

## **Settlement of Litigation over Endangered Species Act Protections for Northern Rocky Mountain Gray Wolves**

### **1. What is being announced today?**

The U.S. Fish and Wildlife Service has reached an agreement with the majority of plaintiffs, including Defenders of Wildlife, the Greater Yellowstone Coalition, and eight other conservation organizations, to settle ongoing litigation over a Federal District Court's 2010 decision to reinstate Endangered Species Act (ESA) protections for gray wolves in the northern Rocky Mountains. If approved by the court, the settlement offers a path for the Service to return management of the recovered wolf populations in Idaho and Montana to the States while the Service considers options for delisting gray wolves across the Rocky Mountain region, where population levels have returned to biologically recovered levels.

### **2. What are the terms of the settlement?**

Service has agreed to address the delisting of wolves in the region in the future as a distinct population segment, rather than on a state-by-state basis. The parties are requesting that the court allow the 2009 delisting to be reinstated in Montana and Idaho on an interim basis, in accordance with approved state management plans, until a full delisting can be completed for the northern Rocky Mountain wolf population. The parties are agreeing that they allow these steps to move forward, up to and including a potential delisting of Rocky Mountain wolves, without resorting to further litigation.

The Service and the plaintiffs have agreed to take other actions that will clarify implementation of the ESA and ensure that a recovered wolf population continues to be sustainably managed under approved state management plans. Other terms of the proposed agreement include:

- The parties will jointly ask the federal district court to stay its prior order so as to reinstate, in the states of Idaho and Montana, the 2009 rule removing wolves in the Northern Rocky Mountain Region from the protection of the Endangered Species Act.
- The Service will withdraw a September 2007 Department of the Interior Solicitors Memorandum Opinion interpreting the meaning of the phrase "significant portion of its range" under the ESA.
- The Service will continue to work with the State of Wyoming to reach agreement on a wolf management plan that provides adequate protection for wolves should they be delisted within the state's boundaries. Until such an agreement is reached, the Fish and Wildlife Service will continue to manage wolves in Wyoming.
- Upon receipt from Wyoming of a mutually acceptable wolf management plan, the Service will publish a proposed rule to designate and delist a Northern Rocky Mountains Distinct Population Segment (DPS) that replaces the 2009 rule.
- The Service will base its proposed and final delisting determination on the ESA's five statutory listing factors and on the basis of the best scientific and commercial data available. The Service may, prior to proposing delisting, consider reclassification of wolves that remain on the list within the Northern Rocky Mountains DPS.

- The plaintiffs have agreed not to challenge any final rule designating and delisting any DPS prior to March 31, 2016. Further, they have agreed not to petition to list either the Northern Rocky Mountains DPS or any wolf population within the NRM DPS within the next three years.
- The Service will continue to monitor the wolf population and gather population data for at least five years. Within four years of the date on which the court approves this agreement, the Service will seek an independent scientific assessment of whether wolves in the northern Rocky Mountains are being managed in a way that reasonably assures the continued presence of a sustainable, genetically connected population of wolves within the Northern Rocky Mountains DPS for the foreseeable future.

### **3. What is the 5-factor analysis contained in the ESA?**

Under the Endangered Species Act, a species is added to the list when it is determined to be endangered or threatened because of any of the following factors:

- The present or threatened destruction, modification, or curtailment of its habitat or range;
- Overutilization for commercial, recreational, scientific, or educational purposes;
- Disease or predation;
- The inadequacy of existing regulatory mechanisms;
- The natural or manmade factors affecting its survival

If a listed species is considered for delisting or downlisting, the same analysis of these five factors is performed. If any of these five factors remain as a threat, the species cannot be delisted, although it may be downlisted if the threat or threats have been sufficiently reduced.

### **4. What is the significance of the phrase “significant portion of the range?”**

The Endangered Species Act describes two categories of declining species of plants and animals that need the Act’s protections – endangered species and threatened species – and provides these definitions:

- **ENDANGERED** - any species that is in danger of extinction throughout all or a significant portion of its range;
- **THREATENED** - any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The ESA contains no explicit definition of what constitutes “significant portion of the range” of a given species. The Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) must nonetheless interpret this phrase in making decisions to list or delist species. The interpretation is important because it influences the determination about whether a species should be listed or delisted.

### **5. Why is the Service withdrawing the existing Solicitor’s Opinion interpreting Significant Portion of the Range?**

On March 16, 2007, the Solicitor of the Department of the Interior issued a formal opinion, “The Meaning of ‘In Danger of Extinction Throughout All or a Significant Portion of Its Range,’” M-37013 U.U.S. DOI 2007 (M-Opinion). Under the M-Opinion, if a species is

found to be threatened or endangered in only a significant portion of its range, protections are applied only to that portion of the range. The legal interpretation spelled out in the M-Opinion has been rejected by the two District Courts in which it has been argued: *Defenders of Wildlife et al. v. Salazar*, CV 09-77-M-DWM and *Greater Yellowstone Coalition v. Salazar*, CV 09-82-M-DWM, concerning the decision to delist northern Rocky Mountain wolves except in Wyoming, and *WildEarth Guardians v. Salazar*, 2010 U.S. Dist. Lexis (D. Ariz. Sept. 30, 2010), concerning FWS' 2008 decision on a petition to list the Gunnison's prairie dog (73 FR 6660).

## **6. What happens now? What geographic area is included?**

The parties are requesting that the court reinstate the 2009 delisting in Montana and Idaho on an interim basis, with management in accordance with approved state management plans, until a full delisting can be completed for the Rocky Mountain wolf population. The parties are agreeing that they allow these steps to move forward, up to and including a potential delisting of Rocky Mountain wolves, without resort to further litigation.

The delisting provided for under this agreement does not extend to the small wolf populations in eastern Oregon and Washington, or to Utah, where there are not believed to be any resident wolves. FWS intends to address the longer term status of wolves in Oregon, Washington, and Utah when it issues a new rule addressing status of wolves across the Northern Rocky Mountain region. FWS will work with state officials in Oregon, Washington and Utah in the meantime to address any wolf management issues and retains the option to consider reclassifying wolves from "endangered" to "threatened" in those states in order to provide more management flexibility.

## **7. What is the current population of gray wolves in the Northern Rocky Mountains?**

The 2010 Interagency Annual Report for the Northern Rocky Mountain Distinct Population Segment (NRM DPS) of gray wolves shows little change in the population or distribution of wolves from 2009. The report, which is compiled and released annually by cooperating federal, state and tribal agencies, estimates that the population contained at least 1,651 wolves in 244 packs and 111 breeding pairs at the end of 2010. Current levels exceed the minimum population recovery goal (>300 wolves) and the minimum breeding pair recovery goal (>30 breeding pair). The end of 2010 marked the 11th consecutive year the NRM population has exceeded numeric and distributional recovery goals.

## **8. Who are the Settling Plaintiffs?**

- Defenders of Wildlife
- Natural Resources Defense Council
- Sierra Club
- Center for Biological Diversity
- Hells Canyon Preservation Council,
- Greater Yellowstone Coalition
- Jackson Hole Conservation Alliance
- Oregon Wild

- Cascadia Wildlands Project
- Wildlands Network (formerly the Wildlands Project)

**9. Who are the non-Settling Plaintiffs?**

- Alliance for the Wild Rockies
- Humane Society of the United States
- Friends of the Clearwater
- Western Watersheds Project