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ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

August 6, 2007

Ed Bangs, Western Gray Wolf Recovery Coordinator
U.S. Fish & Wildlife Service
585 Shepard Way
Helena, MT 59601

Re: RIN 1018-AV39

Comments on the Proposed Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains

Dear Ed:

On behalf of Natural Resources Defense Council, Sierra Club, Jackson Hole Conservation Alliance, The Humane Society of the United States, and Help Our Wolves Live (HOWL) we submit the following comments on the U.S. Fish and Wildlife Service's ("FWS") 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. 36,942-49 (July 6, 2007).

By changing the rules governing the gray wolf experimental populations, FWS will allow the states to kill up to 700 wolves out of the current wolf population of roughly 1,300 wolves. This level of killing will significantly set back wolf recovery. The rule change is in response to the states clamoring for the ability to kill wolves that affect elk, deer, and moose populations. There is no legitimate biological justification for the current proposal. Elk populations are at all-time highs in many areas in the Northern Rockies, including those areas where wolves prey on elk. Wolves survive by killing ungulates, their natural prey. FWS has departed from the wolf recovery path by authorizing a major reduction in wolf numbers and distribution, and by promoting the notion that wolves killing their natural prey is inappropriate. Instead of promoting more tolerance, FWS is promoting intolerance for wolves and wolf recovery.

The Proposal Violates ESA §§ 2 and 4. The purpose of the Endangered Species Act ("ESA") is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species" and to achieve the purposes of international conservation treaties and conventions. 16 U.S.C. § 1531(b).

When Congress passed the ESA it found that "the United States has pledged itself as a sovereign state in the international community" to conserve fish, wildlife, and plants "facing extinction" through a wide variety of international agreements including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and "other

agreements.” 16 U.S.C. § 1531(a)(4). Congress declared it a fundamental purpose of the ESA “to take such steps as may be appropriate to archive the purpose of [these] treaties and conventions.” 16 U.S.C. § 1531(b). Since that time, the United States has signed other treaties and conventions regarding the conservation of imperiled wildlife, including the Convention on Biological Diversity, and has remained an active member in international conservation organizations, such as the World Conservation Union (IUCN) and the United Nations Environment Program (UNEP). Indeed, over the last thirty years in many respects the United States has been a leader in the conservation of biological diversity worldwide.

Many of these international institutions rely heavily on the IUCN’s Red List of Threatened Species. See IUCN Red List of Threatened Species (2006) (available at www.iucnredlist.org). The Red List contains detailed scientific criteria for use in classifying both the current status, and the populations necessary for recovery, of species of flora and fauna. IUCN Red List Categories and Criteria (available at http://www.iucnredlist.org/info/categories_criteria). For example, when determining whether to restrict international trade in fish, plants or wildlife, CITES will typically look at that species’ Red List status.¹ Similarly, UNEP often refers to and relies upon Red List determinations, as does the Convention on Biological Diversity, whose Ad Hoc Technical Expert Group has found that the Red List “is recognized as the most authoritative and objective system for classifying species at high risk of extinction.”²

As we described in detail in our prior comment letter, if one were to apply the IUCN Red List criteria to the Northern Rocky wolf population, a minimum of 2,000-3,000 wolves would be needed before the population could be considered recovered. See May 8, 2007 Earthjustice Letter on FWS Proposal to Designate the Gray Wolf Northern Rocky Mountain Distinct Population Segment and to Remove this Distinct Population Segment from the Federal List of Endangered and Threatened Wildlife (“May, 2007 Earthjustice Comment Letter”) and May 2007 Scientists Letter. Given the widely recognized and authoritative nature of the IUCN’s Red List and the criteria that support it, as well as its thorough integration into the very international conservation agreements that Congress intended the ESA to further, FWS faces a heavy burden when it seeks to depart from this well-recognized scientific standard. Certainly, without a contrary indication in either the plain language of the ESA or the Act’s legislative history, FWS cannot depart from the international standards and practices embodied by the IUCN’s Red List criteria consistent with ESA section 2’s purposes.

¹ Nearly every recent determination of a species’ status under the Convention relied on the Red List status of that species. See www.cites.org (search for “Red List”) (results available at <http://www.googleusercontent.com/u/cites?q=Red+List&imageField.x=3&imageField.y=6>)

² Convention on Biological Diversity, Ad Hoc Technical Expert Group, “Indicators for Assessing Progress Towards the 2010 Biodiversity Target (Montreal, 19 -22 October 2004), p. 1 (available at <http://www.cbd.int/doc/meetings/ind/tegin01/information/tegin01-01-inf-09-en.doc>). Similarly, UNEP has noted that “[t]he IUCN Red List is widely recognized as an authoritative and objective system for classifying species by their risk of extinction.” UNEP, Geo Year Book 2006 (available at <http://www.unep.org/geo/yearbook/yb2006/080.asp>).

The Proposal Violates The ESA Duty To Conserve Endangered Species. Consistent with the purposes of the ESA, Congress declared “that 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. 16 U.S.C. § 1531(c)(1). 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). In defining “conservation” of threatened and endangered species, Congress provided a very limited definition of when regulated taking could be utilized in the name of conservation: “and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.” *Id.*; see also Sierra Club v. Clark, 755 F.2d 608, 613 (8th Cir. 1985) (“before the taking of a threatened animal can occur, a determination must be made that population pressures within the animal’s ecosystem cannot otherwise be relieved”). Thus, under the express mandates of the ESA, FWS is obliged to affirmatively promote recovery of listed species until they are fully recovered and removed from the list of endangered species, and may not authorize taking of listed wolves except as expressly authorized in § 1532(3). The current proposal, which would allow killing more than half of an already insufficiently large gray wolf population in the Northern Rockies, violates section 2 of the ESA, 16 U.S.C. § 1531.

The ESA creates an explicit process for the listing and delisting of endangered species. 16 U.S.C. § 1533. FWS is not empowered under the ESA to treat a listed species as if it has already been removed from the endangered species list. While a species remains on the list of endangered species, FWS—and all federal agencies—have an obligation to conserve the species, not wantonly authorize massive killing of the species. Thus, the current proposal also violates section 4 of the ESA.

The Proposal Violates ESA § 10(j). The FWS proposes to change the rules governing two experimental populations designated pursuant to section 10(j) of the ESA, 16 U.S.C. § 1539(j). Section 10(j) requires, with two limited exceptions, that “each member” of an experimental population be treated as species listed as threatened under the ESA. 16 U.S.C. § 1539(j)(2)(c). Neither of these two limited exceptions applies to the current wolf-killing proposal. First, nonessential experimental populations—except when they occur within National Parks or National Wildlife Refuges—are excepted from the requirements of section 7 of the ESA, 16 U.S.C. § 1536. Section 7 of the ESA governs “Interagency cooperation,” including the consultation process. Second, critical habitat “shall not be designated” for nonessential experimental populations. 16 U.S.C. § 1539(j)(2)(c)(ii). Aside from these two limited exceptions, FWS is required to treat each member of an experimental population as a threatened species, and protect that species as required by the ESA. The Service’s authorization to kill up to 700 wolves of the current population of roughly 1,300 wolves is inconsistent with the requirements of the ESA to protect threatened species and their habitat.

The Proposal Violates 50 C.F.R. § 17.82. The Service’s wolf-killing proposal also violates FWS’s ESA 10(j) regulations. Subpart H—Experimental Populations of volume 50 of the Code of Federal Regulations, 50 C.F.R. §§ 17.80-17.84, lays out the Service’s regulations governing experimental populations. Experimental populations are by definition comprised of

individual members of endangered or threatened species. 50 C.F.R. § 17.81(a). Section 17.82 requires the Secretary to establish “Prohibitions” to protect the members of an experimental population:

Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population. The Special rules (protective regulations) adopted for an experimental population under § 17.81 will contain applicable prohibitions, as appropriate, and exceptions for that population.

50 C.F.R. § 17.82. As explained more fully below, the proposed wolf killing is not a “protective” regulation designed to promote recovery of the gray wolf.

The Process for FWS Approval of State Management Plans is Deeply Flawed. FWS has proposed a rule that would dramatically increase the amount of wolf killing allowed, but has limited this provision to those states that have developed a state management plan approved by FWS:

this rule proposes to modify the definition of “unacceptable impacts” to wild ungulate populations so that States and Tribes with Service-approved post-delisting management plans can better address the impacts of a biologically recovered wolf population on ungulate populations and herds while wolves remain listed.

72 Fed. Reg. 36,942; see also 50 C.F. R. § 17.84(n)(1).

Neither the proposed rule nor existing 50 C.F.R. § 17.84(n) provides any description of what standards FWS will use to approve “post-delisting management plans” and what mechanisms will be used to document those decisions or advise the public what regulatory restrictions are in place at a given time. These deficiencies infect the entire Federal Register notice. It is impossible to know, simply by reading the Federal Register notice on the proposed rule, whether the Service believes that the regulation would apply in any particular area. Only by reading the Required Determinations or the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) sections of the proposed rule can one determine that as of July 6, 2007 FWS has approved the state wolf plans for Idaho and Montana, but not Wyoming. As to the economic impact of the proposed rule change, FWS states that the rule “will result in only minor and positive economic effects on a small percentage of private citizens in Idaho and Montana, and possibly Wyoming if it develops an approved post-delisting wolf management plan.” 72 Fed. Reg. 36946. From this language, one can infer that Wyoming did not have a FWS-approved management plan as of July 6, 2007, but the notice fails to identify when and how such approval could be obtained, including the Service’s release the same day of another Federal Register notice that appears to give tentative FWS approval to the Wyoming wolf plan. See 72 Fed. Reg. 36939. In the Regulatory Flexibility Act section of the proposed rule, FWS notes that “[w]ithin the northern Rocky Mountain gray wolf population range, only the States of Idaho and Montana have approved plans.”

The public is being asked to comment on a proposal without knowing which states will be included within the scope of the regulatory change during what time frames. Will the final rule specify which states are included within the scope of the changed definition of “Unacceptable impact?” Can approval be effected by a phone call or a letter? Revoked at will and for no reason? The proposed rule fails to answer these basic questions. Because the proposed rule change is essentially a black box process that provides no way for the public to know whether, when, how, and under what conditions FWS will approve a state wolf management plan—including a mechanism for the public to know what management rules pertain in what areas by reading the Code of Federal Regulations, the wolf-killing proposal violates the ESA and the basic procedural requirements of the APA, 5 U.S.C. § 553, as required by 50 C.F.R. § 17.81(a).

In addition to these fundamental due process problems, the proposed rule is arbitrary and capricious for two further reasons. First, the “Unacceptable impact” provision is illogical because any state wolf management plan would be implemented only after delisting of the wolf whereas the 10(j) rule changes would be applied before wolves are delisted. There is no legitimate ESA conservation basis to allow further wolf killing before delisting in certain states based on how they might treat wolves in a future delisted scenario that may never occur. Second, as we describe below, there is no legitimate biological basis for killing wolves that affect wild ungulate populations or herds.

The Proposal Fails to Demonstrate Why a Rule Change Is Necessary for Ungulate Management. While FWS claims “extra management flexibility was required to address conflicts given the recovered status of the [wolf] population,” 72 Fed. Reg. 36944, the Service fails to demonstrate that killing wolves will serve any wolf conservation or wildlife benefits. As FWS acknowledges, “[w]olf predation is unlikely to impact ungulate population trends substantially,” and “[c]urrent 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.” *Id.* In Idaho, “elk populations statewide are near all time highs. Elk numbers throughout northern, southern, eastern and much of western Idaho have continued to increase over time.” Idaho elk populations are at 20 percent above management objectives and elk harvest numbers are the highest they have been since 1996. Idaho Fish and Game Elk Survey Progress Report, June 2006, (available at <https://research.idfg.idaho.gov/wildlife/Wildlife%20Technical%20Reports/Elk%20PR06-W-170-R-1-1.pdf>). In Wyoming, as of May 2007 the Game and Fish Department reported that “elk are probably at an all-time high historically.” Casper Star Tribune, May 12, 2007, (available at <http://www.casperstartribune.net/articles/2007/05/12/news/wyoming/f7f7af3584d3955b872572d7007f8c9a.txt>). Elk numbers in Wyoming jumped to 99,867 animals for the census following the 2006 hunt, putting the population approximately 17 percent more than Game and Fish Commission objectives. All of the four herds (Clark’s Fork, Cody, Gooseberry and Upper Green River) that Wyoming Game and Fish department officials have complained were being harmed by wolves were above objectives, according to agency counts. Jackson Hole News and Guide, May 16, 2007 (available at http://www.jacksonholenews.com/article.php?art_id=1766). In fact, Wyoming recently increased the number of hunting tags it will issue, which means hunters will be allowed to take more elk and pronghorn this year than usual. Jackson Hole Star Tribune, April 26, 2007

(available at <http://www.jacksonholestartrib.com/articles/2007/04/26/news/wyoming/bd3865054c105281872572c800829bb7.txt>). And in Montana, two-thirds of the hunting districts in southwestern Montana (all of which support wolves) are currently offering the most liberal hunting opportunities seen in 30 years due to higher elk populations. Rocky Mountain Wolf Recovery 2005 Interagency Annual Report, (available at <http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt06/index.htm>).

Given that there is no biological basis for the increased wolf killing in the name of ungulate management, FWS offers the bromide that a “potential benefit [of the proposed rule] may be a lower level of illegal take of wolves due to higher local public tolerance of wolves resulting from reduced conflicts between wolves and humans.” 72 Fed. Reg. 36946. For this social science proposition, FWS offers no scientific authority. The federal courts have rejected this approach. Humane Society of the United States v. Kempthorne, 481 F. Supp. 2d 53, 63 (D.D.C. 2006) (federal Judge Kollar-Kotelly agreeing with federal Judge Huvelle’s observation: “I have a hard time understanding the notion you kill the wolves to save the wolves.”). In addition, anecdotal evidence suggests the Service is wrong—despite repeated efforts to increase the amount of government-authorized wolf killing in the Northern Rockies, see, e.g., 70 Fed. Reg. 1,286, public tolerance for wolves has declined to the point where Idaho and Wyoming are on record as wanting to kill wolves to the absolute minimum numbers permitted by FWS and the ESA as soon as possible. See May 2007 and August 2007 Earthjustice Comment Letters on Gray Wolf Delisting. Thus, aside from an unjustified and unwarranted social engineering proposition, FWS offers no biological justification for authorizing large numbers of endangered wolves to be killed for impacting their natural prey species.

The Proposal Would Allow Extensive Wolf Killing in the Name of Ungulate Management. The Service has created a regulatory puzzle: it now proposes to modify a 10(j) rule that stands separately in the Federal Register from two prior Northern Rockies gray wolf 10(j) rules. If FWS proceeds with its proposal, there will continue to be three 10(j) rules that are still operative in the Northern Rockies—the two original 10(j) reintroduction proposals (which appear in 50 C.F.R. § 17.84(i)) and the amended 2005 10(j) regulations applied to the same wolves and the same geography, which are located in 50 C.F.R. § 17.84(n). The Service added to the confusion by failing to place the entire § 17.84(n) regulations in the Federal Register notice for the proposed 10(j) rule change. Thus, the only way to decipher how the proposed changes will actually play out is to read all four regulations together and then hope to ascertain what states currently have FWS-approved post-delisting wolf state management plans.

In light of this procedural morass, the only way to ascertain what ungulate species are the subject of the Service’s proposal to allow extensive wolf killing is to examine the current language of 50 C.F.R. § 17.84(n)(4)(v)(A), which is not discussed or described in the instant Federal Register proposal. That provision states:

Take in response to wild ungulate impacts. If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a state or Tribe may lethally remove the wolves in question.

Id. Thus, the Service’s proposal to increase wolf killing would relate to any alleged impacts on deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison populations or herds. The standard for wolf-killing due to “Unacceptable impact[s]” on wild ungulates is simply that “a population or herd” is not meeting “State or Tribal population or herd management goals.” 50 C.F.R. § 17.84 (n)(3). There is no requirement that the State or Tribal management goals be reasonable, or that they be consistent with wolf recovery efforts. In the explanatory text on the proposed rule, FWS states that:

Management goals might include cow/calf ratios, movements, use of key feeding areas, survival rates, behavior, nutrition, and other factors.

72 Fed. Reg. 36,944. Given this expansive, nonrestrictive list of qualifying ungulate management goals, any established management goals, including standards of excluding wolves from bighorn sheep or mountain goats areas, or removing wolves that affect elk behavior would be included within the scope of this authorization. The States and the Tribes are at liberty to establish any ungulate management goals they wish—including no wolves except in Yellowstone Park—and kill wolves accordingly. This blank check for wolf killing would include direct and indirect impacts, and would allow killing of wolf packs hundreds of miles away if they produce a dispersing wolf that traveled through an area where wild ungulates were present.

The wolf-killing authorization, as proposed, is breathtaking in its scope. While the proposed rule would retain remnant provisions for peer review and public comment from the prior rule, those provisions provide no substantive constraints on wolf killing. As currently proposed, the subject of the peer review and public comment is whether there will be an “Unacceptable impact,” which in turn focuses on whether the a population or herd of wild ungulates are failing to meet an established State or Tribal management goal. The only substantive constraints on wolf killing for ungulate impacts in the proposed rule are that the Service must conclude that “wolf removal is not likely to impede recovery,” 50 C.F.R. 17.84(n)(3), and that the wolf population will not be reduced “below 20 breeding pairs and 200 wolves” in the affected State. Id. at (n)(4)(v)(B). Given that FWS has repeatedly stated that it believes that a mere 300 wolves are needed for a recovered Northern Rockies gray wolf population, the only real constraint on wolf killing due to impacts on ungulates is the “20 breeding pairs and 200 wolves” standard. Thus, the wolf-killing proposal for any impacts on wild ungulate populations is an invitation to reduce wolf population and abundance that will significantly retard wolf recovery. It is flatly inconsistent with the conservation mandate of the Endangered Species Act.

FWS’s Wolf Killing Proposal Will Substantially Impair Genetic Connectivity Between Ecosystems. Time and again, FWS has emphasized the need for an “equitable distribution of wolf breeding pairs” among the three states and for wolves to successfully travel between Yellowstone, central Idaho, and northwestern Montana public land areas. 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. Indeed, FWS has stated repeatedly that its gray wolf demographic recovery standards for the Northern Rockies are “minimal” and would

require connectivity between gray wolves in the Yellowstone, central Idaho, and northwestern Montana areas. Id.

Even though the wolf population in the Northern Rockies has rebounded to roughly 1,300 wolves, genetic connectivity between ecosystems has not yet been attained: only a couple of wolves have successfully immigrated to the Yellowstone ecosystem, and there is no indication at this time that any of those wolves has successfully bred and thus contributed to the gene pool. May, 2007 Earthjustice Comment Letter at 9-10; Oakleaf, J.K, et al. (2006) at 555, Habitat selection by recolonizing wolves in the Northern Rocky Mountains of the United States, *The Journal of Wildlife Management* 70(2):554-563. In particular, the GYA recovery area is almost entirely isolated from individuals from central Idaho and northwest Montana. Oakleaf (2006) at 561. Further diminishing the size of all three of these populations will discourage dispersal necessary for wolves' long-term survival.

An effective metapopulation³ dynamic has not occurred because there has not been a steady exchange of breeders between the subgroups so that genetic diversity remains unimpaired. Further reduction in wolf numbers or distribution will reduce the prospects for an effective metapopulation dynamic and further isolate the Yellowstone-area wolves. FWS fails to even mention this critical factor, let alone analyze how reducing the gray wolf population more than half to a mere 600 individuals will reduce the prospects of ever attaining an effective metapopulation dynamic. FWS has violated the ESA and the Administrative Procedures Act by failing to discuss or analyze a critical factor in considering whether to allow a massive reduction in the number and distribution of wolves and how that will affect metapopulation dynamics.

The Wolf Killing Proposal for Impacts on Ungulates Provides No Safeguards to Prevent Excessive Wolf Killing. Under the proposed rule, the only substantive restraint on state wolf killing due to impacts on ungulate populations is the requirement that FWS determine—at the time of permitting—that the wolf killing “will not reduce the wolf population in the State below 20 breeding pairs and 200 wolves before we authorize lethal wolf removal.” 72 Fed. Reg. 36,948 (proposed rule § 17.84(v)(B)). As drafted, the specific language of the proposed rule is rife with mischief. Because there are no distribution requirements, no state is required to maintain wolf packs well distributed throughout their state. Because there is no overall population standard, it would allow authorizing wolf killing in a particular state even if other states had no wolves whatsoever. It would allow authorizing wolf killing down to 200 wolves in a state even if other factors were driving the population to extinction. Indeed, taken literally, it would allow killing every single wolf in a state if the state's wolf population was already below 200, because the newly permitted wolf killing would not “reduce the wolf population” below 200 wolves. And, once FWS authorizes the killing for ungulate control, there is no mechanism for cancelling the authorization if the population declines below the 200-wolf threshold due to other factors.

Reducing the Northern Rocky Mountain Wolf Population to 600 Wolves Would Reduce the Population to Genetically Nonviable Population Levels. As we explained in our May, 2007

³ A metapopulation is a population with genetic exchange between subpopulations. 72 Fed. Reg. at 6,107.

Earthjustice Comment Letter, to avoid the adverse genetic effects of inbreeding, a total population of several thousand wolves is necessary to ensure population viability. Even at the current population level of roughly 1,300 wolves, the Northern Rocky Mountains wolf population is well short of the numeric thresholds for a non-imperiled species established by the IUCN Red List standards. See IUCN Red List Categories and Criteria, Version 3.1 (2001). IUCN protocol requires listing a species as “vulnerable”—which corresponds to the ESA “threatened” listing category—if the population size drops below 1,000 “mature” individuals. Red List Criteria, at 23. An individual is defined as mature if it is capable of reproducing. Id. at 10. In the case of gray wolves, only a small percentage of the population actually breeds. Therefore, far more than 1,000 wolves are necessary in the Northern Rockies to meet IUCN standards for a healthy population. Isolated populations of merely 200 individuals, as contemplated by FWS’ proposal, are not capable of maintaining genetic diversity sufficient to withstand environmental variability and stochastic events.

The Service’s Northern Rocky gray wolf demographic recovery targets are also notably short of the recovery targets established by FWS for wolves in the Western Great Lakes, which included a minimum recovery level of between 1,250 and 1,400 individual wolves in Minnesota alone. This population size was determined necessary to “increase the likelihood of maintaining its genetic diversity over the long term ...[and] provide[] resiliency to reduce the adverse impacts of unpredictable demographic and environmental events.” FWS, Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife, 72 Fed. Reg. 6,052 (Feb. 8, 2007). Consequently, there are no “surplus” wolves in the Northern Rockies that can be killed to reduce any conceivable impacts on native ungulate populations. Rather, the converse is true: FWS needs to work toward attaining a biologically justifiable population level of 2,000-3,000 wolves operating as an effective metapopulation before authorizing additional wolf killing.

The Proposed Rule Fails to Include Essential Standards for Wolf Killing. FWS’ proposed § 10(j) regulations are further flawed because they would permit states to indiscriminately eliminate breeding members of the population, thus reducing the likelihood that packs will breed in the year following the wolf killing.

In general, only the alpha male and alpha female of a wolf pack breed. 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. S.M. Brainerd, et al. (2006) at 22, The effects of alpha wolf (Canis lupus) loss on reproductive success and pack dynamics, (cited in 71 Fed. Reg. 43,410, 43,421 (Aug. 1, 2006)). When both alpha wolves are killed, the result is “generally catastrophic for the short-term reproductive potential of the pack.” Id. at 23. 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. Id. at 18. Further, the chances of reproduction and pup survival after the loss of one or both alpha wolves are greatly influenced by pack size. Id. at 23.

The proposed § 10(j) rule changes fail to take into account these fundamental principles of wolf biology. The rule would allow the killing of any wolf, whether a pup, sub-adult, or breeding individual within a pack, without regard to factors affecting a pack's subsequent ability to remain intact or reproduce. Thus, significant killing of breeding wolves in a fall hunting season could easily drive the population below the proposed rule's minimum of 200 wolves the following year.

The Service has failed to consider a relevant factor in proposing to amend the 10(j) regulations—the significance of killing the alpha male or alpha female or the pack size on breeding success the following year. FWS has violated the ESA and the Administrative Procedures Act by failing to discuss or analyze this critical factor in permitting extensive wolf killing authorized under the proposed regulations.

There is No Justification for the Proposed Rule Concerning Wolf Killing to Protect Stock Animals and Dogs. FWS proposes to radically increase the circumstances where wolves can be killed to address impacts on stock animals and dogs. As to stock animals, there is no factual justification for the proposed rule change; as to dogs, FWS misstates the scope and impact of the proposed rule change.

FWS proposes to change the rules to allow wolf killing to protect stock animals, including horses, mules, donkeys, or llamas, from wolves that wound, harass, molest, or kill stock animals. 72 Fed. Reg. 36,948. This flies in the face of FWS's recognition that "[t]here has been no documentation of wolf depredations on stock animals that were accompanied by their owners in the past 12 years." 72 Fed. Reg. 36,946. FWS does state that a "few instances of stock animals being spooked by wolves" were reported. *Id.* FWS concludes that nervous stock animals should justify killing endangered wolves, and that this will result in only "minor impacts on the wolf population." Killing an endangered species is not a minor activity, and it cannot be justified on such flimsy evidence.

FWS proposes to change the rules to allow wolf killing to protect hunting dogs from being wounded, harassed, molested, or killed by wolves. 72 Fed. Reg. 36,948. The primary justification offered by FWS for this rule change is that "35 hunting hounds have been killed by wolves, primarily on public land." 72 Fed. Reg. 36,946. FWS asserts that in only "a few" of those instances the hounds' owners were close enough "that they might have been able to better protect their dogs by shooting at the wolves involved." *Id.* This compares apples and oranges. The proposed rule would allow killing wolves that merely wounded, harassed or molested dogs, not only wolves that killed dogs. Plus, undoubtedly there are numerous conflicts between wolves and hunting hounds that are neither reported nor confirmed. Dogs, especially when unleashed, are known to attract wolves. Most importantly, hunters who are armed and loaded and ready to shoot wolves, accompany hunting hounds. And the Service fails to define the terms "wounded," "harassed," or "molested," leaving them open to interpretation that would result in numerous wolves being killed to protect hunting dogs in circumstances where there are likely to be few, if any, witnesses other than the affected hound owner(s). The proposed rule would be impossible to enforce, and thus would allow killing of wolves across wide expanses of their habitat with no way to restrict the amount of wolf killing authorized by the rule.

For these reasons, the FWS's proposed rule change to protect stock animals and dogs is unnecessary, excessive, and inconsistent with the conservation mandate of the ESA.

CONCLUSION

FWS's proposed rule change for the experimental wolf populations would set back wolf recovery by radically reducing wolf numbers, substantially reducing occupied habitat, and fracturing potential connectivity routes between core populations. Wolves deserve a place on the landscape in the American West. That can only be achieved in the long run by promoting acceptance for natural wolf behaviors. Predation on elk must be accepted if wolves are to survive in the West. We urge FWS to withdraw the proposed rule changes in their entirety.

Sincerely,

A handwritten signature in black ink that reads "Doug Honnold". The signature is written in a cursive, flowing style.

Douglas Honnold
Jenny Harbine