



VOTE NO  
ON PROPOSED LEGISLATION  
HR 843 AND HR 884  
OR ANY LEGISLATION THAT  
REMOVES FEDERAL PROTECTIONS  
FOR WOLVES OR WEAKENS THE  
ENDANGERED  
SPECIES ACT

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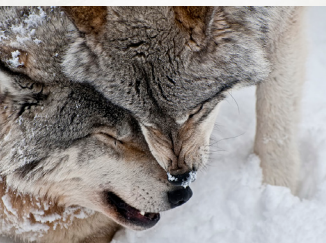


## Summary of HR 843 and HR 884 *and summary of proposed alternatives.*



### **Vote No on Proposed Legislation HR 843 and HR 884**

**Bill summary HR 843:** Rep. John Kline, R-Minn introduced HR 843. This bill will prohibit the U.S. Fish and Wildlife Service from ever listing wolves under the Endangered Species Act in Minnesota, Wisconsin and Michigan.



### **VOTE NO BECAUSE:**

HR 843 does not have its foundation in science; it is a political maneuver designed to circumvent the Endangered Species Act through Congressional intervention by removing wolves from federal protections in the Great Lakes Region.



**Bill Summary HR 884:** Rep. Reid Ribble, R-Wis introduced HF 884. This bill would remove recently restored federal protections for wolves in Wyoming and the Western Great Lakes by directing the Secretary of the Interior to reissue USFWS final rules that were deemed arbitrary and capricious and insufficient to protect wolves under state management plans. The bill will also prevent judicial review of the rule, and by proxy effectively amends the ESA in contravention of the intent of the ESA.



### **VOTE NO BECAUSE:**

Our system of democracy relies on checks and balances and provides for judicial review of laws and rules that are challenged in courts of law. Congress should not exempt some laws or rules from judicial review for political purposes. The court order that this bill is designed to negate, is one in a long history of similar decisions that find state management plans insufficient to protect wolves. Rather than using political clout through legislation designed to silence the courts, scientists and the public on the matter of wolf recovery we ask that Congress support the down listing of wolves to “Threatened” status.







## Summary of HR 843 and HR 884 *and summary of proposed alternatives, continued*



### **Support Precautionary and Compromise Alternatives**

*The alternatives provide continued federal protections for wolves but allow the livestock industry to address concerns about potential wolf conflicts with livestock without amending the ESA or using questionable and politically motivated tactics.*



**Alternative Choice, Attachment A:** Support petition to USFWS to list wolves as threatened under the ESA (instead of endangered). This is a reasonable compromise endorsed by scientists, researchers and many organizations. It would afford states the flexibility to remove problem wolves while providing wolves a measure of protection and,



**Alternative Choice, Attachment B:** Review and use independent scientists', J. Bruskotter and J. Vucetich, Framework for Recovery, as a guide to revise and update the wolf recovery plan under ESA

### **Summary of why vote no and adopt alternatives**

The two proposals offer intelligent compromise between livestock owners who are concerned about possible wolf depredations and the citizens, scientists, lawyers and members of national NGOs who provided overwhelming support for wolves. A downgrading of the classification of wolves from endangered to “threatened” will allow states to manage wolves that threaten livestock or present threats to human safety but will prevent the all out slaughter that is now de rigueur under state plans. Essentially states will be able to remove “problem” wolves but not engage in public hunts that are opposed by scientists and the public. If Congress is concerned about the ambiguities in the recovery plan that make it difficult to define sustainable wolf recovery free from politics then the framework for recovery is a much better place to start than dismantling one of the most important pieces of conservation legislation available to protect endangered or threatened species.





## Why Vote No



### **Facts: Why A NO Vote is Necessary to Protect the ESA, Wolves and the American Public from Politics at their Worst**

**Historically wolves have been unjustly vilified and persecuted despite their ecological value and their relatively excellent track record for staying out of trouble.** In the last hundred years, **in all of North America**, including Canada, only two fatal wild wolf attacks occurred. Similarly predators are blamed for catastrophic livestock losses when predators are actually responsible for only one quarter of 1% or 0.23% of all cattle losses in the US. Of that small portion of losses by predators, wolves accounted just for 4% of the 0.23% losses of cattle.. The greatest percentage of losses are attributed to health and respiratory issues, weather, calving, theft and injuries. Likewise, wolves are named as culprits of declining populations of elk and other ungulate game species. Yet these species are thriving nationally, often at levels that are considered destructive to human crops and property. Wolves help keep unhealthy levels of ungulate populations in check.

### **Politics continue to drive intolerance for wolves and push for management actions that are unpopular to the public and scientific communities.**

To illustrate an example of persistent determination to stigmatize wolves, recently state Sen. Tom Casperson (MI) (R-38) created a fictional account claiming wolves were threatening a daycare, arguing they were overpopulated and threatened human safety. When his attempts to revile wolves failed because they were exposed as untruthful the Senator made a public apology. Nonetheless EVEN after Michigan voters used a citizen's referendum to successfully vote down public hunting of wolves, and the US 9th circuit court remanded wolves back to the care of the federal government the Republican Michigan State Senate passed a resolution asking Congress to take wolves off the endangered species list. This kind of ingrained political state-level knee-jerk intolerance to wolves now threatens wolf recovery on a national level with the introduction of HR843 and HR884. A coalition of scientists signed a letter against the bills, see appendices.

### **Wolf recovery is not completed**

Extirpated in all but a few regions of the US, wolves made a tentative comeback only because the Endangered Species Act prevented ingrained regional hostilities from killing off the newly established populations. Wolves now occupy less than 5% of their former





## Why Vote No, *continued*



ranges even though suitable habitat is available. The recent ruling in *Humane Society of United States v. Jewell* breathes new life into the hope of establishing wolf populations in suitable habitat in the Southwest, Northeast, parts of the southern Rocky Mountains, and Pacific Northwest that would allow wolves to truly inhabit a much greater part of their former ranges as envisioned by the ESA drafters. The Ribble/Lummis proposed legislation would quash those hopes. In recent years most if not all of the wolves that have occasionally migrated into formerly extirpated regions have been shot before they could gain a foothold.

### **The Endangered Species Act is the only weapon against intolerance by livestock producers and the hunting and trophy hunting industries that promote intolerance.**

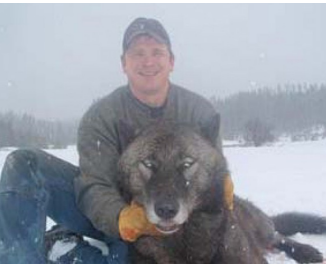
Tolerance for wolves is high in most of the country except in areas heavily invested in livestock and trophy hunting industries. Since wolves received federal protections tolerance was increasing, as ESA protections were lost tolerance is shown to be decreasing again.

### **HR 843 & HR 884 would return wolves to state management when the courts have repeatedly rejected USFWS rules as arbitrary and capricious or when to do so would create irreparable harm because the state plans were inadequate to protect wolves.**

Currently state plans are aggressive, hostile and tend to utilize the lowest thresholds for recovery as the upper limits of acceptable wolf presence instead of pushing for or celebrating robust healthy populations that maximize ecological functions or resemble the intent of a recovered species as originally envisioned. In fact, all states declared aggressive public hunts on wolves as soon as ESA protections were removed. Under state plans wolves are shot from helicopters, hunted with dogs, trapped, snared, shot in bow and arrow seasons and with guns fitted with suppressors. The seasons are long, the quotas large, (Montana allows 5 animals to be killed per year per hunter), there are no protections for age, size or sex, or consideration for the unique sociality of the species or admission that public hunting of wolves may be creating more problems than it solves. The wolf is the only species to be hunted with the intent to reduce the population to its lowest viable number before triggering a possible relisting. This type of hunting pressure assures that wolves will not successfully migrate to populate appropriate habitat elsewhere and the stress of hunting may be doing irreversible damage to the species. To continuously harass,



## Why Vote No, *continued*



kill, and divide all resident wolf packs, but for small remnant populations, that reside on tens of millions of acres of public lands is surely not what the ESA founders envisioned for “recovery”.

### **United states citizens do not support efforts to remove wolves from ESA protections**

In the latest solicitation for comments by the United States Fish and Wildlife Service (USFWS) <http://www.fws.gov/home/wolfrecovery/> an unprecedented 1,600,000 comments were received with tremendous opposition to the USFWS rule for a national delisting. The USFWS reopened the comment period to the rule proposing a national delisting of gray wolves 4 times.



### **HR 843 & HR884 undermine the original intent of the ESA, a popular law that has been deemed the most important piece of conservation legislation.**

The successes in preventing extinctions under the ESA cannot be overstated: the ESA famously protected the snail darter (*TVA v. Hill*); it has halted logging in sensitive areas despite intense political and industry pressure (*Babbitt*); it has prevented raptor extirpations, and it has provided for initial recovery of the gray wolf, which was extirpated from the United States by 1928. These victories were made possible by adhering to the processes laid out in the ESA, which mandates the consideration of science and public comments.



The original intent of the ESA is being undermined by the legislative approach to sidestep erroneous delisting decisions, which began with a rider in the must-pass 2011 budget. When wolves in Idaho and Montana were delisted, the results have been devastating. Since resuming control of the Idaho wolf population, the state is adopting increasingly aggressive wolf management policies. Last year, Idaho had approximately 650 wolves; now the state aims to reduce the population to merely 150 wolves using a wolf control board. While citizens may bring suits against the USFWS for improperly delisting wolves, direct Congressional orders to delist—such as the 2011 rider and now the Ribble/Lummis legislation—eliminate the ability to challenge delisting decisions in court on the basis of a failure to satisfy the delisting requirements of the ESA.







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Dear Members of Congress,

March 27, 2015

After decades without the thrilling howl of wolves in national parks and wilderness areas, the Endangered Species Act (ESA) helped repopulate some of our nation's most remote public lands with this iconic predator<sup>1</sup>. As wolves reclaimed their natural habitats, millions flocked to parks like Yellowstone just to see the newly restored carnivores.

Wolves receive great public support by a solid majority of Americans<sup>2</sup>. Yet, without an intact ESA or continued federal protections, Americans will be less likely to hear the howl of wolves in our vast public lands and wilderness areas. Wolf recovery is largely incomplete because of persistent, irrational, intransigent, human intolerance by special interest groups that refuse to accept wolves and other predators as their neighbors.

Wolves often bear the brunt of ire for livestock and game losses when in fact only one quarter of 1% or 0.23% of all cattle losses in the US were caused by predators. Of that small portion of losses by predators, wolves accounted just for 4% of the 0.23% losses of cattle<sup>3</sup>. The greatest percentage of livestock losses are attributed to health and respiratory issues, weather, calving, theft and injuries. Likewise, elk and other ungulate game species are thriving nationally, often at levels that are considered destructive to human crops and property. Wolves help keep unhealthy levels of ungulate populations in check.

The Ribble/Lummis and Kline bills that are now circulating in Congress threaten wolves, and underscore the misguided eagerness by some politicians to accommodate the loudest and most polarizing voices. Globally, scientists agree that wolves make essential contributions to healthy ecosystems<sup>4</sup>. Yet these bills ignore statistics, scientific studies, and place politics over and above the long-term interest of wolf recovery, the intent of the ESA, the desires of a national constituency in favor of healthy wolf populations, and in contravention of our time-honored democratic traditions.<sup>5</sup>

The problems with the Ribble/Lummis proposed bills are numerous. Despite claims that the bill will not amend the ESA, the effect of the laws will be to abrogate the ESA and isolate wolves from protections afforded to all other listed species. The bill's drafters claim wolves are dangerous, and argue the states need to kill them to protect livestock and humans. But the truth is that in the last 100 years, in all of North America, only two documented fatal wolf attacks on humans have occurred, and livestock losses from wolves are a fraction of those that occur from disease, weather, birthing, or other predators<sup>6</sup>.



The Ribble/Lummis bills would affect management of wolves in states where small packs of wolves roam on tens of millions of acres of mostly public lands, often in designated wilderness and would stagnate immigration into new suitable wolf habitat. State management almost always equates to incessant trapping, hounding, snaring, and aggressive killing in defiance of public opinion, judicial consideration, and science<sup>7</sup>. In fact, the standard wolf policies in place are counter-productive. Hunting and trapping often destabilize pack structure, and are indicated in greater conflicts with humans. Destabilized packs may be driven to prey on livestock and kill more native prey than intact un-hunted packs<sup>8</sup>.

In her 9<sup>th</sup> Circuit Federal Court opinion, Judge Howell who recently placed wolves back under federal protection, admonished the states for the “virtually unregulated” killing of wolves under state government laws in the Great Lakes region, stating that “...at times, a court must lean forward from the bench to let a (state) agency know, in no uncertain terms, that enough is enough.”

Globally and nationally, independent scientists are deeply concerned about “carnivore/predator cleansing”, or the type of management employed by the states to accommodate requests by livestock producers and trophy hunters to recklessly curb healthy wolf populations. One study cited that more than three-quarters of the 31 species of large land predators, such as lions and wolves, are in decline. Of these, 17 species are now restricted to less than half the territory they once occupied<sup>9</sup> In the United States grey wolves occupy only 5% of the range they formerly inhabited<sup>10</sup>.

Ironically, the United States supports listing African lions as endangered under our ESA yet the Ribble/Lummis bills would remove all federal protections for our small struggling population of native wolves. Admittedly, African lion populations deserve protection and are as low as 32,000 by 2012 counts<sup>11</sup>. Yet US wolf populations in the contiguous US are only a fraction of that. The USFWS estimates that there are approximately 5300 wolves in all of the lower United States<sup>12</sup> with another 7700 to 11,200 in Alaska, where they are aggressively hunted in long seasons<sup>13</sup>.

When announcing the legislation to delist wolves in the Great Lakes and Wyoming, after the court reinstated ESA protections, Cynthia Lummis argued that, “State wildlife agencies are in the best position to manage wildlife, not judges.” Yet, the state wolf management plans thus far are brutally reminiscent of the policies that placed wolves under ESA protections in the first place<sup>14</sup>. Throughout 2014 a series of federal court decisions reaffirmed the need for continued federal protections for wolves under the ESA because the pattern of state management for wolves consisted of extreme state hunting and trapping programs<sup>15</sup>. Additionally, the Great Lakes tribes expressed strong opposition to the state plans<sup>16</sup> To date, the 9<sup>th</sup> circuit courts have repeatedly rejected state management plans because either they do not comply with the ESA or significantly threaten truly successful recovery<sup>17</sup>.

If the Ribble/Lummis or Kline legislation is passed, wolves in the affected states will be managed under outdated plans opposed by some of the nation’s most prestigious

carnivore scientists. Some of the states plan to reduce wolf populations down to an arbitrary 150 per state. That number is used because under the obsolete federal wolf recovery plan in the northern Rocky Mountain states of ID, MT, and WY, a population under 150 wolves in those enormous states will trigger relisting under the ESA<sup>18</sup>. One thing is certain; it was never the intention of the drafters of the ESA or the public to restore a species and then allow it to barely survive hovering just above a threshold that would trigger a relisting.

Contrary to their claims, the effect of the Ribble/Lummis or Kline proposed laws is to abrogate or amend the ESA in direct contravention of the drafters' intent and the public's disapproval of such archaic and politically directed management policy.<sup>19</sup> To allow the Ribble/Lummis or proposals to pass is to override the wisdom and experience of our nation's top scientists and lawmakers. Worse yet, both of the proposed bills circumvent our established democratic system of checks and balances that provide for review of laws and regulations through considered judicial review. Americans should be able to depend on our courts to arbitrate when laws or rules are challenged as unconstitutional or arbitrary and capricious.

To accomplish long-term conservation goals, true "bipartisan" efforts directed to protect and preserve public trust resources are necessary<sup>20</sup>. The Ribble/Lummis bills are bad policy, bad for wolves and bad for Americans. Yet there is a compromise. To that end, we encourage the Congress members to **vote no** to the Ribble/Lummis or Kline proposals and offer two alternative approaches to wolf recovery that involve compromise on both sides. The two alternatives were conceived by independent scientists specializing in carnivore research, and by a broad array of constituents represented by numerous non-profit organizations dedicated to preserving wildlife and biodiversity by fighting species-specific targeted persecution. Alternative one is to support the petition to the USFWS to list wolves as "threatened" instead of "endangered"<sup>21</sup> and alternative 2, to review the document, *Framework for Recovery*, and work toward an updated wolf recovery plan<sup>22</sup>. The current recovery plan is more than 20 years old and in desperate need of revision to reflect the "best available science"<sup>23</sup>.

These proposals offer intelligent compromise between livestock owners who are concerned about possible wolf depredations and the citizens, scientists, lawyers and members of national NGOs who provided overwhelming support for wolves. The alternatives are consistent with national and local scientists that advocate for continued federal protections and with the unprecedented number of Americans (1 million+) who spoke out against removing wolves from federal protections in the last solicitation for comments in the federal register for a national delisting<sup>24</sup>.

A down-grading of the classification of wolves from endangered to "threatened" will allow states to manage wolves that threaten livestock or present threats to human safety but will prevent the all out slaughter that is now de rigueur under state plans. Essentially states will be able to remove "problem" wolves but not engage in public hunts that are opposed by scientists, tribes and the public<sup>25</sup>. If Congress is concerned about the ambiguities in the recovery plan that make it difficult to define sustainable wolf recovery free from politics then the *framework for recovery* is a much better place to start than dismantling one of the

most important pieces of conservation legislation available to protect endangered or threatened species.

Far too often, where wolves and predators are concerned, politicians may be swayed by fear tactics or political arguments designed to favor narrow, special interests or constituencies over the greater good. As the Midwest Environmental Advocates stated, “this middle ground, rather than a complete delisting - is the best way to ensure science-based protections of a wild species.” Our politicians owe it to all of us, as we the people, to work together to prevent political grudges or anti-predator policies from driving wildlife policy that will reverse wolf recovery and take us backward a hundred years <sup>26</sup>.

## Endnotes

1 To read a brief legal history of the ESA and its role in wolf recovery visit, <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41730.pdf>. This letter concerns the political attempts to undermine the intent of the ESA specifically via the Ribble/Lummis Gray Wolf and Ryan Legislation.

2 In the latest solicitation for comments by the United States Fish and Wildlife Service (USFWS) <http://www.fws.gov/home/wolfrecovery/> over 1,600,000 comments were received with tremendous opposition to a national delisting. The USFWS reopened the comment period to the rule proposing a national delisting of gray wolves 4 times. It is unclear whether the reopening was conducted to allow supporters of the delisting time to rally or because of the strong national opposition to the delisting proposal.

3 <http://www.conservationnw.org/what-we-do/wildlife-habitat/wolf-activism-packet/the-truth-about-washingtons-wolves>. See also, <http://usda.mannlib.cornell.edu/usda/current/CattDeath/CattDeath-05-12-2011.pdf>

4 See, Science, 2011, 333: 301-306

5 This article references the image of a vigilante like mob reminiscent of lynch mobs and the KKK's persistent hatred of blacks. The image in the article was widely posted across the Internet and shows a slain wolf in front of masked killers. [http://www.huffingtonpost.com/camilla-fox/the-war-against-wolves-wi\\_b\\_4167318.html](http://www.huffingtonpost.com/camilla-fox/the-war-against-wolves-wi_b_4167318.html) Many websites are dedicated to wolf and predator hatred (<http://killallthewolves.tumblr.com>) and promote shoot, shovel and shut up. There are currently an estimated mere 5,000 to 6,000 wolves occupying only about 5 percent of wolves' historic range.

6 [http://en.wikipedia.org/wiki/List\\_of\\_wolf\\_attacks\\_in\\_North\\_America#Fatal\\_attacks](http://en.wikipedia.org/wiki/List_of_wolf_attacks_in_North_America#Fatal_attacks)

7 The original intent of the ESA is being undermined by the legislative approach to sidestep erroneous delisting decisions, which began with a rider in the must-pass 2011 budget. When wolves in Idaho and Montana were delisted, the results have been devastating. Since resuming control of the Idaho wolf population, the state is adopting increasingly aggressive wolf management policies. Last year, Idaho had approximately 650 wolves; now the state aims to reduce the population to merely 150 wolves using a wolf control board. While citizens may bring suits against the USFWS for improperly delisting wolves, direct Congressional orders to delist—such as the 2011 rider and now the Ribble/Lummis legislation—eliminate the ability to challenge delisting decisions in court on the basis of a failure to satisfy the delisting requirements of the ESA.

8 Increased killing of carnivores/wolves through indiscriminate hunting is not an effective preventative and remedial method for reducing predator complaints and depredations (PLoS ONE, 2013, e79713:1-8). See <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0113505> for the online version of the study.



For interpretive commentary, <http://news.nationalgeographic.com/news/2014/12/141203-wolves-hunting-livestock-ranchers-endangered-species-environment/> & [http://www.theecologist.org/blogs\\_and\\_comments/commentators/2662632/shot\\_in\\_the\\_foot\\_killing\\_wolves\\_lynx\\_cougar\\_increases\\_farm\\_predation.html](http://www.theecologist.org/blogs_and_comments/commentators/2662632/shot_in_the_foot_killing_wolves_lynx_cougar_increases_farm_predation.html)

9 <http://www.theguardian.com/environment/2014/jan/09/carnivore-cleansing-damaging-ecosystems>

10 See

<http://www.fs.fed.us/database/feis/animals/mammal/calu/all.html#DISTRIBUTION%20AND%20OCCURRENCE>

11 iv [http://lionalert.org/page/Lion\\_Population\\_2012](http://lionalert.org/page/Lion_Population_2012)

12 It is believed that 1,000,000 – 2,000,000 million wolves once roamed Mexico and North America. Wolves currently inhabit only 5% of their former range in the lower US.

<http://www.fws.gov/midwest/wolf/aboutwolves/WolfPopUS.htm>

13 <http://www.fws.gov/midwest/wolf/aboutwolves/WolfPopUS.htm>

14 To see a discussion of the current state wolf management plans please see Wolf Facts contained in the report as an addendum to this letter. Currently state plans are aggressive, hostile and tend to utilize the lowest thresholds for recovery as the upper limits of acceptable wolf presence instead of pushing for or celebrating robust healthy populations that maximize ecological functions or resemble the intent of a recovered species as originally envisioned. In fact, all states declared aggressive public hunts on wolves as soon as ESA protections were removed. Under state plans wolves are shot from helicopters, hunted with dogs, trapped, snared, shot in bow and arrow seasons and with guns fitted with suppressors. The seasons are long, the quotas large, (Montana allows 5 animals to be killed per year per hunter), there are no protections for age, size or sex, or consideration for the unique sociality of the species or admission that public hunting of wolves may be creating more problems than it solves. The wolf is the only species to be hunted with the intent to reduce the population to its lowest viable number before triggering a possible relisting. This type of hunting pressure assures that wolves will not successfully migrate to populate appropriate habitat elsewhere and the stress of hunting may be doing irreversible damage to the species. To continuously harass, kill, and divide all resident wolf packs, but for small remnant populations, that reside on tens of millions of acres of public lands is surely not what the ESA founders envisioned for “recovery”.

15 The recent ruling in *Humane Society of United States v. Jewell* breathes new life into the hope of establishing wolf populations in suitable habitat in the Southwest, Northeast, parts of the southern Rocky Mountains, and Pacific Northwest that would allow wolves to truly inhabit a much greater part of their former ranges as envisioned by the ESA drafters. The Ribble/Lummis proposed legislation would quash those hopes. In recent years most if not all of the wolves that have occasionally migrated into formerly extirpated regions have been shot before they could gain a foothold.

16 James Zorn, executive administrator of The Great Lakes Indian Fish and Wildlife Commission, which represents 6 Ojibwe tribes in MN, WI and MI opposed the wolf hunts and stated that all 11 of the GL Tribes opposed the wolf hunt. After delisting of wolves in the GL region, the state DNRs did not consult with tribes on a government to government basis as required in Executive Order 13175. Additionally, the Bad River Band of Ojibwe requested a 6 mile buffer to the ceded lands that abut their tribal exterior boundaries but the WI DNR denied that request. See, <http://indiancountrytodaymedianetwork.com/2012/08/14/wisconsin-tribes-struggle-save-their-brothers-wolves-sanctioned-hunt-129021> and it is from:

Pember, Mary Annette, 08/14/2012, “Wisconsin Tribes Struggle to Save their Brother from Sanctioned Hunt”, Indian Country Today Media Network.

17 <https://www.animallaw.info/cases/species/wolves>

18 [http://www.biologicaldiversity.org/news/press\\_releases/2015/wolf-01-21-2015.html](http://www.biologicaldiversity.org/news/press_releases/2015/wolf-01-21-2015.html), “Four years after Congress attached a rider to a spending bill to remove federal protections for wolves in Idaho, the state’s wolf population has dropped to levels where the U.S. Fish and Wildlife Service has said it would consider protection under the Endangered Species Act. As a result of aggressive hunting and trapping seasons, Idaho’s wildlife managers are estimating the wolf population may be as low as 550 individuals with 15 breeding pairs. Under the Fish and Wildlife Service’s 2009 delisting rule, which Congress passed as law, Idaho is required to manage for at least 15 breeding pairs in mid-winter”

19 The Ribble/Lummis Gray Wolf Legislation seeks to undermine the processes of the ESA—which the Supreme Court called “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tennessee Valley v. Hill*, 437 U.S. 153, 180 (1978)

20 The Public Trust Doctrine imposes a duty upon government to protect crucial natural resources for the benefit of current and future generations. Delisting wolves could prove disastrous for the species itself, but also for the very ecosystems in which they exist through a “trophic cascade.” As recent Yellowstone studies have shown, wolf presence has beneficial effects on other animal species and even the landscape.

21 [http://www.humanesociety.org/news/press\\_releases/2015/01/esa-threatened-gray-wolves-012715.html](http://www.humanesociety.org/news/press_releases/2015/01/esa-threatened-gray-wolves-012715.html)

22 Vucetich, John and Jeremy Bruskotter, *A Framework for Wolf Recovery*, 2015. Vucetich et al developed a framework for gray wolf recovery that would include among other things a threatened listing for gray wolves in occupied areas of their range, and several potential recovery areas in unoccupied portions of the species’ historic range.

23 The US Fish and Wildlife Service (USFWS) is the administrative agency charged with implementing the ESA. The ESA requires USFWS, which employs both scientists and policymakers, to adhere to the provisions of the statute, but also to take into account the desires of the public, for whom FWS conserves and manages wildlife. The successes in preventing extinctions under the ESA cannot be overstated: the ESA famously protected the snail darter (*TVA v. Hill*); it has halted logging in sensitive areas despite intense political and industry pressure (*Babbitt*); it has prevented raptor extirpations, and it has provided for initial recovery of the gray wolf, which was extirpated from the United States by 1928. These victories were made possible by adhering to the processes laid out in the ESA, which mandates the consideration of science and public comments.

24 <http://www.endangered.org/nearly-500000-more-americans-speak-out-against-federal-plan-to-strip-wolves-of-protections/>

25 Scientists and lawyers have identified key reasons to oppose public wolf hunting as valid management policy. USFWS reopens comment period after peer review <http://www.fws.gov/news/ShowNews.cfm?ID=0D493E53-AC54-99DD-52400A7BAA5A6085>. Peer review, See [http://www.fws.gov/home/wolfrecovery/pdf/Final\\_Review\\_of\\_Proposed\\_rule\\_regarding\\_wolves2014.pdf](http://www.fws.gov/home/wolfrecovery/pdf/Final_Review_of_Proposed_rule_regarding_wolves2014.pdf). Specific to:

a. High levels of human-caused mortality of top predators can jeopardize ecosystem health in several ways as smaller predators can become over-abundant (e.g., raccoons), herbivores can become over-abundant (e.g., rabbits, ungulates), disease risks can increase, and non-native species may invade more easily (Science, 2014, 343:6167, 1241484).

b. Randomly (e.g., through recreational hunting) killing carnivores, such as wild canids, does not reduce predation on domestic animals and pets (Wildlife Society Bulletin, 2005, 33:876–887; Wildlife Society Bulletin, 2003, 31:736-743; Wielgus & Peebles in press, PLOS ONE). Because the odds of increased complaints and livestock/pet depredations can increase dramatically with increased killing of carnivores/wolves, indiscriminate hunting is not an effective preventative and remedial method for reducing predator complaints and depredations (PLOS ONE, 2013, e79713:1-8).

- c. Non-selective methods of killing wolves and other carnivores can exacerbate conflicts with people, by removing non-culprits and leaving culprits in place or by altering social structure so that carnivore birthrates or pup survival increase, more dispersal occurs, packs break up, and younger animals search for food in human dominated areas (Journal of Range Management 1999, 52:398-412).
- d. Recent discussions in professional journals have questioned the appropriateness of hunting predators in general, especially for (sport) or for perceived losses of prey, and ultimately claimed that it is unethical (Oxford Handbooks Online, 2014, 1-15, DOI: 10.1093/oxfordhb/9780199927142.013.007). Those authors (p. 8) argued that predator hunting is not traditional, and when sustenance is not the central reason for hunting, its distinctive value is simply an act of killing, or worse, an opportunity to manifest hatred.
- e. It has recently been discovered that heavily hunted wolves have higher stress and reproductive steroids/hormones than individuals with lower hunting pressure supporting the theory of social and physiological consequences to sentient animals, like canids, of human-caused mortality such as sport hunting. These authors noted that effects of stress are often subtle, but the resulting harm can be acute, chronic, and permanent, sometimes spanning generations.” (Functional Ecology, 2014, 1-10, doi: 10.1111/1365-2435.12354).
- f. Federal court decisions under the public trust doctrine require U.S. governments to act as trustees to manage wildlife sustainably for current and future generations including non-lethal uses (Science, 2011, 333:1828-1829).

26 Courts have upheld the constitutional authority of Congress to prevent judicial review by a budget rider. However, while the judicial branch can determine what is legally permissible, it cannot determine what is ethical. Because Congressmen and Congresswomen are democratically elected, courts are often reluctant to invalidate legislative policy choices that are not constitutionally forbidden. In other words, if representatives are not fulfilling the desires of their constituents, those constituents should elect to office those women and men who will better serve the public. While the Ribble/Lummis legislation may be permissible, it seems inherently offensive to the ideals of democracy that our elected representatives are on the cusp of once again removing the ability of the people to contribute to the decision whether or not to conserve wolves. Wolves are a natural resource belonging to current and future generations of Americans—resources that have been entrusted to the government to ensure their continuing existence. Amidst public outrage, Congress now stands at the precipice of a decision that could fatally undo the decades of hard work and economic resources put toward wolf recovery while ignoring the majority of 1,600,000 known voices, many of which are opposed to delisting.





Submitted by  
Louise Kane, JD  
Jonathan Way, PhD  
Wolfwatcher

Reviewers  
Guy Dicharry, JD  
Rance Shaw, JD candidate  
Yvette Wiley  
Michael Ruzich  
George Weurthner

## Signatures



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## Signatures

# Petition to Reclassify Gray Wolves as Threatened in the Conterminus United States Under the Endangered Species Act

January 27, 2015



The Humane Society of the United States ■ Center for Biological Diversity  
The Fund for Animals ■ Born Free USA ■ Friends of Animals and Their Environment  
Help Our Wolves Live ■ Detroit Zoological Society ■ Midwest Environmental Advocates  
Predator Defense ■ National Wolfwatcher Coalition ■ Northwoods Alliance  
Wisconsin Federated Humane Societies ■ Minnesota Humane Society ■ Howling for Wolves  
Detroit Audubon Society ■ Sault Sainte Marie Tribe of Chippewa Indians  
Wildlife Public Trust and Coexistence ■ Minnesota Voters for Animal Protection  
Friends of the Wisconsin Wolf ■ Wolves of Douglas County Wisconsin  
Justice for Wolves ■ Wildwoods (Minnesota)



January 27, 2015

Sally Jewell, Secretary  
U.S. Department of the Interior  
Daniel Ashe, Director  
U.S. Fish and Wildlife Service  
1849 C Street NW  
Washington, DC 20240

Dear Secretary Jewell and Director Ashe:

Pursuant to 16 U.S.C. § 1533(b)(3) of the Endangered Species Act (“ESA”), section 5 U.S.C. § 553 of the Administrative Procedure Act (“APA”), and 50 C.F.R. § 424.14, the undersigned organizations hereby petition the U.S. Department of the Interior (“DOI”), and the U.S. Fish and Wildlife Service (“Service” or “FWS”), to reclassify the gray wolf (*Canis lupus*), excluding the Mexican wolf subspecies (*Canis lupus baileyi*),<sup>1</sup> as threatened throughout the conterminous United States.

In 1978, wolves were reduced to just two populations in the conterminous United States, one in northeastern Minnesota, and one very small population in Isle Royale National Park. The Minnesota population was estimated to be approximately 1,235 wolves, and was found in the far northeast portion of Minnesota. At that time, the Service protected the gray wolf at the full species level in the conterminous United States as an endangered species and designated the Minnesota population as threatened.<sup>2</sup> Today, there are several populations of gray wolves in the conterminous United States, and the total population of wolves numbers approximately 5,000 individuals. While this represents a considerable improvement in the status of the gray wolf, most wolf populations are still below what scientists have identified as the minimum viable population size necessary to maintain long-term genetic viability and avoid extinction. Furthermore, even today, the gray wolf occupies as little as 5 percent of its historic range. Although many areas that wolves once inhabited no longer contain suitable habitat, large tracts of unoccupied, suitable habitat still exists in the Pacific Northwest, California, the southern Rocky Mountains, the Dakotas, New England and possibly elsewhere. In total, approximately 360,000 square miles—70 percent of identified suitable wolf habitat—still remains unoccupied. Accordingly, the best available science indicates that the gray wolf is threatened throughout a significant portion of its range.

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<sup>1</sup> This petition excludes Mexican wolves based on the Service’s recently finalized listing of the Mexican wolf as a separate endangered subspecies. 80 Fed. Reg. 2488-01 (Jan. 16, 2015)).

<sup>2</sup> 43 Fed. Reg. 9607 (Mar. 9, 1978). Although the Service concluded that the Minnesota population represented the “eastern timber wolf” subspecies (*Canis lupis lycaon*), it nonetheless designated the Minnesota population at only the species level. Because the authority to list species as “distinct population segments” did not exist at the time of this action, the authority for the original split-species classification has remained unclear.

Moreover, threats to full recovery of the species remain inadequately addressed in both occupied and unoccupied portions of the range. In particular, the threat of inadequately controlled human-caused mortality does not permit full delisting at this time. Our past persecution of this species should serve as a cautionary tale in our efforts to fully recover the species. Yet several states have made no secret of their intentions to dramatically reduce wolf numbers and stifle expansion of wolf range, preventing continued recovery. Overutilization and the inadequacy of state regulatory mechanisms in both occupied and unoccupied areas remain current threats to the species that cannot be ignored.

The reclassification of gray wolves to threatened status is warranted at this time because of the differing conservation status among wolf populations in different portions of the species' range. The gray wolf has not yet been restored throughout a significant portion of its range, and although progress has been made toward recovery of the species in some areas, substantial threats to the species remain within and outside of the areas currently occupied by wolves. Delisting the wolf range-wide when it remains absent from large portions of its range and continues to face many threats fails to follow the best available science and has been repeatedly rejected by federal courts. A threatened listing would continue needed federal oversight of wolf recovery efforts while providing the Service with the regulatory flexibility to work with state and local wildlife officials to appropriately manage conflicts with wolves, and while maintaining ESA protections in areas where wolf recovery remains in its infancy.

This petition represents an independent regulatory action under Section 4(b)(3) of the Endangered Species Act, and must be responded to within 90 days of receipt of this petition to the maximum extent practicable. However, because the Service already has an open rulemaking process in which it has proposed to delist the gray wolf in most of the United States, *see* 78 Fed. Reg. 35664 (June 13, 2013) (proposing delisting of all gray wolves except for the Mexican wolf subspecies), the Service could respond to this petition by modifying its 2013 proposal to delist the gray wolf, proposing to list the gray wolf as threatened, and opening a new comment period to seek input from experts, stakeholders and the general public as to whether reclassification of the gray wolf as threatened is warranted.

## **I. Introduction**

Gray wolves are an icon of America's wilderness. Highly intelligent and social, these animals are family oriented, pair for life, raise their pups using extended family groups, and have inspired Americans for centuries. Wolves connect us to nature, directly and indirectly. They drive tourism and economic gains. They promote and sustain healthy ecosystems. The ecological benefit of this keystone species is staggering—gray wolves counteract the negative impacts of overpopulation of prey species, have an important moderating influence on other predator species, and protect and facilitate ecosystem health. The wolf is one of our nation's most effective and important protectors of biodiversity in the environments in which it is found.

Gray wolf populations are still recovering from decades of persecution and cannot recover without continued federal protections. Government sponsored bounty programs resulted in mass extermination of wolf populations at the beginning of the last century, and the species was nearly eliminated from the landscape of the lower 48 states. Although laudable efforts to restore wolves were undertaken after the species' listing under the ESA, the species has not yet recovered. Today, the species still only occupies a mere fraction, as little as 5 percent, of its historic range.

Unfortunately, the Service has pursued a piecemeal approach to gray wolf recovery that is inconsistent with the ESA's command that species be recovered in all significant portions of their range according to the best available science. And over the last 15 years, the Service has repeatedly attempted to eliminate federal protections for wolves throughout their historic range based only on the progress toward recovery that has occurred in isolated areas. In so doing, the Service has consistently acted to stifle continued recovery, ignoring the potential for restoration of the species to viable but unoccupied areas of its historic range, and ignoring specific threats to long-term sustainability of healthy wolf populations. As one court described it, this effort appears to be nothing more than "a tactic" to remove protections from areas that the Service has already determined warrant such protections "despite the unabated threats and low to nonexistent populations outside of the core areas." *Defenders of Wildlife v. Secretary, U.S. Dep't of Interior*, 354 F. Supp. 2d 1156, 1171 (D.Or. 2005).

In 2014, Federal courts rejected the Service's most recent efforts to delist gray wolves in Wyoming and the Great Lakes regions. *Humane Society of the U.S. v. Jewell*, --- F.Supp.3d ---, 2014 WL 7237702 (D.D.C., December 19, 2014); *Defenders of Wildlife v. Jewell*, --- F.Supp.3d ---, 2014 WL 4714847 (D.D.C., September 23, 2014). In addition to denouncing the Service's fragmented approach to recovery, these courts also recognized that existing state management plans are extremely aggressive and intended to quickly and dramatically reduce wolf numbers and prevent further range expansion. *Id.* This is particularly concerning given the history of human persecution of the species, 42 Fed. Reg. 29527, and the fact that human-caused mortality continues to constitute the majority of documented wolf deaths. 76 Fed. Reg. 81682. Courts rejected the Service's reliance on the insufficient assurances of states to maintain only a bare minimum population of wolves, permitting the species to remain perpetually at the doorstep of extinction, in the face of substantial past and present hostilities.



There is no doubt that expanding wolf populations will create more opportunity for conflict with humans and continued threats to the species. A vocal minority of individuals have exhibited extreme animosity toward wolves, which should not be ignored. But social intolerance for a species is not a legal or rational reason to eliminate federal protections under the ESA. *See Humane Society of U.S. v. Kempthorne*, 481 F.Supp.2d 53 (D.D.C. 2006), *vacated as moot* 527 F.3d 181 (D.C. Cir. 2008). In fact, the difficulties associated with the human dimensions of wolf recovery efforts merely provide further evidence that federal oversight is still needed. In short, the job of wolf recovery is not complete—but it may be time for a new approach.

The threatened listing requested by this petition would provide a path forward to sustainable recovery of gray wolves throughout all significant portions of the wolf's range. If implemented effectively, a threatened listing would promote restoration of the species to those unoccupied areas of its historic range where it can still thrive, and to provide protections for the species in areas where threats to its long-term sustainability remain insufficiently addressed by recovery efforts to date and by state management plans for the future. Such a listing would also help conserve and promote natural balance in the myriad ecosystems that the presence of gray wolves has shaped through their interactions with and influence on other species. A threatened listing would also permit the Service to establish regulations to reduce or increase protections for the species as necessary and appropriate, and thereby allow expanded flexibility to authorize reasonable, science-based state and local management of wolf conflicts, including taking of wolves if consistent with the overarching conservation goals of the ESA, while preserving federal oversight to ensure full recovery of the species.

We are at a crossroads with wolves at which we either turn back regressively to a new period of exploitation or engage the spirit in which we sought their restoration in the first place, coupled with a determination to fully recover the species as the ESA requires. Having completely removed wolves throughout virtually all of their historic range, and having persecuted them in unimaginable ways, we must reengage them in a contemporary process that uses new understandings and insights, promoting harmonious coexistence with this iconic species by responsibly addressing conflicts while fully rejecting and protecting against unfounded antipathies.

## **II. Petitioners**

The twenty-two undersigned petitioners are national conservation and animal protection organizations, and regional and local organizations based in wolf range states, including areas of currently occupied habitat and areas in which suitable habitat still exists but which remains unoccupied (e.g. New England and the Pacific Northwest). The petitioners are unified by their strong interest in, and advocacy efforts to facilitate, protection of wolves from extant threats to the species and complete recovery of gray wolves under the Endangered Species Act. The petitioners represent a broad cross-section of organizations that have been active participants in regulatory and legislative processes relating to wolf protection and wolf recovery efforts at the state and federal level. Each of the petitioners is described more fully in Appendix A.

### **III. Wolf Ecology**

Wolves are the largest wild members of the *Canidae* (dog) family. They are also one of the most adaptable animals on the planet. Wolves have a circumpolar range including North America, Europe, and Asia, and recent genetic studies have suggested that wolves' range may even include portions of North Africa. (Mech and Boitani 2004; Linnell et al. 2008; Rueness et al. 2011; Gaubert et al. 2012). Gray wolves previously inhabited the vast majority of North America, excluding only portions of the driest deserts and portions of the southeastern United States, which is the historic range of a separate canid species, the red wolf (*Canis rufus*). Despite their adaptability, gray wolves are still absent from roughly 95 percent or more of their historic range in the United States, including extensive areas of currently suitable habitat. (Mladenoff et al. 1995; Carroll et al. 2006; Morell 2008). In part, the limited current range of wolves is due to past targeting of wolves for extermination by county, state and federal agencies. (Robinson 2005).

Gray wolves are territorial and social animals that exhibit group hunting and opportunistic scavenging behavior, normally living in packs of 7 or fewer animals, but sometimes attaining pack sizes of up to 20 or more animals. (Mech 1970; Mech and Boitani 2003). Packs are family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year and up to four prior generations, and sometimes one or more unrelated wolves. (Mech 1970; Mech and Boitani 2003; Hunter 2011). Typically, only the top-ranking female and male wolves in each pack will breed and reproduce. (Mech and Boitani 2003). Wolves are typically but not always monogamous, become fertile as 2-year-olds and usually give birth once each spring to a litter of 2-5 pups (though litters of 1-11 pups have been recorded), and may continue to produce offspring annually until they are over 10 years old. (Mech, 1970; Fuller et al. 2003). Offspring usually remain with their parents for 10 to 54 months before dispersing, meaning that packs may include the offspring from up to 4 breeding seasons (Mech and Boitani 2003). Crucial to maintaining the genetic diversity necessary for healthy and sustainable populations, subadult and adult wolves disperse from their natal packs to locate other single wolves. These dispersing wolves remain nomadic until they locate members of the opposite sex and move to suitable unoccupied habitats to establish new packs and claim new territories (Mech 1970; Mech and Boitani 2003).

Pack structure is enormously important to wolves. Wolves establish home territories through urinary scent marking and howling, and by defending their territories from other wolves. Packs typically occupy and defend a territory of 33 to more than 2,600 square kilometers, with territories tending to be smaller at lower latitudes (Mech and Boitani 2003; Fuller et al. 2003). A wolf pack will generally maintain its territory, even as individual wolves occasionally disperse to form new packs, as long as the breeding pair is not killed. (Mech and Boitani 2003). However, if one or both members of the breeding pair are killed, the remaining members of the pack may disperse, starve, or remain in the territory until an unrelated dispersing wolf arrives and mates with one of the remaining pack members to begin a new pack. (Mech and Boitani 2003; Brainerd et al. 2008).

Wolf populations are generally self-regulating—their populations are generally limited by prey availability, but when prey availability is unusually high wolf populations are limited by density-dependent factors, such as disease, and pack stability and territoriality. (Carriappa et al. 2011). Human-caused mortality such as hunting and trapping harvest, however, can significantly affect wolf population levels. (Fuller et al. 2003; Creel and Rotella 2010). Where normal pack dynamics have not been altered by hunting and other sources of mortality, increased levels of reproduction and immigration can compensate for mortality rates under 30 percent (Sparkman et al. 2011; Vucetich 2012; Creel and Rotella 2010; Adams et al. 2008). Recent studies suggest the sustainable mortality rate may be even lower, and that hunting and trapping may have an additive or even super-additive effect on wolf mortality by increasing total mortality, beyond the effect of the direct killing itself, through the loss of dependent offspring or by disrupting pack structure. (Murray et al. 2010; Creel and Rotella 2010).

As a keystone predator species, gray wolves are incredibly important to the ecosystems they inhabit. Their physical structure is well-adapted to travelling quickly across long distances, allowing them to move fast and travel far in search of food, and they have large skulls and jaws, making them well-suited to catching and feeding on a variety of mammalian and other prey. (Mech 1970). Within the United States, studies of gray wolves in Yellowstone National Park and elsewhere demonstrate that wolves significantly shape their ecosystems, promoting biodiversity and overall ecosystem health. Prey animals modify their behavior, distribution and movements in response to wolves. (Ripple and Beschta 2004; White and Garrott 2005). By example, gray wolves limit overgrazing of saplings by elk in sensitive riparian environments and thereby permit other species, such as bison, beavers, birds, fish and amphibians to thrive by stabilizing riparian areas. (Ripple and Beschta 2003; Chadwick 2010). Wolves also have a controlling effect on other predator species, such as coyotes, preventing disproportionate loss of prey species like pronghorn. (Berger and Gese 2007; Smith et al. 2003; Berger et al. 2008). The trophic cascade of benefits provided by wolves is extraordinary, producing measurable positive effects even down to the microbes in soil. (Wilmers et al. 2005; Chadwick 2010). Because of the benefits wolves provide to other species and overall ecosystem integrity, broad recovery of wolves to more areas of their historic range would have substantial ecological benefit.

#### **IV. Wolf Taxonomy**

Numerous efforts have been made to taxonomically classify wolves in North America. (Young and Goldman 1944; Hall 1959, 1981). Nowak (1995) consolidated the gray wolf into five subspecies: the arctic wolf (*C. l. arctos*); the northern timber wolf (*C. l. occidentalis*); the plains wolf (*C. l. nubilus*); the eastern gray wolf (*C. l. lycaon*); and the Mexican gray wolf (*C. l. baileyi*). However, the results of mitochondrial DNA testing of historic and modern specimens suggests much greater genetic diversity for historic as opposed to contemporary wolf populations, as the genetic makeup of historic populations was apparently distinctly different from today's populations in some parts of the range. (Leonard et al. 2005; Leonard and Wayne 2008). This testing also suggests that the greatest continuing genetic diversity exists in wolves that formerly occupied the southern portions of the range, in most of Mexico and parts of

Arizona, New Mexico and Texas. (Leonard et al. 2005). Thus, some recent studies do not find support for several of the subspecies identified by Nowak (1995), but there is continuing support for recognition of the separate Mexican wolf subspecies (*C. l. baileyi*).

In its June 2013 proposed rule to delist wolves throughout the currently listed range, 78 Fed. Reg. 35664, the Service references upwards of fifty research articles that relate to wolf taxonomy. Nevertheless, the Service based its argument for delisting almost exclusively on the recent publication by Chambers et al. (2012), which was authored by four employees of the Service, and published in a journal administered by the Service. The Chambers report reviewed other literature and concluded that there are two major clades of wolves in North America, one being the western gray wolf (*C. lupus spp.*) and the other the eastern gray wolf (*C. lycaon*), in addition to the separately recognized red wolf species (*C. rufus*).<sup>3</sup> Like Leonard (2005), the Chambers report argues that current genetic and morphometric data are not entirely supportive of the subspecific classification of the arctic wolf (*C. l. arctos*). However, the Chambers report does support recognition of three subspecies of gray wolves in North America, the northern timber wolf (*C. l. occidentalis*), the plains wolf (*C. l. nubilus*), and the Mexican wolf (*C. l. baileyi*).

The Service's reliance on the Chambers report to declare three separate species of wolf in the conterminous United States—*C. lupus*, *C. lycaon*, and *C. rufus*—caused considerable controversy. Several commenters highlighted the political convenience of the Service's designation of *C. lycaon* as a separate wolf species, noting that this designation suspiciously supported the agency's past and existing efforts to delist wolves without addressing the listing status of wolves in the eastern United States immediately adjacent to, and expanding from, the western Great Lakes area. *See e.g.*, HSUS Comment *available at* Federal eRulemaking Portal, Document No. FWS-HQ-ES-2013-0073-41496 ("In every respect, the Service's decision to delist the gray wolf in the face of significant scientific uncertainty suggests that its decision is being influenced by politics, rather than based solely on the best scientific information as the ESA requires"); NRDC Comment, *available at* Federal eRulemaking Portal, Document No. FWS-HQ-ES-2013-0073-39993 ("Chambers et al. 2012 was motivated by the Service's desire to address a policy problem. Specifically, the Service was interested in identifying an alternative taxonomic scheme that would facilitate the removal of the nationwide listing of wolves."). Indeed, multiple courts had previously rejected the Service's efforts to reduce ESA protections for gray wolves in the Great Lakes without addressing the remainder of the listing for *C. lupus* in the eastern United States. *See Defenders of Wildlife v. Norton*, 354 F. Supp. 2d 1156 (D. Or. 2005); *National Wildlife Fed'n v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005); *Humane Society of the United States v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008). The Service's new declaration that all gray wolves historically occupying areas of the eastern United States outside the western Great Lakes were actually a different species than those historically and currently occupying the western Great Lakes, on the basis of conclusions reached by its own employees in a report published in its own journal, had the appearance of being made in order to satisfy the

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<sup>3</sup> The red wolf (*C. rufus*), which historically occupied the southeastern United States, and now occupies a small portion of North Carolina, has long been recognized as a distinct wolf species and is separately listed as endangered species. 32 Fed. Reg. 4001 (March 11, 1967). This petition does not propose any reconsideration of the listing status of *C. rufus*.



Service's desire to find a lawful means of delisting wolves in specific regions without addressing the listing status of wolves in unoccupied areas outside those regions.

Regardless of the Service's potential political motivations, many scientists—including renowned wolf biologists—questioned the Service's conclusion as to species status for *C. lycaon*, and the Service's consequent conclusion as to the historic range *C. lupus*. In 2013, a group of 16 experts in carnivore taxonomy and conservation biology, representing many of the researchers whose work was referenced in the Service's proposed delisting rule, wrote a letter to the Service stating that “[t]here is not sufficient information to support recognition of a new species of wolf, *C. lycaon*, and the geographic range reduction for *Canis lupus* in the eastern US as currently proposed.” Bergstrom, et al. (May 21, 2013), *available at* Federal eRulemaking Portal, Document No. FWS-HQ-ES-2013-0073-39245, Exh. 8. The American Society of Mammologists also wrote to the Service in 2013 to state its position that “[t]he taxonomic status of gray wolves in Eastern North America is far from settled,” and to question the Service's plan to “draw[] a taxonomic conclusion with crucial conservation implications based on a single study, not representative of the majority view among wolf taxonomists.” Heske, et al. (May 22, 2013), *available at* Federal eRulemaking Portal, Document No. FWS-HQ-ES-2013-0073-39245, Exh. 9. The backlash from the scientific community could not have come as a surprise to the Service. In 2011, the Service expressly acknowledged the limitations of the Chambers report while the report was still in preparation: “While Chambers et al. . . . provide a scientific basis for arguing the existence of eastern wolves as a distinct species, this represents neither a scientific consensus nor the majority opinion of researchers on the taxonomy of wolves, as others continue to argue that eastern wolves are forms of gray wolves (Koblmuller et al. 2009; vonHoldt et al. 2011).” 76 Fed Reg. 81669.

In September 2013, the Service announced that it would seek peer-review of the June 2013 proposed rule, in accordance with the agency's peer review policy. 59 Fed. Reg. 34270. The peer review process was administered by the National Center for Ecological Analysis and Synthesis, which selected six scientists to conduct an impartial review of the proposed rule. The review panel issued a final peer review report in January 2014. (NCEAS 2014). The peer review report makes clear that the Service's proposed rule is decidedly *not* based on the best available science. Specifically, the report was critical of the way in which the Service manipulated scientific information to defend its declaration that the currently listed *C. lupus* entity is not a valid species under the ESA; that *C. lycaon* should now be considered a separate species of wolf recognized to have historically occupied all or part of 29 eastern states in which *C. lupus* should no longer be recognized; that three subspecies of *C. lupus* (*nubilus*, *occidentalis* and *baileyi*) constitute the taxonomically valid representation of gray wolves in the conterminous United States; and that of these three only the Mexican wolf (*C. l. baileyi*) warrants protection under the ESA. (NCEAS 2014).

By the Service's own admission it recognizes that “. . . *Canis* taxonomy will continue to be debated for years if not decades to come. . . .” 78 Fed. Reg. 35670. But the Service must make listing decisions under the ESA “. . . solely on the basis of the best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A). “The obvious purpose of the

requirement . . . is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise.” *Bennett v. Spear*, 520 U.S. 154, 176-77 (1997). The best available science indicates the following: (1) Mexican wolves (*C. baileyi*) in the southwest United States are properly designated a separate subspecies of gray wolf from other members of the species; and (2) absent compelling additional information, the weight of current evidence strongly indicates that there is only one species of gray wolf in the United States, which includes all of the northeastern United States—accordingly this region of the country must continue to be included within the listing for gray wolves in the conterminous United States.

## **V. The Endangered Species Act and the History of Wolf Recovery Efforts**

The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation” in the world. *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Congress enacted the ESA in 1973 “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 an “endangered species” as one “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 phrase “significant portion of its range” has been consistently interpreted with the historical range of the species in mind. “We conclude, consistently with the Secretary’s historical practice, that a species can be extinct, “throughout a significant portion of its range” if there are major geographical areas in which it is no longer viable but once was.” *Defenders of Wildlife v. Norton*, 258 F.3d 1136, 1145 (9th Cir. 2001); *see also*, *Defenders of Wildlife v. Department of the Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005) (rejecting 2003 rule downlisting wolves to threatened status on grounds that the Service failed to take into account historic range outside of core recovery areas); *National Wildlife Federation v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005) (same); *Defenders of Wildlife v. Norton*, 239 F. Supp. 2d 9 (D.D.C. 2002), *vacated on other grounds*, 89 Fed. Appx. 273 (D.C. Cir. 2004) (holding that the Service acted arbitrarily and capriciously when it failed to consider key areas of historic range when listing lynx as threatened).

When the Service lists a domestic species, it is also required to concurrently designate “critical habitat” for the species. 16 U.S.C. § 1533(a)(6)(C). Critical habitat is defined as including any occupied or unoccupied area essential to the conservation of the species, and any other occupied area that requires special management considerations or protection for areas. *Id.* § 1532(5)(A)(I). In addition, for any species listed as endangered, Section 9 of the ESA makes it unlawful for any person to, among other activities, “import any such species into, or export any such species from the United States,” or to “take any such species within the United States.” *Id.* § 1538(a)(1)(A), (B). The term “take” includes “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19).

For species that are listed as threatened, rather than endangered, the Service “may,” but is not required to, extend the prohibitions of Section 9 to the species. *Id.* § 1533(d). However, for threatened species the ESA nonetheless *requires* the Service to “issue such regulations as [it] deems necessary and advisable to provide for the conservation of such species.” *Id.* at § 1533(d) (noting that “the Secretary *shall* issue such regulations” (emphasis added)). The term “conservation” is specifically defined in the ESA as “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.” *Id.* at § 1532(3). The statutory definition of “conservation” further provides that “[s]uch methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.” *Id.*

ESA protections for gray wolves began in 1967 when they were protected under the Endangered Species Preservation Act of 1966. In response, the Service listed gray wolves in two separate subspecies—one in the western Great Lakes region, 32 Fed. Reg. 4001 (March 11, 1967), and one in the northern Rocky Mountain region, 38 Fed. Reg. 14678 (June 4, 1973). In January 1974, these subspecies were listed under the Endangered Species Act of 1973. 39 Fed. Reg. 1171 (January 4, 1974). In 1976, the Service listed an additional two subspecies as endangered under the Act, one in the southwestern United States, 41 Fed. Reg. 17736 (April 28, 1976), and one in Texas, New Mexico and Mexico, 41 Fed. Reg. 24064 (June 14, 1976).

In 1977, the Service determined that the listing of gray wolves by subspecies was “[un]satisfactory because the taxonomy of wolves [was] out of date, wolves may wander outside of recognized subspecific boundaries, and some wolves from unlisted subspecies may occur in certain parts of the lower 48 states.” 42 Fed. Reg. 29527 (June 9, 1977). The Service concluded that the species-level listing was appropriate because the gray wolf “formerly occurred in most of the conterminous United States and Mexico[, and] [b]ecause of widespread habitat destruction and human persecution, the species now occupies only a small part of its original range in these regions.” *Id.* Therefore, in 1978 the Service reclassified gray wolves as an endangered population at the species level throughout the contiguous United States, except for the Minnesota population which was listed as a threatened species. 43 Fed. Reg. 9607 (Mar. 9, 1978).

The separate threatened listing for wolves in Minnesota followed considerable resistance to an endangered listing from officials in the state. The governor of Minnesota opposed an endangered listing because they believed it would not allow for lethal control of depredating wolves. *Id.* at 9608. Similarly, the Minnesota legislature passed a resolution calling for “complete declassification of the wolf in Minnesota,” arguing that “hardship was resulting from wolf depredations” and it was appropriate for “the State to have exclusive control of its resident wolf population.” *Id.* Despite the resistance from Minnesota, the Service concluded that the State’s expressed concerns over wolf depredations, State resources, and State autonomy, were not among those factors “that may legally be considered in determining the classification of a species under the Endangered Species Act.” *Id.* The Service further stated that “while it is recognized that the

wolf may recently have increased its range in Minnesota, . . . even if the wolf had “reached carrying capacity in some parts of Minnesota,” those “areas represent[ed] a comparatively small portion of the original range of the species, and population density alone will not assure long-term welfare.” *Id.*

The Service developed recovery plans for the gray wolf as required by the ESA, 16 U.S.C. § 1533(f)(1), in three recovery areas—the Northern Rocky Mountains, the Western Great Lakes and the Southwest. In 1994, the Service designated the Yellowstone Experimental Population Area, 59 Fed. Reg. 60252 (Nov. 22, 1994), and the Central Idaho Experimental Population Area, 59 Fed. Reg. 60266 (Nov. 22, 1994), to facilitate reintroduction of “nonessential experimental populations” of gray wolves under Section 10(j) of the ESA. *See* 16 U.S.C. 1539(j). The Service introduced more than 60 wolves to these areas between 1995 and 1996. In 1998, the Service designated the Mexican Gray Wolf Experimental Population Area. 63 Fed. Reg. 1752 (January 12, 1998). The Service introduced 11 wolves to this area in March 1998.

## **VI. Prior Regulatory Proposals for Reduction or Elimination of Federal Involvement in Wolf Recovery**

Beginning in 2000, the Service began efforts to reduce federal protections for wolves under the ESA. In July of that year, the Service published a proposed rule to “to change the classification of the gray wolf (*Canis lupus*) . . . [on grounds that] the species’ current classification is no longer appropriate throughout most of its range.” 65 Fed. Reg. 43450 (July 13, 2000). The Service finalized this rule in April 2003. 68 Fed. Reg. 15804 (Apr. 1, 2003). The Service’s 2003 rule divided the endangered gray wolf species into four separate regional groupings—three distinct population segments (“DPS”) in the northeast, northwestern and southwestern United States that would remain listed under the ESA, and an area in the southeastern United States that would no longer remain listed under the ESA. *Id.* at 15804. The DPSs in the northeastern and northwestern regions were named the Eastern DPS and Western DPS respectively, and were downlisted to threatened status. *Id.* The DPS in the southwestern region was named the Southwestern DPS, and continued to be classified as endangered. *Id.* Finally, in a region comprised of sixteen southeastern states, wolves were delisted, not based on a finding of recovery or extirpation in the region, but instead based on a determination that wolves did not historically exist in that region and were thus the 1978 decision to list wolves in that region was erroneous. *Id.* The Service simultaneously enacted Section 4(d) regulations for the population segments downlisted to threatened status. *Id.* The 4(d) rules were substantially similar to the 4(d) rule promulgated for wolves in Minnesota, and these rules applied to most, but not all, of the new Eastern and Western DPSs. *Id.*; 43 Fed. Reg. 9612-9615 (Mar. 9, 1978).

The 2003 rule was challenged by conservation and animal protection groups in two Federal district courts, one in Oregon and one in Vermont, both of which rejected the rule and issued orders vacating it. *Defenders of Wildlife v. Sec’y, U.S. Dep’t of the Interior*, 354 F. Supp. 2d 1156, 1158–59 (D. Or. 2005); *Nat’l Wildlife Fed’n v. Norton*, 386 F. Supp. 2d 553, 557 (D. Vt. 2005). Both of these courts took issue with the Service’s decision to treat large areas of unoccupied viable wolf habitat the same as areas of occupied wolf habitat based only on progress



toward recovery in the occupied areas. The Oregon court rejected the Service's determination that unoccupied areas within the species' historic range were not a significant portion of the species' range warranting full protection under the ESA, even though large portions of that unoccupied area remained suitable to sustain a wolf population. 354 F. Supp. 2d at 1167-69. The Oregon court also held that the Service's approach of drawing lines around large areas of the wolf range, and declaring those areas DPSs in order to reduce protections throughout those large areas despite the fact that the species' recovery status varied dramatically within them, ignored the mandate of the ESA to address the poor recovery status of the species in much of the DPS. *Id.* at 1171-72. The Vermont court rejected the Service's approach of creating a DPS in order to delist it, noting that a wolf population must in fact exist in an area before a DPS can be designated for that area. 386 F. Supp. 2d at 564. The court further held that the Service could not simply ignore non-recovered areas by lumping them together with areas claimed to be recovered—regardless of the merits of the Service's finding that the size of the wolf population in occupied areas was large enough that the species was not in immediate danger of going extinct—because the Service had effectively ignored its duty to apply the statutory listing factors to the non-recovered areas. *Id.* at 565-66.

Instead of taking a broader view of wolf recovery, the Service's response to these judicial decisions was to take an even more piecemeal approach. Initially, the Service decided to grant the States of Wisconsin and Michigan permits to implement a depredation control program pursuant to Section 10(a) of the ESA, on the theory that such a program would increase social tolerance for the species and thereby enhance the likelihood of survival of the species. *Humane Soc'y of U.S. v. Kempthorne*, 481 F. Supp. 2d 53 (D.D.C. 2006), *vacated as moot*, 527 F.3d 181 (D.C. Cir. 2008). A federal court enjoined issuance of the permits upon finding that the Service's decision to allow endangered wolves to be killed, purportedly to “foster[] greater social tolerance for wolves,” *id.* at 54, ran counter to the plain language, intent, and legislative history of the ESA and could not be permitted, *id.* at 63.

Beginning in 2006 and continuing to present date, the Service attempted to delist wolves by drawing even narrower DPSs around occupied areas than the DPSs established in the Service's previously rejected 2003 rule. 72 Fed. Reg. 6052 (Feb. 8, 2007) (2007 Great Lakes delisting rule); 73 Fed. Reg. 10514 (Feb. 27, 2008) (2008 Northern Rockies delisting rule); 74 Fed. Reg. 15070 (Apr. 2, 2009) (2009 Great Lakes delisting rule); 74 Fed. Reg. 15123 (Apr. 2, 2009) (2009 Northern Rockies delisting rule); 76 Fed. Reg. 81666 (Dec. 28, 2011) (2011 Great Lakes delisting rule); 77 Fed. Reg. 55530 (Sept. 10, 2012) (2012 Wyoming delisting rule). In a series of federal court decisions each of these attempts was rejected, and, although the court rulings addressed different legal issues, all of these rulings touched on a continuing problem—the Service has persistently relied on the progress toward recovery achieved in some areas of wolf range in order to justify ignoring the continuing need to address remaining threats and potential for further recovery. *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008); *Humane Society of U.S. v. Kempthorne (I)*, 579 F. Supp. 2d 7 (D.D.C. 2008); *Humane Soc'y of the United States v. Kempthorne (II)*, Stipulated Settlement Agreement and Order, Civ. No. 09-01092-PLF, Dkt. 27 (D.D.C., J. Friedman, July 2, 2009); *Defenders of Wildlife v.*

*Salazar*, 729 F.Supp.2d 1207, 1228 (D.Mont., 2010); *Defenders of Wildlife v. Jewell*, --- F.Supp.3d ---, 2014 WL 4714847 (D.D.C., September 23, 2014); *Humane Society of the U.S. v. Jewell*, --- F.Supp.3d ---, 2014 WL 7237702 (D.D.C., December 19, 2014). Recognition of this continuing problem is key to finding a lawful and prudent way forward toward recovery of gray wolves.

## **VII. Federal Protections are Still Needed to Complete Recovery Efforts and Address Threats to the Species**

Gray wolves previously inhabited the vast majority of the conterminous United States, throughout which they are currently listed as endangered, except in Minnesota where they are listed as threatened. Despite expansion of human populations, and consequent habitat loss, in large portions of wolves' historic range, wolves are very adaptable animals and there remain several areas of viable but unoccupied wolf habitat to which the species could be restored. (Mladenoff et al. 1995; Oakleaf et al. 2006). Wolves are long-range dispersers, capable of traveling for hundreds of miles in search of mates, adequate prey base, and suitable colonizing locations. For the species to be fully restored, it will be necessary to provide sufficient protections to allow wolves to engage in natural dispersal, exchange genetic material, and occupy available and suitable habitat. *See* 16 U.S.C. §§ 1531(b); 1532(3), (6) (purpose of the ESA is to conserve listed species across all or a significant portion of their range to the point at which the species no longer needs the protections of the Act); 50 C.F.R. § 424.11(d).

That the Service believes wolves to be fully recovered in some portions of their listed range, and incapable of recovery to some other portions of their listed range, does not absolve the Service of its responsibility to finish the job of recovery of wolves to those areas of still viable wolf habitat, and in areas where threats to sustainable wolf populations remain. Moreover, in its past and pending proposals for delisting, the Service's convenient but improper focus on the species' low risk of global extinction, varying levels of social tolerance for the species, and mere biological viability in occupied areas without adequate regard to threats to full recovery, ignores the fact that the ESA's stated purpose is to "provide a means whereby the *ecosystems* upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b) (emphasis added). This broader purpose is furthered by the presence of species across as much of their historic range as possible, especially for a species like the gray wolf, an apex predator whose presence on the landscape has innumerable ecological benefits.

By the Service's own admission, there are numerous areas within the conterminous United States that contain suitable habitat and yet remain devoid of wolves. These areas include the Northeast, parts of Michigan and the Dakotas, the Pacific Northwest, the Southern Rockies, and other parts of the West. *See Defenders*, 354 F. Supp. 2d at 1167, n.8 (discussing wolf habitat and dispersing wolves in the Northeast, Northwest, and the Dakotas); 65 Fed. Reg. 43462 (identifying favorable wolf habitat in the Northeast); 71 Fed. Reg. 15279 (discussing unoccupied wolf habitat in Michigan and North Dakota); 65 Fed. Reg. 43474 (noting that "there is certainly habitat that could support wolves" in western states such as Oregon, Utah, and Colorado). Yet the Service's downlisting and delisting proposals ignore the potential of wolves to re-occupy

these areas, and thus reach true recovery, by trumpeting progress made toward recovery in the species' current range.

## Potential Wolf Habitat in the Conterminous U.S.?



Figure 1. USGS & FWS map of potential habitat based on synthesis of existing spatial models. Produced by the FWS in 2013 in response to a FOIA request by Public Employees for Environmental Responsibility.

Because wolves have not recovered throughout a significant portion of their range, they cannot be delisted at this time. Further, in order to meet the ESA's requirement that gray wolves be recovered throughout all significant portions of their range, the threats analysis under Section 4(a) in making a listing determination must be conducted at a meaningful geographic scale. By example, the pack structure and natural dispersal behaviors inherent in sustainable populations of wolves require careful consideration of the need for regulatory policy that addresses both occupied and unoccupied areas of wolves' range to ensure sufficient gene dispersal between existing and expanding populations.

Even in areas in which the species has made the greatest progress toward recovery, gray wolves remain vulnerable to a variety of mortality factors, including diseases and unsustainable killing by humans. While the Service's June 2013 proposed rule concludes that wolves will be resilient to these threats in both the short and long-term it is laden with qualifications that admit high levels of uncertainty about this. For example, in a single page addressing the issue of mortality the Service states: "... but substantial debate on this issue [sustainable mortality] remains ...", "... exact figures [on illegal killings] are unavailable ...", and "... we lack direct information on disease rates and mortality rates from disease ..." 78 Fed. Reg. 35683. Such

factors are cause for adopting a protective rather than unprotective approach, particularly given the precautionary mandate embodied in the ESA. *See TVA v. Hill*, 437 U.S. 153, 194 (1978) (“Congress has spoken in the plainest of words, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities, thereby adopting a policy which it described as “institutionalized caution.”); *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1986) (Congress “inten[ded] to give the benefit of the doubt to the species.”).

The threat of inadequately controlled human-caused mortality does not permit full delisting at this time. The consequences of opening wolf populations up to a renewed period of human exploitation could be severe. Several studies have indicated that a wolf population can only be sustained by regular breeding and dispersal if mortality rates are less than 30 percent, so long as normal pack dynamics have not been altered. (Sparkman et al. 2011; Vucetich (2012); Creel and Rotella 2010; Adams et al. 2008). However, current state management plans allow for greater mortality rates when permitted hunting and trapping levels are added to losses from other sources of wolf mortality. By example, for the 2013-14 hunting season, Wisconsin set a hunting and trapping quota of 275 wolves, out of approximately 822 wolves estimated to occupy the state. *See* WI Dept. of Natural Resources (“DNR”), Wolf Quota Press Release at <http://dnr.wi.gov/news/releases/article/?id=2851>. The quota thus comprised over 33% of the state wolf population separate from and in addition to the number of wolves intentionally killed pursuant to the state’s depredation control program, the number of wolves lost due to illegal poaching, and the number of wolves killed by accidents, disease and natural causes. Wisconsin state wildlife managers estimated that 126 wolves died the year before due to causes other than hunting and trapping. *See* WI Dept. of Natural Resources, Wisconsin Wolf season Report 2012 at <http://dnr.wi.gov/topic/hunt/documents/WolfReport.pdf>.

Recent studies suggest that hunting and trapping may have an additive or even super-additive effect on wolf mortality through the additional loss of dependent offspring or by disrupting pack structure. (Murray et al. 2010; Creel and Rotella 2010). Brainerd et al. (2008) addressed the issue of breeder loss in wolf packs through an analysis of pooled data, finding among other consequences that the loss of one or more breeders led to dissolution of groups and territory abandonment in 38% of cases. Further, Rutledge et al. (2010) concluded that human predation could affect evolutionary important social patterns in wolves and that intense harvest appeared to increase the adoption of unrelated wolves into disrupted packs. Similarly, Bryan et al. (2014) found that hunting wolves can change their reproductive and breeding strategies as well as create chronic stress for them, with potentially detrimental effects on the fitness of individuals, changes to packs’ evolutionary potential, and increased risk for population extinction. The potentially disastrous *indirect* results of human-caused mortality are not even acknowledged, let alone accounted for, in state management planning to date. This is particularly problematic given the past history of persecution of wolves at the behest of state officials, 78 Fed. Reg. at 35684 (noting that “[a]n active eradication program is the sole reason that wolves were extirpated from their historical range in the United States”), and the fact that human-caused mortality continues to constitute the majority of documented wolf deaths, 76 Fed. Reg. 81682.



In the short time that wolves have been delisted in the Northern Rocky Mountain and Western Great Lakes regions, recreational hunters and trappers have killed *over 3,500* wolves. See U.S. Fish & Wildlife Service, Gray Wolves in the Northern Rocky Mountains, at <http://www.fws.gov/mountain-prairie/species/mammals/wolf/> (containing Annual Reports of population numbers and mortality for the Northern Rocky Mountains region); U.S. Fish & Wildlife Service, Wolf—Western Great Lakes, at [http://www.fws.gov/midwest/wolf/about\\_wolves/mi\\_wi\\_nos.htm](http://www.fws.gov/midwest/wolf/about_wolves/mi_wi_nos.htm) (containing Annual Reports of population numbers and mortality for the Western Great Lakes region). Such widespread hunting and trapping has already led to population-level effects. By example, in Minnesota, a 2012-2013 count of the wolf population revealed that the population fell by 24% from the previous population count (conducted in 2008), much of which may be due to the over 400 wolves that were killed by hunters and trappers in the 2012-2013 hunting season—the first public hunt in the state in over four decades. *Id.* At the start of Wisconsin’s first wolf hunt in 2012, the population was at 782 animals; since that time the population has suffered a 15% decline. *Id.* Further, many of these states allow inhumane and indiscriminate killing methods including the use of steel-jawed leg-hold traps and hounds—encouraging the same behavior that lead to the near extirpation of wolves in the first place.

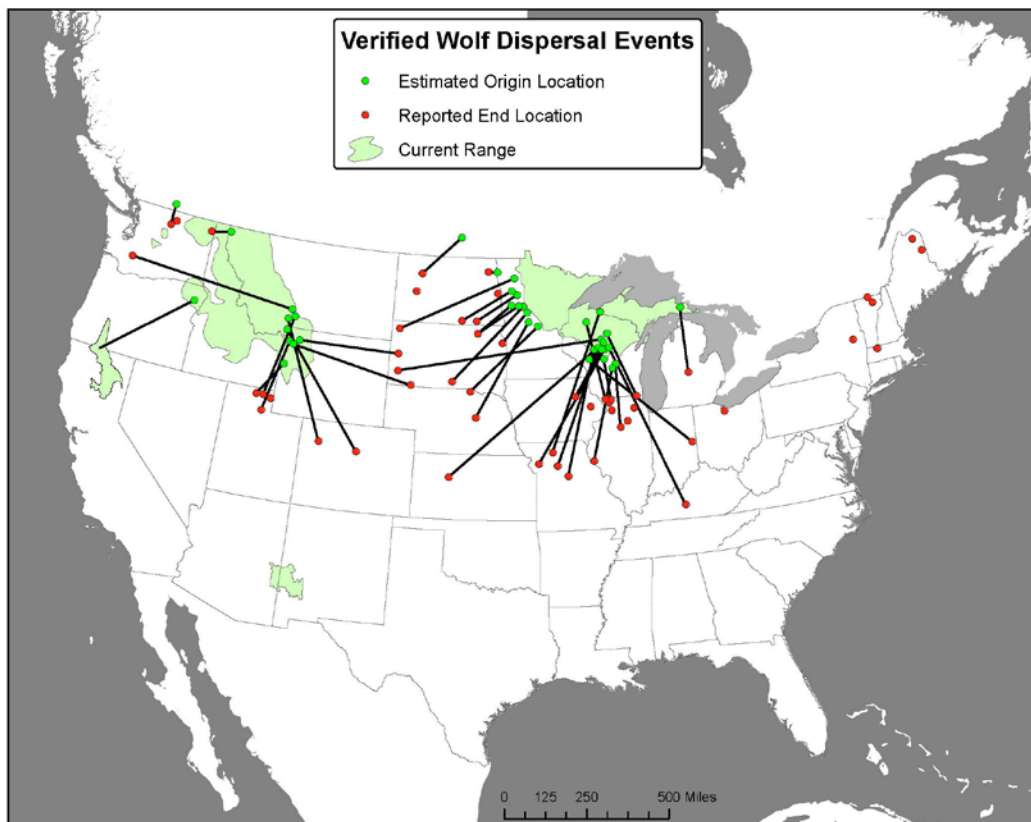


Figure 2. Map of verified wolf dispersal events from 1981-2014. Center for Biological Diversity, Making Room for Wolf Recovery (November 2014).

Without robust populations in the western Great Lakes and northern Rocky Mountains, dispersals to unoccupied areas cannot occur and suitable habitat will decline, making re-colonization much more difficult. As shown in Figure 2, it is beyond dispute that these two areas

provide the source populations needed for further wolf recovery, and help illustrate why a species-level listing as threatened is warranted.

In its June 2013 proposed rule, the Service fully admits that “regional populations of *C. lupus* are facing significant threats.” 78 Fed. Reg. 35717. Scientists agree—Bruskotter et al. (2014) conclude that wolves are still “threatened by high rates of human-caused mortality perpetrated by a very small portion of people who dislike wolves. And while illegal killing has likely influenced population expansion . . . it has not generally prevented range expansion. By contrast, legal killing, implemented by state governments and sanctioned by the FWS, combined with their limited view of recovery is likely to prevent range expansion and, therefore, recovery. Threats to wolves are only going to increase if management is turned over to states with hostile post-delisting management plans. By example, Wyoming allows unrestricted wolf killing (including no restrictions on the numbers of wolves taken, no specificity as to the methods of take, and no requirement to obtain a hunting license) in over 80% of the state. W.S. § 23-1-101(a)(viii)(B). Moreover, some states into which wolves may disperse lack any plan for such events. *See* 78 Fed. Reg. at 35675 (noting that wolves have been seen in Missouri, Indiana and Nebraska, but no regulatory mechanisms relating to wolves in those states). And other states have made no secret of their hostility towards wolves and plans to actively prevent recovery of the species. By example, Utah requires state wildlife officials to capture and kill any wolf that comes into the state in order to prevent the establishment of a viable wolf pack. Utah Code § 23-29-201.

In sum, wolves have not been recovered throughout a significant portion of their range, and curtailment of habitat, overutilization and the inadequacy of state regulatory mechanisms in both occupied and unoccupied areas remain current threats to the species that have not been adequately addressed. *See* 16 U.S.C. § 1533(a)(1).

## **VIII. A New Path Forward**

The HSUS hereby petitions the Service to consider whether to reclassify the gray wolf (*C. lupus*), excluding the Mexican wolf subspecies (*C. l. baileyi*), as threatened throughout the conterminous United States. Importantly, the proposal permits the Service to address the entire listed entity, 43 Fed. Reg. 9607 (Mar. 9, 1978), and therefore is a viable alternative to continued imprudent and unlawful efforts to delist the species or specific populations of the species. A threatened listing would continue needed federal oversight of wolf recovery while providing regulatory flexibility to address specific wolf conflicts in states where wolf numbers are relatively robust, while allowing recovery to occur elsewhere where suitable habitat for wolves remains unoccupied.

There are numerous peer-reviewed scientific studies that have modeled suitable wolf habitat in the lower 48 States (See Appendix B). These models have primarily reviewed available wolf habitat across the western United States, the upper Midwest and the Northeast. These areas encompass the majority of remaining gray wolf habitat, but do not address the range of the red wolf in the Southeast, areas of potential gray wolf habitat in the Appalachian mountains, or potential habitat in North and South Dakota—all areas that should be the subject

of additional modeling prior to any final determinations about the geographic scope of wolf recovery in the United States. These predictive models included screening parameters such as road density, human population density, prey density, and land cover/use. Figure 3 below illustrates a composite habitat map for gray wolves based on this compiled research.

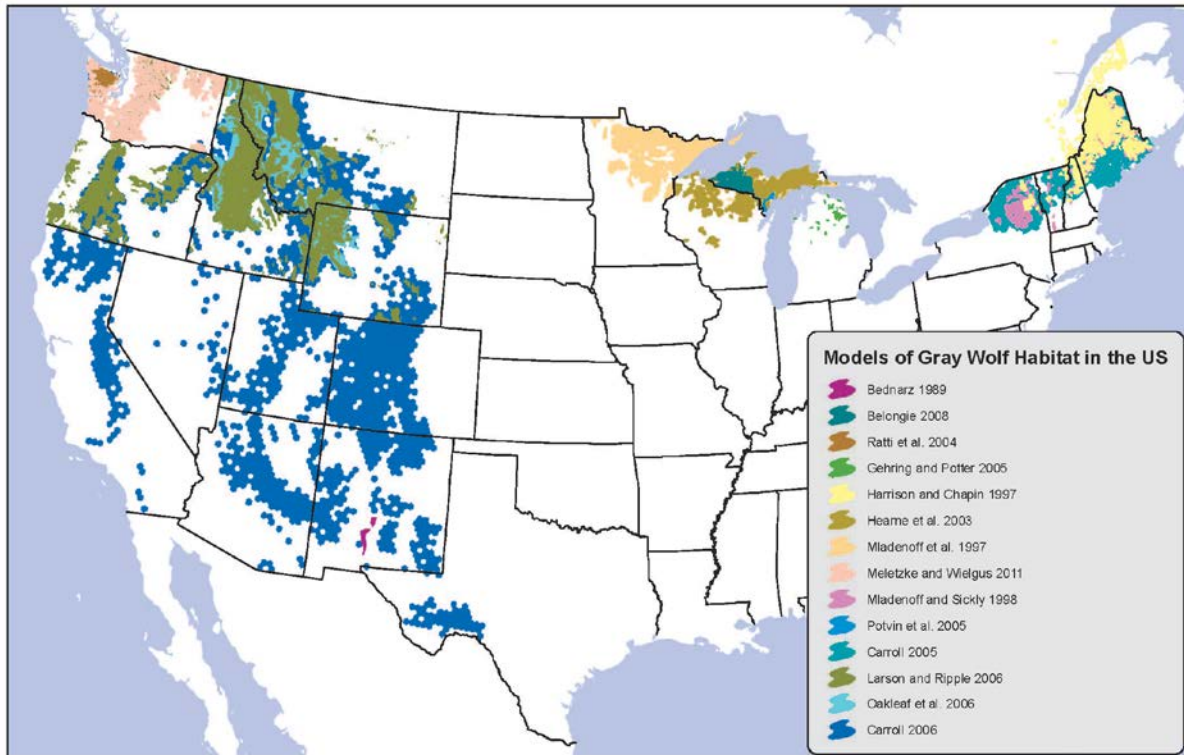


Figure 3. Suitable gray wolf habitat in the contiguous United States as identified in 14 modeling studies. Center for Biological Diversity, Making Room for Wolf Recovery (November 2014).

While there remains some disagreement as to exactly which areas constitute suitable habitat — based on habitat quality, population density, patch size, and prey base, there is overwhelming agreement that large tracts of suitable wolf habitat remain present in the lower 48. Most recently as an example, Vucetich et al. (in preparation) have recently developed a framework for gray wolf recovery that would include as a first step a threatened listing for gray wolves in occupied areas of the range, and which identifies several potential recovery areas in unoccupied portions of the species’ historic range.

Many of the threats to recovery that still remain are similar to the threats cited by the Service when listing wolves as threatened in Minnesota many years ago. In considering the status of Minnesota wolves, the Service asserted that the remnant Minnesota wolf population had survived without protection prior to its listing as endangered in 1967 and “the species was not in immediate danger of being extirpated in the State.” 42 Fed. Reg. at 29527. However, in the face of significant opposition to *any* ESA listing by state officials, the Service further stated that the species warranted continued protection as threatened in Minnesota due to continued risk of “[o]verutilization for commercial, sporting [and other] purposes,” which the Service found to be highly relevant given that “[d]irect killing by man . . . has been the major direct factor in the

decline of wolves in the conterminous United States.” 43 Fed. Reg. at 9611 (Mar. 9, 1978). The Service also highlighted the fact that “[w]olves still are regularly shot, especially when they appear in settled areas that are not part of their regular range [and] [i]llegal killing is a problem in Minnesota and other areas where the wolf still occurs.” *Id.* The Service cited the “inadequacy of existing regulatory mechanisms” as part of its rationale for continued federal oversight. Nevertheless, the Service cautioned that the inability to kill wolves “that may be attacking livestock and pets” could be “creating an adverse public attitude toward the whole species.” *Id.* These issues remain highly relevant to the recovery and listing status of gray wolves today. And more specifically, curtailment of habitat, overutilization and the inadequacy of state regulatory mechanisms in some areas remain current threats to the species that have not been adequately addressed. *See* 16 U.S.C. § 1533(a)(1).

A threatened listing would require the Service to thoughtfully craft a national recovery plan for the species—something it has never done before—which would identify those areas where the full suite of protections, coextensive with the protections extended to species of endangered status, are required to allow for the recovery of the wolf areas of unoccupied but still viable habitat in wolf range. The opportunity to address areas that still need heightened protections is what makes this proposal different than the one articulated in the Service’s 2003 rule. The federal court decisions rejecting the Service’s 2003 rule made clear that the Service could not rely on progress toward wolf recovery in some corners to wipe its hands of its obligations to the species in unoccupied but still viable areas of the wolf range. A threatened listing would permit the Service considerable latitude in providing increased regulatory protections and federal oversight where needed to finish the job of recovery of the species.

A threatened listing would also provide the Service the ability to monitor, and address through regulatory restrictions, those occupied areas of wolf range in which state regulatory mechanisms are inadequate. To date, most state management programs have been based on fear and rhetoric, rather than the best available science and principles of conservation biology. But states are more likely to take seriously their obligation to manage wolves responsibly, refraining from cruel and excessive lethal removal, if wolves remain listed under the ESA and the federal government has the ability to step in and quickly increase protections if states do not take a sufficiently precautionous approach.

At the same time, where states have proven responsible enough to manage their wolf populations, a threatened listing would allow the Service to approve state and local officials to use lethal control to deal with bona fide wolf conflicts where consistent with the best available science and the overarching conservation goals of the ESA.

HSUS believes that the existing ESA listing for gray wolves may, upon further review by the Service, warrant revision as follows:

- (1) Gray wolves (*C. lupus*) should be listed as threatened throughout the conterminous United States, except as noted below.
- (2) Mexican wolves (*C. baileyi*) are properly designated a separate subspecies of gray wolf in the southwestern United States, and should remain listed as endangered.



- (3) Absent compelling new information, the weight of current scientific evidence strongly indicates that there is only one species of gray wolf in the United States, which includes all of the northeastern United States. As a result, this region should continue to be included within the listing for gray wolves in the conterminous United States and included in recovery planning for the species.
- (4) Gray wolves were likely present in the Appalachian mountains, and there may be some overlap within the historic ranges of gray wolves (*C. lupus*) and red wolves (*C. rufus*). Until such time as the best available science makes clear that gray wolves were erroneously listed in a portion of the southeastern United States, this region should continue to be included within the listing for gray wolves in the conterminous United States and included in recovery planning for the species.

Frustrated with the failure of the Service's efforts to provide a viable path forward to wolf recovery, Congress chose to take the unprecedented step of legislatively delisting wolves in Montana, Idaho and parts of several surrounding states in a budget rider passed in 2011. Public Law 112–10, Sec. 1713 (Apr. 15, 2011). The wisdom of such action is hotly disputed. But indisputable is the fact that legislative delisting of a species is clearly contrary to the spirit and purpose of the ESA, which calls for a thoughtful and nuanced approach to recovery of endangered species that can only occur through a robust and deliberative administrative rulemaking process. It is crucial to the long-term and sustainable recovery of gray wolves, and to the integrity of the ESA and our nation's interests in protecting against loss of vulnerable species, that the Service shows leadership on this issue and demonstrates that an administrative path forward to recovery of wolves exists. The undersigned hope that this petition provides a platform for that action.

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**Justice for Wolves**

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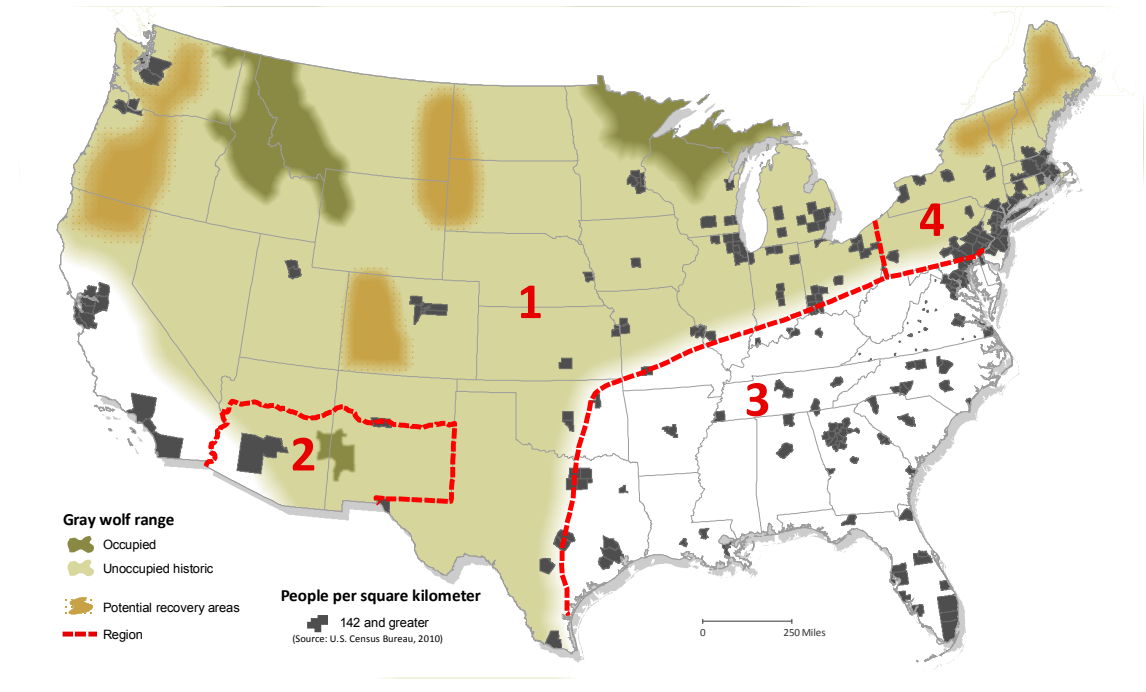
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## **FRAMEWORK FOR ENVISIONING GRAY WOLF RECOVERY** **THAT IS BOTH FEASIBLE *AND* ADHERES TO THE U. S. ENDANGERED SPECIES ACT.**

In separate decisions, two federal judges recently ordered gray wolves to be relisted under the U.S. Endangered Species Act (ESA) in Wyoming and the Great Lakes region. Critics argue that the second decision, in particular, is deeply misguided because it is tantamount to insisting that recovery requires wolves to live virtually everywhere – urban and suburban areas included. That criticism represents a deep misunderstanding of the law as it applies to the gray wolf.

These two decisions and a spate of others highlight difficulties the U.S. Fish and Wildlife Service (FWS) has had in developing a plan that recovers the gray wolf in a manner consistent with a requirement of the ESA known by the shorthand, “significant portion of range.” This difficulty may be best overcome by the agency developing a national wolf recovery plan. Developing a national plan may also forestall legislative efforts to marginalize the ESA by affecting wolf recovery in a piecemeal manner. Here is a simple framework for envisioning such a plan.

### *Landscape of Wolf Recovery*



### **FEASIBILITY**

Wolves are one of the most adaptable mammals on the planet and can live where there is adequate food and where regulatory mechanisms limit the rate at which humans kill wolves. Patterns of coexistence between wolves and humans suggest that wolves can live where human population density is less than 142 people/km<sup>2</sup> (see the map and references in endnote <sup>1</sup> on p. 3).

Concern for human safety need not be an obstacle to recovery. Wolves will always be less dangerous to humans than any number of other animal species that

Americans encounter on a daily basis, including white-tailed deer, hogs, bees, and domestic dogs, to mention just a few.

Livestock losses are an obstacle to recovery and such losses would increase with the implementation of a national recovery plan. Nevertheless, from an industry perspective the economic losses attributable to wolves would be genuinely trivial. In rare circumstances an individual livestock owner will suffer from wolves killing their livestock. Assisting those livestock owners is appropriate and readily accomplished.

Until nationwide recovery is achieved, wolves in Wyoming and the Great Lakes should be listed as threatened and managed per an accommodating section 4(d) rule. This would allow state agencies to use lethal control of wolves to resolve wolf-livestock conflicts.

A small, but vocal and influential, group will insist that wolf recovery meeting the standards of federal law will not be tolerated. Such insistences are likely inaccurate. For example, opponents to wolf recovery had claimed that intolerance would prevent wolves from repopulating places where they now live. More importantly, if intolerance is a genuine threat to recovery, then according to federal law such threats must be mitigated before the wolf can be delisted.

### **THE ENDANGERED SPECIES ACT**

Federal law states that a species is endangered if "at risk of extinction throughout all or a significant portion of its range." A species is recovered when it no longer fits that definition and is unlikely to fit that definition in the foreseeable future. Scholarship and case law indicate, in plainer language and in general, that a species is recovered when it securely occupies much or most<sup>2</sup> of its former range.<sup>3</sup>

Under recovery, some portions of wolves' former range would not be occupied (e.g., Nevada). Those portions would, for ecological reasons, support only low densities of wolves and are less significant to wolf recovery.<sup>4</sup> Still other portions of the wolf's former range would not be occupied under recovery (e.g., northern portion of Michigan's lower peninsula), even though such areas represent high quality wolf habitat (if threats against wolves were removed). It is, however, allowable for gray wolves to be absent from such regions because the law does not require a species to occupy all of its former range. On the whole, the recovery map included here may represent the *smallest* range that wolves would have to securely occupy to be considered recovered according to the law. This map is included here to illustrate the scope of consideration that would be required to finalize a national wolf recovery plan that was consistent with the ESA and related case law.

### **TAXONOMY AND GEOGRAPHY**

Any national wolf recovery plan would need to consider regions 1 and 4 of the attached map, where the species once lived. Region 2 (southwestern U.S.) is important as well and currently inhabited by fewer than 100 Mexican wolves, an important subspecies of the gray wolf. Region 3 (southeastern U.S.) is associated with a different kind of wolf, the red wolf.

An adequate national recovery plan would consider the need for reintroductions to establish wolves in potential recovery areas. Natural recolonization may be sufficient in some cases.

The taxonomic status of wolves in region 4 is uncertain and will remain so for the foreseeable future. Wolves in region 4 may be sufficiently similar to wolves in region 3, or to wolves in region 1, or may be distinct from both kinds of wolf. That uncertainty is not a reason for inaction. Instead, that uncertainty calls for application of the precautionary principle. In this case, recovery has to meet the standards of the law under any of those three taxonomic possibilities. As such, it is difficult to envision wolf recovery without wolves in the northeast.

### **REVIEW**

Proper review of any national wolf recovery plan would involve posing two questions to two groups of experts. First, scientists with appropriate expertise should be asked,

*What recovery areas could wolves inhabit, provided that the threats to wolves (mainly human-caused mortality) are properly mitigated?*

Second, those with appropriate knowledge of the ESA should be asked,

*Would wolves securely occupying those recovery areas represent the minimum requirement for recovery according to the ESA?*

Alternative visions of recovery would need to be judged by these two questions.<sup>5</sup>

Wolves and the U.S. Endangered Species Act are and will continue to be rich parts of our American heritage. It is vitally important to promote a constructive conversation about what gray wolf recovery should look like. The framework here is offered as a critical step toward that end.



## ENDNOTES

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<sup>1</sup> Bruskotter et al. 2013 (*Conserv. Letters* 7, 401-407); see also Chapron et al. 2014 (*Science* 346, 1517-1519).

<sup>2</sup> Whether recovery involves occupying “much” or “most” of its former range may depend on context that varies from species to species. For example, if a portion of a species’ former range had supported only low densities of that species (prior to the onset of threats that caused the species to become endangered), then that portion of range might be less significant than other portions. Such a circumstance might, for some species, allow for recovery to involve occupying much (rather than most) of the former range. See Carroll et al. (2010) for an important exception.

<sup>3</sup> The phrase “former range” means range that was occupied before it was adversely impacted by the threats that caused the species to be listed. See, e.g., Vucetich et al. 2006 (*Conserv. Biol.* 20, 1383-1390); Greenwald 2009 (*Conserv. Biol.* 23, 1374-1377); Carroll et al. 2010 (*Conserv. Biol.* 24, 395-403).

<sup>4</sup> See endnote 2.

<sup>5</sup> This vision of recovery focuses on satisfying the concept known as “significant portion of range,” the details of which are the subject of references in endnote 3. In addition to that concept, recovery also involves other important criteria, such as the removal of threats that caused a species to become endangered and the establishment of adequate regulatory mechanisms that would prevent subsequent relisting.

**February 18, 2015**  
**An Open Letter to Members of Congress**  
**from Scientists on Federal Wolf Delisting**

We, the undersigned scientists, are writing to express opposition to the prospect that Congress might act to delist gray wolves (*Canis lupus*) from the Endangered Species Act (ESA).

The best available science indicates that the gray wolf occupies a mere fraction of its historic range<sup>i</sup> and therefore has not yet recovered from centuries of systematic persecution.<sup>ii</sup> For this reason, and in recognition of the ecological benefits wolves bring,<sup>iii</sup> millions of tourism dollars to local economies,<sup>iv</sup> and abundant knowledge from scientific study, we ask Congress to act to conserve the species for future generations.

The ESA requires the U.S. Fish and Wildlife Service (FWS) to base all listing decisions “solely on the basis of the best scientific and commercial data available” and that a species must be considered endangered if it is “at risk of extinction throughout all or a significant portion of its range” (Sections 3 and 4 of the ESA). A species is recovered when it no longer fits that definition and is unlikely to fit that definition in the foreseeable future. The best available science clearly indicates that wolves do not meet that standard – they occupy only a small portion of their former range—and that the species could occupy much more of its former range if the threats (primarily, human-caused mortality and inadequate regulatory mechanisms) were properly mitigated.

Despite this fact, the FWS has repeatedly removed federal ESA protections from wolves. It did so by distorting the plain meaning of the phrase, “significant portion of its range,” an important component of the ESA. Those distorted interpretations of the ESA are antithetical to what Congress intended when it enacted the ESA.<sup>v</sup> Those distorted interpretations were also rejected by numerous federal courts that have ordered the FWS to restore federal protections to wolves, including two rulings in 2014 alone.

Currently, wolves are absent from most of the United States, with potentially secure populations in only a handful of states (Idaho, Montana, Wyoming, Wisconsin, Minnesota and Michigan). Yet, in those same states, the loss of federal protections resulted in state-sanctioned seasons on wolves at levels designed to reduce their populations to arbitrary goals, which were based on politics but not the best available science.<sup>vi</sup> For instance, since delisting, in Minnesota, the population has been reduced by 20 percent, and in Wisconsin, by at least 15 percent, but likely by more.<sup>vii</sup> Before a federal court intervened, the Wyoming Legislature ordered that 80 percent of the state be open to unlimited wolf killing. Killing of wolves in Montana and Wyoming has even included wolves that should enjoy protections in Yellowstone and Teton national parks<sup>viii</sup>—the place where thousands of tourists go annually just to see wolves and support rural economies.

In rare circumstances, individual livestock owners suffer from wolves killing their livestock.<sup>ix</sup> Assisting those livestock owners is both appropriate and readily accomplished through implementing non-lethal methods.<sup>x</sup> Added to this, livestock growers benefit by managing wolves as “threatened” under the ESA, which permits lethal management under a Section 4(d) rule, allowing agencies to use lethal control of wolves to resolve wolf-livestock conflicts.

Some have expressed their concern for human safety, but such fears should not be an obstacle to recovery. While there has never been a record of a healthy wild wolf attacking a human in the lower 48 states, the ESA listing still allows lethal removal of wolves for human safety reasons.

For all of these reasons, we urge Congress to oppose any legislation to remove the gray wolf (*Canis lupus*) from protections under the ESA. Wolves are an enormous asset to the biological diversity of our country and are well tolerated by the American public. After decades of making excellent progress

toward recovery, it would be a shame to stop before the final goal is accomplished.

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<sup>ii</sup> M.J. Robinson, *Predatory Bureaucracy: The Extermination of Wolves and Transformation of the West* (Boulder: University Press of Colorado, 2005); Bradley J. Bergstrom, "Endangered Wolves Fall Prey to Politics," *Science* 333(2011); J. T. Bruskotter, S. A.ENZLER, and A. Treves, "Rescuing Wolves from Politics: Wildlife as a Public Trust Resource," *ibid.*, no. 6051.

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<sup>v</sup> J. T. Bruskotter et al., "Removing Protections for Wolves and the Future of the US Endangered Species Act (1973)," *Conservation Letters* 7, no. 4 (2014).

<sup>vi</sup> Bradley J. Bergstrom et al., "The Northern Rocky Mountain Gray Wolf Is Not yet Recovered," *BioScience* 59, no. 11 (2009).

<sup>vii</sup> Wisconsin changed its protocols in counting wolves, and may be over-counting them significantly. See: <http://faculty.nelson.wisc.edu/treves/>. Wisconsin admitted that 17 packs disappeared in one hunting season alone.

<sup>viii</sup> The death of a famous Yellowstone wolf, 832F, was reported widely in the U.S. and in Europe. See: [http://www.nytimes.com/2012/12/09/science/earth/famous-wolf-is-killed-outside-yellowstone.html?\\_r=0](http://www.nytimes.com/2012/12/09/science/earth/famous-wolf-is-killed-outside-yellowstone.html?_r=0); see also, scientists warning to the FWS about the lack of buffer zones around national parks: Atkins, "United States Fish and Wildlife Service, Final Peer Review of Four Documents Amending and Clarifying the Wyoming Gray Wolf Management Plan," *Atkins Project No: 1000023591* (2012).

<sup>ix</sup> T. B. Muhly and M. Musiani, "Livestock Depredation by Wolves and the Ranching Economy in the Northwestern U.S.," *Ecological Economics* 68, no. 8-9 (2009).

<sup>x</sup> Adrian Treves et al., "Forecasting Environmental Hazards and the Application of Risk Maps to Predator Attacks on Livestock," *BioScience* 61, no. 6 (2011); A. Treves and K. U. Karanth, "Human-Carnivore Conflict and Perspectives on Carnivore Management Worldwide," *Conservation Biology* 17, no. 6 (2003).