



Via Facsimile and Certified Mail/Return Receipt Requested

December 21, 2010

Ken Salazar, Secretary
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RE: Notice of Intent to Sue, Violations of the Endangered Species Act: Failure to Develop a Recovery Plan for the Gray Wolf throughout its Range in the Conterminous 48 States

This letter serves as official notice by the Center for Biological Diversity, Noah Greenwald, and Peter Galvin of their intent to sue the U.S. Fish and Wildlife Service (“FWS”) and Ken Salazar, Secretary of the U.S. Department of the Interior (“Secretary”), for violations of the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, in connection with the failure of the Secretary and FWS to develop a recovery plan for the gray wolf (*Canis lupus*) in the conterminous United States. Over three decades ago, FWS listed the gray wolf as endangered under the Endangered Species Act “in Mexico and throughout the 48 conterminous States of the United States”, except in Minnesota, where it was designated as “threatened.” 42 Fed. Reg. 29,527 (June 9, 1977) (proposed rule); 43 Fed. Reg. 9607 (Mar. 9, 1978) (final rule recognizing *Canis Lupus* as “Endangered or Threatened to the south of Canada”). However, FWS has never developed a plan to recover the wolf throughout the conterminous United States, in violation of Section 4(f) of the Endangered Species Act. 16 U.S.C. § 1533(f)(1) (Secretary “shall develop and implement plans ... for the conservation and survival of endangered species ... unless he finds that such a plan will not promote the conservation of the species”).

The Center for Biological Diversity (“Center”) is a national, non-profit conservation organization headquartered in Tucson, Arizona and supported by over 315,000 members and online activists. The Center has advocated for gray wolf recovery since the 1990s, and entered into a settlement agreement that required FWS to reintroduce Mexican gray wolves in the Southwest region of the United States, which occurred in 1998. The Center and its members, including Noah Greenwald and Peter Galvin, wish to see healthy gray wolf populations in all suitable habitat throughout the species’ historic range in the conterminous U.S. To realize that vision, the Center has participated in countless rulemakings for wolf management and has halted multiple unlawful downlisting and delisting attempts by FWS through litigation. The Center also runs conservation programs in all regions of the United States, including in regions where efforts are needed to conserve the species and its habitats. The Center submitted a petition for rulemaking, pursuant to the APA, to Secretary Salazar and FWS on July 20, 2010 that formally requested development

of a national wolf recovery plan under the Endangered Species Act and Administrative Procedure Act, 5 U.S.C. 553 (“APA”).

I. Recovery Plans under the Endangered Species Act

The Endangered Species Act was enacted, in part, to provide a “means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b). Section 2(c) of the Endangered Species Act establishes that it is “the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The Act defines “conservation” to mean “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 Act are no longer necessary.” 16 U.S.C. § 1532(3).

Once listed as “endangered” or “threatened,” species are entitled to the Endangered Species Act’s substantive protections, and federal agencies assume duties to conserve, recover, and protect listed species. For example, Section 7(a)(1) requires the Secretary to “review other programs administered by him and utilize such programs in furtherance of the purposes of the Act.” 16 U.S.C. § 1536(a)(1). Pertinent here is the fundamental duty in Section 4(f) of the Act, which directs FWS to develop and implement recovery plans for the “conservation and survival” of listed species “unless he finds that such a plan will not promote the conservation of the species.”¹

A recovery plan contains: (1) a description of site specific management actions that may be necessary to recover the species; (2) objective and measurable criteria which, when met, would result in a determination that the species be removed from the list; and (3) estimates of the time and cost required to carry out those measures needed to recover the species and to achieve intermediate steps towards that goal. 16 U.S.C. § 1533(f)(1)(B)(i)-(iii). In crafting recovery plans FWS is directed, to “the maximum extent practicable,” to “give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.” 16 U.S.C. § 1533(f)(1)(A).

¹ The Endangered Species Act vests primary responsibility for administering and enforcing the statute with the Secretaries of Interior and Commerce. The Secretaries of Interior and Commerce have delegated this responsibility to the FWS and the National Marine Fisheries Service (“NMFS”) (also known as National Oceanic and Atmospheric Administration, Fisheries Service), respectively. 50 C.F.R. § 402.01(b). FWS has primary responsibility for administering the Act with regard to most terrestrial species, including the gray wolf.

A recovery plan is a listed species' "basic road map to recovery, *i.e.*, the process that stops or reverses the decline of a species and neutralizes threats to its existence." *Defenders of Wildlife v. Babbitt*, 130 F.Supp.2d 121, 131 (D.D.C. 2001) (internal quotation marks and citations omitted); *see also Sw. Ctr. for Biological Diversity v. Bartel*, 470 F. Supp. 2d 1118, 1136 (S.D. Cal. 2006) ("The statutory scheme contemplates orderly and timely progression of action to list the species; designate its critical habitat; and create a recovery plan."). FWS's Recovery Handbook states that there "are very few acceptable justifications" for a recovery plan exemption. NMFS & FWS, Interim Endangered and Threatened Species Recovery Planning Guidance (Oct. 2004) at 2.2-1.

II. The Gray Wolf

Wolves are incredibly important to the ecosystems they inhabit. Studies demonstrate that the wolf is a keystone species that profoundly shapes ecosystems, *e.g.*, by limiting elk herbivory of saplings in sensitive riparian areas, and aiding beavers, songbirds, and fish by enhancing habitat through growth of riparian trees. Wolves also aid foxes and pronghorns by controlling coyotes, which are intolerant of foxes and prey on pronghorn fawns disproportionately.

The wolf historically inhabited most of North America, except for portions of the driest deserts and today's southeastern United States. Studies have estimated that historically, there may have been as many as two million wolves in the western U.S. and Mexico. But today, wolves occupy only about five percent of their historic range in the U.S., in three areas – the northern Rocky Mountains, Great Lakes region, and southwestern U.S. – with a combined total population of approximately 5,000 to 6,000 wolves. This severe reduction in wolf numbers was caused by widespread habitat destruction as well as federal policies, implemented over the course of many decades, to exterminate wolves from the landscape. Although the federal government no longer explicitly pursues such policies, wolf populations remain small and isolated and continue to be threatened by genetic inbreeding and poaching, and by ongoing federal and state predator control policies.

Most wolf populations in the U.S. today remain below levels that scientists consider to be viable. A 2007 study estimated a median minimum viable population ("MVP") size of 4,169 individual wolves, while another study estimated a mean MVP of 7,316 wolves. Only the Great Lakes wolf population – with a little over 4,000 individuals – comes near what would be considered viable. The northern Rocky Mountains population, even were it not fragmented into three subpopulations, is well below viability. At last count, the Mexican gray wolf population comprised just 42 wolves and only two breeding pairs, is a couple of orders of magnitude below this crucial benchmark.

Accordingly, even in the contracted areas where they now occur, wolf populations in the conterminous U.S. continue to be threatened by relatively small population sizes. Therefore, continued protection under the Endangered Species Act, including the protections that would be gained through FWS's development of a comprehensive recovery plan, remains necessary.

FWS has ignored this mandate. Prior to listing gray wolves throughout Mexico and the conterminous U.S. in 1978, FWS initiated development of recovery plans for the eastern timber wolf, northern Rocky Mountain wolf, and Mexican wolf. These plans were finalized in 1978, 1980, and 1982 respectively. FWS revised the recovery plans for the northern Rocky Mountains wolf in 1987 and for the wolf in the Great Lakes region in 1992. All of these plans were developed prior to considerable research and major gains in understanding of wolf genetics and viability. Moreover, the plans focused recovery efforts where subspecies of wolf had been listed prior to the 1978 reclassification – *i.e.*, for the Mexican wolf, northern Rocky Mountain wolf, and eastern timber wolf. FWS's recovery efforts for the species have been focused in these areas ever since, reflecting an outdated understanding of wolf taxonomy. FWS still has not developed or implemented recovery efforts to recover the gray wolf throughout the conterminous U.S. (and Mexico).

Still, substantial gains in wolf recovery have been made in some of these areas. In 1995 and 1996, FWS reintroduced wolves to Yellowstone National Park and central Idaho, and designated wolves in Wyoming and most of Idaho and Montana as an experimental, non-essential population under section 10(j) of the Endangered Species Act. 16 U.S.C. § 1540(j). The recovery plan for the northern Rocky Mountains set a population goal of at least 10 breeding pairs in three areas – the Greater Yellowstone Ecosystem, northwestern Montana, and central Idaho – with connectivity between the three populations. The numeric component of the goal was reached by about 2000. 74 Fed. Reg. 15,123, 15,124 (Apr. 2, 2009). At the time of the 1978 listing, the single remaining population of wolves in the conterminous U.S. was in northeastern Minnesota, with about 1,000-2,000 wolves. The recovery plan for the eastern timber wolf set a goal of 1,250-1,400 wolves for this population in at least 40 percent of the state, with a geographically-disjunct population of at least 200 wolves. These goals were apparently met by 1998. 74 Fed. Reg. 15,070, 15,071 (Apr. 2, 2009). Dispersing wolves have been documented in Washington, Oregon, and Utah from the northern Rockies, and in many states in the Great Lakes region.

In 1998, FWS began reintroducing Mexican wolves to the Apache and Gila national forests in Arizona and New Mexico, also as an experimental non-essential population pursuant to Section 10(j) of the Endangered Species Act, and designated these forests as the Blue Range Wolf Recovery Area. The 1982 recovery plan for the Mexican gray wolf did not establish recovery goals, but the reintroduction program established an objective of 100 wolves in the wild and projected this objective would be reached by 2006 and would include 18 breeding pairs. At the end of 2009, there were a total of 42 wolves in the wild and just two breeding pairs; thus, the reintroduction objective has not been met. These wolves also continue to be threatened by illegal take, federal wolf control, and a severely-contracted range where Mexican wolves have been introduced but beyond which they are not permitted to roam.

Thus, FWS's 36-year recovery efforts for gray wolves has realized significant successes and brought the species back from the brink of extinction in two regions of the U.S. But because recovery efforts have focused on these three regions and not on wolf recovery throughout the conterminous U.S., where the species has been protected under the Endangered Species Act

since 1978, full recovery remains elusive, particularly in the Southwest. In addition, wolves are still absent from roughly 95 percent or more of their historic range in the U.S., including extensive areas of suitable habitat. Thus, while these successes show how effective recovery planning can be, they also demonstrate that it is essential it is to the wolf's conservation that FWS finally develop a comprehensive recovery plan for the gray wolf throughout the conterminous U.S.

III. Violations of the Endangered Species Act

The gray wolf in the conterminous U.S. has been listed as endangered since 1978. The wolf has not recovered in the vast majority of this area. FWS's development of recovery plans for just three regions for this once-widespread species is unacceptable and has failed to facilitate nationwide recovery of the wolf. The Secretary and FWS have been under a duty for more than three decades to develop a recovery plan for the gray wolf in the lower 48 states, but have not complied with this key duty under the Endangered Species Act. Their failure to do so is unreasonable and is a violation of Section 4(f) of the Act.

IV. Conclusion

As explained above, the Secretary and FWS are violating Section 4(f) of the Endangered Species Act as a result of their failure to develop a recovery plan for the gray wolf in the conterminous U.S.

If the Secretary and FWS do not act to correct the violations described in this letter, the Center, Mr. Greenwald, and Mr. Galvin will pursue litigation against the Secretary and FWS in U.S. District Court in 60 days from your receipt of this notice. The Center, Mr. Greenwald, and Mr. Galvin will seek injunctive and declaratory relief, and legal fees and costs regarding these violations. To avoid litigation, the Secretary and FWS must immediately begin to develop a nationwide recovery plan for the gray wolf under the Endangered Species Act.

If you have any questions, wish to discuss this matter, or feel this notice is in error, please contact me at 503-283-5474. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'AR Atwood', written in a cursive style.

Amy R. Atwood
Center for Biological Diversity