



*Sent via E-Mail and Certified U.S. Mail*

August 23, 2022

United States Department of the Interior  
1849 C Street N.W.  
Washington, D.C. 20240

The Honorable Deb Haaland, Secretary  
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U.S. Fish and Wildlife Service  
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**RE: Notice of Intent to Sue under the Endangered Species Act and Administrative Procedure Act for Failure to Promulgate a National Wolf Recovery Plan**

Dear Secretary Haaland and Director Williams,

This letter serves to notify the U.S. Fish and Wildlife Service (“Service”), on behalf of the Center for Biological Diversity (“Center”), of our intent to sue under the Endangered Species Act (“ESA”)<sup>1</sup> and the Administrative Procedure Act (“APA”)<sup>2</sup> for failure to develop and implement a national recovery plan for the gray wolf (*Canis lupus*), failure to conduct a timely five year status review pursuant to the requirements of the ESA, and unreasonable denial of the

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<sup>1</sup> 16 U.S.C. § 1531 *et seq.*

<sup>2</sup> 5 U.S.C. §§ 551, 701 *et seq.*

Center's 2010 petition for rulemaking requesting a national wolf recovery plan in violation of the APA. This letter is provided pursuant to the ESA's sixty-day notice requirement.<sup>3</sup>

## **I. Background**

The gray wolf once occupied much of North America. Scientists estimate that pre-European settlement as many as two million wolves may have lived across North America, with as many as 380,000 in the western United States and Mexico alone. Failing to recognize the value of wolves, government agents used deadly poisons and traps to kill wolves during the late 19th century and first half of the 20th century. By 1967, when wolves were first federally protected under a precursor to the ESA, they had been reduced to fewer than 1,000 wolves in northeastern Minnesota, with a very small, isolated population on Isle Royale.

In 1978 the Service protected gray wolves in the contiguous United States as an endangered species, with the Minnesota population being listed as threatened.<sup>4</sup> Rather than establish a national recovery plan for the population as a whole, the Service chose to develop separate plans for three recovery areas; 1) the Northern Rocky Mountains (drafted in 1978, revised in 1987, now delisted); 2) the Great Lakes (drafted in 1978, revised in 1992); and 3) the southwest (now separately listed as the Mexican gray wolf subspecies).

These plans were largely drafted prior to major scientific gains in wolf genetics and population viability. Recovery plans were never drafted for many areas where wolves can and should recover such as the Northeast, Pacific Northwest and California, Southern Rocky Mountains, and Great Plains.

For these reasons, as well as others, on July 20, 2010, the Center submitted a petition for Rulemaking to the Service that formally requested the development of a national wolf recovery plan under the ESA and the APA.<sup>5</sup> On November 13, 2018, the Service denied this petition, claiming that "the requested action is not a petitionable action" because "recovery plans do not involve rulemakings."

In the years following the denial of the Center's request for a national wolf recovery plan, the Service has made repeated efforts to prematurely reduce federal protections for wolves under the ESA. Thankfully, these efforts have not been met with much success. The Service most recently proposed the removal of wolf protections throughout most of the contiguous U.S. in a March 15, 2019 rule. The rule was finalized on November 2, 2020 and removed the species from both the endangered and threatened species list, effective January 4, 2021. However, a federal court on February 10, 2022 vacated this final rule, restoring protections to wolves in most of the lower 48.<sup>6</sup> This decision to delist and the subsequent court ordering restoring protections excluded the northern Rockies population. The northern Rockies wolf population in Montana and Idaho, as well as portions of eastern Washington, eastern Oregon and north-central Utah, were stripped of protections in 2011, by Congress, through a rider to an appropriations bill.<sup>7</sup> The

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<sup>3</sup> See 16 U.S.C. § 1540(g)(1)(C).

<sup>4</sup> 43 Fed. Reg. 9607 (March 9, 1978).

<sup>5</sup> 5 U.S.C. § 1533(f); 5 U.S.C. § 553.

<sup>6</sup> *Defs. of Wildlife*, 2022 U.S. Dist. LEXIS 30123.

<sup>7</sup> 76 Fed. Reg. 25,590 (May 5, 2011).

Service thereafter removed protections from Wyoming's wolves.<sup>8</sup>

Full recovery of the wolf population in the United States has not occurred and today wolves occupy only about ten percent of their historic range. This is in large part due to the fragmented recovery planning which fails to look holistically at the population and address threats in both occupied and unoccupied wolf territory in the lower 48.

## II. ESA Violations

Section 4(f) of the ESA provides that FWS "shall develop and implement" recovery plans for the "conservation and survival" of listed species unless the agency makes a finding that "such a plan will not promote the conservation of the species."<sup>9</sup>

Section 7(a)(1) of the ESA provides an "affirmative duty" for federal agencies to conserve listed species. Under section 7(a)(1), all federal agencies have a non-discretionary duty to "utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed . . . ."<sup>10</sup> The ESA broadly 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."<sup>11</sup>

The Service has never created a national recovery plan that addresses gray wolf recovery nationwide or in a significant portion of its range. Neither has the Service made a finding that such a plan would not help to promote the conservation of the species. This is a violation of the Service's mandatory duty under section 4(f) of the ESA.<sup>12</sup> FWS has also not adequately "utilize[d its] authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed," in violation of ESA Section 7(a)(1).<sup>13</sup>

Furthermore, section 4(c) of the ESA requires that FWS "conduct, at least once every five years, a review of all [listed] species . . . ."<sup>14</sup> The last five-year status review for the gray wolf was completed on February 29, 2012, which is more than a decade ago. Thus, the Service has violated its mandatory, non-discretionary duty found in Section 4(c)(2)(A) of the ESA, to complete a timely five-year status review for the gray wolf.<sup>15</sup>

In addition to these ESA violations, the Service's denial of the petition violates the APA. A recovery plan falls within the APA's broad definition of a "rule," 5 U.S.C. § 551(4), so the Service cannot reasonably deny the Center's petition on that basis.

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<sup>8</sup> 77 Fed. Reg. 55,530 (Sept. 10, 2012).

<sup>9</sup> 16 U.S.C. § 1533(f)(1).

<sup>10</sup> *Id.* U.S.C. § 1536(a)(1).

<sup>11</sup> *Id.* § 1532(3); *see id.* § 1532(6) ("The term 'endangered species' means any species which is in danger of extinction throughout all or a significant portion of its range . . . .").

<sup>12</sup> *Id.* U.S.C. § 1533(f)

<sup>13</sup> *Id.* U.S.C. § 1536(a)(1).

<sup>14</sup> 16 U.S.C. § 1533(c)(2); *see also* 50 C.F.R. § 424.21.

<sup>15</sup> 16 U.S.C. § 1533(c)(2)(A).

### **III. Conclusion**

The aforementioned actions are contrary to law and we may pursue litigation if the Service does not act to correct these violations within 60 days. If you have questions or would like to discuss this matter, our contact information is below. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Sophia Ressler". The signature is written in a cursive style.

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