

**DEFENDERS OF WILDLIFE
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JACKSON HOLE CONSERVATION ALLIANCE • KEYSTONE CONSERVATION
NATIONAL PARKS CONSERVATION ASSOCIATION
NATURAL RESOURCES DEFENSE COUNCIL • OREGON WILD
SIERRA CLUB • WESTERN WILDLIFE CONSERVANCY
WESTERN WATERSHEDS PROJECT • WOLF EDUCATION & RESEARCH CENTER
WOLF RECOVERY FOUNDATION • WYOMING OUTDOOR COUNCIL**

November 6, 2008

Public Comments Processing
RIN 1018-AW37
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

RE: Request for extension of time for public comment period and stakeholder process (RIN 1018-AW37)

To Whom It May Concern:

We respectfully request an extension of the period for public comment on the above-referenced proposed rule to establish a distinct population segment (DPS) of the Northern Rocky Mountains Gray Wolf and to delist this DPS. We request that the reopened public comment period for this matter, currently set for 30 days, be extended to 90 days. We also request that additional stakeholder and public meetings be held in all states affected by the DPS designation and delisting proposal.

Since this proposed rule was proposed in January 2007 and finalized in February 2008, two separate federal court decisions have cast doubt on the U.S. Fish & Wildlife Service's effort to delist wolves in the northern Rockies, prompting the Service to withdraw the final rule. New scientific evidence further calls into question the underlying biological basis for the northern Rockies proposal.

In light of these developments, we seriously question whether the Service should be reopening this comment period for the now discredited proposed rule at all. If the Service remains intent on delisting wolves in the northern Rockies at this time, and believes it has the biological evidence to do so, which we dispute, we believe the Service is required by law to propose a new delisting rule that comports with science and law and allows the public ample time to digest, analyze, and comment on that proposal. Under principles of administrative law, a proposed rule must state with specificity what the agency is considering and the final rule must be a "logical outgrowth" of the proposal. *Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991). To satisfy the Administrative Procedure Act's requirements for notice and comment rulemaking, interested parties must not be expected to "divine [the Agency's] unspoken thoughts." *Ariz. Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299 (D.C. Cir. 2000). The Service's new request for comments gives no indication how the agency intends to

address the legal deficiencies of the state wolf management plans or whether it now views the use of artificial genetic manipulation as a substitute for genetic diversity achieved through robust, connected, wolf populations. These issues are central to the Montana court's ruling and the Service's 2007 proposed rule can in no way be deemed responsive to this ruling. The public should not be required to guess at the Service's thinking on these critical issues, least of all in a limited 30-day comment period. The Service's attempt to revive the proposed rule with a truncated comment period is ill-advised and, in our view, illegal.

The Service can of course seek public input on the issues that would be addressed in a new delisting proposal, and that may be its intention. In any event, the Service should permit a longer comment period, with regional public hearings, to explore the many serious issues raised by a delisting proposal, and then follow that process with a proposed rule to permit public input on the agency's intended action.

Public Comment Period Should be Extended to 90 Days Due to the Complexity of the Proposal

The proposal to designate and delist a northern Rocky Mountains DPS for the gray wolf is an issue of national significance. The reopening of this comment period is the result of repeated losses in federal court that cast doubt on the legal and biological sufficiency of the Service's delisting effort. Specifically, a federal district court in Montana issued a preliminary injunction in July 2008, restoring wolves to the list of endangered species due in part to concerns about the inadequacy of state wolf management plans, particularly the Wyoming plan, and the lack of genetic connectivity among reintroduced populations. In addition, a federal court in the District of Columbia recently cast doubt on whether the Service even has the authority simultaneously to designate and delist a distinct population segment of a broader listed species. That court overturned a final rule delisting the Great Lakes DPS but the legal issues are equally applicable in the northern Rockies.

The Service has asked specifically for comments on the following complex issues:

- (1) Whether it is appropriate or necessary to revise our recovery goal (described below) to clarify that the genetic exchange called for can be satisfied through either natural migration or managed genetic exchange.
- (2) What additional management, protections, and regulatory mechanisms may be needed to facilitate genetic exchange (including both natural migration and managed genetic exchange) including the actions outlined in the draft memorandum of understanding regarding the protection of genetic diversity of NRM gray wolves (available online at: <http://westerngraywolf.fws.gov>).
- (3) What portions of Wyoming need to be managed as a trophy game area, how Wyoming should manage wolves in the trophy game area, and the significance of all portions of the range in the State of Wyoming in maintaining the viability of the NRM DPS.
- (4) The adequacy of existing regulatory mechanisms in Montana, Idaho, and Wyoming, including whether Wyoming's regulatory mechanisms do or should manage for 15 breeding pairs and 150 wolves in mid-winter and if Wyoming's malleable trophy game area affects its ability to manage for such numbers of wolves.
- (5) If we determine that Wyoming's State law and State wolf management plan do not constitute adequate regulatory mechanisms, the area in northwestern Wyoming that is a significant

portion of the range of the NRM DPS that should retain its nonessential experimental population status under section 10(j) of the Act, even if we determine the rest of the DPS should be delisted.

- (6) How Idaho, Montana, and Wyoming's management of take associated with their defense of property laws and hunting regulations affects each State's commitment and ability to manage for 15 breeding pairs and 150 wolves in mid-winter.
- (7) Whether and under what authority the Service may identify and designate a DPS within a broader pre-existing listing and determine that this DPS should be removed from the endangered species list.

As an initial matter, it is not clear what the Service is proposing. The January 2007 proposal to delist the northern Rockies gray wolf sought comments on various DPS configurations, both including and excluding Wyoming. Various issues raised by Defenders of Wildlife and other conservation groups in comments and litigation remain unaddressed, however, and there is no indication the Service has appropriately considered these issues in reopening comment on the 2007 proposed rule.

In order for us to comment adequately on the Service's proposal in this newly reopened comment period, we would ask the Service to clarify exactly what it is proposing. To address the specific questions listed above will require extensive review of the gray wolf recovery goals and the latest science of wolf meta-population dynamics. We will need to address the Service's legal authorities to list and delist distinct population segments under the ESA. We will need to reconsider the impact of state defense of property laws on wolf populations in the region this year. Most notably, we will also need to revisit the adequacy of state wolf management plans at a time when those plans, particularly Wyoming's, may be subject to change.

Because the federal court's preliminary opinion particularly singled out Wyoming's wolf management plan as inadequate, that state is reportedly considering amending its wolf plan when the legislature meets in January. Unfortunately, and irrationally, the proposed 30-day comment period will not allow enough time for Wyoming and other affected states to act to address the court's concerns nor does it allow citizen groups the opportunity to review and comment on the adequacy of any action the states may take. This will undoubtedly necessitate a further reopening of the comment period after any significant state action affecting state management plans.

The Service's proposal raises complex issues and the specific comments the Service seeks require adequate time for analysis. The 30-day period provided by the Service will be wholly inadequate to properly analyze a proposal of this complexity. We therefore request the comment period be extended to 90-days.

Request for Additional Public Meetings and Hearings in Montana, Idaho, Wyoming, Washington, Oregon, Utah and Washington, D.C.

The proposed DPS for the northern Rocky Mountains encompasses all or portions of the states of Montana, Idaho, Wyoming, Washington, Oregon and Utah. Although the Service has again reopened the comment period for the proposal, the Service has utterly failed to modify the plan in a manner that addresses all of its inadequacies. The Service should carefully address these challenges,

which include adopting current science-based recovery goals that ensure a natural and functional wolf meta-population and conflict management strategies for reducing livestock and wolf losses.

We propose that the Service develop and implement a regional stakeholder process that can examine scientific recovery goals and collaboratively identify and recommend methods for improving state wolf management plans. Because the issues at stake in this proposal are of national interest and warrant significant public discussion, we request that public and stakeholder meetings be held in all six affected states, as well as in Washington, D.C.

The Service instead appears to be rushing through this delisting process in order to adopt a severely flawed plan before the end of the Bush administration. As this will lead to more legal challenges and is unlikely to advance the delisting of wolves in the region, we strongly urge the Service to reconsider its haste. An extended comment period and further opportunity for collaboration will help ensure that wolf delisting, if warranted, is done properly and promotes the conservation of this important species.

Request to Submit Comments by Electronic Mail and Facsimile

Lastly we ask that the Service accept comments by electronic mail and facsimile. Accepting comments only through a web-based interface limits the ability of groups and individuals to comment and recruit additional comments from supporters. The Service should be seeking as much input as possible by as many means as possible to permit full public participation in this process.

We appreciate your serious consideration of our requests and concerns and look forward to your response.

Sincerely,



Suzanne Asha Stone
Northern Rockies Representative
Defenders of Wildlife
P.O. Box 773
Boise, ID 83701
(208) 424-9385
stone@defenders.org

Gary Macfarlane
Ecosystem Defense Director
Friends of the Clearwater
PO Box 9241
Moscow, ID 83843
(208) 882-9755
foc@friendsoftheclearwater.org

Leda Huta
Executive Director
Endangered Species Coalition
PO Box 65195
Washington, DC 20035
(202) 320-6467
lhuta@stopextinction.org
www.stopextinction.org

Craig Kenworthy
Conservation Director
Greater Yellowstone Coalition
P.O. Box 1874
Bozeman, MT 59771
406-556-2803
ckenworthy@greateryellowstone.org
www.greateryellowstone.org

Franz J. Camenzind Ph.D
Executive Director
Jackson Hole Conservation Alliance
P.O.B. 2728
685 S. Cache St.
Jackson, WY 83001
(307) 733-9417
franz@jhalliance.org

Jacqueline Reider Hud
Acting Executive Director
Keystone Conservation
P.O. Box 6733
Bozeman, MT 59771
(406) 587-3389

Sharon Mader
Grand Teton Program Manager
National Parks Conservation Association
P.O. Box 1173
Jackson, WY 83001
(307) 733-4680 office
(307) 690-5245 cell
(307) 734-9470 fax
smader@npca.org

Louisa Willcox
Senior Wildlife Advocate
Natural Resources Defense Council
Box 70
Livingston, MT 59047
(406) 222-9561
llwillcox@aol.com

Steve Pedery
Conservation Director
Oregon Wild
5825 N. Greeley
Portland, OR 97217
(503) 283-6343

Melanie Stein
Associate Regional Representative
Sierra Club
P.O. Box 12047
Jackson, WY 83002

(307) 733-4557
(307) 690-6162 (cell)
(307) 733-4558 (fax)
melanie.stein@sierraclub.org

Jon Marvel
Executive Director
Western Watersheds Project
P.O. Box 1770
Hailey, ID 83333
(208) 788-2290
wwp@westernwatersheds.org

Kirk Robinson, PhD
Director
Western Wildlife Conservancy
68 S. Main St., Suite 4
Salt Lake City, UT 84105
(801) 468-1535
(801) 466-9513
lynx@xmission.com

Chris Anderson
Executive Director
Wolf Education & Research Center
3909 NE MLK Blvd, Suite 202
Portland, OR 97212
(888) 422-1110, Ext. 1
Chris.Anderson@WolfCenter.org

Ralph Maughan
President
Wolf Recovery Foundation
P. O. Box 444
Pocatello, ID 83204
(208) 417-0906
rmaughan2@cableone.net

Sophie Osborn
Wildlife Program Manager
Wyoming Outdoor Council
262 Lincoln Street
Lander, WY 82520
(307) 742-6138
sophie@wyomingoutdoorcouncil.org