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July 15, 2019

U.S. Fish & Wildlife Service, Headquarters Office
Public Comments Processing
Attn: Docket No. FWS–HQ–ES–2018–0097
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: Proposed Rule, Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife, 84 Fed. Reg. 9,648 (Mar. 15, 2019)

Dear Sir or Madam:

On behalf of the Public Lands Council ("PLC"), National Cattlemen's Beef Association ("NCBA"), American Sheep Industry Association ("ASI"), and the undersigned state affiliate livestock organizations (collectively, the "Livestock Associations"), we submit the following comments on the agency's Proposed Rule to remove protections for the gray wolf under the Endangered Species Act ("ESA").

In short, the Livestock Associations have been involved with the agency's actions with regard to gray wolves at every step of the way and feel that delisting should occur. At this point, the requirements for delisting have been met for many years and the best available science overwhelmingly indicates that this is an appropriate action. The Livestock Associations offer comments on the following points:

- The current listing of the gray wolf (*C. lupus*) is unlawful, as the entity is neither a valid "species" nor "endangered" under the ESA.
- While uncertainties in taxonomy persist, the best available science indicates the existing populations within the gray wolf entity should be treated as a whole; due to its prior extirpation and practical concerns, FWS should continue to treat the Mexican wolf as non-essential experimental population.
- The wolf has exceeded recovery criteria outlined in the gray wolf Recovery Plans, as evidenced by wolf population estimates and expansion of its range. The ESA does not require expansion into "historical" range to achieve recovery.
- The Livestock Associations feel that management at state level is appropriate.

Each of these points is addressed in greater detail below.

I. The Current Listing is Unlawful

The Service may list a group of animals if it is a "species" as defined by the Endangered Species Act, i.e., a species, subspecies or a distinct population segment ("DPS"). *See* 16 U.S.C. § 1532(16) (definition of "species"). To constitute an "endangered species," the species unit must be "in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). To constitute a "threatened species," the species unit must be "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. § 1532(20). In either case, however, a valid species unit must exist, as opposed to some arbitrary grouping of animals. *See Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207, 1216-17 (D. Mont. 2010).

As acknowledged in the Proposed Rule, the current listed "species," which is identified as the gray wolf (*C. lupus*), is an arbitrary grouping of animals that violates the ESA. Proposed Rule, 84 Fed. Reg. 9,653 ("The two currently listed gray wolf entities are vestiges of a 40-year old-action. . . . these entities do not conform with our current policies and standard practice."). The current listed "species" is not based on biology or current FWS policies. In particular, the gray wolf populations formerly listed as separate are no longer considered "discrete" populations. *Id.* Additionally, the listing relies on the Canadian border to define its northern limit, which is contrary to current FWS policy and ignores the healthy, large populations existing in British Columbia, Canada that are not discrete, but part of overlapping and intermixing populations. *See* Section B, *infra*.

Nor can gray wolves as a whole be considered "endangered" within the meaning of the ESA. The gray wolf is a common species occupying extensive range in over 40 countries and, in many areas, facing few threats. Additionally, populations in the United States have been stable to increasing in the last decade or more, with wolves occupying all or most of the viable habitat in the western Great Lakes ("WGL") area and successfully expanding into additional areas in the Northwest and northern Rocky Mountains ("NRM"). Fish & Wildlife Service, Gray Wolf Biological Report, p. 22 (2018). Further, the wolves in the WGL and the NRM – the two principal areas of the United States where wolves were not completely extirpated when the ESA was enacted in 1973 – were previously provided specialized protection when designated as DPS under the Act. *See* Proposed Rule, 84 Fed. Reg. at 9,650 Tbl.1. As a result, the NRM population has already been determined to be fully "recovered," and thus was delisted in 2011 (and for the Wyoming portion of the NRM, in 2017), while the WGL population likewise has consistently met recovery goals and expanded its range over the last decade into what should be considered "historical" range. 2018 Biological Report, p. 22.

Under these circumstances, it would be unlawful for the Service to allow the current gray wolf listing to remain effective.

II. Taxonomy

The Proposed Rule discusses in detail the ongoing scientific debate with regard to the taxonomic assignment of various canid populations to the gray wolf (*C. lupus*) species. Proposed Rule, 84 Fed. Reg. at 9,654. There is currently scientific uncertainty about whether

there are valid gray wolf subspecies and, if so, where they are currently found. 2018 Biological Report, pp. 1-3; Chambers, S.M., et al., *An account of the taxonomy of North American wolves from morphological and genetic analyses*, NORTH AMERICAN FAUNA 77:1-67 (2012).

Some researchers have pushed for treatment of nearly all wolves distributed across the United States as one species, while others have sought recognition of defined subspecies or other designations. *See* Nat'l Ctr. for Ecological Analysis & Synthesis, Review of Proposed Rule Regarding Status of the Wolf Under the Endangered Species Act, p. 13 (2014) (peer review finding that at the subspecies level, there has not been sufficient time for the development of well supported monophyletic groups, particularly given the highly mobile nature of gray wolves and ongoing genetic interchange). With regard to the eastern wolf, considerable disagreement exists treating the subgroup as a species (Wilson et al. 2000; Wilson et al. 2003; Kyle et al. 2006; Wheeldon and White 2009; Fain et al. 2010; Chambers et al. 2012), a subspecies of gray wolf (Goldman 1944; Nowak 1995; Nowak 2002), an ecotype of gray wolf (Koblmüller et al. 2009), or the product of hybridization between gray wolves and coyotes (Lehman et al. 1991; Leonard and Wayne 2008; vonHoldt et al. 2011; vonHoldt et al. 2016).

Regardless of designation, it is clear that reintroduction efforts, natural dispersal, reproduction, and genetic interchange among subspecies or ecotypes have established a complex network of regional populations representing a variety of gray wolf types spreading across the entire reach of the United States and beyond. 2018 Biological Report, p. 1-3. In support of broader treatment of the wolf species as a whole, the Rule's discussion of the regional wolf populations in the Pacific Northwest and the Western Great Lakes areas as "metapopulations" spanning various state borders and the U.S. border with Canada appropriately recognizes the scientific complexity of wolf genetics. *See* Proposed Rule, 84 Fed. Reg. at 9,655.

Effective dispersal into the Pacific Northwest (Washington, Oregon, and parts of California) is reasonably credited, as are the increasing records of individual wolves or packs moving into North Dakota, South Dakota, Utah, Colorado, Nevada, Missouri, Indiana, Illinois, Nebraska, and Kansas. *See* Proposed Rule, 84 Fed. Reg. at 9,656. The most recent state estimates likewise report continuing increases across the entire range. *See* Section C, *infra*. Evidence of expanding populations cited by FWS and the states is also supported by anecdotal reports from the Livestock Associations' affiliates and members. Thus, the treatment of wolves in the Proposed Rule as regional "ecotypes" common to single or admixed species is supported by current science. In light of the genetic uncertainties associated with those types, the Livestock Associations urge FWS to continue to look at wolves as a whole in North America in order to align with the meaning of the term "species" in the Endangered Species Act, 16 U.S.C. § 1532(16).

While no action was taken in the Proposed Rule with regard to the Mexican wolf, *see* Proposed Rule, 84 Fed. Reg. at 9,653, the Livestock Associations support FWS's continuing outlook of maintaining the Mexican wolf as a separate non-essential experimental population due to its prior extirpation and the complexities of managing the population across the U.S.-Mexico border, among other things. Outside of the Mexican wolf, the Associations would encourage FWS to look at wolves as a whole – which current science supports – looking at wolves' population across the United States and throughout its extensive international range.

III. The Gray Wolf Has Exceeded the Applicable Recovery Criteria – Both in Population Estimates and Extent of Occupied Range.

A. Recovery Criteria and Concept of "Historical Range"

The 1978 and 1992 Recovery Plans outlined recovery criteria to ensure recovery of the species, which focused on two objectives: 1) assure survival of the Minnesota population and 2) maintain one viable population outside of Minnesota and Isle Royale, Michigan. *See* Proposed Rule, 84 Fed. Reg. at 9,657. To be considered "viable" under the Plans, the second population must meet a population target of at least 200 wolves for at least 5 years, if "isolated" or located more than 100 miles from the Minnesota population, or a minimum of 100 wolves for 5 years if "connected," or located within 100 miles. *See id.*

Gray wolf numbers far exceed recovery criteria both within Minnesota and outside Minnesota in the WGL area. *See id*. at 9,658. The wolf population in Minnesota has exceeded 2,000 individuals for the last 20 years, while populations in both Michigan and Wisconsin areas have exceeded 100 individuals every year since 1996. *Id.* Further, extensive state, federal, and tribal plans are in place setting targets that meet or exceed what FWS has determined is necessary to support "viable" isolated and connected populations. *Id.* at 9,666-81 (describing post-delisting management). While some of the public presses for a broader interpretation of the geographical range necessary to support viable populations, wolf occupancy of all its historical range is not possible, practical, or required by the ESA.

As such, the Livestock Associations agree with FWS's determination that it is not the purpose of the ESA to return a species to occupying the full extent of its "historical range." Proposed Rule, 84 Fed. Reg. at 9,652 & 9,656. Rather, as outlined in the FWS's "national wolf strategy," the agency's conservation efforts are focused on four populations of wolves, including the western Great Lakes, the northern Rocky Mountains, and the Pacific Northwest wolf populations—as well as the southwestern population of Mexican wolves. *Id.* at 9,652-53. These four populations have seen unprecedented growth to levels far beyond what is outlined in the recovery plans and the "vast majority of wolves . . . now exist as a large, stable or growing metapopulation" connected either to large populations in eastern Canada or the NRM/western Canada. *Id.* at 9,655-56 & 9,683; *see* 2018 Biological Report, p. 22 (citing Treves 2009 and Thiel and Hammill 1988).

B. Population Estimates and Expansion of Range

FWS has reasonably considered the impact of delisting and historical range loss on the remainder of the listed entity, as required by the U.S. Court of Appeals for the D.C. Circuit in its 2017 ruling. *See also Humane Soc'y of United States v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017). However, these considerations are unlikely to impact wolf recovery due to the interconnectedness of the current metapopulations and the substantial numbers of wolves currently present in these regions.

The interconnected and expansive populations outside of the currently considered "gray wolf entity"—about 12,000 to 14,000 wolves in eastern Canada and about 16,000 wolves in the NRM and western Canada—provide adequate mechanisms for increased resiliency for the gray wolf entity populations currently under consideration. Proposed Rule, 84 Fed. Reg. at 9,683; *id.* ("[F]urther expansion of the metapopulation into the gray wolf entity is likely to continue across the west coast States, further increasing the viability of the gray wolf entity."); *id.* ("[W]e conclude that Minnesota, Wisconsin, and Michigan will maintain abundance and distribution of the Great Lakes wolf population above recovery levels for the foreseeable future."). The eastern and western populations are thus interconnected with outside genetic pools, stable and/or increasing in number and geographic range in existing occupied areas, and appear to be dispersing far into other states as a result. Proposed Rule, 84 Fed. Reg. at 9,656.

1. State Population Estimates and Range Data

Recent data indicates numbers are far up across the entity's current range and into portions of its historic range—with the recent state reports tending to support this finding. For example, wolf counts in the Northwest area continue to increase. *See* Oregon Dept. of Fish & Wildlife, Oregon Wolf Conservation and Management: 2018 Annual Report (2019) (minimum count of 137 wolves, up 10% from 2017); Washington Gray Wolf Conservation and Management: 2018 Annual Report, pp. WA-6 to WA-7 (2019) (noting increases in minimum count, breeding pairs, and packs); California Dept. of Fish & Wildlife, Wolf Management Update: January-March 2019 (noting increase in range of Lassen pack and presence of two dispersing wolves).

In the WGL area, wolf counts and range estimates are also seeing stable or upwards trends. In Minnesota, wolf counts based on observations and range assessments based on representative collaring show stable populations, with increases in total and occupied range. *See* Minnesota Dept. of Nat. Resources, 2017-2018 Wolf Survey, pp. 9-10 (estimating 2,655 wolves, indicating stable levels over last decade coarsely tracking deer density, as well as increases in total range of 18% and occupied range of 5% since 2012). As a result, wolves "remain widely distributed throughout Minnesota's forest zone." *Id.* at 10. Recent surveys in Wisconsin likewise show wolves have recolonized both primary and secondary habitat, with packs occurring throughout the state's central forest zone and parts of the northern forest zone. Wisconsin Dept. of Natural Resources, Wisconsin Gray Wolf Monitoring Report: April 2017-April 2018, pp. 1-4 & 15 Fig.4 (noting minimum wolf count in April 2018 of 905-944 wolves, a slight decrease from the prior year, with 238 packs detected and an increase in total packs by 6 from the prior year). Data thus indicates that the Wisconsin population is stabilized, following three years of continuous population growth. *See* Wisconsin DNR, 2017-2018 Wolf Count Brief. Michigan wolf surveys indicate pairs or packs occupying every Upper Peninsula county; with regard to remaining unoccupied habitat in Michigan, FWS has reasonably determined that the lower peninsula habitat ultimately is likely too small and patchy (geographical isolation, high road densities, and large amount of private lands) to support packs. Proposed Rule, 84 Fed. Reg. at 9,663-64.

It is also essential to note that actual numbers of wolves are likely higher because not all wolves are located during the count. *See, e.g.*, 2018 Oregon Wolf Report, p. 4 (utilizing "direct

count," not an estimate of total). These findings are further validated via the most recent state wildlife agency data, as well as anecdotal evidence from the Livestock Associations' members indicating wolf-livestock and wolf-human interactions are increasing. *See also, e.g.*, 2018 Oregon Wolf Report, p. 2 (increase in confirmed wolf depredations to 28, compared to 17 in 2017); 2018 Washington Wolf Report, p. WA-13 to WA-14 (increase in confirmed wolf depredations).

2. Qualitative Range Assessments

In addition to quantitative increases, qualitative data also suggests that wolves already currently occupy or have the capacity to move into much of the "suitable" habitat available—i.e., habitat with forested terrain and adequate wild ungulate populations to support a wolf population, and with minimal roads and human development. *See* Proposed Rule, 84 Fed. Reg. at 9,662 (citing Oakleaf 2006, Caroll 2006, Mladenoff 1995, and Mladenoff 1999, Maletzke 2015, ODFW 2015).

This is borne out in the FWS's discussion of wolf occupancy of most or all of the suitable habitat in the WGL area. *See* 84 Fed. Reg. at 9,663 (noting occupancy of most or all suitable habitat in Minnesota, Michigan, and Wisconsin, and discussing ability to extrapolate suitability of habitat based on density of roads and availability of prey).

IV. Conclusion

In sum, numbers and range occupancy have been stable or increasing for the better part of the last decade or more, gray wolves are recovered within the meaning of the ESA. While differences of opinion may persist, the best available science indicates wolves have surpassed measurable objectives laid out in the recovery plans and state management plans, and expanded into all or significant portions of current available range, and in some cases, into portions of "historic" range. The species' status thus exceeds what is necessary to be considered recovered consistent with FWS's recovery criteria.

We appreciate the opportunity to provide comments on the Proposed Rule. Respectfully, the Livestock Associations reserve the opportunity to modify and supplement these comments in the future.

Sincerely,

Public Lands Council
National Cattlemen's Beef Association
American Sheep Industry Association
American National CattleWomen
American Sheep Industry Women
Arizona Cattle Growers Association
Arkansas Cattlemen's Association
Association of National Grasslands
California Cattlemen's Association

California Wool Growers Association
Colorado Cattlemen's Association
Colorado Wool Growers Association
Florida Cattlemen's Association
Idaho Cattle Association
Idaho Wool Growers Association
Indiana Sheep Association
Iowa Sheep Industry Association
Louisiana Cattlemen's Association
Maryland Cattlemen's Association
Michigan Cattlemen's Association
Michigan Sheep Producers Association
Minnesota Lamb and Wool Producers Association
Minnesota State Cattlemen's Association
Montana Stock Growers Association
Montana Wool Growers Association
Nebraska Cattlemen Association
Nevada Cattlemen's Association
Nevada Wool Growers Association
New Mexico Cattle Grower's Association
New Mexico Wool Growers, Inc.
North Dakota Stockmen's Association
Oklahoma Cattlemen's Association
Oregon Cattlemen's Association
Oregon Sheep Growers Association
South Carolina Sheep Industries Association
South Dakota Cattlemen's Association
South Dakota Sheep Growers Association
Texas Sheep and Goat Raiser's Association
Utah Cattlemen's Association
Utah Wool Growers Association
Washington Cattlemen's Association
Washington State Sheep Producers
Wisconsin Cattlemen's Association
Wyoming Stock Growers Association
Wyoming Wool Growers Association