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Public Comments Processing
Attn: FWS R3 ES 201(H)062
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
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Laura Ragan
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U.S. Fish and Wildlife Service
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Re: Comments on 90-Day Finding on Petitions to Delist the Gray Wolf in Minnesota, Wisconsin, Michigan, and the Western Great Lakes

Dear Ms. Ragan,

We are concerned citizens and members of the Student Animal Legal Defense Fund, and we submit these comments on the U.S. Fish and Wildlife Service's 90-Day Finding on Petitions to Delist the Gray Wolf in Minnesota, Wisconsin, Michigan, and the western Great Lakes. We have reviewed the science and legal issues put forth by the Center for Biological Diversity with regard to this delisting (see http://www.biologicaldiversity.org/species/mammals/northern_Rocky_Mountains_gray_wolf/pdfs/comments_on_90_day_finding.pdf) and we notice that deficiencies in past delisting rules have not been addressed. The best available science concerning gray wolves in the Great Lakes region, along with legal requirements mandated by the Endangered Species Act ("ESA"), leads to the conclusion that FWS must deny the petitions to delist this population.

1. FWS cannot lawfully designate a DPS within a species-level listing for the sole purpose of delisting the DPS.

FWS has not communicated exactly which populations of gray wolves it is considering delisting, but no matter which populations FWS is targeting, its method for attaining delisting is unlawful. FWS cannot use the DPS designation to circumvent the ESA and delist gray wolves in the Great Lakes region. The petitioner's proposed use of DPS status directly contradicts the purpose of protecting distinct population segments.

Congress intended the DPS status to increase protections to animals by protecting significant, discrete populations under threat whose greater populations are not threatened. 61 Fed. Reg. *4722 (Lexis 2010). Congress reasoned that protecting a smaller group of a species might provide enough mitigation of harm to the species that a

species-wide listing is not necessary. *Id.* at *4725. The flexibility of extending ESA protections to DPSs enables animals to become protected in less time than would be required for listing an entire species. *Id.* Using DPSs also reduces costs of protecting animals because they do not require the intensive efforts of listing a species. *Id.*

In light of Congress's reasons for creating DPS designations, a DPS cannot be used to strip an animal from protection under the ESA. The use of DPS urged by petitioners would mean that important populations of a listed species could be excluded from protection while less important populations are still protected. Congress could not have wanted a DPS used to target significant populations of endangered species to further endanger a species' survival. DPSs are meant to be a preventive tool for protecting threatened animals before their situations become dire enough to merit a species level listing, and petitioners' proposals for delisting would undermine this intent and the purpose of the ESA by using DPSs to delist endangered animals. Therefore, it is unlawful for FWS to designate Great Lakes wolves as a DPS for the sole purpose of delisting them.

2. FWS cannot change the status of ANY currently listed identity - the whole species of gray wolf in the lower 48 - without first undergoing a review of threats faced by that species and even then cannot lawfully create a non-DPS remnant listing by delisting core populations.

ESA section 4(a)(1) sets forth the requirements for listing, amending a listing, or delisting a species under the ESA. 16 U.S.C. §1533(a)(1). In order to reclassify or delist a species under the ESA, a threat analysis must be applied to the currently listed species to determine whether the species is threatened or endangered "throughout all or a significant portion of its range." *Id.* To comply with section 4(a)(1), the following actions are necessary before removing the ESA protection of Great Lakes gray wolves:

- (1) A threat analysis of the currently listed species, the gray wolf, must be conducted.** The gray wolf's current ESA listing is throughout the conterminous United States. To make any change to the gray wolf's listing, this threat analysis would have to be conducted throughout the conterminous United States. Deciding to conduct a smaller-scale threat analysis—such as exclusively within Minnesota, Wisconsin, and Michigan—is necessarily arbitrary and fails to meet the 4(a)(1) requirements because it simply does not reflect the currently listed species. For FWS to confine its analysis to a small part of the currently listed species' habitat may be more convenient, but it does not comply with the plain instructions of 4(a)(1). Federal Courts have rejected such an attempt by the FWS to conduct a threat analysis of a small portion of a species' range, in cases involving the Canada lynx and the bull trout. See *Defenders of Wildlife v. Norton*, 239 F.Supp. 2d 9, 19 (D.D.C. 2002); and *Friends of the Wild Swans v. U.S. FWS*, 12 F.Supp. 2d 1121 (D. Or. 1997).
- (2) A comment period must be opened up to the public for the currently listed species—again, for the gray wolf throughout the conterminous United States.** For the FWS to comply with 4(a)(1) and conduct the requisite threat analysis for

the gray wolf throughout the conterminous U.S., it cannot delist the species in the Great Lakes because the gray wolf is still endangered within “a significant portion of its range”. 16 U.S.C. §1533(a)(1). Specifically, significant portions of the gray wolf’s range lack viable wolf populations. Separate studies have shown that historic gray wolf habitats from Maine through Upstate New York, Michigan, North Dakota, Utah, Colorado, and Oregon all lack such populations today. Taking the example of Oregon, the wolf is present today in a mere five percent of its historic range. John A. Vucetich et al., *The Normative Dimension and Legal Meaning of Endangered and Recovery in the U.S. Endangered Species Act*, Conservation Biology 20 (2006); D.J. Mladenoff & T.A. Sickley, *Assessing potential gray wolf restoration in the northeastern United States: A spatial prediction of favorable habitat and potential population levels*, Journal of Wildlife Management, 62: 1-10 (1998); 71 Fed. Reg. 15279; 65 Fed. Reg. 43474.

Finally, even after conducting the threat analysis obligated under the ESA, FWS cannot lawfully create a non-DPS remnant listing by delisting core populations. The ESA does not provide authority for creating such a designation, and it would be in contrast to the ESA’s national focus in recovering listed species “throughout all or a significant portion of its range.” 16 U.S.C. §1532 (16).

3. FWS cannot include any unoccupied significant portions of the gray wolf’s range in the delisted DPS and must take care that the boundaries of any DPS designation are based on biological factors.

The purpose of the Endangered Species Act is not only to protect species, but also the ecosystem upon which they depend. If FWS includes some portion of the wolf’s range in the delisted DPS only because it is unoccupied, it will contradict the ESA’s purpose by negatively affecting the viability of gray wolf populations. Unless there is substantial evidence suggesting that the habitat FWS plans to include in the delisted DPS is not suitable for wolves, FWS must not include unoccupied areas of wolves in its delisted DPS.

The International Union for Conservation of Nature (IUCN) provides a guideline for the better management of protected areas. It asserts that a protected area should consist of three sub-areas for the greatest outcome: core zone, buffer zone, and transitional area. Core zone is the area, in which protected animals cannot legally be disturbed by human, thereby promoting *long-term* protection of the animals. Buffer zone is around or next to the core zone, where activities must be regulated to protect the core zone. Outside of buffer zone, there needs to be a transitional area where human activities can be compromised, based on the benefit of people who depend on the area. This is the zone where local communities, nature conservation agencies, scientists, cultural groups, private enterprises and other stakeholders can work together to manage and develop the area’s resources.

DPS is the smallest division of a taxonomic species permitted to be protected under the ESA. This discrete and significant population segment reflects current and historical range of animals. In other words, DPS includes currently occupied range as

well as currently unoccupied but historically occupied range. Under the IUCN's guideline, occupied and unoccupied range act as core and buffer zone, respectively. Coexistence of these two zones is very crucial to minimize the effect of human activities on wolves. In addition, buffer zone provides resources and protection for wolves to recover their historic range as well as their population size. With these reasons, FWS must not include the Northern Lower Peninsula of Michigan from any delisted DPS. Evidence suggests that recovery in this area has just begun (a breeding pair with pups was observed in this area.)

Allowing wolves to disperse back to their historical range is likely to increase the viability of the ecosystem. Wolf is a predator that has no predator of its own (except human), and is at the top of the food chain. This kind of predators generally has a crucial role in maintaining the ecosystem. For example, after the reintroduction of the gray wolf in Yellowstone National Park, we observed the drastic changes in the Yellowstone ecosystem. Many animals (such as grizzly bear, black bears, coyotes, eagles, ravens, etc) took advantage of the wolf population by scavenging wolf kills, and new species were attracted to this new ecosystem (beaver and moose). Given the ESA's purpose, we need to consider any possible impact that this delisted DPS can have on other animals.

Therefore, unless there is substantial evidence suggesting that the habitat FWS plans to include in the delisting is not suitable for wolves, FWS must not include unoccupied areas of wolves in a delisted DPS.

4. FWS must retain federal protection for Great Lakes wolves because the best available science demonstrates that these wolves continue to face threats, including inadequate regulatory mechanisms, disease, persecution by humans, and hybridization.

Other than the issues that warrant delisting unlawful mentioned above, the gray wolf still faces threats to its survival, which would make delisting the species very detrimental. These threats include 1) inadequate regulatory mechanisms; 2) disease; 3) persecution by humans and; 4) hybridization.

(1) Current Regulatory Mechanisms are Inadequate to Protect the Gray Wolf. The gray wolf should not be delisted if the existing regulatory mechanisms are not adequate to protect it. 16 U.S.C. § 1533 (a)(1)(D); 50 C.F.R. § 424.11. If the wolf is delisted, they would be subject to extensive hunting. Extreme population decrease is imminent upon delisting because mass hunting would ensue under depredation control programs. Inadequate regulatory mechanisms further other problems wolves face, such as disease.

(2) Disease. The gray wolf is in constant threat from disease. Canine parvovirus has become extremely prevalent among the wolf pups in the Great Lakes region. L. David Mech et al., *Demographic effects of canine parvovirus on free-ranging wolf population over 30 years*, *Journal of Wildlife Diseases* 44:824-36 (2008). Low survival rates of wolf pups due to diseases like parvo could also limit gray wolf dispersion. *Id.* Wolves need to disperse in order to

find open habitat. If dispersion decreases because of lower pup survival, then population density is going to become a problem. *Id.* If population density increases, then diseases such as parvo and Sarcopic mange will flourish. Without protection and adequate monitoring, diseases will increase and the gray wolf population will decrease further.

(3) Persecution by Humans. The reason for first listing the gray wolf was because the FWS realized that hunting was decimating the population of the species in the United States. The listing of the gray wolf has helped tremendously in the recovery of the wolf population. Even at this time humans cause more than half of wolf deaths, whether it be from car accidents or illegal hunting. 72 Fed. Reg. 6082. If the gray wolf population in the Great Lakes region is delisted, it is likely that even greater numbers of wolves will be killed by humans.

(4) Hybridization. Despite the lack of investigation by the FWS, scientists have found that a significant threat to the wolf population is common hybridization with coyotes. A.P. Wydeven *et al.* (eds), *Recovery of the Gray Wolves in the Great Lakes Region of the United States* 233, 246.

Thank you for the opportunity to participate in decisions regarding the future of gray wolves in the Great Lakes region. We hope that our comments demonstrate that delisting a Great Lakes region DPS for gray wolves is not warranted at this time.

Sincerely,

Meera Gajjar, Dianne Lamberty, June Lee, and Sarah Perelstein
Concerned citizens and members of the Student Animal Legal Defense Fund