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***Via Electronic and Certified Mail***

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**Re: Sixty-Day Notice of Intent to Sue over Violations of the Endangered Species Act in Delisting Gray Wolves in Wyoming**

Dear Secretary Salazar and Director Ashe,

Pursuant to 16 U.S.C. § 1540(g), this letter serves as The Humane Society of the United States' and the Fund for Animals' sixty-day notice of intent to sue the U.S. Fish and Wildlife Service ("FWS") for violations of the Endangered Species Act ("ESA"). 16 U.S.C. § 1531 *et seq.* The FWS's decision to delist the portion of the Northern Rocky Mountain gray wolf distinct population segment ("DPS") that resides in Wyoming, *see* Final Rule Removing the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife, 77 Fed. Reg. 55,530 (Sept. 10, 2012) ("Final Rule"), is arbitrary, capricious and violates the ESA and its implementing regulations.

Specifically, in its delisting decision, the FWS arbitrarily and capriciously fails to analyze threats to the Northern Rocky Mountain wolf population as a whole, and instead focuses only on wolves in

Wyoming; fails to comply with the ESA's requirement that it use the best available science in making delisting determinations; and eliminates federal protections for gray wolves in Wyoming despite the fact that the existing regulatory mechanisms are ominously flawed and will continue to pose significant threats to the survival of the gray wolf.<sup>1</sup>

## **Background**

Gray wolves were once abundant across North America, with more than 350,000 individuals inhabiting the American West. However, with the European Settlers came the widespread persecution of wolves. Habitat destruction and government bounties that encouraged the poisoning, trapping and hunting of wolves resulted in their extirpation from more than 95 percent of their range in the lower 48 states. 68 Fed. Reg. 15,804, 15,805 (Apr. 1, 2003). According to the FWS, wolves were hunted and killed "with more passion and zeal than any other animal in U.S. history." FWS, *Gray Wolf*, <http://training.fws.gov/library/Pubs/graywolf.pdf> (July 1998). Recognizing that the species was near the brink of extinction, the gray wolf was one of the first species to be listed under the Endangered Species Preservation Act of 1966, the precursor to the ESA. 32 Fed. Reg. 4,001 (Mar. 11, 1967). These legal protections were limited, however, and it was the 1973 passage of the ESA and subsequent listing of various subspecies of wolves under the ESA in 1974 that marked the true beginning of the wolf's recovery.

Eventually, the FWS moved away from the protection of individual wolf subspecies and decided instead to list the gray wolf at the species level. Accordingly, in 1978 the FWS listed the gray wolf as endangered throughout the coterminous United States and Mexico, except in Minnesota, where wolves were listed as threatened. 43 Fed. Reg. 9,607 (Mar. 9, 1978). With the protection of the ESA, the wolf has made progress toward recovery in the Western Great Lakes region, the Northern Rocky Mountains, and the Southwest, where the Mexican gray wolf was rescued from the brink of extinction. Nevertheless, even today wolves occupy only a small portion of their historic range. Viable populations are absent from vast swaths of habitat where wolves once lived and collectively could still recover, including within the Pacific Northwest and California, the Great Basin and Colorado Plateau, the Southern Rocky Mountains, the Southwest, the Great Plains,

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<sup>1</sup> The Humane Society of the United States submitted comments on the original proposed delisting rule, 76 Fed. Reg. 61,782 (Oct. 5, 2011), and the reopening of the comment period for the proposed rule, 77 Fed. Reg. 25,664 (May 1, 2012), and hereby incorporates those comments (attached herein) by reference.

and the forests of New England and upstate New York. Meanwhile, the existing wolf populations face ongoing threats to their long term survival, such as federal predator-control, state-sanctioned persecution, unlawful killing by the public, disease outbreaks, hybridization, and inbreeding depression.

Despite wolves' continuing imperilment, the FWS has repeatedly sought to remove the gray wolf in the Northern Rocky Mountains from the endangered species list. While those efforts were repeatedly rejected by numerous federal courts, *see Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008); *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010), a 2011 Congressional appropriations rider delisted the wolves throughout the Northern Rocky Mountains, with the exception of Wyoming. *See* H.R. 1473, Pub. L. 112-10 § 1713. Following the 2011 rider, the FWS met with Wyoming's congressional delegation and governor to discuss a wolf delisting plan for the state which the Wyoming Fish and Game Commission accepted on September 14, 2011 (The Wyoming Gray Wolf Management Plan ("2011 Plan")). Not surprisingly, such back-door decision-making has led to a final rule that fails to comply with several of the mandates of the ESA.

### **I. The FWS Has Not Conducted the Proper Delisting Analysis**

The FWS's final delisting rule violates the ESA because it fails to analyze impacts of the Wyoming management scheme to the Northern Rocky Mountain wolf population as a whole, and instead focuses only on impacts on wolves in Wyoming. Under the ESA, a species can be delisted only if the species is neither endangered nor threatened because it is extinct, because it has recovered, or because the original listing decision was in error. *See* 50 C.F.R. § 424.11(d). Decisions to reclassify an already-listed species are governed by the same standards as listing a species<sup>2</sup> and thus the FWS must conduct the same Section 4(a)(1) threats analysis

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<sup>2</sup> The five listing factors are:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1).

before removing a species from the endangered species list as it does when listing the species. 16 U.S.C. § 1533(c)(2)(B); *see also Defenders of Wildlife v. Babbitt*, 130 F.Supp. 2d 121, 133 (D.D.C 2001) (noting that “the same five statutory factors must be considered in delisting as in listing”) (citations omitted). A species has not recovered, and cannot be delisted, “until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” 51 Fed. Reg. 19,926, 19,935 (June 3, 1986).

As such, when deciding whether to delist a species, the FWS must conduct the analysis of the Section 4(a)(1) listing and delisting factors *on the species level*. *See* 16 U.S.C. § 1533(a) (the FWS may determine “whether any *species* is an endangered species or threatened species” on the basis of the five factors) (emphasis added). A “species” is defined as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16). “The words used in the ESA make clear that ‘species’ *excludes distinctions below that* of a DPS, and this definition of ‘species’ applies not only when defining a species, but to all sections of the ESA.” *Defenders*, 729 F. Supp. 2d at 1221 (citations omitted, emphasis added). In other words, the FWS must base its decision to delist the gray wolf in Wyoming on an analysis of the Section 4(a)(1) factors as applied the “species” – the Northern Rocky Mountain population as a whole. The 2011 Congressional rider did not change this statutory reality. If wolves are threatened by any of the Section 4(a) listing factors anywhere in the Northern Rocky Mountain DPS – which includes wolves in Idaho, Montana, and portions of Oregon, Utah, and Washington – the FWS cannot delist wolves in Wyoming. The FWS’s decision to delist wolves in Wyoming without analyzing threats to the Northern Rocky Mountain wolf population as a whole is arbitrary, capricious, and contrary to the ESA and its implementing regulations. 16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11.

## **II. The FWS’s Failure to Use the Best Available Science in its Delisting Decision Violates the ESA**

Under the ESA, all listing decisions – whether to list, reclassify, or delist – must be based solely upon “the best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A), (c)(2). The FWS’s delisting rule violates this mandatory duty.

### **A. The FWS’s Use of Outdated Recovery Criteria is Arbitrary, Capricious and Violates the ESA**

The FWS’s use of an outdated recovery goal of “30 or more breeding pairs. . .

comprising 300+ wolves” in the Northern Rocky Mountains – which the FWS has divided equally between Idaho, Montana and Wyoming, Final Rule, 77 Fed. Reg. at 55,538, 55,547 – is insufficient to maintain a viable, genetically diverse population of wolves and violates its duty to use the best available science. 16 U.S.C. § 1533(b)(1)(A), (c)(2). Indeed, the best available science requires that, at minimum, wolf population recovery goals be set utilizing what is known as the 50/500 rule. Under this rule, 50 breeding individuals are needed for a population to be ecologically viable for the short-term and 500 breeding individuals are needed for a population to be evolutionarily viable for the long-term – *i.e.*, 100 years. Because the breeding population is only likely to be 10 to 20 percent of the total population, the 50/500 rule translates to a total population of approximately 2,500 to 5,000 individuals for long-term viability. *See* Comments from The HSUS to the FWS on the Proposed Rule on Removal of the Gray Wolf in Wyoming from the Federal List of Endangered Wildlife, 76 Fed. Reg. 61,782 at 4 (Jan. 13, 2012) (attached). That the FWS failed to use the best available science in formulating a recovery goal for the Northern Rocky Mountains is evident from the significantly higher recovery goal numbers for wolves in the Western Great Lakes. *See e.g.*, FWS, Post-Delisting Monitoring Plan for Western Great Lakes Distinct Population Segment of the Gray Wolf (Feb. 2008) (restating the 1,251–1,400 Minnesota wolf population criterion, and stating that if the gray wolf population reaches fewer than 1500 wolves, the FWS will consider relisting). The reliance on an outdated recovery goal that has existed since 1987<sup>3</sup> to de-list wolves in Wyoming is not only arbitrary and capricious, but fails to comply with the ESA’s mandate that a decision to delist a species be based on the “best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A), (c)(2); 50 C.F.R. § 424.11(b).

### **B. The Delisting Rule is Arbitrary, Capricious and Violates the ESA Because Adequate Genetic Connectivity is Not Ensured**

The de-listing rule also violates the ESA’s mandatory duty to use the best available science and is otherwise arbitrary and capricious because it fails to ensure genetic connectivity of the Northern Rocky Mountain wolf population.

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<sup>3</sup> Significantly, this outdated recovery goal was set at a time years before wolves were reintroduced in the Northern Rocky Mountains, and when the FWS itself questioned whether wolves would even be capable of re-establishing a viable population in the region. *See e.g.*, FWS, Northern Rocky Mountain Wolf Recovery Plan at 9 (1987) (“[t]he probability of natural reestablishment of wolves in the Yellowstone Ecosystem is extremely remote). The FWS’s failure to reconsider this recovery goal is itself arbitrary and capricious.

A basic concept of the recovery plan for the Northern Rocky Mountain gray wolf is that the three recovery areas must form a “metapopulation. . . with genetic exchange between subpopulations.” Final Rule, 77 Fed. Reg. at 55,543; *see also Defenders*, 565 F. Supp. 2d at 1169. While genetic connectivity has been demonstrated between the three subpopulations, the greater Yellowstone Area (“GYA”) subpopulation continues to be the most isolated of the three subpopulations. Final Rule, 77 Fed. Reg. at 55,564–65. Moreover, the only documented genetic connectivity involving this subpopulation occurred east of Yellowstone National Park, within the area Wyoming has designated as the wolf trophy game management area. Accordingly, hunting within this area could significantly compromise the genetic connectivity of the GYA subpopulation with the rest of the Northern Rocky Mountains population. In addition, this connectivity occurred during a time of rapid population expansion. Now that management conditions in the region are focused on population reduction, maintaining sufficient numbers of wolves in key areas and protecting dispersal corridors will be essential in guaranteeing that genetic connectivity within the Northern Rocky Mountain population is maintained.

Yet, genetic connectivity among the Northern Rocky Mountain’s three wolf subpopulations is almost certain to decline following the delisting of wolves in Wyoming. By the FWS’s own admission, the number of wolves who successfully disperse in a population subjected to increased mortality via hunting and lethal control measures is expected to decrease. *See* Final Rule, 77 Fed. Reg. at 55,593–94 (noting that “after delisting the population will no longer be growing, the population will likely go through a period reduction before leveling off, and management will likely result in higher mortality rates for both dispersers and resident wolves.”). As such, irrespective of the reasonableness of the FWS’s conclusion that genetic connectivity in the Northern Rockies is currently adequate, “past dispersal data is unlikely to be reflective of future effective migration rates.” Proposed Delisting Rule, 76 Fed. Reg. 61,782, 61,814 (Oct. 5, 2011).

Moreover, the FWS’s reliance on the potential for human-assisted genetic dispersal to de-list wolves in Wyoming, *see e.g., id.* at 55,537, is arbitrary, capricious and contrary to the purposes of the ESA. While translocation may be an appropriate tool for promoting recovery of an endangered population, such action cannot be relied upon to delist a species. *See* 16 U.S.C. § 1531(b) (stating the ESA’s goal of seeking “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”); *id.* § 1532(3) (defining

“conserve” as “to use and 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 [the ESA] are no longer necessary. Such methods include...transplantation...”). Indeed, a peer review of the 2011 Plan conducted at the request of the FWS stated that the Plan’s reliance on human-assisted exchange is contrary to the ESA:

Both Dr. Mills and Dr. Vucetich strongly emphasized that human-assisted genetic dispersal is inappropriate for a recovered population and should only be utilized in emergency situations, and not to overcome anthropogenic barriers to dispersal or other human-caused threats such as management actions. Human-assisted dispersal is counter to delisting objectives and is also unnecessary and inefficient for a truly recovered population. Individuals chosen for relocation may have particularly high or low reproductive values (therefore contributing differently to the genetics of the local population), and may vary in diseases from the local population.

FWS, Final Wyoming Gray Wolf Peer Review Summary Report, at 8 (Dec. 2011), *at* [http://www.fws.gov/mountainprairie/species/mammals/wolf/Atkins\\_Wolf\\_Peer\\_Review\\_Rep\\_12-27-11-Final.pdf](http://www.fws.gov/mountainprairie/species/mammals/wolf/Atkins_Wolf_Peer_Review_Rep_12-27-11-Final.pdf). The reliance on human-assisted genetic exchange rather than natural dispersal is not only unlawful under the ESA, but is also evidence that existing regulatory mechanisms are likely to be inadequate to ensure the long-term survival of a genetically viable, recovered wolf population in the Northern Rocky Mountains, as discussed further in Section III, *infra*. In short, the FWS has failed to adequately justify its conclusion that wolves in the Northern Rocky Mountains will not be endangered by inadequate future genetic connectivity.

### **III. The FWS’s Decision to De-List Wolves in Wyoming in the Face of Inadequate Regulatory Mechanisms is Arbitrary, Capricious and Violates the ESA**

As explained above, a species has not recovered, and cannot be delisted, “until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” 51 Fed. Reg. at 19,935. Thus, because a species can be listed solely on the basis of “the inadequacy of existing regulatory mechanisms,” 16 U.S.C. § 1533(a)(1)(D), a species cannot be delisted unless adequate regulatory measures exist to protect the species and ensure its long-term conservation after federal protections are removed. The FWS’s decision to de-list wolves in Wyoming in the face of inadequate regulatory mechanisms, and its determination that such management measures are in fact adequate, is arbitrary, capricious and violates the ESA, 16 U.S.C. § 1633.

## A. Regulatory Mechanisms in Wyoming are Inadequate

The existing regulatory mechanisms in Wyoming suffer from many of the same inadequacies that led to the FWS's repeated rejection of prior iterations of Wyoming's wolf management plan. *See e.g., Defenders of Wildlife*, 565 F. Supp.2d at 1172–75 (discussing inadequacies). As such, the FWS's decision to delist the gray wolf in Wyoming without a full and reasoned justification for its decision would be incongruous with basic tenets of administrative law and the FWS would be due no deference to such decision-making. *C.f., Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1001 (2005) (an agency "is free within the limits of reasoned interpretation to change course if it adequately justifies the change."). The Final Rule certainly does not provide such justification.

As an initial matter, the FWS and the Wyoming management scheme erroneously assert that wolves are able to sustain high levels of human-inflicted mortality. *See* Final Rule, 77 Fed. Reg. at 55,553 (stating that wolves can maintain population levels despite sustained human-caused mortality rates of 22 to nearly 50 percent). However, such reliance on the part of the FWS seems incongruous with the agency's own statement that "[w]olves are unlike coyotes, in that wolf behavior and reproductive biology have resulted in wolves historically being extirpated in the face of extensive human-caused mortality." *Id.* at 55,586. Moreover, the FWS appears to base its findings on the erroneous belief that much human-caused wolf mortality is compensatory—that most of the wolves killed by humans would have nonetheless died from other causes. *See e.g.,* 76 Fed. Reg. at 61,801 (noting that "human-caused mortality can replace up to 70 percent of natural mortality"). However, recent research indicates that hunting wolves actually causes highly *additive* mortality—mortality in addition to that which would otherwise naturally occur. *See* Comments from The HSUS to the FWS on the Proposed Rule at 5. Other deficiencies abound, including that Wyoming's dual classification system, lack of an adequate buffer, Wyoming's lethal take permit system, and the regulatory mechanisms in Idaho and Montana not only fail to adequately protect wolves, but will significantly reduce the wolf population.

### i. Wyoming's Dual Classification System Threatens Wolves

Under Wyoming's dual classification system, wolves are managed as trophy game animals in an area in northwestern Wyoming that constitutes just over 15 percent of the state (the Wolf Trophy Game Management Area ("WTGMA")) and as

predatory animals everywhere else. *See* Wyo. Stat. § 23-1-101(a)(viii)(B), (xii)(B). Within the WTGMA, hunting of wolves will be regulated by licensure requirements, hunting seasons, and annual quotas. Wyo. Stat. §§ 23-1-302; 304(a). Outside the WTGMA, however, wolves will be subject to *unregulated and unrestricted* hunting and other human-caused mortality. *Id.* Indeed, the Wyoming Game and Fish Department (“WGFD”) does not have any authority to impose quotas, temporary closures, or other restrictions on the taking of wolves in these areas. *See* Wyo. Stat. §§ 23-1-302(a)(1). Adopting predator status for wolves across the vast majority of the state fortifies the misguided notion that wolves are undesirable predators and not a necessary or worthwhile part of the landscape, thereby promoting the same contempt that led to the near extirpation of the wolf in the first place. Wolves play a vital role in the maintenance of healthy ecosystems in the region and should be treated as such. Yet, as recognized by the FWS, “in the predator area wolves will experience *unlimited human-caused mortality.*” Final Rule, 77 Fed. Reg. at 55,586 (emphasis added).<sup>4</sup>

Moreover, while the 2011 Plan slightly increased the area constituting the WTGMA from that of previous plans and added a seasonal expansion, the system maintains many of the same deficiencies that led the FWS to reject prior iterations. *See Defenders*, 565 F.Supp.2d at 1174 (finding that “the [FWS’s] approval of Wyoming’s 2007 plan despite its classification of the wolf as predatory throughout much of the state is also problematic and once again represents an agency change of course unsupported by adequate reasoning” because in rejecting Wyoming’s 2003 plan, the FWS “indicated the wolf should be designated as trophy game statewide” and the FWS’s purported justification of its “change of course by arguing the area designated as predatory in the 2007 plan is mostly unsuitable wolf habitat and Wyoming could maintain its share of the wolf population in the trophy game area alone” was an “unexplained surrender of the agency’s rational rejection of the 2003 plan.”). Additionally, because the boundaries of the WTGMA are prescribed by statute, *see e.g.*, Wyo. Stat. § 23-1-101(a)(xii)(B)(I)-(II), the WGFD does not have the ability to expand those boundaries, should such expansion become necessary to protect the wolf population. Thus, Wyoming’s current dual classification system

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<sup>4</sup> Additionally, such a scheme stands in stark contrast to Wyoming’s management of other large predators in the state, such as grizzly bears, black bears, and mountain lions. Specifically, these three species are all managed as trophy game animals throughout the state, *see* Wyo. Stat. § 23-1-101(a)(xii) (defining “trophy game animals” as grizzly bears, black bears, and mountain lions), and the take of these species is regulated by bag limits, seasons, license requirements. Wyo. Stat. §§ 23-1-302; 23-3-102. Wyoming’s disparate treatment of a species immediately following its removal from the federal list of endangered species is particularly troublesome.

remains inadequately protective of wolves. *See* Final Rule, 77 Fed. Reg. at 55,586 (stating the FWS’ expectation “that wolf packs in the predator area of Wyoming *will not persist*”) (emphasis added).

ii. Wyoming’s 2011 Wolf Management Plan Fails to Contain a Definitive, Adequate Buffer

As the FWS has stated, because “the recovery goal represents the minimum number of breeding pairs and individual wolves needed to achieve and maintain recovery,” it has required states manage for a sufficient buffer above that minimum goal. Final Rule, 77 Fed. Reg. at 55,538. The FWS rejected a previous iteration of Wyoming’s wolf management plan in 2003 because, *inter alia*, “the plan failed to clearly commit to managing for at least 15 wolf packs in Wyoming” and was thus insufficiently protective of wolves. *Defenders*, 565 F.Supp.2d at 1172. Wyoming’s regulatory mechanisms still fail to clearly commit to managing for at least 15 wolf packs in the state and fail to clearly commit to managing for a sufficient buffer above the minimum recovery criteria of 10 breeding pairs and 100 wolves. *See* Wyo. Stat. § 23-1-304(a) (stating Wyoming’s committing to manage only for “ten (10) breeding pairs of gray wolves and a total of at least one hundred (100) individual gray wolves.”); Wyo. Rules & Regs Game Hunt, Ch 21, sec 4(a) (same).

Despite the FWS’s heavy reliance on Wyoming’s 2012 Addendum to its 2011 Plan, the Addendum does not amend or otherwise change Wyoming’s 2011 Plan. *See* WDFG, Addendum: Wyoming Gray Wolf Management Plan (March 22, 2012) (“2012 Addendum”). As such, the Addendum cannot be an adequate ground on which to justify the FWS’s decision to delist the gray wolf in Wyoming. Indeed, the FWS repeatedly acknowledged that the Addendum merely “reaffirms” Wyoming’s prior commitments made under its 2011 Plan to manage for at least 10 breeding pairs and at least 100 wolves in Wyoming, *e.g.*, Proposed Delisting Rule Reopening of Comment Period, 77 Fed. Reg. 25,664, 25,665 (May 1, 2012) – the same plan previously found deficient by a scientific peer review panel. *See* FWS, Peer Review Summary Report at 13 (“Atkins finds that the Plan, as written, does not do an adequate job of explaining how wolf populations will be maintained, and how recovery will be maintained. . . . panelists believe that there should be an explicit process for integrating monitoring data, and for showing how such data will be used to set ongoing management objectives.”). Although Wyoming’s 2012 Addendum to its 2011 Plan attempts to “clarify” certain aspects of Wyoming’s plan, including the process for managing for a population buffer, 2012 Addendum at 2-3, the Addendum does little more than regurgitate parts of its 2011 Plan.

Despite the FWS's contentions to the contrary, *see e.g.*, Final Rule, 77 Fed. Reg. at 55,538, when the entire statutory and regulatory scheme of wolf management in Wyoming is considered, it is not clear that Wyoming intends to manage for at least 15 breeding pairs or for a sufficient buffer. For example, while the 2012 Addendum and the 2011 Plan assert that Wyoming will manage for a sufficient buffer above the 10/100 recovery criteria, this specific management requirement is *contradictory to existing statutory language* indicating that the state has committed only to ensuring 10 breeding pairs and 100 wolves, and recent statutory amendments that did not add any buffer. *See* Wyo. Stat. § 23-1-304(a); Wyo. Rules & Regs Game Hunt, Ch 21, sec 4(a). Thus, there is no clearly enforceable duty of the WGF D to manage for any more than the absolute minimum 10/100 recovery criteria. The FWS cannot base its delisting decision on the mere promises of the state that are contrary to the existing state statutory scheme. *See Or. Natural Res. Council v. Daley*, 6 F. Supp.2d 1139, 1155 (D. Or. 1998) (“[a]bsent some method of enforcing compliance,” state conservation plans do not qualify as “regulatory mechanisms” under the ESA); *Greater Yellowstone Coal. v. Servheen*, 672 F. Supp.2d 1105, 1116 (D. Mont. 2009) (“[a]n ‘intention’ or ‘commitment’ to manage [a species] a certain way is not a regulatory mechanism” that can be relied on in making delisting decisions), *aff’d in part and rev’d in part on other grounds*, 665 F.3d 1015 (9th Cir. 2011); *see also* 77 Fed. Reg. at 55,556 (despite its purported reliance on the state’s management intentions, the FWS admits that “[w]e decided against requiring Wyoming to provide a specific numeric buffer above these minimum management targets.”).

For these same reasons, Wyoming cannot rely on wolves in Yellowstone or the Wind River Reservation to help reach its buffer – these are not state lands and the state has no authority to manage wolves in those areas. As such, any “commitment” on Wyoming’s part to coordinate with these areas to maintain a buffer cannot constitute the adequate “regulatory mechanism” necessary for delisting. *See e.g.*, *Greater Yellowstone Coal.*, 672 F. Supp.2d at 1116. The failure to manage for an adequate, definitive buffer is particularly troubling in light of the fact the best available science indicates that the 10/100 recovery criteria do not constitute a recovered wolf population and are inadequate to ensure the long-term viability of the population.

iii. Wyoming's Lethal Take Permits Fail to Adequately Protect Wolves

In a recent statutory amendment, Wyoming enacted “significant change[s]” to the provisions applicable to lethal take permits in chronic wolf depredation areas. Proposed Delisting Rule, 77 Fed. Reg. at 25,666. As originally proposed, the amendment would have allowed WGFD to issue lethal take permits in chronic depredation areas within the agency’s discretion. *Id.* However, the amendment as enacted entirely removes the WGFD’s discretion such that the agency is now *required* to issue lethal take permits upon discovery that a wolf has harassed, injured, or killed livestock or domestic animals. *See* Wyo. Stat. § 23-1-304(n) (depredations permits “shall be issued as long as the removals authorized by such permits could not reduce the numbers of gray wolves below ten (10) breeding pairs or a total of one hundred (100) individual gray wolves within the state and outside Yellowstone National Park and the Wind River Indian Reservation”). This statutory provision *mandates* that the WGFD issue depredation permits until the state’s wolf population reaches the minimum recovery criteria, *without allowing for a buffer* above those criteria. Moreover, the regulatory amendments implementing the statute *require* the issuance of lethal take permits if requested by an owner of property any time “a gray wolf or wolves *are occupying* a chronic wolf predation area.” Wyo. Rules & Regs Game Hunt, Ch. 21, sec. 6(b) (emphasis added). In other words, the WGFD is now required to issue a lethal take permit based on the *mere presence* of wolves in a particular area, regardless of whether the wolves have killed or injured livestock or domestic animals.

In the Federal Register notice announcing reopening of the comment period on the Proposed Delisting Rule, the FWS noted that based on these changes, “lethal take permits could become a significant source of mortality if [the FWS] delist[s] the gray wolf in Wyoming,” 77 Fed. Reg. at 25,666, but claims that “numerous safeguards are in place that limit their potential to meaningfully and detrimentally impact the population.” *Id.*; *see also* Final Rule, 77 Fed. Reg. at 55,557 (stating that “Wyoming’s approach to lethal take permits may affect population abundance (particularly at a localized level where wolf-livestock conflict is high), but that Wyoming has instituted sufficient safeguards...”). Despite these purported safeguards (*e.g.*, limit the duration of each permit to 45 days, and limiting the take under each permit to two wolves), there is *no limit* on the number of such permits that may be issued. *See* Wyo. Stat. § 23-1-304(n); Wyo. Rules & Regs Game Hunt, Ch. 21, sec. 6(b). Thus, the supposed “safeguards” are not actually limiting at all. Indeed, the regulations expressly state that lethal take permits “may be renewable in 45-day intervals.” Wyo. Rules & Regs Game Hunt, Ch. 21, Sec. 7(b)(vii). In short,

there is no limit on the numbers of wolves that can be killed under this scheme.

The purported safeguards will not provide meaningful protections for wolves such that it is likely that lethal take permits will become “a significant source of mortality” as the FWS has previously admitted. The FWS cannot rely on the promises within WGFD’s 2011 Plan or 2012 Addendum to overcome these regulatory shortfalls. *See e.g., Greater Yellowstone Coal.*, 672 F. Supp.2d at 1116 (“[a]n ‘intention’ or ‘commitment’ to manage [a species] a certain way is not a regulatory mechanism” that can be relied on in making delisting decisions). The FWS’s decision to delist the gray wolf in light of this significant source of human-caused mortality, the effects of which it has failed to properly analyze, is arbitrary, capricious and contrary to the ESA, 16 U.S.C. § 1533.

## **B. Regulatory Mechanisms in Idaho and Montana are Inadequate**

Because the FWS focuses its analysis on threats to the gray wolf in Wyoming, rather than throughout the Northern Rocky Mountains as required by the ESA, it has failed to properly analyze the adequacy of all currently existing regulatory mechanisms – and those in Montana and Idaho in particular.

For example, the FWS fails to consider recent management changes in Montana and Idaho resulting from the delisting of the wolf in those states. Many of these management changes have been extremely hostile to wolves and will actively reduce wolf numbers. Montana recently completed rulemaking for the 2012-2013 wolf hunting season. The rules substantially liberalize harvest restrictions, in yet another attempt to decrease wolf numbers in the state. In contrast to last year’s quota of 220 wolves, this year the agency *is proposing to eliminate the quota*, except for areas around Glacier and Yellowstone National Parks; expand the general season from September 1 to February 28; and allowing trapping for the first time statewide from December 15 through February 28. MFWP, 2012-2013 Proposed Wolf Hunting Seasons, Quotas, and Hunting District Boundaries, *at* [http://fwp.mt.gov/hunting/publicComments/2012\\_13proposedWolfHunt.html](http://fwp.mt.gov/hunting/publicComments/2012_13proposedWolfHunt.html). In Idaho, recent regulatory changes allow hunting and trapping of wolves until March 31 in the majority of the state; only set a quota in five of the thirteen hunting and trapping zones; and permit individuals to take up to ten wolves, five via trapping and five via hunting. *See* IDFG, 2012 Gray Wolf Hunting and Trapping Seasons and General Rules, *available at* [fishandgame.idaho.gov/public/docs/rules/bgWolf.pdf](http://fishandgame.idaho.gov/public/docs/rules/bgWolf.pdf).

Moreover, the states have not made enforceable commitments to wolf

protections upon which the FWS relied in delisting wolves in those states, such as commitments to maintaining population size and promoting genetic exchange. In addition, Idaho's 2002 wolf management plan – pursuant to which Idaho has already taken over wolf management from the federal government – establishes a population objective of only 15 “packs,” which does not meet the FWS's recovery standard that attempts to maintain 15 breeding pairs. *See* Final Rule, 77 Fed. Reg. 55,537 (discussing the importance of “breeding pairs” for wolf recovery and management). Indeed, the FWS previously determined Wyoming's plan insufficient because it planned to manage for 15 packs, rather than 15 breeding pairs. *See* 71 Fed. Reg. 43,410, 43,428-30 (Aug. 1, 2006) (Wyoming's regulatory mechanisms were inadequate to due, *inter alia*, reliance on packs, rather than breeding pairs). Similarly, Montana only commits state to maintain “15 breeding pairs,” Mont. Admin. R. 12.9.1301(1), not a number “well above” minimum recovery goals as the FWS contends. *See* Final Rule, 77 Fed. Reg. at 55,539.

By failing to consider the threats to wolves throughout the Northern Rocky Mountains population (the lowest level at which listing and delisting decisions may be made under the ESA), the FWS has not ensured that existing regulatory measures are sufficient to protect the gray wolf in the Northern Rocky Mountains in violation of the ESA. 16 U.S.C. § 1533(a)(1)(D).

### **Conclusion**

For the foregoing reasons, the FWS's decision to eliminate federal ESA-protections for the gray wolf in Wyoming is arbitrary, capricious, and otherwise not in accordance with the ESA and its implementing regulations. If the FWS does not withdraw its delisting rule within sixty days, The Humane Society of the United States and the Fund for Animals will initiate litigation in federal court to resolve the matter.

Sincerely,



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# ATTACHMENTS



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OF THE UNITED STATES

January 13, 2011

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4401 N. Fairfax Drive  
MS 2042-PDM  
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RE: Docket No. FWS-R6-ES-2011-0039; 92220-1113-0000-C6

Dear Director Ashe:

On behalf of the Humane Society of the United States and the Fund for Animals (collectively, “HSUS”), and our over eleven millions members and supporters, I hereby submit these comments on the U.S. Fish and Wildlife Service’s (“FWS”) Proposed Rule on Removal of the Gray Wolf in Wyoming from the Federal List of Endangered Wildlife, 76 Fed. Reg. 61782 (Oct. 5, 2011) (hereinafter, “Proposed Rule”).

The HSUS opposes the delisting of wolves under the Proposed Rule and the Wyoming Wolf Management Plan. In making its delisting decision, FWS must base its decision on the best available science and must adequately analyze threats to the Northern Rocky Mountain wolf population as a whole, rather than focusing on the Wyoming population only. Moreover, while FWS has determined that “wolves in Wyoming are recovered and no longer meet the definition of endangered or threatened. . . [and] Wyoming’s wolf population is stable, threats are addressed, and a post-delisting monitoring and management framework has been developed”, *id.*, Wyoming’s proposed regulatory mechanisms to manage gray wolves are ominously flawed and fail to ensure the future survival of the species. As such, FWS cannot legally delist wolves in Wyoming unless and until these regulatory mechanisms adequately protect the species and ensure its long-term conservation after federal protections are removed.

## Background

Gray wolves were once abundant across North America, with more than 350,000 individuals inhabiting the American West. However, with the

European Settlers came the widespread persecution of wolves. Habitat destruction and government bounties that encouraged the poisoning, trapping and hunting of wolves, resulted in their extirpation from more than 95 percent of their range in the lower 48 states. 68 Fed. Reg. 15,804, 15, 805 (Apr. 1, 2003). According to the FWS, wolves were hunted and killed “with more passion and zeal than any other animal in U.S. history.” U.S. Fish and Wildlife Service, *Gray Wolf*, <http://training.fws.gov/library/Pubs/graywolf.pdf> (July 1998). Recognizing that the species was near the brink of extinction, the gray wolf was one of the first species to be listed under the Endangered Species Preservation Act of 1966, the precursor to the ESA. 32 Fed. Reg. 4,001 (Mar. 11, 1967). These legal protections were limited, however, and it was the 1973 passage of the ESA and subsequent listing of various subspecies of wolves under the ESA in 1974 that marked the true beginning of the wolf’s recovery.

Eventually, the FWS moved away from the protection of individual wolf subspecies and decided instead to list the gray wolf at the species level. Accordingly, in 1978 the FWS listed the gray wolf as endangered throughout the coterminous United States and Mexico, except in Minnesota, where wolves were listed as threatened. 43 Fed. Reg. 9,607 (Mar. 9, 1978). With the protection of the Endangered Species Act (“ESA”), the wolf has made progress toward recovery in the western Great Lakes region, the northern Rocky Mountains, and the southwest, where the Mexican gray wolf was near the very brink of extinction. Nevertheless, even today wolves occupy only a small portion of their historic range. Viable populations are absent from vast swaths of habitat where wolves once lived and collectively could still recover, including within the Pacific Northwest and California, the Great Basin and Colorado Plateau, the southern Rocky Mountains, the Southwest, the Great Plains, and the forests of New England and upstate New York. Meanwhile, existing wolf populations face ongoing threats to their long term survival, such as overzealous federal predator-control, state-sanctioned persecution, unlawful killing by the public, disease outbreaks, hybridization, and inbreeding depression.

Despite wolves’ continuing imperilment, FWS has repeatedly sought to remove the gray wolf in the Northern Rocky Mountains from the endangered species list. While those efforts were repeatedly rejected by numerous federal courts, see *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008); see *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010), a 2011 Congressional appropriations rider delisted the wolves throughout the Northern Rocky Mountains, with the exception of Wyoming. See H.R. 1473, Pub. L. 112-10 § 1713. Following the 2011 rider, FWS met with Wyoming’s congressional delegation and governor to create a wolf delisting plan for the state which the Wyoming Fish and Game Commission (“Commission”) accepted on September 14, 2011 (The Wyoming Gray Wolf Management Plan (“Plan”)). FWS published its proposed delisting rule for the gray wolf Wyoming on October 5, 2011 based on this plan.

## The FWS Has Not Conducted the Proper Delisting Analysis

Under the ESA, all listing decisions – whether to list, reclassify, or delist – must be based solely upon “the best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A), (c)(2). In addition, a species can be delisted only if the species is neither endangered nor threatened because it is extinct, because it has recovered, or because the original listing decision was in error. *See* 50 C.F.R. § 424.11(d). Decisions to reclassify an already-listed species are governed by the same standards in listing species.<sup>1</sup> Thus, FWS must conduct the same Section 4(a)(1) threats analysis before removing a species from the endangered species list. *Id.* U.S.C. § 1533(c)(2)(B); *see also Defenders of Wildlife v. Babbitt*, 130 F.Supp. 2d 121, 133 (D.D.C 2001) (noting that “the same five statutory factors must be considered in delisting as in listing”) (citations omitted). A species has not recovered, and cannot be delisted, “until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” 51 Fed. Reg. 19926, 19935 (June 3, 1996). Because a species can be listed solely on the basis of the “inadequacy of existing regulatory mechanisms”, a species cannot be delisted unless adequate regulatory measures exist to protect the species and ensure its long-term conservation after federal protections are removed. However, current regulatory measures do not adequately protect wolves in the Northern Rocky Mountains and FWS cannot delist the gray wolf in Wyoming unless and until adequate regulatory measures are adopted and implemented.

The ESA also requires that FWS conduct the analysis of the Section 4(a)(1) listing and delisting factors on the species level. *See* 16 U.S.C. § 1533(a) (FWS may determine “whether any *species* is an endangered species or threatened species” on the basis of the five factors) (emphasis added). A “species” is defined as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. *Id.* § 1532(16). “The words used in the ESA make clear that ‘species’ excludes distinctions below that of a DPS, and this definition of ‘species’ applies not only when defining a species, but to all sections of the ESA.” *Defenders*, 729 F. Supp. 2d at 1221 (citations omitted). In other words, FWS must base its decision to delist the gray wolf in Wyoming on analysis of the Section 4(a)(1) factors as applied the Northern Rocky Mountain population as a whole. However, the Proposed Rule analyzes such factors almost exclusively applied to the Wyoming population only. While such a tactic may help the FWS justify its delisting proposal, this tactic falls far short of complying with the clear

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<sup>1</sup> Pursuant to 16 U.S.C. 1533(a)(1), the five listing factors are:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

requirements of the ESA. FWS cannot lawfully delist the gray wolf in Wyoming until it conducts the proper analysis.

### *The Use of Outdated Recovery Criteria*

HSUS believes that the outdated recovery criteria of 30 breeding pairs and 300 wolves in the Northern Rocky Mountains is insufficient to maintain a viable, genetically diverse population of wolves. Indeed, the best available science supports what is known as the 50/500 rule. Under this rule, 50 breeding individuals are needed for a population to be ecologically viable for the short-term and 500 breeding individuals are needed for a population to be evolutionarily viable for the long-term – i.e., 100 years. Because the breeding population is only likely to be 10 to 20 percent of the total population, the 500 rule translates to a total population of approximately 2,500 to 5,000 individuals for long-term viability. See e.g., Soule and Wilcox (1980), Frankel and Soule (1981), Lande (1988), Lande (1995), Frankham (1995), Franklin and Frankham (1998), Fallon (2008), and Palstra and Ruzzante (2008). Moreover, FWS’s recovery goal for the Northern Rocky Mountains is difficult to justify in light of the significantly higher numbers for recovery in the Great Lakes. See e.g., FWS, Post-Delisting Monitoring Plan for Western Great Lakes Distinct Population Segment of the Gray Wolf (Feb. 2008) (restating the 1,251–1,400 Minnesota wolf population criterion, and stating that if the gray wolf population reaches fewer than 1500 wolves, FWS will consider relisting). As such, FWS’ reliance on an outdated recovery goal that has existed since 1987 is not only arbitrary and capricious, but fails to comply with the ESA’s mandate that a decision to delist a species be based on the “best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A), (c)(2).

### *Failure to Ensure Genetic Connectivity*

A basic concept of the recovery plan for the Northern Rocky Mountain gray wolf is that the three recovery areas must form a “metapopulation. . . with genetic exchange between subpopulations.” 76 Fed. Reg. at 61,791; see also *Defenders*, 565 F. Supp. 2d at 1169. While some genetic connectivity has been demonstrated between the three subpopulations, vonHoldt et al. (2010), the greater Yellowstone Area (“GYA”) subpopulation continues to be the most isolated of the three subpopulations, Oakleaf et al. (2006); 76 Fed. Reg. at 61,791. Moreover, the documented genetic connectivity occurred east of Yellowstone National Park, within the area Wyoming has designated as the wolf trophy game management area. As such, hunting within this area could significantly compromise the only documented genetic connectivity of the GYA subpopulation with the rest of the Northern Rocky Mountains. In addition, the only documented connectivity occurred during a time of rapid population expansion. Now that management conditions in the region are focused on population *reduction*, the connectivity necessary for maintaining recovery *is not likely to occur*. Maintaining sufficient numbers of wolves in key areas and protecting dispersal corridors is essential to assuring that genetic connectivity within the Northern Rocky Mountain population is maintained.

Genetic connectivity among the Northern Rocky Mountain's three wolf subpopulations is certain to decline following the delisting of wolves in Wyoming. The number of wolves who successfully disperse in a population subjected to increased mortality via hunting and lethal control measures is expected to decrease. As such, irrespective of the reasonableness of FWS's conclusion that genetic connectivity in the Northern Rockies is currently adequate, "past dispersal data is unlikely to be reflective of future effective migration rates." 76 Fed. Reg. at 61,814. For example, "[p]ost delisting, populations will no longer be growing, may go through a period of population reduction before leveling off, and management will likely result in higher mortality rates for both dispersers and resident wolves." *Id.* FWS has failed to adequately justify its conclusion that wolves in the Northern Rocky Mountains will not be endangered by inadequate future genetic connectivity.

### *Existing Regulatory Mechanisms are Inadequate*

Because FWS focuses its analysis on threats to the gray wolf in Wyoming, rather than throughout the Northern Rocky Mountains, it fails to properly analyze the adequacy of existing regulatory mechanisms. For example, FWS fails to consider recent management changes in Montana and Idaho resulting from the delisting of the wolf in those states. Many of these management changes have been extremely hostile to wolves, and the states have not made enforceable commitments to wolf protections upon which FWS relied in delisting wolves in those states, such as commitments to maintaining population size and promoting genetic exchange. By failing to consider these changes, FWS cannot ensure that existing regulatory measures are sufficient to protect the gray wolf in the Northern Rocky Mountains.

Moreover, the existing regulatory mechanisms in Wyoming – namely, Wyoming law, its management plans, and implementing regulations – are inadequate. Indeed, the current Wyoming statutes are the very regulatory mechanisms that were determined inadequate in the 2008 flawed FWS attempt to delist the NRM gray wolf population, see *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008), and the September 2011 Gray Wolf Management Plan suffers from many of the same inadequacies that lead to FWS's repeated rejection of the plan. This raises two issues worth noting. First, because FWS's approval of the management scheme is based on *future changes* to Wyoming law, the public must be provided an opportunity to review and comment on those future changes *before* the gray wolf is delisted in Wyoming. Second, FWS's decision to delist the gray wolf in Wyoming in reliance on a plan that it repeatedly rejected as inadequate in the past with little justification is incongruous with basic tenants of administrative law and the FWS would receive little deference in its approach as a result. See *e.g.*, *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1001 (2005). It is difficult to see how FWS can possibly justify its swerve from prior precedent.

Notably, the recent peer review of Wyoming's Plan found the Plan deficient. The peer review panel concluded that:

We believe that in this case the initial minority opinion of Dr. Vucetich is the most Appropriate one. While all information, written or otherwise, may be useful in a panel evaluation, verbal assurances of policy must necessarily carry little weight. It may indeed be that it is not in the State's interest to manage down to the absolute minimum population; however that is what is stated in the Plan, and it is not reasonable to simply assume that there will be consistent and longterm commitment to managing for levels above that target.

Hence Atkins finds that the Plan, as written, does not do an adequate job of explaining how wolf populations will be maintained, and how recovery will be maintained. Our position is substantially bolstered by the responses of Dr. Mills and Mr. Stark in response to the clarifying questions from the Service. It is clear that more than one panelist believes that there is a need for explicit buffering, and better explanations of the adaptive processes that will be used in managing down the wolf populations. At the same time, no panelist appears to believe that there is a need for an explicit numerical buffer - but rather panelists believe that there should be an explicit process for integrating monitoring data, and for showing how such data will be used to set ongoing management objectives.

FWS, Final Wyoming Gray Wolf Peer Review Summary Report, at 13 (Dec. 2011). FWS cannot delist the gray wolf in Wyoming in light of the significant faults in the Plan.

### *Specific Problems with the Plan*

#### Hostility to Wolves

The Plan seeks “to establish a framework for wolf management in Wyoming that will provide for a recovered and sustainable population of wolves that is well connected genetically to other subpopulations in the NRM, while minimizing wolf/human conflicts and ensuring the long-term health and viability of big game herds.” While the Plan does contain some improvements over prior iterations, it is still significantly hostile to wolves. For example, while the Plan omits language from prior versions of “aggressive management techniques” to protect private property, and that state statute and Commission regulations no longer require the Commission to adopt aggressive management technique, similar language from previous plans remains: “Aerial gunning of wolves inside the TGMA directed by Wyoming Game and Fish Department will be allowed to control livestock depredations, to achieve ungulate management objectives if wolves are determined to be a significant cause for not meeting those objectives, or to address human safety issues”. Moreover, by compensating livestock owners for the loss of livestock at up to seven times the confirmed value of the livestock, rather than using the funds to promote sound management practices that help livestock owners prevent loss in the first instance, the Plan creates a potentially perverse scheme whereby poor animal husbandry practices are rewarded. These specific

aspects of the Plan, among others, reveal that *the Plan is really nothing more than an attempt at precipitous population reduction under the guise of wildlife management.*

#### Genetic Connectivity under the Plan

The Plan states that should genetic connectivity be insufficient, they will “invoke adaptive management” that will include at least the following “as deemed appropriate”, including improved genetics monitoring, population management, and translocation for genetic purposes. However, reliance on human-assisted genetic exchange rather than natural dispersal is not only inadequate, but signals an implicit admission by FWS that the management plans in Wyoming, Montana, and Idaho are, in current iteration, likely to be *inadequate* to ensure the long-term survival of a genetically viable, recovered wolf population in the Northern Rocky Mountains. Indeed, findings of the scientific panel that conducted a peer review of the Plan at the request of FWS mirror our concerns that the dependence on human-assisted exchange is contrary to the ESA.

Both Dr. Mills and Dr. Vucetich strongly emphasized that human-assisted genetic dispersal is inappropriate for a recovered population and should only be utilized in emergency situations, and not to overcome anthropogenic barriers to dispersal or other human-caused threats such as management actions. Human-assisted dispersal is counter to delisting objectives and is also unnecessary and inefficient for a truly recovered population. Individuals chosen for relocation may have particularly high or low reproductive values (therefore contributing differently to the genetics of the local population), and may vary in diseases from the local population.

FWS, Final Wyoming Gray Wolf Peer Review Summary Report, at 8 (Dec. 2011), [http://www.fws.gov/mountainprairie/species/mammals/wolf/Atkins\\_Wolf\\_Peer\\_Review\\_Rep\\_12-27-11-Final.pdf](http://www.fws.gov/mountainprairie/species/mammals/wolf/Atkins_Wolf_Peer_Review_Rep_12-27-11-Final.pdf)

#### Changes from Prior Versions

The two primary changes to Wyoming’s management plan from the prior version that was rejected by a federal court and FWS itself are the new seasonal “flex-zone” and a commitment to managing for ten breeding pairs outside Yellowstone National Park and the Wind River Reservation (as opposed to seven breeding pairs outside both Yellowstone and Grand Teton National Parks). Neither change satisfies FWS’s prior statement that Wyoming should implement statewide trophy status for wolves and clearly commit to managing for a minimum of 15 breeding pairs. *See e.g.*, 74 Fed. Reg. at 15,183 (“We believe the entire State of Wyoming should be managed as a trophy game area. Continuation of the current regulatory framework in Wyoming would meaningfully affect the [northern Rocky Mountains DPS’s] resiliency, redundancy, and representation, and decrease the ability to conserve the species”); *Id.* at 15,183 (“statewide trophy game status will allow more flexibility to devise a management strategy, including regulated harvest that provides for self-sustaining populations above recovery goals”). Thus, FWS has changed its prior

position on what should be required of the Wyoming management plan before delisting is appropriate, and it has done so without adequate explanation.

Under the current plan, wolves will “be managed under the dual classifications of trophy game animal and predatory animal.” Accordingly, wolves will only be protected as “trophy game animals within the area of northwestern Wyoming identified as the Wolf Trophy Game Management Area (WTGMA).” FWS’s Proposed Rule states that “[t]he boundary and size of the WTGMA will be established by State statute and cannot be *diminished* through WGFC rule or regulation.” However, the Plan actually states that “[t]he boundary and size of the WTGMA will be established by State statute and cannot be *changed* through Commission rule or regulation.” Thus, under the Plan, the Commission has no flexibility to change the WTGMA, including enlarging this area, if it becomes necessary to protect wolf populations.

Moreover, adopting predator status for wolves across the vast majority of the state is indefensible. It fortifies the misguided notion that wolves are undesirable predators and not a necessary or worthwhile part of the landscape, thereby promoting the same contempt that led to the near extirpation of the wolf in the first place. Wolves play a vital role in the maintenance of healthy ecosystems in the region and should be treated as such.

Further, the flex-line concept contains basic flaws made on incorrect assumptions of wolf biology. Biologists and the scientific literature agree that functional connectivity is a combination of population distribution and dispersal. The seasonal nature (October 15- end of February) of the Wyoming flex-line is in conflict with the intended goal of protecting wolf dispersal. The best available science demonstrates that wolves disperse year-round, with peak dispersal occurring late fall to early winter (October-January). With the likely reduction of Wyoming’s wolf population and the removal of most wolves within the predator area, Wyoming’s flex-line concept further restricts the likelihood of wolf dispersal outside of peak months. As such, when determining if the flex boundary is the best line, both spatially and temporally, to accommodate wolf dispersal, the FWS has decided to not use the best available science in the proposed delisting rule. Moreover, as acknowledged by FWS, such an approach poses a difficult enforcement situation where the public must abide by changing regulations unlike those applicable to any other wildlife species. *See* 71 Fed. Reg. 43428 (“We believe the real potential for flipping back and forth between predatory animal status and trophy game status would result in a program that would be nearly impossible to administer and enforce because of widespread public confusion about the changing wolf status”).

Only two years after FWS found Wyoming’s plan inadequate, FWS has approved a Plan that contains the very same defects upon which the prior plan was rejected, with little to no justification as to the agency’s change in position. Wyoming’s Plan leaves wolves subject to predator status throughout the vast majority of the state—a situation FWS previously found to endanger wolves. FWS’s flex zone approach, in which wolves will be managed as game animals subject to regulated hunting during four months of the year and

treated as predators subject to unlimited killing the rest of the year, is inadequate to protect wolves attempting to disperse into the GYA. In other words, existing regulatory mechanisms in Wyoming are inadequate to conserve wolves as required by the ESA.

### **Conclusion**

In sum, FWS's proposal to remove ESA protections for the gray wolf in Wyoming is arbitrary and capricious and fails to comply with the requirements of the ESA and its implementing regulations. FWS cannot lawfully remove such protections unless and until it establishes that wolves have recovered throughout the entire DPS based on the best available science, and unless and until the existing regulatory mechanisms are adequate to ensure the long-term survival of the species once federal protections are removed.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Henry". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ralph Henry  
Deputy Director, Animal Protection Litigation  
The Humane Society of the United States



**THE HUMANE SOCIETY**  
OF THE UNITED STATES

May 16, 2012

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RE: Docket No. FWS-R6-ES-2011-0039; 92220-1113-0000-C6

Dear Director Ashe:

On behalf of the Humane Society of the United States and the Fund for Animals (collectively, “HSUS”), and our over eleven million members and supporters, I hereby submit these supplemental comments on the U.S. Fish and Wildlife Service’s (“FWS”) Proposed Rule on Removal of the Gray Wolf in Wyoming from the Federal List of Endangered Wildlife, 76 Fed. Reg. 61782 (Oct. 5, 2011), for which the FWS has reopened the public comment period, 77 Fed. Reg. 25,664 (May 1, 2012) (hereinafter, “Proposed Rule”). The HSUS submitted comments during the prior public comment period for the Proposed Rule and hereby incorporates those comments by reference.

The HSUS continues to oppose the delisting of wolves under the Proposed Rule for the reasons articulated in our January 2012 comments. Specifically, in the Proposed Rule, the FWS improperly focuses its threats analysis on the Wyoming wolf population rather than the Northern Rocky Mountain wolf population as a whole; utilizes outdated recovery criteria that fail to reflect the best available science; and fails to ensure for genetic connectivity of the Greater Yellowstone area subpopulation with the rest of the Northern Rocky Mountain population.

Moreover, although Wyoming has adopted statutory and regulatory changes to implement its 2011 Gray Wolf Management Plan since promulgation of the Proposed Rule on October 5, 2011, the

statutory and regulatory mechanisms to manage gray wolves remain ominously flawed and continue to fail to ensure the future survival of the species.<sup>1</sup> The FWS cannot lawfully delist wolves in Wyoming unless and until existing regulatory mechanisms adequately protect the population and ensure its long-term conservation after federal protections are removed.

### **Existing Regulatory Mechanisms are Inadequate**

Under the Endangered Species Act (“ESA”), a species can be delisted only if the species is neither endangered nor threatened because it is extinct, because it has recovered, or because the original listing decision was in error. 50 C.F.R. § 424.11(d). In deciding whether to delist a species, the FWS must conduct the same Section 4(a)(1) threats analysis as it does when it decides whether to list a species. 16 U.S.C. § 1533(c)(2)(B); 50 C.F.R. § 424.11(d); *see also Defenders of Wildlife v. Babbitt*, 130 F.Supp. 2d 121, 133 (D.D.C 2001) (noting that “the same five statutory factors must be considered in delisting as in listing”) (citations omitted).<sup>2</sup> A species has not recovered, and cannot be delisted, “until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” 51 Fed. Reg. 19,926, 19,935 (June 3, 1996). Because a species can be listed solely on the basis of the “inadequacy of existing regulatory mechanisms”, a species cannot be delisted unless adequate regulatory measures exist to protect the species and ensure its long-term conservation after federal protections are removed.

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<sup>1</sup> The FWS’s Proposed Rule announcing the removal of the gray wolf in Wyoming from the federal list of endangered wildlife published on October 5, 2011 “relied heavily on Wyoming’s wolf management plan and noted that conforming changes to State law and regulation would be required to allow [implementation of the plan] as written.” 77 Fed. Reg. at 25,664. The FWS reopened the comment period following statutory and regulatory changes to Wyoming law and the publication of an Addendum to the Wyoming Gray Wolf Management Plan to allow the public the opportunity to comment on those changes. *Id.* Accordingly, our comments will focus on these specific changes and their relevance to the FWS’s proposal to delist the wolf, rather than reiterating all the legal flaws in the FWS’s proposal.

<sup>2</sup> Pursuant to 16 U.S.C. § 1533(a)(1), the five listing factors are:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

Current regulatory measures do not adequately protect wolves in the Northern Rocky Mountains. Indeed, the existing regulatory mechanisms in Wyoming – namely, Wyoming law, its management plans, and implementing regulations – suffer from many of the same inadequacies that led to the FWS’s repeated rejection of prior iterations of the plan. *See Defenders of Wildlife v. Hall*, 565 F. Supp.2d 1160 (D. Mont. 2008). As such, the FWS’s decision to delist the gray wolf in Wyoming without a full and reasoned justification for its decision would be incongruous with basic tenets of administrative law and the FWS would be due little deference to its decision-making. *C.f.*, *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 1001 (2005) (an agency “is free within the limits of reasoned interpretation to change course if it adequately justifies the change.”). The Proposed Rule certainly does not provide such justification.

### Wyoming’s Dual Classification System Fails to Provide Adequate Protections

The recently enacted statutory and regulatory amendments simply codify the changes to the dual classification system of wolves in Wyoming reflected in the 2011 Wolf Management Plan. Under this system, wolves are managed as trophy game animals in an area in northwestern Wyoming that constitutes just over 15 percent of the state (the Wolf Trophy Game Management Area (“WTGMA”)) and as predatory animals everywhere else. *See* Wy. St. § 23-1-101(a)(viii)(B), (xii)(B)(I), *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41). Within the WTGMA, hunting of wolves will be regulated by licensure requirements, hunting seasons, and annual quotas. Wy. St. §§ 23-1-302; 304(a) *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41). Outside the WTGMA, however, wolves will be subject to *unregulated and unrestricted* hunting and other human-caused mortality. *Id.*

Adopting predator status for wolves across the vast majority of the state is indefensible. It fortifies the misguided notion that wolves are undesirable predators and not a necessary or worthwhile part of the landscape, thereby promoting the same contempt that led to the near extirpation of the wolf in the first place. Wolves play a vital role in the maintenance of healthy ecosystems in the region and should be treated as such.<sup>3</sup> Moreover, while the 2011 Wolf Management Plan slightly

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<sup>3</sup> Additionally, such a scheme stands in stark contrast to Wyoming’s management of other large predators in the state, such as grizzly bears, black bears, and mountain lions. Specifically, these three species are managed all managed as trophy game animals throughout the state, *see* Wy. St. § 23-1-101(a)(xii) (defining “trophy game animals” as grizzly bears, black bears, and mountain lions), and the take of these species is regulated by bag limits, seasons, license requirements. Wy. St. §§ 23-1-302; 23-3-102. Wyoming’s

increased the area constituting the WTGMA from that of previous plans and added a seasonal expansion, the system maintains many of the same deficiencies that led the FWS to reject prior iterations of Wyoming's plan. *See Defenders*, 565 F.Supp.2d at 1174 (finding that "the approval of Wyoming's 2007 plan despite its classification of the wolf as predatory throughout much of the state is also problematic and once again represents an agency change of course unsupported by adequate reasoning" because in rejecting Wyoming's 2003 plan, the FWS "indicated the wolf should be designated as trophy game statewide" and the FWS's purported justification of its "change of course by arguing the area designated as predatory in the 2007 plan is mostly unsuitable wolf habitat and Wyoming could maintain its share of the wolf population in the trophy game area alone" was an "unexplained surrender of the agency's rational rejection of the 2003 plan.").

Additionally, because the boundaries of the WTGMA are prescribed by statute, *see e.g.*, Wy. St. § 23-1-101(a)(xii)(B)(I), *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41), the Wyoming Game and Fish Department ("WGFD") does not have the ability to expand those boundaries, should such expansion become necessary to protect the wolf population. Thus, Wyoming's current dual classification system remains inadequately protective of wolves.

Under the current dual classification system, wolves would have predator status in almost 85 percent of the state, and be subjected to unrestricted, unregulated human-caused mortality in those areas. *See* Wy. St. § 23-1-101(a)(viii)(B), (xii)(B)(I), *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41). The FWS admits that "few of the wolf packs in the predator portions of Wyoming would persist to the end of 2012" and that "some of the current lone wolves in the predator area would [also] be killed." 77 Fed. Reg. at 25,666; *see also* 76 Fed. Reg. at 61,807 ("wolves are unlikely to survive in portions of Wyoming where they are regulated as predatory animals"). In other words, it is highly likely that wolves in 85 percent of the state would be almost entirely decimated. The FWS, however, finds that this high level of mortality is not expected to meaningfully impact wolves in the WTGMA because none of the packs resident to that area spend a significant amount of time in the predator area, 77 Fed. Reg. at 25,666, and purported improvements to Wyoming's overall management scheme will somehow prevent mortality to wolves who disperse into the predator area from compromising the recovered status of the wolf population in Wyoming. 76 Fed. Reg. at 61,808. However, Wyoming has not

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disparate treatment of a species immediately following its removal from the federal list of endangered species is particularly troublesome.

sufficiently amended its management scheme and neither the FWS nor the WGFD have enough years of data to understand how a significant increase in the level of wolf mortalities will affect the population of wolves in Wyoming, or in the larger Northern Rocky Mountain region as a whole, which should be the scope of the FWS' analysis of the Wyoming management scheme.

In fact, the FWS and the Wyoming management scheme arbitrarily and capriciously rely on the fact that wolves are able to sustain high levels of human-inflicted mortality. *See* 76 Fed. Reg. at 61,801 (stating that wolves can maintain population levels despite sustained human-caused mortality rates of 22 to greater than 50 percent). However, such reliance on the part of the FWS seems incongruous with the agency's own statement that “[w]olves are unlike coyotes, in that wolf behavior and reproductive biology have resulted in wolves historically being extirpated in the face of extensive human-caused mortality.” *Id.* at 66,807. Moreover, the FWS based its findings on the erroneous belief that much human-caused wolf mortality is compensatory—that most of the wolves killed by humans would have died anyways from other causes. *See id.* at 61,801 (noting that “human-caused mortality can replace up to 70 percent of natural mortality.”) However, recent research indicates that hunting wolves actually causes highly *additive* mortality—mortality in addition to that which would otherwise naturally occur. *See* Creel and Rotella (2010); Murray, et al. (2010).

Additionally, in the Proposed Rule promulgated on October 5, 2011, the FWS assumes that wolves in Wyoming can sustain levels of 36 percent human-caused mortality. 76 Fed. Reg. at 61,801, 61,815. However, the peer review of the Proposed Rule and Wyoming's Wolf Management Plan revealed the arbitrariness of such an assumption. *See* FWS, Final Wyoming Gray Wolf Peer Review Summary Report at 5–6 (Dec. 2011) (“all of the panelists expressed concerns with the use of a 36 percent “acceptable” anthropogenic mortality rate” and recommended that “the proposed rule and Plan should not report the value of 36 percent because it is unsubstantiated and misleading”). Indeed, one panelist presented evidence that wolves in the Northern Rocky Mountains would likely decline if human-caused mortality exceeds *17 percent*. *Id.* at 5. Although Wyoming's 2012 Addendum to its Wolf Management Plan states that it intends to manage for a range of 22–34 percent human-caused mortality, this management mechanism *only applies* in the WTGMA area, and does not account for human-caused mortality in the predator area or the fact that human-caused wolf mortality is additive mortality. *See* WDFG, Addendum: Wyoming Gray Wolf Management Plan at 8 (March 22, 2012). As such, the state-wide mortality rate is likely to be much higher. Accordingly, the FWS's

has not properly analyzed the effect of hunting on the Northern Rocky Mountain wolf population and its decision to delist wolves in Wyoming would be arbitrary and capricious.

### Wyoming's Management Plan Fails to Contain an Adequate Buffer

The FWS also rejected a previous iteration of Wyoming's wolf management plan in 2003 because, *inter alia*, "the plan failed to clearly commit to managing for at least 15 wolf packs in Wyoming" and was thus insufficiently protective of wolves. *Defenders*, 565 F.Supp.2d at 1172. Wyoming's regulatory mechanisms still fail to clearly commit to managing for at least 15 wolf packs in the state and fail to clearly commit to managing for a sufficient buffer above the minimum recovery criteria of 10 breeding pairs and 100 wolves.<sup>4</sup> Despite the FWS's heavy reliance on Wyoming's 2012 Addendum to its 2011 Wolf Management Plan in the Federal Register notice announcing the reopening of the comment period, the Addendum does not amend or otherwise change Wyoming's 2011 Gray Wolf Management Plan. As such, the Addendum cannot be an adequate ground on which to justify the FWS's decision to delist the gray wolf in Wyoming. Indeed, the FWS repeatedly acknowledges that the Addendum merely "reaffirms" Wyoming's prior commitments made under its 2011 Gray Wolf Management Plan to manage for at least 10 breeding pairs and at least 100 wolves in Wyoming, *e.g.*, 77 Fed. Reg. at 25,665 – the same plan previously found deficient by a scientific peer review panel. *See* FWS, Peer Review Summary Report at 13 ("Atkins finds that the Plan, as written, does not do an adequate job of explaining how wolf populations will be maintained, and how recovery will be maintained. . . . panelists believe that there should be an explicit process for integrating monitoring data, and for showing how such data will be used to set ongoing management objectives.").

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<sup>4</sup> This figure is based on the FWS's use of recovery criteria of 30 breeding pairs and 300 wolves, which the FWS has allocated equally between Idaho, Montana and Wyoming. 76 Fed. Reg. at 61,719. However, as noted in our comment letter dated January 2012, the best available science supports what is known as the 50/500 rule. Under this rule, 50 breeding individuals are needed for a population to be ecologically viable for the short-term and 500 breeding individuals are needed for a population to be evolutionarily viable for the long-term – i.e., 100 years. *See e.g.*, Soule and Wilcox (1980), Frankel and Soule (1981), Lande (1988), Lande (1995), Frankham (1995), Franklin and Frankham (1998), Fallon (2008), and Palstra and Ruzzante (2008). The use of the 10/100 recovery criteria is based on the FWS's reliance on an *outdated recovery goal* that has existed since 1987. That reliance is not only arbitrary and capricious, but fails to comply with the ESA's mandate that a decision to delist a species be based on the "best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A), (c)(2).

Although Wyoming's 2012 Addendum to its 2011 Gray Wolf Management Plan attempts to "clarify" certain aspects of Wyoming's plan, including the process for managing for a population buffer, 2012 Addendum at 2-3, the Addendum does little more than regurgitate particular aspects of its 2011 Plan. Moreover, confusion remains as to how Wyoming will manage for the buffer. For example, the FWS states that "the buffer would be applied solely within Wyoming's portion of the population in the [WTGMA]," but the Addendum states that wolves within Grand Teton National Park will be counted towards the state's minimum recovery level of at least 10 breeding pairs and at least 10 individual wolves. 2012 Addendum at 3.

Finally, despite the FWS's contentions to the contrary, when the entire statutory and regulatory scheme of wolf management in Wyoming is considered, it is not clear that Wyoming intends to manage for at least 15 breeding pairs or for a sufficient buffer. While the 2012 Addendum and the 2011 Management Plan state that Wyoming will manage for a sufficient buffer above the 10/100 recovery criteria, this specific management requirement is *not expressly included in recently enacted statutory or regulatory amendments* and thus is not a clearly enforceable duty of the agency. The FWS cannot base its delisting decision on the mere promises of the state. *See Or. Natural Res. Council v. Daley*, 6 F. Supp.2d 1139, 1155 (D. Or. 1998) ("[a]bsent some method of enforcing compliance," state conservation plans do not qualify as "regulatory mechanisms" under the ESA); *Greater Yellowstone Coal. v. Servheen*, 672 F. Supp.2d 1105, 1116 (D. Mont. 2009) ("[a]n 'intention' or 'commitment' to manage [a species] a certain way is not a regulatory mechanism" that can be relied on in making delisting decisions), *aff'd in part and rev'd in part on other grounds*, 665 F.3d 1015 (9th Cir. 2011). Such a failure is particularly troubling in light of the fact the best available science indicates that the 10/100 recovery criteria do not constitute a recovered wolf population and is inadequate to ensure the long-term viability of the population.

### Wyoming's Lethal Take Permits Fail To Adequately Protect Wolves

In its recent statutory amendments, Wyoming enacted "significant change[s]" to the provisions applicable to lethal take permits in chronic wolf depredation areas. 77 Fed. Reg. at 25,666. Specifically, the proposed amendment explained that the WGFD "may" issue lethal take permits in chronic depredation areas. *Id.* However, the amendment as enacted entirely removes the WGFD's discretion such that the agency is now *required* to issue lethal take permits upon discovery that a wolf has harassed, injured, or killed livestock or domestic animals. *See* Wy. St. § 23-1-304(n), *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41) (depredations permits "shall be issued as long as the removals authorized by such permits could not reduce the

numbers of gray wolves below ten (10) breeding pairs or a total of one hundred (100) individual gray wolves within the state and outside Yellowstone National Park and the Wind River Indian Reservation”). Notably, this statutory provision *mandates* that the WGFD issue depredation permits until the state’s wolf population reaches the minimum recovery criteria, *without allowing for a buffer* above those criteria. Moreover, the regulatory amendments implementing the statute require the issuance of lethal take permits if requested by an owner of property where “a gray wolf or wolves *are occupying* a chronic wolf predation area.” Wy. Rules & Regs Game Hunt, Ch. 21, Sec. 6(b), *as amended* (emphasis added). In other words, the WGFD is required to issue a lethal take permit based on the *mere presence* of wolves in a particular area, regardless of whether the wolves have killed or injured livestock or domestic animals.

In the Federal Register notice announcing reopening of the comment period on the Proposed Rule, the FWS notes that based on these changes, “lethal take permits could become a significant source of mortality if [the FWS] delist[s] the gray wolf in Wyoming,” 77 Fed. Reg. at 25,666, but claims that “numerous safeguards are in place that limit their potential to meaningfully and detrimentally impact the population.” *Id.* While the recently enacted statutory and regulatory provisions limit the duration of the permits to 45 days, limit the take under each permit to two wolves, and specify that the permit can only apply in a specific limited geographic or legally described area, there is *no limit* on the number of such permits that may be issued nor any conditions or limits on the geographic area that may be delineated. *See* Wy. St. § 23-1-304(n), *as amended by* 2012 Wy. Laws Ch. 25 (S.F. 41); Wy. Rules & Regs Game Hunt, Ch. 21, Sec. 6(b), *as amended*. Indeed, the regulations expressly state that lethal take permits “may be renewable in 45-day intervals.” Wy. Rules & Regs Game Hunt, Ch. 21, Sec. 7(b)(vii), *as amended*. Put differently, there is no limit on the numbers of wolves that can be killed under this scheme.

The purported safeguards will not provide meaningful protections for wolves and as such it is highly probable that lethal take permits will become “a significant source of mortality” if the FWS delists the gray wolf in Wyoming. 77 Fed. Reg. at 25,666. The FWS’s decision to delist the gray wolf in light of this significant source of human-caused mortality, the effects of which it has failed to properly analyze, would be arbitrary and capricious.

## The FWS Failed to Consider the Impacts of Future Hunting in the John D. Rockefeller, Jr. Memorial Parkway

In the Federal Register notice announcing the reopening of the public comment period on the Proposed Rule, the FWS notes that while some hunting is current allowed in the John D. Rockefeller, Jr. Memorial Parkway (“the Parkway”) under the Parkway’s enabling legislation and Wyoming law, “Wyoming’s hunting regulations are clear that gray wolf hunting would be closed in the Parkway for at least 2012.” 77 Fed. Reg. at 25,667. However, because the Parkway’s enabling legislation mandates it be managed for hunting, Pub. Law 92-404, 86 Stat. 619-620 (1972), it is possible that wolves may be hunted in the Parkway in the future. The FWS, however, completely fails to consider the effects of future hunting in this area. The Parkway is the 24,000-acre connection between Yellowstone National Park and Grand Teton National Park, *see id.*, and is a crucial connection north and south between the two Parks as well as east to west between the Greater Yellowstone Area (“GYA”) and Central Idaho and Northwest Montana. Accordingly, the Parkway serves a critical role for providing for genetic connectivity in the area.

A basic concept of the recovery plan for the Northern Rocky Mountain gray wolf is that the three recovery areas must form a “metapopulation. . . with genetic exchange between subpopulations.” 76 Fed. Reg. at 61,791; *see also Defenders*, 565 F. Supp.2d at 1169. While some genetic connectivity has been demonstrated between the three subpopulations, vonHoldt et al. (2010), the GYA subpopulation continues to be the most isolated of the three subpopulations. 76 Fed. Reg. at 61,791. Now that management conditions in the region are focused on population *reduction*, the connectivity necessary for maintaining recovery *is not likely to occur*. Maintaining sufficient numbers of wolves in key areas and protecting dispersal corridors is essential to assuring that genetic connectivity within the Northern Rocky Mountain population is maintained, particularly because genetic connectivity among the Northern Rocky Mountain’s three wolf subpopulations is certain to decline following the delisting of wolves in Wyoming. As such, the FWS must consider the effects on the population from future hunting in the Parkway.

### **Conclusion**

In sum, the FWS’s proposal to remove ESA protections for the gray wolf in Wyoming is arbitrary and capricious and fails to comply with the requirements of the ESA and its implementing regulations. The FWS cannot lawfully remove such protections unless and until it establishes that wolves have recovered throughout the entire Northern Rocky Mountain population based on the best available science,

and unless and until the existing regulatory mechanisms are adequate to ensure the long-term survival of the species once federal protections are removed.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Henry". The signature is stylized and cursive.

Ralph Henry  
Deputy Director, Animal Protection Litigation  
The Humane Society of the United States