

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-008]

[92220-1113-0000; ABC Code: C6]

RIN 1018-AW37

Endangered and Threatened Wildlife and Plants; Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On February 8, 2007, we, the U.S. Fish and Wildlife Service (Service), published a proposed rule to establish a distinct population segment (DPS) of the gray wolf (Canis lupus) in the Northern Rocky Mountains (NRM) of the United States and to remove the gray wolf in the NRM DPS from the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act) (72 FR 6106). On February 27, 2008, we issued a final rule establishing and delisting the NRM gray wolf DPS (73 FR 10514). Several parties filed a lawsuit challenging our final rule and asking to have it enjoined. On July 18, 2008, the U.S. District Court for the District of Montana enjoined the Service's implementation of the final delisting rule, after concluding that Plaintiffs were likely to prevail on merits of their claims. In light of this decision, we asked the court to vacate the final rule and remand it to us. On October 14, 2008, the court issued an order vacating our February 27, 2008, final rule (73 FR 10514) and remanding it back to the Service for further consideration.

We announce the reopening of the comment period for our February 8, 2007, proposed rule (72 FR 6106). We now intend to reconsider our 2007 proposed rule and issue a new listing determination. We seek information, data, and comments from the public regarding the 2007 proposal with an emphasis on new information relevant to this action, the issues raised by the Montana District Court (described in more detail below), and the issues raised by the September 29, 2008, ruling of the U.S. District Court for the District of Columbia with respect to the Western Great Lakes gray wolf DPS (also described in more detail below). If you have previously submitted comments, please do

not resubmit them because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: We request that comments on this proposal be submitted by the close of business on **[INSERT DATE 30 DAYS AFTER THE FEDERAL REGISTER PUBLICATION DATE]**.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AW37; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 585 Shepard Way, Helena, MT 59601 or telephone (406) 449-5225, extension 204. Individuals who are hearing-

impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we hereby request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Whether it is appropriate or necessary to revise our recovery goal (described below) to clarify that the genetic exchange called for can be satisfied through either natural migration or managed genetic exchange.

(2) What additional management, protections, and regulatory mechanisms may be needed to facilitate genetic exchange (including both natural migration and managed genetic exchange) including the actions outlined in the draft memorandum of understanding regarding the protection of genetic diversity of NRM gray wolves (available online at: <http://westerngraywolf.fws.gov>).

(3) What portions of Wyoming need to be managed as a trophy game area, how Wyoming should manage wolves in the trophy game area, and the significance of all portions of the range in the State of Wyoming in maintaining the viability of the NRM DPS.

(4) The adequacy of existing regulatory mechanisms in Montana, Idaho, and Wyoming, including whether Wyoming's regulatory mechanisms do or should manage for 15 breeding pairs and 150 wolves in mid-winter and if Wyoming's malleable trophy game area affects its ability to manage for such numbers of wolves.

(5) If we determine that Wyoming's State law and State wolf management plan do not constitute adequate regulatory mechanisms, the area in northwestern Wyoming that is a significant portion of the range of the NRM DPS that should retain its nonessential experimental population status under section 10(j) of the Act, even if we determine the rest of the DPS should be delisted.

(6) How Idaho, Montana, and Wyoming's management of take associated with their defense of property laws and hunting regulations affects each State's commitment and ability to manage for 15 breeding pairs and 150 wolves in mid-winter.

(7) Whether and under what authority the Service may identify and designate a DPS within a broader pre-existing listing and determine that this DPS should be removed from the endangered species list.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the ADDRESSES section. We will not accept comments sent by e-mail or fax or to an address not listed in the ADDRESSES section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive or mailed comments that are not postmarked by the date specified in the DATES section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information in addition to the required items specified above, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Background

Northern Rocky Mountains DPS Rulemaking and Litigation - On February 8, 2007, we proposed to designate the NRM DPS of the gray wolf and to delist all or most of the NRM DPS (72 FR 6106). Specifically, we proposed to delist wolves in Montana, Idaho, and Wyoming, and parts of Washington, Oregon, and Utah. The proposal noted

that the area in northwestern Wyoming outside the National Parks (i.e., Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller Memorial Parkway) would only be delisted in the final rule if the Service subsequently determined that adequate State regulatory mechanisms were developed. If adequate regulatory mechanisms were not developed, we were considering a final rule that would have continued to protect wolves under the Act and retained their nonessential experimental status in the significant portion of the range in northwestern Wyoming, outside the National Parks, while removing the Act's protections in the remainder of the DPS.

On July 6, 2007, the Service extended the comment period in order to consider a 2007 revised Wyoming wolf management plan and State law (available online at: <http://westerngraywolf.fws.gov>) that we stated, if implemented, could allow the wolves in northwestern Wyoming to be removed from the List of Endangered and Threatened Wildlife (72 FR 36939). On November 16, 2007, the Wyoming Game and Fish Commission unanimously approved the 2007 Wyoming Plan (Cleveland 2007, p. 1). We then determined this plan provided adequate regulatory protections to conserve Wyoming's portion of a recovered wolf population into the foreseeable future (Hall 2007, pp. 1-2). On February 27, 2008, we issued a final rule establishing the NRM gray wolf DPS and removing the entire DPS from the List of Endangered and Threatened Wildlife (73 FR 10514).

On April 28, 2008, 12 parties filed a lawsuit challenging the designation and delisting of the NRM DPS. The plaintiffs also moved to preliminarily enjoin the

delisting. On July 18, 2008, the U.S. District Court for the District of Montana granted the plaintiffs' motion for a preliminary injunction and enjoined the Service's implementation of the final delisting rule for the NRM DPS of the gray wolf. The court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of genetic exchange between subpopulations. The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 statute and wolf management plan because the State failed to commit to managing for 15 breeding pairs and Wyoming's 2007 statute allowed the Wyoming Fish and Wildlife Commission to diminish the trophy game area if it "determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves." The court's preliminary injunction order (available online at: <http://westerngraywolf.fws.gov>) concluded that the Plaintiffs were likely to prevail on the merits of their claims. In light of the district court decision, on September 22, 2008, we asked the court to vacate the final rule and remand it to us. On October 14, 2008, the court vacated the final delisting rule and remanded it back to the Service for further consideration.

Western Great Lakes DPS Rulemaking and Litigation - Some persons who commented on our proposed rule asserted that the Service may not designate a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS. This issue is also the subject of a recent decision of the U.S. District Court for the District of Columbia, which remanded and vacated the February 7, 2008, final rule that established the Western Great Lakes DPS of gray wolves and determined that it should be delisted (72 FR 6052). The court found that the Service had made that decision based on its

interpretation that the plain meaning of the ESA authorizes the Service to create and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service can provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act (Humane Society of the United States v. Kempthorne, Civil Action No. 07-0677 (PLF) (D.D.C., Sept. 29, 2008)).

The Service is considering how to proceed with the Western Great Lakes gray wolf DPS. In the meantime, it is our view that the plain language of the Act does provide the Service with the flexibility to designate a DPS within a broader pre-existing listed entity and then to determine the correct conservation status of the DPS pursuant to section 4(a)(1) of the Act (i.e., endangered, threatened, or neither), even though the conservation status of the broader entity may differ. Alternatively, the Service has reasonably interpreted the Act through the DPS Policy (61 FR 4722, February 7, 1996) and other actions as authorizing the Service to designate a DPS within a broader entity and determine its proper conservation status, even if that means that the DPS is delisted.

Given the court rulings and orders described above, we now intend to issue a revised listing determination for the NRM gray wolf DPS to address the issues noted by the courts and other new information relevant to this action. We also will comprehensively address other issues outlined in the complaint and a notice of intent to

sue. Several of the most important issues being reconsidered are discussed below. Comments are also requested on each of these issues.

Recent Status and Distribution Information

In mid-September of each year we estimate the number of wolves, packs, and breeding pairs, as well as livestock depredations and wolves killed as a result of agency-authorized control. These counts are preliminary, because wolf counting conditions are most accurate in early winter due to snow cover. Consequently, the estimates given below should be interpreted cautiously. The only “official” annual wolf population statistics are provided in the interagency annual report, which is normally available in March each year.

Our annual mid-September wolf population estimate indicates that the overall NRM wolf population in 2008 will be about the same as it was in 2007. We also predict that both livestock depredations and problem wolf removal in 2008 will be slightly higher than they were in 2007.

Our mid-September 2007 estimate indicated that this time last year there were approximately 1,544 wolves (394 in Montana; 788 in Idaho; 362 in Wyoming) in 179 packs (71 in Montana; 75 in Idaho; 33 in Wyoming) with 105 of those classified as breeding pairs (37 in Montana; 41 in Idaho; 27 in Wyoming). Our mid-September 2007 estimate indicated wolves had killed 112 cattle (48 in Montana; 36 in Idaho; 28 in

Wyoming), 185 sheep (19 in Montana; 150 in Idaho; 16 in Wyoming), 10 dogs (1 in Montana; 7 in Idaho; 2 in Wyoming), and a horse (in Montana). In response, 135 depredating wolves (50 in Montana; 40 in Idaho; 45 in Wyoming) had been killed.

Our mid-September 2008 estimate indicated there were approximately 1,463 wolves (360 in Montana; 771 in Idaho; 332 in Wyoming) in 197 packs (74 in Montana; 89 in Idaho; 34 in Wyoming) with 97 of those classified as breeding pairs (36 in Montana; 39 in Idaho; 22 in Wyoming). Our mid-September 2008 estimate indicated wolves had killed 170 cattle (44 in Montana; 81 in Idaho; 45 in Wyoming), 244 sheep (39 in Montana; 189 in Idaho; 16 in Wyoming), 10 dogs (in Idaho), and 6 llamas (in Montana). In response, 172 depredating wolves (60 in Montana; 81 in Idaho; 31 in Wyoming) had been killed.

No unusual wolf dispersal events were documented in the NRM DPS in 2008. A radio-collared wolf from central Idaho continues to live in Yellowstone National Park, but it has not joined an existing pack, nor did it appear to breed in 2008. A report of a pack of wolves in northeastern Utah east of Flaming Gorge Reservoir (outside the proposed NRM DPS) was investigated in spring 2008. The existence of this pack was not confirmed. A report of a wolf pack with pups in northeastern Oregon (inside the proposed NRM DPS) was investigated in August 2008. The existence of this pack was not confirmed.

A wolf pack (2 adults and 6 pups) was discovered near Twisp, Washington, in July 2008. Their territory is outside the proposed NRM DPS border. Genetic analysis indicated the two adults did not come from the wolf population in the NRM DPS. Instead, they likely originated from southcentral British Columbia. The pack is being monitored via radio telemetry by Washington Department of Fish and Wildlife (WDFW). On August 22, 2008, the WDFW published a draft State wolf management plan for public review and comment. The comment period for this plan runs through October 27, 2008. The WDFW anticipates their proposed plan will be revised and sent to the Washington Fish and Wildlife Commission for approval in late 2009.

We are reopening the public comment period on our 2007 delisting proposal to allow the public to consider and comment on all new information on the NRM wolf population and issues regarding the proposed delisting on this population including that which is summarized in this notice.

Genetics Relative to our Recovery Criteria

The Service's current recovery goal for the NRM gray wolf population is: Thirty or more breeding pairs (an adult male and an adult female that raise at least 2 pups until December 31) comprising 300+ wolves in a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations (USFWS 1994; Fritts and Carbyn 1995). Step-down recovery targets require Montana, Idaho, and Wyoming to each maintain at least 10 breeding pairs and 100 wolves by

managing for a safety margin of 15 breeding pairs and 150 wolves in mid-winter. The NRM wolf population met the numeric recovery goal of at least 30 breeding pairs and at least 300 wolves in mid-winter for the first time in 2000. By the end of 2008, the NRM wolf population will have surpassed the numerical recovery goal for 9 consecutive years.

As stated above, the current recovery goal also notes the goal of a metapopulation with genetic exchange between subpopulations. In its discussion of this issue, our 1994 environmental impact statement (Service 1994, appendix 9) said a recovered NRM wolf population would be composed of three parts or subpopulations (Yellowstone, central Idaho, and northwestern Montana), which in combination would be called a metapopulation. Such a metapopulation structure would depend on wolves from a healthy subpopulation to rekindle a neighboring subpopulation should it experience disruptions from stochastic events like fire, disease, human-caused mortality, or reduced genetic viability (Service 1994, appendix 9). The 1994 environmental impact statement (Service 1994, appendix 9) stated that the need for ongoing genetic exchange is lessened where the population is large, not completely isolated, and diversity is inherently high due to a large number of genetically diverse founders; all three NRM DPS subpopulations meet this standard.

Currently, genetic diversity throughout the NRM is very high (Forbes and Boyd 1996, p. 1084; Forbes and Boyd 1997, p. 226; vonHoldt et al. 2007, p. 19). Wolves in northwestern Montana and both the reintroduced populations are as genetically diverse as their source populations in Canada; thus, inadequate genetic diversity is not a wolf

conservation issue in the NRM at this time (Forbes and Boyd 1997, p. 1089; vonHoldt et al. 2007, p. 19). As a result, there is currently no need for management activities designed to increase genetic diversity anywhere in the NRM DPS.

The July 18, 2008, U.S. District Court for the District of Montana decision cited vonHoldt et al. (2007), which concluded “if the Yellowstone [National Park] wolf population remains relatively constant at 170 individuals (estimated to be Yellowstone [National Park’s] carrying capacity), the population will demonstrate substantial inbreeding effects within 60 years,” resulting in an “increase in juvenile mortality from an average of 23 to 40%, an effect equivalent to losing an additional pup in each litter.” The court also cited previous Service statements that call for “genetic exchange” among recovery areas. The court further stated that dispersal of wolves between the Greater Yellowstone Area and the northwestern Montana and central Idaho core recovery areas was “a precondition to genetic exchange.” The preliminary injunction order cited our 1994 environmental impact statement (Service 1994) and vonHoldt et al. (2007) to support its conclusion.

We question many of the assumptions that underpin the vonHoldt et al. (2007) study’s conclusions. First, while the study found no evidence of genetic exchange into Yellowstone National Park (8,987 km² (3,472 mi²)), the Park is only a small portion of the Greater Yellowstone Area (63,700 km² (24,600 mi²)). Further limiting the study’s ability to detect genetic exchange among subpopulations is the fact that most wolves that disperse to the Greater Yellowstone Area tend to avoid areas with existing resident packs

or areas with high wolf densities, such as Yellowstone National Park. Moreover, even among the Yellowstone National Park wolves the study was limited to a subsample of Park wolves from 1995-2004 (i.e., the radio collared wolves). It is important to consider that our ability to detect genetic exchange within the NRM population is further limited by the genetic similarity of the NRM subpopulations. Specifically, because both the central Idaho and Greater Yellowstone Area subpopulations originate from a common source, only first generation offspring of a dispersing wolf can be detected. Additional genetic analysis of wolves from throughout the NRM population, including a larger portion of the Greater Yellowstone Area than just Yellowstone National Park, is ongoing.

Second, the vonHoldt et al. (2007) prediction of eventual inbreeding in Yellowstone National Park relies upon several unrealistic assumptions. One such assumption limited the wolf population analysis to Yellowstone National Park's (8,987 km² (3,472 mi²)) carrying capacity of 170 wolves, instead of the more than 300 wolves likely to be managed for in the entire Greater Yellowstone Area (63,700 km² (24,600 mi²)) by Montana, Idaho, and Wyoming. The vonHoldt et al. (2007) predictive model also capped the population at the Yellowstone National Park population's winter low point, rather than at higher springtime levels when pups are born. Springtime levels are sometimes double the winter low.

It is our current professional judgement that even in the highly unlikely event that no new genes enter Yellowstone National Park or the Greater Yellowstone Area in the next 100 years, that wolf population's currently high genetic diversity would be slightly

reduced, but not to the point the Greater Yellowstone Area wolf population would be threatened. Review of the scientific literature shows that, throughout the world, truly isolated wolf populations that are far smaller and far less genetically diverse than the Greater Yellowstone Area population have persisted for many decades and even centuries (Fritts and Carbyn 1995, p. 33; Boitani 2003, pp. 322-23, 330-335; Liberg 2005, pp.5-6; 73 FR 10514, February 27, 2008). Additionally, in mate selection, wolves have a strong tendency to avoid inbreeding by selecting breeders based on genetic difference; the vonHoldt et al. (2007) study proved this in Yellowstone National Park. Thus, the predictions by the Vortex model used by vonHoldt et al. (2007) were overly pessimistic regarding the potential effect of theoretical future inbreeding, because it ignored the strong outbreeding selection by wolves. Natural wolf mate selection tendencies show that future dispersers into a system experiencing some level of inbreeding would be much more likely to be selected for breeding and have their genes incorporated into the inbred population (Bensch et al. 2006, p. 72; vonHoldt et al. 2007, p. 1; 73 FR 10514, February 27, 2008). Introduction of just one or two new genetic lines can save a severely inbred small wolf population (Vila et al. 2003, p. 9; Liberg et al. 2004; Liberg 2005, pp. 5-6; Mills 2007, pp. 195-196; Fredrickson et al. 2007, p. 2365; 73 FR 10514, February 27, 2008).

Multiple approaches may be taken to facilitate genetic exchange between subpopulations, including natural migration or, if necessary, genetic management (moving individual wolves or their genes into the affected population segment). We have never suggested, nor does the recovery goal require, that natural migration is the only

approach to address this potential issue (USFWS 1994, appendix 9). Furthermore, detection of such natural genetic exchange is not required by the recovery goal and would not be practical to require in routine monitoring protocols. Therefore, a revised listing determination may review the recovery goal and any inaccurate implication that the recovery goal requires natural connectivity. This review could result in a revision of our recovery goal and a clarification of the appropriate range of options for maintaining or increasing genetic diversity in the NRM wolf population.

In terms of natural migration, the northwestern Montana and central Idaho core recovery areas are well connected to each other, and to wolf populations in Canada, through regular dispersals. These subpopulations have established genetic and demographic linkages. The Greater Yellowstone Area is the most isolated core recovery area within the NRM DPS (Oakleaf et al. 2006, p. 554; vonHoldt et al. 2007, p. 19). Radio telemetry data indicate that about one wolf per year disperses into the Greater Yellowstone Area from the other recovery areas. However, natural connectivity is not and has never been required to achieve our recovery goal.

Human intervention in maintaining recovered populations is necessary for many conservation-reliant species and a well-accepted practice in dealing with population concerns (Scott et al. 2005). The 1994 wolf reintroduction environmental impact statement indicated that intensive genetic management might become necessary if any of the sub-populations developed genetic demographic problems (USFWS 1994). The 1994 wolf reintroduction environmental impact statement went on to say that other wolf

programs rely upon such agency-managed genetic exchange and that the approach should not be viewed negatively (USFWS 1994). An example of successful managed genetic exchange in the NRM population was the release of 10 wolf pups/yearlings translocated from northwestern Montana to Yellowstone National Park in the spring of 1997. Future managed genetic exchange could include relocating other wolf age and sex classes, cross-fostering young pups, artificial insemination, or other means of introducing novel wolves or wolf DNA (deoxyribonucleic acid) into a recovery area if it were ever to be needed.

As we continue to evaluate and possibly reconsider this portion of our recovery goal, we request comments on the role, if any, that natural genetic exchange should play in maintenance of the NRM wolf population's genetic diversity. Applying specific management practices in targeted geographic areas may further encourage successful natural wolf dispersal and natural genetic exchange. Some possible management practices to consider include: reducing the rate of population turnover and fostering persistent wolf packs in all or select core recovery segments or all or select areas of suitable habitat (Oakleaf et al. 2006; 72 FR 6106, February 8, 2007); creating occasional disruptions of wolf pack structure or reduced wolf density in select areas of suitable habitat to create social vacancies or space for dispersing wolves to fill; maintaining higher rather than lower overall wolf numbers in all or select recovery areas; maintaining more contiguous and broader wolf distribution instead of disjunction and limited breeding pair distribution; minimizing or precluding human-caused wolf mortality between and around core recovery segments during critical wolf dispersal and breeding periods (December through April); and reducing the rates of or eliminating human-

caused mortality in core recovery segments during denning and pup rearing periods (April through September).

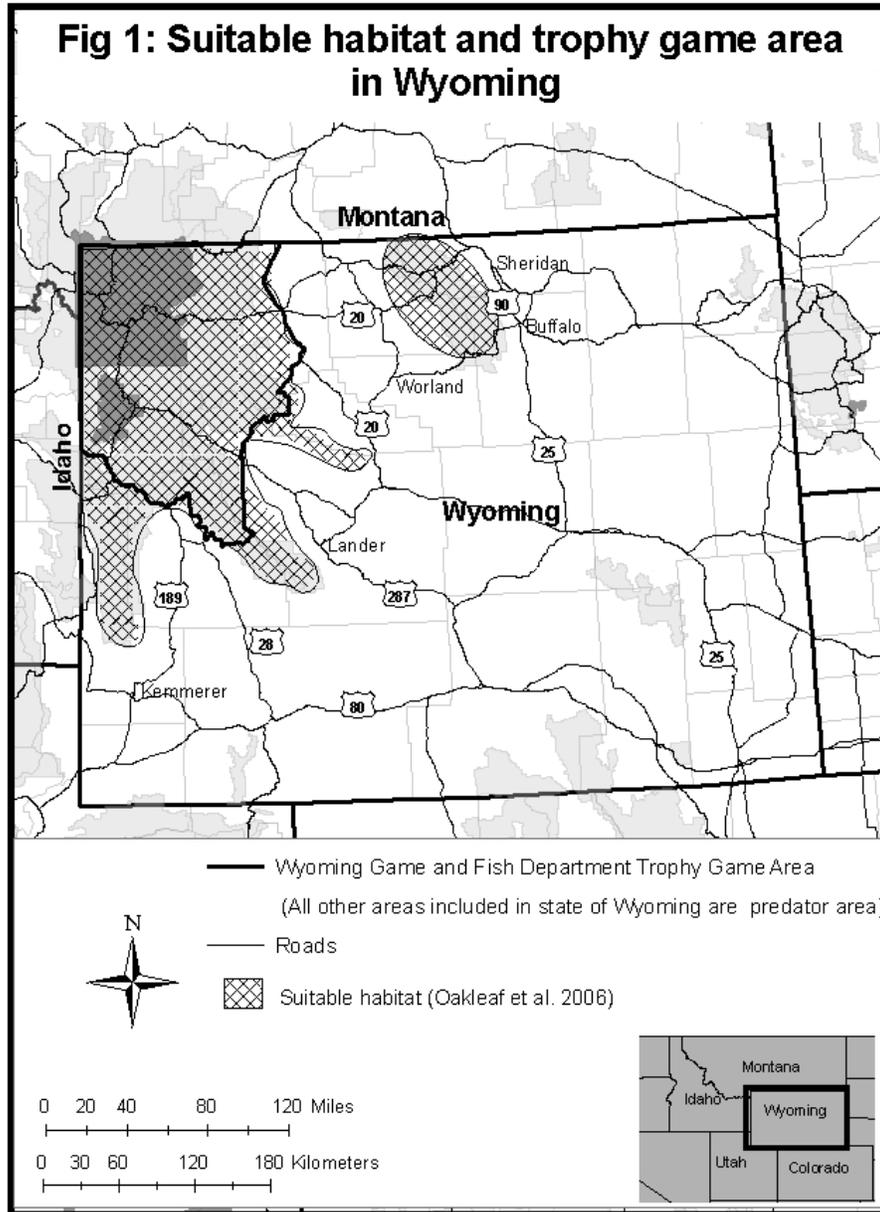
The current post-delisting wolf management approach encourages, but does not require, natural dispersal and natural genetic exchange between core recovery areas. Under this approach some State management practices for delisted wolves could preclude or significantly reduce the opportunity for natural genetic exchange between core recovery segments. Under the current post-delisting wolf management approach, should any genetic problems materialize, they would be addressed through the managed genetic exchange committed to by the States.

Given the recent court ruling, we intend to consider in our new listing determination if additional monitoring and management of wolf dispersal and natural genetic exchange between core recovery areas is necessary. A draft memorandum of understanding (available at: <http://westerngraywolf.fws.gov>) outlines some of the strategies that we and the States might use to further facilitate natural genetic exchange. We welcome comments on this draft memorandum of understanding.

Wyoming's current regulatory framework for delisted wolves minimizes the likelihood of successful migration through the area designated as predatory animals by Wyoming statute. As part of an expanded effort to facilitate natural genetic exchange, we also intend to consider whether it would be appropriate or necessary for Wyoming's

trophy game area to be expanded and its predatory control area decreased. Wolf dispersal patterns suggest dispersing wolves moving into the Greater Yellowstone Area from Idaho or Montana tend to move through the predatory area. Physical barriers (such as high-elevation mountain ranges that are difficult to traverse in winter) appear to discourage dispersal through the National Parks' northern and western boundaries. Limited social openings in the National Parks' wolf packs also direct dispersing of wolves from Idaho and Montana toward the predatory area portions of Wyoming. Finally, Wyoming's winter elk feeding grounds attract and could potentially hold dispersing wolves in the predatory area. We believe dispersal is more likely to lead to genetic exchange if dispersers have safe passage through the predatory area. Figure 1 illustrates the current Wyoming trophy game area and the suitable habitat in Wyoming (Oakleaf et al. 2006; 72 FR 6106, February 8, 2007). We are accepting comments on the current and adequate alternative boundaries of Wyoming's trophy game area, the current authority of the State to reduce the trophy game area, as well as the significance of all portions of the range in the State of Wyoming in maintaining the viability of the NRM wolf population. Additional information on significant portion of its range can be found in the 2007 solicitor's opinion (available at: <http://www.doi.gov/solicitor/opinions/M37013.pdf>) and in our 2007 proposed rule (72 FR 6106, February 8, 2007).

Fig 1: Suitable habitat and trophy game area in Wyoming



Implementation of the draft memorandum of understanding and protecting wolves throughout a larger portion of Wyoming would make it even more unlikely that managed genetic exchange would be necessary in the foreseeable future. However, if genetic problems ever materialize, they could be resolved by agency-managed genetic exchange.

Both the current post-delisting wolf management approach and the expanded effort to facilitate natural genetic exchange described above allow for eventual managed genetic exchange should it become necessary. During our recent litigation, the plaintiffs contended that delisting required an all-natural approach to maintaining genetic diversity. We invite the public to comment on the potential application of an all-natural approach versus the alternative approaches laid out above.

New State Laws, Policies, and Regulations

Since publication of our 2007 proposed rule, a number of State laws, policies, and regulations have been developed that could impact the long-term viability of the NRM gray wolf population. Below we discuss each of these regulatory developments.

Wyoming – The U.S. District Court for the District of Montana’s preliminary injunction order cited several examples of what it perceived as deficiencies in the adequacy of Wyoming’s regulatory mechanisms. The court stated that plaintiffs were likely to prevail on their claim that Wyoming State law did not commit the State to

maintaining 15 breeding pairs of wolves. We have long maintained that Wyoming, Montana, and Idaho must each manage for 15 breeding pairs and 150 wolves in mid-winter to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 wolves per State. We are accepting comments on the ability of Wyoming State law and their management plan to satisfy this necessary commitment.

Further, the preliminary injunction order questioned our approval of a trophy game area that we estimate as 12 percent of the land area of the State and 70 percent of the suitable habitat (Oakleaf et al. 2006; 72 FR 6106, February 8, 2007) and that could be reduced by the Wyoming Fish and Wildlife Commission. Wolves are unlikely to survive in the 88 percent of Wyoming where they are classified as predatory animals. Potential expansion of the predatory animal area could further limit occupancy in Wyoming. The court concluded that the plaintiffs were likely to prevail on their claim that the Wyoming State law and management plan were not adequate regulatory mechanisms. Based on the concerns expressed by the U.S. District Court, we also are accepting comments on the size and “malleability” of the trophy game area, including whether a larger or Statewide trophy game area designation for wolves is necessary.

The court also stated that the State management regime in regard to control of wolves in defense of property and take associated with a hunt presented the possibility of irreparable harm to the population. The court also was concerned about the “expansive” nature of take authorized Wyoming’s depredation control law. On March 13, 2008, the

Wyoming Game and Fish Commission adopted regulations (Wyoming Chapter 21) for the management and control of gray wolves designated as trophy game animals.

Wyoming's hunting season was designed around an allowable hunter-caused mortality in each of four hunting districts in the trophy game area. Hunting would end by December 31 or when 25 wolves had been harvested, whichever is sooner. This level of hunter-caused mortality would likely result in a Wyoming wolf population outside the National Parks of just under 200 wolves by mid-winter 2008. Wolves in the National Parks would not be substantially affected by a regulated public hunt, as hunting is not allowed in National Parks and our data demonstrate that wolves rarely leave the parks during the time period when the fall hunting season would occur. As a result of the court's July 18, 2008, order, the delisting was preliminarily enjoined, thus barring the implementation of the 2008 hunting season. We invite public comment on Wyoming's management regime in regard to control of wolves in defense of property and take associated with a hunt.

The Wyoming State law, their wolf management plan, their implementing regulations (Wyoming Chapter 21), and other supporting information are available on our website at: <http://westerngraywolf.fws.gov>.

Idaho – The court stated that Idaho's depredation control law was not likely to threaten the continued existence of the wolf in Idaho because that State has committed to managing for at least 15 breeding pairs. However, the court also specifically noted that

Idaho's final wolf hunting regulations set a quota of 428 wolves from all causes of mortality Statewide with the season set to end December 31, 2008. Mortality limits also were set by zone so that once reached, the hunting season for that zone would be closed. As implemented, Idaho included all take in defense of property in the above total allowable mortality levels. Mandatory reporting of harvest or defense of property take is required within 72 hours. The court's July 18, 2008, order preliminarily enjoining the delisting rule prevented implementation of the 2008 hunting season. Had the hunting season occurred, this level of wolf mortality would have likely resulted in a remaining wolf population in Idaho of at least 518 wolves by mid-winter 2008. We invite public comment on these potential sources of take and the adequacy of Idaho's regulatory mechanisms. Hunt and defense of property laws, regulations, and other background information can be viewed at: <http://westerngraywolf.fws.gov>.

Montana – The court stated that Montana's depredation control law was also not likely to threaten the continued existence of the wolf. Montana's wolf hunting regulations would have established a quota-based system in which the total hunter harvest within a hunting district was pre-determined after taking into account the level and causes of non-hunting wolf mortality, reproduction, immigration, and emigration. Montana was to establish wolf harvest quotas for each district and sub-area annually. Up to, but not more than, 25 percent of the total quota for a district was to be harvested in December. The agency recommended, and the Montana Fish, Wildlife, and Parks Commission adopted, a tentative Statewide total harvest quota of 75 wolves for the fall 2008 season. This conservative level of harvest would likely still result in a Statewide increase in the

total wolf population and the number of breeding pairs from the previous year. As a result of the court's July 18, 2008, order, the delisting was preliminarily enjoined, thus barring the implementation of the 2008 hunting season. Montana's commitment to manage for at least 15 breeding pairs ensured licensed public hunting would not occur unless this minimum standard was satisfied. The Montana defense of property policy is similar to the Service's regulations and policies under the experimental population regulations for States with approved post-delisting wolf management plans. Hunt and defense of property laws, regulations, and other background information can be viewed at: <http://westerngraywolf.fws.gov>. We invite public comment on these potential sources of take and the adequacy of Montana's regulatory mechanisms.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 21, 2008

/s/ Kenneth Stansell

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310-55-P

~~[FR Doc. 2008-25629 Filed 10/27/2008 at 8:45 am; Publication Date: 10/28/2008]~~