

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

WILDEARTH GUARDIANS,
ALLIANCE FOR THE WILD ROCKIES,
BIODIVERSITY CONSERVATION ALLIANCE,
CONSERVATION CONGRESS,
FRIENDS OF ANIMALS,
FRIENDS OF THE CLEARWATER,
NATIONAL WOLFWATCHER COALITION, and
WESTERN WATERSHEDS PROJECT

Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE SERVICE

Defendant.

PETITION FOR REVIEW OF AGENCY ACTION

INTRODUCTION

1. The wolf is perhaps the most controversial and persecuted species in the United States. As the author Barry Lopez observed when pondering our treatment of the wolf versus our treatment of other predatory animals:

[T]he wolf is fundamentally different because the history of killing wolves shows far less restraint and far more perversity. A lot of people didn't just kill wolves; they tortured them. They set wolves on fire and tore their jaws out and cut their Achilles tendons and turned dogs loose on them. They poisoned them with strychnine, arsenic, and cyanide,

on such a scale that *millions* of other animals – raccoons, black-footed ferrets, red foxes, ravens, red-tailed hawks, eagles, ground squirrels, wolverines – were killed incidentally in the process. In the thick of the wolf fever they even poisoned themselves, and burned down their own property torching the woods to get rid of wolf havens. In the United States in the period between 1865 and 1885 cattlemen killed wolves with almost pathological dedication. In the twentieth century people pulled up alongside wolves in airplanes and snowmobiles and blew them apart with shotguns for sport. [...]

This is not predator control, and it goes beyond the casual cruelty sociologists say manifest itself among people under stress, or where there is no perception of responsibility. It is the violent expression of a terrible assumption: that men have the right to kill other creatures not for what they do but for what we fear they may do.

Of Wolves And Men, Barry Hostun Lopez, Charles Scribner's Sons, N.Y. 1978 at 139-40.

2. Mr. Lopez's historical inquiry further reveals that the intensity of wolf persecution in North America is largely unprecedented if not entirely unique.

No other wolf killing ever achieved either in geographic scope or economic or emotional scale the predator-control war waged against wolves in the nineteenth and early twentieth centuries in the United States and Canada, ... Eric Zimen, a German wolf biologist, once remarked that he was utterly unable to fathom the relentless carnage. "We killed the wolf in Europe," he said, "and we hated the wolf, but it was not anything like what you have done in America." Even speaking as a prejudiced European he was correct.

Of Wolves And Men, Barry Hostun Lopez, Charles Scribner's Sons, N.Y. 1978 at 169.

3. The Federal Government was a significant participant in this campaign to eradicate the wolf from America:

[T]he federal government passed a law in 1915 providing for the extermination of wolves on federal lands. Stockmen for years had been grazing their animals for a pittance on public land and hounding the government to provide them with wolf hunters at government expense. With an appropriation of \$125,000, the government hired its first government hunters on July 1, 1915. Between then and June 30, 1942, when the program was terminated, these hunters killed 24,132 wolves, mostly in Colorado, Wyoming, Montana, and the western Dakotas. The extermination program even included wolves in the country's national parks.

Of Wolves And Men, Barry Hostun Lopez, Charles Scribner's Sons, N.Y. 1978 at 187.

4. Defendant, the United States Fish and Wildlife Service (“FWS”) seems to have forgotten this sordid history of wolf persecution in American, or perhaps FWS simply prefers to pander to the same old irrational fears and emotions that drove it. Whichever the case, FWS has also forgotten something even more important: Wolves are essential to the Wild, to the health of the land itself. As Aldo Leopold, a founding philosopher of the modern conservation movement, observed over a half century ago in reflecting on his own participation in the Federal Government’s wolf eradication campaigns:

In those days we had never heard of passing up a chance to kill a wolf. In a second we were pumping lead into the pack, but with more excitement than accuracy: how to aim a steep downhill shot is always confusing. When our rifles were empty, the old wolf was down, and a pup was dragging a leg into impassable slide-rocks.

We reached the old wolf in time to watch a fierce green fire dying in her eyes. I realized then, and have known ever since, that there was something new to me in those eyes – something known only to her and to the mountain. I was young then, and full of trigger-itch; I thought that because fewer wolves meant more deer, that no wolves would mean hunters’ paradise. But after seeing the green fire die, I sensed that neither the wolf nor the mountain agreed with such a view.

Since then I have lived to see state after state extirpate its wolves. I have watched the face of many a newly wolfless mountain, and seen the south-facing slopes wrinkle with a maze of new deer trails. I have seen every edible bush and seedling browsed, first to anaemic desuetude, and then to death. I have seen every edible tree defoliated to the height of a saddlehorn. Such a mountain looks as if someone had given God a new pruning shears, and forbidden Him all other exercise. In the end the starved bones of the hoped for deer herd, dead of its own too-much, bleach with the bones of the dead sage, or molder under the high-lined junipers.

I now suspect that just as a deer herd lives in mortal fear of its wolves, so does a mountain live in mortal fear of its deer. And perhaps with better cause, for while a buck pulled own by wolves can be replaced in two or three years, a range pulled down by too many deer may fail of replacement in as many decades. So also with cows. The cowman who cleans his range of wolves does not realize that he is taking over the wolf’s job of trimming the herd to fit the range. He has not learned to think like a mountain. Hence we have dustbowls, and rivers washing the future into the sea.

We all strive for safety, prosperity, comfort, long life, and dullness. The deer strives with his supple legs, the cowman with trap and poison, the statesmen with pen, the most of us with machines, votes, and dollars, but it all comes to the same thing: peace in

our time. A measure of success in this is all well enough, and perhaps is a requisite to objective thinking, but too much safety seems to yield only danger in the long run. Perhaps this is behind Thoreau's dictum: In wildness is the salvation of the world. Perhaps this is the hidden meaning in the howl of the wolf, long known among mountains, but seldom perceived among men.

A Sand County Almanac, and Sketches Here and There, Thinking Like a Mountain, Aldo

Leopold, Commemorative ed. 1989, copyright 1949, Oxford University Press, Inc. at 129-133.

5. Accordingly, through this lawsuit, Plaintiffs challenge FWS's decision to remove Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*, protection from the gray wolf, *Canis lupus*, in Wyoming. FWS's final rule is published in the Federal Register at 77 Fed. Reg. 55,530 (September 10, 2012). Plaintiffs further challenge FWS's failure to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, in their decision as to where to draw a line dividing the State of Wyoming into two zones: one in which wolves will be permitted to survive, and the other, vastly larger, in which FWS acknowledges wolves will be exterminated.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this lawsuit presents a federal question under the laws of the United States, including the ESA, NEPA, Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201 *et seq.*, and Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

7. Plaintiffs' request for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201(a) and 2202 (DJA), 16 U.S.C. § 1540(g)(1)(A) (ESA), and 5 U.S.C. § 706(2)(A) (APA).

8. More than 60 days prior to commencing this action, Plaintiffs provided Defendant and the Secretary of the Interior with written notice of the ESA claims asserted in this action as required by 16 U.S.C. § 1540(g)(2)(A)(i).

9. Defendant, FWS, has not remedied the violations of the ESA explained in Plaintiffs' notice letter. Accordingly, an actual controversy, within the meaning of the DJA, exists between Plaintiffs and Defendant. Plaintiffs have exhausted all administrative remedies available to them as required by the APA.

VENUE

10. Venue over Plaintiffs' NEPA claim properly rests in this judicial district pursuant to 28 U.S.C. § 1391(e)(1)(A) because Defendant FWS maintains a major regional headquarters office, chiefly responsible for making the challenged decision in Lakewood, Colorado. See 77 Fed. Reg. 55,530 (identifying FWS's Mountain-Prairie Regional Office in Lakewood, Colorado as responsible for the final rule and the location of all administrative records supporting FWS's decision). Venue over Plaintiffs' NEPA claim also properly rests in this judicial district pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial, indeed the overwhelming majority, of the events or omissions giving rise to Plaintiffs' claim occurred in FWS's Lakewood, Colorado regional headquarters. See 77 Fed. Reg. 55,530. Finally, venue over Plaintiffs' NEPA claim properly rests in this judicial district because the lead Plaintiff, WildEarth Guardians, maintains a major office in this judicial district. Similarly, venue over Plaintiffs' ESA claims properly rests in this judicial district pursuant to 16 U.S.C. § 1540(g)(3)(A) because the alleged violations of the ESA occurred in this judicial district where FWS performed the vast majority of the work leading to its challenged decision. See 77 Fed. Reg. 55,530.

PARTIES

11. WildEarth Guardians (“WEG”) is a nonprofit environmental organization whose mission its to protect and restore wildlife, wild places, and wild rivers in the American West. It has over 4,500 members through the United States and internationally, but is membership is centered in the Rocky Mountain West. WEG maintains offices in Santa Fe, New Mexico, Denver, Colorado, and Phoenix, Arizona. Its Denver office is principally responsible for its advocacy and education efforts on behalf of the gray wolf.

12. Alliance for the Wild Rockies (“AWR”) is a Montana based tax-exempt, nonprofit organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. AWR has over 2,500 members, including members who live and recreate in Wyoming. AWR’s registered office is located in Helena, Montana.

13. Biodiversity Conservation Alliance (“BCA”) works to protect wildlife and wild places in Wyoming and surrounding states. Its members enjoy viewing wolves in the wild and value the important role that wolves play in maintaining healthy ecosystems. BCA has been active in opposing the State of Wyoming’s wolf management plan for many years because of its reliance on predatory animal status across most of the state, which allows indiscriminate killing of wolves, the antithesis of responsible wildlife management. BCA’s members have a strong interest in wolf recovery throughout the state of Wyoming and the eventual recolonization of wolves in the Southern Rocky Mountains through dispersal from the Yellowstone ecosystem.

14. Conservation Congress (“CC”) is a grassroots nonprofit corporation incorporated in California, but with an office in Montana. CC works to protect and preserve native wildlife species and their habitat. Members of CC were present during the release of gray wolves into

Yellowstone National Park and have been involved with wolf management issues since the 1990's.

15. Friends of Animals (“FOA”) is a non-profit, international animal advocacy organization, incorporated in the state of New York since 1957. FOA works to cultivate a respectful view of nonhuman animals, free-living and domestic. Its goal is to free animals from cruelty and institutionalized exploitation around the world.

16. Friends of the Clearwater (“FOC”) is a non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Clearwater Bioregion and surrounding areas. Its registered office is located in Moscow, Idaho. FOC has over 800 members. Members of FOC include biologists, outfitters, recreationists, and researchers who observe, enjoy, and appreciate the wildlife of the Northern Rockies including wolves.

17. National Wolfwatcher Coalition, Inc. (“NWC”) is an all-volunteer nonprofit organization dedicated to promoting positive attitudes towards wolves through education. NWC recognizes the importance of the wolf to the balance of nature and appreciates the importance of this keystone predator.

18. Western Watersheds Project (“WWP”) is a non-profit conservation group founded in 1993. On behalf of its 1,400 members, WWP works to improve public lands management in eight western states, with a primary focus on the negative impacts of livestock grazing on 250 million acres of western public lands, including the policies of predator removal that benefit private livestock operations. WWP's mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and litigation. The organization uses on-the-ground science and data collection with strong advocacy to help ensure that public lands are

managed in accordance with federal regulations and statutes and for the benefit of ecosystem function and resilience.

19. Plaintiffs, WEG, AWR, BCA, CC, FOA, FOC, NWC, and WWP bring suit on their own behalf and on behalf of their adversely affected members. All Plaintiffs and their members have long-standing interests in the preservation and recovery of gray wolves in the Northern Rockies, including Idaho, Montana, and Wyoming. Additionally, all Plaintiffs and their members desire to see gray wolves recolonize adjacent states, including Washington, Oregon, California, Nevada, Utah, and Colorado through dispersal from the Northern Rockies. Plaintiffs and their members are particularly concerned that removal of the gray wolf from the ESA list in Wyoming will preclude recolonization of Colorado by wolves dispersing from the Yellowstone ecosystem.

20. Plaintiffs and their members value wolves as a species and value individual wolves they observe. They also value the ecological roll of gray wolves in maintaining and restoring healthy ecosystems. Plaintiffs have actively sought to protect and recover the gray wolf through a variety of actions including, public education, scientific analysis, and legal advocacy intended to promote a healthy gray wolf population and thus healthy ecosystems in the Northern Rockies and elsewhere.

21. Members of each plaintiff organization engage in recreational pursuits, including wildlife viewing and aesthetic appreciation, on lands where wolves are, or maybe present. Members of the plaintiff organizations seek to view wolves and signs of wolf presence in the wild throughout the Northern Rockies, including in Wyoming, and have concrete and specific plans to continue these activities. These members also enjoy seeing healthy ecosystems that are recovering due to the presence of wolves, their impacts on the behavior of their prey species, and

the cascading impacts on other species that benefit from the return of the wolf. Defendant's challenged action will reduce Plaintiffs' members' opportunities to view wolves or wolf sign and reduce ecosystem health. FWS's decision to eliminate ESA protection for gray wolves in Wyoming will cause irreparable ecological harm to ecosystems throughout the Northern Rockies where wolves are now found. It will also likely foreclose the possibility of natural wolf recolonization of Colorado and other states. Defendant's violation of NEPA also prohibited Plaintiffs and their members from advocating a study of the environmental affects of FWS's decision to create a wolf free zone throughout most of Wyoming, including all portions adjacent to Colorado. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, economic, recreational, scientific, educational and wildlife protection interests of the plaintiff organizations and their members.

22. Plaintiffs' aesthetic, conservation, economic, recreational, scientific, educational, and wildlife protection interests have been, are being, and unless the request relief is granted, will continue to be adversely and irreparably injured by FWS's failure to comply with the law. These are actual, concrete injuries, traceable to FWS's conduct and which would be redressed by the requested relief.

23. Defendant, the United States Fish and Wildlife Service ("FWS"), is a federal agency within the Department of Interior. The Secretary of Interior has delegated to FWS the responsibility for administering the ESA with respect to terrestrial wildlife such as the gray wolf. The Secretary has specifically delegated to FWS the authority to remove species, such as the gray wolf, from the ESA's list of protected species. FWS designated its Mountain-Prairie Regional Office in Lakewood, Colorado as the lead office to consider the ESA status of the gray wolf. The majority of work on FWS's decision to remove the gray wolf from the ESA list was

performed in FWS's Mountain-Prairie Region. The majority of the Administrative Record supporting FWS's decision to remove the gray wolf from the ESA list is found in FWS's Mountain-Prairie Regional Offices in Lakewood, Colorado.

GOVERNING LAW

I. The Endangered Species Act ("ESA")

24. "As it was finally passed, the Endangered Species Act of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." Tennessee Valley Authority v. Hill, 437 U.S. 153, 180 (1978). The purpose of the ESA is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species" 16 U.S.C. § 1531(b).

25. The ESA defines conservation as "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." 16 U.S.C. § 1532(3). Accordingly, the goal of the ESA is not only to temporarily save endangered and threatened species from extinction, but also to recover these species to the point where they are no longer in danger of extinction, and thus no longer in need of ESA protection. Bennett v. Spear, 520 U.S. 154, 157 (1997) ("[T]he objective of the ESA is to enable listed species not merely to survive, but to recover from their endangered status.").

26. Importantly, the protective provisions of the ESA do nothing to conserve a species unless that species is officially "listed" as either "threatened" or "endangered" under the terms of the Act. 16 U.S.C. § 1533. A species is listed as "endangered" if it is "in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). A species is

listed as “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). The ESA defines a “species” to include any “subspecies” and “any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532(16).

27. FWS must make all listing and delisting decisions based on its consideration of whether any species is either threatened or endangered based upon any one, or any combination of, the following five factors: (1) the present or threatened destruction, modification, or curtailment of the species’ habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species’ continued existence. 16 U.S.C. §§ 1533(a)(1)(A)-(E).

28. FWS’ decision to list or delist a species is limited solely to consideration of these five listing factors. 16 U.S.C. § 1533(a)(1). In considering the five listing factors, FWS must employ “the best available scientific and commercial information regarding a species’ status, without reference to possible economic or other impacts of such determination.” 16 U.S.C. § 1533(b)(1)(A); 50 C.F.R. § 424.11(b).

II. The National Environmental Policy Act

29. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).

30. NEPA and its implementing regulations promulgated by the Council on Environmental Quality require federal agencies to prepare an environmental impact statement (“EIS”) for “every recommendation or report on proposals for legislation and other major Federal

actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1508.11.

31. NEPA has “twin aims.” First, it requires federal agencies “to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.” Kern v. BLM, 284 F.3d 1062, 1066 (9th Cir. 2002), quoting Baltimore Gas & Electric Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983).

32. The primary purpose of an EIS “is to serve as an action-forcing device to insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government.” 40 C.F.R. § 1502.1.

33. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken ... Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

34. NEPA requires federal agencies to analyze the direct, indirect, and cumulative impacts of proposed actions. 40 C.F.R. §§ 1508.7 & 1508.8. NEPA also requires federal agencies to take a “hard look” at the environmental effects of their proposed action, even after the proposal has received initial approval. Marsh v. Oregon Nat. Res. Council, 490 U.S. 360, 374 (1989).

III. The Administrative Procedure Act

35. The Court’s review of both Plaintiff’s NEPA and ESA claims is governed by the APA. See e.g. Davis v. Mineta, 320 F.3d 1104, 1110 (10th Cir. 2002) (NEPA compliance is reviewed under the standards found in the APA); Native Ecosystems Council v. Dombeck, 304

F.3d 886, 891 (9th Cir. 2002) (APA provides the appropriate standard of review for violations of the ESA); Village of False Pass v. Clark, 733 F.2d 605, 609 (9th Cir. 1984)(“Because [the] ESA contains no internal standard of review, section 706 of the [APA], 5 U.S.C. § 706, governs review of [agency] actions.”).

36. The APA provides “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

37. The APA provides “the reviewing court shall ... hold unlawful and set aside agency actions, findings, and conclusions found to be ... arbitrary, capricious, or an abuse of discretion or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), or which have been taken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

STATEMENT OF FACTS

I. The Gray Wolf

38. The gray wolf, *Canis lupus*, is the largest wild member of the dog family. Wolves are social animals with strong familial bonds and normally live in packs of two to twelve animals. Packs of wolves usually consist of a breeding pair (the alpha male and alpha female), their pups, their offspring from previous years, and an occasional unrelated wolf. In general, only the alpha male and alpha female in a pack breed. Wolves also have territorial instincts that limit the number of packs in any given region. Together, these two characteristics serve to naturally limit wolf numbers. Wolf litters are generally born in April and may have one to eleven pups. All wolf pack members help feed, protect, and play with the pups as they grow.

39. When one alpha wolf in a pack is killed, the probability that the pack will successfully breed the following year is approximately halved. If both alpha wolves are killed,

the short-term reproductive potential of the pack is generally destroyed. This harm is exaggerated for smaller or less concentrated wolf populations, as an alpha wolf killed from a pack generally must be replaced by a mature wolf from an adjacent pack to allow the pack to persist and produce pups the following year. The chances of reproduction and pup survival after the loss of one or both alpha wolves are greatly influenced by pack size and distribution.

40. Wolves primarily prey on medium and large mammals, including large ungulates such as elk, deer, moose, pronghorn, and bison. For this reason, they are considered a top predator and “keystone” species. Wolves can modulate ungulate populations. However, many other factors including other predators, weather events (such as drought or snowfall), disease, and overhunting by humans also affect ungulate populations. Currently, elk, and other ungulate herds in Idaho, Montana, and Wyoming are at or above State management objectives despite the presence of wolf populations in these States. Notably, Wyoming’s last elk population count in 2010 yielded 103,810 elk, which is 24% above the State’s objective. As to those ungulate herds and subpopulations in Idaho, Montana, and Wyoming in hunting zones that are below State management objectives, most are affected by factors other than wolf predation. Scientific research indicates that the long-term effect of wolves on elk herds is that they normally hold populations at lower levels, which mediates against even greater mortality from starvation, weather, and other stochastic events. In Idaho, wolves account for only ten percent of elk mortality, which is less than that caused by human hunters. In addition, wolves benefit the health of elk and other ungulate populations by virtue of their selection of prey animals, as they primarily take old and injured and diseased animals, leaving the healthiest to produce the next generation. Human hunters, on the other hand, do the opposite, killing the healthiest animals in

ungulate populations. Humans kill far larger numbers of elk in the Northern Rockies than do wolves.

41. Although wolves prefer to prey on wild ungulates, they occasionally, but rarely, prey on domestic livestock, such as sheep and cattle. The destruction of wolf pack structure, caused mainly by the killing of alpha wolves, may increase the likelihood that wolves prey on domestic animals. However, wolf predation remains a very minor source of total livestock mortality in Wyoming, Idaho, and Montana. FWS verified that wolves killed 188 cattle in Idaho, Montana, and Wyoming in 2011, or .003% of the total cattle inventory in these States. FWS also verified 245 sheep kills by wolves in the three States, representing only .03% of the sheep inventory. In the same year, the U.S. Department of Agriculture, National Statistics Service reported, using higher unverified figures (i.e. losses reported by livestock owners, but not professionally verified as wolf kills), that livestock losses to wolves in the three States were still remarkably small .07% of the cattle inventory and .22% of the sheep inventory. Many livestock owners successfully avoid or reduce wolf predation on livestock through non-lethal means, including the use of range riders, guard animals (llamas, some breeds of dogs, and burros), sanitary disposal of livestock carcasses, keeping sick and pregnant animals near humans or in buildings, synchronizing calving and lambing seasons with those of the wolf's wild prey species, and using a variety of scaring devices such as strobe lights, shock collars, firecrackers, or fladry (flags tied to ropes or fences), or electrified fencing.

42. Prior to the European settlement of North America, approximately 380,000 gray wolves inhabited the contiguous United States and Mexico. However, European settlement brought with it superstition and fear that led to widespread persecution of wolves. Wolves were hunted in North America with more passion and zeal than any other animal in U.S. history. By

the 1930s, humans had eradicated the wolf from nearly all of the United States. Hunting, together with an active eradication program sponsored by the federal government, resulted in the extirpation of wolves from more than 95% of their historic range in the contiguous 48 States.

II. Wolf Recovery Under the ESA

43. Given the historic near total elimination of the gray wolf from the 48 contiguous States, the species was among the first protected under the ESA when the United States enacted this law in 1973. The wolf's listing under the ESA protected the species from unregulated killing by humans. With this protection, gray wolves began to return to their native landscapes in northwestern Montana from remaining populations in adjacent Canada. In addition to the natural repopulation of wolves in northwestern Montana, in 1995 and 1996, FWS reintroduced 66 gray wolves into Yellowstone National Park and central Idaho.

44. The protection of naturally migrating wolves and the reintroduction effort carried out under the ESA resulted in an increased wolf population in the Northern Rockies. Though wolf population estimates are inexact and based on a certain amount of speculation, FWS estimates that as of the end of 2011 approximately 1,774 wolves inhabited the Northern Rockies. The best available science, however, estimates that a connected population of 2,000 to 5,000 wolves is necessary to ensure a genetically viable Northern Rockies wolf population over the long term. Further, the current wolf population must expand geographically to achieve necessary connectivity and genetic exchange between the three core recovery areas (northwest Montana, central Idaho, and the Yellowstone area). To date, sufficient connectivity has not been achieved. In particular, wolves in the Greater Yellowstone area remain the most genetically isolated recovery segment in the Northern Rockies. The challenged delisting rule will decrease the wolf population, decrease connectivity, and contract the wolves' geographic range.

45. The return of the wolf to the Northern Rockies resulted in significant ecological benefits. As a top predator or “keystone” species, the wolf’s return has restored the natural balance of the Northern Rockies ecosystem. In particular, the presence of wolves has altered the behavior of elk, which now tend to avoid browsing in areas, such as stream bottoms, where they are most vulnerable to wolf predation. Because elk no longer linger in valleys and overgraze the riparian vegetation there, the destruction of young aspen and willows has decreased. This in turn has led to an increase in available vegetation near streams which has reduced erosion and has provided important riparian habitat, including conditions ripe for the creation of new beaver pond communities, increases in native songbirds, and increases in aspen forest habitat. Additionally, because wolves aggressively prey on coyotes within wolves’ home territories, by reducing the number of coyotes, wolves indirectly benefit the populations of small rodents (principal coyote prey), raptors (who feed on the rodents), lynx (who compete with coyotes) and pronghorn (who are often preyed upon by coyotes). In the Yellowstone ecosystem, wolves also act as a buffer against the effects of climate change by creating more carrion for scavengers and making it available year-round, to the advantage of bald and golden eagles, grizzly bears, ravens, magpies, and coyotes. By leaving carcasses available, wolves may be important in protecting the ESA listed grizzly bear, whose major food-source, whitebark pine, is disappearing due to global warming. Finally, wolves even benefit the species they hunt. Because wolves are a coursing carnivore, meaning they chase swiftly moving prey, then tend to kill the sickest (and therefore the slowest) animals – normally ones who carry disease such as chronic wasting disease or brucellosis.

46. The return of the wolf has also brought with it important economic benefits. For example, approximately 150,000 people annual visit Yellowstone National Park, principally to

see and hear wolves in the wild. This increased visitation brings in \$35.5 million in direct spending annually to Wyoming, Idaho, and Montana.

III. FWS's Attempts to Remove ESA Protection for the Wolf

47. In 1987, prior to the wolf reintroduction program, FWS developed a wolf recovery plan pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), that established a Northern Rockies wolf recovery goal of 300 wolves and 30 breeding pairs (meaning two wolves of opposite sex and adequate age, capable of producing offspring) divided evenly among three core recovery areas: northwest Montana, central Idaho, and the Greater Yellowstone Area. In a subsequent Environmental Impact Statement (“EIS”) prepared under NEPA for its Northern Rockies wolf reintroduction program, FWS reiterated the same numeric recovery standard, but added a requirement for genetic connectivity between the three core recovery areas. In its EIS, FWS found that thirty or more breeding pairs comprising some 300 plus wolves in a metapopulation with genetic exchange between subpopulations should have a high probability of long-term persistence. At the same time, FWS redefined a breeding pair as an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of their birth year, during the previous breeding season.

48. FWS's conclusion in its 1987 Recovery Plan, and subsequent EIS on the reintroduction effort, that the gray wolf would be recovered within the meaning of the ESA so long as a population of 300 wolves with 30 breeding pairs exists in the Northern Rockies is not based upon the best available science. FWS has never provided a scientific rationale for these numbers, or performed a population viability analysis. Numerous articles in peer-reviewed scientific journals question FWS's numeric population goals. One such study recommended that FWS recalculate the numeric population goals based on the number of wolves that are necessary

to fulfill the wolves' ecological roll as a keystone predator and ungulate population regulator. That article found that the population estimate for an ecologically effective Northern Rockies gray wolf population is approximately 17,000 wolves, based upon a need for 16 to 18 wolves per 1,000 square kilometers.

49. In 2000, the Northern Rockies wolf population first met FWS's minimal numeric recovery goal of 300 wolves and 30 breeding pairs. However, the population had not achieved the genetic connectivity among the three core recovery areas that FWS concluded was essential for recovery.

50. Nonetheless, in April 2003, FWS issued a Final Rule to Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States. This Final Rule created three gray wolf distinct population segments ("DPSs"), an Eastern, Western, and Southwestern DPS, and reclassified or "downlisted" the gray wolf from "endangered" to "threatened" in the Eastern and Western DPSs.

51. In 2005, two federal district courts struck down the 2003 Final Rule as illegal in violation of the ESA. Defenders of Wildlife v. U.S. Dep't of Interior, 354 F. Supp. 2d 1156 (D. Or. 2005); National Wildlife Federation v. Norton, 386 F. Supp. 2d 553 (D. Vt. 2005). Following these rulings, the gray wolf retained its listing status as endangered throughout the conterminous United States except in Minnesota, where the gray wolf remained listed as threatened.

52. In February 2008, FWS again tried to remove ESA protection from the wolf in the Northern Rockies, this time publishing a rule delisting the wolf in the Northern Rocky Mountains DPS and turning over management in that region to the States. FWS's Northern Rocky Mountains DPS encompassed all of Montana, Idaho, and Wyoming, as well as eastern

Washington, eastern Oregon, and northeastern Utah. In preparation for the 2008 delisting rule, FWS had requested that the States of Montana, Idaho, and Wyoming prepare wolf management plans specifying how they would manage wolves once federal ESA protections were removed. FWS required that each of these three States had to commit to manage for at least 15 breeding pairs and at least 150 wolves in midwinter to ensure their populations never fell below the 10 breeding pairs and 100 wolves required by the 1987 Recovery Plan and subsequent reintroduction EIS.

53. Numerous conservation groups, including some of the present Plaintiffs, challenged FWS's 2008 delisting rule in the District of Montana. Defenders of Wildlife v. Hall, 565 F. Supp. 2d 1160 (D. Mont. 2008). On July 18, 2008, the District Court granted their motion for a preliminary injunction and, in doing so, reinstated ESA protections for the Northern Rockies wolf DPS. Id. at 1178. The District Court found that the groups were likely to succeed on the merits of their claim that FWS had arbitrarily departed from its own recovery standard requiring genetic exchange among the wolves in northwestern Montana, central Idaho, and the Greater Yellowstone Area. Id. at 1171-72. The District Court also ruled that the groups were likely to succeed on their claim that FWS had acted arbitrarily in declaring that Wyoming's regulatory mechanisms were adequate to maintain a recovered wolf population. Id. at 1175-76.

54. In response to the preliminary injunction ruling, FWS moved the District Court for a voluntary remand and vacatur. On October 14, 2008, the District Court granted FWS's motion, vacated the 2008 delisting rule, remanded it to FWS, and returned the Northern Rockies gray wolf DPS to the list of threatened and endangered species.

55. On October 28, 2008, two weeks after FWS's 2008 delisting rule was vacated and remanded to the Agency, FWS announced the reopening of the comment period on its proposal

to delist wolves in the Northern Rockies – the same proposal that had resulted in FWS vacated 2008 delisting rule. In support of its action, FWS offered a draft, unsigned memorandum of understanding that made vague representations about post-delisting state management to address the wolf population’s need for genetic connectivity.

56. In April 2009, FWS issued a new Northern Rockies wolf delisting rule. In this 2009 rule, FWS again identified and designated a DPS that included all wolves in Idaho, Montana, and Wyoming and portions of Washington, Oregon, and Utah. FWS determined that the Northern Rocky Mountains gray wolf DPS was not threatened or endangered throughout “all” of its range as the population exceeded the 1987 Recovery Plan’s goals in all three core recovery areas (northwestern Montana, central Idaho, and the Greater Yellowstone Area) and that state management and regulation in all of these areas except Wyoming was adequate to ensure a recovered population into the foreseeable future. However, because FWS determined that Wyoming constituted a significant portion of the DPSs range and that, due to inadequate State regulatory mechanisms, gray wolves remained in danger of extinction in Wyoming, FWS maintained the listing of the wolf in Wyoming under the 2009 delisting rule.

57. Various scientists writing in peer-reviewed journals criticized the 2009 delisting rule for complying with political expediency instead of the best available science. One such article explicitly stated that the 2009 delisting rule was not based on the best available science and was insufficient for maintaining a viable metapopulation. This article noted that FWS’s population recovery goals were never based on scientific data or population viability analysis, and had never considered genetic diversity. The article pointed out that FWS’s population goals represented less than one percent of the wolf’s original population in the DPS and that both the initial recovery goals and the goals of the State management plans FWS approved were

unrealistically low for a full recovery. The article explained that the level of wolf hunting and killing FWS intended to allow under the State management plans would likely disrupt wolf pack structure, cause inbreeding, and minimize dispersal, resulting in a loss of connectivity and gene flow. The article stated that these genetic and structural factors alone could eventually cause the decline of the DPS population, but the wolf killing levels proposed by Idaho and Montana will directly cause an even more rapid, unsustainable decline. The article concluded that there is not biological basis for declaring the Northern Rocky Mountains wolf DPS recovered.

58. After FWS's 2009 rule delisted wolves in the Northern Rockies outside of Wyoming, State officials in Idaho and Montana had jurisdiction to implement wolf eradication programs in those States, so long as the minimum recovery targets of 150 wolves in both States were maintained. Consequently, before these States could commence wolf eradication via a public hunting season in the fall of 2009, conservation groups, again including several of the present Plaintiffs, brought a new lawsuit this time against the 2009 delisting rule in the District of Montana. See Defenders of Wildlife v. Salazar, 729 F. Supp. 2d 1207 (D. Mont. 2010). The groups again moved for a preliminary injunction, but this time the District Court denied their request. Without a preliminary injunction to prohibit the commencement of wolf eradication efforts, Idaho initiated a public hunting season and killed approximately 188 wolves. Montana also initiated a public hunting season and killed 72 wolves in only 23 days. Additionally, 145 wolves in Montana and 93 in Idaho were killed in predator control operations. All told, during this initial time period in which wolves in the Northern Rockies lacked ESA protection, humans killed approximately 37% of Idaho and Montana's estimated wolf populations.

59. The elimination of approximately 37% of a population previously protected under the ESA during the first few months without ESA protection was unprecedented. Following the

2009 hunting seasons, an article published in a peer-reviewed scientific journal found the 2009 wolf mortality levels were not sustainable and that sustainable wolf mortality is both lower than that the State management plans suggested and lower than the 2009 killing rate.

60. After the end of the 2009 wolf hunting season in Idaho and Montana, the District Court in Montana ruled in the conservation groups favor on their challenge to the 2009 delisting rule, finding that delisting wolves in only a portion of a DPS (i.e. delisting in Idaho and Montana, but not in Wyoming even though all three states were part of the same DPS) violated the ESA. The District Court held that “the rule delisting the gray wolf must be set aside because, though it may be a pragmatic solution of a difficult biological issue, it is not a legal one.” Defenders of Wildlife v. Salazar, 729 F. Supp. 2d at 1210-11. The District Court found that FWS had misconstrued the plain language of the ESA, disregarded the intent of Congress, and acted without authority by adding a new taxonomic category to the Statute (i.e. a category smaller than the entirety of a DPS). Id. at 1217. The District Court admonished FWS that “[n]either the Court nor the agency is free to add or subtract words, phrases, or otherwise change what Congress has written, yet that is what the Service’s reading of the term endangered species requires ... The northern Rocky Mountain DPS must be listed, or delisted, as a distinct population and protected accordingly.” Id. at 1219, 1228. Accordingly, the District Court then vacated and set aside the 2009 delisting rule. Id. at 1228-29.

61. Following the District Court’s ruling in Defenders of Wildlife v. Salazar, Secretary of the Interior, Ken Salazar, indicated that we would accept what he called a “legislative solution” to address the failure of FWS to delist wolves in the Northern Rockies in compliance with the ESA. In response, in mid-2011, Congress passed and the President signed into law, H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act of

2011. P.L. 112-10. This Act contained a “rider,” Section 1713, addressing FWS’s failure to successfully delist the wolf. P.L. 112-10 § 1713, 125 Stat. 38. Section 1713 provided that within 60 days FWS would reissue the 2009 delisting rule, which had been struck down by the District Court in Montana, “without regard to any other provision of statute or regulation” that would otherwise apply to the reissuance of the rule. A number of conservation groups, again including some of the present Plaintiffs, challenged this legislative rider and FWS’s subsequent reinstatement of the 2009 delisting rule on constitutional grounds. However, the groups’ constitutional “separation of powers” arguments were rejected by the District Court in Montana and that Court’s ruling was upheld by the Ninth Circuit. Consequently, after the 2011 legislative enactment of Section 1713, in May 2011, the 2009 delisting rule was reinstated and Wyoming became the only State in the Northern Rocky Mountain DPS in which wolves were protected under the ESA.

IV. The Challenged 2012 Wyoming Delisting Rule

62. FWS then set about the current effort to remove ESA protection from the wolf in Wyoming. By October 2011 FWS issued a propose rule to remove ESA protections from the gray wolf in Wyoming. The proposed rule stated that changes to Wyoming’s wolf management laws and regulations would be required before delisting. FWS requested that Wyoming prepare a wolf management plan specifying how the State would manage wolves once the animals were no longer listed under the ESA. Both the decision to delist Wyoming’s wolves and the substance of the management plan itself were the result of negotiations between Wyoming’s Governor and Secretary of the Interior Salazar.

63. Under the challenged final delisting rule issued in September 2012, Wyoming is permitted to eliminate all but 100 wolves outside Yellowstone National Park and the Wind River

Indian Reservation. Wyoming's current legal framework for wolf management, consisting of State statutes and an administrative management plan, does not differ substantially from either the Wyoming plan that was rejected by the District Court in Montana in 2008, or which FWS itself rejected in the 2009 delisting rule. Since FWS's wolf delisting efforts began in 2003, Wyoming's wolf management plan has remained consistent. However, each time FWS has considered the adequacy of Wyoming's plan it was reached a different result, supporting it in 2008, rejecting it in 2009, and again supporting it in 2012.

64. Rather than requiring Wyoming to manage for 15 breeding pairs and 150 wolves as it required of Montana and Idaho, and previously required of Wyoming, FWS's new position is that Wyoming must manage for 10 breeding pairs and 100 wolves outside of Yellowstone National Park, while relying on the Park to provide enough wolves to ensure the overall population does not sink below 150 wolves. However, FWS did not require, as it previously deemed necessary, for Wyoming to increase its population minimum if the Yellowstone wolf population dropped below 50 wolves. Wyoming is also not required to provide a buffer zone around Yellowstone to ensure that state management does not diminish the Yellowstone population. Many of Yellowstone's wolves routinely leave the Park and maybe killed outside the Park under Wyoming's laws. Indeed, thus far this year, seven Yellowstone wolves, fitted with radio collars for scientific research, have been killed outside the Park, several in Wyoming. This figure only represents collared wolves, which are readily identifiable, and thus the total number of Yellowstone wolves killed outside the Park may be greater. Indeed, the loss of these wolves from Yellowstone packs may also result in indirect mortality as pack structure may break down, with the loss of alpha wolves, and pups starve or otherwise fail to survive. Additionally,

the hunting zone around the Park will diminish genetic connectivity between Yellowstone and the rest of the Northern Rocky Mountain DPS.

65. Wyoming law treats wolves as “predatory animals” that can be shot on sight, year-round, with no bag limit, in approximately 85% of the State. In the remaining 15% of the State, consisting of lands surrounding Yellowstone and Grand Teton National Parks in the northwest corner of Wyoming, wolves will be managed as “trophy game” subject to regulated hunting. This trophy game area is expanded slightly from October 15 to March 1 each season in an area extending southward from the “trophy game” boundary, which includes an additional 1.3% of the State (the “flex zone”). FWS does not expect wolves to survive in the predatory management zone. Thus, in total, under FWS’s approved Wyoming plan, wolves will be eliminated from approximately 85% of the State – even though FWS previously stated all of Wyoming comprised a significant portion of the DPSs range. Moreover, Wyoming’s “new” plan is not meaningfully different from earlier Wyoming plans, which treated wolves as predators in a slightly larger area. Nonetheless, FWS approved Wyoming’s new plan despite previously stating that it would require the State to manage all its wolves as trophy game, as do Idaho and Montana.

66. Prior to promulgating the 2012 delisting rule, FWS conducted peer review of Wyoming’s wolf management plan by soliciting comments from a panel of five scientists. The initial round of comments from these reviewers raised significant questions about both the sufficiency of Wyoming’s plan and whether Wyoming law adequately ensured that the plan could be implemented. Subsequently, Wyoming released an Addendum to its Gray Wolf Management Plan, but made no additional changes to its laws. FWS then solicited a second round of comments from its peer reviewers. The peer review panel remained unconvinced by Wyoming’s plan including the new Addendum. One explicitly stated that while the Addendum

contained some further description of the Wyoming approach, these changes were cosmetic and failed to address the scientific substance of his criticisms, including the inadequacy of Wyoming's regulatory measures.

67. FWS finalized the 2012 delisting rule on September 10, 2012, despite the significant concerns raised by some of its peer reviewers. FWS did not require Wyoming to fix any of the weaknesses in its laws and regulations that the peer review process identified but instead simply concluded that Wyoming's statutes and plan appeared to provide adequate regulatory mechanisms to justify delisting under the ESA.

68. Accordingly, this fall, wolf management in Wyoming has been in the hands of the State. To date, Wyoming has sold more than 4,000 wolf-hunting tags. Thus far, this hunting season hunters in the trophy game management area have killed at least 35 wolves. Four additional wolves in this area have also been killed, but Wyoming has not counted their mortality towards its hunting "harvest" quotas. Outside, the trophy game management area, in the predatory management area, where hunting tags and not required and records thus more suspect, at least 18 wolves have been killed this fall. These totals represent only direct, known deaths, however wolf killing may also result in indirect mortality, because when alpha wolves are killed pack structure breaks down and pups may starve or otherwise fail to survive.

69. Contrary to FWS's conclusions in approving the 2012 delisting rule, Wyoming law fails in several important ways to provide adequate regulatory mechanisms to protect wolves. The State's wolf management provisions do not require Wyoming to manage for any buffer above the minimum population threshold, thereby failing to ensure that the minimum population will be maintained. Wyoming's regulations provide for the killing of wolves under a defense of property provision, which allows the killing of wolves even if they are baited into

attacking livestock or pets. Wyoming's regulations also fail to require management to minimize the damage to the Yellowstone wolf population that will result from the killing of Yellowstone wolves that travel outside the Park – and which is already occurring. Finally, the Wyoming plan relies on “adaptive management” without adequately explaining or describing what future “adaptations” will be used or when they will be triggered if wolf populations fail to meet objectives.

70. Wyoming's law and regulations also do not contain management goals based on the best available science. The State's wolf management decisions are based on the theory that sustainable human caused mortality can be up to 48%. Wyoming has no firm target for the amount of human caused mortality that will be allowed, but only expresses intent to keep it between 22% and 48%. The lack of a set “sustainable” human-caused mortality level combined with the lack of any buffer to manage the population above the minimum threshold and the difficulty of counting living wolves accurately, means that Wyoming lacks the management tools to ensure it meets the minimum population threshold. Furthermore, Wyoming states that one goal of its wolf management will be to minimize the “conflict” between wolves and their prey populations such as elk, but fails to consider that such “conflict” may be beneficial to both prey populations and the ecosystem. Thus, Wyoming's plan does not address the substantial research discussing the positive impacts wolf predation has on ungulate populations.

71. In short, Wyoming's wolf-management plan contains numerous deficiencies, each of which on its own would be sufficient to violate the law, but which when taken together sum to a situation which will be damaging not only to the survival of the wolf, but to the entire ecosystem in which it plays a “keystone” roll. FWS's decision to delist the wolf in Wyoming requires the State to do only one thing: maintain a minimum wolf population of 100 wolves and

10 breeding pairs. No credible scientist has ever opined that this population level is equal to wolf recovery within the meaning of the ESA.

FIRST CAUSE OF ACTION
(Violation of the ESA: Insufficient Population Size)

72. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

73. FWS may delist a species only if it determines based on the best available science that the species is no longer threatened or endangered. 16 U.S.C. § 1533(a) (listing factors); *Id.* §1533(b) (best available science requirement); 50 C.F.R. § 424.11(d) (providing grounds for delisting). Accordingly, to delist the Wyoming portion of the Northern Rocky Mountain wolf DPS, FWS must find that the entire DPS is not threatened or endangered by any of the delisting factors. *Id.* FWS arbitrarily concluded that the Rocky Mountain wolf DPS is not threatened by its current, or certainly foreseeable, small population size.

74. FWS's conclusion is based on an unfounded assumption about the number of wolves that will be allowed to survive in the DPS under state management. Outside of Wyoming, the states managing the rest of the DPS are increasing the number of wolves that can be killed and have stated an intention to reduce their wolf populations. FWS acknowledges that measurable declines in the wolf population across the region are expected to begin occurring in 2012. However, FWS assumes that though wolf populations are expected to decrease in Idaho, Montana, and Wyoming, that these states will manage the population so that it is maintained above FWS's recovery level and that perhaps as many as 1,000 wolves will exist in the DPS long term. FWS's expectation that 1,000 wolves will be allowed to persist, or that state management will ensure this population level, is unfounded.

75. There is no factual or legal basis for FWS's belief that Montana, Idaho and Wyoming will maintain a wolf population above the minimum population actually required under the two delisting rules. The State have not committed under the delisting rules to maintaining a population anywhere near 1,000 wolves. Idaho's wolf management plan establishes a population objective of 15 "packs," which is below even FWS's minimum standard that Idaho is required to maintain 15 "breeding pairs." FWS defines a "breeding pair" as an adult male and adult female wolf that have produced, during the previous breeding season, at least two pups that survived until December 31 of their birth year. Not every wolf "pack" contains a breeding pair that meets this requirement. Therefore, Idaho's law does not ensure that the minimum population standard that FWS has set will be met. Montana's plan does commit the State to maintain 15 breeding pairs, but this could translate to no more than 150 wolves. Wyoming's law commits the State to maintaining only 10 breeding pairs and 100 wolves outside of Yellowstone Park and the Wind River Reservation (which contains few wolves). Moreover, even though Yellowstone wolves range outside the Park, no State has committed to ensuring a minimum wolf population in Yellowstone. The wolf population in Yellowstone, prior to this hunting season in which 7 collared Yellowstone wolves have been killed to date, was estimated at 98 wolves and 8 breeding pairs. FWS expects the Yellowstone Park population to decline to between 50 and 100 wolves in five to ten packs, with four to six of the packs meeting the breeding pair definition annually. This math simply does not add up to FWS's optimistic prediction that the States will allow up to 1,000 wolves to survive.

76. Moreover, State management policies throughout the DPS are becoming even more aggressive as to the amount of wolf killing they allow. For example, Montana began to allow wolf trapping in 2012 for the express purpose of reducing the wolf population and has

lengthened wolf-hunting seasons. Idaho has removed wolf-hunting quotas in many areas. Wyoming law provides an even more aggressive standard. In 85% of Wyoming, wolves are expected to be eradicated under the State's predatory management strategy. In addition, the plain language of Wyoming's wolf management statute requires allowance of wolf killing by private landowners or livestock owners at any time that Wyoming's wolf population exceeds the minimum. Specifically, the statute states that lethal take permits shall be issued to landowners or livestock owners "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 of Yellowstone National Park. Wyo. Stat. 23-1-304(n). Finally, there was no basis for FWS to conclude that the wolf population in Yellowstone National Park will provide a buffer to state management because the states are not required to consider protections for Yellowstone's wolves in management activities along the Park's boundaries and the states are not required to maintain adequate connectivity between the Park's wolves and wolves under state management.

77. FWS's final 2012 delisting rule is filled with references to FWS's optimistic determination that the states will manage wolf populations well above the required minimum, but FWS's hope is based on non-regulatory and non-scientific factors such as its beliefs as to changing public opinion and unsupported assurances by state managers. See e.g. 77 Fed. Reg 55,545 (stating that FWS has few concerns about increasingly aggressive state management because of the states' "commitment" to manage the population above minimum levels); 55,553 (stating that because state management has thus far resulted in gradual reductions, state management provides sufficient protections); (stating that the Yellowstone wolf population will always provide a sufficient buffer against population reduction below minimum levels); 55,556

(asserting that, though state management may reduce populations, the populations will stabilize well above minimum recovery goals); 55,567 (FWS is confident that states will not manage at minimum levels because “State wildlife managers have consistently reiterated to us their desire not to come close to their floor levels”; and “harvest rates will moderate as the population stabilizes and the public’s current angst and intense interest wanes ... The NRM gray wolf population will then likely settle into a reasonable, long term equilibrium, well above minimum recovery levels.”); 55,568 (stating that “a NRM gray wolf population more than double the minimum management targets is likely” based on FWS’s determinations that (i) increasingly aggressive state management such as longer hunting seasons and larger quotas are “temporary,” (ii) wolves are difficult to hunt because they prefer rugged, remote, and difficult-to-access landscapes; (iii) wolves will become more difficult to find and kill as their numbers are reduced; and (iv) it is likely that hunter and trapper interest and dedication will diminish as the wolf population is reduced and success rates for hunters and trappers decrease); and 55,569 (public pressure to aggressively manage wolves will decrease as the wolf population decreases, such that states will not manage at minimum levels). All of these conclusions defy the historic treatment of the wolf and the history of eradication efforts. None of these conclusions provides a basis for FWS’s continuing assertions that the DPS population will remain at perhaps around 1,000 wolves, but FWS’s continued reliance on such sophistry to support its conclusion that the wolf population will remain above the minimum specified in its Recovery Plan does demonstrate FWS’s lack of confidence that its recovery criteria of 300 wolves with 30 breeding pairs is biologically defensible or sufficient.

78. To the contrary, the best available scientific information establishes that FWS’s recovery criteria are not scientifically supported. Under the internationally accepted

International Union for the Conservation of Nature’s (“IUCN”) “Red List Criteria” (which are relied upon by FWS as persuasive authority in rendering other ESA listing decisions, but disregarded by FWS here), a species must be listed as “vulnerable” when its population falls below 1,000 “mature” individuals. With respect to wolves, scientists have calculated that a minimum population of 2,000 to 5,000 (including both mature and immature animals) is required to ensure long-term population viability. Indeed, FWS itself requires 1,251 to 1,400 wolves for a recovered wolf population in Minnesota and FWS’s Post-Delisting Monitoring Plan for the western Great Lakes wolf DPS identifies a trigger for consideration of relisting if the Minnesota winter wolf population reaches 1,500 or fewer wolves. Minnesota is a much smaller geographic area than that of the Northern Rockies Mountains wolf DPS. Yet, in Minnesota FWS requires five times more wolves (1,500 versus 300) than in does in the vastly larger Northern Rockies DPS to provide recovery. The differential standards for gray wolves in the Northern Rockies and the western Great Lakes DPSs cannot be justified under scientific principles.

79. FWS has acknowledged that small, isolated populations of 100 to 150 wolves, such as those contemplated under its delisting rule, are not sustainable. However, in the delisting rule, FWS continually predicts that a larger wolf population will continue to exist, to avoid discussing the problems of small, isolated populations, and despite the fact that no legal mechanisms actually exist to prevent the states from managing for the minimum population levels FWS’s rule allows.

80. Because, FWS arbitrarily determined that wolves in the Northern Rocky Mountain DPS are not threatened by their small population size, its 2012 delisting rule is arbitrary capricious, and abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a) & (b), in violation of the APA, 5 U.S.C. § 706(2).

**SECOND CAUSE OF ACTION
(Violation of the ESA: Lack of Genetic Connectivity)**

81. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

82. The 2012 delisting rule is arbitrary and contrary to the best available science because it failed to demonstrate that the northern Rocky Mountain DPS is not threatened by ongoing genetic isolation that is certain to worsen under Wyoming and other state management. The health of a population is determined not only by population size, but also by metapopulation connectivity, meaning the exchange of individual wolves and their genetic material among population centers. Metapopulation connectivity is a function of both population size and distribution and is enhanced in metapopulations with shorter distances between subpopulations. Without rationally determining that wolves throughout the DPS are not imperiled by future inadequate genetic exchange, FWS could not determine that the recovery criteria in the ESA are met.

83. Even at the currently estimated population of approximately 1,700 wolves in the Northern Rockies, the wolf population has not yet established the connectivity between the core recovery areas (northwest Montana, central Idaho, and the Yellowstone Area) that FWS has found essential. FWS has repeatedly stated that the establishment of a metapopulation dynamic among the three recovery areas and Canada is essential to the long-term viability of the DPS. While limited genetic connectivity has been documented between the three subpopulations, the Yellowstone subpopulation continues to be the most isolated.

84. The subpopulation of wolves in the Greater Yellowstone Area continues to be the most isolated subpopulation in the Northern Rockies DPS. Its connectivity will continue to

decrease under state management. After delisting the wolf population will no longer be growing and will likely be reduced to a lower level. State management will also likely result in higher mortality rates for both dispersing wolves and resident wolves.

85. The range and dispersal opportunities for wolves in the DPS will be decreased via delisting in Wyoming. FWS previously rejected Wyoming's attempts to adopt a dual-classification status for wolves (i.e. regulated trophy game management in some areas and unregulated predator management in others), and called for wolves to be managed as trophy game animals throughout the State. FWS cited several reasons for its prior position, including concerns that treating wolves as predators in most of the State would limit opportunities for genetic exchange and demographic connectivity. FWS has now reversed its position by stating its prior concerns have been addressed. Instead of trophy game status throughout Wyoming, FWS stated in the delisting rule that it accepted the following Wyoming measures as adequate: (i) regulations committing to manage wolves so that genetic diversity and connectivity issues do not threaten the population; (ii) incorporating a "management goal" of one migrant per generation, (iii) committing to an adaptive management approach that adjusts management if the management goal is not met, (iv) planning to use human translocation of wolves if necessary to increase genetic exchange; and (v) the seasonal expansion, or "flex zone," for trophy game management during four and a half months per year. These measures are not sufficient to remedy the concerns FWS previously raised, and are no substitute for the previous FWS requirement that Wyoming manage wolves as trophy game throughout the State.

86. Wyoming's commitment to manage wolves so that genetic diversity and connectivity issues do not threaten the population will be accomplished by "encouraging effective migrants into the population." The Wyoming wolf management regulations do not

provide a mechanism by which this “encouragement” will be accomplished. Neither Wyoming’s wolf management statute nor its regulations affirm the “management goal” of one migrant per generation, and do not specifically commit to using an adaptive management approach. Furthermore, stating that Wyoming will use adaptive management does not actually establish any regulatory mechanisms to ensure that State management will be adequate to meet Wyoming’s obligation to ensure the recovery criteria are met.

87. State management will diminish connectivity by diminishing the wolf’s range within Wyoming (wolves will not persist in the 85% of the State that is not the trophy management zone), which will also have the effect of diminishing the wolf’s range throughout the DPS. The predator management area, even with the flex zone’s seasonal expansion, decreases the wolf’s range in Wyoming and limits opportunities for dispersing wolves to cross into the Wyoming population from the rest of the DPS.

88. Mortality of future dispersing wolves is certain to increase under State management. Wolves attempting to enter Wyoming from Idaho will have to run the gauntlet of the predator management area, including the flex zone, which will be managed as a predator zone for roughly two-thirds of the year. While the flex zone imposes a regulated hunting approach to wolf management in the affected area for a period of four and a half months, nearly half of all known past wolf dispersal events occurred outside of that four and a half month period and wolves on average have taken more than five months to disperse from home territory to their new range. The wolf hunting regulations in Montana and Idaho will also affect the number of successful dispersals to and from Wyoming. In particular, Idaho’s wolf hunting regulations for areas adjacent to Wyoming’s flex zone, in combination with the management of the flex zone

itself, fail to ensure that there will be a single day of the year when a wolf can disperse across the Idaho-Wyoming border without being subject to human killing.

89. The delisting rule also allows for “human assisted” genetic exchange as a backstop mechanism should the Wyoming plan result in inadequate genetic connectivity. This is inappropriate for delisting under the ESA. Recovery or “conservation” under the ESA means that a species has reached a situation so that the “measures provided [by the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). While translocation, genetic manipulation, and maintenance of captive populations are appropriate tools for promoting recovery of an ESA listed population, they are not appropriate bases upon which to determine that a species has recovered and no longer requires the protections of the ESA. Indeed, they represent a continuation of the measures the ESA provides and which are supposed to be unnecessary for recovered populations. Recovery under the ESA means that a species is self-sustaining without perpetual human manipulation. Wyoming’s plan to engage in perpetual manipulation through “human assisted” genetic exchange is inconsistent with the ESA’s definition of a recovered species.

90. In its delisting rule, FWS pointed to past examples of dispersal to conclude that genetic exchange in the future will be sufficient. At the same time, FWS acknowledged that because the wolf population will be diminished in the future, past dispersal date is unlikely to be an exact predictor of future effective migration rates. However, FWS failed to consider two other important factors: that the referenced past dispersal events took place at a time when (i) the wolf population was increasing, not declining, and (ii) wolves were under federal protection throughout their range. Neither of these factors will be present in the future.

91. In addition to relying on Wyoming’s inadequate regulatory measures, FWS also based its conclusion that essential genetic exchange will be sufficient after delisting on its

determination that the overall DPS population is likely to be maintained well above the recovery levels (perhaps at 1,000 wolves). As discussed in the prior claim, this prediction is unfounded and represents an arbitrary basis for conclusions regarding genetic connectivity and exchange. Therefore, FWS's determination that genetic exchange will be maintained under state management relies on inflated population estimates and is arbitrary.

92. FWS's 2012 delisting rule is thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a) & (b), in violation of the APA, 5 U.S.C § 706(2).

THIRD CAUSE OF ACTION
(Violation of the ESA: Inadequate Regulatory Mechanisms)

93. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

94. FWS arbitrarily concluded that the Wyoming portion of the Northern Rockies DPS is not threatened by "the inadequacy of existing regulatory mechanisms." 16 U.S.C. § 1533(a)(1)(D).

95. Wyoming's wolf management statute requires it to manage for wolves based on a minimum population of 100 wolves and 10 breeding pairs outside of Yellowstone National Park, and does not require Wyoming's management to take into account, or compensate for, reductions in the population within Yellowstone.

96. Wyoming law fails to ensure that the wolf population does not drop below 100 wolves or 10 breeding pairs. Wyoming law does not include a population buffer above the minimum, and thus cannot ensure that even the minimum is maintained. This was a key issue raised in the peer review panel's initial report, and more than one panelist believed there was a

need for explicit buffering. In response to the repeated calls for an explicit buffer, Wyoming produced an Addendum to its wolf management plan. The Addendum contained assertions that Wyoming's approach will "maintain an adequate population buffer above minimum recovery levels," but fails to amend state law to actually require such a buffer. Nevertheless, in the delisting rule, FWS decided against requiring Wyoming to provide a specific numeric buffer above these minimum management targets.

97. The population buffer questions is critical to FWS's determination that adequate regulatory mechanisms exist to protect the DPS after delisting given Wyoming's stated intent to reduce the population. The anticipated killing plays out against the backdrop of a wolf population history that saw the Yellowstone National Park population decline by approximately 43% from 2007 to 2010 without any additive, human-caused mortality such as Wyoming now contemplates. A similar decline for the portion of the population outside of Yellowstone National Park could quickly leave the State below the agreed-upon minimums. Without any safeguards in place to guarantee an adequate buffer, FWS's determination that the DPS is not endangered or threatened by inadequate state regulatory mechanisms is contrary to the ESA.

98. Compounding the problem caused by the lack of a buffer, Wyoming law contains no firm target for or limitation on human-caused mortality. Wyoming plans during its first hunting season to aim for a human-caused mortality rate between 22% and 35%. Wyoming management officials have stated that they intend to be "conservative" in their approach during the 2012 season. However, Wyoming has made not any assurances regarding target mortality rates in future years. The State's management documents express an intention to achieve an allegedly "sustainable" rate of human-caused mortality between 22% and 48%. Several studies, however, placed the sustainable range between 17% and 29%. Only one outlying study found

that wolves could sustain human-caused mortality of up to 48%. Wyoming relies on this outlier study to establish the upper human-caused mortality limit for the State's wolves. Wolf management decisions, including hunting quotas, will be largely based on achieving an acceptable rate of human-caused mortality. Because Wyoming is relying on a rate that is derived from an outlier study, its plan does not adequately ensure that the rate of human-caused mortality will be sustainable. This is especially problematic because Wyoming: (i) has not established a management buffer or specific adaptive management framework, so there is no assurance that the mortality rate will be decreased if the number of wolves approaches the minimum threshold, and (ii) intends to pursue an aggressive reduction of its wolf population.

99. FWS's delisting rule discussed Wyoming's planned high rate of human-caused mortality, and stated that this rate is not a concern because Wyoming intends to consider all sources of mortality when making management decisions. However, the delisting rule acknowledged that there will be sources of mortality that will be difficult to limit, or that may be uncontrollable and occur regardless of population levels – such as mortality resulting from Wyoming's defense of property exception, illegal killing, accidental mortality (such as vehicle collisions), and mortality occurring in the predator management area. FWS concluded that it was not concerned about either aggressive state management of the impact of the significant uncontrollable sources of mortality because Wyoming intended to maintain an adequate buffer above minimum population objectives to accommodate management needs and ensure uncontrollable sources of mortality do not drop the population below minimum levels. However, as explained above, this commitment does not appear anywhere in Wyoming's statutes or regulations. Furthermore, FWS took comfort in the fact that Wyoming removed statutory mandates for aggressive management of wolves, calling this a significant improvement.

However, this was only a cosmetic change in Wyoming law. Wyoming did strike the word “aggressive” from the statutory provision listing management techniques, but did not alter, clarity, or remove any of the techniques allowed. Indeed, Wyoming law still provides that permits shall be issued to landowners or livestock owners to kill wolves which are harassing, injuring, maiming or killing livestock or other domestic animals (or where chronic wolf predation occurs) so long as the wolf population remains above the minimum threshold. Though the statute no longer contains the word “aggressive,” FWS failed to obtain any meaningful assurance from Wyoming, in the form of changed regulatory measures, that Wyoming wolf management would not actually be “aggressive.”

100. In fact, the existing Wyoming plan provides for an unreasonably high level of human-caused mortality, including the unregulated killing of wolves in 85% of Wyoming, where they are classified as “predators,” unlimited mortality under defense of property laws, and aggressive management techniques intended to reduce the populations of wolves that prey on elk and livestock at any time the minimum wolf population of 100 with 10 breeding pairs exists.

101. Wyoming law classifies wolves as predators in all but the northwest corner of the State. This designation subjects wolves to unlimited killing by a full array of aggressive techniques. For example, traps and snares may be used. Other methods that may be used on wolves in the predator area include harassing, pursuing, hunting, shooting, or killing wolves from aircraft, street-legal vehicles, off-road-vehicles, motorcycles, or snowmobiles.

102. Management of wolves as trophy game in the northwest corner of Wyoming also offers numerous opportunities for human-caused mortality. In the trophy game area, Wyoming law allows the issuance of permits to private landowners to hunt wolves from aircraft in order to protect private property, including livestock and other domestic animals, from wolves.

Wyoming law further authorizes the State Game and Fish Department to take any action necessary to reduce the effects of gray wolf predation on wild ungulate herds in areas of the state experiencing “unacceptable impact” from gray wolf predation. An “unacceptable impact” on a wild ungulate population or herd is broadly defined as one where the herd or population is not meeting population management goals, objectives, or recruitment levels established by the Game and Fish Commission. The Game and Fish Department has the authority to determine whether a decline in a wild ungulate population or herd constitutes an “unacceptable impact” and whether wolf predation is a significant factor causing this unacceptable impact. Thus, the Game and Fish Department has broad, essentially unchecked, authority to manipulate the management objectives in order to authorize wolf killing.

103. In addition, throughout the State, Wyoming law allows for unpermitted and unregulated killing of wolves that are doing damage to private property. Damage to private property includes attacking or threatening livestock or dogs. Wyoming law does not contain any exception for situations in which wolves are intentionally baited into attacking livestock or dogs, and thus may actually promote wolf killing. In comparison, when FWS managed wolves in Wyoming it also allowed the killing of wolves attacking livestock or dogs, but prohibited such killing if there was any evidence of intentional baiting. Similarly, Montana law also allows the killing of any wolf that is attacking or killing a domestic dog, but prohibits any person from intentionally baiting a wolf with domestic dogs or livestock for the purpose of killing the wolf. Wyoming’s law fails to provide any such exception to prohibit intentional baiting. Indeed, Wyoming Game and Fish Department officials have stated at public meetings in Wyoming that baiting techniques such as staking out a dog or leaving sheep carcasses in an area of known wolf presence would be lawful for the express purpose of drawing in wolves to be killed.

104. With respect to the lack of a baiting exception in Wyoming's defense of property provisions, FWS has stated that it is "unclear" to them whether baiting would be allowed under Wyoming law – though that is certainly the position of the Wyoming Game and Fish Department officials mentioned above. FWS has also stated that it is unconcerned that this will become a widespread practice based on two assumptions: (i) that baiting is time-consuming and difficult; and (ii) that landowners would instead prefer to obtain a lethal take permit. However, these assumptions do not address the lack of a baiting exception in Wyoming's law. In particular, these assumptions become meaningless at exactly the point where Wyoming's defense of property law becomes most troubling – when the wolf population falls below minimum levels. At that point, despite the perceived inconvenience of baiting wolves, baiting would become the only method by which landowners could continue to kill wolves as State law would then prohibit the issuance of further lethal take permits to landowners.

105. Compounding the threat to the wolf population, Wyoming's defense of property law is not suspended or qualified even if the State's minimum wolf population objectives are approached or actually breached. Based on this, as well as the other sources of human-caused mortality discussed above, many of which cannot be managed, FWS's determination that the Northern Rockies DPS is not endangered or threatened by inadequate State regulatory mechanisms is arbitrary, capricious and contrary to the ESA because it is not based on the best available science. 16 U.S.C. § 1533(a), (b).

106. FWS's delisting rule is therefore arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a), (b), in violation of the APA, 5 U.S.C. § 706(2).

FOURTH CAUSE OF ACTION
(Violation of the ESA: Significant Portion of Range)

107. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

108. The ESA sets forth a five-factor test for determining whether a species is threatened or endangered. 16 U.S.C. § 1533(a). These factors must be analyzed “throughout all or a significant portion of [the species’] range. *Id.* § 1532(6), (20). A species’ range includes “major geographical areas in which [a species] is no longer viable but once was.” Defenders of Wildlife v. Norton, 258 F.3d 1136, 1145 (9th Cir. 2001). FWS’s delisting rule failed to analyze the threats to the gray wolf throughout significant portions of its range within the DPS. Instead, FWS assumed that the entire range of gray wolves in the DPS is only the area currently occupied by a significant number of wolves, but ignored areas within the DPS where the wolf was once viable but no longer exists in significant numbers.

109. FWS has previously concluded that the entire State of Wyoming constituted a significant portion of the wolf’s range in the DPS. However, in the delisting rule, FWS arbitrarily and capriciously determined that areas of the DPS outside of the occupied portions of Wyoming’s core recovery area are not significant portions of the wolf’s range because they do not contain suitable wolf habitat. Indeed, under Wyoming’s split management plan, distinguishing between the trophy hunting and predatory areas, wolves are not expected to survive in 85% of the State. FWS based its finding that this area is not significant on current and future threats (i.e. predator management) and projected development in part, and on the lack of resident wolves due to human-caused mortality or agency removal of wolves that have dispersed into this area. To disqualify a major portion of the wolves’ historic range within the DPS due to

preventable factors relating to human activities turns the ESA on its head. The Act's protections are meant to protect species from such threats, not justify conclusions that areas are unsuitable habitat because of threatening human activities.

110. FWS's delisting rule is thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a) & (b), in violation of the APA, 5 U.S.C. § 706(2).

**FIFTH CAUSE OF ACTION
(Violation of the ESA: Failure to Consider the Entire DPS)**

111. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

112. In its delisting rule, FWS failed to consider both the impact the Wyoming delisting would have on the entire Northern Rockies DPS, and the threats posed to the DPS due to inadequate regulatory mechanisms in Idaho and Montana. FWS delisted wolves in Idaho and Montana pursuant to Congressional direction to re-instate its 2009 delisting rule, which had been struck down by a District Court, without regard to law. FWS's 2009 delisting rule, however, was premised on FWS's belief that Idaho and Montana would manage wolves for numbers far above FWS's inadequate recovery standards, notwithstanding the lack of any such commitment by the States in their laws or regulations. Idaho and Montana have since demonstrated the ease with which hunting seasons and quotas may be changed. For example, in 2009, Idaho's statewide wolf population target was 520 wolves. Yet, in 2010, Idaho dispensed with any minimum total wolf population number, committing instead to maintain only 15 "packs" (as opposed to breeding pairs). Although, FWS previously stated that significant changes in wolf management would trigger a status review for the species, FWS has not initiated a status review, nor has it

acknowledged the change in Idaho's population commitment. Instead, FWS has continued to rely on an unrealistically high prediction of future wolf numbers in Idaho and other states.

113. FWS also reference unenforceable state intentions with respect to genetic exchange in its 2009 rule, including alleged state commitments to promote wolf dispersal and a memorandum of understanding ("MOU") among FWS, Montana, and Idaho that provides for wolf translocation in the event genetic problems surface. However, the MOU does not alter the statutory or regulatory responsibilities of state wildlife managers and fails to establish concrete management actions or thresholds. Rather, the MOU is only binding to the extent future politicians find it in their interest.

114. Finally, both Montana and Idaho have established 2012-13 regulations that promote far more aggressive wolf killing than FWS previously evaluated, including hunting and trapping within the December through April period FWS previously identified as critical for wolf dispersal and breeding success. Montana extended its general wolf-hunting season closing date from December 31 to February 28 and for the first time added a trapping season, in which each trapper can take three wolves. In Idaho, hunting and trapping of wolves is allowed through March 31 in many parts of the State, and each tag holder may take up to 10 wolves, 5 trapped and 5 hunted.

115. In its delisting rule, FWS failed to confront the decrease in wolf dispersal that is likely to result from such increasingly aggressive and hostile state wolf management measures. FWS's failure to reevaluate Montana and Idaho's regulatory changes, which further diminish protections for wolves in the DPS and threatens their viability, is arbitrary and contrary to the ESA. 16 U.S.C. § 1533(a)(1)(D).

116. FWS's delisting rule is thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a) & (b), in violation of the APA, 5 U.S.C. § 706(2).

SIXTH CAUSE OF ACTION
(Violation of the ESA: Reliance on Non-Regulatory State Representations in Assessment of Regulatory Mechanisms)

117. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

118. FWS arbitrarily relied on non-regulatory state representations, including statements contained in state wolf-management guidance documents and other non-binding state representations such as oral representations from Wyoming Game and Fish Department personnel, in assessing the adequacy of state regulatory mechanisms. This reliance shows an illegal failure to distinguish between regulatory and non-regulatory mechanisms.

119. For example, while FWS relied primarily on its review of the Wyoming laws and regulations, it also relied on the Wyoming wolf management plan to further clarify that Wyoming intends to satisfy these statutory and regulatory mandates by maintaining a buffer above minimum population targets. The delisting rule states that although it would have been desirable for Wyoming to have included a reference to a buffer above the minimum population targets in State statutes and regulations, inclusion of such a concept or a specific numeric buffer is not required for FWS to consider the buffer described in Wyoming's wolf management plan. Despite its centrality to the rationale offered in FWS's delisting rule, the concept of a population buffer above minimum wolf recovery levels does not appear in Wyoming's regulatory mechanisms.

120. Accordingly, FWS's assessment of regulatory mechanisms was arbitrary, capricious and not based upon the best available scientific information in violation of the ESA, 16 U.S.C. § 1533(a) & (b), and the APA, 5 U.S.C. § 706(2).

**SEVENTH CAUSE OF ACTION
(Violation of NEPA)**

121. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint herein by reference.

122. The Wyoming wolf management plan is a pillar of FWS's rational supporting its decision to delist the wolf in Wyoming. Before it would address delisting, FWS required Wyoming to submit a wolf management plan for its approval. Thus, FWS decision to approve the Wyoming plan was a separate decision preceding the actual delisting decision. FWS's decision to approve the Wyoming wolf management plan was nonetheless a federal action. FWS essentially negotiated many of the provisions of Wyoming's wolf management plan with the State. In particular, FWS negotiated the "line drawing," including the creation of the flex zone, dividing the State into a trophy game area, where wolves might persist, and a predator management area, where wolves will be exterminated. FWS approved Wyoming's decision to devote only approximately 15% of the State to the trophy game area and approximately 85% of the State to the predator management area. However, FWS could have negotiated or considered other alternative line drawing arrangements, with different percentage outcomes. Indeed, FWS once took that position that 100% of the State should be managed as a trophy game area. The division of Wyoming into zones where wolves will exist and where wolves will be extirpated has significant effects on the human environment. For example, the ability of humans, such as Plaintiffs' members, to enjoy wolves, and the economic impacts of this "wolf watching," are

obviously effected by this line drawing and the presence or absence of wolves in particular areas. Additionally, the positive effect wolves have on ecosystems by regulating and changing wild ungulate behavior will only occur in areas where wolves are present. Moreover, in the present case, FWS's approval of Wyoming's decision to include the entire southern and eastern portions of the State in the predator management zone essentially forecloses the possibility of natural wolf migration to Colorado or other nearby states (because dispersing wolves would have to negotiate more than 100 miles of a virtual "kill zone" to escape Wyoming) and thus engenders environmental impacts even beyond Wyoming's borders.

123. NEPA generally requires federal agencies, such as FWS here, to prepare an Environmental Impact Statement ("EIS") or an Environmental Assessment ("EA") to evaluate the environmental impacts of proposed major federal actions. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9(a)(1). FWS's approval of Wyoming's wolf management plan was a major federal action.

124. In narrow situations, neither an EA nor and EIS is required and federal agencies may invoke a "categorical exclusion" ("CE") from NEPA. 40 C.F.R. § 1508.4. A categorical exclusion is defined as "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations." 40 C.F.R. § 1508.4. A decision to approve a state wolf management plan as a precursor to delisting the wolf in a state is not such an action.

125. Accordingly, by its failure to prepare an EA or EIS or otherwise comply with NEPA prior to its decision to approve the Wyoming wolf management plan, FWS violated

NEPA, 42 U.S.C. § 4332(2)(C), and thus acted arbitrarily, capriciously, with an abuse of discretion, or contrary to law, in violation of the APA, 5 U.S.C. § 706(2).

REQUEST FOR RELIEF

Therefore, Plaintiffs respectfully request that the Court:

A. Declare that FWS has violated the ESA in delisting the gray wolf in the Wyoming portion of the Northern Rocky Mountain DPS;

B. Declare that FWS violated NEPA in approving the Wyoming wolf management plan without first conducting a NEPA analysis and preparing either an Environmental Assessment or Environmental Impact Statement;

C. Set aside FWS's final rule delisting the gray wolf in Wyoming and reinstate the prior rule affording the gray wolf in Wyoming the protection of the ESA;

D. Enjoin FWS's approval of the Wyoming wolf management plan until the Agency complies with NEPA;

E. Award Plaintiffs their reasonable attorney's fees and costs pursuant to the ESA and/or the Equal Access to Justice Act; and

F. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully Submitted,

November 27, 2012

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