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October 24, 2013

Public Comments Processing
Attn: FWS-HQ-ES-2013-0073
Division of Policies and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive
MS 2042-PDM
Arlington, VA 22203

RE: Docket # FWS-HQ-ES-2013-0073

Dear Service Director Ashe,

The Committee on Animal Law of the New York City Bar Association (the “Committee”) respectfully submits this response to the request in 78 Federal Register 56,614 (September 5, 2013) for comments to the U.S. Fish and Wildlife Service (the “Service”) on the proposal to remove the Gray Wolf (*Canis lupus*) from the list of Endangered and Threatened Wildlife under the Endangered Species Act of 1973 (the “Act”).¹ We urge the Secretary of the Interior (the “Secretary”) to find that the Gray Wolf meets statutory criteria as an Endangered or Threatened species and must remain listed as an Endangered or Threatened species under the Act.²

The New York City Bar Association is an independent non-governmental organization of more than 23,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local anti-cruelty legislation. When warranted, our

¹ 16 U.S.C. §1531-§1544.

² *Id.* at §1533.

Committee takes positions on various issues of concern involving the Endangered Species Act of 1973.³

Recommendation

The Committee recommends that the Secretary determine that the Gray Wolf, *Canis lupus*, “is in danger of extinction throughout all or a significant portion of its range,” and therefore maintain the species’ listing as Endangered throughout its range under the Act.⁴ The Committee bases its recommendation on its analysis of the work done by established organizations regarding the conditions in which the Gray Wolf exists, as applied to the relevant law.

A. The Gray Wolf should remain listed as “Endangered” under the Act due to the present modification and destruction of its habitat and range.

The Act defines “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range.⁵ The Act sets forth the criteria to determine whether any species is an Endangered species or a Threatened species and provides that a species may be determined to be Endangered or Threatened because of any of the following factors:

(A) the presence of threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation, (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.⁶

The Act provides that a species may be determined to be Endangered due to “the present or threatened destruction, modification or curtailment of its habitat or range.”⁷ The Gray Wolf faces ongoing habitat modification and curtailment of its natural range and should therefore remain listed as Endangered under the Act. The Gray Wolf, as an apex predator (an animal, who as an adult, has no natural predators in its ecosystem), requires large amounts of space and resources.⁸ Gray wolves have the largest natural range of any land-based mammal

³ See, e.g., Letter to the U.S. Fish and Wildlife Service urging the African Lion be added as an Endangered species under the Endangered Species Act of 1973 (January 2013), available at <http://www2.nycbar.org/pdf/report/uploads/20072384-CommentsreAfricanLionasEndangeredSpecies.pdf> (last visited October 17, 2013).

⁴ §1532(6),(16). Alternatively, even assuming *arguendo* that the Secretary finds the Gray Wolf fails to meet the criteria to merit a designation of Endangered under the Act, the Committee urges the Secretary at minimum to maintain some level of protection for the Gray Wolf under the Act by finding that the Gray Wolf meets the criteria to merit a designation of Threatened under the Act.

⁵ 16 U.S.C. §1532(6),(16).

⁶ 16 U.S.C. §1533(a)(1)(A)-(E).

⁷ *Id.* §1533(a)(1)(A).

⁸ See “Gray Wolf Conservation and Management,” Washington Department of Fish and Wildlife, available at http://wdfw.wa.gov/conservation/gray_wolf/big_game/predators.html (last visited October 10, 2013); see also Jim Dutcher, Jamie Dutcher, Garrick Dutcher, *Don’t Forget the Gray Wolf*, The New

besides humans and possibly some rodents and need the ability to roam and connect with other populations for genetic sustainability.⁹ As the human population continues to expand in the United States into previously unsettled wildlife conservation areas, there is increased competition between wildlife and humans for land and prey,¹⁰ and Gray Wolf habitats are destroyed, fragmented, and supplanted with settlement, agriculture, and livestock farming.¹¹ As a result the Gray Wolf currently occupies only 5 percent of its natural territory, with a population estimated at 5,000 to 6,000 in the lower 48 states.¹²

B. The Gray Wolf should remain listed as “Endangered” under the Act due to overutilization of the species for commercial, recreational or scientific purposes.

The Act provides that a species may be determined to be Endangered due to “overutilization for commercial, recreational, scientific or educational purposes.”¹³ The Gray Wolf is overutilized for recreational hunting and trapping in the lower 48 states and should therefore remain listed as Endangered under the Act. In August 2011, the Service delisted the Gray Wolf in the Western Great Lake Region, allowing those states to take over the management of the Gray Wolf population.¹⁴ State regulation of the Gray Wolf populations has proven highly inadequate and damaging to the survival of the species.¹⁵ Recreational

York Times, June 7, 2013, available at http://www.nytimes.com/2013/06/08/opinion/dont-forsake-the-gray-wolf.html?_r=2& (last visited October 10, 2013).

⁹ See *Restoring the Gray Wolf, River of No Return: Gray Wolf Fact Sheet*, PBS Nature, 2013, available at <http://www.pbs.org/wnet/nature/episodes/river-of-no-return/gray-wolf-fact-sheet/7659/> (last visited October 10, 2013).

¹⁰ According to the USDA, in 2012, the total number of farm operations in the Gray Wolf’s range (Idaho, Michigan, Minnesota, Montana, Wisconsin, and Wyoming) was 274,800. These operations are expected to continue to expand in number and size as the USDA has reported that average farm size in the United States increased by 1 acre in 2012 to 421 acres per farm. See *Farms, Land in Farms, and Livestock Operations 2012 Summary*, United States Department of Agriculture (February 2013), available at <http://usda01.library.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-19-2013.pdf> (last visited October 10, 2013).

¹¹ *Id.*; see also *Wildlife on the Brink: Gray Wolf*, Natural Resources Defense Council, available at <http://www.nrdc.org/wildlife/habitat/esa/rockies02.asp> (last visited October 10, 2013).

¹² See Defenders of Wildlife, *Basic Facts about Gray Wolves*, available at <http://www.defenders.org/gray-wolf/basic-facts> (last visited October 10, 2013) (estimating the Gray Wolf Population at roughly 5,000 wild animals in the lower 48 states, mainly in Idaho, Michigan, Minnesota, Montana, Wisconsin, and Wyoming); see also The Center for Biological Diversity, *Restoring the Gray Wolf*, available at http://www.biologicaldiversity.org/campaigns/gray_wolves/index.html (last visited October 10, 2013) (estimating that as of mid-2013 Gray Wolves occupied less than 5 percent of their historic range in the United States); see also Matthew Brown and John Flesher, *U.S. Wolf Protections Lift Proposed By Obama Administration*, Huffington Post, June 7, 2013, available at http://www.huffingtonpost.com/2013/06/07/us-wolf-protections-lift-gray-wolves_n_3403029.html (last visited October 14, 2013) (estimating the population at 6,100).

¹² 16 U.S.C. §1532(6),(16).

¹³ 16 U.S.C. §1533(a)(1)(B).

¹⁴ See *Restoring the Gray Wolf*, *supra*.

¹⁵ See Press Release, *Wildlife Protection Groups File Suit to Restore Federal Protection for Great Lakes Wolves*, Humane Society of the United States, February 12, 2013, available at

hunting and trapping licenses for the taking of the Gray Wolf have been increasingly issued, including in Michigan, Minnesota, Montana, Idaho, Wisconsin and Wyoming.¹⁶ Indeed, since the time of the Service's selective delisting of the Gray Wolf in Idaho, for example, the Gray Wolf population saw immediate declines¹⁷ with a total of 908 wolves killed due to such hunting and trapping.¹⁸ Within four months of enacting Gray Wolf hunting authorizations in Minnesota and Wisconsin, 500 wolves were killed in those two states alone.¹⁹ Additionally, it is reported that in the first six days of Wisconsin's 2013 hunting season, at least 85 Gray Wolves have been killed.²⁰ Furthermore, as the Gray Wolf's proximity to humans continues to increase, this threat of over hunting and trapping also increases.²¹

While the number of Gray Wolves killed by hunters and trappers reflects activities carried out through legal hunting and trapping programs authorized by states in the Great Lakes Region, many of the deaths also include illegal hunting.²² It is reported that legal methods of killing Gray Wolves by hunters and trappers have included such means as steel

http://www.humanesociety.org/news/press_releases/2013/02/wildlife-protection-groups-great-lakes-wolves-suit-021213.html (last visited October 14, 2013).

¹⁶ See *Restoring the Gray Wolf, supra.* The Michigan Department of Natural Resources has issued 1,200 hunting licenses for the 2013 Gray Wolf season beginning November 13, 2013. See *Natural Resources Commission authorizes limited public wolf harvest aimed at managing the state's wolf population*, Michigan Department of Natural Resources, July 11, 2013, available at http://www.michigan.gov/dnr/0,4570,7-153-10371_10402-308071--,00.html (last visited October 10, 2013). Montana has increased the length of its wolf season to last from September 7, 2013 to March 15, 2014. See *Montana Fish, Wildlife, and Parks: Wolf Hunting Guide*, Montana State Parks Commission, available at <http://fwp.mt.gov/hunting/planahunt/huntingGuides/wolf/> (last visited October 10, 2013).

¹⁷ See Lucia Graves, *Lawmakers Push To Take Gray Wolf Off Endangered Species List*, Huffington Post, March 25, 2013, available at http://www.huffingtonpost.com/2013/03/25/lawmakers-gray-wolf-endangered-species-list_n_2949975.html (last visited October 14, 2013).

¹⁸ Since 2011, an estimated 908 wolves were killed in Idaho. 379 of the estimated wolf population of 683 were killed in the 2011-2012 Idaho hunting season. See *2013-2014 Gray Wolf Hunting and Trapping Seasons and General Rules*, Idaho Fish and Wildlife Service, available at

<http://fishandgame.idaho.gov/public/docs/rules/bgWolf.pdf> (last visited October 14, 2013). At the end of the 2012 Wyoming hunting season, the wolf population had decreased by 17% to 186 wolves. See *2012 Wyoming Gray Wolf Population Monitoring and Management Annual Report*, Wyoming Game and Fish Department, available at

http://wgfd.wyo.gov/web2011/imgs/QRDocs/WYWOLF_ANNUALREPORT_2012.pdf (last visited October 14, 2013).

¹⁹ *Id.* at Press Release, *Wildlife Protection Groups File Suit to Restore Federal Protection for Great Lakes Wolves*.

²⁰ Paul Smith, *85 wolves killed in first six days of 2013 Wisconsin season*, Milwaukee Journal Sentinel, October 21, 2013, available at <http://www.jsonline.com/sports/outdoors/85-wolves-killed-in-first-six-days-of-2013-wisconsin-season-b99125061z1-228692831.html> (last visited October 23, 2013).

²¹ See Matthew Brown and John Flesher, *supra.*

²² *Gray Wolf Fact Sheet, supra.* (noting that "A few hunters continue to illegally kill wolves, believing that such actions will help [preserve] the deer herd."); In January 2013, Wyoming, Game and Wildlife Officials investigated the illegal killing of wolves near Grand Teton National Park. See *Wyoming Game Officials Investigating Illegal Wolf Kills Near Grand Teton*, Yellowstone Gate, available at <http://www.yellowstonegate.com/2013/01/wyoming-game-officials-investigating-illegal-wolf-kills-near-grand-teton/> (last visited October 15, 2013)(noting "These illegal killings of wolves are plain and simple poaching, with total disregard for the state's efforts to properly and adequately manage wolf populations in order to maintain recovery goals.").

trap hunting, hunting with dogs, aerial shooting from planes and helicopters, as well as the killing of wolf pups in their dens by such means as shooting or clubbing, gassing dens, setting fire in dens, and burying the dens with pups alive inside --some of the most inhumane methods of hunting and trapping wild animals.²³

C. The Gray Wolf should be listed as “Endangered” under the Act due to disease or predation.

The Act provides that a species may be determined to be “Endangered” due to “disease or predation.”²⁴ The Gray Wolf population suffers substantially from both disease and human predation and therefore should be listed as Endangered under the Act. Disease, including as Lyme disease, mange, parvovirus, and distemper,²⁵ is a significant threat to the Gray Wolf population and has had a demonstrable impact on the survival of these animals.²⁶ In addition to disease, predation by humans through both legal and illegal hunting is a significant factor threatening the Gray Wolf population as detailed in section B *supra*.

D. The Gray Wolf should be listed as “Endangered” under the Act due to inadequacy of existing regulatory mechanisms.

The Act provides that a species may be determined to be “Endangered” due to “the inadequacy of existing regulatory mechanisms.”²⁷ Presently, as detailed in section B, *supra*, the existing state regulatory mechanisms are inadequate to protect the Gray Wolf from

²³ See Press Release, *Wildlife Protection Groups File Suit to Restore Federal Protection for Great Lakes Wolves*, *supra*. Steel-jaw leghold trap, one of the most common animal traps used in the United States, restrains an animal by using spring-loaded steel jaws that when tripped clamp on to an animal's foot or leg. Animals caught in leghold traps can suffer from severe swelling, dislocations, fractures, self-mutilation, and death. See *Trapping the Inside Story*, Humane Society of the United States, available at http://www.humanesociety.org/assets/pdfs/WILD_Trapping_The_Inside_Story.pdf (last visited October 15, 2013); Hunting with dogs or hounding involves releasing a pack of dogs (as many as 20 dogs to a pack) to pursue a wild animal until the animal tires (at that point to be attacked by the pack) or climbs a tree. See *Hound Hunting Fact Sheet*, Humane Society of the United States, http://www.humanesociety.org/issues/hound_hunting/facts/hounding_fact_sheet.html (last visited October 15, 2013); Eric Barker, *Aerial gunners kill 14 wolves in North Idaho*, *The Spokesman Review*, February 23, 2012, available at <http://www.spokesman.com/stories/2012/feb/23/aerial-gunners-kill-14-wolves-north-idaho/> (last visited October 23, 2013); *In Wyoming, slaughtering wolf pups in their dens is legal*, *MSN Now*, April 6, 2013, available at <http://now.msn.com/wolf-denning-slaughtering-pups-in-dens-legal-in-wyoming> (last visited October 23, 2013).

²⁴ 16 U.S.C. §1533(a)(1)(C).

²⁵ See *In the Valley of the Wolves, Are the Wolves at Risk?*, PBS Nature, 2013, available at <http://www.pbs.org/wnet/nature/episodes/in-the-valley-of-the-wolves/are-wolves-at-risk/215/> (last visited October 17, 2013); see also *River of No Run: Gray Wolf Fact Sheet*, *supra*.

²⁶ *Id.* See also Frank Clifford, *Wolves and the Balance of Nature in the Rockies*, *Smithsonian Magazine*, February 2009, available at <http://www.smithsonianmag.com/science-nature/Howling-Success.html?c=y&page=3> (last visited October 15, 2013) (noting that in 2005 in Yellowstone Park alone, two-thirds of gray wolf pups died from the viral infection distemper which affects the pups' respiratory and central nervous systems).

²⁷ 16 U.S.C. § 1533(a)(1)(D).

extinction. Therefore, the Gray Wolf should be listed as Endangered under the Act. The Gray Wolf was one of the original species listed as Endangered under the Act in 1973 at a time when the species had lost 95% of its previous range and numbered only several hundred throughout the United States.²⁸ Since that time, the Gray Wolf population has begun to improve through the strict regulations and successful reintroduction programs promulgated under the Act.²⁹ The nascent Gray Wolf populations in the Northwest need these continued federal protections to ensure successful, stable, and long term growth and connection with natural ecosystems, particularly since the Gray Wolf population currently occupies only 5 percent of its natural territory, with a population estimated at only 5,000 – 6,000 in the lower 48 states.³⁰

Based on the foregoing reasons, we urge the Secretary to find that the Gray Wolf subspecies meets the statutory criteria as an Endangered species and to list the Gray Wolf as “Endangered” under the Act.

Sincerely,



Christine Mott
Chair, Committee on Animal Law

²⁸ Catherine J. Archibald, *The Recovery of the Gray Wolf Under the Endangered Species Act*, Michigan State University College of Law, 2005, available at <http://www.animallaw.info/articles/ddusgraywolf.htm> (last visited October 14, 2013).

²⁹ *Id.*; see also *Restoring the Gray Wolf*, *supra* (noting that while protection for the species was provided under the Act there were “for two of the three gray wolf populations in the contiguous states, steady increases in numbers and distribution, along with benefits to their ecosystems.”).

³⁰ *Id.*