



20 Gilsland Farm Road
Falmouth, Maine 04105
207-781-2330
www.maineaudubon.org

November 17, 2004

U.S. Fish and Wildlife Service
Attn: Gray Wolf Delisting
c/o Content Analysis Team
P.O. Box 221150
Salt Lake City, UT 84122-1150

RIN 1018 – AJ03

To: Content Analysis Team:

Maine Audubon would like to outline five major inadequacies in the proposed rule to remove the Eastern Distinct Population Segment of the Gray Wolf from the list of endangered and threatened wildlife.

1. USFWS has not allowed for adequate public input on removing the Eastern Distinct Population Segment (DPS) of Gray Wolf from consideration for recovery.

The USFWS went through a thorough public comment period after it issued its July 13, 2000 proposed rule¹ to reclassify the wolf. All the scientific information provided by the USFWS supported designating four separate distinct population segments (DPS) including a Northeastern DPS. Indeed, the proposed rule never indicated that a possible outcome was combining the Western² Great Lakes DPS with the Northeastern DPS. Then on April 1, 2003, the USFWS published a notice of proposed rulemaking that essentially eliminated the Northeastern DPS by combining it with the wolf population in the Great Lakes region³.

On the very same day, the USFWS also published its *final* rule to reclassify and remove the gray wolf from the list of endangered species, including the controversial merging of distinct population segments. Because the decision to remove the Northeastern DPS was not outlined as a possible action for public input in the original proposed rule to reclassify and remove the gray wolf from the list of endangered and threatened species in July of 2000, we believe the USFWS has not followed due process in allowing public input regarding combining the two distinct population segments and *what it will mean* for wolf recovery.

¹ Federal Register/ Vol. 65, No. 135/ Thursday, July 13, 2000/ Proposed Rules

² emphasis added

³ Federal Register Vol. 68, No. 62 / Tuesday, April 1, 2003 / Advanced Notice of Public Rulemaking

Although the USFWS cited their longstanding practice of requesting expert opinions of independent specialists in accordance with their Peer Review Policy, the agency did not follow this policy with regards to combining the Northeastern and Great Lakes DPSs. The USFWS clearly stated that the “complexity, geographic scope and expected controversial nature of the proposed action⁴” indicated they should go beyond what is outlined in the Peer Review Policy, which recommends soliciting expert opinions from *three* independent specialists. Following the July 2000 proposal to create a separate Northeastern DPS, the USFWS solicited and received comments from 11 independent experts.

Because a similarly comprehensive peer review has not yet occurred to assess the scientific validity of combining the Western Great Lakes DPS and the Northeastern DPS, the USFWS has failed to provide a scientific basis for its decision *before* requesting public review of that determination. Therefore, USFWS has not abided by its obligation for public participation regarding combining the Western Great Lakes DPS with the Northeastern DPS in its final rule.

2. USFWS used opposing and inconsistent standards in delineating wolf recovery areas for the Northeast DPS when compared to the Southwestern DPS:

The USFWS has designated a separate Southwestern DPS for wolves even though the naturally-occurring wolf population was already extirpated from that DPS. Yet, the USFWS explicitly cited their finding that wolves do not currently occur in the Northeast United States to abandon recovery efforts for this region. The USFWS has relied too heavily on the scarcity of evidence for the presence of wolves in the Northeast United States in arguing for eliminating a separate DPS for the Northeast. This inconsistency should be addressed in the USFWS proposal to remove the gray wolf from its list of endangered and threatened species in the new “Eastern DPS”.

An additional weakness in the USFWS proposal was to use different standards for determining the boundary for the Southwest DPS versus the Northeast. The Southwestern wolf DPS does not arbitrarily stop at the United States border but continues on into Mexico. If the USFWS had included Canada as part of the Northeastern DPS, it would have had to conclude wolves do occur within the Northeast DPS and deserve to be protected within the United States.

3. Occurrences of wolves in the Northeast combined with the very low level of search effort indicate that USFWS cannot conclude that wolves do not exist in the Northeast.

We do not believe the USFWS has enough data to conclude that there are no wolves in Maine. I urge you to look to the federal listing of the Canada lynx to see what can be learned about the range, distribution, population size and trends of a rare or seemingly “nonexistent” animal if we actually spend time and money looking for them. Before the lynx was listed, the Maine Department of Inland Fisheries and Wildlife urged you not to

⁴ Federal Register Vol. 68, No. 62 / Tuesday, April 1, 2003 / Final Rule page 15819.

list the lynx because there was no evidence that lynx actually bred in Maine though they admitted lynx probably wandered in from Canada. After the lynx was listed, state and federal resources were allocated to find what animals were here. Since 1999, the lynx research project reports they have captured 93 lynx, located 23 dens and handled 63 kittens.

We are now hearing the same familiar refrain about the gray wolf that they do not exist here in Maine. Even though the USFWS has confirmed the presence of four wolves in the Northeast, there is still “no evidence that a population of wolves is breeding in the Northeast”. Unfortunately all the confirmed wolves were shot, including a 63-pound female killed in northwestern Maine in 1993.

In Maine, the areas where wolves and lynx are likely to be encountered are extremely remote with very few people. Just like the lynx, it is unlikely wolves in Maine would be encountered during regular use of the forest. Since the State of Maine and the USFWS have spent much time and money searching for and finding lynx, we have learned they are much more abundant than ever anticipated. The physical evidence required to confirm the presence of wolves would also be difficult to uncover without a comprehensive proactive search. It is unfortunate that we have had to rely on carcasses to confirm presence of at least some wolves.

The lesson of the lynx listing combined with the Northeast wolf specimens shot, is that we have not adequately resolved the question of the existence of wolves in the Northeast because we have not adequately looked. Therefore, we cannot conclude they are absent. This is important because if the gray wolf occurs in the Northeast, we would be required to protect them until they occurred in significant enough numbers that they qualified for delisting

4. The Northeast DPS is a significant component for the recovery of the Gray Wolf and should be included as a separate DPS:

It is not scientifically defensible to conclude that the Great Lakes population of gray wolves will adequately protect wolves in the Northeast. The Northeast DPS is *contiguous* with the wolf population in southeastern Canada and *separate* from the Great Lakes population. Furthermore, the wolves that currently exist in Minnesota, Wisconsin and Michigan are not separate from each other but all part of the same dispersing population. Therefore, this interconnecting population is at risk of disease, loss of prey or unexpected catastrophe because it is truly a single population. For this reason, we believe that USFWS has not fully incorporated the recognized principles of conservation biology of representation, resiliency and redundancy⁵ into the proposed rule. The Great Lakes population, by itself, does not possess the redundancy, or multiple populations necessary to ensure the species will persist over time. The Eastern Timber Wolf recovery goal of “at least one viable population outside the Minnesota and Isle Royale in the contiguous 48 states⁶” has not been met under this proposal.

⁵ Federal Register / Vol. 69, No. 139 / July 21, 2004. page 43673.

⁶USFWS, Recovery Plan for the Eastern Timber Wolf Revised 1992.

We are particularly concerned about the risk of disease in a single population that is physically connected. In 1994 canine distemper virus killed a third of the lions in the Serengeti⁷. The source of that virus was *domestic dogs*. The risk of wolves contracting and spreading this or other diseases is great because they live in close proximity to human populations.

We believe the USFWS has an obligation to promote recovery of the gray wolf in the Northeast and that the gray wolf population is at risk of failing to meet recovery goals without such efforts. The wolf now occupies only 5% of its historic range. We do not believe this meets the expectation for recovery in a “significant portion” of its range as required.

5. Wolves and the future of wolf recovery will be at grave risk under the USFWS’s proposed rule because existing laws do not adequately protect wolves in Maine:

We urge the USFWS to conduct its own investigation into the laws pertaining to “take” of gray wolves in Northeastern states where wolf habitat occurs, should they be delisted. There is great uncertainty that existing laws would be any deterrence to poaching of wolves in these states.

Nongame birds not listed as endangered or threatened species receive strong federal protection under the federal Migratory Bird Treaty Act. There is no similar federal or state statute that offers such broad protection for mammals. In Maine, there would be no penalties levied under the state’s game statutes since it is not listed as a game species. In fact, it is unclear exactly what laws would apply to individuals who kill wolves in Maine once federal protection is removed. By keeping wolves off Maine’s list of endangered and threatened species, it is likely that we have relegated any penalties to the discretion of judges without any specific guidance or context. This is not acceptable.

The USFWS should not continue to depend on dead wolves to “confirm their presence” in the Northeast. Without either a federal or state recovery plan in place, I’m afraid the potential that dispersing wolves have for recovery in Maine will be literally shot out of existence.

I appreciate the opportunity to comment on your proposal.

Sincerely,



Jody Jones
Wildlife Ecologist

⁷ Reported in *Science Daily*: <http://www.sciencedaily.com/releases/2004/09/040902085433.htm>