



# Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

**Phone:** (202) 265-PEER • **Fax:** (202) 265-4192

**Email:** [info@peer.org](mailto:info@peer.org) • **Web:** <http://www.peer.org>

Ms. Alisa Shull  
Chief, Endangered Species  
Midwest Region  
U.S. Fish and Wildlife Service  
5600 American Blvd. West  
Suite 990  
Bloomington, Minnesota 55437-1458

Date: June 1, 2017

## **RE: Necessity of Endangered Species Act Consultation for Coyote-Killing Contests**

Dear Ms. Shull:

We are submitting this letter on behalf of Public Employees for Environmental Responsibility (“PEER”), National Wolfwatcher Coalition, and Friends of the Wisconsin Wolf to redress ongoing violations of law and official mismanagement of wildlife.

### **Summary**

Wisconsin Department of Natural Resources (“DNR”) is in violation of the Endangered Species Act (“ESA”) by failing to consult with the U.S. Fish and Wildlife Service (“FWS”) over the ongoing threat to the endangered gray wolf (*Canis lupus*) due to unregulated coyote-killing contests throughout the state.

A recent trend has emerged in Wisconsin that jeopardizes the gray wolf’s critical habitat. Unregulated “coyote-killing” contests, which are conducted without licenses and incentivize widespread and indiscriminate killing of coyotes (*Canis latrans*), are taking place across Wisconsin, oftentimes on public lands. Rather than being hosted by sportsmen’s organizations, a disproportionate amount of these contests are sponsored by area bars, such as Rotten Brothers and Kickback Grille.<sup>1</sup>

---

<sup>1</sup> See “Coyote hunting contest draws complaints from environmental groups,” Lee Berquist, *Milwaukee-Wisconsin Journal Sentinel*, Jan. 21, 2013. Available at <http://archive.jsonline.com/news/wisconsin/coyote-hunting-contest-draws-complaints-from-environmental-groups-b99655858z1-366096181.html?page=1>

While the hunting of coyotes is licensed by the Wisconsin DNR, these contests are essentially unregulated. These events incentivize hunters to kill as many coyotes as possible, often with young and minimally trained hunters participating. Under field-conditions even a veteran hunter or wildlife biologist can easily confuse a coyote and a wolf, as evidenced by the numerous instances where hunters have turned themselves in after killing a wolf by mistake while hunting coyote. Therefore, these unregulated coyote-killing contests are hugely problematic, especially when they occur in the habitat of the endangered gray wolf.

Given that the Wisconsin DNR has a history of poor management of gray wolves, its lack of attention and enforcement of these unregulated coyote-killing contests is unsurprising; however, in this instance such action violates the Endangered Species Act.

Section 7 of the ESA requires that DNR consult with FWS to insure that government action, such as issuing hunting licenses, do not jeopardize the continued existence of the gray wolf, a listed endangered species, or result in the adverse modification of the its critical habitat. DNR has not sought or been granted an exemption for this required consultation. Furthermore, because the coyote closely resembles the gray wolf, it would be appropriate for FWS to consider a “de facto” listing conferring protections on the coyote in order to protect the endangered gray wolf.

### **Requested Actions**

DNR’s disregard for its consultation obligations under the ESA pose a serious risk to a listed species in the state. We are asking your agency to take the following actions:

#### **1. Initiate consultation with DNR on coyote-killing contests**

Under Section 7 of the ESA, 16 U.S.C. § 1536 *et seq.*, state agencies must consult with the FWS when their action may jeopardize the continued existence of a listed species or result in the adverse modification or destruction of the critical habitat designated for the species. Between the delisting of the wolf in 2012 and its re-listing in 2014, the population of the wolf in Wisconsin plummeted from estimated totals of 815-880 in 2012 to 660-689 in 2014.

This decrease in numbers corresponded exactly with reported harvest by hunters from trapping and shooting. During the winter of 2015-2016, Wisconsin was home to 866 gray wolves, a number that federal courts have deemed too low for reduced protections, de-listing, or reclassification to “threatened” status. During this same time period, the state’s wolves saw only one incidence of agency lethal control. However, illegal poaching constituted 34% of all wolf mortalities within Wisconsin.<sup>2</sup>

Coyote-killing contests occur throughout the gray wolf’s critical habitat in Wisconsin. These contests face no regulation nor do they command greater anti-poaching restrictions by DNR. These contests certainly result in adverse modification to the gray wolf’s habitat and jeopardize its continued existence because of the resulting illegal take negatively impacting the gray wolves’ numbers and continued viability. Therefore, DNR and FWS are required to enter

---

<sup>2</sup> <http://dnr.wi.gov/topic/Wildlifehabitat/wolf/documents/Wolfreport2016.pdf>

into a consultation process to determine if such action has a detrimental effect. After the consultation, and upon a finding of jeopardy, the FWS must suggest reasonably prudent alternatives that would not result in an ESA violation. 16 U.S.C. § 1536(b)(3)(A).

**2. Begin a review for a de facto listed species designation for coyotes in areas where there are listed gray wolves.**

Section 4(e) of the ESA permits FWS to treat the coyote as threatened or endangered in this particular scenario since it can be easily mistaken for an endangered species when present in its range. Listing the coyote would be appropriate in this instance because of the difficulty in distinguishing between the coyote and the gray wolf under field conditions, as DNR already acknowledges the difficulty in properly identifying wolves – even stating that a DNA test is necessary to properly identify the species in some situations.<sup>3</sup>

The threat posed to the gray wolf because of its similarity in the appearance to the coyote is evident by its continued human mortality in coyote hunting territories.<sup>4</sup> Because of these threats, the designation of the coyote as “de facto” endangered within the gray wolf’s range will more greatly facilitate FWS’s necessary work to conserve the wolf and the ecosystems on which it depends. 16 U.S.C. § 1533(e); 16 U.S.C. § 1531(b)-(c)(1); 50 C.F.R. 17.50.

There is ample precedent demonstrating the need for agencies to employ “de facto” listings for easily mistaken species in overlapping ranges with listed species. In 2012 this agency promulgated a final rule prohibiting fisherman from taking the shovel-nosed sturgeon (which was not threatened or endangered) in the Missouri and Mississippi river basins where its habitat overlaps with that of the pallid sturgeon (a species of fish listed as threatened.) 50 C.F.R 17.44(aa); 75 Fed. Reg. 53,598, 53604-05. This designation withstood judicial scrutiny. *Ill. Commer. Fishing Ass'n v. Salazar*, 867 F. Supp. 2d 108 (D.D.C. 2012).

Just like in the case of the sturgeon, the FWS must grant a “de facto” listing to the coyote in areas where coyote and gray wolf habitats overlap. Doing so would provide much-needed regulation of coyote hunting and would mitigate or eliminate the adverse impacts that coyote-killing contests are having on the gray wolf’s population and critical habitat.

**Endangered Species Act Citizen Suit Provision.**

The FWS, in failing to initiate the consultation process with DNR, has failed to perform a non-discretionary duty. 16 U.S.C. § 1536. Section 11 of the ESA permits any citizen, after providing sixty days’ notice, who is adversely affected by this agency’s violation of the ESA to commence a civil action against it for failure to perform a non-discretionary function. 16 U.S.C. 1540(g); see generally *Bennett v. Spear*, 520 U.S. 154 (1997). Ample judicial precedent has been

---

<sup>3</sup> <http://dnr.wi.gov/topic/wildlifehabitat/wolf/identify.html>

<sup>4</sup> Chapron G., Treves A., 2016, “Blood does not buy goodwill: allowing culling increases poaching of large carnivore,” *Proc. R. Soc. B.* 283: 20152939. Available at: [http://faculty.nelson.wisc.edu/treves/pubs/Chapron\\_Treves.pdf](http://faculty.nelson.wisc.edu/treves/pubs/Chapron_Treves.pdf)

established to show that FWS must protect the gray wolf within Wisconsin and such actions are necessary to avoid enforcement of such requirements through the ESA's civil suit provision.

**Conclusion**

The Endangered Species Act requires state and federal agencies to cooperate for the purposes of protecting endangered species until such time that those protections are no longer necessary for its continued survival. Unregulated, privately sponsored coyote-killing contests are simply the latest example of DNR's reckless acquiescence to hunters. The ESA requires that DNR and FWS enter into consultation on this issue. As it stands, FWS is liable and is subject to lawsuits for failure to perform its non-discretionary functions under the ESA.

To that end, the undersigned urge the U.S. FWS to initiate consultation with the Wisconsin DNR and to begin review of a "de facto" listing for the coyote when present in gray wolf habitat.

Thank you for your prompt attention to this matter.

Sincerely,



Adam Carlesco, Staff Counsel  
*Public Employees for Environmental Responsibility (PEER)*  
962 Wayne Ave, Suite 610  
Silver Spring, MD 20910  
Office: 202.265.7337 / Direct: 240.247.0298  
Email: [acarlesco@peer.org](mailto:acarlesco@peer.org)

Nancy Warren, Executive Director  
*National Wolfwatcher Coalition*  
PO Box 161281  
Duluth, MN 55816

Melissa Smith  
*Friends of the Wisconsin Wolf*  
117 Ardmore Drive  
Madison, WI 53713

Cc:

Lori Nordstrom, Assistant Regional Director  
U.S. Fish and Wildlife Service  
Ecological Services  
5600 American Blvd. West, Suite 990  
Bloomington, MN 55437-1458