



Public Employees for Environmental Responsibility

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William C. Woody
Chief, Office of Law Enforcement
U.S. Fish & Wildlife Service
5600 American Boulevard, West, Suite 990
Bloomington, MN 55437-1458

RE: Request for Criminal Investigation – Violation of the Endangered Species Act

Dear Chief Woody:

This is a formal request for an investigation of alleged criminal violations relating to the illegal take of the federally protected gray wolf (*Canis lupus*) in Wisconsin. Public Employees for Environmental Responsibility (“PEER”) has learned of ongoing illegal harassment of the gray wolf by hound hunters in Wisconsin. These activities have led to adverse effects on breeding patterns and the habitat of the gray wolf. PEER believes these activities constitute prima facie evidence of ongoing criminal misconduct.

The activities in question involve twenty-two individuals who have, by all appearances, violated the Endangered Species Act, 16 U.S.C. § 1531 et seq., (“ESA”) by engaging in activities which amount to the “taking” of a protected species as defined under § 9 of the Act.

During Wisconsin’s 2016 hunting season, forty-eight hunting hounds were killed by wolves. Twenty-one of these incidents occurred on public National Forest lands, and more than fifteen occurred after hunters were informed of the fact that they were hunting or training their dogs in “wolf caution areas.” These activities constitute harassment of endangered wolves and are criminal violations of the ESA.

Background

Wisconsin’s Hound Dog Compensation Program

In 1982, Wisconsin started its wolf depredation program, which includes reimbursement for death or injury caused to hunting dogs by wolves. Wis. Stat. 29.888.¹ Through its Department of Natural Resources (“DNR”), Wisconsin allows the hunting of bears with hound dogs and is the only state with a program that compensates the owners of hound dogs killed by wolves while hunting other animals. The stated purpose of the program is to mitigate damage caused by the recovery of the endangered wolf population. Wisconsin’s DNR compensates each hunter \$2,500 per hound killed during a wolf depredation event. In addition, DNR reimburses hunters for any veterinary care sought to save the hound’s life. If the animal dies, the state covers veterinary costs in addition to the \$2,500 depredation payout.²

Over the past decade, the state has paid hundreds of thousands of dollars to hunters who have lost dogs due to depredation events.³ In 2017 alone, the state paid out \$99,400.00 to hunters for hounds killed by wolves.⁴

Wisconsin DNR provides compensation for a lost hound regardless of past or present criminal activity. At least five individuals who have filed verified claims to receive compensation from the state of Wisconsin for hunting dogs killed by wolves had prior criminal convictions for hunting-related offenses.⁵ These payments, as well as those to individuals with less serious hunting-related prior violations, are legal under DNR compensation policies.

Though the DNR issues hunting licenses in the state, a license is not an eligibility requirement for compensation from the DNR for hounds killed by wolves during violent

¹ Although the statute by its terms forbids depredation payments at times when the wolf is listed on the federal or state endangered species list, the DNR has been making payments despite the fact that the gray wolf is federally listed. Wis. Stat. 29.888(1m).

² See Dep’t Natural Res., Dog Depredations by Wolves for 2016, *available at* <http://dnr.wi.gov/topic/wildlifehabitat/wolf/dogdeps2.html> [hereinafter Dog Depredations]; *see also* Dep’t Natural Res., Wolf Damage Payments, *available at* <http://dnr.wi.gov/topic/wildlifehabitat/wolf/documents/wolfdamagepayments.pdf> [hereinafter Wolf Payments] (describing the amount of money the state paid out to cover the cost of hound veterinary bills in 2016).

³ See Wolf Payments, *supra* note 2.

⁴ *Id.*

⁵ Rickey J. Nelson, Loyal, in Clark County: 2002 misdemeanor conviction for killing a bear without a license. Mr. Nelson was fined \$2,064 and lost his DNR privileges for three years. Mr. Nelson also had prior misdemeanor convictions for trapping without a license during closed season and possessing a deer during closed season. Mr. Nelson was fined \$2,860. The state has paid Nelson \$2,500 each for two dogs — one killed in 2009, the other in 2012.

Josh K. Schlosser, Oconto, WI: 2009 misdemeanor conviction for killing a bear without a license. Mr. Schlosser was fined \$2,108 and had his DNR hunting privileges revoked for three years. He filed a claim seeking \$4,500 for the death of a hound in 2011 and received the maximum \$2,500.

Kenneth F. Strobl, Catawba, in Price County: 2003 misdemeanor convictions on one count of killing a bear without a license and one count of unlawful sale of animal parts. Mr. Strobl was originally charged with illegally killing two bears and selling 30 bear gall bladders to an undercover conservation warden. He was fined \$2,749 and subsequently lost DNR privileges for five years. Mr. Strobl received \$2,000 for a hunting dog killed in 2011.

Brandon M. True, Gillett, in Oconto County: 2009 misdemeanor conviction for being party to killing a bear without a license; he was fined \$1,000 and lost hunting privileges for one year. Mr. True additionally received \$2,500 for a dog killed in 2013.

Mike Wood, Amery County: 2009 three misdemeanor convictions for intentional mistreatment of animals. Mr. Wood was also convicted of a fourth misdemeanor for illegal poaching of a bear and a fifth for resisting a conservation warden.

hound/wolf interactions. *See* Wis. Stat. § 29.184.⁶ Thus, Wisconsin’s current DNR compensation policy for lost dogs covers out-of-state hunters as well as Wisconsin residents who do not have hunting licenses and thus are hunting illegally.⁷ Under the present policies, both in-state and out-of-state residents may petition and receive reimbursement from the state for hounds killed by wolves while legally or illegally engaged in hound hunting or training activities.⁸ Hunters who are restricted from obtaining licenses, yet continue to hunt in violation of licensing requirements, may still receive a state sanctioned payout if they lose a dog to a wolf.

Furthermore, in 2015, the state eliminated the “Class B” bear hound training licenses. While a Class A license or “kill tag” is still required for any hunter wishing to kill a black bear, the Class B licensing requirements have been rescinded. *See* Wis. Stat. 29.184(3)(a) (stating that no license is required to, among other things, train a dog to track bear or assist a holder of a Class A bear license). Class B requirements mandated that a prospective hunter seeking to train hounds obtain a permit from the state to do so. A Class B permit allowed a hunter to bait bears, train dogs to track bears, act as a back-up shooter, or assist a hunter pursuing a bear. Now both residents and non-residents may run hound dogs through Wisconsin’s wilderness for training purposes unchecked and without licensed oversight from the state.

Wisconsin’s 2016 Hunting Season

Wisconsin’s DNR allows for the training of dogs by pursuing bear from July 1 through August 31, prior to the start of hunting season.⁹ This period is when female wolves are tending to their roughly three-month-old pups. This hound training occurs when wolves are taking their pups out of dens for the first time to “rendezvous sites” where the pups can be taught to hunt. Thus, this training occurs at times when female adult wolves are more aggressive about defending their young and their territory.

Between March and December of 2016, forty-eight hound dogs were sent by hunters into probable wolf pack ranges¹⁰ and killed in conflicts with wolves, with the highest number of depredation events occurring between July 1 and August 31 when wolf pups are first leaving their dens.¹¹ Bear season does not start in Wisconsin until September 6; however, more hounds were killed in Wisconsin during hound training season than during the sanctioned bear hunting season. Of the total number of depredation events, more than fifteen of the forty-eight hounds killed were on public lands in the Chequamegon-Nicolet National Forest, specifically in areas that the DNR had cautioned previously as being high risk for wolf attacks.¹²

⁶ *See supra* note 5; *see generally* Dog Depredations, *supra* note 2.

⁷ Bill Leuders, *State pays scofflaws over hound deaths*, WisconsinWatch.org (Jan. 5, 2014), <http://wisconsinwatch.org/2014/01/state-pays-scofflaws-over-hound-deaths/>.

⁸ *See supra*, note 2.

⁹ *See* Dep’t Natural Res., Bear Season Dates, *available at* <http://dnr.wi.gov/topic/hunt/dates.html> (noting that this occurs before the official start of bear hunting season that begins on September 6).

¹⁰ *See* Dep’t Natural Res., Wisconsin Grey Wolf Monitoring Report 11-13, *available at* <http://dnr.wi.gov/topic/Wildlifehabitat/wolf/documents/Wolfreport2016.pdf>.

¹¹ *See* Dep’t Natural Res., Gray Wolf Depredation, *available at* http://dnrmapping.wi.gov/H5/?viewer=GRAY_WOLF_DEPREDATION [hereinafter Depredation Map].

¹² *See id*; *see also* Wolf Payments, *supra* note 2

Criminal Violations

Endangered Species Act

Due to a Federal court decision, wolves in the western Great Lakes Distinct Population Segment, which includes Michigan, Minnesota, and Wisconsin, were relisted under the ESA effective December 19, 2014.¹³ The United States Supreme Court has observed that the ESA is “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). Beyond any doubt, “Congress intended endangered species to be afforded the highest of priorities, as the “plain intent of Congress in enacting [the] statute was to halt and reverse the trend toward species extinction, *whatever the cost.*” *Id.* at 184 (emphasis added).

Section 9(a)(1) of the Endangered Species Act provides that “with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to... (B) take any such species within the United States or the territorial sea of the United States.” 16 U.S.C. § 1538(a)(1)(B). Section 3(19) of the Act defines the statutory term “take” as meaning “to *harass*, harm, *pursue*, *hunt*, shoot, wound, kill, trap, capture, or collect, or *to attempt to engage in any such conduct.*” 16 U.S.C. § 1532(19) (emphasis added).

In a recent case in Arizona, the U.S. district court¹⁴ invalidated the Department of Justice’s “McKittrick Rule,” addressing the law’s definition of “knowingly” for criminal offenses. *WildEarth Guardians* overturned the DOJ’s previous policy, which required that the government only prosecute “take” of animals on the ESA list of endangered species when it could prove that the individual knew the biological identity of the species he was harming. Just as criminal “take” can occur when a hunter mistakenly shoots an endangered species believed to be a non-listed species, “take” can occur when a hunter’s activities, though not specifically directed at a listed species, result in take of a listed species. This is the case here where hunters’ activities in training and hunting with hound dogs for bears result in the harassment of listed wolves.

Twenty-one individuals have engaged in the impermissible take of the federally protected gray wolf on federal land in the state of Wisconsin.

Section 9 of the ESA prohibits various activities including the “take” of endangered species. 16 U.S.C. § 1538(a). “Take” can be direct or indirect and includes engaging in or attempting to engage in a variety of deleterious actions including harassment, harm, and pursuit. *Id.* § 1532(19). Under 50 C.F.R. § 17.3, “harm” includes significant habitat modification or degradation that kills or injures wildlife by *significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.*” (emphasis added). Moreover, both the Supreme Court and Congress have explicitly stated that the term “take” is to be interpreted as broadly as

¹³ *Humane Soc’y of the United States v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. Dec. 19, 2014) (holding The National Fish and Wildlife Service’s (FWS’s) final rule, which “delisted” wolves from the ESA’s list of protected species in nine Midwestern nine states violated the spirit and the letter of the ESA).

¹⁴ *WildEarth Guardians v. United States DOJ*, No. CV-13-00392-TUC-DCB (D. Ariz June 19, 2017).

possible.¹⁵ “Harass” is an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.¹⁶ Courts have recognized that, in addition to past and current threats of harm, the “likely” threat of future harm also constitutes “take” under the ESA.¹⁷

Harassment or pursuit of a wolf while hound hunting is a prohibited act as evidenced by the plain language of the ESA’s “take” definition, which includes harassment and pursuit. However, over the course of Wisconsin’s 2016 hunting season, forty-eight hounds were killed by wolves, twenty-one of which occurred on public lands, and more than fifteen of those acts occurred after hunters were informed of the fact that they were hunting in “wolf caution areas.”¹⁸ The Wisconsin Department of Natural Resources creates specific “wolf caution areas” that warn hunters of previous instances of wolf attacks on hound dogs in a hunting or training situation. To aid hunters, the DNR website features an interactive “Gray Wolf Depredation Mapping Application” which “shows all verified wolf depredations and threats on livestock, hunting dogs and pets as well as verified human health and safety conflicts.”¹⁹ Lastly, DNR has an e-mail and text alert system to inform residents about wolf activity in their area.²⁰

Wisconsin is the only state in the nation that has a compensation program for hound hunters who have lost hunting dogs to wolf depredation out in the field. While this program is designed to improve hunters’ acceptance of the presence of wolves within the State, it has demonstrably failed to do so. Wisconsin’s own Wolf Management Plan states, “the existing compensation program for wolf depredations was very popular, but individuals who received compensation payments for reported depredations were no more tolerant of wolves than were individuals claiming losses but who were not paid.”²¹ Wisconsin’s compensation program serves as little more than a state sanctioned financial subsidy for hunters engaged in the criminal harassment of the federally endangered gray wolf.²²

¹⁵ 16 U.S.C. § 1538(a)(1)(B); 5 C.F.R. 17.21(c); *see, e.g., Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 698 (1995) (determining that “the broad purpose of the ESA supports” a correspondingly broad definition of “harm” from the Secretary of the Interior); S. Rep. No. 93-307, at 7 (1973) (“‘Take’ is defined . . . in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.”).

¹⁶ *See Babbitt*, 515 U.S. 705, 718, 719-720.

¹⁷ *Marbled Murrelet v. Babbitt*, 83 F.3d 1060, 1066 (9th Cir.1996); *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Florida*, 92 F. Supp. 2d 1296, 1302 (M.D. Fla. 2000).

¹⁸ *See* Depredation Map, *supra* note 11; *see also* WOLF ADVISORY COMMITTEE MEETING (Feb. 12, 2014), *available at* <http://dnr.wi.gov/topic/wildlifehabitat/wolf/documents/committee/meeting0214.pdf> (noting that wolf alert areas include a 4-mile buffer around the depredation event).

¹⁹ *See* Depredation Map, *supra* note 11.

²⁰ *See* Dog Depredations, *supra* note 2; *see also* Karen Madden, *DNR starts issuing wolf alerts*, Timber Wolf Information Network, <http://www.timberwolfinformation.org/dnr-starts-issuing-wolf-alerts/>.

²¹ WISCONSIN WOLF MANAGEMENT PLAN Appendix H2 (1999), *available at* <http://dnr.wi.gov/files/PDF/pubs/ER/ER0099.pdf>.

²² As noted above, the program is not even statutorily authorized for periods when the wolf is listed as endangered on the federal or state level. However, the DNR has continued to implement it since the gray wolf was reinstated on the federal endangered species list.

Gray wolves are a federally protected species under the ESA in the Great Lakes Region of Michigan, Minnesota, and Wisconsin.²³ Yet, violent interactions between hounds and wolves continually occur, constituting impermissible “take” under § 9 of the ESA. As the Court held in *Babbitt v. Sweet Home Chapt. Comms. for Ore.*,²⁴ Congress intended to go beyond the actual infliction of direct force upon an endangered species. Deadly encounters between wolves and hound dogs are clearly take of a federally protected species, as they may result in wounding, and at the least stem from harassing or pursuing the wolf. Scientific research on wolves confirms that death to a hound would not occur unless a wolf had been harassed or pursued.²⁵ These facts by their very nature establish the prima facie elements of a violation of the ESA.

Additionally, because hound training season in Wisconsin takes place when wolves are raising their pups, the fact that hounds are running through clearly identified wolf territory unchecked means that such actions directly impair the wolves’ ability to breed, feed, and find shelter; activity specifically protected by the plain language of the ESA’s implementing regulations. 50 C.F.R. 17.3. Such action is in obvious conflict with Congress’ intent to protect a fragile species and constitutes a criminal violation of the ESA.

Congress passed the ESA to conserve endangered and threatened species and their habitat. 16 U.S.C. § 1531(b). The Supreme Court’s review of the ESA’s “language, history, and structure” convinced the Court “beyond a doubt” that “Congress intended endangered species to be afforded the highest of priorities.”²⁶ Below is a list of twenty-one individuals who engaged in hounding activities during the 2016 season in the Chequamegon-Nicolet National Forest and one individual on DNR-managed land that resulted in the criminal harassment of an endangered species, yet received compensation from the state:

1. Cody Hatten, Milltown, WI; depredation occurred in Bayfield, WI
2. Eugene Benson, Amery, WI; depredation occurred in Bayfield, WI
3. Jesse Claflin, New Auburn, WI; depredation occurred in Sawyer, WI
4. Eli Belisle, Osceola, WI²⁷; depredation occurred in Bayfield, WI
5. Jacob Lindahl, Osceola, WI; depredation occurred in Bayfield, WI
6. Tod Harshman, Clear Lake, WI; depredation occurred in Bayfield, WI
7. Nathan Bauer, Stanley, WI; depredation occurred in Bayfield, WI
8. Morgan Francis, Rio, WI; depredation occurred in Sawyer, WI
9. Steven Lipsy, Neillsville, WI; depredation occurred in Ashland, WI
10. Jonas Moermond, Hazelhurst, WI; depredation occurred in Langlade, WI
11. Luke Withrow, Broadhead, WI; depredation occurred in Ashland, WI
12. Ryan McCauley, Stratford, WI; depredation occurred in Sawyer, WI
13. John Larson, Foley, MN; depredation occurred in Bayfield, WI

²³ *Humane Soc’y of the United States v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. Dec. 19, 2014).

²⁴ 515 U.S. 687 (1995).

²⁵ See David Mech, *THE WOLF: THE ECOLOGY AND BEHAVIOR OF AN ENDANGERED SPECIES* 5 (1970) (noting that wolves have a basic aversion to fighting and will do much to avoid aggressive encounters but will become aggressive in certain specific situations including but not limited to protecting a den or pups from other predators).

²⁶ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978).

²⁷ Mr. Belisle was paid twice in the same season for two hound depredation events in the same area within three weeks of each other. This demonstrates an obvious knowledge of the presence of the endangered gray wolf in the area and a willful disregard of DNR recommendations to avoid such areas.

14. Randy Moldenhauer, Osseo, WI; depredation occurred in Sawyer, WI
15. Benny Vance, Newland NC; depredation occurred in Ashland, WI
16. Marne Gall, Hillman, MN; depredation occurred in Bayfield, WI
17. Leon Gall, Pierz, MN²⁸; depredation occurred in Bayfield, WI
18. Duane Fansler, Balsam Lake, WI; depredation occurred in Bayfield, WI
19. Larry Leer, Ettick, WI; depredation occurred in Bayfield, WI
20. Gary Sprague, Mason, WI; depredation occurred in Bayfield, WI
21. Steven Kolbach, Iron River, MI; depredation occurred in Florence, WI
22. Mike Wood, Amery, WI²⁹; depredation occurred in Douglas, WI³⁰

Each of these listed individuals has engaged in the impermissible criminal “take” of a federally listed endangered species under § 9 of the ESA.

Conclusion

The twenty-two listed individuals have knowingly violated § 9 of the Endangered Species Act by engaging in activities which on their face amount to the “taking” of a protected species.

We respectfully request that you launch a criminal investigation of these alleged violations, and if they are substantiated refer them to the U.S. Department of Justice for prosecution.

Sincerely,



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Cc. Jeffrey H. Wood, Acting Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice

²⁸ Mr. Gall was paid \$7,500 for three separate hound depredation events that occurred within the same nine day period.

²⁹ Mr. Wood submitted three claims within the same two week period. DNR denied one claim, but paid \$5,000 for the two accepted claims. Mr. Wood is a convicted criminal with three misdemeanor convictions for intentional mistreatment of animals, one misdemeanor conviction for illegal poaching of a bear, and another misdemeanor conviction for resisting a conservation warden. Though Mr. Wood’s behavior is clearly demonstrates a reckless disregard for the law, he continued to receive financial payouts.

³⁰ It should be noted that this depredation event occurred on land managed by the Wisconsin Department of Natural Resources.