



April 12, 2011

Attn: FWS-R6-ES-2011-0022  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, MS 2042-PDM  
Arlington, VA 22203

SUBMITTED VIA FEDERAL RULE-MAKING PORTAL at <http://www.regulations.gov>,  
Docket No. FWS-R6-ES-2011-0022

Re: West Fork Lethal Wolf Control Plan (FWS-R6-ES-2011-0022)

Dear U.S. Fish and Wildlife Service staff:

I write on behalf of WildEarth Guardians, Alliance for the Wild Rockies, Friends of the Clearwater, GravelBar, Western Watersheds Project, Wilderness Watch, and their members, in response to the Montana Department of Fish, Wildlife, and Park's (MFWP) proposal to kill wolves in the West Fork of the Bitterroot Elk Management Unit. 76 Fed. Reg. 17439 (March 29, 2011). The U.S. Fish and Wildlife Service (FWS) must deny this proposal. As demonstrated in these comments, the proposed project would violate the Endangered Species Act (ESA) (16 U.S.C. §§ 1533 et seq.), the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 et seq.), the Administrative Procedure Act (APA) (5 U.S.C. §§ 701 et seq.), the National Forest Management Act (NFMA) (16 U.S.C. § 1600 et seq.), the Wilderness Act (16 U.S.C. §§ 1131 et seq.), and possibly other federal laws.

We request that the FWS extend the public comment deadline on this controversial proposal from 14 days to 30 days.

The situation facing wolves in the West Fork area is one of human intolerance and policy irrationality. Since their reintroduction in the mid-1990s, Northern Rockies wolves have been under assault due to real and perceived predation on livestock. Wolves in the West Fork, however, generally do not prey on livestock (EA at 30). The five wolf packs at issue established themselves in remote, rugged, and wild terrain almost entirely on public land, including the Selway-Bitterroot Wilderness (one of the largest wilderness areas in the lower 48 states). Not only is the project area 95% federal public land, but most of the land within a 25 mile radius is also federal public land, including more wilderness (EA at 41). Quite appropriately, wolves here have focused on native prey: elk, white-tailed deer, mule

deer, and moose. Now their perceived crime against humanity is that they are eating precisely what wild wolves are supposed to eat: native prey. Neither the project proponent nor FWS has explained to the public what it is they expect these wolves to eat.

No matter, MFWP plans to slash this population of 30 wolves in five packs, who are behaving as wolves should, down to 12 wolves in 2-3 packs, a level to be maintained for 5 years (EA at 10, 55). The majority of the killing will likely occur in the first year (2011), but the project proponents leave open the possibility of changes that include reducing the population of wolves below the stated minimum of 12 before the 5 year term is even up (MFWP application at 1). While the EA estimates that 30 wolves may be killed over the term of the project, that number may very well climb higher (EA at 55).

The lack of any rational basis to this proposal is nowhere more clearly demonstrated than in MFWP's own failure to demonstrate that wolves are indeed the cause of elk population declines in the West Fork EMU. The EA states, "the number of wolf-caused mortalities of elk has not been documented, and MFWP is not sure if elk is the primary prey of wolves" (EA at 30). It makes no sense to proceed with a project that purports to address a factor (wolf predation) that has not been shown to be leading to a problem (elk decline). In fact, human hunting pressures are likely to blame for elk and other ungulate declines in the West Fork area.

This proposal ignores existing data on human hunting of ungulates and is a shoot-first-and-ask-questions later approach. Wolf-killing would start immediately, while the Bitterroot Elk Study, to determine the very factors causing elk declines in the project area, was not slated to begin until February 2011 and won't be concluded until the end of 2013 (EA at 30). Also concerning is that funding for this elk study is not assured.

Wolves face a moving target in the West Fork: MFWP has continually increased elk population objectives in the project area in order to increase human hunting levels. If it weren't for human overhunting of elk, the elk population size would likely be in compliance with the goal established in 1992, of 980-1062 elk. But, that goal was changed to 1120-1680 in 2005, right as wolves were starting to appear in the area, and was again upward-adjusted to 1600-2400 elk in 2006. The goals were set based on observed elk and likely reflect observation of a peak in elk populations. But really these changes were made blindly, as the carrying capacity for elk in the project area is unknown (EA at 48). The elk goals may very well have been changed to make life impossible for wolves, given state hostility to wolf recovery and persistence.

When implemented, the project will likely create unintended consequences and be downright messy. While FWS describes the proposal as "an adaptive management strategy to reduce the wolf population" (76 Fed. Reg. 17439 at 17441), the wolf-killing will consist of a battery of kill methods, some of which are highly indiscriminate, employed by an assortment of individuals. FWS states:

Wolf removal would be accomplished by MFWP personnel and other approved agents of the State of Montana. Wolves that inhabit the West Fork

EMU would be targeted for removal. Removal would be accomplished using legal means approved by the Service under provisions of the Service's 2008 10(j) rule. Wolf control would occur through fair chase hunting or trapping by the public, control actions by agency personnel or designees, or any combination of these...

*Id.* Packs would be either reduced in size or removed altogether. *Id.* Killing would occur primarily during winter months. *Id.* Wolf carcasses would be collected from the field "when possible." *Id.* Private individuals would be hunting or trapping wolves, as would state and likely federal (Wildlife Services) agents, creating a high-likelihood of: no discrimination as to particular wolves, particular packs of wolves, wolf social structure, or even targeting of wolves. The EA catalogues the possibility of a number of non-target species being trapped or snared, including wolverine, fisher, bighorn sheep, and domestic dogs. Add to that list: grizzly bears, coyotes, bobcats, bears, cougars, moose, deer, and even the supposed beneficiaries of this project: elk. While the EA provides some mitigations for addressing the threat to non-targets, including 24-hour trap checks, pan-tension devices, and other measures, none of these are guaranteed to avoid take. With private trappers involved, it is also unclear how animals would be released unharmed, and how the trap deadlines and other provisions would be enforced. For example, how would an injured and agitated wolverine be released? Or grizzly bear?

We are further alarmed by language in the Federal Register notice that carcasses of killed wolves would be recovered "when possible." This opens up the possibility of: poaching, under-reporting wolf kills, failure by shooters to identify individual wolves killed, with implications for pack structure, demographics, and survival of any remaining packs (e.g., the pack's primary hunter is killed), and unreported impacts on wolf reproductive success (e.g., a pregnant or nursing wolf is killed).

More importantly, wolves cannot withstand the type of killing envisioned in this project, which would reduce the West Fork wolf population by 60%. Wolves are not yet biologically recovered in the Northern Rockies (Bergstrom et al. 2009)<sup>1</sup>. The hunting of wolves contributes additive, even super-additive stresses on their populations, from which they may not rebound (Creel and Rotella 2010).<sup>2</sup>

However, the issue with wolves is not just wolves, but the ecosystem benefits they provide. The federally listed bull trout, the federal candidate yellow-billed cuckoo, and other aquatic or riparian species daily benefit from the effects of wolves in the West Fork. The project fails to consider these benefits, thereby ignoring the rich body of science demonstrating the ripple effects of wolves on the landscapes they inhabit, particularly in Yellowstone. By keeping wild ungulates on the move, wolves help streamsides to recover, beaver to re-establish, and an array of aquatic species and songbirds to flourish (Ripple et

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<sup>1</sup>Bergstrom, B. J., S. Vignieri, S. R. Sheffield, W. Sechrest, and A. Carlson. 2009. The Northern Rocky Mountain Gray Wolf is Not Yet Recovered. *BioScience* 59:991-999. [Attachment 1].

<sup>2</sup>Creel, S. and J. Rotella. 2010. Meta-Analysis of Relationships between Human Offtake, Total Mortality and Population Dynamics of Gray Wolves (*Canis lupus*). *PLoS ONE* 5. [Attachment 2].

al. 2001; Ripple and Beschta 2003, 2004, 2006; White et al. 2003; Fortin et al. 2004; Mao et al. 2005; Licht et al. 2010).<sup>3</sup> But this proposal largely ignores the benefits of wolves and, further, squanders opportunities to learn about wolves' ecological roles in a non-National Park federal lands context. Instead, the project documents are deliberately slanted to create a façade that this project makes any sense at all. This façade must be shattered by FWS with a rejection of MFWP's proposal.

### ESA Violations

MFWP's project violates the ESA in several different ways, not only as to wolves, but to other federally listed species as well. We hereby incorporate all information provided in the subsequent section on NEPA violations.

#### a. Proposed Project Violations ESA Section 10(j)

First, the 10(j) "non-essential, experimental" (ENE) designation of wolves, under which this project is proposed, is no longer valid. Wolves in the Central Idaho Experimental Population Area and the Greater Yellowstone Experimental Population Area are no longer "wholly separate geographically from nonexperimental populations of the same species" (16 U.S.C. § 1539(j)), namely, wolves in, or dispersing from, the Northwest Montana Recovery Area. The 10(j) rule is consequently no longer lawful, and wolves in the West Fork are Endangered under the ESA and warrant all of the protections the ESA provides Endangered species. Most importantly, these wolves are protected from killing, harm, and harassment under ESA Section 9. 16 U.S.C. § 1538(a)(1). Section 9 protections would be violated by MFWP's proposal to kill 60% of the West Fork wolves. In fact, they would be violated if just one of these wolves were killed.

Second, even if the ENE status still applied, this proposal (and the 2008 rule on which it is based) violates the statutory language of the ESA. The statute is clear that take of 10(j) species is permitted only if it furthers the conservation of the listed species. 16 U.S.C. § 1539(j)(2)(A). Elk are not a listed species. Rather, the listed species at issue under the 10(j)

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<sup>3</sup>Licht, D. S., J. J. Millspaugh, K. E. Kunkel, C. O. Kochanny, and R. O. Peterson. 2010. Using Small Populations of Wolves for Ecosystem Restoration and Stewardship. *BioScience* 60: 147–153 [Attachment 3]; Ripple, W. J., and R. L. Beschta. 2004. Wolves and the ecology of fear: Can predation risk structure ecosystems? *BioScience* 54:755–766 [Attachment 4]; Ripple, W. J., E. J. Larsen, R. A. Renkin, and D. W. Smith. 2001. Trophic cascades among wolves, elk, and aspen on Yellowstone National Park's northern range. *Biological Conservation* 102:227–234 [Attachment 5]; Ripple, W. J., and R. L. Beschta. 2003. Wolf reintroduction, predation risk, and cottonwood recovery in Yellowstone National Park. *Forest Ecology and Management* 184: 299–313; Ripple, W. J., and R. L. Beschta. 2006. Linking wolves to willows via risk-sensitive foraging by ungulates in the northern Yellowstone ecosystem. *Forest Ecology and Management* 230:96–106 [Attachment 6]; Mao, J. S., M. S. Boyce, D. W. Smith, F. J. Singer, D. J. Vales, J. M. Vore, and E. H. Merrill. 2005. Habitat selection by elk before and after wolf reintroduction in Yellowstone National Park. *Journal of Wildlife Management* 69:1691–1707; Fortin, D., M. S. Boyce, E. H. Merrill, and J. M. Fryxell. 2004. Foraging costs of vigilance in large mammalian herbivores. *Oikos* 107:172–180; White, C. A., M.C. Feller, and S. Bayley. 2003. Predation risk and the functional response of elk-aspen herbivory. *Forest Ecology and Management* 181:77-97.

rule is the gray wolf. This proposal is not to further the wolf's conservation, can in no way be argued as furthering the wolf's conservation, and is therefore unlawful.

Third, even if the ENE status applied to wolves in the West Fork, and this proposal conformed with the statutory language of the ESA, it fails to comply with the requirements set forth in the 2008 rule. This rule permits control of wolves to benefit ungulates if a state or tribe decides that wolves are causing "unacceptable impacts" to wild ungulate populations and where wolves are found to be one of the major causes of a population or herd not meeting state or tribe objections (EA at 6). The rule then sets out requirements that must be met for the Service to approve this type of project. In its Federal Register Notice for this project, FWS distills those requirements down to the following:

Under the 2008 10(j) rule, States or Tribes with Service-approved post-delisting management plans may lethally take wolves within the experimental population areas if wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, provided that the State or Tribe prepares a science-based document that:

- (1) Describes the basis of ungulate population or herd management objectives, which data indicate that the ungulate population or herd is below management objectives, which data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and control actions adjusted for effectiveness;
- (2) demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines, or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and
- (3) provides for an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written authorization of the proposal...

Before authorizing such lethal removal of wolves proposed by a State or Tribe, the Service must determine whether an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

76 Fed. Reg. at 17440-17441. The EA and application show clearly that the first requirement cannot be met. There is no basis for the elk population objectives, as the carrying capacity of the project area for elk is unknown (EA at 48). MFWP has arbitrarily adjusted the elk goal continually upward while at times allowing increased elk hunting,

likely misinterpreting elk population spikes as the norm, perhaps to create a situation where it can blame wolves for too much elk killing. Two of the peer-reviewers (Layne G. Adams, Dean E. Beyer, Jr.) questioned why the elk population objective was increased, and a third questioned the reliability of elk abundance data (Scott McCorquodale).

Despite the frantic language in MFWP's application, there is no basis to conclude that wolves are causing unacceptable impacts to the elk population in the West Fork. MFWP states, "The West Fork elk population is on the brink of a steep and unprecedented decline that can only be avoided by immediately and sharply elevating survival rates of calves through their first year of life"; and "...without the ability to manage the level of wolf predation by adjusting the number of wolves in the area, the West Fork elk population will continue to display poor recruitment and further decline" (MFWP application at 2). But, despite its other flaws, the EA provides ample counter to MFWP's presumption that killing wolves will reverse elk declines. For example, the EA states that the causes of elk declines are unknown (EA at 25, 28, 36, 50), that hunter harvest may have caused the decline (EA at 25, 28, 29), that the elk herd may be at the area's carrying capacity (EA at 28), and, as mentioned above, that the carrying capacity is unknown (EA at 48). Due to the inability to show that wolves are causing unacceptable impacts to West Fork elk, the project documents also do not demonstrate why wolf removal is warranted.

Notably, MFWP was extremely misleading in its application on scientific citations regarding its claim that wolves were causing elk declines in the West Fork. None of the citations apply to the West Fork area. Rather, they are all based on studies almost entirely conducted in national parks (Yellowstone, Glacier, and Banff):

- Becker, M., R. Garrott, P. J. White, C. Gower, E. Bergman, and R. Jaffe. 2009. Wolf prey selection in an elk-bison system: choice or circumstance? *in* R. A. Garrott, P. J. White, and F. G. R. Watson, editors. *The ecology of large mammals in central Yellowstone: sixteen years of integrated field studies*. Elsevier, Academic Press, San Diego, California, USA. (Yellowstone National Park study)
- Hamlin, K. L., R. A. Garrott, P. J. White, and J. A. Cunningham. 2009. Contrasting wolf-ungulate interactions in the Greater Yellowstone Ecosystem. Pages 541-577 *in* *The Ecology of Large Mammals in Central Yellowstone: Sixteen Years of Integrated Field Studies*. Academic Press. (Yellowstone National Park study)
- Hebblewhite, M. 2007. Predator-prey management in the national park context: lessons from a transboundary wolf, elk, moose, and caribou system. *Transactions of the 72nd North American Wildlife and Natural Resources Conference*, pp. 348-365. (Banff National Park study)
- Kunkel, K. E., and D. H. Pletscher. 1999. Species-specific population dynamics of cervids in a multipredator ecosystem. *Journal of Wildlife Management* 63:1082-1093. (Glacier National Park study)
- Smith, D. W., T. D. Drummer, K. M. Murphy, D. S. Guernsey, and S. B. Evans. 2004. Winter prey selection and estimation of wolf kill rates in Yellowstone National Park, 1995-2000. *Journal of Wildlife Management* 68:153-166. (Yellowstone National Park study)

The difference is that human hunters are generally not allowed to hunt in national parks.

It may be that human hunters in the West Fork have effectively displaced wolves, and human hunting is the top cause of elk decline in the project area. These are not valid citations for substantiating the cause of the elk population declines at issue.

One exception is Hebblewhite (2007) [Attachment 7], as that study included areas outside of Banff National Park. But Hebblewhite (2007: 355) had this to say about trying to maintain high ungulate numbers:

Based on experiences in BNP [Banff National Park], I show that wildlife managers face tough choices ahead and must come to terms with the truth that maintaining prewolf ungulate harvest regimes may be a fantasy in postwolf landscapes and, moreover, may be incompatible with ecosystem management.

This is the fundamental problem with MFWP's proposal: the ecosystem role of wolves is not being respected. Rather, wolves (along with black bears and mountain lions) are being denied their native prey. Hebblewhite (2007: 357) further stated,

...to date, the best executed wolf-control study in the Yukon (Hayes et al. 2003) pointed out the seeming futility of their wolf-control program as a long-term solution to ungulate population declines. Within 2 years of the end of wolf control, wolf densities and ungulate vital rates returned to precontrol levels.

Hebblewhite (2007) should therefore not be cited as providing support for MFWP's proposal.

The Bitterroot Elk Study is imperative given that research elsewhere often shows that the causes of ungulate decline can be quite complex. For example, the Colorado Division of Wildlife concluded that mule deer herd recruitment problems were associated with poor quality winter range conditions and disease, not predation (Pojar and Bowden 2004).<sup>4</sup> Mosnier et al. (2008)<sup>5</sup> found that intensively killing bear and coyote populations to protect a threatened and isolated population of caribou in Canada only benefited the caribou for a short duration and concluded that lethal control measures failed to help them in the long-term. A study on Sonoran pronghorn found that drought, not predation, is the primary cause for the decline of this endangered species (Bright and Hervert 2005).<sup>6</sup> In their "Pronghorn Management Guide," Lee et al. (1998)<sup>7</sup> found that if habitat is unsuitable,

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<sup>4</sup>Pojar, T. M. and D. C. Bowden. 2004. Neonatal mule deer fawn survival in west-central Colorado. *Journal of Wildlife Management* 68:550-560.

<sup>5</sup>Mosnier, A., D. Boisjoly, R. Courtois, and J. P. Ouellet. 2008. Extensive predator space use can limit the efficacy of a control program. *Journal of Wildlife Management* 72:483-491.

<sup>6</sup>Bright, J. and J. Hervert. 2005. Adult and fawn mortality of Sonoran pronghorn. *Wildlife Society Bulletin* 33:43-50.

<sup>7</sup>Lee, R., J. Yoakum, B. O'Gara, T. Pojar, and R. Ockenfels. 1998. Pronghorn Management Guide, Proc. 1998-18<sup>th</sup> Biennial Pronghorn Antelope Workshop. Pronghorn Antelope Workshop, AZ Game and Fish, and Arizona Antelope Foundation, Inc.

predator control will fail to create robust prey species populations. Sawyer and Lindzey (2002)<sup>8</sup> surveyed over 60 peer-reviewed articles concerning predator-prey relationships involving bighorn sheep and mountain lions, and they concluded that while predator control is often politically expedient, it does not address underlying environmental issues including habitat loss, loss of migration corridors, and inadequate nutrition.

Moreover, MFWP's application and the EA clearly ignored the many peer-reviewed studies that have shown that killing predators not only destabilizes ecosystem functions, but can fail to increase prey populations—unless prey species are below their carrying capacity (National Research Council 1997; Ballard et al. 2001; Logan and Sweanor 2001; Cougar Management Guidelines Working Group 2005).<sup>9</sup>

The second requirement set forth in the 2008 rule has also not been met, as MFWP cannot address major causes of ungulate decline which haven't been identified. The Bitterroot Elk Study was scheduled to begin last month. The purpose of this study is, in fact, to identify the major causes of elk decline in the area (EA at 28). Until, and if, it is completed, MFWP has no basis for attributing elk declines to various possible factors.

The third requirement for adequate peer review has likewise not been met. The peer review is supposed to be conducted by five individuals with relevant expertise (76 Fed. Reg. 17441).<sup>10</sup> FWS states in the Federal Register notice for this project that the peer review process must conform with the Office of Management and Budget's (OMB's) Final Information Quality Bulletin for Peer Review (70 Fed. Reg. 2664; January 28, 2008) and include in their proposal an explanation of how the Bulletin's standards were considered and satisfied. 76 Fed. Reg. 17441. OMB's bulletin indicates the importance of assessing a peer reviewer's expertise, independence, and conflict of interest. 70 Fed. Reg. at 2665. The bulletin states that "independence poses a complex set of questions that must be considered by agencies when peer reviewers are selected." *Id.* at 2669. MFWP has not shown such consideration in selecting these peer reviewers. The OMB bulletin addresses conflict of interest issue by stating, in part, "Agencies shall make a special effort to examine prospective reviewers' potential financial conflicts, including significant investments, consulting arrangements, *employer affiliations* and grants/contracts." *Id.* at 2670, emphasis added. Reviewers who are not Federal employees must conform to the

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<sup>8</sup>Sawyer, H. and F. Lindzey. 2002. Review of Predation on Bighorn Sheep (*Ovis canadensis*). Prepared for Wyoming Animal Damage Management Board, Wyoming Domestic Sheep and Bighorn Sheep Interaction Working Group, Wyoming Game and Fish Department.

<sup>9</sup>National Research Council. 1997. Wolves, bears, and their prey in Alaska. National Academy Press, Washington, D.C.; Ballard, W. B., D. Lutz, T. W. Keegan, L. H. Carpenter, and J. C. deVos. 2001. Deer-predator relationships: a review of recent North American studies with emphasis on mule and black-tailed deer. *Wildlife Society Bulletin* 29:99-115; Logan, K. A. and L. L. Sweanor. 2001. Desert puma: evolutionary ecology and conservation of an enduring carnivore. Island Press, Washington, DC; Cougar Management Guidelines Working Group, T. Beck, J. Beecham, P. Beier, T. Hofstra, M. Hornocker, F. Lindzey, K. Logan, B. Pierce, H. Quigley, I. Ross, H. Shaw, R. Sparrowe, and S. Torres. 2005. Cougar Management Guidelines. WildFutures, Brainbridge Island, WA.

<sup>10</sup>MFWP's peer review document does not appear to include the actual response by peer-reviewer David Mech. His comments on the proposal should have been disclosed to the public prior to the beginning of the public comment period. The only evidence of what he said is MFWP's characterization of his comments.

National Academy of Sciences' definition of conflict of interest: "any financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or could create an unfair competitive advantage for a person or organization." *Id.*

None of the five reviewers therefore qualifies as having the expertise, independence, and freedom from conflicts of interest to qualify as providing an unbiased peer review. One of the peer-reviewers stated in his response, "I am admittedly not a wolf expert..." (Scott McCorquodale, EA Appendix B at unnumbered p. 11). Two other of the peer-reviewers (Dean E. Beyer, Jr., Bruce Dale) work for and represent agencies that are themselves advocating wolf-killing projects or decreases in wolves. The State of Michigan's wolf management plan set the minimum wolf population at 200 in the state, which is less than half the population that existed when the plan was written.<sup>11</sup> The State of Alaska routinely conducts wolf-killing, with little regard for wolves at all, and has even sued FWS for in May 2010 for blocking a wolf-killing proposal on FWS land.<sup>12</sup> Their employment with state agencies interested in themselves proposing or implementing wolf control have a conflict, as their interests are furthered (and thus their objectivity impaired) if FWS approves MFWP's wolf control project. These state employees may be engaged in a *quid pro quo* system, where they reciprocally support each others' wolf control projects under the guise of peer review. The remaining two reviewers (Layne G. Adams, David Mech) work within the U.S. Department of Interior, which has for the past several years tried mightily to reduce legal protections for wolves in Montana and elsewhere.<sup>13</sup> They therefore lack independence, and may have a conflict, as well.

Legitimate choices would have been independent scientists with expertise, independence, and without a conflict of interest. Scientists with university affiliations, not employed by federal or state agencies, with expertise in wolf biology and ecology, should be selected and given the opportunity to review MFWP's West Fork wolf-killing proposal. Wolves in the Northern Rockies are an extremely popular research subject, and there is no shortage of independent experts on this matter.

Regarding the overall FWS requirements for project approval, as we will demonstrate throughout these comments, MFWP has not shown that wolves in the West Fork are causing unacceptable impacts to the area's elk population. Nor is the proposal science-based. While this proposal will not take the total State population down to 20 pairs and 200 wolves on its own, it will impede wolf recovery. Wolves are not yet recovered (i.e., Bergstrom et al. 2009), and removing wolves from any unrecovered population will setback wolf recovery, particularly in the corridor between the Greater Yellowstone Area and central Idaho, where there is a lack of genetic connectivity. FWS therefore must reject this proposal based on the requirements it has established in the 2008 10(j) rule.

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<sup>11</sup>See [http://www.michigan.gov/documents/dnr/Draft\\_Wolf\\_Management\\_Plan\\_030708\\_227742\\_7.pdf](http://www.michigan.gov/documents/dnr/Draft_Wolf_Management_Plan_030708_227742_7.pdf) [Accessed April 2011]. However, Michigan's plan includes an excellent discussion on the ecological effects of wolves. See pp. 17-18.

<sup>12</sup>See <http://www.law.state.ak.us/pdf/press/052810-Complaint.pdf> [Accessed April 2011].

<sup>13</sup>Additionally, David Mech submitted a declaration in a case to remove federal legal protections for Northern Rockies wolves and is therefore not an appropriate peer-reviewer for this project. [Attachment 8].

b. Proposed Project Violates USFS Duties Under ESA Section 7(a)(1)

The wolf control in this proposal would take place on national forest lands. 75 Fed. Reg. at 17441. If approved, it would violate the U.S. Forest Service's (USFS) duty to conserve the wolf, an obligation that applies whether the gray wolf has ENE or Endangered status. ESA Section 7(a)(1) is the substantive embodiment of the ESA's purposes and policies, and requires that "all...Federal agencies shall...utilize their authorities in furtherance of the purposes of [the Act] by carrying out programs for the conservation of endangered species..." The term "conserve" is defined in ESA § 3(2), 16 U.S.C. § 1532(2), which states that, "'conserve,' 'conserving,' and 'conservation' mean to use and 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 this chapter are no longer necessary." Killing of 60% of the West Fork wolves would in no way conserve wolves. Rather, it would violate USFS's duties to conserve (recover) the gray wolf. It would also violate USFS's duties to conserve other ESA listed species in the project area, including the grizzly bear, bull trout, and lynx.

c. Proposed Project Violates Consultation Duties in ESA Section 7(a)(2)

The heart of the ESA's federal protection for species and their habitat is Section 7(a)(2), which requires that every federal agency insure that its actions are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. § 1536(a)(2). The prohibitions against jeopardy and adverse modification are implemented first and foremost through the consultation process. When an agency determines that a proposed federal action "may affect listed species or critical habitat," the agency must formally consult with the FWS. The consultation process is critical to insuring that the substantive protections of the ESA are carried out. Failure to consult in accordance with ESA § 7(a)(2) is arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), and violates the ESA itself.

The EA states that FWS will complete intra-Service consultation prior to making a final decision (EA at 12). However, the results of that consultation are necessary for the public to participate in the comment process in an informed, meaningful way. Therefore, the EA should be set aside until the consultation is complete. This is necessary, as there are several species likely to be adversely affected if this project is approved. These effects are expected to occur due to the important ecosystem roles that wolves play (e.g., Hebblewhite 2007).

*Bull trout.* Bull trout are a Federally Threatened species that requires high water quality and intact riparian habitat in order to survive. 75 Fed. Reg. 63898- 64070. Because (as discussed elsewhere in these comments) wolves have been shown to provide benefits to riparian areas by making elk and other ungulates more mobile generally and less sedentary in riparian areas, they provide indirect benefits to bull trout. MFWP or USFS must therefore consult with FWS on the consequent effects of this proposal to bull trout and

their critical habitat in the Clark Fork River Basin. *Id.* and FWS map of Bull Trout Critical Habitat [Attachment 9].

*Canada lynx.* Lynx are a Federally Threatened species not mentioned in the EA. When this species was listed, FWS stated that “We conclude that a resident population of lynx is distributed throughout its historic range in Montana.” 65 Fed. Reg. 16052 at 16058. We have attached a FWS map that clearly shows the project area within the range of resident lynx [Attachment 10]. The proposed project is likely to adversely affect lynx due to the use of traps and snares. Because lynx feet are oversized, they may be particularly at risk from traps set for wolves. MFWP or USFS must therefore consult with FWS on effects to lynx.

*Grizzly bears.* This Federally Threatened species has the potential to occur in the project area. Grizzly bears are the second largest carnivore in North America—behind polar bears—and have large home ranges that include shrub cover, forested land and open areas depending on the time of year and seasonal food availability (Schwartz et al. 2003).<sup>14</sup> Prior to European colonization, grizzly bears habited landscapes “from mountain tops to valley bottoms and plains” (Schwartz et al. 2003, p. 577). Historically, grizzly bears ranged in Western North America from the top of Mexico to Canada and Alaska (NatureServe, 2010), but were largely extirpated by the 1920s and 1930s because of exaggerated fears from humans (Schwartz et al. 2003). According to NatureServe, the North American grizzly bear population likely numbers over 30,000 in Alaska, over 21,000 in Canada, but less than 1,000 in the Lower 48.<sup>15</sup>

Currently, grizzly bear populations have been largely relegated to remote habitats in rugged mountains (Schwartz et al. 2003), which may include the Selway-Bitterroot Wilderness. Indeed, a grizzly bear was shot in the Idaho portion of the Selway-Bitterroot Ecosystem in 2007 after having travelled 140 miles from the Selkirk Mountains.<sup>16</sup> MFWP or USFS must consult with FWS on the threat to this species from traps or snares set for wolves; the decrease in elk carrion available due to fewer wolf kills; the risk of lead poisoning due to lead-laced carcasses and gutpiles left by hunters; and potential mortality due to hunter confrontations.

#### d. Proposed Project Violates ESA Section 9

If MFWP proceeds with this project, it may violate ESA Section 9, which prohibits take of a listed species. 16 U.S.C. § 1538(a)(1). Particularly at risk from take are bull trout, grizzly bear, and Canada lynx, for reasons discussed above.

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<sup>14</sup>Schwartz, C.C., S.D. Miller, and M.A. Haroldson. 2003. Grizzly bear. Pp. 556-586 in G.A. Feldhamer, B.C. Thompson, and J.A. Chapman, Eds. *Wild Mammals of North America: Biology, Management, and Conservation*. Second edition. Johns Hopkins University Press. Baltimore, MD, USA.

<sup>15</sup>NatureServe.org [Accessed January 2010].

<sup>16</sup>Chaney, R. 2010. “Grizzlies in the Bitterroot Mountains Politically Thorny.” *Missoulian*. Online at: [http://missoulian.com/news/local/article\\_9dd378a2-032b-11df-8285-001cc4c002e0.html](http://missoulian.com/news/local/article_9dd378a2-032b-11df-8285-001cc4c002e0.html) [Accessed April 2011]. [Attachment 11].

## NEPA Violations

We hereby incorporate all information provided in the previous section on ESA violations. Even if the proposed action complied with the terms of the ESA, that does not satisfy NEPA requirements. Indeed, this proposal violates NEPA in several ways. Rampant flaws in the EA severely foreclose meaningful public participation, thereby squandering both the letter and intent of NEPA.

### a. Purpose and need

The EA states that the purpose is “to evaluate potential impacts associated with the implementation of the proposed MFWP 5-year gray wolf management program” in the project area (EA at 1). However, the real purpose of the EA is to increase the elk population for the purpose of increasing human elk-hunting opportunities. MFWP is clear in its application that the goal is increasing elk and specifically, “to relieve unacceptable impacts of wolf predation on an elk population” and “to restore recruitment rates of 10-month old calves to pre-2007 level of at least 25 calves per 100 cows” (MFWP application at 1-2). But the underlying goal of the project is invalid: MFWP simply continues changing the target for elk populations in the project area, either out of ineptitude, political pressure, or to make it impossible for elk goals to be met. The EA states:

The 2005 Elk Management Plan increased the elk count objective for HD 250 from a range of 980–1,062 set in 1992, to 1,120–1,680 observed elk (MFWP 2005a). The HD 250 elk objective was again raised in 2007 by the MFWP Commission to the current management objective of 1,600–2,400 elk...

EA at 9-10. In fact, 2,400 elk have not been counted in the project area in any year for which data is provided (1980-2010), and there have been only 3 years since 1980 in which 1,600 elk have been counted. The EA gives three reasons for this higher population objective: 1) the high proportion of public lands in the West Fork area; 2) increased habitat capacity due to past wildfires; and 3) “the need for a larger elk population to sustain standard harvest regulations (e.g., maintain a stable elk population) in a multi-predator system.” EA at 12. The first reason is invalid, as the proportion of public lands in the West Fork area has not significantly changed since 1992. The second reason makes sense, but it is dependent on recurring fires, as post-burn elk forage will decline over time (EA at 25). It may be hard to replicate the scale of fires that occurred in the early 2000s and thus made the increase in elk habitat possible. For example, the Complex Fire in 2000 burned 307,000 acres in the Bitterroot National Forest, including ¼ of the eastern portion of the project area (EA at 23). The third reason boils down to increasing elk so that human hunting opportunities can increase. The reference to “sustaining standard harvest regulations” also appears to indicate that no change in human hunting pressure is being contemplated. That, ultimately, is the purpose of this project. But as such it violates NEPA. NEPA requires consideration of a full range of alternatives that meet the project’s purpose. Here, when the true purpose of the project is understood to be increasing elk numbers as opposed to simply killing wolves, it becomes clear that several alternatives

would meet this objective – including proposing changes to “standard harvest regulations.”

In addition, there is no firm basis for concluding that wolf killing will increase elk numbers. The EA acknowledges that the carrying capacity for elk in the project area has not even been documented (EA at 48). It is therefore unknown whether the purpose of the EA – obtaining specific elk population objectives – can be met through the proposed project. By setting elk goals at this possibly excessive<sup>17</sup> level, the state may be deliberately creating a situation where it can claim that wolves are causing “unacceptable impacts” to elk populations.

The whole project hinges on a simple correlation: elk numbers have declined as wolf numbers have increased (EA at 13). But one of the basic principles of science is that correlation does not equal causation, and causation has not been shown in this instance. The EA states:

The MFWP considers gray wolves a current major factor in the declining elk numbers in HD 250 and is considered by MFWP as a probable limiting factor in HD 250 (MFWS 2010a). However, the number of wolf-caused mortalities of elk has not been documented, and *MFWP is not sure if elk is the primary prey of wolves.*

EA at 30, emphasis added.

Moreover, there are other ways to meet a purpose of increasing elk populations, including conducting more prescribed burns, removing livestock, and eliminating or reducing human elk hunting, particularly of female elk, for a period of time. These alternatives, however, are not considered.

#### b. Inadequate Range of Alternatives

The EA’s failure to consider other ways to meet a purpose of increasing elk populations is manifest in its consideration of only two alternatives: MFWP’s proposal or No Action (EA at 17). It does not include alternatives, for instance, that include, singly or in combination, the following approaches:

- Remove fewer wolves;
- Conduct removal over shorter time-frames (e.g., 2 years instead of 5 years);
- Only allow government agents to remove wolves;
- Only allow removal by shooting (and not trapping or snaring);
- Do not allow wolf killing in the Selway-Bitterroot Wilderness Area;
- Alter or suspend livestock grazing in order to improve elk habitat;
- Suspend or reduce all human hunting of elk (particularly female elk) in the project area until elk populations rebound; or

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<sup>17</sup>We say “possibly excessive,” as the Bitterroot Elk Study should provide more information from which to evaluate elk population goals.

- Require first that the Bitterroot Elk Study be conducted and proceed with management recommendations based on the results of that study.<sup>18</sup>

These are only examples of alternatives or facets of alternatives that the EA should have considered. Not all of these are alternatives that we would support. However, the EA violates NEPA by providing only the preferred and No Action alternatives, thereby foreclosing the public's and decision-makers' ability to participate in a more meaningful process that looks at a broader range of policy actions, as the law intended.

Relatedly, the EA inappropriately excludes alternatives from consideration. Habitat improvements, predator control, and decreased human hunting of elk are rejected from consideration on the basis that:

...they are outside the authorities of the Service to approve or disapprove, they may not meet the State's objectives, they are already being implemented but have not succeeded in achieving the desired increase in the elk herd, or they are not feasible.

EA at 17. The EA does not specify the particular reason for each alternative being rejected. However, an alternative cannot be rejected simply because it is beyond the Service's authority to approve it. See e.g. *NRDC v. Morton*, 458 F.2d 827 (D.C. Cir. 1972) (Agency can't eliminate alternatives from consideration because they are outside its power to implement or require legislative action).

A habitat improvement alternative would have been reasonable and may have been more effective in meeting the purpose of increasing elk populations. While MFWP asserts that habitat is not a limiting factor for elk and that habitat improvements therefore will not meet their objectives, the state has not provided evidence for this claim. For instance, it is quite likely that historic and current livestock grazing in the project area has degraded elk riparian and meadow habitat. Indeed, the EA states that a "greater number of livestock grazed the area in the early- to mid-1900s; the habitat degradation that occurred at that time is reflected in some of the present habitat condition rankings" (EA at 22). It does not disclose the present habitat condition rankings to which it is referring. Restoring degraded ungulate habitats could help address this project's goal.

Also problematic is that the EA relies on just two personal communications from A. Shortsleeve (February 28, 2011) and C. Jourdonnais (March 4, 2011) to assert that: elk are not having an impact on riparian or meadow conditions; there is minimal livestock grazing in the project area; and habitat conditions are likely improving (EA at 22). The EA must include USFS or independent monitoring data and other relevant reports and data regarding riparian, meadow, and other habitat assessments. An alternative should have been included that provided clear documentation of elk habitat conditions and valid

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<sup>18</sup>See *Roosevelt Campobello International Park Commission v. U.S. EPA*, 684 F.2d 1041, 1044 (1<sup>st</sup> Cir. 1982) (finding NEPA and ESA require completion of studies if access to relevant information is available). See also 40 C.F.R. § 1502.22.

evidence of the effect of either past or future elk or livestock grazing on that habitat, and proposed methods of ensuring that habitat management was contributing to increasing elk populations.

Habitat improvement issues include housing development. The EA notes that elk are disproportionately using winter range on private land, but housing development on those lands is “causing the physical loss of winter range” (EA at 29). Overwinter survival is a key concern for wild ungulates, yet this issue is mentioned in a cursory fashion, and no alternative is prescribed to address this possible limiting factor for elk.

An alternative that reduced or eliminated human hunting while elk populations or calf recruitment had a chance to increase would also have been reasonable and likely more or equally effective as wolf-killing in achieving the purpose of the project. While human hunting of elk was significantly reduced in 2010, MFWP had continued to allow substantial human hunting up through 2009, despite continual evidence of elk decline from 2006-2009 (Table 1 in EA Appendix B). As multiple peer reviewers suggested, heavy human hunting in the project area is likely one of the reasons for elk population decline (EA Appendix B at unnumbered pp. 2 (Layne G. Adams), 4 & 5 (Dean E. Beyer, Jr.)). For example, according to peer-reviewer Dean Beyer, Jr., hunting pressure on cows and calves was three times higher in 2004-2006 than it had been in 14 years: cow-calf harvest was twice as high in 2007-2009 as the historical average. Beyer states, “The removal of cows by hunters can have important effects on the population because hunters tend to remove animals with higher reproductive potential...than wolves, and harvest may be super-additive” (EA Appendix B at unnumbered p. 5).

The EA also suggests that low calf recruitment is directly attributable to hunters killing reproductive elk cows:

Between 2007 and 2010 in HD 250 the observed calf to cow ratios were lower than observed in any previous 4-year period since calf to cow ratios were first collected in 1971 (MFWP 2010a). However, more cows were harvested in 2008 (65) and 2009 (70) than any other year between 1999 (50) and 2002 (49).

EA at 28. Killing cows quite obviously will lower the number of calves recruited into the elk population. The EA also notes the decreasing age of hunted bull elk from 2001-2003, “possibly suggesting high rates of harvest” (EA at 29). The EA should have considered an alternative that continued to limit hunting to the levels allowed in 2010 or even suspended hunting in the project area completely, to allow the elk population to rebound or to analyze more rigorously the elk/predator dynamic in this area.

More evidence that human hunting pressures are to blame for elk and white-tailed deer declines comes from MFWP ungulate hunting data. Between 2006 and 2008, Region 2, the hunting district in Montana that includes the West Fork, allowed unlimited licenses on antlerless deer. As a result, ungulate kills by sport hunters were excessive in Region 2, increasing from 887 white-tailed deer in 2004 to 1,466 in 2006: *a 65% increase*. In 2008,

sport kills of deer dropped to 976, which was still well above the 887 deer killed in 2004. The hunter kill of elk increased dramatically between 2004 and 2005 (from 840 to 1,211) a 44% increase in one year and averaged 949 for the years 2006 and 2007, but declined in 2008 to 654.

Because of the large numbers of ungulates killed by sport hunters in the years since 2005, MFWP data suggest that human hunters have taken an unsustainable toll on Region 2's elk and deer herds and that wolf (and mountain lion) predation may be playing a secondary if not negligible role. As a result of its mismanagement of elk, deer, and even bighorn sheep<sup>19</sup> herds, these ungulate populations are in decline.

Given strong evidence that anthropogenic threats have caused the decline of ungulate populations – populations that had been woefully mismanaged by MFWP – killing wolves (and mountain lions) to increase ungulate populations is misguided and contrary to the best available information.

Notably, the EA states that it takes several years to evaluate the response of the elk population to management changes. While the EA refers here to the effects of wolf control, the following could accurately refer to evaluating the effects of reducing human hunting:

...it would likely take 5 years to determine if the program is fully achieving expected results due to variable weather and other environmental conditions, elk reproductive rate, and current number of elk below objectives.

EA at 19. An alternative that suspended, reduced, or restricted human hunting of elk in the project area, given years of heavy hunting pressure, could similarly take several years to achieve results. As we discuss below, given that wolves have not even been determined to be the major limiting factor on elk in the West Fork, an alternative limiting human hunting is a reasonable alternative that must be considered.

c. Failure to take a hard look

The EA fails to take a hard look at the environmental consequences of the proposed action. This hard look is required by NEPA to afford the public the opportunity to assess a proposed project in an informed way, thereby engendering meaningful public participation.

First, the EA provides inaccurate information about wolves' biological status. MFWP repeatedly refers to wolves in the Northern Rockies as "biologically recovered," when, in fact, this is the source of much debate. Indeed, a court found that FWS's conclusion that Northern Rockies wolves are biologically recovered to be arbitrary and capricious.

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<sup>19</sup>In his 2010 response to WildEarth Guardians' request for more information about bighorn sheep declines, the Region 2 manager for MFWP agreed that the bighorn sheep die-offs were not caused by predation problems but came as a result of disease and culling campaigns by MFWP.

*Defenders of Wildlife v. Hall*, 565 F. supp. 2d 1160, 1172 (D. Mont. 2008). Scientists also concluded that wolves in this region are not biologically recovered (Bergstrom et al. 2009).

Second, and relatedly, the impacts of this project on wolves may be greater than stated. The EA fails to consider recent scientific research indicating that human hunting of wolves has resulted in super-additive mortality. State Creel and Rotella (2010: 1):

Contrary to current conventional wisdom, there was a strong association between human offtake and total mortality rates across North American wolf populations. Human offtake was associated with a strongly additive or super-additive increase in total mortality. Population growth declined as human offtake increased, even at low rates of offtake. Finally, wolf populations declined with harvests substantially lower than the thresholds identified in current state and federal policies.

Seemingly at odds with this finding is Murray et al.'s (2010)<sup>20</sup> find that human killing of wolves partially compensates for natural mortality:

Evidently, anthropogenic and natural risks were higher and lower, respectively, among individuals occurring in unprotected or otherwise marginal habitat, implying that the assumption that expanding populations should be fully exposed to additive effects of anthropogenic mortality is suspect. In our study high anthropogenic risk was partially offset by reduced risk from factors such as intraspecific strife and disease, which should be more prevalent in natural landscapes.

However, the West Fork wolves occupy a natural landscape, and therefore are likely exposed to the natural threats referenced here (strife and disease), as well as anthropogenic threats, in the form of this project's goal of reducing their population by 60%. Human killing will therefore likely constitute additive mortality in the West Fork area. In addition, the amount of killing in this project (60%) exceeds any level suggested to be "sustainable" for wolves in the EA (EA at 55).

Moreover, researchers have found dramatic social changes among wolves due to wolf-killing (Rutledge et al. 2009; Levy 2010),<sup>21</sup> the implications of which we do not yet fully understand. This is particularly likely if killing occurs during the wolves' breeding season. This is possible under the project, as there "would be on-the-ground shooting during a

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<sup>20</sup>Murray, D.L., Smith, D.W., Bangs, E.E., Mack, C., Oakleaf, J.K., Fontaine, J., Boyd, D., Jiminez, M., Niemeyer, C., Meier, T.J., Stahler, D., Holyan, J., and V.J. Asher. 2010. Death from anthropogenic causes is partially compensatory in recovering wolf populations. *Biological Conservation* 143 (2010) 2514–2524. [Attachment 12]

<sup>21</sup>Rutledge, L.Y., Patterson, B.R., Mills, K.J., Loveless, K.M., Murray, D.L., and B.N. White. 2009. Protection from harvesting restores the natural social structure of eastern wolf packs. *Biological Conservation* (2009): doi:10.1016/j.biocon.2009.10.017 [Attachment 13]; Levy, S. 2010. Family values: why wolves belong together. Online at: [www.newscien7st.com/search?rbauthors=Sharon+Levy](http://www.newscien7st.com/search?rbauthors=Sharon+Levy) [Attachment 14].

predefined big game hunting season between October and December. If the number of wolves targeted for removal is not reached by shooting, wolves may also be trapped later in the winter” (EA at 19). The EA fails to even disclose whether breeding or non-breeding packs will be killed. It states that the project area included “6 percent of the 35 breeding pairs in the central Idaho recovery area at the end of 2010” (EA at 68). This equates to 2.1, so presumably 2 of the 5 packs in the project area are breeding. The project documents do not specify whether MFWP or the private hunters and trappers will discriminate for breeding or non-breeding packs, the implications of which are significant to evaluate environmental consequences of this proposal. Nor will there be any discrimination based on the age of the wolf, despite research showing that wolves’ hunting ability declines after the age of 2-3 years, and that younger wolves keep older wolves alive by provisioning them with food (MacNulty et al. 2009).<sup>22</sup>

The EA acknowledges that the wolf population in the project area may be on the verge of stabilizing (EA at 50), but somewhat bizarrely tries to represent the proposed wolf-killing in the West Fork as a positive action for wolves: “However, with the removal of wolves from HD 250 there would be an increase in unoccupied habitat, and these social openings may allow wolves from the surrounding areas to disperse more readily into HD 250 and form new pairs” (EA at 56). This also undercuts the logic of the plan: if “new” wolves disperse into the area, wolf numbers may not decrease, but when those new wolves are killed the area will be a wolf population sink. Given wolves’ highly complex social and territorial relations (e.g., Harrington and Mech 1983; Haber 1996; Mech 1999; Peterson et al. 2002; Stahler et al. 2002; Rutledge et al. 2009; Levy 2010),<sup>23</sup> and given that the intent of this project is to grow the elk herd, not to help wolves, this assertion must be rejected as a spurious misrepresentation of the environmental consequences of this project.

The proposed action, of destroying 60% of the wolf population, could have drastic consequences, likely destabilizing the West Fork wolves. In fact, the level of wolf-killing falls outside of the parameters that the EA says wolf populations may be able to withstand:

...wolf populations have sustained human-caused mortality rates of 30–50 percent without experiencing declines in abundance (Fuller et al. 2003). In their analysis of multiple data sets, Adams et al. (2008) found human caused mortality rates less than 29 percent did not cause wolf population declines. However, not all wolf populations may be able to sustain an annual human-caused mortality rate above 30 percent (USFWS 2008a).

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<sup>22</sup>MacNulty, D.R., Smith, D.W., Vucetich, J.A., Mech, L.D., Stahler, D.R., and C. Packer. 2009. Predatory senescence in ageing wolves. *Ecology Letters* 12(12): 1347-1356. [Attachment 15].

<sup>23</sup>Haber, G. C. 1996. Biological, conservation, and ethical implications of exploiting and controlling wolves. *Conservation Biology* 10:1068-1081 [Attachment 16]; Harrington, F. H., and L. D. Mech. 1983. Wolf pack spacing: Howling as a territory-independent spacing mechanism in a territorial population. *Behavioral Ecology and Sociobiology* 12:161-168; Mech, L. D. 1999. Alpha status, dominance, and division of labor in wolf packs. *Canadian Journal of Zoology* 77: 1196–1203 [Attachment 17]; Peterson, R. O., A. K. Jacobs, T. D. Drummer, L. D. Mech, and D. W. Smith. 2002. Leadership behavior in relation to dominance and reproductive status in gray wolves, *Canis lupus*. *Canadian Journal of Zoology* 80:1405–1412 [Attachment 18]; Stahler, D. R., D. W. Smith, and R. Landis. 2002. The acceptance of a new breeding male into a wild wolf pack. *Canadian Journal of Zoology* 80:360–365 [Attachment 19].

EA at 55. Given these disclosures, FWS cannot approve this project as currently designed.

Third, the EA has failed to isolate the causes of elk population decline and therefore does not provide to the public a basis for evaluating whether killing wolves will indeed help meet the objective of increasing elk. Indeed, the EA points to the inability of project proponents to demonstrate that wolves are the cause of elk trends in the project area:

...throughout the Bitterroot Valley, which consists of five hunting districts including HD 250, elk numbers in all five hunting districts have declined since 2005. Hamlin and Cunningham (2009), who monitored and assessed wolf-ungulate interactions throughout Montana and in the greater Yellowstone area from 2001 to 2008, *attributed the decline primarily to increased antlerless harvests achieving a planned management reduction*, and stated there is no evidence that wolves or other predators have affected the elk population decline through 2008, though they did acknowledge that wolves may affect elk numbers at some point. Population declines in HD 250 began in 2006 (1,462 elk counted), and in 2008–2010, total elk counts (863, 744, and 764, respectively) were 46 to 54 percent below the minimum population objective of 1,600 elk (MFWP 2010a). *Because no data has been collected, the cause of the decline is unknown. Even where much data has been collected, scientific and public debates are ongoing regarding the impacts of wolves on ungulate populations* (Hamlin and Cunningham 2009).

EA at 25, emphasis added. Noting that calf recruitment since 2005 has fluctuated up and down, while elk abundance has declined, the EA states, “This could indicate that populations are at or near carrying capacity” (EA at 28). In addition, multiple peer-reviewers point to the problem of separating out wolf predation from other factors limiting the elk population in the project area:

Dean E. Beyer, Jr.: [wolf hunting will] “make it very difficult to understand which of the limiting factors is most important and what interactions among factors may be occurring. Thus, this approach will certainly limit what can be learned from the proposed action...” (EA Appendix B at unnumbered p. 4).

“Given the multi-faceted plan, it will be very difficult to determine which of the managed factors, singly or in combination (interactions) are responsible for any elk population response. I think the proposed elk research will be critical to gain a good understanding of the relative roles of habitat, weather, and predation on elk calf survival.” *Id.* at unnumbered pp. 5-6.

Scott McCorquodale: “...it seems to me that the proposal attempts to offer a scientifically credible justification for dismissing factors other than wolf

predation. But, it isn't really the formal integrated type of argument usually supported with rigorous statistical tools.” *Id.* at unnumbered p. 10.

“I think the biggest weakness of the proposal is that it seems to be structured to look like a very rigorous analysis of the relevant data, but much of it is really just subjective interpretations of the data.” *Id.* at unnumbered p. 11.

David Mech: “Consider possible diminishing returns for wolves. Is it a good assumption that without control the elk pop. will continue to decline? (May depend on status of alternate prey, if any.)” *Id.* at unnumbered p. 46 (note that this is MFWP’s characterization of Mech’s review, as Mech’s review was not provided).

As noted previously, the elk over-hunting of the past several years (up to 2010) may have lag effects, which the EA mentions (at 30), but which are ignored when it comes to the design of the proposed alternative as well as the consideration of its environmental consequences (e.g., if the population is falling due to human hunting, many of the environmental consequences disclosed in the EA are inaccurate). These types of gaps in the EA could possibly be addressed through the Bitterroot Elk Study, depending on how that study is designed. However, this study was scheduled to begin in February 2011, will not be complete until the end of 2013, and its completion is not even assured, as it is contingent on availability of funding (EA at 13-14). It simply makes no sense for MFWP to proceed with wolf-killing before the causes of the elk decline are known. This research must be conducted *before* wolves are killed. The only evidence provided that wolves are limiting the elk population is that wolf numbers are going up as elk numbers are going down. This is not enough to reach the conclusion MFWP is reaching.

The EA’s deficiencies point to the premature nature of the proposed action: MFWP needs to know that wolves are indeed the cause of elk decline before proposing a project to kill wolves in order to increase elk. It may be that West Fork wolves are taking old or infirm prey (including elk) that are not contributing to the reproductive health of the elk population.<sup>24</sup> It may be that human hunting has caused the age of elk bulls to decrease (EA at 29), which could result in younger bulls siring calves in intervals, thus providing predators with longer access to vulnerable young. No one will know the answers to these important issues until the Bitterroot Elk Study is complete. The EA fails to disclose these important data gaps in violation of 40 C.F.R. § 1502.22 (“When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment . . . and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.”).

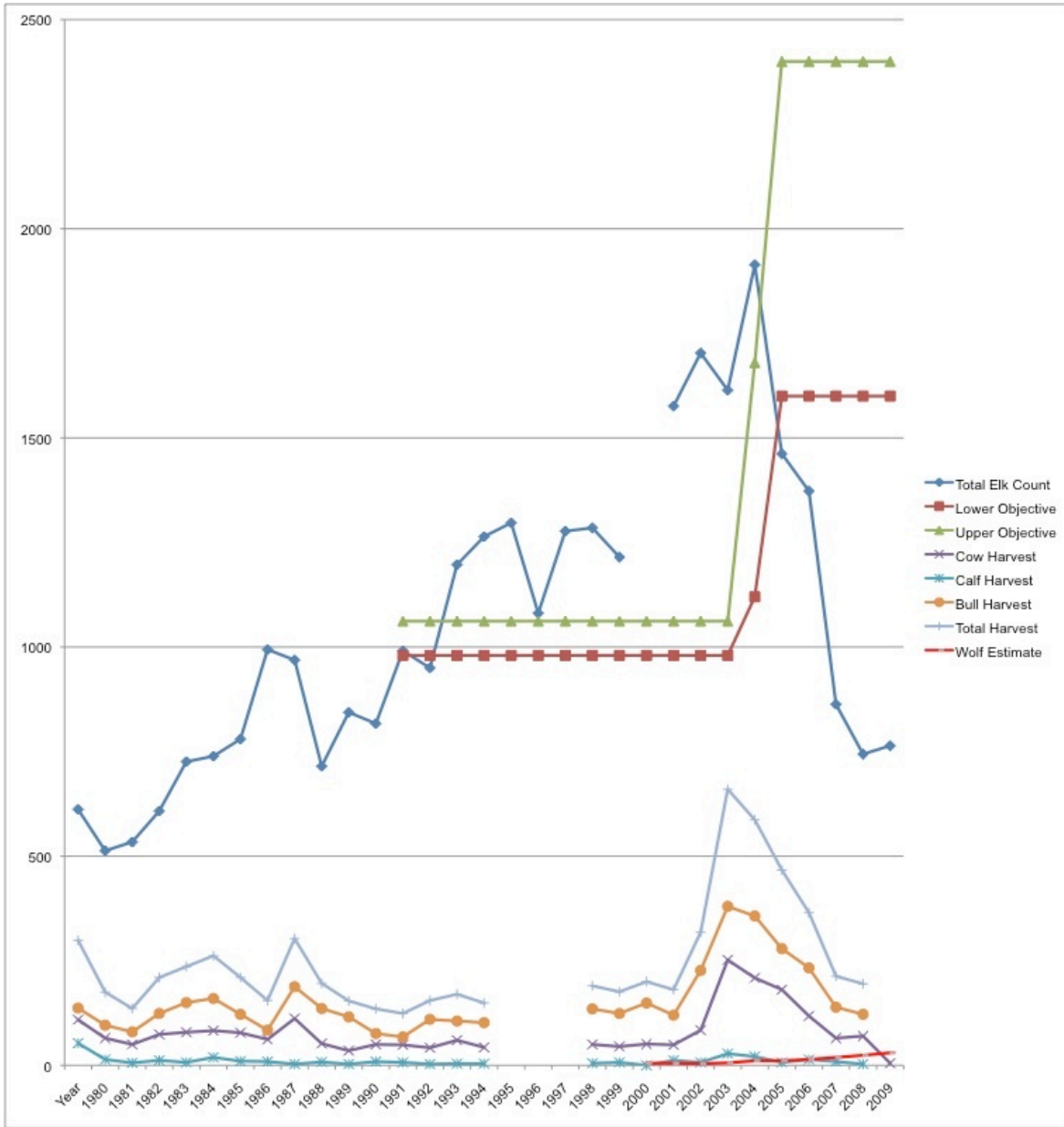
Nor does the EA consider the finding by MacNulty et al. (2009) that wolves’ predation abilities decline after the age of just two or three. They state: our “findings suggest that

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<sup>24</sup>See Mech, L. D. 1970. *The wolf, the ecology and behavior of an endangered species*. Doubleday, New York, New York, USA.

predatory senescence is an important, though overlooked, factor affecting predator-prey dynamics.” *Id.* at 1347. That is especially true in the West Fork EA and MFWP’s application. Wildlife managers do not know, nor have they provided for an inquiry into, or even curiosity about, the age of wolves within the five packs in the West Fork. MacNulty et al.’s findings provide an additional reason to wait on drastic management actions until more is known about both predators and prey in the West Fork area.

Fourth, the EA fails to disclose whether the elk population goals that are prompting this project are even sustainable. These goals have been steadily adjusted upwards, but it is not clear that a herd of 1600-2400 elk is biologically or ecologically sustainable in this area. The EA states that the carrying capacity for elk in the project area is unknown (EA at 48) or may have been met (EA at 28), but fails to evaluate the goal of 1600-2400 elk directly. Figure 1 shows in graphic form that the elk goals are fairly inexplicable.



**Figure 1: Wolf & Elk Populations in the West Fork of the Bitterroot Project Area.**  
**Source: Montana Fish and Wildlife Service data; graph produced by Western Watersheds Project.**

If the elk goal of 1600-2400 is above carrying capacity, then it is simply unachievable. In addition, to maximize sustainable hunting while maintaining a specific population goal, the population would have to be maintained *below* carrying capacity. For a density dependent population, “under logistic growth, a population at roughly half of its carrying capacity would be putting the most individuals into the population each time step via recruitment... this would be the population size where we could harvest the most animals each year”

(Mills 2007).<sup>25</sup> Even an extremely simplified version of a sustainable yield model such as this does not appear to have been considered when setting elk population goals. According to MFWP, liberalized hunting regulations were instituted in 2004 “to temper the population growth rate,” (MFWP application at 7) and “from 2004-2006 the cow-calf harvest rate was about 3 times higher than it had been in the prior 14 years” (*Id.*). Considering the growth of the elk population, if the intention was maintenance of the population goal set in 1992, the increased harvest during those years could have been judged a success (see Figure 1). But instead, after the elk hunting level in 2004, the population goal was increased dramatically, once in 2005 and once in 2007, while higher hunting levels were still in play. Increasing the level of hunting on a population and then expecting that population to continue to grow is counter-intuitive. Continuing to set the population goal higher and higher without knowing the carrying capacity of the area is a recipe for failure both for wildlife populations and for sustainable hunting.

In fact, multiple peer reviewers question MFWP’s West Fork elk population goal:

Layne G. Adams: “...it would be timely to reassess the population objective for this EMU given that the population goals increased markedly during 2004-2006 as the wolf population was becoming established.” (EA Appendix B at unnumbered p. 1).

Dean E. Beyer, Jr.: “it will be important to explain why the population objective of this unit increased after 2004. Given that cow-calf harvest rate appeared relatively stable from 1993-2003, what factor(s) changed that allowed the elk population to increase? Is it possible these factors temporarily increased the carrying capacity of the area?” *Id.* at unnumbered p. 4.

David Mech: “Explain why objective is so high when 1980-1991 the pop. ranged from 513-994 when no wolves.” *Id.* at unnumbered p. 39 (note that this is MFWP’s characterization of Mech’s review, as Mech’s review was not provided).

Fifth, this project may be modified to provide for even fewer wolves to be maintained and even extended beyond 5 years. States MFWP in its application (at p. 1): “MFWP would be accountable to the USFWS for maintaining a minimum year-end count of 12 wolves through 2015 unless MFWP proposes and the USFWS accepts a new or amended proposal prior to 2015 in response to new information, or wolves are delisted.” The EA states: “Additional wolf removal efforts in HD 250 would likely be required to maintain the wolf population at a reduced level allowing for continued increase in the elk population once the 5-year management program has ended” (EA at 63). In fact, given that legislative delisting is strongly likely, MFWP should have disclosed how the project would be altered if the West Fork wolves are delisted, by an act of Congress or other mechanisms. The EA fails

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<sup>25</sup>Mills, L. S. 2007. Population biology of harvested populations. Chapter 14 (pp. 286-307) *in* Conservation of wildlife populations: demography, genetics, and management. Blackwell Publishing, Malden MA.

to disclose the impacts to wolves, elk, or the rest of the affected environment from killing even more wolves or killing them for a longer period than currently proposed. This prevents the public from full knowledge of the effects of this project, thereby hindering meaningful public participation.

Sixth, the project fails to consider the environmental impacts of human hunting in the project area. The proposed action will continue to allow elk hunting – perhaps at increased rates from 2010. The project documents do not consider that human hunting can have extremely deleterious effects on targeted ungulates, targeted predators, and nontarget species vulnerable to lead poisoning. Human hunters don't normally take old or sick animals, but take the most mature bulls and healthy cows. Peer reviewers on this project note that humans tend to take more reproductively vital animals than other predators (Dean E. Beyer, Jr.: EA Appendix B at unnumbered p. 5). Human and wolf kills of elk likely have very different implications for elk breeding success. In contrast, in the Lolo Elk Management zone, nearly 40% of the cows killed by wolves were over 15 years old and therefore well past breeding age.<sup>26</sup> An additional threat that human hunters pose (but wolves do not) is lead poisoning to wildlife from the use of lead shot. We discuss lead poisoning further below.

d. Failure to use the best available information

The EA relies on the unverified assumption that wolves are reducing elk in the West Fork. The EA repeatedly states that it is unknown whether wolves are limiting elk populations in the West Fork area (e.g., pp. 25, 28, 36, 50), yet its analysis of environmental consequences of the proposed wolf-killing is fundamentally based on the assumption that wolves are limiting elk populations in the area. The EA's entire analysis of environmental consequences (Part 4 in its entirety, including Table 3) is therefore flawed, as it is based on an assumption that the project proponents cannot verify. In fact, the EA is categorically flawed, as it is based on this same assumption.

For example, in its analysis of the No Action Alternative, the EA states:

- By not removing wolves in HD 250, the elk population is anticipated to decline further in the short-term, before reaching an equilibrium point where the population may stabilize at a lower level over the longterm (EA at 47).
- The wolf population would likely remain stable or potentially increase (see Graph 3) for the short-term, and elk numbers may continue to decline further (EA at 49).
- Under the No Action Alternative, the elk population in HD 250 would likely continue to decline, which would mean less prey available for the wolf and other predators (EA at 51).

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<sup>26</sup>See comments submitted to FWS by Friends of the Clearwater on the Lolo Elk Management Zone wolf-control proposal, dated March 14, 2011. [Attachment 20].

None of these statements are valid, as it is unknown how wolf and elk are currently affecting each other in the West Fork.

In its analysis of the Proposed Alternative, the EA states, for example,

- Removal of wolves is anticipated to result in increased elk numbers under the Proposed Action (EA at 48).
- The reduction in wolves may result in fewer opportunities for scavengers in the short-term; however, ungulate populations would eventually increase, and as such, the amount of carrion available to scavengers would also increase (EA at 56).

Likewise, none of these statements are valid, as it is unknown how wolf and elk are currently affecting each other in the West Fork.

e. Failure to disclose impacts

First, and most significantly, the EA either ignores or understates the ecosystem role that wolves play and consequent impacts of wolf-killing to the ecology and natural community in the project area. The benefits of wolves to riparian areas is swept aside, seemingly on the basis that the increased biodiversity documented from wolf reintroduction into Yellowstone National Park (YNP) does not apply to the West Fork area. This is premised on only two personal communications with individuals who stated riparian conditions were good, but without any data provided in the project documents to back up this claim. Monitoring data on these conditions should be available from USFS and FWS quite readily and is preferable to relying on personal communications which the public can't verify or replicate. The project documents should have included USFS monitoring data on riparian conditions which the public could then comment on. No peer-reviewed science justifies the conclusion that wolves are not playing important ecosystem roles, including through indirect effects on riparian areas, in the West Fork.

Wolves have newly restored themselves to the West Fork, and the benefits to other wildlife from significant wolf presence in the area may have only just begun to make themselves felt, including control of meso-predators; provision of carrion to scavengers; increased movement of ungulates, particularly away from riparian areas; consequent benefits to riparian areas; and other effects. Numerous studies have shown substantial ecosystem effects of wolves in North America (Ripple et al. 2001; Smith et al. 2003; Soule et al. 2003; Beschta 2003, 2005; Ripple and Beschta 2003; 2004, 2006; Berger and Smith 2005; Hebblewhite 2007, Hebblewhite and Smith 2007; Licht et al. 2010).<sup>27</sup> Rather than killing

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<sup>27</sup>See Berger, J., and D. W. Smith. 2005. Restoring functionality in Yellowstone with recovering carnivores: Gains and uncertainties. In *Large carnivores and the conservation of biodiversity*, ed. J. C. Ray, K. H. Redford, R. S. Steneck, and J. Berger, 100–8. Washington, DC: Island Press; Hebblewhite, M., and E. H. Merrill. 2007. Multi-scale wolf predation risk for elk: Does migration reduce risk? *Oecologia*. 154:377–87; Smith, D. W., R. O. Peterson, and D. B. Houston. 2003. Yellowstone after wolves. *Bioscience*. 53(4):330–40; and Hebblewhite, M. 2007. Predator-Prey Management in the National Park Context: Lessons from a Transboundary Wolf, Elk, Moose and Caribou System. *Predator-prey Workshop: Predator-prey Management*

West Fork wolves, MFWP should be researching whether and to what degree they are having ecosystem effects similar or different from those documented in national parks.

While the EA mentions some of these effects, it does so in a generally minimizing and equivocal fashion, without justification. It outright dismisses findings that wolves create a trophic cascade: “A trophic cascade in HD 250 [the West Fork area] as a result of elk population declines would not be expected” (EA at 49). This conclusion is reached on the basis of one personal communication from USFS that elk don’t spend much time in riparian areas in the project area (EA at 47-48). Because the Bitterroot Elk Study will not be complete until the end of 2013, it is not clear how this conclusion was reached. It is not obvious what data went into this conclusion. But this one claim is spuriously used to counter years of scientific research from YNP, where riparian conditions have improved.

The failure to consider wolves’ ecological roles results in an inadequate assessment of affects to other wildlife, particularly special status species such as the bull trout (ESA Threatened), grizzly bear (ESA Threatened), wolverine (ESA candidate), and yellow-billed cuckoo (ESA candidate), which are likely to experience effects from wolf-killing and reduced wolf numbers in the project area. These effects concern riparian areas (bull trout, wolverine, cuckoo) and diminished availability of carrion from wolf-kills (grizzly bear, wolverine).

The importance of wolf-provided carrion to other wildlife has been demonstrated in scientific studies (Wilmers et al. 2003; Wilmers and Getz 2005).<sup>28</sup> As discussed above, the EA is unjustifiably equivocal on the benefits from carrion provided by wolves and instead appears to equate it to carcasses left behind by hunters but fails to acknowledge those are potentially laced with lead. In particular, wolverines were designated an ESA candidate in 2010. There are a variety of ways in which wolf-killing may affect this species, including capture in traps and snares, less carrion available from ungulates killed by wolves, the risk of lead poisoning from hunting and hunter-left carcasses, and the harm to riparian habitat due to the reduction of wolves in the ecosystem. Wolverine exist at even lower densities than other mid-sized carnivores. One of its limiting factors is the relative scarcity of predators that provide carrion for wolverines: “Not a hunter, [the wolverine] depends on wolves and other predators to provide carrion” (Banci 1994 at 100).

Another ESA candidate that could be negatively affected is the yellow-billed cuckoo. This bird was designated an ESA candidate in 2001. It is a riparian-dependent species and may therefore be adversely affected by reduced numbers of wolves and consequently reduced benefits to riparian ecosystems in the project area.

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in the National Park Context. Pp. 348-365; Soule, M. E., J. A. Estes, J. Berger, and C. Martinez del Rio. 2003. Ecological effectiveness: Conservation goals for highly interactive species. *Conservation Biology* 17:1238-1250 [Attachment 21].

<sup>28</sup>Wilmers, C. C., R. L. Crabtree, D. W. Smith, K. M. Murphy, and W. M. Getz. 2003. Trophic facilitation by introduced top predators: grey wolf subsidies to scavengers in Yellowstone National Park. *Journal of Animal Ecology* 72:909–916. Wilmers, C. C., and W. M. Getz. 2005. Gray wolves as climate change buffers in Yellowstone. *PLOS Biology* 3:571–576 [Attachments 22 & 23].

Second, the EA fails to assess lead dangers to wildlife. The EA fails to consider and disclose the environmental consequences of continued or increased hunting by humans in the West Elk area. The most important impact is potential lead poisoning from lead bullets and/or lead-contaminated carcasses and gutpiles. For example, Bedrosian and Craighead (2009)<sup>29</sup> found that bald and golden eagles are ingesting large amounts of lead during the hunting season in the southern part of the Greater Yellowstone Ecosystem. Craighead and Bedrosian (2009)<sup>30</sup> reported similar results for ravens in the same region. Domenech and Langner (2009)<sup>31</sup> found high levels of lead in golden eagles in West-central Montana, which they attributed to hunter gutpiles.

Instead of analyzing lead dangers to wildlife, the EA strangely appears to equate wolf-provided carrion to gutpiles left by hunters, stating:

The No Action Alternative would also have potential impacts on scavengers. Scavengers such as bears, coyotes, wolverines, and vultures could benefit from an increased amount of carrion that would be provided by a stable or increasing wolf population over the short-term. Scavengers may also be disadvantaged by a low elk population and resulting limited hunting opportunity as the overall availability of carrion, including hunter-killed carcasses, gut piles, and unrecovered game would be reduced.

EA at 49-50 (See also EA at 53). Here, the EA is failing to disclose the important threat to wildlife from lead poisoning, which would not be present in an alternative that reduced or eliminated human hunting or in the No Action alternative.

Third, the EA understates social and economic benefits from wolves. Incredibly, the EA argues that the No Action alternative will have long-term adverse effects on wildlife watching due to decreased populations of elk, and subsequently decreased populations of wolves (EA at 61). Notwithstanding the fact that there are two unverified assumptions in this logic (that, in the project area, wolf are currently causing elk declines and that elk declines would cause wolf declines), this completely ignores what has transpired in YNP due to wolf reintroduction. It also ignores the reality that wildlife watchers can quite easily view elk, which are more numerous, more well-distributed, and more conspicuous than wolves. Wolves continue to be a top draw to Yellowstone, 15 years after the first release, and without any wolf-killing (by humans) in the Park. They are estimated to bring in some

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<sup>29</sup>Bedrosian, B., and D. Craighead. 2009. Blood lead levels of Bald and Golden Eagles sampled during and after hunting seasons in the Greater Yellowstone Ecosystem. Extended abstract in R. T. Watson, M. Fuller, M. Pokras, and W. G. Hunt (Eds.). *Ingestion of Lead from Spent Ammunition: Implications for Wildlife and Humans*. The Peregrine Fund, Boise, Idaho, USA. DOI 10.4080/ilsa.2009.0209. [Attachment 24].

<sup>30</sup>Craighead, D., and B. Bedrosian. 2009. A relationship between blood lead levels of Common Ravens and the hunting season in the southern Yellowstone Ecosystem. In R. T. Watson, M. Fuller, M. Pokras, and W. G. Hunt (Eds.). *Ingestion of Lead from Spent Ammunition: Implications for Wildlife and Humans*. The Peregrine Fund, Boise, Idaho, USA. DOI 10.4080/ilsa.2009.0206. [Attachment 25].

<sup>31</sup>Domenech, R., and H. Langner. 2009. Blood-lead levels of fall migrant Golden Eagles in west-central Montana. Extended abstract in R. T. Watson, M. Fuller, M. Pokras, and W. G. Hunt (Eds.). *Ingestion of Lead from Spent Ammunition: Implications for Wildlife and Humans*. The Peregrine Fund, Boise, Idaho, USA. DOI 10.4080/ilsa.2009.0210. [Attachment 26].

\$35 million per year to local economies (Duffield et al. 2006).<sup>32</sup> The proposition that, unless MFWP kills wolves in the West Fork, the public's enjoyment of wolves will decline is preposterous and ignores the substantial monetary value of wolf-related wildlife watching in areas where wolves are protected from killing.

Fourth, the EA fails to fully disclose the cumulative effects of this project. It fails to consider or disclose the number of wolves and wolf-packs that are likely to be killed through the 3 Idaho wolf-killing projects referenced (Lolo, Sawtooth, Smoky Mountains), combined with the West Fork. The Lolo plan involves 12 packs (which will be reduced by up to 80%: EA at 55, 67) and the West Fork plan involves 5 packs. The EA doesn't state how many packs are at issue in the other areas. To these totals should be added wolf-killing for livestock (259 wolves were killed in 2010 on this basis: EA at 67), which may bring the number of packs affected to a substantial portion of the total Northern Rockies wolf population. The EA inadequately addresses this problem of cumulative wolf killing (EA at 67-69).

The EA fails to consider the future for wolf persistence if they are not even tolerated in the West Fork, where they are not preying on livestock, live in a remote area, and subsist on native prey. If they cannot be tolerated in this area, where they are behaving exactly as wolves "should," where will they be tolerated? This is a social dimension to the proposed project that also requires consideration under NEPA.

The EA also fails to consider how intense killing of multiple predators in the West Fork may together have a significant effect on the ecology and multi-species predator guild in this area. In the West Fork, over 60% of wolves are to be killed; it has one of the highest levels of cougar hunting statewide is in the West Fork, thereby increasing the chance of killing females with dependent kittens; and the spring hunting season for bears has extended in the West Fork (EA at 45), thereby increasing the chance of killing bears with dependent cubs.

The EA also fails to consider how all of this predator killing, premised on a desire to rigidly control the size of the elk population, affects the wilderness qualities of the Selway-Bitterroot Wilderness. The EA states that three times more Montanans participated in wildlife-watching in 2006 than in hunting; that hiking and wildlife-watching are popular in the project area; and that: "The Selway-Bitterroot Wilderness provides opportunities hikers to experience beautiful vistas and view wildlife such as elk, wolves, and bighorn sheep in a primitive, roadless setting" (EA at 46). The EA's analysis has dramatically downplayed the extent to which killing most of the wolves in the area, as well as shooting, traps, and snares (EA at 59), will degrade the recreation and wilderness experience for individuals that enjoy this area. Certainly, if a member of the public were to be caught in a snare or trap, it would impair their enjoyment of this wilderness area.

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<sup>32</sup>Duffield, J.W., Patterson, D.A., Neher, C.J. 2006. Wolves and people in Yellowstone. Paper presented to 18th Annual North American Wolf Conference; 4-6 April 2006, Pray, Montana. [Attachment 27].

f. Need for an Environmental Impact Statement

While we contend that this project proposal should be denied outright by FWS, in the alternative, FWS should find that an Environmental Impact Statement (EIS) is required. An EA is insufficient, given the extreme public controversy on this issue, and the likelihood that this project marks the beginning (along with the Lolo and possibly two other Idaho plans) of a number of wolf-control plans to be proposed by Northern Rockies states.

Wilderness Act & Other USFS Violations

First, this project violates the Wilderness Act. The Act provides that wilderness-designated areas:

...shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness...

16 U.S.C. § 1131(a). USFS is responsible for preserving the wilderness character of the Selway-Bitterroot Wilderness. 16 U.S.C. § 1133(b) (“each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area”). As a federal court has found, “It was man who wiped out the wolf from this area. Now man is attempting to restore the wilderness character of the area by returning the wolf.” *Wolf Recovery Foundation v. U.S. Forest Service*, 629 F.Supp.2d (D. Id. 2010)

Killing 60% of the population of a keystone carnivore (e.g., Hebblewhite 2007) that is an essential component of the area’s wilderness character violates this statute by impairing the Selway-Bitterroot Wilderness for future use and enjoyment by the American people; eroding the wilderness character of this area; and precluding the gathering of information about the ecological roles wolves are playing in and near this wilderness and about wolf-related human recreation in this area.

Second, the proposed project violates the USFS manual by allowing predator control in a Wilderness Area. Regulations on wilderness stewardship note that wilderness provides, “an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.” FSM 2323.31. FSM 2323.32 discourages, “measures for direct control (other than normal harvest) of wildlife and fish populations.” The FSM is even more explicit regarding predator control:

Predacious mammals and birds play a critical role in maintaining the integrity of natural ecosystems. Consider the benefits of a predator species in the ecosystem before approving control actions. The Regional Forester may approve predator control programs on a case-by-case basis where control is necessary to protect

federally listed threatened or endangered species, to protect public health and safety, or to prevent serious losses of domestic livestock. Focus control methods on offending individuals and under conditions that ensure minimum disturbance to the wilderness resource and visitors. Poison baits or cyanide guns are not acceptable. Poison bait collars may be approved.

FSM 2323.33c. The regulations do not allow predator control to boost elk numbers. This same section of the FSM later notes, “The Forest Service is responsible for determining the need for control, the methods to be used, and approving all proposed predator damage control programs in wilderness.” As such, this proposal creates a conflict between wilderness and MFWP’s desire to eliminate the majority of wolves from the West Fork.

Third, the proposal violates USFS’s duty to manage for viable populations of native species, under the NFMA. Adopted in 1987, the Bitterroot National Forest Plan was promulgated under the 1982 NFMA planning regulations.<sup>33</sup> The 1982 NFMA planning regulations require that a forest plan contain provisions to accomplish the following:

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

36 C.F.R. § 219.19 (2000). The proposed project, which will reduce wolves by 60%, a killing rate from which they might not recover (e.g., Creel and Rotella 2010), will violate the USFS responsibility to manage viable populations of gray wolves, a native species that exists in the project area.

Fourth, the proposal to kill wolves to increase elk numbers flies in the face of the determination made by FWS in a similar situation involving caribou in the Unimak Wilderness. There, the State of Alaska proposed killing wolves in order to boost caribou numbers for subsistence hunting. But FWS found:

*“The conservation of fish and wildlife populations and habitats in their natural diversity, as stated in ANILCA, infers consideration and inclusion of population characteristics and dynamics, which are: rate of birth, rate of death, immigration and emigration, rate of population growth (or decline), social structure and behavior, temporal and spatial use of habitat, etc. Wilderness, as defined in the Wilderness Act, is recognized as an area where (sic) earth and its community of*

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<sup>33</sup>See US Forest Service (USFS). 1987. Bitterroot National Forest Plan.

*life are untrammelled* by humans, or shaped by natural processes and not by human manipulation. (emphasis in original)

If some of the Unimak Island wolves are removed, population characteristics and complex social structure may be altered for this species as well as caribou and others in the wolf food chain. Further, removal of wolves through any of the action alternatives would have a negative impact on the Service's ability to fulfill Refuge purposes, notably conservation of natural diversity and maintaining wilderness character." *Notice of Decision and Finding of No Significant Impact, Management Alternatives for Unimak Island Caribou Herd Environmental Assessment. March 2011.*

Here, just as in the Unimak Wilderness, the proposal to kill wolves to inflate ungulate numbers would negatively affect the legal requirement to preserve the area's wilderness character.

#### FWS Misrepresentation of Proposal in Federal Register Notice

FWS must closely scrutinize this proposal, and we have pointed out numerous and fatal flaws in the project documents. We are particularly concerned that FWS itself has misrepresented the proposal in its Federal Register notice. Therein, FWS cites 2009 data on wolves, thus understating the amount of wolf-killing that will take place (despite the fact that the EA cited 2010 wolf data). 76 Fed. Reg. at 17441. FWS describes the reduction to be from 24 wolves down to 12 (*Id.*), but it will actually be from 30 wolves down to 12 (or lower, as discussed in these comments). FWS's notice also states that "Most wolf control would occur on U.S. Forest Service lands outside of designated wilderness." *Id.* This is misleading, as hunters or trappers would be able to seek wolves in the Selway-Bitterroot Wilderness, which comprises more than ¼ of the project area (EA at 1). FWS has no way to tell in advance that most of the killing will occur outside the wilderness area and is misleading the public.

#### Request for Extension of Comment Period

FWS set the public comment period at just 14 days in the Federal Register. In contrast, the EA states the following:

The Service published a Notice of Availability of this Draft EA in the *Federal Register* on March 29, 2011, initiating a 14-day public review and comment period. The public comment period extends until April 23, 2011. Substantive and timely written comments received during the 30-day public comment period will be considered and addressed by the Service in its preparation of the Final EA for this proposal.

EA at 72. Because a 30-day public comment period on this issue is appropriate, and because it was stated in the EA, FWS should extend the comment period deadline to 30 days from March 29, 2011 or open a second comment period. Public participation was

reduced by FWS for no stated reason. Nor did FWS state why the project must be approved immediately, given that wolf killing is not supposed to start until the winter months.

### Conclusion

There is simply no justification for this project. If FWS approves it, it will be in violation of the ESA, NEPA, NFMA, the Wilderness Act, and other federal laws. We implore FWS to reject MFWP's proposal for wolf-killing in the West Fork. This project is not justified, as wolf predation on elk has not even been verified as the cause of elk declines. Human hunting of elk, which has included cows and calves in recent years, may very well be the cause of this population's decline. Moreover, there is not even a valid basis for the elk population goals in this area.

The project documents do not substantiate a need for this project. They fail to disclose the full environmental consequences. They do not explore a range of reasonable alternatives to address elk issues in the West Fork. The project would harm non-target species, particularly in traps and snares are employed. The project also ignores FWS's and USFS's duties under the ESA as to listed species. The selection of peer reviewers was highly questionable and the environmental analysis is so full of flaws that it must be set aside.

Most concerning is that the project would punish wolves who are behaving precisely as wolves should. This small wolf population has established itself in a remote, rugged area, where they have barely brushed up against livestock, taking only two cattle calves in the past decade. Rather, they are subsisting on native prey and may be on the verge of population stabilization. Yet, MFWP plans to reduce this wolf population by 60% or more, which may obliterate, and will certainly destabilize, this wolf population. FWS must reject this proposal. Let the wolves be.

Sincerely,

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