June 19, 2019

David Bernhardt
Secretary of the Interior
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Margaret Everson
Principal Deputy Director
U.S. Fish and Wildlife Service
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Re: Red Wolf Revised Recovery Plan: Notice of Intent to Sue for Violations of the Endangered Species Act

Dear Secretary Bernhardt and Principal Deputy Director Everson:

On behalf of the Center for Biological Diversity and Defenders of Wildlife (collectively, the “Center”), I hereby provide notice that the U.S. Fish and Wildlife Service (“Service”) is violating the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-559. Specifically, the Service has failed to update its red wolf recovery plan in violation of section 4(f) of the ESA, failed to pursue further red wolf recovery in violation of section 7(a)(1) of the ESA, and unreasonably delayed or withheld a revised plan after announcing that it would do so by the end of last year.

BACKGROUND

I. The ESA Requires That the Service Develop Recovery Plans and Take Affirmative Conservation Actions

The ESA was enacted, in part, to provide a “means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b). Once listed as “endangered” or “threatened,” a species is entitled to the ESA’s substantive protections, and federal agencies assume duties to conserve it.

Section 4(f) of the ESA directs the Service to develop and implement recovery plans for the “conservation and survival” of listed species unless the agency makes a finding that “such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f)(1). The ESA defines “conservation” to mean “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 Act are no longer necessary.” 16 U.S.C. § 1532(3).
Section 7(a)(1) provides an “affirmative duty” for federal agencies to conserve listed species. It provides that all federal agencies shall “utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed . . . ” 16 U.S.C. § 1536(a)(1).

II. The Red Wolf’s History of Persecution and Protection

Once common throughout the southeastern United States, most of the red wolf’s populations were extirpated by the early 1900s due to predator control programs and habitat degradation. In 1982, the Service designated an experimental population for the species in North Carolina under section 10(j) of the Endangered Species Act, 16. U.S.C. § 1531 et. seq.1

For its first 25 years, red wolf reintroduction was a considerable success, growing the wild population to over 120 wolves by 2001 and peaking in 2006 with 130 wolves in 20 packs throughout the recovery area.2

For about the last decade, however, the red wolf in eastern North Carolina has been drastically declining.3 Red wolf numbers began plummeting in the mid-2000’s when the state of North Carolina loosened regulations on coyote hunting that in turn increased the incidental take of red wolves.4

Rather than work to curb these shooting deaths, the Service began in 2015 to dismantle its red wolf recovery program, and for example, stopped its successful coyote sterilization program.5

Thereafter, in 2018, the Service proposed a new 10(j) rule that would reduce the recovery area where the wolves can safely roam by more than 90 percent.6 The proposal would eliminate protections for any red wolves that wander off Alligator River National Wildlife Refuge and Dare County Bombing Range, and it would allow anyone to kill red wolves on private lands for any reason.7

The red wolf is now one of the world’s most endangered mammals in existence. The species is classified as “critically endangered” by the International Union for Conservation of Nature

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1 51 Fed. Reg. 26,564 (July 24, 1986); 50 C.F.R. § 17.81(a).
3 Id.
7 Id.
In its proposed 10(j) rule, the Service reports 24 known red wolves in the wild within the five-county “North Carolina Non-Essential Experimental Population” with an estimated total population in the wild of approximately 30 to 35 individuals.

III. The Red Wolf’s Outdated 1990 Recovery Plan and the Center’s Petition

The recovery plan for red wolves has not been updated since its drafting in 1990. Since that time red wolves have experienced changes in their range, the threats they face, and their management.

On December 8, 2016, a coalition of wildlife protection groups, including the Center, petitioned the Service to prepare a revised red wolf recovery plan. The Service responded to the Center’s petition on January 19, 2017. The Service stated that “[d]eveloping a revised recovery plan for this species is a high priority and will commence shortly after completion of the SSA [Species Status Assessment] with the goal of completing the Revised Recovery Plan in 2018.” It explained that a revised recovery plan would “incorporate new information about the status of the red wolf found in recent studies and findings.” It further stated that “the recovery plan will be developed using the best available science, including the SSA [Species Status Assessment] along with the information you submitted with your petition.”

As of the date of this letter, the Service still has not released a draft revised recovery plan.

LEGAL VIOLATIONS

In 2017, the Service explicitly acknowledged that its 1990 Recovery Plan should be revised. The agency’s failure to update the plan violates section 4(f) of the ESA. 16 U.S.C. § 1533(f). That provision provides, in pertinent part, that the Service “shall develop and implement plans [] for the conservation and survival of endangered species and threatened species . . . .” Id. § 1533(f)(1). Where, as here, the Service itself has acknowledged that the existing plan is outdated and fails to address “new information,” section 4(f)(1) imposes an obligation on the Service to “develop and implement” a plan that will in fact provide for the “conservation and survival” of the species.

The Service, in failing to update the plan, has also violated its affirmative duty to conserve under section 7(a)(1) of the ESA. 16 U.S.C. § 1536(a)(1); see also id. § 1536(c)(1) (“It is further

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declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.”).

In addition to these ESA violations, the Service’s failure to finalize a revised red wolf plan is “agency action” “unlawfully withheld or unreasonably delayed” in violation of the APA. 5 U.S.C. 706(1).

CONCLUSION

If the Service does not act to correct the violations described in this letter, the Center will pursue litigation in U.S. District Court in sixty days. The Center will seek injunctive and declaratory relief, and legal fees and costs regarding these violations. If you have wish to discuss this matter or believe this notice is in error, please contact Collette at 651-955-3821.

Sincerely,

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Center for Biological Diversity  
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Dear Ms. Adkins:

Thank you for your petition dated December 8, 2016, submitted on behalf of the Animal Welfare Institute, Center for Biological Diversity, Defenders of Wildlife, Endangered Species Coalition, South Florida Wildlands Association, WildEarth Guardians, and Wolf Conservation Center. Your petition requested that the U. S. Fish and Wildlife Service (Service) revise and update our 1990 recovery plan for the red wolf. The Red Wolf Recovery Plan (Recovery Plan), finalized on October 26, 1990, delineates reasonable actions which are believed to be required to restore the red wolf as a component of certain ecosystems within the southeastern United States. These actions include captive-breeding objectives as well as reintroduction and propagation-in-the-wild strategies.

Prior to receiving your petition, the Service had already decided to revise the Recovery Plan. The revisions will incorporate new information about the status of the red wolf found in recent studies and findings, including the Red Wolf Recovery Team Recommendations and Red Wolf Population Viability Analysis, all of which are currently informing our management decisions. On September 12, 2016, we released a memorandum outlining a proposed path forward for the red wolf recovery program (see enclosed). In that memo, we committed to developing a Species Status Assessment (SSA) by October 2017, which will be used as the basis for a revised Recovery Plan. We will develop the SSA using the best available scientific and commercial information, and we will also consider the information you submitted with your petition. To ensure the Recovery Plan provides the best course of action for conservation of this species, it will also be developed using the best available science, including the SSA, along with the information you submitted with your petition and other materials received during the public comment period on the draft revised Recovery Plan. Developing a revised Recovery Plan for this species is a high priority and will commence shortly after the completion of the SSA with a goal of completing the revised Recovery Plan in 2018.

We greatly appreciate your interest in the conservation of the red wolf. For further information or if you have any questions, please contact Emily Weller, Regional Red Wolf Recovery Lead, at (337) 291-3090 or at emily_weller@fws.gov.

Sincerely yours,

Cynthia K. Dohner  
Regional Director

Enclosure