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*Sent via e-mail to: [fgc@fgcc.ca.gov](mailto:fgc@fgcc.ca.gov) on date shown below*

March 28, 2014

Michael Sutton, President  
California Fish and Game Commission  
P.O. Box 944209  
Sacramento, CA 94244-2090

**Re: EPIC Comments Regarding listing of Gray Wolf (*Canis Lupus*) as an  
“Endangered” Species under the California Endangered Species Act**

Dear President Sutton and Commissioners:

The Environmental Protection Information Center (EPIC) presents the following comments regarding its petition to list the Gray Wolf (*Canis Lupus*) as an “endangered” species under the California Endangered Species Act (CESA). We appreciate the opportunity to address the Fish and Game Commission (Commission) on this important matter.

**Summary**

EPIC urges the Commission to reject the California Department of Fish and Wildlife (Department) recommendation to deny listing of the Gray Wolf. There is ample scientific evidence to warrant full listing for the Gray Wolf. The Department’s recommendation fails to satisfy the CESA requirements, which warrant this listing. Instead, the Department’s recommendation is based on the assumption that “management activities” will effectively achieve the goal of listing as “endangered” under CESA. Reliance on “management activities” to protect the Gray Wolf is insufficient and fraught with peril. The proposed “management activities” are either voluntary (i.e. creation of a California Wolf Plan), or carry no enforceable protections for the Gray Wolf (i.e. designating the wolf as a special species of concern). These “management activities” as identified by the Department are not sufficient to ensure that the Gray Wolf, in serious danger of being extinct in California, is actually “conserved” in California as provided by CESA. We therefore urge the Commission to list the Gray Wolf as an “endangered” species and provide it the fullest protections of the law in California.

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## **Background**

On February 27, 2012, EPIC joined the Center for Biological Diversity (CBD) and others in petitioning the Commission to list the Gray Wolf as an “endangered” species under CESA. In October 2012, the Commission voted to accept our petition, finding that the proposed action “may be warranted.” This decision and the subsequent adoption of findings for the decision by the Commission initiated a “candidacy” period for the wolf while the Department conducted its status review and prepared a status report. The Department presented its status report to the Commission on February 5, 2014 with a recommendation that the wolf not be listed, on the basis that no wolves are “present” in California, and that alternative measures could achieve the conservation goals for the wolf.

## **CESA Requirements for Designation of an “Endangered” Species**

The State of California enacted the California Endangered Species Act (CESA) in order to address and prevent the extinction of native biological diversity. The purpose of CESA is to “conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat...” (Fish & Game Code § 2052.) The first step under CESA is to identify and list species as “threatened” and “endangered.” A “threatened species” refers to a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts. (Fish & Game Code § 2067.) An “endangered species” refers to a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. (Fish & Game Code § 2062.)

For the at risk Gray Wolf in California, CESA clearly calls for “conservation,” “protection,” “*restoration*” and “enhancement” of the species because the wolf is in “serious danger of becoming extinct.” Indeed, given that there is thus far only one wolf inhabiting California, the Commission is compelled to list based on the criteria of the Act herein described.

## **Question of “Presence” for the Gray Wolf in California**

Listing the Gray Wolf under CESA serves the objectives of conserving, protecting, *restoring*, or enhancing the species in California. Even if no Gray Wolf had been present in California for the 50 years before OR-7 arrived, as the Commission has found when it declared the Gray Wolf a candidate species, “[e]limination, from any cause, will result in extirpation of the species within the state.” (Commission Findings, October 18, 2012). The Gray Wolf is present in California and its range includes California; at least one Gray Wolf is known to have been in the state in each of the past four years. In fact, the last day a Gray Wolf was confirmed in California was on February 5, 2014, the same day that CDFW presented its recommendation to deny listing. The United States Fish and Wildlife Service expects OR-7 to be followed by other wolves, who will be returning to areas of their historic range which the species had not occupied – due to a lack of regulatory protections – for the previous 50 years. Indisputably, the wolf’s range once again

includes California.

### **Gray Wolf Should Be Listed as an “Endangered” Species**

The Department’s recommendation not to list the Gray Wolf as an “endangered” species under CESA fails to take into account the best available information available. The petition which the Commission approved presented a fair argument based on the best available science to lead a reasonable person to determine that listing of the Gray Wolf as an “endangered” species in California is warranted. The Department has not refuted this evidence.

Three primary factors affect the survival and recovery of the Gray Wolf in the wild in California. These include: 1) destruction, modification, and/or curtailment of wolf habitat; 2) disease and predation; 3) inadequacy of existing regulatory mechanisms. We briefly address each of these factors in turn.

#### **(1) Destruction, Modification, and/or Curtailment of Gray Wolf Habitat**

While wolves are not dependent on a particular habitat type, scientists have identified a number of habitat or landscape features that influence wolf use and persistence, including human density, density of agricultural lands, and road density, all of which are largely surrogates for the likelihood that wolves will be killed or harmed by people (Mladenoff et al. 1995; 1997, 1999, Carroll et al. 2001, Potvin et al. 2005, Carroll et al. 2006.). (Petition at (IV)(A), page 27).

The Department’s 2012 initial evaluation of the petition to list the Gray Wolf found that the references cited in the petition supported the conclusion that the primary factor affecting the survival and recovery of the wolf in California largely depends on human attitudes toward the wolf. “The references in the petition cited above support the statement that human threat is the major direct factor for the past decline of wolves in the conterminous United States.”(CDFW Initial Petition Evaluation at page 22). The Department agreed that “[h]abitat loss caused by urban and agricultural development and the associated habitat fragmentation is also correctly identified in the Petition as a threat to wolves (page 20).” (*Id.* at page 23.)

Despite this admission, in its February 2014 status report of the Gray Wolf in California, the Department states that it has determined that present or threatened habitat modification or destruction is not a factor threatening the continued survival and recovery of the wolf in the wild in California. The Department indicates in its status report that there is not enough scientific evidence to support the contention that present or threatened habitat modification is present to warrant listing of the wolf under CESA. (CDFW Status Report, Executive Summary, at page 5).

This statement is not based on available scientific evidence as presented in the petition, and directly conflicts with the Department statements in its initial evaluation of the petition. The Department has already accepted that there is adequate evidence, both scientific and anecdotal, that human-related habitat modification and destruction continues to be a factor affecting the survival and recovery of the Gray Wolf in the wild in California. The Department must not be allowed to now ignore its own agreement on this point.

## **(2) Disease or Predation**

Human predation is a primary threat to the Gray Wolf, and constitutes a threat to the species sufficient to demonstrate the need to list the Gray Wolf. At the time of the Gray Wolf's 1978 listing, the U.S. Fish and Wildlife Service recognized that "[d]irect killing by man . . . has been the major direct factor in the decline of wolves in the conterminous United States." (43 Fed. Reg. at 9611.) Within California there is a substantial livestock industry that has historically dealt with predators by lethal control. Government and industry sponsored trapping and hunting of wolves was instrumental in driving the gray wolf towards extirpation in California, and the chief reason that the Gray Wolf was listed as an endangered species throughout the United States.

The Department's Initial Petition Evaluation finds that there is not sufficient scientific evidence to support the conclusion that predation on wolves by humans is a significant threat to wolf populations with any scientific certainty. However, CESA does not require scientific certainty, only that the best available science and information be considered. Furthermore, the Department's status report does not summarize any science that would controvert the assertions and science in the original petition. The lack of compelling evidence to suggest that human predation is not a significant threat to wolves lead only to the conclusion that listing is warranted.

## **(3) Inadequacy of Regulatory Mechanisms**

The Gray Wolf has not yet been listed under CESA, and is under threat of "de-listing" under the federal Endangered Species Act. What's more, the Gray Wolf was never designated as a "fully protected species" in California.

Without CESA listing, the State of California will have no obligation to "conserve" or "restore" the Gray Wolf and its habitat. Reliance on alternative regulatory mechanisms, such as designating the Gray Wolf as a "nongame" species pursuant to Fish and Game Code 4150 as suggested by the Department will not require either "conservation" or "restoration" of the wolf or its habitat in California. Consequently, there is and will remain a lack of adequate regulatory mechanisms in California to ensure that the Gray Wolf is adequately protected to prevent a serious risk of extinction of this species in California. Short of listing the wolf as an "endangered" species under CESA, the Gray Wolf remains unprotected and the State fails in its obligation to conserve or restore the wolf and its habitat in California.

## **Reliance on Other Management Recommendations in Lieu of Listing the Gray Wolf**

The Department's status report for the Gray Wolf proposes four management recommendations that appear to be substitutes for listing the wolf as "endangered" under CESA. These measures include: 1) designating the Gray Wolf as a "Special Species of Concern" in California; 2) completing a California Wolf Plan with reports to the Commission; 3) Commission action under existing authorities in the Fish and Game Code to prohibit the "take" of Gray Wolf even for depredation; and 4) CESA listing at a later date. While these may appear to be well-intended efforts, they must be rejected to the extent they are the basis upon which to refuse the Gray Wolf listing under CESA. We discuss each of these management recommendations in turn.

### **(1) Designating Gray Wolf as a “Special Species of Concern”**

Designation of the Gray Wolf as a California “Special Species of Concern” does not bring with it any enforceable prohibitions against “take” of the species. Furthermore, designation as a “Special Species of Concern” does not carry the weight of CESA, which requires that all actions necessary be taken to “conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat...” In short, there is no real benefit to the Gray Wolf, or to the general welfare of the people of the state to be gained from simply designating the wolf as a “Special Species of Concern.”

### **(2) Completion of a “California Wolf Plan”**

The cover letter to the Department’s status report indicates that completing a “California Wolf Plan” i.e. wolf management plan, by the end of 2014 will effectively negate the need for listing the wolf. As a member organization in the wolf stakeholder group, we can definitively say that while this goal appears lofty and ambitious, it is unrealistic given the current state of the work on the plan. Moreover, the completion of the “California Wolf Plan” is entirely dependent upon the fragile dynamics of a stakeholder group that could collapse at any given moment. There are no assurances, legal or otherwise, that the wolf stakeholder group either can or will produce a plan that will achieve the intent of CESA, or provide adequate and enforceable legal protections for the wolf in California.

### **(3) Commission Actions under Existing Authorities**

The Department’s recommendation that the Commission should simply rely on existing and/or alternative authorities to achieve the intent of CESA is simply not a substitute for listing. If listing is “warranted,” the Commission is compelled to list. Deference to alternative legal mechanisms in lieu of listing the Gray Wolf as required by CESA leaves the wolf as well as the Department and the Commission in a precarious position, one that could easily be resolved by listing the species.

### **(4) CESA Listing at a Later Date**

Deferring listing to another (unknown future) date is speculative and contrary to the tenants and intent of CEQA. Reliance on deferral of listing into the future is akin to the illegal deferral of mitigations necessary to minimize and mitigate significant adverse environmental effects. There is no assurance, legal or otherwise, that listing at a future date will actually occur. Putting off until tomorrow what can be done today sets a dangerous precedent for the Department and the Commission, and leaves the Gray Wolf in continued danger of extirpation.

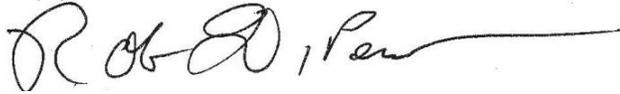
### **Conclusion**

The available evidence indicates that the Gray Wolf is in fact “present” in California, and that the wolf warrants listing due to the factors outlined in the petition and indeed the Department’s own status report. Legal requirements and indeed Commission precedent compel the Commission to list the Gray Wolf. Failure to do so is contrary to the best available information,

CESA, and CEQA. We therefore request that the Commission reject the Department's recommendation, and list the Gray Wolf as an "endangered" species under CESA.

We appreciate the opportunity to address the Commission on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Rob DiPerna". The signature is written in a cursive style with a long horizontal line extending to the right.

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