

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band
Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

May 6, 2021

Regional Director Charles Wooley
U.S. Fish and Wildlife Service
Midwest Region
5600 American Blvd. West, Suite 990
Bloomington, MN 55437-1458

Voigt Intertribal Task Force Requests Reconsideration of the Wolf Delisting Decision

Dear Regional Director Wooley:

I am writing this letter on behalf of the Voigt Intertribal Task Force, comprised of 10 Ojibwe Tribes with reserved rights to the 1837 and 1842 Ceded Territories.¹ The Voigt Intertribal Task Force urges the U.S. Fish and Wildlife Service (Service) to reconsider the delisting decision in light of systemic failures in the State of Wisconsin's management of wolves.

A reconsideration of this decision is an important action to take to make good on numerous promises to support tribal efforts to protect their natural resources and environment. Your agency's decision to delist Ma'iingan² was the first decision that ultimately led to a poorly-organized, late-season wolf hunt in Wisconsin. The February hunt illuminated the systemic failures in the state's attempt at wolf management, which were not considered by the Service in its decision. The hunt, which was mandated by a circuit court interpreting Wisconsin's wolf harvest statute, took place during the wolf breeding season and without engaging in agreed-upon quota-setting processes with the Tribes. During the hunt, wolf hunting zones were not closed on a timely basis, allowing state hunter to exceed the quota by over 80%, killing the state's portion of the overall quota, the tribes' portion, and many additional animals. The regulatory failures in Wisconsin's mismanagement of wolves significantly disadvantages the Tribes' management and ability to protect wolf populations on reservation and within the Tribes' off-reservation ceded territories.

¹ The Voigt Intertribal Task Force of the Great Lakes Indian Fish & Wildlife Commission is composed of 10 representatives of member tribes throughout the 1837 and 1842 Ceded Territories and recommends policy regarding inland harvest seasons, resource management issues, and budgetary matters to the Board of Commissioners. The VITF addresses matters that affect the treaty rights of the member tribes in the 1837 and 1842 Treaty Ceded Territories.

² Ma'iingan, Ma'iinganag (pl.) is the Anishinaabe word for wolf.

Tribal representatives have spoken with you before on this issue, stressing the importance of the relationship between the Anishinaabe and our Ma'iingan relatives. The relationship is one of interdependence; our ability to survive and thrive as a people depends on the wellbeing of Ma'iinganag within our traditional territories. Your response has consistently been – the Service cannot consider cultural factors when making a decision on delisting. This response has been repeated by you when tribal representatives discussed the integral role of Ma'iingan in protecting and enhancing the productive capacity of on and off-reservation woodlands environments, such as their role to control the population growth of grazers (e.g. white tailed deer) to maintain access to sacred plant medicines, and the likelihood that the presence of Ma'iinganag on the landscape is limiting the spread of chronic wasting disease in the traditional, and treaty-reserved, territories. However, this letter will focus on the duties and obligations of the Service as set forth in its own policies and regulations, and the policies of the Interior Department, upon making a decision to delist an animal. In reviewing these sources, we question the decision-making processes taken by the Service.

According to the Service, “state and tribal laws and regulations have become the primary mechanism to protect wolves from their primary former threat – excessive human-caused mortality.” As such, an analysis of these laws and regulations and their ability to prevent excessive human caused mortality should have been conducted. No such analysis appears in the delisting decision.

The most problematic regulatory elements of Wisconsin’s current management of wolves include the following:

- According to Wis. Stat. Sec. 29.185, the Department of Natural Resources (Department) must hold an annual hunting and trapping season, as long as wolves are not listed on the state or federal lists of endangered species, with no legally binding standard on wolf population levels that would require re-listing on the state’s list.³ Likewise, during an open season, the Department may not close a zone without providing 24 hours' notice, even if the animals registered greatly exceed the animals available for killing within that zone.
- The Department’s decision-making body on quotas and permits, the Wisconsin Natural Resources Board (“NRB”) has seen fit to ignore Department recommendations on both overall wolf harvest quota and permits issued. While the Department recommended allowing 10 licenses per quota animal, the NRB doubled that number. The excessive number of permits ultimately issued for the 2021 hunt (1548 permits for 119 kill tags) likely contributed to the significant exceedance of the state quota (by 99 animals) during the 2021 hunt.
- The wolf hunt was conducted after the annual collection of tracking data (used to estimate the wolf population) had largely concluded. Since another hunt beginning

³ Within the delisting decision itself, a Revised Recovery Plan provides only one population of 100 or 200 wolves somewhere in northern Wisconsin, the Upper Peninsula of Michigan or designated areas in Maine or New Hampshire, apart from the northern Minnesota population, to be considered “recovered.” See *discussion* 85 Fed. Reg. 69778, 69791-92.

November 6 is mandated by state law, and further tracking data will likely not be collected until after that hunt has concluded, the impact of the February hunting season in terms of reduced reproduction and recruitment on the fall population will be poorly known, and planning for the fall hunt will have to proceed without a reliable recent population estimate. Using unreliable population data to set a harvest quota is contrary to principles of adaptive management, which requires the use of reliable information to guide management decisions.

- Wisconsin's wolf management plan established a management threshold of 350 individuals, above which certain management activities could be considered. The 350 figure has been misinterpreted by some members of the NRB as the current population goal.² While the Department has recently convened a committee to revise the wolf management plan, several members of the NRB have indicated they wish to drive the population towards the 350 figure when setting the fall 2021 harvest quota.
- Statutory changes recommended in the 1999 Wolf Harvest Plan upon delisting to punish illegal take and immoral activities (e.g. increasing penalties for illegal take and prohibiting disturbing wolf dens, etc.) have not been implemented. By comparison, harming or molesting a dened bear can result in a fine of up to \$10,000 and imprisonment of up to 9 months.
- Despite having the authority to collect carcasses from hunted animals, and a commitment within the 1999 Wolf Management Plan promising to engage in health monitoring of wolf populations, the Department did not require carcasses to be turned over for examination and necropsy during the February hunt. Only a small percentage of carcasses were voluntarily released.

In the final delisting decision, the Service explains that Wisconsin, along with Michigan and Minnesota, will use "adaptive management to maintain populations at sustainable levels well above the federal recovery requirements." The U.S. Department of the Interior released a technical guide on adaptive management in 2007. This technical guide explains the process of "adaptive management" as follows:

Adaptive management [is a decision process that] promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a 'trial and error' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders.

Key aspects of adaptive management include measuring and monitoring outcomes. The adaptive management process depends on receiving information from a variety of sources, and then using that information to make future management decisions. An assumption within this framework is that decision-making can and will change depending on the information received. Using adaptive management is meant to better address management goals, while increasing scientific understanding and decreasing conflict.

High-level Interior Department guidance directs the Service to collaborate with states, before species are delisted, to ensure that their management systems will adequately protect recovered populations. For example, the Revised Interagency Cooperative Policy³ on the role of state agencies directs the Service to engage with states in the pre-delisting period:

Use the expertise of state agencies in designing and implementing prelisting stabilization actions, consistent with authorities for species and habitat to remove or alleviate threats so that the listing priority is reduced or listing as endangered or threatened is not warranted.⁴

Far from collaborating with the state on developing prelisting stabilization actions, which would necessarily involve analysis and recommendations related to state and tribal laws and regulations (“the primary mechanism to protect wolves from their primary former threat”), the Service took no part in public hearings on 2011 Senate Bill 411. This bill was passed into law as 2011 Wisconsin Act 169, the Wisconsin law that requires the Department, upon the delisting of wolves, to hold a wolf hunting and trapping season, including authorizing the use of hunting dogs. 2011 Wisconsin Act 411 is the antithesis of a “stabilizing action,” as it mandates an annual hunt upon delisting, regardless of the status of the wolf population. The prescriptive and unambiguous language in the corresponding statute (i.e. “if the wolf is not listed on the federal endangered list and is not listed on the state endangered list, the department *shall allow* the hunting and trapping of wolves and *shall regulate such hunting and trapping as provided in this section*”) has been used in a lower court in Wisconsin to force the Department to open the season in a manner that conflicted with data collection efforts, principles outlined in the state’s wolf management plan, and its obligations to consult with the Tribes. Litigation by the plaintiffs in that lawsuit, *Hunter Nation v. Wisconsin Department of Natural Resources*, is ongoing, with further proceedings scheduled in August, 2021.

The 1999 Wolf Management Plan is appropriately classified as an *aspirational document*, and not mandatory. Despite the fact that the 1999 Wolf Management Plan is grossly out-of-date, many elements within the plan have never been implemented. The 1999 Wolf Management Plan is not a legally binding document; Wisconsin statutes and Administrative Code set forth the legally-binding processes related to wolf management. Relying on the 1999 Wolf Management Plan, and not conducting a thorough review of Wisconsin law is a serious shortcoming in the analysis contained in the delisting decision.

The NRB, in setting annual harvest quotas and number of permits issued, has shown a willingness to ignore management plan guidelines and the science-based recommendations from

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the species-specific advisory committees and the Department of Natural Resources (Department). For example, in 2020, the NRB ignored the Department's recommendation to limit the harvest of elk in Wisconsin to 6 bull elk, and instead, the set the quota at 10 bull elk, despite receiving information that any harvest over 6 animals would conflict with agreed-upon management goals to allow for the expansion of the elk population. Likewise, in February 2021, the NRB disregarded the Department's recommendations on the issuance of harvest permits for the wolf season, doubling the number of licenses that could be issued. At least one member of the NRB maintains that the population goal listed in the 1999 Wolf Management Plan (350 individuals) is the "socially-tolerable carrying capacity" of wolves in the state.⁵

Clearly, the Service made the determination that Wisconsin would employ an adaptive management approach by relying on a statement in the 1999 Wolf Management plan and not by conducting an analysis of how wolf management would be conducted in practice. In the ensuing 20 years, Wisconsin's management of wolves has become highly politicized, with emotion and opinions, not data and science, guiding its decisions.

Without the implementation of federal protection over *ma'iingan*, tribes within Wisconsin are unable to effectively protect the packs living within their reservations and in off-reservation ceded territories. A reconsideration of the delisting decision, especially in light of recent events, is an important action that supports tribal sovereignty and will help make good on numerous promises made to support the efforts of tribes to protect their natural resources and environment.

Signed,

A handwritten signature in black ink that reads "John D. Johnson Sr." The signature is written in a cursive, flowing style.

John Johnson, Sr.

Chair of the Voigt Intertribal Task Force

cc. Secretary of the Interior Debra Haaland
Deputy Assistant Secretary of Indian Affairs Brian Newland
Tribal attorneys