

STATE OF MINNESOTA
IN COURT OF APPEALS

Court File No. A12-1680

Center for Biological Diversity,
Howling for Wolves,

Petitioners,

vs.

RESPONDENTS' APPENDIX

Minnesota Department of Natural
Resources, and Tom Landwehr, in his
official capacity as the Commissioner of
the Minnesota Department of Natural
Resources,

**DATE OF FILING OF COURT OF
APPEALS DECISION: October 10,
2012**

Respondents.

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Affidavit of Steven S. Merchant	RA 001
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Affidavit of Daniel W. Stark.....	RA 037

numerous positions. I have managed the Wildlife Populations and Regulation Program since 2006. From 2000 to 2006, I drafted select wildlife rules as the Forest Wildlife Program Consultant.

2. On January 6, 2012, DNR first informed the public of its intentions to hold a conservative, science-based wolf hunting and trapping season beginning in the fall or winter of 2012. This was done through a press conference in conjunction with the DNR's annual Fish Wildlife and Eco Waters Resources Round Table. The press conference was attended by most major media outlets including the Minneapolis *Star Tribune*, the *St. Paul Pioneer Press*, Minnesota Public Radio, and Outdoor News. On January 25, 2012, DNR published a press release announcing its initial wolf season harvest proposal. This proposal included the number of wolves that would be taken, the number of hunting licenses that could be offered, and the manner in which wolves would be registered. The press release also indicated that DNR would take public comment prior to finalizing a wolf season. Throughout much of 2012, wolves and wolf hunting were extensively covered by the media. DNR published a press release on May 21, 2012, again describing the details of the wolf hunt, including harvest targets, season structure, the application process, and registration. In this press release DNR explicitly stated that "given how soon the season must be put in place, DNR will only take comments through an online survey" and then immediately followed the statement with a link to the survey.

3. The 2012 Minnesota State Legislature began its session in January, 2012. Provisions for a wolf season were included in the Game and Fish Bill, and heard by the House and Senate natural resource committees. Testimony on these provisions were

given by numerous stakeholders, including Minnesota Deer Hunters Association, Minnesota Cattlemen's Association, Minnesota Audubon, Minnesota Conservation Federation, The Humane Society of the United States, and individuals both supporting and opposing the hunting of wolves. The Game and Fish Bill was signed into law by the Governor in May, 2012. 2012 Minn. Laws ch. 277.

4. Laws of Minnesota 2012, chapter 277 defined a wolf license, established fees for wolf licenses, created a wolf management and monitoring account in the Game and Fish Fund, established the opening day of the season, gave the Commissioner the authority to prescribe open seasons for wolves, establish quotas, designate areas where wolves may be taken, establish possession limits, limit the number of hunters and trappers that can take wolves, and prescribed an application and fee for a wolf hunt. 2012 Minn. Laws ch. 277, art. 1, §§ 23, 42-43, 65, 68, 71, 85.

5. I was aware that in 2011, the Minnesota Legislature amended *Minnesota Statutes* section 97B.645, subdivision 9, to state as follows: "Open Season. There shall be no open season for gray wolves until after the gray wolf is delisted under the federal Endangered Species Act of 1973. After that time, the commissioner may prescribe open seasons and restrictions for taking gray wolves but must provide opportunity for public comment."

6. DNR began discussing how to provide this required public input opportunity shortly after the press release in January, 2012. Options discussed included (a) holding in-person public input meetings dedicated solely to the wolf hunting and trapping season throughout the state, (b) including the wolf hunting season in our typical

annual late winter open-house meetings at select areas in the state as just another topic, and (c) designing an on line option for public comment. For the last several years we have held our annual late- winter public-input meetings at 4 to 6 locations. We typically request input on approximately four to six issues using a written, hard-copy questionnaire. Concurrently we have used an online process to solicit input on exactly the same issues using exactly the same questionnaire, and DNR has found that it gets far more comments from the public using the online format. That was persuasive, so DNR began to focus on an online format.

7. The public input instrument consisted of ten questions. Prior to answering the questions or providing written comment, respondents were required to view an informational presentation regarding the proposed wolf hunt. This presentation included the proposed wolf quota of 400 animals and the number of wolf licenses that would be sold. A total of 7,351 persons participated in the survey. The final question on the survey was "Do you have any additional comments?", and DNR received 4,808 written comments in response. Written comments were not limited by word count. Many comments exceeded 600 words. The results of the process, including all of the written comments, were made available to the public via DNR's website during the week of July 9, 2012.

8. The resulting online public input instrument was never intended to be a public referendum on the wolf hunting season. DNR believed that the Legislature, in its actions during the previous two legislative sessions, provided strong direction to the agency to hold a wolf hunt in the fall of 2012. The survey instrument was designed to

measure public sentiment regarding the content of the wolf hunting and trapping rules. DNR was interested in what the public thought about a proposed hunting and trapping season structure, extent, and timing. DNR presented several options on what a hunt could look like, but the agency did not present a draft rule. At that time DNR had not begun to formally write the rule, as the agency wanted to use the public input to inform the subsequent rule.

9. The 7,351 responses to DNR's on-line public input instrument was by far the largest response I have ever seen in my career. The 4,808 written comments were the largest number of written comments I have seen in response to a question asked by the Section of Wildlife Management. I strongly believe that the on-line instrument allowed DNR to hear from more people than what in-person meetings would have generated, and in an efficient, money and resource saving way.

10. The information gathered from this public input process did inform DNR's wolf rule. It was instrumental in finalizing the details of how DNR could end the wolf season rapidly, and yet keep hunters and trappers informed in real time. DNR changed the closing date of the final rule based upon this public input. A press release was issued on July 12, 2012, announcing that the wolf hunting and trapping rules had been finalized. This release also described the wolf season in full detail.

11. DNR received hundreds of emails, phone calls, and letters from the public regarding their thoughts on the proposed hunting and trapping season prior to finalizing the rule.

12. Petitioners Howling For Wolves and the Center for Biological Diversity both informed their members and the public through their websites that the DNR public input survey was available on the DNR website. They provided a link to the survey and asked persons to participate in the survey, as well as providing them specific language to enter into question 10 (the comments section). DNR monitored how many surveys were coming in on a near-daily basis, and it was apparent that these campaigns were successful in increasing the number of respondents to DNR's public-input survey.

13. The Section of Wildlife Management's Populations and Regulations Program writes between 12 and 15 expedited game rules each year. These rules have included season rules for black bears, bobcats, otters, fisher, and marten, each of which is a carnivore and each of which has a significant constituency that opposes hunting and trapping. All of the rules involving annual season setting for these species that I have been involved with were completed under the expedited rulemaking process. The Wildlife Populations and Regulations Program did discuss using the emergency process (Minn. Stat. §§ 97A.0451 - .0459), but we concluded that the provision in section 97A.0458 that limits the number of allowable revisions made the process inappropriate for setting annual seasons, as annual season rules frequently need to be adjusted in order to insure the sustainability of wildlife populations. It is very important that DNR has the ability to set annual quotas for the wolf season, in order to (a) make adjustments to the season, primarily through the number of wolves that are allowed to be taken, and thus (b) maintain populations at the desired level. This is the same process DNR uses for deer, moose, elk, bear, and other seasons.

14. It is DNR's policy to have game rules adopted prior to selecting hunters for hunting seasons when there are more applicants than licenses available. DNR also attempts to give hunters as much time as possible in which to be able to purchase a license before the purchase deadline. Typically hunters have more than a month to purchase their licenses. In the case of the 2012 wolf season, DNR was very concerned that successful lottery applicants would not have enough time to purchase licenses after learning they were winners.

15. Timelines for getting all of the work completed to successfully hold the 2012 hunt were very compressed due to not knowing until May whether DNR had the needed authority from the Legislature to hold the hunt. I knew that this was going to be a significant challenge, and anything that could cause delay could jeopardize DNR's ability to have everything needed in place and fully functional. DNR's Hunting and Trapping Handbook typically lists the rules for nearly all of the fall and winter hunting and trapping seasons. DNR knew that even using the expedited rulemaking process, DNR would not be able to include the detailed rules and regulations for the wolf season. Thus, the only statement regarding the wolf season DNR included in the Hunting and Trapping Handbook when it was sent to the printer on July 9, 2012 was the following statement: "Application materials for a wolf license will be available online in early August. The application deadline is Sept. 6 and online winner notification will be no later than Oct. 14. Further details and complete regulations will be announced in August." I was aware of the fact that the emergency rulemaking process took additional time, and that any extra time to complete tasks was cause for concern.

16. In order to prepare for the 2012 wolf season, DNR created a system for applications, for a random drawing for license purchasers, and for license sales. DNR has also prepared instructions regarding the wolf season that will be provided to successful applicants on the internet and in a printed booklet mailed to each eligible applicant.

17. A total of 23,433 wolf season applications were received by DNR by the September 6, 2012, deadline. Each applicant paid \$4.00 for the application fee. DNR received a total of \$93,732 in revenue from these applications. DNR has paid the Electronic Licensing System ("ELS") vendor \$0.94 per application fee for a total expenditure of \$21,620.

18. DNR paid the ELS vendor approximately \$60,000 in programming costs in order for the ELS to be able to (a) take wolf applications, and then subsequently (b) sell wolf licenses and (c) register harvest wolves. The DNR Division of Fish and Wildlife also paid an additional \$4,000 in internal lottery programming fees to MN.IT Professional Services.

19. DNR expects to receive wolf license sale revenues of \$201,120. The ELS vendor is expecting to receive an additional \$6,016 in transaction fees for selling 6,000 wolf licenses and registering 400 harvested wolves. Revenues are planned to be spent in Fiscal Year 2013, and in subsequent years, to continue the implementation of the wolf management plan. Without this revenue DNR will have to reallocate other non-wolf dedicated resources for this purpose.

20. DNR currently contracts with U.S. Department of Agriculture Wildlife Services to control wolves that have destroyed livestock or pets. This federal service, in one form or another, has been provided since federal listing of the wolf in 1974, and it is widely accepted as a key reason why public attitudes towards wolves have greatly improved in Minnesota, thereby allowing wolf numbers to grow and expand their range. Less revenue could mean that these services will have to be scaled back to a point where expectations are not met. This could result in an erosion of public support for wolves which could in turn mean fewer wolves on Minnesota's landscape.

21. A total of 6,000 hunters and trappers are expecting to be able to participate in the 2012 wolf hunting and trapping season. Applicants were able to see if they won the right to purchase a wolf license beginning on September 26, and licenses went on sale that day. That is less than one month before the license purchase deadline for the early wolf season. The wolf regulation booklet was sent to the printer on September 27.

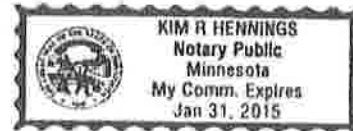
22. I have not been asked by Howling for Wolves, The Center for Biological Diversity, or anyone else to stay implementation of the rule-making process in order that DNR could consider their arguments regarding rulemaking.

FURTHER YOUR AFFIANT SAYETH NOT.


Steven S. Merchant

Subscribed and sworn to before me on
this 25th day of September, 2012


NOTARY PUBLIC



AG: #3089750-v1

IN COURT OF APPEALS

Center for Biological Diversity, Howling
for Wolves,

VS.

Minnesota Department of Natural Resources, and Tom Landwehr, in his official capacity as the Commissioner of the Minnesota Department of Natural Resources,

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

1. I am the season setting/furbearer specialist of the Section of Wildlife Management for the Minnesota Department of Natural Resources ("DNR"). My office is at 500 Lafayette Road, St. Paul, Minnesota 55155. I have been employed by the DNR since 1996 and have been the season setting/furbearer specialist since 2007. I have coordinated more than 75 expedited emergency rules using the process described in *Minnesota Statutes*, section 84.027, subdivision 13(b).

2. I have reviewed the materials submitted by the Petitioners in the above-captioned action and have the following comments regarding a number of the assertions related to the DNR's use of the expedited emergency rules process as outlined in *Minnesota Statutes*, section 84.027, subdivision 13(b).

3. The Petitioners assert that no conditions exist that prevented the DNR from adopting wolf season rules under *Minnesota Statutes*, sections 97A.0451 to 97A.0459. Therefore, Petitioners argue, the DNR incorrectly adopted wolf season rules using the expedited emergency process provided in *Minnesota Statutes*, section 84.027, subdivision 13(b). To the contrary, the following conditions exist that do not allow the DNR to adopt wolf season rules under the emergency rules process set forth in *Minnesota Statutes*, sections 97A.0451 to 97A.0459.

4. The total effective period of the emergency rule is limited to 360 days. Specifically, *Minnesota Statutes*, section 97A.0458 states that emergency rules may remain in effect for 180 days and may be continued for one additional 180 days period by publishing notice in the State Register. After these 360 days have expired, the emergency rules may not be continued in effect without the full notice and comment period set forth in the Minnesota Administrative Procedure Act in *Minnesota Statutes* §§ 14.14 to 14.28. Therefore, if DNR adopted rules for the 2012 wolf season using the emergency rulemaking process, it would be required to use permanent rulemaking for the 2013 season and beyond.

5. Because it takes 12 to 18 months to adopt a permanent rule under the Minnesota Administrative Procedures Act, the DNR would be forced to begin the

rulemaking process before the start of the 2012 wolf season in order to have permanent rules in place for a 2013 wolf hunting and trapping season. This would force the DNR to draft and adopt permanent wolf season rules without the benefit of biological data (such as data from DNR's periodic wolf survey and its annual winter track survey) gathered during the winter of 2012, as well as other biological information gathered from the 2012 season harvest. Therefore, the DNR would not have the ability to adjust bag limits, season lengths and other variables in the evidenced-based manner that is necessary to manage the annual harvest while maintaining a sustainable population of wolves.

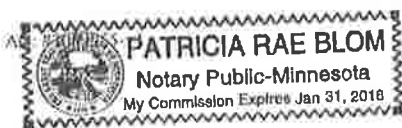
6. The objective of the DNR Division of Fish and Wildlife with regard to hunting and trapping regulations is to provide for sustainable resource conservation, public safety, and equitable use opportunities, consistent with state and federal law. *Minnesota Statutes* section 84.027 allows the DNR to use up-to-date wolf population data to adjust season dates, bag limits and other variables to sustainably manage the state's wolf population on an annual basis.

FURTHER YOUR AFFIANT SAYETH NOT.


Jason Abraham

Subscribed and sworn to before me on
this 27th day of September, 2012


NOTARY PUBLIC



IN COURT OF APPEALS

Court File No. A12-1680

Center for Biological Diversity, Howling
for Wolves,

Petitioners,

VS.

**AFFIDAVIT OF
ELIZABETH P. CARLSON**

Minnesota Department of Natural Resources, and Tom Landwehr, in his official capacity as the Commissioner of the Minnesota Department of Natural Resources,

Respondents.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Elizabeth P. Carlson, state the following under oath:

1. I am the Administrative Rules Coordinator for the Minnesota Department of Natural Resources (“DNR”). My office is located at 500 Lafayette Road, St. Paul, Minnesota 55155. I have been employed by DNR since 1993 as a strategic planner, facilitator, and public participation practitioner. I assumed the responsibilities of Administrative Rules Coordinator in 2007. I hold a Master of Planning from the University of Minnesota’s Humphrey School of Public Affairs. Prior to graduate school,

I was employed as a legal assistant by the law firm of Murnane, Conlin, White, Brandt, and Hoffman, in St. Paul, Minnesota.

2. Rulemaking in Minnesota generally follows procedures outlined in the Minnesota Administrative Procedure Act (“APA”), Minnesota Statutes, chapter 14, which allows permanent rules to be adopted with or without a hearing. The major stages of a permanent rulemaking process are (a) rule development, (b) public notice of the agency’s intent to adopt proposed rules, and (c) review and approval as to form and legality. A general rule of thumb is that it can take 18 to 24 months to complete a permanent rulemaking process. Rule development can take 6 to 12 months and sometimes longer for complex or controversial rules. The procedures for notice, review, and approval of proposed rules usually take at least 12 months.

3. The APA requires agencies to seek public comment during rule development. Publication of a Request for Comments in the State Register is the first formal step in the rulemaking process. A Request for Comments does not have to include a set of proposed rules. DNR often publishes a Request for Comments early in rule development before any rule drafting takes place, in order to hear all relevant ideas unconstrained by preconceived language.

4. When DNR decides on a final set of proposed rules, a Statement of Need and Reasonableness (“SONAR”) is prepared and signed by the commissioner. The SONAR contains a summary of the evidence and argument that DNR is relying on to justify that the rules are needed and reasonable. The contents of the SONAR are prescribed by the APA. *See* Minn. Stat. § 14.131 (2010).

5. DNR must give notice of its intent to adopt rules and make the proposed rules available to the public. The notice and the proposed rules must be published in the State Register and must be delivered to interested parties according to an Additional Notice Plan.

6. DNR usually uses the option of publishing a Dual Notice: Notice of Intent to Adopt Rules without a Hearing. In this type of notice, DNR announces one or more hearing dates and locations but reserves the right to cancel the hearing if 25 or more requests for a hearing are not received. If DNR does cancel the hearing, it is not required to re-publish its notice of intent and can proceed to have the proposed rules reviewed by an Administrative Law Judge at the Office of Administrative Hearings. In some cases of controversial rules, DNR initially opts instead to go through hearings and publishes a Notice of Intent to Adopt Rules with a Hearing.

7. After the public comment period on the notice of intent to adopt rules, DNR submits a required set of exhibits to the Administrative Law Judge. The purpose of the exhibits is to present DNR's case for adopting the rules and to demonstrate compliance with all procedural requirements. Upon review and approval of the rules by the Administrative Law Judge, the Commissioner of Natural Resources signs an Order Adopting Rules and the rules are filed with the Secretary of State. The Revisor's office prepares a Notice of Adoption for DNR to submit to the State Register for publication. That completes the rulemaking process.

8. Minnesota Statutes, sections 97A.0451 to 97A.0459, outlines an emergency rulemaking procedure for use when DNR needs to adopt, amend, suspend, or repeal a

rule in a manner that does not allow for compliance with the permanent rulemaking procedures of the Administrative Procedure Act in Minnesota Statutes, sections 14.14 to 14.28, or when commissioner is expressly required or authorized by statute to adopt emergency rules. In turn, Minnesota Statutes, section 84.027, subdivision 13, provides an expedited process for use under conditions that do not allow the commissioner to comply with the requirements of the emergency rulemaking process in sections 97A.0451 to 97A.0459.

9. Authority for emergency rules under sections 97A.0451 to 97A.0459 is effective for only a limited time; the intended purpose is to allow the agency temporary regulatory authority until permanent rules can be promulgated. Consequently, the emergency rulemaking may only be used one time for a 180-day effective period, with one additional 180-day effective period available "if the commissioner gives notice of continuation by publishing notice in the State Register and mailing the same notice to all persons registered with the commissioner to receive notice of any rulemaking proceedings," before the agency must use the permanent rulemaking procedures of chapter 14. Minn. Stat. § 97A.0458 (2010). Expedited rules, on the other hand, are effective for 18 months, and there is no requirement that permanent rulemaking be utilized after the expiration of the 18 month period. DNR uses the expedited emergency rulemaking process for hunting, trapping, and fishing rules that need to be revised each season, year after year. The conditions that do not allow DNR to use the emergency rulemaking process are that, for numerous game species, DNR must gather data on a yearly basis, analyze the data, and then, if necessary, modify bag limits, season dates,

hunting/trapping zones, etc.—changes that require yearly modification of the rules within a maximum of a few months' time. If emergency rulemaking were used, it could only be used for one season, and then any subsequent modifications to the rule would have to be performed through permanent rulemaking. Permanent rulemaking could not be accomplished during the short time period DNR has to adopt the new seasonal rules prior to the beginning of the hunting, trapping, or fishing season.

10. The 1995 Minnesota Legislature repealed the emergency and expedited rule authority previously contained in Minnesota Statutes, sections 14.29 to 14.36, and moved much of the authority and enabling language for emergency and expedited game and fish rulemaking from Chapter 14 to Chapters 84 and 97A. At that time, DNR converted its previous system of commissioner's orders for fish and wildlife activities into legislation and rules in order to increase public input for and awareness of regulations.

11. DNR has used the expedited rulemaking process since 1995 for the topics listed in Minnesota Statutes, section 84.027, subdivision 13, for species of animals that require annual modification to the existing rules. See *FY 2012 Activities Report for Administrative Rules Coordination*, attached as Exhibit A hereto, which includes a list of all expedited emergency rulemaking projects completed by DNR during Fiscal Year 2012.

12. DNR followed the following steps in the expedited rulemaking process under Minnesota Statutes, section 84.027, subdivision 13, to adopt rules for the 2012 wolf season:

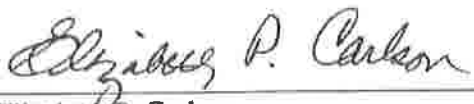
- a. Division staff developed rule language during May and June 2012.

- b. On July 10, 2012, DNR submitted draft rule language to the Revisor's office for preparation of a preliminary draft in required form.
- c. On July 11, 2012, division staff obtained Commissioner Landwehr's signature on the combined *Notice of Adoption and Statement of Emergency Conditions* and *Preliminary Proposal Form* for the Governor's office.
- d. On July 17, 2012, DNR received a preliminary draft numbered RD4098 from the Revisor's office and forwarded it to division staff for review.
- e. On July 24, 2012, division staff made requested changes.
- f. On July 30, 2012, DNR advised the Revisor's office of the requested changes and requested preparation of rules approved as to form.
- g. On August 6, 2012, DNR submitted the *Preliminary Proposal Form* informational package to Governor's office.
- h. On August 7, 2012, DNR submitted the rules to Office of the Attorney General and requested approval as to legality.
- i. On August 10, 2012, DNR received notification that the Office of the Attorney General had approved the rules as to legality.
- j. On August 10, 2012, DNR submitted a printing order to the State Register for publication on August 20, 2012. The printing order deadline for this type of rule is noon on the Tuesday preceding the publication date.
- k. On August 15, 2012, DNR filed the approved rules with Secretary of State.
- l. On August 16, 2012, DNR sent a copy of the rules as filed to the Legislative Coordinating Commission.

13. The rules were published and effective on August 20, 2012, following approval as to form by the Office of Revisor of Statutes as of August 1, 2012, and approval as to legality by the Office of the Attorney General on August 10, 2012. These rules included an expiration date of February 2, 2013.

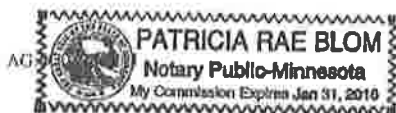
14. DNR has not received a request from the Petitioners to stay implementation of the 2012 wolf season rules.

FURTHER YOUR AFFIANT SAYETH NOT.


Elizabeth P. Carlson

Subscribed and sworn to before me on
this 28th day of September, 2012


NOTARY PUBLIC



Date: September 17, 2012

To: Laurie Martinson, Division Director

From: Beth Carlson, DNR Rules Coordinator

Copy: Mark Wallace
Laura Preus
Keith Wendt

Beth

Phone: 651-259-5531

Subject: FY 2012 ACTIVITIES REPORT FOR ADMINISTRATIVE RULES COORDINATION

QUANTITY

Annual Summary of Completed Rulemaking Activities
Minnesota Department of Natural Resources

	Permanent Chap. 14	Expedited Permanent §14.389	Good Cause Exempt Permanent §14.388	Exempt Permanent §14.386	Repeal Obsolete §14.3895	Exempt Permanent Fisheries §§97C.001, .005	Expedited Emergency Game & Fish §84.027, subd. 13(b)	Emergency Game & Fish §84.027, subd. 13(a)	TOTAL
FY 2012	2	0	2	0	0	2	19	0	25
FY 2011	2	3	0	0	0	2	20	0	27
FY 2010	2	0	1	0	1	1	18	0	23
FY 2009	1	3	2	1	0	3	18	0	28
FY 2008	3	n.a.	1	0	0	3	17	0	24
FY 2007	0	n.a.	2	0	0	1	21	0	24
FY 2006	1	n.a.	1	0	0	2	17	0	21
FY 2005	0	n.a.	1	0	0	2	16	1	20
FY 2004	2	n.a.	1	0	0	3	16	0	22
FY 2003	3	n.a.	1	0	0	4	9	0	17
FY 2002	0	n.a.	1	0	0	2	11	0	14
FY 2001	2	n.a.	2	0	0	1	12	0	17

* DNR did not have statutory authority to use the expedited permanent process until FY 2009

OTHER ACCOMPLISHMENTS

- Planning committee for the Annual Rulemaking Seminar.
- Participated and represented the DNR in quarterly meetings of the Interagency Rules Committee for briefings on legal determinations, legislative developments, and other items of common interest.

ATTACHMENTS

Rulemaking projects completed during FY 2012

**RULEMAKING ACTIVITIES COMPLETED IN FISCAL YEAR 2012
BY THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES**
500 Lafayette Road, St. Paul, MN 55155-4010

* Rules types: P = Permanent; ExpP = Expedited Permanent (14.389); GCE = Good Cause Exempt (14.388);
Ex = Exempt (14.386); ExFSH = Exempt Fisheries; ExpEm = Expedited Emergency; Em = Emergency

Subject Matter of Rules	Rule Type*	Agency Unit Lead Staff	Publication Date and Citation	Effective Date of New or Amended Rule
Wild Turkey and Prairie Chicken Hunting	ExpEm	Fish & Wildlife J. Abraham	18 June 2012 36 SR 1569	18 June 2012
Camp Ripley Archery and Youth Deer Hunts	ExpEm	Fish & Wildlife J. Abraham	11 June 2012 36 SR 1503	11 June 2012
2012 Elk Season	ExpEm	Fish & Wildlife J. Abraham	30 April 2012 36 SR 1291	30 April 2012
2012 Bear Season	ExpEm	Fish & Wildlife J. Abraham	30 April 2012 36 SR 1290	30 April 2012
Designated Experimental Waters and Special Management Waters — Northern Pike <i>permanently remove lakes from lists that were temporarily removed under expedited emergency process (see 36 SR 501 below)</i>	ExFSH	Fish & Wildlife L. Erickson-Eastwood	23 April 2012 36 SR 1247	30 April 2012
Mille Lacs Lake Fishing	ExpEm	Fish & Wildlife L. Erickson-Eastwood	23 April 2012 36 SR 1252	23 April 2012
Moose Season Quota	ExpEm	Fish & Wildlife J. Abraham	9 April 2012 36 SR 1184	9 April 2012
Special Spring Turkey Hunt	ExpEm	Fish & Wildlife J. Abraham	9 April 2012 36 SR 1181	9 April 2012
Wildlife Management, Hunting, Trapping, and Stamp Design (Notice of Adoption)	P	Fish & Wildlife J. Abraham	2 April 2012 36 SR 1155	9 April 2012
Using Cisco and Smelt as Bait	ExpEm	Fish & Wildlife L. Erickson-Eastwood	2 April 2012 36 SR 1155	5 April 2012
Designated Experimental and Special Management Waters	ExFSH	Fish & Wildlife L. Erickson-Eastwood	17 January 2012 36 SR 810	1 March 2012
Aquatic Plant Management Permits	GCE	Ecological & Water Resources S. Enger	3 January 2012 36 SR 764	10 January 2012
Elk Hunt Extension	ExpEm	Fish & Wildlife J. Abraham	3 January 2012 36 SR 463	3 January 2012
Spring Turkey Season	ExpEm	Fish & Wildlife J. Abraham	5 December 2011 36 SR 635	5 December 2011 2 January 2012
Hunting on State Recreation Areas <i>LaSalle Lake</i>	ExpEm	Fish & Wildlife J. Abraham	7 November 2011 36 SR 545	5 November 2011 <i>retroactive</i>
Special Deer Hunts and Light Goose Population Control	ExpEm	Fish & Wildlife J. Abraham	31 October 2011 36 SR 507	31 October 2011

Subject Matter of Rules	Rule Type*	Agency Unit Lead Staff	Publication Date and Citation	Effective Date of New or Amended Rule
Restrictions on the Taking of Northern Pike	ExpEm	Fish & Wildlife L. Erickson-Eastwood	31 October 2011 36 SR 505	31 October 2011
Repeal of Northern Pike Rules	ExpEm	Fish & Wildlife L. Erickson-Eastwood	31 October 2011 36 SR 501	31 October 2011
Spearing on Cass Lake	GCE	Fish & Wildlife L. Erickson-Eastwood	17 October 2011 36 SR 436	17 October 2011
Aquatic Wildlife <i>Fisheries 8B & AR200-Part 3</i>	P	Fish & Wildlife L. Erickson-Eastwood	17 October 2011 36 SR 435	1 November 2011
Camp Ripley and Waterfowl Hunting	ExpEm	Fish & Wildlife J. Abraham	22 August 2011 36 SR 160	22 August 2011
2011 Deer Season	ExpEm	Fish & Wildlife J. Abraham	15 August 2011 36 SR 115	15 August 2011
State Game Refuges, Wildlife Management Areas, and Furbearers Seasons	ExpEm	Fish & Wildlife J. Abraham	8 August 2011 36 SR 75	8 August 2011
Sandhill Crane Hunting	ExpEm	Fish & Wildlife J. Abraham	1 August 2011 36 SR 39	1 August 2011
Youth Waterfowl Day; Early Goose Hunting; Waterfowl Feeding and Resting Areas	ExpEm	Fish & Wildlife J. Abraham	25 July 2011 36 SR 12	25 July 2011

IN COURT OF APPEALS

Center for Biological Diversity, Howling
for Wolves,

VS.

Minnesota Department of Natural Resources, and Tom Landwehr, in his official capacity as the Commissioner of the Minnesota Department of Natural Resources,

STATE OF MINNESOTA)
) ss.
COUNTY OF ITASCA)

1. I am a Wildlife Research Biologist for the Division of Fish and Wildlife, Minnesota Department of Natural Resources ("DNR"). I office at 1201 East Highway 2, Grand Rapids, Minnesota 55744. I have been a Wildlife Research Biologist since October 1998. A copy of my curriculum vitae is attached to this affidavit as Exhibit A. Included within my curriculum vitae is a list of publications I have authored within the previous 10 years.

2. I hold a Ph.D. in Zoology and Physiology from the Department of Zoology and Physiology of the University of Wyoming. I have a Master's degree in Wildlife Ecology from the University of Missouri-Columbia and a Bachelor of Science degree in Fisheries and Wildlife Biology from Iowa State University.

3. As a Wildlife Research Biologist for the Minnesota DNR, I presently coordinate wolf and furbearer population monitoring and research activities, among other related duties. This includes several annual wolf and furbearer trend surveys, DNR's periodic (every five year) wolf population assessment, and coordination of most DNR wolf research projects.

4. Minnesota's wolf population steadily increased from the 1970s until 2000, and has been comparatively stable since that time. The Minnesota 'component' of the Great Lakes Distinct Population Segment of wolves exceeded federal recovery goals more than 20 years ago, and 13 years ago the combined Great Lakes wolf population (Minnesota, Wisconsin, and Michigan) exceeded numeric recovery goals recommended by independent scientists and incorporated into the 1992 Endangered Species Act ("ESA") wolf recovery plan. Following two previous attempts that were reversed by court action, on January 27, 2012 the Great Lakes wolf population was once again removed from the federal threatened-species list and management authority was returned to the State.

5. Based on population data collected during winter 2007-8, approximately 3,000 wolves were estimated to be in Minnesota, more than double the level deemed sufficient to meet federal recovery goals. Annual data from four independent data

sources indicates that the population has been relatively stable since 2007, except for indications of an increase in the last 1.5 years.

6. Since 1978, with only slight modifications thereafter, the Minnesota DNR has utilized a consistent method (hereafter, "periodic wolf survey") for periodically estimating both the number of wolves and the number of square miles occupied by wolves in Minnesota. These periodic wolf surveys have been conducted in 1978, 1988, 1998, 2003, and 2007, with future surveys scheduled in the year following delisting (i.e., this winter) and continuing at 5-year intervals thereafter (as outlined in the DNR's Wolf Management Plan). The methods employed have been described and published in a peer-reviewed scientific journal, and the data resulting therefrom has been utilized by the U.S. Fish and Wildlife Service ("USFWS") as their numeric metric for evaluating wolf population size in Minnesota in relation federal recovery goals.

7. Since 1976, the DNR has conducted an annual track survey each fall (hereafter, "scent station survey") that records presence or absence of wolf sign along approximately 400 survey routes within the state, of which approximately 200 occur within current wolf range. The survey provides information on trends in the size of the (fall) wolf population in between the periodic wolf surveys mentioned above. Since the last periodic wolf survey, indices from the scent station survey indicate a stable and then increasing trend in fall wolf abundance, with the most recent (2011) index the highest yet recorded since the survey's inception.

8. Since 1994, the DNR has also conducted an annual track survey each winter (hereafter "winter track survey") that also records the presence or absence of wolf

sign along approximately 50 survey routes throughout wolf range in Minnesota. The survey provides information on trends in the size of the (winter) wolf population in between the periodic wolf surveys mentioned above. Since the last periodic wolf survey, indices from the winter track survey indicate a stable and then increasing trend in winter wolf abundance, with the most recent (2011) index the highest yet recorded since the survey's inception.

9. Since 1978, intentional trapping of wolves in response to wolf depredations, with no specific numeric constraint on the number of wolves that could be killed, was authorized under the ESA. Annual information on the number of verified depredations in Minnesota is collected by U.S. Department of Agriculture Wildlife Services and DNR, and it serves as a secondary source of information regarding wolf population trend between DNR's periodic wolf surveys. Since the DNR's last periodic wolf survey (2007), the number of verified depredations has fluctuated, but they have generally been at levels at or above those observed prior to 2007, and data from partway through 2012 suggests that the number of verified wolf complaints will be the highest on record.

10. Since 1967, Dr. L. David Mech has annually estimated, using radio-telemetry and aerial surveys, the number of wolves occupying an approximately 800-square-mile area of the Superior National Forest. Although this area represents only a small portion of Minnesota's current wolf range, the data provides an additional source of information regarding the wolf population trend in that area. Since the DNR's last

periodic wolf survey (2007), the number of wolves in this study area has held stable at the highest average level recorded since 1967.

11. In spite of differing methodologies, the data collected by DNR and other agencies (see paragraphs 6 - 10 above) has generally provided corroborating assessments of wolf population trends in Minnesota, thereby adding confidence that DNR's current assessment is accurate. Specifically, since 2007, multiple independent sources of data indicate that the wolf population has been stable or recently increased, and I am aware of no data to the contrary.

12. Statements within the Petitioners' declarations assert that the DNR will be "unable to measure the effects of the hunt on the state's wolf population" without conducting another periodic wolf survey prior to the hunt. This is not true. As discussed above, DNR has multiple *annual* sources of population status data for wolves that have established track records for collectively providing reliable data on wolf population trend. Actual field-based population estimates are not required to assess changes in population status. In fact, having such data, on an annual basis just prior to each harvest season, would be considered a rarity for the many sustainably hunted wildlife populations throughout the world. Change can accurately be assessed with indices of relative abundance like those discussed above. Furthermore, even if a periodic wolf survey were to be completed in the year prior to the first wolf harvest, the next periodic survey would not be conducted for five years, and any changes that occurred in the wolf population over that time would be a cumulative effect of all biotic, abiotic, and anthropogenic factors acting upon the population. Hence, assessment of any "...effects of the hunt on

the state's wolf population," or more correctly, changes in abundance between years, will still be based on the multiple annual indices of relative abundance currently collected by or available to DNR, along with additional annual population monitoring tools being considered.

13. The above-described wolf monitoring activities, including the intervals at which all are conducted, provided sufficient population assessment information necessary for the USFWS to remove wolves from the ESA in 2012. Furthermore, the USFWS has formally accepted Minnesota's existing monitoring approach as part of the official post-delisting monitoring plan required by ESA.

14. Within Minnesota, DNR has sustainably managed regulated harvest of bobcats (whose population size is similar to wolves) for over thirty years based primarily on surveys similar to the ones discussed above that provide annual indices of abundance and hence population change through time. Using this management approach, and in spite of recent record harvest levels, the bobcat population is now the highest estimated since regulated harvests were established in the 1970s.

15. Minnesota's wolf population contains an estimated 500 wolf packs, and given an average litter size of approximately five, it appears that as many as 2,500 wolf pups are born each year. Given that the population has been relatively stable in recent years, this indicates that as many as 2,500 wolves also likely die in Minnesota each year as a result of senescence, disease, starvation, intra-specific killing, natural accidents, legal depredation control, human-caused accidental death, and poaching. The Petitioners' declarations assert that "the deaths of hundreds of wolves will decrease the ability of

wolves to serve as the top predator,” a conclusion that appears to assume that wolves are currently capable of playing a key ecological role in spite of over 2,000 likely wolf deaths a year, but that wolves will be unable to fill this role after the “deaths of hundreds of wolves.” This is a flawed assumption. Furthermore, applied examples and considerable research data indicates that wolf populations can likely sustain 30% annual human-caused mortality, in addition to normal rates of natural mortality, without causing the population to decline across years. In my opinion, the level of public harvest proposed by DNR will clearly have little if any impact on the long-term ability of wolves to serve their many important ecological roles, nor will it hinder the opportunity for public observation or wolf-related ecotourism.

16. In my opinion, the DNR’s proposed conservative harvest falls well within the bounds of sustainability. With an estimated mid-winter population around 3,000, I project that the post-birth summer wolf population may reach 4,800 wolves, meaning that up to approximately 1,450 (30%) wolves could die as a result of human causes with little if any impact to wolf population size the following year. The DNR’s proposed quota of 400, along with a projected depredation take of perhaps 275 wolves this year, still represents less than half of the current estimated sustainable level of human-caused mortality, and it is highly unlikely additional forms of human-caused mortality (illegal killing, wolf-vehicle collisions) will come close to bringing total human-caused mortality above this threshold. Furthermore, I am of the opinion that a non-trivial percentage of the deaths attributable to depredation control and public harvest will be offset by

reductions in other forms of mortality, meaning the actual population-level effect of any given public harvest will effectively be less in numeric magnitude.

17. Several of the Petitioners' declarations suggest concern that wolf trapping will lead to elevated risks of accidental catch of domestic pets or lynx, or even children. I am unaware of any incidents of children being captured in a wolf (or other) trap in any state or province where wolf trapping has occurred for decades. Regarding lynx, DNR already requires lynx avoidance techniques in the Lynx Zone, techniques that our wolf regulations are consistent with. Although domestic pets can be accidentally captured in traps, it is rare. In my opinion, the concerns expressed are not based on realistic risk assessment. It assumes that in comparison to current conditions, there will be more trappers, more total traps, or more traps deployed of a type that are capable of causing such concern. In my opinion, the number of trappers will be largely unaffected by the existence of a wolf harvest season. I believe that licensed wolf trappers will consist of a subset of existing trappers that already trap other species, not previous non-trappers that decide to start wolf trapping. Second, even though a portion of these existing trappers (i.e., licensed wolf trappers) may now be able to set traps specifically for wolves, there is only a limited amount of time in a day to set and tend traps, and deployment of any notable number of wolf traps will require a reduction in traps set for other species—and hence an offsetting reduction in risk. Third, it is certainly possible that accidental catch of certain animals could occur in the types of traps set for wolves, but in my opinion not at a higher rate than could occur in traps currently set for other species. With one minor exception, no changes were made to either the types of trapping devices legal for use in

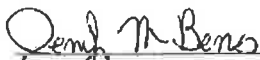
Minnesota or the manner in which they can be deployed. The one change made (allowing licensed wolf trappers to set their snares using larger loops higher off the ground), will not in my opinion lead to any higher risk than what may currently exist, and may even have lower risk in some cases.

FURTHER YOUR AFFIANT SAYETH NOT.

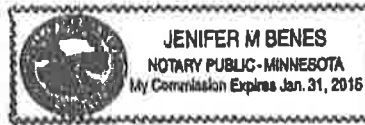


John D. Erb

Subscribed and sworn to before me on
this 28 day of September, 2012



NOTARY PUBLIC



AG: #3089698-v1

John D. Erb

1201 E. Hwy. 2, Grand Rapids, MN 55744
218-999-7930; john.erb@state.mn.us

Education

- 2001 Ph.D., University of Wyoming, Department of Zoology and Physiology
Dissertation: Time-series analysis of mammalian population fluctuations
- 1993 M.S., University of Missouri-Columbia, Department of Fisheries and Wildlife
Thesis: Age-specific reproduction of riverine muskrats
- 1989 B.S., Iowa State University, Department of Animal Ecology

Professional Experience

Wildlife Research Biologist

Minnesota Dept. of Natural Resources

10/98 – present

- Coordinated wolf and furbearer population monitoring and research activities since 2001.
- Coordinated grouse population monitoring and research activities from 2001-2003.
- Coordinated farmland deer population modeling and assisted in farmland deer research activities from 1998 to 2001.

Wildlife Biologist

U.S. Dept. of Agriculture, Wildlife Services – Ames, Iowa

1/98 – 10/98

- Provide technical assistance to the public on methods for the prevention and control of wildlife damage.
- When/where appropriate, implement direct control methods to alleviate wildlife damage.
- Prepare environmental assessments evaluating alternatives for addressing wildlife damage concerns

Interpretive Naturalist

Environmental Education Program, Des Moines YMCA Camp

10/96 – 12/97

- Develop and present outdoor environmental education programs to school groups

Teaching Assistant

Dept. of Zoology and Physiology, University of Wyoming

8/93 – 5/96

- Primary instructor for course on Principles of Game Biology, fall 1994.
- Teaching assistant for 2 courses on wildlife ecology/management

Exhibit A

RA 033

Graduate Research Assistant

Fisheries and Wildlife Dept., University of Missouri-Columbia

1/90 – 5/93

- Design, conduct, and present findings on a 3-year study of the impacts of an oil spill on muskrat populations in a riverine system.

Wildlife Assistant

Iowa Department of Natural Resources

7/88 – 12/88

- Participate in wildlife habitat improvement projects
- Participate in waterfowl management activities on a state management area
- Participate in hunter check station operation

Other Relevant Experience

- Member of the Association of Fish and Wildlife Agencies Furbearer Resources Technical Work Group, 2002 – present.
- Reviewer for the Journal of Wildlife Management, Wildlife Society Bulletin, Journal of Mammalogy, and Ecology.
- Member of The Wildlife Society's Furbearer Working Group, 1994-1999.

Honors/Awards

- Certificate of Appreciation from USFWS for wolf conservation/recovery activities
- Member of the Furbearer Resources Technical Work Group that received the Association of Fish and Wildlife Agencies nationally recognized Ernest Thompson Seton Award, 2006.
- Member of the Furbearer Resources Technical Work Group that received The Wildlife Society's nationally recognized Group Achievement Award, 2006.
- Independent Summer Study Award, College of Arts and Sciences, U. of Wyoming, 1994.
- Reed W. Fautin Memorial Scholarship, Dept. of Zoology and Physiology, U. of Wyoming, 1994.
- Dean's List – Iowa State University

Scientific Publications

Martin, D. J., B. R. McMillan, **J. D. Erb**, and T. A. Gorman, and D. P. Walsh. 2010. Diel activity patterns of river otters (*Lutra Canadensis*) in southeastern Minnesota. *Journal of Mammalogy* 91:1213-1224.

Erb, J., and M. DonCarlos. 2009. An overview of the legal history and population status of wolves in Minnesota. Pages 49-64 in A. P. Wydeven, T. R. Van Deelen, and E. J. Heske, editors. *Recovery of gray wolves in the Great Lakes Region of the United States: an endangered species success story*. Springer. New York, New York.

- Erb, J.**, and J. C. Ray. 2008. Interagency cooperative scent station survey. Pages 106-109 in R. A. Long, P. MacKay, W. J. Zielinski, and J. C. Ray, editors. Noninvasive survey methods for carnivores. Island Press, Washington, D.C.
- Gorman, T. A., B. R. McMillan, **J. D. Erb**, C. S. DePerno, and D. J. Martin. 2008. Survival and cause-specific mortality of a protected population of river otters in Minnesota. *American Midland Naturalist* 159:98-109.
- Gorman, T. A., **J. D. Erb**, B. R. McMillan, and D. J. Martin. 2006. Space use and sociality of river otters (*Lontra Canadensis*) in Minnesota. *Journal of Mammalogy* 87: 740-747.
- Gorman, T. A., **J. D. Erb**, B. R. McMillan, D. J. Martin, and J. A. Homyack. 2006. Site characteristics of river otter (*Lontra Canadensis*) natal dens in Minnesota. *American Midland Naturalist* 156: 109-117.
- Erb, J.**, and H. R. Perry. 2003. Muskrats. Pages 311 – 348 in G. A. Feldhamer, B. C. Thompson, and J. A. Chapman, editors. *Wild mammals of North America: Biology, management, and conservation*. Johns Hopkins, Baltimore, Maryland.
- Brinkman, T. J., C. S. DePerno, J. A. Jenks, **J. D. Erb**, and B. S. Haroldson. 2002. A vehicle mounted radiotelemetry antenna system design. *Wildlife Society Bulletin* 30: 256-258.
- Erb, J.**, M. S. Boyce, and N. C. Stenseth. 2001. Spatial variation in mink and muskrat interactions in Canada. *Oikos* 93: 365-375.
- Erb, J.**, M. S. Boyce, and N. C. Stenseth. 2001. Population dynamics of large and small mammals. *Oikos* 92: 3-12.
- Erb, J.**, N. C. Stenseth, and M. S. Boyce. 2000. Geographic variation in population cycles of Canadian muskrats (*Ondatra zibethicus*). *Canadian Journal of Zoology* 78: 1009-1016.
- Erb, J. D.**, and M. S. Boyce. 1999. Distribution of population declines in large mammals. *Conservation Biology* 13: 199-201.
- Erb, J. D.**, R. D. Bluett, E. K. Fritzell, and N. F. Payne. 1999. Aging muskrats using molar indices: a regional comparison. *Wildlife Society Bulletin* 27: 628-635.

Presentations/Invited Talks

<u>Subject</u>	<u>Organization</u>	<u>Year</u>
Fisher/Marten Habitat Use	UM Cloquet Forest/Wildlife	2011
Fisher/Marten Survival	Midwest Furbearer Workshop	2011
Fisher Reproductive Ecology	Midwest Furbearer Workshop	2011
Furbearer Research Methods	Midwest Furbearer Workshop	2010
Otter Occupancy Survey	Midwest Furbearer Workshop	2009
MN wolf management	Midwest Wolf Stewards meeting	2007
Modern snares	Midwest Furbearer Workshop	2006
Otter surveys	Midwest Furbearer Workshop	2006

MN wolf update	Midwest Wolf Stewards meeting	2006
Wolf Surveys	The Wildlife Society	2006
Great Lakes Wolf Management	Midwest Furbearer Workshop	2005
Wolf Surveys/Management	Native American Fish/Wildlife Society	2005
Wolf survey/update	Midwest Wolf Stewards meeting	2005
Beaver ecology/management	Forest Management Conference	2005
Otter research	Midwest Furbearer Workshop	2004
Wildlife Survey Methods	Vermillion Community College	2004
Wildlife Damage Management	Iowa State University Ag. Class	1998
Wildlife Damage Management	Iowa Association of Naturalists	1998
Furbearer Trapping/Management	University of Wyoming Wildlife class	1996
Estimating population size	University of Wyoming Wildlife class	1995
Muskrat reproduction	Midwest/Southeast Furbearer Workshop	1993
Muskrat aging	Midwest Fish and Wildlife Conference	1992
(over 100 additional wildlife/environmental presentations to school/civic/sportsmen's groups)		

IN COURT OF APPEALS

Petitioners,

Respondents.

RA 037

comments on management issues. In 1998, DNR convened a Minnesota wolf management roundtable ("Roundtable") composed of representatives of environmental, agricultural, hunting, trapping, and wolf-advocate organizations; government agencies; and private citizens who had specific interest in wolf management issues in Minnesota. The purpose of the Roundtable was to provide guidance to DNR in developing a wolf management plan for Minnesota. The 2000 Minnesota Legislature passed a wolf management bill that incorporated many of the Roundtable recommendations and was signed into law (2000 Minn. Laws ch. 463). As authorized by this law, DNR prepared and adopted the Minnesota Wolf Management Plan ("Plan") in 2001, in consultation with the Minnesota Department of Agriculture, consistent with all provisions of state law, and incorporating many Roundtable consensus recommendations. The Plan is attached to Petitioners' Declaration of Collette L. Adkins Giese as Exhibit A.

7. Under this Plan, wolves in Minnesota are allowed to naturally expand their range in the state. To assure the continued survival of the wolf in Minnesota, the minimum statewide winter population goal is 1,600 wolves. There is no maximum goal. If the population falls under this minimum, DNR will take appropriate management actions to address the cause of the reduction and assure recovery to the minimum level in the shortest possible time.

8. In April 2003, the USFWS published a final rule revising the listing status of the gray wolf in the United States. That rule included a Distinct Population Segment ("DPS") for the gray wolf in the eastern US and reclassified wolves as threatened except in Minnesota where they were already classified as threatened. U.S. District Court

rulings in Oregon and Vermont invalidated that final rule in 2005 and the status of gray wolves reverted back to endangered in the conterminous United States, except in Minnesota where they retained threatened status, as they had prior to the reclassification in 2003.

9. In February 2007 the Service issued a final rule identifying the Western Great Lakes Distinct Population Segment (“WGLDPS”) and delisting the WGLDPS from the ESA list. Three parties challenged the delisting; a U.S. District Court ruled in favor of the plaintiffs, vacated the rule, and remanded it to the USFWS in September of 2008.

10. In April 2009 the USFWS published a final rule identifying and removing protections for gray wolves in the WGLDPS. In June 2009, a complaint was filed against the USFWS for violating the Administrative Procedures Act for not seeking public comment on the proposed revision of the gray wolf listing. The USFWS settled the matter and the court issued an order remanding and vacating the 2009 rule.

11. On March 15, 2010, DNR submitted a petition to the USFWS to revise the listing of the gray wolf in Minnesota and remove ESA protections. On September 14, 2010, the U.S. Fish and Wildlife Service issued a finding determining that the petition presented substantial information that revising the listing may be warranted and reinitiated a status review.

12. The USFWS published a proposal to revise the List of Endangered and Threatened Wildlife for the gray wolf (*Canis lupus*) in the eastern United States in May of 2011. The final rule revising the list was published in December of 2011 and took effect on January 27, 2012.

13. It was expected that wolves in Minnesota would be delisted from the ESA in 2003, but following an attempt to revise the ESA status, wolves were not delisted until March of 2007. Legal challenges resulted in reversal of the delisting action by the USFWS, but DNR managed wolves under the Plan for 18 months from March of 2007 until September of 2008. During this time there was no significant change to the Minnesota wolf population as a result of implementing provisions of the Plan. There was little change in the legal protections for wolves under state management compared to the legal protections afforded under the ESA.

14. The Plan, as adopted, addresses population management measures, including public taking, but based on previous state law required DNR to wait five years before developing a wolf season. The Legislature changed this law in 2011, allowing DNR to implement a season once wolves were removed from the ESA.

15. Minnesota assumed management authority for wolves in Minnesota on January 27, 2012, following the removal of the Minnesota gray wolf population from the threatened species list under the ESA. This is the third time that ESA protections for wolves have been removed for wolves in Minnesota since March of 2007. Previous delisting actions were challenged in court and reversed based on procedural violations of the ESA. Nevertheless, the biological status of the Minnesota wolf population has been recovered since the late 1980s, and the risk of wolves being threatened or endangered has been addressed.

16. In January 2012, DNR presented a wolf-season proposal to the public and the legislature. Additional wolf season authority was authorized by the legislature and signed by the governor in May 2012.

17. Other provisions of the Plan are being implemented by DNR and have been since the removal of ESA protections for wolves in Minnesota. These include depredation management, population monitoring, enforcement, and education.

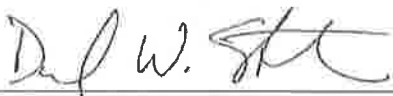
18. Since January of 2007, fourteen wolves have been taken by private individuals for protection of livestock or pets. A total of 237 wolves have been taken in response to livestock depredation claims by U.S. Department of Agriculture Wildlife Services and State-certified wolf trappers. The number of wolves taken is consistent with previous take of wolves for depredation conflicts under the ESA listing.

19. The take authority under state management is consistent with the Recovery Plan for wolves in Minnesota and allows individuals to take wolves to protect livestock and pets. The Recovery Plan envisioned that the numerical goal for wolf populations would be achieved solely in Zone A (Federal Zones 1-4)—and that has occurred. Wolves outside Zone A are not critical to the long-term viability of wolves in Minnesota and to the sustainability of the wolf population. Protections under state law in Zone A are similar to the protection of wolves under ESA status. Therefore, DNR has substantial information to evaluate state management of wolves and the changes that may occur as a result. We have seen little to no change in the population status of wolves in the time that wolves were previously delisted in 2007-2008, 2009, and since removal of ESA protections in January of 2012.

20. The 2012-13 wolf hunting and trapping season is not expected to result in a population decline of wolves in Minnesota. A limited number of 400 wolves may be taken by 6,000 hunters and trappers licensed to harvest a wolf.

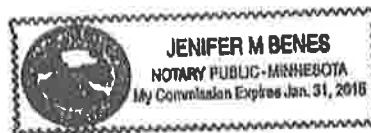
21. Mechanisms are in place to monitor the take of wolves that will close the season when the target harvest of 400 wolves is reached. This level of wolf harvest is well below the estimated number of wolves that may be taken from a wolf population without having a negative population trend. Registration of wolves by hunters and trappers is required to be done the same day of harvest. Season progress will be tracked in "real time" so that harvest of wolves may be monitored through the season and the season will be closed when harvest targets are reached or harvest projections indicate the target harvest will be attained.

FURTHER YOUR AFFIANT SAYETH NOT.


Daniel W. Stark

Subscribed and sworn to before me on
this 28 day of September, 2012


NOTARY PUBLIC



AG: #3090159-v1