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Sent via Federal eRulemaking Portal to: http://www.regulations.gov

Mr. Pete Benjamin
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U.S. Fish and Wildlife Service
551F Pylon Dr.
Raleigh, NC 27606

Re: Advance Notice of Proposed Rulemaking and Notice of Intent to Prepare a National Environmental Policy Act Document for North Carolina's Wild Red Wolf Population

Dear Mr. Benjamin:

The Southern Environmental Law Center submits these comments on behalf of the Red Wolf Coalition, Defenders of Wildlife, and Animal Welfare Institute ("Conservation Groups") in response to the U.S. Fish and Wildlife Service's ("Service" or "USFWS") advance notice of proposed rulemaking and notice of intent to prepare a National Environmental Policy Act document for North Carolina's wild red wolf population ("ANPR"). Endangered and Threatened Wildlife and Plants; Nonessential Experimental Population of Red Wolves (Canis rufus) in North Carolina, 82 Fed. Reg. 98, 23518 (advance proposal May 23, 2017) (to be codified at 50 C.F.R. pt. 17). In the ANPR, the Service makes clear its intention to continue its rollback of the Red Wolf Recovery Program, despite decades of demonstrated success. We strongly oppose the Service's suggested approach and instead provide the Service with alternative actions that will enhance, rather than undercut, red wolf recovery.

As discussed in detail in the following comments, the best available science and the history of the red wolf reintroduction demonstrate that the following actions are required:

- The red wolf population in eastern North Carolina must be maintained;
- The red wolf 10(j) rule must be revised and implemented to provide for the conservation of the species; and
- The USFWS must consider the alternative rule language set forth below as part of its environmental review under the National Environmental Policy Act. The red wolf population in North Carolina is the only wild population in the world, yet the Service has not presented an alternative that would provide greater protection than its current approach, which has recently resulted in the catastrophic decline of this species.

I. History of Red Wolf Recovery

Although once common throughout the southeastern United States, red wolves were driven to the brink of extinction by aggressive predator control and habitat loss in the twentieth century. By 1967, red wolves were listed as endangered. By 1980, the Service removed the remaining red wolves from the wild to establish an intensive captive breeding program. Determination of Experimental Population Status for an Introduced Population of Red Wolves in North Carolina, 51 Fed. Reg. 41,790, 41,791 (Nov. 19, 1986) (codified at 50 C.F.R. pt. 17). According to the Service, "the decision to remove the last red wolves from the wild could only be justified through the development of a long-range objective to eventually return the species to areas of its historic range." U.S. Fish & Wildlife Serv., *Red Wolf Recovery / Species Survival Plan* (1990), *available at* https://ecos.fws.gov/docs/recovery_plan/901026.pdf.

In 1987, the Service released four pairs of captive red wolves into Alligator River National Wildlife Refuge in northeastern North Carolina. *See generally*, 51 Fed. Reg. 41,790-02. Since the initial reintroduction, the Red Wolf Recovery Area has expanded to include over 1.7 million acres of land. This land spans Dare, Hyde, Tyrell, Washington and Beaufort Counties in North Carolina, and includes four national wildlife refuges; a Department of Defense bombing range; state-owned lands; and private lands. The 1990 Red Wolf Recovery Plan set forth the goals of having three wild populations of red wolves, comprising a total of 220 wild red wolves. U.S. Fish & Wildlife Serv., *Red Wolf (*Canis rufus*) 5-Year Status Review: Summary and Evaluation* 7 (2007) [hereinafter "2007 Status Review"], Attachment 1. The population in northeastern North Carolina was the first established wild population under the Recovery Plan, and is currently the only wild population of red wolves in the world. In the 30-year history of the program, the Service has only attempted one other reintroduction effort. This second reintroduction in Great Smoky Mountain National Park was terminated after seven years due to unsuitable habitat. *See* Notice of Termination of the Red Wolf Reintroduction Project in the Great Smoky Mountains National Park, 63 Fed. Reg. 54151, 54152 (Oct. 8, 1998). The Service historically managed several small island propagation sites to evaluate different techniques for releasing wolves into the northeastern North Carolina population, but as of September 2015, there was only one resident breeding pair at a single island propagation site on St. Vincent National Wildlife Refuge in Florida. Memorandum from Field Supervisor, Ecological Services, Raleigh NC, to Red Wolf Recovery Lead, Alligator River National Wildlife Refuge, North Carolina (Sept. 10, 2015), [hereinafter "2015 Biological Opinion"], Attachment 2. Due to their isolated nature and limited size, these island sites have never been considered reintroductions pursuant to Section 10(j) of the Endangered Species Act.

Contrary to the misleading representation in the ANPR, *see* 82 Fed. Reg. at 23518-19, the North Carolina red wolf reintroduction has been widely regarded as one of the most successful reintroductions that the Service has ever undertaken. The most recent 5-year status review of the red wolf—completed in 2007—noted that red wolves had "been transformed from nearly extinct at a count of only 14 individuals in the 1970's to a captive population of 208 and a restored wild [population] with counts up to nearly 130." 2007 Status Review, Att. 1, at 33; *see also id.* at 34 (noting that the "Red Wolf Recovery Program is one of the oldest recovery programs for an endangered species in the USA," and "[s]ignificant amounts of red wolf recovery have been achieved"). The Service's 5-year Status Review further concluded that their "efforts to restore,

recover and conserve [red wolves] have been remarkably successful." *Id*. In 2001, the number of wild red wolves peaked at around 131 wolves. *Id.* at 12, Table 1.

Unfortunately, the last decade has resulted in a dramatic population decline to as few as 28 known red wolves in the wild. Memorandum from Assistant Regional Director for Ecological Services, U.S. Fish & Wildlife Serv., to Cynthia Dohner, Regional Director, U.S. Fish & Wildlife Serv. 6 (Sept. 12, 2016) [hereinafter "USFWS Sept. 2016 Memorandum"], Attachment 3. The decline was slow at first, and largely attributed to gunshot mortality. By 2007, gunshot had grown to be the leading cause of death for the species. 2007 Status Review, Att. 1, at 18, 28-29. In 2012, the Service reiterated its concerns about gunshot mortality in a letter to the North Carolina Wildlife Resources Commission ("WRC" or "Commission") asking the Commission to rescind new regulations allowing coyote hunting at night, noting that nighttime coyote-hunting would exacerbate the already serious problem of gunshot mortality because the difficulty in distinguishing red wolves and coyotes would become all but impossible in the dark. Letter from Cynthia Dohner, Regional Director, U.S. Fish & Wildlife Serv., to Gordon Myers, Executive Director, N.C. Wildlife Res. Comm'n (Apr. 16, 2012), Attachment 4. Between 2004 and 2012, gunshot accounted for around 7 red wolf deaths per year—compared to an average of less than two gunshot deaths per year between 1987 and 2003. *Id*. at 2. From 2012 to June 30, 2015, gunshot accounted for twenty-three out of a total of fifty-eight red wolf deaths. U.S. Fish & Wildlife Serv., Causes of Mortality in Wild Red Wolves (Canis rufus) 2012-2015 (June 30, 2015) [hereinafter "Causes of Mortality 2012-2015"], Attachment 5.

Following the gunshot deaths of six red wolves over a four-week period in the fall of 2013, and a corresponding finding that irreparable harm was likely to result if coyote hunting was allowed to continue, the U.S. District Court for the Eastern District of North Carolina enjoined coyote hunting in the Red Wolf Recovery Area in May 2014. *Red Wolf Coal. v. N.C. Wildlife Res. Comm'n*, 2014 WL 1922234 (E.D.N.C. May 13, 2014), Attachment 6. The court found as part of this ruling that the North Carolina Wildlife Resources Commission was likely violating the Endangered Species Act ("ESA") by causing red wolves to be shot and killed by way of coyote hunting in the Red Wolf Recovery Area without any permitting or reporting requirements. Following the injunction, the number of red wolf gunshot deaths fell significantly, from eight suspected or confirmed in 2012 and nine in 2013, to four in 2014—including only two following the court's injunction—and four in 2015. Causes of Mortality 2012-2015; U.S. Fish & Wildlife Serv., Causes of Mortality in Wild Red Wolves (Canis rufus) 2013-2016 (June 13, 2016) [hereinafter "Causes of Mortality 2013-2016"], Attachment 7.

Yet the successful curbing of red wolf gunshot deaths has not stopped the decline in the red wolf population, with numbers plummeting from more than 100 in 2014 to less than a third of that number today. Causes of Mortality 2013-2016, Att. 7; USFWS Sept. 2016 Memorandum, Att. 3, at 6. According to the Service, as of September 2016, there were only 28 known wild red wolves being monitored, and an estimated population of 45 animals. USFWS Sept. 2016 Memorandum, Att. 3, at 6.[1] According to the recent red wolf Population Viability Analysis ("PVA"), the wild red wolf population has a 100% probability of extinction in as few as 8 years

[1] The Service has not provided any public updates of the wild population numbers since its September 2016 Memorandum. The Service's mortality table and population counter available online is more than a year out-of-date and continues to display the June 2016 population estimates.

without management changes. Lisa J. Faust, et al., Lincoln Park Zoo, Red Wolf (Canis rufus) Population Viability Analysis – Report to U.S. Fish and Wildlife Service 15-17 (June 10, 2016) [hereinafter "PVA"], Attachment 8 ("The model analysis showed a range of 8-82 years until extinction, with a median of 37 years").

Conservation Groups again obtained a preliminary injunction for likely violations of the Endangered Species Act, this time against the U.S. Fish and Wildlife Service for its actions causing the illegal take of red wolves, as well as its failure to comply with important procedural safeguards in federal law. According to the court, the Service's actions were "detrimental to the recovery of the species and in violation of the ESA." *Red Wolf Coal. v. United States Fish & Wildlife Serv*., No. 2:15-CV-42-BO, 2016 WL 5720660, at *6 (E.D.N.C. Sept. 29, 2016), Attachment 9. The court further noted "[s]uch rapid population decline has been described as a catastrophic indicator that the wild red wolf population is in extreme danger of extinction." *Id*. The court blocked the USFWS from removing red wolves from private property unless they are shown to be a threat to human safety, life, or property. *Id*.[2]

II. The Service Must Recommit to the Red Wolf Reintroduction in Northeastern North Carolina

In the ANPR, the Service recommends severely restricting the size and scope of the wild population of red wolves. 82 Fed. Reg. at 23519. The Service suggests that a goal of the wild red wolf population should be to support the captive breeding program, in addition to the existing goal of "establishing a self-sustaining wild population." *Id*. The Service also notes that it plans to consider an alternative of terminating the red wolf reintroduction in North Carolina, and one that would maintain the northeastern North Carolina population in its current state, with no changes to the current 10(j) rule. *Id*. None of these approaches would meet the requirements of the Endangered Species Act.

Instead of abandoning this program, as all three of these alternatives would effectively do, the Service must act decisively to promote the recovery of the world's only wild population of red wolves. As described in detail above, this is not a failed reintroduction effort. It has been a model reintroduction effort and in existence for 30 years. The Service must maintain this population, over the full range of its existing recovery area, in order to best further conservation and recovery of the red wolf as required by the ESA.

[2] Notably, the modeling for the PVA cited above was released prior to the depth of the current population decline, and before the recent shift in Service policy that liberalized the agency's lethal and nonlethal removal of wolves from private lands. A note in the published version of the PVA cautions "[e]xtinction of the wild population will likely occur earlier than this timeframe because the population has already declined to lower than the model starting point[,]" PVA, Att. 8, at 3, and the model did "not incorporate any requests to remove wolves from private land or more recent trends (2015-16) in mortality and reproductive rates," *id*. at 28.

A. The Service Should Maintain and Expand the Wild Population of Red Wolves in North Carolina

As an initial matter, the Service must abandon its proposal to scale back the world's only wild population of red wolves. The legislative history, discussed in greater detail below, and the statutory scheme of the Endangered Species Act are clear that the Act's goal is to recover endangered species in the wild, and not simply to preserve them in captivity. *See* H.R. Conf. Rep. 97-835 (1982) *reprinted in* 1982 U.S.C.C.A.N. 2860, 2875 1982 WL 25084 ("In making the [essential/nonessential] determination, the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species *in the wild.*"). The Act clearly envisions recovery occurring in the wild, as evidenced by its provisions for protecting species' wild habitat, 16 U.S.C 1533(a)(3), and by the Act's purpose of conserving "the ecosystems upon which endangered species and threatened species depend," *id.* § 1531(b). Indeed, if recovery under the ESA could be achieved by simply maintaining a species in captivity, much of ESA's language would be rendered superfluous.

As mentioned above, the northeastern North Carolina population of red wolves is the only wild population of red wolves—and no other reintroduction sites are currently proposed or being presented for public comment. Terminating this wild population, or scaling it back to such a point that it is not a sustainable population, would be counterproductive to the ESA's recovery goals from a sheer numbers-in-the-wild perspective. Moreover, loss of this wild population would impair future red wolf recovery, including undercutting the likelihood of a successful future reintroduction elsewhere.

Unfortunately, the Service appears poised to propose limiting the wild population of red wolves to only federal lands in Dare County—in other words, only Alligator National Wildlife Refuge and the Dare County Bombing Range—which would effectively reduce the wild population to a single pack of red wolves. *See* 98 Fed. Reg. at 23519 ("The proposed revision . . . will be focused on maintaining a wild population on Federal lands within Dare County . . . .") . The Service itself effectively admitted on a press call in September 2016 that it would cease trying to grow or expand the red wolf population in the wild if it is scaled back to Alligator River National Wildlife Refuge, acknowledging how few wolves the Refuge can support: "We have traditionally one pack of wolves [sic] whose territory is more or less completely within the bounds of Alligator River National Wildlife Refuge . . . You know [a] pack can be as little as a breeding pair or typically would include the breeding pair and offspring from the current season and prior breeding seasons." Sept. 12, 2016 U.S. Fish & Wildlife Serv. Media Briefing Transcript at 16, Attachment 10.

A November 2016 letter from thirty scientists condemned this proposal to limit the red wolf's recovery area to federal lands in Dare County, stating that "[t]his one-county area cannot maintain a viable population of red wolves[,]" and that the Service's proposal is therefore "inconsistent with red wolf recovery and best available science." Letter from T. Delene Beeland, MS, Science Writer and Author, *et al*., to Sally Jewell, Secretary, Department of Interior, and Dan Ashe, Director, U.S. Fish and Wildlife Service at 2 (Nov. 30, 2016), Attachment 11. Similarly, the PVA evaluated a recovery scenario under which the wild population would be limited to federal lands throughout the current recovery area—thus including substantially more

land than the Service's current recommendation—and even under that scenario, the wild population had a median extinction time of 14 years. PVA, Att., 8 at 27. It stands to reason that an even more severely restricted area would result in an earlier date of extinction.

Cutting back or eliminating the wild northeastern North Carolina population would mean the loss of the world's only red wolves with the instincts and behavioral competence suited for living in the wild. Willfully losing this pool of behavioral competence would be an act in clear violation of the ESA's conservation mandate and recovery goals, and would be likely to jeopardize the continued existence of the species. *See* 16 U.S.C. §§ 1531, 1532(3), 1536(a). The Service's own ANPR recognizes that the wild red wolf population can "preserve red wolf natural instincts and behavior" and "provide a population for continued research on wild behavior and management." 82 Fed. Reg. 98 at 23519. The PVA emphasized that the extinction of the wild red wolf population "would not just be about numbers, but would also represent the loss of *behaviorally competent* wild wolves on the landscape[.]" PVA, Att. 8, at 28 (emphasis added). Behavioral competence is vital to the species because competent wild wolves exhibit lower mortality and higher reproductive rates than captive wolves. *Id*.; *see also* 2007 Status Review, Att. 1, at 17 ("Wild born red wolves showed higher survival than captive born or island born red wolves."). If the current North Carolina wild red wolf population became extinct, a new wild population would "have to start from scratch and rebuild that behavioral competence again, and would likely experience higher mortality and lower reproductive rates as it worked to re-build that competence." PVA, Att. 8, at 28.

The biological importance of the northeastern North Carolina wild population underscores the necessity of maintaining this population for red wolf recovery and conservation purposes. Doing away with this population in light of the critical role it must play in any future red wolf recovery efforts would violate the ESA by jeopardizing the continued existence of the species and undermining, rather than furthering, red wolf recovery. *See* 16 U.S.C. §§ 1533(d), 1536(a).

B. The Service Should Designate the Northeastern North Carolina Wild Population of Red Wolves as Essential

In its ANPR, the Service notes that it is considering no change to the northeastern North Carolina population, terminating the northeastern North Carolina population, or scaling back the northeastern North Carolina population. 98 Fed. Reg. at 23519. It has not considered reclassifying the population as essential, but should do so to meet the requirements of the ESA and provide for the conservation of the species.

The Service's treatment of the wild red wolf population as non-essential conflicts with the ESA and legislative intent. Section 10(j) of the ESA governs the reintroduction of threatened or endangered species into portions of their historic ranges. 16 U.S.C. § 1539(j)(2)(A); 50 C.F.R. § 17.81(a). Under Section 10(j) of the ESA, a reintroduced population of a threatened or endangered species must be designated as essential or nonessential experimental, according to whether the population is necessary "to the continued existence" of the species. 16 U.S.C. § 1539(j)(3); 50 C.F.R. § 17.81(c)(2). The protections of the ESA vary according to the essential or nonessential designation, with essential populations receiving the full ESA protections given

to species listed as threatened under the Act. 16 U.S.C. § 1539(j)(2)(C). Members of an experimental nonessential population are "treated as threatened species" under the ESA, except that critical habitat may not be designated, and the typical ESA Section 7 consultation requirements apply only when the population "occurs in an area within the National Wildlife Refuge System or the National Park System." 16 U.S.C. § 1539(j)(2)(C). While Section 10(j) provides the Service with flexibility in its management of experimental populations, such populations must still be managed so as to "further the conservation of [the] species." 16 U.S.C. §§ 1533(d); 1539(j)(2)(A); 50 C.F.R. § 17.81(b).

Contrary to the Service's refrain that the wild population is nonessential because of the existence of the captive population of red wolves, legislative history makes clear that the question is whether the reintroduced population is essential to the continued existence of the species *in the wild*. The Joint Explanatory Statement between the House and Senate regarding the addition of Section 10(j) to the ESA is explicit on this point: "In making the [essential/nonessential] determination, the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild." H.R. Conf. Rep. 97-835 (1982) reprinted in 1982 U.S.C.C.A.N. 2860, 2875 1982 WL 25084. The Service's own regulations reinforce that the "essential" determination hinges on the species' survival *in the wild*. *See* 50 C.F.R. § 17.80(b) (defining an essential population as one "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild").

Under this standard, the loss of the only wild population of red wolves in the world would undoubtedly "appreciably reduce the likelihood of survival" of the red wolf in the wild. As the wild population shrinks, the remaining wild red wolves become even more essential to the continued existence of the red wolf in the wild. The PVA explained that such a loss would not only be about the numerical loss, but about the loss of red wolves with specific behavioral competence, or wild instincts, that will be necessary for any future reintroductions. PVA, Att. 8, at 28. These wild wolves also represent unique genetic diversity for the species.

Recognizing the only wild population of red wolves as essential would also enhance red wolf recovery by granting the population greater protections—namely, critical habitat designation and uniform application of Section 7 of the ESA. These protections would enable the Service to more effectively manage the wild red wolf population, including better protecting habitat necessary to the long-term survival of the species. The consistent application of Section 7 to the wild red wolf population would clarify that consultation must be completed for actions affecting red wolves solely on private lands in the recovery area, thus again broadening protections for the red wolf.

III. A Revised Red Wolf Rule Must Provide for Conservation and Recovery of the Species in the Wild

Just as any revisions to the northeastern North Carolina wild population must provide for the conservation of the species, as required by the Endangered Species Act, any revisions to the 10(j) rule governing that population must do the same. Congress designed the ESA to ensure the conservation of any threatened or endangered species, such as the red wolf. *See* 16 U.S.C.

§ 1531(c)(1) ("It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter."); *id.* § 1533(d) (requiring the Service to "provide for the conservation" of listed species); *id.* § 1536(a)(2) (requiring federal agencies to ensure their actions are "not likely to jeopardize the continued existence of any endangered species or threatened species"). Since experimental populations are treated as threatened species in most circumstances, 16 U.S.C. § 1539(j)(2)(C), the red wolf rule must comply with the substantive standard of Section 4(d) "to provide for the conservation of" listed species. 16 U.S.C. § 1533(d), 50 C.F.R. § 17.82; *see also Defenders of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095, 1116-17 (D. Ariz. 2009) (rules issued pursuant to section 10(j) are "by definition the promulgation of the protective regulations for the species pursuant to the authority of ESA section 4(d)"). "Conservation" is defined by the ESA to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." 16 U.S.C. § 1532(3). While the Service "has discretion to issue the regulations it deems necessary and advisable, [] the regulation *shall* provide for the conservation of such species." *Id.* (emphasis added). *See also Red Wolf Coal. v. United States Fish & Wildlife Serv.*, 2016 WL 5720660, Att. 9, at *5.

None of the options suggested in the Service's ANPR comply with the ESA's requirements to further conservation of the species. Not only must the Service maintain the population and designate it as essential, the Service must revise the current red wolf 10(j) rule to provide for the conservation of the species. In particular, a revised 10(j) rule should explicitly provide for controlling wolf-coyote hybridizations, releasing wolves from the captive population to the wild population, and addressing anthropogenic mortality.

We specifically propose the following language for a revised red wolf rule, based on the existing red wolf rule, 50 C.F.R. § 17.84 (c):

(c) Red wolf (Canis rufus).

(1) The red wolf populations identified in paragraph (c)(10) of this section are essential experimental populations.

(2) No person may take this species, except as provided in paragraphs (c)(3)-(c)(6) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take red wolves for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) (i) Any person may take members of the experimental population of red wolves in the areas defined in paragraph (c)(10)(i) of this section, Provided That such taking is in defense of that person's own life or the lives of others; and that such taking is reported to a Service biologist within 24 hours;

(ii) Any private landowner, or any other individual having his or her permission, may take members of the experimental population of red wolves found on his or her

property in the areas defined in paragraph (c)(10)(i) of this section when the wolves are in the act of killing livestock or pets, Provided That freshly wounded or killed livestock or pets are evident and that such taking is reported to a Service biologist within 24 hours; and

(iii) Any private landowner, or any other individual having his or her permission, may harass members of the experimental population of red wolves while found on his or her property in the areas defined in paragraph (c)(10)(i) of this section, Provided That all such harassment is by methods that are not lethal or physically injurious to the red wolf and that such taking is reported to a Service biologist within 24 hours;

(5) Any employee or agent of the Service or State conservation agency who is designated for such purposes, and who has received special training from the Service in capturing, handling, transporting, and releasing red wolves and/or other endangered canids, when acting in the course of official duties, may take a red wolf if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen;

(ii) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study;

(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, Provided That such taking be nonlethal and be done in a humane manner, and may involve removal of the animal and disruption of pack dynamics only if deterrence by harassment has not been possible; or

(iv) Move an animal for genetic purposes.

(6) Any employee or agent of the Service or State conservation agency who is designated for such purposes, and who has received special training from the Service in capturing, handling, transporting, and releasing red wolves and/or other endangered canids, when acting in the course of official duties, shall take red wolves to implement efforts to reduce hybridization with coyotes, Provided That such taking shall be nonlethal and be done in a humane manner.

(7) Any taking pursuant to paragraphs (c) (3)-(6) of this section must be reported to the U.S. Fish and Wildlife Service within 24 hours. Any such animals shall be released as soon as possible into the recovery area on federal or state lands, or else on private lands where the landowners have provided permission to the Service for releasing red wolves, with due consideration given to habitat suitability and the existence of other red wolves in the recovery area.

(8) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(9) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (c) (2) through (8) of this section.

(10) (i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrell, Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation. The Service shall introduce at least two captive born red wolves, or more pursuant to Red Wolf Species Survival Plan recommendations, to the Alligator River wild population, on

federal or state lands, or on private lands where the landowners have provided permission to the Service for releasing red wolves, in order to bolster this population's chance of recovery in the wild. The Alligator River reintroduction site shall be maintained at least until another red wolf reintroduction site has been designated, established, and is determined to be contributing to the recovery of the species for ten years.

(ii) Other than this reintroduced population and island propagation projects, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the experimental populations could come into contact.

(iii) No later than 2019, the Service shall establish two additional reintroduction sites within the historic range of the species. These sites shall be monitored pursuant to paragraph (c)(11) and maintained for a minimum of ten years. During each of those years, the Service shall introduce at least two captive born red wolves, or more pursuant to Red Wolf Species Survival Plan recommendations, into each site to bolster the red wolf's chance of recovery in the wild.

(11) The reintroduced populations will be monitored closely for the duration of the project, generally using radio telemetry as appropriate. All animals released or captured will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be in need of special care will be recaptured, if possible, by Service or designated State wildlife agency personnel and will be given appropriate care. Such animals will be released back into the wild as soon as possible, unless physical problems make it necessary to return the animals to a captive-breeding facility.

(12) The status of the red wolf population, including all reintroduction sites, shall be reviewed every five years to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population.

The Service should evaluate this rule language as an alternative alongside the approaches suggested in the ANPR. As specifically discussed in Section IV below, the Service must complete an environmental impact statement pursuant to the National Environmental Policy Act ("NEPA"), and in doing so, must consider a reasonable range of alternatives. *See* 42 U.S.C. § 4332(C); *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 602 (citing 40 C.F.R. § 1502.14(a)) (4th Cir. 2012). The alternatives analysis, supported by thorough scientific, expert, and public review, is intended to be the "heart" of the impact statement. 40 C.F.R. § 1502.14. In turn, "[a]ccurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. § 1500.1(b). The alternatives laid out in the Service's ANPR do not meet this standard, suggesting only the status quo and two alternatives that would be less protective for red wolves. The Service must also consider an alternative that is more protective for red wolves, such as the one presented here. Furthermore, the following subsections identify essential components of *any* revision to the red wolf rule pursuant to Section 4(d) of the ESA and explain how our suggested language satisfies these needs.

A. The Revised Rule Must Designate the Northeastern North Carolina Population as Essential

As explained above, the wild population of red wolves in northeastern North Carolina is essential to the continued existence of the species. Conservation Groups thus recommend that the first provision of the current red wolf rule be revised as follows:

> *(1) The red wolf populations identified in paragraph (c)(10) of this section are essential experimental populations.*

B. A Revised Red Wolf Rule Must Reduce Anthropogenic Mortality By Limiting Lawful Categories of Take

As noted above, gunshot mortality has been the greatest source of red wolf deaths in recent years. The current red wolf rule absolves private landowners of responsibility for taking a red wolf if they claim the take was unintentional and encourages private landowners to seek lethal take permits for non-problem wolves. In order to recover the species, a revised 10(j) rule must limit when private landowners can take a red wolf to those instances in which it is absolutely necessary and will not be abused.

The Service must reconsider the balance between the concerns of landowners and the recovery needs of the red wolf. The Conservation Groups recommend the following language exempting landowner take of red wolves:

> *(4) (i) Any person may take members of the experimental population of red wolves in the areas defined in paragraph (c)(10)(i) of this section, Provided That such taking is in defense of that person's own life or the lives of others; and that such taking is reported to a Service biologist within 24 hours;*
> *(ii) Any private landowner, or any other individual having his or her permission, may take members of the experimental population of red wolves found on his or her property in the areas defined in paragraph (c)(10)(i) of this section when the wolves are in the act of killing livestock or pets, Provided That freshly wounded or killed livestock or pets are evident and that such taking is reported to a Service biologist within 24 hours; and*
> *(iii) Any private landowner, or any other individual having his or her permission, may harass members of the experimental population of red wolves while found on his or her property in the areas defined in paragraph (c)(10)(i) of this section, Provided That all such harassment is by methods that are not lethal or physically injurious to the red wolf and that such taking is reported to a Service biologist within 24 hours;*

There are a number of important elements to these provisions. First, private landowners retain the ability to lethally take red wolves in the defense of human life, and if a wolf is found in the act of killing livestock of pets. The provision for the protection of human life simply reinforces the ESA's exemption against prosecution for taking a member of an endangered or threatened species on an individual's good faith belief that it was necessary to do so in order to

protect against bodily harm of a person. *See* 16 U.S.C. § 1540(b)(3). To our knowledge, this provision has never been needed in the context of red wolves. Second, landowners retain broad authority to take wolves on their private property by *harassment only* for any reason whatsoever. Each of these provisions also retains the requirement that the landowner notify a Service biologist of the incident, which will then enable the Service to work with the landowner to determine the most effective ways to manage red wolves on their property, give the Service an opportunity to confirm the identity of the canid in question as a red wolf, and provide the Service with helpful information to guide future management of red wolves.

Conservation Groups' suggested language removes two existing provisions exempting landowners from liability for red wolf take in cases of mistaken identity and under permit from the U.S. Fish and Wildlife Service. As described above, these two provisions have been the subject of federal Endangered Species Act lawsuits and injunctions in recent years because they have been abused and not implemented in a way that is inconsistent with recovery of the species. In light of the current size of the population, and the reasons for the recent population decline, it is critical that the U.S. Fish and Wildlife Service address these concerns and limit these sources of red wolf mortality.

Taken together, these changes are intended to encourage landowners to utilize non-injurious methods of harassment to handle red wolves found on their lands instead of resorting to lethal take of red wolves. Red wolves are notoriously shy and avoid humans when possible; harassment measures should provide a sufficient deterrent to discourage wolves from straying too close to areas frequented by humans. Indeed, the Service's own records dispel assertions that red wolves regularly threaten livestock or have caused a decline in wild game numbers. Over the history of the program, there have been 78 depredation complaints, 35 verified incidents, and only 6 depredation events attributable to red wolves. USFWS Document, ECF No. 51, at 1, *Red Wolf Coal. v. U.S. Fish & Wildlife Serv.*, No. 2:15-cv-00042-BO (E.D.N.C. July 29, 2016), Attachment 12. The majority of verified incidents were actually attributable to the owner's or a neighbor's dog. *Id.* Similarly, despite anecdotal suggestions to the contrary, wild game numbers did not suffer as the wild red wolf population grew. Deer and turkey harvest numbers have either held steady or increased over the duration of the program. *Id.* at 2-3.

The narrow categories of permissible take provided for in Conservation Groups' proposed rule language should suffice to protect landowners from improbable instances of red wolves threatening human safety, livestock, or pets. The rule language will also help reduce anthropogenic mortality of red wolves, which the Service has long-recognized as a leading threat to the wild red wolf population.

C. A Revised Rule Must Limit USFWS Removal of Red Wolves From Private Lands

A revised rule must minimize human interference with the red wolf population, including by not enabling wolves to be removed—lethally or non-lethally—from private lands pursuant to Service permission. As noted above, Conservation Groups' recommended language eliminates the provision for USFWS granting lethal take permits to private landowners. The Conservation Groups' recommendation also modifies the language of the (c)(10) in the current rule to omit the language about removing wolves pursuant to landowner request. Conservation Groups further

recommend that subsection (c)(5) be modified as follows, in order to address concerns about offending animals:

> *(5) Any employee or agent of the Service or State conservation agency who is designated for such purposes, and who has received special training from the Service in capturing, handling, transporting, and releasing red wolves and/or other endangered canids, when acting in the course of official duties, may take a red wolf if such action is necessary to:*
> *(i) Aid a sick, injured, or orphaned specimen;*
> *(ii) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study;*
> *(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, Provided That such taking be nonlethal and be done in a humane manner, and may involve removal of the animal and disruption of pack dynamics only if deterrence by harassment has not been possible; or*
> *(iv) Move an animal for genetic purposes.*

Pursuant to subsection (5)(iii) of Conservation Groups' proposed language, in the event that a landowner has experienced problems with red wolves attacking livestock or pets, the landowner may request the Service's assistance in removing the offending animal after deterrence and harassment efforts have proven ineffective. Such a taking must be nonlethal and humane. The provision also requires that the Service or State personnel conducting such activities have received training to mitigate harms resulting from handling of wild red wolves.

Again, these modifications are intended to lessen abuse of the regulations and address USFWS reinterpretations in recent years that have led to an increase in harm to red wolves. Prior to 2014, the Service interpreted the take authorization and removal request provisions of the red wolf rule, 50 C.F.R. § 17.84(c)(4)(v), (c)(10), to apply only to "problem wolves" in order to be consistent with the ESA's conservation mandate. In the past few years, however, the Service began interpreting and applying the red wolf rule so as to facilitate broad-scale removal of red wolves from private lands. This detrimental practice of removing wolves from private lands without regard to population impacts disrupts packs, leaves pups and mates abandoned and confused by the removed wolf's absence, and places the removed wolf at higher risk of mortality when released back into the wild. A mate left behind is more likely to hybridize with a coyote, and territory previously successfully defended by the removed wolf may be ceded to invading coyotes. Justin H. Bohling & Lissette P. Waits, Factors Influencing Red Wolf-Coyote Hybridization in North Carolina, USA, Biological Conservation, Apr. 2015, at 113, Attachment 13 ("Ultimately, it appears that hybridization events tend to follow the disruption of stable breeding pairs of wolves, frequently due to anthropogenic actions such as gunshot mortality."); Eric M. Gese & Patricia A. Terletzky, Using the "Placeholder" Concept to Reduce Genetic Introgression of an Endangered Carnivore, Biological Conservation, Dec. 2015, at 17, Attachment 14.

In addition to ramping up its removal efforts, in 2014 the Service issued the first ever written authorization for a private landowner to kill a red wolf with no evidence of any problem behavior by the wolf in question. This landowner refused to allow Service personnel on his property, and the Service did not attempt to capture the wolf otherwise. Instead, the Service determined that "given our other staffing commitments and lack of access to actively trap on the property . . . we are foreclosed from pursuing the animal on your property and in that sense must abandon efforts to capture and relocate the animal ourselves." The Service subsequently "renewed" this same take authorization on September 23, 2014 and again on April 27, 2015, apparently without first attempting to trap any wolves on or near the property in question.

This new interpretation of the red wolf rule's take authorization provision—allowing take authorizations for non-problem wolves—resulted in the death of at least one key member of the red wolf population in 2015. In that case, the Service issued an authorization to a landowner, who barred the Service from accessing his property, to kill a red wolf that had not exhibited any "problem" or "offending" behavior. The landowner shot and killed the wolf on June 17, 2015. The wolf was a denning mother wolf that previously had mothered a total of 16 pups through four separate litters.

Eliminating the removal request and lethal take permit provisions of the current red wolf rule is in line with the conservation and recovery purposes of the ESA. While an interpretation of these provisions to apply to only problem wolves was successful for many years, the Service has been unwilling to maintain that position in recent years. Instead, these lethal and non-lethal removal provisions have served as a signal to private landowners that they can and should seek opportunities to kill red wolves found on their private lands, regardless of the circumstances. Implicit in the take permit provision is the belief that red wolves can and do pose problems, and that landowners should not want red wolves on their land. A new red wolf rule should reinforce that red wolves generally pose no threat to humans or their property and can be effectively managed without resorting to lethal and non-lethal removal provisions.

D. The Revised Rule Must Explicitly Provide for Adaptive Management to Limit Red Wolf-Coyote Hybridization

The revised 10(j) rule must explicitly include provisions that will enable and require the Service to effectively manage red wolf and coyote interactions to minimize hybridization between the two species. Conservation Groups recommend the following language:

> *(6) Any employee or agent of the Service or State conservation agency who is designated for such purposes, and who has received special training from the Service in capturing, handling, transporting, and releasing red wolves and/or other endangered canids, when acting in the course of official duties, shall take red wolves to implement efforts to reduce hybridization with coyotes, Provided That such taking shall be nonlethal and be done in a humane manner.*

For years, the Service's practice of sterilizing coyotes and managing coyote-wolf hybrid pairs, often referred to as the "red wolf adaptive management plan," was essential to the conservation of the wild red wolf population, as regularly recognized by the Service. In the 2007 Status Review, the Service asserted that: "We have effectively reduced inbreeding and coyote

gene introgression using the adaptive plan and associated non-invasive techniques, all with assistance from scientists on the Red Wolf Recovery Implementation Team." 2007 Status Review, Att. 1, at 10-11; *see also id*. at 31 ("Our adaptive management and monitoring efforts prior to 2006 effectively reduced the number of coyotes on the Albemarle Peninsula where the red wolf [wild population] occurs."). The Service concluded that "management of eastern coyotes on the Albemarle Peninsula continues to be necessary to further reduce the threat of coyote gene introgression into the red wolf NEP." 2007 Status Review, Att. 1, at 32. The Service again observed the success of its adaptive management protocol in 2014, when it concluded that: "Adaptive management efforts are making progress in reducing the threat of coyotes to the red wolf population in northeastern North Carolina." U.S. Fish & Wildlife Serv., *Red Wolf Recovery Program 2nd Quarter Report (January – March 2014)* at 2, Attachment 15. As recently as September 2015, the Service recognized the importance of managing coyotes in the Red Wolf Recovery Area, characterizing coyote sterilizations and the use of "placeholder" coyotes as effective techniques for reducing coyote-red wolf interbreeding. 2015 Biological Opinion, Att. 2, at 11-12.

This need to manage coyotes continues to be true, yet the Service inexplicably halted such efforts in 2015. A review of the best available science demonstrates that coyote sterilization and utilization of placeholders has and can continue to reduce coyote hybridization events. Justin H. Bohling et al., Describing and Developing Hybrid Zone Between Red Wolves and Coyotes in Eastern North Carolina, USA, 9 Evolutionary Applications 791, 801 (2016), Attachment 16; Eric M. Gese et al., Managing Hybridization of a Recovering Endangered Species: The Red Wolf Canis Rufus as a Case Study, 61 Current Zoology 191, 200 (2015), Attachment 17 (discussing "success of RWAMP at limiting introgression of coyote genes" and characterizing sterilization of coyotes and hybrids as "critical components" of adaptive management). Moreover, research has also shown that hybridization between red wolves and coyotes is not as widespread as is often thought, which suggests that the threat of coyote introgression may not be as severe as previously thought. E.g. Bohling et al., Att. 16 at 798 ("Based on our results, hybridization between red wolves and coyotes is infrequent relative to the proportion of the parental groups in the landscape."); Gese et al., Att. 17, at 200 (estimating an average ancestry of 96.5% for "all known, reproductively intact red wolves and introgressed individuals in the recovery zone in 2014"); Bohling & Waits (2015), Att. 13, at 112 (observing 30 hybrid litters and 126 red wolf litters from 2001 and 2013); Justin H. Bohling and Lisette P. Waits, Assessing the Prevalence of Hybridization Between Sympatric Canis Species Surrounding the Red Wolf (Canis Rufus) Recovery Area in North Carolina, 20 Molecular Ecology 2142, 2150 (2011), Attachment 18 (finding limited coyote-red wolf hybrids outside of the Red Wolf Recovery Area). As the wild red wolf population grows and stabilizes, it would likely be able to better withstand the encroachment of coyotes into red wolf territories, and in turn, further reduce potential hybridization events. Joseph W. Hinton et al., Space Use and Habitat Selection by Resident and Transient Red Wolves (Canis Rufus), PLoS ONE, Dec. 21, 2016, at 1, 13-14, Attachment 19 ("The findings from our study suggest that if the red wolf population increases and saturates the Recovery Area, the available space for coyotes would diminish and the number of transient wolves frequenting marginal habitats would increase. In doing so, transient red wolves would likely disrupt coyote territories in marginal habitats while biding for opportunities to acquire territories and mates.").

The best available science, including the Service's own past positive assessments of adaptive management, demonstrate that red wolf-coyote hybridization can be effectively managed through proven adaptive management practices. Management of coyotes will be key to the continued recovery of red wolves in the wild—including in the current recovery area and any new reintroduction sties. *E.g.* PVA, Att. 8, at 19 (concluding that effective coyote hybridization management tools—in combination with decreased mortality rates—decreases the wild red wolf population extinction risk to 16.2%). In order to comply with the ESA conservation mandate, The 10(j) rule revision must require the Service to resume coyote sterilizations and associated adaptive management techniques in order to manage red wolf and coyote hybridization events. Moreover, the Service should investigate and incorporate additional adaptive management strategies, such as selectively breeding red wolves to be larger in size and thus less likely to pair with coyotes, see generally Joseph W. Hinton & Michael J. Chamberlain, *Morphometrics of Canis taxa in Eastern North Carolina,* 95 J. of Mammalogy 855 (Aug. 2014), Attachment 20, and red wolf pup fostering, *e.g.* Joseph W. Hinton et al., *Effects of Anthropogenic Mortality on Critically Endangered Red Wolf Canis Rufus Breeding Pairs: Implications for Red Wolf Recovery*, Oryx, at 10 (Oct. 2015), Attachment 21 (describing multiple management strategies necessary to "ensure long-term persistence of red wolves").

The Service has demonstrated that red wolf-coyote hybridization can be effectively managed, and recent research reinforces this conclusion. A revised red wolf rule must include this established, effective population management tool.

E. A Revised Rule Must Reinstitute Red Wolf Releases into the Wild Population

The revised red wolf rule must also require regular releases of red wolves from the captive breeding program into the wild population. Conservation Groups recommend the following language:

> *(10) (i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrell, Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation. The Service shall introduce at least two captive born red wolves, or more pursuant to Red Wolf Species Survival Plan recommendations, to the Alligator River wild population, on federal or state lands, or on private lands where the landowners have provided permission to the Service for releasing red wolves, in order to bolster this population's chance of recovery in the wild. The Alligator River reintroduction site shall be maintained at least until another red wolf reintroduction site has been designated, established, and is determined to be contributing to the recovery of the species for ten years.*

The Service inexplicably terminated red wolf releases in June of 2015. This decision, however, conflicts with the best available science. The Red Wolf Population Viability Assessment determined that both the most realistic and the most effective management tool to recover the wild red wolf population must include red wolf releases. PVA, Att. 8, at 28-29. To secure the most sustainable wild red wolf population, the Service must release approximately 3-4 red wolves for 125 years. *Id*. at 24. Releases will not only benefit the wild red wolf population,

but the species as a whole. *Id*. at 21 ("releases will be needed . . . to ensure healthy future red wolf populations.") Moreover, releases are also necessary to make additional room in the currently space-limited captive population. When the captive population lacks rooms for additional animals, some captive wolves are prevented from reproducing which in turn impairs the wolves' future reproductive success. *Id*. at 4 ("This management results in the use of contraceptives, separating of pairs during the breeding season, and/or delayed or less frequent breeding opportunities for females"). Creating space in the captive program also enables movement of animals between breeding facilities for the purpose of maintaining genetic diversity in the population.

The Service itself appears to have recognized the need for releases within its September 2015 Biological Opinion, where it evaluated resuming reintroductions from the captive population to the wild population. *See generally* Att. 2. This Biological Opinion condoned releasing an average of two captive-born red wolves into the wild population in northeastern North Carolina. *Id.* at 16-17. Importantly, in contrast to the current ANPR's suggestion that removing wolves from the captive population would increase the captive population's extinction risk, the 2015 Biological Opinion concluded that "it appears that past releases have not adversely affected the captive population." *Id.* at 16. The Biological Opinion went on to conclude that the wild population of red wolves "directly benefit[s] [from releases] from a genetic diversity and population increase standpoint." *Id.* at 17.

Consistent with the Service's September 2015 Biological Opinion, this provision would require the Service to release two red wolves per year into the current wild population. The two-releases per year is a minimum, and especially initially, the Service should release more per year to help jumpstart renewed population growth in the wild population. The rule also explicitly requires the Service to confer with the Red Wolf Species Survival Plan in determining which individuals to release. This requirement will help ensure that the individuals released will be most beneficial to red wolf recovery in terms of genetic diversity, demography, and other considerations. The language also expressly allows for releases to occur on public lands or private lands where landowners have provided permission to the Service to conduct such releases.

F. A Revised Red Wolf Rule Must Specify Plans for Additional Reintroduction Sites

The Service has repeatedly stated its intention to identify additional reintroduction sites as envisioned by the Red Wolf Recovery Plan. *E.g.* 2007 Status Review, Att. 1, at 35. Because additional reintroduction sites are necessary for red wolf recovery, *see id.*, Conservation Groups propose the following language:

> *(10) . . .*
> *(iii) No later than 2019, the Service shall establish two additional reintroduction sites within the historic range of the species. These sites shall be monitored pursuant to paragraph (c)(11) and maintained for a minimum of ten years. During each of those years, the Service shall introduce at least two captive born red wolves, or more pursuant to Red Wolf Species Survival Plan*

recommendations, into each site to bolster the red wolf's chance of recovery in the wild.

As noted above, the Great Smoky Mountain reintroduction of red wolves lasted for seven years before it was declared a failure because of unsuitable habitat and other biological problems. Additional reintroduction sites must be identified and explored, but there should be no rush to "replace" the Alligator River National Wildlife Refuge site with a different location. Especially at this very early stage where no other sites have yet been identified, vague plans or possibilities that may someday happen should not be considered as appropriate alternatives for a tremendously successful population that has been in existence for 30 years.

IV. The National Environmental Policy Act Requires the Service to Complete a Full Environmental Impact Statement in Substantially Revising the Red Wolf Rule

In the ANPR, the Service notes the need to comply with NEPA, but does not specify the nature of the document it will prepare to evaluate its proposed rule and alternatives. Instead, the ANPR regularly refers to an "environmental review" without committing to completing the legally-required environmental impact statement under NEPA. *See, e.g.*, 82 Fed. Reg. at 23518 (stating the Service intends to "prepare a draft environmental review pursuant to [NEPA]"), 23519 ("The draft environmental review under NEPA will consider consequences of a range of reasonable alternatives to the proposed action."). Because of the substantial changes the Service is considering, and the wide-ranging impacts on the endangered red wolf, as well as northeastern North Carolina, the Service must complete a full environmental impact statement to thoroughly analyze and evaluate possible revisions to the red wolf rule.[3]

As an "action-forcing" statute, NEPA is designed to ensure the public and decision-makers are provided with the information they need to make a considered decision about the best path forward, and to ensure that the agency has carefully and fully contemplated the environmental effects of its proposed action. 40 C.F.R. § 1502.1; *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 601 (4th Cir. 2012) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Accordingly, an environmental impact statement must "serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." 40 C.F.R. § 1502.2(g).

NEPA requires agencies to complete an environmental impact statement for any proposed "major Federal action[ ] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Rules, regulations, or official policies of agencies, as well as adoption of programs to implement a particular policy or plan, are considered "federal actions" within the meaning of NEPA. 40 C.F.R. § 1508.18 (b). The Council on Environmental Quality has promulgated regulations directing agencies to consider certain "significance" factors in evaluating whether a proposed action triggers the environmental impact statement requirements of NEPA. Those factors include, among others, "[t]he degree to which the action

[3] Notably, Conservation Groups have already challenged the Service's failure to comply with NEPA in substantially revising its interpretation and implementation of the current red wolf rule. *See Red Wolf Coal. v. United States Fish & Wildlife Serv.*, No. 2:15-CV-42-BO, 2016 WL 5720660 (E.D.N.C. Sept. 29, 2016), Att. 9.

may adversely affect an endangered or threatened species", 40 C.F.R. § 1508.27(b)(9); "[t]he degree to which the action may establish a precedent for future actions", *id*. § 1508.27(b)(6); and "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," *id*. § 1508.27(b)(4). An action may be significant even if only one of these factors is met. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1220 (9th Cir. 2008).

Here, the Service's suggestions to revise the red wolf rule would constitute a major federal action with significant environmental consequences, thus necessitating a complete environmental impact statement under NEPA. Eliminating or restricting the wild red wolf population to a fraction of its current range would have a significant adverse effect on the endangered red wolf, as demonstrated throughout these comments. The Service's proposal is tantamount to condemning the wild population to extinction—and as such, the Service is required to complete a full environmental impact statement thoroughly analyzing the impacts and alternatives to its proposed action. The action also could set the dangerous precedent of allowing for the same type of de facto abandonment of recovery in the wild for other species. Furthermore, reducing or eliminating recovery of the only population of wild red wolves would also be highly controversial; as demonstrated by a recent poll, more than 70% of North Carolina voters, and more than 60% of voters residing within the recovery area, support recovering the red wolf. Memorandum from Tulchin Research, Polling Finds North Carolina Voters Strongly Back Red Wolf Recovery, at 1 (Aug. 17, 2016), Attachment 22; *see also* Letter from North Carolina Legislators to U.S. Dep't of Interior Sec. Sally Jewell (Aug. 29, 2016), Attachment 23 (letter from a bipartisan group of 27 North Carolina senators and representatives urging the Service to resume its previous management activities).

Anything less than a full environmental impact statement will fail to satisfy the requirements of NEPA. An environmental impact statement is necessary in order to fully evaluate the ramifications of the Service's ideas, to fully vet a variety of possible alternatives, and to provide the public and decisionmakers with needed information in order to make an informed decision.

V. Conclusion

The Service's suggestions in its ANPR would doom the wild population of red wolves and undo decades of red wolf recovery success. As outlined above, if the Service revises the red wolf rule, it must do so in furtherance of red wolf recovery. The wild population of red wolves is integral to the future success of red wolf conservation and must be maintained, not undermined, reduced or eliminated.

Sincerely,

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