United States Department of the Interior

FISH AND WILDLIFE SERVICE
300 Westgate Center Drive
Hadley, MA 01035-9589

In Reply Refer To:
FWS/Region 5/ES-TE

JUN - 9 2010

Mr. John M. Glowa, Sr.
30 Meadow Wood Drive
South China, Maine 04358

Dear Mr. Glowa:

This replies to the January 31, 2009, petition you submitted to the Secretary of Interior on behalf of yourself, Mr. Walter Pepperman, Ms. Christine Schadler, Mr. Joseph Butera, and Mr. Jonathan Way. The petition requests the Secretary to: (1) Regulate commerce or taking, and to treat as endangered or threatened species, coyotes, coyote/gray wolf hybrids, eastern wolves, eastern wolf/gray wolf hybrids, coyote/eastern wolf hybrids, and coyote/eastern wolf/gray wolf hybrids in the Northeast because of their close resemblance to the federally endangered gray wolf; (2) establish a northeastern gray wolf distinct population segment; and (3) develop and implement a northeastern gray wolf recovery plan. We received your petition on February 2, 2009.

Regarding your request for a similarity of appearance designation, section 4(b)(3) of the Endangered Species Act (ESA) allows any interested individual to petition the U.S. Fish and Wildlife Service (Service) to list, delist, or reclassify species, or revise a listed species' critical habitat. The similarity of appearance provision of the ESA, section 4(e), allows the Secretary to treat any species as an endangered or threatened species, even though it is not listed, if the species closely resembles a listed species and such treatment would facilitate the enforcement of the ESA. Because the petition provisions of the ESA are limited to listing, delisting, and reclassifying species and revising critical habitat, and because a similarity of appearance designation is not a listing, your requested action is not petitionable under the ESA. However, we consider your request for a similarity of appearance designation as a petition under the Administrative Procedure Act (APA).

As we stated in our July 9, 2008, letter to you regarding your previous petition dated August 24, 2007 (also requesting that we take this action), consideration of a similarity of appearance designation of coyotes and other wolf-like canids is premature. As a consequence of Service rulemakings and subsequent legal challenges and court decisions, and considerable new information, the delineation of appropriate gray wolf entities under the ESA has become very complicated. The Service, therefore, has initiated an analysis of the currently listed gray wolf entity. As part of this analysis, we are examining its taxonomic identity or identities, population

structure(s), and range(s). We are conducting a review of all of the available information regarding taxonomy of wolves in North America, and we are addressing significant policy questions related to the delineation of listable entities. In regard to the taxonomy of wolves in North America, we note that there have been 19 scientific articles published on this subject in just the past 2 years (since 2007). This analysis of the currently listed gray wolf entity is necessary to determine the need and appropriate scale(s) for recovery planning which will, in turn, help us determine whether restoration of a wolf population in the northeastern United States would be necessary for recovery of the listed entity. Because we have not yet determined whether restoration of a wolf population in the Northeast is necessary for recovery of the listed entity, it is premature to consider what actions might be effective, practicable, necessary, and advisable to achieve that objective. While we have made progress in this analysis, we have not yet completed it. For this reason, we have determined that a similarity of appearance designation is unwarranted at this time.

Concerning your request that we establish a northeastern gray wolf distinct population segment, we have issued a 90-day finding as required under section 4(b)(3)(A) of the ESA. This finding is scheduled to be published in the Federal Register on June 10, 2010.

You also requested that we develop and implement a northeastern gray wolf recovery plan. As noted above, section 4 of the ESA authorizes petitions to list, reclassify, or delist a species, and to amend existing critical habitat designations. Therefore, development and implementation of a recovery plan are not petitionable actions under the ESA. Section 553(e) of the APA provides interested parties the right to petition for the issuance, amendment, or repeal of a rule. Because recovery plans do not meet the definition of a rule or rulemaking, development and implementation of a recovery plan are not petitionable actions under the APA. However, as explained above, the Service is analyzing the currently listed gray wolf entity. When we complete this analysis, we will assess the need for additional recovery plan(s).

We appreciate and share your interest in the protection of the gray wolf. If you have any questions, please contact Paul R. Phifer, Ph.D., Assistant Regional Director, Ecological Services, at 413-253-8304, or Martin Miller, Chief, Division of Endangered Species, at 413-253-8615.

Sincerely,

Marvin E. Moriarty
Acting Regional Director