



January 7, 2014

Hope Grey  
Service Information Collection Clearance Officer  
Attn: FWS–HQ–ES–2013–N245;  
United States Fish and Wildlife Service  
MS 2042–PDM  
4401 N. Fairfax Drive  
Arlington, VA 22203

**Re: Proposed Information Collection; Endangered and Threatened Wildlife,  
Experimental Populations**

Please accept the following comments on behalf of the Center for Biological Diversity (Center) in response to the U.S. Fish and Wildlife Service (Service) Information Collection (IC) relating to experimental populations under Section 10(j) of the Endangered Species Act (ESA).<sup>1</sup> The Center strongly supports the continuation of this IC as the information that is collected is integral in fulfilling the objectives of Section 10(j) and achieving the overall goal of the ESA—to recover listed species to the point that they no longer need protection of the Act.

The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has more than 625,000 members and online activists dedicated to the protection and restoration of endangered species and wild places. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life. We appreciate the opportunity to provide comment.

Section 10(j) of the ESA is one of the most important tools to conserve critically endangered species in the United States because it allows the Services a mechanism to more easily restore threatened and endangered species to portions of their historic range where they have been extirpated. Congress added Section 10(j) in 1982 to address the Fish and Wildlife Service's (FWS) frustration over political opposition to reintroduction efforts perceived to conflict with human activity. Although the FWS already had authority to conserve threatened and endangered species by introducing it to areas outside their current range, Congress hoped the flexible management provisions of Section 10(j) would mitigate fears that experimental populations would conflict with development and economic activity, and even encourage private parties to host such populations on their lands.<sup>2</sup> By regulation, the FWS can identify experimental populations, determine whether such populations are essential or nonessential, and, consistent

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<sup>1</sup> Endangered Species Act, 16 U.S.C. § 1539(j) (1973).

<sup>2</sup> See *Wisconsin Farm Bureau v. v. Babbitt*, 199 F. 3d 1224 (10<sup>th</sup> Cir. 2000); See also, H.R.Rep. No. 97-567, at 8 (1982), reprinted in 1982 U.S.C.C.A.N. 2807, 2808, 2817.

with that determination, provide control mechanisms (including controlled takings) where the ESA would not otherwise permit take. Extensive regulations at 50 C.F.R. § 17.80 *et seq.* provide a detailed regulatory scheme governing each reintroduction tailored to local concerns.

Today, critically endangered species such as the Mexican wolf, red wolf, black-footed ferret, California condor, Guam rail, whooping crane, northern aplomado falcon, Boulder darter, woundfin, and others have all benefited by having experimental populations introduced into the wild as a result of a Section 10(j) reintroduction. Species like the Delmarva fox squirrel have benefited extensively from Section 10(j) reintroductions, and the squirrel is now approaching levels that may allow it to be delisted or downlisted in the next few years.

The IC that is proposed for renewal gathers three types of information: (1) information on general takes or removals, including unintentional takes incidental to lawful activities, (2) depredation-related take, (3) and specimen collection, recovery and reporting of dead individuals. This information is vital to the effectiveness of Section 10(j). As seen with both the Mexican wolf and the red wolf reintroductions, human-caused take is the primary factor that is thwarting recovery efforts for these species in the wild. For example, in 2013, approximately 12 red wolves—out of a wild population of 100—have been killed, mostly through illegal take. Therefore, all information relating to take—intentional, incidental, and unpermitted—is critical for scientifically addressing the threats to this species. Likewise, depredation-related take is a very important consideration regarding the recovery of the Mexican wolf, where there is substantial livestock conflict. Without reporting requirements for take of all dead individuals of experimental populations, it is much more difficult to develop a responsive recovery program for these species.

Finally, the costs of this IC are minimal and impose virtually no burden on the public. As both Congress and the Supreme Court observed, the ESA requires that all agencies of the federal government work to protect and conserve endangered species at “whatever the cost.”<sup>3</sup> This *de minimis* IC collects critically important information at almost no cost and should be continued into the future.

Sincerely,



Brett Hartl  
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<sup>3</sup> *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978)