

**NATIONAL PARKS CONSERVATION ASSOCIATION'S PETITION TO THE  
SECRETARY OF INTERIOR, THE DIRECTOR OF NATIONAL PARK SERVICE AND  
THE SUPERINTENDENT OF JOHN D. ROCKEFELLER, JR. MEMORIAL PARKWAY  
SEEKING RULE-MAKING TO GOVERN HUNTING OF WOLVES AND OTHER  
WILDLIFE THERE TO COMPLY WITH 36 C.F.R. § 2.2**

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**NATIONAL PARKS CONSERVATION ASSOCIATION’S PETITION FOR RULE-  
MAKING TO GOVERN HUNTING IN THE JOHN D. ROCKEFELLER, JR.  
MEMORIAL PARKWAY**

National Parks Conservation Association (“NPCA”) petitions the Secretary of the Interior (the “Secretary”), the Director of National Park Service (“NPS”) and the Superintendent of the John D. Rockefeller, Jr. Memorial Parkway (“JDR”) (the “Superintendent”) to adopt special regulations to govern hunting at JDR. This petition is submitted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), and Department of the Interior regulations, 43 C.F.R. Part 14, which give interested persons the right to petition federal agencies to adopt regulations. The text of the proposed special regulations can be found in the Attachment to this petition.<sup>1</sup>

**SUMMARY**

JDR is federally-owned land that is part of the National Park System. As such, NPS has the responsibility and the authority to preserve the wildlife there and otherwise to manage it. That responsibility includes deciding under 36 C.F.R. § 2.2 (“Rule 2.2”) what hunting to permit there, under an exception in JDR’s Enabling Act from the more general prohibition on hunting in the National Park System. However, in connection with the U.S. Fish and Wildlife Service’s (“FWS”) removal of the gray wolf (“wolves”) in Wyoming from the list of endangered and threatened species, the State of Wyoming has “assumed control” of managing wolf populations in JDR, as the State advised FWS, and asserts that the State will determine whether, when and how wolves may be hunted there. NPS has tried repeatedly to convince the State to recognize NPS’s ultimate authority over JDR’s wolves, but the State has declined to do so.

The State argues that it has concurrent jurisdiction with the federal government over JDR’s wildlife and that no federal law has preempted the State’s authority over hunting there. The State also argues that it manages all other game species in JDR and that NPS has recognized the State’s authority to do so in the applicable Superintendent’s Compendium. The State also bases its position on a provision of the legislation establishing JDR that provides that the Secretary “shall” permit hunting there “in accordance with applicable laws of the United States and the State of Wyoming” and subject to other powers of NPS to close areas and periods to such hunting.

The State is wrong. Congress intended and mandated, and Rule 2.2 requires, that NPS administer JDR and that NPS determine what hunting would conflict with the purposes for which JDR was established. The very fact of the State’s assumption of control over wolves in JDR is therefore an interference with NPS’s overall management role there and in Yellowstone and Grand Teton National Parks. NPS must exercise its professional judgment about the killing of wolves there, taking into account the “symbolic and physical connection” JDR provides between Yellowstone and Grand Teton (a purpose stated in JDR’s Enabling Act), the highly significant national role played by both of those parks and the role played by wolves in those parks. The

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<sup>1</sup> We will provide copies of the non-public materials cited here. Those materials include documents produced by NPS and by FWS pursuant to FOIA requests.

Wyoming Game and Fish Department (“WGFD”) has no such power or responsibility and lacks NPS’s park management expertise needed to make such overall determinations.

However, the State does recognize that it may not adopt any law or rule that would be inconsistent with or undermine the purpose of any federal law or rule, and that such a federal law or rule would preempt the State one. While the State does not accept that its assumption of control over wolves in JDR is itself inconsistent with the provisions and purposes of federal laws, the debate about NPS’s primacy would be put to an end by NPS’s granting this petition and adopting a special regulation to control hunting in JDR.

NPS undoubtedly has the power to adopt such a regulation. Among other things, the same clause on which the State relies, providing that hunting would be permitted “in accordance with applicable laws of the United States and the State of Wyoming,” accords applicable federal laws no lesser standing than those of the State. If the State may regulate hunting under that clause, then so can the federal government. Moreover, the statutory text and history in no way suggest that Congress intended, by directing the Secretary to permit hunting, to include the killing of a species not usually considered a “game” animal in order to control its numbers, which is the stated purpose of WGFD’s Wolf Management Plan. Other laws, such as 16 U.S.C. § 3, address killing of wildlife for that purpose.

Not only does NPS have the power to adopt such a regulation, but NPS may not legally permit hunting where it is discretionary, as here, unless NPS has adopted a special regulation and then only, among other things, “if the superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles.” Rule 2.2(b)(2). NPS explained when it proposed this rule that such a determination should include consideration of whether the hunting in question would be “compatible with the primary objectives for which the park area was established.” 47 Fed. Reg. 11598, 11601 (March 17, 1982). The purpose for which JDR was made part of the National Park System was, in part, “to provide both a symbolic and desirable physical connection between the world’s first national park, Yellowstone, and the Grand Teton National Park,…” Enabling Act, Preamble.

The Secretary, the NPS and the Superintendent all have the responsibility to assure that JDR, the “symbolic” and physical link between Yellowstone and Grand Teton, does not become another killing ground for these iconic symbols of both of those parks. The wolf has become “a showcase animal” in Yellowstone, “attracting visitors just for the purpose of wolf watching.”<sup>2</sup> In Grand Teton, “visitors had consistently cited wildlife viewing as the primary draw to the park, and viewing wolves is of great interest.”<sup>3</sup> It is a goal of Grand Teton “to maintain wolves as part of the natural ecological landscape in that park,…”<sup>4</sup> Moreover, numerous studies have shown that the reintroduction of the wolf has had a major beneficial impact on the entire Greater Yellowstone Ecosystem. The most recent wolf hunting season, however, has reportedly reduced the Yellowstone wolf population by about 25%, in light of permissible shooting of wolves wandering outside Yellowstone’s boundaries, including highly popular individual wolves and

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<sup>2</sup> NPS, Yellowstone National Park Winter Use Plan/Environmental Impact Statement (Feb. 2013) at 114.

<sup>3</sup> Letter from Grand Teton Superintendent to Wyoming Game and Fish Department, Sept. 6, 2011.

<sup>4</sup> *Id.*

collared individuals that were being monitored in connection with NPS studies.<sup>5</sup> JDR should not become another killing ground for these iconic animals.

NPS is currently in violation of Rule 2.2 in other respects in JDR and needs to commence a process promptly to bring itself into compliance with that rule, a process that should include addressing the wolf-hunting issue and presumably prohibiting such hunting. The Superintendent's Compendium does say hunting of elk and other species in JDR is permitted as authorized by the State, but Rule 2.2 does not permit such action by Compendium, requiring special regulations adopted under the Administrative Procedure Act. Moreover, Rule 2.2 prohibits hunting unless the Superintendent can make and has made the determinations required by that rule.

Accordingly, NPS must commence a rulemaking process under Rule 2.2 if it is to continue to permit hunting of elk or waterfowl in JDR, which NPCA does not oppose if the appropriate determinations are made and regulations adopted. But that regulation should make clear that wolves may not be hunted there. The regulation should address any other hunting management issues NPS believes appropriate, while incorporating laws and regulations of the State concerning hunting that NPS believes appropriate, such as licensing requirements for hunters and/or hunting seasons.

Meanwhile, while the Superintendent's Compendium does not now comply with Rule 2.2, NPCA urges the Superintendent nevertheless as an interim measure to revise the provision relating to hunting on which the State relies (page 9) to make clear it is only an interim measure and that, until a regulation can be adopted addressing the issue, hunting of wolves and any other species not expressly permitted there is prohibited.

## **I. FACTUAL BACKGROUND**

### **A. NPCA**

NPCA is a non-profit organization with a primary mission to protect and enhance America's national parks for present and future generations. As the nation's largest membership organization dedicated solely to national parks, NPCA represents a broad array of existing and potential park users. NPCA has approximately 750,000 members and other supporters nationwide, with more than 1500 members in the State of Wyoming. NPCA members frequently visit, use, and enjoy Yellowstone, Grand Teton and JDR, including watching wolves found there and enjoying the enhanced ecosystem that has resulted from the wolves' presence there, as discussed below. NPCA is "an interested person" entitled to submit this rulemaking petition under 5 U.S.C. § 553(e).

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<sup>5</sup> M. Koshmrl, "Y'stone Wolves Down 25%," *Jackson Hole News and Guide*, Jan. 16, 2013, [http://www.jhnewsandguide.com/article.php?art\\_id=9452](http://www.jhnewsandguide.com/article.php?art_id=9452).

## **B. The Delisting of Wyoming's Wolves**

FWS has long sought to delist Wyoming's wolves based on a State plan to manage the wolf population in order to maintain a viable population there, but years of litigation forestalled the delisting until 2012. A principal issue in the litigation has been the adequacy of the State's management plan. In the processing of the FWS 2012 delisting action, the issue of State versus NPS authority to manage wolf hunting in JDR following delisting, as well as within in-holdings at Grand Teton, was debated.<sup>6</sup> But NPS was not able to convince the State that NPS has the primary role of protecting JDR's wildlife and determining whether or not wolves may be hunted there.

### **1. WGFD Proposes Its Wolf Management Plan**

In the summer of 2011, FWS and representatives of the State of Wyoming apparently reached basic agreement about the terms of WGFD's Wolf Management Plan. WGFD then released its proposed plan for public comment. That plan stated that WGFD would manage the wolf population in the State by establishing geographic areas and giving the wolf a status that depends on the area. One such area was called the Wolf Trophy Game Management Area (the "WTGMA"). Wolves there would be managed by the State as a "trophy game animal," eligible for State-regulated hunting. Trophy game status allows Wyoming state agencies to regulate the methods of take, hunting seasons and numbers of wolves that could be killed. 76 Fed. Reg. 61782, 61801 (Oct. 5, 2011). State law would establish the boundaries of the WTGMA. The WGFD would develop the annual hunt plan, establishing annual harvest quotas that will maintain an "adequate buffer above minimum population objectives to provide management flexibility." *Id.*

The proposed plan set forth the area of the WTGMA in a map. While that map excluded Yellowstone and the Wind River Indian Reservation ("WRIR") from the WTGMA, the map included JDR and Grand Teton within that management area. Moreover, while the Plan stated that the WGFD "does not have authority to manage wolves" within the boundaries of [Yellowstone] or [WRIR]", no comparable statement was made as to the authority of the State within JDR.

The Superintendent of Grand Teton, who also administers JDR, commented to WGFD by letter of September 6, 2011. She stated that, while WGFD would count wolves in Grand Teton towards management objectives, the Plan should clarify that "monitoring and management of wolves within [Grand Teton] remain the responsibility of" NPS. She explained that wolves had become established in Grand Teton shortly after they were reintroduced into Yellowstone, and that six wolf packs had used portions of Grand Teton in the prior three years. Grand Teton "visitors had consistently cited wildlife viewing as the primary draw to the park, and viewing wolves is of great interest. Our goal is to maintain wolves as part of the natural ecological landscape in the park,...." She also asked that JDR be left outside any hunt area, because it

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<sup>6</sup> Congress required Wyoming to cede exclusive jurisdiction over Yellowstone at the time Wyoming became a State, so Wyoming has not asserted authority as to that park.

connects Yellowstone and Grand Teton and “[m]aintaining connectivity between the two parks is an important conservation goal.”

## 2. The State Makes Its Authority Argument to FWS

By letter dated September 23, 2011, the FWS advised the Wyoming Governor that FWS “will rely on the approved plan and other available information to proceed with a proposed rule to delist wolves in Wyoming,” pending conforming legislative and regulatory changes. On October 5, 2011, FWS published for comments its proposed wolf delisting rule amendment. 76 Fed. Reg. 61782. FWS referred to “National Parks” as areas where wolves would be protected, but it was at best unclear whether that phrase included JDR. *See, e.g.*, 76 Fed. Reg. at 61801 (wolves will be “permanently managed as game animals or protected (*e.g.*, in National Parks)”); 61802 (“[n]o legal hunting or trapping will occur in [Yellowstone], Grand Teton National Park, or the National Elk Refuge,” thereby omitting reference to JDR).

Because the State’s authority was then already a subject of ongoing debate between NPS and the State, FWS sought clarification. On October 14, 2011, the State sent FWS a package of materials arguing its position. A two-page document (the “Wyoming Position Paper”) summarized that argument. Also included was a 1958 Opinion of the Wyoming Attorney General concerning WGFD’s authority to manage wildlife in Grand Teton (the “Wyoming Opinion”). The Wyoming Position Paper argued that WGFD has management authority over wolves in JDR instead of NPS because the State currently administers hunting of other game species in JDR, that JDR’s Enabling Act contemplated that the State would do so and that the State’s doing so was consistent with the objectives of JDR’s 1984 General Management Plan and with the Superintendent’s July 26, 2011 Compendium. In addition, the paper argued, based on the Wyoming Opinion that the State has concurrent jurisdiction in JDR because it had not ceded jurisdiction to the Federal Government. The Wyoming Position Paper also argued that the State had wolf management authority over wolves in in-holdings at Grand Teton.

Wyoming Governor Mead took the same positions in his January 13, 2012 comments to FWS. In those comments, the State staked out an aggressive position as to its authority. The State stated that JDR “is open to public hunting in accordance with Federal and State laws and regulations, and the Parkway’s General Management Plan.” Therefore, the State asked FWS to “acknowledge the State’s authority to set hunting seasons and other limitations for game species, including wolves, within the Parkway unit,” and that this “acknowledgement” should be repeated throughout the FWS final rule-promulgating release. (page 5).

NPS also commented to FWS briefly on its delisting proposal, by letter of January 13, 2012. NPS did not take a strong position in support of its authority at JDR, however. The letter stated that, while hunting is permissible in JDR, NPS “prefers” not to allow wolf hunting there. If wolf management goals could not be met outside those areas, NPS would “consider[] all options within its authority.”



### **3. NPCA Rebutts the State's Arguments and Urges NPS Action to Assert Its Authority Over National Park System Wolves**

NPCA also commented to FWS on its proposed delisting. In its January 6, 2012 letter, NPCA asked that FWS not act unless and until the WGFD's Plan was revised to delete Grand Teton and JDR from the WTGMA and to acknowledge that NPS has sole authority to manage the wolf populations there.

NPCA also wrote to FWS again on January 24, 2012 and to NPS on February 8, 2012 concerning this jurisdictional issue. Attaching Governor Mead's comment letter to FWS, NPCA stated it strongly disagrees with Governor Mead's assertion of authority over wolf populations in the National Park System units. In addition, in its letter to NPS, NPCA expressed concern that, as it had recently become aware, the State was permitting hunting of other species in JDR, and that NPS had taken no action to regulate it notwithstanding that it is contrary to Rule 2.2. NPCA urged NPS to bring itself into compliance at an early date and to take control of the wolf hunting issue.

### **4. WGFD Reasserts Its Authority Over Wolf Hunting on Federal Land, Rejecting NPS's Contrary Position**

On March 5, 2012, WGFD responded to the foregoing developments by making its assertion of authority even more clear. WGFD issued for comment a draft Addendum to its Plan. Among other things, WGFD stated that its proposed Addendum set forth more details about management authority for wolves in different jurisdictions. In the draft Addendum, WGFD stated that Wyoming has "management authority over all wolves in Wyoming except for wolves in ... Yellowstone ... [and] lands administered by [NPS] within Grand Teton ...." No exception was made for JDR. The State's clear position was that it has the unilateral authority to permit wolf-hunts in the JDR.

On March 19, 2012, NPS wrote WGFD, commenting on the proposed Addendum. NPS asked WGFD to add a statement that "NPS retains final authority on wolf hunting within [JDR] and will continue to work collaboratively with [WGFD] on mutual wolf management objectives." NPS sent a copy to FWS as well.

NPCA also commented by letters of March 19, 2012 to WGFD and FWS. NPCA urged WGFD not to take the position that it has management authority over wolves found on in-holdings in Grand Teton or in JDR. NPCA urged FWS not to sanction such a claim.

On March 22, 2012, however, WGFD adopted the Addendum without change in relevant respects, effectively ignoring NPS's proposed change. On March 7, 2012, Governor Mead signed legislation implementing the WGFD Plan as revised by the Addendum (the "2012 Plan"). 2012 Wyo. Sess. Laws Ch. 25 (S.F. 41).

On April 20, 2012, NPS commented to WGFD on proposed regulations relating to wolf hunting, which asserted that the State has "management authority for gray wolves" in the state, with exceptions not including JDR. NPS commented by referring again to its March 19, 2012 comment letter on the Addendum. NPS stated that nothing in the WGFD Plan "alters or in any way affects the jurisdiction or authority of the State or the NPS with respect to regulation of

hunting on any unit of the NPS including [JDR].” On April 25, 2012, however, WGFD adopted regulations implementing that legislation and that Plan, without change in relevant respects. 47 Wyo. Game and Fish Comm. Regs. § 1 *et seq.*

**5. NPS Privately Commits to Exercising “Sole Authority” Over Wolf Hunting in Grand Teton and JDR**

By letter of March 8, 2012, NPS Regional Director John Wessels responded to a private letter concerning the jurisdictional issue by stating that NPS is “deeply committed to ensuring that, within Grand Teton National Park and [JDR], the National Park Service exercises its sole authority over the management of wolves and other wildlife in accordance with its statutory responsibilities under the NPS Organic Act.”<sup>7</sup> No wolf hunting would be permitted in Grand Teton, said the letter, and “it is our strong preference that wolves not be hunted” in JDR.

**6. The State Concedes and FWS Finds That Federal Law Preempts State Authority Over Wolf Hunting Within Grand Teton but Not Within JDR**

On May 1, 2012, FWS reopened the comment period on its delisting proposal. 77 Fed. Reg. 25664. Implicitly acknowledging the jurisdictional dispute, FWS stated that its proposed delisting action would not affect “[w]hatever jurisdiction or authority the State and the respective Services had to authorize, prohibit, or regulate hunting in” any unit of the National Park System. *Id.* at 25667. On May 12, 2012, Governor Mead commented on the FWS notice. While finally conceding that the State lacks authority to regulate wolves on in-holdings within Grand Teton, the State made no such concession as to JDR. Instead, the letter stated that “[i]f in the future [WGFD] intends to establish wolf hunts in [JDR], they will work with [NPS] in accordance with state and federal law.” (page 4).

On September 10, 2012, FWS finalized its delisting action. 77 Fed. Reg. 55530. FWS repeated that its action had no effect on the jurisdictional issue and stated that it was not purporting to delegate any authority to the State for the management of wolves. FWS took a position as to wolf hunting within Grand Teton, however. FWS stated that, although WGFD’s 2012 Plan claimed authority over wolf management and hunting on in-holdings at Grand Teton, “hunting of wolves on those inholdings would not be allowed because hunting within Grand Teton National Park is not authorized by federal law, and is therefore prohibited. Title 36 of the Code of Federal Regulations makes clear that the hunting prohibition is applicable on all lands within the park boundary, regardless of ownership. Therefore, taking of wolves would not be allowed on any of the inholdings within the park.” *Id.* at 55560.

As to JDR, however, FWS merely repeated NPS’s “strong preference” against wolf hunting there. *Id.* FWS stated that hunting of other species there is currently allowed, and that, while Wyoming might permit wolf hunting there in the future, it would be “closely coordinated” with NPS. *Id.*

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<sup>7</sup> The date on the letter, produced by FWS to NPCA pursuant to FOIA, is stated to be March 8, “2011,” but the context makes clear it was actually 2012.

**7. WGFD Determines Not to Permit Wolf Hunting in JDR, at Least Temporarily, but the Initial Wyoming Wolf Hunting Season Results in Substantial Impact on Wolf Populations in Its National Parks**

WGFD determined not to permit wolf hunting in JDR or Grand Teton in the first wolf-hunting season. Nevertheless, wolves from these parks and from Yellowstone were killed as they wandered outside the park boundaries. Such kills reportedly amounted to 25% of the population of Yellowstone, causing a nation-wide outcry. *See, e.g.*, M. Koshmrl, “Y’stone Wolves Down 25%,” *Jackson Hole News and Guide*, Jan. 16, 2013; [http://www.jhnewsandguide.com/article.php?art\\_id=9452](http://www.jhnewsandguide.com/article.php?art_id=9452); J. Glionna, “Popular Wolf Killed by Hunters in Yellowstone,” *Los Angeles Times*, Dec. 11, 2012, <http://articles.latimes.com/2012/dec/11/nation/la-na-nn-popular-wolf-killed-yellowstone-20121211>; N. Schweber, “Famous Wolf Is Killed Outside Yellowstone,” *NY Times*, Dec. 9, 2012, at A34.

A Yellowstone biologist expressed his alarm at the season’s impacts on park wolves. He said that a number of the wolves killed “were instrumental to our Winter Study research, with staff hired specifically for research and monitoring.” Collared wolves were among those killed, and those collars “were instrumental to significant [Yellowstone] research.” One wolf killed in Wyoming had been part of the Snake River pack south of Yellowstone. That wolf had only recently been collared and researchers now could no longer monitor that pack, about which little was known, he said. Nov. 14, 2012 Email from Dr. Dan Stahler.

**II. THE REASONS FOR GRANTING THIS PETITION**

NPS has tried to convince the State by persuasion that NPS has “sole authority” over wolf hunting within JDR, but the State has continued to assert that it instead has the primary authority in that regard, even as it concedes NPS has such authority within Grand Teton. The State’s assurance to FWS that WGFD would consult with NPS about WGFD’s decision concerning JDR wolf hunts is of no comfort, and indeed the State has it exactly backwards. It is NPS that has the authority and the responsibility to manage JDR as well as Grand Teton. Nevertheless, it appears that the only thing that would convince the State to defer to NPS in this regard is for NPS to use its unquestioned authority to adopt a regulation making clear that wolf hunting is not permitted in JDR and that that issue is under the control of NPS.

**A. The Secretary, NPS and the Superintendent Have the Responsibility and the Power to Protect Yellowstone, Grand Teton and JDR by Protecting Their Wolf Populations from being Killed in JDR, but NPS Needs to Act**

The State argues that it has sovereign jurisdiction over wildlife within the State, including within JDR. The State has made that assertion before, and it was rejected by the Courts.<sup>8</sup> The

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<sup>8</sup> In *Wyoming v. United States*, 279 F. 3d 1214 (10th Cir. 2002), the Court of Appeals rejected Wyoming’s argument that it had “sovereign authority” over wildlife within its borders, even in a national wildlife refuge. The district court had held that the State “does not have the sovereign power to manage wildlife on Federal lands.” 279 F. 3d at 1223. The Court of Appeals agreed, finding that, while the states have possessed broad powers over wildlife within their borders, that power is not Constitutionally based; instead, the U.S. Constitution’s Property

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State therefore relies primarily here on one subsection of JDR's Enabling Act. Notwithstanding NPS's broad authority under that Act and the Organic Act, the State appears to argue that no federal law would be impacted by the State's controlling, or even allowing, the killing of wolves in JDR. The State also appears to argue that JDR's Enabling Act delegated that authority to the State and that JDR's General Management Plan or Superintendent's Compendium acknowledge the State's authority in this respect. Those arguments do not withstand analysis, however. To the contrary, NPS has the authority and the responsibility under the Organic Act, the Enabling Act and Rule 2.2 to exercise ultimate decision-making authority over the wolves within JDR.

**1. Subsection 3(b) of the JDR Enabling Act Does not Delegate Any Authority to the State or Mandate Hunting in JDR**

The State places heavy reliance in the Wyoming Position Paper on Section 3(b) of the JDR Enabling Act, Public Law 92-404, 86 Stat. 619 (1972). That subsection provides:

- (b) The Secretary shall permit hunting and fishing within the area described by section 1(a) of this Act in accordance with applicable laws of the United States and the State of Wyoming, except that the Secretary may designate zones where, and periods when, no hunting or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department.

The State appears to argue that this provision mandates hunting and leaves to the State to decide what species would be hunted, among other things. But such an argument is untenable.

First, Section 3(b) is not a stand-alone statute. It is part of and must be understood together with the whole Enabling Act, Section 3(a) of which provides that the "Secretary shall administer [JDR] as a unit of the national park system in accordance with the authority contained in [16 U.S.C. § 1], as amended and supplemented." *See also* 16 U.S.C. § 1a-1 (National Park System is one unified whole). NPS Management Policies recognize that among the resources and values to be so protected under the Organic Act's mandate are "the park's . . . wildlife, and the biological processes and conditions that sustain them . . ." In addition, those resources and values include "the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit

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Clause "delegates to Congress" the power to make all needful rules governing federally owned land. Congress' power in this regard is "plenary," explained the Court. While a state may have concurrent jurisdiction, that jurisdiction "does not extend to any matter that is not consistent with the full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." 297 F. 3d at 1227 (quoting the U.S. Supreme Court). Moreover, federal laws and their policies and objectives "necessarily override and preempt conflicting state laws, policies, and objectives" and — indeed — a "different rule would place the public domain of the United States completely at the mercy of [the State]." *Id.* (quoting from other U.S. Supreme Court rulings). *See also, to the same effect, Kleppe v. New Mexico*, 426 U.S. 529 (1976).

and inspiration provided by the national park system.” Management Policies § 1.4.6. It is therefore NPS, under the Secretary, that has the power to manage JDR, and the manner of such administration is provided for in the Organic Act, as elaborated in these Management Policies. The wildlife within the National Park System is an integral part of the resources of such places, and Congress has expressly mandated that NPS manage such places so as to preserve their wildlife. 16 U.S.C. § 1. Accordingly, hunting of wildlife there is prohibited except as Congress has otherwise expressly provided. Section 3(b) of the Enabling Act is such an exception, but it would be wrong to read it to mandate that anyone may hunt or kill any or all species of wildlife there. The subsection instead merely opens the door to hunting, otherwise closed in all National Park System units without such a provision, but leaving to other determinations the question of what hunting is to be allowed.

This is made clear in the subsection itself. First, it states that the Secretary shall permit hunting and fishing, making clear that it is the Secretary who has such power. The last sentence of Section 3(b) accordingly calls for the Secretary to consult with the State in exercising what are the Secretary’s powers under that provision, not the other way around as the State has argued. Next, the opening sentence of the subsection continues that the Secretary and NPS are to permit hunting and fishing “in accordance with applicable laws of the United States and the State of Wyoming.” In other words, laws of the United States may control such hunting at least to the same extent as the laws of Wyoming may do so. And the applicable laws include the Organic Act and NPS regulations adopted thereunder, including Rule 2.2. That Rule 2.2 represents NPS’s determination as to how the hunting allowed and the wildlife preservation mandate of the Organic Act are to be balanced. We discuss that rule and that balance below.

There is another reason the State’s arguments that Section 3(b) mandates, or even permits, the “hunting” at issue here are wrong. Section 3(b) cannot fairly be read to authorize the killing of wolves to control their numbers. Killing for such a purpose is different from the type of hunting of game contemplated by Congress in adopting Section 3(b). Congress understood that elk and other game animals had previously been hunted in the federal land that became JDR, and Congress chose to exempt such hunting from the general rule against hunting in the National Park System. In its Plan, however, WGFD described the purpose for which it will regulate “regulated public harvest” of wolves in the WTGMA, which includes JDR. “Regulated public harvest will be used to manage the wolf population in the WTGMA. The primary purpose of regulated public harvest of wolves in Wyoming will be to manage the wolf population and alleviate conflicts with livestock, domesticated animals, and unacceptable impacts to big game.” WGFD Plan at 23.<sup>9</sup> This is not hunting game for sport and food but killing wolves to control their numbers.<sup>10</sup> When Congress wanted to authorize killing of animals to control their numbers, it knew how to say so. *See* 16 U.S.C. § 673c (authorizing elk to be

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<sup>9</sup> One member of FWS’s Peer Review Panel read this to mean that Wyoming would manage to “control wolf abundance.” FWS, “Final Wyoming Gray Wolf Peer Review Panel Summary Report,” December 2011 (Atkins Project No. 100023591), at A-16; FWS, “Final Peer Review of Four Documents Amending and Clarifying the Wyoming Gray Wolf Management Plan,” May 2012, at 70-77 (finding State’s “clarification” not to clarify in this respect).

<sup>10</sup> Indeed, while WGFD’s Plan does commit the State to limit the number of wolves killed in the WTGMA, the Plan permits the killing of wolves elsewhere in Wyoming as “predators.”

“killed” in Grand Teton “when a reduction in [their] numbers” is authorized by the State and the Federal Governments); 16 U.S.C. § 3 (NPS may provide for “the destruction of such animals . . . as may be detrimental to the use of” National Park System units). Section 3(b) of JDR’s Enabling Act therefore may not be read to authorize killing of wolves to control their numbers.

Accordingly, Section 3(b) of the Enabling Act does not mandate all hunting of all species of wildlife. Instead, that subsection merely creates an exception to the otherwise applicable Organic Act prohibition on any hunting, while leaving to NPS the job of deciding the parameters of such hunting based on other state and federal laws.

## **2. The State’s Exercise of Control Over Wolf Hunting in JDR Would Significantly Interfere with NPS’s Responsibility for Its Overall Management**

The State also argues that WGFD “determined that the State would assume management authority over wolves” because of its view of the intent of Section 3(b), discussed above, because the Federal Government does not have exclusive jurisdiction at JDR and because “federal law has not preempted authority in this regard.” Wyoming Position Paper at 1. The State cites in support the fact that it currently administers hunting for “all game species” there.

The State concedes that Federal statutes and regulations take precedence over inconsistent laws of the State. The Wyoming Opinion states that Wyoming’s concurrent jurisdiction over Grand Teton, the park at issue there, was “limited to the extent that Wyoming law must not handicap national purposes or impair the use of the park property for such purposes.” Wyoming Opinion, at 2-3. Wyoming law may not “conflict with federal law or regulation” and “may not impair the purpose for which the park was created nor conflict with existing federal management law or regulation.” *Id.* at 5. State laws accordingly must not be inconsistent with or interfere with the purposes of Federal laws. Nevertheless, the State argues that neither recognizing WGFD as the agency to control JDR wolf hunting nor its permitting killing of wolves there would be inconsistent with any such laws or would interfere with their purpose.

That argument ignores NPS’s responsibility for the overall management of JDR and its need to exercise management control over its wolves in order to carry out that responsibility. That argument also fails to recognize the critical role played by wolves in Yellowstone and Grand Teton and in JDR as the link between them. Congress made clear in JDR’s Enabling Act that the purpose of JDR was to “commemorat[e] the many significant contributions to the cause of conservation in the United States” of John D. Rockefeller, Jr. and “to provide both a symbolic and desirable physical connection between the world’s first national park, Yellowstone, and the Grand Teton National Park...” Pub. L. 92-404, Preamble (emphasis added). Congress also explained what it intended by Section 3(b) in the legislative history of that Act. The House Report explained that “the Secretary shall permit hunting and fishing insofar as such activities do not conflict with the purposes for which the area is established.” H. Rep. No. 92-1237, at 5 (1972) (emphasis added).

Accordingly, Congress intended and mandated that NPS administer JDR and that NPS determine what hunting would conflict with the purposes for which JDR was established. To do

so, NPS must exercise its professional judgment about the killing of wolves there, taking into account the “symbolic and physical connection” JDR provides between Grand Teton and Yellowstone and the highly significant national role played by both of those parks. WGFD has no such power or responsibility and lacks NPS’s park management expertise to make such overall determinations. The very fact of the State’s control over wolves in JDR is therefore an interference with NPS’s overall management role there.

### **3. Allowing Killing of Wolves in JDR Would Be Inconsistent with NPS’s Responsibilities for the Management of JDR, Yellowstone and Grand Teton**

Because JDR is both the physical and symbolic link between Yellowstone and Grand Teton, NPS must evaluate wolf hunting in JDR, not as if it were some stand-alone unit segregated from others, but as an integral part of the wider whole consisting of all three units. Allowing hunting of wolves in JDR would be inconsistent with NPS’s responsibilities for the management of that wider whole.

The NPS *Yellowstone Wolf Project Annual Report* for 2011 explained that “[b]ecause of its large size and the abundant prey, the Greater Yellowstone Area (GYA) was identified in the recovery plan as one of three areas where the recovery of wolf populations had a good chance of succeeding.” NPS, *Yellowstone Wolf Project Annual Report* (2011), at iv. JDR was included in the 1987 Recovery Plan GYA Recovery Area. FWS, “Documented 2011 Greater Yellowstone Area Wolf Pack Distribution” (2012) (“FWS 2011 Wolf Pack Distribution”).<sup>11</sup> Wolves were reintroduced into Yellowstone between 1995 and 1997. Wolves quickly became established in Grand Teton as well. *See* Letter, Grand Teton Superintendent to WGFD, Sept. 6, 2011.

By 2011, wolf packs were known to occupy all three of these park units. *See* FWS 2011 Wolf Pack Distribution. “After reintroduction, wolves quickly became a showcase animal in Lamar Valley, readily visible from the wheeled vehicle route, and attracting visitors just for the purpose of wolf watching.” NPS, *Yellowstone National Park Winter Use Plan/Environmental Impact Statement* (Feb. 2013), at 114. *See also* WGFD’s 2012 Wyoming Gray Wolf Population Monitoring and Management Report, at 26 (“Lamar Valley has become the premier location worldwide to observe free-ranging wolves.”). As Grand Teton’s Superintendent Mary Gibson Scott has described, six wolf packs have used portions of Grand Teton in the prior three years. *See* Letter, Grand Teton Superintendent to WGFD, Sept. 6, 2011. Indeed, Grand Teton “visitors had consistently cited wildlife viewing as the primary draw to the park, and viewing wolves is of great interest.” *Id.* Therefore, the “goal is to maintain wolves as part of the natural ecological landscape in the park, ...” Wolf packs are known to use JDR as part of their habitat and as a corridor between Yellowstone and Grand Teton. *See* FWS 2011 Wolf Pack Distribution. Grand Teton Superintendent Scott “urge[d]” that JDR be left outside any designated hunt area, because “[m]aintaining connectivity between the two parks is an important conservation goal.” Letter, Grand Teton Superintendent to WGFD, Sept. 6, 2011.

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<sup>11</sup> FWS 2011 Wolf Pack Distribution, available at <http://www.fws.gov/mountain-prairie/species/mammals/wolf/20120828MapGreaterYellowstonePopulationFigure%201.jpg>.

Wolves are accordingly a critical component of the ecological landscapes of Yellowstone, Grand Teton and JDR. As shown below, ecological and economic studies on wolves demonstrate that wolves benefit the ecosystems of the Greater Yellowstone region and materially contribute to visitor enjoyment of the area. However, recent hunting activity in and around JDR, discussed above, shows that NPS must act swiftly to protect the continued viability of wolves in the region.

**Impact on Ecosystem.** Ecological research confirms that the presence of wolves benefits the ecology and vitality of JDR and the adjoining parks. Recent studies show that the reintroduction of the gray wolf to the Greater Yellowstone Region is “capable of affecting the interactions of numerous animals and plants, as well as the structure and function of ecosystems,” and that therefore, “the preservation or recovery of gray wolves may represent an important conservation need for helping to maintain the resiliency of wildland ecosystems, especially with a rapidly changing climate.” Ripple, W.J., Beschta, R.L., “Trophic Cascades in Yellowstone: The First 15 Years After Wolf Reintroduction.” *Biol. Conserv.* (2011), doi:10.1016/j.biocon.2011.11.005, at 8. (“Ripple (2011)”).

Specifically, the reintroduction of the wolf has led to important trophic effects, including increased biodiversity.<sup>12</sup> In fact, “wolves have initiated a trophic cascade in Yellowstone National Park, allowing for the restoration of forest and other native vegetation in overgrazed grassland,”<sup>13</sup> and have been a “key component” in helping to restore aspen and other woody browse species in the region. See Ripple, W.J., Beschta, R.L., “Restoring Yellowstone’s Aspens with Wolves,” *Biological Conservation* 138: 514–19, 518 (2007).<sup>14</sup> Wolf reintroduction has also led to “increases in the number of active beaver colonies,”<sup>15</sup> an “increase in the height of riparian woody plants,”<sup>16</sup> and the improvement of migratory bird habitats. See Berger J., Stacey P.B., Bellis L., Johnson, M.P. “A Mammalian Predator-Prey Imbalance: Grizzly Bear and Wolf Extinction Affect Avian Neotropical Migrants.” *Ecological Applications* 11: 947–960 (2001).

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<sup>12</sup> Berger, K.M., Gese, E.M., Berger, J., “Indirect Effects and Traditional Trophic Cascades: A Test Involving Wolves, Coyotes, and Pronghorn.” *Ecology* 89(3): 818–828, 818 (2008) (“[T]he loss of large carnivores carries broader implications for the maintenance of biodiversity as a result of indirect effects at lower trophic levels” (citing Crooks and Soule 1999, Henke and Bryant 1999)) (“Berger (2008)”); see also Hebblewhite, M., “Predator-Prey Management in the National Park Context: Lessons from a Transboundary Wolf, Elk, Moose and Caribou System.” *Transactions of the 72nd North American Wildlife and Natural Resources Conference*, 348-365, 355 (2007) (concluding that “[c]learly, the ecosystem effects of wolves will be broad and, likely, beneficial for the conservation of biodiversity.”); M.E. Hannibal, “Why the Beaver Should Thank the Wolf,” *N.Y. Times*, Sept. 29, 2012, at A23 (noting that “[t]he wolf is connected to the elk is connected to the aspen is connected to the beaver. Keeping these connections going ensures healthy, functioning ecosystems, which in turn support human life”).

<sup>13</sup> Wayne, R., Hedrick, P., “Genetics and Wolf Conservation in the American West: Lessons and Challenges.” *Heredity* (2010) at 1 (citing Ripple et al., 2001; Fortin et al., 2005) (“Wayne (2010)”).

<sup>14</sup> See also Ripple, W.J., Beschta, R.L., “Linking Wolves to Willows Via Risk-Sensitive Foraging by Ungulates in the Northern Yellowstone Ecosystem.” *Forest Ecology and Management* 230:96–106 (2006).

<sup>15</sup> Ripple, W.J., Beschta, R.L., “Linking Wolves and Plants: Aldo Leopold on Trophic Cascades.” *BioScience* 55(7):613-621, 618 (2005) (“Ripple (2005)”).

<sup>16</sup> Ripple, W.J., Beschta, R.L., “Wolf Reintroduction, Predation Risk, and Cottonwood Recovery in Yellowstone National Park.” *Forest Ecology and Management* 184: 299–313, 299 (2003).



Reintroduction of the wolf as a keystone predator also has had important consequences to the control of ungulate populations, such as elk. This is important, because “[i]n the absence of wolves, elks flourish and overgraze woody vegetation.” Roemer, G.W., Gompper, M.E., Van Valkenburgh, B., “The Ecological Role of the Mammalian Mesocarnivore.” *BioScience* 59: 165–173, 166, ISSN 0006-3568 (2009); *see also* Ripple (2005) at 620 (explaining that “the periodic hunting of ungulates by humans is also unlikely to replicate the persistent predation risk effects associated with wolves”). Wolves also aid in the beneficial culling of sickly members from the prey population, as “wolf predation may suppress disease emergence or limit prevalence.” Wild, M.A., “The Role of Predation in Disease Control: A Comparison of Selective and Nonselective Removal on Prion Disease Dynamics in Deer.” *Journal of Wildlife Diseases* 47(1):78-93, 78 (2011).

Finally, wolves play a critical role in “substantially reduc[ing] coyote numbers in many areas and may also have had top-down positive effects on the abundance of certain prey, such as pronghorn antelope.” Wayne (2010) at 2; *see also* Berger (2008) at 818 (finding “[t]hat wolves precipitated a trophic cascade was evidenced by fawn survival rates that were more than four-fold higher at sites used by wolves”).<sup>17</sup> Further, wolves “often provision scavengers with carrion by partially consuming their prey,”<sup>18</sup> and therefore, “[s]pecies diversity [is] found to be higher at wolf kills than at hunter kills.” Wilmers, C.C., Stahler, D.R., et al., “Resource Dispersion and Consumer Dominance: Scavenging at Wolf- and Hunter-killed Carcasses in Greater Yellowstone, USA.” *Ecology Letters* 6:996-1003, 1001 (2003). To this end, wolves help “buffer” the effects of climate change on carrion availability which “allow[s] scavengers to adopt to a changing environment over a longer time scale more commensurate with natural processes.” Wilmers, C.C., Getz, W.M., “Gray Wolves as Climate Change Buffers in Yellowstone.” *PLoS Biology* 3: 571–576, 571 (2005); *see also* Ripple (2011) at 8 (“[T]he preservation or recovery of gray wolves may represent an important conservation need for helping to maintain the resiliency of wildland ecosystems, especially with a rapidly changing climate.”).

**Visitor Enjoyment.** Recent studies also demonstrate that the presence of wolves enhances the social and aesthetic value of JDR and the adjoining parks for visitors. For example, a 2008 analysis of visitor data from 2005 shows that “44% of visitors listed wolves as a species they most would like to see on their Yellowstone trip, and wolves are second only to grizzlies as a preferred species to see .... [A]n estimated 326,000 visitors [to Yellowstone] ... saw wolves in 2005.”<sup>19</sup> Indeed, “[h]ighly visible individuals or packs [of wolves] (such as those in and

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<sup>17</sup> *See also* Berger, K.M. and Gese, E.M., “Does Interference Competition with Wolves Limit the Distribution and Abundance of Coyotes?” *Journal of Animal Ecology* 76:1075–1085, 1075 (2007) (“Our results support the hypothesis that coyote abundance is limited by competition with wolves, and suggest that differential effects on survival and dispersal rates of transient coyotes are important mechanisms by which wolves reduce coyote densities.”); Smith, D.W., Peterson, R.O., Houston, D.B., “Yellowstone after Wolves.” *BioScience* 53: 330-40, 335 (2003) (noting that “pronghorn fawn survival seems positively correlated with wolf density and inversely correlated with coyote density, as most fawn mortality is caused by coyote predation”).

<sup>18</sup> Wilmers, C.C., Crabtree, R.L., “Trophic Facilitation by Introduced Top Predators: Grey Wolf Subsidies to Scavengers in Yellowstone National Park.” *Journal of Animal Ecology* 72(6):909-916, 909 (2003).

<sup>19</sup> Duffield, J., Neher, C., Patterson, D., “Wolf Recovery in Yellowstone: Park Visitor Attitudes, Expenditures, and Economic Impacts.” *The George Wright Forum* 25(1):13-19, 14-15 (2008) (“Duffield (2008)”).

adjacent to national parks) in some cases have attained celebrity status among local populations and national park visitors ....” Way, J., Bruskotter, J., “Additional Considerations for Gray Wolf Management After Their Removal From Endangered Species Act Protections.” *Journal of Wildlife Management* 76(3):457-61, 459 (2012); *see also* NPS, *Yellowstone Wolf Project Annual Report* (2011), at v (“Wolf Project staff made 17,635 visitor contacts during 2011 and estimated that 25,000 people observed wolves in the park.”).

Consequently, the presence of wolves in JDR and adjoining parks directly benefits the local economies in the Greater Yellowstone Region. The visitor data analysis concluded that, “[i]n total, it is estimated that visitors coming from outside the three-state region, who are coming specifically to see or hear wolves in the park [Yellowstone], spend \$35.5 million annually.”<sup>20</sup>

The foregoing makes clear that hunting of wolves in JDR could not be reconciled with sound resource management principles, the purposes of any of these parks or the mandates of the Organic Act.

#### **B. NPS Must Meet Its Responsibilities by Adopting Special Regulations Under Rule 2.2 Asserting its Control over Wolf and Other Hunting in JDR and Assuring No Wolf Killing Occurs There**

NPS has expressed its “strong preference” that wolves not be hunted in JDR, but NPS has the authority and the responsibility to do more to assure that result. Indeed, even with no wolf hunting in JDR last season, wolf killing in Wyoming outside the boundaries of the parks has exacted a significant toll on their wolf populations. *See* M. Kosmrl, “Y’stone Wolves Down 25%,” *Jackson Hole News and Guide*, Jan. 16, 2013, [http://www.jhnewsandguide.com/article.php?art\\_id=9452](http://www.jhnewsandguide.com/article.php?art_id=9452) (explaining that “[h]ad it not been for hunting-related losses, Yellowstone would have had a mostly stable wolf population”). If wolves are also hunted within JDR in future seasons, that loss will be even greater.<sup>21</sup>

Exercising its authority under the Organic Act, NPS has adopted system-wide regulations concerning hunting, Rule 2.2. NPS explained when it proposed what became Rule 2.2 that, with the elimination of management categories, each unit should be given individual attention in planning and management to ensure that legislative and policy requirements are carried out. *See*

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<sup>20</sup> Duffield, J., Neher, C., Patterson, D., “Wolves and People in Yellowstone: Impacts on the Regional Economy,” *Yellowstone Park Foundation*, at 51 (2006); *see also* Duffield (2008) at 18 (“Regarding changes in visitor spending in the local economy due to wolf presence, the current estimate of +\$35.5 million (confidence interval of \$22.4 to \$48.6 million)).

<sup>21</sup> Specifically, “[a]t least 850 wolves have been shot and trapped in Montana, Idaho and Wyoming since May 2011 when the U.S. Fish and Wildlife Service removed the predators from the endangered species list in that region. More than 350 were killed in 2012.” P. Fimrite, “Move to Extend Wolf Protections in State.” *S.F. Gate*, Jan. 13, 2013, <http://www.sfgate.com/science/article/Move-to-extend-wolf-protections-in-state-4191167.php#ixzz2KiZ5pGcG>; WGFD’s 2012 Wyoming Gray Wolf Population Monitoring and Management Report, at 12 (“The number of wolves that died in 2012 (124 wolves) was higher than in 2011 (51 wolves) **primarily because hunting removed 66 wolves in addition to wolves that died of other causes.**”) (emphasis added); *id.* at 16 (“A total of 41 wolves were legally harvested and 1 wolf was illegally killed during the hunting season.”).

47 Fed. Reg. 11598 (March 17, 1982). In this regard, NPS stated in the proposing release that consultation with state authorities were not to be understood “to bind NPS to the recommendations of the State or to lessen the authority or responsibility of the superintendent to ensure that management actions are consistent with public safety and enjoyment, sound resource management principles and are compatible with the primary objectives for which the park area was established.” *Id.* at 11601.

At this time, however, NPS has not exercised the judgment Rule 2.2 requires it to exercise concerning killing of wolves in JDR or indeed concerning any hunting there. That rule requires that NPS do so as to any hunting of wildlife to be permitted there.

When hunting is mandated in a particular unit by federal statute, Rule 2.2 imposes no further requirements. Rule 2.2(b)(1). But hunting is not mandated in JDR, as demonstrated above. Indeed, the State itself appears to recognize that Section 3(b) does not mandate hunting generally. WGF D itself prohibited hunting of wolves in JDR during the 2012 hunting season. If State law may prohibit hunting of a particular species there, then clearly the laws of the United States may also do so. Otherwise, the State would have greater authority than NPS would have over activities on this federally owned land. There is nothing in the Enabling Act’s language or history that could reasonably be said to produce such an implausible interpretation.<sup>22</sup>

If hunting is not mandated in JDR, as we have shown, then hunting there must be discretionary. Where hunting is a “discretionary activity,” hunting is only permitted if the superintendent adopts special regulations authorizing such activity after having determined that “such activity is consistent with public safety and enjoyment, and sound resource management principles.” Rule 2.2(b)(2). No such determination has been made and no such special regulation has been adopted for JDR, whether for killing of wolves or for hunting of other species.<sup>23</sup>

NPS therefore has the responsibility to address the issue of hunting in JDR by commencing a rulemaking process under Rule 2.2(b)(2).

### III. CONCLUSION

NPCA accordingly asks NPS to adopt a special regulation addressing what species may be hunted in JDR and prohibiting the hunting of any other species not expressly authorized by that regulation. As we have demonstrated above, NPS could not make the required

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<sup>22</sup> This is demonstrated by the fact that NPS has promulgated special regulations limiting hunting in NPS units with similar enabling act provisions. *See, e.g.*, 36 C.F.R. § 7.85(a) (limiting both permissible species and seasons for hunting in Big Thicket National Preserve); 16 U.S.C. § 698c (enabling legislation for Big Thicket National Preserve providing that the Secretary “shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the preserve in accordance with the applicable laws of the United States and the State of Texas, except that he may designate zones where and periods when, no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection and management, or public use and enjoyment.”).

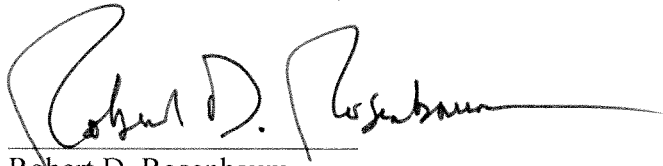
<sup>23</sup> Nothing in JDR’s 1984 General Management Plan or 2011 Compendium satisfies these requirements. Moreover, Rule 2.2 clearly takes precedence over those documents.

determinations necessary to permit the killing of wolves in JDR. The regulation should therefore not permit hunting or killing of wolves there. The regulation should address any other hunting management issues NPS believes appropriate, while incorporating such laws and regulations of the State concerning hunting as NPS believes appropriate, such as licensing requirements for hunters and/or hunting seasons. As part of that process, because there is a dispute about the meaning of Section 3(b) of JDR's Enabling Act, NPS should adopt a formal interpretation of that provision, as discussed in Part II.A.1 of this Petition. Such an interpretation would call for judicial deference in the event any person brings suit to challenge the special regulation.

Meanwhile, while the Superintendent's Compendium does not now comply with Rule 2.2, NPCA urges the Superintendent nevertheless as an interim measure to revise the provision relating to hunting on which the State relies (page 9) to make clear it is only an interim measure and that, until a regulation can be adopted addressing the issue, hunting of wolves and of any other species not expressly permitted is prohibited. Similar Compendium amendments have been adopted at St. Croix National Scenic Riverway and Apostle Islands National Lakeshore while those units evaluate their next steps concerning hunting of the recently delisted gray wolves there.

These steps would assure that NPS has the ultimate control over hunting within this federally owned portion of the National Park System and that its purpose of serving as a symbolic link between Yellowstone and Grand Teton National Parks may not be tarnished by the killing there of iconic gray wolves.

Respectfully Submitted on Behalf of National Parks  
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May 15, 2013

**ATTACHMENT — A PROPOSED REGULATION FOR JOHN D. ROCKEFELLER, JR.  
MEMORIAL PARKWAY**

- (a) Hunting and trapping.
  - (1) Trapping is prohibited.
  - (2) Hunting is allowed only of the following game animals and birds, and no others:
    - i. [list here the species for which NPS has made the determinations required under 36 C.F.R. 2.2(b)(2)]
  - (3) [provisions as determined by NPS relating to stands or blinds, use of hunting dogs or calling devices, or other limitations on hunting activities]
  - (4) The laws of the State of Wyoming not inconsistent with this regulation or the other laws or regulations of the United States applicable to the Parkway are hereby adopted to regulate seasons during which the foregoing game species may be hunted, the persons permitted or licensed to hunt and other aspects of such hunting.
  - (5) Notwithstanding the foregoing, the superintendent may close areas to hunting or designate periods of time within which hunting of any species or all species may not be hunted for reasons of public safety; administration of the Parkway, including its wildlife; or public use and enjoyment. Except in emergencies, any such order shall be put into effect only after consultation with the Wyoming Game and Fish Department.