

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220  
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

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February 9, 2015

## **VIA U.S. MAIL AND ELECTRONIC MAIL**

Gordon S. Myers  
Executive Director  
NC Wildlife Resources Commission  
1701 Mail Service Center  
Raleigh, NC 27699-1701  
gordon.myers@ncwildlife.org

Dear Mr. Myers,

I am writing on behalf of the Red Wolf Coalition, Defenders of Wildlife, and Animal Welfare Institute to express our deep concern with the Wildlife Resources Commission's ("Commission") recent resolutions calling for the end of the Red Wolf Recovery Program in eastern North Carolina. In addition, we are deeply concerned about news that the U.S. Fish and Wildlife Service's ("Service") permit to capture, sterilize, and release coyotes in the Red Wolf Recovery Area ("Recovery Area") expired and has not been renewed, despite their request to the Commission. Moreover, we understand that at the February 3, 2015, public hearing, Commission staff told the audience that they would not issue a permit for the Service to capture and sterilize coyotes on private land. For the reasons outlined below, we believe that the Commission's actions belie its stated commitment to work with the Service to aid red wolf recovery; directly violate the terms of the recent court-approved settlement agreement concerning coyote hunting in the Recovery Area; and are incompatible with the status of the red wolf (*Canis rufus*) as a state-listed threatened species under the North Carolina Endangered Species Act.

First, the Commission's recent actions violate the November 20, 2013, Memorandum of Understanding ("MOU") between the Commission and the Service, "Collaborative Conservation of Red Wolves and Other Canids on North Carolina's Albemarle Peninsula." As you know, the MOU states that "[s]ince 2009, the FWS and WRC have worked to broaden our collaboration in the conservation and management of all canid species (including red wolves) on the [Albemarle Peninsula]. As these efforts have solidified, specific actions have been jointly identified by our two agencies that will *improve conservation outcomes*."<sup>1</sup> The MOU further explains that "[t]his memo establishes the FWS's and WRC's commitment to initiate, or to continue [ ] efforts" that

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<sup>1</sup> U.S. Fish and Wildlife Service and N.C. Wildlife Resources Commission, "Collaborative Conservation of Red Wolves and Other Canids on North Carolina's Albemarle Peninsula," November 20, 2013, 1 (emphasis added).

will “provide[] the *best opportunity to achieve recovery goals for red wolves*” in North Carolina.<sup>2</sup> The MOU then outlines a host of “Action Items for Collaborative Conservation of Canids on North Carolina’s Albemarle Peninsula,” or steps that the Commission and Service committed to take in order to ensure red wolf recovery.<sup>3</sup>

By calling on the Service to abandon the goal of red wolf recovery in eastern North Carolina with its recent resolutions, the Commission is betraying the collaborative framework outlined in the MOU. This reversal is particularly troubling in light of the Commission’s reliance on the MOU to attest to its commitment to red wolf recovery. With its latest actions, the Commission has seriously called into question its commitment to working with the Service to ensure red wolf conservation and recovery.

Second, the Commission’s failure to renew the Service’s coyote capture and sterilization permit violates the recent court-approved settlement in the matter of *Red Wolf Coal. v. N.C. Wildlife Res. Comm’n*, No. 2:13-CV-60-BO. At the February 3, 2015, public hearing on the Commission’s proposed final rules to limit coyote hunting in the Recovery Area and list the red wolf as a threatened species under North Carolina law, Commission staff further articulated that the Commission would not renew this permit for private lands. The settlement agreement specifically requires that the Commission authorize the Service to trap, sterilize, and release coyotes on private lands within the Red Wolf Recovery Area.<sup>4</sup> The agreement also requires the parties to “cooperate fully, to execute any and all supplementary documents necessary to effectuate this Agreement, and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.”<sup>5</sup> Moreover, the agreement states that “this Agreement was negotiated in good faith.”<sup>6</sup> In light of these provisions, we believe that the Commission’s failure to renew the Service’s permit, and the Commission’s public representations regarding any future sterilization permits, violate both the letter and the spirit of the settlement agreement and are a signal of bad faith.

Also at the February 3 public hearing, Commission staff suggested to attendees that they need only report the shooting of collared animals, rather than reporting the shooting of all red wolves, coyotes, and red wolf-coyote hybrids, as provided for in the settlement agreement.<sup>7</sup> As the Commission is well aware, reporting of all canid deaths is critical to determining the extent of red wolf and coyote gunshot mortality. Again, the statements by Commission staff are in direct conflict with the provisions of our settlement agreement.

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<sup>2</sup> Id. (emphasis added).

<sup>3</sup> Id. at 2-4.

<sup>4</sup> Settlement Agreement, ¶ 6.

<sup>5</sup> Id. ¶ 12.

<sup>6</sup> Id. ¶ 15.

<sup>7</sup> Id. ¶ 3.

We remind you that the settlement agreement requires the parties to provide a status report to Judge Boyle in May 2015.<sup>8</sup> Barring resolution of this issue, we may be forced to take more immediate action to enforce the terms of the agreement.

Finally, the Commission's actions are incompatible with its recent approval of listing the red wolf as a state threatened species. Under the North Carolina Endangered Species Act ("NC ESA"), it is the policy of North Carolina that "threatened species of wild animals ... be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them." N.C. Gen. Stat. § 113-332. Further, the Act makes it the duty of the Commission to "coordinate development and implementation of conservation programs and plans for endangered and threatened species of wild animals;" to "adopt and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected animals;" and to "develop a conservation plan for the recovery of protected wild animal species [that] shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat." Id. § 113-333(a)-(b). Taken together, these provisions clearly prohibit actions that would undermine conservation measures and reverse the recovery of a protected species, such as the red wolf.

In addition, we understand that the North Carolina Nongame Wildlife Advisory Committee was not involved in the decision to issue the resolutions. Under the NC ESA, this Advisory Committee is given the role of advising the Commission on "matters related to conservation of nongame wildlife including creation of protected animals lists and development of conservation programs for endangered, threatened, and special concern species." N.C. Gen. Stat. § 113-335. We also note that the Commission recently issued a resolution reaffirming the Advisory Committee's role to "make recommendations to the Commission on protected animal lists;" to "provide an external perspective from the scientific community;" to "provide advice to the Commission on activities or matters of conservation concern;" and to "support the Commission's conservation initiatives."<sup>9</sup> Failure to consult with the Advisory Committee regarding the red wolf resolutions is at the very least an indication of the Commission's failure to take seriously its obligations under the North Carolina Endangered Species Act.

For all these reasons, we are deeply concerned about the Commission's recent actions attempting to end the Red Wolf Recovery Program and extinguish North Carolina's wild population of endangered red wolves. We request that the Commission rescind its recent resolutions calling for the end of the red wolf program in North Carolina. Alternatively, we request a response to this letter by February 23rd explaining how the Commission's actions are compatible with its legal obligations. We are available to meet with you at any time to discuss this matter further.

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<sup>8</sup> Id. ¶ 10.

<sup>9</sup> N.C. Wildlife Resources Commission, "Resolution Regarding the Nongame Wildlife Advisory Committee," October 30, 2014, 1.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sierra B. Weaver". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sierra B. Weaver  
Senior Attorney

cc (via email):

Jim Cogdell, Chairman, N.C. Wildlife Resources Commission  
Erica Garner, General Counsel, N.C. Wildlife Resources Commission  
Ken Bridle, Chair, Nongame Wildlife Advisory Committee  
Daniel M. Ashe, U.S. Fish and Wildlife Service  
Gary Frazer, U.S. Fish and Wildlife Service  
Cynthia K. Dohner, U.S. Fish and Wildlife Service  
Pete Benjamin, U.S. Fish and Wildlife Service  
Leopoldo Miranda, U.S. Fish and Wildlife Service