

ORDINANCE NO 15-004
SETTING FORTH WOLF-HUMAN INCIDENT EMERGENCY PROTECTIVE MEASURES

WHEREAS, the U.S. Fish and Wildlife Service ("FWS") final rule implementing the introduction of the experimental wolf population allows Mexican Gray Wolves ("wolf") to be "taken" in certain instances. See 63 F.R. 1752, 1759; and

WHEREAS, the FWS, joined by the New Mexico Game and Fish Commission, Arizona Game and Fish Department, Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA), the U.S. Forest Service, and others, in a document called *Mexican Wolf Encounter Safety Tips*, states that "if in imminent danger, do what is necessary to protect yourself, your family, or the lives of others;" and

WHEREAS, NMSA 1978, § 4-37-1 provides the power to the county to make and publish ordinances to provide for the health and safety of its inhabitants, and

WHEREAS, NMSA 1978, § 4-37-2 provides that county ordinances are effective within the boundaries of the county, including privately owned land, New Mexico State Land, or land federally administered by the United States; and

WHEREAS, the Sierra County Board of County Commissioners finds and determines that the increase of dangerous predators, including introduced, experimental and managed species, will result in an increase in human-predator encounters that can result in threats, attacks, injuries and death to humans, especially young, vulnerable, handicapped, and elderly throughout the county; and,

WHEREAS, the Sierra County Board of County Commissioners finds and determines that predatory animals, including introduced, experimental and managed species, and predator-human encounters pose serious threats to human health and safety, as well as threaten the economic well-being of families and businesses within the County; and,

WHEREAS, the Sierra County Board of County Commissioners has received numerous testimonials from those affected by predators, including introduced, experimental and managed species; and,

WHEREAS, disease and spread of disease by predators including introduced, experimental and managed species and rodents is not being addressed sufficiently/effectively by the agencies at hand; and,

WHEREAS, increasing pressure on livestock from predatory animals, including introduced, experimental and managed species, has shown to impact and have detrimental effects to cow-calf and yearling operations; and,

WHEREAS, increased pressure from predatory animals, including introduced, experimental and managed species, has led to drastic and negative impacts on big game animals and has further stressed the viability of outfitting and hunting activities throughout the western U.S.; and,

WHEREAS, psychological impacts and damages have been proven and testified to, by licensed mental health professionals, concerning the impacts of predators, including introduced, experimental and managed species such as the wolf, with no relief forthcoming; and,

WHEREAS, many experts on predators, including introduced, experimental and managed species to include wolves, demonstrate that habituated predators pose an increased danger to the health and safety of the citizens of Sierra County because these predators lose their natural fear of humans; and,

WHEREAS, experts have documented that common handling, rearing, and feeding practices of the FWS lead to habituation and fearlessness; and,

WHEREAS, it is the prudent duty of the county to increase its ability to protect humans, the general wellbeing of humans from predatory animals, including introduced, experimental and managed species; and,

WHEREAS, the 10th Amendment to the Constitution for the United States is clear when stating, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people[,]"; and,

WHEREAS, the states and their political subdivisions, the counties, have derived specific and reserved powers from the 10th Amendment of the Constitution for the United States, referred to as police powers of the State; and,

WHEREAS, under the 10th Amendment and subsequent state authorization, the counties has the duty to pass laws and regulations to protect the safety, health, welfare and morals for the benefit of their communities; and,

WHEREAS, the Sierra County Board of Commissioners has a fiduciary responsibility under its statutory police powers to protect the health, safety and welfare of its residents, and the County reserves the right to take whatever actions necessary to do so; and,

WHEREAS, the cooperation and participation with federal and state agencies is not always sufficient to address the needs of the county health, safety and welfare; and,

WHEREAS, citing past and current County Comprehensive Land Use Plans, prior official actions to include, Resolution 97-074, Resolution 91-052, Resolution 90-085, Resolution 89-009, and Ordinance 94-001, actions Sierra County has attempted to coordinate with the USFWS to no avail; and,

WHEREAS, information critical to local governing bodies to fulfill their obligations to protect health, safety, welfare and morals has not been efficiently provided nor is forthcoming from management agencies; and,

WHEREAS, the FWS final rule implementing the introduction of the experimental wolf population allows Mexican Gray Wolves ("wolf") to be "taken" in certain instances. 80 Fed. Reg. 2512 (to be codified at 50 C.F.R. §17.84(k) (Jan. 16, 2015)). This process combined with the non-responsive nature of the FWS is not applicable nor efficient in the protection of the general health safety and welfare of county residents.

WHEREAS, on January 16, 2015, FWS announced Sierra County was to become part of the zone one of the Mexican Wolf Experimental Population Area (MWEPA) subjecting the entire county to direct releases into the expanded Recovery Area.

WHEREAS, the Sierra County Board of County Commissioners finds and determines that the FWS actions to address Mexican Gray Wolf threats to residents of the County are not sufficient to reduce and eliminate these threats to their health, safety and welfare; and,

WHEREAS, the Sierra County Board of County Commissioners determines that measures used by other counties have provided some relief to predator-human encounters; the County realizes that the risk of wolf and other predator attacks on humans has become more likely as human/wolf incidents increase, certain measures are necessary for the protection of the safety, health, and welfare of the residents and businesses in Sierra County; and these escalating incidents include human suffering, possible loss of life, loss of income, loss and damage to private property, and disruption of the normal functioning of government and communities in Sierra County; and,

WHEREAS, the Sierra County Board of County Commissioners desires emergency response measures that are more effective, direct and immediate when residents ask for assistance when threatened by predator encounters (including wolves), and the Board desires to establish expectations of law enforcement within the County when responding to such dangers;

NOW THEREFORE, BE IT RESOLVED, the County Commissioners of Sierra County hereby adopts this Ordinance, an Ordinance Setting Forth Emergency Predator-Human Incident Protective Measures, which measures shall have the force and effect of law.

BE IT FURTHER RESOLVED, the purpose of this ordinance is to set forth and specify emergency response to requests for help to remove threatening predators (including wolves) to protect life and limb.

BE IT FURTHER RESOLVED, Sierra County predator protection management objectives are to:

1. Prevent human death and injury;
2. Assist persons who encounter predators and fear for their lives;
3. Provide rapid response to persons who cannot safely protect themselves from predator encounters that present a threat, as described above;

4. Prevent loss of property that may be damaged or destroyed by predators;
5. Reduce predator-human interactions;
6. Reduce predator-livestock interactions and depredations; and
7. Reduce habituated predators from human encounters.

BE IT FURTHER RESOLVED, impeding the Sierra County Sheriff, any designated Sierra County Deputy, any designated Officer or other designee or contractor of Sierra County who is performing the task of protecting the safety, health, welfare and morals of humans from predatory animals is hereby designated a Misdemeanor and punishable pursuant to NMSA 1978, Section 30-22-1 (1981).

BE IT FURTHER RESOLVED, it is illegal to translocate, introduce or allow to be introduced, any predatory, experimental, non-native, or any other species into Sierra County, without either fully coordinating with the County prior to any planning efforts, or ensuring compliance with all applicable county ordinance and state and federal laws.

BE IT FURTHER RESOLVED, that this Ordinance be called immediately to the attention of Governor of New Mexico, New Mexico Department of Game and Fish, United States Fish and Wildlife Service, New Mexico Congressional Delegation and the New Mexico Legislature.

BE IT FURTHER RESOLVED, the County will, as needed, enter into coordinated agreements with the New Mexico Department of Agriculture and APHIS.

BE IT FURTHER RESOLVED, the Sierra County Board of County Commissioners may, as needed, contract with a qualified predator expert to provide an instructional course on predatory animal behavior, identification and familiarization for the Sierra County Sheriff's Office's deputy first-responders.

BE IT FURTHER RESOLVED, since response time is critical, the County Sheriff or designee may issue a dispatch order to lethally remove a predator(s), when there is an imminent threat of serious bodily injury to members of the affected household(s).

BE IT FURTHER RESOLVED, the Board specifies the following procedures in responding to requests for immediate assistance by persons as described above:

SECTION 1:

Procedures are hereby established for responding to sightings, complaints, or need for immediate assistance to manage predators that threaten or pose danger to humans, including children or other defenseless persons, domestic animals and/or livestock. As requested by the Sierra County Sheriff's Department a designated agent will respond to any of the following predator-related activities:

- 1.1 Approaching people or domestic animals and/or livestock;
- 1.2 Entering human developments;
- 1.3 Behavior indicating habituation to humans and human food items;
- 1.4 Attacking, injuring or showing aggressive behavior towards humans and domestic animals;

1.5 Where and when residents are unable or disadvantaged to protect themselves from predators, the County may intervene to assist in removing threatening predators.

SECTION 2:

The Sheriff's Department shall assume the following actions:

- 2.1 Upon receiving a request for assistance, the designated agent shall log the incident and make the determination to respond to the request;
- 2.2 The designated agent may respond to the scene of the threat, check the resident(s), and make an initial observation for obvious physical effects and/or danger to humans or domestic animals.

SECTION 3:

The designated agent will assume the following actions:

- 3.1 Confirm the threatening incident;
- 3.2 Identify and document the presence of predator(s) and determine if such presence is causing an imminent threat of physical harm to humans or domestic animals;
- 3.3 If there is an immediate threat to human safety, the designated agent may act in defense of others to alleviate the threat if such actions are reasonably necessary for protection of human safety. Further, lethal take of a predator is only appropriate if the agent determines that (1) there is an apparent, danger of death or bodily harm to others, (2) if the designated agent witnesses the wolf in the act of biting, wounding or killing domestic animals, including livestock and non-feral dogs, on non-federal land, and (2) the apparent danger would have caused a reasonable person to act the same way in the same circumstances;
- 3.4 Provide comfort and apply first aid, if necessary.
- 3.5 Notify Sierra County Board of Commissioners and County Sheriff;
- 3.6 In the case of a lethal take of a predator that is not threatened or endangered, the designated agent will contact the New Mexico Game and Fish Department, within 24 hours;
- 3.7 In the case of a lethal take of a confirmed or perceived predator listed as threatened or endangered, the designated agent will preserve the site with the minimum of disturbance and call the USFWS as soon as possible, but in all cases within 24 hours;
- 3.8 Complete investigation;
 - Document Incident
 - Inspect and document physical effects;
 - Photograph all scenes where physical effects occurred;
 - Measure canine spread in millimeters;
 - Prepare incident report including all non-confidential information described above and transmit to the Sierra County Board of County Commissioners, FWS and US Wildlife Service and New Mexico Game and Fish Department within seven (7) days.

SECTION 4:

Definitions:

Designated Agent (agent): A person authorized by the Sierra County Sheriff that shall respond to incidents involving predators in Sierra County.

Habituated Predator: The waning of a predator's flight response following repeated exposure to inconsequential stimulus.

Problem Predator: A predator that:

- (1) Has depredated lawfully present livestock; or any other domestic animal;
- (2) Is or was a member of a group or pack (including adults, yearlings, and young-of-the-year) that were directly involved in livestock depredations;
- (3) Was fed by or dependent upon adults involved with livestock or domestic animal depredations (because young animals will likely acquire the pack's livestock or domestic animal depredation habits);
- (4) Has depredated domestic animals on more than one occasion.
- (5) Is habituated to humans, human residences, camp sites, hiking trails, or other related or similar areas.

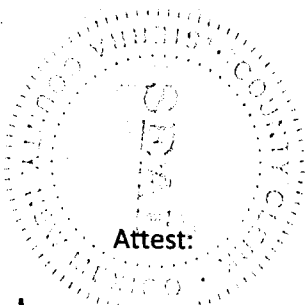
Predation: Orientation towards the prey followed by: stalking, chasing, catching, biting, shaking the prey, carrying or dragging off. The predator may not show prior threat display or vocalization; it may continue attack on targeted prey, even with interference. Children and domestic animals are particularly susceptible to predation.

Predator: Any animal including but not limited to mountain lions, bobcats, black and Grizzly bears, jaguars, wolves and coyotes, that live by preying on other animals, to include introduced, experimental and managed species, as well as those identified in NMSA 17-2-3.

Predator-Human Interaction: Any incident in which the behavior of a predator has a direct physical or mental effect upon a human.

Threat: Any predator-related circumstance or event with the potential for adverse physical or psychological impact upon a human. A predator is considered to be a threat to a human any time the predator demonstrates menacing or fearless behavior while in proximity to a human.

PASSED, APPROVED AND ADOPTED this 23rd day of June 2015.



by Connie Greer
Connie Greer, Clerk *Chief Deputy*

Board of County Commissioners
Sierra County, New Mexico

Kenneth Lyon
Kenneth Lyon, Chair

Frances Luna
Frances Luna, Vice Chair

Sherry Fletcher
Sherry Fletcher, Member

STATE OF NEW MEXICO } SS
County of Sierra

I HEREBY CERTIFY that this instrument was filed for record on the 24th day of June A.D., 20 15 at 11:59 o'clock A M. and duly recorded in book 2 page 516-521 Fee \$ 05
Connie Greer
County Clerk, Sierra County, N. Mex
By Scott Anderson
Deputy