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Division of Policy and Directives Management

U.S. Fish and Wildlife Service

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September 18, 2013

**Subject:** Scoping comment for Environmental Impact Statement on pending U.S. Fish and Wildlife Service proposal to revise the rule establishing the Mexican wolf in Arizona-New Mexico as a nonessential experimental population

**Reply to:** Jim deVos, Assistant Director, Wildlife Management, Arizona Game and Fish Department, Phoenix, AZ, 85086.

To Whom It May Concern:

As the Director of the Arizona Game and Fish Department, I write to you regarding U.S. Fish and Wildlife Service (Service) efforts to prepare an Environmental Impact Statement (EIS) on revision of the 1998 nonessential experimental population rule (10(j) Rule) for the Mexican wolf (*Canis lupus baileyi*). I offer these comments to ensure that the EIS addresses the full range of issues associated with Mexican wolf recovery as well as reintroduction, and that it reflects the fact that recovery and delisting cannot be achieved without substantive progress in and contribution from Mexico. At best, Mexican wolf historical range in the United States is just a small fraction, perhaps only about 10 percent, of the historical range, the rest of which is in Mexico.

In a subsequent letter, I will provide detailed comment on the proposed 10(j) Rule but for now we submit the following issues and concerns regarding the Service's approach to the related draft EIS. First and foremost, I am concerned that:

1. The Service has failed to demonstrate that enlarging the wolf dispersal and release area to include the entire MWEPA is necessary to achieve its objective of a self-sustainable population of at least 100 wolves.
2. The Service has based its proposal to enlarge the dispersal area on reasons not supported by the record.

3. Enlarging the dispersal area will allow the wolf population to increase beyond what is necessary to meet the established population objective.
4. The Service has failed to give equal consideration to the impact the proposed revision will have on State Wildlife Agency wildlife management objectives.
5. The Service's failure to seek State Wildlife Agency concurrence with the proposed revision to the current 10(j) Rule is contrary to congressional intent and federal regulation.
6. The Service has promulgated a revised rule and prepared alternatives for the draft EIS without completing the EIS scoping process.
7. The environmental effects of the proposed revision to the 10(j) Rule are uncertain because the Service has failed to identify the projected wolf population.

Further, we believe the Service should:

1. Not confuse the EIS process by proposing pre-decisional modifications of the current 10(j) Rule. The impacts of any possible changes in the current (1998) Rule should be analyzed through National Environmental Policy Act (NEPA) process and an EIS (both on the basis of an approved Recovery Plan) before they are proposed for public comment.
2. Administratively reclassify and relist the Mexican gray wolf as the Mexican wolf. The Service could then focus on better integration of methods by which to address the current deficiencies in Mexican wolf conservation by initiating EIS scoping for the reclassified subspecies and comprehensively revising the current 10(j) Rule within that EIS process.
3. Realign the EIS scoping period with the comment period for drafting the proposed 10(j) Rule. The staggered sequence in which the Service is proceeding now effectively prevents integrated analysis and comment by the public and state government. The Service has opted to extend the public comment period on revision of the 10(j) Rule but not for scoping the EIS. Thus, stakeholders must comment on the draft EIS before they have an opportunity to consider what state and federal agencies will recommend regarding the 10(j) Rule. This disjointed approach also seems contradictory to relevant USFWS policy and to procedures set forth under NEPA and the Endangered Species Act (ESA).
4. Reconsider its apparent intent to rely on EIS scoping information from 2007 and not to conduct more public scoping meetings throughout the affected area. The current approach is not consistent with Service Policy on NEPA compliance (see NEPA Policy Manual, Chapter 1 of 550 FW 1). Also, demographic information readily available to the Service indicates population turnover in Arizona and New Mexico since 2007 demonstrates the citizenry sampled during scoping in 2007 was significantly different from the citizenry present in the

affected area now. Thus, well-coordinated scoping that includes local public meetings throughout the affected area is essential to affording current residents an opportunity to engage in person with Service representatives to discuss the relevant issues and their concerns.

5. Rectify its EIS scoping and 10(j) Rule revision proposals use of key Service documents to which the public is not privy. These documents will help shape wolf management and the final revised 10(j) Rule for at least the next 10 to 20 years. These documents, the Service's' draft Mexican Wolf Recovery Plan and its draft Mexican Wolf Management Plan (for outside the 10(j) boundaries), should be completed and then be available for scrutiny and consideration while the public develops EIS scoping comments. The same is true for peer review comments to the Service on its proposed delisting of the gray wolf and re-listing of the Mexican wolf. The central issue here is rangewide Mexican wolf conservation and management, not just management within a prescribed Mexican Wolf Experimental Population Area (MWEPA). Management prescriptions for lands outside the MWEPA, as well as those inside it, have potentially significant economic implications for management agencies and for local residents and other stakeholders.
6. Rectify its errors in handling peer review of its proposed delisting of the gray wolf and relisting of the Mexican wolf to ensure that peer review results are available to the Service and the public before EIS scoping ends and before the extended comment period on the proposed 10(j) Rule ends. Peer review comments are crucial to informing stakeholder comment on the spectrum of EIS scoping issues, as well as comment on the proposed and potential content of a new 10(j) Rule.
7. Clarify and extend opportunities for EIS cooperating agencies to develop alternatives. USFWS Region 2 staff has verbally advised agency cooperators they have until September 30 to provide EIS comment in the form of a consensus alternative for the Service to consider. It is unreasonable to expect cooperating agencies to develop a consensus alternative in less than 60 days when the Service has been working on its alternatives since 2007 and has not yet fully developed them. Requiring cooperators to reach consensus on a new alternative in order for the Service to consider it is also a significant problem, one that raises concerns about compliance with NEPA, which allows for consideration of multiple reasonable alternatives.
8. Clarify through the EIS the Service's "Purpose and Need" statement for the EIS and for the associated draft 10(j) Rule. The Purpose and Need statement for the 1998 10(j) Rule and the associated EIS was to establish a population of "at least 100 Mexican wolves" within the MWEPA in Arizona and New Mexico. The draft EIS and the preamble to the draft proposed 10(j) Rule reference that population objective (at least 100 Mexican wolves), but the draft proposed Rule, without appropriate justification or public process, modifies the Purpose and

Need statement to establishing an expanded Mexican wolf population without identifying a quantitative range with lower and upper limits. This suggests a predetermined decision by the Service that the current objective of “at least 100 wolves” cannot be achieved under the current rule. If so, that decision is not based on science. Mexican wolf population growth since 2007 indicates the “at least 100 Mexican wolves” objective can be reached in the foreseeable future. The 2012 “end of year count” (EOYC) minimum published by the Service and its agency cooperators was 75, with perhaps an additional 5 or 10 uncounted wolves present in Arizona and/or New Mexico. Given that more than 90 percent of the wild population is now wild-born, it seems likely that within 2 to 5 years the population will reach and possibly surpass 100 to 125 individuals. The other wolf populations reintroduced by the Service (i.e. gray and red wolves) increased precipitously when they reached 75 to 100 individuals and 10 or more breeding pairs. The Service must determine whether the proposed 10(j) Rule modification and the accompanying EIS scoping are lawful and appropriate in terms of stated Purpose and Need.

9. Explicitly state the current numerical objective of “at least 100 wolves” in the proposed amendments to the 10(j) Rule, not just in the prefatory (explanatory) text, and carry it forth as the reintroduction objective for Arizona and New Mexico until such time as the Service has appropriately developed, proposed, analyzed and approved a different population objective or set of objectives through completed recovery planning and NEPA and rulemaking processes. The original objective cannot be changed by default.
10. Clarify the legal status of Mexican wolves that are classified as nonessential experimental (i.e. threatened status), and concomitantly affirm what management authorities for such species have been conveyed to the States via ESA Section 6 Cooperative Agreements and how those authorities can be enhanced, not restricted, through ESA Section 10(a)(1)(A) and (B) take permits. Toward that end, the EIS must identify and analyze the costs and benefits of using a State-empowerment approach to achieve the desired objectives for Mexican wolf conservation. In crafting this portion of the Mexican wolf draft EIS and the proposed 10(j) Rule, the Service should pay particular attention to its approach in granting management authorities to the states via: (a) the 10(j) Final Rule for black-footed ferret reintroduction in Arizona, (b) its existing ESA Section 10(a)(1)(B) permit to Arizona Game and Fish Department for black-footed ferret reintroduction in Arizona and (c) its long-standing, ESA-authorized (Sections 6 and 10) recognition of the Arizona Game and Fish Department as the lead agency in bald eagle conservation in the Southwest.
11. Examine and identify the guidelines and procedures by which other private individuals can appropriately be authorized to non-injuriously harass a wolf that is actively engaged in nuisance or other unacceptable behavior.
12. Evaluate and identify the guidelines and procedures by which livestock operators and their agents can appropriately be authorized to capture or kill a wolf that is actively engaged in

acts of depredation on livestock or pets, or which has been identified by the Service as a repeat predator of sufficient frequency that removal is appropriate.

13. Explore, and identify measures by which to rectify, the primary impediments to progress in Mexican wolf reintroduction and recovery since 1998, which include, but are not limited to, Service inaction, such as: failure to initiate and then to complete recovery planning (i.e. the Service aborted the 2003-2005 recovery planning effort and the Service has now placed the 2010-2012 recovery planning effort in limbo); failure to initiate and then complete NEPA process for changes in the current reintroduction project 10(j) Rule and management approaches (i.e. the Service aborted an internally-generated draft 10(j) Rule revision in 2001); abandonment of a 2008 effort by agency cooperators to draft an Environmental Assessment for 10(j) Rule modification; and jeopardy for the current EIS effort, due to probable litigation of the Service's proposed gray wolf delisting and proposed Mexican wolf re-listing. The costs (time, money and lack of progress) due to Service failure to initiate appropriate planning and regulatory actions and to fairly and consistently implement approved management guidelines for Mexican wolf conservation from 2001 through 2012 have greatly diminished public trust and confidence in the Service's ability and willingness to identify the important issues and work through to final decisions.
14. Explicitly define in the EIS and consequent 10(j) Final Rule the area in which the Mexican wolf will be considered nonessential experimental, and whether or not that status is legally appropriate for other parts of its historic range (i.e. in Mexico and in the United States north of I-40). The Service has stated repeatedly that Mexican wolves originating from Mexico must, if they disperse into the United States, be treated as endangered. This might be true under the current 10(j) Rule but court decisions for other species suggest other possibilities that would enable broader management flexibility and greater agency responsiveness to problem situations (e.g. livestock depredation). Toward this end, the EIS and draft 10(j) Rule must give due consideration to court findings in *Wyoming Farm Bureau v. Babbitt*, 199 F.3d 1224 (10th Cir. 2000) (affirming treatment of gray wolves that disperse from Canada into the experimental population area as members of the experimental population) and *Forest Guardians v. U.S. Fish and Wildlife Service*, 611 F.3d 692 (10th Cir. 2010) (affirming experimental nonessential treatment of endangered northern aplomado falcons that disperse from Mexico into the United States).
15. Evaluate through the EIS that mirrors the Service's approach in the 10(j) Final Rule for the California condor, which include reaffirming authority for specific states to manage listed species and requiring the Service to remove the entire nonessential experimental population if 10(j) status or state management authority is ever diminished or eliminated.
16. Evaluate whether and how a 10(j) rule or an ESA Section 4(d) rule might be used to enable state management of Mexican wolves to contribute toward achieving recovery goals, thus achieving conservation purposes and benefits under the ESA while providing more effective,

efficient local response to problem situations (e.g. livestock depredation and large wild ungulate population impacts).

17. Identify and analyze methods and means of avoiding and mitigating or minimizing Mexican wolf depredation on livestock, pets and wild ungulates, including identification of realistic methods by which to fund and implement such programs over the long-term, preferably over a 20-year planning horizon because it is unlikely the next federal Mexican wolf management framework will be modified within that span of time.
18. Fully explore issues related to live-trapping of wolves and other species of wildlife by agency personnel and the public on public, private, state and tribal lands. Appropriate levels of incidental take by agency and sport trappers must be explored and evaluated in the EIS and protected in the 10(j) Rule. The Service must define its intent and the methods by which that intent can be realized; agency employees and others must be appropriately protected from prosecution for their participation in lawful actions.
19. Explain and clarify the Service's contentions regarding capture and removal of Mexican wolves that disperse outside the area(s) that are included in the proposed 10(j) Rule. In recent months, the Service has committed to the states that the draft Rule would affirm that such wolves would be removed and potentially returned to the MWEPA or placed in captivity. The draft proposed 10(j) Rule affirms that commitment in prefatory text but does not include it in the Rule itself. In recent weeks, some senior Service staff opined that it would not be appropriate to include that commitment in the proposed Rule, while others said it would. The issue needs to be explored and definitively resolved in the body of the draft EIS and the 10(j) Rule. If the Service decides that this commitment cannot be made, the EIS must explore whether stakeholder interests and wolf conservation are better served by a 10(j) Rule that applies to the Mexican wolf wherever it may occur in the wild, enabling wider dispersal under well-defined management guidelines (e.g. perhaps under a Zone Management Concept for varying levels of occupancy and management).
20. Identify and analyze the full spectrum of projected and potential economic impacts of the Service's proposed Mexican wolf management program throughout the proposed MWEPA area, in which the Mexican wolf occurs or might again occur as a result of reintroduction. Impacted entities include the States of Arizona and New Mexico, Native American Tribes, sportsmen, guides and outfitters, other public lands recreationists, livestock owners and operators, and rural towns and local businesses and governments. The potential impacts include, but are not limited to, direct costs (i.e. those resulting from releasing and managing wolves) and indirect costs (i.e. those associated with planning, coordinating and responding to wolf reintroduction and behavior in the wild). The EIS must disclose, discuss and analyze the hidden costs of wolf recovery, which include time and money spent by state, federal, tribal and local governments to understand, comment on and respond to the Service as it designs and implements its wolf programs

21. Identify and analyze projected and potential economic impacts of its proposed Mexican wolf management program outside the proposed MWEPA, to which Mexican wolves might disperse and require management response. These impacts (costs) include, but are certainly not limited to: depredation losses (livestock and pets, including herding and guide dogs); modifications of livestock husbandry, herding and grazing programs to accommodate wolf presence; livestock owner/manager time and travel in the course of preventing or reacting to depredations; livestock owner/manager time/travel required for coordination with wolf and land management agencies; and changes in or outright loss of business for outfitters and hunting guides. The impacts on agencies include, but again are not limited to: costs associated with meetings and other coordination with the Service on wolf-related issues; field and administrative staff required for wolf management; and large ungulate (prey) population shifts (including local changes in seasonal presence but also potential declines in herd size and hunter opportunity). There will also be an increase in costs to the State to monitor the herd size and assess impact levels to the ungulate population as wolves are reestablished on the landscape. Also, broadening wolf reintroduction and management to areas in Arizona that have significant state land holdings could cause a significant negative impact (i.e. decreased value or increased cost of managing lands leased for grazing) on the State Land Trust, which is primarily dedicated to supporting the state's education system.
22. Clarify that in Arizona state lands are not the same as public (federal) lands and the Service must account separately for the economic and other impacts of Mexican wolf recovery to them (as well as any management or mitigation measures proposed).
23. Consider and apply current economic impact information available to the Service from the Northern Rockies (e.g. Idaho, Wyoming and Montana) and the Western Great Lakes (e.g. Minnesota, Michigan and Wisconsin). That information is crucial to understanding the potential impacts of a Mexican wolf population that reaches and perhaps eventually surpasses any approved recovery objective for Arizona and/or New Mexico.
24. Clarify through the EIS and the draft proposed 10(j) Rule technical issues such as, but not limited to: quantitative recovery objectives overall (rangewide) and for Arizona, New Mexico and Mexico; whether an Arizona population of Mexican wolves could ever be self-sustaining, or whether dispersal or translocation from and to New Mexico and Mexico will always be necessary (e.g. for genetic management purposes); the need for genetic infusion into the wild population and an evaluation of whether naïve releases have any measured effect in terms of shifting the genetics of the wild population; how and when the wolf population in each State is estimated; whether the annual EOYC is a census, survey or an estimate (with confidence intervals); the definition of breeding pair and how it allows for mate replacement within a calendar year; how young-of-the-year pups are accounted for in the annual count; whether the current approach to the annual count is statistically reliable or should be modified; whether and how annual EOYCs are or could be linked to provision of

incentives to livestock operators to further wolf conservation goals while decreasing the need for management removals; guidelines for avoiding habituation of wolves that are being held in captivity prior to planned or potential release; how, when, where and by whom naïve or wild-born or wild-experienced Mexican wolves may be released to the wild; definition of what constitutes a depredation incident and how such incidents relate to wolf removal; clarify whether livestock operators are required to implement proactive depredation-avoidance measures before incentives or compensation funding can be provided, or whether such actions are voluntary and independent of incentives and compensation programs; clarify who verifies legal presence of grazing livestock and how they verify it (relative to depredations); clarify which agency or agencies conduct investigations to confirm or refute claims of livestock depredation; thresholds and methods for temporary and for permanent removal of depredating and nuisance wolves; clearly state the laws pertaining to ownership and removal or destruction of livestock carcasses on public, state, tribal and private lands.

25. Evaluate the costs and benefits of expanding the area within the current MWEPA in which release of naïve (captive) wolves is allowable, the areas in which wolf occupancy is allowed to persist and the areas to which Mexican wolves are allowed to disperse and remain until a depredation problem occurs, a landowner objects and/or residency is established (as through denning activities). As a component of this issue, the EIS must explore methods by which landowners and livestock operators might receive incentives for tolerating wolf presence.
26. Ensure that consideration of external and internal boundaries for wolf management areas is accompanied by rigorous evaluation of the costs of wolf management efforts (e.g. monitoring and removal) that would be necessary for such boundaries to have meaning from a management perspective.
27. Provide a meaningful analysis of Mexican wolf impacts on native ungulate populations and of wolf depredation on various species of livestock (e.g. cattle, horses, sheep). These impacts must be projected across the potential numerical range of expansion of the Mexican wolf population, up to and beyond current and potential recovery objectives in Arizona and New Mexico. This analysis must define unacceptable impacts to livestock herds as well as to wild ungulate herds, how such impacts can be measured, the means available for responding to prevention of such impacts and the management responses allowable when and if unacceptable impacts occur.
28. Analyze how the Service and its agency cooperators have interacted and how they should interact (cooperate and coordinate) with each other and with the public to effect better wolf management on the ground and to protect the rights and privileges of the public, including livestock operators. This analysis should explore previous administrative and management paradigms within the Mexican wolf program (e.g. AMWG and AMOC) as well as the current federal top-down approach, and how to best provide for: improved agency transparency and

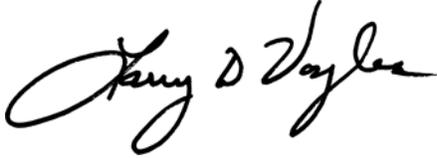
openness; ongoing, regular public engagement opportunities; effective collaboration; increased responsiveness by speeding up effective decision-making; and improved adaptive management processes (including timely resolution of resource, management response and other conflicts). The adequacy of program outreach efforts should be included in this analysis, so they can be made effective.

29. Identify and analyze Mexican wolf conservation efforts in Mexico and the economics thereof. The Service considers (and is re-listing) the Mexican wolf in Mexico endangered and is: (a) addressing that area in its yet-to-be-released draft Recovery and management plans; (b) providing wolves to Mexico for captive breeding and for release in the AZ-NM border environs; and (c) is providing equipment, supplies and training to Mexico for Mexican wolf field conservation efforts. These actions all have bearing on the need for, and the extent of, proposed wolf recovery and conservation efforts in Arizona and New Mexico. It is essential that agencies and the public know how wolf conservation in Arizona and New Mexico complements the parallel actions in Mexico, so they collectively feed toward attaining the overall objective of rangewide recovery. Fully 90 percent of the Mexican wolf's historic range is in Mexico; therefore, based on science and reason, the EIS must reflect the fact that recovery cannot be achieved in Arizona and New Mexico alone.
30. Clearly define how Service Region 2 will comply with Service policy on NEPA compliance, specifically whether and how it will provide Service funds and staff support to enable robust cooperating agency participation in EIS preparation, particularly during scoping. Providing neither funding nor staff support to such agencies, as Region 2 apparently intends to do (Sherry Barrett, MW Recovery Coordinator, August 2013 EIS Cooperators Meeting), is at best not conducive to ensuring active engagement by cooperating agencies and local governments.
31. Develop and analyze a wolf management alternative that places the Arizona-New Mexico reintroduction program entirely in state and tribal hands, with no participation by the Service, other than oversight, planning and provision of necessary funding.

In closing, I believe the Service has a much higher obligation to affected and interested stakeholders in Arizona and New Mexico than is reflected by the current Region 2 approach to EIS scoping and developing a revised management framework and nonessential experimental population rule for the Mexican wolf. Thirteen years of Service delay in reaching this point should not force the public into an unacceptably brief comment period, nor should the Service's approach preclude other agencies from meeting their own legal, policy and procedural obligations for stakeholder participation in shaping the state's response on their behalf. I hope the Service will reconsider its approach, redesign it accordingly and bring a constructive end to our concerns and those expressed by countless others. As a last note, I and the Department staff are willing to assist you in recovery actions; all you need to do is ask. A collaborative and trusting relationship is key to achieving an effective and responsible recovery program for the Mexican wolf.

I will appreciate Service consideration of, and meaningful response to, our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Voyles". The signature is fluid and cursive, with the first name "Larry" being the most prominent.

Larry D. Voyles, Director  
Arizona Game and Fish Department

cc: Jim Lane, Director, New Mexico Department of Game and Fish  
Steve Yamashita, Acting Director, Colorado Division of Wildlife  
Gregg Sheehan, Director, Utah Division of Wildlife Resources  
Daniel M. Ashe, Director, U.S. Fish and Wildlife Service  
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