



**Rob Edward, Director**  
Carnivore Recovery Program

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Also sent this date via e-mail to primary recipients.

The Honorable Dirk Kempthorne  
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December 3, 2008

**Re: Petition for a revision of the 1982 Mexican Wolf Recovery Plan.**

Secretary Kempthorne and Director Hall:

Please find attached a petition from WildEarth Guardians, the Rewilding Institute, and the Center for Biological Diversity to the United States Fish and Wildlife Service to revise to revise the 1982 Mexican Wolf Recovery Plan.<sup>1</sup> This petition is submitted pursuant to Section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e).

This cover letter precedes a copy of the petition and all appendices in both electronic (PDF) and hard copy format (hard copy sent this date via certified mail/return receipt).

If you have any comments or questions, please do not hesitate to contact me at 303.573.4898 ext. 762.

For the Wild,

Rob Edward, Director  
Carnivore Recovery Program  
WildEarth Guardians

cc: Dr. Benjamin Tuggle

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<sup>1</sup> The Recovery Plan is available for download as a PDF file from <http://1982MWRP.notlong.com>

A PETITION  
TO REVISE THE 1982 MEXICAN WOLF RECOVERY PLAN



Photo: Courtesy of Tony Norton (All rights reserved)

SUBMITTED BY  
WILDEARTH GUARDIANS  
THE REWILDING INSTITUTE  
AND  
CENTER FOR BIOLOGICAL DIVERSITY

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## I. EXECUTIVE SUMMARY

WildEarth Guardians, the Rewilding Institute, and the Center for Biological Diversity (“Petitioners”) hereby petition the United States Fish and Wildlife Service (“FWS”) to revise the 1982 Mexican Wolf Recovery Plan (“Recovery Plan”).<sup>1</sup> This petition is submitted pursuant to Section 553 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e).

The Mexican gray wolf (*Canis lupus baileyi*) is the most endangered mammal in North America and the most endangered wolf in the world. Despite over three decades of protection under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 *et seq.*, and more than ten years of active reintroduction, the Mexican gray wolf, or lobo, remains critically endangered in the wild.

Two main and inextricably linked impediments stand in the way of achieving viable populations of Mexican gray wolves in the American Southwest: the lack of an updated, legally adequate recovery plan; and the unsustainable rate of wolf removals left unchecked by the absence of any set guidance governing Mexican wolf recovery in the wild. Petitioners seek a remedy to these two major impediments by herein petitioning FWS to immediately revise the 1982 Mexican Wolf Recovery Plan.

FWS is now required to revise the Recovery Plan both because the Recovery Plan is legally inadequate and because the Recovery Plan has expired and is therefore obsolete. As thoroughly described below, the Recovery Plan is legally deficient and therefore must be revised because it contains neither: objective,

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<sup>1</sup> The Recovery Plan is available for download as a PDF file from <http://1982MWRP.notlong.com>

measurable criteria which, when met, would result in delisting of the Mexican gray wolf; nor estimates of the time required or the cost to carry out those measures needed to achieve Mexican gray wolf recovery. Further, as thoroughly described below, the Recovery Plan is obsolete, and therefore must be revised because: it was never meant to guide a long-term recovery effort contributing towards delisting; is inherently limited and overdue for periodic re-evaluation and amendment; and effectively expired in 1984, thus leaving the Mexican wolf without a recovery plan, in violation of Section 4(f) of the ESA, 16 U.S.C. § 1533(f).

In accordance with its own recovery planning policy, FWS must prioritize the revision of the Recovery Plan over other endeavors because the Mexican gray wolf: continues to face great threats to its survival; is an extremely rare subspecies; has a high potential for recovery; and remains the subject of great conflict despite federal protection. Considering FWS's current revision of 50 C.F.R. § 17.84(k), the Mexican wolf ESA § 10(j) Rule, and associated management policies, immediate revision of the Recovery Plan is paramount. FWS must have the benefit of recovery goals and procedures in order to reasonably plan for, and facilitate, an ongoing recovery program for the Mexican gray wolf. Petitioners seek the development of such goals and procedures by and through this Petition.

## **II. PETITIONERS**

WildEarth Guardians protects and restores wildlife, wild rivers, and wild places in the American West. Using a combination of litigation, scientific analysis, and grassroots organizing, WildEarth Guardians fiercely defends the West's wild heritage. WildEarth Guardians has approximately 4,500 members across the nation, including many who live in or frequently visit the region encompassed by the range of the Mexican wolf. WildEarth Guardians has been significantly involved in the effort to restore and protect wolves in the American West for over 15 years.

The Rewilding Institute is a non-profit, conservation think tank dedicated to science-informed protection and restoration of biological diversity at landscape and continental scales in North America. A primary focus of the Rewilding Institute is the restoration and conservation of ecologically effective populations of top predators. Such top predators include the Mexican gray wolf, which formerly inhabited vast areas in the Southwest and is currently being restored to portions of Arizona and New Mexico. Ensuring a healthy and viable wild population of Mexican gray wolves in Arizona and New Mexico is one of the Rewilding Institute's primary conservation endeavors.

The Center for Biological Diversity is a non-profit conservation organization that protects the lands, waters, and climate that imperiled animals and plants need in order to survive, through science, law, and public education. The Center has 180,000 members and citizen activists, including those who live and visit in the historic and current range of the Mexican gray wolf. The Center has been actively working to recover the Mexican gray wolf since serving as a plaintiff in the pioneering 1990 lawsuit, under the name Wolf Action Group, that eventually led to the reintroduction project in the Blue Range Wolf Recovery Area. The Center is based in Tucson, Arizona and maintains an office in Silver City, New Mexico.

## **III. THE MEXICAN GRAY WOLF**

### **A. DESCRIPTION AND HISTORY**

The Mexican gray wolf, or "lobo," is the southernmost and smallest subspecies of the gray wolf (*Canis lupus*) in North America. Adults weigh 50 to 90 lbs., average 4'6" to 5'6" in total length, and reach 26" to 32" in height at the shoulder. Pelt color is a mix of black, brown, cinnamon, and buff with some variation among individuals of the subspecies. The Mexican gray wolf subspecies is genetically distinct

from other wolves, with the only known wild subpopulation – reintroduced from captive stock – occurring in west-central New Mexico and east-central Arizona, an area collectively known as the Blue Range Wolf Recovery Area (“BRWRA”). The lobo is one of the rarest land mammals in the world. International experts rate recovery of the Mexican wolf subspecies as the highest priority of all gray wolf recovery programs. *See FWS*, Final Environmental Impact Statement for the Reintroduction of the Mexican Wolf Within its Historic Range in the Southwestern United States (“EIS”) (1996) at iv.

The U.S. Bureau of Biological Survey exterminated the Mexican gray wolf from the southwestern United States on behalf of the livestock industry by the 1930s. In 1950, the Biological Survey’s successor agency, FWS, sent government personnel and poison to the Republic of Mexico to exterminate wolves south of the border. In 1976, FWS listed the Mexican wolf as endangered under authority of the ESA. *See* 41 Fed. Reg. 17736 (1976). In 1978, FWS consolidated separate gray wolf subspecies listings in North America south of Canada into a single species-level listing as endangered, except in Minnesota where wolves were listed as threatened. *See* 43 Fed. Reg. 9607 (1978). Although the 1978 listing of the gray wolf species as a whole subsumed the Mexican wolf subspecies listing, FWS affirmed that it would continue to recognize valid biological subspecies for purposes of research and conservation. *See id.* Taxonomists and geneticists have confirmed that the Mexican wolf is a valid subspecies of the gray wolf.

## B. CAPTIVE BREEDING AND REINTRODUCTION

Between 1977 and 1980, under an agreement between the United States and Mexico, the last five remaining Mexican gray wolves were captured in the Mexican states of Durango and Chihuahua. These four males and one pregnant female served as the foundation of a captive breeding program initially centered at the Arizona-Sonora Desert Museum in Tucson, Arizona and the Wild Canid Survival and Research Center in St. Louis, Missouri. No wild wolves have been confirmed alive in Mexico since 1980.

In 1979, FWS convened a Mexican Wolf Recovery Team that developed the bi-national Mexican Wolf Recovery Plan approved by the United States and Mexico in 1982. The prime objective of the Recovery Plan is “to conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mile area within the Mexican wolf’s historic range.” Recovery Plan at 23. In addition to the prime objective, the Recovery Plan established a broader objective of establishing viable wild populations in at least two areas in Mexico and/or adjoining areas of the southwestern United States. *See id.*, at 32. The Recovery Plan is explicit that these objectives *do not* serve as delisting or downlisting goals. The Recovery Plan also acknowledges that the unknowable results of its prescribed actions and of future research would necessitate future revisions to the Plan.

In the mid-1990s two captive lineages of Mexican wolves, stemming from two wolves apiece previously captured from the wild, were genetically tested and determined to be purebred Mexican wolves. They were then incorporated into the captive breeding program, increasing the number of founders of the captive-bred population to seven. *All known Mexican wolves in existence today stem from these seven founders—a true brush with extinction.*

By July 31, 2008, the captive breeding program included 327 animals maintained at 47 facilities in the United States and Mexico. *See Mexican Wolf International Studbook 2008* (Siminski 2008a, page 25). The Mexican wolf Species Survival Plan (“SSP”), developed and implemented by the Association of Zoos and Aquariums, guides management of this program. The goal of the SSP is to keep at least 300 Mexican gray wolves in captivity to protect the subspecies in the captive reservoir, while producing additional animals for reintroduction. *See Siminski*, Mexican Wolf Species Survival Plan (“SSP”) at 22 (2008b).

Mexican gray wolves are bred and managed for reintroduction at three U.S. facilities: the Sevilleta National Wildlife Refuge and Ladder Ranch Wolf Management Facilities in New Mexico; and Wolf Haven International in Tenino, Washington. Wolves are selected for reintroduction according to genetic makeup, reproductive performance, behavior, and physical prowess, and are managed with minimal human contact. *See id.*

Pursuant to the 1993 settlement of 1990 litigation filed by Wolf Action Group et al., FWS began developing the EIS for reestablishing a wild Mexican gray wolf population. After considering nearly 18,000 comments on the draft EIS, FWS recommended reintroducing Mexican gray wolves to the American Southwest. In keeping with its promise to conserve valid gray wolf subspecies, FWS issued a final rule in 1998 that authorized the re-establishment of a nonessential, experimental (“ENE”) population of *C. lupus baileyi* into the BRWRA. *See* 63 FR 1752 (1998) (“Final Rule”).

The BRWRA encompasses 17,752 km<sup>2</sup> (6,854 mi<sup>2</sup>) of the contiguous Gila and Apache National Forests. Under the Final Rule, FWS may reintroduce wolves only in the “primary recovery zone” of the BRWRA, an area that encompasses about 2,664 km<sup>2</sup> (1,091 mi<sup>2</sup>) of the Apache National Forest. The remainder of the BRWRA comprises the “secondary recovery zone,” where FWS is authorized only to conduct re-releases or translocations of wolves from the wild population. Wolves that travel from the primary recovery zone may inhabit the secondary zone. However, wolves living wholly outside the boundaries of the BRWRA on public lands or on private or tribal lands where they are unwanted must be captured and either brought back to the recovery area or returned to captivity.<sup>2</sup>

Ninety-nine Mexican gray wolves were released from 1998 through 2006—four years beyond the anticipated need to release wolves. FWS estimated that it would take nine years (1997-2005) to reach a population of 100 wolves with 18 breeding pairs. *See* EIS. Although the reintroduction did not actually begin until 1998, the 100-wolf prime objective was not met in nine years – by 2006 – as planned. Indeed, even this initial benchmark seems unlikely to be met under current management. By the end of 2006, just 59 wolves and six breeding pairs (according to the definition of breeding pair in the 1998 final rule) survived in the wild. By the end of 2007, those numbers had fallen to 52 wolves and just three breeding pairs. Importantly, the 2007 official population count shows that fewer individual wolves and no more breeding pairs now exist in the wild than did at the end of 2003. In short, the 100+ wolf interim recovery benchmark of the Recovery Plan has not been achieved. No goals for Mexican gray wolf recovery, *i.e.*, delisting, exist today.

### C. THWARTED RECOVERY

Despite hopeful first efforts in captive breeding and reintroduction, FWS has failed to attain any basic benchmark for recovery in the wild since the Mexican gray wolf reintroduction project began. Instead, the population of Mexican gray wolves in the BRWRA has suffered significant human-caused losses from both illegal killings and authorized removal actions by FWS. From 1998 – 2003, the wild wolf population suffered from an average annual failure rate of 64 percent. *See Mexican Wolf Adaptive Management Oversight Committee (“AMOC”), Mexican Wolf Blue Range Reintroduction Project Five-Year Review (2005)*. Failure rate is the sum of wolf mortalities plus wolves killed or removed from the wild by deliberate management actions carried out by the agencies.

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<sup>2</sup> The Mexican gray wolf reintroduction project is the only endangered species reintroduction project where hard boundaries legally limit the area that can be occupied by the species in the wild, even though suitable areas exist on public lands outside the boundary.

Rather than redouble its wolf conservation efforts in light of this daunting report, FWS – in what has proved to be a highly questionable and unprecedented move – instead effectively abandoned the Mexican wolf reintroduction project by delegating its primary authority over wolf recovery to an interagency team known as the AMOC. Under the newly minted “leadership” of the AMOC, the Mexican gray wolf reintroduction project has gone severely off course, tending to promote wolf control over wolf recovery. Indeed, the most notable “accomplishment” of the AMOC has been the formal adoption of Standard Operating Procedure 13 (“SOP 13”), which requires FWS to permanently remove from the BRWRA every Mexican wolf that preys on livestock three times or more within 365 days.

Since the AMOC formally adopted SOP 13 in 2005, FWS-authorized permanent wolf removals have spiked. While FWS has ordered the removal of 70 Mexican wolves for conflicts with livestock since the reintroduction program began, FWS permanently removed 45 of those wolves under the punitive mandate of SOP 13 in the last three years alone. Largely as a result, the wild population has not been known to top 59 individuals during the ten years. The aggressive and biologically unsustainable rate of removals driven by the continued implementation of SOP 13 is systematically unraveling any progress already made towards Mexican wolf recovery.

The Mexican gray wolf is not currently on a trajectory toward recovery. As of December 31, 2007, the wild population of lobos in Arizona and New Mexico was estimated at 52 wolves comprising 12 packs, only three of which qualified as breeding pairs. Notably, this represents a 12% decline in the wild population of Mexican gray wolves from the previous year (2006). The stated population objective for 2007 was a 10% population increase. Thus, FWS fell 22% short of its most recent goal, leaving only 52 of these critically endangered animals in the wild. More ominously, the number of breeding pairs as defined in the final rule declined from six at the end of 2006 to only three at the end of 2007. This backwards population trend line may portend the Mexican gray wolf’s second extinction in the wild.

These poor program results, which are a direct consequence of agency mismanagement, would have likely been avoided if FWS had been operating the wolf reintroduction program under a valid recovery plan with set goals and criteria for delisting. Indeed, but for the absence of recovery goals and parameters, agency-led predator control directed at the Mexican wolf would have been reduced sufficiently to achieve recovery. *The failure of the BRWRA reintroduction project to date derives from a policy vacuum left in the wake of the Recovery Plan’s legal deficiencies and obsolescence, which are fully described below.* This policy vacuum is biologically unacceptable and legally indefensible. Quite simply, the ESA requires more.

#### **IV. THE ENDANGERED SPECIES ACT RECOVERY MANDATE**

The essential purpose of the ESA is conservation of endangered and threatened species within their natural ecosystems. “The purposes of [the ESA] are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species.” 16 U.S.C. § 1531(b). To “conserve” means “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.” *Id.* § 1532(3).

Within the context of the ESA, conservation means recovery. *See Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434, 441 (5<sup>th</sup> Cir.2001). “Recovery” is “improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in Section 4(a)(1) of the Act.” 50 C.F.R. § 402.02.

Recovery plans are an essential and required ESA conservation tool. The ESA imposes “a clear duty on [FWS] to fulfill the statutory command to the extent that it is feasible or possible.” *Fund for Animals v. Babbitt*, 903 F.Supp. 96, 107 (D.D.C. 1995). Specifically, 16 U.S.C. § 1533(f) directs FWS to “develop and implement plans...for the conservation and survival of endangered species and threatened species listed pursuant to [the Act], unless [it] finds that such a plan will not promote the conservation of the species.”

The ESA requires that all recovery plans “shall...to the maximum extent practicable” include:

- o “a description of the site-specific management actions as may be necessary to achieve the plan’s goals for conservation and survival of the species;”
- o “objective, measurable criteria which, when met, would result in a determination...that the species be removed from the list;” and
- o “estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal and to achieve intermediate steps toward that goal.” *Id.* § 1533(f)(1)(B).

The thrust of this Petition is to compel the revision of the Recovery Plan as a means to resuscitate recovery.

Recovery plans are well recognized as the heart of successful species recovery efforts. “The importance of recovery plans as guiding documents for recovering species has been recognized since 1972.” 48 Fed. Reg. 43099, 43103 (1983). Recovery plans largely serve to guide actions on behalf of listed species that will contribute substantially to recovery. “A recovery plan delineates, justifies, and schedules the research and management actions necessary to support recovery of a species, including those that, if successfully undertaken, are likely to permit reclassification or delisting of the species.” *FWS, Policy and Guidelines for Planning and Coordinating Recovery of Endangered and Threatened Species* (“FWS Recovery Guidelines”) (1990) at 1.<sup>3</sup> Indeed, any valid recovery plan serves as “a basic road map to recovery, *i.e.*, the process that stops or reverses the decline of a species and neutralizes threats to its existence.” *Fund for Animals*, 903 F.Supp. at 103, *citing* FWS Recovery Guidelines.

The ESA contemplates that recovery plans will be revised as needed. *See* 16 U.S.C. §§ 1533(f)(4)-(5). Revisions involve “substantially rewriting some portion(s) of the plan. A revision is necessary when significant changes are needed...and/or when major conceptual changes are required.” FWS Recovery Guidelines at 9. As described below, the Recovery Plan needs significant, conceptual changes in order to guide the ongoing Mexican gray wolf reintroduction project and to ensure recovery throughout all significant portions of the Mexican wolf’s range.

## **V. THE RECOVERY PLAN MUST BE REVISED**

The Recovery Plan, which has been in effect in its original form for 26 years, requires revision. It is both legally inadequate and otherwise obsolete. The legal inadequacies of the Recovery Plan are two-fold. The Recovery Plan contains neither clear criteria for delisting the Mexican gray wolf nor estimates of the time and/or cost of achieving such delisting. The recovery plan is obsolete because it is no longer relevant and has thus effectively expired.

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<sup>3</sup> The FWS Recovery Guidelines are attached hereto.

## A. THE RECOVERY PLAN IS LEGALLY INADEQUATE

### i. No Objective, Measureable Criteria for Delisting

The ESA requires that all recovery plans contain “objective, measurable criteria which, when met, would result in a determination...that the species be removed from the list.” 16 U.S.C. § 1533(f)(2)(B)(ii). Implicit in the ESA § 4 mandate is that all recovery plans must both define what recovery of the subject species looks like and set forth those steps necessary for attaining that species’ recovery so that it can then be removed from the federal list of threatened and endangered species. The Recovery Plan does neither of these things and is therefore legally inadequate.

First, the Recovery Plan does not define what constitutes Mexican gray wolf recovery. In fact, the Recovery Plan expressly states that it contemplates no scenario under which the Mexican wolf could ever be taken off the endangered species list. *See* Recovery Plan at 23 (“the Mexican Wolf Recovery Team sees no possibility for complete delisting of the Mexican wolf.”). The Recovery Plan’s prime objective represents a mere interim benchmark for recovery, as does its goal of re-establishing and maintaining viable wild populations of Mexican wolves in at least two areas in Mexico and/or adjoining areas of southwestern United States. Examination of the recovery plan itself indeed reveals that FWS considered the recovery plan’s 100+ primary demographic objective as nothing more than a “working hypothesis.” *See id.* The lack of any goal for recovery and consequent delisting of the Mexican gray wolf is a legal deficiency in the recovery plan, which, in and of itself requires revision.

With no scenario provided under which the Mexican gray wolf would be delisted, the Recovery Plan necessarily also lacks the requisite objective, measurable criteria for achieving such delisting. This legal deficiency also cannot stand. “Congress has spoken in clarion terms: the objective measurable criteria must be directed towards the goal of removing the endangered or threatened species from the list. Since the same five statutory factors must be considered in delisting as in listing, 16 U.S.C. § 1533(a), (b), (c), the Court necessarily concludes that FWS, in designating objective, measurable criteria, must address each of the five statutory delisting factors and measure whether threats to the [species] have been ameliorated.” *Fund for Animals*, 903 F.Supp. 96 at 111.

Far from addressing each of the five statutory delisting factors and measuring whether such threats to the Mexican gray wolf have been ameliorated, the Recovery Plan fails entirely to discuss any of the ESA’s delisting factors. Although it was evidently not feasible to identify delisting criteria in 1982, the past ten years of wild wolf management and scientific advancement have provided FWS with the experience and knowledge to develop these criteria now. Such experience and advancement mandate Recovery Plan revision. FWS may decline to develop delisting criteria *only* where it is not feasible or possible to do so. *See Southwest Center for Biological Diversity v. Babbitt*, 1999 WL 33438081 (D.Ariz.). The case of the Mexican wolf does not qualify.

### ii. No Estimates of the Time Required or Cost Necessary for Delisting

The ESA requires that all recovery plans further contain “estimates of the time required and the cost to carry out those measures needed to achieve the plan’s [recovery] goal and to achieve intermediate steps toward that goal.” 16 U.S.C. § 1533(f)(1)(B). Contrary to this legal mandate, the Recovery Plan contains neither cost nor time estimates for reaching Mexican wolf recovery. The Recovery Plan sets forth no timetable for when what actions will be implemented and makes absolutely no attempt to quantify the cost for anything program-related.

Again, the Recovery Plan contains no goal for delisting the Mexican gray wolf, but instead expressly concedes FWS’s 1982 position that the factual scenario by which such delisting would occur was not at

that time identifiable. Just as with the Recovery Plan's "lack of objective, measurable criteria" defect, the Recovery Plan lacks the requisite time and cost estimates for attaining recovery because it does not define what would actually constitute Mexican wolf recovery.

FWS made no attempt in 1982 to conceal these inadequacies. It stated in the preface to the Recovery Plan that, "The plan is far from complete, lacking specifics and cost estimates for the later stages of the propagation and release projects. This omission is necessary at this time because the present slow progress in establishment of a captive breeding program pushes those later stages farther into an unseeable (*sic*) future." See Recovery Plan at 1.

While Petitioners certainly understand the chasm of uncertainty facing those originally involved in early planning for Mexican wolf recovery, this uncertainty has been largely eliminated in the past 26 years. Not only has captive breeding been sufficiently successful to launch and maintain the first reintroduced population of Mexican gray wolves, but FWS now has more than a decade of on-the-ground experience with wild Mexican wolves in the BRWRA, and even longer experience with wild wolves elsewhere. Indeed, the "unseeable (*sic*) future" referenced in the Recovery Plan arrived years ago, and the reintroduction program, which in the absence of recovery criteria is the only substantial step toward possible recovery, is now in peril. The Recovery Plan is not the type of "roadmap" for wolf recovery that the ESA intended, and FWS needs to move forward with the Mexican gray wolf recovery planning effort.

## B. THE RECOVERY PLAN IS OBSOLETE

The Recovery Plan has effectively expired, and is thus irrelevant in governing the ongoing Mexican gray wolf reintroduction and recovery project in the BRWRA. The Recovery Plan was never meant to guide a long-term recovery effort contributing towards delisting, but was instead designed only to guide the launching of the first reintroduction project, with future reintroduction projects to new recovery areas intended to be guided in as-yet-unwritten amendments or revisions to the Recovery Plan. The Recovery Plan states that, "Given uncertainties that exist now (January 1982) about the rate of progress of the captive propagation project, proposals for consideration of specific release areas are not included in the present issue of the plan, *which covers the period only to September 30, 1984.*" Recovery Plan at 20 (emphasis added).

By its express terms, the Recovery Plan expired less than three years after it was approved, *i.e.*, fourteen years before FWS first began releasing wolves into the BRWRA in 1998. The Recovery Plan states that, "No releases of wolves are anticipated in the three-year period covered by the present schedule." *Id.* at 58. The Recovery Plan therefore provides no substantive guidance as to how FWS might actually manage the first wild population (as well as subsequent populations) of Mexican gray wolves in a manner that promotes the recovery and subsequent delisting of this subspecies. As previously stated, it is this utter lack of guidance for facilitating Mexican wolf recovery in the wild that has enabled the wolf control program to continue unchecked by FWS itself. ESA § 4 was designed to avoid just such a policy vacuum in endangered species management. FWS must end its policy of willful blindness towards the fate of the Mexican wolf and correct this deficiency by now revising the Recovery Plan.

The drafters of the Recovery Plan recognized its limitations and the need for later amendment. The preface stated that, "Later amendment of the plan is obviously required for its realistic completion. Beyond that, the team also recommends that the plan be periodically re-evaluated and amended in the light of progress of the recovery program and new developments in knowledge of the Mexican wolf and in techniques of management and husbandry." Granted, FWS has since recognized these same limitations and acknowledged the need – and indeed its willingness – to revise the Recovery Plan. "The recovery plan is currently being revised; the Service expects to release a draft for public review in 1998. The

revised plan will more precisely define population levels at which the Mexican wolf can be downlisted to threatened status and removed from protection under the Act (*i.e.*, delisted).” 63 Fed. Reg. 1752, 1753 (1998).

Despite these stated intentions, FWS disbanded the Mexican wolf recovery team before any such revisions took place. FWS appointed a new recovery team in August 2003, stated its intent for the team to finalize a new recovery plan by the end of 2005 (see 2003 Progress Report, p. 5, [http://www.fws.gov/southwest/es/Documents/R2ES/Mexican\\_Wolf\\_Recovery\\_Program\\_Annual\\_Progress\\_Report\\_2003.pdf](http://www.fws.gov/southwest/es/Documents/R2ES/Mexican_Wolf_Recovery_Program_Annual_Progress_Report_2003.pdf)), but canceled its scheduled January 2005 meeting and subsequently indefinitely suspended recovery planning. These actions go against FWS Recovery Guidelines, which state that FWS-sponsored recovery efforts should be terminated only “in cases where a species’ extinction is imminent and inevitable.” FWS Recovery Guidelines at IV-3. That is certainly not the case here, and thus provides no justification for FWS’s failure to revise the Recovery Plan.

Because the Recovery Plan expired in 1984, there is currently no recovery plan guiding the Mexican wolf reintroduction and recovery project at all. This state of affairs violates ESA § 4(f), and thus must be promptly rectified by FWS.

## **VI. FWS MUST PRIORITIZE RECOVERY PLAN REVISIONS**

According to FWS’s own recovery priority system, FWS must act quickly to revise the Recovery Plan. FWS policy dictates that the agency is to evaluate four criteria when prioritizing recovery efforts. These are: 1) degree of threat; 2) conflict; 3) recovery potential; and 4) taxonomic status/monotypic genus. *See* 48 Fed. Reg. 43099, 43103 – 43104 (1983). These criteria are “intended to devote resources on a priority basis to those species representing highly distinctive or isolated gene pools...[and] give[] priority...in the preparation of recovery plans to those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.” *See id.*

Under these internal Recovery Priority Guidelines, FWS has already assigned Mexican gray wolf recovery as a “3C” priority. Considering that the scale of prioritization consists of 36 priority “levels” (1C – 18), the Mexican wolf’s 3C designation constitutes FWS’s own acknowledgement that Mexican gray wolf recovery planning should be prioritized over most other FWS endeavors. The 3C priority designation is based on FWS’s own conclusion that the Mexican gray wolf subspecies faces a high degree of threat and is subject to a high level of conflict, yet still enjoys a high potential for successful recovery.

Threats to the Mexican gray wolf are immense due to ongoing conflict. FWS and its predecessor agency systematically eradicated the Mexican wolf from the United States and Mexico to resolve conflicts with the livestock industry. Today, due to a failure of leadership in resolving this conflict in a manner that permits wolf recovery, FWS has reverted to its predator control past, and is suppressing the sole wild Mexican wolf population and foreclosing opportunities for recovery. Although the mission of FWS changed upon passage of the ESA in 1973 from one of predator control to one of species recovery, its actions remain startlingly consistent with its pre-1973 history. Whether coupled with illegal killings or standing alone, agency-led wolf control poses an ongoing and significant threat to individual Mexican gray wolves, family packs, and to the survival and recovery of this subspecies.

Rarity of the Mexican gray wolf is unparalleled, yet its recovery potential remains high. The Mexican gray wolf is the rarest and most genetically distinct of all the gray wolf subspecies. FWS biologist and renown wolf taxonomist Ronald W. Nowak suggested it as the most endangered mammal in North America. There is no naturally occurring wild population of Mexican gray wolves. Yet, habitat and prey

for the species exists throughout much of the Southwest, providing significant opportunities to allow the species to recover and thrive (Carroll et al. 2006).

Independent experts have called for immediate revision to the Recovery Plan. See *Paquet et al.*, Mexican Wolf Recovery: Three-Year Program Review and Assessment (2001). After ten years of experience with wolf management that has failed to achieve a modest population goal, a renewed look at recovery planning is necessary, feasible, and will promote the conservation of the Mexican wolf subspecies. At present, the subspecies is moving in the wrong direction in the wild – or is at best in a “put and take” situation. FWS must immediately revise the Recovery Plan and get the Mexican gray wolf reintroduction program back on track. As just one example, the wild population lacks important genetic diversity; yet, despite the advice and recommendations of genetics experts, FWS has developed no formal guidance for addressing this critical problem and ordered the killing of a genetically irreplaceable wolf.

That the Mexican gray wolf is not listed as endangered separately from *Canis lupus* under the ESA is no excuse for inaction. FWS first recognized the imperative to conserve the Mexican gray wolf when it listed the subspecies separately under the ESA in 1976. FWS again recognized this imperative when it committed to continue recognizing valid subspecies for purposes of conservation, even after the lobo’s listing status was subsumed by that of *Canis lupus* in 1978. FWS for the third time recognized this imperative when it developed a subspecies recovery plan for the Mexican gray wolf in 1982 under the authority of the same 1978 listing rule that remains in effect today. The Mexican gray wolf is still the most rare and most genetically distinct of all gray wolves in North America. There is absolutely no significant change in circumstance that would warrant FWS changing its 32-year policy of *Canis lupus baileyi* conservation.

Indeed, no time could be more critical for revised recovery planning than the present, while FWS is in the process of revising the 1998 Mexican wolf ESA § 10(j) rule. As set forth herein, managing the wild Mexican wolf population without the sideboards provided by an up-to-date, legally valid Recovery Plan has proven disastrous. FWS should heed the lessons of the past ten years and should expedite development of a new Recovery Plan to guide its revision of the final rule addressing wolf management. FWS’s history suggests that absent an updated Recovery Plan replete with delisting goals, benchmarks, costs, and timetables, FWS may not possess the institutional commitment, nor exercise the fortitude necessary, to satisfy ESA § 10(j)’s conservation standard. See 16 U.S.C. § 1539(j)(2)(A) (stating that populations of endangered species released under Section 10(j) must be managed in order to further their conservation). If given appropriate priority by FWS, and especially given that a draft Recovery Plan was prepared in 1998 and additional work performed by the recovery team during 2003 and 2004, a revised Recovery Plan could easily be completed and approved before the proposed completion date of the revised Section 10(j) rule currently scheduled for 2010.

## VII. CONCLUSION

The Mexican gray wolf is the most endangered mammal in North America and the most endangered wolf in the world. Despite three decades of protection under the ESA, and more than ten years of active reintroduction, the lobo continues to teeter on the brink of extinction.

Two main and inextricably linked impediments stand in the way of achieving a viable population of Mexican gray wolves in the American Southwest: the lack of an updated, legally adequate Mexican wolf recovery plan; and the unsustainable rate of agency wolf removals unchecked by any set guidelines for achieving Mexican wolf recovery. FWS is now required to revise the Mexican Wolf Recovery Plan both because the Recovery Plan is legally inadequate and because the Recovery Plan has expired and is therefore obsolete.

Recovery of the Mexican wolf in the American Southwest and in Mexico requires the expeditious revision of the now obsolete 1982 Mexican Wolf Recovery Plan. Therefore, the primary tasks before FWS in this instance are to immediately reconstitute the recovery team with a clear goal of revising the Recovery Plan, and then to actually approve a new, legally sufficient, Mexican Wolf Recovery Plan. The mandate for FWS to act in this manner is fully embodied in ESA § 4(f).

Given that FWS's own guidelines require a recovery plan within 2.5 years of a species' original listing, Petitioners request that FWS take action on this Petition well in advance of any FWS action to finalize a new Section 10(j) rule for the Mexican wolf in the BRWRA. Clearly, revision of the existing Recovery Plan – one that has undergone scrutiny by two successive recovery teams – should take far less time than development of an entirely new plan. Petitioners herein request that FWS immediately endeavor to revise the 1982 Mexican Wolf Recovery Plan in order to fulfill its obligations under the ESA and promote the expeditious conservation and recovery of the Mexican gray wolf in the wild. Petitioners further request within 60 days of FWS's receipt of this Petition, a written response to this Petition indicating FWS's intended course of action on the items requested herein.

Respectfully submitted,



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## REFERENCES

- Carroll, C., M.K. Phillips, C.A. Lopez-Gonzalez, and N.H. Schumaker. 2006. Defining recovery goals and strategies for endangered species: The wolf as a case study. *BioScience* 56 (1): 25 – 37.
- Fuller, T.K., L.D. Mech, and J.F. Cochrane. 2003. Wolf population dynamics. In L.D. Mech and L. Boitani, eds. *Wolves: Behavior, Ecology, and Conservation*. University of Chicago Press, Chicago. pp 161-191.
- Groebner, D.J., A.L. Girmendonk, and T.B. Johnson. 1995. A proposed cooperative reintroduction plan for the Mexican wolf in Arizona. *Arizona Game and Fish Department, Technical Report 56*. Phoenix, Arizona, USA.
- Paquet, P.C., J. Vucetich, M.K. Phillips, and L. Vucetich. 2001. *Mexican Wolf Recovery: Three-Year Program Review and Assessment*. Prepared by the IUCN-SSC Conservation Breeding Specialist Group, Apple Valley, Minnesota for the U.S. Fish and Wildlife Service, Albuquerque, New Mexico, USA.
- Parsons, D.R. 1998. Establishment of a nonessential experimental population of the Mexican gray wolf in Arizona and New Mexico. *Federal Register* 63:1752-1772.
- Siminski, D.P. 2008a. Mexican Wolf, *Canis lupus baileyi*, International Studbook, 2008. The Living Desert, Palm Desert, California, USA.
- Siminski, D.P. 2008b. Mexican Wolf, *Canis lupus baileyi*, Species Survival Plan, 2008. The Living Desert, Palm Desert, California, USA.
- U.S. Fish and Wildlife Service. 1982. *Mexican Wolf Recovery Plan*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico, USA.
- U.S. Fish and Wildlife Service. 1996. *Reintroduction of the Mexican Wolf Within Its Historic Range in the Southwestern United States: Final Environmental Impact Statement*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico, USA.