

September 15, 2005

Senator James Inhofe
Chairman
Committee on Environment
& Public Works

Senator James Jeffords
Ranking Minority Member

Re: Nomination of Dale Hall to Serve as U.S. Fish & Wildlife Service Director

Dear Senators:

The undersigned organizations are writing to notify you of our collective opposition to the nomination of Dale H. Hall to serve as the Director of the U.S. Fish & Wildlife Service.

Our principal concern is the lack of integrity that Mr. Hall has exhibited and his past actions to undermine the very conservation statutes that lie at the core of the mission of the U.S. Fish & Wildlife Service. His lack of respect for the diversity of life and the laws established to protect it is greatly responsible for high staff turnover in recent years that is crippling the agency in the Southwest.

During his tenure since 2002 as the Southwest Regional Director, overseeing Service operations in Arizona, New Mexico, Oklahoma and Texas, Mr. Hall has only taken actions to protect wildlife pursuant to a court order or under the threat of legal action. Moreover and more disturbingly, Mr. Hall has repeatedly overturned the scientific findings of his agency's own specialists for non-scientific or explicitly political reasons. Finally, Mr. Hall has personally taken actions and directed subordinates to take actions that are contrary to law.

Guided by Politics in Violations of Endangered Species Act's "Best Available Science" Mandate

As Regional Director of USFWS in the Southwest Dale Hall has exhibited a disappointing willingness to compromise science, or disregard it altogether, to reach pre-determined results. The most recent, but certainly not the only, example of Mr. Hall sacrificing science for political reasons is a 2005 policy issued by Mr. Hall **instructing Service biologists in the Southwest to ignore genetics when making decisions about endangered or threatened species' recovery.**

This "no genetics" policy quickly generated widespread criticism from scientists in related disciplines; including 160 scientists who signed a letter requesting Mr. Hall rescind the policy. Mr. Hall's action also drew criticism from inside USFWS. In a

highly unusual rebuke, Ralph Morgenweck, USFWS Regional Director for the Mountain-Prairie Region, in a March 11, 2005 letter,¹ wrote to Mr. Hall sharply charging that the policy contradicted the purposes of the Endangered Species Act (ESA) and ran counter to the law's requirements that USFWS utilize the "best scientific and commercial data available" in making determinations.

Mr. Morgenweck also cited several examples where genetic diversity has been critical to species' survival because it allows wildlife to adapt to emerging threats, diseases and changing conditions. This is in keeping with current scientific knowledge.

By prohibiting consideration of individual or unique populations, Mr. Hall's policy allows USFWS to declare wildlife species secure based on the status of any single population. Thus, in the Southwest a species may be pronounced recovered even if a majority of populations and their genetic component are lost. This allows regional decision-makers new justification for approving development projects that extirpate individual populations while prohibiting strategies to recover the genetic health of an imperiled species according to the best available science and recommendations of wildlife biologists.

In addition to the "no genetics" policy's basis on faulty interpretations of a federal court decision and the ESA, Mr. Hall derived his motivation for declaring the irrelevance of genetic data in recovery planning from interests that run contrary to protection of wildlife and habitats. Instead of insisting that Service scientists use sound science in decision-making, the Regional Director drafted a pro-development policy to allow decisions in the Southwest to contravene the best available science and reach pre-determined results.

In the wake of such sharp criticism Mr. Hall has failed to revisit this policy, begging the question of whether, given the opportunity as director of the agency, he would proudly extend the regional policy to all Service scientific staff. Such a move would send a message to thousands of dedicated agency personnel that species protection and recovery is no longer the number one priority of the USFWS.

Instructed Southwest Staff to Violate Law and Agency Policy & Further Imperil Federally Listed Endangered Wildlife and Plants

According to reports from Service biologists, Regional Director Hall verbally instructed subordinates in 2001 that the agency would not issue findings of "jeopardy" for any species currently protected by the Endangered Species Act in the Southwest Region.² Such a blanket ban on jeopardy opinions categorically allows any and all development projects to proceed regardless of the impacts to ESA listed species and with complete disregard for established law and science in place to protect those species. This amoral

¹ See attached documents: Attachment A, Policy Memo from Dale Hall to Assistant Regional Director for Ecological Services (January 27, 2005); Attachment B, Memo from Ralph Morgenweck to Dale Hall (March 11, 2005); and Attachment C, Letter from Scientific Community to Dale Hall (June 20, 2005).

² See attached document: Attachment D, Letter from Sally Stefferud, retired USFWS biologist, to Senators John McCain and Jon Kyl of Arizona (September 13, 2005).

edict is a deliberate means to circumvent a science-based provision of the ESA that is central to the agency's mission, a mission Mr. Hall is charged with honoring.

The USFWS is required under the Act to consult with any other federal agency that is proposing to take an action in an area where an endangered or threatened species is present.³ The purpose of this consultation is for USFWS biologists to determine whether the proposed action would likely jeopardize the continued existence of the species. The law provides that the Service will base the consultation on the best available science. Thus, Mr. Hall's decision to make a finding of "no jeopardy" before considering any relevant scientific data is a clear violation of the ESA and Service policy for carrying out the mandates of the Act to ensure protections for wildlife.

Not surprisingly, since Mr. Hall assumed the reins in the Southwest, the only finding of jeopardy by the U.S. Fish & Wildlife Service publicly documented in the four southwest states since 2001 was court-ordered and in a biological opinion for the Rio Grande silvery minnow and Southwest willow flycatcher. **There is no record of a single voluntary finding of jeopardy for any project impacting an ESA-protected species in the Southwest during Dale Hall's tenure as Regional Director.**

The reports of Mr. Hall's instruction to biologists to find no jeopardy for all consultations are reinforced by a recent survey of Southwest Region scientific staff conducted by Public Employees for Environmental Responsibility and the Union of Concerned Scientists:⁴

- Fully two-thirds of respondents whose work under Mr. Hall is related to endangered species scientific findings reported being "directed, for non-scientific reasons to refrain from making jeopardy or other findings that are protective of species;" and
- More than one in four respondents (29%) reported being "directed to inappropriately exclude or alter technical information from a USFWS scientific document," the highest percentage compared with the other USFWS regions.

Furthermore, the survey results leave little doubt as to how such directives are affecting the relationship between scientific staff and upper management under Mr. Hall's direction:

- Four out of five respondents (83%) did not "trust USFWS decision makers to make decisions that will protect species and habitats;" and
- Fewer than one in five (19%) respected "the integrity and professionalism" of their agency heads.

³ See Endangered Species Act, Section 7, "Interagency Cooperation," 16 U.S.C. § 1536.

⁴ See attached documents: Attachment E, Focus on the Southwest: 2005 U.S. Fish & Wildlife Service Survey in Region 2; and Attachment F, Southwest Region Complete Survey Results.

In an essay submitted with the survey, one Southwest USFWS biologist addressed this sidestepping of science by calling for greater accountability:

Providing rigorous documentation of scientific decisions is already required. I wish managers would provide similar documentation, (phone records, and memos to file) of those when marching orders are given by a member of congress, an appointee, a [Regional Director] etc. In other words, it should be documented when a scientific process is usurped by political considerations.

Another respondent noted the need to “reduce politically-based interference with agency scientists and scientific decisions by requiring challenges to [be] made through formal channels and to be based on science...”

Compared with nationwide survey results, scientists in the four Southwestern states reported more problems with transparency in scientific documents and higher levels of concern for the agency’s mission and direction than did their USFWS colleagues in other regions of the country. Regional Director Hall earns the distinction among all other USFWS regional directors of having the worst scientific staff report, yet instead of being censored for a string of criticisms, he is now being considered for a promotion.

We believe that this record offers incontrovertible evidence that vigorous protection of wildlife, scientific excellence and adherence to established law and policy have not been the priorities under Dale Hall’s leadership.

Pattern of Decisions Detrimental to Wildlife

While there are no recorded instances of Mr. Hall making decisions that benefit wildlife, the record is replete with examples of decisions by Mr. Hall that have been detrimental to wildlife. Under Mr. Hall, the southwest region has virtually stopped listing new species as endangered or threatened under the ESA. The only species listed between January 1, 2002, and April 1, 2005, the Chiricahua leopard frog, was the result of a court order. In April of this year southwestern conservation groups wrote to Dale Hall with an accounting of the decline in decisions to list imperiled species and expressing concerns about the implications of the decline.⁵ Despite a call for reforms at the regional level, more than five months later the groups still await a response from Mr. Hall’s office.

Furthermore, decisions affecting several species already listed under the ESA reveal what appears to be an unwritten rule in the Southwest to weaken species protection in favor of ranching and development interests:

Mexican gray wolf. When his own biologists proposed a policy change to enhance the prospects for recovery of endangered Mexican gray wolves, Mr. Hall stonewalled that proposal by refusing to send it on to the national office for

⁵ See attached document: Attachment G, Letter from Forest Guardians and the Center for Biological Diversity to Dale Hall and Joy Nicholopoulos (April 7, 2005).

approval. Failure to implement the policy is largely responsible for a 20% decline in the known population of Mexican wolves during 2004. At the same time, Mr. Hall suspended indefinitely the Southwest gray wolf recovery team that is charged with developing an updated wolf recovery plan, even though the 1982 Mexican Wolf Recovery Plan is significantly out of date and lacks criteria for delisting the wolf. His decision to suspend the recovery team followed a meeting of his top-level officials with ranchers opposed to the Mexican wolf recovery program.

Rio Grande silvery minnow. The lone jeopardy biological opinion approved by Mr. Hall in September 2002 for the Middle Rio Grande failed to include a reasonable and prudent alternative to remove jeopardy to the Rio Grande silvery minnow as required by the ESA. Mr. Hall's decision to de facto become the "god squad" by approving the opinion was determined to be illegal by the Chief federal judge in New Mexico.

The failure to propose an alternative to the archaic water management policies and practices that were leading to the jeopardy of the silvery minnow is a complete abandonment of his chief responsibilities as regional director: to prevent the extinction of all species listed under the ESA and more broadly to ensure that the diversity of life is protected and restored. Meanwhile, the same action likely won Mr. Hall political favors.

This lone jeopardy biological opinion under Mr. Hall's direction, along with a more recent biological opinion in the Middle Rio Grande, also reflects a cavalier attitude about the dire ecological straits for the silvery minnow. Sugar coating the bleak biological status of the silvery minnow has put incredible pressure on agency biologists to minimize the devastation to silvery minnow populations.

Pygmy-owl. Mr. Hall's office recently proposed to de-list the Cactus ferruginous pygmy-owl under the Endangered Species Act. A white paper by expert Service biologists summarized scientific data on the owl's status and strongly supported continued listing protection for the pygmy-owl, yet this information was sequestered away for over a year until conservation organizations were able to obtain a copy through a Freedom of Information Act request. The Service appears to have ignored the white paper's findings in its proposal to de-list, pursuant to Mr. Hall's new policy restricting the use of genetic science.

Aplomado falcon. On the same day the PEER/UCS survey results were released, February 9, 2005, the Southwest region issued a proposal to reintroduce aplomado falcons under a "nonessential, experimental" designation. If finalized, this would severely erode ESA protections for wild falcons already in the state, in New Mexico's boot heel. This is not a biologically sound proposal. The primary factor suspected to have caused the severe imperilment of the falcon is habitat degradation. Yet, the agency's reintroduction proposal's design would undermine

the very tool which provides enforceable habitat protections for falcons – the ESA consultation process.

This proposal will also pave the way for oil and gas drilling on Otero Mesa, while limiting critical habitat protections that the existing wild falcons need to survive and recover. Moreover, a recent review of the draft Environmental Assessment (EA) issued with the falcon reintroduction proposal indicated profound scientific manipulation, with all mention of the proposal's foreclosure of the critical habitat for the falcon, and the likelihood of habitat protection backslides having been edited out of this EA.

Efforts to determine whether Mr. Hall actually has a good faith explanation for these actions has proven futile because Mr. Hall dodges attempts of stakeholders to derive his explanations for his policy decisions. For example, the letter Mr. Hall received from 160 scientists questioning his genetics policy earlier this year has to date not been addressed. Despite such wide criticism of this policy, Mr. Hall has not yet made any effort to respond to, let alone quell, the concerns of the scientific community and his own agency colleague, Regional Director Ralph Morgenweck.

Mr. Hall's lack of responsiveness to requested meetings from the environmental community has become so commonplace that many groups have simply stopped asking. As noted above, Mr. Hall has not responded to the April 7 letter from biodiversity protection groups to Mr. Hall underscoring rampant problems and misconduct in the southwest endangered species program. At the same time, Mr. Hall regularly appears at industry stakeholder functions and the Mexican wolf program has shown the perils to endangered wildlife of such lopsided decision-making. Mr. Hall's rather one-sided appointment calendar raises serious questions as to his suitability to be an unbiased leader of an agency that inexorably must referee disputes among competing interests.

The mission of the U.S. Fish & Wildlife Service is "to conserve, protect and enhance fish and wildlife and their habitats for the continuing benefit of the American people." Any dispassionate review of USFWS decisions in the Southwest under Mr. Hall's leadership would demonstrate that the agency's mission is somehow dispensable.

In conclusion, we believe that Dale Hall's record as Southwest Regional Director of the U.S. Fish & Wildlife Service has been deplorable. His record at the regional level presents a frightening preview to the damage he could deal to endangered wildlife and plants if confirmed to lead the entire U.S. Fish & Wildlife Service.

While some deference is owed to a president's choice in selecting persons of similar philosophy to serve in the administration, Dale Hall's record so clearly undercuts the very mission of the agency he aspires to lead that we would strongly urge this nomination be rejected.

Sincerely,

Jeff Ruch,
Executive Director
Public Employees for Environmental Responsibility

Nicole J. Rosmarino, Ph.D.
Conservation Director
Forest Guardians

Kieran Suckling
Policy Director
Center for Biological Diversity

Cc. Members of Senate Committee on Environment & Public Works