

## Chronology

### NPS Planning and Consultation for Mojave National Preserve and Desert Tortoise

1. On June 22, 2001, the NPS announced the availability to the public of the Abbreviated Final Environmental Impact Statement (EIS) and General Management Plan (GMP) for the Mojave National Preserve. 66 FR 33537. In that document, the NPS decided to “begin the promulgation process for federal regulations in 36 CFR...” to govern hunting in the Mojave National Preserve. pp. 155/156 Revised Draft GMP and p. 21 Abbreviated Final GMP.
2. The NPS Plan adopted the hunting decision to conform to a recommendation of the 1994 Desert Tortoise Recovery Plan. The Recovery Plan recommended that discharge of firearms be restricted in areas of high quality desert tortoise habitat (called desert wildlife management areas or DWMA) EXCEPT for hunting of upland game birds and big game. Recovery Plan, p.57. The Department of the Interior declared that the Recovery Plan “represents the best available biological information on the conditions needed to bring the Mojave population of the desert tortoise to the point where listing under the Act (The Endangered Species Act) is no longer necessary (i.e. recovery.)” 59 FR 5823.
3. The NPS Abbreviated Final GMP/EIS went a big step further than the Recovery Plan, proposing to manage the entire Preserve, not just the critical desert tortoise habitat of 700,000 acres, to restrict hunting. “Although the...Recovery Plan specifically recommends certain actions in “critical” desert tortoise habitat, we have opted to implement specific management actions throughout the...Preserve for two reasons. First, the preservation mission of the National Park Service lends itself to protect the desert tortoise throughout the park area, not just in critical habitat. Second, adopting consistent management actions, *such as hunting requirements*, throughout Mojave, aid in public understanding and enforcement equitability.” Emphasis added.
4. On February 17, 2000, the NPS requested formal consultation with the USFWS on the Draft GMP for Mojave, as required by section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2)).
5. On July 6, 2001 the U.S. Fish and Wildlife Service (USFWS), completed its review of the Final GMP/EIS for Mojave National Preserve. USFWS issued a Biological Opinion (BO) for the Mojave GMP/EIS (BO 1-8-00-F-36). The BO states that it “...is based on the information you supplied in the General Management Plan that accompanied your request for consultation.” Based upon that information, the BO concluded that the GMP would result in “no jeopardy” to the desert tortoise. Thus, the “no jeopardy” finding is based, in part, on the NPS decision in the GMP that “[I]n accordance with NPS regulations at 36 CFR, the discharge of firearms... is prohibited throughout the Mojave National Preserve, except for hunting of upland game birds and big game during the seasons

designated for and these species by the California Department Fish and Game.” BO, p. 25.

The BO states “Hunting would occur only from September through January or early February. This timing avoids the spring activity period of desert tortoise; however, hunting would occur during its fall activity period. A portion of the hunting will occur outside of desert tortoise habitat because bighorn sheep tend to occupy higher elevation in the desert. *For these reasons*, authorized hunting is unlikely to substantially affect the desert tortoise. BO, p. 45. Emphasis added.

The BO states “[W]e have reached this conclusion (no jeopardy) for the following reasons: For the desert tortoise, most of the actions that the NPS has proposed would improve the condition of habitat within the Mojave National Preserve and reduce the level of mortality of desert tortoises; consequently implementation of the GMP would benefit survival of this species.”

The BO does not prescribe that the NPS restrict hunting as one of the non-discretionary “terms and conditions” attendant to the Incidental Take Statement. It does not because the BO accepted at face value the NPS decision that it would restrict hunting.

Lastly, the BO requires re-initiation of consultation on the Mojave GMP “...if...(3) the agency action is subsequently modified in a manner that *may affect* listed species or critical habitat *not considered in this opinion*.” BO, p. 56.

6. September 7, 2001, the superintendent of the Preserve requested that the USFWS modify the BO of July 6, 2001 to allow for small game hunting of cottontails and jack rabbits, in addition to the hunting in the original BO of upland game birds and big game animals.
7. September 19, 2001, the USFWS issued an Amendment to the BO of July 6, 2001. The USFWS letter states that “[T]he General Management Plan (for Mojave) notes that the hunting of upland game birds, small game, and big game would occur within the Mojave National Preserve. During the consultation process, you noted that the National Park Service would not allow small game hunting within the Mojave National Preserve; consequently the biological opinion (of July 6, 2001) analyzed only the potential effects on the desert tortoise of upland bird and big game hunting. We concluded that these activities...were unlikely to jeopardize the continued existence of the desert tortoise...” The Amended BO concluded that “[T]he addition of Audubon cottontails and black-tailed jack rabbits to the list of animals that could be hunted within the Mojave National Preserve does not substantially change the analysis in the biological opinion.” The Amended BO is premised on the decision by the NPS to “...not allow hunting of long-tailed weasels..., badgers..., striped and spotted skunks...,rodents, coyotes,”... In contrast to game species, most of the carcasses of those animals would likely be available for scavenging...”

8. September 21, 2001, NPS Regional Director John Reynolds signed the Record of Decision (ROD) for the Mojave GMP and Abbreviated Final EIS. The 2001 ROD decided to allow hunting in the Mojave National Preserve for upland game birds, big game AND cottontails and jackrabbits "...in keeping with goals of the (1994 Department of the Interior) Desert Tortoise Recovery Plan." ROD, p. 3.
9. June 20, 2002, PEER, among other groups, petitions Secretary of the Interior Gale Norton under the Administrative Procedures Act (APA) to adopt the rules promised by the NPS in the GMP to regulate hunting in the Mojave National Preserve.
10. November 27, 2002, then-NPS Regional Director Jarvis writes to Mr. Jay Tutchton of the Earthjustice Legal Defense Fund acknowledging receipt of the Petition and that "[T]he park intends to implement changes to hunting activities described in the recently approved General Management Plan. This will be accomplished through a well-planned process that includes consultation with California Department of Fish and Game and changes to state regulations. If this process is not successful, the National Park Service will then seek special regulations in 36 CFR Part 7."
11. April 7, 2004, Assistant Secretary for Fish and Wildlife and Parks Craig Manson writes to the petitioners that [T]he park fully intends to pursue promulgation of federal regulations as provided in the General Management Plan..." Manson continued "the promulgation of federal regulations is temporarily on hold in anticipation of a response from the State."
12. May 13, 2009, PEER and the Center for Biological Diversity write to Interior Secretary Ken Salazar again requesting action on their petition but to date have not received an answer.
13. July 28, 2010, PEER files a complaint in Federal District Court, District of Columbia that the Interior Department failure to respond to a petition for rulemaking under the APA, after more than 8 years, violates the standards of that law for action within a reasonable period.
13. October 14, 2010, NPS Director Jarvis writes to PEER to respond to the petition for rulemaking of June 2002. He states in his response that he has decided not to promulgate regulations that limit hunting in Mojave Preserve as decided by the NPS in the 2001 GMP. He asserts that such regulations are unwarranted. He provides no scientific studies or evidence to support this stark reversal of the agency's previous decision; a decision supported by DOI officials, in writing, as recently as April 2004. Mr. Jarvis also waives NPS Management Policy § 8.2.2.6 directing NPS to publish special regulations governing hunting in those NPS units where hunting occurs as it applies to the Mojave National Preserve.