

Structured Decision Making: A Vehicle for Political Manipulation of Science May 2013

In North America, gray wolves (*Canis lupus*) formerly occurred from the northern reaches of Alaska to the central mountains and the high interior plateau of southern Mexico, but had been extirpated from nearly all of their historic range in the coterminous 48 states by the 1930s. In 1967, six years prior to the passage of the 1973 Endangered Species Act, the FWS listed the putative timber wolf subspecies (*Canis lupus lycaon*) as an endangered species in Minnesota and Michigan. In 1974, the northern Rocky Mountain wolf (*Canis lupus irremotus*) was listed as endangered in Montana and Wyoming, and in 1976, the Mexican wolf was listed in 1976 as endangered.

In 1978, FWS revised its earlier listing determinations by extending the protections of the ESA to gray wolves at the species level *throughout the conterminous 48 States* in order to eliminate difficulties with listing separate subspecies of the gray wolf. 43 Fed. Reg. 9,607. With the exception of the Western Great Lakes Distinct Population Segment (WGL DPS) of wolves, and the Northern Rocky Mountain Distinct Population Segment (NRM DPS) wolves in Idaho and Montana, the gray wolf retains protections of the ESA throughout its range in the lower 48 States as an endangered species. The Secretary of the Interior, through the Fish and Wildlife Service is responsible for the development of recovery plans for conservation and survival of threatened and endangered species under the Endangered Species Act of 1973 (16 U.S.C. §1533(f)).

Recovery plans must contain “objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list.” (16 U.S.C. § 1533(f)(1)(B)(ii)). Recovery plans describe criteria that are used to assess a species’ progress toward recovery, contain specific prioritized actions believed necessary to achieve the recovery criteria and objectives, and identify the most appropriate parties to implement the recovery actions.

A recovery plan was written for the eastern timber wolf in May 1978, and was revised in 1992. The eastern timber wolf plan covered gray wolf recovery in the great lakes and portions of the northeastern United States. The Northern Rocky Mountain Wolf Recovery Plan was approved in 1980 and revised in 1987. The Rocky Mountain Plan covered Idaho, most of Montana and Wyoming, and approximately the eastern one-third of the States of Washington and Oregon. A recovery plan for the Mexican wolf was approved in 1982, but did not contain specific recovery criteria for wild populations of the Mexican wolf. Although the gray wolf is listed as an endangered species throughout the 48 conterminous United States and Mexico, wolf recovery has not been addressed in over half of the States in which the gray wolf is an endangered species.

Under Section 4(c)(2) of the ESA, any determination to remove a species from the list of threatened and endangered species must be made in accordance with the provisions of subsections 4(a) and 4(b) of the Act. Most importantly, Section 4(b)(1)(A) requires

listing decisions (and therefore decisions to delist a species) to be made “solely on the basis of the best scientific and commercial data available...and taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision...to protect such species.” The joint FWS/NMFS Recovery Planning Guidance states that recovery plans shall “delineate such reasonable actions as may be necessary, based upon the best scientific and commercial data available, for the conservation and survival of listed species.”

As explained below, the development of a National Wolf Strategy, which is primarily focused on the delisting of the gray wolf in large portions of its former range, does not represent the best scientific and commercial data available. Furthermore, the National Wolf Strategy appears to be taking into account the opinions of *only* those States which do *not* want to make efforts to protect the gray wolf in their respective states, which also appears to violate the ESA’s clear mandates on best available science.¹

In 2008, the FWS embarked on an effort to develop a National Wolf Strategy through the use of a “Structured Decision Making” (SDM) process. See 76 Fed. Reg. 26,086 at 26,089. The FWS describes the goal of the SDM process as follows:

“We first conducted several iterations of the process in an internal Service effort to develop a viable framework for considering the scientific and policy questions that drive decision-making for wolves. The resulting framework incorporated decision analysis principles and techniques for crafting alternative listing units and then assessing the relative performance of each alternative in terms of achieving management objectives. Management of wolves is shared among the Service, States, and Tribes. Thus, following our development of a satisfactory decision-making framework, representatives from several States involved with gray wolf conservation joined us to further explore alternative units that could qualify for future status review (Tribal representatives declined to participate).”²

The FWS further describes the SDM process as follows:

“After acquainting state participants with the decision-making framework, we convened a State-Federal workshop in August 2010 to generate and assess alternative taxonomic and population units at various scales and in various configurations, including the 1978 listing as the status quo alternative. Workshop participants also explored the different values that

¹See, e.g. *Comments by the New York State Department of Environmental Conservation regarding the Proposed Rule to Revise the List of Endangered and Threatened Wildlife for the Gray Wolf (Canis lupus) in the Eastern United States, Initiation of Status Reviews for the Gray Wolf and Eastern Wolf (Canis lycaon), Docket Number: FWS-R3-ES-2011-0029. The NY DEC wrote regarding the SDM process that the “contravenes the Endangered Species Act.” The workshop was attended “by most of the States, including New York, that are involved in gray wolf conservation and recovery,” but the resulting Strategy “is inconsistent with the results and recommendations of the wolf SDM workshop insofar as it focuses on conservation of four extant wolf populations.”*

drive wolf decision-making; these values were expressed as the following fundamental management objectives: (1) Promote and sustain wolf recovery; (2) comply with the requirements of the Act; (3) minimize the regulatory burden on States, Tribes, and the general public; (4) facilitate State and Tribal management of wolves; (5) minimize wolf-human conflicts; and (6) promote public acceptance of wolf listing and recovery actions. Workshop outcomes provided important input to our continuing effort to formulate a comprehensive vision of wolf conservation. Based on further Service deliberations, this comprehensive vision has evolved into the proposed national wolf strategy discussed below.”

In essence, the SDM process appears to have been designed to identify and rank, based on policy concerns, a range of wolf recovery alternatives that set forth where wolf recovery would occur and areas where wolf recovery was deemed “both unrealistic and unnecessary.” This process has lacked transparency in terms of its discussions, its work products, and even which states participated in the SDM process.

The register notice states that recovery effort for the gray wolf will not be initiated in areas not identified by the SDM process as suitable for wolf recovery:

“We plan to move forward with a rulemaking to replace the remainder of the 1978 listing with more targeted regional units, as appropriate, concurrently with publication of the final rule for the WGL DPS. It is likely that revision of the 1978 gray wolf listing into finer-scale taxonomic or population units will result in removal of the Act’s protections in areas of the historical *C. lupus* range, such as the Great Plains States and areas of the western States, that do not support extant wolf populations and do not play a role in the recovery of any of the four gray wolf entities. Although some of these areas are within the species’ historical range, these areas lack sufficient suitable habitat for wolf pack persistence. Thus, we believe recovery in these areas is both unrealistic and unnecessary.”

While it is unclear from the proposed rule how determination of “extant gray wolf entities” was made, available evidence from other sources suggests that this process did not conform to appropriate scientific integrity standards, does not conform with general requirements regarding public involvement in policy decisions under the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), or the ESA’s requirements regarding listing and delisting decisions, and is not based upon the best available science.

For example, it is not evident what, if any, scientific analyses were used to identify which areas “within the species’ historical range [that] lack sufficient suitable habitat for wolf pack persistence.”

The development of a National Wolf Strategy represents an action to intentionally circumvent the ESA's listing and delisting requirements, thereby compromising the integrity of science's role in the ESA. The ESA requires that listing and delisting decisions be based on the best available science, including biological thresholds for when such species no longer threatened or endangered.

Because the National Wolf Strategy is a de facto recovery plan for gray wolves at the species level (*Canis lupus*), a process that preserved scientific integrity would have addressed the biological recovery requirements for wolves *prior* to considering how those goals should be achieved in light of economic concerns. The lack of involvement of and review by independent scientists in development of the National Wolf Strategy, and the general lack of public transparency, suggests that the process did not meet the requirements of the Act to defer consideration of economic constraints until secondary stages of recovery planning.

PEER became aware of the full extent of the impact on the scientific integrity of wolf recovery efforts from the SDM process and development of the National Wolf Strategy based on information regarding how the National Wolf Strategy was impacting the efforts to develop a recovery plan for the Mexican wolf. The negotiations during the SDM process for the Mexican wolf involved assurances by the FWS to various states regarding the geographic scope of wolf recovery efforts, which may have led to inappropriate influence in the development of recovery criteria for gray wolf entities including the Mexican wolf, and may have also inappropriately constrained status determinations for gray wolf entities such as the potential Pacific Northwest DPS

State representatives also threatened to bring political pressure to bear via the SDM process and other means to alter recovery criteria so as to exclude some or all of their states from recovery activities. The Utah Division of Wildlife Resources (DWR) commented that recovery of wolves to Utah "will be vigorously opposed (legally and politically) by the Utah Division of Wildlife Resources and the State of Utah" (October 2011 comments submitted by UDWR to FWS on draft Mexican Wolf recovery plan). The Arizona GFD commented "Some carefully chosen federal judges may even believe that [*proposed recovery criterion*]. But let's see how Congress weighs in on down the way, as it considers what Congressional intent was with regard to defining recovery" (October 2011 comments submitted by AZGFD to FWS on draft Mexican Wolf recovery plan).

The state representatives also noted their understanding that assurances made during the SDM process should trump development of science-based recovery criteria. In an email to FWS staff, the Arizona GFD representative stated concerning the conflict between SDM, listing, and recovery planning processes: "the three "regulatory" or regulated processes seem to be confusingly mixed and anything but discrete and transparent to most if not all participants, including USFWS employees." (10/19/2011 email from AZGFD representative)

In short, the Structured Decision Making used political and other socioeconomic factors to define the range of acceptable potential recovery criteria through closed-door negotiations not subject to scientific peer review or other appropriate quality control.