



GARY R. HERBERT
Governor

GREGORY S. BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

JAMES F. KARPOWITZ
Division Director

September 21, 2011

Daniel M. Ashe, Director
U.S Fish and Wildlife Service
1849 C St. NW.
Mail Stop 3331
Washington, DC 20240

Dear Director Ashe:

The following letter details the position of the Division of Wildlife Resources, Department of Natural Resources, and State of Utah on Mexican Wolf recovery plans and gives reasons for our concerns with the apparent direction of the recovery effort.

Background:

The Mexican wolf, a subspecies of the gray wolf, historically occupied portions of Arizona, New Mexico, Texas, and Mexico. The subspecies is genetically and morphologically unique from its cousins to the north and east. It is believed to represent one of the earliest species of Eurasian wolf to cross the Bering Strait and occupy the North American continent. Subsequent migrations of Eurasian wolves inhabited much of North America, with the exception of what is now the Southwest United States and Mexico. There, genetic and morphological evidence suggests the Mexican wolf was isolated from other wolves.

As human settlement intensified across the Southwest in the early 1900s, wolves increasingly came into conflict with livestock operations and other human activities. Private, state, and federal control programs in the early 1900's all but eliminated Mexican wolf populations in the United States and Mexico. In 1978, the gray wolf, including the Mexican wolf subspecies, was listed as endangered in the coterminous United States under the Endangered Species Act of 1973 ("ESA"). Between 1978 and 1982, recovery of the Mexican wolf started with creation of a captive breeding program between the United States and Mexico. The program was designed to save the subspecies from extinction and to provide animals for future reintroduction to the wild. The U.S. Fish and Wildlife Service ("Service") established a recovery team in 1979 to assist the agency in mapping out a recovery strategy for the Mexican wolf. The team developed a recovery plan that the Service approved in 1982. The plan recommended maintenance of the captive breeding program and re-establishment of a viable self-sustaining population of at least 100 wolves in the wild within historic range. Between 1982 and 2005, two additional recovery teams were convened and charged with developing a recovery plan for the Mexican wolf. Neither was successful in completing the task.

As the Mexican wolf breeding program grew and demonstrated increasing success through the 1980's, attention turned to identification of appropriate areas for reintroduction of the wolf to its historic habitat. The Service subsequently published a final rule on January 12, 1998 for the



establishment of a nonessential experimental population of the Mexican wolf in Arizona and New Mexico. Captive-reared Mexican wolves were subsequently released to the wild for the first time in the Blue Range Mountains of Arizona and New Mexico. To date, success of the recovery program in the Blue Range has been limited with less than 50 Mexican wolves living in the wild.

Current Recovery Team Efforts:

In 2011 the Division of Wildlife was invited to participate on a fourth Mexican Wolf Recovery Team. Kevin Bunnell, Wildlife Section Chief, has been assigned to represent the State of Utah as a member of the agency subgroup. In addition to the agency subgroup, the full recovery team is comprised of a science and stakeholder subgroup.

DPS vs. Subspecies Listing:

One of the major issues facing the Service in its effort to delist the gray wolf in the Western United States is how to maintain ESA protection for the Mexican wolf, which remains imperiled. It must publish a rule specifically listing the Mexican wolf as either a *distinct population segment* ("DPS") or as a *subspecies*. All three states (Utah, Arizona, and Colorado) participating on the Mexican Wolf Recovery Team unanimously support listing the wolf as a DPS rather than as a subspecies. A number of significant problems arise with listing as a subspecies.

First, a *subspecies* listing will protect the wolf anywhere it is found in the United States. This deprives the State of Utah and all other states outside its historic range from managing or controlling dispersing wolves. Perhaps more troubling is the inevitable re-listing of the gray wolf in Utah under the similarity of appearance provisions in Section 4(e) of the ESA. This section authorizes the Service to treat any species as threatened or endangered, even though it is not listed, where it so closely resembles a listed species that enforcement personnel will have substantial difficulty attempting to differentiate between the listed and unlisted species. The gray wolf and the Mexican wolf are very similar in appearance. The combined effect of the two listings will preclude Utah from managing dispersing wolves from both the North and the South, and allow establishment of resident wolf populations without state authority to balance them with prey base and livestock operations. In short, Utah will relive the Greater Yellowstone wolf reintroduction troubles experienced in Idaho, Montana, and Wyoming over the past 10 years.

Additionally, listing the Mexican wolf as a subspecies will effectively prevent it from ever being delisted in the United States. Under the ESA, a listed species may be delisted only when it is no longer in danger of extinction *throughout all or a significant portion of its range*. Approximately 10% of the Mexican wolf's historic range occurs in the United States with the remainder in Mexico. No matter how successful recovery of the wolf is in the United States, it may never constitute a significant portion of its range. Delisting will require substantial wolf recovery in Mexico, which is hindered by the political and economic obstacles in that country. Listing the wolf as a subspecies will effectively ensure federal management of wolves in Utah under the ESA indefinitely. Since the ESA focuses primarily on expanding listed species' populations and has no effective mechanism for controlling population growth other than delisting, Utah will be obliged to host unchecked wolf populations to the detriment of its

livestock and big game wildlife until Mexico (significant portion of the range) recovers the Mexican wolf. This is simply unacceptable.

Listing the Mexican wolf as a distinct population segment, on the other hand, will not deprive Utah and other states outside its historic range from managing dispersing wolves and will facilitate recovery of the subspecies and delisting in the United States. Listing the wolf through a DPS will afford full ESA protection within its established boundaries and allow state management outside those boundaries. DPS boundaries should reflect the historical range of the wolf, which is documented by the best scientific evidence as comprising portions of Arizona, New Mexico, Western Texas, and Mexico. Every published scientific study over the past century on the historic range of the Mexican wolf places its northern extent well south of Utah and Colorado. Application of a DPS in the Mexican wolf listing is consistent with and satisfies all the criteria in the Service's DPS policy. In fact, it is a much cleaner fit with the DPS policy than the Rocky Mountain DPS created by the Service to delist the gray wolf. Another compelling advantage to the DPS route is the wolf can be recovered and delisted once recovery goals for the DPS are satisfied. Recovery throughout all or a significant portion of the wolf's range in Mexico will be unnecessary in a DPS listing. Lastly, a DPS listing will not require the Service to relist the gray wolf in Utah under the ESA's similarity of appearance provisions.

Despite the obvious advantages of DPS listing over subspecies listing, Region 2 of the Service remains inexplicably resistant to the concept. Thus far, Region 2 maintains it must list the Mexican wolf as a subspecies to ensure the greatest degree of management flexibility and legal defensibility. It further resists all efforts by the participating states to exclude Utah and Colorado from the Mexican wolf recovery equation despite the lack of evidence that either state was within its core historic range. The only explanation is that Utah and Colorado have unoccupied wolf habitat and therefore must contribute to recovery of the Mexican wolf.

More perplexing than Region 2's persistent determination to include Utah and Colorado in Mexican wolf recovery, though, is its outright exclusion of Western Texas -- undisputed historic range of the subspecies. Texas is written out of recovery because Region 2 believes the Mexican wolf will struggle to find a place in the state due to social opposition and the absence of large tracts of public land. Moreover, initial recovery objectives under consideration by Region 2 largely exclude Mexico and fail to define any meaningful role it may play in Mexican wolf recovery. In its effort to chart a course for Mexican wolf recovery, Region 2 has absolutely no concrete plan to address the issue in a significant portion (90%) of the subspecies' historic range.

The only realistic conclusion that can be reached on the Service's objective is that it desires to establish Mexican wolf populations in the United States greater than can be sustained by its historic range in Arizona and New Mexico, and that it has no realistic intent to ever delist the subspecies. The legality of this objective is seriously in question.

Science Team Recommendations:

Unfortunately, the Science Team selected by Region 2 is largely comprised of individuals with a documented history of advocating the expansion of wolf populations throughout the Western United

States. The team is charged to formulate recovery objectives for the Mexican wolf using the best scientific evidence available. The individual members are qualified from an academic or experience standpoint, but their philosophical preference for widespread distribution of wolves throughout the Rocky Mountains is pervasive in their recommendations. Inasmuch as Region 2's initial selection of Science Team members did not include representation from any of the affected states, Arizona requested Region 2 to include one of its top wildlife biologists, Jim Heffelfinger. The Region initially resisted the request stating government biologists should not participate on the team. It later reconsidered its position and Mr. Heffelfinger was appointed to the Science Team.

The team formulated preliminary recovery objectives and recently presented its conclusions and recommendations to the full Mexican Wolf Recovery Team. The recommendations were unanimously supported by the Science Team, with the exception of Mr. Heffelfinger. He took issue with the team's: 1) conclusions that the Mexican wolf's historic range included significant portions of Utah and Colorado; 2) exclusion of Mexico in recovery analysis and objectives; 3) 750 individual population objective for Mexican wolf recovery in the United States; and 4) inclusion of a threshold, human-caused mortality percentage for recovery determination.

The team first concluded that Mexican wolf historic range extends well into Utah and Colorado. Although multiple published scientific studies document the northern extent of the wolf's historic range in Arizona and New Mexico, the team concluded it extended into central Utah and Colorado based on the genetic composition of three wolf skulls collected in the early part of the 20th century. One skull was collected in Southern Utah, one in Southern Colorado, and one in Nebraska. Genetic testing showed each as a hybrid cross between a northern wolf subspecies and the Mexican wolf. From this, the team set aside the consensus of scientific literature and surmised the Mexican wolf historically occupied and relied upon habitat in Utah and Colorado.

The team further failed to identify any significant role Mexico must play in recovery of the Mexican wolf. They openly acknowledge that the wolf's range and populations predominantly occurred in, what is now, Mexico. However, nearly every recovery objective centers on restoring wolves in only the United States. To ignore or superficially address wolf recovery in Mexico is to turn one's back on the significant portion of the wolf's range. This assures the wolf will never be delisted in the United States regardless of its abundance and viability. The omission of Mexico in meaningful recovery participation is particularly curious given the fact that two members of the team coauthored and published an article in 2006 contending that "significant portion of the range" for purposes of ESA delisting, has more to do with widespread distribution of a species across its historic range than simple occurrence of isolated pockets of viable, self-sustaining populations (Vucetich et al. 2006). Nevertheless, the team, including John Vucetich and Michael Phillips, failed to define a meaningful role for Mexico in wolf recovery.

The team further concludes that Mexican wolf recovery cannot be achieved until three separate, self-sustaining populations of 250 individuals each are established and distributed across Arizona, New Mexico, Utah and Colorado. Genetic exchange and preventing inbreeding depression are offered as rationale for the 750 animal population objectives. The *current* population objective for the Mexican wolf, presumably based on the best scientific evidence available, is set at 100 animals. The recovery

objective set for the Rocky Mountain gray wolf population was 300 animals. Adequate genetic exchange can be achieved through the captive breeding program and does not require population numbers that necessitate utilization of habitat in Utah and Colorado, outside the wolf's historic range.

Further, the legitimate objective to preserve the genetic uniqueness of the Mexican wolf is potentially compromised by the planned expansion of Mexican wolf range into Utah and Colorado where Mexican wolves will likely contact gray wolves from the north and interbreed. Even a few genetic exchanges with the gray wolf, early in the recovery process, has the real potential to swamp the unique genetic features of the Mexican wolf populations in the United States and jeopardize successful recovery of the subspecies.

Lastly, the team identifies a rather unique recovery objective involving the percentage of human-caused wolf mortality in relation to overall mortality. Human-caused mortality includes highway mortality, illegal take, lawful take by the Service and its agents, and all other mortality that can be attributed to humans. The objective will identify a threshold percentage of wolf mortality caused by humans, above which delisting cannot be achieved. This objective will operate independent of the overall population objective, and control recovery regardless of how robust the population may be. For example, the population objective of 750 may be satisfied two times over with a growing trend, but recovery unattainable because human-caused mortality exceeds the pre-established percentage. This objective will effectively prevent the Service or the states from attempting to control excessive wolf populations causing damage to wildlife and livestock by means of hunting or any other form of human take. The objective is nonsensical since recovery should be based on population size, distribution and trend, not the causes of mortality. The cause of mortality in a population is irrelevant as long as the population is viable and self-sustaining.

The objective of the Science Team and Region 2 appears to be to establish a large Mexican wolf population that occupies the Southern Rocky Mountains without regard to the species historic range (including Utah and Colorado and excluding Western Texas and Mexico) and without a realistic plan for delisting. Mexican wolf listing and recovery decisions by both Region 2 and the Science Team seem to be driven by a strong philosophical undercurrent for widespread wolf distribution across the Western United States.

It is recognized that neither the Service nor the Science Team has submitted its final recommendations for listing and recovery of the Mexican wolf, and the positions taken thus far may change. Material changes, however, are seriously in question given Region 2 and the Science Team's level of resistance and defensive posture to the states' suggestions.

State of Utah Position:

Wolves are legally protected in Utah and we have a management plan for wolves that has been adopted by our Wildlife Board. However, it has not been officially reviewed by the Service despite numerous requests to do so. The State of Utah's position is twofold: 1) delist the gray wolf in the remaining portions of the State so our management plan for wolves can be implemented; and 2) list and *successfully* recover the Mexican wolf in its historic range in compliance with ESA and using the best

scientific evidence available. Therefore, the unavoidable conclusion is that the Mexican wolf must be listed, managed, and protected by means of a distinct population segment that is confined to the historic range of the subspecies.

Accordingly, the State of Utah requests the Service to list the Mexican wolf as a distinct population segment with a boundary confined to the subspecies historic range in Arizona, New Mexico, and Western Texas. The State of Utah will vigorously resist any effort by the Service to leave the gray wolf listed in the state, list the Mexican wolf as a subspecies, or include its territorial boundaries within any distinct population segment created to protect wolves under the ESA. The Service has repeatedly confirmed that Utah is not necessary for the recovery of gray wolves. Further, it is evidently clear that listing the Mexican wolf as a subspecies will legally ensure it is never recovered and delisted, and the best scientific evidence available shows the subspecies (*canis lupus baileyi*) did not rely upon habitat within the State.

To the extent Utah is needed as an intergradation zone for genetic exchange, federal protection and management of wolves under the ESA is unnecessary. Once wolves are delisted throughout Utah, its wolf management plan will fully take effect and the species will be managed by the State on a sustainable basis as directed in Utah Code § 23-14-3. The State will successfully manage wolves as it has other large predators, such as cougar and bear. State management of wolves will allow the occasional genetic exchange needed by the Mexican wolf from gray wolf populations to the north. It must be remembered that too much interchange between the subspecies will swamp the unique genetic features of the Mexican wolf and jeopardize its recovery, particularly in the absence of significant genetic exchange between U.S. and Mexican populations. Lastly, maintaining the listed status of the recovered, gray wolf in Utah to protect a genetic exchange corridor for the Mexican wolf or artificially expanding the Mexican wolf's historic range into the State are equally inconsistent with the directives and authority granted in the ESA. In short, there is no legal basis to validate or sustain a decision to protect wolves in Utah under the ESA.

Sincerely,



James F. Karpowitz, Director
Division of Wildlife Resources



Michael S. Styler, Executive Director
Department of Natural Resources

cc: Steve Guertin, Regional Director, U. S. Fish and Wildlife Service Region 6
Dr. Benjamin Tuggle, Regional Director, U. S. Fish and Wildlife Service Region 2
Utah Representative Jason Chaffetz
Utah Representative Rob Bishop
Utah Representative Jim Matheson
Utah Senator Orrin Hatch
Utah Senator Mike Lee
Larry Voyles, Director, Arizona Game and Fish Department
Tod Stevenson, Director, New Mexico Department of Game and Fish
Rick Cables, Director, Colorado Parks and Wildlife



STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

GARY R. HERBERT
GOVERNOR

GREG BELL
LIEUTENANT GOVERNOR

September 22, 2011

Ken Salazar, Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Salazar:

I am writing in regard to the on-going efforts by the Fish and Wildlife Service to list and develop a recovery plan for the Mexican wolf and delist the remainder of wolves in the United States. The State of Utah is participating on the Mexican wolf recovery team and we have serious concerns about the apparent direction the Service is taking. Under the ESA, the Service can protect the Mexican wolf as either a *distinct population segment* ("DPS") or as a *subspecies*. All of the states (Utah, Arizona, and Colorado) participating on the Mexican wolf recovery team support listing the wolf as a DPS rather than as a subspecies.

Despite the obvious advantages of a DPS listing over a subspecies listing, the Service remains inexplicably resistant to the concept. Thus far, the Service maintains it must list the Mexican wolf as a subspecies to ensure the greatest degree of management flexibility and legal defensibility. It further resists all efforts by the participating states to exclude Utah and Colorado from the Mexican wolf recovery equation, despite the lack of evidence that either state was within its core historic range. The only explanation they give is that Utah and Colorado have unoccupied wolf habitat, and therefore must contribute to the recovery of the Mexican wolf, even though the wolves that once occurred in Southern Utah and Colorado were a separate subspecies.

The State of Utah's position is twofold: 1) delist wolves in the remaining portions of the State; and 2) list and successfully recover the Mexican wolf in compliance with ESA and using the best scientific evidence available. The unavoidable conclusion is that the Mexican wolf must be listed, managed and protected by means of a distinct population segment that is confined to the core historic range of the subspecies. A more detailed letter explaining our position is being sent to Service Director Dan Ashe by the Utah Department of Natural Resources.

The State of Utah will vigorously resist any effort by the Service to: 1) leave wolves listed in the State, 2) list the Mexican wolf as a subspecies, or 3) include Utah within any distinct population segment created to protect wolves under the ESA.

Sincerely,

Gary R. Herbert
Governor

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OFFICE OF THE GOVERNOR

From: Maricela Constantino
To: Michelle Shaughnessy; Maggie Dwire; Sherry Barrett; Stacey Baca; Tracy Melbihess; Wendy Brown
Subject: WO edits to Herbert response (DCN 049631)
Date: 10/18/2011 09:48 AM
For Follow Up: Low Priority.
Attachments: 049631 Herbert.WO edits_clean.docx

Hi All,

Based on the requested edits from Gary, this is the current version of the response. Let me know if you have any serious issues with this but keep in mind the direction was to pare the response down significantly and focus on covering the following points. I'm planning to hand this back to Marj (Acting Deputy AD) by 12:45 pm ET so please provide any substantive feedback before then. Thanks.

- 1) thank him for his input
- 2) confirm that the views of the affected States are very important to us as we determine how to move forward with Mexican wolves
- 3) acknowledge that we have a more detailed letter from UT DNR, and
- 4) commit Dr. Tuggle to a meeting with Karpowitz to discuss the State's views in detail.



049631 Herbert.WO edits_clean.docx


Maricela A. Constantino
Endangered Species Program
Branch of Recovery and Delisting
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive
Arlington, VA 22203

Remotely located at:
2832 N. Staunton Rd
Huntington, WV 25702
blackberry: 571-969-9804
email: maricela_constantino@fws.gov

▼ Michelle Shaughnessy/RO/R2/FWS/DOI

**Michelle
Shaughnessy/RO/R2/FWS/DOI**

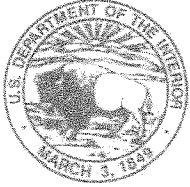
10/17/2011 07:41 PM

To: Maricela Constantino/ARL/R9/FWS/DOI@FWS
cc: Maggie Dwire/RO/R2/FWS/DOI@FWS, Sherry Barrett/R2/FWS/DOI@FWS, Stacey Baca/RO/R2/FWS/DOI@FWS, Tracy Melbihess/R2/FWS/DOI@FWS, Wendy Brown/RO/R2/FWS/DOI@FWS
Subject: Re: Karpowitz Response 

Just talked to Gary-we are going to cut the Gov. Letter down to bare minimum then we also have to send a letter back to Karpowitz as well. And I think we are going to wait on sending the letter until after the meeting in UT. Benjamin will need to talk to Dan about signature.

Michelle Shaughnessy
Assistant Regional Director-ES
Cell Phone 505-908-1151

▼ Maricela Constantino---10/17/2011 03:01 PM MDT---



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



Mr. Michael R. Styler
Executive Director
Utah Department of Natural Resources
1594 West North Temple, Suite 2110
P.O. Box 146301
Salt Lake City, Utah 84114-6301

Dear Mr. Styler:

Thank you for your letter of September 21, 2011, expressing the position of the Utah Department of Natural Resources on the reclassification and recovery of the Mexican wolf. The comments and perspectives of the affected States are crucial to the Service as we determine how to proceed with management of the Mexican wolf under the Endangered Species Act (ESA).

Reflecting the importance we place on collaboration with the affected States in managing wolves under the ESA, we hosted a meeting, attended by Division of Wildlife Resources assistant director Alan Clark, at the recent annual conference of the Association of Fish and Wildlife Agencies specifically to discuss the choices in front of us and to solicit the advice and views of the affected State Directors.

It was thus somewhat disappointing to receive your letter the following week, which mischaracterized the facts of the matter, the choices before us and their implications, and also implied that the Service has already decided how we intend to proceed. Southwest Regional Director Benjamin Tuggle and his staff will be meeting with Division Director James Karpowitz and his staff on November 10 to have a detailed face-to-face discussion of the questions and points raised in your letter and the subsequent letter from Governor Herbert. It is critical that we have a mutual understanding of these issues.

The Service has not yet decided how to proceed with regard to Mexican wolf reclassification and recovery. We hope to move forward in a collaborative partnership with the Utah Department of Natural Resources and the other States as we chart a path for management and recovery of this species.

Sincerely,

Director