



May 1, 2008

Hon. Dirk Kempthorne, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. Dale Hall, Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

SENT VIA CERTIFIED MAIL. RETURN RECEIPT REQUESTED

**RE: NOTICE OF VIOLATIONS OF THE ENDANGERED
SPECIES ACT IN RELATION TO THE MEXICAN GRAY WOLF
REINTRODUCTION PROJECT**

Dear Secretary Kempthorne and Director Hall:

On behalf of Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project, New Mexico Audubon Council, New Mexico Wilderness Alliance, University of New Mexico Wilderness Alliance, the Wildlands Project, Sierra Club, Southwest Environmental Center, and Grand Canyon Wildlands Council, we write to provide you with notice, pursuant to 16 U.S.C. § 1540(g), that recent U.S. Fish and Wildlife Service (“FWS”) decisions in relation to the Mexican gray wolf reintroduction project are arbitrary, capricious, an abuse of discretion, and contrary to the requirements of the Endangered Species Act (“ESA”) and its implementing regulations. Specifically, as explained in detail in this notice, FWS’s approval and implementation of: (1) a Memorandum of Understanding creating the Adaptive Management Oversight Committee (“AMOC”); and (2) its approval of “Standard Operating Procedure 13.0” (“SOP 13”) violate its duties to conserve the Mexican gray wolf pursuant to section 4(d) of the ESA, 16 U.S.C. § 1533(d). In addition, pursuant to the AMOC MOU, FWS has unlawfully transferred its statutory duty to administer the ESA to AMOC, including but not limited to, its duty to recover the Mexican gray wolf.

The Adaptive Management Oversight Committee Memorandum of Understanding

On October 31, 2003, the U.S. Fish and Wildlife Service (“FWS”) entered into a Memorandum of Understanding (“MOU”) vesting management responsibility for the federal Mexican gray wolf endangered species reintroduction project with an interagency Adaptive Management

Oversight Committee (“AMOC”). Under the MOU, Arizona Game and Fish Department, New Mexico Department of Game and Fish, WS, USFS, White Mountain Apache Tribe, and FWS are designated as “Lead Agencies” to the AMOC. The MOU directs each lead agency to designate one lead participant and one or more alternates to serve as a “lead participant” in the AMOC. The AMOC MOU further directs that a “non-Federal lead” be designated as the “committee chair” for AMOC from Arizona Game and Fish Department, New Mexico Department of Game and Fish, or White Mountain Apache Tribe. Committee chairs serve two year terms, subject to renewal, and Terry Johnson, Chief of the Nongame Branch of the Arizona Game and Fish Department, has served in the lead participant role for AMOC since its inception.

Standard Operating Procedure 13

On October 10, 2005 the AMOC approved standard operating procedure 13 (“SOP 13”), “Control of Mexican Wolves.” Under SOP 13, “wolves known or likely to have committed three depredation incidents within a period of 365 days shall be permanently removed from the wild as expeditiously as possible.” In the decisions guiding the Mexican gray wolf reintroduction project, including the final Environmental Impact Statement, 10(j) rule, and 1998 Interagency Management Plan, FWS provided that wolves that consistently depredate on livestock could be removed from the wild, but made clear that this general principle was intended to be implemented in a flexible manner that ensured all management actions were consistent with the overall goal of Mexican gray wolf recovery. For example, the reintroduction EIS specifies that control of problem wolves will be done “with the greatest degree of management flexibility . . . *consistent with wolf recovery.*” EIS, at 2-16 (emphasis added). Through AMOC and the adoption of SOP 13, FWS has precluded the consideration of factors such as husbandry practices, carcasses, genetic value of involved wolves, and time of year (denning, etc.) related to depredation incidents, before approving removal actions.

Subsequent to the creation of AMOC and adoption of SOP 13, management removals of Mexican gray wolves have increased significantly. For example, in 2003 only two wolves were removed for alleged livestock depredations; in 2004 that number dropped to one. Subsequent to the adoption of SOP 13, six wolves were removed for alleged livestock depredations in 2005; in 2006 that number rose to 15; and in 2007 it rose further to 19. Many of the removals have had the effect of weakening or destroying packs and breeding pairs. As a consequence, the Mexican gray wolf reintroduction effort has faltered significantly, and population numbers of wolves in the wild have declined the last three out of four years and the biologically significant number of breeding pairs decreased by approximately 50% between 2006 and the latest count as of the end of 2007. Today, the wild population is now far below projected reintroduction levels, and the reintroduction effort’s ultimate success is increasingly threatened. Removals (killing and trapping) under SOP 13 are the primary cause for the failure of the reintroduction project to progress after 2003.

Violations of the ESA

The AMOC MOU and SOP 13, as approved and as implemented, run directly counter to the overriding principles of flexibility and recovery outlined in the reintroduction EIS, 10(j) rule, and 1998 Interagency Plan. Instead, SOP establishes hard rules for wolf removal and/or lethal

control regardless of their impact on wolf recovery. Under SOP 13's inflexible approach, AMOC is not required to take into consideration other factors which may have contributed to or caused the initial wolf-livestock conflict and, in practice, has not taken such considerations into account. By its plain language, SOP 13 neither contemplates nor allows an analysis of the wolf's importance to recovery or any other factor. Instead, FWS is directed to "issue a permanent removal order" within 24 hours of a third livestock depredation, and removal efforts must begin on the day of issuance. SOP 13, at 10.

At a minimum, protective regulations for threatened species under section 4(d) must always "provide for the conservation of the species." 16 U.S.C. § 1533(d). This language applies equally to nonessential populations designated under section 10(j) such as the Mexican gray wolf, which are treated as threatened species. See S. Rep. No. 418, 97th Cong., 2d Sess. 8 (1982) ("All experimental populations [] are to be treated as though they have been separately listed as threatened species. This provision obliges the Secretary to issue such regulations as he deems necessary and advisable to provide for the conservation of the experimental population, just as he now does under subsection 4(d) for any other threatened species."). In sum, FWS must ensure that its actions always provide sufficient protection to ensure continued progress towards recovery of the species, and removal from the list of threatened and endangered species. *Sierra Club v. Clark*, 755 F.2d 608, 612 (8th Cir. 1985). FWS has failed to meet this duty in its approval and implementation of the AMOC MOU and SOP 13.

In addition, FWS's approval of AMOC MOU violates section 4 and other provisions of the ESA, because the agency has unlawfully delegated its statutory responsibilities, including but not limited to its duty to recover the Mexican gray wolf, to an outside entity that is not similarly bound and which the FWS has no ultimate control over.

The organizations to this notice urge FWS to revisit the AMOC and its promulgation of SOP 13, and to ensure that removal actions are not impeding the overall goal of the ESA and the reintroduction project—recovery of the Mexican gray wolf. Should you fail to take these required actions, the undersigned groups will pursue judicial relief in Federal District Court. Please contact me at (202) 682-9400 should you have questions regarding this notice.

Sincerely,

Brian Segee
Staff Attorney