

**Before the Department of the Interior
U.S. Fish and Wildlife Service**

WASHINGTON, D.C. 20240

In Re: Mexican gray wolf recovery,)
Arizona and New Mexico.)
Petition for Rule-making to enhance)
prospects for recovery of the Mexican)
gray wolf experimental population, in)
accordance with scientific findings.)

*To the Secretary of the Interior and
the Director, Fish and Wildlife Service:*

Petition for Rule-making

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March 29, 2004

TABLE OF CONTENTS

	Page
Summary-----	3
Introduction: Recovery of Mexican gray wolves will benefit natural ecosystems and human communities.-----	3
Petition for Rule-making-----	4
Adaptive Management at Heart of Reintroduction Effort-----	5
Three Year Review Process Intended to Implement Adaptive Management through a Vetting of Biological and Social Issues-----	5
Recommendations of Three Year Review-----	7
Consequences of Failing to Revise Rule-----	11
Paquet Report Analysis Affirmed by State Wildlife Agencies-----	13
Standing to File-----	13
Conclusion-----	14

SUMMARY

This Petition filed by the Center for Biological Diversity requests that the Department of the Interior and the U.S. Fish and Wildlife Service promulgate regulations revising the experimental non-essential rule for the reintroduction of the Mexican gray wolf into the wild in Arizona and New Mexico. Specifically, this petition seeks the following elements in the new regulations:

- (a) Providing the Fish and Wildlife Service the authority to release Mexican gray wolves from the captive breeding population into New Mexico.
- (b) Providing the Fish and Wildlife Service the authority to allow wolves to establish territories outside the boundaries of the Gila and Apache National Forests.
- (c) Defining “nuisance wolves” and “problem wolves” so as to exclude animals that scavenge on the carcasses of livestock that died of non-wolf causes.

Such regulations are necessary to follow the urgent recommendations of a team of expert, independent wolf biologists contracted by the Fish and Wildlife Service to assess the progress of the Mexican wolf reintroduction program. Following scientific recommendations, in turn, is part of the “adaptive management” policy which the Service pledged itself to in its 1996 Mexican wolf reintroduction Final Environmental Impact Statement. Failure to promulgate such regulations jeopardizes the recovery of the Mexican wolf and violates Section 7(a)(1) of the Endangered Species Act, which requires all federal agencies to utilize their authorities to recover threatened and endangered species.

Introduction: Recovery of Mexican gray wolves will benefit natural ecosystems and human communities.

The ongoing program to reintroduce the Mexican gray wolf (*Canis lupus baileyi*) into the wild is intended to correct an historic mistake and save an endangered species and the ecosystems of which it is a part. The Mexican wolf is the engine of evolution for southwestern ecosystems, contributing to the strength and vigor of elk, the alertness of deer, the agility and sense of balance of bighorn sheep, and the speed and keen eyesight of pronghorn antelope. The “lobo” also provides carrion for scavenger species such as eagles, badgers and bears, and may subtly change the inter-relationships between other species, such as foxes and coyotes, and between herbivores such as elk and the vegetation they utilize.

Beginning in 1915, the federal government poisoned, trapped and dug up the dens of wolves and by the late 1920s had completely exterminated the Mexican wolf from the United States. Starting in 1950, the U.S. Fish and Wildlife Service began sending poison and salaried American personnel to the Republic of Mexico to duplicate this extermination program south of the border.

Only after passage of the Endangered Species Act did these policies end. The last five Mexican wolves confirmed from Mexico were captured between 1977 and 1980 in an emergency effort to save this animal via captive breeding. It is the progeny of three of these last survivors, and of four previously captured wolves later certified through genetic testing to be pure-bred Mexican wolves, that were first reintroduced in March, 1998 and that now roam their ancient habitats in southeastern Arizona and southwestern New Mexico.

Reintroduction of the Mexican wolf is part of this generation's commitment to generations yet to come that we will leave them some landscapes teeming with life. Appropriately, polls taken over the past several years have consistently indicated strong public support for wolf reintroduction, including in the rural counties where lobos now roam.

But this program, and the wolves' chances of success, are currently being undermined by arbitrary and capricious federal regulations. These regulations mandate a control program targeting wolves that do not attack livestock, fail to prevent preventable conflicts between wolves and the livestock industry, and needlessly restrict the authority of the Fish and Wildlife Service and its agency partners in the States of New Mexico and Arizona, the White Mountain Apache Tribe, and the U.S. Forest Service in deciding where to release wolves and under what circumstances to allow them to roam.

Petition for Rule-making

The Center for Biological Diversity, pursuant to the Administrative Procedures Act (16 U.S.C. 553 (e)) and Department of the Interior regulations (43 C.F.R. Part 14), hereby petition the U.S. Fish and Wildlife Service to revise the experimental non-essential rule for the reintroduction of the Mexican gray wolf into the wild in Arizona and New Mexico. (50CFR17.84) Administrative Procedures Act directs that “[e]ach agency (of the Federal Government) shall give an interested person the right to petition for the issuance...of a rule.”

5 U.S.C. 553.

Adaptive Management at Heart of Reintroduction Effort

On November 6, 1996, the Fish and Wildlife Service's southwest regional director, Nancy M. Kaufman, signed the notice for a Final Environmental Impact Statement on the Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States ("FEIS"). This document, and subsequent federal register notice (50CFR17.84) authorized reintroduction of an experimental, non-essential population of the Mexican gray wolf into the Blue Range Wolf Recovery Area of southwestern New Mexico and southeastern Arizona, and established a broader Experimental Population Area.

The FEIS premised the reintroduction program on principles of adaptive management: "The FWS and the cooperating agencies will use a flexible 'adaptive management' approach based on careful monitoring, research, and evaluation throughout the release phase." (FEIS, p. v)

To ensure implementation of adaptive management, the FEIS and the federal register notice pledged to "evaluate Mexican wolf reintroduction progress and prepare periodic progress reports, detailed annual reports, and full evaluations after 3 and 5 years that recommend continuation, modification, or termination of the reintroduction effort." (50CFR17.84)

Three Year Review Process Intended to Implement Adaptive Management through a Vetting of Biological and Social Issues

On February 16, 2001, the FWS held an invitation-only meeting in Silver City, New Mexico to unveil its plans to conduct the three-year review. At that meeting, Mexican wolf recovery coordinator Brian T. Kelly introduced representatives of the Conservation Breeding Specialist Group (CBSG), a non-profit organization, to the invited guests, who largely consisted of ranchers and representatives of groups opposing Mexican wolf reintroduction, and explained that CBSG would be conducting a three day workshop, again only open to invited guests, to evaluate the program and produce a review document that included

recommendations for the future. However, by majority vote of participants at that Silver City meeting, the Service modified that plan to authorize the CBSG to conduct a separate scientific evaluation of the recovery program, to precede and inform the workshop.

The CBSG subsequently contracted with Paul C. Paquet, Ph.D., of the University of Calgary to conduct that scientific evaluation. Dr. Paquet is considered one of the world's top experts on carnivores, and especially on wolves. He selected three colleagues with wide expertise in conservation, wolf recovery, and demographic and statistical analysis, to assist him. None of them were at the time affiliated with the government. The resulting 86-page document, *Mexican wolf recovery: three year program review and assessment* (by Paul C. Paquet, John A. Vucetich, Michael K. Phillips and Leah M. Vucetich, "Paquet, *et al*"), released in June, 2001, to date is still the sole published scientific research study of the Mexican wolf population in the wild. It incorporates all the monitoring data conducted by the interagency Mexican wolf field team, and was conducted by the CBSG's contract biologists and paid for with federal endangered species recovery funds, specifically for its value in guiding future actions in the Mexican wolf reintroduction program.

Paquet, *et al* included the following remarks germane to adaptive management:

The architects of the Mexican wolf reintroduction program properly accounted for the inevitable uncertainty and difficulty of the project by establishing adaptive management as the overarching operational paradigm. Consequently, our recommendations are largely the inevitable result of the reintroduction project's maturation. In this regard, we predict that the next review will also identify changes that can be made for improving the program. (p. 61)

After release of Paquet, *et al*, the Service hosted eleven "Open House" public meetings to gather public opinion on the recovery program. Nine of the meetings occurred in small towns and even smaller rural communities proximate to the reintroduction area. The remaining two meetings were held in Albuquerque, New Mexico and Phoenix, Arizona. Written comments were accepted at these open houses and were compiled in a document entitled *Mexican Gray Wolf: Three Year Review: Open House Participant Comments* ("Participant Comments").

Finally, the CBSG conducted the planned workshop in Show Low, Arizona, on

August 7 - 10, 2001. The results of this workshop was a rambling, digressive document entitled *Mexican Wolf Reintroduction Program Three-Year Review Workshop: Final Report* (edited by Brian T. Kelly and Michelle H. Brown of the Service and Onnie Byers of the CBSG, “Workshop Final Report”).

Recommendations of Three Year Review

The tripartite review process produced three discrete sets of recommendations: Those of Dr. Paquet and his colleagues, of the public attendees of the open house meetings, and of the invitation-only workshop. Strikingly, however, two salient recommendations emerged from all three processes, and a third was endorsed in two of the three.

The biological report, Paquet, *et al*, advised as follows:

Immediately modify the final rule (Parsons 1998) and develop the authority to conduct initial releases into the Gila National Forest. Several releases conducted during the first 3 years of the reintroduction project resulted in wolves settling much of the primary recovery zone in the Blue River Wolf Recovery Area. As work elsewhere (Phillips unpublished data) has revealed, wolves should not be released in areas that support resident animals. Over time, it will become harder for the Service to find suitable release sites in the primary recovery zone. The Service can best address this problem by obtaining the authority to conduct initial release in the secondary recovery zone, most notably the Gila National Forest. This recommendation was first made to the Service by a panel of experts (including Phillips) enlisted by the Service to review the reintroduction program in January 1999. Despite the Service’s approval of the recommendation, they have taken no implementation action. This is by far the most important and simplest change the Service can make to the existing reintroduction project. The Gila National Forest is approximately 75% of the 4.4 million acre Blue Range Wolf Recovery Area. The Gila Forest includes about 700,000 acres that are roadless and free of livestock. Several high-quality release sites are available in the area. Using them is the best way for improving the cost-effectiveness and certainty of the reintroduction project. Accordingly, we strongly recommend that the Service immediately take whatever action is necessary to conduct initial releases of captive-born (and wild-born if appropriate) Mexican wolves to the Gila National Forest.

Immediately modify the final rule to allow wolves that are not management problems to establish territories outside the Blue River Wolf Recovery Area. For specific language and instruction for this modification we strongly recommend that the Mexican wolf recovery program review the final rule promulgated for the gray wolf recovery in the northern Rockies (Bangs 1994). During the first 3 years of the

reintroduction the Service recaptured some Mexican wolves simply because they left the Blue Range Wolf Recovery Area. As the wolf population grows, more animals will disperse from the Blue Range Wolf Recovery Area. Retrieving animals because they wander outside the primary recovery area is inappropriate because it is:

1. inconsistent with the Service's approach to recover wolves in the southeast, Great Lakes states, and the northern Rockies;
2. will lead to serious logistical and credibility problems as the wolf population grows and more wolves disperse from the area; and
3. needlessly excludes habitat that could substantially contribute to recovery of *Canis lupus baileyi*.

Before the current Mexican wolf reintroduction project was initiated, the red wolf recovery program adopted a similar approach (Henry 1995) with dire consequences (Phillips and Smith 1998). Extensive tracts of public land and some private land outside the Blue Range Wolf Recovery Area are suitable for wolves. Consequently, we strongly recommend that the Service develop the appropriate flexibility to allow wolves to occupy lands outside the Blue Range Recovery Area. We believe that obtaining the requisite flexibility will require that the Service modify the final rule currently governing the reintroduction project.

We recognize that the statements above as they relate to private land may cause controversy so we offer the following remarks. Allowing Mexican wolves to inhabit suitable tracts of private land (e.g., large holdings) in the absence of problems, would bring the reintroduction project into compliance with Service-led efforts to recover wolves elsewhere. Allowing wolves to inhabit private property in the absence of a problem should not be construed to mean that the Service would begin to actively target private lands as wolf habitat that needs to be settled. Quite the contrary, and note that nowhere is the Service effecting management of private land to promote wolf conservation. However, throughout the U.S (except in the Blue Range Wolf Recovery Area) if a wolf wanders onto private property and does not cause a definable problem, and its mere presence is not a definable problem, then the Service is not required to remove the animal even if the landowner demands such action.

Such an approach to wolf recovery is consistent with the determination in the United States that the public owns wildlife, rather than private landowners. Within limits, landowners can manage their property in a way that promotes or hinders the welfare of wildlife. However, through laws enforced by state and federal officials, citizens decide under what circumstances wildlife can be captured and moved or killed from public and private land. Such decisions are not the prerogatives of the landowner, regardless of whether the animal(s) in question are naturally occurring or present because of a reintroduction program.

In sharp contrast with the Service's approach elsewhere, the Mexican wolf project developed a rule that requires wolves to be removed from public and private land outside the Blue Range Wolf Recovery Area, even in the absence of a problem (Parsons 1998). Such regulations are inappropriate for at least 2 reasons: 1) they are nearly impossible to effectively carry out as the wolf population grows because of the difficulties of managing an ever-increasing number of wide-ranging dispersing

animals, and 2) they establish a precedent that could be effectively used to argue for the removal of other endangered species inhabiting certain tracts of public or private land.

Certainly local opposition to the Mexican wolf reintroduction program affected the development of such a rule. Indeed, the recovery program coordinator assumed from personal knowledge of local politics and sentiments that a more restrictive rule would have significantly hindered and possibly caused the termination of the project (D. R. Parsons personal communication 1996). Maybe this was a valid assumption. Opinion polls, however, suggest widespread and persistent local support for wolf recovery in the southwest (Duda and Young 1995, Pate *et al.* 1996, Meadows 2001). Regardless, noting that wolf recovery elsewhere has faced substantial opposition is instructive, but the Service did not promulgate similarly onerous rules (e.g., see Bangs 1994, Henry 1995). And to date, recovery efforts elsewhere have been quite successful (Refsnider 2000).

...

Require livestock operators on public land to take some responsibility for carcass management/disposal to reduce the likelihood that wolves become habituated to feeding on livestock. Currently livestock grazing is permitted on about 66% of the Blue Range Wolf Recovery Area. At least 3 packs were removed from the wild because they scavenged on dead livestock left on national forest lands. Such scavenging may predispose wolves to eventually prey on livestock. Accordingly, reducing the wolves' access to carcasses will greatly facilitate coexistence between ranchers and wolves in this portion of the recovery area carcasses. While some predation on livestock is inevitable, reasonable means of reducing the frequency of occurrence will enhance wolf recovery so that is respectful of the needs and concerns of livestock producers. Consequently, livestock producers using public land in occupied wolf range should be required to exercise reasonable diligence in finding livestock that have died to either dispose of the carcass or enable the Service to do so. Such diligence will probably reduce predation on livestock, which in turn will improve the cost-effectiveness and certainty of the reintroduction project. (pp. 65-67)

Comments from the open houses adduced strong sentiment in favor of the same three recommendations. Out of 364 signed comments (each of which could include more than one issue), the single largest category of comments advising on specific program policies addressed releasing wolves from the captive breeding program directly into New Mexico. Eighty-three comments supported such releases, and only two opposed them.

The second largest category of such specific comments addressed the issue of allowing wolves to roam/and or establish territories outside the boundaries of the currently constituted recovery area. Fifty-five comments indicated support for such a change, while

seven opposed this.

Another forty-four comments supported disposal of livestock carcasses so as to prevent wolves from habituating to livestock. No one wrote to oppose such disposal. (Participant Comments, pp. 5-24)

Finally, the three-day workshop resulted – despite the cacophony of a process tarnished by a biased and Federal Advisory Committee Act-violating process – in a series of recommendations along the same lines. The Workshop Final Report includes the following two proposed action items from among a multitude issued by the six working groups constituted during the workshop:

- “Change the 10(j) management rule to allow direct releases of wolves anywhere within the Blue Range Recovery Area.” (p. 52)
- “Change rule to allow for possible release of wolves from captive population throughout recovery area and allow wolves to disperse outside recovery area.” (p. 64)

None of the proposed action items are at odds with either of these two courses of action.

Consequences of Failing to Revise Rule

The scientific report, Paquet, *et al*, included the following minatory remarks:

- “We conclude that some wolves have successfully established home ranges and possibly pack territories within the designated wolf recovery area. We caution, however, that frequent recaptures and re-releases confounded our analysis. These manipulations may also be interfering with pack formation and establishment and maintenance of home ranges. Lastly, individual wolves have shown some indication of dispersing outside the recovery areas. This is to be expected and required if the regional population is to be viable.” (p. 23)
- “The number of free-ranging Mexican wolves at the end of third year is similar to that projected in the EIS. Survival and recruitment rates, however are far too low to ensure population growth or persistence. Without dramatic improvement in these vital rates, the wolf population will fall short of predictions for upcoming years.” (p. 27).
- “Frequent removals and re-releases of wolves confounded our analysis of rates and causes of mortality. However, if recaptured wolves were at high risk of being killed, then survival is much lower than projected in the EIS.” (p. 33)
- “Using data collected since March 1998, we calculated a 39% chance that the annual growth rate is < 0.0 ; a 43% chance the annual growth rate is ≤ 0.10 ; and a 50%

chance the annual growth rate ≤ 0.20 (Figure 22). Using data collected since December 1998, we calculated a 23% chance that the annual growth rate is < 0.0 ; a 26% chance the annual growth rate is ≤ 0.10 ; and a 29% chance annual growth rate ≤ 0.20 (Figure 23). ” (p. 41)

These remarks indicate that if trends from the first three years of the reintroduction program continue, there is a greater than one third possibility of a decline in the population. And indeed, between June, 2001, when the Paquet Report was released and today, the population of radio-collared and monitored Mexican wolves in the wild declined from 27 to 18 animals. According to the 1996 *Final Environmental Impact Statement on Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States*, at the end of 2003, there were projected to be a total of 55 wolves in the wild. That FEIS also projected ten breeding pairs established by this time, whereas at the end of last year, only three breeding pairs could be documented (p. 2-8).

Radio collared wolves are the only objective benchmark for the demographics of this population. Some non-radio collared wolves and possibly animals whose collars have malfunctioned also roam the recovery area, but their numbers are unknown. Over the past two and a half years the Fish and Wildlife Service has made a concerted effort to capture wild-born wolves in order to radio collar them and monitor demographic trends, and the agency has captured nine (whose numbers are incorporated into the eighteen that are currently collared and monitored). However, guesstimates as to how many more uncollared wolves there might be do not suffice as the basis for recovery decisions; the only actual data available indicates a declining population.

The trends producing such an uncertain prognosis for recovery are largely based on frequent government control actions against the wolves. Such control actions to date have directly resulted in the deaths of ten wolves (nine accidental and one purposefully) and in the destruction of numerous packs and the resultant loss in (additional) individual animals' lives and in many possibilities for success in reproduction. Even in cases in which wolves captured from the wild are re-released, their survival chances diminish significantly because family packs break up and their individual members then travel vast distances alone, often succumbing to poachers and automobiles. In sum, the control actions are the greatest single limitation in the growth of the Mexican wolf population, and to a greater degree than can

likely be sustained in the absence of continual re-infusion of wolves from the captive population. These control actions are overwhelmingly due to the wolves' discovery and utilization of livestock carcasses, and dispersal outside the recovery area. Allowing the wolves to so disperse, and limiting the availability of livestock carcasses through modifying the rule would at once remove the two greatest risk factors to the population.

Furthermore, releasing wolves from the captive breeding pool directly into the Gila National Forest in New Mexico would accelerate establishment of a wolf population in the largest areal extent of the recovery area, a region which continues to lag behind Arizona in supporting a wolf population, despite several years of translocations of wolves first released in Arizona or born in the wild. The failure to change the rule in this respect is to rely largely on such translocations, despite their very limited success to date and the Paquet, *et al* warning that they "may also be interfering with pack formation and establishment and maintenance of home ranges" – in other words, the conditions necessary for successful growth of the population.

Paquet Report Analysis Affirmed by State Wildlife Agencies

The Paquet Report's validity was affirmed by both the Arizona and New Mexico departments of Game and Fish, in a joint September 30, 2002 statement to the Fish and Wildlife Service to be transmitted to Congress, in accordance with report instructions contained within the Department of Interior and Related Agencies Appropriations Bill, 2002 at the request of former Representative Joe Skeen (House of Representatives Report 107-103). In their review, the Departments stated that "the findings and recommendations of the Biological Review are scientifically valid" (*Arizona-New Mexico Review of the U.S. Fish and Wildlife Service's 3-Year Review of the Mexican Wolf Reintroduction Project*, p. 18).

Standing to File

The Center for Biological Diversity is dedicated to protecting and restoring the imperiled species and wild places of North America, operating through science, policy, education, citizen activism and environmental law.

The Center has a longstanding interest in the recovery of the Mexican gray wolf. Our executive

director, Kieran Suckling, was part of the 1989 litigation against the Departments of the Interior and Defense (Wolf Action Group et al vs. Lujan, et al) that broke the logjam on recovery and precipitated development of the reintroduction EIS. Subsequently, we helped build public support for the program over many years.

After reintroduction began, we contributed to the reward fund that helped capture and convict James Michael Rogers for illegally killing a Mexican wolf in 1998. We continue to offer a reward of \$5,000 for apprehension and conviction of those illegally killing wolves. We played a leading role in advocating for, and removing the political obstacles to the translocation of wolves into the Gila National Forest in 2000. Currently, we are building further grassroots support for the wolves through a slide show tour that has reached thousands of people in the Southwest and nationwide over three years.

The Center for Biological Diversity has over 9,000 members, many of whom reside in New Mexico and Arizona and show up at public hearings and otherwise participate in management decisions on the Mexican wolf, insofar as they are permitted. In sum, the Center for Biological Diversity meets all the criteria for “an interested person” under the Administrative Procedures Act.

Conclusion

The Fish and Wildlife Service’s failure to date to promulgate new regulations in contravention to this record directly contradicts the Endangered Species Act’s intent to recover endangered species and the ecosystems upon which they depend. On July 15, 1986, Fish and Wildlife Service mammalogist Ronald M. Nowak stated that “the Mexican wolf may be the most critically endangered mammal in North America, and is of unusual biological, historical, and cultural interest” (in an internal FWS memo to James Johnson). Today, there is just one tenuous population derived from the last wolves captured in Mexico, and that population is at grave risk.

In devising an elaborate and expensive review of the Mexican wolf reintroduction program in 2001, the Fish and Wildlife Service made numerous public commitments to act on the review’s findings. “This is an important time for communities to voice their issues with the program,” Brian T. Kelly, Mexican gray wolf recovery coordinator, told the media in June 2001. “In addition to the science, we need the local views and recommendations on what changes to make to the management plan” (“Meetings set to discuss wolf reintroduction,” 6/7/2001, *Silver City Daily Press*). Other

examples abound.

The failure of the Fish and Wildlife Service to follow through on a process in which members of the public volunteered their time to participate, which was paid for by endangered species funds and which was explicitly intended to guide management, is breeding cynicism about the agency's commitment to recovery of the lobo.

Given the danger of further population declines toward extirpation of the remaining Mexican wolves, and of the likelihood that the population will not achieve the reintroduction's objectives under current management, we request that the Fish and Wildlife Service immediately begin the rule-making process to modify policies in accordance with the Paquet Report's recommendations and the public sentiment expressed in the social components of the three-year review.