



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility (PEER)
2000 P Street, NW
Washington, D.C. 20036

SEP 25 2012

Mr. Ruch,

I received your scientific integrity allegation, dated June 7, 2012, regarding the Fish and Wildlife Service's alleged intentional interference in developing science-based recovery criteria and suitable habitat in the on-going recovery planning update for the Mexican wolf. I talked with you by phone on June 27, 2012 and received additional information from you by emails, following that conversation. I read and considered all the materials in your complaint. You also suggested three "experts" for me to contact and I was able to contact two of them and we discussed their perspective on this matter.

I also contacted several members of the Science and Planning Subgroup (SPS) of the Mexican Wolf Recovery Team, several Fish and Wildlife Service (FWS) employees involved in this matter and the facilitator of the Structured Decision Making (SDM) process that was included in your complaint. I read and considered all the additional materials that these people provided to me on this matter.

The Science and Planning Subgroup (SPS) were formed in late 2010 by accepted letters of invitation from the Southwest Regional Director. These letters of invitation (attached) indicated that, in addition to the science and planning group (later known as the Science and Planning Subgroup), the new Mexican Wolf Recovery Team would be comprised of 3 other groups (tribal liaisons, agency liaisons, and stakeholder representatives). These letters also stated that "**the management perspectives, review and input from tribal liaisons, agency liaisons, and stakeholders will be considered throughout the process of developing the plan** (emphasis added). Public review and independent peer review will occur when the draft revised plan is complete." These invitation letters also stated: "Recovery teams **convene at the discretion of the Service's Southwest Regional Director** (emphasis added), who has lead responsibility for recovering the Mexican wolf under the Endangered Species Act (ESA) as amended."

The Structured Decision Making (SDM) process is a tool used by the FWS since 2006. Other government and non-government agencies have also used the SDM process. The SDM process referred to in your complaint appears to be the meeting held in Grand Junction, CO, in August 2011, on the topic of Southwest wolf reclassification. This SDM process was known as the Southwest wolf SDM process. Like the earlier National wolf SDM process (August 2010), this Southwest wolf SDM was an attempt to open communication between the States and the Service

about the consequences of various species classification listing options in terms of a number of objectives. Participants indicated preferences, not a commitment to a decision. No consensus recommendation was sought, no decision was made, and there was no promise to proceed in any particular direction, nor did the Service commit to including all the objectives in its determination; it was merely an opportunity to receive that input from the States, and to convey to the States the arguments that the Service found compelling.

The Department's policy on integrity of scientific and scholarly activities (305 DM 3) defines misconduct to include:

§3.5(M)(1) "Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity."

§3.5(M)(3) "A finding of scientific and scholarly misconduct requires that:

- (a) There be a significant departure from accepted practices of the relevant scientific and scholarly community.
- (b) The misconduct be committed intentionally, knowingly, or recklessly.
- (c) The allegation be proven by a preponderance of evidence.

I will respond to each of your enumerated complaints:

1. "[FWS officials] attempted to alter numeric recovery criteria considered by Science and Planning Subgroup to reflect political and other socioeconomic concerns that are properly addressed in other stages of recovery planning (e.g., development of recovery actions), in order to insulate outcomes of "Structured Decision Making" process from conflict with the best available scientific information;"

Finding: Not warranted. In August 2011, the Regional Director requested that the SPS consider providing a numeric range for a viable population of wolves in their recovery criteria, rather than a specific number. Requesting a consideration of a range of the numeric size of a viable wolf population, in lieu of a specific number for that viable population, is not a departure from accepted practices for estimating viable populations and it is consistent with recovery planning guidelines that call for criteria that is objective and measurable. Furthermore, it is not reckless conduct for the Regional Director to request this consideration of the SPS, since the Regional Director is ultimately responsible for the recovery of the Mexican wolf. Therefore this request is not considered to be misconduct.

2. "[FWS officials] attempted to exclude areas of suitable habitat from consideration by the Science and Planning Subgroup based on political and other socioeconomic concerns, in order to insulate outcomes of "Structured Decision Making" process from conflict with the best available scientific information;"

Finding: Not warranted. Your allegation implies a direct link between the Southwest wolf SDM process meeting and the recovery criteria and suitable habitat for the Mexican wolf.

Your alleged link incorrectly assumed that the SDM process concluded with a determination that the Mexican wolf listing status would be more limited and preclude suitable habitats for its recovery. Specifically, your allegation assumed that the Southwest wolf process concluded that the Southwest wolf would be classified as a Distinct Population Segment (DPS) with defined geographical boundaries, and those boundaries would exclude Colorado and Utah from recovery planning of the DPS. Your allegation also assumed that the best available scientific information would indicate that recovery of the Mexican wolf (Southwest wolf) should include areas in Colorado and Utah.

In consideration of preparing a response to two petitions for reclassification of the Mexican wolf, the FWS invited States' (AZ, NM, CO, UT) wildlife agencies to participate in the Southwest wolf SDM process in Grand Junction, CO in August 2011. Like the National wolf SDM process (August 2010), the Southwest wolf SDM meeting was an attempt to open communication between the States and the Service about the consequences of various species classification listing options in terms of a number of objectives. No consensus recommendation was sought, no decision was made, and there was no promise to proceed in any particular direction, nor did the Service commit to including all the objectives in its determination; it was merely an opportunity to receive that input from the States, and to convey to the States the arguments that the Service found compelling. This SDM process did not determine the listing status of the Mexican wolf, nor did it limit the further consideration of suitable recovery habitat.

Subsequent correspondence between the States of Utah and Colorado and the Service, and their November meeting in Utah, did not result in any Service decision on the two petitions for reclassification of the Mexican wolf or restrictions of considerations for its recovery planning. The evidence indicates that these communications provided another opportunity to express the different perspectives on the matter and seek understanding of those perspectives without making any decisions or promises.

The State participation in the SDM process and subsequent Federal-State communications, as described above, and in the recovery planning process is not a significant departure from accepted practices in this scholarly community nor is it considered to be reckless behavior. The SDM process and subsequent communication, and the conduct of the Federal and State participants in that process or meetings did not interfere with the FWS' ability to conduct the status review of the Southwest (Mexican) wolf for the upcoming FWS decision on the two petitions, nor did it interfere with the SPS' ability to consider the best available scientific information, including the areas of suitable habitat within which recovery could occur.

The Service expects to complete their finding on the two petitions to reclassify the Southwest wolf by September 30, 2012. Your allegation implies that the Service has already promised the States that this petition response will exclude areas of suitable habitat from consideration. Speculation about the conclusion of this upcoming petition finding is not a valid basis for scientific misconduct.

3. “[FWS officials] blocked dissemination of science-based recovery criteria and suspended the recovery planning process for the Mexican wolf in order to prevent conflicts with the outcomes of the “Structured Decision Making” process;”

Finding: Not warranted. The Mexican wolf recovery planning process has faced numerous setbacks in the past decade, and this history may have increased the concern about the recent postponement of the SPS meeting that was scheduled for June 2012. The Regional Director has considerable discretion on how recovery plans are developed or revised. The SPS was specifically established by and for the Regional Director in November 2010. Your allegation apparently claims that the proposed June meeting of the SPS would result in the dissemination of science-based recovery criteria, and that postponement of the June meeting “blocked” that dissemination and “suspended the recovery planning process.” The Regional Director’s postponement of the June SPS meeting was based on reasonable considerations, as stated in his email message to the SPS on May 18, 2012, including: 1) an August visit to Mexico to access any additional information about wolf habitat availability and prey density, 2) schedule to include Consensus Building Institute in the next subcommittee and full committee recovery team meetings, and 3) consider the petition finding by the Service for the listing status of the Southwest wolf, expected to be completed by September 30, 2012. The meeting in Mexico occurred the week of August 13 and included 3 Service employees from the Mexican Wolf Program, 4 members of the SPS, as well as several Biologists from Mexico associated with the Federal government, universities, and a non-governmental organization. The next SPS meeting will be in Albuquerque on October 1-3, 2012. Pending the successful outcome of that meeting, the next step in the recovery planning process would be disseminating the SPS recommendation report to the full recovery team.

The postponement of a meeting of the full Recovery Team by several months is not considered to be reckless, and not a significant departure from accepted practices of recovery teams. Therefore the preponderance of evidence indicates that this does not constitute “misconduct”, nor does it indicate that the recommendations of the SPS will be “blocked, skewed or manipulated” or not be considered by the full Recovery Team. A meeting of the full Recovery Team is anticipated for later this calendar year, following the October SPS meeting.

4. “[FWS officials] pursued a “Structured Decision Making” process toward developing a “National Wolf Strategy” with state “Partners” that would use 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.”

Finding: Not warranted. The national wolf SDM process that occurred in August 2010, shared perspectives on wolf conservation in the lower 48 States, specifically addressing which “entities” might warrant protection under ESA. The Mexican wolf was one of these groups that warranted a comprehensive status review. In addition, a response to the two petitions for reclassification is expected before September 30, 2012. The Mexican

wolf has been listed as endangered as part of the broader lower-48-State-and-Mexico gray wolf listing, as revised, since 1978 (43 FR 9607, March 9, 1978). Thus, although not currently listed separately as a subspecies or DPS, Mexican wolves have been protected by the Act for the last 36 years. It is important to note that the 1978 reclassification rule stipulated that “biological subspecies would continue to be maintained and dealt with as separate entities” (43 FR 9609), and offered “the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs” (43 FR 9610, March 9, 1978). This protective designation does not preclude any potential conservation measures for consideration in the recovery planning process. The Service will conduct independent scientific peer review and public review of any revised listing of the Mexican wolf and the revised draft recovery plan. This process is well within the Service guidelines for endangered species listing and recovery planning.

In conclusion, by policy, I found no merit in the charges. As a result, the concerns of this allegation are considered closed. I appreciate your cooperation in this important process.

Sincerely,



Richard A. Coleman
FWS Scientific Integrity Officer

Attachment

cc: Suzette Kimball Ph.D., DOI SIO
Gabriela Chavarria Ph.D., FWS
OSA Gary Frazer, FWS AD-ES
Benjamin Tuggle Ph.D., FWS RD, Region 2

