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Public Comments Processing
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Division of Policy and Directives Management
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Re: Gila County scoping comments on the *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi).* Federal Register / Vol. 78, No. 150 / 47268 / Monday, August 5, 2013.

Dear Responsible Official,

Gila County has been a stakeholder in the efforts to develop and implement landscape scale forested ecosystems restoration; watersheds restoration; endangered and threatened fauna and flora protection; and, natural resources management for the last two decades. Gila County is actively involved as stakeholder, cooperating agency and coordinating local government in federal and state projects such as, among others, the nation's largest forested ecosystems restoration effort: the Four Forest Restoration Initiative; the ground breaking Arizona Watersheds Investment Fund; the Mexican Wolf Recovery Program; and, numerous state or local scale natural resources management projects and natural resources-based economic development initiatives.

Gila County is uniquely affected by the Proposed Action to delist gray wolves, list the Mexican wolf, revise the 10(j) rule establishing the Mexican wolf in Arizona-New Mexico as a nonessential experimental population, and draft an Environmental Impact Statement on the proposed revision to the Mexican wolf nonessential experimental population rule, due to the fact that a large part of the proposed revised Blue Range Wolf Recovery Area (BRWRA) and Mexican Wolf Experimental Population Area (MWEPA) would be located within the county.

Gila County scoping comments on the *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi)*. Federal Register / Vol. 78, No. 150 / 47268

On August 2, 2013 the Southwestern Regional Office of the U.S. Fish and Wildlife Service (USFWS) released the preliminary draft chapters 1 and 2 of the *Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis Lupus Baileyi) and the Implementation of a Management Plan*. In this document, five alternatives are identified: Alternative One (Proposed Action); Alternative Two (blue range wolf recovery area (BRWRA) expansion); Alternative Three (Mexican wolf experimental population area (MWEPA) expansion; Alternative Four (comprehensive alternative); No Action Alternative.

As outlined in the following sections, Gila County believes that the five alternatives proposed by the USFWS that the USFWS suffer NEPA and ESA implementation process deficiencies and scientific deficiencies that are of a nature to compromise the viability of the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis Lupus Baileyi) and the Implementation of a Management Plan*.

Gila County, therefore, respectfully submits the following substantive scoping comments with the expectation that the USFWS will modify its current NEPA and ESA implementation process and its current Draft Environmental Impact Statement (DEIS) accordingly.

Public and Cooperating Agencies engagement and scoping deficiency

ESA Section 10(j) and NEPA mandate a process of Public and Cooperating Agencies engagement and scoping. This process is articulated, among others, around the three concepts of:

1. Full communication to the Public of all the components of the Proposed Action and their alternatives;

2. Engagement of the Public and Cooperating Agencies at the earliest possible stage of the process, prior to the agency plans being formalized and its course of action being committed;

3. Proposed Action and action alternatives based on current scoping information gathered through the timely engagement of the public in public hearings throughout the area potentially affected by the Proposed Action.

By any objective measure, the USFWS is currently in default of these three fundamental provisions of ESA and NEPA:

1. Several critical components of the Proposed Action such as the *Mexican Wolf Management Plan for Portions of Arizona, New Mexico, and Texas outside of the Mexican Wolf Experimental Population Area*; the *Mexican Wolf Revised Recovery Plan*; the *Scientific Peer Review for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf*; and, a *Bi-National Mexican Wolf Collaboration Plan*, have not been released to the public, thereby negating the ability of the public to review the complete Proposed Action prior to the end of the comments period (see subsequent paragraphs);

2. A Proposed Action has been developed by the USFWS without engaging the public in Arizona and New Mexico in procedural public hearings on the Mexican Wolf issues since 2007, therefore relying on 6 year old outdated scoping information inconsistent with the USFWS policy on compliance with NEPA, as described in the USFWS policy manual in Chapter 1 of 550 FW 1;

3. Procedural actions taken by the USFWS (78 FR 35664; 78 FR 35719*;* 78 FR 47268) directly contradict the ESA and NEPA requirement for early public engagement in the sense intended under NEPA to have this engagement take place prior to the USFWS plans being formalized and its course of action being effectively decided.

In view of the above, and due to the scope, complexity and controversial nature of the Proposed Action, as well as the flaws discussed in the subsequent sections, Gila County believes that the USFWS must now suspend the comments process, and make every effort to ensure that the public, local governments and their constituents are given an opportunity to participate in a meaningful way in the engagement process through a series of public scoping hearings held across the entire area potentially affected by the Proposed Action, which encompasses the entire states of Arizona and New Mexico.

Mexican Wolf Management Plan outside of the MWEPA deficiency

Managing Mexican Wolves straying outside of quality habitats rich in abundant large ungulate prey into poorly adapted habitats, as is the case in most areas south of Interstate 10; north of Interstate 40; and arguably in the western third of Arizona and eastern half of New Mexico is of critical importance to the communities.

The *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi)* states: "The proposed rule (78 FR 35719, June 12, 2013), together with the proposed implementation of a soon-to-be-released management plan for Mexican wolves in areas of Arizona and New Mexico that are outside of the experimental population area, form the basis of the proposed action of our EIS" (Federal Register / Vol. 78, No. 150, 47268).

The *Preliminary Draft Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis Lupus Baileyi) and the Implementation of a Management Plan* further states as part of Alternative One (the Proposed Action): "Implement a management plan (Mexican Wolf Management Plan) for the Mexican wolf for those portions of Arizona and New Mexico that are outside of the modified MWEPA. Under this alternative the proposed management plan would be implemented for those areas of Arizona and New Mexico north of Interstate 40 and south of Interstate 10" (DEIS p. 52).

The USFWS introduced a *Southwestern Gray Wolf (Canis lupus) Management Plan for Portions of Arizona, New Mexico, and Texas outside of the Mexican Wolf Experimental Population Area (MWEPA)* on December 17, 2012. However, this plan was withdrawn on February 11, 2013 and no further public action has been taken.

Considering the fact that the referred *Mexican Wolf Management Plan for Portions of Arizona, New Mexico, and Texas outside of the Mexican Wolf Experimental Population Area (MWEPA)* is an integral part of the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf,* Gila

County believes that the public is not given the legally required opportunity to comment meaningfully on the *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf* until the USFWS releases the *Mexican Wolf Management Plan for Portions of Arizona, New Mexico, and Texas outside of the Mexican Wolf Experimental Population Area (MWEPA)*.

Mexican Wolf Recovery Plan deficiency

The USFWS is required to develop and maintain an Endangered Species Recovery Plan outlining the goals, tasks required, likely costs, and estimated timeline to recover endangered species to a point where their numbers and improved management allows removal from the endangered species list. Provisions of ESA Section 4(f) outline the minimum contents of a recovery plan. Among the three types of information that must be included figures the "objective, measurable criteria" to serve as a baseline for judging when and how well a species is recovering.

Since the initiation of the Mexican Wolf recovery project, the population goal has consistently been set at 100 animals. This is the number still currently used in the USFWS documents. The 2012 count identified a minimum of 75 animals. Since then, a minimum of 35 pups having survived the whelping season have been counted. This brings the current counted population in Arizona and New Mexico to a minimum of 110 animals. Assuming a 10% to 20%, or more, undercount because all animals are typically not observed during the counts, the real number is likely to be around 125 animals or more, therefore exceeding the original stated target of 100 animals.

The USFWS has recently in public verbal and written statements dismissed the original stated target of 100 animals, but is not providing an alternate "objective, measurable criteria," nor is it providing a scientific analysis to support suddenly dismissing the long standing target of 100 animals and arguing for an unspecified higher number.

Specifically, in December, 2010, the Service's Southwest Regional Director appointed a new recovery team to develop a revision of the original 1982 recovery plan for the Mexican wolf. However, the Team only held three team meetings in 2011, and three meetings of the Science and Planning Subgroup, and the Science Subgroup never reached consensus on its draft guidance to the Service and has not met since December 2012. Further, the USFWS recently announced at the August 2013 Wolf MOU Middle Management Team (MMT) meeting that the scientific team working on the Recovery Plan has been disbanded in order to reallocate resources to the 10(j) revision EIS.

In the absence of "objective, measurable criteria," among others, to serve as a baseline for judging when and how well a species is recovering, Gila County believes that the public is not given the legally required opportunity to comment meaningfully on the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf* until the USFWS releases the *Revised Mexican Wolf Recovery Plan*.

Mexican Wolf Scientific Peer Review deficiency

ESA requires that a team of scientists evaluate the basis for *Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered* and the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf* before a final decision is made. As standard procedure to ensure that

the analysis meets standards for quality and independence, the USFWS hired a private contractor, AMEC, to select and oversee the peer review panel.

In June 2013, the USFWS released to the public a *Peer Review Plan for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf*. However, the AMEC wolf peer review is slated for completion by September 11, 2013, the very date on which the comments are due on *Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered* and the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf.* Accordingly, the public and Gila County are deprived of the benefits of the scientific peer review to educate their comments.

Additionally, on August 13, 2013, the USFWS suspended the peer review process after the contractor notified three scientists who were under consideration that their services wouldn't be required, presumably due to their signing, among 16 wolf experts, of a May 21, 2013 letter to Interior Secretary Sally Jewell that challenged a draft version of the gray wolf plan.

Considering the fact that the legally required independent scientific peer review is a critical component in the analysis of the USFWS Proposed Action, Gila County believes that the public is not given the legally required opportunity to comment meaningfully on the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf* until the USFWS releases the *Mexican Wolf Scientific Peer Review*.

Bi-National Mexican Wolf Collaboration Plan deficiency

Approximately 85% of the Mexican Wolf habitat is located in Mexico. Overall recovery of the species can only succeed if the program is successful in Mexico. A *Bi-National Mexican Wolf Collaboration Plan* is therefore essential to the recovery of the species.

Additionally, although the release of captive animals in the 10(j) area is designed to bring genetic diversity in the wild U.S. population to a sustainable level, long term genetic sustainability of the species can only be assured by a dynamic and successful recovery effort in Mexico.

Considering the lack of social license in Mexico for the re-introduction of the Mexican Wolf, and the resulting numerous illegal lethal takes recorded among the released animals, a very real possibility exists that recovery could be successful in the United States, in Arizona and New Mexico, spreading to Texas, California, Colorado and Utah, while recovery would fail in Mexico.

A *Bi-National Mexican Wolf Collaboration Plan* must therefore address not only designing, implementing and monitoring a successful recovery program in Mexico, but the possibility of 'catastrophic success' in the United States, and the management actions that would be required in such event, such as but not limited to the transfer of animals from the United States to Mexico.

Gila County believes that the public is not given the legally required opportunity to comment meaningfully on the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf* until the USFWS releases a *Bi-National Mexican Wolf Collaboration Plan.*

Depredations compensation and cohabitation measures plan deficiency

The USFWS in cooperation with the National Fish and Wildlife Foundation established the Mexican Wolf/Livestock Interdiction Trust on September 23, 2009. The objective of the Trust Fund is to generate long-term funding for prolonged financial support to livestock operators within the framework of cooperative conservation and recovery of Mexican wolf populations in the Southwest. Funding is provided for initiatives that address management, monitoring, and other proactive conservation needs for Mexican wolves as they relate to livestock, including alternative livestock husbandry practices, grazing management alternatives, livestock protection, measures to avoid and minimize depredation, habitat protection, species protection, scientific research, conflict resolution, compensation for damage, education, and outreach activities. In April 2011, the Service appointed a Mexican Wolf/Livestock Interdiction Council which has the authority to identify, recommend, and approve conservation activities, identify recipients, and approve the amount of the direct disbursement of Trust Funds to qualified recipients. In 2013, the Interdiction Council was renamed the Coexistence Council.

However, the funding of the Trust Fund rests entirely on discretionary decisions by the agency and the Foundation, and there is no mechanism to guarantee annual funding or that the level of funding will match the level of approved or approvable disbursement. Other depredations compensation and cohabitation measures exist, such as the Defenders of Wildlife Compensation Program and the Mexican Wolf Fund. However, the Defenders of Wildlife Compensation Program compensation payments for cattle mortalities ended on September 11, 2010, and the Mexican Wolf Fund grants are available for proactive projects only and does not compensate for livestock losses related to Mexican wolf.

Gila County believes that the funding of both depredations compensation and cohabitation measures is critical to the sustainability of the Nonessential Experimental Population of the Mexican Wolf social license, and that the management mechanisms and the appropriate funding mechanisms by the USFWS of the Mexican Wolf/Livestock Interdiction Trust and Mexican Wolf/Livestock Coexistence Council must be integrated in the NEPA analysis and resulting Record of Decision.

Scientific deficiencies

The four action alternatives identified by the USFWS: Alternative One (Proposed Action); Alternative Two (blue range wolf recovery area (BRWRA) expansion); Alternative Three (Mexican wolf experimental population area (MWEPA) expansion; Alternative Four (comprehensive alternative); share the concept that the entire MWEPA outside the BRWA would be managed under a single set of rules.

This concept ignores three fundamental scientific realities:

1. Biophysical carrying capacities vary significantly across the MWEPA due to critical differences in habitat quality. For example, forested portions of the Mogollon Rim have significantly more adapted habitat than desert areas west of the Mogollon Rim such as portions of Mohave County or La Paz County do.

2. Biophysical carrying capacities vary significantly across the MWEPA due to critical differences in prey base availability. For example, portions of the Mogollon Rim have significantly larger prey basis than areas west of the Mogollon Rim such as portions of Mohave County or La Paz County do.

3. Potential prey bases vary significantly across the MWEPA due to critical differences in species composition, characterized by fundamentally different ability to withstand sustainably depredation by wolves. For example portions of the Mogollon Rim are characterized as primarily elk habitat, while other areas are characterized as primarily deer habitat.

Gila County believes that a comprehensive analysis of Mexican wolf impacts on native ungulate populations and of wolf depredation on various species of livestock (e.g. cattle, horses, sheep) is required to guide the creation of multiple 10(j) management areas and management rules adapted to habitat quality and prey basis. These impacts must be projected across the potential numerical range of expansion of the Mexican wolf population, up to and beyond current and potential recovery objectives in Arizona and New Mexico. This analysis must define unacceptable impacts to livestock herds as well as to wild ungulate herds, how such impacts can be measured, the means available for prevent and for responding to such impacts and the management responses allowable when and if unacceptable impacts occur.

Negative potential economic impact analysis deficiencies

Accurate and complete negative potential economic impact analysis is critical for the validity of the NEPA analysis as intended by the legislator.

Gila County believes that the negative potential economic impact analysis must:

1. Include mechanisms designed to accurately assess the total negative potential economic impact of wolves depredation on livestock operations, including specifically factors such as, but not limited to, non-reported losses occurring in low density free range areas, lower reproduction rate, lower animal weight gain, lower meat quality, true economic value of specific animals over standard weight-based market value, etc.

2. Identify and analyze the full spectrum of projected and potential economic impacts of the proposed Mexican wolf management program throughout the proposed MWEPA area, in which the Mexican wolf occurs or might again occur as a result of reintroduction. Impacted entities include the States of Arizona and New Mexico, Native American Tribes, sportsmen, guides and outfitters, other public lands recreationists, livestock owners and operators, and rural towns and local businesses and governments. The potential impacts include, but are not limited to, direct costs (i.e. those resulting from releasing and managing wolves) and indirect costs (i.e. those associated with planning, coordinating and responding to wolf reintroduction and behavior in the wild). The EIS must also disclose, discuss and analyze the hidden costs of wolf recovery, which include time and money spent by state, federal, tribal and local governments to understand, comment on and respond to the Service as it designs and implements its wolf programs.

3. Identify and analyze projected and potential economic impacts of the proposed Mexican wolf management program outside the proposed MWEPA, specifically but not restricted to areas north of Interstate 40, to which Mexican wolves might disperse and require management response. These impacts (costs) include, but are not limited to: depredation losses (livestock and pets, including herding and guide dogs); modifications of livestock husbandry, herding and grazing programs to accommodate wolf presence; livestock owner/manager time and travel in the course of preventing or reacting to depredations; livestock owner/manager time/travel required for coordination with wolf and land management agencies; and changes in or outright

loss of business for outfitters and hunting guides. The impacts on agencies include, but are not limited to: costs associated with meetings and other coordination with the Service on wolf-related issues; field and administrative staff required for wolf management; and large ungulate (prey) population shifts (including local changes in seasonal presence but also potential declines in herd size and hunter opportunity).

4. Identify and analyze projected and potential economic impacts on the Arizona State Land Trust of the proposed Mexican wolf management program on Arizona state land holdings' potentially decreased value or increased cost of management.

5. Consider and apply current economic impact information available to the Service from the Northern Rockies (e.g. Idaho, Wyoming and Montana) and the Western Great Lakes (e.g. Minnesota, Michigan and Wisconsin). That information is crucial to understanding the potential impacts of a Mexican wolf population that reaches and perhaps eventually surpasses any approved recovery objective for Arizona and/or New Mexico.

NEPA process deficiencies

Pre-decisional deficiency

Gila County believes that the USFWS is proposing pre-decisional modifications of the current 10(j) Rule. The impacts of any possible changes in the current (1998) Rule should be analyzed through National Environmental Policy Act (NEPA) process and an EIS (both on the basis of an approved Recovery Plan) before they are proposed for public comment.

Connected Actions deficiency

The USFWS has recently undertaken simultaneously, or in close sequence, a series of connected and cumulative actions that are of a nature to cause cumulative effects on Gila County. These actions are:

1. *Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered.* Federal Register / Vol. 78, No. 114 / 35664 / Thursday, June 13, 2013. Comments accepted until September 11, 2013. Comments period 90 days.

2. *Proposed Revision To the Nonessential Experimental Population of the Mexican Wolf*. Federal Register / Vol. 78, No. 114 / 35719 / Thursday, June 13, 2013. Comments accepted until September 11, 2013. Comments period 90 days.

3. *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi).* Federal Register / Vol. 78, No. 150 / 47268 / Monday, August 5, 2013. Comments accepted until September 19, 2013. Comments period 45 days.

The Council on Environmental Quality (CEQ) defines connected actions (1508.25) as those that are "closely related" to the proposal and alternatives. Connected actions automatically trigger other actions and do not proceed unless other actions have been taken previously or simultaneously, or

they are interdependent parts of a larger action and depend on the larger action for their justification.

Cumulative actions (1508.7, 1508.25 (a)(2)) are defined as having additive impacts on a particular environmental resource, regardless of who takes these actions and whether they took place in the past, are taking place in the present, or will take place in the reasonably foreseeable future.

CEQ further defines a cumulative effect as "an impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions" (40 CFR 1508.7). The regulations distinguish cumulative effects from direct effects (those which are caused by the project action and occur at the same place and time), and indirect effects (those also caused by the project action but occur at a later time and/or farther removed in location) (40 CFR 1508.8). Cumulative effects encompass the direct and indirect effects of the project action and other past, present or reasonably foreseeable actions that are related in the sense that they may affect the same resources as the project action.

Arguably, the three Mexican Wolf-related actions undertaken by the USFWS are connected, cumulative and trigger cumulative effects that must be analyzed together, as required under NEPA, in the proposed EIS for the *Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf*.

In consequence, Gila County believes that the USFWS must:

1. Realign the EIS scoping period with the comment period for drafting the proposed 10(j) Rule. The staggered sequence in which the Service is proceeding now effectively prevents integrated analysis and comment by the public and state government. The Service has opted to extend the public comment period on revision of the 10(j) Rule but not for scoping the EIS. Thus, stakeholders must comment on the draft EIS before they have an opportunity to consider what state and federal agencies will recommend regarding the 10(j) Rule. This disjointed approach also seems contradictory to relevant USFWS policy and to procedures set forth under NEPA and the Endangered Species Act (ESA).

2. Lengthen the EIS scoping period to enable effective collaboration among State wildlife agencies and their stakeholders to formulate possible reasonable alternatives to the alternatives described in the draft EIS materials made available by the Service. Again, see the Service policy manual regarding NEPA compliance for guidance directing providing ample time for such collaboration to occur.

3. Clarify opportunities for EIS cooperating agencies to develop alternatives. USFWS Region 2 staff has verbally advised agency cooperators they have until September 30 to provide EIS comment in the form of a consensus alternative for the Service to consider. It is unreasonable to expect cooperating agencies to develop a consensus alternative in less than 60 days when the Service has been working on its alternatives since 2007 and has not yet fully developed them. Requiring cooperators to reach consensus on a new alternative in order for the Service to consider it is also a significant problem, one that raises concerns about compliance with NEPA, which allows for consideration of multiple reasonable alternatives.

Gila County recommendations for the *Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi)*.

Recommended additional action alternatives

Gila County believes that at least four additional alternatives must be added to the DEIS and analyzed in the NEPA process:

1. Develop and analyze a wolf management alternative that compartmentalize the proposed MWEPA across the entire States of Arizona and New Mexico in different areas based on the biophysical habitat characteristics and biophysical prey basis (i.e. carrying capacities), as well as transit requirements between prime habitat areas, and provides different management rules adapted to the carrying capacities, ranging, for example, from: allowed releases and transfer; to: allowed colonization and residence without releases; to: allowed transit without permanent residence; to: removal of any wolf and transfer in other allowable area.

2. Develop and analyze a wolf management alternative that compartmentalize the proposed MWEPA between Interstate 10 and Interstate 40 in different areas based on the biophysical habitat characteristics and biophysical prey basis (i.e. carrying capacities), as well as transit requirements between prime habitat areas, and provides different management rules adapted to the carrying capacities, ranging, for example, from: allowed releases and transfer; to: allowed colonization and residence without releases; to: allowed transit without permanent residence; to: removal of any wolf and transfer in other allowable area.

3. Develop and analyze a wolf management alternative that places the Arizona-New Mexico reintroduction program entirely in federal hands, with no participation by and no unmitigated costs to state, tribal or local governments, other federal agencies, or the public (e.g. livestock owners and operators, guides and outfitters).

4. Develop and analyze a wolf management alternative that places the Arizona-New Mexico reintroduction program entirely in state and tribal hands, with no participation by the Service, other than oversight, planning and provision of necessary funding.

Additional recommendations

In addition to the above, Gila County also recommends that the USFWS:

1. Administratively reclassify and relist the Mexican gray wolf as the Mexican wolf. The Service could then focus on better integration of methods by which to address the current deficiencies in Mexican wolf conservation by initiating EIS scoping for the reclassified subspecies and comprehensively revising the current 10(j) Rule within that EIS process.

2. Clarify through the EIS the USFWS's "Purpose and Need" statement for the EIS and for the associated draft 10(j) Rule. The Purpose and Need statement for the 1998 10(j) Rule and the associated EIS was to establish a population of "at least 100 Mexican wolves" within the NWEPA in Arizona and New Mexico. The draft EIS and the preamble to the draft proposed 10(j) Rule reference that population objective, but the draft proposed Rule, without appropriate

justification or public process, modifies the Purpose and Need statement to establishing an expanded Mexican wolf population without identifying a quantitative range with lower and upper limits. This suggests a predetermined decision by the Service that the current objective of "at least 100 wolves" cannot be achieved under the current rule. If so, that decision is not based on science. Mexican wolf population growth since 2007 indicates the "at least 100 Mexican wolves" objective can be reached in the foreseeable future.

3. Clarify the legal status of Mexican wolves that are classified as nonessential experimental (i.e. threatened status), and concomitantly affirm what management authorities for such species have been conveyed to the States via ESA Section 6 Cooperative Agreements and how those authorities can be enhanced, not restricted, through ESA Section 10(a)(1)(A) and (B) take permits. Toward that end, the EIS must identify and analyze the costs and benefits of using a State-empowerment approach to achieve the desired objectives for Mexican wolf conservation. In crafting this portion of the Mexican wolf draft EIS and the proposed 10(j) Rule, the Service should pay particular attention to its approach in its draft wood bison 10(j) Final Rule, its 10(j) Final Rule for black-footed ferret reintroduction in Arizona, its existing ESA Section 10(a)(1)(B) permit to Arizona Game and Fish Department for black-footed ferret reintroduction in Arizona and in its long-standing, ESA-authorized (Sections 6 and 10) recognition of the Arizona Game and Fish Department as the lead agency in bald eagle conservation in the Southwest.

4. In conjunction with #2 above, examine and identify the guidelines and procedures by which other private individuals can appropriately be authorized to non-injuriously harass a wolf that is actively engaged in nuisance or other unacceptable behavior.

5. In conjunction with #2 and #3 above, evaluate and identify the guidelines and procedures by which livestock operators and their agents can appropriately be authorized to capture or kill a wolf that is actively engaged in acts of depredation on livestock or pets, or which has been identified by the Service as a repeat depredator of sufficient frequency that removal is appropriate.

6. Explore, and identify measures by which to rectify, the primary impediments to progress in Mexican wolf reintroduction and recovery since 1998, which include, but are not limited to, Service inaction, such as: failure to initiate and then to complete recovery planning (i.e. the Service aborted the 2003-2005 recovery planning effort and the Service has now placed the 2010-2012 recovery planning effort in limbo); failure to initiate and then complete NEPA process for changes in the current reintroduction project 10(j) Rule and management approaches (i.e. the Service aborted an internally-generated draft 10(j) Rule revision in 2001); abandonment of a 2008 effort by agency cooperators to draft an Environmental Assessment for 10(j) Rule modification; and jeopardy for the current EIS effort, due to probable litigation of the Service's proposed gray wolf delisting and proposed Mexican wolf re-listing. The costs (time, money and lack of progress) due to Service failure to initiate appropriate planning and regulatory actions and to fairly and consistently implement approved management guidelines for Mexican wolf conservation from 2001 through 2012 have greatly diminished public trust and confidence in the Service's ability and willingness to identify the important issues and work through to final decisions. This next EIS must address this aspect of Mexican wolf conservation efforts and clarify how the Service will avoid repeating the cycle of dysfunction.

7. Explicitly define in the EIS and consequent 10(j) Final Rule the area in which the Mexican wolf will be considered nonessential experimental, and whether or not that status is legally

appropriate for other parts of its historic range (i.e. in Mexico and in the United States north of I-40). The Service has stated repeatedly that Mexican wolves originating from Mexico must, if they disperse into the United States, be treated as endangered. This might be true under the current 10(j) Rule but court decisions for other species suggest other possibilities that would enable broader management flexibility and greater agency responsiveness to problem situations (e.g. livestock depredation). Toward this end, the EIS and draft 10(j) Rule must give due consideration to court findings in *Wyoming Farm Bureau v. Babbitt*, 199 F.3d 1224 (10th Cir. 2000) (affirming treatment of gray wolves that disperse from Canada into the experimental population area as members of the experimental population) and *Forest Guardians v. U.S. Fish and Wildlife Service*, 611 F.3d 692 (10th Cir. 2010) (affirming experimental nonessential treatment of endangered northern aplomado falcons that disperse from Mexico into the United States).

8. Evaluate through the EIS a 10(j) Rule model (management alternative) that mirrors the Service's proposed 10(j) Rule for the wood bison in Alaska and the 10(j) Final Rule for the California condor, which include reaffirming authority for specific states to manage listed species and requiring the Service to remove the entire nonessential experimental population if 10(j) status or state management authority is ever diminished or eliminated.

9. Evaluate whether and how an ESA Section 4(d) rule might be used to enable state management of Mexican wolves to contribute toward achieving recovery goals, thus achieving conservation purposes and benefits under the ESA while providing more effective, efficient local response to problem situations (e.g. livestock depredation and large wild ungulate population impacts).

10. Identify and analyze methods and means of avoiding and mitigating or minimizing Mexican wolf depredation on livestock, pets and wild ungulates, including identification of realistic methods by which to fund and implement such programs over the long-term, preferably over a 20-year planning horizon because it is unlikely the next federal Mexican wolf management framework will be modified within that span of time.

11. Fully explore issues related to live-trapping of wolves and other species of wildlife by agency personnel and the public on public, private, state and tribal lands. Appropriate levels of incidental take by agency and sport trappers must be explored and evaluated in the EIS and protected in the 10(j) Rule. The Service must define its intent and the methods by which that intent can be realized; agency employees and others must be appropriately protected from prosecution for their participation in lawful actions.

12. Clarify which Mexican wolves on which lands will contribute toward reintroduction and recovery objectives. The 1998 10(j) speaks to a population objective of at least 100 wolves within the MWEPA. The MWEPA defined by the current Rule does not include tribal lands, thus the significant contribution of the White Mountain Apache Tribe to Mexican wolf conservation is masked on the front end, even as the total number of wild wolves counted each year includes those on Tribal lands and thus masks how short the Service is falling in achieving its objective of establishing a population of at least 100 wolves on non-tribal lands.

13. Clarify through the EIS and the draft proposed 10(j) Rule technical issues such as, but not limited to: quantitative recovery objectives overall (range-wide) and for Arizona and New Mexico; whether an Arizona population of Mexican wolves could ever be self-sustaining, or whether dispersal or translocation from and to New Mexico and Mexico will always be necessary (e.g. for

genetic management purposes); the need for genetic infusion into the wild population and an evaluation of whether naïve releases have any measured effect in terms of shifting the genetics of the wild population; how and when the wolf population in each State is estimated; whether the annual EOYC is a census, survey or an estimate (with confidence intervals); the definition of breeding pair and how it allows for mate replacement within a calendar year; how young-of-the-year pups are accounted for in the annual count; whether the current approach to the annual count is statistically reliable or should be modified; whether and how annual EOYCs are or could be linked to provision of incentives to livestock operators to further wolf conservation goals while decreasing the need for management removals; guidelines for avoiding habituation of wolves that are being held in captivity prior to planned or potential release; how, when, where and by whom naïve or wild-born or wild-experienced Mexican wolves may be released to the wild; definition of what constitutes a depredation incident and how such incidents relate to wolf removal; clarify whether livestock operators are required to implement proactive depredation-avoidance measures before incentives or compensation funding can be provided, or whether such actions are voluntary and independent of incentives and compensation programs; clarify who verifies legal presence of grazing livestock and how they verify it (relative to depredations); clarify which agency or agencies conduct investigations to confirm or refute claims of livestock depredation; thresholds and methods for temporary and for permanent removal of depredating and nuisance wolves; clearly state the laws pertaining to ownership and removal or destruction of livestock carcasses on public, state, tribal and private lands.

14. Clearly define how Region 2 will comply with the USFS policy on NEPA compliance, specifically whether and how it will provide Service funds and staff support to enable robust cooperating agency participation in EIS preparation, particularly during scoping. Providing neither funding nor staff support to such agencies, as Region 2 apparently intends to do (Sherry Barrett, MW Recovery Coordinator, August 2013 EIS Cooperators Meeting), is at best not conducive to ensuring active engagement by cooperating agencies and local governments.

Conclusion

Gila County is concerned that the USFWS appears to be rushing the ESA Section 10(j) and NEPA process, thereby preventing full and fair participation by Gila County, as well as other potential Cooperating Agencies and the public generally. It seems advisable at this stage for the USFWS to take the time necessary to complete the required components of the Proposed Action and Action Alternatives as suggested here above, submit them for public review and scoping in the process of Public and Cooperating Agencies engagement required under ESA and NEPA, provide adequate time for written comments subsequent to these actions, and conduct the legally required comprehensive analysis including all the components suggested in these comments.

Gila County respectfully submits that the above comments and recommendations are substantive in nature and warrant careful consideration and adoption by the USFWS.

Gila County requests to be kept informed as the *Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi)* NEPA process progresses; hereby reserves its right to provide further comments as the process unfolds; and, requests that the USFWS commit to receiving and integrating further comments from the County as provided.

Gila County is committed to partner with the USFWS to design, implement and monitor an ecologically, economically and socially responsible Mexican Wolf recovery effort, while preserving the custom, cultures, economic well-being, health and safety of the county's residents and visitors.

Thank you for your consideration.

Respectfully submitted,

_____ _____

Michael A. Pastor
Chairman of the Board
Gila County Board of Supervisors

Date

ATTEST

_____ _____

Marian E. Sheppard
Clerk of the Board
Gila County Board of Supervisors

Date

cc: Benjamin Tuggle, Ph.D., Regional Director, Southwest Region, U.S. Fish and Wildlife Service
Sherry Barrett, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service
Jonathan Olson, Southwest Region NEPA Coordinator, U.S. Fish and Wildlife Service
Larry D. Voyles, Director, Arizona Game and Fish Department
Jim Lane, Director, New Mexico Department of Game and Fish

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