

June 7, 2012

Office of the Executive Secretariat and Regulatory Affairs  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

### **Complaint of Scientific and Scholarly Misconduct**

Intentional Interference in Developing Science-based Recovery Criteria and Suitable Habitat in the Mexican Wolf Recovery Plan by the U.S. Fish and Wildlife Service and State “Partners” to Subvert the Application of Best Scientific Information Regarding Wolf Recovery

**Complainant:** Filed by Public Employees for Environmental Responsibility (PEER), a national service organization to assist public employees in pursuit of environmental ethics, scientific integrity and resource protection. PEER has no conflicts of interest with any party related to this complaint. We became aware of the facts detailed below within the past 60 days.

**Complaint Summary:** The scientific integrity of the work of the Science and Planning Subgroup of the Mexican Wolf Recovery Team has been significantly and intentionally compromised by political interference of U.S. Fish & Wildlife Service (FWS), as well as by specified state “Partners.” In particular, these officials have –

1. 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;
2. 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;
3. 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; and

4. 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.

In short, the “Structured Decision Making” process, and as a result the Mexican wolf recovery planning process, has placed politics ahead of science in direct contravention of the Department of Interior’s (DOI) Policy for the Integrity of Scientific and Scholarly Activities (Part 305; Chapter 3 DOI Manual), as specified below.

**Subjects of Complaint:** The interference in the scientific process to the detriment of the integrity of scientific and scholarly activities was committed by the intentional acts of the following officials from the FWS and state “Partners”:

1. All FWS officials and other employees who, in the course of their participation in the “Structured Decision Making” negotiations, have knowingly developed draft policies, guidance, and/or regulations, informal agreements, memoranda of understanding and other similar documents to limit the input of the best available science regarding wolf recovery in future actions relating to wolf conservation in the United States.
2. All FWS officials, in either the Washington D.C. office or Southwest Regional Office (SWRO), and other employees who attempted to improperly influence the work of the Mexican wolf recovery team in order to revise or alter the geographic and/or numeric recovery criteria for the Mexican wolf;
3. Representatives of the Arizona Game and Fish Department, the Utah Division of Wildlife Resources, and the Colorado Division of Parks and Wildlife who participated in the Structured Decision Making process, and/or publicly disclosed confidential information developed as part of the Mexican wolf recovery planning process in an attempt to limit the application of the best available science in any draft or final recovery plan for the Mexican wolf. State officials are covered by the DOI Code of Scientific and Scholarly Conduct in “§ 3.7(A)(6) which defines the scope of the rules to include “All Department Employees, and all Volunteers, Contractors, Cooperators, [and] Partners...will... not intentionally hinder the scientific and scholarly activities of others or engage in scientific and scholarly misconduct.”

**Requested Relief:** We are seeking the following relief to satisfy this complaint:

- (1) DOI should enforce its own policy regarding the integrity of science and scholarly activities by recommending appropriate disciplinary action against responsible parties, and implementing such actions with regard to their employees, contractors, grantees, or the employees or contractors of states

receiving DOI funds, including persons at the SWRO and Headquarters of the FWS;

(2) Improve FWS-NMFS Recovery Planning Guidance to make clear that all recovery plans and recovery criteria are to be based on the best scientific and commercial data available, consistent with Section 4(b)(1)(A) of the ESA, which pertains to listing and delisting of threatened and endangered species;

(3) Develop, through the notice and comment process, a set of disclosure rules regarding stakeholder communications with the FWS Regional Office directors during the development of recovery plans for threatened and endangered species.;

(4) Require FWS to provide documents from the Structured Decision Making Process and the development of the draft National Wolf Strategy in digital form on the agency's public data portal, and obligate the agency to maintain annual updates to these data so as to ensure free access to these data for public and private research and oversight by others outside the agency;

(5) Require as a condition to receiving funds under Section 6 of the ESA, that states agree to participate in recovery planning and implementation with the understanding that recovery goals are to be based on the best available science and that other considerations are given proper consideration and met with flexible tools in other phases of ESA implementation, and

(6) Post the DOI policy regarding scientific integrity and scholarly activities on the FWS Regional home pages and public data portals and transmit this policy to all state fish & game partner agencies with a request that those agencies also post the policy on their home pages and public data portals.

**The Record:** The Mexican wolf (*Canis lupus baileyi*) is one of the most endangered mammals in North America. From a founding stock of 7 individuals, in 30 years the wild population has increased to around 60 individuals, with an additional 300 Mexican wolves in captivity.

Mexican wolves were reintroduced to the Blue Range of eastern Arizona/western New Mexico beginning in 1998 as a non-essential, experimental population under the Endangered Species Act (ESA). The sole wild population of Mexican wolves grew from 4 individuals in 1998 to 55 individuals in 2003, at which time a more aggressive policy was instituted for removal of wolves involved in livestock depredation. The population then ceased to expand in size, remaining below 60 individuals through 2011.

In 2010, the Fish and Wildlife Service concluded that the experimental population "is not thriving" due to the current regulatory structure governing the reintroduction program, lack of an up-to-date management plan, illegal shooting; and genetic inbreeding. Together, the cumulative impacts of these factors "threaten the population with failure."

Recognizing the inadequacies of the 1982 recovery plan, which lacked formal recovery criteria as required by the 1988 recovery Amendments to the ESA, the Southwest Region of the FWS convened a team in 2003 to develop a new recovery plan. However, in 2004, shortly after a majority of the Science Subgroup of the recovery team concluded that “three populations of 250 wolves each, connected by dispersal” constituted a recovery criterion supported by best available science, the recovery team process was suspended by Dale Hall, FWS regional director of SWRO.

In 2010, the new SWRO director, Benjamin Tuggle, invited seven scientists with recognized expertise in wolf conservation and management, as well as a social scientist specializing in the human dimensions of the biological resource management, to serve on the Science and Planning Subgroup (SPS) of the Mexican Wolf Recovery Team. Although review and input from tribal liaisons, agency liaisons, and stakeholders, which were organized into three additional subgroups, were to be considered, the SPS was given responsibility in ensuring recovery criteria were based solely on the best available science. In keeping with its charge to base criteria “solely” on the best available science, members of the SPS were selected based solely on relevant scientific expertise rather than as representatives of specific agencies or stakeholders.

In 2011, state agencies represented on the recovery team, particularly the Arizona GFD (AZGFD), also requested representation on the SPS. The Arizona GFD representative on the Agency Liaisons Subgroup later stated “We had to fight our way onto the SPS ... I greatly lament the fact that CO and UT did not fight their way into SPS representation” (10/19/2011 email from AZGFD representative). This perspective, namely that the AZGFD employee on the SPS would represent a particular stakeholder interest, was contrary to the recovery team framework that separated stakeholders and scientists into different subgroups to ensure recovery criteria were based on best available science. In April 2011, the FWS acceded to these demands by appointing to the SPS Jim Heffelfinger, an AZGFD employee with no expertise in wolf conservation and management.

After several meetings devoted to unsuccessful efforts to achieve consensus between the AZGFD representative and the remainder of the SPS (8 of 9 members) on appropriate science-based criteria for the recovery plan, the recovery team leader decided that the AZGFD representative would develop a minority opinion for the recovery plan. After meetings of SPS and the full recovery team in September of 2011, the SPS Subgroup produced and provided to the full recovery team a 55-page document evaluating alternate recovery criteria and proposing draft criterion based on the best available science.

All members of the SPS, with the exception of the AZGFD representative, concurred in concluding that a recovery criterion of “three populations of 250 wolves each, connected by dispersal” was supported by best available science. A region in which the three populations could appropriately be established was identified, based on research on historical genetic patterns, habitat availability, and other data, as stretching

northward to encompass southern Utah and Colorado. Based on the initial ground rules established for the team's deliberations, the draft document was to be treated as confidential by the full team.

RD Tuggle commented indirectly via FWS staff emails on draft recovery criteria proposed by the SPS Subgroup. He requested that (1) a range of numbers be provided in place of the "3 x 250" criterion; and (2) any connectivity criterion allow dispersal by "either by mechanical or natural means." The email correspondence between the FWS and the SPS Subgroup stated:

"You should not feel undo [sic] pressure at this point to accommodate, per se, but you should recognize that this is his way of telling you (at least at this point) what information he would like to see."

In October 2011, members of the full recovery team submitted comments on the draft criteria. State representatives pointed out that the proposed criteria were inconsistent with assurances made by the FWS in their negotiations with the states as part of the concurrent Structured Decision Making (SDM) process to develop a "National Wolf Strategy". The Colorado Division of Parks and Wildlife (CPW) commented:

"CPW's fundamental concern is the geography of recovery, as there is a significant and substantial divergence in the directions the recovery planning and the SDM processes are taking...In the most recent draft document distributed to the participants (dated 9/16/2011), the SDM process has narrowed the original 14+ alternatives down to two alternatives. Of the two remaining alternatives, all state participants (with the exception of New Mexico, as they have withdrawn from Mexican wolf recovery actions and have not stated a preferred alternative) favor 'Alternative 4,' which provides specific geographic boundaries (accepted historical range limits including dispersal) within which recovery actions would be focused (see Appendix, attached). Only the extreme southwest corner of Colorado (approximately 2 km<sup>2</sup>, or 509 acres) is included within the boundary of Alternative 4....In contrast to the SDM document, the Draft Recovery Plan identifies all portions of Colorado west of I-25 and south of I-70 as the Mexican Wolf Recovery Area. **Importantly, this was 'Alternative 3' of the SDM process, which was neither favored nor supported by any of the participants, including USFWS staff.**" (October 2011 comments submitted by CPW to FWS on draft Mexican Wolf recovery plan) (Emphasis added).

State representatives also threatened to bring political pressure to bear via the SDM process and other means to alter recovery criteria so as to exclude some or all of their states from recovery activities.

- The Utah Division of Wildlife Resources (DWR) commented that recovery of wolves to Utah "will be vigorously opposed (legally and politically) by the Utah

Division of Wildlife Resources and the State of Utah” (October 2011 comments submitted by UDWR to FWS on draft Mexican Wolf recovery plan).

- The Arizona GFD commented “Some carefully chosen federal judges may even believe that [*proposed recovery criterion*]. But let's see how Congress weighs in on down the way, as it considers what Congressional intent was with regard to defining recovery” (October 2011 comments submitted by AZGFD to FWS on draft Mexican Wolf recovery plan). The state representatives also noted their understanding that assurances made during the SDM process should supersede development of science-based recovery criteria. In an email to FWS staff, the Arizona GFD representative stated concerning the conflict between SDM, listing, and recovery planning processes: “the three “regulatory” or regulated processes seem to be confusingly mixed and anything but discrete and transparent to most if not all participants, including USFWS employees.” (10/19/2011 email from AZGFD representative).

In November 2011, a Utah newspaper reported that Utah state officials had communicated similar objections to draft recovery criteria to the FWS. The paper reported that “Gov. Gary Herbert and Division of Wildlife Resources Director Jim Karpowicz wrote to Interior Secretary Ken Salazar and U.S. Fish and Wildlife Service Director Daniel Ashe, respectively, in late September, protesting what they say is the federal wildlife agency's apparent plan to expand protections from Arizona and New Mexico into southern Utah and Colorado.” The paper reported that RD Tuggle would meet with the director of Utah DWR and staff from governor’s office to discuss these issues (*Salt Lake Tribune* 11/9/2011).

The letter to Secretary Salazar from Utah Governor Gary Herbert, obtained via FOIA request, states

“All of the states (Utah, Arizona, and Colorado) participating on the Mexican wolf recovery team support listing the wolf as a DPS rather than as a subspecies. Despite the obvious advantages of a DPS listing over a subspecies listing, the Service remains inexplicably resistant to the concept. Thus far, the Service maintains it must list the Mexican wolf as a subspecies to ensure the greatest degree of management flexibility and legal defensibility. It further resists all efforts by the participating states to exclude Utah and Colorado from the Mexican wolf recovery equation. ...The State of Utah's position is twofold: 1) delist wolves in the remaining portions of the State; and 2) list and successfully recover the Mexican wolf in compliance with ESA and using the best scientific evidence available. The unavoidable conclusion is that the Mexican wolf must be listed, managed and protected by means of a distinct population segment that is confined to the core historic range of the subspecies. A more detailed letter explaining our position is being sent to Service Director Dan Ashe by the Utah Department of Natural Resources. The State of Utah will vigorously resist any effort by the Service to: 1) leave wolves listed in the

State, 2) list the Mexican wolf as a subspecies, or 3) include Utah within any distinct population segment created to protect wolves under the ESA.” (9/22/2011 letter from Utah Gov. Gary Herbert)

In November 2011, RD Tuggle met with the director of Utah DWR and staff from governor’s office.

In the November 2011 meeting of the full recovery team, state representatives from Utah and Arizona proposed that decisions on appropriate numeric recovery criteria (e.g., “3 x 250”) were normative rather than scientific questions and thus should not be the responsibility of the SPS. FWS staff proposed that the responsibility for identification of specific geographic recovery areas be shifted from the SPS to the full team and reclassified as an “implementation action.”

Despite the agreement to keep recovery team deliberations confidential, in October 2011, U.S. Senator Orrin Hatch (UT) authored an op-ed in a Utah newspaper that included confidential information on draft recovery criteria, including the following:

“As part of their proposal to ‘reintroduce’ 750 Mexican wolves, these scientists want to have a self-sustaining population of 250 wolves in southern Utah and northern Arizona – places that fall well outside the predators’ historic range.... Just as egregious, the agency wants to list Mexican wolves under the Endangered Species Act (ESA) as a ‘subspecies,’ which will prevent Utah and other states from managing the predators if they wander outside of their historic range.”

The Arizona Deer Association, represented on the recovery team via the Arizona Wildlife Federation, also posted confidential information from the draft recovery plan. Then in December 2011, the confidential draft recovery plan documents in their entirety were publicly posted on the website of “Big Game Forever”. Copies of the documents were also distributed to the public by Arizona Game and Fish Commissioner Jack Husted.

Members of the recovery team, including state representatives from Utah DWR, who facilitated these breaches of confidentiality, did so with the aim of applying inappropriate political pressure on the recovery criteria development process.

In a letter dated January 20, 2012, members of the SPS sent a letter to RD Tuggle objecting to efforts by stakeholders to insert political considerations into development of recovery criteria. The letter requested that RD Tuggle reiterate the team structure and process described in his original invitation letter of November 2010.

The following month, February 2012, the SWRO FWS staff proposed that the existing two-stage recovery criteria development process be altered. FWS staff proposed that the SPS would now consider a variety of detailed recovery “alternatives” based on specific geographic options such as derived from the SDM process. FWS suggested that

at least one of the alternatives to be considered should exclude any areas in Utah from recovery efforts.

On April 2, 2012 RD Tuggle responded in writing to the SPS letter of January 20, 2012. In his response he reaffirmed the differential responsibility of the SPS to develop recovery criteria based on best available scientific information.

On May 11, 2012, the SPS completed a 146 page draft of the Recovery Plan, supported by a 69-page appendix describing the modeling process used to derive recovery criteria. Seven alternative scenarios (or sets of recovery criteria) were evaluated in the appendix, including scenarios that excluded habitat in Colorado and Utah. Three alternatives were found to be adequate to support recovery. All three of the remaining alternatives required recovery of three populations of 200-350 wolves in the United States, which in light of best available information on distribution of suitable habitat, were deemed to require recovery efforts in southern Colorado and/or southern Utah..

On May 15, 2012, the SPS received an email from the Recovery Coordinator stating that FWS staff had “briefed the Regional Director on Monday morning on the draft recovery criteria options and supporting material. He had a number of substantive questions related in particular to the numeric component of the criteria and to habitat suitability in Mexico and has asked that no material be distributed to the Team until we can discuss these items further.”

On May 18, 2012, all recovery team members received an email from RD Tuggle cancelling the scheduled June recovery team meeting and effectively suspending the recovery planning process. The email stated

“I feel that we need to postpone the June meeting for several reasons. This week, my staff briefed me on draft recovery criteria that have been developed by the SPS. I am impressed with the breadth and depth of the subgroup’s assessment. I understand that information on habitat availability, especially prey density, for Mexico is limited. However, I want to ensure that the subgroup has had every opportunity to identify and assess the information that is available at this time. Therefore, I am requesting that members of my staff and several members of the SPS meet with Mexican researchers and officials this summer to further explore this matter. In addition, we will take this time to further coordinate with Mexico regarding the binational aspects of the two nations' recovery efforts...Finally, the team has indicated concern over our coordination of the recovery planning process and the finding the Region will be making in response to two petitions to reclassify the Southwestern gray wolf. Due to a court settlement that mandates deadlines for this and several hundred other listing decisions nation-wide, we will make a petition finding by September 2012. **This petition finding will provide the team with much needed clarity as you move forward with development of the recovery plan.**” [emphasis added]



The May 18 decision the FWS appears to have inappropriately injected political considerations into development of science-based recovery criteria. That is, the FWS decision to block dissemination of the science-based recovery criteria documents to the full recovery team, and to suspend the recovery planning process for the Mexican wolf, was in response to inappropriate political pressure from state agencies involved in the “Structured Decision Making” process, as well as an internal FWS decision that the results of the science-based Mexican wolf recovery criteria development process, if made public, threatened to undermine political decisions made in the course of the “Structured Decision Making” process.

**Structured Decision-Making as Vehicle for Political Manipulation of Science:** In North America, gray wolves (*Canis lupus*) formerly occurred from the northern reaches of Alaska to the central mountains and the high interior plateau of southern Mexico, but had been extirpated from nearly all of their historic range in the coterminous 48 states by the 1930s. In 1967, six years prior to the passage of the 1973 Endangered Species Act, the FWS listed the putative timber wolf subspecies (*Canis lupus lycaon*) as an endangered species in Minnesota and Michigan. In 1974, the northern Rocky Mountain wolf (*Canis lupus irremotus*) was listed as endangered in Montana and Wyoming, and in 1976, the Mexican wolf was listed in 1976 as endangered.

In 1978, FWS revised its earlier listing determinations by extending the protections of the ESA to gray wolves at the species level *throughout the conterminous 48 States* in order to eliminate difficulties with listing separate subspecies of the gray wolf. 43 Fed. Reg. 9,607. With the exception of the Western Great Lakes Distinct Population Segment (WGL DPS) of wolves, and the Northern Rocky Mountain Distinct Population Segment (NRM DPS) wolves in Idaho and Montana, the gray wolf retains protections of the ESA throughout its range in the lower 48 States as an endangered species. The Secretary of the Interior, through the Fish and Wildlife Service is responsible for the development of recovery plans for conservation and survival of threatened and endangered species under the Endangered Species Act of 1973 (16 U.S.C. §1533(f)).

Recovery plans must contain “objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list.” (16 U.S.C. § 1533(f)(1)(B)(ii)). Recovery plans describe criteria that are used to assess a species’ progress toward recovery, contain specific prioritized actions believed necessary to achieve the recovery criteria and objectives, and identify the most appropriate parties to implement the recovery actions.

A recovery plan was written for the eastern timber wolf in May 1978, and was revised in 1992. The eastern timber wolf plan covered gray wolf recovery in the great lakes and portions of the northeastern United States. The Northern Rocky Mountain Wolf Recovery Plan was approved in 1980 and revised in 1987. The Rocky Mountain Plan covered Idaho, most of Montana and Wyoming, and approximately the eastern one-third of the States of Washington and Oregon. A recovery plan for the Mexican wolf was

approved in 1982, but did not contain specific recovery criteria for wild populations of the Mexican wolf. Although the gray wolf is listed as an endangered species throughout the 48 conterminous United States and Mexico, wolf recovery has not been addressed in over half of the States in which the gray wolf is an endangered species.

Under Section 4(c)(2) of the ESA, any determination to remove a species from the list of threatened and endangered species must be made in accordance with the provisions of subsections 4(a) and 4(b) of the Act. Most importantly, Section 4(b)(1)(A) requires listing decisions (and therefore decisions to delist a species) to be made “solely on the basis of the best scientific and commercial data available...and taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision...to protect such species.” The joint FWS/NMFS Recovery Planning Guidance states that recovery plans shall “delineate such reasonable actions as may be necessary, based upon the best scientific and commercial data available, for the conservation and survival of listed species.”

As explained in detail below, the process used in development of a National Wolf Strategy, which is primarily focused on the delisting of the gray wolf in large portions of its former range, does not utilize the best scientific and commercial data available. Furthermore, the National Wolf Strategy appears to be taking into account the opinions of *only* those States which do *not* want to make efforts to protect the gray wolf in their respective states, which also appears to violate the ESA’s clear mandates on best available science.<sup>1</sup>

In 2008, the FWS embarked on an effort to develop a National Wolf Strategy through the use of a “Structured Decision Making” (SDM) process. See 76 Fed. Reg. 26,086 at 26,089. The FWS describes the goal of the SDM process as follows:

“We first conducted several iterations of the process in an internal Service effort to develop a viable framework for considering the scientific and policy questions that drive decision-making for wolves. The resulting framework incorporated decision analysis principles and techniques for crafting alternative listing units and then assessing the relative performance of each alternative in terms of achieving management objectives. Management of wolves is shared among the Service, States, and Tribes. Thus, following our development of a satisfactory decision-making framework, representatives from several States involved with gray wolf conservation joined us to further explore alternative units that could

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<sup>1</sup>See, e.g. *Comments by the New York State Department of Environmental Conservation regarding the Proposed Rule to Revise the List of Endangered and Threatened Wildlife for the Gray Wolf (Canis lupus) in the Eastern United States, Initiation of Status Reviews for the Gray Wolf and Eastern Wolf (Canis lycaon), Docket Number: FWS-R3-ES-2011-0029.* The NY DEC wrote regarding the SDM process that the “contravenes the Endangered Species Act.” The workshop was attended “by most of the States, including New York, that are involved in gray wolf conservation and recovery,” but the resulting Strategy “is inconsistent with the results and recommendations of the wolf SDM workshop insofar as it focuses on conservation of four extant wolf populations.”

qualify for future status review (Tribal representatives declined to participate).”<sup>2</sup>

The FWS further describes the SDM process as follows:

“After acquainting state participants with the decision-making framework, we convened a State-Federal workshop in August 2010 to generate and assess alternative taxonomic and population units at various scales and in various configurations, including the 1978 listing as the status quo alternative. Workshop participants also explored the different values that drive wolf decision-making; these values were expressed as the following fundamental management objectives: (1) Promote and sustain wolf recovery; (2) comply with the requirements of the Act; (3) minimize the regulatory burden on States, Tribes, and the general public; (4) facilitate State and Tribal management of wolves; (5) minimize wolf-human conflicts; and (6) promote public acceptance of wolf listing and recovery actions. Workshop outcomes provided important input to our continuing effort to formulate a comprehensive vision of wolf conservation. Based on further Service deliberations, this comprehensive vision has evolved into the proposed national wolf strategy discussed below.”

In essence, the SDM process appears to have been designed to identify and rank, based on a range of concerns of which only one was compliance with the ESA those locations within the United States would, and would not, be included in future wolf recovery efforts. Based on “political concerns”, a range of wolf recovery alternatives set forth where wolf recovery would occur and areas where wolf recovery was deemed “both unrealistic and unnecessary.” This process has lacked transparency in terms of its discussions, its work products, and even the information on which states participated in the SDM process.

The register notice states that recovery effort for the gray wolf will not be initiated in areas not identified by the SDM process as suitable for wolf recovery:

“We plan to move forward with a rulemaking to replace the remainder of the 1978 listing with more targeted regional units, as appropriate, concurrently with publication of the final rule for the WGL DPS. It is likely that revision of the 1978 gray wolf listing into finer-scale taxonomic or population units will result in removal of the Act’s protections in areas of the historical *C. lupus* range, such as the Great Plains States and areas of the western States, that do not support extant

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<sup>2</sup> Gray Wolf (*Canis lupus*) in the Eastern United States, Initiation of Status Reviews for the Gray Wolf and Eastern Wolf (*Canis lycaon*), Docket Number: FWS-R3-ES-2011-0029. The NY DEC wrote “the proposed rulemaking incorrectly states that “tribal representatives declined to participate.” 76 Fed. Reg. at 26089. In fact, the Service acknowledged during the SDM workshop that none of the then seven (now eight) federally recognized Indian nations in New York were invited to attend the workshop.”

wolf populations and do not play a role in the recovery of any of the four gray wolf entities. Although some of these areas are within the species' historical range, these areas lack sufficient suitable habitat for wolf pack persistence. Thus, we believe recovery in these areas is both unrealistic and unnecessary.”

While it is unclear from the proposed rule how determination of “extant gray wolf entities” was made, available evidence from other sources (described below) suggests that this process did not conform to appropriate scientific integrity standards, does not conform with general requirements regarding public involvement in policy decisions under the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), or the ESA’s requirements regarding listing and delisting decisions, and is not based upon the best available science.

For example, it is not evident what, if any, scientific analyses were used to identify which areas “within the species’ historical range [that] lack sufficient suitable habitat for wolf pack persistence.”

The DOI Scientific Integrity policy states that an official or employee commits scientific misconduct by “intentionally circumventing policy that ensures the integrity of science.” The Endangered Species Act is a quintessential environmental law that protects the integrity of science by clearly identifying the relevant policy decisions that must be made solely on the basis of the best available science. The development of a National Wolf Strategy is an action designed to intentionally circumvent the ESA’s listing and delisting requirements, thereby compromising the role of the integrity of science in the ESA. The ESA requires that listing and delisting decisions be based on the best available science, including biological thresholds for when such species are no longer threatened or endangered.

Because the National Wolf Strategy is a de facto recovery plan for gray wolves at the species level (*Canis lupus*), a process that preserved scientific integrity would have addressed the biological recovery requirements for wolves *prior* to considering how those goals should be achieved in light of economic, political, or other non-biological concerns. The lack of involvement of and review by independent scientists in the development of the National Wolf Strategy, and the general lack of public transparency, suggests that the process did not meet the requirements of the Act to defer consideration of economic and related constraints until the secondary stages of recovery planning and implementation.

PEER became aware of the full extent of the impact on the scientific integrity of wolf recovery efforts from the SDM process and development of the National Wolf Strategy based on information regarding how the National Wolf Strategy was impacting the efforts to develop a recovery plan for the Mexican wolf. The negotiations during the SDM process for the Mexican wolf involved assurances by the FWS to various states regarding the geographic scope of wolf recovery efforts, which may have led to inappropriate influence in the development of recovery criteria for gray wolf entities

including the Mexican wolf, and may have also inappropriately constrained status determinations for gray wolf entities such as the potential Pacific Northwest DPS.

**Specified Violations:** Ongoing negotiations between federal and state officials to develop a “National Wolf Strategy” have politicized the development of science-based recovery criteria and suitable habitat for the Mexican wolf. Moreover, the Structured Decision Making process is being carried out in a manner which precludes objective, scientific review.

The DOI Policy for the Integrity of Scientific and Scholarly Activities posits its central policy as:

§ 3.4 Policy “The Department... will not tolerate loss of integrity in the performance of scientific and scholarly activities or in the application of science and scholarship in decision making...”

As detailed above, FWS has set aside recovery criteria and designation of suitable habitat based upon the best available science in favor of the preferences of state “Partner” agencies. Further, FWS allowed the politics of its state interactions to dictate what criteria or habitat could be considered. In short, the Mexican wolf recovery plan has become the antithesis of scientific integrity.

The policy further requires that scientific findings and conclusions be made subject to public vetting:

§ 3.4.C “ Document the scientific and scholarly findings considered in decision making and ensure public access to that information and supporting data through established Departmental and Bureau procedures...”

In this instance, SPS documents were leaked to politicians and selected advocacy groups. By contrast, the deliberations between FWS and state agencies in the SDM process were kept behind closed door, with no public access to the scientific data, conclusions or the standard by which decisions were being made.

The DOI rules define 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.

In this instance, all actions by subjects of this complaint appear to be intentional rather than the product of mistake or confusion. The intricate interference denotes an acute awareness by the actors of the consequences of their actions with respect to what steps would be take in Mexican wolf recovery.

As detailed above, the work product of scientific experts reflecting both their collective judgment applying the accepted practices of the scientific community was variously set aside, delayed, skewed or manipulated into irrelevance by the actions detailed above. As a result, the ESA mandate thta recovery planning be based upon best available science was set aside.

The downward adjustment of recovery criteria and the exclusion of suitable habitat on the basis of political and other socioeconomic factors represent significant departures from accepted practices of the relevant scientific and scholarly community. In short, the end result of the SDM process was to reach a politically acceptable pre-determined result regardless of the science.

Finally, this complaint is supported by more than a preponderance of the evidence. Further, we know of no information which contradicts this narrative of events.

**Conclusion:** The purpose of the DOI Policy for the Integrity of Scientific and Scholarly Activities is to prevent political manipulation of science in precisely the manner in which it has occurred in the case of wolf recovery planning as outlined in this complaint. We urge that you undertake an investigation of this matter immediately.

We have a number of supporting documents and suggested witnesses to the events described above and we will provide you that list under separate cover should this complaint be accepted for investigation. If you desire any clarification of the above or additional information, please do not hesitate to contact me.

Respectfully submitted,

Jeff Ruch  
Executive Director