

Meeting with States on SDM process for Mexican Wolf
June 16-17, 2011 – Colorado Division of Wildlife office, Grand Junction, Colorado

Opening remarks by Mike Runge:

We are seeking communication on listing with states; we are not seeking consensus, and we are not sharing decision making authority because can't do so under ESA.

We'll articulate objectives, then think through the science and analyses to arrive at the best course of action

Mike Runge summarized August 2010 workshop and what has happened since then.

Notes and minutes from this meeting will be part of the current status review for Mexican wolf. States can still submit formal comments if desired. We will provide notes from this meeting to participants to ensure that it's a fair reflection of what happened at this meeting. There is no formal comment period for a status review, so no closing date. However, we'd like to get as much scientific information up front before we write the rule, but we can accept comments/information up to time we submit. Best if we can receive information by August 2011.

June 2011 workshop – build a common framework, articulate individual agency perspectives using this common framework.

Terry Johnson: for AGFD, "constructive dialogue" is actual engagement throughout the process and understanding timelines. Commission is at end of its rope on cooperation with FWS due to reintroduction efforts and due to commitments in August workshop and lack of communication on what FWS was doing with information from that workshop. It will be problematic if the same sort of actions occur after this meeting. FWS handling of Chambers data and paper is unacceptable, especially since it's being used to shape this process. Timeliness of comment periods is unacceptable – they received output for southwestern part of Aug 2011 SDM workshop last week, which did not allow him to have conversations with others on content. Timeliness of surname process is problematic. He is "Limited out" on hearing that FACA is a problem because it's held up differently in one region versus another. He doesn't buy that we can't reach a decision based on FACA. He thinks many decisions can be delegated to states with a section 6 agreement. The FWS outreach to the two Tribes on this has been pathetic. It's problematic for AGFD to put together reintroduction project in Arizona. When material comes out of SDM process and says States "support" says that states were in a decision making position. Status review – on behalf of AGFD publishing a request for State comment in the FR is insufficient. ** Wants formal request from AGFD for information. Wants courtesy of a letter or meeting. Courtesy should also be extended to Tribal partners. There is a special relationship between FWS and states through section 6, but they don't see it. This was the first time that he was offered opportunity to not attend this meeting by his agency – telling on where his agency is in regard to Mexican wolf recovery. Relationship in past with FWS was golden, engaged 7 days per week. Since then there has been a setback in that

relationship. There became a change at the RO in transparency in January 2007, change in philosophical approach. Decay of relationship.

Michelle: we do see this as an opportunity to gain information from the states. She would like for Terry Johnson to provide his 28 years of information in a productive way. This process allows participants to have a good debate on details which leads to a good decision. The decision may not be agreeable to all participants, but at least we know how we got to that decision.

Mike T: we plan on providing a synopsis of this meeting and provide it to participants for review. We need to know state's perspectives on proposal.

Eric Odell: they were not at August 2010 workshop, but webinar last week and summary today have been helpful.

Maricela gave a powerpoint presentation on recognizing Distinct Population Segments Under the ESA.

Maricela: It's not appropriate to have DPS of entire species or subspecies, it's not consistent with DPS policy and couldn't reach discreteness or significance. Could do a DPS of *lupus* and have management focus on *baileyi* Terry wanted to know if this is staff analysis of policy or legal analysis. AGFD wants policy vetted through solicitor. My relaying of conversation with Philip Kline is insufficient. **Terry wants a written solicitor opinion. ** Terry wants copies of the powerpoints by tonight.

Michelle: can't have DPS with same boundaries as subspecies,

Kevin: original DPS in NRM was struck down because boundaries needed to be restricted down to what is occupied.

Mike T: if we delineate DPS at international boundary, and no wolf population in Mexico, would have difficulty going through discreteness test. If entire subspp is delineated by DPS boundary, again, have difficulty going through discreteness test.

DPS of *lupus* that completely includes *baileyi* will work under DPS policy.

Similarity of appearance is a separate rule making. Could it be used outside of a DPS boundary? Not for the purposes of conserving that DPS, because any animal that walked outside of that DPS would not be listed. Could use it in conjunction with a listing as subspecies. Could use similarity of appearance inside a DPS for animals coming into the DPS

Mike R: can include in alternatives and address legal defensibility.

Listing under similarity of appearance is APA action, we can be petitioned to do so.

State updates:

Colorado: no known packs of wolves in CO. State has Commission resolution opposing wolves due to impacts of hunting. 1989. Recovery plans for species at that time did not state need for reintroduction. If the recovery plans require it, it can be reviewed. Need legislative approval for state or local agency to participate in reintroductions. Have management plan for wolves that migrate into the state. Manage to resolve conflicts. Benjamin Tuggle assured them that there will be no critical habitat or recovery goals in state of Colorado.

Utah: Their level of frustration is similar to that of AGFD. Level of tolerance is low. Have state management plan, which lets wolves come into State. If there are no conflicts, no problem with wolves being there. If 2 packs established, will write more formal plan to manage them. Policy of state to legally advocate to delist wolves and return management to the states. Wolf management Act - prevent the establishment of a viable population of wolves until delisted and management returned to state. At that time they could implement their state management plan. Wildlife Board has stated support for legislation to delist the wolf. Objective of state is to get management back to state, not to eradicate wolves. They believe that the state has better tools to manage conflicts. They recognize that the way to get state management is to recover wolves. So, state understands that at that time, they would need to keep viable populations. Not adequate resources for viable populations just within the state of Utah, they would need to rely on a broader area for viable populations.

Arizona: no question of law involved. Wolf management has been kept within the purview of the Commission, under Title 17. No specific regulations speaking to it, or Governor edicts. Evolution of Commission on wolf management - it escalated in 2007 and came to head in October 2008. At that time the Commission gave guidance on recovery and reintroduction and what elements needed significant progress. Have to provide updates on annual basis. In December 2010, the Commission advocated for legislative delisting of wolf, but they do not consider the wolf to be recovered. The Commission is frustrated by FWS gridlock. August 2009, concerned about release of wolves in Sonora. Of those elements, many still not addressed. Their commitment stands for wolf conservation, not interested in mindless and endless management. They want to know what recovery is and that their actions are leading toward recovery. Commission meets next week on whether to intervene on litigation for wolves and whether to initiate litigation of their own with regard to divergence from 1998 management plan and 10(j) rule. By October 2011, AGFD will have drafted a state management plan for the Mexican wolf for future. May be vetted and implemented or round filed. They are working with Tribes on wolf management. They may want to change arrangement for their role in reintroduction. NMDGF leaving project leaves them precarious, but also provides opportunities. Don't want wolf conservation to go like NRM where they have met recovery and can't get delisted. Benjamin's assurance to state of Colorado needs to be discussed. They hope to reconstruct level of collaboration that they had from 2003-2007. If they can, great things can be achieved. Some Commissioners want to follow New Mexico's lead. Ugly mess and the wolf didn't make it.

Objectives: Mike R. summarized the objectives from the August 2010 SDM workshop.

Terry J: have significant reservations about quantitative aspects of SDMs – taking qualitative information and assigning values. It doesn't talk about ecosystem upon which the wolf depends – in particular the

prey base, not just the vegetative structure. Prey base needs to be discussed in terms of population viability and management. Prey base is solid piece of wolf recovery and AGFD is directed to also manage elk and deer for recreation. And, without them, there won't be any wolves. There is a distinction between restoration and recovery (legal mandate for recovery, not restoration). Need to parse issue with hunters, with regard to bag limits etc. Need to reflect the importance of prey base.

Mike R: could reflect prey base in promoting wolf recovery. In beginning had objective to maintain hunting opportunities, but that got folded into objective 3.a.1.: provide full-spectrum of consumptive and non-consumptive wildlife availability for current and future generations. For Tribes, may also include subsistence. Also, in internal objectives, did have "ecosystems on which they depend." We could have it as broad category.

Mike T.: more element of recovery versus as part of assessment unit analysis. Also, thinks that suitable habitat includes prey, but we can be more explicit.

Terry wants it overtly captured in the objectives as part of acceptable and unacceptable impacts.

Michelle: "suitable habitat" map included density of prey base, roads, etc.

Kevin: but the map didn't include density of livestock, which is major limiting factor.

Terry: also need to address livestock herd husbandry, timing of calving, etc.

Wendy: looking for reclassification unit, but we don't have explicit level of detail at this time, but we do need to identify it as issue for recovery. We're not talking about recovery units in this meeting.

Terry: AGFD will oppose recovery in a non-recoverable unit. Don't want 200 years of undelisted wolves.

Mike T: If we designate a listing unit, can we also use it for delisting. Unit has to be able to stand on its own.

Mike R.: If we list a unit that's too small, can't achieve recovery. If too big, unnecessary regulatory burden on people.

Kevin: agrees that we are here to talk about assessment units, but depends on how you define assessment. 5-factor analysis doesn't bring in the elements that are key to states.

Mike R: but the analysis in listing does need to be the ESA 5-factor analysis.

Mike T: need to base listing on best available science, and if there is discretion, can see how to accommodate those concerns. Asked if we could collapse some of the objectives, but say what that objective is comprised of.

Terry: want to be sure that we are considering not only the adequacy of prey base but also the effects on the hunting opportunities.

Mike R: Livestock captured in objective 5.a – minimize regulatory burden induced by ESA: units support management at the landowner/producer level.

Mike R: concerns in legal defensibility with regard to compliance with policy.

Terry: doesn't think 10(j) is legally defensible and that it needs to be reconstructed. There are management components that are based on speculation, and things didn't work out the way anticipated. There are boundary issues that are contrary to recovery. Need reconstruction of the 10(j) rule. The 10(j) boundary needs to include all areas of wolf management in Arizona, and will help Arizona move toward recovery. Boundary should include all areas of the unit. Need to determine outer limits of boundary. This would address regulatory burden. Unit needs to include Mexico.

Mike R: 10(j) is part of recovery planning.

Maricela: so we need to ensure that all alternatives are large enough to encompass areas for recovery.

Mike T: need to ensure that the assessment unit is large enough to encompass a legally defensible 10(j) rule. Need to ensure unit is large enough to achieve recovery, which is where you would assess Mexico's inclusion or not.

Terry: doesn't believe that we have a recoverable entity if there are not at least 2 populations in Mexico.

Terry: 10(j) has impact on section 7, management flexibility.

Mike T: not relevant to boundary of unit, but rather the outcome. Maximize opportunity to use ESA tools to reduce regulatory burden. Sportmen (hunters, guides, and outfitters), scientists, affected on public lands; private landowners also affected.

Mike R: Administrative burden was addressed under objective 6, "minimize state, tribal, and federal resources needed to achieve wolf recovery."

Terry: taxonomic validity has been determined. Historic range clear, and anything less will be litigated. So, unclear as to need for SDM process.

Michelle: We're looking for discretion where there is gray area between subspecies and DPS designation. We're looking to see if there is information for an informed decision.

Terry: Colorado, San Juan, include Mexico, leave Colorado and Utah out as outliers.

Mike T: we not only need to justify what we did, we also need to explain why we didn't do something else. We can't be silent on Colorado and Utah. Do we need connectivity between Mx wolf and NRM wolf? Also, is there enough area? Difference between Colorado and Nebraska is that there is a lot of suitable habitat in Colorado and not in Nebraska.

Terry: There is suitable habitat in Colorado but no evidence of historical occurrence of Mx wolf there. DPS of *lupus* problematic because it opens door that Colorado and Utah were occupied by *lupus* but not

necessarily *baileyi*. We don't want Colorado and Utah issues to be an impediment to recovery and don't want Mx wolf recovery to be impediment to Colorado and Utah management.

Maricela: can we be open that the reason we listed as DPS rather than subspecies is so that we could have boundaries?

Marty: worst scenario: Mexican wolf listed as subspecies and then all wolves in state are listed under similarity of appearance (through citizen petition).

Seth: we have discretion on what APA petitions we address (e.g., prairie dogs).

Kevin: if part of state is listed, they can't participate in recovery.

Mike R: if states can participate in recovery, then we can achieve recovery faster.

Terry: with regard to Tribes, they want to be part of planning for wolf recovery. Sovereignty and economics are key aspects. They have issues of uncompensated livestock losses and impacts on trophy elk.

Alternatives:

Kevin: assessment unit. **Utah has asked for formal review of management plans to have justification to not include Utah and Colorado in DPS because they're providing adequate protections for the wolf through their state management plans. Do they provide enough protection for wolves to travel between AZ/NM and the NRMs. That genetic exchange does not need to be addressed through listing. **Want official response.

Mike R: the Colorado and Utah assessment unit was not for a DPS but rather to see if existing state management plans provide sufficient protection. If management plans are adequate, then alt 14 works, if not, then alt 3 would need to be in play.

Mike T: This scenario is similar to what we lost in NRM; can't delist on state basis, which is smaller than a DPS.

Michelle: We can't designate Colorado and Utah as a DPS, because there aren't wolves there now.

Seth: not sure we could approve the management plans under PECE policy, because there is no track record.

Kevin: need to first make case that genetic exchange between Mx wolf and NRM is essential to recovery.

Terry: Utah and Colorado are extraneous to recovery of Mx wolf

Michelle: literature shows that there is suitable habitat in Utah and Colorado. That is area where we are legally vulnerable.

Mike T: reviewing Utah's management plan is problematic because of the legal issue that it's not implementable until wolf is delisted, so there cannot be a track record.

Kevin: Would like to have a DPS that follows historical range of *baileyi* (Alt 7).

Terry: would not support historical range (Mogollon Rim/I-40 line), thinks that it goes up to the state line. Does not agree with alternatives 3 and 5, think they cloud the issue. A 200-mile dispersal distance gets you to the state line. He wants northern AZ as a passive dispersal area, not an active reintroduction area.

Kevin wants to include Alternatives 3 and 5 for the admin record.

Friday.....

Recovery potential

Wendy: we can write into preamble of listing that wolves occurring outside of prescribed range would be considered part of a different population (Idaho, Montana).

Kevin and Marty: Utah wants to manage wolves against other species. They are concerned that wolves will grow and ungulates will decline without the ability to do anything about it.

Wendy: we can address management issues through 10(j)

Kevin: can't imagine 10(j) in Utah because not part of historical range.

Terry: thinks that the habitat quality degrades for wolves as you move north out of core habitat.

Sherry: need to ensure that we have enough habitat for recovery. The number and location of wolves and their populations is still under debate by the Recovery Team. Southeastern AZ and southwestern NM, as well as Mexico have more limited prey abundance and will likely be affected by climate change.

Michelle: Recovery Team will inform where efforts should be focused, so fuzzy lines not as important.

Terry: more vague the listing, the more effort to expand the range through litigation to get protection for other areas. So, he's not a fan of vague boundaries. It's best to focus conservation dollars on most important areas.

Marty: Are Utah and Colorado necessary for genetic exchange or for core population.

Michelle: we don't know yet. The Recovery Team is working on those issues. We will get more information and a better understanding from the Recovery Team to inform the listing. If not enough time before proposal, the information could still be incorporated into the final rule.

Terry: Alternatives 1 and 4 are adequate. Arrows on Alt 1 should have gone more directions than just to north.

Maricela: Alt 1 doesn't have boundaries (where found).

Kevin: difference between subspecies and DPS is whether you are letting the animal tell you where it occurs or you are telling the animal where it occurs.

Wendy: we can still circumscribe where the animal is recovered through other ESA tools.

Kevin: Alt 3 would not allow Utah to allow wolves to establish packs in the gap between the Mx wolf DPS and the NRM DPS, which would be necessary to have true connectivity. Concerned that we're saying that if it's not listed under ESA then it's not protected. He wants it to instead be a discussion of who is protecting the wolves – Feds or State.

Seth: if gray wolf is delisted, and no Mx wolves yet found in Utah, how would Utah's law be enacted – does it address *baileyi*? Or just *Canus lupus*?

Kevin: Alt 1 is not really a big issue for them now, but it may be in future. It puts some uncertainty into issue that would be eliminated with a line. So, without Mx wolves in the state now, Utah law would allow them to manage for wolves from the north.

Wendy: lines can and have been successfully challenged. A subspecies is less subject to litigation.

Kevin: But if recovery team recommends recovery in Utah and Colorado, then Utah will sue us on the recovery plan.

Michelle: we would rather fight the lawsuit on the recovery plan than on the listing status. Judges give us deference on science. The DPS policy is not scientific, although we've tried to give it some science in policy.

Terry: what is the expected outcome of the SDM process? It's not a regulatory process. It all has to go through public process. If intent is to be open and transparent as possible, should go with Alt 1. Everyone can argue the other issues in next process.

Mike: The outcome is an agreed upon framework for evaluating the listable entities. We are assessing the pros and cons of various alternatives. Not trying to achieve consensus.

Michelle: Science that would help define a DPS would help us now. We wanted to get that information from the states up front. States should decide whether to provide formal comments on status as well.

Terry: He does not think that Utah and Colorado are part of historical range. Recovery of the Mx wolf should be focused under alt 4. No certainty on boundaries, but *baileyi* existed until the 60s as far north as northern AZ. If you take a dispersal radius to known locations, you get to northern AZ. Have to double dispersal distances to get into Utah and Colorado.

Mike R: 1.a. - uncertainties about how much land area needed.

2. Promote ecosystem health and integrity – not a driver for evaluating alternatives

3. Legal defensibility

Marty: if discreteness and significance arguments are based on protecting *baileyi*, does it make sense to go so far north?

Seth: if northern wolves come south, Alt 2 would undermine your efforts to protect *baileyi*.

Mike T: DPS vulnerability depends on direction of the lawsuit. Some are too small, some are too big.

Maggie: Alt 2 was developed because it addresses all of the suitable habitat.

Mike T: Alts 4 and 5 leave out suitable habitat on the landscape

Terry: the more you expand beyond the historical range, the more legally vulnerable you are with a DPS.

Mike T: defensibility of DPS is squishy, but easier than defending leaving suitable habitat out of national plan as suitable habitat. Arguments are made that it should be included as wolf habitat for some wolf. With subspecies, could delist Colorado and Utah from *Canis lupus* listing, but it would be included in *baileyi* subspecies listing as where found, if they eventually occurred there.

Kevin: do you want the states included as supporters or antagonists. Do you want the states as intervenors? The wolf that occurred there has been extirpated and scientifically it does not make sense to recover it for *baileyi*.

Eric: If listed as subspecies, what would happen if a wolf killed in southern Colorado?

Mike T: We would do an investigation to determine if Mexican wolf or NRM wolf.

Terry: but including it on a state list includes some level of regulatory burden under section, such as jaguarondi.

Sherry: but we have to my knowledge never done a formal or informal consultation on jaguarondi.

State Management:

Terry: with wolves, there are closures for wolf dens and wolf enclosures. Some inconveniences, but these issues don't really come into play in the assessment but rather later in structure of a 10(j).

Kevin: objectives 1, 2, and 3 all limit state's ability to manage wildlife. For example, states sometimes go in to remove a cougar population to facilitate growth of a population of a prey species.

Wendy: 10(j) provides flexibility to manage wolves to address prey reductions.

Kevin: thinks that similarity of appearance would invoke their law restricting their management authority.

Management Flexibility:

Michelle: could not do a 10(j) for all of Alt 2 because it would not be wholly separated from NRM.

Mike: to designate an entire DPS as non-essential may be problematic. May make a difference if *lupus* vs. *baileyi*. But you wouldn't have a 10(j) in Mexico.

Seth: 10(j) have to be wholly geographically separated. If endangered pop and 10(j) pop grow together, may invalidate the 10(j). We are arguing that movement is not enough to invalidate the 10(j), needs to be population comingling.

Terry: this is the argument that AGFD has had with the establishment of wolves in Mexico. Also, Alts 2 and 3 hurt AZ because if wolves are established in northern AZ, they would be restricted from going into southern Utah and Colorado.

Tribal management

Terry: states defer to Tribes on this issue.

Public Values

This objective is not distinguishing among alternatives. If there is a strong public value, it will appear in legal defensibility.

Efficiency

Terry: with Alt 5, you'll spend a lot of time defending why northern AZ not included.

Terry: line for Alt 4 is not specific, but rivers and canyons are defensible barrier – San Juan is more defensible than I-40.

Kevin: Alt 2,3, and 5 would take more time to recovery. Alts 2 and 3 would put Utah in position of Wyoming. It would be preferable to have DPS boundary.

Terry: for AZ, Alt 1 is the best for assessment, and Alt 4 is best for recovery. But for proposed listing, he supports Alt 4.

Next meeting – SDM webinar July 11:

Review of consequences table, updates, new interpretation

Balancing the tradeoffs

Decision makers from States may choose to sit in on webinar, so no need for another meeting with them in the next couple of months. But need a conversation between RDs and Directors before release of proposed rules. This could happen at WAFWA meeting in July or at AFWA in September.

As we are developing products, would have calls with Directors

Terry: RD should ask Governor if NMDGF could come to future meetings

Wrap up

Kevin: They will only not oppose Alt 4. Otherwise you're trying to recover a subspecies that never occurred in Utah. Still willing to go through weighting July 11. Kevin appreciates that we are considering their perspectives at this level and understands that there are other issues that we will consider.

Terry: They support Alt 4 based on science. They want to see impact on prey and on prey potential. Based on that information they get to Alt 4. Absent new data, doesn't think their position to change on July 11. Reasonable people can disagree, and he appreciates the face-face meeting. Helps him convince Director that they are part of the process. Disheartening that there has been so much time lost in litigation and bickering.

Eric: agrees with the other 2 states and supports Alt 4. **Again requests that they be able to have a surrogate at the recovery team meeting in August.

Mike T: appreciates states meeting with us. We'll look at best available science and recoverable entity. We are treating states with special purpose. Don't want to lose sight of the other management tools down the road.