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Public Comments Processing  
Attn: FWS-R2-ES-2013-0056  
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To Whom It May Concern:

New Mexico Department of Agriculture (NMDA) submits the following comments in response to the United States Fish and Wildlife Service's (USFWS) proposed revisions to the nonessential experimental population of the Mexican gray wolf (*Canis lupus baileyi*) [Docket No. FWS-R2-ES-2013-0056].

**Use of 2007 Scoping Information**

The USFWS states that it intends to use information gathered from its 2007 scoping process in the development of the current Environmental Impact Statement (EIS) (P35721). Since 2007, many variables have changed. Techniques used to manage wolf/human/livestock conflicts have been proven and disproven, drought and catastrophic wildfire have had tremendous impacts on the landscape within the Blue Range Wolf Recovery Area (BRWRA), and the attitudes and perceptions of public and private sector stakeholders have changed. Based on these changing variables, NMDA strongly believes the information gained from the current [Docket No. FWS-R2-ES-2013-0098] scoping process should be the only basis for this EIS. The scoping report from 2007 should not be considered in the development of the 2013 EIS. It does not reflect the present situation. Any further development of the draft EIS should be halted until the current scoping process has been completed. This will allow the most recent information to be used in the development of the EIS.

**Increased Conflict**

USFWS proposes to allow direct initial release of the Mexican gray wolf (wolves) throughout the BRWRA. It also proposes to allow wolves to disperse naturally from the BRWRA into the Mexican Wolf Experimental Population Area (MWEPA). If release sites increase and the designation of a primary and secondary recovery zone are removed, which allows wolves to move freely within the

MWEPA, conflicts among wolves, livestock, and humans will inevitably increase. Since USFWS has identified high rates of management removals and high human-caused mortality as the primary limiting factor in population growth of the species, it is logical that both of these factors must be reduced in order to achieve wolf population growth. NMDA has great concerns over the steps the USFWS proposes to address this issue:

1. USFWS proposes to revise the conditions that determine when a take permit would be issued to livestock owners or their agents to allow the taking of Mexican gray wolves engaged in livestock depredation on public land from 6 breeding pairs, to 100 Mexican gray wolves (P35723). On page 35741, the USFWS states that at least 100 wolves must be present in the MWEPA (including the BRWRA) before take permits will be issued on public lands allotted for grazing. The service also states that it will establish conditions that must be met before a take permit is issued on private land “such as a minimum population size of Mexican wolves present in the MWEPA” (P35730). The specifications for the issuance of take permits to livestock producers (on private or public land) should be included in this proposed rule. Any specifications should be based on the particular set of circumstances surrounding an ongoing depredation situation. The issuance of the permit should not depend upon the number of wolves in the MWEPA, BRWRA, or a combination of both. The USFWS recognizes that the United States Congress enacted the provisions of Section 10(j) to allow the implementation of flexible rules to encourage a recovery partner’s participation in the reestablishment of endangered species (P35731). Tying the issuance of permits that would alleviate a human/wolf conflict to the existing wolf population ignores a potential recovery partner’s (in this case a livestock producer) situation and the economic impacts associated with it. Instead, it implements an inflexible rule that will discourage further participation by potential recovery partners. NMDA strongly urges USFWS to develop and publish for review a set of take permit criteria based on certain situational elements such as the number of livestock killed or injured, the frequency of wolf depredation, and the individual economic impacts to the livestock producer. Due to its inflexibility, take permit criteria based on wolf population numbers will not effectively address livestock depredation throughout the large geographic expanse of the MWEPA and will increase distrust and resentment between the USFWS and potential recovery partners.
2. In the final rule, USFWS intends to replace the term “depredation” with the term “depredation incident.” Depredation incident is defined as “the aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or a single pack of Mexican wolves at a single location within one 24-hour period” (P35724). Under this definition multiple livestock losses or injuries will be reported as one single “depredation incident.” Since multiple livestock kills or injuries will be reported as a single depredation incident, the true number of individual livestock killed or injured by wolves and the true economic cost of those livestock losses will not be accurately reflected. The true number of individual livestock killed or injured by wolves need to be reported in order to accurately reflect the economic impacts incurred by livestock producers. Between 2006 and 2012, there were 116 confirmed kills or injuries to livestock in Catron County attributed to the Mexican

gray wolf. According to New Mexico Agricultural Statistics for 2011, the value per head for cattle was \$980. The loss of these cattle represents a significant economic impact to the livestock producers involved. Under the depredation incident definition, the true number of livestock depredated would not be reflected. This number would be greatly reduced for reporting purposes, thereby, diminishing the public perception of the impacts to those most affected.

### **Releases on Private land**

USFWS discusses its intent to release wolves on private land when requested by the landowner. However, it mentions no criteria or process for these releases. The specifications for the release of wolves on private land should be included in this proposed rule. Releases on private lands require federal action and will have direct impacts on other surrounding private landowners, wildlife, livestock, and federal and state public land. As such, the National Environmental Policy Act (NEPA) requirements must be followed in developing release specifications and prior to establishment of release sites on private land. Also, surrounding landowners should be consulted prior to any such release being made. Failure to do so would only increase the kinds of conflict USFWS desires to avoid in order to decrease high rates of management removals and high human-caused mortality. Livestock producers adjacent to private land release sites must be made aware of these releases in order to implement measures to avoid depredation. NMDA strongly urges USFWS to develop and publish for review a set of specific criteria for private land releases prior to any revision to the final rule or EIS.

### **Public Land – State Land**

On page 35723, USFWS states its intent to “consider state owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies.” NMDA would like to clarify that state lands held in trust by the New Mexico State Land Office are subject to permitting requirements and approval by the State Land Commissioner (which is an elected position in New Mexico). In FY 2013, these lands generated \$577,497,370.00 in revenue for public schools in New Mexico. Income from grazing, oil, gas, and mineral leases provide the large majority of this funding.

On page 35742, USFWS states that it “will work with cooperating public land management agencies to use their authorities to temporarily restrict human access and disturbance causing land use activities.” According to USFWS timetables (P35742), these restrictions could potentially be in place from March 1 through September 30. This would deny access to the restricted area for the entire growing season. Many ranches in New Mexico have a mixture of state land and private land holdings. State lands, along with the private lands, are included in ranchers’ rotational grazing system. Through their state land leases, the ranchers have the right to graze their livestock on state lands. If USFWS denies the rancher access to that state land, thereby, denying its use by livestock, the ability of that rancher to implement proper grazing practices is reduced ranch wide. Pastures that are relied on seasonally or within the rotational grazing system will be rendered inaccessible,

increasing grazing pressure elsewhere and reducing the livestock carrying capacity for the ranching operation as a whole. In order to maintain proper range conditions, ranchers will be forced to destock, purchase supplemental feed, or pay to lease other pasture. All of these options represent a significant negative economic impact to the rancher.

The specifications for the release of wolves on public lands (including state land) should be included in this proposed rule. Releases on state lands require federal action and will have direct impacts on other surrounding private landowners, wildlife, livestock, and federal public land. As such, NEPA requirements must be followed in developing the specifications, under which an access restriction will be declared and maintained. Surrounding private landowners should be consulted prior to any such restrictions being declared in order to implement measures to avoid depredation and economic loss due to denied access to forage. Failure to do so would only increase the kinds of conflict USFWS desires to avoid in order to decrease high rates of management removals and high human-caused mortality. NMDA strongly urges USFWS to develop and publish for review a set of specific criteria for private land releases prior to any revision to the final rule or EIS.

#### **Responsiveness to Livestock Producers and Landowners**

A timely, proactive, and effective USFWS response to reports of wolf depredation or nuisance behavior is needed to build trust and cooperation between USFWS and private landowners. NMDA contends that in the past USFWS has not fully exercised the management flexibility afforded it under Section 10(j). Considering the proposed expansion of the wolf recovery effort, NMDA strongly encourages USFWS to directly and proactively engage local government as well as livestock and agricultural producers to gain an understanding of the wolf management changes that are practical and necessary. Without changes in the way USFWS responds to private landowners and livestock producers, the trust and cooperation needed will be lacking. In order for USFWS to be proactive and effective in its endeavors to respond to the needs of livestock producers, it must make efforts to understand what livestock producers truly need to respond to wolf depredation and still maintain a working, fiscally viable ranching operation that provides a living for their family. This will require a proactive and ongoing dialogue, responsiveness, and flexibility on behalf of USFWS. The management flexibility afforded through the 10(j) population designation allows for creative adaptive management strategies for the Mexican gray wolf. NMDA strongly urges USFWS to include methods of implementing creative adaptive management strategies in both the draft EIS and any amended final rule. These strategies must be based on input from landowners and livestock producers if they are to be effective.

#### **Definitions**

1. **Due Care** – A specific definition of “Due Care” is needed. As the range of the Mexican gray wolf expands, interactions with humans will increase. Allowing the wolf to freely move into and throughout the MWEPA will place the wolf in geographic locations and habitats that are considered marginal at best. The species is highly mobile (especially young males) and will move great distances, crossing unsuitable habitat in order to expand its range. Individual

wolves may be found in areas far removed from any release site and well outside of occupied Mexican gray wolf range. Public awareness of the presence of wolves in these areas will be lacking. Due to the small size of the wolf, it is easily mistaken for a coyote or domestic dog. Human/wolf conflicts are bound to occur outside of occupied Mexican gray wolf range. Having a specific definition of “Due Care” and what it entails is the first step in proactively addressing this possibility. A simple list of trapping criteria, as presented in the document (P35734), will not suffice. Failure to establish this definition would be shortsighted.

2. **Occupied Mexican Wolf Range** – USFWS states that “an area consistently used by at least one resident Mexican wolf over a period of at least 1 month” will be considered occupied Mexican gray wolf range. Allowing the wolf to freely move into and throughout the MWEPA will place the wolf in geographic locations and habitats that are considered marginal at best. The species is highly mobile (especially young males) and will move great distances, crossing unsuitable habitat in order to expand its range. The presence of a single wolf over the period of one month does not denote occupied range. Implicit in the term occupied is to possess or hold a place or to take up residence. Single wolves by nature are transient. Wolves are a pack animal. In order to occupy or take up residence in a home range, a family group must be established through breeding and successful production of offspring. Using this definition will artificially increase the occupied range of the species and the potential for human/wolf conflicts. It will also lead to increased restrictions, legal issues, and higher rates of management removals and high human-caused mortality. NMDA strongly requests that the definition of occupied Mexican gray wolf range be changed to tie occupied range to the presence of breeding populations of wolves only.
3. **Problem Wolves** – On Page 35739, USFWS lists three definitions for problem wolves. None of these definitions consider livestock depredation on private lands. Wolves involved in depredation on private lands, or any other lands, are problem wolves. NMDA demands that wolves involved in depredation on private land be classified as problem wolves. Failure of the service to include private lands in this definition demonstrates the USFWS’s lack of consideration given to private landowners and livestock producers. It also demonstrates the duplicitous and disingenuous nature of the service’s stated desire to build trust and gain cooperation from private landowners and livestock producers.

### **Recovery Delisting Criteria**

Passage of the proposed final rule changes will take the Mexican wolf recovery program to a greatly expanded level. It is the understanding of NMDA that the ultimate goal of listing any species as endangered is to recover the species and, ultimately, delist it. If USFWS predictions that expanded range allowed for the wolf under the new final rule will result in the desired population increases, the wolf could recover quite quickly (similar to the gray wolf in the continental United States). If a rapid population expansion occurs, the goal of reestablishing a viable, self-sustaining population of at least one hundred Mexican wolves could be quickly reached and surpassed. For this reason, keeping in mind the interest of USFWS in building trust and being proactive, responsive, and effective (ideals

conveyed multiple times by USFWS in the proposed rule), NMDA believes a set of delisting criteria are necessary. Delisting criteria will give all those involved a clear understanding of the ultimate goal of the project and how progress is being made toward that goal. Failure to anticipate the rapid population growth of the Mexican gray wolf, based on gray wolf recovery efforts elsewhere in the United States, would not be proactive and would be, in fact, shortsighted.

On the current scale in which the Mexican gray wolf recovery project operates, livestock producers and private landowners have had great difficulties in dealing with USFWS regarding livestock depredation and nuisance wolf behavior. The changes proposed by USFWS represent a major geographic expansion of the wolf recovery program. Any effort to address these issues under the proposed modifications to the final rule should involve proactive consultation with counties, local landowners, New Mexico Department of Game and Fish, and livestock producers. Simply carrying on with the same approach toward addressing conflicts among wolves, livestock, and humans will yield similar unsatisfactory results. A more cooperative and proactive approach to wolf management must be implemented. This should include proactive ongoing dialogue, responsiveness, and flexibility on behalf of USFWS regarding the inevitable increase in conflicts among wolves, humans, and livestock.

In closing, NMDA would like to emphasize that the proposed changes outlined in this document will greatly expand the scope of the Mexican wolf recovery program. In turn the potential for a variety of conflicts will expand significantly. USFWS is reminded that its actions regarding the Mexican wolf recovery program in New Mexico have major economic, emotional, and cultural impacts on human beings and their communities. Unless these impacts are proactively considered and constructively addressed at the local level, the Mexican wolf recovery program and the local communities that are affected will continue to struggle.

If you have any questions regarding these comments, please contact Mr. Jim Wanstall at (575) 646-2642.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeff M. Witte', with a stylized flourish extending to the right.

Jeff M. Witte

JMW/JW/ya