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WRITTEN STATEMENT
OF
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NEW MEXICO DEPARTMENT OF GAME AND FISH
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

The Status of the Federal Government's Management of Wolves

September 21, 2016

I. Introduction

Chairman Gohmert, Ranking Member Dingell, members of the subcommittee, thank you for the opportunity to appear today to discuss the status of the Federal Government's management of wolves, specifically, the Mexican gray wolf (*Canis lupus baileyi*).

The State of New Mexico, through the New Mexico Game Commission and the Department of Game and Fish, exercises trust ownership and control of New Mexico's wildlife, including "the duty of safeguarding this property in the interest of the public." Cognizant of its trust obligations, the New Mexico legislature has enacted a comprehensive statutory scheme to conserve, manage, and protect New Mexico's wildlife.¹ Together, the Commission and the Department actively manage wildlife across the State, including carnivore species such as the bear and cougar; ungulate species such as deer, elk, bighorn sheep and antelope, which serve as prey to carnivores; and numerous other fish and wildlife species. With over 100 years of experience in restoring and managing wildlife populations across the state, the Department excels at wildlife conservation.

¹ *State ex rel. Sofeico v. Heffernan*, 41 N.M. 219, 227 (1936); N.M. Stat. Ann. §§ 17-1-1 and 17-1-14; see N.M. Stat. Ann. §§ 17-1-1 through 17-6-11.

In 1973 Congress established a program for the conservation of threatened and endangered species and a means whereby the ecosystems upon which those species depend may be conserved—the Endangered Species Act (the Act). *See* 16 U.S.C. § 1531(b). It is as true today as it was in 1973, and arguably always has been, that the creation with which we share this earth—fish, wildlife, plants, etc.—are of aesthetic, ecological, educational, historical, recreational, scientific, and I would add spiritual value to our Nation and its people.

We New Mexicans value our wildlife resources and strive to be excellent stewards of this incredible natural resource. One of the species that we are most proud of in New Mexico is the desert bighorn sheep. In 1980, New Mexico’s desert bighorn population totaled less than seventy and could only be found in two isolated mountain ranges, prompting the State to add the species to its list of endangered species. Since then, through the tireless efforts of numerous New Mexicans to conserve and increase the number of self-sustaining populations, New Mexico now boasts a population of over one thousand desert bighorns across at least seven mountain ranges. In 2011 we removed the species from the state endangered species list. Various other once imperiled or extinct resident New Mexican species now thrive or on the path to recovery. We know how to conserve wildlife and, when necessary, recover imperiled species.

In the quest to conserve our wildlife and recover federally listed imperiled species, what has proven to be an unnecessary yet significant hurdle is the cloud of uncertainty and added challenges to state self-governance resulting from the United States Fish and Wildlife Service’s (Service) failure to implement Section 6 the Endangered Species Act. Section 6 mandates that the Service “cooperate to the maximum extent practicable with the States.”² Section 6 contemplates a significant role for the States in the management and conservation of threatened and endangered species, a role that has yet to be fully realized.

The constitutional scholar Erwin Chemerinsky identified “state experimentation” as one of the main functions served by the federalist division of political authority in the United States.³ The Service’s failure to implement Congress’s mandate to cooperate with the States has unnecessarily stymied more robust state experimentation in the realm of species recovery. More often than not, through its sans-cooperation implementation of the Endangered Species Act, the Service co-opts species recovery efforts, leaving little or no opportunity for the States to pursue recovery on terms that fit state exigencies and eccentricities. The Mexican wolf recovery program is the cover story in the Service’s failure to cooperate story.

II. BACKGROUND

1. The Mexican wolf

The Mexican wolf is the smallest gray wolf subspecies in North America, with an adult weight of 50 to 90 pounds, a length of five to six feet, and a height at shoulder of 25 to 32 inches. Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts. The Mexican wolf’s smaller stature is a product of the habitat it

² 16 U.S.C. § 1535(a).

³ Erwin Chemerinsky, *Enhancing Government: Federalism for the 21st Century* 99 (2009).

occupies. The Mexican wolf historically occupied central and northern Mexico with small reaches into portions of the American southwest.

As defined by the Service in its 1982 Mexican wolf Recovery Plan, the core historical range of the subspecies was in Mexico, while core historical habitat in the United States was limited to the very southwest corner of New Mexico and the southeast of Arizona. When initially releasing wolves into the wild in 1998 the Service recognized that the reintroduction site in the Blue Range Wolf Recovery Area was at the northern extent of an expanded historical range for the subspecies.

The Mexican gray wolf subspecies was listed as endangered under the Endangered Species Act on April 28, 1976.⁴ Subsequently, on March 9, 1978, the entire gray wolf species (*Canis lupus*) in North America south of Canada was listed as endangered, except in Minnesota where it was listed as threatened.⁵ The listing of the gray wolf in the contiguous United States and Mexico therefore subsumed the separate listing of the Mexican gray wolf subspecies.⁶ In February 2012, the Service recommended that the listing of the entire gray wolf species be revised to reflect the distribution and status of various gray wolf populations. On June 13, 2013, the Service published a proposed rule to delist the gray wolf and maintain protections for the Mexican gray wolf by listing it as an endangered subspecies.⁷ The final rule listing the Mexican gray wolf subspecies as endangered was issued on January 16, 2015.⁸

2. Recovery Planning

The Mexican Wolf Recovery Plan ("Recovery Plan") was adopted in 1982. The Recovery Plan's "prime objective" is "[t]o conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mile area within the Mexican wolf's historic range."⁹ The Recovery Plan does not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the ESA, other than the 100-wolf and 5,000-square-mile goals referenced above.

The Service has initiated various failed efforts to revise the Recovery Plan. First, in 1995, the Service reported its intent to release a draft revised recovery plan in 1998.¹⁰ A 1998 draft revised Recovery Plan never came to fruition. Later, in 2003, the Service again attempted a revision of the 1982 Recovery Plan, which effort was abandoned. The 2003 effort was followed by a 2010 attempt, which also failed to produce a revised plan. Finally, in 2015, the Service invited the states of New Mexico, Arizona, Colorado, and Utah as well as a variety of independent and contract scientists to a series of working group meetings to contribute to the

⁴ 41 Fed. Reg. 17740 (Apr. 28, 1976).

⁵ 43 Fed. Reg. 9607 (Mar. 9, 1978).

⁶ *Id.*

⁷ 78 Fed. Reg. 35664 (Jun. 13, 2013).

⁸ 80 Fed. Reg. 2488 (Jan. 16, 2015).

⁹ Recovery Plan at 23.

¹⁰ 63 Fed. Reg. 1752, 1753 (Jan. 12, 1998).

development of a revised recovery plan. According to the terms of a settlement agreement, which the court has yet to approve, the Service has announced its intention to publish a revised Recovery Plan by the end of November 2017.

While New Mexico is optimistic that the current recovery planning effort will ultimately produce a revised plan, until a revised recovery plan is finalized, the 1982 Recovery Plan will remain the only completed recovery plan for the species, and the now obsolete 100-wolf and 5,000-square-mile objectives will remain the only objective and measurable recovery criteria guiding recovery. Given the lack of current measurable and objective recovery criteria, New Mexico remains in the dark about important recovery questions—how many wolves constitute a recovered population and where these wolves will occur. Forty years into the program, New Mexico should not be as in the dark on these issues as it is.

3. Captive Breeding and the 1998 Rule

A binational captive-breeding program between the United States and Mexico was established in the late 1970s, with the capture of the last remaining Mexican wolves in the wild. Referred to as the Mexican Wolf Species Survival Plan, the captive breeding program's ultimate objective is to provide healthy offspring for release into the wild, while conserving the Mexican wolf subspecies genome.¹¹ The captive breeding program originated with seven founding wolves, and has grown to approximately 248 wolves in 55 facilities in the United States and Mexico.¹² The wolves in the captive population are the only source of animals for release into the wild. The success of the captive breeding program has resulted in surplus animals, allowing the Service to undertake efforts to reintroduce populations of the Mexican wolf into the wild.

On January 12, 1998, the Service published a final rule establishing the Mexican Wolf Experimental Population Area ("MWEPA") in central Arizona, New Mexico, and a small portion of northwestern Texas.¹³ In March of 1998, the Service released 11 Mexican wolves from the captive breeding program into the wild.

Under the 1998 Rule, the wolves were released into the Blue Range Wolf Recovery Area ("Blue Range") of Arizona and New Mexico, which is within the MWEPA. Mexican wolves released into the Blue Range and their offspring are designated as a non-essential experimental population, which allows for greater management flexibility to address wolf conflict situations such as livestock depredations and nuisance behavior. The Blue Range is a defined geographic area that encompasses the entire Apache and Gila National Forests and is divided into primary and secondary recovery zones. Under the 1998 Rule, wolves are not allowed to establish territories on public lands wholly outside the Blue Range boundary and must be retrieved by the Service. At the end of 2014, the Service estimated that 110 wolves inhabited the United States in central Arizona and New Mexico, which count exceeded the criteria set out in the Recovery Plan.

¹¹ Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf ("Final EIS") (Nov. 2014) at 4.

¹² *Id.*

¹³ 63 Fed. Reg. 1752 (Jan. 12, 1998) ("1998 Rule").

4. The 2015 Rule

When the Service announced its intention to revise the 1998 Rule, the Department communicated its objection to the proposed revision. New Mexico explained that it was nonsensical to modify the 1998 Rule without first updating the now obsolete 1982 Recovery Plan. How could the Service propose a rule that might contemplate hundreds of wolves when the Recovery Plan did not venture beyond 100? The Department stressed to the Service the importance of revising the Recovery Plan to establish what contribution would be required of Mexican wolf historical range in New Mexico and Arizona towards Mexican wolf recovery. The Service moved forward with its revision of the 1998 Rule despite New Mexico's objection.

On January 16, 2015, the Service issued a final rule revising the 1998 Rule.¹⁴ As explained by the Service, the revisions were needed to help "enhance the growth, stability, and success of the experimental population."¹⁵ The 1998 Rule required that Mexican wolves stay within the Blue Range, leading to the removal of wolves that strayed into the larger MWEPA. According to the Service, the 1998 Rule "constrained the number and location of Mexican wolves that can be released from captivity into the wild," "constrain[ed] the growth of the wild population," and "required [the Service] to implement management actions that disrupt social structure."¹⁶ The Service issued the 2015 Rule to modify the geographic boundaries in which Mexican wolves are managed, as well as the management regulations that govern the initial release, translocation, removal, and take of Mexican wolves.¹⁷ In the 2015 Rule, the Service established a population objective of 300 to 325 Mexican wolves within the MWEPA throughout both Arizona and New.¹⁸ The 2015 Rule includes a population objective that is triple that included in the Recovery Plan for the species and establishes a vastly expanded experimental population area. Whereas the 1998 Rule established an approximately 7,000-square-mile area within which the species could disperse, the 2015 Rule expanded the area by more than an order of magnitude to approximately 154,000 square miles.

III. Cooperation under the Endangered Species Act

Section 6(a) of the Act requires that in carrying out the activities authorized by the ESA, the Service cooperate to the maximum extent practicable with the States.¹⁹ Through Section 6, Congress incorporated into the Act principles of cooperative federalism memorialized in the United States Constitution. That is, the powers delegated to the federal government are few and defined and those which remain in the state governments are numerous and indefinite and extend to all the objects which concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the states.

¹⁴ 80 Fed. Reg. 2512 (Jan. 16, 2015) ("2015 Rule").

¹⁵ *Id.* at 2518.

¹⁶ *Id.*

¹⁷ *Id.* at 2512.

¹⁸ *Id.* at 2517.

¹⁹ 16 U.S.C. § 1535(a).

Section 6 contemplates a much different cooperative scheme than that posited by the United States Fish and Wildlife Service in the Mexican Wolf Recovery Program. The Act's legislative history tells us that Congress's intent in drafting Section 6 was not purely academic. Consider the statement from Senator Tummey (D. Cal), when he called Section 6 "perhaps the most important section" and a similar statement from Senator Stevens (R AK) when he called Section 6 "the major backbone of the Act." The substance of the provision cannot, or should not, be dismissed by the Service as mere aspirational policy.

The Conference Report for the 1973 Act lends insight into what Congress intended Section 6 to accomplish—"[t]he successful development of an endangered species program will ultimately depend upon a good working arrangement between the Federal agencies, which have broad policy perspective and authority, and the State agencies, which have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed." While the Act no doubt places ultimate authority in the Federal Government, that authority comes with strings attached, specifically, the strings of relationship building and cooperative interaction with the several states.

The Service appreciates the legal obligations flowing from Section 6 and recognizes them, at least on paper. Consider the Service's pronouncements in its "Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities," published February of this year (2016)—"[s]tates possess broad trustee and police powers over fish, wildlife, and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats." In that same publication, the Service announced a "renewed commitment by the Service and State fish and wildlife agencies to work together in conserving America's imperiled wildlife."

When it comes to putting its words into action, however, the Service often fails to satisfy the cooperative mandate of Section 6, opting instead to shoehorn its square peg version of species recovery into the states' round hole.

IV. The Mexican wolf, a Failure in Cooperation

As noted above, the Mexican wolf was first added to the list of endangered species in April of 1976, over forty years ago. Very few species have held endangered status for as long as the Mexican wolf. Over those forty years, the Service has spent over \$25,000,000 on the recovery of the subspecies.²⁰ Forty years and \$25,000,000 later, one might anticipate that the subspecies is recovered, or in the least something more than a mere 100 wolves in the wild, yet that is all the Service has to show for its time and money. And while no one single factor is to blame for the lack of success recovering the Mexican wolf, one factor looms larger than others, the Service's failure to cooperate with the states. For the sake of brevity, I have categorized the Service's various cooperative failures into three relatively broad categories—(1) lack of

²⁰ Estimated Funds Expended by Lead Agencies for Mexican Wolf Recovery and Reintroduction, *available at* https://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_Project_Costs_to_Date.pdf

cooperation on wolf releases; (2) lack of cooperation pertaining to and awareness of social and cultural considerations; and (3) the imposition of federal decisions and objectives over New Mexico's stated concerns and objections.

1. Wolf releases

The Service first began releasing Mexican wolves in New Mexico in 1998. Releases back then at least had a colorable argument that they were guided by the 1982 Recovery Plan. However, in the context of more recent releases, the Recovery Plan is all but irrelevant. Modern releases occur under the guidance of the 2015 Rule. However, the Rule provides no guidance on the definition of recovery. If a population of 325 wolves is accomplished, would that trigger a delisting? No one knows. Can New Mexico have any confidence that once 325 wolves exist in the MWEPA, the Service will not announce a recovery target of 600 or one thousand wolves across the entire state? No, New Mexico can have zero confidence that such a scenario will not occur because the Service has not, despite numerous requests over the last decade from New Mexico, defined what recovery will look like.

While it would seem logical that the Service define its recovery objective prior to implementing a recovery program that contemplates the release of wolves into a state wary of the program, that is not how the Service has managed its program. Somewhat backwardly, the Service opted to release Mexican wolves in Arizona and New Mexico without first defining its recovery objective. Not surprisingly, this caused problems for the states, specifically New Mexico. Time and again the Service failed to reach agreement with the New Mexico Department of Game and Fish, the experts on New Mexico prey densities and awareness of which areas would be most suitable and those most impacted by wolves, regarding release locations.

While New Mexico plugged its nose for the first decade of the release program, in 2011 New Mexico decided enough was enough and declined to participate further in the Service's objectiveless program, meaning it would no longer lend human or financial resources to aid the program. New Mexico simply could not support a program without certainty about what the program sought to achieve. Certainly, the goal was recovery, but what did recovery look like in New Mexico. Would Mexican wolves be limited to the Blue Range or did recovery contemplate wolves across the State? Questions of great import to New Mexico and New Mexicans, but seemingly little to the Service.

While New Mexico declined, beginning in 2011, to participate in the recovery program, the Service's own regulation, specifically 43 CFR 24.4(i)(5)(i), still required that the Service comply with New Mexico's permitting requirements prior to releasing wolves in the State. New Mexico continued to grant the Service importation and release permits up until 2015 when, on the heels of the controversial 2015 Rule, the State denied the Service's request to import and release up to ten wolves into New Mexico. The State's denial was premised on the lack of a current species management plan, i.e. recovery plan, and on the Director's inability to determine that the Service's intended releases would not conflict with the State's conservation management efforts. While the Service's request was to release up to ten wolves in the State, without a recovery plan informing New Mexico how many more releases were likely necessary and where

in the State the Service intended to recover the subspecies, New Mexico was no longer willing to authorize releases.

Upon review of my decision to deny the Service the requested permits, the Game Commission succinctly stated the State's position on wolf releases in New Mexico:

While the Commission sympathizes with the Service's position—that the denial of release permits effectively slows certain aspects of Mexican wolf recovery—the recovery of Mexican wolves in New Mexico requires careful planning and consideration of myriad issues and the Director's decision that plowing ahead with releases of additional Mexican wolves in New Mexico without first delineating the contours of how, when, where, and how many Mexican wolves will be introduced in New Mexico, i.e. the information that will be developed in a fully-vetted recovery plan under the Endangered Species Act, cannot be found to be arbitrary or capricious.

New Mexico's denial of the Service's requested permit did not sit well with the Service. In September of 2015, Director Ashe communicated to New Mexico that "Given the denial of our permit applications, we are left with no option except to continue to move forward with wolf recovery efforts." He continued, "the Service has concluded that it has independent legal authority . . . to engage in all activities regarding the reintroduction of the Mexican wolf in New Mexico. Exercising this authority will allow the Service to import, export, hold and transfer Mexican wolves in the State of New Mexico; and to release wolves on federal lands in New Mexico without a State permit."

Troubled by the Service's intentions, on April 20, 2016, New Mexico filed a notice of intent to sue the Service to prevent violations of state and federal law. Three days after receiving New Mexico's notice of intent, and just two months after announcing its renewed commitment to working cooperatively with the States, on April 23, 2016, the Service, at perhaps the height of its uncooperative approach, imported two Mexican wolf pups into New Mexico and released them into the wild of Catron County, NM.

One might assume that the Service had at least notified New Mexico about how many wolves would be imported, where they would be released, when they would be released, etc. No such communication occurred. New Mexico only learned of the releases after they occurred and only because a colleague with the Arizona Department of Game and Fish notified us and because a local media outlet sought New Mexico's comment on the matter. Upon learning of the releases I promptly called the Service's Southwest Regional Director to confirm what I had heard. The Regional Director apologized that I was only just learning of the releases, stating that he had intended to notify the State earlier.

Promptly following the unlawful releases, New Mexico filed a complaint in the United States District Court for the District of New Mexico along with a request to enjoin the Service from conducting further releases in violation of state and federal law. On June 10, 2016, the court granted New Mexico's request and enjoined the Service from releasing any wolves in the State without first complying with State permitting requirements.

In its ruling, the court pointed to the language of the Service's own regulation, which requires that the Service, in carrying out "programs involving reintroduction of fish and wildlife" "shall . . . consult with the States and comply with State permit requirements . . . except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibility."²¹ The court disagreed with the Service's argument that it had satisfied the regulation when it applied for the permit, and held that the "clear meaning of compliance with State permitting requirements requires actually receiving a permit and not merely applying for one." Answering the Service's argument that it was exempt from complying with state permitting requirements because doing so would prevent it from fulfilling its statutory duty under the Endangered Species Act to conserve the Mexican wolf, the court held that the Service had no statutory obligation to release a nonessential experimental population. While Section 10(j) of the Act authorized the Service to conduct releases, such was not a statutory responsibility.

Had the Service been more cooperative years ago when New Mexico and others demanded a revised recovery plan prior to the Service moving forward with releases and had the Service been more responsive to State concerns and ideas about when, where, and how many wolves to release, we would likely be at a different place today than where we are—a court ordered injunction preventing the Service from releasing wolves in New Mexico in violation of state and federal law.

2. Consideration and understanding of local social and cultural issues

As with any well-planned program, fundamental to its long-term success is stakeholder support. This is particularly paramount when working to recover a carnivore species that can negatively impact livestock operations, wildlife species management, and a host of related issues. The Service, since its first release of wolves into the recovery area, has failed to adequately recognize local and State interests, a fatal flaw for the recovery of any species, let alone a carnivore, and has consequently failed to educate relevant stakeholders and ultimately failed to achieve a meaningful level of stakeholder support.

Effective communication and cooperation with local communities has been so greatly deficient that the Office of Inspector General for the U.S. Department of the Interior (OIG) released an investigate report on the Service's Mexican wolf program earlier this year.²¹ Of the allegations of misconduct OIG investigated, failure to communicate effectively with the communities impacted by Mexican wolf recovery was one among several others. Without obtaining some level of social tolerance within the communities directly impacted by a recovery program, the program will continue to collapse, as is clearly apparent with the Mexican wolf.

The Department has a record of conserving carnivores, often times in less than friendly environs. When the Department set out to recover and increase populations of bears and cougars across the State, a program that successfully restored these populations from the low hundreds to

²¹ 43 C.F.R. 24.4(i)(5)(i).

²¹ Office of Inspector General: U.S. Department of Interior; Investigative Report of the U.S. Fish and Wildlife Service's Mexican Gray Wolf Program; July 11, 2016

now thousands, it built programs that recognized impacts to local communities and worked with those communities to find appropriate, workable solutions. We understood that there would be instances in which bears and cougars would kill livestock and in turn we would have to work with the impacted producers to alleviate losses, including, when appropriate, lethal control. As noted in the OIG report, the Service has truly failed in its handling of the nuisance wolf issue, which failure has set in stone a deep-rooted mistrust and rejection of the Service's program.

The Department understands much better than the Service does the issues impacting New Mexican communities where Mexican wolf recovery is occurring. Department employees live within impacted communities, raising families, building relationships, and gaining an appreciation for the New Mexican way of life. While the Department and local communities may not always see eye to eye, there is an appreciation that actions have impacts and we have learned to mutually empathize with one another. There is a mutual respect and trust that has developed over a near century of interaction and relationship building. This mutual respect is born from the fact that we are a part of the communities in which we operate and know that we must work cooperatively and not through imposition. The Service must recognize that social tolerance and engagement with local and State-level partners in an honest and transparent manner is the only path to recovery of the Mexican wolf.

3. The Service's imposition of its version of recovery on New Mexico

Webster's Dictionary defines cooperation as "a situation in which people work together to do something; the actions of someone who is being helpful by doing what is wanted or asked for." The same source defines imposition as "a demand or request that is not reasonable or that causes trouble for someone." Through years of exposure to the Service's Mexican Wolf Recovery Program, it appears that the Service confuses cooperation with imposition. It is the normal course for the State to communicate a concern to the Service or to request some action, e.g. "you should update the Recovery Plan," and for the Service to do exactly what the State had requested it not do or to entirely ignore the stated concern. Consider as an example the Service's effort to revise the 1998 Rule.

On June 13, 2013, the Service published a Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf. During the associated EIS development and rule revision process the Department continually asked the Services for a population objective and was told on every occasion that this number would not be presented until a new recovery plan was finalized. As the steward of New Mexico's wildlife resources, the State importuned the Service for the information it needed to appropriately assess the Service's proposed revisions to the 1998 Rule. The Department could not adequately analyze all "proposed alternatives" and "proposed revisions" during review of the preliminary EIS or proposed rule revisions without knowledge of a population objective. However, nowhere in the draft rule or preliminary EIS did the Service include a target number of wolves to be released into New Mexico or Arizona or an objective of wolves that would eventually inhabit New Mexico and Arizona. Despite the Service's promise that the revised rule would not contain a population objective, the 2015 Rule did contain a numerical target of 300-325 wolves across New Mexico and Arizona.

Where the Service allegedly recognizes that New Mexico “possesses broad trustee and police powers over fish, wildlife, and plants and their habitats within their borders” as well as the “primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats,” and is committed to working cooperatively with the states, one might assume that the Service arrived at the target of 300-325 through consultation and cooperation with New Mexico. That would be a bad assumption. The Service did not consult with New Mexico about the target population. New Mexico learned that the final 10(j) Rule would include a target population of 300-325 wolves in late 2014 after years of asking the Service to release that target number.

The 2015 Rule was not a product of cooperation, but rather an example of federal imposition. The Service decided how it wanted to manage wolves in New Mexico, and deliberately ignoring New Mexico’s concerns and requests, pounded away on the square peg of Mexican wolf recovery.

V. CONCLUSION

Late last year, the New Mexico Game Commission sat in review of my denial of the Service’s permit application. In a submission to the Commission the Service communicated a thinly veiled threat. It said:

The Supremacy Clause of the United States requires that state laws that ‘interfere with or are contrary to,’ federal law be invalidated. . . . To the extent that the State’s denials of these permits interfere with the Service’s ability to in any way manage Mexican wolves in the State of New Mexico, those denials should be overturned. The Secretary would prefer to consult and cooperate with the State of New Mexico regarding this issue and thus apply for and be issued applicable State permits. However, should the Commission decide to not overturn the denials of the Director, and if the Director makes similar decisions in the future, the Secretary could decide that compliance with New Mexico permits applicable to Mexican wolves will prevent her from carrying out her statutory responsibilities.

Echoing what the Commission said in response, it is my observation that the Service employs a definition of cooperation entirely distinct from the term as employed in New Mexico. To the Service, cooperation is applying for and being issued, without question from the State, the applicable State permits, and threatening preemption when it does not issue. What is cooperative about threatening preemption if a state does not issue a permit or ignoring New Mexico’s legitimate concerns about the Mexican Wolf Recovery Program and repeated requests for an updated recovery plan? To New Mexico, cooperation involves a dialogue where the Service sees a permit denial for what it is, a big red flag that cooperation has broken down and perhaps an opportunity to introspectively examine the status of your program.

For years the Service has moved forward with introduction efforts in New Mexico without the guidance of a current, comprehensive, science-based recovery plan to frame and inform the effort and without dedicating sufficient financial or other resources to the program to ensure its success. New Mexico withdrew from the recovery program because it grew weary of

being an accomplice to an undefined and objectiveless effort. For years New Mexico has implored the Service to develop a recovery plan that would both frame recovery and provide the State with real, objective information that could inform and guide the State's positions and undertakings relative to New Mexico wildlife, including the Mexican wolf.

The Service has repeatedly declared that it is not obligated to develop a revised recovery plan and that legally, the 1982 plan need not be revised. At the same time, however, the Service has acknowledge, from the outset of the 1982 Recovery Plan, that it was inadequate as a recovery document and that revision was necessary. In New Mexico we are not interested in the legal nuances of whether the Service is obligated to develop a recovery plan for the Mexican wolf. What we are interested in is recovering the species in its historic range and until a valid recovery plan is developed, that will be nothing more than a permanently elusive dream.

The 93rd Congress envisioned an implementation of the Endangered Species Act far different from the Service's current approach with the Mexican wolf. Section 6 of the Act requires the Service to "cooperate to the maximum extent practicable with the States" and those members of Congress in 1973 that spoke of Section 6 as "perhaps the most important section" and "the major backbone of the Act" certainly envisioned something more significant and meaningful in terms of cooperation than the Service applying for a State permit but then barreling forward without it when it did not issue.

New Mexico objects to the Service's historical dismissiveness of New Mexican ideas and concerns regarding the recovery of the Mexican wolf in our State; to its illegal attempt to release Mexican wolves in our State without State approval; and to attempting to recover the Mexican wolf without first developing a fully-vetted, science-based recovery plan to guide and frame recovery efforts.

In short, New Mexico encourages the United States Fish and Wildlife Service to reexamine Section 6 of the Endangered Species Act and then redouble its efforts at implementation of the cooperative mandate.