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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

WildEarth Guardians, a non-profit
organization; Western Watersheds
Project, a non-profit organization,

Plaintiffs,

vs.

Ryan Zinke, as Secretary of the
Department of the Interior; the United
States Department of the Interior, a
federal department; Greg Sheehan, as
Acting Director of the U.S. Fish and
Wildlife Service; and the United States
Fish and Wildlife Service, a federal
agency,

Federal-Defendants.

No.

COMPLAINT

INTRODUCTION

1. Plaintiffs, WildEarth Guardians and the Western Watersheds Project (collectively “Guardians”), bring this civil action against the above named Federal-Defendants (hereinafter the “U.S. Fish and Wildlife Service” or “the Service”) under the citizen suit provision of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, for violations of the ESA.

2. This case challenges the Service’s final Mexican wolf recovery plan (first revision), which was signed by the Service’s Regional Director on November 28, 2017 (hereinafter “2017 recovery plan”). Notice of the availability of the 2017 recovery plan was published in the Federal Register on December 4, 2017. 82 Fed. Reg. 57288 (December 4, 2017).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704. The Service’s action complained of herein qualifies as “final agency action” under the APA, 5 U.S.C. § 704.

4. This Court has the authority to review the Service’s action(s) complained of herein and grant the relief requested, under the ESA’s citizen suit provision, 16 U.S.C. § 1540(g), and the APA, 5 U.S.C. § 706.

5. All requirements for judicial review required by the ESA are satisfied. Guardians e-mailed and hand-delivered a notice of intent to sue letter to all named defendants in this action on November 29, 2017. This letter notified all defendants of Guardians' intent to file a civil action to rectify the legal violations described in the letter. More than sixty days have elapsed since all defendants received Guardians' notice of intent to sue letter for violating the ESA.

6. All requirements for judicial review required by the APA are satisfied. Guardians exhausted any and all administrative remedies provided and related to the Service's 2017 recovery plan. Guardians submitted timely comments on the Service's draft recovery plan.

7. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706 (APA).

8. Venue is proper in this Court under 16 U.S.C. § 1540 (g)(3)(A) and 28 U.S.C. § 1391(e).

9. Guardians satisfies the minimum requirements for Article III standing to pursue this civil action. Guardians – including their members, supporters, and staff – have suffered and continue to suffer injuries to their interests in Mexican wolves and conserving Mexican wolves caused by the Service's 2017 recovery plan. This Court can redress these injuries. There is a present and actual controversy between the Parties.

PARTIES

10. Plaintiff, WILDEARTH GUARDIANS, is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians is specifically committed to ensuring the survival and recovery of Mexican wolves in the United States. WildEarth Guardians has approximately 202,000 active members and supporters across the American West, including many who reside in Arizona. Many of WildEarth Guardians' members and supporters also reside and routinely recreate in areas occupied by Mexican wolves. WildEarth Guardians has a long history of working to protect and restore native carnivore species across the West, including Mexican wolves in the southwest. WildEarth Guardians brings this action on behalf of itself, its members, and its supporters.

11. Plaintiff, WESTERN WATERSHEDS PROJECT ("WWP"), is a non-profit membership organization with offices throughout the West, including in Arizona. WWP has over 1,500 members including many who reside and routinely recreate in Arizona and areas occupied by Mexican wolves. WWP, its staff, members, and supports are dedicated to protecting and conserving the public lands, wildlife and natural resources of watersheds in the American West. WWP, its staff, members, and supporters are dedicated to ensuring the long-term survival and recovery of Mexican wolves to the Southwest. WWP brings this action on behalf of itself, its members, and its supporters.

12. WildEarth Guardians' and WWP's (collectively "Guardians") members, supporters, and staff are dedicated to ensuring the long-term survival and recovery of Mexican wolves and ensuring the Service complies with the ESA and bases all recovery decisions on the best scientific and commercial data available ("best available science").

13. Guardians' members, supporters, and staff live in or near and/or routinely recreate in or near areas occupied by Mexican wolves in Arizona and New Mexico. Guardians' members, supporters, and staff enjoy observing – or attempting to observe – and studying Mexican wolves, including signs of Mexican wolves' presence and observing, studying, and/or photographing Mexican wolves in areas where they are known to exist, travel, disperse, and roam. The opportunity to view Mexican wolves or signs of Mexican wolves in the wild is—by itself—of significant interest and value to Guardians' members, supporters, and staff and increases their use and enjoyment of the area.

14. The Service's 2017 recovery plan challenged in this lawsuit harms Guardians' interests in Mexican wolves and Mexican wolf conservation. Guardians' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from Mexican wolves, recreating in areas occupied by and used by Mexican wolves, and in working to protect Mexican wolves from human-caused mortality and disturbance and in working to restore and recover Mexican wolves in the

United States and Mexico. In furtherance of these interests, Guardians' members, supporters, and staff have worked and continue to work to conserve Mexican wolves, including work to promote increased dispersal and connectivity among Mexican wolves in the wild, decrease incidence of human-caused mortality, and increase habitat protections for Mexican wolves.

15. Guardians' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the Service's 2017 recovery plan. If this Court issues the relief requested the harm to Guardians' interests will be alleviated and/or lessened.

16. Defendant RYAN ZINKE is sued in his official capacity as Secretary of the United States Department of the Interior. As Secretary, Mr. Zinke is the federal official with responsibility for all Service officials' inactions and/or actions challenged in this complaint.

17. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal department responsible for applying and implementing the federal laws and regulations challenged in this complaint.

18. Defendant GREG SHEEHAN is sued in his official capacity as Acting Director of the U.S. Fish and Wildlife Service. As Acting Director, Mr. Sheehan is the federal official with responsibility for all Service officials' inactions and/or actions challenged in this complaint.

19. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of Interior that is responsible for applying and implementing the federal laws and regulations challenged in this complaint.

BACKGROUND

The Mexican gray wolf

20. The Mexican wolf is the smallest, rarest, southernmost occurring, and most genetically distinct subspecies of the North American gray wolf. Mexican wolves historically numbered in the thousands and were distributed across large portions of the Southwest, mostly in mountainous forest terrain that supports populations of deer and elk.

21. By the mid-1900s government and private eradication efforts effectively wiped out the native wolf population. The government's eradication program alone reported "over 900 Mexican wolves killed in New Mexico and Arizona" during a ten-year period from 1915-1925. By 1976, the Mexican wolf was likely extirpated from the United States.

22. In 1976, the Mexican wolf was listed and protected as an endangered subspecies of gray wolf under the ESA, even though no wild populations were known to remain. In 1978, the Mexican wolf was later reclassified and listed as a gray wolf in the contiguous United States. In 2015, the Service issued a final rule reclassifying the Mexican wolf as an endangered subspecies of gray wolf.

23. After the Mexican wolf's original ESA listing in 1976, the Service initiated a recovery program for Mexican wolves in the Southwest pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533 (f). Section 4 (f) of the ESA directs

the Service to develop and implement recovery plans for the conservation and survival of listed species.

The 1982 “recovery” plan

24. In 1982, the Service prepared a recovery plan for the Mexican gray wolf. The 1982 recovery plan recognized the Mexican gray wolf’s poor prospects for survival. The Service described the 1982 recovery plan as “far from complete.” The 1982 recovery plan did not contain recovery criteria because the status of the species at the time “was so dire that the recovery team could not foresee full recovery and eventual delisting.” The 1982 recovery plan focused on the Mexican wolf’s “immediate survival.” *Id.* The 1982 recovery plan’s goal was to reestablish a viable, self-sustaining population of at least 100 Mexican gray wolves in a 5,000 square mile area within the Mexican gray wolf’s historic range.

25. The objective of the 1982 recovery plan was to start a captive breeding program with the hopes of reestablishing a viable, self-sustaining population of Mexican wolves in the wild. In accordance with the 1982 recovery plan, a captive-breeding program was initiated “with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States.” All Mexican wolves alive today “descend from three captive lineages founded between 1960 and 1980 from a total of seven wolves.”

The reintroduction program

26. In 1996, the Service initiated plans to reintroduce Mexican wolves to their historic range in the Southwest. Two years later – in 1998 –the Service released 13 Mexican wolves in eastern Arizona and western New Mexico in the “Blue Range Wolf Recovery Area.” During the first five years, from 1998-2002, the Service released 110 Mexican wolves into the wild. During the same time period – 1998-2002 – the service removed 58 Mexican wolves for various reasons. Successful reproduction of Mexican wolves in the wild was first documented in 2003.

27. From 2003-2007, the Service conducted a total of 68 releases and translocations of Mexican wolves into the wild. During this same period, the Service removed 84 Mexican wolves from the wild, primarily due to livestock depredation claims. Many of the wolves removed were from “the most successful packs.” These large-scale removals, coupled with fewer releases and high rates of human-caused mortality fundamentally altered the trajectory of the population.

28. By 2010, 89 Mexican wolves released into the wild had been killed. These 89 Mexican wolf deaths were due to illegal killings, vehicle collisions, government killings in response to livestock depredations, and natural causes. In January 2010, only 42 Mexican wolves were detected in the wild, a decline from the 2006 count of 51.

29. From 2010 to 2013, 10 Mexican wolves were released into the wild. During this period, the Service documented a “higher average population growth rate” than in previous phases of the reintroduction effort.

30. The current estimated population of Mexican wolves in the wild is 113. This population likely has an effective population (number of breeding animals) of approximately 28 animals. This number is “inadequate to ensure short- or long-term genetic fitness” of the existing population. The Service has announced a draft plan to attempt to cross-foster pups into as many as six wild Mexican wolf packs in 2018. The Service estimates it will cross-foster a maximum of 12 pups in 2018 as part of these efforts. There are no plans to reintroduce non-pups into the wild in 2018.

The Mexican Wolf Recovery Team

31. In 2010, the Service appointed an official Mexican Wolf Recovery Team (“recovery team”). The recovery team included a nine-member Science and Planning Subgroup (“science subgroup”) that was made up of independent scientific experts.

32. The recovery team’s science subgroup was charged with reviewing and applying the best available science in preparation of a recovery plan for Mexican wolves. After reviewing the best available science, the science subgroup was assigned the task of defining recovery goals and objectives, describing actions needed to achieve recovery of the subspecies, and

developing criteria for downlisting and delisting Mexican wolves to be included in a new, revised and updated recovery plan.

The 2012 draft recovery plan

33. On May 7, 2012, the recovery team's science subgroup produced a 149-page draft Mexican Wolf Revised Recovery Plan ("2012 draft recovery plan").

34. The stated goal in the 2012 draft recovery plan was to recover the Mexican wolf so that protections afforded by the ESA are no longer necessary. The interim goal of the 2012 draft recovery plan was to downlist the Mexican wolf to threatened status.

35. The objectives of the 2012 draft recovery plan were to ensure: (a) Mexican wolf populations are sufficiently large and distributed such that the subspecies no longer requires listing under the ESA; and (b) all the threats to the Mexican wolf are reduced or eliminated such that Mexican wolf populations are stable or increasing and Mexican wolves are unlikely to become threatened again in the foreseeable future.

36. The criteria for downlisting Mexican wolves from endangered to threatened in the 2012 draft recovery plan was: (a) the establishment of three separate populations of Mexican wolves, each with a census population of at least 100 individuals maintained in the wild for two successive generations (eight years); (b) a stable or increasing population trend over eight years (as

measured by a statistically reliable monitoring effort); and (c) an estimated rate of human-caused losses during the eight year period (as measured by a statistically reliable monitoring effort) that is less than 17%.

37. The criteria for delisting Mexican wolves in the 2012 draft recovery plan included five criteria: (1) an adequate population size that consists of a metapopulation of Mexican wolves with a minimum of three primary core populations in the wild, each with a census population size of at least 250 individuals, and a total metapopulation size of at least 750 individuals; (2) adequate population connectivity that includes immigration into each of the primary core populations via natural dispersal at a rate not less than 0.5 genetically effective migrants per generation; (3) a stable population trend; (4) sufficient post-delisting monitoring (including approval of a post-delisting monitoring plan); and (5) assurances that adequate post-delisting regulatory protections are in place.

38. The 2012 draft recovery plan's finding that – at a minimum – an adequate population needed for delisting requires a minimum of three primary core populations in the wild, each with a census population size of at least 250 individuals, and a total metapopulation of 750 individuals, was based in the best available science. The 2012 draft recovery plan's habitat analysis anticipated that the three core populations will be located in the United States (not Mexico). Using a sophisticated landscape analysis, the

scientific subgroup recommend these three Mexican wolf populations include: (1) the current population in the Blue Range Recovery Area; (2) a second population near the north rim of the Grand Canyon in Arizona (north of Interstate 40); and (3) a third population in north-central New Mexico's and southern Colorado's San Juan and Sangre de Cristo Mountains.

39. The 2012 draft recovery plan incorporated the best available science on the goals, objections, criteria, and actions needed to recover Mexican wolves.

The states' opposition to the 2012 draft recovery plan

40. The 2012 draft recovery plan was marked "for team use only, not for distribution" by the recovery team but a copy of the 2012 draft recovery plan (plus supplementary materials) was leaked to the public (and politicians) in 2013.

41. The states of Arizona, New Mexico, Utah, and Colorado expressed their disapproval of the recovery team's 2012 draft recovery plan. The Service responded to this disapproval by suspending all further work of the recovery team, including the science subgroup.

42. In 2014, litigation was initiated challenging the Service's alleged failure to finish the recovery planning process. This litigation resulted in a settlement agreement, whereby the Service agreed to prepare a final, revised recovery plan for Mexican wolves by November 30, 2017.

The Service's closed-door/invitation only workshops

43. In December 2015, the Service initiated a new Mexican wolf recovery planning process. The Service held a series of “information gathering workshops” to inform the recovery planning process through February 2017. These workshops were closed-door, invitation only meetings. Only personnel affiliated with the states of Arizona, New Mexico, Utah, and Colorado, and the Service, as well as representatives from Mexico, were allowed to participate,.

44. The stakeholders who were previously invited to serve on and participate in the 2010 recovery team were not included in the process or workshops. One exception is that members of the science subgroup were invited to attend some (not all) of the meetings and workshops and only four members of the science subgroup were able to attend some (not all) of the workshops. Science subgroup members were not invited to a number of “closed door” sessions. Science subgroup members were not invited to preview or otherwise participate in the editing or writing of a new draft or final recovery plan.

The 2017 recovery plan

45. On November 28, 2017, the Regional Director for the Service's Southwest Region signed a new, 2017 recovery plan for Mexican wolves. The

2017 recovery plan does not identify who specifically authored or contributed to the recovery plan.

46. The stated goal of the Service's 2017 recovery plan is "to conserve and protect the Mexican wolf and its habitat so that its long-term survival is secured, populations are capable of enduring threats, and it can be removed from the list of threatened and endangered species."

47. The stated objectives of the Service's 2017 recovery plan include increasing the size of two Mexican wolf populations – one in the contiguous United States and one in Mexico. Additional objectives include improving gene diversity, ensuring adequate habitat availability, maintaining the captive breeding program, education and outreach, and ensuring recovery success.

48. The criteria for downlisting Mexican wolves from endangered to threatened in the 2017 recovery plan include two options. The Mexican wolf will be considered for downlisting if: (1) the United States population is greater than or equal to 320 wolves over a four year period and gene diversity from the captive breeding program has been incorporated into the wild population through the scheduled release of wolves "surviving to breeding age"; or (2) two populations (one in the United States and one in Mexico) each average a population equal to or greater than 150 wolves over a four year period and with positive population growth and gene diversity from the

captive breeding program has been incorporated into the wild population through the scheduled release of wolves “surviving to breeding age.”

49. The criteria for delisting Mexican wolves in the 2017 recovery plan includes a minimum of two populations (one in the United States and one in Mexico). The United States population must average 320 wolves over an eight-year period and the population must exceed 320 wolves each of the three final years of the eight-year period and the averaged growth rate must be stable or increasing over this period. Gene diversity from the captive breeding program must be incorporated into the wild United States population through the scheduled release of wolves to result in 22 released wolves surviving to breeding age. “Surviving to breeding age” means a pup that lives two years to the age of breeding or an adult or sub-adult that lives for a year following its release. The Mexico population must average 200 wolves over an eight-year period and the population must exceed 200 wolves in each of the three last years of the eight-year period and the average growth rate must be stable or increasing over this period. Gene diversity from the captive breeding program must be incorporated into the wild population in Mexico through the scheduled release of wolves to result in 37 released wolves surviving to breeding age.

50. The criteria for delisting in the 2017 recovery plan requires states and tribes and Mexico to ensure regulatory mechanisms are in place to

prohibit or regulate human-caused mortality. No specific regulatory mechanisms are included in the 2017 recovery plan or required by the Service as part of the delisting criteria.

51. The Service's 2017 recovery plan establishes "actions" for each objective included in the recovery plan. These actions include surveying and monitoring Mexican wolves to determine population status in the U.S., Mexico, and various Tribal lands; conduct Mexican wolf releases to increase population size in Mexico; reduce human-caused mortality of Mexican wolves in the U.S. and Mexico; reduce Mexican wolf-livestock conflicts in the U.S. and Mexico; develop and implement annual plans for Mexican wolf releases, cross-fostering, and translocations in the U.S. and Mexico; monitor and manage Mexican wolf genetic health; monitor and manage Mexican wolf health; maintain habitat for Mexican wolves in the U.S.; maintain and protect habitat for Mexican wolves in Mexico; maintain and enhance connectivity within and between Mexican wolf populations; maintain or improve the status of native prey populations of Mexican wolves; manage the Mexican wolf captive breeding population; conduct education and outreach on Mexican wolf conservation in the U.S. and Mexico; manage the Mexican Wolf Recovery Program in the U.S. and Mexico; coordinate bi-national Mexican wolf recovery efforts; and develop adequate regulations and management and monitoring plans to maintain viable Mexican wolf populations after delisting.

52. The Service estimates that recovery of Mexican wolves – as defined by the recovery plan’s criteria for delisting – will occur in 25-35 years. The Service estimates that recovery will cost approximately \$178 million.

**FIRST CAUSE OF ACTION
(Violation of ESA and APA – no reasonable explanation for departure
from 2012 draft recovery plan)**

53. Guardians hereby incorporates all preceding paragraphs.

54. Under the APA, the Service must provide a valid, reasonable, and rational explanation for why the findings and criteria included in 2017 recovery plan differs significantly from the 2012 draft recovery plan for Mexican wolves.

55. Under the APA, the Service is entitled to makes changes to the Mexican wolf recovery plan but must provide a reasonable explanation for doing so. The Service must also provide a reasoned explanation for disregarding facts, science, and circumstances that underlay or were engendered by the 2012 draft recovery plan.

56. The draft 2012 recovery plan included specific criteria – based on the best available science – regarding population size (including the number of subpopulations needed and overall metapopulation size), population trend, population connectivity (including releases from captive to wild population), amelioration of human-caused losses, post delisting monitoring, and regulatory mechanisms. The draft 2012 recovery plan also included scientific findings and data supporting its recovery criteria, including a habitat

analysis. The 2017 recovery plan for Mexican wolves either changes or abandons this recovery criteria without any explanation as to why it chose to do so and without providing any supporting data or science. The 2017 recovery plan for Mexican wolves fails to explain why the science relied on in the 2012 draft recovery plan is invalid, outdated, or what new science displaces it.

57. The Service's failure to provide a reasoned explanation or rationale for its departure from the criteria and underlying science in 2012 draft recovery plan violates the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A)

**SECOND CAUSE OF ACTION
(Violation of the ESA – failure to provide site-specific management actions necessary for conservation)**

58. Guardians hereby incorporates all preceding paragraphs.

59. Pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), the Service shall, to the maximum extent practicable, incorporate into each recovery plan a description of site-specific management actions necessary to achieve the plan's goal for the conservation and survival of the species. 16 U.S.C. § 1533(f)(1)(B)(i).

60. The 2017 recovery plan for Mexican wolves does not incorporate a description of site-specific management action necessary to conserve Mexican wolves. The 2017 recovery plan's "actions" are vague, voluntary, untested,

based on faulty assumptions, difficult to monitor, and, if implemented, will not conserve Mexican wolves.

61. The Service has not alleged or demonstrated that providing site-specific management actions necessary for the conservation of Mexican wolves, as required by Section 4(f) of the ESA, 16 U.S.C. § 1533(f), would be impracticable.

62. The Service's decision and/or failure to provide site-specific management actions necessary for the conservation of Mexican wolves violates the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

**THIRD CAUSE OF ACTION
(Violation of the ESA – failure to provide objective, measurable
criteria necessary for delisting)**

63. Guardians hereby incorporates all preceding paragraphs.

64. Pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), the Service shall, to the maximum extent practicable, incorporate into each recovery plan objective, measurable criteria which, when met, would result in a determination that the species be delisted (recovered). A recovery plan's criteria for delisting must address the threats to the listed species. A recovery plan's criteria for delisting, once met, must ensure the species is "recovered" and no longer endangered "throughout all or a significant portion of its range," 16 U.S.C. §1532(6), or likely to become endangered in the "foreseeable future" "throughout all or a significant portion of its range" (i.e., threatened), 16 U.S.C. §1532 (20).

65. The Service's criteria in the 2017 recovery plan (for both downlisting and delisting) is not objective and is not adequately measurable (using the Service's proposed methods).

66. The Service's criteria in the 2017 recovery plan (for both downlisting and delisting), even if met, would not result in a determination that Mexican wolves should be downlisted or qualify for delisting due to recovery.

67. The Service's criteria in the 2017 recovery plan does not address all the threats to Mexican wolves. The 2017 recovery plan does not include criteria related to connectivity. The 2017 recovery plan does not include criteria related to conflicts with livestock operations. The 2017 recovery plan does not include criteria related to high-levels of human-caused mortality rates. The Service's criteria in the 2017 recovery plan does not include any specific regulatory mechanisms to limit human-caused mortality. The 2017 recovery plan does not include criteria related to protecting and restoring habitat for Mexican wolves. The Service's criteria in the 2017 recovery plan arbitrarily relies on speculative conservation measures and actions in Mexico.

68. The Service's criteria in the 2017 recovery plan does not address and properly define "recovery." The Service's criteria in the 2017 recovery plan does not address whether, if met, the Mexican wolf is still endangered throughout "all or a significant portion of its range" or whether the Mexican wolf is likely to become endangered in the "foreseeable future" "throughout all or a significant portion of its range."

69. The Service has not alleged or demonstrated that providing objective and measurable criteria for delisting in the final recovery plan, as required by Section 4(f) of the ESA, 16 U.S.C. § 1533(f), would be impracticable.

70. The Service's decision and/or failure to provide objective and measurable criteria for delisting (recovery) in the final recovery plan for Mexican wolves violates the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

**FOURTH CAUSE OF ACTION
(Violation of ESA – failure to utilize the best available science)**

71. Guardians hereby incorporates all preceding paragraphs.

72. Pursuant to the ESA, 16 U.S.C. § 1533(b)(1)(A), the ESA's implementing regulations, 40 C.F.R. § 424.11, and the Service's recovery planning guidance, all delisting decisions and recovery determinations (including the criteria, actions, analyses, methods, data and assumptions that underlie those decisions and determinations) must be based solely on the best scientific and commercial data available ("best available science").

73. The Service's 2017 recovery plan fails to utilize and incorporate the best available science on the conservation needs of Mexican wolves. The Service's 2017 recovery plan does not incorporate the recommendations from the Service's recovery team or the science subgroup.

74. The Service's 2017 recovery plan, including but not limited to, the plan's proposed site-specific management actions, downlisting and delisting criteria, threats assessment, and methods used to evaluate risk, conduct a population viability analysis ("PVA"), evaluate and measure recovery, and ensure compliance with the recovery plan, conflict with the best available science.

75. The Service's 2017 recovery plan for Mexican wolves fails to utilize the best available science by failing to meeting minimum viable population objectives and relying on a flawed a biological report (June, 2017), a flawed PVA, a flawed habitat suitability analysis ("HSA") and habitat model, a flawed definition of historic range, and a flawed paper (Hefflefinger et al., (2017)) while ignoring or discounting other science-based, peer-reviewed studies.

76. The Service's 2017 recovery plan for Mexican wolves fails to utilize the best available science by failing to address and analyze questions of probability and certainty and by relying on flawed assumptions, population abundance, geographic distribution, and genetic criteria, including a flawed definition of "surviving to a breeding age" that requires no evidence of breeding in the wild and flawed data and science on the number of "effective releases" needed to ensure adequate genetic representation in wild populations.

77. The Service’s 2017 recovery plan for Mexican wolves fails to utilize the best available science to assess the threats to Mexican wolves from high levels of human-caused mortality, demographic and environmental stochasticity from small population size, the loss of genetic diversity, the ongoing and future impacts of climate change, and the construction of a border wall. The Service’s 2017 recovery plan fails to utilize the best available science on the adequacy of state, tribal, and Mexican government action, and by failing to address, respond to, and incorporate the scientific concerns raised by many of the peer reviewers and leading experts on Mexican wolves and Mexican wolf conservation, including the recommendation of the official Mexican Wolf Recovery Team and Science and Planning Subgroup.

78. The Service’s decision and/or failure to utilize the best available science in the 2017 recovery plan for Mexican wolves violates the ESA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

REQUEST FOR RELIEF

Guardians respectfully request this Court:

A. Declare the Service has violated and continues to violate the law as alleged above;

B. Remand this matter back to the Service with instruction to comply with the ESA and APA, as alleged herein;

C. Issue other relief that Guardians may subsequently request;

D. Award Guardians their reasonable attorneys' fees, costs and expenses of litigation;

E. Issue any other relief this Court deems necessary, just, or proper.

Respectfully submitted this 30th day of January, 2018.

/s/ Matthew K. Bishop

Matthew K. Bishop

application for pro hac vice pending

/s/ John R. Mellgren

John R. Mellgren

application for pro hac vice pending

Counsel for Plaintiffs