



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

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JUN 21 2007

### Memorandum

To: Regional Director, Region 6

From: Assistant Regional Director, Fisheries – Ecological Services, Region 6  
*Mike Stempel*

Subject: Region 6 Decisions Influenced by Julie MacDonald

In response to your request for a review of all decisions that may have been affected by former Deputy Assistant Secretary Julie MacDonald, I have consulted with our field and regional staff. The following list includes actions where either Ms. MacDonald was involved but did not influence the final outcome, or had no involvement of which we are aware.

### SOME INVOLVEMENT

#### Gunnison Prairie-Dog; 90-day Finding, Not Substantial (February 2006)

**FIELD OFFICE INPUT** - The South Dakota Field Office drafted a 90-day finding on this petition that concluded that the information presented by the petitioners was substantial and warranted further review of the species' status. Our "substantial" finding was based primarily upon 1) the documented threat to prairie dogs from plague; and 2) results of site-specific monitoring that indicated that all intensively monitored populations had declined. Although we determined that the petition presented substantial information, we were optimistic that Statewide surveys underway would provide better information on the range-wide threat than the localized declines previously documented. We were cooperating with the States to get the results before the due date for our 12-month finding. The finding was surnamed as "substantial" by the Field Office, Regional Office, and Washington Office. We received an e-mail from Chris Nolin instructing us to revise the finding to negative "per Julie's instructions."

**REGIONAL OFFICE INPUT** - We were informed that the decision to change the finding occurred within the Fish and Wildlife Service (Ren Lohofener and Dale Hall) because they decided that the petition finding should not be substantial.

**RECOMMENDED CORRECTIVE ACTION** - As a result of litigation, we have proposed to submit a revised 90-day finding to the *Federal Register* in February 2008.

### **Salt Creek Tiger Beetle; Proposed Critical Habitat Designation (under development)**

**FIELD OFFICE INPUT** - The Nebraska Field Office (NEFO) feels that Ms. MacDonald's demands influenced the feedback they received from the Regional Office and Washington Office on Salt Creek tiger beetle proposed critical habitat designation. Although they did not speak directly to, nor were influenced directly by, Ms. MacDonald during the course of many conference calls with Regional Office and Washington Office personnel, the field office was told that "the amount of acreage the NEFO was proposing would not get past Julie MacDonald..."

The NEFO originally identified primary constituent elements and critical habitat for the Salt Creek tiger beetle that resulted in their recommendation to designate 7,300 acres of critical habitat. Subsequent to this analysis, the NEFO was told to designate only in occupied areas and exclude corridor habitats for dispersal. The NEFO was directed to reduce the final amount of acres to no more than 1,500 acres within four areas. The NEFO was directed to outline these four areas based on where the "Salt Creek tiger beetle was walking around" and add a 0.25-mile buffer.

**REGIONAL OFFICE INPUT** - The original proposal submitted to the Regional Office by the NEFO contained 100 times the amount of habitat known to be occupied by the species. It also included several habitat types that were unable to support Salt Creek tiger beetles and that could not be shown to contain the physical and biological features essential to the conservation of the species. Based upon our interpretation of current policy regarding critical habitat designation, we instructed the NEFO to focus on areas either known to be occupied or unoccupied areas that were essential to the conservation.

**RECOMMENDED CORRECTIVE ACTION** - None required at this time. The draft proposed rule includes the limited occupied and unoccupied areas essential to the conservation of the species, and the public will have an opportunity to comment on the proposal this fall.

### **Arctic Grayling; Distinct Population Segment Determination**

**FIELD OFFICE INPUT** - Prior to 1994 the Service determined the fluvial Arctic grayling constituted a distinct population segment (DPS) that qualified as a candidate for listing. In 2004, drought and irrigation resulted in extremely low flows in the Upper Big Hole River, site of the last remnant of the fluvial grayling in the lower 48 States. Service staff briefed Ms. MacDonald on the grayling situation at which time she clearly disagreed that the DPS was valid. The Service settled litigation that required a final listing decision for the fluvial Arctic grayling by April 2007. Based on direction from Service decision-makers, a finding was issued that the fluvial grayling did not constitute a DPS and, therefore, was not a listable entity in 2007.

**REGIONAL OFFICE INPUT** - The decision that the Arctic grayling did not constitute a listable entity was made in the Regional Office. The final decision is consistent with the latitude in the DPS policy.

**RECOMMENDED CORRECTIVE ACTION** - None.

### **Greater Sage-grouse; 12-month Finding, Not Warranted (January 2005)**

**FIELD OFFICE INPUT** - In January 2005, the Service determined that listing the greater sage-grouse was not warranted based on input provided by an independent panel of experts and a structured decision-making process. Ms. MacDonald was very involved in discussions surrounding the decision-making process though she was not part of the panel of agency administrators that developed a "not warranted" recommendation for the Director. For example, Ms. MacDonald significantly edited and critiqued a "synthesis document" of scientific information that was to provide a basis for discussion among the experts who participated in the structured decision-making panel. In it, Ms. MacDonald asserts that greater sage-grouse are not sagebrush obligates. However, the Service provided the panel with both her document and the earlier, unedited version. In spite of Ms. MacDonald's attempts to influence the outcome of this finding, Service managers ultimately concluded that the greater sage-grouse does not warrant listing as the result of a scientifically sound structured decision making process that is well documented in the record.

**REGIONAL OFFICE INPUT** - Concur with Field Office characterization.

**RECOMMENDED CORRECTIVE ACTION** - None.

### **Black-Tailed Prairie Dog; Candidate Removal and Subsequent Forest Service Control Proposals (August 2004)**

**FIELD OFFICE INPUT** - Black-Tailed Prairie Dog candidate removal occurred in August 2004 despite Washington Office reservations. The South Dakota Field Office was supportive of earlier removal. Immediately thereafter the Forest Service moved via a fast track Forest Plan Amendment to control prairie dogs on Forest Service lands supporting black-footed ferrets adjacent to private lands and used an unusual "emergency" partnership with the Animal and Plant Health Inspection Service prior to Amendment completion that required fast-tracking Service support. A year later, in the fall of 2005, Ms. MacDonald was scheduled to attend a Forest Service meeting with West River ranchers from South Dakota and Nebraska where Mr. Tenney of the Department of Agriculture suggested that additional prairie dog control could occur in the interior portions of the Conata Basin ferret area. Another Forest Plan Amendment is now proposed to address this action.

**REGIONAL OFFICE INPUT** - Despite initial reservations, we were persuaded by the analysis conducted by the Field Office and concurred with the removal of the species from the candidate list. Additionally, the decision to amend its Forest Plan for the Conata Basin is at the discretion of the Forest Service.

**RECOMMENDED CORRECTIVE ACTION** - None for the black-tailed prairie dog removal from the candidate list. Defer to the Forest Service on their Forest Plan revision.

### **Gunnison Sage-grouse; 12-month Finding, Not Warranted (April 2006)**

**FIELD OFFICE INPUT** - The Field Office prepared an endangered listing package and started on a critical habitat package that had been briefed with the Regional Office and Washington Office and had their initial support. Internal discussions with the Regional Office and Washington Office in the spring and summer of 2005 led us to change the proposed listing status to threatened. After an unpublished population trend analysis (Garton 2005) concluded that there have been no declines in the past 50 years and none in the past decade came out in November 2005, the Field Office was told by the Washington Office and Regional Office to prepare a withdrawal package, even though the Field Office still believed that listing as threatened was warranted. In several conversations with the Washington Office and Regional Office, numerous comments were made that listing the Gunnison sage-grouse would not get through Ms. MacDonald (though no specifics were stated as to what it would take to get it through her). Ms. MacDonald's interference in this issue is documented on the web at [http://www.sagebrushsea.org/sp\\_gunn\\_grouse\\_interference.htm](http://www.sagebrushsea.org/sp_gunn_grouse_interference.htm).

**REGIONAL OFFICE INPUT** - The increased level of scrutiny on Service listing packages by Ms. MacDonald may have influenced the final decision by the Regional Office. However, our determination also was significantly influenced by the inability of the Field Office to draft a cogent argument for listing based on known threats to the species.

**RECOMMENDED CORRECTIVE ACTION** - We have been sued on this determination. A scheduling conference will take place July 11, 2007, at which time the parties will propose a briefing schedule. If we want to settle the case and redo the 12-month finding we should propose a settlement to Plaintiffs at this time.

### **NO INVOLVEMENT**

### **Topeka Shiner; Final Critical Habitat Designation (July 2004)**

The Topeka shiner has been cited as an example of a decision influenced by Ms. MacDonald. However, we are unaware that she directly influenced the final designation of critical habitat for this fish. The most controversial aspect of this rule is that the Office of Management and Budget urged us to delete references to the benefits of designating critical habitat in our economic analysis.

### **Boreal Toad; Withdrawal from Candidate List**

The boreal toad candidate withdrawal has been cited as an example of a decision influenced by Ms. MacDonald. However, our withdrawal was based on new genetic information indicating that the entity is not a discrete population segment of a species with a wide range in the western United States.

**Wolverine; 90-day Not Substantial Finding**

The wolverine “not substantial” finding has been cited as an example of a decision influenced by Ms. MacDonald. However, the ultimate decision was consistent with what the Field Office originally recommended. We determined that petition to list the species was not substantial given the lack of information on population status and threats. Due to a court order, we are conducting a 12-month finding this fall.

**Mountain Plover; Withdrawal from Candidate List**

~~The mountain plover candidate withdrawal has been cited as an example of a decision influenced~~  
by Ms. MacDonald. However, the ultimate decision was made by the Regional Office. We have no record of Ms. MacDonald’s involvement in this decision.