

# **Tribal Perspectives on Mexican Wolf Recovery**

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**Mexican Wolf Tribal Working-group  
Final – May 5, 2017**

# Tribal Perspectives on Mexican Wolf Recovery

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### **Authors' Note**

The following section was developed by the Tribal Working-group of the Mexican Wolf Recovery Team. It is important to note that while most, if not all, of the Indian sovereigns that reside in the southwest have an interest and may directly or indirectly be affected by ongoing efforts to protect, conserve, and recover a wide variety of federally listed threatened and endangered species, each Indian sovereign has the prerogative to choose their level of partnership and participation in those efforts, and that nothing in this recovery creates duties, obligations, or commitments enforceable upon any of those Indian sovereigns.

Sections of this plan have been adapted from or directly incorporated from the recovery plans for the Rio Grande Silvery Minnow and Southwestern Willow Flycatcher.

### **Acknowledgment**

We would like to thank each of the following Tribes, Pueblos, and agencies for their participation in writing this paper; Acoma Pueblo, Bureau of Indian Affairs, Hopi Tribe, Jicarilla Apache Nation, Kaibab Band of Paiute Indians, Laguna Pueblo, Navajo Nation, San Carlos Apache Tribe, Sandia Pueblo, Southern Ute Tribe, Taos Pueblo, White Mountain Apache Tribe and Zuni Pueblo. This paper is not a legal document and statements made within this paper may not represent each Tribe. However, these are broad perspectives expressed by members of the Tribal Working-group of the Mexican Wolf Recovery Team.

### **EXECUTIVE SUMMARY**

This document presents various perspectives that a Tribe or Tribes may have regarding the Mexican Wolf Recovery Program and Mexican wolves in general. Perspectives include cultural, traditional, economical, financial, legal, and social considerations that are important for the U.S. Fish and Wildlife Service and other agencies to understand when implementing Mexican wolf recovery on or near Tribal lands. Being sovereign nations, Tribes have authority over their lands and thus have a unique relationship with federal agencies. Federal agencies in turn have a unique trust responsibility when interacting with tribes and conducting activities that may impact tribes or tribal lands. The primary purpose of this paper is to educate those agencies and other individuals and assist them in working with Tribes throughout the recovery process. The existing policies described herein lay the foundation for the legal framework for trust responsibilities to Tribes and the recommendations at the end of the paper identify areas for improved collaboration on recovery processes.

### **INTRODUCTION**

It is not possible to speak with one voice for all Indian Tribes in the Southwest that may have a stake in the conservation of the Mexican wolf and its recovery. It is likely that, beyond disagreeing with the notion of acceptance of and cooperation with the Endangered Species Act (ESA), some Tribes may be hesitant to participate in this dialogue at any level. Therefore, this paper does not intend to speak for every Tribe in the southwest nor does this constitute in any way a government to government consultation. Instead, the ideas presented here are a culmination of varying views, discussion, and the perspective that there is room for constructive dialogue with the Fish and Wildlife Service (FWS) on ways to improve the Federal/Tribal relationship and to conduct a meaningful discussion as it relates to

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endangered species conservation and recovery. Many issues and problems surrounding wolf conservation will likely continue over the course of its recovery. It is important that Tribal participation at any level be carried out with extreme sensitivity to the views of other stakeholders, as well as Tribal sovereigns that choose not to participate. It is vital that the Federal Government, especially the FWS, establish effective relationships and dialogues with all Tribes that are based on mutual respect for one another; recognition of the shared common interests in conserving natural resources; and moving beyond an adversarial relationship to one that reflects a positive problem-solving approach.

## **POLITICAL LANDSCAPE**

### ***TRIBAL SOVEREIGNTY AND TRUST RESPONSIBILITY***

To gain an overall perspective and appreciation of how Tribes view the ESA as it relates to Tribal interests, it is important to present some discussion on the basis of and the general principles embraced by all Tribal governments, namely Tribal Sovereignty and Federal Trust Responsibility.

#### **Tribal Sovereignty**

The inherent sovereignty of Indian Tribes and Nations has long been recognized by the United States Constitution, the Federal Government, and Federal Courts. See, *Cherokee Nation v. Georgia* (1831); *United States v. Winans* (1905) (Indian nations reserve all governmental powers and individual rights not specifically abrogated by Congress, or granted away by the Tribes in their treaties or agreements with the United States). As a result of a constitutionally established government to government relationship, the Federal Government has a responsibility to protect Indian trust resources (Indian trust resources generally include land, water, air, minerals, and wildlife, reserved or otherwise owned or held for the benefit of Indian Tribes and nations). That legal principle has been reiterated extensively in recent years within the context of natural resource management, *Parravano v. Babbitt* (1995) (Federal Indian trust responsibility extends not just to the Interior Department, but to the entire Federal Government as a whole) and *Covelo Indian Community v. FERC* (1990). As sovereign nations, Tribes and Tribal lands are not subject to the same public domain laws that govern other lands within the United States, either public or private. It has been legally established that inherent in the establishment of a reservation is the right of Indians to hunt and fish on reservation lands free from state regulations, lawfully exercise substantial control over the lands and resources of its reservation, including its wildlife, and to regulate the use of its resources by members as well as nonmembers. Cases such as the *Menominee Tribe of Indians v. United States* (1968), *Washington v. Washington State Commercial Passenger Fishing Vessel Association* (1979), *New Mexico v. Mescalero Apache Tribe* (1983), *Arapahoe Tribe v. Hodel* (1990), and *Minnesota v. Mille Lacs Band of Chippewa Indians* (1999), have affirmed this precept. Some of these rights are based on treaty rights, but many follow from the mere establishment of a reservation and the self-governance powers inherent therein. Congress may limit the powers of Indian self-governance, including the denial of treaty established hunting or fishing rights, as it did when it prohibited Indians from hunting eagles under the Eagle Protection Act. But to do so, the Congressional act abrogating those powers must be clear and explicit. See *Lone Wolf v. Hitchcock* (1903). Tribes retain their rights and powers, comprehensive of all Tribal properties and interests; *United States v. Winans* (1905), *Winters v. United States* (1908). In general, however, Congress has not abrogated Tribal interests and utilization of Indian trust resources and the matter has been, for the most part, left to Tribal regulation.

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### **Trust Responsibility**

It is well established that Indian Tribes in the United States are sovereign entities, and that the U.S. is legally required to protect Indian trust resources for the benefit of each respective Indian Tribe and Nation. Those legal responsibilities are intended to ensure that Tribal lands remain capable and sufficient of serving as viable homelands. In managing trust lands or assisting Tribes in doing so, the government must act for the exclusive benefit of the Tribes, and ensure that Indian lands and resources are protected and maintained for their exclusive use.

Tribal lands are not public lands and are not set aside or designated for the purpose of conserving endangered species, critical habitat, or for the primary purpose of conserving flora or fauna, except as it may directly benefit the Tribes. As a practical matter, Tribal lands comprise some of the most remote, wild and scenic places on the continent and Tribal lands often support a far greater biological diversity than surrounding private or public lands. Nevertheless, it is important to point out that Tribal lands (reservations) are first and foremost the homelands to Indian people, established to provide for their respective traditional, spiritual, cultural, social, and economic benefit. As trustee, the United States must ensure that the purposes for which reservations were created are not undermined and the fiduciary obligations that arise from the trust responsibility must be met by all federal agencies and in a manner that does not interfere with Tribal rights.

### ***Existing Policy Directions***

The interaction of Tribal sovereignty and trust responsibility is complex, as Tribes and the federal government struggle to protect Indian resources while at the same time respecting Tribes' power to manage their own affairs. As a result, several administrative directives issued by the Executive Branch bear directly on the relationship of the FWS and other Interior Department agencies to Tribes. The following are examples of these directives and orders;

#### **Secretarial Order 3175, November 8, 1993**

##### **Departmental Responsibilities for Indian Trust Resources**

This Order clarifies the responsibility of the agencies under the Department of the Interior to ensure that trust resources of federally recognized Indian tribes are identified, conserved, and protected.

#### **Native American Policy of the U. S. Fish and Wildlife Service January 20, 2016**

This policy provides the framework within which the FWS cooperates and fulfills its Trust Responsibility with Native American governments to conserve fish and wildlife resources on Indian lands.

#### **Joint Secretarial Order 3206, June 5, 1997**

##### **American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act**

This order recognizes the importance of cooperation between Federal and Tribal governments. It also recognizes the jurisdictional tensions inherent in Indian resources management, especially concerning endangered species. In order to achieve a cooperative balance, Secretarial Order 3206 specifically states that it shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities.... under existing law", while making clear that it "does not preempt or modify the (FWS's) statutory authorities". It reaffirms the trust and treaty responsibilities of the U.S. government and instructs Federal agencies to "be sensitive to Indian culture, religion, and spirituality," the basis of which often relies on the use of these natural resources. It also reminds agencies under the

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Department of Interior and Commerce that Indian lands are not subject to the same controls as Federal lands; instructs them to recognize that Tribes are the appropriate governmental entities to manage their lands and resources; and instruct them to support Tribal measures that preclude the need for conservation restrictions. At the same time, the Order strives to harmonize Tribal concerns and interests, regarding the ESA and Federal mandates to enforce it; and it allows Tribes to develop their own conservation plans for threatened and endangered species that are more amenable to Tribes and Tribal needs.

The Order further states that the departments shall work directly with Indian Tribes on a government to government basis to promote healthy ecosystems.

### **Executive Order 13175, November 6, 2000**

#### **Consultation and Coordination with Indian Tribal Governments**

This Order establishes regular and meaningful consultation and collaboration with tribal officials in development of Federal policies that have tribal implications, to strengthen the United States government to government relationships with Indian Tribes

### **Memorandum of November 5, 2009**

#### **Tribal Consultation**

Carries forth the commitment to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that were prescribed to in Executive Order 13175 of November 6, 2000

### **Secretarial Order No. 3317 Amendment 1, December 31, 2012**

This Order updates, expands, and clarifies the Department of Interior's policy on consultation with American Indian and Alaska Native tribes and acknowledges the provisions for conducting consultation in compliance with Executive Order (E.O) 13175

### ***Endangered Species Act and Tribes***

Although Congress does have authority to restrict some Tribal wildlife practices, it is unclear whether the FWS and the U.S. National Marine Fisheries Service (the two agencies responsible for enforcing the Act) have authority to enforce the ESA on Tribal land; an issue that has never been decided in the courts. At the heart of the matter is the question of what Congress' intent was when it established the ESA. The ESA does not specifically mention Tribes, and other court cases have upheld the concept that, unless Tribal treaty and other rights are specifically abrogated by an act of Congress or a particular piece of legislation, they remain in force. In the one court case that came closest to testing this question, *United States v. Dion*, a Tribal member was convicted of taking a bald eagle for commercial use. The statute under which the case was prosecuted, however, was not the ESA, but the Bald and Golden Eagle Protection Act. The ESA question was left unanswered; however, the success of ESA actions such as the proposed Mexican wolf recovery relies heavily on cooperation of southwestern Tribes and their lands. Given this ambiguity, many Tribal leaders and natural resource managers would prefer resolving these conflicts through cooperative agreements with Federal and in some cases, State agencies, rather than engage in costly and lengthy litigation.

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The previous discussion is not intended to imply that Indian Tribes are not willing to work with the ESA, consider ESA a burden, or are not interested in managing or conserving imperiled species. In fact, some Tribes have used the ESA to benefit their interests, especially in regards to the protection of dwindling fish stocks in the Pacific Northwest and the Great Lakes region. For example, the Pyramid Lake Paiute Tribe in Nevada and other entities used the ESA to achieve listing of the Cui-ui sucker in Pyramid Lake and to protect water resources and reduce diversions from the Truckee River. In the Pacific Northwest, off-reservation treaty rights are often protected by mandatory conservation measures, and strictly reinforced under provisions of the ESA.

Despite the legal maneuvering that can and often does accompany endangered species conservation, and the applicability of the Act, it generally contributes little to directly benefit threatened or endangered species. As a result, greater efforts and more positive dialogue must be initiated and continue between Tribal entities and the FWS. This dialogue, which is mutually beneficial to all interests, in recent years has evolved into policies that set aside diverse interpretations of the ESA and other laws and instead have focused on cooperative partnerships that promote species conservation, while acknowledging the respective roles of the FWS and Tribal governments in the conservation of endangered species.

### **Tribal Concerns with ESA**

Indian Tribes generally work closely with the Federal government to meet many natural resource management needs; consequently triggering Federal regulations, often including ESA Section 7 consultations. Nearly every type of federally funded or federally approved activity requires consultation measures of one sort or another. While the intent of these regulations is to protect federally listed threatened and endangered species, the regulatory processes can occasionally create a bureaucratic quagmire that can impede projects and generate conflict with Tribal economic development, which frequently lag behind similar efforts in other non-Tribal communities.

For many years Tribes have expressed concern and distrust of the intent of the ESA and the manner in which it is often applied, especially on Tribal lands. Many Tribes feel that they are far better land stewards than the vast majority of private landowners and some Federal land management agencies, and consequently support a higher proportion of endangered species on their lands. In addition, most Tribal lands are far less developed than adjacent private or public lands. Tribes believe that because of this, Indian lands effectively serve as safe havens for a variety of threatened and endangered species, a result of displacement due to more aggressive development efforts on surrounding lands. Tribes feel they are unfairly penalized for exercising strict control over the large scale development of their lands and protecting the natural integrity of their homelands. Many Tribes also view the use of certain federal laws, such as ESA, as a means to dictate how they can, or should utilize their lands to accomplish resource management priorities of other non-Tribal resource management agencies and feel obligated to set aside priorities of their own. Unfortunately, Tribes frequently do not have a choice, particularly when they rely heavily on federal funding to carry out resource management activities, hence the federal nexus, which requires the protection and conservation of threatened and endangered species. Tribes generally consider this as a direct disregard of and infringement on Tribal sovereignty.

Within the context of the ESA the development of recovery plans for listed species typically gave minimal opportunity to Tribes to directly engage in the recovery plan process. Tribes are generally viewed as “stakeholders” or as “interested parties”, consequently their participation and input carried little, if any weight. Not until the listing of the southwestern willow flycatcher and the subsequent

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development of a recovery plan were Tribes actually provided a more direct opportunity to participate in the process. The establishment of a Tribal Working-group under the Southwestern Willow Flycatcher Recovery Team provided Tribes an opportunity to develop a Tribal Perspective Paper, which became part of the recovery plan. The Tribal perspective identified issues ... “relative to recovery of the flycatcher on Tribal lands and promoted a more thorough understanding of these issues and potential resolutions, ... engaging the FWS in a collaborative approach to recovery”.

Development of the Rio Grande Silvery Minnow Recovery Plan also engaged the middle Rio Grande Pueblos in the recovery plan process by also establishing a Tribal Sub-team, which functioned as part of the Rio Grande Silvery Minnow Recovery Team. The Tribal Sub-team had the opportunity to develop a Tribal Perspective that was incorporated in the main body of the recovery plan. This level of involvement allowed the Pueblos to have direct participation in the process and voice their issues and concerns relative to the recovery of the silvery minnow and finally have opportunity to discuss the broad level of their participation in recovery efforts. Regardless of the extent of Tribal involvement in any recovery process, Tribes still are reluctant to commit totally to the conservation of endangered species on Tribal lands for various reasons, including: concerns over the potential designation of critical habitat, which often follows the listing of a species; concerns over requirements to prioritize protection and conservation of listed species to the detriment of other culturally important resources; concerns over restrictions that could be placed on the use of Tribal lands for activities other than the conservation of endangered species; concerns over the loss of management and control of land use, especially when Tribal lands provide and support the livelihood of its members, such as through aggressive timber harvesting, grazing and recreational uses; concerns over the use of Tribal resources, including Tribal manpower and funds to protect, conserve and manage listed species without commitments or adequate technical support, especially regarding reliable federal funding.

## **Federal/Tribal Coordination on Endangered Species**

There are many opinions regarding the Federal/Tribal relationship which has led to a contentious history over Federal/Tribal jurisdictions and their respective roles for the conservation of endangered species. Since the mid-1990's the overall relationship has developed into a more cooperative partnership and a willingness to work together. Over the years many Tribes have dramatically improved their management capacity for natural resources and the FWS and other Federal agencies must recognize and acknowledge this expertise. The benefit Tribes have derived from this cooperative relationship is the opportunity to directly participate at a broader level in various work groups and collaborative efforts administered by various Federal agencies. To continue improving and strengthening the commitment to working with Tribes, many Federal agencies have established Tribal Liaison positions, who are responsible for maintaining effective two way communication with Tribes and their respective agencies. Many recently issued Federal directives have been intended to establish policies that will allow for more direct communication and input from Tribal governments on a wide variety of issues, including those related to natural resource management and endangered species conservation. This increased level of Tribal participation in Federal actions that may affect Tribal lands continues to be refined and the hope is to eventually arrive at a point where Tribes can proactively participate in endangered species conservation and recovery, while having the flexibility of engaging at a level that ensures Tribes the prerogative to prioritize and accomplish their own resource management goals and objectives. For example, despite the mandates for Federal agencies to communicate with Tribes, the recent FWS decision to include the Mexican wolf subspecies as part of the greater gray wolf species did not include consultation with potentially affected Tribes, nor was the proposed revision of the Nonessential Experimental Population of the Mexican Wolf.

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Secondly, it is important that Federal agencies recognize and acknowledge the sovereignty of Tribal governments to manage their resources, including threatened and endangered species, at least at a level that minimizes the direct oversight by an external authority that Tribes often consider an infringement. It is also important that Federal agencies understand and realize that because of the holistic view Tribes have of all natural resources; their sense of value of all plants and animals is a tribute to their culture and tradition. Because of this view, Tribes understand that all plants and animals, including endangered species, have value and should be managed in a manner that will wholly protect and perpetuate their continued existence.

Coordination among Federal and Tribal representatives relies upon in-depth interaction concerning species and conservation priorities of mutual concern. For example, the Pueblo of Santa Ana executed a Safe Harbors Agreement with the FWS, the first in the country. The White Mountain Apache Tribe, San Carlos Apache, Tohono O'odham, and the Pueblo of Zuni have each established Statements of Relationship (SOR) with the FWS. The White Mountain Apache Tribe, which was instrumental in developing the first SOR, was one of the first Tribes to address the Tribal/ESA issue head on, as a result of the listing of the Mexican spotted owl as a threatened species and the proposed designation of critical habitat on Tribal lands. White Mountain chose to be proactive in terms of how they addressed endangered species conservation, without directly acknowledging compliance with the Endangered Species Act on their lands; and in doing so promoted their sovereignty and capacity to manage natural resources in accordance with their management priorities. The SOR also helped to forge a mutually acceptable partnership in conserving a variety of endangered species.

### ***Meaningful Tribal Participation***

#### **Ensure Effective Communication**

Many of the issues outlined in this paper can be avoided with early, open, and honest communication. According to Secretarial Orders 3206 and 3175, Tribes must be kept involved and informed at all levels and treated as equal partners. Tribes must be involved at the earliest stages of any planning process that could potentially affect Tribal trust resources. Communication with Tribes should be frequent and any and all related information must be made available to Tribes in a timely manner in order to provide sufficient time to review, discuss, and have the opportunity to engage, if they choose, in government to government consultations. The Federal government must ensure that the timing is appropriate for Tribal participation.

All federal agencies are reminded that Indian Tribes and Tribal leaders should not and must not be viewed as part of the general public, but instead must be dealt with on a government to government basis. Agency representatives, who are required to communicate and maintain working relationships with Indian Tribes should have appropriate training and knowledge in Tribal communication protocols; and because each Tribe is unique, it is important that individuals be aware and have a basic understanding of each Tribe's culture and customs. All agencies should err on the side of consulting and communicating with Tribes prior to taking action, rather than assuming an action will not affect a Tribe.

If the FWS desires close partnerships with Tribes in the recovery of the Mexican wolf, it will be imperative that open communications be maintained at all levels. Although government to government consultations will need to be carried out with Tribal leaders, especially those that request consultations and those that could be directly affected as a result of wolf recovery efforts, maintaining effective communications with Tribal resource managers and technical staff will be especially important.

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### **Broad Representation**

Tribal lands are widely distributed throughout the southwest; and it is expected that the Mexican wolf recovery process will impact many, if not all, Tribal lands and their resources. Wolves are expected to be wide-ranging and may occupy areas outside primary recovery zones; therefore, all Tribes within the five state region, including, Arizona, Utah, Colorado, New Mexico and Texas, must be invited to participate and engage in all aspects of the process. Tribes can then exercise their prerogative to either proactively participate in recovery efforts or choose to monitor the process and engage at their discretion.

### **Formal Communication**

#### **Government to Government Consultation**

Government to government consultations generally serve as a foundation for recognizing and acknowledging the respective role of the Federal government and Indian Tribes concerning endangered species. This process, generally initiated as a result of proposed federal actions and decisions that are anticipated to potentially affect Tribal trust resources, Tribal rights and various other Tribal interests, is an important mechanism to ensure that Tribal governments are informed and have the opportunity to review and assess proposed actions and provide input.

#### **Agreements**

Agreements in the form of Memorandum of Agreements, Cooperative Agreements, or Statement of Relationships are examples of formalizing the roles and responsibilities, and establishing mutually acceptable principles to guide the FWS and Tribal Governments in dealing with threatened and endangered species on Tribal lands, and other issues of mutual concern. While the process of negotiating and developing a mutually acceptable agreement can be time consuming, it is important that federal entities understand that Tribal decisions often require considerable internal consultation with traditional and cultural leadership. Many formal agreements have been developed over the years and can serve as useful models; however, it is also important to understand that because each Tribe is a sovereign entity, each agreement that is developed will be unique; some may be simple and straight forward, others may be more complicated. Regardless of the complexity of any formal agreement that may be developed, the basic foundation that guides these formal agreements must be based on principles of Tribal sovereignty and federal trust responsibilities.

### ***Confidentiality of Tribal Information***

All Tribes have serious concerns regarding endangered species information that is gathered on Tribal lands. These concerns have impeded effective cooperative relations with other management agencies. In part because of a level of distrust and concerns over having the information used against them, many, if not most, Tribes are reluctant to share information. In addition, some information that Tribes possess has cultural or religious significance, therefore Tribes may choose to withhold the information. It is important that federal agencies understand that any information provided by Tribes must be considered confidential and the use of the information should have written Tribal approval if it will be provided in a public forum or document. The confidentiality of information is an important cornerstone of Tribal sovereignty, self-governance, and spiritual and religious power. Unfortunately, court decisions recently have undermined the Tribes' ability to maintain confidentiality of certain information collected through cooperative efforts, especially when Tribes use federal funding to collect information.

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To maintain some control over sensitive information that is shared with federal agencies, some Tribes have developed Confidentiality Agreements and Information Sharing Protocols. These agreements contain mechanisms to establish what information the Tribe considers confidential and proprietary, who can access it, and how it can be used. These agreements are especially useful when information or data have cultural or religious significance. Despite efforts to ensure confidentiality of Tribal data and information, Tribes understand the vulnerability of Tribal information when in the possession of federal agencies. The confidentiality of information can be compromised under the Freedom of Information Act; therefore Tribes must be aware that any information that is provided by them may possibly become public information.

## **RESOURCE LANDSCAPE**

### ***Natural Resources***

#### **Wolf Habitat**

Tribal lands in the southwest comprise a significant land area, amounting to over 27 million acres. A wide variety of habitats can be found on these lands, ranging from low elevation deserts to high elevation mixed conifer and sub-alpine forests, habitats that are certainly capable of supporting the Mexican wolf. Tribes that have the largest land bases, such as the Navajo Nation, San Carlos Apache, White Mountain Apache, and the Jicarilla Apache generally support a greater diversity of habitats.

Although it is not a question of whether Tribal lands could support wolves or other federally listed endangered species, the question that should be asked, is whether Tribes wish to engage in the conservation and recovery of endangered species, and to what extent and what level of involvement they are willing to accept. The assertion that Tribes are not concerned about endangered species is not accurate. Habitats that are important for species conservation may occur on Tribal lands and the possibility that listed species occupy those habitats is generally assumed by the FWS. The reluctance of Tribes to willingly provide information on habitat or the possible presence of listed species is the result of concern of the potential loss of management control of Tribal resources through the designation of critical habitat. Although it could be assumed that the majority of Tribal lands in the southwest could probably support wolves at some level, it is important to also understand from a Tribal perspective that these same lands are important for species that may have greater cultural/traditional significance.

In considering the availability of potential wolf habitat on Tribal lands it is important that federal agency resource managers acknowledge the importance of these same habitats for other beneficial land uses. Tribes must have the opportunity to assess their own lands and make management decisions for available habitat.

#### **Land Management**

An important consideration regarding Tribes' ability to manage for wolf recovery is the complicated jurisdictional framework that exists within many Indian reservations, especially those that have been compromised by non-Indian settlement or properties owned by Tribes that are not held in trust. Historical Congressional actions which opened Tribal lands to homesteading, created checker-boarded land ownership patterns divided wildlife management authorities among Tribal, federal, and state governments in adjacent parcels. Although sovereign authority empowers Tribes with strong control over wildlife management on their trust lands, the inability of Tribes to affect action on neighboring

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fee/private/public land can present significant challenges. This is especially true when the success of wildlife management actions hinges on strong jurisdictional control over vast areas of habitat (e.g., species reintroductions). Similar challenges exist in off-reservation settings, where some Tribes enjoy treaty rights tied to wildlife management, but wildlife management is strongly controlled by state government. Although Tribes' authority and ability to implement their wildlife management plans may be compromised in these scenarios, this does not mean they will resign from pursuing wildlife management and/or other interests. These challenges can lead to Tribes developing cooperative working relationships with state and federal agencies who share the same wildlife management goals.

### **Natural Prey Base**

The overall distribution of Mexican wolves will likely be dictated by the availability of prey and it follows that any new releases to enhance the success of wolf recovery in the southwest will likely hinge on the availability of a natural prey base, including mule deer, Coues white-tailed deer, elk, pronghorn, and in a few cases bighorn sheep. While several Tribes in the southwest conduct periodic big game population surveys and update data routinely, most Tribes are not able to conduct population assessments on a regular basis; and in some cases Tribal lands have never had biological inventories or surveys conducted. Consequently the status of large natural prey is largely unknown.

A common concern among most Tribes may be the potential conflict between wolf predation on big game and traditional and ceremonial hunting practices that occur on Tribal lands. Conflicts could possibly intensify especially in situations where big game numbers are severely limited. In addition, the presence of Mexican wolves and predation on big game may possibly be of concern on Tribal lands that promote big game hunting enterprises.

The fact that wolves are opportunistic in terms of their prey can present concerns for Tribes and Tribal resource managers. By and large the most traditionally valued game species by Tribes throughout the southwest is the mule deer. Deer and their parts are used for religious ceremonies and other traditional practices. It is and has been clearly noted by deer biologists throughout the southwest that overall populations have declined over the last 3 decades, a trend that has affected many Tribal lands as well. Wolves released near Tribal lands are a concern too many Tribes considering the impact those wolves may have on the already low numbers of deer.

### ***Conservation***

Tribal lands offer some of the most pristine environments in the southwest and as such, provide habitat that supports a multitude of federally listed threatened and endangered species, as well as many species of concern. Tribes have been fearful of being unjustly penalized for maintaining large areas of undeveloped land that could be designated as critical habitat. To avoid these designations, Tribes are required to prepare management plans to receive deference on their lands and justify exclusion from critical habitat. The presence of endangered species on Tribal lands is perceived by some Tribes as a liability, a view commonly held by private land owners as well.

Tribes reject the notion that Tribal land and resource management priorities should yield to federal conservation policies that dictate and often revolve around endangered species protection and conservation, instead of assisting Tribes in fulfilling and promoting Tribal management goals, objectives, and priorities. Generally at issue is the original intended purpose of establishing Indian reservations, which was to support and protect remaining Tribal cultural and traditional values and practices; while sustaining economic livelihood for their members, as well as their unique sovereign governmental

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entities. Indian Reservations, in most cases are basically a remnant of the traditional lands relinquished to the United States and now serve as their only homeland. Short of exempting Tribes and Tribal lands from the ESA, incentives and alternatives need to be made available to Tribes that will allow them to continue setting their own natural resources management priorities in accordance with their own goals and objectives. Any incentive or alternative must carry with it maximum flexibility in applying them to Tribal lands. The Tribal community encourages the FWS to comply with Federal mandates to engage in adaptive management during the development of conservation incentives, especially when consulting with federally recognized Tribes. Because each Tribal entity is sovereign, Tribal goals and objectives vary, and each Tribe's level of engagement in wolf recovery will be different, and it is likely that incentives that may be appropriate for one Tribe may not be appropriate for another.

One of the primary concerns for Tribes is sustainable and realistic compensation for the necessary infrastructure, mitigation, monitoring, maintenance, and for other economic losses (including the take or destruction of property, pets, livestock, wildlife, and/or trophy game animals). Several other incentives that may warrant consideration include: hands-on proactive involvement and participation by Tribal biologists and technicians in all phases of data collection and management activities; training of Tribal personnel in all aspects of monitoring, data collection, analysis and other related wolf recovery activities; and use of FWS equipment or assistance in the purchase of new equipment to carry out wolf management work on Tribal land.

Tribal programs are often over-burdened and overwhelmed with the complicated requirements and stipulations under the ESA. Tribal resource managers are typically supportive of reducing the need for regulatory paperwork. A potential incentive that the FWS should consider is a reduction or relaxation of various ESA permitting and regulatory paperwork that does nothing to promote the recovery of T & E species. Instead, the FWS should consider incorporating administrative requirements under the umbrella of cooperative agreements or memorandum of agreements which address regulatory requirements, such as for "take permits". Many Tribes have raised issue with "Take Permit" requirements, especially when implementing T & E conservation activities on Tribal land, or carrying out strategies in accordance with Tribal sensitive species management plans. Objections commonly revolve around reporting requirements and submission of data considered by Tribes as confidential information.

### ***Tribal Enforcement***

#### **Partnerships (Role of Tribal Conservation Enforcement)**

In accordance with S.O. 3206, federal agencies (FWS) and Indian Tribes can enter into formal intergovernmental agreements in order to *"harmonize the Department's missions under the Act (ESA) with the Indian Tribes' own ecosystem management objectives"*. These agreements may involve candidate, proposed and listed species; and pertain to land and resource management, multi-jurisdictional partnerships, cooperative law enforcement and guidelines to accommodate Indian access to, and traditional uses of, natural products. Many Tribal fish and wildlife resource management programs maintain some level of conservation enforcement and enforce Tribal conservation laws, in accordance with Tribal approved Game and Fish Codes. The majority of these codes generally cover all fish and wildlife species that may occur on their lands and may also address federally listed species and "sensitive species". Tribal conservation enforcement officers have equal and local authority, and can and do serve a vital role in the protection of these species. S.O. 3206 further states in the Appendix, Sec. 3., (F) Law Enforcement (2) - that the US. Fish and Wildlife, at the request of an Indian Tribe can, *"cooperate....in enforcement of the Act by identifying opportunities for joint enforcement operations or*

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*investigations. Discuss new techniques and methods for the detection and apprehension of violators of the Act or Tribal conservation laws, and exchange law enforcement information in general”.*

Utilizing Tribal conservation officers, or Tribal wardens, to assist in protecting endangered species resources on Indian lands can have considerable benefits, not only to federal enforcement entities, but for Tribes as well. Formal agreements can establish protocols necessary to initiate appropriate actions, in the event enforcement actions are warranted for ESA. Tribal, Federal, and State conservation officers should have a clear understanding of their enforcement role. By having a proactive enforcement role, Tribes can have the opportunity to promote their sovereignty, while engaging in meaningful partnerships. Formal agreements can serve as an effective mechanism to improve and enhance Tribal conservation enforcement capacity.

### **Wildlife Codes**

Tribal Wildlife Codes serve as the basis for conservation law enforcement on Tribal lands. Any person who enters into the exterior boundaries of Tribal lands is subject to these codes and to the jurisdiction of the Tribal Police and Game Rangers. Tribal wildlife codes are an important avenue for Tribes to exert their sovereignty and maintain the authority to manage their natural resources. Many Tribal wildlife codes directly address threatened and endangered species. These may include species that are federally and/or tribally protected. For Tribal conservation law enforcement, it may be easier to charge violators if there is a wildlife code in place. Therefore, it may be beneficial for Tribes that do not have codes that address ESA issues, to develop general wildlife codes.

Some Tribes may not wish to directly address federally listed threatened and endangered species due to unanswered questions regarding whether or not ESA applies to Tribes. However, those species may be indirectly protected by wildlife codes that reference unlawful take of any wildlife on the reservation except as provided in the codes. Another way to avoid directly addressing ESA is to designate all wildlife found within the exterior boundaries of the reservation as property of the Tribe, including resident and migratory, native and introduced species. Some Tribes have also developed their own lists of threatened and endangered species. These lists often include federally listed species as well as culturally sensitive species.

### ***Management***

#### **Tribal Management Priorities**

Conflicts can occur concerning Tribal priorities with regard to natural resource management, and the conservation and recovery of endangered species, a primary mission of the FWS. The underlying question generally is to what extent must Tribes “share the burden” for the conservation and recovery of federally listed species, especially in situations where management priorities conflict.

Each Tribe establishes its own priorities regarding the management of their natural resources. These priorities can vary widely, depending on the reservation’s diversity, size, location, cultural and traditional values, and the resources that occur. In the southwest, Tribes consider water a very high priority resource, due to its importance for municipal and commercial uses and because of its cultural significance. For example the Pueblos, which are located in the middle Rio Grande River corridor, consider water the life-line for many of their traditional and cultural practices. It is vital to sustaining their traditional agricultural practices. The listing of the Rio Grande Silvery Minnow in 1994 caused an immediate concern among Tribes because of the potential issue over the conservation need of Rio

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Grande River water necessary to sustain the minnow, essentially the same water needed by the Tribes to sustain their cultural and traditional values. Fortunately, despite several years of restricted low water recharge, decisions to balance water between ESA and Indian water rights have not been necessary; however, with recent trends that indicate declining precipitation events, potential conflicts between the ESA and Tribal resource priorities may yet occur.

The listing of the Northern and the Mexican spotted owls likewise resulted in all affected Tribes immediately raising concerns about the potential impacts the listing and the designation of critical habitat would have on Tribal timber management and logging activities. The fear of being forced to shut down or dramatically decrease timber harvest on Tribal lands was a serious economic problem. Tribes that had issues with the spotted owls consider timber management a high priority program that would have far reaching economic impacts on Tribal lands and communities, concerns and issues that were clearly in conflict with ESA.

In the case of Mexican wolves, Tribes may be put in a situation that requires a decision to potentially compromise traditionally important species and their habitat, such as deer, to aid in the conservation and recovery of a threatened and endangered species and its habitat, which may negatively impact the more culturally important species.

While these are only a few examples of the potential conflicts that exist between the application of the ESA on Tribes and Tribal lands and resource priorities vital to Tribal culture and their economic well-being, it is generally this issue that causes many, if not most Tribes to take up a defensive and distrustful posture toward the federal government. The notion that the ESA could potentially trump Tribal rights and management priorities on Indian lands is a valid concern and one that must be addressed if Tribes are to have a proactive role in assisting with recovery efforts for the Mexican wolf in the southwest.

### **Tribal Wolf Management Plans**

Many Tribes have invested considerable efforts in developing both comprehensive and resource specific management plans. Others have invested time, money, and efforts in developing management plans for threatened and endangered species. Most, if not all, Tribal management plans that have been prepared for endangered species are developed to avoid designation of critical habitat. Over the years, Tribes have consistently used a provision in S.O. 3206 (Principle 3. (B)), that allows and encourages Tribes to develop conservation plans for listed species and in doing so are given "...deference to Tribal conservation and management plans for Tribal trust resources that: (a) govern activities on Indian lands,...and (b) address the conservation needs of listed species." While preparing conservation plans has been primarily in response to critical habitat designations, many Tribes have the capability and capacity to take a more proactive approach to endangered species conservation by developing ecosystem management plans that address a wide variety of resources and include culturally sensitive or endangered species. This approach can dramatically reduce the necessity of having to prepare species specific management plans for each listed species. Tribes that are able to engage in a proactive approach to endangered species conservation can potentially provide useful insight to endangered species conservation, including critical habitat designation and recovery efforts.

It would behoove Tribes to develop management plans for their lands, in close coordination with the FWS that would serve as guidance for the Tribe to closely manage wolves that are present on Tribal lands. The development of management guidelines could provide agencies that conduct activities on Tribal lands with strategies that could diminish any potential effects and conflict with wolves. Having

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guidelines in place would reduce the need to consult on every action and help strengthen and promote Tribal sovereignty, while easing the Tribes' sense of being overwhelmed by ESA.

It is a Tribe's decision whether or not to participate in the recovery of the Mexican wolf, a decision that requires considerable insight and a thorough assessment of the impacts of having wolves on Tribal land. Secondly it is important to have a strong commitment of resources to participate in various aspects of wolf monitoring and other recovery actions. Tribes understand that wolf recovery requires a long term commitment. Tribes that choose to participate in recovery efforts are encouraged to develop management plans that address specific management goals and objectives for Tribal land and in accordance with S.O. 3206 the FWS must "...be cognizant of Tribal desires to attain population levels and conditions that are sufficient to support the meaningful exercise of reserved rights and the protection of Tribal management or development prerogatives for Indian resources."

If Tribes decide not to participate in wolf recovery and the recovery process and FWS determine areas adjacent to Tribal lands are potentially suitable wolf release areas, it is important that Tribes in this situation be encouraged and assisted in developing a strategy/policy to help deal with wolves that may invariably move from transplant sites into adjacent areas, including Tribal land. Having a management or strategic plan in place to guide Tribes in dealing with potential wolf encounters would be useful and would assist Tribal resource managers in ensuring that any wolves that may relocate or travel through Tribal lands are protected, monitored, or handled appropriately.

### **Staffing Levels**

Mexican wolf recovery and management requires considerable effort in terms of manpower and time invested. Whether a Tribe is actively engaged in wolf recovery or opposes it, management of wolves on Tribal lands is necessary. Each Tribe may determine their level of involvement in the recovery program and whether they would prefer to handle the management of wolves on Tribal lands or allow the FWS to. The level of involvement will dictate the number of personnel and funding necessary to complete the goals and objectives established by the Tribe. Recovery or removal of wolves on Tribal lands may include, but is not limited to, development of management plans, depredation investigations, trapping, vaccinating, releasing, relocating, tracking, monitoring, harassing, attending meetings, public outreach and education, and law enforcement.

Although the majority of Tribal natural resources departments are understaffed, most Tribes do have professional staff that is capable of managing natural resources on Tribal lands. With adequate funding and training from FWS, Tribes are more than capable of developing wolf management programs that meet Tribal goals and objectives. The number of wolves on Tribal lands will also play a major role in determining the amount of personnel needed. Low-density Mexican wolf populations may only require 1-2 individuals. In areas with medium-density populations it would require 2-4 trained individuals to manage Mexican wolves. For example, the San Carlos Apache Tribe does not currently have any resident wolf packs on the reservation; however, they do have packs that maintain a home range that occupies part of the reservation. San Carlos employs 1 technician to manage field activities such as monitoring and trapping, and 1 biologist to oversee the program, participate in middle management meetings, and write work plans and management plans. In established wolf areas, such as on the White Mountain Apache Reservation, 3 technicians and 1 biologist are responsible for monitoring, trapping, vaccinating, collaring, harassing, implementing action plans, investigating depredations, education, and outreach, working with partners, etc.; therefore, at a minimum, each Tribe within the recovery area would need at least 2 additional employees to manage for wolves. Tribes that oppose the recovery

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program and participate in the removal of Mexican wolves from Tribal lands still require 2 individuals to trap and relocate wolves. The more involved a Tribe is in the recovery program the more time, effort, and manpower will need to be invested. Whether FWS provides FWS personnel or trains Tribal personnel for wolf management on Tribal lands, FWS must be willing to provide funding for training, travel, equipment, vehicles, etc.

### **Funding Levels**

A vast majority of Tribal natural resource programs have insufficient funding to carry out their own resource management goals and objectives. Therefore, Tribes are generally unwilling to redirect their limited resources to management issues that conflict with Tribal priorities that are federal responsibilities. While most Tribes rely on federal program dollars through the Bureau of Indian Affairs or through grants offered by other agencies, the amount of effort required to sustain these programs can be overwhelming and is a primary reason Tribal resource management programs experience fluctuations from year to year. Lack of stable, consistent, and secure funding is one of the primary reasons why Tribes are reluctant or unable to proactively engage in endangered species conservation, especially when the ESA directly conflicts with other important Tribal resource management priorities. Tribes typically feel they are left with the burden of implementing federal conservation measures without adequate resources. As Mexican wolf recovery is a FWS effort, fiscal responsibility for Mexican wolf management and recovery lies with the FWS. When estimating costs for Mexican wolf recovery FWS needs to include costs incurred by Tribes to manage wolves on their lands and implement a funding program for Tribes that is long-term and consistent. Tribes should not be pressured to engage in wolf recovery.

### **Training**

Tribes generally have access to training opportunities that help to increase and improve management capabilities. Field oriented training should continue to be available to Tribes, through federal, state, and private entities, in techniques and methodologies involving biological data collection, use of appropriate sampling and inventory protocols, and data analysis. Funding should be available for Tribes to access training. In situations where Tribal resource management programs may not have adequate technical staff, agencies or other entities engaged in data collection activities should be encouraged to provide assistance to Tribes to gather scientific information specific to Mexican wolves and wolf biology. Most Tribal resource management programs generally lack specialized tools and equipment to conduct Mexican wolf data collection and removals. To help Tribes accomplish data gathering, functioning surplus equipment should be available to Tribes and/or opportunities provided to Tribal resource programs to have access to agency equipment by means of loans, or the purchase of equipment specifically for use by Tribes.

Tribes that wish to proactively engage in wolf recovery should have the opportunity to have resource personnel work directly with agency biologists to learn basic wolf biology, observation techniques, radio tracking, and other related data collection methods. To streamline training opportunities, though it would be best to provide training on a reservation by reservation basis for Tribes engaging in recovery, logistically it could be more efficiently accomplished by establishing a training "unit" specifically to work with and train Tribal resource managers and technicians. An ideal location for training on wolf management, research and other related topics could possibly be at White Mountain, because of the wolf management program that is currently in place. Other benefits would be the opportunity to gain the Tribe's perspective regarding wolves and wolf management and observing firsthand the complexity

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of resource issues that potentially is dealt with on Tribal lands; and finally because the Interagency Wolf Management Field Team is located near White Mountain, access to biologists that are involved in actual wolf recovery could be arranged.

## SOCIO/CULTURAL LANDSCAPE

### ***TRIBAL CONCERNS WITH WOLF REINTRODUCTION***

#### **Traditional and Cultural Perspective**

Each Southwestern Native American culture has their own oral history, cultural perspective, beliefs, and teachings of the wolf. Wolves serve a specific purpose for each Tribe. It is believed that the wolf served as a messenger, a good omen to hunters, served as spiritual being for traditional elders and in some cases is a specific clan for Tribes. Some historical accounts recognize the wolf being present within traditional homelands at one point in time, but it is unknown whether the Mexican wolf was the specific wolf which inhabited the southwest region, or if it was another species.

Mexican wolves are viewed differently among the Tribes of the southwest. Some have no strong cultural connection with the wolf, while for others, the wolf is extremely significant. Within a Tribe, wolves may be viewed differently by the youth than the elders or by members of different societies. For cultures that interacted with southwestern wolves prior to their extirpation from the U.S., whether or not the wolf played a significant role, there are mixed feelings about their reintroduction. One Tribe may feel that wolves had their place, but they left, and bringing them back would be unnatural, unless the wolves recovered by themselves. Other Tribes may feel that the lack of wolves has left the ecosystem in an unbalanced state and that the reintroduction will bring back that balance. Yet another may look back in their history and stories and indicate that the Mexican wolf is not the right wolf, and that their histories indicate that the “right” wolf looked, or behaved differently than the one proposed for reintroduction. There is no reason to discount any of these views, as all may be correct.

Dr. Sarah E. Rinkevich recorded the thoughts of Apache consultants on the wolf’s traditional role in their culture in her dissertation “**Cultural Significance of *Ba’cho*, *Ma’cho* (Wolf) to the Western Apache in Arizona**”:

*“We know him as ba’cho. He was here before, and we Apaches learned to live him them. The same way as all the other animals like the bear and mountain lion; they are dangerous but the Apaches learned to live with them. And we learned from them [wolves] too, by watching them. Long time ago, Apaches would want to imitate the way wolves hunted, in packs, as in a team effort. The Apache people tapped into everything in the natural world in order to obtain knowledge. We learn from the animals. Long ago, people wanted to be like the wolf for ways of hunting, to be stealth-like.”*

*“He is very powerful to us. They are a person in that they have blood like we do, they breath air like we do, and their heart is pumping like our hearts pump. The wolf is a serious person in the way he carries himself and the way he hunts whereas the coyote and fox wait to scavenge.”*

*“He is a protector in a spiritual sense in that he comes to you and tells you of perils or dangers. They [wolves] tell you when there is danger. The wolf is very powerful and should be respected.*

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*In the traditional way, you don't mess around with dangerous animals, need to respect them and leave them alone."*

*"There is a difference between the modern wolf and the old wolf. The wolf that they brought back was not the wolf that was originally here. The wolf that is here is a relative to it. The one that was brought here was not the one that was here before, that one is gone, wiped out for good. We'd like the one that was here historically back."*

Despite these differing and sometimes conflicting views, there are some general commonalities in the cultural worldview of many Tribes. In general, Native cultures interact with the natural world on a holistic level, with no one piece being more important than another. The focus on the needs of a particular species rather than on the whole is contrary to their ecosystem level understanding of the systems in which that species may exist. On the other hand, on a cultural level, excluding an individual species, when it may have played an important role in the ecosystem, would also not make sense.

The interconnectedness of all the natural elements, such as land, water and the animals, along with traditional and cultural values, are basic to Tribal existence. This cultural and traditional view of the environment is very much in line with the concept of ecosystem management. For Tribes, this approach has considerable benefits, one of which is the ability to address a wide variety of listed and non-listed species holistically rather than on a species by species basis. By addressing a broad range of species and habitat, the amount of effort and resources required can be minimized and for Tribes, many of which are seriously strapped for funding and technical staff, allows them to more efficiently allocate resource management efforts. A case in point, during the early to mid-1990's the White Mountain Apache Tribe proactively developed management plans for several species that were proposed for listing, including the Mexican spotted owl, Arizona willow, and the Loach minnow. In addition, plans were being contemplated for the Southwestern willow flycatcher and the Mexican wolf as a result of FWS actions for these species. The result of developing management plans that were species-specific led to extensive overlap of goals, objectives and strategies and added management complexities that were at times difficult for various resource managers to effectively carry out. The complexity of trying to implement multiple strategies can easily become burdensome.

In honor of this holistic view of the natural world and the wolves' potential place in it, it is important for the FWS to consider how the ecosystem has changed since the Mexican wolf left it, and how the introduction or reintroduction of the Mexican wolf will impact it. In addition, despite the holistic, or ecosystem approach Tribes generally accept and are guided by, it is important for non-Tribal entities to understand that in the practical sense many Tribes view the reservation boundary as the limit of their influence. It is also important to remember that although the cultural views and actions of the Tribes have resulted in ecosystems that are ideally suited for wildlife, these reservation lands belong first to the Tribal peoples, and are not wildlife refuges or parks to be taken advantage of by the federal government.

The proposed recovery plan should include formal consultations with traditional elders from each affected Tribe to address and consider each Tribes traditional teaching, as these historical accounts and traditions have been passed on, and have sustained Tribes for generations. Some specific teachings may not be shared with others, however, and can only be disclosed to specific individuals. To minimize

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potential affects and infringement on the Tribe's First Amendment Rights, early consultation with traditional elders is needed.

### **Economic Development**

Land use practices vary widely on Tribal lands in the southwest and include grazing, oil and gas production, mining, timber production, recreation and various urban and rural developments. However despite these uses, large portions of Tribal lands are generally considered undeveloped. Traditionally these areas have served as habitat largely for culturally important fish and wildlife species and a variety of sensitive species, which may also include federally listed threatened and endangered species. Because large expansive areas of Tribal lands may appear as unused or undeveloped, it is important to clearly understand that these areas function and serve to meet cultural and spiritual needs that are vital to the well-being of each respective Tribe and some Tribes may be reluctant to change or modify their current land uses, especially if significant changes in the way they utilize and manage their land could result.

Throughout Indian country, economic development is a critical means by which Tribal governments can sustain their sovereign governmental functions and provide basic services and support for Tribal memberships. This is especially true at a time when federal trust obligations to Tribes are not being met due to shrinking political support and annual budgets for the U.S. Bureau of Indian Affairs. Therefore, Tribes are increasingly dependent on economic development of their homelands. The ability of Tribes to successfully pursue such activities is influenced by the federal regulatory environment in which they operate, including various environmental laws such as the National Environmental Policy Act (1969) and Endangered Species Act (ESA, 1973).

An expanded re-introduction effort for the Mexican wolf in the southwest potentially represents a new challenge to Tribal economic development primarily due to ESA-related protections on wolf habitat. There are many examples throughout the southwest where the ESA has threatened land-based Tribal economic development, including the impact of the Mexican spotted owl on Tribal commercial forestry, and the impacts of silvery minnow, humpback chub, razorback sucker, loach minnow, spikedace, bald eagle, and southwestern willow flycatcher on Tribal water use and development.

### **Domestic Livestock**

A long tradition among Tribes in the southwest is domestic livestock grazing, in some cases serving as economic enterprises through the establishment of Tribal herds and cattle associations. Some Tribal grazing is carried out by individual livestock owners. Regardless of what system is in place, livestock are a historical use of Tribal lands. Tribal livestock owners are no different than livestock owners who graze private and public lands. They generally have a vested interest in the well-being of their livestock and strive to maximize production, as well as generate revenue. Livestock owners clearly understand the vulnerability of grazing on the open range and the potential hazards they are typically prone to, especially regarding depredation. Livestock owners generally accept minimal levels of depredation; however, as depredation rates increase the typical response is to address the problem. Depredation of most Tribal livestock is believed to be a result of mountain lion, black bear, and coyote, especially on calves. The addition of another potential predator would certainly be a major concern among the Tribal livestock industry.

Some Tribes or Tribal members may use livestock as a means of subsistence. Thereby, the loss of one or a few livestock to depredation can be detrimental. Although there are several depredation

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compensation programs available, many livestock owners believe that these programs do not compensate for full impact predators have on livestock and/or may not be willing to go through the often detailed and time consuming process to apply for reimbursement. Many Tribes are also distrustful of federal compensation programs and would prefer that the Tribes manage their own depredation compensation programs.

### **Captive Game Species**

Several Tribes manage big game under fence, promoting hunting enterprises, as well as intensive captive breeding programs. Wolf recovery efforts near Tribes with captive big-game populations create extensive management concerns, as predation on even a single animal carries serious economic damages. For example, restitution could easily reach \$25,000-\$50,000 for a single high quality breeding animal. Tribes with captive populations also often operate intensive breeding programs to augment hunted populations, with significant costs and inputs to ensure trophy quality. These programs require a considerable amount of investment in time and resources for them to be successful; accordingly these programs also require a relatively high level of security from such things as predation and other related concerns. Tribes that engage in these sorts of resource management activities may raise issues regarding the potential impacts on resources from wolves that could trespass in existing enclosures. These enclosures are not currently designed to be predator-proof, so wolves could potentially have access to captive game and consequently create serious issues. Although modifying existing fences may be possible in some cases the question remains of who would be or should be responsible for the cost of fence modification. Although there are several depredation compensation programs available for livestock, Tribes with captive big-game programs believe that these programs would not compensate for full market value of wildlife, and would likely pursue full restitution for animals killed by wolves.

### **Big Game Populations**

Big game animals, especially mule deer, are culturally and traditionally important to many, if not all Indian Tribes in the southwest. Other game species such as whitetail, pronghorn, turkey, bighorn sheep, and elk are also important, but may not be held in the same reverence as mule deer in many of the Indian cultures. Despite the significance of various large game species, which may also be potential prey for Mexican wolves, Tribes consider all wildlife relevant and important in sustaining the overall health of the ecosystem. Some Tribes consider the wolf as a culturally important animal.

All southwestern Tribal lands maintain populations of one or several big game species and their populations can vary based on a number of factors, including the size of the reservation, the diversity and health of habitats that occur, the geographic location of the reservation, and often their management capacity.

Tribes such as the White Mountain Apache, San Carlos Apache, Navajo Nation, and the Jicarilla Apache, encompass large acreages of reservation lands that support diverse habitats and support healthy populations of big game. Each of these Tribes have well established hunting enterprises that are well known in the professional hunting circles and the overall success of these programs generate revenues that are important to the Tribes and contribute to managing and protecting their natural resources. Apart from trophy hunting opportunities these Tribes offer, ensuring hunting opportunities for Tribal members is generally first and foremost because of the cultural and traditional significance that hunting serves. Some Tribal member hunting can be considered subsistence hunting.

Tribes that operate trophy hunting programs normally conduct periodic efforts to survey big game populations that occur on Tribal land, some on an annual basis and others as funding allows. Population

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surveys and big game numbers can and should serve as an indicator to assess the feasibility of successfully supporting Mexican wolves on Tribal lands. FWS shall ensure that Tribes that wish to engage in recovery efforts on their lands understand that current levels of big game may experience significant changes in their distribution, numbers, and quality. If big game populations were to decline it is apparent that Tribes that maintain trophy hunting programs would be forced to make important management decisions that could have significant detrimental economic impacts, while also directly affecting Mexican wolf recovery. Other Tribes that manage primarily for Tribal member harvest would none the less be impacted by lower populations of game. If big game numbers decline the overall success of Tribal hunters could decline and potentially compromise cultural, traditional, and subsistence harvests. These are important, as well as difficult, decisions Tribal resource managers and Tribal leaders could be required to make in situations where Mexican wolves were present and had negative impacts to game numbers, a situation that could be magnified for Tribes that have a smaller land base and/or low big game densities.

### **Forest Management**

For most Tribes, respect for the natural world is rooted in a tradition of environmental stewardship. Many Tribal forestry programs continue this deep-rooted traditional practice by planning and implementing natural resource management plans that work toward healthy landscape conditions. Therefore, many Tribes combine a variety of management techniques such as prescribed burning, thinning, planting, and commercial timber sales. As a result, forests on Tribal lands are often healthy and productive. Restrictions on how Tribes can manage their forest resources would not only undermine Tribal sovereignty, but would preclude Tribes from maintaining sustainable forest resources. Harvesting trees is an important part of forestry management and improving forest health. For some Tribes, commercial timber harvest is a significant source of revenue, with some of the larger Tribes generating over \$1,000,000.00 annually. This money usually goes back into Tribal forestry management and is also often used to supplement other Tribal departments. For Tribes with largely forested reservations forest management and timber harvests may be the main industry generating numerous jobs for Tribal members. In economically impoverished populations, this type of industry can contribute significantly to a Tribe's ability to provide for its people. Restrictions on if, where, and/or how a Tribe can harvest timber could severely cripple Tribes that rely heavily on these resources for employment and revenue.

Many Tribal forest resource programs permit wood-cutting for home use. Many Tribal members rely on this to heat homes, cook, build fences and homes, and for ceremonial use. Some Tribes may also allow Tribal members to sell wood by the cord or stack. Limitations on tree harvesting, whether for commercial or personal use, would impact the ability for Tribal members to provide for themselves.

### **Recreation**

Many Tribes in the southwest benefit financially from recreation programs. Because Tribal lands are mostly undeveloped, reservations provide a large expanse of outdoor recreational opportunities. Therefore, many Tribes are concerned about human safety and how populations of Mexican wolves may impact recreation on Tribal lands. There have been several documented cases of released Mexican wolves that have become habituated to humans and frequent areas of high human activity, i.e., houses, towns, etc. The same concerns exist in regards to recreation sites and campgrounds. Because many of these sites are in remote locations, there is a higher likelihood that human/wolf interactions will occur. Whether those interactions are positive or negative depends largely on the individual human and wolf; however, because both are unpredictable, Tribes may not be prepared to adequately address each

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situation. Some Tribes are currently overburdened with other human/predator recreation conflicts, such as bears in campgrounds, and may not have the resources to address additional predator/human recreation concerns. Many Tribes have recently felt the economic impacts of catastrophic wildfires and have been forced to shut down recreation sites due to flash floods, erosion, and unsafe conditions resulting in significant financial loss. The presence of Mexican wolves could have a similar impact if Tribes are forced to close recreation sites due to the proximity of a den, the presence of a genetically valuable pack, aggressive or habituated wolves, etc. Spread of diseases such as parvo and canine distemper virus around recreation sites and within the communities may also be a concern. On the other hand, the presence of Mexican wolves may raise interest in recreation on Tribal lands if there are opportunities to interact with wolves through wildlife viewing, wolf tracking, wolf howling surveys, or similar ecotourism opportunities. These opportunities would require substantial financial support from the Tribe to develop and sustain such programs; funding that may be currently allocated to other important resources such as emergency services, education programs, hospitals, diabetes prevention, or other higher priority programs.

## **ISSUES TO ADDRESS FOR IMPROVED COLLABORATION WITH TRIBES**

### ***Education and Community Outreach***

One of the most crucial elements of Mexican wolf reintroduction and recovery will be education and community outreach. This effort is just as important to Tribal communities as it is to private landowners. Although some communities may have historic or cultural knowledge of wolves, perceptions of these top predators have changed over the years. Reeducation will go a long way in mitigating community concerns with Mexican wolf reintroduction efforts.

Community outreach should be as broad as possible; many Tribes, let alone Tribal members, do not have the resources to travel great distances to attend a joint meeting at the FWS's convenience. Demonstrating a willingness to put forth the effort to meet with many small groups, on the many reservations will be necessary to gain any support from the Tribal communities.

At a minimum, community outreach needs to educate the Tribal public on several issues, including:

1. Why reintroduction is occurring;
2. What the role of the federal government and the FWS is in the process;
3. How consultation on the process will occur with the Tribes;
4. What the role of the Tribes are in the process;
5. What the steps are in the reintroduction process;
6. Basic wolf biology, ecology, and demography; and
7. Potential threats, costs, and benefits to reintroduction

At the same time, concerns about the impact of wolves on the health and safety of the communities and their livelihoods will need to be addressed, as well as the political misinformation that frequently arises from the extremes at both sides of the spectrum.

Although it may be easy to reincorporate Mexican wolves into the cultural world view of many Tribes, not all of them are or will be in support of the reintroduction or recovery efforts. Economic influences play a strong role in the decision making process of most Tribes. The potential loss of income from lost livestock or hunting revenues and how those Tribes will be compensated for those losses will be a critical message to bring to the people for them to be comfortable with the risk.

Finally, the majority of Tribes, if not all, have concerns about the US Federal Government forcing them to accept things on sovereign Tribal lands. This concern, resulting from extensive experience will probably be one of the hardest to address, but if approached honestly, and humbly, may pay the biggest dividend.

### ***Population Management and Monitoring***

Tribes that participate in wolf recovery should clearly understand the importance of monitoring wolf numbers should they become established on Tribal lands, even if opposed to wolf presence. Although it is ultimately the responsibility of the FWS to oversee population monitoring activities, Tribal resource managers must be closely apprised of population trends and distribution on Tribal lands. Tribal managers must remain engaged in the monitoring process as well in order to keep Tribal leaders informed of changes in wolf populations, and locations and the potential changes in wolf management

## **Tribal Perspectives on Mexican Wolf Recovery**

that could result. In other words, if numbers increased beyond established population objectives, management could possibly call for reducing numbers, or if numbers were to dramatically decline, following population establishment, management efforts could potentially call for strategies that would assist to increase numbers, including possible releases.

Prior to engaging in wolf management on Tribal lands it is imperative that Tribes seriously consider and weigh the benefits of allowing wolves to occupy their lands by considering various factors, including but not limited to the following: the importance and level of livestock grazing, including the class of livestock; acres of unoccupied Tribal lands, which include a wide variety of habitat such as high elevation montane habitats consisting of mixed coniferous forest, pinyon/juniper habitat, and extensive rangeland habitat; type of land use that occur on the landscape; overall health of the reservation big game population, especially mule deer and elk, if they occur; road density and level of human activities, including outdoor recreational uses; it is also important to take into consideration adjacent land owners and their perspective on wolf management and recovery.

An assessment of these and other factors should assist Tribes in determining the feasibility of supporting wolves on their lands and secondly, working closely with FWS, it is important that Tribes establish wolf population goals and objectives acceptable to the Tribe and biologically sound.

### ***Wolf Conflict Management and Predator Control***

Tribes have the inherent authority to manage predators, including wolves, on their lands. Many Tribal wildlife management programs carry out predator control activities on Tribal lands and if Tribes, or a Tribe decides to participate in wolf recovery, it is highly likely that it may create management conflicts. Predator control is primarily conducted to address impacts on livestock and in certain situations to assist in improving big game populations, especially mule deer, which is a culturally significant species. It is important that Tribes continue to have the flexibility to maintain a level of predator management in order to address specific problems and assist in non-wolf related livestock depredation. Problem predators may involve coyotes, black bear and mountain lions; and in some cases feral dogs. Because Tribal livestock owners generally have considerable influence, both politically and traditionally, it is imperative that predator related issues are addressed in a timely manner. Also, because potential wolf depredation can be controversial when it involves livestock, Tribal resource managers will need to be assisted and trained in identifying signs and evidence of wolf depredation if wolves occur on Tribal lands. Secondly Tribal resources managers will require training on how to address and handle potential depredation issues, first in effectively working with livestock owners and secondly by ensuring that mechanisms are in place that will quickly resolve depredation problems that may involve wolves, including compensation and removal programs. These procedures outlined in management plans or policies should be in place prior to placing wolves on the ground.

With respect to non-wolf depredation issues, Tribes that maintain proactive predator management programs have the authority to continue these activities or to develop programs if the need arises. These programs typically involve a small staff of individuals that carry out the work, therefore, control efforts are generally performed on a case by case basis and generally affect small localized areas; and generally cease once the problem is resolved. Tribes can and should be able to continue control efforts. To ensure that non-wolf predator control is carried out in an appropriate manner it will be necessary for FWS to provide training to Tribal personnel engaged in predator control work and assist them in modifying or utilizing control methods that will protect non-target species, especially in areas where wolves are confirmed to be present.

## Tribal Perspectives on Mexican Wolf Recovery

Allowing wolves to occupy Tribal lands will be contentious, especially on reservations that have large livestock operations and therefore will require considerable coordination. It will be imperative that a compensation plan be in place that is accepted by livestock owners; and a process that will resolve depredation problems in a fair and timely manner.

The FWS, in cooperation with the National Fish and Wildlife Foundation (NFWF), established the Mexican Wolf /Livestock Interdiction Trust Fund (Interdiction Trust Fund) on September 23, 2009. The objective of the Interdiction Trust Fund is to generate long-term funding for prolonged financial support to livestock operators within the framework of conservation and recovery of Mexican gray wolf populations in the Southwest. Funding will be applied to initiatives that address management, monitoring, and other proactive conservation needs for Mexican gray wolves as they relate to livestock, including alternative livestock husbandry practices, grazing management alternatives, livestock protection, measures to avoid and minimize depredation, habitat protection, species protection, scientific research, conflict resolution, compensation for damage, education, and outreach activities. In April 2011, the FWS appointed an 11-member Interdiction Fund Stakeholder Council (Stakeholder Council), which includes a member from both Tribes currently affected by the reintroduction program, has the authority to identify, recommend, and approve conservation activities, identify recipients, and approve the amount of the direct disbursement of funds to qualified recipients. This Council is responsible for developing a formula that better addresses the concerns of livestock operations with the goal of building tolerance. If future Mexican wolf populations are established outside of the current recovery area, at least one (1) Tribal representative from each recovery area shall be appointed to the ***“Interdiction Fund Stakeholder Council.”*** Tribes may also develop their own interdiction and compensation program to handle wolf related depredations on their lands through funding agreements with federal/state agencies.

### ***10(j) Considerations on Tribal Lands***

Wolves have been released within the current recovery area in New Mexico and Arizona since (1998) and are considered a Non-essential Experimental Population, under the 10(j) rule. Under this rule, individual wolves in the populations (C)(i) are treated as a threatened species for purposes of Section 7 and are considered (B) to be not essential to the continued existence of the species. Under (C)(ii), critical habitat shall not be designated for any experimental population.

It is important that Tribes clearly understand the implications that come with the designation of the population, especially those planning to proactively participate in wolf recovery. If proposed releases occur, 10(j) may be in a Tribe’s best interest and would offer considerable flexibility in terms of managing wolves on Tribal lands. It is also important to note that there are some national parks/monuments on Tribal lands and the FWS will need to clarify the status of Mexican wolves that enter those areas with regard to 10(j). When 10(j) boundaries are designated, the FWS needs to consider geographical configuration of Tribal lands and consult with Tribes.

The presence of wolves on Tribal lands will undoubtedly result in additional Section 7 consultation requirements and may consequently lead to additional consultations for actions of federal agencies that carry out activities on Tribal lands. Tribes must also be cognizant of any potential take related issues that could arise on their lands and should ensure that appropriate partnerships and processes are in place to quickly address and resolve potentially sensitive situations.

## Tribal Perspectives on Mexican Wolf Recovery

### *Wolf Releases*

In order to establish additional Mexican wolf populations and ultimately recover the Mexican wolf in the southwest, the FWS will likely engage in new wolf releases in certain areas of the southwest, in accordance with recommendations that will be presented by the Mexican Wolf Recovery Team. Tribal lands that occur in or near potential reintroduction areas may be asked to participate and could even serve as potential “ground – zero” release sites. If this were to occur it is important that the FWS ensure that the Tribe has a clear understanding of the commitment and responsibility that will be required if wolves are released on Tribal lands. If a Tribe is interested or considering serving as a release site it is essential that a wolf management plan be developed prior to wolves being released on Tribal land and a memorandum of agreement or cooperative agreement be developed. **The White Mountain Apache Tribe has worked under a cooperative agreement with the FWS that could possibly serve as a model.** FWS needs to also ensure that in cases where Tribes oppose wolf releases, government to government consultation is conducted with impacted Tribes. Because wolves are wide ranging and any release on or near Tribal lands would require FWS to consult with affected or potentially affected Tribes.

## CASE STUDIES

### *Wolf Management on Tribal Lands*

Over the last 20 years many Tribes in other regions have proactively engaged in wolf management and recovery, including Tribes in the Great Lakes region, the Nez Perce in Idaho, Salish Kootenai and Blackfeet in Montana and the Shoshone and Arapahoe Tribes in Wyoming. The Nez Perce Tribe was instrumental in helping in recovery of the northern gray wolf by serving as the lead entity in coordinating wolf management activities in Idaho. A primary factor in the Tribe’s involvement was the close cultural significance of the wolf and the cultural ties the Tribe has with the wolf. Other Tribes in the northern Rockies have taken a more reserved approach to wolf recovery and have developed Tribal wolf management plans that address the presence of wolves that may eventually find their way on to Tribal lands.

Through discussions about wolves and wolf reintroduction with Tribal communities and stakeholders, there are a number of concerns that could be addressed with additional research. Some of that research may be time consuming and site specific; however, the information would go a long way in assisting individual Tribes in determining the extent to which they would like to participate. The majority of these studies involve further development of the ecological understanding of the specific impacts to existing wildlife species populations, distributions, and movements; this research should include both prey and predator species. Many of these studies would be interconnected, and reflect the holistic nature of the ecosystem and Tribal world views.

### **History of Mexican Wolf Management on Tribal Lands**

With the 1998 release of Mexican wolves near the borders of the White Mountain Apache and San Carlos Apache Tribes, it was inevitable that both Tribes would be impacted. Although only separated by a river, the positions that each Tribe has taken vary drastically. Below is an account from each Tribe on their experiences with the Mexican wolf recovery program and how each Tribe responded to the reintroduction effort.

## Tribal Perspectives on Mexican Wolf Recovery

### *White Mountain Apache Tribe*

The last naturally occurring Mexican gray wolf was removed from the reservation in the 1960's by a government trapper near Cibecue, Arizona. With the judicial settlement calling for the recovery of the wolves, wolves were released into the reintroduction area just east of the reservation in March of 1998. Because of the prime habitat and prey base for wolves available on the reservation, a presentation was made to the Tribal Council advising that wolves would be coming onto Tribal lands. The first Mexican wolf was monitored on the reservation in June of 1998. A Mexican Wolf Task Force was established for the evaluation of the potential impacts and benefits of wolf presence in July 1998. The Tribe chose to participate due to the following reasons: 1) wolves would be on Tribal lands because of the habitat and prey base and FWS is under a Federal court settlement to release and recover wolves, 2) wolves were here in the past and part of the land and the culture of the Tribe, 3) this is a sovereignty issue; the land and all of its resources should be under WMAT management, 4) response time is better when the Tribes' own field team does daily monitoring, depredation investigations, follow-up on sighting reports and incidents, 5) as one of the lead agencies, the Tribe has an equal voice for management and participation in reintroduction decisions that may affect WMAT, 6) there is depredation compensation funding for losses incurred by wolves with interdiction and incentive funding in the works, 7) federal funding provides employment for Tribal staff and outside funding has provided for education, outreach, and equipment, 8) economic benefits have started an initial ecotourism program (Apache Wilderness Journeys). In August 1998, a resolution was adopted by the Tribal Council to develop a Cooperative Agreement with the FWS for the management of wolves on White Mountain.

The WMAT-Mexican Wolf Management Plan was completed in February 2000 and was accepted by the Tribal Council and the USFWS. A Cooperative Agreement was developed with the FWS to train a Wolf Biologist in September 2000. The comprehensive Cooperative Agreement was signed by FWS after being approved by the White Mountain Apache Tribal Council March 2002. In January 2004, there was a resolution and an MOU signed, establishing the White Mountain Apache Tribe as one of six lead regulatory agencies for wolf reintroduction.

The first naturally occurring wild wolf pack was formed on the Reservation in February 2001 from 1 wild born pup (Hawks Nest Pack) and 1 released pup (Francisco Pack). After the first year of wolf presence, and again following review by the Wolf Task Force, a resolution was passed in May of 2003, allowing the release of a wolf pair with pups. The pack was released in June 2003. The female alpha was lost to a lion kill and another female was released to bond with the alpha male; this didn't happen and the released wolf was removed for nuisance behavior. The alpha male bonded with an un-collared, unknown wild-born female wolf, denned, and had pups near the original release site in April of 2006. In May 2006, the entire pack with pups were removed at Tribal Council's request and transferred to USFWS personnel because of their involvement in multiple depredations. Since then, several packs have formed on the reservation, some have dispersed after losing one of the alphas, some packs are on and off the reservation seasonally, and some have established ranges entirely on the Reservation. Current observations have been made of additional paired wolves, as well as single wolves. Depredation incidents have been infrequent. The program pursues tolerance through cooperation with the livestock associations by providing ear tags and equipment, grant funding for extra stockman/monitors, outreach and educational presentations, and development of funding for interdiction and incentives.

## Tribal Perspectives on Mexican Wolf Recovery

The Tribe's main management goals include: 1) capture and collaring of at least half of the members in each wolf pack (especially un-collared packs), 2) investigation of all potential livestock depredations, 3) respond to sighting reports and checks of historical locations, 4) monitoring of known packs and animals, 5) continuation of education and outreach, 6) participation in working-groups on policy and adaptive management issues for wolf reintroduction and recovery under the WMAT/FWS Cooperative Agreement, the WMAT-MW Management Plan, and Statement of Relationship/Information Protocol. The benefits seen by the Tribe at this time include: 1) protection of sovereignty by having a Tribal program with the capacity to pro-actively manage a controversial predator with Federal and State cooperation instead of interference or passivity, 2) protection of a species with cultural and intrinsic value that were on the land historically, 3) funds to provide for a Tribal program and employment for Tribal member staff, 4) positive recognition for the Tribe and Tribal programs on local, State, and Federal levels, 5) protection from potential litigation, 6) ecotourism development and economic potential for the Tribe and the Wildlife & Outdoor Recreation Division, 7) opportunities for funding and equipment from agencies and outside entities, lessening the financial burden on livestock associations, and 8) immediate response to issues by Tribal program employees that are familiar with the land, resources, and the language and culture.

Potential costs have been minimal for depredation of livestock with compensation mitigation first from the Defenders of Wildlife program and now from federal funding provisions under the Stakeholder's Council. There is the potential for impacts on trophy elk and other big game species; mitigation measures can be carried out by our own management personnel (moving or removing wolves, supplementary feeding near den sites, livestock monitoring, hazing, etc.). Compensation for wildlife losses is being discussed, should losses occur. While threats to people and pets are possible, it is felt that it is fairly unlikely per observations of wolves on the Reservation from the past 14+ years. Our own team can respond immediately, acting under accepted protocols from our Management Plan. So far, there have been no significant impacts to overall big game population numbers (per yearly surveys, animals have been moved by wolves, but also rotate back to areas). No person has been injured or seriously imperiled by wolves on the Reservation. Reports of conflicts between wolves and pets have not been frequent and no deaths of pets have been reported.

A public opinion poll/survey was done in 2007 prior to the Tribe's signing of the 2<sup>nd</sup> Cooperative Agreement with FWS. Survey forms were sent out to all Tribal members 18 years and older. Most of those responding said that they had never seen a wolf, but believe that they were on the Reservation in the past. Most believe that the land and all plants and animals are of equal value and are not aware of cultural connection to the wolves specifically. The majority of Tribal members responding say they do not hunt and of those that do hunt, only a small percent have had hunts impacted by wolves. The majority of responders say they do not own livestock and of those who do, only a small percent have had wolves affect their livestock. Most Tribal member responders say they do not know if wolves have any economic impact on the Tribe.

The 2<sup>nd</sup> Cooperative Agreement (5-year) was approved by Tribal Council and USFWS in 2008. A new financial system was set up by FWS which required a new agreement in 2012 and this was also approved by WMAT and FWS (2012-2016).

Since their initial 2000 agreement with the USFWS, the WMAT has been an active participant in the Mexican Wolf program, but it has not always been a smooth path, nor unopposed.

## Tribal Perspectives on Mexican Wolf Recovery

### *San Carlos Apache Tribe*

The primary release zone established in the Blue Range Wolf Recovery Area (BRWRA) is located just east of the San Carlos Apache Reservation (SCAR). Because the San Carlos Apache Tribe (SCAT) has spent considerable effort managing for cattle and trophy elk, which generates substantial revenue, there were concerns about the impact wolves may have on livestock and ungulate populations. Therefore, in 2000 SCAT motioned in Special Council that they would not participate in Mexican wolf reintroduction and required the removal of wolves at the Tribe's request.

In 2002, during a 5-month period, 5 wolves were documented on SCAR (USFWS 2002). Four of these wolves were trapped, collared, and then released on site, rather than being removed. Only one of the wolves was removed, however, not until after its third capture. In response to FWS not abiding by the Tribe's requests, the Tribal Council adopted a Resolution on December 11, 2002 opposing the reintroduction program and requiring the removal of wolves from the reservation.

In 2003, SCAT entered into a Cooperative Agreement with FWS for wolf monitoring and management which included non-lethal removal. The Tribe received \$20,000.00 annually to operate a wolf management program on the reservation. Over the next several years numerous wolves were documented or monitored on SCAR however, only a handful were trapped and relocated, mostly by FWS staff. Although the amount of financial support increased to \$40,000.00 annually, SCAT was apprehensive to spend the money or participate in Mexican wolf management or IFT meetings in fear that it would be viewed as contributing to the reintroduction efforts. As a result, SCAT was regularly disregarded in decision making, uninformed about decisions and management actions, and rarely afforded the opportunity to express its views or needs. When surplus funding or equipment was available, SCAT was commonly forgotten. In 2003, the FWS hired a Tribal member part-time to monitor wolves on SCAR. Although several wolves were trapped and relocated over the years, employees learned how difficult it was to trap wolves, and most attempts to do so were unsuccessful. At meetings, the employee was often viewed as representing the Tribe; however, as a FWS employee this was not how the Tribe viewed it.

Due to concerns about cattle losses to Mexican wolves and other predators the Tribe passed a Resolution in 2006 to implement a Tribal Wildlife Grant from FWS to assess cattle mortality in areas with Mexican wolves, coyotes, bears, and mountain lions. Over 200 calves were fitted with radio ear tags that emitted a signal when the calf did not move for 24 hours. Trained staff investigated the mortalities and determined cause of death. Coyotes and mountain lions were mostly responsible for the depredations. There was only one documented Mexican wolf kill. Unfortunately, data from this study were not used to modify husbandry practices to decrease depredations from any predator. In 2009 SCAT passed a Resolution allowing a PhD student to investigate and assess prey selection patterns of Mexican wolves and other predators on the Reservation by scat collection and to describe Western Apache views on Mexican wolves. However, no wolves were identified in the scat that was collected. Therefore, it was impossible to determine and describe the wolf population on SCAR through DNA analysis.

During this time, the Tribe's relationship with FWS remained contentious and strained. Invitations to and representation at meetings were intermittent. However, after several years of employee turnover,

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the Tribe hired two biologists in 2009 that believed it would be to the Tribe's benefit if they were represented at Mexican wolf related meetings to provide Tribal input and to stay informed of decisions and management actions. It would be in SCAT's best interest to develop their own wolf management program to monitor wolves and ensure their removal from the reservation. Utilizing funding from FWS through the Cooperative Agreement, two Tribal member wolf technicians were hired to carry out the following duties: track and monitor wolves using radio telemetry, scat, tracks, and GPS, collect scat for DNA analysis, install and monitor camera traps, map wolf locations, maintain daily logs of areas searched, and report wolves on SCAR to the Tribe and FWS for removal. One biologist oversaw SCAT's Mexican Wolf Management Program and participated in IFT meetings but no portion of that salary is covered by FWS even though approximately 50% of the duties are Mexican wolf related.

Although the Tribe became more involved with the Mexican wolf recovery program they maintained their stance and continued to oppose the program. However, by having more of a presence in the program, SCAT was included in more proposals, decisions, meetings, and trainings. That is not to say that the Tribe's comments are always executed. In 2012, the Tribe was asked to comment on a proposal to remove the alpha female from the Rim Pack which share part of their home range with the reservation and to release another female or pair within the Rim Pack's home range. The Rim Pack has not been implicated in many depredations and has been a relatively low problem pack. Efforts to trap and relocate the pack off reservation have been unsuccessful. When relocated, they have made their way back to the reservation within a week. The Tribe submitted comments boldly expressing their opposition to removing the alpha female in fear that the introduction of a new female or pair and a change in pack dynamics may result in depredations and/or expansion of their range on SCAR. Despite the Tribe's opposition, FWS moved forward in January 2013 with the removal of the alpha female.

## **CONCLUSION**

It is imperative the FWS recognize and acknowledge Tribal sovereignty when implementing the recovery goals of the Mexican wolf in the southwest. Tribal land base in the southwest is enormous and constitutes a large part of the recovery area for the Mexican wolf. It is impossible to represent all Tribal views in this Perspective, and this is not the intent of this paper. It is the FWS's responsibility to carry out the intent of Secretarial Order 3206 and engage meaningful consultation with all Tribes impacted by federal decisions related to the recovery effort of the Mexican wolf, and to do so early in the process and continue throughout the recovery planning and implementation phases of the project. Each Tribe is unique in governmental organization and structure and some work directly with their Tribal councils, or others work indirectly, to enhance Tribal wildlife resources. The FWS is responsible for ensuring that Tribal interests are considered prior to making Mexican wolf recovery decisions that affect Tribes. Many Tribes in the southwest have developed capabilities to manage Tribal wildlife resources on their lands without federal/state interference, and meaningful consultation with Tribes will only serve to enhance a productive and trusting working relationship. It is difficult to determine how many Tribes support Mexican wolf recovery and how many Tribes oppose it; however, Tribal interests, recommendations, and positions should be a major consideration with making decisions in the recovery effort of the Mexican wolf in the southwest. Tribes have inherent authority over wildlife resources on their lands and are the decision makers for Mexican wolf recovery and management efforts on their lands. With the expansion of the Mexican wolf reintroduction area more Tribal lands will be affected. Therefore, when FWS estimates the total costs for Mexican wolf recovery it is necessary that the FWS allocate appropriate funding for management costs and impact mitigation costs to each Tribe.

### RECOMMENDATIONS

- All agencies should err on the side of consulting and communicating with Tribes **prior to taking action**, rather than assuming an action will not affect a Tribe
- FWS to designate and fund 1 southwestern Native American representative to serve as Tribal Liaison for the Mexican wolf program
- There should be a representative for each potentially affected Tribe on the IFT for each release area
- FWS to conduct timely government to government consultation with potentially affected Tribes on all recovery and reintroduction actions
- Federal mandates such as this recovery is the responsibility of FWS and therefore adequate funding should be provided to potentially affected Tribes to carry out wolf management, whether or not Tribes participate in the recovery program; FWS should fully fund training, employees, and equipment for Tribes that are affected by Mexican wolves
- Greater efforts and more positive dialogue must be initiated and continue between the FWS and Tribal entities to build trust and effective working relationships
- Understand that each Tribe is a sovereign nation and should not be regarded as the general public
- Understand that each Tribe has its own government, culture, and traditional beliefs which dictate resource management and thus should be consulted with individually
- DOI to earmark or appropriate funding for Tribes to implement wolf management
- Ensure that Indian lands and resources are protected and maintained for their exclusive use
- As trustee, the United States must ensure that the purposes for which reservations were created are not undermined and the fiduciary obligations that arise from the trust responsibility must be met by all federal agencies and in a manner that does not interfere with Tribal rights
- All DOI employees should familiarize themselves with the purpose and intent of SO 3206 and should have appropriate training and knowledge in Tribal communication protocols
- FWS shall provide potentially affected Tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes
- FWS shall strive to ensure that Indian Tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation
- Tribes must be kept involved and informed at all levels and treated as equal partners
- Tribes must be involved at the earliest stages of any planning process that could potentially affect Tribal trust resources
- FWS shall ensure that the timing is appropriate for Tribal participation
- Because wolves are expected to be relatively wide-ranging and may occupy areas outside primary recovery zones, all Tribes within the five state region, including, Arizona, Utah, Colorado, New Mexico and Texas, should be invited to participate and engage at some level
- Formal agreements must be based on principles of Tribal sovereignty and federal trust responsibilities
- Federal entities must understand that Tribal decisions often require considerable internal consultation with traditional and cultural leadership
- Federal agencies must recognize and acknowledge Tribal expertise in natural resource management

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- FWS needs to ensure Tribes the prerogative to prioritize and accomplish their own resource management goals and objectives
- Federal agencies need to understand and realize that Tribes have a holistic view of all natural resources and that belief influences their ecosystem approach to resource management
- It is important that federal agencies understand that any information provided by Tribes must be considered confidential and the use of the information should have written Tribal approval if it will be provided in a public forum or document
- It is important for FWS to understand from a Tribal perspective that lands which may be considered for wolf recovery are the same lands for other species that have greater cultural/traditional significance
- FWS needs to clarify the legal status of Mexican wolves on non-trust Tribal properties and consider those wolves outside of the non-essential experimental population to be 10(j), i.e. private ranches purchased by Tribes or Tribal lands that are divided by the 10(j) zone
- FWS needs to understand that their priorities may not necessarily be Tribal priorities and may also conflict with Tribal management priorities
- Tribal lands are historical homelands intended for maintaining traditional and cultural values versus refuges for endangered species
- Incentives and alternatives need to be made available to Tribes that will allow them to continue setting their own natural resources management priorities in accordance with their own goals and objectives
- FWS should consider a reduction, relaxation, or simplification of various ESA permitting and regulatory paperwork as an incentive for Tribes
- Develop agreements for conservation enforcement on Tribal lands that describe the roles and responsibilities for each entity; use investigations as opportunities for training for Tribal personnel
- Evaluate and mitigate impacts of the recovery program on Tribal economic development
- Work with Tribes to educate community members about Mexican wolves and the recovery program

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