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15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF ARIZONA**

17 WildEarth Guardians, a non-profit  
18 organization; Western Watersheds  
19 Project, a non-profit organization; New  
20 Mexico Wilderness Alliance, a non-  
21 profit organization; and the Wildlands  
22 Network, a non-profit organization,

23 Plaintiffs,  
24 vs.

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

Federal-Defendants.

No. CV-18-00048-JGZ

**AMENDED COMPLAINT**

## INTRODUCTION

1  
2 1. Plaintiffs, WildEarth Guardians, Western Watersheds Project, New  
3 Mexico Wilderness Alliance, and Wildlands Network (collectively  
4 “Guardians”), bring this civil action against the above named Federal-  
5 Defendants (hereinafter the “U.S. Fish and Wildlife Service” or “the Service”)  
6 under the citizen suit provision of the Endangered Species Act (“ESA”), 16  
7 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. §  
8 706, for violations of the ESA.  
9

10  
11 2. This case challenges the Service’s final Mexican wolf recovery plan  
12 (first revision), which was signed by the Service’s Regional Director on  
13 November 28, 2017 (hereinafter “2017 recovery plan”). Notice of the  
14 availability of the 2017 recovery plan was published in the Federal Register  
15 on December 4, 2017. 82 Fed. Reg. 57288 (December 4, 2017).  
16  
17

## JURISDICTION AND VENUE

18  
19 3. This Court has jurisdiction over this action under 28 U.S.C. § 1331,  
20 16 U.S.C. § 1540(c), and 5 U.S.C. § 704. The Service’s action complained of  
21 herein qualifies as “final agency action” under the APA, 5 U.S.C. § 704.  
22

23 4. This Court has the authority to review the Service’s action(s)  
24 complained of herein and grant the relief requested, under the ESA’s citizen  
25 suit provision, 16 U.S.C. § 1540(g), and the APA, 5 U.S.C. § 706.  
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1           5. All requirements for judicial review required by the ESA are  
2 satisfied. Guardians e-mailed and hand-delivered a notice of intent to sue  
3 letter to all named defendants in this action on November 29, 2017. This  
4 letter notified all defendants of Guardians' intent to file a civil action to  
5 rectify the legal violations described in the letter. More than sixty days have  
6 elapsed since all defendants received Guardians' notice of intent to sue letter  
7 for violating the ESA.  
8

9  
10           6. All requirements for judicial review required by the APA are  
11 satisfied. Guardians exhausted any and all administrative remedies provided  
12 and related to the Service's 2017 recovery plan. Guardians submitted timely  
13 comments on the Service's draft recovery plan.  
14

15  
16           7. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory  
17 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and  
18 5 U.S.C. § 706 (APA).

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

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

1  
2 10. Plaintiff, WILDEARTH GUARDIANS, is a non-profit conservation  
3 organization dedicated to protecting and restoring the wildlife, wild places,  
4 wild rivers, and the health of the American West. WildEarth Guardians is  
5 specifically committed to ensuring the survival and recovery of Mexican  
6 wolves in the United States. WildEarth Guardians has approximately  
7 202,000 active members and supporters across the American West, including  
8 many who reside in Arizona. Many of WildEarth Guardians’ members and  
9 supporters also reside and routinely recreate in areas occupied by Mexican  
10 wolves. WildEarth Guardians has a long history of working to protect and  
11 restore native carnivore species across the West, including Mexican wolves in  
12 the southwest. WildEarth Guardians brings this action on behalf of itself, its  
13 members, and its supporters.  
14

15  
16 11. Plaintiff, WESTERN WATERSHEDS PROJECT (“WWP”), is a non-  
17 profit membership organization with offices throughout the West, including  
18 in Arizona. WWP has over 1,500 members including many who reside and  
19 routinely recreate in Arizona and areas occupied by Mexican wolves. WWP,  
20 its staff, members, and supports are dedicated to protecting and conserving  
21 the public lands, wildlife and natural resources of watersheds in the  
22 American West. WWP, its staff, members, and supporters are dedicated to  
23 ensuring the long-term survival and recovery of Mexican wolves to the  
24 Southwest. WWP brings this action on behalf of itself, its members, and its  
25 supporters.  
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1           12. Plaintiff, the NEW MEXICO WILDERNESS ALLIANCE (“the  
2 Alliance”) is a non-profit membership organization dedicated to the  
3 protection, restoration, and continued enjoyment of New Mexico’s native  
4 wildlife, including Mexican wolves. The Alliance has approximately 4,000  
5 members, including members in New Mexico and Arizona. As part of its work  
6 on maintaining healthy ecosystems, the Alliance has been particularly active  
7 in efforts to protect and restore Mexican wolves to their historic range in the  
8 southwest. The Alliance brings this action on behalf of itself, its members,  
9 and its supporters.  
10

11           13. Plaintiff, WILDLANDS NETWORK, is a non-profit conservation  
12 organization dedicated to reconnecting, restoring, and rewilding North  
13 America so that life in all its diversity can thrive. Wildlands Network  
14 envisions a world where nature is unbroken, and where humans co-exist in  
15 harmony with the land and its wild inhabitants. Wildlands Network is  
16 specifically committed to ensuring the survival and recovery of keystone  
17 species, especially carnivores, and our staff includes individuals with decades  
18 of experience devoted to Mexican wolf recovery. We have approximately 8,800  
19 supporters across the North America (including many in Arizona and New  
20 Mexico) who share our devotion for protecting and restoring this ecologically  
21 essential member of America’s southwest.  
22

23           14. WildEarth Guardians’, WWP’s, the Alliance’s, and Wildlands  
24 Network’s (collectively “Guardians”) members, supporters, and staff are  
25 dedicated to ensuring the long-term survival and recovery of Mexican wolves  
26 and ensuring the Service complies with the ESA and bases all recovery  
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1 decisions on the best scientific and commercial data available (“best available  
2 science”).

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

14  
15 16. The Service’s 2017 recovery plan challenged in this lawsuit harms  
16 Guardians’ interests in Mexican wolves and Mexican wolf conservation.  
17 Guardians’ members, supporters, and staff derive aesthetic, recreational,  
18 scientific, inspirational, educational, spiritual, and other benefits from  
19 Mexican wolves, recreating in areas occupied by and used by Mexican wolves,  
20 and in working to protect Mexican wolves from human-caused mortality and  
21 disturbance and in working to restore and recover Mexican wolves in the  
22 United States and Mexico. In furtherance of these interests, Guardians’  
23 members, supporters, and staff have worked and continue to work to  
24 conserve Mexican wolves, including work to promote increased dispersal and  
25 connectivity among Mexican wolves in the wild, increase releases of captive  
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1 wolves, decrease incidents of human-caused mortality, and increase habitat  
2 protections for Mexican wolves.

3 17. Guardians' interests have been, are being, and unless the requested  
4 relief is granted, will continue to be harmed by the Service's 2017 recovery  
5 plan. If this Court issues the relief requested the harm to Guardians'  
6 interests will be alleviated and/or lessened.  
7

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

12 19. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR  
13 is the federal department responsible for applying and implementing the  
14 federal laws and regulations challenged in this complaint.  
15

16 20. Defendant GREG SHEEHAN is sued in his official capacity as  
17 Acting Director of the U.S. Fish and Wildlife Service. As Acting Director, Mr.  
18 Sheehan is the federal official with responsibility for all Service officials'  
19 inactions and/or actions challenged in this complaint.  
20

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

### *The Mexican gray wolf*

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

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

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

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

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

3 ***The 1982 “recovery” plan***  
4

5 26. In 1982, the Service prepared a recovery plan for the Mexican gray  
6 wolf. The 1982 recovery plan recognized the Mexican gray wolf’s poor  
7 prospects for survival. The Service described the 1982 recovery plan as “far  
8 from complete.” The 1982 recovery plan did not contain recovery criteria  
9 because the status of the species at the time “was so dire that the recovery  
10 team could not foresee full recovery and eventual delisting.” The 1982  
11 recovery plan focused on the Mexican wolf’s “immediate survival.” *Id.* The  
12 1982 recovery plan’s goal was to reestablish a viable, self-sustaining  
13 population of at least 100 Mexican gray wolves in a 5,000 square mile area  
14 within the Mexican gray wolf’s historic range.  
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18 27. The objective of the 1982 recovery plan was to start a captive  
19 breeding program with the hopes of reestablishing a viable, self-sustaining  
20 population of Mexican wolves in the wild. In accordance with the 1982  
21 recovery plan, a captive-breeding program was initiated “with the capture of  
22 the last remaining Mexican wolves in the wild in Mexico and subsequent  
23 addition of wolves from captivity in Mexico and the United States.” All  
24 Mexican wolves alive today “descend from three captive lineages founded  
25 between 1960 and 1980 from a total of seven wolves.”  
26  
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1 ***The reintroduction program***

2 28. In 1996, the Service initiated plans to reintroduce Mexican wolves  
3 to their historic range in the Southwest. Two years later – in 1998 –the  
4 Service released 13 Mexican wolves in eastern Arizona and western New  
5 Mexico in the “Blue Range Wolf Recovery Area.” During the first five years,  
6 from 1998-2002, the Service released 110 Mexican wolves into the wild.  
7  
8 During the same time period – 1998-2002 – the service removed 58 Mexican  
9 wolves for various reasons. Successful reproduction of Mexican wolves in the  
10 wild was first documented in 2003.  
11  
12

13 29. From 2003-2007, the Service conducted a total of 68 releases and  
14 translocations of Mexican wolves into the wild. During this same period, the  
15 Service removed 84 Mexican wolves from the wild, primarily due to livestock  
16 depredation claims. Many of the wolves removed were from “the most  
17 successful packs.” These large-scale removals, coupled with fewer releases  
18 and high rates of human-caused mortality fundamentally altered the  
19 trajectory of the population.  
20  
21

22 30. By 2010, 89 Mexican wolves released into the wild had been killed.  
23 These 89 Mexican wolf deaths were due to illegal killings, vehicle collisions,  
24 government killings in response to livestock depredations, and natural  
25 causes. In January 2010, only 42 Mexican wolves were detected in the wild, a  
26 decline from the 2006 count of 51.  
27  
28

1           31. From 2010 to 2013, 10 Mexican wolves were released into the wild.  
2 During this period, the Service documented a “higher average population  
3 growth rate” than in previous phases of the reintroduction effort.  
4

5           32. The current estimated population of Mexican wolves in the wild is  
6 114. This population likely has an effective population (number of breeding  
7 animals) of approximately 28 animals. This number is “inadequate to ensure  
8 short- or long-term genetic fitness” of the existing population. The Service  
9 has announced a draft plan to attempt to cross-foster pups into as many as  
10 six wild Mexican wolf packs in 2018. The Service estimates it will cross-foster  
11 a maximum of 12 pups in 2018 as part of these efforts. There are no plans to  
12 reintroduce adult wolves or wolf packs into the wild in 2018. No adult wolves  
13 have been released into the wild since 2015. No wolf packs have been  
14 released into the wild since 2006. In 2017, the Service announced plans to  
15 release two wolf packs into the wild – one in the Gila Wilderness and the  
16 other in the Aldo Leopold Wilderness. The Service never followed through on  
17 that commitment.  
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22           ***The Mexican Wolf Recovery Team***  
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24           33. In 2010, the Service appointed an official Mexican Wolf Recovery  
25 Team (“recovery team”). The recovery team included a nine-member Science  
26 and Planning Subgroup (“science subgroup”) that was made up of  
27 independent scientific experts.  
28

1           34. The recovery team’s science subgroup was charged with reviewing  
2 and applying the best available science in preparation of a recovery plan for  
3 Mexican wolves. After reviewing the best available science, the science  
4 subgroup was assigned the task of defining recovery goals and objectives,  
5 describing actions needed to achieve recovery of the subspecies, and  
6 developing criteria for downlisting and delisting Mexican wolves to be  
7 included in a new, revised and updated recovery plan.  
8  
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10           ***The 2012 draft recovery plan***

11           35. On May 7, 2012, the recovery team’s science subgroup produced a  
12 149-page draft Mexican Wolf Revised Recovery Plan (“2012 draft recovery  
13 plan”).  
14  
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16           36. The stated goal in the 2012 draft recovery plan was to recover the  
17 Mexican wolf so that protections afforded by the ESA are no longer necessary.  
18 The interim goal of the 2012 draft recovery plan was to downlist the Mexican  
19 wolf to threatened status. The 2012 draft recovery plan’s recovery strategy  
20 includes the establishment of multiple wild populations of sufficient size and  
21 the maintenance of habitat connectivity to ensure these populations are  
22 effectively connected by dispersing wolves.  
23  
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25           37. The objectives of the 2012 draft recovery plan were to ensure: (a)  
26 Mexican wolf populations are sufficiently large and distributed such that the  
27 subspecies no longer requires listing under the ESA; and (b) all the threats to  
28

1 the Mexican wolf are reduced or eliminated such that Mexican wolf  
2 populations are stable or increasing and Mexican wolves are unlikely to  
3 become threatened again in the foreseeable future.  
4

5 38. The criteria for downlisting Mexican wolves from endangered to  
6 threatened in the 2012 draft recovery plan was: (a) the establishment of three  
7 separate populations of Mexican wolves, each with a census population of at  
8 least 100 individuals maintained in the wild for two successive generations  
9 (eight years); (b) a stable or increasing population trend over eight years (as  
10 measured by a statistically reliable monitoring effort); and (c) an estimated  
11 rate of human-caused losses during the eight year period (as measured by a  
12 statistically reliable monitoring effort) that is less than 17%.  
13  
14  
15

16 39. The criteria for delisting Mexican wolves in the 2012 draft recovery  
17 plan included five criteria: (1) an adequate population size that consists of a  
18 metapopulation of Mexican wolves with a minimum of three primary core  
19 populations in the wild, each with a census population size of at least 250  
20 individuals, and a total metapopulation size of at least 750 individuals; (2)  
21 adequate population connectivity that includes immigration into each of the  
22 primary core populations via natural dispersal at a rate not less than 0.5  
23 genetically effective migrants per generation; (3) a stable population trend;  
24 (4) sufficient post-delisting monitoring (including approval of a post-delisting  
25  
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1 monitoring plan); and (5) assurances that adequate post-delisting regulatory  
2 protections are in place.

3  
4 40. The 2012 draft recovery plan's finding that – at a minimum – an  
5 adequate population needed for delisting requires a minimum of three  
6 primary core populations in the wild, each with a census population size of at  
7 least 250 individuals, and a total metapopulation of 750 individuals, was  
8 based in the best available science. The 2012 draft recovery plan's habitat  
9 analysis anticipated that the three core populations will be located in the  
10 United States (not Mexico). Using a sophisticated landscape analysis, the  
11 scientific subgroup recommended these three Mexican wolf populations  
12 include: (1) the current population in the Blue Range Recovery Area; (2) a  
13 second population near the north rim of the Grand Canyon in Arizona (north  
14 of Interstate 40); and (3) a third population in north-central New Mexico's  
15 and southern Colorado's San Juan and Sangre de Cristo Mountains.  
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20 41. The 2012 draft recovery plan incorporated the best available science  
21 on the goals, objections, criteria, and actions needed to recover Mexican  
22 wolves.  
23

24 ***The states' opposition to the 2012 draft recovery plan***

25 42. The 2012 draft recovery plan was marked “for team use only, not for  
26 distribution” by the recovery team but a copy of the 2012 draft recovery plan  
27  
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1 (plus supplementary materials) was leaked to the public (and politicians) in  
2 2013.

3  
4 43. The states of Arizona, New Mexico, Utah, and Colorado expressed  
5 their disapproval of the recovery team's 2012 draft recovery plan. The Service  
6 responded to this disapproval by suspending all further work of the recovery  
7 team, including the science subgroup.  
8

9 44. In 2014, litigation was initiated challenging the Service's alleged  
10 failure to finish the recovery planning process. This litigation resulted in a  
11 settlement agreement, whereby the Service agreed to prepare a final, revised  
12 recovery plan for Mexican wolves by November 30, 2017.  
13

14 ***The Service's closed-door/invitation only workshops***

15  
16 45. In December 2015, the Service initiated a new Mexican wolf  
17 recovery planning process. The Service held a series of "information  
18 gathering workshops" to inform the recovery planning process through  
19 February 2017. These workshops were closed-door, invitation only meetings.  
20 Only personnel affiliated with the states of Arizona, New Mexico, Utah, and  
21 Colorado, and the Service, as well as representatives from Mexico, were  
22 allowed to participate.  
23  
24

25 46. The stakeholders who were previously invited to serve on and  
26 participate in the 2010 recovery team were not included in the process or  
27 workshops. One exception is that members of the science subgroup were  
28

1 invited to attend some (not all) of the meetings and workshops and only four  
2 members of the science subgroup were able to attend some (not all) of the  
3 workshops. Science subgroup members were not invited to a number of  
4 “closed door” sessions. Science subgroup members were not invited to preview  
5 or otherwise participate in the editing or writing of a new draft or final  
6 recovery plan.  
7  
8

9 ***The 2017 recovery plan***

10 47. On November 28, 2017, the Regional Director for the Service’s  
11 Southwest Region signed a new, 2017 recovery plan for Mexican wolves. The  
12 2017 recovery plan does not identify who specifically authored or contributed  
13 to the recovery plan.  
14

15 48. The stated goal of the Service’s 2017 recovery plan is “to conserve  
16 and protect the Mexican wolf and its habitat so that its long-term survival is  
17 secured, populations are capable of enduring threats, and it can be removed  
18 from the list of threatened and endangered species.”  
19

20 49. The stated objectives of the Service’s 2017 recovery plan include  
21 increasing the size of two Mexican wolf populations – one in the contiguous  
22 United States and one in Mexico. Additional objectives include improving  
23 gene diversity, ensuring adequate habitat availability, maintaining the  
24 captive breeding program, education and outreach, and ensuring recovery  
25 success.  
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1           50. The criteria for downlisting Mexican wolves from endangered to  
2 threatened in the 2017 recovery plan include two options. The Mexican wolf  
3 will be considered for downlisting if: (1) the United States population is  
4 greater than or equal to 320 wolves over a four year period and gene diversity  
5 from the captive breeding program has been incorporated into the wild  
6 population through the scheduled release of wolves “surviving to breeding  
7 age”; or (2) two populations (one in the United States and one in Mexico) each  
8 average a population equal to or greater than 150 wolves over a four year  
9 period and with positive population growth and gene diversity from the  
10 captive breeding program has been incorporated into the wild population  
11 through the scheduled release of wolves “surviving to breeding age.”  
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16           51. The criteria for delisting Mexican wolves in the 2017 recovery plan  
17 includes a minimum of two populations (one in the United States and one in  
18 Mexico). The United States population must average 320 wolves over an  
19 eight-year period and the population must exceed 320 wolves each of the  
20 three final years of the eight-year period and the averaged growth rate must  
21 be stable or increasing over this period. Gene diversity from the captive  
22 breeding program must be incorporated into the wild United States  
23 population through the scheduled release of wolves to result in 22 released  
24 wolves surviving to breeding age. “Surviving to breeding age” means a pup  
25 that lives two years to the age of breeding or an adult or sub-adult that lives  
26  
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1 for a year following its release. The Mexico population must average 200  
2 wolves over an eight-year period and the population must exceed 200 wolves  
3 in each of the three last years of the eight-year period and the average  
4 growth rate must be stable or increasing over this period. Gene diversity from  
5 the captive breeding program must be incorporated into the wild population  
6 in Mexico through the scheduled release of wolves to result in 37 released  
7 wolves surviving to breeding age.  
8

9  
10 52. The criteria for delisting in the 2017 recovery plan requires states  
11 and tribes and Mexico to ensure regulatory mechanisms are in place to  
12 prohibit or regulate human-caused mortality. No specific regulatory  
13 mechanisms are included in the 2017 recovery plan or required by the Service  
14 as part of the delisting criteria.  
15  
16

17 53. The Service's 2017 recovery plan establishes "actions" for each  
18 objective included in the recovery plan. These actions include surveying and  
19 monitoring Mexican wolves to determine population status in the U.S.,  
20 Mexico, and various Tribal lands; conduct Mexican wolf releases to increase  
21 population size in Mexico; reduce human-caused mortality of Mexican wolves  
22 in the U.S. and Mexico; reduce Mexican wolf-livestock conflicts in the U.S.  
23 and Mexico; develop and implement annual plans for Mexican wolf releases,  
24 cross-fostering, and translocations in the U.S. and Mexico; monitor and  
25 manage Mexican wolf genetic health; monitor and manage Mexican wolf  
26  
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1 health; maintain habitat for Mexican wolves in the U.S.; maintain and  
2 protect habitat for Mexican wolves in Mexico; maintain and enhance  
3 connectivity within and between Mexican wolf populations; maintain or  
4 improve the status of native prey populations of Mexican wolves; manage the  
5 Mexican wolf captive breeding population; conduct education and outreach on  
6 Mexican wolf conservation in the U.S. and Mexico; manage the Mexican Wolf  
7 Recovery Program in the U.S. and Mexico; coordinate bi-national Mexican  
8 wolf recovery efforts; and develop adequate regulations and management and  
9 monitoring plans to maintain viable Mexican wolf populations after delisting.

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12  
13 54. The Service estimates that recovery of Mexican wolves – as defined  
14 by the 2017 recovery plan’s criteria for delisting – will occur in 25-35 years.  
15 The Service estimates that recovery will cost approximately \$178 million.  
16

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

20 55. Guardians hereby incorporates all preceding paragraphs.

21 56. Under the APA, the Service must provide a valid, reasonable, and  
22 rational explanation for why the findings and criteria included in 2017  
23 recovery plan differs significantly from the 2012 draft recovery plan for  
24 Mexican wolves.  
25

26 57. Under the APA, the Service is entitled to makes changes to the  
27 Mexican wolf recovery plan but must provide a reasonable explanation for  
28 doing so. The Service must also provide a reasoned explanation for

1 disregarding facts, science, and circumstances that underlay or were  
2 engendered by the 2012 draft recovery plan.

3 58. The draft 2012 recovery plan included specific criteria – based on  
4 the best available science – regarding population size (including the number  
5 of subpopulations needed and overall metapopulation size), population trend,  
6 population connectivity (including releases from captive to wild population),  
7 amelioration of human-caused losses, post delisting monitoring, and  
8 regulatory mechanisms. The draft 2012 recovery plan also included scientific  
9 findings and data supporting its recovery criteria, including a habitat  
10 analysis. The 2017 recovery plan for Mexican wolves either changes or  
11 abandons this recovery criteria without any explanation as to why it chose to  
12 do so and without providing any supporting data or science. The 2017  
13 recovery plan for Mexican wolves fails to explain why the science relied on in  
14 the 2012 draft recovery plan is invalid, outdated, or what new science  
15 displaces it.  
16  
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21 59. The Service’s failure to provide a reasoned explanation or rationale  
22 for its departure from the criteria and underlying science in 2012 draft  
23 recovery plan violates the ESA and is “arbitrary, capricious, an abuse of  
24 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).  
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1 **THIRD CAUSE OF ACTION**  
2 **(Violation of the ESA – failure to provide objective, measurable**  
3 **criteria necessary for delisting)**

4 65. Guardians hereby incorporates all preceding paragraphs.

5 66. Pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), the Service  
6 shall, to the maximum extent practicable, incorporate into each recovery plan  
7 objective, measurable criteria which, when met, would result in a  
8 determination that the species be delisted (recovered). A recovery plan’s  
9 criteria for delisting must address the threats to the listed species. A recovery  
10 plan’s criteria for delisting, once met, must ensure the species is “recovered”  
11 and no longer endangered “throughout all or a significant portion of its  
12 range,” 16 U.S.C. §1532(6), or likely to become endangered in the “foreseeable  
13 future” “throughout all or a significant portion of its range” (i.e., threatened),  
14 16 U.S.C. §1532 (20).

15  
16 67. The Service’s criteria in the 2017 recovery plan (for both down  
17 listing and delisting) is not objective and is not adequately measurable (using  
18 the Service’s proposed methods).

19  
20 68. The Service’s criteria in the 2017 recovery plan (for both down  
21 listing and delisting), even if met, would not result in a determination that  
22 Mexican wolves should be down listed or qualify for delisting due to recovery.

23 69. The Service’s criteria in the 2017 recovery plan does not address all  
24 the threats to Mexican wolves. The 2017 recovery plan does not include  
25 criteria related to connectivity. The 2017 recovery plan does not include  
26 criteria related to conflicts with livestock operations. The 2017 recovery plan  
27 does not include criteria related to high-levels of human-caused mortality  
28

1 rates. The Service's criteria in the 2017 recovery plan does not include any  
2 specific regulatory mechanisms to limit human-caused mortality. The 2017  
3 recovery plan does not include criteria related to protecting and restoring  
4 habitat for Mexican wolves. There are no habitat-based objectives or criteria  
5 in the 2017 recovery plan. The Service's criteria in the 2017 recovery plan  
6 arbitrarily relies on speculative conservation measures and actions in Mexico.  
7

8 70. The Service's criteria in the 2017 recovery plan does not address  
9 and properly define "recovery." The Service's criteria in the 2017 recovery  
10 plan does not address whether, if met, the Mexican wolf is still endangered  
11 throughout "all or a significant portion of its range" or whether the Mexican  
12 wolf is likely to become endangered in the "foreseeable future" "throughout  
13 all or a significant portion of its range."  
14

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

19 72. The Service's decision and/or failure to provide objective and  
20 measureable criteria for delisting (recovery) in the final recovery plan for  
21 Mexican wolves violates the ESA and is "arbitrary, capricious, an abuse of  
22 discretion, or otherwise not in accordance with law" and/or constitutes  
23 "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706  
24 (2)(A), 706 (1).  
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1 **FOURTH CAUSE OF ACTION**  
2 **(Violation of ESA – failure to utilize the best available science)**

3 73. Guardians hereby incorporates all preceding paragraphs.

4 74. Pursuant to the ESA, 16 U.S.C. § 1533(b)(1)(A), the ESA's  
5 implementing regulations, 40 C.F.R. § 424.11, and the Service's recovery  
6 planning guidance, all delisting decisions and recovery determinations  
7 (including the criteria, actions, analyses, methods, data and assumptions that  
8 underlie those decisions and determinations) must be based solely on the best  
9 scientific and commercial data available ("best available science").  
10

11 75. The Service's 2017 recovery plan fails to utilize and incorporate the  
12 best available science on the conservation needs of Mexican wolves. The  
13 Service's 2017 recovery plan does not incorporate the recommendations from  
14 the Service's recovery team or the science subgroup.  
15

16 76. The Service's 2017 recovery plan, including but not limited to, the  
17 plan's proposed site-specific management actions, downlisting and delisting  
18 criteria, threats assessment, and methods used to evaluate risk, conduct a  
19 population viability analysis ("PVA"), evaluate and measure recovery, and  
20 ensure compliance with the recovery plan, conflict with the best available  
21 science.  
22

23 77. The Service's 2017 recovery plan for Mexican wolves fails to utilize  
24 the best available science by failing to meeting minimum viable population  
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1 objectives and relying on a flawed a biological report (June, 2017), a flawed  
2 PVA, a flawed habitat suitability analysis (“HSA”) and habitat model, a  
3 flawed definition and interpretation of historic range, and a flawed paper  
4 (Hefflefinger et al., (2017)) while ignoring or discounting other science-based,  
5 peer-reviewed studies.  
6

7  
8 78. The Service’s 2017 recovery plan for Mexican wolves fails to utilize  
9 the best available science by failing to address and analyze questions of  
10 probability and certainty and by relying on flawed assumptions, population  
11 abundance, geographic distribution, and genetic criteria, including a flawed  
12 definition of “surviving to a breeding age” that requires no evidence of  
13 breeding in the wild and flawed data and science on the number of “effective  
14 releases” needed to ensure adequate genetic representation in wild  
15 populations.  
16  
17

18  
19 79. The Service’s 2017 recovery plan for Mexican wolves fails to utilize  
20 the best available science to assess the threats to Mexican wolves from high  
21 levels of human-caused mortality, demographic and environmental  
22 stochasticity from small population size, the loss of genetic diversity, the  
23 ongoing and future impacts of climate change, and the construction of a  
24 border wall. The Service’s 2017 recovery plan fails to utilize the best  
25 available science on the adequacy of state, tribal, and Mexican government  
26 action, and by failing to address, respond to, and incorporate the scientific  
27  
28

1 concerns raised by many of the peer reviewers and leading experts on  
2 Mexican wolves and Mexican wolf conservation, including the  
3 recommendation of the official Mexican Wolf Recovery Team and Science and  
4 Planning Subgroup.  
5

6 80. The Service’s decision and/or failure to utilize the best available  
7 science in the 2017 recovery plan for Mexican wolves violates the ESA and is  
8 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
9 with law” and/or constitutes “agency action unlawfully withheld or  
10 unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).  
11

12 **REQUEST FOR RELIEF**

13 Guardians respectfully request this Court:

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

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

18 C. Issue other relief that Guardians may subsequently request;

19 D. Award Guardians their reasonable attorneys’ fees, costs and  
20 expenses of litigation;  
21

22 E. Issue any other relief this Court deems necessary, just, or proper.  
23

24 Respectfully submitted this 24th day of May, 2018.

25 /s/ Matthew K. Bishop  
26 Matthew K. Bishop  
27 *admitted pro hac vice*  
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/s/ John R. Mellgren  
John R. Mellgren  
*admitted pro hac vice*

*Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of May, 2018, I filed a copy of this document electronically through the CM/ECF system, which caused all ECF registered counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Matthew Bishop  
Matthew Bishop