United States House of Representatives
Committee on Natural Resources

The Danger of Deception: Do Endangered Species Have a Chance?

TESTIMONY

Date: May 21, 2003

Title: **U.S. Fish and Wildlife Service's Failure to Recover the Endangered Mexican Gray Wolf in the Southwestern United States**

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OVERVIEW OF THE ISSUE

- The Mexican gray wolf (*Canis lupus baileyi*) was completely extirpated from the wild by a United States government eradication program throughout its historical range in the U.S. and Mexico and **rescued from the brink of extinction** through the captive breeding of just 7 survivors.
- Thirty-two years after receiving protection under the Endangered Species Act (ESA), the Mexican gray wolf remains the most endangered mammal in North America and the most endangered subspecies of gray wolf in the world.
- **The U.S. Fish and Wildlife Service (FWS) has failed in its duty under the ESA to conserve and recover the Mexican wolf because it has abandoned the application of science and consequently mismanaged the program**.
- Twenty-six years after adoption of a recovery plan and 10 years following initial reintroductions, the total wild population of Mexican wolves was only 52 animals and 3 successful breeding pairs at the end of 2007 (Figure 1).
- The approved objective for this initial reintroduction project is the establishment of a viable, self-sustaining wild population of at least 100 wolves and 18 breeding pairs by the end of 2006 in the 7,000 square mile Blue Range Wolf Recovery Area in SW New Mexico and SE Arizona (Figure 2). **The FWS has failed to meet this objective by all measures**; and there is no evidence that the population is on a growth trajectory.
- Under current policies and management practices it appears unlikely that recovery of the Mexican wolf will succeed. A complex web of bureaucratic multi-agency authority sharing, deference to special interests that oppose recovery, mismanagement of public lands, the promulgation of operational procedures that cause excessive management removal of wolves, inattention to science, and the indefinite suspension of the recovery planning process are precluding the FWS from meeting the Endangered Species Act (ESA) mandate for recovery of the endangered Mexican wolf.

- It is my professional opinion that **the FWS and its cooperating agencies are prioritizing wolf control over wolf recovery of the endangered Mexican gray wolf** to the point of threatening the second extirpation of the Mexican wolf in the wild; ultimately, this may result in the complete extinction of the Mexican wolf since the captive-breeding program is intended as a temporary measure to achieve recovery in the wild.

BACKGROUND

- The FWS approved the Mexican Wolf Recovery Plan in 1982 which called for reintroduction of Mexican wolves, using the rescued captive stock of certified pure Mexican wolves, to at least two areas within their historic range. Following the preparation of an Environmental Impact Statement (EIS), the Secretary of the Interior signed a Record of Decision in early 1997 authorizing the release of one experimental non-essential population (per Section 10(j) of the ESA) into the Blue Range Wolf Recovery Area (BRWRA; Figure 2).
- Section 10(j) of the ESA allows the Secretary of the Interior to authorize such releases of experimental populations only **"if the Secretary determines that such release will further the conservation of such species."** The ESA defines "conservation" as: the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary—in other words, recovery and delisting of the species.
- The BRWRA comprises all of the Gila National Forest in southwestern New Mexico and all of the Apache portion of the Apache-Sitgreaves National Forest in southeastern Arizona—an area of about 7,000 square miles (Figure 2). **Ninety-five percent of the area consists of public national forest lands.**
- The release of wolves began in 1998, and 99 wolves were released to the BRWRA by the end of 2006. None were released in 2007.
- A special rule (50 C.F.R. § 17.84(k)), promulgated under provisions of Section 10(j) of the ESA, specifies circumstances under which Mexican wolves in the BRWRA population may be harassed, killed, or removed:
    - Wolves may be harassed when in proximity to people, livestock, and pets.
    - Wolves may be killed in self defense or in defense of the lives of other humans; when wolves are in the act of attacking livestock on private or tribal property; and when wolves are killed by livestock guarding dogs.
    - The rule authorizes, but does not require, the FWS to implement management measures for additional taking (including killing) of wolves for various purposes specified in the rule, primarily to resolve conflicts between wolf restoration and human activities, especially livestock grazing. **But this additional taking must not preclude progress toward recovery of Mexican wolves** (ESA § 10(j)(2)(A)).
- The final EIS (page 2-16) affirms the FWS's recognition, in 1996, of its duty to conserve and recover Mexican wolves by stating that it will use the "greatest degree of management flexibility" granted through discretionary rule provisions

to achieve "the least impact on private activity **consistent with wolf recovery**" (emphasis added).

- Project authorizing documents mandate the use of an "adaptive management" process for project decisions. Under adaptive management, actions and policies are to be treated as scientific experiments where certain outcomes are hypothesized. Anticipated outcomes are compared with actual outcomes and adaptations are guided by what has been learned through research, monitoring, and data assessment.
- Since October 31, 2003, management of the BRWRA wolf population has been carried out by a six-agency decision-making body, the Mexican Wolf Adaptive Management Oversight Committee (AMOC), established by a Memorandum of Understanding.
- The most notable management measure authorizing the killing and permanent removal of wolves is **Standard Operating Procedure 13** (SOP 13), a discretionary management measure adopted by the AMOC and approved by the FWS which requires the removal or killing of wolves involved in three fatal livestock depredation incidents in the span of one year, **even if recovery is precluded by its implementation.**

STANDARD OPERATING PROCEDURE 13

- In October 2005, the AMOC, with FWS approval, formally adopted SOP 13.
- Under provisions of SOP 13, "Wolves known or likely to have committed three depredation incidents within a period of 365 days **shall be permanently removed from the wild as expeditiously as possible**." Permanent removal includes live capture with subsequent placement in captivity and shooting wolves in the wild. Wolf removals under SOP 13 are punitive and mandatory.
- SOP 13 requires permanent removal of each offending wolf **regardless of important biological factors** such as population numbers, genetic value, reproductive status, or the presence of dependent pups.
- SOP 13 places no cap on the number of wolves that will be permanently removed from the BRWRA and **establishes no population floor below which its provisions would be suspended**.
- Since its implementation, Mexican wolf removals have spiked, undoing all progress towards their recovery in the wild (Figures 1 and 4).
- FWS approved SOP 13 despite warnings from experts in the Three-Year Review (2001; "Paquet Report") that progress towards recovery would not occur without a reduction in wolf mortalities and management removals.

MEXICAN WOLF REINTRODUCTION PROJECT—STATUS REVIEW

- The objective of the authorized reintroduction project is to **establish a viable, self-sustaining wild population of at least 100 Mexican wolves** in the BRWRA by the end of 2006—nine years following the initial releases in 1998. Such a population was predicted to include 18 breeding pairs.

- **The FWS has failed to meet this objective by all measures**; and there is no evidence that the population is on a growth trajectory.
- **The estimated population at the end of 2007 was 52 wolves and only 3 breeding** pairs. The population has actually declined since the end of 2003, and the number of breeding pairs has not increased over this 4-year period (Figure 1).
- Permanent removal and lethal control by agency managers of wolves that depredate livestock is the most significant cause of the population decline and lack of progress toward the reintroduction objective (Figure 3).
- Given that all Mexican wolves stem from only 7 founders, management of population genetics is critically important. Recent peer-reviewed research has documented genetic deficiencies and reduced reproductive fitness in the wild population and recommended measures to restore the genetic integrity and fitness of the wild population—a process referred to as "genetic rescue." Yet, the FWS has established no formal objectives or procedures for managing and improving the genetic composition of the wild population.
- The Association of Zoos and Aquariums, which manages the captive population of Mexican wolves, requested that the FWS implement **"a moratorium on lethal control and permanent removal** (rescind or suspend SOP13) of Mexican wolves in the Blue Range Wolf Recovery Area until an expert taskforce on genetic issues can be convened to provide guidance to these actions.**"** (Letter to Dr. Benjamin Tuggle, SW Regional Director, January 2, 2008; emphasis added).
- A formal resolution unanimously passed by the American Society of Mammalogists at its 2007 annual meeting calls upon the FWS to expedite a revision of the Mexican Wolf Recovery Plan; **suspend all predator control directed at Mexican gray wolves** (currently carried out under SOP 13) at least until the 100-wolf goal of the current reintroduction program has been achieved; and protect wolves from the consequences of scavenging on livestock carcasses, which can habituate wolves to preying on stock causing preventable conflicts.
- New Mexico Governor Bill Richardson has called for the immediate suspension of and ultimately revising SOP 13, but his request has not been acceded to. In his July 6, 2007, statement, the Governor said: "**The lethal removal of a female wolf, that leaves pups with a single parent, is a setback to the Mexican Gray Wolf Recovery Program**, and signals that it is time to reexamine the protocols under which wolves are removed from the wild" (emphasis added). Recent peer-reviewed research has confirmed the Governor's judgment.
- The wild population of Mexican wolves is not "self-sustaining." In fact, **the population is lower now than at the end of 2003**.
- The FWS contracted with the International Union for the Conservation of Nature (IUCN) for the required three-year review of the BRWRA reintroduction project. A team of scientists led by world-renowned wolf ecologist Dr. Paul C. Paquet issued their report in June 2001; they concluded that **"Survival and recruitment rates are far too low to ensure population growth or persistence. Without dramatic improvement in these vital rates, the population will fall short of predictions for upcoming years."**

- The FWS took no action on the substantive recommendations of the three-year review or any of the many subsequent requests to rescind SOP 13, and the Paquet Report's prediction became the current reality.

THE BRWRA POPULATION OF MEXICAN WOLVES IS "ESSENTIAL" TO THEIR RECOVERY

- Mexican wolf recovery will ultimately require the establishment of at least three or more viable, self-sustaining "core" populations with habitat connectivity among the core populations.
- An analysis of five potential reintroduction areas presented in the final EIS found the BRWRA to be the most suitable site capable of meeting the 100+ wolf objective within the probable historic range of the subspecies. The Paquet Report estimated that **the BRWRA could support 200 to 400 Mexican wolves**.
- A recent peer-reviewed analysis of areas suitable for wolf recovery in western U.S. **confirms the high importance of the BRWRA to the recovery of the Mexican wolf in the Southwest.**
- Given that the BRWRA is arguably the best place to initiate wolf recovery in the Southwest and that restoration of a viable, self-sustaining population of Mexican wolves in the BRWRA is arguably a critically essential component to any future recovery plan for the Mexican wolf, the FWS can no longer justify an "experimental non-essential" classification for the BRWRA population.
- In the final rule, the FWS states: "This reintroduction will establish a wild population of at least 100 Mexican wolves and reduce the potential effects of keeping them in captivity in perpetuity. **If captive Mexican wolves are not reintroduced to the wild within a reasonable period of time, genetic, physical, or behavioral changes resulting from prolonged captivity could diminish their prospects for recovery**" (emphasis added).
- Recent peer-reviewed research has confirmed genetic deterioration of captive populations over time and recommends the return of captive animals to the wild as rapidly as possible.
- Endangered species recovery takes place in the wild, not in captivity. There is absolutely no legal or biological basis for asserting that a captive breeding program alone satisfies the mandate of the ESA. **Clearly, the existing BRWRA population or any future wild population of Mexican gray wolves can no longer be considered "nonessential" to the continued existence of the subspecies**. If there ever is a case to be made for the first ever designated "essential" experimental population under Section 10(j) of the ESA, this is it.

RECOVERY PLANNING

- The ESA (Section 4(f)(1)) mandates that the Secretary "shall develop and implement…'recovery plans' for the conservation and survival of endangered species." The Mexican Wolf Recovery Plan was approved and adopted in 1982. FWS policy requires that recovery plans be reviewed every five years and updated or revised if they are out of date or not in compliance with the ESA. **The 1982**

- The FWS initiated a recovery plan revision process in October 2003 but suspended that effort in January 2005. **The FWS has shown no intent to reinitiate the recovery planning process for the critically endangered Mexican wolf.**
- The FWS has indefinitely suspended recovery planning that would apply the best available science to future decisions for achieving recovery of the Mexican wolf.

SELECTED EXAMPLES OF MISMANAGEMENT BY FWS

Genetics:

- The unnecessary government killing of the alpha male of the Saddle Pack (AM574) illustrates the punitive management that imperils this population and the subspecies as a whole. This wolf killed four head of cattle by mid April 2004 and plans were made to remove him from the wild. **The FWS was aware that he was the sixth most genetically valuable Mexican wolf** for his genetic attributes among the combined wild and captive populations. **He was the single most genetically valuable wolf in the wild**; and was, in fact, irreplaceable genetically. This important information was documented in internal FWS communications. If captured alive, he could have been bred in captivity, and would have perpetuated his valuable genetic heritage. Over the next three months this wolf ceased killing cattle, and was observed feeding on an elk; it may be that, like other wolves that switch prey preferences, he would never have killed another cow. Nevertheless, on July 11, 2004, **he was shot and killed as per FWS instructions**.

Adaptive Management:

- On February 12, 2005, Congressman Steve Pearce (NM) convened two meetings, in Glenwood and Socorro, New Mexico, to hear constituents' concerns about Mexican wolf recovery efforts in New Mexico. Invited participants were primarily members or supporters of the livestock industry in New Mexico. At the Congressman's request, senior staff from FWS's Southwest Region attended the meetings. **Conservation stakeholders' requests for similar access to FWS officials through formal public hearings were denied.**
- On April 22, 2005, the AMOC proposed a moratorium on new releases of Mexican wolves into the BRWRA, and the new Standard Operating Procedure 13. The Rewilding Institute concluded that the proposed release moratorium and new wolf control procedures **"will likely increase mortality and removal of wolves while reducing population supplementation."** Following public review, AMOC issued a final release moratorium and a final SOP 13 with no substantive

changes from the proposed procedures, despite the fact that **project monitoring had documented a population decline of about 20% at the end of 2004**.

- The Rewilding Institute found that **"[t]he proposed moratorium on releases and translocations appears politically motivated, premature, and unjustified** on the basis of findings of the 3-year review and preliminary findings of the 5-year review…. We fail to find any compelling justification in support of the necessity or urgency of the proposed moratorium and we recommend that it be rescinded immediately." (Letter to FWS and Arizona Game and Fish Department dated May 25, 2005). The Rewilding Institute's comments were formally endorsed by several prominent (some world renowned) conservation scientists, including Dr. Paul Paquet. Neither the FWS nor the AMOC paid any heed to our science-based and expert-endorsed comments.

LITIGATION

Frustrated over the FWS's failure to conserve and recover the federally endangered Mexican gray wolf, twelve conservation organizations filed two lawsuits in the United States District Court for the District of Arizona on April 30, 2008. Complaints are summarized below.

WildEarth Guardians and the Rewilding Institute vs. **United States Fish and Wildlife Service and United States Forest Service. [2:08-cv-00820-ECV]**

- **FWS has failed to meet the conservation standard of the ESA § 10(j).** Since the beginning of 2005, permanent wolf removals under SOP 13 have precluded progress towards recovery.
- FWS has acted, and is acting, unreasonably and with clear error of judgment by adopting and continuing to implement its SOP 13 wolf removal campaign in the face of a crashing wolf population.
- **FWS has arbitrarily and capriciously overstepped the bounds of management flexibility** and entered into the realm of unlawful endangered species predator control.
- FWS's management strategy of killing and trapping its way to recovering the Mexican gray wolf, as manifested by its adoption and implementation of SOP 13, has not – and cannot – further the conservation of the subspecies.
- **The Forest Service has failed to meet the conservation duty of ESA § 7(a)(1).**
- Permanent wolf removals directly resulting from conflicts with Forest Service permitted livestock are precluding the attainment of recovery benchmarks for the only wild population of Mexican gray wolves.
- The Forest Service has unlawfully refused or unreasonably delayed developing and implementing a program for the conservation of this endangered subspecies.

Defenders of Wildlife; Center for Biological Diversity; Western Watersheds Project; New Mexico Audubon Council; New Mexico Wilderness Alliance; University of New Mexico Wilderness Alliance; The Wildlands Project; Sierra Club; Southwest Environmental Center; and Grand Canyon Wildlands Council vs. **Benjamin Tuggle,**

Region 2, USFWS; Dale Hall, Director, USFWS; Dirk Kempthorne, Secretary U.S. Department of The Interior; U.S. Fish and Wildlife Service. [4:08-cv-00280-DCB]

- Defendants failed to carry out environmental analysis and public review, as required under NEPA, 42 U.S.C. § 4331 *et seq*., of its decision or decisions to establish the Adaptive Management Oversight Committee under a Memorandum of Understanding.
- Defendants' decision or decisions to delegate FWS's statutory duties and responsibilities to administer the Mexican gray wolf reintroduction project will and have harmed the environment and will and has caused adverse impacts to the Mexican gray wolf and the reintroduction project.
- Defendants failed to carry out environmental analysis and public review, as required under NEPA, 42 U.S.C. § 4331 *et seq*., of its decision or decisions to approve and implement SOP 13.
- Defendants' decision or decisions to establish SOP 13 will and have harmed the environment and will and have caused adverse impacts to the Mexican gray wolf and the reintroduction project. Further, because there is no other Mexican gray wolf population in the wild, the harm extends not just to the reintroduction project but to the prospects for the ultimate recovery of the subspecies.
- By the AMOC MOU, Defendants unlawfully subdelegated to the other AMOC lead agencies their statutory duty and responsibility to "implement . . . the objectives and strategies" of the most central facets of the Mexican gray wolf recovery.
- **The Defendants' decision or decisions to establish the Adaptive Management Oversight Committee under a Memorandum of Understanding and to approve and implement SOP 13 are counter to the FWS's reintroduction environmental impact statement and record of decision, final ESA § 10(j) rule, the 1998 Interagency Management Plan, and Defendant's overriding ESA obligation to recover the species in the wild.**

RECOMMENDATIONS

- Direct FWS to abolish SOP 13.0 and develop management protocols for addressing wolf conflicts in ways that take into account population genetics, demographics and other factors important for making progress towards recovery of the critically endangered Mexican gray wolf. Benchmarks for population growth must be established. We recommend an annual population increase of at least 15% and an annual increase of at least 2 breeding pairs.
- Direct FWS to abolish the AMOC and establish a new model for interagency participation, reclaim full decision authority for the BRWRA reintroduction project, and carry out its duty to conserve Mexican gray wolves per the ESA.
- Direct FWS to prepare a legally sufficient recovery plan, under the 1988 revisions to the ESA, based on modern conservation science within the next year.
- Develop and introduce legislation to compensate livestock operators within the BRWRA, on a voluntary basis, in exchange for the permanent retirement of the public grazing allotments they lease.

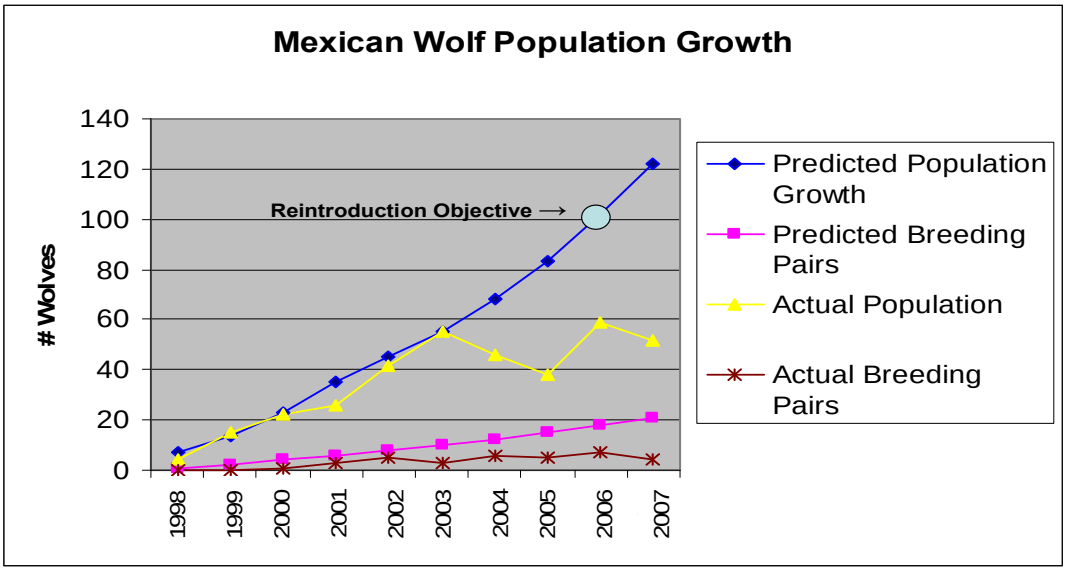

Figure 1. Predicted versus actual growth of the reintroduced population of Mexican gray wolves in the Blue Range Wolf Recovery Area of SW New Mexico and SE Arizona (Final EIS).

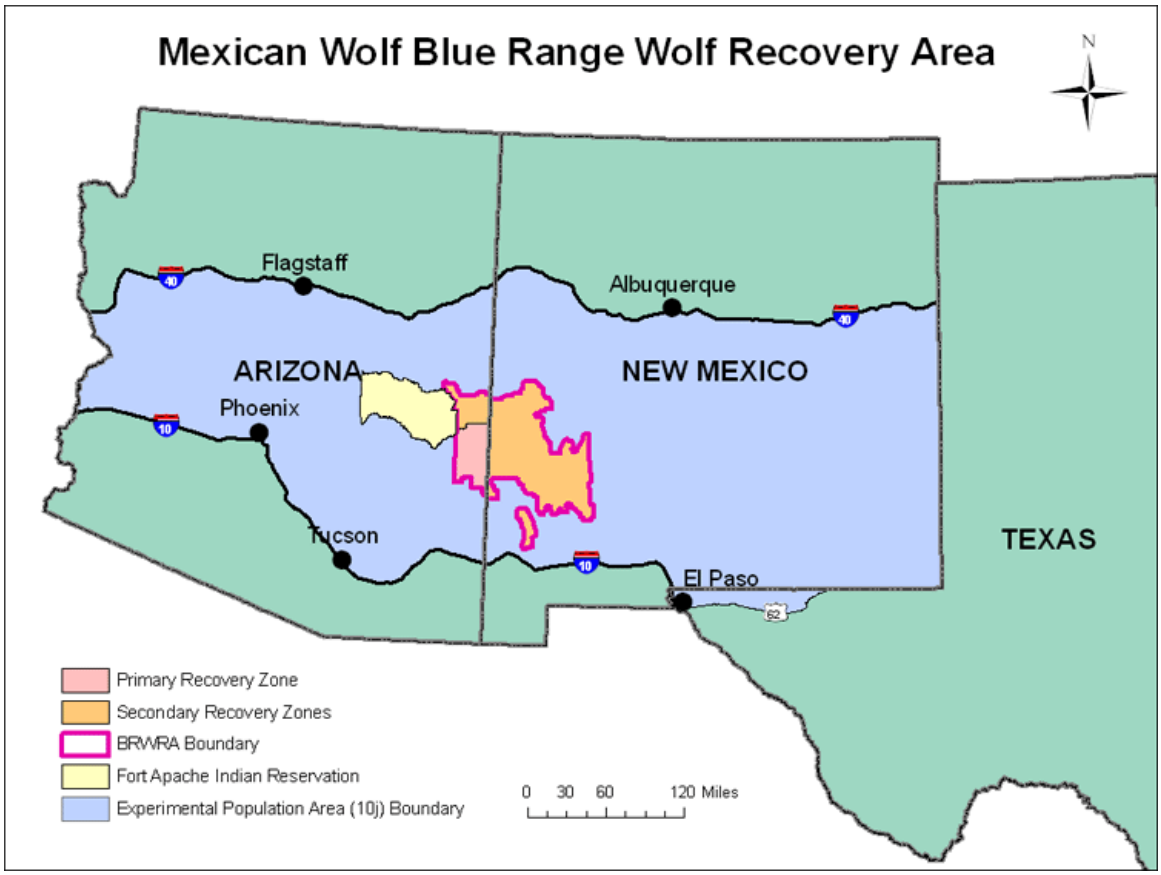

Figure 2. The Blue Range Wolf Recovery Area (BRWRA) consists of all of the Gila National Forest in southwestern New Mexico and all of the Apache National Forest in southeastern Arizona. Mexican wolves are initially released in the Primary Recovery Zone and are allowed to disperse or be translocated throughout the BRWRA. Wolf packs are not allowed to establish permanence residence outside the boundaries of the BRWRA, except when landowners agree to accept wolves. Such is currently the case with the White Mountain Apache Tribe on the Fort Apache Indian Reservation.

Figure 3. Causes of Mexican wolf removals and mortality in the BRWRA from 2003-2007. Removal or lethal control of wolves by agency managers accounts for 62% of all causes combined. Response to livestock depredation incidents accounts for 91% of all management removals.

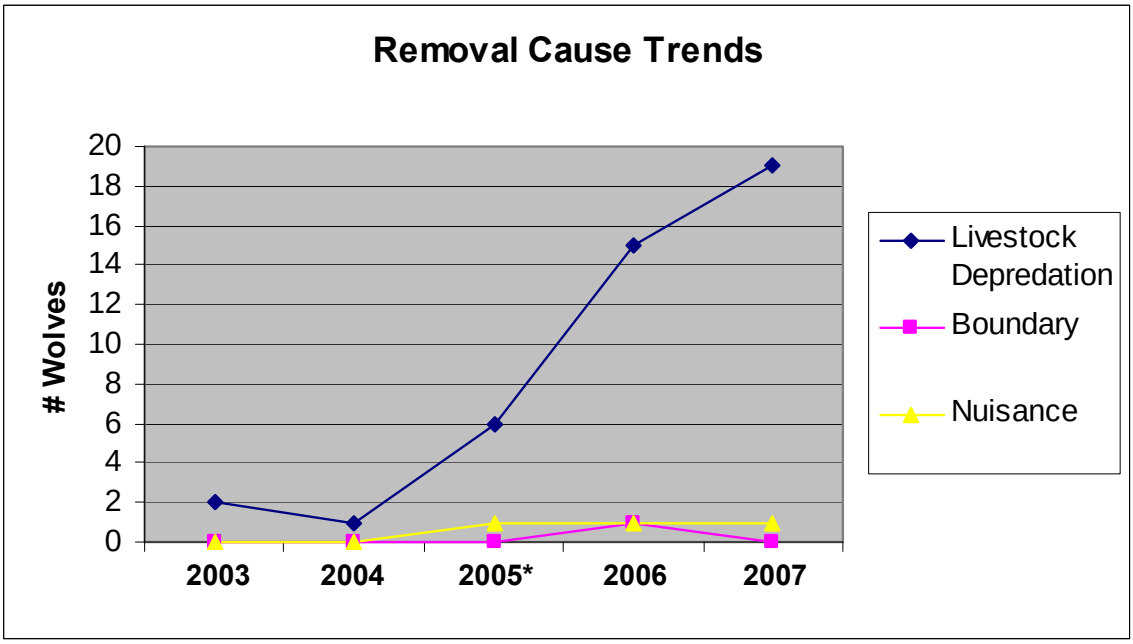

Figure 4. Trends in causes of removal of wolves from the BRWRA by agency managers from 2003 through 2007.