



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/R6/ABS/032409/361579

SEP 21 2007

The Honorable Wayne Allard
United States Senate
Washington, D.C. 20510-0606

Dear Senator Allard:

Thank you for your letter of July 30, 2007, to Secretary of the Interior Dirk Kempthorne concerning the ongoing status review of the Preble's meadow jumping mouse (Preble's). The Secretary asked the U.S. Fish and Wildlife Service (Service) to respond directly to you.

The Service remains committed to making biologically sound decisions based on the best available science. In accordance with a recent court settlement, we are finalizing a comprehensive status review that will examine Preble's taxonomy and its threatened status under the Endangered Species Act utilizing all available distribution, abundance, and trends data. While this issue has a long, complex and controversial history, I can assure you that the Service's October 2007 determination on the status of the mouse will be based on the best available science.

Your letter raises concerns about the Service process in addressing the status of Preble's, and the conduct of some Service employees involved with this issue. Specifically, you state that Service employees are conducting themselves in an unethical manner in order to retain the listed status of Preble's. We recognize that the success of any listing decision is dependent upon the integrity and objectivity of the Service and of all employees involved in the decision process. In response to your concerns, we have reviewed the history of the status review. We are satisfied that the Service staff conducted themselves professionally and in accordance with Service and Departmental policy. We are enclosing a summary of the decision process to date, which also addresses the concerns outlined in your letter.

Thank you for your consideration of these facts. If we can be of further assistance, please feel free to contact me at (202) 208-4717.

Sincerely,

Kenneth Stansell
Acting
DIRECTOR

Enclosure

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MAJOR POINTS AND SERVICE RESPONSE

Cooperation with the Denver Museum of Nature and Science – You raise the concern that the Service attempted to retain the listed status of Preble's through efforts to discredit the science of the Denver Museum of Nature and Science (Museum). To resolve ongoing taxonomic questions about the relationship between Preble's and neighboring mouse taxa, the Service, in cooperation with others, provided funding via a Cooperative Agreement (Agreement; see Service 2003) with the Museum. The funding resulted in the first peer-reviewed publication on the relationship between Preble's and neighboring subspecies of mice (Ramey et al. 2005).

As indicated in your letter, there were some difficulties with respect to our Agreement with the Museum. However, our difficulties were not with the results of the study, as indicated in your letter, but with the performance of the Museum under the terms of the Agreement. Specifically, the Museum failed to deliver on time several of the tasks outlined in the Agreement (Rosenlund 2004a, 2004c, 2005), including a commitment to submit the results of the study for publication by July 2004 (Service 2003, see IVA3). Despite these missed deadlines, Service staff provided the Museum with additional funds and extended the deadline for publication from July 2004 to July 15, 2005 (Rosenlund 2004a; Ramey et al. 2004c). Once contracted tasks were completed, with publication of the study being one of five deliverables, the Service paid the Museum in full. The Office of Inspector General conducted a review of the Cooperative Agreement with the Museum and its implementation; it raised no issues.

Appropriate Use of Tax Payer Dollars – In response to your concerns about the cost of these studies to taxpayers, our decision to fund both the Museum and USGS studies was strictly made to ensure that sound science was brought to bear on this issue. The Service has spent comparable amounts for both the Museum and USGS studies, and we received comparable matching funds from partners. Our February 2, 2005, proposed delisting (70 FR 5404) relied exclusively on Ramey et al. (2004a) which had received mixed peer reviews (70 FR 5407-5408) and remained (at the time) unpublished. Considering the weight Ramey et al. (2004a) was given in the proposed delisting, verifying these results was a high priority for the Service (Morgenweck 2005, Williams 2004). The conclusions of King et al. (2006a, pp. 53-59) and the SEI panel (SEI 2006, pp. 3-4, 21-30) demonstrate that our concern was justified, and our decision to contract with USGS for additional analysis was an appropriate use of appropriated dollars.

Dr. King's Selection – We believe that Dr. King is well qualified to conduct the analysis. For example, the results of Dr. King's Atlantic salmon work to which you refer were upheld by a National Academy of Science review (National Academy of Sciences 2002, p. 4). This validation provided us with confidence that Dr. King's expertise could meet our scientific needs.

Other considerations that factored into our decision to contract with USGS and Dr. King included his ability to complete an analysis of the available samples within the requested time frame and the cost effectiveness compared to other geneticists. In addition, we sought a scientist from outside of the Region without a history of involvement in Preble's issues for the objectivity it could lend to the question at hand.

Violation of Peer Review Policy – We did not commission USGS to conduct a peer review of Dr. Ramey's study; therefore, the Service's Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (Service 1994) does not apply in this case. Dr. King's study represents a stand-alone evaluation of the taxonomy of Preble's and neighboring subspecies. The Service's 1994 policy applies to peer review of proposed rules, not whether an agency can fund additional scientific investigations.

Inappropriate Cooperation with Outside Interests – We have reviewed the correspondence between the Service and the environmental groups and found no evidence of inappropriate cooperation. The September 7, 2004, meeting between the Regional Director and the Center for Native Ecosystems, Predator Conservation Alliance, and Earth Justice Legal Defense Fund was one of several meetings with outside stakeholders concerning Preble's. The Regional Director also met with representatives from Coloradans for Water Conservation and Development and the State of Wyoming on June 15, 2006, and again with the State of Wyoming on July 5, 2006 and April 20, 2007.

Service personnel did, as you point out, share Ramey et al. (2004b) work with the Center for Native Ecosystems. We also shared the work with over 50 other interested parties including State, Federal, and local government representatives, non governmental organizations, academic researchers, consultants, and other private business and industry groups on the same day (Rosenlund 2004b). Shortly thereafter, we made the report available online. The Service commonly shares public information with interested parties to avoid getting costly and time-consuming requests for information under the Freedom of Information Act.

Your letter cites an August 16, 2005, email suggesting that a Service employee arranged for Dr. King to update "Service allies" on his progress. The audience seeking the update was the Service's Chief of Endangered Species, the Assistant Regional Director for Ecological Services, and the Regional Director. Because timing of this project was of critical concern to the Service given our statutory deadline, regular updates were provided to Regional leadership.

Your letter suggests that the Service kept the USGS study "under wraps" and cites a January 3, 2006, email from a Service employee. On August 31, 2005, Service staff received their first indication of what the preliminary results demonstrated (King 2005). However, we did not have a final report and determined that it would be inappropriate to release preliminary results prior to the receipt of the peer-reviewed final product. Unfortunately, the results were obtained by the media in December 2005 (Davies 2005), which was the event referenced in the January 3, 2006, email. Once we were provided a peer-reviewed copy of the report on January 25, 2006, we promptly made it available to the public.

Request for Preble's Samples – We would like to clear up a misunderstanding regarding the nature of a draft email from Service staff to the Recovery Team that you reference in your letter. The Service was seeking samples to be used in a potential, inexpensive genetic test to differentiate Preble's from the western jumping mouse (*Zapus princeps princeps*). The draft email was not misleading because this study was to be completely separate from the ongoing debate concerning the relationship between *Z. hudsonius* species. Of note, the project was never funded and, thus, the draft email at issue was never distributed to the Recovery Team.

Role of Outside Influences in the Preble's Review Panel – We have found no evidence that Service staff attempted to influence the process. Following an open and competitive bid process, SEI was selected as the contractor in June 2006. Once selected, SEI ran all aspects of this process within the

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bounds of the contract, which is available upon request. As SEI stated in a July 5, 2006, email, "The peer review panel is administered by SEI, not the Service." The Service staff never crafted an agenda for the SEI panel meeting. The agenda referenced in the June 7, 2006, email (Willey 2006), was for a meeting between SEI, and the Service focused on administering the contract.

The Service did not take a position regarding SEI's selection and retention of panelists. As outlined in the contract, the selection and retention of panelists was entirely within SEI's purview. Further questions regarding the agenda and panelists should be directed to SEI (P.O. Box 80605, Portland, Oregon 97280; email: courtney@sei.org; phone 503-246-5008).

Your letter cites a 2005 communication as evidence of a behind-the-scenes relationship between our staff and SEI regarding the science panel. Of note, this communication was unrelated to the science panel, which did not exist until a year after the date of the email. The email was in regard to a May 23-24, 2005, genetics workshop that SEI was running on behalf of the Department of the Interior.

SEI Panel - Your letter refers to several issues related to the SEI panel and the information that it considered. Because the Service did not run the panel, we are unfamiliar with most of these issues you raise in your letter. However, I have confirmed that the Service provided both the Jones (1981) and the Crandall and Marshall (2006) studies to SEI. The SEI report references the Jones study on page 40 and the Crandall and Marshall study on pages 15, 17, 34, 35, and 43. This information demonstrates that these studies were considered by the panel. Further questions on how these reports and other information were considered should be directed to SEI (see contact information above).

Only Posting Select Information on our Website - In 2004, we began posting frequently requested Preble's documents on our website to ensure interested parties could easily obtain unpublished documents, data, peer reviews, and reports. This practice is consistent with the Freedom of Information Act and its implementing regulations that require that we make frequently requested materials (or materials we anticipate will become frequently requested) available online or available through some other comparable method (such as a "reading room"). None of the documents referenced in your letter were frequently requested. Now that most of these materials are available in published professional journals, we have removed the "Genetics, Peer Reviews, and Other Studies" webpage.