



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

JUL - 7 2004

In Reply Refer To:
FWS/AEA/17172

Mr. Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility
2001 S Street NW, Suite 570
Washington, D.C. 20009

Mr. Andrew C. Eller, Jr.
1805 19th Place, #203
Vero Beach, FL 32960

Dear Messrs. Ruch and Eller:

This responds to your information quality request dated May 4, 2004, alleging violations of Section 515 of Public Law 106-554, commonly referred to as the Information Quality Act (IQA). In brief, you allege the U.S. Fish and Wildlife Service (Service) violated the IQA by using and disseminating erroneous scientific literature in a number of documents related to the Florida panther. Your request for correction falls into two broad categories: those associated with panther habitat use, and those associated with panther population models and estimates. The main focus of your complaint seems to be the use of peer-reviewed studies produced by Dr. Maehr and others.

The documents you specifically cite as containing these errors date from 1998 through 2003 and include several biological opinions, the Multi-Species Recovery Plan, and the draft Landscape Conservation Strategy. In the attachment, we respond to the statements of error for each of the documents you cited in detail.

The IQA requires that Federal agencies ensure the quality, objectivity, utility, and integrity of the information they use or disseminate as the basis of an agency decision. Under the IQA, "quality" is an encompassing term that includes utility, objectivity, and integrity. "Utility" refers to the usefulness of information to its intended users, and "integrity" pertains to the protection of information from unauthorized access or revision. With regard to "objectivity," according to OMB Guidelines (*Federal Register, February 22, 2002*), "technical information that has been subjected to formal, independent, external peer review" is "presumed to be of acceptable objectivity. An example of a formal, independent, external peer review is the review process used by scientific journals."

We note that the studies you cited in your complaint were peer-reviewed prior to their publication in scientific journals or publications. As such, they are, under OMB standards, presumed to be of acceptable objectivity to meet the requirements of the IQA. Under the Endangered Species Act, the Service is required to use "the best available scientific and commercial information" in implementing the Act. With regard to the panther, this standard certainly required us to review and consider the scientific work you have challenged, which was considered among the best peer-reviewed literature at that time.

Nevertheless, we acknowledge that despite having been published in peer-reviewed scientific journals, some of the information you are challenging has, over time, been determined to have limitations, as identified by the Scientific Review Team (SRT) (Beier et. al 2003). The Service documents you challenged were either completed prior to the SRT's report, or are still undergoing revision and review. Indeed, scientific information evolves over time as scientists review each others' work and complete new studies, and that is what has occurred in the case of the panther – a process that is still ongoing. For those documents still being revised, we will explain in our response how we are addressing the new information.

In our review of the Service documents you challenged, we found that Service scientists considered that there were limitations to the data available, even though these limitations were not fully documented and confirmed until 2003. Our analysis showed that we used new panther science in our analyses and decision-making as it became known to us, and that in all the documents you cite, we did not rely upon the challenged studies to the exclusion of other available scientific information, as you contend. Rather, we consistently considered and incorporated all available scientific information, in accordance with our responsibilities under the Endangered Species Act, and specifically sought to balance what we perceived as the limitations of the challenged data by including and considering information from other sources.

Finally, the Service has been an active participant in seeking further scientific review of panther information. We initiated strong corrective actions over 4 years ago when we appointed the Florida Panther Sub-team of the Multi-Species Ecosystem Recovery Implementation Team and challenged them to identify a strategically located set of lands containing sufficient area and appropriate land cover types to ensure the long term survival of the panther. We believe that we were the very catalyst that brought the issues you raise to light in the scientific community, and we made changes to our use of this data as was appropriate at that time. In addition, we are continuing to seek the best science by publishing a Notice of Availability in the Federal Register of the draft Landscape Conservation Strategy for the Florida Panther in South Florida (Conservation Strategy) and supporting the findings and recommendations of the SRT's analysis of the scientific literature related to the panther.

Because you have specifically challenged our dissemination and use of the challenged data in the Conservation Strategy, we would like to clarify how we are addressing Dr. Beier's comments on the strategy. The Service requested peer review of this document from three qualified reviewers. Comments from two of the reviewers were received within the time frame requested

and their comments were incorporated in to the most recent (December 2002) version of the Conservation Strategy. Comments from the third peer reviewer (Beier) were received in February 2003, after the date requested. Dr. Beier's comments contained several suggestions that were very constructive and beneficial to the scientific integrity of the document. We incorporated many of these suggestions and comments. However, some of Dr. Beier's comments and suggestions are substantial and would require re-analysis of telemetry data. After discussing the situation with several members of the Florida Panther Sub-team, the Service decided in 2003 that it was most appropriate to proceed with issuing the Conservation Strategy for public review and comment in the Federal Register (anticipated in September 2004) and address the remainder of Dr. Beier's 2003 comments concurrently with comments received during the public comment period. In the future, as new information becomes available to us, we will edit and modify the draft Conservation Strategy and as appropriate and if necessary, we will make the Conservation Strategy available for public review and comment again if the document is changed dramatically.

With respect to the Multi-species Recovery Plan, the Service is revising this document to update all of the information for all of the covered species, including the Florida panther. We expect this revision to be completed in 2006, as this time frame will allow us ample time to review and incorporate all substantive comments received during the Federal Register public comment period for the draft Conservation Strategy, as well as to complete and include any additional data re-analysis, as recommended by Dr. Beier.

Separate from our response, we are providing you with copies of the unsolicited correspondence which we received from members of the scientific community regarding the issues you raised in your IQA challenge. We did not consider this correspondence in our response to your IQA challenge and submit them for your consideration as the opinions of the individuals who authored them. We have not formally evaluated this correspondence. The Service does not in any way adopt or endorse this correspondence.

If you wish to seek a reconsideration of this response to your IQA request, you may submit an appeal to the Service within 15 business days from the date of this letter. Your request should contain the following:

- I. Indication that you are seeking an appeal of a Service decision on a previously submitted request for correction of information, including the date of the original submission and date of Service decision;
- II. Indication of how the appellant is an 'affected person' under the provisions of the Service's IQA guidelines;
- III. Name and contact information. Organizations submitting an appeal should identify an individual as a contact;
- IV. Explanation of the disagreement with the Service decision and, if possible, a

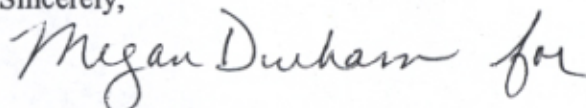
recommendation of the corrective action; and a copy of the original request for the correction of information.

V. Please submit your appeal to:

Correspondence Control Unit
Attention: Information Quality Request Processing
U.S. Fish and Wildlife Service
1849 C Street NW, Mail Stop 3238 - MIB
Washington, D.C. 20240

As the Service official responsible for processing IQA responses, I attach the following response which was prepared by Service scientists.

Sincerely,

A handwritten signature in cursive script that reads "Megan Durham for".

Thomas O. Melius
Assistant Director – External Affairs

Attachment