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Legal issues pertaining to wolves in Utah

T. Adam Switalski

Department of Fisheries and Wildlife, Utah State University, Logan

Trey Simmons

Department of Fisheries and Wildlife, Utah State University, Logan

Shiree L. Duncan

Department of Forest Resources, Utah State University, Logan

Andreas S. Chavez

Department of Fisheries and Wildlife, Utah State University, Logan

Robert H. Schmidt

Department of Environment and Society, Utah State University, Logan

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Wolves in Utah

2. Legal Issues Pertaining to Wolves in Utah

2.1. Current Status

The United States Fish and Wildlife Service (USFWS) classifies gray wolf populations as either *endangered*, *threatened*, or *nonessential/experimental*. Each of these designations carries different levels of protection and is associated with different management options. Currently, wolves are classified as fully endangered throughout most of the United States, and thus enjoy the most stringent level of protection under the Endangered Species Act (ESA). In Minnesota, where wolves are classified as threatened, these protections are relaxed somewhat to allow federal specialists to kill depredating wolves, although strict guidelines must be followed (MN DNR, 2001). On the other hand, reintroduced wolf populations in Idaho, Wyoming, Montana, New Mexico, and Arizona have been designated as nonessential/experimental. Under this designation, depredating wolves can be killed or relocated by federal, state, or tribal agencies and, under some conditions, harassed or killed by members of the public (USFWS, 1994). Finally, species classified as threatened or endangered are usually assigned a critical habitat designation, within which land-use activities may be regulated to avoid harm to the species. However, this does not occur under experimental/nonessential status [16 U.S.C.A. 1536 § 10(j)(2)(C)(ii)].

2.2 Future Scenarios

Currently, the USFWS is leading the effort to restore gray wolves to the northern Rockies. The Northern Rockies Recovery Area consists of three separate populations. In two of the three areas, Yellowstone National Park (Yellowstone) and central Idaho, wolves were actively reintroduced by the USFWS, whereas wolves naturally recolonized the third area, near Glacier National Park in northwestern Montana. Wolves in the first two populations are classified as nonessential/experimental, whereas in northwestern Montana they are classified as endangered. The ultimate goal of this recovery effort is to remove wolves from the endangered species list (“de-list”), after certain population objectives have been met. A recent USFWS decision modified the original objective of maintaining 10 breeding pairs of wolves in each of the three recovery areas for three consecutive years (USFWS 1994). The new criterion requires a total of 30 breeding pairs for three consecutive years in the recovery area as a whole (E. Bangs, USFWS, personal communication). Because the 30 breeding-pair criterion was met in 2000, and again in 2001, the USFWS is now in the third year of the countdown (Meier, 2001; D. Smith, 2001; Babcock et al., 2001; E. Bangs, USFWS, personal communication). This is the first step toward removal from ESA protection. However, a number of wolf advocacy groups have questioned the biological basis for this alteration in the recovery goals (Tollefson, 2001) In any case, de-listing will be incumbent upon the creation of satisfactory state wolf management plans in Wyoming, Idaho, and Montana. While Montana and Idaho are currently developing management plans (Idaho Legislative Wolf Oversight Committee, 2000; Montana Wolf Management Advisory Council, 2002), Wyoming is in a very preliminary stage of developing their plan, which will almost certainly delay the de-listing beyond the 2003 target set by the USFWS.

Once a wildlife species is removed from the endangered or threatened list, it becomes the responsibility of the states in which it occurs. Therefore, if wolves are de-listed, the state of Utah will assume the responsibility for managing any wolves in the state. Although under this scenario Utah would not be legally required to create a wolf management plan, we feel strongly that such a plan should be in place. A state plan would facilitate responsible decision making, integrate wolf management with the needs and wishes of Utah citizens, and help minimize conflicts by addressing local conditions. Furthermore, the existence of a Utah state plan would facilitate the de-listing process (E. Bangs, USFWS, personal communication.). In the meantime, any wolves that are found in Utah will remain under USFWS jurisdiction and be managed as a protected, endangered species.

In the short term, it is likely that the USFWS will “downlist” wolves from endangered to threatened status. The initial criteria for downlisting have already been met, and this process does not require adoption of acceptable state management plans. As part of the current USFWS downlisting proposal, four so-called “Distinct Population Segments” (DPS) would be created. The Western DPS would include Washington, Oregon, Idaho, Montana, Wyoming, Colorado, northern New Mexico, northern Arizona, and Utah. If this plan is adopted, wolves would be reclassified as threatened throughout the Western DPS, with the exception of those populations already designated nonessential/experimental. Although the USFWS would retain primary responsibility for wolf management under this scenario, state agencies in Utah would probably play a significant role. Once again, a Utah wolf management plan would be useful, especially considering that downlisting could be followed relatively quickly by de-listing.

There is an alternative scenario, in which de-listing of the wolf in the northern Rockies would not necessarily lead to de-listing in Utah. A number of nongovernmental organizations are currently petitioning the USFWS to create a Distinct Population Segment in the southern Rockies, an area that would include Colorado, Utah, and northern New Mexico (Phillips et al., 2000). Under this scenario, wolves could remain endangered in Utah, even if they were de-listed in the northern Rockies. Designating a separate DPS would require a finding by the USFWS that a southern Rockies wolf population would be significant to the species as a whole. As the USFWS indicates (USFWS et al., 2000), there are no hard and fast rules for determining this significance. According to their 1996 Vertebrate Population Policy (61 FR 4722), the USFWS considers whether a population is defined by physical, physiological, ecological, and behavioral barriers or by a governmental boundary that coincides with differences in management policy, but does not require that a DPS be completely isolated. This scenario (creation of a Southern Rockies DPS) could lead to active reintroduction of wolves in the region. Any reintroduced populations could be designated “nonessential/experimental,” as has been done in Yellowstone and central Idaho. In any case, the current position of the USFWS is that there are no distinctions within the Intermountain West that justify a DPS for any subregion. Further down the road, de-listing of this hypothetical Southern Rockies DPS would be incumbent upon the adoption of satisfactory state plans by Colorado, Utah, and New Mexico. The states would assume control over wolf management; however, wolves would be monitored by the USFWS for five years after

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de-listing, and could be re-listed if recovery fails (16 U.S.C.A. 1536 § 4(g)(1)). Clearly, under this scenario, creation of a state management plan would be necessary. In summary, then, no matter what the eventual outcome of this process is, Utah will need to have a wolf management plan in place at some point.