

Resolving Conflicts Between Endangered Species and Man: Case Study--The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho

by Paula Hartman

I. Introduction

I have lived to see state after state extirpate its wolves. I have watched the face of many a newly wolfless mountain, and seen the south-facing slopes wrinkle with a maze of new deer trails. I have seen every edible bush and seedling browsed, first to anemic desuetude, and then to death. I have seen every edible tree defoliated to the height of a saddlehorn. Such a mountain looks as if someone had given God a new pruning shears, and forbidden Him all other exercise. In the end the starved bones of the hoped-for deer herd, dead of its own too-much, bleach with the bones of the dead sage, or molder under the high-lined junipers. I now suspect that just as a deer herd lives in mortal fear of its wolves, so does a mountain live in mortal fear of its deer.

-Aldo Leopold in a Sand County Almanac

Ever since the creation of a wolf recovery team in 1975, public interest in the return of wolves to North America has grown. The 160,000 letters commenting on the Environmental Impact Statement (EIS) for wolf reintroduction into the Yellowstone region and Central Idaho represent the highest public response ever to an EIS.¹ Yet human reintroduction of the wolves is more symbolic than tangible because wolves have been busy reintroducing themselves. Since 1986 wolves have been successfully reproducing in and immediately adjacent to Glacier National Park in northwestern Montana. Wolves have reproduced in other areas in northwestern Montana too, but all of these groups have been removed or relocated in response to livestock depredations. Sporadic yet persistent reports of wolves in northwestern Montana and Idaho exist, but no pack formation or reproduction has yet been documented in Idaho.²

Wolves have become the rope in a political and environmental tug-of-war.³ Wolf recovery opponents represent several interests. Stockgrowers worry about livestock depredation. Outfitters and hunters worry about big game population losses to wolves. Land developers are concerned about prohibitions on development in and near the recovery areas. Because of these concerns, state and local governments have raised management and control issues which the Fish and Wildlife Service (FWS) felt had to be addressed if reintroduction is to succeed.⁴ More is at stake here than the future of wolves in the Rocky Mountains. The future of the Endangered Species Act (ESA) itself is at issue. Success with wolf reintroduction may help neutralize attacks on the ESA and aid recovery of other large predators such as grizzlies.⁵

II. Background

A. The Region: Yellowstone and Central Idaho

Three states are included in the current recovery efforts: Idaho, Montana, and Wyoming. The greater Yellowstone region, including about eighteen million acres of federal, state, Native American, and private land, contains a population of 220,000 people. Population growth is rapid, and roughly ten million people visit the area each year.⁶ Central Idaho supports a population of less than 100,000 people and encompasses over 15 million acres, only fifteen percent of which are privately owned. Agriculture, including ranching, accounts for less than ten percent of total personal income in both regions, whereas the services industry, including tourism, represents thirty-five or more of the economy.⁷ Tourists have plenty of reason to visit. Both regions contain spectacular scenery characterized by rugged mountain ranges like the Tetons and the Bitterroot and significant watersheds including the Snake and Salmon Rivers. In addition to Yellowstone National Park, the regions are home to Grand Teton National Park and all or part of fourteen national forests. Wildlife viewing in Yellowstone is world famous, and Central Idaho is populated by 400 or so species of terrestrial vertebrates.⁸ Ungulate (hoofed mammals including elk, deer, moose, and bighorn sheep) populations have been increasing and may be at carrying capacity in some regions.⁹

B. The Wolf

The wolf that once lived in Yellowstone is known as the Northern Rocky Mountain wolf (*Canis lupus irremotus*).¹⁰ One of twenty-four subspecies of the gray wolf found in North America, the Northern Rocky Mountain Wolf lived at one time throughout nearly all of Wyoming, Montana, Idaho, and parts of Washington, Oregon, and South Dakota.¹¹ The subspecies is now believed to be extinct. The elimination of the wolf from its historic range was entirely due to a combination of human actions working against the wolf, including: (1) human settlement and land development in wolf habitat, (2) introduction of domestic livestock, (3) misunderstandings of wolf ecology and habitat, (4) superstition and folk lore, (5) territorial management programs, and (6) elimination of prey across a large portion of the wolf's range.¹²

Even after establishment of Yellowstone in 1872, big game and predatory animals were slaughtered in the park.¹³ Although President Grover Cleveland assigned the Army to protect park wildlife in 1886, the Army continued predator control.¹⁴ Prior to creation of the National Park Service (NPS) in 1916, Congress authorized predatory animal elimination from all public lands, including national parks.¹⁵ NPS policy did not shift away from predator control until 1926.¹⁶ No wolf pack activity has been confirmed in Yellowstone since the 1930s, although reports of wolves continued to filter in.¹⁷ Since the

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late 1970s there have been no verified reports of wolves in Yellowstone and the wolf is "believed absent" in Wyoming.¹⁸ Unlike the situation in Wyoming, biologists have confirmed existing, natural wolf populations breeding in Montana.¹⁹ As for Idaho, although confirmed wolf sightings occurred, no known breeding pairs exist in the state.²⁰

In 1973, the Secretary of the Interior (Secretary) listed the Northern Rocky Mountain wolf as endangered.²¹ In response to a trend among taxonomists recognizing only four or five (rather than twenty-four) subspecies of the gray wolf that once lived in North America,²² the Secretary listed the entire species *Canis lupus* as endangered in the forty-eight contiguous states, except Minnesota. Current FWS efforts to recover the wolf in Yellowstone are formally directed at the Northern Rocky Mountain Wolf.²³ The wolf is listed as a state endangered species in Montana. Where necessary to alleviate property damage, Montana law allows taking of state endangered species under a permit issued by the state. The wolf is also listed as endangered under Idaho law, and state statutes allow taking wildlife, including wolves, to protect human life and property. The wolf is listed as a predator in Wyoming and may be taken at any time without limit.²⁴

C. The Conflict

After the decline of buffalo and Native Americans populations in the West were drastically reduced, settlers moved cattle into the area. Although cattle depredations were initially rare, by 1883 the Montana territorial legislature found it necessary to enact the first predator bounty.²⁵ As fences became more common and depredations of cattle more noticeable, hunting was significantly reducing native ungulate populations.²⁶ Settlers competed with wolves for available game and cattle became an alternative prey base for wolves. Demands upon the states to eliminate predators became what was described by one ecologist as a "pathological jihad."²⁷ As the federal government began asserting its power over the public lands, the stock interests felt that it was unfair to pay grazing fees for the use of forage on lands "heavily infested with wolves . . . unless some degree of protection from predation was simultaneously afforded."²⁸ Responding to the livestock interests, the federal government went into the predator control business in 1914.²⁹ As the costs, inefficiency, inequities, and liabilities of predator control increased, the program became increasingly difficult to defend.³⁰ Today, predator control programs are clearly an economically inefficient subsidy to the western livestock industry.³¹

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The true magnitude of the threat to Northern Rockies livestock from wolves is not fully known. In 1973, the administrators of federal predator control admitted that no one knew the extent of predator damage in the west, and that the government had never attempted to keep records of such damage.³²

But wolves do kill livestock and reintroduced wolves will undoubtedly encounter livestock. After all, although cattle are not allowed in Yellowstone, the park's acreage comprises only eleven percent of the Yellowstone Ecosystem, while private land makes up twenty-four percent.³³

In attempting to predict the magnitude of livestock losses that will occur upon reintroduction and recovery of wolves, biologists have looked to recent wolf/livestock interaction records in other regions such as Minnesota. Although wolf populations declined rapidly in Minnesota under predator control programs in that state, by 1975 Minnesota officials halted legal, public killings of the wolf. With the advent of a subsequent recovery and control program, Minnesota currently holds the largest wolf population (about 1,550 to 1,750 wolves) in the forty-eight contiguous states.³⁴ Studies in Minnesota, where wolves live among dairy farms, show that very few domestic animals are killed by wolves. The rate in Minnesota is less than one loss per 10,000 cows.³⁵ A single Minnesota farmer, however, was compensated \$11,988 for wolf losses in 1991, proof that considerable losses can occur.³⁶ Furthermore, it may be inaccurate to try and translate dairy farming losses into accurate estimates of losses for western beef cattle operations. In northwest Montana, however, where wolves have reintroduced themselves, livestock losses so far have been minimal.³⁷ Of course, so are the numbers of wolves.

Based on available information, biologists assume that few if any livestock losses to wolves will occur during the first five years after reintroduction due to low numbers and little dispersal into cattle regions. As wolf populations grow and disperse throughout the area, losses will eventually parallel the rates seen elsewhere in North America. According to the EIS, losses of ten head of cattle and fifty-seven sheep per 100 wolves could be expected.³⁸

While livestock losses are inevitable, consensus among experts is that wolves pose little threat to humans. After reviewing available literature, two biologists concluded that strong evidence exists that the North American wolf is harmless to humans.³⁹ According to wolf expert Dr. L. David Mech, no documented case of a healthy wild wolf killing or seriously injuring a human in North America exists.⁴⁰ As for threats to game by wolves, as the opening quote suggests, wolves can benefit game and the ecosystem by removing diseased animals, culling inferior animals, stimulating prey productivity, and controlling populations.⁴¹

Attitudes towards wolves have changed radically in the past century. As late as 1970, twenty states still had bounties on wolves even though the species had been virtually extinct in the forty-eight contiguous states for fifty years.⁴² Once seen even by biologists as a threat to ungulate populations, today biologists view them as "linchpins in a delicately balanced ecosystem" that keep prey from overpopulating the land.⁴³ Many Americans now see wolves in an almost spiritual light, and support for wolf reintroduction into Yellowstone has been high. Even in Wyoming, perhaps the most conservative state in the west, a 1991 poll by the Wyoming Game and Fish Department found that a majority of those surveyed favored a return of the wolf.⁴⁴ Perhaps the final irony is that some of the very same agencies that helped create the wolf's endangered status are now working so hard toward its recovery.

III. The 1987 Wolf Recovery Plan

The recovery plan (plan), approved in 1987 by the FWS, was the first major step toward eventual reintroduction of wolves. The plan described recovery goals, outlined steps that may be taken to accomplish recovery, and identified three areas where these efforts should be focused

in Montana, Idaho, and Wyoming. The plan identified the probability of recovery through natural processes as high in northwestern Montana, moderate in Idaho, and remote in Yellowstone National Park.⁴⁵ It is the basis for the preferred alternative contained in the reintroduction EIS.

The plan required selecting three areas within the northern Rocky Mountain region for wolf recovery. The plan's rationale is that establishment of three geographically separate wolf populations would offer some assurance that one or two populations would survive in the event of an unexpected catastrophe.⁴⁶ The plan reflected a strong desire to avoid conflicts between wolves and economic interests. For example, site selection criteria for recovery areas included: (1) a substantial population of large ungulates to serve as a prey base, (2) at least 3,000 square miles of designated wilderness (or similar) area, (3) a maximum ten percent private ownership of the lands, (4) absence, if possible, of livestock grazing, and (5) isolation from populated or heavy-use recreational areas to protect wolves from human disturbance.⁴⁷ Three areas met these criteria: 1. the Selway-Bitterroot Mountains/Salmon River Breaks ecosystem in central Idaho, the Bob Marshall ecosystem in northwestern Montana, and the Greater Yellowstone Area.⁴⁸ The plan determined that if a minimum of ten breeding pairs are established in each of the three recovery areas for a minimum of three successive years, the wolf will be deemed "recovered." If this goal is met, under the plan the wolf will be eligible for delisting.⁴⁹

Obviously authors of the plan were very conscious of wolf recovery opponents. Not only were site selection criteria carefully selected to minimize conflicts with economic interests, but the plan created a concentric, three-zone management scheme within each recovery area.⁵⁰ Protection for wolves decreased as the wolves moved outward from the core. In the outermost zone, wolves deemed a threat to livestock could be controlled by relocation, captivity, or killing.⁵¹ While these options might have helped silence criticism from livestock interests, critics of the plan say it is driven more by economics than biology.⁵²

IV. The Wolf Management Committee Plan

The Wolf Management Committee (Committee) was established as a result of an amendment to Section 218 of Public Law, Title III, General Provisions⁵³ enacted on November 5, 1990 (Act). The Act directed then Secretary of the Interior, Manuel Lujan, to appoint a ten-member committee with the task of developing a gray wolf reintroduction and management plan for Yellowstone and Central Idaho.⁵⁴ Members represented the Department of the Interior, Forest Service, Fish and Game agencies of Idaho, Wyoming, and Montana, conservation groups, and livestock and hunting communities.⁵⁵ The Committee's goal was to create a consensus agreement with at least six members supporting the plan.⁵⁶

The nine alternatives that the Committee considered can be lumped into three principal alternatives. The first alternative was management of wolves in Montana, Idaho, and Wyoming as an endangered species. The second was management of wolves in portions of Montana and Idaho and all of Wyoming as a nonessential experimental population under the provisions of Section 10(j) of the ESA with the remainder managed under standard provisions of the ESA.

The third principal alternative was the removal of the gray wolf from the list of threatened and endangered species through congressional action with exclusive management responsibilities reverting to the respective states.⁵⁷

The Committee's ultimate recommendation consisted of three components. First, it recommended designating the area of Idaho, Montana, and Wyoming (with the exception of the Glacier Area as defined by the Committee) as a nonessential, experimental area for purposes of wolf recovery.⁵⁸ A detailed discussion of this designation is given below. Second, the Committee recommended that Congress declare that the primary management authority for wolves outside of the defined Glacier Area, National Parks and National Wildlife Refuges to be under the jurisdiction of the states. To assume this authority, the states would have to adopt wolf management plans agreed to by the Secretary of the Interior, the Secretary of Agriculture and the Governors of the three states.⁵⁹ Third, the Committee recommended that Congress also declare the right of involved states to manage wolves and their "unacceptable" impacts on livestock, big game resources, and multiple land uses.⁵⁹

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The Committee recommendation focused heavily on controlling wolves preying on livestock, working animals, or pets and on returning control to the states as early as possible. It called for an interagency committee and a federal trust to fund all wolf recovery, livestock compensation, and ungulate enhancement.⁶⁰ The buzz word in the Committee recommendation is "flexibility." This flexibility was designed to neutralize opposition from the livestock and hunting community.⁶¹ For example, by maximizing the area in which wolves are designated an experimental population, the plan allowed for maximum control of wolves by the states.⁶² In addition, wolf populations would be managed to meet management objectives for ungulate species.⁶³ Finally, post-recovery management included sport harvest of wolves.⁶⁴ The Committee presented its recommendation to Congress in May 1991, but Congress never enacted any of the recommendations. Because many saw the recommendations as exceeding ESA authority to use the experimental population designation, levels of control, and available funding, it was reportedly "dead on arrival" in Congress.⁶⁵ Instead Congress directed that the USFWS complete an EIS for wolf recovery. The recommendations were presented as an alternative in the EIS.⁶⁶

V. Conflict Mitigation Within the Preferred Alternative of the Wolf Reintroduction EIS

A. The Process

Before discussing the conflict mitigation approaches taken by the EIS, a brief overview of the reintroduction process is in order. Thirty wolves were captured in Alberta and British Columbia in late 1994. Those flown to Yellowstone were taken to three one-acre pens where

they were fed and monitored as they adjusted to their surroundings. The plan involved holding the wolves for six to eight weeks, and then opening up the gates and releasing the wolves into the park. Yellowstone has such a dense ungulate population that experts assumed the wolves would have no trouble finding food.⁶⁷ Plus, at the time of release the snow was deep and the elk slow and tempting, giving wolves little reason to wander outside of the park.⁶⁸ Biologists wanted to hold the animals long enough to encourage breeding. Wolves would be less likely to return to Canada if they had a pregnant female in their midst.⁶⁹ The Yellowstone procedure is called a "soft release," in contrast with the "hard release"⁷⁰ in Idaho in the Frank Church River of No Return.⁷¹ There, the wolves lacked the security of a pack and faced a harder search for food.⁷² Wolves brought to Idaho in January were simply flown into a remote site and released. Biologists hoped they would join up with wolves who may be resident in the area.

B. Nonessential Experimental Population Designation (§10(j) of the ESA)

Not unlike the Committee's recommendation, the preferred alternative ("proposal") in the EIS is designed to minimize conflicts by maximizing management flexibility. Perhaps the key to the entire proposal is the use of the "experimental population" designation. In 1982,

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Congress adopted the experimental population designation in an effort to promote species reintroduction by allowing increased management flexibility.⁷³ Prior to the creation of section 10(j), the FWS could reintroduce threatened and endangered species into an unoccupied historic range, but attempts to do so were often met with fervent resistance. One reason is that the FWS could not promise private landowners, other federal

agencies, and state and local governments that the transplanted population would not disrupt future land management options.⁷⁴ By designating a reintroduced population as experimental, options for land managers are much greater.

ESA section 10(j) defines an "experimental population" as "any population (including any offspring arising solely therefrom) authorized by the Secretary for release, but only when, and at such times as, the population is wholly separate geographically from non-experimental populations of the same species."⁷⁵ Under section 10(j), any wolves naturally migrating into the park could terminate the availability of experimental status for Yellowstone wolves as a whole.⁷⁶

Experimental populations are not treated as "endangered," regardless of donor population classification.⁷⁷ Conservation and management regulations may be tailored to meet the needs of specific experimental populations, local conditions, and local opposition.⁷⁸ Furthermore, take limitations clarified by *Sierra Club v. Clark*,⁷⁹ which held that the Secretary may not permit the regulated taking of a threatened species in the absence of a showing of an extraordinary case, do not apply to experimental populations.⁸⁰ Although the holding was limited to "threatened"

populations, in 1987 the Senate committee on Environment and Public Works opined that the ruling would not apply to experimental populations.⁸¹ Thus, the Secretary may have greater flexibility in permitting take of experimental populations.

Prior to designating a population as experimental, the Secretary must consider if the experimental population is "essential" or "non-essential."⁸² An experimental population is "non-essential" if loss of the population would not appreciably reduce the likelihood of the species' survival.⁸³ The distinction between "essential" and "non-essential" dictates levels of protection afforded by ESA section 7 "jeopardy" provisions.⁸⁴ Except in national wildlife refuges or national parks, "non-essential" experimental populations are treated as species "proposed to be listed," i.e. neither threatened nor endangered.⁸⁵ The wolves introduced into Idaho and Yellowstone received this "non-essential, experimental" designation. In fact, the entire state of Wyoming, the state most in opposition to wolf reintroduction, received this designation. Thus, the reintroduced wolves existing outside Yellowstone do not receive full protection under ESA section 7 and may even be killed.

C. Management Outside National Parks and Wildlife Refuges by States and Tribes

The proposal also utilizes an often overlooked section of the ESA to involve state and tribal governments with wolf management. ESA section 6⁸⁶ provides for cooperative state-federal agreements, essentially allowing state management of endangered and threatened species.⁸⁷ Once the Secretary determines a state listed species conservation program is adequate under the ESA, he or she shall enter into a cooperative agreement with the state to implement the state program.⁸⁸ A state program is adequate if it meets the following requirements: (1) the state agency has the authority to conserve endangered or threatened species, (2) the state has established conservation programs acceptable under the ESA for all resident species of fish and wildlife within the state deemed by the Secretary to be endangered or threatened, (3) the state has furnished said plans to the Secretary, (4) the state agency has authority to determine resident species survival requirements, (5) the agency is authorized to establish programs for conservation of resident endangered or threatened species, and (6) the state plan provides for public participation in designating a resident species endangered or threatened.⁸⁹

State management of recovering wolf populations is a big concern for the three states involved, and involving the states as much as possible with wolf management is an overriding goal of the proposal. The states and tribes, through cooperative agreements with the FWS, can be primarily responsible for implementing wolf recovery, monitoring, and management on lands where they have authority to manage wildlife. The states and tribes will be encouraged to develop management plans with local public involvement. The FWS will retain ultimate management responsibility for program oversight and achievement of wolf recovery.⁹⁰ Perhaps most important to the states, at least for the livestock interests, is the "control" aspect of management. By forming cooperative agreements, the states will be able to assert greater authority in this area. However, creating cooperative agreements is not necessarily easy. In January, Idaho's legislature rejected a state wolf management plan, citing the plan's failure to sufficiently protect livestock interests. Not long after Idaho's rejection of the plan, the FWS was

expected to sign a contract with the Nez Perce Tribe to monitor and manage wolves in central Idaho.⁹¹ If that occurs and wolves kill livestock, Idahoans will have to appeal to the Nez Perce Tribe or FWS for relief.

D. Criteria for Wolf Control Procedures

More than simply stopping depredation, removing "problem" wolves often relieves the antagonism directed toward the total wolf population. As a result, all wolves may be in less danger from potential nonselective, illegal attempts at damage control.⁹² Although the idea of allowing harassment and killing of wolves just to alleviate the concerns of a vocal minority may seem repugnant, the EIS proposal has latched onto the idea. The significance of the nonessential, experimental population designation is evident in the variety of control options made available in the proposal.

Landowners on private land and livestock producers on public land will be allowed to harass adult wolves in an opportunistic, noninjurious manner at any time.⁹³ The theory is that this will discourage wolves from coming into contact with livestock or humans. Livestock producers on their private land will be allowed to kill wolves in the act of killing livestock. Such incidents must be reported within twenty-four hours and livestock freshly wounded or killed by wolves must be evident and confirmed by experts.⁹⁴ After six or more breeding pairs of wolves become established in an experimental area, livestock producers with public land allotments will be eligible for a permit to take a specific number of depredating wolves after Animal Damage Control, or another authorized agency, confirms that the losses were due to wolves and that it is unable to resolve the problem in a nonlethal manner.⁹⁵ Options available for control of wolves attacking livestock on public lands include aversive conditioning (e.g., scaring wolves), nonlethal control (e.g., with dogs or fencing), and relocation.

As for impacts on ungulates, states and tribes will be allowed to move wolves that are having "unacceptable" impacts on ungulate populations to other places within the experimental population area. For example, wolf predation might dramatically affect prey numbers because of unusual habitat or weather conditions or might cause prey to move onto private property and mix with livestock.⁹⁶ It is up to the states, subject to FWS approval, to define unacceptable impacts and how they would be measured, and to identify other possible mitigation measures in their state or tribal management plans. Wolves could not be deliberately killed to address ungulate-wolf conflicts. It is too early in the reintroduction process to know how necessary the above control measures are or if they will be abused.

E. Reliance on Private Compensation for Livestock Losses

While the federal government has firmly established its preemptive right as the premier regulator of wildlife in this country, it has also maintained a position of nonliability concerning wildlife depredation.⁹⁷ Courts have consistently upheld this nonliability stance.⁹⁸ Although the proposal incorporates compensation as part of the overall scheme, it specifically states that no federal compensation program will exist for wolf-caused losses to domestic animals.⁹⁹ Instead, the government will encourage livestock producers incurring losses from wolves to seek

compensation from private programs. The best known program, operated by Defenders of Wildlife, is described in detail below. Although the proposal gives no reason for the lack of a federal compensation program, strong arguments in favor of this position exist. By relying on a private compensation fund, the need for government funds is avoided and financial responsibility is put directly in the hands of wildlife supporters. The potential for fraud or false claims is also reduced.¹⁰⁰

F. Public Education and Outreach

Public education and outreach was a key component of restoring wolf populations in Wisconsin,¹⁰¹ and the proposal calls for an aggressive, balanced, public information and education program about wolf ecology and management.¹⁰² Wolf education got off to a rocky start in Yellowstone. Soon after FWS approval of the Recovery Plan in 1987, William Penn Mott, then NPS Director, launched a public education program on wolves. The forces in opposition to wolf reintroduction immediately began voicing their concerns.¹⁰³ In response, FWS promised local coalitions that reintroduction would be delayed until further studies addressed the issues raised by the groups. In 1988, James Ridenour, new NPS Director, caved in to pressure from then Secretary of Interior Donald Hodel and the Reagan administration and halted the wolf education programs Mott had initiated.¹⁰⁴

Education is an essential component of defusing antagonism toward reintroduction.

Education is an essential component of defusing antagonism toward reintroduction. No details are provided in the proposal as to what education programs by the federal agencies might encompass, but private organizations provide some insight into successful programs. The Wolf Education and Research Center (WERC) of Ketchum Idaho takes a unique approach. WERC is a nonprofit organization dedicated to increasing public education and scientific research concerning gray wolves in the Northern Rockies. WERC designed a fifteen acre enclosure to be the home of the "Sawtooth Wolf Pack," a small group of wolves somewhat acclimated to humans. Interested persons can sponsor a wolf, visit the center, and receive updates on WERC's outreach efforts. Outreach includes an "ambassador wolf" taken to schools and community programs to let people experience a wolf up close. By educating and exposing people to wolves, WERC hopes to build support for wolf recovery efforts.¹⁰⁵ WERC specifically targeted children in Idaho with its "Track a Wolf" program. Schoolchildren have given each wolf released in Idaho a name which is inscribed on the radio collars that the wolves wear. WERC will distribute wolf-monitoring data to the schools so children can follow the progress of their wolves.¹⁰⁶ In addition, WERC has a toll-free telephone number for those who wish to donate money to help pay for the costs of managing the reintroduced wolves.¹⁰⁷

Not all managers agree with the idea of naming wolves as part of an outreach program. Yellowstone biologists want to avoid "warm and fuzzy" labels. One reason is that a "favorite" wolf might have to be destroyed or might be illegally killed, Idaho-style. Plus, "naming distracts us from what they really are. Good or bad, they're just wolves," says Yellowstone

wildlife veterinarian Mark Johnson.¹⁰⁸ Another reason not to name wolves is that the appeal of a nickname sometimes deteriorates over time. A few years ago, a young male grizzly dodging capture by Yellowstone rangers was nicknamed "O.J." because he ran so fast.¹⁰⁹ Finally, "[a]ssigning nicknames to wild animals reinforces our tendency to reduce the value of wildlife to merely how much it means to us, rather than affirming the intrinsic value of wildlife and wild places," park ranger Mary Taber wrote in a recent park newsletter. "If we humans were as omniscient as we like to think, we could properly name the wolves in their own language, but it is difficult to transmit a scent over the radio and messy to splash a urine sample on an official report."¹¹⁰

VI. Defenders of Wildlife Compensation and Reward Programs

A. Compensation

Obviously, minimizing ranchers' animosity toward wolves lessens political and physical assaults on wolves. Right now, compensation for ranchers seems to be a political necessity. Defenders of Wildlife (Defenders) has probably played the most substantial private financial role in mitigating concerns over wolf recovery. Director Mott first presented the idea of a private wolf compensation program to Defenders in 1985, arguing that "the single most effective action a conservation organization could take to advance wolf recovery would be to create a program to compensate ranchers for verified livestock losses to wolves."¹¹¹ When the first wolf-caused livestock losses occurred in Montana in 1987, a tremendous anti-wolf outcry propelled Defenders into action. Within forty-eight hours of the attacks, Defenders raised enough money to compensate the ranchers and dissipate the controversy. Defenders' goal is to shift economic responsibility for wolf recovery away from the individual rancher and toward people who want wolf populations restored. Currently, the fund contains more than \$100,000 and interest is reinvested annually.¹¹²

Critics of compensation programs argue that compensating ranchers for livestock losses entails a presumption that cattle and sheep rather than wolves are the rightful users of the public lands.

To qualify for compensation under the program, a wolf kill must be verified by state wildlife officials, animal damage control experts, or FWS biologists. The expert lets the rancher know if he or she is eligible for compensation and informs Defenders of the verified kill. Defenders calls the rancher, determines the market value of the livestock, and sends a check. Livestock value is

determined by comparing the rancher's assessment of the animal's value with current auction reports and livestock prices. In cases of great disparity between the values, the local extension agent determines the price. The maximum payment per animal is \$2,000, and ranchers are not compensated if insurance covers the loss. Total payments for the years 1987-1994 were \$16,347 paid out to twenty-one ranchers. On occasion, Defenders has expended program funds towards

predation prevention such as electric fencing. Defenders plans to maintain the fund as long as the wolf is on the endangered species list.¹¹³ Ranchers are concerned that they might be left out in the cold if and when wolves are delisted.

Critics of compensation programs argue that compensating ranchers for livestock losses entails a presumption that cattle and sheep rather than wolves are the rightful users of the public lands. In a way, we are shifting some of the costs of live stock production to the public.¹¹⁴ After all, wolf damage "is merely another form of just loss not unlike that inflicted by a wide variety of natural hazards."¹¹⁵ In other words, predator losses are part of the cost of doing business in the west¹¹⁶ and wolf predation compensation is a subsidy. Furthermore, ranchers never paid the public for extirpating the wolf in the first place. Critics must keep in mind, however, that losses will be felt on private, as well as public lands, where fewer subsidies are provided for ranchers.

B. Reward

Recognizing that the compensation program can only neutralize the impacts of wolves on landowners, in 1992 Defenders initiated a program to award \$5,000 to any landowner in the northern Rockies who has wild wolves reproduce and successfully raise pups to adulthood on his or her private land. The objective was to find out whether landowners' attitudes toward wolves could be influenced by economic incentives. Speculating that landowners finding wolves on their property would be unlikely to aid the wolves and might even kill them illegally, Defenders hopes the potential for an award will induce the landowner to report wolves to authorities and then assist with their recovery. Defenders first award was made in February, 1994 to a Montana rancher who provided habitat for the first wolves known to den in the area in fifty years. According to the rancher, the only significant modification to his normal livestock operation was to limit human access to the area where the wolves were denning. Biologists advised the action because human disturbance can cause wolves to abandon their den.¹¹⁷

VII. Conclusion

Life was pretty good for the captive Yellowstone wolves--they were fed fifteen pounds of meat a day per wolf (brought in via sleigh pulled by a pair of mules). The meat came from Yellowstone's cold-storage stock of deer and elk that were not quick enough to dodge oncoming vehicles.¹¹⁸ An electrified fence kept humans and grizzlies away while armed rangers maintained twenty-four-hour surveillance from hidden watchtowers. Concern for the wolves grew since a wolf released earlier in Idaho was found in February with a bullet in its chest next to a dead calf. Meanwhile, Wyoming legislators approved a \$1000 state-funded bounty on wolves that stray outside Yellowstone National Park, and they would have required the state to pay attorney fees for anyone accused of violating the Endangered Species Act by killing a wolf. Wyoming Governor Jim Geringer vetoed the measure February twenty-fourth, saying he was worried that it could not withstand a constitutional challenge.¹¹⁹ Controversy or no, the doors to the pens were opened and the wolves began to explore the Park on March 24.¹²⁰ In May, biologists announced that a wolf released in Yellowstone has delivered a litter of seven pups.¹²¹

The reintroduction represents the first attempt to restore a top predator to its native habitat,¹²² and wildlife biologists elsewhere are watching carefully. Plans are underway to restore the Mexican wolf and lessons learned in the Rockies will come into play in the Southwest.¹²³ "In a west that is increasingly subdivided, bar-coded, and strip-malled, a living piece of wilderness has been imported and fitted with radio-telemetry collars."¹²⁴ The questions remain: Will this all work? Will the wolf survive here as something more than an artificially controlled symbol? "We all look forward to the day," chief wolf recovery biologist Mike Phillips said, "when the questions are answered and we can leave the boogers alone."¹²⁵

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NOTES

1. Christopher Smith, *At the Door, Animals' Foes May Huff and Puff, But Wolves Soon Will Be Released*, Salt Lake Trib., Feb. 27, 1995, at A1.
2. Wolf Management Committee (WMC), *Reintroduction and Management of Wolves in Yellowstone National Park and the Central Idaho Wilderness Area* (1991).
3. Smith, *supra* note 1.
4. Timothy Strauch, *Holding the Wolf by the Ears: The Conservation of the Northern Rocky Mountain Wolf in Yellowstone National Park*, 27 Land & Water L. Rev. 33 (1992), footnote 185.
5. The impact of wolf reintroduction on grizzly recovery has not been entirely favorable in that so much money has been spent on wolves that almost no money is currently available for grizzlies. Eric Pryne, *Plan for Grizzlies Now Has Little Bite—North Cascades Comeback Lacks Essential Ingredient: Money*, Seattle Times, Dec. 14, 1994, at B1.
6. United States Department of the Interior (USDI), Fish and Wildlife Service, *The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho*, Final Environmental Impact Statement (1994).
7. *Id.*
8. *Id.*
9. *Id.*
10. Strauch, *supra* note 4, at 36.
11. *Id.*
12. *Id.*, at 38.
13. *Id.*, at 42.
14. *Id.*
15. *Id.*, at 43.
16. *Id.*
17. For example, between 1967 and 1977 there were eighty-one probable reports of 109 large canids from the Yellowstone region. *Id.*, at 44.
18. *Id.*, at 45.
19. Denning was confirmed in 1986. *Id.*, at 46.
20. *Id.*
21. *Id.*, at 36.
22. Lumpers v. splitters
23. Strauch, *supra* note 4, at 37.
24. Wolf Management Committee, *supra* note 2.
25. One dollar per pelt. Strauch, *supra* note 4, at 40.
26. *Id.*
27. Ken Miller, *GNS Special Report: Wolf Reintroduction Shows Endangered Species Act at Work*, Gannett News Service, Nov. 23, 1994. Once caught, wolves were tortured ; their captors set their coats on fire, pulled their jaws out and cut their Achilles tendons. David Todd, *Wolves—Predator Control and Endangered Species Protection: Thoughts on Politics and Law*, 33 S. Tes. L. Rev. 459 (1992), at 470. In 1905, Montana veterinarians introduced sarcoptic

- mange. From 1883-1918, 80,730 wolves were killed for the bounty in the state of Montana alone and by 1926 wolves were eliminated from that state altogether. Strauch, *supra* note 4, at 41.
28. Todd, *supra* note 27, at 480.
29. Act of June 30, 1914, ch. 131, 38 Stat. 415, 434.
30. For example, in 1930 the precursor to Animal Damage Control spent \$35,800 per wolf killed in the southwest. Annual losses per wolf that year were less than \$2000. Todd, *supra* note 27, at 482.
31. Dale Goble, *Of Wolves and Welfare Ranching*, 16 Harv. Envtl. L. Rev. 101 (1992), at 104. For example, in 1983 ranchers paid roughly \$7.5 million per year for grazing permits while at the same time the predator control program had a budget of \$13.55 million. Todd, *supra* note 27, at 483.
32. Todd, *supra* note 27, at 482.
33. Brian Beisher, *Are Ranchers Legitimately Trying to Save Their Hides or Are They Just Crying Wolf—What Issues Must Be Resolved Before Wolf Reintroduction to Yellowstone National Park Proceeds?*, 29 Land & Water L. Rev. 417 (1993), at 420.
34. Strauch, *supra* note 4, at 41.
35. Timothy Egan, *From Fiendish Predator to Furry Victim: Wolf Is Poised for Return to West*, Int'l Herald Trib., Dec. 12, 1994.
36. Beisher, *supra* note 33, at 425.
37. In fact, dogs kill far more Montana sheep than does any wild predator. Egan, *supra* note 35.
38. USDI, *supra* note 6.
39. Todd, *supra* note 27, at 482.
40. Defenders of Wildlife, Wolf Fact Sheets (1995).
41. Todd, *supra* note 27, at 483.
42. Protection for any predator is a fairly recent event. For example, while the Migratory Bird Treaty Act of 1918 protected songbirds, hawks were not covered until 1972. Goble, *supra* note 31, at 105.
43. Scott Weidensaul, *Wolf Song: Feared for Centuries, Wolves Are Now Finding Favor Among Those Who Understand Them*, Country J., Nov. 1994, at 62.
44. Less surprising were the results of a survey among Yellowstone visitors who favored a return of the wolf by six to one. Egan, *supra* note 35.
45. WMC, *supra* note 2.
46. Strauch, *supra* note 4, at 51.
47. Strauch, *supra* note 4, at 52.
48. Strauch, *supra* note 4, at 53.
49. Strauch, *supra* note 4, at 53.
50. Goble, *supra* note 31, at 106.
51. Goble, *supra* note 31, at 105.
52. Goble, *supra* note 31, at 107.
53. Public Law 101-512.
54. WMC, *supra* note 2.
55. The committee consisted of one representative each from the Fish and Wildlife Service, Gem State Hunter's Association, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, National Wildlife Federation, Defenders of Wildlife, American Sheep Industry Association, National Park Service, Forest Service, and Wyoming Game and Fish Department. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. Strauch, *supra* note 4, at 65.
66. USDI, *supra* note 6.
67. In Yellowstone, rangers shoot elk at intervals and bison are shot both inside and outside the park because of

excessive numbers. Jerry Brady, *Wolf Reintroduction Plan Is a Reasonable Compromise*, Idaho Post Register, December 6, 1994, at A9.

68. Ken Miller, *GNS Special Report: Gray Wolf on Verge of Return to Yellowstone*, Gannett News Service, Nov. 23, 1994.

69. Smith, *supra* note 1.

70. Miller, *supra* note 68.

71. Ken Miller, *Wolves Face Hurdles in Adjusting to New Homes*, Gannett News Service, January 19, 1995.

72. *Id.*

73. Strauch, *supra* note 4, at 54.

74. WMC, *supra* note 2.

75. Endangered Species Act Amendments of 1982, 16 U.S.C. § 1539 (j)(1) (1988). The experimental population rule has been successfully used to reintroduce red wolves to Alligator River National Wildlife Refuge in North Carolina and Great Smoky Mountains National Park and black-footed ferrets to Wyoming. USDI, *supra* note 6.

76. Strauch, *supra* note 4, at 55.

77. 16 U. S. C. § 1539(j)(2)(C) (1988).

78. 16 U. S. C. § 1539(j)(2)(B) (1988).

79. 755 F. 2d 608 (8th Cir. 1985).

80. Strauch, *supra* note 4, at 79.

81. *Id.*

82. 50 C.F.R. § 17.81 (1990).

83. 16 U.S.C. § 1539(j)(2)(C)(i) (1988).

84. Strauch, *supra* note 4, at 56.

85. 16 U.S.C. § 1536 (1988).

86. 16 U.S.C. § 1535 (1988).

87. "The Secretary is authorized to enter into a cooperative agreement . . . with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species." *Id.* at § 1535(c).

88. *Id.* at § 1535(c)(1).

89. *Id.* at § 1535(c)(1)(A)-(E).

90. USDI, *supra* note 6.

91. Stephen Stuebner, *Lawmakers Reject State Wolf Management Plan*, Idaho Falls Post Register, January 18, 1995, at C1.

92. Goble, *supra* note 31, at 110.

93. USDI, *supra* note 6.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. See, e.g., *Sickman v. United States*, 184 F. 2d 616 (7th Cir. 1950) and *Mountain States Legal Foundation v. Hodel*, 799 F. 2d 1423, 1426 (1978).

99. USDI, *supra* note 6.

100. Beisher, *supra* note 33, at 426.

101. Ken Miller, *GNS Special Report: Wolves Returning to Southeast; Southwest Introduction Planned*, Gannett News Service, November 23, 1994.

102. WMC, *supra* note 2.

103. Strauch, *supra* note 4, at 57. Perhaps concerns were heightened when none of the local schoolchildren participating in a mock trial of wolves wanted to take the side against wolves. Egan, *supra* note 35.

104. Strauch, *supra* note 4, at 58.

105. Wolf Education and Research Center (WERC), Newsletter, Winter 1995.

106. Ken Miller, *Students Get Involved by "Adopting Wolves"*, Gannett News Service, January 7, 1995.

107. The number is (800) 793-WOLF. WERC, *supra* note 105.

108. Smith, *supra* note 1.

109. *Id.*

110. *Id.*

111. Defenders, *supra* note 40.
112. *Id.*
113. *Id.*
114. Goble, *supra* note 31, at 107.
115. William H. Rodgers, Jr., *Building Theories of Judicial Review in Natural Resources Law*, 53 U.Colo.L.Rev., 213, 224 (1981).
116. Goble, *supra* note 31, at 108.
117. Defenders, *supra* note 40.
118. Smith, *supra* note 1.
119. *Id.*
120. Wolf Education and Research Center (WERC), Newsletter, Spring 1995.
121. Bill Loftus, *Recovery; Wolf in Montana Has Pups*, Lewiston Morning Tribune, May 5, 1995, at 5A.
122. Miller, *supra* note 68.
123. A draft EIS is expected this year. Miller, *supra* note 101.
124. Smith, *supra* note 1.
125. *Id.*