

# A Look Beyond

## What Constitutes Wolf Recovery?

by Mike Phillips

Significant progress has been achieved on behalf of the gray wolf since the species was listed under the Endangered Species Act (ESA) late in the 1960s. Starting with about 1,000 wolves in Minnesota, ESA-based activities have led to the establishment of several populations in several states that include nearly 4,500 animals.

While this is evidence of notable progress, success for the ESA requires that a species be recovered or delisted. Interestingly, the ESA and associated federal policies do not define recovery but simply indicate that it has been achieved when the definitions for endangered and threatened no longer apply to the species in question.

While the ESA of 1973 was the third in a series of laws aimed at protecting imperiled species, it was the first to offer protection to a species in danger of extinction throughout only a portion of its range. The previous two laws only considered species facing total extinction. The ESA defined an endangered species to be any species in danger of extinction throughout all or a significant portion of its range, and a threatened species to be any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

By including the phrase “significant portion of its range,” Congress elevated the threshold for recovery by establishing the expectation that a recovered species would be reasonably well distributed within its historic range, at least where suitable habitat existed. This expectation was buttressed when Congress defined the term species to include “any sub-

species of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” Thus, ESA protections and recovery activities can be applied to a population segment of an otherwise common species as long as the population segment is discrete, significant and threatened or endangered.

Since passage of the ESA, the U.S. Fish and Wildlife Service (USFWS) has effected 14 recovery actions. Not surprisingly, the species involved were widely distributed at the time of delisting.

Curiously, when considering wolf recovery the USFWS avoided comprehensive consideration of the phrase “significant portion of its range” and seemingly did not consider the precedent established by previous delisting actions. This is unfortunate, since consideration of both would have instructed the 2003 reclassification of the gray wolf (from endangered to threatened throughout much of the United States) and the 2004 proposal to delist the wolf in the Eastern Distinct Population Segment (DPS). Perhaps predictably, in January 2005 District Judge Robert Jones ruled that the 2003 wolf reclassification was illegal because it did not comport with the ESA and related USFWS policies. This ruling has the added effect of disallowing the proposal to delist the wolf in the Eastern DPS.

Jones’s ruling clearly indicates that the future of wolf recovery must be based on a comprehensive assessment of the notion of “significant portion of its range.” To ensure sufficiency, this assessment must be guided by relevant principles of conservation

biology, existing case law, previous delisting actions and a rangewide determination of habitat suitability.

It is unequivocal that passage of ESA in 1973 signaled Congress’s intent that listed species should not simply be saved from extinction but rather recovered so that populations inhabit relatively large areas of suitable habitat within historic ranges. Previous delisting actions suggest that at some level the USFWS is keenly aware of this intent. Case law is also based on this intent. For example, when considering recovery of the flat-tailed horned lizard, the Ninth Circuit Court of Appeals concluded that the text of the ESA and its subsequent application have been guided by the following observation by Aldo Leopold: “There seems to be a tacit assumption that if grizzlies survive in Canada and Alaska, that is good enough. It is not good enough for me. . . . Relegating grizzlies to Alaska is about like relegating happiness to heaven; one may never get there.” ■

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