



# Gray Wolf Reclassification Derailed, Delisting in Eastern United States Delayed

BY RON REFSNIDER

*The three wolf recovery programs and the respective DPS designations reflected a long-standing USFWS understanding that the purpose of the ESA is to prevent extinction of rare plant and animal species by improving their status to the point where they are not likely to be in danger of extinction for the foreseeable future.*

Lynn and Donna Rogers, bearstudy.com

On January 31, 2005, U.S. District Court Judge Robert Jones delivered an important ruling against the U.S. Fish and Wildlife Service (USFWS). The ruling wasn't just a surprise to me—it was a shock! I had been the leader of a team of USFWS endangered species biologists that had crafted the gray wolf reclassification overturned by the ruling. With the help of several career Endangered Species Act (ESA) attorneys for the Department of the Interior, we had spent nearly three years developing the initial proposal, held 14 public hearings across the nation, and analyzed comments from 43,000 individuals and organizations interested in the changes we had proposed. We spent an additional three years carefully making changes based on those comments and to comply with the legal requirements of the ESA. We were convinced that we had followed the law and had used the best scientific data in making the final decision that we announced in April 2003. So you might understand why we were shocked when Judge Jones ruled that we had misinterpreted and improperly applied the ESA, and that he was vacating—overruling—our gray wolf reclassification final rule and the three Distinct Population Segments (DPS) that it had established.

Our 2003 gray wolf reclassification had subdivided the 1978 48-state-wide listing of the gray wolf into three geographically delineated DPSs. Under its definition of “species” the ESA allows the listing/reclassification/delisting of DPSs of vertebrate animals, so our 2003 reclassification had “listed” three DPSs that corresponded to the USFWS's three on-going gray wolf recovery programs. These DPSs were an eastern one encompassing the area of the 25-year-old Eastern Timber Wolf Recovery Plan (from the Dakotas to the Atlantic Coast), a western one that was centered around the Northern Rocky Mountain Gray Wolf Recovery Program, and a southwestern one that was built around the Mexican Gray Wolf Recovery Program in the United States and Mexico. Because wolves in

the Eastern and Western DPSs had already achieved the numerical criteria that their respective recovery programs had established to trigger reclassification from endangered to threatened status, our 2003 final rule had reclassified gray wolves in these two DPSs to threatened status. Wolves in the Southwestern DPS remained listed as endangered due to their low numbers, limited range, and continuing threats to their survival.

These three recovery programs and the respective DPS designations reflected a 30-year USFWS understanding that the purpose of the ESA is to prevent extinction of rare plant and animal species by improving their status to the point where they are not likely to be in danger of extinction for the foreseeable future. We believed that establishing three gray wolf metapopulations—three isolated populations of wolves, each of which are composed of semi-isolated subpopulations, are sufficiently large and geographically dispersed, and preserve genetic diversity so that they are independently viable—would guarantee that the gray wolf would not be threatened with extinction in

Rockies, he indicated that the USFWS's reclassification of much larger DPSs around those recovered populations was improper because we had not analyzed the threats to gray wolves throughout all "significant portions" of historical wolf range within the Eastern and Western DPSs. Without such DPS-wide assessments of threats, our newly designated DPSs were invalid, according to the judge, as were our reclassifications of wolves in two of those DPSs from endangered to threatened status.

Judge Jones viewed "significant portions" of gray wolf range to be any large areas of historical range in the DPSs that still have suitable habitat, while the USFWS had viewed the significant portions of wolf range to be those areas in each DPS that were necessary to establish and maintain viable wolf populations for the foreseeable future. Thus, we had limited our assessment of threats to those smaller areas, instead of conducting the geographically larger analysis that Judge Jones envisioned. Because the USFWS has no written policy or guidance on the meaning of "significant portion of range" as the phrase is used

■ All changes made by the April 1, 2003, gray wolf reclassification final rule are canceled, including the establishment of three gray wolf DPSs.

■ Minnesota's 3,000 wolves remain listed as threatened, as they have been since 1978.

■ Gray wolves throughout the remaining 47 conterminous states and Mexico have reverted to endangered status, except where they are listed as part of an experimental population for reintroduction purposes (throughout Wyoming and in portions of Montana, Idaho, Arizona, New Mexico and Texas).

■ The April 1, 2003, Special Regulations for parts of the Eastern and Western DPSs (primarily dealing with the control of wolves attacking domestic animals) cannot be implemented.

■ The 1994 and 1998 Experimental Population Regulations remain in effect for the experimental populations in the Northern Rockies and the Southwest.

■ The 1985 Special Regulations that apply to control of depredating wolves in Minnesota remain in effect.

■ Our July 21, 2004, proposal to delist gray wolves through-out the Eastern DPS cannot be finalized.

The 2005 regulations for the experimental populations of gray wolves in the Northern Rockies remain in effect, as they were not linked to the 2003 reclassification. These regulations increase management flexibility

for states and tribes in the Northern Rockies experimental areas if they have wolf management plans approved by the USFWS.

In February, the Departments of Natural Resources in Wisconsin and Michigan requested that the USFWS issue subpermits to them that would restore some or all of their ability to kill wolves verified as attacking domestic animals. The states and tribes in the Eastern DPS had gained such "lethal control" authority under the 2003 special regulations for that DPS;

## Those of us who had spent many years working in the ESA program—over 20 years in my case—did not believe the ESA required rangewide restoration of a species before it could be considered recovered and removed from the list of threatened or endangered species.

our lifetime or in the lifetimes of our grandchildren. Those of us who had spent many years working in the ESA program—over 20 years in my case—did not believe the ESA required rangewide restoration of a species before it could be considered to be recovered and removed from the list of threatened or endangered species.

Judge Jones' ruling indicated that he interpreted the ESA differently. While stating that gray wolves have achieved their recovery goals in the Western Great Lakes and Northern

in the definitions of "threatened" and "endangered," Judge Jones was able to provide his own interpretation.

At this writing, the Department of Justice has not yet decided whether to appeal the ruling of the Oregon District Court to the Ninth Circuit Court, so the long-term impacts of the ruling are uncertain. (A "Protective Notice of Appeal" was filed with the court on July 1, retaining the government's ability to appeal for an additional period.) But these immediate impacts have already occurred:

the two DNRs had used that authority to kill a total of 34 wolves in 2003 and 2004. After careful review of the impacts of the 2003–04 lethal control actions in those states, we issued one-year subpermits to each DNR. The subpermits authorize limited lethal control programs under stricter conditions than those previously contained in the 2003 special regulations. Details of each subpermit and our analysis can be found on our Web site at <http://www.fws.gov/midwest/WisconsinWolfNEPA/> and <http://www.fws.gov/midwest/MichiganWolfNEPA/>.

Two things are crystal clear to me: The wolves have done their part, by reproducing and colonizing suitable habitat areas in the Midwest at a faster rate than most biologists expected. And the ESA has done its part, by protecting and fostering that expanding wolf population and providing legal flexibility to effectively deal with wolf-human conflicts during the recovery process. But now we face a new dilemma, and the solution is far from clear: how do we go about downlisting and delisting recovered populations of a species that once ranged over almost all of the United States?

The USFWS and the federal court system have had a great deal of experience with ESA listing actions and recovery programs, but we have had very little experience with the downlisting and delisting of species. Hopefully the public will bear with us longer as the USFWS, the courts and the environmental groups who opposed our DPS designations figure out how to make it work. ■

*Ron Refsnider is the Endangered Species Listing Coordinator for the Midwest Region of the U.S. Fish and Wildlife Service. He has been working in the Endangered Species Program for over 21 years and has been involved in gray wolf recovery for the past 15 years.*

*Editor's note: Also see "Should the Wolf Be Delisted?" in the Spring 2004 issue.*



*The wolves have done their part in their recovery by reproducing and colonizing suitable habitat areas in the Midwest at a faster rate than most biologists expected.*

the two DNRs had used that authority to kill a total of 34 wolves in 2003 and 2004. After careful review of the impacts of the 2003–04 lethal control actions in those states, we issued one-year subpermits to each DNR. The subpermits authorize limited lethal control programs under stricter conditions than those previously contained in the 2003 special regulations. Details of each subpermit and our analysis can be found on our Web site at <http://www.fws.gov/midwest/WisconsinWolfNEPA/> and <http://www.fws.gov/midwest/MichiganWolfNEPA/>.

Two things are crystal clear to me: The wolves have done their part, by reproducing and colonizing suitable habitat areas in the Midwest at a faster rate than most biologists expected. And the ESA has done its part, by protecting and fostering that expanding wolf population and providing legal flexibility to effectively deal with wolf-human conflicts during the recovery process. But now we face a new dilemma, and the solution is far from clear: how do we go about downlisting and delisting recovered populations of a species that once ranged over almost all of the United States?

The USFWS and the federal court system have had a great deal of experience with ESA listing actions and recovery programs, but we have had very little experience with the downlisting and delisting of species. Hopefully the public will bear with us longer as the USFWS, the courts and the environmental groups who opposed our DPS designations figure out how to make it work. ■

*Ron Refsnider is the Endangered Species Listing Coordinator for the Midwest Region of the U.S. Fish and Wildlife Service. He has been working in the Endangered Species Program for over 21 years and has been involved in gray wolf recovery for the past 15 years.*

*Editor's note: Also see "Should the Wolf Be Delisted?" in the Spring 2004 issue.*



*The wolves have done their part in their recovery by reproducing and colonizing suitable habitat areas in the Midwest at a faster rate than most biologists expected.*