

# HOWL OF THE WOLF OR BARK OF THE BUREAUCRAT?

## THE ENDANGERED SPECIES ACT, THE FUTURE OF NORTH AMERICAN WOLF REINTRODUCTION EFFORTS AND THE DILEMMA OF DELISTING

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I.	Introduction.....	124
	A. Administration of the Endangered Species Act.....	124
	B. Wolf Reintroduction Controversy as a Case Study.....	126
II.	The Endangered Species Act.....	127
	A. The Bureaucratization of Wolf Reintroduction.....	129
	B. Current Regulatory State.....	130
III.	Case Study: North American Wolf Reintroduction Efforts.....	131
	A. Reintroduction Efforts.....	131
	1. Red Wolf ( <i>Canis rufus</i> ).....	132
	a. Southeastern United States.....	132
	b. Northeastern United States.....	134
	2. Gray Wolf ( <i>Canis lupus</i> ).....	134
	a. Great Lakes Reintroduction.....	135
	b. Yellowstone Reintroduction.....	138
	c. Mexican Gray Wolf ( <i>Canis lupus baileyi</i> ).....	139
	C. Current Problems with Wolf Reintroduction Populations.....	141
IV.	The Future of Wolf Reintroduction Efforts.....	143
	A. Current Debate on Wolf Reclassification.....	143
	B. Local Control of Wolf Reintroduction.....	143
	1. Federal Action.....	144
	2. State Action.....	145
V.	Conclusion—A Call for Delisting.....	146
VI.	Epilogue.....	147
	A. The Passage of the Final Rule to Delist the Gray Wolf.....	147

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B. Provisions of the Final Rule to Delist.....	148
1. Establishing Different Recovery Programs.....	149
2. Maintaining Special Regulations under Section 10(j).....	150
3. New Special Regulations under Section 4(d).....	151
C. Changes from the Proposed Rule to the Final Rule.....	153
D. Continued Controversy, State Control and Future Changes to Wolf Reintroduction Administration.....	155

## I. INTRODUCTION

The reintroduction of the wolf across the contiguous United States has been a long and tumultuous process, hailed by some as one of the most successful species reintroduction efforts ever; others argue it has been a bureaucratic nightmare mismanaged at all levels which jeopardizes local economies and the livestock of adjoining ranchers. Such polarization has fueled national media attention regarding this controversial program.<sup>1</sup> The only point both sides agree on is the program's protection of the reintroduced wolves has allowed their populations to increase to levels that have not been seen since the early 1900s.<sup>2</sup>

### A. Administration of the Endangered Species Act

Wolf reintroduction projects are examples of programs authorized under the Endangered Species Act of 1973 ("ESA").<sup>3</sup> Under the ESA, native species determined to be either endangered or threatened are permitted to be reintroduced to their natural habitat.<sup>4</sup> Congress declared the purpose of the ESA was to provide a program for the conservation of endangered and threatened species of both

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1. See, e.g., *Call of the Wild: Wolf Reintroduction Pits Federal Power Against Local Ranchers*, ABC NEWS, Sept. 3, 2002, available at <http://abcnews.go.com>; Jay Black, *The Wolf Pack Makes a Comeback*, DES MOINES REG., Nov. 3, 2002, at 4E.

2. See Tom Nugent, *Wolves Making Comeback in Upper Midwest; Careful Management in Minnesota, Wisconsin and Michigan Likely to Lead to Emergence from Endangered Status*, CHI. TRIB., Aug. 28, 2002, at A10; see also Kit Miniçlier, *Fed Proposal Cuts Chance of Wolves in Colorado*, DENV. POST, July 12, 2000, at B1; Black, *supra* note 1.

3. Endangered Species Act (ESA) of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified as amended at 16 U.S.C. §§ 1531-44 (2000)).

4. See 16 U.S.C. § 1531(f) (2000).

animals and plants.<sup>5</sup> Subsequent amendments to the ESA in 1978 and 1982 reaffirmed the original goals of the ESA as well as reauthorized it.<sup>6</sup> Under this statutory framework, Congress established the guidelines for both determining when a species is endangered<sup>7</sup> and when a species is threatened.<sup>8</sup> Following these guidelines, the Fish and Wildlife Service (“FWS”) first identified populations of the gray wolf and the red wolf as endangered in 1978.<sup>9</sup>

The statutory framework outlined in the 1982 amendments to the ESA remains largely the same today.<sup>10</sup> The statute directs the Secretary of the Interior to determine which species are endangered or threatened under the ESA and grant statutory protection to those species.<sup>11</sup> Upon that determination by the Secretary, the statute provides that rules may be promulgated by the Secretary to enforce the provisions of the statute.<sup>12</sup> The Secretary has delegated species reintroduction authority to the FWS, an agency subject to oversight from the Environmental Protection Agency (“EPA”) and the National Park Service (“NPS”).<sup>13</sup>

While much has been written about wolf reintroduction programs, this Note seeks to discuss and review the administrative structure created through the series of federal rules and regulations authorized by the 1982 amendments to the Endangered Species Act.<sup>14</sup> Furthermore, this note examines the wolf reintroduction program as a case study for determining the successes and failures of the complex administrative scheme set out by the ESA and the regulations enacted by the Secretary of the Interior and the Fish and Wildlife Service.

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5. *Id.* § 1531(b).

6. Endangered Species Act Amendments of 1978, Pub. L. No. 95-632, 92 Stat. 3751 (1978); Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, 96 Stat. 1411 (1982).

7. 16 U.S.C. § 1532(6) (2000).

8. *Id.* § 1532(20).

9. *See* Reclassification of the Gray Wolf in the United States and Mexico, with Determination of Critical Habitat in Michigan and Minnesota, 43 Fed. Reg. 9607 (March 9, 1978) (codified at 50 C.F.R. pt. 17).

10. *Compare* Endangered Species Act of 1973, 16 U.S.C. §§ 1531-44 (2000), *with* Endangered Species Act Amendments of 1982.

11. 16 U.S.C. § 1533(a) (2000).

12. *See id.* § 1536.

13. *See id.* § 1533 (providing authority for the Secretary of Interior to promulgate rules related to species listed as endangered under the ESA); 50 C.F.R. § 17.84 (2002) (creating the regulatory framework for enforcement of the ESA and the protection of endangered wolves).

14. Endangered Species Act Amendments of 1982 (current version at 16 U.S.C. § 1531 (2000)).

### B. *Wolf Reintroduction Controversy as a Case Study*

In addition to examination of the administrative structure under the ESA, this Note will use the wolf reintroduction program as a case study for analyzing the administrative state of the ESA in action. Wolf reintroduction efforts provide a perfect case study for such an analysis for three reasons.

First, wolf introduction programs provide the perfect example of a reintroduction effort under the ESA because the endangered status of the North American wolf can be directly attributed to the systematic elimination efforts promoted by early American governmental policies in settling the west.<sup>15</sup> These policies helped to exterminate the wolf in the western United States and in scattered areas across the eastern United States by 1930.<sup>16</sup> It is this type of extinction that the ESA was designed to redress.

Secondly, wolf reintroduction programs are an excellent case study because of the potential impact the reintroduction of wolves has on the agricultural economy.<sup>17</sup> For example, a relatively small number of people would complain about whooping crane reintroduction efforts in the Everglades (where presumably there is a relatively low economic impact on the surrounding community), compared with the vast majority of western cattle ranchers who stand to lose their economic livelihood if their herds of livestock are attacked and decimated by wolves while grazing on federal lands.<sup>18</sup> Thus, the potential economic impact of the wolf reintroduction programs plays an important role in the analysis of the administrative regulations enforcing the ESA.

Finally, wolf reintroduction programs are the perfect case study because they spread across the entire country. Currently, there are wolf reintroduction programs from coast to coast and north to south, with populations being reintro-

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15. RICK MCINTYRE, *A SOCIETY OF WOLVES: NATIONAL PARKS AND THE BATTLE OVER THE WOLF* 12-13 (1996) [hereinafter *SOCIETY OF WOLVES*]; See RICK MCINTYRE, *WAR AGAINST THE WOLF: AMERICA'S CAMPAIGN TO EXTERMINATE THE WOLF* 9-28 (1994) [hereinafter *WAR AGAINST THE WOLF*].

16. *WAR AGAINST THE WOLF*, *supra* note 15, at 9-28.

17. See Fritz Thompson, *The Effects of Enforcement*, ALBUQUERQUE J., Oct. 20, 2002, at A1 [hereinafter *Effects of Enforcement*]; see also Fritz Thompson, *Ranchers Share Anxiety about Wolf Reintroduction*, ALBUQUERQUE J., Oct 20, 2002, at A12.

18. See Betsy Carpenter & Lisa Busch, *The Comeback Wolves as They Return to Northern States, Can Humans Learn to Live With Them?*, U.S. NEWS & WORLD REP., Dec. 12, 1994, at 76.

duced in Southeastern United States,<sup>19</sup> the Upper Midwest and Great Lakes region,<sup>20</sup> the Yellowstone Park region,<sup>21</sup> and the Southwestern United States.<sup>22</sup> Additionally, wolf reintroduction programs are being investigated and researched in the Northeastern United States.<sup>23</sup> Therefore, wolf reintroduction programs provide a truly national view of reintroduction programs and help show how the ESA and its administrative structure work to support and possibly hinder similar policies across the United States.

## II. THE ENDANGERED SPECIES ACT

Hailed as one of the most comprehensive wildlife conservation laws in the world,<sup>24</sup> the Endangered Species Act was first passed in 1973.<sup>25</sup> The purpose of the ESA is “to conserve ‘the ecosystems upon which endangered and threatened species depend’ and to conserve and recover listed species.”<sup>26</sup> With this purpose in mind, Congress created a complex statutory scheme whereby species

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19. Red wolf reintroduction programs in North Carolina began in early 1987. See Walter Partain, *Morrison Overcome: Protecting Red Wolves and the Administrative State*, 11 B.U. PUB. INT. L.J. 277, 280-83 (2002) (discussing the reintroduction of red wolves to North Carolina and Tennessee); see also Mary Frances Patrick, *Destroying the Myth of the Big, Bad Wolf: Red Wolf Protection in Gibbs v. Babbitt*, 9 S.C. ENVTL. L.J. 253, 253-254 (2002) (discussing the Fifth Circuit’s decision upholding red wolf reintroduction in North Carolina).

20. See RICHARD P. THIEL, *KEEPERS OF THE WOLVES: THE EARLY YEARS OF WOLF RECOVERY IN WISCONSIN*, 205-16 (2001).

21. Gray wolf reintroduction occurred in 1995. See generally Christopher T. Cook, Note, *Reintroduction of the Gray Wolf: The Battle Over the Future of Endangered Species Policies*, 5 DRAKE J. AGRIC. L. 487 (2000) (providing a background of the Yellowstone Gray Wolf reintroduction efforts); Scott R. Cleere, Casenote & Comment, *Wolf Reintroduction as an Experimental Population Under the Endangered Species Act: Wyoming Farm Bureau Federation v. Babbitt*, 36 IDAHO L. REV. 83 (1999) (providing a thorough analysis of the Ninth Circuit decision regarding gray wolf reintroduction).

22. Mexican gray wolf reintroduction efforts have begun in parts of New Mexico despite a less than warm response from local ranchers. See *Effects of Enforcement*, *supra* note 17.

23. See JOHN ELDER, *THE RETURN OF THE WOLF: REFLECTIONS ON THE FUTURE OF WOLVES IN THE NORTHEAST* 1-2 (2000).

24. *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978); U.S. FISH AND WILDLIFE SERV., *ESA BASICS: OVER 25 YEARS OF PROTECTING ENDANGERED SPECIES* (2002), available at [http://www.nv.blm.gov/t&e/documents/ESA\\_Basics.pdf](http://www.nv.blm.gov/t&e/documents/ESA_Basics.pdf) [hereinafter *ESA BASICS*].

25. *ESA BASICS*, *supra* note 24; see also Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified and amended at 16 U.S.C. §§ 1531-44 (2000)).

26. *ESA BASICS*, *supra* note 24.

may be classified in two distinct categories, endangered or threatened status, both offering protection.<sup>27</sup>

Under the ESA, endangered protection status is reserved for species which are in danger of extinction throughout all or a significant portion of its range<sup>28</sup> while threatened status is reserved for species that are likely to become endangered within the foreseeable future.<sup>29</sup> The protection afforded under the ESA for either status is not limited to animals but also extends to all species of plants.<sup>30</sup> The determination of which species of plants or animals qualify for protection under the ESA is left to the Secretary of the Interior with insight provided by the Secretary of Commerce.<sup>31</sup> In making this determination, the Secretary must base the decision “solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species . . . .”<sup>32</sup>

In addition to granting authority to the Secretary of the Interior to determine which species are either endangered or threatened, the ESA also allows the Secretary to develop and implement recovery plans “for the conservation and survival of endangered species and threatened species listed . . . unless he finds that such a plan will not promote the conservation of the species”.<sup>33</sup>

While the development of recovery plans was allowed under the original ESA, the creation of Section 10(j) in the 1982 ESA amendments led to the current state of wolf reintroduction efforts.<sup>34</sup> Section 10(j) creates an exemption to the prohibitions on taking any protected animal under the ESA.<sup>35</sup> This exemption provides that the Secretary may authorize a population of a certain species as an “experimental population” when “the population is wholly separate geographically from nonexperimental populations of the same species.”<sup>36</sup> This exemption has been important in the development of recovery plans for a variety of wolf

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27. *See id.*

28. *Id.*

29. *Id.*

30. *See id.*

31. *See* 16 U.S.C. § 1533 (2000); ESA BASICS, *supra* note 24.

32. 16 U.S.C. § 1533(b)(1)(A) (2000).

33. *Id.* § 1533(f)(1).

34. *See* Endangered Species Act Amendments of 1982, (current version at 16 U.S.C. § 1539(j) (2000)).

35. *Id.*

36. *Id.*

species because the same treatment has been applied to different reintroduction efforts.<sup>37</sup>

Thus, the Endangered Species Act granted the FWS the authority to examine species populations, determine if a certain species is endangered or threatened within the Act, promulgate rules to protect selected species, and enforce the rules it creates. This determination and subsequent promulgation of administrative rules creates the backdrop for the controversy which has encompassed the entire wolf reintroduction effort across the country.

#### *A. The Bureaucratization of Wolf Reintroduction*

Following the passage of the ESA, the Fish and Wildlife Service began promulgating administrative rules regarding the hunting and trapping of gray wolves and Mexican gray wolves.<sup>38</sup> The problem with the promulgation of these rules was that they were specific to each subspecies of wolf and each subspecies set covered a wide geographic area.<sup>39</sup> To effectively eliminate this problem, the FWS undertook a rulemaking in March 1978 with the specific goal of re-listing the gray wolf at the species level as endangered throughout the contiguous 48 states and Mexico, with the exception of Minnesota.<sup>40</sup> This 1978 rulemaking can be considered the rise of the bureaucratization of wolf reintroduction because for the first time the federal government, via the FWS, decided to list the entire species of gray wolves across the United States as endangered<sup>41</sup> and began discussions regarding the reintroduction of the gray wolf to the contiguous United States.<sup>42</sup>

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37. See 50 C.F.R. § 17.84(i) (2002) (providing nonessential experimental status to gray wolves in Idaho, Montana and Wyoming); see also *id.* § 17.84(k) (providing nonessential experimental status to Mexican gray wolves in Blue Range Wolf Recovery Area in East-Central Arizona and Central New Mexico as well as the White Sands Wolf Recovery Area in South-Central New Mexico).

38. See *id.* §17.84.

39. See *id.*

40. See Reclassification of the Gray Wolf in the United States and Mexico, with Determination of Critical Habitat in Michigan and Minnesota, 43 Fed. Reg. 9607 (Mar. 9, 1978) (codified at 50 C.F.R. pt. 17).

41. This of course is with the exception of wolf populations in Minnesota, where the Fish and Wildlife Service listed the gray wolf as threatened. See *id.*

42. The rise of the red wolf administrative state began around the same time, but because the red wolf is a different species of wolf, *canis rufus*, the rules were promulgated under different provisions of the CFR.

Throughout the course of the 1980s relatively little occurred regarding wolf reintroduction, as compared with the 1970s and 1990s. Wolf reintroduction finally became a reality in November of 1994, when the FWS designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction in the Greater Yellowstone Area.<sup>43</sup> This move toward reintroduction of wolf populations continued through the 1990s, and in 1998, the FWS issued rules establishing a nonessential experimental population in portions of Arizona, New Mexico, and Texas.<sup>44</sup> The introduction of these nonessential experimental populations created the current system of regulations supporting reintroduction of the gray wolf populations that exist today. But the debate over the reintroduction efforts in the Greater Yellowstone Area and the Southwestern reintroduction area overshadowed the success of the wolf reintroduction efforts in Northern Minnesota. Compared with the nonessential experimental populations, the Western Great Lakes recovery area was years ahead of other reintroduction efforts.<sup>45</sup> Thus, while the reintroduction efforts were just beginning in the Western United States, the FWS was already discussing delisting the gray wolves in Northern Minnesota. This dichotomy has led the current debate concerning the need for the current administration of the wolf reintroduction effort.

### B. *Current Regulatory State*

While the historical background of the administrative procedures surrounding wolf reintroduction is anything but clear, the most recent rules promulgated and amended by the FWS provide a much clearer picture of the administrative state of wolf reintroduction programs.

Title 50 of the Code of Federal Regulations (“CFR”) contains the administrative rules regarding wildlife and fisheries as administered by the FWS.<sup>46</sup> The pertinent portion of this Title is Part 17 which addresses the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife and

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43. Proposal to Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Proposal to Establish Three Special Regulations for Threatened Gray Wolves, 65 Fed. Reg. 43,450, 43,454 (July 13, 2000) (codified at 50 C.F.R. pt. 17) [hereinafter Proposal to Reclassify].

44. See generally Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 63 Fed. Reg. 1752 (Jan. 12, 1998).

45. See U.S. FISH AND WILDLIFE SERV., RECOVERY PLAN FOR THE EASTERN TIMBER WOLF 24 (Rev. ed. 1992).

46. See 50 C.F.R. §§ 17.1-17.108 (2002).

plants that are listed as endangered or threatened as determined by the Secretary of the Interior.<sup>47</sup> The purpose of Part 17 is to implement the Endangered Species Act of 1973 and to identify those species of wildlife and plants that have been determined by the Fish and Wildlife Service to be endangered or threatened with extinction.<sup>48</sup>

Keeping with the overall goal of the ESA, the administrative regulations prohibit the taking of endangered wildlife except as otherwise provided by the administrative regulations.<sup>49</sup> Among the exceptions to the general prohibition on takings of endangered species protected under the ESA are permits issued for scientific purposes<sup>50</sup> and permits for economic hardship.<sup>51</sup> While general blanket exceptions apply to takings of certain populations that are labeled endangered, more specific special rules are promulgated for species which have been determined to be threatened.<sup>52</sup>

While this outline of the current administrative structure provides some background as to procedures and protections afforded to species listed under the ESA, a more careful geographic and species-based analysis is required. Through a species by species analysis that accounts for the different geographic locations and the different species of wolves being reintroduced, as well as an analysis of the economic and cultural differences among the reintroduction sites, it will be easier to understand why the reintroduction efforts have been so controversial.

### III. CASE STUDY: NORTH AMERICAN WOLF REINTRODUCTION EFFORTS

#### A. *Reintroduction Efforts*

Wolf reintroduction efforts began in the late 1980s as a result of a 1975 determination that wolf populations were so degraded that they could no longer sustain native populations in the wild.<sup>53</sup> As a result, the FWS began capturing

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47. *See id.*

48. *See id.* § 17.1.

49. *Id.* § 17.21(c).

50. *See id.* § 17.22.

51. *See id.* § 17.23.

52. *See id.* §§ 17.31 – 17.48 (providing the special rules for each species that is listed as threatened – more specifically, gray wolves located in Northern Minnesota are listed as threatened and have special rules as listed in 50 C.F.R. § 17.40(d) (2002)).

53. *See* Frederico Cheever, *From Population Segregation to Species Zoning: The Evolution of Reintroduction Law Under Section 10(J) of the Endangered Species Act*, 1 WYO. L. REV. 287, 329 (2001).

what native wolves remained in the wild and began raising wolves in captivity, planning on returning them to the wild one day.<sup>54</sup> After a long and spirited debate, the FWS began its reintroduction efforts following a study of the red wolf population in the southeastern United States.

1. *Red Wolf* (*Canis rufus*)

a. *Southeastern United States*

The red wolf was once the dominant predator in the southeast region of the United States.<sup>55</sup> However, changes in the habitat as a result of continued human development of the land caused the red wolf to migrate to less hospitable climates.<sup>56</sup> Subsequently, from 1974-1980, the FWS began collecting red wolves for a possible reintroduction.<sup>57</sup> From this collection, only 14 captured animals met the criteria established and formed the nucleus of a captive breeding program.<sup>58</sup> This reintroduction eventually occurred near the Alligator River in the Alligator River National Wildlife Refuge (“ARNWR”) in 1987-1992.<sup>59</sup>

This reintroduction effort proved to be successful, creating a sustained population of 40 red wolves on the ARNWR. However, similar reintroduction efforts failed near the Great Smokey Mountains National Park in 1998.<sup>60</sup> Today, around 240 to 317 red wolves are in existence, with the populations ranging from 45 to 92 located in Eastern North Carolina, 9 to 37 occurring in the Great Smokey Mountain National Park area and another 11 to 13 along the lower Atlantic and Gulf Coasts.<sup>61</sup>

While the reintroduction of the red wolf was not without its critics, the program continued without major incident until 1990 when Richard Lee Mann was arrested and charged with killing a red wolf that had left the ARNWR and

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54. *See id.*

55. SOCIETY OF WOLVES, *supra* note 15, at 102.

56. *Id.*

57. *See* U.S. FISH & WILDLIFE SERV., ENDANGERED RED WOLVES, 1 (Oct. 1997), available at <http://southeast.fws.gov/pubs/alwolf.pdf> [hereinafter ENDANGERED RED WOLVES].

58. *Id.*

59. SOCIETY OF WOLVES, *supra* note 15, at 102.

60. *See* Partain, *supra* note 19, at 282; *see also* Press Release, U.S. Fish and Wildlife Service, National Park Service Ends Effort to Establish Endangered Red Wolves in Great Smokey Mountains National Park (Oct. 8, 1998), available at <http://southeast.fws.gov/news/1998/r98-091a.html>.

61. ENDANGERED RED WOLVES, *supra* note 57, at 4.

traveled onto his property.<sup>62</sup> As a result of this charge, Charles Gibbs, Jr. filed suit against the FWS and Secretary of the Interior Babbitt, claiming that the FWS regulations<sup>63</sup> violated the Commerce Clause in that it exceeded the grasp of the Interstate Commerce Clause and violated the doctrine expressed by the United States Supreme Court in *United States v. Lopez*.<sup>64</sup> Furthermore, Mr. Gibbs claimed that the reintroduction of the red wolf by FWS caused damage to his hunting business and constituted a government taking under the Fifth Amendment.<sup>65</sup>

Mr. Gibbs also based his complaint on a number of state laws that were enacted in response to the reintroduction effort.<sup>66</sup> In response to the charges filed against Mr. Mann and to the lawsuit filed by Mr. Gibbs, the state legislature of North Carolina enacted a statute that allowed for individuals to capture or kill a reintroduced red wolf that came onto private property.<sup>67</sup>

The Federal District Court for the Eastern District of North Carolina held that the regulations of the FWS and the ESA fall within Congress' authority to regulate economic activity.<sup>68</sup> The Fourth Circuit Court of Appeals upheld the district court judge's granting of a motion for summary judgment on the same grounds.<sup>69</sup> The case was then denied *certiorari* by the United States Supreme Court.<sup>70</sup>

Following the litigation, North Carolina repealed its state statute allowing the capture or killing of a stray reintroduced red wolf.<sup>71</sup> While the North Carolina laws may have been repealed, the sentiment among many property owners remains that a landowner has a right to protect his land from any wolf that strays onto his/her property. However, the current administrative classification of the red wolf as a nonessential experimental population does not allow a taking in such an instance. While the classification is the most liberal in terms of

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62. See *Gibbs v. Babbitt*, 31 F. Supp. 2d 531, 533 (E.D.N.C. 1998); see also Patrick, *supra* note 19, at 253-54.

63. 50 C.F.R. §17.84(c) (2002).

64. See *U.S. v. Lopez*, 514 U.S. 549 (1995).

65. Patrick, *supra* note 19, at 254-55; see *Gibbs v. Babbitt*, 214 F.3d 483, 489 (4th Cir. 2000).

66. See *Gibbs*, 214 F.3d at 489.

67. See Patrick, *supra* note 19, at 254; see also *Gibbs*, 214 F.3d at 489.

68. See *Gibbs v. Babbitt*, 31 F. Supp. 2d 531, 536 (E.D.N.C. 1998); see also Patrick, *supra* note 19, at 255.

69. *Gibbs*, 214 F.3d at 487.

70. *Gibbs v. Norton*, 531 U.S. 1145 (2001).

71. See Patrick, *supra* note 19, at 254-55 (discussing the North Carolina law at the time the case was filed and the subsequent change following the decision of the Fourth Circuit).

taking a protected species, it is clear that courts, such as the Fourth Circuit Court of Appeals, are reluctant to allow a taking absent a clear cut situation where a red wolf was taken in defense of a person's life or for protection of a person's livestock.<sup>72</sup>

b. *Northeastern United States*

While the reintroduction of the red wolf to the southeastern part of the United States has mirrored similar reintroduction efforts across the United States, the potential reintroduction effort to the northeastern United States is still in the development stage.<sup>73</sup> The debate has even caused the state legislatures of a number of states to begin discussion on possible state legislation both for and against the reintroduction efforts posed by the FWS.

While this reintroduction does not seem much different than the other reintroduction efforts, one substantial distinction is the proximity to large population centers in the northeastern United States.<sup>74</sup> Additionally, the impact of the state laws enacted in other reintroduction areas as well as legal challenges are likely to shape the debate and any potential effort to block reintroduction in the northeast.

2. *Gray Wolf (Canis lupus)*

Perhaps the most debated and well known of all the wolf reintroduction efforts is the reintroduction of the gray wolf. Gray wolf reintroduction in Yellowstone National Park garnered more media coverage and was fought more aggressively than any other wolf reintroduction effort to date.<sup>75</sup> Yet, while the battle in Yellowstone over wolf reintroduction continues, a lesser known reintroduction of the gray wolf is beginning to see its share of attention.<sup>76</sup>

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72. See 50 C.F.R. §§ 17.84(c)(4)(i), 17.84(c)(4)(iii) (2002).

73. See Mollie Matteson, Editorial, *Wolves Deserve Respect; Don't Warrant Fear*, BURLINGTON FREE PRESS, Oct. 8, 2002, at 11.

74. Reintroduction is being considered for Maine, New Hampshire, New York and Vermont. See SOCIETY OF WOLVES, *supra* note 15, at 95.

75. See Eugene Linden, *Search for the Wolf (In Yellowstone Park)*, TIME, Nov. 9, 1992, at 66.

76. See Nugent, *supra* note 2; see also Tom Meersman, *Lawsuit Challenges Snowmobiling Decision*, MINNEAPOLIS-ST. PAUL STAR TRIB., Mar. 15, 2002, at B7.

2004]

*Howl of the Wolf*

135

a. *Great Lakes Reintroduction*

The Great Lakes area gray wolf reintroduction was not surrounded with the media hype that encompassed the Yellowstone National Park reintroduction, but has been every bit as controversial.<sup>77</sup> In fact, in addition to the traditional complaints raised by the agricultural and livestock community, both the recreational and tourist industries have also filed complaints in court due to the adverse effects of the gray wolf reintroduction programs in the Great Lakes area.<sup>78</sup>

While the Great Lakes area is the general classification region for gray wolf reintroduction, the area of particular interest for this discussion is Northern Minnesota.<sup>79</sup> The specific focus on Minnesota is unique for one reason—because the wolf reintroduction effort in Northern Minnesota has been so successful, the Fish and Wildlife Service has upgraded the gray wolf in Minnesota to threatened status.<sup>80</sup> This classification as a threatened species, instead of an endangered species, provides different procedural rules for the maintenance of the gray wolf population as well as alters state government control over the management of the population.

The gray wolf in Northern Minnesota has been treated in a different manner, compared with other wolf populations over the last 20 years,<sup>81</sup> mainly because the population of gray wolves in Minnesota has remained higher than in

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77. See Nugent, *supra* note 2.

78. See *Mausolf v. Babbitt*, 125 F.3d 661, 669-70 (8th Cir. 1997) (holding that restrictions placed upon snowmobiling in Northern Minnesota by the National Park Service were rationally based on biological opinions finding possible adverse impact snowmobiling may have on gray wolf populations). However, these restrictions were recently repealed by the National Park Service in March 2002. Subsequently, eight different environmental groups filed a lawsuit in the Federal District Court for the District of Minnesota seeking to have the restrictions reinstated as a result of potential harm to the gray wolves near Voyageurs National Park. See Meersman, *supra* note 76.

79. While the Western Great Lakes wolf reintroduction area encompasses a number of states, including Minnesota, Michigan, North Dakota, South Dakota and Wisconsin, the large increase in the population of wolves in Northern Minnesota and the recent delisting of the gray wolf in Minnesota provide an excellent comparison to other reintroduction populations. U.S. FISH & WILDLIFE SERV., GRAY WOLF RECOVERY: SOMETHING TO HOWL ABOUT!, at <http://midwest.fws.gov/wolf/> (last visited July 19, 2004) (providing more information on population of gray wolves).

80. See 50 C.F.R. § 17.40(d) (2002) (listing the gray wolf in Northern Minnesota as threatened).

81. See Dennis Anderson, *Wolf Expert Says Minnesota is Setting Trend; U.S. Proposal Calls for Taking Gray Wolf off 'Endangered' List*, MINNEAPOLIS-ST. PAUL STAR TRIB., July 12, 2000, at 4A.

other reintroduction areas.<sup>82</sup> Thus, many might be surprised to hear that the same conflicts can arise in an area where the wolf status has been upgraded from endangered to threatened. An example of an ongoing problem after wolf upgrading is wolf attacks on livestock.

Even in a state where the gray wolf has been delisted for more than twenty years, the debate still continues as to the protection and reimbursement that farmers are afforded by FWS for livestock killed by gray wolves.<sup>83</sup> Yet, perhaps the most interesting of the disputes that have arisen in Minnesota regarding gray wolves has not revolved around the regulations promulgated by the Fish and Wildlife Service, but instead over regulations that were promulgated by the National Park Service.

The controversy surrounding the classification of the gray wolf and the subsequent implications for the tourist industry of Northern Minnesota began in January 1991, when the National Park Service issued its first Voyageurs snowmobiling regulations.<sup>84</sup> These regulations allowed a park superintendent to temporarily close trails or lake surfaces after considering a number of issues, including wildlife management.<sup>85</sup> In March 1992, the Fish and Wildlife Service directed the National Park Service to implement trail closures consistent with the biological opinions it administered the previous year, which held that snowmobiling across certain areas may cause disruption of gray wolves hunting prey.<sup>86</sup> Based upon this opinion, the Superintendent of Voyageurs National Park issued an order closing the Park's bays and lakes to effectuate wildlife management objectives.<sup>87</sup>

Following the determination by the Park's Superintendent to close the lakes and bays to snowmobilers, the Minnesota United Snowmobilers Association filed a complaint in the Federal District Court for Minnesota alleging a violation of the ESA and the Administrative Procedure Act ("APA").<sup>88</sup> The district

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82. Compare U.S. FISH AND WILDLIFE SERV., WOLF RECOVERY IN MINNESOTA, WISCONSIN AND MICHIGAN (Mar. 2003), available at <http://midwest.fws.gov/wolf/recovery/R3FCTSHT.pdf>, with U.S. FISH AND WILDLIFE SERV., ROCKY MOUNTAIN WOLF RECOVERY 2001 ANNUAL REPORT (2002), available at <http://westerngraywolf.fws.gov/annualrpt01/2001report.htm> [hereinafter WOLF RECOVERY 2001].

83. See Larry Oakes, *State Gives the Feds Plan on Wolves: Step Taken Toward Removal From Endangered List in Midwest*, MINNEAPOLIS-ST. PAUL STAR TRIB., March 28, 2001, at 1B.

84. *Mausolf v. Babbitt*, 913 F. Supp. 1334, 1338 (D. Minn. 1996).

85. *Id.* (citing 36 C.F.R. § 7.33(b)(3) (1991)).

86. *Id.* at 1339.

87. *Id.* at 1340.

88. *Id.* at 1336.

court found that the snowmobilers had standing to sue and that the FWS and the NPS failed to adequately explain their reasoning; subsequently, Judge Rosenbaum granted the plaintiff's motion for summary judgment.<sup>89</sup>

On appeal to the Eighth Circuit Court of Appeals, the Eighth Circuit Court held that while the district court analyzed the NPS's park closures under the authority of the ESA, the district court failed "to consider the closures in light of the NPS's authority arising from the organic act creating the NPS and the national park system".<sup>90</sup> The Eighth Circuit further stated that the orders of the Superintendent were rationally based and designed to further management objectives, including the preservation of wildlife.<sup>91</sup> Thus, the Eighth Circuit ultimately overruled the decision of the district court and upheld the rules as promulgated by the NPS in restricting snowmobiling across certain areas where it may have an adverse effect on the hunting of certain populations of gray wolves.<sup>92</sup>

With the United States Supreme Court denying *certiorari*,<sup>93</sup> it appeared as if the dispute regarding the NPS issuing regulations regarding snowmobiling would have come to an end. However, this same issue would soon re-emerge, albeit from a different perspective.

The issue of closing lakes and bays to snowmobile use arose again in 2001, when the NPS decided to not renew the same eleven lake and bay closures that were at issue in the *Mausolf* decisions.<sup>94</sup> This time, the suit was filed by the Voyageurs Region National Park Association, along with a number of other environmental groups seeking an injunction stopping the NPS from opening the area in question to snowmobiling.<sup>95</sup> Here the district court relied on the Eighth Circuit's decision in *Mausolf* and held that based upon the court's limited authority to review administrative agency decisions, the decision of the NPS was not arbitrary and capricious though the court might have leaned differently if presented with the evidence in a matter outside of the administrative realm.<sup>96</sup>

These decisions show the different problems that arise when regional economics are considered during the classification of an endangered species. While the problem of snowmobiling may be unique to Northern Minnesota, the

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89. *Id.* at 1341, 1343-44.

90. *Mausolf v. Babbitt*, 125 F.3d 661, 668 (8th Cir. 1997).

91. *Id.* at 669.

92. *See id.* at 670.

93. *Mausolf v. Babbitt*, 524 U.S. 951 (1998).

94. *Voyageurs Region Nat'l Park Ass'n v. Norton*, No. CIV. 02-580 (DWF/AJB), 2002 WL 31689430, at \*1 (D. Minn. Nov. 26, 2002).

95. *Id.*

96. *Id.* at \*4.

cases are representative of problems that occur across all wolf reintroduction areas. Perhaps the most noteworthy distinction that can be made regarding these decisions is they occurred in an area where gray wolves were not even classified at the highest level, endangered, but were merely classified as threatened.

b. *Yellowstone Reintroduction*

Perhaps the most controversial of all the wolf reintroduction programs was the reintroduction of the gray wolf to Yellowstone National Park. During the late 1800s and the early 1900s, when the expansion of the United States led many ranchers and farmers westward, gray wolf populations flourished in the Yellowstone area.<sup>97</sup> However, subsequent state government policies during the mid to late 1800s created an atmosphere ripe for the destruction of the gray wolf population.<sup>98</sup> Additionally, policies of the federal government also supported the systematic removal of the gray wolf from the West to promote construction of a national rail system.<sup>99</sup> Thus, by the late 1930s only a few remaining wolves existed in the greater Yellowstone National Park area.<sup>100</sup>

The FWS first began its analysis of a possible wolf reintroduction in the 1982 draft report for the Rocky Mountain Wolf Recovery Plan.<sup>101</sup> While the first draft of the recovery plan was prepared in 1982, the revised draft of the plan was not completed for five more years.<sup>102</sup> After a number of successful efforts to defeat the bill in both 1987 and 1988, the wolf reintroduction effort eventually became law with the review and subsequent passage of the 1993 Environmental Impact Statement by the FWS.<sup>103</sup>

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97. See generally SOCIETY OF WOLVES, *supra* note 15, at 38 (showing the original range of the gray wolf).

98. In 1869, Colorado established a wolf bounty, as did Wyoming in 1875 and Montana in 1883. See *id.* at 65.

99. See Cleere, *supra* note 21, at 86-88 (providing a very detailed historical description of the state and federal policies which lead to the extermination of the gray wolf in the Yellowstone area).

100. See SOCIETY OF WOLVES, *supra* note 15, at 65, 75.

101. Cook, *supra* note 21, at 491.

102. *Id.*

103. Inga Haagenson Causey, Comment, *The Reintroduction of the Wolf in Yellowstone: Has the Program Fatally Wounded the Very Species It Sought to Protect?*, 11 TUL. ENVTL. L.J. 461, 467 (1998).

The first “nonessential experimental population” of gray wolves arrived in Yellowstone National Park amid a controversy.<sup>104</sup> While the FWS and the Department of the Interior hoped to reintroduce the first wolves into Yellowstone, a federal district court judge issued an injunction against the reintroduction efforts.<sup>105</sup> However, even as this legal challenge continued, the FWS was allowed to begin wolf reintroduction efforts.<sup>106</sup>

Subsequent litigation in this matter resulted in a temporary victory for those who were opposed to reintroduction efforts.<sup>107</sup> However, the order by Federal Judge Downes, directing the FWS to remove the reintroduced population of wolves from Yellowstone National Park, would soon be appealed to the Tenth Circuit Court of Appeals.<sup>108</sup>

On appeal, the Tenth Circuit Court of Appeals overturned the stay issued by the Federal District Court for Wyoming, holding that the evidence presented by the appellees was insufficient to warrant an intervention into the FWS reintroduction program.<sup>109</sup> Following the end of this litigation, the FWS began relocating more gray wolves to Yellowstone National Park, and today the number of wolves roaming the area is listed somewhere near 563.<sup>110</sup>

c. *Mexican Gray Wolf* (*Canis lupus baileyi*)

The final wolf reintroduction program to discuss is the Mexican gray wolf reintroduction effort in the southwestern United States. As with the other wolf reintroduction efforts, the Mexican gray wolf effort received its start as a result of the Endangered Species Act of 1973.<sup>111</sup> By 1982, the Mexican gray wolf was considered completely extinct in the United States, and by the end of

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104. See Brian Bramblett, Note, *Wolves in the West: The Triumph of Section 10(J) of the Endangered Species Act*, 22 PUB. LAND & RESOURCES L. REV. 133, 137-38 (2001).

105. See *id.* at 137.

106. *Id.*

107. See *Wyo. Farm Bureau Fed'n v. Babbitt*, 987 F. Supp. 1349, 1376 (D. Wyo. 1997).

108. *Wyo. Farm Bureau Fed'n v. Babbitt*, 199 F.3d 1224, 1228 (10th Cir. 2000).

109. See *id.* at 1241. For a more detailed description and analysis of this case, see Cook, *supra* note 21, at 492-98.

110. See WOLF RECOVERY 2001, *supra* note 82, at 3.

111. See Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified as amended at 16 U.S.C. §§ 1531-44 (2000)).

1982, the FWS had drafted the proposed recovery plan for the Mexican gray wolf in the southwestern United States.<sup>112</sup>

Based upon the proposed recovery plan and following the completion of a Finding of No Significant Impact (“FONSI”) analysis and the creation of an Environmental Impact Statement (“EIS”), the Secretary of the Interior authorized the reintroduction of the Mexican gray wolf into the southwestern United States.<sup>113</sup> Following this authorization, Mexican gray wolves were released first onto the Blue Range Wolf Recovery Area in the Apache National Forest in Arizona and onto public lands in the Gila National Forest in New Mexico in early 1997.<sup>114</sup>

While the reintroduction seemed to be transitioning smoothly from the planning and development stage to the critical stage of reintroduction, the program soon began to experience a number of problems. First, one pack of the newly released wolves managed to stalk a camper and his family in the Apache National Forest.<sup>115</sup> During this encounter, the alpha male of the pack attacked the camper’s dog, and, fearing for the safety of the family, the camper shot and killed the wolf.<sup>116</sup> While the FWS claims that this sort of human interaction has been rare and that the Mexican gray wolves that were reintroduced were unlikely to interact with humans, the media and public sentiment regarding the reintroduction tell a different story.<sup>117</sup>

Similarly, interactions between wolves and livestock have also fueled contention between ranchers opposed to repopulation and government officials tasked with supporting the reintroduction effort.<sup>118</sup> In fact, a three year biological

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112. See U.S. FISH & WILDLIFE SERV., MEXICAN WOLF RECOVERY PLAN 3 (1982), available at <http://ifw2es.fws.gov/Documents/R2ES/RecoveryPlan.pdf>.

113. U.S. FISH & WILDLIFE SERV., PROJECT UPDATE, (Apr. 1997), available at <http://mexicanwolf.fws.gov/Documents/R2ES/4-1-1997.pdf>.

114. *Id.*

115. U.S. FISH & WILDLIFE SERV., PROJECT UPDATE (July 1998), available at <http://ifw2es.fws.gov/Documents/R2ES/7-1-1998.pdf>.

116. *Id.*

117. Compare U.S. FISH & WILDLIFE SERV., PUBLIC INTERACTION PLAN FOR THE MEXICAN WOLF RECOVERY PROGRAM (Mar. 1998), available at <http://ifw2es.fws.gov/Documents/R2ES/InteractionPlan.pdf>, with Tom Jackson King, *Man Faces Off with Four Gray Wolves*, E. ARIZ. COURIER, Apr. 19, 2000 and Jon E. Dougherty, *New Mexicans Fight Wolf Release: ‘When They See Humans, They Think It’s Chow Time’*, WORLDNETDAILY.COM, Feb. 11, 2000.

118. See generally CONSERVATION BREEDING SPECIALIST GROUP (CBSG), U.S. FISH & WILDLIFE SERV., MEXICAN WOLF RECOVERY: THREE-YEAR PROGRAM REVIEW AND ASSESSMENT 52 (June 2001), available at

review conducted by the U.S. Fish and Wildlife Service showed that over the three year period of the study, 1998 to 2001, there were forty-two possible wolf-livestock interactions, but only twenty-eight of these incidents actually involved wolves.<sup>119</sup> Further, the report stated that during the same time period, there were seventeen reported incidents of wolf and domestic animal interactions in the reintroduction area.<sup>120</sup> As with the human interactions, the actual numbers of attacks was later determined to be only thirteen which resulted in the injury or death of five domesticated animals.<sup>121</sup>

While these reports are similar to complaints that were filed with other reintroduction sites, the difference seems to be the aggressive nature of the encounters between humans, domesticated animals, livestock and the reintroduced Mexican gray wolves. In fact, these encounters have caused an increase in what would appear to be vigilante-type behavior by the surrounding community.<sup>122</sup> This trend of ranchers and residents protecting their families, land, and livestock has helped fuel the current controversy surrounding the Southwestern Mexican Wolf Reintroduction.

### *C. Current Problems with Wolf Reintroduction Populations*

The current state of wolf repopulation is a delicate tale of reintroduction efforts pitted against regional economics. While almost all parties involved will agree that the reintroduction of the gray wolf, Mexican gray wolf and red wolf have led to an increase in the wild populations of the species, many disagree as to whether the current administrative system is necessary to continue to promote the success of the species.

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[http://ifw2es.fws.gov/Documents/R2ES/Mexican\\_Wolf\\_3\\_Year\\_Biological\\_Review.pdf](http://ifw2es.fws.gov/Documents/R2ES/Mexican_Wolf_3_Year_Biological_Review.pdf) (examining the quantity and accuracy of livestock-wolf interaction reports).

119. *Id.*

120. *Id.*

121. *Id.*

122. *See, e.g.*, News Release, U.S. Fish & Wildlife Service, Reward Offered in Mexican Gray Wolf Shooting (Nov. 6, 1998), *available at* <http://news.fws.gov/NewsReleases/R2/A11C3CA2-AC20-11D4-A179009027B6B5D3.html>; News Release, U.S. Fish & Wildlife Serv., Two Charged in Wolf Killing (Mar. 9, 2000), *available at* <http://news.fws.gov/NewsReleases/R2/A11C3D53-AC20-11D4-A179009027B6B5D3.html>.

Currently, there are approximately 656<sup>123</sup> gray wolves in Northern Michigan and Wisconsin, along with some 2,445 plus<sup>124</sup> gray wolves in Northern Minnesota, making the Western Great Lakes recovery area the most successful reintroduction effort to date. The second most successful gray wolf reintroduction area is the Western gray wolf recovery area, commonly referred to as the Yellowstone reintroduction.

The Northern Rocky Mountains reintroduction area consists of three distinct reintroduction areas, including the Greater Yellowstone recovery area (Idaho, Montana, and Wyoming), the Central Idaho recovery area, and the Northwestern Montana Recovery area.<sup>125</sup> Combined, these three areas account for a total of 563 gray wolves (as of 2001) with 261 of these wolves in the Central Idaho Recovery Area, 218 in the Greater Yellowstone Recovery Area and 84 in the Northwest Montana recovery area.<sup>126</sup>

The most recent wolf reintroduction, the Mexican gray wolf, is still in the beginning stages, yet it has already experienced difficulties. Currently, there are approximately twenty-two Mexican gray wolves free-ranging in the reintroduction areas in the Southwest.<sup>127</sup> Problems with this population have included systematic hunting and shooting, accidents between wolves and cars, and wolves returned to captivity. These problems have reduced the population to twenty-two wolves from the original thirty-four that were reintroduced.<sup>128</sup>

Technically classified as a different program because it is a different species, the reintroduction of the red wolf in the southeastern United States is important to discuss because of the parallels that can be drawn to gray wolf reintroduction. To this date, the red wolf remains listed as endangered, with the reintroduction populations listed as nonessential experimental populations.<sup>129</sup> At the end of August 1997, there were around 240 to 317 red wolves living in the United States with approximately 45-92 of these wolves living in eastern North Carolina, 9-37

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123. U.S. FISH & WILDLIFE SERV., GRAY WOLF POPULATION IN MINNESOTA, WISCONSIN, AND MICHIGAN FROM 1976-2004 (2004), available at <http://midwest.fws.gov/wolf/population/mn-wi-mi-table.pdf>.

124. *Id.*

125. WOLF RECOVERY 2001, *supra* note 82.

126. *Id.*

127. U.S. FISH & WILDLIFE SERV., MEXICAN GRAY WOLF FREQUENTLY ASKED QUESTIONS (July 1999), available at <http://ifw2es.fws.gov/mexicanwolf/faq.cfm>.

128. *Id.*

129. See U.S. FISH & WILDLIFE SERV., RED WOLF STATUS DETAILS (2004), available at [http://ecos.fws.gov/species\\_profile/SpeciesProfile?spcode=A00F](http://ecos.fws.gov/species_profile/SpeciesProfile?spcode=A00F).

in the Great Smokey Mountains National Park and another 11-13 in the Atlantic Gulf Coast Islands.<sup>130</sup>

While the wolf numbers are a definite increase compared to the population numbers before reintroduction efforts began, some argue the current populations are still not great enough to remove the current wolf populations from endangered status. Others argue that delisting the wolf populations and providing state control will help increase wolf populations, while providing better maintenance and response to complaints and problems brought by citizens affected by the wolf reintroduction efforts.<sup>131</sup>

#### IV. THE FUTURE OF WOLF REINTRODUCTION EFFORTS

##### A. *Current Debate on Wolf Reclassification*

While the debate continues over whether to return control of wolf reintroduction populations to the states, the states are moving quickly to create plans for management of wolf populations on their own. With heavy constituent correspondence on the matter, many states have drafted management plans, as well as passed required legislation that will take effect as soon as the FWS promulgates rules releasing control of the wolf populations to state governments.<sup>132</sup>

##### B. *Local Control of Wolf Reintroduction*

Since the beginning of the wolf reintroduction efforts, states have complained that the federal government should not interfere with their control of species populations within their borders. As the reintroduction efforts continued, states gradually realized wolf reclassification was the only option available to

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130. ENDANGERED RED WOLVES, *supra* note 57, at 4.

131. *See generally* MONT. FISH, WILDLIFE & PARKS, MONT. WOLF CONSERVATION & MANAGEMENT PLAN UPDATE (Aug. 2002), *available at* <http://www.fwp.state.mt.us/wildthings/wolf/mgmtplanupdate.pdf> (providing a summary of comments and key issues raised in Montana in spring 2002) [hereinafter MONT. WOLF UPDATE].

132. *See generally* IDAHO LEGISLATIVE WOLF OVERSIGHT COMM., IDAHO WOLF CONSERVATION AND MGMT. PLAN (2002), *available at* <http://www.wolfology.com/id185.htm> [hereinafter IDAHO MGMT. PLAN]; MONT. FISH, WILDLIFE & PARKS, MONT. WOLF CONSERVATION & MGMT. PLAN (2003), *available at* <http://www.fwp.state.mt.us/wildthings/wolf/finaeis/finalwolfeis.asp> [hereinafter MONT. MGMT. PLAN]; WYO. GAME AND FISH DEP'T, WYO. GRAY WOLF MGMT. PLAN, DRAFT (2003), *available at* <http://www.wolfology.com/id178/htm> [hereinafter WYO. MGMT. PLAN].

regain control over the populations from the FWS. While this argument has continued for years, the FWS recently proposed a nationwide reclassification of wolf populations.<sup>133</sup>

### 1. Federal Action

In the summer of 2000, the FWS proposed a comprehensive initiative to categorically change the status of the gray wolf across the country.<sup>134</sup> This proposed reclassification was based upon the success of wolf reintroduction programs across the 48 contiguous states, and it proposed that the FWS revisit the classification of the gray wolf.<sup>135</sup>

The proposal recommended establishment of four distinct gray wolf population segments that are considered independently of one another.<sup>136</sup> The four distinct population segments will be analyzed individually, and status will then be determined based upon a number of factors. The four distinct population segments to be considered are: the Western Great Lakes Gray Wolf Distinct Population Segment (“DPS”),<sup>137</sup> the Northeastern Gray Wolf DPS,<sup>138</sup> the Western Gray Wolf DPS<sup>139</sup> and the Southwestern Gray Wolf DPS.<sup>140</sup> Any area in the lower 48 states other than those listed in the distinct population segments would be removed from the endangered status list.<sup>141</sup>

Under the proposed reclassification/delisting, wolves located in the Western Great Lakes DPS, the Western DPS, and the Northeastern DPS would all be reclassified from endangered to threatened, except in areas where they are already classified as an experimental or threatened population.<sup>142</sup> “Gray wolves in the Southwestern (Mexican) DPS will retain their endangered status under the proposal.”<sup>143</sup>

The obvious question with regard to the FWS proposal is, what effect does the reclassification actually have on wolf populations in the distinct popula-

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133. See Proposal to Reclassify, *supra* note 43.

134. See *id.*

135. See *id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

tion segments? The real effect of the proposal to reclassify/delist the wolf populations is that nothing really changes in areas where the wolves are already listed as experimental populations. The only real effect of the proposal to reclassify/delist is that areas that currently have no specific regulation, other than the blanket endangered status, will be reduced to threatened status.<sup>144</sup>

While this may seem an insignificant change, the portion of the proposal that would help cattle ranchers and other livestock producers near the experimental populations is the introduction of a special regulation in these areas under Section 4(d) of the ESA.<sup>145</sup> Section 4(d) of the ESA provides, in pertinent part, that the Secretary may prohibit takings under Section 9 of the ESA, but the Secretary can also enter into cooperative agreements with state governments under Section 6(c) of the ESA.<sup>146</sup> Thus, the true benefit of the proposal to reclassify/delist is that the Secretary can now allow the FWS to enter into agreements whereby state authorities would maintain wolf populations.

## 2. *State Action*

With the promulgation of the proposal to reclassify/delist, the Secretary of the Interior has essentially granted the states authority to help administer the wolf reintroduction program when there are “wolf-human conflicts” and land use issues.<sup>147</sup> However, this control by the states is limited to agreements that are drafted between the FWS and the state seeking to work with the FWS.

Under the proposal to reclassify/delist, states seeking to work with the FWS under the Section 4(d) exception to the ESA must first draft state management plans and implement required rules and regulations.<sup>148</sup> Thus, states have hurried to create conservation plans regarding the maintenance of the gray wolf populations in their respective states.<sup>149</sup> The impact of these management reports is still under review by the FWS at the date of this Note; however, many states hold the hope that this proposed reclassification/delisting will return management of the wolf reintroduction programs back to the states and thus begin the process to delist the gray wolf.<sup>150</sup>

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144. *See id.*

145. *See id.*

146. 16 U.S.C. §§ 1533(d), 1535(c)(1) (2000).

147. *See* Proposal to Reclassify, *supra* note 43.

148. MONT. WOLF UPDATE, *supra* note 131, at 1.

149. *See, e.g.*, IDAHO MGMT. PLAN, *supra* note 132; MONT. WOLF UPDATE, *supra* note 131, at 1; WYO. MGMT. PLAN, *supra* note 132.

150. MONT. WOLF UPDATE, *supra* note 131, at 1.

## V. CONCLUSION—A CALL FOR DELISTING

The bureaucratization of the wolf reintroduction program under the ESA has become an interesting balance of statutory construction and administrative rulemaking. While no one doubts the successes that reintroduction efforts have achieved, the methods of handling problems when wolf populations attack livestock has become a process that requires an interpreter.<sup>151</sup> To the hundreds of family farmers who graze cattle and other livestock near reintroduced wolf populations, maintaining the herd has become an interesting lesson in how to deal with government bureaucracy.

The FWS proposal to reclassify/delist gray wolves has been seen as a mixed blessing among the thousands of cattle ranchers who have to deal with the day to day fear that their prize cattle, or other livestock, may not be there in the morning. This fear is coupled against some of the ridiculous measures that the federal government seems to impose on ranchers, from being required to shoot bean bags at wolves that are attacking livestock<sup>152</sup> to having tax dollars spent on sending wolves that attack cattle to “aversion therapy” on Ted Turner’s Montana ranch.<sup>153</sup> These fears have become the rallying cry for advocates of state’s rights. Those seeking to support this rallying cry have rushed to state legislatures in hope of adopting state management plans for wolf reintroduction that will eventually lead to state control of the programs.

The fact of the matter is that the reintroduction of gray wolves and red wolves in the Southeast, under the ESA, is here to stay. Furthermore, the populations of these wolves seem to be thriving with the help of the government. However, at some point, the federal government must realize that the most cost-effective, long-term way to manage wolf reintroduction populations is handing control back to the states.

The debate surrounding the wolf reintroduction program is likely to continue long after the FWS issues a final rule regarding the delisting of the reintroduced wolves. The final course of the FWS will ultimately hinge on the continued success of wolf populations in the reintroduction areas. One can only hope that the final rule promulgated by the FWS will strike the delicate balance be-

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151. The FWS commonly refers to problems with wolves attacking both livestock and persons as “wolf-human conflicts.” See Proposal to Reclassify, *supra* note 43.

152. See *Rancher May Shoot Wolves but Only with Bean Bags*, A.P. NEWSWIRE, January 2, 2001.

153. See *Wolf Aversion Therapy a Bust*, A.P. NEWSWIRE, Oct. 26, 2001.

tween the noble goal of reintroduction and the interests of the hardworking members of the livestock industry.

## VI. EPILOGUE

Wolf reintroduction policy continues to dominate discussion on the ESA and remained a controversial issue as this article was completed. Since the completion of this note, the Fish and Wildlife Service has passed the final rulemaking to reclassify and remove the Gray Wolf from the list of endangered species.<sup>154</sup> The final rule changed the ESA designation of the gray wolf in most of the 48 states to reflect the species' current population status.<sup>155</sup> The change in designation was originally proposed in July 2000<sup>156</sup> and was finalized by this rule in a modified form.<sup>157</sup>

### A. *The Passage of the Final Rule to Delist the Gray Wolf*

The final rule to delist the gray wolf was published on April 1, 2003, in the Federal Register and spanned ninety-eight pages in length.<sup>158</sup> This lengthy regulation is the first major change to wolf reintroduction programs since the FWS adopted the first set of administrative rules following the initial passage of the ESA in 1978.<sup>159</sup> While the original rulemaking of 1978 can be seen to effectively federalize wolf reintroduction efforts, many have seen this new final rule to delist the gray wolf as a return of reintroduction power to state authorities. This statement, while not entirely inaccurate, is misguided. The truth of the matter is that the final rule to delist the gray wolf does provide some control over wolf populations to state governments, but ultimate control over the wolf populations is retained by the FWS.

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154. Final Rule to Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves, 68 Fed. Reg. 15,804 (Apr. 1, 2003) (to be codified at 50 C.F.R. pt. 17) [hereinafter Final Rule].

155. U.S. FISH AND WILDLIFE SERV., A SUMMARY OF THE FINAL RULE TO RECLASSIFY THE GRAY WOLF 1 (Mar. 2003), available at <http://midwest.fws.gov/wolf/esa-status/final-rule-summary.pdf> [hereinafter SUMMARY OF THE FINAL RULE].

156. Proposal to Reclassify, *supra* note 43.

157. SUMMARY OF THE FINAL RULE, *supra* note 155.

158. Final Rule, *supra* note 154.

159. See generally ESA BASICS, *supra* note 24, at 1.

While this note discussed the reintroduction efforts of both the red wolf (*Canis rufus*) and the gray wolf (*Canis lupus*), the final rule to delist is only concerned with the reintroduction efforts of the gray wolf.<sup>160</sup> The red wolf, a separate species found in the southeastern United States, retains its current endangered status provided by the ESA and is unaffected by the final rule to delist the gray wolf.<sup>161</sup> Additionally, the final rule to delist does not affect gray wolves in Alaska or Canada.<sup>162</sup>

### B. Provisions of the Final Rule to Delist

The final rule to delist the gray wolf begins with a historical analysis of gray wolf reintroduction and provides a very detailed background explanation of reintroduction programs under the ESA.<sup>163</sup> Next, the final rule provides a summary of the different comments and recommendations that were submitted after the notice of proposed rulemaking.<sup>164</sup> The FWS then addresses each comment and concern by providing a response to each of the issues addressed.<sup>165</sup> Following the comments, the final rule lists a summary of factors affecting the gray wolf<sup>166</sup> and then adds a conclusion to the introductory section.<sup>167</sup> The remaining portions of the final rule discuss the difference between the final rule from that of the proposed rule.<sup>168</sup>

Finally, the substantive changes to the ESA regarding gray wolf delisting occur in the final amendments to Part 17 of the C.F.R. located near the end of the final rule to delist.<sup>169</sup> The first major portion of the final rule provides the overall change in classification of the gray wolf under the ESA, and establishes separate listings for each recovery program.<sup>170</sup> Under the ESA prior to the final rule, the gray wolf was listed as endangered across the lower 48 states and Mexico, except in Minnesota, where the gray wolf was listed as threatened.<sup>171</sup> The new adminis-

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160. See SUMMARY OF THE FINAL RULE, *supra* note 155.

161. Final Rule, *supra* note 154.

162. SUMMARY OF THE FINAL RULE, *supra* note 155.

163. Final Rule, *supra* note 154.

164. *Id.* at 15,820.

165. *Id.*

166. *Id.* at 15,841.

167. *Id.* at 15,857.

168. *Id.* at 15,858.

169. *Id.* at 15,872.

170. *Id.* at 15,804.

171. *Id.* at 15,818; SUMMARY OF THE FINAL RULE, *supra* note 155.

trative rule removes this blanket endangered listing and instead creates three separate, distinct, smaller populations.<sup>172</sup>

1. *Establishing Different Recovery Programs*

The final rule designated these three areas as Distinct Population Segments. The areas cover what was believed to be the historical areas once occupied by the gray wolf, and contain one gray wolf recovery program at the core.<sup>173</sup> The three DPSs that were created by the final rule are the Eastern Gray Wolf DPS, the Western Gray Wolf DPS, and the Southwestern Gray Wolf DPS.<sup>174</sup> Each DPS provided its own level of protection for gray wolves and was created based on a determination focused on the analysis of the “discreteness” and “significance” of the population,<sup>175</sup> in addition to the conservation status of the population.<sup>176</sup> The Eastern Gray Wolf DPS consists of the states of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, New York Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine.<sup>177</sup> Wolves in the Eastern DPS are classified as threatened as a result of successful recovery in Minnesota, Wisconsin and Michigan.<sup>178</sup>

The Western Gray Wolf DPS encompasses the states of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, northern Utah and northern Colorado.<sup>179</sup> Wolves residing in the Western DPS have been reclassified from endangered to threatened.<sup>180</sup> However, gray wolves in the Western DPS that were listed as non-essential experimental populations under Section 10(j) of the ESA remain protected as NEP designated areas and are not affected by the final rule.<sup>181</sup> The Western DPS contains two such Nonessential Experimental Populations (“NEP”) areas which encompass all of Wyoming, most of

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172. Final Rule, *supra* note 154; SUMMARY OF THE FINAL RULE, *supra* note 155.

173. SUMMARY OF THE FINAL RULE, *supra* note 155.

174. Final Rule, *supra* note 154, at 15,818; SUMMARY OF THE FINAL RULE, *supra* note 155, at 1-2.

175. Final Rule, *supra* note 154, at 15,818.

176. *Id.*

177. *Id.*

178. *See id.* at 15,812.

179. *Id.* at 15,818.

180. *See id.* at 15,810.

181. Final Rule, *supra* note 154, at 2.

Idaho, and the southern half of Montana<sup>182</sup> (commonly referred to as the Yellowstone and central Idaho reintroduction populations)<sup>183</sup>.

The final DPS created under the new rule is the Southwestern Gray Wolf Distinct Population Segment, and it encompasses Arizona, New Mexico, southern Colorado, southern Utah, western Oklahoma, western Texas and Mexico.<sup>184</sup> While the Southwestern DPS is created just as the Eastern and Western DPSs were, the Southwestern DPS does not reclassify or delist the Mexican gray wolf. Instead, the Mexican gray wolf retains its classification as an endangered species, because the FWS determined that efforts to reintroduce Mexican gray wolves are still in an early stage, with low wolf numbers and a relatively high number of threats.<sup>185</sup>

## 2. *Maintaining Special Regulations under Section 10(j)*

The passage of Section 10(j) in the 1982 amendments to the ESA was paramount to the establishment of wolf reintroduction efforts.<sup>186</sup> Section 10(j) was passed by Congress to allow flexibility in the ESA to help residents and businesses that are frequently opposed to reintroduction efforts because they feel the presence of a reintroduced species will bring severe restrictions on the use of private and public land in the vicinity of a reintroduction area.<sup>187</sup>

Section 10(j) was applied to wolf reintroduction populations in what is now the new Western DPS and the Southwestern DPS, early in the reintroduction process in both areas.<sup>188</sup> Since 1994, the use of two NEPs in the Northern U.S. Rocky Mountains has fueled the rise of the gray wolf and allowed some relief to individuals living in the reintroduction area. Section 10(j) was later applied to the reintroduction of Mexican gray wolves in the Southwestern DPS in 1996.<sup>189</sup>

182. Final Rule, *supra* note 154, at 2.

183. U.S. FISH AND WILDLIFE SERV., QUESTIONS AND ANSWERS ABOUT THE FINAL RULE TO RECLASSIFY/DELIST THE GRAY WOLF 3 (Apr. 2003), *available at* <http://midwest.fws.gov/wolf/esa-status/final-rule-qas.pdf> [hereinafter QUESTIONS AND ANSWERS].

184. Final Rule, *supra* note 154, at 15,818.

185. *See id.* at 15,811; SUMMARY OF THE FINAL RULE, *supra* note 155, at 2.

186. *See* Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, 96 Stat. 1,411, 1,424, (current version at 16 U.S.C. § 1539(j) (2000)).

187. U.S. FISH AND WILDLIFE SERV., LITTLE-KNOWN BUT IMPORTANT FEATURES OF THE ENDANGERED SPECIES ACT: DISTINCT POPULATION SEGMENTS, 4(d) RULES, AND EXPERIMENTAL POPULATIONS 2 (Mar. 2003), *available at* <http://midwest.fws.gov/wolf/esa-status/esa-features.pdf> [hereinafter LITTLE-KNOWN].

188. Final Rule, *supra* note 154, at 15,808.

189. *Id.*

The final rule to delist the gray wolf recognized the importance of the NEP distinction to the success of reintroduction efforts. While the final rule delists the gray wolf in the Eastern DPS and most of the Western DPS, it retains the NEP distinction in part of the Western DPS (Yellowstone, Central Idaho) and the Southwestern DPS.<sup>190</sup> This distinction is important, because the NEPs retain the same level of protection for gray wolves as before the promulgation of the final rule. Thus, the final rule essentially delists the gray wolf in the Eastern DPS and the Western DPS, except for two NEPs located in the Western DPS (encompassing Wyoming, most of Idaho, and the southern half of Montana) which retain their protection under Section 10(j). Further, the final rule does not delist the Mexican gray wolf in the Southwestern DPS, and the NEP covering Arizona, New Mexico and a portion of Texas retains its Section 10(j) designation.<sup>191</sup>

### 3. *New Special Regulations under Section 4(d)*

Perhaps the most important provision in the final rule to delist is the use of Section 4(d) of the ESA to provide a more workable solution to interactions between wolves and people. Section 4(d) of the ESA provides that the FWS may decide how the ESA protections relating to “taking”, or harming of the species, apply to threatened species.<sup>192</sup> This section is designed to provide even greater flexibility in reducing conflicts between provisions of the ESA and the needs of people near the areas occupied by the species.<sup>193</sup> Because the final rule delists gray wolf populations across the United States from an endangered species to that of a threatened species, Section 4(d) provides rules to continue to protect the species, while working to reduce these conflicts.

The difference between Section 4(d) protection and the special protections afforded under Section 10(j) is the designation of species. Section 10(j) applies to nonessential experimental designations, while Section 4(d) applies to populations that are labeled as threatened. Because the final rule delisted the gray wolf across the United States, Section 4(d) is used; however, Section 10(j) remains in effect for NEPs located in the Western DPS.

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190. SUMMARY OF THE FINAL RULE, *supra* note 155, at 3; QUESTIONS AND ANSWERS, *supra* note 183, at 3.

191. SUMMARY OF THE FINAL RULE, *supra* note 155, at 3.

192. LITTLE-KNOWN, *supra* note 187, at 1.

193. *Id.*

Under the final rule, there are two different areas that Section 4(d) special rules apply to, one in the Eastern DPS and one in the Western DPS.<sup>194</sup> The final rule adopts special rules for the Eastern DPS focusing on removing wolves verified to have killed or attacked domestic animals.<sup>195</sup> The special rules under Section 4(d) provide that both States and Tribes have the authority to kill wolves without the need to obtain a federal permit if it can be verified that they have attacked or killed domestic animals or livestock.<sup>196</sup> Further, the new special regulation for the Eastern DPS provides that Tribes in the area may salvage dead wolves for religious or other traditional cultural uses without a federal permit.<sup>197</sup> These new rules under Section 4(d) apply to the Eastern DPS area, but the area does not include Minnesota.<sup>198</sup>

The special rules created under Section 4(d) also apply to the Western DPS. While similar to the Section 4(d) rules imposed upon the Eastern DPS, the special rules for the Western DPS are slightly different because of the existence of Section 10(j) NEPs. The new Section 4(d) rules expand the situations in which wolves that are in conflict with human activities may be taken by either the FWS or private individuals.<sup>199</sup> The new rules under Section 4(d) are similar to rules that were created for NEPs in early 1995 under Section 10(j).<sup>200</sup> The rules help private landowners and livestock grazing permittees, allowing them to harass wolves in a non-injurious manner at any time for any reason in the Western DPS outside of the NEP areas.<sup>201</sup> Further, under the new Section 4(d) rules, landowners on their private land may take a wolf that is observed in the act of physically attacking livestock and dogs.<sup>202</sup>

The new Section 4(d) rules have essentially expanded the area where a private individual may take a wolf, expanding the area from the limited NEP areas to the entire Western DPS. While the new Section 4(d) regulations are an

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194. SUMMARY OF THE FINAL RULE, *supra* note 155, at 2-3. Recall that the Final Rule does not delist the Mexican gray wolf in the southwestern DPS, but retains the endangered status of the wolf in that area; thus, there is no application of section 4(d) special rules to populations of Mexican wolves in the southwestern DPS.

195. *Id.* at 3.

196. *See* Final Rule, *supra* note 154, at 15,868.

197. SUMMARY OF THE FINAL RULE, *supra* note 155, at 3.

198. Final Rule, *supra* note 154, at 15,867; SUMMARY OF THE FINAL RULE, *supra* note 155, at 3.

199. Final Rule, *supra* note 154, at 15,864.

200. *Id.*

201. *Id.*

202. *Id.*

expansion of the takings provisions, they are similar to regulations already in place for the Yellowstone and Central Idaho NEPs.<sup>203</sup> The goal of this rule change is to protect the gray wolf populations while providing more options to local residents for handling problem wolves.<sup>204</sup> This idea of using Section 4(d) rules was the same approach used in Minnesota, where the gray wolf was reclassified from endangered to threatened.<sup>205</sup> The overall belief of the FWS is that this new special regulation will speed the species' recovery in the Northern U.S. Rocky Mountains, while providing innovative solutions to the potential conflicts between wolves and humans.<sup>206</sup>

### *C. Changes from the Proposed Rule to the Final Rule*

The first proposal to change the classification of the gray wolf occurred on July 13, 2000.<sup>207</sup> Following this proposal, the FWS held a series of public information meetings, including 14 official public ones, and also examined 17,000 unique comments on the proposal to reclassify the status of the gray wolf.<sup>208</sup> From these comments and meetings, the FWS reviewed its proposal and eventually drafted the Final Rule to Reclassify and Remove the Gray Wolf from the List of Endangered Species. The final rule in its amended form had a number of changes from the proposed rule of July 2000, and some of the changes that were incorporated were components of several of the alternatives discussed in the proposal.<sup>209</sup>

The first major change between the proposed and final rule was to combine a proposed Western Great Lakes DPS and the proposed Northeastern DPS into what the final rule now classifies as the Eastern DPS.<sup>210</sup> The purpose of this revision was based on two different factors. First, the FWS concluded that there is a lack of a current gray wolf population in the proposed Northeastern DPS<sup>211</sup>. Second, the FWS concluded that there is continued uncertainty as to whether a historical population of gray wolves in fact existed in this area.<sup>212</sup> Taken to-

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203. See QUESTIONS AND ANSWERS, *supra* note 183, at 3.

204. Final Rule, *supra* note 154, at 15,867.

205. QUESTIONS AND ANSWERS, *supra* note 183, at 3.

206. Final Rule, *supra* note 154, at 15,867.

207. Proposal to Reclassify, *supra* note 43.

208. QUESTIONS AND ANSWERS, *supra* note 183, at 3.

209. Final Rule, *supra* note 154, at 15,859.

210. *Id.*

211. *Id.*

212. *Id.*

gether, these two factors led the FWS to conclude that a conservative approach would be best for retaining protection for any wolves that may remain in the area.<sup>213</sup> Thus, the FWS combined the two proposed DPS regions and created the Eastern DPS in the final version of the rule.

The second change between the proposed and final rule was the reduction in the area of the U.S. that was delisted.<sup>214</sup> In the proposed rule, the FWS stated it was seeking to delist the gray wolf in 30 states, whereas the final rule only delists the gray wolf in parts of 16 states.<sup>215</sup> The final rule seeks to repair the erroneous listing of certain states in the 1978 rulemaking by delisting the gray wolf from areas where restoration was not necessary and not feasible.<sup>216</sup> These states are outside the historical range of the species and were reclassified into the new DPSs that the final rule creates<sup>217</sup>, thus correcting the erroneous 1978 listing.

The third change between the proposed rule and the final rule is the retained listing of areas previously marked for delisting under the proposed rule.<sup>218</sup> Specifically, California and Nevada were added in the Western DPS under the final rule, although scheduled to be delisted under the proposed rule.<sup>219</sup> The reason for this change is the possible dispersal of wolves from the reintroduction areas to adjacent areas.<sup>220</sup> Because of the possible dispersal, the FWS found it necessary to include the adjacent areas in the DPSs so that they would be protected under the special rules adopted for those areas under Section 4(d).<sup>221</sup>

The fourth change between the final rule and the proposed rule is the change in the boundary between the Western DPS and the Southwestern DPS.<sup>222</sup> The final rule extends the northern boundary into Colorado and Utah at Highway 50, from the proposed boundary of northern Arizona and New Mexico.<sup>223</sup> This change resulted from an FWS determination that the final boundary is more consistent with the known and expected dispersal distances of both reintroduction populations.<sup>224</sup>

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213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* at 15,859-60.

221. *See id.*

222. *See id.* at 15,860.

223. *Id.*

224. *Id.*

The fifth change between the final and proposed rule was the application of Section 4(d) special rules and the taking of wolves by private citizens.<sup>225</sup> The proposed rule had allowed a private person to take a wolf if it was seen attacking any domestic animal, if there was evidence of a wolf attack, and if the taking was reported within 24 hours.<sup>226</sup> The final rule is more restrictive of landowners' rights and only allows such a taking when the private party is a landowner, and the wolf is seen attacking any livestock, animals guarding livestock, or herding animals.<sup>227</sup> The FWS changed the requirements in response to a number of comments stating the proposed rule was too liberal and would be open to abuse.<sup>228</sup>

The final change between the final rule and the proposed rule is the wider geographic application of proposed Section 4(d) special rules in the Eastern DPS.<sup>229</sup> The proposed rule provided that a Section 4(d) special rule should be applied to the proposed Western Great Lakes DPS (excluding Minnesota), but now is applied to almost all of the Eastern DPS west of Pennsylvania (excluding Minnesota).<sup>230</sup> The revision results from the change in merging the proposed Western Great Lakes DPS and the proposed Northeastern DPS into the Eastern DPS. Minnesota remains exempted from the Section 4(d) special rules because they are already protected by a preexisting special rule under Section 4(d).<sup>231</sup>

#### *D. Continued Controversy, State Control and Future Changes to Wolf Reintroduction Administration*

The passage of the final rule to reclassify the gray wolf was an important step in returning power to local authorities, while working to protect the still fragile populations of gray wolves. However, the passage of the final rule has not ensured implementation of the provisions contained in the rule. In fact, as recently as January 2004, the FWS had delayed delisting the gray wolf in the Western DPS.<sup>232</sup>

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225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at 15,861.

230. *Id.*

231. *Id.*

232. See News Release, U.S. Fish and Wildlife Service, FWS Identifies Steps Needed to Delist Gray Wolf; Wyoming Needs Changes to State Law and Management Plan (Jan. 13, 2004),

While the current problems with implementation will likely be ironed out in the forthcoming months, a number of other potential problems exist. The largest potential problem with delisting the gray wolf is the likely increase in costs to states. For example, Wyoming spent an additional \$37,171 in 2003 as compared with the previous year.<sup>233</sup> This increase in costs can be largely attributed to the costs associated with the preparation of the final wolf management plan for Wyoming;<sup>234</sup> however, it would be naive to think that the costs associated with wolf management will not increase as states regain control over some of the populations within their borders.

The bottom line is that just like any federal program, the FWS wolf reintroduction program has improved as it has been continually reevaluated. The passage of the final rule to delist the gray wolf can be seen as a victory to both sides of the wolf reintroduction controversy. Those opposed to wolf reintroductions in their local communities can rest easier now that some control of the program has been handed to local authorities. The same applies to those on the other side of the argument. Those who are opposed to delisting the gray wolf can rest a bit easier knowing the FWS continues to retain the overall control over wolf reintroductions. All in all, the final rule to reclassify the gray wolf can be seen as a partial victory for both sides, though it still seems as if neither side is likely to celebrate.

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available at <http://news.fws.gov/NewsReleases/r6/B129E041-D427-45A9-9142/EDD937CEEE4.html>.

233. Jeff Gearino, *Wyoming's Wolf Costs Soared in 2003*, ASSOCIATED PRESS, Jan. 22, 2004, available at <http://espn.go.com/outdoors/conservation/news/2004/0122/1715539.html>.

234. *Id.*