

**Comments by The Idaho Department of Fish and Game and
The Idaho Office of Species Conservation
In Support of Removal
of the Northern Rocky Mountain Population of Gray Wolf
from the Endangered Species List**

INTRODUCTION

The Idaho Department of Fish and Game ("IDFG") and the Idaho Office of Species Conservation ("OSC") support the proposed rule delisting the meta-population of gray wolves in the Northern Rocky Mountains, or alternatively, those portions of the meta-population residing in Idaho, Montana, and the national parks within Wyoming. These comments are submitted primarily to demonstrate the adequacy of Idaho's regulatory mechanisms for gray wolf management after delisting.

The gray wolf population within Idaho is vigorous and healthy, and will remain so under state management. As Judge Molloy found in his preliminary injunction order in *Defenders of Wildlife v. Hall*, Idaho's commitment to maintain 15 breeding pairs of wolves will ensure the continued existence of wolves within Idaho. Idaho, however, will do far more than simply maintain the bare minimum necessary to fulfill recovery standards. Idaho's five-year management plan requires IDFG to maintain a minimum population of 518 wolves in Idaho – a level five times greater than that required in the recovery plan prepared by the United States Fish and Wildlife Service ("Service" or "FWS").

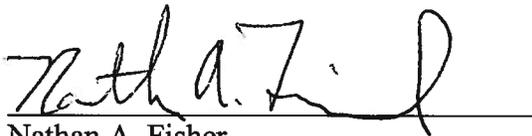
Idaho will implement stringent controls to limit mortality and assure wolves are distributed across all suitable habitats. Idaho's commitment to maintain population levels far exceeding those contemplated or required by FWS will ensure that wolves within Idaho never again fall to levels where ESA protections are necessary. Moreover, as described in detail below, Idaho will not manage its wolves in isolation, but will manage them as a key component of the three-part meta-population in Montana, Idaho and Wyoming. Idaho's management plans recognize the importance of genetic exchange among subpopulations and provide mechanisms to protect and encourage natural dispersal and, where necessary, actively assist in the exchange of genetic material.

In preparing a new delisting rule, the FWS should consider the latest management information available from Idaho that was not available at the time the initial delisting rule was published in February of 2008. Since that time:

- The Idaho Fish and Game Commission has finalized a Wolf Management Plan that governs wolf management for 2008-2012 (attached hereto as Exhibit 1);
- The Idaho Legislature has adopted statutory guidelines describing the circumstances under which private depredation control actions are permitted;

- IDFG has agreed in principle to the terms of a Memorandum of Understanding with Montana and FWS prescribing collaboration on natural and managed genetic exchange between subpopulations;
- The Idaho Fish and Game Commission has adopted a methodology for establishing annual mortality limits and hunting seasons;
- Idaho has issued a series of progress reports throughout the year (attached hereto as Exhibits 2 through 16); and
- IDFG has entered into a memorandum of understanding (MOU) with the Idaho State Animal Damage Control Board establishing protocols for agency depredation control actions (attached hereto as Exhibit 17).

Together, such materials affirm Idaho's commitment to not only meeting but far exceeding the recovery goals for that portion of the Northern Rocky Mountain gray wolf population that resides within Idaho.



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COMMENTS

A. IDAHO'S REGULATORY FRAMEWORK PROVIDES A SCIENCE-BASED PROCESS FOR THE PERPETUAL CONSERVATION OF VIABLE WOLF POPULATIONS.

Gray wolves within Idaho are managed as big game animals by the IDFG under general guidelines provided in the Idaho Wolf Conservation and Management Plan, prepared by the Idaho Legislative Wolf Oversight Committee in 2002 (hereinafter “Wolf Conservation Plan”). The Wolf Conservation Plan requires IDFG to:

- Manage wolves at recovery levels to ensure viable, self-sustaining populations of gray wolves;
- Institute remedial measures and increased monitoring if the population falls below 15 packs¹;
- Assure that resident wolf populations are able to interchange with wolves in adjacent states and provinces, thereby making Idaho's wolves part of a larger meta-population;
- Manage wolves as part of the native resident wildlife resources, similar to other large mammalian carnivores resident in Idaho;
- Use increasingly stringent depredation control measures if the population falls below 15 packs¹;
- Minimize wolf-human conflicts through prompt response to notifications of wolf depredation and prompt resolution of conflicts; and
- Establish a strong public educational program that emphasizes wolf biology, management, and conservation and presents a balanced view of the societal impacts and costs of wolf reintroduction.

The guidelines established in the Wolf Conservation Plan were used as sideboards and supplemented and expanded by the Idaho Fish and Game Commission when it adopted the Idaho Wolf Population Management Plan in 2008 (hereinafter “Wolf Management Plan,” attached hereto as Exhibit 1). The Wolf Management Plan provides specific objectives for wolf management for the years 2008 through 2012. The Wolf Management Plan requires IDFG to:

- Maintain wolves at the 2005-2007 population levels (518-732 wolves);
- Provide hunting opportunities when the wolf population \geq 20 breeding pairs;
- Ensure genetic transfer among Idaho, Montana and Wyoming populations by maintaining connectivity and functional meta-population processes;
- Monitor wolf population status annually;

¹ The Wolf Conservation Plan uses the term “pack” interchangeably with the term “breeding pair.”

- Reduce depredations through agency control actions and implementation and investigation of private control actions;
- Minimize illegal takes of wolves through enhanced enforcement of Idaho Code § 36-1101(a) (unlawful take of big game animals);
- Identify wolf viewing opportunities;
- Allow wolves to fulfill their ecological role without impacting viability and sustainable harvest of other big game populations; and
- Monitor wolf health status.

IDFG prepared the Wolf Management Plan in cooperation with OSC and numerous stakeholders, including a primary stakeholder group consisting of: Idaho Outfitters and Guides Association, Sportsmen for Fish and Wildlife Idaho, Idaho Cattlemen’s Association, Idaho Sportsman Caucus Advisory Council, Idaho Conservation League, Idaho Woolgrowers Association, and Defenders of Wildlife. The Wolf Management Plan received the full support of Idaho Governor C.L. “Butch” Otter (Otter 2008). Together, the Wolf Conservation Plan and the Wolf Management Plan maintain viable wolf populations by managing for those factors that determine viability: population size, population distribution, population health, and connectivity with other wolf populations.

1. Population Size

By the end of 2007, field staff of the IDFG and Nez Perce Tribe had observed ≥ 489 wolves and documented ≥ 83 wolf packs in Idaho. The population estimation technique, based on the number of documented packs and individuals within the packs, and correction for lone wolves, yielded a minimum population estimate of 732 wolves in Idaho for 2007 (Nadeau et al. 2008). Given the logistical and accessibility issues associated with data collection in wilderness and other remote parts of Idaho (see pp. 7-8), IDFG expects the actual wolf population in Idaho is higher than 732. A copy of the 2007 Wolf Conservation and Management in Idaho Progress Report is included as Exhibit 18.

The 2002 Wolf Conservation Plan states Idaho will manage wolves at recovery levels and requires remedial measures and intensive monitoring if the population level falls below 15 packs in Idaho. In the 2008 Wolf Management Plan, the population objective was further refined to provide for stabilization of wolf populations at the levels estimated in 2005 through 2007, namely 518 to 732 wolves. This population objective would apply for the five-year life of the Wolf Management Plan. Furthermore, the 2008 Wolf Management Plan requires the maintenance of at least 20 breeding pairs throughout the state to allow a wolf hunting season.

Achieving population objectives requires IDFG to account for and manage both discretionary and non-discretionary mortality factors, including:

- Private depredation control actions.** Private depredation controls will not hinder achievement of population objectives, since Idaho statutes allow such

controls only under limited circumstances. Private depredation control is discussed in more detail in Section "C" of these comments.

b. **Agency depredation control actions.** Agency depredation controls will not hinder achievement of population objectives. Agency controls continue to be carried out by USDA Wildlife Services using the same criteria employed by the FWS while wolves were listed (see Exhibit 17). Agency depredation controls did not hinder expansion of wolf populations and will not significantly impact maintenance of wolf populations at objective levels.

c. **Hunting.** The number of wolves available for hunting will be determined only after accounting for all other mortality sources. Hunting quotas will be established so that the number of wolves at year-end is consistent with both local and state-wide population objectives. Hunting management is discussed in greater detail in Section "B" of these comments.

d. **Control actions to protect elk.** The primary tool for wolf management under the 2008 Wolf Management Plan will be regulated harvest through standard seasons. In the event that regulated harvest is not adequate to reach a balance between wolves and prey, a more targeted approach, guided by a predation management plan, may be necessary. Wolf predation management proposals will include information about prey-population status, trends, and management objectives. If agency removal is required to achieve wolf population reduction beyond that achieved through regulated harvest, control actions would adhere to the IDFG Predation Management Policy (Appendix C of the 2008 Wolf Management Plan). Such removal would be included in statewide mortality objectives, so statewide populations would always remain healthy and viable despite localized population reduction under a predation management plan.

e. **Illegal take.** Under state law, a violation of wolf harvest regulations or illegal take of a wolf would be a violation of Idaho Code § 36-1101(a) and could result in a misdemeanor fine of \$25 to \$1,000, jail time not to exceed 6 months, and loss of hunting privileges. Multiple violations may be considered flagrant and/or felonious and result in higher fines and penalties including jail time, loss of hunting privileges, and forfeiture of equipment used in the crime. Such laws provide an adequate deterrence to any increase in illegal take. Based on radio-collared wolf data, illegal take during 2005 accounted for approximately 7 to 8% of the pre-mortality population estimate in Idaho (Nadeau et al. 2006, p. 9). Similar mortality has occurred since 2005.

f. **Disease.** Although diseases can be significant sources of mortality for wolves, diseases are generally not considered to be limiting at the population level. Despite evidence of ubiquitous exposure, wolves in Idaho demonstrate high recruitment, indicating long-term stability of the population. Negative effects associated with diseases are unlikely unless the population reaches high density (Kreeger 2003). If, at any time, the wolf population level falls below acceptable limits due to disease mortality, an emergency order will be implemented by the Director to curtail harvest and lethal control pursuant to Idaho Code § 36-106(6)(A).

Idaho will achieve wolf population objectives by establishing annual, science-based mortality limits that calculate the level of total mortality consistent with the achievement of population objectives. The mortality limits include all reported wolf kills from natural causes, accidents, wolf predation control actions, and hunter kills, along with estimates of unreported mortality based on data gathered from radio-collared wolves since reintroduction. Mortality allocated among various sources is adjusted as actual mortality figures become available. For example, if mortality due to predation control is higher than estimated, discretionary mortality allocated to hunting will be reduced to compensate, so that total mortality limits are not exceeded.

Mortality limits are calculated as follows. The numbers in the right-hand column describe the harvest that was proposed for 2008, which was not implemented due to the federal district court’s reinstating ESA listing for the gray wolf:

Table 1. Development of Proposed 2008 Harvest Quota (not implemented due to judicial reinstatement of ESA listing)

| | |
|--|--|
| The wolf population as of the first of the year is determined using year-end population counts. | <ul style="list-style-type: none"> ● 738 (as of January 1, 2008) |
| The estimated spring population is determined using reproduction data. Estimated reproduction for established wolf populations is 44%. | <ul style="list-style-type: none"> ● 1063 (738 x 1.44) |
| Mortality from all causes other than hunting, including natural causes, predation control, accidents, and illegal killings, is then estimated using information from radio-collared wolves. The recent mortality rate from such causes in Idaho is estimated at 20% of the spring population. Mortality rates are measured and updated annually. | <ul style="list-style-type: none"> ● 213 (1063 x 0.2) |
| Total non-hunting mortality is further broken down into reported mortality (43% of total non-hunting mortality) and non-reported mortality (57% of total non-hunting mortality) based on 2006 radio-collared wolf information. This calculation allows actual reported mortality to be compared to estimated recorded mortality. If the number of wolf mortalities reported in any particular year is higher than the estimated reported mortality, then hunting mortality is adjusted downward so that the total mortality limit is not exceeded. | <ul style="list-style-type: none"> ● <u>reported portion</u> 92 (213 x .43) ● <u>nonreported portion</u> 121 (213 x .57) |
| Total non-hunting mortality (both reported and unreported) is then subtracted from the spring population to determine the estimated year-end population absent hunting. | <ul style="list-style-type: none"> ● 850 (1063-213) |

| Table 1 continued. | |
|--|-----------------------|
| The difference between the estimated year-end population and the population objective is the number of wolves available for harvest. | ● 330 (850-520) |
| A portion of the harvest is allocated to the Nez Perce Tribe (NPT) in accordance with the MOU between the State and the Tribe. | ● 58 (NPT allocation) |
| The remaining wolves will be available for harvest by persons purchasing the appropriate license and tags from IDFG. | ● 272 (330-58) |
| Harvest quotas are adjusted immediately prior to opening of hunting season to account for any reported mortality in excess of the initial estimate. For example, reported mortality through September 2008 was 118 (two of these were in the South Idaho DAU, which was not included in the estimated reported mortality). To compensate, the harvest quota would have been reduced from 272 to 244 wolves (including an adjustment for the two South Idaho wolves). | ● 244 (272-26-2) |

The mortality limits are intended to be conservative, and IDFG expects actual mortality will be substantially lower. Experiences in jurisdictions that allow wolf hunting have shown that harvest rates are low even where hunting is unregulated. Hunters and trappers in Alberta, Canada take approximately 10% of the wolf population annually, even though Alberta imposes no bag limits (Boyce 2008: 4-5). Once mortality limits are reached in a DAU, hunting would be stopped. Once the statewide mortality limit is reached, all hunting statewide would stop. Additionally, in the unlikely event that total mortality exceeds the annual limit, an emergency order can be implemented by the Director under the authority of Idaho Code § 36-106(6)(A) to curtail harvest and lethal controls.

2. Population Distribution

Gray wolf populations in Idaho are well-distributed throughout most of the available suitable habitat. A vast expanse of suitable habitat is found on National Forest lands and public lands managed by the Bureau of Land Management. Federal wilderness areas in central Idaho function as default “core” areas (as they do for black bears [*Ursus americanus*] and mountain lions [*Puma concolor*]) because of their remote nature, difficult access, and low hunting pressure. There are over 3.2 million acres of designated wilderness in central Idaho. The rule for management of National Forest roadless areas in Idaho establishes 3.3 million acres that will be off-limits to road construction and an additional 5.3 million acres where only temporary road construction can occur under very limited circumstances (e.g., reducing hazardous fuels for at-risk communities) (73 Fed. Reg. 61456-61496, October 16, 2008).

Such core habitat provides source populations to repopulate any areas of the state where wolf populations are depleted due to mortality exceeding production/recruitment. Population "sinks" can occur where there is a high level of conflict with livestock grazing or other human activities, or where natural factors such as disease or wolf-on-wolf conflicts affect localized populations. Source and sink relationships are considered when developing strategies to distribute wolves throughout all suitable habitat, maintain appropriate population levels, address conflict issues, facilitate dispersal, and provide hunting and viewing opportunities.

Distribution of wolves will be maintained through a management framework that employs Data Analysis Units (DAUs) or Zones that reflect habitat conditions, populations, land management, and other management considerations. There are 12 Wolf DAUs designated for Idaho (Figure 1). Wolf DAUs were developed based on current wolf densities and distribution, elk zones and prey base, livestock conflict areas, ecological or administrative similarities, and meta-population and linkage concerns. Each DAU consists of two or more game management units (GMUs).

To assure annual mortality does not affect distribution objectives, annual mortality quotas are allocated among the DAUs to meet DAU-specific objectives specified in the Wolf Management Plan. Such objectives are expressed in terms of short-term goals to stabilize populations in some DAUs while reducing populations in other DAUs. Wolf harvest is then managed at the DAU, GMU, or even subunit (a GMU may be subdivided into smaller portions for certain objectives) level as necessary to achieve monitoring and management goals and objectives. Variable harvest rates can occur among GMUs within a DAU. For instance, if the objective were to maintain a stable population in a DAU, managers would strive for a moderate harvest goal for the DAU as a whole. However, managers could prescribe low or no harvest in some GMUS or subunits within that DAU to promote dispersal or to achieve other objectives, such as preserving wolf viewing opportunities, yet allow higher harvest rates in another GMU within the DAU to reduce livestock or ungulate conflicts.

Wolf Management DAUs

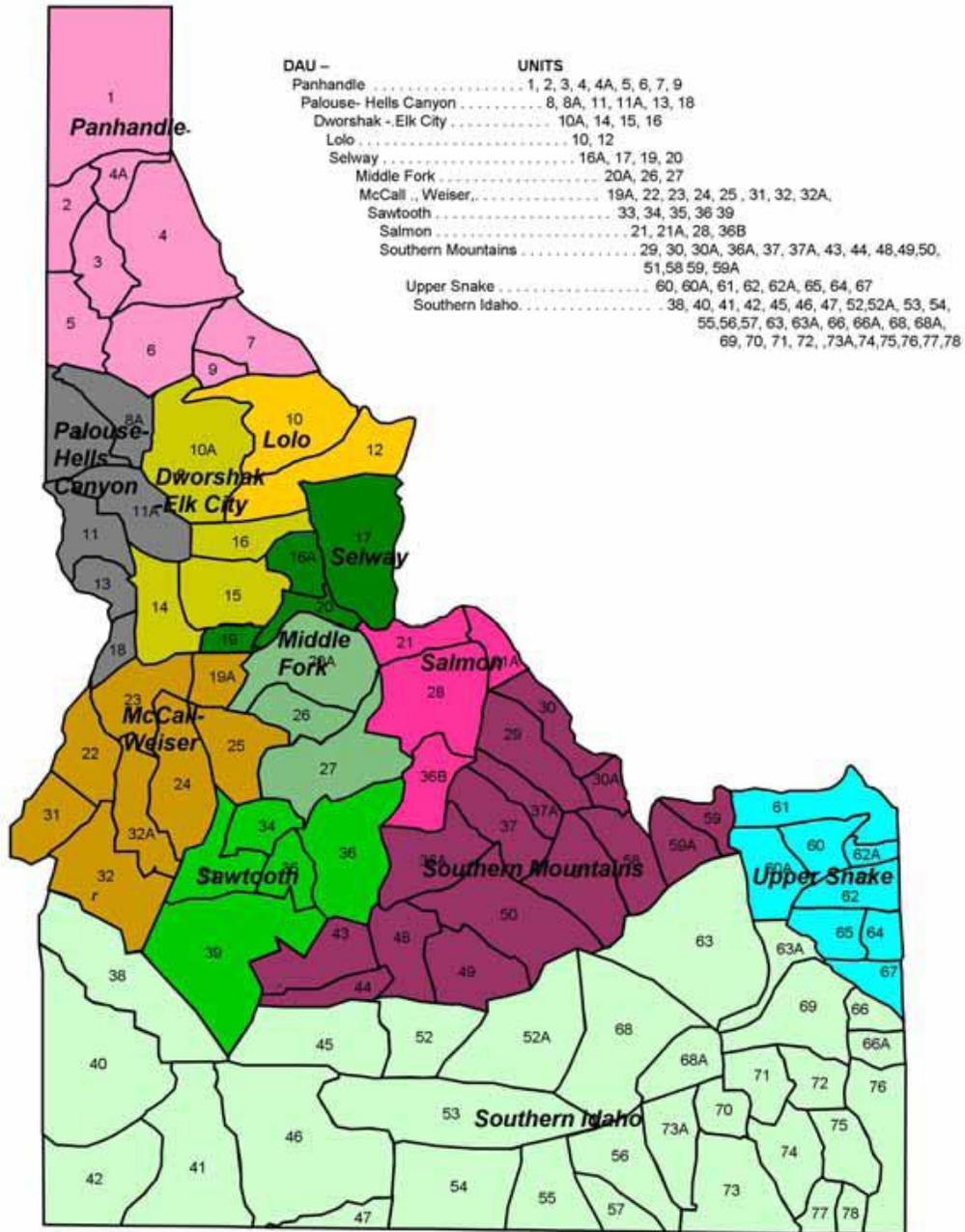


Figure 1. Wolf Management Data Analysis Units

3. Population Health

Wolves in Idaho are known to have exposure to a variety of diseases, including those caused by viruses (e.g., canine distemper, canine parvovirus, and canine infectious hepatitis), bacteria, and both internal (e.g., intestinal worms of various species, echinococcus) and external (e.g., lice and ticks) parasites. A complete list of diseases that wolves in Idaho could encounter would closely mirror diseases present in domestic dogs in the state. Those animals that interact with domestic dogs are likely to have higher exposure rates than wolves in remote areas. Wolf populations have the opportunity to develop individual and pack level immunity to some of the common pathogens over time, some of which may be conferred to offspring through maternal antibodies (Gillespie and Timoney 1981).

Although diseases can be significant sources of mortality for wolves, they are generally not considered to be limiting at the population levels that will be maintained in Idaho. While wolves in Yellowstone National Park have experienced periodic outbreaks of disease resulting in population declines, such outbreaks have not been experienced in Idaho. Despite evidence of ubiquitous exposure, wolves in Idaho demonstrate high recruitment, indicating long-term health of the population. Negative effects associated with diseases are unlikely unless the population reaches high density (Kreeger 2003). Idaho wolf population objectives were established with the goal of maintaining wolf densities at levels that should result in healthy and vigorous populations. If, at any time, disease causes the wolf population level to fall below acceptable limits, an emergency order can be implemented by the Director to curtail harvest and lethal control. (Idaho Code §36-106(6)(A)).

4. Connectivity with Other Populations

One of the primary objectives of the 2008 Wolf Management Plan is to "[e]nsure that resident wolf populations are able to interchange with wolves from adjacent states/provinces as part of a larger meta-population" and to provide "meta-population linkage through adequate protection of border packs between Montana and Wyoming" (IDFG 2008: 22, 34). DAUs along the Montana and Wyoming borders were designated to include larger groupings of game management units to provide greater flexibility in conflict and population management while maintaining avenues for connectivity within the meta-population. Wolves along the border will be managed to promote movement across state lines. Harvest in border DAUs will be limited and allowed only where consistent with maintenance of connectivity.

Where necessary, travel between core populations across state borders and into the Greater Yellowstone Nonessential Experimental Population Area ("GYA") will be enhanced by restricting harvest and limiting control actions during peak dispersal periods and during breeding season. In particular, GMUs 30, 30A, 58, 59A, 59, 61, all of which lie along the Idaho/Montana borders, will be closely monitored and managed for connectivity (IDFG 2008: 27). In addition, GMUs 60, 62, 62A, 65, and 67 along the Idaho/Wyoming border are also being managed for similar dispersal concerns and

increased survival adjacent to and within the GYA. Nonlethal efforts have included radio-collaring and releasing on site, noise-making devices adjacent to livestock, aversive conditioning and fladry. These extra efforts were included at the Sheep Station depredation in GMU 61, the Davis Allotment in GMU 60, and the Gerrit Meadows allotment in GMU 62A during 2008.

Maintaining adequate packs within border DAUs and close monitoring of border packs will assure continued dispersal among states. Border packs are numerous, with 22 along the Idaho-Montana border in 2008 and 2 to 3 along the Idaho-Wyoming border. In addition to migration from border packs, wolves from non-border packs have displayed long-range movements into adjacent states and such movements will continue.

Idaho will coordinate with Montana, Wyoming, the NPS, and the FWS to reach consensus on corridor and cross-boundary pack management, meta-population connectivity, and monitoring of dispersal and genetic inbreeding within subpopulations. A draft MOU has been prepared for Idaho, Montana, and the FWS to establish protocols for cooperation with regard to dispersal and genetic exchange issues. This draft MOU is posted on the FWS website. If monitoring does not confirm adequate dispersal, Idaho will participate in the following steps:

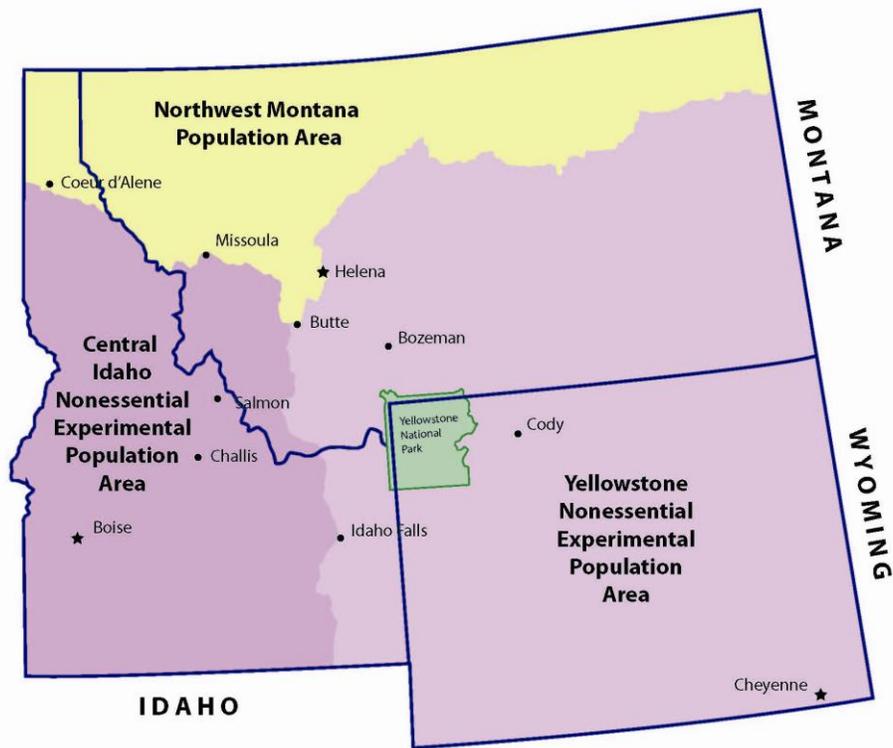
- a. The States and FWS (and other federal agencies, possibly including the National Park Service and USDA Wildlife Services) will coordinate monitoring of wolf populations and cross-boundary packs and will share information. The States and FWS will report the results of their monitoring to each other no less than annually.
- b. The States and FWS recognize that genetic diversity within the NRM wolf population is currently high (see vonHoldt et al. 2007) and will jointly collaborate on topics related to preserving genetic diversity and preserving and enhancing connectivity of the three population areas.
- c. The States and FWS agree that natural dispersal among the three population areas facilitates maintenance of genetic diversity and if necessary, human-assisted techniques can be used to accomplish the same goal of preserving genetic diversity and preserving or enhancing connectivity.
- d. The States and the FWS further agree that the adaptive management principles outlined in the state plans along with careful management of human-caused mortality from agency lethal control and regulation of public harvest will not impede natural dispersal among the population areas.
- e. The States, in coordination with the FWS, will jointly assure gene flow among the three population areas of gray wolves by natural or human-assisted techniques.
- f. The States, in coordination with the FWS, will establish and maintain a protocol that will address the collection, storage and analysis of genetic samples from the NRM.
- g. The States and the FWS will cooperate by coordinating on funding and technical aspects of monitoring the genetic health of the NRM population. Should human-assisted genetic management strategies become necessary, we will coordinate by

expediting issuance of permits required by law and provide personnel and equipment.

Specifically, Idaho will:

- a. Cooperate with Montana, FWS, and NPS in actively relocating wolves as necessary to meet genetic diversity goals;
- b. Adjust harvest and control of dispersing wolves or those in border packs if adjacent states approach minimum population limits, so that overall recovery area goals are not threatened;
- c. Monitor impacts of Idaho control actions and harvest adjacent to GYA and share results through annual reports, regular communication, and manager meetings;
- d. Adjust harvest management along suspected corridors and in border packs as necessary to incorporate information, data, and knowledge obtained after initial harvest strategies are implemented; and
- e. When necessary, curtail harvest and lethal controls in border packs by implementation of emergency orders issued by Director as authorized by Idaho Code §36-106(6)(A).

In addressing connectivity issues, the Service should consider the fact that the relevant boundary for measuring dispersal success is not the Idaho/Wyoming border or Yellowstone National Park, but rather the western boundary of the GYA, which runs along Interstate 15 through Idaho Falls and Butte, Montana (Figure 2). That portion of Idaho lying east of Interstate 15 is part of the GYA, and Idaho manages a significant portion of the GYA subpopulation. In 2007, there were three documented packs, one suspected pack, 16 sightings of multiple wolves, and four sightings of single wolves in the Idaho portion of the GYA (Figure 3). The presence of an additional one to two packs has been documented in 2008. Wolves are also present immediately outside the GYA boundary.

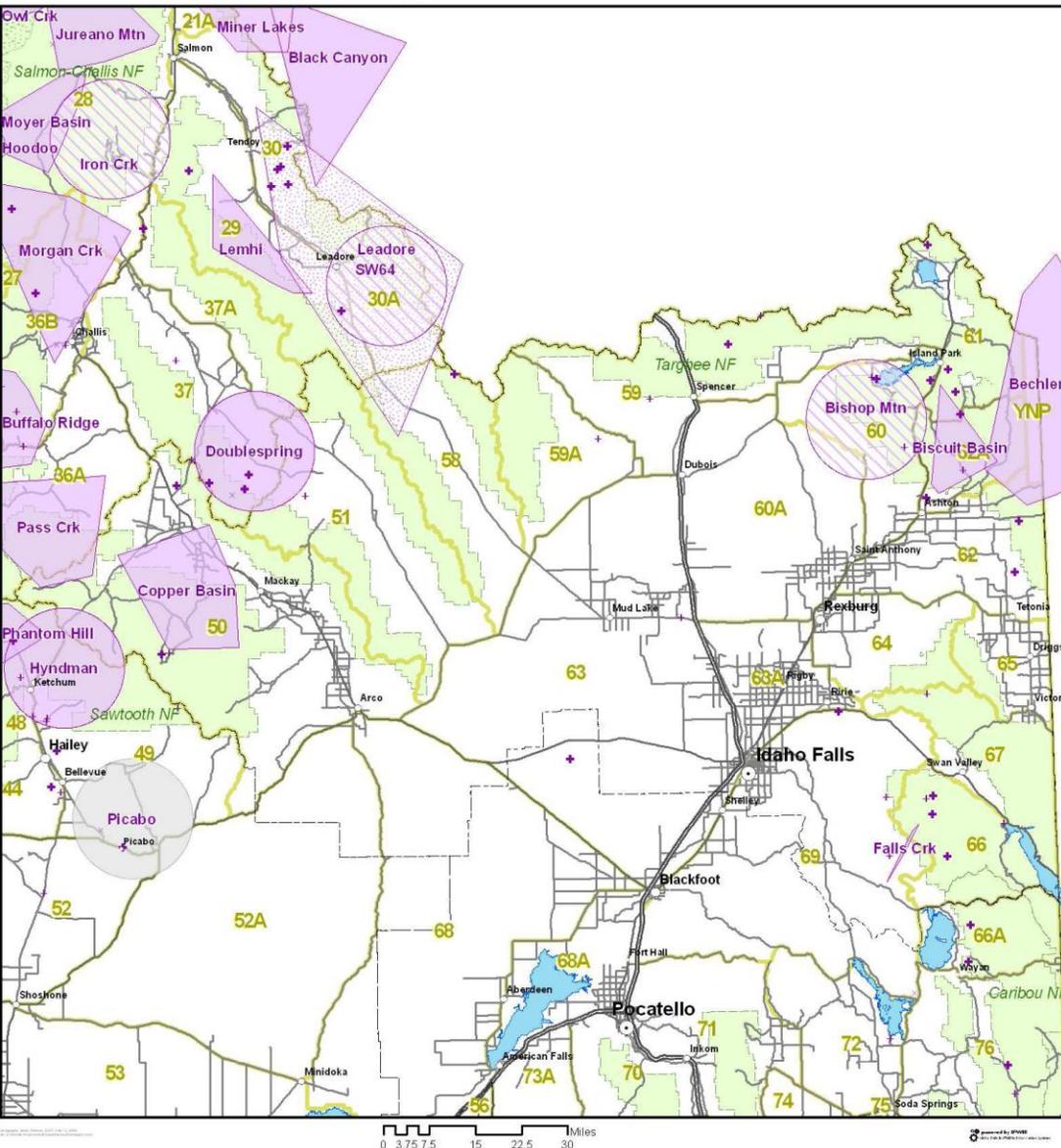


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Figure 2. Boundaries of the Central Idaho and Greater Yellowstone Nonessential Experimental Population Areas and the Northwest Montana Population Area.

2007 Upper Snake Region Wolf Activity

Telemetry, Documented and Suspected Locations
 2006-07 Telemetry and Research-based Locations * 2007 Estimated Locations (Not Telemetry-based)** 2007 Public Observations ***



* Telemetry data and research locations collected and analyzed by Idaho Department of Fish and Game, the Nez Perce Tribe, Montana Department of Fish, Wildlife and Parks, Wildlife Services and the National Park Service. Pack locations are minimum convex polygons of telemetry and research observations for radiocollared wolves from 1/1/2006 - 12/31/2007 with outliers removed. Packs which did not exist in 2007 are excluded. This map is provided for management purposes and should not be used for data analysis. Do not release these data to third parties without first contacting the Idaho Department of Fish and Game or the Nez Perce Tribe.
 ** Estimated Pack Activity determined by biologists from research locations, public observations and incidental observations from 1/1/2006 - 12/31/2007.
 *** Public Observations from 1/1/2007 - 12/31/2007 collected on the Idaho Fish and Game website and reviewed by staff biologists.

Figure 3. Wolf Activity in Upper Snake Region, 2007 (does not include activity identified through confirmed mortality or depredation; see Figures 5 and 6).

Another factor the Service should consider in addressing connectivity issues is the level of dispersal and/or managed genetic exchange necessary to prevent inbreeding. In the 1994 EIS the Service concluded that "having 10 breeding pairs of wolves (estimated about 100 individuals) in each of 3 recovery areas [with at least 1 individual moving from

one recovery area to the other per generation (about every 10 years)] for 3 consecutive years would constitute a viable wolf population" (FWS 1994: V-57) (bracketed material as quoted in EIS). Dr. L. Scott Mills recently affirmed the application of the "one migrant per generation" rule to the GYA wolf population, although he suggested that "[o]ne immigrant per generation would be one breeding wolf every four years; doubling that to be conservative and allow for error would be two breeding wolves every four years, or one every other year on average" (Mills 2008:9).

Documented movements of wolves into and out of the GYA demonstrate that dispersal is occurring. At least 22 documented packs used the border between Montana and Idaho during 2008 and reside part-year in each state, and 2-3 other packs move among Wyoming, YNP, and Idaho. Radio-collared wolves from the Boundary pack move freely among Canada, Idaho, and northwestern Montana. A GPS-collared wolf moved from just south of Banff National Park, Alberta to west of Dworshak Reservoir in the Clearwater Region, where it now appears to be a permanent resident. Also, a radio-collared wolf from near Boise was located in the Eagle Cap Wilderness in northeastern Oregon in January of 2008. One way that dispersers are located is when a missing collared wolf shows up dead. Recently, an Ashley pack wolf from Northwestern Montana had been missing since 12/18/07, when she was last located near Dahl Lake (about 24 miles west of Kalispell, MT). The distance between her last location and her mortality location (about 16 miles south of Grangeville, ID) is 175 air miles (SSW).

Long-distance dispersals of radio-collared wolves moving between the GYA and Central Idaho have been documented (Figure 4). Two wolves from the Bishop Mountain pack within the GYA were snow tracked for 30 airline miles to near the Montana border before they were darted and collared. The wolves had been moving in and out of Montana within the GYA. A dispersing wolf was radio-collared at a depredation site near the Humphrey's National Sheep Station near Dubois, Idaho this summer and that wolf has moved north into Montana and in and out of the GYA. Wolf Y239 was radio-collared in Yellowstone and became the suspected alpha male of the Hoodoo pack southwest of Salmon. The alpha male of the Steele Mountain pack R241 was a disperser from the Sheep Mountain pack in the GYA just north of Yellowstone National Park. Two of R241's offspring were documented returning to the GYA, wolf B187 and wolf B271, both males that were suspected breeders (wolf B187 with the Washaki Pack; wolf B271 seen with several females in the Yellowstone National Park northern range before its radio-collar stopped functioning in 2006). B58 from the Thunder Mt. pack in the Frank Church Wilderness dispersed to the Gray Bull pack near Cody, WY and successfully reproduced as found in DNA samples of offspring (vonHoldt personal communication 2008, regarding unpublished data). The Bechler pack resides part of the year in Yellowstone and part of the year in eastern Idaho. Clearly effective travel corridors exist between the GYA and Central Idaho and Northwest Montana. The number of documented dispersers, however, only represents a fraction of total dispersals, for the majority of wolves are not radio-collared.

Other evidence demonstrates additional migration is occurring. Wolf depredations and confirmed mortality from lone wolves (dispersers) are occurring along

the predicted travel corridor along the Montana and Wyoming borders (Figures 5 and 6). In 2005, 2006, and 2007, there were multiple sightings of lone wolves in the area that would be used for dispersal from the central Idaho mountains into the GYA (Nadeau et al. 2006: 7, 43; Nadeau et al. 2007: 7, 53; Nadeau et al. 2008: 8, 54). Documented dispersal is only a fraction of actual immigration and emigration, and existing dispersal is fulfilling recovery goals (Mills 2008:6; Smith 2008:7; Mech 2008: 9).

IDFG expects dispersal to increase as Idaho's Wolf management Plan is implemented. Central Idaho wolf populations are nearing, or at, saturated conditions where territoriality and pack density limit room for additional breeding pairs so that population growth can only be accommodated through range expansion. Central Idaho will continue to serve as a source of dispersers. Where suitable habitat is available, the likelihood is high that dispersers will eventually find a mate and become breeders. Even if the genetic exchange MOU is not implemented, IDFG, of its own accord and authority, can also relocate wolves from central Idaho to eastern Idaho when necessary to provide genetic diversity to the GYA subpopulation.

In considering the number of natural or human-assisted migrants necessary to prevent inbreeding, the Service, while considering the results in the vonHoldt study (vonHoldt 2007) of wolves in Yellowstone National Park, should not apply those results to the GYA as a whole. A number of prominent biologists and wildlife managers have warned against applying the vonHoldt study to the GYA generally, for the limitation of genetic sampling to 170 wolves within the boundaries of Yellowstone National Park, and the exclusion of any data from 2005-2008, makes it impossible to reliably extrapolate the results to the larger population of approximately 450 wolves in the GYA (Mills 2008:6; Smith 2008:6; Bangs 2008:17; Mech 2008:8). It has also been noted that there is no support in the scientific literature for the conclusion that immigration of 12 wolves or four breeders per year are necessary to prevent significant decreases in the heterozygosity of the YNP wolves (Mills 2008: 8-9). Moreover, as vonHoldt concluded, any lack of heterozygosity would not result in phenotypical effects for 50-60 years, so that there is abundant time to conduct additional studies and implement management measures as needed to address the genetic diversity of the GYA subpopulation.

The mere fact that such measures may be needed in the future is not, in itself, a sufficient reason to preclude delisting. It is only necessary that the Service have assurances that such measures will take place under state management. Idaho, through its Wolf Management Plan and MOU with Montana and FWS, has committed to monitoring and managing dispersal as necessary to assure heterozygosity in the GYA subpopulation.

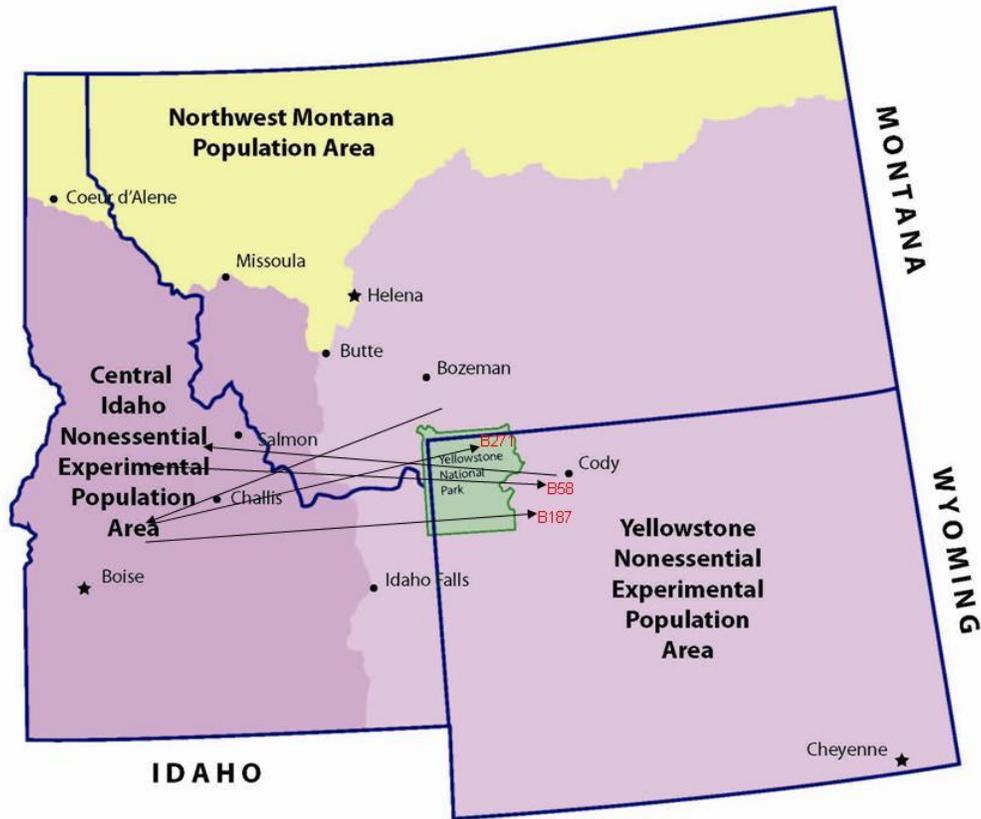


Figure 4. Documented dispersal of radio-collared wolves (#B58, B187, B271, R241) between the Central Idaho Nonessential Experimental Population Area and the Yellowstone Nonessential Experimental Population Area from 2001 to 2008.

5. Wolf Mortality

Recent mortality records (2005-2008) show that only 2 of 99 GMUs in the state receive high wolf mortality (10-11 average per year, Fig. 5), in GMUs associated with wolf depredations (see Fig. 6). Three GMUs receive moderate wolf mortality (5-10 average per year), 17 receive 1-5 mortalities per year, but 77 GMUs across the state average 0-1 wolves killed per year, including most of the units considered the heart of the Central Idaho wolf population. Central Idaho, due to the 3.2 million acres of wilderness and other remote and adjacent federal lands, will always have secure wolf habitat and healthy wolf populations at or near carrying capacity.

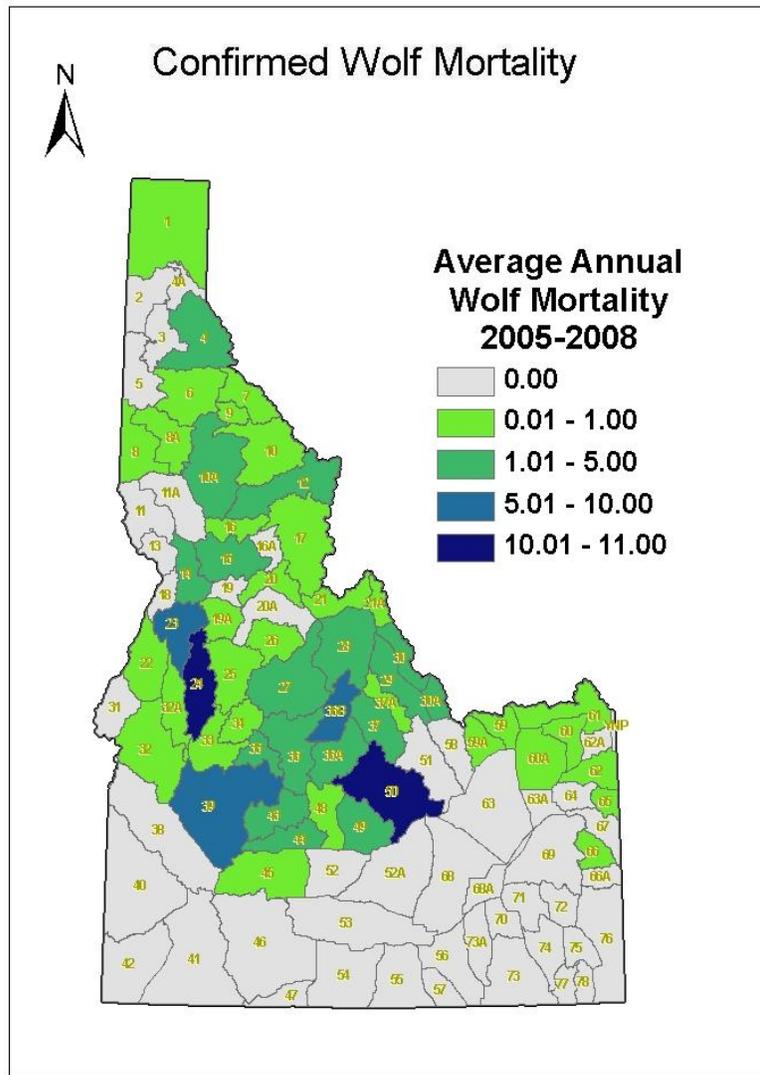


Figure 5. Average annual confirmed wolf mortality by GMU in Idaho from 2005-2008.

B. HARVEST WITHIN IDAHO WILL BE CAREFULLY MONITORED AND MANAGED TO MAINTAIN POPULATIONS FAR ABOVE RECOVERY LEVELS AND PROTECT CONNECTIVITY.

Under Idaho Administrative Code, wolves are classified as big game animals. Idaho Code § 36-201; IDAPA 13.01.06, Subsection 100.01.d. As such, rules for population management and regulated harvest are developed by the IDFG and promulgated by the Fish and Game Commission.

Existing rules and laws provide an adequate regulatory framework to manage wolves through hunting. Harvest will be managed using harvest quotas, season length and timing, bag limits, method of take, and other regulatory tools depending on

objectives. Hunting will be reduced or terminated if wolf populations drop to ≤ 20 breeding pairs statewide in order to provide an adequate buffer to ensure compliance with Idaho's commitment to maintain a minimum of 15 breeding pairs.

Initial hunting seasons will likely be established with the objective of reducing wolf populations to 2005 levels identified in the Wolf Management Plan. Once population objectives are achieved, harvest levels will be established to ensure a stable wolf population. Wolf populations can sustain mortality of 40% or more without population decrease (Boyce 2008: 4). Conservatively, an established wolf population should stabilize with 30-40% total annual mortality, or a human-caused mortality rate of 20-25% (Mech and Boitani 2003:184). The wolf population in Idaho increased 20% per year in recent years, despite annual estimated mortality of approximately 20% (Nadeau et al. 2007), confirming that stability can be achieved with a harvest rate of approximately 40%.

Mortality limits will be set as discussed in section A of these comments. The statewide population estimate and objective will be compared to determine population surplus. Annual mortality from non-hunting causes will be subtracted from the population surplus to estimate harvestable surplus. Mortality limits will be allocated by objective and availability across DAUs or GMUs.

The hunting season set for 2008 by the Idaho Fish and Game Commission, though ultimately unimplemented due to litigation, provides a likely model for future initial harvests following delisting. The 2008 harvest would have reduced the wolf population to a level consistent with population objectives. Reductions, however, would not have been implemented statewide or uniformly. Harvest in DAUs in dispersal corridors would have been prohibited or significantly limited, as the small mortality limit for such DAUs was mostly consumed by depredation control actions. As an example, the harvest proposed by the Idaho Fish and Game Commission for 2008, after adjusting for depredation controls, would have been distributed among the DAUs as described in Table 2.

Table 2. Reported wolf mortality by Wolf DAU (see Figure 1) compared with allowable mortality limits approved for 2008 hunting season as of Oct. 1.

| DAU | Control | Legal | Other | Total | Mortality Limit | Harvest Quota |
|----------------------|---------|-------|-------|-------|-----------------|---------------|
| Dworshak-Elk City | 2 | 1 | 4 | 6 | 48 | 42 |
| Lolo | | | 3 | 3 | 55 | 52 |
| McCall-Weiser | 18 | 3 | 5 | 23 | 51 | 28 |
| Middle Fork | | | 3 | 2 | 25 | 23 |
| Palouse-Hells Canyon | | 1 | 1 | 2 | 5 | 3 |
| Panhandle | | 1 | 2 | 3 | 29 | 26 |
| Salmon | 9 | 1 | 2 | 11 | 42 | 31 |
| Sawtooth | 18 | 2 | 5 | 25 | 35 | 10 |
| Selway | | | 1 | 1 | 28 | 27 |
| South Idaho | 1 | 1 | | 2* | UL* | -2* |
| Southern Mountains | 31 | 1 | 4 | 36 | 38 | 2 |
| Upper Snake | 1 | 2 | 1 | 4 | 6 | 2 |
| Total | 80 | 13 | 31 | 118 | 362 | 244 |

*Wolf mortality of two wolves in the South Idaho DAU counted against actual reported statewide mortality. They were not included in the original estimated mortality limit, and were thus subtracted from the harvest quota.

1. Hunting Regulations.

Hunting will be allowed only to the extent consistent with the mortality limit. When the statewide limit is reached, all hunting will stop. When limits in individual DAUs are reached, hunting in those DAUs will stop. Management goals for individual zones were established in the 2008 Wolf Management Plan.

Wolf hunting season rules adopted by the Idaho Fish and Game Commission assure adequate harvest monitoring and compliance with mortality limits. The rules adopted for 2008 provided as follows:

- Season from September 15 (in Wilderness) and October 1 (in rest of the state) to December 31, with a November 6 Commission review meeting.
- Season limit of one wolf per hunter with season closed by DAU or statewide when mortality limit is met.
- A toll-free, 24/7 telephone number and a web-based system to track hunter harvest, mortality limit status and management area closures.
- A 72-hour mandatory telephone reporting requirement with a 10-day check requirement for the hunter to present the skull and hide to determine sex and age of harvested wolves.
- No trapping or snaring.
- No hunting within ½ mile of any big game feeding site.
- No electronic calls.

- No baiting.
- No use of poisons.
- No use of aircraft, or communication from aircraft.
- No dogs allowed to pursue or attract wolves.

Harvest within each DAU will be closed immediately by IDFG when mortality limits are fulfilled or when the statewide mortality limit is filled. Experience from other jurisdictions, however, suggests that hunter success will likely be well below the season limits established by the Commission. Hunters and trappers in Alberta, Canada, generally succeed in only removing 10% of the population annually, even though Alberta imposes no bag limits (Boyce 2008:4-5). Generally, regulated hunting is unable to reduce wolf populations (Mech 2008:7). The experience in Idaho is likely to be similar, especially since many of Idaho's wolf packs are in remote wilderness areas with limited access.

It is not expected that hunting will significantly impact reproduction. Pack resilience to high mortality is inherent in behavioral adaptation and high reproductive capabilities of wolves (Brainerd et al. 2008). Brainerd et al. (2008) found that 62% of packs in recovering populations retained territories despite breeder loss, and of those who lost territories, one half became reestablished. Pups survived in 84% of packs with breeder loss, which was similar or higher than packs without breeder loss (Mech and Boitani, 2003). Brainerd et al. (2008) stated that breeder replacement was highest and fastest in populations greater than 75 wolves, and pup survival was greater in areas with an abundant prey base. In Idaho, the population size and prey base should assure that packs disrupted by breeder mortality will reestablish quickly. This is confirmed by observations of several packs in Idaho that have been remarkably stable despite annual removal due to livestock conflicts. For instance, the Jureano Mountain, Moyer Basin, Steel Mountain, and Copper Basin packs, as well as several others, are subject to annual removal of multiple pack members. In 2005, the Copper Basin pack was reduced from 10 pack members to 1 subadult and 1 pup, but the wolves remained together and territorial and by breeding season, new wolves joined the pack and pups were born again in the spring.

2. Impacts of Harvest on Dispersal and Connectivity.

Adult wolf mortality can encourage dispersal of sub-adults by disrupting pack structure (Mech and Boitani 2003:28), although pup survival and alpha replacement remains high (Brainerd et al. 2008). Hunting could potentially disrupt connectivity if dispersing wolves are harvested, but Idaho's hunting regulations will minimize such impacts by limiting harvest in likely dispersal corridors and avoiding periods when dispersal is most common (January – March). Harvest objectives in the Upper Snake DAU and in the border GMUs of the Southern Mountains DAU will be adjusted to take into account border pack trans-boundary movements and connectivity. Non-harvest mortality in border DAUs will be closely monitored and harvest adjusted as necessary to ensure excess mortality is avoided.

Experience from the proposed 2008 season suggests that in most instances hunting in dispersal areas will be either prohibited or severely limited, since control actions and other sources of reported mortality will account for most, if not all, of the allowed mortality limit for such DAUs. For example, the 2008 mortality limit for the Upper Snake DAU, which provides a potential migration corridor between central Idaho and the GYA, was six wolves. As of September 30, 2008, total reported mortality for the Upper Snake DAU was 4 wolves, so that the harvest authorized for 2008, had it occurred, would have been limited to 2 wolves. Such a limited harvest should not affect connectivity in any measurable way. Impacts from harvest are also self-regulating due to the inherent difficulties in locating and harvesting lone dispersing wolves.

The mortality limit authorized by the Fish and Game Commission for 2008 was 362 wolves statewide. As of October 1, 2008, hunters would have been allowed to harvest up to 244 wolves (see Table 2), the large number reflecting the fact that the estimated population for 2008 was well above the population objectives established by the Commission for the years 2008 through 2012. In order to bring the population into compliance with stated objectives, the Commission determined that a one-time harvest of no more than 244 wolves was appropriate.

In subsequent years, however, harvests will be substantially lower, since wolf populations will be closer to, if not in compliance with, population objectives. For example, if harvest had occurred in 2008, the objective was to end with a year-end population of approximately 520 wolves. With a wolf population at this statewide objective, the maximum harvest allowed would have been calculated as follows:

- Beginning population: 520
- Estimated spring population following reproduction: 749 (520 x 1.44)
- Estimated non-hunting mortality: 150 (749 x .20)
 - Estimated reported non-hunting mortality: 65 (150 x .43)
 - Estimated non-reported non-hunting mortality 85 (150 x .57)
- Population after non-hunting mortality: 599 (749 – 150)
- Harvestable surplus: 79 (599 – 520)
 - Nez Perce harvest allocation: 25²
 - State-licensed harvest: 54 (79-25)
- Estimated statewide population at end of hunting season (assuming all harvestable surplus actually harvested): 520 (599-79).

² The Tribe's harvest allocation is calculated as a percentage of the identified harvestable surplus of wolves within the Tribe's aboriginal territory, which can vary from year to year. For purposes of this calculation, we estimated allocation based on where most of the non-hunting mortality occurred during 2008. Final calculations for subsequent years would be worked through with the NPT using the allocation formula based on mortality prior to the hunting season.

In other words, once the wolf population is reduced to the population objective of 520 wolves, state-authorized harvest would remain static at approximately 54 wolves per year, with annual adjustments to reflect fluctuations in reported mortalities and overall mortality limits. IDFG does not expect such a low level of harvest to have any appreciable effect on wolf migrations between wolf subpopulations in Idaho, Montana and Wyoming, especially since harvest will be allocated primarily to DAUs not identified as migration corridors. It is expected that in most years little to no harvest will occur in dispersal corridors because of the low mortality limits established for those DAUs.

3. Harvest Seasons.

The anticipated 2008 season was set to run from September 15 to December 31, to meet the objective of initial reduction of the wolf population to 520 wolves. In future years, the Commission will adjust season length to meet and maintain population objectives. With lower anticipated harvest levels in the future, the Wolf Management Plan identifies October and November as the primary hunting season period.

4. Tribal Harvest.

The calculation of mortality limits includes harvest allocated to tribal hunters in accordance with an MOU between the Governor of Idaho and the Nez Perce Tribe Executive Committee completed in 2005. The agreement identifies a sliding scale harvest that will allow the Nez Perce Tribe a Fair Share Allocation of the harvestable surplus of wolves within the open and unclaimed lands that are subject to the Tribe's treaty hunting rights, using the following allocation formula:

| <u>Harvestable Surplus</u> | <u>Allocation Formula</u> |
|----------------------------|--|
| 50 or less | 50% State: 50% NPT |
| 51-75 | 55% State: 45% NPT; not <25 wolves for NPT |
| 76-100 | 60% State: 40% NPT; not <34 wolves for NPT |
| Greater than 100 | 65% State: 35% NPT; not <40 wolves for NPT |

IDFG staff will meet annually with tribal staff to establish that year's allocation. Harvest allocated to the Nez Perce Tribe is unlikely to affect connectivity for two reasons: first, the Tribe has indicated it is unlikely to harvest its full allocation; second, any harvest by the Tribe would be limited to open and unclaimed lands in the Tribe's aboriginal territory in central Idaho, which does not include any identified migration corridors to the GYA.

C. DEPREDATION CONTROL ACTIONS IN IDAHO WILL CONTINUE UNDER STANDARDS SIMILAR TO THOSE APPLIED WHILE THE WOLVES WERE LISTED.

1. Depredations.

Wolf depredations across Idaho are increasing rapidly as the wolf population continues to increase (see Figure 6). Over the last 2 years, even though numbers of

incidents have increased, the locations of primary trouble spots have been similar to previous years. Three GMUs have received 16-30 incidents over the last 2 years; 4 have received 11-15 depredations; 6 have received 6-10 depredations; 24 have received fewer than 5 depredations; and the remaining 62 GMUs had no depredations reported since 2007.

Twelve GMUs make up the core of the Central Idaho wolf population, where there will likely never be depredations because of little or no livestock (see Figure 6). Central Idaho will act as a source population simply because of the low losses that occur outside of a potential regulated harvest. To further illustrate the level that wolf depredations have reached in just a few areas over a short period of time, there were 78 verified wolf depredations in just 3 counties (Custer, Elmore, Lemhi) in FY 2008. There were 70 verified wolf depredations in the entire state of Idaho in FY 2006. In FY 2003 (a year after wolf populations in Idaho reached recovery levels), the total of verified wolf depredations in Idaho was 27. In FY 2008, there were 30 in Custer County alone and 43 statewide during the month of August.

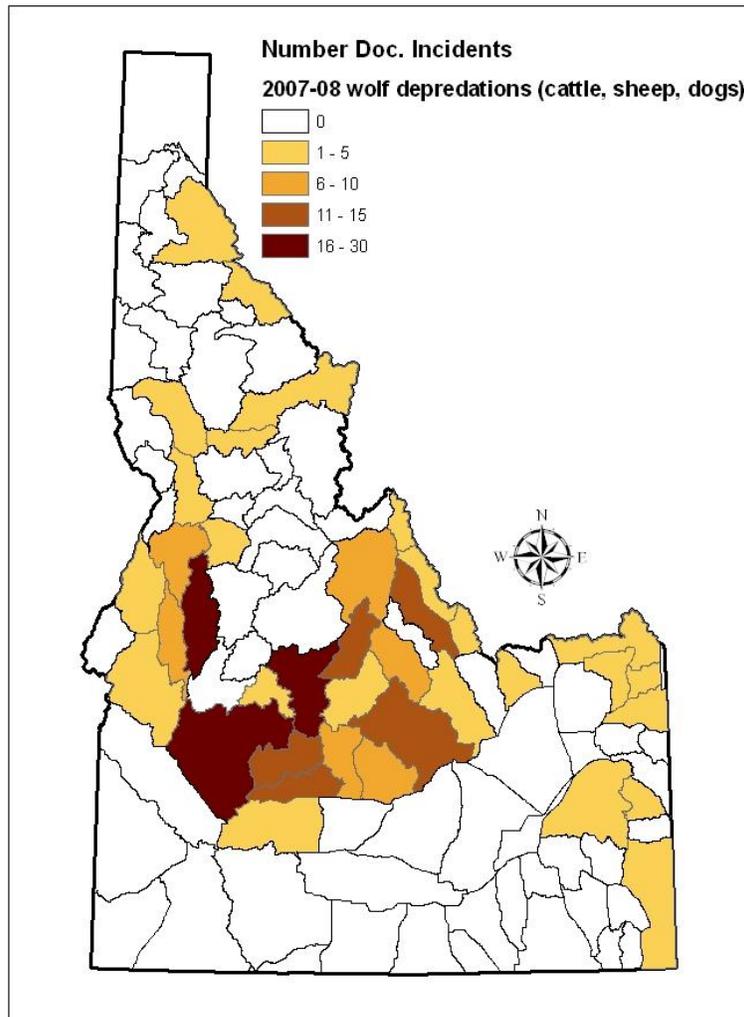


Figure 6. Total number of depredations recorded by GMU in Idaho during 2007 & 2008.

2. Agency Control Actions.

Agency control actions under state management will employ essentially the same protocols employed by the FWS while the wolves were listed, under the terms of an MOU between the Animal Damage Control Board, USDA Aphis Wildlife Services ("WS"), and IDFG. WS must confirm that the depredation was caused by wolves before any control action is authorized. Non-lethal controls are employed if available and the producer is amenable. Use of non-lethal controls is emphasized in dispersal corridors. If lethal control is needed, initial control is limited to a single wolf or pair of wolves. Packs with established depredation histories may be incrementally removed until depredations

cease. If depredations continue, the entire pack may be removed. In areas of high conflict, more aggressive actions may be employed where deemed necessary by IDFG.

If depredations occur during hunting seasons, efforts will be made to enlist hunters to remove depredating wolves. Outside hunting seasons, depredation hunts may be used where and when feasible to remove wolves involved in depredations. IDFG maintains the controls needed to ensure that depredation hunts target the packs or individual wolves responsible for depredation events.

3. Private Control Actions.

Private control actions are not expected to impact population objectives or wolf dispersals. Idaho Code § 36-1107 authorizes "livestock and domestic animal owners" and their employees and agents to dispose of wolves who are "molesting or attacking livestock or domestic animals." Molesting is defined to mean:

[T]he actions of a wolf that are annoying, disturbing or persecuting, especially with hostile intent or injurious effect, or chasing, driving, flushing, worrying, following after or on the trail of, or stalking or lying in wait for, livestock or domestic animals.

Idaho Code § 36-1107(c). Section 36-1107 defines specifically those circumstances under which a private control action may occur without permit. While § 36-1107 does not require that an actual attack be occurring, the definition of "molesting" describes those behaviors of gray wolves typically observed immediately prior to attack. If wolves are acting to annoy, disturb or persecute livestock, and their intent is clearly hostile or if actual injury to animals is occurring, then the wolves are subject to private control. In drafting the statute, the legislature drew upon existing wildlife and livestock management statutes. For example, the language in § 36-1107 closely parallels many aspects of the definition of "hunting" in the Idaho Code:

“Hunting” means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded.

Idaho Code § 36-202(j). The similarity between the language in § 36-1107 (defining molesting) and § 36-202 (defining hunting) confirms that private control actions are not unlimited, but may be utilized when wolves are observed engaging in behavior that typically precedes an attack.

Some of the terms in § 36-1107 also originate with statutes dating back to the nineteenth century authorizing owners of livestock to shoot domestic dogs whose behavior indicates an intent to attack livestock. For example, the term "worrying" appears in Idaho Code § 25-2806, which was first enacted in 1867 to authorize the shooting of domestic dogs "worrying, wounding or killing" livestock. The term "worrying," as used in § 36-1107, is found in similar statutes from over a dozen states.

Cases construing the term confirm that its common legal meaning requires behavior that would lead a reasonable person to conclude that the dog intended harm to the livestock. Failing v. People, 98 P.2d 865 (Colo. 1940) (dogs were worrying livestock when barking at cattle while facing them with heads down); Ellis v. Oliphant, 141 N.W. 415 (Iowa 1913) (mere presence of dog in pasture not enough to conclude dog was worrying sheep); Trautman v. Day, 273 N.W. 2d 712 (N.D. 1979) (dog was not worrying cattle when it ran through herd then immediately headed away from herd); State v. Spano, 745 A.2d 598 (N.J. App. 2000) (worrying requires more than simple barking); Bass v. Nofsinger, 269 N.W. 303 (Wisc. 1936) (dog was worrying sheep when it chased them for distance of 200 feet).

Private control actions under § 36-1107 are not significantly broader than those control actions authorized by the Fish and Wildlife Service under section 10(j) of the Endangered Species Act, 70 Fed. Reg. 1286 (Jan. 6, 2005) (“2005 10(j) Rule”). The 2005 10(j) Rule authorized private control actions when wolves were observed “in the act of attacking livestock or dogs.” *Id.* at 1307. The term “act of attacking” was defined to include not only “biting, wounding, grasping, or killing of livestock or dogs,” but also “chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.” *Id.* at 1306. In short, the 2005 10(j) Rule expanded the definition of “in the act” to include not only actual attacks, but also behavior indicating that “wolves [were] **preparing** to attack livestock or dogs.” *Id.* at 1290 (emphasis added). While the wording of Idaho Code § 36-1107 may differ from the 10(j) rule, the practical effect is the same: both the 10(j) rule and § 36-1107 allow private control actions when wolves are observed attacking or engaging in behavior that indicates that the wolves are preparing to attack.

Moreover, Idaho's experience with implementation of Idaho Code § 36-1107 following the initial delisting of gray wolves demonstrates that private control actions did not increase dramatically. From delisting through July 18, 2008, there were a total of eleven wolves killed under the auspices of § 36-1107. In 2006 and 2007, seven wolves were killed each year under the 10(j) rule. The increase in wolves killed in 2008 by livestock and pet owners is consistent with the fact that the wolf population was higher and depredation events in Idaho during the first eight months were at record levels, nearly doubling the amount of depredations experienced during the same period in 2007. (IDFG 2008b).

IDFG investigates every control action taken by private individuals and reports the results to local prosecutors. Some of the shootings by livestock owners remain under investigation, and IDFG and the Idaho Attorney General's office are working with prosecutors to assure consistent interpretation and enforcement of § 36-1107 throughout the state.

Finally, any concerns about an increase in private depredation controls affecting the viability of wolf population is addressed through the Wolf Management Plan, under which IDFG annually establishes mortality limits to ensure that annual mortality from all

sources is consistent with wolf population objectives. Mortality from private control actions is documented and incorporated into the annual mortality limit. Any unexpected increase in mortality due to private depredation control actions that occurs during the course of the year would be offset by decreases in discretionary mortality as necessary to achieve and maintain population objectives.

D. THE 1994 EIS RECOGNIZES THAT GENETIC EXCHANGE AMONG SUBPOPULATIONS CAN BE SATISFIED THROUGH EITHER NATURAL MIGRATION OR MANAGED GENETIC EXHCANGE.

While Idaho is committed to managing wolves to promote dispersal from central Idaho to subpopulations in Montana and the GYA, the Service should reject any assertion that unassisted genetic exchange among subpopulations is a prerequisite to delisting. Unassisted genetic exchange is not among the factors in ESA § 4 that the Service must ascertain before delisting a species or DPS. In fact, two of the factors, adequacy of existing regulatory mechanisms and other natural or man-made factors affecting the species' continued existence, clearly contemplate that the viability of a species or DPS must be examined in the context of the management system that will be applied by humans to that species. The mere fact that such a management scheme provides for monitoring of dispersal and active management of genetic exchange when needed does not preclude delisting. Rather, it supports delisting, since it is a regulatory mechanism that will contribute to the continued existence of the species.

It is likely that Congress, in incorporating the adequacy of regulatory mechanisms into the decision of whether delisting is justified, had in mind common management tools such as relocation of animals to invigorate genetic integrity. Translocation of animals is commonly employed when dispersal is limited by habitat or physical barriers, and offers advantages over natural dispersal since the donor population can be selected to ensure genetic differentiation from the target population, and the number, sex, and age characteristics of the translocated individuals can be managed to provide the maximum benefit to the target population (Mills 2007: 219).

Translocation of wildlife is a standard wildlife management practice used worldwide to increase distribution, population abundance, and genetic diversity. Hundreds of species and thousands of individual animals (including gray wolves and other carnivores) have been translocated by fish and wildlife management agencies during the past century (Annotated Bibliography of Animal Translocations 1998).

Many now-common species of North American wildlife were nearly or completely exterminated by the early twentieth century (e.g., wild turkey, white-tailed deer, pronghorn antelope, elk, bighorn sheep, black bear, Florida panther, and others). Translocations restored these species to former habitats and extended the range of many.

A wide variety of big game animals (elk, moose, woodland caribou, bighorn sheep, and mountain goats) and game birds (ring-necked pheasants, chukar and gray partridge, sharp-tailed and forest grouse, quail, and wild turkeys) has been translocated into Idaho to establish a new population or reintroduced following the demise of once-abundant

populations. An example is restoration of California bighorn sheep, a race completely extirpated from Idaho by 1939. Following several releases of California bighorn sheep into historic ranges in southwest Idaho beginning in 1963, the species flourished. As the population became re-established, hunting was reinitiated on California bighorn sheep in 1969 and continues to the present.

The fact that managed relocation of wolves is a legitimate management tool is embodied in the recovery standards developed in the 1994 EIS. Dr. Steven Fritts, the authority of Appendix 9 of the EIS, stated that there was "no reason why migration management should be view[ed] negatively," since it was a "necessity in other wolf recovery programs" (FWS 1994: 42). Dr. Fritts also recognized that "intensive migration management might become necessary" to achieve "movement of individuals between subpopulations." *Id.*

Finally, in determining whether the possible future use of translocation should preclude delisting, the Service should consider the facial contradiction posed by such a determination. It defies logic to conclude that assisted relocation of wolves is an unacceptable management practice when such method was employed in the first instance to restore the populations. The 1994 EIS correctly questioned whether gray wolves would be able to successfully recolonize the GYA by natural dispersal in the near future. (FWS 1994: 42). By choosing to artificially restore gray wolves to the relatively isolated habitat of the GYA, the FWS established a set of conditions whereby artificial relocation of wolves was not only necessary for restoration, but may also continue to be necessary to ensure periodic infusion of new genetic material. In other words, the Service must consider that its choice to artificially introduce a wolf population into habitat which it might not have naturally recolonized necessarily implies that a higher level of active management may be necessary to maintain such a population. The mere fact that more active management is required to maintain the population, however, should not prohibit delisting. To carry such reasoning to its logical conclusion, a species should be listed whenever a state employs active conservation management to maintain its population, no matter how healthy that population may otherwise be. Congress clearly did not intend such a result when it enacted the Endangered Species Act.

E. THE ENDANGERED SPECIES ACT AUTHORIZES FWS TO DESIGNATE A DISTINCT POPULATION SEGMENT FOR THE PURPOSE OF DELISTING THAT DPS.

Idaho agrees with the Service's assertion that the plain language of the ESA authorizes the Service to designate a DPS for the purpose of removing the wolves within the DPS from the list of endangered and threatened species. Nonetheless, it would be prudent for the Service to include additional findings supporting its interpretation that the ESA authorizes the Service to designate a DPS of a listed species and change the conservation status of the DPS to "not listed," especially under the circumstances applicable to the NRM DPS of gray wolves. Those findings could include the following:

1. Designation of a DPS for purposes of identifying a population of animals whose conservation status does not warrant continued listing furthers the purposes of the ESA. The legislative history of the ESA clarifies that the "ultimate goal of the Endangered Species Act is to focus sufficient attention on listed species so that, in time, they can be returned to a healthy state and removed from the list." (U.S. Sen. 1982:730). Congress' later amendment of the term "species" to include distinct population segments confirms its intent that a DPS may be recovered and delisted even if other populations of the species remain threatened or endangered.
2. During the debates leading to the 1973 adoption of the ESA, Senator Tunney emphasized the importance of allowing healthy populations of otherwise endangered species to remain unlisted: "An animal might be 'endangered' in most States but overpopulated in some. In a State in which a species is overpopulated, the Secretary would have the discretion to list that animal as merely threatened or to remove it from the endangered species listing entirely while still providing protection in areas where it was threatened with extinction." (U.S. Sen. 1982:360) (emphasis added). Thus, Congress contemplated that recovered populations could be removed from ESA listings even if the larger population remained threatened with extinction. Senator Tunney went on to cite the American alligator as an example of how the ESA "provides for maximum management and conservation discretion while insuring absolute protection for species imminently in danger of extinction. He noted that the alligator, while generally endangered, was doing so well in Louisiana that a closely regulated harvest had been allowed in one parish of the State. *Id.*
3. In amending the definition of "species" in 1978 to include the DPS concept, Congress rejected an amendment that would have had the effect of requiring all members of a species to be listed even where only some populations are threatened or endangered. Congress specifically intended for the FWS to have the flexibility to designate populations that should remain unlisted even if the majority of the species was listed. As an example, Representative Dingell again cited the American alligator, which at that time was listed everywhere in the United States except for three parishes in Louisiana. Congressman Dingell opposed the above-described amendment because it would preclude "the hunting which now goes on under careful supervision over a part of [the alligators'] range." (U.S. Sen. 1982:882).
4. In 1979, the Senate Committee on Environment and Public Works affirmed the FWS's authority to differentiate healthy populations from larger populations of threatened or endangered species: "One of the weaknesses of the 1969 act which was corrected in the 1973 amendments was the inability of the FWS to adopt different management practices for healthy, threatened or endangered populations. This committee agrees that there may be instances in which FWS should provide for different levels of protection for populations of the same species." (U.S. Sen. 1982:1397).
5. There have been a number of instances where FWS or NOAA Fisheries, in listing species as threatened or endangered, have simultaneously identified populations of such species that did not require listing. While most of these did not specifically designate the

non-listed populations as DPSs, they nonetheless confirm the long-standing application of the ESA to avoid listing healthy populations of otherwise endangered species. Examples include the following:

- 40 Fed.Reg. 44412 (Sept. 26, 1975) (listing American alligators as endangered everywhere other than in three Louisiana parishes).
- 43 Fed.Reg. 6233 (Feb. 14, 1978) (listing bald eagles as endangered south of 40 degrees north latitude, while leaving those to the north as unlisted).
- 50 Fed.Reg. 4938 (Feb. 4, 1985) (listing brown pelicans west of the Mississippi-Alabama state line as endangered, while east of that line brown pelicans remained unlisted).
- 50 Fed.Reg. 21784, 21789 (May 28, 1985) (listing least terns as endangered along the Mississippi River and its tributaries north of Baton Rouge, but leaving least terns south of Baton Rouge as unlisted).
- 63 Fed Reg. 13,134 (Mar. 18, 1998) (designating and listing DPS of Peninsular bighorn sheep in southern California, while leaving unlisted those Peninsular bighorn sheep residing in Baja California).

6. Given the plain language of the ESA, the legislative history, and decades of FWS practice, it is beyond question that the FWS, in listing a species, may concurrently designate a DPS consisting of a discrete, healthy population of that same species and assign it the conservation status of "not listed." If the FWS can provide different levels of protection to different populations during the listing process, then it necessarily retains the authority to do the same during the delisting process, for Congress has clearly provided that the same factors and standards that apply to listing also apply to delisting. Indeed, because the ESA requires the FWS to apply identical standards for both listing and delisting, it would be arbitrary and capricious for the FWS to refuse to remove healthy populations from the list of protected species if it would not list such populations if the species were being proposed for listing under current circumstances. In other words, because of the conflation of listing and delisting standards, the FWS should inquire as to whether, if it received a petition to list the gray wolf today, it would include the NRM gray wolf populations in such a listing. If the answer is no, then designation of a DPS and delisting of that DPS is within the authority granted to FWS.

7. Additionally, the Service's final rule should explain that the facts surrounding the reintroduction and maintenance of the gray wolf populations in the NRM support designation and delisting of the NRM DPS. The 1987 Recovery Plan clearly contemplated the establishment of three gray wolf populations that would be distinct from any gray wolves in other parts of the continental United States. It also recognized that historically, the gray wolf population in the NRM was a distinct population isolated from other gray wolf populations in the United States. It is not without coincidence that the Recovery Plan's map of historical distribution of the NRM gray wolf is very similar to the map of the proposed NRM DPS, as seen in Figure 1 from the 1987 Recovery Plan (Figure 7).

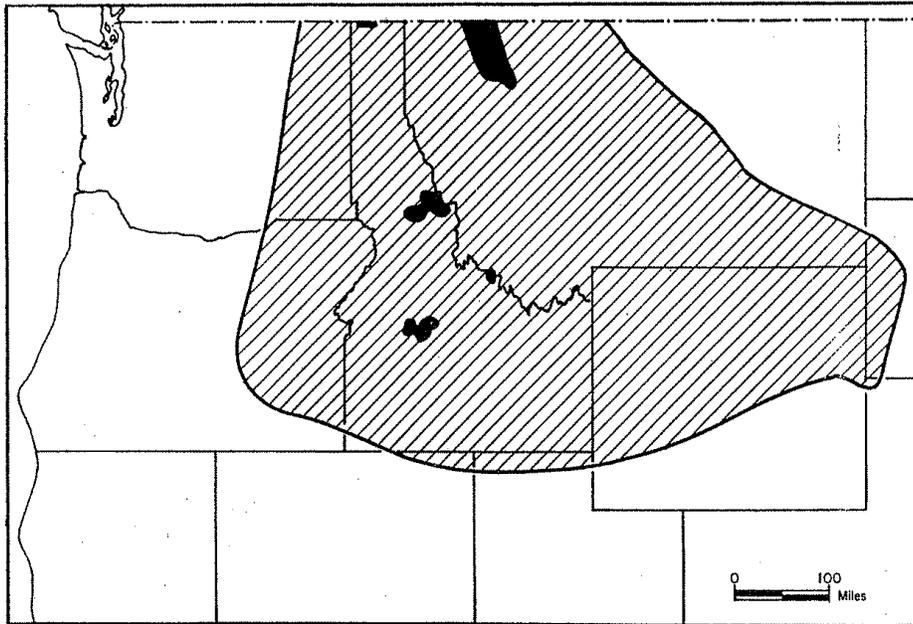


Figure 1. Historical distribution of the northern Rocky Mountain wolf (*Canis lupus irremotus*) in the United States according to Hall and Kelson (1959). The black areas represent the current approximate distribution of wolves in the northern Rocky Mountains of the contiguous 48 states.

Figure 7. Figure 1 from the 1987 Northern Rocky Mountain Wolf Recovery Plan

The stated objective of the Recovery Plan was to "remove the Northern Rocky Mountain wolf from the endangered and threatened species list by securing and maintaining a minimum of 10 breeding pairs in each of three recovery areas for a minimum of 3 successive years" (FWS 1987:19). The objective was further clarified in the 1994 EIS, which provided that "[r]ecovery of wolf populations in the northern Rocky Mountains of the U.S. requires a wolf population be established that is composed of three (Yellowstone, central Idaho, and northwestern Montana) parts, or sub-populations, which in combination would be called a meta-population" (FWS 1994: Glossary 4). In each instance, the Service clearly contemplated that the gray wolves in Northwestern Montana, Central Idaho, and the Greater Yellowstone Area would be managed as a discrete population for purposes of determining their future conservation status. This long history of identifying the NRM gray wolves as a discrete population with a conservation status distinct from that of gray wolves in other portions of the historic gray wolf range provides strong support for employing the DPS policy for purposes of delisting the NRM DPS.

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EXHIBIT LIST

| Ex. No. | Description |
|---------|---|
| 1..... | Idaho Wolf Population Management Plan: 2008-2012, Idaho Fish and Game Commission, March 6, 2008. |
| 2..... | Idaho Wolf Management Progress Report -- March 30 - April 11, 2008 |
| 3..... | Idaho Wolf Management Progress Report -- April 13 - April 26, 2008 |
| 4..... | Idaho Wolf Management Progress Report -- April 27 - May 2, 2008 |
| 5..... | Idaho Wolf Management Progress Report -- May 4 - May 18, 2008 |
| 6..... | Idaho Wolf Management Progress Report -- May 17 - May 30, 2008 |
| 7..... | Idaho Wolf Management Progress Report -- May 31 - June 14, 2008 |
| 8..... | Idaho Wolf Management Progress Report -- June 15 - June 27, 2008 |
| 9..... | Idaho Wolf Management Progress Report -- June 28 - July 1, 2008 |
| 10..... | Idaho Wolf Management Progress Report -- July 12 - July 27, 2008 |
| 11..... | Idaho Wolf Management Progress Report -- July 28 - August 15, 2008 |
| 12..... | Idaho Wolf Management Progress Report -- August 16 - August 29, 2008 |
| 13..... | Idaho Wolf Management Progress Report -- August 29 - September 12, 2008 |
| 14..... | Idaho Wolf Management Progress Report -- September 13 - September 26, 2008 |
| 15..... | Idaho Wolf Management Progress Report -- September 26 - October 17, 2008 |
| 16..... | Idaho Wolf Management Progress Report -- October 18 - November 3, 2008 |
| 17..... | Memorandum of Understanding between the Idaho Department of Fish and Game and the Idaho State Animal Damage Control Board |
| 18..... | 2007 Wolf Conservation and Management in Idaho Progress Report |