


[Print Page](#)

## Making delist

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Wolf impact on ungulate herds grows critical in Lolo-Selway country

More than a decade after 35 gray wolves were released in central Idaho as part of a three-state "experimental, non-essential population" mandated by the federal government through the Endangered Species Act, some hunters and state wildlife managers are at odds whether to trust the delisting process a second time.



Photo courtesy of [Shutterstock.com](http://Shutterstock.com) Gray wolves like these have multiplied to fill most of central and North Idaho mountain regions where each wolf consumes around two elk a month.

Disgusted after seeing attempts to remove wolves from the Endangered Species List thwarted by the courts, legislators sympathetic to Idaho sportsmen will introduce a bill — the Idaho Wolf Recovery Act — to declare Idaho sovereignty over its game, including wolves.

The Idaho bill — supported by representatives Judy Boyle, R-Midvale, Lenore Barrett, R-Challis, JoAn Wood, R-Rigby, Phil Hart, R-Hayden, and others — very closely parallels a bill introduced in the Montana Legislature, which, if passed, would require Fish and Game to boycott any cooperation with the federal government regarding wolf management.

The action would send a message to the federal government that it has overextended its use of the Commerce Clause in Section 8 of Article 1 of the U.S. Constitution to justify its use of the ESA in the case of the experimental, non-essential wolf introduction in Wyoming, Montana and Idaho, said Boise attorney John Runft.

While the Tenth Amendment to the U.S. Constitution (rights reserved to the states) has languished for the past century, several rulings like the Lopez case in Texas have reawakened legal scholars to its rightful place, he said.

Many of the posters on one of Ralph Maughan's pro-wolf blogs castigate anyone who holds states' rights sentiments, calling them "reactive folk," "right-wing fanatics," "don't believe in evolution," "Christian reconstructionist folks."

Another said, they are "why Montana is regarded as such a culturally retarded state."

"Whenever there is a rather fundamental proposition brought up, usually it induces the other side to start

name calling," Runft said. "But, as a matter of fact, there is a real Tenth Amendment issue here, a very valid one.

"I think people like myself and others will just have to endure the name calling and make rational arguments as to why this current trend is excessive."

Runft claims that Idaho has fallen into a trap — agreeing to provide services and paying for the management of wolves, which would still be controlled and directed by the federal government — should it take over wolf management after delisting.

"It's an unfunded federal mandate given to the states to perform like lakeys," he said. "I can't tell you how that offends me."

Idaho Fish and Game estimates that wolf conservation and management will cost between \$900,000 and \$1.2 million a year.

Runft further contends that Fish and Game was hoodwinked by the U.S. Fish and Wildlife Service into taking on the wolf management role — agreeing to manage them as big game and not as a predator like Wyoming defines them in the areas outside of Yellowstone Park — by threatening to name the Nez Perce Tribe as the designated agents of the FWS.

Idaho Fish and Game Commissioner Tony McDermott poo poos the idea that Fish and Game was tricked into wolf management by that tactic. While agreeing that the Nez Perce has no interest in killing wolves, he also believes they would not take on management of them, because the whole thing has turned into such a huge social and political issue.

"We're not being naive, the difference is we don't have a choice," he said.

The Nez Perce did play a significant role in the release of the wolves in 1996 and 1997. Being a sovereign nation, the tribe who championed the idea was asked by the federal government to conduct the release.

"So they partnered up with a sovereign nation and they foisted an animal on us that nobody wanted," McDermott said. "But here we got it and the federal government says, until you treat this thing as a game animal — I mean they held us at gunpoint, basically, pushing us up against the wall — and said, 'either you do this or it'll never get delisted.'"

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Runft claims, the 2008 Wolf Management Plan — specifying a 500- to 700-wolf minimum — violates the 150-wolf minimum set out in the 2002 Wolf Conservation and Management Act, which he says is still Idaho state law. After researching the documents, Runft stated that Fish and Game was acting ultraviresly, that is without authority, by increasing the numbers in the 2008 Wolf Management Plan.

Even those numbers became moot when federal Judge Donald Molloy of Missoula granted the injunction in favor of the 12 environment groups that sued in federal court against the first delisting attempt by the FWS last year.

McDermott doesn't believe that the initial minimum numbers in the management plan are all that important, what's important is completing delisting.

"The argument over whether we have a hundred, 150 or 500 is crazy," he said. "My guess is it will take us two or three years to get back to 500, why not wait and let the dust settle until you try a legislative action and let Fish and Game do what they say they can do and that's to manage them."

Idaho Fish and Game officials, its commissioners and many sportsmen are willing to let the once-failed delisting process proceed to the next step, even though the same 12 environmental groups who successfully sued in federal court to stop the first attempt, vow to sue again.

When the wolves were first released, everyone involved agreed — U.S. Fish and Wildlife Service, Idaho Fish and Game, the Nez Perce Tribe, Defenders of Wildlife, the Farm Bureau and other interested so-called stakeholders — that 100 wolves in each state would constitute an appropriate level to justify taking them off the ESA list.

That population was achieved in Idaho in 2002 and since then the numbers have skyrocketed.

“We’ve got 900 of them now and that’s a conservative number,” McDermott said. “My guess is it’s more around 1,200.”

Just a year ago the official state guesstimate was 800.

“I can tell you that every commissioner is frustrated beyond belief,” McDermott said. “We don’t trust the enviros because they’ll use everything in their tool box, lies, deceit, misinformation, to achieve their goals.”

Further, the environmental groups claim that a base population of 5,000 wolves is needed in the three-state area to maintain the biodiversity to prevent inbreeding, Runft said.

“That’s their figure now and that underlines the absolute fraud of the federal government in the first place coming out to get their foot in the door by saying 100 wolves in each state, that is 10 breeding pairs, would do the trick,” he said. “That genetic diversity knowledge was already present in those times.”

Even with small populations, the three state fish and game departments demonstrated that ample genetic diversity could be maintained by trapping and releasing wolves into each other’s ranges, like the original releases were done.

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Should President Obama decide to rescind the most recent Northern Rocky Mountain Gray Wolf delisting action, or should the delisting fail because of the expected lawsuit or for some other reason, and should Judge Molloy again grant an injunction disallowing state management of wolves, Idaho Fish and Game intends to take strong action under the 10j rule for the experimental, non-essential wolf population south of I-90 (north of I-90, wolves are protected under the standard ESA), McDermott said.

One of the provisions of the 10j rule allows strong state agency controls if whole ungulate herds are adversely affected by wolves.

At a Sportsmen’s Breakfast in Coeur d’Alene recently, Region 1 wildlife manager Jim Hayden stated that the Panhandle now houses 16 wolf packs. That’s up from eight official packs (12 suspected) last year.

“We’re seeing things filling in in that middle area of the Coeur d’Alenes,” he said. “We expect further expansions.”

Northern wolves are moving down and central Idaho wolves are moving north.

“We’re getting two hands clapping there in the Coeur d’Alenes,” he said.

State Fish and Game director Cal Groen is adamant that wolves be managed like other big game.

“We also want to manage for sportsmen, that we have harvestable surplus,” he said.

He has already heard from outfitters who are calling it quits in some areas and he’s very concerned about the elk herd in the Lolo-Selway.

“It’s a very emotional factor,” Groen said.

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Wyoming, which is largely cattle and some sheep ranching, refuses to change the status of wolves from a predator to a big game animal, excepting Yellowstone Park, which they don't administer anyway.

Because of that the FWS left Wyoming out of this round of delisting.

"I understand where Wyoming is coming from," McDermott said. "They're treated like the black sheep by the system."

Even so, leaving out Wyoming could become a legal hurdle as prior rulings have held that portions of a Distinct Population Segment (DPS) cannot be delisted separately.

McDermott is aware of and somewhat agrees with the analogy of the state of Idaho being a bit like the comic-strip character Charlie Brown as he tries time after time to kick the football, only to have it pulled away at the last second by Lucy, but, in his heart, he doesn't believe he or the other commissioners are being naive.

McDermott has hopes that delisting, if it's successful, will proceed like Alaska.

"I know that Alaska went through this same process 25 years ago, they've taken everything that the environmental organizations can throw at them and they've managed to keep it all in perspective," he said. "Where wolves are severely impacting on ungulates in Alaska, the Alaskan Fish and Game go in there and take care of the problem."

McDermott hopes that sportsmen will focus on the real issue, the unified front of organizations like Earth Justice that don't want the wolf delisted until there are 5,000 of them in the Rockies.

FWS estimates that wolves consume 11 to 22 elk per year per wolf (they likely kill more, because of sport and surplus killing). With 900 wolves in the state, that's at least 9,900 to 19,800 elk killed annually and wolves have been increasing 20 to 25 percent annually.

The future of Idaho's elk population — around 115,000 in 2008 (RockyMountain Elk Foundation) — appears to be in the hands of a judge in Missoula.

Can Charlie Brown afford to be fooled by Lucy much longer?