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Are Gray Wolves Still Endangered?

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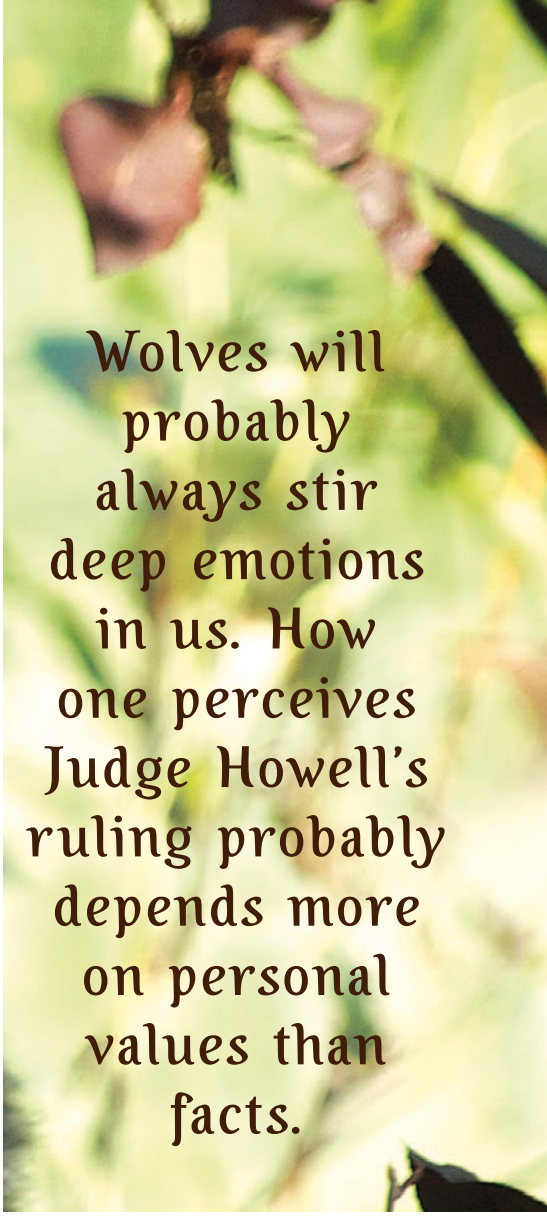
In a stunning move on December 19, 2014, Federal Judge Beryl Howell ruled that Endangered Species Act protections be reinstated for gray wolves *(Canis lupis)* in Michigan, Minnesota, Wisconsin, and parts of Illinois, Indiana, Iowa, North Dakota and South Dakota. The ruling resulted from a lawsuit filed by the Humane Society of the United States and other wildlife protection groups against the U.S. Fish and Wildlife Service's (USFWS) December 2011 decision that removed the act's protections. That delisting decision allowed state fish and game departments to manage wolves and to implement harvest programs for recreational purposes. The judge's ruling ended all public taking of wolves in the Great Lakes states for depredation control or any other purpose except defense of human life. The ruling did not put an end to federally enacted depredation control efforts in Minnesota, where the wolf was returned to threatened rather than endangered status.



Even though the ruling could be interpreted as indicating otherwise, the gray wolf is biologically secure in Minnesota, Michigan, and Wisconsin and should have remained so, even with liberal state management. However, a thorough reading of the Endangered Species Act indicates that biological security and legal recovery are not necessarily one and the same. The latter requires wolves to be far more common and widely distributed than the former.

One can argue that wolves have been biologically secure in Minnesota since the 1970s when approximately 1,000 animals lived there. The state used that argument to oppose the original listing of the species. But the Endangered Species Act has always required that the gray wolf be more common than that. The law requires that a species be secure (not endangered or threatened, but suitable for delisting) across a significant portion of its range. Put another way, recovery requires that before delisting can occur a species can only remain insecure (threatened, endangered, or extirpated) across no more than an insignificant portion of its range.

This notion of recovery is consistent with the definitions for important words in the act including *endangered*, *threatened*, and *species*. It is consistent with the USFWS's previous delisting decisions for species other than the wolf. In those cases, the species in question were fairly common and widespread at the time of delisting. Finally, this notion of recovery is consistent with the all-important "Findings" section of the Endangered Species Act which specifically identifies ecological value as an important reason for conserving imperiled species. It is very hard for the ecological value of a species to be properly expressed if it is absent from many of the ecoregions of its historical range.

In sum, Judge Howell took sharp exception to the USFWS's advance of a novel, relatively easily attained approach to gray wolf recovery. While it is easy to understand that the difficulty of wolf recovery offered rationale for this approach, it is important to note that the courts have rendered it unlawful.

Why?

Judge Howell set aside the delisting decision because she concluded that the USFWS had failed to adequately explain why the majority of the Great Lakes wolf population area, where the species remains extirpated, was insignificant and, therefore, superfluous to recovery. The term *insignificant* is important in the context of the Endangered Species Act, since its counterpart *significant* is included in the definitions for endangered and threatened species:

- Endangered species—any species …which is in danger of extinction throughout all or a significant portion of its range.
- Threatened species—any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

When considering *significant* and *insignificant* it is important to accept that the *insignificant* portion of a species' range can include large areas that are not occupied securely, if at all, by the species. Recovery does not require that a species occupy all of its range. It is equally important, however, to accept that in every meaningful way, *significant* has to mean more than *insignificant*. Recovery does require that a species be fairly widespread in the area considered by the original listing action, which typically is the species' historical range, before federal protections are lifted.

Judge Howell also concluded that the USFWS erred by adopting a piecemeal approach to wolf recovery by delisting the Great Lakes gray wolf population when it was never more than a subset of the originally listed entity (i.e., the gray wolf across a much larger area) which had not been recovered. According to the judge the Endangered Species Act only allows for the delisting of the originally listed entity in total, rather than piecemeal.

Lastly, Judge Howell was concerned that the USFWS had failed to adequately explain why a liberal recreational harvest of wolves did not threaten the species. It is worth noting that since delisting, Great Lakes region trophy hunters and trappers have killed more than 1,500 wolves. A recent USFWS internal report indicates that recreational and management harvests can cause declines in wolf populations, despite the birth of far more pups (about 11,000 since delisting) than wolves killed by hunters and trappers. Since Judge Howell's ruling was something of a shocker, given the presence of more than 3,000 wolves and several hundred breeding packs in the Great Lakes states, it is reasonable to consider possible consequences.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The USFWS's most recent vision for recovery of the wolf subspecies that occupies the Great Lakes states called for delisting from the Great Plains to the Pacific Northwest based solely on its biological security in Minnesota, Michigan, and Wisconsin (and, curiously, Canada). Judge Howell's ruling strongly suggests that this vision comes up short. Why? Because the area targeted for delisting includes vast tracts of highly suitable, but unoccupied, habitat that is significant in many relevant ways. Judge Howell's ruling bolsters an interpretation of the Endangered Species Act that concludes that federal protections for the wolf must apply until the species is securely distributed across much more of this area.

The judge's ruling might prompt some elected officials to try to gut the act. Given the controversial nature of wolves, it is reasonable to expect blowback of this sort. I suspect, however, that any substantive change to the Endangered Species Act would be hard to enact. Given the public's overwhelming and persistent support of the law, President Obama would seem an unlikely ally in such an effort, and procedural rules for the U.S. Senate could be exercised to prevent such a bill from ever passing.

The ruling might prompt some elected officials to try to amend the Endangered Species Act to minimize the consequences of recovery. Some amendments may be in order. It could be useful to amend the phrase "significant portion of range" to read "significant portion of historical range where habitat remains suitable or can be made so through reasonable means." Granted, such an amendment would create a slippery slope, given the myriad definitions that could be attached to *significant*, *suitable*, and *reasonable* means. However, the vast extent of private land across much of the gray wolf's historical range precludes recovery there. Due to extensive private land in Illinois, for example, the state seems lost to the gray wolf. No reasonable means seem to exist to change that fact. There is no doubt that passage of the Endangered Species Act cleared the way to secure a future for the gray wolf, but it was large tracts of public land, not private land, that allowed that future to be realized.

Rather than gutting or lightly amending the Endangered Species Act, a more likely legislative response to Judge Howell's ruling would be fiscal in nature. Congress could, for example, defund activities by attaching riders to unrelated spending bills. This is the approach that Congress recently used to express disfavor with the USFWS's consideration of listing the greater sage grouse. Or Congress could legislatively delist the wolf as it did in Idaho and Montana. Several legislators are now preparing such a bill.

Wolves will probably always stir deep emotions in us. How one perceives Judge Howell's ruling probably depends more on personal values than facts. Whether it is cause for celebration or regret, it clearly signifies that biological security is not necessarily an adequate threshold for wolf recovery under the Endangered Species Act. It seems that even controversial species must be fairly widespread before federal protections can be lifted, or the USFWS has to adequately explain why more widespread distribution is not possible or necessary to honor the spirit and intent of the act. ■

Mike Phillips has been a Montana state legislator since 2006 and is currently a state senator. For the last 29 years he has worked with threatened and endangered species in the research, management and policy realms. He led the effort to restore the red wolf to northeastern North Carolina and the gray wolf to Yellowstone National Park. He has served on every Mexican Wolf Recovery team convened since 1995, and has directed the Turner Endangered Species Fund since he co-founded the organization with Ted Turner in June 1997.