

State Notes

TOPICS OF LEGISLATIVE INTEREST

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An Update on the Status of the Gray Wolf in Michigan **By Julie Cassidy, Legislative Analyst**

Introduction

Several hundred years ago, various wolf species, including the gray wolf, could be found throughout much of the United States. Following settlement by Europeans, however, wolves nationwide came to be seen as a nuisance due to their predation on livestock and game animals. As a result, wolves were the target of extermination efforts that continued well into the 1900s. Hundreds of thousands were killed throughout the country, and by 1900, the animals were rare in the eastern United States and parts of Michigan, Minnesota, and Wisconsin. Eventually, the gray wolf was extirpated in 95% of its historic range. The gray wolf population is thought to have reached its lowest point in the 1960s, when only several hundred remained in northeastern Minnesota and approximately 20 lived on Michigan's Isle Royale.

Over time, the public perception of the wolf began to change, and the focus of policy pertaining to the animal shifted from eradication to protection. Michigan declared the gray wolf an endangered species in 1965. In 1967, the animal was granted protection on Federal land under the Endangered Species Preservation Act. In 1974, the gray wolf was listed as endangered under the Federal Endangered Species Act (ESA), meaning it was considered to be at risk of extinction. The listing made it illegal to kill, trap, or otherwise harm a gray wolf. In addition, over the next few decades efforts were made to reintroduce wolves within the species' historical territory.

As a result of these statutory protections and repopulation programs, the gray wolf has made a recovery in Minnesota, Wisconsin, and Michigan's Upper Peninsula. In fact, in recent years, there have been numerous reports of wolves venturing into developed areas and attacking pets and livestock in Northern Michigan. These incidents have raised concerns that the wolves' numbers have grown too large in that part of the State. The U.S. Fish and Wildlife Service (FWS) has attempted to remove the gray wolf from the list of endangered species several times over approximately the last decade, most recently by a final rule that took effect in January 2012. Some people believe that delisting the gray wolf and allowing the animal to be hunted in Michigan again is necessary to keep the population in check. Others, however, believe that the gray wolf has not yet rebounded sufficiently to ensure the long-term survival of the species, and have fought actions to eliminate Federal protection and classify the wolf as a game animal in Michigan. This article discusses the litigation surrounding the Federal delisting attempts and statutory changes related to wolf management that have been implemented in Michigan.

Delisting

In 1978, the FWS adopted a recovery plan for the eastern timber wolf (which is considered a subspecies of the gray wolf). The plan established a population goal of 1,250 to 1,400 wolves in the State of Minnesota by the year 2000 and 100 wolves combined for Wisconsin and Michigan. The Minnesota population reached the goal by 1989, and the desired level for Michigan and Wisconsin was met by 1994. According to the plan, the latter population had



to be maintained for five years before the subspecies could be considered for delisting under the ESA.

Michigan reclassified the gray wolf under State statute as threatened, rather than endangered, in 2002. At that time, the population was estimated at 280 in the Upper Peninsula with an additional 17 on Isle Royale. (Under the State's Natural Resources and Environmental Protection Act (NREPA), a species is "endangered" when it is in danger of extinction throughout all or a significant part of its range. A species is "threatened" when it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.)

On several occasions over the next few years, the FWS issued a final rule to reclassify the gray wolf by identifying "distinct population segments" ("DPSs"), and to remove the species from the list of endangered and threatened wildlife in certain DPSs. A number of wildlife conservation and animal protection organizations sued the FWS and the U.S. Department of the Interior, claiming that the rule violated the ESA and the Department's own policy through improper use of the DPS designation. Each time, U.S. District Courts agreed with the plaintiffs, granting their motion for judgment and vacating the rule.

The FWS most recently delisted the gray wolf in the Western Great Lakes DPS (which includes Michigan, Minnesota, and Wisconsin and parts of Illinois, Indiana, Iowa, North Dakota, and South Dakota) by a final rule that took effect in January 2012. In response, the Humane Society of the United States, Born Free, USA, Help Our Wolves Live (HOWL), and Friends of Animals and Their Environment (FATE) filed a complaint in the U.S. District Court for the District of Columbia. The complaint alleges that the FWS has once again violated the ESA and the DPS policy, rendering the rule "arbitrary, capricious, an abuse of discretion, and not in accordance with the law".

The DPS tool enables the listing of a specific geographically limited population, even if the species as a whole is not endangered or threatened—in other words, according to the plaintiffs, its purpose is "to promote species prosperity and conservation", not to eliminate protection as the FWS did. The area in Michigan, Wisconsin, and Minnesota where the gray wolf has made a significant recovery represents only a small portion of the species' historic range. The boundaries of the Western Great Lakes DPS extend far beyond this core population area, and include a considerable amount of land that has not yet been repopulated by wolves, but that could be crucial to their dispersion as their numbers grow. The plaintiffs posit that the removal of Federal protection in these areas where the wolf remains extirpated could impede the species' full recovery, contrary to the objective of the DPS concept. In addition, the plaintiffs question the propriety of simultaneously creating and delisting a previously unlisted DPS.

Noting the similarities between the most recent delisting rule and previous rules that have been rejected by the courts, the complaint requests an order to vacate the rule and reinstate protections for the gray wolf in the Great Lakes region. A hearing in the case is expected to take place this winter and the court's final decision will likely be issued in early 2014.



Developments in Michigan

Following implementation of a 2007 FWS delisting rule, legislation was enacted in Michigan to authorize the owner of a dog or livestock to remove, capture, or kill a gray wolf that is preying upon the dog or livestock, and require the owner to report a wolf killing to the Department of Natural Resources. After a U.S. District Court decision vacated the FWS rule in 2008, placing the gray wolf back on the endangered list, the Michigan law was amended to provide that the authorization to remove, capture, or kill an actively preying wolf was contingent upon the District Court's decision being overturned or the promulgation and implementation of a new delisting rule. Thus, the Michigan law has been in force again since January 2012, when the FWS's most recent rule took effect.

Although this measure is welcomed by the owners of animals who are at risk of predation, some feel that it is an inadequate solution, and that a hunting season is a more proactive approach to managing the wolf population and protecting the animals and livelihoods of Upper Peninsula farmers. In response, Public Act 520 of 2012 (Senate Bill 1350) amended NREPA to include wolf in the definition of "game", authorize the establishment of the first open season for wolf, and allow the Natural Resources Commission (NRC) to issue orders establishing annual wolf hunting seasons. The Act establishes a wolf hunting license fee of \$100 for a resident and \$500 for a nonresident; makes it a misdemeanor to illegally possess or take wolf; and created the Wolf Management Advisory Council, which must submit to the NRC and the Legislature an annual report containing wolf management recommendations. The legislation took effect on December 28, 2012.

Wolf hunting opponents then launched a petition drive to compel a statewide referendum on the legislation. (In order for a law enacted by the Legislature to be submitted to voters for approval or rejection, the State Constitution requires the collection of a number of signatures equal to at least 5% of the total vote cast for all gubernatorial candidates at the last general election at which a governor was elected.) The Act's opponents have voiced concerns that people might want to hunt wolves for trophies rather than for genuine management reasons, and that a hunt could jeopardize the wolf's recovery. They also are worried that killing wolves could interfere with opportunities to observe the animals in the wild, having a negative impact on the State's tourism industry. In addition, a number of Michigan Indian tribes have opposed the hunt and participated in the petition drive, citing the important role of the gray wolf in their heritage and culture.

Petition circulators reportedly collected more than 200,000 signatures, enough to surpass the constitutional threshold. The Board of State Canvassers certified the petition in May 2013, and the question will appear on the 2014 general election ballot. As discussed below, however, subsequently enacted legislation will make the results of the vote moot.

For some people, the proposed referendum raised concerns about the extent to which electors should be directly involved in natural resource decisions, the appropriate use of the referendum, regional conflicts within the State, and the potential influence of money and out-of-State interests in Michigan's affairs. Noting that most electors are not experts in the subject of natural resources, some questioned the prudence of allowing wildlife management decisions to be made at the ballot box. In a related matter, there is concern surrounding



ballot proposals generally that some stakeholder groups take advantage of voters' lack of knowledge and present misleading or inaccurate information in their efforts to sway public opinion. Ballot question campaigns may be financed by parties from outside the State, and sometimes, petition circulators are paid for each signature they obtain, which might encourage them to use tactics that cast doubt on the legitimacy of the political process. Supporters of the wolf hunt also note that some of the opposition has come from people who live in the southern part of the State and thus might have a limited understanding of the problems Upper Peninsula residents experience with regard to wolf encounters.

These concerns prompted the enactment of Public Act 21 of 2013 (Senate Bill 288), which took effect on May 8, 2013. This legislation amended NREPA to extend the authority to designate game species to the NRC, whose orders are not subject to the State Constitution's referendum provisions. (Previously, the Legislature had exclusive authority to designate game species.) Supporters of the measure believe it will ensure that the State's wildlife management decisions are based on scientific evidence.

Subsequently, the NRC issued an order to establish Michigan's first open season for wolf from November 15 to December 31, 2013. Under the order, 1,200 wolf hunting licenses are available for the season in three wolf management units (WMUs) designated in the Upper Peninsula. A target level of 43 wolves has been set. The Department of Natural Resources (DNR) may close the open season in any WMU before December 31 if the Department's harvest objectives are reached. A person may take one wolf per year by firearm, crossbow, or bow and arrow. The order specifically prohibits an individual from hunting a wolf with a dog, or taking a wolf with a snare, cable restraint, conibear, or any other kind of trap. The order requires a person to present a wolf's pelt and skull to the DNR for examination within 72 hours of harvest.

License sales for the first wolf season were scheduled to begin on August 3, 2013, but were delayed due to the anticipated high demand. Generally, in the case of a limited license hunt, licenses are issued through a lottery system. Licenses for the wolf hunt, however, were to be offered on a first-come, first-served basis. In order to ensure that the DNR's retail sales system could handle the expected transaction volume, the Department decided to wait until September 28 to make the licenses available for purchase. Once sales began, nearly 1,000 were sold within the first two hours and fewer than 100 remained by the end of the day.

Those who oppose wolf hunting in Michigan view Public Act 21 as an attempt to circumvent the democratic process, and again began collecting signatures to compel a referendum on the legislation at the 2014 election. Although the ballot will include a vote on Public Act 520 of 2012, that legislation essentially was superseded by the amendments enacted in 2013. Therefore, even if the voters reject Public Act 520, wolf hunting will remain legal in Michigan—absent statutory changes, judicial rulings, or orders of the Natural Resources Commission to the contrary—unless the opponents are able to secure a referendum on Public Act 21 of 2013 and the voters overturn that law.