

# **Delisting the Gray Wolf: Political Casualty or Precursor of a New Era in Environmental Policy Making?**

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**I**n 2011, the removal of the gray wolf from the Endangered Species List in Montana and Idaho was an unprecedented and highly controversial decision. For the first time Congress removed an animal from the list, a decision based on lawmakers' deft political maneuvering rather than science. The push to remove the gray wolf by various legislators, however, had been persistent for almost a decade (Barringer 2011). The gray wolf, however, is by no means the only officially endangered or threatened species currently being called into question. Some feel that "...the current wave of legislation against ESA (Endangered Species Act) protections...shows that support for the ESA has ebbed" (Perry 2012, 473).

What is it about the gray wolf that makes it controversial? More to the point, is the push to delist the gray wolf an indicator of what is to come in regards to the other species that have benefitted from the Endangered Species Act? Is this just one instance in a larger movement away from the innovative environmental policies and practices implemented in the 1970s and the end of the era of Green

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Drift?<sup>1</sup> I believe the Punctuated Equilibrium model provides the best approach for answering these questions. Given the model's focus on stabilizing versus disruptive policy forces over extended periods of time, it clarifies the factors related to the gray wolf's delisting and those that threaten the continued political viability of the ESA.

### **The Gray Wolf and the Endangered Species Act**

#### *The Wolf*

Before the colonial era, the gray wolf resided in most of the contiguous United States. In the early nineteenth century an estimated 35,000 wolves inhabited the Yellowstone region alone (Western Kentucky University 2013). However, by the second half of the century the increase in demand for their valuable pelts led to a population decline. It was a common practice for professional hunters to poison bison carcasses, then collect and skin the wolves which had died as a result of ingesting the poisoned meat (Perry 2012, 445). Sick, injured and young bison were a common and important source of food for the wolves. As bison herds declined, wolves instead began to prey on the livestock, predominately cattle, and quickly became the adversary of many ranchers in the 1870s and 1880s (Perry 2012, 445). The wolves were also unpopular with hunters, who saw them as direct competition for big game and trophy animals. In Montana, the state legislature instituted a bounty

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<sup>1</sup>Beginning in the 1980s, efforts to rollback existing environmental policies produced a legislative gridlock that persists to this day. Although the rollback efforts were largely defeated, the backlash has prevented significant additional environmental legislation. Klyza and Sousa (2008, 4) describe the present legislative deadlock as green drift, "a slow, uneven movement in directions generally favored by greens."

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for wolf pelts in 1884, due in part by pressure from powerful ranchers' associations and Congress followed suit in 1914, allocating funds to destroy wolves (Montana Fish, Wildlife and Parks, "Gray Wolf History", n.d. ; Perry 2012, 445). This approach to wolf 'management' led to the extirpation of the species from the western United States by the 1930s (USFWS 2011, 5).

*The Endangered Species Act*

In 1973, Congress passed the Endangered Species Act (ESA) with overwhelming bipartisan support. The votes were 390 to 12 in the House and 92 votes to 0 in the Senate (Perry 2012, 440). As one of many pieces of legislation passed during the "Golden Age" of environmental policymaking during the 1970s, the ESA was an innovation in conservation and wildlife management. The Supreme Court referred to the law as "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation" (*TVA v Hill* 1978). The definition of endangered species contained in the act is "any species which is in danger of extinction throughout all or a significant portion of its range." Threatened species are defined as "any species which is likely to become endangered within the foreseeable future." While not particularly relevant to this research, it is important to note that the ESA also protects the habitats of endangered species (*TVA v Hill* 1978). This component of the Act has also been employed repeatedly in successful conservation efforts over the last 4 decades.

The gray wolf came under the protection of the Endangered Species Act in the lower 48 states the same year it was enacted (Chaney 2012). For decades, wolves had been sighted in the Northern Rockies, but no evidence of breeding pairs existed until

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1986, when a den was discovered in Glacier National Park in Montana (Perry 2012, 446).

### **Reintroduction**

#### *The Plan*

For some time before the discovery of the den in Glacier National Park, the United States Fish and Wildlife Service (FWS) had been considering the reintroduction of gray wolves to the area and had already conceived a plan of action (Perry 2012, 446). It proposed three separate recovery areas: northwestern Montana, central Idaho and the Greater Yellowstone Area. It stated a recovery goal of ten breeding pairs of wolves in each of these areas for three consecutive years. This was considered a reasonable goal after consulting with wolf experts in the U.S. and Canada who were assisting the recovery team (Perry 2012, 446).

The FWS held over fifty “open houses” to discuss the plan and distribute information regarding the reintroduction. Information regarding the plan was also distributed via newspaper ads and mailings (Perry 2012, 447). The FWS worked with local governments and landowners to smooth the way for the reintroduction of wolves to the region. The Idaho Department of Fish and Game, the Wyoming Game and Fish Department, and the Montana Department of Fish, Wildlife, and Parks also participated in the preparations leading up to reintroduction (Fischer 1995, 12). The reintroduction plan designated the gray wolves as a non-essential experimental population, a designation that reduced the management burden on other federal agencies and softened the concerns of congressional representatives otherwise hostile to the plan. The policy image of the

reintroduction issue had become one of “reasonable compromise” according to newspaper editorials, the majority of public comments received by the FWS were favorable and the resistance by livestock groups had begun to moderate (Perry 2012, 447). In 1994, Bruce Babbitt, Secretary of the Interior at the time, approved the environmental impact statement and the recommendation contained within, which paved the way for reintroduction of gray wolves to Idaho, Wyoming and Montana (Federal Register 1994, 224).

While receiving considerable support, there were several who still opposed the reintroduction of wolves to the region for a variety of reasons, and they chose to sue for an injunction against the release of wolves. The Wyoming Farm Bureau and various environmental groups who brought the suit were required to show that they would somehow suffer “irreparable harm” if the wolves were released. After failing to do so, the motion was denied. An emergency appeal filed by the Wyoming Farm Bureau at the time the wolves (from Canada) were on their way to the release points made it necessary to hold the wolves in their travelling cages until the appeal was considered (*Wyoming v. Babbitt* 2000). After the appeal was denied, the wolves were released. In 1995, there were already six wolf packs in northwest Montana and in the following two years thirty-one wolves were introduced to the Yellowstone National Park region and thirty-five wolves were released in the central Idaho region (USFWS 2011, 5).

### *Recovery*

By 1999 the gray wolf population had met the recovery goals previously determined by the FWS, the third year in a row with over twenty reproducing wolf packs residing in the Northern Rockies

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(Fischer 1995, 12). In 2003, FWS issued a Final Rule which created a distinct population segment (DPS) apart from the other areas originally outlined in the environmental impact statement. The newly categorized DPS was then downlisted in classification from endangered to threatened (Federal Register 2003, 15804). Environmental groups immediately brought suit against the Final Rule claiming it violated the ESA and FWS policy, largely due to improper population assessments and classification procedures (*Def. v Hall* 2011). The Court granted the plaintiff's injunctions and the FWS withdrew its Final Rule of 2003. In 2005, the FWS brought forth a new Rule, (10(j)) which was a revision of the original 1994 10(j) rule. Under the new rule, States that possessed approved management plans could petition the FWS for "lead management authority" to deal with its respective resident wolf population (Perry 2012, 450). In February of 2008, a Final Rule by the FWS effectively delisted the DPS wolves claiming that "...the wolf population in the Northern Rockies has far exceeded its recovery goal". Idaho, Montana and Wyoming all proposed fall hunting and winter trapping seasons for 2008 (Conservation Northwest n.d.). Environmental groups, however, received another injunction after citing, among other things, the questionable nature of the Wyoming Management Plan and the lack of scientific data supporting the separation of subpopulations (Perry 2012, 450). The FWS attempted to transfer full management authority to Montana, Idaho and Tribal authorities in 2009, with yet another Final Rule calling for the delisting of the gray wolf. Again, the Final Rule was successfully contested in Court and an injunction was issued. (*Defenders of Wildlife v. Salazar* 2010).

*The Impact*

While federal agencies set about outlining the conservation management strategies for the gray wolf, the state and local authorities were most often responsible for implementing and enforcing the rules, as well as dealing with the public. In 2003, in response to the first Final Rule by the FWS, the Montana Legislature passed a law requiring the Montana Department of Fish, Wildlife and Parks to manage large predators, including wolves, with the primary goals of protecting humans, livestock and pets and the citizens' "opportunity" to hunt large game species (Montana Cattlemen's Association n.d.). In 2005, after the amendment to 10(j), the State and Tribal Authorities of Montana became legally responsible for wolf management. Both were already under criticism for inadequately notifying counties and livestock owners of the location of wolves. The Montana Department of Fish, Wildlife, and Parks was facing increasing pressure to ensure at least one wolf in each pack was collared and to provide day to day tracking information to the public as a means of controlling livestock losses (Montana Cattlemen's Association n.d.).

According to the USDA Wildlife Services (WS), from 1995 to 2007 298 cattle, 46 sheep, 13 llamas, 24 goats, and 7 horses were confirmed kills of wolves in the State of Montana, while in Idaho confirmed losses were rare. However, confirmed losses may be only a fraction of actual wolf kills (Montana Fish, Wildlife & Parks. "Wolves & Livestock" n.d.). A total of 328 wolves were killed in Montana in response to livestock predation during that time period, as allowed by the EIS. Meanwhile, several non-lethal deterrents were also employed by agencies and livestock owners such as electric fencing, guarding/herding animals, night pens, and light/siren warning devices (Montana Fish, Wildlife & Parks "Wolves & Livestock" n.d.).

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According to the Montana Fish, Wildlife and Parks Service, most packs routinely encountered but rarely attacked livestock. Research has documented that some packs have coexisted with livestock for periods 12 years or more and rarely attacked, while other packs frequently predate them, leading some to conclude that preying on livestock is a learned behavior, not an innate one (Montana Fish, Wildlife & Parks “Wolves & Livestock” n.d.).

From 1989-2001, according to the Rocky Mountain Wolf Recovery 2010 Interagency Annual Report, wolves were relocated 117 times in Northwest Montana (USFWS 2011). This includes the relocation of 10 pups from a pack that had repeatedly preyed on livestock (USFWS 2011).

### **The Punctuated Equilibrium Model**

The phrase punctuated equilibrium was originally coined by Niles Eldredge and Stephen Jay Gould, paleontologists who opposed the Darwinian model of gradualism that was the widely accepted theory throughout much of the twentieth century. They illustrated how species, after existing without any significant changes for long periods of time, experienced sudden and dramatic shifts which led to either extinction, speciation or radical transformation (Robinson 2006, 136).

Created by Frank Baumgartner and Bryan Jones, the punctuated equilibrium model (PE) of policy change was first presented in 1993. It seeks to explain patterns of incremental change as well as moments of policy innovation. Not a snap shot model, PE examines a policy over decades in order to identify the indicators



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that precede significant change. In this instance, the PE model reveals the factors that have resulted in the unprotected status of the gray wolf in Idaho and Montana, as well as those that render the future of a number of environmental, conservation and wildlife programs uncertain.

The model focuses on the relationships between issue definition and agenda setting, within the context of multilayered political institutions and the limited potential of decision makers to fully comprehend each issue at hand. Indeed, Baumgartner and Jones consider the bounded rationality of decision makers to be paramount in the policy making process (True, Jones, Baumgartner 2006, 156). The policy making trends of political sub-systems are also analyzed by the model. These sub-systems or “policy monopolies” are often comprised of smaller groups of knowledgeable decision makers who typically determine their stance based on a firm grasp of their issue. The simultaneous “parallel processing” of a wide range of issues is achieved as these specialized policy monopolies each address their respective issues, a political process which typically results in incremental policy changes. By contrast, when various issues reach the macropolitical stage (i.e., Congress as a whole and /or the President) and decision makers consider each one in turn, “serial processing” becomes the norm (True, Jones, Baumgartner 2006, 159). The PE theory contends that punctuated, or non-incremental, policy formation can result from a dynamic that occurs when the policies generated by the parallel processing capabilities of sub-systems are subjected to the serial processing of macropolitical institutions, particularly if an issue is the focus of enough public attention to prompt action. This phenomenon is considered ‘mobilization’ and a primary indicator of an impending policy shift (True, Jones, Baumgartner 2006, 157, 159). Punctuated change to a long standing

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policy may also occur as sets of new actors are introduced and/or when new kinds of information challenge the bounded rationality of macropolitical decision makers.

### **2009 – Now**

The previous sections were organized in such a way to provide historical context regarding the gray wolf, its status on the ESA, the management of its reintroduction to the Northern Rocky Mountains, and the impact wolf populations had on local residents, all in an effort to lay the foundation for the events of the last four years. Despite the controversy over the reintroduction and management of the gray wolf, their status on the ESA seemed fairly secure, even after several rounds of disputation. The policy playing field, however, was about to change, the result of unexpected and devastating economic events.

The crash on Wall Street, hitting a low in September of 2008, resulted in the stock market dropping half of its value in 18 months, the steepest decline in history (Amadeo 2012). The resulting panic led to massive sell offs, layoffs and desperate attempts by the Federal Reserve, law makers and President Obama to prevent the U.S. economy from collapsing all together. Unemployment rates spiked from 6.1% in September of 2008 to 10% in just thirteen months, and home foreclosures hit a new record high at 2.82 million (Weller 2008; BLS 2012, 2; Kerch 2010). These factors culminated in a dramatically different political climate and constituted a shift in priorities for many involved in both the state and federal levels of government.

Since 2008, federal budget cuts have had a significant impact on the Environmental Protection Agency, the USDA and the Fish and

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Wildlife Service despite the fact that federal spending on all land, water, ocean and wildlife programs comprise only approximately one percent of the federal budget (Defenders of Wildlife n.d.). One program sponsored by the FWS that has been hit hard is the Cooperative Endangered Species Fund that provides grants to states to conserve the species protected by the ESA on non-federal lands. Since 2010, its funding has been cut by 44 percent (Defenders of Wildlife n.d.). In 2010, according to Rocky Mountain Wolf Recovery Report, Federal agencies spent \$4,566,000 on wolf management (USFWS 2011, 5).

As mentioned earlier in the text, wolves in Montana and Idaho were delisted in 2009 by the FWS but an appeal reinstated them. However, this ruling was successfully challenged in a suit filed by the State of Montana and other groups, and gray wolf hunts were allowed to continue in the two states (*Def. v USFWS* 2011). Then in August of 2010, Judge Molloy again ruled to return the gray wolf to the Endangered Species List (*Def. v USFWS* 2011).

In March of 2011, Judge Molloy denied a proposed settlement agreement between the FWS and 10 environmental conservation groups. The agreement stipulated that the wolves in Montana and Idaho would be delisted, while wolves in other states would enjoy continued protection under the ESA. The Judge ruled that putting only a portion of an endangered species under state management was beyond the court's authority (*Def. v USFWS* 2011). Once again all gray wolves were protected under the ESA.

In April, a very brief provision removing the gray wolves in Montana and Idaho from ESA protection was attached to a must pass budget appropriations bill by Senator Jon Tester of Montana and

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Representative Mike Simpson of Idaho (Knickerbocker 2011). Dubbed the “wolf rider”, it was the first time Congress had removed an animal from the Endangered Species List.<sup>2</sup>

Along with the wolf rider there were “a myriad (of) restrictions and budget cuts for environmental initiatives in the proposed budget”, among them “...\$49 million from programs relating to climate change, \$438 million from programs supporting energy efficiency and renewable energy, \$638 million from environmental cleanup efforts by the Defense Department and \$997 million from revolving funds through which the Environmental Protection Agency provides money for local water treatment and pollution cleanup programs” (Barringer 2011). Cuts of \$800 million from conservation programs and \$350 million from the Environmental Quality Incentives Programs managed by the Department of Agriculture were also called for in the FY 2011 budget (Barringer 2011).

In 2012, a spending bill in the House of Representative proposed a 17% cut to the EPA’s budget. A reduction of \$1.4 billion, it would be the smallest EPA budget since 1998 (Chu 2012). The bill would have cut the administrator’s office by 30% and the congressional affairs office by 50%, and it contained numerous riders that would have prevented environmental rules and limited the reach of Clean Water Act regulations (Wasson 2012). The bill also blocked funding for tougher regulations that would protect streams threatened by mountaintop mining in the Appalachians. At the time,

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<sup>2</sup> Policy riders are directives attached to appropriation bills. They are often used to bypass the traditional policy making process, particularly when a gridlock or stalemate has occurred. As applied to environmental policy issues, see Klyza and Sousa (2008, 63-97).

President Obama had pledged to veto it because it deviated from the August debt-ceiling agreement with the White House (Wasson 2012).

On March 1, 2013, EPA's annual budget was cut by \$472 million. Although the cuts were less than expected, key programs took big hits. One of largest cuts was to the environmental and programs management account which funds many of EPA's air, waste, toxics, climate and other regulatory programs (Lacey 2013).

Many state legislatures have proposed and/or passed 2013 budget bills that feature significant cuts to conservation and environmental programs. In North Carolina, Governor McCrory's proposed budget cuts the state's Clean Water Management Trust Fund by \$4 million. If passed the annual budget would be \$6.75 million. At one time the budget was \$100 million. Other proposed cuts include \$12 million from the state Parks and Recreation Trust Fund and over \$5 million from the Natural Heritage Trust Fund (Henderson 2013).

In Alabama, a proposed cut would amount to a \$20 million reduction from the Department of Conservation and Natural Resources' annual budget since 2010. This budget bill has already passed the Senate (Doyle 2013). It is important to note here that out of all the states, Alabama ranks third, behind Hawaii and California, for the most endangered or threatened species currently protected under the ESA.

Before the current economic decline, the future of the gray wolf in the Northern Rocky Mountains appeared to be fairly secure, despite repeated attempts to delist it. Would the wolf rider have passed if it had not been attached to such a critical budget bill? It's doubtful, especially considering the defeat of several other bills

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calling for delisting of the gray wolves. In total, 23 bills reducing ESA protections were proposed in 2011, only the wolf rider passed (Perry 2012, 441).

### **Conclusion**

The House's 2013 budget resolution states in the Energy function summary that "regulations have cost people and small businesses some \$1.75 trillion per year...including \$281 billion for environmental regulations that disproportionately hit small businesses" and that "burdensome and ineffective regulations have driven up the prices of many products and services". It goes on to say that "The President has also stifled domestic energy production by blocking or delaying production both onshore and offshore, destroying jobs and idling American energy sources." This sentiment is repeated in the Natural Resources and Environmental function summary, followed by an aspiration of "unlocking domestic energy supplies in a safe, environmentally responsible manner." This resolution includes even deeper cuts to conservation and environmental programs, and calls for several programs to be discontinued altogether (U.S. Congress House 2013, 59, 63).

A main focus of the PE model is the 'policy image' and how labeling can influence the health of a policy. By framing this issue as "environmental regulation versus jobs and economic stability" the budget committee seemingly justifies the crippling cuts and consolidations requested in their resolution. Is this deliberate issue framing preying on the bounded rationality of some who occupy the seats in the House and Senate? Baumgartner and Jones claim that punctuated dynamics result from an abundance of new information in a short period of time, and now that legislators are forced to make

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increasingly difficult and influential decisions regarding areas outside their expertise, many may choose to accept critical information at face value, without thorough analysis, when determining how to vote.

While the delisting of the gray wolf is a serious issue, perhaps the mechanism by which it, and the other subsequent cuts occurred should be of greater concern. Over the last three years these cuts and the restrictions impacting the enforcement of current regulations, along with the preponderance of proposals which would, according to one Representative on the Appropriations Committee, effectively "...hamstring the EPA from enforcing environmental rules" (Chu 2012). It now appears we have entered a new era of environmental policymaking, one that (if allowed to continue) will threaten not only the future of wildlife and natural resource conservation programs, but the health and safety of the American public now, and for generations to come.

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