

THE COMPLEXITIES OF STATE MANAGEMENT OF WILDLIFE UNDER FEDERAL LAWS

Presented to:

Conference of Western Attorneys General

August 3-5, 2009
Sun Valley, Idaho

By:

Randy Budge
Idaho Fish and Game Commissioner
Racine, Olson, Nye, Budge & Bailey, Chtd.
201 E. Center Street
P.O. Box 1391
Pocatello, Idaho 83204

Telephone: (208) 232-6101
Email: rcb@racinelaw.net

THE COMPLEXITIES OF STATE MANAGEMENT OF WILDLIFE UNDER FEDERAL LAWS

By
Randy Budge
Idaho Fish and Game Commissioner

INTRODUCTION

By far the greatest conservationist of our times was President Theodore Roosevelt, who was driven by a passion to protect wildlife for future generations:

“Wild beasts and birds are by right not the property of the people who are alive today, but the property of the unknown generations whose belongings we have not right to squander.”

In an incredible feat to restore dwindling wildlife and protect wild lands in the early 1900s, Roosevelt was instrumental in bringing under federal protection 230 million acres in the form of 150 national forests, 50 national wildlife refuges, 5 national parks and 18 national monuments. This amounted to an incredible 84,000 acres for each day he was in office.

Most wildlife managers, sportsmen, conservationists and environmentalists would agree with Henry David Thoreau's belief that “[i]n wildness is the preservation of the world.” Aldo Leopold, the father of the modern wildlife movement, in his classic *A Sand County Almanac* first published in 1949, posed questions that remain our challenges today:

“There are some who can live without wild things and some who cannot. Like winds and sunsets, wild things were taken for granted until progress began to do away with them. Now we face the question of whether a “higher standard of living” is worth the cost of things natural, wild and free. For us in the minority, the opportunity to see geese is more important than television, and the chance to find the flower is a right as inalienable as free speech.”

A tension has always existed between the rights of the states to manage the wildlife within their borders and the right of the federal government to restrict the taking of wildlife or to otherwise manage wildlife in the national interest. The history of federal and state wildlife legislation exhibits an intricate dance over jurisdiction and the right to manage wildlife.

State wildlife laws are based on the principle states own the wildlife within their borders to be held “in trust” for their citizens. Accordingly, the states have primarily shouldered the responsibility to manage wildlife, and have a proven track record of success. In my opinion, the states are far better suited to manage wildlife within their borders than the lumbering and detached federal bureaucracy because the states are better able to monitor and respond to wildlife

needs and threats, and to establish cooperation with landowners and other agencies while recognizing the social values of the residents that regularly interact with wildlife.

Federal wildlife laws generally preempt state laws only when necessary to manage or conserve wildlife species that occupy multiple states. Preemption of state law is an area of considerable complexity to be addressed by a later speaker, so further discussion here is omitted. It should be noted, however, that state laws often expressly include or complement Federal laws such as the Endangered Species Act, whose list of endangered species is usually adopted in full by states in their own legislation of endangered and threatened species.

Today in the United States and Canada, we inherit a system of wildlife conservation known as the "North American Wildlife Conservation Model" which is unique and unequaled throughout the world. This model has rescued species from certain oblivion while perpetuating human traditions in a natural world that is both sustaining and sustainable, despite population growth, loss of habitat, and environmental threats.

Early Federal laws had substantial positive impact in protecting and preserving wildlife. At the same time, the states developed effective management agencies which are now well-established and have proven their ability to effectively manage and perpetuate wildlife. Unfortunately, the states' right and authority to manage wildlife within their borders to protect and further traditional hunting and fishing heritage as well as viewing opportunities is now under siege from more recent and complex environmental laws that benefit some wildlife species while injuring others. In particular, the Endangered Species Act, Marine Mammal Protection Act, Clean Water Act, and National Forest Management Act are now often utilized to obstruct the efforts of state wildlife agencies to manage wildlife under state law. Organizations such as Defenders of Wildlife, PETA, the Sierra Club, and the Wilderness Society rely upon these laws to organize and energize membership and to raise funds, spurring an unprecedented growth in environmental litigation. These actions often aim to further anti-hunting agendas by obstructing the efforts of state wildlife management agencies to protect, manage and perpetuate wildlife to provide hunting, fishing and trapping opportunities according to state law mandates.

While early Federal wildlife laws were short and simple, today we live in a tangle of federal wildlife and environmental laws, regulations and court decisions that surround every aspect of wildlife management. Seemingly endless legal challenges under federal environmental laws deplete limited resources of state wildlife managers, impairing and impeding their ability to manage state wildlife resources.

Idaho's inability to manage wolf populations is a case in point. Wolves introduced in Idaho in 1995 by Federal agencies under the Endangered Species Act over strong objections of Idaho citizens are now at least 5 and more likely 10 times greater than the minimum federal recovery levels, which were met in 2002. Notwithstanding, the State's efforts to manage wolves successfully, like it has with ten big game species including bears and mountain lions for decades, continue to be prevented by ongoing litigation by anti-hunting groups utilizing Federal environmental laws. In the meantime, wolf depredation on livestock and dogs continues to

escalate as their numbers continue to grow at a 21% rate. Wolf predation is now a major cause of dramatic reductions in populations of elk, deer and moose in a growing number of hunting units.

MAN'S RELATIONSHIP WITH WILDLIFE

Man's relationship with wildlife life is of historic origin. The Book of Genesis sets forth the Christian and Jewish tradition of man's dominion over wildlife:

“And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowls of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.”

The Jewish faith abhorred the killing of animals for sport, and passed laws prohibiting cruelty to them and indicating a concern for their well being. Similarly, Greek and Egyptian cultures often held wild animals in revered position.

During the Roman Empire, it was believed that animals were created for the use and pleasure of man. While in their natural state, wild animals were treated like the air and the oceans, in that they were property of no one. Landowners were not considered the owners of the wildlife on their property; rather, wildlife was viewed as common property. Anyone who could catch or kill a wild animal gained its ownership.

In Europe, wildlife was considered to be the property of the King. Accordingly, only nobility and the very wealthy were allowed to hunt, which may also have been a means of keeping weapons out of the hands of unhappy peasants.

In this hemisphere, Native Americans were heavily dependent upon wildlife, and developed over centuries an elaborate system of traditions, culture and religion that reflected respect and often sacred status for many wild animals. Native American tribes still strive, yet struggle, to maintain these traditions.

As North American settlers made their way west through the nineteenth century, wildlife populations dwindled from over-hunting and habitat loss. Many species, including buffalo, elk, and pronghorn, went from countless numbers to a few thousand by the close of the nineteenth century. Wildlife protection laws were non-existent, and some species were decimated to feed growing populations of settlers, miners and loggers, and for fashion.

Sport hunters initially came to the rescue of American wildlife. Conservation-minded hunters and anglers such as Theodore Roosevelt pushed for hunting regulations, realizing the need to set limits on the take of wildlife in order to protect rapidly disappearing species. Early sportsmen championed two basic principles. First, that fish and wildlife belong to all North American citizens. Second, that wildlife should be managed in such a way that their populations will be sustained forever. Their efforts are the backbone of what became known as the North American Wildlife Conservation Model.

NORTH AMERICAN WILDLIFE CONSERVATION MODEL

In the late nineteenth century, hunters and anglers realized the need to set limits in order to protect rapidly disappearing wildlife, and assumed responsibility for managing wildlife habitats. Hunters and anglers were among the first to crusade for wildlife protection. The North American Wildlife Conservation Model was based on the basic principles that fish and wildlife belonged to all North American citizens and should be managed to sustain their populations forever. These principles are explained through a set of guidelines known as the "Seven Sisters for Conservation," which hold the key to wildlife conservation as we know it today. These are the Seven Sisters:

1. The Public Trust. In the United States and Canada, wildlife is not owned by individuals. Instead, state and federal governments are responsible to manage all wildlife, as well as their habitats on public lands, in trust for the public. This public trust gives all citizens the equal opportunity to hunt, fish and view wildlife resources. In 1842 the United States Supreme Court set the legal precedent for supporting the American ideal that wildlife belongs to everyone. Since that time, all legislation drafted around issues of wildlife ownership has reflected the "public trust doctrine," whether administered by federal or state governments.
2. Prohibition of Commerce in Wildlife. Buying and selling meat, hides and feathers and other wild animal parts was a huge business in the latter half of the 1800s. A number of laws, including the Lacey Act, were enacted at the turn of the twentieth century that restricted market hunting and the buying and selling of wild animals. These laws allowed many threatened wildlife species to rebound and thrive.
3. Democratic Rule of Law. Despite the drive to eliminate wildlife markets, there was no intention to eliminate the use of wildlife for personal purposes. People still wanted to hunt, fish and enjoy wild places, and used the democratic process to establish laws that regulated those activities.
4. Hunting Opportunity for All. All citizens have the right to legally hunt and fish on public lands in North America, regardless of social status, race, creed, religion or gender. Before Theodore Roosevelt became president, he helped found the Boone and Crockett Club. The Club's "Fair Chase Statement" was the first document outlining a code of conduct and ethics for hunters and anglers and became the cornerstone of game laws.
5. Non-Frivolous Use. Laws were enacted that preclude the casual killing of wildlife for antlers, horns or feathers. The lawful access to wildlife was defined to mean killing for food, fur, self-defense and property protection.
6. International Resources. The boundaries of states and nations are of little relevance to wildlife and fish. Wildlife conservation laws and policies were enacted to ensure that wildlife can safely cross borders and that no country or state can take more than its share of a common resource. A famous effect example is the Migratory Bird Treaty Act of 1918, which made it illegal to capture or kill migratory birds, except as allowed by

specific hunting regulations. Treaties now exist between the United States, Canada, Mexico and Russia to protect birds migrating between these countries. The Act restored and protected migrating water fowl and other birds that travel great distances across several countries between their wintering and nesting areas.

7. Scientific Management. Scientific research was deemed essential to manage and sustain wildlife populations and their habitats. Interest in science and natural history is deeply ingrained in North American society, a fact reflected by the emphasis placed on recording wildlife habitats and diversity by almost every major expedition charged with mapping the continent. Hunters and anglers are by habit and inclination naturalists. Science was a crucial requirement pushed to reality by the American Fisheries Society (1870) and the Boone and Crockett Club (1887).

The "Seven Sisters" restored decimated game populations and brought back many of our best known wildlife species, such as buffalo, elk and pronghorn from the edge of annihilation. They also benefit a wide array of other species that share the habitats and landscapes of hunted wildlife. Preserved eco-systems for all wild nature is an aspect of the Model that leads to critically important partnerships with private landowners. The most notable example in recent years is the USDA's Conservation Reserve Program. The Model also spawned a broad collection of non-profit conservation organizations supported by hunters and anglers (and others) which engage in political action and raise money to preserve habitat and restore wildlife.

Hunting and fishing is big business. Currently, in the United States there are nearly 34 million anglers and 13 million hunters, who between them disburse nearly \$70 billion annually into the economy and support nearly 1.5 million jobs.

FEDERAL WILDLIFE LAW

Federal wildlife law dates from the early twentieth century to the present and is an evolutionary work in progress. What began as simple and straightforward legislation has become an incredibly complex entanglement of statutes, rules, regulations and case law.

Statutes for the management of forests, mining, grazing and water resources date back to the nineteenth century. The current tangle of statutes, regulations and court decisions surround every aspect of wildlife management. Generally, state law governs unless preempted by a Federal law. Federal law may be more restrictive but not more permissive than state law, except where necessary to protect federal property.

Up until the early twentieth century, the American approach to wildlife regulation was that those who capture wildlife possess or own it. There was a prevailing belief that the land could provide unlimited natural resources, and wildlife was included in this American perception of plenty. Wildlife was freely hunted and trapped, primarily for subsistence and commercial purposes, rather than enjoyed for recreation purposes as it is today. What few early game laws existed were mostly ignored and seldom enforced. As a result, wildlife populations in American had severely

declined by the end of the nineteenth century. At the turn of the twentieth century, President Theodore Roosevelt brought the Progressive Era and the ideals of the conservation of nature.

Federal restrictions on taking wildlife began in earnest with the Lacey Act¹ of 1900 which made illegal the interstate transportation and sale of wildlife. The Migratory Bird Treaty Act² of 1918 prohibited the taking of migratory birds except under federal guidelines and provided strict civil and criminal penalties.

Programs to provide important Federal monetary support for state management of fish and wildlife began in 1937 with the enactment of the Federal Aid and Wildlife Restoration Act³ (a/k/a "Pittman-Robertson Act") which imposed a federal excise tax on hunting equipment and firearms. These funds are apportioned to the states for state management and restoration of fish and wildlife. This was followed by the Federal Aid in Sport Fish Restoration Act⁴ (a/k/a "Dingell-Johnson Act") in 1950 which imposed an excise tax on fishing equipment also apportioned to the states for fish resources and habitats. These tax revenues provide approximately sixty-five percent of all state fish and wildlife agency budgets.

The Migratory Bird Hunting and Conservation Stamp Act⁵ (a/k/a "Duck Stamp Act") enacted in 1934 is the first major federal legislation to provide funds specifically for a wildlife conservation purpose. In contrast to statutes protecting wildlife, the Animal Damage Control Act⁶ was passed in 1931 in part to assist with the eradication of wildlife that threatened livestock, grazing and agriculture on western federal and private lands. The Bald Eagle Protection Act⁷ of 1940 was the first federal statute to prohibit the taking, possession of, or commerce in a particular species of wildlife. In 1934 the Taylor Grazing Act⁸ was enacted to control over-grazing and over-production on public lands by establishing grazing districts and a grazing permit system. That Act contemplated the conservation of wildlife, as the Secretary was directed to consult with state agencies engaged in conservation or propagation of wildlife.

The 1960s marked the beginning of a 30-year transition into the modern era of wildlife and environmental regulation. The term "environment" was relatively unknown before the 1960s. The Clean Air Act Amendments of 1963 began the process of establishing national standards for air pollution control. The Water Quality Act of 1965 required that states set water quality standards. The Wilderness Act⁹ was enacted in 1964, setting aside specific areas for preservation in their natural state. The Wild and Scenic Rivers Act¹⁰ and the National Trails System Act¹¹

¹ 16 U.S.C. 3371, et. seq.

² 16 U.S.C. 703-712.

³ 16 U.S.C. 669-669I.

⁴ 16 U.S.C. 777-777L.

⁵ 16 U.S.C. 718-718J.

⁶ 16 U.S.C. 426-426C.

⁷ 16 U.S.C. 668-668d.

⁸ 43 U.S.C. 315-316.

⁹ 16 U.S.C. 1131-1136.

¹⁰ 16 U.S.C. 1271-1287.

¹¹ 16 U.S.C. 1241-1251.

enacted in 1968 provided a basis for setting aside additional public land for scenic and recreational use, and simultaneously protecting wildlife habitat.

The Administrative Procedure Act was amended to its modern form in 1966, based upon the earlier Act of 1946, developing a mandate for agency administrative procedures that would have an enormous impact on federal actions affecting wildlife.

Perhaps to the surprise of Republicans and Democrats alike, the period during which Richard Nixon was president (1969-1974) brought about passage of some of the most comprehensive environmental laws in American history. During that time, thirty-four major environmental laws were passed. Among those, the National Environmental Policy Act¹² (1969) requires federal agency consideration of impacts on the whole environment before major federal action is undertaken. The Act declared as Federal policy the use of all practicable means to administer Federal programs in the most environmentally sound fashion and allows citizen lawsuits against Federal agencies that violate the Act. The Marine Mammal Protection Act¹³ (1972) prohibits the taking or importation of marine mammals without a permit. The Federal Endangered Species Act¹⁴ (1973) replaced weaker legislation and is considered “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” In passing the Endangered Species Act, Congress declared that “species of fish, wildlife and plants are of aesthetic, ecological, educational, historical, recreational and scientific value”¹⁵

In addition, the Environmental Protection Agency was established in 1970. The National Forest Management Act of 1976 (NFMA)¹⁶ the role of the Forest Service and provides for protection of wildlife and plant diversity. The Federal Land Policy Management Act of 1976 (FLPMA)¹⁷ is currently the organic act for the Bureau of Land Management which includes management of public lands for multiple use, including protection for fish and wildlife habitat.

This environmental legislation spawned the growth in environmental litigation.

The Fish and Wildlife Conservation Act passed in 1980¹⁸ (the “Non-Game Act”) was to inject non-game wildlife into state conservation management. The Non-Game Act has suffered from a lack of funding for state programs, largely because those who hunt and fish pay the fees that support wildlife agencies, while those who view and enjoy non-game wildlife typically do not.

Since 1990, over 40 federal laws have been enacted dealing with the environment, fisheries, wildlife or federal land management. The 1990s also brought about a growing awareness of the extensive economic and ecological damage being caused by exotic species.

¹² 42 U.S.C. 4321-4347.

¹³ 16 U.S.C. 1361-1421H.

¹⁴ 16 U.S.C. 1531-1544.

¹⁵ 16 U.S.C. 1531(a)(3).

¹⁶ 16 U.S.C. 1600-1614.

¹⁷ 43 U.S.C. 1701-1782.

¹⁸ 16 U.S.C. 2901-2911.

In sum, Federal environmental laws have become an important, permanent and complex area of legal protection in the United States which continues to complicate and in many instances impair the states' ability to manage wildlife. Federal laws and federal agencies often erode and undermine state authority to manage wildlife, resulting in a corresponding erosion of public confidence.

When the Federal government embarks upon very unpopular programs, such as the reintroduction of wolves or grizzly bears, it promises the affected states that if they cooperate then state authority over management will be restored. Such was the case with wolves in Idaho and grizzly bears in Wyoming. Instead, through litigation and federal agency policy slip, the Federal government reneged on its promise to restore state management. This has further inflamed local opposition and widened the growing schism between the state and Federal governments. This is worsened by a general Federal arrogance that scientists far removed from the local impacts know better than local scientists and wildlife biologists with first-hand experience. Too often, there is a very mistaken belief among Federal officials that the state's scientists and wildlife biologists are simple foot soldiers of local opposition.

HOW NOT TO MANAGE WOLVES IN IDAHO

The remarkable recovery of wolves should be heralded as an incredible Endangered Species Act (ESA) success story. Instead it has become a lightning rod of discontent, distrust and controversy between the states and the federal government, one that continues to be mired in ongoing litigation.

Nothing has evoked more passion and controversy in Idaho than the federal introduction of unwanted Canadian grey wolves into Idaho as an "experimental and nonessential species" under the ESA. Wolves once ranged throughout much of North America, but were eliminated in the lower 48 states by the early 1900s by poisoning and bounty hunters. Notwithstanding, there remains a very large population of 60-70,000 wolves in North America, with more than 22,000 wolves in Alaska and Canada.

In 1974, wolves were added to the Endangered Species List in the lower 48. In January 1995, the U.S. Fish & Wildlife Service (USFWS) introduced wolves into a three state recovery area of Idaho, Wyoming and Montana under the provisions of 10(j) of the ESA. The goal was to re-establish 300 wolves and 30 breeding pairs well disbursed in the recovery areas. In 1995 and 1996 sixty-six wolves were trapped in Southwest Canada, with thirty-six released into central Idaho and the rest in Wyoming and Montana. All introduced wolves were radio collared and were monitored after release by the Nez Perce Tribe under contract with the USFWS. Wolves have since reproduced rapidly, with an annual growth rate of 20-25%, even after mortality from natural diseases, vehicles, illegal kills, etc. By 2002 the Federal Biological Recovery Goal of 30 breeding pairs of wolves well distributed throughout Idaho, Montana and Wyoming for three consecutive years had been reached.

By the end of 2008, Idaho's wolf population alone was documented to contain a minimum of 846 wolves in 88 packs—nearly three times the minimum recovery level for all three states and over

eight times the recovery level for Idaho. Documented wolves are considered a very conservative number with the current total in Idaho is estimated to be as high 1,500. The attached map reflects extensive wolf activity throughout central and northern Idaho.

In January of 2006, the Secretary of the Department of Interior and the Governor of Idaho signed a Memorandum of Agreement which transferred most wolf management responsibilities to the State of Idaho. The Idaho Department of Fish and Game is the primary state agency responsible for carrying out wolf management activities in Idaho. Wolf conservation and management responsibilities are divided between the State of Idaho and the Nez Perce Tribe.

In March of 2008—some six years after the recovery goal was met—USFWS finally de-listed wolves from the Endangered Species List. A lawsuit challenging the listing was immediately filed by Defenders of Wildlife and other anti-hunting groups in the Federal District Court in Missoula, Montana. While the Idaho and Montana wolf management plans were approved, the Court granted the plaintiffs' request for a preliminary injunction in July finding fault with Wyoming's management plan and reinstating ESA protections which precluded state management and scheduled hunting seasons. As a result, the USFWS vacated the de-listing rule and returning wolves to the Endangered Species List.

The Idaho wolf population has continued to expand both in numbers and in distribution. Wolves are now not only well-distributed throughout the recovery area, but exist in high numbers from the Utah border on the south to the Arctic Circle on the north. With growing wolf populations have come an increasing conflict level with livestock. Wolf depredation on livestock continues to escalate as shown in Table 1 attached. In 2008 alone, 104 cattle, 215 sheep, 14 dogs and one horse foal were classified by USFWS as confirmed wolf kills, with an additional 32 cattle, 46 sheep and 1 dog considered probable kills by wolves. During 2008, 108 wolves were removed by agencies or producers to manage livestock depredation problems.

Wolf predation on elk, deer and moose has had a substantial adverse affect on populations in certain areas, particularly in northern and central Idaho. Studies in Idaho confirm that each wolf eats an average of 16.9 elk per year. For example, in the Lolo Zone wolves are the primary proximate cause of elk mortality killing 6% of radio-collared bulls, 20% of the collared adult females and up to 64% of the ratio-collared calves. IDFG continues its efforts to measure the effect of wolf predation and habitat on elk and mule deer populations across Idaho. Wolves are monitored intensively through capturing, radio collaring and aerial survey.

Recent studies by Montana State University funded by the National Science Foundation also establish that wolves in the Greater Yellowstone Ecosystem have changed behavior and foraging habits of elk so much that herds are having fewer calves. During the winter all elk were shown to lose weight and essentially be starving. As a result of direct killing and reduced birth rates since wolves were introduced Yellowstone's elk population has declined from between 17,000 to 19,000 to roughly 6,000.

Wolf predation has prevented management objectives from being met and has necessitated reduced opportunities for hunters and negatively affected tag sales relied heavily upon by the

agency which now must increasingly use limited revenues to fund wolf monitoring, management and depredation efforts. After a 25% decline in nonresident tag sales in 2008 followed by a decline of 31% so far in 2009, an IDFG's survey reflected that wolves were the No. 1 reason why nonresident hunters will not be hunting in Idaho this season accounting for a loss of revenue of \$1 million. According to the USFWS, hunters in Idaho contribute \$441 million dollars a year to Idaho's economy.

Idaho's management plan will ensure that wolf populations will be maintained at 2005 population levels, a minimum of 518 wolves and 15 breeding pairs, although it is expected to take years to reach that level. The Idaho plan will maintain balanced wolf and prey populations, ensure genetic transfer among states through maintaining connectivity, and minimize conflict with humans and domestic animals. Secondly, the IDFG and hunter goal of maintaining harvest opportunity for wolves is an important component to maintaining a long-term viable wolf and ungulate populations. The plan calls for managing wolves similar to other big game predators such as black bears and mountain lions. Regulated harvests will provide the most effective tool for management of wolf populations and providing harvest opportunity. Harvest strategies for wolf hunting opportunities will include general hunts with quotas and stringent reporting. Harvestable surplus will be shared with the Nez Perce Tribe. However, experience with wolves in Alaska and Canada indicates that wolf hunting is very difficult with low success rates indicating that hunting alone will not likely achieve management goals.

To date Idaho's wolf program has been funded with congressional appropriations. However, federal funding is expected to decline or be eliminated after de-listing, leaving the State of Idaho with the financial burden.

On May 4, 2009, a new de-listing order was issued and wolf management in all of Idaho reverted to state management. However, Defenders of Wildlife and other anti-hunting groups again immediately filed lawsuits in federal court in Montana challenging the most-recent de-listing. It is anticipated that these groups will again seek injunctive relief to stop the de-listing and again preclude state management of wolves. Despite wolf populations having been fully recovered in Idaho since 2002, Idaho Fish and Game managers have still been stymied in their efforts to manage wolf populations. As a result, wolf populations continue to rapidly expand with a 21% growth rate, resulting in escalating wolf depredation on sheep, cattle, horses, dogs, elk, deer and moose, increasing wolf-human conflicts.

In sum, Federal law used to introduce wolf populations that Idaho did not want are now being relied upon by private litigants to continue to preclude state management of wolves to protect and provide a balance with previously established elk, deer and moose populations. In the meantime, Idaho's wolf populations continue to grow unchecked, with livestock predation on the increase and big game populations on the decline. All of this has understandably angered and frustrated state game managers and citizens.

BIG HORN SHEEP AND PELICANS

The introduction of big horn sheep is another prime example of Federal usurpation of state wildlife management. Local sheep ranchers who utilize the same habitat as big horn sheep cooperated with the reintroduction, asking only that they be allowed to continue with their historic sheep operations that in most cases have been in their families for generations. The Federal government agreed. However, the backtracking began immediately upon reintroduction, with the Federal officials who made the original commitment hiding behind the curtain while local sheep operators are thrown under the bus of Federal litigation, depriving their use of historic ranges that were to be cohabitated with the big horn sheep.

The Federal government's refusal to allow the state to manage pelicans that are protected under the Migratory Bird Act is yet another example. Pelican populations have exploded in southern Idaho, causing serious depredation of Bonneville cutthroat trout and Yellowstone cutthroat trout, both of which are listed as "Species of Concern" by the United States Fish and Wildlife Service. Prior to the pelican explosion, cutthroat trout numbers had increased significantly under very protective state regulations. Despite well-documented pelican depredation in critical cutthroat restoration areas, Idaho's Pelican Management Plan, relying primarily upon non-lethal oiling of eggs to reduce populations to former levels, was summarily rejected by the Federal government without scientific analysis, simply characterizing it as an "eradication plan".

CONCLUSION

Federal laws increasingly complicate and interfere with the rights and legal obligations of state wildlife management agencies to protect, preserve and perpetuate wildlife populations to provide hunting, fishing, trapping and viewing opportunities for their residents that chose to do so for recreational purposes. Hunters and anglers are primarily to credit for the restoration and protection of wildlife in North America by implementing the principles of the North American Wildlife Conservation Model and paying the associated state management costs through licenses and fees. This Model has rescued species from certain oblivion while perpetuating human traditions in a natural world that is both sustaining and sustainable, despite population growth, loss of habitat, and environmental threats. Yet, today these heritages and the states' ability to manage wildlife within their borders are increasingly under siege by litigants armed with complex Federal environmental laws used as both a shield and sword to further their anti-hunting preferences and other political agendas.

As the state's authority to manage wildlife continues to be impaired and replaced by the Federal government through Federal agency policy and litigation, public trust and confidence declines. We now have a growing crisis. If the Federal government cannot keep its commitments of returning to state management when reintroducing species under the ESA or other Federal laws are biologically recovered, there will be increasing resistance and perhaps open rebellion by effected citizens. An honorable government must be able to keep its promise that state control and management will be timely restored once biological recovery has been achieved. A dishonorable government that fails to keep its promises leaves state citizens feeling no obligation to abide by the law.

I fear that the absence of Federal de-listing of wolves and a return to state management as promised when the reintroduction occurred, will result in citizen self-help and no local prosecutorial support to ensure compliance with the Federal law. While the citizens of Idaho have been patient thus far in allowing the federal government to fulfill its promise, they cannot be expected to stand idly by forever when action is needed to protect revered populations of elk, deer and moose from excessive depredation. The states have decades of experience in successfully managing predatory mountain lions and bears and will do so with wolves if given the chance.

The states are best suited to manage fish and wildlife and know how to do so. Idaho manages 10 species of big game and to be able to continue to do so successfully wolves and grizzly bears but be added as 11 and 12. While the federal government certainly has a role to ensure a backstop should states succumb to local pressures, it cannot and will not be successful in protecting species by overriding and ignoring state wildlife agencies. In recovering endangered species, the states want and need a cooperative partnership with the Federal government, not a dictatorship.

Randy Budge currently serves on the Idaho Fish and Game Commission. He is an avid fly fisherman and hunter of upland and big game. Randy was raised on a cattle ranch along the Bear River in southeast Idaho. He received business, finance and economic degrees from Utah State in 1973 and received his Juris Doctorate Degree from the University of Idaho College of Law in 1976. Randy is a partner in the law firm of Racine, Olson, Nye, Budge & Bailey, Chartered, with offices in Pocatello, Boise and Idaho Falls. His areas of practice emphasize water law, real estate, business, estate planning and public utilities.

Table 1. Confirmed wolf depredations and wolf mortality in Idaho, Jan. 1, 2003 - June 30, 2009.

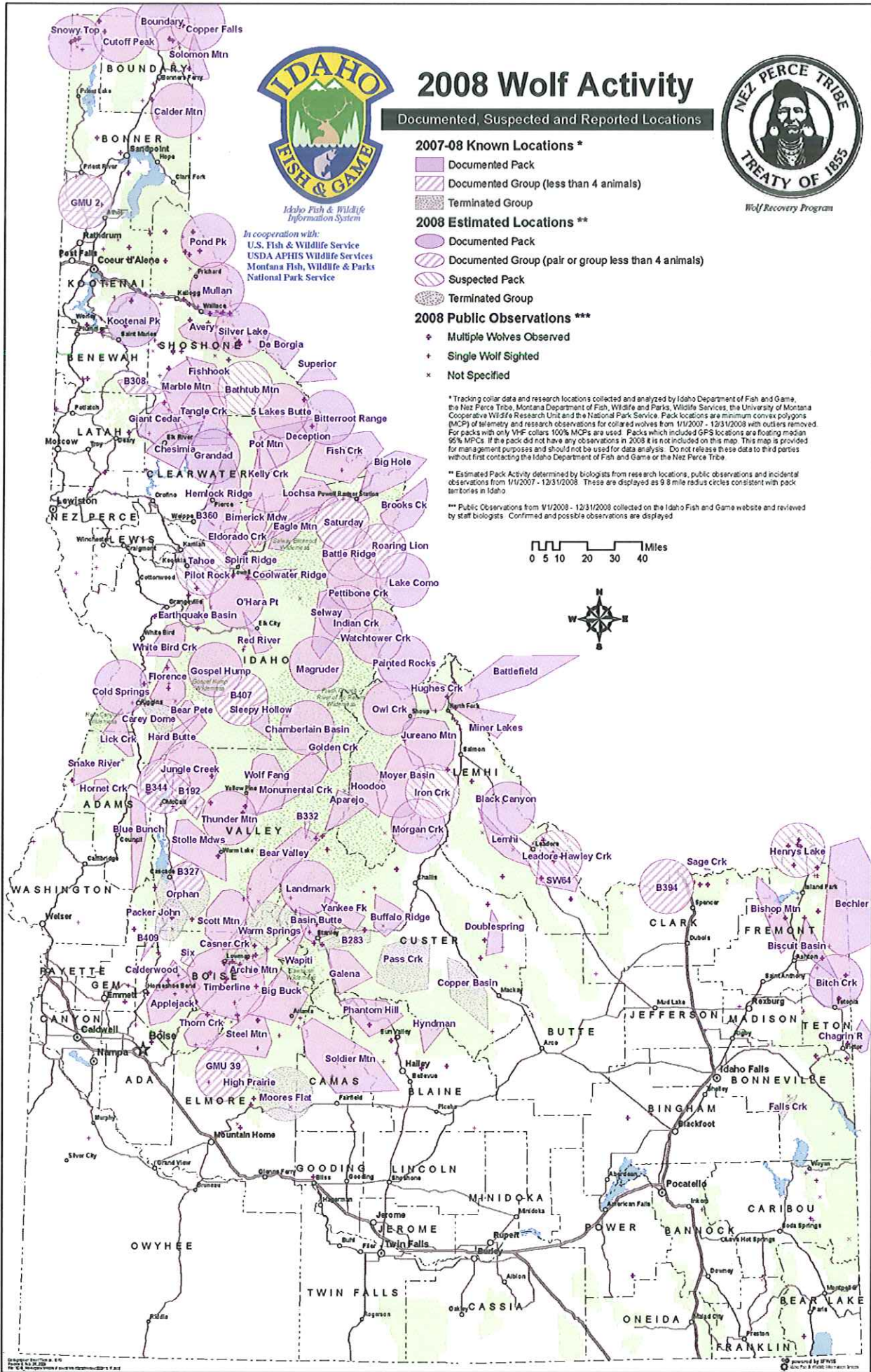
YEAR	Depredations ¹				Wolf Mortality			
	Cattle	Sheep	Dogs	Total	WS ²	ESA 10j / I.C. §36- 1107 ³	Other ⁴	Total
2003	7	130	3	140	7	0	8	15
2004	19	176	4	199	17	0	21	38
2005	29	166	12	207	24	3	16	43
2006	41	237	4	282	35	7	19	61
2007	57	211	10	278	43	7	27	77
2008	104	215	14	333	94	13	44	151
Jan 1 – Jun 30, 2009	40	69	4	113	30	4	19	53

¹ Includes confirmed wolf depredations resulting in death or injury.

² Authorized take by USDA Wildlife Services.

³ Authorized take under Section 10j of ESA; or legal take after delisting under Idaho Code §36-1107 for protection of stock and dogs under state law.

⁴ Includes known illegal killing of wolves and other misc. wolf mortality (including vehicle collisions, wolf-caused mortality, and other natural mortality).



2008 Wolf Activity

Documented, Suspected and Reported Locations

2007-08 Known Locations *

- Documented Pack
- Documented Group (less than 4 animals)
- Terminated Group

2008 Estimated Locations **

- Documented Pack
- Documented Group (pair or group less than 4 animals)
- Suspected Pack
- Terminated Group

2008 Public Observations ***

- Multiple Wolves Observed
- Single Wolf Sighted
- Not Specified

* Tracking collar 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, the University of Montana Cooperative Wildlife Research Unit and the National Park Service. Pack locations are minimum convex polygons (MCP) of telemetry and research observations for collared wolves from 1/1/2007 - 12/31/2008 with outliers removed. For packs with only VHF collars 100% MCPs are used. Packs which included GPS locations are floating median 95% MCPs. If the pack did not have any observations in 2008 it is not included on this map. 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 1/1/2007 - 12/31/2008. These are displayed as 9.8 mile radius circles consistent with pack territories in Idaho.

*** Public Observations from 1/1/2008 - 12/31/2008 collected on the Idaho Fish and Game website and reviewed by staff biologists. Confirmed and possible observations are displayed.

