



Northern Rockies 10(j) Rule Q&A

The United States Fish and Wildlife Service (USFWS) is proposing to make changes to how wolves will be managed in the northern Rockies, by revising a set of guidelines known as “the 10(j) rule.”

What is the 10(j) Rule?

Subsection (j) in Section 10 of the Endangered Species Act permits reintroduction of an endangered species to a location where it used to live, but has since been driven out or exterminated. For each reintroduction effort, a special rule, called a “10(j) rule,” is written, which determines whether the population is essential to the survival of the species and specifically describes how the species will be treated by agency staff, whether lethal control can ever be used on the species, and what private citizens can or cannot do in regard to the species. Reintroduced species are managed differently than other endangered species. Federal agencies have more control over these reintroduced populations, which they call “experimental populations,” than they do for endangered populations that have not been reintroduced. The Fish and Wildlife Service considers these populations to be supplementary to the core population of the species; a designation which gives FWS more flexibility in managing the species because they do not have to abide by regular ESA standards. Experimental populations are treated under the ESA as threatened species unless designated “nonessential” to the continued existence of the species, a designation that allows FWS to manage the species as though it were a candidate for listing. Unlike the protection accorded other threatened or endangered species, federal agencies are not required to consult with FWS to insure that their actions are not likely to jeopardize members of a nonessential experimental population, unless the population is located on a national wildlife refuge or national park.

Was a 10(j) Rule written when wolves were reintroduced to Yellowstone National Park and central Idaho?

Yes, wolves were reintroduced in these two locations in the northern Rockies in 1995-1996 as “nonessential, experimental populations,” and an initial 10(j) rule was written and adopted by FWS that identifies how wolves will be managed in the three-state region of Montana, Wyoming and Idaho. (In northwestern Montana, however, wolves recolonized on their own by dispersing across the border from Canada. Therefore, the wolves in northwestern Montana are not part of the 10(j) nonessential, experimental population, and must be treated as fully endangered.)

What key points does the initial 10(j) rule say about wolf management in the northern Rockies?

The initial 10(j) rule allowed for lethal take of wolves only after all reasonable non-lethal methods to resolve wolf-livestock conflicts were first exhausted. The rule provided that a private citizen could only kill a wolf if it was in defense of human life or, in the case of wolf-livestock conflict, livestock producers on their private land could “shoot, wound or kill a gray wolf in the act of killing, wounding or biting livestock.” Livestock was defined as cattle, sheep, horses and mules. The initial rule did not allow wolves to be killed for killing wild ungulates such as deer and elk.

Is the initial 10(j) rule still in effect?

Only in Wyoming. As part of the wolf recovery program, FWS required Montana, Idaho and Wyoming to develop wolf management plans to demonstrate they could responsibly manage wolves after federal protections are lifted. FWS approved Montana and Idaho’s plans. However, to

date FWS has not issued final approval of Wyoming's proposed plan; therefore, the initial 10(j) Rule is still in effect in that state. In June 2007, FWS reached agreement with Wyoming on their state wolf plan, and is now holding a public comment period regarding the plan.

What about Montana and Idaho, and the revised 10(j) rule?

In 2005, FWS made revisions to the 10(j) rule and turned over much management authority to the states of Montana and Idaho via a Memorandum of Agreement that contained provisions allowing Idaho and Montana to use the newly revised 10(j) rule. The 2005 revised 10(j) Rule has some significant differences from the initial 10(j) Rule:

- When dealing with wolf-livestock conflicts, wildlife managers no longer have to first exhaust reasonable non-lethal methods before resorting to killing wolves.
- Wolves can be killed for having “unacceptable impacts” on wild ungulates like deer and elk if it can be shown that wolves are the primary cause of a wild ungulate population not meeting management objectives
- The wolf does not need to be actually “in the act” of attacking livestock in order for a private citizen to kill a wolf. Instead, the standard has been lowered so that a citizen can kill a wolf if it is “attacking (actually biting, wounding or grasping) or in the act of chasing, molesting or harassing that would indicate to a reasonable person that such biting, wounding, grasping, or killing is likely to occur at any moment,” which is a much more vague standard that can be subject to many different interpretations.
- The 2005 revised 10(j) Rule allows a citizen to kill a wolf on private land whether the attack or potential attack is on livestock or dogs, whereas previously it only applied to livestock.
- The rule was expanded to include not just private land, but public land as well so long as the livestock producer is grazing livestock there with a current federal land-use permit. And, on public land, this new lower standard for killing wolves applies whether the animal attacked was livestock, or a herding or guarding dog.

What changes are being proposed for the 10(j) Rule at this time, and how will these changes affect wolves?

The USFWS is now proposing to revise the 10(j) Rule for wolves in the northern Rockies once again, and the changes in the Rule would affect Montana, Wyoming and Idaho.

- The state agencies' ability to kill wolves for having “unacceptable impacts” on deer and elk would be made much easier.
- Instead of having to demonstrate that wolves were “the primary cause” of an ungulate population decline, the bar would be substantially lowered. Wildlife managers would only have to show that wolves were “a major cause” of wild ungulates not meeting state management objectives, and the range of objectives could include not only population numbers, but also factors such as cow:calf ratios, herd movements, behavior and nutrition.
- And, for the first time, outfitters, guides, hikers and hunters would be allowed to kill wolves if their stock animals (a horse mule, donkey or llama used to transport people or their possessions) or dogs were attacked, chased, harassed or molested by wolves. That could include wolves acting in defense of their pups on national forest lands or wilderness areas.
- The new proposal would set a minimum population of 600 wolves (or 60 breeding pairs). There are currently more than 1300 wolves (or 85 breeding pairs) in the region. More than 700 wolves in the region could be killed under the conditions set forth in this new 10(j) Rule.

Why are these changes being proposed, and are the arguments for these changes valid?

A small but vocal group of wolf opponents in the northern Rockies have been diligently trying to have wolves killed or removed from the region, claiming wolves are decimating the populations of elk, deer, moose and bison in the northern Rockies and affecting hunting success. Some outfitters and guides have also been arguing that wolves are running them out of business. Although their voices have held great sway with local and federal officials, their arguments do not hold up under scrutiny. In fact, current scientific data from the state wildlife agencies of the very states that are calling for wolf removal show that ungulate populations are thriving. The Idaho Department of Fish and Game, and the Wyoming Department of Fish and Game keep records of wild ungulate populations throughout each of their states, as do all state wildlife agencies.

How plentiful are elk in the northern Rockies?

In Idaho, elk populations are at 20 percent above management objectives. Elk harvest numbers are the highest they have been since 1996, though not as high as in the early 90's in Idaho. According to Idaho Fish and Game, "Overall elk populations statewide are near all time highs. Elk numbers throughout northern, southern, eastern and much of western Idaho have continued to increase over time."¹ In Wyoming, the state wildlife agency indicated in May 2007 that "elk are probably at an all-time high historically."² Elk numbers in Wyoming jumped to 99,867 animals for the census following the 2006 hunt, putting the population approximately 17 percent more than Game and Fish Commission objectives. All of the four herds (Clark's Fork, Cody, Gooseberry and Upper Green River) that department officials have complained were being harmed by wolves were above objective, according to agency counts.³ In fact, Wyoming recently increased the number of hunting tags it will issue, which means hunters will be allowed to take more elk and pronghorns this year than usual.⁴ And in Montana, two-thirds of the hunting districts in southwestern Montana (all of which support wolves) are currently offering the most liberal hunting opportunities seen in 30 years due to higher elk populations.⁵

¹ Idaho Fish and Game Elk Survey Progress Report, June 2006

<https://research.idfg.idaho.gov/wildlife/Wildlife%20Technical%20Reports/Elk%20PR06-W-170-R-1-1.pdf>

² Casper Star Tribune, May 12, 2007

<http://www.casperstartribune.net/articles/2007/05/12/news/wyoming/f7f7af3584d3955b872572d7007f8c9a.txt>

³ Jackson Hole news and Guide, May 16, 2007

http://www.jacksonholenews.com/article.php?art_id=1766

⁴ Jackson Hole Star Tribune, April 26, 2007

<http://www.jacksonholestartrib.com/articles/2007/04/26/news/wyoming/bd3865054c105281872572c800829bb7.txt>

⁵ Rocky Mountain Wolf Recovery 2005 Interagency Annual Report

<http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt06/index.htm>