

Last week, Holly [posted](#) an excellent discussion of the latest wranglings in the Fish & Wildlife Service's ongoing effort to delist the gray wolf in the mountain west. I share her discomfort with Congress's decision to reinstate the delisting decision through an appropriations rider. But stepping back from the arcane separation of powers questions dominant in the legal case, I think we ill-serve the Endangered Species Act and biodiversity conservation more generally when we object too strenuously to delisting *canus lupis*.

The ESA is about much more than preventing species from disappearing altogether. At its best, the ESA is about improving the lot of species in decline and allowing them to flourish once more. The environmental community has fought to keep the ESA infused with a spirit of recovery. And we must not forget that recovery – and delisting – is among our most important measures of success.

With this in mind, the story of the gray wolf in the northern mountain west is one that we should celebrate, rather than mourn. Before 1995, there were essentially no wolves in the region – the last gray wolf in Yellowstone National Park was shot in 1926. Now there are well-over 1,600 wolves in more than 200 packs roaming the wilds in Idaho, Montana, Oregon, Utah, Washington, and Wyoming. There have been difficulties, and some communities remain vehemently opposed to sharing their land with wolves. But the gray wolf has proven itself adept at recolonizing its ancestral home.

Even if we are not wholly satisfied with the wolf's recovery, I believe this is a time when we should declare that the ESA has worked. As the saying goes: "Everyone loves a winner, but when you lose you lose alone." If environmentalists insist that the ESA has not, and perhaps cannot, succeed, particularly in high-profile cases such as that of the gray wolf, I worry that the public will lose faith in the mission of biodiversity conservation. The gray wolf gives us the opportunity to voice a belief that the ESA is not just a list of species that will forever be relegated to the status of remnants, but rather, that through concerted effort, we can restore them to health.

Of course, risks remain for the gray wolf in the mountain west. In a world with changing climate, development pressure, invading non-native competitors, and, yes, the desire to hunt predators that sometimes kill livestock, we will never know with certainty that the wolves' fortunes will remain ever bright. But to insist on certainty is to insist that the ESA can never achieve success. Such a dim view of the ESA's potential undermines the viability of biodiversity conservation and may further fuel the conservative attack on the Act itself.

Viewing the ESA as a permanent management regime for listed species may also threaten its legal viability. When the conservative Fourth Circuit considered whether the ESA

violated principles of federalism (in a case dealing with the red wolf no less), Judge Wilkinson noted that once a species has recovered, wildlife management – including regulation of hunting – will return to state hands. We lose this feature of the Act – which seems to have made it more palatable to at least one prominent conservative jurist – if we define recovery so that it becomes effectively unattainable.

The dramatic restoration of the gray wolf to the mountain west is a particularly good occasion for celebration for three reasons. First, the wolf occupies a unique corner of our cultural consciousness – what animal better personifies the wild areas of the mountain west? And the image of the wolf resonates emotionally with many people throughout the country. Surely it is easier for the public to understand that the ESA works in the context of the wolf than, say, the Lake Erie water snake, the recovery of which the Fish & Wildlife Service just [announced](#).

Second, I think that it's important to calibrate our evaluation of the gray wolf delisting with the what is at stake. Even after delisting, areas like Yellowstone National Park will continue to provide complete protection for the packs within its boundaries. And the history of wolf reintroduction demonstrates that even if gray wolves were hunted so severely that they disappeared outside of the borders of Yellowstone before we could respond, they would recover once more.

And third, it is important to recognize that the risks we face with the gray wolf (as with any reintroduced species) are not as dire as those that arise when the survival of an endemic and genetically distinct population is at risk. The wolf plays an important part in the ecosystems of the mountain west. But our wolves are the recent descendents of wolves from Canada – both those that were translocated, and perhaps those that migrated across the border as well – and do not possess unique genetic characteristics. Should they disappear, our world will not lose irreplaceable genetic heritage. While that does not mean that we should take the health of the gray wolf lightly, the consequences of delisting too soon are somewhat less than if the Northern Rocky Mountain Distinct Population Segment of gray wolves had evolved in isolation for thousands of years and developed their own unique traits, or even more extremely, were the only remaining gray wolf population in the world.

I view the recovery of the gray wolf as cause to celebrate. I also hope that it provides us with an opportunity to expand the discourse surrounding endangered species and biodiversity to include not only the narrative of perpetual loss, but also the narrative of success as a realistic possibility. The ESA is a perennial source of political conflict, and I believe that part of this conflict arises from the perception that the ESA means eternal

protection. I believe that we squander an opportunity to find common ground if we deny the ESA the opportunity to succeed.

Delisting the wolf – with important safeguards like the status review requirements – sends a signal that recovery is possible. For environmentalists, that means the likelihood that a cherished species will persist and thrive. And for land owners, commercial interests, and local communities, this means regulatory relief. The recovery of a species should be something that all stakeholders can support, albeit perhaps for different reasons. If we can view delisting as part of wildlife conservation, rather than as antithetical to it, this will allow us to build alliances between the environmental community and people facing property restrictions due to the presence of an endangered species or its critical habitat.

I find hope that these alliances are possible in the negotiations between the Fish & Wildlife Service and Montana and Idaho. While the regulations those states have adopted are imperfect, they are better than I might have expected, and they will provide a degree of security to the wolf. If the gray wolf is also delisted in Wyoming, I suspect that despite that state's intransigence, it too will try to ensure that the population does not decline too precipitously. It is not as though scientists and the public will stop paying attention now that the Northern Rocky Mountain DPS has been delisted. Should the worst case scenario come to pass, we will know gray wolves threaten again to disappear. And the ESA's panoply of protections are waiting in the wings should relisting become necessary.

In suggesting that we as environmentalists should embrace the gray wolf's delisting – while remaining vigilant of the species future prospects – I do not suggest that the regulatory delisting process was without flaw. (Full disclosure: I previously worked at the division of the Department of Justice that defended the initial delisting decision, although I was not involved with the case.) But even if the process was imperfect, I see little good coming out of continued litigation. Particularly now. Even if the plaintiffs manage to draw a sympathetic panel in the Ninth Circuit, a decision invalidating Congress's decision that gray wolves should be delisted without the possibility of judicial review would be too tempting a target for the current Supreme Court. And the last thing environmentalists need is for this Court to get its hands anywhere near the ESA.

True, I realize that many – perhaps even most – listed species have few near-term prospects for recovery. Indeed, for many species, recovery plans have never even been prepared. But that is all the more reason that we must seize the opportunity to celebrate successful recovery when it comes to pass – as it has in the case of the gray wolf in the mountain west.

*Justin Pidot is an assistant professor at the University of Denver Sturm College of Law.*

