

recovery of a rare species requires that the necessary components of its habitat and ecosystem be conserved, and that diverse partnerships be developed to ensure the long-term protection of those components. Thus, the recovery success demonstrated for gray wolves is also a demonstration of the ecosystem approach, including the various partnerships that are needed for success.

*Issue 8:* The Service has not adequately consulted with Native American tribes, as required by Secretarial Order 3206. (Refer to issue V, Native American Concerns, below, for additional Native American concerns.)

*Response:* During the development of the proposal and this final rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. Although we must base the decision on whether a species should be listed, reclassified, or delisted under the Act purely on scientific data concerning the threats and commercialization of the species, the manner in which we carry out listing, reclassification, or delisting vary so that we can address the cultural and spiritual importance of a species to Native Americans. As we have become aware of Native American concerns through consultation with them, we have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes.

For example, the proposed 4(d) rule for lethal control of depredating wolves in Wisconsin and Michigan has caused concern among several tribes that have, or expect to soon have, wolves living on their reservations. We are currently working with the Bad River Band and the WI DNR to develop a Memorandum of Understanding for the cooperative management of wolves in the area surrounding the Bad River Reservation (Wisconsin), in order to minimize the impacts that off-reservation depredation control actions by the WI DNR might have on reservation wolves. This agreement may serve as a prototype for other tribes and States.

We acknowledge that our early consultation efforts could be improved. Early consultation efforts were hampered primarily by the geographic scope and complexity of the proposal. We tried to remedy this issue by making additional efforts to contact and inform tribes during the comment period.

*Issue 9:* The Service should propose critical habitat for the gray wolf.

*Response:* Critical habitat was designated in 1978 for the gray wolf in parts of northeastern and north-central Minnesota and on Isle Royale, Michigan (43 FR 9607, March 9, 1978). We are not making any changes to the currently designated critical habitat, because we do not believe it is appropriate to do so.

The Endangered Species Act amendments of 1982 specified that, for any critical habitat designation for a species already listed as threatened or endangered at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97-304, section 2(b)(2)). Consequently, designation of critical habitat for the gray wolf is subject to the procedures for revisions to critical habitat. As such, it is not mandatory for the Service to designate critical habitat for the gray wolf. Section 4(a)(3)(B) provides that the Service "may" make revisions to critical habitat "from time-to-time \* \* \* as appropriate" (16 U.S.C. 1533(a)(3)(B)). The Service has determined that there currently are no likely benefits to be derived from additional critical habitat designations, and it therefore is not appropriate to designate additional critical habitat. Wolf populations in both the Eastern and Western DPSs are at their numerical recovery goals as a result of past and current protections, but the currently designated critical habitat played a negligible role in wolf recovery. This is attributable to the fact that gray wolves are habitat generalists, and their numbers and range are not limited by a lack of suitable habitat or by any degradation of any essential habitat features. Designating critical habitat would be an inappropriate use of our limited listing funds if done for a species that is successfully recovering without such designation, and at a time when we have determined that it is more appropriate to reduce, rather than increase, the Federal protections for the species.

It should also be noted that the Act (section 10(j)(2)(C)(ii)) prohibits us from designating critical habitat for the nonessential experimental populations established in the Western DPS and the Southwestern DPS. Furthermore, 50 CFR 424.12(h) prohibits the designation of critical habitat in foreign countries.

*Issue 10:* The Service should have conducted additional public meetings and hearings, or extended the comment period to provide additional opportunities to learn more about the proposal and to provide comments. We should have used the postmark date, rather than the received date, to determine whether comments were made during the open comment period.

*Response:* The Act requires that we provide at least a 60-day comment period and that we conduct one public hearing if we are requested to do so. We recognized that the proposal would be controversial, would require more explanation than most of our proposals, and would result in a large number of comments. Therefore, we went well beyond the basic requirements of the Act and other Federal rulemaking procedures. We established a comment period that was twice the required length. We prearranged 14 hearings from Maine to Washington State. We conducted two national press conferences and two Congressional briefings. We conducted multiple informational meetings. We provided a variety of informational materials at hearings and meetings, by mail and e-mail, and on our Web site. We established mechanisms for interested parties to ask questions and to submit comments verbally, in writing, by e-mail or fax, and on our Web site.

Finally, while the Service sometimes uses the postmark date to determine whether comments were received before a deadline in rulemakings, our normal practice is to use the date of receipt, and our intent to use that cutoff method at the close of the 4-month comment period was clearly stated in all our documents that referred to comment submission. We believe we provided extensive, varied, and sufficient opportunities for interested parties to ask questions, obtain additional information, and provide input for our consideration.

*Issue 11:* The Service should conduct Population Viability Analyses (PVA) before reclassifying anywhere.

*Response:* The Act requires that we use the best scientific data available when we make decisions to list, reclassify, or delist a species. The Service recognizes that PVAs are a tool that can provide some insight into the vulnerability of species, and we have conducted PVAs for a number of species, usually as an aid in establishing recovery goals or identifying the most critical gaps in our knowledge in order to prioritize research needs. While we have found PVAs to be useful in some circumstances, in other cases the analyses provided little or no new information, or the outcome was not considered to be reliable.

PVAs can be a valuable as a tool to help us understand the population dynamics of a rare species (White 2000). They can be useful in identifying gaps in our knowledge of the demographic parameters that are most important to a species' survival, but they cannot tell us how many individuals are necessary to