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Tribal sovereignty and the Endangered Species Act : recovering the Idaho wolves

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TRIBAL SOVEREIGNTY AND THE ENDANGERED SPECIES ACT:
RECOVERING THE IDAHO WOLVES

A Thesis

Presented to

The Faculty of the Department of Environmental Studies

San Jose State University

In Partial Fulfillment

of the Requirements for the Degree of

Master of Science

by

Davinna Lam Ohlson

May 2005

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ABSTRACT

TRIBAL SOVEREIGNTY AND THE ENDANGERED SPECIES ACT: RECOVERING THE IDAHO WOLVES

by Davinna Lam Ohlson

In 1995, the Nez Perce Tribe partnered with the U.S. Fish and Wildlife Service to recover gray wolves in central Idaho under the authority of the federal Endangered Species Act. In late 2002, wolf recovery objectives were met. This case study investigates how the Tribe and Service characterize their government-to-government relationship and how this relationship contributed to successful wolf recovery. Both governments perceive their relationship to be effective for carrying out the operational responsibilities of wolf management and resolving conflicts at the technical level but ineffective for securing adequate funding for recovery efforts. Different interpretations of the Tribe's wolf management status highlight tensions between the two governments at the policy level. Competing definitions of government-to-government consultation challenge the intent of Secretarial Order 3206, and a recently published ESA rule regarding post-recovery wolf management threatens to weaken wolf protection measures, restrict tribal natural resource management authorities, and erode tribal treaty rights.

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I dedicate this work to all those I love, past, present, and future.

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EXECUTIVE SUMMARY

The federal Endangered Species Act (ESA) of 1973 is the United States' most powerful tool for protecting species threatened with extinction. It provides an umbrella of protection to over 1,200 endangered and threatened species occurring on both federal and non-federal lands, including tribal lands, which are held in trust by the federal government. However, the ESA's failure to address the federal government's trust responsibility to tribes has led to disagreements over the ESA's application, and the consistency of that application, to tribal trust lands, resources, and treaty rights.

In June 1997, the Secretaries of the Interior and Commerce jointly signed Secretarial Order 3206, which attempts to reconcile endangered species protection and the tribal trust by clarifying the responsibilities of the U.S. Fish and Wildlife Service (Service) and the National Marine Fisheries Service when actions taken under authority of the ESA affect tribal lands and resources or the exercise of treaty rights.

A number of listed species are highly regarded in Native American cultures. One such species is the gray wolf (*Canis lupus*), which represents ideals such as strength, loyalty, and wisdom. At the time of its ESA listing in 1974 and with the exception of one remnant population in northern Minnesota, the gray wolf had been extirpated throughout the coterminous United States due to westward expansion by European settlers, who perceived wolves as dangerous predators of livestock and a threat to the homesteading lifestyle.

In 1987, the Service approved a gray wolf recovery plan for the northern Rocky Mountains region, comprised of Idaho, Montana, and Wyoming. In 1995, after the State of Idaho declined to participate in federal recovery efforts, the Service negotiated a cooperative agreement with the Nez Perce Tribe (Tribe) of Idaho, naming the Tribe as the designated agent for carrying out gray wolf recovery and management responsibilities in the Central Idaho Experimental Management Area (CIEMA).

By the end of 2000, the original recovery goal of at least ten breeding wolf pairs for the CIEMA was reached. The revised recovery goal of 30 breeding pairs equitably distributed among the three recovery areas for three successive years was reached in late 2002. By all accounts, wolf recovery is one of the most successful efforts to recover an endangered species.

This research showed that the Tribe and Service share a vision of restoring and recovering the wolf population. Wolf recovery is also a surrogate for larger sociopolitical debates over natural resources management. To the Tribe, their involvement in wolf recovery represents a step towards asserting their authority as a sovereign nation and establishing themselves as a legitimate natural resources manager alongside the federal and state governments.

In order to establish themselves as natural resources managers, the Tribe demonstrated to the Service that they could successfully fulfill the responsibilities of the cooperative agreement. Policymakers and technical staff interviewed from each government perceive

their government-to-government relationship to be effective for carrying out the operational aspects of the Tribe's wolf recovery and management plan in order to meet federal wolf recovery goals. The two governments' shared ideology of restoring wolves to the land transcends their differing missions (the Service's to successfully implement the ESA and the Tribe's to advance tribal sovereignty issues) and allowed them to develop their long-term, multi-year cooperative agreement for collaborative wolf management. Over the short term, annual meetings at the technical level provide an opportunity for the Tribe and Service to bridge any disconnects that may have arisen over the past year and to develop shared expectations for the coming year. Both technical staffs also attribute the efficiency and effectiveness of their relationship to an understanding of each other because of their shared biological discipline and because as a team, they have remained relatively intact since the early days of wolf recovery. The Tribe and Service's demonstrated commitment to the program through close communication and coordination solidified their government-to-government relationship at the technical level and allowed them to implement the Tribe's management plan with a high degree of efficiency. By placing recovery objectives above defined agency responsibilities, livestock producers and other public interests benefit because more than one agency works on their behalf and can allocate more staff, time, and resources to a problem. This unified effort builds public trust and confidence in the governments' ability to monitor wolves and quickly react to problem situations. In turn, the gradual shift in human attitudes towards tolerance of wolf recovery efforts indirectly allowed the wolves to flourish.

Technical personnel from both governments agree that they retain considerable decision-making authority over on-the-ground recovery actions. Having decision-making authority allows a skeptical public to see a legitimate "face" representing the program, air their concerns and criticisms, and have issues addressed and resolved immediately.

The two governments have conflicting views on the adequacy of the government-to-government relationship for resolving conflicts at the policy level. While all interviewees from both governments feel that the government-to-government relationship is effective for resolving conflicts at the technical level, both the Tribe and the Service noted conflicts early on in their relationship over administrative requirements of the cooperative agreement. The trust and confidence that each government gained in each other over time helped dissolve the initial unease and skepticism over their partnership.

At the technical level, both the Service and the Tribe identify two current points of conflict: lethal control and funding. Levels of acceptance of the application of lethal control vary within the Tribe. Tribal members oppose lethal control of wolves because of their holistic worldview, while the technical staff from each government entity accepts it more readily. Both governments perceive conflicts over lethal control to be more with the public and different interests, primarily livestock and conservation interests, than with each other. They feel that they have made significant progress in resolving conflicts with livestock producers and the environmental community through public information and community outreach efforts. The Tribe and Service identified the human dimensions of wolf recovery as the most critical component of wolf recovery. By placing greater importance on coordinating

agency efforts to meet the needs of the community than on compartmentalizing agency responsibilities, they feel that they have minimized internal government-to-government conflicts at the technical level and are more effective in resolving external conflicts with the public. Addressing the human dimension of wolf recovery by working to make the public more tolerant of wolves is an indirect benefit to the wolves.

The Service and the Tribe disagree on the adequacy of funding levels for wolf recovery. The Tribe believes that they are underfunded, which they feel is in keeping with a history of the federal government underfunding Indian programs. Service personnel believe that wolf recovery is overfunded due to political and public demands for intense monitoring efforts. Because the Tribe's annual budget has not kept pace with the increasing wolf population, they have fewer radio collars and biologists available to accurately and effectively monitor an increasing number of wolves.

The Tribe argues their management status to be that of a co-manager, with legal authority to manage the wolf, due to the federal government's treaty and trust obligations to tribes. The Service perceives the Tribe to be cooperative managers due to text explicit within the cooperative agreement designating them as such. By asserting co-management status, the Tribe may be able to leverage their current role in wolf recovery in order to negotiate co-management responsibilities with the State of Idaho once delisting occurs or once wolf management authority is transferred from the Service to the states and tribes through the 10(j) rule.

Regarding Secretarial Order 3206's principles on conducting government-to-government relationships, both the Service and Tribe are satisfied with the level of scientific information and technical assistance provided to each other through their cooperative agreement but disagree on the adequacy of consultation, especially over the proposed 10(j) rule. The Service cited their scheduled consultation with the Tribe on the 10(j) rule as in keeping with a history of effective consultation regarding wolf recovery and as an example of fulfilling their trust obligations with the Tribe. The Tribe expressed greater skepticism about the scheduled consultation, largely because the State of Idaho worked with the Interior Department on authoring the rule without any input from the Tribe. According to the Tribe's own consultation policy, the scheduled meeting was not true consultation because the rule was already published in the Federal Register. While S.O. 3206 has had little effect on on-the-ground wolf recovery efforts, its guiding principles encourage policy-level collaboration between the Service and the Tribe.

The Nez Perce Tribe's participation in wolf recovery had a dual purpose: to recover a species of cultural significance to them and whose history of persecution and extirpation they identify with, and to establish themselves as a legitimate natural resources manager. In February 2005, the Service issued the final 10(j) rule, an ESA regulation that relaxes wolf protection measures and allows states and tribes in the northern Rockies recovery region with approved wolf management plans to petition the Service for management authorities within their respective state or reservation boundaries. The wolf is considered a trust resource, so by virtue of their specifically retained treaty rights, the Tribe argues that they

should have wolf management authority not just over their reservation lands but over their ceded lands, which encompasses most of central Idaho, as well. The 10(j) rule represents a step backwards for both wolf protection and the Tribe and Service's government-to-government relationship.

Technical staff personnel from both the Tribal and federal governments perceive their relationship to be effective for recovering the wolf. The government-to-government relationship at the technical level has been most critical for plan implementation and wolf recovery. However, wolf recovery was successful despite the policy level of the government-to-government relationship, not because of it. The 10(j) rule indicates that tribal natural resource management is not guaranteed in the future. As a vehicle for exploring tribal sovereignty issues and tribal natural resources management authorities, which the Tribe drove forward against the Service's resistance, wolf recovery may lead to greater hardships.

To minimize future conflicts, existing policies should be reviewed and updated. Future federal-tribal partnerships in endangered species protection require a true effort at bilateralism, including clearly defined expectations and objectives, consistency in the application of government-to-government concepts like consultation, and regular, ongoing dialogue at all levels of government.

PROBLEM STATEMENT

Introduction

The purpose of this research is to assess the role of the federal-tribal relationship in endangered or threatened species conservation and management. This research is based on Secretarial Order 3206, a joint order issued in June 1997 by the Secretaries of the Interior and Commerce regarding federal-tribal trust responsibilities, Native American tribal rights, and the Endangered Species Act of 1973. The Order attempts to clarify the responsibilities of the Departments' component agencies, bureaus, and offices when "actions taken under authority of the Act... affect, or may affect, Indian lands, tribal trust resources, and the exercise of American Indian tribal rights" (DOI and DOC 1997).

This thesis addresses the following question: How does the federal-tribal trust relationship affect measures taken by Native American tribes to protect endangered or threatened species? This case study will address the above question by investigating the role of the relationship between the federal government and the Nez Perce Tribe of Idaho with respect to gray wolf (*Canis lupus*) recovery in the northern Rocky Mountains. This evaluation consists of two parts. First, this study will investigate and describe the relationship between the U.S. Fish and Wildlife Service (Service), one of two agencies tasked with implementing the Endangered Species Act (the National Marine Fisheries Service, also known as NOAA Fisheries, a division of the Department of Commerce, protects species inhabiting marine habitats), and the Nez Perce Tribe (Tribe). Second, the study will investigate and evaluate measures that are being taken by the Service and the Tribe to protect the gray wolf. This information will be used to determine how the government-to-government relationship contributes to tribal endangered species management efforts.

Background

Native Americans, the original stewards of American land, are the only ethnic minority group in the United States to whom the federal government must fulfill, as part of the federal trust responsibility, specific legal obligations.

The special status of tribes in the United States is established by a complex body of law that is not widely known or understood by either Indians or non-Indians. This is partly due to the limited availability of related literature to public administrators and others who have the authority to make decisions that may affect tribes, tribal treaty rights, and tribal trust resources (Aufrecht 1999). As Native American rights become more fully understood, federal policies like the Endangered Species Act may require review to determine how they might interfere with those rights.

The extinction crisis and the Endangered Species Act. The federal Endangered Species Act is one governmental response to the national biodiversity crisis. The planet is currently experiencing a loss of biological diversity that is unparalleled in human history. In the absence of human interference and disturbance, the “normal ‘background’ extinction rate is approximately one species per one million species per year” (Wilson 1992, 280). Human activities have multiplied that rate by at least one thousand, and it has been estimated that Earth loses as many as 27,000 species annually (Wilson 1992). Of the roughly 100,000 native terrestrial and freshwater species described in the United States alone, approximately 1.5% are believed to be extinct (Eisner et al. 1995).

The United States government has responded to the loss of biodiversity with the federal Endangered Species Act (ESA), its most powerful tool for protecting species

threatened with extinction. The ESA's goal is to "provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved" (*Endangered Species Act* 1973). Under the ESA, species, subspecies, and (in the case of vertebrates) distinct population segments are afforded protection when they are "in danger of extinction throughout all or a significant portion of [their] range" (*Endangered Species Act* 1973). The Act also protects species that are threatened or "likely to become an endangered species within the foreseeable future" (*Endangered Species Act* 1973).

Over 1,200 plant and animal species are currently designated as either endangered or threatened under the ESA, and at least one listed species occurs in 90% of the counties in the United States (Sahr 2000). A number of listed species are highly regarded in Native American cultures. One such species is the gray wolf (*Canis lupus*), whose cunning and hunting abilities are venerated by many Native American tribes (DOI 1998). The gray wolf was listed as endangered in 1974, one year after passage of the ESA. At the time of listing, the gray wolf had been extirpated throughout the coterminous United States due to westward expansion, where wolves "were perceived as destructive predators of livestock and ungulates" (Mack and Holyan 2003, 1). The only remaining substantial population existed in northern Minnesota (Mech 1970; 1995).

Under the legal protection of the ESA, the Minnesota wolf population has recolonized neighboring Wisconsin and Michigan's Upper Peninsula. Wolf relocations and reintroductions have also taken place in other regions of the U.S., including central Idaho, where the Nez Perce Indian Reservation is located, and Yellowstone National Park. In 2003, the Service reclassified the gray wolf from endangered to threatened status in the eastern U.S. and the Rocky Mountain region upon the determination that these populations

have met the Service's recovery goals. A February 2005 federal court decision ruling that the downlisting was a violation of the ESA restored these populations back to endangered status. Mexican gray wolves (*Canis lupus baileyi*), once common in the southwestern U.S., remain on the endangered list (DOI 2003a). A Mexican gray wolf restoration project is ongoing in the Apache National Forest in eastern Arizona.

Native Americans and the Endangered Species Act. Ethnic minorities have experienced a long history of environmental injustice in the United States. Only in the past twenty years has the issue of social and racial equity been addressed within the context of environmental policy. Minority and low-income groups must receive fair treatment when government actions have the potential to force these groups to take on a greater burden of negative environmental consequences than the rest of the general population (Bass 1998).

One of the most familiar Native American environmental justice issues has been the siting of nuclear waste storage facilities, which degrades sacred homelands and threatens the survival of a tribe's cultural identity (Gowda and Easterling 2000; Gonzales and Nelson 2001). While "protecting the land and its biological communities tends to be a prerequisite for cultural survival" (Suagee 1999, 488), actions taken under the authority of the Endangered Species Act may conflict with the cultural survival of Native Americans by forcing them to shoulder a disproportionate burden of conservation measures in protecting listed species on tribal lands (NIFC 2000).

Early in United States history, under pressure of American westward expansion, Indian tribes negotiated treaties with the federal government. They ceded large areas of aboriginal lands to the government in return for homelands and specifically identified forms of support and protection for tribal members. Through the treaty-making process, these

tribes are formally recognized by the United States as domestic dependent nations, meaning that they possess the right to self-government and can exercise sovereign powers over their members and territory.

Today, the federal government holds over 95 million acres of land in trust for Native Americans and Alaskan Natives, with more than 572 federally recognized tribes residing on 314 reservations (DOI 2003b).¹ These lands provide the living space, sacred and cultural sites, and natural resources that tribes need for physical and spiritual sustenance as well as for economic self-sufficiency. In short, “land is everything to Native American peoples” (Gonzales and Nelson 2001, 499), and their holistic worldview—in which the human existence is part of the environment and the spiritual world part of everyday life—emphasizes an ecosystem approach to protecting and conserving biological diversity (OPICAC 2002).

“Approximately 50% of listed [species] occur only on state and local public lands, tribal lands, and private lands” (Eisner et al. 1995, 1231). The ESA provides an umbrella of protection to species occurring on both federal and non-federal lands, including non-federal tribal lands held in trust by the federal government. Tribes generally manage their lands in accordance with tribal objectives and within the framework of applicable laws. However, the Endangered Species Act's failure to address the federal government's trust responsibility to tribes has led to disagreements over the ESA's application, and the consistency of that application, to tribal trust lands, resources, and treaty rights (Fjetland 1999; Krogseng 2000). Federal protection and recovery plans developed under the ESA may potentially conflict

¹ Lands held in trust refer to the “practice of the federal government holding legal title to most Indian land for the beneficial use of Indian tribes and tribal members” (NEJAC 2000, 8).

with tribal sovereignty in the form of tribal development activities, on- and off-reservation natural resources management, traditional religious ceremonies, and the exercise of treaty-reserved hunting, fishing, and gathering rights (NIFC 2000). These long-standing and often hostile controversies hinder the relationship between the federal government and tribes on endangered species conservation.

Secretarial Order 3206. In early 1996, as the Endangered Species Act was facing reauthorization, tribes from throughout the United States attended a workshop in Seattle, Washington, and began working with the federal government on a broad policy that would “harmonize” the Act and treaty-reserved rights and resources.² In June 1997, the Secretaries of the Interior and Commerce jointly signed Secretarial Order 3206, which clarified the responsibilities of the Interior Department’s Fish and Wildlife Service and the Commerce Department’s National Marine Fisheries Service when actions taken under the authority of the Endangered Species Act have the potential to affect tribal lands and resources or the exercise of treaty rights. The Order attempts to reconcile protection of endangered species and the tribal trust, acknowledges the federal government’s trust responsibility and treaty obligations toward tribes and tribal members, and recognizes their government-to-government relationship with tribes (DOI and DOC 1997).

The Secretarial Order sets forth five principles for establishing and maintaining working, mutual partnerships with Native American tribes that promote the conservation of sensitive species, support efforts to increase ecosystem health, and facilitate the government-

² Treaty-reserved rights are those rights, such as the right to hunt and fish at usual and accustomed places, reserved by tribes during the treaty process unless explicitly stated as having been given up within the treaty text (Cohen 1971).

to-government relationship. Two of those principles provide the foundation for this research:

Principle 1. "The Departments shall work directly with Indian tribes on a government-to-government basis to promote healthy ecosystems." The federal government recognizes tribes as governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage their natural resources. When federal agency actions to carry out the ESA may impact tribal trust resource, tribal lands, or the exercise of tribal rights, those agencies must include tribal participation in consultation, data collection, consensus seeking, and associated processes. Furthermore, agencies must obtain tribal permission before knowingly entering reservations and other tribally-owned lands for ESA-related purposes (DOI and DOC 1997).

Principle 3. "The Departments shall assist Indian tribes in developing and expanding tribal programs so that healthy ecosystems are promoted and conservation restrictions are unnecessary." In keeping with the federal policy to promote tribal self-government, the departments must give deference to tribal conservation and management plans for tribal trust resources on tribal lands. Regarding tribal activities that could result in an incidental take of listed species under the ESA where conservation restrictions are determined to be necessary, notice must be given of such activities along with a determination that 1) the restriction is reasonable and necessary for conservation and cannot be achieved through regulation of non-Indian activity, 2) the measure is the least restrictive alternative available for conservation and does not discriminate against tribal activities, and 3) voluntary tribal measures are not sufficient to achieve the conservation purpose (DOI and DOC 1997).

Based on these two principles, this study attempts to fill the knowledge gap by evaluating the government-to-government relationship's contribution to gray wolf recovery efforts in the northern Rockies. Within a broader context, this study will shed light on how the conservation of endangered and threatened species can be harmonized with the rights and interests of Native Americans.

Value and Application

This study will contribute to the knowledge in the field by assessing the nature of the government-to-government relationship between the U.S. Fish and Wildlife Service and the Nez Perce Tribe and by analyzing how collaboration may or may not enhance endangered species management efforts. As a performance review of national policy and the government-to-government relationship under the Endangered Species Act, the results of this research may be useful to federal agencies and offices, including the U.S. Fish and Wildlife Service (and the Service Native American Liaison), Bureau of Indian Affairs, and Office of American Indian Trust in the Department of the Interior as well as the Commerce Department's National Marine Fisheries Service. As a chronicle of the Tribe's gray wolf conservation and management efforts, this research may be of use and interest to other tribal nations and organizations interested in wolf or other endangered species protection and management. Finally, because they view Secretarial Order 3206 as a prototype for specifying how government-to-government relationships should be conducted, the Indigenous Peoples Subcommittee of the Environmental Protection Agency's National Environmental Justice Advisory Council may be interested in the results of this study.

While its primary objective is to initiate documentation of tribal efforts to recover a species, the gray wolf, protected under the Endangered Species Act, this study will also provide insight into the social and cultural dynamics that shape management efforts and decisions. The potential exists, therefore, for wider application by non-federally recognized tribes or native Hawaiians, two groups of indigenous peoples in the United States that have few legal options for incorporating traditional ecological knowledge into current natural resource management practices.

Research Importance and Design

The federal-tribal trust responsibility with respect to the Endangered Species Act has received extensive analysis in the legal forum, but a practical analysis of how the government-to-government relationship facilitates the conservation of protected species remains to be conducted.

This thesis investigates and analyzes processes within this relationship, as outlined by Principles 1 and 3 of Secretarial Order 3206, that affect implementation of the ESA by the Nez Perce Tribe and that led to the successful recovery of the gray wolf. To accomplish this objective, this research attempts to:

- Characterize the tools and strategies used to protect the gray wolf in Central Idaho;
- Determine the extent and nature of the federal government's role in assisting the Tribe's development and implementation of these tools and strategies;
- Determine whether or not a relationship exists between federal-tribal interactions and Tribal measures to protect listed species;
- Consider the effects of organizational culture in management efforts; and
- Provide recommendations for advancing the government-to-government relationship in order to enhance tribal endangered species management efforts.

This research utilizes a case study approach for exploring the role of the government-to-government relationship in tribal gray wolf recovery efforts. To define the government-to-government relationship within the context of the ESA, interviews with and field observations of Tribe and Service personnel involved in gray wolf recovery were conducted to collect data regarding how they perceive their relationship with each other. Interview data and fieldnotes were coded for themes (e.g., communication, consultation, sharing of scientific information with tribes, etc.) within the federal-tribal relationship.

To determine the extent of tribal measures to protect listed species, a characterization of the Nez Perce Tribe's recovery and management plan is presented. This research component is based on the Environmental Protection Agency Office of Wetlands, Oceans and Watershed's (OWOW) *Tribal Wetland Program Highlights* (2000). Borne out of the *Indian Policy and Action Plan* (1984), in which the EPA recognizes tribes as the appropriate parties "for setting standards, making environmental policy decisions, and managing programs," *Tribal Wetland Program Highlights* provides a comparative analysis of tools and strategies tribes are using to reach their wetland protection goals. This study identifies and describes wolf recovery program components such as wolf status, recovery goals, population and habitat management, and education and outreach.

The relationship between core themes emerging from the interview data, fieldnotes, and tribal wolf management program components is then analyzed to identify the effectiveness of specific elements of the government-to-government relationship in contributing to wolf recovery and management efforts. The findings will be used to evaluate the degree to which the government-to-government relationship promotes tribal endangered species conservation and ecosystem management.

LITERATURE REVIEW

Conceptual Framework

The United States government's trust responsibility to Native American tribes and tribal members has never been clearly defined. Rather, it is based on treaties, federal court rulings, acts of Congress, Executive Orders, and specific circumstances defined by the sophistication and development of individual tribal governments (Cohen 1971; McKeown 1997). The evolving nature of this trust responsibility creates difficulties for Indians and non-Indians alike in understanding how the Endangered Species Act applies to tribal reservation lands, ceded lands, and tribal trust resources.

Tribal sovereignty. Tribal sovereignty, or the right of a tribe to self-government and self-determination, finds legal footing within treaty and treaty-making law outlined in the United States Constitution (Churchill 1992). Article I (Section 10) reads, "No State shall enter into any Treaty, Alliance, or Confederation," reserving treaty-making power to the federal domain and precluding the federal government from entering into a treaty with any governing body but a sovereign entity (U.S. Constitution, art. 1, sec. 10). Article VI (2) reads, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (U.S. Constitution, art. 6), further bolstering the United States' position of defining treaties as international agreements with foreign nations and, as defined through treaty relationships, recognizing Native American tribes as independent nations. This position has been upheld throughout U.S. history as far back as 1828, when Attorney

General William Wirt affirmed that Native American independence was “as absolute as that of any other nation” (Churchill 1992, 150).

As tribal sovereigns, Indian nations possess an inherent right to self-govern, enact and enforce their own judicial structure, charter business organizations, and determine tribal citizenship or membership (Churchill 1992; DOA 1997). The idea of tribal nations as sovereign states is not without controversy, as some have questioned the validity of sovereignty through the verbiage of treaty documents stating that “tribes and bands acknowledge their dependence on the government of the United States” (*Treaty of Medicine Creek* 1854). However, “the tribal right of self-government has been repeatedly affirmed by the U.S. Supreme Court, and the tribes’ jurisdiction over their homelands remains substantially intact” (Small 1998, 125).

The government-to-government relationship. Because of their sovereign status, the federal government’s interactions with federally recognized tribes must operate as one government to another. President Clinton’s Executive Memorandum (1994) on government-to-government relationships guides the interactions of executive departments and agencies with Native American tribal governments. Operating within this relationship, all departments and agencies must recognize the right of tribes to develop, manage, and protect their natural and cultural resources, including the management of fish and wildlife resources on reservation lands and, under certain circumstances, non-reservation lands (DOE 2000; DOI 1994a). Each executive department and agency must also assess the impacts of federal projects, programs, and activities on tribal trust resources; the Department of the Interior (1995) requires those impacts to be explicitly addressed in planning or decision documents.

Consultation. The government-to-government relationship mandates executive departments and agencies to consult with tribal governments on all matters potentially affecting tribal lands, tribal resources, and treaty rights. The legacy of the government-to-government relationship “makes consultation similar in many ways to diplomacy between nations” (McKeown 1997, 18). As President Clinton underscored in Executive Order 13175 (2000), consultation is founded upon the federal government’s trust responsibility to tribes and the right of tribes to self-government and self-determination.

Consultation provides affected tribes with an opportunity to participate in the decision-making process so that tribal interests are “given due consideration in a manner consistent with tribal sovereign authority” (DOD 1998). Ideally, parties engage in a dialogue, with information and opinions exchanged in both directions. According to the National Environmental Justice Advisory Council's Indigenous Peoples Subcommittee (2000), the goal of consultation is consensus, or the “full agreement between all of the parties involved in the consultation.”

The Indigenous Peoples Subcommittee developed guiding principles to facilitate effective consultation with tribes: 1) know the tribes; 2) build ongoing consultative relationships with tribes; 3) institutionalize consultation and collaboration procedures; 4) contact tribes as early as practicable and allow sufficient time for the consultation process; 5) establish training programs for all staff on consultation with tribes; 6) maintain honesty and integrity in their consultation processes; and 7) view tribal consultation as an integral and essential element of the government-to-government relationship with tribal governments and not simply as a procedural requirement (NEJAC 2000, 16). Additional recommendations by the U.S. Forest Service (1997) include demonstrating sensitivity to the

effects of history on the consultation relationship, particularly where there may be a lack of trust. Furthermore, just as the trust responsibility differs from tribe to tribe, consultation must demonstrate flexibility and adaptability to the individual tribes engaged in the process.

Secretarial Order 3206 (1997) recognizes that as governmental sovereigns, Indian tribes “possess the inherent authority to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect tribal trust resources.” Issued jointly by the Secretary of the Interior and the Secretary of Commerce, the Order aims to harmonize the Endangered Species Act with the federal trust responsibility to tribes and “strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.” The Indigenous Peoples Subcommittee (2000) cites the Order as a prototype for specifying how government-to-government consultations should be conducted. The bilateral negotiation effort of the Order itself between the federal and tribal governments has been hailed as an example of successful implementation of the tribal trust and the government-to-government relationship, where “the two teams, as equals, developed protocols, set meeting dates, negotiated, developed working drafts, and eventually agreed upon a final” document (Wilkinson 1997).

Idaho wolf recovery. Approved in 1987, the U.S. Fish and Wildlife Service’s *Northern Rocky Mountains Wolf Recovery Plan* establishes a recovery objective of at least ten breeding pairs in each of three identified recovery areas— northwest Montana, central Idaho, and the Greater Yellowstone Area (Figure 1)— for a minimum of three successive years. This was later revised to an objective of thirty breeding pairs equitably distributed across the three recovery areas for three successive years. Wolf recovery in northwest Montana has occurred

Figure 1. The Northern Rocky Mountains wolf recovery region. Data source: U.S. Department of the Interior Geological Survey (2000).

through natural recolonization, while wolves from Canada were reintroduced into central Idaho and the Greater Yellowstone Area in 1995 and 1996.

Wolves released into central Idaho and the Greater Yellowstone Area are designated as “nonessential, experimental populations,” provided for by a 1982 amendment to the ESA that allows “wholly separated geographically” populations of listed species to be reintroduced into their historic range (DOI 1987). This “experimental” designation, authorized under Section 10(j) of the ESA, allows these reintroduced populations to be treated as threatened in order to provide authorities with greater flexibility in managing wolves, especially wolves involved in livestock depredations. The “nonessential” status means that these populations are not considered “essential to the continued existence” of the species.

Following the 1994 release of the final environmental impact statement approving the preferred non-essential, experimental population alternative for wolf reintroduction in Yellowstone National Park and central Idaho (DOI 1994b), the Service approached the Montana, Idaho, and Wyoming state governments for their participation in the recovery effort. Idaho’s Department of Fish and Game drafted a wolf management plan, but the Idaho legislature, representing a variety of powerful interests such as livestock producers and sportsmen, passed a bill rejecting Fish and Game’s plan and effectively barring the State’s involvement in the recovery effort (Idaho Fish and Game Code 1994, sec. 36-715). Montana and Wyoming also declined the Service’s invitation.

The State’s resistance to wolf recovery opened the door for the Nez Perce Tribe to take a leadership role in wolf recovery and management. In 1995, the Nez Perce Tribe negotiated a cooperative agreement with the Service (a second, amended agreement was

signed in 1998) to recover the wolf in central Idaho under the authority of the ESA (DOI and Nez Perce Tribe 1995). The Nez Perce became the first Indian tribe to assume such a role in the reintroduction of an endangered species (Nie 2003). The cooperative agreement names the Tribe as the designated agent for carrying out key management and monitoring responsibilities for the central Idaho recovery area, a role traditionally delegated to the states.

At the time of the reintroductions, the wolf recovery effort was embroiled in litigation. A number of groups across the political spectrum, from the American Farm Bureau Federation to wolf advocacy groups, challenged the Interior Secretary's authority to declare and treat the reintroduced wolves as threatened under the "nonessential, experimental population" designation. While the challenge was against the Department of Interior, the Tribe worked very closely with the Department, including filing briefs in court. By the time that the litigation reached the appellate courts, the Tribe had already been managing wolves on the ground for over two years and so were in the unique circumstance of saying not only the Endangered Species Act provides the Secretary with the discretion to implement this program but that it was actually working. By sharing that perspective, the Service prevailed, and the program was declared a valid exercise of the Secretary's authority.³

The recovery program has four elements: 1) wolf monitoring, 2) information and outreach with affected parties and interested special interest groups, 3) research, and 4) wolf control (Nez Perce Tribe 1995). As stipulated in the cooperative agreement, the Service administers the Endangered Species Act with overall oversight. The Tribe, through the cooperative agreement, handles the day-to-day recovery and is responsible for monitoring

³ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

and collecting biological data, including wolf movements, distribution, population, seasonal food habits, predation rates, and breeding activity (Nez Perce Tribe 1995).

The Tribe assists Animal Damage Control (now Wildlife Services) from the U.S. Department of Agriculture in non-lethal wolf control actions and the relocation of problem wolves. The Service authorizes any lethal control measures to be carried out by Wildlife Services. Defenders of Wildlife, a non-profit organization, financially compensates livestock producers for livestock losses confirmed by Wildlife Services as caused by wolves.

The Service also retains law enforcement responsibilities and addresses all policy issues. The Tribe, Service, and Wildlife Services cooperate on information, education, and public outreach efforts and, in partnership with universities and other interest groups, conduct research.

By the end of 2000, a total of 196 wolves, 19 packs, and 10 confirmed breeding pairs were estimated for the Central Idaho Experimental Management Area, or CIEMA (Mack, Babcock, and Holyan 2002). That marked the third consecutive year of at least 10 breeding pairs for the area, meeting the original recovery goal. The revised recovery goal of 30 breeding pairs equitably distributed among the three recovery areas for three successive years was reached in late 2002, when a total of 673 wolves and 49 breeding pairs across the northern Rockies region were counted (Figure 2). By the end of 2004, at least 452 wolves and 30 breeding pairs inhabited the central Idaho recovery area (Service et al. 2005).

Related Research and Controversies

A review of the literature reveals no research on the effectiveness of the government-to-government relationship in assisting tribes with endangered species

Figure 2. Total estimated number of breeding pairs for the northern Rocky Mountains recovery region, broken down by estimated number of breeding pairs for each of the recovery areas, comprised of the Central Idaho Experimental Management Area (CIEMA), Northwest Montana recovery area (NWMT), and Greater Yellowstone Area (GYA). The recovery objective is 30 breeding pairs distributed across the region for three successive years. Data sources: Nez Perce Tribe annual reports (1995-2003) and U.S. Fish and Wildlife Service annual reports (1999-2004).

conservation and promoting healthy ecosystems on tribal lands. However, the literature does unveil ongoing tensions within the government-to-government relationship concerning implementation of the Endangered Species Act.

A case study by the Working Group on the Endangered Species Act and Indian Water Rights (n.d.) explores tribal rights issues arising from water development projects in the Upper Colorado River Basin. Habitat changes due to water projects in the region, stocking of nonnative fish, invasion of nonnative plants, eradication programs, and other factors led the Service to list four fish species as endangered or threatened pursuant to the Endangered Species Act. Five Indian tribes occupying lands in the Upper Basin objected to subsequent Service actions, including: 1) failure of the Service to include senior Indian reserved water rights in current and future water projects when setting the environmental baseline for biological opinions; 2) critical habitat designation based on the species' historic range instead of the specific habitat needed for their survival; and 3) failure to consult with the tribes before issuing the final rule on critical habitat designation, which the tribes believed would have adverse effects on their reserved water rights (Working Group on the Endangered Species Act and Indian Water Rights n.d.).

Based on this case study and other water development conflicts, the Working Group developed several recommendations for the Service's implementation of the Endangered Species Act that respects Indian water rights, allows those rights to be exercised while avoiding jeopardy to listed species and adverse modification of critical habitat, and promotes healthy watersheds upon which sensitive species depend. These recommendations include: 1) excluding areas from critical habitat designation that would have adverse impacts to the future exercise of Indian water rights and would not result in the extinction of the species,

which is consistent with Secretarial Order 3206, and 2) giving priority to listed species which conflict, or may conflict, with the development of Indian water rights when setting priorities for the development and implementation of recovery plans (Working Group on the Endangered Species Act and Indian Water Rights 2000).

In 2001, the Puget Sound Indian Tribes and the Northwest Indian Fisheries Commission submitted a resource management plan to NOAA Fisheries detailing research projects to investigate the biology and ecology of the threatened Hood Canal summer-run chum salmon. NOAA Fisheries approved the Tribal Plan after evaluating it using a series of factors designed to assess compliance with ESA Section 9 take prohibitions. According to NOAA Fisheries, this process “reinforces the commitment to government-to-government relations as expressed in Secretarial Order 3206” (DOC 2002, 1), whereby the Services must defer to tribal conservation and management plans when ESA-related activities affect tribal lands, tribal resources, and the exercise of treaty rights. However, the approval process implies a hierarchical system and demonstrates inequality within the government-to-government relationship (Zellmer 1998).

While the Secretarial Order provides more concrete guidance on the ESA's relationship to the federal trust responsibility than was previously available, Zellmer (1998) points out three shortcomings. First, the Order assumes that the ESA applies to tribal activities in the first place. Second, the Order fails to “recognize an affirmative trust responsibility to restore habitat degraded by non-Indian development” (Zellmer 1998, 409). Third, the Order is a non-binding, unenforceable executive policy unless it is expressed as a trust responsibility.

Fjetland (1999) addresses the consistency of endangered species protection with the federal trust responsibility to Native Americans in his evaluation of *United States v. Billie*, in which the U.S. District Court for the Southern District of Florida concluded that the ESA abrogated, or abolished, the Seminole Indians' right to hunt an endangered species. Fjetland argues that provisions in the ESA are flexible enough to resolve Indian treaty rights issues without resorting to abrogation. However, to balance the ESA's goal of species conservation with the federal government's trust responsibility to tribes by preserving or recovering a species of cultural value, the ESA may abrogate Indian treaty rights where those rights conflict with the protection of endangered species. Furthermore, abrogation is temporary; once a species is delisted, treaty rights are fully restored.

Nye's (1992) exploration of the inconsistency with which courts in the Pacific Northwest have determined the extent of treaty-based tribal off-reservation hunting rights supports Wolfley's (1998) argument that management plans fail to incorporate indigenous management practices due to a lack of multiagency cooperation, particularly when habitats extend beyond tribal reservation boundaries. When multiple stakeholder conflicts arise, competing interests lead to a breakdown in communication and cooperation.

Continuing tensions between multiple stakeholders emphasize the need for increased federal involvement by agencies to establish cooperative co-management of natural resources with tribal nations. In *Minnesota v. Mille Lacs Band of Chippewa Indians*, the Supreme Court found that the Mille Lacs Band did not abrogate its hunting and fishing rights at any point in its history, but the state "conservation necessity" standard applies to those rights (Krogseng 2000). The case is indicative of the longstanding, and often hostile, controversy regarding the exercise of treaty rights to hunt and fish. Krogseng argues that although

increased federal involvement might be perceived as a step backward for tribal self-governance, increased involvement up front would reduce the amount of costly, acrimonious litigation.

Wilson's (1999) exploration of the central Idaho wolf recovery program's early years addresses the knowledge gap of the "institutional capacity of native tribes to manage natural resources and participate in collaborative regional management arrangements." He identifies challenges and opportunities facing the Nez Perce Tribe. Challenges include gaining recognition and acceptance as a primary actor, alongside state and federal agencies, in natural resources management and securing "stable, long-term funding" for the recovery program. The recovery program offers the Tribe an opportunity to restore the ecological balance and biodiversity of the northern Rocky Mountain ecosystem (Nez Perce Tribe 1993), revive the Tribe's cultural ties to the wolf, and "play an expanded and enhanced role in the management of local and regional natural resources" (Wilson 1999, 559).

Further Research

Due to the nature of the trust responsibility to Native Americans, the federal government's Native American policies, and policies that may affect tribes or their resources, necessitate performance reviews to ensure that those responsibilities are met. A review of the literature currently indicates that no assessment has been made of these policies, even after implementation of Secretarial Order 3206. This research will address this gap in the literature by evaluating the effectiveness of the government-to-government relationship in promoting species conservation and ecosystem management by Native American tribes.

This study will also initiate a process for documenting tribal efforts to protect listed species in order to set a baseline of information for comparing future progress.

RESEARCH QUESTIONS

This case study investigates how the Nez Perce Tribe and the U.S. Fish and Wildlife Service characterize their government-to-government relationship as pertains to gray wolf recovery efforts and how this relationship led to the recovery of the wolf in central Idaho. Specifically, this study answers the following questions:

1. How is the existing government-to-government relationship with respect to the Endangered Species Act perceived by the Nez Perce Tribe and the federal government?
 - a) To what degree does this relationship demonstrate flexibility and adaptability to the Tribe?
 - b) How effective do the Tribe and federal government perceive this working relationship to be for:
 - 1) Managing the resource?
 - 2) Resolving conflicts?
 - 3) Funding management needs?
 - c) Is the Service working with the Tribe on recovery of the gray wolf in a manner consistent with Principles 1 and 3 of Secretarial Order 3206? To what degree:
 - 1) Is the Tribe given the opportunity to participate in decision-making processes through consultation? Is consensus achieved?
 - 2) Does the Service provide scientific and technical assistance and information to the Tribe for the development of tribal conservation and management plans?
 - 3) Does the Service give deference to Tribal wolf conservation and management plans?
2. Does the existing government-to-government relationship as defined by the tribes and the Service lead to:
 - a) Tribal wolf management plans of high scientific quality?
 - b) Effective implementation and monitoring of tribal wolf management plan actions?
 - c) Recovery of the species?
3. What recommendations can be made to improve the government-to-government relationship with respect to the ESA in order to protect listed species?

METHODS

This case study consists of two components: 1) an analysis of the government-to-government relationship with respect to the Endangered Species Act and 2) an evaluation of measures taken by the Tribe to protect the gray wolf. Data collection for the first part of this study involved interviewing personnel currently or formerly affiliated with the Nez Perce Tribe and the U.S. Fish and Wildlife Service who worked on wolf recovery. For the second part of the study, I performed a qualitative assessment of the Nez Perce Tribe's gray wolf protection measures through document reviews provided by the Tribe and Service, supplemented by direct field observations at the study site and interviews with Tribal and federal personnel.

Setting and Study Site

Gray wolves exhibit high adaptability to a diverse array of habitats and climates. The wolves' ability to tolerate and thrive in both moderate and extreme environments allowed their range to expand throughout the northern hemisphere, from the deserts of the Middle East to the frozen tundra of Greenland and Siberia, limited only by the availability of an ungulate prey base. Gray wolves may potentially prey on any type of ungulate, both wild and domestic, as well as beavers and Arctic hares (Mech 1995). Land clearing, settlement, and the domestication of ungulates such as cattle following westward expansion led to the extirpation of the gray wolf throughout the contiguous United States, with the exception of one remnant population in northern Minnesota's wilderness (Mech 1995; Mladenoff et al. 1995). Since its listing as endangered under the federal ESA in 1974, the gray wolf has recolonized northern Minnesota, and wolf reintroductions by the Service occurred in the

western Distinct Population Segment (Idaho and Yellowstone National Park). The Mexican gray wolf is an endangered subspecies in the southwestern U.S., and a restoration program is currently underway in eastern Arizona.

The U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service is the agency charged with implementing the federal ESA. The Service is divided into seven geographic regions (Figure 3). Each region has a central office out of which works a regional endangered species coordinator and a Native American Liaison. Excluding Alaska, most gray wolf recovery and management activities occur in the four westernmost regions—Regions 1 (Pacific), 2 (Southwest), 3 (Midwest), and 6 (Mountain-Prairie).

The northern Rockies wolf recovery area has a regional wolf recovery coordinator based out of Helena, Montana, who manages activities across regions 1 (Idaho) and 6 (Montana and Wyoming). The Nez Perce Tribe and central Idaho wolf recovery, which this case study investigates, are in region 1 (Figure 3). For additional information about the Service, refer to Appendix A.

The Nez Perce Tribe. Due to the European colonization of the eastern United States, which forced eastern tribes out of their native lands, most Native American reservations are located west of the Mississippi River, particularly in the Midwest where the land was considered unsuitable for living. At least fifteen tribes (including the Nez Perce), most of which reside on reservations located in one of the above four Service regions, have either expressed an interest or are actively participating in the recovery of the gray wolf.

The Nez Perce Tribe's governing body is the Nez Perce Tribal Executive Committee (NPTEC), below which are a series of subcommittees, including the Natural Resources Subcommittee. The Tribe's Wildlife Program, a division of their natural resources

Figure 3. The Nez Perce Indian Reservation and U.S. Fish and Wildlife Service regions. Data source: U.S. Department of the Interior Geological Survey (2000).

department, which includes the wolf recovery project, reports to the Subcommittee and NPTEC on policy matters (Nez Perce Tribe n.d.). Appendix B provides a brief historical profile of the Tribe.

The Central Idaho Experimental Population Area. Idaho has some of the largest undeveloped public lands in the United States, most of which occur in the central part of the state. This land became the central Idaho restoration area and encompasses over 13 million contiguous acres of National Forests, including the Bitterroot, Boise, Clearwater, Lolo, Nez Perce Panhandle, Payette, Salmon, Challis, and Sawtooth National Forests. The restoration area also includes approximately four million acres of contiguous wilderness areas, including the Selway-Bitterroot, Frank Church River-of-No-Return, and Gospel Hump Wildernesses (Figure 4).

Idaho's landscape ranges from sagebrush flatlands in the south to mountainous terrain in the central and northern part of the state. Maritime climates in the north support "western red cedar-western hemlock vegetation types, grading into continental climates of Douglas-fir and Ponderosa pine to the south" (Mack and Holyan 2003, 2). Central Idaho, where the initial wolf releases occurred, has an elevation ranging from 1500 feet (457 m) to 12,000 feet (3657m), resulting in varying amounts of precipitation. Primary land uses include grazing, logging, mining, and recreation (Mack and Holyan 2003).

With a tribal enrollment of approximately 3,300 members, over half of which live on the 770,000-acre Nez Perce Reservation in north central Idaho, the Nez Perce, in partnership with the Service, are in charge of wolf recovery in Idaho. Wolves were released in 1995 and 1996 in the Frank Church River-of-No-Return Wilderness (Figure 4).

Figure 4. The Central Idaho restoration area. Data source: U.S. Department of the Interior Geological Survey (2000).

Research Design and Data Collection

To address the research questions, this study employed the case study approach outlined by Yin (2003). Within this framework, I utilized four common methods: 1) semi-structured interviews, 2) document review, 3) archival research, and 4) field observation.

From August through November 2003, I reviewed existing and available information sources (e.g., communications with the U.S. Fish and Wildlife Service and non-governmental organizations, Federal Register documents, federal wolf recovery plans, state wolf management plans, and internet searches) to identify those tribes that are currently participating in the recovery of the gray wolf and have developed gray wolf management programs.

The Nez Perce Tribe and the White Mountain Apache Tribe in Arizona are the only two tribes that not only participating in wolf recovery but have cooperative agreements with the Service to do so. I approached both tribes to request permission for conducting a case study of their respective programs with the intention of doing a cross-case comparison of their programs. However, only the Nez Perce Tribe granted permission for me to proceed with my research.

Interviews. To address the first research question regarding perceptions of the government-to-government relationship by the Tribe and the Service, I conducted a total of 20 semi-structured in-person and phone interviews with current and former Tribal and Service personnel from July through November 2004. Interviewees from each government entity were selected based on the extent of their 1) direct interactions with personnel from the other government interest, 2) participation in decision-making processes regarding the gray wolf, 3) participation in the design and implementation of gray wolf management

programs, and 4) their willingness to participate in this study. Interviewees from the Tribe included current and former Tribal Council members, natural resources and wildlife program heads, and full-time and seasonal biologists from the Tribe's Wolf Recovery Project team. Service interviewees included current and former U.S. Fish and Wildlife Service directors, regional and state gray wolf recovery coordinators, Native American Liaisons, and field supervisors. Where interviewees granted written consent, interviews were recorded on audiocassette and later transcribed.

Being sensitive to the historical treatment and needs of Native American tribes is critical for building meaningful and trusting relationships. For this reason, conducting in-person interviews with tribal members was especially important. I visited the Nez Perce Tribe in Idaho and carried out in-person interviews with Tribal leaders and other Tribal personnel in Lapwai and McCall from 26 to 31 July 2004 (Figure 4).

The interview structure and questions for Tribal personnel paralleled those for Service personnel in order to compare the government-to-government relationship through all of its participants' meanings and perceptions (see Appendix C for the survey questionnaire). The semi-structured nature of the interview allowed me flexibility in exploring themes of particular significance to the interviewee.

Interviews began with a series of general questions about the interviewee's background and experience working on gray wolf recovery as well as the importance of recovering the gray wolf.

The next set of questions related to the interviewee's perception of the government-to-government relationship. This included questions regarding modes of communication between the Tribe and the Service, development of their existing relationship, conflicts and

conflict resolution, and the adequacy of funding by the Service for recovering and managing the gray wolf.

The final set of questions was designed to gauge the interviewee's perception of the consistency with Secretarial Order 3206. This included questions regarding tribal participation in consultation, the adequacy of scientific information and technical assistance provided by the Service, and deference by the Service to tribal wolf conservation plans.

Document reviews. I addressed the second research question, regarding how the existing government-to-government relationship leads to improved gray wolf recovery and management efforts, by performing a review of the Tribe's wolf management program. The program evaluation included a review of written management plans and annual or biennial wolf recovery progress reports obtained from the Tribe and Service. I supplemented these with interviews with Tribal wolf biologists. Documents were reviewed in June and July 2004; supplemental interviews were carried out in tandem with the in-person interviews conducted in July 2004.

The *Nez Perce Tribe Wolf Recovery and Management Plan* and annual monitoring reports requested from the Tribe and Northern Rocky Mountains wolf recovery annual reports obtained from the Service provided information on measures to recover and protect the gray wolf.⁴

To maintain consistency and reduce bias in characterizing these documents, the data collected from the wolf management plan and monitoring reports were obtained using a questionnaire matrix loosely based on one developed by Boersma et al. (2001) to determine the effectiveness and consider the content and attributes of endangered species recovery

plans. The matrix for the management plan included descriptive data about the plan and the gray wolf as well as attribute data collected on information used in the management plan, including factors threatening the gray wolf; proposed management, monitoring, and public relations actions; proposed administration and implementation of plan actions; and recovery criteria.

Matrices representing each year of recovery noted whether or not original plan actions were carried out. I collected this data from annual monitoring reports. This included data on wolf management, ongoing monitoring activities, and wolf control.

Field observations and archival research. To triangulate data, I observed interactions between field biologists in the McCall office in July 2004. I also reviewed archival documents from July 2004 through March 2005 (e.g., cooperative agreements, newspaper articles, policy documents, etc.).

Data Analysis

I wrote up field notes based on the jottings and observations recorded in Lapwai and McCall. I also transcribed all tape-recorded interviews.

The first research objective was addressed by identifying patterns and themes in the responses of interviewees within and across each governmental entity. Field notes and interviews were analyzed using an approach that draws on ideas rooted in grounded theory, an inductive method of data analysis, as outlined in Emerson, Fretz, and Shaw (1995).

Coding for themes, the primary method for analyzing qualitative data, allows the researcher to identify patterns, variations, and emerging themes within the data and link

⁴ Annual reports from the Service are available online at <http://westerngraywolf.fws.gov/annualrpt>.

related events together, thus moving beyond mere description to more general analytic dimensions. By performing an initial, line-by-line coding of the fieldnotes and interview transcripts, the researcher opens up inquiry and entertains all analytical possibilities (Emerson, Fretz, and Shaw 1995).

The various components of the government-to-government relationship identified and broken out both in the research questions and in the survey instrument (e.g., communication between governments, conflicts and conflict resolution, funding, consultation, disclosure of scientific information, etc.) served as preexisting themes emerging from the data. These and other themes emerging from the interviews, which are organized into the following seven chapters, were coded for by hand in the interview transcripts. In addition to coding for these preexisting themes regarding wolf recovery, another set of codes were developed based on the interviewee's emotions and attitudes as revealed in the field notes and interview transcripts. For each aspect of the government-to-government relationship, words and phrases were identified as corresponding with positive (e.g., satisfaction, hope, pride) and negative (e.g., anger, resentment, frustration) feelings.

I then performed a focused coding of the data, which privileges core themes and allows subthemes to develop. For example, within a particular theme such as conflict resolution, I coded for subthemes, such as decision-making authority or lethal control, that appeared frequently in the data. During the coding process, writing integrative memos provided a sustained examination of a particular theme and explored the relationship between core themes (Emerson, Fretz, and Shaw 1995). Further analysis was required if the two governmental entities expressed opposing attitudes and feelings about a particular aspect

of federal-tribal interactions. As such relationships emerged, I returned to previously coded documents for focused recoding and examination of the data.

To address the second research question, tribal wolf management program data collected via interviews and document reviews were analyzed in a format similar to that used by OWOW's *Tribal Wetland Program Highlights* (2000), where program components were identified and described. The wolf management program was evaluated for breadth by identifying and describing general program components such as recovery goals, education and outreach, and research. I then evaluated the depth of each program component by examining its level of detail, including whether or not specific goals or actions were explicitly stated. The tribe's annual monitoring reports were used to determine wolf population trends and management activities since the program's inception.

All data analyses were then integrated to identify the effectiveness of specific elements of the government-to-government relationship in contributing to wolf recovery and management efforts. To accomplish this, I explored the relationship between core themes emerging from the interview data and/or field notes and tribal wolf management program components.

Limitations

Due to budget and time constraints, only one case study was conducted and so will not represent all conditions on a national scale. Instead, this case study provides an in-depth review of a gray wolf protection program undertaken by a very engaged tribe, the Nez Perce. Similar to OWOW's *Tribal Wetland Program Highlights*, this case study initiates a process for

documenting tribal endangered species protection efforts and forms a baseline for measuring and comparing future progress.

MEANINGS OF WOLF RECOVERY

Relevance to Research Question

Gray wolf recovery is one of the most controversial ongoing recovery efforts occurring under the authority of the Endangered Species Act. To frame subsequent discussions appropriately and open new analytic dimensions for discussing federal-tribal interactions, it is necessary to illuminate the cultural, economic, and sociopolitical context of wolf recovery in which this government-to-government relationship operates.

Shared Visions of Wolf Recovery

Wolves are an important biological and political indicator species (Nie 2003). Where multiple players are involved in wolf recovery, multiple meanings have been placed on wolves. These meanings often compete with each other, which has led to the wolf controversy. To ranchers, hunters, and others, wolves are a threat to their way of life and represent government intrusion into their lifestyle. To environmentalists, wolf restoration symbolizes “a last chance to atone and make amends for past destruction of wildlife and wilderness” (Nie 2003, 6).

These multiple, competing meanings place wolves within a larger cultural and political debate. Just as divergent views of the wolf stem from a different set of values held by ranching and environmental interests, wolf recovery has different meanings to the Tribe and the Service and results in different views of these larger debates.

The Tribe and Service share a vision of restoring and recovering the wolf population. Interviewees from each government expressed the sentiment that the wolf has “a rightful place here [on earth]” (Table 1).

Table 1. Meanings of wolf recovery to the Nez Perce Tribe and the U.S. Fish and Wildlife Service.

	Nez Perce Tribe	U.S. Fish and Wildlife Service
"What does wolf recovery mean to you?"	<ul style="list-style-type: none"> • Returning a species to its rightful place on earth • Opportunity to honor the wolf • Revival of Tribal culture • Continuing mirror of wolf and Tribe's journey 	<ul style="list-style-type: none"> • Returning a species to its rightful place on earth • Recovery of an endangered species • Endangered Species Act worked • Restoring a native species to original habitat • Successful execution of Service responsibilities

"Recovering the gray wolf is, to me, putting a native species back on the ground in the country that it once was a part of, putting them back on the ground in places they once were," said one Service employee.⁵

Tribal members expressed similar views as the Service but did so in a way that reflects the Tribe's spirituality and holistic worldview that all living creatures have value and should all be able to inhabit the earth. One Tribal member sees wolf recovery as an opportunity to "honor the wolf as an equal" and "clear a place at the table for the wolf to be [there] with us as a brother."⁶

This shared ideology regarding the wolf provided a common ground from which both the federal and Tribal government could negotiate the cooperative agreement and collaborate on subsequent recovery efforts. While both governments expressed pride in recovering the wolf, its recovery transcends biological issues and reflects each government's culture, interest, and mission.

⁵ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

⁶ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

Meanings to the Service

When asked what wolf recovery means to them, several personnel from the Fish and Wildlife Service discussed restoration of native species. “[It’s also] an obligation of the U.S. Fish and Wildlife Service to get that job done,” said one Service employee.⁷ Another succinctly stated, “Endangered Species Act worked. Job well done.”⁸

To the Service, wolf recovery points toward the Endangered Species Act’s strength and ability to accomplish its goal of recovering species. It also indicates that the Service did their job in carrying out the ESA and that they have successfully carried out the responsibilities that had been tasked to them by the United States government.

Attending and/or participating in Tribal ceremonies also helped frame the cultural context for Service personnel working on recovery with the Nez Perce Tribe. Service employees acknowledged the importance of culture that the Tribe placed on wolf recovery. Two employees interviewed were present, along with several spiritual leaders from the Tribe, in Missoula, Montana, for the initial reintroductions during the mid-1990s when the first wolves were unloaded off the plane and set on the tarmac. Tribal leaders performed a ceremony welcoming the wolves back to the region (*High Country News* [Paonia, CO], 26 February 2001). One Service employee described it as “pretty cool”:

I think it’s increased my appreciation of different viewpoints of the world and relationships with animals. I’m just a middle-aged white guy, and I think having those guys talk about what it means to their culture and stuff is pretty impressive. The different viewpoint they brought was pretty important to me personally. I think that it makes you appreciate diversity and just different viewpoints and realize that people do think different ways about different things.⁹

⁷ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

⁸ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 5 October 2004.

⁹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 5 October 2004.

Meanings to the Tribe

Because the wolf is an integral part of their history and culture, the Tribe finds meaning in the return of the wolf as a manifestation of the Tribe's spirituality, culture, and history. One NPTEC member stated proudly, "It was a reality come true. It was a vision that came true... and it was a reassurance that our natural world and our spiritual world were reviving."¹⁰

Although other animal species, such as the coyote, have a more prominent place in the Nez Perce culture, the wolf is also significant, representing ideals like loyalty, wisdom, and strength in battle. One Tribal member discussed the wolf as a guardian spirit for many Nez Perce. In the Nez Perce War of 1877, he said, the visions of many wounded and dying warriors were often of animals, and many of these visions were some variation of the wolf.

Personal connections with the wolf tie the past to the present (*High Country News* [Paonia, CO], 26 February 2001). Said one Tribal member:

All I can think about is my great-great-grandpa. He fought against the cavalry in [the Nez Perce War of] 1877. All the things that we—our way of life, being able to honor the wolf as an equal, those things come to my mind. The things that we fought for, whether we knew it or not, we were fighting to keep our way of life. That meant leaving wolves alone. That meant not harvesting too much, not overpopulating an area. So that's what we were fighting, just for that basic, for those beings to be with us. It's what our people died for. It takes on a whole new meaning than just talking about science and critters and x's and o's.¹¹

Two Tribal members also spoke of wolf recovery as a journey largely reflecting that of the Tribe itself. The wolves and the Tribe have shared a similar fate as European settlers

¹⁰ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

¹¹ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

expanded westward, seeking to tame the frontier and bring order to the west to make room for their way of life. One NPTEC member explained:

Many times you'll hear this, and I often use this in my travels, that the wolf and the Nez Perce history mirrors one another. We've been chased from the land, and so has the wolf. We've been hated and feared, and so has the wolf. We have been hunted and killed, and so has the wolf. And over the course of time, we have fought to regain ourselves as a Tribe, as a sovereign nation. In this country's history, we're typically a nation of people that are suppressed in such a way that it's difficult to regain. Well, we're regaining as well. The wolf is regaining and has returned to the landscape with the assistance of Fish and Wildlife and the Tribe. You can find that history; you can find that pride within the community.¹²

"For the wolf, they were pushed to the edge of extinction in Idaho," explained another Tribal member. "Over time, we came out of our winter season, and I feel that today the reflection of the journey continues when you see the Tribe developing the political and technical and biological expertise to deal with wolf recovery. At the same time, you see the wolf regaining its rightful place in the landscape. It's a more optimistic future. You see this elevation, a continuing mirror of our journeys."¹³

Those individuals dealing most closely with the technical and operational aspects of wolf recovery and management, the Tribe's wolf biologists and operations-level management, are not tribal members. They explicitly stated that although they, as non-Indians, could not pretend to know how important the return of the wolf is to the Tribe, they still felt a connection to the Tribe and recognized the larger cultural and sociopolitical contexts in which the Tribe is participating in the recovery effort. Even though he understands that the Tribe's worldview draws on a totally different way of interpreting how

¹² Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

¹³ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

the world works and the interconnectedness of ecological processes than “us white folks,” one non-Indian employee is emotionally invested in the Tribe’s success in achieving those larger political goals:

I work for the Nez Perce Tribe not just because I’m a wolf biologist and I want to work on wolves, or just because I’m a biologist and I want to work on wildlife, natural resource issues. Yes, what I’ve done is helped to recover wolves in the Northern Rockies. It’s helped to recover an endangered species. But where I take the most pleasure out of my accomplishments is the benefit that this, hopefully, will bring to the Tribe. So I don’t try to connect with their cultural or religious angle or connections. It’s there. It’s very strong. It’s very real. I’ve participated in lots of different meetings and gatherings and ceremonies that had to do with wolves or other natural resource issues. It only takes one time to be involved... to know that the... commitment to natural resources by the Nez Perce Tribe is absolute. There is no question. So of course, being a wildlife biologist, it’s great to work for a government that just assumes natural resource conservation is the right thing to do, but... I just can’t pretend that I know how important this means to them. There’s a cultural difference. I do what I can to understand their perspective so that I can carry out my charge to best benefit them.¹⁴

Wolf recovery is a surrogate issue for larger sociopolitical debates (Nie 2003).

Because they view wolf recovery as a metaphor for the regaining of their sovereign status and as a platform for discussing tribal authority in natural resource management issues, the Tribe is using recovery to explore its authority as a sovereign nation carving out a role in wolf management once the species is delisted and management is transferred to the states (see *Implications of Wolf Recovery: Management Authorities and the 10(j) Rule*). Now that the recovery goals have been met, and as the federal government moves closer to delisting the wolf, the Tribe wants to make sure that a spotlight remains on this issue.

¹⁴ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 29 July 2004.

While the cultural differences may be wide at times, both governments benefit from having overlapping ideals of recovery and species conservation. The potential gains to both governments resulting from their cooperative effort helped them step out from the shadows of their respective histories and may help minimize future conflicts.

COMMUNICATION AND DECISION-MAKING

Relevance to Research Question

Because negative human attitudes towards the gray wolf led to its decline, wolf recovery and management largely depends on the ability of both governments to interact with each other and with the public in an effective manner (Research Questions (RQ) 1b and 2b). Technical personnel from both governments cited communication and decision-making authority as most critical to these interactions. This chapter discusses how communication between the two governments and decision-making authority within each government affects their ability to carry out on-the-ground recovery efforts.

Interagency Communication and Coordination

Both policy- and technical-level interviewees from each government perceive their government-to-government relationship to be effective for carrying out the operational aspects of the Tribe's wolf recovery and management plan in order to meet federal wolf recovery goals. All interviewees expressed satisfaction with the level of communication between technical staffs and cited it as a primary contributor to the ongoing success in fulfilling their programmatic responsibilities (Table 2).

Table 2. Perspectives on overall relationship effectiveness for wolf recovery, communication, and decision-making. Number of interviewees from the Tribe and Service agreeing or disagreeing with each statement.

		Nez Perce Tribe		U.S. Fish and Wildlife Service	
		Yes	No	Yes	No
The Service and Tribe have an effective relationship for meeting wolf recovery goals.		6	0	5	0
Communication is adequate for carrying out wolf recovery efforts.		6	0	3	0
The Tribe has adequate opportunities to participate in decision-making processes at the...	...technical level.	2	0	4	0
	...policy level.	0	4	5	0

In the central Idaho recovery area, the Service and Tribe hold annual coordination meetings, either in Lapwai or Boise, to discuss budget and technical issues as well as overall implementation of the cooperative agreement. Attendees at the annual meetings from the Tribe usually consist of the wolf project leader, wildlife program director, natural resources department manager, and legal counsel. Attendees from the Service normally include the field supervisor, Native American Liaison, wolf recovery coordinator, and a public relations representative. Policymakers do not attend these meetings.

The two governments' shared ideology of restoring wolves to the land transcends their differing missions (the Service's to successfully implement the ESA and the Tribe's to advance tribal sovereignty issues) and allowed them to develop their long-term, multi-year cooperative agreement for collaborative wolf management. Over the short term, these annual meetings at the technical level provide an opportunity for the Tribe and Service to bridge any disconnects that may have arisen over the past year and develop shared expectations for the coming year.

The governments have experienced few debates over issues, such as wolf-collaring efforts or the allocation of funds to telemetry flights or outreach activities, "largely because we've taken the initiative to go up on an annual basis and meet with the Tribe in the spring to talk about what's your program of work and let's talk it through and reach an agreement as to what we collectively think should be the priorities. That's helped a great deal to develop shared expectations."¹⁵

¹⁵ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

Expectations from the public necessitate diligent coordination across their agencies in order to implement the Tribe's recovery and management plan. For example, most depredations get reported on weekends, which require the cooperators to maintain a "24x7" operation. Close communication becomes even more critical as the wolf population and geographic distribution increases while funding and staff levels remain flat (see *Funding*).

"When Wildlife Services calls me with a depredation," said a Service employee, "my first thing is [to] go to the Tribe [because they maintain the database with wolf and wolf pack locations]."

The Tribe has tremendous insights into what the wolves are doing. I depend heavily upon them when an issue comes up with a particular wolf pack in a certain area... that involves livestock or may involve somebody saying a wolf's running around downtown or something. By them being in their position with their field crews, they're the most intimately aware of where these wolves are and what they're doing, so yeah, usually one of the first calls I make when I get a call that requires a management decision is to the Tribe. I lean very heavily upon them to give me the best information possible so that I can intelligently deal with it.¹⁶

"When it comes to getting stuff done in the field," explained one Tribal employee, "we've really developed an integrated team," even though the agencies have their own set of responsibilities as outlined in their respective cooperative agreements.

Wherever there's a problem, we all get together and talk about it. Whoever's the closest to get there the quickest to resolve it or address it just takes off and does it. We all know the system, we know the protocols, we all work together, and we'll get the ball started to make sure that the response is prompt. We just don't have those kind of turf wars in the project in Idaho.¹⁷

¹⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

¹⁷ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

Both technical staffs also attribute the efficiency and effectiveness of their relationship to an understanding of each other because of their shared biological discipline and because as a team, they have remained relatively intact since the early days of wolf recovery.

“We’re a bunch of ol’ farts. We’re all middle-aged white guys in our fifties,” said one Service employee. “We’ve all been together working on this thing for nearly seventeen years now. That really makes a huge difference because we know and trust each other.”¹⁸

“It’s one thing to have an MOU between Fish and Wildlife Service and the Tribe,” added another Service employee, “but if you don’t have personalities that blend, you can have major, major problems.”¹⁹

One Tribal official speculated on the program’s success if those relationships had not existed. “Without those bonds or friendships, it’s really hard to say where this would be.”²⁰

The Tribe and Service’s demonstrated commitment to the program through close communication and coordination solidified their government-to-government relationship at the technical level and allowed them to implement the Tribe’s management plan with a high degree of efficiency. By placing recovery objectives above defined agency responsibilities, livestock producers and other public interests benefit because three agencies, rather than just one, work on their behalf and can allocate more staff, time, and resources to a problem. This unified effort built public trust and confidence in the governments’ ability to monitor wolves and quickly react to problem situations. In turn, the gradual shift in human attitudes towards tolerance of wolf recovery efforts indirectly allowed the wolves to flourish.

¹⁸ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 5 October 2004.

¹⁹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

Decision-Making Authority at the Technical Level

Both governments indicated that interactions between the technical and policy levels are few and mostly occur when issues cannot be resolved at the operational level. For the Tribe, this was not the case during the early years of recovery. At that time, the wolf recovery office was located in Lapwai, near Tribal headquarters and most government department offices. One Tribal wolf biologist recalled, “You knew the elected leadership on a personal basis. They’d call you, or you’d stop by and talk with individual elected officials.”²¹

In 1999, the Tribe’s wolf office relocated to McCall, approximately 150 miles south of Lapwai. As a result, Tribal biologists today have few interactions with NPTEC. The chain of command has also become more defined as the Tribal government needed more structure in order for them to be more efficient when dealing with issues, so all wolf-related issues are directed from the wolf project leader to the wildlife program director and the natural resources department manager. With the added levels between the Tribal biologists and NPTEC, issues requiring immediate action could take weeks for a decision if they had to go through the bureaucracy.

Within the much larger Service, the northern Rockies wolf recovery coordinator manages the overall program, coordinates activities, and directs the cooperators in all three recovery areas. The Idaho wolf recovery coordinator coordinates all wolf-related issues within the CIEMA. Above his level and beyond the responsibilities of the regional wolf

²⁰ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

²¹ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

recovery coordinator, day-to-day involvement in wolf recovery is minimal and mostly involves budget and program oversight as well as policy issues.

Consequently, technical personnel from both governments agree that they retain considerable decision-making authority regarding on-the-ground recovery actions (Table 2).

The Idaho wolf recovery coordinator describes himself as “the conduit, the mediator, the ambassador, the peacemaker, the bridge, and any other words you can come up with that describe what it takes to communicate with a very polarized public on the very contentious issue of wolves.” He also serves as the management authority for wolf depredation issues and is “the judge, the jury, and the executioner of wolves in this recovery area” and answers to the public for all of their concerns and criticisms.²²

“You’ve gotta be out there available to get your butt kicked,” said the Tribe’s wolf project leader. “[You] have to be able to answer the hard policy questions. ‘What are you gonna do about this? What are you gonna do about that?’ ‘I don’t know. You have to talk to so-and-so.’ That’s just sending [you] out to be slaughtered because [you] have no decision-making authority. There’s no way I could be as effective as I have been unless the Tribe gives me decision-making authority. I gotta have some room to make some decisions.”²³

Having the technical storehouse of knowledge puts the technical staffs in the best position to make quick decisions. Because both governments’ policymakers take a hands-off approach and place their trust in that knowledge at the operational level, technical staffs from both governments retain a significant amount of decision-making authority, which

²² U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

²³ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

contributes to the overall effectiveness of their relationship because neither government delays the actions from either side. The greatest benefit to having decision-making authority is that it allows a skeptical public to put a legitimate face to the program, air their concerns and criticisms, and have their questions answered (*Spokesman-Review* [Spokane], 25 March 2003). Because the program is highly publicized, neither government wants the program to be perceived as a failure, especially with such a polarized public. Given the power to answer those questions face-to-face with the public, they begin to break down barriers and develop trust with the public, which empowers both to achieve ready and effective solutions.

Decision-Making Authority at the Policy Level

The two governments disagree on the adequacy for both to participate in decision-making at the policy level (Table 2). The Tribe has little input and influence on decision-making at that level, as the Service retained that responsibility in the cooperative agreement. Unlike the fluid and flexible nature of the relationship at the technical level, where responsibilities overlap and are shared, no such relationship exists at the policy level. The Tribe's lack of decision-making authority at the policy level may have implications for their future in wolf recovery (see *Secretarial Order 3206* and *Implications of Wolf Recovery: Management Authorities and the 10(j) Rule*).

CONFLICT RESOLUTION

Relevance to Research Question

The ability to resolve technical- and policy-level conflicts can either enhance or destabilize the government-to-government relationship. This chapter discusses the types of conflicts within and external to the government-to-government relationship as well as the steps that the Service and the Tribe have taken to resolve them (RQ 1b). This section also discusses how the two governments perceive the effectiveness of their relationship to be for resolving such conflicts.

Policy-Level Conflicts

The two governments had conflicting views on the adequacy of the government-to-government relationship for resolving conflicts above the technical level (Table 3). Ongoing conflicts at the policy level primarily concern the government-to-government consultation process (see *Secretarial Order 3206*) and post-recovery tribal management authorities (see *Implications of Wolf Recovery: Management Authorities and the 10(j) Rule*), which continue to deeply frustrate the Tribe.

Table 3. Perspectives on conflict resolution. Number of interviewees agreeing or disagreeing with each statement.

		Nez Perce Tribe		U.S. Fish and Wildlife Service	
		Yes	No	Yes	No
The government-to-government relationship is adequate for resolving conflicts at the...	...technical level.	3	0	4	0
	...policy level.	0	4	3	0

Management Responsibilities

All interviewees from both governments feel that the government-to-government relationship is effective for resolving conflicts at the technical level (Table 3). Both the Service and the Tribe identified only two current points of conflict: funding (see *Funding*) and lethal control.

Early conflicts between the Service and the Tribe regarding the cooperative agreement arose, in part, because they were unknown partners. Beyond disagreements over the application of lethal control and the controversy over wolf depredations, both the Tribe and the Service noted conflicts early on over administrative requirements of the cooperative agreement. The Tribe wanted to expand their role to include policy discussions, while the Service remained steadfast in their authority to make and communicate policy.

For instance, the Service “encouraged” and provided clarification to the Tribe to stay within the bounds of speaking only to wolf biology and monitoring activities and not get pulled into policy discussions during public relations and outreach activities. “It would be easy to do, because in a lot of parts of the State, they are recognized as the lead in wolf recovery, and for good reason,” noted one Service employee, “but they’re not, technically, in terms of authority and policy issues.”²⁴

For their part, the Tribe felt that the Service occasionally behaved in a way “just to let [the Tribe] know that they’re still in control” by intervening in the Tribe’s recovery efforts, acting as the lead, and reducing the Tribe to a contractor status by managing the Tribe’s biologists.²⁵

²⁴ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 9 November 2004.

²⁵ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

“We need to make sure that the work that’s being carried out [by the Tribe] is within the priorities of what we think is important because we’re providing funding,” responded one Service employee.

We’ve talked about where monitoring is going to occur, what percentage of the funding is going to go toward monitoring flights versus other activities. I’ve had discussions about the role of the Tribe in public meetings and outreach activities. We’ve wanted to make sure that when the Tribe is speaking, they’re speaking to issues of primarily distribution and numbers. Then, when there’s any issue that comes up regarding the topics of policy, that the Fish and Wildlife Service is the authority to speak to that so the Tribe doesn’t get caught in between those issues.²⁶

To resolve such issues, the Tribe and Service evaluated the agreement during their annual coordination meetings to see if changes, additions, or amendments were necessary to match the evolving nature of their relationship. “The first agreement kind of read, “Thou shalt, thou shalt, thou shalt,”” said one Tribal employee who negotiated the cooperative agreement. “[The Service was] worried about their new partner. And so, instead of us asserting leadership in the program right off, we were working with Fish and Wildlife Service staff that felt they had an ongoing, continuing interest. It was two or three years before the Service moved their staff off and gave us the entire playing field.”²⁷

“Fish and Wildlife Service was riding us a little too hard,” added a Tribal member.

Would they require the same kind of detail if it was an agreement that they were crafting with a state? Chances are they would not require that level of detail and oversight, but with us they were. I think a lot of it was based on the fact that we were a new, unknown partner. As time went on and we were gaining their confidence, I felt that they eased up on us. It was all about crafting relationships between two brand new neighbors. It just took some time.²⁸

²⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 9 November 2004.

²⁷ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

²⁸ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

Service personnel agreed. “The Tribe gained confidence every year,” said one Service employee. “They knew the job, knew the business, knew the wolves and their behavior a little bit better. I think the Fish and Wildlife Service then gained confidence in their ability and in our own understanding of what was going on here with wolf recovery.”²⁹

The trust and confidence that each government gained in each other over time helped dissolve the initial unease and skepticism over their partnership.

Lethal Control

Livestock depredations, or the preying of livestock by wolves, and wolf control actions have been primary sources of tension between the livestock industry, the Idaho state government, the federal government, and the Nez Perce Tribe. To address the depredation issue, control of problem wolves is one of the Tribe’s four core management components (Nez Perce Tribe 1995).

From the start of their relationship, the Tribe and Service have disagreed on how wolf control would be handled. The Tribe wanted more flexibility in the ability to dispatch its own personnel to respond to depredation calls, but the Service maintained that authority. Although the Service retains overall responsibility for wolf control and delegates authority for control actions to Wildlife Services, both governments feel that all three parties share this responsibility (see *Communication and Decision-Making*).

The Service and Tribe have also disagreed about the circumstances under which lethal control would be used. Lethal control is only taken when livestock depredations still continue after non-lethal control actions have been exhausted.

²⁹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

Levels of acceptance of lethal control vary within the Tribe, from reluctance at the NPTEC level to acceptance at the technical level. Because of the Tribe's holistic worldview, in which there is no such thing as a "problem wolf," they oppose lethal control of wolves even though they reluctantly agreed to lethal control in the cooperative agreement.

We agree that lethal control is a must. [But] oftentimes, we'd like to relocate packs. Oftentimes, we would like to try other hazing possibilities and options, but we oftentimes don't have an option. It's go in, remove the wolves lethally, and be done with the problem. That seems to be more and more the approach and the standard of the Service at this time.³⁰

At the same time, the Tribe acknowledges the Service's and, to a lesser extent through the cooperative agreement, their own responsibilities to the State and to public interests dictating that lethal control must remain a viable control option.

They're guided by the law, and largely, you can understand from their perspective [that] we may not be the best partners in this marriage. They have a huge responsibility on their shoulders. At the same time, as their conservation ethic comes into play, then the hardship and the feeling comes forward, and we'd like to do not so much of a control effort as they are providing for, but again, those are some of the givens we've agreed to within the agreement that don't set well.³¹

Tribal members in the higher levels of government do not feel that the lethal control issue has been resolved philosophically but reluctantly accept the political reality of the cooperative agreement, which gives the Service the final authority to decide on control actions. In so doing, the Service and Tribe avoid driving a wedge in their relationship, which may have led to further, irresolvable conflicts in the post-delisting era.

At lower levels of the Tribal government where wolves are directly being managed, and where all of the actors are non-Indians, the issue of lethal control is more accepted.

³⁰ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

“We try to talk through the issues [with the Service],” said one Tribal government official. “Like using different techniques to scare wolves, [just] making sure we’re on the same page. We’re identifying problems, and we’re trying to figure out what’s in the toolbox that we can use to fix that problem.”³²

Today, the Tribe, Service, and Wildlife Services work together to address depredation issues on the ground, so they perceive conflicts over lethal control to be more with the public and different interests, primarily livestock and conservation interests, than with each other. Both the Tribe and the Service agree that livestock depredations on public lands have been the most pervasive and incendiary conflict that they’ve confronted to date.

Environmental groups, who often emotionally connect wolf recovery with the conservation movement, oppose lethal control as a control option because it hinders the recovery effort. Livestock producers, who lease grazing allotments on public lands, support wolf control on public lands (*Idaho Mountain Express* [Sun Valley], 13 August 2003). Their livelihood is jeopardized, and the legitimacy of that livelihood is undermined, when wolves kill their livestock without consequence. From the producers’ standpoint, wolves should not be treated differently than other predators, who can be controlled under the current federal and State legal systems (*Idaho Statesman* [Boise], 21 April 21).

Knowing that wolf-livestock interactions will always be an emotional, political, and contentious issue, all parties involved must actively seek and develop long-term solutions where the public can coexist with both livestock and wolves and, at the same time, maintain

³¹ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

³² Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

open rural space. Both the federal and Tribal government recognize that lethal control needs to be carried out within this framework.

In July 2004, the entire Cook Pack was lethally controlled because they continued to depredate on livestock after non-lethal control techniques had been exhausted.³³ The Tribe's wolf project leader expressed concern that events such as what happened with the Cook Pack will be occurring every year.

By this time next year, there's gonna be additional wolves, another wolf pack in there. There's gonna be sheep in there. They're gonna kill the sheep; we'll be taking that pack out, too. So we're just in this endless cycle of just wolves killing sheep, so we're losing all this stock. That makes the producers angry. We're gonna be killing wolves out there, which makes environmental folks angry. Everyone's gonna be angry, every year, all the time. We need to be smarter than that. We need to look for some long-term solutions that everyone can live with and put that issue in proper perspective. It's gonna be hard. It's gonna be a challenge, but that's where we need to go.³⁴

The challenge for the Service, Tribe, and Wildlife Services has been to develop a balanced approach to wolf recovery that assures a viable wolf population, an issue of concern to environmental groups, but does so in a way that mitigates economic burdens to livestock producers and other interests. Trying to find that balance without angering either interest has been difficult.

I think amongst livestock producers, Idaho Cattle Association, we have gained a lot of credibility. There's a lot of support from individuals as well as the State Cattle Association for wolf presence. They understand that wolves are here to stay and that we can manage wolves when they get into trouble. We have a very effective wolf control program and have demonstrated that when wolves get into trouble, we will be there. We will be responsible and be there timely, and we have

³³ The Cook Pack, designated a breeding pair in 2003, were suspected of over 100 confirmed sheep depredations between the breaks of the Salmon River and Payette Lake north of McCall, Idaho. The confirmed depredations represent 78% of all sheep losses in the Central Idaho recovery area for 2003 (Mack and Holyan 2003; *Star-News* [McCall], 29 July 2004).

³⁴ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

a very good track record that we're effective at reducing future losses, mitigating those losses of livestock. That's a big complicated issue in itself, but I think our control program and our approach to that element in our program has generated acceptance and support by the Cattle Association and from individual producers.³⁵

The Service concurs that relations with various stakeholders, especially livestock producers and other opponents of wolf recovery, have improved over time. Explained one Service employee, "A lot of effort was put into working with the Idaho Cattle Association, Wool Growers, Farm Bureau, et cetera, county commissions, in the way of public meetings, or any time we got a complaint, to be willing to go meet with them to try to resolve that and answer their questions or concerns."³⁶

The Tribe's wolf project leader feels that they have made significant progress in the last nine years working with livestock producers and the environmental community. "Ranchers would still rather not deal with wolves," said one Tribal employee. "The environmental community still would rather not deal with cattle on public land. We're not trying to change their perspective, but I think we have worked through the issues enough that both entities understand that we're gonna have wolves and livestock overlap and need to figure out a way to live together in a new environment. I think we're making progress that way."³⁷

The Tribe and Service cite the lethal control of the Cook Pack as a good example of the success of their community outreach efforts and the progress they have made from the days when the annihilation of an entire pack made international news. "We just annihilated an entire pack," said the Tribe's wolf project leader. "It is the largest number of wolves that

³⁵ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

³⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

we've removed in one single pack, eight at one time, nine wolves we lethal-controlled last week. It was, of course, in the paper, but it was all support."³⁸

He cited the public statements of support from major national, state, and regional conservation groups, including Defenders of Wildlife and the Idaho Conservation League, following the control event as evidence of the gains that the wolf recovery team has made in the community (*High Country News* [Paonia, CO], 11 October 2004; *Idaho Statesman* [Boise, ID], 23 July 2004).

The larger challenge that the recovery team currently experiences is dealing with anti-wolf sentiment developing across the state from outfitters, guides, hunters, and sportspersons. Unlike livestock depredations, which can be readily counted, and wolf-livestock interactions, which are fairly well understood, the effects of wolves on Idaho's big game population (e.g., elk, deer, and other natural wild prey) are difficult to quantify (*Star Tribune* [Casper, WY], 20 February 2005).

"You're looking at trying to understand very complex, ecological functions, predator-prey relationships," said the Tribe's wolf project leader. "It's not just a single predator and a single prey. It's interactions between multiple predators and multiple prey species. It becomes incalculably complex, and there's no way that any human being right now can understand or predict the potential effects that wolves are gonna have on Idaho's big game populations."

Both the wolf recovery plan and the Tribe's management plan place particular emphasis on information, education, and outreach efforts. By committing to resolve issues

³⁷ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

³⁸ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

at the personal level, Tribe and Service technical staff have personal working relationships with nearly every producer that has been affected by wolves.

Early on, the Tribe and Service identified the human dimensions of wolf recovery as the most critical component of wolf recovery (Nez Perce Tribe 1995), and by placing greater importance on coordinating agency efforts to meet the needs of the community than on compartmentalizing agency responsibilities, the technical staffs of the two governments feel that they are effectively bridging the gap between conflicting interests and have developed trust in and comfort with each other. By minimizing internal government-to-government conflicts at the technical level, the recovery team feels that they have been more effective in resolving external conflicts with the public.

FUNDING

Relevance to Research Question

Wilson (1999) identified funding as one of the Tribe's biggest challenges for the monitoring program to keep pace with wolves and to provide accurate and timely information to minimize potential conflicts with humans and livestock. This chapter explores how effective the government-to-government relationship is perceived to be for securing funding towards wolf recovery and how the federal and Tribal governments perceive the adequacy of funding amounts the Tribe receives annually towards achieving their recovery objectives and fulfilling management needs (RQ 1b).

Perspectives on the Adequacy of Funding for Wolf Recovery

Funding chiefly comes from three sources: Public Law 93-638³⁹, the Fish and Wildlife Service, and the Bonneville Power Administration for mitigation of hydropower impacts. At the outset of the recovery efforts, the Wolf Education and Research Center, a small non-profit organization based in Winchester, Idaho, on Reservation lands, also provided funds for the Service to rent equipment, allowing the initial extraction and relocation of wolves from Alberta and British Columbia to take place (*High Country News* [Paonia, CO], 25 December 2005).

In 1995, their first year participating in wolf recovery and management, the Tribe had an annual budget of \$151,166 to monitor 14 wolves. By 2003, the Tribe's annual budget

³⁹ Better known as the Indian Self-Determination and Education Assistance Act, PL 93-638 is meant to maintain the federal government's trust responsibility to tribes by allowing tribes to contract programs from the Department of the Interior and plan, conduct, and administer those programs in an "effective and meaningful" way (*Indian Self-Determination and Education Assistance Act* 1975).

had tripled to \$455,000; at the same time, the wolf population in the central Idaho recovery area had increased to 379 wolves (Figure 5).

The Service and the Tribe disagreed on the adequacy of funding levels for wolf recovery (Table 4). Interviewees from the Tribe believed that they are underfunded, while, with the exception of one interviewee, Service personnel believed that wolf recovery is overfunded.

Tribal personnel consistently identified funding as one of their most critical needs for effectively managing wolf recovery. When Tribal members framed the funding issue in the context of their history with the federal government, dissatisfaction with the disproportionate budgets versus wolf population totals as well as funding inequities with the State took on deeper personal and cultural meanings.

“Historically, we have seen from the federal government being severely underfunded [*sic*],” said a NPTEC member. “The tribes have already paid their lifetime premium to the federal government by giving the United States all this land [through the treaty process], so the federal government, you better live up to your responsibility.”⁴⁰

Table 4. Perceptions of funding levels by the Nez Perce Tribe and the Fish and Wildlife Service. Number of interviewees that agreed or disagreed with each statement.

	Nez Perce Tribe		U.S. Fish and Wildlife Service	
	Yes	No	Yes	No
The amount of funding for wolf recovery is adequate.	0	5	3	1
The government-to-government relationship is effective for funding management needs.	0	5	0	3

⁴⁰ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

Figure 5. Estimated wolf population, number of packs, and number of breeding pairs versus funding levels for the Central Idaho Experimental Management Area. Data sources: 1995 and 1998 cooperative agreements, Nez Perce Tribe annual reports (1995-2003), and U.S. Fish and Wildlife Service annual reports (1999-2003).

When the initial cooperative agreement was negotiated and signed in 1995, the Nez Perce Tribe had proposed a fiscal year budget of \$900,000 to cover expenses (e.g., personnel, travel, radio telemetry flights, etc.) relating to the operational responsibilities delegated to them by the Service.

“They laughed at us,” said one Tribal employee. The Tribe’s actual first-year budget of \$151,166 was less than 20% of the funding they believed was necessary to carry out the first year of wolf recovery. “We had one person and a flight budget to cover the state. We’re lucky we started with the number of animals that we did and that everything was radio-collared.”⁴¹

While there has been frustration, and even anger, with the Service for a lack of adequate funding, the Service has, at times, demonstrated flexibility to the Tribe’s funding needs by pitching in year-end money to cover budget items like aerial flights, which can quickly swallow up budgets but are necessary due to central Idaho’s mountainous and nearly roadless terrain. The Bureau of Indian Affairs out of the Portland office has also made year-end funding available to the Tribe to help augment their efforts.

“It has been a godsend some years,” said one Tribal employee of the BIA funding. “We’ve just been in some really, really tough positions where we’ve gone to Animal Damage Control and Fish and Wildlife Service, when we knew that they had year-end money and said, ‘Give us some year-end. We are just tamed here,’ and explained the situation, and neither agency had come through.”⁴²

⁴¹ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

⁴² Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

By contrast, three out of four Service personnel responding to the funding question felt that the wolf recovery program is, if anything, overfunded. “We throw fistfuls of money at wolves. That’s politicians’ ways of trying to resolve problems,” said one Service personnel of the perceived inadequacy. He continued:

The symbolism of wolves makes it much more controversial and expensive than it ever need be in the real world. But everybody, except me I guess, likes radio collars. The law enforcement guys like them ‘cause they help make cases. The researchers like them ‘cause it allows you to do cool research. Wildlife Services likes them ‘cause it’s easier to kill or do problem wolves. Conservation likes radios ‘cause it helps with enforcement and then you can use these gimmicks like the RAG boxes or that kind of stuff for wolves. Ranchers like them ‘cause you can give them a receiver and they can know when wolves are around their livestock. But in reality, it just fosters this absurd perception that you have to have every wolf radioed ‘cause they’re about to do something bad. As a consequence of all that, we’ve tried to back off, and when you do, you just get beat up severely.⁴³

While Service personnel feel that recovery is drastically overfunded, both politics and the public’s high expectations demand intense monitoring efforts. Furthermore, as long as delisting is prolonged through lawsuits from wolf coalition groups and through Wyoming’s failure to produce an acceptable state wolf management plan, the necessity for the Service and Tribe to continue monitoring wolves keeps the cost excessive.

Tribal Perspectives of the Funding Issue

The Tribe’s annual budget for wolf recovery has tripled since their first year managing wolves under the cooperative agreement (Figure 5), although it still falls short of the \$600,000 that the Tribe has been requesting over the past few years. According to the

⁴³ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

Tribe, the program's annual budget would not consistently come under the amount they requested unless the Service was deliberately holding back money.

Tribal members and employees feel that the Service, at times, has used their control of the Tribe's purse-strings to supersede the Tribe's decision-making authority by directing wolf recovery efforts beyond what was negotiated in the cooperative agreement and outside the limits of a government-to-government relationship.

One Tribal employee speculated that the Service may perceive the Tribe as a wholly separate entity rather than as a cooperator working in conjunction with the Service to fulfill their program needs.

I think that if [the Service] were doing the work in the field that they would have been dedicating year-end monies to it. They would've been augmenting the amount of funds that were out there. Whereas they've contracted the job, and it's up to the Tribe. Once every year and a half, we discuss how we're gonna meet the challenges presented by an expanding population and what are the priorities. It's pretty easy to work out the priorities and the strategies. But there's no new money through the Service to do much of anything with. They've got a little 5 or 10K here and there, but most of the money has been developed by [the Tribe] working with the Congressional delegation to get the job done. Or year-end money from the BIA. The BIA has turned out to be a heck of a partner where it was just unexpected, when they have been traditionally short with resources. It was meaningful to them to see the Tribe succeed at that kind of effort.⁴⁴

Other Tribal members indicated that the Service, bearing political pressure from the State, deliberately held back money because they wanted the Tribe to fail at wolf recovery. The mere impression that the Service might want the Tribe to fail, especially after developing the cooperative agreement and particularly in light of the historical treatment of the Tribe at the hands of the federal government, was disappointing to the Tribe.

⁴⁴ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

“[The Service] turned to us in the first place, thinking that we were just gonna fall flat on our faces and that the recovery efforts would’ve failed because the Tribe wasn’t capable of actually getting [the wolves] out there,” explained one Tribal employee.

“They didn’t think the Tribe had the technical capacity to take it on. It was one of those deals where they thought it would be over with and wolves wouldn’t be here... It’s like this subhuman role that, you know, we’re the Tribe. [We’re] not capable of doing that. Only the State can do something like that. And then [the wolves] start taking off like wildfire.”⁴⁵

Almost all Tribal members who identified funding as one of their most critical needs for effectively managing wolf recovery suggested that the primary reason for low funding was that the Service did not have confidence in the Tribe at the outset of recovery. Having no prior relationship with the Tribe on the scale of wolf recovery, they initially didn’t want to allocate too much money to the project until they were confident that the Tribe had the technical knowledge and resources to carry out recovery efforts.

In order to gain the Service’s confidence, the Tribe augmented the program to the funding. “We did what it took to start fledgling elements, all these different elements that are listed in this plan,” said one Tribal biologist. “We’ve just led by example to show that we are capable and that we had a vision and knew how to put all these elements together to build a successful overall program.”⁴⁶

As the Tribe demonstrated that they were capable of implementing the various plan elements, they were able to tease away more responsibilities from the Service. In turn, the Service felt more comfortable increasing funding levels to carry out the job. “It was basically just building this relationship with the Fish and Wildlife Service, giving them assurances and

⁴⁵ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

comfort that the Tribe could do the job,” continued the Tribal biologist. “That just took years and years and years.”⁴⁷

Consequences of Limited Funds

When asked if funding was adequate during the early years of wolf recovery, one former Service employee involved in wolf recovery for the duration of the first cooperative agreement replied, “I didn’t have a clue if it was or not. It was the amount available, and I was determined to make that money go as far as possible and do the job with it.”⁴⁸

As the wolf population continues to increase, the Tribe needs more money in order to collar more wolves and schedule more telemetry flights over a larger geographic area. However, their annual budget has not kept pace with the flourishing wolf population (Figure 5; Table 5). Without good data to respond to the political parts of wolf management, “it’s just a poor performance. Your credibility’s on the line.”⁴⁹

Table 5. Yearly percentage of collared wolf population and Nez Perce Tribe staffing levels. Data sources: Nez Perce Tribe annual reports (1995-2003) and U.S. Fish and Wildlife Service annual reports (1999-2004).

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Wolf population	14	42	71	114	156	196	261	294	379	452
# of collars	15	20	n/a	n/a	23	23	27	25	41	59
Total # of collared wolves	14	n/a	n/a	n/a	36	35	54	38	43	64
% of population that is collared	100	n/a	n/a	n/a	23.1	17.9	20.7	12.9	11.3	14.2
# of biologists (permanent and seasonal)	n/a	n/a	n/a	n/a	7	6	8	6	7	6

⁴⁶ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

⁴⁷ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

⁴⁸ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

⁴⁹ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 29 July 2004.

They also need public education funds to inform public expectations as wolves recolonize new areas. “We’ve had the same workforce level since the very beginning,” said one Tribal biologist, “so our workload has increased exponentially with the expanding wolf population, but our finances haven’t really been kept up.”⁵⁰

As a consequence of not having enough money to collar more wolves or hire additional biologists, both the Service and Tribe are more reactive than proactive to situations such as wolf depredations. Said one Service employee:

What it boils down to, in my experience over the years, is you go where there are hot spots. Where the issues are burning, that’s where you usually go and try and put water on the fire. We are not funded or staffed with enough people to go around and do more than is required of us... .

I have found that we are less and less capable of taking the liberty, you know, let’s go speak to Timberline High School, or let’s go talk to Powell College. Early on, when wolves were few but public curiosity was great, we spoke to tens of thousands of people. We did presentations all over. All over. Now I find I am unable to do anything but respond and react and manage day-to-day, the things that we have to do.⁵¹

Ability to Secure Funding

Neither government felt that their relationship was effective for funding management needs because they do not jointly appropriate funding (Table 4). One former Fish and Wildlife Service Director explained:

[The Tribe] wanted more money. We didn’t have money to give, and so they would lobby Congress directly, and Fish and Wildlife Service didn’t like their budget earmarked, money shaved away. We couldn’t hardly fund our own wolf work [*sic*], and so we saw recovery dollars being shaved off to the Nez Perce. It didn’t mean we didn’t support

⁵⁰ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

⁵¹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

them, but it was just, you know, you're taking the same \$3 and rearranging them. So that was a bit frustrating for folks who thought that money really needed to be focused inward and that... Bureau of Indian Affairs and other sources should fund the Nez Perce's activities.⁵²

The Tribe's lobbying efforts to Idaho's Congressional delegation during their annual trips to Washington, D.C., have received mixed results. "One year," said one NPTEC member, "we thought, through Senator [Larry] Craig's office, that we had funding earmarked for the Nez Perce Tribe, which we lobbied hard for, but somehow it got lost in the appropriations language, and the request we put in never did get to the Tribe."⁵³

Because then-Secretary of the Interior Bruce Babbitt would continually highlight the relationship that was being forged with the Nez Perce on wolf recovery and in Indian Country in a broader sense, the Tribe was disappointed that their expectations of securing additional funding from the Service were not met. The Service directed the Tribe to go directly to the budget writers in Congress.

When their lobbying efforts in Congress failed to secure them additional funding, the Tribe employed a strategy of "politics at the retail level." To make a compelling request to Congress, the Tribe felt that a good way to paint the program as a failure was to put Congress in a position not to sponsor the increase of funding, which would make the program struggle. The Tribe went to the "retail level" and approached the cattlemen, ranchers, and livestock industry to demonstrate their support for additional funding.

"What we approached to them," said a former NPTEC member, "was that, 'For us to give you accurate and timely information, we need to be doing a good job of tracking.

⁵² U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

⁵³ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

And the wolf population is growing so much that we're concerned that we are going to spread the budget out too thin, and we won't have sufficient resources to put collars on the majority of the animals. But if we get additional Congressional appropriations, we promise you that's what we'll do.' They liked the idea."⁵⁴

With the livestock industry and, using the same argument, then-Governor Phil Batt on their side, the Tribe asked then-Senator (now Governor) Dirk Kempthorne to sponsor language in the Interior appropriations for them, which he did. However, instead of appropriating new funds, he directed the Service to break free existing money and take it out of their existing funds, which backfired on the Service Director asking them to go out and work with Congress.

The Tribe's ability to do politics at the retail level demonstrated that even though the State's policy was very clear that they did not want wolves, the Tribe was able to work with and garner support from the opposing interests for appropriations to do a good job of managing the wolves once they were there.

The difficulty in securing funding and working with the money available to complete their tasks successfully is apparent to the Service, as they find themselves competing for the same dollars as the Tribe on the same project. In hindsight, one Service employee believes that they "might have looked at how to fund all of this a little bit more strategically."⁵⁵

Post-Recovery Funding

As the federal government moves closer to transferring authority to the State of Idaho, either through delisting or through the 10(j) rule, the Tribe, to their frustration, sees

⁵⁴ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

more and more money going to Idaho's Office of Species Conservation, which is the State office for overseeing the management of wolves and other endangered species (Table 6).

Table 6. Funding levels for the Nez Perce Tribe vs. Idaho's Office of Species Conservation. Data sources: U.S. Fish and Wildlife Service annual reports (2003-2004).

	2003	2004	2005
Nez Perce Tribe	\$455K	\$393K	\$343K
Office of Species Conservation	\$248K	\$454K	\$720K

"Several years ago," said one Tribal government official, "we came up with, like, six hundred thousand dollars just to do the recovery project in Idaho, so we can justify an increase. And the State of Idaho, not doing anything, received two hundred eighty-five thousand the first year, and their funding keeps going up. They're unjustified. We don't even know what they use it for."⁵⁶ The State's 2005 budget exceeds the budget amount allocated to the Tribe for the past several years, while the Tribe's funding for 2005 has decreased from 2004 (Table 6).

According to the Service, the intent for increasing funding for the State was to reengage them in wolf recovery after the legislature had taken them off the field back in the 1990s. "Maybe as a state entity rather than a federal government," said one Service employee, "they would have some access or contacts that maybe we wouldn't have had. I think that was the hope and the intent with providing that money to kind of look at some things that had been sore spots with wolf recovery and see if they could fix it."⁵⁷ From the

⁵⁵ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

⁵⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 9 November 2004.

⁵⁷ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

Service's perspective, explained another Service employee, "The Tribe just wants to make sure they're not totally cut out of the loop."⁵⁸

As the State continues to come online with wolf management, the Tribe doubts that they will ever get their funding level up to the \$600,000 they have requested for several years. Anything above the base level of funding that the Service has committed to will have to be garnered by the Tribe through lobbying Congress year after year, which is a time-consuming effort that does not guarantee favorable results.

As a result, the Tribe's recovery program is in more flux now than at any point in the past decade, and the funding challenge identified by Wilson (1999) continues. The Tribe finds it difficult to develop a successful statewide program and plan for the coming year when they don't have a stable and steady funding stream. They would like to hire and train additional biologists, but not knowing how much money they have, they pick up seasonal folks "here and there" depending on how much money they have from year to year. "That's a very inefficient way of doing it," said the Tribe's wolf recovery project leader, "but that's just the way it is."

⁵⁸ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 14 October 2004.

CO-MANAGEMENT VS. COOPERATIVE MANAGEMENT

Relevance to Research Question

The cooperative agreement negotiated by the Fish and Wildlife Service and the Nez Perce Tribe summarizes their respective roles and expected deliverables related to wolf recovery (RQ 1). This cooperative agreement largely influences how both the Tribe and the Service perceive the Tribe's role in wolf recovery. While the cooperative agreement is not a source of tension in and of itself, differing perceptions of the Tribe's role as either co-managers or cooperative managers may cause tensions in other aspects of the government-to-government relationship.

Basis for Co-Management and Cooperative Management

The Service's Native American Policy (1994a) articulates principles for the Service to follow in establishing and maintaining government-to-government relationships with Indian tribes. The policy also states that the Service "supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their Federally recognized authorities" and that the Service "is committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs" (DOI 1994a, 4).

The policy defines co-management as "two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore fish and wildlife resources" (DOI 1994a, 8). Cooperative management is

“two or more entities working together to actively protect, conserve, enhance, or restore fish and wildlife resources” (DOI 1994a, 8).

At the same time, the cooperative agreement “supports and complements the Native American Policy of the Service, and is an example of *cooperative management* (author emphasis) to protect and restore fish and wildlife resources” (DOI and Nez Perce Tribe 1995, 1999). However, the agreement’s stipulation that because it was entered into under the authority of the Endangered Species Act, the Service retains supervisory authority over the project and maintains full responsibility for the recovery and management of wolves in Idaho implies that tribes and the federal government can only co-manage fish and wildlife resources not protected under the ESA, raising questions that S.O. 3206 may not be able to resolve.

The unique and precedent-setting circumstance of the Tribe’s involvement in recovery does not easily reconcile with Service and Interior Department policies, Secretarial Order 3206, or the federal Endangered Species Act itself and leads to conflicting interpretations of the cooperative agreement.

The Argument for Co-Management

Although the Tribe works on the Service’s behalf and operates, from a legal standpoint, under the Service’s authority to manage and recover wolves, the Tribe interprets their role to be one of co-management based on their rights reserved through the Treaty of 1855, which states that the Tribe reserves the right of taking fish at all usual and accustomed places and of hunting, gathering roots and berries, and pasturing horses and cattle upon open and unclaimed lands (Table 7; *Treaty with the Nez Percés* 1855). Their reserved hunting right provides a context for co-managing the resource.

Table 7. Perceptions of the Tribe's management status. Number of interviewees agreeing with the following statements.

		Nez Perce Tribe	U.S. Fish and Wildlife Service
The Tribe's management role in wolf recovery is that of a...	...co-manager.	5	1
	...cooperative manager/contractor.	1	5

According to the Tribe's legal counsel, "The Tribe believes that it's entering into [the cooperative agreement] based on its treaty and trust relationship with the United States. Our position, and the one that seems to be reflected in the document itself, is that it's based, at least in part, on this treaty and trust obligation."⁵⁹

In explaining why he considers the Tribe a co-manager, one Tribal official stated, "[We] have all along been trying to achieve a level of parity with the management of our ancestral homelands." He continued:

At times, the federal government will shy away from the word "co-management" because it implies that they have to give deference to whether tribes have an approval in any actions that are taken on those lands. What we began to do was just avoid the use "co-management," but we'll just do it [*sic*]. I felt that we were doing it in gray wolf recovery, and we've been doing it in salmon recovery on federal lands. So I always felt that it was a co-management relationship. We just use the mechanism of a Memorandum of Agreement to establish our co-management responsibilities. Even though we had the guidelines of the Memorandum of Agreement, it was almost like co-management plus. We were given the leadership role.⁶⁰

By citing their Native American Policy and the Secretarial Order, the Service recognizes, based on treaty and trust obligations, the Tribe's basis for its authority and entering into the agreement.

⁵⁹ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

⁶⁰ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

The Service didn't put out a request for proposals and submit or accept bids from different subcontractors. They came to the State government, and the State government declined. Then they approached the Tribal government, and the Tribal government, because it has resources in the state, stepped up and agreed to do it. I think the Tribe would say there's a government-to-government agreement, and the Service recognizes that the Tribe has resources that it's entitled to manage as well as the State. Not everybody recognizes it as that. I think some people do diminish [the Tribe's role] to a subcontractor status. The State likes to do that. More frequently, as they are jockeying for a larger management role, they're trying to cast the Tribe as a subcontractor, but that's not why the Service has entered into an agreement with the Tribe. Under the ESA, the Service retains responsibility until delisting. So really, the Service is the overriding coordinator of wolf recovery in Idaho, but they, in essence, delegated some of their responsibilities to the tribal government.⁶¹

The Argument for Cooperative Management

Arguments by Service personnel and by one Tribal employee for cooperative management status were based on text explicitly stated within the cooperative agreement itself (see subsection "Basis for Co-Management and Cooperative Management" above). Responses by Service personnel ranged from definitely affirmative statements regarding the Tribe's cooperative manager status to responses qualified with caveats about the risk in raising the management status issue.

"This is oftentimes a position that neither the Tribe nor the Service fully agree upon as to what constitutes a co-manager versus a cooperative manager," explained one Service employee. "In this case, the Service's position... is [that] the Tribe... is a contractor by which we have set up an agreement to channel money through us to them for the recovery of the species, and so they act as a designated agent."⁶²

⁶¹ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

⁶² U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 8 October 2004.

“In one sense, they are a contractor,” said another Service employee. “We contract with them to do certain work. On the other hand, they basically have co-managed wolves, so they’re both. But that’s almost more of a philosophical statement. Just on a purely semantic level, they’re both from our perspective. We’re contracting with them, but they’re also helping us manage [the wolves].”⁶³

Implications for Recovery and Collaboration

Service personnel acknowledged the Tribe’s perception of itself as having a co-management role in federal wolf recovery, but the Service’s responsibility to states under the ESA conflicts with their trust responsibility to tribes. The Service intentionally stopped short of calling the Tribe co-managers because the responsibility for wildlife management has traditionally lain with the State of Idaho. “I think the Tribe hoped that it would and often felt like they were co-managers,” said one Service employee.

That whole co-management concept is the subject of discussion just about everywhere you have tribes and fish and wildlife resources. Often, it’s resolved in courts. Often, it hasn’t been resolved. It’s just sort of a big red flag that you want to be pretty careful how you word these things so that you... keep everyone actively participating in an effort like wolf recovery. Co-management is something that could really polarize an issue and antagonize some of the parties that you would want to work with. The lack of having it in there certainly was always an issue with the Tribe. You try to walk a middle ground in all of this.⁶⁴

From the Tribe’s perspective, the cooperative agreement describes only a portion of the federal-tribal relationship. By diminishing the Tribe’s role to a contractor status, the Tribe fears that the Service and, eventually, the State might neglect to work with them on a

⁶³ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 14 October 2004.

⁶⁴ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

government-to-government basis, to which one Service employee reaffirmed that the government-to-government relationship “absolutely still applies”:

The Tribe still is considered a sovereign entity, and the recovery of the wolf in the Nez Perce’s ceded land area puts upon us the onus of government-to-government discussions about how is this recovery to take place, to what level, and how will the Tribe interact with other groups for potentially managing or even harvesting of wolves should the recovery be fully successful, which it is showing that it is. Those kinds of scenarios require us to be in a government-to-government discussion with the Tribe. So even though they’re contracted by us and they’re designated agents, they still retain their sovereign status as a tribe and, since this is a species that the Tribe has a particular interest in, we would have government-to-government discussions with them on the recovery of that.⁶⁵

Still, the Service is wary of labeling the Tribe as either a cooperator or a co-manager. The variation in responses from different Service personnel reflects how nebulous the government-to-government relationship concept truly is. From the Service’s perspective, the cooperative agreement was put in place primarily as a mechanism for transferring money so that the Tribe could carry out the operational responsibilities of the program, the “day-to-day work” outlined in the management plan, the Final Rule, and the terms of the agreement.

As one Service employee explained, “There was nothing designed really ever to have the Tribe... actually be a co-manager with the Fish and Wildlife Service.”

Co-management will only occur after delisting. The Fish and Wildlife Service can’t give away that authority. It’s only through delisting that that authority then is transferred to the State. The State then has the ability to determine whether or not they want to agree to any kind of co-management arrangement with the Tribe. Part of the Tribe’s perspective is: this is not just a state issue, it’s a tribal trust responsibility, and, therefore, the federal government needs to weigh in

⁶⁵ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 8 October 2004.

and protect the Tribe's interest in wolf management. That's very much a legal question that attorneys are wrestling with as we speak.⁶⁶

Both the Tribe and the Service also recognize the importance of distinguishing between co-management and cooperative management because the Tribe's role in wolf recovery through the cooperative agreement will serve as a touchstone for any future role they may have once management authority is transferred to the State, either through delisting or through the 10(j) rule.

While the Service does not have the authority to share legal management responsibilities with the Tribe, the Tribe, by asserting co-management status now, may be able to leverage their current role in wolf recovery in order to negotiate co-management responsibilities with the State of Idaho once delisting occurs or once wolf management authority is transferred from the Service to the states and tribes through the 10(j) rule.

Stated one NPTEC member, "We do not believe that the State of Idaho is going to look out for our best interests, so I think there are probably feelings from the State officials that are concerned with the Tribe leading the wolf recovery."⁶⁷

However, they are leveraging from a disadvantaged position, as the legally binding cooperative agreement does not give away any legal management authority to the Tribe. Clearly defining those roles during negotiations may have been unwise so early in their relationship. Asserting co-management status at that point may have delayed or even prohibited any Tribal involvement by adding that extra layer of discussion to the initial negotiations.

⁶⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 9 November 2004.

⁶⁷ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

Competing interpretations of the Tribe's management status in federal wolf recovery illuminate the still-unfolding and evolving nature of their government-to-government relationship. "We kind of take each day at a time, what we'll find, how we'll go about it," said one NPTEC member.⁶⁸

The Tribe's management status had little effect on the wolf's rapid recovery, but by forcing the Service to sit up and take note of their accomplishments, recovery highlighted the specific issue of the nature of the cooperative agreement as it relates to the relationship between the Service and the Tribe.

"The Tribe saw this as a great opportunity to show that the Tribe has expertise in wildlife and natural resource management," said one Tribal employee, "and also as this great opportunity to explore and further develop trust responsibilities and relationships with... federal [and] state governments. They wanted to make sure they did a good job, to make sure they could capture those opportunities."⁶⁹

He later described this process of exploring their relationship as "finding the edges of the table." By working Together on specific, tangible projects such as wolf recovery, the Tribe and federal government are finding the edges of that table by taking advantage of those opportunities for collaboration.

⁶⁸ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

⁶⁹ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

SECRETARIAL ORDER 3206

Relevance to Research Question

Although wolf recovery in central Idaho is being carried out under the terms of a cooperative agreement, the principles of Secretarial Order 3206 should still guide the federal-tribal interaction (RQ 1c). This chapter describes how the two governments perceive their relationship to conform to some of those principles.

The Crafting of Secretarial Order 3206

Even though neither the federal government nor tribal governments wanted to test tribal-ESA issues in court because either side might suffer a potential loss of rights resulting from a judge's unilateral decision, tribal-ESA conflicts often resulted in litigation due to the ESA's silence on its application to Indian Country (*High Country News* [Paonia, CO], 19 September 1994).

To make sure that, when such conflicts arose, they exhausted every possible avenue of resolution prior to taking litigious action, the federal government and tribal nations jointly developed Secretarial Order 3206 to help resolve difficult questions involving tribal rights and the Endangered Species Act.

"We were trying to honor our federal trust responsibility without walking away from compliance with the Endangered Species Act," said one Service employee.

[Although] we were dealing with significant cultural differences, it was very clear through lots of long, long dialogue that we had very similar goals. We just had different ways in our minds of how to achieve them. And these lands, these sovereign lands are truly Indian Country,

and we had to be somewhat respectful and careful about how we kind of imposed government will, so as not to revisit history.⁷⁰

Perceptions of Compliance with Principle 3

Principle 3 of Secretarial Order 3206 directs the Service to exchange scientific and technical information and provide assistance to tribes in the development and implementation of conservation and management plans. Under the terms of the cooperative agreement, the Tribe developed their own plan and collects all biological data on wolves; they provide scientific information to the Service rather than vice versa. Personnel from both governments acknowledged and expressed satisfaction with this arrangement (Table 8).

The Tribe, Service, and Wildlife Services also provide cross-agency technical assistance when needed and do so at a level that is satisfactory to all actors (see *Communication and Decision-Making*; Table 8).

Table 8. Perceptions regarding adequacy of Principles 1 and 3 of Secretarial Order 3206. Number of interviewees from each government agreeing or disagreeing with each statement.

	Nez Perce Tribe		U.S. Fish and Wildlife Service	
	Yes	No	Yes	No
The level of government-to-government consultation between the Service and the Tribe is adequate.	1	6	4	0
The Service provides scientific information to the Tribe for the development or implementation of the Tribe's recovery plan.	0	2	0	2
The Service provides technical assistance to the Tribe for the development or implementation of the Tribe's recovery plan.	3	0	4	0

⁷⁰ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

Perceptions of the Consultation Process

Principle 1 of S.O. 3206 identifies consultation as a cornerstone for a successful government-to-government relationship. However, the Order doesn't explicate any consultation mechanism, which has resulted in the Service and Tribe differing considerably in their perspectives of the nature of consultation and the adequacy of the consultative process currently in existence (Table 8).

In November 2000, President Clinton issued Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 directs each agency to have an "accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications," to consult with tribal officials "early in the process of developing the proposed regulation," and, on issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, to explore and use "consensual mechanisms for developing regulations, including negotiated rulemaking."

Despite the guiding principles outlined in E.O. 13175, federal agencies interpret the consultation process differently and, consequently, have developed different consultation mechanisms. The Fish & Wildlife Service's Native American Policy (1994a), for example, states that the Service will consult with tribes on "fish and wildlife resource matters of mutual interest and concern" in order to keep tribes "involved in such matters from initiation to completion of related Service activities." The Policy's verbiage does not reflect the bilateral nature of consultation implied within E.O. 13175 or expected by the Tribe.

When asked how he feels about the Service's Native American Policy, one NPTEC member pulled a thick red binder from a bookcase behind him and tossed it on his desk.

“They don’t follow it,” he said, flipping through the pages until he reached the policy. He turned the binder around and pushed it towards me, then leaned back in his chair. “It’s just a document that’s there to be broken like any other document.”⁷¹

The Tribe also noted inconsistencies in consultation across administrations. Under the Clinton administration, for example, the federal government stuck too much to policy.

Sometimes, we felt like we were getting shined in Bill Clinton’s era. Like, for instance, Bill Richardson. He was the head of the Department of Energy at the time. He had a couple guys working for him as liaisons working on... we’re affected by the Hanford Research Reservation over in Washington. There’s approximately ten tribes that are affected. They have trust resources that are on that property. Well, those two clowns over in D.C. that they’ve hired on, they said, “Well, no, we can’t pay attention. We can’t just get your concerns. There’s over five hundred tribes in the United States. We have to get every one of those tribes’ concerns about Hanford,” and so the process just got diluted. They really weren’t sincere about meeting with the ten affected tribes. They were more concerned about their little consultation process of, “Well, we have to reach out to every single tribe in the United States.”⁷²

Conversely, the Tribe feels that Republican administrations work on behalf of the states, not the tribes. “You just get blown off,” said the same Tribal official. “They don’t even care what you say. It’s gonna happen like this or else. [Or] there’s something held up for hostage, [like] gaming. If we’re trying to make grounds in the gaming industry for our casino, well, they want to know what you’re willing to give up for this other particular issue like wolf recovery.”

Because the federal government lacks a consistent consultation policy across all agencies, the Tribe developed and adopted their own consultation policy that they expect any federal agency interacting with them to follow. This document defines consultation as

⁷¹ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

“the formal process of negotiation, cooperation, and *mutual decision-making* (author emphasis) between two sovereigns: the Nez Perce Tribe and the United States (including all federal agencies)... that ultimately leads to the development of a decision” (Nez Perce Tribe 2003, 91).

From the Tribe’s perspective, consultation should be initiated as early in the process as possible to provide an opportunity for the technical staffs from each government to review information regarding an impending project or activity before policy-level engagement occurs. “You better not come to the Tribe when you’re down toward the final decision,” said one NPTEC member.

The Tribe’s view of consultation is that it’s a meeting to try to understand each other’s interest but also to try to reach a common path forward, even if that means one or both people changing their mind and trying to develop a better solution for heading forward. I think often from the federal perspective, it sometimes stops a little bit short of that joint decision-making and hope or expectation that the Tribe might have.⁷³

Although S.O. 3206 directs the Service to provide tribes with “adequate opportunities to participate in... consensus seeking,” the Service asserts that with respect to wolf recovery, consensus between the two governments is not required because the Service retains full responsibility for wolf recovery under the ESA.

“But we consult with the Tribe, and with others as well, about how we go about that,” said one Service employee. “With regard to delisting, for example, we solicit comments and discussion from the tribes. We then document how we’ve... responded to

⁷² Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

⁷³ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

those comments... within our record of decision.”⁷⁴ The record of decision becomes the final document that the Secretary approves for moving the wolf from a threatened to a delisted status.

Under the Tribe’s policy, however, “consultation does not mean notifying the Tribe that an action will occur, requesting written comment on that prospective action, and then proceeding with the action. In this scenario, the decision is not affected. ‘Dear Interested Party’ letters are not consultation” (Nez Perce Tribe 2003, 91).

As a cooperative manager, the Tribe works on behalf of the Service to listen to and address affected citizens’, such as the Idaho Cattle Association or Wool Growers, concerns over recovery-related issues, such as wolves encroaching on elk territory. At the same time, the Tribe, outside of the cooperative agreement, needs to be consulted with as a sovereign nation by the Service over the same issues because they actually or potentially affect treaty resources. The Tribe doesn’t see the Service meeting that same obligation with them.⁷⁵

Inconsistencies in consultation across agencies and administrations place unrealistic demands on tribes to be pliable to multiple consultation mechanisms. Having the federal government conform to the consultation policies of over 500 federally recognized tribes is similarly unreasonable. Just as with the crafting of Secretarial Order 3206, a bilateral effort between the federal and tribal governments to develop a single, consistent consultation policy may be the best hope for avoiding frustration with existing mechanisms.

⁷⁴ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 8 October 2004.

⁷⁵ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 27 July 2004.

Consultation on the 10(j) Rule

Once they met and exceeded the federal recovery goals in late 2002, the federal, tribal, and state governments began transitioning into a new era of long-term wolf conservation and management. Delisting is to occur and management authorities transferred to the states once they produce an acceptable state management plan, as Idaho and Montana state governments have done, but because the Service did not accept Wyoming's plan, delisting the gray wolf's western distinct population segment has been indefinitely postponed.⁷⁶ As a result, in early 2004, the Service proposed a 10(j) rule allowing state and tribal governments with acceptable management plans to petition the federal government for management authority within their respective state and reservation boundaries prior to delisting (see *Implications of Wolf Recovery: Management Authorities and the 10(j) Rule*).

The Tribe requested consultation with the Service to discuss their concerns with the proposed 10(j) rule. The Tribe felt that their management authorities were not adequately recognized in the rule and would create future confusion regarding such authorities. Wanting to make certain that wolves are adequately protected in the future, the Tribe was also concerned that wolf conservation objectives outlined in the rule would result in their efforts coming to naught.

The Service cited their scheduled consultation with the Tribe on the 10(j) rule as in keeping with a history of effective consultation regarding wolf recovery and as an example of fulfilling their trust obligations with the Tribe. "We've had a number [of consultations] prior

⁷⁶ In early 2004, after an independent peer review, the Service rejected Wyoming's state management plan because it designated wolves as "trophy game" in some parts of the state and "predatory animal" in other parts

to this where we've met with not only staff but also Council members over the years to work through, renegotiate, hammer out what this cooperative agreement is being effective towards or not effective towards, and how do we adjust it to make it more effective," said one Service official. "And we have right now several hundred wolves to show for it."⁷⁷

The Tribe expressed greater skepticism about the scheduled consultation, largely because the State of Idaho worked with the Interior Department on authoring the rule without any input from the Tribe. According to the Tribe's own consultation policy, the scheduled meeting was not true consultation because the rule was already published in the Federal Register.

"The Tribe would expect that the Service would consult with it before it developed and issued notice in the Federal Register of the rule," explained one Tribal personnel.

"What we saw was the Service published the rule. The Tribe is, like anyone else, providing comments on it."⁷⁸

While they feel that the consultation process has improved since the past, the Tribe still perceives the Service as dragging its feet in committing to consultation. According to the Tribe, the 10(j) rule consultation finally took place in October 2004 after four months of attempts to schedule the meeting. "We would have liked if the Service would have acted more quickly and made it apparent that this is a priority," said one Tribal employee.⁷⁹

without an adequate framework to regulate human-caused mortalities and ensure that wolves would be conserved at or above a recovered level within the state (Service et al. 2005).

⁷⁷ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 8 October 2004.

⁷⁸ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

⁷⁹ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

“We have a government-to-government need to consult, which they’re very reluctant to do so for fear that they might have to put something on the record,” explained one frustrated NPTEC member.

So we don’t communicate very often under the umbrella of consultation because they’re largely fearful of what could take place. You can raise an issue [like the 10(j) rule], but whether or not you get a response, an adequate response, is a whole other subject. So we communicate, we don’t hear each other oftentimes, or they do not hear the tribes. That’s a real concern, so when you call for a consultation session, then they’re reluctant, because obviously, they know some very important priorities are on the table. And I, as a governmental representative, am reluctant to commit to any discussion where I do not have the upper, superior approval.⁸⁰

The Tribe’s legal counsel also perceives a disparity in the level of consultation between the Service and the Tribe versus the Service and the State, especially under a states’ rights-oriented administration. The Tribe asked the Service to sit out their initial discussions and negotiations with the State to craft a Memorandum of Understanding for post-delisting co-management of wolves and let the State and Tribe negotiate as two sovereign governments. Once those discussions stalled, though, the Tribe requested the Service’s involvement in assisting the two governments in shaping their future roles in wolf management, which led to the October consultation.

“We’ve not been real impressed with their responsiveness,” said the Tribe’s legal counsel. “The State has a more direct line of communication with the Department of Interior [than the Tribe]. For some things, the Service has not been requested to be

⁸⁰ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

involved, and now that they have been asked, we'd like them to show a little bit more interest in getting that done."⁸¹

In appointing a federal negotiating team and, later, signing the Order, then-Interior Secretary Bruce Babbitt had to blend both his federal trust responsibility with his federal authority over environmental statute compliance. "He had to walk in both camps at all times himself," said one former Service employee who worked on the Order.

This inherent difficulty and challenge of carrying out the spirit of the Order becomes apparent in this new era of long-term wolf management. The Service is reluctant to involve itself in state-tribal interactions because of the responsibilities they must uphold to both interests and to ESA compliance. "We're trying to figure out how to apply [the Secretarial Order] in terms of how we support the Tribe in this discussion and if it complements how the regulations and policies are relative or specific to wolf recovery, which basically turned over management authority to the State," said one Service official. "The state and the Tribe have been talking this whole issue, and we have just been on the periphery."⁸²

While the Order has had little effect on on-the-ground wolf recovery efforts, its guiding principles encourage policy-level collaboration between the Service and the Tribe. Despite their concerns about the consultation process, which they consider to be an integral part of the government-to-government relationship, the Tribe expressed satisfaction with the overall direction provided in the Secretarial Order. The Service, for their part, is happy to see that it has been carried through to, if not fully embraced by, the Bush administration.

⁸¹ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

⁸² U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 14 October 2004.

Still, both the Service and Tribe feel that the possibilities laid out in the Order have not fully been explored with respect to wolf recovery. The two governments hope that the scheduled 10(j) consultation will display the strength of the Order as well as clarify and resolve tribal management authority issues. “After October,” suggested one Tribal employee, “we may have a whole different perspective on consultation as well.”⁸³

⁸³ Nez Perce Tribe personnel, phone interview by author, tape recording, 23 September 2004.

IMPLICATIONS OF WOLF RECOVERY: MANAGEMENT AUTHORITIES AND THE 10(j) RULE
Relevance to Research Question

The Nez Perce Tribe's participation in wolf recovery had a dual purpose: to recover a species of cultural significance to them and whose history of persecution and extirpation they identify with, and to establish themselves as a legitimate natural resources manager. As they begin the transition from federal recovery to long-term conservation and management, the Tribe has a new set of issues to explore that transcend wolf biology and recovery, including natural resources management authorities implied within their treaty rights, and the geographic boundaries of such management authorities (RQ1). The resolution of such issues may have precedent-setting application for other tribes.

The Final 10(j) Rule

As a recovered wolf population in Idaho became a reality, the State and the Tribe discussed possible co-management responsibilities in a post-delisting world. Together, they negotiated and, in early 2004, came very close to signing a Memorandum of Understanding delineating those responsibilities. Once again, the State legislature, under pressure from livestock and hunting interests, halted the MOU.

Although the State has opposed wolf reintroduction since the Service first extended the invitation to them ten years ago, political and economic forces drove the State to seek wolf management authorities from the Service after it became clear that the wolves were rapidly recovering. At the same time, the Service was seeking ways to initiate the transition from federal to state management authority of wolves that would maintain the wolf

population and minimize conflicts with affected landowners while the delisting process remained indefinitely postponed.

Together, they developed the 10(j) rule, an ESA regulation specific to wolf recovery in the northern Rocky Mountain region. First proposed in March 2004, the final rule went into effect in February 2005 and allows Montana and Idaho, and tribes within the tri-state recovery region with Service-approved wolf management plans, to petition the Service for management authorities within their respective state and reservation boundaries prior to delisting.

The rule is intended to increase state and tribal management flexibility to address wolf-human and wolf-livestock conflicts. For example, wolves seen attacking livestock on private lands or on grazing allotments on public lands can be shot by the landowners or grazing permittees without prior written authorization (Service et al. 2005).

All interviewees with the Tribe expressed anger and concern over the 10(j) rule for not addressing their management authority beyond reservation boundaries and for weakening wolf protection measures (Table 9). Service interviewees expressed satisfaction that the rule transfers management authority from the federal to state and tribal levels.

Table 9. Perceptions of the 10(j) rule and the Service's role in post-delisting negotiations between the Tribe and the State of Idaho. Number of interviewees agreeing or disagreeing with each statement.

	Nez Perce Tribe		U.S. Fish and Wildlife Service	
	Yes	No	Yes	No
The 10(j) rule is satisfactory.	0	10	5	0
The Service has a responsibility to advocate for the Tribe in co-management discussions with the State of Idaho.	3	0	2	2
The Service is supportive of the Tribe in their efforts to seek out co-management responsibilities with the State of Idaho.	0	9	5	0

To the Tribe, the rule represents the interests of that portion of the public that perceives wolves as an imminent threat to human, livestock, and ungulate populations. A statement by Idaho governor Dirk Kempthorne supports that impression by emphasizing that the 10(j) rule “puts the Idaho Department of Fish and Game in a better position to manage big game herds— essential to the success of the state’s hunting and tourism industries— which have been declining in numbers as the wolf population has recovered” and ensures that “all Idahoans, including hunters, sportsmen, livestock owners and producers, will finally have a chance to fully protect their interests as we move forward to delisting” (*Idaho State Journal* [Pocatello, ID], 3 May 2004).

Statements such as those by Idaho’s governor validate the Tribe’s fear that by assuming statewide management authority, the State will relax protection measures such as breeding pair thresholds and give more preference and authority for livestock producers and sportsmen, whose interests are largely represented in the State legislature, to kill wolves that threaten livestock and ungulate populations (*The Washington Times* [Washington, D.C.], 20 October 2003). The Tribe’s recovery and management efforts for the past decade would, essentially, be wasted.

The Tribe also feels that the State is attempting to diminish the Tribe’s role in wolf recovery efforts in order to justify the State assuming management authority (*High Country News* [Paonia, CO], 24 January 2005). “The history is being rewritten as we speak, to smudge up the Tribe’s role in wolf recovery,” said one Tribal official. “There’s a bit of a tar

and feather routine that's going on."⁸⁴ While the State was drafting their post-delisting management plan, he pushed for a broad section of the plan to have Tribal participation.

I took [one of the legislators] aside on one of the breaks and said, "What's the problem?" And literally between the thumb and the palm, he said, "You know, I need to know that when I call somebody at the state that something's going to happen." He needed to know that if he got his constituents calling him with a wolf problem, that he could call somebody and something was going to happen, that it was a direct linkage that political pressure would be applied. He didn't feel like that was happening with the Tribe, and I was kind of, "You know, have you ever tried? Have you called the Tribal leadership? Have you had a problem where you've had a constituent call and we had failed? I mean, I don't remember you calling me, but when did that happen?" They're not even trying. They're just saying, "We can't engage the Tribe."

The Tribe also believes that the State is portraying an image that they would be more aggressive with control actions than the Tribe and that the Tribe is aligned with conservationists and environmental groups by using non-lethal controls, such as trapping and relocation, on problem wolves. However, the Service decides on lethal control actions, not the Tribe. According to the recovery plan, lethal control could not be employed below the threshold of six breeding pairs.

"I think that's where some folks have felt like, 'Well, you just don't wanna kill them,'" explained one Tribal official. "Well, you know, this is part of speeding the recovery along. This is why we did the experimental population [designation]. It has been geared to make it as easy as possible on the livestock community. If we can use non-lethal controls, and that pack survives instead of dying, then you get that much closer that much faster to the recovery goal. So then they're delisted, and then it's local control, and it's all good."⁸⁵

⁸⁴ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

⁸⁵ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

When a situation such as the July 2004 extermination of the Cook Pack is called for, he said, “we’re supporting that. It’s not like we’re not supporting intensive management.”

The comments section of the rule acknowledged the consultation that occurred between the Tribe and the Service in October 2004 and the Service’s receipt of the Tribe’s wolf conservation and management plan. Except for two sentences commending the Tribe on its wolf recovery efforts under the cooperative agreement, the Tribe’s lead role in central Idaho recovery was not mentioned (DOI 2005). After leading the statewide recovery effort for ten years, that lack of recognition was disappointing to the Tribe:

We think that it largely is a slap in the Tribe’s face because obviously, had we not stepped in in the early 90s to assist Fish and Wildlife, they would not have been able to provide for gray wolf recovery. [The Service] got the stars on the report card, the great marks, and they’re forgetting about that history and the ability and the willingness of the Tribe to step in and assist them to provide for the wolf recovery.⁸⁶

The final rule does not fulfill the spirit of Secretarial Order 3206, and the final rule reveals that the October 2004 consultation did not satisfactorily address the Tribe’s management authority concerns. That lack of recognition undermines the Tribe and Service’s effort to build and nurture their government-to-government relationship.

Argument for Tribal Management Authority

While having led statewide recovery efforts for the past decade put the Tribe in a strong position to argue for wolf management authority over more than just their reservation lands, perhaps the stronger argument is grounded in the rights they reserved in their treaties with the federal government. One of the threat factors that the Service must consider before delisting can occur is that the state has to provide the Service with enough assurances

that they will exercise control and harvest to ensure that the population survives and thrives. Because states have no authority over treaty rights, tribes have independent authority from states to regulate treaty harvest.

“The argument we’re making to the Service,” said one Tribal personnel, “is that if you need that assurance from the State, then the State can’t provide it for the Tribe. You need a separate assurance from all of the tribes that are affected in this area because the Nez Perce can’t give it to you for the Coeur d’Alene.”⁸⁷

The Tribe disputes the Service’s narrow interpretation of the treaty that the Nez Perce has management authority over their current reservation lands but has reserved the right only to hunt and fish in all “open and unclaimed” lands (i.e., federal, or public, lands, such as BLM and Forest Service lands) within their ceded lands, or treaty territory.

Ironically, no wolves are currently known to occur on any Indian reservation in Idaho, rendering the management authorities granted to tribes through the 10(j) rule a moot point. However, the wolf is a trust resource, so by virtue of their specifically retained treaty rights, the Tribe argues that they should have management authority not just over their reservation lands but over their ceded lands as well (Figure 6; *Treaty with the Nez Perces* 1855). Much of the Tribe’s ceded land base consists of national forests and wilderness areas (open and unclaimed lands), where wolves have predominantly remained since reintroduction. The Tribe asserts a broader interpretation than the Service that natural resources are the foundation of their religion, culture, lifestyle, and survival, which they never gave up. As one Tribal personnel explained:

⁸⁶ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 26 July 2004.

⁸⁷ Nez Perce Tribe personnel, interview by author, tape recording, Lapwai, Idaho, 28 July 2004.

Figure 6. Public ("open and unclaimed") lands within the Nez Perce Tribe's treaty territory. Data sources: U.S. Department of Agriculture and U.S. Department of the Interior (1996).

The Tribe specifically retained their ability to maintain that lifestyle in those treaties. They never abrogated that to the treaties. They have always maintained the authority to do whatever it takes to maintain their lifestyle, the hunting and gathering ability, and to use natural resources for their cultural and religious survival. That means being able to have a hand in managing those resources [sustainably]. It doesn't make sense to say, 'Well, yeah, we have the ability to just harvest it. We don't have the ability to make sure there's enough around for us to harvest.' They have never given that authority away.⁸⁸

Through the treaties, the Tribe reserved their right to maintain that lifestyle in all their "usual and accustomed places" within their aboriginal territory, or ceded lands, not just on reservation lands, in perpetuity. In a state that opposed wolf recovery from the beginning, favors the interests of livestock producers over the Tribe, and has a Service-approved plan that weakens current protections, the Tribe does not trust the State to manage the wolf in a sustainable manner.

The Tribe-to-State Relationship

The challenge for the Tribe has always been to get the federal government and state governments to recognize management authorities for tribes over their natural resources. The Tribe sees the wolf recovery program as a great vehicle for the Tribe to nurture that working relationship with the Service, as one agency of the federal government, to a point that they can finally start to address those management authority issues and explore the responsibilities that the federal government might have to Native American tribes. "It's taken us nine concerted years on one very narrow issue, wolf recovery, to be able to finally get to that stage," said one Tribal employee.⁸⁹

⁸⁸ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

⁸⁹ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

Along with nurturing their relationship with the Service, the Tribe had hoped that their central role in wolf recovery in the state would “allow them greater opportunities to nurture a closer relationship with the State of Idaho that would have spin-offs to natural resources and non-natural resources issues as well.”⁹⁰

Relationships between the State and tribes strained under a long-standing history of conflict over tribal sovereignty and other issues extending beyond natural resources. This holds true for the State and the Nez Perce Tribe, especially since the State officially opposed wolf reintroduction and recovery a decade ago (*High Country News* [Paonia, CO], 19 September 1994).

“The State,” said one former Service employee. “The State, the State, and the State.”

That was clearly an obstacle. The State clearly did not share the same desire for the relationship that the feds did with the Tribe. The State was very frustrated, but the State wasn’t keen on wolves to begin with. And they were less keen at the fact that they were coming and being released in Indian Country and that Native Americans would oversee a lot of the recovery implementation program. Because the program falls within the political jurisdiction of their state borders, they felt like they didn’t have any control. So there was a bit of a rub between the State and the Tribe, and therefore, the Fish and Wildlife Service and Department, and that probably continues to this day. There probably were other background noise problems from some groups, but clearly, bar none, the biggest challenge was the state relationship.⁹¹

The possibility of post-delisting wolf management presented both the Tribe and the State with an opportunity to either set aside or work through cultural, ideological, and political differences in order to delineate co-management responsibilities.

The final 10(j) rule encourages “the continued cooperation and coordination between the Tribes and States to delineate the roles and responsibilities for management of

⁹⁰ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

wolves both inside and outside Tribal reservations” (DOI 2005, 1295), but the Tribe foresees difficulties working with the State similar to what they went through in the early years with the Service. Although they have set a precedent and achieved progress over the past decade working on wolf recovery issues with the Service, the Tribe finds itself reinventing the wheel with the State.

We are starting with the State’s perspective of, “Oh yeah, well, there may be a few contract items that we might not be able to cover. We know you guys have been doing some stuff with wolves over the last couple of years. You might be qualified, and we might contract with you for a few things.” Well, you know, the Tribe is really interested in a government-to-government relationship. It is the sovereign nation of the Nez Perce Tribe, and you don’t deal with the Nez Perce Tribe as a private contractor because they’re not. We still find that we have to go back to the drawing board on the same issue, wolf recovery and long-term conservation and management, with the State of Idaho. We’re starting at the same place now in our negotiation with the State [as we did nine years ago with the Service], where the State views this as a contract, and the Tribe views this as a government-to-government relationship. We can’t connect.⁹²

The Federal Government’s Role in Tribal-State Discussions

The federal courts affirmed tribal management authorities over salmon in the Columbia River Basin.⁹³ The Tribe believes it has similar standing with respect to wolf management and serves as a basis for negotiating co-management responsibilities with the State of Idaho. With the 10(j) rule now in effect, the State has less incentive than before to revive co-management discussions with the Tribe.

⁹¹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

⁹² Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

⁹³ In the 1960s and 1970s, numerous fishing rights cases affirmed tribal fishing rights. In *United States v. Washington* (1974), Judge George Boldt reaffirmed the rights of Stevens Treaty tribes in the Pacific Northwest to fish off-reservation at all usual and accustomed fishing places. The Boldt decision also recognized tribes as co-managers of salmon resources with the State of Washington (Nez Perce Tribe 2003).

In order for the Tribe to effectively manage their trust resources, they must have a constructive and proper government-to-government relationship with the State of Idaho. Because the State has not demonstrated a willingness to engage the Tribe in discussions, the Tribe raises the question of whether or not the Service has an obligation to assist in facilitating discussions between the State and the Tribe. Does the federal government have a trust obligation to advocate for the Tribe as they seek co-management responsibilities with the State over their ceded lands?

Interviewee perceptions of the federal government's role in Tribal-State negotiations run the ideological spectrum (Table 9).

"We should be [an advocate], and to the extent that we can be within this administration, we will," said one Service personnel, "but I think there are certainly political struggles that occur within the Department and also... within the Service."

There are certainly political pressures on both the Department and the agency that are not supportive of the Tribe's position. Within the Service, to the extent that I work in that process, I advocate, as I encourage my regional director to advocate, for tribal rights. In this case, it's clear the Tribe has a right to harvest wolves—in my mind, this is the picture that I make—it is clear the Tribe has rights to harvest wolves in their ceded lands and, in this case, the Forest Service property. The State has no mechanism that would account for that harvest. And so, we cannot, out of hand, defer to the State without having some sort of monitoring component. Basically, the scenario I describe puts an onus on the State to incorporate the Tribe in the management process.⁹⁴

However, the final 10(j) rule, in outlining the geographic boundaries of state and tribal management authorities, essentially allows the State to sidestep discussions with the Nez Perce, or any tribe, leaving the Tribe feeling abandoned by the Service. "I would hope

⁹⁴ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 8 October 2004.

they would be an advocate for the Tribe,” said one Tribal member, “but I don’t really see them being that advocate. I would hope that they would tell the State that they must come up with a plan or an agreement that is equitable, but all I can tell now is that they’re leaning heavily towards the State, which leaves the Tribe kind of leaning into the wind against two entities, the State and the feds, on this.”⁹⁵

As with tribal management authorities itself, the Service takes a narrower interpretation of their role in Tribal-State discussions than the Tribe would like:

While wolf recovery often is something that seems to be a very noble undertaking and so on, I always tried to say the wolf was just another wildlife species in the State, just like mule deer or ring neck pheasants or anything else. As another species, the State is the entity that has the responsibility. I believe we, the Service, did recognize our trust responsibilities when the State pulled out of management, when the first relocation or reintroductions happened. We went to the Tribe. I believe the Tribe worked hard and did a good job. The Service did what they could to encourage and support that. I think that is certainly in line with our trust responsibilities to the Tribe. Now, should we jump on the side of the Tribe in every case, in disagreements with the State? No, I don’t think so. I think sometimes that trust responsibility may be for us to try to mediate or to be a force for keeping the parties talking to each other and trying to resolve some of these issues.⁹⁶

This narrower interpretation may have less to do with wanting to restrict tribal rights and more to do with carrying out what’s explicitly stated in the Endangered Species Act.

A former, high-level Service employee offered yet another interpretation of the federal government’s role in post-delisting management, namely that the Service has, above all else, a responsibility to be an advocate for the wolf and to assure that management and regulatory mechanisms are deployed with the highest and best use of resources:

⁹⁵ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

⁹⁶ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 16 November 2004.

The federal government does have a trust responsibility to help with the capacity of the Tribe on tribal lands, so the Secretary of the Interior, who oversees the Endangered Species Act also is the trustee for the tribes. And so to that degree, the Secretary does have some kind of responsibility to be a champion of the Tribe, but it's a little bit different than saying it's an advocate, because the Secretary— and all folks in government— also have a responsibility to have a relationship with the State under section 6 of the Endangered Species Act. So I think probably the biggest challenge is to find the appropriate balance when you have an endangered species initiative on tribal lands contained within state borders implementing a federal law. And so it's really all about cultivation and relationships.⁹⁷

The Nez Perce Tribe broke new ground by taking a lead role in the wolf recovery effort. This is reflected not only in the differing perceptions of the federal government's role in Tribal-State discussions between the Tribe and the Service but also in the multiple interpretations by personnel within the Service itself, which neither the Service's Native American Policy nor S.O. 3206 are currently capable of addressing.

This also points to a breakdown in communication, whether through informal discussions or through government-to-government consultation, between the Service and the Tribe at the policy level. An ongoing, consultative mechanism, particularly when it became exceedingly clear that wolves would reach recovery levels sooner than expected and that the federal government's transfer of its management authority would come to fruition, might have helped, and may help in the future, to resolve such policy-level conflicts (see *Recommendations*).

The Future of the Government-to-Government Relationship

Overlapping ideals of wolf recovery and conservation provided the foundation for the Service and Tribe's government-to-government relationship. As the wolf population

⁹⁷ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

increased, the relationship continued to grow, more so at the technical level, where personnel from both governments have the freedom to coordinate and make decisions, than at the policy level, where the Tribe has little freedom to explore sovereignty issues in tandem with the federal government through wolf recovery. Ironically, wolf recovery leaves the fates of both the wolf and the government-to-government relationship uncertain.

Much of the disappointment that the Tribe feels over the final 10(j) rule stems from the different context in which they have framed wolf recovery efforts and from having far different expectations of the federal government than the government did of the Tribe (see *Meanings of Wolf Recovery*).

The expectations that the federal government had of themselves and of their responsibilities to the Tribe were, and continue to be, very different from the Tribe's expectations of the federal government. The Tribe entered the cooperative agreement with a clear vision of what the government-to-government relationship should be, that wolf recovery could, and would, be used to explore tribal management authorities. They expected the federal government to support them, when requested, in their discussions with the State. From their point of view, the federal government needs to discover, develop, and define their own responsibilities and expectations. Said one Tribal employee:

I don't think the federal government— at least not the Fish and Wildlife Service as a federal government agency— I don't think they had much of an idea at all about what their responsibility to the tribes were. It's more of the federal government becoming more comfortable in defining their expectations and roles and responsibilities to Native American tribes. We've come a long ways. I think we are finally able to sit down and talk about those really important issues that the Tribe has always been interested in, and those are the management authority issues, trying to get the federal government to recognize that they have a responsibility to help the

tribes assert that management authority to ensure the long-term conservation of trust resources.⁹⁸

The Service and Tribe were never in agreement about what wolf recovery meant outside of its biological context. Beyond restoring wolves to their native habitat, the Service wanted to demonstrate the strength of the Endangered Species Act in addressing the biodiversity extinction crisis. Additionally, several primary actors in Idaho wolf recovery are nearing the end of their careers and would like to see wolf recovery through to completion, the success story that would cap off their careers, and deservedly so.

“I see the Service ultimately wanting to get wolves delisted and step out of the picture,” said one Service employee who’s worked on wolf recovery for nearly twenty years. “That’s what our agency or my agency, that’s their vision. That’s my vision. I think all of us would like to be in Acapulco drinking margaritas.”⁹⁹

Recovery of a top-level predator posed enough political and social challenges by itself; layering tribal sovereignty issues on top of that, while not necessarily opposed by the Service in and of itself, adds an unknown and unwanted factor to an already complicated situation. Like the delay in delisting due to Wyoming’s management plan, the Service perceives tribal sovereignty issues as holding them back from declaring wolf recovery a success. Transferring authority to the states through the 10(j) rule would bring a sense of finality to their decades-long journey of wolf recovery.

“The Tribe is saying to Fish and Wildlife Service, “Look. We know how to do this. We’ve done a good job. When you delist, you should turn management over to us,”” said a Service employee. “Well, no. That brings up whole other legal issues that we’re not gonna

⁹⁸ Nez Perce Tribe personnel, interview by author, tape recording, McCall, Idaho, 29 July 2004.

hang on the back of wolf recovery. That may be a discussion or a legal challenge that will happen someday, but it needs to happen in a different arena, not in wolf recovery.”¹⁰⁰

Without such tangible applications as wolf recovery, however, no appropriate arena for discussion exists.

The Tribe does not feel politically supported by the Service in their efforts to negotiate co-management responsibilities with the State of Idaho (Table 9). Under the Clinton Administration, they felt that they had a solid partnership with the Service and the Interior Department with the cooperative agreement in place and the strength of S.O. 3206.

“[Whenever] we would run into [then-]Secretary Babbitt and introduce ourselves from the Nez Perce Tribe, it always seemed like his first question was, ‘How are those wolves doing?’” recalled one Tribal member.

I felt that we had the political leadership from them, the support. Kind of inspiring, to be honest. I wasn’t concerned so much what the State of Idaho would attempt to do as long as I had my federal partner. When we got the [Bush] administration in, the new Secretary of Interior, I felt that now the State of Idaho could go back to D.C. and appeal to this administration, this Interior secretary, who would have more compassion for states’ rights and State leadership and less respect for tribal leadership, tribal treaty rights, tribal sovereignty. I was really never concerned what the State could do, but I was always concerned that I may lose the support of my federal partner. I think that’s exactly what we’re seeing now. What I would have hoped to see was this Secretary continue to ask, ‘How are the Nez Perce wolves doing? How are my wolves doing?’ We don’t see that. I feel somewhat—no, not somewhat—I do feel abandoned by this administration maintaining a lead role for the Nez Perce Tribe in this whole effort.¹⁰¹

⁹⁹ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

¹⁰⁰ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 18 October 2004.

¹⁰¹ Nez Perce Tribe personnel, phone interview by author, tape recording, 2 November 2004.

By not standing up boldly and directing the State of Idaho, who long refused any involvement with wolf reintroduction, to work with the Tribe, the Tribe feels that the Service no longer embraces them as a legitimate management authority off reservation lands.

Wolf recovery was always more than simply recovering a species of cultural significance to the Nez Perce; it was a stepping-stone for all other tribal-federal interactions in light of the Secretarial Order. The final 10(j) rule both weakens wolf protections and forces the Tribe to the sidelines of the effort they have led with great success since 1995. In a sense, both the wolf and the Tribe are being cast aside once again as their mirrored journeys continue.

Secretarial Order 3206 was developed to exhaust all avenues for addressing conflicts between the federal government and tribes, with the litigation option as a last resort. The Tribe's legal counsel is currently reviewing the 10(j) and will decide whether or not to recommend to NPTEC to pursue a fight in court for a management role beyond their reservation boundaries (*High Country News* [Paonia, CO], 24 January 2005). After ten years of cooperation and with S.O. 3206 in place, the 10(j) rule represents a step backwards for both wolf protection and for the Tribe and Service's government-to-government relationship.

THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AND WOLF RECOVERY

Relevance to Research Question

Federal wolf recovery in the central Idaho area consisted of drafting a recovery and management plan for the area and carrying out the plan's objectives in order to contribute to the regional recovery goal. This chapter discusses how the government-to-government relationship as perceived by the Nez Perce Tribe and the U.S. Fish and Wildlife Service effected the scientific quality of the Tribe's management plan, influenced implementation of the plan, and led to the recovery of the gray wolf (RQ 2).

Scientific Quality of Tribal Management Plan

Boersma et al. (2001) identify "effective" recovery plans as those that have met or exceeded the recovery criteria outlined in the plan. If recovery has not yet been achieved, plan effectiveness is determined through the assignment of a qualifier to describe the recovery trend (i.e., improving, stable, declining, extinct, or unknown). While this may seem to be a limited way of determining plan effectiveness, it "represents the best estimate available" (Boersma et al. 2001, 645).

The Tribe's plan met the criteria for a scientifically sound recovery plan under Boersma et al.'s definition by the end of 2000, when 10 breeding pairs were confirmed for the third consecutive year in the Central Idaho Experimental Management Area (CIEMA). Not only did wolves have an increasing population trend in Idaho every single year since the first wolf reintroductions, but they also tripled the recovery goal for that area (Figure 2).

The Tribe did not receive any scientific or technical assistance from the Service in writing the *Idaho Wolf Recovery and Management Plan*. Thus, the government-to-government relationship had little to no effect on the scientific quality of the Tribe's plan.

Plan Implementation and Monitoring

After the cooperative agreement went into effect in 1995, the U.S. Fish and Wildlife Service approved the Tribe's recovery and management plan. The *Nez Perce Tribal Wolf Recovery and Management Plan for Idaho* (1995) outlines seven specific objectives:

1. Establish a self-sustaining population of at least 10 breeding packs of wolves in the central Idaho [sic] through reintroductions of wolves from Canada.
2. Increase wolf populations in Idaho to contribute to delisting of wolves in the northern Rocky Mountains of the United States from the Endangered Species list.
3. Gain insight to how wolves recolonize unoccupied wolf habitat by monitoring wolves reintroduced into central Idaho and confirming the presence of wild wolves that might naturally recolonize Idaho.
4. Implement information and education programs to provide factual information about wolves, inform the public about the status of wolf recovery, and explain the role of the Tribe in recovery.
5. Strive for consistency of handling wolf-related management issues among all involved agencies.
6. Minimize negative impacts of wolf depredation on livestock through effective wolf management.
7. Solicit external funding and encourage Service, IDFG, and universities to obtain additional funding sources for research.

The Tribe's program has four components for meeting these objectives: 1) information and education, 2) monitoring, 3) control, and 4) research. The plan details, in separate sections, these components. Almost all elements of the recovery and management program were implemented and carried out from the plan's inception to date (Table 10).

Table 10. Implementation of recovery and management tasks outlined in the Tribe's 1995 plan. Data sources: *Nez Perce Tribal Wolf Recovery and Management Plan for Idaho* (1995), Nez Perce Tribe annual reports (1995-2003) and U.S. Fish and Wildlife Service annual reports (1999-2004).

Wolf recovery components	Tasks outlined in the 1995 recovery and management plan	Were tasks implemented? (Y/N)			
		1995-8	1999-2001	2002	2003
Information/Education	• Low-profile reporting of wolf events.	UNK	UNK	UNK	UNK
	• Public education program.	N	Y	Y	Y
	• Intern program and development of curriculum.	N	N	N	N
	• Proactive outreach program.	N	Y*	Y*	Y*
Monitoring	• Determine the distribution and occurrence of wolves in the CIEMA.	Y	Y	Y	Y
	• Determine annual estimates of total numbers of wolves in the CIEMA and document pack affiliation, if any.	Y	Y	Y	Y
	• Determine spatial and temporal relationships of wolves including definitions of wolf pack home ranges.	Y	Y	Y	Y
	• Determine movement patterns of lone and pack wolves.	Y	Y	Y	Y
	• Evaluate movement characteristics of wolves translocated through a "quick release" technique.	Y	Y	N	N
	• Determine habitat use of wolves.	N	N	N	N
	• Determine seasonal food habits of wolves.	Y	Y	Y	Y
	• Estimate wolf predations rates on wintering ungulates.	Y	N	N	N
	• Document breeding and denning activity.	Y	Y	Y	Y
	• Determine number of wolf litters, post-den emergence litter sizes, pup/adult ratios, and recruitment of pups into the winter population.	Y	Y	Y	Y
	• Determine age and sex of dispersing wolves and their success in establishing new packs.	Y	Y	Y	Y
	• Determine cause-specific wolf mortality.	Y	Y	Y	Y
Control	• Compensation program (Defenders of Wildlife)	Y	Y	Y	Y
	• Assist ADC in control actions and relocate problem wolves.	Y	Y	Y	Y
Research	• Identify, prioritize, and initiate wolf research.	N	Y	Y	Y
	• Support and help solicit additional funding from external sources.	N	Y	Y	Y

Y = Element covered in Nez Perce Tribe annual monitoring report

N = Element not covered in Nez Perce Tribe annual monitoring report

UNK = Element could not be measured

* = Element not covered in Tribe's annual report but covered in Northern Rockies annual report

Information and Education. The Tribe's plan details several steps for information, education, and outreach programs targeted at public and private schools, universities, community groups, and "other interested public organizations such as cattlemen

associations, hunting groups, guide-outfitters associations, multiple use groups, environmental groups, government agencies, etc.” in communities affected by wolves (Nez Perce Tribe 1995, 12). Because media coverage provides the major source of wolf information to the public, the plan emphasizes “accurate, low-profile reporting of wolf events” to put wolf recovery in its proper perspective.

During the winter, the Tribe and Service have targeted outreach efforts in five or six select communities that are just beginning to learn what it means to live with wolves. For instance, if a new wolf pack sets up a territory in the neighborhood of a rural community, that community gets put on a list for the winter outreach efforts, and the team will make targeted, proactive efforts to go into the community and talk to them about wolf biology and ecology and the wolf recovery program.

“Wolves don’t need us; the people do,” stated the regional wolf recovery coordinator.

Following the wolves around didn’t help the wolves at all. The only way to help the wolves is to be out in front of them and work with the people that were most affected. The Animal Damage Control folks did refrigerator magnets, got little refrigerator magnets with all the names of people you should contact if you have a wolf problem. So there was this effort to establish phone trees, who do you call, how do you do this when you have a problem, what are your rights and responsibilities within the program, what can you do, and what can you not do.¹⁰²

For each targeted area, multiple information venues are set up for different target audiences. The recovery team arranges coordination meetings with land management

¹⁰² U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 5 October 2004.

agencies, such as the Forest Service, livestock producers and local livestock associations, and local governments. Then one or more open houses or meetings are held with the public.

The Tribe also puts together news releases and weekly progress reports for dissemination to an open list. The core mailing list began with the Service and the sister recovery programs in Wyoming and Montana, then later included conservation organizations—including the National Wildlife Federation, Defenders of Wildlife, and the Wolf Education and Research Center—that helped them through funding and providing them with equipment and staff over the years. The core mailing list “just grew and grew by leaps and bounds every month” until it became prohibitively expensive for the Tribe to physically mail out newsletters, at which point they turned to e-mail. Today, the Tribe maintains an e-mail list of several hundred contacts that is the core of a national e-mail network.

Per their cooperative agreement, the Tribe provides weekly updates and monthly reports to the northern Rockies regional wolf recovery coordinator on the progress of the four tasks outlined in their recovery and management plan. “The Tribe will let us know that they found two new packs, got collars on x number of wolves, field crews went in on the—at the Buffalo Ridge pack and counted five pups, and so all this stuff is weekly sent in,” explained the Service’s wolf recovery coordinator.¹⁰³ Wildlife Services and Fish and Wildlife Service coordinators from the three recovery areas also send in weekly reports on livestock depredation and wolf management, respectively. The regional wolf recovery coordinator

¹⁰³ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 5 October 2004.

compiles all weekly progress reports and makes them available to the public via the Internet.¹⁰⁴

Monitoring. During the field season, which typically lasts from May through September, the Tribe sends out five two-person crews consisting of an experienced field biologist and a volunteer on ten-day hitches to document the reproductive status of all known wolf packs throughout the state. Crews trap new wolves to fit them with radio collars. Once they are collared, the Tribe tracks the wolves through year-round aerial monitoring flights that occur approximately twice per month. Aerial monitoring allows the Tribe to track wolves through largely roadless areas and collect data on pack territories, pack locations, and proximity of wolves to livestock or towns in order to foresee and avoid potential conflicts. Technical staffs from the Tribe, the Service, Wildlife Services, and, more recently, Idaho Fish and Game maintain contact almost daily by phone and e-mail to keep each other informed of their activities. They also maintain contact with the public through information, education, and outreach as well as via the e-mail newsletters and weekly status reports.

Control. The plan states, and the cooperative agreement stipulates, that the Tribe assist Wildlife Services (formerly Animal Damage Control, or ADC) in control actions. Under a special use permit, Wildlife Services investigates and verifies suspected wolf-caused livestock depredations (Mack, Babcock, and Holyan 2002). The Tribe, Service, and Wildlife Services cooperate on implementing wolf control actions. The Tribe assists in proactive, non-lethal control measures, including the relocation of problem wolves, hazing, non-lethal rubber bullets, and radio-activated guard (RAG) boxes, which frighten off wolves with loud

¹⁰⁴ Weekly status updates back to 1998 are available online at <http://westerngraywolf.fws.gov>.

noises. The Service authorizes any lethal control measures to be carried out by Wildlife Services. Defenders of Wildlife provides market-rate financial compensation to livestock producers for livestock losses confirmed by Wildlife Services as caused by wolves.

Research. While research is important to the Tribe, it is seen as secondary to the top management priorities, outreach and monitoring. Research areas that were highlighted in the plan include wolf effects on ungulates, other special status species, other large predators, and alternative radio telemetry methods. Nine research studies have been initiated in the central Idaho recovery area since 1999 on topics such as wolf-livestock interactions, den site characteristics, and wolf-ungulate dynamics (Mack and Holyan 2004).

Information and outreach, control, and research programs were largely interagency efforts coordinated between the Tribe, Service, and Wildlife Services. Both the Tribe and the Service identified these components, particularly information/outreach and wolf control, as being successfully implemented (see *Communication and Decision-Making*). They attributed their ability to carry out these programs to:

- Trust in each other due to long-standing personal friendships and working relationships;
- A commitment to make personal, one-on-one relationships with the public a top priority;
- Daily communication;
- Inter-agency coordination and a lack of “turf wars”; and
- Decision-making authority at the technical level.

Funding was cited as the one element of the government-to-government relationship that hindered their ability to conduct proactive information and outreach efforts as well as

address wolf control issues. Inadequate funding limits the number of seasonal biologists and permanent staff that the Tribe can hire for monitoring and the number of targeted outreach efforts scheduled each winter. Also, as the wolf population increases disproportionately with funding levels (Figure 5), the proportion of collared wolves to uncollared wolves decreases, so not all suspected livestock depredations can be confirmed.

Monitoring efforts are the Tribe's primary responsibility. Both the Tribe and the Service identify wolf monitoring as successful, although inadequate funding limits the number of collars that can be purchased, the frequency of aerial flights, and the number of staff available to track wolves. However, the Tribe credits the Service with pitching in year-end monies for additional flights when the Tribe has really pushed for it. The Service and Wildlife Services also provide on-the-ground assistance with darting and trapping when needed. The elements of the relationship that the Tribe and Service have identified as critical to the success of the monitoring program include:

- Long-standing, trusting relationships between Tribal and federal technical staffs; and
- Their ability to hammer out priorities and maintain flexibility in shifting priorities to accommodate the level of funding (see *Communication and Decision-Making*).

Based on their ability to carry out most of the tasks outlined in the recovery and management plan, the two governments appear to have developed a relationship at the technical level that could overcome funding limitations and is effective in implementing the Tribe's recovery and management plan.

Recovery of the Species

The Tribe's wolf recovery and management plan for Idaho supports the recovery objectives outlined in the Service's *Northern Rocky Mountain Wolf Recovery Plan* (1987):

Primary objective: To remove the Northern Rocky Mountain wolf from the endangered and threatened species list by securing and maintaining a minimum of ten breeding pairs in each of the three recovery areas for a minimum of three successive years.

Secondary objective: To reclassify the Northern Rocky Mountain wolf to threatened status over its entire range by securing and maintaining a minimum of ten breeding pairs in each of two recovery areas for a minimum of three successive years.

Tertiary objective: To reclassify the Northern Rocky Mountain wolf to threatened status in an individual recovery area by securing and maintaining a minimum of ten breeding pairs in the recovery area for a minimum of three successive years. Consideration will also be given to reclassifying such a population to threatened under similarity of appearance after the tertiary objective for the population has been achieved and verified, special regulations are established, and a State management plan is in place for that population.

The original recovery goal of ten breeding pairs for three consecutive years in the Central Idaho recovery area was reached by the end of 2000 (Figure 2; Mack, Babcock, and Holyan 2002). The revised recovery goal of 30 breeding pairs equitably distributed among the three recovery areas for three successive years was reached in late 2002 (Service et al. 2003). By the end of 2004, at least 452 wolves and 30 breeding pairs inhabited the Central Idaho recovery area (Service et al. 2005). Therefore, the species is considered recovered according to the criteria defined in the Service's recovery plan.

Both the Tribe and the Service consider wolf recovery to be a resounding success and attribute actual biological recovery less to active efforts, aside from reintroduction back in 1995 and 1996, on their parts than to the robustness of the species they were dealing with.

“Working on the wolf recovery issue,” said the Northern Rockies wolf recovery coordinator, “I guess we’re fortunate in that wolves themselves are very robust and are a very easy species from a biological standpoint to manage.” He continued:

They have fairly high reproductive capabilities. They’re fairly resilient to disturbance and perturbations. They have incredible movement dispersal capabilities, so they can move around the State of Idaho and neighboring states so easily, that it’s easy for them to recolonize vacant habitats and increase the distribution of the population. So from a biological standpoint, you know, we hire good biologists, good field crews. They’ve done a tremendous job in going out and collecting information, but from a program standpoint, from a tribal program standpoint, most of the challenges the program deals with, are social and political challenges.

Wolf populations in the United States declined due to excessive hunting, not to habitat loss, which is the cause of decline for many endangered and threatened species. Negative human attitudes towards the wolf, therefore, led to species decline. Targeted outreach efforts to livestock producers, sportsmen, and other members of the public whose lives and livelihoods may be affected by the presence of wolves to encouraging public tolerance for wolves has been the backbone of the recovery effort. Therefore, while the government-to-government relationship had little effect on wolf recovery at a biological level, the relationship had a significant effect on wolf recovery at a sociopolitical level due to highly coordinated interagency efforts for wolf control, monitoring, and public information and outreach (see *Communication and Decision-Making* and *Conflict Resolution*).

RECOMMENDATIONS

Discussions in previous chapters suggest that most tensions with respect to wolf recovery occur at the policy level because each government had different expectations of the government-to-government relationship. Recommendations for improving the government-to-government relationship are offered.

Recommendation 1: Revise the Fish and Wildlife Service Native American Policy through a bilateral process.

The Fish and Wildlife Service's Native American Policy, now over ten years old, was not sufficient to provide guidance or direction for conducting the federal-tribal relationship in light of the precedent-setting wolf recovery effort in central Idaho. One NPTEC member indicated that the Service was in the process of revising the policy but that discussions had stalled out over the past few months. Similar to crafting Secretarial Order 3206, the Service should revive discussions and work on a bilateral, government-to-government basis with representatives from individual tribes or inter-tribal organizations to update and make revisions to the Native American Policy. Such revisions should include:

- Referencing and incorporating principles of Secretarial Order 3206 for government-to-government relationships;
- Developing a consultation policy more consistent with S.O. 3206 and Executive Order 13175;
- Clarifying the distinction between co-management and cooperative management of resources, especially with respect to the circumstances under which each of these may occur; and
- Establishing a mechanism for conducting regular performance reviews of the policy.

Recommendation 2: Develop a single consultation policy across all federal departments and agencies.

The Nez Perce Tribe developed a single set of consultation guidelines to be applied across all federal agencies in response to the lack of uniformity in the agencies' own consultation policies and ensuing confusion as to how consultation with various entities should be carried out. Because consultation is a cornerstone of the government-to-government and is, ideally, a collaborative process, the federal government and tribal governments should work together to develop a single federal consultation policy that:

- Fulfills the spirit of Executive Order 13175;
- Explicitly states the purpose and goal of consultation;
- Allows flexibility and adaptability to individual tribes without diluting the intent of the guiding principles for consultation;
- Establishes a timetable for scheduling consultation to ensure meaningful participation by tribes; and
- Holds agencies accountable when consultation responsibilities are not met.

Recommendation 3: Prior to engaging in activities like wolf recovery, set and clearly define expectations. Also, institutionalize procedures for conducting the government-to-government relationship.

Much of the dissatisfaction and conflict arising out of the wolf recovery project occurred at the policy level because each government held different expectations of each other and projected different meanings on the wolf recovery effort. These conflicting perspectives manifested themselves specifically with respect to the proposed 10(j) rule. Subsequent consultation on the 10(j) rule failed to bridge disagreements that arose between the Service and the Tribe. Therefore, prior to undertaking large-scale efforts, so as to minimize conflict down the road, both the tribal and federal governments should clearly

define their expectations of the project, including consideration of post-recovery plans, and of each other during initial government-to-government discussions.

The National Environmental Justice Advisory Council's (NEJAC) Indigenous Peoples Subcommittee recommends institutionalizing general consultation and collaboration procedures with tribes (NEJAC 2000). When working collaboratively on projects such as wolf recovery, similar procedures should be institutionalized with specific tribes.

Recommendation 4: Develop an ongoing "consultative" relationship between the Tribe and the Service and between the Tribe and the State.

While annual coordination meetings occurred between technical staffs from the Service and the Tribe, no comparable meetings are known to have occurred at the policy level. NEJAC (2000) recommends developing ongoing government-to-government relationships to ensure meaningful participation by tribes in consultation. In this case, conflicts between the Service and Tribe, especially regarding tribal management authorities, may have been minimized or resolved satisfactorily through regular, policy-level meetings specifically about wolf recovery. With respect to wolf recovery, the Service should also make a proactive effort to facilitate government-to-government discussions between the Tribe and the State of Idaho. Such Service responsibilities to the Tribe and State should be formalized in a Memorandum of Agreement.

CONCLUSION

The success of the wolf recovery program has brought widespread attention and acclaim to the Nez Perce Tribe, not only for helping to recover an endangered species but also for advancing tribal sovereignty, treaty rights, and tribal management authority issues. The Tribe's gray wolf recovery program was a 1999 Honoring Nations honoree of the Harvard Project on American Indian Economic Development and has been featured in numerous other stories and articles as an example of a highly successful partnership between the federal government and a Native American tribe for conserving an endangered species.

Wolfley (1998) suggested that conflicts between multiple stakeholders might lead to breakdowns in communication and coordination. Conflicts were noticeably absent within the technical level of the government-to-government relationship (Table 11). Those that were identified— funding and lethal control— manifested themselves primarily as external pressures affecting both governments in a similar fashion.

Technical staff personnel from both the Tribal and federal governments perceive their relationship to be effective for recovering the wolf. The government-to-government relationship at the technical level has been most critical for plan implementation and wolf recovery. A shared ideology for recovering a species once native to the region provided the foundation for cooperative recovery efforts between the Tribe and the Service. From there, they overcame differences in funding attitudes to develop a strong and effective government-to-government relationship based on:

- Personal relationships between technical staffs;
- Technical assistance provided by the different agencies;

- Interagency communication and coordination;
- Conflict resolution at the technical level;
- A common commitment to be available to each other;
- Lack of “turf wars” over agency responsibilities; and
- Broad decision-making authority at the technical level.

Table 11. Summary of research questions and conclusions.

Research Question		Conclusions
1. How is the existing government-to-government relationship with respect to the Endangered Species Act perceived by the Nez Perce Tribe and the federal government?	a. Flexible and adaptable?	Yes.
	b. Effective for:	1. Managing wolves? Yes.
		2. Resolving conflicts? At the technical level, yes. At the policy level, no.
		3. Funding management needs? No.
	c. Is the Service working with the Tribe on recovery of the gray wolf in a manner consistent with Principles 1 and 3 of Secretarial Order 3206?	1. Opportunities for Tribal participation in decision-making through consultation? Tribe says no. Service says yes, to the degree allowed under the cooperative agreement.
		2. Scientific and technical assistance provided to Tribe? Tribe provides scientific info to Service under terms of the cooperative agreement. Technical assistance provided across all agencies.
		3. Deference to Tribal conservation and management plan? Yes.
2. Does the existing government-to-government relationship as defined by the tribes and the Service lead to:	a. Management plans of high scientific quality?	No. Service did not help Tribe develop the plan.
	b. Plan implementation?	Yes.
	c. Recovery of the species?	Yes, through indirect effects (i.e., working to change human attitudes towards the wolf). Biologically, wolves recovered on their own.

One Service employee best summed up the Idaho wolf recovery program: “We have a lot of politics here [in Idaho], but I really think that the effort going on here, the team effort between Wildlife Services, Fish and Wildlife Service, Nez Perce Tribe, and the State of Idaho, is about as good as it gets. It was such a contemptuous species of critter to manage. As far as the wolf population, we’re carrying the lion’s share of wolves for the three recovery

areas, and all of that to me expresses success. It is my humble opinion that we've got the class act going on in Idaho."¹⁰⁵

However, one must distinguish the technical level from the policy level of the government-to-government relationship. It appears that wolf recovery was successful despite the policy level of the government-to-government relationship, not because of it. Despite a shared ideology of recovering the wolf, the two governments diverged significantly in the meanings that they placed on wolf recovery as well as the expectations that they had of each other when first entering into the cooperative agreement. Unlike the circumstances described by Wilkinson (1997) that allowed for the bilateral crafting of Secretarial Order 3206, a shared set of expectations for wolf recovery above and beyond biological recovery appears to have been absent from initial discussions between the Tribe and Service. As a vehicle for exploring tribal sovereignty issues and tribal natural resources management authorities, which the Tribe drove forward against the Service's resistance, wolf recovery may lead to greater hardships.

To minimize future conflicts, existing policies should be reviewed and updated. Future federal-tribal partnerships in endangered species protection require a true effort at bilateralism, including clearly defined expectations and objectives, consistency in the application of government-to-government concepts like consultation, and regular, ongoing dialogue at all levels of government.

¹⁰⁵ U.S. Fish and Wildlife Service personnel, phone interview by author, tape recording, 27 September 2004.

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APPENDICES

A. The U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service, a bureau within the Department of the Interior, is the principal federal agency responsible for administering programs dedicated to the conservation of natural resources. It traces its origins to the U.S. Commission on Fish and Fisheries in the Department of Commerce and the Division of Economic Ornithology and Mammalogy in the Department of Agriculture, two programs created to recover declining fish and wildlife populations during the last quarter of the 19th century (DOI n.d.). The Service's mission is to form mutual partnerships to "conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

The Service, an agency of more than 7,000 employees, manages the 95-million-acre National Wildlife Refuge System, comprised of 545 national wildlife refuges, thousands of small wetlands, and other special management areas. Under its Fisheries Program, the Service operates 69 national fish hatcheries, 64 fishery resources offices, and 81 ecological services field stations. Other key responsibilities include enforcement of federal wildlife laws, administration of the federal Endangered Species Act, management of migratory bird populations, conservation and restoration of fisheries, wetlands, and other wildlife habitats, multilateral implementation of international treaties and conservation programs (DOI n.d.).

The Service also establishes partnerships to conserve and protect habitat on private lands.

B. The Nez Perce Tribe

The Nimipuu (the Real People) or Nez Perce, are the largest of the Sahaptin-speaking tribes. According to their legends, they were created and have always lived in their ancestral homeland (Evans 1996), a territory that encompassed much of the land drained by the Snake River in present-day southwestern Washington, northeastern Oregon, and central Idaho. According to their beliefs, they did not cross over the Bering Strait from Asia but have been here forever.

The Lewis and Clark expedition first entered the Nez Perce homeland in September 1805, and the Nez Perce lived in relative peace with the first westerners for several decades. In 1855, Governor Isaac Stevens, newly appointed over the Washington Territory, negotiated the Walla Walla Treaty of 1855 with the Tribe (Evans 1996; Haines 1955). The Treaty of 1855 established a reservation of approximately 7.5 million acres for the Tribe and reserved hunting, fishing, and gathering rights in all other usual and accustomed places.

Five years later, the discovery of gold by Elias D. Perce on the reservation led to a new treaty in 1863 that reduced the reservation size to approximately one-tenth of its 1855 size, allowing white miners on to previously reserved Nez Perce lands (Josephy 1997). The Treaty of 1863 “excluded from the Nez Perce Reservation the Wallowa lands of northeastern Oregon, the Salmon River territory, the downstream Snake River lands, and hundreds of thousands of acres of other hunting and fishing areas and root and berrying grounds” (Evans 1996, 12).

In 1877, the U.S. military demanded that all Nez Perce bands that had not signed the 1863 treaty move onto the reservation. The Nez Perce War of 1877 broke out when certain bands resisted these demands. They embarked on a four-month, 1,100-mile journey to

retreat from federal troops before surrendering, when Chief Joseph promised to “fight no more forever.”

The Dawes Act, or the General Allotment Act, of 1895 opened the reservation up to homesteading by white settlers. As a result, only about 11% of the 1863 treaty reservation is owned by Tribal members today.

The Nez Perce Tribe’s ceded lands include the Columbia River and its tributaries in Washington, Oregon, Montana, and Idaho. The Tribe has more than 3,300 enrolled members today (Nez Perce Tribe 2003).

C. Survey Instrument

SAN JOSE STATE UNIVERSITY SURVEY INSTRUMENT – NEZ PERCE TRIBE

BACKGROUND

Information about the interviewee

1. What is your position title?
 - a. How long have you been in this position?
 - b. What are your responsibilities as a [position title]?
 - c. Are you an enrolled member of the Nez Perce Tribe?

Interviewee's knowledge about recovery of the gray wolf

2. What does recovering the gray wolf on your lands mean (e.g., culturally and biologically):
 - a. To you?
 - b. To the Tribe?
3. Is working with the Service to recover the gray wolf important? Please briefly explain.
4. How long has the Nez Perce Tribe been working on gray wolf recovery?
5. Who first initiated the tribe's work with gray wolf recovery, the tribe or the Service?
6. Does gray wolf recovery conflict with other tribal interests? If so, how?
7. How have the public and the tribe, in general, reacted to gray wolf recovery on Idaho lands?

OBJECTIVES 1A AND 1B

Interviewee's perception of the government-to-government relationship

8. How do you communicate with Service personnel (in person, telephone, e-mail, etc.)?
 - a. With whom do you usually communicate (Native American Liaison, biologists, etc.)?
 - b. Who usually initiates the communication, you or the Service?
 - c. How often do you communicate with the Service?
 - d. What issues do you discuss with the Service?
 - e. If you initiate communication, do you feel that these communications achieve your desired goals?
9. During this wolf recovery process, did you discuss with the Service how you wanted to work with each other?
 - a. What did you agree upon?

- b. What did you disagree about?
 - c. How did you resolve disagreements?
 - d. What are the tribe's needs for effectively managing gray wolf recovery?
 - e. Do you feel that the Service demonstrates flexibility to meet your needs?
 - f. Do you feel that the Service adapts to your needs?
 - g. Did the Service mention their obligations to meet the requirements of Secretarial Order 3206?
10. What measures do the Service take in order to work with tribes to manage the gray wolf?
- a. To what extent did the Service participate in developing the tribal wolf management plan?
 - b. Are you satisfied with their level of involvement?
 - c. To what extent does the Service participate in implementing the wolf management plan?
 - d. Are you satisfied with their level of involvement?
 - e. Do you feel that this is an effective working relationship for managing the gray wolf?
11. What types of conflicts have you had with the Service?
- a. How often do you have conflicts with the Service?
 - b. How do you work to resolve conflicts with the Service?
 - c. Do you feel that this is an effective working relationship for resolving conflicts?
12. Does the Service fund wolf management?
- a. What components of wolf management are funded?
 - b. Do you feel that the amount of funding for wolf management by the Service is adequate?
 - c. Do you feel that this is an effective working relationship for funding management needs?

OBJECTIVE 1C

Interviewee's perception of consistency with Secretarial Order 3206

13. Does the tribe participate in decision-making processes through consultation?
- a. What is discussed?
 - b. Where are discussions held?
 - c. What is your role in consultation?
 - d. Do you feel that the tribe is given adequate opportunities to participate in consultation?
 - e. Is the tribe treated by the Service as an equal? Please explain.
 - f. Is consensus achieved?
 - g. How is consensus achieved?

14. Does the Service provide the tribe with scientific information on the gray wolf?
 - a. What types of information do they provide?
 - b. How is this information used in the tribal wolf management plan?
 - c. Do you feel that this information was sufficient for developing the management plan?
 - d. Do you feel that this information is sufficient for developing other conservation measures?
15. Does the Service provide the tribe with technical assistance?
 - a. What types of assistance do they provide?
 - b. Do you feel that this information was sufficient for developing the management plan?
 - c. Do you feel that this information is sufficient for developing other conservation measures?
16. Does the Service defer to tribal wolf conservation and management plans?

SAN JOSE STATE UNIVERSITY
SURVEY INSTRUMENT - U.S. FISH AND WILDLIFE SERVICE

BACKGROUND

Information about the interviewee

1. What is your position title?
 - a. How long have you been in this position?
 - b. What are your responsibilities as a [position title]?
 - c. Are you an enrolled member of any tribe?

Interviewee's knowledge about recovery of the gray wolf

2. Why is recovering the gray wolf on tribal lands important to the Service?
3. Is working with tribes to recover the gray wolf important? Please briefly explain.
4. How important is working with tribal governments on gray wolf recovery compared to working with state governments?
5. Who first initiated the tribe's work with gray wolf recovery, the tribe or the Service?

OBJECTIVES 1A AND 1B

Interviewee's perception of the government-to-government relationship

6. How do you communicate with tribal members (in person, telephone, e-mail, etc.)?
 - a. With whom do you usually communicate (tribal leaders, natural resource department heads, biologists, etc.)?
 - b. Who usually initiates the communication, you or the tribe?
 - c. How often do you communicate with the tribe?
 - d. What issues do you discuss with the tribe?
 - e. If you initiate communication, do you feel that these communications achieve your desired goals?
7. During this wolf recovery process, did you discuss with the tribe how you wanted to work with each other?
 - a. What did you agree upon?
 - b. What did you disagree about?
 - c. How did you resolve disagreements?
 - d. What are the tribe's needs for effectively managing gray wolf recovery?
 - e. Do you feel that the Service demonstrates flexibility to meet their needs?
 - f. Do you feel that the Service adapts to their needs?
 - g. Did the Service mention their obligations to meet the requirements of Secretarial Order 3206?

8. What measures do the Service take in order to work with tribes to manage the gray wolf?
 - a. To what extent did the Service participate in developing the Nez Perce Tribe's gray wolf management plan?
 - b. Are you satisfied with their level of involvement?
 - c. To what extent does the Service participate in implementing the wolf management plan?
 - d. Are you satisfied with their level of involvement?
 - e. Do you feel that this is an effective working relationship for managing the gray wolf?
9. What types of conflicts have you had with the tribe?
 - a. How often do you have conflicts with the tribe?
 - b. How do you work to resolve conflicts with the tribe?
 - c. Do you feel that this is an effective working relationship for resolving conflicts?
10. Does the Service fund wolf management?
 - a. What components of wolf management are funded?
 - b. Do you feel that the amount of funding for wolf management by the Service is adequate?
 - c. Do you feel that this is an effective working relationship for funding management needs?

OBJECTIVE 1C

Interviewee's perception of consistency with Secretarial Order 3206

11. Does the tribe participate in decision-making processes through consultation?
 - a. What is discussed?
 - b. Where are discussions held?
 - c. What is your role in consultation?
 - d. Do you feel that the Service provides the tribe with adequate opportunities to participate in consultation?
 - e. Is the tribe treated by the Service as an equal? Please explain.
 - f. Is consensus achieved?
 - g. How is consensus achieved?
12. Does the Service provide the tribe with scientific information on the gray wolf?
 - a. What types of information are provided?
 - b. How is this information used in the tribal wolf management plan?
 - c. Do you feel that this information was sufficient for developing the management plan?
 - d. Do you feel that this information is sufficient for developing other conservation measures?
13. Does the Service provide the tribe with technical assistance?

- a. What types of assistance are provided?
- b. Do you feel that this information was sufficient for developing the management plan?
- c. Do you feel that this information is sufficient for developing other conservation measures?

14. Does the Service defer to tribal wolf conservation and management plans?