

The Public Trust and the Pros and Cons of Lethal Management of Wolves

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University of Wisconsin-Madison July 2015



An aerial photograph of a snowy mountain slope. Several wolves are seen walking across the snow, leaving tracks. The snow is uneven, with some patches of dry grass or small shrubs visible. The lighting suggests a bright day, with shadows cast by the wolves and the terrain.

Outline

- 1. What is the public Trust Doctrine (PTD)?**
- 2. Large carnivores challenge government trustees. Pros and cons of lethal management of predators**
 - Intergenerational equity**
 - Uses that deplete the trust**
 - Government accountability**
 - Best available science**
- 3. Large carnivores and our democracies have a shared future.**



1776 U.S. threw out the English sovereign and declared a federation of states

1936-2014 Judge Sax

<http://senate.universityofcalifornia.edu/JosephL.Sax.html>

1972 the public interest evolves with societal changes

1842 People are sovereign over all environmental assets



Michigan Law Review 1970
THE PUBLIC TRUST DOCTRINE IN NATURAL RESOURCE LAW: EFFECTIVE JUDICIAL INTERVENTION
Joseph L. Sax

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A. The Historical Background

B. The Public Trust as a Public Right

1. The Concept of Property Owned by the Citizens

2. The Conceptual Support for the Public Trust Doctrine



1982 all uses are protected as feasible

1892 Control by the state never lost; no substantial impairment



1948 Preserve the trust

Governments are accountable for the broad public interest in preserving and regulating exploitation of wildlife as trust assets for the benefit of current and future generations.

1936-2014
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Common misconceptions about the PTD

- Is a doctrine brain-washing?
- **No, doctrines are legal tests established in constitutional, statutory, or common law precedents that guide formal judgments.**
- Does preservation mean ‘no use’?
- **No, all legal uses are recognized but not equally.**

1936-2014 Judge Sax

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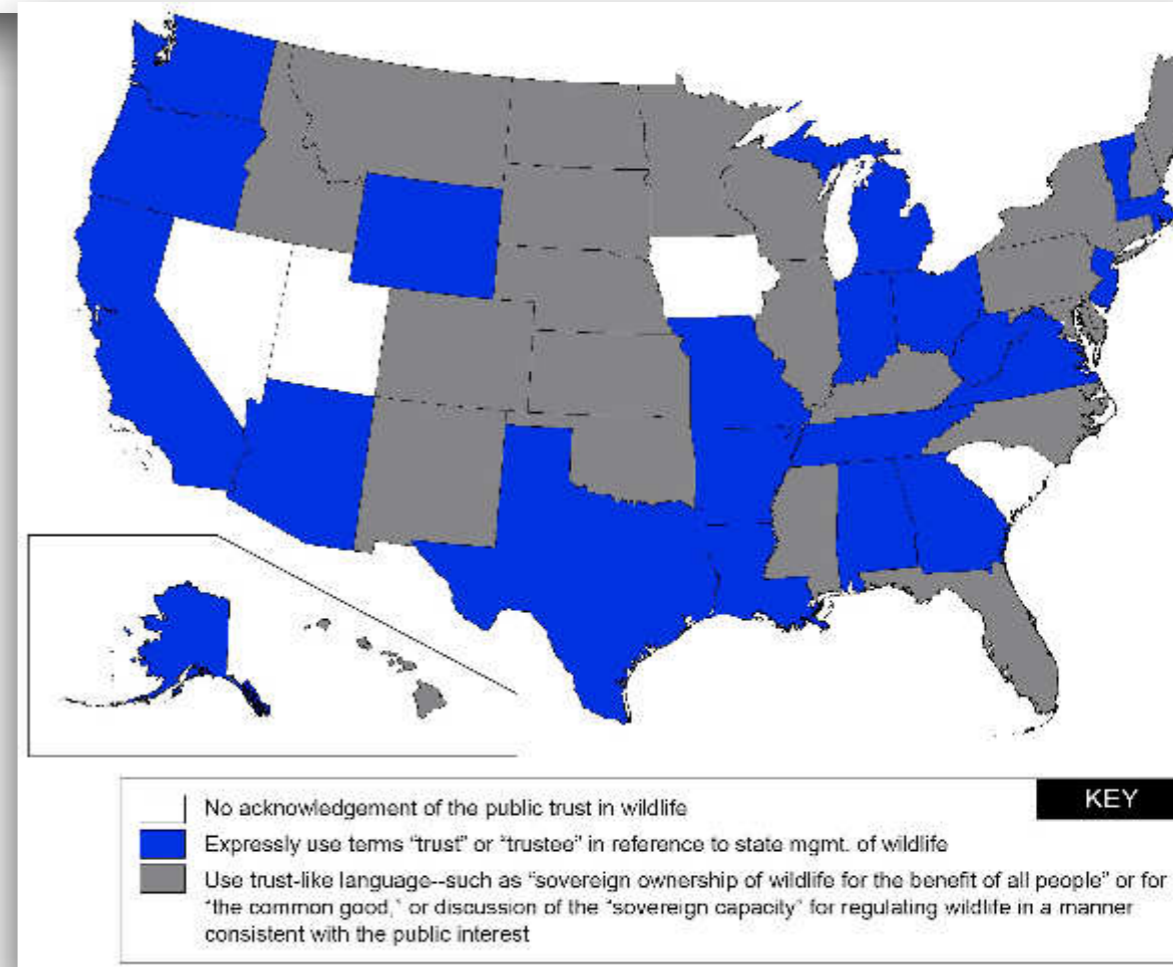
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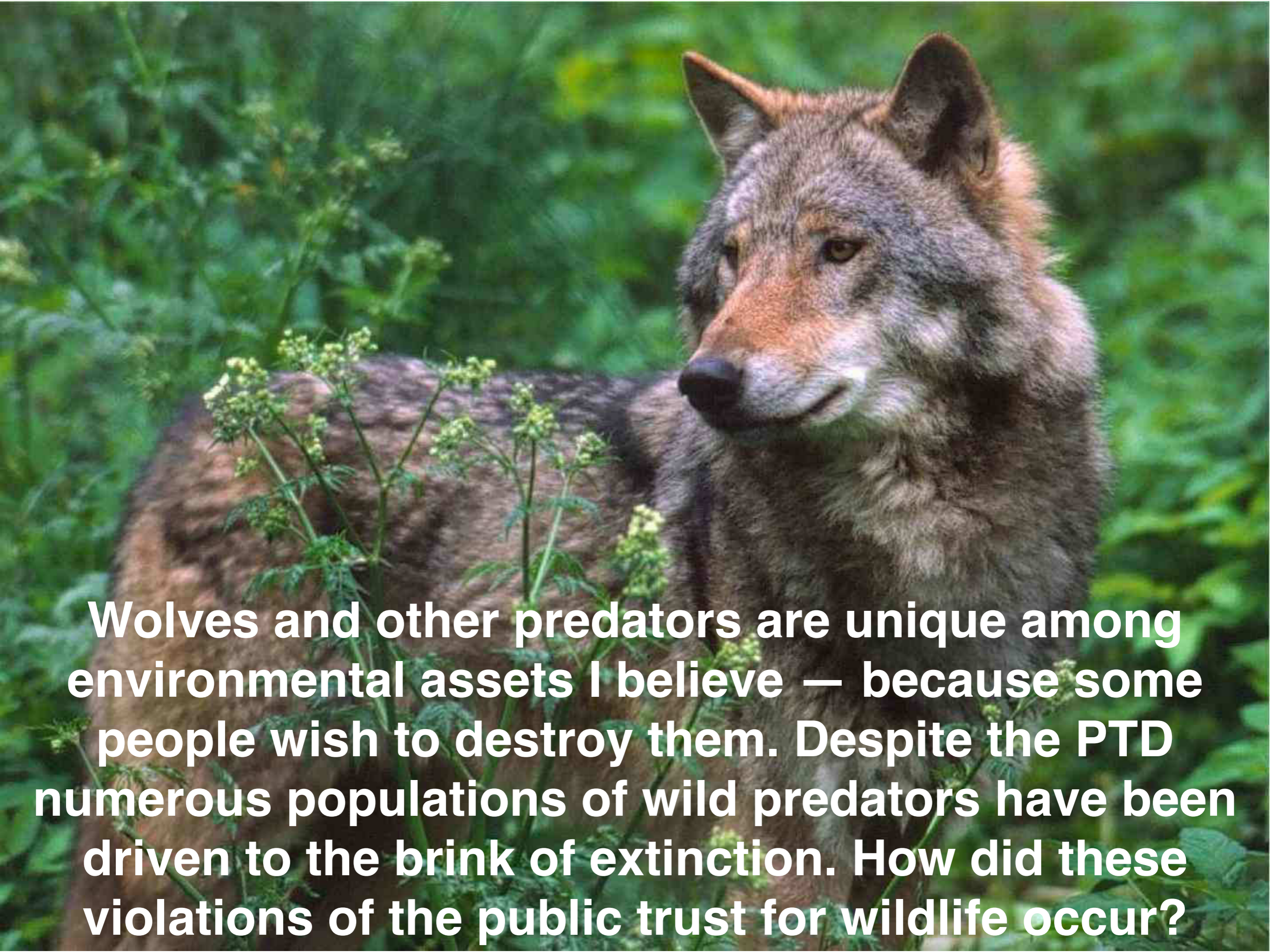


Bottom: The mosaic of U.S. State public trust doctrines (PTD) as classified by Blumm and Paulsen (2013) http://works.bepress.com/michael_blumm/16 and mapped by Treves et al. (in press). Top: The global mosaic of PTDs adapted from Sagarin & Turnipseed (2012).

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Wolves and other predators are unique among environmental assets I believe — because some people wish to destroy them. Despite the PTD numerous populations of wild predators have been driven to the brink of extinction. How did these violations of the public trust for wildlife occur?

Just, democratic governments have a duty to preserve and allocate the trust assets for the public forever.

Intergenerational equity implies preserving the principal of the trust.

Future citizens have a right to self-determination. We have no right to determine their uses.

Intergenerational equity



Theodore Roosevelt (1858-1919)
http://40.media.tumblr.com/mcgqralYV01rf1jvro1_r1_1280.jpg

“Defenders of the short-sighted men who in their greed and selfishness will, if permitted, rob our country of half its charm by their reckless extermination of all useful and beautiful wild things sometimes seek to champion them by saying that ‘the game belongs to the people.’

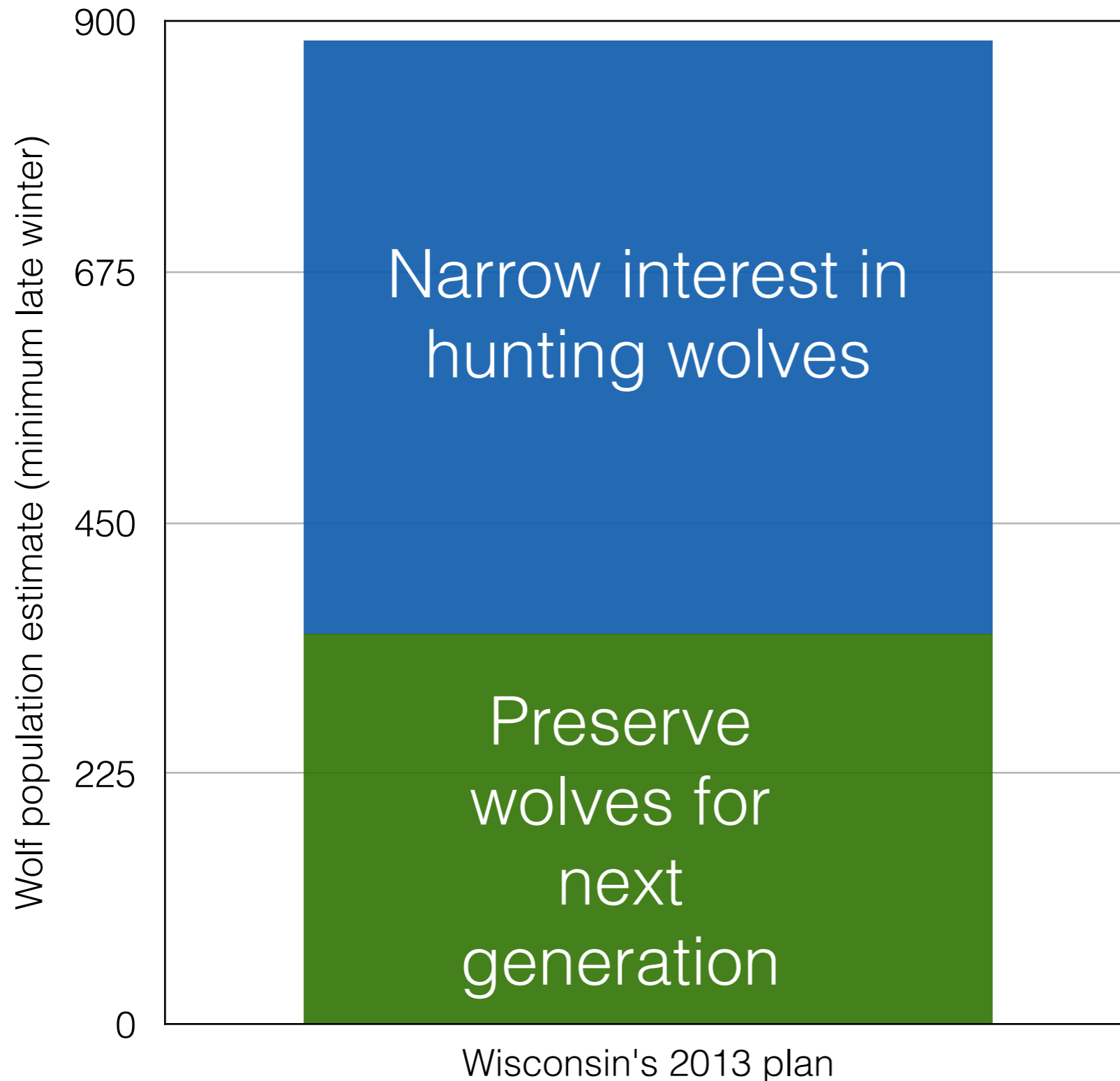
So it does; and not merely to the people now alive, but to the unborn people. The ‘greatest good for the greatest number’ applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole, including the unborn generations, bids us to **restrain an unprincipled present-day minority from wasting the heritage of these unborn generations...**”

(Chapter 10, passage 25, Roosevelt, 1916)

Intergenerational equity



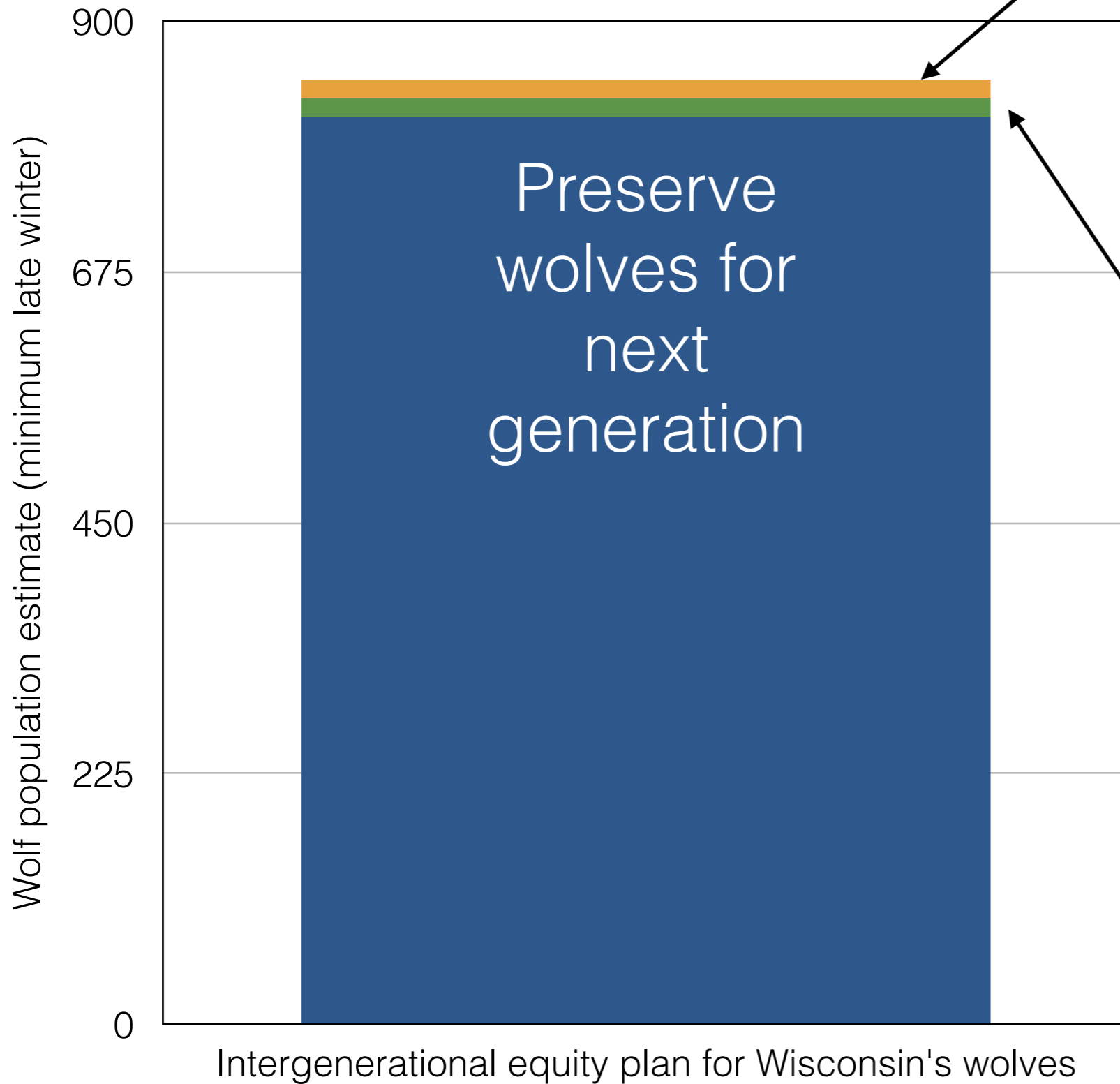
Wisconsin's wolf policy neglected the public trust



Theodore Roosevelt (1858-1919)
http://40.media.tumblr.com/tumblr_mcgqraYV01rf1jvro1_r1_1280.jpg

Wolf hunting consistent with the PTD

Narrow interest in hunting wolves



Theodore Roosevelt (1858-1919)

<http://ecx.images-amazon.com/images/I/51jZaPzbXDL. SY300. jpg>

Ojibwe treaty right to protect Ma'ingan



- Uses must promote the public interest
- Use cannot substantially impair the asset
- Private users must compensate the public interest

Illegal uses are the common enemy



Judge Sax urged courts to deter “ventures into the unknown”

“The courts properly evince reluctance to approve decisions based upon ignorance... One product of such judicial reluctance is an incentive for decision-making agencies to begin seeking **careful and sophisticated measurements of the benefits and costs involved in resource allocations.**”

(Sax 1970, p.564)

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Ingredients for proper accounting

- Transparent, careful, sophisticated measurements (best available science) require ecological and social sciences
- The public needs independent science to avoid “capture by narrow interests.
- Users face the burden of proof that they serve a public interest and are not substantially impairing the asset.
- Lethal management of predators has not provided that proof...

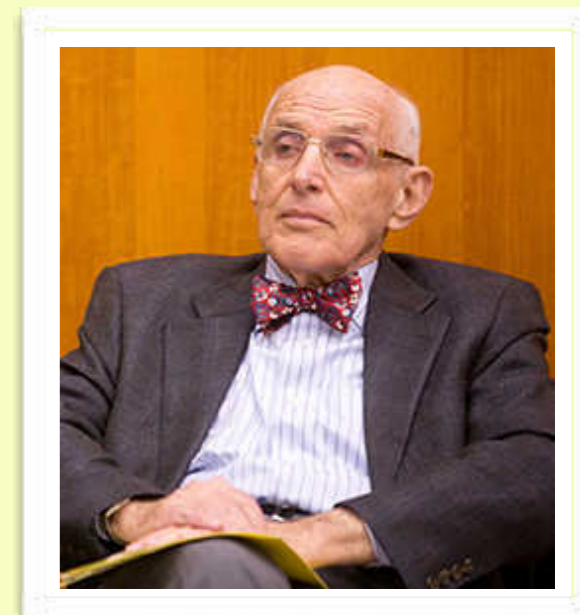
Lethal interventions to prevent livestock predation have never been tested with controlled experiments



why not?

“And if the relevant facts are unknown and yet legislatures and administrative agencies show eagerness to go forward, the courts are only reinforced in their overall suspicion that they are dealing with governmental responsiveness to pressures imposed by powerful but excessively narrow interests.”

(Sax 1970, p.565)



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Is hunting carnivores a conservation tool?

Many claims have been made about the conservation benefits of killing carnivores, few have been tested scientifically

- The information and revenue it generates must improve carnivore conservation outcomes, or
- It must sustain the carnivore population, or
- It must reduce intolerance or reduce poaching of carnivores.

(Treves 2009) Journal of Applied Ecology



Intolerant people may be less angry at the agency if it kills wolves... but tolerance for wolves themselves **did not** improve after Montana's wolf hunt.

(Lewis et al. 2012, Montana FWP unpublished)

Tolerance continued to decline after Wisconsin killed 33-47% of its wolves by April 2013

A unique study of attitudes.

The same individuals were measured in 2001,
2009, and 2013

after

culling resumed (2003-2013, intermittently)

and after

the first-ever regulated, public hunting season
(2012)

Tolerance declined after lethal management began

Culling wolves did not raise tolerance 2001–2009

(Treves et al. 2013 Conservation Biology)

Culling wolves led to more poaching 1980–2012

(Treves et al. in review Journal of Mammalogy)

Hunting wolves did not raise tolerance by 2013

(Hogberg et al. 2015 Environmental Conservation)

We should not **expect** tolerance to increase when the value of wolves is diminished.

(Treves & Bruskotter 2014 Science)

**The health of our carnivores
reflects the health of our
science.**



Recommendations for scientists

A close-up photograph of a wolf's head and shoulders, looking slightly to the left. The wolf has grey and brown fur. The background is a lush green forest with some small yellow flowers in the foreground.

- **Academic freedom is the best defense against capture by narrow interests.**
- **Even the academic community has to enforce transparency about funding and ethics in research.**
- **Restore trust in science by eliminating special interest capture from agency science.**



The health of our democracies reflects the health of the public trust.



Recommendations for governments

- Judicial deference to agencies requires the trustees uphold the public interest with best available science.
- Do not consolidate power in the executive branch
- Create or restore public intervenors
- Don't elect judges (like Wisconsin does)
- Establish environmental courts (like Vermont)



Thank you

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