

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

September 8, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Melissa Beaumont, Christine Harsha
Subcommittee on Oversight & Investigations (x5-7107)

Mark-up: **H.R. 424 (Rep. Collin Peterson)**, To direct the Secretary of the Interior to reissue final rules relating to listing of the gray wolf in the Western Great Lakes and Wyoming under the Endangered Species Act of 1973, and for other purposes.
September 12 & 13, 2017; 1334 Longworth House Office Building

H.R. 424 (Rep. Collin Peterson), “*Gray Wolf State Management Act of 2017*”

Summary of the Bill

H.R. 424, introduced by Rep. Collin Peterson (D-MN-07) on January 10, 2017, is a bipartisan bill that would require the Department of the Interior to reissue the final rules from 2011 and 2012 that removed the gray wolf from the Endangered Species List in the Western Great Lakes and Wyoming distinct population segment area and exempt the rules from judicial review. U.S. Fish and Wildlife Service will retain authority to list gray wolves for federal protection if populations numbers warrant relisting. Although the State of Wyoming currently manages gray wolves, management authority is still subject to uncertain judicial review.

Cosponsors

Rep. Jack Bergman (R-MI), Rep. Liz Cheney (R-WY), Rep. Sean Duffy (R-WI), Rep. Tom Emmer (R-MN), Rep. Mike Gallagher (R-WI), Rep. Glenn Grothman, (R-WI), Rep. Bill Huizenga (R-MI), Rep. Ron Kind (D-WI), Rep. Raul Labrador (R-ID), Rep. John Moolenaar (R-MI), Rep. Richard Nolan (D-MN), Rep. James Sensenbrenner (R-WI), Rep. Michael Simpson (R-ID), Rep. Fred Upton (R-MI), Rep. Tim Walberg (R-MI).

Background

Gray wolves were listed under the Endangered Species Act (ESA) in 1974.¹ Existing wolves present in the Western Great Lakes Region were protected, and the federal government introduced the species *canis lupus irremotus* to the West by removing wolves from Canada and releasing them in central Idaho and Yellowstone National Park in 1994 and 1995.² States, local

¹Endangered Species Act of 1973, 16 U.S.C. § 1531 (1973).

²See Wolf Restoration, NAT'L PARK SERV., <https://www.nps.gov/yell/learn/nature/wolf-restoration.htm> (last visited July 12, 2017).

citizens, livestock groups, and sportsmen opposed the reintroduction effort.³ The reintroduced wolf population in the West recovered and expanded more quickly than anticipated. As a result, in September 2001, the states and tribes began working with the U.S. Fish and Wildlife Service (FWS) to formulate plans that would effectively transition management responsibility to the states upon delisting.⁴

FWS deemed the Idaho and Montana wolf management plans adequate, but did not approve the Wyoming plan.⁵ Gray wolves were removed from the Endangered Species List on January 14, 2009.⁶ As part of their management plans, Idaho and Montana conducted tightly controlled wolf hunts beginning in the autumn of 2009.⁷ Sales of wolf hunt tags fund management activities, and hunts are conducted in a similar fashion to those of large ungulates and other wild animals under state management.

Litigious environmental groups challenged the FWS decision to delist the wolves in Idaho, Montana, and the Western Great Lakes, arguing that the rule had been politically motivated and did not comply with ESA.⁸ The U.S. District Court for the District of Montana held that the rule was a “political solution that does not comply with ESA” and that delisting of a species which was still endangered in a portion of its region (Wyoming) was not appropriate.⁹ The delisting of the wolves was halted in all states until the Wyoming plan was acceptable.

Representative Mike Simpson and Senator Jon Tester included a provision in the Fiscal Year (FY) 2012 Consolidated Appropriations bill that clarified congressional intent to remove the recovered wolves in Idaho and Montana from the Endangered Species List, returning them to

³See Letter from C.L. “Butch” Otter, Governor, State of Idaho, to Ken Salazar, Secretary, U.S. Department of the Interior (October 18, 2010), available at <http://fishandgame.idaho.gov/public/wildlife/wolves/?getPage=161>.

⁴See STATE OF IDAHO, IDAHO DEPARTMENT OF FISH AND GAME, IDAHO WOLF MANAGEMENT PLAN (2002), available at <http://fishandgame.idaho.gov/public/docs/wolves/plan02.pdf>. See also, STATE OF MONTANA, MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS, MONTANA WOLF CONSERVATION AND MANAGEMENT PLAN (2002), available at <http://fwp.mt.gov/fishAndWildlife/management/wolf/management.html>. See also Wyoming Farm Bureau v. Babbitt, 987 F. Supp. 1349 (D. Wyo. 1997).

⁵Wyoming Farm Bureau v. Babbitt, 987 F. Supp. 1349 (D. Wyo. 1997). See also, Press Release, U.S. Fish and Wildlife Serv. Service Removes Western Great Lakes, Portion of Northern Rocky Mountain Gray Wolf Populations From Endangered Species List Wolves in Wyoming to Remain Protected by Endangered Species Act (Jan. 14, 2009) (<https://www.fws.gov/mountain-prairie/pressrel/09-02.htm>).

⁶See, Endangered and Threatened Wildlife and Plants; Final Rule to Identify the Western Great Lakes populations of Gray Wolves as a Distinct Population Segment and to Revise the List of Endangered and Threatened Wildlife, 74 Fed. Reg. 15070 (Apr. 2, 2009) (available at: <https://www.fws.gov/Midwest/wolf/archives/2009delisting/pdf/fnlruleFR02april2009.pdf>).

⁷See Press Release, State of Idaho Department of Fish and Game, Idaho’s First Wolf Hunt is Over (Apr. 5, 2010), available at <https://fishandgame.idaho.gov/public/docs/wolves/news10.pdf>. See also STATE OF MONTANA, DEPARTMENT OF FISH, WILDLIFE, AND PARKS, THE 2009 MONTANA WOLF HUNTING SEASON (2010), available at <file:///C:/Users/molmstead/Downloads/2009%20Wolf%20Hunting%20Season%20Summary.pdf>. See also *The Status of the Federal Government’s Management of Wolves: Hearing Before the H. Comm. on Natural Res. Subcomm. on Oversight and Investigations*, 114th Cong. (2016) (The State of Idaho has successfully managed thriving wolf populations since delisting).

⁸See, *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. MT 2010). See also, *Defenders of Wildlife v. Hall*, 565 F.2d 1160 (D. Mont. 2008); *Defenders of Wildlife v. Salazar*, 354 F. Supp. 2d 1156 (D. Or. 2005); .

⁹*Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1227, 1228 (D. MT 2010).

state management.¹⁰ Appropriations provisions to delist the wolf and allow states to retain management authority have been included in each successive year.

Populations of gray wolves already present in the Western Great Lakes increased in number through the 1990s and 2000s. FWS delisted wolves in Minnesota, Wisconsin, and Michigan in a new rule in 2011.¹¹ Wyoming wolves were delisted by FWS in 2012.¹² Wolves in Wyoming and in the Western Great Lakes region were, however, re-listed in 2014 due to additional court decisions that challenged the adequacy of state management plans.¹³

The D.C. Circuit Court of Appeals reversed the 2014 decision on March 3, 2017 regarding gray wolves in Wyoming only.¹⁴ FWS published the final rule removing them from the list in accordance with the Court order on May 1, 2017, and Wyoming wolves are again managed by the State of Wyoming.¹⁵ As such, the specific portion of this bill directing FWS to reissue the 2012 Wyoming final rule for delisting has been accomplished, though the delisting of wolves in Wyoming remains (without this legislation) subject to potential judicial review.

Recently, on August 1, 2017, a federal appeals court ruled to uphold a lower court's decision that FWS acted prematurely when it removed the gray wolf in the Western Great Lakes region from the endangered species list, which ensures this population segment of gray wolves currently retains protection as an endangered species.¹⁶

Previous Committee Activity and Legislation

Rep. Reid Ribble introduced this bill in the 114th Congress. It was referred to the Committee on Natural Resources.¹⁷

¹⁰Press Release, Rep. Mike Simpson, Simpson's Wolf Language Included in Final Funding Bill (Apr. 12, 2011), available at <http://simpson.house.gov/News/DocumentSingle.aspx?DocumentID=235258>. See also, Consolidated Appropriations Act 2012, Pub. L. No. 112-74 (2011), available at <https://www.congress.gov/resources/display/content/Appropriations+for+Fiscal+Year+2012#AppropriationsforFiscalYear2012-omnibusappropriations>).

¹¹ See, U.S. DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE, GRAY WOLF RECOVERY IN MINNESOTA, WISCONSIN, AND MICHIGAN (2011) (available at: <https://www.fws.gov/midwest/wolf/aboutwolves/r3wolfrec.htm>) and Endangered and Threatened Wildlife and Plants; Revising the Listing of the Gray Wolf (*Canis Lupus*) in the Western Great Lakes, 76 Fed. Reg. 81666 (Dec. 28, 2011) (available at: https://www.fws.gov/midwest/wolf/archives/2011FinalDelisting/pdf/FR_grwoWGLDelist28Dec2011.pdf).

¹²Endangered and Threatened Plants; Removal of the Gray Wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population, 76 Fed. Reg. 81666 (Sep. 10, 2012).

¹³ See, *Humane Society v. Jewell*, 2014 WL 7237702 (D.D.C 2014), and *Defenders of Wildlife v. Jewell*, 2014 WL 4714847 (D.D.C. 2014).

¹⁴ *Defenders of Wildlife et al v. Zinke*, No. 14-5300, 2017 (D.C. Cir. Mar. 3, 2017) at [https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/\\$file/14-5300-1664135.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/$file/14-5300-1664135.pdf).

¹⁵ Endangered and Threatened Wildlife and Plants; Reinstatement of Removal of Federal Protections for Gray Wolves in Wyoming, 82 Fed. Reg. 20284-85 (May 1, 2017).

¹⁶Darryl Fears, *Gray wolves just won another battle to stay on the endangered species list*, THE WASHINGTON POST, August 1, 2017, available at https://www.washingtonpost.com/news/animalia/wp/2017/08/01/gray-wolves-just-won-another-battle-to-stay-on-the-endangered-species-list/?utm_term=.c0e2181955bd.

¹⁷ H.R. 884, 114th Cong. (2015).

The FY 2017 Department of the Interior, Environment, and Related Agencies Appropriations Act, H.R. 5538, included a provision to delist the wolves in the Western Great Lakes and Wyoming, allowing for state management.¹⁸ The U.S. House also passed the SHARE Act (H.R. 2406) in February 2016, which also included such a provision.¹⁹ The wolf provision from the SHARE Act was included in the North American Energy Security and Infrastructure Act of 2016 (S. 2012).²⁰ In addition, The House Committee on Natural Resources, Subcommittee on Oversight and Investigations held a hearing about wolf management in the United States on September 21, 2016.²¹

On July 19, 2017, the Committee held a legislative hearing examining H.R. 424 and four other pieces of legislation that provide for reforms to improve implementation of the ESA.²² During the hearing, FWS Deputy Director Greg Sheehan testified that the Service had concluded in past reports that the gray wolf in the Western Gray Lakes region has recovered and that proper regulatory mechanisms exist in the states for the protection of the species, which FWS believes is sufficient criteria for the delisting of the species.²³

Section-by-Section Analysis of H.R. 424

Section 1. *Short Title.* The bill may be referred to as the Gray Wolf State Management Act of 2017.

Section 2. *Reissuance of the Final Rule Regarding Gray Wolves in the Western Great Lakes.* Requires the Secretary of the Interior to reissue the rule delisting gray wolves in the Western Great Lakes within 60 days of enactment. The rule would not be subject to judicial review and wolves would be returned to indefinite state management.

Section 3. *Reissuance of Final Rule Regarding Gray Wolves in Wyoming.* Requires the Secretary of the Interior to reissue the rule delisting gray wolves in Wyoming within 60 days of enactment. The rule would not be subject to judicial review and wolves would be returned to indefinite state management.

Cost

No CBO cost estimate is available at this time.

¹⁸Fiscal Year 2017 Interior and Environment Appropriations bill, H.R. 5538, 114th Cong. (2016), available at <https://www.gpo.gov/fdsys/pkg/BILLS-114hr5538eh/pdf/BILLS-114hr5538eh.pdf>.

¹⁹SHARE Act, H.R. 2406, 114th Cong. (2016) (available at <https://www.gpo.gov/fdsys/pkg/BILLS-114hr2406eh/pdf/BILLS-114hr2406eh.pdf>).

²⁰North American Energy Security and Infrastructure Act of 2016, S. 2012, 114th Cong. (2016) (available at <https://www.gpo.gov/fdsys/pkg/BILLS-114s2012es/pdf/BILLS-114s2012es.pdf>).

²¹*The Status of the Federal Government's Management of Wolves: Hearing Before the H. Comm. on Natural Resources Subcomm. on Oversight and Investigations*, 114th Cong. (2016).

²²Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131, H. Comm. on Natural Res., 115th Cong. (2017).

²³*Id.*, at 143.

Administration Position

During the July 19, 2017 legislative hearing, which examined H.R. 424 and four other ESA-related bills, FWS Deputy Director Greg Sheehan expressed support for the Committee's overall work on reforms to the ESA that improve implementation of the Act.²⁴ In Deputy Director Sheehan's written testimony, he stated that this bill would not affect the Service's recent rule affirming the 2012 delisting of the Wyoming gray wolf population and that the Western Great Lakes population has exceeded its recovery goals and is biologically recovered.²⁵

Anticipated Amendments

No amendments are anticipated at this time.

²⁴Legislative Hearing of the Committee on Natural Resources on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131, July 19, 2017, 115th Cong. (2017) (Statement of Greg Sheehan, Deputy Director, FWS).

²⁵*Id.*