



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: House Committee on Natural Resources Republican Staff
Date: Thursday, April 27, 2023
Subject: Markup of 9 bills

The Natural Resources Committee will hold a markup on **Thursday, April 27, at 9:45 a.m.** in room 1324 Longworth House Office Building. The bills to be considered include H.J. Res. 29 (Mann), H.J. Res. 46 (Bentz), H.J. Res. 49 (Stauber), H.R. 215 (Valadao), H.R. 764 (Boebert), H.R. 1245 (Hageman), H.R. 1419 (Rosendale), H.R. 1319 (Neguse), and H.R. 1567 (Tiffany).

Member offices are requested to notify Madeline Bryant (madeline.bryant@mail.house.gov) by 4:30 p.m. on Wednesday, April 26, to confirm their Member's attendance at the mark-up.

I. KEY MESSAGES & TOP LINE ACTIONS

- Bills expected to move by regular order: **H.J. Res. 29 (Rep. Mann)**, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Species Status for the Southern Distinct Population Segment”*; **H.J. Res. 46 (Rep. Bentz)**, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat”*; **H.J. Res. 49 (Rep. Stauber)**, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat”*; **H.R. 215 (Rep. Valadao)**, *“WATER for California Act”*; **H.R. 764 (Rep. Boebert)**, *“Trust the Science Act”*; **H.R. 1245 (Rep. Hageman)**, *Grizzly Bear State Management Act of 2023*; and **H.R. 1419 (Rep. Rosendale)**, *“Comprehensive Grizzly Bear Management Act of 2023”*.
- Bills expected to move by unanimous consent: **H.R. 1319 (Rep. Neguse)**, *“Biking on Long-Distance Trails Act”* and **H.R. 1567 (Rep. Tiffany)**, *“ACRES Act”*.
- Please note that an Amendment in the Nature of a Substitute (ANS) is expected for H.R. 215. Members should draft any amendments to H.R. 215 to the ANS.

II. EXPECTED LEGISLATION

H.J. Res. 29 (Rep. Mann), *Resolution Providing for Congressional Disapproval of the Lesser Prairie Chicken Listing under the Endangered Species Act*

H.J. Res. 29 would provide for congressional disapproval of the recent listing of the Lesser Prairie Chicken under the Endangered Species Act (ESA). On November 25, 2022, the U.S. Fish and Wildlife Service (USFWS or Service) published a final rule that added the Lesser Prairie Chicken (LPC) to the federal endangered species list and created two distinct population segments (DPS) after lengthy litigation.¹ Specifically, the LPC would be listed as threatened in the Northern DPS, which covers Kansas, Oklahoma, and the northern Texas Panhandle and the LPC would be listed as endangered in the Southern DPS, which covers New Mexico and west Texas.²

The LPC is a “boom and bust” species that is affected by the weather conditions across its historic range.³ Since historic voluntary conservation efforts were undertaken in 2013, the population of the LPC has increased dramatically from 20,000 birds to 35,000 birds in 2020.⁴ As part of these voluntary conservation efforts over six million acres of habitat have been conserved and \$64 million of private money has been invested in LPC conservation.⁵ In addition, the USFWS has issued a flawed 4(d) rule for the Northern DPS that requires ranchers to use a grazing plan approved by a “Service-approved party.”⁶ This 4(d) approach effectively forces ranchers to subject their land management decisions to a government approved third party that may have little to no ranching experience.⁷ At the hearing on this bill, the USFWS revealed that there are only three grazing plans approved under the rule as of the hearing date. The USFWS testified in opposition to this legislation.⁸

H.J. Res. 29 is cosponsored by nine Republican members. A Senate companion has been introduced by U.S. Senator Roger Marshall (R-KS) and is cosponsored by four Republican Senators. Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.J. Res. 29 is expected to move by regular order.

Staff contact: Doug Levine (Doug.Levine@mail.house.gov)

¹ [87 FR 72674](#)

² Id

³ Id

⁴ “Lesser Prairie Chicken Rule Pressures Fragile Rural Economies.” Shelby Hagenauer and Daniel Munch. U.S. Farm Bureau. 1/19/2023. Lesser Prairie Chicken Rule Pressures Fragile Rural Economies | Market Intel | American Farm Bureau Federation (fb.org)

⁵ “Lesser Prairie-Chicken.” Western Association of Fish & Wildlife Agencies. Lesser Prairie-Chicken – WAFWA

⁶ [87 FR 72674](#)

⁷ https://naturalresources.house.gov/uploadedfiles/hineman_testimony.pdf, at 3.

⁸ https://naturalresources.house.gov/uploadedfiles/frazer_testimony.pdf, at 5.

H.J. Res. 46 (Rep. Bentz), *Resolution Providing for Congressional Disapproval of the Recission of the Trump Critical Habitat Rule*

H.J. Res. 46 would provide for congressional disapproval of the Biden administration’s recission of the Trump administration’s Critical Habitat Rule. This recission once again opens the door for USFWS and the National Marine Fisheries Service (NMFS) to designate critical habitat in areas that are **not** currently occupied by the species in question and, in some cases, have not been occupied in decades and may never be occupied. This rule stemmed from the U.S. Supreme Court decision in *Weyerhaeuser Co. v. U.S. FWS*, which stated an area must logically be “habitat” for that area to meet the definition of “critical habitat” under the ESA.⁹ Critical habitat designations affect federal actions, federally funding activities, and federally permitted activities.¹⁰ When an activity, like a forest management project, construction of a dam, or any critical infrastructure project might impact critical habitat for a listed species, a consultation process is required with USFWS and NMFS under Section 7 of the ESA.¹¹ This process can take years and disincentivizes investment into critical infrastructure. The USFWS¹² and NMFS¹³ testified in opposition to this legislation.

H.J. Res. 46 has seven Republican cosponsors. A Senate companion has been introduced by U.S. Senator Cynthia Lummis (R-WY) and is cosponsored by seventeen Republican Senators. Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.J. Res. 46 is expected to move by regular order.

Staff contact: Doug Levine (Doug.Levine@mail.house.gov)

H.J. Res. 49 (Rep. Stauber), *Resolution Providing for Congressional Disapproval of the Listing of the Northern Long-Eared Bat under the Endangered Species Act*

H.J. Res. 49 would provide for congressional disapproval for the uplisting (from “threatened” to “endangered”) of the Northern Long-Eared Bat (NLEB) under the ESA. The NLEB, which primarily lives in caves and abandoned mines in winter months and forested areas in summer months, is found in 37 states, the District of Columbia, and Canada.¹⁴ In its listing decision, the

⁹ “Final Rules Amending ESA Critical Habitat Regulations.” Erin H. Ward and Pervaze A. Sheikh. Congressional Research Service. IF11740 (congress.gov)

¹⁰ “Critical Habitat.” *What is it?* U.S. Fish and Wildlife Service. March 2017. Critical Habitat fact sheet (fws.gov)

¹¹ “Endangered Species Act (ESA) Section 7 Consultation and Infrastructure Projects.” Erin H. Ward, R. Eliot Crafton, Pervaze A. Sheikh. Congressional Research Service. Endangered Species Act (ESA) Section 7 Consultation and Infrastructure Projects (everycrsreport.com)

¹² https://naturalresources.house.gov/uploadedfiles/frazer_testimony.pdf, at 6

¹³ https://naturalresources.house.gov/uploadedfiles/testimony_rauch.pdf, at 2.

¹⁴ “Northern long-eared bat, devastated by a fungus, is now listed as endangered.” Associated Press. Nov 29, 2022. Northern long-eared bat declared as endangered: NPR
Figure 3. Source: U.S. Fish and Wildlife Service

USFWS stated the main threat to the NLEB is a disease known as White-Nose Syndrome (WNS), not human activity.¹⁵

Now that the NLEB is listed as endangered as a result of litigation, the USFWS plans to focus its recovery efforts in wooded areas where the NLEB nests in summer months, while a vaccine and other remedies for WNS are developed.¹⁶ This plan of action will create additional red tape for forest management projects, road and bridge construction, energy projects, and public lands access within the NLEB range.¹⁷ In fact, over the last three years, the USFWS says it has completed ESA consultations on 24,480 projects across the 37-state range for the NLEB.¹⁸ Many of those projects are in progress and the up-listing of the NLEB may cause greater exposure to litigation and additional regulatory obligations on these projects. The USFWS testified in opposition to this legislation.¹⁹

H.J. Res. 49 has twelve Republican cosponsors. A Senate companion has been introduced by U.S. Senator Markwayne Mullin (R-OK) and is cosponsored by ten Republican Senators. Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.J. Res. 49 is expected to move by regular order.

Staff contact: Doug Levine (Doug.Levine@mail.house.gov)

H.R. 215 (Rep. Valadao), “*WATER for California Act*”

In light of catastrophic drought and recent high precipitation patterns, H.R. 215 would enable the capture of more water supplies in the western United States. As such, the bill would extend west-wide Bureau Reclamation water storage feasibility study and construction provisions contained in the Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. 114-322) through December 31, 2028. The bill also includes California-specific provisions, including the requirement to operate California’s Central Valley Project and State Water Project in accordance with the 2019 Biological Opinions (BiOps) and Preferred Alternative.²⁰ It would also help remove regulatory and statutory roadblocks to raise Shasta Dam an additional 18.5 feet in order to create multi-purpose water supplies. The legislation would also direct the Secretary of the Interior to complete the fish, wildlife, and habitat restoration programs required under the Central Valley Project Improvement Act (CVPIA or P.L. 102-575) within two years of enactment of this Act.

¹⁵ Id

¹⁶ “Northern long-eared bat, devastated by a fungus, is now listed as endangered.” Associated Press. Nov 29, 2022. Northern long-eared bat declared as endangered. NPR

¹⁷ https://naturalresources.house.gov/uploadedfiles/horton_testimony.pdf, at 3.

¹⁸ “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-eared Bat; Delay of Effective Date.” Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-eared Bat; Delay of Effective Date (fws.gov)

¹⁹ https://naturalresources.house.gov/uploadedfiles/frazier_testimony.pdf, at 4.

²⁰ USBR, Record of Decision for Central Valley Project Operations, <https://www.usbr.gov/mp/bdo/rodcvp.html>

The Biden administration was invited to testify at a recent field hearing on this legislation but chose not to participate in the hearing. However, the Department of the Interior submitted testimony opposed to the bill.²¹ Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 215 has eleven cosponsors, including the entire California Republican delegation.

An Amendment in the Nature of a Substitute (ANS) is expected for this bill. H.R. 215 is expected to move by regular order.

Staff contact: Annick Miller (Annick.Miller@mail.house.gov)

H.R. 764 (Rep. Boebert), “Trust the Science Act”

This bill would require the Department of the Interior to reissue the final rule entitled “Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife” and published on November 3, 2020 (85 Fed. Reg. 69778). The 2020 Trump administration rulemaking returned management of Gray Wolf populations to each of the lower 48 states within their borders. On February 10, 2022, U.S. Federal District Court Judge Jeffrey White, in response to a lawsuit filed by Defenders of Wildlife, WildEarth Guardians, and other environmental groups, vacated and remanded the November 2020 rulemaking.²²

State management of delisted wolves has proven to be a success. In states where wolves had been delisted prior to the 2020 rulemaking, wolf populations were either stable or thriving, with Montana’s wolf population being 500 percent above USFWS recovery goals, Idaho’s at 700 percent above recovery goals, and Wyoming’s population being stable.²³ This was made possible by state management plans that have successfully balanced wolf population health and human activity. However, the USFWS testified in opposition to the bill.²⁴

H.R. 764 has twenty-four Republican cosponsors, including a number of House Natural Resources Republican members. In the 115th Congress, the House passed similar language to H.R. 764 by a vote of 196-180 (with nine Democrats voting in favor).²⁵ Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 764 is expected to move by regular order.

²¹ <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=413035>

²² U.S. District Court Northern District of California. *Defenders of Wildlife, Et. Al. v. U.S. Fish and Wildlife Service, Et Al.* 10 Feb 2022.

²³ “RMEF Strongly Supports Delisting, State Management of Wolves.” 10/29/20. RMEF Strongly Supports Delisting, State Management of Wolves | Rocky Mountain Elk Foundation

²⁴ https://naturalresources.house.gov/uploadedfiles/testimony_guertin.pdf, at 3

²⁵ H.R. 6784, “Manage our Wolves Act”. H.R.6784 - 115th Congress (2017-2018): Manage our Wolves Act | Congress.gov | Library of Congress

Staff contact: Doug Levine (Doug.Levine@mail.house.gov)

H.R. 1245 (Rep. Hageman), “Grizzly Bear State Management Act”

This bill would require the Department of the Interior to reissue the final rule entitled “Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife” (82 Fed. Reg. 30502 (June 30, 2017)). This rule delisted the Grizzly Bear in the Greater Yellowstone Ecosystem (GYE), which covers areas around Yellowstone National Park in Wyoming, Montana, Idaho. Montana Federal District Court Judge Dana L. Christensen overturned the rulemaking on September 24, 2018, holding that the USFWS failed to consider how reduced protections for GYE grizzlies would affect other populations and that the USFWS’s application of the ESA threat analysis was arbitrary and capricious.²⁶

In January 2022, the State of Wyoming petitioned the USFWS to delist the grizzly bear in the GYE, estimating its population to be 1,069 bears.²⁷ This number is well above the recovery goal set by the USFWS of at least 500 grizzlies or to maintain an average of 674 bears.²⁸ In addition, GYE grizzlies now occupy a land area of nearly 25,000 square miles, an area larger than the states of Connecticut, New Hampshire, and Massachusetts combined.²⁹

In response to Wyoming’s petition, the USFWS announced on February 3, 2023, that a delisting in the GYE “may be warranted” and initiated a 12-month status review of the species.³⁰ The outcome of this process may be promising, but without legislation from Congress, any rulemaking delisting the GYE will likely be vulnerable to additional litigation. The USFWS testified in opposition to this bill.³¹

H.R. 1245 is cosponsored by Reps. Rosendale (R-MT) and Zinke (R-MT). Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 1245 is expected to move by regular order.

Staff contact: Doug Levine (Doug.Levine@mail.house.gov)

²⁶ “Grizzly Bears and the Endangered Species Act.” Jenny Gesley. Congressional Research Service. 7/28/21. Grizzly Bears and the Endangered Species Act | In Custodia Legis (loc.gov)

²⁷ “Wyoming’s push to delist grizzly bears from endangered species list faces opposition from anti-hunting group.” Michael Lee. Fox News. 1/21/22. Wyoming’s push to delist grizzly bears from endangered species list faces opposition from anti-hunting group | Fox News

²⁸ “Grizzly Bear Recovery Program.” 2021 Annual Report. Grizzly Bear Recovery Program. U.S. Fish and Wildlife Service. 2021 GBRP Annual Report.pdf (fws.gov)

²⁹ “Secretary Zinke Announces Recovery and Delisting of Yellowstone Grizzly Bear.” U.S. Department of the Interior. 6/27/2017. Delisting of Yellowstone Grizzly Bear | U.S. Fish & Wildlife Service (fws.gov)

³⁰ “Service to initiate grizzly bear status review in the Northern Continental Divide and Greater Yellowstone ecosystems.” U.S. Fish and Wildlife Service. 2/3/2023. Service to initiate grizzly bear status review in the Northern Continental Divide & Greater Yellowstone ecosystems | U.S. Fish & Wildlife Service (fws.gov)

³¹ https://naturalresources.house.gov/uploadedfiles/testimony_guertin.pdf, at 4.

H.R. 1419 (Rep. Rosendale), “*Comprehensive Grizzly Bear Management Act*”

This bill would require that no later than 180 days after enactment, the Secretary of the Interior shall issue a final rule removing the Northern Continental Divide Ecosystem (NCDE) Population of Grizzly Bears from the federal list of endangered and threatened wildlife.

In December 2021, the State of Montana petitioned the USFWS to delist grizzly bears within the NCDE. At the time the delisting petition was filed, Montana estimated the NCDE population to be at approximately 1,100 bears.³² In addition to population numbers, NCDE grizzly bears have more than doubled their range area since being listed, according to the USFWS. The NCDE grizzly range has grown from 9,500 square miles to over 26,000 square miles. For context, this means NCDE grizzlies are distributing to areas outside of the area known as the Rocky Mountain Front to prairie lands to the east, where they have not been for over a century.³³

In response to Montana’s petition, the USFWS announced on February 3, 2023, that a delisting in the NCDE “may be warranted” and initiated a 12-month status review of the species.³⁴ Similar to the GYE grizzly bear population, any rulemaking delisting the NCDE will be vulnerable to litigation. The USFWS testified in opposition to the bill.³⁵

H.R. 1419 is cosponsored by Reps. Zinke (R-MT), Hageman (R-WY), and Stauber (R-MN). Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 1419 is expected to move by regular order.

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Bills Expected to Move by Unanimous Consent

H.R. 1319 (Rep. Neguse), “*Biking on Long-Distance Trails Act*”

H.R. 1319 is intended to meet the needs of biking enthusiasts by increasing the number of long-distance biking trails on federal lands. To accomplish this goal, the bill would direct the Departments of the Interior and Agriculture to 1) identify at least 10 long-distance bike trails; 2) identify at least 10 areas in which there is an opportunity to develop or complete long-distance bike trails; and 3) coordinate with stakeholders via a public comment period on the feasibility of, and resources necessary for, completing the development of such trails. This bipartisan

³² “Governor Gianforte: Montana Petitioning Federal Government to Delist NCDE Grizzly Bears.” Governors Office. 12/6/21. Gov. Gianforte: Montana Petitioning Federal Government to Delist NCDE Grizzly Bears (mt.gov)

³³ “Governor Gianforte: Montana Petitioning Federal Government to Delist NCDE Grizzly Bears.” Governors Office. 12/6/21. Gov. Gianforte: Montana Petitioning Federal Government to Delist NCDE Grizzly Bears (mt.gov)

³⁴ “Service to initiate grizzly bear status review in the Northern Continental Divide and Greater Yellowstone ecosystems.” U.S. Fish and Wildlife Service. 2/3/2023. Service to initiate grizzly bear status review in the Northern Continental Divide & Greater Yellowstone ecosystems | U.S. Fish & Wildlife Service (fws.gov)

³⁵ https://naturalresources.house.gov/uploadedfiles/testimony_guertin.pdf, at 5.

legislation is cosponsored by Representatives Curtis (R-UT) and Lee (D-NV). An identical version of the bill passed the House under suspension in the 117th Congress.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 1319 is expected to move by unanimous consent.

Staff contacts: Aniela Butler (Aniela@mail.house.gov) or Taylor Wiseman (Taylor.Wiseman@mail.house.gov)

H.R. 1567 (Rep. Tiffany), “ACRES Act”

H.R. 1567 would provide much needed transparency to the way federal land managers report hazardous fuels treatments. More than 117 million acres of federal land, including 63 million acres of USFS lands and 54 million acres of DOI lands, are at high or very high risk of wildfire, representing nearly one-fifth of the lands administered by these agencies.³⁶ Despite this crisis, the USFS only treats an average of roughly 2 million acres per year.³⁷ While this reported pace is already insufficient, recent investigative reporting uncovered the situation is likely much worse, as agencies like the USFS have been overstating their treatment numbers by over 20 percent.³⁸ The investigative reporting found the USFS counted treatments on the same pieces of land toward its risk reduction goals multiple times, even up to more than 30 times in some cases.³⁹ The discrepancy arises because USFS will record multiple treatments (i.e. mechanical thinning, prescribed burning, chipping and piling, etc.) on the same acre separately as if multiple acres had been treated.

Accurate reporting is necessary to broadly track wildfire mitigation progress in a macro sense, but it is also vitally important that individual treatment projects are tracked properly. When they are not, the results can be disastrous. The “Accurately Counting Risk Elimination Solutions (ACRES) Act” provides a way to hold federal land management agencies accountable, to see the work they are doing to reduce the amount of fuel for wildfires on our public lands and determine the effectiveness of the fuel reduction work. Specifically, this bill would require USFS and DOI to produce yearly hazardous fuels reduction reports based on the *actual* number of acres that the respective agencies treated over the past year. The legislation requires additional transparency measures to detail the location, type, effectiveness, and cost of forest treatments carried out. The ACRES Act would also require the agencies to standardize tracking procedures for hazardous fuels reduction to ensure accuracy and timely input.

³⁶ Congressional Research Service, “Federal Wildfire Management: Ten-Year Funding Trends and Issues (FY2011-FY2020)”, Katie Hoover, October 28, 2020,

<https://www.crs.gov/Reports/R46583?source=search&guid=8a080671120b4e7f92061e82e8a2bdf3&index=6>.

³⁷ PERC, “Does Environmental Review Worsen the Wildfire Crisis”, Eric Edwards, Sara Sutherland, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>.

³⁸ NBC News, “The Forest Service is overstating its wildfire prevention progress to Congress despite decades of warning not to”, Adiel Kaplan, Monica Hersher, August 9, 2022, <https://www.nbcnews.com/news/investigations/forest-service-overstating-wildfire-prevention-progress-congress-decad-rcna41576>.

³⁹ *Id.*

This is a good governance bill that will lead to greater accountability, a more streamlined process, and provide critically important information needed to fight the national wildfire crisis strategically and effectively. An amendment will be offered to the legislation making minor and technical changes.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

H.R. 1567 is expected to move by unanimous consent.

Staff contacts: Aniela Butler (Aniela@mail.house.gov) and Brandon Miller (Brandon.Miller@mail.house.gov)

III. CBO SCORES

None available.

IV. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 215 \(Rep. Valadao\), “WATER for California Act”](#)