HOUSE COMMITTEE ON

NATURAL RESOURCES

CHAIRMAN BRUCE WESTERMAN

To:	House Committee on Natural Resources Republican Members
From:	Subcommittee on Oversight and Investigations Staff, Michelle Lane (Michelle.Lane@mail.house.gov) and Lucas Drill (Lucas.Drill@mail.house.gov) x5-2761
Date:	March 3, 2025
Subject:	Oversight Hearing titled "*Understanding the Consequences of Experimental Populations Under the Endangered Species Act*"

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled "*Understanding the Consequences of Experimental Populations Under the Endangered Species Act*" on **Tuesday, March 4, 2025, at 10:15 a.m. in 1324 Longworth House Office Building**.

Member offices are requested to notify Cross Thompson (Cross.Thompson@mail.house.gov) by 4:30 p.m. on March 3 if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Although well-intentioned, the Endangered Species Act (ESA) has been exploited by both the federal government and radical environmental organizations over the years to stifle development and hinder species conservation.
- The purpose of section 10(j) of the ESA was to provide exceptions to the regulatory requirements for experimental populations.
- Over time, previous administrations, acquiescing to radical environmental groups, have weaponized the 10(j) process while ignoring crucial local stakeholder input.
- The negative impacts on ecosystems of experimental predator populations, like gray wolves, Mexican wolves, and grizzly bears, present the clearest examples of 10(j) abuses.
- Not only must the Fish and Wildlife Service (FWS) heed local stakeholder input before introducing experimental populations, but they should also effectively manage the population once placed, by removing those that pose specific risks to livestock, humans, and pets.
- To return to the ESA's original intent, the FWS and the National Oceanic and Atmospheric Administration (NOAA) must prioritize local input from stakeholders on the ground rather than radical environmental groups with conflicting interests.

II. WITNESSES

- **Mr. Dalton Dobson**, Rancher, Dobson Timberline Ranch, Thatcher, AZ
- **Mr. Kent Clark,** Manager, Double R Ranch, Loomis, WA
- **Ms. Robbie LeValley**, Secretary, Public Lands Council, Hotchkiss, CO
- **Dr. Chris Servheen**, Former United States Fish & Wildlife Service Bear Recovery Coordinator (retired), President & Board Chair of the Montana Wildlife Federation, Helena, MT [*Minority witness*]

III. BACKGROUND

Experimental Populations Under the ESA

In 1973, Congress enacted the ESA, "seek[ing] to conserve endangered species and threatened species."[1] Nine years later, the ESA was amended for a second time[2] to reflect the 97th Congress' understanding of conservation needs.[3] This 1982 amendment established a new exception[4] under subsection 10(j) to the ESA's general provisions and prohibitions, titled "experimental populations."[5] Experimental populations under the ESA are now codified in 16 U.S.C. § 1539(j).

The ESA defines experimental populations as "any population (including any offspring arising solely therefrom) authorized by the Secretary[6] for release . . . but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species."[7] The Secretary of the Interior can authorize the release and related transportation of "any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species."[8]

Before the Secretary may authorize the release of an experimental population, they "shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species."[9] Generally, "each member of an experimental population shall be treated as a threatened species" even if that species is listed as endangered elsewhere.[10] Additionally, critical habitat can only be designated for experimental populations that the

[1] Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973).
[2] Congress has regularly substantively amended the ESA. The ESA has so far been amended four times: 1978, 1982, 1988, and 2004. After more than twenty years since its last amendment, the ESA desperately needs another update to optimize conservation. *See* ESA Amendments Act of 2024, H.R. 9533, 118th Cong. (2024).
[3] Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, 96 Stat. 1411 (1982).
[4] Section 10 of the ESA, codified at 16 U.S.C. § 1539, establishes exceptions to the ESA's provisions. Notable exceptions include some incidental takings, some hardships, some actions by Alaska natives, and some preexisting historical items.
[5] Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, 96 Stat. 1411, 1424-25 (1982) (codified as amended at 16 U.S.C. § 1539(j)).
[6] Depending on the context of the experimental population, the authorizing secretary may be either the Secretary of the Interior or the Secretary of Commerce given that both FWS and NOAA have ESA-related authorities.
[7] 16 U.S.C. § 1539(j)(1).
[8] 16 U.S.C. § 1539(j)(2)(A).
[9] 16 U.S.C. § 1539(j)(2)(B).
[10] 16 U.S.C. § 1539(j)(2)(C).

Secretary determines is "essential to the continued existence of a species."[11] This experimental population exception could also be applied retroactively to populations reintroduced before October 13, 1982.[12]

Because experimental populations are definitionally excepted from "the general regulations that extend most of the ESA's prohibitions," experimental populations are designated through rules promulgated by FWS or NOAA.[13] These 10(j) rules, which follow notice-and-comment rulemaking procedures, contain "the prohibitions and exemptions necessary and appropriate to conserve the designated experimental population."[14]

In 2023, in an attempt to warp the 10(j) exception, the Biden administration promulgated a final rule allowing FWS to broadly introduce experimental populations into habitats outside of species' historical ranges.[15] The text of 16 U.S.C. § 1539(j), however, has not changed since its enactment in 1982.

FWS & 10(j) Populations

At its core, the experimental population exception—particularly in cases of nonessential experimental populations—is a conservation tool designed to help recover species listed as endangered or threatened while easing the "regulatory burden associated with endangered species" and the ESA.[16] When used appropriately, the experimental populations exception can be an effective way to balance successful species recovery with practical considerations.

For nonessential experimental populations, FWS is afforded greater flexibility in species management,[17] and also certain incidental harm otherwise restricted by the ESA would be legal when resulting from lawful activities like traditional management or land use.[18] For example, after FWS biologists introduce an experimental population into a habitat containing public and private lands, landowners can "continue to manage their lands without concern about violating the ESA by inadvertently harming" a member of that experimental population."[19]

However, the experimental populations exception as applied by previous administrations, particularly when influenced by radical environmentalists, tended to focus on harmful preservation rather than effective conservation. This in turn, presents dire consequences for

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[11] 16 U.S.C. § 1539(j)(2)(C)(ii).
[12] 16 U.S.C. § 1539(j)(3) (stating that "[t]he Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.").
[13] *What is a 10(j) Rule?*, U.S. FISH AND WILDLIFE SERV. (Oct. 2018), https://www.fws.gov/sites/default/files/documents/ESA-section10%28j%29-fact-sheet.pdf.
[14] *Id.*
[15] Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations, 88 Fed. Reg. 42642 (July 3, 2023) (codified at 50 C.F.R. Part 17), https://www.federalregister.gov/documents/2023/07/03/2023-13672/endangered-and-threatened-wildlife-and-plants-designation-of-experimental-populations.
[16] *What is a 10(j) Rule?*, U.S. FISH AND WILDLIFE SERV. (Oct. 2018), https://www.fws.gov/sites/default/files/documents/ESA-section10%28j%29-fact-sheet.pdf.
[17] *See Id.* (stating that "[t]reating the experimental population as threatened allows the FWS the discretion to devise management programs and special regulations for that population.").
[18] *What is a 10(j) Rule?*, U.S. FISH AND WILDLIFE SERV. (Oct. 2018), https://www.fws.gov/sites/default/files/documents/ESA-section10%28j%29-fact-sheet.pdf.
[19] *Id.*

communities into which some species are introduced. The impacts of experimental apex predator populations, like wolves and bears, present perhaps the clearest examples of 10(j) abuses.

Gray Wolves

In 1994, in effort to recover the once-endangered gray wolf, FWS finalized 10(j) rules for two nonessential experimental populations of gray wolves: one in the greater Yellowstone area and another in central Idaho and southwestern Montana.[20] In 1995 and 1996, Canadian gray wolves were brought in to establish these populations.[21] In just five years, the population met all of FWS' initial management goals.[22] At the time, these experimental population rules empowered private landowners with the ability to protect their livestock and property, provided that certain reporting requirements were met.[23] However, FWS did not initially allow killing wolves to resolve excessive big game predation.[24]

As the gray wolf population quickly ballooned, supported in large part by the experimental population introductions, problems arose. Wolf predation significantly hindered big game herds from "reaching state or tribal management goals."[25] The wolves, as apex predators, preyed on livestock, reduced hunting opportunities, and posed safety risks to people and pets. Accordingly, FWS was forced to expand the possibilities in which wolves could be suitably controlled.[26]

The gray wolf experimental populations also ignited substantial litigation campaigns, focused largely on the areas into which FWS released the experimental wolves. Statutorily, experimental populations must be completely geographically distinct from other populations of the species.[27] Yet, because wolves occupy expansive ranges, as the populations grew and wolves roamed freely, it became extremely difficult to differentiate between supposedly distinct populations.[28]

Additionally, even though gray wolf populations, including the experimental populations, not only met but also exceeded recovery goals across the lower 48 states, delisting gray wolves from the ESA has been nonsensically challenging. Gray wolf population numbers and activities show that the wolves recovered in the lower 48 states, should be delisted, and management should be returned to the states. But, due largely to environmentalist litigation efforts, widespread delisting has not yet been achieved.

Worse yet, decades after the first gray wolf experimental populations were introduced, ESA 10(j) rules are being exploited to bring new gray wolves into areas where they are not wanted. At the

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[20] *See, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the Endangered Species Act and Gray Wolves*, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] 16 U.S.C. § 1539(j)(1).
[28] *See, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the Endangered Species Act and Gray Wolves*, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.

end of 2023, FWS issued a final rule establishing a nonessential experimental population of gray wolves in Colorado following the passage of Colorado's 2020 Proposition 114, a proposal to introduce new wolves to the state.[29] Colorado's own Parks and Wildlife Commission had previously rejected a similar proposal, citing successful gray wolf recovery and additional wolves' devastating impact on Colorado's livestock ranching industry and big game management efforts.[30] Notably, the Colorado ballot measure and subsequent 10(j) rule were vehemently opposed by communities in the areas identified by FWS as the epicenter for wolf introduction and supported by more urban communities with little or no threat of wolf presence after the introduction of an experimental population.[31]

Mexican Wolves

In 1998, FWS finalized a rule to establish a nonessential experimental population of Mexican wolves[32] in Arizona and New Mexico.[33] FWS' 10(j) designation for Mexican wolves largely mirrored the previous rules for gray wolves. One notable difference was that, given the Mexican wolf's smaller stature and appearance, FWS was explicitly permitted to "kill, capture, or subject to genetic testing any feral wolf-like animal, feral wolf hybrid, or any feral dog found within the experimental population area."[34]

Like the experimental populations of gray wolves, the new Mexican wolf population ushered in significant opposition and litigation. Shortly after the 10(j) rule's finalization, ranchers unsuccessfully sued to block the introduction of Mexican wolves, highlighting the catastrophic impact of wolf depredation on livestock.[35]

Unfortunately, the ranchers' concerns proved true. For example, a single-collared Mexican wolf and its mate were responsible for more than 15 confirmed livestock depredations in less than a month.[36] These same wolves produced pups and formed a pack, which killed more livestock, terrorized ranching families, and charged at least one ranch employee.[37] Despite requests from at least one member of Congress and local community residents and being empowered by its own 10(j) rule, FWS refused to lethally remove the problem wolves.[38]

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[29] Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado, 88 Fed. Reg. 77014 (Nov. 8, 2023) (codified at 50 C.F.R. Part 17), https://www.federalregister.gov/documents/2023/11/08/2023-24514/endangered-and-threatened-wildlife-and-plants-establishment-of-a-nonessential-experimental.

[30] *Colorado Parks and Wildlife Commission Resolution 16-01*, COLORADO PARKS AND WILDLIFE COMMISSION (Jan. 13, 2016), https://web.archive.org/web/20211221025213/https://cpw.state.co.us/Documents/Commission/policy_procedures/PWC_Resolution_Wolves_in_Colorado.pdf.

[31] *2020 Abstract of Votes Cast*, STATE OF COLORADO OFFICE OF THE SECRETARY OF STATE, https://www.sos.state.co.us/pubs/elections/Results/Abstract/2020/2020BiennialAbstractBooklet.pdf.

[32] Mexican wolves are a distinct subspecies of gray wolves.

[33] *See, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the Endangered Species Act and Gray Wolves*, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.

[34] *Id.* (internal citations omitted).

[35] *See, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the Endangered Species Act and Gray Wolves*, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.

[36] *See, e.g.*, letter from member of congress to U.S. Fish and Wildlife Serv. (May 3, 2022), on file with the Committee.

[37] *Id.*

[38] *Id.; see, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the*

Moreover, FWS's 10(j) rule establishing a gray wolf population in Colorado also opened the door to introducing Mexican wolves into that state even though Colorado is not part of the Mexican wolf's historic range.[39] Worse still, given that Colorado's 10(j) rule enabling the introduction of nonessential experimental wolves spawned from a statewide referendum masquerading as local input,[40] FWS is not only empowered but also pressured to prioritize the presence of gray and Mexican wolves in regions where they are undesirable at best.

Also, because wolves are highly mobile, the various wolf populations occupy overlapping territories, and FWS itself recognizes the possibility of feral hybridization, identifying specific populations of gray and Mexican wolves is increasingly problematic. Nevertheless, FWS refuses to acknowledge the complications of introducing experimental wolves, and its 10(j) Mexican wolf experimental population continues to exist, grow, and wreak havoc.

Grizzly Bears

Most recently, in 2024, FWS decided to establish a nonessential experimental population of grizzly bears in the North Cascades Ecosystem in Washington State.[41] Before this final rule was issued, grizzly bear population numbers in the Greater Yellowstone Ecosystem and the Northern Continental Divide Ecosystem revealed that the bears had biologically recovered and exceeded their recovery goals.

For decades prior to FWS's 10(j) rule, residents of Northern Washington raised concerns regarding the potential reintroduction of a grizzly bear population in their region.[42] Over the years, the surrounding communities of the North Cascades region have consistently opposed the introduction of grizzly bears due to the potential consequences for their communities, including danger to people, local wildlife, livestock, and crops.[43] The State of Washington has been so strong in its opposition that state law limits the transportation or introduction of grizzly bears. Specifically, Washington Revised Code (RCW) 77.12.035 states: "Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears native to Washington State may be utilized by the department for management programs."[44]

Endangered Species Act and Gray Wolves, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.

[39] *Colorado Parks and Wildlife Commission Resolution 16-01*, COLORADO PARKS AND WILDLIFE COMMISSION (Jan. 13, 2016), https://web.archive.org/web/20211221025213/https://cpw.state.co.us/Documents/Commission/policy_procedures/PWC_Resolution_Wolves_in_Colorado.pdf; *see also* letter from member of congress to U.S. Fish and Wildlife Serv. (May 3, 2022), on file with the Committee.

[40] *See 2020 Abstract of Votes Cast*, STATE OF COLORADO OFFICE OF THE SECRETARY OF STATE, https://www.sos.state.co.us/pubs/elections/Results/Abstract/2020/2020BiennialAbstractBooklet.pdf (showing that local stakeholders in communities identified for wolf introduction broadly opposed the ballot measure. Instead, communities with little—if any—stake in wolf introduction, and with little—if any—chance of experiencing the consequences of gray and Mexican wolf presence, carried the referendum to pass.

[41] Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State, 89 Fed. Reg. 36982 (May 3, 2024) (codified at 50 C.F.R. Part 17), https://www.federalregister.gov/documents/2024/05/03/2024-09136/endangered-and-threatened-wildlife-and-plants-establishment-of-a-nonessential-experimental.

[42] Courtney Flatt, *Keep Grizzly Bears Out Of Washington, Residents Say*, KUOW NEWS (Mar. 9, 2015), https://kuow.org/stories/keep-grizzly-bears-out-washington-residents-say/.

[43] *Id.*

[44] Washington Revised Code Title 77. Fish and Wildlife § 77.12.035.

Despite this local opposition and the grave dangers apex predator grizzly bears can have for an ecosystem, FWS's North Cascades grizzly bear 10(j) rule did not even afford residents the same protections previous 10(j) rules provided for species such as wolves. FWS's final rule does not allow the intentional taking of any experimental grizzly bear except to protect human life during exigent circumstances.[45] Accordingly, as FWS continues to use 10(j) rules to establish experimental populations, it becomes clearer that experimental populations are not being used as an ESA exception to further conservation but to appease radical eco activists regardless of consequences.

NOAA Fisheries & 10(j) Populations

Section 10(j) of the ESA also allows NOAA Fisheries to designate populations of listed species as experimental populations.[46] In 2016, NOAA Fisheries promulgated a final rule to update and establish recommendations for 10(j) populations. These recommendations included the following definitions and procedures:

- "Establishing and/or designating certain populations of species otherwise listed as endangered or threatened as experimental populations
- Determining whether experimental populations are essential or nonessential
- Promulgating appropriate protective measures for experimental populations."[47]

One example of a species considered under the 10(j) rule by NOAA Fisheries is the Spring-run Chinook Salmon in specific areas above the Shasta Dam.[48] This is an example of a distinct population of fish where the region is key, as "NOAA Fisheries works in cooperation with federal, state, tribal, and Canadian officials to manage these commercial, recreational, and tribal harvest of salmon and steelhead in ocean and inland waters of the West Coast and Alaska."[49] Depending on the specific state and region, the same type of fish could be listed as endangered or be available for commercial harvest.

Local Input is Essential to Effective Species Recovery

FWS regulations require that, before a 10(j) rule is finalized and an experimental population is established, the agency "consult with relevant state fish and wildlife agencies and local governmental entities as well as with affected federal agencies and private landowners."[50] In its regulations, "FWS states that any experimental population regulation shall reflect an agreement

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[45] *See, e.g.*, Erin H. Ward et al., *Grizzly Bears and the Endangered Species Act*, CONG. RSCH. SERV. (June 28, 2024), https://crsreports.congress.gov/product/pdf/R/R48116#:~:text=Under%20the%20ESA%2C%20grizzly%20bears,with%20unlawfully%20taken%20grizzly%20bears.

[46] Designating Experimental Populations Under the Endangered Species Act, Final Rule, (Last Updated June 10, 2020), https://www.fisheries.noaa.gov/action/designating-experimental-populations-under-endangered-species-act

[47] *Id.*

[48] *Id.*

[49] NOAA Fisheries Species Directory, Chinook Salmon, (Accessed February 26, 2026), https://www.fisheries.noaa.gov/species/chinook-salmon

[50] *See, e.g.*, Erin H. Ward and Benjamin M. Barczewski, *Experimental Populations Under the Endangered Species Act and Gray Wolves*, CONG. RSCH. SERV. (July 28, 2023), https://crsreports.congress.gov/product/pdf/R/R47581#:~:text=FWS%20has%20released%20and%20designated,these%20experimental%20populations%20was%20litigated.

between the agency and the relevant stakeholders with which it consults to the maximum extent practicable."[51]

Yet, the most apparent characteristic of some of the most adversely consequential FWS 10(j) experimental populations is a lack of meaningful response to local input. Instead of listening to community stakeholders and local experts expressing valid concerns about introducing experimental populations of apex predators into areas that are unprepared and unable to support them, the FWS has opted to yield to the demands of environmental preservationists. So, until the FWS adheres to its own regulations and genuinely considers local input, airdropped predators will keep killing livestock and posing a threat to human life and property consequences due to the experimental populations under the ESA.

[51] *Id.* (internal citations omitted).