

Committee on Natural Resources
Rob Bishop, Chairman
Markup Memorandum

September 24, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff — Chris Esparza
Subcommittee on Federal Lands (x67736)

Markup: **H.R. 6784 (Rep. Sean P. Duffy)**, to provide for removal of the gray wolf in the contiguous 48 States from the List of Endangered and Threatened Wildlife published under the Endangered Species Act of 1973.
September 26, 2018, at 10:15 a.m. in 1324 Longworth House Office Building.

H.R. 6784 (Rep. Sean Duffy), “Manage our Wolves Act”

Summary of the Bill

H.R. 6784, introduced by Rep. Sean P. Duffy [R-WI-07] on September 12, 2018, is a bipartisan bill that would exempt from judicial review the 2012 rule (later reinstated in 2017) delisting of the gray wolf (*canis lupus irremotus*) in Wyoming under the Endangered Species Act of 1973. The bill further directs the Secretary of the Interior to reissue a 2011 rule to delist the gray wolf in the Western Great Lakes region and would exempt this rule from judicial review. Finally, the bill directs the Secretary to issue a rule to remove the gray wolf (*Canis lupus*) in each of the 48 contiguous States from the list of Endangered and Threatened Wildlife and prohibits judicial review of this action.

Cosponsors

Rep. Collin C. Peterson [D-MN-07], Rep. Cathy McMorris Rodgers [R-WA-05] Rep. Dan Newhouse [R-WA-04]

Background

Gray wolves were first listed as endangered under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) in 1974.¹ Existing wolves present in the Western Great Lakes region at the time were protected, and the federal government subsequently introduced the species to the Western U.S. by relocating wolves from Canada and releasing them in central Idaho and Yellowstone National Park in 1994 and 1995.² States, local citizens, livestock groups, and sportsmen mostly opposed the reintroduction effort.³ The reintroduced wolf population in the West expanded more quickly than many had anticipated. As a result, in September 2001,

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

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

³ See, 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>).

affected States and tribes began working with the U.S. Fish and Wildlife Service (FWS) to formulate plans that would effectively transition management responsibility of the species 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 traditionally provide funding for wildlife management activities, and hunts are conducted in a similar fashion to those of large ungulates and other wild animals under State management.

Litigation activist 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 certain provisions of the 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 historic range (Wyoming) was not appropriate.⁹ The delisting of the wolves was halted in all States until the Wyoming plan could be proven to be acceptable to FWS.

Rep. Michael K. Simpson [R-ID-02], and Senator Jon Tester [D-MT] sponsored a provision in the Fiscal Year 2012 Consolidated Appropriations bill clarifying Congressional intent to remove the recovered wolves in Idaho and Montana from the endangered species list, and returning the species to State management.¹⁰ Appropriations provisions to delist the wolf and allow States to retain management authority have been included in appropriations acts each successive year.

⁴ See, 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).

⁵ Wyoming Farm Bureau v. Babbitt, 987 F. Supp. 1349 (D. Wyo. 1997). See also, Press Release, U.S. Fish and Wildlife 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>).

⁶ See, 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>).

⁷ See, 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 Resources Subcomm. on Oversight and Investigations*, 114th Cong. (2016) ([The State of Idaho has successfully managed thriving wolf populations since delisting](#)).

⁸ See, *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).

¹⁰ Press 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>).

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 a final rule delisting them in accordance with the Court order on May 1, 2017, and Wyoming wolves are again managed by the State of Wyoming.¹⁵ As such, this bill would safeguard the FWS' delisting decision from litigious groups' lawsuits by exempting this delisting from judicial review. On August 1, 2017, the D.C. Circuit Court of Appeals issued a ruling upholding a U.S. District Court order overruling FWS' determination that the wolves had sufficiently recovered within the Western Great Lakes region.¹⁶ This bill would direct the Secretary to reissue the rule to delist the gray wolf in the Western Great Lakes region and exempt this rule from judicial review to prevent continued litigation.

Finally, the last section of this bill seeks to empower the States to manage their individual gray wolf populations by directing the Secretary to issue a rule to delist the gray wolf in each of the 48 contiguous States and the District of Columbia. To ensure that States are provided certainty when developing State management plans, this bill would also exempt this delisting decision from judicial review.

Previous Legislation

Rep. Reid J. Ribble [R-WI-08] introduced a similar bill in the 114th Congress. It was referred to the Committee on Natural Resources.¹⁷

The Department of the Interior, Environment and Related Agencies Appropriations Act, 2017 (H.R. 5538) included a provision to prohibit the use of federal funds to list the gray wolf

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).

¹² Endangered 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).

¹⁶ *Humane Society of the United States v. U.S. Secretary of the Interior*, (2017). [https://www.cadc.uscourts.gov/internet/opinions.nsf/9EDB5CE0814D2B948525816F00511636/\\$file/15-5041.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/9EDB5CE0814D2B948525816F00511636/$file/15-5041.pdf).

¹⁷ H.R. 884, 114th Cong. (2015).

under the ESA in the lower 48 States after June 13, 2017.¹⁸ The House also passed the SHARE Act (H.R. 2406) in February 2016, which included the directive to reissue gray wolf rules for the Western Great Lakes and Wyoming.¹⁹ The wolf provisions from the SHARE Act were also included in the House amendment to the North American Energy Security and Infrastructure Act of 2016 (S. 2012).²⁰

The Committee's Subcommittee on Oversight and Investigations also held a hearing about wolf management in the United States on September 21, 2016.²¹

Rep. Collin Peterson [D-MN-07] introduced a similar bill this Congress (H.R. 424). The Committee reported the bill favorably on January 8, 2018.²²

Cost

A Congressional Budget Office cost estimate has not yet been made available.

Administration Position

Unknown.

Anticipated Amendments

Unknown.

Major Provisions of H.R. 6784

Section 1. Short Title. The bill may be cited as the “Manage our Wolves Act.”

Section 2. Removal of Federal Protections for Gray Wolves in Wyoming and Western Great Lakes. Exempts the FWS final rule published on September 10, 2012, delisting the gray wolf in Wyoming, from judicial review. Section (b) 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. Removal of Federal Protections for Gray Wolves Range-Wide. This section directs the Secretary of the Interior to issue a rule removing the gray wolf in each of the 48

¹⁸ Fiscal 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>).

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

²⁰ North 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).

²² Gray Wolf State Management Act of 2017, (2017).

<https://www.gpo.gov/fdsys/pkg/BILLS-115hr424rh/pdf/BILLS-115hr424rh.pdf>.

contiguous States and the District of Columbia from the list of endangered or threatened wildlife under the ESA. The section further exempts this rule from judicial review and limits the rule's inclusion of the subspecies classified as the Mexican gray wolf.

Effect on Current Law (Ramseyer)

None.