

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

July 17, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff — Megan Olmstead
Subcommittee on Oversight and Investigations (x5-7107)

Hearing: Legislative hearing on **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.
July 19, 2017 at 10:00 a.m. in 1324 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).

Invited Witnesses

Panel I

The Honorable Collin Peterson
Member of Congress
Minnesota’s 7th Congressional District

Panel II (in alphabetical order)

Mr. Jeff Corwin

Biologist

Host of ABC's *Ocean Treks with Jeff Corwin*

Marshfield, MA

The Honorable Glenn Hegar

Comptroller of Public Accounts

State of Texas

Austin, Texas

Mr. Kent Holsinger

Manager

Holsinger Law, LLC

Denver, Colorado

Mr. Greg Sheehan

Deputy Director

U.S. Fish and Wildlife Service

Washington, DC

Mr. David Willms

Policy Advisor for Governor Matt Mead

Cheyenne, Wyoming

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 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

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>).

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,

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 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

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>).

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.

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 has been accomplished, though the delisting of wolves in Wyoming remains (without this legislation) subject to potential judicial review. A decision on the Western Great Lake wolves is pending and FWS currently retains gray wolf management authority in Minnesota, Michigan, and Wisconsin.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

The FY2017 U.S. House Interior and Appropriations bill (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

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

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 Endangered and Threatened Wildlife and Plants; Reinstatement of Final Rules for the Gray Wolf in Wyoming and the Western Great Lakes in Compliance with Court Orders, 80 Fed. Reg. 9218 (Feb. 20, 2015) (available at: <https://www.gpo.gov/fdsys/pkg/FR-2015-02-20/pdf/2015-03503.pdf>).

¹⁷ H.R. 884, 114th Cong. (2015).

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).

Cost

No CBO cost estimate is available at this time.

Administration Position

No Administration position is available at this time.

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.