

GRAY WOLF STATE MANAGEMENT ACT OF 2017

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JANUARY 8, 2018.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 424]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 424) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 424 is 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.

BACKGROUND AND NEED FOR LEGISLATION

Gray wolves were listed for protection under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) in 1974. 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 relocating wolves from Canada to central Idaho and Yellowstone National Park in 1994 and 1995. States, local citizens, livestock groups, and sportsmen opposed the reintro-

duction effort. 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 transition management responsibility back to the States upon delisting.

FWS deemed the Idaho and Montana wolf management plans adequate, but did not approve the Wyoming plan. Gray wolves were delisted on January 14, 2009.<sup>1</sup> As part of their management plans, Idaho and Montana conducted tightly controlled wolf hunts beginning in autumn 2009. 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. 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.<sup>2</sup> The delisting of the wolves was halted in all States until the Wyoming plan was found to be acceptable.

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 by regulation in 2011. Wyoming wolves were delisted by FWS in 2012. However, wolves in Wyoming and in the Western Great Lakes region were re-listed in 2014 due to additional court decisions that challenged the adequacy of State management plans.<sup>3</sup>

The D.C. Circuit Court of Appeals reversed the 2014 decision on March 3, 2017, regarding gray wolves in Wyoming only.<sup>4</sup> FWS published the final rule removing these wolves from the ESA on May 1, 2017, and Wyoming wolves are again managed by the State of Wyoming.<sup>5</sup> While technically the goal of Section 3 of the bill directing FWS to reissue the 2012 Wyoming final rule for delisting has been accomplished, the delisting of wolves in Wyoming remains (without this legislation) subject to potential judicial review.

On August 1, 2017, a federal appeals court upheld 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.<sup>6</sup> This ensures this population segment of gray wolves remains regulated under the ESA.

H.R. 424 requires the Secretary of the Interior to reissue the final rules from 2011 and 2012 that removed the gray wolf from

<sup>1</sup>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>).

<sup>2</sup>Defenders of Wildlife v. Salazar, 729 F. Supp. 2d 1227, 1228 (D. MT 2010).

<sup>3</sup>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).

<sup>4</sup>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).

<sup>5</sup>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).

<sup>6</sup>Humane Society et al v Zinke et al, No. 15-5041, 2017 (D.C. Cir. Aug. 1, 2017) at [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).

ESA protected status in the Western Great Lakes and Wyoming distinct population segment area. It also exempts the new rules from judicial review. FWS will retain authority to list gray wolves for federal protection if population numbers warrant relisting.

#### SECTION-BY-SECTION ANALYSIS

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

*Section 2. Reissuance of final rule regarding gray wolves in the Western Great Lakes.* This section 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.* This section 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.

#### COMMITTEE ACTION

H.R. 424 was introduced on January 10, 2017, by Congressman Collin C. Peterson (D-MN). The bill was referred to the Committee on Natural Resources. On July 19, 2017, the Committee held a hearing on the bill. On October 3, 2017, the Natural Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives on October 4, 2017, by a bipartisan roll call vote of 24 ayes and 15 noes, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 10-04-17

Recorded Vote #: 5

Meeting on / Amendment on: FC Mark Up on Favorably Reporting 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. "Gray Wolf State Management Act of 2017";

| MEMBERS                          | Yes | No | Pres | MEMBERS                | Yes | No | Pres |
|----------------------------------|-----|----|------|------------------------|-----|----|------|
| Mr. Bishop, UT, Chairman         | X   |    |      | Mr. Cook, CA           | X   |    |      |
| Mr. Grijalva, AZ, Ranking Member |     | X  |      | Mr. Soto, FL           |     | X  |      |
| Mr. Young, AK, Chairman Emeritus | X   |    |      | Mr. Westerman, AR      | X   |    |      |
| Mrs. Napolitano, CA              |     | X  |      | Mr. McEachin, VA       |     | X  |      |
| Mr. Gohmert, TX, Vice Chairman   | X   |    |      | Mr. Graves, LA         | X   |    |      |
| Ms. Bordallo, Guam               |     | X  |      | Mr. Brown, MD          |     | X  |      |
| Mr. Lamborn, CO                  | X   |    |      | Mr. Hice, GA           | X   |    |      |
| Mr. Costa, CA                    | X   |    |      | Mr. Clay, MO           |     | X  |      |
| Mr. Wittman, VA                  | X   |    |      | Mrs. Radewagen, AS     | X   |    |      |
| Mr. Sablan, CNMI                 |     |    |      | Mr. Gomez, CA          |     | X  |      |
| Mr. McClintock, CA               | X   |    |      | Mr. LaHood, IL         | X   |    |      |
| Ms. Tsongas, MA                  |     | X  |      | Mr. Webster, FL        | X   |    |      |
| Mr. Pearce, NM                   |     |    |      | Mr. Bergman, MI        | X   |    |      |
| Mr. Huffman, CA                  |     | X  |      | Ms. Cheney, WY         | X   |    |      |
| Mr. Thompson, PA                 | X   |    |      | Mr. Johnson, LA        | X   |    |      |
| Mr. Lowenthal, CA                |     | X  |      | Ms. González-Colón, PR | X   |    |      |
| Mr. Gosar, AZ                    | X   |    |      | Mr. Gianforte, MT      | X   |    |      |
| Mr. Beyer, VA                    |     | X  |      |                        |     |    |      |
| Mr. Labrador, ID                 | X   |    |      |                        |     |    |      |
| Mrs. Torres, CA                  |     | X  |      |                        |     |    |      |
| Mr. Tipton, CO                   | X   |    |      |                        |     |    |      |
| Mr. Gallego, AZ                  |     |    |      |                        |     |    |      |
| Mr. LaMalfa, CA                  | X   |    |      |                        |     |    |      |
| Ms. Hanabusa, HI                 |     | X  |      |                        |     |    |      |
| Mr. Denham, CA                   |     |    |      |                        |     |    |      |
| Ms. Barragán, CA                 |     | X  |      | TOTAL:                 | 24  | 15 |      |

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 8, 2017.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 424, the Gray Wolf State Management Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 424—Gray Wolf State Management Act of 2017*

H.R. 424 would require the Secretary of the Interior to reissue final rules that removed gray wolves from the endangered species list in Wyoming and the western Great Lakes region. On May 1, 2017, the U.S. Fish and Wildlife Service (USFWS) reissued the rule delisting the gray wolf in Wyoming, and CBO expects that reissuing the final rule pertaining to the Great Lakes region would have an insignificant effect on the agency's workload. Under the bill, those actions would not be subject to judicial review.

Based on an analysis of information provided by the USFWS, CBO estimates that implementing the bill would have no significant effect on the federal budget.

Enacting H.R. 424 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 424 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 424 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. Sections 2 and 3 of this bill direct the Secretary of the Interior to reissue two rules regarding wolves under the Endangered Species Act.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

## DISSENTING VIEWS

H.R. 424 would remove Endangered Species Act (ESA) protections for gray wolves in the Western Great Lakes region and prevent judicial review of a recent federal court decision upholding a U.S. Fish and Wildlife Service (FWS) rule to delist wolves in Wyoming. The bill short-circuits the science-based ESA process of determining when species are recovered to the point that protections can be removed.

In the case of the gray wolf, the species occupies only five percent of its historic range in the lower 48 states. Gray wolves currently enjoy ESA protections in the lower 48 outside of Wyoming and the Northern Rocky Mountains area where they were legislatively delisted. Historically, gray wolves were present throughout most of the continental United States, Canada, and northern Mexico, but because they were viewed as a threat to livestock, wolves were hunted to the brink of extinction. By 1965, wolves had been nearly extirpated from the continental United States. By the time they received ESA protection in the early 1970s, only several hundred gray wolves remained in the wild in extreme northern Minnesota and Michigan.

Wolves still face persecution from hunters and agricultural interests, and are only beginning to recolonize areas where they were long a critical part of ecosystems. The continued threat to wolves is evidenced by the fact that in the states where Congress delisted the species in 2011, more than 5,000 wolves have been killed.

The practical impact of H.R. 424 with respect to Wyoming wolves would only be to block a review by the Supreme Court, something that was unlikely to happen anyway. However, the D.C. Circuit recently overturned the FWS delisting decision on Western Great Lakes wolves because the agency's delisting decision failed to account for "the undisputedly vast loss of historical range" of the wolf. Therefore, this legislation would strike a damaging blow to the continued recovery of gray wolves by removing all ESA protections for wolves in the Midwest. For these reasons, we oppose the bill as reported.

RAÚL M. GRIJALVA,  
*Ranking Member, Committee  
on Natural Resources.*

DARREN SOTO.  
A. DONALD MCEACHIN.  
ALAN S. LOWENTHAL.  
GRACE F. NAPOLITANO.  
DONALD S. BEYER.  
COLLEN HANABUSA.

8

NANETTE DIAZ BARRAGÁN.

