

MANAGE OUR WOLVES ACT

NOVEMBER 9, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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. 6784]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6784) 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, 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. 6784 is to provide for the 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.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 6784 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.

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, 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 under the ESA.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.

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 ap-

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

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, 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 Serv. 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).

appropriate.⁹ The delisting of the wolves was halted in all States until the Wyoming plan was acceptable to FWS.

Congressman Michael K. Simpson (R-ID) 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 return the species to State management.¹⁰ Provisions to delist the wolf and allow States to retain management authority have been included in appropriations acts each successive year.¹¹

Populations of gray wolves 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 2011.¹² Wyoming wolves were delisted by FWS in 2012.¹³ 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.¹⁴

The D.C. Circuit Court of Appeals reversed the 2014 decision on March 3, 2017, regarding gray wolves in Wyoming only.¹⁵ 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.¹⁶ 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.¹⁷ This bill would direct the Secretary of the Interior 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

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 HR 1473 (112th Cong.); H.R. 2584 (112th Cong.); H.R. 6091 (112th Cong.); H.R. 5538 (114th Cong.).

¹² 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/r3wolffrec.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).

¹³ 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).

¹⁴ 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).

¹⁵ *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).

¹⁶ 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).

¹⁷ *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).

States are provided certainty when developing State management plans, this bill would also exempt this delisting decision from judicial review.

The gray wolf delisting issue is not a new one for Congress and has been bipartisan. As mentioned above, appropriations riders affecting the gray wolf have been enacted since 2012. In the 112th Congress, Congressman Denny Rehberg (R-MT) introduced H.R. 509, Congresswoman Candice Miller (R-MI) introduced H.R. 1819, Senator Orrin Hatch (R-UT) introduced S. 249 and Senator Max Baucus (D-MT) introduced S. 321—all affected gray wolves. In the 114th Congress, Congressman Reid J. Ribble (R-WI) introduced a similar bill,¹⁸ and Senator Ron Johnson (R-WI) introduced S. 2281. 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 under the ESA in the lower 48 States after June 13, 2017.¹⁹ Also during the 114th Congress, the House 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.²⁰ 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).²¹ In the 115th Congress, Congressman Collin Peterson (D-MN) introduced a gray wolf bill (H.R. 424); the Natural Resources Committee reported the bill favorably on January 8, 2018.²² Senator Ron Johnson (R-WI) also introduced a gray wolf bill, S. 164, this Congress.

COMMITTEE ACTION

H.R. 6784 was introduced on September 12, 2018, by Congressman Sean P. Duffy (R-WI). The bill was referred to the Natural Resources Committee. On September 26, 2018, 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 by a roll call vote of 19 yeas and 15 nays, as follows:

¹⁸H.R. 884, 114th Cong. (2015).

¹⁹Fiscal 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>).

²⁰SHARE Act, H.R. 2406, 114th Cong. (2016) (available at <https://www.gpo.gov/fdsys/pkg/BILLS-114hr2406eh/pdf/BILLS-114hr2406eh.pdf>).

²¹North 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>).

²²Gray Wolf State Management Act of 2017, (2017). <https://www.gpo.gov/fdsys/pkg/BILLS-115hr424rh/pdf/BILLS-115hr424rh.pdf>.

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 09.26.18

Recorded Vote #:6

Meeting on / Amendment on: FC Markup Favorably Report HR 6784 (Rep. Sean P. Duffy)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Clay, MO</i>			
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Gomez, CA</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>		X		<i>Ms. Velázquez, NY</i>		X	
Mr. McClintock, CA	X			Mr. Webster, FL			
<i>Ms. Tsongas, MA</i>		X		Mr. Bergman, MI	X		
Mr. Pearce, NM				Ms. Cheney, WY	X		
<i>Mr. Huffman, CA</i>		X		Mr. Johnson, LA	X		
Mr. Thompson, PA	X			Ms. González-Colón, PR	X		
<i>Mr. Lowenthal, CA</i>		X		Mr. Gianforte, MT	X		
Mr. Gosar, AZ	X			Mr. Curtis, UT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mr. Gallego, AZ</i>		X					
Mr. Tipton, CO	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Barragán, CA</i>		X					
Mr. Denham, CA							
<i>Mr. Soto, FL</i>		X		TOTAL:	19	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, October 12, 2018.

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. 6784, the Manage our Wolves Act.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 6784—Manage our Wolves Act

H.R. 6784 would direct the U.S. Fish and Wildlife Service (USFWS) to issue a rule that removes the gray wolf from the endangered species list in the 48 contiguous states and to reissue a 2011 rule that delisted the gray wolf in the Western Great Lakes. The bill also would prohibit judicial review of those rules and of a recently reinstated 2012 rule delisting the gray wolf in Wyoming.

According to USFWS, the agency is reviewing the status of the gray wolf in the 48 contiguous states. If the agency determines that the species has exceeded recovery goals, it will propose a rule to delist the gray wolf. Conversely, if the finding is that recovery goals are unmet, the agency will not propose a rule. Using information from USFWS, CBO estimates that directing USFWS to issue a rule to remove the grey wolf from the endangered species list would cost less than \$500,000; such spending would be subject to the availability of appropriated funds.

Under current law, plaintiffs who challenge the federal government under the Endangered Species Act may be entitled to the payment of attorneys' fees. Such payments are made from the federal government's Judgment Fund, which has a permanent indefinite appropriation. By prohibiting judicial review, CBO expects, H.R. 6784 could reduce the number of civil actions that otherwise would be filed and thus the potential for payments from the Judg-

ment Fund. Based on the amount of such payments in the past, CBO estimates that any decrease in direct spending would be insignificant over the 2019–2028 period.

Because enacting H.R. 6784 could affect direct spending, pay-as-you-go procedures apply. The bill would not affect revenues.

CBO estimates that enacting H.R. 6784 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6784 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On November 8, 2017, CBO transmitted a cost estimate for H.R. 424, the Gray Wolf State Management Act of 2017, as ordered reported by the House Committee on Natural Resources on October 4, 2017. Both pieces of legislation contain similar provisions, but H.R. 6784 would require USFWS to issue a new rule and would prohibit judicial review of that rule. The estimates of budgetary effects reflect those differences.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed 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 provide for the 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.

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. Section 2 of this bill directs the Secretary of the Interior to reissue a regulation regarding gray wolves in the Western Great Lakes. Section 3 of the bill directs the Secretary of the Interior to issue a regulation to remove the gray wolf from the List of Endangered and Threatened Wildlife that would apply to each of the 48 contiguous States.

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. 6784 would remove Endangered Species Act (ESA) protections for gray wolves in the Western Great Lakes region and in the contiguous 48 States 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.

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 northern Minnesota and Michigan. While the population of the gray wolf has increased, the species currently only occupies five percent of its historic range in the lower 48 states. Gray wolves can only be found in the Great Lakes, northern Rockies, and Pacific Northwest.

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.

This legislation would strike a damaging blow to the continued recovery of gray wolves in the contiguous 48 states. For these reasons, we oppose the bill as reported.

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

NIKI TSONGAS.

JARED HUFFMAN.

A. DONALD MCEACHIN.

WM. LACY CLAY.

NANETTE DIAZ BARRAGÁN.

DONALD S. BEYER, JR.

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