

GRIZZLY BEAR STATE MANAGEMENT ACT OF 2023

SEPTEMBER 20, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1245]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1245) to direct the Secretary of the Interior to reissue a final rule relating to removing the Greater Yellowstone Ecosystem population of grizzly bears from the Federal list of endangered and threatened wildlife, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1245 is to direct the Secretary of the Interior to reissue a final rule relating to removing the Greater Yellowstone Ecosystem population of grizzly bears from the Federal list of endangered and threatened wildlife, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1245 requires the Department of the Interior to reissue the final rule entitled “Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife” (82 Fed. Reg. 30502 (June 30, 2017)). The bill also prohibits the rule from being subject to judicial review.

The grizzly bear was first listed under the Endangered Species Act (ESA) in 1975 as a threatened species in the lower 48 states. A grizzly bear recovery plan was developed in 1982 and amended in 1993 with the goal of delisting the species in the future.<sup>1</sup> The 1993 recovery plan created six distinct recovery areas across the grizzly bear's historic range: the Greater Yellowstone Ecosystem (GYE), Northern Continental Divide Ecosystem, Cabinet-Yaak Ecosystem, Selkirk Ecosystem, North Cascades Ecosystem, and Bitterroot Ecosystem. The GYE, a 22-million-acre region encompassing portions of Wyoming, Montana, and Idaho, including Yellowstone and Grand Teton National Parks, is home to one of the largest grizzly bear populations in the contiguous United States.<sup>2</sup>

On March 29, 2007, the U.S. Fish and Wildlife Service (Service) published a final rule designating the GYE as a distinct population segment and removed GYE grizzly bears from the endangered species list.<sup>3</sup> The rule was overturned in 2009 by the Montana federal district court, in response to a lawsuit filed by the Greater Yellowstone Coalition against the Service.<sup>4</sup> In his decision, Judge Donald Molloy stated that there were inadequate regulations to protect the grizzly bear once delisted and the Service did not consider other environmental factors, such as climate change.<sup>5</sup>

The Service again published a final rule delisting the grizzly bear within the GYE on June 30, 2017. The Montana federal district court again overturned the rulemaking on September 24, 2018, holding that the Service failed to consider how reduced protections for GYE grizzly bears would affect other populations and that the Service's application of the ESA threat analysis was arbitrary and capricious.<sup>6</sup>

In 2021, the State of Wyoming petitioned the Service to delist the grizzly bear in the GYE, estimating its population to be 1,069 bears.<sup>7</sup> This number is well above the recovery goal set by the Service of at least 500 grizzly bears or to maintain an average of 674 bears.<sup>8</sup> In addition, GYE grizzly bears now occupy a land area of nearly 25,000 square miles, an area larger than the states of Connecticut, New Hampshire, and Massachusetts combined.<sup>9</sup> States in the GYE region, including Wyoming, have formalized grizzly bear management plans in the event the species was

<sup>1</sup>"Grizzly Bear Recovery Plan." Dr. Christopher Servheen. September 10, 1993. fws.gov (npshistory.com).

<sup>2</sup>"In a changing ecosystem, Yellowstone grizzly bears are resilient" U.S. Geological Survey. June 1, 2023. <https://www.usgs.gov/news/national-news-release/a-changing-ecosystem-yellowstone-grizzly-bears-are-resilient>.

<sup>3</sup>"Grizzly Bears; Yellowstone Distinct Population; Notice of Petition Finding; Final Rule." Department of the Interior. March 29, 2007. *2007 Federal Register*, 72 FR 14866; *Centralized Library: U.S. Fish and Wildlife Service—FR Doc 07 1474* (fws.gov).

<sup>4</sup>U.S. District Court of Montana. *Greater Yellowstone Coalition, Inc. v. U.S. Fish and Wildlife Service*. September 12, 2009.

<sup>5</sup>"Grizzly Decision Detailed." Cat Urgbikit. Pinedale Online!. *Grizzly decision detailed—Pinedale, Wyoming* (pinedaleonline.com).

<sup>6</sup>"Grizzly Bears and the Endangered Species Act." Jenny Gesley. Congressional Research Service. July 28, 2021. *Grizzly Bears and the Endangered Species Act In Custodia Legis* (loc.gov).

<sup>7</sup>"Wyoming's push to delist grizzly bears from endangered species list faces opposition from anti-hunting group." Michael Lee. Fox News. January 21, 2022. *Wyoming's push to delist grizzly bears from endangered species list faces opposition from anti-hunting group* | Fox News.

<sup>8</sup>"Grizzly Bear Recovery Program." *2021 Annual Report*. Grizzly Bear Recovery Program. U.S. Fish and Wildlife Service. *2021 GBRP Annual Report.pdf* (fws.gov).

<sup>9</sup>"Secretary Zinke Announces Recovery and Delisting of Yellowstone Grizzly Bear." U.S. Department of the Interior. June 27, 2017. *Delisting of Yellowstone Grizzly Bear* | U.S. Fish & Wildlife Service (fws.gov).

delisted.<sup>10</sup> The Wyoming management plan largely adheres to the Service’s current population goals, prioritizes minimizing human and bear conflicts, and applies conservative management policies within areas outside of national parks.<sup>11</sup>

On March 23, 2023, Mr. Brian Nesvik, the Director of the Wyoming Game and Fish Department, testified before the Committee on Natural Resources Subcommittee on Water, Wildlife and Fisheries that “Wyoming people have invested over \$59 million to recover this population from its low point when there were as few as 136 bears in the GYE.”<sup>12</sup> He went on to state the following: “In the case of the GYE, the states of Wyoming, Montana, and Idaho played a lead role in the population recovery. From a data collection, public education, conflict management, law enforcement, and research perspective, the states have conducted the overwhelming majority of the work despite the species being under federal authority.”<sup>13</sup>

In response to Wyoming’s petition, the Service announced on February 3, 2023, that a delisting in the GYE “may be warranted” and initiated a 12-month status review of the species.<sup>14</sup> The outcome of this review process may be promising. However, without legislation from Congress this rule will likely be vulnerable to litigation, as many previous ESA delisting rules have shown.

For the ESA to work properly, there must be an achievable recovery goal for land managers and private landowners to reach. In the case of the GYE grizzly bear, that goal has been reached and we should be celebrating the GYE grizzly bear as a success story. The states of Wyoming, Montana, and Idaho are willing and able to take over management control of a delisted GYE grizzly bear population and this bill would enable just that.

#### COMMITTEE ACTION

H.R. 1245 was introduced on February 28, 2023, by Rep. Harriet M. Hageman (R–WY). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On March 23, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On April 27–28, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 1245 by unanimous consent. Ranking Member Raúl Grijalva (D–AZ) offered an amendment designated Grijalva #1. The amendment offered by Ranking Member Grijalva was withdrawn by unanimous consent. Rep. Katie Porter (D–CA) offered an amendment designated Porter #2. The amendment offered by Rep. Porter was not adopted by a roll call vote of 16 yeas to 21 nays, as follows:

<sup>10</sup>“Wyoming Game and Fish Commission approves tri-state grizzly management MOA.” Wyoming Game and Fish Department. November 30, 2021. *Wyoming Game and Fish Department—Wyoming Game and Fish Commission approves tri-state grizzly management MOA*.

<sup>11</sup>“Wyoming Grizzly Bear Management Plan.” Wyoming Game and Fish Commission. May 11, 2016. *Microsoft Word—Grizzly Bear Management Plan Amended July 2005.doc* (wyo.gov).

<sup>12</sup>“Testimony of Brian Nesvik.” House Natural Resources Committee. March 23, 2023. *testimony\_nesvik.pdf* (house.gov).

<sup>13</sup>*Id.*

<sup>14</sup>“Service to initiate grizzly bear status review in the Northern Continental Divide and Greater Yellowstone ecosystems.” U.S. Fish and Wildlife Service. February 3, 2023. *Service to initiate grizzly bear status review in the Northern Continental Divide & Greater Yellowstone ecosystems* | U.S. Fish & Wildlife Service (fws.gov).

Committee on Natural Resources  
U.S. House of Representatives  
118th Congress

Date: April 28, 2023

Recorded Vote #: 11

Meeting on / Amendment on: Porter #2 Amendment to H.R. 1245 (Hageman), "Grizzly Bear State Management Act of 2023"

MEMBERS				MEMBERS			
	Yea	Nay	Pres		Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking	X		
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI			
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ	X		
Mr. Graves, LA		X		Mr. Neguse, CO	X		
Mrs. Radewagen, AS				Mr. Lavin, CA	X		
Mr. LaMalfa, CA		X		Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR				Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Polio, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle, OR			
Mr. Carl, AL		X		Ms. Kamlagar-Dova, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boehert, CO		X		Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI	X		
Ms. Kiggans, VA		X		Mrs. Dingell, MI	X		
Mr. Moynihan, Gnam				Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL		X					
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	16	21	

Rep. Katie Porter (D-CA) offered an amendment designated Porter #4. The amendment offered by Rep. Porter was not adopted by a roll call vote of 17 yeas to 21 nays, as follows:

**Committee on Natural Resources**  
**U.S. House of Representatives**  
**118th Congress**

Date: April 28, 2023

Recorded Vote #: 12

Meeting on / Amendment on: Porter #4 Amendment to H.R. 1245 (Hageman), "Grizzly Bear State Management Act of 2023"

MEMBERS				MEMBERS			
	Yea	Nay	Pres		Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking	X		
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI			
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ	X		
Mr. Graves, LA		X		Mr. Neguse, CO	X		
Mrs. Radewagen, AS				Mr. Levin, CA	X		
Mr. LaMalfa, CA		X		Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR				Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Peltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle, OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dovs, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boehert, CO		X		Ms. Valázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI	X		
Ms. Kiggans, VA		X		Mrs. Dingell, MI	X		
Mr. Moilan, Guam				Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL		X					
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				<b>TOTAL:</b>	17	21	

Rep. Sydney Kamlager-Dove (D-CA) offered an amendment designated Kamlager-Dove #6. The amendment offered by Rep. Kamlager-Dove was not adopted by a roll call vote of 17 yeas to 21 nays, as follows:



Rep. Sydney Kamlager-Dove (D-CA) offered an amendment designated Kamlager-Dove #7. The amendment offered by Rep. Kamlager-Dove was not adopted by a roll call vote of 17 yeas to 21 nays, as follows:

Committee on Natural Resources  
 U.S. House of Representatives  
 118th Congress

Date: April 28, 2023

Recorded Vote #: 14

Meeting on / Amendment on: Kamlager-Dove #7 Amendment to H.R. 1245 (Hageman), "Grizzly Bear State Management Act of 2023"

MEMBERS				MEMBERS			
	Yea	Nay	Pres		Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking	X		
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI			
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ	X		
Mr. Graves, LA		X		Mr. Neguse, CO	X		
Mrs. Radewagen, AS				Mr. Lavin, CA	X		
Mr. LaMalfa, CA		X		Ms. Portier, CA	X		
Mr. Webster, FL		X		Ms. Legar Fernandez, NM	X		
Ms. González-Colón, PR				Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Paltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle, OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dove, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO		X		Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Cava, HI	X		
Ms. Kiggans, VA		X		Mrs. Dingell, MI	X		
Mr. Moylan, Guam				Ms. Lea, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL		X					
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	17	21	

Rep. Jared Huffman (D-CA) offered an amendment designated Huffman #8. The amendment offered by Rep. Huffman was not adopted by a roll call vote of 17 yeas to 21 nays, as follows:

Committee on Natural Resources  
U.S. House of Representatives  
118th Congress

Date: April 28, 2023

Recorded Vote #: 15

Meeting on / Amendment on: **Huffman #8 Amendment to H.R. 1245 (Hageman), "Grizzly Bear State Management Act of 2023"**

MEMBERS				MEMBERS			
	Yea	Nay	Pres		Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking	X		
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI			
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ	X		
Mr. Graves, LA		X		Mr. Neguse, CO	X		
Mrs. Radewagen, AS				Mr. Levin, CA	X		
Mr. LaMalfa, CA		X		Ms. Portier, CA	X		
Mr. Webster, FL		X		Ms. Legar Fernandez, NM	X		
Ms. González-Colón, PR				Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Paltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyer, OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dova, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO		X		Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI	X		
Ms. Kiggans, VA		X		Mrs. Dingell, MI	X		
Mr. Moylan, Guam				Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL		X					
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				<b>TOTAL:</b>	17	21	

The bill was then ordered favorably reported to the House of Representatives by a roll call vote of 21 yeas to 17 nays, as follows:

Committee on Natural Resources  
U.S. House of Representatives  
118th Congress

Date: April 28, 2023

Recorded Vote #: 16

Meeting on / Amendment on: Favorably reporting H.R. 1245

MEMBERS				MEMBERS			
	Yea	Nay	Pres		Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Grijalva, AZ, Ranking		X	
Mr. Lambern, CO	X			Ms. Napolitano, CA		X	
Mr. Wittman, VA	X			Mr. Sablan, CNMI			
Mr. McClintock, CA	X			Mr. Huffman, CA		X	
Mr. Gosar, AZ	X			Mr. Gallego, AZ		X	
Mr. Graves, LA	X			Mr. Neguse, CO		X	
Mrs. Radewagen, AS				Mr. Lavin, CA		X	
Mr. LaMalfa, CA	X			Ms. Porter, CA		X	
Mr. Webster, FL	X			Ms. Leger Fernandez, NM		X	
Ms. González-Colón, PR				Ms. Stansbury, NM		X	
Mr. Fulcher, ID	X			Mrs. Peltola, AK		X	
Mr. Stauber, MN	X			Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT	X			Mr. Mullin, CA		X	
Mr. Tiffany, WI	X			Ms. Hoyle, OR		X	
Mr. Carl, AL	X			Ms. Kamelagar-Dove, CD		X	
Mr. Rosendale, MT	X			Mr. Magaziner, RI		X	
Mrs. Boebert, CO	X			Ms. Valázquez, NY			
Mr. Bentz, OR	X			Mr. Caste, HI		X	
Ms. Kiggans, VA	X			Mrs. Dingell, MI		X	
Mr. Moylan, Guam				Ms. Lea, NV		X	
Mr. Hunt, TX							
Mr. Collins, GA	X						
Ms. Lujan, FL	X						
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	21	17	

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on March 23, 2023.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 establishes the short title of the bill as the “Grizzly Bear State Management Act.”

*Section 2. Removal of the Northern Continental Divide Ecosystem of Grizzly Bears from the List of endangered and threatened wildlife*

Section 2 requires the Secretary of the Interior, not later than 180 days after the enactment of the Act, to issue a final rule removing the Northern Continental Divide Ecosystem Population of Grizzly Bears from the federal List of endangered and threatened wildlife. This section also precludes the reissuance of the final rule from judicial review.

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 section 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:

H.R. 1245, Grizzly Bear State Management Act of 2023			
As ordered reported by the House Committee on Natural Resources on April 28, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	*	*	*
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	< \$5 billion	<b>Mandate Effects</b>	
		Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

H.R. 1245 would direct the Secretary of the Interior, without regard to other provisions of law, to reissue the final rule, “Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Threatened and Endangered Wildlife.” The bill also would exempt that reissued rule from judicial review. The rule was submitted by the U.S. Fish and Wildlife Service (USFWS), published in the *Federal Register* on June 30, 2017, and took effect on July 31, 2017. A court order in 2018 reinstated protection of the grizzly bears as a threatened species under the Endangered Species Act (ESA). Under H.R. 1245, the reinstated rule would again remove grizzly bears in the Greater Yellowstone Ecosystem from protection under the ESA.

USFWS is authorized to collect permitting fees for lawful activities that involve protected species, including scientific research, conservation, and unintentional taking of animals while performing permitted activities. Under H.R. 1245, permits would no longer be required for such activities involving grizzly bears in the Greater Yellowstone Ecosystem. Permitting fees are recorded in the budget as offsetting receipts (or reductions in direct spending) and are available to be spent without further appropriation. Using information from USFWS, CBO estimates that enacting H.R. 1245 would reduce those receipts and the consequent spending by an insignificant amount over the 2024–2033 period so that the net increase in direct spending would be negligible.

Violators of the ESA are subject to civil and criminal penalties, which are recorded as revenues and available for spending without further appropriation. Using information from USFWS, CBO estimates that any reductions in penalties or associated spending would be insignificant because of the small number of related cases expected to occur over the 2024–2033 period.

Finally, CBO estimates that the administrative costs to reissue the regulation under H.R. 1245 would be insignificant; any spending would be subject to the availability of appropriated funds.

H.R. 1245 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by eliminating a right of action for entities to seek judicial review of the administrative rule required by the bill. Because the rights of action precluded under the bill do not generally result in monetary damages, CBO estimates that the cost of the mandates would fall well below the intergovernmental and private-sector thresholds established in UMRA (\$99 million and \$198 million in 2023, respectively, adjusted annually for inflation).

The CBO staff contact for this estimate is Lilia Ledezma (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by Emily Stern, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

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 a final rule relating to removing the Greater Yellowstone Ecosystem population of grizzly bears from the Federal list of endangered and threatened wildlife, and for other purposes.

## 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.

## UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, H.R. 1245 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act by eliminating a right of action for entities to seek judicial review of the administrative rule required by the bill. However, the Congressional Budget Office estimates that the cost of the mandates would fall well below the intergovernmental and private-sector thresholds established in the Unfunded Mandates Reform Act, which are \$99 million and \$198 million in 2023, respectively, adjusted annually for inflation.

## EXISTING PROGRAMS

*Directed Rule Making.* This bill directs the Secretary of the Interior, an executive branch official, to reissue the final rule entitled “Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife” (82 Fed. Reg. 30502 (June 30, 2017)).

*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.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill’s purpose and text and the Supremacy Clause of Article VI of the U.S. Constitution.

## CHANGES IN EXISTING LAW

As reported by the Committee on Natural Resources, H.R. 1245 makes no changes in existing law.

## DISSENTING VIEWS

H.R. 1245 would legislatively de-list the Greater Yellowstone Ecosystem grizzly bear, located around Yellowstone National Park in Wyoming, Montana, and Idaho, from the Endangered Species Act (ESA). It directs the Secretary of the Interior to reissue the final 2017 rule de-listing the Greater Yellowstone Grizzly, “Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife” (82 Fed. Reg. 30502 (June 30, 2017)). H.R. 1245 includes provisions allowing the Secretary to de-list this distinct population segment (DPS) without regard to any other law that would normally apply to issuing that final rule, such as the Administrative Procedure Act. The bill would not allow the rule to be subject to judicial review.

The Greater Yellowstone Ecosystem (GYE) grizzly bear population once numbered as few as 136 individuals, but it has slowly recovered to approximately 730 individuals.<sup>1</sup> Despite population size and range increases, grizzlies are threatened by genetic bottlenecks, habitat loss, lack of habitat connectivity, climate change, hunting, and other contact with humans. With increased grizzly population numbers and continued human encroachment and development in grizzly habitat, encounters have increased. Unfortunately, state management often allows the hunting of grizzlies, and even with protections under the ESA, “problematic” grizzlies are killed.<sup>2</sup> Conflicting opinions on state management and federal protections have created contention around grizzly management, resulting in many petitions to de-list the grizzly and lawsuits regarding listing decisions over the years.

The U.S. Fish and Wildlife Service (FWS) is conducting a status review based on three petitions to de-list the grizzly bear, two of which would de-list the grizzly in the GYE. Upon completion of the evaluation, the FWS may choose to alter the listing status of any of the petitioned populations.

This bill attempts to bypass the species status assessment and congressionally de-list the grizzly bear in the GYE and prevent any similar listing in the future.

The passage of this bill would circumvent the FWS review process that is currently ongoing and being conducted by experts in their field based on the best available science. If supporters of this bill believe that the best available science points to recovery and warrants the de-listing of grizzly populations in the GYE, then they

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<sup>1</sup>Haroldson, M. A., B. E. Karabensh, and F. T. van Manen. 2020. Estimating number of females with cubs. Pages 12–18 in F. T. van Manen, M. A. Haroldson, and B. E. Karabensh, editors. Yellowstone grizzly bear investigations: annual report of the Interagency Grizzly Bear Study Team, 2019. U.S. Geological Survey, Bozeman, Montana, USA.

<sup>2</sup>See, e.g., Brown, M. US May Lift Protections for Yellowstone, Glacier Grizzlies. February 3, 2023. <https://apnews.com/article/us-fish-and-wildlife-service-alaska-montana-wyoming-idaho-f09eccea665e580248c44692d46115d>.

should present relevant data to the FWS and feel confident that an appropriate listing decision will be made. The current FWS review will be over in less than 12 months, with an announcement expected in February 2024. The rush for Republicans to bring this legislation forward before the FWS results are published lends doubt to their claims that state management is adequate to protect the grizzly from future harm and underscores the need for an unbiased, scientific review of the facts to determine species listing and de-listing under the ESA.

Further, many Native Americans value the grizzly bear in ways that are not—and cannot be—accounted for under the ESA. Their concerns should be considered in the future of grizzly management. Blocking judicial review removes a vital avenue for public and tribal recourse on grizzly management issues. The bill ignores federal trust responsibilities with tribes and skips tribal consultation, leaving tribes entirely out of the process.

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