



OPPOSE A PROVISION THAT WOULD REMOVE COURTS FROM THE ENDANGERED SPECIES ACT PROCESS

Interior Appropriations Bill Would Shield Potentially Flawed Federal Decisions from Judicial Review

Introduction

Section 119 of the Interior and Environment Appropriations bill for fiscal year 2012 (H.R. 2584) exempts from judicial review any final rule removing gray wolves in Wyoming and the Western Great Lakes Distinct Population Segment (i.e., all of Michigan, Minnesota, and Wisconsin, and portions of North and South Dakota, Iowa, Illinois, Indiana, and Ohio) from the Endangered Species Act.

While the Fish and Wildlife Service (the “Service”) is currently *proposing* to delist gray wolf populations in Wyoming and the Great Lakes, it has not yet done so. Thus, this provision would protect the Service’s rules from judicial review before anyone even knows what they will contain. Several of the states that would be affected by the Great Lakes rule oppose the Service’s proposal, which is based on controversial information and unsettled science. Not only would Section 119 bar judicial review for what may be extremely flawed government decisions, but it would also undercut one of our nation’s most important checks and balances and place the interests of the federal government over those of states.



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Would Insulate Potentially Flawed Federal Decisions from Judicial Review

Currently, neither gray wolves in Wyoming or the Great Lakes have been delisted. Thus, Section 119 would bar judicial review of future decisions, despite the fact that we don’t yet know what these rules will contain or if they will be flawed.

Additionally, there is some indication that these rules, when they are eventually released, could be faulty. In Wyoming, Interior Secretary Salazar recently stated that he had struck a deal with Governor Mead to delist wolves in Wyoming. The agreement would include a shoot-on-sight policy similar to one the Service previously found inadequate for maintaining a recovered population and a district court found to be illegal. The Service’s proposed delisting rule for the Great Lakes, issued this May, also suggests that its final rule might not be based on the best available science, as required. *See* 76 Fed. Reg. 26086. This is because in addition to delisting wolves in the Great Lakes, the proposed rule also reclassifies wolves in the eastern part of the country that exhibit coyote-like genes as a separate species (*Canis lycaon*), despite that the science regarding this is disputed. As a result, if this rule were finalized in its current form, it would delist gray wolves in 29 eastern states, including New York and all of New England.

Would Place Federal Interests over State Interests

Because the Service's proposed delisting rule for the Great Lakes, if finalized, would delist wolves in states outside of the Great Lakes by creating a new species of wolf (*Canis lycaon*), a number of states oppose the proposed rule. New York has stated that this aspect of the rule is "erroneous and scientifically insupportable" and that the recognition of a new species of eastern wolf "is unprecedented and not supported by a consensus of the scientific community." Wisconsin said that they "strongly disagree" with the Service's conclusion, which is "contrary to over 30 years of listing, protection and management." Minnesota declared that the Service has "prematurely accepted only one of several competing alternatives to the taxonomic classification of wolves." By preventing these states from challenging a rule that affects them directly, this provision would place the interests of the federal government over those of the states.

Would Drastically Reduce Oversight of the Federal Government

Access to our judicial system is critical to ensuring that federal political appointees adhere to our nation's laws. This provision essentially gives federal regulators a blank check – allowing them to do whatever they please, regardless of the interests of states or individuals. Giving any bureaucracy unfettered powers, free from judicial review, directly conflicts with our system of checks and balances.

Would Set a Dangerous Precedent

In the current CR, Congress overrode a judicial decision it did not like in order to delist gray wolves in the Northern Rocky Mountains (excluding Wyoming) from the Endangered Species List. Section 119 would create an even more dangerous precedent by barring judicial review of decisions that have yet to be finalized and face opposition from a number of affected states. Effectively, this provision would put federal interests above states rights when it comes to wildlife decisions. It would also set the stage for Members to pass legislation barring *any* of the Service's decisions from being challenged in court. Not only would such a provision greatly hamper the role of courts in our society, but it would also prevent a broad sector of people, including hunting, ranching, and industry groups, from challenging federal decisions they think are flawed or illegal.

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