



Comments of the Regulatory Action Center

Re: Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife
Docket ID: FWS-HQ-ES-2018-0097-0001

July 15, 2019

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

On behalf of over 5.7 million activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the notice of proposed rulemaking on Removing the Gray Wolf from the List of Endangered and Threatened Wildlife (FWS-HQ-ES-2018-0097-0001), and to participate in the discussion surrounding this issue. This notice reflects the determination of FWS that the Gray Wolf warrants removal from the list as its recovery no longer brings it in line with the criteria for an endangered or threatened species.

FreedomWorks Foundation vehemently opposes unnecessary, burdensome government regulations, especially so when they exist in perpetuity. The Endangered Species Act (ESA) hits all three of those criteria. It is unnecessary in that there are avenues for private citizens to assist in the preservation of these species without government mandates. It is burdensome as it both a direct and indirect regulation on the property rights of Americans across the country, particularly in rural areas. Finally, the ESA essentially lacks effective means to sunset the designations made on certain species, even after significant recovery has occurred.

It is for these reasons that the Regulatory Action Center (RAC) comes out in support of removing the Gray Wolf from the list of endangered and threatened wildlife. We are encouraged to see FWS beginning the process of actually de-listing species that no longer require the protections of the ESA and hope this will be the first effort of many to begin easing the regulatory burden on rural America.

Many advocates on both sides of the ESA debate acknowledge that well over 90 percent of species listed under the Act have failed to be de-listed. Proponents of the ESA say this statistic shows how necessary the legislation still is, given that so many species remained "endangered." Opponents say that it shows how inadequate the legislation has been when it comes to recovering these species. However, the truth lies somewhere between both points. The ESA has been somewhat effective at helping species recover, but is thoroughly inept when it comes to returning to a normal regulatory framework once that recovery has occurred.

The Gray Wolf is an excellent illustration of that reality. The Wisconsin Department of Natural Resources (DNR) estimates that the Gray Wolf population within that state has grown from 14 in 1985 to roughly 900 last year. This sort of recovery has been seen in other states like Minnesota and ranging as far out to states like Idaho, Montana, and portions of the Pacific Northwest. For perspective, the Wisconsin DNR outlined a goal of 250 wolves to de-list the species.



While decades ago, the Gray Wolf was almost hunted to extinction, today over 5,500 wolves live in the continental United States. It is time to declare victory and let the Gray Wolf and Americans who live near their habitats to continue life under a normal regulatory framework.

This shows one of the fundamental flaws of the ESA. FWS should publish, as the Wisconsin DNR did, a set number to determine a healthy, thriving species in the United States. Unfortunately, no such benchmark exists and the regulations imposed exist in perpetuity. Another issue here is that the ESA does not respect the fundamental tenets of our Tenth Amendment federalism. While states, like Wisconsin, may seek their own conservation plan to avoid compliance with federal listing, the burden is placed on states to request federal action. This is what puts Wisconsin in its current bind.

Further, Congress voted years ago to de-list the Gray Wolf for portions of the Rocky Mountains. We have seen that the Gray Wolf has exceeded targets in Wisconsin and has healthy populations in states like Minnesota and Montana as well. Any population issues that exist in the remaining states to which the Gray Wolf is native should be dealt with at the state and local level. The Gray Wolf has clearly demonstrated enough recovery and resilience to be a prime candidate for federal de-listing.

This also demonstrates the burdens that the ESA designation of the Gray Wolf places on American citizens as well as state and local governments. Despite the fact that Gray Wolf populations have exceeded management targets, the state of Wisconsin cannot effectively manage the population to prevent harm to landowners because of the existing protections. The same dilemma is posed farmers in rural areas. Ryan Klussendorf, a dairy farmer in Taylor County, Wisconsin detailed that he is forced to spend an extra \$30,000 to pasture his livestock, as his previous methods left them vulnerable to wolf attacks. Unfortunately, Klussendorf is also prohibited from harming wolves on or near his land because of existing protections. No one should have to choose between preserving their livelihood and complying with outdated federal regulations.

Ted Abram, a member of FreedomWorks' Board of Directors is himself a resident of the state of Oregon. Ted no longer feels comfortable hiking in his area because of the increased presence of Gray Wolves near his home. This is having an impact on Americans of all walks of life in a wide variety of areas of this country.

Personal anecdotes aside, the regulations imposed by the ESA are strict and should be scaled back wherever possible. Where there is a reasonable justification to de-list a species, that opportunity should be taken enthusiastically. Complacency is an acceptance of the harm we are causing to scores of Americans. The ESA is a strict regulation of private property under the guise of conservation. The broad definition of "harm" also makes it illegal to operate in the type of habitat a listed species could find suitable (regardless of whether or not they are actually present). This is another encroachment on land rights and many landowners who are not legal experts will undoubtedly be caught in the cross hairs.

One could certainly make the argument that this framework creates a reverse incentive structure. Landowners might be incentivized to destroy potentially habitable areas near their land



before they are discovered so they will not be subject to the ESA's harsh regulations. Removing the Gray Wolf from the ESA designation would ensure that landowners only cause harm to a Gray Wolf or its habitat if there is a direct threat posed to their life or property.

Let nothing in the preceding few paragraphs be construed as a criticism of the Gray Wolf as a species or an endorsement of any unnecessary harm being brought to any one of those majestic animals. The Gray Wolf is an important part of America's history and is also an important part of America's present. The Gray Wolf drives a lot of tourist revenue in that many want to see these creatures in their natural habitat. An America without the Gray Wolf would certainly be a country worse off than it was previously. Fear-mongering about the species and unnecessary killing of these animals is plainly and simply wrong.

Lastly, the protections of the ESA are broadly unnecessary. As was discussed earlier, states and localities are perfectly capable of handling preservation and management on their own. In fact, the ESA often makes them less effective in doing so. The wisdom of our Tenth Amendment is the recognition that a national federal government does not always understand the needs of each part of the country. Each area is more in tune with its needs and are thus, more capable of handling local issues. Species management should surely be among them.

There are also a variety of other options available to help preserve species while respecting the principles of limited governance, the free market, and property rights. Randal O'Toole, a senior fellow at the Cato Institute, suggested that private ownership of wildlife be considered as an alternative. He mentions that for years, it was British common law for landowners to own the wildlife that resided on the land.

Furthermore, George R. Wilson, an Australian environmental scientist, proposes a regime "in which landholders, community groups, and investors would have a form of wildlife ownership by leasing animals on land outside protected areas. They would be able to acquire threatened species from locally overabundant populations, breed them, innovate, and assist further colonization/range expansion while making a profit from the increase." This is a market-based structure where government does not play a leading role in spurring biodiversity. O'Toole notes also that such an approach has helped the domestic peregrine falcon population recover from the brink of extinction.

These formal comments are less of an endorsement of the structure outlined above and more so a demonstration that other avenues exist to protect endangered and threatened species like the Gray Wolf. De-listing the Gray Wolf at the federal level would not be the end of all protections for that species, as some critics of this proposal would like to claim. In fact, removing the Gray Wolf from the federal list of endangered and threatened species would allow more tailored solutions to be implemented by people who know best. Nothing in this proposal, nor in these formal comments, should be construed as an endorsement of zero protections of any sort for the Gray Wolf.

We appreciate the opportunity to weigh in on this notice and thank the FWS in advance for the time and attention it gives to these comments and the scores of others it has surely received concerning this docket. Animals like the Gray Wolf spur our imaginations and allow us to view



nature with childlike wonder. It is a beautiful thing to know that both the FWS and the American public care deeply about issues such as these and seek to do what is best for these species. We hope you will move forward with the de-listing process, allowing the species to be properly managed and providing much-needed relief for America's rural populations and its small farmers.

Respectfully Submitted,

Daniel Savickas
Regulatory Policy Manager
FreedomWorks Foundation