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D.C. Circuit Court of Appeals Approves Endangered Species Act Delisting for Gray Wolves in Wyoming

In 2012, the U.S. Fish and Wildlife Service (Service), acting on behalf of the Secretary of the Interior, delisted the gray wolf in Wyoming as a protected species pursuant to the Endangered Species Act (ESA). Several environmental groups sued to reinstate the listing and the district court vacated the rule, agreeing that the Service had arbitrarily determined that Wyoming had put into place adequate regulatory mechanisms to ensure protection for gray wolves. The Secretary and the State of Wyoming appealed the district court's ruling, principally on the ground that the court erred by failing to defer to the Service's reasonable interpretation of regulatory mechanisms to include Wyoming's management plan for a wolf population buffer, which although not itself legally binding, was a practical entailment of Wyoming's statutory establishment of a minimum wolf population.

The Service's proposal to delist the gray wolf in Wyoming was based on federal-state cooperative efforts to develop an adequate state regulatory framework, taking into account court decisions that had found prior state plans deficient. However, the district court concluded that Wyoming's inadequate regulatory framework rendered arbitrary the Service's determination that the gray wolf is not threatened or endangered in Wyoming. The district court found that, although the delisting imposed on Wyoming a duty to maintain above the minimal number of wolves, and although Wyoming statutes had been amended to require at least the minimum number, only an Addendum to Wyoming's management plan included a commitment to managing above that level and it was not legally enforceable. Based on the court's determination that a legal commitment to maintain a buffer population was required, it vacated the delisting.

In *Defenders of Wildlife v. Zinke*, 849 F.3d 1077 (D.C. Cir. 2017), the U.S. Court of Appeals for the District of Columbia Circuit reinstated the Service's delisting. The court saw the question before it as turning on "whether the rulemaking record demonstrates the Service exercised its judgment in a reasonable way in concluding that Wyoming's Management Plan, which explains how the State intends to carry out its day-to-day implementation of its legal obligations, will adequately protect Wyoming's gray wolf population after delisting."

The D.C. Circuit reversed the district court's vacatur of the Rule, concluding that the Service adequately and reasonably evaluated the state regulatory mechanisms in place to conserve the species. Central to

this case was the question of whether existing regulatory mechanisms, in order to be "adequate," must be binding. The D.C. Circuit concluded, consistent with a number of judicial decisions in recent years, that "existing regulatory mechanisms" do not need to be binding to support a conclusion that a species does not warrant listing under the ESA. Thus, the issue before the court was whether the rulemaking record demonstrated that the Service exercised its judgment in a reasonable way in concluding that Wyoming's management plan will adequately protect Wyoming's gray wolf population after delisting.

The court applied the familiar two-step *Chevron* analysis to review agency action, and deferred to the Service's expertise in determining that the state management plan is a reliable indicator of how Wyoming plans to implement its statutes and regulations, including that the State would not manage the species down to its minimum population level (at least 10 breeding pairs and at least 100 individuals) and would continue to maintain a buffer above that minimum. The court held that the Service reasonably concluded that Wyoming's efforts, as set forth in its management plan, were sufficiently certain to be implemented based on the strength of the State's incentives to manage wolf populations so as to avoid relisting.

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