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THE PRESIDENT'S FISCAL YEAR 2016 BUDGET REQUEST FOR THE FISH AND WILDLIFE SERVICE AND LEGISLATIVE HEARING ON ENDANGERED SPECIES BILLS

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MAY 6, 2015

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ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

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THE PRESIDENT'S FISCAL YEAR 2016 BUDGET REQUEST FOR THE FISH AND WILDLIFE SERVICE AND LEGISLATIVE HEARING ON ENDANGERED SPECIES BILLS

WEDNESDAY, MAY 6, 2015

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Building, Hon. James M. Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Boxer, Wicker, Fischer, Rounds, Barrasso, Crapo, Boozman, Sullivan, Capito, Cardin, Merkley, Whitehouse, Booker, Markey, and Gillibrand.

Senator INHOFE. Our meeting will come to order.

Let's do this. We have five members. One is Senator Enzi, one is Senator Booker and the other three will be here, who have legislation that they have introduced that does affect Fish and Wildlife. So we have said we would be happy to have them make a brief statement as to their legislation. And this is your opportunity, since you are the first one here, Senator Enzi, we will recognize you.

OPENING STATEMENT OF HON. MIKE B. ENZI, U.S. SENATOR FROM THE STATE OF WYOMING

Senator ENZI. Thank you, Mr. Chairman, Ranking Member. I appreciate this opportunity to testify before you on S. 736, the State, Tribal and Local Species Transparency Act. I appreciate the committee's efforts to focus on the Endangered Species Act. We have some of the richest wildlife habitat in North America and it supports a number of industries, including tourism, guiding, recreation, agriculture, just to name a few.

The successes in Wyoming have come from State management of wildlife based on science collected from State, local, tribal and Federal wildlife officials. An example of that is we have recovered an extinct species. The black-footed ferret was considered extinct. Near Meeteetse, Wyoming, I think its population is about 85, they found a few of these, they captured them, they put them into captivity for a while so they could get the best genetic breeding on them. They have expanded dramatically and they have been released back into the wild and they are doing well out there now.

That is an effort that relied on science from a variety of sources, including State and Federal biologists. It has resulted in restoring North America's only ferret species.

However, these types of partnerships aren't the norm. In too many cases, the data Federal agencies rely on to make a listing are not shared with the key State partners. Making matters worse, there are instances when State, local and tribal science is ignored completely.

For that reason, I introduced this bill to include those people. I did it last year with a number of my colleagues and again in this Congress. It is designed to ensure that the Federal Government adheres to its statutory responsibilities to cooperate with the States under the Endangered Species Act and second, to ensure that the best available scientific data is used in the listing decisions.

Section 6 of ESA already requires the Secretary to "cooperate to the maximum extent practicable with the States." Despite the statutory charge on the Federal Government, States have noted cases where the ESA listing decisions are made in the dark, and express that Federal agencies often duplicate analyses in conservation plans that are already generated by the States.

We know that science from State, local and tribal officials plays an effective role in wildlife management. For example, in December, 2010, the Fish and Wildlife Service proposed to list the dune sagebrush lizard as endangered under the ESA. Texas officials raised concerns that the Fish and Wildlife listing proposal depended on scant, outdated data from the 1960s to determine the lizard's known distribution and assumed that the lizard was locally extinct in certain areas where the State of Texas had verified that it was present.

After research and field surveys conducted in cooperation with the States, the local government and other affected stakeholders, the Fish and Wildlife Service reversed its earlier determination to list the dune sagebrush lizard as endangered in June 2012. As a result, the lizard continues to co-exist with State economic activities in the area that produces 14 percent of the Nation's oil and 47,000 jobs.

The bill also ensures that the best scientific and commercial data available to the Secretaries of Interior or Commerce is used in ESA listing decisions. Hearings on this bill in the House during the last session of Congress revealed numerous examples of Federal agencies not including data or information in decisions where they are required to utilize the best scientific and commercial data available.

I can go into an example of grizzlies in Wyoming, they were measuring footprints instead of checking the DNA of the hair of the bears in the feeding areas.

The legislation you are considering today is designed to address such inadequacies. S. 736 does not favor one science over another or require multiple county or State submissions of conflicting data. The Secretary of Interior or Commerce would continue to have the final decision on what constitutes best available scientific and commercial data. However, S. 736 would ensure that they incorporate and provide proper respect for data provided to them by States, tribes and local governments.

I will keep my comments short because I know you are covering a number of different things today. You are going to be taking testimony from others, including Director Ashe. I have to say that he has been extremely helpful with the Wyoming wolves, improving the Wyoming plan for wolves, which has led to an increase in the number of wolves but a decrease in the number of conflicts.

I will say there are a number of these other bills I have co-sponsored as well as helped author. In particular, I want to recognize Senator Gardner for his work with the Wyoming delegation to ensure that States with existing approved or endorsed plans are adequately protected under this legislation. I thank you, Mr. Chair.

Senator INHOFE. Thank you, Senator Enzi. Consider me a co-sponsor.

Senator Booker.

Senator BOOKER. Mr. Chairman, I would happily defer to Senator Heller. I know he will want to speak and leave. I am going to be here for the entire hearing. And there is a tradition; we are both from the PAC 12. We always let USC go before Stanford, because you save the best for last.

[Laughter.]

Senator INHOFE. We also have Senator Gardner here, so we will go ahead with you, Senator Heller.

OPENING STATEMENT OF HON. DEAN HELLER, U.S. SENATOR FROM THE STATE OF NEVADA

Senator HELLER. Mr. Chairman, thank you.

Senator INHOFE. And I say to my fellow Senator, try to keep it within 5 minutes. We have a big agenda today.

Senator HELLER. Certainly, I will give it my best effort, my best PAC 12 effort, let's put it that way.

I do want to thank my friend from New Jersey for his help and support and for his efforts for his school. I know how important that is to him as it is for all of us. Thank you very much.

Again, Mr. Chairman, thanks for holding this hearing today. I know you have a number of pieces of legislation on today's agenda. My bill, the Common Sense in Species Protection Act, is one of them.

As you are well aware, I grew up in the State of Nevada. We understand the importance of being good stewards of our natural treasures. We are very blessed in our State. But we also understand the importance of economic development. As you are probably well aware, hunting, camping, horseback riding in your State is just as revered in our State. We still to this day, my wife and I, when opportunity avails itself, get our horses out and we will pack our horses into the Sierras, or take some crest trail that spooks my wife a little bit. But we continue to do so.

Needless to say, I just want to make sure that the activities that I have enjoyed over the years, my family, my children, are continued for future generations. I think that is why we are here today. I again appreciate, Mr. Chairman, your efforts to hold this hearing.

I think it is important that we have effective environmental laws that balance the need to protect wildlife and the environment while allowing for reasonable economic development. Unfortunately, the Endangered Species Act, I believe, is a prime example of a law that

has proven to be out of date and frankly, ineffective. Since the last time it was reformed 30 years ago, it has less than a 2 percent effective recovery rate. I know these days you get medals for just participating, but when I was in school, 2 percent definitely was a failing grade. It is clear the law is not serving wildlife or frankly, our western ways of life as it should.

While my bill is not a cure-all, it is a simple reform aimed at modernizing the ESA, making the listing process more transparent. When the U.S. Fish and Wildlife makes a listing decision, it not only aims to protect the species itself, it also affords some protection to the ecosystems that these species rely upon.

They frequently make what is called a critical habitat designation, which of the lands that are essential for the conservation of that particular species. Activities on these lands, as you can imagine, Mr. Chairman, are heavily restricted. States like Nevada, where mining, ranching, energy production and outdoor recreation all serve as a central component to our local economy, these restrictions have been and can be very devastating.

My bill does not take away from Interior's to limit these types of activities. What it does require, though, is that the Department of Interior report the full economic impact of any proposed critical habitat designation to the public before it makes a decision. Specifically, rather than a very limited economic analysis that they can currently conduct, which by the way is very limited, the Service must determine the effect a designation would have on property use and values, employment and revenues for the States and local governments. Additionally, it requires the Service to exclude areas from critical habitat designation if the benefit of keeping it a multiuse purpose far exceeds the benefits a restriction would have for the wildlife.

Access to all lands, particularly public lands, is vital to Nevada's character and its economy. Restricting the multiple use of those lands in a non-transparent and irrational fashion is not an option for Nevadans who rely heavily on them for their livelihood. Whether it is the greater sage grouse, the long-eared bat, the lesser prairie chicken or any other species the agency is making a decision on, it is critical that at a minimum that we had this simple common sense step to that process.

So before I conclude, I would like to briefly touch on Senator Cory Gardner's Sage Grouse Protection and Conservation Act. I will let him discuss the details of his bill. But as an original cosponsor, I want to underscore the importance of this measure to the State of Nevada. Fish and Wildlife is expected to make a decision on whether to protect the greater sage grouse under the Endangered Species Act this fall. Should it get listed, our rural way of life and our local economies would be devastated. All grazing, all hunting, all recreation, all mining and energy production in over 19 million acres of public lands in Nevada would all come to a screeching halt.

Given the threat of a listing, the 11 western States, home to sage grouse, have been working diligently on State-specific conservation plans. These plans specifically aim to address each State's unique threats to sage grouse while protecting their local economies. So it

is important to States and the Interior has said they play a major factor in their listing determinations.

My time has run out, Mr. Chairman, and I will cut my comments short. I again want to thank you for our efforts on hearing these bills. I think it is important. We are determined in these western States that our rural way of life can be strengthened. I think we can work together to make this happen.

So thank you, and again I want to thank the gentlemen to my right and left for their efforts and your committee for hearing these bills.

Senator INHOFE. Very good. Thank you. Senator Gardner.

OPENING STATEMENT OF HON. CORY S. GARDNER, U.S. SENATOR FROM THE STATE OF COLORADO

Senator GARDNER. Thank you, Chairman Inhofe. To Senator Booker, not everybody can be in the Mountain West Conference. We understand that.

[Laughter.]

Senator GARDNER. Thank you, Chairman Inhofe and Ranking Member Boxer, for this hearing today on the Endangered Species Act, including my legislation, S. 1036. It has been just around 10 years ago that I first testified before the EPW committee on the need to look at how we can do a better job of recovering the species under the Endangered Species Act. The Sage Grouse Protection and Conservation Act is a part of that continuing effort.

Thank you to co-sponsors here, Senator Heller and others, about this discussion and the importance of this legislation. I certainly welcome the opportunity to make this a truly successful bipartisan effort.

The Act that we have introduced is designed to allow States to create and implement State-specific conservation and management plans, State-specific plans that would allow us to protect and restore greater sage grouse populations and their habitats and require Federal agencies to honor the hard work and massive investments by the States to protect sage grouse within their borders. It is important to note that this legislation is not a mandate. Again, this is an optional approach. A State may choose to defer to Federal agencies for sage grouse protection. A State opts into this legislation.

In 2011, Secretary of the Interior Salazar invited western States to craft State plans for the management of sage grouse on all lands, State and Federal. These plans were to be submitted and considered by the Secretary as the preferred management alternative for sage grouse within each State as part of the land use plan process. My legislation keeps that promise and allows States to prescribe management of sage grouse within their borders.

Colorado and other States have spent years crafting these plans and spent hundreds of millions of dollars, all with the cooperation and participation of interested stakeholders and the Federal agencies. Since 2010, States, Federal agencies, landowners and stakeholders are voluntarily protecting over 4.4 million acres of private property for sage grouse. We have made tremendous progress, and my legislation seeks to keep that momentum moving forward.

This incredible cooperation among States, the Federal agencies, landowners and stakeholders will no doubt end the moment that there is a listing of the sage grouse this September when the Federal land use plans are released in May or June, because those land use plan amendments will largely ignore the efforts of the States.

The Sage Grouse Protection and Conservation Act ensures that sage grouse will be managed appropriately, whether they occur on Federal, State or private lands. It will prohibit the Secretary's proposed withdrawal of 16.5 million acres across the west from agricultural activity, energy development and outdoor recreation, which will cost jobs and devastate our local economies.

This legislation represents an extremely important effort to keep all parties at the table to conserve the species. I look forward to working with members of the committee and colleagues in a bipartisan fashion to get this important legislation across the finish line and signed into law. I would like to submit a series of letters we have in support of the Sage Grouse Protection and Conservation Act, if I may do so.

Senator INHOFE. We will put that into the record of this hearing.

[The referenced information follows:]

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INTELLIGENCE

May 4, 2015

Senator James M. Inhofe (OK)
Chair Senate Environment and Public
Works Committee
410 Dirksen Senate Office Bldg.
Washington, DC 20510

Dear Chairman Inhofe:

Thank you for expediting the hearing for Senator Cory Gardner's S. 1036. This legislation will provide western states the ability to implement their own greater sage-grouse management plans, without further federal intervention. It fulfills the promise given by Interior Secretary Ken Salazar in the first term of the Obama Administration, that the states would be allowed to create their own management plans to avoid a listing of the species under the Endangered Species Act (ESA). Despite those assurances, it would seem that the Administration is intent to disregard their previous statements in order to pursue their environmentalist agenda to the economic detriment of the American West.

Many states in the west have already completed their sage-grouse plans and other states are working to complete such plans. Each of these plans has been built by the local communities, bringing together multiple stake holders in an effort to maintain economic viability while preserving the birds and their habitat.

The federal government's efforts to manage sage-grouse do not consider the economic wellbeing of the communities where the sage-grouse live. As they have done with so many other species, they will rush to a listing that will shut down the economy of thousands of western communities. History has shown that once a species is listed, they are almost never removed. The ESA has proven to be far more effective at locking up land than it has recovering species populations. In contrast, we have repeatedly seen how states can effectively manage animal populations.

Now is the time for the Obama Administration to show that a new and better model can be developed for preserving species. A model in which the federal government, instead of pressing its heavy hand onto the backs of the American people, partners with them to preserve species while maintaining and improving the economic viability of communities. Senator Gardner's Bill does this. I am proud to be the sponsor of this legislation in the House of Representatives. Thank you for your help and support.

Sincerely,

Chris Stewart (UT-2nd)

American Exploration &
Mining Association

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March 24, 2015

The Honorable Cory Gardner
United States Senate
Washington DC 20510

Re: The Sage Grouse Protection and Conservation Act

Dear Senator Gardner:

The American Exploration & Mining Association applauds the introduction of the Sage Grouse Protection and Conservation Act. This important legislation will provide the states with sage grouse habitat sufficient time to complete and implement state conservation and management plans for the recovery of greater sage grouse, demonstrate effectiveness of those plans, and importantly, develop the track record necessary to support a not warranted listing under the Endangered Species Act (ESA). We encourage your Senate colleagues to join you and cosponsor this important legislation.

Your legislation also ensures that Secretary Jewell and the Department of the Interior honor the invitation and promise Secretary Salazar made in December 2011 when he invited the states to prepare conservation and management plans for the conservation of the greater sage-grouse and its habitat. As you are aware, several western states accepted Secretary Salazar's invitation and have expended thousands of hours and millions of dollars working with stakeholders to develop state plans that address the unique threats in their respective states. Faced with an arbitrary deadline of September 30, 2015 in a court-approved settlement between U.S. Fish & Wildlife Service and environmental litigants, there is insufficient time for these state plans to develop the necessary track record to avoid a listing under the ESA.

Your legislation ensures that the states will have the necessary time to develop a track record and keeps pressure on the states, federal agencies and stakeholders to continue implementation of the state plans, continue investments to conserve, protect, and enhance greater sage-grouse populations, and protect and restore greater sage-grouse habitat. Your bill also provides an important opportunity to demonstrate the ESA can indeed achieve its intended purpose – to stimulate conservation and protect species so that listing as threatened or endangered is not necessary. This can only happen if the Act is allowed to work as enacted by Congress, without the inappropriate changes made to the Act through settlements.

American Exploration & Mining Association (AEMA) is a 120-year old, 2,500 member national association representing the minerals industry with members residing in 42 U.S. states. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80% of our members are small businesses or work for small businesses; many have projects located on lands with sage-grouse habitat. Most of our members are individual citizens.

Thank you for introducing this important legislation and please let us know how we can help.

Yours truly,

Laura Skaer

Laura Skaer
Executive Director

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May 5, 2015

The Honorable James Inhofe
Chair, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington DC 20510

Re: S. 1036, The Sage Grouse Protection and Conservation Act

Dear Chairman Inhofe:

The American Exploration & Mining Association (AEMA) appreciates the expedited hearing on S. 1036, Senator Gardner's Sage Grouse Protection and Conservation Act. This important legislation will provide the states with sage grouse habitat sufficient time to complete and implement state conservation and management plans for the recovery of greater sage grouse, demonstrate effectiveness of those plans, and importantly, develop the track record necessary to support a not warranted listing under the Endangered Species Act (ESA).

S. 1036 also ensures that Secretary Jewell and the Department of the Interior honor the invitation and promise Secretary Salazar made in December 2011 when he invited the states to prepare conservation and management plans for the conservation of the greater sage-grouse and its habitat. Several western states accepted Secretary Salazar's invitation and have expended thousands of hours and millions of dollars working with stakeholders to develop state plans that address the unique threats in their respective states.

Faced with an arbitrary deadline of September 30, 2015 in a court-approved settlement between U.S. Fish & Wildlife Service and environmental litigants, there is insufficient time for these state plans to develop the necessary track record to avoid a listing under the ESA. Senator Gardner's legislation ensures that the states will have the necessary time to develop that track record and keeps pressure on the states, federal agencies and stakeholders to continue implementation of the state plans, continue investments to conserve, protect, and enhance greater sage-grouse populations, and protect and restore greater sage-grouse habitat rangewide.

Most importantly, S. 1036 provides an important opportunity to demonstrate the ESA can indeed achieve its intended purpose – to stimulate conservation and protect species so that listing as threatened or endangered is not necessary. This can only happen if the Act is allowed to work as enacted by Congress, without the inappropriate changes made to the Act through sue and settlement agreements.

AEMA is a 120-year old, 2,500 member national association representing the minerals industry with members residing in 42 U.S. states. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80% of our members are small businesses or work for small businesses; many have projects located on lands with sage-grouse habitat. Most of our members are individual citizens.

Thank you for providing a hearing for this important legislation. We are copying committee members and attaching our one-pager in support of the Sage Grouse Protection and Conservation Act.

Yours truly,

Laura Skaer

Laura Skaer
Executive Director

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Sage-Grouse Protection and Conservation Act

An important opportunity to demonstrate the ESA can achieve its intended purpose—to stimulate conservation and protect species so that listing the Sage-Grouse is not necessary

PURPOSE:

- The Gardner-Stewart Sage-Grouse Protection and Conservation Act (S. 1036 & H.R. 1997) is designed to allow states to implement state-created conservation and management plans for the recovery of greater sage-grouse and distinct population segments (GSG) in order to prevent a listing under the Endangered Species Act (ESA).
- Ensures that Secretary Jewell and DOI honor Secretary Salazar's December 2011 invitation to the western states to prepare state conservation and management plans for conservation of the GSG and its habitat to avoid the need to list GSG as a Threatened or Endangered species.
    - Several western states accepted Secretary Salazar's invitation and have expended millions of dollars and thousands of hours working with stakeholders to develop plans that address the unique threats in their states.

WHAT THE BILL DOES:

- Creates an implementation and monitoring period during which states can create and implement a state-specific conservation and management plan and collect monitoring data to document that the plan successfully protects GSG populations and habitats, in lieu of federal management through land use plan amendments or a premature ESA listing decision.
    - Not a mandate - a state may choose to defer to federal agencies for GSG protection.
- Requires states, opting to implement their own plan, to collect monitoring data on GSG habitat conditions and population trends and report this information to the Secretary of Interior.
- Requires the Secretary of Interior to share scientific data with states, assist states in crafting and the implementing the state's plan, and recognize these state plans for a minimum of 6 years.
- Maintains the GSG as a candidate species under the ESA during the implementation and monitoring period for the state plans and eliminates the arbitrary September 2015 listing deadline created in a settlement with environmental litigants.
- Ensures that state plans have sufficient time to develop the track record of conservation success necessary to support a not warranted determination.
- Prohibits the Secretary of Interior from imposing large-scale mineral withdrawals or other sweeping land use restrictions in GSG habitat.
- Keeps pressure on states, federal agencies, and stakeholders to continue implementing conservation and management plans and investing in measures to safeguard GSG populations, and protect, restore, and enhance GSG habitat to preclude the need to list the bird.
- Requires the Secretary of Interior to implement the rangeland management measures in Secretarial Order 3336 to minimize rangeland fire and the spread of invasive species and restore sagebrush landscapes on federal lands.

AEMA urges Members of Congress to cosponsor and support the Gardner-Stewart Sage Grouse Protection and Conservation Act. Contact Jennifer Loraine (jennifer_loraine@gardner.senate.gov) or Tim Robison (tim.robison@mail.house.gov).

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April 20, 2015

The Honorable Cory Gardner
B40B Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Gardner,

We are writing you today on behalf of 400,000 Farm Bureau members across the west to thank you for your work on the Sage-Grouse Protection and Conservation Act. This Act is a positive step in protecting western property from the overreach of the federal government.

Agriculture has long played a role in protecting threatened and endangered species in the United States. Agriculture provides the food and habitat needed by species. Agriculture is key to successful species recovery which requires cooperation between landowners, state, and federal governments. Farmers and ranchers have grown leery of the United States Fish and Wildlife Services (USFWS) and the Endangered Species Act. Since the inception of the Endangered Species Act, over 2000 species have been listed[1] and only 32 have been delisted because of species recovery[2]. These numbers do not bode well for a species should the USFWS become involved in management.

This is why we are so concerned with the USFWS listing of the greater Sage-Grouse. Private property owners, local governments and state governments, through working together, have seen recovery of greater Sage-Grouse. However, the USFWS, did not seem keen on using this course of action and felt a heavy-handed approach by the federal government was more warranted. We disagree and this is why your legislation is so important.

We appreciate that your legislation allows a state to create and implement a state-specific conservation and management plan that will successfully protect and restore greater Sage-Grouse populations and their habitats, in lieu of federal management through land use plan amendments and the ESA.

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[1] http://ecos.fws.gov/tess_public/pub/boxScore.jsp
[2] http://ecos.fws.gov/tess_public/reports/delisting-report

We also appreciate that this legislation is not a mandate and that states may choose to defer to federal agencies for greater Sage-Grouse protection. These are but a few of the common sense measures in your legislation that we support.

Thank you again for your work on behalf of agriculture. We support the Sage-Grouse Protection and Conservation Act and look forward to working with you as this bill moves through the legislative process.

Sincerely,

California Farm Bureau
Idaho Farm Bureau Federation
North Dakota Farm Bureau
Oregon Farm Bureau
Colorado Farm Bureau
Nevada Farm Bureau Federation
Utah Farm Bureau Federation
Wyoming Farm Bureau

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April 9, 2015

Honorable Cory Gardner
United States Senate
Senate Dirksen Office Building SD-B40B
Washington, DC 20510

Re: The Sage Grouse Protection and Conservation Act

Dear Senator Gardner:

On behalf of the Colorado Mining Association (CMA), I am writing to thank you for introducing the Sage Grouse Protection and Conservation Act and to express our support for it. This legislation will provide the states with sage grouse habitat sufficient time to complete and implement state conservation and management plans for the recovery of the greater sage grouse. We also strongly endorse the letters of support by the American Exploration & Mining Association and the Utah Mining Association.

As you know, CMA is an industry organization, founded in 1876, whose more than 1,000 members include the producers of coal, metals and other minerals throughout Colorado and the west, as well as those who provide services, equipment and supplies to Colorado's $8.8 billion mining industry. Many of the 73,000 jobs mining provides to Colorado's economy are threatened by the actions of the United States Department of the Interior, which ignore sound science and the efforts of states like Colorado to conserve the sage grouse.

The actions proposed by the Interior Department and the Bureau of Land Management would particularly threaten coal mining in northwest Colorado, an industry already hard hit by federal and state measures designed to reduce coal use. For these reasons, the CMA strongly supports your introduction of this bill and offers its assistance as this makes its way through the Senate.

Sincerely,

Stuart A. Sanderson
President

April 13, 2015

The Honorable Cory Gardner
United States Senate
Washington D.C., 20510

Re: The Sage Grouse Protection and Conservation Act

Dear Senator Gardner:

On behalf of the Colorado Stone, Sand & Gravel Association (CSSGA), I want to thank you for introducing the Sage Grouse Protection and Conservation Act. It is critical that states have sufficient time to complete, implement and demonstrate effectiveness of state conservation plans for the recovery of the greater sage-grouse. Your legislation accomplishes that objective, allows the Endangered Species Act (ESA) to function as intended.

CSSGA is a 50 plus year old, non-profit, non-partisan trade association representing the interests of the construction aggregate mining industry in Colorado. CSSGA members are actively involved in exploration and mining operations on public and private lands throughout the state, and many projects are located on lands with sage-grouse habitat.

As you are aware, at the invitation of Secretary Salazar in December 2011 Colorado has worked with stakeholders to develop state conservation plans that address the unique threats in each of the respective states. Faced with an arbitrary deadline of September 30, 2015 in a court-approved settlement between the U.S. Fish & Wildlife Service and environmental litigants, there is insufficient time for these state plans to develop the necessary track record to support a not warranted listing under the ESA.

This legislation ensures that the states will have the necessary time to develop that track record and keeps pressure on the states, federal agencies and stakeholders to continue implementation of the state plans, continue investments to conserve, protect, and enhance greater sage-grouse populations, and protect and restore greater sage-grouse habitat.

Thank you again for your work on the Sage Grouse Protection and Conservation Act. We encourage your Senate colleagues to cosponsor this important legislation and have been in touch with Senator Bennett.

Sincerely,

Todd R. Ohlheiser
Executive Director
Colorado Stone, Sand & Gravel Association

6880 S. Yosemite Court • Suite 100 • Centennial, CO 80112
303-290-0303 • www.cssga.org

National Cattlemen's Beef Association

April 21, 2015

The Honorable Cory Gardner
B40B Dirksen Senate Office Building
Washington, DC 20510

RE: Livestock Industry Support for the Sage Grouse Protection and Conservation Act

Dear Senator Gardner:

The Public Lands Council (PLC) and the National Cattlemen's Beef Association (NCBA) strongly support the *Sage Grouse Protection and Conservation Act*. PLC is the only national organization dedicated solely to representing the roughly 22,000 ranchers who operate on federal lands. NCBA is the beef industry's largest and oldest national marketing and trade association, representing American cattlemen and women who provide much of the nation's supply of food and own or manage a large portion of America's private property.

The Sage Grouse Protection and Conservation Act, would allow states to implement state-created and state-specific conservation and management plans for the recovery of greater sage-grouse in order to prevent a listing under the Endangered Species Act (ESA). This bill would encourage state management of the bird, rather than a federal management plan and the ESA, however the bill also gives an individual state the ability to defer to federal agencies for protection of the species. Once a state has submitted a plan, the Secretary of the Interior would be required to share scientific data with states, assist states in crafting and implementation of the state's plan, and must recognize these state plans for minimum of six years. States, ranchers, and private entities have already invested mass resources and countless hours to put management plans into place in some states and working toward finalizing plans in others. These plans focus on improving sage grouse habitat, through decisions based on-the-ground where impacts to the bird can be best dealt with.

The Fish and Wildlife Service (FWS) is required to determine whether or not the greater sage-grouse should be listed as threatened, endangered or not warranted under the ESA by September 2015. While Congress has prohibited any funds to be used to list the bird through the end of FY 2015, FWS is still required to make that decision. Under that timeline, there will be little time to see if those efforts and the state management plans are working. This legislation would take that arbitrary listing deadline out of the equation and give the state and private efforts time to succeed.

The sage grouse is found in eleven states across the western half of the United States, including California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Sage grouse habitat encompasses 186 million acres of public and private land. Your bill would ensure that the sage grouse is managed properly, and will keep management of the species with the state where it belongs. After all, nobody knows the conditions on the ground better than the people who live there. Ranchers across the country in particular have consistently lived and operated in harmony with the sage grouse for many decades. It is a known fact that livestock grazing is the most cost effective and efficient method of removing fine fuel loads, such as grass, from the range thus preventing wildfire, which is one of the primary threats to the sage grouse. Your bill would require the Secretary of the Interior to implement Secretarial Order 3336 to prevent rangeland fire and restore sage brush landscapes on federal lands.

It is important to note that this legislation does nothing to change the ESA but rather takes a new approach to managing species that are threatened or endangered by providing states with an opportunity to ensure protections for the sage grouse. PLC is an active member of the Western Grouse Coalition, a group created to ensure the west is not negatively impacted by a listing of the sage grouse.

PLC and NCBA applaud the efforts of you and Representative Stewart and appreciate the opportunity to provide our input on behalf of our members – the nation's food and fiber producers. We encourage members of Congress to support this positive and proactive piece of legislation.

Sincerely,

Brenda Richards

Brenda Richards
President
Public Lands Council

Philip Ellis

Philip Ellis
President
National Cattlemen's Beef Association

March 27, 2015

The Honorable Cory Gardner
United States Senate
Washington DC 20510

Re: The Sage Grouse Protection and Conservation Act

Dear Senator Gardner:

On behalf of the Utah Mining Association (UMA), I want to thank you for introducing the Sage Grouse Protection and Conservation Act. It is critical that states have sufficient time to complete, implement and demonstrate effectiveness of state conservation plans for the recovery of the greater sage-grouse. Your legislation accomplishes that objective, allows the Endangered Species Act (ESA) to function as intended, and we strongly support your efforts.

UMA is a 100 year old, 120 member, non-profit, non-partisan trade association representing the interests of the mining industry in Utah. UMA members are actively involved in exploration and mining operations on public and private lands throughout the state, and many projects are located on lands with sage-grouse habitat.

As you are aware, at the invitation of Secretary Salazar in December 2011, Utah and several other western states have worked with stakeholders to develop state conservation plans that address the unique threats in each of the respective states. Faced with an arbitrary deadline of September 30, 2015 in a court-approved settlement between the U.S. Fish & Wildlife Service and environmental litigants, there is insufficient time for these state plans to develop the necessary track record to support a not warranted listing under the ESA.

This legislation ensures that the states will have the necessary time to develop that track record and keeps pressure on the states, federal agencies and stakeholders to continue implementation of the state plans, continue investments to conserve, protect, and enhance greater sage-grouse populations, and protect and restore greater sage-grouse habitat.

Thank you again for your work on the Sage Grouse Protection and Conservation Act. We encourage your Senate colleagues to cosponsor this important legislation.

Sincerely,

Mark D. Compton
President

WESTERN ENERGY
ALLIANCE

April 21, 2015

The Honorable Cory Gardner
United States Senate
B40B Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Gardner:

Thank you for introducing the *Sage Grouse Protection and Conservation Act*, which empowers states to continue managing Greater Sage-Grouse and providing them time to show the Fish & Wildlife Service that their conservation efforts are effective. The Act is a common-sense way to ensure the protection of the species without harming the western economy and job creation.

States effectively manage sage-grouse populations and should retain management authority for the species. States already have or are currently developing viable conservation plans that protect sage-grouse by using a bottom-up process with input from diverse stakeholders. These plans provide a sensible and adaptive approach to managing the species based on local conditions, while allowing responsible economic activities to occur.

We support requiring sage-grouse management on federal lands to conform to state plans. As you are aware, the Bureau of Land Management and U.S. Forest Service are currently updating nearly one hundred federal land management plans across the range of the species with very restrictive measures for sage grouse. Many of the measures in these plan amendments do not balance conservation with continued economic activity, are unnecessarily restrictive, lack proper scientific justification, and are not tailored to local conditions. Western Energy Alliance along with a coalition of western counties and ranching, mining and energy organizations are challenging the poor science the agencies are using to make sage grouse decisions.

We appreciate your leadership on this issue, which is weighing heavily on Westerners. Western Energy Alliance and its members stand ready to support you in advancing this legislation and sustaining state-level oversight of sage-grouse conservation.

Sincerely,

Kathleen M. Sgamma
Vice President of Government & Public Affairs

1775 Sherman St., Ste 2700 Denver, CO 80203
P 303.623.0987 F 303.893.0709 W WesternEnergyAlliance.org

WESTERN GROUSE COALITION

Allen D. Freemyer
President

March 25th, 2015

The Honorable Cory Gardner
United States Senate
B40B Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Gardner,

The Western Grouse Coalition (WGC) is writing in appreciation of your efforts to preserve our Western way of life by sponsoring the Sage Grouse Protection and Conservation Act. Under your leadership this bill was introduced into the U.S. House of Representatives during the last Congressional session and enjoyed the support of 18 cosponsors from Western states. WGC appreciates the opportunity to work with you again this Congress to craft legislation that responds to the needs of the Western states and recover sage-grouse species. We urge you to introduce your updated bill in the Senate during this session and again lead the way towards a solution that will promote responsible resource management and conservation of the sage-grouse species.

WGC is working with states, local communities, private land owners and industry stakeholders to preserve state management and protection of sage-grouse species in the West. WGC believes that the Sage Grouse Protection and Conservation Act will give states the tools necessary to invest in sage-grouse conservation without the looming uncertainty of an Endangered Species Act listing. The act facilitates cooperation between state and federal governments to manage the species in a way that works best for the sage-grouse and those who work and live near them.

The 11 Western states that are home to greater sage-grouse are all already working to craft and implement conservation and management plans for sage grouse and their habitat. Recent experience demonstrates that a listing decision will only dry up state, local and private conservation efforts and funding. Currently, states, local governments and private land owners are spending hundreds of millions of dollars to protect and recover the sage grouse population of over 500,000 birds throughout 160 million acres of habitat across the West. The Sage Grouse Protection and Conservation Act will make sure that these efforts have not been in vain.

WGC is dedicated to preserving our Western way of life. We value our public lands and are working with a wide range of stakeholders to promote sustainable resource management and development in the sagebrush ecosystem. WGC understands that conservation and responsible economic development are not mutually exclusive.

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The 11 Western states that are home to the greater sage-grouse have made great progress in addressing the threats to sage grouse across the West. Your legislation will ensure that all of these efforts continue and that states have an opportunity to demonstrate that they know how best to recover grouse species. WGC is working hard to educate the public and elected officials about the importance of on-the-ground management decisions using the best available science.

Thank you and we stand ready to assist in your efforts.

Sincerely,

Allen D. Freemyer, President

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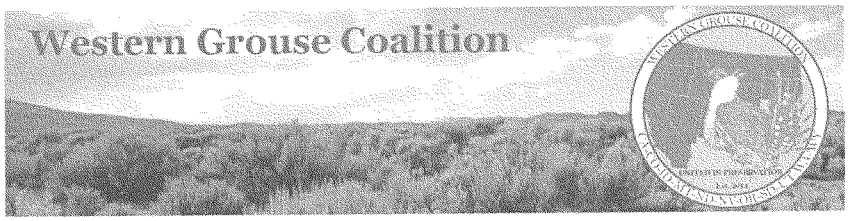

Senate Committee on Environment and Public Works
Hearing: S. 1036, Sage-Grouse Protection and Conservation Act
May 6, 2015

Chairman Inhofe,

The Western Grouse Coalition submits these comments in support of Senator Gardner's Sage-Grouse Protection and Conservation Act, S. 1036 and requests these comments be included in the official record for the hearing on May 6, 2015.

The Western Grouse Coalition (WGC) supports S. 1036, the Sage-Grouse Protection and Conservation Act and has worked closely with Senator Gardner, Congressman Stewart, states, stakeholders, and landowners to help craft a legislative solution to what we believe could be the next Endangered Species Act train wreck in the American West. The primary focus behind the Gardner legislation is to fulfill the promise made by Secretary Salazar in December of 2011 when he invited the 11 states with sage-grouse populations to engage in state initiated processes to craft state management and conservation plans for their state. The states accepted this challenge, engaged the public, landowners, and stakeholders to produce science based, professionally crafted conservation and management plans which have been largely rejected by the Secretary.

Today, states have expended millions of dollars and thousands of man hours to craft plans that address the specific threats to sage-grouse within their borders. Currently, with the help of states and through the Sage-Grouse Initiative, we have restored or are protecting over 4.4 million acres of private lands, and invested over $424 million in conservation alone. Secretary Jewell touts these activities as "epic collaboration", yet it appears the Department of Interior is poised to take actions that will end this cooperation and halt progress toward protection of sage-grouse. The Sage-Grouse Protection and Conservation Act ensures that collaboration between states, landowners and stakeholders continues by implementing the state plans and allowing them to demonstrate a track record of success within their borders in the protection and conservation of sage-grouse and their habitats. The Sage-Grouse Protection and Conservation Act:

- Creates an implementation and monitoring period of 6 years for the operation of state-specific conservation and management plans to collect monitoring data to document state plan success in the protection of sage-grouse populations and habitats, in lieu of federal management through land use plan amendments or a premature ESA listing decision.

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- Maintains sage-grouse as a candidate species under the ESA during the implementation and monitoring period of the state plans and eliminates the arbitrary September 2015 listing deadline created in a settlement with environmental litigants.
- Ensures that state plans have sufficient time to develop the track record of conservation success necessary to support a "not warranted" determination under the ESA.
- Prohibits the Secretary of Interior from imposing land use plan amendments that withdraw millions of acres of public lands west wide from energy and commodity production in the name of sage-grouse protection and utilizes state crafted prescriptions to address threats to sage-grouse.
- Keeps pressure on states, federal agencies, and stakeholders to continue implementing conservation and management plans and investing in measures to safeguard sage-grouse populations, and protect, restore, and enhance their habitats to preclude the need to list the bird.
- Requires the Secretary of Interior to implement the rangeland management measures in Secretarial Order 3336 to minimize rangeland fire and the spread of invasive species and restore sagebrush landscapes on federal lands.

States and cooperating agencies are today reviewing the draft land use plan amendments proffered by the Bureau of Land Management and the U.S. Forest Service and the initial reviews are dismal. The BLM and Forest Service are proposing to withdraw millions of acres (16.5 million acres pursuant to USFWS Director Ash to BLM Director Kornze memo dated October 2014) of public lands from energy and commodity production, place restrictions on recreation covering millions of acres of public lands, and further damage the ability of western ranchers to raise food for our nation. Proposed land use plan amendments by the BLM and Forest Service contain onerous restrictions on the use of federal lands and will most certainly bring an end to the "epic collaboration". Working with states, landowners, and stakeholders, WGC believes one thing is abundantly clear, the financial and human resources which are today protecting and conserving sage-grouse and their habitats will cease and will be refocused on litigation, political battles, and survivability of western economies—none of which will protect or conserve sage-grouse. WGC commends Senator Gardner for his hard work and dedication toward resolving this issue and we urge the Committee to work with western Senators to enact the Sage-Grouse Protection and Conservation Act to protect and conserve sage-grouse through existing and future state efforts.

Allen D. Freemyer
President

The Western Grouse Coalition is dedicated to preserving our western way of life. We value our public lands and are working with a wide range of stakeholders to promote sustainable resource management and development in the sagebrush ecosystem. WGC understands that conservation and responsible economic develop are not mutually exclusive.

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Senator GARDNER. I thank you, Chairman and Ranking Member, for the opportunity to be with you today.

Senator INHOFE. Thank you, Senator Gardner.

Senator Booker.

OPENING STATEMENT OF HON. CORY A. BOOKER, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BOOKER. Thank you very much, Chairman Inhofe and Ranking Member Boxer, for giving me a chance to talk about my Refuge Cruel Trapping Act, which would ban the use of body-gripping traps in the national wildlife refuge system.

Leg-hold traps have been banned in over 90 countries. Again, that is 90 countries that have banned the cruel leg-holding traps. Yet even in the United States they are not banned in wildlife refuges.

Jaw traps operate by slamming shut with bone-crushing force on any animal that trips the device. Terrified animals break legs, chew off limbs, dislocate shoulders and tear muscles as they try to break free of these traps.

Strangulation neck snares are perhaps the cruelest of all the trapping devices. The snare is designed to tighten around an animal's neck as he or she struggles. Animals trapped in neck snares suffer for days and days and the death is often slow and painful.

Not only are body-gripping traps gruel but they also are indiscriminate. Too often the animals caught in these traps are not the animals that are actually targeted.

I will give one example of this. In 1989, a New York State Department of Agriculture study examined the effectiveness of using leg-hold traps for coyote control. The study found that 10.8 non-targeted animals were trapped for every coyote. That is more than 10 to 1, the animals caught in these cruel traps were not their intended targets.

And what types of non-targeted animals are being maimed and killed by these cruel body-trapping traps? Here are some illustrations. The endangered species, such as the lynx, are being maimed and killed. The lynx is caught, in this picture, in a strangulation snare trap that I mentioned earlier.

Iconic species, such as the bald eagles, are being maimed and killed. At the time this picture was taken, the bald eagle was still listed as an endangered species.

Common, everyday animals, even such as raccoons, are being maimed and killed, as we see in this picture. This is a leg-hold trap shown here. Last month in Missouri on public land a mountain lion paw was found torn off in one of these traps. They found nothing but the torn paw of a mountain lion.

And common animals, such as our pets, cats and dogs, are regularly, routinely caught and killed in these cruel traps.

This last picture is an animal, a beagle named Bella. Bella was a 20-month old hunting dog who was killed in the steel jaws of a conibear trap. Bella's owner was devastated and obviously with anger asked, what was this type of deadly trap doing on public land? I wonder that too.

Our wildlife refuges attract more than 47 million visitors a year. Nearly all those visitors, more than 99 percent, are using our ref-

uge system for recreational purposes, not for trapping. Why would those 47 million visitors need to worry about the safety of their pet or even worse, the safety of their children? Just 2 days ago a 12-year old boy in North Carolina was taken to an emergency room after a body-gripping snare snapped shut on his hand while he was doing chores by a pond in his neighborhood. It took six doctors hours to release this boy from the trap.

An American public overwhelmingly agrees that we should not be using these traps. Seventy-nine percent of Americans believe trapping on wildlife refuges should be prohibited. Charles Darwin called the leg-hold trap one of the cruelest devices ever invented by man. He said, "Few men can endure to watch for 5 minutes an animal struggling in a trap with a torn limb. Some will wonder how this cruelty can have been permitted to continue in these days of civilization."

He said that in 1863. And I echo those words now today. How can such cruelty be permitted on wildlife refuges, of all places, where we are trying to preserve wildlife habitat? I urge my colleagues to support S. 1081 and join me in banning these cruel body-gripping traps from wildlife refuges. Thank you very much.

[The referenced information follows:]

Mountain lion paw in wolf trap upsets Darby ex-houndsman

APRIL 11, 2015 8:00 AM • PERRY BACKUS
PBACKUS@RAVALLIREPUBLIC.COM

HAMILTON – A mountain lion paw found torn off in a wolf trap has a former houndsman from Darby asking for change in the way the state manages the predator.

A little over two weeks ago, a friend of Cal Ruark's dropped off the trap with the severed lion paw in it.

Ruark – a former president of the Bitterroot Houndsmen Association and now a mountain lion advocate – said his friend was antler hunting in the Reimel Creek area, east of the Sula Ranger District, when he made the gruesome find.

The man told Ruark there were deep claw marks in a tree near the location of the trap.

"He told me the trees were all tore to hell," Ruark said. "The drag on the trap was hung up on a tree and there were claw marks on the trees where the lion had stood up on its back legs and tried to climb."

Ruark is sure the mountain lion didn't survive.

"It might have been able to get along for a little while, but it's dead now," he said. "It can't hunt on three legs."

Every year, mountain lions die after being caught in traps set for wolves or other furbearers.

Under the current rules, those dead lions are not considered under the quota system that Fish, Wildlife and Parks uses to manage mountain lion numbers.

Ruark believes that needs to change. He will take that request before the Fish and Wildlife Commission at its regular meeting this month.

***

KC York of Hamilton is leading an effort place a referendum on the ballot that could ban all trapping on public lands.

York said between October 2013 and February 2015, 32 mountain lions were captured in traps set for furbearers other than wolves. State records showed that 21 died, six suffered some type of damage to their paws, but were released and another five were set free unharmed.

"So 84 percent of those mountain lions captured in non-wolf sets were either dead or injured," York said. "Only one of those trappings was determined to be illegal."

In the two years that wolf trapping has been legal in Montana, York said state FWP records show that 16 mountain lions were caught in traps set for wolves. Five of those lions died.

York said 96 percent of the trappings were considered legal.

"You can't legally trap a mountain lion in Montana," she said. "These trappings are considered incidental. It goes with the territory of trapping in this state."

Anja Heister, co-founder of Footloose Montana, said no one knows for sure how often a mountain lion loses a paw or toes to a trap.

"It was a horrific sight," Heister said about the lion's paw in the trap. "This was an incident that was actually discovered. No one knows for sure how often it happens. Trappers have a term for it when an animal loses a foot or a toe. They call it twist off or ring off."

***

The Ravalli Republic contacted Montana Trapping Association president Toby Walrath of Corvallis for a comment on this story. Walrath said he would either provide a written comment or a phone contact for someone else in the organization Thursday night. By Friday's end, the newspaper had received neither.

Montana Fish, Wildlife and Parks regional wildlife manager Mike Thompson said all he could say about the issue at this point is that it was being investigated.

Ruark said he wants people to know about this.

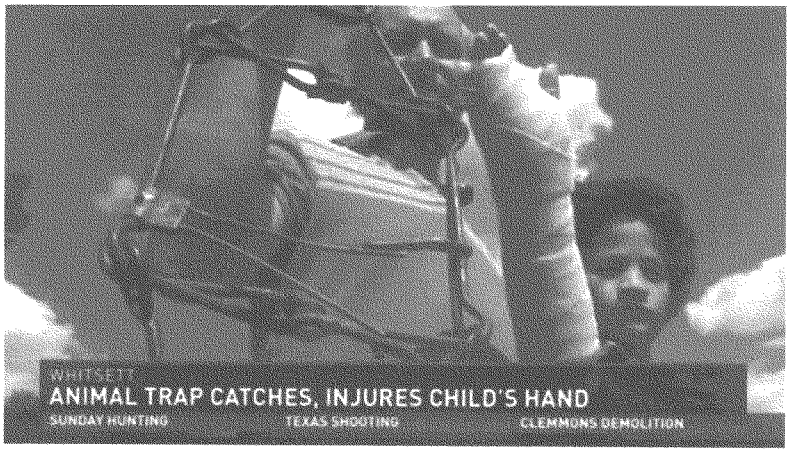
"There are a lot of people who should be angry about this lion caught in a wolf trap," Ruark said. "Trappers should be mad because it makes them look bad. Outfitters should be thoroughly angry because they get $5,000 a pop from their clients to kill one and now there's one less to hunt. The fact that it's not counted toward the quota should make local houndsmen angry, too. Everyone involved should be upset.

"But unless there's a consequence, it's only going to get worse," he said. "It's not right to ignore it when a mountain lion dies."

If someone put all the mountain lions that died after being trapped in a pile and took a photograph, Ruark said people would pay attention.

"From my perspective, these incidental kills should be counted," he said.

Animal Trap Catches, Injures 12-Year-Old Triad Boy



Animal Trap Catches, Injures 12-Year-Old Triad Boy WFMY News 2

Benjamin F Powell, *11:57 p.m. EDT May 3, 2015*

Wildlife Resources Officers are trying to figure out who is responsible for setting a trap that caught and injured a 12-year-old boy in Whitsett.

(Photo: WFMY News 2)

WHITSETT, NC -- Parents always worry about their kids outside.

They have to watch out for cars, germs, and even snakes and bugs. But you wouldn't think about an animal trap, until now.

Wildlife Resources Officers are trying to figure out who is responsible for setting a trap that caught and injured a 12-year-old boy in Whitsett.

It took several hours for six doctors to release Sebastian Schorr from the trap.

Sebastian said he was doing chores near a pond in his neighborhood when he reached down for a metal object and his hand was smashed by the trap.

"I put my hand and triggered and it went 'ting,'" said Sebastian. "It like bothered me a lot and it hurt."

Officials say that trap was legally not supposed to be there at this time.

Sebastian's father, Bob Schorr said he and his wife were panicking as they rushed their son to the hospital.

"He was crying and we could not get it off," said Schorr. "It took six people at the ER to get that thing off his hand. We had no idea these things were here."

Schorr says he found several similar traps at the pond in their neighborhood.

"It's not something you would expect when you tell your kids not to touch stuff," said Schorr. "I worry about germs, not animal traps."

Officer Darryl Southern with the Wildlife Resources Commission say the trap that caught Sebastian is called a canibear trap, which are legal -- even in residential neighborhoods like this one.

They are typically set in or near water and are used to catch muskrats, beavers, otters, or other small animals.

However, there are regulations for usage, according to Southern.

In North Carolina, canibear traps can only be set in winter -- between November and February.

The only way that traps can be set during other parts of the year is for active depredation. For instance, if a beaver or muskrat was causing damage to property.

Depredation permits are issued by the NC Wildlife Resources Commission.

Each trap also needs to have the name and address of its owner.

The trap that caught Sebastian's hand was not marked.

"It is hard to see when a young man like this is hurt over a trapping incident. Hopefully we can find out who the owner is. We will be investigating thoroughly to see the owner and see if there are any legal reasons why the trap was there," said Southern. "If the trap was set illegally, we will be looking into charges at this time to make sure this doesn't happen again."

Schorr hopes this unfortunate incident will be a learning tool for other parents.

"I just want everybody to know that in the area that we are in, I have seen them now on multiple ponds. It's very likely they're in more," said Schorr. "This would never have occurred to me and so I am assuming it probably didn't occur to other parents."

Sebastian is handling the injury pretty well. He has some tissue damage in his hand but no broken bones. He's wearing a cast for a few weeks and his parents say they will set up an appointment with an orthopedic doctor this week.

Wildlife Resource Commission Officers will begin their investigation into the case starting Monday.

They'll be interviewing neighbors and trying to find out who set the traps and determining the legality of the trap setting.

Read or Share this story: http://on.wfmy.com/1f6OoSf

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(/story/news/local/outreach/read-2-succeed/2015/05/08/read-2-succeed-moss-street-elementary/26970571/)
May 8, 2015, 8:11 a.m.

Winston-Salem Silver Alert: William Olive

Senator INHOFE. Thank you, Senator Booker. That is a wake-up call.

Our last presenter here with legislation will be a part of this committee, he is coming to this committee. Senator Thune.

OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman. I appreciate you and Senator Boxer holding this hearing today, and particularly giving me the opportunity to make a couple of comments about this bill.

On March 4th, I introduced S. 655, which is a bill to prohibit the use of funds by the Secretary of the Interior to make a final determination on the listing of the northern long-eared bat under the Endangered Species Act of 1973. Listing the northern long-eared bat under the Endangered Species Act is a misguided attempt by the Fish and Wildlife Service to protect the species which is suffering death loss and reduction in numbers from a fungus called white nose syndrome, not because of habitat loss.

Mr. Chairman, even the Fish and Wildlife Service has acknowledged that "White nose syndrome alone has led to dramatic and rapid population level effects on the northern long-eared bat. The species likely would not be imperiled were it not for this disease." The Congressional Research Service has informed me that during the last 10 years, no species has been listed in the United States under the Endangered Species Act naming disease as a primary factor for reduction in numbers in the listing.

I point that out, that the white nose syndrome has been detected in only 25 of the 39 States included in the northern long-eared bat's range. Yet as a result of this misguided listing of the species, thousands of jobs are going to be placed at risk, including more than 1,500 timber industry jobs in my home State of South Dakota. My concern is that the Fish and Wildlife Service has insufficient supporting data to warrant listing the northern long-eared bat as a threatened species, particularly given the absence of white nose syndrome in so much of its range.

In addition, I believe the Fish and Wildlife Service failed to adequately gather and consider credible information available from State government entities and other non-Federal sources before making its decision to list the northern long-eared bat.

Mr. Chairman, let me just say, what concerns me the most is that with the listing of this northern long-eared bat, once again we have a Federal agency that is throwing aside common sense and listening to special interest groups that, based on their actions, do not have the best interests of the people of this Country in mind.

Along with the listing of the northern long-eared bat, the Fish and Wildlife Service has also published a proposed rule called the 4(d) rule which was designed to offer protection to forest management practices that would actually enhance the northern long-eared bat's habitat. It is my understanding that litigation filed by the Center for Biological Diversity regarding the 4(d) rule raises a purely procedural claim that is that the Fish and Wildlife Service must perform NEPA analysis on the 4(d) rule prior to finalizing it.

It is likely that the Center for Biological Diversity will seek a stay or preliminary injunction request on the interim 4(d) rule. If

an injunction is granted, forestry practices would not be exempt from the take prohibitions of the Endangered Species Act, which would be an uncalled for blow to the timber industry and other industries in the eastern two-thirds of the United States.

Mr. Chairman, to summarize, many of my colleagues and I are deeply disappointed that in listing the northern long-eared bat, the Fish and Wildlife Service has failed to adequately address the real reason even it recognizes the decline of the northern long-eared bat, and that is white nose syndrome, and not the loss of habitat. I believe much more progress could have been made if the Fish and Wildlife Service had taken the funds it is using the list the northern long-eared bat and use those funds for research and other tools to diminish the effects of the white nose syndrome.

We all know that Congress stepped in and took control of another ESA listing by removing the northern Rockies gray wolf off the ESA list because the Fish and Wildlife Service was too timid to do it. That may be what is necessary regarding the northern long-eared bat. In the case of the northern Rockies gray wolf, the Congress stepped in because nearly everyone acknowledged that the wolf was a recovered species.

In the case of the northern long-eared bat, the issue isn't whether the species is in trouble, it is whether the ESA listing provides the kind of help the species needs and other species like it. The answer to that is a firm no.

So I would hope, Mr. Chairman, that you all could work with me on this issue. It has a very detrimental impact on the economy of the Black Hills of South Dakota. And it doesn't address the fundamental problem, which is the disease that this bat is facing, not the habitat. This will have profound impacts on the habitat and on our ability to continue to produce timber in the Black Hills, something that is very important to the economy of that region and a lot of jobs.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Thune. We look forward to working on your legislation in this committee. I am sure it didn't go unnoticed to Director Ashe that of all the comments that were made in legislation that is being proposed here, it brings up the problem of a lack of transparency, secrecy, local input, these are things that people are concerned about, myself included.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. So we will have our opening statements here. The last time that we had a hearing on the Fish and Wildlife Service budget was when I was chairman many years ago, in 2003. It has been that much time since we have had a hearing on this. The Endangered Species Act has gone from a well-intentioned piece of legislation in the 1970s to one that is dictated by environmental activist groups taking advantage of the adversarial system.

In 2011, the Service entered into closed door settlements with environmental groups that has required the Service to make final listing decisions on hundreds of species but has not provided documents about how these settlements were developed despite repeated requests from Congress. The species covered by these settle-

ments is staggering, covering almost the entire Country, as we have been observing. It includes the lesser prairie chicken, the northern long-eared bat, the greater sage grouse and numerous freshwater mussels and fish.

The ESA recovery rate is a mere 2 percent, even though the entire Federal Government spent $1.2 billion on species conservation in 2013. This Administration touts its success as delisting more species than any other Administration and it has. Yet, when you look at the math on this thing, you note that it has delisted 12 species and yet listed several hundred at the same time. So we are getting deeper and deeper in that hole.

In recent years, the Service has been too focused on listing more species instead of focusing on the goal of the Act to recover species. The Fish and Wildlife Service is forced to designate habitat because of lawsuits instead of a comprehensive understanding of the species and its surroundings.

The Endangered Species Act has to be reformed to clarify the focus and achieve real results. It can no longer be an ATM machine for environmental groups looking to make money off statutory deadlines.

In addition to a conversation with Director Ashe about the budget and how ESA can be fixed, I would like to use this opportunity today to examine all legislation within the Endangered Species Act nexus. That has been referred to this committee.

Some of these bills are very narrowly tailored to address local issues. Others are bills that address overarching problems with the direction of ESA. In examining these bills, I hope to have a more clear direction in moving forward as to how we can modify the Endangered Species Act and return to its purpose.

As a part of the ESA modernization, I want to bring the conservation efforts to a more local level. I think we heard that from those who are proposing legislation, Director Ashe. The Five-State Plan among Colorado, New Mexico, Oklahoma, Kansas and Texas to address the lesser prairie chicken was a thoughtful, thorough plan. It was a plan developed by local communities who know the land and the animal population. But the Fish and Wildlife Service has listed the lesser prairie chicken as threatened, which only works to discourage the efforts. And you know the efforts that took place in those five States.

That is demoralizing, when they all come together, they work, they spend their money, their resources. I am not saying they are totally ignored. Because it could have been an even worse outcome.

But anyway, communities are not incentivized to develop their own plans if the Fish and Wildlife Service will systematically reject them. I hope we do not see Fish and Wildlife make the same mistakes on the sage grouse and other species.

I want to thank our witnesses for their time today. I would like to extend a special welcome to Director Ashe. Director Ashe came to Oklahoma at my request and we were pleased to show him the way that Oklahomans are working to protect and develop the species. I believe when you came that you really did listen and actually learn some yourself. So I thank you for that.

Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA

I said at the beginning of this Congress that our Committee would conduct vigorous oversight of the Obama administration's environmental policies, and there are few issues more in need of oversight than the Endangered Species Act. This Committee has not held a hearing on the Fish and Wildlife Service budget since 2003, the last time I was Chairman. I am pleased to have this hearing today, to hear from Director Ashe and our other witnesses about how ESA can be improved and Fish and Wildlife Service can be better managed.

The Endangered Species Act has gone from a well-intentioned piece of legislation in the 1970s to one that is dictated by environmental activist groups taking advantage of the adversarial system. In 2011, the Service entered into closed-door settlements with environmental groups that has required the Service to make final listing decisions on hundreds of species, but has not provided documents about how these settlements were developed despite repeated requests from Congress.

The species covered by these settlements is staggering, covering almost the entire country, and includes the lesser prairie-chicken, the northern long-eared bat, the greater sage-grouse, and numerous freshwater mussels and fish.

The ESA recovery rate is a mere 2 percent, even though the entire Federal Government spent $1.2 billion on species conservation in fiscal year 2013. This administration touts its success as delisting more species than any other administration. And it has. Yet when you note that it has delisted 12 species yet listed hundreds, with hundreds more to be considered, their claim is far less impressive.

In recent years, the Service has been too focused on listing more species, instead of focusing on the goal of the Act: to recover species. The Fish and Wildlife Service is forced to designate habitat because of lawsuits, instead of a comprehensive understanding of the species and its surroundings. The Endangered Species Act must be reformed to clarify the focus and achieve real results. It can no longer be an ATM machine for environmental groups looking to make money off of statutory deadlines.

In addition to a conversation with Director Ashe about the budget and how ESA can be fixed, I would like to use this opportunity today to examine all legislation with an Endangered Species Act nexus that has been referred to this Committee. Some of these bills are very narrowly tailored to address local issues. Others are bills that address overarching problems with the direction of the ESA. In examining these bills, I hope to have a more clear direction in moving forward as to how we can modify the Endangered Species Act and return it to its purpose.

As a part of the ESA modernization, I want to bring the conservation efforts to a more local level. The Five-State Plan among Colorado, New Mexico, Oklahoma, Kansas, and Texas to address the lesser prairie chicken was a thoughtful, thorough plan. And it was a plan developed by local communities who know the land and the animal populations. But the Fish and Wildlife Service listed the lesser prairie chicken, which only works to discourage local efforts. Communities are not incentivized to develop their own plans if FWS will systematically reject them. I hope we do not see the FWS make the same mistakes with the sage grouse and other species.

I want to thank our witnesses for their time today. I'd like to extend a special welcome to Director Ashe. Director Ashe came to Oklahoma at my request and we were pleased to show him the ways in which Oklahomans are working to protect our development and species alike. I think he would agree that the Endangered Species Act can—and must be—improved and that States and local governments have answers and real-world experience we should be relying on to modernize the law. I look forward to hearing from our witnesses and my fellow Committee members on this important issue.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thanks so much.

Director Ashe, thank you for dedicating your working life to protecting God's species. I heard them called by Senator Thune, I think he said a special interest. Well, let's take a look at what they look like. The American eagle, which was saved by the ESA, the very symbol of America. If we listen to the folks on this side of the aisle and they were here then, the ESA never would have passed and we might have lost this great symbol. And the lesser prairie chicken also needs to be checked out as well.

So thank you for that and taking all the heat that you take. That is a compliment, because it means you are doing something and you are fighting for what you promised you would fight for.

Now, I think it is important to note that today, we are looking at a series of bills, eight Republican bills and one Democratic bill. I want to say to Senator Booker, thank you. That is, you know, a heart stopping presentation. I hope we will all work together on that bill.

But today, I received a letter from the following organizations against every single Republican bill on the agenda. And these are bipartisan groups. Many of these groups were started by Republicans.

We have to remember, I think it was Richard Nixon who signed the Endangered Species Act, Richard Nixon. And all these backdoor efforts we are looking at today have to stop.

So here are the groups that wrote against every single Republican bill. You know, sometimes I have to pinch myself that this is really the Environment and Public Works Committee, not the Anti-Environment and Public Works Committee. Today it feels like the Anti-Environment and Public Works Committee. It is a bad, bad thing.

So let me tell you the groups that wrote against these Republican bills. The American Bird Conservancy, the Animal Welfare Institute, The Audubon Society, Born Free USA, the Center for Biological Diversity, the Center for Food Safety, Clean Water Action, Defenders of Wildlife, Earth Island Institute, Earth Justice, Endangered Species Coalition, Friends of the Earth. The Humane Society of the United States of America, the International Federation of Fly Fishers, the International Fund for Animal Welfare, the League of Conservation Voters, the National Resources Defense Council, Oceanus, Sierra Club, Southern Environmental Law Center, the Union of Concerned Scientists, the Wild Earth Guardians and the Wyoming Wildlife Advocates.

I ask unanimous consent to place these into the record.

Senator INHOFE. Without objection.

[The referenced information follows:]

Animal Welfare Institute * American Society for the Prevention of Cruelty to Animals * Animal Legal Defense Fund * Animal Protection League of New Jersey * Bear Education and Resource Program * Born Free USA * California Wolf Center * Cascades Raptor Center * Center for Biological Diversity * Center for Food Safety * Colorado Wolf and Wildlife Center * Coyote Watch Canada * Earth Island Institute * Endangered Species Coalition * Environmental Protection Information Center * Footloose Montana * Friends of the Earth * Friends of the Wisconsin Wolf * Georgia Animal Rights and Protection * Humane Society Legislative Fund * The Humane Society of the United States * In Defense of Animals * International Fund for Animal Welfare * Klamath Forest Alliance * League of Humane Voters, Alabama * League of Humane Voters, Florida * League of Humane Voters, Georgia * League of Humane Voters, New Jersey * League of Humane Voters, Ohio * Massachusetts Society for the Prevention of Cruelty to Animals * National Urban Wildlife Coalition * National Wolfwatcher Coalition * Natural Resources Defense Council * The North American Wolf Foundation * Predator Defense * Project Coyote * Sierra Club * Trap Free Montana Public Lands * Western Nebraska Resources Council * Western Wildlife Conservancy * WildEarth Guardians * Wildlife Public Trust & Coexistence * Wisconsin Wolf Front * Wolf Conservation Center * Wolf Conservation PAC * Wolf Haven International * The Wolf Mountain Nature Center * Wyoming Untrapped

RE: Support the Refuge from Cruel Trapping Act (S. 1081)

May 6, 2015

The Honorable James Inhofe
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
Ranking Member, Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Boxer:

On behalf of our millions of members and supporters nationwide, we are writing to express our strong support for the Refuge from Cruel Trapping Act (S. 1081), sponsored by Senator Cory Booker, to prohibit the use of body-gripping traps within the National Wildlife Refuge System (NWRS). We appreciate the Committee's consideration of this legislation and encourage swift action on this important and necessary bill.

The NWRS is managed by the US Fish and Wildlife Service (FWS) and attracts more than 47 million visitors each year. National wildlife refuges are intended to be safe havens for wildlife, but over half of our nation's 563 wildlife refuges allow trapping on these public lands, posing a safety risk for humans and animals alike. Millions of Americans visit refuges each year to hike

on trails and observe a wide range of wildlife species in their natural habitats. According to the FWS, most wildlife refuges are in or near urban areas, with "at least one wildlife refuge … within an hour's drive of most major cities and more than 260 wildlife refuges … near smaller cities."

All visitors should be able to enjoy our national wildlife refuges without fear that they or their pets may stumble upon a body-gripping trap or encounter an injured animal languishing in these gruesome devices. Body-gripping traps—such as strangling snares, Conibear traps, and steel-jaw leghold traps—are inhumane and inherently nonselective. These archaic traps indiscriminately injure and kill countless nontarget animals, including endangered and threatened species, and even household pets.

Jawed traps slam closed with bone-crushing force on any animal that trips the device, while strangling snares tighten around the neck or body of their victims. Steel-jaw leghold traps are among the most notorious trapping devices. Over 88 countries have banned their use, but—astonishingly—these and other cruel traps are still allowed in the United States on federal lands intended to protect and conserve our nation's wildlife. Put simply, this cruelty should not be permitted in any place that is called a "refuge."

The NWRS contains one of the most diverse collections of fish and wildlife habitats in the world and provides a home for more than 240 endangered species. The NWRS's stated mission is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." Trapping is not considered a priority wildlife-dependent public use of the NWRS (as per the 1997 Refuge Improvement Act). By law, the Secretary of the Interior is charged with ensuring the "biological integrity, diversity, and environmental health" of the NWRS, in addition to providing for the conservation of fish and wildlife. Importantly, the Refuge from Cruel Trapping Act still allows the FWS to engage in population management goals, as all other trapping methods, including cage and box traps, can still be used to remove or relocate animals.

A national Decision Research public opinion poll showed that 79 percent of Americans believe trapping on national wildlife refuges should be prohibited, while 88 percent believe wildlife and habitat preservation should be the highest priority of the refuge system.

Thank you for allowing this bill time before the Committee. The Refuge from Cruel Trapping Act (S. 1081) is a crucial step toward fulfilling the wishes of the American public on this matter and reducing the suffering inflicted on our nation's wildlife.

Sincerely,

Cathy Liss
President
Animal Welfare Institute

Richard Patch
Vice President, Federal Affairs
American Society for the Prevention of Cruelty to Animals

Stephen Wells
Executive Director
Animal Legal Defense Fund

Janine Motta
Programs Director
Animal Protection League of New Jersey

Angi Metler
Director
Bear Education and Resource Program

Adam M. Roberts
Chief Executive Officer
Born Free USA

Karin Vardaman
Director of California Wolf Recovery
California Wolf Center

Louise Shimmel
Executive Director
Cascades Raptor Center

Brett Hartl
Endangered Species Policy Director
Center for Biological Diversity

Colin O'Neil
Director of Government Affairs
Center for Food Safety

Darlene Kobobel
President
Colorado Wolf and Wildlife Center

Lesley Sampson
Founding Executive Director
Coyote Watch Canada

David Phillips
Executive Director, International Marine Mammal Project
Earth Island Institute

Leda Huta
Executive Director
Endangered Species Coalition

Natalynne DeLapp
Executive Director
Environmental Protection Information Center

Christopher Justice
Executive Director
Footloose Montana

Benjamin Schreiber
Climate and Energy Program Director
Friends of the Earth

Melissa Smith
Executive Director
Friends of the Wisconsin Wolf

Melody Paris
President
Georgia Animal Rights and Protection

Michael Markarian
President
Humane Society Legislative Fund

Wayne Pacelle
President and CEO
The Humane Society of the United States

Anja Heister
Director, Wild and Free Habitats
In Defense of Animals

Carson Barylak
Campaigns Officer
International Fund for Animal Welfare

Kimberly Baker
Executive Director
Klamath Forest Alliance

Victoria Nichols
State Director
League of Humane Voters, Alabama

Marilyn Weaver
Director
League of Humane Voters, Florida

John Eberhart
Executive Director
League of Humane Voters, Georgia

Susan Russell
Co-Director
League of Humane Voters, New Jersey

Lane Ferrante
Chair
League of Humane Voters, Ohio

Laura Hagen
Deputy Director of Advocacy
Massachusetts Society for the Prevention of Cruelty to Animals

Katherine McGill
Founder
National Urban Wildlife Coalition

Nancy Warren
Executive Director
National Wolfwatcher Coalition

Scott Slesinger
Legislative Director
Natural Resources Defense Council

Adam DeParolesa
Outreach Coordinator
The North American Wolf Foundation

Brooks Fahy
Executive Director
Predator Defense

Camilla H. Fox
Founder and Executive Director
Project Coyote

Athan Manuel
Director, Lands Protection Program
Sierra Club

KC York
Chair
Trap Free Montana Public Lands

Buffalo Bruce
Staff Ecologist
Western Nebraska Resources Council

Kirk Robinson, Ph.D.
Executive Director
Western Wildlife Conservancy

Bethany Cotton
Wildlife Program Director
WildEarth Guardians

Melanie Weberg
Founder
Wildlife Public Trust & Coexistence

Adam Kassulke
Director
Wisconsin Wolf Front

Maggie Howell
Executive Director
Wolf Conservation Center

Elizabeth Huntley
Director
Wolf Conservation PAC

Diane Gallegos
Executive Director
Wolf Haven International

Will Pryor
Curator
The Wolf Mountain Nature Center

Lisa Robertson
President
Wyoming Untrapped

CC: Members of the Senate Environment and Public Works Committee

Senator BOXER. Then there is a Denver Post article, Cory Gardner Wrong on Greater Sage Grouse, and an explanation of why that is wrong.

So I just really want to say this, Mr. Chairman. I respect your views, I disagree strongly with them, and we will have hand to hand combat on the floor if these bills get that far, which they may get voted out of this committee.

But I want to make a point here. Recent polling of the American people shows that 84 percent support the Act that was signed in a bipartisan way by an overwhelming voice vote in the Senate. And again, signed into law by Richard Nixon. It has a strong record of success. I showed you the eagle. It is the whooping crane, the California condor, the brown pelican, species of sea turtle, this is a heritage for America. This is just as much a heritage, frankly, as our magnificent rivers and streams and mountains and forests.

So wildlife-related recreation is a significant industry. And they are expressing their concern, the fishermen are, about some of these radical bills. Wildlife-related recreation was a $145 billion activity in America in 2011. Native plants and animals can provide life-saving medicines. So this Endangered Species Act shouldn't be back-door repealed this way with oh, you have to consider even more economics, you have to say that State scientists know more than national scientists.

Let's not turn everyone against everyone. Let's work together for the best science and very clear moves to protect a species where it makes sense. Where it doesn't make sense, the law is already clear, they can't do it.

So I look forward to working together maybe to moderate some of these radical bills. But if we don't moderate these radical bills, then we are going to have to get all of the people out there in this Country motivated to weigh in against what the Republicans are trying to do here today with this series of bills that really are a back-door repeal of the Endangered Species Act.

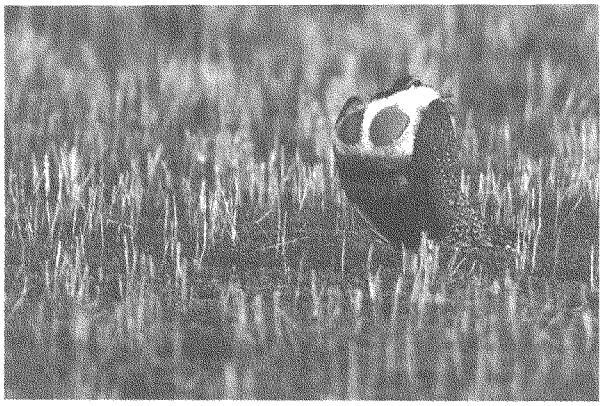
Thank you, Mr. Chairman.

[The referenced information follows:]

- eLetters - http://blogs.denverpost.com/eletters -

Cory Gardner wrong on greater sage grouse

Posted By *DP Opinion* On April 27, 2015 @ 5:01 pm In Letters | No Comments



A greater sage grouse struts in the dawn light on April 7 on the McStay ranch in Craig. (Joe Amon, The Denver Post)

Re: "Cory Gardner introduces act to delay endangered decision on grouse," [1] *April 23 news story.*

As an elected official, I am disappointed by Sen. Cory Gardner's recently introduced bill, the Sage-Grouse Protection and Conservation Act. This bill will effectively undermine good-faith efforts currently underway to conserve the species by stakeholders, including counties, landowners and state and federal agencies. Instead of more delays, which put us in this position in the first place, we should focus on creating and implementing strong state and federal plans to protect the bird, its habitat and our local economy.

The recent bi-state (California and Nevada) decision not to list the greater sage grouse highlights what good-faith proactive and collaborative efforts can do to effectively conserve key habitat and protect this iconic bird. Now is the time to step up our efforts to conserve the bird and its habitat — we can't afford further distractions and delays and neither can the bird.

Tim Corrigan, *Steamboat Springs*

The writer is a Routt County commissioner.

This letter was published in the April 28 edition.

Submit a letter to the editor via this form [2] or check out our guidelines [3] for how to submit by e-mail or mail.

Article printed from eLetters: **http://blogs.denverpost.com/eletters**

URL to article: **http://blogs.denverpost.com/eletters/2015/04/27/cory-gardner-wrong-on-greater-sage-grouse/37396/**

URLs in this post:

[1] "Cory Gardner introduces act to delay endangered decision on grouse,": **http://www.denverpost.com/environment/ci_27965734/cory-gardner-introduces-act-delay-endangered-decision-grouse**
[2] this form: **http://blogs.denverpost.com/elettersblogs.denverpost.com/eletters/letters/**
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[The prepared statement of Senator Boxer follows:]

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM THE STATE OF CALIFORNIA

Director Ashe, thank you for dedicating your working life to protecting God's species. Thank you taking all the heat that you take. That is a compliment, because it means you are doing something and are fighting for what you promised you would fight for.

If we listen to the folks on the other side of the aisle, and if they were here in Congress when the Endangered Species Act (ESA) was considered four decades ago, it never would have been passed into law. A recent poll of the American people shows that 84 percent support the ESA, which was passed by an overwhelmingly bipartisan voice vote in the Senate, and signed into law by President Richard Nixon. All the back door efforts by special interests to undermine the ESA have to stop.

The ESA has a strong record of success, and without it, we might have lost the very symbol of our nation—the bald eagle. And the ESA helped to save other species, including the lesser prairie chicken, the whooping crane, the California condor, the brown pelican, and the Kemp's Ridley sea turtle. These species are part of America's heritage. They are just as much a part of our heritage as our magnificent rivers, streams, mountains, and forests.

Further, wildlife-related recreation is a significant industry—accounting for nearly $145 billion in 2011. In addition, native plants and animals can provide life-saving medicines.

I think it is important to note that today we are looking at a series of bills—eight Republican bills and one Democratic bill. I wanted to say thank you to Senator Booker for introducing his bill to ban inhumane traps in National Wildlife Refuges. I hope we will all work together on that bill.

Today, I received a letter from several organizations that oppose every single Republican bill on the agenda. The groups include: American Bird Conservancy, the Animal Welfare Institute, the Audubon Society, Born Free USA, the Center for Biological Diversity, the Center for Food Safety, Clean Water Action, Defenders of Wildlife, Earth Island Institute, Earthjustice, Endangered Species Coalition, Friends of the Earth, Humane Society, National Federation of Fly Fishers, the International Fund for Animal Welfare, League of Conservation Voters, NRDC, Sierra Club, OCEANA, Southern Environmental Law Center, Union of Concerned Scientists, the WildEarth Guardians, and the Wyoming Wildlife Advocates. I ask unanimous consent to enter this into the record.

I would also like to introduce into the record a Denver Post Op-Ed, "Cory Gardner wrong on greater sage grouse," which explains why his legislation is the wrong approach.

Let us work together using the best available science to protect species where and when it makes sense.

I want to say this, Mr. Chairman, while I respect your views, I disagree strongly. We will have hand-to-hand combat on the floor if these bills are voted out of this committee. The Endangered Species Act should not be repealed in this backdoor way.

I look forward to working together to moderate some of these radical bills. If we do not make significant changes, we are going to have to get the American people motivated to weigh in against what the Republicans are trying to do—repeal the Endangered Species Act.

Senator INHOFE. Director Ashe, you are recognized for 5 minutes.

STATEMENT OF HON. DAN ASHE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. ASHE. Thank you, Senator. It is a joy to be here in front of the committee again. I am going to spend my time this morning just talking to you about the budget and the context for our budget for this year.

The President's budget is about a $135 million increase for the U.S. Fish and Wildlife Service, a 9 percent increase. We certainly realize that in these difficult times that that is a significant investment. I hope that you will agree with me that it is a good investment.

When you think about our budget, it really is a budget that is built on priority. And that is priority landscapes and priority species. We are putting those priorities behind efforts grounded in partnership and really epic scale partnership.

The best example of that is the greater sage grouse. We started more than 5 years ago by reaching out to our State partners and building a framework for cooperative management of the sage grouse to hopefully avoid the need for a listing. We have worked hand in glove with former Governor Dave Friedenthal, a Democrat from Wyoming, and we are working today with Governor Matt Meade, a Republican from Wyoming. Wyoming has built a great framework for sage grouse conservation.

We built a sage grouse task force with the Western Governors Association, which is chaired by Governor Hickenlooper from Colorado, a Democrat and Governor Meade from Wyoming, a Republican. We built a conservation objectives team report jointly with our State colleagues to identify the actions that will be necessary to conserve the sage grouse and hopefully avoid the necessity to list it under the Endangered Species Act.

We reached out to the BLM and the U.S. Forest Service and they began a public and transparent process of land management planning to help conserve the sage grouse. We reached out to the U.S. Department of Agriculture and the Natural Resource Conservation Service has been an exemplary partner, putting over 4 million acres, almost $400 million of investment in private lands, to incentivize and encourage conservation of the sage grouse.

Another example is in Harney County, Oregon, where we are signing candidate conservation agreements with assurances for ranchers. We now have nearly a million acres of private ranch land signed up in Oregon to conserve the sage grouse. We had a rancher, Tom Strong, who coined perhaps the best conservation phrase of the year last year, What's Good for the Bird Is Good for the Herd, recognizing that there is an economy between good, sustainable ranching and good conservation of the sage grouse.

Examples of working with the EPA and the Corps of Engineers and the USDA and NOAA and the Great Lakes States to keep the Asian carp out of the Great Lakes, and our budget provides enhancement for that. Examples in the Great Plains, working with the range States to conserve the lesser prairie chicken, as the chairman said, not through Fish and Wildlife Service, Federal regulation, but by standing behind a five-State, range-wide plan.

These types of examples require field capacity. They require innovative, energetic, professional people in the field and that is what our budget will do for us.

Monday, a Washington Post editorial writer, E.J. Dionne, began his column with the observation that there are few moments of grace in our politics these days. But Mr. Chairman and members, I am here to tell you that there are many moments of grace every day by the men and women in the United States Fish and Wildlife Service and their partners, people like Angela Sitz, who forged those relationships and those candidate conservation agreements in Harney County Oregon. People like Andy Ewing, the manager of San Diego Bay National Wildlife Refuge, and San Diego County de-

clared May 20th, 2014, as Andy Ewing Day because of his exceptional work with local communities.

People like Jeremy Coleman, our white nose syndrome coordinator, who despite this devastating disease in bats, maintains an infectious enthusiasm that we can be successful. People like Greg Noydecker, who has worked with the ranchers in the Big Hole Valley in Montana to avoid the need to list the Arctic grayling and who has forged friendships with ranchers like Don Reese, lasting, durable friendships. People like Pam Scruggs, in our International Affairs program, who worked 2 years ago in the Convention on International Trade and Endangered Species on the listing of sharks to prevent the finning practice in sharks. When we went to the CITES COP and she met for the first time some of her international counterparts, one of them from Germany said, oh, you are the famous Pam Scruggs, because she had done such good work with them.

People like Dave Hendricks, who is the manager of Neosho National Fish Hatchery. When I went to Neosho, Missouri and met with Dave, the mayor came and the city and town councilmen came and told me of the role that Dave and his team plan in that community. So these are the people and the work of the U.S. Fish and Wildlife Service. And they deserve your support.

[The prepared statement of Mr. Ashe follows:]

STATEMENT OF DAN ASHE, DIRECTOR
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON
THE U.S. FISH AND WILDLIFE SERVICE'S FY 2016 BUDGET REQUEST
AND
S.112, COMMON SENSE IN SPECIES PROTECTION ACT OF 2015; S.292, 21ST CENTURY ENDANGERED SPECIES TRANSPARENCY ACT; S.293, A BILL TO AMEND THE ENDANGERED SPECIES ACT OF 1973 TO ESTABLISH A PROCEDURE FOR APPROVAL OF CERTAIN SETTLEMENTS; S.468, SAGE-GROUSE AND MULE DEER HABITAT CONSERVATION AND RESTORATION ACT OF 2015; S.655, A BILL TO PROHIBIT THE USE OF FUNDS BY THE SECRETARY OF THE INTERIOR TO MAKE A FINAL DETERMINATION ON THE LISTING OF THE NORTHERN LONG-EARED BAT UNDER THE ENDANGERED SPECIES ACT OF 1973; S.736, STATE, TRIBAL, AND LOCAL SPECIES TRANSPARENCY AND RECOVERY ACT; S.855, ENDANGERED SPECIES MANAGEMENT SELF-DETERMINATION ACT; S.1036, A BILL TO REQUIRE THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF AGRICULTURE TO PROVIDE CERTAIN WESTERN STATES ASSISTANCE IN THE DEVELOPMENT OF STATEWIDE CONSERVATION AND MANAGEMENT PLANS FOR THE PROTECTION AND RECOVERY OF SAGE-GROUSE SPECIES, AND FOR OTHER PURPOSES; AND S.1081, A BILL TO END THE USE OF BODY-GRIPPING TRAPS IN THE NATIONAL WILDLIFE REFUGE SYSTEM.

May 6, 2015

Good morning Chairman Inhofe, Ranking Member Boxer, and Members of the Committee. Thank you for the opportunity to testify before you today on the U.S. Fish and Wildlife Service's (Service) Fiscal Year 2016 budget request. I also appreciate the opportunity to testify before you today on eight bills related to the Endangered Species Act and a bill related to the National Wildlife Refuge System. We look forward to working with you on the Service's efforts to conserve, protect, and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people.

U.S. Fish and Wildlife Service's FY 2016 Budget Request

As Americans, our iconic landscapes reflect our unique way of life. We want to maintain these places for people of all ages to enjoy and experience our heritage. We want future generations to be able to go hunting, fishing, biking, camping, boating, and wildlife watching. We want our children to inherit a sense of wonder and the sheer joy of being in the outdoors. We also want to preserve the other benefits to society provided by the natural environment, such as clean water and air, wetlands to reduce storm damage, native plants to help prevent erosion and control wildfires, and pollinators for our food supply.

At the same time we recognize that life is about balance. We need the outdoors for relaxation and recreation, but we also need places to work and live, we need places to shop and to make the products that we depend on.

The Service recognizes the need for this balance and is actively pursuing conservation to foster and support the Nation's growing economy and human population. We have proposed a budget that is strategically crafted to help us achieve this goal.

We are investing in the conservation of our wildlife and habitat to provide those myriad health and economic benefits to U.S. communities. Investing in the next generation of Americans is also critical, so we are creating new ways to engage young audiences in outdoor experiences, both on wildlife refuges and partner lands. With 80 percent of the U.S. population currently residing in urban communities, helping urban dwellers to rediscover the outdoors and its benefits is a priority for the Service.

The President's Fiscal Year 2016 discretionary budget request supports $1.6 billion in programs for the Service, an increase of $130.7 million over the 2015 enacted level to fund the agency's high-priority needs. The budget also contains an additional $1.4 billion available under permanent appropriations, most of which will be provided directly to States for fish and wildlife restoration and conservation.

This budget invests in: science-based conservation and restoration of our lands, water, and native species while considering the impacts of landscape-level changes like changing climate; expansion and improvement of recreational opportunities – such as hunting, fishing and wildlife watching – for all Americans, including urban populations; increased efforts to combat illegal wildlife trafficking, which is an international crisis; and the operation and maintenance of our public lands.

America's Great Outdoors – This initiative, a Service priority, seeks to empower all Americans to share the benefits of the outdoors, and leave a healthy, vibrant outdoor legacy for generations to come. A critical component of America's Great Outdoors is the National Wildlife Refuge System (Refuge System), which offers rewarding and convenient outdoor adventures, including world class hunting and fishing opportunities, to an increasingly urban society. Funding for the operation and maintenance of the Refuge System is requested at $508.2 million, an increase of $34.0 million above the 2015 enacted level. Included in that increase, is $5.0 million for the Urban Wildlife Conservation Program, which will extend opportunities to engage more people in urban areas.

The budget also requests $108.3 million for grant programs administered by the Service that support America's Great Outdoors goals. Programs such as the State and Tribal Wildlife Grants are a key source of funds for our State and Tribal partners and their efforts to conserve and improve wildlife and the landscapes on which they depend.

Wildlife Trafficking – Wildlife trafficking is an international crisis, imperiling some of the world's most recognized and beloved species as well as global security. The poaching of African elephants and rhinos for ivory and horn stands at unprecedented levels – it is a slaughter, and if it continues unabated, we will likely see these species go extinct in our or our children's lifetimes. Illegal trade in wildlife also undermines the conservation of scores of other species. The President is requesting an increase of $4.0 million for the Service to combat expanding illegal wildlife trafficking and support conservation efforts on the ground in Africa and across

the globe, an additional $4.0 million to expand the Service's wildlife forensics capability to provide the evidence needed for investigating and prosecuting wildlife crimes, and an additional $2.0 million for the African Elephant and the Rhinoceros and Tiger Conservation Funds.

Ecological Services – The budget includes $258.2 million to conserve, protect and enhance listed and at-risk wildlife and their habitats, an increase of $32.3 million compared with the 2015 enacted level. These increases include a $4.0 million program increase to support conservation of the sagebrush steppe ecosystem, which extends across 11 States in the intermountain West. Conservation of this vast area requires a collaborative effort unprecedented in geographic scope and magnitude. To achieve sustainable conservation success for this ecosystem, the Service has identified priority needs for basic scientific expertise, technical assistance for on-the-ground support, and internal and external coordination and partnership building with western States, the Western Association of Fish and Wildlife Agencies and other partners.

Additionally, the budget request contains a $4.0 million increase to ensure appropriate design and quick approval of important restoration projects that will be undertaken in the Gulf of Mexico region in the near future. The Gulf of Mexico Watershed spans 31 States and is critical to the health and vitality of our Nation's natural and economic resources. The 2010 Deepwater Horizon oil spill dramatically increased the urgency of the Service's work in the Gulf region and our leadership responsibilities. Over the course of the next decade, billions of dollars in settlement funds, Clean Water Act penalties and Natural Resource Damage Assessment restitution will be directed toward projects to study and restore wildlife habitat in the Gulf of Mexico region. The Service is in high demand to provide technical assistance and environmental clearances for these projects and this funding will ensure that this demand can be met.

Fish and Aquatic Conservation – The budget request includes a total of $147.5 million for Fish and Aquatic Conservation, a program increase of $4.9 million from the 2015 enacted level. Within its fisheries program, the Service is requesting an additional $1.0 million for fish passage improvements to help make human communities and natural resources more resilient to extreme weather events by restoring natural stream channels, which helps reduce flooding. This partnership program also generates revenue and jobs for local communities. The Service is also requesting an additional $2.4 million for efforts to control the spread of invasive Asian carp. This budget also maintains the funding increase provided to the National Fish Hatchery System by Congress in the 2015 appropriations bill, which will allow the Service to continue hatchery operations, working with States, Tribes and other partners and stakeholders to chart a financially sound course forward to conserve our Nation's fish and aquatic species.

Land Acquisition – The 2016 Federal Land Acquisition program builds on efforts started in 2011 to strategically invest in the highest priority conservation areas through better coordination among Department of the Interior agencies and the U.S. Forest Service. This budget includes $164.8 million for Federal land acquisition, composed of $58.5 million in current funding and $106.3 million in proposed permanent funding. The budget provides an overall increase of $117.2 million above the 2015 enacted level. An emphasis on the use of these funds is to work with willing landowners to secure public access to places to recreate, hunt, and fish.

Powering Our Future – The Service continues to support the Administration's "all-of-the-above" energy strategy by engaging in early planning, thoughtful mitigation and the application of sound science not only for traditional sources of energy but also in the development of new, cleaner energy to help mitigate the causes of climate change. The budget proposes $16.8 million, an increase of $2.6 million, for environmental clearances and other activities associated with energy development.

Landscape Level Understanding – The budget request includes $69.7 million, an increase of $12.2 million above the 2015 enacted level, for landscape level science and conservation. Global and national conservation challenges such as development pressure, climate change, resource extraction, wildfire, drought, invasive species and changing ocean conditions require an unprecedented effort to better understand threats and inspire coordinated action to address them.

The President's request for the Service includes an important increase for Landscape Conservation Cooperatives (LCCs). The budget requests an increase of about $8 million for LCCs and Adaptive Science over the fiscal year 2015 appropriation. LCCs are at their core voluntary, non-regulatory collaborations with States, Tribes, and others stakeholders. Together, we work at the large landscape scale, identify common priorities, invest in the science needed to make smart conservation decisions, and then work together to meet our shared goals. The growing commitment to the LCCs by our partners is demonstrated by the formal participation of over 270 organizations on LCC committees and the increasing leveraging of resources.

Partners are now calling upon LCCs to take on larger roles. For example, LCCs are working with 15 Southeastern States to facilitate the development of a shared conservation vision. The effort is identifying the areas that are most important for wildlife in the Southeastern United States, allowing all partners to coordinate conservation investments and leverage resources into the future. Similarly, at the request of Northeastern States, LCCs are knitting together multiple state wildlife action plans into a single regional conservation strategy. LCC investments are also prioritizing fish passage projects across the Great Lakes, ensuring that native fish can move into historical spawning grounds while minimizing the likelihood that invasive species expand their range. In addition, LCCs are working with partners in the West to understand the impacts of invasive species and fire management on wildlife and develop strategies to keep native wildlife healthy. Providing funding at fiscal year 2016 request level will position LCCs to meet these conservation priorities and many others identified collaboratively with our partners.

Cooperative Recovery – Species recovery is another important Service priority addressed in this budget. For 2016, the President requests a total of $10.7 million, an increase of $4.8 million over the enacted level, for cooperative recovery. The focus will be on implementing recovery actions for species nearing delisting or reclassification from endangered to threatened, and actions that are urgently needed for critically endangered species.

Legislative Proposals – In addition to our funding requests, the Service is proposing three legislative changes to reduce costs and enhance State and Federal conservation programs.

First, the Service is requesting authority, similar to that of the National Park Service and the National Oceanic and Atmospheric Administration, to seek compensation from responsible

parties who injure or destroy Refuge System or other Service resources. Today, when Refuge System resources are injured or destroyed, the costs of repair and restoration falls upon our appropriated budget for the affected refuge, often at the expense of other refuge programs. In 2013, refuges reported seven cases of arson and 2,300 vandalism offenses. Monetary losses from these cases totaled $1.1 million dollars.

We also support the extension of the authority that applies the interest from the Pittman-Robertson fund to conservation projects under the North American Wetlands Conservation Act (NAWCA). Interest from Pittman-Robertson funds is a critical source of income for NAWCA projects. Since 1994, $348 million has been provided, contributing to stabilizing waterfowl populations on the continent and enhancing hunting, fishing, and other outdoor recreation. Unless the Act is amended to extend the provision, this key source of funding for NAWCA projects will be lost.

Another legislative proposal would provide stability to the purchasing power of the Federal Duck Stamp. Our proposal would give clearly defined and limited authority to the Secretary of the Interior, after appropriate consultation with the Migratory Bird Conservation Commission, to periodically increase the price of the Federal Duck Stamp to keep pace with inflation. We appreciate Congressional approval last year of the first increase to the cost of a Duck Stamp in many years, and we hope this provision will allow the funds generated by the stamp to keep up with inflation.

Endangered Species Act Overview

The Endangered Species Act (ESA) provides a critical safety net for America's native fish, wildlife, and plants. And we know it can deliver remarkable successes. Since Congress passed this landmark conservation law in 1973, the ESA has prevented the extinction of hundreds of imperiled species across the nation and has promoted the recovery of many others – like the bald eagle, the very symbol of our Nation's strength.

Earlier this year, in recognition of its recovery, the Service delisted the Oregon chub, a fish native to rivers and streams in the State of Oregon. The recovery of the Oregon chub is noteworthy because it is attributable in significant part to the cooperation of private landowners who entered into voluntary conservation agreements to manage their lands in ways that would be helpful to this rare fish. In some cases, landowners agreed to cooperate in reintroducing the fish into suitable waters on their property. The help of private landowners and the cooperation of state and federal partners were critical to the success in bringing this fish to the point at which it is no longer endangered and no longer in need of the protection of the ESA.

As the Oregon chub example makes clear, private landowners can hasten the recovery of endangered species through their cooperative efforts. The Oregon chub is just one of many endangered species that landowners are helping recover through voluntary agreements with the Service known as "safe harbor agreements." These agreements provide participating private property owners with land-use certainty in exchange for actions that contribute to the recovery of listed species on non-Federal lands. Safe harbor agreements with Texas ranch owners have helped restore the northern aplomado falcon to the United States, from which it had been absent

for roughly a half century. In the southeastern United States, more than 400 landowners have enrolled nearly 2.5 million acres of their land in safe harbor agreements for the endangered red-cockaded woodpecker. These landowners have effectively laid out the welcome mat for this endangered bird on their land, as a result of which populations of this endangered bird are growing on many of these properties.

In October 2013, the Service withdrew its proposal to list the Coral Pink Sand Dunes tiger beetle, a species found in Kanab, Utah. The Service was able to withdraw its proposal based on an amendment to an existing conservation agreement that sufficiently addressed the threats to the beetle by enlarging an existing conservation area, and targeting additional areas of habitat for protection. This was a joint effort among the Bureau of Land Management, Utah Department of Natural Resources, Kane County and the Service.

Last summer, the Service announced its determination that listing the Montana population of Arctic grayling was not warranted. Private landowners in the Big Hole and Centennial valleys in Montana worked through a voluntary Candidate Conservation Agreement with Assurances ("CCAA") to achieve significant conservation of grayling within its range. Since 2006, over 250 conservation projects have been implemented under the CCAA to conserve Arctic grayling and its habitat. Habitat quality has improved and grayling populations have more than doubled since the CCAA began in 2006. The cooperation between the federal and state partners serves as a model for voluntary conservation across the country.

The ESA provides great flexibility for landowners, states and counties to work with the Fish and Wildlife Service on voluntary agreements to protect habitat and conserve imperiled species. Through Safe Harbor Agreements, Candidate Conservation Agreements, Habitat Conservation Plans, Experimental Population authority, and the ability to modify the prohibitions on take of endangered species in Section 9 by crafting special rules for threatened species under Section 4 (d), the Act allows and encourages creative, collaborative, voluntary practices that can align landowner objectives with conservation goals.

Improving the ESA

The Administration is working hard to continually improve our implementation of the ESA. Our efforts are guided by four broad themes: (1) ensuring the use of best science and increasing transparency; (2) engaging the states as fuller partners; (3) incentivizing voluntary conservation efforts; and (4) focusing our resources on delivering more successes.

In the coming weeks we will be announcing actions that the Administration will take over the next 18 months to continue improving the execution and implementation of the ESA, consistent with these four themes. Some of these ideas are already in progress. We are working with states to finalize a proposal that would give credit for early conservation action to any state that develops a program to advance the conservation of candidate or other at risk species. This entirely voluntary program will create a tangible reward for states and landowners who participate if the species becomes listed in the future. We will also propose revisions to our 1981 mitigation policy and our 2003 guidance on conservation banks. Both revisions will help clarify the permitting process and because conservation banks provide advance gains for species, should

also expedite permitting. We will be announcing additional actions in the coming weeks but wanted to give you this summary of some of the most important actions we are taking to make the ESA work even better.

The most significant step that Congress can take in improving effectiveness of the ESA is to provide the resources needed to get the job done in the field. To that end we ask that Congress support the President's budget request for Fiscal Year 2016.

S. 292 the 21st Century Endangered Species Transparency Act and S. 736, the State, Tribal, and Local Species Transparency and Recovery Act

If enacted, S. 292, the *21st Century Endangered Species Transparency Act,* and S. 736, the *State, Tribal and Local Species Transparency and Recovery Act* would establish a requirement to make publically available on the internet the best scientific and commercial data that are the basis for each listing determination. S. 736 would amend the ESA to require the Service to provide states with all data used in ESA section 4(a) determinations prior to making its determination, and define "best available scientific and commercial data" to include all data submitted by a state, or tribal or county government.

"Best Available" Data

The decisions that the Service makes with respect to listing or delisting of species must be made "solely on the basis of the best scientific and commercial data available." Congress added this explicit directive in 1982, in response to the perception that some listing decisions then were being influenced by non-scientific considerations. Congress made clear then that the threshold decision of whether a species is an endangered or threatened species is a scientific judgment to be informed by the best available information alone.

Often, the states are among the best sources of such information, particularly with respect to game and other actively managed species. However, some states lack authority or programs to conserve certain species that are eligible for protection under the ESA, such as invertebrates and plants, and therefore collect insufficient data. Counties and other units of local government generally have neither jurisdiction nor programs to manage wildlife. Relevant and highly credible data and information may also come from such sources as universities, museums, conservation organizations, and industry. Thus, to define data submitted by a state, tribal or county government as always constituting the "best scientific and commercial data available" – as S. 736 does – would be incorrect in many cases and would serve to exclude or override data and information available from other credible sources. Section 4(b)(1) of the Act already requires the Service to take into account the efforts and views of states and their political subdivisions when making listing decisions, and Section 4(i) requires the Service, if it makes a listing determination at odds with the recommendations of a state, to provide that state with a written explanation of the reasons for doing so. Finally, it should be noted that defining all data submitted by states or counties as the "best available," would create a quandary if there were conflicting data from such sources. A concrete recent example concerned several counties in Kansas who took strong exception to the conservation plan for the lesser prairie-chicken that the

state proposed. The counties and the state took diametrically opposed positions based on conflicting data. In this example, both cannot be the "best available."

The Service already makes available through *Regulations.gov* the information upon which our listing determinations are based, but with recognition of the limitations posed by state law, copyright, or other factors. As noted, the studies, reports, and research publications by state agencies or their employees are often the best studies and analyses available to the Service. A broad-ranging requirement to post on the internet this state data – particularly if that requirement extends to the raw data underlying such studies and analyses – would almost certainly elicit a number of well-considered concerns from the states themselves. Those concerns would start with the fact that in some instances state law prohibits the release of certain wildlife data. For example, Texas Government Code Section 403.454 prohibits the disclosure of information that "relates to the specific location, species identification, or quantity of any animal or plant life" for which a conservation plan is in place or even under consideration. We note that S. 292 recognizes the limitations posed by state law, although other factors also need to be considered when determining what information is suitable to post on a publicly accessible website.

Even where there is no state law barrier to releasing the raw data underlying state studies, there are many reasons why states would be reluctant to have that data widely disseminated via the internet. To the extent that such data reveals the location of rare or sensitive species, its disclosure would put such species at added risk, both from collectors or vandals as well as from people with entirely innocent motives, such as the desire to get an up-close photo of an eagle and its young in their nest, or of prairie-chickens displaying on their mating grounds.

The ability of states, and of scientific researchers generally, to gather wildlife data often depends upon the willingness of private landowners to grant them access to their lands. Many landowners can reasonably be expected to be less likely to grant such access if they know that the data collected on their land would be posted on the internet. Their concerns might include the well-being of the wildlife on their land as well as their own sense of privacy and desire not to have to contend with trespassers, vandals, and simple curiosity seekers. The disclosure requirement that the sponsors of S. 292 intend to produce better scientific data could have the unintended consequence of reducing the amount and quality of such data. While the Service is willing to explore other approaches, it has generally found satisfactory to most states and researchers its current records management process. As part of that process, the Service makes available all of the relevant scientific and commercial data that it has and on which it relies in making a listing determination under section 4(a)(1) of the ESA. The data is generally maintained at the field office that is the lead for making the listing determination. Additionally, a list of literature, studies, and other relevant data used in making the determination and copies of pivotal documents are posted on *Regulations.Gov*, the government website for electronic records and public comments. These documents are generally made available to the public electronically upon request. However, there may be limitations to the release of certain data if it falls within one of the exceptions to disclosure under the Freedom of Information Act (for example, the Service sometimes obtains from the Defense Department certain high resolution photographs that the Department requests not be released to the public because of national defense considerations). In these cases, the Service refers the requester to the party from which the data originated. Further, in many circumstances, such as peer-review published literature, the Service

relies on a synthesis or analysis of data that is summarized by the prevailing scientific expert or author of the paper. In such circumstances, the Service relies on the expert evaluation and analysis of the data and may not have in its possession or be able to obtain the underlying data.

The Administration is working to address the underlying concerns that may have motivated S. 292 and S. 736 using existing authorities and welcomes input from Congress as we move toward increased transparency using modernized methods. As such, S. 292 and S. 736 are not necessary and we cannot support them.

S. 293, To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements

S. 293, would amend the ESA to require the Service to publish all complaints received pursuant to the ESA within thirty days of being served in order to provide notice to all affected parties. Those affected parties would then have a "reasonable opportunity" to move to intervene, during which time parties would be prohibited from moving for entry of a consent decree or to dismiss the case pursuant to a settlement agreement. The bill would create a rebuttable presumption that any affected party moving for intervention would not be adequately represented by the existing parties. If the court grants a motion to intervene, the bill requires the court to refer the case to mediation or a magistrate judge for settlement discussions including any intervenors. Finally, the bill revises the attorneys' fees provision, effectively prohibiting the payment of attorneys' fees to plaintiffs in any case that settles and adds a new provision that requires each state and county where the species at issue occurs to approve of the settlement.

When the Service settles an ESA case, it is because we are unlikely to be the prevailing party, and settlement of the case will both save the Government the time and expense of further litigation and will result in terms more favorable to the Government than what we might expect from a court if the case went to trial. We do not give away our discretion to decide the substantive outcome of any agreed upon actions, and the notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions. It is important that we retain the ability to settle ESA litigation on favorable terms and reduced cost to the Government.

If this bill were enacted and a burdensome process were imposed, the prohibition against the award of reasonable attorney fees will make it highly unlikely that any plaintiff will agree to settle a case. Instead, plaintiffs would likely press the courts for summary judgment, seeking a remedy that may be far less favorable for the Service and forcing the Government to incur litigation costs far in excess of the reasonable attorney fees associated with a settlement agreement. In addition, the requirement that each State and County within the range of the species must approve any settlement will make it nearly impossible to achieve the concurrence necessary to pursue settlement.

When deadline cases have been litigated in the past, courts have frequently imposed very short deadlines. Therefore, removing the incentive for settlement is likely to accelerate the timing of listing determinations and other actions required by deadline, thereby reducing the opportunity for interested parties to participate in the decision-making process. In addition, the necessity of

fully litigating each case would greatly increase the administrative burdens and costs borne by the Service and the courts, with no offsetting benefit.

The Department opposes S. 293 because it will greatly diminish the opportunity to settle deadline lawsuits brought under the ESA, where it is in the interests of the Government and taxpayer to do so.

S.112, the Common Sense in Species Protection Act

S. 112, the Common Sense in Species Protection Act, amends the ESA of 1973 to make exclusion of specific areas from a critical habitat designation a mandatory duty, rather than a discretionary one. The effect of this change would be to create another cause of action for legal challenge to critical habitat designations, creating greater litigation risk, more litigation, and more litigation costs to the Service and the Government.

The bill goes well beyond the requirement published in the revised 50 CFR 424.19, that was directed by the President's February 28, 2012, memorandum, which directed us to take prompt steps to revise our regulations to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat. In particular, the bill would require that the economic analysis assess the impacts not merely of the proposed designation of critical habitat, but of "all actions to protect the species and [its] habitat." This would represent a marked reversal of the principal embodied in the ESA since 1982 that the decision whether a species is threatened or endangered should be a scientific one, not one skewed by economic or political considerations. In addition, the bill would require that the draft analysis be published versus our practice of making it available, but not publishing. By codifying the requirements set forth in these lines, it could limit any future discretion to change these provisions by revising the regulations and would result in requiring additional resources to "publish" the draft economic analysis. The Service believes that the revised regulation adequately establishes these requirements and incorporates public involvement in the rulemaking process and a revision to the ESA is not necessary, therefore we cannot support S. 112.

S. 855, the Endangered Species Management Self-Determination Act

The Department opposes S. 855, which would make dramatic changes to the ESA. First, it would require the consent of the Governor of each state in which a species occurs before a species could be listed as threatened or endangered. Second, the list of threatened and endangered species would not become effective without a joint resolution of Congress. Third, that list would terminate after five years, thus necessitating a repeat of the entire process of seeking gubernatorial and congressional consent. The net effect would be an endless cycle in which species would gain and then lose legal protection and the Service's resources would be spent on repetitive processes rather than on meaningful conservation. During periods in which a lapsed listing was awaiting a new congressional resolution, any conservation gains could be wiped out or substantially reduced.

For species that occur in a single state, the bill allows the Governor of that state to exercise exclusive authority over that species, including the exclusive authority to issue any permits, enforce regulations, and specify recovery goals. This provision thus potentially removes federal protection from nearly all the listed species in Hawaii, the Florida panther, the California sea otter, Attwater's prairie-chicken, the San Joaquin kit fox, and hundreds of other currently listed species. The potential extinction of any listed species impacts more than just the state in which it is found; it impacts the Nation as a whole.

Finally, the bill creates a perverse incentive for property owners to propose uses of their property that are incompatible with conserving listed species that occur thereon. It does so by allowing a property owner to submit to the Service a proposed use and to request of the Service a determination whether that proposed use would violate any provision of the ESA. If the Service determined that it would, the property owner would be entitled to be compensated by an amount equal to 150 percent of the fair market value of the property. Thus, by proposing an incompatible use, a property owner could secure compensation that is far in excess of the actual value of the property, thus creating an incentive for such owners to propose such uses for the sole purpose of securing excessive compensation.

S. 655, To prohibit the use of funds by the Secretary of the Interior to make a final determination on the listing of the northern long-eared bat under the Endangered Species Act of 1973

Bats are a critical component of our nation's ecology and economy, maintaining a fragile insect predator-prey balance. Without bats, insect populations can rise dramatically, with the potential for devastating losses for our crop farmers and foresters. In the United States, the northern long-eared bat is found from Maine to North Carolina on the Atlantic Coast, westward to eastern Oklahoma and north through the Dakotas, reaching into eastern Montana and Wyoming. Throughout the bat's range, states and local stakeholders have been some of the leading partners in both conserving the long-eared bat and addressing the challenge presented by white-nose syndrome.

On April 2, 2015, the Service published its final decision to protect the northern long-eared bat as a threatened species under the ESA primarily due to the threat posed by white-nose syndrome, a fungal disease that has devastated many bat populations. Concurrently, the Service issued an interim 4(d) rule that eliminates unnecessary regulatory requirements for landowners, land managers, government agencies and others in the range of the northern long-eared bat. We designed the interim 4(d) rule to provide appropriate protection within the area where the disease occurs for the remaining individuals during their most sensitive life stages, but to otherwise eliminate unnecessary regulation. The Service has invited the public to comment on this interim rule as the Service considers whether modifications or exemptions for additional categories of activities should be included in a final 4(d) rule that will be finalized by the end of the calendar year.

The Service has finalized the listing determination for the northern long-eared bat, made effective on May 2, 2015. The Department cannot support S. 655.

S. 468, Sage-Grouse and Mule Deer Habitat Conservation and Restoration Act

S. 468 would establish a new categorical exclusion under the National Environmental Policy Act (NEPA) for certain vegetation management projects on lands administered by the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). Under the bill, the removal or treatment of pinyon and juniper trees for the purposes of conserving or restoring Greater Sage-Grouse or Mule Deer habitat would be eligible for a categorical exclusion. The BLM shares Senator Hatch's strong interest in conducting pinyon and juniper vegetation treatments and supports the goals of S.468, but has some concerns with the bill as introduced. We would like to work with him and the Committee to narrow the proposed categorical exclusion to a more narrowly defined set of circumstances, in addition to establishing a sunset for the provision.

The BLM treats thousands of acres of pinyon and juniper annually to improve habitat for the Greater Sage-Grouse and other sagebrush-dependent wildlife species, provide opportunities to establish native vegetation, and reduce the risks of resource damage from catastrophic wildfires. Before undertaking vegetation treatments, the BLM engages in robust public involvement and tribal consultation to assess both existing resource conditions and the potential impacts of proposed treatments. Consideration of resources, such as cultural values, archaeological sites, wildlife species, native vegetation, drought conditions, and invasive weeds, ensures that treatments can be undertaken in the areas where they will be most effective and can be conducted in a manner that does not adversely impact other resources.

The BLM recognizes that there are many acres of sage-grouse habitat that require removal or treatment of encroaching pinyon and juniper, but a broad categorical exclusion as provided for under this bill would not ensure an adequate analysis of impacts to other significant resources would occur. For example, the bill does not include any limit to the scale, method, or effect of a vegetation treatment that would be covered by the categorical exclusion. The BLM believes a categorical exclusion would be inappropriate in cases of large spatial scales, controversial or high-impact types of treatments, and in areas with sensitive resources that could be adversely impacted. The BLM and USFS have found that the current approach of landscape-level Environmental Assessments increase efficiency of vegetation treatments while offering the flexibility to use available resources. We also recommend planning a sunset on a possible categorical exclusion to ensure an opportunity to evaluate and consider the use and impact of this special tool over a specific and limited period of time.

The BLM is interested in working with Senator Hatch and the Committee to further explore opportunities for increasing the efficiency of pinyon and juniper treatments to advance the goals of S. 468 without obviating the benefits of meaningful NEPA analysis.

S. 1036, A bill to require the Secretary of the Interior and the Secretary of Agriculture to provide certain Western States assistance in the development of statewide conservation and management plans for the protection and recovery of sage-grouse species, and for other purposes

S. 1036 would prohibit the USFWS from making a listing determination of the Greater Sage Grouse for a period of no less than six years and subordinate federal land management authority

to undefined state land use plans. This unnecessary delay would subvert the West-wide partnership to conserve an iconic animal and the unique American landscape on which it depends. The bill runs counter to the fundamental principle that science should govern determinations under our nation's environmental laws by legislating the conservation status of a species under the ESA without regard to science. More practically, by preventing the FWS from determining whether the sage grouse warrants protection under the ESA for at least six years, the amendment precludes any opportunity for reaching a not warranted determination by September of this year. For more than five years, a diverse coalition of federal agencies, states, private landowners, and other stakeholders have worked tirelessly to map the long-term future of America's sagebrush systems, a future that includes healthy wildlife populations, abundant outdoor recreation opportunities, and strong, working communities.

The Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service (USFS), are completing an unprecedented and proactive planning effort to conserve the uniquely American habitat that supports the Greater Sage-Grouse and other iconic wildlife species, outdoor recreation, ranching, and other traditional land uses. Through close coordination with Governors, State Wildlife Agencies, and the Service, this partnership has created a new model for wildlife conservation, one that spans 11 states and offers a path forward to find a balance between a full range of resources, including the conservation of crucial wildlife habitat and resource uses. The BLM and USFS planning effort is designed to work in harmony with the State Greater Sage-Grouse plans from the Natural Resources Conservation Service's Sage-Grouse Initiative. Combined with the Secretary's wildland fire strategy, the efforts are a significant step for the conservation of sage-grouse habitat.

S. 1036 would – for no clear benefit to the species, landscape, or American public, including people who live and work in sage-grouse country – shelve this historic initiative, erase the progress the partnership has made toward rescuing a landscape in trouble, remove for the duration any chance of securing Greater Sage-Grouse and its habitat without the protections of the ESA, explicitly prevent the Service from reaching a "not warranted" determination this fiscal year and prolong the uncertainty for all those who live and work in the sagebrush steppe.

Indeed, this bill would dismantle many of the important tools the partners have put in place, not just to protect sage-grouse, but to forge a new way of doing species conservation business in the West, and across the nation, a way that focuses on landscapes, cooperation and balanced solutions. After decades of rancor over public land management and wildlife conservation in the West, government, working with its citizens and those who live closest to the resource, has shown there is a third way, a solution. The federal land management plans have been designed to focus development away from the habitat most important for the species, while allowing for continued economic development in areas of less conflict.

The Service's decision on whether or not the Greater Sage Grouse warrants protection under the ESA depends greatly on the certainty that planned conservation actions will be implemented and will be effective. The BLM and Forest Service stand poised to finalize and implement their plans.

The bill would create a significant impediment to sage-grouse conservation and will erase more than five years of partnership-driven effort and millions of dollars of investment in federal planning efforts focused on sage-grouse. The immediate suspension of federal plans will be detrimental to grouse conservation and sound management of the larger sagebrush-steppe landscape, as will the immediate reversal of actions the federal land management agencies have already implemented. The federal land management plans were developed to address the very threats that led to sage-grouse's decline across the majority of the species' range. Importantly, these plans were developed locally and in concert with many cooperators and are tailored to address specific, identified threats within the planning areas.

Thousands of hours of collaborative work incorporating the best science went into these plans. If they are completed and the federal land managers ensure they will be implemented, these plans could help preclude the need to list sage-grouse. Accordingly, the Department opposes S. 1036.

S. 1081, A bill to end the use of body-gripping traps in the National Wildlife Refuge System

The Service appreciates the Senator Booker's interest in ensuring trapping practices on National Wildlife Refuge System lands are humane but we have some concerns with the bill as written. Trapping is an important management tool that the Service uses to protect threatened and endangered species, such as piping plover and loggerhead sea turtles, protect migratory birds, and manage other wildlife populations. In addition, trapping programs help protect Service infrastructure investments, such as impoundment dikes used to manage wetlands for a myriad of migratory birds, wetland habitats, and rare plants. Restricting trapping methods will result in expenditure of additional Service resources, staff time, and taxpayer money. The Service values its close relationship with State fish and wildlife agencies, and relies on their authority, expertise, and assistance for help in meeting wildlife population objectives. We seek, where appropriate, to complement state regulations in regards to hunting, trapping, and fishing and this bill appears to restrict the Service's ability to complement state trapping program regulations. We are also concerned with enforcing this legislation as it appears to conflict with the Alaska National Interest Lands Conservation Act (ANILCA) by not exempting subsistence use from the prohibitions on trapping. We look forward to working with Senator Booker to address these concerns.

National Wildlife Refuge System

The National Wildlife Refuge System (Refuge System), to which S. 1081 would apply, is a national network of lands and waters devoted solely to the conservation of wildlife and habitat. The 563 national wildlife refuges and thousands of waterfowl production areas across the United States teem with millions of migratory birds, serve as havens for hundreds of endangered species, and host an enormous variety of other plants and animals. The Refuge System and its over 150 million acres, offers about 47 million visitors per year the opportunity to fish, hunt, observe and photograph wildlife, as well as learn about nature through environmental education and interpretation. These visitors make refuges an important economic driver, generating nearly $2.4 billion for local economies each year returning nearly $5 for every dollar appropriated to the Refuge System.

Trapping on National Wildlife Refuge System Lands

Trapping is often used on Refuge System lands to accomplish wildlife management objectives. Wildlife management objectives vary between refuges but may include: controlling predators for the protection of threatened or endangered species, managing invasive species populations that impact refuge habitats and infrastructure, and providing management of species to provide a safe place for wildlife and our visitors. These objectives are identified in the trapping plans that are developed when opening a refuge to trapping. The decision to permit hunting, trapping and fishing on national wildlife refuges is made on a case-by-case basis that considers biological soundness, economic feasibility, effects on other refuge programs, and public demand.

Trapping is also viewed by the Service as a legitimate recreational and economic activity when there are harvestable surpluses of furbearing mammals. ANILCA allows for subsistence uses in Alaska, including trapping.

Examples of Trapping:

Blackwater National Wildlife Refuge, Maryland – Nutria are South American semi-aquatic rodents similar to native muskrat and beaver. They breed year round and can give birth to two or-three litters of four to-nine young each year. Nutria is a highly invasive species that eat plants, including their roots, causing severe negative impacts on wetland environments. At the Blackwater National Wildlife Refuge in Dorchester County, Maryland, nutria destroyed nearly half of the marshlands vital for native wildlife in the 1990s. In a 2004 economic study commissioned by the Maryland Department of Natural Resources, they found that, without action, over 35,000 acres of Chesapeake Bay marshes could be destroyed by nutria within 50 years with annual economic losses estimated in the hundreds of millions.

To eradicate nutria, the Service works with USDA Wildlife Services to implement a monitoring and trapping program to eradicate nutria from Blackwater National Wildlife Refuge. The program has tested a variety of traps and trapping strategies for their efficiency in capturing nutria under various natural conditions. While box traps can be used where appropriate, body-gripping traps proved to be more effective and at times more selective in the types of species trapped. Since nutria are a semi-aquatic species, box traps that need to be set on dry ground cannot be used exclusively. Also, body-gripping traps that have been used on the Refuge could be set to reduce the incidence of capture of non-target species, even differentiating between nutria and native species such as muskrat. The program is currently in a monitoring and bio-security phase of the eradication protocol. The refuge will need to continue the use and/or availability of use of the body-gripping traps to address any re-occurrence until eradication is finally achieved throughout the Delmarva Peninsula.

Trapping on New Jersey National Wildlife Refuges – National Wildlife Refuges in the State of New Jersey allow for management trapping programs. Trapping at these Refuges is vital for controlling predator species to protect endangered beach nesting bird species such as piping plover, least tern, black skimmer, and other endangered wildlife such as bog turtles. Traps are also used to protect waterfowl during banding operations. When waterfowl are caught in traps, raccoons will predate on the birds before staff can get to them to band and release the birds.

Traps for these predator species are needed to prevent predation on these birds. Traps also protect infrastructure investments including:

- Protecting for Water Control Structures – beavers block these up with debris which undermines the structure, weakens them, and causes failures.
- Protect Impoundment Dikes – muskrat and beavers burrow into them thereby weakening the integrity of the dike, which can lead to failure. Impoundment/water control structure failure can result in: uncontrolled flooding upstream of homes and businesses; release of contaminated sediment contained in the impoundment from past human activities; and adverse impacts on wildlife and aquatic plants dependent on those managed wetlands.
- Beavers will block streams and other waterways that can and often do result in flooding roads and trails preventing safe access to destinations.

The use of body-gripping traps in these examples is of great importance to achieving critical conservation objectives and could be restricted by S. 1081. We are happy to work with Senator Booker and the Committee to address our concerns in this legislation.

Conclusion

In closing, Mr. Chairman, America's fish, wildlife, and plant resources belong to all Americans, and ensuring the health of imperiled species is a shared responsibility for all of us. The native species and ecosystems of our planet support billions of people and help drive the world's economy. Despite the challenges we face, I am incredibly optimistic about the future. With the President's budget request we can help preserve the values Americans support, leave a legacy to our children and grandchildren, and sustain species and habitat.

In implementing the ESA, the Service endeavors to adhere rigorously to the congressional requirement that implementation of the law be based strictly on science. At the same time, the Service has been responsive to the need to develop flexible, innovative mechanisms to engage the cooperation of private landowners and others under the ESA and other laws, both to preclude the need to list species where possible, and to speed the recovery of those species that are listed. The Service remains committed to conserving America's fish and wildlife by relying upon the best available science and working in partnership to achieve recovery.

Thank you for your work on behalf of the American people, and for your support of the U.S. Fish and Wildlife Service. I am happy to answer any questions you may have.

Environment and Public Works Committee hearing entitled, "Fish and Wildlife Service: The President's FY2016 Budget Request for the Fish and Wildlife Service and Legislative Hearing on Endangered Species Bills" Questions for the Record for Director Dan Ashe

May 6, 2015

Senator Inhofe:

American Burying Beetle

At the May 6 hearing, you stated that the U.S. Fish and Wildlife Service (Service) would initiate a 5-year status review for the American Burying Beetle (ABB) in June 2015, and the process could take between six and 18 months to complete.

1) What are the steps the Service will take in considering whether to delist the ABB, and how long are these steps expected to take?

Response: The Service has initiated a status assessment to review the status of the ABB across its range. We had meetings with multiple Service offices on June 23 and 24, 2015, and with ABB experts on October 8 and 9, 2015. Information from the status assessment will be used to prepare the 5-year review and to inform other decisions related to the recovery of the ABB. The status assessment is expected to be completed by December, 2016. The assessment will involve the coordination and consolidation of information from multiple Service regions and field offices and will provide opportunities for input, feedback and review from several species experts and State Game and Fish Agencies within the range of the ABB.

The Service is also responding to a petition to delist the ABB. The Service is preparing a 90-day finding that we expect to publish in the Federal Register within a few months. If the 90-day finding is positive, the Service would initiate a status review of the ABB to inform our 12-month finding as to whether the petitioned action is warranted, warranted but precluded by higher actions, or not warranted. Public comment would be sought during the status review. The SSA would be used to inform the 5-year review and 12-month finding, if needed.

2) How will the Service take into consideration the size and health of the ABB population in specific states and geographic areas to determine whether the species has recovered?

Response: The Service will develop a process to bring in Federal, state, and other knowledgeable experts from all portions of the ABB range to collectively assess the existing scientific information on the ecology, distribution, status and viability of known populations using peer reviewed and other published research.

3) Would the Service be authorized to make a recovery determination and delisting decision for the ABB in a specific state or geographic area, even if the species has not recovered in its entire range?

Response: The Service would not have the authority to downlist or delist the ABB in a specific state or geographic area, even if the species has not recovered in its entire range. For vertebrate species, we are authorized to apply listing determinations to geographic populations if the populations meet the criteria described in our Distinct Population Segment Policy (61 FR 4722-4725; February 1996). However, because the ABB is not a vertebrate, this policy cannot be used to change the listing status of the ABB for individual geographic populations.

4) How will the lack of an updated recovery plan and delisting criteria impact the Service's ability to assess whether the ABB has recovered and should be delisted as part of the new status review?

Response: For the 5-year review, the Service will use the best available scientific and commercial information to assess the status of the ABB, which will include an analysis of the five listing factors and whether we believe the species continues to be endangered, or should be considered for downlisting—to threatened—or proposed for delisting. The lack of an updated recovery plan and delisting criteria does not preclude the Service from proposing changes in the status of the ABB. Any decisions to propose changes in the status will be justified and based on the best available information developed through the species status assessment. If we conclude that the ABB should remain on the list, the 5-year review will help us determine what, if any, additional information is needed to update the recovery plan, or revise recovery goals, including the development of delisting criteria.

5) What is the status of the MOU and the ABB fund with The Nature Conservancy?

Response: The Service entered into a Memorandum of Understanding (MOU) with The Nature Conservancy - Oklahoma Chapter in February 2009 to establish a conservation fund for the ABB. The MOU was scheduled to operate for a period of five years and was subject to expiration or renewal at that time. The conservation fund received money from the Federal government, the state, and private parties for habitat conservation and recovery research activities related to the ABB. However, the MOU and ABB fund are no longer in effect.

6) Did the Service renew the MOU after the initial 5-year period? If not, please explain the circumstances surrounding the expiration, cancellation, or revocation of the MOU.

Response: The MOU was terminated in 2012 and was not renewed. The Service made the decision to terminate the MOU to develop an appropriate and efficient mechanism for compliance with the Endangered Species Act that would support individual incidental take permits for oil and gas development while promoting conservation of the ABB. The Service then began developing the Industry Conservation Plan for oil and gas development activities within Oklahoma in May 2012.

7) Were any audits or reviews conducted of the contributions received by or expenses from the ABB conservation fund? If yes, please describe the findings and any recommendations concerning such audits or reviews.

Response: There were no audits conducted of the funds or expenses. All individual projects completed through the ABB conservation fund were reviewed and approved by the Service as they were submitted. All funded projects and proposals were considered appropriate for research and recovery of the ABB and were approved.

8) How much money from the ABB conservation fund was used to acquire land or otherwise support the Tallgrass Prairie Preserve?

Response: The ABB conservation fund totaled $830,537.00. A majority of that funding was used by The Nature Conservancy to manage ABB habitat and purchase lands that are now part of the Tallgrass Prairie Preserve. About 335 acres were purchased adjacent to the Tallgrass Prairie Preserve to support ABB conservation. This was considered appropriate because the area near the Preserve represents the largest and best-known population of ABBs in northern Oklahoma.

9) To what extent was section 7 consultation performed in connection with the bison herd's impact on the ABB at the Tallgrass Prairie Preserve?

Response: Oklahoma State University conducted research on the effects of bison grazing and burning at the Tallgrass Prairie Preserve. The research indicated the effects of grazing are related to recent fire history. The results demonstrated potential ABB benefits with appropriate levels of burning and grazing that maintained habitat diversity and favored rodents and birds used by ABBs as sources of carrion during reproduction. The Service is not aware of any section 7 consultation having been conducted that considered the effect of the bison herd's impact on ABB at the Tallgrass Prairie Preserve.

Consultation

In a letter dated May 27, 2014, you informed me that as of that date Environmental Protection Agency (EPA) had not asked the Service to engage in section 7 consultation on the proposed New Source Performance Standard for greenhouse gases from new power plants.

10) Has the Service had any discussions with EPA, the Department of Justice, the Council on Environmental Quality, or other federal official about section 7 consultation in regards to EPA's development of the Standards of Performance for Greenhouse Gas Emissions for new Stationary Sources or the Carbon Pollution Emission Guidelines for Existing Stationary Sources? If yes, please provide the dates of these discussions, the officials involved, and a description of what was discussed and any decisions made.

Response: Between April 14 and April 17, 2015, the Service and EPA had two email exchanges and two telephone calls to discuss a draft response from the Service to a letter from Chairman Rob Bishop of the House Natural Resources Committee on this subject. The following individuals participated in one or more of those email exchanges and/or telephone calls:

Gary Frazer, Assistant Director for Ecological Services, FWS
Megan Kelhart, Office of Congressional and Legislative Affairs, FWS
Stephenne Harding, Office of Congressional and Legislative Affairs, DOI

Jason Powell, Office of Congressional and Legislative Affairs, DOI
Jeremy Bratt, Office of Congressional and Legislative Affairs, DOI
Laura Vaught, EPA
Nichole Distefano, EPA
William Niebling, EPA
Todd Siegel, EPA

The email exchanges and phone calls were to confirm that the Service's response to Chairman Bishop accurately described EPA's consideration of the need for section 7 consultation with regard to their development of these two rules. No decisions were made, other than to concur on the substance of the Service's response to Chairman Bishop. To our knowledge, the Service has not had any other conversations with EPA, the Department of Justice, the Council on Environmental Quality, or other federal official regarding this issue.

11) Section 7 of the ESA and Service regulations require that all federal agencies consult with the Service about whether any proposed action – including issuance of a regulation – is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. EPA's proposed greenhouse gas rule for existing power plants promotes the use of renewable energy, and many of these solar and wind projects will impact threatened and endangered species and their habitat – from the desert tortoise to the northern long-eared bat. Can you confirm that EPA has not asked the Service to undergo section 7 consultation with the Service in regards to the greenhouse gas rules for new and existing power plants, correct?

Response: The EPA has not asked the Service to enter into section 7 consultation regarding this issue.

The FY 2016 budget request (at ES-12) indicates that the Fish and Wildlife Service works closely with EPA on water quality and pesticide registrations, including section 7 consultations for these EPA actions. In a recent letter to the House Natural Resources Committee, you wrote that the Fish and Wildlife Service "has not requested that EPA consult on these two Clean Air Act rules, and we do not intend to do so, because we know from past experience that EPA has full knowledge of their Section 7 responsibilities. EPA, as the expert agency on the Clean Air Act, is best positioned to understand if their rules will affect listed species or designated critical habitat; the Service does not have the technical expertise in the Clean Air Act to be able to independently do so."

12) Does the Fish and Wildlife Service consider EPA to be the expert agency on the Clean Water Act or the Federal Insecticide, Fungicide, and Rodenticide Act, and if so, why then is EPA not in the best position to understand if their actions involving water quality standards and pesticide registrations will affect listed species and designated critical habitat? If not, please explain the basis for the different approaches to consultation with EPA under the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act and the approach involving these two Clean Air Act rules.

Response: Federal agencies are ultimately responsible for determining if their proposed actions may affect listed species or designated critical habitat. If an agency determines that an action it is proposing may affect listed species or designated critical habitat, it must either formally consult with the Service and/or NOAA Fisheries, or obtain written concurrence that the proposed action is not likely to adversely affect any listed species or critical habitat (i.e., the effects are completely beneficial, insignificant, or discountable). In contrast to the two Clean Air Act rules, EPA has initiated consultations with the Service and NOAA Fisheries regarding certain activities they are authorizing, funding, or otherwise carrying out under the Clean Water Act and Federal Insecticide, Fungicide, and Rodenticide Act.

13) Does the Fish and Wildlife Service interpret the Endangered Species Act to require consultation under section 7 if an action agency believes that its action would have a beneficial or positive effect on listed species or designated critical habitat?

Response: Section 7 consultation is required for any proposed Federal action that "may affect" a listed species or designated critical habitat, including if the effects of the action are beneficial. However, if a proposed action is wholly positive, without any adverse effects, on a listed species or designated critical habitat, formal consultation with the Service is not required. Instead, the action agency may request concurrence from the Service that the action, "may affect, but is not likely to adversely affect" listed species or designated critical habitat.

14) In determining whether an action "may affect" a listed species or designated critical habitat, would consultation be required even if an action agency believed the action would have a beneficial or positive effect?

Response: Section 7 consultation is required for any proposed Federal action that "may affect" a listed species or designated critical habitat, including if the effects of the action are beneficial. However, if a proposed action is wholly positive, without any adverse effects, on a listed species or designated critical habitat, formal consultation with the Service is not required. Instead, the action agency may request concurrence from the Service that the action, "may affect, but is not likely to adversely affect" listed species or designated critical habitat.

15) How does the Service track petitions to list species or designate critical habitat?

Response: The Service enters each petition received into our Environmental Conservation Online System. The public can view the list of all petitions received at http://ecos.fws.gov/ecp/report/table/petitions-received.html. This report provides information on when the petition was received, the petitioners name, the petitioned action, and the petition finding if it has been concluded. The Service also provides access to petitions and petition findings through its specific species web pages, available through http://endangered.fws.gov, and then search by species name.

16) Does the Service post to its website the ESA petitions it has received? If not, is there a legal prohibition that would prevent the posting of such petitions?

Response: Yes, the Service maintains a list of petitions received online athttp://ecos.fws.gov/ecp/report/table/petitions-received.html. Through this report, the public can view any uploaded petitions. The Service continues to upload petitions to this database. Petitions and petition findings are also available through our specific species web pages, available throughhttp://endangered.fws.gov, and then search by species name.

17) What policies and procedures does the Fish and Wildlife Service have in place to inform the public and affected states about the receipt of petitions under the ESA?

Response: The above referenced report and various Service species specific or program specific web pages provide access to petitions. The Service also provides notice about the receipt of petitions through its publication of 90-day petition findings.

18) What is the Service's backlog of species that are awaiting delisting or down-listing action based on recent five-year reviews?

Response: As of June 12, 2015, there were 53 species with completed 5-year reviews recommending downlisting or delisting that had not yet been acted on. (We note that as of [date] we have proposed actions for 10 of these species but have not yet made final determinations.)

19) How many species does the Service plan to delist in FY 2016?

Response: The Service currently has 22 delisting or downlisting actions scheduled for FY 2015-2016. Thus far in FY 2015, we have delisted one species and proposed to delist 3 additional species. Of the remaining actions, eleven of these are final determinations on actions we have already proposed. The pace at which delistings and downlistings occur is dependent largely on the resources available and complexity of the individual action, so while we have established these as targets, we may not accomplish all these actions by end of FY 2016. If we were to receive an increase of $1 Million in FY 2016 for delisting and downlisting actions, we estimate that we could initiate an additional 5-6 proposed rules; similarly if we receive an increase of $2 Million in FY 2016, we estimate that we could initiate or finalize an additional 10-12 delisting or downlisting rules in FY 2016.

20) How many listed species are without recovery plans?

Response: As of June 12, 2015, 326 out of 1490 listed species do not have a draft or final recovery plan. 144 of these species have been listed since the beginning of FY 2013, meaning they have been listed less than 3 years. While there are no statutory deadlines for preparing recovery plans, the Service tries to prepare recovery plans within 2.5 years of listing. However, the large number of recent listings—213 species over the last 5 years—has made it difficult to achieve this timeline.

21) How many listed species with recovery plans are lacking criteria that would allow them to be delisted?

Response: The Service does not track which species do not have delisting criteria. However, we require that all recovery plans contain delisting criteria unless such criteria cannot be determined. Our guidance indicates that this should be an unusual case and provides the following directions for such circumstances:

> "In the rare case that recovery objectives and criteria cannot be established at the time the plan is written, the following steps should be taken: (1) describe interim objectives and criteria, which will be used for the short-term until better delisting objectives and criteria can be determined; (2) explain clearly in the plan and the administrative record why objectives and criteria are undeterminable at the time; and (3) include the actions necessary and timelines in the plan to obtain the pertinent information and develop recovery objectives and criteria once the information is obtained."

This approach is rare and is generally used only in cases where the species is in such a state of endangerment or threats are so poorly understood that we cannot estimate or predict how recovery may be achieved. If recovery criteria have not been developed it is still possible to delist a species. The determination of whether a species is threatened or endangered is based on an analysis of the 5 factors outlined in Sec 4(a)(1) of the ESA. If a species is not endangered or threatened according to this analysis, it should be delisted.

22) One of the problems with listing decisions is the lack of periodic review, even though it is mandated. Is there a better way to ensure species are reviewed for updated population counts? Status reviews?

Response: The Service supports the 5-year review requirement of the ESA for all listed species. Our 5-year reviews not only consider the numeric status of the populations, but more importantly consider the status of threats to the species that affect the species' ability to recover. The Service is moving towards the use of Species Status Assessments (SSA) for compiling and analyzing the status of the species. These SSAs are intended to provide a transparent, systematic assessment of the species' biology, population numbers, and the status of the species threats as related to the 5 listing factors under s4(a)(1). This analysis provides a scientific basis for making a determination of whether a species' listing status should remain the same, or be changed . These SSAs would be better informed if resources were available for population surveys and threats assessments..

23) Numerous Fish and Wildlife Service officials have testified in various Congressional hearings over the years that critical habitat designations are among the most costly and least effective measures of conserving species under the ESA. Do you agree with that characterization?

Response: The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (together, the "Services") are nearing completion of a rule that better describes the role and purpose of critical habitat. The Services are working together to improve the implementation of critical habitat language under the ESA to maximize efficiency and effectiveness of the critical habitat designations in supporting recovery of listed species.

Interim 4(d) Rule

24) On March 17 of this year the Fish and Wildlife Service closed the comment period for its sweeping proposal to designate the Northern Long Eared Bat, a species present in 37 states, as threatened or endangered under the Endangered Species Act and to implement a draft Section 4(d) rule under that Act. Just over two weeks later the Service published its final rule listing the species as threatened and issuing the interim 4(d) rule for the species. How do you expect any of the 37 impacted states and the myriad of stakeholders impacted to believe that you reviewed and took into account all of the comments received regarding this massive proposal in just two weeks?

Response: In the proposed listing rule published on October 2, 2013, we requested that all interested parties submit written comments on the proposal by December 2, 2013. Following that first 60-day comment period, we held four additional public comment periods (see 78 FR 72058, December 2, 2013; 79 FR 36698, June 30, 2014; 79 FR 68657, November 18, 2014; 80 FR 2371, January 16, 2015) totaling an additional 180 days for public comments, with the final comment period closing on March 17, 2015. We reviewed comments as they were received, throughout the multiple comment periods. The majority of unique, substantive comments on the proposed listing rule were received during the earlier comment periods; later comment periods raised a few, additional unique, substantive issues, but many comments raised similar issues to those in previous comments. During the last few weeks while the final rule was being written, a team of Service biologists worked diligently to sort and review all comments received during the final comment period (that pertained to the listing determination), to assure that all substantive issues were identified and addressed in the final listing rule.

Due to the complexity of the issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we decided to publish an interim 4(d) rule. The interim 4(d) rule allowed incidental take exemptions to be in place when the listing of the northern long-eared bat became final, but also provided additional time to open another public comment period for 90 days, fully consider all comments received, and engage with stakeholders.

25) In the Service's 12 month finding on the petition to list the Service stated that it "will seek peer review" and is "seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposal." What peer review was conducted prior to publication of the final decision and interim 4(d) rule, and if any was conducted, can that be made available to the Committee?

Response: For the listing determination, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with the northern long-eared bat and its habitat, biological needs, and threats. We invited these peer reviewers to comment on our listing proposal. We received responses from four of the peer reviewers. Peer reviewer comments are addressed in the final listing rule (beginning on page 18006).

We also solicited three peer reviews of the proposed 4(d) rule. However, due to the complexity of the issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we decided to publish an interim 4(d) rule. As stated above, the, interim 4(d) rule allows incidental take exemptions to be in place when the listing of the northern long-eared bat became final, but also provided additional time to open another public comment period, fully consider all comments received, including peer reviews.

All peer review comments received on the listing rule and 4(d) rule are available on the internet at http://www.regulations.gov under Docket No. FWS–R5–ES–2011–0024.

26) The bulk of your Section 4(d) rule for the long eared bat centers on the creation of 150-mile "white nose syndrome buffer zones" which strongly restrict most land uses within 150 miles of bat hibernacula. Your published decision states that these buffers represent a "compromise distance" that is useful for "estimating the extent of syndrome infection." Why did the service choose to impose highly restrictive 150 mile buffer zone that will effectively shut down all land use in the area based on estimation rather than rely on the best available science as required under the law?

Response: The purpose of the white-nose syndrome (WNS) buffer is to estimate the area where northern long-eared bat (NLEB) populations are considered to be experiencing the impacts of WNS. Currently, direct detection of WNS is limited largely to wintering bat populations in the locations where they hibernate. To fully represent the extent of WNS, we must also include the areas where the NLEB migrates to spend summers. To estimate the extent of infection, we used the migratory distance of the little brown bat, which is widely considered a likely source of WNS spread across eastern North America. The best available science shows that little brown bats have a known maximum migratory distance of 344 miles. However, based on the approximate observed movements of WNS to date, the interim 4(d) rule sets the WNS buffer zone as those within 150 miles of areas where the fungus Pd or WNS has been detected. We acknowledge that 150 miles does not capture the full range of potential WNS infection, but represents an intermediate distance between the known migration distances of NLEBs and little brown bats that is suitable for our purpose of estimating the extent of WNS infection on the northern long-eared bat.

You expressed concerns that the 150-mile buffer will "shut down all land use in the area." Under a threatened listing, all incidental take is prohibited. However, the interim 4(d) rule greatly reduces restrictions on land use by exempting the prohibitions on incidental take resulting from a wide variety of activities. In addition, activities that do not involve incidental or purposeful take of the bat are not restricted.

27) Your interim 4(d) rule exempts only a select few land uses within the massive Northern Long Eared Bat habitat despite the Service's acknowledgement in the rule that many land uses, including surface and mining and reclamation, have no known impact on the spread of white nose syndrome, the acknowledged cause of population decline. Why was surface mining and other activities with no known impact on the spread of white nose syndrome not included in the Section 4(d) exemptions?

Response: Due to the complexity of this issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we did not have enough information concerning take of the bat from many specific activities, including surface mining, to adequately determine whether that take was compatible with the conservation of the species or not. Therefore, we published an interim 4(d) rule, which allowed some incidental take exemptions to be in place while we reopened the comment period to consider all comments received, including those from surface mining and other activities, and engage with stakeholders to explore whether additional exemptions should be included in a final 4(d) rule.

28) In the Service's 12 month finding on the petition to list the species, FWS states that "although conservation efforts have been undertaken to help reduce the spread of the disease through human-aided transmission, these efforts have only been in place for a few years and it is too early to determine how effective they are in decreasing the rate of spread." The Service goes on to mention a number of WNS mitigation initiatives recently underway, including the national Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats, the Western Bar Working Group's White- Nose Syndrome Action Plan, and the adoption of recommended best practices by a host of states and federal agencies. Given that White Nose Syndrome is the sole primary cause of population decline, why weren't any of these initiatives that actually address the problem given a chance to work before the Service promulgated a rule that doesn't address the problem?

Response: The Service received a petition to list the northern long-eared bat and eastern small-footed bat in 2010. We published a substantial 90-day finding on June 29, 2011 (76 FR 38095), indicating that listing these two species may be warranted and initiating a status review. Section 4(b)(3) of the ESA establishes the statutory timelines for completing petition findings; within 12 months after receiving a petition, the Service must make a determination whether listing is or is not warranted. Completion of this status review for the northern long-eared bat was delayed due to listing resources expended on other higher priority rulemakings. On July 12, 2011, the Service filed a multiyear work plan as part of a settlement agreement with WildEarth Guardians and the Center for Biological Diversity, in a consolidated case in the U.S. District Court for the District of Columbia. The settlement agreements in Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), Multi-district Litigation Docket No. 2165 (D.D.C. May 10, 2011 and July 11, 2011) were approved by the court on September 9, 2011. The settlement agreements specified that listing determinations be made for more than 250 candidate species, and specified dates for several petitioned species with delayed findings. For the northern long-eared bat, the specified date for completing a 12-month finding, and a listing proposal if that finding was warranted was September 30, 2013, 3 years after the receipt of the petition.

We are required to make our final determination based on the best scientific and commercial data available at the time of our rulemaking. The ESA requires the Service to publish a final rule within 1 year from the date we propose to list a species, unless there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, but only for 6 months and only for purposes of soliciting additional data. Based on the comments received and data evaluated, we determined that an extension was necessary. However, we were able to extend the listing determination by 6 months, but not

longer. Thus, the Service completed the listing action within the established statutory and court-ordered deadlines, based on the best available scientific information available.

Sage Grouse

Along with the U.S. Geological Service, the Fish and Wildlife Service hosted the "Expert Elicitation Workshop on the Genetics of the Greater Sage Grouse" in Fort Collins, Colorado, in October 2014. A number of scientific experts were invited to provide their views and answer questions on the genetic differences of sage grouse. The workshop apparently was not convened as a formal advisory committee in accordance with the Federal Advisory Committee Act.

29) What were the criteria used for selecting participants for this workshop?

Response: The Service reviewed recent greater sage-grouse genetics publications to identify potential workshop invitees. Then, the planning team used selection criteria, including a candidate's professional credentials, position, area of expertise, and experience with the greater sage-grouse, to develop a list of potential invitees. These criteria helped ensure that invitations to participate were made to scientific experts familiar with the topic and that the selections were transparent, unbiased, and captured a broad diversity of expertise and professional judgments related to the topic. With assistance from USGS, the Service developed the draft invitation list and then the Service also requested input on our list of experts from the Western Association of Fish and Wildlife Agencies (WAFWA). WAFWA reviewed the list of potential participants that we already identified and responded with additional suggestions. The workshop Summary Report, publically available on our website, describes the selection criteria and invitation process in more detail (http://1.usa.gov/1cOcdSx, p. 1).

30) To what extent did the workshop discuss scientific support for recognition of additional sage-grouse subspecies?

Response: The purpose of the workshop was to explore the current state of information regarding greater sage-grouse genetics including: recent and upcoming genetic studies of the greater sage-grouse; evaluating genetic evidence for barriers to gene flow between populations or groups of populations; evaluating evidence of genetic divergence or isolation; and, evaluating evidence for other genetic mechanisms or processes that potentially impact the greater sage-grouse. Workshop participants briefly discussed the current information regarding potential genetic differentiation in sage-grouse. The discussion is summarized in Appendix 7 *Meeting Notes* of the publically available workshop summary report that is available on our website (http://1.usa.gov/1cOcdSx, p. 105).

31) Did any of the authors of the 2011 "Report on National Greater Sage-Grouse Conservation Measures" produced by the Sage-Grouse National Technical Team or the 2013 "Greater Sage-Grouse Conservation Objectives: Final Report" participate in the workshop?

Response: Dr. Michael Schroeder of the Washington Department of Fish and Wildlife was the only expert participant who was also a team member for the Greater Sage-Grouse Conservation

Objectives Team: Final Report (COT Report). No members of the National Technical Team attended the workshop.

32) Did the workshop review the "Report on National Greater Sage-Grouse Conservation Measures" produced by the Sage-Grouse National Technical Team or the 2013 "Greater Sage-Grouse Conservation Objectives: Final Report"? If yes, please describe what aspect(s) of these reports was reviewed and discussed at the workshop.

Response: Neither document was discussed or reviewed at the workshop.

33) Were any findings, minutes, recommendations, report, summaries, or notes developed or issued as part of the workshop? If yes, were they distributed to members of the workshop.

Response: Yes. All preparation materials, meeting notes, and presentations are readily available to the public on our website in our workshop Summary Report. We distributed the Summary Report to all workshop participants. The workshop produced information and scientific discussion regarding sage-grouse and conservation genetics, and did not result in any findings or recommendations. https://www.fws.gov/greatersagegrouse/documents/ESA%20Process/20150505_Genetics_Summary_Report_FINAL.pdf .

34) Were any scientists employed by state, county, or local governments invited to participate, and if yes, did any in fact participate?

Response: Our summary report explains the invitation criteria and provides the attendee list for the genetics workshop (http://1.usa.gov/1cOcdSx). We invited several genetics experts from state agencies who attended the workshop. Additionally, the Western Association of Fish and Wildlife Agencies (WAFWA) helped review our list of potential participants and provided additional suggestions.

35) Were any nongovernmental scientists who had received grants or other financial assistance from the Fish and Wildlife Service invited to participate, and if yes, did any in fact participate?

Response: The workshop report with appendices explains the invitation criteria and provides the attendee list for the genetics workshop (http://1.usa.gov/1cOcdSx). We investigated potential participants from nongovernmental organizations; however, we did not identify experts, based on the established criteria, from these affiliations.

36) What role will the workshop have in informing the Fish and Wildlife Service's decision on whether to list the Greater Sage-Grouse?

Response: This workshop was one component of the Service's information gathering process for the status review. Information gathered during the workshop will be used by the Service in conjunction with other published literature or information submitted by interested parties, to evaluate the status of the species. The Service is committed to using the best available scientific and commercial information, and will incorporate new information as it becomes available.

37) Why was the workshop not convened as a formal advisory committee under the Federal Advisory Committee Act?

Response: The workshop complied with the Federal Advisory Committee Act (FACA), but it did not qualify as a formal advisory committee under the FACA. The workshop was designed to collect information from individual experts on conservation genetics and sage-grouse genetics only; it did not seek advice or consensus. Rather, information was exchanged and the Service noted factual information, and, as appropriate, professional opinions regarding available scientific information from each individual expert.

38) On October 27, 2014 you wrote to the Director of the Bureau of Land Management and the Chief of the Forest Service recommending that they implement enhanced protections in what you call sage grouse "strongholds" within previously identified Priority Habitat Management Areas. In response to this action, Governor Mead of Wyoming wrote to you questioning the need for the establishment heightened areas of restriction which would overlap existing state based conservation frameworks. In light of the considerable collaboration and science based conservation occurring at the state level in Wyoming and in other western states, what is the need for additional restrictions that would undermine these locally driven protections already in place?

Response: The Conservation Objectives Team (COT) Report, developed jointly with State representation and expertise, identified Priority Areas for Conservation (PACs) essential for conservation of the greater sage-grouse. Further, the COT Report identified reducing or eliminating disturbance in PACs as a central component to the species conservation. At the request of the land management agencies, the Service identified a subset of PACs, consisting of Federal lands, with high grouse densities, healthy sagebrush habitat, and that the literature has identified as critical to the species persistence; we called these "strongholds" or "highly important landscapes." The maps were intended to provide additional information to our federal land management agency partners as to areas where it is most important to ensure that the species is conserved such that it will persist into the future. The Service's objective in developing this memorandum and accompanying maps was to provide information to help our partners advance the conservation of the species.

39) How did you arrive at the sage grouse "strongholds" that you are suggesting BLM and the Forest Service use in developing strict land use restrictions?

Response: On October 27, 2014, Service Director Ashe – acting in response to a request from the Bureau of Land Management (BLM) asking FWS to identify high-value landscapes where we recommend BLM consider maximizing conservation for sage grouse - provided BLM and U.S. Forest Service leadership with a memo transmitting maps identifying areas within sage-grouse range that the scientific literature indicates is essential to the persistence of the species. These maps, which represent a synthesis of current spatial data showing large, contiguous blocks of high-value sage-grouse habitat on federal lands, and the associated transmittal, have been made available to all partners and interested parties.

Whooping Cranes

40) Recently, it has been brought to my attention that many media outlets continue to report that 23 whooping cranes died during the winter of 2008-2009 at the Aransas National Wildlife Refuge (the Refuge) in Texas. However, I have also been informed that after a thorough review, the U.S. Fish and Wildlife Service (the Service) abandoned the methodology of making aerial counts of the wintering whooping crane flock at the Refuge that was in place during the winter of 2008-2009 because of problems with the methodology in use for many years, and replaced that methodology with a the Whooping Crane Winter Abundance Survey Protocol which is based on proven techniques used widely by wildlife biologists for decades and which is based upon the scientific method. A September 2012 FWS report describes the core assumption of the estimate as "untenable" and the method as not "defensible." Therefore, my question to you is what is the Service's official position on how many whooping cranes died at the Aransas National Wildlife Refuge during the winter of 2008-2009?

Response: In a 2008-2009 publication, the Service's Southwest Region reported what we believed there was a loss of 23 whooping cranes, using the best information available at that time. Following the retirement of the Service's Whooping Crane Coordinator in 2011, a team of specialists was formed to evaluate our process for estimating the whooping crane population. After an extensive review, the team updated the methodology used for estimating whooping crane abundance. Use of this scientifically sound methodology has improved our knowledge and understanding of this whooping crane population and will aid in conservation planning, future policy decisions and the long-term conservation of this species for the American public. However the Service is unable to confirm the loss of whooping cranes previously reported in 2008-2009, because the data could not be verified using the previous methodology. Therefore the number of whooping cranes that died at the Aransas National Wildlife Refuge during the winter of 2008-2009 remains unknown.

Please see the following peer reviewed publications for further details:
http://ecos.fws.gov/ServCatFiles/reference/holding/28257
http://www.sciencedirect.com/science/article/pii/S0006320714003115

Note: Tom Stehn, former Service Whooping Crane Coordinator, retired on September 30, 2011.

Categorical Exclusion – Invasive Species

41) The U.S. Fish and Wildlife Service's (the Service) proposed Categorical Exclusion rule to facilitate adding species to the injurious wildlife list under the Lacey Act has been the subject of three public comment periods including July 1-July 31, 2013; August 1- October 15, 2013; and January 22-February 22, 2014. It has been over a year since your latest public comment period closed. How do you plan to proceed with categorical exclusion?

Response: The Service is working to finalize the categorical exclusion by August 2015, and will coordinate with the Council on Environmental Quality as required.

42) Water agencies are responsible for serving the needs of millions of people from Texas to Southern California. I am hearing concerns that categorical exclusion will increase the number of invasive species listed under the Lacey Act and that will in turn force local water agencies and the Congress to duplicate the special actions that were necessary with Lake Texoma to restore Texas drinking water supplies. Has the Service looked at the issue of how the Lacey Act and the proposed rule could disrupt water supply transfers over state lines?

Response: The Service implements the Lacey Act (18 U.S.C. 42) to protect United States interests from the harm that injurious wildlife species can cause to human beings, to the interests of agriculture, horticulture, or forestry, or to wildlife or wildlife resources. However, the administrative process for listing injurious wildlife can be protracted and complex, reducing its effectiveness. A categorical exclusion, if appropriate, is one way to expedite the listing process and, in so doing, support the purposes of the Lacey Act's injurious wildlife provisions. The Service is aware of concerns about the spread of injurious aquatic species in the West, as well as concerns raised about the potential impacts on water distribution projects of preventing this spread.

S. 292 and S. 293

43) You referenced in your testimony that, "The Administration is working to address the underlying concerns that may have motivated S. 292 and S. 736 using existing authorities and welcomes input from Congress as we move toward increased transparency using modernized methods." Please explain what the Service is doing to improve transparency for all stakeholders and taxpayers?

Response: On May 18, 2015, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the Services) announced an additional suite of actions the Administration will take to improve the effectiveness of the Endangered Species Act and demonstrate its flexibility. The actions will engage the states, promote the use of the best available science and transparency in the scientific process, incentivize voluntary conservation efforts, and focus resources in ways that will generate even more successes under the ESA.

As part of the Administration's ongoing efforts, the Services will also be unveiling additional proposals over the coming year. One of the four broad goals is improving science and increasing transparency. To improve public understanding of and engagement in ESA listing processes, the Services will strengthen procedures to ensure that all information that can be publicly disclosed related to proposed listing and critical habitat rule notices will be posted online; and adopt more rigorous procedures to ensure consistent, transparent, and objective peer-review of proposed decisions.

44) You referenced in your testimony the Service's opposition to S. 293 because it "will greatly diminish the opportunity to settle deadline lawsuits brought under the ESA, where it is in the interests of the Government and taxpayer to do so." However, you did not specifically comment on certain provisions of the bill. Should the Service publish all complaints received pursuant to the ESA within thirty days of being served in order to provide notice to all affected parties? Should affected parties have a "reasonable opportunity" to move to intervene, during which time

parties would be prohibited from moving for entry of a consent decree or to dismiss the case pursuant to a settlement agreement? In other words, does the Service believe it adequately represents impacted stakeholders who are not aware of these settlement negotiations until they are announced?

Response: To require the Service to publish all complaints filed against the Service pursuant to the ESA would be a significant workload. Further, once a complaint is filed, it is a matter of public record. For example, all federal lawsuits are available on PACER (psc.uscourts.gov). Therefore, we believe such a requirement would create unnecessary hardship for the Service.

The Federal Rules of Civil Procedure Rule 24 provides a mechanism whereby parties with an interest in the subject matter of the litigation may move to intervene. To give a few examples, the Texas Comptroller intervened in litigation challenging our decision not to list the dune sagebrush lizard; the State of Wisconsin intervened in litigation challenging our decision to delist the Western Great Lakes population of the gray wolf; and the State of Wyoming intervened in litigation challenging our decision that listing of the whitebark pine was warranted, but precluded. In fact, interested parties are frequently granted intervenor status in ESA litigation. Thus, we believe interested stakeholders are adequately represented by the judicial system.

45) You noted in your testimony, "We do not give away our discretion to decide the substantive outcome of any agreed upon actions, and the notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions." Does the Service believe that plantiffs in settlements should be able to negotiate listing priority changes and timeframes for workplans that while not dictating the ultimate decision by the Service, certainly alter the priority order of species and the timeline of the Service's decision, and leave out other impacted stakeholders?

Response: The Service developed its Listing Priority Guidelines to help us determine how to make the most appropriate use of our limited resources to implement the ESA. These guidelines provide for the ranking of species according to: (1) the magnitude of the threats they face; (2) the immediacy of those threats; and (3) their taxonomic distinctiveness. The numbers assigned in this ranking process are not subject to negotiation in Service litigation. However, while the Service generally follows this ranking system, courts have found the rankings do not create any requirement – procedural or otherwise – that we consider the species in the order they are ranked and that the Service may consider factors such as staff resources and geographic efficiencies when making its determinations as to order.

The ESA requires the Service to respond to petitions within a specific time frame. When litigation is filed against the Service for failure to do so, the Service attempts to negotiate these cases in hopes of obtaining a resulting deadline for the action that is consistent with its priorities and based on its resources and other workload.

46) You also stated in your testimony, "When deadline cases have been litigated in the past, courts have frequently imposed very short deadlines. Therefore, removing the incentive for settlement is likely to accelerate the timing of listing determinations and other actions required by deadline, thereby reducing the opportunity for interested parties to participate in the decision-

making process." Would you please explain which species in the workplan settlements of 2011 were subject of a missed deadline, and which candidate species were re-prioritized from the Service's listing priority as part of the settlement actions? Please list those species contained in the settlements that had existing candidate conservation agreements with states or local entities where the species is found.

Response: The workplans filed by the Service resolved petition deadline litigation for more than 100 species. See Attachment 1. Additionally, it resolved the five following lawsuits challenging warranted but precluded determinations (i.e., asserting that we should have proceeded immediately to a listing proposal, or that we were not making expeditious progress in resolving the status of species on the candidate list) for more than 200 candidate species: WildEarth Guardians v Salazar, Civ. No. 4:10-420 (D. Ariz.) (New Mexico meadow jumping mouse); WildEarth Guardians v. Guertin, et al., Civ. No. 1:10-1959 (D. Colo.) (Canada lynx); WildEarth Guardians v. Salazar, Civ. No. 1:10-2129 (D. Colo.) (lesser prairie-chicken); Biodiversity Conservation Alliance, et al. v. Kempthorne, et al., Civ. No. 04-2026 (D.D.C.) (See Attachment 2 for list of 200+ species); and Western Watersheds Project, et al. v. Salazar, Civ. No. 4:10-229 (D. Idaho) (greater sage-grouse). The workplans did not "re-prioritize" species, as no prior multi-year workplan for all the candidate species (which would consider factors other than just the listing priority number) was in place. Rather, they resolved the deadline litigation in a manner acceptable to the Service.

Twelve species covered by the MDL settlement had candidate conservation agreements at the time the Service entered into the settlement agreement. Those twelve species include: the boreal toad, barrens top minnow, Columbia spotted frog, fisher (Pacific), Guadalupe fescue, inquirer cave beetle, Louisiana pine snake, relict leopard frog, greater sage-grouse, Southern Idaho ground squirrel, Tahoe yellow cress, and Washington ground squirrel.

Mega-Settlements

The Fish and Wildlife Service entered into settlements with WildEarth Guardians and the Center for Biological Diversity in 2011 requiring final decisions on listing hundreds of species by 2016. You have previously informed me and other members of the Committee that Local Rule 84.9 of the U.S. District Court for the District of Columbia prohibits the Service from disclosing details of how the settlement agreements were developed.

47) Is it the Service's position that this local court rule would bar disclosure of these mediation-related documents to Congress pursuant to a subpoena?

Response: The Service defers to the Department's Office of the Solicitor and Department of Justice on these matters. However, Local Rule 84.9 provides a number of exceptions, none of which would seemingly permit disclosure pursuant to subpoena. Further, the Local Rules specifically state that Mediators shall not respond to subpoenas or requests for such information. Thus, presumably it would likewise not be appropriate for one party to unilaterally release records otherwise covered under this Rule.

48) In a law review article entitled "Endless War or End this War? The History of Deadline Litigation Under Section 4 of the Endangered Species Act and the Multi-District Litigation (14 Vermont Journal of Environmental Law 328, 373), Department of the Interior attorney Benjamin Jesup writes, "This settlement was much broader in scope than the cases covered by the [multi-district litigation]." In what ways was the settlement broader in scope than the cases covered by the multi-district litigation?

Response: The Multi-District Litigation (MDL) Panel consolidated 20 cases involving petition deadline violations for 100 species in the District Court for the District of Columbia. In addition to resolving these cases by providing deadlines for the majority of actions at issue, the MDL Agreements also resolved five lawsuits pending in multiple districts involving challenges to warranted but precluded findings for more than 200 species. Thus, the scope of the settlement was broader than the cases consolidated by the MDL Panel, but it served to resolve significant exposure in other pending cases as well.

49) Did the draft settlement agreements undergo review by the Office of Management and Budget? If yes, please describe the impact of the OMB review process on the settlement agreements.

Response: No. The Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) has the authority to review rulemaking documents under Executive Order 12866. It does not typically review settlement agreements as they are not rulemaking documents. The agreements merely set a schedule for making a decision or issuing a rulemaking document that may be subject to OIRA review prior to issuance.

50) Please describe agency policies regarding closed door settlements. If a settlement is to affect uses of lands and human and economic activities in the area subject to the terms of the settlement, what is your perspective on the ability of state, local or tribal units of government to participate?

Response: The Service generally defers to the Department of Interior's Office of the Solicitor and the Department of Justice on matters involving the settlement process. However, the Service does not agree to any substantive outcome or specific terms within its settlement agreements that affect the uses of lands and human and economic activities in those areas. The agreements generally set a schedule for an action that is already required by law and any negotiations involve all parties to the litigation. As stated previously, parties with an interest in the litigation may move to intervene and, thus, be a part of any negotiations.

51) Will you fully consider proposals (including regulatory or legislative efforts) that ensure that potentially affected states, tribes and local governments have the ability to review settlement proposals that may greatly affect their citizens and their economies?

Response: The Service would need more details about such proposals and any process before it is able to provide a thoughtful response to your question.

If a burdensome process is imposed on the settlement process, it could force parties to litigate rather than enter into mutually beneficial negotiations and settlement agreements. Plaintiffs may be unwilling to spend time in this administrative process, particularly for deadline litigation, where the Service has no defense. Instead, they would likely press the courts for summary judgment, seeking a remedy that may be far less palatable for the Service. In the past, courts have frequently imposed short deadlines where the Service has missed a statutorily required deadline. Therefore, removing the realistic possibility of settlement is likely to accelerate the timing of listing determinations, thereby reducing the opportunity for interested parties to participate in the decision-making process. In addition, an acceleration of the timing of listing determinations could also decrease the quality of the decisions, ultimately impairing our defensibility and leading to remands and reduced efficiency. Further, the necessity of fully litigating each case would greatly increase the burdens on the Service and the courts, with no offsetting benefit. It is likely to increase attorney's fees, particularly in deadline cases, where the Service has no defense and plaintiffs have a disincentive to settlement. These are all considerations that may factor into the Service's position on such a policy or procedure.

52) Will you consider measures that will assure that parties do not use the judicial system to usurp the effective administration of the ESA, including improvements to the management and deadlines for listing and critical habitat determinations under the ESA?

Response: Again, the Service would require additional details in order to provide an informed position.

53) Describe how your agency sees the role of conservation agreements with private landowners in protecting species and in assisting with their recovery. What does your agency do to encourage such agreements? Considering a case study, what has been the role of conservation agreements in the case of the Lesser Prairie-Chicken?

Response: Because approximately 2/3 of the habitat on which candidate and listed species depends is privately owned, it is essential that the Service partner with private landowners to conserve and restore habitat on private lands. The Service's Habitat Conservation Plan, Safe Harbor and Candidate Conservation Programs and the Partners for Fish and Wildlife Program work closely with private landowners to support activities and agreements that contribute to species conservation. Conservation agreements provide transparency and clarity about how landowners will be in compliance with the ESA. The Service actively urges landowners to take advantage of candidate agreements, Safe Harbor Agreements, Habitat Conservation Plans and other conservation efforts through outreach efforts including meetings with landowners about the tools available through the Service.

Before the Lesser prairie-chicken was listed as a threatened species, over 340 private landowners and energy related companies had voluntarily enrolled in four different Candidate Conservation Agreements with Assurances (CCAAs) administered by either state wildlife agencies or not-for-profit organizations that assure habitat is maintained and restored. These four CCAAs include one in Oklahoma specifically for ranching activities, agreements covering both agricultural and energy activities in New Mexico and Texas, and a range-wide CCAA for oil and gas producers in five states that was developed with the Western Association of Fish and Wildlife Agencies.

The landowners and companies enrolled in a CCAA and who continue to implement their agreements have not been required to change their management practices as a result of the listing decision.

Landscape Conservation Cooperatives

The Office of Inspector General issued a June 27, 2013 audit report on the Fish & Wildlife Service's Landscape Conservation Cooperative that identified several concerns related to grants management and oversight that places several millions of dollars at risk. The report made 15 recommendations, one of which was resolved and implemented at the time the report was issued and the remaining 14 were resolved but not implemented.

54) What is the status of the remaining 14 recommendations?

Response: The Service developed a Corrective Action Plan (CAP) for the 14 resolved, but not implemented, recommendations. Current status is as follows:

- 4 have been completed
- 7 have been completed except for satisfying the training requirement for all Landscape Conservation Cooperative (LCC) staff involved in financial assistance to attend the Basic Financial Assistance Management Course by December 31, 2015. We anticipate this training requirement will be fulfilled by December 31, 2015.
- 2 have been completed except for the training requirement and sampling for compliance. We anticipate both training and sampling requirements will be fulfilled by December 31, 2015.
- The final recommendation, an internal review by the FWS Division of Policy and Directives Management, is on track for completion by December 31, 2015. FY2015 is the first year of a 4-year review cycle.

The progress of the CAP has been reported quarterly to the Division of Internal Control and Audit Follow-Up in the Office of Financial Management in the Department of the Interior. The entire plan is to be completed on schedule by December 31, 2015. The Service will update the Committee once all 14 recommendations have been implemented.

ESA Science

The Fish and Wildlife Service and the National Oceanic and Atmospheric Administration issued a policy on July 1, 1994 on the use of peer review in Endangered Species Act activities. Accordingly, it is the policy of the Fish and Wildlife Service to "[s]olicit the expert opinions of three appropriate and independent scientists" a part of the peer review process associated with ESA activities.

55) How does the Service define "appropriate" under the peer review policy?

Response: The policy states that "Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State

agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration." Thus we seek reviewers who are species experts or have specialized knowledge and expertise relevant to the species, habitat, and or threats being reviewed, and draw those reviewers from a wide variety of backgrounds as much as possible. The Service also follows the Office of Management and Budget (OMB) bulletin, "Final Information Quality Bulletin for Peer Review," issued in December 2004 which provides additional direction on the selection of peer reviewers.

56) How does the Service define "independent" under the peer review policy?

Response: The policy states that "Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration." The Service utilizes external experts to serve as peer reviewers to assure credibility of the process. The Service also seeks peer reviewers from diverse groups and backgrounds to assure independence in peer review and minimize bias. The Service also follows the Office of Management and Budget (OMB) bulletin, "Final Information Quality Bulletin for Peer Review," issued in December 2004 which provides additional direction on the selection of peer reviewers.

57) Does the FWS consider the peer reviewer's employer or professional affiliations in determining whether the individual is "appropriate" or "independent"?

Response: According to the OMB guidelines, "The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest." Whenever possible, FWS solicits peer review from an expert with no conflict of interest. In some situations, particularly with narrow endemic species, there may only be one or two experts that exist on that species.

58) The Fish and Wildlife Service routinely uses scientists whose research, articles, studies, and other work forms the scientific basis for an ESA action as a peer reviewer for the same action. Please explain how the use of such scientists as peer reviewers is not a conflict of interest and how such peer reviewers can be "appropriate" or "independent" under the 1994 policy.

Response: As directed by the OMB guidelines, "The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest." Whenever possible, the Service solicits peer review from an expert with no conflict of interest. In some situations, particularly with narrow endemic species, there may only be one or two experts that exist on that species or habitat type.

In compliance with the best available data standard, the Service relies on scientific work from recognized experts that are knowledgeable about a species, its habitat, ecology, and how threats may impact it when making listing determinations under the ESA. The Service believes that it is completely appropriate to also ask these scientists to review our interpretation of the information in our decisions. Even though the Service relies heavily on information from these scientific experts, the Service also seeks additional review of the scientific information and its use from

other scientific experts directly knowledgeable with the species, similar species or ecology, or general conservation principals as peer reviewers. The Service always provides notice of proposed rulemaking and opportunity for comment as part of our rulemaking process, in which others (and not just the peer reviewers) may review our information and conclusions, and provide comment or further information. This robust process allows for a more thorough and balanced review that we believe limits the possibility of conflict of interest.

59) The Fish and Wildlife Service routinely uses scientists who have received grants and other financial assistance from the Service, other Department of the Interior bureaus, and other federal agencies as peer reviewers for ESA actions. Please explain how the use of such scientists as peer reviewers is not a conflict of interest and how such peer reviewers can be "appropriate" or "independent" under the 1994 policy.

Response: The Service does rely on scientific work from recognized experts in making ESA-related decisions, and sometimes provides funding for that work to meet specific data needs. The Service often requests that these same scientists review the Service's interpretation and use of scientific information to ensure appropriate use and interpretation in making listing determinations. Even though the Service relies heavily on information from these scientific experts, the Service also seeks additional review of the scientific information and it use from other scientific experts directly knowledgeable with the species, similar species or ecology, or general conservation principals as peer reviewers. To this end, the Service always provides notice and opportunity for comment as part of our rulemaking process, in which others (and not just peer reviewers) may review our information and conclusions, and provide comment or further information. This robust process allows for a more thorough and balanced review that we believe limits the possibility of conflict of interest.

60) Does the Service have any policy or legal restrictions that would prevent a scientist employed by a non-for-profit trade or professional association from serving as a peer reviewer for an ESA action?

Response: The Service does not currently have a policy nor is aware of any legal restrictions that would prevent a scientist from serving as a peer review on a specific ESA action based on their organization's tax status. However, when soliciting peer review, Service policy recommends seeking balanced peer review of ESA actions.

61) Does the Service have any policy or legal restrictions that would prevent a scientist employed by a for-profit trade or professional association from serving as a peer reviewer for an ESA action?

Response: The Service does not currently have a policy or is aware of any legal restrictions that would prevent a scientist from serving as a peer review on a specific ESA action based on their organization's tax status. However, when soliciting peer review, Service policy recommends seeking balanced peer review of ESA actions.

62) Does the Service have any policy, or is there a legal prohibition, against identifying the individuals who have served as peer reviewers for ESA activities, either on the Service's

website, in relevant Federal Register notices, or on the online rulemaking docket Regulations.gov? If yes, please explain what those policy and/or legal prohibitions are.

Response: The Service does not have a policy nor are we aware of a legal prohibition against identifying individuals who serve as peer reviewers on ESA activities. Peer reviewers are notified that they will be identified as peer reviewers as part of the rulemaking process. Peer review comments on a specific ESA action are treated as public comments on that action and are posted on Regulations.gov as part of the rulemaking docket.

63) How do you respond to the assertion that too much of the documentation on which your agency is currently relying to assess the state of Greater sage-grouse populations derives from a particular subset of research specialists? One example is the National Technical Team's A Report on National Greater Sage-Grouse Conservation Measures (the "NTT Report"), which uses data and studies from a small number of Greater Sage-Grouse specialist-advocates. Another is the U.S. Fish and Wildlife Service's ("USFWS") Greater Sage-Grouse Conservation Objectives Final Report (the "COT Report") is a limited and selective review of scientific literature and relies upon unpublished reports on the Greater Sage-Grouse. These reports offer Action alternatives that include 4 mile no surface occupancy buffers around active leks during seasonal use. A May 2013 letter from Western Association of Fish and Wildlife Agencies (WAFWA) criticized the Department of Interior for using the NTT report as BLM's sole source of GSG management direction rather than a wide variety of peer-reviewed publications which collectively provide the best available science for conserving GSG. How do you respond to the statements that these reports rely on a small group of researchers, lack rigorous peer review, overstate impacts to the species from human activity, and propose restrictions on certain uses of the sage brush range land that are inadequately supported by science?

Response: The NTT Report and COT Report examine the breadth of available research and cite more than 80 studies examining sage-grouse populations and conservation. While the Service is using these reports to guide sage-grouse conservation, they are only two documents within a wide array of research and published literature that the Service is reviewing and evaluating.

In drafting the action alternatives, the Bureau of Land Management considered the U.S. Geological Survey's 2014 report that compiles and summarizes published scientific studies that evaluate effective conservation buffer distances from human activities and infrastructure that influence greater sage-grouse populations. The report reviewed more than 50 scientific studies, with the literature largely indicating that 90-95 percent of sage-grouse movements are within 5 miles of lek sites.

The Service has not completed its data collection process and will continue to accept new data as long as the greater sage-grouse is a candidate species. The Service will continue to consider any data or information provided related to the status of the species. We will continue to update and refresh these and all other materials on the site as newer versions become available.
The Administration is committed to decision-making that is transparent and supported by public participation and collaboration. In an effort to be as transparent as possible, an increasing number of documents on our site relate to our Endangered Species Act status review process.

In addition, the site serves as a repository for a growing number of documents including cutting-edge research, useful information for landowners, and information on the biology of and threats to the bird. We also feature the most up-to-date sage-grouse news on the site each week to foster awareness of and support for long-term conservation of sage-grouse and the places they inhabit. Maps related to the greater sage-grouse habitat are also stored on this website.

64) Many people have questioned the degree to which decisions on application of the Endangered Species Act are based on objective scientific data and the degree to which these decisions are based on judgment and opinion. Judgment and opinion will always be a part of any decision that is informed by science. Nevertheless, it's important to understand the role played by data and the role played by judgment. Please describe your principles and policies regarding the data used in ESA decisions, and the access to that data to be provided affected stakeholders. Please describe the Agency's policies regarding access to that data for states, local governments and tribes, and the ability of these entities to furnish additional data for use in a pending ESA decision.

Response: As previously stated, the Administration is committed to decision-making that is transparent and supported by public participation and collaboration. In line with this commitment and because high-quality science and scholarly integrity are crucial to advancing the Service's mission, the Service carefully documents and fully explains its decisions related to the listing of species under the Endangered Species Act, and provides public access to that the supporting information and data through established Department and Agency procedures. By creating the Scientific and Scholarly Integrity Policy in January 2011, the Department of the Interior was the first federal agency to respond to the Presidential Memorandum on Scientific Integrity and the guidance provided by the Office of Science and Technology Policy Memorandum on Scientific Integrity.

65) Please discuss the use of predictive models by the Agency in the course of preparing determinations on the status of species or habitats. How does the Agency come to the determination that models may be necessary? What are the policies in place regarding use of or access to the data on which modeling will rely?

Response: The ESA requires the Secretary of the Interior and the Secretary of Commerce to determine whether any species is endangered or threatened (16 U.S.C. 1533) based on the best scientific and commercial data available. The Services receive and use information on the biology, ecology, distribution, abundance, status, and trends of species from a wide variety of sources as part of their responsibility to implement the ESA. Some of this information is anecdotal, some of it is oral, and some of it is found in written documents. When necessary to answer a question about current or future status, the Service will consider information provided through predictive models. The Service typically has access to the data on which the model relies if the Service funded the development of the model. In all other situations, access to underlying data is determined in agreement with their modelers depending on the proprietary nature of the model or data.

Senator Booker:

Necessity of Body-Gripping Traps

1) In terms of wildlife management in the NWRS, what species can FWS point to where FWS believes that the use of body-gripping traps is the only possible management option?

Response: The U.S. Fish and Wildlife Service is unable to provide this information to meet the Committee's deadline. The Service manages 563 National Wildlife Refuges and 38 Wetland Management Districts on over 150 million acres. Each refuge is unique and requires a variety of site specific and landscape-scale resource management approaches to meet the goals of the individual refuge and the System as a whole. In order to provide the information requested, the Service would need to collect extensive data to estimate the scope of trapping in the National Wildlife Refuge System (Refuge System).

2) If you have identified examples where FWS believes that body-gripping traps were the only possible management option, please provide specific details regarding the circumstances of the incident(s), including the refuge name, species involved, and what alternatives were attempted before resorting to body-gripping traps.

Response: Please see above response.

3) FWS has singled out nutria as an invasive species that FWS believes requires the use of body-gripping traps. Is FWS aware that governmental entities such as USDA APHIS and the Washington Department of Fish and Wildlife state that nutria can be captured effectively and easily using cage and box traps, and in a variety of environmental settings including wetlands?

Response: The Service agrees that capturing nutria in live-traps can be done effectively and easily under many circumstances. However, eradicating nutria from complex landscapes is neither practical nor possible relying solely on live-trapping techniques.

The nutria eradication effort in Chesapeake Bay has been frequently referenced by the Service because we believe it provides a relevant example that addresses multiple concerns regarding trapping decisions and methodologies in the NWRS. This one example is illustrative of the rigor of our analysis, our engagement with partners, and the accomplishment of habitat protection efforts through efficient and effective control of a highly invasive species. The scope and magnitude of the effort and the tidal nature of the system limit methodologies, including live-trapping, at our disposal. We believe maintaining the ability to employ a variety of trapping methodologies is necessary in order to efficiently and effectively achieve our conservation goals.

Statutory Authority

1) What is the statutory authority for FWS to allow trapping in the NWRS?

Response: The U.S. Fish and Wildlife Service receives its statutory authority to allow trapping for management from the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (Organic Act). The Organic Act, set the mission of the National Wildlife Refuge System, "to administer a national

network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

The 1997 House Committee Report that accompanied the National Wildlife Refuge System Improvement Act explained that "[the Organic Act] defines the terms "conserving", "conservation", "manage", "managing", and "management" to mean sustaining and, where appropriate, restoring and enhancing healthy populations of fish, wildlife, and plants by utilizing methods and procedures associated with modern scientific resource programs. The Committee understands that the list of methods in this definition is not inclusive and that any or all of these methods may be inappropriate in certain situations. One of the listed methods and procedures, "regulated taking" encompasses management tools such as hunting, trapping and fishing."

Compatibility Determinations

1) Please provide a copy of each trapping compatibility determination for each refuge open to trapping (as per the 1997 Refuge Improvement Act).

Response: A compatibility determination is not required for all trapping programs. If trapping is carried out as a refuge management activity – defined by the Service's Compatibility Policy, (603 FW 2) as, "an activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission" – then it is exempted from the compatibility standard.

A compatibility determination would be required only if the trapping activity is considered a refuge use, defined by the Service's Compatibility Policy as, "a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity." However, the U.S. Fish and Wildlife Service is unable to provide a copy of the compatibility determinations prepared for refuges where trapping activities are considered a refuge use by the Committee's deadline.

2) Please describe the process in place used to generate trapping compatibility determinations – namely the type of evidence, data, or justification needed (if applicable) in order to open a refuge to trapping.

Response: The process is outlined in the above referenced compatibility policy (603 FW 2) which we will provide to the Committee as an attachment to these responses (See Attachment 3).

3) A review of the Comprehensive Conservation Plans for a subsample of eight refuges identified from the 2012 list of refuges opened to trapping revealed that two (Theodore Roosevelt National Wildlife Refuge Complex and Catahoula National Wildlife Refuge) included compatibility determinations on trapping, five (Sacramento River, Kootenai, Mingo, Cape May, Valentine National Wildlife Refuges) did not include compatibility determinations for trapping, and one (Havasu National Wildlife Refuge) apparently has not completed its Comprehensive

Conservation Planning process. Can you explain why five of the eight CCP's review from the list of refuges open to trapping do not appear to have compatibility determinations for trapping?

Response: Please see the above response – not all trapping programs require a compatibility determination. Additionally, not all compatibility determinations are done concurrently with the CCP. Managers review compatibility as new uses are requested, circumstances change, or new information becomes available.

Non-lethal Control

1) Before opening a refuge to trapping for wildlife management, does the FWS attempt alternative methods of predator and/or wildlife control? If not, why not? Where applicable, please provide specific examples, including species involved, non-lethal methods used, refuge name, etc.

Response: The Service employs numerous alternatives to trapping (eg. Fencing, scare devices, etc.) but does not track the extent to which refuges use non-lethal methods of wildlife control.

2) FWS has maintained that body-gripping traps are used to manage wildlife and protect endangered/threatened species. Please provide data since 2011 showing how frequently body-gripping traps are employed for these purposes. If this information is not collected, please explain why not?

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. Gathering and synthesizing all relevant information would require a substantial investment of Service resources. The Service would have to invest significant staff time to plan and execute an information collection process, including: establishing a method to gather required data and obtaining approval under the Paperwork Reduction Act; identifying Service lands where trapping is used to meet refuge and wildlife objectives; identifying management versus recreational objectives; consulting with our State fish and wildlife agency partners for consistency with State regulations and reporting requirements; identifying legal trapping methods within each State; and ensuring the privacy of individuals is protected during the data gathering process.

Data Collection

1) Please provide a current list of all refuges open to trapping. Please include in this list the primary purposes of any trapping program allowed on any refuge.

Response: The Service is unable to provide this information by the committee's deadline.

2) For each refuge in the NWRS that allows trapping, please provide a list of how many allow body-gripping traps and what specific type of traps are used – e.g., Conibear, leghold, snare.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders.

3) What data does the FWS have on the number of animals caught in body-gripping traps that injure their limbs, teeth, paws or other body parts when attempting to escape the trap? When providing this data, please provide evidence of the type of injuries sustained by trapped animals by refuge and trap type if available and describe how the FWS collects such data if it does so. If the FWS does not collect this data, please explain why not.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders.

4) Please provide the following data from 2011 to the present; if you do not have data for any of the following please explain why:

- The number and species, target and non-target, of animals trapped by trap type on each National Wildlife Refuge that has allowed trapping.

  Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- How many refuge special use permits have been issued to private citizens for recreational or commercial trapping purposes? If you are unable to provide this data, please elaborate how else FWS quantifies the amount of trapping on refuges conducted by private citizens for recreational or commercial purposes.

  Response: See previous answer.

- How many refuge special use permits have been issued to the public for "resource management" trapping purposes?

  Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- Please quantify the amount of trapping conducted by refuge staff and the amount conducted by contract trappers, and for what purposes. Please provide a copy of all contracts with third parties for trapping services.

  Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely

delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What non-target species are most commonly trapped?

  Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What types of traps are used to trap FWS's primary target species?

  Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What trap check times has the FWS set for management, commercial, and recreational trapping on each refuge open to such activities?

  Response: Where trapping is permitted on refuges, it generally follows the regulations of the state where it occurs, but is often more restrictive. Records are maintained at the field station level.

5) What is the ecological impact of recreational and commercial trapping on refuges? Has this been studied through ecosystem research or experimental controls? If not, why not?

Response: Each refuge is unique and the ecological impact of trapping programs differs at each refuge. The majority of trapping programs, including recreational and commercial trapping programs, have some management nexus which supports the mission of the refuge and System. As outlined in the Service's Organic Act, refuge managers will use "sound professional judgment" and will consider principals of sound fish and wildlife management and administration, and available science and resources when determining if a trapping program is compatible with the refuge and ecosystems it contains.

Priority Uses

As per the 1997 Refuge Improvement Act, trapping is not considered a priority wildlife-dependent public use of the NWRS.

1) Why, then, does the default presumption seem to be that trapping should be allowed in the NWRS?

Response: Trapping programs on refuges are generally implemented to accomplish wildlife management objectives. These objectives vary between refuges, and are often an essential tool in

meeting refuge objectives(e.g., trapping of predators may be necessary to accomplish waterfowl production objectives or to protect an endangered species).

The Committee Report for The National Wildlife Refuge System Improvement Act of 1997, which amended the National Wildlife Refuge System Administration Act of 1966, does address trapping as a management tool. House Report 105-106 states that management tools encompass actions "such as hunting, trapping and fishing," in wildlife management. (H.R. 1420 Committee Report [105-106]).

2) Is this why FWS does not publish trapping-specific regulations in the Federal Register?

Response: The vast majority of trapping programs on Service lands are conducted to accomplish resource management objectives. Special use permits are often issued to impose more restrictive stipulations on trapping activities over state trapping regulations. These stipulations are required to ensure that trapping activities are compatible with refuge purposes. Special use permits give the refuge manager greater flexibility to adjust conditions of the permit as needed. Publishing regulations in the Federal Register is a lengthy process and eliminates the flexibility offered to refuge managers through the issuance of a special use permit. This flexibility, and the ability to adjust trapping activities, is important since most trapping activities are conducted to help reach a resource objective, and resource conditions are constantly changing.

3) Recognizing that refuge-specific hunting and fishing regulations were required well before passage of the 1997 Refuge Improvement Act, can you please explain why refuge-specific trapping regulations are not published?

Response: See above response.

4) Does this pose a problem for transparency purposes given that the Service publishes hunting and fishing regulations, which the public can easily access?

Response: The Service does not believe this creates a transparency issue but believes if required to publish trapping information in a similar manner to the hunting and fishing regulations it would require staff to divert time from higher priority work and prevent some units of the National Wildlife Refuge System from completing mission critical work among other concerns outlined in previous responses.

Clarification on Statements in Testimony

1) You state in your testimony that "trapping is an important management tool that the Service uses to protect threatened and endangered species." What special precautions does the FWS take to ensure that endangered, threatened, and other non-target animals are not captured by body-gripping traps on NWRs? Has the FWS engaged in an analysis of the potential use of non-lethal management measures, including using barriers to temporarily exclude predators from habitat used by threatened and endangered species when most critical to ensure protection of said species? Similarly, what regulations does FWS have in place concerning the use of body-

gripping traps in designated critical habitats for threatened and endangered species or other unique habitats, like wetlands?

Response: Site specific evaluations and the use of best management practices are employed on a case-by-case basis to maximize the selectivity of trapping. Evaluations of alternatives occur on a case-by-case basis. The Service does not have specific regulations related to the types of traps employed in areas designated as critical habitat. However, if the Refuge System's actions were likely to result in the destruction or adverse modification of critical habitat they are required, like any federal agency, to consult with the Service's Endangered Species Program to ensure any activity will not jeopardize the survival of a threatened or endangered species.

2) You state in your testimony that "trapping is often used on Refuge System lands to accomplish wildlife management objectives."

Who determines what these wildlife management objectives are?

Response: Refuge managers and biologists, often working with states, tribes, partners, academia, and the public, determine management objectives. Each Refuge is required to undergo a National Environmental Policy Act (NEPA) compliant, Comprehensive Conservation Plan (CCP), which involves extensive public review and comment, to guide the management of the Refuge.

How often are they reassessed?

Response: These CCP are to be reassessed every 15 years or when conditions warrant reassessment.

How and when does the public get to participate in determining wildlife management objectives for individual refuges and in providing input in response to FWS proposals to achieve its refuge-specific wildlife management goals?

Response: There are five basic steps in the CCP process:

Step 1: Conduct scoping phase. Refuges hold open houses and collect comments from the public to help identify all possible concerns and issues regarding the refuge. At this time, refuge employees collect data on such things as fish and wildlife resources, wildlife oriented recreation, or visitor services, needs and costs.

Step 2: Formulate Plan and planning team consisting of representatives from other government agencies, Tribes and State and local governments Refuge staff and planning team members outline key issues and concerns, as well as long-term goals for the refuge. Next, they analyze alternative ways to protect fish and wildlife, resolve concerns and meet goals.

Step 3: Write Draft Plan. The draft plan identifies management alternatives and examines the effects each would have on wildlife and habitat, visitation and public use, and refuge acquisition and expansion. Once the draft plan is written it is distributed within the Fish and Wildlife Service for internal review. Then, the draft is distributed to the public for review.

Step 4: Revise Plan. After hearing from the public, refuge employees analyze the comments, revise the plan and issue the final CCP.

Step 5: Implement, Monitor, and Evaluate Plan.

3) You state in your testimony that "restricting trapping methods will result in expenditure of additional Service resources, staff time, and taxpayer money." Since S. 1081 still allows for all other forms of trapping and wildlife management to occur – including the use of cage/box/live traps – on what basis are you making the determination that enacting S. 1081 would result in additional expenses?

Response: The Service often partners with local trappers to help meet management objectives on National Wildlife Refuges. These trappers operate under their individual state regulations and do not solely work on National Wildlife Refuges. Having separate requirements to trap on a National Wildlife Refuge would deter trappers from offering their vital, and often free, service to help us meet our resource management needs. Without the partnerships with local trappers the Service would be required to either forgo trapping programs all together due to resource challenges or would have to pull staff and funding resources from other high priority areas to conduct these trapping activities. In addition, box and live-enclosure traps are often less effective and significantly more expensive than other types of traps that would be banned by this legislation.

4) You state in your testimony that trapping is "viewed by the Service as a legitimate recreational and economic activity when there are harvestable surpluses of furbearing mammals."

- First, could alternative trapping methods, including box and live traps, fulfill this function?

  Response: Many trappers do use box and live-enclosure traps but not exclusively. Also, there are many species of furbearing mammals that are not effectively trapped using box and live-enclosure traps.

- Second, who keeps track of whether there is a "surplus" of furbearing mammals?

  Response: In general, the state sets harvest regulations on furbearing mammals and determines population trends that help set harvest limits however; the Service through its biological program, guided by refuge management documents (CCPs, Habitat Management Plans, etc.), monitors some species of furbearing mammal populations.

- How is that determined (particularly to ensure that population numbers do not fall below a sustainable level)? Is this decision-making process uniformly applied across refuges? What scientific evidence do you use?

  Response: In general, the state sets harvest regulations on furbearing mammals and determines population trends that help set harvest limits however; the Service through its biological program, guided by refuge management documents (CCPs, Habitat Management Plans, etc.), monitors some species of furbearing mammal populations.

5) In your written testimony you declared that body-gripping traps are more selective than cage traps. Does FWS recognize that a Conibear style body-gripping trap will literally crush a non-target animal whereas an animal caught in a cage trap can very often be released unharmed? Please explain how and under what circumstances body-gripping traps are more selective?

Response: The Service and its partners use best management practices when trapping on National Wildlife Refuges to minimize capture of non-target species. Body-gripping traps, when used in conjunction with best management practices, are highly selective and minimize the risk of capturing non-target species. To increase selectivity, body-gripping traps can be easily set in targeted locations to avoid non-target species, trigger settings can be adjusted to target species by size and weight, and many body-gripping traps can be used in conjunction with cubbies, which restrict access by non-target animals. These are a few ways body-gripping traps are selective however this list is not all inclusive.

6) You mentioned in your testimony that you do use traps in California that California voters voted to ban in 1998. Do you use body-gripping traps in other states where those devices have been banned or restricted by state law and/or voter initiative or referendum?

Response: The Service does not use types of body-gripping traps in states where those devices have been banned for resource management by state law.

7) In your testimony you indicate that "when waterfowl are caught in traps, raccoons will predate on the birds before staff can get to them to band and release the birds." Can you explain what types of traps are used to capture waterfowl (for banding and other research purposes) and why alternative traps, including cage traps, that would provide greater protection for trapped waterfowl cannot be used for waterfowl research purposes in order to avoid the apparent need to trap raccoons to prevent their depredation of trapped waterfowl?

Response: Per standard scientifically established methods, we use live-enclosure traps to capture waterfowl and other bird species for banding and other research purposes.

ANILCA

In your testimony you express concern that S. 1081 conflicts with the Alaska National Interest Lands Conservation Act by not exempting trapping for subsistence use.

1) Please provide data on the amount of subsistence trapping that takes place on Alaskan national wildlife refuges.

Response: ANILCA specifically requires Alaska refuges to provide for continued subsistence uses. Trapping is one of many subsistence uses in Alaska. All refuges in Alaska support subsistence trapping at some level. Since refuges follow state regulations for trapping we do not collect information. The Alaska Department of Fish and Game collects trapping information across the state annually. This information can be found at their website under trapping.

2) Please clarify what FWS believes that ANILCA, and in particular those sections dealing with subsistence management and use, requires in regard to trapping for subsistence purposes.

Response: After the establishment of ANILCA refuges were asked to examine subsistence and recreation use opportunities when developing the first comprehensive conservation plans. One of the establishing purposes for Alaska refuges is to provide for continued subsistence uses. Trapping is one of many subsistence uses.

3) Does all of the trapping utilizing body-gripping traps on wildlife refuges in Alaska qualify as subsistence use under ANILCA? If not, please provide any data which FWS has that would show how much of the trapping utilizing body-gripping traps on wildlife refuges in Alaska is for subsistence use and how much of the trapping utilizing body-gripping traps on wildlife refuges in Alaska is for other purposes.

Response: Yes. ANILCA does not specify types of traps, but clearly states subsistence uses must continue on refuges. With this in mind, many forms of traps and snares are legal under state and federal regulations, including body-gripping traps for subsistence purposes.

Public Safety and Balancing Needs of All Users

1) Given that the NWRS draws 47 million visitors each year and the vast majority of refuges are in close proximity to urban areas, should any special precautions be taken to ensure the safety of visitors and their pets to ensure they do not encounter body-gripping traps set on refuge land? Similarly, since most visitors go to NWRs to hike on trails and observe wildlife in their natural setting, is there any need, in your view, to minimize the probability that they will encounter injured or dying animals captured in body-gripping traps?

Response: We do take precautions to ensure the safety of visitors, and where allowed on Refuges, their pets. We also look to provide an enjoyable experience for all of our visiting public.

2) DOI reports show that the vast majority of people who visit refuges are non-consumptive users; they are not there to hunt, fish, or trap. How does allowing the use of body-gripping traps help the FWS to balance the needs of all users of public refuge lands?

Response: While wildlife-dependent recreation is important, the mission, as laid out in the Organic Act is wildlife conservation. Trapping is a wildlife management tool used to manage populations and ensure a healthy refuge.

Wildlife Services

1) Does FWS work with USDA APHIS Wildlife Services to trap on refuge land?

Response: Yes.

2) If so, please state the reasons for trapping operations conducted by the USDA's Wildlife Services program and provide data on the number of animals (both target and non-target) trapped? Please break this information down by refuge.

Response: They are the lead federal agency on species population control and monitoring. The mission of USDA APHIS Wildlife Services (WS) is to provide Federal leadership and expertise to resolve wildlife conflicts to allow people and wildlife to coexist. WS conducts program delivery, research, and other activities. The U.S. Fish and Wildlife Service is unable to provide the data requested to meet the Committee's deadline.

3) What kind of information does Wildlife Services report back to FWS regarding their activities on NWRs? Does Wildlife Services, for example, report trap check times, capture of target and non-target wildlife, types and severity of injuries to trapped animals, disposition of injured non-target animals released from traps, and/or whether Wildlife Services sought veterinary care for any injured non-target animals tapped by Wildlife Service's personnel?

Response: We do not have this information collected at a National level to provide to the Committee to meet the deadline.

4) Is there concern with using Wildlife Services given that the agency is currently under an OIG investigation?

Response: No.

1) Please provide a copy of all existing contracts between FWS and USDA Wildlife Services for trapping operations on refuges.

Response: We do not have this information collected at a National level to provide to the Committee to meet the deadline.

Transparency/lack of oversight

Before a refuge is opened up to hunting or fishing, FWS allows for public comment. However, no public comment is required before a refuge can allow trapping; it is up to refuge manager to decide if trapping is compatible with the purpose of the refuge.

1) Why does the Service publish refuge-specific hunting regulations but not refuge-specific trapping regulations?

Response: The vast majority of trapping programs on Service lands are conducted to accomplish resource management objectives, not for recreational purposes. Special use permits are often issued to impose more restrictive stipulations on trapping activities over state trapping regulations. These stipulations are required to ensure that trapping activities are compatible with refuge purposes. Special use permits give the refuge manager greater flexibility to adjust conditions of the permit as needed. Publishing regulations in the Federal Register is a lengthy process and eliminates the flexibility offered to refuge managers through the issuance of a special use permit. This flexibility, and the ability to adjust trapping activities, is important since most trapping activities are conducted to help reach a resource objective, and resource conditions are constantly changing.

2) How can this policy be altered to ensure all interested parties and stakeholders have easy, continued access to refuge-specific trapping data and regulations?

Response: Hunting and fishing are priority public uses, as outlined in the Organic Act. Trapping is not a priority public use and is primarily a management activity. As such, trapping should not be included in the hunting and fishing rule. Management activities are not subject to the same rulemaking process.

3) Should proposals to allow trapping on refuges be open to a public comment period? If not, why not?

Response: When it comes to managing a refuge, and the activities needed to support the mission of that refuge and the System, the Organic Act directs our managers to "use principles of sound fish and wildlife management and administration… in considering and designing a program or public use." We believe the Organic Act gives our refuge managers the authority to conduct management activities without a separate rulemaking process. When trapping is a use, as opposed to a management activity, Compatibility Determinations are completed which includes a public comment period.

4) 50 CFR 31.2(f) specifies that "surplus wildlife" on refuges can be controlled through trapping. Yet 50 CFR 31.1 indicates that a determination of whether wildlife is surplus on a refuge is to be "determined by population census, habitat evaluation, and other means of ecological study." Has the FWS completed such censuses, habitat evaluation, and other types of ecological study for all species allowed to be trapped on each refuge open to trapping? If so, please provide that data for each refuge that allows trapping.

Response: Refuge CCPs include Habitat Management Plans (HMPs) that evaluate and study habitats and species populations on the particular refuge. Refuge Managers work with state officials as well to determine if harvestable surpluses exist. Additionally, CFR 50 31.14 states:

(a) Animal species which are surplus or detrimental to the management program of a wildlife refuge area may be taken in accordance with Federal and State laws and regulations by Federal or State personnel or by permit issued to private individuals.

5) The FWS has a policy (605 FW 2) on hunting in the NWRS. There is not commensurate policy on trapping. Why not? Also, 605 FW 2-2.9 indicates how a refuge is opened to hunting and includes a list of all of the documents that must be compiled as part of the refuge hunting opening package. Are the same documents required to open a refuge to trapping? If not, why not? If so, please provide that information for each refuge that currently allows trapping.

Response: The Organic Act directs the Service to "ensure that biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans." The majority of trapping activities on refuges are done to accomplish resource management objectives. Since trapping is a primarily a management tool to benefit the mission of the refuge and System, it does not go through the same process as opening a refuge to hunting or fishing. A refuge manager will exercise sound professional judgment when using trapping as a management tool to accomplish a population objective.

Indiscriminate Nature of Trapping, Selectivity, Inhumaneness

1) At the EPW hearing you agreed that we should use humane methods when dealing with wildlife on NWRs. At least 88 countries have banned the use of steel-jaw leghold traps (and many states restrict or prohibit body-gripping traps); moreover, the US prides itself on being a world leader when it comes to strong legislation that protects vulnerable species. How does the use of indiscriminate trapping methods – namely snares, Conibear traps, and leghold traps – further the NWRS's mission of protecting wildlife?

Response: Trapping is an important management tool that the Service uses to protect threatened and endangered species, such as piping plover and loggerhead sea turtles, protect migratory birds, and manage other wildlife populations. In addition, trapping programs help protect Service infrastructure investments, such as impoundment dikes used to manage wetlands for a myriad of migratory birds, wetland habitats, and rare plants. The Service allows for different trapping methods to be employed to ensure that Refuges have the ability to achieve desire wildlife management goals as effectively and efficiently as possible.

2) Recognizing the variability in trap check times required by state wildlife agencies; that the FWS often sets refuge trapping requirements to be consistent with state laws; and recognizing that trap check times excessively long in duration significantly exacerbate the suffering, potential for injury, and severity of injury of trapped wildlife, would the FWS be willing to set a standard required trap check time (e.g., no more than 24 hours) to be applicable to all refuges that allow trapping to try to reduce the suffering inherent to trapping? If not, why not?

Response: The Service's trap check requirements are at least as stringent as the States' requirements but for the vast majority of trapping activities on refuges, refuges impose more stringent requirements for trap check times, depending on local circumstances.

Senator Cardin:

1) Does the USFWS frequently have to spend portions of its annual O&M budget, to restore damaged or destroyed assets or responding to ongoing emergency situations?

Response: Yes. Routinely, the Service must use Operation and Maintenance funds to address assessment and restoration of damages—such as illegal timber harvest, arson, destruction of visitor amenities, gate or road damage that restricts access—caused by third parties and illegal activities. This does place a strain on Operation and Maintenance activities, often causing a backlog effect on other needs.

2) Is it correct that USFWS has the authority to levy criminal fines against bad actors that destroy or damage USFWS assets, but USFWS cannot pursue damages?

Response: This is correct. Currently, unlike other land management agencies (e.g., the National Park Service), the U.S. Fish & Wildlife Service only has criminal penalties for those damages occurring on National Wildlife Refuge System lands. The penalties levied are limited, and rarely provide for the recovery of the damaged property.

- Do those criminal fines come back to the Service to restore damaged or destroyed assets?

  Response: Under the Refuge System Administration Act as amended by the Refuge System Improvement Act of 1997, for criminal violations by statute, up to $100,000 can be levied for knowing violations, and $5000 can be levied for strict liability violations. These fines imposed go to the General Fund and are not applied to the recovery of the damage.

- Even if it did would the fines adequately cover the cost of restoring these damaged or destroyed assets?

  Response: No. In most cases the damages far exceed any fines recovered by the United States Government, and as a result, the taxpayer, through the appropriated Operations and Maintenance budget, bears the burden.

3) If the USFWS had the authority to pursue civil suits to attain damages from bad actors, would USFWS be able to better allocated its annually appropriated O&M budget to actual O&M projects like repairing regular wear and tear on visitors centers, or restoring naturally degraded wetland and forested habitats?

Response: Yes.

4) Should taxpayers be responsible for restoring the damages caused by bad actors, or should USFWS be able to hold those responsible for destroying assets financially liable?

Response: We believe bad actors should be held responsible for their actions, not the taxpayer.

5) Would enactment of the USFWS Resource Protection Act allow the Service to better avoid having to spend O&M funds on restoring damage and destroyed resources, and thereby allocating more O&M funds to better address the Service's backlog of (more traditional) maintenance and repair projects?

Response: Yes. If enacted into law, the USFWS Resource Protection Act would allow the Service to avoid spending operations and maintenance funding on restoring damaged and destroyed resources by enabling the Service to pursue the responsible party or parties. This would relieve the impact on the taxpayer.

Senator Sessions:

1) Section 4(d) of the Endangered Species Act (ESA) authorizes the U.S. Fish and Wildlife Service (Service) to prescribe special rules "necessary and advisable to provide for the conservation of" threatened species. Recently, the Service announced an interim Section 4(d) rule for the northern long-eared bat and a proposed Section 4(d) rule for the black pine snake.

2) While the Service's effort to protect these species is laudable, I am concerned that the Section 4(d) measures for the northern long-eared bat and the black pine snake may significantly impact forest management activities in Alabama without benefitting the species. Specifically, while the Section 4(d) measures exempt some forest management activities from take liability, these measures are overly prescriptive and fraught with conditions that will do little to encourage forest managers to conserve the northern long- eared bat and black pine snake.

3) The Service's approach contrasts with a good example of an effective conservation incentive measure: the 1992 Section 4(d) rule for the Louisiana black bear. In that rule, the Service determined that "normal forest management activities that support a sustained yield of timber products and wildlife habitats are considered compatible with Louisiana black bear needs" and exempted the "effects incidental to normal forest management activities within the historic range" of the species. The Section 4(d) rule incentivized forest landowners to maintain their lands in a forested condition, and as a result the Louisiana black bear population has increased substantially to the point where the species may warrant delisting.

4) In light of the concerns that have been raised regarding the Section 4(d) measures for the northern long-eared bat and black pine snake, the Service must work more cooperatively with forest landowners as these measures approach finalization. In that regard, to what extent is the Service using the experience of the Louisiana black bear Section 4(d) rule as it considers revisions to the interim Section 4(d) rule for the northern long-eared bat and the proposed Section 4(d) rule for the black pine snake?

Response: The exemptions authorized under section 4(d) of the Endangered Species Act (ESA) included in the listing rules for Louisiana black bear (final), black pinesnake (proposed), and northern long-eared bat (final) are intended to minimize the regulatory burdens for landowners

by exempting certain activities beneficial for the conservation of the species from the ESA take prohibitions, while still providing protections important for the species. These exemptions are customized based on the biology and management needs of each species. For all three species, the Service exempted (or is proposing to exempt) most normal forest management activities from the prohibitions of "take" under the ESA, meaning those activities could continue to take place if the conservation measures in the rules are followed. However, a subset of these activities has a potential to greatly impact the species to a level that does not provide a conservation benefit and are not exempted. For example, normal forest management activities within the historic range of the Louisiana black bear were exempted, except for activities causing damage to or loss of den trees, den tree sites or candidate den trees.

For the black pinesnake, the Service is proposing activities such as thinning, herbicide treatment, and prescribed burning to be exempt from ESA prohibitions since they encourage management and restoration of the longleaf pine ecosystem where the snake predominantly occurs. However, activities that do not protect the snake's underground habitat, such as stump removal, are not exempt.

The final listing rule for the northern long-eared bat includes interim exemptions for normal forest management activities. The exempted forest management activities may continue as long as the activity includes the conservation measures outlined in the rule, which are intended to protect the bat during its most vulnerable life stages—when the bats are hibernating, and when females are raising young that are not yet able to fly. The final exemptions will be developed following public comments and consideration of those comments and concerns.

These rules do prohibit activities that are not exempted. In such situations, to ensure compliance with the ESA, the landowner should contact the local Fish and Wildlife Service Ecological Services Office to determine whether the activity is likely to result in take of the species. If so, the Service will work with the landowner to obtain the appropriate authorization prior to conducting the activity.

The Service has been actively seeking feedback from the public, including forest landowners, about the exemptions included in the rules for black pinesnake and northern long-eared bat. We have engaged interested stakeholders, including states, other federal agencies, and industry including the forest landowners through briefing calls, information meetings and webcasts, and personal conversations. This is good government—putting out our best proposal and then shaping it based on public comment, peer review, and new information. The Service is actively reviewing the feedback gathered during 120 days of open comment period for the black pinesnake and 60 days of open comment period for the northern long-eared bat (which closes July 1, 2015), and will use that feedback to shape the finalized exemptions for these two species.

Senator Vitter:

White Nose Bat Syndrome

1) How much money does the Fish and Wildlife Service ("Service") estimate will be required to fund necessary research of white-nose syndrome (WNS) over the next five years?

Response: The strategy for implementing the national WNS response plan, *Implementation of the National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats,* was formally accepted by the WNS interagency Executive Committee on March 13, 2014. The implementation plan follows the goals and objectives outlined in the national plan and provides cost estimates for all relevant action items for a period of 5 years (FY 2011 to 2015). Using the average value for any cost estimates provided as a range, the total cost of implementing all aspects of the national response plan over the last 5 years was estimated to be $37.5 million. During this same timeframe, the Service has allocated $23 million to WNS, with at least $17.7 million being awarded in grants and contracts for the highest priority research and related projects. It is important to note that while the Service has provided the majority of funding for WNS research to date, other Federal agencies (e.g., US Geological Survey, National Science Foundation), non-government organizations, and other private entities have also funded high priority research projects in the U.S., Canada, and Europe that have yielded important results.

The Service and its partners are in discussions now to revise the plan for the future and cannot provide exact costs for implementation for the next five years at this time. Because the research has matured, and we are now pursuing the development of treatments options, we anticipate that future costs would be as much, if not more, than the past 5-year research investment of $17.7 million. Because past research has led to the development of potential future treatment options, it is a critical time for continued research investment.

2) Why doesn't the interim 4(d) rule for the Northern Long-Eared Bat establish a mechanism to allow the Service to generate that funding given that the ESA's definition of "conservation" specifically identifies "research" as a key conservation measure?

Response: The purpose of a 4(d) rule is to adjust or modify what forms of take of a threatened species are prohibited under the ESA. Overall, the take prohibitions as modified by a 4(d) rule must be "necessary and advisable to provide for the conservation of threatened species." There is no allowance for a 4(d) rule to establish a "mechanism" to generate funding for any species conservation measures.

3) I understand that, for over a year, industry stakeholders have volunteered to pay into a conservation fund a per-acre amount to account for any habitat impacts of their activities so that those crucial projects can be built without unnecessary delays. I also understand that those monies could be dedicated to funding the WNS research tasks identified by FWS in the White Nose Syndrome National Plan, but that your office has declined that offer so far. Is that correct? If so, please explain the reasoning behind that decision.

Response: The Service is not aware of any formal offers by industry to pay for research specifically focused on combating white-nose syndrome. We would be interested in any opportunity to work with partners to combat the disease. The Service has experience working with industry through the National Fish and Wildlife Foundation on species conservation issues and would be interested in exploring opportunities specifically related to white-nose syndrome. Industry has approached us during the listing process for the northern long-eared bat to consider

mitigation funds related to the oil, gas and wind industries as part of our proposed 4(d) special rule. We will continue to explore those opportunities as we receive public comments and work to finalize the 4(d) rule this year.

4) Since it is beyond dispute that the bat has more than sufficient habitat (425 million acres) and that WNS is the only reason that the Service is considering listing the species, in light of your mandate to conserve only species that are truly at risk how can you justify the Service's failure to create a conservation mechanism through the 4(d) rule intended to identify a treatment to WNS?

Response: As mentioned in Question 2 regarding the purpose of a 4(d) rule, the purpose of a 4(d) rule is to adjust or modify what forms of take of a threatened species are prohibited under the ESA. Overall, the take prohibitions as modified by a 4(d) rule must be "necessary and advisable to provide for the conservation of threatened species." There is no allowance for a 4(d) rule to establish a "mechanism" to generate funding for any species conservation measures.

The Service has made research and management of WNS a priority since 2008. In that time, Service has committed over $20 million on research to understand the disease and its impacts, and to develop treatments and tools to manage the disease and conserve bats. In 2015, Service has made available an additional $3.5 million for important research and response through several funding opportunities available to Federal, state, academic, and non-government partners. Service is also coordinating a workshop in July 2015 that will focus on refining our collaborative treatment and management strategy with options that are safe and effective for bats and the environment.

Senator INHOFE. Thank you, Director Ashe. We will have a 5-minute round of questions, we will not have a second round. Because we do have another panel.

First of all, as I said in my opening statement, Director Ashe, the Fish and Wildlife request for fiscal year 2016 is another $23 million specifically for listing alone. Now, the Service's budget justification references a backlog of 609 other petitions for listing that are in addition to settlement agreements. I would just say, if you look, for example, at the burying beetle, that originally came from the east coast and the populations now have been expanded and are found in my State of Oklahoma and Nebraska, in Arkansas and some other areas. We went through this thing.

When I go back to Oklahoma, it doesn't matter who we talk to in the rural areas. It can be farmers who are concerned about, can they go out and plow their fields without disrupting this critter's habitat? People who might be drilling, people who might be doing anything on the land, it is something that is very, very costly.

What about the delisting? You are requesting more money for listing, and yet that is not the problem. It is the delisting. Do you think that we have an adequate system to address the delisting and when is that going to be set in place?

Mr. ASHE. Mr. Chairman, the increases in our budget are actually, we are directed to fulfilling our responsibilities, like 5-year status review, which support the analysis of species that are already listed and will support our review to determine if they should be downlisted or delisted.

For instance, with the American burying beetle, we are initiating next month a range-wide comprehensive status review for the species. So we will engage the Service's experts, the States, other experts, and we will use that status review to determine whether delisting or downlisting of the American burying beetle——

Senator INHOFE. No, wait a minute. You are going to do this study to see how many should be delisted? Is this what we are looking at?

Mr. ASHE. We are going to do it to determine the status of the species, and then based on that, we could make a proposal to downlist——

Senator INHOFE. Well, no, we are talking about having listed, remember the 12 versus hundreds that I used in my opening statement? Why is it that we are spending all this time on listing and not delisting? We have talked about this for a long period of time. I can remember letters sent back, and I have copies right here, back to 2011, addressing this, along with some sue and settle problems that we have.

But it is the delisting. What is my answer to the people when I go back to western Oklahoma and they say, how much longer is it going to be until we do something with this vast, this growing beetle or whatever you want to refer to it as?

Mr. ASHE. It will be this coming month, when we start the status review.

Senator INHOFE. How long do you think that review will take?

Mr. ASHE. I can't really give you that answer right now, Mr. Chairman.

Senator INHOFE. Can you tell me within 6 months how long it will take?

Mr. ASHE. I could tell you it would take 6 to 18 months, would be my guess, to do the status review.

Senator INHOFE. All right, 6 to 18 months, somebody write that down. We want to get some conclusion on this thing.

So the backlog for delisting or downlisting the species, right now you can't tell us what the specific backlog is for delisting or for downlisting species today?

Mr. ASHE. I can tell you we have a backlog of species, we have over 200 species that are already listed and for which we have not developed recovery plans.

Senator INHOFE. OK.

Mr. ASHE. And so we have, we definitely have a backlog of need to deal with status assessment of species to consider delisting or downlisting. But Mr. Chairman, I think what you realize, and I hope all the other members realize, we have an affirmative duty to list. The law requires us to deal with petitions. The law requires us to make 12-month findings on listing.

So by law, our highest priority is to consider the listing of species. The law does not give us any latitude to do that. When I have a petition, I have 90 days to make a determination on the petition. If I make a positive finding on that at 90 days, I have 1 year to do a status review.

Senator INHOFE. The mission, though, originally, and you probably have done a lot of study on this, all the way back to 1970, was to list, but also to delist if you are successful. You could almost come to the conclusion that you are not successful if you haven't found an opportunity to delist some amount, some numbers of species, or downlist them, and yet we keep adding more and more to the list.

So that is what I think everyone wants to see, the results. I think you would say this morning, recognize the fact that sometimes you list something and all of a sudden some programs are successful, as in, I would say, the burying beetle, because it is now found in places where it never was found back when it was originally listed from east coast information. Is that correct?

Mr. ASHE. But in order to show that, Senator, you or I or others may believe that. But in order to propose a delisting or a downlisting, I have to show that. So that is the purpose of a 5-year review.

Senator INHOFE. So it might be a flaw in the process, though. You are doing your job but perhaps we need to make some changes in the Act.

Mr. ASHE. I think the most important things, Mr. Chairman, are the resources to do the job. The job is doable, and I think we are showing, as you acknowledge, in this Administration, by the end of this Administration if we stay on course we will not just have delisted more species than any other Administration. We will have delisted more, due to recovery, more species than all previous Administrations combined. So I think we are focusing on delisting. We need the resources to do the 5-year status assessments. We need the resources to do the recovery planning. We need the resources to do the delisting.

So when you are looking at our delisting budget, or our listing budget, that is our budget for listing and delisting. And so we need the resources to do that.

Senator INHOFE. My time has expired, but I will show you where we got the information in terms of the listing. And that is why I wanted to bring it up this morning.

Senator Boxer.

Senator BOXER. Thanks so much, Mr. Chairman.

Well, the fact that you are delisting shows that the ESA is working. I am just looking at the different Administrations. Ronald Reagan administration, they delisted 5 due to recovery, Bush 1, Clinton 6, Bush 2, 7 and Obama 11. So that says to me you have flexibility in this law. And yet all these bills that the Republicans have filed say, well, we just need more flexibility. That is just a cover. That is just a cover. That is just what they say. They just want to stop this Act from functioning.

I feel that the way the Obama administration has proven that this Act works is when you see this recovery. So I want to ask you about Senator Gardner's bill which is so controversial that there has been a big op-ed in his own paper back home, and all these groups oppose it. He basically says, for 6 years, you can't do a thing about the greater sage grouse. And as I look at the ESA, its beauty is its flexibility. I think we are proving it in real terms on the ground.

So I would like to ask you, what would it mean to this particular species if all of a sudden your hands were tied for 6 years? It would mean that the States would develop the plans, you are out of it completely for whatever God knows reason, and then the States decide what we can do on Federal lands. So if you could tell me how you think that would impact the recovery of the sage grouse, the saving of the sage grouse?

Mr. ASHE. I think as you said, the Gardner bill essentially defers completely to State plans that do not exist other than in the State of Wyoming, as I said, we have a very good plan for sage grouse conservation. But it defers to State plans that don't exist and provides no standards for those plans at all. So there is no functional standard that goes into place for those plans.

So my sense about the Gardner bill is that it is simply delay. In the meantime, what we will see for sage grouse is more fragmentation, more loss of habitat and we will move toward a crisis by delay.

Senator BOXER. Right. Well, this bill is even worse. It says for 6 years you can't do any listing. So it basically, what it does for the sage grouse, it repeals the Endangered Species Act for 6 years. It is a make believe there is none because we don't like what is happening.

But your comment, what's good for the bird is good for the herd I thought was a real takeaway. The fact is, when we work together on this with the flexibility that we have, everybody is a winner. I don't see a situation where that hasn't been the case.

In my own State, the Federal Government acting as a catalyst has brought together everybody in terms of our endangered species. My God, we have had huge successes with conservation plans drawn up by the entire region.

You are pointing out that employees in your shop are being cited in San Diego as heroes, this is what it is. This shouldn't be about, well, my State scientists know better than your State scientists. This isn't about that. It is about let's do what is right to protect God's species. That is our job. We inherited them. And they are glorious.

And what right do we have to sit here and say that, who cares how many species die off? Well, that is not right. It is a moral issue to me. It may not be to the next person, and I don't preach about it. They can decide what they think is moral and what they don't think is moral.

But the fact is, if we work together, it is a win-win all across the board. So can you tell us a little bit about the flexibility in the law that so many people are excited to see changed, either changing it by the back door or even perhaps as Senator Inhofe said, maybe the law needs to be changed so that you have more flexibility. Tell us about the flexibility in that visionary law that was signed by Richard Nixon that has been supported across the board by bipartisanship and 82 percent of the people support it in the Nation. Tell us about the flexibility.

Mr. ASHE. There are some key flexibilities in the law, one of which was mentioned earlier. When we listed the northern long-eared bat, we did so with the 4(d) rule that clarifies that white nose syndrome is the principal threat and therefore we can provide, we can insulate a broad range of activities from the regulatory restrictions in the law. We used the same tool with the lesser prairie chicken range-wide plan, where we listed the bird as threatened but we deferred largely to the well-designed, comprehensive conservation strategy that five States worked together on.

When we designate critical habitat, we can remove areas from critical habitat for economic, for social or for reasons or national security. And we do that on a regular basis. So there are many flexibilities in the law. We provide a candidate conservation agreement with assurances, tells a rancher that if a species is listed and you continue to implement this voluntary agreement, then you need do nothing further in the law, so we can provide regulatory predictability for ranchers and farmers. We are doing that throughout the Country today.

Senator BOXER. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Director Ashe, the challenge in South Dakota in a lot of cases is one of trying to coordinate between the agency and individual farmers and ranchers that have contracts established for landownership or at least the availability for leases and so forth. Sometimes there are permanent leases on land. The relationship becomes strained on an occasional basis, and it is unfortunate.

Part of it is because of the tactics that in many cases are being employed by law enforcement officers who are also doing what I believe is their best to make communications with landowners. But in this time in which we see across the Country a concern about interaction between law enforcement personnel and individuals in the public, let me just share with you a letter that we got. I have tried to abbreviate a little bit. But I want to share with you some

of the frustration that individual farmers and ranchers that have had leases for years with U.S. Fish and Wildlife, what they have shared with us.

South Dakota landowners and farmers have allowed waterfowl production area easements with U.S. Fish and Wildlife Service for years. They believe that they have found in many cases a rather difficult and uncooperative approach in determining which acres are actually protected by the Federal easements. In some cases there is no math, it is simply an agreement that had been done perhaps back in the 1940s.

Now, in the particular case that I am going to share, the constituent related to us that he had a story about a Fish and Wildlife agent appearing in their front yard with a flak jacket and side arms, intimidating them simply by his appearance and his tone. I am particularly troubled as the taxpayer dollars are funding this type of aggressive approach to citizens who are voluntarily and proactively enacting conservation measures on their own land as they have been doing for generations.

How do I respond to them when they ask me why they are being made to feel as if they are law breakers, as if they are at risk? And as if rather than being a partner they are being seen in almost an adversarial type of role?

It is just one example. I have a lot of examples, literally relating back to the time in which I was Governor. In fact, I actually asked to have one of your officers removed from his post because of the interaction with local sportsmen in the central South Dakota area.

But there seems to be a breakdown in terms of the attitude of who knows best. Whether or not it is simply a matter of if you are a Federal officer, he seemed to have the upper hand when it came to the citizens that are literally paying the bill for the services. And in a lot of cases, trying to cooperate in allowing for easements for waterfowl production areas.

How do I respond?

Mr. ASHE. I don't know the specifics of the case, so I would like to find those out and I can come talk to you personally about that, Senator. I would like to do that.

Senator ROUNDS. Yes, sir.

Mr. ASHE. But I will theorize here that if a law enforcement officer goes to a landowner in South Dakota, it would be because we have purchased an easement. So it would not be voluntary. So that would have been an easement that we have purchased and the taxpayer has paid for.

Senator ROUNDS. On a voluntary basis.

Mr. ASHE. Sure. It was a voluntary transaction. But the taxpayer has an interest in that property because we have paid for it. So we do aerial surveys and so they must have seen something on the ground that caused them concern. Because we don't send a law enforcement officer unless they have observed what they believe to be an easement violation.

Senator ROUNDS. For an easement violation you would send an armed officer in a flak jacket?

Mr. ASHE. Not always, but it, I mean, our officers are like, if a Montgomery County police officer were to come to my home, they would have a side arm and they would be wearing protective gear

that sworn officers wear. So I understand that that can be intimidating to people. I do understand that.

Senator ROUNDS. It is not a way to get more easements, that is for sure.

Mr. ASHE. But I would say overall, we have an extraordinarily positive relationship with landowners in South Dakota. We have hundreds of people waiting to have the Fish and Wildlife Service secure easements on their property because of the relationship that we have.

So this could be an exception and I would like to look at it and come talk to you personally.

Senator ROUNDS. I would like that opportunity. My tie is expired, but I would like an opportunity to visit further.

Mr. ASHE. Thank you, Senator.

Senator ROUNDS. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Rounds.

Senator Booker.

Senator BOOKER. Thank you very much, Chairman Inhofe.

Senator Boxer keeps talking about Richard Nixon. I would rather talk, this was passed in 1973 to a unanimous vote in the Senate, as well as a 355 to 4 vote in the House. And President Nixon said there is nothing more priceless and more worthy of preservation than the rich animal array of life with which our Country has been blessed. And that is very true.

And the success that this legislation has had, it has had more success, frankly, than most governmental departments can have: 99 percent of the wildlife under its protections have been preserved. But more importantly, when it comes to the time line, it has often taken the huge task of recovering species over decades and the majority of the ones that you are recovering are within the original time lines that were projected. It didn't go over. This often takes decades to accomplish this.

And you have saved countless species. Senator Boxer put up the bald eagle. But there is the Florida panther, the California condor, the gray wolf, the American alligator. And while these successes are impressive, the reality is we are in a global crisis of species extinction that is shocking. Shocking. Most people have no idea that it is estimate between one-sixth and one-half of all the species of all species on the planet earth are threatened with extinction in this very century. That is chilling.

Scientists now believe that the planet is currently faced with a mounting loss of extinctions that threaten to rival the five great mass extinctions of the past. People are saying we are now in the next major mass global planetary extinction. And that is unacceptable.

According to a Living Planet report released in 2014 by the World Wildlife Fund, it is estimated that the world's populations of fish, birds, mammals, amphibians and reptiles fell by over 52 percent of all life on earth, 52 percent between 1970 and 2010. Stated another way, our planet earth lost half of its wildlife in 40 years. That is shocking and stunning and has implications that cannot be monetized.

So I think our focus should be on strengthening rather than weakening the ESA. You have talked about flexibilities, you have

talked about how under the Obama administration, delisting has been done more than the previous Presidents since this has passed. So I would like to run through questions, keeping your answers as short as possible, because the great Senator Inhofe runs a tight ship here. Can you do that for me?

Mr. ASHE. I can try.

Senator BOOKER. In relation to the Refuge From Cruel Trapping Act that I spoke about earlier, you would agree with me that wildlife management within the refuge system should be as humane as possible, yes or no?

Mr. ASHE. Yes.

Senator BOOKER. OK. And Director, in your written testimony, you describe some trapping activity on the refuge system in New Jersey. But I know you are aware that New Jersey, similar to other States, has banned the use of leg-hold traps.

Mr. ASHE. Yes.

Senator BOOKER. Yes, you are aware, OK. And in some States like New Jersey the ban on leg-hold traps, the Fish and Wildlife Service complies with those States' bans and currently prohibits the use of leg-hold traps.

Mr. ASHE. Yes.

Senator BOOKER. Go ahead, give a little flavor.

Mr. ASHE. We reserve the right to do our job. In some cases, with States like California and other places where they have large-scale bans on certain trapping methods, we do in some cases use methods that are not authorized by State law. Where we have to for conservation of the endangered clapper rail or other things.

Senator BOOKER. Very narrowly tailored.

Mr. ASHE. Very narrowly defined.

Senator BOOKER. Very narrowly defined, not the kind of trapping that is being proposed to be done on our refuges. So Director, in relation to the Endangered Species Act, you would agree that listing and delisting decisions are best made by science and the available science there is, right?

Mr. ASHE. Yes.

Senator BOOKER. So you would agree that listing and delisting decisions should be made by experts, scientists, not by Congress?

Mr. ASHE. Correct, yes.

Senator BOOKER. And this is especially true that these decisions should be made based on science by the agency, not by all the political forces that often work, the science of the agency best is insightful in cases like the sage grouse, the gray wolf, where political emotions often run awry? But the design of your regulatory regime is that science should prevail, is that correct?

Mr. ASHE. That is correct.

Senator BOOKER. OK. So finally, in my last 30 seconds, Director, I note that funding levels for the Federal Endangered Species program have been insufficient, not just for listing, but also for the delisting process. So can you please describe the importance, especially for those people who are looking for delisting, that we have better funding for you to implement the ESA?

Mr. ASHE. As I said to the Chairman, I think that the major impediment to further progress on delisting of species is our capacity to drive recovery. One of the big increases in our budget for this

year is in our cooperative recovery program, where we are looking for species in and around national wildlife refuges, where a relatively small investment can make a quantum leap in terms of recovery and getting species off the list.

Just this last year, we delisted the first fish ever due to recovery, the Oregon chub, because of that little effort, little bit of funding that got it over the edge. So we are showing that by some relatively modest effort, we can make quantum leaps in recovery and delisting. Those increases are reflected in our budget.

Senator BOOKER. Mr. Chairman, thank you for indulging me. The more resources you have, the more delisting you could probably do. Thank you, sir.

Mr. ASHE. Exactly.

Senator INHOFE. Thank you, Senator Booker.

Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman, and thank you Director, for being here today.

The Fish and Wildlife Service budget request seeks $164.8 million for land acquisition. That is $58.5 million in discretionary funding and $106.3 million in mandatory funding in fiscal year 2016. That is an increase of $117.2 million from your 2015 levels.

Now, the national wildlife refuge system has a deferred maintenance backlog totaling $1.28 billion. So why are you proposing to acquire more Federal land when we have this huge maintenance backlog? I think we should be addressing that. What is your response?

Mr. ASHE. Two-fold. First with regard to the maintenance backlog, I need to note that in the last 5 years, we have decreased our maintenance backlog by 50 percent, one-half. So 5 years ago our maintenance backlog was $2.6 billion. We have managed that effectively. We got a lot of help from the American Reinvestment and Recovery Act. We have scrubbed projects throughout the refuge system, we have placed priority where necessary. And we have reduced our backlog by 50 percent.

So I feel like the Fish and Wildlife Service has been an excellent steward of our maintenance backlog. Our total maintenance backlog now is less than 4 percent of our asset value, which I would say any private company would envy that type of maintenance backlog.

So I think we are a very good steward of national wildlife refuges.

Senator FISCHER. I have a bunch of questions. With the recovery funds, wasn't that just a one-time shot, though? So how much of that backlog was reduced due to a one-time shot?

Mr. ASHE. I can't give you the exact figure, but a substantial amount. Because we got a substantial funding for facilities and for roads through the Reinvestment Act.

Senator FISCHER. Moving forward then, you still have to look at that $1.28 billion that I don't anticipate you are going to get another one-time shot to address it.

Mr. ASHE. But I would say that our acquisitions, those planned acquisitions, are not going to substantially increase our maintenance backlog. We are actually very careful now too, as we acquire lands, that we don't acquire liabilities. So we look before we leap

in terms of land protection and conservation. I think we are doing an excellent job.

The other thing is, a lot of our effort is geared toward easement, particularly in the Dakotas. Our principal investment is to conserve lands through easement, conservation, where we don't inherit a maintenance backlog. Because we have good stewards, those ranchers and farmers on the landscape.

Senator FISCHER. In my State as well. You are looking, I believe, at supporting 34 land acquisitions and over 100,000 acres. Do you have plans for any acquisitions in the State of Nebraska?

Mr. ASHE. We have active conservation projects in the rainwater Basin, which we have conservation projects along the Platte River. I don't think we have any specific proposals in this budget for Nebraska, but we do have active acquisition efforts through the North American Wetlands Conservation Act and with our Federal Duck Stamp funding and other measures.

Senator FISCHER. Senator Rounds and I were discussing the Niobrara Confluence in the Ponca Bluffs Conservation Area. He and I have, as you know, a directed interest there. Are you moving ahead with plans there on acquiring that land through easements? As you know, both Senator Rounds and I have heard from hundreds of landowners who have concerns with that.

Mr. ASHE. I am not aware of that in particular, but let me get back to you for the record.

Senator FISCHER. That would be good. Are you going to move forward with any acquisition plans or plans to establish a refuge or conservation areas if you do meet local State opposition?

Mr. ASHE. Our longstanding policy is that we do not establish refuges over the objections of State and local parties, and certainly not Members of Congress. I believe we have a very strong record in that regard. Just in the last year, we have withdrawn efforts in California, in Alabama, and we have moved through public controversy in places like the Everglades headwaters in Florida where we had significant opposition. But we sat down, we worked through those efforts.

So I think we have a very good track record.

Senator FISCHER. I appreciate that. In the area that I live in, we do have wildlife refuges, and it is important to have that local buy-in so that you can have a more welcoming atmosphere for people to come and enjoy the beauty that surrounds us as well.

Mr. ASHE. We believe the same thing, Senator. I believe we have proven that, as I mentioned, Andy Ewing and his role in San Diego. Andy is an exceptional individual, but that is not the exception in the Fish and Wildlife Service; by and large it is the rule.

Senator FISCHER. Thank you, sir. Thank you, Mr. Chairman.

Senator INHOFE. Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chairman.

The Endangered Species Act is not broken. Since this bipartisan law was enacted in 1973 under President Nixon, it has been 99 percent successful in recovering listed species. I am a firm believer that our policy should be driven by science, especially when it comes to preserving biodiversity in our American heritage. No one wants to see a species get listed.

For example, I don't want to see the sage grouse listed. I can tell you a lot of folks in Oregon don't want to see it listed. And you can bet the sage grouse doesn't want to see it listed. So that means they are close to, or inching closer to extinction.

The fact is that it is our responsibility not to politicize the science or the biology needed to recover a particular species, but to heed the warning signs given to us by science and address the issues so a species can recover. So I am very pleased that you are here to testify today.

I wanted to focus specifically on the sage grouse. I understand the Federal plans for sage grouse conservation on BLM lands are going to be finalized and we will have that later this month?

Mr. ASHE. Senator, their schedule right now is to finalize the plans in early June.

Senator MERKLEY. OK, I look forward to that. My understanding is that these plans have been developed collaboratively with input from States and local stakeholders to help inform how it should be designed.

Mr. ASHE. There has been, over the course of three full, more than 3 years, been exhaustive public process.

Senator MERKLEY. So there is a genetically distinct group of sage grouse in California and Nevada. My understanding is that the efforts to preserve them have led to a not warranted decision in terms of listing. Are there lessons learned from that population that can be applied to the balance of the population of sage grouse?

Mr. ASHE. There certainly are, the bi-State sage grouse is shared between Nevada and California. They suffer from the same types of threats, largely habitat disturbance. In that case we have BLM and the Forest Service commit to conservation plans that will conserve the sage grouse. We have Natural Resource Conservation Service also engaged there on private lands. We had cooperation from the two States.

So that is a microcosm of the larger discussion and public process that we have going on with the greater sage grouse.

Senator MERKLEY. There is a plan in Oregon that is called SageCon, that is about Oregon working with stakeholders on private lands and State lands to try to stabilize the population and hopefully to prevent the necessity of being listed. Are there insights from that that have been incorporated into the plans for the BLM lands?

Mr. ASHE. Yes, I think the State of Oregon has been a great partner in this context. We expect to have a very substantive, strong program through the SageCon effort in Oregon. Again, they are a very close collaborative relationship between the planning at the State level and the planning that BLM and the Forest Service are doing. So that kind of ongoing discussion, so that the planning process that BLM is doing and the Forest Service is doing are informed by the planning process at the State level and vice versa.

Senator MERKLEY. Excellent. That sort of collaboration gives the best chances for success. One of the things that we have really been encouraging are the candidate conservation agreements with assurances. The Secretary of Interior came out and publicized those agreements. Ranchers have taken a close look at them. Many have

signed up. But few have been fully enrolled. That enrollment process has yet to be completed.

Is there anything that we should do to encourage the acceleration of the enrollment process so that these ranchers who are willing to enter these agreements on how they manage their own lands are protected from future ill effects, if you will, of a listing?

Mr. ASHE. I think some of that is a little bit organic. We have to continue to build spokespeople in the ranching community, people with whom we have a trust relationship, who can help us kind of expand that relationship. I think that is happening.

The other thing is the topic of the day, which is the budget resources. We have to have the people in the field who can go out and meet with these people. Because a lot of times they are not going to sign up——

Senator MERKLEY. I am almost running out of time. The point I want to make is, many ranchers have signed up. But it is up to the Fish and Wildlife Service to complete the enrollment process.

Mr. ASHE. Right.

Senator MERKLEY. They are waiting. They are willing partners, ready partners. But we need to complete and honor the deal.

Mr. ASHE. That is our resource constraint.

Senator MERKLEY. Well, I will certainly work with my colleagues. I think both sides of the aisle benefit greatly from these sorts of voluntary efforts. Now my time has expired, but I hope that these collaborative efforts that are going on in Oregon will be effective in stabilizing the population preventing the necessity to have a listing.

Mr. ASHE. Thank you, sir.

Senator MERKLEY. Thank you.

Senator INHOFE. Thank you, Senator Merkley. Senator Crapo.

Senator CRAPO. Thank you, Mr. Chairman.

Director Ashe, I want to use my time to talk with you about the greater sage grouse. As I am sure you are very well aware, in March 2012, the U.S. Fish and Wildlife determined that the greater sage grouse across the 11 western State range was warranted for listing under the Endangered Species Act, but precluded because of other, higher priorities. This decision placed the greater sage grouse on a candidate list whereby, due to court order, the Service must address its conservation status and decide by September 30th of this year whether to list the species.

As a result of that, States across the west, including Idaho, have been working with various Federal agencies involved, namely Fish and Wildlife Service and the Bureau of Land Management, on conservation management plans that will protect the grouse and take into account unique circumstances within each State. It has been the hope of all of those discussing this that we could use this collaborative process to avoid a listing and if any kind of activity was required, to work on something collaboratively to make it successful.

However, what I want to focus my questions on is a letter that came from your office in October 2014. I ask unanimous consent to make this letter a part of the record.

Senator INHOFE. Without objection.

[The referenced information follows:]

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/AES/058711

OCT 27 2014

Memorandum

To: Director, Bureau of Land Management
Chief, U.S. Forest Service

From: Director

Subject: Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes

Pursuant to our October 1, 2014 leadership discussion regarding the federal land management planning process for greater sage-grouse (sage-grouse) conservation and as a continuation of our ongoing coordination and advice regarding your land management plan revisions and amendments, we are providing recommendations to further assist your agencies in the important management decisions you are currently finalizing. During the ongoing coordination effort for the planning process, we have provided conservation advice in the form of the 2013 Conservation Objectives Team final report (COT report), our comments on the draft federal plans including comprehensive analyses of alternatives, and the National Policy Team (NPT) Guidance, as well as other consultative activities.

This memorandum and associated maps respond to a request from the Bureau of Land Management (BLM) to identify a subset of priority habitat most vital to the species persistence, within which we recommend the strongest levels of protection. The areas we have identified on the attached map are a subset of the already identified Priority Habitat Management Areas (PHMA). The areas we have identified within PHMA represent recognized "strongholds" for the species that have been noted and referenced by the conservation community as having the highest densities of the species and other criteria important for the persistence of the species. For example, the Western Association of Fish and Wildlife Agencies' 2004 Conservation Assessment of Greater Sage-Grouse and Sagebrush Habitats (Connelly, et al., 2004; Figure 13.1, attached) included a similar geographic distribution of these stronghold areas for breeding populations of sage-grouse. In addition, in 2010, Doherty et al. produced the first sets of breeding density maps, which clearly illustrate high densities of breeding birds exist in very similar locations. Most recently, Chambers et al. (2014) produced maps of relative resilience and resistance to invasive species and wildfire impacts to sagebrush habitats that also align closely with the subset of priority habitats we have identified in the Great Basin region.

Strong, durable, and meaningful protection of federally administered lands in these areas will provide additional certainty and help obtain confidence for long-term sage-grouse persistence. To be clear, enhanced protections in the stronghold areas do not obviate the need to follow the NPT guidance in the entirety of PHMAs (and in PACs in those instances where gaps between PHMA and PACs exist) and in general habitat.

We have previously advised and continue to recommend that BLM and US Forest Service (Forest Service) land management plans be designed to meet the objectives outlined in COT report. The attached maps highlight areas where it is most important that BLM and Forest Service institutionalize the highest degree of protection to help promote persistence of the species.

Criteria, Methodology and Rationale

We used the following criteria to identify areas within PHMAs in which the most conservative approach should be applied:

- Existing high-quality sagebrush habitat for sage-grouse;
- Highest breeding densities of sage-grouse;
- Areas identified in the literature as essential to conservation and persistence of the species (Knick and Hanser 2011); and,
- A preponderance of current federal ownership, and in some cases, adjacent protected areas that serve to anchor the conservation importance of the landscape.

In addition, we evaluated these areas against related efforts by partner organizations (NatureServe and Conservation Biology Institute) to determine relative agreement between analyses. Using Data Basin, a mapping and analysis platform, we verified our analysis is consistent with landscape-level sage-grouse conservation opportunities and needs, as defined by the above criteria as well as additional considerations, including the modeled "velocity" of climate change onset in various parts of the range and the potential for fire and invasive species impacts on sage-grouse habitat. In the process of this comparative exercise, we determined there was generally good spatial relationship between these areas and other important habitat conservation values in the sagebrush-steppe ecosystem, including shrub-steppe passerine birds (Hanser and Knick 2011) and mule deer winter range (identified by the Western Governors Association Crucial Habitat Assessment Tool.

Rangewide Map (Map 1)

See below for regional maps and individual unit descriptions.

Great Basin Region (Map 2)

- **Southern Idaho/northern Nevada**: This general area is comprised almost entirely of federal surface lands. The area contains five designated federal Wilderness areas, and protected areas for bighorn sheep conservation. Sage-grouse breeding densities are very high.

- **North-central Idaho**: This area is anchored by Craters of the Moon National Monument, is comprised of mostly federal surface land ownership, and has a high density of breeding sage-grouse.

- **Areas adjacent to the Sheldon-Hart Mountain National Wildlife Refuge Complex, Oregon and Nevada:** This area occurs predominately on federal surface lands, and includes several Wilderness Study Areas (WSAs). It contains some of the highest sage-grouse breeding densities in Oregon and both of these national wildlife refuges (NWRs) are actively managing for sage-grouse conservation.

- **Southeastern Oregon/north-central Nevada:** This area is predominately federal surface lands and contains five designated WSAs. Breeding densities of sage-grouse are high.

Rocky Mountain Region (Maps 3 and 4):

- **Southwestern/south-central Wyoming** (Map 3): This expansive area is predominately federal surface estate and represents some of the best remaining sage-grouse habitat within the entire range of the species. The area includes four currently designated WSAs, one federal Wilderness area, and several areas managed for historic and cultural resources (which exclude development). Seedskadee National Wildlife Refuge is in the vicinity.

- **Bear River Watershed** (Northeastern Utah/Southwestern Wyoming, Map 3): This area has a high density of breeding sage-grouse. Cokeville Meadows NWR is located nearby.

- **North-central Montana** (Map 4): This area comprises the highest breeding sage-grouse densities in Montana. It follows the Missouri River, is adjacent to Charles M. Russell NWR. This area also provides wintering habitat for sage-grouse migrating seasonally from Alberta, Canada, where the species listed as endangered under the Canadian Species at Risk Act.

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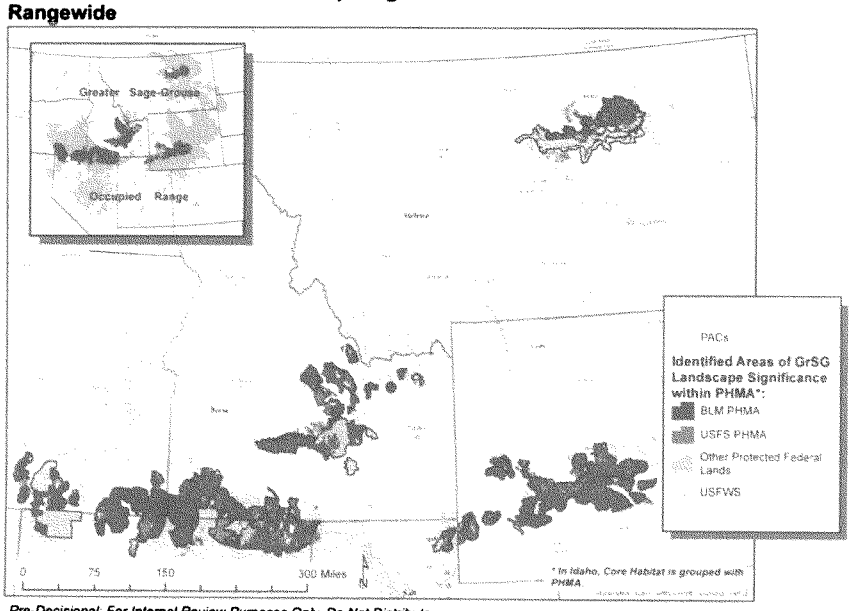
Data Basin, *see* http://databasin.org/

Enclosures

Maps 1-4

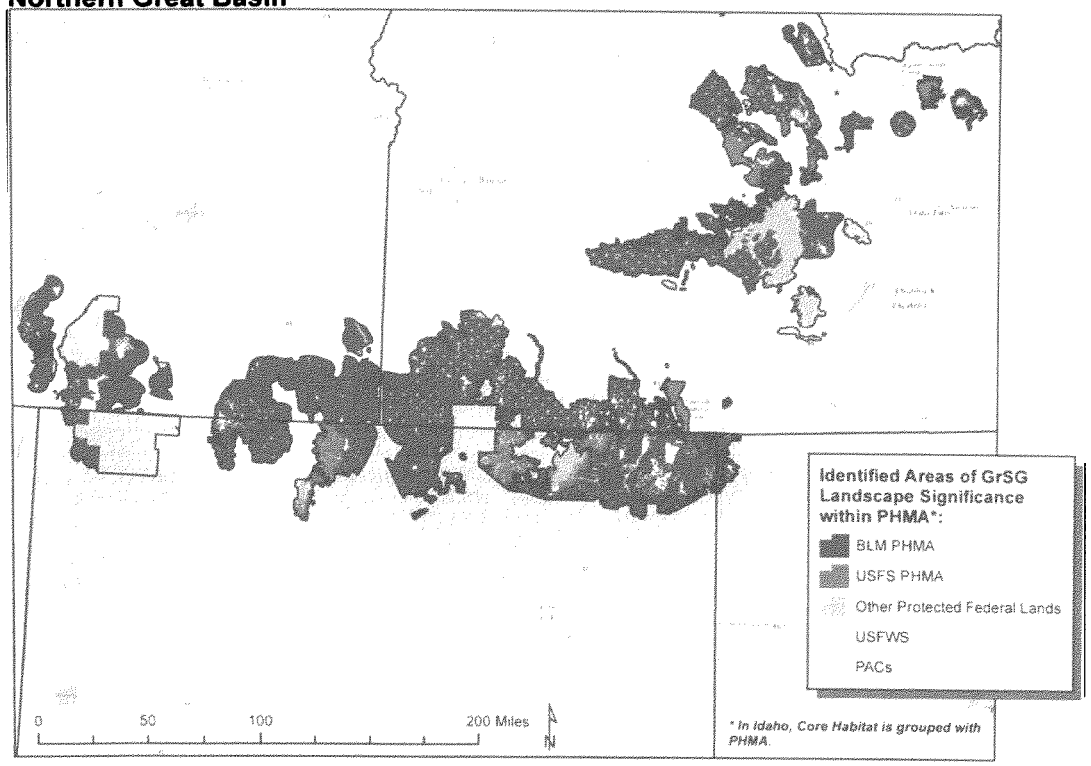
Figure 13.1, from Connelly, et al, 2004.

Identified Areas of GrSG Landscape Significance within BLM/USFS PHMA: Rangewide



Pre-Decisional. For Internal Review Purposes Only. Do Not Distribute.
PHMA current as of October, 2014

Identified Areas of GrSG Landscape Significance within BLM/USFS PHMA: Northern Great Basin



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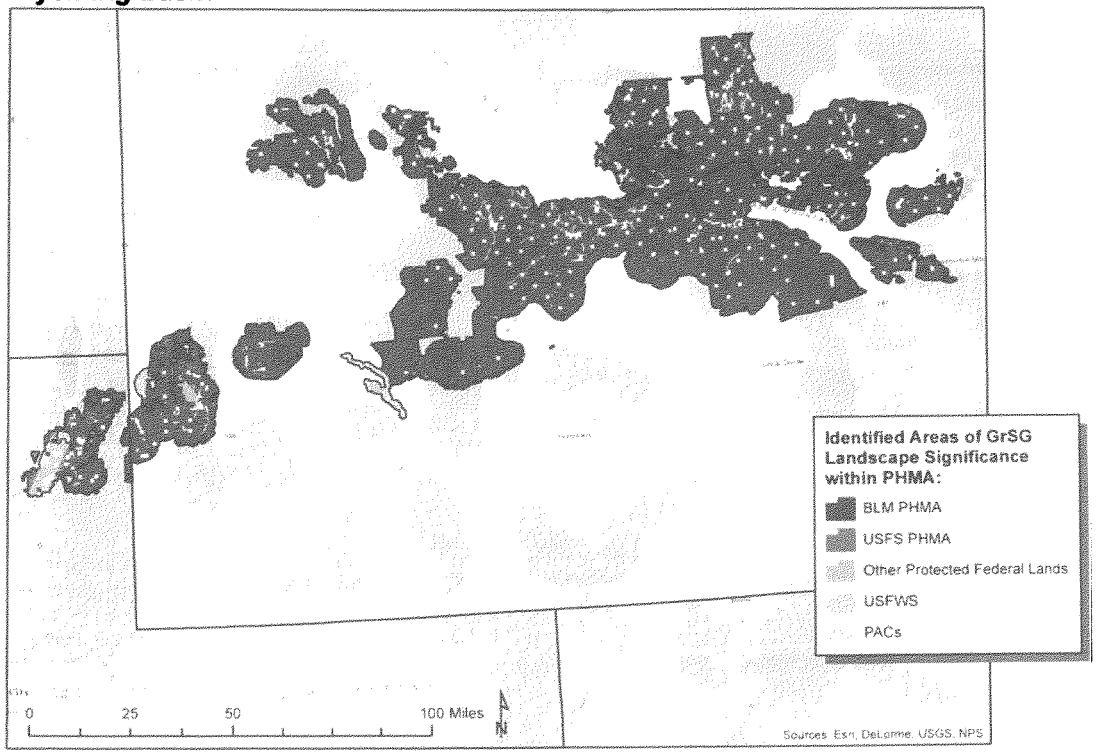
PHMA current as of October, 2014.

Identified Areas of GrSG Landscape Significance within BLM/USFS PHMA: Wyoming Basin



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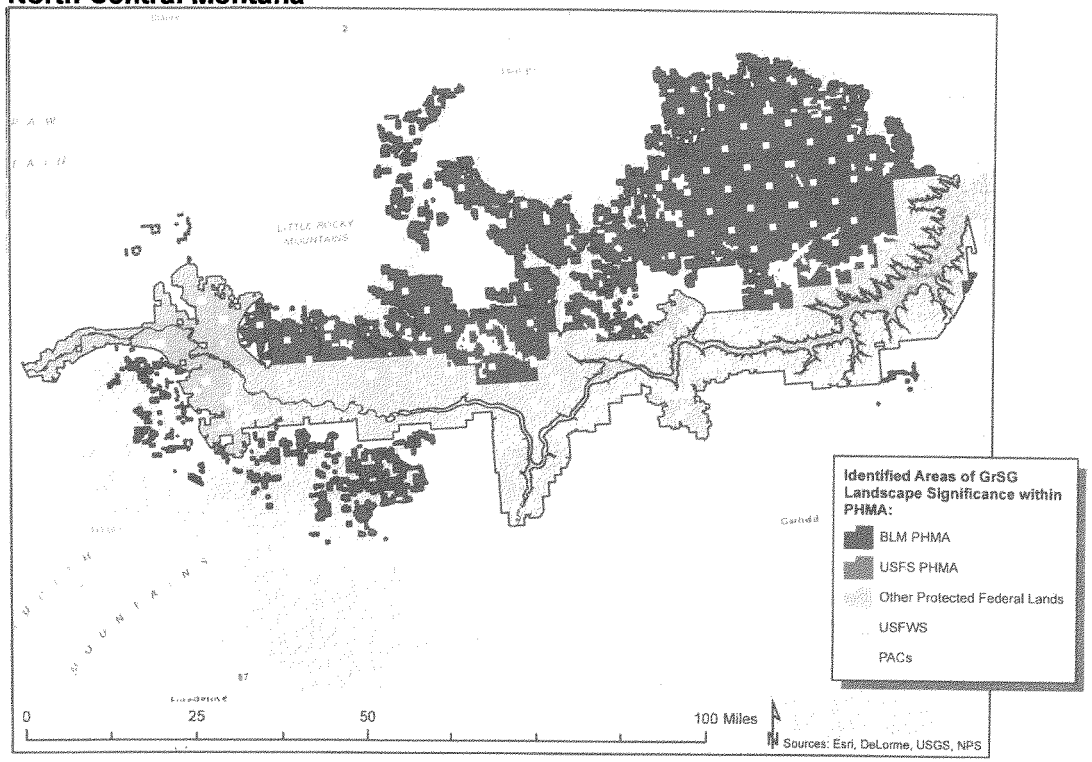
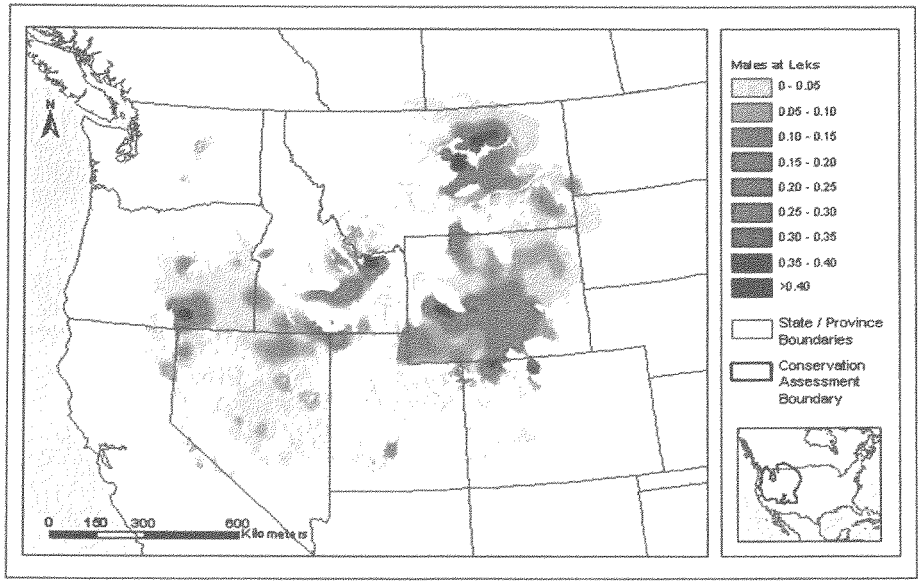
PHMA current as of October, 2014.

Identified Areas of GrSG Landscape Significance within BLM/USFS PHMA: North Central Montana



Pre-Decisional; For Internal Review Purposes Only. Do Not Distribute.
PHMA current as of October, 2014.

Figure 13.1 Strongholds for breeding populations of sage-grouse in western North America.



Note: The darker shades represent the greatest densities of males/km^2

Source: Connelly, J.W., Knick, S.T., Schroeder, M.A., and Stiver, S.J., 2004. Conservation Assessment of Greater Sage-Grouse and Sagebrush Habitats. Western Association of Fish and Wildlife Agencies. Unpublished Report. Cheyenne, Wyoming.

Senator CRAPO. You are probably familiar with the letter I am referring to. I have a copy for you if you want it, but I know you are familiar with it. In this letter, the Fish and Wildlife Service seems to have once again moved the goalpost and basically acted, at least many of us in Idaho feel, unilaterally by proposing land withdrawals on millions of acres in sage brush focal areas.

That seems to us to be contradictory to the collaborative effort that we are all seeking to engage in, because now the maps that came in conjunction with this letter have essentially put parameters on the entire discussion about how to come up with sage grouse protection plans that we feel are impediments to the collaborative process, rather than helping that process move forward. I would appreciate your observation on this.

Mr. ASHE. Sir, the letter there refers to what we would call strongholds, what the BLM has called sage grouse focal areas in their planning process. It doesn't move the goalpost. What that is is a refinement. Previously we had identified priority habitat for the sage grouse. We were looking for protections. If we are going to avoid the need to list, then we have to show that there are meaningful protections in place across the priority habitat.

The BLM asked us to refine that. Is there a best of the best habitat? And so that is what we did. We provided them with really what is the very best, highest quality habitat where we do need the strongest protections possible.

So if we are going to reach a not warranted conclusion, then we need to see large pieces of the landscape where sage grouse, where we are highly confident that sage grouse are going to persist into the future. So those strongholds, or sage grouse focal areas, are key to that.

It doesn't mean nothing can happen in there. It means that we will have, with oil and gas, we will have no surface occupancy without exceptions. It means with grazing that those areas will receive priority in terms of the BLM's analysis. Because grazing, as we saw in Harney County, Oregon, can be helpful to sage grouse conservation. But they will receive priority in terms of the evaluation process to make sure that we are meeting our grazing standards.

Senator CRAPO. Let me interrupt there. Are you telling me that in these areas that there are not necessarily going to be automatic withdrawals, but a State like Idaho, for example, could propose management plans that would satisfy the requirement that these areas would require for proper treatment?

Mr. ASHE. We have recommended that they be withdrawn from the Mineral Leasing Act. So from hard rock mining, we have recommended that those areas be withdrawn. Because the Mineral Leasing Act provides us with no way, once a claim is made under the Mineral Leasing Act, provides us with very limited tools to protect sage grouse.

Senator CRAPO. So Idaho is more focused primarily on the grazing side of this question.

Mr. ASHE. Correct. And I believe they came to us with some legitimate questions and concerns about how grazing would be managed. I think we have answered those questions. Many of them.

Senator CRAPO. My time has run out. I would just say, there is still a very high level of anxiety.

Mr. ASHE. I understand.

Senator CRAPO. We have a very strong and I think a very capable and effective plan and planning process underway. We want to be able to collaborate with you to be able to make that happen, rather than having rigid edicts come down that interfere with our ability to do exactly what the objective is, which is to protect the sage grouse.

Senator INHOFE. Senator Whitehouse.

Senator WHITEHOUSE. Thank you very much, Chairman.

Today's hearing unfortunately continues something that would have dismayed the predecessor in my seat, John Chaffee of Rhode Island, who is to this day revered as an environmental leader by his home State. But by my count, we have Republican amendments which, eight to zero, go against the protections of the Endangered Species Act. We recently had a hearing on the Clean Power Plan in which the majority's witnesses were completely stacked in favor of the polluter interests. We have an absolutely Republican wall of antagonism to the new EPA rule protecting the waters of the United States. And their budget efforts are a relentless attack against those who protect our resources and our godly heritage of nature.

It causes me to wonder, is there a single Federal environmental protection that our Republican friends like today. When I consider the Republicans in the past who helped build these protections, again, I am somewhat dismayed that there is this relentless single-mindedness, apparently as is the case now.

I don't have a sage grouse in Rhode Island. There is not one to be found.

Mr. ASHE. There used to be a sage hen.

Senator WHITEHOUSE. Was there a sage hen?

Mr. ASHE. A heath hen, it was the eastern sage grouse. It is no longer with us.

Senator WHITEHOUSE. Well, there is an instructive point that I did not know. Helps remind us why we do the Endangered Species Act.

I want to ask you a different question. Rhode Island is a coastal State. Coastal States are seeing a triple whammy coming from climate change. We are seeing the same land habitat changes that non-coastal States experience. We are also seeing that the margin between land and sea, sea level rise that is threatening to or beginning to overwhelm features like salt marsh. And third, we are seeing the changes in the seat itself, the warming temperatures, the increased acidification. We haven't seen acidification of the oceans measured to increase like this in, forget the lifetime of our species on the planet and millions and millions of years.

So what particular attention should the Fish and Wildlife Service be giving to those coastal areas where the climate effects are coming at us through so many different vectors?

Mr. ASHE. You have hit many nails on the head there, Senator. I think the phenomenon of climate change is one which is an overarching threat to the conservation of species. Sea level rise being one actually where we have given better tools to managers than anywhere else.

So we actually see innovation in places like the Albemarle Peninsula in North Carolina where we are working with Duke Power and the State of North Carolina and the Nature Conservancy and others to begin to plan for an orderly transition of that landscape. We manage nearly half a million acres of national wildlife refuges there. The future for those refuges is to become estuarine habitat, not the pocosin bogs that they are today.

So we are working with partners to kind of realize that and plan for the future. But that as well is a resource constraint. We need better science. We need more people in the field to work with local communities in terms of how we can adapt, how we can build alliance with private landowners to better manage land, so that we can make an orderly transition occur.

So certainly sea level rise, whether it is sea turtle or piping plover or red knot and horseshoe crabs, climate change is a large, overarching factor that we have to understand better if we are going to be good stewards of these creatures.

Senator WHITEHOUSE. With 8 seconds remaining, I don't think I can top the way you ended. So I will leave it there. Thank you very much.

Senator INHOFE. Thank you, Senator Whitehouse. Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman. Director Ashe, good to see you. I have so many questions for you that I could spend the next 3 days asking you questions. So we are going to submit a number for the record, and if you can try to answer these succinctly, it would be helpful so we can get through at least a couple in the 5-minutes that I have.

First, I want to talk about the Alaska National Interest Lands Conservation Act. Are you familiar with ANILCA?

Mr. ASHE. I am.

Senator SULLIVAN. Great. There are a lot of Alaskans who actually don't think your agency is that familiar with ANILCA, because there is a strong sense in my State that your agency continually violates that important Act. And to Senator Whitehouse's comments, I will tell you this, today's hearing but more your actions would bring great dismay to one of Alaska's great predecessors in the U.S. Senate, Ted Stevens, who crafted ANILCA, knew it was a finely crafted balance and yet, it is being ignored by your agency, I think, on a daily basis.

Let me give you the latest example. The President's recent announcements on the 1001 area, ANWR. As you know, the coastal area of ANWR, the 1002 area of ANWR, very important place, laid out in ANILCA, whole chapters on it in ANILCA. And critical that the Federal Government was tasked with either looking at developing it for oil and gas, looking at the resources there, recommendations to Congress, or perhaps someday making it a wilderness.

But do you think there is any other branch of government in the Federal Government that has the power to either develop the 1002 area for oil and gas or make it a wilderness besides this body, Congress?

Mr. ASHE. No, I do not.

Senator SULLIVAN. OK, then how can the President of the United States a couple of months ago say he is going to submit a bill to make the 1002 area wilderness, which is fine, he has a right to do that, it has to be approved here, it won't go anywhere, but then in the meantime say, I am going to "manage" the 1002 area for wilderness anyway? That is what he said on Air Force One to big fanfare.

How can he manage the 1002 area for wilderness when you don't have the authority to do that? Can you explain that to me? This is a huge issue for my State. I think you are violating the law, I think the President is violating the law. How do you do that?

Senator BOXER. Can we have order?

Senator INHOFE. We have order already.

Senator BOXER. He wouldn't let him answer the question.

Senator INHOFE. Stop the clock and give him at least 1 more minute.

Senator SULLIVAN. How do you manage the 1002 area for wilderness when you don't have the authority to designate wilderness, the 1002 area? Go read ANILCA. There is not a lawyer in town who thinks your agency has that authority.

Mr. ASHE. There are lawyers who in the Interior Department who agree very much. Mr. Sullivan, we are managing the 1002 area as we are managing it today for what we call minimal management.

Senator SULLIVAN. No agency, Republican or Democrat, has ever said they are going to manage the 1002 area for wilderness with the exception of yours. First time ever.

Mr. ASHE. We are managing the 1002 area to protect the wilderness value that is represented there. That is our duty.

Senator SULLIVAN. Let me ask a follow up question. If there is a President in 2017, he is a Republican, he submits legislation to develop the 1002 area for oil and gas development. It doesn't go anywhere, it is a tough issue. Can that President, say it is President Cruz, President Rubio, President Paul, can that President say, I am now going to "manage" the 1002 area for oil and gas development?

Mr. ASHE. We have produced a comprehensive conservation plan.

Senator SULLIVAN. Can you answer that question?

Mr. ASHE. The President would have to, we would have to change our conservation plan. We have gone through the lawful administrative process of developing a comprehensive plan.

Senator SULLIVAN. Not designating 1002 as wilderness without congressional approval.

Mr. ASHE. We have a comprehensive conservation plan for the management of the refuge which has been developed through a public process.

Senator SULLIVAN. Can a President in 2017 manage the 1002 area for oil and gas, even through a comprehensive management plan?

Mr. ASHE. No.

Senator SULLIVAN. Can a President now manage the 1002 area for wilderness? The answer has to be no if you said no to the other question.

Mr. ASHE. The President is not managing it.

Senator SULLIVAN. The President said he was going to manage the 1002 area for wilderness. He doesn't have the authority to do that.

Mr. ASHE. The United States Fish and Wildlife Service is managing the Arctic National Wildlife Refuge.

Senator SULLIVAN. No, the 1002 area is different. Look at ANILCA.

Mr. ASHE. No. The 1002 area is part of the Arctic National Wildlife Refuge. The law makes no distinction between the 1002 area and the remainder of the refuge.

Senator SULLIVAN. It makes a huge distinction. There is an entire chapter called the 1002 chapter in ANILCA. That is why it is called the 1002 area. There is a gigantic distinction. Director Ashe, I think that your agency has been violating the law. I have so many other questions, Mr. Chairman. We will submit them for the record. This is incredibly disturbing and a whole host of different ANILCA sections.

I am going to ask one more question, Mr. Chairman, if I may.

Senator INHOFE. Senator Sullivan, you have another good minute, because you were interrupted. Please go ahead.

Senator SULLIVAN. So in Alaska there is a provision, what we believe is the "no more" provision of ANILCA. Do you believe that that exists?

Mr. ASHE. It does exist.

Senator SULLIVAN. So the "no more" clause says there should be, that ANILCA, according to Ted Stevens and others, was a finely balanced designation. We have almost 60 million acres of wilderness. We have State parks that are bigger than Rhode Island, individual State parks. We have a lot of wilderness; we love our wilderness.

But we don't think there should be any more, and neither did the Congress. Do you think that there can be any more wilderness, managed, designated or otherwise, without the express permission of this body?

Mr. ASHE. There can be no designated wilderness without congressional action.

Senator SULLIVAN. Then how can the President of the United States say he is going to manage the 1002 area for wilderness? He can't.

Mr. ASHE. The President has said, the U.S. Fish and Wildlife Service is going to manage the refuge to protect the wilderness value that resides there. We have ample authority to manage the refuge in a way that preserves and protects its wilderness character.

That does not mean it is congressionally designated wilderness. We have gone through a lawful administrative——

Senator SULLIVAN. Are you familiar with 1002(e) of ANILCA?

Mr. ASHE. Not the number, no.

Senator SULLIVAN. That is the one that says there are exploration plans that have to be approved by the Secretary in the 1002 area. The State of Alaska put together an exploration plan under that provision. You rejected it. Why wouldn't you want to work with the State of Alaska on a plan like this?

Mr. Chairman, I will submit the additional questions I have for the record.

Senator INHOFE. Thank you, Senator Sullivan. Senator Markey. Now, I think, Senator Markey, it might be a good time for us to relate our story from last week.

Senator MARKEY. Please.

Senator INHOFE. Oddly enough, while we disagree on a lot of issues, I have always felt Senator Markey to be a very close friend. We bumped into each other with our wives last week. He was joking around, I guess I was joking more than he was, after meeting his wife, who was really dolled up. She looked really good. I told her that, too.

[Laughter.]

Senator INHOFE. And they kidded me because my wife was wearing blue jeans and her Save the Ridley Sea Turtle tee-shirt. Now, are you paying attention to this? The sea turtle, yes.

Senator BOXER. I hope she is not out here today for this hearing.

Senator INHOFE. But anyway, I think sometimes people try to say that conservatives or Republicans are not concerned about a species. In fact, when you say how many people would answer yes, we need a U.S. Fish and Wildlife, I think most Republicans would be on that list. It is just that we need some reforms there. We will talk about the Ridley sea turtle at a later time.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much. And by the way, your wife looked tremendous that day as well.

[Laughter.]

Senator MARKEY. There will be no graciousness gap that opens up in this hearing. And like you are saying, it did demonstrate that there areas of common agreement where we can work together. And your wife gave me a deep insight into you, that you have been married to her for 56 years. Is that right?

Senator INHOFE. That is correct.

Senator MARKEY. Incredible. That is a reason to believe that we can find areas of agreement.

Senator INHOFE. So welcome, sir, we appreciate your being here.

Senator MARKEY. On the 1002 issue, as we know, that question of whether or not that area is so special, so important that there should not be some extra protections, especially if there is going to be oil drilling and especially if the oil companies then want to export the oil overseas. It is one thing to say that they want to drill for America, but to drill and simultaneously be saying that we have a surplus in America, let's export our oil while drilling on this special land is a big question for the Country, very big question. And that deserves a big, big debate.

With regard to Chatham, Massachusetts, which you know very well from your long service with the great Congressman Gerry Studds, there has been work done on the Monomoy Refuge for decades to support conservation efforts while maintaining historic fishing practices and small scale bay scalloping. I appreciate the Service's work with Chatham as the Monomoy Refuge has developed its comprehensive conservation plan. My hope is that the final plan will continue the partnership between Chatham and the Fish and Wildlife Service that has worked so well over the years. Can I get

a commitment from you that you will keep me informed of the plan developments as it moves toward being finalized, so that we can understand how closely you are going to be working with Chatham in order to ensure that there is a continued comprehensive partnership?

Mr. ASHE. Senator, I would be glad to come up personally and talk to you before we make any final decisions.

Senator MARKEY. That is a very important issue to me.

Critics of the Endangered Species Act and the Fish and Wildlife Service's efforts to implement it are often concerned with the amount of funds that the President's budget requests for supporting endangered species conservation. How do inadequate resources hinder the species conservation and delisting efforts of the Service?

Mr. ASHE. I think the lack of support for doing 5-year assessments, inadequate support for the scientific investigation and information that we need, we have increases in our budget this year for our State college, for State and tribal wildlife grants. That would be an important investment in our State partners' capacity to do work in endangered species conservation and to provide us the work or the information that we need to make better listing and better delisting decisions.

So resource constraints, in my view, are the principal reason that we are not making the progress that we could otherwise make.

Senator MARKEY. So several of the bills being considered today will likely cause the cost of managing the Endangered Species program to increase dramatically. Do you believe the agency has the capacity to absorb these costs without requiring additional Federal funds?

Mr. ASHE. No, we don't. Several of the bills that are before you today would essentially create separate causes of action. I hear constant criticism of the sale of litigation that we have to deal with now. But if these bills pass, it would establish new causes of action against the United States Fish and Wildlife Service.

Senator MARKEY. And again, I will just list the bills. S. 112 would require the agency to produce separate economic impact analyses for each State and locality affected by critical habitat designations. S. 292, 736, 855 would require the agency to publish massive amounts of raw scientific data. S. 293 would make litigation more cumbersome and delay court decisions. S. 736 would force the agency to review potentially massive amounts of unqualified scientific information. And S. 855 would raise takings compensation above fair market value and require the agency to relist species every 5 years until recovery. Those are massive additional costs that the Fish and Wildlife would have to absorb without any increase in appropriations.

Mr. ASHE. Correct.

Senator MARKEY. And finally, Director Ashe, last week my colleagues on the other side of the aisle passed out a bill from this committee that would raise barriers to EPA using science to inform its decisions. Today we are considering a bill that would require the Fish and Wildlife Service to use any information, any information submitted to it by State, tribal or county governments in its decisions. Has the current best available science and commercial

data standard served the conservation of wildlife well over the years, or do we need to change it?

Mr. ASHE. I think it has served us very well. And we are held accountable. So if a State or local government or tribe provides us with information that represents the best available and we ignore it, I mean, we are held accountable for that by the courts. So I believe that provision has worked miraculously well to make sure that these decisions are science-driven.

Senator MARKEY. And I agree with you, I think any data would just paralyze you. The best available data allows you to ensure that you are hearing all of those views that actually could substantively impact on the decision which you have to make. I agree with you 100 percent, and I yield back, Mr. Chairman. Thank you.

Senator INHOFE. Thank you, Senator Markey. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Director Ashe, welcome. A couple of questions on the grizzly bear, sage grouse and the gray wolf. On the grizzly bear, the grizzly bear reached their population goal I believe several years ago in Wyoming, were delisted. The population goal at the time was 500 bears.

Subsequently, a lawsuit forced your agency to backtrack on the delisting to complete a study on white bark pine. The result of the study showed that white bark pine was largely a non-issue, ultimately you could still move forward with the delisting.

But my question is, what is the current target population goal for that same population today? It was 500 initially.

Mr. ASHE. The 500 was one part of the recovery standard. We said a minimum of 500 bears to ensure that the population would be genetically connected to the larger grizzly bear population in the lower 48 and Canada. So that was one part of our recovery standard. We don't have a number that we are shooting for, but I can tell you, we agree that grizzly bears are recovered. We are working with the State of Wyoming and Idaho and Montana literally as we speak to try to put together the frame for a potential delisting proposal.

Senator BARRASSO. That would be helpful. People in my State feel that the bar has been raised, the goalpost has been moved in terms of the total counts. Thank you on your efforts there.

The sage grouse, the State of Wyoming, as you know, said that it has worked very hard to create a plan to protect the sage grouse. Your office has been very helpful to us in that regard. You have worked collaboratively with our State. Just last week, your staff praised Wyoming's plan in a meeting with my staff. Wyoming, as you know, has worked in good faith to create a workable plan. Because we know that such a listing of sage grouse would be economically bad for our State, and because we believe we know best how to protect the bird in Wyoming.

With that said, isn't it true that despite all this good work, Wyoming's plan isn't enough to avoid a listing that my State has tied to all the other States that have to develop plans to protect the sage grouse? And if their plans don't add up, that Wyoming could still face a listing?

Mr. ASHE. The Wyoming plan by itself would not be sufficient to avoid a listing. So that is why we have come together with all 11

range States and the BLM and the Forest Service and the Natural Resource Conservation Service. It is through that collaborative, comprehensive process that we have the potential to get to a not-warranted determination.

But like with Wyoming, Wyoming made difficult decisions to conserve the sage grouse. So conservation involves sacrifice. At some level we have to make tradeoffs. Wyoming has made them well. And the BLM and the Forest Service are now in the process, and I believe they are doing an extraordinary job.

Idaho has been a good partner. Hopefully we will see other States, their plans take shape here very quickly, Oregon, Montana, Colorado. But it is that collective effort that will get us across the finish line.

Senator BARRASSO. Is it also true that even if all the States meet Wyoming's standard and the bird isn't listed by Fish and Wildlife that the agency could still be sued, could lose in court the position that Wyoming has already faced with the wolf delisting and the grizzly bear delisting?

Mr. ASHE. It is possible.

Senator BARRASSO. We are just concerned, because it seems in spite of the agency's best efforts, sometimes the lawyers don't have the winning record that we would like in these cases when it comes to defending and delisting.

Mr. ASHE. And I would say, in that context of that question, we have a $4 million increase proposed in our budget. Because if we were to get to a not-warranted, then we are going to have to defend that record. So we are going to have to be able to put together an administrative record that we can bring to court. We are going to have to have the people power to implement the agreements that we have forged in the context of this collaborative effort. So we need that capacity dearly.

Senator BARRASSO. And in terms of the gray wolf, has Wyoming met every goal that Fish and Wildlife has set to protect the gray wolf, including developing a wolf protection plan that lives up to your agency's standards?

Mr. ASHE. Yes.

Senator BARRASSO. So do you believe it is time to once again delist the wolf?

Mr. ASHE. I do.

Senator BARRASSO. Thank you. Thank you, Mr. Chairman. No further questions.

Senator INHOFE. Thank you, Senator Barrasso. Senator Capito.

Senator CAPITO. Thank you. Thank you, Mr. Chairman, thank you, Director, for being with us today.

I am going to talk about the northern long-eared bat, no surprise there, we talked about it when you came to visit me. It is in 37 different States. I am interested to know what steps the Service has taken to prepare for the flood of new Section 7 consultations that will be required for the development of new transportation projects, additional renewable energy exploration, commercial and residential construction, electricity transmission projects, forest management projects. In this budget that you have put before us today, are you making any adjustments there to try to meet this heavy demand?

Mr. ASHE. Makes me tired just listening to you.

[Laughter.]

Mr. ASHE. Yes, I mean, one of the largest increases in our budget is for our consultation and planning function within what we call ecological services. So I think yes, we are preparing for that. One of the things that we have been trying to do through the budget is to build that capacity. We know as the economy continues to recover that the demands on the Fish and Wildlife Service increase. We are anticipating significant additional need to have field capacity to deal with it.

But with the long-eared bat, I think the 4(d) rule, the interim 4(d) rule provides significant flexibility. I think with the increases that are proposed in the President's budget, I anticipate that we will be able to manage that workload well.

Senator CAPITO. When do you expect to have the final rule? You have an interim rule now?

Mr. ASHE. We have an interim rule now. We will be going through a public comment process. I am thinking by the end of the year we should have a final rule.

Senator CAPITO. Obviously, the concern there since it is such a wide-ranging species and it being in 37 States, and in the eastern part of the United States, obviously where West Virginia is located, the backlog of consultations and I know you are short-staffed in West Virginia anyway. It concerns me in terms of being able to move these projects forward.

Mr. ASHE. Thank you. It does concern me too. I think we have built in a responsible increase in the budget that will help. The increase that we have in the budget I think is going to allow us to hire an additional 50 people in this area. Of course, that would be nationwide. But I think that capacity is going to be key to us dealing effectively with the northern long-eared bat and the lesser prairie chicken and the other species that we have listed. But I think again, our record shows that we can do that.

I will note with the long-eared bat that the Indiana bat has been listed for over 20 years as an endangered species. It occupies much of the same habitat, has the same basic life history as the northern long-eared bat. And we have been managing that well and without significant controversy. So I think with the northern long-eared bat we have excellent cooperation from our State partners. And we have been working not just with State fish and wildlife agencies, but with State forestry agencies and I think we have laid the groundwork for a very cooperative, successful endeavor.

And we will learn as we go along. The interim final rule is another innovation in flexibility that the law allows us. We put in place an interim rule, now we are going to hear additional public comment and make adjustments if necessary in the final rule.

Senator CAPITO. Thank you so much.

Senator INHOFE. Thank you, Senator.

Director Ashe, thank you very much for the time that we have had here. You did an excellent job. I would ask you, if you don't mind, to come back to the anteroom so we could have a real quick word on something unrelated.

Mr. ASHE. Thank you, Senator, always, for your kindness when I am here.

Senator INHOFE. Senator Boxer.

Senator BOXER. I want to add my voice of thanks. I think that you showed us today you are a voice of reason. I think you showed us today the flexibility that you bring to this job that is in the Act. And I think you proved today that this number of bills that have been put into play in this committee, which are very sad to me, because I think they undermine the ESA, are not necessary. Because we can deal with you as a human being who is smart, you know your way around the block, you understand, you have a broad range of knowledge on these issues. Plus, you know how to keep your cool under what I thought was rude questioning.

Senator INHOFE. That is getting a little out of hand there, Senator.

Senator BOXER. I have the right of free speech. And that is my opinion, and I will say it again, I thought you held your cool under what I thought was rude questioning.

I have done my share of that kind of questioning, so I think I can say I know it when I see it.

So thank you, Mr. Ashe, and thank you, Mr. Chairman.

Senator INHOFE. Let me applaud Senator Sullivan for his passion, his representation of his State. It means a lot to us and to the system.

Mr. ASHE. And Senators, if I could, I would just say last night I was looking back, because I do believe that the Endangered Species Act should be reauthorized, and I think there could be room for improvement of the law. I looked back and the last time it was reauthorized was in 1998. You are both former members of the Committee on Merchant Marine and Fisheries in the House of Representatives.

The base legislation for that was H.R. 1497 in the 100th Congress. The sponsors were Gerry Studds, Democrat from Massachusetts, Don Young, Republican from Alaska, Walter Jones, the committee chairman, a Democrat from North Carolina, and Bob Davis, the ranking Republican on the committee from Michigan. So I think it is possible to bring people of goodwill together. And we could do the same thing and we could pass legislation that improves the law.

Senator INHOFE. Thank you very much, Director Ashe. Would you mind coming up to the anteroom now, because I want to have a real quick word with you. I would ask the second panel to please be seated.

The second panel is David Bernhardt, partner in Brownstein Hyatt Farber Schreck. He is the former solicitor for the Department of Interior. Gordon Cruickshank, the County Commissioner from the Valley County in Idaho; and Donald Barry, Senior Vice President, Conservation Program, Defenders of Wildlife.

What I would like to ask you to do is go ahead. Let's start with you, Mr. Bernhardt, for your opening statement.

STATEMENT OF DAVID BERNHARDT, PARTNER, BROWNSTEIN HYATT FARBER SCHRECK, FORMER SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. BERNHARDT. Good morning, Mr. Chairman, members of the committee. I appreciate the invitation to testify before you today. I request that my written statement be included in the record.

Senator CRAPO [presiding]. Without objection.

Mr. BERNHARDT. By way of background, I have worked on ESA issues for over 20 years, including while serving as the Solicit of the Department of the Interior, as an attorney in private law practice, and as a congressional aide. Given the scope of the hearing and the time, I will make four brief points.

First, many of the decisions made by the Fish and Wildlife Service are decisions of great public consequence, and as such they should be made with as much care and as much forethought and foresight as our Government can muster. These decisions have the potential to greatly impact the particular species at issue, but equally important, if not even more so, also people and communities where the particular species are present.

Unfortunately, at times these decisions are driven by deadlines, some imposed by statute, some established by courts, and some imposed by the Service's own agreement with imposing litigants.

In my opinion, these deadlines often have as their consequence less care and thought in crafting the underlying decision, less review of the legal sufficiency of the decision to be made, and I believe that the arbitrary time lines often undermine the credibility of the merits of the decision itself with the public.

But you don't need to take my word for that. Recently, the Ninth Circuit Court of Appeals provided a view of a biological opinion prepared under a court deadline on a very significant matter. It upheld the legality of the opinion, but it questioned whether anyone is served by the imposition of tight deadlines in matters of such consequence. The court explained the biological opinion as a jumble of disjointed facts and analysis. It further pointed out that deadlines become a substantive constraint on what an agency can reasonably do. And it said that future analysis should be given the time and the attention that these serious issues deserve. I ask your committee to look at the validity of maintaining these deadlines.

Second, despite the significant conflict and acrimony that exists in the implementation of the Act, I believe things might have been a lot worse. We must recognize that over the last 20 years, those charges with implementing the Act, including Don Barry, who sits to my left, have developed and significantly expanded initiatives primarily related to sections 7 and 10 of the Act, such as multi-species conservation plans, safe harbor agreements, no surprises policies. Director Ashe talked about these earlier today.

These administrative changes have been meaningful to the individuals, to entities, and even entire communities who have been able to use these tools to successfully resolve their particular challenges while providing the species protections under the Act. But, unquestionably, much more can and should be done to incentivize private landowners and States to be encouraged to engage in meaningful conservation efforts, and we should strive to further efforts that minimize conflict while still protecting species.

Third, the controversy and conflict associated with the implementation of the Act may actually get much worse than it is today if the current Administration finalizes two regulations and one policy. One of the regulations is related to the designation of critical habitat; one regards the interpretation of a term called "adverse modification"; and the policy is one that describes how the Service intends to utilize its authority to exclude areas from critical habitat designation.

While the Service and NOAA Fisheries should be commended for making the effort to provide greater clarity to its employees and to the public on these issues, they have missed the mark and they have developed proposals that are untethered to the text of the Act itself.

Finally, regarding the legislative proposals before you today, they are quite varied. Some reflect longstanding policy debates and others raise new questions. But they should be welcomed in the course of a meaningful dialog framed by whether the Act of today can or should be improved after the decades of experience that we have actually living under it.

I think we can incentivize and create improvements to the Act while at the same time effectively protecting species.

I welcome your questions.

[The prepared statement of Mr. Bernhardt follows:]

Testimony of David Bernhardt

Before the U.S. Senate Committee on Environment and Public Works

Hearing Entitled, "Fish and Wildlife Service: The President's FY2016 Budget Request for the Fish and Wildlife Service and Legislative Hearing on Endangered Species bills."

May 6, 2015

Mr. Chairman and Members of the Committee, I appreciate the invitation to testify before the Committee today. By way of background, I have worked on Endangered Species Act ("ESA" or "Act") issues for over twenty years, including while serving as the Solicitor of the Department of the Interior, as an attorney in private law practice, and as a congressional aide.

Given the breadth of today's hearing, I have four points to make:

First, regarding oversight, many of the decisions made by U.S. Fish and Wildlife Service ("Service") employees when implementing the ESA are decisions of great public consequence, and as such, they should be made with as much care and as much foresight as our government can muster.

Some examples of important decisions that have potential to greatly impact species, people, states and communities include:

- The determination that a particular species merits the protection of the ESA,
- The identification and designation of the critical habitat for that listed species,
- The decision whether certain areas should be excluded from such a critical designation, and,
- The issuance of a biological opinion to another federal agency along with a reasonable and prudent alternative to the agency's proposal

Unfortunately, at times, each of these decisions are driven by deadlines (some imposed by statute, some established by courts, and some imposed by the Service's own agreement with opposing litigants). The consequence of these deadlines mean less care and thought in crafting the underlying decision, less review of the legal sufficiency of the decision, and less credibility on the merits of the decision with the public.

You do not need to take my word for it. Recently, the Ninth Circuit of Appeals provided its view of a biological opinion prepared under a court ordered deadline. The Court explained:

> The BiOp is a jumble of disjointed facts and analyses. It appears to be the result of exactly what we would imagine happens when an agency is ordered to produce an important opinion on an extremely complicated and technical subject matter covering

> multiple federal and state agencies and affecting millions of acres of land and tens of millions of people. We expect that the document was patched together from prior documents, assembled quickly by individuals working independent of each other, and not edited for readability, redundancies and flow. It is a ponderous, chaotic document, overwhelming in size, and without the kinds of signposts and roadmaps that even trained, intelligent readers need in order to follow the agency's reasoning. We wonder whether anyone was ultimately well-served by the imposition of tight deadlines in a matter of such consequence. Deadlines become a substantive constraint on what an agency can reasonably do… Although we ultimately conclude that we can discern the agency's reasoning and that the FWS's 2008 BiOp is adequately supported by the record and not arbitrary and capricious, we also recognize that Reclamation has continuing responsibilities under CVP and SWP and that this is likely not the last BiOp that the FWS will issue with respect to the delta smelt, nor is this the last legal challenge that we will hear. Future analyses should be given the time and attention that these serious issues deserve.

San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F .3d 581, 605-06 (9th Cir.2014)

Sadly, this is not an isolated example, prior Inspector General Reports paint a similar portrait over and over. These decisions should be made with care and not under arbitrary deadlines, which can serve to facilitate poorly made decisions. The Committee should consider the benefit of the imposition of deadlines compared to their cost to people and species.

Second, despite the significant conflict and acrimony that exists in the implementation of the Act, things might have been much worse. We must recognize that over the last twenty years, those charged with implementing the Act have developed and significantly expanded initiatives primarily related to sections 7 and 10 of the Act such as Safe Harbor Agreements, multi-species Habitat Conservation Plans, Candidate Conservation Agreements, No Surprises Policy and Private Stewardship Grants. These tools are not without criticism. Unquestionably, much more can and should be done to incentivize private landowners and states to be encouraged to engage in conservation measures without the specter of ESA penalties hovering above their heads. In addition, the administrators of the ESA could choose to do more to maintain the protection of species, while also reducing conflict under sections 4, 6, and 7of the ESA. That said, these administrative changes have been very meaningful to the individuals, entities and entire communities, who have been able to use these tools to successfully resolve their particular challenges while providing the protection to listed species that the law requires.

Third, the conflict and controversy associated with the implementation of the Act may actually become far worse than it is today if the Obama Administration finalizes two regulations and a draft policy. The regulations relate to the designation of critical habitat and the interpretation of the term "adverse modification." The policy describes how the Service intends to utilize its authority to exclude areas from critical habitat designations it has initiated. While the Service

and NOAA Fisheries should be commended for making the effort to provide greater clarity to its employees and to the public on these three issues, they have missed the mark and developed proposals that are untethered from the text of the statute itself. Though all three have issues of concern, for my testimony today, I will focus on only one of these changes, the proposed regulatory changes related to the designation of unoccupied critical habitat.

Unoccupied habitat is habitat that is not currently occupied by a listed species. To deal with the anticipated effects from climate change, the Service and NOAA Fisheries are proposing changes to their regulations that would vastly expand their authority to designate unoccupied areas as critical habitat. By changing a few words in a regulation, the Services would fundamentally alter the role that the designation of unoccupied areas has historically played in the ESA regulatory scheme.

Whatever one may think of the Services' concern for the effects that climate change may have on critical habitat, their proposed changes to 50 CFR § 424.12 to deal with those effects exceed their authority under the ESA for the following reasons:

The ESA only grants the Services the authority "to designate any habitat of [a species that has just been listed] which is then considered to be critical habitat" (emphasis added).[1] It does not grant them the authority to designate habitat which "is [not] then considered to be critical habitat," but that may become critical habitat at some point in the future, depending on the effects of climate change or other factors. The ESA provides the Services with the authority to deal with changes that may occur in the critical habitat of a species in the future by authorizing them to make changes in their designations as it becomes clear what those changes are. The ESA states that the Services "may, from time-to-time thereafter [i.e., after the designation of habitat that is critical habitat at the time of listing] as appropriate, revise such designation."[2] The ESA does not grant them the authority to predict what changes may be necessary in the future and to designate habitat as critical now that is not presently needed but that may (or may not) be needed in the future.

The ESA grants the Services the authority to designate unoccupied areas as critical habitat only if those areas are "essential for the conservation of the species."[3] Clearly, an unoccupied area cannot be "essential for the conservation of [a] species" if the occupied area is adequate to insure its conservation. Thus, contrary to the Services' claim, they must necessarily first determine whether the occupied areas are adequate to insure the conservation of a species before they can determine whether unoccupied areas are "essential" to the achievement of that purpose. It is impossible to claim that an unoccupied area is "essential for the conservation of [a] species" without knowing how the species would fare if the unoccupied area were not designated.

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[1] 16 U.S.C. § 1533(a)(3)(A).
[2] Id.
[3] Id. at § 1532(5).

Under the Services' new reading of the definition of "critical habitat," they assert that Congress, by defining "critical habitat'' in the way it did-- by defining unoccupied areas as critical habitat if they were deemed "essential" to the conservation of the species--intended to grant them a larger authority to designate unoccupied areas as critical habitat. This definition is far broader than they have previously asserted, while also far broader than the authority Congress granted them for the designation of occupied areas.

This assertion is contradicted by the legislative history of the definition of critical habitat. The ESA as originally passed in 1973 did not contain a definition of "critical habitat." Concerned about the issues raised by the snail darter case, Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978), Congress adopted its own definition of "critical habitat" in 1978, which remains the definition today. Congress provided a statutory definition of critical habitat that was narrower than the FWS's regulatory definition; it changed the definition from a focus on "constituents," the loss of which would ''appreciably decrease the likelihood of the survival and recovery of a listed species,'' to a focus on "physical and biological features" that are "essential to the conservation of a species." The Services now claim to read "essential"; however, in a way that would broaden the definition of "critical habitat" far beyond that contained in the Services' original definition that was rejected by Congress. They read "essential" as encompassing potential features, the loss of which (if the features actually develop) may (or may not) at some unspecified point in the future reduce the likelihood of the survival and recovery of the species by some unspecified degree, depending on the accuracy of their predictions about the effects of climate change.

In addition to being in conflict with the legislative history, the Services' claim that "essential" may be read so broadly cannot be squared with the rest of the language in the definition. Congress, in defining "critical habitat" in the way it did in 1978, was deeply concerned about the amount of habitat, even in occupied areas, that would be deemed critical and sought to carefully limit it, not grant a broad new authority to designate it.

In the definition, Congress placed three limitations on the amount of occupied areas that could be designated. First, it limited critical habitat to those occupied areas that presently have "those physical and biological features...essential to the conservation of the species."[4] But even that was not limited enough, so it added a second limitation. It defined critical habitat in such a way that only those areas with the requisite features that also required "special management considerations or protection" could be designated.[5] Finally, to make sure that its intent to limit the amount of occupied habitat that could be designated was clear, it stated that "[e]xcept in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."[6]

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[4] 16 U.S.C. § 1533(5).
[5] Id.
[6] Id.

The Services' proposed changes to their regulations based on their new reading of the definition of "critical habitat," may legitimately reflect a policy goal that the Administration feels is important, and if so, they should propose legislation to garner such authority rather than trying to shoehorn it into a regulatory change.

Fourth, the legislative proposals before you today highlight several important ideas regarding changes to the Act. Some reflect longstanding policy debates, others raise new ones, but they each merit a serious and meaningful debate framed by whether the Act of today can or should be improved, after decades of experience we have living under it. While I have not included detailed testimony on each individual bill, I would be happy to respond to questions regarding these legislative proposals.

Conclusion

Mr. Chairman and Members of the Committee, as you begin to consider the Administration's proposed budget and proposed changes to the Act, please ask yourself whether you believe the Act is being implemented with as much care and as much foresight as our government can muster. Consider greater opportunities for incentivizing stewardship and public confidence in the decisions and carefully examine whether the Administration's regulatory and policy changes are within the parameters Congress intended when it enacted the Endangered Species Act. I look forward to addressing any questions you have.

Senator INHOFE [presiding]. Thank you very much.

We will recognize Senator Crapo for the purpose of an introduction.

Senator CRAPO. Thank you very much, Mr. Chairman. It is really an honor for me today to be able to introduce my good friend, Commissioner Gordon Cruickshank. Today the committee is going to hear from Commissioner Cruickshank from the Valley County of Idaho, representing the National Association of Counties. Commissioner Cruickshank has been a county commissioner in Valley County since 2007. Prior to joining Valley County's Commission, Commissioner Cruickshank spent 16 years with the Valley County Road Department, with much of that time spent as the road superintendent managing 750 miles of roadways and bridges.

Commissioner Cruickshank's experience as a county commissioner and road superintendent enables him to present a valuable perspective on the impact of the Endangered Species Act on local governments, especially rural counties throughout the West with the large presence of ESA-listed species and large tracts of federally managed land in their jurisdictions.

As Commissioner Cruickshank will testify, county governments are responsible for a wide range of responsibilities, including county government buildings, roads and bridges, schools, and municipal water systems. Compliance actions and costs associated with ESA listing species present challenges to all of these government functions, and the challenges are exacerbated when such listings are the result of closed door settlements that do not properly address the best available science or economic impacts.

County governments across Idaho and the County are committed to clean air and water, and the proper stewardship of our natural resources, but ESA listing determinations lacking in transparency and absent a proper accounting to the socioeconomics and costs to local governments do not help commissioners such as Commissioner Cruickshank to manage county resources while also preserving viable wildlife populations.

Again, I thank Commissioner Cruickshank for coming here to testify. I think we are going to learn a lot from his wisdom, Mr. Chairman.

Senator INHOFE. Thank you.

Commissioner Cruickshank, let me just observe that I am sure, as you watched the first panel, there is a tendency for people in Washington to think all the wisdom comes from Washington. I can assure you that the majority on this committee don't agree with that. We welcome you and your local perspective on the problems that we are faced with.

STATEMENT OF GORDON CRUICKSHANK, COUNTY COMMISSIONER, VALLEY COUNTY, IDAHO

Mr. CRUICKSHANK. Thank you, Mr. Chairman.

Chairman Inhofe, Ranking Member Boxer, and distinguished members of the committee, thank you for inviting me to be here today on behalf of the National Association of Counties to share with you why the Endangered Species Act matters to counties.

Through both my career in public service and involvement with NACo, I have seen firsthand the impacts of the ESA on my county,

my State, and counties nationwide. In the 40 years since the ESA was enacted, our Nation has learned many lessons about how to protect endangered and threatened species. The ESA should be updated and improved to reflect those lessons.

NACo has identified three key elements that should be considered as Congress examines the legislation to update and improve the ESA.

First, ESA decisions must consider the socioeconomic impacts, as well as species impacts. Counties recognize the importance of the ESA; however, its requirements often result in unintended impacts on our local economies and the people we serve. For example, Valley County was recently identified as the potential site of a mine that could create over 400 jobs, 1,000 indirect jobs, and provide $20 million in annual wages. However, concerns over mine impacts on listed salmon populations and threats of litigation have slowed approval of the project and the hundreds of jobs that could come with it.

My county's ability to promote economic growth through outdoor recreation and tourism has also been impacted by the ESA. Recreation activities in Idaho contribute over $6 billion in direct consumer spending and support 77,000 jobs statewide. Recent decisions by the Forest Service have resulted in the closure of many roads that people rely on. Access has been restricted during our peak tourist seasons due to concerns over sedimentation impacts on listed species.

Like 70 percent of counties in the United States, we are a rural county, and our natural resources are a vital part of our economy. Limiting access to outdoor recreation and natural resources limits our ability to grow and thrive.

Again, the impacts on the local economy must be considered by Federal agencies as part of the ESA decisionmaking process.

Second, the Federal Government must reduce the cost of ESA compliance to local governments. Permitting requirements and extended review time substantially increase project costs and delay project delivery, diverting limited funds from other critical county services. In general, for every year a project is delayed, the construction costs increase by approximately 10 percent.

For example, in Attawa County, Oklahoma, the Stepps Ford bridge project was ready to move forward after receiving the necessary Federal environmental permits. Construction was halted by the U.S. Fish and Wildlife Service after it decided to reconsider the project's impact on a listed species of catfish. Construction sat idle for over 170 days and cost an additional $270,000.

For counties, every dollar spent on regulatory compliance or project delays takes away from funds available for other critical services like law enforcement, firefighting, and ensuring public health.

Third, State and county governments must be treated as cooperating agencies when enacting conservation measures and settling ESA litigation. Local governments have every incentive to work with the Federal Government to promote species conservation, and this collaborative approach has been successful.

For example, a listing of the Bi-State sage grouse would have impacted nearly 82 percent of Mono County, California's land area.

The county took a leadership role in the Bi-State sage grouse conservation and cooperated with relevant Federal and State agencies in California and Nevada to provide technical support to landowners to limit local impacts on grouse populations. The county's efforts led to the announcement that the Bi-State sage grouse would not be listed. Clearly, solutions can be found.

Counties work every day to protect and preserve their natural resources and environment. We are keenly aware of the historical, economic, and aesthetic values of our local environment, and work diligently to provide a sustainable future for our communities. Collaboration and consultation between all levels of government is critical to the success of the species conservation efforts. Locally driven conservation must be given time to work.

Counties must also be confident that their collaborative efforts will be defended in court by Federal agencies and that they will have a seat at the table during settlement negotiations. Counties stand ready to work with the committee and Congress to better promote species conservation while safeguarding local economic stability.

Thank you.

[The prepared statement of Mr. Cruickshank follows:]

STATEMENT OF

THE HONORABLE GORDON CRUICKSHANK
COMMISSIONER, CHAIR
VALLEY COUNTY, IDAHO

ON BEHALF OF

THE NATIONAL ASSOCIATION OF COUNTIES

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

MAY 6, 2015

Chairman Inhofe, Ranking Member Boxer and distinguished members of the Committee, thank you for holding today's hearing on the impacts of the Endangered Species Act (ESA) and for inviting me to be here today on behalf of the National Association of Counties (NACo) to share with you why the ESA matters to counties.

My name is Gordon Cruickshank, Chairman of the Valley County Board of Commissioners. Valley County is located in central Idaho. The county seat is in Cascade, which is located approximately 80 miles north of our state capital, Boise. Our county has a population of 9,862 residents and – according to a recent analysis of U.S. Fish and Wildlife Service data by the National Association of Counties – three species whose status under the ESA imposes additional regulatory requirements on our county.

Prior to my service as a county commissioner, I was the Valley County Road Superintendent for ten years. I have seen firsthand the impacts of the ESA on my county and state. Further, through my involvement in the NACo Transportation Steering Committee and as the incoming president of the Western Interstate Region of NACo, I have heard from my colleagues about the impacts ESA has had on counties across the country.

Counties across the country are committed to protecting the environment. Since counties are an extension of state government, many of their duties are mandated by the state. Although county responsibilities differ widely between states, most states give their counties significant authority to enact environmental safeguards. For example, counties enact zoning and other land use ordinances to safeguard valuable natural resources, establish rules on illicit water discharges and fertilizer ordinances and enact codes to promote green building and infrastructure development.

The ESA was enacted in 1973 with the promise that our nation could do a better job of protecting and conserving its resident species and the ecosystems that support them. Today, over forty years later, on behalf of the nation's 3,069 counties, I bring that same message to this Committee – we can, and must, do better. Our nation has learned many lessons over the past four decades about what can be done to protect endangered and threatened species and it is time to update and improve the ESA to reflect those lessons.

NACo has identified three key elements that should be considered as Congress debates legislation to update and improve the ESA:

1) **ESA decisions must consider socioeconomic impacts as well as species impacts**
2) **The federal government must work to reduce the local costs of ESA compliance**
3) **Counties should be included as decision makers in conservation and litigation**

ESA Decisions Must Consider Socioeconomic Impacts

First, species management and conservation decisions under the ESA must consider the economic impacts on local economies and the costs to local governments.

Counties across the United States recognize the importance of the ESA as a safeguard for conserving our nation's wildlife, fish and plants. However, the requirements of the ESA often result in socioeconomic impacts that are shouldered by local governments and their residents. The economic impacts of the ESA on counties and local governments must be considered alongside the ESA's benefits for a species.

Like many counties across the United States that are struggling to recover from the recent economic crisis, Valley County has taken a proactive approach to promoting economic development and job creation. Our county has a rich mining heritage and was recently identified as the potential site of a mine that would produce gold, silver and tungsten, a strategic mineral. If completed, it could be the 4th largest mining operation in the United States. Early economic analysis shows the mine could create over 400 jobs during its construction and operation, support an additional 2.5 indirect jobs per each direct job created and provide $20 million in annual wages.

However, concerns over mine impacts on listed salmon populations and threats of litigation have slowed approval of the project and the hundreds of jobs that could come with it.

Valley County's ability to promote economic activity through outdoor recreation has also been impacted by the ESA. Valley County offers an unlimited variety of summer and winter recreation opportunities such as hunting, fishing, mountain biking and cross-country skiing. In fact, outdoor recreation in Idaho contributes over $6 billion in direct consumer spending and supports 77,000 jobs statewide. However, concerns over sedimentation caused by the use of forest roads and trails and the sediment's potential impacts on listed fish species within our county have resulted in the closure of many of the back country roads that sportsmen and recreationalists rely on. In the winter, access to motorized and non-motorized recreation alike has been curtailed due to concerns over how outdoor recreation could impact local lynx and wolverine populations. Access to these routes is so important to our local economy that Valley County has filed suit to re-open the historic routes. Limiting Valley County's access to outdoor recreation and our natural resources is the same as limiting our ability to grow and thrive.

This story is not unique to Valley County. Many rural counties rely on their natural resources to support economic growth and over 70 percent of all counties in the United States are considered rural. A recent study conducted by Inyo County, California, as part of its comments to the U.S. Fish and Wildlife Service on the proposed listing and designation of critical habitat

for the Mountain Yellow-Legged Frog illustrated the far reaching economic impacts that actions under the ESA can have on counties. Inyo County's study found that the designation of critical habitat within their county could have an economic impact on recreational activities as high as $17 million annually and could detrimentally impact up to 40 percent of businesses in the county. In addition, restrictions on grazing activities would result in another $6.9 million in lost economic activity within the county.

ESA requirements have a considerable economic impact on county governments and their residents. When faced with management decisions under the ESA, many counties perform their own socioeconomic studies in order to fully understand the impacts on their communities. Although socioeconomic studies are conducted at considerable local taxpayer expense, the U.S. Fish and Wildlife Service is not required to consider these studies as part of their decision making process. **Counties believe economic impacts must absolutely be considered by federal agencies as part of the ESA decision making process, taking into account the best available scientific and socioeconomic information available on impacts to communities as well as species.**

The Federal Government Must Work to Reduce the Local Costs of ESA Compliance

Second, the federal government must recognize and reduce the costs of ESA compliance to local governments. When asked to share their experiences, county transportation officials from across the country told much the same story – permitting requirements under the ESA and protracted review times by the U.S. Fish and Wildlife Service and other federal regulators increase project costs and delayed project delivery.

Counties own and maintain nearly 40 percent of all public bridges and 45 percent of all public roads nationwide. Restrictions under the ESA increase costs and delay completion of the critical infrastructure built and maintained by counties. In general, for every year a project is delayed its final construction cost increases 10 percent, not including regulatory compliance costs. If the goals of the ESA are indeed a national priority, the burden of meeting those goals rests with the federal government.

In Ottawa County, Oklahoma, the Stepps Ford bridge project was let to contract having after receiving the necessary environmental permits from federal regulators. However, as the project was underway, construction was halted by the U.S. Fish and Wildlife Service after it decided to begin a reconsideration of the project's impact on the Neosho Madtom, a three-inch catfish that is listed as threatened under the ESA. While the U.S. Fish and Wildlife Service reinvestigated, construction sat idle for over 170 days and the county was still left to pay over $270,000 in contractor costs for the down time.

In Hillsdale County, Michigan, to ensure ESA compliance for a bridge replacement, the project was delayed by more than one year and additional compliance and construction costs were placed on Hillsdale County taxpayers while the U.S. Fish and Wildlife Service reviewed findings and worked to determine whether or not a listed species of mussels was present. Subsequently, the county hired a biologist at considerable expense to relocate the population of mussels within the project site to another location in the stream. At another site within Hillsdale County, the permit for a bridge replacement project was refused due to the presence of the Northern Copperbelly Water Snake around the project site. Today, the portion of roadway where the bridge is located has been officially abandoned by the county and county residents must travel out of their way to find another stream crossing.

In other parts of the United States, new requirements designed to protect populations of the Northern Long-Eared Bat are already having far reaching impacts on county infrastructure. Although the U.S. Fish and Wildlife Service concedes that the disease known as white-nose syndrome is the primary stressor on Northern Long-Eared Bat populations, the threat remains of additional requirements on counties imposed by ESA to protect the bats.

Recently, Beltrami County, in northern Minnesota, was informed by the Army Corps of Engineers that a planned infrastructure reconstruction project could be delayed due to potential impacts on bat populations. Clearing trees is a necessary component of the project. However, according to guidance issued by the U.S. Fish and Wildlife Service, clearing trees may not be allowed between April 1 and September 30, nearly the entirety of the region's limited construction season. The result could be a more than one year delay in the project's delivery date, with the increased costs paid for by county taxpayers.

For those like myself who must balance a county budget, every dollar spent on regulatory compliance or wasted on project delays takes away from our ability to fund other critical county services like law enforcement, firefighting and public health services. Counties will implement conservation measures and take the time to conduct the necessary reviews, but with county budgets already stretched thin by years of economic recession, it is simply unjust to expect all the costs to be borne by our local taxpayers.

Counties Should Be Decision Makers in Conservation and Litigation

Third, state and county governments must be treated as cooperating agencies with full rights of coordination and consultation with the appropriate federal agencies to determine when and how to list species, designate critical habitat and plan and manage for species recovery and de-listing. Cooperation and engagement must include decisions made in settling ESA litigation.

It is clear to see that the ESA has a significant impact on county governments and communities. Counties across the United States have sought to engage with federal decision makers to find solutions that promote species conservation and limit the impacts of an endangered species listing. Local governments have a vested interest in working with the federal government to find positive solutions for species conservation and should be treated as cooperating agencies and partners in ESA decision making.

The success of a locally driven collaborative approach that includes counties as cooperating partners in species conservation has been proven time and time again. Most recently, on April 21, 2015, the Secretary of the U.S. Department of the Interior, Sally Jewell, announced that the Bi-State Distinct Population Segment of Greater Sage-grouse will not be listed as threatened. This outcome showcases that, when local governments and federal agencies work together, solutions can be found.

A listing of the Bi-State Sage-grouse would have impacted nearly 82 percent of Mono County, California's land area. As a result, Mono County took a leadership role in achieving species conservation and worked to ensure that new regulatory burdens were not imposed on private land owners on the eastside of the Sierra Nevada.

As part of the collaborative process, Mono County worked with relevant federal and state agencies in California and Nevada to assist in Bi-State Sage-grouse population monitoring, provide technical support to local landowners to help mitigate the impacts of land use on Bi-State Sage-grouse habitat, make certain that best practices for conservation were being implemented on the landscape and secure necessary resources for conservation work in the region. The county also hosted outreach and education forums to ensure that community members and land owners were well informed on all aspects of the Bi-State Sage-grouse's status under the ESA, the impacts a critical habitat designation would have on private and public land use and how individuals could help contribute to species conservation.

The actions in Mono County that led to Secretary Jewell's announcement that the Bi-State Sage-grouse would not be listed could not have been accomplished alone by any one agency. Although biological expertise may rest largely with state and federal agencies, partnering with local government provides critical perspective on local land use activities and on the economic and environmental impacts of ESA decisions.

County government is among the closest forms of government to the people. Partnering with counties provides federal regulators with the credibility that is necessary to bring together broad cross sections of stakeholders and community members to implement local conservation efforts from the grassroots, rather than by federal mandate.

If the success of locally driven conservation efforts were limited only to one region or one species, I would not be sitting here today. However, it has been shown again and again that locally driven conservation bringing stakeholders together with agency partners produces results. In Washington State, the Upper Columbia Salmon Recovery Board, a collaboration between Chelan, Douglas and Okanogan Counties and the Yakima and Colville Tribes, has brought together 67 partners and 150 land owners to help protect and restore more than 3,400 acres of salmon habitat. County engagement supporting strong landowner participation has been key to the collaborative's success. What started as collaboration to improve the waterways that salmon call home has grown into a landscape level initiative that has taken on the additional challenge of improving local forest health. This undertaking will not only improve water quality and salmon habitat but also reduce the risk of catastrophic wildfire and support economic activity and jobs on the region's forests.

Collaborative efforts like those I just mentioned require a significant commitment of county time and resources to be successful. Counties want to know that if they invest their taxpayers' time and money into leading local conservation efforts those investments will be upheld by their federal agency partners.

In recent years, costly litigation has been a common theme in dealing with ESA listings. Simply put, litigation is a deterrent to local collaboration. Counties want to partner with federal agencies and other stakeholders in making ESA decisions. However, many are stopped short because the partnership does not extend to the settlement of ESA lawsuits. Locally driven conservation must be given the time it needs to work and those engaged in the collaborative process must be confident that their efforts will be defended in court and not overturned as part of a settlement deal to appease litigants. Without a seat at the table in settling ESA litigation, many counties lack the certainty they owe their residents before spending precious taxpayer funds to take a lead in local conservation efforts.

Ultimately NACo believes that socioeconomic values and environmental values must be in balance. Counties work every day to protect and preserve their natural resources and environment and promote their local economies. We must endeavor to achieve a policy that results in a high degree of environmental protection and preserves and enhances community economic sustainability without unduly shifting the costs of compliance to local taxpayers. County officials and their constituents are keenly aware of the historical, economic and aesthetic values of their local environment and are certain of the need to provide a sustainable future to ensure the economic viability of their communities. We look forward to being your partners "on the ground" as we work with you toward these common goals.

Senator INHOFE. Thank you, Commissioner.

Mr. Barry.

STATEMENT OF DONALD BARRY, SENIOR VICE PRESIDENT, CONSERVATION PROGRAM, DEFENDERS OF WILDLIFE

Mr. BARRY. Mr. Chairman, I would like to submit my written testimony for the record and just make a few oral remarks.

Senator INHOFE. Without objection.

Mr. BARRY. I would like to make basically six key points today.

First of all, not one of the bills before this committee would actually promote the conservation and recovery of listed species, with the possible exception of the one from Senator Hatch, which would authorize the waiver of NEPA provisions for doing juniper removal, although the BLM already has that adequate authority. Collectively, we think that all of the proposals in front of this committee would become the equivalent of a legislative wrecking ball, accelerating extinctions and not promoting recovery.

In my testimony I quote Mark Twain, who once said that I have lived through many terrible things, some of which actually happened. And I have a feeling that when you hear a lot of the dire predictions of widespread economic ruin from listings, you find that they rarely, if ever, come to pass.

I would like to submit for the record a copy of an ENE news article from last June which highlighted some of the consequences that were anticipated for the listing of the Lesser prairie chicken that includes a number of quotes from folks from the oil and gas industry describing the likely ruin that would occur from it; and then it includes quotes from them a few months after the listing of the prairie chicken where they are basically saying everything is working just fine.

That, to me, is an example of how, frequently, the predicted dire economic consequences really seem to happen.

Many of these proposals also seem to be extreme solutions in search of problems, ostensibly addressing problems while in fact the Fish and Wildlife Service already has adequate authority and flexibility for dealing with the type of issues that are addressed. A good example of that has to do with provisions mandating the exclusion of areas from proposed critical habitat because of economic consequences. This is the one area of the Act where Congress, back in 1973, specifically gave permission and authority for the Fish and Wildlife Service to take economics into account, and the Service does this quite frequently.

When they designated a critical habitat for the Northern Spotted Owl, they cut out 4.2 million acres of land because of the economic impacts from including those areas in the critical habitat. I think when they designated a critical habitat for the jaguar, they cut out something like 94,000 acres of land, again, because of economic impacts.

So the Act currently works for the Fish and Wildlife Service and gives them authority for taking economics into account with critical habitat.

I think one of the other big concerns that we have in the conservation community is that a number of the provisions in front of the committee today really distort and attack the concept of science

and best available science. They decree and define what is best available science. In the case of State or local and county data, it all is decreed to be best. There is an example, I believe, that the Fish and Wildlife Service encountered with regards to the Gunnison sage grouse where the State said one thing and one of the local counties said something exactly opposite.

So if the Fish and Wildlife Service is required to consider them both best available, but they are conflicting, how do reconcile something like that?

We may disagree with a number of the decisions the Fish and Wildlife Service makes, but they have the ability right now to weigh the strength of the science that they have in front of them, to discount those that they think those recommendations that come in that they believe are weaker than others. And I think that to have Congress coming in and putting its thumb on the scale and decreeing some things as best available science is inappropriate.

I think Dan Ashe also, earlier, really hit the nail on the head when he said that the big problem here is resources. They endangered species program is not broken, it is just starved. Over the last, I think, back to about 2007 or 2004, there has been an 11 percent actual decrease in funding for the Endangered Species Act when you take into account inflation. So the level of funding has been coming down while their responsibilities have been going up, and I think some of the problems that have been discussed before are really a representation of the fact that you have way too few people trying to do too much. They are doing the best job they can, but they are not going to be getting everything at A+ if they are stretched to the breaking point.

Last, I would just say that the ESA, I think, has been a success. It has been mentioned that 99 percent of the species that are listed are still in existence and have been preserved.

Dan brought up the last time the ESA was reauthorized. I was on the floor of the House with Walter Jones, Sr., the chair of the House committee that had jurisdiction over the ESA, and we had broad bipartisan support for that bill. I think it is possible at times to think back on those days as the way it ought to be, but it is hard for me to envision or to imagine how even a reasonable package of endangered species amendments could make it through this Congress and retain that sense of reasonableness and balance.

Thank you very much.

[The prepared statement of Mr. Barry follows:]

Testimony of Donald Barry
Senior Vice President for Conservation Programs
Defenders of Wildlife

Before the
Committee on Environment and Public Works
U.S. Senate

Legislative hearing on S. 112, S. 292, S. 293, S. 468, S. 655, S. 736, S. 855, S. 1036, S. 1081

May 6, 2015

Mister Chairman and Members of the Committee:

My name is Don Barry and I am the Senior Vice President of Conservation Programs at Defenders of Wildlife, a national non-profit conservation organization dedicated to the protection of imperiled wildlife and plants in their natural communities. We represent more than 1.2 million members and activists.

Thank you for inviting me here to discuss these various bills related to the Endangered Species Act (ESA). I'd like to note that I have been involved in ESA issues for 40 years, having served for many years as the Chief Counsel for the U.S. Fish and Wildlife Service and later as the Assistant Secretary for Fish and Wildlife and Parks, overseeing the programs and policies of the National Park Service and U.S. Fish and Wildlife Service. I helped draft all of the key implementation regulations for the ESA in the mid-1970's and have been involved in every reauthorization and major amendment to the ESA since the original law was passed in 1973.

During my 40-year career in wildlife conservation, I've seen many efforts to undermine our nation's wildlife laws and programs, but I can honestly say to you, that this Congress is already unparalleled in its sweeping attacks on this country's wildlife and natural heritage. To date, we have seen 44 proposals introduced in Congress that would cripple endangered species conservation, 26 of which

were proposed in the Senate alone. Despite the attractive or conservation sounding titles for most of these bills, with the possible exception of S. 468, not a single one of them will actually enhance the conservation of endangered species in this country or stimulate their recovery. Additionally, many of them are solutions in search of problems. The humorist Mark Twain once said "I have lived through some terrible things in my life, some of which actually happened." If he were alive today, he would be chuckling at the dire, economy-wrecking narratives ascribed to the Endangered Species Act, none of which actually happened.

All eight of the Endangered Species Act bills before you today would directly undermine our nation's stewardship responsibility, although some have more harmful practical effects than others. The most egregious attack on the ESA comes from Senator Rand Paul of Kentucky. His bill, S. 855, encompasses so many destructive and damaging amendments to the ESA, and so completely undermines endangered species conservation and recovery in this country, it should be more accurately renamed the "Extinction Acceleration Act." Senator Paul's bill would, among other things, devastate the recovery of imperiled species by automatically removing them from the endangered species list after five years, whether or not they've biologically recovered. It would stymie the future listing of additional imperiled species by requiring the prior consent of affected governors and a joint resolution of Congress. Whether a species is endangered or not is a biological and scientific matter, not a political one. Determining the biological status of imperiled species should be left where it is today: in the hands of professional biologists in the federal government.

But there is more in Senator Paul's bill: the proposal would also allow a state governor to override federal protection for all species found entirely within the state's borders. Our best available data indicate that approximately 900 species—over half of listed US species—could lose protections if this bill became law. All Hawaiian species. All Puerto Rican species. About 200 species in California. And charismatic species such as the spectacled eider, Puerto Rican parrot, golden cheeked warbler, Hawaiian monk seal, Sonoran pronghorn and over a dozen butterflies. All could be dropped from the list whether or not they are recovered. I would also point out that resident species are only listed under the ESA when the affected states have failed to stop their decline. There is little doubt that this one provision in Senator Paul's bill would result in the extinction of many currently listed species.

Other anti-ESA proposals before this Committee would create excessive red tape and burdensome reporting requirements for the Fish and Wildlife Service, severely handicap the designation of critical habitat, limit citizens access to court, target individual species, and circumvent the planning process under the National Environmental Policy Act (NEPA).

S. 112, introduced by Senator Dean Heller (R-NV), would require federal wildlife agencies to prioritize short-term economic considerations over conservation values each time they designate critical habitat, even if doing so would jeopardize the species' recovery. By requiring the agencies to do a hugely burdensome and speculative analysis of the "incremental and *cumulative* economic effects of *all* actions to protect the species and its habitat," this bill significantly increases the opportunity

for economic considerations to be injected inappropriately into listing decisions themselves. Congress explicitly rejected the consideration of economic effects as part of the listing process decades ago, and has limited the analysis of economic effects solely to the designation of critical habitat. The bill would also hamstring federal wildlife agencies with a new hugely burdensome set of bureaucratic requirements that do nothing to promote the conservation and recovery of listed species.

S. 292, introduced by Senator John Cornyn (R-TX), would require federal wildlife agencies to publish, on the Internet, all raw data that is the basis for each proposed and final listing determination. This bill could have a chilling effect on scientific research by undermining the ability of scientific professionals to do their work. It could also have a harmful effect on imperiled species vulnerable to poaching or illegal collection by revealing their locations to the public. The disclosure requirements would certainly burden agencies, and squander limited agency resources.

S. 293, introduced by Senator John Cornyn (R-TX), would severely limit citizen enforcement of the ESA by barring the recovery of legal fees from settlement cases, which would perversely drive up the ultimate costs of successful litigation. Not only does this proposal discard historic checks and balances for holding the Executive Branch accountable for complying with the law, it would also mandate state and county approval for all settlement agreements reached in federal court, regardless of whether those parties have any actual injury or harm.

S. 468, introduced by Senator Orrin Hatch (R-UT), would create a new Categorical Exclusion (CE) under NEPA, foreclosing thoughtful, science-based public planning for conifer control projects intended to conserve sage-grouse or mule deer on Bureau of Land Management (BLM) and Forest Service lands. This bill is largely unnecessary, as Federal agencies are already removing encroaching conifers from tens of thousands of acres of public and private lands in the West. Moreover, BLM already has the ability to issue CEs for vegetation-related projects up to 1,000 acres, and fire projects up to 4,500. This bill is yet another attempt to undermine NEPA through a "death by a thousand cuts" strategy, and it could have major negative effects on wildlife, watersheds and other public resources.

S. 655, introduced by Senator John Thune (R-SD), aims to block funding for a listing decision on the imperiled northern long-eared bat, a listing decision which the U.S. Fish and Wildlife Service has already finalized and has now gone into effect. There seems to be no practical effect of this bill as currently written. However, the bill's attempt to thwart the listing process for the bat offends the science-based decision-making process under the ESA. Congress should not be injecting politics into any listing decisions, much less one for a highly imperiled bat species that has already declined by 96% in the northeastern portion of its range.

S. 736, introduced by Senator Mike Enzi (R-WY), would require that federal wildlife agencies utilize all state, tribal, and county-provided data in listing decisions, even if such data is not developed by scientists, or is of poor quality. The agencies already consider data generated by states,

tribes, and counties if that data is the best science available. This anti-science proposal does nothing to improve the science used in ESA decisions, and would instead result in the use of deficient and less sound information. A similar provision prioritizing all state-generated data, regardless of its quality, appears in S. 855.

S. 1036, introduced by Senator Cory Gardner (R-CO), would prohibit the U.S. Fish and Wildlife Service from listing the greater sage-grouse under the ESA for at least six years, and require the Secretaries of Interior and Agriculture to support western states in developing statewide sage-grouse conservation plans. There is an unprecedented planning process currently underway for sage-grouse. The National Greater Sage-Grouse Planning Strategy is working to amend 98 federal resource and land use plans with additional measures to conserve sage-grouse on approximately 60 million acres of federal public lands in the West. We will know in August whether these revised plans will be sufficient to conserve the grouse, as well as hundreds of other species that depends on sagebrush habitat. Senator Gardner's proposal would reset the clock on this planning process by requiring the administration to evaluate and apply state conservation strategies to federal lands, wasting millions of dollars invested in the current planning process and delaying conservation action for sage-grouse for years longer. Moreover, the bill effectively transfers management of 60 million acres of federal lands that are home to sage-grouse to western states. This is right in line with several other attempts in the current Congress to simply give away federal lands to the states.

These eight bills are just a few of the 44 anti-ESA proposals that have been introduced in the early days of this Congress.

If proponents of these bills are really interested in helping species recover and avoiding further extinctions, they would be better advised to support critically needed funding increases for the U.S. Fish and Wildlife Service rather than advancing these damaging legislative proposals that only undermine the ESA. Since FY 2010, the Service's already inadequate endangered species program budget has declined by 11 percent when adjusted for inflation. The impacts of this reduction in funding come into even sharper relief in light of the fact that the Service now has responsibility for nearly 280 additional species listed since then. And these cuts have had real on the ground impacts – for example when "red tide" events resulted in the death of more than 40 endangered Florida manatees several years ago, funding cuts prevented the Service from restoring important sea grass feeding habitats affected by the die off, delaying manatee recovery. The president's FY 2016 budget requests an increase of $23.2 million for the Service's endangered species program which includes an $11 million increase for recovery and a $5.5 million increase for Section 7 consultation. I urge the members of the Committee to support these modest increases rather than advancing these ill-advised proposals.

Overall, these bills would individually and collectively take a legislative wrecking ball to the landmark Endangered Species Act. For decades, the ESA has been an indispensable safety net for fish, wildlife and plants on the brink of extinction. These proposals ignore the law's wide popularity and achievements, which include stopping the slide towards extinction of species like the whooping

cranes, manatees, California condors, grizzly bears, brown pelicans, alligators, gray whales, and peregrine falcon. The ESA has been effective because it requires that decisions under that law be based upon the best available science – not politics. It has also been successful because it gives individual citizens the right to hold agencies accountable for complying with the law. These lynchpins of the ESA would be obliterated by the bills pending before this Committee.

Forty years ago, our country was at an environmental crossroads. Americans saw that things were terribly wrong with their environment. Smog choked our air, rivers were so polluted they caught on fire, and species like the whooping crane were headed toward extinction.

We realized as a nation that a choice needed to be made: do we conserve our natural heritage or let it continue to decline and disappear? Our answer to that question was as farsighted as it was dramatic: we chose to be a country that conserves our air, land, water and imperiled species. In passing the Endangered Species Act, our leaders embraced key values that still guide conservation thinking to this day. The importance of those environmental values remains the same – it is the political values of some in Congress that have changed. The late Senator James Buckley, who was elected to the Senate by the Conservative Party in New York once said in defending the ESA that "conservation should be a conservative value." That statement is as true today as it was when Senator Buckley said it.

Now, once again we find ourselves as a nation at a crossroads: down one road is the continued slide towards extinction; down the other road is the continued conservation and recovery of our nation's imperiled species. Which road we choose will define our nation for decades to come.

These proposals before you need to be seen for what they are: threats to our nation's natural heritage that, as President Nixon said, are "a heritage which we hold in trust to countless future generations." We owe it to them to be good stewards of our lands and wildlife and should not play politics with our natural heritage. I urge you to protect it all for your children and generations to come.

Thank you.

The Sage-Grouse and Mule Deer Conservation and Restoration Act of 2015, S.468, protects Greater Sage-Grouse (Sage-Grouse) and mule deer habitat affected areas from the dangerous encroachment of Pinyon and Juniper trees.

According to the Fish and Wildlife Service, "Pinyon and Juniper forests have been encroaching into key Greater Sage-Grouse habitat at a rapid rate. Forest expansion removes available sagebrush habitat and creates barriers, fragmenting important Greater Sage-Grouse habitats. In addition, these trees provide artificial roosting and nesting sites for Greater Sage-Grouse predators."

Although tree expansion is a natural process normally controlled by wildfire, fire suppression efforts over the years have allowed expansion to go unchecked. As a result, trees have spread to areas they have not historically occupied. Fortunately, federal restoration projects have been successful in removing these trees without threatening the natural habitat.

The Bureau of Land Management (BLM) recently treated a 2,800-acre area in Idaho with Pinyon and Juniper removal. After completing the treatment, the BLM successfully reduced approximately 1,500 acres of encroaching trees. Pre-existing grasses, forbs, and sagebrush were left untouched and intact, creating instant, suitable Sage-Grouse habitat. Within two days following the treatment, the BLM found Sage-Grouse within the previously dense stand of Juniper.

This important legislation would streamline vegetation management projects—specifically, Pinyon and Juniper tree removal projects—conducted by the Forest Service (FS) for the purposes of Sage-Grouse habitat restoration and conservation. Removing lengthy, cumbersome environmental review processes for ecologically beneficial vegetation management projects is critical to successful Sage-Grouse habitat restoration. Pinyon and Juniper trees are home to natural predators of the Sage-Grouse, and removal of these trees prevents habitat encroachment while greatly increasing soil water availability. In addition, proper vegetation management offers other ecological benefits, such as the reduction of soil erosion.

States, local entities, BLM, and FS are actively working to approve these important vegetation management projects. This legislation would allow these organizations to carry out management projects in a more efficient manner. It is important that we give our agencies the tools they need to promote the recovery of the Sage-Grouse species.

Donald Barry

From: Donald Barry
Sent: Tuesday, May 05, 2015 4:40 PM
To: Donald Barry
Subject: FW: From E&ENews PM -- ENDANGERED SPECIES: Industry embraces voluntary measures to help lesser prairie chicken

Importance: High

This E&ENews PM story was sent to you by: yli@defenders.org

E&ENEWS PM

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ENDANGERED SPECIES: Industry embraces voluntary measures to help lesser prairie chicken *(Tuesday, June 3, 2014)*

Scott Streater, E&E reporter

The threatened listing of the lesser prairie chicken two months ago has sparked energy industry participation in voluntary conservation programs designed to restore the bird across its five-state range despite concerns that a federal listing would slow such participation.

Oil and natural gas, wind, pipeline, and transmission companies have nearly tripled the amount of land they've enrolled in a voluntary conservation plan since the Fish and Wildlife Service announced in late March that it would designate the ground-dwelling bird as a threatened species, according to the Western Association of Fish and Wildlife Agencies (WAFWA), which administers the plan.

Just days before Fish and Wildlife announced the listing decision, those industries had enrolled about 3.6 million acres in the Lesser Prairie Chicken Range-wide Conservation Plan, committing to spend nearly $21 million over the next three years for habitat conservation (*E&ENews PM*, March 25).

But since the FWS announcement, that number has surged to a total of 160 companies that have enrolled about 9 million acres in the rangewide conservation plan, committing more than $43 million for habitat conservation over the next three years.

"The oil and gas industry has demonstrated overwhelming support for the Lesser Prairie Chicken Range-wide Conservation Plan," said Ben Shepperd, president of the Permian Basin Petroleum Association, in a statement. "The industry should be lauded for doing their part in this important

initiative and we appreciate the leadership of the Western Association of Fish and Wildlife Agencies in developing a plan that works for industry, landowners and the prairie chicken."

The new numbers, released today by WAFWA, would seem to soothe concerns among some Western government and industry leaders, including Shepperd, who feared a federal listing decision would drive away voluntary cooperation in the conservation programs that were initially designed to convince FWS not to list the bird.

The formal listing decision included an accompanying special rule designed to allow regulatory flexibility for oil and gas firms, farmers and ranchers who enrolled in approved conservation plans (*E&ENews PM*, March 27).

FWS decided to list the prairie chicken mostly because farming, grazing, energy development and other land uses have significantly reduced the bird's population numbers and habitat, which includes parts of Colorado, Kansas, New Mexico, Oklahoma and Texas.

Leaders in the five states and the energy industry sector worked out the rangewide conservation plan in an effort to avoid a listing. The energy companies that agreed to enroll in the conservation plan -- including American Electric Power Company Inc., ConocoPhillips Co., Devon Energy Corp. and Marathon Oil Corp. -- paid enrollment fees to sign up, agreed to follow a list of guidelines to minimize impacts on the bird and committed to pay for impacts they could not avoid. The money goes to farmers, ranchers and landowners to protect and restore habitat for the bird.

Shepperd said in March, a day before FWS announced its decision, that a federal listing would be a "tragedy" to those companies that had signed up for the voluntary program (*Greenwire*, March 26).

"People have really spent a lot of blood, sweat and tears trying to put meaningful conservation on the ground. A federal listing throws all that work into the garbage," he said.

But Fish and Wildlife has worked with the states to provide flexibility under the Endangered Species Act, and that has encouraged voluntary participation in the conservation programs, said Bill Van Pelt, grasslands coordinator for WAFWA, which crafted the rangewide conservation plan in the bird's five-state range.

"Despite the concerns with the federal listing, what the service has done by working with their state partners is to identify the flexibility inherent in the Endangered Species Act that allows for credit to be given to voluntary programs to conserve a species," Van Pelt said. "A lot of folks said of the listing decision, 'Oh, it's going to drive people away, it's going to drive people away.' But the [ESA] itself has some inherent flexibility that has not been used in the past like it could have been."

It's not just the energy industry sector that's benefiting, but also private ranchers and other landowners, he said.

More than 3 million acres of private land in Texas, Oklahoma and New Mexico have been enrolled in voluntary conservation agreements. And the nonprofit Center of Excellence for Hazardous Materials Management in New Mexico has enrolled an additional 1.9 million acres of oil and gas leases in the state under separate conservation agreements.

In total, nearly 14 million acres has been enrolled in some sort of public-private conservation

agreement designed to restore the lesser prairie chicken and its habitat in the five states, according to WAFWA.

"The enrollment of nearly 14 million acres in these various conservation agreements to benefit the Lesser Prairie Chicken is an extraordinary achievement," Carter Smith, president of WAFWA and executive director of the Texas Parks and Wildlife Department, said in a statement. "Our focus now is to continue implementing the plan, recover the species, and facilitate the bird's removal from the federal threatened species list. In that regard, we appreciate [FWS's] commitment to and support for using the rangewide plan as a blueprint for recovery."

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Senator INHOFE. Thank you, Mr. Barry.

You know, I know what you are saying there, but I think from a local perspective you have heard several of us talk about problems that we have.

And, Commissioner, when you mentioned a seat at the table, that kind of drove home to me a problem that I think we have said in several other ways during the course of this hearing. Dan Ashe, as I mentioned, came out to Oklahoma and was good enough to sit down and talk to the people. We had, on the lesser prairie chicken, five States involved, and the five States all came in. I think if they were to complain about one thing in the way the process worked, and I say this to all who are in the audience also, is that they didn't really have a seat at the table when a decision was made. They would come in and they will present their case, and then that is evaluated by the Fish and Wildlife. All of a sudden they pick up the paper and their decision has come out, and they weren't a part of that, they didn't have the opportunity, and I think you said it well, to have a seat at the table.

Is this kind of what you are getting at?

Mr. CRUICKSHANK. Mr. Chairman, yes, it is. Quite often we are heard, but, however, when those decisions are made, we are not at the table; and then that impacts our local residents and could impact our economy. And by not having a seat at the table, how do you go back to the people that we are closest to? We are the part of the government that is closest to the people, and you try to explain to them or they try to come back to you and say why didn't you fight for us better, when we weren't at the table of the decisions to understand why the decision was made the way it was.

So that is all we are asking, is to be involved all the time, clear through the entire process, so that it doesn't have that big of an impact on the county; and just to be listened and to be heard and understand why those reasonings happen. We need a seat at the table and we have shown with the Bi-State example that came in.

And I can give you another example in Washington State where counties got together and they brought 200 stakeholders and helped to restore 3,400 acres of salmon habitat. It took the counties to be involved. They were there, they were helping with it, and that was a success story.

So we are just asking to be involved, be educated, and we are there to help in any way.

Senator INHOFE. Obviously, you are an elected official, so you have a lot of people saying you must not have the power that you should have in this position if you were able to present a better case. Is that somewhat accurate of the complaints that you hear from your constituents?

Mr. CRUICKSHANK. Yes, Mr. Chairman.

Senator INHOFE. Because I think we have been through the same thing, those of us up at this table. The other area that has been brought up by this committee is a lot of the things that are done in secret and, again, not having a seat at the table on the settlements that are made on sue and settle, and this is something that a couple of those bills would address that for transparency purposes.

Mr. Bernhardt, do you kind of agree to the seat at the table argument?

Mr. BERNHARDT. I think there are certainly ways that the Service can—yes, Mr. Chairman. As a matter of fact, there are various places in the Act where the Act guarantees a seat of the table, for example, certain places in section 7 an applicant has a seat at the table. There had been policies developed to include State and local governments in decisionmaking, but I think what you are hearing here today is a view that those don't go far enough; and certainly that is something that Congress can look at.

In terms of the settlements themselves, as any lawyer will tell you, you often are looking at best ways to clear your docket, and at times when I was solicitor I went down and visited with the Service about these large listing cases, and what struck me on one of those visits is I sat down with Dale Hall, who had been both a career employee in the Fish and Wildlife Service and then subsequently was the director during the last half of the Bush administration. I went to Dale and I said, Dale, look, we have all these cases. There is probably an opportunity to settle them. I would really like to get your thoughts on this.

And Dale said to me something that I will never forget; he said, absolutely there is no way we should settle those cases. And I said, why, Dale? And he turned to me and he said, look, I was here the last time as a career employee the last time a major settlement was initiated, and I can tell you that there was no additional resources and there was a priority of timelines that were put down on all of the local offices; and I know, I know that packages were developed and sent upstairs that didn't pass muster, but went ahead and went into the Federal Register because no one was reviewing them, and I don't think we should repeat that.

And I think that was very good advice by Dale Hall, and I turned around and walked back up to my office and went on to other issues.

Senator INHOFE. Dale Hall was a very good Oklahoman.

Mr. BERNHARDT. Yes, he is.

Senator INHOFE. Well, in your testimony, Mr. Bernhardt, you discuss the problems with the critical habitat rules, and I would ask you do you have any specific suggestions on how to overcome that objection or that problem that we are having.

Mr. BERNHARDT. Well, I think Mr. Barry inadvertently misspoke when he said that critical habitat exclusions were developed in 1973. They actually, if you look at the legislative history, you will see that there were changes made in 1978 and they were a direct result of Congress seeing the TVA v. Hill decision by the Supreme Court and essentially saying, oh my goodness, what did we do. So when they looked at the Act to revise or improve it, their thought was as follows: let's leave the listing part pretty much intact, we think that is OK. But at this point of critical habitat designation, we would like that determination made at essentially the same time as the listing, or commensurate with it; and when you do that, secretary, you must look at the economics of the consequences of listing plus the critical habitat designation, and for other issues we are going to give you the authority, we are going to delegate you the authority to exclude certain areas, as Mr. Barry said.

Now, what has happened over the last many years is at times the secretary has used that; at other times they have not, and it is entirely discretionary. So one thing to look at is should that provision be beefed up in some way.

This Administration has a proposal that would actually say there are laying out a policy on how to do these exclusions so there is more clarity to their employees, and that is good. At the same time, if you are from a western State, their proposal is essentially to not use these exclusions on Federal lands, or at least use them very rarely. So that is an area that you can look at in terms of how you structure an act and ensure that these decisions regarding economics that are important to people are more robustly factored in. But that is something that Congress looked at in 1978 and came to where they wanted to be, and maybe the balance needs to be a little differently.

Senator INHOFE. Thank you.

Senator Crapo.

Senator CRAPO. Thank you very much, Mr. Chairman.

Commissioner Cruickshank, I have a couple of questions for you. I want to focus on the idea of the value or utility of relying on people who live where the land is or live on the land and in the neighborhood being able to come up with the kinds of solutions and protections to put in place to protect their land. You have heard even here today where some we will call those who think that we need to make some improvements or some fixes anti-fish and wildlife or anti-environmental protection or species, and that has always frustrated me, coming from a beautiful State like Idaho. I first want to just ask your observation on this. I would assume that you live in Valley County because you think it is a beautiful, wonderful place, and that you would like to be able to protect and preserve the species and the environmental heritage that is there as much as any Washington, DC, or Californian or person from any other part of Idaho. Would you agree with that?

Mr. CRUICKSHANK. Yes, I would, Senator.

Senator CRAPO. And you would also like to have a local resource-based economy be able to thrive there, correct?

Mr. CRUICKSHANK. Yes, I would.

Senator CRAPO. And the question I have is do you believe that it is possible for people to live in Valley County and protect the beautiful place that they live in and still have jobs and build businesses and have an economic future?

Mr. CRUICKSHANK. Yes, Senator, I do. Over the years, like I have stated, we have learned many valuable lessons on how we treat the natural resources or how we protect the land. I grew up farming, so I grew up nurturing the ground and knowing how it could produce, and that is how we made our living. So the counties are there. We want to safeguard our Nation's wildlife and our fish and our plants, and in my county alone we have spent millions of dollars to either resurface roadways or change culverts out to make more fish-friendly passageways for the salmon recovery and things like that; and I am proud to say that the salmon river that flows through Valley County is some of the prime spawning areas for that salmon, but while we still maintain access to our residents to enjoy that area. And that is some of the concerns, because some of

those accesses have been closed. You can imagine if the road was closed going to your home, you would be upset too, and the residents come to us and say why is this happening to us. So that is why we are involved.

But we are seeing where we are doing the best we can and then being told we are not doing enough. And this all comes at a cost to the county, to the time and the efforts that we do, but we are not being recognized as we are doing anything to really help. But in essence we are, we are doing what we can within our financial means. So when you talk about what can we do better, when you talk to the local stakeholders, sometimes it may not be all about the science; it may be that the local stakeholder knows where that population thrives better than other areas that have been looked at.

Senator CRAPO. Well, there certainly, I don't think, is any substitute for involving people who know the land and who know the circumstances around it. I just wanted to get that out because sometimes it is a little frustrating to have your motives challenged and to have your commitment to protecting our wonderful earth challenged because you believe there may be a better way to do it.

Another criticism that happens, though, and happens quite often, is that it is said, well, maybe the people who live there in Idaho, or maybe the people who live in Wyoming or Oklahoma, maybe they really do love the land and really do love the environment, but they don't have the capacity, they don't have the education, they don't have the experience to really protect the land; we have to bring in the Federal Government or we have to bring in the experts from somewhere to tell them how to do it.

My question is do you believe that local governments, working in conjunction with the Federal agencies and the others who are involved in the land management have the capacity to provide the necessary protection of the environment and the species that we seek to protect?

Mr. CRUICKSHANK. I believe that it all has to be taken into consideration. The science can be brought into the equation, but I think what is lacking is that the Federal Government explaining how that science works to the local stakeholders and the local people that live there. They love the land and they love everything about it, and they understand what they see on the ground; and quite often what they see on the ground doesn't maybe match with what the science says. So I think working together, sitting down together, and I have done this with groups as well, and we can come and find a lot of common ground that we all agree on. Sometimes it is a little bit of that right at the very end, the 10 percent or so that we may have to try to work out, but a lot of times we agree, but it is just a matter of getting around the table, educating, understanding what we are trying to accomplish. I believe we can get there, and that is why we are asking to be involved all the way through the process, and I think the counties are willing to do that.

Senator CRAPO. Well, thank you. And I appreciate you taking your time to come here to Washington, DC, to share this with us.

Mr. CRUICKSHANK. Thank you, Senator, and thank you, Chairman.

Senator INHOFE. Well, thank you. Just kind of building on what Senator Crapo is saying, there is kind of an irresistible temptation by a lot of people, when their argument is not too good, to start name-calling, and I sit here and it is very difficult, very difficult to have someone say, well, they probably just don't care about endangered species, they don't care about the environment. It is just not true at all. That is why I brought up this thing with Senator Markey. He and I are good friends, and yet we don't agree on very much.

But when our wives ran into each other and my wife was wearing her Save the Ridley sea turtle t-shirt, I was kind of reminded. You might remember, in fact, Dan, you might remember this, Ila Loetscher was the turtle lady, very famous. She died at 100 years old. She was lauded in National Geographic and everything else, and the reason is the Ridley sea turtle at that time only laid its eggs in two places in the world: Vera Cruz and very south Texas, on South Padre Island.

I can remember growing up as a small child, and with my kids, teaching them to do the same thing. During the hatching season, we would actually spend the night up there and make sure that those little critters that would get out, they would hatch and they can make it to the ocean without other people either trying to get them for boots or critters trying to get them.

Anyway, I hope people keep in mind that Republicans and Democrats are both very sensitive to this beautiful world that we have and the environment that we live in.

You were squirming a little bit, Mr. Barry, when Mr. Bernhardt made some comments. Did you want to make any response to that?

Mr. BARRY. Well, one of the big challenges, I think, for the State fish and wildlife agencies is having adequate resources to accomplish their work as well. I was sort of paying attention to what was happening with a lot of the State fish and wildlife agencies' budgets when the recession hit, and they all took a huge beating. There is a wide variation among State fish and wildlife agencies as to the amount of resources that they have available for fish and wildlife conservation. You have some States like California and Florida that are putting in a lot of money. Idaho is another one of those States that puts in a lot of money. But there are other States that are putting in next to nothing. I think Kansas put in something like $34,000 last year or in 2013 on endangered and threatened species conservation. So there is a wide variation from State to State to State, and that is one reason why, I think, having sort of a uniform one-size-fits-all approach to activities under the Endangered Species Act can be ill advised at times, because not every single State, even if they have the desire, has the resources to be able to engage as actively as they would like to.

David and I were talking before the hearing. I logged in 12 years at the Interior Department as an attorney, I was a chief counsel for the Fish and Wildlife Service for a number of years. I was Jim Watts' wildlife lawyer, if you will. And I think the Endangered Species Act has been a remarkably successful statute given the amount of work that is involved in it. When I spent 8 years under Secretary Babbitt, we adopted almost all of the reforms that David referred to, and spent many, many years working with State and

local officials. I spent half my time probably walking in the woods with private landowners that owned large forest areas and that. So the Act is a challenge. I think it can work. I think it just needs more resources.

Senator INHOFE. Well, I just would observe that the complaints that you hear up here and that you heard during the course of this hearing really wouldn't be corrected by more resources, in my opinion. We are talking about transparency; we are talking about getting involved in these lawsuits. The sue and settle thing is out in the open. We can participate, and then when the decisions are made, to have local participation. That doesn't, in my opinion, cost any more.

Mr. Bernhardt, did you want to say anything about that, since you brought that subject up?

Mr. BERNHARDT. Well, first off, I think that a lot has changed in our society since 1973, too. If you look at the number of biologists at the BLM or the Forest Service, what you would see that wildlife considerations, and I think this is laudable, wildlife considerations are an important aspect of their decisionmaking, irrespective of the Endangered Species Act. And that is not to minimize the importance of the Act, that is just a reality of where we are as a Country. I think that it is very important for these decisions, because I think they are important decisions and I think they have great consequence, and my view is that it is important for those decisions to be transparent, that the transparency facilitates public confidence in the decision.

And I think that there should be ways for a broader public to be able to see things like settlement documents, if that is required. There are means for Congress to be able to see those. There is an ability in this day of electronic media and electronic availability to ensure that the underlying basis of decisions is available, while still protecting those interests that Mr. Ashe raises in his testimony, such as copyright and State disclosure requirements and the protection of the species. Those things can be worked through. And I think what we should do is strive to make improvements that enhance public confidence in the Act, while at the same time protecting species and trying to minimize conflict.

Senator INHOFE. That is a good statement.

Senator Crapo, do you have anything further?

Let me apologize to the second panel, because we were late in getting you started and, as you can see, there is not as much participation as there should be. However, every Senator up here is represented by staff, and I can assure you that your testimony will be very seriously taken into consideration on the acts that we are putting together for the future. And I thank you very much for being here.

We are now adjourned.

[Whereupon, at 12:03 p.m. the committee was adjourned.]

[Additional material submitted for the record follows:]

TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

May 5, 2015

The Honorable James Inhofe
Chairman
Environment and Public Works Committee
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Inhofe:

On behalf of the Texas General Land Office (GLO), I write to you today in support of Senator Cornyn's bills, S. 292 and 293, and to briefly share my state's experience with the Endangered Species Act. Established in 1836 to manage the state's land records, the GLO is Texas' oldest state agency. Over time the jurisdiction has expanded to include many different areas of service to the citizens of Texas.

One of the most important roles of the GLO is the management of the Permanent School Fund (PSF), a constitutionally created fund that now consists of 13 million acres of land and mineral rights. The total value of the PSF, which includes investments outside of what is managed by the General Land Office, is $37 billion, making it the largest education endowment in the country, larger even than Harvard University's. Money from these investments is used to fund our public school system. In short, the PSF benefits every child in Texas. As both the Land Commissioner and a former high school teacher, I take this fiduciary duty very seriously.

The value of these state trust lands is at risk because of a loophole in the Endangered Species Act (ESA) that is being exploited by a few trial lawyers and certain environmental groups. This frivolous litigation impairs the rights of both private property owners and the state of Texas. In addition, it inhibits the U.S. Fish and Wildlife Service (FWS) from carrying out the original intent of the Endangered Species Act.

At issue is the practice of "sue to settle" or "sue to list." Under the ESA's Citizen Suit section, anyone can file suit against the U.S. Fish and Wildlife Service to list as endangered nearly any species imaginable. Environmental groups bring hundreds of candidate listings to FWS that the agency cannot possibly respond to in the time allotted by statute. These same environmental groups then file suit, claiming that FWS is not carrying out its duties under the Act. Overwhelmed by the number of proposed listings, and facing lengthy litigation, FWS is forced into a settlement. One of the key components of the settlements has been the recovery of litigation costs by the groups that filed suit. This has resulted in staggering amounts of legal fees that have done nothing to protect any habitats or species as the Act originally envisioned. Instead, money that should go to improving habitats and protecting species funds the

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activities of these environmental groups and pays attorney fees, making it a lucrative business for plaintiff attorneys.

Finally, this broken system bypasses the federal regulatory process as the settlements become the agency's rules for a given species. The promulgation of federal regulations is a public process. A candidate listing arrived at in court without public comment is the opposite of what is intended by our rules-making process. Often there is not even scientific evidence to support listing a species, but the settlements are made just the same.

Listing a species as endangered is not the only solution. In 2010, FWS proposed listing the dunes sagebrush lizard as endangered under the ESA. This creature's primary habitat spans across southeastern New Mexico and West Texas, including the Permian Basin, one of the nation's most productive oil and gas regions. In order to continue the area's vital economic activity, the state of Texas brokered a Candidate Conservation Agreement with Assurances with FWS known as the Texas Conservation Plan.

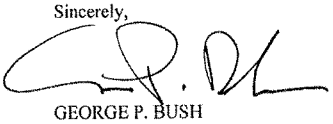
Under this plan, land owners enroll their property and agree to have the management of the property monitored to ensure that any activity occurring on the property will minimize the impacts to the lizard's habitat. Due to the overwhelming, voluntary response efforts under the plan, FWS eventually agreed to not list the dunes sagebrush lizard as endangered. Over the past three years the Texas Conservation Plan has successfully allowed the state and individual property owners to ensure protection of the lizard's habitat while continuing to develop oil and gas in this vital area.

The principle behind citizen suits is not at issue, but as the ESA is currently written, it allows for unelected groups to circumvent the entire system, while reaping windfalls through undisclosed settlements. This closed-door system offers almost no means of recourse for landowners, and at its core violates our country's democratic principles and processes. Such suits threaten the Permanent School Fund and the proper funding of our public schools. We believe both S. 292 and 293 will help greatly to eliminate the problems created by the current law and we respectfully ask for the committee's full support in correcting this issue.

If you or your staff have questions for me or the Texas General Land Office, please do not hesitate to contact my policy analyst, Kaleb Bennett, at kaleb.bennett@glo.texas.gov or 512-463-5363.

Thank you for your timely consideration.

Sincerely,



GEORGE P. BUSH
Commissioner, Texas General Land Office

STATEMENT BY DAVID SOLLMAN, EXECUTIVE DIRECTOR, FUR INDUSTRIES OF NORTH AMERICA BEFORE THE
SENATE ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON FISHERIES, WATER, AND WILDLIFE
CONCERNING S. 1081, CONCERNING THE USE OF BODY GRIPPING TRAPS IN THE NATIONAL WILDLIFE REFUGE
MAY 6, 2015

MR. CHAIRMAN,

On behalf of the Fur Industries of North America, an organization that represents the fur trade, including wildlife trappers throughout the country, we appreciate the opportunity to provide information to the Committee on the current state of trap technology and ongoing research programs. Trapping is an important component of wildlife predator and nuisance control, and its uses are not limited to National Wildlife Refuges. Today's bill seeks to arbitrarily single out certain traps and their use in specific geographic areas, while disregarding the important role of trapping as a resource management tool and as a livelihood for many in rural communities.

Trapping in North America continues as a critical and vital tool to wildlife managers across a wide array of activities, which include endangered species management and the re-introduction of extirpated species to original habitats and sustainable management for human benefit.
It is a critical component of crop management from apples to pine trees as well as the maintenance of human and animal health. In addition, trapping is very important in the role of controlling invasive species as well as wildlife populations that have become over abundant and are in conflict with local populations. Finally, and of equal importance, wild fur production plays a vital role in the economy and lifestyle of rural dwellers across North America.

We, therefore, offer the following information on the current status of trap technology research, best management practices and our international obligations under agreements on humane trapping.

In 1997, the United States and the European Union signed an Agreed Minute on humane standards for trapping of furbearing animals. The Agreed Minute represents a binding international treaty commitment of the United States. Concurrently, an agreement was reached between Canada, Russia and the EU. The Agreement on International Humane Trap Standards (AIHTS) continues to identify humane methods for the capturing of furbearing animals. The Agreed Minute reflects the U.S. commitment to the principles of the AIHTS.

As a result, the United States is committed to ongoing programs designed to meet U.S. obligations by testing trapping devices that measure humaneness, safety, selectivity, practicality and efficiency that are incorporated in the Agreement. Accordingly, the program was designed,

with Federal oversight, to allow state control of the research. While as a constitutional matter, trapping is regulated by the states; this is more than an issue of state vs. federal control over trapping regardless of whether it takes place on public lands such as National Wildlife Refuges. States have the right to regulate their respective wildlife populations. Also, State control is more practical because of: (1) the competency of the states residing with their respective DNRs; and (2) the great diversity of habitats across the country, which require state-specific solutions to issues of wildlife management.

Each year, the Congress funds an ongoing research program to further test traps and to ensure new traps meet certain internationally recognized criteria. This research program, undertaken by the USDA National Wildlife Research Center, has been developed in partnership with the State Fish and Wildlife Agencies, which have regulatory authority over trapping. The work of the NWRC and the states represents the most up to date science and engineering and ensures that industry best practices will continue to evolve as new technologies come on line.

To date, research has been completed and best management practice recommendations have been distributed on traps for 21 species with two more soon to be released. Hundreds of trap types including "so called" body gripping traps have been tested and a substantial number of tools have been identified that meet international animal welfare and engineering standards. Those traps that fail to meet international standards have also been identified. These findings have been published and distributed by the states to wildlife managers, users and available to the general public. Future efforts will increase state level education, outreach, and training to ensure that best management practices are integrated into professional and agency programs.

To arbitrarily singe out certain traps using general terms that do not accurately reflect current science and disregard best practices or important wildlife management protocols does little to advance any true goals in regards to humane trapping. It merely ties the hands of wildlife resource managers.

We appreciate the opportunity to provide this information to the Committee as it considers issues that relate to trapping technology and wildlife management.

David Sollman
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