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LEGISLATIVE HEARING ON A DISCUSSION DRAFT BILL, S. ___, THE ENDANGERED SPECIES ACT AMENDMENTS OF 2018

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JULY 17, 2018

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SECOND SESSION

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C O N T E N T S

Page

JULY 17, 2018

OPENING STATEMENTS

Barrasso, Hon. John, U.S. Senator from the State of Wyoming 1
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 3

WITNESSES

Mead, Hon. Matt, Governor, State of Wyoming 5
Prepared statement 9
Broscheid, Bob, Director, Colorado Parks and Wildlife 343
Prepared statement 345
Responses to additional questions from:
Senator Barrasso 351
Senator Carper 353
Strickler, Matthew J., Secretary of Natural Resources, Commonwealth of Virginia 355
Prepared statement 357
Responses to additional questions from:
Senator Barrasso 361
Senator Whitehouse 362

ADDITIONAL MATERIAL

Text of The Endangered Species Act Amendments of 2018, Section-by-Section Analysis 378
Letter to Senators Barrasso and Carper from David Y. Ige, Governor, State of Hawaii, July 19, 2018 387

LEGISLATIVE HEARING ON A DISCUSSION DRAFT BILL, S. __, THE ENDANGERED SPECIES ACT AMENDMENTS OF 2018

TUESDAY, JULY 17, 2018

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

The Committee met, pursuant to notice, at 9:50 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Capito, Wicker, Fischer, Rounds, Ernst, Sullivan, Cardin, Merkley, Gillibrand, Booker, Markey, Duckworth, and Van Hollen.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Good morning. I call this hearing to order.

Today we will consider the Endangered Species Act Amendments of 2018, and I would like this discussion draft to serve as the foundation for a bipartisan effort to modernize the Endangered Species Act. If we work together—Republican and Democrat—we can ensure that this important law fulfills the full conservation potential and works better for species, as well as for people.

Congress last reauthorized the Endangered Species Act with amendments of substance in 1988, 30 years ago. Even the U.S. Constitution has been amended more recently than the Endangered Species Act.

Stakeholders are making it clear that the Endangered Species Act can be improved. A major goal of the Endangered Species Act is the recovery of species to the point that protection under the statute is no longer necessary.

Since the ESA was signed into law, only 54 out of 2,393 species listed in the U.S. and foreign countries have been delisted because they have recovered. That is less than 3 percent.

Now, as a doctor, if I admit 100 patients to the hospital and only 3 recover enough under my treatment to be discharged, Governor, I would deserve to lose my medical license with numbers like that.

When it comes to the Endangered Species Act, the status quo is not good enough. We must do more than just list species and leave them on life support. But that is what we are doing now. We need to see species recovered.

In June 2015 as then-chairman of the Western Governors Association, Wyoming Governor Matt Mead took on the challenge of

identifying opportunities to modernize the Endangered Species Act. Now the Western Governors Association represents Governors of 19 western States and three U.S. territories in the Pacific. He launched the GWA's Species Conservation and Endangered Species Act Initiative.

Three years later Governor Mead's groundbreaking initiative has facilitated a bipartisan dialogue of stakeholders from across the political spectrum. They have resulted in three annual reports, the adoption of a bipartisan Western Governors Association Policy Resolution, and the adoption of bipartisan Western Governors Association policy recommendations.

This month I released a discussion draft, the Endangered Species Act Amendments of 2018, and it is based on the Western Governors Association's principles and policies. Earlier this year I received a supportive letter from the GWA signed by its chair and its vice chair, Republican Governor Daugaard of South Dakota and Democratic Governor Ige of Hawaii. It commended our efforts to address "this polarizing topic in an inclusive, thoughtful manner."

It noted, "The proposed bill reflects this fact and offers meaningful bipartisan solutions to challenging species conservation issues." It continued, "The proposed bill is generally consistent with the Western Governors Association recommendations, and the Western Governors Association offers its support for the portions of the bill that are consistent with existing Western Governors policy."

The discussion draft was also shaped by input from two EPW Committee hearings last year. We heard from a diverse bipartisan group of witnesses and panelists, including former Democrat Wyoming Governor Dave Freudenthal, and Fish and Wildlife directors from across the country. Each of these witnesses and panelists acknowledged that the Endangered Species Act could work better. Many believe the foundation established by the Western Governors Association was a good starting point for modernizing the Act.

The discussion draft elevates the role of States in partnering with the Federal Government to implement the Endangered Species Act. It affords States the opportunity to lead wildlife conservation efforts, including through the establishment of recovery teams for listed species, and developing and implementing recovery plans. It provides for increased regulatory certainty so stakeholders are incentivized to enter into voluntary conservation and recovery activities. It increases transparency. It codifies a system for prioritizing species listing petitions so limited resources flow to the species most in need.

Over the 45-year life of the Endangered Species Act, the capacity of State wildlife agencies has grown significantly. According to the Association of Fish and Wildlife Agencies, States now spend over $5.6 billion on conservation and employ approximately 240,000 people and volunteers. Of that number, 50,000 are employees, including over 11,000 degreed wildlife biologists, over 10,000 wildlife law enforcement officers, and 6,000 employees with advanced education degrees.

Combined, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service employ only 11,661 people, so the substantial resources of the States are not located in Washington, DC.

These State agencies are in the field every day working to protect wildlife.

The draft bill has received broad support from conservation and stakeholder groups alike. Over 100 organizations have already written to the Committee to express their support of this effort, so I look forward to working with the members of this Committee and the larger stakeholder community to find a bipartisan pathway to meaningful modernization of the Endangered Species Act based on the Western Governors Association's recommendations.

I now turn to Ranking Member Carper for his statement.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thanks, Mr. Chairman.

To our lead off witness, Governor, great to see you. Welcome. Thank you for your leadership in Wyoming and among our Nation's Governors.

As a recovering Governor, I recognize the critical and sometimes challenging role that States play in implementing our Federal laws. The Endangered Species Act, one of our Nation's most popular environmental protection statutes, is one example of just such a law.

I also appreciate the ability of our Governors to come together with stakeholders and solve difficult issues on the ground.

Governor Mead, I understand from colleagues that you spearheaded—and the Chairman has alluded to this—a bipartisan 3-year process through the Western Governors Association to discuss the improvements to the Endangered Species Act, and I commend you for doing so. I think we commend you for doing so.

I very much look forward to hearing from you and our other witnesses today on what we all believe is an important topic. But I have to be honest, as well. I am not fully convinced that a similar process is possible right now in Washington, DC. Our colleagues in this Congress have put forward and advanced a myriad of legislative proposals to weaken, and in some cases, undermine the Endangered Species Act. The current Administration has repealed policies from the previous Administration that would have helped endangered species to recover, and I am told that the Department of Interior plans to release new regulations this week that could harm our Nation's most imperiled species.

Further, the draft legislation we are considering today includes provisions that go beyond the legislative recommendations proposed by the Western Governors Association last year. Even the text that is based on the WGA's recommendations contains problematic details. To my knowledge, none of the Democratic Governors who supported that resolution can endorse this draft, at least not as it is currently written.

I hasten to add that this process seems to be skipping another important step, and that is discussing and incorporating the views of the other 31 States. For example, my home State of Delaware has a compelling story to tell. The Endangered Species Act has successfully recovered a number of species in our State recently, including the Delmarva fox squirrel and the bald eagle.

Delaware is proud to host and help recover threatened species like the red knot, a tiny little bird that flies all the way from the North Pole down to Brazil and stops for lunch one place along the way, Delaware, and keeps on going. Another bird called the piping plover, we have helped that one recover, too. People travel from all over the world, far and near, to view these special birds from our beaches along the Atlantic Ocean and along the Delaware Bay. In fact, I joined some of the birders just a couple months ago at our beloved wildlife refuges. We are blessed with two of those.

The First State also enjoys a wonderful working relationship with the U.S. Fish and Wildlife Service. Our region is working with landowners, industry partners, and nonprofit organizations to successfully prevent new listings.

Now, let me just say, no law is perfect. I know that, and I think we all know that. But in Delaware's experience, changes to the Endangered Species Act have not been a prerequisite for the law to work. I continue to believe that our State, along with the Service and all States, could do exponentially more to recover species and prevent new listings with additional resources.

The Western Governors Association seems to agree with this assessment. I also remember that all of our witnesses at previous endangered species hearings agreed that funding is a serious challenge. Yet, in recent years, Congress has underfunded the Endangered Species Act, and the draft legislation that we are holding this hearing on today does not provide a meaningful funding solution for species conservation.

Instead, the legislation proposes several changes to the Act that cause—for me—some real concerns. For one, it creates a new definition for how the Fish and Wildlife Service should consider scientific information. This change could actually prevent the best available science from guiding species management, especially in an Administration that consistently denies and undermines science.

It also includes a judicial review prohibition that limits the public's opportunity to challenge delisting decisions that may not be supported by the best available science or are otherwise not fully compliant with the law.

Having said all that, I want to again acknowledge the thoughtfulness that went into the Western Governors Endangered Species Act Initiative. Having said that, I am having a hard time understanding how this legislation, in particular, will better recover species or better serve the American people.

Perhaps this hearing will serve to further my understanding, or perhaps it will cause us to go back to the drawing board and draw on the expertise and the insight of some of those other 31 States whose input apparently has not been sought when the legislation before us was being crafted. If we do that, it may enable our Committee to come together, as we have on several occasions in this Congress, in working to truly conserve our Nation's treasured wildlife for future generations.

Thank you, Mr. Chairman.

Again, Governor, welcome.

Senator BARRASSO. Well, thank you very much, Senator Carper.

Today we are going to hear from two panels. Each member of the Committee has an option to either ask one 5-minute round from either panel or a 3-minute round from each panel, but we are going to follow this procedure to ensure that we complete the hearing by noon because we have a couple of roll call votes scheduled for later this morning, and we want to be able to cast those votes.

On the first panel we will soon hear from Matt Mead, Governor of Wyoming, and on the second panel we will hear from Bob Broscheid, the Director of the Colorado Parks and Wildlife, and Matt Strickler, who is the Secretary of Natural Resources, the Commonwealth of Virginia.

I want to remind the witnesses your full testimony will be made part of the official hearing record.

I would like to take a moment now to introduce Wyoming Governor Matt Mead, who has been serving as Governor since January 2011.

Born and raised in Jackson, Wyoming, he graduated law school from the University of Wyoming. Since then, he has engaged in the private practice of law, as well as worked as a prosecutor and as a United States Attorney.

Governor Mead has served in the past as Chair and also Vice Chair of the National Governors Association's Natural Resources Committee. He also worked as the Co-Chair of the State and Federal Sage-Grouse Task Force. From 2015 to 2016 he served as Chairman of the Western Governors Association, where, as I mentioned before, he led the Species Conservation and Endangered Species Act Initiative. That initiative serves as the inspiration of the discussion draft that we are examining today.

Governor Mead also has a farm and ranch operation in southeast Wyoming, and I hope that Governor Mead will tell us about his experience in Wyoming and within the Western Governors Association, balancing the interests of citizens while efficiently conserving and effectively conserving wildlife.

Governor Mead, it is an honor to welcome you as a witness before the Environment and Public Works Committee. Thank you for traveling to Washington to be with us today. I know Frontier Days is coming to Cheyenne, and I know you are going to be very busy over the next week and a half at home, but I am so grateful you take time to be with us today.

Governor, please proceed.

STATEMENT OF HON. MATT MEAD, GOVERNOR, STATE OF WYOMING

Mr. MEAD. Chairman Barrasso, Ranking Member Carper, and Ranking Member Carper, I hope you give me your notes on how to recover from the Governor's [unclear], but it is an honor for me to be Governor of Wyoming.

Senator CARPER. I am still working on those notes.

Mr. MEAD. Thank you, sir.

Senator CARPER. One of my favorite things as Governor—this should not take away your time—was coming and testifying before Congress when I was chairman of the NGI. I just loved it, and I hope you enjoy it as well. Thank you.

Mr. MEAD. I do.

And to all the members of the Committee, thank you for the privilege and the opportunity to be with you this morning and the opportunity to speak about the Endangered Species Act amendments and the discussion draft.

To start out, I want to share with you, I have witnessed some of the greatest successes of the Endangered Species Act in 1987 on a ranch near Meeteetse, Wyoming. Biologists removed from the wild the last 18 black-footed ferrets in the world. Before that, they were believed to have been extinct. Today, due to collaborative efforts among multiple partners, ferrets have been reintroduced to eight States, as well as Canada and Mexico.

Another example, when listed as threatened in 1975, biologists estimated as few as 136 grizzly bears remained in a few isolated areas of Yellowstone National Park within the Greater Yellowstone Ecosystem. Upon delisting in 2017, conservative estimates show that more than 700 bears inhabit an area the size of New Jersey, Delaware, and Connecticut combined, and continue moving into areas where people have not seen them in generations. These success stories are a testament to the ESA's ability to prevent extinction.

The ESA provided part of the incentive for folks to work together to keep the greater sage-grouse from being listed. Wyoming brought together diverse interested groups to develop a scientifically based and common sense strategy for preserving the bird. Wyoming's plan served as a model for other western States and Federal agencies. Preventing the need to list sage-grouse is a success story.

I have also witnessed some of the ESA's greatest failings. It took five lawsuits and 15 years to delist a recovered gray wolf population in Wyoming. Grizzly bears are embroiled in litigation for the second time. Canadian lynx were listed more than 18 years ago and still have no discernible path to recovery. In fact, nearly 30 percent of all listed species have no recovery plan, and litigation often dictates U.S. Fish and Wildlife Service priorities and workload.

The ESA hasn't been substantially amended since 1988, so now it is time, in my view, to have this discussion, and again, I so appreciate the opportunity. As evidence that this is the time to have this discussion, there are currently bills before Congress to prevent listing greater sage-grouse and lesser prairie-chickens for 10 years. Before this, there were bills proposing to delist gray wolves in part of the country and to prevent judicial review of already delisted species.

I supported legislation to delist gray wolves in Wyoming because it appeared at the time the only viable option, and I will continue to support efforts to protect gray wolf delisting until we can address the root of the problems.

But I have to frankly say that that process of Congress, by popular vote, making the decisions on individual species is not the best way to go. Addressing root problems would obviate the need for Congress to intervene with respect to individual species. That would be better legislation, better policy, and better for wildlife.

The Chairman's discussion draft offers a real bipartisan—which is so critical—way to correct deficiencies in the ESA implementa-

tion, while maintaining science based decisionmaking. As was said, this was my initiative at Western Governors, and I just want to give a little more context on that.

That was open to everybody. We extended an open invitation to anyone interested in species conservation and endangered species issues to engage in meaningful dialogue. For 3 years the initiative included 11 work sessions, 8 Webinars, several surveys, questionnaires, two reports outlining opportunities for ESA improvement. To ensure transparency, work sessions and Webinars were recorded and posted on YouTube. This process helped inform the Western Governors, and in 2016 and again in 2017, Western Governors adopted bipartisan policy resolutions that included specific recommendations for improving the ESA and species conservation.

A number of WGA recommendations are reflected in this discussion draft bill. A couple of them—when Congress adopted the ESA in 1973, it did not require the Fish and Wildlife Service to act on petitions by a date certain. In 1978 Congress amended the ESA, giving the Fish and Wildlife Service 2 years to make a final determination on a proposed rulemaking. If the Fish and Wildlife Service failed to act within those 2 years, it had to withdraw.

In 1982, after complaints that listing decisions were being delayed, Congress acted, adding the current requirement that the Fish and Wildlife Service act on a substantial 90-day finding within 12 months of the date received. Congress did not choose the 12-month deadline for any specific scientific reason; it was simply an arbitrary timeline meant to spur action on potential species listings.

The Fish and Wildlife Service receives hundreds of petitions to list species at a time, but it does not have the resources to meet the deadlines. The resulting litigation allows courts, not scientists, to prioritize agency workloads and frequently impedes local species conservation efforts that can take years to develop and implement.

After 36 years of the status quo, this discussion draft addresses this source of conflict in a scientifically based, practical way by codifying the framework of the Fish and Wildlife Service's National Listing Work Plan. This Work Plan has been praised by environmental groups and conservation groups, but despite its broad support, the National Listing Work Plan extends the current statutory deadline, and if a court took issue with this, we would fully expect deadline driven litigation to rise again.

This discussion draft also—we believe in Western Governors—enhances the roles of States in several ways. It contemplates States' leading recovery teams, developing and implementing recovery plans, consulting with Federal agencies in a meaningful way on all aspects of ESA implementation.

Of course, this is a start, and we believe it is a very important start. We understand people will have concerns. One of the concerns that I have heard is critics of enhancing the role of States and ESA generally distrust the States' ability to manage wildlife. However, Congress did not adopt the ESA because it distrusted the States' ability to manage wildlife. To the contrary, Congress and other supporters of the ESA recognized the important role States play in wildlife management. For example, during its adoption, New York Representative James Grover, speaking in favor of the

ESA, argued, "The greater bulk of the enforcement capability concerning endangered species lies in the hands of the State fish and game agencies, not the Federal Government."

The House Committee on Merchant Marine and Fisheries Report on the ESA also explained the important role States would play, stating, "The States are far better equipped to handle the problems of day to day management and enforcement of laws and regulations for the protection of endangered species than is the Federal Government."

There are numerous examples about the importance Congress recognized States would play. Unfortunately, much of Congress's vision never materialized due to inadequate Fish and Wildlife Service funding for State recovery efforts.

Through amendment, the ESA can give back State incentives that Congress originally envisioned. The provisions of this discussion draft take a needed step in returning the ESA to its original vision that garnered near unanimous support from Congress when passed.

In conclusion, first, I would note this discussion draft does not erode authority of the Secretary of Interior or Secretary of Commerce. Every time the discussion draft offers a greater role to States, the Secretary retains final decisionmaking authority.

Second, the draft does not remove science from decisionmaking. On the contrary, decisions that list, up-list, down-list, delist, or decline to list must be based on the best scientific or commercial data.

This discussion draft stems from a State led, bipartisan effort conducted over several years. Environmental, sportsmen, ag, and energy interests all have commended the WGA process. I would also note that after we got the process through the Western Governors, I took it to the National Governors Association, and the National Governors Association—and I don't want to overstate this—broadly adopted many of the policies of the WGA. It is not as extensive, and I want to be careful there, but the NGA has also taken a look at this.

So, this draft represents a reasonable way to elevate the WGA process into a national dialogue. As said by Mr. Chairman, the WGA submitted a letter of support for the provisions of this bill that are consistent with WGA policy.

So now we have an opportunity to improve the Endangered Species Act for wildlife and for people. We can encourage innovative conservation practices that obviate the need to list species. We can facilitate faster and more cost effective species recovery. We can improve transparency, reduce litigation, and ensure that science dictates species management decisions, not Congress or the courts. Perhaps most importantly, we can see the ESA reauthorized for the first time in a generation.

Thank you again very much for the opportunity, and I appreciate the warm welcome this morning.

Thank you.

[The prepared statement of Mr. Mead follows:]

The Honorable Matt Mead
Governor of the State of Wyoming
Cheyenne, WY

Matt Mead, Wyoming's 32nd Governor, took office in January 2011 and is serving his second term. He was born and raised in Jackson. After earning a law degree from the University of Wyoming, he served as a prosecutor, practiced in a private firm, and served as U.S. Attorney. He maintains a farm and ranch business with his wife Carol in southeast Wyoming.

Governor Mead has put in place a comprehensive state energy strategy and state water strategy for Wyoming. He has vigorously promoted carbon capture technologies. He moved the entire state to a 100 gigabit broadband network. His rules initiative has resulted in fewer regulations and improved public access to rules. His focus on increasing state competitiveness, for example, through technology, innovation and expansion of business opportunities in numerous economic sectors, has brought national recognition. Under the Governor's ENDOW initiative, a 20-year economic diversification strategy for Wyoming will be issued in August.

In July 2015, Governor Mead issued Executive Order 2015-4 which sets forth Wyoming's comprehensive sage grouse conservation strategy. In December 2015, the Governor received the Sheldon Coleman Outdoors Award from the American Recreation Coalition, in recognition of his commitment to conservation and the outdoors. In April 2017, he received the James D. Range Conservation Award from the Theodore Roosevelt Conservation Partnership for his leadership on sage grouse, endangered species policy and public lands.

Governor Mead has served as Chair and also as Vice Chair of the Natural Resources Committee of the National Governors Association. He serves as Co-chair of the State and Federal Sage Grouse Task Force. He is past Chairman (2015-16) of the Western Governors' Association where his Chairman's Initiative was Species Conservation and the Endangered Species Act.

Matt and Carol have been married 26 years and have two young adult children.

Testimony of Matthew H. Mead, Governor of Wyoming
Before the
United States Senate
Committee on Environment and Public Works

Views of State Officials on the Discussion Draft Bill, S.___, the Endangered Species Act Amendments of 2018

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

Thank you for the opportunity to speak today about the Endangered Species Act Amendments of 2018 discussion draft. I am honored to be here in my capacity as Governor of the State of Wyoming.

I have witnessed some of the greatest successes of the Endangered Species Act (ESA). In 1987, on a ranch near Meeteetse, Wyoming, biologists removed from the wild the last 18 black-footed ferrets in the world. Today, due to collaborative efforts among multiple partners, ferrets have been reintroduced in eight states as well as Canada and Mexico. Two years ago, biologists released ferrets back to the ranch in Wyoming where the last ones had been removed nearly 30 years earlier.

When listed as threatened in 1975, biologists estimated as few as 136 grizzly bears remained in a few isolated areas of Yellowstone National Park within the Greater Yellowstone Ecosystem. Upon delisting in 2017, conservative estimates show more than 700 bears inhabit an area the size of New Jersey, Delaware, and Connecticut combined, and continue moving into areas where people have not seen them in generations. These success stories are a testament to the ESA's ability to prevent extinction.

The ESA provided part of the incentive for folks to work together to keep the Greater sage-grouse from being listed. Wyoming brought together diverse interested groups to develop a scientifically based and common sense strategy for preserving the bird. Wyoming's plan served as a model for other western states and federal agencies. Preventing the need to list sage-grouse is a success story, one that the ESA should encourage in conserving other species.

I have also witnessed some of the ESA's greatest failings. It took five lawsuits and fifteen years to delist a recovered gray wolf population in Wyoming. Grizzly bears are embroiled in litigation for the second time. Canada Lynx were listed more than 18 years ago and still have no discernable path to recovery. Nearly 30% of all listed species have no recovery plan, and litigation dictates U.S. Fish and Wildlife Service (FWS) priorities and workload.

The ESA has not been amended substantively since 1988. It is time now to discuss amendments. There are currently bills before Congress to prevent listing Greater sage-grouse and lesser prairie chickens for ten years. There were bills proposing to delist gray wolves in part of the country and to prevent judicial review of already delisted species. I supported legislation to delist gray wolves in Wyoming because it appeared the only viable option at the time. I will continue

offering support for efforts to protect gray wolf delisting until we address the root problems. Addressing root problems would obviate the need for Congress to intervene with respect to individual species. That would be better legislation, better policy, and better for wildlife.

The Chairman's discussion draft offers real bipartisan solutions to correct deficiencies in ESA implementation while maintaining science-based decision-making. In my experience, cooperation and collaboration yield better results than bitter partisanship and harsh rhetoric.

In June 2015, I was elected Chairman of the Western Governors' Association (WGA). The WGA consists of nineteen politically and geographically diverse states, as well as 3 US-flag islands. The Governors - six democrats, twelve republicans, and one independent - represent lands that comprise 68% of the United States. The WGA works in a bipartisan way to develop policy and take action on issues of critical importance to western states, including ESA implementation.

The value of bipartisan cooperation on western issues through the WGA cannot be overstated. When there is a good faith effort to get along, things get done. Whether R's or D's, red states or blue, we all care about the West and its future. Western Governors choose civil discourse. We communicate regularly, speak candidly, listen to different opinions, and partner with non-government organizations as we work toward agreements that are acceptable to all members and lead to constructive action. A hallmark of leadership is the ability to achieve results—to be proactive and productive – and the WGA provides a good leadership model.

Each incoming WGA Chairman designates an initiative during that governor's tenure as Chairman. I led the Species Conservation and Endangered Species Act Initiative (Initiative). This Initiative sought to (1) create a mechanism for states to share best practices in species management; (2) promote and elevate the role of states in species conservation efforts; and (3) explore ways to improve the efficacy of the ESA. To further these goals, I worked with the WGA to establish a bipartisan, transparent and inclusive process aimed at bringing a diverse group of stakeholders together to explore ways of improving the ESA and species conservation generally.

To begin, we extended an open invitation to anyone interested in species conservation and endangered species issues to engage in a meaningful dialogue. Next, we engaged professional facilitators from the University of Wyoming's Ruckelshaus Institute to lead group discussions. This ensured every participant's opinions were accurately represented and fully considered. Governors from politically and geographically diverse states agreed to host these work sessions, and ultimately thousands of people participated in some way over the course of the Initiative.

For the first three years, the Initiative included eleven work sessions, eight webinars, several surveys and questionnaires, and two reports outlining opportunities for ESA improvement. To ensure transparency, work sessions and webinars were recorded and posted to YouTube. In smaller sessions that were not recorded, extensive notes were taken to preserve the discussion record. Collectively, these activities helped inform Western Governors about successes and opportunities in species management. In 2016, and again in 2017, Western Governors adopted bipartisan policy resolutions that included specific recommendations for improving the ESA and species conservation.

A number of the WGA recommendations are reflected in this discussion draft bill. Other WGA recommendations identified opportunities for regulatory and policy changes in the executive branch that would provide greater incentive for voluntary conservation and improve ESA implementation. For purposes of my testimony, I will provide a couple of examples where the discussion draft incorporates WGA statutory recommendations.

Timelines/Litigation

When Congress adopted the ESA in 1973, it did not require the FWS to act on petitions it received by a date certain. In 1978, Congress amended the ESA, giving the FWS two years to make a final determination on proposed rulemaking. If the FWS failed to act within two years, it had to withdraw the rulemaking.

In 1982, after complaints that listing decisions were being delayed, Congress added the current requirement that the FWS act on a substantial 90-day finding within 12 months of the date received. Congress did not choose this 12-month deadline for any scientific reason, nor did it account for FWS resource availability. It was simply an arbitrary number meant to spur action on potential species listings. Today, these rigid timelines discourage voluntary conservation and lead to endless litigation.

The FWS receives hundreds of petitions to list species at a time, but it does not have the resources to meet the deadlines. The resulting litigation allows courts, not scientists, to prioritize agency workloads and frequently impedes local species conservation efforts that can take years to develop and implement.

After 36 years of the status quo, this discussion draft addresses the source of conflict in a scientifically based, practical way by codifying the framework of the FWS's National Listing Work Plan. In 2016, the FWS adopted its National Listing Work Plan to prioritize substantial 90-day findings and ensure decisions are made on petitions within seven years. Through this work plan, the FWS addresses species facing the greatest threats first, while species undergoing active conservation efforts receive a lower priority.

The most litigation prone groups support this science-based approach to provide flexibility when considering petitions and have stopped, or greatly reduced, deadline driven lawsuits. In 2016, one of these groups publically praised the FWS for developing the work plan.

Despite its broad support, the National Listing Work Plan extends the current statutory deadline. If a court took issue with it, we would fully expect deadline driven litigation to rise again. This discussion draft ensures the current, broadly accepted practice of the FWS fits with the law—a practical solution.

Enhancing the Role of States

This discussion draft enhances the role of states in several ways. It contemplates states leading recovery teams, developing and implementing recovery plans, consulting with federal agencies in a meaningful way on all aspects of ESA implementation, and providing helpful species data to

the FWS. Each of these provisions can lessen resource strains on the federal agencies, lead to faster and more robust species recovery, encourage innovation in species management, and engender broader support for the ESA.

Critics of enhancing the role of states in ESA implementation generally distrust the states' ability to manage wildlife. Congress did not adopt the ESA because it distrusted the states' ability to manage wildlife. To the contrary, Congress and other supporters of the ESA recognized the important role states play in wildlife management. In his 1973 testimony supporting the ESA, Dr. Laurence R. Jahn, President of the Wildlife Management Institute, testified that state agencies were involved with "rescuing many species" from statehood. Congress intended the ESA to support state wildlife management efforts, not usurp them. The ESA's legislative history is replete with comments emphasizing the importance of a strong state/federal relationship to implement the ESA.

The House of Representatives Conference Report recognized that state involvement in implementation was critical to the ESA's ultimate success:

> It should be noted that the successful development of an endangered species program will ultimately depend upon a good working arrangement between the federal agencies, which have broad policy perspective and authority, and the state agencies, which have the physical facilities and the personnel to see that state and federal endangered species policies are properly executed.

H.R. Rep. No. 93-740, at 26 (1973).

New York Representative James Grover, speaking in favor the ESA, argued, "the greater bulk of the enforcement capability concerning endangered species lies in the hands of the State fish and game agencies, not the Federal Government." This sentiment was confirmed by Cynthia Wilson of the National Audubon Society when she noted that the federal government was "dreadfully undermanned" to implement the ESA.

The House Committee on Merchant Marine and Fisheries Report on the ESA also explained the important role states would play in ESA implementation:

> The states are far better equipped to handle the problems of day-to-day management and enforcement of laws and regulations for the protection of endangered species than is the Federal government. It is true, and indeed desirable that there are more fish and game enforcement agents in the state system than there are in the federal government. Any reasonable and responsible program designed to protect these species must necessarily take into account this fact.

H.R. Rep. No. 93-412, at 20-21 (1973).

These are a few of myriad examples where drafters of the ESA signal intent for states to assume a large role in ESA implementation. For more examples, see Congressional Research Service, *A Legislative History of the Endangered Species Act of 1973, as amended 1976, 1977, 1978, 1979, and 1980* (1982). Unfortunately, much of Congress's vision never materialized due to inadequate FWS funding for state recovery efforts. Through amendment, the ESA can give back state incentives that Congress originally envisioned. The provisions of this discussion draft take a needed step in returning the ESA to its original vision that garnered near unanimous support from Congress.

Conclusion

As consideration of this discussion draft begins, I note that constructive dialogue requires knowing more than what is in the bill. It also requires understanding what is not in the bill.

First, the discussion draft does not erode any authority of the Secretary of Interior or Secretary of Commerce. Every time the discussion draft offers a greater role to states, the Secretary retains final decision-making authority. For example, if a state fails to develop a scientifically sound recovery plan, the Secretary may reject that plan. If a state-led recovery team recommends delisting or down listing of a species, the Secretary can reject the recommendation. The Secretary remains the final arbiter on species recovery.

Second, this draft does not remove science from decision-making. Decisions to list, uplist, down list, delist, or decline to list must be based on the best scientific or commercial data. The Secretary must give state data great weight but is not obligated to rely upon it—best science available still prevails. Through incorporation of the National Listing Work Plan framework, the discussion draft actually creates greater scientific integrity in ESA implementation.

This discussion draft stems from a state-led, bipartisan, multi-disciplinary effort conducted over several years. Environmental, sportsmen, agriculture and energy interests have all commended the WGA process. This discussion draft represents a reasonable way to elevate the WGA process into a national dialogue. WGA submitted a letter of support for the provisions of this bill that are consistent with WGA policy. It also notes provisions where the WGA takes no position. The letter recognizes the difficulty of amending the ESA. It also reserves the right for governors to withdraw their support if the discussion draft changes in ways that deviate from WGA policy or that weaken the ESA. Like others, I condition my support upon Congress pursuing a true bipartisan solution to some of these challenging issues.

We have an opportunity to improve the Endangered Species Act for wildlife and for people. We can encourage innovative conservation practices that obviate the need to list species. We can facilitate faster and more cost effective species recovery. We can improve transparency, reduce litigation, and ensure that science dictates species management decisions, not Congress or Courts. Perhaps, most importantly, we can see the ESA reauthorized for the first time in a generation. I look forward to continued engagement in this discussion.

Thank you. I am happy to answer any questions you may have.

Senator BARRASSO. Well, thank you very much, Governor. I will tell you there are a number of interns from my office who are here from Wyoming, a number from Casper, and they were delighted to hear your testimony, so people are listening in the room, and people from Wyoming are going to be calling their parents very shortly to say what a great job you did. Thank you very much. I appreciate it, Governor.

Mr. MEAD. Thank you, Mr. Chairman.

Senator BARRASSO. A couple of questions, then we will go back and forth around the panel.

Over the last several decades there have been a series of efforts to amend the Endangered Species Act. They weren't successful for a variety of reasons, so can you kind of distinguish for this Committee the difference between past efforts to amend the Endangered Species Act and what the Western Governors Association is doing? Do you think the discussion draft reflects the policy, principles, and recommendations kind of in a bipartisan way?

Mr. MEAD. Thank you, Mr. Chairman. I think it is different than past efforts. There is no question, when I announced this was going to be my initiative, I immediately got pushback, saying this is too tough an issue. To Senator Carper's comments, it is a tough time to get this through Congress. I get that. But this is an important enough issue, and it is an exciting enough issue. The opportunity in Wyoming and across the Nation to address wildlife issues, I think we have an enthusiastic group of Governors and citizens that are ready to move forward.

In 1998 Senator Kempthorne got moving on this as an individual Senator. His efforts were killed by Senator Lott. In 2005 California Representative Pombo got some improvements through the House, and it died in the Senate.

But this effort began at the State level. It involved local input; it has been transparent. We have included ranchers; we have included wonderful groups that have helped us out, like The Nature Conservancy and Audubon. We have had, as I said, not only WGA involvement, but NGA involvement. And we have learned a lot. We have over 40 years of knowledge.

So, this is the time, and I think it is different because it has been bipartisan; it has been an effort by Republican and Democratic Governors, and Independent, as well.

As we see now Congress taking up individual species to decide whether they remain listed or delisted, it also shows that it is the time. And there is good news out there, Mr. Chairman. What we have done in Wyoming and in the West with regard to sage-grouse shows that voluntary efforts can go a long way to preventing a species from being delisted.

I acknowledge it is difficult, but I also acknowledge that we have gotten it through Western Governors; we have addressed it with National Governors. This can be and should be a bipartisan effort.

Senator BARRASSO. Can you explain a little bit more about why States should be a more equal partner with the Federal Government in implementing the Endangered Species Act? We showed the chart about just how involved States are in terms of the number of personnel and the commitment of resources, because things really have changed.

Mr. MEAD. Mr. Chairman, I had not seen that chart until it was held up this morning. I think that is very telling in terms of the amount of expertise and the money. Just on grizzly bears, for example, the State of Wyoming spent approximately $50 million in the recovery of grizzly bears. That is one State on one species. There is no question, looking at your chart and otherwise, from my knowledge working in Wyoming as Governor, States have not only put in resources, but they have a great amount of expertise.

Also, I would think it is really important to point out States care about endangered species. It is not only a quality of life issue. Why do we live in our States? This species, that species. But it also is an economic driver particularly, I know, in the State of Wyoming for tourism. It is very important. We have a trust responsibility with regard to wildlife. We care about our habitat.

I would also point out that to the extent there is a concern that States are not the one to lead this, I just think the expertise and the money, and over the 40 years, I think that States have become much more engaged. In fact, in my view, States are the leaders in terms of species conservation.

Senator BARRASSO. It does seem that too frequently, in terms of trying to promulgate a rule for delisting a species under the Endangered Species Act, that it gets derailed by litigation, and we have seen that happen in Wyoming. Under this discussion draft, a decision by the Secretary of Interior to delist a species is not then subject to judicial review until the expiration of a 5-year monitoring period.

Could you talk a little bit about this cooling off period, why it is important and how we respond to those who claim that delaying judicial review could have an impact on the delisted species?

Mr. MEAD. I think that is really an important point, Mr. Chairman, because I think, on the one hand, if you don't have that opportunity, as you said, a cooling off period, I think you are going to lose local support, and I think you are going to lose voluntary efforts. People want to engage in this. On the sage-grouse, oil and gas companies and the ranchers, they were very excited about having a plan to go forward. But they also needed to know that there was going to be fruit at the end; that if they do their work, there was going to be a reward. And with the amount of lawsuits that are out there, it hurts the opportunity to have a decent management plan.

I would also point out, as you know, in the working draft, that in that cooling off period, if something, you know, whether it is a weather condition or something else, there is still an opportunity for the Secretary to have an emergency listing. So, you won't fall off a cliff, in other words, if something unanticipated happens.

But I think if you want to build that local support, if you want to have voluntary efforts, if you want to get away from this notion, that is unfortunate but is out there, that finding endangered species in your State or on your land is bad news story, and you want to turn it into good news story, you have to show the voluntary efforts, and the cooperative effort at the local and State effort are going to work and that it is just not a race to the courthouse on everything you try to do.

Senator BARRASSO. Thank you very much, Governor.

Senator Carper.

Senator CARPER. Thank you.

Governor, thanks again for your efforts to spur meaningful conversation about improving the Endangered Species Act. Several times in your testimony today you mentioned the word funding, and I think it is appropriate that you do because I believe—and I know that my colleagues believe—that funding has got to be part of the conversation.

The Western Governors Association's Endangered Species Act recommendations from last year stated, among other things—this is a quote right from the recommendations, "Congress should allocate additional funding to the services to implement the Endangered Species Act." It went on to say, "Governors will work with Congress to identify priorities for fundings that will facilitate voluntary species conservation efforts and improve the efficacy of the Endangered Species Act." That is part of one of the recommendations, and I very much appreciate, and I agree with this recommendation.

Yet the draft legislation that we are considering today, as far as I know, does not tackle funding challenges at the State or the Federal level. So, let me just ask you. This is not a trick question, but do you believe that the Congress should address these issues? You have spoken to it already in your recommendations, but do you think that Congress ought to address these issues, and if so, how?

Mr. MEAD. Senator, it is a good question. You are exactly right. Funding was part of our discussion. We were not equipped to say what that funding level, what full funding looks like, but I would also add to that that I don't know these numbers, but what funding is going to recovering a species, what funding is going to partner with the States, versus funding that is used for litigation. Just in the work that I have had in the 7, almost 8, years, you sometimes get in these discussions with Federal folks and State folks and local folks; let's do this so we can avoid litigation. It shouldn't be litigation driven; it should be how to improve the opportunity for a species, in my mind.

So, absolutely, funding has to be part of it, and as I said, reauthorization, this would be the first time in a generation. But in my view, we need to make sure we are spending money in the right areas and actually recovering and helping species, versus just gearing up to avoid, it is money for litigation strategy versus for species strategy.

Senator CARPER. All right. I have one more question, if I could.

Governor, your testimony mentions legislative proposals to prevent Endangered Species Act listings for the greater sage-grouse and lesser prairie-chicken for 10 years. Your testimony also acknowledges that the Endangered Species Act, and presumably the threat of a listing, provided part of the incentives for States, for stakeholders, and for the Federal Government to work together to successfully conserve those species.

Chairman Barrasso's legislative proposal, as far as I know, does not include the 10-year listing prohibition, for which I commend him, but the listing prohibition language seems to arise at every turn, whether it be in the annual appropriations process or during our consideration of the NGAA.

What negative impacts do you think a 10-year sage-grouse listing prohibition could have on collaborative conservation efforts in Wyoming or even more broadly?

Mr. MEAD. Thank you, Senator. It is a tough issue, but as I tried to articulate in my testimony, Congress addressing individual species I do not think is the way to go. I think you have other things to do. And to think that a species rides on a popular vote, when science may direct otherwise, I don't think is the best way to go.

Having said that, because I think it is important to acknowledge this, I did support that with regard to the gray wolves. I think for those who are reluctant to take on this heavy lift, who say, geez, can Congress get it done, and I mean that respectfully, it should be a red flag. When Congress is having to take that up, and it was with gray wolves over multiple, multiple years, 20 years, and multiple, multiple lawsuits, and people doing the right thing, and the numbers have reached their goals, and you still can't get the species delisted. That is why those things happen.

Is it the best way to do it? No, but I think it is a red flag that is borne out of frustration for where is the end game. We have done everything you have asked. We have reached the goal line in terms of habitat and species, and we still can't get it delisted. That is the frustration that causes that, I think, and that is why, in my view, this is the time for us to engage and make improvements, so that we are not leaving it, again, respectfully, to Congress to make a popular vote on a species.

Senator CARPER. All right. Thank you again for your testimony and your thoughtful responses.

Mr. MEAD. Thank you, Ranking Member.

Senator BARRASSO. Thanks, Senator Carper.

Senator Ernst.

Senator ERNST. Thank you very much, Mr. Chair.

Thank you, Governor, for being here, and thanks for being a leader in this area. We really do need folks stepping up and discussing this, so thank you very much.

We do talk about, of course, delegating more authority to the States, and a lot of times people just have this knee-jerk reaction that because you are delegating more authority to the States, you are somehow weakening the law. I don't necessarily believe that is true. I think in this case it is a good idea.

Now, the draft legislation before us does elevate the role of the States. I think that is important. But it also allows the Secretaries of Interior or Commerce to overrule the States' recommendations. So, do you believe—and I think I have heard this—but do you believe that simply allowing States to make recommendations that can ultimately be overruled by the Federal Government amounts to a weaker Endangered Species Act?

Mr. MEAD. Thank you, Senator. I think it makes it stronger, and the reason I think it makes it stronger, the States aren't asking for veto power; the Secretary still has that power. If the States, in the estimation of the Secretary, are going the wrong direction, he or she, the Secretary, can say that is not the way we are going to go.

But Senator, if I am taking your question right, the role of the States, and I mean this respectfully to our good partners in Fish and Wildlife Services, shown by the chart there, they don't have as

many people, and frankly, the expertise lies in the States. It really does.

The sage-grouse effort, and I have heard people at the Interior say this, is one of the greatest conservation efforts ever, and with respect, it was led at the local level and the State level, started by my predecessor, Governor Freudenthal. If the State hadn't done that, we would not be where we are. Without the State and the States'—collectively—initiative on that, the Federal Government, Fish and Wildlife Service would not have been able to do that.

So, this increased role shouldn't be viewed as usurping any authority; it should be building a collaborative partnership that is going to be much more effective, and still the Secretary will retain that opportunity, as you said, Senator, to say, no, I don't think this is the right way to go. And the working draft has that mentioned many times; we want greater State participation, but if it is not working, in the Secretary's view, it is not going to happen.

Senator ERNST. Very good. Well, I do appreciate that.

I am going to point out a couple examples that I am familiar with. Our Ranking Member mentioned the piping plover. We actually have the piping plover in Iowa as well; it is part of its breeding territory up and down the Missouri River. I learned so much about the piping plover——

Senator CARPER. Could I just ask?

Senator ERNST. Yes, go ahead.

Senator CARPER. Do you mean the piping plover is two-timing Delaware?

Senator ERNST. It is. Actually, we have a much greater territory than Delaware, so it is.

But I learned so much about the piping plover and the pallid sturgeon in the Missouri River from the Missouri River floods of 2011. Just an example of where big Federal Government doesn't necessarily work very well with the actual landowners or people on the ground, during that flood event, we saw a lot of boats moving and down the Missouri River as it flooded.

The perception, whether it was correct or not, was that the Federal Government was more concerned about the pallid sturgeon and the piping plover than they were about the landowners and the homeowners whose homes were under water for 4 months during that flood event. So, the perception, whether it was correct or not, was that Federal Government was not communicating with local landowners.

Now, as we move forward, we have other examples. Now the water has receded, people are trying to get their lives back to normal, but now we see those fish habitats, the breeding areas for the piping plovers being put into place along the Missouri River without input from those local stakeholders. Again, the perception is that the Federal Government cares more about the endangered species than they actually about those that reside in the areas.

Some of the water has been redirected away from those breeding grounds and so forth, and it has caused erosion from some of the land where people live; they have homes along the river. So, there is a mistrust between the Federal Government and the folks along the Missouri River.

Do you believe that if there was collaboration with folks in the middle, from the State and local government, that that would help get rid of that misperception?

Mr. MEAD. In a word, absolutely. Even beyond that, if you want to have voluntary efforts for your private landowner, your farmer, your rancher, you have to have that trust involved in that. And I do mean this respectfully, if they hear the Federal Government is going to come in and have this plan, it is just not going to be as effective if it is more organically grown at the State level and the local level, and that is why that partnership I think is a real opportunity for species.

You mentioned sturgeon. One thing I have learned in this, we all become very centered on our own world. I have heard of sturgeon, but the piper plover, it is an education. There are a lot of species I have learned about.

But I think you are exactly right, Senator, to have that trust and to have that local involvement absolutely is critical. You brought up Mother Nature. For example, one of the things, people say States can't be trusted. Let's look at the polar bear, for example. That is listed because of climate change. The State isn't going to be able to do that. The long-eared bat, which I don't know if you have long-eared bats, but it is listed——

Senator ERNST. Small brown bat.

Mr. MEAD [continuing]. Because of a fungus. So, you know, those who say States can't be trusted because look at the polar bear, the long-eared bat, that is outside of the States' control and maybe the Federal control as well. But that State participation, the local participation is absolutely, I think, critical for better success in the Endangered Species Act.

Thank you, Senator.

Senator ERNST. I agree wholeheartedly. Thank you, Governor.

Senator BARRASSO. Thank you, Senator.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Governor, thank you for your testimony, and I commend the bipartisan process you used with respect to the Western Governors Association on your recommendations. Do you know whether the Western Governors Association Democratic Governors that supported your process, whether they have supported this draft bill?

Mr. MEAD. Senator, I don't know the answer to that. I am not disclosing private conversations, but some of the Democratic Governors I have talked to, they believe in the work; they believe in the draft; their fear, frankly, Senator, is that, in this process, that it will not go forward as we, the Western Governors or National Governors, envisioned. That is why, as a condition of some of the letters you have said and even the Western Governors' work, they have made clear we reserve the right to withdraw our help on this if it goes awry.

Senator VAN HOLLEN. No, I appreciate that. I haven't heard from any Democratic Governors who were part of the Western Governors Association about supporting this draft, not a one. I haven't seen a piece of paper. So, until I do, while I recognize they supported your process, I am going to assume, I have an open invitation to them, that they do not support the current draft.

Look, we all recognize there are things we can do in a bipartisan way to improve laws that are on the books. But in my view, you took the right approach getting everybody around the table. To my knowledge, we have not followed that approach in drafting this piece of legislation here.

And let me just give you one example. There are lots of provisions in this bill. There is a provision in this bill related to Federal employees. It requires that Governors and States give feedback on the performance of individual employees of the Fish and Wildlife Service.

Now, I recognize there are constant communications between the States and the Federal Government, but do you think it would be appropriate for you, for example, to be told that the Federal Government is going to weigh in on the performance of your State employees?

Mr. MEAD. No, I don't agree with that. But I do want to say this. I think that this process, and why I do support the working draft as it is consistent with Western Governors, is that it is a good start to a process.

And Senator, I would not make the assumption that Democratic Governors don't support the working draft. I would say that they would support provisions in the draft, but maybe not everything in there. So, to get started, what I am doing, what I think is best is getting Western Governors involved and National Governors involved.

Senator VAN HOLLEN. I appreciate that, but Governor, you just pointed out that you disagree with a particular provision in this draft, and I share your disagreement with that. There are obviously going to be honest disagreements sometimes between Fish and Wildlife employees and State employees, and I am not sure why would we want to give people that cudgel over certain Federal employees who are doing their job, some of whom, as you know, have gotten death threats for their work on endangered species.

My time, apparently, has run out. Thank you, Mr. Chairman.

Mr. MEAD. Thank you, Senator.

Senator BARRASSO. Thank you, Senator Van Hollen.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

Governor, thank you. I appreciate the hard work you are doing, and I know it is an effort that, in my experience, has a lot of bipartisan support. When I was attorney general of Alaska, where this issue is a huge issue, I co-chaired the Endangered Species Act Working Group with my Democratic co-chair, Gary King, who was the former attorney general of New Mexico.

And particularly the Western AGs, we saw a lot of common ground where we didn't think this should be a partisan issue at all, but how to best work on the recovery of listed species and employing the best science and giving the States a more prominent role. So, let me talk to that issue.

I know Senator Ernst talked about it, I know you believe it, but I would disagree a little bit. I think in terms of expertise, particularly the State of Alaska, we have thousands of State employees who are the top experts in the field probably in the world with re-

gard to science and expertise on endangered species, including the polar bear, I might add.

So, the role of the States, from your perspective, should be heightened. Why shouldn't it include a veto on decisions? And let me give you an example. I know there are issues of cross-boundaries, where the species are moving across boundaries. What if you happen to be in a State the size of a continent in some ways and there is no cross-boundary issue, like my State?

Mr. MEAD. Well, Senator, of course—I am sure you know this—you have never met a Governor who wouldn't like greater authority in all things, but I think that, as the working draft, you need to make sure the Secretary has that authority. And I appreciate the magnitude of Alaska and the challenges you have there, but oftentimes these are cross-State.

Senator SULLIVAN. Correct. And where I see that as an issue cross-State, I get it; one State shouldn't have a veto. I am asking, and maybe it is unique to my State, which, again, is so big, has so many species. We care about them way more than the Feds do, and keeping them healthy and sustainable.

But can you see an example where, if there isn't a cross-boundary challenge, like there are in lower 48 States, that the State could even have more authority, particularly when the State has as much knowledge, if not more knowledge, than the Feds?

Mr. MEAD. Senator, I appreciate what you are saying. I guess what I would tell you, perhaps, in the way of context is this came out of Western Governors. There were certainly some things that I wanted more.

Senator SULLIVAN. Sure.

Mr. MEAD. Others wanted less. I think if you start carving off a State, the State of Alaska, the State of Hawaii, the territories, that my goal is to get this moving forward, and I just worry about that hurting the process. But I do appreciate what you are saying, sir.

Senator SULLIVAN. Well, look, I appreciate the hard work, and again, bipartisan work.

Let me ask another issue that relates to expertise beyond the Federal Government. One that is particularly important, again, in Alaska, but it is in the draft bill, so I think it should have bipartisan support, the whole issue of traditional knowledge.

In my State, that typically means Alaska native communities that have been harvesting and watching the species for literally thousands and thousands of years. You might know the example of the bowhead whale, where western scientists had a number that was very, very different from the whaling captains of the Inupiat communities on the North Slope, and it ended up that the whaling captains and the traditional knowledge ended up being right on the numbers, way more than the western scientists.

So, I am glad to see the issue of traditional knowledge being highlighted in this. Do you care to speak on that topic? I think it is an important one that doesn't get a lot of recognition. There are a lot of people who know a lot about species who don't necessarily have a Ph.D. in biology from American University.

Mr. MEAD. I think it is an important component. The draft bill, of course, says there is going to be scientific or commercially best data available. And I am not familiar with the example you gave,

but it rings true to me in that, as we were working on, for example, the gray wolf, I would have local ranchers say I have three of them in my back pasture, and your experts show that there are none in this part of the State.

Senator SULLIVAN. Right.

Mr. MEAD. So, I think more information and the more credible information you can have is certainly helpful.

Senator SULLIVAN. I know my time is expiring here, but if I can ask one final question, Mr. Chairman.

There has been an issue where Federal agencies, in my view, have abused their statutory authority by having examples of listings that stretch the definition of the foreseeable future in making listing decisions. Let me give you an example.

The bearded seal was listed as threatened based on projections of what was going to happen 100 years in the future. Nobody knows what is going to happen 100 years in the future. Yet, we have more and more Federal agencies that are making claims that we are going to list this species because, 100 years from now, we believe it is going to be threatened.

Now, mostly that relates to climate change, and certainly climate change is happening in Alaska, there is no doubt about that, but to be able to say, for a Federal agency, therefore, we are going to list a species that is healthy now, but we think it is going to be unhealthy 100 years from now, I just think that is an abuse of authority, and I am certainly hopeful that this legislation can rein in that kind of decisionmaking that doesn't have any statutory basis. It happens in my State all the time.

Do you care to comment on that, or is that an issue that you guys are trying to take——

Mr. MEAD. Thank you, Senator. We struggled with that at Western Governors for the very reason that you said, and not only because you add foreseeable future to the issue of climate change, and you see climate change in Alaska, you add foreseeable future and climate change, and then you are going to list a species.

What do you do about it? What local work can be done? What State work can be done? What Federal work can be done? You have to have an opportunity to say we are concerned about this, so here are the steps you can take. And whether it is climate change or whether it is fungus in long-eared bat, if you just say it is listed based upon our view of 100-year foreseeable future, how do you motivate the local rancher or the fisherman or the concerned environmentalist to have a voluntary effort to do something about it? So, I do think we have to be careful on that, and that is something that certainly the Western Governors and the staffs are saying we have to be careful with that term, foreseeable future.

Senator SULLIVAN. So, there is bipartisan concern on that issue?

Mr. MEAD. Lots of bipartisan discussion on that. I don't know that we came with a resolution that is helpful, but I think that certainly is part of the concern that was discussed.

Senator SULLIVAN. All right, thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Sullivan.

Before heading to Senator Cardin, I want to enter into the record a letter from the Western Governors Association of support and

going title by title of the bill. And this letter of support is signed by Governor of Hawaii, a Democrat, Vice Chair of the Western Governors Association, Governor Ige. So, there has been a submission by a Democrat Senator. There was a question earlier asked.

Additionally, I have a number of letters that over 100 stakeholders have written in support of the draft Endangered Species Act Amendments of 2018 and a bipartisan process to improve the ESA. They represent interests in every State, including State wildlife agencies, local governments, sportsmen and conservation groups, energy, forestry, agriculture, livestock, and water groups.

I ask unanimous consent to submit these supportive letters to the record as well.

Without objection, they are submitted.

[The referenced information follows:]

DENNIS DAUGAARD
GOVERNOR OF SOUTH DAKOTA
CHAIR

DAVID IGE
GOVERNOR OF HAWAII
VICE CHAIR

JAMES D. OGSBURY
EXECUTIVE DIRECTOR

June 18, 2018

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Western Governors' Association (WGA), we wish to commend the Committee for its leadership in advancing S. 2800, America's Water Infrastructure Act of 2018. We strongly support Congressional action on this legislation, which is so vital to our region. WGA Policy Resolution 2015-08, Water Resource Management in the West, calls upon Congress to pass water resources development legislation on a regular schedule in order to provide states and local governments with certainty in meeting water infrastructure needs. For this reason, we applaud Congress's renewed commitment to develop and pass water resources development legislation every two years.

Water is a precious resource everywhere, but especially in the arid West, where many communities anticipate challenges in meeting future water demands. Current water resources are fully allocated in many basins across the West, and increased demand from population growth, economic development, and extreme weather and fire events places added stress on limited supplies. Whether for purposes of drought mitigation, flood control or supply allocation, proper water management is essential. WGA believes that S. 2800 addresses several water management issues that are critical to western states and that its enactment would provide substantial benefits to western water management practices.

Strong state, regional and national economies require reliable deliveries of good-quality water, which in turn depend on adequate infrastructure for water and wastewater. Investments in water infrastructure also provide jobs and a foundation for long-term economic growth in communities throughout the West. Repairs to aging infrastructure are costly and have often been unnecessarily delayed.

Western Governors recognize the essential role of partnership with federal agencies in western water management and hope to continue the tradition of collaboration between the states and federal agencies. We ask that you consider addition of the following language to address several issues of special concern to the West, where water management is unique because of legal structures and hydrology:

(303) 623-9378
1600 Broadway
Suite 1700
Denver, CO 80202

WESTGOV.ORG

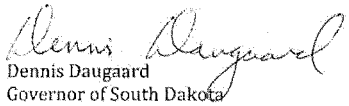
- **U.S. Army Corps of Engineers' Assertion of Authority over Surplus Water, Including Natural Flows:** Western Governors ask Congress to continue to recognize and protect states' primary authority over the management and allocation of water resources within their boundaries, including water stored at U.S. Army Corps of Engineers reservoirs. In particular, WGA requests that the legislation expressly prohibit the Corps from asserting jurisdiction over natural flows of impounded rivers when defining and managing "surplus waters" stored within Corps projects.

- **Aquatic Invasive Species:** Western Governors urge Congress to provide federal agencies with the authorities necessary to effectively combat aquatic invasive species in the West, including invasive mussels. Senator Michael Bennet highlighted these issues in a letter to the Committee dated February 26, 2018. In the letter, Senator Bennet requests that the Committee consider, "authorizing the BOR, NPS, and USFS to participate and cooperate with aquatic nuisance species prevention efforts, so that we keep our nation's headwaters free of invasive mussels that can harm our infrastructure, environment, and economy." Western Governors appreciate Senator Bennet's attention to this important issue, and we encourage you to include these recommendations in the legislation.

- **Water Transfers Rule:** Western Governors support the legislative codification of EPA's Water Transfers Rule, 40 C.F.R. § 122.3(i), which has historically exempted certain transfers of waters from permitting under the Clean Water Act's National Pollutant Discharge Elimination System. The Rule is critical to the social and economic health of the arid West, which must rely on thousands of intrastate and regional transfers to move billions of gallons of water to satisfy domestic, agricultural and industrial needs.

On behalf of WGA, thank you again for your leadership in the development of this bipartisan legislation. We hope that you will consider Western Governors as a resource on this and other water-related matters.

Sincerely,



Dennis Daugaard
Governor of South Dakota
Chair, WGA

David Ige
Governor of Hawai'i
Vice Chair, WGA

June 4, 2018

Honorable John Barrasso, MD
Senate Committee on Environment and Public Works
410 Dirksen Office Building
Washington, DC 20510

Dear Chairman Barrasso,
I am writing to strongly support your proposed legislation to modernize the Endangered Species Act (hereafter ESA), The Endangered Species Act Amendments of 2018.

I began my career in the office of the Assistant Secretary for Fish, Wildlife, and Parks, Department of Interior in 1973, so I was in the office that drafted the 1973 Endangered Species Act and was involved on a daily basis over the following 3 years in the early implementation of measures for the US Fish and Wildlife Services' (FWS) Endangered Species program.

From 1977-1980 I worked as the assistant to the Chief of USFWS Office of Endangered Species and was intimately involved in many species recovery efforts, among them: peregrine falcon, whooping crane, bald eagle, California condor, and grizzly bear. In each of these cases, states and outside government organizations were critical to the success of nascent recovery efforts.

During my tenure as Executive Director of the National Fish and Wildlife Foundation, I funded millions of dollars of grants for both pre-listing and recovery projects, almost all of which were successful.

My foundation, Land Conservation Assistance Network, LandCAN, hosts an endangered species website, the Habitat Conservation Assistance Network (http://www.habitatcan.org/), which we built to assist with the recovery of both the lesser prairie chicken and the greater sage grouse, and we will be adding monarch butterflies to the site in 2018.

I have worked for the past three years to assist the Western Governors Association (WGA) in their efforts to formalize recommendations to modernize ESA reform.

Title 1- Enhancing the Federal-State Partnership; I strongly support these provisions which are two decades overdue. When the 1973 ESA was written, Section 6 establishing cooperative programs with states was almost an afterthought, added to entice states to get involved in endangered species recovery. In the early 1970s, no state had a formalized Endangered Species program; today virtually all states do. States today have more and better resources to commit to endangered species recovery than USFWS. They have more biologists, better data and inventory capacity, better relations with local landowners and better outreach to potential corporate partners. Section 6 is arguably the most

successful provision of the 1973 ESA legislation because it has taken the commitment for species recovery to a nationally scalable basis. Specifically, I support Sec. 108. Award System for State agencies. During my tenure at NFWF (1986-1999), we annually made several Chuck Yeager (General Yeager was one of NFWF's original board members) awards for outstanding performance by agency professionals at both the federal and state levels. Many of our best awardees were state officials engaged in endangered species conservation.

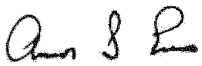
Title 11-Encouraging Conservation Activities Through Regulatory Certainty.Sec.203. I strongly support Sec 203. Voluntary wildlife conservation agreements. Nationwide 80% of endangered species habitat is found on private lands. It is imperative for the Secretary to "establish procedures for developing and entering into voluntary wildlife conservation agreements." In 1993 I gave a NFWF grant to help Texas Parks and Wildlife establish a Private Land Conservation Program. Today this program has enrolled 32 million acres in conservation agreements. Later in the 1990s, I gave grants to develop the California Rangeland Trust, Colorado Cattleman's Agricultural Land Trust, and Texas Agricultural Land Trust. Today these three land trusts, which work voluntarily with farmers and ranchers, are the three largest land trusts in acreage conserved in their respective states. I also gave multiple grants to the Malpais Borderland Group in Arizona/New Mexico, a group of conservation-minded, pro-active ranchers who have done an exemplary job with endangered species conservation for two decades. The most extensive distribution of endangered species lies in Southeastern states and Texas where habitat is overwhelmingly privately owned. We need much greater emphasis and execution of voluntary conservation agreements.

Sec .204. I strongly support, particularly the language prohibiting the Secretary from precluding a party to a CCAA from receiving Federal funds from any other conservation programs. Secretary Babbitt undermined Pacific salmon programs for decades by insisting that Bureau of Reclamation funds not be pooled with additional federal funding sources.

Title VI-Reauthorization. I strongly urge that a significantly increased funding authorization for annual appropriations be provided to enhance Sec 6 state cooperative endangered species programs.

The ESA has been both a national and international success, but after 45 years it is time to modernize the act and build upon its most successful feature which demonstratively has been implementing cooperative programs with states and voluntary participants in conservation. I applaud Senator Barrasso's efforts to modernize ESA.

Respectfully,



Amos S. Eno President / Executive Director LandCAN

Protecting Water for Western Irrigated Agriculture
P.O. Box 216 Klamath Falls, Oregon 97601
www.familyfarmalliance.org

June 6, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Family Farm Alliance (Alliance), I write in support of the proposed "Endangered Species Act Amendments of 2018." This bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. The Alliance great appreciates the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

The ESA was a well-intended and laudable effort by Congress and then-President Richard Nixon to protect "charismatic mega fauna" like grizzly bears, the bald eagle, and the blue whale. The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local

interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

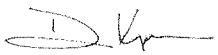
Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, a series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place. Representatives from our organization played a prominent public role in several of the 2015 WGA public meetings and webinars and participated in every WGA workshop. As part of the workshop process, we prepared a white paper – derived from earlier reports authored by the Alliance – that outlines our ideas to encourage voluntary conservation efforts to advance the goals of the ESA.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty, including provisions that address our oft-voiced complaint regarding "random acts of conservation." Section 201 of the proposed bill establishes the Sense of Congress that local government, landowners, and other stakeholders should receive credit for enrolling in, and performing obligations under, conservation agreements, as well as investing in and carrying out conservation activities generally. We agree that federal agencies should consider these actions in making determinations under the ESA. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, the Family Farm Alliance strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at dankeppen@charter.net if you have further questions.

Sincerely,



Dan Keppen
Executive Director

GREGORY M. PENSABENE
VICE PRESIDENT, GOVERNMENT RELATIONS

June 8, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: *The Endangered Species Act Amendments of 2018*

Dear Chairman Barrasso:

On behalf of Anadarko Petroleum Corporation ("Anadarko"), one the world's largest independent oil and natural gas exploration and production companies, I wish to express our support of the proposed legislation, *The Endangered Species Act Amendments of 2018*. Thank you for your continued leadership that supports common sense solutions to help recover more species while recognizing the economic benefits of environmentally responsible energy development.

Anadarko has been engaged with this issue since 2015 through the Western Governors Association ("WGA") and Wyoming Governor Matt Mead's Species Conservation and Endangered Species Act ("ESA") Initiative. This important effort sought to create a mechanism for states and stakeholders to share best practices in species management, promote the role of states in species conservation, and explore options for improving the ESA. The bipartisan recommendations that grew organically out of this collaborative process are embodied in this legislation, which builds on the tremendous engagement conducted through the WGA effort. The legislation as currently drafted will help recover imperiled wildlife and enable agency resources to be maximized to address wildlife issues across the United States.

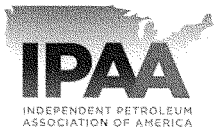
The ESA was enacted in 1973, followed only by amendments in 1978 and 1979. The proposed legislation addresses many overdue needs for implementing and protecting biodiversity on U.S. soil. It will further advance the original intent of halting the trend toward species extinction. It also captures the benefits from over 40 years of technological advances, scientific research and experience and ensures policies, such as transparency and regulatory certainty, of the twenty-first century are secured.

We look forward to working with the committee to advance this important legislation and its critical improvements to modernize the ESA.

Sincerely,

Greg Pensabene
Vice President, Government Relations

ANADARKO PETROLEUM CORPORATION
800 CONNECTICUT AVENUE, NW, SUITE 700 • WASHINGTON, DC 20006
MAIN: 202 861-8064 • FAX: 202 861-8065



June 8, 2018

The Honorable John Barrasso, MD
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Independent Petroleum Association of America (IPAA) writes to express its support for the Endangered Species Act Amendments of 2018. IPAA believes both exploration and development of America's oil and natural gas resources and conservation can coexist through reasonable and balanced wildlife policy. Your legislation would aid in the modernization of the 1973 Endangered Species Act to benefit not only species recovery, but also the regulated community.

IPAA represents thousands of independent oil and gas explorers and producers that want to ensure species and their ecosystems are preserved for future generations. IPAA's members are active participants in federal, state, and private efforts to protect and conserve endangered and threatened species. More specifically, IPAA's members have enrolled millions of acers in conservation plans and committed tens of millions of dollars to fund habitat conservation and restoration programs.

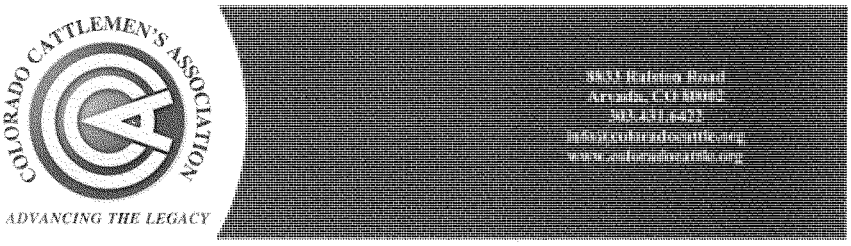
The Endangered Species Act Amendments of 2018 will allow agency resources to better focus efforts on the original congressional intent of the ESA, to recover imperiled wildlife. IPAA believes the legislation is rightly focused on some key areas of improvement including: improving transparency and the federal state partnership, enhancing regulatory certainty, and optimizing and encouraging conservation.

Thank you for introducing this important legislation and IPAA looks forward to working with you as the bill moves through the legislative process.

Sincerely,

Barry Russell
President & CEO

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA • 1201 15TH STREET, NW • SUITE 300 • WASHINGTON, DC 20005
202-857-4722 • FAX 202-857-4799 • WWW.IPAA.ORG



[redacted]

June 10, 2018

The Honorable John Barrasso, MD/Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

On behalf of the Colorado Cattlemen's Association (CCA), representing landowners and beef producers throughout Colorado, our organization appreciates the Environment and Public Works (EPW) Committee's recognition of need in modernizing the 1973 Endangered Species Act (ESA). States, organizations and landowners are very interested in an ESA that addresses species concerns, creates regulatory certainty and is ultimately accountable. To this end, the CCA fully supports the Endangered Species Act Amendments of 2018.

CCA was part of the diverse stakeholder process initiated by Governor Mead that focused on a mechanism for states and stakeholders in addressing species management, promoting the role of states in conservation, and exploring options for improving the efficacy of the ESA. It was always envisioned that legislation would be required to achieve these objectives. The ESA Amendments' Act is representative of this effort's outcomes which were carefully considered and developed into a framework to facilitate a more functional and effective ESA.

In closing, every person and species that encounters the ESA deserves better outcomes than the act has delivered throughout its tenure. ESA efforts must be outcome-based, have regulatory certainty, and ultimately bring people together to achieve enchantments. The current law does not deliver on any of these points. CCA supports the Senate EPW Committee's Endangered Species Act Amendments of 2018 and looks forward to fully engaging in its advancement through Congress. Thank you for your leadership.

Sincerely,

Todd Inglee
President

June 12, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Safari Club International Comments in Support of the "Endangered Species Act Amendments of 2018."

Dear Chairman Barrasso;

Safari Club International (Safari Club) wishes to express its support for the bill entitled the "Endangered Species Act Amendments of 2018" (ESA Amendments of 2018). This very comprehensive piece of legislation attempts to address many of the failings of the existing Endangered Species Act. In particular, Safari Club agrees with the bill's provisions that would: (1) increase the role of states in ESA decision-making; (2) facilitate the participation of states and other affected parties in ESA litigation, and more specifically in settlement discussions over the resolution of these cases; (3) prohibit litigation over species delistings until the completion of the five-year post-delisting monitoring period; and (4) provide regulatory status for conservation agreements for the purpose of listing and delisting decisions.

Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 48,000 members worldwide. Safari Club has participated in many of the lawsuits that have demonstrated the need for the changes included in the ESA Amendments of 2018. For example, Safari Club helped the U.S. Fish and Wildlife Service (FWS) defend the delistings of the Northern Rocky Mountain Distinct Population Segment of gray wolves, Wyoming's portion of the wolf population and the Western Great Lakes Distinct Population Segment of gray wolves. Safari Club is currently participating in litigation that addresses the role of the state of New Mexico in the conservation and management of the Mexican wolf experimental population. Those cases show that the ESA suffers from flaws that undervalue if not discourage the role of states in species recovery. The ESA allows states and affected parties to be excluded from negotiations intended to resolve listing and delisting litigation, facilitates challenges to delistings, and prolongs unnecessary listings of recovered populations. The ESA overly complicates the analysis of how conservation agreements contribute to species recovery and long-term conservation. ESA Amendments of 2018 provide an important foundation for improvements to the ESA to address these problems.

Safari Club International - Washington DC Headquarters
501 2nd Street, NE, Washington, DC 20002 • Phone 202 543 8733 • Fax 202 543 1205 • www.safariclub.org

The Role of States in Decisions to List, Delist, Recover Experimental Populations, Etc.

One of the most troubling aspects of the litigation history of ESA delistings is the inadequacy of the ESA's current recognition of states' invaluable, if not essential, role in species recovery and conservation. For example, a D.C. federal district court ruling invalidated a delisting of the recovered Western Great Lakes (WGL) population of gray wolves, despite the fact that the continued listing would serve as a disincentive to states to participate in species recovery. The ESA, as it exists now, simply did not give the district court an unequivocal explanation of the crucial role played by states in species recovery. Even though a Court of Appeals reversed that district court's error, the WGL wolves remain on the endangered species list and the ESA continues to be missing an indelible message about the role of states in ESA decision-making.

Safari Club supports the ESA Amendments of 2018's recognition that state input must be given enhanced status. Safari Club supports the bill's acknowledgement that comments offered by states should "be afforded greater weight by the Secretary than a comment received from any other individual." Section 101(c)(1)(A). Safari Club similarly supports the bill's requirement that the Secretary consider the state's input at a higher standard than to "the maximum extent practicable." Section 101(c)(1)(B). In addition, the bill properly requires the Secretary, upon receiving a petition concerning the listing status of a species to "take into consideration and give great weight to" any State comments submitted in response.

The ESA Amendments of 2018 similarly afford states enhanced status in litigation involving listing decisions. While the bill does not authorize automatic party status for a state in the settlement of lawsuits involving ESA-based decision-making, it does require that the Secretary must "provide notice to, consult with and otherwise take appropriate actions to include, each impacted State" when the Secretary prepares to or enters into a settlement agreement in the case. Section 107(3).

Delay of Litigation Until After the Post-Delisting Monitoring Period

One of the most practical and valuable aspects of the bill is the prohibition against litigation challenges to delisting decisions until after the five-year monitoring period required following a species delisting. Section 102. Under the existing law, litigants can file suit immediately after the FWS finalizes its decision. This requires a court, when reviewing that decision, to evaluate the validity of the delisting before the FWS's judgment can be proven by the success or failure of the affected states' conservation efforts following the removal of federal protections. Contrary to the forecasts of those who think federal protection should be a permanent status, states have proven to be excellent custodians of delisted populations. For example, the post-delisting history of the Northern Rocky Mountain (including Wyoming's) wolf population demonstrates that Idaho, Montana and Wyoming have successfully managed their delisted wolves. The lack of federal protection has not placed the wolves in jeopardy. By mandating a stay of litigation until the end of the post-delisting monitoring period, the ESA Amendments of 2018 prevent litigation and premature restoration of federal protections from interfering with the demonstration of the accuracy and efficacy of states' abilities to manage and conserve post-delisted species.

Establishment of Regulatory Status for Conservation Agreements

The ESA does not clearly identify or define the phrase "adequate regulatory mechanism," yet the law conditions listings and delistings on the presence of such mechanisms. Conservation agreements are an extremely effective mechanism used by states and other affected parties to prevent the need for listings and conserve delisted species. Because the ESA does not expressly recognize conservation agreements to qualify as adequate regulatory mechanisms, the question of their status to fulfill listing criteria requirements has been the subject of multiple lawsuits. The ESA Amendments of 2018 put an end to the oft-litigated question and allow the states, federal agencies and others to focus on creating effective agreements, rather than defending them in court. Section 202.

Safari Club appreciates the efforts of all those who participated in the work to develop the ESA Amendments of 2018. The bill is a major achievement in that it represents the agreements of many parties with divergent interests and motivations. Safari Club is pleased that the bill incorporates components that, if passed, will make some clear improvements in the way listing decisions will be made and carried out in the future.

If you have any questions or need any further input, please contact Anna Seidman, Director of Legal Advocacy Resources and International Affairs at aseidman@safariclub.org.

Sincerely,
Paul Babaz

President,
Safari Club International

cc:
Matthew Leggett: matt_leggett@epw.senate.gov
Andrew Harding: andy_harding@epw.senate.gov.

Wyoming Department of Agriculture

Matthew H. Mead, *Governor*
Doug Miyamoto, *Director*
2219 Carey Ave. • Cheyenne, WY 82002
Phone: (307) 777-7321 • Fax: (307) 777-6593
Web: agriculture.wy.gov • Email: wda1@wyo.gov

The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

June 12, 2018

The Honorable John Barrasso, MD/Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso,

The Wyoming Department of Agriculture (WDA) is pleased to review the "Endangered Species Act Amendments of 2018." Your efforts to modernize the Endangered Species Act (ESA) are commendable and timely. WDA works closely with Wyoming agricultural producers and landowners across the state. We recognize their concerns regarding the negative impacts that federally listed wildlife and plant species can have on not only private lands, but also county, state, and federal lands.

ESA reform is long overdue and we fully support Congress' proposed amendments to the ESA. The misuse of the ESA since the law was passed in 1973 has grown exponentially, including mass listing of hundreds of species, litigating on US Fish and Wildlife Service process, and the inability to clearly identify when species no longer warrant listing. We support the opportunity for State-led conservation activities that help preclude listing species and to reduce the number of species the USFWS must manage.

The draft amendments will greatly increase cooperation and communication with Governors and State Agencies allowing states to direct species conservation efforts within their states. WDA appreciates this cooperative and transparent approach. In addition, allowing states to participate on Recovery Teams and the ability to develop Recovery Plans provides the states the opportunity to lead recovery planning and implementation efforts, and fully engage in Threatened and Endangered Species recovery. We also support the efforts to increase accountability and incentives for positive efforts, as well as streamlining process.

The state of Wyoming has two examples of process streamlining we would encourage at the national level; 1) Statewide 10(j) and Safe Harbor Agreement for Black Footed Ferrets and 2) Greater-Sage Grouse Umbrella Candidate Conservation Agreement with Assurances for Ranch Management. We believe the USFWS could utilize these as a model to increase participation in programs, while addressing the regulatory mechanisms in place when proposed listings occur.

WDA genuinely appreciates your efforts in reforming the ESA and fully support any changes to increase a State's role in the ESA process and provides the utmost flexibility in delisting or downlisting threatened and endangered species. We appreciate the opportunity to assist you with the amendments provided and we are available to you for any other informational or policy needs you may have.

Sincerely,

Stacia Berry for

Doug Miyamoto
Director

DM/jw

Equal Opportunity in Employment and Services

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June 12, 2018

Honorable John Barrosso, Chairman
Committee on Environmental and Public Works
United States Senate
SD 410 Dirksen Senate Office Building
Washington, D.C. 201510-6175

Dear Chairman Barrosso,

I am pleased to have had an opportunity to review the Committee draft of legislation titled "Endangered Species Act Amendments of 2018".

As a former government official at state and federal levels, conservationist, and environmental attorney, I have been attentive to implementation of the Endangered Species Act (ESA) since its inception in 1973. From this long perspective, I can appreciate that the Committee and its staff, particularly Matt Leggett and Andy Harding, have worked diligently to address important issues which—after 45 years of experience with the ESA—now command Congressional attention. Circumstances have changed considerably over that period, notably foundational principles of conservation biology and wildlife management. At the same time, we have experienced a growth in capacity of state wildlife agencies and their partners in the private sector to manage indigenous wildlife resources. Despite periodic amendments, and the adoption of important administrative reforms, some provisions of the Act do not yet adequately reflect these changed circumstances.

In authorizing a greater role for states—as originally intended by section 6 of the ESA—the Committee draft follows closely the recommendations of the Western Governors Association Species Conservation and Endangered Species Act Initiative. As you know, the WGA initiative has developed a broad consensus around the principal themes of the Committee draft—enhanced cooperation with the states, heightened recognition of opportunities for voluntary conservation by the private sector, including assurances of regulatory certainty, and increased accountability in federal administration of the ESA. In its hearings to date, the Committee has heard from participants in innovative state-led initiatives to protect species at risk and their habitats. Similarly, private land owners, on whose property can be found a large majority of threatened and endangered species, have also generated an impressive portfolio of voluntary conservation initiatives.

During the course of the Committee's further deliberations, it will no doubt be possible to refine this draft by incorporating the further suggestions of landowners, state officials, NGOs and federal administrators who share your commitment to a truly workable ESA. And while federal appropriations for these purposes do not fall within the purview of your Committee, it must be

remembered that adequate funding from multiple sources will be needed to implement many of these new initiatives.

Please be assured that I stand ready to assist the Committee and its staff in any way possible as you move toward enactment of this draft bill. While I do not speak here for our Firm or its clients, I am confident that many in the public, private and non-profit sectors will also express their appreciation of your leadership on this important issue.

Sincerely,

Douglas R. Wheeler
Senior Counsel

douglas@hoganlovells.com
D +1 202 637 5556

June 13, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

Thank you for your leadership and commitment in introducing the Endangered Species Act Amendments of 2018 to get this critical legislation introduced allowing states to take a more formal, active and cooperative role in all aspects of ESA implementation. I would like to extend the support of the Arizona Game and Fish Department (Department) as Arizona's state wildlife management authority for this important legislation that will bring the Endangered Species Act (ESA) in line with Congress' original intent.

State wildlife agencies have come a long way since the enactment of the ESA in 1973, and its last amendment and authorization in 1988. State agencies have grown from early implementation and now have enhanced staff, greater expertise, improved habitat management techniques, better science, stronger relationships with public and private land managers and now the political support to realize these authorities such as under Section 6.

Wildlife action plans have allowed states to identify species of greatest conservation need and outlining key actions needed to conserve them. These changes will provide states with more flexibility and allow the ESA to become less of a regulatory tool and establish a more effective pathway to conservation.

In Arizona, following the 1969 designation of Apache Trout as endangered, the Department joined with the White Mountain Apache Tribe, US Fish and Wildlife Service and USDA Forest Service form the Apache Trout Recovery Team. Early conservation work and the successful efforts of the recovery team led to the downlisting of Apache trout in 1975 from endangered to threatened. Simultaneously, a special rule under the Endangered Species Act was adopted, allowing limited fishing of pure Apache trout in specific areas, bringing valuable angler support for the conservation of this species. To date, no fish species has been successfully recovered and removed from the endangered species list. After decades of cooperative protection and restoration efforts by the Apache Trout Recovery Team; anglers; and non-profit organizations, Apache Trout are fast approaching the recovery goal of 30 self-sustaining populations in their historic range.

azgfd.gov | 602.942.3000
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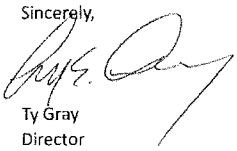
GOVERNOR DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN, JAMES R. AMMONS YUMA | JAMES S. ZIELER, ST. JOHNS | ERIC S. SPARKS, TUCSON
KURT R. DAVIS PHOENIX | LELAND S. 'BILL' BRAKE, ELGIN DIRECTOR: TY E. GRAY DEPUTY DIRECTOR: TOM P. FINLEY

The Endangered Species Act Amendments of 2018 has addressed the key provisions and concerns of the Department and I am confident this legislation will allow all state wildlife agencies to better undertake conservation activities with our local and federal partners that will prevent species listings, help recover listed species and allocate the resources needed to save threatened and endangered species. The Department stands ready to provide any assistance your office may need to ensure its passage.

Sincerely,



Ty Gray
Director

Holsinger Law, LLC
lands, wildlife and water law

June 13, 2018

The Honorable John Barrasso, M.D., Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Sent via U.S. First Class Mail

RE: Endangered Species Act Amendments of 2018

Dear Senator Barrasso:

Thank you for the opportunity to review the Endangered Species Act Amendments of 2018 ("Amendments"). The Endangered Species Act ("ESA") is long overdue for amendment. In fact, the last time the ESA was substantively changed, the Soviet Union was a superpower. To date, the regulatory burdens of the ESA have been severe while its successes have been sparse. ESA implementation has been wrought with problems. Various listing decisions have not only proven a clear lack of coordination with state and local governments, but they have also been plagued by a failure to designate recovery goals within set time frames, a failure to economically incentivize private conservation, and burdensome sue-and-settle litigation, among other issues. I commend your hard work and close adherence to policies adopted by the Western Governors Association. I heartily endorse this legislation.

I. Comments and Recommendations

a. State and Local Involvement; Judicial Review

Rather than authorizing that the states may have an increased role in recovery planning alone, I urge the Committee to consider delegating ESA authority entirely to the states. Thanks to the states' wealth of readily available local mapping, data, and resources, the states are the nation's wildlife experts and as such are better suited for wildlife conservation than the federal government. In addition to cooperating and consulting with the states, I urge the Committee to invite the participation of local governments wherever practicable.

Please ensure that *all* decisions by the Secretary of the Interior ("Secretary")—and not just listing decisions initiated at the Secretary's discretion—take into account important state and local information.

Finally, while I appreciate the modest limits on judicial review in this bill, I urge the Committee to address this issue more thoroughly.

Kent Holsinger
Alyson Meyer Gould
Nicholas Rising

Jack Silver, Of Counsel
Terry Jo Epstein, Of Counsel

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Holsinger Law, LLC

b. Curbing Litigation

Thank you for the presumption in the proposed legislation that states and local governments have standing in ESA litigation. It is unconscionable that some judges have refused to allow state and local governments to participate in these cases. In light of this, I do appreciate the provisions to notify the governors and state agencies upon receipt of petitions to list the species within their borders.

Nonetheless, while state involvement and settlements in ESA litigation is admirable, please work to eliminate the perverse incentives to litigate. As I discussed in congressional testimony last year, sue-and-settle litigation is staggeringly expensive and a burden on the taxpayers.

In light of this, I also greatly appreciate the push to quantify litigation expenses. In addition to the requirement that federal agencies account for attorney fees paid, I also urge the Committee to include agency time and resources, Department of Justice time and resources, and fees and costs awarded to litigants.

c. Improving Conservation Mechanisms

Thank you for recognizing that conservation agreements should be considered regulatory mechanisms. Strengthening incentives for candidate conservation agreements, as proposed, is also sorely needed.

Amendments to Section 10(j) of the ESA regarding experimental populations are likewise excellent and long-overdue.

d. Transparency and Best Available Science

As to the requirement for concurrence prior to publishing state and local information, I have concerns this condition may dissuade the Secretary from considering and relying upon such important information. The Secretary should be encouraged to divulge more, rather than less, information. This information can always be redacted or handled as sensitive. However it must be reproducible.

Rather than conducting studies on determinations to list, please consider directing the Secretary to consider population fluctuations due not only to disease, predation and invasive species, but also to weather patterns and hunter harvest.

II. Additional Considerations

a. Need to Involve State and Local Governments and to Incorporate State and Local Input

I commend the Committee for addressing state and local input in this legislation. While Section 4(b)(1)(A) requires the Secretary to take into account efforts by a state or its political subdivision to protect species or its habitat, as well as predator control, ESA listing decisions are frequently made without full cooperation of state and local governmental entities. As a result, listing decisions often fail to take into account the best sources of information on the species.

b. Best Available Science Required

Amendments to the ESA must ensure the agencies truly utilize the best available science. Pursuant to Section 4(b)(1)(A) of the ESA, "The Secretary shall make determinations … solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species…." A determination must be based on proven data—not conjecture. Yet the very definition of best available science has come under scrutiny in several recent cases due to the increasing use of speculative long-term climate change modeling.

The listing decision on greater sage-grouse provides another example. There, a single report, the U.S. Geological Society Monograph Report, was cited nearly 300 times. Unfortunately, the Monograph is highly flawed and fails basic standards of quality, objectivity and integrity.

III. Conclusion

The Amendments make great improvements to the ESA. The Amendments mark an admirable first step in advancing on-the-ground conservation efforts in a way that benefits species, communities, and landowners.

Sincerely,

HOLSINGER LAW, LLC

Kent Holsinger, Manager

cc: Andrew C. Harding, Majority Counsel, Senate Committee on Environment and Public Works, *via email to* Andrew_Harding@epw.senate.gov
Matt Leggett, Chief Counsel, Senate Committee on Environment and Public Works, *via email to* matt_leggett@epw.senate.gov

WILDLIFE CONSERVATION COMMISSION

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OKLAHOMA
DEPARTMENT OF WILDLIFE CONSERVATION
P.O. Box 53465 Oklahoma City, OK 73152 PH. (405) 521-3851

June 14, 2018

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act Amendments 2018 discussion draft legislation

Dear Chairman Barrasso:

Thank you for the opportunity to engage and offer my support for your important efforts to improve the Endangered Species Act (ESA) via your proposed 2018 amendments. While there undoubtedly have been some successes under the existing ESA, reform is long overdue, and legislation such as this is vital to ensuring conservation of species is more collaborative, efficient and recovery-focused.

Many before you have been tempted to "gut" or otherwise completely overhaul the ESA in one fell swoop. I commend you on this more measured approach that focuses on a few critical improvements that stem from years of experience – oftentimes frustration – in attempting to do what is best for at-risk species. Chief among the improvements, and in my view the most meaningful reform from a wildlife recovery perspective, is your proposal to ensure State wildlife agencies are more firmly ensconced in the ESA process.

Like most other State wildlife agencies, the Oklahoma Department of Wildlife Conservation (ODWC) has a public trust responsibility to manage our citizens' fish and wildlife resources. Accordingly, I deeply appreciate the opportunity afforded by your draft legislation for States to play a much more integral role in listing, delisting and species recovery. Indeed, it is important for us to be viewed not just as partners with the Federal government, but as leaders in species management and the recovery process. Giving State wildlife agencies greater weight in ESA decisions will make the entire process more productive and successful at conserving at-risk species. I am equally encouraged that this bill stops short of saddling the States with unfunded mandates, thus recognizing that we are often constrained by lack of adequate funding and resources for species of greatest conservation need.

ODWC's core belief is that fish and wildlife should be managed to ensure that wildlife populations will be sustained for future Oklahomans – a goal we ultimately share with the ESA. I am encouraged to see legislation that strives for species recovery through scientific data, cooperation, transparency, proactive conservation, and species monitoring. This type of focus on what is best for a species, rather than on process or procedure, is essential for properly managing species recovery and achieving the stabilization that ultimately leads to downlisting or delisting a species.

The Oklahoma Department of Wildlife Conservation is the state agency responsible for managing fish and wildlife. The Wildlife Department receives no general tax appropriations and is supported by hunting and fishing license fees and federal excise taxes on hunting and fishing equipment.

Thank you for your leadership on this important reform bill. I have long appreciated the hard work the EPW committee does every day to improve our Nation's natural resources, and I truly believe this bill will go a long way to putting the ESA process on a more solid and sustainable footing. Please do not hesitate to contact me if I can provide additional information or support.

Gratefully,

J. D. Strong
Director

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

June 14, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act Amendments 2018 discussion draft legislation

Dear Chairman Barrasso:

Thank you for the opportunity to offer my enthusiastic support for your important efforts to improve the Endangered Species Act (ESA). Reform is long overdue, and legislation such as this is vital to ensuring conservation of species is more collaborative and recovery-focused.

I have spent close to 40 years working in State fish and wildlife agencies and the ESA has long been one of the more contentious and frustrating pieces of federal law I have had to deal with. The ESA has been used many times in the past as a blunt instrument to impede responsible resource development and to usurp the public trust responsibility that every state wildlife agency has to manage our fish and wildlife resources. Furthermore there has not been a consistent approach on how federal agencies have implemented.

We have had past discussions that maybe the best approach would be just repeal the ESA. I truly believe that is neither a practical nor an achievable option. Instead I commend your more measured approach that is consistent with what the Western Governors Association and the Association of Fish and Wildlife Agencies have proposed. Chief among the improvements, and in my view the most meaningful reform from a wildlife recovery perspective, is your proposal to ensure State wildlife agencies play a key a role the ESA process.

It is critical for States to have an integral role in listing, delisting and species recovery. The States need to be viewed as leaders in species management and the recovery process. I firmly believe by giving State wildlife agencies a more prominent role in the ESA that the entire process will be more successful at conserving at-risk species. I am equally encouraged that this bill stops short of saddling the States with unfunded mandates, thus recognizing that we are often constrained by lack of adequate funding and resources.

South Dakota Game, Fish, and Parks believes in providing responsible management of our fish and wildlife through fostering partnerships and cultivating stewardship to benefit future generations. These core principles should be embraced and memorialized through the day to day implementation of the ESA. I am encouraged to see legislation that strives for species recovery through scientific data, cooperation, transparency, proactive conservation, and species monitoring.

Thank you for your leadership on this important reform bill. I truly believe this bill will go a long way to putting the ESA process on a more solid and sustainable footing. Please do not hesitate to contact me if I can provide additional information or support.

Sincerely,

Kelly R. Hepler
Cabinet Secretary

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National Association of State Departments of Agriculture
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Tel: 202-296-9680
www.nasda.org

June 15, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

The National Association of State Departments of Agriculture (NASDA) thanks you for your leadership in advancing meaningful reforms to the Endangered Species Act (ESA). This legislative package presents an opportunity to elevate the state voice in the important work of protecting endangered species. NASDA supports the efforts to modernize the ESA and advance a federal-state partnership on species conservation. Further, we look forward to working with the committee in a bipartisan fashion to advance policies that protect endangered species while working with agriculture producers through the listing, delisting and conservation processes.

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including combating the spread of disease, conserving natural resources, wildlife management and fostering economic vitality in rural communities.

After listing decisions are made, states feel the greatest impact and currently work to mobilize action plans to conserve species. NASDA members are on-the-ground resources that work with agriculture producers, landowners and local game and fish agencies throughout the listing, delisting, exemption and recovery processes. NASDA members partner with these entities to gather habitat and wildlife data and provide feedback from landowners. We would like to thank the committee for including provisions that support state departments of agriculture and local wildlife agencies throughout the process and in state recovery teams while maintaining venues for public input.

We look forward to working with you to effectively modernize the ESA. If you have any questions, please contact Britt Aasmundstad, Associate Director, Policy (britt@nasda.org).

Sincerely,

Nathan Bowen
Director, Public Policy

June 15, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

Western Energy Alliance strongly supports modest, incremental efforts to reform the Endangered Species Act (ESA). As you, the Western Governors Association, and many stakeholders across the West have long recognized, the ESA has become too cumbersome and prohibitive of responsible economic activity and job creation while being ineffective at protecting and recovering species. We fully support efforts by Congress to modernize the ESA, and the introduction of the ESA Amendments of 2018 helps initiate that important process.

Carrying out the intent of the ESA has become an overly cumbersome process where more resources are spent by the U.S. Fish and Wildlife Service (FWS) on paperwork and responding to litigation than providing on-the-ground conservation that benefits species and their habitat. The ESA has also far too often been used primarily as a means to prevent or delay responsible economic activity rather than to truly protect species. The lack of effectiveness of the ESA is clear in that only about 2% of listed species have actually been recovered.

When applied too broadly or for species that do not truly warrant a listing, the ESA can have very negative economic and job impacts on states, local communities, and the nation without commensurate benefits to species or their habitat. It is time to modernize the Act so that it is refocused back on the original intent of protecting and recovering species.

Federal ESA listings often thwart existing state, local and private efforts to protect species, and the threat of a listing may disincentivize voluntary conservation efforts under current regulations. Rather than imposing one-size-fits-all species listings that harm communities and obstruct on-the-ground conservation, FWS should support and defer to state plans, voluntary conservation agreements, and scientifically-sound management policies. Increasing transparency and prioritizing listing petitions, reviews, and determinations will also help FWS utilize limited resources in the most efficient manner possible.

We appreciate that the draft legislation identifies these critical concepts for ESA modernization and provides the foundation for sensible changes. We urge Congress to pass legislation updating the ESA with targeted changes to improve the consistency and effectiveness of the law, increase transparency and regulatory certainty, and update the scientific standards by which decisions are made.

Sincerely,

Kathleen Sgamma
President

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LOWELL E. BAIER
ATTORNEY AT LAW

June 8, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act of 2018

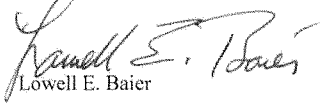
Dear Senator Barrasso:

Having reviewed the June 1, 2018 draft "Endangered Species Act of 2018," I commend you and your Committee staff for taking a major step towards amending the current text of the 1973 Endangered Species Act. Your proposed legislation is long overdue in surgically addressing procedural issues that have provoked serial litigation for the last two decades.

There are a few technical and drafting edits that I would offer upon request. The underlying mission of the ESA is stated in its 1973 "Purposes" clause: "…to provide a means whereby the ecosystems upon which endangered species and threatened species depend upon may be conserved, to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. §1531(b). Any amendments to the Act need to focus on improving the Act's procedural application to ensure the proper allocation of resources for habitat enhancements as the precursor to saving at risk species. Amendments should be surgically drafted in a manner that will reduce the stranglehold of litigation and the judicial system.

This draft legislation is a major step onwards improving the application of the Endangered Species Act, and I look forward to participating in its review by Congress.

Very truly yours,



Lowell E. Baier

PETROLEUM ASSOCIATION OF WYOMING

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June 19, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

The Petroleum Association of Wyoming (PAW) would like to thank you for the opportunity to review the proposed Endangered Species Act Amendments of 2018. PAW is Wyoming's largest and oldest oil and gas organization dedicated to the betterment of the state's oil and gas industry and public welfare. PAW members, ranging from independent operators to integrated companies, account for approximately ninety percent of the natural gas and eighty percent of the crude oil produced in Wyoming.

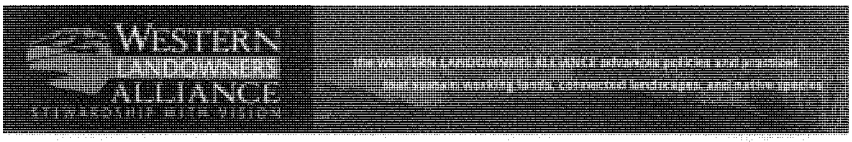
PAW strongly supports the Endangered Species Act Amendments of 2018 and is pleased to see this legislation aligns well with the process and principles put forth by the Western Governors Association at the initiative of Wyoming Governor Matt Mead. Through the added emphasis on recovery, the establishment of reasonable timeframes to deter delays and ensure the process proceeds, and the elevated role of states in the process, the ESA Amendments of 2018 will provide for meaningful modernization of the Endangered Species Act that will not only increase benefits to species recovery, but will also provide added regulatory certainty to industry.

Again, thank you for the opportunity to review this important legislation and we look forward to working with you as it moves through the legislative process.

Sincerely,

Esther Wagner

Esther Wagner
Vice President – Public Lands



June 21, 2018

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

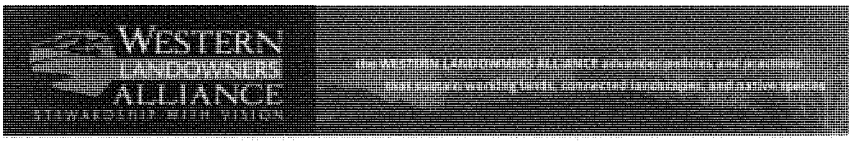
Dear Chairman Barrasso:

Thank you for soliciting input from Western Landowners Alliance regarding the Endangered Species Act Amendments of 2018 draft bill. We appreciate the work you and your staff have put into the draft bill and wish to provide the following comments.

The Western Landowners Alliance (WLA) is made up of members from 10 western states. Our organization represents more than 14 million deeded and leased public acres in the West. WLA works to advance policies and practices that sustain working lands, connected landscapes and native species. Despite much rhetoric, landowners in the West enjoy and value wildlife and support conservation. Healthy landscapes and healthy economies go hand in hand. Investments in conservation integrated into working landscapes yield clear returns to taxpayers and provide for the well-being of human communities. The Endangered Species Act (Act) should be viewed and applied as originally intended—a last stop measure to prevent species extinction, not as a tool to advance anti-grazing or other agendas. The primary public policy emphasis should not be on dismantling or defunding implementation of the Act, but on cost-effective, pro-active solutions that avoid the need to list species in the first place and to accelerate recovery of those that are listed.

As you are aware, the Western Governors Association (WGA), under the chairmanship of Wyoming Governor Matt Mead, led an inclusive and collaborative initiative to explore ways to improve species conservation and the Act. WLA participated in this initiative and was pleased with the process and the efforts of participants to address species conservation in a constructive, non-partisan manner. WLA priorities for species conservation were discussed throughout this process and are reflected in several of the recommendations adopted by the WGA. Generally, these priorities include working with landowners to implement conservation practices for the benefit of species, providing funding for proactive, voluntary conservation, and assuring states and federal agencies have the appropriate resources to work towards both proactive conservation and species recovery.

Westernlandowners.org PO Box 6278, Santa Fe, NM 87502 info@westernlandowners.org



The draft bill considers many of WLA's priorities. It also includes proposed amendments where WLA has not weighed in and amendments that we believe require additional discussion. These items are discussed in detail below.

Title I – Enhancing the Federal-State Partnership

Sections 102-107.

WLA did not provide extensive input on the role of States through the WGA process. Our organization supports increasing the role of States in species recovery. However, we recognize that priorities, budgets, and landscapes differ from state to state and this impacts how they participate in species conservation efforts. States (or federal agencies) may also introduce bias into recovery efforts, complicating those efforts and potentially impairing or prolonging species recovery. Ultimately, delays in recovery efforts adversely impact both species and landowners. Additionally, authority already exists for states to exercise concurrent jurisdiction with federal agencies to implement the Act.

The draft bill contains measures for the Secretary to evaluate the roles of States and make changes as appropriate. However, this is an important topic that should be discussed in more detail with a broad audience to determine the best way for States to partner with federal agencies in recovery efforts.

Section 104.

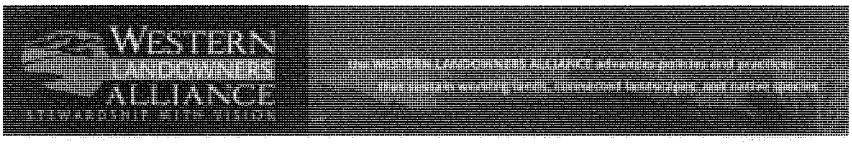
While we understand the interest of states in potential federal land acquisitions, state intervention in the sale of private land encroaches on the rights of private property owners. In addition, states have the ability to comment on land acquisitions through National Environmental Policy Act planning processes. WLA is concerned that this proposed amendment will add weight to State comments while reducing the voice of private landowners directly involved in land acquisitions. It is also unclear if "land" refers to surface only or includes minerals and/or water right acquisitions.

Section 108.

WLA has no position on this Section.

Section 109.

WLA recognizes the need for federal employees to be responsive to landowners, States, and local governments but are uncertain if this is the appropriate mechanism to ensure this happens.



Title II – Encouraging Conservation Activities through Regulatory Certainty

Sections 201-205.

Sections 201-205 improve opportunities for landowners and others to enter into agreements that provide certainty, incentivize species recovery and improve on-the-ground conservation practices. Section 202, in particular, provides certainty that conservation agreements endorsed by the Secretary shall be considered a regulatory mechanism. Opportunities for voluntary conservation and providing certainty for landowners is a priority for our organization and our members. Generally, WLA supports the amendments proposed in this section.

There are two areas that warrant further discussion. First, for conservation agreements to serve as regulatory mechanisms, participants in voluntary wildlife conservation agreements must be held to similar standards as other conservation mechanisms within the Act, such as Candidate Conservation Agreements with Assurances and Safe Harbor Agreements. These agreements require participants to develop an implementation plan with clear actions and goals. If actions and goals are not met, the Secretary must have the authority to re-authorize a listing process. Additionally, if a landowner enters into a conservation agreement and implements conservation measures in good faith, but is later advised that those changes are not adequately conserving species, that landowner should not be penalized.

Second, conservation agreements and practices are only meaningful if funding is provided for technical assistance and to the landowners/participants implementing projects and practices. Pro-active species conservation is an investment and that needs to be reflected in funding for this bill. The financial burden of species conservation cannot lie squarely with those who manage the habitat of imperiled species. WLA understands the difficulty of determining appropriate funding, but it is imperative that this conversation continues to advance and that Congress authorizes funding for species recovery and pro-active conservation.

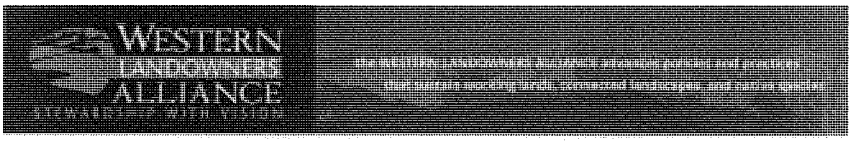
Title III – Strengthening Conservation Decision Making through Increased Transparency

Sections 301-304.

WLA is generally supportive of the amendments proposed in Section 301-304. We want to ensure landowner data is protected but recognize that increased transparency is important to support listing decisions. This section may need additional review to ensure these two values are balanced.

Title IV – Optimizing Conservation through Resource Prioritization

Section 401.



There is a need to prioritize listing petitions, reviews and determinations to ensure that those species that demand immediate resources for their conservation receive a timely and thorough

review and determination – regardless of outside pressures. WLA appreciates the emphasis on conservation activities and the recognition that these activities will be considered in the prioritization process.

Allowing a 7-year work plan has the potential to create a crisis where the delay in making a decision on whether or not to list a species creates a permanent backlog that could be difficult to address, further harming species in need and increasing pressure on landowners. No amount of prioritization or extended timelines will address or accelerate species recovery efforts if the U.S. Fish and Wildlife Service lacks the resources to meet the demands. Adequate funding for staff and recovery efforts is necessary to process status reviews and accompanying 12-month findings in a timely manner that is in the best interest of the species under consideration and in the best interest of affected landowners. To reduce the rising costs to landowners and taxpayers associated with threatened and endangered species, investment is needed on the front end to increase pro-active, voluntary conservation, avoid the need to list species in the first place and recover those species that are listed more quickly.

Title V – Studies to Improve Conservation

WLA takes no position on the proposed studies.

Title VI – Reauthorization

WLA supports re-authorization of the Act with sufficient funding to get ahead of the curve and better support landowners in the conservation and recovery of wildlife species. WLA looks forward to participating in continued conversations related to funding.

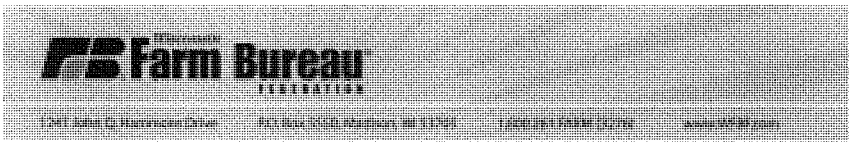
In closing, WLA is interested in working with you to further refine portions of the draft bill. A broader, in-depth conversation regarding this bill is necessary and we are willing to assist you in bringing stakeholders together for those conversations. Please do not hesitate to contact us for further comment or assistance.

Again, thank you for the opportunity to provide comment.

Sincerely,

Lesli Allison
Executive Director

Westernlandowners.org PO Box 6278, Santa Fe, NM 87502 info@westernlandowners.org



June 22, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

We appreciate your efforts as the Chairman of the U.S. Senate Committee on Environment and Public Works to include additional input from state and local stakeholders throughout the Endangered Species Act. There is a legitimate need for states to have more input for wildlife management while still maintaining some level of federal oversight.

Specifically, Wisconsin has a serious gray wolf situation. Under the umbrella of the Endangered Species Act, the gray wolf's federal status has undergone extensive changes during the last 15 years. This is not due to the biological or scientific evidence that population numbers for the species have met and exceeded their recovery goals, but flaws in the Act that make these decisions prone to politics and legal battles based on procedural technicalities.

While the recovery status of the gray wolf in the Western Great Lakes region continues to be fought in courtrooms and determined by Federal Judges in Washington, D.C., Wisconsin farmers have their hands tied when it comes to defending their livestock and livelihoods. It is illegal for farmers in the Western Great Lakes region to protect their livestock from depredating wolves and there is no mechanism to manage the population.

There is a dire need for states to have more control of wildlife populations. Implementation of Wisconsin's first gray wolf hunting and trapping season in 2012 demonstrated that the state's Department of Natural Resources (DNR) management plan was conservative, science-based and designed to maintain the prescribed wolf population while managing it to minimize conflicts with Wisconsin farmers and others.

We agree that the ESA should include a focus on species recovery and habitat conservation objectives that respects landowners. Coordination with state wildlife agencies to leverage private, incentive-based conservation efforts can better achieve long-term conservation goals can help work toward species delisting or downlisting.

We support the 2018 Amendments to the Endangered Species Act.

Sincerely,

Jim Holte

Jim Holte
President, Wisconsin Farm Bureau Federation

IDAHO DEPARTMENT OF FISH AND GAME
600 S. Walnut/P.O. Box 25
Boise, Idaho 83707

C.L. "Butch" Otter/Governor
Virgil Moore/Director

June 25, 2018

The Honorable John Barrasso, M.D.
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

We appreciate the opportunity to review draft legislation for The Endangered Species Act Amendments of 2018. As a state wildlife management agency, we greatly appreciate your attention and engagement to increase opportunities for state fish and wildlife management agencies to take a more formal and active role and fully participate in Endangered Species Act administration and implementation as a partner, not just as a stakeholder.

Our perspectives about some aspects of the draft legislation follow.

TITLE I – ENHANCING THE FEDERAL-STATE PARTNERSHIP

Sec. 102. Recovery teams.
We suggest establishing "provisional" recovery expectations such as recovery goals and habitat objectives, in consultation with impacted States that would lead to downlisting or delisting in a listing rule. We offer this caveat because for some species, certain data may be lacking at the time of a listing rule to offer a definitive vision of recovery, but this expectation would still create standards for a recovery team to further evaluate and refine in regards to existing or developing new data. We also suggest that requiring a unanimous vote by a recovery team to modify a recovery goal, habitat objective or other criterion is too stringent a limitation on the Secretary's authority; we recommend a majority vote with minority opinion for the Secretary's consideration.

Creating specific expectations for action, particularly to delist or downlist a species is appropriate. However, we caution that adopting too ambitious a timeline creates an unnecessary litigation target. Our candid observation is that 30 days seems like an unrealistic timeline for the actions addressed in this section. Other timelines in this section seem manageable.

Sec. 103. State-Federal consultation relating to conservation and recovery of wildlife.
We are very supportive of the opportunities afforded to States to lead development or implementation of a recovery plan, however we are concerned that the timeline of no more than 1 year, for a state agency to submit a draft recovery plan to the Secretary, is not feasible. Consideration should be given to the complexity of issues affecting the species and expectations for public and governmental participation in recovery plan development within a state or multiple states (if a multi-state species). We suggest two years, with opportunity for the lead state to petition for additional time to complete a recovery plan.

Chairman John Barrasso
June 25, 2018
Page 2

Sec. 104. Consultation with States regarding land acquisition; Sec. 105. Cooperation with States and Indian Tribes; Sec. 106. State consultation regarding experimental populations; Sec.107. State participation in settlements.
We support these sections.

Sec. 108. Award system for State agencies and Sec. 109. State feedback regarding U.S. Fish and Wildlife Service employees.
We believe these sections are not necessary for meaningful and productive state-federal partnerships to administer and implement the ESA.

TITLE II – ENCOURAGING CONSERVATION ACTIVITIES THROUGH REGULATORY CERTAINTY
These sections support and improve aspects of important conservation elements.

TITLE III – STRENGTHENING CONSERVATION DECISIONMAKING THROUGH INCREASED TRANSPARENCY
Our experience is that that empirical, field tested, or independently peer reviewed data comes in many forms and is not always necessarily "better" data. We recommend providing discretion ("may" rather than "shall") to the Secretary to give greater weight to data that is empirical or that has been field-tested or independently peer reviewed.

TITLE IV – OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION
We recognize and support direction to establish a workplan schedule and prioritization. We suggest integration of downlisting and delisting into this Title.

TITLE V – STUDIES TO IMPROVE CONSERVATION
We recommend consideration of other avenues than ESA legislation to accomplish these studies (Secs. 502, 503, 504, 505) in a prioritized manner or develop timelines and resource allocation that does not interfere with the other substantive ESA reform elements presented in this draft legislation.

Thank-you for your leadership on behalf of states to be a full partner in administering and implementing the ESA.

Sincerely,

Sharon W. Kiefer

Sharon W. Kiefer
Deputy Director

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The Honorable John Barrasso
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

June 26, 2018

Re: American Loggers Council Support for the Endangered Species Act Amendments of 2018

Dear Senator Barasso,

The American Loggers Council (ALC), representing professional timber harvesters in 33 states across the United States, will supports legislation that amends the Endangered Species Act of 1973, and appreciates the inclusion of the following issues that we have taken a position on since 2014:

1. **Increase the role of the states.** This includes explicit statutory recognition to state conservation efforts and increased funding for state programs. A critical element is to insulate state officials from liability for take when they issue permits, or review notices or plans, authorizing private activity. Consideration could be given to the delegation of some functions to states, but all consequences must be carefully examined. Attention should also be given to clarifying the scope of consultation under section 7 for the delegation of environmental programs by EPA to states.

2. **Provide explicit statutory authority for No Surprises** assurances that are used in habitat conservation plans, safe harbor agreements and candidate conservation agreements.

3. **Provide statutory standards to improve the use of science,** such as criteria to determine what is the "best available science," peer review, scientific basis for identification of distinct population segments, and consistency in use of captive breeding/hatchery programs.

4. **Update the statutory process for designating critical habitat** by: (1) defining the term "critical habitat" more precisely (including biological prerequisites and economic considerations) and extending the designation deadline to some point after preparation of a draft recovery plan and (2) by clarifying the meaning of the destruction or adverse modification of critical habitat standard in consultations on federal agency actions.

5. **Recognize private property rights** by providing adequate funding for landowner conservation and incentive programs, by ensuring such programs are voluntary and by establishing a process to compensate fairly for the loss of property value.

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6. **Establish explicit statutory authority for measures to control the consultation process.** Consultation on federal agency actions is on the increase and may be the next procedural program that overwhelms the agencies' ability to conserve and recover species. Codifying explicit authority for counterpart regulations and criteria for delegation of environmental programs to states under other laws should provide efficient improvements in this process.

7. **Merge ESA functions into one agency.** It causes considerable confusion and inconsistency for both NOAA-Fisheries, a Commerce Department Agency, and the Fish and Wildlife Service, and Interior Department agency, to have policy jurisdiction over ESA implementation. These functions should be merged into the Fish and Wildlife Service.

We applaud your efforts for introducing the Endangered Species Act Amendments of 2018 and believe it addresses the issues that members in our organization have sought since 2014.

Sincerely,

Daniel J. Dructor
Executive Vice President

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Casper, WY

June 29, 2018

Senator John Barrasso
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: "Endangered Species Act Amendments of 2018."

Dear Senator Barrasso:

This letter will serve as the Wyoming Outfitters & Guides Association support of the draft legislation for the "Endangered Species Act Amendments of 2018". We encourage congress to move forward with ESA modernization for this bill.

We greatly appreciate your time and attention to this important matter.

Sincerely,

Jeff Smith, President

WYOMING STOCK GROWERS ASSOCIATION
Guardian of Wyoming's Cow Country since 1872

SGA

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June 2, 2018

Honorable John Barrasso, MD
Chairman
Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

The Wyoming Stock Growers Association (WSGA) appreciates your ongoing efforts to develop critical changes to enhance the implementation of the Endangered Species Act of 1973 (Act). The miniscule rate of recovery of listed species, the dominant role of litigation in implementation of the ESA and the overly burdensome regulatory processes associated with implementation all beg for common sense procedural changes to the Act WSGA strongly believes that your proposed legislation meets this need while maintaining and enhancing the substantive provisions of the Act.

On behalf of WSGA I was personally engaged in the three-year process undertaken by the Western Governors Association to identify weaknesses in the current implementation of the Act and seek common ground on needed regulatory and statutory changes. Those topics that surfaced as the primary focus of our discussions, including transparency, the role of state and local governments, incentivizing private sector conservation and reasonable timelines for actions under the Act, have all been addressed in the proposed legislation.

While WSGA respects the intent of the Act to establish a critical federal role in identification and recovery of threatened and endangered species, we have become alarmed over the life of the Act with the extent to which it has superseded the primary authority of state wildlife agencies in wildlife management. Title I of the proposed legislation takes several important steps toward assuring the opportunity for state and local governments to assume an active role in the identification, listing, recovery and delisting of species.

We want to emphasize, in particular, the critical need for the proposed requirement that a listing rule must include recovery goals. In our experience, recovery goals have far too often been a moving target subject to expansion base on non-scientific evidence or the whims of the judicial system. The establishment of balanced state-federal recovery teams whose unanimous vote is needed to modify recovery criteria will go far toward assuring the stability and longevity of recovery goals.

Delisting of a species under the current Act has almost invariably led to litigation challenging the delisting. WSGA has, in recent years, been drawn into litigation to defend the delisting of the Preble's Meadow Jumping Mouse, the Gray Wolf and, currently, the Grizzly Bear. The lawsuits challenging delisting are, literally, often prepared before the ink has dried on the delisting decision. The proposed five-year delay on judicial review will enable state wildlife agencies to demonstrate their capability to manage a delisted species.

Recent success in state-led development and implementation of plans for the management of the Greater Sage Grouse has drawn widespread attention to the value of state-led recovery efforts that fully engage local affected interests. The proposed recognition of conservation agreements as a regulatory mechanism under Title II of the Act, together with provisions designed to expedite the process of entering into CCAAs and Safe Harbor Agreements will serve to further engage private landowners in management of these species. Throughout the Western Governor's process, WSGA was an outspoken advocate for allowing landowners who enter into CCAA's for regulatory certainly to remain eligible to receive funding under other conservation programs. Thank you for including this important provision in the legislation.

While WSGA remains a vigilant advocate for the protection of information and data specific to private landowners and business enterprises, at the same time we recognize the need for increased transparency regarding scientific and commercial data that serves as the basis for decision making. Full sharing of information with the affected States prior to making a listing decision will go far in enhancing the credibility of federal agency decisions.

The process for prioritizing status reviews and findings as provided in Title IV is an essential step ESA Amendmentstoward more efficient use of resources. Prioritization should not be based, as it often is currently, on judicial settlements with petitioners.

The studies provided for in Title V address several topics on which WSGA has been a strong voice for many years. These include adoption of a multi-species approach and recognition of the role of predation and invasive species in listing decisions. Finally, all taxpayers are entitled to transparency regarding the tremendous cost in federal resources expended in connection with ESA litigation.

WSGA is pleased to offer our full support to your proposed legislation. Do not hesitate to call upon us if we can be of further assistance in moving this bill forward.

Best Regards,

Jim Magagna

Jim Magagna
Executive Vice President

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conserving
natural resources

Wyoming Association of Conservation Districts
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June 6, 2018

The Honorable John Barrasso, Chair
Environment & Public Works Committee
U.S. Senate
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper, Ranking Member
Environment & Public Works Committee
U.S. Senate
513 Hart Senate Office Building
Washington, DC 20510

Re: Wyoming Association of Conservation Districts Support of legislation "The Endangered Species Act Amendments of 2018"

Dear Chairman Barrasso, Ranking Member Carper and Members of the Committee,

On behalf of the Wyoming Association of Conservation Districts, representing Wyoming's 34 local Conservation Districts, I write to you to express our strong support for the Endangered Species Act Amendments of 2018.

Wyoming's Conservation Districts are local political subdivisions of state government authorized under §§ 11-16-101 *et. seq.*, and governed by 170 elected district officials. The Districts are charged with the responsibility of providing for the conservation of Wyoming's natural resources through the delivery of technical and program assistance to private landowners and as cooperating agencies with state and federal land management agencies. These responsibilities include, but are not limited to, wildlife habitat conservation.

The Districts have over 70 years of experience in implementing on-the-ground conservation projects and practices. In the past 10 to 20 years we have witnessed the focus change from on-the-ground conservation of species and their habitat to in-the-courtroom litigation, appeals, and lawsuit settlement agreements. There have been far more resources by federal agencies dedicated to legal fees and buy-offs than there has been habitat. We find ourselves increasingly diverted from what we do best, which is work hand in hand with landowners and our state and federal partners, to commenting, intervening and responding to litigation or the threat of litigation.

The Conservation Districts, working in conjunction with private landowners, agencies and organizations such as the US Fish & Wildlife Partners for Wildlife Program, National Fish & Wildlife Foundation, USDA Natural

Resources Conservation Service, Wyoming Wildlife & Natural Resource Trust, and several non governmental entities, have played an important role in real species conservation through on the ground project implementation.

The Association has been actively engaged in the Western Governor's Association's Endangered Species Initiative. This effort has brought diverse interests together to identify constructive changes to the Act to more successfully protect, conserve and recover species and their habitats. This legislation clearly reflects those principals and we believe provides an important recognition of the role of state and local governments, and ultimately landowners, play in species protection. Further, it also recognizes that locally based approaches to species protection provide our greatest chance of success.

Respectfully,

Shaun Sims
President

June 6, 2018

The Honorable John Barrasso, M.D.
United States Senator
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

Thank you for your diligent work to craft legislation to modernize the Endangered Species Act (ESA). As you know, the Wyoming County Commissioners Association has long supported efforts in both the United States House and Senate that would take steps to update and improve the ESA to support species recovery, best available science, open and accessible policy decisions, and maximum state and local government involvement in decision making. We believe that the Endangered Species Act Amendments of 2018 offers meaningful improvements to the ESA, and we offer our support.

Notably, the Endangered Species Act Amendments of 2018 for the first time requires that the federal government engage in meaningful consultation with states on developing and — importantly — sticking to recovery goals that will ultimately lead to the downlisting or delisting of endangered species. We should not forget that the purpose of the ESA is to recover species to the point that removal from the list is warranted. Removal from the ESA should be seen as the conservation victory that it is, and states are well positioned to not only assist in reaching that goal, but in sustaining those successes over the long term.

We also strongly support the inclusion of local governments in the section to improve transparent data, information dissemination, and litigation. In land management decisions under the Departments of Interior and Agriculture, local governments are recognized as cooperating agencies with all the rights and responsibilities that come with that designation. In short, counties are not "stakeholders," we are governmental partners. The ESA presents different challenges than the organic land management Acts, but the principle remains. While counties might often defer to expert state agencies when commenting, preserving the role of local governments as agencies unto themselves is important when individual counties have undertaken their own baseline studies, scientific research, or conservation plans apart from the State's efforts. In Wyoming, Campbell County's efforts to bolster data to support our understanding of raptors in the context of energy development comes to mind.

As this legislation moves through your committee, and hopefully the entire Senate and House, we are committed to working with you to achieve the goal of improving the Act. To that end we hope to identify further areas where specific guidelines on consultation with county government

would improve outcomes. Do not hesitate to reach out to us at any time. Again, thank you for your careful attention to this long-standing issue. After more than four decades without serious improvements to the Act, we are grateful for your serious attempt at modernization.

Sincerely,

Rob Hendry
President
Wyoming County Commissioners Association

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Harry C. LaBonde, Jr., P.E.
Director

June 6, 2018

Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Subject: Modernization of the Endangered Species Act (ESA)

Dear Senator Barrasso,

I have had the opportunity to review proposed legislation which modernizes the ESA. The implementation of this 1973 act has dramatically changed from the original intent of the act to how it is now used stop or impede uses of lands and water within this country. In some cases it has reversed 100 plus years of historical land and water use in this country. For these reasons, the ESA is truly in need of modernization.

There are several sections of the proposed legislation that call for needed structural changes in the administration of the act and I would like to mention a few of them. Specifically:

- Section 102 requires the establishment of recovery goals, habitat objectives or other criteria at the time a listing rule is issued. This is needed so all parties know at the start of a recovery process, what is to be accomplished and how it will be beneficial to the listed species.
- Section 102 requires certain time frames for action by the Secretary when a species is proposed to be listed or delisted. In the current process, affected parties have waited years to learn what actions agencies may be taking in this regard. Defining the schedule expectations is appropriate.
- Section 102 requires the Secretary to solicit from impacted States a request to establish a recovery team and provides a one (1) year window to establish a science based recovery team. States are then able to appoint members to the recovery team which creates balance in a process which is now dominated by federal agencies and environmental organizations. One suggestion: The current language states, "relevant State and local land and wildlife management agencies from each impacted states" I would suggest that "water" management agencies be included as well. As we know water is a key component in many ESA programs.
- Section 107 requires that States be consulted when legal settlements are being contemplated by the Secretary. States absolutely need to be able to provide their positions on settlements that impact the citizens of their states.

- Title II recognizes the importance of conservation agreements in protecting target species and provides protections to landowners in their use. With this reform, these types of landowner agreements can take on a greater significance in species recovery.
- Section 304 provides States with notice in legal proceedings, the right to intervene in legal actions, and disclosure of plaintiff's legal fees being paid by agencies. These provisions will provide balance in a process which is currently exploited by plaintiffs.

In summary, the Wyoming Water Development Office very much supports the proposed legislation to modernize the ESA and believes it will result in more effective recovery programs for listed species. It will focus the ESA on providing scientific based recovery programs and allows the impacted States a voice in the process.

I very much appreciate you bringing this legislation forward and offer my support in that endeavor. If you should have any questions, please feel free contact me.

Respectfully,

Harry C. LaBonde Jr., P.E.
Director

WYOMING GAME AND FISH DEPARTMENT

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June 7, 2018

The Honorable Senator John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

I write to convey my support for your efforts to consider and debate important legislation for much needed reform of the Endangered Species Act (ESA or the Act). The current draft bill addresses many of the concerns we have in our state regarding the application of the Act in listing, recovery, and delisting of species. Specific provisions of particular interest to our state are summarized below.

Wyoming has been a leader in conserving and recovering imperiled species for many decades. Black Footed Ferret and Grizzly Bear Recovery are hallmarks of our success and commitment to responsibly and collaboratively recover those native species that become threatened or endangered. We are also proud of our proactive work to avert ESA listing in our conservation of the Greater Sage Grouse. Wyoming's engagement in these and other endangered species initiatives places our leaders on firm ground to speak with authority and credibility on ESA issues.

The language in the bill providing requirements for additional state involvement early in ESA processes is particularly important from our perspective. Provisions that include the addition of specific measures and standards required of a recovery team are useful in ensuring all involved are accountable to the goals of the Act and the citizens of the state and nation. These additions also provide equal importance on actions and scientific data used to inform listing *and* delisting decisions. Likewise, the portions of this draft that include specific timelines for ESA related actions and decisions are clearly focused on improving the efficiency and accountability of those implementing the Act. Lastly, the added flexibility included in this draft bill address some of our biggest concerns with how the Act has been applied. Additional flexibility allows federal and state decision makers the ability to address changes in the science or information available with more agility.

In conclusion, I greatly respect your clear interest in making the Act a better tool for wildlife conservation. We are committed to working cooperatively with Federal Agencies and all of our partners in executing new legislation.

Sincerely,

Scott Talbott
Director

ST/bn

June 7, 2018

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The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

On behalf of the Wyoming Wool Growers Association, we appreciate the opportunity to review the discussion draft of proposed legislation to modernize the Endangered Species Act. After careful review of the language we believe it accomplishes the goals of the bipartisan recommendations from the Western Governors Association and would benefit the ranchers and landowners our organization represents. We are pleased to offer our support for this legislation.

The draft legislation contains some key components that we believe are necessary in modernizing the ESA, including much needed benchmarks that determine recovery goals. This is necessary to identify progress in species recovery and will help make the ESA a useful tool in conservation rather than an obstacle. In addition, the legislation requires much needed transparency in science and in litigation, which is essential. We are hopeful it will help to curb the current "sue and settle" process that has contributed to the current broken system.

We are very supportive of the provisions in the draft legislation that elevates the role of state and local governments in planning for, and executing, species conservation efforts. This is long overdue. The involvement of state wildlife agencies is critical and will do more to strengthen species conservation efforts than the current approach. We greatly appreciate the emphasis the bill gives to states as equal partners to the federal government and believe it will improve the ESA.

Another very important provision in the draft legislation that we are pleased with is the requirement for a seven-year work plan for species and the requirement that all species receive a priority designation. We believe this will allow time for effective plans to be developed and executed. The provision is further strengthened by the language that allows the Secretary to postpone response to a petition or review of the status of the species until the last day of its established work plan.

Lastly, we are pleased to see the legislation rewards proactive landowners who participate in conservation agreements. The requirement that any such agreements entered into with, or endorsed by, the Secretary be considered as regulatory mechanisms when deciding on whether to list a species as threatened or endangered is very welcome.

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The Wyoming Wool Growers Association supports the proposed legislation as drafted and is willing to provide whatever help is needed to move it forward. We are extremely grateful to you, Chairman Barrasso, for your effort to make these common-sense improvements to the currently unworkable ESA. If you need further information, please don't hesitate to contact our office.

Sincerely,

Amy W. Hendrickson

Amy W. Hendrickson
Executive Director

/awh

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The Honorable John Barrasso, Chairman
Senate Environment and Public Works Committee
US Senate
Washington, DC 20510

June 8, 2018

Dear Chairman Barrasso:

The National Association of State Foresters (NASF) would like to express our appreciation for your introduction of The Endangered Species Act Amendments of 2018, a bill that would accomplish many of the recommendations found in the attached NASF Position Statement - Improving the Effectiveness of the Endangered Species Act and in the NASF Farm Bill Platform. NASF represents the heads of forestry agencies from all 50 states, the District of Columbia and the US territories. Our focus is on promoting the protection and proper management of state-owned and privately-owned forests, but we are also regular collaborators in the management of federally-owned lands.

NASF continues to support the purposes of the Act originally adopted in 1973, we but have concerns as to the Act's effectiveness and some of its unintended consequences. Notably, when an endangered or threatened species listing places restrictive and/or financially difficult burdens on a landowner the end result could well be the disposal and conversion of that land to other uses. We feel that administration of the Act in the past has made many landowners, in fact, fearful that an endangered species may reside on their property. Hopefully, badly needed updates to this legislation could one day lead to landowners celebrating their ability to help a species at risk rather than dreading regulatory intervention.

We note a number of desirable amendments in the bill. Chief among those is expanding the role of states in all phases of administering the Act and giving clear guidance on the use of the best scientific and commercial data available. We also highly support the aim to simplify processes for entering into voluntary conservation agreements of all types, as well as clarifying the process and need for timeliness in any delisting. Broadening the role of interveners in legal actions will insure that all affected parties are fully heard. Providing direction on the need to prioritize agency activities around listing petitions and their subsequent requirements for review and determination is a needed change given the number of petitions that are being promulgated.

We would suggest that any changes brought on by the Act that are incumbent upon the US Fish and Wildlife Service to implement, be equally applicable to the National Marine Fisheries Service. The management of anadromous fisheries can have significant impacts on the management of forests in several states.

Again, thank you for the hard work that went into developing this important piece of legislation. NASF stands ready to assist you in this effort.

George Geissler
Washington State Forester and
President, National Association of State Foresters

National Cattlemen's Beef Association

June 8, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Public Lands Council (PLC), the National Cattlemen's Beef Association (NCBA), and the American Sheep Industry Association (ASI) would like to express our support for the Endangered Species Act Amendments of 2018. PLC is the only national organization dedicated solely to representing the roughly 22,000 ranchers who hold federal grazing permits and operate on federal lands. NCBA is the beef industry's oldest and largest 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. ASI has been the national trade organization representing the interests of nearly 90,000 sheep ranchers located throughout the country who produce America's lamb and wool since 1865. ASI is a federation of forty-five state sheep associations representing a diverse industry.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, asses, and quickly react to changing conditions for the benefit of species.

As the nation's largest non-governmental bloc of land managers, ranchers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been

dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results.

PLC, NCBA, and ASI appreciate the opportunity to provide our input on behalf of our members – the nation's food and fiber producers. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Kevin D. Kester

Kevin Kester
President
National Cattlemen's Beef Assn.

David Eliason

Dave Eliason
President
Public Lands Council

Mike Corn

Mike Corn
President
American Sheep Industry Assn.

Wyoming State Forestry Division

Wyoming State Forestry Division
5500 Bishop Blvd.
Cheyenne, WY 82002

Matthew H. Mead
Governor

Bill Crapser
State Forester

June 8th, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso,

On behalf of the Wyoming State Forestry Division (WSFD), I would like to thank you for the opportunity to offer feedback regarding the Endangered Species Act Amendments of 2018. WSFD has been actively working with federal, state, and local partners for nearly 60 years throughout Wyoming. Updating the Endangered Species Act (ESA) using science and common sense has the ability to provide the needed endpoint for the successful recovery of many species and better certainty for those engaged in land management decisions.

There are several drafted amendments to the ESA that appear to level the playing field between the Federal Government and the States' that are impacted. Overall we support the increased involvement of the States in working with the Secretary of the Interior in administrating the process through Recovery Teams. Careful coordination with effected States can ensure a process is created for those Recovery Teams to arrive effective guidance from both sides while not creating an economic burden on States' resources in doing so.

Additionally, we support State empowerment regarding the ESA process. This can include earlier notification on potential petitions and listing information, consultation with impacted states regarding litigation and settlements, and modified language for general state consultation regarding ESA issues.

Allowing for greater weight in States' information also allows for better guidance from those most familiar with what is actually happening on the ground and the resulting issues that may arise. It has been our experience that we can learn a lot about an issue by consulting with local landowners and land managers first before taking action. This would be a tremendous improvement to the current ESA process.

Again, I would like to thank you for the opportunity to provide feedback to the Endangered Species Act Amendments of 2018. By revising the ESA, an opportunity exists to allow more participation by the States' that can potentially create better certainty for those dealing with

threatened and endangered species on the ground level. Certainty, combined with the right science and economic sense, provides the right elements for an effective process that can reduce the high price of "doing business" with threatened and endangered species. These items I feel can make great strides realigning an ESA that works for the species it was intended for. For all of these reasons, we support the "Endangered Species Act Amendments of 2018", and would recommend you moving the proposal forward.

Please feel free to contact me if you have any additional questions or follow up on the ESA Amendments. I think things are moving in a positive direction.

Sincerely,

Bill Crapser

Simplot

J.R. Simplot Company
P.O. Box 27, Boise, Idaho
83707 0027

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208 985 4672 Cell

June 11, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Senator Barrasso,

On behalf of the J.R. Simplot Company, I am writing to offer our full support for the Endangered Species Act Amendments of 2018.

Simplot is Idaho's largest privately-held agribusiness company with more than 10,000 employees and operations throughout much of the Western United States and the world.

Simplot is involved in almost every aspect of agriculture from farming and ranching and food processing to mining and fertilizer production. We have operations throughout the United States that operate on Company private land, state endowment lands, and on public lands.

Achieving our Company mission of "Bringing Earth's Resources to Life" requires us to operate our Company in a truly sustainable manner that allows for continued and predictable use of the valuable resources available to us. Because of the scope of our operations, we are often directly affected by the Endangered Species Act (ESA).

We work closely with federal and state regulators to guarantee our operations have the least amount of impact as possible on the natural environment. While we recognize the importance of the ESA in protecting listed species, the Company like many others across the West has become increasingly concerned that the Act is being used by some groups to eliminate multiple-uses of public lands.

We are also very aware that in most cases those who know how to best manage species are state wildlife managers who have first-hand knowledge, rather than a dictated one-size-fits-all federal solution. Accordingly, we applaud the effort to further improve relationships and consultation with the states in achieving the cooperative partnership goals outlined by the ESA.

At Simplot, we also look for opportunities to actively pursue innovative conservation activities in our operations to conserve listed species. Unfortunately, companies are sometimes reluctant to make these conservation investments due to a lack of regulatory certainty defining when and how a company may receive credit for entering into conservation agreements. The proposed

amendments to the ESA outlined in Section 201, are an important step to assuring regulatory certainty and the proper recognition of state and private party efforts toward species conservation.

We are also pleased to see that the effort to amend the ESA is based on the principles of the Western Governors Association (WGA) Species Conservation and Endangered Species Act Initiative. Through that effort, which included a number of stakeholder discussions, it was determined that amendments to the ESA should focus on identifying efforts to incentivize voluntary conservation while elevating the role of states to true partners with the federal government in species conservation.

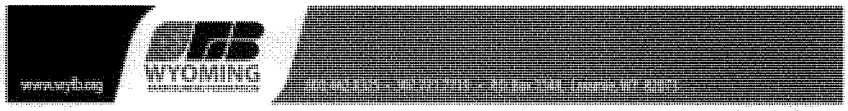
The end-goal in any amendments to the ESA should be to improve species conservation by identifying areas where the effectiveness of the ESA can be improved. We understand that the effort to amend the ESA has the potential to create controversy. The WGA initiative put a great deal of focus on building a broad consensus from a diverse slate of stakeholders, which allowed for a bi-partisan resolution to adopt the WGA's principles for amending the ESA.

As this Endangered Species Act Amendments of 2018 works its way through the legislative process, we encourage you to follow the lead of Western governors.

Thank you for allowing Simplot to offer support for amending the Endangered Species Act, which we believe will better meet the needs of all the parties effected by the ESA. If you have any additional questions, or if we can offer any further assistance, please don't hesitate to reach out to Ken Dey, Simplot Director of Government Affairs, at (208) 780-7318 or ken.dey@simplot.com

Sincerely,

Garrett Lofto
Incoming President & CEO and current AgriBusiness President



11 June, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso:

As you are aware, the Wyoming Farm Bureau Federation has been active in issues surrounding endangered species. As we have worked to protect the 2,600 agricultural producers we represent throughout the state of Wyoming, it has become apparent that changes should be made to the Endangered Species Act (ESA). Over the years there have been attempts to help citizens affected by endangered species by amending the act. Our leaders have had numerous discussions on what could help our members cope with the sometimes, onerous provisions of the ESA. **The "Endangered Species Act Amendments of 2018" addresses many of the concerns we've had over the years and our organization certainly supports the proposed legislation.**

Experience with wolf introduction and efforts to delist that species along with grizzly bear delisting which has reached population objectives established by the scientific community for recovery; has shown that something needs to be done to facilitate endangered or threatened species removal from ESA management.

State involvement in endangered and threatened species recovery, while contemplated by the ESA, needs to be expanded. Listing of species by the Fish and Wildlife Service has happened in a vacuum over the years. States where these species live have often been provided only cursory input into potential management programs, even though the impacts to the citizens in that state can be significant. This needs to change. States need to be treated more as a partner in endangered species listing. The information states have available need to be considered and utilized when decisions are made on whether to list a species or not.

Once listed, species need to have a recovery process that is adhered to. Our experience has been that once a recovery goal is established, then special interest groups set about to change the goal posts. The current process forces landowners and users away from a cooperative process into an adversarial process. Getting the delisting or downlisting process right from the get go could unleash a cooperative process that will help the species. Something that cannot be said by the present process.

Providing landowners certainty in what is expected through clear recovery goals and habitat objectives lends itself to better cooperation. Getting states to lead this effort will help relieve some of the tension between landowners and the federal agencies. Providing states input on recovery processes will also help reduce these tensions.

Limit judicial review of delisting decisions by the Fish and Wildlife Service. We've seen in a dynamic natural system there will always be something that hasn't been considered by the Fish and Wildlife Service. Anyone who has dealt with those systems is well aware of this fact, but we've seen delisting or downlisting decisions made by species professionals in the Fish and Wildlife Service second guessed by judges with little or no experience in natural systems. These judges appear to let their biases rule their decisions where there is not a legitimate issue.

An example of this would be the Fish and Wildlife Service's decision to delist the grizzly bear in the Greater Yellowstone Area. The species had reached the recovery goals and the the Fish and Wildlife Service set about to delist the species so it could focus its limited resources on species in need of help. Instead, a judge overruled the the Fish and Wildlife Service's decision because they had not adequately analyzed the impact of white bark pine trees on the bear. The Fish and Wildlife Service then went back and studied the impact white bark pine trees had on the species and concluded that there would not be a significant impact.

Several years later the Agency once again proposed delisting the species. The Federal Register notice noted that the grizzly bears in that region are one of the most studied species ever. If the previous Fish and Wildlife Service decision would have been allowed to go forward, the post delisting monitoring would have provided ample forewarning should white bark pine be critical to the species and steps could have been taken to protect the species. All of this would have happened several years and millions of dollars earlier. A much better outcome with reduced expenditures. Plus the Fish and Wildlife Service may have been able to focus scarce resources on other more imperiled species.

States should be part of the process. Again, with limited resources, it only makes sense that the Fish and Wildlife Service utilize resources in the states. This limits the Fish and Wildlife Service's financial resources while availing themselves of expertise from, many times, those closest to the species. Allowing states the opportunity to participate, if not lead this process again draws the process closer to the collaborative process envisioned by the ESA.

Allowing states to have greater say in the 10(j) process will foster a greater partnership between the federal government and the states. Wyoming's experience with wolf introduction can be helpful in understanding this process. Also the 10(j) process should allow the Fish and Wildlife Service the necessary flexibility to facilitate recovery. In Wyoming several years ago, the Fish and Wildlife Service worked with some landowners to introduce Black-footed ferrets onto private lands. This process was brought to a halt when an environmental group attempted to sue the Fish and Wildlife Service over their 10(j) rule.

It is imperative that states be part of any settlement processes that might occur between litigants and the federal government. To often we've seen the Fish and Wildlife Service agree to settlements which have huge impacts on states and their citizens. When a state cannot manage their resources because a settlement didn't consider the state's realities it only serves to confirm the short comings of the ESA.

These are some of the issues which we feel should be considered when amending the ESA:

- Again, enhance cooperation between states and the federal government.
- Establish a more open and transparent process that allows parties to understand what the process and goals are.
- Allow the experts the ability to reach delisting or downlisting decisions and allow those

decisions to go forward without incessant legal challenges which serve to erode public confidence in the ESA.

- Once a species is recovered allow the Agency to move on to other species without having to spend years in additional studies and/or litigation to achieve essentially the same outcome. Then allow the Fish and Wildlife Service to set priorities.

All of the proposed changes in the Endangered Species Act Amendments of 2018 will achieve species recovery faster and less expensively that the current process. Our organization certainly supports this effort.

Thanks of your time and effort on this topic.

Sincerely,

Ken Hamilton
Executive Vice President
ESA reform support letter to Sen Barrasso

Neiman
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June 25, 2018

The Honorable John Barrasso
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso,

Thank you for your diligence in finding practical solutions to roadblocks that delay or prevent critical land and resource management actions. Although the Endangered Species Act (ESA) was enacted with the best of intentions, it has been reshaped through time into a law that has lost sight of the original intent and now serves as a tool to block necessary forest management actions. Actions that often benefit species the ESA proposes to protect.

Budgets, staffing, and petitions by the thousands to list species under the ESA have hamstrung the Fish and Wildlife Service. Far too often, the FWS workplan is dictated by lawsuits and settlements which reduces transparency and results in questionable decisions. That process, ultimately, further reduces resources.

Additionally, states have a vested interest in the thoughtful management of natural and wildlife resources within their borders. However, a common issue heard throughout discussions regarding the ESA is a lack of involvement from individual states. States often desire to play a more integrated role in the species listing process and subsequent recovery plans for protected species. Unfortunately, their opportunities to provide scientific input and expertise are limited.

Congress can, and should, take action to remedy the deficiencies in the implementation of the ESA. Neiman Enterprises supports amendments to the ESA that would 1) Enhance the federal-state partnership 2) Encourage conservation activities through regulatory certainty 3) Strengthen conservation decision making through increased transparency 4) Optimize conservation through resource prioritization and 5) Conduct further studies to improve conservation.

I appreciate the efforts to amend the ESA back into a functioning law with regulations that benefit species while encouraging vital forest management activities.

Thank you,

Jim D. Neiman
President/CEO
Neiman Enterprises, Inc.

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NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
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(202) 463-5310

June 26, 2018

The Honorable John Barrasso, MD
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

The U.S. Chamber of Commerce applauds the Committee for reexamining the Endangered Species Act of 1973 (ESA) and considering the "Endangered Species Act Amendments of 2018."

The Chamber believes we need to protect species in the United States that are threatened with extinction. Efforts to protect endangered species should be carried out in a reasonable and science-based manner that takes into consideration the impact of the method of protection. In recent years, outside interest groups have used the tactic of "sue and settle" to drive the ESA regulatory agenda in a direction that fails to appropriately take these considerations into account.

The Chamber believes that the Committee could improve the ESA through amendments that increase transparency, empower states, enhance regulatory certainty, and encourage conservation through resource prioritization.

Thank you for your leadership on this important issue.

Sincerely,

Neil L. Bradley

NORTH DAKOTA
GAME & FISH
DEPARTMENT
"Variety in Hunting and Fishing"

GOVERNOR, Doug Burgum

DIRECTOR, Terry Steinwand
DEPUTY, Scott A. Peterson

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June 28, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso:

I have been provided draft legislation meant to modernize the Endangered Species Act titled "Endangered Species Acts Amendments of 2018" and have thoroughly reviewed the document. North Dakota certainly advocates for the Endangered Species Act when used in a prudent and meaningful manner. The natural resources of our great state are important to us as well as the United States and we certainly want to maintain our resources in a healthy and robust state to benefit all.

While the existing Endangered Species Act allows for state involvement in the process of listing species, it hasn't necessarily included them in formulating recovery efforts. The amendments address that issue quite well in that affected states have a 'seat at the table' to formulate a recovery plan. The affected states undoubtedly understand the culture of their given area and also the capabilities to determine the most effective and efficient method to recover listed species. As such, the North Dakota Game and Fish Department supports the Endangered Species Act Amendments of 2018.

Respectfully,

Terry Steinwand

Terry Steinwand
Director

June 28, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Endangered Species Act Amendments of 2018

Dear Senator Barrasso:

The American Forest Resource Council (AFRC) is pleased to offer its support for the Endangered Species Act Amendments of 2018. AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout Washington, Oregon, California, Idaho, and Montana.

AFRC and our members are keenly aware of the impact of species listings under the Endangered Species Act (ESA). As a result of the listing of the northern spotted owl as a threatened species in 1990, public timber harvests dramatically decreased, leading to shuttered mills, lost jobs, and devastated communities. It is vitally important that the ESA be implemented carefully, collaboratively, and rigorously, lest the significant impacts of a listing happen without adequate justification.

The Endangered Species Act Amendments of 2018 take appreciable steps to improve implementation of the ESA. Title I will improve coordination and input from States which have some of the best local knowledge and information about status of potentially listed species. There are significant improvements in recovery planning, including the requirement to set objective recovery thresholds at the time a species is listed and the option of a State-led recovery team. Improving the recovery planning and implementation process is important, as clear guidelines and State involvement are more likely to provide a return on conservation investments made by State, private, and other stakeholders. Title II makes important strides in solidifying the use of Candidate Conservation Agreements with Assurances (CCAAs). CCAAs have emerged as an important tool in building commitments among private, State and federal landowners to conserve species across all lands to avoid the necessity of an ESA listing. The remaining Titles of the legislation contain important provisions with the goal of increasing transparency and data

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quality. The provisions regarding litigation transparency will shed important light on the role of litigation in driving management decisions that should be science-based.

As the Committee considers this important legislation, we urge you to examine the role that consultation under ESA section 7 plays in land management decisions. With the continued forest health crisis across the West, timely completion of the section 7 process is important to implementing management projects on the ground. Congress took a step forward with the Consolidated Appropriations Act in March where it addressed much of the Ninth Circuit's disastrous *Cottonwood* decision. A complete fix would eliminate duplicative paperwork without removing any significant conservation benefits. The Committee should also consider firm timelines for section 7 consultation, as the current timelines are very rarely observed. Additionally, the Committee should consider enabling the Forest Service's expert biologists to make their own determinations that an action is "not likely to adversely affect" listed species. This would streamline the process and make better use of the agency's expertise in land management.

Thank you for your leadership on the Endangered Species Act Amendments of 2018 and we look forward to working with you and the Committee as the legislation is considered further.

Very truly yours,

Travis Joseph
President

North Carolina Wildlife Resources Commission

Gordon S. Myers, Executive Director

June 29, 2018

The Honorable Senator John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso,

Thank you for the opportunity to review and comment on draft legislation entitled the "Endangered Species Act Amendments of 2018." Also, thank you for your thoughtful and careful leadership in identifying opportunities for meaningful Endangered Species Act (ESA) modernization. Your efforts along with those of the Western Governors' Association, the Association of Fish and Wildlife Agencies, and others have led to a well vetted set of goals that are reflected in the proposed legislation.

I support the draft legislation, which I believe, would improve implementation of the ESA and most importantly, improve recovery of listed threatened and endangered species. The proposed legislation would increase opportunities for state fish and wildlife agencies to take a more formal and active role in all aspects of ESA implementation, improve optimization of financial and human resources by instituting a prioritization system for addressing listing petitions, reviews, and determinations, and encourage conservation actions by increasing regulatory certainty.

As a state wildlife agency director serving in the southeastern United States, I am particularly mindful of the vital importance of private land conservation. In my home state of North Carolina, more than ninety-percent of the land-base is privately owned; therefore, the future of fish and wildlife in North Carolina relies heavily upon those landowners. The proposed legislation would help break down barriers of regulatory inflexibility and uncertainty thus promoting a balance of shared conservation values and landowner objectives. Since ESA inception in 1973, we have learned much about the conservation of listed species, their recovery needs, and how to facilitate, not discount, private landowner involvement. The proposed legislation would enable application of that knowledge to better achieve the conservation and recovery of listed species.

Thank you again for your thoughtful leadership on ESA modernization and for the opportunity to provide input on proposed legislation. Please let me know if I can be of any assistance.

Sincerely,

Gordon Myers

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Young Wooldridge, LLP

July 2, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Orange Cove Irrigation District, I write in strong support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) in order to increase transparency and regulatory certainty and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly support this critical legislation.

The Orange Cove Irrigation District is a Friant Division Contractor in California's Southeastern San Joaquin Valley. The Friant Division was established in the 1930's. Today it provides water supply to more than 1.5 million acres of the world's most productive agriculture and M&I supply which together support a population in the millions. The CVP had functioned as envisioned by its federal architects for decades without a disruption in Friant Division supply until 2014 and 2015 when limited Sacramento/San Joaquin Delta exports and maximum carryover storage requirements (based on ESA driven Biological Opinions) were imposed on Project operations. Those operations resulted in zero water supply allocations to all Friant Division contractors, many of whom, including the Orange Cove Irrigation District have no alternative source of supply.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are delighted to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

The aforementioned impacts in California's Great Central Valley have been nothing short of devastating over the last few decades as ever-increasing ESA "justified" Delta export restrictions have impacted the sustainability of agriculture and groundwater in rural communities without a modicum of species benefit.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in tbe draft. The bill also encourages conservation activities through regulatory certainty. Title II contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately improve conservation. For all of these reasons, the Orange Cove Irrigation District strongly supports the draft "Endangered Species Act Amendments of 2018" and looks forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at (559) 626-4461 if you have further questions.

Sincerely,

Fergus Morrissey
Engineer-Manager
Orange Cove Irrigation District

CC: Orange Cove Irrigation District Board of Directors
Dan Keppen, Family Farm Alliance

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AGGA

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

July 3, 2018

Dear Chairman Barrasso:

The Arizona Cattle Growers' Association (ACGA) would like to express our support for the Endangered Species Act Amendments of 2018. ACGA is the only state organization dedicated solely to representing Arizona's beef producing families, most of which hold federal grazing permits and operate on federal lands.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. Although there are currently 64 plant and animal species listed as threatened or endangered under the ESA in Arizona, one species which weighs heavily on the minds and wallets of Arizona's ranchers is the Mexican grey wolf. Forty-two years after being listed as endangered and 20 years into a federal recovery plan, the government has already spent millions of dollars with little to show for their efforts. This broken program is marred by a long-standing tradition of the United States Fish and Wildlife Service's failure to work with individuals who live on and manage the land. The Endangered Species Act Amendments of 2018 lay out critical species-specific recovery teams designating the states as the lead on species recovery. The Arizona Game and Fish Department has already proven far more adept at working to manage wolves and the landscape while also collaborating with those who live and work on the ground. It is time that the broken process laid out by the ESA be amended and the control of our state's species be placed in the hands of locals who have proven track records in achieving successful management of wildlife populations.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

As the nation's largest non-governmental bloc of land managers, ranchers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been

dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results.

ACGA appreciates the opportunity to provide input on behalf of our members. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Jay Whetten
President

FFRC Board of Directors
Chuck Roady
President
Montana

Travis Joseph
Vice President
Oregon

Mark Bosetti
Secretary-Treasurer
California

Tom Schultz
Idaho

Steve Brink
California

Howard Hedstrom
Minnesota

Dan Toivonen
Wisconsin

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Oregon

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Mark Travis
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Bill Imbergamo
Executive Director

600 New Hampshire Ave., NW Suite 500
Washington, DC 20037

July 3, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Re: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

The Federal Forest Resource Coalition (FFRC) is pleased to offer its support for the Endangered Species Act Amendments of 2018. FFRC is a national trade association focused on improving the management of Federal forests to support local business while improving watershed health and protect important forest values. With members in 32 States, FFRC works with those who rely on Federal timberlands for all or a portion of their fiber supply, as well as broad coalition of sportsmen's groups, local governments, and others who share our goals.

FFRC and our members are keenly aware of the impact of species listings under the Endangered Species Act (ESA). Listing of numerous species was used as a pretext to reduce timber harvest across many regions of the Forest Service, forcing closure of numerous sawmills, reducing management of national forests, and leading to greatly increased fire dangers across the National Forest System. Increasing the involvement of States and focusing on recovery of species – as the discussion draft bill does – would go a long way towards addressing concerns about endangered species management.

The Endangered Species Act Amendments of 2018 take appreciable steps to improve implementation of the ESA. Title I will improve coordination and input from States which have some of the best local knowledge and information about wildlife proposed for listing or species already listed under the Act. There are significant improvements in recovery planning, including the requirement to set objective recovery thresholds at the time a species is listed and the option of a State-led recovery team. Improving the recovery planning and implementation process is important, as clear guidelines and State involvement are more likely to provide a return on conservation investments made by State, private, and other stakeholders.

Title II would incentivize and improve the use of Candidate Conservation Agreements with Assurances (CCAAs), which have emerged as an important tool in building commitments among private, State, and federal landowners to conserve species across all lands to avoid the necessity of an ESA listing. The provisions regarding litigation transparency will shed important light on the role of litigation in driving management decisions that should be science-based.

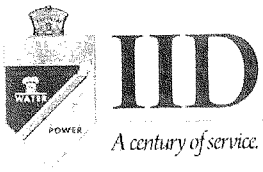
As the Committee considers this important legislation, we urge you to examine the role that interagency consultation under ESA section 7 plays in Federal land management decisions. Timely completion of the consultation process is critical to implement urgently needed forest management projects – particularly those intended to reduce fire danger or to recover value from already damaged timber stands. Congress took a step forward with the Consolidated Appropriations Act in March, which addressed much of the Ninth Circuit's disastrous *Cottonwood* decision. A complete fix would eliminate duplicative paperwork without removing any significant conservation benefits.

The Committee should also consider firm timelines for completion of section 7 consultation, as well as enabling the Forest Service's own expert biologists to make determinations that an action is "not likely to adversely affect" listed species. This would streamline the process and make better use of the agency's expertise in land management.

Thank you for your leadership on the Endangered Species Act Amendments of 2018 and we look forward to working with you and the Committee as the legislation moves forward.

Sincerely,

Bill Imbergamo
Executive Director



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Since 1911

July 3, 2018

The Honorable John Barrasso, Chairman
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso,

Imperial Irrigation District writes in support of the "Endangered Species Act Amendments of 2018." This bill proposes changes that will improve the efficiency and effectiveness of the ESA by way of increased transparency, improved state-federal consultation and resource prioritization.

As an irrigation district, it is vital to provide affordable and reliable water supplies as this affords economic, environmental and water security benefits. As we move toward balancing the needs of irrigated agriculture with conservation, it is important to recognize the ESA, although well intended, has resulted in increased litigation and fragmented interpretation by federal agencies. As a result, rural communities such as those in Imperial County have experienced unintended effects.

The proposed amendments to the ESA include improvements that will strengthen conservation decision-making. A series of workshops led by the Western Governors' Association, in consultation with the Family Farm Alliance, have led to identification of best practices in species management, increased state participation and improved methods to implement the ESA. Each of the ideas identified as a result of the workshops are reflected in the proposed bill. By engaging local government, landowners and stakeholders, we can encourage improved conservation under ESA Title II.

Making practical improvements to the ESA that increase transparency and optimize conservation through resource prioritization will enhance conservation. For these reasons, we support the draft "Endangered Species Act Amendments of 2018."

Sincerely,

Antonio Ortega
Governmental Affairs Officer

cc: The Honorable Juan Vargas
The Honorable Raul Ruiz

IMPERIAL IRRIGATION DISTRICT · P.O. BOX 937 · IMPERIAL, CA 92251

MOHAVE COUNTY BOARD of SUPERVISORS

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BUSTER D. JOHNSON
SUPERVISOR DISTRICT 3

July 6, 2018

Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

I am writing this letter in support of the Endangered Species Act Amendments of 2018 discussion draft. As the District III Supervisor for Mohave County, Arizona, and Chairman of the Quadstate Local Government Authority, I feel that rural counties in southwestern Arizona, Nevada, Utah and California will drastically benefit from this discussion draft. I have been a County Supervisor for over twenty years and Chairman of Quadstate for ten. While I feel that the protection of our most endangered species in this Country is erucial, amendments and revisions to the Endangered Species Act have been a long time coming. Overall, this discussion draft is a positive step and should move ahead.

While the Act has always had language that required State and local government involvement, there have been many incidents in which those promises of collaboration have fallen through. It is vitally important that we ensure that state and local governments have a voice at the table when it comes to species listing, delisting and species recovery. The emphasis on greater State involvement in this draft is a positive step in that states often have more detailed information of conditions and population status than do the federal wildlife and land management agencies. If nothing else, the explicit input will provide broader confirmation on conditions, or better identify gaps where adequate data does not exist.

An example of inadequate data can be seen in the Hualapai Mexican Vole that was delisted last year. It was first listed as an endangered species in 1987. Since then, it has been more difficult for Mohave County Officials to go forward with economic development on our vast public lands. Mohave County is made up of roughly 82% of public lands making economic growth very limited on private property. One developer in Mohave County had its entire project shut down indefinitely because the developer was not allowed to grade an existing roadway due to fear of disturbing this special field mouse. Back in 1987, the Service believed the Vole was confined mainly to the Hualapai Mountain area in Kingman. New scientific research has shown this to be untrue, and has revealed that they are a lot more wide spread across the state than originally

thought. I firmly believe had state and local government been more involved in the recovery of this species from the onset, it wouldn't have taken thirty years to properly delist the Vole.

I applaud your emphasis on several key aspects of this proposal and specifically on using the totality of the best scientific knowledge available. The Quadstate Local Government Authority encompasses over 50,000 square miles in the Southwest. The Authority has been heavily involved in the recovery of the Mojave and Sonoran Desert Tortoises. We have always pushed on the emphasis that the federal government needs to focus on the real issues related to the endangerment of these species such as disease and predation and stop the restrictive policies and programs that continue to fail. In over thirty years, we have spent well beyond $100 million on the recovery of the Desert Tortoise yet have no evidence to show that we have saved a single one.

By including states and local governments in the recovery process, I strongly believe that we can finally focus on recovery. Frequently, policies and plans are put into place by leaders and individuals well over two thousand miles away in Washington D.C., when they should be made by those locally on the ground and those who interact with these species on a daily basis. I feel this draft discussion is a step in that direction, so we can finally help these species recover and not simply put them on some list.

I fully support the inclusion of recovery goals and habitat objectives in the listing regulation. This will assure full-disclosure upon promulgation, and provide the public with details of the expected effects of a listing decision upon which it, and affected governments can comment prior to Secretarial decision-making. I also fully concur in the language on county notification appearing on page 12, lines 33 and 34.

The provision for state preparation of recovery plans is a positive approach for spreading workload and delegating workload. I do believe, however, that there needs to be explicit language to assure that a state team and plan formally include representation and direct input from affected local governmental units, including counties.

I applaud your emphasis on the key aspects of the proposed amendments in providing states with more time. Often, species are listed not because they are endangered, but because of court cases. Environmental groups are suing to have these species listed and the Service is given unrealistic time frames to determine if they are truly endangered. By giving states more time, I am hopeful that this problem will eliminate itself. Listing a species that is not truly endangered can be very burdensome on local government and economic development opportunity.

I again want to applaud the work you have done on this draft discussion, and I also want to thank the Western Governors Association for all of its help in drafting this. Overall, the language on performance, conservation agreements, best science, and transparency appear to be fully acceptable, and some such as a formal consideration as to whether the listing would do any good (page 34, line 1), demonstrates the positive degree to which the authors have thought out the draft.

Thank you for the opportunity to comment.

Sincerely,

BDJ

Buster D. Johnson
Mohave County Supervisor
District III

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cwgawool@aol.com ◦ coloradosheep.org

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

July 6, 2018

Dear Chairman Barrasso:

The Colorado Wool Growers Association represents the majority of stock sheep and lamb numbers in our state. Our members' farming and ranching operations span the state and utilize private, state, and federal lands. Our policy on the ESA states:

CWGA Resolution
Resource Management – 1
ENDANGERED SPECIES ACT REFORM

WHEREAS the Endangered Species Act (ESA) has only recovered approximately two percent of the species listed as endangered since its implementation in 1973; and

WHEREAS the ESA is misused by radical environmental groups to control land management and wildlife management decisions; and

WHEREAS the ESA negatively impacts land owners, livestock owners, federal lands permittees, and other private businesses, and public organizations;

THEREFORE BE IT RESOLVED that the CWGA and the American Sheep Industry Association (ASI) work with Congress to pass ESA reform that will significantly reduce the regulatory overburden and cost of the Act; and utilize accurate, objective science to determine species eligibility for listing and delisting.

The Colorado Wool Growers Association appreciates your leadership in ESA reform and reauthorization. We hope this common-sense legislation and your work with the Western Governor's Association leads to a more streamlined ESA that focuses on recovering species in need, while minimizing and mitigating the regulatory impact of the Act.

Respectfully,

Ernie Etchart
President

LITTLE SNAKE RIVER CONSERVATION DISTRICT
P.O.BOX 355 – Baggs, WY 82321 ph# 307-383-7860

July 6, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

The Little Snake River Conservation District stands in strong support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and facilitate the collaborative efforts from other important stake holders form state and local governments. For too long those state and local governments with strong ties to the land and significant levels of expertise in land and habitat management and demonstrated ability to work in cross jurisdictional land ownership patterns have not been afforded the opportunity to participate in the development of conservation activities and restoration of both ESA species and their habitat. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

The Little Snake River Conservation District is one of the 32 conservation districts in Wyoming and one of 3000 in the nation. We are the front line for the conservation of the nation soil, water and natural resource. The Conservation Districts are the original grass roots, locally lead, mechanism to get conservation on the ground. Specifically, the Little Snake River Conservation District has lead numerous cross jurisdictional landscape scale effort in the restoration and conservation of our water resource, habitat, and watershed. With our long history of implementing successful conservation efforts we would welcome the opportunity to bring that expertise to the table to further the original intent of the Endanger Species Act.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

LITTLE SNAKE RIVER CONSERVATION DISTRICT
P.O.BOX 355 – Baggs, WY 82321 ph# 307-383-7860

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, the Little Snake River Conservation District strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at 307-383-7860 if you have further questions.

Sincerely,
Larry Hicks, Natural Resource Coordinator

25 Cadillac Drive, Suite 214
Sacramento, CA 95825
Phone: (916) 444-8122
Email: info@woolgrowers.org

July 9, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The California Wool Growers Association (CWGA) would like to express our support for the Endangered Species Act Amendments of 2018. CWGA represents more than 500 sheep producers that produce lamb and wool products while being excellent stewards of the land, managing their pastures and rangelands as sustainable resources. Since 1860, CWGA has been the voice of the California sheep industry, delivering lasting value to support and grow all segments of the State's sheep industry.

According to the U.S. Fish & Wildlife Service, "the purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend." While a worthy and important goal, data indicates that fewer than two percent of the species listed under the Act since its implementation have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exercise control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the standard.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who most frequently interact with species.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement guarantees that those with firsthand knowledge of a habitat area can provide critical insights to the formation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

California producers use great care in shepherding their flocks in species conservation and recovery. For generations, sheep producers have been dedicated to improving the wellbeing of

President	***Vice President***	***Treasurer***	***Executive Director***
Ryan Indart	Dan Macon	Ed Anchordoguy	Erica Sanko
Clovis, CA	Auburn, CA	Sebastopol, CA	Sacramento, CA

landscapes where wildlife reside. Over the years, our members have grown frustrated by the lack of commonsense ESA implementation and being forced to the sidelines while those decisions are made. This legislation will help bring California sheep producers back to the table to develop recovery plans that are feasible and produce favorable results.

CWGA appreciates the opportunity to provide our input on behalf of our members – California sheep producers. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

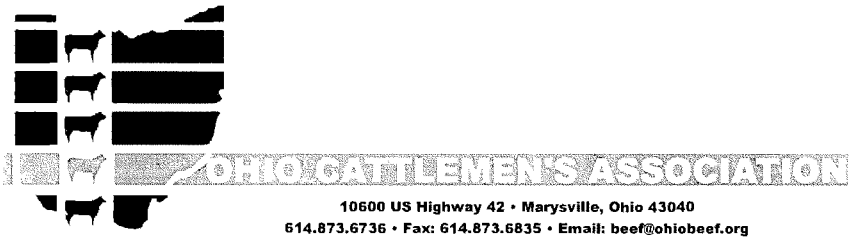
Ryan Indart
President
California Wool Growers Association

President
Ryan Indart
Clovis, CA

Vice President
Dan Macon
Auburn, CA

Treasurer
Ed Anchordoguy
Sebastopol, CA

Executive Director
Erica Sanko
Sacramento, CA



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Past President
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hjfoster25@yahoo.com

Executive Director
Elizabeth Harsh

July 9, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Ohio Cattlemen's Association (OCA), representing cattle farm families throughout Ohio would like to express our support for the Endangered Species Act Amendments of 2018. OCA serves as the voice of the state's beef cattle business including cattle breeders, producers and feeders.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a commendable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This approach is a key contributor to the ESA's dreadful success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. OCA supports the Endangered Species Act Amendments of 2018 that was crafted to follow the Western Governor's Association's ESA Resolution which was passed on a bipartisan basis after years of engaging stakeholders from all ends of the political spectrum – including environmentalists and conservationists. It calls on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

As land managers, Ohio cattle farmers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results.

The Ohio Cattlemen's Association appreciates the opportunity to provide our input on behalf of our members. We urge swift passage of the Endangered Species Act Amendments of 2018. Thank you.

Sincerely,

Sasha Rittenhouse
President
Ohio Cattlemen's Association

July 9, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Barrasso,

Our collective natural resource-based members are all too familiar with the impacts of the Endangered Species Act (ESA). Their livelihoods are threatened by the ESA's ever-present potential of placing serious federal restrictions on the natural resource industry. There is a limit to how much a business can take and still survive.

It is no secret that Oregon's famous timber industry is a pale version of what it used to be. On June 26th, 1990, the Northern Spotted Owl was put on the Endangered Species list. That date marks one of the most controversial decisions ever for Northwest forests. Loggers correctly predicted old-growth protections that might be good for the owl could destroy their industry. The owl's protected status in 1990 led to the Clinton Administration's Northwest Forest plan, four years later. That plan promised a balance of timber production and environmental protection, but never delivered for timber production.

The effect has been a 90% reduction in our federal timber supply. When nearly four billion board feet are taken off the market, the economic effects to our rural communities was disastrous. Throughout the state, hundreds of mills closed, and tens of thousands of people lost their jobs. In 2003, the *Journal of Forestry* reported that more than half of the 60,000 Oregon workers who held jobs in the wood- products industry at the beginning of the 1990s no longer had them by 1998.

Negative effects on grazing are another prime example of how the ESA and litigation has hampered the natural resource industry. The natural resource community continues to be inundated with legal claims that insufficient monitoring exists within the system. An example of this is the case filed on January 6, 2011, by the Hells Canyon Preservation Council and Oregon Natural Desert Association. That case specifically challenges the monitoring done by the US Forest Service (USFS) to support its decisions to use the 2005 Appropriations Rider to categorically exclude thirty-five allotments from an environmental impact statement or assessment under the National Environmental Protection Act (NEPA).

In most cases, the problem is constant-- the USFS has failed to do its job and do the proper monitoring of the federal land. When the USFS is unable to adequately supply the courts with evidence of monitoring, livestock producers suffer. Courts are quick to limit or modify grazing activities even if the USFS collects the information it should have had in the first instance to demonstrate that grazing is not harmful to national forest lands.

Oregon's devastating experience with the ESA shows the need for a more collaborative recovery approach, with State conservation agencies, local governments and stakeholders. We appreciate the bipartisan approach and extensive work that the Western Governors' Association has put into improving the ESA. The proposed Endangered Species Act Amendments of 2018 takes positive steps forward to improve implementation of the ESA.

We support the draft's improved coordination and input from States. State conservation agencies have some of the best local knowledge and information about status of potentially listed species. They also have experience working collaboratively with local stakeholders. This is why the option of a State-led recovery teams for listed species is justified.

The draft also elevates the use of Candidate Conservation Agreements with Assurances (CCAAs). The use of CCAA are an important tool in building conservation commitments among private, State and federal landowners to avoid the necessity of an ESA listing. Our Oregon ranching stakeholders are successfully working collaboratively with other private industry sectors, conservation groups and local, State and Federal governments to implement a CCAA for the Greater sage-grouse. An important addition to the draft is the safe-harbor provisions to provide regulatory certainty for landowners and other stakeholders to facilitate participation in conservation and recovery activities.

We support the increased transparency for state conservation agencies, local governments and stakeholders. The provisions regarding litigation transparency are especially important and will inform the role of litigation in driving management decisions over science-based efforts.

As the Committee deliberates on this Act, please consider the impact that ESA litigation is having on the management of species and our natural resource sectors. Just last April, a federal district court in Oregon dismissed an ESA lawsuit about the impacts of grazing on protected bull trout, finding that grazing was unlikely to have caused the decline in bull trout populations. Unfortunately, it took 15 years to reach a decision in this case. During this time, several ranches gave up their grazing permits because the ESA fight had become too burdensome.

Thank you for your leadership on the Endangered Species Act Amendments of 2018 and we look forward to working with you and the Committee as the legislation is considered further.

Sincerely

Katie Fast
Oregonians for Food & Shelter

Mary Anne Cooper
Oregon Farm Bureau Federation

Jerome Rosa
Oregon Cattlemen's Association

Roger Beyer
Oregon Seed Council

Jim Geisinger
Associated Oregon Loggers

Tami Kerr
Oregon Dairy Farmers Association

Oregon Water Resources Congress

795 Winter St. NE | Salem, OR 97301 | Phone: 503-363-0121 | Fax: 503-371-4926 | www.owrc.org

July 9, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

The Oregon Water Resources Congress (OWRC) is writing in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to enhance transparency, increase regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly support this very important legislation.

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other local government entities delivering agricultural water supplies. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower production, and deliver water to roughly 1/3 of all irrigated land in Oregon. The water supplied by our members helps support family owned farms and ranches that provide over 225 diverse agricultural products; an integral part of Oregon's economy and our global food network.

In Oregon there are numerous endangered, threatened, and sensitive species of concern and we feel strongly that the State is best positioned to develop and implement conservation efforts. Efforts by the State of Oregon and other western states to incentivize and support on-the-ground projects that directly benefit species is far more effective than litigation driven action and settlements. In fact, the Oregon Chub became the first fish species to be de-listed for recovery in 2015; an accomplishment that would have not been possible without a cooperative and incentivized approach with landowners.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas in Oregon have suffered as a result and the cost of litigation has stymied genuine species recovery efforts.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act. Whether it is the Oregon Spotted Frog in the Deschutes Basin, or competing biological flow needs for freshwater and anadromous fish in the complex Klamath Basin, every watershed basin in Oregon has suffered from so-called environmentalists who have used provisions of the ESA to destroy livelihoods and cripple agency budgets rather than support actions that improve species health.

OWRC has been supportive of the efforts of the Western Governors' Association (WGA) in modernizing the ESA process through the Species Conservation and Endangered Species Act Initiative (Initiative) and we are encouraged to see this discussion continuing at the national level. WGA led a robust process for engaging stakeholders in a transparent and constructive manner. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states, including Oregon, to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. In addition, Title II contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, OWRC strongly supports the draft "Endangered Species Act Amendments of 2018" and looks forward to working with you further to advance this important legislation. We would be happy to provide you with more specific examples of how this draft bill could improve collaborative species conservation throughout Oregon.

Please do not hesitate to contact me at 503-363-0121 or aprils@owrc.org if you have further questions or for any additional information.

Sincerely,
April Snell
Executive Director

Southland Royalty Company LLC

July 9, 2018

VIA Email

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

Southland Royalty Company LLC ("Southland") appreciates this opportunity to express its support for the Endangered Species Act Amendments of 2018 ("2018 ESA Amendments"). Southland is an independent oil and natural gas exploration and production company headquartered in Fort Worth, Texas with interests in more than 9,000 oil and gas wells located throughout the Greater Wamsutter Area of the Green River Basin in southwestern Wyoming and the San Juan Basin in southwestern Colorado and northwestern New Mexico. Southland is committed to environmental stewardship and the protection and recovery of species and habitats existing in the areas that we operate.

The 2018 ESA Amendments offer much needed updates to modernize and promote the effective administration of policies to conserve and protect important ecosystems. With a particular emphasis on using best scientific and commercial data and by creating new mechanisms for promoting collaboration and involvement with state and local experts to assist in listing processes, the 2018 ESA Amendments offer a tailored, adaptable, and transparent framework for promoting and meeting conservation goals and enabling recovery activities. Moreover, the 2018 ESA Amendments endeavor to provide regulatory certainty for stakeholders, who like Southland, are interested in facilitating and

participating in conservation and recovery efforts to improve the areas where we are present.

Southland appreciates this opportunity to share its input and support and urges swift passage of this important legislation.

Yours very truly,

James P. Albert
Manager – Government & Regulatory Affairs
Southland Royalty Company LLC

Board of Directors
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Daniel C. Naumann, Vice President
Michael W. Mobley, Secretary/Treasurer
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General Manager
Mauricio E. Guardado, Jr.

Legal Counsel
David D. Boyer

UNITED WATER CONSERVATION DISTRICT
"Conserving Water since 1927"

July 9, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Support for Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

On behalf of United Water Conservation District (United), I write in support of the "Endangered Species Act Amendments of 2018" as reflected in the June 29, 2018 discussion draft. United appreciates your work, and that of committee members and staff, to bring the discussion draft forward. It reflects goals of transparency and regulatory certainty, and promotes problem-solving over the conflict that has characterized implementation of the Endangered Species Act (ESA). Even though it has many shortcomings, the ESA has inappropriately been treated as untouchable and not in need of reform. We applaud your effort to accomplish needed and sensible reforms.

For 90 years, United and its predecessor agency have managed water resources of the Santa Clara River basin in Ventura County, California. Our primary focus is on protecting and sustaining groundwater basins that are critical for highly productive agriculture and hundreds of thousands of urban residents. United stores, diverts and delivers water of the Santa Clara River watershed to high-rate percolation ponds that recharge groundwater basins in western Ventura County, and in some areas delivers surface water in lieu of direct pumping from the groundwater basin. These activities are essential to maintain sufficient quantity and quality of groundwater supplies for the region, and prevent seawater intrusion into the groundwater basins that would permanently contaminate this essential resource.

The Santa Clara River Valley and the Oxnard Plain, for which United provides groundwater recharge, comprise one of the prime agricultural areas in the world, with year-round agriculture supporting high-value row crops, strawberries, raspberries, lemons, oranges, avocadoes, flowers and sod, providing the basis for a significant Ventura County agricultural economy, with annual production valued at over $2 billion, including over $1 billion per year generated from the Oxnard Plain alone.

106 N. 8th Street ♦ Santa Paula, California 93060 ♦ Phone (805) 525-4431 ♦ Fax (805) 525-2661 ♦ www.unitedwater.org

UNITED WATER CONSERVATION DISTRICT

U.S. Senator John Barrasso
July 9, 2018
Page 2

United has been affected by the application of the ESA: species listings, most particularly Southern California Steelhead, that occurred long after regional economies developed in reliance on United, have resulted in litigation and costly and frustrating regulatory procedures. At the present time, United is aggressively working to pursue permits for several listed aquatic and terrestrial species based on a multiple species habitat conservation plan that has been in development for many years.

Some of our current problems and conflicts could have been headed off had the proposed ESA amendments been in place years ago. Further, we recognize the potential for future listings, and the support of cooperative conservation that is reflected in the discussion draft would be extremely helpful and productive.

United also understands that the discussion draft will be subject to clarification and amendment as the bill moves through the legislative process. United would strongly support additional, common-sense amendments that provide predictability, objectivity, and regulatory accountability for parties applying for permits under section 10(a)(1)(B) of the ESA, especially those operating pre-existing water projects. These could include interim protections from litigation and enforcement, time deadlines for agency action such as exist in the ESA section 7 consultation process, and certainty as to the application of the "maximum extent practicable" standard that applies to permitting based on a habitat conservation plan. 16 U.S.C. § 1539(a)(2)(B)(ii).

Again, thank you for your leadership in delivering the discussion draft. We look forward to working with you to realize enactment of this legislation.

Please feel free to contact me at 805.525.4431 or mauriciog@unitedwater.org if you have any questions.

Sincerely,

Mauricio E. Guardado, Jr.
General Manager, United Water Conservation District

PRESIDENT
TOM DAVIS
Yuma County Water Users' Association
Yuma, Arizona

VICE-PRESIDENT
DONOVAN NEESE
Roosevelt Irrigation District
Glendale, Arizona

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Salt River Project
Phoenix, Arizona

TREASURER
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Maricopa Water District
Litchfield, Arizona

EXECUTIVE DIRECTOR
CHRIS UDALL
Mesa, Arizona

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Arizona's Representative to the National Water Resources Association

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Coolidge, Arizona

MICHAEL URTON
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Coolidge, Arizona

GRANT WARD
Maricopa-Stanfield IDD

July 10, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Agribusiness & Water Council of Arizona (ABWC), I am writing in support of the "Endangered Species Act Amendments of 2018" legislation being considered at this time. Our membership is very supportive of increasing transparency, addressing regulatory overkill and most certainly reauthorization of the Endangered Species Act! It is long overdue! We are very appreciative of you and your committee's leadership on this important issue of ESA reform and are desirous to help in every way we can.

The Agribusiness & Water Council of Arizona is a non-profit trade association established in 1978 to focus on irrigated agriculture and agribusiness related issues in Arizona. We also serve as the state affiliate to the National Water Resources Association (NWRA) and are also actively involved as members of the Family Farm Alliance.

Our members want nothing more than to see endangered species recovered and delisted or protected in advance of any listing. We feel this can be done without negatively impacting our economy and putting people out of business. Our members desire transparency, regulatory certainty, local input and ability to manage at the local level; most importantly, they want to see the 800-pound litigation gorilla taken out of the driver's seat. We feel the proposed bill addresses many of our concerns and desires and brings the law into the 21st Century. We certainly hope the process will also be bipartisan so we can solve some of these lingering issues and differences once and for all. Unfortunately, there is too much political talk and not enough action.

Again, thank you for your leadership and efforts to address such a critical issue to our nation's producers and consumers.

Sincerely,

Chris Udall

Executive Director

Jim Stone, Chair
Ovando, Montana

Terry Mansfield, Vice-Chair
Cheney, Washington

Shelly Kelly, Secretary
Sutherland, Nebraska

Russell Davis, Treasurer
Ordway, Colorado

Duane Coombs
Battle Mountain, Nevada

Jim Faulstich
Highmore, South Dakota

Tuda Libby-Crews
Bueyeros, New Mexico

Warren Mickey
Charles Town, West Virginia

Pat O'Toole
Savery, Wyoming

Gary Price
Blooming Grove, Texas

Bill Sproul
Sedan, Kansas

Jay Tanner
Grouse Creek, Utah

Reese Thompson
Vidalia, Georgia

July 9, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

On behalf of the Board of Directors of Partners for Conservation, I write in support of the proposed language to amend and reauthorize the Endangered Species Act of 1973. Our organization appreciates the leadership of Chairman Barrasso and the members of the committee in efforts to return to the original intent of a more collaborative approach to the conservation of species covered by the Act.

Partners for Conservation is a landowner-led organization that supports collaborative conservation of our national working landscapes through public-private partnership for the benefit of both people and nature. It is our belief, and experieuce, that collaboration and partnership is the only way to build solutions to conservation issues we face as a nation. We are committed to doing all we can to make partnership and collaboration our first choice instead of an approach of last resort.

The principles included in the proposed language reflect the collaborative process undertaken by the Western Governors' Association (WGA) launched in 2015 by Wyoming Governor Matt Mead that brought together diverse public and private perspectives that all have a stake in endangered species conservation. The concepts of transparency, increased coordination, more effective communication, regulatory certainty and a more collaborative approach between stakeholders are all attributes that we know to be important when facing any challenge on the landscape.

The proposed language seeks to provide practical improvements that if adopted should result in more effective outcomes on-the-ground for, species, landscapes, landowners and communities across the country.

Sincerely,

Steve Jester
Executive Director

Partners for Conservation • P.O. Box 1876 • Blanco, TX 78606 • www.partnersforconservation.org • info@partnersforconservation.org

Board of Commissioners

Donnie Boyd, Commissioner
Position One

Kelley Minty Morris, Commissioner
Position Two

Derrick DeGroot, Commissioner
Position Three

July 10, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of Klamath County, we write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

305 Main Street, Klamath Falls, Oregon 97601
Phone: (541) 883-5100 | Fax: (541) 883-5163 | Email: bocc@klamathcounty.org

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, Klamath County strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact any of us at 541-883-5100 if you have further questions.

Sincerely,

Donnie Boyd Vice Chair	Kelley Minty Morris Commissioner	Derrick DeGroot Chair

305 Main Street, Klamath Falls, Oregon 97601
Phone: (541) 883-5100 | Fax: (541) 883-5163 | Email: bocc@klamathcounty.org

Missouri Sheep Producers

July 9, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Missouri Sheep Producers (MSP) would like to join the American Sheep Industry (ASI) in expressing our support for the Endangered Species Act (ESA) Amendments of 2018. MSP is an active organization of nearly 120 Missouri sheep producing families and others interested in the sheep industry. MSP is one of 45 state sheep associations who have joined together to form ASI and represent nearly 90,000 sheep ranchers located throughout the country who produce America's lamb and wool.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans.

Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

As the nation's largest non-governmental bloc of land managers, farmers and ranchers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation

and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results. MSP and ASI appreciate the opportunity to provide our input on behalf of our members – the nation's food and fiber producers. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Raymond Jones
President
Missouri Sheep Producers

July 11, 2018

The Honorable John Barrasso, MD

Chairman, Senate Committee on Environment and Public Works

410 Dirksen Senate Office Building

Washington, DC 20510

Dear Senator Barasso:

I write on behalf of the membership of the Montana Wool Growers Association (MWGA). The MWGA represents Montana's sheep and wool producers.

MWGA had advocated for many years for reforms to be made to the Endangered Species Act (ESA). Our producers have seen time and time again how it easy it is to put a species under the auspices of the ESA and how hard it is to get one off the endangered species act list. This is why MWGA's membership strongly supports the Endangered Species Act Amendments of 2018. The benefits of the ESA are being undermined by its procedural flaws.

ESA reform is critical for Montana's sheep producers. In the last 10 years, Montana's producers have had their ability to protect their livestock from predators hamstrung by the fact that both grizzly bears and wolves have been and are ESA protected. While conservation of these two species is a laudable goal, the inability to get these species delisted after recovery goals have been met due to the incessant filing of federal lawsuits is problem that must be addressed.

We join our national organization, the American Sheep Industry, in stating that ESA reform is a priority for agriculture producers and must be a priority for Congress as a result. In this vein, we applaud you for your work on bringing ESA reform to the forefront and for advancing the Endangered Species Act Amendments of 2018.

Again, on behalf of the membership of the MWGA, I thank you for the opportunity to share our thoughts and priorities on the need for endangered species act reform. We are available to speak with you directly about the issues raised above should you need more information or clarification on the matters discussed herein.

Sincerely,

/s/

James E. Brown

Public Relations Director

MWGA

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Board of County Commissioners
Nye County, Nevada

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July 11, 2018

Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Subject: Endangered Species Act Amendments of 2018

Dear: Chairman Barrasso

I am writing this letter in support of the Endangered Species Act Amendments of 2018 discussion draft. As the Chairman of the Nye County Board of County Commissioners, I feel that rural counties in southwestern Nevada, Arizona, Utah and California will drastically benefit from this discussion draft.

I have been a County Commissioner for 1 ½ years but previously a member of the Regional Planning Commission for six years and the Chairman for three years. While I feel that the protection of our most endangered species in this Country is crucial, amendments and revisions to the Endangered Species Act have been a long time coming. Overall, this discussion draft is a positive step and should move ahead.

The emphasis on greater State involvement in this draft is a positive step in that states often have more detailed information of conditions and population status than do the federal wildlife and land management agencies. If nothing else, the explicit input will provide broader confirmation on conditions or better identify gaps where adequate data does not exist.

Frequently, policies and plans are put into place by leaders and individuals well over two thousand miles away in Washington D.C., when they should be made by those locally on the ground and those who interact with these species daily. I feel this draft discussion is a step in that direction, so we can finally help these species recover and not simply put them on some list.

Thank you for the opportunity to comment.

Sincerely,

John Koenig,
Chairman, Nye County Commissioner District 2

JK/jr

18-0267JK

TEXAS CATTLE FEEDERS ASSOCIATION

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Dwayne Thompson

July 11, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

Texas Cattle Feeders Association (TCFA) supports the Endangered Species Act Amendments of 2018 and urges swift passage of this important legislation. The Endangered Species Act Amendments of 2018 is a critical step forward in modernizing the Endangered Species Act (ESA), providing state and local governments with more authority to make decisions based on their areas' unique landscapes, individual needs and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights regarding the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess and quickly react to changing conditions for the benefit of species.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the ESA since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on land owners and local communities. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The Endangered Species Act Amendments of 2018 closely aligns with the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

TCFA represents 200 cattle feedyards in Texas, Oklahoma and New Mexico which feed and market roughly six million head of cattle annually and account for 30 percent of the nation's fed beef production. Cattle producers play an integral part in species conservation and recovery and take great pride in their role. For generations, these men and women have been dedicated to improving wildlife habitat and the health of their lands. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and actually help protect and recover imperiled species and ecosystems. TCFA urges swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Jason Peeler
Chairman

ZACHARY RENSTROM, COMMISSION CHAIR | VICTOR IVERSON, COMMISSIONER | DEAN COX, COMMISSIONER

July 11, 2018

The Honorable John Barrasso, M.D.
Chairman
United States Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Draft Legislation to Strengthen the Endangered Species Act

Dear Chairman Barrasso:

Washington County, Utah supports your efforts to modernize the Endangered Species Act (ESA) through drafting the Endangered Species Act Amendments of 2018.

We are especially pleased to see that your draft bill would require, for the first time, that the United States Fish and Wildlife Service (USFWS) engage in meaningful consultation with state and local governments in developing and following through with recovery goals designed to lead to delisting. As a county, we naturally support provisions of the draft legislation to ensure greater and more proactive consultation with state and local governments in the development of recovery goals. Here in Washington County, we have been managing a habitat conservation plan (HCP) to recover the threatened Mojave Desert Tortoise for over 20 years. Our county is the only county in the state with a desert tortoise population, so county involvement has been vital balancing protection of the species with the need for economic growth. We have plenty of on-the-ground experience with how much more effective USFWS can be when acting in strong partnership with local government. We speak from experience when we say that county governments should have an active role in threatened and endangered species recovery efforts, including the development and measurement of population recovery goals.

Washington County also supports provisions in the draft legislation that would expand participation of state and local governments in efforts to ensure transparency in the development and use of scientific data during the listing and recovery processes. Utah's counties know that listing and delisting decisions should be based on the best available

scientific data and a transparent decision-making process that follows consistent, reliable timelines. We are also pleased to see that the draft legislation includes the development of candidate conservation agreements to be credited by the U.S. Fish and Wildlife Service when making a listing determination. Utah's counties have seen firsthand that collaborative agreements between the federal government, state and local officials, landowners and other stakeholders can create species conservation plans that balance community and economic needs with environmental protection. Without local government partnerships, federal management of threatened and endangered species is limited by federal budgets and federal expertise.

All of Utah's counties, including Washington County, have already written individual county resource management plans to coordinate management actions with federal agencies. The state of Utah has used those plans to create a state resource management plan. These plans provide the federal government with existing, verifiable data and scientific information that can be incorporated into federal agency plans, further reducing timelines and ensuring data consistency. We appreciate that the draft legislation recognizes the unique and constructive role counties already play in the development of data and science and the need for the federal government to include state and local governing partners in developing the best possible species conservation policies. The State of Utah and the counties need to be considered full partners in any species plans and decisions. We applaud your effort to codify that into law with this revision of the ESA.

We urge you to continue your dialogue with state and county governments as you craft the best possible ESA modernization package. Thank you for your continued support for counties on this and other issues affecting local governments.

Sincerely,

WASHINGTON COUNTY COMMISSION

Victor Iverson
Commissioner

Zachary D. Renstrom
Chairman

Dean Cox
Commissioner

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Western Association of
Agricultural Experiment Station Directors
Office of the Executive Director

July 11, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso:

On behalf of the Western Region Deans, Directors and stakeholders of the Western Region Land Grant University (LGU) Colleges of Agriculture, I am pleased to write a letter of support for The Endangered Species Act Amendments of 2018 as shared with Dr. John Tanaka from the University of Wyoming on June 7, 2018.

When the Western Extension Directors Association (WEDA) and the Western Association of Agricultural Experiment Station Directors (WAAESD) jointly published the *Western Perspective, Western Agenda Report* (http://www.waaesd.org/the-western-agenda) in 2015, the first project undertaken was species conservation. Western Region land-grant university scientists and Extension educators became involved in the Western Governors Association (WGA) Initiative on the Conservation of Species and the Endangered Species Act started by Governor Matt Mead and met separately to develop recommendations for using science-based solutions to conserve threatened and endangered species.

On behalf of the WAAESD, Dr. Tanaka participated in nearly all of the WGA initiative forums and workgroup meetings over the past three years. Through that process, he had the opportunity to both share the research perspective and to learn different stakeholders' views. The collaborative forum process resulted in a series of sound recommendations presented to the Western Governors Association (WGA) for consideration. Many of those recommendations contributed significantly to the resolutions adopted by WGA and many of the proposed amendments appear to follow the WGA recommendations.

As Governor Mead stated in the kick off the WGA initiative, this is not an attempt to scrap the ESA, but to make it work better. Establishing clear criteria for recovery of a threatened or endangered species is critical. Delisting a species when it has met those criteria is equally critical for local landowners, communities, and the state. Better involvement of the States and Tribal Governments throughout the process was an overarching theme throughout the WGA workgroups. Indeed, the following sections make significant improvements to the Act

- Use the "best scientific and commercial data" (Title I, Sec. 102) and (Title III, Sec. 301). These changes far exceed using only the best available data standard currently in place.

- Transparency of information (Title III, Sec. 302) is increasingly important in the scientific community. Protections as outlined in this section important to safeguard those providing such information and allowing state laws to be followed while ensuring such data can be made available.

- Voluntary conservation efforts and regulatory assurances, Title II, Secs. 201 to 205
- Prioritizing listing petitions, reviews, and determinations (Title IV, Sec. 401)
- Inclusion of qualified scientists on the recovery teams (Title I, Sec. 102).

LGU scientists can add research results, contribute to data interpretation, and bring relevant field experiences and knowledge of the species and ecosystem to the table. Scientists with both habitat and species-specific experience should be included. If these scientists are to be full voting members of the recovery team, there should be a qualifier in the section similar to the one where Federal representatives cannot exceed the number of State and local representatives. However, we caution against having scientists as voting members of these committees. We believe that scientists participating in a technical advisory capacity would best serve committees. Finally, LGUs are a valuable source of scientists from Agricultural Experiment Stations and educators from Cooperative Extension who should be among the go-to experts during ESA decisions.

The WGA workgroups also had significant discussion on whether economic and social considerations should be included in listing or delisting decisions. These factors are not in the proposed amendments; however, many of stakeholders thought these were important considerations.

The WAAESD, the Western LGU Deans of Agriculture, Western Council of Agriculture Research, Extension and Teaching, and the Western Extension Directors Association support efforts that bolster the scientific integrity that is the foundation of the Endangered Species Act, expand collaboration between states and the USFWS, and protect the privacy of stakeholders engaged in the recovery process. Further, we support the recommendations that resulted from the collaborative process sponsored by the WGA.

If you have questions please do not hesitate to contact Dr. John Tanaka at jtanaka@uwyo.edu or the WAAESD at Michael.Harrington@colostate.edu.

Sincerely,

H Michael Harrington
Executive Director

H. Michael Harrington
Executive Director
Michael.harrington@colostate.edu
Phone: 970-491-6280; Direct: 970-491-7457

4040 Campus Delivery
Colorado State University
Ft Collins, CO 80523
http://www.waaesd.org

Court Boice, *Commissioner*

94235 Moore Street, Ste. 122

Gold Beach, OR 97444

Ph.: (541) 247.3229

July 11, 2018

RE: the "Endangered Species Act Amendments of 2018."

The Honorable John Barrasso, MD Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510.

Dear Mr. Barrasso;

Again your work and concerns are greatly assisting Rural America with wise legislative amendments. Those efforts will aid my County in a variety of ways.

As you know, we have in our special Southwest Oregon County Corner; varied habitats for the Northern Spotted Owl, Snowy Plover, Bald Eagle, Marbled Murrlet, and various other Fish and Wildlife. Nearly all are either on the "E.S.A. watch list", the threatened list, the endangered list or changing from one level of listing to another.

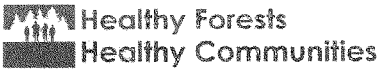
These routine and anticipated premature listings severely restrict our Timber Harvest negatively impacting our livability, economic vitality, schools, and public safety.

More science is needed as we should fully understand and too need to be reminded – *science is always changing.* I look forward to future correspondence regarding other critical projects from your distinguished Environment and Public Works Committee.

Oregon sends sincere gratitude to you and your great staff.

Thank You.

Court Boice, Curry County Commissioner



July 11, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
United States Senate
Washington DC 20510

Re: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

Healthy Forests, Healthy Communities (HFHC) is a grassroots coalition that advocates for active forest management on federally-owned forests. Thus, we support efforts to modernize the Endangered Species Act (ESA) and to make its implementation and processes more responsive to the needs and perspectives of states and local communities. These goals are reflected in the proposed Endangered Species Act Amendments of 2018.

HFHC operates in the Pacific Northwest, Inter-Mountain West and Great Lakes States. We advocate for communities that continue to be socially and economically impacted by ESA-related decisions that have dramatically reduced timber harvests on federal lands, and have significantly restricted opportunities for active management that keep our forests healthy, resilient and accessible. Over the past several decades, the ESA has fundamentally failed to recover vulnerable wildlife species. It is part of a complex and counterproductive web of federal policies that have cost tens of thousands of American jobs, high poverty and unemployment in rural communities, and forests and wildlife habitat that's been degraded by catastrophic wildfire, insect infestations and disease.

It's time to fix this well-intentioned yet broken law, and the Endangered Species Act Amendments of 2018 is a step in the right direction. HFHC is especially supportive of provisions that give states and communities a greater role in listing decisions, recovery planning and implementation processes. It is critical for the federal government to (1) leverage the knowledge and expertise of those who live, work and recreate on affected lands, and (2) implement the ESA in a way that doesn't destroy family-wage jobs and limit efforts to reduce the risks of catastrophic events on public lands.

The committee should consider that a primary barrier to active forest management is the considerable cost and time it takes for federal agencies to satisfy environmental regulatory requirements. As you consider this legislation, we ask that you seek long-term solutions that ensure timely ESA consultations, eliminate duplicative paperwork, and help expedite urgently needed forest projects. This could be accomplished, in part, by allowing U.S. Forest Service biologists to make determinations when actions are not likely to adversely affect vulnerable species.

Thank you for bringing forth the Endangered Species Act Amendments of 2018, and especially for your leadership in improving our system of federal land management.

Sincerely,

Nick Smith
Executive Director
Healthy Forests, Healthy Communities

Restore our federal forests to restore our rural communities
HealthyForests.Org

Idaho Farm Bureau Federation
500 West Washington Street
Boise, Idaho 83702
Phone: (208) 342-2688 Fax: (208) 342-8585

July 11, 2018

Senator John Barrasso, MD- Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

I am contacting you today to express the Idaho Farm Bureau Federation's (IFBF) support of the *Endangered Species Act Amendments of 2018*. IFBF is Idaho's largest agriculture organization, representing 78,800 member families throughout our state. Many of these families have been directly affected by the Endangered Species Act (ESA). American Farm Bureau Federation policy no. 565.3 - Endangered and Threatened Species says ***"The Endangered Species Act should not be reauthorized in its current form. The current federal ESA must be amended and updated to accommodate the needs of both endangered and threatened species and humans with complete respect for private property rights within the framework of the United States Constitution."***

IFBF greatly appreciates your work on this issue as well as the earlier work of the Western Governors Conference. *ESA Amendments of 2018* eliminates the current law's top-down approach by granting states and local governments more involvement in the decision making process and recognizes unique conditions, landscapes and needs. It allows those with firsthand knowledge and understanding to participate in recovery plans.

Farmers and ranchers are the initial land and water managers. Their input is critically needed in the recovery of any threatened or endangered species. As your bill advances in the process, IFBF looks forward to assisting your staff and you in making a good bill even better.

Thank you again for the opportunity to express IFBF's support for the *Endangered Species Act Amendments of 2018*.

Sincerely,

Bryan Searle

Bryan Searle, President
Idaho Farm Bureau Federation

July 11, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

The Kansas Livestock Association (KLA) strongly supports the Endangered Species Act Amendments of 2018. Formed in 1894, KLA is a trade association representing over 5,400 members on legislative and regulatory issues. KLA members are involved in many aspects of th livestock industry, including seedstock, cow-calf and stocker production, cattle feeding, dairy production, swine production, grazing land management and diversified farming operations.

The Endangered Species Act (ESA) is long overdue for common sense reform. With a reported success rate of two percent of listed species being recovered, the ESA could more accurately be described as a tool for litigation for activist groups intent to negatively impact property rights o private landowners and change the traditional multi-use management approach for federal lands

The Endangered Species Act Amendments of 2018 would shift more decision-making authority to the local level. This approach is reflective of the Western Governors Association resolution c this subject. Their bipartisan resolution is the result of years of collaboration among impacted stakeholders.

In Kansas, the lesser prairie chicken is a perfect example of how the ESA, as currently structured, inhibits species recovery. Local efforts to preserve and enhance lesser prairie chicke habitat have been hindered by the contemplated listing under the ESA.

The Endangered Species Act Amendments of 2018 would provide much needed reform. We asl for your support and swift passage of this bill.

Thank you for your consideration. Don't hesitate to contact the KLA office if you have any questions.

Sincerely,

Matt Teagarden
Chief Executive Officer

6031 SW 37th Street * Topeka, KS 66614-5129 * (785) 273-5115 * Fax (785) 273-3399 * E-mail: kla@kla.org * www.kla.org

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KAREN BUDD-FALEN[1]
FRANKLIN J. FALEN[2]
BRANDON L. JENSEN[3]

[1] ALSO LICENSED IN NM & ID
[2] ALSO LICENSED IN NE, SD & ND
[3] ALSO LICENSED IN CO

BETHANY A. GROSS[4]
TERESA L. SLATTERY[5]
CONNER G. NICKLAS

[4] ALSO LICENSED IN MT & MO
[5] ALSO LICENSED IN IL

July 13, 2018

Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

RE: Endangered Species Act Amendments of 2018

Dear Senator Barrasso:

This letter is to offer my support for your draft bill entitled the Endangered Species Act Amendments of 2018. If passed, this bill would bring the focus of the Endangered Species Act (ESA) back to the original Congressional intent of species recovery, led by the scientists and managers who know best about such recovery. Over the past decade, at least, I believe that there has been too much focus on simply putting plant and animal species on a federal list where they languish for decades without affirmative action. In contrast, the Congressional record makes it clear that simply listing a species was not the point of the ESA; rather it was recovery. However, there has not been a strong direction towards that recovery that included deadlines to ensure that recovery is not a listing "after thought." Admittedly, much of the U.S. Fish and Wildlife Service's (FWS) and National Marine Fisheries Service's (NMFS) actions over the past decade have been driven by litigation, but with this legislation, the focus on recovery will no longer be swallowed up by "higher priorities" such a pushing out listing decisions and paying attorney fees.

The other important portion of this legislation I would applaud is that the recovery teams will be led by those state agencies that are truly the experts "on-the-ground." Under your proposal, the recovery teams are locally led. I believe that the state agencies located where the threatened or endangered species live are certainly the best equipped and have the knowledge to lead the recovery programs and efforts. After all, the species we are discussing live in the habitats across the nation and there is no one more knowledgeable about those habitats than local managers. Washington, DC was not meant to be the driver for all activities. This clearly is a "win" for the species because their recovery can be guided by local efforts who are directly impacted by the decisions they make.

Again, I offer to you my support for the Endangered Species Act Amendments of 2018. If there is any assistance I can provide in this effort, please do not hesitate to contact me.

Sincerely,

Karen Budd-Falen
Budd-Falen Law Offices, LLC

xc: Matt Leggett - matt_leggett@epw.senate.gov
Andrew Harding - andrew_harding@epw.senate.gov

Phone (541) 883-6100 ~ Fax (541) 883-8893 ~ 735 Commercial Street, Suite 3000 Klamath Falls, Oregon 97601

July 11, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of Klamath Water Users Association (KWUA), I write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of you and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

KWUA is a non-profit corporation whose members include public and private water delivery entities, primarily in the form of irrigation districts. KWUA members deliver water to about 170,000 acres of land and over 1200 family farms and ranches, located on both sides of the Oregon/California border.

Nearly every Klamath Basin water issue has stemmed from ESA policy, regulation, and/or litigation. In fact, next week we face another ESA court hearing that may determine the fate of a nearly $500 million agricultural economy that is the lifeblood of our entire community.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. The Klamath Basin and other rural communities have, in particular, suffered as a result.

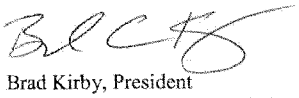
We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act. Had these reforms been in place years ago, we might well not be in condition of chronic crisis in the Klamath Project. With other proposed listings pending, we welcome the potential for a return to a paradigm that is based on problem-solving and collaboration rather than conflict.

KWUA urges that as the bill moves forward, the Committee be open to additional common-sense measures that would add efficiencies and reasonableness to the administration of the ESA as related to listed species. We look forward to providing recommendations on that subject.

In summary, Klamath Water Users Association strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at (541) 883-6100 if you have further questions.

Sincerely,



Brad Kirby, President
Klamath Water Users Association

The Minnesota State Cattlemen's Association
P.O. Box 12 - Maple Plain, MN 55359
www.mnsca.org • mnsca@mnsca.org • 612-618-6619

7/11/2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

On behalf of the members of the Minnesota State Cattlemen's Association, we would like to express our support for the Endangered Species Act Amendments of 2018. Minnesota is home to 16,000 beef producers that generate $4.9 billion dollars of economic activity in the state. Minnesota is also home to the largest population of grey wolves in the lower 48 states.

Prior to December of 2014, the state of Minnesota implemented a proven wolf population control program. A minimum population of 1,600 wolves had been set as the benchmark before re-enlisting them into the Endangered Species Act. The current estimated population jumped 25% in 2017 to nearly 3,000 wolves, well above this established number and proof that the grey wolf has recovered and further proof that the current ESA process need reforming.

According to the U.S. Fish & Wildlife Service, the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend. While we agree that this is an important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become an arena for outside groups and individuals to take control over proper policy making.

As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on

The Minnesota State Cattlemen's Association
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local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, local governments are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

For generations, Minnesota farmers and ranchers have been dedicated to improving landscapes where livestock and wildlife can co-exist. These same farmers and ranchers have grown frustrated by the lack of commonsense ESA implementation, and having to deal with the consequences that result when outside interests who are not directly impacted the rapid growth of poorly managed wildlife populations push policy without sound science. Minnesota has demonstrated it can effectively administer recovery plans that are workable and produce favorable results.

The Minnesota State Cattlemen's Association thanks you for your time. As a group of cattlemen who are directly impacted by the failed ESA system, we urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Krist Wollum

Krist Wollum
President, Minnesota State Cattlemen's Association

MONTANA PETROLEUM ASSOCIATION, INC.

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Alan Olson
Executive Director

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July 11, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

The Montana Petroleum Association (MPA) is a non-profit trade association representing the nearly two hundred businesses which work to facilitate energy production in Montana. These include integrated and independent producers; lease operators; service providers; pipeline companies; refineries; as well as professional entities providing legal, financial, and additional regulatory support to the oil and natural gas industry.

We thank you for the opportunity to review the proposed Endangered Species Act (ESA) Amendments of 2018. On behalf of our diverse spectrum of revenue and job creators working to support Montana production, transportation, and refining of crude oil and natural gas, MPA respectfully submits the following comments regarding the ESA as we work to continue domestic production of vital petroleum resources.

MPA strongly supports the proposed Endangered Species Act Amendments of 2018. Through the added emphasis on recovery, the establishment of reasonable timeframes to deter delays and ensure the process proceeds, and the elevated role of states in the process, the ESA Amendments of 2018 will provide for meaningful modernization of the Endangered Species Act that will not only increase benefits to species recovery, but will also provide added regulatory certainty to industry.

Again, thank you for the opportunity to review this important legislation and we look forward to working with you as it moves through the legislative process.

Regards,

Alan Olson
Executive Director
Montana Petroleum Association

cc: U.S. Senator Steve Daines
U.S. Senator Jon Tester
Congressman Greg Gianforte

AMERICAN FARM BUREAU FEDERATION®
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July 13, 2018

The Honorable John Barrasso
Chairman, Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the American Farm Bureau Federation and its more than 6 million member families across the United States, I commend you for your leadership in the development of the Endangered Species Act Amendments Act of 2018. For the last 30 years, Congress has been unable or unwilling to successfully provide meaningful changes to the ESA while allowing the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) free reign to fundamentally alter and strengthen the regulatory power of the ESA through rulemaking after rulemaking.

Farmers and ranchers play a critical role in protecting endangered and threatened species, and it is important that the ESA strike a fair balance between the needs of plants and animals and the needs of people. Farms and ranches comprise much of the privately owned open space in this country – space that provides habitat for endangered or threatened species. Approximately 76 percent of all listed species live to some extent on privately owned lands and more than one-third exclusively on privately-owned lands. Agricultural lands are also the buffers between wildlife habitat and development. Scientific credibility, public accountability, and cooperation between federal agencies, states, and landowners is imperative if the ESA is going to work effectively.

Thus far, federal coordination with farmers and ranchers is often lacking and at best inconsistent. Listing decisions are often made using outdated, insufficient or inaccurate data that is not always publicly available. Instead, the ESA has often been used as a land-use tool to prevent farmers and ranchers from making use of their privately-owned land. At the same time, the ESA has failed in its mission to recover imperiled species. Only three percent of all species listed during the 45 years that the ESA has been in existence can be considered to have actually "recovered" to the point where they could be removed from the list.

Reform is necessary because there are clear shortcomings associated with the upkeep and recovery rate of listed species. Congress intended for the ESA to protect species from extinction, but the law fails to accomplish this purpose by prioritizing species listings over actual recovery and habitat conservation. Unfortunately, the law fails to provide adequate incentives for working lands species conservation and imposes far-reaching regulatory burdens which greatly restrict agriculture's ability to produce food, fuel and fiber for consumers here at home and around the world.

One of the most serious deficiencies with the listing process of the ESA is the lack of transparency in science used to justify an agency's action to list a species. The current "best available science" standards provide little incentive for agencies involved in listing decisions to obtain accurate and up-to date information necessary to make an informed decision. Further, listing decisions are often made using outdated, insufficient or misinformed data, which agencies frequently withhold from the public.

AFBF supports amendments to the ESA to require that listing decisions are made using sound, peer-reviewed science that is readily available to landowners and the public. The ESA needs to reflect that states, local governments, and private parties often have current and accurate data that can be better incorporated into listing, critical habitat, and recovery decisions. **Farm Bureau believes that any environmental decision-making process benefits from having information from affected state and local governments. These entities very often have better and more updated information on species locations and local economic impacts than the federal agencies.**

The Endangered Species Act Amendments Act builds upon the bipartisan recommendations of the Western Governors Association and its Species Conservation and Endangered Species Act Initiative championed by Governor Matt Mead (R-WY). The American Farm Bureau Federation extends support to your legislation which would prioritize and improve the recovery planning process, provide regulatory certainty for landowners through improvements to voluntary conservation agreements, and require transparent decision-making processes based on the best scientific and commercial data available.

The scope and reach of the ESA are far more expansive today and cover activities and situations not contemplated when it was originally enacted. Procedures established in 1973 are outdated. We applaud your efforts to update and improve the processes and procedures that the ESA put in place 45 years ago so that they better serve the needs of the public and the people most affected by implementation of the law's provisions. We look forward to working with the committee to make the ESA more workable for private landowners and more beneficial for the species that it is supposed to help.

Sincerely,

Zippy Duvall
President

CALIFORNIA FARM BUREAU FEDERATION
EXECUTIVE OFFICES
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July 12, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The California Farm Bureau Federation (Farm Bureau) expresses its support of the Endangered Species Act Amendments of 2018. The Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 40,000 members in 56 counties. The Farm Bureau strives to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

As the ESA approaches its 50th anniversary, it is clear the act is not working as well as it should. The past several decades have shown that the ESA has not been an effective tool to recover species. Instead, it is often used as a regulatory weapon against agricultural production. Since 1973, only 2% of 2,300 species listed as "Threatened" or "Endangered" under the ESA have been recovered and delisted. The fact is the ESA has become much more effective in promoting conflict than promoting recovery.

Rural communities in California have been significantly impacted by ESA conflict for decades. Beginning in the 1990s, timber wars over the Northern Spotted Owl brought extraordinary changes to rural communities dependent upon forest management. Despite timber harvest being a fraction of what it once was, the Northern Spotted Owl is in worse shape than ever due to natural competition from another owl species, not from timber harvest activities. Additionally, conflicts over salmon and smelt species have brought tremendous problems to water management throughout the state including the Klamath Basin and the Central Valley of California. After two decades of ESA based conflict, California's water deliveries have been significantly reduced with lasting impacts to farmers and rural communities.

For the benefit of both species and people, this must change. The ESA can and should be modernized in a way that will improve the efficacy and efficiency of the ESA without diminishing essential protections for imperiled wildlife. The Endangered Species Act Amendments of 2018 are such an approach.

While there is broad recognition that the ESA could function better, figuring out how to make that happen is extremely difficult. Thankfully, the Western Governors' Association took on this task through an extensive and inclusive process resulting in bipartisan policy recommendations to modernize the ESA.

These recommendations, which we understand are the basis for the Endangered Species Act Amendments of 2018, were intentionally tailored to protect species more effectively and efficiently

without weakening the act itself. This foundation presents a rare opportunity to make meaningful changes based upon ideas discussed in an inclusive and nonpartisan process.

Fundamentally, the ESA needs to be less about conflict and more about species conservation. The Endangered Species Act Amendments of 2018 would help accomplish this change by promoting transparency, enhancing engagement of impacted communities, and allowing for efficient allocation of limited resources.

A key lesson from the past several decades of conservation is that success depends upon the cooperation of local communities. The landowners where listed species exist must be part of the solution instead of the target of unproductive regulation. This requires ensuring the ESA provides opportunities for regulators and stakeholders to participate in collaborative conservation while minimizing the opportunities to expand conflict. The Endangered Species Act Amendments of 2018 points us in that direction.

Sincerely,

Jamie Johansson
President

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Robert P. Palmer, Commissioners
Administrative Director

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July 12, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

On behalf of the Campbell County Board of Commissioners, we would like to thank you for the opportunity to review the proposed Endangered Species Act Amendments (ESA) of 2018. These issues are of great importance to us and working with you and Congress to improve legislation to provide a balance between the protection of the species while allowing economic development to occur is critical to the long-term health of our county and the State of Wyoming.

Campbell County strongly supports the Endangered Species Act Amendments of 2018 and is pleased to see this legislation aligns well with the process and principles put forth by the Western Governors Association at the initiative of Wyoming Governor Matt Mead. Through the added emphasis on recovery, the establishment of reasonable timeframes to deter delays and ensure the process proceeds, and the elevated role of states in the process, the ESA Amendments of 2018 will provide for meaningful modernization of the Endangered Species Act that will not only increase benefits to species recovery but will also provide added regulatory certainty to industry.

Again, thank you for the opportunity to review this important legislation, and we look forward to working with you as it moves through the legislative process.

Sincerely,

Mark A. Christensen

Mark A. Christensen
Chairman

The mission of Campbell County is to provide quality, efficient, and cost-effective services for all Campbell County residents through sound decision making and fiscal responsibility.

President – Ron Thompson
Vice President – Cheryl Zittle
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

July 12, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

I write today on behalf of the members and the board of directors of the National Water Resources Association to express our gratitude for your efforts to improve the Endangered Species Act (ESA) through the Endangered Species Act Amendments of 2018 discussion draft. This is an important step in the process to improve and reauthorize the ESA. This legislation builds on the principles developed by the Western Governors Association through a bipartisan multi year effort. Your leadership in this matter is to be applauded and NWRA looks forward to working with you to further perfect this legislation.

The NWRA is a nonpartisan, nonprofit federation of state water resources associations, agricultural and municipal water providers, and water professionals dedicated to the promotion of the development, conservation, and beneficial use of the water resources of the United States. Our members provide water to more than 50 million people, providing a critical resource to both families and farms. For more than eighty years the NWRA has partnered with federal partners to help meet many of our nation's most pressing water supply needs. We are responsible members of the regulated community and often deal with the direct on the ground implementation of the ESA and species recovery efforts.

Like you, NWRA members recognize the importance of the ESA and also recognize that improvements to the Act that benefit species and the regulated community are necessary, achievable, and should be pursued. We look forward to working with you to ensure that the ESA is implemented in an open and transparent manner that focuses on species recovery and the engagement of water providers.

Thank you for your leadership on this critical issue and please know that NWRA stands ready to work with you on this important effort.

Sincerely,

Ron Thompson
President
National Water Resources Association

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

12 July 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

Tennessee Wildlife Federation appreciates your efforts to modernize the Endangered Species Act. We believe the time is long overdue to have a meaningful conversation regarding modernization of the Act, and your bill is an important starting point to begin this discussion.

The draft appears to draw heavily from the Western Governor's Association work on this subject, and I would add it appears relevant to states in the eastern United States. The governor's work on this topic is impressive, and brings important ideas to the table for this discussion. We look forward to scrutinizing the details of the discussion draft and providing your committee with more specific comments and improvements to consider.

In closing, it has been since the mid-1990s when the Act itself was not reauthorized. The annual authorization, via the appropriations process, does not reflect a commitment to our country's wildlife resources that the public believes is important. If not for any other reason, starting this discussion is critical to the effort to reauthorize the Act. We commend you for your efforts to do so, and look forward to working with your committee to effect this result.

Respectfully yours,

Michael Butler, CEO

Cc: The Honorable Lamar Alexander

300 Orlando Avenue • Nashville, TN 37209 • Telephone: (615) 353-1133 • www.tnwf.org

Washington Cattlemen's Association
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WACATTLE@KVALLEY.COM • WWW.WASHINGTONCATTLEMEN.ORG

July 11, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Washington Cattlemen's Association is made up of over 1,200 members from across the state of Washington, we wish to express our support for the Endangered Species Act Amendments of 2018. According to the U.S. Fish & Wildlife Service, "the purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

In Washington State specifically, where we have a separate, state listing process for endangered species we do have some concern about the state control. We would suggest the following: *For a state to be eligible for a Federal-State Partnership, the state's ESA policy must conform to the purpose and polices for the Federal ESA. Specifically, all listings, recovery plans and status reviews must be required to confarm to the scientific standard "solely on the bosis of the best scientific and commercial data available" and for the state's ESA policy to give consideration for the species condition outside the state.*

For generations, livestock producers have been dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results. In Washington, the spotted frog is an example of recovery of a species, whose recovery occurred in part due to livestock producer's practices. The grey wolf is an example of federal delisting and recovery in Washington, but a state listing that is still providing challenges to livestock producers.

Thank you for your time and your commitment to finding workable solutions that bring the ESA into the 21st Century. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Sarah Ryan
Executive Vice President
Washington Cattlemen's Association

July 12, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: ESA Amendments of 2018 – Discussion draft
Dear Chairman Barrasso:

The Colorado River Water Conservation District (Colorado River District) commends and applauds your "ESA Amendments of 2018" discussion draft. Your leadership and initiative to improve the Endangered Species Act (ESA) through this discussion draft is appreciated by all of us who have been frustrated by the failures and inflexibility of the current ESA.

The Colorado River District has long recognized the importance of the ESA and the need for improvements (as well as reauthorization) to the Act that genuinely benefit listed species as well as affected parties and communities. Your draft is a large and important step in the process to improve and reauthorize the ESA. While there are areas of ESA reform we would dearly love to see included in your draft, we commend your focus and restraint to addressing only common-sense, workable improvements that should enjoy bi-partisan consensus.

We recognize the close adherence to the reform principles developed by the Western Governors Association through its bipartisan, multi-year effort that we had the pleasure of contributing to. Specifically, we commend your inclusion of the states in the listing and recovery process.

The Colorado River District was a founding member of the Upper Colorado River Endangered Fishes Recovery Program, which has proven the power and potential of collaboration and partnership among federal, state, and affected interests. Species recovery progress continues while water and power users in Colorado, Wyoming and Utah are relatively unaffected by the more onerous implications of the ESA.

Thank you for your leadership on this critical issue. The Colorado River District looks forward to working with you to advance this important public policy issue.

Sincerely,

Christopher J. Treese, Manager
External Affairs

cc: The Honorable Cory Gardner
The Honorable Michael Bennet

201 Centennial Street / PO Box 1120 • Glenwood Springs, CO 81602
(970) 945-8522 • (970) 945-8799 Fax
www.ColoradoRiverDistrict.org

Connecting Central Oregon's Water, Land & Environment

July 12, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Deschutes Basin Board of Control (DBBC), I write in support of the proposed "Endangered Species Act Amendments of 2018." As I understand this discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly support this very important legislation.

The DBBC is comprised of the 8 Central Oregon irrigation districts, including Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo. Members of the DBBC members have played a long and pivotal role in the Deschutes Basin with some of its member's water rights dating back to the late 1800's, and collectively, the DBBC conveys water to over 150,000 acres of productive farms and ranches, as well as local schools and parks.

In 2008 the DBBC and the City of Prineville began development of a multi-species habitat conservation plan known as the Deschutes Basin Habitat Conservation Plan (HCP). Over 20 stakeholders, including state and federal agencies, the Confederated Tribes of Warms Springs, Portland General Electric, and conservation groups have participated in development of this plan. The U.S Fish and Wildlife Service have invested over $3 million to this process with that amount having been matched with another $3 million by the DBBC and the City of Prineville. The HCP the DBBC has embarked upon is a voluntary, unprecedented, collaborative, process that is meant to address the needs of the environment while insuring Central Oregon farming and ranching families can continue to provide for themselves and those in the region that rely upon the work they do. Even in light of this unprecedented effort, in the summer of 2015, two environmental groups (one of which was an active stakeholder to the process), sued the Federal Government (U.S. Bureau of Reclamation) and three members of the DBBC under the Endangered Species Act as it relates to the Oregon spotted frog. In the end this litigation resulted in significant time and resources being expended that could have been used to advance the HCP and important "on the ground" conservation work. I'm happy to report that in this rare instance the DBBC prevailed in the litigation but did so at a great expense financially and to the collaborative process we'd

PO Box 919 - Madras, OR 97741

Deschutes Basin Board of Control Member Districts
Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District
DBBC President - Mike Britton, 541-475-3625; mbritton@northunitid.com

worked so hard to foster and maintain. Even so, we continue to work diligently towards responsible solutions to difficult environmental issues driven by the ESA.

As you know, the original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. The DBBC's example above is a testament as to how rural communities in Central Oregon suffered as a result of the misintent of the ESA

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

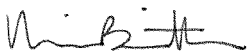
The DBBC also applauds the work of Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), having launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. The intent of Governor Mead's work was designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, the Deschutes Basin Board of Control strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at 541.475.3625 if you have further questions.

Sincerely,



Mike Britton
President

PO Box 919 - Madras, OR 97741

Deschutes Basin Board of Control Member Districts

Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District
DBBC President - Mike Britton, 541-475-3625; mbritton@northunitid.com

HARDWOOD
FEDERATION

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www.hardwoodfederation.com

July 2, 2018

The Honorable John Barrasso
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Hardwood Federation, I would like to convey our support for your efforts to reform the Endangered Species Act. The wood products industry in the U.S. is an important contributor to the U.S. economy, accounting for approximately 4 percent of the total U.S. manufacturing GDP; wood products companies are among the top ten manufacturing sector employers in 47 states, producing $210 billion in products annually. The industry employs nearly 900,000 people; more than the automotive, chemicals and plastics industries. And most of them are in rural areas where employment opportunities are limited.

The raw materials necessary to support our industry are of course, taken from woodlands and forests, private, local, state and federal. The Endangered Species Act, in its current form, provides confusing direction, endless red-tape and unclear time frames for decision making which combine to put unnecessary burdens on the small and medium sized businesses that make up the majority of the community. Although we support protecting our natural resources, we advocate for doing so using science-based methodology that leads to positive outcomes under a defined timeline, a timeline that also allows forest based businesses to grow and thrive.

The reform measures you have proposed in your draft discussion document reflect a common sense approach to efficiently and effectively addressing the challenges faced by many species in today's changing world, but they also provide a well-defined path towards reaching realistic goals, providing certainty to both the business and environmental communities. We also applaud the emphasis on state and local leadership in the decision making process which puts problem-solving in the hands of those closest to the issues at hand.

We look forward to future conversations regarding this much needed action.

Sincerely,

Dana Lee Cole
Executive Director

IDAHO CATTLE ASSOCIATION

since 1915

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

The Idaho Cattle Association (ICA) would like to voice our support for the Endangered Species Act Amendments of 2018. The ICA is dedicated to protecting, preserving, and promoting the Idaho beef industry, and has been representing the cattlemen and women of our great state since 1915.

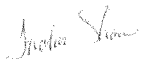
While the Endangered Species Act set out with an admirable and essential goal, the program has failed to achieve its objectives. Data indicates that fewer than 2% of the species listed under the Act have been recovered since its establishment. Instead of conserving and recovering endangered species as the Act was intended to do, the Act has acted as a tool and a crutch for outside groups and individuals to exert control in the American policy-making process. This overreach has allowed policies to form based on legal settlements rather than the science-based evidence and data relevant to the issues at hand.

The ESA can still achieve its original mission if action is taken, and the Western Governors Association has taken the necessary steps to restore the original goal of the ESA. The Western Governors Association's bipartisan resolution was passed after years of work and collaboration with the groups that the resolution will affect the most—environmental interest groups, industry leaders, and local governments—and calls upon Congress to make the ESA work in the 21st Century. Putting real power into the hands of those who interact with protected species most often will allow those locals to lead the way in preserving and recovering the species—effectively accomplishing what the ESA was intended to at its inception.

Empowering local entities to make decisions in the interest of the preservation of endangered species will allow cattlemen and women to join the discussion and find the best solutions to the issues facing the ecosystems they work within. With their intimate knowledge of the specific conditions the species in their areas face, local governments and industry leaders are best equipped to assess and react to changing circumstances in a timely matter.

Idaho beef producers are committed to protecting the ecosystems they interact with and the habitats that so many endangered species reside in. The ICA appreciates the chance to provide input on our member' behalf. We urge the swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,



Tucker Shaw
ICA President

July 12, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Idaho Water Users Association (IWUA), I write to express our gratitude for your efforts to improve the Endangered Species Act (ESA) through the proposed "Endangered Species Act Amendments of 2018." This is a vital step in the process to improve the ESA by increasing transparency and regulatory certainty, and by reauthorizing the Clean Water Act (CWA or Act). This legislation builds on the principles developed by the Western Governors' Association (WGA) through a bipartisan multiyear effort. We appreciate the leadership of Chairman Barrasso and members of the Committee on the issue of ESA reform.

IWUA is a non-profit corporation formed in 1937. Although originally named the Idaho State Reclamation Association, IWUA was subsequently renamed to reflect the broader-based mission of serving all water users of the State. IWUA represents approximately 300 canal companies, irrigation districts, water districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals – all dedicated to the wise and efficient use of Idaho's water resources. The purpose of IWUA is to promote, aid and assist the development, control, conservation, preservation and utilization of Idaho's water resources.

The original intent of the ESA – stated in the Act itself – was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards." The authors of the ESA clearly believed that the Act should be applied in a way that would foster collaboration and efficiency, in an incentive-driven manner. Unfortunately, over time, implementation of the ESA is now driven by litigation and sometimes inappropriate interpretation by Federal agencies.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is

happening in several Western states under current interpretation of the Act. IWUA has long maintained that amendments to the ESA are necessary. At its recent Annual Convention, IWUA members reaffirmed this by adopting Resolution 2018-5 (Endangered Species Act). A copy of this Resolution is attached.

IWUA supported the efforts of the WGA to create an inclusive and bi-partisan dialogue about modernizing the ESA process through the Species Conservation and Endangered Species Act Initiative (Initiative) and we are encouraged to see this discussion continuing at the national level. WGA led a robust process for engaging stakeholders in a transparent and constructive manner. A series of Initiative workshops, webinars and questionnaires, have enabled states, including Idaho, to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster a dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas, and others, are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Finally, the proposed bill includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For these reasons, IWUA supports the draft "Endangered Species Act Amendments of 2018."

Thank you for your leadership on this critical issue and please know that IWUA stands ready to work with you to advance these important discussions.

Please do not hesitate to contact me at paul@iwua.org if you have further questions.

Sincerely,

Paul L. Arrington, Executive Director

Cc: Matt Leggett
Andrew Harding
Sam Eaton, Office of the Governor of the State of Idaho
Andrew Earl, Office of Senator Mike Crapo
Casey Attebery, Office of Senator Mike Crapo
Ayla Neumeyer, Office of Senator Jim Risch
Craig Quarterman, Office of Congressman Mike Simpson
Nikki Watts, Office of Congressman Mike Simpson
Brad Griff, Office of Congressman Raul Labrador

IWUA Resolution 2018-5: Endangered Species Act

WHEREAS, The Federal Endangered Species Act is clearly designed to support maintaining endangered or threatened species through artificial propagation; and

WHEREAS, Special interest groups use the Act to obstruct beneficial water resource projects; and

WHEREAS, The appropriate federal agencies do not adequately or appropriately administer the act; and

WHEREAS, Recovery plans for threatened and endangered species is a federal obligation but can be delegated to or developed in cooperation with states.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports revision and amendment and implementation by the Administration of the Endangered Species Act of 1973 to:

1. Require that when a species is listed, the lead federal agency simultaneously publish a recovery plan that identifies the actions necessary for recovery, the cost of recovery, the probability of recovery if actions are taken, the activities that are subject to Section 7 Consultation as a result of the listing, the reasonable and prudent alternatives needed to avoid jeopardy, if any, and the potential economic impacts of recovery.

2. Require that the agency specify only reasonable and prudent alternatives contained in approved recovery plans if alternatives are needed to avoid jeopardy;

3. Require the agency to prepare and publish a detailed decision document containing all data concerning the designation of a species, sub-species, critical habitat, finding of jeopardy or recovery plan;

4. Require the agency to include economic considerations as well as scientific data in a determination of the value of listing a species for either threatened or endangered status;

5. Provide that cooperative agreements between federal, state, local, agencies and water supply entities shall be deemed a substitute for listing conservation or recovery plans;

6. Protect only those sub-species which are significantly different genetically from the primary species;

7. Require periodic reviews of designated critical habitat and species listing to determine if such designations are still appropriate, but the Secretary of Interior and Secretary of Commerce should not be permitted to designate by regulation waters to which the United States exercises sovereignty as critical habitat that would impact non-federal waters or entities;

8. Require that where land or water resources are needed for recovery of listed species the federal government be responsible for providing the habitat in accordance with Section 5 of the Act and applicable state laws; however, no provision or program of the Endangered Species Act shall be construed or applied to authorize a taking or deprivation of any state created interest in water or water rights;

9. Provide exemptions for operation and maintenance and emergency repair of existing water facilities; and

10. That when petitioned by an affected State Legislature or Governor the agency take immediate steps to review, document and, where appropriate, rescind its previous action in administration of the Endangered Species Act of 1973 as amended.

MOHAVE COUNTY BOARD of SUPERVISORS

P.O. Box 7000
700 West Beale Street
Kingman, Arizona 86402-7000
Telephone (928) 753-8618 Cell (928) 715-1560
TDD - (928) 753-0726
Website -- - www.mohavecounty.us

Supervisor Jean Bishop
Mohave County Supervisor District 4

July 12, 2018

Honorable John Barrasso, Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

I am writing this letter in support of the Endangered Species Act Amendments of 2018 discussion draft. As the District 4 Supervisor for Mohave County, Arizona, I feel that rural counties in southwestern Arizona, Nevada, Utah and California will drastically benefit from this discussion draft. I feel that the protection of our most endangered species in this Country is crucial and amendments and revisions to the Endangered Species Act have been a long time coming. Overall, this discussion draft is a positive step and should move ahead.

While the Act has always had language that required State and local government involvement, there have been many incidents in which those promises of collaboration have fallen through. It is vitally important that we ensure that state and local governments have a voice at the table when it comes to species listing, delisting and species recovery. The emphasis on greater State involvement in this draft is a positive step in that states often have more detailed information of conditions and population status than do the federal wildlife and land management agencies.

I applaud your emphasis on the key aspects of the proposed amendments in providing states with more time. Often, species are listed not because they are endangered, but because of court cases. Environmental groups are suing to have these species listed and the Service is given unrealistic time frames to determine if they are truly endangered. By giving states more time, I am hopeful that this problem will eliminate itself. Listing a species that is not truly endangered can be very burdensome on local government and economic development opportunity.

I want to thank the Western Governors Association for all of its help in drafting the Endangered Species Act Amendments of 2018 and for the opportunity to comment.

Sincerely,

Jean Bishop

Jean Bishop
Mohave County Supervisor, District 4

La Paz County Board of Supervisors

D. L. Wilson, Supervisor District #1
1108 Joshua Avenue
Parker, Arizona 85344
(928) 669-6115 TDD (928) 669-8400 Fax (928) 669-9709
dlwilson@lapazcountyaz.org www.co.la-paz.az.us

July 12, 2018

Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

SUBJECT: Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

I am writing this letter in support of the Endangered Species Act Amendments of 2018 discussion draft. As the District I Supervisor for La Paz County, Arizona, and Vice-Chairman of the QuadState Local Government Authority, I feel that rural counties in the southwestern US including Arizona, Nevada, Utah and California will drastically benefit from this discussion draft. I have been a County Supervisor for five years and involved in economic development in Arizona for over twenty-five years. While I feel that the protection of our most endangered species in this Country is crucial, amendments and revisions to the Endangered Species Act have been a long time coming. Overall, this discussion draft is a positive step and should move ahead.

While the Act has always had language that required State and local government involvement, there have been many incidents in which those promises of collaboration have fallen through. It is vitally important that we ensure that state and local governments have a voice at the table when it comes to species listing, delisting and species recovery. The emphasis on greater State involvement in this draft is a positive step in that states often have more detailed information of conditions and population status than do the federal wildlife and land management agencies. If nothing else, the explicit input will provide broader confirmation on conditions, or better identify gaps where adequate data does not exist.

I applaud your emphasis on several key aspects of this proposal and specifically on using the totality of the best scientific knowledge available. The QuadState Local Government Authority encompasses over 50,000 square miles in the Southwest. The Authority has been heavily involved in the recovery of the Mojave and Sonoran Desert Tortoises. We have always pushed on the emphasis that the federal government needs to focus on the real issues

related to the endangerment of these species such as disease and predation and stop the restrictive policies and programs that continue to fail. In over thirty years, we have spent well beyond $100 million on the recovery of the Desert Tortoise yet have no evidence to show that we have achieved sustainable populations.
By including states and local governments in the recovery process, I strongly believe that we can finally focus on recovery. Frequently, policies and plans are put into place by leaders and individuals well over two thousand miles away in Washington D.C., when they should be made by those locally on the ground and those who interact with these species on a daily basis. I feel this draft discussion is a step in that direction, so we can finally help these species recover and not simply put them on some list.

I fully support the inclusion of recovery goals and habitat objectives in the listing regulation. This will assure full-disclosure upon promulgation and provide the public with details of the expected effects of a listing decision upon which it and affected governments can comment prior to Secretarial decision-making. I also fully concur in the language on county notification appearing on page 12, lines 33 and 34.

The provision for state preparation of recovery plans is a positive approach for spreading workload and delegating workload. I do believe, however, that there needs to be explicit language to assure that a state team and plan formally include representation and direct input from affected local governmental units, including counties.

I applaud your emphasis on the key aspects of the proposed amendments in providing states with more time. Often, species are listed not because they are endangered, but because of court cases. Environmental groups are suing to have these species listed and the Service is given unrealistic time frames to determine if they are truly endangered. By giving states more time, I am hopeful that this problem will eliminate itself. Listing a species that is not truly endangered can be very burdensome on local government and economic development opportunity.

I again want to applaud the work you have done on this draft discussion, and I also want to thank the Western Governors Association for all its help in drafting this. Overall, the language on performance, conservation agreements, best science, and transparency appear to be fully acceptable, and some such as a formal consideration as to whether the listing would do any good (page 34, line 1), demonstrates the positive degree to which the authors have thought out the draft.

Thank you for the opportunity to comment on these proposed amendments.

Sincerely,

D.L. Wilson
La Paz County Supervisor
District 1

July 12, 2012

Honorable John Barrasso, Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Office Building
Washington, DC 20510

Dear Chairman Barrasso:

Please accept this letter of support of the Endangered Species Act Amendments of 2018 discussion draft. For your information, the Lake Havasu Area Chamber of Commerce is supported by 650 business and organization members that employ 20,000-plus area residents.

Our chamber of commerce supports the message that Mohave County Supervisor Buster Johnson has sent to you regarding this issue. We are especially pleased that amendments provide more state and local government control. We live, work and play in an area where more than 80 percent of public land is owned by the government. This makes it difficult enough when it comes to economic development and the recreational activities that drive our local economy as it is; the current regulations in the Endangered Species Act add additional levels of bureaucracy that can make improvements to our communities next to impossible.

We are grateful for your work on this draft and appreciate your service to our country. Please do not hesitate to contact me if you need further details or information.

Sincerely,

Lisa Krueger

Lisa J. Krueger, IOM, ACE, CTA
President & CEO

LAKE HAVASU AREA CHAMBER OF COMMERCE
[redacted]
WWW.HAVASUCHAMBER.COM

July 13, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

The American Exploration & Production Council (AXPC) proudly supports the Endangered Species Act (ESA) Amendments of 2018 discussion draft. We appreciate your thoughtful approach to modernizing the ESA and believe this draft legislation would help improve species conservation while providing much-needed regulatory certainty.

AXPC is a national trade association representing 33 of the largest independent oil and natural gas companies in the United States. Dedicated to safety, science and technological advancement, AXPC members strive to deliver affordable, reliable, domestic energy to consumers while positively impacting the economy and the communities in which we live and operate.

Our members are committed to proactively protecting and conserving threatened and endangered species and their habitat. Working closely with federal and state agencies, as well as with private landowners, AXPC members regularly participate in voluntary conservation measures that include providing funding for research and restoration efforts, setting aside acres for land conservation, and implementing practices and policies to avoid, minimize or mitigate habitat and species impacts. We firmly believe that with reasonable and balanced federal policy, safe and responsible energy production can co-exist with species conservation.

The discussion draft addresses several important issues that would help update the law for the 21st century and would improve its implementation and effectiveness and reflect contemporary conservation practices. We support the draft legislation's emphasis on species recovery, which would restore the original intent of the ESA. Requiring recovery goals and habitat objectives, along with the creation of recovery teams that include federal, state, and local wildlife management agencies, would help ensure that conservation efforts are working and that species can be appropriately downgraded or delisted in a timely manner once goals have been met.

We also fully support the increased focus on transparency, the enhanced role of the states in species management, and providing increased regulatory certainty for landowners and stakeholders who participate in conservation and recovery efforts. These measures would improve implementation of the ESA and would help ensure that local economies and communities are not adversely impacted by listing decisions.

The draft legislation makes important strides towards improving the ESA for the benefit of species, communities, and our economy. AXPC looks forward to working with you and your committee on this important effort and to providing additional comments and feedback as this draft legislation works its way through the legislative process.

Sincerely,

V. Bruce Thompson
President
American Exploration & Production Council
1001 Pennsylvania Avenue, NW, Seventh Floor
Washington, DC 20004
Phone: (202) 347-7529
E-mail: bthompson@axpc.us

American Road & Transportation Builders Association
250 E Street, S.W.
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Washington D.C. 20024
P 202.289.4434
F 202.289.4435
W artba.org
Transportation Makes America Work
TMAW

July 13, 2018

Dear Senator Barrasso:

On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), I would like to thank you for introducing the "Endangered Species Act (ESA) Amendments of 2018." We applaud this legislative measure aimed at constructively updating the ESA in a manner which achieves both species protection and an efficient regulatory structure. Specifically, the bill would add predictability to ESA regulations by inserting additional deadlines into the review process. The goal of an ESA designation should be to protect the threatened or endangered species and restore them to a healthy and thriving existence. This common-sense approach would be achieved by the measure's requirement of recovery goals and habitat objectives.

ARTBA has consistently advocated for a standard to define the "best available" scientific data in decisions concerning endangered or threatened species. Your proposed legislation will help to achieve this goal by giving greater weight to data that is empirical or has been field tested or independently peer reviewed during the ESA decision making process. Additionally, ARTBA also appreciates the legislation's goal of increasing transparency in ESA litigation by requiring publication of all filed ESA complaints within 30 days and notification to any affected state or county of a proposed ESA settlement.

ARTBA looks forward to continuing to help you more forward with this common sense legislative reform to the ESA.

Sincerely,

T. Peter Ruane

T. Peter Ruane
President & C.E.O

July 13, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The undersigned organizations wish to express our support for the Endangered Species Act Amendments of 2018. According to the U.S. Fish & Wildlife Service, "the purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

As the nation's largest non-governmental bloc of land managers, ranchers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results.

Thank you for your time and your commitment to finding workable solutions that bring the ESA into the 21st Century. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

National Cattlemen's Beef Association
Public Lands Council
Alabama Cattlemen's Association
Arizona Cattlemen's Association
Arkansas Cattlemen's Association
California Cattlemen's Association
Florida Cattlemen's Association
Hawaii Cattlemen's Council, Inc.
Idaho Cattle Association
Indiana Beef Cattle Association
Kansas Livestock Association
Louisiana Cattlemen's Association
Michigan Cattlemen's Association
Minnesota State Cattlemen's Association
Mississippi Cattlemen's Association
Missouri Cattlemen's Association
Montana Stockgrowers Association
Nevada Cattlemen's Association
New Mexico Cattle Growers Association
Ohio Cattlemen's Association
Oregon Cattlemen's Association
South Carolina Cattlemen's Association
South Dakota Cattlemen's Association
Texas & Southwestern Cattle Raisers
Utah Cattlemen's Association
Wyoming Stock Growers Association

Paul Sander
Chief Operating Officer

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July 13, 2018

The Honorable John Barasso, MD
Chairman
Senate Committee on Environmental and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Amendments of 2018

Dear Chairman Barasso:

Aethon Energy appreciates the opportunity to review the proposed Endangered Species Act Amendments of 2018. Aethon is a privately owned oil and gas company that develops and operates assets in the states of Louisiana, Texas, and Wyoming.

Aethon fully supports the Endangered Species Act Amendments of 2018 and is pleased to see this legislation outline a collaborative and time-bound process with impacted States. As drafted, these Amendments increase benefits to species recovery and provide additional regulatory certainty to our industry.

Sincerely,

AETHON ENERGY OPERATING LLC

Paul Sander
Chief Operating Officer and Partner

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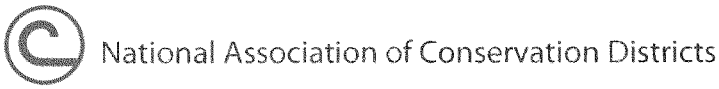

July 16, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works
United States Senate
Washington, DC 20515

Dear Chairman Barrasso:

The National Association of Conservation Districts (NACD) represents America's 3,000 conservation districts and the 17,000 men and women who serve on their governing boards. Established under state law, conservation districts share a single mission: to work cooperatively with federal, state and other local resource management agencies, and private sector interest groups to provide technical, financial and other assistance to help landowners and operators apply conservation to the landscape at the local level.

We thank you and members of the committee for all the hard work that went into writing the Endangered Species Act (ESA) Amendments of 2018. The ESA must be modernized, and voluntary conservation plays an important role in achieving this. Scientific consensus and peer-reviewed data needs to be the driving force behind the conservation of species. NACD supports requiring the federal government to coordinate with all public and private partners, including conservation districts and tribal governments, involved in managing the critical habitat for listed species.

We commend you for your efforts to make the ESA more incentive-based through its emphasis on voluntary conservation agreements. NACD appreciates your committee's efforts to strengthen programs to encourage species recovery on private lands. The importance of codifying safe harbor agreements and candidate conservation agreements with assurances will directly benefit listed species and private landowners. We strongly believe that local decision-making, rather than litigation, is the best way to address environmental challenges and achieve positive results for our threatened species.

NACD appreciates your efforts to bring the ESA into the 21st century and the public discussion you are creating with this important legislation.

Sincerely,

Brent Van Dyke

Brent Van Dyke
President, NACD

National Association of Home Builders

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Government Affairs

James W. Tobin III
Executive Vice President & Chief Lobbyist
Government Affairs and Communications Group

July 16, 2018

The Honorable John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20515

Dear Senator Barrasso:

On behalf of the 140,000 members of the National Association of Home Builders (NAHB), I am writing to applaud your commitment to improving the Endangered Species Act (ESA). We believe that the draft legislation you authored, the Endangered Species Act Amendments of 2018, is an excellent starting point towards reforming the ESA because it would make needed improvements that would benefit species, landowners and the federal agencies charged with enforcing the law.

We are pleased that this legislation encourages the states to take on a greater role in protecting threatened or endangered species. It would require the Secretary of the Interior to consult with the states when listing a species and provide clear recovery goals and habitat objectives that, if met, would lead to the delisting of a species. NAHB believes that state's resources, including data, science and expertise, should be considered in species conservation efforts, listing and delisting decisions, and the recovery process. However, we also believe that private landowners, business owners and the regulated community have valuable expertise to contribute to these decisions, and we encourage you to create a meaningful role for these stakeholders. Gaining state and local involvement and input from the regulated community will lead to a more successful ESA.

We also applaud the emphasis your draft legislation places on pre-listing conservation activities. It would help provide regulatory certainty when engaging in conservation agreements by establishing clear procedures and guidelines. Additionally, it would also optimize conservation efforts by creating a prioritization system for addressing listing petitions, reviews and determinations to ensure that resources are directed towards our nation's most vulnerable species. These modifications are a great first step towards improving the functionality of the ESA.

Finally, this legislation stresses the importance of using sound science with greater transparency when making decisions such as listing or delisting species. NAHB supports the notion that data used in making these decisions should be made publicly available and that there should be collaboration and consultation with states and local entities in order to ensure that the "best available scientific" requirement is met. However, NAHB has serious concerns about language in the draft bill that would prohibit any stakeholder from obtaining information through the Freedom of Information Act. While we understand the desire to protect private landowner's personal information, we believe it is more important to have access to the information that is used in making ESA decisions.

It is time for Congress to make changes to the ESA, and we commend you for starting this important conversation. There have been very few meaningful changes to the ESA since its enactment in 1973; consequently, most species have failed to recover. It is estimated that only three percent of species have recovered under ESA, which indicates that the law is not working and improvements need to be made.

NAHB supports many aspects of this legislation but we believe that changes still need to be made in addition to the concerns in this letter. As this bill works its way through the legislative process, we look forward to working with you and the Environment and Public Works Committee to ensure that more sensible protections are provided for our nation's endangered species while also continuing to allow our businesses to thrive. Thank you for giving consideration to our views.

Sincerely,

James W. Tobin III

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July 13, 2018

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*District Vice-Chair

The Honorable John Barrasso, MD
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Barrasso:

Oregon Business & Industry (OBI) is writing in support of our natural resource-based colleagues in Oregon to underscore the need for a balanced and collaborative approach to improving the Endangered Species Act (ESA).

Our timber and ranching industries know firsthand the impact of poorly drafted laws and the devastating consequences they have on industry longevity, community livelihood, and overall health of a state's economy. For example, since 1990 and with the enactment of the Northern Spotted Owl decision, too many rural, timber communities across Oregon faced catastrophic losses from which they have never recovered. In other instances, ranchers relinquished their grazing permits because of burdensome, and oftentimes, poorly implemented ESA rules and decisions.

We are encouraged with the bipartisan approach currently underway and the positive steps the proposed ESA amendments are taking toward improving implementation of the ESA. We urge you to continue to engage local stakeholders and work collaboratively and transparently with industry leaders, state conservation agencies, and local governments to seek local solutions to local issues.

OBI and our industry colleagues recognize the importance of protecting our natural resources while balancing the needs of industry. When done right and responsibly, we can protect Oregon's abundant natural resources and ensure economic prosperity for all Oregon communities for generations to come.

Thank you for your leadership on the Endangered Species Act Amendments of 2018. We are optimistic that together we will find the right balance and path forward.

Sincerely,

Virginia W. Lang
Interim CEO and President

July 13, 2018

The Honorable John Barrasso, MD, Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Barrasso,

Rural Oregon Counties are very familiar with the impacts of the Endangered Species Act (ESA). The challenge of balancing the ecological, social and economic aspects of ESA listing decisions is one that Oregon's rural County Commissioners have faced over many years.

Oregon's rural county governments are increasingly concerned with our fraying economic and social fabric. As we see a decrease in natural resource jobs, and an increase in service sector jobs, rural Oregon is experiencing some of the highest rates of free and reduced-price school lunches in the state, and increases in child, spousal, and drug abuse. Jobs in the wood products manufacturing and trucking sectors in western Oregon pay between $43 - $51,000 per year. By way of comparison, jobs in the tourism sector pay between $17 - $21,000 per year.

The strength and resiliency of our rural communities depend on maintaining those high wage manufacturing jobs in natural resources.

In rural Eastern Oregon, ranching is an economic mainstay. Because most of the land is federally owned, being able to productively use public lands to graze cattle is pivotal to the economic viability of the job base and the communities it supports.

Oregon's rural County Commissioners appreciate a move toward a more collaborative recovery approach that combines State conservation agencies, local governments and stakeholders. We appreciate the bipartisan approach and extensive work that the Western Governors' Association has put into improving the ESA. The proposed Endangered Species Act Amendments of 2018 take positive steps forward to improve implementation of the ESA.

We support the draft's improved coordination and input from States. State conservation agencies have some of the best local knowledge and information about status of potentially listed species. They also have experience working collaboratively with local stakeholders.

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The draft also elevates the use of Candidate Conservation Agreements with Assurances (CCAAs). The use of CCAA are a valuable tool in building conservation commitments among private, state and federal landowners, and conservation stakeholders to avoid the necessity of an ESA listing. Our Oregon ranching stakeholders are successfully working collaboratively with other private industry sectors, conservation groups and local, State and Federal governments to implement a CCAA for the Greater sage-grouse. An important addition to the draft is the safe-harbor provisions to provide regulatory certainty for landowners and other stakeholders to facilitate participation in conservation and recovery activities.

We support the increased transparency for state conservation agencies, local governments and stakeholders. The provisions regarding litigation transparency are especially important and will inform the role of litigation in driving management decisions over science-based efforts.

As the Committee deliberates on this Act, please consider the impact that ESA litigation is having on the management of species, the viability of our natural resource sectors, and the economic and social health of our counties and communities.

Just last April, a federal district court in Oregon ruled on an ESA lawsuit about the impacts of grazing on protected bull trout, finding that grazing was unlikely to have caused the decline in bull trout populations. Unfortunately, it took 15 years to reach a decision in this case. During this time, several ranchers gave up their grazing permits because the financial burden and uncertainty around the litigation had become too burdensome. The loss of these jobs and income in rural counties has a much greater social and economic impact than would be felt in more urbanized counties.

Thank you for your leadership on the Endangered Species Act Amendments of 2018. We look forward to working with you and the Committee as the legislation is considered further.

Sincerely,

Craig Pope, President
Association of Oregon Counties

The voice of fish and wildlife agencie
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July 16, 2018

The Honorable John Barrasso, M.D.
Chairman
Senate Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act Amendments of 2018 discussion draft legislation

Dear Chairman Barrasso:

The Association of Fish and Wildlife Agencies (Association) would like to thank you for the opportunity to review your discussion draft bill and for your thoughtful efforts on how to improve implementation of the Endangered Species Act (ESA, Act) via your proposed 2018 amendments. While there undoubtedly have been a number of conservation success stories under the existing ESA, several directors of state fish and wildlife agencies (state agencies) testified before the Committee on Environment and Public Works in 2017, on some of the ways the ESA and its implementation could be modestly improved to more effectively and efficiently recover species listed as federally threatened or endangered under the Act. Further, the state directors who testified referenced the Association's General Principles for Improving Implementation of the ESA (GPs), which included Principles for Improvement and Recommendations for Improvement, and suggested these be considered during further deliberations on how to improve the Act and associated recovery outcomes. We greatly appreciate your serious review and contemplation of those suggestions.

The state agencies support and value the ESA as a strong and effective tool for protecting and recovering species that are at risk of extinction. There are many different state experiences with and perspectives on the ESA, and the perspectives in this letter do not supersede or alter the views or input of any state and should not be viewed as representing the perspective of any individual state.

The amendments that you propose to the ESA are reflective of and consistent with our Principles for Improvement, which would ensure more effective and consistent conservation and protection of species; ensure fish and wildlife natural resource professionals make ESA decisions; facilitate the opportunity for state agency expertise to be utilized and participate in ESA implementation as Congress intended; focus on management actions that will recover species to the point of no longer needing protections under the Act; and better incentivize private landowner participation in ESA implementation. Additionally, the GPs include Recommendations for Improvement to the Act, and the following highlighted recommendations from our GPs are addressed to some degree through your proposed amendments as follows:

- *Implement Preventive and Restorative Management:* more fully recognizes and integrates state-led conservation efforts and improves processes and guidelines for listing decisions.
- *Elevate the Role of State Fish and Wildlife Agencies:* increases opportunities for state fish and wildlife agencies to take a more formal and active role and fully participate in Endangered Species Act implementation actions on Recovery Teams and in Recovery Planning, and improves cooperation between state and federal agencies in ESA decisions and potential litigation impacts.

- *Improve the Listing Process:* makes the best decision within a more realistic timeframe; allows the prioritization of species considered for listing; and ensures all state fish and wildlife data are utilized and fully considered in the listing determination whether such data are published or not; and includes state agency expertise in the process of interpreting these data and drawing conclusions. Further, also affords states the opportunity to protect sensitive data or data protected by state privacy laws that may be shared during ESA decision-making.
- *Require the Development of Science-Based Recovery Plans for Listed Species Directed by Recovery Teams:* enhances the States' roles including the opportunity to lead recovery teams, planning and implementation; will help expedite recovery by integrating and supporting state level initiatives and partnerships through states' enhanced implementation roles.
- *Revise Down-listing and De-Listing Processes:* increases reliance on and gives great weight to state data and to recovery plan population and habitat objectives to inform the initiation of the delisting or down-listing processes; expedites down-listing and delisting processes when recovery objectives are met and as initiated by the Recovery Team to acknowledge conservation successes and reduce unnecessary regulatory burdens.
- *Provide Certainty and Incentives for Private Landowners:* enhances clarity and increases conservation incentive options available; expedites the processes for concluding these conservation agreements to enhance certainty to private landowners; improves regulatory certainty for private landowners and increases assurances for the FWS for voluntary conservation actions on private lands.
- *Enhance Endangered Species Act Funding:* requires the FWS to submit annually to Congress a budget for implementation of the work plan, which provides transparency for the financial resources needed to implement the work plan.
- *Improve Implementation of 10(j) Experimental Populations to Enhance Species Recovery:* requires state agency approval of the boundaries of the 10(j) experimental population and receipt of a state permit, if required, before release of individuals in a 10(j) population; precludes 5-year post-delisting monitoring plans and timeframe from litigation while states monitor a species' population during the required post delisting monitoring period.
- *Establish more Consistent Implementation Procedures and Processes:* improves consistency, certainty and timeliness of administrative processes and actions implemented under the Act.

State wildlife agencies have a public trust responsibility to manage our citizens' fish and wildlife resources within their borders, and most state agencies believe that the ESA is not performing as it should or could to leverage cooperation between federal and state agencies to ensure conservation of species is more collaborative, efficient, recovery-focused and successful. The Association believes these proposed amendments to the ESA are largely consistent with our GPs and the testimony provided by state fish and wildlife directors in 2017, and supports the overall intent to improve species conservation outcomes and provide more effective uses of state and federal capacity and expertise. We must, however, recognize that more financial resources will be needed by the state agencies and federal agencies to successfully implement all of these proposed changes and Recovering America's Wildlife Act (H.R. 4647) offers an opportunity for proactive, dedicated stateside funding unto such ends.

We deeply appreciate the opportunity afforded by your draft legislation for States to play a much more integral role in ESA implementation and for them to be treated as equal partners and leaders with the Federal government in species management and recovery. Thank you for your leadership on this important issue, please do not hesitate to contact me if I can provide additional information or support.

Sincerely,

Virgil Moore
President

Elephant Butte Irrigation District
Of New Mexico

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July 16, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Proposed Endangered Species Act Amendments of 2018

Dear Chairman Barrasso:

On behalf of the Elephant Butte Irrigation District, I write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

Elephant Butte Irrigation District ("EBID") is a political subdivision of the State of New Mexico and for 100 years EBID has been the water steward of New Mexico's portion of the Rio Grande Project. We operate and maintain the irrigation infrastructure system for EBID members in the Rincon and Mesilla Valleys, continually improving efficiencies to meet the needs of those we serve, all while keeping costs low and protecting the interests of our members to a secure water source for now and the future. We are committed to maximizing the benefit of the limited water we are blessed with. We maintain the canals, drains, and dams of our system to extend the life of the Project into the future and contribute to the conservation of our water and natural resources. We also have innovative collaborative programs to protect species, such as our Environmental Water Transaction Program. Through the program, we supply surface water to historic floodplains for purposes of growing a mosaic of native riparian habitat including open woodlands, dense riparian shrub, meadows and grasslands to protect existing, endangered, and threatened species.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and

maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization stand to suffer as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act. The agriculture community, after all, are the original environmentalists.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Further, Title II contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, Elephant Butte Irrigation District strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me if you have further questions.

Sincerely,

Gary Esslinger
Manager, Elephant Butte Irrigation District

cc: Senator Tom Udall
Senator Martin Heinrich

Congressman Steve Pearce
Dan Keppen, Family Farm Alliance
Kris Polly, Natural Water Resource Association

FRIANT
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July 16, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Friant Water Authority, I write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and supports this very important legislation.

I am the Chief Executive Officer of the Friant Water Authority in California. The Authority is a public agency formed by its members under California law to operate and maintain the Friant-Kern Canal, a unit of the Central Valley Project owned by the Bureau of Reclamation, and to represent our members in federal and state policy, political, and operational decisions that could affect the Friant Division's water supply.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards." The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

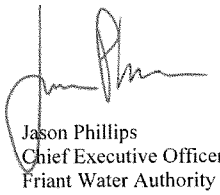
Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, the Friant Water Authority supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me if you have questions.

Sincerely,



Jason Phillips
Chief Executive Officer
Friant Water Authority

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www.klamath.org

Klamath County
CHAMBER OF COMMERCE
Lead. Connect. Advocate.

July 12, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Klamath County Chamber of Commerce, I write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increase regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly support this very important legislation.

The Klamath County Chamber of Commerce represents 470 business and organizations in Klamath County. Started in 1905, our Chamber is the oldest active business advocate in the community. Our mission is to advance the economic vitality and quality of life in our region. That being said, two of our largest industries (agriculture and timber) have been affected by the ESA legislation and we believe it is time to review the Act and modernize it as necessary to both protect the animals and a community's economic, sociological, and environmental well-being.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For all of these reasons, the Klamath County Chamber of Commerce strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at 541-884-5193 if you have further questions.

Sincerely,

Heather

Heather Tramp
Executive Director, Klamath County Chamber of Commerce
541-884-5193
heathert@klamath.org

"The Klamath County Chamber of Commerce is committed to Klamath County by advancing its economic vitality and quality of life through the education, promotion and networking of our members"

385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415-0120 | Phone: 909.387.4821 Fax: 909.387.5430
www.SBCounty.gov

SAN BERNARDINO COUNTY

County Administrative Office
Governmental & Legislative Affairs

Josh Candelaria
Director

July 16, 2018

The Honorable John Barrasso
Chairman, Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso:

The County of San Bernardino is pleased to support the Endangered Species Act Amendments of 2018 discussion draft.

San Bernardino County is home to a large number of federally listed threatened and endangered species, from the iconic desert tortoise to fish, such as the Santa Ana sucker fish, a number of plants and even insects, notably the endemic Delhi Sands flower-loving fly.

As the largest geographic county in the contiguous U.S., our environmental and biological diversity is one of our greatest assets. Our formal County Vision states: *"We envision a sustainable system…in which development complements our natural resources and environment."*

Protecting the environment is a top priority but the ESA as currently administered is often burdensome and misused while affording marginal, if any, benefits to the species it purports to protect. San Bernardino County is also a member of the Quadstate Local Governments Authority, a joint powers authority comprising a number of counties across four western states, which for nearly 20 years has advocated for effective, science-based recovery efforts for the desert tortoise, while maintaining sustainable multiple use on our public lands.

Strengthening state and local involvement would bring into play the expertise of those most familiar with species and conditions on the ground, allowing for management decisions that lead to actual recovery, without unnecessary and ineffective actions that hamper economic activities and development to the detriment of our citizens.

For these reasons, the County of San Bernardino is pleased to support the ESA Amendments of 2018 discussion draft. If you have any questions regarding the County's position, please do not hesitate to contact Josh Candelaria, Director of Governmental and Legislative Affairs at (909) 387-4821 or jcandelaria@sbcounty.gov.

Sincerely,

ROBERT A. LOVINGOOD
First District Supervisor
Chairman, San Bernardino County Board of Supervisors

BOARD OF SUPERVISORS
ROBERT A. LOVINGOOD Chairman, First District | JANICE RUTHERFORD Board Member | JAMES RAMOS Third District | CURT HAGMAN Vice Chairman, Fourth District | JOSIE GONZALES Fifth District

HAL QUINN
President & CEO

July 17, 2018

The Honorable John Barrasso, MD
Chairman
Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

Thank you for your efforts to modernize the Endangered Species Act through reforms that improve outcomes and create workable solutions for multiple-use land users. Your discussion draft, entitled Endangered Species Act Amendments of 2018, would significantly improve species recovery while balancing the need for land access and responsible resource development.

This common-sense legislation would refocus the Endangered Species Act on recovering species to healthy levels by moving beyond the current framework which perpetuates threatened or endangered status for species. The draft bill would improve the quality of listing decisions and recovery planning through better integration of the expertise of state and local governments where species are located.

State and local officials often possess the in-depth knowledge about threats to species and the conservation measures needed for successful protection and recovery. The requirements to notify states of listing petitions, solicit the views of state, local and tribal officials and the integration of states as leading contributors in recovery planning are strong measures for ensuring the ESA meets its core objective of species recovery. Greater transparency with respect to the science used in making listing decisions will also enhance the integrity of decisions.

State and local officials are also keenly aware of the need to balance species conservation and recovery with the economic needs of those who live and work in the area. The Endangered Species Act Amendments of 2018 would improve the prospects of achieving both objectives.

Sincerely,

Hal Quinn

National Mining Association 101 Constitution Avenue, NW | Suite 500 East | Washington, DC 20001 | (202) 463-2600

Black Hills Forest Resource Association

2218 Jackson Boulevard, Suite 10, Rapid City, South Dakota 57702 – (605) 341-0875

July 20, 2018

The Honorable John Barrasso
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Barrasso:

The Black Hills Forest Resource Association and our members thank you for your continued work to modernize the Endangered Species Act (ESA) to improve its functionality in protecting species through increased involvement and additional information from states. As the recent mountain pine beetle epidemic in the Black Hills wains, the ability to implement forest management projects in a timely manner remains critical.

Although the original intent of the ESA was well-intended it is now used to delay or stop critical forest management actions that benefit a myriad of other species and, in many cases, the very species the ESA purports to protect. Additionally, the Fish and Wildlife Service does not have all the needed resources to address the continuous petitions to list species under the ESA. Far too often, the FWS workplan is dictated by lawsuits and settlements which reduces transparency and results in questionable decisions.

States have a vested interest in the effective management of natural and wildlife resources within their borders. However, input from individual states is often discounted due to a lack of involvement in the listing process. States deserve a more integrated role in the species listing process and subsequent recovery plans for protected species.

The BHFRA supports your proposed amendments to the ESA that would 1) Enhance the federal-state partnership 2) Encourage conservation activities through regulatory certainty 3) Strengthen conservation decision-making through increased transparency 4) Optimize conservation through resource prioritization and 5) Conduct further studies to improve conservation.

The BHFRA appreciates the efforts to amend the ESA back into a functioning law with regulations that benefit all species while encouraging vital forest management activities.

Thank you,

Ben Wudtke
Executive Director

Black Hills Regional Multiple Use Coalition
P.O. Box 9496 • Rapid City, SD 57709 • 605-341-0875 • Fax 605-341-8651

July 20, 2018

The Honorable John Barrasso
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Barrasso:

The Black Hills Regional Multiple Use Coalition thanks you for your continued work to modernize the Endangered Species Act (ESA) to improve its functionality in protecting species through increased involvement and additional information from states. The BHRMUC is made up of 31 user groups from around the Black Hills of SD and WY with a common interest in continued, and increased, multiple uses on public lands.

Although the original intent of the ESA was well-intended it is now used to delay or stop critical forest management actions that benefit a myriad of other species and, in many cases, the very species the ESA purports to protect. Additionally, the Fish and Wildlife Service does not have all the needed resources to address the continuous petitions to list species under the ESA. Far too often, the FWS workplan is dictated by lawsuits and settlements which reduces transparency and results in questionable decisions.

States have a vested interest in the effective management of natural and wildlife resources within their borders. However, input from individual states is often discounted due to a lack of involvement in the listing process. States deserve a more integrated role in the species listing process and subsequent recovery plans for protected species.

The BHRMUC supports your proposed amendments to the ESA that would 1) Enhance the federal-state partnership 2) Encourage conservation activities through regulatory certainty 3) Strengthen conservation decision-making through increased transparency 4) Optimize conservation through resource prioritization and 5) Conduct further studies to improve conservation.

The BHRMUC appreciates the efforts to amend the ESA back into a functioning law with regulations that benefit all species while encouraging vital forest management activities.

Thank you,

Patty Brown

Patty Brown
President

Intermountain Forest Association
2218 Jackson Blvd, Ste 10, Rapid City, SD 57702
605-341-0875 Fax 605-341-8651

July 20, 2018

The Honorable John Barrasso
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Barrasso:

The Intermountain Forest Association and our members thank you for your continued work to modernize the Endangered Species Act (ESA) to improve its functionality in protecting species through increased involvement and additional information from states.

Although the original intent of the ESA was well-intended it is now used to delay or stop critical forest management actions that benefit a myriad of other species and, in many cases, the very species the ESA purports to protect. Additionally, the Fish and Wildlife Service does not have all the needed resources to address the continuous petitions to list species under the ESA. Far too often, the FWS workplan is dictated by lawsuits and settlements which reduces transparency and results in questionable decisions.

States have a vested interest in the effective management of natural and wildlife resources within their borders. However, input from individual states is often discounted due to a lack of involvement in the listing process. States deserve a more integrated role in the species listing process and subsequent recovery plans for protected species.

The IFA supports your proposed amendments to the ESA that would 1) Enhance the federal-state partnership 2) Encourage conservation activities through regulatory certainty 3) Strengthen conservation decision-making through increased transparency 4) Optimize conservation through resource prioritization and 5) Conduct further studies to improve conservation.

The IFA appreciates the efforts to amend the ESA back into a functioning law with regulations that benefit all species while encouraging vital forest management activities.

Thank you,

Ben Wudtke
Executive Director

Elizabeth Mendenhall
2018 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP
William E. Malkasian
Chief Advocacy Officer/Senior Vice President

Jerry Giovaniello
Chief Lobbyist

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Washington, DC 20001-2020
Ph. 202-383-1194
WWW.NAR.REALTOR

July 23, 2018

The Honorable John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso:

On behalf of the 1.3 million members of the National Association of REALTORS® (NAR), thank you for crafting the Endangered Species Act (ESA) Amendments of 2018. This discussion draft will jumpstart important ESA reform discussions that will benefit species, landowners and the federal agencies charged with enforcing the law.

NAR is pleased this discussion draft addresses the following broad issues:

- Shift more ESA implementation responsibility to state and local governments where appropriate;
- Reduce ESA administrative and regulatory burdens;
- Make the regulatory process more transparent and accountable;
- Emphasize the use of sound science in the regulatory process; and
- Incentivize more private sector engagement to protect species and preserve habitat.

It is time for Congress to make changes to the ESA, and the Association commends you for starting this important conversation. The ESA is a story of success and failure: although the ESA has been successful at preventing the extinction of species in the U.S., it is estimated that only three percent of species have been recovered and delisted under ESA.

NAR stands ready to work with you to promote balanced, locally supported solutions to species conservation challenges that protect property rights and encourage smart development. REALTORS® urge you to continue your dialogue with all interested parties as you create the best possible ESA modernization package.

Sincerely,

Elizabeth J. Mendenhall

Elizabeth Mendenhall
2018 President, National Association of REALTORS®

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NatGLC

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

25 JUL 2018

Dear Chairman Barrasso:

The National Grazing Lands Coalition (NatGLC) would like to express our support for the Endangered Species Act Amendments of 2018. NatGLC is a producer-led organization founded in 1991 to promote and support voluntary ecologically and economically sound management of all grazing lands for their adaptive uses and multiple benefits to the environment and society through science based technical assistance, research and education.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become an E.R. with full conservation hospital rooms, whose limited staff resources are diverted from treating species in desperate need of attention.

If the Endangered Species Act is going to meet the wildlife challenges of the 21st century, it has to be something more than a one-way street into a cul-de-sac of perpetual stasis. The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just this-giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species. The pride of local ownership in the ESA plans will result in increased efficiency and effectiveness of species recovery.

As ranchers and land stewards we take great pride in our integral role in species conservation and recovery. For, generations, livestock producers have been dedicated to improving the health of the landscape. Over the years we have become frustrated in the process by the lack of commonsense ESA implementation and being put on the sidelines while decisions are being made. This legislation will help bring producers back to the table to craft recovery plans that are workable and produce favorable results.

NatGLC appreciates the opportunity to provide input on behalf of our members and grazers across the nation. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Monti Golla, Exec. Dir.

Chad Ellis, Chairman

NatGLC Member Organizations
American Farm Bureau Federation - American Forage & Grassland Council -
American Sheep Industry - Dairy Industry - National Association of Conservation Districts -
National Cattlemen's Beef Association - National Farmer's Union - The Noble Research Institute -
Society for Range Management - Soil & Water Conservation Society
www.grazinglands.org

July 26, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The Florida Cattlemen's Association would like to express our support for the Endangered Species Act Amendments of 2018. As an organization we represent 5000 ranching families with 1.7million head of beef cattle being managed on approximately 6.5 million acres in Florida of which is in excess of 97 percent is private land.

Our state is ranked third highest with 137 listed species, in fact upon review of the USFWS information 5 of the top ten states are in the Southeastern United States.

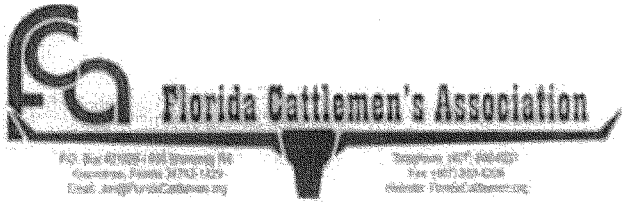
We have a great deal of interest in this region of the country for improvement and modernization of the Endangered Species Act.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. As a result, policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

Florida cattlemen are no strangers to dealing with endangered species. The Florida panther, an apex predator found across the state, is known to prey upon newborn calves. In some cases, cattle producers have suffered calf-crop losses as high as 20% when cats have crossed onto their private property, and unfortunately the livestock indemnity program that is in place to compensate livestock owners for their losses is extremely limited. I am aware of only one single claim being awarded for partial loss due to the predation of panthers. I also feel compelled to mention that many operations are not eligible to file claims because of restrictions in the LIP program administered through the United States Department of Agriculture, Farm Service Agency.

Because the panther is federally listed as endangered, landowners are forced to decide between complying

President
President-Elect
1st Vice President
2nd Vice President
Treasurer
Secretary
Executive Vice President



with inflexible federal laws and operating a viable business to support their families.

The Endangered Species Act Amendments of 2018 give more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement allows states such as Florida to consider our unique situations and

develop sound recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

The Florida Cattlemen's Association appreciates the opportunity to provide our input on behalf of our members. We respectfully request hasty passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Jim Hadley
Executive Vice President
Florida Cattlemen's Association

President

President-Elect

1st Vice President

2nd Vice President

Treasurer

Secretary

Executive Vice President

July 27, 2018

The Honorable John Barrasso
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman,

The wood manufacturing members of the Montana Wood Products Association appreciate the work that the you and the EPW committee members have put in to the discussion draft's proposed amendments to the Endangered Species Act (ESA).

Over sixty percent of Montana's timberlands are under the management of the U.S. Forest Service. The Northern Region continues to be ground zero for litigation including complaints involving threatened or endangered species. Any measures that help streamline the ESA & NEPA review processes and provide litigation relief are direly needed in the western regions of the U.S. Forest Service.

We look forward to seeing the discussion draft progress and would like to offer any feedback that may be helpful to inform the work of committee.

Best regards,

Julia Altemus

Julia Altemus
Executive Director
Montana Wood Products Association

P.O. Box 1967, Missoula MT 59806 Phone (406) 241-7047 www.montanaforests.com

FLORIDA FARM BUREAU FEDERATION

THE VOICE OF AGRICULTURE

July 30, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

We appreciate your leadership in the development of the Endangered Species Act Amendments of 2018. Long overdue, these amendments will help to satisfy the need for state agencies to have more input in wildlife management while maintaining federal oversight to achieve the goals of the Act.

Florida's unique and expansive environment is home to nearly ninety endangered species and forty threatened species. Whether it is the Atlantic Sturgeon, the American Crocodile, the Everglade Snail Kite or the Florida Panther, the Florida Fish and Wildlife Commission is actively manitoring populations and habitat to insure that the species not only survive, but thrive in the state.

The Gopher Tortoise (*Gopherus Polyphemus*) is a state-designated threatened species that is a perfect example of a success story for recovery. Though Florida's development industry is thriving as people move to escape the winter climate, there is not a developer that is unaware of the Gopher Tortoise and the mitigation process required to protect the species.

Similar programs are in place for the other listed species and now even the Florida Panther (*Puma [=Felis] concolor cory*) has expanded in number and range to have a breeding population north of the Caloosahatchee River. The Florida Fish and Wildlife Commission works closely with agriculture and other landowners to educate and develop programs to promote symbiotic land management practices that help our threatened and endangered species to thrive on the landscape.

We agree that the Endangered Species Act should focus on species recovery and habitat conservation objectives that also respect the rights of landowners. The increased coordination with state wildlife agencies, in the Senate Committee on Environment and Public Works' amendments to the Endangered Species Act, leverage private, incentive-based efforts to achieve long-term conservation goals for all species.

P.O. Box 147030, Gainesville, Florida, 32614 - 7030 • 352.378.1321 • www.FloridaFarmBureau.org

We support the 2018 Amendments to the Endangered Species Act.

Kind regards,

John L. Hoblick
President

Cc: The Honorable Bill Nelson
The Honorable Marco Rubio

P.O. Box 147030, Gainesville, Florida, 32614 - 7030 • 352.378.1321 • www.FloridaFarmBureau.org

31 July 2018

The Honorable John Barrasso, M.D.
Chairman, Senate Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Endangered Species Act Amendments of 2018 discussion draft legislation

Dear Chairman Barrasso,

The National Wild Turkey Federation is pleased to offer support for the Endangered Species Act Amendments of 2018. The NWTF is a national non-profit organization dedicated to the conservation of the wild turkey and the preservation of our hunting heritage. Our 230,000 members nationwide support species conservation and conservation projects on public and private lands across the country. We applaud your efforts to update the Endangered Species Act to improve its effectiveness in recovering species, the ultimate goal of the Act.

Through our efforts to help agencies like the USDA Forest Service implement quality conservation on the ground, we have seen firsthand the challenges created by 40 years of legal interpretation of ESA and the agency guidelines and practices that have been a result. This has resulted in an inefficient process that hinders the ability to get work done in a timely manner. In the case of active forest management, this can often contribute to unhealthy forests that are more susceptible to wildfire, insects and disease. A modernization of the ESA is overdue.

In reviewing the discussion draft, it is evident that many of the proposed amendments are based largely on recommendations that were outlined in the Western Governors Association Species Conservation and the Endangered Species Act Initiative report and on the Association of Fish and Wildlife Agencies' (AFWA) General Principles for Improving Implementation of the Endangered Species Act. The NWTF was involved with the development, and previously endorsed, both of these sets of recommendations. We particularly appreciate your efforts to elevate the role and involvement of state wildlife agencies. These agencies have the responsibility to manage the wildlife of the state, and must be fully engaged in decisions regarding ESA listing, recovery, and delisting. In addition, these agencies often have the best available information for informing decisions. Having the state agencies more integrated in the entire process will create more local buy-in and investment and will lead to greater success in recovering populations.

As this legislation in considered, we urge you to further consider the role that interagency consultation under Section 7 plays in Federal land management decisions. In particular, we suggest evaluating the role that other federal agency biologists, who are experts in the interaction between land management decisions and the potential impacts to a species on their property, can play in making determinations on "not likely to adversely affect" listed species.

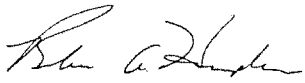
National Wild Turkey Federation
P.O. Box 530 • 770 Augusta Road • Edgefield, South Carolina 29824 • Phone: (803) 637-3106 • Fax: (803) 637-0034
www.nwtf.org

This is one way that more timely completion of necessary consultation can be made, so that management beneficial to the species can be implemented.

Thank you for your leadership to improve the Endangered Species Act. Responsible reforms of the ESA are long overdue, but like the bipartisan forest management items you successfully secured in the Omnibus, it will take Democratic support to get the bill moving and to the President's desk. We urge you to continue to seek counterparts willing to work towards a bipartisan bill.

We believe that the amendments contained in the discussion draft will make significant improvements to ensure that the ESA is a foundation for the recovery of species, and not just for the listing of species. Thank you for your leadership on this issue. We look forward to working with you and the committee as the legislation moves forward.

Sincerely,



Rebecca A. Humphries
Chief Executive Officer

July 5, 2018

The Honorable John Barrasso, M.D.
Chairman
United States Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

On behalf of the National Association of Counties (NACo), the only organization representing the nation's 3,069 counties, parishes and boroughs, thank you for your efforts to modernize the Endangered Species Act (ESA) through drafting the Endangered Species Act Amendments of 2018. Counties appreciate your leadership to ensure that species conservation policy is based on the best-available scientific data with the maximum level of involvement from state and local governments. We believe that the draft legislation offers significant improvements to the ESA and hope to see Congress act on this important issue soon.

Counties strongly support provisions of the draft legislation to ensure greater and more proactive consultation with state and local governments in the development of recovery goals for threatened and endangered species. State and local governments serve as important partners with the federal government in resource and wildlife management decisions, including on federal lands. Furthermore, state and local governments also employ wildlife biologists, land management experts and other individuals with scientific training to develop detailed plans. Since state and local governments have already proven to be reliable partners in supporting critical species conservation efforts, we should also participate in threatened and endangered species recovery efforts, including the development of population recovery goals.

NACo also supports provisions in the draft legislation that would expand participation of state and local governments in efforts to ensure transparency in the development and use of scientific data during the listing and recovery processes. Counties believe that listing and delisting decisions should be based on the best available scientific data and a transparent decision-making process that follows consistent, reliable timelines. Counties also believe that collaborative agreements between the federal government, state and local officials, landowners and other stakeholders can create species conservation plans that balance community and economic needs with environmental protection.

The draft legislation also encourages the development of candidate conservation agreements that would be credited by the U.S. Fish and Wildlife Service when making a listing determination. The legislation would also require the federal government to honor the terms of candidate conservation agreements with assurances (CCAAs), promulgate regulations to expedite the creation of CCAAs, and support the development of these agreements to protect community and economic interests while ensuring habitat conservation needs are met.

660 NORTH CAPITOL STREET NORTHWEST · SUITE 400
WASHINGTON, DC 20001 : 202 393 6226 FAX 202 393 2630 · www.NACo.org

Counties have also developed data that can assist federal agencies in resource management decisions and we encourage the federal government to use this data where available. For example, the State of Utah has provided funding to every Utah county government to develop its own resource management plan to coordinate management actions with federal agencies. Similarly, counties in Wyoming have worked with the academic community in developing county-level socioeconomic baseline data to use in development and land management decisions. These plans provide the federal government with existing, verifiable data and scientific information that can be incorporated into federal agency plans, further reducing timelines and ensuring data consistency. We appreciate that the draft legislation recognizes the unique and constructive role counties already play in the development of data and science and the need for the federal government to include state and local governing partners in developing the best possible species conservation policies.

NACo stands ready to work with you to promote balanced, locally supported solutions to species conservation challenges. We appreciate your efforts on this important issue and encourage you to continue your dialogue with interested parties as you craft the best possible ESA modernization package. Thank you for your continued support for counties on this and other issues affecting local governments.

Sincerely,

Matthew D. Chase
Executive Director
National Association of Counties

New Mexico Soil and Water Conservation Districts

NEW MEXICO ASSOCIATION OF CONSERVATION DISTRICTS

163 Trail Canyon Road
Carlsbad, NM 88220

575-361-1413
www.nmacd.org

July 3, 2018

The Honorable John Barrasso, Chair
Environment & Public Works Committee
U.S. Senate
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper, Ranking Member
Environment & Public Works Committee
U.S. Senate
513 Hart Senate Office Building
Washington, DC 20510

Re: New Mexico Association of Conservation Districts Support of legislation "The Endangered Species Act Amendments of 2018"

Dear Chairman Barrasso, Ranking Member Carper and Members of the Committee,

On behalf of the New Mexico Association of Conservation Districts (NMACD) board of directors, I write to you to express our strong support for the Endangered Species Act Amendments of 2018.

New Mexico's Conservation Districts are local political subdivisions of state government authorized under NMSA 73-20-24 thru 48 and governed by over 300 elected district officials. The Districts are charged with the responsibility of providing for the conservation of New Mexico's natural resources through the delivery of technical and program assistance to private landowners and as cooperating agencies with state and federal land management agencies. These responsibilities include, but are not limited to, wildlife habitat conservation.

The Districts have over 70 years of experience in implementing on-the-ground conservation projects and practices. The Conservation Districts, working in conjunction with private landowners, agencies and organizations such as the New Mexico Game & Fish Department, USDA Natural Resources Conservation Service, New Mexico Department of Agriculture, Department of Interior Bureau of Land Management and hundreds of private landowners, have played an important role in real species conservation through on the ground project implementation of the "Restore New Mexico program."

NMACD has several policies and position statements concerning the Endangered Species Act. Our policies call for any kind of relief that can put more conservation on the ground, keep farmers and ranchers on the land and cut down on the enormous amount of litigation and government waste. We feel that private landowners can do more to protect, conserve and recover species and their habitats with voluntary incentive- based conservation instead of more regulations. This legislation clearly reflects those principals and we believe provides an important recognition of the role of state and local governments, and ultimately landowners, play in species protection. Further, it also recognizes that locally based approaches to species protection provide our greatest chance of success.

Respectfully

Jim Berlier

Jim Berlier, NMACD President

YUMA COUNTY WATER USERS' ASSOCIATION

MAILING ADDRESS:
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YUMA, ARIZONA 85366-5775
OFFICE: (928) 627-8824

SHIPPING ADDRESS:
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SOMERTON, ARIZONA 85350
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EMAIL ADDRESS:
OFFICE@YCWUA.ORG

July 5, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Yuma County Water Users' Association, I write in support of the proposed "Endangered Species Act Amendments of 2018." This discussion draft bill would amend the Endangered Species Act of 1973 (ESA) to increase transparency, increased regulatory certainty, and to reauthorize that Act. We appreciate the leadership of Chairman Barrasso and members of the committee on the issue of ESA reform, and strongly supports this very important legislation.

Yuma County Water Users' Association is a private non-profit corporation incorporated in 1903 to cooperate with the Reclamation service to construct an irrigation project in the Yuma Valley or the Colorado River in Yuma, Arizona. The association members hold the most senior Colorado River diversion rights in Arizona. The Valley we serve grows crops year around. During the winter months we supply 80% of North America's leafy green produce.

The original intent of the ESA - stated in the Act itself - was to encourage "the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards". The authors of the ESA clearly believed in applying it in a way that would foster collaboration and efficiency of program delivery, in an incentive-driven manner. Unfortunately, implementation of the ESA has "progressed" in recent years towards an approach that is now driven by litigation and sometimes inappropriate interpretation by federal agencies. Rural communities in areas represented by our organization have, in particular, suffered as a result.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interest, including farmers and ranchers, instead of at the expense of agriculture, which is happening in several Western states under current interpretation of the Act.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and Endangered Species Act Initiative (Initiative) in June 2015. Since then, the entire process has been transparent and constructive. A series of Initiative workshops and webinars, along with a series of questionnaires, have enabled states to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster an inclusive and bipartisan dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas and others are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Title II also contains important provisions that will improve application of conservation agreements, candidate conservation agreements with assurances, and safe harbor agreements.

Finally, the proposed bill also includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management strongly supports the draft "Endangered Species Act Amendments of 2018" and look forward to working with you further to advance this important legislation.

Please do not hesitate to contact me at tdavis@ycwua.org or 928-941-1882.

Sincerely,

Tom W. Davis
Manager

Oregon Cattlemen's Association
1320 Capitol Street, Set. 150
Salem, OR 97301
(503) 361-8941 • Fax (503) 361-8947
www.orcattle.com

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

The purpose of the Oregon Cattleman's Association is to advance the economic, political and social interests of the Oregon cattle industry and to enjoy all rights and privileges accorded such non-profit corporations under the laws of the State of Oregon. As the voice of the cattle industry in Oregon, our mission statement of the Oregon Cattleman's Association is to promote environmentally and socially sound industry practices; to promote a positive, contemporary image of the industry; to improve and strengthen the economics of the industry; to assure a strong political presence in all areas affecting the industry; and to protect our industry communities and private property rights.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. Policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

This top-down approach is a key contributor to the ESA's abysmal success rate and its burden on local communities and land managers. As a result, groups across the political and conservation spectrum have called for updates to the ESA aimed at solving these problems. The gold standard for tackling this challenge has been the Western Governors Association's bipartisan resolution – passed after years of collaboration with impacted stakeholders including local governments, environmental interest groups, and industry leaders – calling on Congress to make the ESA work for the 21st Century by putting more decision-making authority in the hands of the locals who interact with species most frequently.

The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just that – giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species. As the nation's largest non-governmental bloc of land managers, ranchers take great pride in their integral role in species conservation and recovery. For generations, livestock producers have been dedicated to improving the health of landscapes where wildlife call home. Over the years, they have grown frustrated by the lack of commonsense ESA implementation and being put on the sidelines while those decisions are made. This legislation will help bring them back to the table to craft recovery plans that are workable and produce favorable results.

OCA appreciates the opportunity to provide our input on behalf of our members – the nation's food and fiber producers. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Jerome Rosa

Jerome Rosa
Executive Director

~ Voice of the Oregon Cattle Industry Since 1913 ~

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

August 1, 2018

Dear Chairman Barrasso:

We would like to express our support for the Endangered Species Act (ESA) Amendments of 2018.

Here in Florida, we have a great deal of interest for improvement and modernization of the ESA. In a ranking of listed species in each state, ours is ranked third highest with a total of 137 listed species. Upon review of USFWS information, five of the top ten states are in the Southeastern United States, Agriculturist in this part of the country have dealt with the complexities of staying in compliance with ESA for many years. Individuals involved in agriculture are often owners and/or land managers of large tracts of private property. It is on these properties that many listed species thrive, however since enactment of the ESA those providing the most habitat have had to bear the brunt of severe land and resource restrictions as well as countless lawsuits brought by environmental extremists and funded by taxpayer dollars.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become a toolbox of litigation-ready opportunities for agenda-driven outside groups and individuals to exert control over proper policy making. As a result, policies and mandates, often crafted by legal settlement rather than scientific data, have become the norm.

The Endangered Species Act Amendments of 2018 give more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement allows states such as Florida to consider our unique situations and develop sound recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species.

The undersigned appreciate the opportunity to provide input on behalf of our members, and the Florida Agriculture Industry (with it's over $160 Billion Impact to the Florida Economy). We respectfully request hasty passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Florida Cattlemen's Association
Florida Farm Bureau Federation
Southeast Milk Inc.
Florida Forestry Association
Florida Strawberry Association
Florida Fruit & Vegetable Association
Florida Citrus Mutual
Florida Nursery, Growers & Landscape Association

COLORADO FARM BUREAU
9177 East Mineral Circle · Centennial, CO 80112
Mailing Address: PO Box 5647, Denver, CO 80217
(303) 749-7500 · Fax (303) 749-7703
www.ColoradoFarmBureau.com

August 2, 2018

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works

410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrass:

On behalf of Colorado Farm Bureau, Colorado's largest agriculture organization representing more than 24,000 member families from around the state. Our diverse membership is a great representation of the success in stewardship, planning and implementation that goes into providing for the continued use of our natural resources. These stewards are the best possible intermediaries when it comes to species management given that they live on and work the lands. CFB is happy to support the amendments as proposed to the Endangered Species Act (ESA) and help ensure its success in any way we can.

CFB is incredibly grateful for the work of the members of the EPW committee and recognize that the ESA is largely antiquated and in dire need for modernization and clarification. For the last 30 years, Congress has been unable or unwilling to successfully provide meaningful changes to the ESA while allowing the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) free reign to fundamentally alter and strengthen the regulatory power of the ESA through rulemaking after rulemaking. Listing of species by the Fish and Wildlife Service has happened in a vacuum over the years. Once listed species need to have a recovery process that is clearly defined including goals and expectations of all partners and it should be strictly adhered to or updated when appropriate. Promoting stakeholder involvement and states input should be at the forefront of the priorities, as well as efficacy of the agencies charged with the implementation of the ESA.

Thus far, federal coordination with farmers and ranchers is often lacking and, at best, inconsistent. Agricultural lands are the buffers between wildlife habitat and development. Approximately 76 percent of all listed species live to some extent on privately owned lands and more than one-third exclusively on privately-owned lands. Farms and ranches comprise much of the privately owned open space in this country – space that provides habitat for endangered or threatened species.Therefore, farmers and ranchers play a critical role in protecting endangered and threatened species, and it is important that the ESA strike a fair balance between the needs of plants and animals and the needs of people.

Judicial review of delisting decisions by the Fish and Wildlife Service should be limited. We've seen in a dynamic natural system that there will always be something that hasn't been considered by the Fish and Wildlife Service. Anyone who has dealt with those systems is well aware of this fact, but we've seen delisting or downlisting decisions made by species professionals in the Fish and Wildlife Service second guessed by judges with little or no experience in natural systems. These judges appear to let their biases rule their decisions where there is not a legitimate issue.

These are some of the issues which we feel should be considered when amending the ESA:

- Enhance cooperation between states and the federal government.
- Establish a more open and transparent process that allows parties to understand what the
- process and goals are.
- Allow the experts the ability to reach delisting or downlisting decisions and allow those decisions to go forward without incessant legal challenges which serve to erode public confidence in the ESA.
- Once a species is recovered, allow the Agency to move on to other species without having to spend years in additional studies and/or litigation to achieve essentially the same outcome. Then allow the Fish and Wildlife Service to set priorities.

Congress intended for the ESA to protect species from extinction, but the law fails to accomplish this purpose by prioritizing species listings over actual recovery and habitat conservation. Unfortunately, the law fails to provide adequate incentives for working lands species conservation and imposes far-reaching regulatory burdens which greatly restrict agriculture's ability to produce food, fuel and fiber for consumers here at home and around the world. Reform is necessary because there are clear shortcomings associated with the upkeep and recovery rate of listed species.

We applaud your efforts to update and improve the processes and procedures that the ESA put in place 45 years ago so that they better serve the needs of the public and the people most affected by implementation of the law's provisions. All of the proposed changes in the Endangered Species Act Amendments of 2018 will achieve species recovery faster and less expensively that the current process. Our organization certainly supports this effort. ESA efforts must be outcome-based, have regulatory certainty and ultimately bring people together to achieve enhancements.

CFB is happy to lend its support to this innovative approach to species recovery and hopes that all organizations vested in animal welfare and environmental protection will support the plan as well. Please, contact the CFB offices 303.749.7516 with any question or concerns that you may have.

Sincerely,

Chad Vorthmann
Executive Vice President

ROCKY MOUNTAIN ELK FOUNDATION

August 6, 2018

The Honorable John Barrasso, MD
Chairman
Environment & Public Works Committee
US Senate
410 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

The Rocky Mountain Elk Foundation (RMEF) appreciates the opportunity to review the discussion draft of the Endangered Species Act Amendments of 2018. RMEF participated in the Western Governors' Association Species Conservation and Endangered Species Act Initiative and consistently conveyed support for measures to remove recovered species from the threatened and endangered list.

We support modernization of the Endangered Species Act (ESA), including provisions to increase state consultation and participation in species recovery. RMEF strongly believes state wildlife agencies are fully capable of managing threatened and endangered species—particularly gray wolves and grizzly bears.

ESA listing decisions should be based on best available science and commercial data. Yet, reasonable limits should be established to post-listing reviews when new information becomes available. RMEF also has significant concerns about the alarming number of ESA lawsuits brought by organizations seeking to obstruct forest management projects—especially those designed to improve wildlife habitat. Public notification of ESA settlements and awards and reasonable limits to attorney fees for ESA challenges should be established.

We look forward to working with you and members of the Committee on the discussion draft and encourage you to contact me or my staff should you require additional information.

Sincerely,

Kyle Weaver
President & CEO

5705 Grant Creek Rd. | Missoula, MT 59808-6249 | (800) CALL ELK | WWW.RMEF.ORG

NATIONAL ASPHALT
PAVEMENT ASSOCIATION

August 8, 2018

The Honorable John Barrasso
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

On behalf of the National Asphalt Pavement Association (NAPA) and its more than 1,100 members. I am writing to express strong support for the Endangered Species Amendments (ESA) Act of 2018.

NAPA strongly supports the ESA and the role it plays in environmental stewardship and protecting and conserving ecosystems upon which all species depend. A major goal of the ESA is the recovery of species to the point that protection under the statute is no longer necessary. However, the Fish and Wildlife Service has found that less than 3 percent of species in the United States under the protection of ESA have recovered sufficiently to no longer necessitate the protection of the statute.

Since the Act was last updated nearly 30 years ago, it is appropriate for the Western Governors Association, the Association of Fish and Wildlife Agencies, and other stakeholder groups to work together to identify challenges with the ESA, and opportunities to make the statute work better. The reforms in the ESA Amendments Act of 2018 would bring more regulatory certainty and facilitate a scientifically-based program that takes a practical approach to protecting endangered species while recognizing private property rights and the need for continued economic growth.

NAPA commends you for your leadership on this issue and looks forward to working with you to enact this sensible reform legislation.

Sincerely,

Jay Hansen
Executive Vice President

ASPHALT.
AMERICA RIDES ON US.

5100 FORBES BLVD.
LANHAM, MD 20706

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NAPA@AsphaltPavement.org

TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER
P. O. BOX 40747
NASHVILLE, TENNESSEE 37204

August 8, 2018

The Honorable John Barrasso, M.D.
Chairman
Senate Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Endangered Species Act – Proposed 2018 Amendments

Dear Chairman Barrasso:

Thank you for the opportunity to comment on your efforts to improve implementation of the Endangered Species Act (ESA). Tennessee is one of the most biodiverse states in the nation. Currently, there are more than 325 species of fish, 89 mammals, 61 reptiles, 70 amphibians, and 340+ birds known to inhabit or migrate through Tennessee. The number of invertebrate species, many of which are endemic to Tennessee, is equally impressive with 256 land snails, 99 aquatic snails, 120+ mussels, 77 crayfish, and a multitude of insects. Tennessee supports and values the ESA as an important and effective tool for protecting and recovering species that are at risk of extinction.

The 2018 amendments that you propose to the ESA are reflective of and consistent with Tennessee's views on how Congress could improve the ESA. The amendments ensure more effective and consistent conservation and protection of species, ensure natural resource professionals make ESA decisions, and incentivize private landowner participation in ESA implementation. The proposed changes also provide more opportunity for the Tennessee Wildlife Resource Agency to utilize our expertise in ESA implementation to focus on management actions that will recover species to the point of no longer needing protections under the Act.

Your proposed amendments provide Tennessee with an increased role in ESA implementation, which we fully support. However, we also recognize that state and federal agencies will need more financial resources to successfully implement all of these proposed changes. The Recovering America's Wildlife Act (H.R. 4647) offers an opportunity for proactive, dedicated stateside funding unto such ends. We are hopeful that this legislation will continue to gain momentum.

Tennessee is supportive of the Association of Fish and Wildlife Agencies' letter to you dated July 16, 2018. We sincerely appreciate the opportunity afforded by your draft legislation for Tennessee to play an integral role in ESA implementation and to be treated as equal partners and leaders with the Federal government in species management and recovery. Thank you for your leadership on this important issue, please do not hesitate to contact me if I can provide additional information or support.

Sincerely,

Ed Carter

Ed Carter
Executive Director

WYOMING Department of Transportation
"Providing a safe, high quality, and efficient transportation system"
5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340

Matthew H. Mead
Governor

William T. Panos
Director

August 8, 2018

Honorable John Barrasso, Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Wyoming Department of Transportation Support for the
Endangered Species Act Amendments of 2018 (Discussion Draft)

Dear Chairman Barrasso:

Thank you for the opportunity to support the discussion draft amendments to the Endangered Species Act (ESA) now being considered in the Senate by the Environment and Public Works Committee. Though ESA issues do not touch a large number of Wyoming Department of Transportation (WYDOT) projects, ESA concerns can significantly affect projects when they do occur. WYDOT supports the bill's efforts to improve project delivery so that WYDOT can deliver a safe and efficient transportation system to the people of Wyoming.

Provisions of the draft bill work to accomplish the following improvements:

- Elevate the role of state conservation agencies in species management,
- Increase transparency associated with carrying out species conservation,
- Provide regulatory certainty for states to facilitate participation in conservation and recovery activities, and
- Give great weight to evidence and information provided on behalf of state governments.

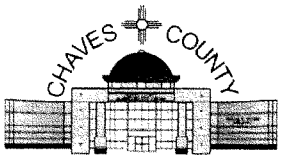
Taken together, the amendments to the current ESA found in the bill move helpfully in the direction of creating clarity and certainty for states, including state departments of transportation, as they work to meet ESA requirements.

We hope that these elements of the discussion draft can be retained as the bill progresses and look forward to working with you and the rest of the Congress on successful reauthorization of the Endangered Species Act.

Sincerely,

William T. Panos,
Director

COUNTY MANAGER
Stanton L. Riggs
PO Box 1817
Roswell, NM 88202-1817
PHONE: 575-624-6602
FAX: 575-624-6659
Email: sriggs@co.chaves.nm.us



COMMISSIONERS
James W. Duffey · District 1
T. Calder Ezzell, Jr. · District 2
Jeff Bilberry · District 3
Robert Corn · District 4
William E. Cavin · District 5

August 13, 2018

The Honorable John Barrasso
U.S. Senate
307 Dirksen Senate Office Building
Washington, DC 20510

RE: Endangered Species Act Reform

Dear Chairman Barrasso:

Chaves County, New Mexico has been heavily involved with Endangered Species for the past several years. Quite frankly we are very frustrated with the Endangered Species Act. ("ESA"). We appreciate the work you and your committee are doing regarding the ESA. Chaves County supports your working draft and we believe the ESA is in desperate need of the constructing reforms you are proposing.

Thank you for your leadership on this issue. The Chaves County Commission stands willing to assist you in your efforts in any way you deem appropriate.

Sincerely,

Robert Corn
Chairman, Chaves County Commission

August 14, 2018

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso:

I appreciate the opportunity to comment on your discussion draft of the Endangered Species Act Amendments of 2018. On behalf of Associated Builders and Contractors, a national construction industry trade association with 70 chapters representing more than 21,000 chapter members, I am writing in support of the draft bill.

While the goals of the ESA are laudable, its current approach can impede critical construction projects as the law is increasingly used by anti-development groups to halt construction activities while doing little or nothing to ensure the protection of endangered species. ABC believes that your efforts to modernize the ESA can improve our conservation efforts and ensure a more collaborative process with stakeholders to protect U.S. wildlife.

This draft legislation would improve the ESA by providing regulatory certainty to the construction industry, which would allow economic and sociological impacts to be considered during the permitting process and the review of applications. The draft legislation would also strengthen conservation decision-making through greater use of scientific and commercial data.

ABC believes that the discussion draft's increased incentives for innovative federal, state, local and private efforts to conserve species will lead to a more effective recovery process that would not only ensure the protection of our threatened and endangered species but would also be beneficial to ABC members and the communities in which they work.

ABC appreciates the opportunity to comment on the discussion draft and applauds the Committee on Environment and Public Works for its work on this critical issue. We look forward to continuing to work with the committee to ensure the reauthorization and modernization of the ESA.

Sincerely,

Kristen Swearingen
Vice President of Legislative & Political Affairs

440 First St. N.W., Suite 200 • Washington, D.C. 20001 • 202.595.1505 • www.abc.org

August 15, 2018

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

I am writing on behalf of the National Ready Mixed Concrete Association, the National Stone Sand and Gravel Association and the Portland Cement Association to share our support for your efforts to modernize the Endangered Species Act (ESA) with the Endangered Species Act Amendments of 2018. We commend your thoughtful efforts to craft legislation that balances species protection with encouraging economic growth.

The stone, cement and concrete-related associations directly and indirectly employs hundreds of thousands of workers and contributes more than $100 billion to the economy annually. Our member Associations represent businesses and talented workers in every state and congressional district. Stone, sand and gravel are raw materials found in every home, building, road, bridge and public works. These materials are needed to create portland cement, the fundamental ingredient in concrete.

The ESA is a well-intentioned effort by Congress to protect and recover our nation's native species from extinction. Our members support efforts to protect those species based on science with a balanced consideration for the mitigation measures. We believe the draft legislation would make necessary improvements to the law that would benefit species, manufacturers, and the public. Mainly, this legislation will improve the federal-state partnership that has been the cornerstone to many of our environmental laws with enhanced coordination, information sharing, and input from the Governors. Further, our members support measures contained within the bill that seek to ensure federal agencies list a species with the best available scientific data that has been independently peer reviewed or field tested. Lastly, the bill will provide federal agencies the power to prioritize listing petitions, reviews, and determinations.

Congress and the Administration have solicited ways to rebuild our infrastructure with scarce taxpayer resources. This legislation is one solution to do more with less. Federal permitting, particularly for the ESA, raises infrastructure costs needlessly. One jarring example is the construction of an interchange connecting Loop 1604 and State highway 151 in San Antonio, Texas. At the site, the Braken Bat Cave Meshweaver was discovered, an eyeless spider listed as endangered in 2000. The discovery of the spider raised construction costs from $15.1 million to $44 million to change the project from an underpass to an overpass. This legislation will set clear recovery goals and habitat objectives to ensure a listing is pragmatic, which was missing in the case of this spider. At a time when the federal government and states are having difficulty paying for necessary infrastructure maintenance and expansions, each dollar should be responsibly

spent. Making the common sense improvements to the ESA found within the Endangered Species Act Amendments of 2018 will help towards the more efficient use of funding and financing.

The undersigned organizations appreciate the opportunity to share our members' perspectives on legislation reforming the ESA. We stand ready to assist you while changes are still permitted to the underlying legislation so that modernizing the program may move forward. If there are any questions regarding these comments or if you would like additional information, please contact Rachel Derby at (202) 719-1986 or rderby@cement.org.

Sincerely,

National Ready Mixed Concrete Association
National Stone Sand and Gravel Association
Portland Cement Association

DRAFT – Internal use only, do not circulate

Date

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso:

It is with pleasure that I am able to write a letter of support for The Endangered Species Act Amendments of 2018 as shared with me on June 7, 2018. Before getting into specifics of the amendments, I would like to share how the Western Agricultural Experiment Station Directors (WAAESD) became involved. When the Western Extension Directors Association and WAAESD jointly published the Western Perspectives, Western Agenda in 2015, the first project they undertook to implement the agenda was the conservation of species. The decision was to form a multistate research committee and concurrently become involved in the Western Governors Association Initiative on the Conservation of Species and the Endangered Species Act started by Governor Matt Mead. I was appointed by WAAESD to take the lead in both efforts. I have participated in almost all of the WGA initiative forums and workgroup meetings for the past 3 years. Through that process, I had the opportunity to both share ideas from the research side but also learn what all of the different stakeholders represented thought and believed. Through that collaborative process, I believe sound recommendations were made to the Western Governors for their consideration. Many of those recommendations formed the basis for their adopted resolutions or at least contributed significantly to their consideration.

Many of the proposed amendments appear to follow what came out of those recommendations. From my interpretation of comments made by participants, my interaction with fellow researchers from land grant and other universities and agencies, and what I have come to learn through all of these processes, I would generally support the proposed amendments.

Let me be a little more specific. As Governor Mead stated when he kicked off the WGA initiative, this is not an attempt to scrap the ESA, but to make it work better. Establishing clear criteria for recovery of a threatened or endangered species is critical. But also being able to delist a species when it has met those criteria is equally critical for local landowners, communities, and the state that has to manage the wildlife. Better involvement of the States and Indian Tribes throughout the process was an overarching theme throughout the workgroups.

The use of the "best scientific and commercial data" in listing determinations and having that defined is an important step (Title I, Sec. 102). Defining that data as well as how it can and should be used or shared is important (Title III, Sec. 301). Just as important is establishing criteria for data that is "deficient in fact and inconsistent with other credible scientific and commercial information" (Title III, Sec. 301). These changes far exceed using only the best available data standard.

DRAFT – Internal use only, do not circulate

Transparency of information (Title III, Sec. 302) is increasingly important in the scientific community. Protections as outlined in this section are just as important to protect those providing such information and allowing state laws to be followed but ensuring such data can still be made available.

The workgroups spent a lot of time discussing the need for both voluntary conservation efforts and regulatory assurances. I believe there was general consensus within the workgroups that both are important to move the conservation of species forward. Title II, Secs. 201 to 205 appear to address both of those concerns and makes them part of the Act.

The prioritization of listing petitions, reviews, and determinations (Title IV, Sec. 401) gathered a lot of discussion at the WGA workgroups. It was seen as the only rational way for the federal agencies to manage their workload and give due consideration to those species deserving protections under ESA and where enough information is available. For those not having enough information, these changes would also allow the responsible agencies time to either produce, scientists able to study, or otherwise gather enough credible information to make a determination. This is critical for either listing decisions or decisions not to list. Once the petition is made the responsible agency has to have the best and adequate information to make a decision. Allocation of resources within the agency can only happen when prioritization happens.

Allowing qualified scientists on the recovery teams (Title I, Sec. 102) is important. I do think sideboards need to be incorporated or developed for their participation. I think scientists including those from land grant universities can add greatly to data interpretation and bring their field experiences and knowledge of the species to the table. I would hope that both habitat and species-specific scientists would be brought in. I am concerned whether they should be full voting members of the recovery team. If they are, there should probably be some qualifier in the section similar to the one where Federal representatives cannot exceed the number of State and local representatives since they appear to be voted onto the team by those groups.

During the WGA workgroups there was a lot of discussion on whether economic and social considerations should be brought to bear on listing or delisting decisions. That is not in the proposed amendments, but it is important to know that many of the stakeholders in those discussions thought it was an important criteria that should be considered.

With that, I will close with that I generally support the proposed amendments in "The Endangered Species Act Amendments of 2018." I have focused on those changes that came out of the WGA workgroups and those that affect the research enterprises of the land grant universities represented by WAAESD. If you would like me to clarify any of the points made, please do not hesitate to contact either WAAESD at Michael.Harrington@colostate.edu or me at jtanaka@uwyo.edu. Thank you for your time.

Sincerely,

John A. Tanaka

DRAFT – Internal use only, do not circulate

Associate Director
Wyoming Agricultural Experiment Station

DRAFT

Senator BARRASSO. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman. Thank you for convening this hearing.

Governor, thank you very much for your efforts. We do appreciate the fact that we are having this discussion and you are bringing Democrats and Republicans together in a bipartisan manner.

The Endangered Species Act has been an extremely important policy of this country and has achieved a great deal in restoring species in delisting. Every time we get a delist, it is a major accomplishment.

In our area—Senator Carper and my area—we have the Delmarva fox squirrel that was delisted. That is an incredible accomplishment in our community and is a success of the Endangered Species Act.

I point that out because one of our objectives is to have action plans that can preserve species and make them healthier so that they can be delisted, and in many cases the challenges there are financial. So, one of the issues that I think we all could agree on, let's make sure that we have adequate funding so that the Endangered Species Act can in fact work.

I want to also just thank you for your attention to the realities of climate change as it relates to endangered species. Sometimes it is controversial for us to mention those words, so I appreciate you saying that directly. It is important on adaptation as it relates to endangered species. There are things that you can't do as a result of management of the species because of the exterior factors that are changing. We want to change the exterior factors, but you don't have that ability to make that immediate impact, so you have to adapt to the current status, and I appreciate the manner in which you dealt with that.

I want to deal with one area that has brought us some concern, and that is the modifications you make in judicial review, and the process and your recommendations. You mentioned that Governors like to have a lot of power. That is very true. I was a speaker of my State assembly, and I remember standing up to our Governor. Legislatures like a lot of power.

But judicial review is checks and balances in our system, and because we have strong checks and balances, it makes for a much more open process where people have an opportunity for input because they know that there is always the possibility of the judicial branch getting involved in the process.

So, I just really want to wave a concern. A lot of people who are very much committed to the working of the Endangered Species Act have brought at least to my attention their concern on the modifications you make in your proposal on judicial review, and I would just urge us to step back a moment and recognize that it is in all of our interests to make sure that we do have checks and balances in our system. It is very possible that State officials in your State will act responsibly and will have a very open process, but in other States they may not, and the judicial review gives us that opportunity for balance in our system; and I think, when you look at policies today in Washington, it has never been more important.

So, I just point that out. I welcome your thoughts on it, but I would just ask you to be open minded as we look at ways that we may make this more effective.

Mr. MEAD. Senator, if working on this doesn't do anything else, it keeps you open minded, so I will do that. I would say this with regard to judicial review. Absolutely important to have checks and balances. We know that, and it is important.

But in this context, I mentioned in my opening comment about the years and the multiple lawsuits with regard to gray wolves long after the population numbers had been reached. And if you want to have voluntary efforts—and I just want to highlight the sage-grouse work we have done in the State of Wyoming with ranchers, energy companies, Audubon Society—to have those voluntary efforts, you also have to know that if you do right, and you take care of the species, and you get to those goal lines, that there in fact can be a delisting, that you have reached your goal.

So there has to be a point, and that is why I think with the Chairman's comment about a cooling off period, we need to be able to see that it works. And in the working draft, the Secretary, of course, does continue to have the authority for emergency listing. I would never suggest that courts not be part of the process, but I am suggesting that, as you see now individual species being addressed by Congress, it is borne out of frustration that there is no end in sight, and that is not, in my view, the best way to address species conservation.

Senator CARDIN. And I would underscore that, at times, Congress and the statute have left those areas either ambiguous or not in the best interest, giving the courts little discretion as to how they review. The gray wolf is an example of maybe the statute not being appropriate for dealing with the circumstances in different regions of our country.

So, I just point out that if we draft the statute correctly, judicial review is an extremely important part and can be done in a timely way, but allows for a more open, transparent process as the administrative areas move forward.

Thank you.

Mr. MEAD. Thank you, Senator.

Senator BARRASSO. Thank you, Senator Cardin.

Senator Sullivan, you had one last question?

Senator SULLIVAN. Yes, sir, Mr. Chairman.

Governor, I just wanted to touch on, again, this is a really bipartisan issue that we had in a hearing a couple years ago, the Obama administration's Fish and Wildlife Service Director Dan Ashe, in a hearing like this, we were talking about opportunities for bipartisan reforms to the ESA that I don't think has been amended since 1988 significantly, but it went to this issue of multiple listings.

So, you would have certain groups come, and they are trying to get a listing where they file dozens, if not more, species in one petition, and that, of course, gums up the entire process, which may have been their intent. Even Director Ashe, under President Obama, was saying we don't think that is helpful; we think we should be able to reform that to have a much more narrow process.

So that, at least in a hearing here, was something that was a very bipartisan view. Did the Governors get to that issue of multiple listings? It kind of goes to some of the other topics we have been talking about.

Mr. MEAD. We did in the discussions. Just a history, last time I was here testifying was on the House side, it was with Dan Ashe, and Director Ashe and I have had that conversation at times about that multiple listing.

I just want to underscore one of the things you said. Part of the problem that we have with multiple listings and part of the problem that we were trying to address with Western Governors is this issue of when a species is listed, or when multiple species are thrown out there, you are spending money and time in areas that it doesn't need to be spent.

Who suffers from that? It is not the people; it is the species. And that is, in my view, one of the reasons that it needs to be helped, is we are spending a lot of time, money making sure that attorneys are employed, but we are losing money and resources for species. And that is why, when we addressed this as Western Governors, it was bipartisan because the Western Governors, Governors, the country cares about species. Let's be smart about how we are spending our money and our time, and let's not have a system that is open to abuse that causes those delays.

Senator SULLIVAN. Great point. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Well, thank you, Senator Sullivan.

I would say that a significant number of environmental and conservation organizations have voiced their enthusiasm to work with this Committee in this bipartisan effort, Governor, to modernize the Endangered Species Act. Among these groups are the Western Agriculture and Conservation Coalition, which includes the Environmental Defense Fund, the Family Farm Alliance, The Nature Conservancy, the Wyoming Stock Growers Association, the National Audubon Society, and the California Farm Bureau. Additionally, the National Wildlife Federation and the Theodore Roosevelt Conservation Partnership have echoed this willingness.

So, I look forward to working with these and other organizations that believe the status quo isn't good enough and the Endangered Species Act can be improved, and I ask unanimous consent to submit these letters for the record.

[The referenced information follows:]

The Western Agriculture and Conservation Coalition

July 17, 2018

Chairman John Barrasso

Ranking Member Thomas Carper

U.S. Senate Committee on Environment and Public Works

Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

As a coalition of organizations with a shared goal of "supporting the common interests of agriculture and conservation," the Western Agriculture and Conservation Coalition (WACC) writes to offer initial thoughts on your recently released discussion draft of proposed amendments to the Endangered Species Act (ESA). We urge that as you move this work forward, you continue to do so in a way that builds and maintains trust in the process. It is our hope that this discussion draft will be able to accomplish that.

The members of the WACC have been constructively engaged in the Western Governors' Association's (WGA) *Species Conservation and Endangered Species Act Initiative* since its inception, and we are supportive of its focus on species recovery and habitat improvements on working lands. We appreciate that you have released your discussion draft – based on recommendations from this process – as a starting point for further conversations and we appreciate your willingness to accept feedback and modifications to the discussion draft before introducing legislation. Only through true bipartisanship and broad stakeholder engagement will we create good policy, address the needs of communities and species, and eventually advance this ESA legislation.

While not contemplated in your discussion draft, we know that the lack of funding for ESA remains a significant challenge when it comes to species recovery and conservation. We commit to continuing to work with you and your Congressional colleagues and the administration to provide adequate funding for ESA programs and conservation programs vital for ensuring the protections of the ESA are not required for species in the first place. While all in our coalition acknowledge the need for adequate ESA programmatic funding, some believe that legislation such as yours could provide the structure needed to ensure good use of such funding. To that end, as these modifications to ESA are contemplated, we will work with you to ensure funding is appropriately looked at in ways that are meaningful to all stakeholders.

Given your commitment to a thoughtful, bipartisan approach to comprehensive reauthorization of ESA, you should know that some in our coalition find the ESA related amendments being advocated for in both the National Defense Authorization Act (NDAA) and the FY19 Interior, Environment, and Related Agencies Appropriations Bill detrimental to this process. At the same time, others in our coalition have supported such language out of frustration with the current implementation of the ESA. It is because of this shared frustration - across the spectrum - that as a coalition we seek to achieve a bipartisan reauthorization of the Endangered Species Act. Out of respect for this delicate and ongoing process, we ask that you work with Senate and House leadership to ensure that amendments of this type do not move forward while your work progresses.

Again, we appreciate your willingness to engage with, and seek ideas from, our coalition and other stakeholders. We look forward to working with your committee to offer comments, guided by our "Western Agriculture and Conservation Coalition Common Endangered Species Act Principles" (attached). We welcome opportunities to discuss them with you and your staff as well as with Ranking Member Carper and minority staff.

Contact Jeff Eisenberg, coalition director, or any of the members of the coalition should you have any questions about these principles. Jeff's email is jeffeisenberg@rockspringrs.com. His telephone number is 571-355-3073.

Signed,

Steering Committee: Arizona Cattle Growers Association, California Farm Bureau Federation, Environmental Defense Fund, Family Farm Alliance, Irrigation Association, The Nature Conservancy, Public Lands Council, Trout Unlimited, Wyoming Stock Growers Association

Members: California Agricultural Irrigation Association, Montana Stock Growers Association, National Audubon Society, Oregon Water Resources Congress, Montana Stock Growers, Farmers Conservation Alliance, Western Growers

26 July 2018

The Honorable John Barrasso
Chairman, Senate Environment and Public Works Committee
307 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

The Wildlife Society appreciates the recent focus of your office and the Environment and Public Works Committee on efforts to improve the Endangered Species Act and its important role in sustaining wildlife populations and their habitat. In light of this effort, we offer some perspectives on the draft Endangered Species Act Amendments of 2018 as representatives of wildlife professionals across North America.

The Wildlife Society (TWS; wildlife.org) was founded in 1937 and is a non-profit professional society representing over 10,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation.

The Wildlife Society actively promotes the use of science in all aspects of policy and decision making - including the execution of the Endangered Species Act. TWS members work cooperatively in state agencies, federal agencies, universities, and private corporations to advance science-based management and conservation, to prevent listing under the ESA, and to conserve and recover those already listed. TWS has prepared a **Position Statement** and a **Technical Review** based on the experience and expertise of our members on ways to strengthen the ESA and improve its implementation.

In line with the recommendations provided in our Technical Review, we appreciate your recognition throughout the draft Endangered Species Act Amendments of 2018 of the important role that state fish and wildlife agencies play in ESA implementation. TWS' technical review noted the importance of state fish and wildlife agencies and recommended earlier and greater levels of involvement of these agencies throughout the listing, recovering, and delisting decision processes. We believe such involvement will help states provide crucial information, lead to improved management decisions, and provide the public with more timely information. Specifically, we commend the provision in Section 102 that would exempt recovery teams, and in particular their state agency members, from FACA requirements. We believe this exemption will enable state agencies to participate as equal partners in the recovery process, and facilitate greater sharing of information and expertise.

We also applaud your support of voluntary conservation programs, such as Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, within the ESA decision making process. We support proactive conservation efforts done in partnership with private

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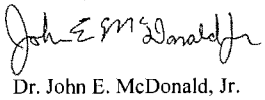
landowners, and we're optimistic that codifying SHAs and CCAAs in statute will provide private landowners with the needed certainty to increase enrollment in these vitally important programs.

However, we are concerned about some provisions in the draft legislation and their potential effects on the ability of wildlife science to inform the decision-making process. For example, Section 109 outlines a process by which states would annually provide feedback regarding performance of individual USFWS employees. While the working relationship between the states and the Service is central to the effectiveness of the ESA, we do not believe it is appropriate to have those outside the federal government directly contributing to performance appraisals of federal employees. This system could not only affect morale, but result in federal employees not providing clear and impartial work products on behalf of federally regulated and candidate species.

We are also concerned about the changes proposed in Section 101 of the draft language, which would create a definition for "best scientific and commercial data available". This definition appears to require the Secretary of the Interior give greater weight to a comment from a state than a comment received from any other individual or entity. State fish and wildlife agencies produce robust science, and that information should certainly be used to inform ESA processes. However, wildlife science and management is done in collaboration, with many components contributing to our growing knowledge. TWS believes scientific information should be considered on its own merits and given the appropriate weight in the decision making process based upon its scientific rigor, not its source. State agencies, tribes, universities, non-profit organizations, federal agencies, private corporations, and individual researchers all have the ability to contribute robust science to our knowledge and help inform ESA decision processes.

Thank you for considering the views of wildlife professionals. We look forward to continuing discussions with your office and the Committee on this important legislation.

Sincerely,



Dr. John E. McDonald, Jr.
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July 31, 2018

The Honorable John Barrasso
Chairman, Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: July 17, 2018 Legislative Hearing on a Discussion Draft Bill, S. __, the Endangered Species Act Amendments of 2018

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

Thank you for the opportunity to submit comments on the draft "Endangered Species Act Amendments of 2018." Arctic Slope Regional Corporation (ASRC) is an Alaska Native corporation that holds title to approximately five million acres of land in Alaska. We have a significant interest in the potential impact of the draft legislation on ASRC lands as well as other Native-owned lands throughout the United States.

About ASRC

ASRC is one of twelve land-owning Alaska Native regional corporations created at the direction of Congress under the terms of the Alaska Native Claims Settlement Act of 1971 (ANCSA). ASRC's region is the North Slope of Alaska, a region which encompasses 55 million acres (the informal names "North Slope" and "Arctic Slope" are geographically identical and are alternately used when one or the other has become more associated with a given usage or is a part of a formal name).

The North Slope region includes the villages of Point Hope, Point Lay, Wainwright, Atqasuk, Utqiaġvik (formerly Barrow), Nuiqsut, Kaktovik, and Anaktuvuk Pass. The residents of these villages are also residents of the North Slope Borough, a home-rule municipality. The residents are largely Iñupiat (North Alaskan "Eskimos"), and they comprise many of the approximately 13,000 Alaska Native owners of ASRC.

Within the North Slope region, ASRC also holds title to approximately five million acres of land conveyed to it pursuant to ANCSA, much of it with energy, mineral and other resource potential. Among many other efforts, ASRC pursues and benefits from natural resource development on and near its lands. Our shareholders also depend on subsistence resources from the land as well as the rivers and ocean, as they have for millennia.

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Under ANCSA, Congress created Native corporations, including ASRC, as profit-making entities "to provide benefits to its shareholders who are Natives or descendants of Natives or to its shareholders' immediate family members who are Natives or descendants of Natives to promote the health, education or welfare of such shareholders or family members." Consistent with this unique Congressional mandate, ASRC is committed both to providing sound financial returns to our shareholders in the form of jobs and dividends, and to preserving our Iñupiat way of life, culture and traditions, including the ability to hunt for food to provide for our communities. A portion of our revenues are invested in initiatives that aim to promote and support an educated shareholder base, healthy communities and sustainable local economies. Our perspective is based on the dual realities that our Iñupiat culture and communities depend upon a healthy ecosystem and subsistence resources as well as natural resource development as the foundation of a sustained North Slope economy.

Comments on Draft ESA Legislation

On July 17, the Senate Committee on Environment and Public Works ("Committee") heard from a panel of distinguished representatives from the states of Wyoming, Colorado, and Virginia. The hearing, which focused on the concerns of the States, was an important first step in its efforts to draft legislation that will authorize much-needed amendments to the Endangered Species Act (ESA).

Upon reviewing the bill, we noted the proposed amendments to the ESA focus on empowering States—for good reason—but do not go far enough to include American Indian and Alaska Native land owners. On a positive note, the draft legislation does include language intended to address some of the concerns of Indian tribes and Native corporations. We commend the Committee for its efforts in this regard and urge the Committee to consider further amendments to better serve Native landowners.

Our comments focus on several specific proposals within the draft legislation that implicate American Indian and Alaska Native-owned lands. We have detailed several suggested revisions within this letter. However, we also urge the Committee to invite Indian tribes and Alaska Native corporations to testify regarding the draft legislation at a future hearing if there is an opportunity to do so.

In addition to our comments below, I have attached two documents that provide detailed proposals for amending the ESA to address the concerns of American Indian and Alaska Native land owners like ASRC.

The first attachment, "Proposed ESA Amendments," details several specific ASRC proposals to amend the ESA to address the concerns of ASRC and other Native landowners.

The second attachment, "Legislative Proposal to Include 'Indigenous Knowledge' Among the Sources of Data Considered in ESA Decision-Making" ("Indigenous Knowledge Memo"), details ASRC's support for an amendment to the ESA to establish that "Indigenous knowledge," if available, must be among the sources of data considered in federal decision-making under the statute.

"Best Scientific and Commercial Data Available"

The draft legislation proposes to define the phrase "best scientific and commercial data available" to include "information provided by a unit of State, Tribal, or local government" and, separately, "traditional knowledge provided by an Indian Tribe."

However, while the draft legislation defines "best scientific and commercial data available" to include traditional knowledge, it also includes the following statement: "The term 'best scientific and commercial data available' does not include any information or knowledge [that] is (i) deficient in fact; and (ii) inconsistent with other credible scientific and commercial information." (Emphasis added.) We read this language as a directive to accept traditional knowledge only so far as that knowledge isn't inconsistent with any other scientific or commercial information.

As Senator Dan Sullivan explained during the July 17 hearing, Iñupiat whaling captains famously proved in the 1970s that they had a more accurate understanding of the bowhead whale population than scientists employed by the Federal Government. More of this specific history is detailed in ASRC's Indigenous Knowledge Memo, attached.

The language proposed by the Committee would permit "credible" scientific or commercial information to trump traditional knowledge in all cases. That isn't right. ASRC recommends defining the term "best scientific and commercial data available" to "include, among the sources of available data considered, Indigenous knowledge." This language makes clear that neither Indigenous knowledge nor any other source of information should automatically be deemed "best scientific and commercial data."

We note that the draft legislation establishes that the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), in "evaluating comparable data," shall give greater weight to scientific or commercial data that is empirical or has been field tested or independently peer reviewed. We support this language. Traditional and Indigenous knowledge is inherently "empirical" and traditional and Indigenous knowledge holders would, we believe, welcome peer review.

State and Tribal Involvement in Petitions to List or Delist

The draft legislation would increase State and Tribal involvement in decisions on whether petitions to list or delist species may be warranted.

Specifically, NMFS and FWS would be required to provide notice of, solicit comments regarding, and "give great weight to" any petition to list, delist or down-list a species, to any: 1) "impacted State;" 2) "Indian Tribe with jurisdiction over land in which the species covered by the petitions is believed to occur;" or 3) "county or equivalent jurisdiction in which the species is believed to occur." Further, NMFS or FWS would be required to provide written justification for failure to list, delist, or down-list a species consistent with a petition filed by a Governor, State agency, or Tribe.

NMFS or FWS also would be required to provide notice of and solicit comments regarding proposed ESA regulations to any: 1) "impacted State;" 2) "Indian Tribe with jurisdiction over land in which the species is believed to occur;" or 3) "county or equivalent jurisdiction in which the species is believed to occur." Further, NMFS or FWS would be required to provide written justification for failure to adopt regulations consistent with comments filed by a Governor, State agency, or Tribe.

However, while the objectives of the language above align with a similar proposal advanced by ASRC, ASRC's Proposed ESA Amendments, attached, also propose to include Indian tribes "as defined in 25 U.S.C. § 5304(e)," which specifically includes Indian tribes and Alaska Native corporations, as well as "Alaska Native organizations (as defined in 16 U.S.C. § 1362(23)) with jurisdiction over the species." ASRC's language would thereby include Alaska Native co-management organizations like the Alaska Eskimo Whaling Commission (bowhead whales) and the Alaska Nannut Co-Management Council (polar bears). The Committee uses the undefined term "Indian Tribe," which, we believe will be read to exclude Alaska Native corporations and ANCSA lands. Alaska Native corporations received their lands in settlement of aboriginal land claims; ANCSA lands are Native-owned lands and should not be excluded.

Indian Tribes and Native Corporations As Participants in Cooperative Agreements

The draft legislation authorizes Indian tribes and Alaska Native Corporations to enter into "cooperative agreements" with FWS and NMFS, which aligns with ASRC's proposal to do the same.

However, the bill accomplishes this objective by re-defining the term "State" for purposes of Section 6 of the ESA to include 1) any "Indian tribe" as defined in section 4 of the Indian Self-Determination and Education Assistance Act ("Indian Self Determination Act" or ISDEAA); as well as 2) any "Native Corporation" as defined in section 3 of ANCSA.

Section 4 of the Indian Self Determination Act already defines the term "Indian tribe" to include Alaska Native corporations. There is no need to separately list "Indian tribes" as defined in section 4 of that Act and "Native Corporations" as defined by ANCSA. We assume the Committee chose to separately list Indian tribes and Alaska Native corporations because the ISDEAA definition of Indian tribe includes only "Regional" and "Village" Native corporations, not "Urban" or "Group" Native corporations. If this is the case, we recommend tweaking the language to include Indian tribes as defined by the ISDEAA as well as, specifically, Urban and Group corporations, which are also defined in section 3 of ANCSA.

Litigation Reform

The draft legislation also includes language intended to address the need for ESA litigation reform. For example, the draft legislation provides that any determination to delist a species will not be subject to judicial review until the expiration of a 5-year "monitoring period" for the delisted species. The legislation also provides for more "transparency in litigation," in part by requiring the disclosure by any federal agency of the amount for attorney fees paid in connection with any ESA citizen suit under Section 11(g)(4) (which authorizes courts to award attorney fees "whenever . . . appropriate"). We support these measures.

As detailed in ASRC's Proposed ESA Amendments, we would also limit the award of attorney fees by establishing that such fees must be paid based on the requirements of the Equal Access to Justice Act.

Conclusion

Thank you again for undertaking an effort to amend the ESA. We appreciate the opportunity to provide these comments and welcome further dialogue with Committee members and staff.

In addition to the proposals noted above, ASRC's Proposed Amendments (attached) also would exclude land owned by Indian tribes and Native corporations from ESA "critical habitat" designations and define "foreseeable future," in part, as "the duration in which the Secretary can assess the status of the species with reasonable certainty." We recognize that the current Administration is pursuing an effort to better define the term "foreseeable future," but we also encourage you to address both of these issues in the context of the draft legislation, if possible.

We look forward to an opportunity to review updated legislation.

Sincerely,

ARCTIC SLOPE REGIONAL CORPORATION
Richard Glenn
Executive Vice-President, Government and External Affairs

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arctic slope regional corporation

PROPOSED ESA AMENDMENTS

Contents

(1) Define Best Available Science to Include Indigenous Knowledge 2

(2) Exclude Alaska Native Corporation and Indian Tribe Lands from Critical Habitat 3

(3) Allow Federal Agencies to Enter into Cooperative Agreements with Indian Tribes, Alaska Native Corporations, and Alaska Native Organizations 5

(4) Incorporate Equal Access to Justice Act Limitations 8

(5) Define Foreseeable Future 9

(6) Expand the Section 4(i) Obligation to Provide Justification for Inconsistent Regulations.....10

(7) Amend Secretarial Order 3206 to Include Alaska Native Lands.....12

(8) Expand Alaska Native Exceptions in ESA Section 10.....14

(1) Define Best Available Science to Include Indigenous Knowledge

Explanation: The ESA requires FWS and NMFS to take certain actions based upon the best available science, including decisions to list species, designate critical habitat, and conduct consultation on federal actions that may affect listed species or critical habitat.[1] However, the ESA does not currently include a statutory definition of what constitutes the best available science, providing federal agencies with discretion to determine which data are appropriate.

While there is general recognition that Indigenous knowledge should be considered in ESA decision-making, it is typically not relied upon or incorporated as fully as other sources of data. The language below amends ESA Section 3 to establish that the terms "best scientific and commercial data available" and "best scientific data available" shall include, among the sources of available data considered, Indigenous knowledge.

The relevant statutory text is below, with additions in **bold**:

> 16 U.S.C. § 1532. Definitions
>
> . . .
>
> **(2) The terms "best scientific and commercial data available" and "best scientific data available" shall include, among the sources of available data considered, Indigenous knowledge.**

Drafting note: Please see attached memorandum for additional background.

[1] *E.g.*, 16 U.S.C. §§ 1533(b)(1)(A) (listing species based on "best scientific and commercial data available"); 1533(b)(2) (designation of critical habitat based on "best scientific data available"); 1536(a)(2) (consultation shall use "best scientific and commercial data available").

(2) Exclude Land Owned by Alaska Native Corporations and Indian Tribes from Critical Habitat Designations

Explanation: In designating critical habitat, FWS and NMFS have discretion to exclude any particular area based upon a determination that the benefits of exclusion outweigh the benefits of inclusion. FWS and NMFS have relied upon this discretion to exclude Indian lands from critical habitat in the continental United States, but have not used this same approach for land conveyed to Alaska Native corporations in settlement of aboriginal land claims. The proposed revision would prohibit the Secretary from designating "Indian land" (as defined in 25 U.S.C. § 3501(2)) as critical habitat unless necessary to preserve the species.

The relevant statutory text is below, with additions in **bold** and deletions in ~~strikethrough~~:

> 16 U.S.C. § 1533. Determination of endangered species and threatened species
> (a) Generally.
> . . .
> (3) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—
> (A)(i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
> (ii) may, from time-to-time thereafter as appropriate, revise such designation.
> (B)(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.
> (ii) Nothing in this paragraph affects the requirement to consult under section 7(a)(2) with respect to an agency action (as that term is defined in that section).
> (iii) Nothing in this paragraph affects the obligation of the Department of Defense to comply with section 9, including the prohibition preventing extinction and taking of endangered species and threatened species.
> **(C) The Secretary shall not designate as critical habitat any Indian land (as defined in 25 U.S.C. § 3501(2)) unless the Secretary determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.**

Drafting Note: The term "Indian land," as defined as in 25 U.S.C. § 3501(2), means:

"(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;
(B) any land not located within the boundaries of an Indian reservation, pueblo, or

rancheria, the title to which is held—

(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(iii) by a dependent Indian community; and

(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land."

Drafting Note: We recommend adding the term "Indian land," and the additional terms discussed below, to the ESA at 16 U.S.C § 1532 (definitions).

Drafting Note: This revision is similar to the exclusion for Department of Defense lands in 16 U.S.C. § 1533(a)(3)(B)(i), which was added by Section 318(a) of H.R. 1588 (National Defense Authorization Act for Fiscal Year 2004), which became PL 108-136 (Nov. 24, 2003).

(3) Allow Federal Agencies to Enter Into Cooperative Agreements with Indian Tribes, Alaska Native Corporations, and Alaska Native Organizations

Explanation: Section 6 of the ESA allows FWS or NMFS to enter into cooperative agreements with the States, but there is no comparable provision allowing for such agreements with Indian tribes, Alaska Native corporations, or Alaska Native organizations. The revisions below would expand the scope of cooperating partners to include those entities. Depending upon the agreement, this could provide greater access to federal funds for ESA-related conservation activities, and could also provide greater autonomy and management of ESA permitting on American Indian and Alaska Native lands.

The relevant statutory text is below, with additions in **bold** and deletions in ~~strikethrough~~:

16 U.S.C. § 1535. Cooperation with States

. . .

(c) Cooperative agreements.

(1) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating

resident species of fish or wildlife as endangered or threatened; or
that under the State program—

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or
that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened

and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(3) The Secretary may enter into a cooperative agreement under this subsection with any Indian tribe (as defined in 25 U.S.C. § 5304(e)) or Alaska Native organization (as defined in 16 U.S.C. 1362(23)) in substantially the same manner in which the Secretary may enter into a cooperative agreement with a State. The Secretary is authorized to provide financial assistance to any such Indian tribe or Alaska Native organization in accordance with subsection (d) of this section.

Drafting Note: "Indian tribe," as defined in 25 U.S.C. § 5304(e), means:

> "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

"Alaska Native organization," as defined in 16 U.S.C. § 1362(23), means "a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska." We recommend adding the defined terms "Indian tribe" and "Alaska Native organization" to the ESA at 16 U.S.C § 1532 (definitions).

Drafting Note: This revision is similar to a provision in Section 10(1) of H.R. 3824 (Threatened and Endangered Species Recovery Act of 2005) which was introduced on September 19, 2005, and passed the House on September 29, 2005. That text states:

> "(5)(A) The Secretary may enter into a cooperative agreement under this subsection with an Indian tribe in substantially the same manner in which the Secretary may enter into a cooperative agreement with a State.
> (B) For the purposes of this paragraph, the term 'Indian tribe' means--
> (i) with respect to the 48 contiguous States, any federally recognized Indian tribe, organized band, pueblo, or community; and
> (ii) with respect to Alaska, the Metlakatla Indian Community."

Importantly, however, this amendment would have defined "Indian tribe" in a way that did not include Alaska Native corporations.

(4) Incorporate Equal Access to Justice Act Limitations

Explanation: The ESA citizen suit provision in Section 11(g)(4) authorizes courts to award attorney fees "whenever . . . appropriate." The availability of attorney fees under this provision has arguably contributed to an increase in petitions for species listings and critical habitat designations followed by "sue-and-settle" litigation when FWS or NMFS cannot comply with statutorily mandated decision deadlines. The revisions below would instead authorize the award of attorney fees based on the requirements of the Equal Access to Justice Act.

The relevant statutory text is below, with additions in **bold** and deletions in ~~strikethrough~~:

> 16 U.S.C. § 1540. Penalties and enforcement
>
> . . .
>
> (g) Citizen suits
>
> . . .
>
> (4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any ~~party, whenever the court determines such award is appropriate~~**prevailing party in accordance with section 2412 of title 28, United States Code**.

Drafting Note: This revision is consistent with Section 5 of H.R. 4315 (Endangered Species Transparency and Reasonableness Act) which was introduced on March 27, 2014, and passed the House on July 29, 2014. That section states:

> SEC. 5. AWARD OF LITIGATION COSTS TO PREVAILING PARTIES IN ACCORDANCE WITH EXISTING LAW.
>
> Section 11(g)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)(4)) is amended by striking "to any" and all that follows through the end of the sentence and inserting "to any prevailing party in accordance with section 2412 of title 28, United States Code.".

(5) Definition of Foreseeable Future

Explanation: For purposes of listing, the ESA defines a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Given the incorporated reference to "endangered species," the standard, in relevant part, is that a species is "threatened" if it is likely to become in danger of extinction within the foreseeable future. The ESA does not define "foreseeable future," and the Services have applied this concept differently on a species-by-species basis in their listing determinations. Thus, there is no consistent interpretation of the temporal extent of the relevant analysis, and the increased focus on the impacts of climate change has led to the listing of currently robust and healthy species based upon hypothetical and speculative modeling projections that extend to the end of the century and potentially beyond. This revision would require the foreseeability of future threats and species status to be reasonably certain, and specifies the timeframe that can be used when conducting the relevant analysis.

The relevant statutory text is below, with additions in **bold**:

> 16 U.S.C. § 1532. Definitions
>
> . . .
>
> (20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. **The "foreseeable future" shall be limited to the duration in which the Secretary can assess the status of the species with reasonable certainty based upon the factors in subsection 4(a)(1) and shall not extend beyond ten years.**

Drafting Note: There does not appear to be a biological basis for establishing a uniform duration of the foreseeable future that would apply to all species. The 10-year limit was selected to balance the need for limits on the extent of analysis to reflect the ability to accurately forecast population trends with Congress's intent that the threatened designation allows for the protection of species before the danger of extinction is imminent.

As an alternative to the specific temporal limit (e.g., 10 years), this provision could limit the extent of the foreseeable future based on generation time of the species (e.g., three generations as noted in the polar bear listing). However, while providing a biological and species-specific reference point, because there is significant variability between the life histories of different species, it would be difficult to establish what number of generations would be appropriate.

(6) Expand the Section 4(i) Obligation to Require the Services to Provide Notice of Proposed Regulations and Justification for Inconsistent Regulations

Explanation: Under Section 4(b)(5), NMFS and FWS are required to provide notice of proposed or revised species listings and critical habitat designations to States and Counties and invite their comments. Under Section 4(i), if NMFS or FWS issues a final regulation that conflicts with a State's comments, the agency must provide a written justification for failing to adopt a consistent regulation. The revisions below would add Indian tribes (and Alaska Native corporations by definition) and Alaska Native organizations to both the notice and the justification-for-inconsistent-regulation requirements.

The relevant statutory text is below, with additions in **bold** and deletions in ~~strikethrough~~:

16 U.S.C. § 1533. Determination of endangered species and threatened species

. . .

(b) Basis for determinations

. . .

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency **and Indian tribes (as defined in 25 U.S.C. § 5304(e))** in each State in which the species is believed to occur, **to any Alaska Native organization (as defined in 16 U.S.C. § 1362(23)) with jurisdiction over the species,** and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, ~~and each such~~ **Indian tribe, organization, and** jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

. . .

16 U.S.C. § 1533(i) Submission ~~to State agency~~ of justification for regulations inconsistent with ~~State agency's~~ comments or petition **of State agency, Indian tribe, Alaska Native organization, or county, or equivalent jurisdiction**

If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency**, Indian tribe, Alaska Native organization, or county, or equivalent jurisdiction** to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency**, Indian tribe, Alaska Native organization, or county, or equivalent jurisdiction** under subsection (b)(3), the Secretary shall submit to **each**~~the~~ State agency**, Indian tribe, Alaska Native organization, or county, or equivalent jurisdiction** a written justification for his failure to adopt regulations consistent with the ~~agency's~~ comments or petition **of the State agency, Indian tribe, Alaska Native organization, or county, or equivalent jurisdiction**.

Drafting Note: As discussed previously, the terms "Indian tribe" and "Alaska Native organization" are defined in 25 U.S.C. § 5304(e) and 16 U.S.C. § 1362(23), respectively.

(7) Amend Secretarial Order No. 3206 to direct NMFS and FWS to Exempt ANCSA Lands from Critical Habitat Designations Unless it is Essential to Conserve a Listed Species

Explanation: Acknowledging the special relationship between the Federal Government and Indian tribes, Secretarial Order (S.O.) 3206 clarifies the responsibilities of the FWS and NMFS to Indian tribes under the ESA. In particular, for areas impacting tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights, S.O. 3206 states that:

> Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

Alaska is not included in S.O. 3206. Instead, Section 7 of the Order acknowledges "that there is a need to study the implementation of the Act as applied to Alaska tribes and natives." S.O. 3206 directs the Departments of the Interior and Commerce to develop recommendations "to guide the administration of the Act in Alaska" and "to harmonize the government-to-government relationship with Alaska tribes, the federal trust responsibility to Alaska tribes and Alaska Natives, the rights of Alaska Natives, and the statutory missions of the Departments."[2] A subsequent Department of the Interior Order 3225 established a government-to-government consultation requirement relative to the implementation of the ESA in Alaska, but did not address critical habitat designations.

Congress, both under ANCSA and under subsequently-enacted federal statutes, sought to ensure that special federal protections continued to apply to Native corporations and ANCSA lands.[3] Moreover, FWS and NMFS are obligated, whenever they designate critical habitat, to "tak[e] into consideration the economic impact . . . *and any other relevant impact*, of specifying any particular area as critical habitat."

We think the impacts of critical habitat designations on Alaska Native lands—lands that Congress conveyed to Native corporations in settlement of aboriginal land claims—are "relevant impact[s]" that FWS and NMFS should take into consideration in the context of ESA decisions. Yet, when FWS designated critical habitat for the polar bear in Alaska, it imposed broad federal management oversight across huge expanses of land with little consultation with or consideration for the civic or economic needs of Alaska Native villages. FWS denied the requests of Alaska Native entities to exclude Native villages and Native-owned lands despite the significant adverse impacts likely to result, and notwithstanding the fact that each of these Alaska Native villages is a federally-recognized Indian tribe. Unfortunately for these villages, the federally-recognized

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[2] S.O. 3206 simply states that "there is a need to study the implementation of the Act as applied to Alaska tribes and natives", and, "[a]ccordingly, this Order *shall not apply to Alaska* and the Departments [of the Interior and Commerce] shall . . . develop recommendations to the Secretaries to supplement or modify this Order . . . to guide the administration of the Act in Alaska." S.O. 3206 at §7. S.O. 3206 applies only to the Annette Island Reserve of the Metlakatla Indian Community. *See* Order 3225 at §1.

[3] *See, e.g.*, Pub. L. No. 108-447, 118 Stat. 2809, 3267 (2005) ("Public Law 108-199 is amended in division H, section 161, by inserting 'and all Federal agencies' after 'Office of Management and Budget'.") (amending Pub. L. No. 108-199, 118 Stat. 3, 452 (2005) ("The Director of the Office of Management and Budget shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.")).

tribal governments for these villages do not own lands that fall within the purview of S.O. 3206; instead, within and surrounding the villages, it is the community's Alaska Native village corporation and/or Alaska Native regional corporation that own land.

S.O. 3206, which fails to address the designation of critical habitat in Alaska, should be amended to ensure the Secretary of the Interior avoids such designations of critical habitat in and around Alaska Native villages unless and until such areas are deemed essential to conserve the species.

Our proposed statutory text is below:

> The Secretary of the Interior and the Secretary of Commerce shall amend Secretarial Order No. 3206, issued on June 5, 1997, to include within the definition of the term "Indian tribe" in that Order any Alaska Native corporation defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and to include within the definition of "Indian lands" any land that is owned by an Indian tribe and was conveyed by the United States to an Alaska Native corporation pursuant to that Act, or that was conveyed by the United States to a Native Corporation in exchange for such land.

Drafting Note: This language draws on the definition of the term "Indian tribe," as defined in 25 U.S.C. § 5304; and the term "Indian land," as defined as in 25 U.S.C. § 3501(2).

(8) Expand Alaska Native Exceptions in ESA Section 10

Explanation: As an alternative to the amendments described previously, some of the provisions could be incorporated into the existing statutory exception provided for Alaska Natives. While the existing provisions in ESA Section 10(e) are focused on the take of listed species by Alaska Natives for subsistence purposes, the scope of these provisions could be expanded. While many of the proposed amendments discussed previously could be included in this section, some (e.g., a definition of foreseeable future) are arguably beyond the scope of this section.

The relevant statutory text is below, with additions in **bold**:

16 U.S.C. § 1539. Exceptions

. . .

(e) Alaska natives

(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be

prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(5) The Secretary shall not designate as critical habitat under subsection 4(a)(3) any lands owned by any Alaska Native village or Alaska Native corporation defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(6) For any regulation under this subsection or section 4 and any consultation or conference under subsection 7(a), with respect to Alaska, the "best scientific and commercial data available" or the "best scientific data available" or the "best scientific evidence available" shall include, among the sources of available data considered, Indigenous knowledge.

(7) The Secretary may enter into a cooperative agreement under subsection 6(c) with any Alaska Native village or Alaska Native corporation defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or any Alaska Native organization (as defined in 16 U.S.C. 1362(23)), in substantially the same manner in which the Secretary may enter into a cooperative agreement with a State. The Secretary is authorized to provide financial assistance to any such Alaska Native village or corporation or Alaska Native organization in accordance with subsection 6(d).

Drafting Note: The term "best scientific evidence available" in subsection (6) reflects its use in in MMPA section 103(a) and appears to apply should the Secretary attempt to regulate subsistence take.

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arctic slope regional corporation

Legislative Proposal to Include "Indigenous Knowledge" Among the Sources of Data Considered in ESA Decision-Making

Contents

Background.....2

What is Indigenous Knowledge?.....3

Why should federal agencies consider Indigenous knowledge in ESA decision-making? 4

Is Indigenous knowledge considered by the agencies in ESA decision-making today? 6

Conclusion.....7

This memorandum provides support for federal legislation that would amend the Endangered Species Act (ESA) to establish that "Indigenous knowledge," if available, must be among the sources of data considered in federal decision-making under that statute. As detailed below, the language does not elevate or prioritize Indigenous knowledge over any other source of data used in ESA decision-making. The language is consistent with current law and practice.

Background

The ESA requires the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to take certain actions based on the "best available science," including decisions to list species, designate critical habitat, and conduct consultations on federal actions that may affect listed species or critical habitat.[1] However, the ESA does not define what constitutes best available science, instead providing federal agencies with wide discretion to determine which data are appropriate.

As discussed below, the U.S. Department of the Interior has established that "traditional knowledge" should be considered in ESA decision-making. In practice, FWS and NMFS have, at least to some degree, relied on "traditional knowledge" in ESA decision-making. Our proposal amends section 3 of the ESA to formally recognize that that "Indigenous knowledge"—a term that is often used interchangeably with traditional knowledge—if available, is one source of data that must be considered in federal decision-making under the ESA.

Specifically, we propose to amend section 3 of the ESA, 16 U.S.C. § 1532, to include the following statement:

> "The terms 'best scientific and commercial data available' and 'best scientific data available' shall include, among the sources of available data considered, Indigenous knowledge."[2]

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[1] *E.g.*, 16 U.S.C. §§ 1533(b)(1)(A) (listing species based on "best scientific and commercial data available"); 1533(b)(2) (designation of critical habitat based on "best scientific data available"); 1536(a)(2) (consultation shall use "best scientific and commercial data available").

[2] "Indian tribe" would be defined as stated in section 4 of the Indian Self-Determination and Education Assistance Act:

> "'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

25 U.S.C. § 450b(e).

Discussion

What is Indigenous knowledge?

The term "Indigenous knowledge" is one of several terms—including the terms Indigenous knowledge, traditional knowledge, traditional ecological knowledge and local knowledge—which are often used interchangeably in an effort to capture the unique source of knowledge or unique "way of knowing" that these terms imply.[3]

We have seen different definitions used for each of these terms. By way of example, a study prepared for the former Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) offered the following definition of "traditional ecological knowledge":

> Traditional Ecological Knowledge (or TEK) is a system of understanding one's environment. It is built over generations, as people depend on the land and sea for their food, materials, and culture. TEK is based on observations and experience, evaluated in light of what one has learned from one's elders. People have relied on this detailed knowledge for their survival—they have literally staked their lives on its accuracy and repeatability. TEK is an important source of information and understanding for anyone who is interested in the natural world and the place of people in the environment. Many scientists recognize the value of working with people who live in an area and who have great insight into the natural processes at work in that area. While the scientific perspective is often different from the traditional perspective, both have a great deal to offer one another. Working together is the best way of helping us achieve a better common understanding of nature.[4]

As another example, the Inuit Circumpolar Council (ICC) offered the following definition of "Indigenous knowledge":

> Indigenous knowledge is a systematic way of thinking applied to phenomena across biological, physical, cultural and spiritual systems. It includes insights based on evidence acquired through direct and long-term experiences and extensive and multigenerational observations, lessons and skills. It has developed over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation.[5]

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[3] *See, e.g.*, U.S. Fish and Wildlife Service, *Traditional Ecological Knowledge for Application by Service Scientists* (Feb. 2011), available at https://www.fws.gov/nativeamerican/pdf/tek-fact-sheet.pdf.

[4] L. Quakenbush and H. Huntington, *Traditional Knowledge Regarding Bowhead Whales in the Chukchi Sea near Wainwright, Alaska* (Sept. 2010).

[5] Inuit Circumpolar Council Canada, "Application of Indigenous Knowledge in the Arctic Council," available at

The language we have proposed utilizes the term "Indigenous knowledge" because we think that terminology most clearly captures the unique, or special policy interest of the federal government in ensuring that federal decision-makers consider Native American traditional knowledge in reaching their decisions under the ESA.

Why should federal agencies consider Indigenous knowledge in ESA decision-making?

Indigenous knowledge and scientific observations are independent sources of information that, when combined, can increase a decision-maker's depth of knowledge.[6] Indigenous knowledge can provide valuable detail about natural processes over a long period of time (for example, through an understanding of historic migratory patterns or the geographic distribution of a specific population of animals) complementing scientific data gathered over a relatively short period of time (for example, through the use of satellite telemetry or population counts). While the Western scientific perspective may be very different from the Indigenous perspective, both are valuable sources of information.

The importance of incorporating Indigenous knowledge into federal decision-making is exemplified by the historic fight of the Iñupiat and Yupik people to preserve their subsistence bowhead whale hunt, a tradition they have carried on for thousands of years. The hunt is critically important the Iñupiat and Yupik culture. The entire community participates and shares in the hunt, ensuring that the traditions and skills of the past will be carried on by future generations. Each whale provides thousands of pounds of meat and maktak, which is shared by the entire community.

In the early 1970s, as opposition to commercial whaling operations started to grow, some countries raised concerns about the status of the northern Alaska bowhead population and the Iñupiat and Yupik subsistence harvest of this stock. The hunters were not made aware of this international concern until 1977, when the International Whaling Commission (IWC) imposed a ban on the subsistence harvest of bowhead whales. The ban was based upon a Federal Government report that erroneously estimated that only 600 to 2,000 bowhead whales existed in the northern Alaska stock. Had the Federal Government consulted with the Iñupiat and Yupik hunters, they would have been informed (correctly) that there were at least 4,000 bowhead whales in the population and that the population was growing.[7]

In response to the ban, the subsistence whaling community established the Alaska Eskimo Whaling Commission (AEWC), which undertook the difficult task of convincing the Federal Government that Iñupiat and Yupik elders – holders of Indigenous knowledge – knew more about the bowhead whale population than Western scientists.[8] The North Slope Borough, a county-level government, also established its own Department of Wildlife Management, which

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http://www.inuitcircumpolar.com/application-of-Indigenous-knowledge-in-the-arctic-council.html.

[6] H. Huntington, T. Callaghan, S. Fox, and I. Krupnik, *Matching Traditional and Scientific Observations to Detect Environmental Change: A Discussion on Arctic Terrestrial Ecosystems* (2004).

[7] *See* Alaska Eskimo Whaling Commission, *Ilitqusia Agvigum: Spirit of the Whale* (2012).

[8] *See* Jessica Lefevre, A *Pioneering Effort in the Design of Process and Law Supporting Integrated Arctic Ocean Management*, 43 Envtl. L. Rep. News & Analysis 10893-10908 (2013), available at http://www.aewc-alaska.com/uploads/Jessica_CAA_Article.pdf.

has now spent decades uniting Western science with Indigenous knowledge to better understand the bowhead whale.

Through IWC-related research collaboration with the North Slope Borough's wildlife biologists, Alaska Native subsistence hunters cooperated with scientists on the design of research proposals and the interpretation of research results. In the early 1980s, scientists struggled to design a research program for counting the bowhead whale stock. Their early whale census efforts met with criticism from whaling captains, who said the counts were too low. The whaling captains subsequently helped the scientists understand that they had been unable to count whales because the whales were swimming under the ice cover. The reliability of this "Indigenous knowledge" was then verified through peer-reviewed, Western science.[9] Indigenous knowledge ultimately prevailed, but not before the Alaska Native community was forced to make enormous investments of time, energy, and money to convince the Federal Government that Indigenous knowledge was of great value.

Today, Alaska Native whaling captains, through the AEWC, manage their own hunt under a cooperative agreement with the National Oceanic and Atmospheric Administration (NOAA). Early fears that Native subsistence whaling would decimate the whale population have proved false. The northern Alaska stock of bowhead whales—thought to have originally numbered between 11,700 and 18,000 animals, before commercial whaling—is now estimated to be 16,892 (95% confidence interval of 15,704 to 18,928).[10]

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[9] *Id.*
[10] *Id.*

Is Indigenous knowledge considered by the agencies in ESA decision-making today?

In developing our legislative proposal, we became aware of concerns that our effort to amend federal law to define best available "science" to include Indigenous knowledge might unwittingly enable a biased federal decision-maker to rely on otherwise unsupported sources of "traditional" or "Indigenous" information to justify—even in the face of conflicting scientific evidence—an agency decision to list a species or designate critical habitat under the ESA.

In response, first, the intent of our proposal is simply to ensure that FWS and NMFS include (when it is available) Indigenous knowledge within the body of data *that is considered* when making decisions under the ESA. Second, we note that the language does not elevate or prioritize Indigenous knowledge over any other source of data; it simply requires that available Indigenous knowledge must be considered—just as other scientific data must be considered—by FWS and NMFS when identifying the best available science during the decision-making process.

Finally, and most importantly, ESA case law establishes how FWS and NMFS are to determine and utilize best available science. An agency "cannot ignore available biological information" and it is "prohibit[ed] . . . from disregarding available scientific evidence that is in some way better than the evidence [it] relies on."[11]

Undoubtedly, a federal agency could abuse its discretion in identifying and basing decisions on the "best scientific data available." In fact, in the past, Members of Congress have expressed deep concern that "the data and scientific information cited as support for federal ESA listing decisions . . . often include unpublished studies or professional opinions rather than actual data . . ." H. Rep. No. 113-537, at 2 (2014). However, the potential for abuse exists whether or not the term "best scientific data available" is defined in a manner that requires consideration of available Indigenous knowledge.

It is also clear that FWS and NMFS already believe they have the discretion to consider Indigenous knowledge when reaching decisions under the ESA. The use of "traditional knowledge" in ESA decision-making is explicitly encouraged in (if not required by) the Department of the Interior in Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997), which states:

> The Services shall coordinate with affected Indian tribes in order to fulfill the Services' trust responsibilities and encourage meaningful tribal participation in the following programs under the Act, and shall . . . [f]acilitate the Services' use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected Indian tribes in addition to data provided by the action agency during the consultation process.

In fact, FWS, during the George W. Bush Administration, used Indigenous knowledge, in concert with Western science, to "justify" at least one listing decision under the ESA:

[11] *E.g., Kern Cnty. Farm Bureau v. Allen*, 450 F.3d 1072, 1080-81 (9th Cir. 2006).

> [T]he U.S. Fish and Wildlife Service used both western scientific data and TEK to justify listing the polar bear (Ursus maritimus) as a threatened species under the ESA. Ecological knowledge provided by Chukotka, Inuit, and other Indigenous coastal residents with regard to polar bear habitat, density estimates and population numbers provided valuable data used in making the decision. The final listing rule stated that both traditional and contemporary Indigenous knowledge recognized climate-related changes occurring in the Arctic, and these changes are negatively impacting polar bears.[12]

Interestingly, at least one report we found points to Indigenous knowledge to support a conclusion that certain Canadian polar bear populations might *not* be threatened by climate change.[13] In short, Indigenous knowledge is playing an important role in the ongoing scientific effort to determine the scope of potential threats to polar bear populations.

Conclusion

In Alaska, we understand the utility of working with holders of Indigenous knowledge to manage land and natural resources in a manner that benefits all resource users. For example, Iñupiat subsistence whalers meet annually with offshore oil and gas industry representatives to develop Conflict Avoidance Agreements, through which whalers and industry representatives "devise measures that . . . reduce industrial disturbances to migrating whales and key areas of habitat and hunting, while ensuring that the oil and gas work remains operationally and economically feasible."[14]

FWS and NMFS believe they have discretion today to consider Indigenous knowledge in federal decision-making under the ESA. We think Congress should acknowledge and support the role of Indigenous knowledge in ESA decision-making by explicitly incorporating the language we have proposed.

We also recommend that Congress continue to use its oversight authority to ensure that FWS and NMFS do not abuse their discretion when identifying and relying on "best available scientific data"— whether such data is derived from Western science or Indigenous knowledge— to make decisions under the ESA.

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[12] U.S. Fish and Wildlife Service, *Traditional Ecological Knowledge for Application by Service Scientists* (Feb. 2011), available at https://www.fws.gov/nativeamerican/pdf/tek-fact-sheet.pdf.

[13] *See* J. York, M. Dowsley, A. Cornwell, M. Kuc and M. Taylor, *Demographic and Traditional Knowledge Perspectives on the Current Status of Canadian Polar Bear Subpopulations*, Ecology and Evolution, 2016 ("Considering both TEK and scientific information . . . [w]e do not find support for the perspective that polar bears within or shared with Canada are currently in any sort of climate crisis.")

[14] Jessica Lefevre, A Pioneering Effort in the Design of Process and Law Supporting Integrated Arctic Ocean Management, 43 Envtl. L. Rep. News & Analysis 10893-10908 (2013), available at http://www.aewc-alaska.com/uploads/Jessiea_CAA_Article.pdf.

July 16, 2018

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

Dear Chairman Barrasso:

You recently released a discussion draft of proposed amendments to the Endangered Species Act (ESA) that incorporates several concepts and recommendations generated from the Western Governors' Association's *Species Conservation and Endangered Species Act Initiative*. Although we cannot endorse the proposal as currently drafted, we appreciate that the discussion draft is a starting point for conversation and one more step in a multi-year process. We also acknowledge your commitment to a bipartisan process that seeks comments from diverse stakeholders – as well as your willingness to modify the discussion draft based on input received before any legislation is introduced.

We look forward to reviewing the discussion draft and working with the Committee to offer comments. In our review, we will be looking to see that, among other things, any amendments to ESA: truly enhance implementation of this bedrock statute; do not diminish or weaken its core protections and authorities; encourage greater collaboration to drive on-the-ground restoration efforts; and provide clear benefit to species and ecosystems.

While not contemplated in your discussion draft, we know that the lack of funding for ESA remains a significant challenge when it comes to species recovery and conservation and we will continue to work with The White House and relevant Senate and House committees to provide adequate funding for ESA programs, as well as for conservation programs vital for ensuring the protections of the ESA are not required for species in the first place. We believe it is important that the Committee specifically address this lack of funding for collaborative recovery of species before they become endangered or threatened. Investing in such efforts will both accelerate the attainment of recovery goals for listed species and increase populations of species of greatest conservation need to prevent the necessity of future ESA listings. We encourage the Committee to include consideration of dedicated funding for the implementation of State Wildlife Action Plans and ESA Recovery Plans as well as funding for key habitat conservation programs.

Your commitment for bipartisanship – as well as a more comprehensive approach to reauthorizing ESA – is appreciated. As you know, during this 115th Congress, the House Natural Resources Committee has approved several discrete measures, each of which weaken the integrity of the ESA. We welcome bipartisanship consistent with the overwhelming legislative history of the Endangered Species Act of 1973 and

subsequent reauthorizations. Practically speaking, a bipartisan approach with broad stakeholder engagement will be critical for creating good policy, addressing the needs of communities and species, and eventually advancing any ESA legislation.

Given your commitment to a bipartisan approach to comprehensive reauthorization of ESA, you should know that we take exception to the misguided and misplaced ESA related amendments being advocated for in both the National Defense Authorization Act (NDAA) and the FY19 Interior, Environment, and Related Agencies Appropriations Bill. While this process is moving forward, it can only do so successfully with trust. Legislation without ESA riders will be viewed by this community as critical signals of your desire and ability to maintain this trust and a bipartisan approach to produce legislation to the benefit of all. If there is to be a good faith effort among parties to reauthorize ESA in your committee of jurisdiction, we ask that you work with Senate and House leadership to ensure that no ESA amendment is included in either measure – nor in any FY19 continuing resolution, omnibus bill, or other legislation wholly unrelated to ESA.

Again, we appreciate your willingness to engage with, and seek ideas from our groups and other stakeholders. We look forward to submitting comments on your discussion draft and welcome opportunities to discuss them with you and your staff as well as with Ranking Member Carper and minority staff.

Sincerely,

Environmental Defense Fund

National Audubon Society

National Wildlife Federation

The Nature Conservancy

Theodore Roosevelt Conservation Partnership

ENVIRONMENTAL POLICY INNOVATION CENTER
1015 15th St. NW | Suite 600 | Washington, D.C. 20005
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To: U.S. Senate Committee on Environment and Public Works
Re: Discussion Draft Bill on the Endangered Species Act Amendments of 2018

The Environmental Policy Innovation Center is submitting our initial perspectives on Senator Barrasso's Discussion Draft Bill on the Endangered Species Act Amendments of 2018. Putting aside for the moment our perspectives on the individual sections of the draft, we believe that it clearly reflects considerable thought on the Endangered Species Act (ESA). We have identified many sections of the draft that would impede species recovery and create new burdens for federal, state, and local agencies. Below, we have identified the most problematic sections. We have also identified several sections that could improve conservation. Because Senator Barrasso released a "discussion draft," we hope he and other supporters of the draft are open minded about opportunities to improve it so that the ESA works better for wildlife and people.

Summary of Sections Problematic for Conservation

1. Gives state data preeminence over all other science, even peer-reviewed work.

Several parts of the bill require the Services to favor state science, regardless of whether it is the best science available or even good science. State comments are supposed to be "afforded greater weight" than those from anyone else (Section 101). Thus, state or tribal comments on a listing petition are given "great weight," but no one else's comments—not even those of scientists most knowledgeable about a species—are afforded the same privilege (Section 103). The bill also favors empirical or field tested data, even though those data are often less useful than data from computational models (Section 301). For instance, many endangered species are difficult to study in the field, which is why scientists need to model how those species will respond to threats like pollution or invasive predators.

We think that the state data provisions reflect at least two underlying issues. One is their frustration about how the Services consider state data in certain ESA decisions. This frustration is not unique to states. Many other regulated entities and even conservation organizations believe that their comments and data are not always properly considered in ESA decisions. The solution to this problem, however, is not to dictate that any one source of data preempts all others, regardless of quality. Rather, it is to require the Services to develop clearer approaches to explaining their decisions. Weight-of-evidence techniques and uncertainty assessments are two such approaches from the field of decision science.

Another issue is the extent to which the Services should treat state-generated science and comments differently from those of other groups. As the Services have recognized, states are uniquely suited to helping implement the ESA. For this reason, the Services give states special opportunities to weigh in on ESA decisions, such as by soliciting states for information to determine which species warrant listing and requesting an information update from affected states before preparing a final biological opinion. These privileges, however, do not allow states to dictate the kind of science the Services consider or the outcome of their decisions. The

Barrasso bill overreaches by doing just that, undercutting the ESA's best available science mandate. A more constructive approach would be to codify the Services' current policy on the role of states.

2. Consumes many aspects of the ESA with bureaucracy and process that no one can afford.

Funding is a challenge not only at the federal level—every year, local and state agencies are similarly challenged to fund their programs. For example, state legislatures offer no funding for endangered species programs in many states and only modest funding in other states. Most local and state endangered species funding comes from federal sources, except in a few states like California, Florida, and Hawaii. Here are some examples in the bill of new procedural requirements and workload for federal, state, and local agencies:

- Section 102 requires that recovery teams "shall include representatives of .... each impacted state" and another section requires unanimous consent of each of those states to change a recovery goal. Green sea turtles are found, at least occasionally, on the coasts of at least 30 U.S. states and four territories. A representative of each of those states would, under the law, be required to participate in the time-consuming process of developing a recovery plan, and the absence of just one state member would prevent a recovery team from changing a recovery goal.

- Section 103 would require federal agencies to send written notice to every county where a species occurs whenever they are considering a listing or critical habitat decision affecting that species. For the monarch butterfly—currently at risk for ESA listing—this would require notification to more than 2,000 county governments.

States are special partners with deep expertise in wildlife conservation and capacity to build and deliver recovery strategies. Instead of making their lives more difficult and paperwork-focused, bring technology into the ESA in ways that make their lives easier. Require federal agencies to build a password-protected website for states that provides real-time, electronic notification to individual points of contact in each state, identified by the state's governor, for each regulatory action. Require federal agencies to geotag each ESA-related Federal Register notice so that each state affected by a notice receives automatic notification of an action affecting the state. Instead of creating review requirements for recovery plan authorship, require federal agencies to accept as a first draft any recovery plans already written by states if they meet the Services' content requirements. States have ample time and expertise to put together plans long before a federal requirement arises to do so.[1]

3. Eliminates the public's ability to challenge delisting decisions.

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[1] Council to Advance Hunting and the Shooting Sports, State Agency Resource Allocation to R3 Efforts, http://www.cahss.org/research/report-state-agency-resource-allocation-to-r3/

The ESA currently allows the public to immediately challenge in court a final decision to delist a species. The bill suspends this ability for five years after a final decision, during which time the Services are supposed to work with states to monitor the status of the species (Section 102). Even if the species were to decline precipitously during this time, the public would have no recourse to challenge the delisting in court. Much of the hard work done to recover the species could be reversed during this period.

To date, the Services have delisted nearly 55 species as recovered. Most of those decisions were not challenged. It thus appears that the five-year delay in the Barrasso bill was driven by a few controversial delistings for species like the gray wolf and the Greater Yellowstone population of the grizzly bear that were immediately litigated. Put simply, a minority of high-profile delistings has likely sparked an extreme remedy. The main conflict in the bear and wolf delisting was the amount of hunting allowed under state law after a species is delisted. Another issue is differences in views on what it means to "recover" a species—is ensuring the species' long-term persistence enough or does the ESA mandate greater aspirations?

Senator Barrasso and others could squarely address these underlying issues in far more constructive ways. For example, they could issue legislation directing the Services to clarify what it means to recover a species (*e.g.*, 95 percent likelihood of survival for 100 years) and how state managed hunts will factor into the agencies' delisting decisions. While the answers will probably not satisfy everyone, they would provide a stronger foundation for the Services to defend legitimate decisions and set clearer expectations for the public around the goals of ESA recovery.

4. Requires the Services to explain decisions that conflict with state comments, slowing ESA decisions even more.

In several provisions of the bill, the Services must go out of their way to explain any decisions that conflict with information provided by states. For example, the Services must "provide a detailed, comprehensive, written explanation" if it determines that any information provided by a state, tribe, or local government on a listing or critical habitat decision is factually deficient and inconsistent with other credible science (Section 301). Likewise, if the Service's decision to list a species or designates critical habitat is "in conflict with" comments from a state, tribe, or local government disagreeing with the decision, the agency must submit a written justification explaining the departure (Section 103).

These requirements will hurt conservation. First, they will debilitate the Services' listing program with paperwork that goes beyond the explanations the Services already provide about how they considered public comments on a proposed listing or critical habitat rule.
Alternatively, the Services might simply capitulate to many state or local government comments to avoid the burden of justifying departures from those comments. The ensuing ESA decisions may be much worse for conservation because they are motivated by avoiding excessive work rather than the needs of species.
These provisions strike us as thinly veiled attempts to strong-arm the Services into giving state, tribal, and local government the upper hand in ESA decisions. They bog down the Services'

already overworked staff with paper shuffling rather than actual conservation. We find it impossible to reconcile this added workload with the expressed desire of many western states to recover more species, faster. If Senator Barrasso and others legitimately think that the Services undervalue states comments and science, they have not given concrete examples indicating the problem is pervasive nor offered tailored solutions.

5. Gives governors a formal role in naming and shaming specific federal employees but does not reciprocate for state employees.

Section 109 requires federal agencies to send requests to each governor on an annual basis for feedback on each individual federal employee who has duties that affect that state. The feedback pertains to the responsiveness and effectiveness of each employee. It is hard to find an idea in this bill that would do less for conservation, more to disincentivize staff initiative, and more to increase legal liabilities of states. In responding to such requests, each governor would have to consult its own human resources staff and legal counsel about legal liabilities its feedback could create for the state, if a federal employee is terminated, demoted, transferred, or has his employment status changed as a result of that feedback. This idea would institutionalize partisanship into human resource processes at federal agencies. A large percentage of federal staff have work that affects multiple states. Depending on the partisan alignment of each affected state, we can easily imagine how Section 109 would escalate conflict between states about which specific federal employees to reward or punish. And it is hard to think of a policy that is more in conflict with President Truman's statement, "the buck stops here." Each state already has many avenues to express opinions about agency actions directly with the politically-appointed director of the Fish and Wildlife Service or National Marine Fisheries Service, as well as the respective secretaries who oversee those departments. Our only recommendation is to eliminate Section 109.

6. Prevents the public from getting information need to conserve species.

The public plays a vital role in helping the Services understand the status of listed species and their habitats. For example, copies of conservation plans and monitoring reports help everyone understand whether plan participants are duly implementing the conservation actions they agreed to and whether those actions are effective. Species information is also needed for the public to know how and where to voluntarily conserving species. The Barrasso bill would undercut these and other opportunities for public assistance by preventing the Services from disclosing under the Freedom of Information Act "sensitive information regarding a species" or information that "identifies the property of a specific landowner" (Section 301).

This type of language could easily be construed to cover a very wide range of information. Sensitive species information could include the distribution, abundance, and habitat of a species. If this information appears in a document that must otherwise be disclosed under FOIA, the Services will need to spend countless hours redacting the protected information. At the same time, Senator Barrasso has not explained the purpose of this provision. Was there rampant poaching of endangered species that led to the need to suddenly protect sensitive species

information? Are landowners being harangued by radical environmental activists and need to have their property information concealed? What is the purpose of creating so much additional work for Services staff and denying the public the information needed to help monitor the condition of species and their habitats? It is never a good sign when the number of questions a bill raises vastly outnumbers the problems it supposedly fixes.

7. Pits states against federal government, rather than encouraging collaboration.

Our final criticism of the bill is a catch-all for the fact that it creates a standoff between states and the federal government. Many provisions contribute to this conflict—some are nitpicky while others are substantial, and they pervade throughout the bill. For example, the number of federal representatives on a recovery team cannot exceed that of state representatives, and the latter can collectively block any outside scientists from joining the team (Section 103). If a state requests to lead a recovery team, the Services must grant that request, with no provision for sharing that role with the federal government or other recovery partners. In implementing the ESA, the Services are generally not trusted to carry forth activities unless they consult with states "to the maximum extent possible" (Section 101).

Summary of Sections That May Advance Conservation

We identified at least three sections of the draft bill that would likely advance conservation. We will discuss these and other beneficial sections at a later time. For now, we summarize the advantages we see with each section.

- **Puts federal scientists back in charge of deciding which species gets listed first (Section 401).** This section largely codifies the Fish and Wildlife Service's seven-year listing workplan, which has been widely supported by a variety of stakeholders. Codification would help the Service better manage its listing workload and provide with public with more certainty about potential listings and opportunities to conserve species early.

- **Creates deadlines for delisting species that have met their recovery goals (Section 102).** This section would help ensure expeditious delisting of species that have met their recovery targets. Congress, however, should properly fund the Services to handle this new workload under an aggressive timeframe.

- **Creates award for states that perform outstanding conservation (Section 108).** An annual award would allow the Services to endorse state-based conservation initiatives that are effective at conserving species.

* * * * *

Thank you for considering our feedback on the draft bill. Should you have any questions, please do not hesitate to contact Ya-Wei (Jake) Li at jake@policyinnovation.org.

Sincerely,

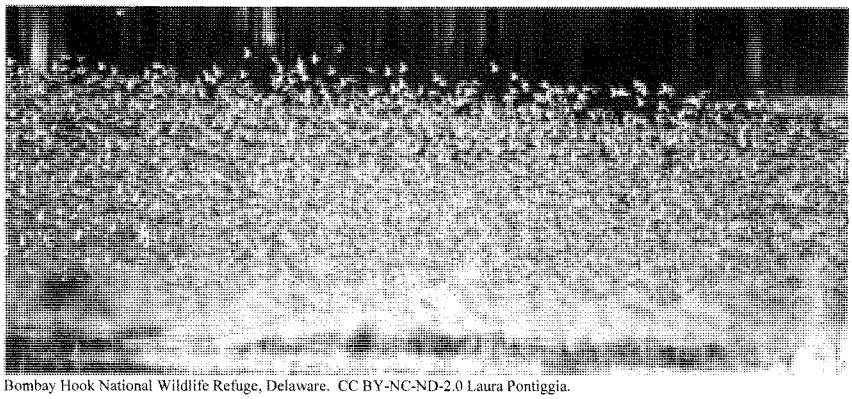
Ya-Wei Li Director for Biodiversity	Timothy Male Executive Director

ENVIRONMENTAL POLICY
INNOVATION
CENTER

ENDANGERED SPECIES ACT: 2018 ADMINISTRATIVE REFORM

Initial Perspectives on Proposed Regulatory Changes

July 2018



Bombay Hook National Wildlife Refuge, Delaware. CC BY-NC-ND-2.0 Laura Pontiggia.

A Balanced Look at the Proposed Endangered Species Rules

In July, the two federal wildlife agencies that oversee the Endangered Species Act (ESA) released their proposals to amend some of the rules that implement the law. Most of the initial media coverage of the proposals has been disappointing and hyperbolic, nearly devoid of balanced, objective analysis. The Innovation Center want the ESA to work better for wildlife and people, and believe that a constructive dialogue on the proposals will best advance this goal. For that reason, we are publishing this initial analysis of the proposals.

The proposals affect four functions of the ESA: how agencies decide whether to list species, how they designate habitat as critical, consultation between federal agencies intended to minimize harm to species (section 7 of the ESA), and special rules for threatened species (section 4(d) of the ESA).

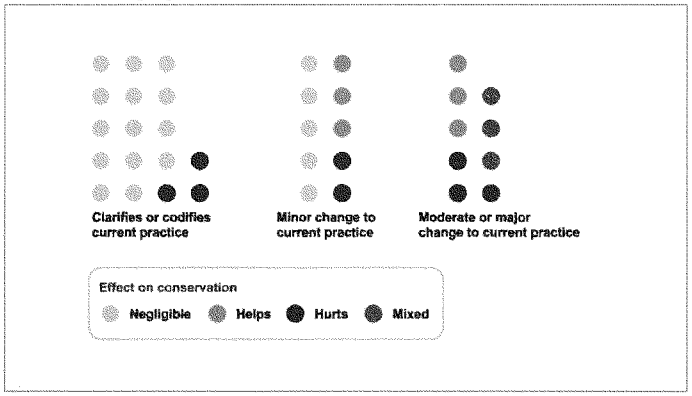
Two decades have passed since the two federal wildlife agencies—the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS)—proposed such comprehensive changes to their ESA rules. The July proposals have alarmed many people because they were release by the current administration, but we know that many of the proposals were first introduced by career Services biologists in 2017 rather than by political appointees. This report summarizes some of the most controversial or noteworthy proposals, and evaluates each on its merits.

Big, Bad, and Ugly?

We counted 36 distinct proposals in the rulemaking package, although media coverage has focused on only a few of them.[1] Are those few representative of the entire package? No, nearly half of the proposals are reasonable bookkeeping, codifying into regulations what is existing practice at the agencies. For example, one proposal would specify in regulations the current standards for when federal agencies should start formal consultation. Although those bookkeeping proposals do not grab headlines, they can improve the clarity and consistency of how the ESA is administered, and sometimes make it faster or more efficient to implement. Balancing your finances may not be exciting, but it helps keep your life in order. The same is true for periodic updates to environmental rules and policies.

See the 36 proposals online
We have posted our initial views on each proposal at http://policyinnovation.org/esaregs18 and will update the contents as we learn more about the proposals.

Effects of the 36 proposals



Of the 36 individual proposals, 19 will likely have negligible effects on conservation, 6 will likely have positive effects, 8 will likely have negative effects, and 3 will likely have mixed effects. You can see which category each proposal belongs to at http://policyinnovation.org/esaregs18

To be sure, not all of these bookkeeping proposals would help conservation. As the figure above shows, three of them would codify practices that we think undercut wildlife conservation. But it is inaccurate to claim that the proposals would change those practices for the worse. We discuss some of those proposals in greater detail later.

Of the remaining proposals, ten would cause minor changes to current practice and nine would cause moderate or major changes. Most of the coverage on the rulemaking has focused on three of the major changes: removing the prohibition on referencing economic impacts in listing decisions, changing the order and standard for designating unoccupied habitat as critical, and withdrawing the general 4(d) rule that automatically extends section 9 protections for endangered species to threatened species. We will discuss each of these proposals later, but we first start with some good news.

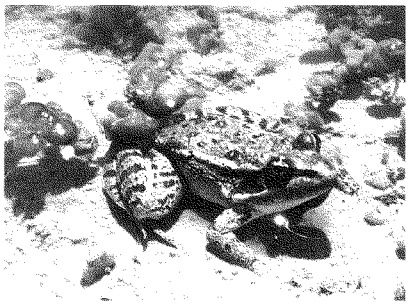
FASTER CONSULTATIONS AND BETTER INCENTIVES FOR RECOVERY

The six proposals we ranked as, on the whole, helping conservation all affect the consultation process—through which a federal agency is required to ask one (or both) of the Services about how its proposed project might affect listed species. None of the proposals offers bold improvements to the process, but collectively they should reduce the time and money that federal agencies spend on consultations. Greater efficiency allows the

agencies to do more productive things for wildlife, such as fund and implement projects to restore habitat. The proposed process improvements should also reduce complaints about the costs of complying with the ESA, which eases the political pressure on the law.

Two of the proposals focus on easier ways to initiate formal consultation—by reducing the paperwork needed to initiate consultation and by allowing federal agencies to group related projects when they initiate consultation. Another proposal should reduce the time to write biological opinions by allowing the Services to adopt analysis they or other agencies have completed elsewhere. There's nothing earthshattering here, as most of these proposed changes are already allowed by the current consultation handbook. That handbook was published in 1998, however, and has never been thoroughly updated. Codifying these best practices provides other agencies and the public with clearer, more affirmative direction. Considering that FWS completed an average of 11,344 consultations annually from 2011-17, even small changes can yield outsized effects. In fact, we regularly hear that Services staff lack the time to work on recovery actions and voluntary conservation plans because they are consumed with section 7 consultations and listing decisions. Reducing the section 7 paperwork, without compromising the quality of the work, can free agency staff to pursue other efforts that directly promote recovery.

Two other proposals are vague but intriguing. One is called an "optional collaborative consultation process," which would allow federal agencies and the Services to streamline consultations for certain types of actions. The change would likely involve the federal agencies playing a larger role in providing the Services with analysis and documentation that the Services would normally complete by themselves during formal consultation. The proposal explains that the Services could then add "any necessary supplementary analyses and incidental take statement" in finalizing their biological opinions. This approach shifts more of the paperwork and analyses to agencies that want the project, without undercutting the Services' legal authority under section 7.



California red-legged frog, a species covered by over 1,000 formal consultations since 2008, mostly from U.S. Army Corps of Engineer projects.

The other proposal involves creating an expedited consultation process for certain types of actions. The proposal explains that "[c]onservation actions whose primary purpose is to have beneficial effects on listed species will likely be considered appropriate for expedited consultation." We can envision the Services using this process to expedite a consultation if a federal agency agrees to offset most or all of the harmful effects of its proposed project, thus creating a "net gain" for the affected species and helping it recover. In that situation, an agency can choose to go beyond the bare minimum needed to comply with section 7, in return for a faster or easier consultation. This is the bargain struck between FWS and the Army Corps of Engineers in a widely-acclaimed 2013 conservation plan to conserve three listed species in the lower Mississippi River, which had the Corps offering to do more conservation than what the ESA requires. According to the Corps, "Conservation Plans offer greater predictability and efficiency in ESA compliance and streamline the Biological Opinion process under 7(a)(2) of the Act."[2] The U.S. Forest Service is now considering a similar approach, which the proposal for expedited consultations would likely encourage.

Little of this is groundbreaking. FWS already issued a memo in November 2016 describing a process to streamline consultations on recovery actions, and NMFS has been using programmatic consultation for

restoration actions for over a decade "to promote more consistent use of conservation measures, more efficient workload management, and better customer service."[3] But codifying this approach could invite even more federal agencies to the table for recovery. That bigger tent is what the ESA has needed for decades.

THE MOST CONTROVERSIAL PROPOSALS

Three proposals have cause the most alarm. We discuss each one below, putting them into context.

Referencing economic impacts in listing decisions

The agencies propose to remove language in the listing regulations that requires the Services to make listing determinations "without reference to possible economic or other impacts of such determination." The proposal would still prohibit the Services from *considering* those impacts in listing decisions, but allows them to publish the impacts as part of the decisions (*i.e.*, to "reference" it). The Services have not indicated how often they plan to use their discretion to publish the impacts, so the practical implications of this proposal are unclear.

The lesser prairie chicken was listed in 2014, a decision that some people claimed would have widespread economic impacts. FWS delisted the species in 2016 in response to a court order and is currently evaluating a petition to relist the species. FWS also issued a 4(d) rule for the species that excluded many types of activities from the prohibitions of section 9 of the ESA. CC BY-2.0 Larry Lamsa.

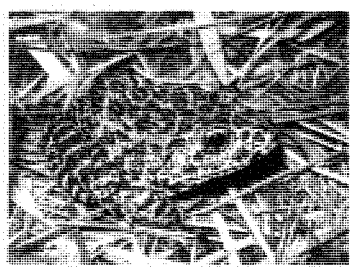
We see three issues with this proposal. One is the difficulty in preventing the impacts from influencing the outcome of a listing decisions. There is ample room in the current listing standards for non-biological factors to create that influence, because listing decisions are risk assessments that were never (and will never) be based solely on scientific factors.[4] Publishing the impacts can exacerbate that muddiness between biological and non-biological factors. A second concern is that wildlife-related economic analysis remains very basic and focused on the negative economic effects of listing while overlooking some positive effects. The latter—which can include ecotourism revenue and increases in property value from adjacent properties enrolled in conservation easements—can be difficult to estimate with accuracy, so it often gets left out in economic impact analyses. Finally, we question the value of the Services spending more of their limited resources to produce any impacts analyses that may not have a purpose of guiding recovery strategies or improving the effectiveness of other

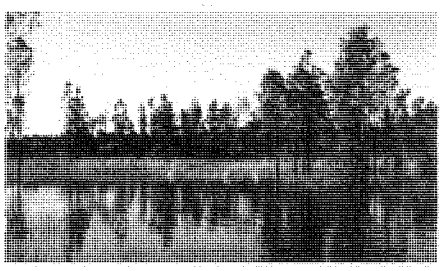
ESA activities.

Designating unoccupied critical habitat

The second hotly-contested proposal is the change to when and how the Services may designate unoccupied habitat as critical. There are three parts to this proposal: evaluating occupied habitat before evaluating unoccupied habitat; identifying the two situations when unoccupied habitat is deemed "essential"; and requiring a "reasonable likelihood" that unoccupied area contribute to conserving the species. The main problem with forcing the Services to evaluate occupied habitat first is that it creates the risk of overlooking unoccupied habitat whose use may be more effective or less costly at recovering species. The proposed language, however, tries to reduce this concern by allowing unoccupied habitat to be designated if doing so would result in more "efficient conservation." By that, the agencies mean conservation that is "effective, societal conflicts are minimized, and resources expended are commensurate with the benefit to the species." Those objectives are laudable and, at least the first two, have broad support among conservationists. Does this proposed definition offer the Services enough flexibility to continue designating unoccupied habitat as needed? Possibly, but much of the public discourse already seems to have presupposed that it would not be.

The proposal would also require that any unoccupied habitat present a "reasonable likelihood" of contributing to species conservation. The Services explain that they "might conclude that an area is unlikely to contribute to the conservation of the species where it would require extensive affirmative restoration that does not seem likely to occur such as when a non-federal landowner or necessary partners are unwilling to undertake or allow such restoration." This is similar to what happened when FWS designated Unit 1 as unoccupied critical habitat for the dusky gopher frog, a conflict that gave rise to the *Weyerhaeuser Co. vs. U.S. Fish and Wildlife Service* case that the U.S. Supreme Court will hear in October 2018. Had the "reasonable likelihood" requirement been in place when FWS was evaluating critical habitat for the frog, the agency might not have designated Unit 1. Despite the biological importance of Unit 1—it contains breeding habitat that no longer exists elsewhere in the frog's historic range—we have not seen anyone explain how the designation would someday result in the owner of Unit I authorizing the reintroduction and habitat management needed to recover the species. This conundrum is one that the ESA is poorly equipped to address. The proposed changes sidestep this issue by decreasing the chances that the Services would designate unoccupied habitat in controversial situations, but they do not resolve the underlying question of how FWS is supposed to conserve areas like Unit 1 or recover species without those areas when scientists conclude it is not possible to do so.

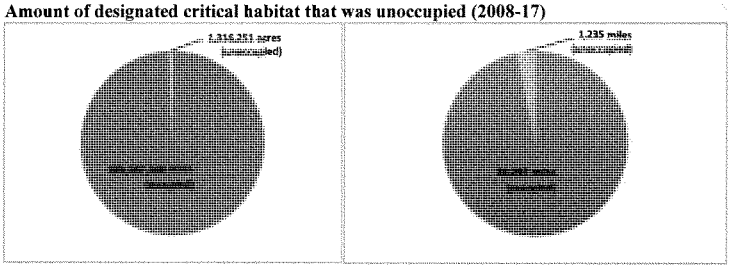




The dusky gopher frog and its habitat in De Soto National Forest, Mississippi. In 2013, scientists discovered the frog in the pond pictured. De Soto plans to restore 13,400 acres of longleaf pine over nine years as part of the U.S. Department of Agriculture's Collaborative Forest Landscape Restoration Program. Credits: John Tupy (frog), USDA (pond).

The *Weyehaeuser* case has drawn a lot of attention to unoccupied habitat, but how often do the Services designate such habitat? Among all FWS critical habitat designations from 2008-17, 144 had occupied habitat only and 43 others included some unoccupied habitat.[5] By size, only 0.6% of FWS terrestrial critical habitat was unoccupied, and only 3.1% of aquatic habitat was unoccupied. NMFS finalized 23 designations during this time, none (0%) of which included unoccupied habitat. These numbers question the extent to which the regulatory proposals would change the practice of unoccupied designations. We are not suggesting that the Services were correct in largely ignoring unoccupied habitat (no one has studied that issue), but the data suggest that the Services have not relied heavily on unoccupied designations in the past and might not have suddenly begun doing so even without the proposed changes to unoccupied designations. Although the changes have attracted a lot of attention, they might not drastically alter species conservation compared to the status quo.

Amount of designated critical habitat that was unoccupied (2008-17)



Unoccupied habitat was only a small percentage of the total amount of critical habitat that FWS designated from 2008-17.

Withdrawing the general section 4(d) rule for threatened species listed in the future

Under the ESA, section 9 protects only "endangered" species. In 1975, however, FWS issued a "general" 4(d) rule that extends those protections to all threatened animal species, and the agency did the same for all threatened plant species in 1977. FWS can override its general rules on a case-by-case basis by issuing a "special" 4(d) rule for a species. By contrast, NMFS never issued a general 4(d) rule, so any section 9 protections for its species must come from a species-specific 4(d) rule. A study that one of us (YL) completed last year found that 49% (116) of all FWS animal species listed as threatened were covered by a special 4(d) rule, with mammals, fish and reptiles making up 85% of those species.[6] NMFS covered 61% of its threatened animal species with a 4(d) rule; the rest were without any section 9 protections.[7] Further, FWS was already issuing an increasing number of species-specific 4(d) rules during the last decade. Through May 2016, the Obama administration listed 55 species as threatened and covered 35 species using species-specific rules.[8] We expect that trend to continue, so the effect of FWS withdrawing its general 4(d) rules is largely limited to those species the agency would not have covered under its general rules.

Against that backdrop, we believe that withdrawing the general rules for future-listed species will have mixed results on conservation, with considerable variation across species. We see the withdrawal as worrisome in at least three situations. First, FWS might not issue a special 4(d) rule upon listing or soon after, even when the species would benefit from section 9 protections. The lapse in protection could mean missed opportunities to prohibit destructive activities through section 9 or to enroll landowners in habitat conservation plans, which are not required absent the take prohibition.

Left: FWS stocking over 8,000 Lahontan cutthroat trout in Fallen Leaf Lake, Tahoe Basin, CA. Right: A spawning trout at the Marble Bluff Fish Passage Facility, NV. The trout is one of over 115 FWS-listed species covered by a species-specific 4(d) rule. The 1975 rule for the trout exempts state-regulated fishing, which FWS determined "does not pose a significant threat" to the trout outside the western Lahontan basin.

Second, FWS might decline to issue a species-specific 4(d) rule because of sociopolitical pressure to minimize the regulatory impacts of listing. By contrast, under the general 4(d) rule, FWS has to go out of its way to reduce protections. Sociopolitical pressures are very real, and FWS has not always handled the pressures in ways that benefit conservation.

Third is the potential lapse in protection for plants. FWS has never issued a special 4(d) rule for any plant species, allowing its general 4(d) rule for plants to protect all 175 species listed as threatened. By withdrawing the general rule, FWS would need to begin spending time and resources to issue species-specific 4(d) rules for new threatened plant species, assuming the agency wants to maintain current levels of protections for this group. Our concern, however, is minimized by the fact that the section 9 protections for plants are considerably weaker than those for animals, largely because the ESA does not extend the take prohibition to any plant. Although the 1988 amendments to the ESA protect endangered plants from malicious damage on federal lands or from removal, cutting, digging up, or damage done in knowing violation of state law, FWS never updated its general 4(d) rule to reflect the added protections. The failure to act suggests that FWS sees the rule as playing a limited role in protecting plants.

NMFS has never issued a general 4(d) rule, but does not seem to have experienced any of these three problems with regularity nor seen consistent public outcry over how it handles 4(d) rules. One potential reason is that the contents of NMFS rules are noticeably different from those of many FWS rules. As discussed later, nationwide guidance on when and how the Services use species-specific 4(d) rules should reduce these discrepancies.

Finally, we point out the workload of writing potentially hundreds of species-specific 4(d) rules in the coming decade. That workload, however, might be outweighed by the time that FWS saves from avoiding the need to review and approve incidental take permits for activities excluded by a 4(d) rule—especially if those rules specify avoidance, minimization, and mitigation measures with better conservation standards than those required for a habitat conservation plan.

Withdrawing the general 4(d) rules could offer at least two distinct advantages for some species. First, it would encourage FWS to think more purposefully about what protections to extend to threatened species, rather than simply defaulting to the general rules. In some situations, FWS may decide that the benefits of regulating an activity are exceeded by the drawbacks of doing so. For example, an activity that only minimally threatens a

species may not be worth the time and cost for FWS and the public to deal with incidental permitting for that species. FWS's time is limited and might be better spent on other activities. Second, FWS can rely on the "necessary and advisable" standard in section 4(d) to issue species-specific rules that create "protective measures beyond those contained in [section 9]," as the U.S. Court of Appeals for the D.C. Circuit has stated.[9] In the special rules for African lion and African elephants, FWS took a step in this direction by increasing protections beyond those offered by the general 4(d) rule. Of course, FWS need not withdraw the general 4(d) rules to take advantage of these benefits, but doing so might prompt the agency to tailor protections more often.

We predict that FWS will finalize its withdrawal proposal because it has the clear legal authority and apparently a strong motivation to do so. Moving forward, we urge the agency to focus on improving when and how it uses 4(d) rules. One improvement is to draw a much clearer line between threatened and endangered species, as this distinction sets the foundation for which species are affected by the proposed withdrawal. The Services have improved their classification process over the years, but have yet to adopt a more objective or quantitative classification system. Doing so would vastly improve the consistency, predictability, objectivity, and defensibility of listing decisions. In a 2011 study involving 21 experienced Services biologists, the authors found meaningful differences in interpretation of basic concepts like extinction and time to extinction:

> Even biologists experienced with ESA listing decisions had difficulty judging endangerment and articulating their reasons for making particular judgments. The absence of stable and clear methods and preferences for judging extinction danger and linking predictions to endangerment classification calls into question the current—best professional judgment approach to regulatory decision making.[10]

Another major improvement to 4(d) implementation is for the Services to develop national guidance on when and how they develop species-specific 4(d) rules. The absence of nationwide guidance will become particularly evident as FWS relies increasingly on those rules. At a minimum, we recommend that nationwide guidance describe how and when FWS would issue species-specific rules, including providing clarity to private landowners about which types of voluntary conservation activities qualify for 4(d) exclusions; incentivizing collaborative conservation with states; incorporating adequate avoidance, minimization, and/or offset measures in a 4(d) rule, so that a covered species is no worse off than if it had been covered by a section 10 agreement; and using science-based metrics to evaluate the effects of excluding certain activities.[11]

OTHER NOTEWORTHY PROPOSALS

Among the 36 proposals, several others have led to confusion, concern, or concern arising from confusion. It is beyond the scope of this initial report to cover all of those proposals, but we will address some below.

Defining the "foreseeable future"

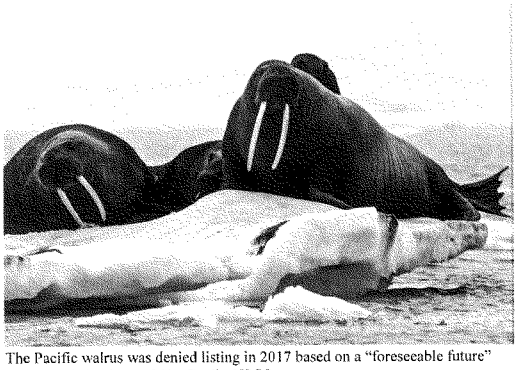
A threatened species is one that is likely to be in danger of extinction in the "foreseeable future." The Services have never defined this phrase using objective or quantifiable metrics, leading to widespread concern about whether the agencies have applied it consistently. The agencies are now proposing to define that phrase in their regulations for the first time. Unfortunately, mischaracterization of this proposal has been widespread in the media. An example comes from the July 22nd piece from the The New York Times Editorial Board:

> A third proposal could make it harder for some species to gain a foothold on the threatened list to begin with. The statue defines a threatened species as one "that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Obama administration defined "foreseeable future" liberally—for instance, listing the Arctic bearded seal as threatened because the ice sheets the seal relies on would almost certainly disappear by the end of the century because of global warming. That's too speculative for the Trump people, whose scientists and

> policymakers will henceforth be required to "avoid speculating as to what is hypothetically possible." To Mr. Carper, that's a clear invitation to limit protections for species threatened by climate change, of which there are many.[12]

Similarly, a July 19th story in the Times reported that the proposed definition would give the Services "greater" (implying a change) leeway to deny listings:

> Thursday's proposals also include a change that, while technical, could give the government greater leeway to play down climate change in judging whether a plant or animal is at risk of extinction. Environmentalists criticized the change—which involves writing a new definition for the term "foreseeable future"—as giving the government greater leeway to discount future effects of global warming.[13]



The Pacific walrus was denied listing in 2017 based on a "foreseeable future" that extended only to 2060. Credit: USGS.

The problem with this coverage is that it is factually incorrect, and the top Google search result for "FWS foreseeable future" quickly reveals why. During the Obama administration, FWS decisions that involved the "foreseeable future" relied on a 2009 Department of the Interior memo published by the George W. Bush administration that interpreted this phrase.[14] Here are the relevant parts from the memo, verbatim (italics added):

- The Secretary's analysis of what constitutes the foreseeable future for a particular listing determination must be rooted in the best available data that allow predictions into the future, and the foreseeable future extends *only so far as those predictions are reliable*. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.
- With respect to any relevant prediction, when the point is reached that the conclusions concerning the trends or the impacts of a particular threat are *based on speculation, rather than reliable prediction*, those impacts are not within the foreseeable future.
- Indeed, a number of courts have interpreted the best-data-available standard set forth in section 4(b)(1) to prohibit the Secretary from basing listing determinations on factors *such as speculation*.

Compare those passages to the proposed definition of foreseeable future, and you will find that they are remarkably similar:

> The term foreseeable future extends only so far into the future as the Services can reasonably determine that the conditions potentially posing a danger of extinction in the foreseeable future are probable.... The Services need not identify the foreseeable future in terms of a specific period of time, but may instead explain the extent to which they can reasonably determine that both the future threats and the species' responses to those threats are probable.

In sum, for the last decade FWS has been applying an interpretation of the foreseeable future that is comparable to the one being proposed. The core elements are identical: predictions must be reliable or probable, and certainty is not required but speculation is not allowed. Using this approach, the Services listed over 60 threatened species from 2010 through 2017.

The Obama and the Trump administrations both denied listing certain species based partly on their skepticism about the future effects of climate change on those species. The North American wolverine is an example from the Obama administration, and the Pacific walrus is an example from the current administration. Our opinion is that to the extent FWS misapplied the foreseeable future standard in those and other decisions, an underlying reason is the tremendous flexibility the Services have afforded themselves in interpreting that phrase. Despite the detailed interpretation of foreseeable future in the 2009 Interior memo, Services biologists have great latitude to decide when projections about the future are no longer "reliable" or "probable." Those concepts are inherently subjective, and the fact-specific nature of the listing analysis only compounds the problem. A more objective or quantitative approach could bring greater transparency and consistency to listing decisions, and an earlier report we produced offers recommendations on how to pursue this objective.[15] We believe the proposed definition of foreseeable future has shortcomings, but not the ones many media sources have described.

Destruction or adverse modification of critical habitat

Under the proposed redefinition of destruction or adverse modification, the Services would evaluate whether an activity diminishes the value of critical habitat "as a whole" rather than in smaller geographic units. This is largely current FWS practice and is consistent with the holding in *Butte Environmental Council v. U.S. Army Corps of Engineers*, 620 F.3d 936 (9th Cir. 2010) that where "there is no evidence in the record that 'some localized risk was improperly hidden by use of large scale analysis, we will not second-guess the FWS.'"

The geographic scale issue nicely illustrates the considerable gap between ESA in theory and in practice. Because recovery occurs at the species-wide scale, it is reasonable to assume that the adverse modification analysis should also occur at that scale. But in practice, we see little evidence of the Services' ability to determine whether any particular alteration—considered in light of past alterations that affect a species—appreciably diminishes the conservation value of critical habitat. The primary reason is that the agencies have yet to develop an official system to track the cumulative effects of past disturbances on a species' recovery prospects. For example, there is no nationwide system to track the amount of authorized incidental take for most species, as documented in a 2009 Government Accountability Office report.[16] This problem is tantamount to an airline that continues to sell tickets without knowing how many it has sold. And even when agency biologists track cumulative incidental take through informal methods, there is little evidence of widespread use of the information to inform the jeopardy/adverse modification analysis. Without a process to track cumulative incidental take *and* other alterations to critical habitat, the agencies often lack the context to properly determine whether a particular alteration diminishes the value of critical habitat for recovery. For this reason, we believe that analyzing adverse modification based on critical habitat "as a whole" is ineffective at this moment. The agencies should thus focus the adverse modification inquiry at smaller geographic scales that are manageable for them to analyze. Appropriate scales could include individual critical habitat units, recovery units (where

available), and units in species conservation plans.

Vernal pool tadpole shrimp, one of several species at issue in the *Butte Environmental Council* case. CC BY-NC-2.0 Ken-ichi Ueda.

If the agencies insist on analyzing adverse modification at the broadest scale possible, they should develop systems to monitor the status of critical habitat and describe the implications for recovery. Fortunately, the technology exists to do that today. Databases to track incidental take can be developed for a very low cost, and satellite imagery allows the agencies and conservationists to track many types of habitat disturbances. The agencies can also enable the public to help with compliance monitoring by posting online all biological opinions and other permitting documents.

For now, however, we predict the Services will finalize their proposed definition, continuing their current practice that can easily overlook the additive effects of multiple alterations to critical habitat. Under this approach, we see critical habitat continuing to play a very limited—and deliberately constrained—role in helping species recover.

"Baseline" and "tipping point" concepts in jeopardy findings

The Services are affirming two aspects of how they interpret the jeopardy prohibition, both of which we believe can impede conservation in practice. The first is clarifying that even the most imperiled species cannot already be "in jeopardy" solely because of baseline conditions for the species, such that any additional harmful effect automatically triggers a jeopardy or adverse modification finding. For example, FWS would not conclude that a species whose entire population consists only of three individuals is in a state of jeopardy. We agree with the Services that the jeopardy definition focuses mainly on the effects of a proposed agency action, not the baseline condition of a species. But in practice, the public often has great difficulty understanding when the Services are likely to find jeopardy. The concept of baseline jeopardy provides the public and regulated community with an imperfect but useful proxy for when a species cannot tolerate additional harm without seriously undercutting its survival or recovery prospects. Although the Services do not have to endorse this concept, they should identify a rigorous method that explains how the likelihood of jeopardy could change depending on a species' degree of

imperilment. That clarity would benefit industry and other federal agencies by providing them with greater certainty about the types of effects to certain species or habitat they would need to avoid.

The Services are also clarifying that, during consultations, they are not required to identify a "tipping point" beyond which a species cannot recover. The agencies point to several court decisions that impose this requirement, and explain that neither the ESA nor the section 7 regulations state this requirement. While this is correct, the underlying issue remains: how will the Services explain in a consistent and transparent way when impacts to a species preclude its recovery? The regulatory proposals offer no hints at a solution, merely explaining that the Services have "discretion as to how it will determine whether the statutory prohibition is exceeded." This lack of predictability makes business planning harder for federal agencies and their applicants, both of whom might be better off planning in advance to avoid impacts to a critically endangered species instead of being surprised by a jeopardy finding.

Not-prudent determinations for critical habitat

The Services are proposing two changes to how they decide whether designating critical habitat would not be prudent. First, the agencies would no longer default to issuing a not-prudent determination if either of two specific factors are met: designating critical habitat would threaten the species or would not benefit it. Rather, the agencies "may" issue such a determination if certain circumstances exist. This approach might reduce certainty for the public because there would no longer be automatic triggers for not-prudent determinations.

On the other hand, the uncertainty is mitigated by the proposal to specify in greater detail the circumstances in which the agencies may issue not-prudent determinations. Specifically, the agencies are proposing two circumstances absent from their current regulations: (1) threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from section 7(a)(2) consultations, and (2) areas within US jurisdiction provide no more than negligible conservation value, if any, for a species occurring primarily outside of US jurisdiction. The first circumstance is likely to apply to habitat affected by invasive species and possibly global climate change, neither of which the current section 7 consultation process addresses well or at all. The underlying rationale behind proposing this circumstance is reminiscent of certain FWS not-prudent determinations from the 1990s, which reasoned that critical habitat designation would not provide benefits beyond those resulting from the jeopardy prohibition. Whether or not you agree with this rationale, we think it accurately reflects the limited role that critical habitat and the adverse modification prohibition have played in most FWS consultations. Many of the adverse modification analyses we have seen in biological opinions are minimal and use boilerplate language.

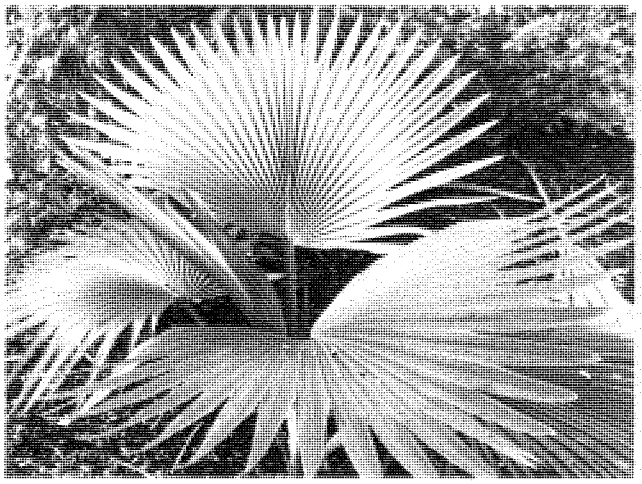
We think that both proposed circumstances are reasonable from the perspective of ensuring that the Services' limited resources are invested wisely. We would much rather see those resources used for actions that will more yield more direct benefits for the species at issue, such as recovery planning or implementation. We acknowledge that the Services' current funding categories do not allow the agencies to simply transfer unused money from the listing and critical habitat budget to the recovery budget. But we also assume that the agencies could adopt a better budget allocation system in the future, especially if doing so yields clear benefits for enhancing species recovery. For now, the agencies can at least use the funding saved from a not-prudent determination to designate or revise critical habitat for other species that will benefit more from those actions.

Finally, despite the concerns we have heard about the not-prudent proposal, we do not think it would drastically increase the percentage of not-prudent findings. The two new circumstances are limited to only certain types of species or habitats. Further, not-prudent determinations have been very rare in the last two decades. The table on the next page shows the 19 not-prudent FWS determinations we found since 2000, nine of which are for very

rare Hawaiian plants and 16 of which are based on either threats from collecting, vandalism, or persecution, or extinction of the species in the wild.

U.S. Fish and Wildlife Service not-prudent determinations since 2000

	Year of determination	Species	Taxon	Reason for determination
1	2016	Northern long-eared bat	Mammal	No benefit for summer habitat; increase threat for winter habitat.
2	2016	Eastern massasauga	Reptile	Threat from collecting and persecution.
3	2015	White Fringeless Orchid	Plant	Threat from collecting.
4	2007	Hidden Lake bluecurls	Plant	Threat from trampling and collecting.
5	2006	Jaguar	Mammal	No benefit - No areas in US met definition of critical habitat. Withdrew finding in 2014.
6	2004	Mariana fruit bat	Mammal	Likely extinct.
7	2004	Guam bridled white-eye	Bird	Likely extinct.
8	2003	Haha (Cyanea copelandii ssp. copelandii)	Plant	Likely extinct.
9	2003	Holei (Ochrosia kilaueaensis)	Plant	Likely extinct.
10	2003	Hawai'i pritchardia (Pritchardia affinis)	Plant	Threat from collecting.
11	2003	Lo`ulu (Pritchardia schattaueri)	Plant	Threat from collecting.
12	2003	Lo`ulu (Pritchardia napaliensis)	Plant	Threat from collecting.
13	2003	Wahane (Pritchardia aylmer-robinsonii)	Plant	Threat from collecting.
14	2003	Lo`ulu (Pritchardia viscosa)	Plant	Threat from collecting.
15	2003	Alani (Melicope quadrangularis)	Plant	Likely extinct.
16	2003	Liliwai (Acaena exigua)	Plant	Likely extinct.
17	2003	Lo`ulu (Pritchardia munroi)	Plant	Threat from collecting.
18	2002	Unarmored threespine stickleback	Fish	Pre-1978 listing; not required.
19	2001	Rock gnome lichen	Plant	Threat from collecting.



Lo'ulu (Pritchardia napaliensis), one of less than two-dozen species for which FWS issued a not-prudent determination between 2000 and 2018. Nine of those determinations covered Hawaiian plants like the Lo'ulu.

AN MIXED START, BUT WHAT NEXT?

Although some of the proposals raise legitimate concerns about hindering species recovery, others are reasonable from the standpoint of improving the efficiency and clarity of ESA implementation. Further, some of the beneficial proposals, if given enough attention and staff resources, could improve species conservation significantly. This includes expedited consultations for projects that further recovery. We are not aware, however, of any plans to provide those resources, so we fear the benefits will be modest and left to regional or field office directors within the Services who need to take it upon themselves to invest in the best of these ideas. Among the proposals that have received the most critical media attention, we expect only a few of them to substantially change how the Services implement the ESA.

Given the constant criticism that the ESA has not recovered enough species, we were surprised by the absence of any bold proposals to incentivize voluntary conservation by private, state, or federal landowners. There are ample opportunities to amend ESA regulations and policies to further those objectives. We were similarly surprised by the lack of proposals to expedite recovery planning and to improve the alignment between recovery objectives and critical habitat designations, consultations, and incidental take permitting. If the current administration wants to leave a legacy of ESA success, it should dig deeper into the well for more ambitious reforms aimed at preventing extinction and achieving recovery, especially by streamlining or improving how the law interacts with the public and businesses. We encourage the administration to seek public input on feasible improvements to species conservation. The public, academic experts, state leaders, and the business

community affected by the ESA are full of practical experiences and good insights that could help shape the next generation of ESA policies and regulations that do far more for wildlife and people.

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[1] Examples include: The New York Times, *Law That Saved the Bald Eagle Could Be Vastly Reworked*, www.nytimes.com/2018/07/19/climate/endangered-species-act-changes.html (July 19, 2018); The Washington Post, *Endangered Species Act stripped of key provisions in Trump administration proposal*, www.washingtonpost.com/news/animalia/wp/2018/07/19/endangered-species-act-stripped-of-key-provisions-in-trump-administration-proposal/?utm_term=.13c8104e4cfc (July 19, 2018); and The New York Times, *Lawmakers, Lobbyists and the Administration Join Forces to Overhaul the Endangered Species Act*, www.nytimes.com/2018/07/22/climate/endangered-species-act-trump-administration.html (July 22, 2018).

[2] US Army Corps of Engineers, Mississippi Valley Division, *Conservation Plan for the Interior Least Tern, Pallid Sturgeon, and Fat Pocketbook Mussel in the Lower Mississippi River (Endangered Species Act, Section 7(a)(1))*, http://www.mvd.usace.army.mil/Portals/52/docs/SandT/Morphology-Potamology/MRGand%20P-Fact-Sheets/17838%20fact%20sheet.pdf

[3] NOAA Fisheries Northwest, *Streamlining Restoration Project Consultation using Programmatic Biological Opinions* (July 2010).

[4] One of the best articles on this topic is Holly Doremus, *Listing Decisions Under the Endangered Species Act: Why Better Science Isn't Always Better Policy*, 75 Wash. U. L. Q. 1029 (1997).

[5] U.S. Fish and Wildlife Service, DRAFT Effects Data for the Revision of the Regulations for Listing Species and Designating Critical Habitat; 1018-BC88, 0648-BH42 (June 2018).

[6] Ya-Wei Li, Section 4(d) Rules: The Peril and the Promise, Defenders of Wildlife White Paper Series, https://defenders.org/publication/section-4d-rules-peril-and-promise (2017).

[7] *Id. at 6*

[8] *Id.* at 6.

[9] *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), reversed on other grounds, 515 U.S. 687 (1995).

[10] Jean F. Cochrane et al. *How Biologists Judge Species Endangerment*, Research Project Report to National Marine Fisheries Service, Protected Species Program and U.S. Fish and Wildlife Service, Endangered Species Program (2011).

[11] Further details on these recommendations appear in a joint letter from the Innovation Center, Environmental Defense Fund, and Sand County Foundation, posted on the regulations.gov document for the 4(d) withdrawal and accessible at https://goo.gl/iFCV7u

[12] The New York Times Editorial Board, Donald Trump Has Endangered Species in His Sights, https://www.nytimes.com/2018/07/22/opinion/editorials/zinke-interior-endangered-species.html (July 22, 2018).

[13] The New York Times, Law That Saved the Bald Eagle Could Be Vastly Reworked, https://www.nytimes.com/2018/07/19/climate/endangered-species-act-changes.html (July 19, 2019).

[14] U.S. Department of the Interior, *The Meaning of "Foreseeable Future" in Section 3(20) of the Endangered Species Act*, https://www.fws.gov/endangered/esa-library/pdf/M-37021%20Foreseeable%20future.pdf (2009).

[15] Environmental Policy Innovation Center, *Endangered Species Act: 2018 Administrative Reform, Perspectives and Initial Recommendations*, http://policyinnovation.org/wp-content/uploads/2018/06/ESA-2018-rulemaking-preview.pdf (2018).

[16] United States Government Accountability Office (2009). The U.S. Fish and Wildlife Service Has Incomplete Information about Effects on Listed Species from Section 7 Consultations. https://www.gao.gov/new.items/d09550.pdf

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ENVIRONMENTAL POLICY INNOVATION CENTER

NatGLC

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

25 JUL 2018

Dear Chairman Barrasso:

The National Grazing Lands Coalition (NatGLC) would like to express our support for the Endangered Species Act Amendments of 2018. NatGLC is a producer-led organization founded in 1991 to promote and support voluntary ecologically and economically sound management of all grazing lands for their adaptive uses and multiple benefits to the environment and society through science based technical assistance, research and education.

According to the U.S. Fish & Wildlife Service, "the purpose of the ESA is to protect and recover imperiled species and ecosystems upon which they depend." While a laudable and important goal, data indicates that fewer than 2% of the species listed under the Act since its inception have been successfully recovered. What was originally intended to be a wildlife recovery program has instead become an E.R. with full conservation hospital rooms, whose limited staff resources are diverted from treating species in desperate need of attention.

If the Endangered Species Act is going to meet the wildlife challenges of the 21st century, it has to be something more than a one-way street into a cul-de-sac of perpetual stasis. The Endangered Species Act Amendments of 2018 takes a critical step forward in modernizing the ESA by doing just this-giving more power to state and local governments to make decisions based on their area's unique landscapes, individual needs, and conditions on the ground. This emphasis on local involvement ensures that those with firsthand knowledge of a habitat area can provide critical insights to the creation of recovery plans. Furthermore, locals are the best equipped to predict, assess, and quickly react to changing conditions for the benefit of species. The pride of local ownership in the ESA plans will result in increased efficiency and effectiveness of species recovery.

As ranchers and land stewards we take great pride in our integral role in species conservation and recovery. For, generations, livestock producers have been dedicated to improving the health of the landscape. Over the years we have become frustrated in the process by the lack of commonsense ESA implementation and being put on the sidelines while decisions are being made. This legislation will help bring producers back to the table to craft recovery plans that are workable and produce favorable results.

NatGLC appreciates the opportunity to provide input on behalf of our members and grazers across the nation. We urge swift passage of the Endangered Species Act Amendments of 2018.

Sincerely,

Monti Golla, Exec. Dir.

Chad Ellis, Chairman

NatGLC Member Organizations
American Farm Bureau Federation - American Forage & Grassland Council -
American Sheep Industry - Dairy Industry - National Association of Conservation Districts -
National Cattlemen's Beef Association - National Farmer's Union - The Noble Research Institute -
Society for Range Management - Soil & Water Conservation Society
www.grazinglands.org

August 15, 2018

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

I am writing on behalf of the National Ready Mixed Concrete Association, the National Stone Sand and Gravel Association and the Portland Cement Association to share our support for your efforts to modernize the Endangered Species Act (ESA) with the Endangered Species Act Amendments of 2018. We commend your thoughtful efforts to craft legislation that balances species protection with encouraging economic growth.

The stone, cement and concrete-related associations directly and indirectly employs hundreds of thousands of workers and contributes more than $100 billion to the economy annually. Our member Associations represent businesses and talented workers in every state and congressional district. Stone, sand and gravel are raw materials found in every home, building, road, bridge and public works. These materials are needed to create portland cement, the fundamental ingredient in concrete.

The ESA is a well-intentioned effort by Congress to protect and recover our nation's native species from extinction. Our members support efforts to protect those species based on science with a balanced consideration for the mitigation measures. We believe the draft legislation would make necessary improvements to the law that would benefit species, manufacturers, and the public. Mainly, this legislation will improve the federal-state partnership that has been the cornerstone to many of our environmental laws with enhanced coordination, information sharing, and input from the Governors. Further, our members support measures contained within the bill that seek to ensure federal agencies list a species with the best available scientific data that has been independently peer reviewed or field tested. Lastly, the bill will provide federal agencies the power to prioritize listing petitions, reviews, and determinations.

Congress and the Administration have solicited ways to rebuild our infrastructure with scarce taxpayer resources. This legislation is one solution to do more with less. Federal permitting, particularly for the ESA, raises infrastructure costs needlessly. One jarring example is the construction of an interchange connecting Loop 1604 and State highway 151 in San Antonio, Texas. At the site, the Braken Bat Cave Meshweaver was discovered, an eyeless spider listed as endangered in 2000. The discovery of the spider raised construction costs from $15.1 million to $44 million to change the project from an underpass to an overpass. This legislation will set clear recovery goals and habitat objectives to ensure a listing is pragmatic, which was missing in the case of this spider. At a time when the federal government and states are having difficulty paying for necessary infrastructure maintenance and expansions, each dollar should be responsibly

spent. Making the common sense improvements to the ESA found within the Endangered Species Act Amendments of 2018 will help towards the more efficient use of funding and financing.

The undersigned organizations appreciate the opportunity to share our members' perspectives on legislation reforming the ESA. We stand ready to assist you while changes are still permitted to the underlying legislation so that modernizing the program may move forward. If there are any questions regarding these comments or if you would like additional information, please contact Rachel Derby at (202) 719-1986 or rderby@cement.org.

Sincerely,

National Ready Mixed Concrete Association
National Stone Sand and Gravel Association
Portland Cement Association

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GOVERNOR OF SOUTH DAKOTA
CHAIR

DAVID IGE
GOVERNOR OF HAWAII
VICE CHAIR

JAMES D. OGSBURY
EXECUTIVE DIRECTOR

February 14, 2018

Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

Western Governors offer these comments regarding proposed legislation to amend the Endangered Species Act (ESA). The Western Governors' Association (WGA) appreciates the Chairman's willingness to productively engage with Governors, and that the Chairman has approached this polarizing topic in an inclusive, thoughtful manner. The proposed bill reflects this fact and offers meaningful, bipartisan solutions to challenging species conservation issues.

WGA represents the Governors of the 19 western states and 3 U.S. territories in the Pacific. The association is an instrument of the Governors for bipartisan policy development, information-sharing, and collective action on issues of critical importance to the western United States. Issues surrounding the ESA and its implementation are increasingly important to Western Governors.

Congress passed the ESA in 1973, codifying the responsibility to protect imperiled species and the habitats upon which they rely. Since then, the ESA has prevented a number of extinctions and facilitated the recovery of some of our nation's most iconic species. Yet, the ESA is not perfect. We can and should continually strive to make it work better for wildlife and people.

For more than two years, the WGA Species Conservation and Endangered Species Act Initiative has engaged a diverse and bipartisan collection of interested organizations to discuss ways of improving the ESA's effectiveness and efficiency. Using a series of public workshops, facilitated work sessions, substantive webinars, and other tools, WGA gathered valuable insight that enabled Governors to adopt a series of recommendations for improving the ESA in June 2017.

Most of the WGA recommendations seek regulatory improvements because the rulemaking process does not require amending the statute. However, some recommendations can only be implemented through congressional action. The proposed bill is generally consistent with the WGA recommendations, and WGA offers its support for the portions of the bill that are consistent with existing Western Governors' policy. In other instances, the proposed bill addresses issues where WGA has no formal policy and as to those, WGA takes no position. With respect to each section of the bill:

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Title I – Enhancing the Federal-State Partnership

Section 101. Definitions

Western Governors support directing the Secretary of the Interior to define the terms "great weight" and "maximum extent possible." Both terms enhance the Secretary's consultation requirements with states when implementing the ESA.

Section 102. Recovery Teams

Governors support establishing recovery teams that are empowered to develop and implement recovery plans, propose modifications to recovery plans when appropriate, and recommend delisting and downlisting, at which point the Service shall initiate a status review of the species for purposes of considering delisting or downlisting of a listed species once the established recovery goals are met. Governors also support providing impacted states the opportunity to lead the recovery team, if they so choose.

Too often, species that meet or exceed recovery goals for more than a decade remain listed. This prevents the allocation of resources to species that are truly imperiled, reduces public support for the species on the landscape, erodes support for the ESA with critical landowners, and leads to increased tension between state and federal wildlife management agencies.

Western Governors support the provision of this section that delays judicial review of a determination to delist a species until the conclusion of the statutorily mandated post-delisting monitoring review period as long as there is a federally reviewed and endorsed conservation plan in place. Delaying judicial review will allow state management plans to be implemented and evaluated for success.

Section 103. State-Federal consultation relating to conservation and recovery of wildlife.

Roughly 30 percent of all listed species have no recovery plan: some species languish more than 15 years with no discernable path to recovery. For species without recovery teams, Western Governors support empowering states to lead recovery plan development and implementation, subject to plan approval from the Secretary. This would reduce federal agency workload, allow for more efficient species recovery, and utilize local expertise to ensure local support for recovery efforts.

Section 104. Consultation with States regarding land acquisition.

Western Governors support language requiring the Secretary seek and give great weight to comments provided by states regarding proposed land acquisitions within that state's boundaries. This is consistent with WGA policy that seeks meaningful consultation opportunities for all ESA matters potentially impacting states.

Section 105. Cooperation with States and Indian Tribes.

Western Governors stress that states have primary management authority over all fish and wildlife within their borders and appreciate the language in this section recognizing this fact. Governors also support improving consultation requirements between states and the Secretary when implementing the ESA.

Section 106. State consultation regarding experimental populations.

Western Governors do not take a position regarding the specific language of this section; however, Governors generally support efforts to require increased consultation with states on matters related to ESA implementation.

Section 107. State participation in settlements.

Western Governors do not take a position regarding the specific language of this section; however, Governors generally support efforts to require increased consultation with states on matters related to ESA implementation.

Section 108. Award system for State agencies.

No position.

Section 109. State feedback regarding U.S. Fish and Wildlife Service employees.

No position.

Title II – Encouraging Conservation Activities through Regulatory Certainty

Western Governors generally support efforts to improve regulatory certainty for public and private stakeholders that can encourage conservation. However, the Governors take no position with respect to the specific language in title II.

Title III – Strengthening Conservation Decisionmaking through Increased Transparency

Sec. 301. Policy relating to best scientific and commercial data available.

Western Governors support transparency, but also support protecting sensitive information about species or information that identifies the property of a specific landowner from disclosure under the Freedom of Information Act. Landowners frequently decline to participate in voluntary conservation programs because they fear information about their property will become part of the public record. Since private landowners control nearly 70 percent of all habitat in the United States, protecting privacy and providing certainty are critical for proper ESA implementation.

Sec. 302. Transparency of information.

Western Governors support requiring state approval before a federal agency releases state provided data. In many cases, states possess data that their laws prohibit disclosing to the public. If states provide this data to the federal agencies, and those agencies release that data to the public, states could be liable for violating their sunshine laws. Requiring state consent prior to federal agencies releasing state-provided data will alleviate this concern and result in better data for federal agencies to rely upon when making listing determinations.

Sec. 303. Information provided to States.

Western Governors support providing states with all information used in the federal decision-making process, subject to well-defined exceptions, and receiving comment from affected states prior to making a listing decision. Frequently, states possess valuable species information that federal agencies will find persuasive in listing determinations. This provision allows the federal agencies to make better decisions based on the evaluation of state data.

Sec. 304. Transparency in litigation.

No position.

Title IV—Optimizing Conservation Through Resource Prioritization

Sec. 401. Prioritization of listing petitions, reviews, and determinations.

Western Governors support the creation of a prioritization system for addressing listing petitions, reviews, and determinations. Congress established the current listing deadlines in 1982 to encourage timely determinations from the federal agencies. However, after more than 35 years, these arbitrary deadlines have outlived their usefulness. They discourage voluntary conservation, limit the development of good science for informed decision-making, and give rise to significant litigation.

Creating a prioritization schedule ensures the immediate protection of species at the greatest risk of extinction. Further, delaying listing determinations for species with active conservation plans provides incentive for states, local government, and private individuals to engage in proactive, voluntary conservation. Incentivizing conservation can eliminate the need to list a species, which is always better than a threatened or endangered finding. Finally, a prioritization schedule gives the federal agencies flexibility to prioritize their workload without the fear of litigation.

Title V—Studies to Improve Conservation

No position.

Title VI—Reauthorization

Sec. 601. Reauthorization.

Western Governors support efforts to reauthorize appropriations for the ESA.

Western Governors acknowledge that any congressional effort to amend the ESA will be complicated and spark diverse opinions. WGA supports your work to modernize the ESA and appreciates your efforts to conduct this process in a thoughtful, bipartisan manner. Each Governor reserves judgment on whether to continue supporting this bill as it moves through the legislative process. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Dennis Daugaard
Governor of South Dakota
Chair, WGA

David Ige
Governor of Hawaii
Vice Chair, WGA

Senator CARPER. I object. No, I don't object.

Senator BARRASSO. Do you have something you would like to add?

Senator CARPER. Can I ask a consent request of my own?

Senator BARRASSO. Yes.

Senator CARPER. I do not object.

I ask unanimous consent to enter into the record a 2017 letter from the Delaware Department of Natural Resources and Environmental Control, which recommends that the statutory and scientific integrity of the endangered species be maintained.

I also ask unanimous consent to enter into the record additional letters and supplemental materials regarding the draft legislation that we are considering today.

Senator BARRASSO. Without objection, and there is none.

Senator CARPER. Thank you.

[The referenced information follows:]

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
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Office of the
Secretary

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DEC 05 2017

The Honorable John Barrasso
Chairman, Senate Committee on
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Washington, DC 20510

The Honorable Tom Carper
Ranking Member, Senate Committee on
Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert Bishop
Chairman, House Committee on
Natural Resources
123 Cannon House Office Building
Washington, DC 20515

The Honorable Raul Grijalva
Ranking Member, House Committee on
Natural Resources
1511 Longworth House Office Building
Washington, DC 20515

Dear Chairman Barrasso, Chairman Bishop, Ranking Member Carper and Ranking Member Grijalva:

I am writing to recommend that the statutory and scientific integrity and the effectiveness of the Endangered Species Act (Act) be maintained. Many imperiled fish, wildlife and plant species within Delaware have directly benefited from the Act and the State of Delaware is fully supportive of the purpose and intent of the Act.

The Act is instrumental in protecting wildlife and plants in danger of extinction. Ninety nine percent of species that have received protection under the Act still exist or have recovered to stable populations, including many within Delaware such as the bald eagle, Delmarva fox squirrel, red knot, Atlantic sturgeon, and swamp pink. Scientists estimate that at least 227 species would have become extinct nationally between 1973 and 2005 without the protection of the Act, which plays a critical role in protecting endangered species nationally and within states.

Thank you for your consideration. Please feel free to contact me or have your staff contact David Saveikis at 302-739-9910 or david.saveikis@state.de.us if you have any questions or for more information on endangered species protection in Delaware.

Sincerely,

Shawn M. Garvin
Secretary

cc: The Honorable Mitch McConnell
The Honorable John Cornyn
The Honorable Chuck Schumer
The Honorable Dick Durbin
The Honorable Paul Ryan
The Honorable Kevin McCarthy
The Honorable Steve Scalise
The Honorable Nancy Pelosi
The Honorable Steny Hoyer

May 18, 2018

Dear Senator/Representative,

We, the undersigned 1452 scientists and experts, know that the Endangered Species Act is effective only because it relies on the best-available science to protect our nation's species from extinction and to preserve the healthy ecosystems that support us all. We therefore ask that you protect the scientific foundation of the Endangered Species Act and reject any attempts to weaken or compromise the role of science in protecting species. Further, we urge you to provide adequate resources so that the Endangered Species Act can be meaningfully implemented.

Each of us depends on the functioning of healthy natural ecosystems that make our lives possible. We Americans are fortunate to have one of the finest mechanisms in the world to protect the species that comprise those ecosystems: The Endangered Species Act. When it was signed into law, President Nixon and a broad bipartisan congressional coalition understood the enduring importance of the Endangered Species Act and its grounding in science. The Endangered Species Act has been one of our nation's most effective environmental laws to date because decisions made under its purview are based on science, not politics.

As our nation faces severe threats to its biodiversity, we must continue to do everything we can to lessen the impact of these threats and protect the rich natural heritage with which we have been entrusted. Loss of biodiversity jeopardizes the health and safety of the American public – from increased transmission of vector-borne diseases due to declining bat populations to decreased crop yield caused by the collapse of bee colonies and other pollinators.

Using the best available scientific resources at our disposal, we have prevented the irreversible destruction of many species and their habitats. The law has succeeded in preventing 99 percent of listed species from going extinct and led to the recovery of iconic species such as the American alligator, bald eagle, and Louisiana black bear. It has also been essential for ongoing recovery of Pacific and Atlantic salmon – critical parts of economically valuable fisheries.

The terms of the Endangered Species Act are sufficiently flexible to enable species conservation while allowing our economy to thrive. While listing decisions must be made solely on the best available scientific information, other factors can be taken into account when developing plans to effectively manage and recover a threatened or endangered species. The Endangered Species Act empowers scientists and federal agencies to work hand in hand with states and local communities to conserve biodiversity.

Restricting the use of science in the Endangered Species Act or making the law vulnerable to political interference, as has been the case with some recent legislative proposals, would lead to otherwise preventable species extinctions and the destruction of habitat that is essential to environmental health. Accordingly, we affirm the following

principles that we believe are consistent with the intent and purpose of the Endangered Species Act and critical to its continued success:

- **Science Is at the Heart of Preventing Extinction**
  Well-established scientific processes, such as peer-reviewed science, studies conducted in accordance with sound and objective practices, and data collected by accepted methods, ensure that the science used to conserve species is independent, objective, and credible. Congress should not interfere with the scientific method by legislating or restricting definitions of science, especially when such actions could compromise the ability of scientific experts in government agencies to implement the Endangered Species Act.

- **Science Should Be Insulated from Political Interference**
  Decisions relating to listings and management of species should be free from political interference. Alarmingly, government officials have attempted to inappropriately suppress or manipulate the science used in federal endangered species decisions or interfere with scientists' ability to carry out their work. Such interference is unacceptable and must end. Further, funding restrictions and inadequate resources imperil the effectiveness of the Endangered Species Act and should be adjusted accordingly.

- **Protecting Biodiversity Is Our Responsibility**
  Biological diversity provides significant economic, social, and cultural benefits fundamental for our survival. All of our food and many of our medicines come from living organisms, which also clean the air we breathe, maintain the quality of our soils, prevent erosion and floods, and convey an enduring beauty that enriches our lives. As President Nixon stated when he signed the Endangered Species Act into law, biodiversity "is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans."

- **Scientists, Wildlife Officials, and Local Communities Work Together**
  The Endangered Species Act includes mechanisms to accommodate new and evolving scientific information and more efficient management strategies, allowing delisting of species or reclassifications of threats. The law is based on a cooperative approach that involves federal agencies; state, local, and tribal governments; and stakeholders to protect species and preserve habitat while addressing the concerns of communities and promoting healthy economic development. Americans should be skeptical of politicians who attempt to take responsibilities away from scientists and wildlife officials who work within local communities to protect wildlife.

- **Endangered Species Act Is a Critical Backstop**
  The goal of the Endangered Species Act is not to list species but rather to prevent them from going extinct in the wild. States have the primary authority of protecting species and their habitats. Scientists at federal agencies like the US Fish and Wildlife Service and National Marine Fisheries Service provide scientific information to state

and local stakeholders to identify species that are threatened. Once they have done so, the organizations and stakeholders work together to develop management strategies to help stabilize populations and prevent species from becoming endangered. Cooperation and coordination on conservation actions has successfully averted endangerment status and led to the rebound of a number of species, including the New England cottontail. It is far more effective, easier, and less expensive to protect species and their habitats than it is to try to restore them once they are critically endangered. And once they are gone, they are gone forever. Only when preventative actions fail does the final backstop in the Endangered Species Act kick in. Efforts to weaken this failsafe, disguised as efforts to reform, will only shift more species from threatened status to endangered, and from endangered to extinct.

Legislative proposals to substitute arbitrary political judgments for the Endangered Species Act's effective science-based decisionmaking are counterproductive and put the Endangered Species Act at risk. We request that members of Congress refrain from weakening the scientific foundation of the Endangered Species Act. It is of lasting importance for our common good that the scientific principles embodied in the Endangered Species Act be preserved, and that the law be fully funded and implemented. We urge you to strongly oppose any efforts to reform the Endangered Species Act that would chip away at its scientific foundation, which would inevitably undermine the science underlying the law and lead to more species extinctions.

Sincerely,

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Californians for Western Wilderness * Center for Biological Diversity * Clean Water Action
Colorado Native Plant Society * Conservatives for Responsible Stewardship * Defenders of Wildlife
Delaware Ecumenical Council on Children and Families * Delaware-Otsego Audubon Society
Earthjustice * Earthworks * Endangered Habitats League * Endangered Species Coalition
Environmental Action Committee of West Marin * Environmental Protection Information Center
Friends of Blackwater, Inc. * Friends of the Earth US * Friends of the Sonoran Desert
Friends of the WI Wolf and Wildlife * Great Lakes Wildlife Alliance
Great Old Broads for Wilderness * Great Old Broads for Wilderness-GJ Broadband
Hoosier Environmental Council * Howling for Wolves * Humane Society Legislative Fund
Indiana Forest Alliance * Klamath Forest Alliance * League of Conservation Voters
Lower Ohio River Waterkeeper * Maine Audubon * National Parks Conservation Association
National Wolfwatcher Coalition * Natural Born Juicers * Natural Resources Council of Maine
Natural Resources Defense Council * New Hampshire Audubon
New Mexico Wilderness Alliance * Northcoast Environmental Center
Northern New Mexico Group of Sierra Club * NYC Audubon * Oceana * Onondaga Audubon
Rocky Mountain Recreation Initiative * Rocky Mountain Wild * Save Animals Facing Extinction
Save the Manatee Club * Save Wolves Now Network * Sierra Club
Southern Adirondack Audubon Society, Inc.
Southern Resident Killer Whale Chinook Salmon Initiative
The Humane Society of the United States * Trap Free Montana * Trap Free Montana Public Lands
Turtle Island Restoration Network * Union of Concerned Scientists
Western Environmental Law Center * Western Nebraska Resources Council
Western Watersheds Project * Wild Utah Project * Wildlands Network * Wolf Conservation Center

July 17, 2018

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The Senate Environment and Public Works committee meets today for a hearing on Chairman Barrasso's draft legislation entitled the "Endangered Species Act Amendments of 2018," a bill that would more aptly be named the "Eliminating Species Act." Given that the Endangered Species Act (ESA) has proven highly effective at preventing the extinction of species under its care, we strongly believe this is nothing more than a politically motivated attempt to undermine this successful, popular law at the expense of sound science and the conservation of imperiled species. We write on behalf of our millions of members and supporters to express strong opposition to this draft legislation.

The Endangered Species Act is our nation's most effective law for protecting wildlife in danger of extinction. By the U.S. Fish and Wildlife Service's own statistics, 99 percent of species listed under the Act have survived, and many are on the path to recovery. On May 18, 2018, nearly 1,500 scientists sent a letter[1] urging Congress not to weaken the Endangered Species Act because it is one of the most successful pieces of legislation and uses the best available science to help imperiled species recover. Given this incredible success, it should come as no surprise that the ESA is also extremely popular, earning the support of 90 percent of voters.[2] The American public expects that our rich biological heritage will be preserved for future generations to enjoy and the ESA ensures that the nation meets that expectation.

The draft legislation would dramatically weaken this effective and popular wildlife conservation law. The bill would:

- Undermine the ESA's reliance on science, especially in recovering species;
- Give states the ability to veto endangered species restoration projects;
- Make it harder to protect imperiled species by requiring recovery goals at the same time as listing;
- Undermine citizen court access and reduce public involvement and agency accountability; and
- Slow agency conservation actions by requiring cumbersome and unnecessary new procedures

This damaging bill seeks to impose state control over the most important processes to list, protect, and recover imperiled species under the ESA — even though states already have broad opportunities to engage in the ESA process. Moreover, states lack the legal authority, resources and political resolve to implement the ESA. A 2017 study[3] by the U.C. Irvine School of Law found that:

  - Only 4% of states have authority to promote the recovery of imperiled species;
  - Only 5% of spending on imperiled species is by the states; and
  - Only 10% of states have significant habitat safeguards.

There is no reason to believe that the current effort to "reform" the ESA is anything other than a thinly veiled attempt to gut the law, given that members of Congress have repeatedly tried to do just that. In the 115th Congress alone, there have already been more than 100 individual legislative attacks on the ESA, including efforts to both remove protections for specific species and to undermine the law itself. These attacks are often made in the name of corporate interests, placing short-term economic gain above long-term conservation efforts and demanding changes that would create significant barriers to species protection.

Moreover, industry opponents to the ESA frequently site statistics that are wholly misrepresentative not only of the law's effectiveness, but of the science behind species recovery. Recovery within a relatively few years is simply inaccurate as a metric for success. Furthermore, species are often only listed under the ESA after decades of decline under state management, and only once they have

[1] https://s3.amazonaws.com/ucs-documents/science-and-democracy/esa-letter-final-may-18-2018.pdf
[2] https://defenders.org/press-release/new-national-poll-finds-90-percent-american-voters-support-endangered-species-act
[3] http://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-esa-report-final.pdf

reached "emergency room status." The ESA saves species by preventing extinction and setting them on the long road to recovery. That is the measure of the law's profound success.

The ESA contains immense flexibility including incidental take permits for land use and other otherwise prohibited activities; cooperative agreements to encourage collaboration and to provide aid to states for conservation projects; and candidate conservation agreements to avoid the need for a formal ESA listing. This flexibility has repeatedly served to reconcile the imperative to save species from extinction and industry concerns.

Recognizing the proven success, immense popularity, and flexibility provided under the law, there is simply no justifiable explanation for this draft legislation or any of the other more than 100 damaging changes to the Endangered Species Act proposed in this Congress.

Sincerely,

American Bird Conservancy
American Rivers
Animal Welfare Institute
Born Free USA
Californians for Western Wilderness
Center for Biological Diversity
Clean Water Action
Colorado Native Plant Society
Conservatives for Responsible Stewardship
Defenders of Wildlife
Delaware Ecumenical Council on Children and Families
Delaware-Otsego Audubon Society
Earthjustice
Earthworks
Endangered Habitats League
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Friends of Blackwater, Inc.
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Hoosier Environmental Council
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Humane Society Legislative Fund
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League of Conservation Voters
Lower Ohio River Waterkeeper
Maine Audubon
National Parks Conservation Association
National Wolfwatcher Coalition
Natural Born Juicers
Natural Resources Council of Maine
Natural Resources Defense Council
New Hampshire Audubon
New Mexico Wilderness Alliance
Northcoast Environmental Center
Northern New Mexico Group of Sierra Club
NYC Audubon
Oceana
Onondaga Audubon
Rocky Mountain Recreation Initiative
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Save Animals Facing Extinction
Save the Manatee Club
Save Wolves Now Network
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Southern Adirondack Audubon Society, Inc.
Southern Resident Killer Whale Chinook Salmon Initiative
The Humane Society of the United States
Trap Free Montana

Trap Free Montana Public Lands
Turtle Island Restoration Network
Union of Concerned Scientists
Western Environmental Law Center
Western Nebraska Recources Council
Western Watersheds Project
Wild Utah Project
Wildlands Network
Wolf Conservation Center

Senator BARRASSO. Governor Mead, thank you so very much. We appreciate your being here. You are welcome to stay and listen to the discussion of the next panel. There are a number of interns from Wyoming who are here listening. I hope you will get a chance to visit with each of them.

But thank you so much for being here. We look forward to being with you this weekend and the following weekend and all through the week at Frontier Days.

Mr. MEAD. Mr. Chairman, I just thank you for your leadership.

Senator Carper, thank you for your leadership as well.

When we discussed this with Western Governors, we recognized that it is up to us, and we hope we got you all a good start, and we appreciate your continued bipartisan work. So, thank you very much for the time today and for your efforts. It is appreciated very much.

Senator BARRASSO. Well, Senator Rounds was a former Governor, and Senator Rounds was trying to get here to visit and ask a couple questions, but he seems to be unavoidably delayed.

Mr. MEAD. Likely effectively endangers the rest of the members leaving, so thank you.

Senator BARRASSO. Thank you, Governor. Appreciate it.

Our next panel—and I invite them to the come to the table—is Bob Broscheid, who is the Director of the Colorado Parks and Wildlife, and Matt Strickler, who is the Secretary of Natural Resources for the Commonwealth of Virginia.

Thank you both for being here. I am grateful that you would take time to be with us. I hope you have enjoyed and benefited from the testimony of Governor Mead.

As you are readying your testimony, we ask that you limit your testimony to 5 minutes so that there will be time for questions from the Committee.

With that, Director Broscheid, welcome to the Committee, and please proceed at your leisure.

STATEMENT OF BOB BROSCHEID, DIRECTOR, COLORADO PARKS AND WILDLIFE

Mr. BROSCHEID. Thank you, Mr. Chairman, and thank you for the warm welcome.

Good morning, Chairman, Ranking Member Carper, and members of the Committee. Thank you for the opportunity to represent the Governor of Colorado, John Hickenlooper, who couldn't be here and asked me to come in his stead, and to discuss our or my experiences as a State director who is on the front lines of management of threatened and endangered species conservation.

As I provided in my written testimony, Governor Hickenlooper has not taken a position on this draft, but remains very supportive of the Western Governors Association process that Governor Mead laid out, and continuing this dialogue with Congress toward bipartisan practical solutions that improve the implementation of the Endangered Species Act.

For the past 25 years I have had the privilege to work in partnership with many Federal, State, and local government agencies, non-governmental organizations, and private landowners on many issues associated with Endangered Species Act implementation.

The Endangered Species Act, as Congress laid out in the passage, is premised on the State and Federal partnership approach; however, there are frustrations and certainly disagreement on all sides about what is broken and why, but more notably how do we fix it. These frustrations are evident in the enormous number of lawsuits being litigated and discussed in courts all over the country on both sides of these issues.

For Colorado, we maintain 960 species that inhabit our State border, of which 210 species fall under some level of special concern. My agency spends an average of $8 million of State funding per year on those 210 special status species. In the last 10 years my agency alone has spent in excess of $100 million on just two species of sage-grouse. Our expenditures are viewed as not only in conserving a threatened species or endangered species, or one that could be, but we view them as investments to prevent the need for that listing.

Additionally, Congress congressionally appropriated revenue sources such as Farm Bill conservation programs, and Land and Water Conservation Fund also provide very critical support, but it is not enough. Draft legislation as you had discussed with the previous panelist is being considered in the House right now as Recovering America's Wildlife Act, and it is intended to alleviate this financial shortfall and provide much needed funding for those species at risk all over the country.

However, one of the provisions in the discussion draft talk about State involvement. Not all States have the same technical, financial, or political wherewithal to engage in all aspects of the Endangered Species Act. We believe it is important to include provisions that allow each State the opportunity to opt in to whatever desired level of engagement. I believe this is consistent with what Congress intended some 45 years ago, when the Endangered Species Act was passed.

The other role from the States is our desire to be better engaged in the Act is not solely about shifting or the loss of a species from State to Federal jurisdiction, or about veto power. It is also about better ensuring that other State interests and authorities are fully considered in the listing and recovery process. These authorities—such as water rights, land use development, private property rights, and air quality—are all some of the factors that influence State and local economies and recovery of those species.

So, Mr. Chairman, I will keep my comments very short, so thank you very much.

[The prepared statement of Mr. Broscheid follows:]

Mr. Bob Broscheid
Director
Colorado Parks and Wildlife Division

Mr. Bob Broscheid is the Director of the Colorado Parks and Wildlife Division and has been in that position since 2014. Bob is a member of the Association of Fish and Wildlife Agencies' Executive Committee and serves as Chair of the Legal and International Relations Committees. He is also past President of the Western Association of Fish and Wildlife Agencies.

Prior to coming to Colorado, Mr. Broscheid worked the previous 20 years for the Arizona Game and Fish Department, most recently having served as Deputy Director and Assistant Director of the Wildlife Management Division. He also served as Special Assistant for former Governor Jan Brewer on the Natural Resources Advisory Council to better coordination between counties and state agencies to be more effective in informing federal decision-making processes, including fish and wildlife management, land and water development and County Comprehensive Planning processes. Bob also served on numerous Endangered Species task forces and initiatives at the state, national and international level, including the recent Western Governors' Association ESA Initiative.

Bob has worked on several projects involving Endangered Species Act Section 10 tools throughout his career, including Safe Harbor Agreements, Candidate Conservation Agreements with Assurances, Experimental- Non-Essential (or 10j) designations and Habitat Conservation Plans. He has extensive experience working with local, state and federal agencies on Section 7 consultations and Section 6 Cooperative Agreements.

Testimony before the Senate Committee on Environment and Public Works

Bob Broscheid, Director, Colorado Division of Parks and Wildlife
(July 17, 2018)

Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee, and thank you for inviting me here today. I'm Bob Broscheid, and I'm the Director of the Colorado Division of Parks and Wildlife, and the immediate past president of the Western Association of Fish and Wildlife Agencies. I want to thank Chairman Barrasso for taking on the challenge of working towards reauthorizing and improving the Endangered Species Act, and for his recognition of the central role that needs to be played by states, especially state wildlife agencies, if the ESA is to succeed in its goals.

The draft bill being discussed today proposes to update the ESA. This draft drew significantly from Governor Mead's multi-year species conservation initiative, and reflects a number of proposals that received the full-throated support of the Western Governors Association. While I want to make it clear that Governor Hickenlooper has not taken a position on this or any other specific language, he wholeheartedly supports the dialog and the process WGA has followed, and the value WGA places on bipartisan, practical solutions to improving the ESA. This approach has reflected the style of both Governors Hickenlooper and Mead, which is to understand problems, come up with solutions that have broad-based support, and figure out how to implement solutions without getting trapped in partisan disputes that derail efforts to make this law work better.

Ultimately, we believe that a key to improving the effective implementation of the ESA is to empower state wildlife agencies, who often have the most expertise and experience managing at-risk species, to leverage their expertise and resources to achieve better species protection and restoration, and to provide better incentives for state wildlife agencies and other stakeholders to invest in conservation and recovery. The discussion draft addresses a number of specific features of the ESA that parties reached some consensus on during the WGA process, but empowering state wildlife agencies is a theme throughout the draft and a much needed step toward improving recovery of our nation's most imperiled species.

I'm here today to speak to you on behalf of wildlife professionals, particularly state wildlife agencies. Many people don't really have any idea what their state wildlife agencies do, or have the misconception that they only manage wildlife for hunting and fishing. This is a really outdated image that unfortunately continues to persist. But the fact is, state wildlife agencies are on the frontlines of conserving and recovering species. We are required by state statutes, and for some even the state constitution, to conserve all wildlife species, and to preserve and protect the habitat these species need to thrive today and for future generations. This is what we do – every day. We work in partnerships with agricultural communities, conservation organizations, and local communities to find ways to continue protecting and enhancing habitats and species and to understand how to do that in the face of constantly shifting

challenges. Colorado Parks and Wildlife, like all wildlife agencies, is staffed with professionals who have committed their careers to species and habitat conservation. We have expert biologists, wildlife officers and managers, and boots on the ground in communities throughout the state.

I have spent my entire career managing wildlife for state wildlife agencies. I began my career in Arizona, starting as a biologist with the Arizona Game and Fish Department and ultimately serving as Deputy Director of the agency. Now in Colorado, I've spent the last 5 years as the head of the state Division of Parks and Wildlife. I've been at this for more than twenty years. During that time, I have seen tremendous success through collaboration between the states, the federal government, landowners, and private industry. I've also witnessed these same entities work at odds with each other creating unnecessary obstacles to conservation initiatives. I have professional experience specific to the Endangered Species Act in a number of ways, including work to preclude listing of species, listing and delisting species, coordination of ESA regulations with private landowners, and species recovery planning. I have worked closely with state agency experts on management and recovery of high profile listed species including Canada lynx, greenback cutthroat trout, sage-grouse, lesser prairie chicken, and many others. Directors of state wildlife agencies across the country have similar experiences.

One thing we have all seen is that learning from the past to improve the ESA should not be a hot-button partisan issue. Species conservation matters to everyone on both sides of the aisle, and there are some common sense fixes that can work for everyone. And not just everyone in the west, as evident by the US Fish & Wildlife Service's national listing workplan. The workplan lays out the listing decisions the Service intends to make over the next 5 years or so – and except for Nevada, the states with the most upcoming listing decisions are not even in the west – they are primarily in the southeast. Appalachia and the Pacific Coast states are also facing between 10 and 20 listing decisions in each of their states in that time. Getting this statute right, so that it works for states, incentivizes stakeholders, and brings a decent funding stream to species conservation, should be important to every member of this Committee.

When it adopted the ESA, Congress envisioned a partnership between states and the federal government. The hearings and debates leading up to passage of the Act made clear that cooperation and partnership between the states and the federal government was essential to achieve the goals of the Act. Section 6 of the Act, which mandates cooperation with the States "to the maximum extent practicable," was seen by many, including Senator Ted Stevens, to be "the major backbone of the Act." The conference report for the Act made it clear that the success of the Act would depend on a good working arrangement between the Federal agencies and the state agencies.

I want to emphasize: it's not just that state wildlife agencies were expected to play a prominent role in implementation of the Act, but that the *success of the Act was seen to depend on productive partnerships* between the state and federal wildlife agencies. Unfortunately, over the years the agencies have not always been able to live up to that vision,

and without states as equal partners, the Act hasn't always worked as intended. As a result, we see state expertise and resources used inefficiently, which in turn creates unnecessary local frustration and resentment, and impairs cooperation. We see partnerships that don't function well, and missed opportunities for species conservation.

Why is this the case?

The ESA is premised on a strong federal-state partnership. It contemplates strong state conservation programs, but states struggle when they are accorded little authority in the listing and recovery processes. When relationships are at their worst, state wildlife agencies get frustrated by a process that leads them to view the Service as untrustworthy. They see the Service withholding information, using state staff and resources but dismissing and sometimes not even responding to the states' substantive input. From the state wildlife agency view, "cooperation" on ESA efforts sometimes gets reduced to filing comments on proposed rules, helping staff Service conservation efforts, and responding to conflicts, all the while not being given authority to participate in critical decisions. The absence of an enhanced state role continues to strain limited federal resources and undermines local government and stakeholder/landowner willingness to participate in conservation and recovery efforts, and it also makes it difficult internally for us to be seen as a partner to the Service.

We know there's a better way to do this. That's why Governor Mead embarked on the species conservation initiative and why I'm here today.

Without compromising the federal role, the ESA should also seek to ensure a meaningful role for state wildlife agencies – those that want to exercise it. Forty-five years ago when the ESA was adopted, many states lacked the dedicated resources and expertise that we have today for species and habitat conservation. That has changed. Over the last 45 years, states have taken significant steps, both financial and political, to ensure species and habitat conservation. Due in large part to these investments, it is time to strengthen and refocus the ESA to realize the state role as originally intended by Congress 45 years ago.

A stronger role for the state agencies is also critically important because, although the federal agencies responsible for administering the ESA are working diligently to implement the law as adopted by Congress and interpreted by the Courts, they are simply overwhelmed by the work. In spite of their best efforts, these agencies cannot keep pace with the growing number of species subject to petitions for federal listing. They just do not have capacity to handle the growing workloads associated with the petition and listing process, regulatory responsibilities, take permitting, administering conservation incentives, assurances and mitigation programs, addressing litigation, recovery planning, and managing species through the recovery and delisting processes. States can and should play a leading role in some of these functions.

Until a species is listed under the ESA, it is a state trust species, and falls under the management jurisdiction of the state wildlife agency. But after listing, the states—without which species recovery cannot succeed—often find themselves on the outside looking in. Even

during the listing process, state agencies find themselves consigned to the same role as other members of the public; they are invited to comment and share data, but not to sit at the table and participate meaningfully in the decision. This is an inefficient use of our resources. Given the opportunity to partner with the Services, and some autonomy or flexibility to make our own decisions about our activities, we can achieve better outcomes for species and better collaboration with the communities whose cooperation is crucial for long-term success.

Recent work in Colorado with the US Fish & Wildlife Service regarding a petition to list the Gunnison sage-grouse provides an example where the state agency should have been more closely included as a full jurisdictional partner. We were critical in collecting and analyzing data and in working with counties, landowners, and ranchers to implement conservation programs, but we were not fully brought into the final decision making process related to this species, even though it was our science and our conservation actions on the ground that were under consideration. The listing process lasted multiple years, and the state was on the outside looking in, not kept fully apprised of progress, and not participating in critical decisions that changed the focus of the listing decision and left our partners on the ground feeling confused, frustrated, and betrayed.

This is not an isolated example. Any director of a state wildlife agency, in the west or across the country, has a similar story.

This statute is a work in progress. Given all the changes in the human environment and in natural ecosystems, we'd be crazy to think that an act adopted in 1973 can't be improved upon, based on our experiences over the last forty-plus years. The ESA was last reauthorized and amended in 1988. It was a bipartisan issue and effort then, just like it should be today. We have learned a lot about the conservation of listed species, their recovery needs, and how to incentivize and facilitate private landowner involvement since then. It is time to apply that knowledge to improving the ESA to better achieve the conservation and recovery of listed species.

Today, thanks to the efforts of Governor Mead, the WGA, Senator Barrasso, and others, we hope to be on the path towards making that happen. The principles upon which improvements can be based include providing more options for states to enter into a partnership with the federal government on more equal footing. Specific areas that have been supported by the WGA to empower state wildlife agencies to play a more central role and promote better working partnerships include

(1) providing for better pre-listing conservation tools – and putting those tools in the hands of states as well as the federal agencies;

(2) improving the petition and listing processes, and giving states a formal role in these processes;

(3) letting states take the lead in planning and implementing management and recovery of listed species;

(4) giving states flexibility to use their expertise and resources to engage in creative approaches and to enlist the support of local governments and communities; and

(5) recognizing the need to provide state wildlife agencies with the ability to protect their data from a FOIA request if they share it with the federal government. Many states, including Colorado, have enacted restrictions on our ability to share sensitive wildlife data, especially regarding wildlife on private lands. We are constantly being asked by the FWS, the USGS, the BLM, the Forest Service, to share our data with them because they can't do their jobs without it, and they don't have the resources to gather it themselves. We want to help – and often we do. But we put ourselves at risk when we do it.

I have seen over the years that although sometimes states and the federal agencies play well together, it seems to depend entirely too much on who's in control at the federal level. In my experience, legislative changes are needed to enshrine states' role in ESA implementation, and to formalize a role for the states, rather than subjecting them to always having to seek the favor of partnership from the federal agencies. This should be a peer-to-peer relationship. Congress should take the opportunity to nudge the Act towards its original vision of a partnership that accords states a meaningful role.

Give us the ability to be true partners at the table, trust our expertise and our commitment, and you will be amazed at what we can do.

Senate Committee on Environment and Public Works
Hearing entitled, *"Legislative Hearing on a Discussion Draft Bill, S. __, the Endangered Species Act Amendments of 2018."*
July 17, 2018
Questions for the Record for Mr. Broscheid

Chairman Barrasso

1. How would you answer detractors who claim that the Western Governors' Association and its Species Conservation and Endangered Species Act Initiative were not at all, or only superficially, bipartisan?

Director Broscheid

The founding premise of the initiative was that species conservation is not a partisan issue, and the initiative was organized around that premise. Anyone who attended the sessions could see that both Democratic and Republican administrations were represented throughout the process, as were NGOs from all sides of the spectrum. Sessions were hosted in both Colorado and Hawaii by the Democratic governors of those states who wholeheartedly supported Governor Mead's approach. The initiative demonstrated that people from industry, from the environmental movement, and from both sides of the aisle, can come together to talk pragmatically and to find areas of agreement about how the ESA could be improved.

In addition, the initiative resulted in the adoption of resolutions and policy recommendations that were supported by governors of both parties.

2. How do you respond to critics who claim that when a species is listed under the ESA as either threatened or endangered, it is because state wildlife agencies failed to protect it in the first place?

State wildlife agencies are typically charged with conservation of species and habitats either by statute or occasionally, by the state constitution. They often lack the resources, however, to comprehensively fulfill their mission.

First, there are many threats to species over which state wildlife agencies have little or no control. Global climate change comes to mind, along with many things we associate with it such as increased frequency and intensity of wildfire, a new or increased vulnerability of some species to diseases, loss of habitat due to hotter summers and earlier melting of the snowpack. States also have very little control over the stewardship of habitat on federal lands, and frequently in the West, federal lands provided the majority of wildlife habitat. We also have limited ability to control some water quality issues, such as increasing amounts of

mercury and selenium, which pose threats to aquatic species in many of our western rivers.

Second, both state and federal lands are subject to competing demands and often to multiple use mandates that make it difficult for the wildlife agency to ensure the protection of habitat. Some of the most secure protections we can provide for habitat come in the form of conservation easements or fee title purchases where conservation can be given the highest priority on the landscape. But we need partnerships. We can't do this alone.

Third, many state wildlife agencies struggle financially. We often lack adequate resources to engage in the management, restoration, and conservation activities necessary to conserve all our at-risk species. Without funding, we simply cannot meet the needs of all the species that need our help.

3. This discussion draft reauthorizes the ESA, but at "to-be-determined" funding levels. People are unaware of the exact amount of money spent or disbursed in implementing the ESA across the federal administrative apparatus. Section 504 of this discussion draft seeks to fix the problems related to lack of information regarding funding by requiring a biennial report on the federal administrative costs of the ESA, be submitted to Congress. This is our attempt to understand the funding for different provisions of ESA that will be needed in the future. Do you think such information would be helpful?

   Transparency regarding public expenditures is valuable and can provide an important source of information for lawmakers and the public. But these numbers – assuming they can be gathered accurately – will only show current spending levels. They will not help Congress understand what needs to be spent in order to achieve the goals of the ESA.

4. Would you agree that the role of the states should be greater in implementing the ESA in partnership with the federal government?

   Yes. As I explained in my written testimony, the ESA was designed to be implemented through partnership and cooperation between the states and the federal government. The very success of the Act was conceived as being dependent on productive partnerships between the states and the federal agencies. Over the years, the states' role in this partnership has been eroded, resulting in inefficient use of state expertise and resources, and often failed efforts to secure local support for conservation of listed species.

   In addition, the federal agencies charged with implementation of the ESA are overwhelmed by the work, understaffed, and underfunded. They already depend on the state agencies to assist with monitoring, species status assessments, mitigation programs, conservation incentive programs, recovery planning, take permitting, and other ESA-related activities. So it's not just a greater role that the

states seek, but specifically, a greater role in decision-making as well as a role assisting federal agencies.

5. Would you agree that states should have the opportunity to lead wildlife conservation efforts, including through the establishment of recovery teams for listed species? How about through developing and implementing recovery plans?

   States already initiate and lead most wildlife conservation efforts. As a result of their expertise, they are well-positioned to take a leadership role in ESA-related efforts including establishing recovery teams and developing and implementing recovery plans. Not all states have the resources to do this, but creating the option for those who want to take on this role puts leadership on recovery in the hands of the people who are best-positioned to understand how to recover species.

6. Would you agree that states should have increased regulatory certainty, so stakeholders are more incentivized to enter into voluntary conservation and recovery activities?

   Any increase in regulatory certainty that can provide incentives for voluntary conservation activities by states or private entities should benefit species conservation.

7. Would you agree that we should have a system for prioritizing species listing petitions, so limited resources flow to the species most in need, and stakeholders can better plan for potential listing decisions in the future?

   Yes. The Service's National Listing Workplan, which classifies listing decisions according to five categories of urgency, has made conservation planning more predictable for states and our partners. But at this point, the prioritization system is vulnerable to a finding that the ESA's existing statutory deadlines for listing a species once it has been petitioned do not permit the Service to engage in the kind of pragmatic triage contemplated by its prioritization policy. We would support a statutory change that allows the Service to adopt and use a prioritization system as part of its regular operations.

Ranking Member Carper

8. Governor Mead's testimony mentioned legislative proposals to prevent Endangered Species Act (ESA) listings for the greater sage-grouse and lesser prairie chicken for ten years. His testimony also acknowledged the important role that the ESA played in providing part of the incentive for the collaborative conservation action that states, stakeholders, and the federal government took to keep the greater sage-grouse from requiring protection under the ESA in 2015. Despite this greater sage-grouse success story, some of my colleagues continue to propose greater sage-grouse listing prohibition language in annual appropriations bills, the annual National Defense Authorization Act and, other legislation.

a. Do you agree that conservation of the greater sage-grouse and its habitat to date has been an ESA success story?

Yes, I agree with Governor Mead that, even though the species was not listed, the ESA played an important role in shaping the legal context within which stakeholders, states, and the federal government were able to achieve remarkable collaboration and reach agreement on conservation measures. While there may be exceptions, as a general rule, I do not support the use of appropriations bills to dictate how the Services are able to implement the ESA.

b. What negative impacts do you think a ten-year greater sage-grouse listing prohibition could have on collaborate conservation efforts in Colorado and beyond?

It removes the incentive for stakeholders – particularly industry and private landowners – to cooperate or collaborate, or to take the consequences of the failure of cooperation and collaboration seriously.

c. Does the State of Colorado generally oppose this type of listing prohibition language?

Yes, absolutely. This kind of congressional interference invites and incentivizes political interference in what should be a scientific determination. It also incentivizes behavior that conflicts with conservation goals because there are no adverse consequences for projects that destroy habitat or drive away individual animals. Flaws in the ESA listing process should be addressed directly by changes to the statute or regulations, not by individual members of Congress targeting single species.

Senator BARRASSO. Well, thank you so much for being with us today and for sharing your comments.

Now I would like to turn to Mr. Strickler. Thank you.

STATEMENT OF MATTHEW J. STRICKLER, SECRETARY OF NATURAL RESOURCES, COMMONWEALTH OF VIRGINIA

Mr. STRICKLER. Good morning, Chairman Barrasso, Ranking Member Carper, members of the Committee. Thank you for inviting me to testify today on this draft legislation and this important topic of conserving the shared natural heritage of Virginians and all Americans.

My name is Matt Strickler. I serve as Secretary of Natural Resources for Governor Ralph Northam. I oversee the Commonwealth's Department of Game and Inland Fisheries and Department of Conservation and Recreation, which together lead our efforts to protect native Virginia wildlife and plants, including State and federally listed threatened and endangered species.

Virginia currently has 89 ESA listed species, ranging from a flying squirrel, to five varieties of sea turtles, to the Atlantic sturgeon, a fish that can reach 14 feet long and 800 pounds, and has been around since the time of the dinosaurs.

We have strong, collaborative working relationships with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on Endangered Species Act issues. Those relationships have led to some impressive accomplishments in conserving and recovering populations of imperiled species.

Collaboration among Fish and Wildlife Service, Department of Game and Inland Fisheries, the College of William and Mary, and other partners conserved critical bald eagle nesting areas in the Chesapeake Bay watershed and reduced the impacts of land disturbance, a key to the eagle recovery effort and ultimate delisting in 2007.

Fish and Wildlife Service, Game and Inland Fisheries, and The Nature Conservancy have worked together to protect endangered habitat in Southeast Virginia. Now the population is expanding on Federal, State, and private lands.

And the restoration plan co-developed by the Fish and Wildlife Service and Game and Inland Fisheries is bringing freshwater mussels back from the brink of extinction in southwest Virginia's Clinch, Powell, and Holston Rivers, one of the most biologically diverse areas on the North American continent.

We certainly have work left to do, but Governor Northam and I see species conservation and recovery as an opportunity, not a hurdle. We believe that when our lands and waters are kept natural and clean enough to support a health and diverse ecology, they are better able to support a healthy and diverse economy. These places become more attractive for use by hunters, anglers, hikers, bikers, paddlers, and the like. And they become more desirable places to live, work, play, start a business, and raise a family.

Speaking to the draft bill before us today, I agree with the Chairman's assessment that we need to do more for threatened and endangered species than keep them on life support. But the most important thing we can do is commit greater resources to the vital task of recovery. I also agree that the Endangered Species Act can

be strengthened, and I respect the dialogue initiated by the Western Governors Association to explore potentially beneficial ideas.

The discussion draft released by the Chairman, however, contains provisions that would hinder Virginia's ability to make the most of our partnerships with Federal agencies by complicating proven and established species protection and recovery processes. The Commonwealth of Virginia cannot support the legislation in its current form.

More generally, I am also concerned that even well intentioned efforts to amend the ESA could open the door to provisions that would harm its essential purpose. Some of the provisions suggested in this draft and in the Western Governors Association report would do that. However, the primary reason many species are where they are is precisely because States, including Virginia, have not had the resources or the political will to do the jobs themselves. That is why the Endangered Species Act is so important; it separates the complicated scientific and management questions of biodiversity conservation from local political pressures.

As a practical matter, I believe this bill would make working with adjacent States to recover shared species more difficult. As a philosophical matter, these resources do not belong just to Virginia or to Wyoming or to any other single State; they belong to all Americans.

In the view of Virginia, the existing Act and regulations strike the appropriate balance of shared responsibility between State and Federal agencies. We have multiple opportunities to participate in and provide information to ESA decisionmaking, including recovery planning and implementation, and we offer information and recommendations on proposals to list species, as well.

We know that the Fish and Wildlife Service and the National Marine Fisheries Service are viewing the scientific information we provide them and using it when it is the best available. It is our view that the best way to improve implementation of the ESA and to recover more species faster is for Congress to provide adequate funding for science and management of these resources and their habitat.

Federal agencies should absolutely be held accountable for how these funds are spent and should be required to document progress and results. But we should not forget that the ESA, as written, has a 99 percent success rate at preventing the extinction of listed species and that 90 percent of species with recovery plans are on track to meet their goals on schedule. To use the Chairman's medical analogy, if you look at the Endangered Species Act as an emergency room, an ER doctor with a 99 percent success rate of keeping patients alive is pretty impressive.

Moving forward, Virginia hopes to work with Congress to improve the Endangered Species Act and secure the kind of funding for Federal and State wildlife agencies that is necessary to speed recovery of ESA listed species.

Thank you.

[The prepared statement of Mr. Strickler follows:]

Matthew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia

Matthew J. Strickler is the Secretary of Natural Resources for the Commonwealth of Virginia. Prior to joining the Administration, he served as Senior Policy Advisor to Democratic members of the House of Representatives Committee on Natural Resources. Originally from Lexington, Virginia, Matthew graduated from Washington and Lee University and holds master's degrees in public policy and marine science from the College of William and Mary and the Virginia Institute of Marine Science. He was a Knauss Marine Policy Fellow in NOAA's Office of International Affairs in 2007, and worked on U.S. Senator Mark Warner's successful 2008 campaign. Immediately prior to his time on Capitol Hill, Matthew worked in the Virginia General Assembly as a legislative assistant to then-state Senator Ralph Northam.

Testimony of Mathew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia

Before the United States Senate
Environment and Public Works Committee
"Legislative Hearing on a Discussion Draft Bill, Endangered Species Act Amendments of 2018"

July 17, 2018

Good Morning Chairman Barrasso, Ranking Member Carper, and Members of the Committee.

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Speaking to the draft bill before us today, I agree with the Chairman's assessment that we need to do more for threatened and endangered species than keep them on life support, but the most important thing we can do is commit greater resources to the vital task of recovery. I also agree that the Endangered Species Act (ESA) can be strengthened, and I respect the dialogue initiated by the WGA to explore potentially beneficial ideas. The discussion draft released by the Chairman, however, contains provisions that would hinder Virginia's ability to make the most of our partnerships with federal agencies by complicating proven and established species protection and recovery processes. The Commonwealth of Virginia cannot support the legislation in current form. More generally, I am also concerned that even well intentioned efforts to amend the ESA could open the door to provisions that would harm its essential purpose.

Some of the provisions suggested in this draft and in the Western Governors' Association report would do that; however, the primary reason many species are where they are is precisely because states – including Virginia –have not had the resources or the political will to do the job themselves. That's why the ESA is so important. It separates the complicated scientific and management questions of biodiversity conservation from local political pressures.

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But we should not forget that the ESA as written has a 99 percent success rate at preventing the extinction of listed species, and that 90 percent of species with recovery plans are on track to meet their goals on schedule.

Moving forward, Virginia hopes to work with Congress to improve the Endangered Species Act and to secure the kind of funding for federal and state wildlife agencies that is necessary to speed recovery of ESA-listed species.

Thank you.

Senate Committee on Environment and Public Works
Hearing entitled, *"Legislative Hearing on a Discussion Draft Bill, S. __, the Endangered Species Act Amendments of 2018."*
July 17, 2018
Questions for the Record for Secretary Strickler

Chairman Barrasso

1. This discussion draft reauthorizes the ESA, but at "to-be-determined" funding levels. People are unaware of the exact amount of money spent or disbursed in implementing the ESA across the federal administrative apparatus. Section 504 of this discussion draft seeks to fix the problems related to lack of information regarding funding by requiring a biennial report on the federal administrative costs of the ESA be submitted to Congress. This is our attempt to understand the funding for different provisions of ESA that will be needed in the future. Do you think such information would be helpful?

It's a worthwhile endeavor to better understand funding allocations and needs. That said, the ESA requires the protection and recovery of species without the consideration of cost constraints.

2. Would you agree that the role of the states should be greater in implementing the ESA in partnership with the federal government?

The current balance of power and federal leadership has served Virginia well and led to the protection and delisting of many species. Based on these experiences, Virginia is comfortable with its existing role in the state-federal partnership related to the ESA.

3. Would you agree that states should have the opportunity to lead wildlife conservation efforts, including through the establishment of recovery teams for listed species? How about through developing and implementing recovery plans?

States already do lead most wildlife conservation efforts. Only when those state efforts have failed do the federal protections of the ESA kick in. It defies common sense to give states that have pushed species to the brink of extinction the primary authority for ensuring those species recover. At that point, the state has blown its chance and strong federal intervention is appropriate to guide species recovery with state assistance. Further, Virginia shares borders and waterways with five neighboring states. Astrong federal presence is imperative to ensure that no state can disproportionately impact the listing and delisting decisions or recovery efforts for a multi-state endangered species. As such, Virginia prefers that the existing balance of state and federal authority be maintained.

4. Would you agree that states should have increased regulatory certainty so stakeholders are more incentivized to enter into voluntary conservation and recovery activities?

While the Commonwealth supports clear goals and expectations, we also support using the best available science and understand that changing landscape, climate and other conditions may

require updated goals, timelines, etc. Further, the ESA already provides significant regulatory certainty by allowing FWS and NMFS to enter into Candidate Conservation Agreements and Safe Harbor agreements with private and public non-federal landowners. These tools have been used effectively and will continue to be used without statutory changes. The way we can provide the most regulatory certainty, however, is to recover listed species so that they not longer need ESA protections.

5. Would you agree that we should have a system for prioritizing species listing petitions, so limited resources flow to the species most in need, and stakeholders can better plan for potential listing decisions in the future?

The ESA and regulations already lay out a clear process with appropriate timelines for the consideration of species listing petitions. With respect to species listings themselves, Virginia and its citizens benefit greatly from the state's biodiversity and all of its diverse species must be protected and maintained. For that reason, Virginia supports the recovery of all listed species, not a process whereby some may be left behind simply because Congress chooses not to provide adequate conservation funding.

Senator Whitehouse:

6. Does Virginia, and other states to the best of your knowledge, have the resources necessary to take on the extra burdens created for them under the draft Endangered Species Act Amendments of 2018?

Virginia works hard to protect and recover endangered species, in concert with our federal partners. However, the Commonwealth need significant additional funds to implement Section 6 requirements. If the draft text of the Endangered Species Act Amendments of 2018 were to become law, it would likely require more staff to engage in listing and delisting reviews and decisions, potentially further limiting available resources for the state investment in Section 6 activities.

7. What is Virginia's working relationship with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service? Has there been regular conflict, or does the state enjoy a cooperative and collaborative relationship?

The partnership between Virginia and the federal agencies who carry out the ESA has yielded many success. In Virginia, for example, bald eagles had declined to 20 breeding pairs in 1970. As a result of the partnership between the U.S. Fish and Wildlife Service (USFWS), the Department of Game and Inland Fisheries (DGIF), the College of William and Mary, and many other conservation partners conserving critical eagle nesting and winter concentration areas in the Chesapeake Bay watershed and mitigating impacts of land management actions on eagles, we now have more than 1,100 breeding pairs. This successful recovery – a combination of: land and riparian conservation, on the cessation of the use of DDT, and on the improvement of water quality in Chesapeake Bay – led to the delisting of bald eagles in 2007. The success of the

Chesapeake Bay population was key to that decision, and the state was a partner in the recovery efforts.

Virginia is the northernmost extent of the range of the federally-endangered red-cockaded woodpecker, with only one self-sustaining population (at The Nature Conservancy's Piney Grove Preserve in Sussex County). In partnership with the USFWS (and leveraging nationally-competitive Recovery Land Acquisition funding), the DGIF purchased the Big Woods Wildlife Management Area adjacent to Piney Grove Preserve. The agency and its partners (including USFWS and The Nature Conservancy) are managing the habitat on the Big Woods area to support nature expansion of woodpeckers found on Piney Grove as that population has grown and is exceeding capacity on the Preserve. The USFWS and DGIF also collaborated on the translocation of red-cockaded woodpeckers to the Great Dismal Swamp National Wildlife Refuge in the cities of Suffolk and Chesapeake, with DGIF supporting the trapping and interstate transport of birds from South Carolina. This collaboration has increased the diversity of wildlife refuges in the Commonwealth and have contributed to Virginia's thriving outdoor recreation economy.

Perhaps the best example of the fruitful partnership between the Commonwealth and the U.S. Fish and Wildlife Service is in the recovery and restoration of Virginia's tremendously diverse freshwater mussel communities. In the Atlantic Slope drainage, the DGIF and USFWS have developed the Virginia Fisheries and Aquatic Wildlife Center, located at the Harrison Lake National Fish Hatchery in Charles City County. The goal of the facility (established in 2008) is to propagate and grow out listed and at-risk mussel species with the intent of augmenting existing populations and returning animals to historic ranges. In 2017, more than 1 million individuals of 8 species were successfully propagated at the facility, including the federally-endangered James spinymussel.

In the Upper Tennessee, the DGIF established the Aquatic Wildlife Conservation Center at its Buller Fish Cultural Station in 1998. The diversity of freshwater mussel fauna in the Upper Tennessee is high and nearly unparalleled elsewhere in the country. The facility has successfully propagated 30 different species, including the federally-listed Cumberlandian combshell, oyster mussel, fine-rayed pigtoe, dromedary pearlymussel, fanshell and purple bean, and state-listed black sandshell, sheepnose, slabside pearlymussel, and spectaclecase. The mussels produced at the facility are used to augment wild mussel populations in the Clinch, Powell, and Holston watersheds. In 2017, more than 100,000 individuals of these federal- and state-listed species were successfully raised to a size to be released at one of six augmentation areas. This outcome is possible in part because of culture successes at the AWCC and in part because of the aggressive efforts of the USFWS's Partners for Fish and Wildlife Program to effect riparian restoration in these key watershed to improve water quality. Additionally, the DGIF and its partners has been able to leverage more than $3 million in Recovery Land Acquisition grant funds to secure lands along the major rivers to improve water quality and protect important mussel beds from sedimentation and nutrient loading. The Upper Tennessee River mussel restoration plan that serves as a foundation for all of this work was co-developed by the USFWS and DGIF nearly 20 years ago.

Annually, the DGIF and USFWS collaborate on the development of the Commonwealth's proposals for research and conservation on federally-listed freshwater mussels, fish and aquatic invertebrates. This collaborative spirit ensures that all partners with trust responsibilities are invested in the a priori identification and prioritization of the most important work to be completed to drive recovery efforts.

The DGIF and USFWS have long maintained a strong data-sharing agreement that facilitates the use of information collected across the Commonwealth and reported to the DGIF in environmental reviews, development of biological opinions and other responsibilities of the USFWS. This streamlined approach ensures that the DGIF and the USFWS are using the same information when providing input into land management and permitting actions at the federal and state levels.

At the regional level, the DGIF is part of two collaborative efforts with the USFWS that have strengthened voluntary and early intervention that are resulting in "listing not warranted" decisions. In the northeast, the DGIF and 13 other jurisdictions are pooling funds from the USFWS to support the Northeast Association of Fish and Wildlife Agencies' Regional Conservation Needs program. Working in partnership with the USFWS, the states leveraged the RCN program to initiate regional conservation efforts for species such as New England cottontail and wood turtle. These efforts served as the foundation for successful awards through the national Competitive State Wildlife Grants program that directed more funding to on-the-ground conservation and precluding the need to list these species. The partnership between the NEAFWA and the USFWS for regional species of greatest conservation need is perhaps unique in the country and serving as a model for large-scale conservation. In the southeast, the DGIF and 14 other jurisdictions are collaborating with the USFWS to pool information and share data that support the USFWS's evaluation of species petitioned for listing. As a result of the work completed by the states, petitioners have voluntarily withdrawn a number of species from consideration.

Collaboration and coordination between the USFWS – at the state and regional level – and the DGIF in the conservation and recovery of federally-listed species has been and continues to be excellent and a model for other states.

8. Do you agree that judicial review should be closed for an extended period of time after the delisting of a species?

The Commonwealth of Virginia does not believe that judicial review should be closed for any period of time after the delisting of a species. Barring the courthouse doors to citizens who value public trust wildlife resources that states and the federal government are required to protect would run afoul of basic principles of American constitutional democracy.

   a. If not, what risks can an improperly delisted species face in this time period?

There are many historical examples of improper delisting decisions that have been challenged successfully and overturned by the courts. If the public is barred for a number of years from

bringing such cases to ensure that the ESA is being properly enforced, wrongly delisted species could suffer further decline or even extinction before a challenge is able to be brought.

9. What role should scientists and science play in the listing, delisting, and recovery planning for a species?

Science and scientists should play thecentral role in in the listing, delisting, and recovery planning for a species. Species protection and restoration is a science based goal that must be based on and informed by the best available science in order to be successful.

   a. Do you think scientists should be *de facto* participants in a recovery team, or should require a majority vote to participate, as in the current draft bill?

Due to the imperative role science and scientists play in the decisions made by a recovery team, scientists should be de facto participants in any and all recovery teams.

Senator BARRASSO. Well, thank you so much for your testimony.

Mr. Broscheid, Director, the challenges surrounding implementation of the Endangered Species Act don't just affect the West. We talk about the Western Governors Association, but according to the U.S. Fish and Wildlife Services' 7 year work plan, there are over 360 additional species that are going to be considered for listing by 2023, so in the next 5 years; and many of these species are in States in the East, the South, and the Midwest.

In terms of the numbers on the list, Colorado between 21 and 40, but if you look at Virginia, North Carolina, Florida these places, the East and the South, seem to really be impacted. A staggering 68 species are going to be considered in Virginia alone; 43 in Tennessee, 42 in Florida, 41 in North Carolina. Dozens more are going to be considered in other States throughout the country.

I would just say, shouldn't these States be given a greater role to play in helping prevent these listings in the first place, by protecting species, and if the listings do occur, have the States have a greater role in helping recover these species?

Mr. BROSCHEID. Mr. Chairman, thank you for that question. Absolutely, I agree on all of those points. You talked previously with the Governor, and I agree with his response. State wildlife agencies maintain very broad police powers within their borders. We in Colorado maintain a very strong scientific and research program, as well as the landowner connections that we have with local governments, private landowners, and then can work across State lines, like the Governor mentioned about sage-grouse.

We are engaged. In Colorado we are aware of those numbers, and with the limited amount of funding that we have available, we are having to make decisions about where to put that funding to have the biggest impact—prioritize, essentially.

Our role in recovery plannings and listing and delisting and down-listing processes, as well as bringing the best available science. In most cases, States are the only ones who have that, in conjunction with universities, and I think that affords us an opportunity to sit at the table and discuss this. If these are going to be science based decisions, let's make sure we have the best available science.

Senator BARRASSO. We had a hearing in February—this past—of 2017, and at the time Jamie Rappaport Clark, President and CEO of the Defenders of Wildlife, a former director of U.S. Fish and Wildlife Service under President Clinton, acknowledged, said, "Certainly, the ESA could work better, absolutely."

I guess you agree with that. Then I would say why is it important for States to have more of a say?

Mr. BROSCHEID. Mr. Chairman, States are concerned, first of all. They are very concerned about threatened and endangered species, and their management and their future survival; that they won't need the protections of the Act. States like mine have been very lucky about the funding that is available, non-Federal funds that we can commit to this.

But I think in the broader sense, in the highest level, it is talking about economies; it is talking about working landscapes; private landowners that have very large ranches. It is about our water supply; it is about all of those things that, as a State, we are very

concerned about, and I think that should afford us an opportunity and a seat prominently at the table when we talk about listings and recovery.

Senator BARRASSO. Senator Carper.

Senator CARPER. Senator Booker has been good to come not once, but twice today. I am going to yield to him so he doesn't miss a chance to ask questions, then I will ask later.

Senator BARRASSO. Senator Booker.

Senator BOOKER. Thank you very much. It is not often that Delaware defers to New Jersey, but I am grateful for that, sir.

[Laughter.]

Senator BOOKER. Mr. Chairman and Ranking Member, I want to start off by just saying that the Endangered Species Act has been incredibly successful by any measure, but statistically, when I was mayor of the city of Newark, I used to write, In God We Trust, but everybody else bring us data. The data is compelling: 99 percent of the wildlife under the Endangered Species Act protection has been saved from extinction. Ninety-nine percent. We have a great track record.

And while the huge task of recovering a species from the brink of extinction often takes decades, the majority of the species that have been listed under the ESA are recovering within the timeframes that have been projected.

Now, I want to just emphasize for the record how dire our current situation is on the planet Earth. We are in a global extinction crisis of a proportion that most Americans don't understand.

It is estimated that, right now, more than one in six species on the planet are threatened with extinction in this century alone. According to a report released by the 2016 World Wildlife Fund, it is estimated the global populations of fish, birds, mammals, amphibians, reptiles declined 58 percent between about the time I was born, 1970, and today, meaning that we have lost more than half of all the wildlife on the planet, more than half of all the wildlife on the planet Earth in the last 50 years.

Species today are going extinct thousands of times faster than natural extinction rates. Again, this is staggering. This is stunning, that half of all the wildlife on the planet Earth—in my lifetime—have gone.

So, given this extinction crisis, I just believe that we are considering a bill that, in its total conception, is taking us in the wrong direction. It is a step in the wrong direction. And rather than focusing on what we have heard from the other testimony that I sat in earlier, on the urgent need to increase resources to do a better job at protecting species. Governors from both sides of the aisle would echo that we need more investment on the Federal level to deal with the crisis.

And this is not just about animals; this has a profound impact on human beings, on every American. And I just believe that this bill would move us away from the best available science and would delay and restrict, ultimately, judicial review.

So, in the few moments I have left, Mr. Strickler, the bill we are considering today would prevent any legal challenge to delisting determination by the Fish and Wildlife Service for 5 years. So, the Fish and Wildlife Service, if they make a mistake, which we all do,

and prematurely delist a species, this mistake couldn't be challenged for 5 years in court.

I am wondering about that particular section. Do you have an opinion about that, and do you believe it is going to help the crisis we have, the endangered species crisis we have right now in America and beyond?

Mr. STRICKLER. Senator Booker, thank you for the question. I certainly understand the sentiment behind this proposal. I think, as a practical matter, it is concerning to the Commonwealth of Virginia.

As you mentioned, species recovery is a question of science, and science is an evolving process. We are always finding out more than we currently know about listed species and the ecosystems they live in. And judicial review is the tool that we have to make sure that we are doing things right as executive and legislative branches. If there is a situation where we make a delisting decision that we find out, 2 years later, was an error, having to wait 3 more years for someone to be able to challenge that is not really the place we want to be, so, for that reason, I think it is perhaps misguided.

Senator BOOKER. And it is a balance. I don't think there is an American who doesn't think we are overly litigious in many ways, but it is really a balance between having the courts have the flexibility necessary so that science can actually guide. I guess that is next question I have in the few seconds I have remaining, is one of the strengths of the ESA as we know it is the flexibility it provides the Fish and Wildlife Service to update recovery plans as those facts change on the ground, but this bill would require unanimous agreement among members of a recovery team in order to change the goals of a recovery plan, even if new scientific evidence emerged of an increased threat to species.

Do you believe that this change would help or hurt the efforts to protect endangered species?

Mr. STRICKLER. Thank you for the question, Senator. I think it would hinder species recovery efforts. And again, I understand where this is coming from. States have expressed frustration in the past when recovery criteria are set through the recovery planning process and then, because of new data, new science coming in to the equation, the end game changes a little bit as far as what is necessary to recover a species, and some people think that is shifting the goalpost. Really, it is just following the best available science, and I think this provision would prevent us from doing that.

Senator BOOKER. I am grateful, sir.

Thank you very much, Mr. Chairman.

Senator BARRASSO. Thank you.

Senator Duckworth.

Senator DUCKWORTH. Thank you, Mr. Chairman.

During our last hearing on the Endangered Species Act, we heard about the bipartisan process previous leaders of this Committee embraced, developed, refined, and ultimately passed the Endangered Species Recovery Act of 1997. I am concerned that the current discussion draft diverges from that bipartisan model, as

evidenced by numerous conservation stakeholders who have already come out in opposition to the current draft.

As we look to modernize ESA, it is important that we always remember the foundational policy goals of this seminal Act: to protect and recover our Nation's endangered species and ecosystems. And we must never forget that ESA has been incredibly successful in pulling back more than 99 percent of listed species from the brink of extinction.

Any effort to reform this critical law must recognize this fact and be very careful to guarantee that, at the very least, we do no harm when it comes to modifying our current science based framework.

And that is where my questioning is going to go to, Mr. Strickler. I think I am going to address you first.

In your testimony, you noted that the Federal Government reviews your department's scientific information and will use it so long as it represents the best available data. Can you explain why it is so important to use the best available science when justifying the Endangered Species Act decisions and describe how this bill might negatively impact the way the U.S. Fish and Wildlife Services uses State data?

Mr. STRICKLER. Senator Duckworth, thank you for the question. The importance of using the best available science is because these species are critically imperiled, and we may not have another chance to get it right if we are not using the best available science. In many cases, as the Chairman and others have noted, the best available science is science that is being produced by State agencies. In other cases, the best available science is being produced by research universities or nonprofit groups, or the Federal Government itself, and in many cases, the Fish and Wildlife Service.

So, I think elevating State produced data above data produced and science conducted by other stakeholders that have just as much concern, just as much care for the species that are under Endangered Species Act protection really runs a risk of kind of marginalizing potentially very good science and may put us in a situation where delisting listed species is easier, but actually recovering them in a meaningful ecological or biological sense is more difficult.

Senator DUCKWORTH. Thank you.

I want to address funding a little bit, as well. Although this draft bill dramatically redefines the State's role in species management, it does fail to provide new resources to address the current funding shortfalls that hinder both Federal and State species conservation programs. This is a serious shortcoming, since, even with the strongest law, it will be weakly enforced if it does not have vital funding.

Again, Mr. Strickler, in your opinion, should Congress prioritize using any ESA modernization effort to significantly increase Federal funding to help States better implement species recovery efforts?

Mr. STRICKLER. Thank you, Senator, for the question. I think that funding is the critical question here. Mr. Broscheid mentioned that his State has been in triage mode, basically, with having to prioritize the most critically endangered species, and we are, too,

and that is certainly something that is experienced across the country.

And a big part of that is because, at least the information that I have shows about a quarter of federally listed species receive $10,000 or less per year toward their recovery. That is just inadequate, and we are never going to make the progress that we need, regardless of what States are doing, if that is the kind of commitment that the Federal Government is able to make.

Senator DUCKWORTH. Thank you.

With my remaining time, Mr. Broscheid, can you talk a little bit about the funding needs for States in terms of Federal funding for the management of endangered species?

Mr. BROSCHEID. Senator, I agree with Mr. Strickler. It is essential. It is everything. To recover habitats, to conduct the science, to sit on recovery teams and develop these recovery plans all take resources right now that are coming from State or legislatively, at the State level, appropriated dollars. Certainly, funding is probably the biggest impact to and prevention of recovery of species of not just to prevent them from extinction, but to move them from off the list, where they don't need the protections of the Act anymore.

Senator DUCKWORTH. Thank you so much.

Thank you, both of you gentlemen, for being here today.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Duckworth.

Senator Merkley.

Senator MERKLEY. Thank you very much.

Appreciate all your testimony. In your testimony, you have spoken to the importance of collaboration between Federal and State agencies, and true collaboration is very helpful and essential to understanding what is going on at both levels and how those things interact. To that end, I want to understand a few of the practical events of the bill.

Secretary Strickler, what is the practical effect of a Governor appointing half the members of the recovery team? Does it make it easier or harder for local interests to influence recovery outcomes?

Mr. STRICKLER. Senator Merkley, thank you for the question. I think, from perhaps some perspective, it makes sense for localities and States that are in the area, physical area of a threatened or endangered species to have a greater role in recovery, but I think this particular provision would throw things out of balance. In one sense, when a species is listed, it means that the States where that species exist have not done an adequate job of conserving the species in the first place, so to give the States the primary authority and an equal number or majority of members on a recovery team I think kind of goes against common sense, perhaps.

The other thing I think that is worth noting is that there are other States that perhaps these species don't exist that have an interest in protecting these species. We certainly, in Virginia, have folks who visit the West and appreciate western States' wildlife and have an interest in making sure that that wildlife is conserved. So, for those reasons, I think that is where we come down on that.

Senator MERKLEY. So just in terms of basic collaboration understanding, it makes sense to have a very rich dialogue with local experts, local decisionmakers, but your concern is about the formal

structure of the recovery team? Does that take us to the issue of the unanimous vote being required to be able to update a plan?

Mr. STRICKLER. Yes, sir. I think that that particular provision would make it very challenging if new science was introduced, to be able to kind of do adaptive management and shift on the fly the way that we are working to recover species.

Back to your original question, I apologize for not answering it very articulately, but collaboration is absolutely necessary to this process, and it is collaboration among States, it is collaboration between the States and the Federal Government. At least in Virginia, and I certainly can't speak directly to the experience of other States, but we feel like we have that relationship.

Our Department of Game and Inland Fisheries and our Department of Conservation and Recreation Natural Heritage Program work closely on a daily basis with Fish and Wildlife Service. There is nothing that Fish and Wildlife Service is planning to do with respect to threatened and endangered species in Virginia that our fish and wildlife agencies do not know about and are not working hand in hand with the Federal Government on.

Senator MERKLEY. We have a situation out in the West where Oregon put together a whole team of State experts of all kinds to try to develop a plan because we wanted to avoid a Federal listing, but it was the Federal listing that motivated us to develop that plan. Not only did we do the State plan, but we also then used extensive use of candidate conservation agreements, because essentially said if you do these things on your own private land, then you are protected from additional measures that might be adopted if we do get listed. That combination really motivated people to come together.

I am looking at the structure here and seeing if essentially Federal action depends upon full sign off by a State, then essentially Oregon wouldn't have acted on the sage-grouse; the Federal Government would have kicked in late in the process at great stress and odds, rather than having had a true collaboration.

Is there a possibility this could actually undermine the type of collaboration that acts early and quickly on an endangered species?

Mr. STRICKLER. Thank you for the question. I think, just to go back to your initial point, the things that you mentioned, candidate conservation agreements, safe harbor agreements, proactive conservation work to try to preclude listing or take positive conservation steps before a species is listed, those things really show the flexibility of the ESA as it is written. Of course, there are processes that can be improved and that are always improving and would make things a little more seamless with respect to those kinds of voluntary agreements, but they are really helpful, and they are able to be entered into under the Act, and I think that is a very valuable thing.

Senator MERKLEY. Thank you.

Senator BARRASSO. Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Secretary, good to have you here.

Mr. Chairman, the Secretary was on my staff over on the Natural Resources Committee, so I am used to actually having him sit

next to me in a hearing. And it is good to see you on the other side of the dais as the Secretary from the State of Virginia.

Matt actually is an oyster farmer. That is what he did in a previous life, so I am looking forward to harvesting the pearls of wisdom from you here today. He has always been a common sense, smart, pragmatic advisor.

You say in your testimony that the best way to improve implementation of the Endangered Species Act and to recover more species faster is for Congress to provide adequate funding for science and management of those resources and their habitat.

What does adequate funding look like? How much more do we need to appropriate? Where is the need the greatest?

Mr. STRICKLER. Senator Markey, thank you for the question and for your kind remarks. It is good to see you again.

The answer of how much is enough is a difficult one to answer and perhaps is one that congressional appropriators need to deal with, and not me, but I think it is safe to say that we are not there yet. At the risk of being redundant, again, the information that I have received is showing that about a quarter of threatened and endangered species are receiving less than $10,000 a year toward recovery, and that is just not acceptable. We are not going to be able to make meaningful progress in recovering these species or doing much more than, as the Chairman mentioned, keeping them on life support, without a significant dedication of resources.

Senator MARKEY. So, we have prevented 99 percent of listed species from going extinct because of the Act, but it always depends upon the best science.

In your opinion, how much of that success has been dependent upon using the best science in order to ensure that the Endangered Species Act works?

Mr. STRICKLER. Thank you for the question. In my opinion, the science is critical; it is the most important piece of ensuring that the Endangered Species Act works successfully.

Senator MARKEY. And what would the impact be of this draft legislation that is being presented to us in terms of the role that science will play in making decisions?

Mr. STRICKLER. Thank you for the question. I think that there is some frustration that has been expressed, and this may be based on some experience, that States aren't having science that they produce, at least in their minds, adequately considered by the Fish and Wildlife Service when they are making listing and delisting decisions and recovery planning and things like that.

My experience and Virginia's experience is that the Fish and Wildlife Service does take the State concerns into account and is using State science when it is the best available. I think that the current process is working, and we are skeptical of upsetting that balance.

Senator MARKEY. In your testimony, you mentioned that this draft legislation contains provisions that would hinder Virginia's ability to work with Federal agencies under the Endangered Species Act. Can you elaborate on that?

Mr. STRICKLER. Yes, sir. I think one of the key points here is when you are setting up a recovery plan, for example, under this new legislation, one State has to be the lead. We share threatened

and endangered populations of a lot of aquatic species in the Tennessee River watershed with Tennessee. Without the Federal Government, the Fish and Wildlife Service being able to step in and be a referee to that process, I don't think things would work as well trying to recover these species if Virginia and Tennessee were pointing fingers at each other without a central node to kind of coordinate things and point everybody in the right direction.

Senator MARKEY. Finally, this draft legislation currently limits judicial review of the Endangered Species Act on decisions such as the delisting of species. What would, in your opinion, the impact of reduction of judicial review have in terms of your State's role, but in general, our ability to protect endangered species?

Mr. STRICKLER. Yes, sir. Thank you for the question. I don't want to be redundant on this point either, but I think limiting judicial review and limiting the ability of citizens to hold their government accountable for decisions that, in the view of the citizens, they think are not the right decisions, you know, if people bring court challenges that are frivolous or not adequate, they are going to be rejected. We have seen that in the past. Litigation is an important tool. It is not the only tool, but it is an important tool for species recovery.

Senator MARKEY. Thank you. Thank you. We are proud of you sitting down there. We thank you for your service.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you.

Senator CARPER. Mr. Strickler, do I understand you once served in the House of Representative as a professional staffer?

Mr. STRICKLER. With great trepidation, I will answer yes.

Senator CARPER. Who were some of the members you worked with in that time before?

Mr. STRICKLER. I had the privilege, first, of working for then Ranking Member Ed Markey, and when he moved over to this venerable body I worked for Peter DeFazio from Oregon, and then, more recently, for Raul Grijalva from Arizona.

Senator CARPER. Of those three, who would you say was your favorite to work for?

[Laughter.]

Senator MARKEY. Or to put it another way, who hired you the first time?

Mr. STRICKLER. I was hired by Senator Markey.

Senator MARKEY. Thank you. Excellent choice.

Senator CARPER. I have no further questions. Well, I have one.

Thank you both for being here today and for bringing your sense of humor, and for your commitment and your service.

Mr. Secretary, your testimony mentions the economic opportunity to maintain diverse ecology and for restoring our lands and our water. You state that "These places become more attractive for use by hunters, anglers, hikers, and bikers in Virginia."

I grew up in Virginia; I grew up in Danville and Roanoke. You drive down Route 81, Interstate 81 on your way from Maryland on your way to North Carolina, where my wife is from. We drive down Route 81, where I used to take my hunting dogs and go hunting for quail, so I have great affection for Virginia, especially that part of Virginia.

As I said in my opening statement, which I think you were here to hear, we share this experience in Delaware, and that is that we want these places to become more attractive for use by hunters and anglers, bikers and hikers. Not only do people travel from far and near to see the endangered species, all kinds of threatened and endangered species on Delmarva Peninsula and in Delaware, but when they do, they spend money, and they support our local economies.

Would you just elaborate on how habitat restoration and species conservation can bolster economies in Virginia and beyond?

Mr. STRICKLER. Yes, Senator Carper. Thank you for the question.

I think, directly speaking with respect to individual species, there are industries and economies that we have seen pop up in Virginia around recovery of threatened and endangered species. Humpback whales is a great example. For a long time in Virginia, you would never see a humpback whale off the coast. Now we have whale watching trips; people pay money to go off of Virginia Beach and see humpback whales in the wintertime. It is a great thing.

Last week I was down in far southwest Virginia on a trip with The Nature Conservancy and some local partners who are working with the Fish and Wildlife Service and others to recover a number of threatened and endangered mussel species on the Clinch River. It is a really fascinating effort because these mussels, when they are recovered, they filter 10 gallons of water a day.

So, when you have a few of them in the river, your river is not going to be really clean. When you have thousands of them in the river, your water quality is going to be much better. That is improving water quality that supports one of the best trophies—small mouth bass fisheries—in the country, and people are coming from far and wide to participate in that fishery, to participate in water sports and things like that.

This is a river system that was decimated by the vestiges of pollution related to the coal industry only a decade or so ago, and we have really brought it back, and now we are seeing tourism pop up around the recovery and the restoration efforts that are made possible and driven by endangered species recovery.

Senator CARPER. Mr. Broscheid, a last quick comment. Anything you want to mention with an eye toward helping steer us toward some kind of principal compromise on what is a difficult issue, important issue. In closing, quick thought?

Mr. BROSCHEID. Senator, thank you very much.

I agree. I think as far as the West goes and the State of Colorado, half the State is private and half is mixed Federal land, along with some State trust lands out there. It gets complicated.

The old saying is habitat is where it's at; that's where the species live. And if you can work toward habitat conservation, you will likely have recovery of species, of a suite of species that reside in the habitat. But that is not necessarily the case all the time.

Sage-grouse is a perfect example. We have a population that is Gunnison sage-grouse that is located mostly in the Gunnison Basin and small parts of Utah. We have conserved, at the time of the listing, warranted listing, 85 percent of that habitat, working with local governments, the Federal agencies, and those entities to secure 85 percent of that habitat. The bird was still listed as threat-

ened, despite already a discussion or decision by the Service that that would be needed.

I think my point is that birds will fluctuate, and anybody who does bird hunt knows 1 year you may have a great year, and the next couple maybe not. Birds do that naturally. This is the information that is coming out of the science that we are starting to learn. So, securing the habitat doesn't necessarily mean that species will recover; we have to include in there what the scientific and daily needs of that species are. But it does get trickier when you add in a significant amount of Federal land, private land, and State lands within the borders of a State.

Senator CARPER. All right.

Just very briefly, the same question. A word of advice for counsel as we look for principal compromise on what is an important issue, but a difficult issue, Mr. Strickler.

Mr. STRICKLER. I apologize, Senator. Could you just repeat the question?

Senator CARPER. I asked Mr. Broscheid, a word of advice, as we conclude here today, for us as we look for some kind of principal compromise on what is admittedly an important, but difficult issue.

Mr. STRICKLER. Sure. I think I would just add a little bit of insight to continuing answering your previous question on the economics of species recovery.

As we look at protecting these habitats and these ecosystems that support threatened and endangered species, we are also protecting and conserving land that has multiple uses. The outdoor recreation economy is huge business, almost $1 trillion in annual consumer spending in the United States. That is about $22 billion in Virginia alone.

We, as the Commonwealth, have a land conservation strategy that focuses on biodiversity conservation and multiple uses, watershed protection, things like that. When you have those kinds of synergies, you can protect threatened and endangered species, and also get economic benefits.

I think the last point I would make is if the Committee would just keep in mind the significant interest that States like Virginia, that unfortunately have, through mismanagement, lost a lot of our iconic wildlife species decades and centuries ago, but don't take for granted what you have, when you have it, as far as iconic wildlife. Our folks have to travel all the way across the country to see bison or elk or mountain lions, and that used to not be the case. But the places where they do exist are special because they exist, not in spite of them.

Senator CARPER. Thank you.

Thank you both very, very much.

Senator BARRASSO. Well, those special places are called Wyoming, so thank you.

[Laughter.]

Senator CARPER. And there is a Wyoming in Delaware, just south of Dover, Camden, Wyoming.

Senator BARRASSO. Director Broscheid, just a couple quick things.

Title 1 of this discussion draft is intended to really make States equal partners in implementing the Endangered Species Act. Some

defenders of the status quo claim that States can't really adequately conserve wildlife or really don't have interest to do so. The Sierra Club actually went so far as to say authority over wildlife decisions to often hostile State management, is their phraseology about the bill.

I think you have served in high level positions both in the Colorado Parks and Wildlife and in the Arizona Game and Fish Departments. Are States hostile to protecting wildlife in their States? What is your experience?

Mr. BROSCHEID. Mr. Chairman, I think hostile is a strong word. I think it is more of frustration. I think the frustration comes from—and the Governor alluded to this a lot earlier—it is created by uncertainty in decisionmaking processes. You are told something, this is the best science of conservation, and then as you start marching down the road spending millions and millions of dollars that you probably don't have, and then to have those goal posts move constantly, it creates a frustration to a point that folks that you have to work with toward conservation. It makes private landowners, it makes even individuals in Federal land management agencies, as well as the Fish and Wildlife Service, very frustrated when, at the end of the day, a lot of these decisions are being decided in courts and judges are making these decisions, whether there is science in that decision or not.

It is really borne out of our frustration, Mr. Chairman, I think, where you see some States that may have constructive criticism for the Act.

Senator BARRASSO. Well, I appreciate everyone being here today. The hearing has been very useful in outlining the need to modernize the Endangered Species Act in a manner that I think captures the expanded conservation capacity and expertise of our States around the country. I think we need to move beyond the current failing policy of listing species and then leaving them on life support.

Over the weekend, Eric Vance, a Maryland based science writer, editorialized about endangered species in the Washington Post. The headline—this is page A15, Saturday, July 14th—"We Are Losing the Fight to Save Endangered Species." And he stated, "Modern conservation is increasingly about maintaining insanely thin populations with shallow gene pools." He said, "Not only is this expensive and often futile, but also it undermines the whole point of wildlife management."

That is how today's Endangered Species Act operates. For 30 years defenders of the status quo have prevented prior Congresses and Administrations from improving the law, so I believe we need to act. We need the Endangered Species Act to work better.

I appreciate the Western Governors Association to come together on a bipartisan basis; done an excellent job identifying the policies that we can adopt to do just that.

Now it is our turn. I look forward to working across the aisle with members who will join me in using the Western Governors Association's bipartisan work to make the Endangered Species Act work better for both wildlife and for people.

So, I appreciate your being here today.

Members may submit follow up questions for the record. The hearing record will be open for the next 2 weeks.

I want to thank all of the witnesses today for your time and testimony, especially Governor Mead. Grateful that you would take the time to be with us to share your thoughts, your experience, your leadership. We are very grateful and appreciative.

With that, the hearing is adjourned.

[Whereupon, at 11:41 a.m. the Committee was adjourned.]

[Additional material submitted for the record follows:]

RYA18059

The Endangered Species Act Amendments of 2018

Section-by-Section Analysis

TITLE I – ENHANCING THE FEDERAL-STATE PARTNERSHIP

Sec. 101. Definitions.

This section defines terms used in the Endangered Species Act Amendments of 2018 (this Act). It requires the Secretary of the Interior (the Secretary) to initiate a rulemaking to define the terms "great weight" and "maximum extent possible," which are used in this Act to enhance the Secretary's consultation with the States when implementing the Endangered Species Act (the ESA).

Sec. 102. Recovery teams.

This section requires that each listing rule for a threatened or endangered species under section 4 of the ESA must include recovery goals, habitat objectives, and other criteria established by the Secretary, in consultation with impacted States, that upon fulfillment would lead to a delisting or downlisting. Such factors have to be based on the best scientific and commercial data available and, to the maximum extent practicable, use objective and measureable biological criteria.

This section allows the recovery team to modify a recovery goal, habitat objective, or other criterion established for a species by a unanimous vote based on a material change to the best scientific and commercial data available.

This section requires the Secretary to approve or reject the proposed modification of a recovery goal, habitat objective, or other criterion within 90 days of receiving a proposed modification from the recovery team. If the Secretary rejects a proposed modification, he must provide a written justification to the recovery team, applicable State agencies of impacted States, and Congress.

This section requires that the Secretary initiate a status review of a threatened or endangered species within 30 days after the earlier of the date on which he determines that the recovery goals, habitat objectives, and other criteria for the listed species have been met, or the date on which he receives a report from the recovery team stating that the applicable criteria have been met and recommending delisting or downlisting. The Secretary shall make a determination of whether to delist or downlist the species within 90 days of the initiation of the status review.

This section requires, in the case of a positive determination to delist or downlist a species, that the Secretary publish in the Federal Register a notice of the determination within 30 days, a proposed regulation to delist or downlist within 180 days, and a final regulation to delist or downlist within 1 year, of the date of the determination. A determination to delist will not be subject to judicial review until the expiration of the monitoring period for a delisted species.

This section requires, in the case of a negative determination to delist or downlist a species, that the Secretary provide a written explanation to the recovery team, applicable State agencies of impacted States, and Congress.

This section requires that the Secretary submit to the Governor of each impacted State a notice that includes a solicitation from the impacted State of a request to establish a recovery team within 30 days after the date on which a species is listed as threatened or endangered under the ESA. The impacted State may request the establishment of a recovery team within 30 days of receipt of the notice. The Secretary shall establish a science-based recovery team within 1 year of the date on which an impacted State submits a request for a recovery team, or the date on which the Secretary determines that a recovery team would promote the conservation and survival of the species.

This section requires the membership of a recovery team to include representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service; other relevant Federal land and wildlife management agencies; relevant State and local land and wildlife management agencies from each impacted State who are nominated by the Governor; and, upon the agreement of a majority of members representing the aforementioned groups, appropriately qualified scientists. The number of Federal representatives on a recovery team shall not exceed the number of State and local representatives. A vacancy on a recovery team shall be filled in the same manner as the original appointment.

This section requires the Secretary to solicit from the Governor of each impacted state a request by the impacted State to lead a recovery team within 30 days of the establishment of the recovery team. If multiple impacted States request to lead a recovery team, the Secretary shall designate one of the impacted States to lead the recovery team. This shall be done in accordance with criteria established by the Secretary, in consultation with the States, no later than 180 days after the date of enactment of this Act. If no impacted State requests to lead a recovery team, the Secretary, in consultation with all applicable impacted States, shall lead the recovery team.

This section requires a recovery team to fulfill certain duties, including: developing and implementing a recovery plan; proposing modifications to the recovery plan; and recommending delisting or downlisting of a species once established recovery plan criteria have been satisfied.

Sec. 103. State-Federal consultation relating to conservation and recovery of wildlife.

This section emphasizes that Federal authority should be exercised in conjunction with State authority regarding conservation and management of fish and wildlife under the ESA. It expresses the support of Congress for State-led conservation activities that help preclude the need to list a species under the ESA.

This section requires that the Secretary notify the Governor and the State agency of each impacted State and Indian Tribe within 15 days of the receipt of a petition to list a species under the ESA. It requires the Secretary to solicit comments from the Governor, State agency, or Indian Tribe, as applicable, for submission back to the Secretary within 75 days of the notification by the Secretary. It requires the Secretary to consider and give great weight to any comments.

This section requires the Secretary to provide States the opportunity to: lead recovery planning and implementation; expedite threatened species or endangered species recovery by supporting State-level initiatives and partnerships; and increase flexibility and feasibility for the applicability of recovery plans.

This section requires that, in any case in which a recovery team is not established, the Secretary shall approve the request of an eligible State agency of an impacted State to develop or implement a recovery plan. The Secretary shall designate an eligible state agency of an impacted State as leader of the development or implementation of a recovery plan if the Secretary receives multiple requests from impacted States. The selected leader shall develop or implement the recovery plan in consultation with all other impacted States. If no eligible state agency of an impacted State requests to develop or implement a recovery plan, the Secretary shall do so in consultation with all impacted States.

This section provides that an eligible state agency that develops a recovery plan must submit a draft recovery plan to the Secretary no later than 1 year after the date of its authorization to prepare the recovery plan. It requires the Secretary to determine whether a draft recovery plan meets applicable requirements. If the Secretary approves the draft recovery plan, he shall notify the eligible State agency and publish a notice of availability of the draft recovery plan. If the Secretary disapproves the draft recovery plan, he shall provide the eligible State agency with a notice identifying each deficiency, an opportunity to correct each deficiency, and consultation regarding the development of the recovery plan so that it meets all applicable requirements.

This section requires that, on finalization of a recovery plan, an impacted State may make recommendations to the lead eligible State agency or to the Secretary, as applicable, including recommending proposed modifications to the recovery plan and recommending delisting and downlisting once applicable criteria for the species have been satisfied. A lead eligible State agency shall give great weight to any recommendations received from an impacted State.

This section requires the Secretary, in consultation with States, to establish standards and guidelines for the development and implementation of recovery plans by eligible State agencies.

This section permits the Secretary to withdraw the authorization of an eligible state agency to develop or implement a recovery plan. Prior to taking such action, the Secretary shall provide an eligible State agency notice that the authorization is under review and an opportunity to submit comments regarding the review within 30 days after the date of receipt of the notice. On withdrawal of authorization of an eligible State agency designated as leader of development or implementation of a recovery plan, the Secretary shall designate another eligible State agency as leader. If no additional eligible State agency requested to be leader of development or implementation, the Secretary shall develop or implement, as applicable, the recovery plan.

Sec. 104. Consultation with States regarding land acquisition.

This section requires the Secretaries of the Interior, Commerce, or Agriculture, as applicable, to notify and consult with a State to the maximum extent possible prior to acquiring land within its borders, including prior to proposing the acquisition. It requires the applicable Secretary to give

great weight to the comments received from a State when determining whether to carry out the proposed acquisition.

Sec. 105. Cooperation with States and Indian Tribes.

This section requires the Secretary to consult with the States to the maximum extent possible and to acknowledge and respect the primary authority of State agencies to manage fish and wildlife within their borders. Consultations must be based on the best scientific and commercial data available and include each impacted State, including Indian tribes and Native Corporations.

Sec. 106. State consultation regarding experimental populations.

This section amends section 10(j) of the ESA by requiring the Secretary to establish through an agreement with the State agency of each impacted State the boundaries of the area in each State in which an experimental population of a listed species is authorized to be released. It also requires compliance with the applicable permitting requirements of the State agency of each impacted State in authorizing a release.

Sec. 107. State participation in settlements.

This section amends section 11(g)(2)(C) of the ESA. It requires the Secretary to provide notice to, consult with, and otherwise take appropriate actions to include impacted States and local governments in impacted States when preparing or entering into a settlement or other agreement relating to the Secretary's failure to perform a non-discretionary duty under section 4 of the ESA.

Sec. 108. Award system for State agencies.

This section requires the Secretary to establish an award system under which he may publicly commend up to five State agencies each year for outstanding performance in conserving and recovering wildlife. It requires the Secretary to develop criteria for the award system in consultation with the Association of Fish and Wildlife Agencies and other representatives of State fish and wildlife agencies, including regional groups, State fish and wildlife agencies, and other applicable State agencies.

Sec. 109. State feedback regarding U.S. Fish and Wildlife Service employees.

This section requires the Director of the U.S. Fish and Wildlife Service annually to solicit from the Governor of each State feedback on the performance of the U.S. Fish and Wildlife Service and its employees within their respective borders. The feedback shall be provided by each appropriate State agency tasked with the conservation and management of fish and wildlife. The feedback shall reflect the responsiveness of the U.S. Fish and Wildlife Service to representatives of State and local government and stakeholders who reside in the State. The Governor of each State may petition the Director of the U.S. Fish and Wildlife Service to publicly commend any employee of the U.S. Fish and Wildlife Service for outstanding performance in carrying out duties relating to species conservation, species management, the recovery of threatened and endangered species, and the implementation of the ESA, within the borders of the State.

RYA18059

TITLE II – ENCOURAGING CONSERVATION ACTIVITIES THROUGH REGULATORY CERTAINTY

Sec. 201. Sense of Congress regarding credit for conservation agreements and activities.

This section establishes the sense of Congress that States, Indian Tribes, units of local government, landowners, and other stakeholders should receive credit for enrolling in, and performing obligations under, conservation agreements, as well as investing in, and carrying out, conservation activities, generally. The Secretary should take into account the enrollment in, and performance of obligations under, conservation agreements, and investments in, and carrying out of, general conservation activities by States, Indian Tribes, units of local government, landowners, and other stakeholders in making determinations under the ESA.

Sec. 202. Conservation agreements as regulatory mechanisms.

This section requires that a conservation agreement entered into or endorsed by the Secretary shall be considered a regulatory mechanism for purposes of determining whether to list a species as threatened or endangered under section 4 of the ESA.

Sec. 203. Voluntary wildlife conservation agreements.

This section requires the Secretary to establish procedures for developing and entering into voluntary wildlife conservation agreements, including with state and local governments, private landowners, lessees, and private third party organizations. It requires that any party to such an agreement that is in compliance therewith shall not be required to carry out any additional mitigation measures for a species covered by the agreement, if the additional measure would require any additional expenditure of resources or the adoption of any additional restriction on a land, water, or water-related right of the party. It requires the Secretary to streamline the process for entering into a voluntary wildlife conservation agreement to the maximum extent practicable.

Sec. 204. Candidate conservation agreements with assurances.

This section requires the Secretary to: honor the terms of Candidate Conservation Agreements with Assurances (CCAA); to promulgate regulations to expedite the process for entering into CCAAs; to promulgate regulations to protect sensitive personal and business-related information of each party to the agreement; and to consider whether the implementation of the agreement is reasonably expected to preclude or remove any need to list the species. It prohibits the Secretary from considering whether the implementation of the agreement is reasonably expected to provide a net conservation benefit to the species. It prohibits the Secretary from precluding a party to a CCAA from receiving Federal funds under any other conservation program.

This section voids the final rule promulgated by the Secretary of Interior entitled "Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Candidate Conservation Agreements With Assurances" (81 Fed. Reg. 95053).

Sec. 205. Safe harbor agreements.

This section authorizes the Secretary to enter into a Safe Harbor Agreement with a state and local government, private landowner, lessee, private third-party conservation organization, or other entity that shall provide for the taking of any additional threatened or endangered species that is not covered under another agreement and is drawn to the property covered by the Safe Harbor Agreement due to the improved conditions on that property generated by recovery activities for the benefit of the species covered by the Safe Harbor Agreement. It authorizes the Secretary to enter into a Safe Harbor Agreement that may provide for an extension of these protections to neighboring properties not covered by the Safe Harbor Agreement due to the improved conditions on the property covered by the Safe Harbor Agreement generated by recovery activities for the benefit of the species covered by the Safe Harbor Agreement.

TITLE III – STRENGTHENING CONSERVATION DECISIONMAKING THROUGH INCREASED TRANSPARENCY

Sec. 301. Policy relating to best scientific and commercial data available.

This section establishes a policy relating to best scientific and commercial data available that prohibits the Secretary from disclosing information pursuant to the Freedom of Information Act that includes sensitive information regarding a species, identifies the property of a specific landowner, or includes sensitive personal or business-related information. In any case where the Secretary is required to use the best scientific and commercial data available, he shall, in evaluating comparable data, give greater weight to data that is empirical or that has been field-tested or independently peer reviewed. In any case where the Secretary determines that information provided by a State, Tribal, or local government is deficient in fact and inconsistent with other credible scientific and commercial information, he shall provide a written explanation to the State, Tribal, or local government and Congress, and include the information and written explanation in the administrative record of the listing, critical habitat, or other designation.

Sec. 302. Transparency of information.

This section requires that the Secretary make publicly available on the internet the best scientific and commercial data available that are the basis for each proposed and promulgated regulation. It requires that the Secretary obtain concurrence before publishing information derived from or provided by a State or local government. The Secretary shall obtain consent before publishing any copyrighted material. On request by a State, the Secretary shall not make available information the disclosure of which a State has determined is prohibited by its own laws. The Secretary also shall not disclose any information that may be withheld under the Freedom of Information Act or that would violate the policy relating to best scientific and commercial data available under section 2(d) of this Act.

Sec. 303. Information provided to States.

This section applies to cases where the Secretary has not received a petition to list a species but is considering proposing to list a species at his own discretion. It requires the Secretary: to notify

the Governor and the State agency of each impacted State that he is considering taking such action; to solicit comments from them to be submitted to the Secretary no later than 60 days after the date of receipt of the notification; and to consider and give great weight to such comments before publication of a draft, proposed, final, or emergency regulation to list the species.

Prior to making any determination to list under section 4(a) of the ESA, the Secretary shall: provide to each impacted State all information on which the determination is based; consider, give great weight to, and use State data, analyses, and comments; and accept comments from the Governor, State agency, and any affected local government within an impacted State.

This section requires the Secretary to obtain concurrence from a State or local government that generated or submitted information before providing that information to another State. It requires the Secretary to obtain the consent of the holder of a copyright before publishing copyrighted material. If the copyright holder refuses to provide consent, the Secretary shall provide bibliographic information relating to the material sufficient to ensure that stakeholders can independently obtain the information.

Sec. 304. Transparency in litigation.

This section requires the publication by the Secretary, including electronically, of any complaint filed under section 11(g) of the ESA not later than 30 days after service of process. It requires the Secretary to provide any State, Tribal, or local government the rights of which may be affected by a listing decision a reasonable opportunity to move to intervene. In considering a motion to intervene, the court shall presume, subject to rebuttal, that the parties to the action would not adequately represent the interests of the State, Tribal, or local government.

This section requires the Secretary to provide notice of a proposed settlement to each impacted State and each county in which a species is believed to occur.

This section requires the disclosure by any federal agency of the amount for attorney fees paid to any person in connection with a complaint filed under section 11(g)(1)(C) of the ESA. It requires the Department of Justice to publish an annual report in the Federal Register based on this information.

TITLE IV – OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

Sec. 401. Prioritization of listing petitions, reviews, and determinations.

This section establishes a prioritization system for addressing listing petitions, reviews, and determinations. It requires the Secretary to submit with his annual budget request a national listing work plan that includes: a seven year schedule for completing status reviews and accompanying 12-month findings regarding petitions for listing species; status reviews relating to the species initiated by the Secretary; proposed and final determinations regarding listing the species; and proposed and final critical habitat designations. It also requires the Secretary to include with his budget request the amounts that will be required to carry out future work plans.

DISCUSSION DRAFT

This section requires that the Secretary assign each species covered by the work plan a priority classification of Priority 1 through Priority 5 based on the information available and the urgency for action with regard to determining the status of a species under the ESA. Species designated as Priority 1 are given highest priority. Species designated as Priority 5 are given lowest priority.

This section authorizes the Secretary to retain a species assigned a priority classification of Priority 3 through Priority 5 on the workplan for not more than an additional five year period beyond the initial seven year period if the Secretary makes certain determinations, such as, additional time would allow for more complete data collection or the completion of studies relating to the species, or existing conservation efforts continue to meet the conservation needs of the species.

This section authorizes the Secretary to modify a work plan only on an emergency basis and in consultation with each State affected by the modification.

This section provides that, in the case of a species assigned a priority classification on the workplan, the Secretary shall not be required to act on a petition or review regarding the status of a species by any deadline otherwise required by the ESA until the last day of the period on which the workplan to which the species that is the subject of the petition is assigned.

TITLE V – STUDIES TO IMPROVE CONSERVATION

Sec. 501. Definition of Secretaries.

This section defines the use of terms used throughout Title V.

Sec. 502. Feasibility studies.

This section requires the Secretaries of the Interior and Commerce to conduct feasibility studies relating to: protecting habitat located outside of the United States to promote the conservation of a species in the United States that is listed; providing regulatory flexibility to incentivize States, local governments, and private landowners to stock listed species into unoccupied habitat; and providing regulatory flexibility to allow for a multi-species approach to planning, conservation and recovery to improve coordination in cases where multiple species may have conflicting habitat requirements and competing natural resource requirements.

Sec. 503. Studies on determinations to list.

This section requires the Secretaries of the Interior and Commerce to conduct studies to analyze the extent to which their departments have accounted for factors like disease, predation, and invasive species when deciding to list a species as endangered or threatened. The study shall review any factors that threaten and endanger species for which application of the ESA would not improve a species' population. It shall examine and present findings regarding the weight given to factors like disease, predation, and invasive species in listing decisions. It shall make recommendations for ways to improve the inclusion of, and to give appropriate weight to, such factors in the analysis of the best scientific and commercial data available.

Discussion Draft

Sec. 504. Study and report on expenditures.

This section requires the Comptroller General of the United States to conduct a study, and to submit a report to Congress, regarding the amounts of federal money expended or disbursed for each of fiscal years 2014 through 2018 as a direct result of any provision of the ESA.

This section requires that within one year of enactment of this Act, the head of each federal agency or department must submit a report detailing amounts expended or disbursed by their agency or department. They must present this information according to programmatic office, provision of the ESA, and project or activity.

This section requires that within eighteen months of enactment of this Act, the report detailing the findings of the study shall be submitted to Congress. Not later than 90 days after the initial date of the first session of each Congress thereafter, a report detailing similar findings with respect to the preceding two fiscal year period shall be submitted to Congress.

Sec. 505. Study to quantify litigation expenses.

This section requires the Comptroller General of the United States to conduct a study, and to submit a report to Congress, quantifying the amount of federal resources expended in connection with litigation under the ESA.

TITLE VI – REAUTHORIZATION

Sec. 601. Reauthorization.

This section reauthorizes appropriations for the ESA.

Discussion Draft

EXECUTIVE CHAMBERS

HONOLULU

DAVID Y. IGE
GOVERNOR

July 19, 2018

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
U.S. Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

I am responding to the statement made by Chairman Barrasso at the Environmental and Public Works Committee hearing held on July 17, 2018. Chairman Barrasso entered into the hearing record the Western Governors' Association's (WGA) letter dated February 14, 2018 that offered comments regarding Chairman Barrasso's proposed legislation to amend the Endangered Species Act (ESA). Chairman Barrasso then stated, "This [WGA] letter of support is signed by Governor of Hawai'i, a Democrat and Vice Chair of the Western Governors' Association, Governor Ige, so there has been a submission by a Democrat" as bipartisan support for the proposed legislation.

As Governor of the State of Hawai'i, I do not support Chairman Barrasso's proposed legislation. I cannot support the proposed legislation in its current form. As drafted, new limitations on judicial review, increased responsibilities for states without adequate funding, and changes to how science guides ESA implementation could have extremely negative impacts on the recovery of endangered species. In addition to new obstacles that it could create, the proposal fails to solve the longstanding problem of adequately funding the current mandates of the ESA.

To be clear, I signed the February 14 letter solely in my capacity as Vice Chair of the WGA. WGA represents the Governors of 19 western states and 3 U.S. territories in the Pacific. WGA develops bipartisan policies, encourages information sharing and takes collective action on issues critical to the western United States. WGA provided comments on certain areas of the proposed legislation where there was bipartisan agreement and was silent on other areas.

My role as WGA Chair, and Vice Chair at the time the February 14 letter was signed, does not necessarily reflect my position as an individual Governor. In fact, the letter as a whole does not represent the views of any individual Governor, as explicitly spelled out in its closing paragraph:

> Each Governor reserves judgment on whether to continue supporting this bill as it moves through the legislative process.

While I cannot support Chairman Barrasso's proposed legislation, I appreciate Governor Matt Mead's effort to amend the Endangered Species Act in a bipartisan manner through the Western Governors' Association's process. I want to emphasize that the process is important, and that true bipartisanship is Republicans and Democrats in Congress working together to draft this legislation.

With warmest regards,

David Y. Ige
Governor, State of Hawai'i

c: The Honorable Mazie Hirono
The Honorable Brian Schatz
James Ogsbury, Western Governors Association

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