

**MODERNIZING THE ENDANGERED SPECIES ACT:
LEGISLATIVE HEARING ON S. 4589, THE EN-
DANGERED SPECIES ACT AMENDMENTS OF
2020**

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION
SEPTEMBER 23, 2020

Printed for the use of the Committee on Environment and Public Works



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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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WEDNESDAY, SEPTEMBER 23, 2020

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

The Committee, met, pursuant to notice, at 10:06 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Cramer, Braun, Rounds, Sullivan, Boozman, Ernst, Cardin, Gillibrand, Booker, 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 Senate Bill 4589, the Endangered Species Act Amendments of 2020. I introduced this legislation to modernize and to strengthen the Endangered Species Act. It is the culmination of a collaboration with stakeholders from across the political spectrum, and it began 4 years ago.

During my time as Chairman, we have held five different hearings on how the Endangered Species Act needs to be reformed so it works better for wildlife and for people. It is clear: Legislation is needed to accomplish this goal.

It was my intention to introduce a bill with the support of environmental and wildlife conservation organizations and a bipartisan group of Senators. Our stakeholder feedback process made clear that at least one provision in my bill is a non-starter for those groups and for the Committee's minority. It also made clear that the same provision is the top priority for my home State of Wyoming.

The Endangered Species Act requires the Secretary of the Interior to monitor a species for at least 5 years after the species is fully recovered and delisted. My legislation would delay the ability of a Federal court to overturn a delisting rule during this 5 year monitoring program. It doesn't eliminate anyone's rights to challenge a delisting rule in the Federal court; it only delays such a lawsuit so States have an opportunity to prove that they can successfully manage the recovered species.

Under my legislation, a recovered species is still protected during that 5 year post-delisting monitoring period. They are still protected by State regulations and the State management plan, and by the Secretary's authority to relist the species if its condition deteriorates. These changes to the Endangered Species Act are critical for Wyoming, for Montana, for Idaho, and for other States.

This point was highlighted at a hearing this Committee held earlier this month. The grizzly bear in the Greater Yellowstone ecosystem is fully recovered. That is not just me saying it; President Bush, President Obama, and President Trump all agree, and each of those administrations have tried to delist the species. Yet activist Federal judges have repeatedly intervened to overturn these delisting rules.

The decades long commitment of time and resources by States and stakeholders simply cannot continue if the good work to recover the grizzly bear is ignored by activist courts. I understand that this provision ensures some stakeholders won't support my bill; however, it is an issue that needs to be addressed if we are to improve the Endangered Species Act.

Many other concepts and provisions in the bill have received positive feedback and support from environmental and wildlife conservation groups. They include the parts of the bill that reauthorize the Endangered Species Act for the first time in almost 30 years, substantially increasing the funding authorization, and focusing money on recovery of species, elevating the role of States in implementing the act, ensuring non-governmental stakeholders have a clearer voice in recovery and in implementing planning, providing regulatory certainty to incentivize investment in conservation and recovery activities, and prioritizing resources for species that are most in need.

Stakeholders have also sought a significant additional funding stream for wildlife conservation. I continue to be open to exploring this possibility. The funding levels must be reasonable, justified, and paid for. They must also be part of a bill that modernizes the Endangered Species Act.

Since the Endangered Species Act was signed into law, fewer than 3 percent of listed species have been recovered and delisted. This is a failure, not a success. We must do more than just list species and leave them on life support. We need to see them recovered and delisted. The Endangered Species Act Amendments of 2020 will go a long way to achieving this goal.

I want to thank all of the stakeholders who participated in bringing the legislation to this point, including those stakeholders who currently cannot support the bill. I hope to continue to work to find a viable pathway for this legislation as we move into the 117th Congress.

I would now like to turn to Ranking Member Carper for his opening statement.

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

Senator CARPER. Thanks, Mr. Chairman. Good to see you.

Good to see all of our colleagues today, and I am happy to welcome back Governor Gordon. We have almost a quorum here today,

with you and Governor Rounds, and others. We are happy to see you, and we welcome our other witnesses, Jamie Rappaport Clark, and Aliese Priddy.

As a recovering Governor and former State treasurer myself, I appreciate the critical role that States play, as well as the challenges that they may face in implementing many of our Federal laws, and that includes the Endangered Species Act. We gather here today to consider legislation that would make significant changes to the Endangered Species Act, one of our Nation's most popular environmental statutes at a time when our world is facing dramatic decline in biodiversity.

Last week, in fact, the United Nations released a report warning us that humanity is at a crossroads. Climate change fueled by harmful emissions, rapid industrial growth, and deforestation are destroying or seriously disrupting ecosystems throughout our planet.

As rising sea temperatures acidify the ocean, bleaching coral reefs in the process, plastic pollution is overwhelming marine life in large parts of our ocean.

As severe heat and longer droughts create drier conditions, animals and birds cannot escape the catastrophic wildfires that engulf many of our forests.

The steep decline in biodiversity is not just dangerous in theory; biodiversity is the variety of life on Earth. Its imbalance endangers humans, too, fueling the spread of invasive species and zoonotic disease. Addressing this biodiversity crisis is all the more important as our country mourns the loss of more than 200,000 Americans to COVID-19, a zoonotic disease.

Fortunately, the Endangered Species Act is one of our Nation's best tools to support, improve, and protect biodiversity. How, you might ask? Well, let's consider my own home State of Delaware.

The First State enjoys an effective partnership with the U.S. Fish and Wildlife Service within the framework of the existing Endangered Species Act. Through this partnership, the act has helped recover species in our State, just in recent years, such as the Delmarva fox squirrel and the iconic bald eagle.

Delaware's Department of Natural Resources and Environmental Control is currently collaborating with the U.S. Fish and Wildlife Service to combat the spread of something called white nose syndrome, a disease that has wiped out entire populations of endangered bats in our State, and as we know those bats serve a valued purpose.

Our Fish and Wildlife Service Northeast Region is also working with landowners, with industry partners, with nonprofit organizations, to prevent new Endangered Species Act listings and to restore the Delaware River basin.

Meanwhile, people travel from around the world to visit us in Delaware to see threatened and endangered species, most notably, the red knots and piping plovers, two types of migratory birds that find safe haven on our shores to fuel on horseshoe crabs or nest on our beaches.

They fly all the way from the South Pole almost to the North Pole, and they stop for lunch in Delaware. A lot of people from around the world come and see them. If our visitors today are

lucky enough, some of them might even spot a North Atlantic right whale or a sea turtle off of our shores.

I have heard from many of my constituents who are also passionate about protecting species in their States, other States. Delawareans certainly support improving species conservation outcomes, but they overwhelmingly believe that Congress can do that by helping to address funding shortfalls at both the State and the Federal level.

In fact, I would say that most, if not all the witnesses who have testified at our many wildlife hearings that our Committee has held, during the past two sessions of Congress, they seem to agree that States and Federal agencies lack sufficient wildlife conservation resources.

Let me just say that this is not entirely a Federal burden. It is not entirely a State or local burden; this is a shared responsibility. We are one of those who need to share our fair share.

As some of you will recall, one of Wyoming's former Governors, Dave Freudenthal, cochaired of the Blue Ribbon Committee, I believe it was in 2014, on how best to sustain America's diverse fish and wildlife resources. That panel, as some of you will recall, that panel which included State leaders, industry, and conservation organizations, determined 4 years ago, in 2016, that a new funding model for State wildlife management is necessary. Yet the legislation before us today does not prioritize funding.

While I do support reauthorizing the Endangered Species Act, doing so does not constitute a complete or meaningful funding strategy. Reauthorization also does not guarantee funding increases for Federal agencies, nor does it provide additional funding to States. Instead, the legislation before us today proposes changes to the Endangered Species Act that raise heartfelt concerns for those of us in Delaware and beyond.

For one, it attempts to shift responsibilities for recovery and other species management decision to States, without providing additional funding for States to fulfill those expanded roles. This is particularly troubling, even, I think, counter-intuitive, because species typically only require Endangered Species Act protection when State management has failed.

At the same time, the legislation before us also expands States' roles by creating more steps to add the Endangered Species Act implementation process, which could unintentionally create more, not less, bureaucratic red tape.

Most concerning of all, however, the legislation includes a sweeping judicial review prohibition that limits the public's opportunity to challenge delisting decisions that may not be supported by the best available science or otherwise may not be fully compliant with the law.

I believe that most of our colleagues know that I tend to be someone who tries to understand where my colleagues are coming from, especially when it comes to issues of importance to their States. I think our Chairman is like that as well, and I think most of us on this Committee are, too.

But over the course of the last two Congresses, I have learned how and why Delaware's experience and perspective is vastly different from some other States', including Wyoming, on this par-

ticular issue. But having said that, I still struggle to fully understand how this legislation would support species recovery or serve the American public, in Delaware or in most other States. While I believe there are areas of bipartisan agreement on how to better protect and conserve species, sadly, I am afraid they are not clearly reflected in the legislation that we are considering today.

With that said though, I still look forward to our discussion today. I am hopeful that the result will be a return to bipartisan policy, making one that considers the views of all our States and stakeholders, based upon shared principles and priorities. This Committee is capable of doing that; in fact, under the leadership of our Chairman and the support of Democrat and Republican members of our Committee, we do it regularly, and I am proud to say, as recently as this month.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Carper.

We are delighted to have two panels today; each member of the Committee will have an opportunity to question one or both members, either a 5 minute round of questions with either panel, or 3 minutes with both.

On the first panel, we are going to hear from Hon. Mark Gordon, who is Governor of Wyoming. On the second panel, we will hear from Leisa Priddy, who is the owner and operator of the JB Ranch, and Jamie Rappaport Clark, who is President and Chief Executive Officer of Defenders of Wildlife, and she will be joining us remotely from Leesburg, Virginia, today.

I want to remind the witnesses that your full written testimony will, of course, be made part of the official hearing record today, so I would ask that you please keep your statements to 5 minutes so we will have plenty of time for questions. I know we do have a roll call vote on the floor of the Senate a little later this morning.

First, I would like to introduce Wyoming Governor Mark Gordon, who has been serving as Governor since January 2019. Governor Gordon grew up on a ranch outside of Kaycee, Wyoming. He worked there after graduating from college. He then started his own ranch, as well as several successful outdoor recreation and tourism businesses in both Buffalo and Sheridan, Wyoming.

Today, Governor Gordon and his wife Jennie own and operate the Merlin Ranch east of Buffalo, which has been recognized by the Society for Range Management with the Excellence in Ranch Stewardship award.

Prior to his election as Governor, he served as Wyoming's State treasurer from 2012 to 2019. Governor Gordon's efforts to improve the State's financial portfolio resulted in Wyoming being ranked No. 1 in the country for transparency.

Governor Gordon's service to Wyoming does not stop there; he has served in a variety of other positions, including as a member of the boards of the Wyoming Wildlife and Natural Resource Trust and Nature Conservancy in Wyoming, the Wyoming Environmental Quality Council, and the Powder River Conservation District in Johnson County, Wyoming.

I hope that Governor Gordon will tell us about some of his experiences in Wyoming balancing the interests of citizens while effectively conserving and recovering wildlife.

Governor Gordon, it is a great honor to welcome you again as a witness before the Environment and Public Works Committee. I want to thank you for traveling from Wyoming to Washington today to be part of this hearing.

Governor Gordon, please proceed.

**STATEMENT OF HON. MARK GORDON,
GOVERNOR, STATE OF WYOMING**

Mr. GORDON. Thank you, Mr. Chairman, Ranking Member Carper, and members of the Committee. When I last had a chance to be before this Committee, we were a lot closer, but I thank you very much for this opportunity to testify on Senate 4589, Amendments to the Endangered Species Act.

I am the 33rd Governor of Wyoming and the third in succession to support such a bill. Governor Freudenthal, that Ranking Member Carper mentioned, as a Democrat and a friend, he was the first. Governor Mead, a Republican, also a friend and my immediate predecessor, both suggested improvements like those contained in this bill.

Unlike them, I am not an attorney, though we all share a love of our State and its remarkable wildlife, flora, and fauna. I was remembering, as I came here yesterday, that a year ago, I was with game and fish biologists as they were logging and collaring a male grizzly bear that had gotten into some trouble in Sunlight Basin. For some of you, Sunlight Basin is familiar. It is a beautiful valley just east of Yellowstone Park. The Clarks Fork runs through it, the same river where the Nez Pierce, led by Chief Joseph, made good their escape from pursuing armies.

This particular bear had gotten into trouble for killing a horse in someone's pasture, and therefore, it needed to be relocated. I remember that experience as being especially meaningful, because back in the late 1970s and early 1980s, I had worked as a citizen environmental leader to help recover the bear after Yellowstone Park's dumps had closed as a tourist attraction.

At the time, there were fewer than 150 bears in the area. Not many bears, and for a couple of generations, their lives were transformed immeasurably.

But they have subsequently learned new behaviors. I am a rancher, one of nine who signed up in 2014 for the first Candidate Conservation Agreements with assurances inside a tent with Governor Mead and former Secretary of Interior, Sally Jewell. It took place on a windy hill outside Pinedale, Wyoming, and the ceremony represented the culmination of many efforts between Wyoming Governors, landowners, industry, and the Federal Government to find a strategy that would protect the sage-grouse and enhance core sage-grouse habitat, because that is essential to protecting the bird from extinction.

In turn, as we have learned more about this fascinating bird, I have issued my own executive order recently to improve on this approach, which began two administrations ago, involving private landowners, government agencies, non-governmental entities, industry, citizens, all with the common aim of protecting the largest concentration of remaining grouse habitat in the country.

It is working. Northeastern Wyoming sage-grouse populations have improved of late, something that I can attest to from seeing the birds in my own Hall Pasture over the course of the past year.

I digress to point out my personal experience with the Endangered Species Act from many sides of its implementation, and while I must acknowledge that there are many aspects of the act which can be problematic to private property at times, misinterpreted science, and at times be used improperly, it is nonetheless, a well intentioned law with a laudable aim, an aim which it has sometimes failed to accomplish.

Members of the Committee, I come to you today because I believe the Endangered Species Act is broken, and there is no scientific reason it shouldn't be fixed. This bill amends the Endangered Species Act in necessary ways that are intended to bring more transparency, better cooperation, and incentive, and that most key element of empirical science, the ability to test a hypothesis, correct for undesirable outcomes, and chart a clear course to species recovery.

Wyoming provides a multitude of successful examples from species recovery to preventing species from being listed in the first place. Unfortunately, Wyoming also has a long history of being hamstrung with paying for species management, yet being obliged to defer to Federal Government on decisions about that management. This is particularly vexing when species have fully recovered, yet remain listed because of legal horseplay and judicial jousting.

Rather than focusing on actual results, courts are asked to speculate on what ifs that lead to a vicious cycle. On the side of those charged with finding solutions, they face unending expense and never ending challenges, while well meaning gadflies take advantage of a golden goose that lavishes court costs and legal fees and provides a fund raising cash cow. Neither the species nor affected parties find much relief in that recipe.

This is not how the act was supposed to work. Wyoming is home to several lightning rod species, species like the carnivores that command national and international attention. The gray wolf and the grizzly bear have a marquee value that is mesmerizing. Perversely, some organizations who set forth to do good work found the fundraising appeal of these stars irresistible.

While dire threat once underscored urgency, now the work to resolve these issues falls to more routine issues of rising in areas where large carnivores come into conflict with humans, domestic livestock, and big game. That process can seem more mundane, taking up the cudgel that the Endangered Species Act has become to impose the will of the Federal agency often to the detriment of affected parties seems to be more compelling.

Let me mention a few examples of why the ESA needs fixing. The gray wolf was reintroduced in Wyoming, despite objections throughout the State. After five lawsuits and 15 years, the wolf was finally delisted.

Scientific research and rigorous study proved to us that the wolf has reached the recovery thresholds that had been set for it for 10 years before that finally happened. Today, under our management, the population is thriving and expanding, well above federally required population objectives.

Another successful recovery, by all accounts, is that of the Greater Yellowstone grizzly bear. It ranks as one of the most significant conservation success stories in North America, and I will tell you why. When a retired judge wakes up to find grizzlies on his back porch in downtown Cody, 52 miles from Yellowstone Park, or even further on, 47 miles away in Cowley, Wyoming, a farmer's corn maze needs to be shut down last year because grizzlies are in it, it is pretty evident bears are expanding and thriving too, well beyond government objectives.

But this example of recovery is also an example of the act's reluctance to delist. We know more about the grizzly bear than any other wildlife species on the face of the Earth because we have studied it extensively since 1975. In all that time, we have seen methodologies and technologies improve. Our ability to estimate populations, migration, migration dynamics, behavior, and so on has evolved even as challenges facing the bear have also emerged.

Wyoming is proud to have paid for and taken an active role in grizzly bear recovery and management for over four decades. Wyoming hunters and anglers financed the \$50 million investment in grizzly bear recovery.

When I started working on environmental issues back in 1979, the population was estimated to be around 136 bears. They were in peril, no question about it.

Now, the most conservative estimates run between 700 bears on the low side and as many as 1,200. The population is recovered to a point where it is the Wyoming people who have changed the way they work, live, make their livings, and recreate in bear country. More human-bear interaction means there are more bears doing more things that involve people. These incidents, some tragic, provide further proof that the bear has recovered, and management must evolve beyond its initial objectives.

Despite the species being fully recovered for 20 years by every milestone that has been set for it for over those 40 years, the bear remains listed, not because there is some novel or unaccounted for threat, not because there is some scientific concern over the population's viability; it remains listed because twice, Federal courts have rejected meticulously crafted U.S. Fish and Wildlife rules. In both cases, the court delved into complex and sometimes unsettled scientific findings as well as policy decisions of the Fish and Wildlife Service, looking for what ifs to scuttle the delisting.

The courts seemed to ignore the findings and conclusions of grizzly bear experts in favor of ruling in a way that simply reaffirms a status quo. Perhaps it should come as no surprise or coincidence that five of the six lawsuits challenging the most recent 2018 grizzly bear delisting rule were filed in the same District Court, a court where previous eco-activist backed suits had found success. That is what we apparently do these days: Shop for judges favorable to one's point of view, regardless of law or evidence.

Wyoming spends around \$2 million annually to manage grizzly bears. That is the State's money, not Federal reimbursement. Grizzlies are federally protected species, yet the State of Wyoming bears much of that cost. An obvious question is, why are we unable to manage the bears when we should be shouldering so much of the cost?

For these reasons and many others, I support the bill before you today. These amendments will align the act with its original intent to protect imperiled species, recover them, and remove them from the threatened or endangered species list.

My predecessor, Governor Mead, opined before this Committee a few years ago about better ways to serve listed species and get them to what should be the goal of the ESA: Delisting. His suggestions were supported and crafted by the bipartisan Western Governors Association. They are sound.

To my view, the largest barrier to delisting and returning the management of fully recovered species to the States and Tribes is litigation. Not litigation based on whether a species is recovered, but litigation aimed at finding technicalities in how the United States Fish and Wildlife Service promulgated the rules in the first place.

Thus, I believe, this bill's proposed delay of judicial review during post-delisting monitoring is essential to its success. This provision will not harm species conservation. Rather, it will provide States and Tribes a reasonable period of time to show whether their management plans work. This approach properly comports with the scientific method.

In any case, this bill still provides substantial safeguards, allowing for greater Federal involvement should that be deemed necessary, including emergency relisting. There is a safety valve. Giving States an incentive to implement State management plans will work. Keeping the big stick usually used to hit States over the head via litigation at a reasonable distance will incentivize State led conservation efforts.

Wyoming has invested in conservation for listed species, given the face of multiple legal challenges. We have shown our commitment and our ability to find success with the Wyoming toad, the black-footed ferret. We are proud of that heritage, and yet public support of this type of investment could wane with the continued frustration that has come at the hands of pickers of nits.

Critics of amending the act may say that States don't want to conserve at risk species, or that States lack capacity and expertise. Nothing could be further from the truth. The majority of wildlife in our Nation is managed and managed well by State and Tribal governments. The Public Trust Doctrine, outlined in the North American Model of Wildlife Conservation, is the bedrock for wildlife conservation in our country.

It is also worth recognizing the substantial contributions made by private landowners, ranchers, and farmers across our Nation to wildlife conservation. To have those efforts overturned by litigation early in process is a great deterrent to cooperation.

Further considerations, including takings, are not insignificant, and they also deserve a fair hearing. This bill provides a thoughtful way to address these complex issues.

The current bill significantly improves on this bedrock act by encouraging State and Tribal involvement throughout the ESA process. It provides requirements for the Secretary to notify Governors when an ESA petition is filed. It provides allowances for State agencies to lead recovery teams and to take significant roles in recovery planning and implementation. It provides Governors and

Tribal leaders the opportunity to weigh in on a listing decision before it is too late.

These are critical steps, recognizing the value of local wildlife managers and what they bring to conservation and recovery of imperiled species. Most importantly, it provides an early entry for State and Tribal governments, as well as citizens and those affected, to help define what recovery looks like.

Almost 30 percent of the species listed under the ESA have no recovery plan. A problem. How can a State, Federal, or Tribal Government meet the intent of the act and help recover imperiled species if they don't know how a recovery will be defined?

Senator BARRASSO. Governor, I am so grateful for your passion, I know we have a number of Senators that want to get to ask specific questions, so if you could wrap up so we could get to those?

Mr. GORDON. Yes. Thank you, Mr. Chairman, forgive me for my excessive time. I very much appreciate this.

I do want to make one last note, which is that I think the funding that this bill brings is extraordinary, and will be very helpful to State efforts. As I mentioned in my testimony, the big challenge here is that the State bears the burdens of the cost.

[The prepared statement of Mr. Gordon follows:]

STATEMENT OF THE HONORABLE MARK GORDON
GOVERNOR, STATE OF WYOMING

BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
REGARDING S. 4589 – A BILL TO AMEND THE ENDANGERED SPECIES ACT OF 1973

WEDNESDAY SEPTEMBER 23, 2020

Good morning Chairman Barrasso, Ranking Member Carper and members of the committee. I am Mark Gordon and have the honor and privilege to serve as the Governor of the great State of Wyoming. As a lifelong rancher, sportsman, wildlife enthusiast and resident of Wyoming, I have a strong understanding of the Endangered Species Act (the Act or ESA used interchangeably) and its contribution to wildlife conservation across our country.

Today, I will offer my perspectives regarding necessary modifications to the Act. While the Act has been effective in protecting and recovering many species of wildlife, improvements are needed to better align the Act with its original intent—to protect imperiled species, recover them in accordance with scientific recovery objectives and to **delist** or remove species from the threatened or endangered species list. The Act hasn't been updated since 1988 and the bill your committee is considering today includes many amendments that, if passed, would serve to make the Act more effective.

The implementation of the Act has been important to my state for quite some time. My last two predecessors have appeared before this committee to offer similar perspectives regarding the Act—Governor Dave Freudenthal in February 2017 and Governor Matt Mead in July of 2018. Governor Freudenthal and his administration invested significant time and resources into how the ESA was implemented in Wyoming. Governor Mead, as chair of the Western Governors Association (WGA), made ESA improvement his highest priority policy objective. The WGA served as a driving force in developing many of the initial ideas discussed and analyzed related to ESA improvement. Many of the ideas in the bill you are considering were inspired by the bipartisan work of the WGA, led by Wyoming's Governor.

Americans are passionate about wildlife and wild places, and that sentiment is abundant among the residents of my state. While there is some disagreement around the ways and means protection and recovery occurs under the Act, most agree with its underlying objectives. From its signing in 1973 by President Nixon, the Act is intended to provide protection while a given species recovers and that at the point the species reaches recovery, the species' management should be returned to the states and tribes. I strongly support the notion that wildlife is best managed by the states and tribes where they live and that the Act is most effective when it is applied to those species that truly become imperiled as shown by the best science.

The largest barrier to returning the management of fully recovered species to the states and tribes is litigation—not litigation based on whether a species is recovered, but litigation aimed at exploiting technicalities in how the United States Fish and Wildlife Service (USFWS) promulgated rules. While the basis for judicial review of agency actions was provided with good intent, federal judges have used challenges to delisting rules to delve into science and policy to a level that certainly was never intended by the legislative branch. Endless court challenges on species conservation run counter to the objectives of the Act. These suits, and the associated investment of money, time and energy, detract from species recovery and conservation and divert important resources away from species that truly need help.

The work states and tribes carry out every day across our country for imperiled species conservation is a vital component to the discussion of recovery efforts. Despite the fact that little to no federal funding exists to support state's efforts nor that no specific mandates require states to take certain actions in the ESA, they do it anyway. Critics of amending the Act seem to insinuate that states do not want to conserve at risk species or that states lack the capacity and expertise. Nothing could be further from the truth. The public trust doctrine outlined in the North American Model of Wildlife Conservation is the bedrock for wildlife conservation in our country. Most wildlife in our country are managed, and managed quite well, by state and tribal governments in trust for their citizens. I am proud of the significant achievements state wildlife managers in my state and others across the nation have accomplished. Wildlife continues to be abundant and diverse and this is due in large part to the efforts of states and tribes.

Private landowners, ranchers and farmers across our nation have made amazing contributions to wildlife conservation and should be recognized. In my state, farmers and ranchers have demonstrated their commitment to wildlife as the ultimate conservationists. They know their land and the species that live there better than anyone else. Their willingness to contribute habitat for wildlife, while simultaneously making their living off the lands they own and manage, is testament to their talent and capability to balance the needs of all people and animals that rely on their lands to survive. Specifically, in Wyoming ranchers have been integral partners on the recovery of black-footed ferrets and Wyoming toads.

Wildlife Management and Species Conservation in Wyoming

Wyoming is proud to be a leader in managing at-risk species and recovering those species listed under the Act. We have also taken a proactive role to address challenges before a need arises to list species under the Act. Wyoming has many notable examples of contributions. Some demonstrate ESA successes and some demonstrate areas where ESA improvement is warranted.

Grizzly Bear

The successful recovery of the Greater Yellowstone (GYE) grizzly bear population is, in my opinion, the most significant conservation success story in the history of wildlife conservation in North America. It is a stellar example of the power of the ESA to conserve this nation's treasured wildlife resources. Listing the grizzly bear as a threatened species in 1975 triggered a full-court press of scientific research and natural resource policy development. Today, we know more about the GYE grizzly bear than any other wildlife species on the face of the earth. Constant observation, monitoring and study of these bears since 1975 by many of the world's best scientists have given

us unparalleled scientific knowledge. Wyoming is proud to have paid for, and taken a leadership role in, grizzly bear recovery and management over the last four decades. Those who purchase hunting and fishing licenses in Wyoming have financed the Wyoming Game and Fish Department's \$50 million investment in grizzly bear recovery. The fruit of this investment is evident in a recovered population showing steady growth from as few as 136 bears when first listed to at least 700 to 1,200 in the ecosystem today. In addition to the significant financial investment, Wyoming people have changed the way they work, live, and recreate in grizzly bear country providing further assurance the species' future is safe.

Unfortunately, despite the fact that this species has been fully recovered as measured by all federally and scientifically determined recovery objectives for over 20 years, the GYE grizzly bear remains listed today. It remains listed not because there is some un-accounted for threat. It remains listed not because there is scientific concern over the population's viability. The species remains listed because on two occasions the federal courts have rejected the USFWS final delisting rule. In both cases, the court delved into complex scientific findings and the policy decisions of the USFWS. The court seemed to ignore the findings and conclusions of grizzly experts and science in favor of ruling in a way that pleased environmental litigants. It is no coincidence that five of six suits challenging the most recent 2018 grizzly bear delisting rule were filed in the same Montana District Court where previous environmentalist-backed suits were heard and decided in favor of plaintiffs.

The State of Wyoming continues to spend \$2 million annually to manage grizzly bears and the ever-increasing number of conflicts between bears and people. The States of Idaho and Montana also spend significant amounts of money and invest human capital into grizzly management. These costs are higher because the state simply acts in an assistance role to the federal government. Much of the financial resources allocated to grizzly bear management could be used on other species if the GYE population was not listed.

Gray Wolves

After five lawsuits and 15 years, the gray wolf population was finally delisted. Similar to grizzly bear, the species was fully recovered by all federally developed criteria for over 10 years before management was completely turned over to the states and tribes. Similarly, the scope of most litigation was on technicalities and post-delisting state and tribal management plans and not on population viability. Today, after four years of state management, the wolf population is thriving and is consistently managed far above federally required recovery objectives. Delisting required at least 100 individual wolves and 10 breeding pairs. Under Wyoming state management these numbers have held consistent between 160 and 180 wolves and as many as 17 breeding pairs, which does not include the wolves in the national parks.

Black-Footed Ferret

Black-footed ferrets were thought to be extinct in the 1970s. In the mid-1980s, near Meeteetse, WY, a ranch dog showed up at his owner's doorstep with a dead ferret. Subsequently, biologists located and captured nearly 20 black-footed ferrets from the wild. These were the last known black-footed ferrets in the world. The State of Wyoming worked hard with the USFWS to breed and rear black-footed ferrets in captivity at the Wyoming Game and Fish Department's wildlife

research facility. These black-footed ferrets were raised for future release into natural habitats. Thanks to the collaborative work of the state and USFWS, ferrets have been reintroduced in Wyoming and at least 10 other states and countries (Canada and Mexico). The species remains listed, but recovery continues as new populations are established in the mammal's historic native ranges.

Greater Sage-Grouse

Wyoming is home to the largest greater sage-grouse population in the world. When species declines indicated there were potential threats to sage-grouse habitat, the State of Wyoming crafted its own plan termed the core area strategy to conserve populations and ensure their future viability. This model was emulated by other states with dwindling grouse populations and subsequently, the USFWS opted not to list the species. Because of this state-led conservation effort, multiple land uses like oil and gas extraction, ranching and recreation can continue and the population is stabilized. In this case, involved states, private landowners and stakeholders went to extremes to alter land uses and make long-term commitments to conserve sage-grouse without the necessity of using the Act.

Wyoming Toad

The Wyoming toad is found to only live in a small geographic area of southeast Wyoming. The species is listed under the Act and state and federal efforts have secured suitable habitat for this extremely rare species. Wyoming's work with local ranchers, wildlife enthusiasts and water users have contributed to preserving this species. The Act continues to provide necessary protections for an at-risk species that has significant threats to native habitat.

Canada Lynx

The Canada lynx has been listed for 20 years and have never had a recovery plan. In 2014, a federal court ordered the USFWS to draft a recovery plan or make a determination that it wasn't necessary. Recent decisions by the USFWS indicated a recovery plan is not needed because the species may no longer meet the definition of a Distinct Population Segment (DPS) under the ESA and should be delisted. If the species is delisted, it will have been listed for over two decades, recovered and delisted with no recovery plan.

Significant restrictions were put in place in western Wyoming based on Canada lynx critical habitat designations under the ESA. Much of the land area identified as critical habitat encompassed areas where state biologists never believed were suitable for lynx occupancy. Because of the restrictions imposed by critical habitat designations, other habitat improvement projects were prohibited. These were habitat projects that would have benefited other species like sage-grouse, mule deer and other sagebrush obligate species. The states had little input into critical habitat designations. Early input by Wyoming and a listening ear by the federal government would have ensured critical habitat designations were practical and realistic.

As of today, there is no clear indication of when delisting may occur. This example illustrates the importance of requiring a recovery plan prior to listing to ensure states, tribes and other partners understand what is required to achieve recovery.

Necessary Amendments to the ESA

The original intent of judicial review of USFWS final agency decisions was well intended; however, it has become clear that endless litigation by environmental groups has become the single biggest challenge to the future efficacy of the ESA. Giving states an incentive to commit to and provide resources for state management plans and the recognition of their data-collection efforts will work; endless litigation does not. While the State of Wyoming invested in conservation for listed species, even in the face of multiple legal challenges, public support for this type of investment is waning.

This bill's prohibition of judicial review during post-delisting monitoring is necessary and will not be harmful to species conservation. Giving states and tribes a period of time as defined by the post-delisting monitoring period to implement their state and tribal management plans makes good sense and is protected by stop-gaps in the existing ESA.

Prohibiting judicial review during post-delisting monitoring is harmless due in large part to the fact that during this period, the USFWS could immediately re-list the species if it were to decline or fall below recovery objectives and other parameters of the recovery plan. The states have proven time and time again they are committed to and capable of managing wildlife within their borders. They should be given the chance to do so for delisted species without the threat of endless and costly lawsuits that in the end do not benefit the species in question.

It is important to note the extreme costs of managing wildlife through litigation. Many environmental litigants are paid significant sums of money for legal costs when they obtain a favorable ruling. As an example, following the recent grizzly bear decision out of the 9th U.S. Circuit Court, plaintiffs have requested over \$1.4 million in attorney fees. While they have not been awarded their full request yet, it is likely they will be awarded a large portion of the ask. This is just one case for one species and the amount of money being spent across the country to litigate is extreme.

The current bill provides significant improvements in allowances for state and tribal involvement throughout all processes associated with the ESA. This version requires the Secretary to notify governors when an ESA petition is filed. It provides allowances for state agencies to lead recovery teams and to take significant roles in recovery planning and implementation. Governors and tribal leaders would have the opportunity to weigh in on listing decisions before they are made. These are critical steps to recognize the value local wildlife managers bring to discussions involving the preservation and recovery of imperiled species. Additionally, it provides a path for state and tribal governments to help define early in the process the criteria that will be used to define recovery. Almost 30% of species listed under the ESA do not have a recovery plan. It is hard to imagine state, federal and tribal governments can meet the intent of the Act by working towards recovering imperiled species if they do not know how recovery will be defined. Those biologists and scientists closest to the habitats where at-risk species live have the best on the ground working knowledge of critical biological metrics that are necessary to plan and implement recovery. State biologists and wildlife managers have relationships with private landowners, federal land managers and other stakeholders. In the end, the Secretaries of Interior and Commerce still hold final decision authority, but the improvements in this version of the bill demonstrate increased value in state and tribal involvement throughout ESA required processes.

The current bill in sections 4e recognizes the value of voluntary conservation efforts by states, tribes, private landowners and others. It directs the Secretary to evaluate voluntary conservation efforts and gives the Secretary the ability to formally consider those actions and plans as regulatory mechanisms. In any five-factor analysis prior to down-listing or delisting, the evaluation of regulatory mechanisms is one of the most substantive evaluations. States and tribes have the opportunity to demonstrate commitments to the future viability of delisted species through regulatory mechanisms and this addition would be additive and productive.

Additionally, this draft allows state and tribal collected wildlife data to be used in a manner commensurate with scientific data collected by federal agencies. Science has evolved significantly since the Act was signed into law in the 1970s. Today we have radio and global positioning system location devices that provide real time biological data—data that would have taken months or years to collect two decades ago. Aerial data collection and advances in geographic information systems have accelerated the rate at which information can be collected and analyzed. As is demonstrated in Wyoming with grizzly bear, black-footed ferret, Canada lynx, greater sage-grouse and many more, state collected data is the best available science. States invest millions of dollars to collect these data and they should be used in combination with all available information to assess species status, plan recovery objectives and monitor progress.

Funding

I applaud the committee for contemplating funding implementation of the Act in this bill. I strongly believe it is worthy of your consideration. The ESA is often an unfunded mandate for state and tribal governments. As is illustrated in our Wyoming examples, working to conserve and recover at risk species is costly. Under section 6 of the Act, there is some funding that is provided annually to states, but in amounts that are inadequate to pay for the expensive work required for species conservation. In Wyoming our Game and Fish Commission allocates \$2 million annually to grizzly bear management and conflict mitigation. USFWS, Section 6 funding only reaches up to \$100,000 annually.

Combining a predictable long-term funding source with necessary improvements seems to me to be a balanced package that would reflect commitment and rededication to the original tenants of the ESA. I am keenly aware of the fiscal challenges you and the rest of Congress face. With that said, I would assert if this particular Act has survived this long and continues to be one of the most important pieces of environmental law in our country, it is worth statutory commitment to long-term and predictable funding to ensure it is implemented effectively. States, tribes, private landowners and others will be more apt to enhance their efforts if they can count on resources to fund their work.

Conclusion

I appreciate the opportunity to testify before you today and look forward to your committee's and the full Senate's progress on these important improvements to a landmark piece of legislation. In many ways, the Act has provided the framework and regulatory requirements to prevent hundreds of species from becoming extinct. Congress showed great vision and wisdom when they enacted the Endangered Species Act. However, implementation of the Act clearly shows that many of their original intentions are not being met. Less than 3% of those species listed have been delisted. The

ESA is no longer working effectively and is in desperate need of revision. I hope you are able to work cooperatively with all of your colleagues to find a path forward to enhance the Act to a level where it revitalizes conservation for decades to come. Protecting and conserving America's wildlife is a noble cause supported by nearly all of our citizens. It reflects American values and puts us in a leadership role globally on the importance of wildlife and habitat conservation.

Senate Committee on Environment and Public Works
Hearing entitled, “Modernizing the Endangered Species Act: Legislative Hearing on S. 4589,
the Endangered Species Act Amendments of 2020.”
September 23, 2020
Question for the Record for the Honorable Mark Gordon

Senator Inhofe:

1. Governor Gordon, I know the American burying beetle is not found up in Wyoming, but it has presented a number of challenges in my state of Oklahoma. In 1989, the beetle was placed on the Endangered Species List. I remember that decision as I was serving in the U.S. House of Representatives at the time. Over the years, I have seen the impact of this listing on my state. It has hindered Oklahoma’s farmers, ranchers, homebuilders, energy producers and other industries with burdensome regulatory requirements. I am grateful to the Trump administration for their recent action to downlist the beetle. And while I do believe a delisting is warranted, sadly, I know frivolous lawsuits could be filed in an attempt to block the delisting of this recovered species. As you know, Chairman Barrasso’s bill would delay legal challenges to a delisting for at least five years following a delisting – something that could benefit a recovered species like the beetle. **Governor Gordon, will you elaborate on your remarks regarding this provision and explain how delaying judicial review would benefit your state?**

Answer: The successful biological recovery and subsequent delisting of a species requires full cooperation and participation of federal and state agencies. State management agencies are in the best position to craft a workable recovery plan and to maintain recovery. Not only do these plans take a considerable amount of time to create, they require financial resources and local biological expertise to implement. Wyoming and Oklahoma clearly have a vested conservation and economic interest in keeping a species recovered. Giving states time to prove they will maintain recovery of a species post-delisting is essential. Senator Barrasso’s amendments to the ESA allow sufficient time for recovery plans to be implemented and evaluated before the inevitable rush to the courts. The five-year reprieve would provide the opportunity to prove management plans (which are developed with and approved by U.S. Fish and Wildlife Service prior to delisting) are effective means to conserve species. This five-year window allows wildlife and habitat managers the ability to further improve resource allocation (e.g., where and when to implement, best methods, etc.) without the threat of doing it all in vain should a court decide to remove the State’s ability to continue plan implementation.

The Wyoming grizzly bear plan is a prime example. Repeat visits to federal court to re-argue previous decisions and to create new subjectively determined problems with delisting rules creates a disincentive for states and underscores the need for this five-year proving period. The Greater Yellowstone Ecosystem grizzly bear population has been proven as recovered, by all scientifically developed metrics three times, but the populations still remain listed. If managers do not have the ability to implement plans in a meaningful manner, over an appreciable time period, recovery of any species (on paper and approved by the courts) will never be achieved.

The proposed amendments to the ESA still provide strong protection for a recovering species during the five-year litigation deferment and federal agencies would retain the ability to take

additional measures if biologically necessary. I strongly believe the five-year proving period is a positive ESA amendment that if implemented will help foster and promote long-term, sustainable recovery that is embraced by states.

Senator Carper:

2. How difficult do you think it would be for the U.S. Fish and Wildlife Service to correct the deficiencies that the courts have identified in the 2017 delisting rule for the Greater Yellowstone Ecosystem grizzly bear?

Answer: The short answer is that it depends. There are different answers for different parts of the court's ruling. The translocation and genetic interchange is easily addressed. States could commit to moving bears as a last resort if the science ever indicated genetic diversity was in question. Dozens of bears are trapped and moved annually across the ecosystem and moving bears to other ecosystems is quite simple. Similarly, addressing the analysis of the remnant populations outside of the Distinct Population Segment (DPS) is easily dealt with if the U.S. Fish and Wildlife Service made a commitment to analyze these populations in a new rule.

However, addressing recalibration is very complex and difficult. Recalibration, at its core, is a requirement to change the population goals of recovery at some point in the future. This is primarily due to the concept of recalibration being required in the court's ruling. This is neither legally required in the ESA or biologically correct. Recalibration, as currently envisioned and outside of the ESA, provides the potential for eternal federal management of a delisted species. This is not the intent or the scope of the ESA. In this sense, recalibration also requires speculation, which is nearly impossible for state managers to do without acquiescing their rights to manage wildlife within their borders and has no solid foundation in science.

As discussed in the response to Senator Inhofe, the real issue is that it does little good to fix a plan to align with a single court decision if there is not a chance to implement it. The 2017 delisting rule did address all of the issues identified in the underlying court's decision. Those adamantly opposed to the delisting of the Greater Yellowstone Ecosystem (GYE) grizzly have found a sympathetic court which is willing to substitute its judgment for the science-based plan developed by the state, federal and tribal biologists. In this case, the population measures established by experts have been met and greatly exceeded for many years, but Wyoming, Idaho and Montana are unable to continue their efforts to lead management and remove the bear from the ESA list. The litigation "take five" in the proposed amendments would give the plan time to work. After five years, the scientists would have the information necessary to fully evaluate the recovery plan; recalibration would not allow for this as it would move the goalposts, yet again, for GYE grizzly bears' recovery.

Senator BARRASSO. Well, we are so grateful for your thorough, your excellent presentation.

We do have a couple of questions. We have a number of Senators here who would like to ask.

I want to start by talking about the greater State involvement that comes in the bill that you were just referring to. It gives States the opportunities to lead the recovery and the implementation teams, and I know you support those provisions.

Can you explain how a listed species could actually benefit from increased State involvement in the recovery process? Because you have had, now, 41 years of involvement in this area, which is truly one of your passions.

Mr. GORDON. Right. Mr. Chairman, thank you very much, members of the Committee. State involvement, State science, is often the best. It is certainly the most ground truthed; it is certainly most current. It would inform decisions. That State connection and the ability for States to be involved, private landowners to be involved, is absolutely essential for the success.

I think the example you see in that, Mr. Chairman, is Wyoming's own efforts with the sage-grouse in the core areas.

Senator BARRASSO. When you take a look at what the bill does, which it delays that court's review of a rule delisting for at least 5 years during that post-delisting monitoring period, how does this specific provision help with effective State management of a recovered species?

Mr. GORDON. Mr. Chairman, thank you for that question. As I mentioned in my testimony, one of the principal things about the scientific method is that you have to test what the hypothesis is, correct for mistakes that might have been made.

In the case of this particular provision, it allows the States to make a plan. It actually demands that they make a plan, and that they then monitor that plan over time and see if it works or if it doesn't work. What we have currently, where everything is litigated almost immediately, we never get off the ground. So I think that is essential.

Senator BARRASSO. So my final question, based on what you just said about the science based decisionmaking, do you believe there is anything in this bill that we are introducing today, the Endangered Species Act Amendments of 2020, that would in any way erode the existing authorities of the Endangered Species Act in terms of the Secretaries of Interior, or Commerce, or Agriculture, or anything at all?

Mr. GORDON. Mr. Chairman, in my review of the bill, and I read it again last night, it seemed that you specifically have pointed out that that erosion cannot occur.

Senator BARRASSO. Thank you, Governor.

Senator Carper.

Senator CARPER. Thanks.

Again, Governor Gordon, welcome. Great to see you again.

As you know, I am especially interested in your views on funding, given your roles not just as Governor, but as State treasurer, a role I once was privileged to fill in Delaware. Your testimony talks about the importance of, you mentioned right at the end of your statement, you mentioned the importance of, I quote you, "a

predictable long term funding source.” A predictable long term funding source for the Endangered Species Act.

The legislation before us today, as best that I can tell, does not provide this, either for States, or for Federal agencies. We have a saying in Delaware, all hat, but no cattle. Actually, that is not a Delaware saying, but it is a great saying.

But when I think of the authorization process, we authorize programs. That is a two step process: We authorize them, and then later on, we come back, and we appropriate money to make good. The authorization could just be an empty promise.

But I have a question: Do you agree that our Committee should consider a funding strategy beyond just the reauthorization of the Endangered Species Act for Federal agencies and for States? And if you would, just elaborate on that, please.

Thank you.

Mr. GORDON. Thank you, Mr. Chairman, Ranking Member Carper. I think your question is a very good one. Reauthorization does, it appears to me, in this bill, also include some appropriations. To the degree that those can be improved, I certainly would not—

Senator CARPER. Let me just interrupt. I don't think that is the case. We can have another sidebar conversation. If that were the case, I wouldn't be focusing on it so much, but go right ahead.

Mr. GORDON. OK. Thank you, Ranking Member.

In my view, the Federal Government really does need to bear more of that burden, and I am going to encourage this Committee to look at that carefully. Wyoming, and out of that \$2 million we spend, we get about a \$100,000 from the Federal Government to meet that obligation. So that is the differential: \$2 million that the State spends, \$100,000 that the Federal Government spends.

Senator CARPER. All right, thank you. Your testimony highlights Wyoming's work to help recover the black-footed ferret. I understand that voluntary conservation agreements between landowners, and I think with the U.S. Fish and Wildlife Service, have been a critical tool for recovering this specie. These voluntary conservation agreements provide regulatory certainty, and they support recovery for one of our Nation's most endangered mammals. It is a real win-win situation.

However, the development and implementation of these voluntary conservation agreements and subsequent reintroduction of black-footed ferrets on private lands requires funding. Again, do you agree that Federal agencies could do more to promote voluntary conservation activities for black-footed ferrets and for species across the country, if they had some additional financial resources?

Mr. GORDON. Mr. Chairman, Ranking Member Carper, I do agree that that would help. I also think the certainty that this bill provides also helps in promoting more cooperation between landowners.

Senator CARPER. All right, thanks. I have another question; I will just probably end up having to ask it for the record. You mentioned the roles the courts that are playing in review of these matters. It is my fourth term in the U.S. Senate, and in my first term, I was one of the lead Democrats on class action reform. In my second

term, I was one of the lead Democrats on asbestos litigation reform.

I have never been a big fan of venue shopping. I have never been a big fan of venue shopping, which you raised. In testimony we had just in the last couple of weeks, right here in this room, we talked about the decision by a, I think, a District Court decision with respect to this issue, and then we talked about a three judge panel, a unanimous three judge panel, I think this was Ninth District Circuit Court of Appeals.

At the end of the hearing, I asked our witnesses, what kind of remedy was prescribed by the courts. And three items were mentioned. Two were fairly straightforward; one was more difficult, and I would just ask you to take a look at, and we will provide for you, the three remedies that were heard literally in this room a couple weeks ago, and ask you just to get back to us, as to which you think have merit or actually are doable. Thank you.

And again, it is very good to see you.

I am going to slip out; I have another hearing going on in the Committee on Homeland Security and Government Affairs with the Secretary of the Department. I will be back, but I may miss you when I return, so thank you so much for joining us, again.

Senator BARRASSO. Thank you.

I think we have Senator Capito now, joining us remotely.

Senator CAPITO. Yes. Thank you, Mr. Chairman, and thank you Governor, for being in our Committee today. I am sorry I am not there in person, but I am actually quarantining, so I am doing what the CDC is telling me to do.

In mentioning some of the cooperative workload on this that the State and the Federal Government do, I was wondering, and you might have mentioned this, and I might have missed it in your statement, is there an example where an innovative habitat or species conservation plan that has been put forward first by Wyoming itself as a State plan, that it might be used as an example of ways that a State can really bring about the solutions granularly and help the Fish and Wildlife Service and others meet these challenges?

You mentioned the sage-grouse earlier, I didn't know it that was an example of that.

Mr. GORDON. Thank you, Mr. Chairman, Ranking Member Carper, and Senator Capito. The sage-grouse, in the core area strategy, first developed under Governor Freudenthal and then improved under Governors Mead, and I hope I have played a small role, I think is exactly the right example. It was a State led process that established a way to bring groups together to really discuss what are the core area habitat needs, and then to work with landowners and agencies to devise a program that has worked and has stood as an example for other Western States.

Senator CAPITO. With that being said, then, as you move forward with that plan, when trying to collaborate with Fish and Wildlife, was that a contentious kind of role, or was it a total collaboration, the State leading the way with the Fish and Wildlife being an integral part of that?

Mr. GORDON. Mr. Chairman, Senator Capito, it is a working group. We have a sage-grouse implementation team with a number

of stakeholders that are on it. They work through process, and I won't say that it is all, that it is always a happy discussion. Sometimes there are serious conversations about, for instance, in the latest addition, how do we work to expand sage-grouse habitat, even if it is outside of core areas. Sometimes, that doesn't go as happily as other discussions do, but it always work through it.

Senator CAPITO. Great. Thank you. I know that you mentioned in your statement, the sue and settle lawsuits that are very prevalent in this area. We have an issue with the Guyandotte crayfish over in my State of West Virginia, which is really impacting the ability of a part of my State to try to recover, and you could certainly identify with, being from Wyoming, from a major downturn in thermal coal. So we are finding ourselves at odds with this.

How are you meeting that challenge in Wyoming? It is frustrating for us in West Virginia; it has to be frustrating for you in Wyoming as well, and sometimes I think when we are trying to present our different sides, we are not actually talking to one another, we are sort of talking above or at one another.

How have you worked on the issues of the economic development issues as they are met with the sue and settle lawsuits?

Mr. GORDON. Thank you, Mr. Chairman, Senator Capito, I would say that is the reason we are talking as much as we are about the grizzly bear. The grizzly bear is an animal that we have twice before worked on rules that could delist. As I said, the population has grown substantially, and we are frustrated at every turn by the same venue and what if scenarios.

That is the reason I think this bill is so essential, because it allows for us to test whether the hypothesis works, and it provides the safeguards and safety valves that allow for a relisting should that be absolutely essential.

Senator CAPITO. Thank you. Thank you, Governor.

Thank you, Mr. Chairman.

Senator BARRASSO. Well, thank you so very much, Senator Capito. We appreciate your participation from West Virginia.

Senator Cramer.

Senator CRAMER. Thank you, Mr. Chairman, and thank you, Governor, for being here and for your very good testimony.

I wanted to say amen several times, but instead, I will just focus a question or two on what I thought were a couple of the highlights, frankly, highlights of the legislation.

I have never been a Governor, although there have been several in the room today already. But I was a State regulator, and one of my greatest frustrations in regulating at the State level Federal rules and laws, was when the Federal Government would try to impose its mediocrity on North Dakota's excellence.

You have spoken to the challenge, and probably the greatest inhibitor to success, and I deem success, at least, in part to getting species delisted. We are looking at over 2,300 species and plants on the list today. Since 1973 only 60 have gotten off the list, so my measure of success, I think, would be delisting.

I think one of the highlights of the legislation for me, and you pointed this out, is, of course, the prohibition on litigation or Federal lawsuits or lawsuits in Federal court during that State period, that period of after the delisting, or after success, in my view, of

that State monitoring period. I find that really critical. I find it as common sense.

But the argument against it, of course, is that, oh, we can't do that because, you know, the citizens have to have a venue. I think back to my days as a North Dakota regulator, and Wyoming is very similar to North Dakota in lots of ways other than the mountains and the grizzly bears, and I think, gee, who do the citizens have the greatest access to, if not their State legislators, their State Governors, their State regulators?

I would think it is similar in Wyoming. Do you have pretty good access to good people, whether they be landowners, conservationists? In most cases, they are the same people, the same stakeholder groups.

Mr. GORDON. Mr. Chairman, Senator Cramer, I think you speak exactly correctly. I think citizens have the best access to State agencies. I think that State agencies have people on the ground that work directly with landowners, and I think that the State involvement, that this particular bill promotes is absolutely essential to any working solution.

The point you made about the Federal Government's sometimes one size fits all challenges just don't make sense on the ground. So I think having States involved, citizens involved early, makes for a good dialogue that is absolutely essential.

Then again, you know, from the suing kind of provisions, what is essential is that we talk about what has happened, not necessarily what might happen or what you didn't consider when you were thinking about that. We can continually, the perfect, sometimes, is the enemy of the good, and the good thing that this Endangered Species Act did was to promote the delisting of animals.

Senator CRAMER. For sure, and of course, it also encourages voluntary participation in that effort. Wyoming, like North Dakota, has a lot of volunteers, again, landowners, environmentalists, professionals, and users of the land, in the case of Federal lands where there is a lot of multiple use. They all care about the same thing, and I think, want the same outcome. But I would think they would find it rather demoralizing to continually work to get something, to get a critter delisted, but only to have their success punished in the courts.

Mr. GORDON. Mr. Chairman, Senator Cramer, I think it is demoralizing, talking to some of my landowner neighbors, absolutely, for a number of reasons.

Senator CRAMER. Well, thank you again for appearing. Thanks for your care about this and for your excellent testimony.

I might just say, Mr. Chairman, that a lot of people are wondering, what is going to be the main issue when you talk to President Trump's next nominee to the Supreme Court of the United States? Mine is going to be this issue. That is, what is the proper role of States with our Federal Government in our Federalist system, because I think we have lost track of it for decades, and that erosion needs to be stopped, and I think, reversed. I think the Endangered Species Act is one of many examples, so thank you.

Senator BARRASSO. Thank you so much, Senator Cramer.

Senator Braun.

Senator BRAUN. Thank you, Mr. Chairman.

Taking off on what Senator Cramer just said, I share the same concerns that interplay between State and Federal Governments, especially when it comes to how we pay for things. That was interesting, hearing your discussion earlier, where you thought the Federal Government needed to do more. I think that is something that everyone that comes here to testify or to discuss anything, probably has that point of view.

I think the even larger challenge is that this place is probably going to be in a position out of necessity to do less over time, and I know that can be discouraging and disappointing to many. So I think that when it comes to what are the responsibilities between States and the Federal Government, it is also going to be viewed in the context of how we have evolved over time to where, keep in mind, we borrow 23 percent, we borrow 23 percent of everything we spend here on an annual basis.

So for anyone listening, and especially people that come here to testify, I would hedge my bets a little bit on things that you want to make sure that get done in your own particular States, even when it does sound so imbalanced in what you cited.

Pleasure to be speaking with someone, too, that comes from the business world. I am freshly out of it. Some of the differences between being here and running something, where you got that accountability, I think, probably, is more what a Governor has to contend with.

I want to make sure, because I have one particular instance here in my home State, I want to describe it to you briefly and then see if you think that there would be remedies within the amendments that we are kind of talking about that would help this local concern be heard over all the other stuff that is involved with the Endangered Species.

In my State, there is a place called Lake Freeman. Since 2012, following low waters, that was a drought year, in the Tippecanoe River, the habitat for protected, freshwater mussels, the U.S. Fish and Wildlife Service has ordered the local electric company, which also has its own regulatory body, to release water through its dam out of Lake Freeman to raise the river's water level to protect six species of mussels. Of course, I am for that. I am a conservationist. I believe we have to do whatever we can to keep endangered species from becoming extinct.

In this case, it has had a devastating effect on the local economy, because you can't put a boat into the water. The water level is 3 to 5 feet below the dock levels.

Do you feel comfortable with what we are doing here that a grievance and a concern like that would be aired through the amendments we are proposing?

Mr. GORDON. Mr. Chairman, Senator Braun, I do believe that this act provides better access by engaging local citizens and local governments earlier in the process to be able to find a solution that can best balance the needs of both the species and the economic interests that are there.

I do believe that this act is a vast improvement. Is it perfect? Probably not, but on the other hand, I do believe that that is the best place for that solution to be found, at the local level.

Senator BRAUN. Well, thank you, that is good to hear, and I think that will be kind of good for the folks at Lake Freeman to hear as well.

I think, as we move forward to try to have that delicate balance between State and Federal obligations and who pays for it, we need to make sure, at the grassroots level, that anyone impacted is heard, as well. Thank you so much.

Thank you, Mr. Chairman.

Senator BARRASSO. Well, thank you.

Thank you, Governor, for being here. We appreciate your being here to testify. We have a second panel, and you are more than welcome to stay and listen to them.

There may be members of the Committee that supply to you questions for the record, and we would ask that you try to reply and get those answers back to us in 2 weeks.

So thank you, Governor. We are so grateful for your coming to DC to visit today to share your thoughts, your experience of your 41 years of commitment to this topic from Wyoming with all the members of the Senate and the Committee.

Thank you, Governor.

Mr. GORDON. Thank you, Mr. Chairman, and members of the Committee.

Senator BARRASSO. Now, I would like to welcome our second panel. Two members will be here, one directly, and one remotely, Ms. Priddy and Ms. Clark.

I would like to welcome both of you here, Ms. Priddy in person, Ms. Clark, from Virginia.

Ms. Priddy, I would like to ask you first to proceed with your testimony. Welcome to the Committee.

**STATEMENT OF ALIESE PRIDDY,
OWNER AND OPERATOR, JB RANCH**

Ms. PRIDDY. Thank you.

Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee. I am Leisa Priddy, a native Floridian, and third generation cattle rancher.

As a rancher, I am also a conservationist, managing and improving landscapes for my livestock as well as habitat for a wide variety of species, including those protected under the Endangered Species Act.

I come to this Committee today to offer testimony that is representative of the varied hats I have worn throughout my career, which give me a unique perspective on the ESA and how to make species management and recovery efforts more successful. I hold a bachelor's degree in finance and also in environmental studies.

In addition to running my ranch in southern Florida, I have served in a variety of wildlife and conservation leadership positions. I was appointed by then-Governor Rick Scott to serve a 6 year term on the Florida Fish and Wildlife Conservation Commission, and have served on the Ave Maria Stewardship Community District Board since its inception in 2005.

My testimony today draws from each of my experiences that have allowed me to work with environmental groups, wildlife managers, ranchers, and government officials, who all want the same

thing: A good outcome and brighter future for species, especially those that need additional protection to thrive.

My testimony today will focus on two distinct themes: Empowering and including non-Federal expertise in ESA implementation discussions, and whether the ESA as currently implemented is meeting all of its objectives, and if not, why.

Mr. Chairman, as a former Fish and Wildlife Conservation Commissioner in a State that currently has more than 130 species protected under the Endangered Species Act, I appreciate that your bill recognizes the incredible investments States like Florida have made in wildlife conservation and recovery efforts.

Each year, States spend billions of dollars managing species and ensuring their lands are filled with robust populations of the plants and animals that call them home. I saw this first hand as a commissioner through the efforts made to recover panthers and manatees, and I know that Florida is not alone in that commitment.

States are uniquely positioned to coordinate resources from private landowners, ranchers, industries, non-governmental organizations, and regional authorities to ensure the best outcomes. It is for that reason I fully support your proposal to allow States to lead recovery teams during the ESA process.

States have primacy over wildlife management, meaning they bear sole responsibility for ensuring laws, science, and partnerships are in place to have robust populations. In cases where a species needs additional assistance, States' knowledge, authorities, and partnerships are invaluable. Allowing States to demonstrate that leadership recognizes their broad capacity to manage and provide certainty to ranchers like me, who have invested in conservation activities.

Further, States work with ranchers and other groups to engage in voluntary conservation efforts, even outside the ESA context. These voluntary efforts provide predictability for ranchers, land managers, and regulatory authorities alike, and are often the basis for longstanding partnerships. Your proposal to allow voluntary conservation efforts to be factored into ESA determinations is a recognition of the value of these voluntary efforts, and allows for the ESA determination process to be more accurate.

I always try to make well informed decisions, and the Fish and Wildlife Service is no different. Allowing them to recognize these voluntary conservation agreements is just common sense, and will make these agreements more attractive in future recovery efforts.

I come to this Committee today knowing that discussions of changes to the ESA are often met with significant controversy. We hear phrases like "gutting the ESA," but most of that emotional signaling is based in fear.

We are all concerned about what would happen if the ESA weren't effective, but I think in large part, we are already there. The ESA has achieved some significant and popular recovery efforts. The bald eagle and the manatee are just two examples. But thousands more species have languished on the list due to lack of attention and a system that just hasn't worked for them.

In your bill, you recognize several challenges that have made the ESA less effective over time: A system that doesn't account for local

and State expertise, an inefficient way to prioritize resources to the most imperiled species, and a system that makes it almost impossible for the Fish and Wildlife Service to have the ability to declare victory when recovery is achieved.

I have some additional comments, Mr. Chairman, but I understand that my time is out, so I will turn it back to you, thank you.

[The prepared statement of Ms. Priddy follows:]



**Senate Environment and Public Works Committee
Hearing on S.4589, the *Endangered Species Act Amendments of 2020*
September 23, 2020**

**Testimony of
Liesa Priddy
Florida Cattlemen's Association and the National Cattlemen's Beef Association**

Good morning Chairman Barrasso, Ranking Member Carper, and Members of the Committee.

I am Liesa Priddy, a native Floridian and third generation cattle rancher. I have spent my life as a conservationist, managing and improving landscapes that provide valuable forage for my livestock and are also home to a wide variety of species, including those protected under the Endangered Species Act (ESA).

I began my educational career at Georgia Southern University where I received a bachelors degree in finance. I also hold a bachelors degree in environmental studies, with a minor in biology, from Florida Gulf Coast University. I attended the Graduate School of Banking at Louisiana State University. Throughout my career, I have actively sought to develop solutions that address the environmental and economic needs of southwest Florida. This broad experience was valuable when I was appointed by then-Governor Rick Scott to serve a six-year term on the Florida Fish and Wildlife Conservation Commission. The Commission manages and regulates the state's fish and wildlife resources. I have also served on the Ave Maria Stewardship Community District Board since its inception in 2005. The District was the first community to be built in Collier County that combined the desire to address urban sprawl through the use of targeted development, and targeted conservation, in strategic areas.

I come to this Committee today to offer testimony that is representative of the varied hats I have worn throughout my career which give me a unique perspective on the ESA, and how to make species management and recovery efforts more successful. If your perception of a rancher is a cowboy with hat and boots, roping and riding, let me update your view. We're land and water managers, preservers of habitat and wildlife, business people, and animal husbandry practitioners, while also being producers of the highest quality beef in the world. Each of these roles provides a specific set of information that has been used to inform my approach to issues that are sometimes emotionally sensitive. Most of the emotional discussion of the ESA, especially when discussing changes to the Act, is based in fear. As a land manager and someone who has been involved in many successful conservation efforts, I can tell you that each of the hats I have worn provide me with expertise to engage with many different groups, with many different perspectives. I have worked with environmental groups, wildlife managers, ranchers, and government officials who all want the same thing: a good outcome and a brighter future for species – especially those that need additional protection to thrive.

That's why I'm here today: I believe the *Endangered Species Act Amendments of 2020* will improve conservation outcomes by empowering experts whose species conservation and management experience can be used more fully. Empowering experts at the local level to be

more intimately involved in species recovery planning will ultimately make desired recovery outcomes more timely and more successful.

The ESA is often described as a landmark, foundational conservation bill. I agree. The ESA was enacted to ensure that imperiled species nationwide could be identified, supported, and recovered. The original Act sets clear targets for how and when each of those steps should occur, and in some cases, the Act and its processes has been incredibly successful. Over time, however, the needs of species and those implementing the ESA have changed.

Generally, the ESA has failed to keep pace with new technologies and conservation paradigms that have changed from the 1970s. Over the last 50 years, species and land managers have been forced to contend with urban sprawl that has changed the land mass available for species. This is something I am intimately familiar with in my role as an Ave Maria Stewardship Community District Board member. We grapple with how best to support human needs for housing and infrastructure with the needs of ecosystems and species. This balance is particularly important, given there are 133 species in Florida that are currently protected in some form under the ESA. Florida's species protections are intense and widespread; only 3 states have more ESA listings than Florida: Hawaii (502), California (280), and Alabama (143). Many more species are yet to be evaluated for listing according to the National Listing Work Plan, so the additional layers of federal intervention only have the potential to grow.

With the ever-growing complexity of community development in the face of land management considerations, the need to incentivize voluntary conservation has never been more important. The *ESA Amendments Act* recognizes what ranchers and conservationists have requested for a long time: ranchers are stewards of the landscape and consistently seek improvements for the benefit of a variety of species, but when it comes to federal recognition, their efforts are often discarded or ignored. Section 302 of the bill before the Committee today recognizes ranchers' commitment to conservation, and recognizes that the time, money, and labor invested in voluntary conservation agreements should mean something when federal protections are being explored. Equally, the ESA should allow federal authorities to consider all factors, including voluntary conservation agreements, when making an ESA determination. ESA analysis should consider the full scope of information, the best available science, in order to make the most accurate determination about what the species actually needs. Omitting information about a conservation plan, or being unable to account for the benefits because the agreements don't have the same force and effect of law, is counterintuitive.

Currently, we are partnered with a group of other landowners in our county in seeking a Habitat Conservation Plan (HCP). HCPs are outlined under the ESA to "provide for partnerships with non-federal parties to conserve the ecosystems upon which listed species depend". Not only are these voluntary conservation efforts the result of concerted effort by many groups, they provide predictability and certainty that all expectations are clear and that everyone is on the same page. The last thing ranchers want is more regulation and red tape, and they should get credit for the good work they do, even while acknowledging that they engage in these efforts primarily for the benefit of the resource, not the credit or recognition they receive (Section 303).

ESA enactment has also failed to keep pace with the drastic increase in states' capacity to engage in conservation. Several years ago, this Committee held a series of hearings about this very subject, and heard that over time, states have expanded state wildlife management and research capacity, and have developed robust regulations of their own. According to the Association of Fish and Wildlife Agencies, states spend more than \$5 billion each year on species conservation activities. Collectively, states' budgets for species management dwarf federal budgets for ESA implementation, so it follows logically that leveraging states' capacity for conservation is key to the success of ESA recovery efforts.

Having served as a Florida Fish and Wildlife commissioner, I can attest to states' expertise firsthand. States have primacy over wildlife management and successfully manage hundreds of thousands of wildlife species within their borders, including some that are ultimately listed for protection under the ESA. Under current ESA implementation, a listing decision is often perceived to be a referendum on states' management, which I believe actively ignores the gaps in ESA implementation. In Florida, the State has developed a set of specific and comprehensive management plans to support their desire to have consistent management of species long before a species needs to be protected under the ESA. Currently, the ESA is not allowed to consider those practices or voluntary conservation agreements when making listing determinations, as I previously addressed. Further, federal authorities are often unable to access the expertise and resources of the states after a listing decision. This bill addresses both of those gaps, affording states the opportunity to lead species recovery teams as addressed in Section 203. States, even after a listing determination, are the frontline, boots-on-the-ground experts on species management.

Florida is certainly an example: without the financial and programmatic support from the State, the recovery progress of the manatee and panther would not have achieved what it has. Cooperation and productive collaboration are key to ensuring species management and protections are cohesively applied across a landscape, no matter whether it is private, state, or federal land. Additionally, states have more support than ever before from partner groups across these land management jurisdictions, and those collective resources should be leveraged for the best outcome of the species. This bill would allow states to leverage those partnerships in a much more immediate and lasting way, as conservation partnerships can and do persist long after a species is listed – or delisted – under the Act.

Ultimately, the ESA has failed to keep pace with the way the American people view the Act. Since its inception, the Act has marked many notable successes: recovery of the bald eagle, peregrine falcon, and American alligator. These species met all ESA objectives: identification, recovery, and delisting. The Act was always intended to identify an imperiled species, concentrate resources to improve population numbers, and return a species to state management when the population had recovered. Over time, those objectives have been skewed by fear that because the species declined once, it will do so again. The ESA has accounted for that fear in the 5-year post-delisting monitoring period and the state management plan that the U.S. Fish and Wildlife Service must approve before a species is delisted. As a result of that fear, we have seen an explosion in listing petitions and legal challenges to delisting efforts that have subverted the intent of the Act and allowed ESA protections to become perpetual, rather than short-term emergency measures.

This bill addresses that fear and takes an honest look at how current implementation is meeting the objectives of the Act. By codifying the National Listing Work Plan in Section 501, the bill empowers federal authorities to spend appropriations where they are most needed and most likely to be successful. Further, the bill supports the right and responsibility of the state and federal authorities to demonstrate conservation success in the period immediately following a delisting activity by seeking to prevent an emotional, fear-charged judicial challenge to the delisting rule. As a rancher and former wildlife commissioner, I know that it takes time to demonstrate success in natural resources management. The authors of the ESA envisioned a transition back to state management as a key portion of the ESA recovery process, and the law should reflect that statutory direction.

Often, the ESA hangs heavy over private landowners and federal lands users alike – but it doesn't have to. There is a way to better integrate the Act into existing management frameworks and incentivize voluntary conservation for species nationwide, and the *ESA Amendments Act of 2020* is a significant step in the right direction. Every legislative effort to amend portions of the ESA is measured against the high bar set by specific recovery efforts that have enshrined the Act in the hearts and minds of all Americans, but I believe your bill supports the Act and helps to transition ESA recovery efforts into the next era of species conservation.

Thank you, Mister Chairman and Members of the Committee for inviting me here today to share my experience. Your invitation is a testament to your recognition that state leadership and state expertise is integral as we move into the future.

Senate Committee on Environment and Public Works
**Heariug entitled, “Legislative Hearing on S.4589, the Endangered Species Act Amendments
of 2020”**
September 23, 2020
Questions for the Record for Liesa Priddy

Senator Inhofe:

1. Ms. Priddy, as you know, voluntary, public-private partnerships engaged in species conservation and recovery are vital to the recovery process of a vulnerable species. Private partners like those of farmers, ranchers, and the energy industry provide land and other important resources for species recovery. That is especially true for the years-long conservation efforts of the Lesser Prairie-Chicken (LPC) in Oklahoma and other states. Industry partners involved with LPC conservation have committed over \$60 million with over 130,000 acres of land dedicated to the LPC’s habitat. These resources have clearly helped as recent aerial surveys of the LPC’s population shows it remains “stable” from previous surveys and, importantly, the population has more than doubled since 2013. **Ms. Priddy, would you agree that at-risk species can be successfully managed and recovered by state and private partnerships?**

Liesa Priddy:

1. Senator Inhofe, yes, I absolutely agree that at-risk species can be successfully managed and recovered by state and private partnerships. Much like the LPC, the black bear in Florida is a model success story. The Florida Fish and Wildlife Conservation Commission (FWC) monitoring efforts detected a stagnant population of black bears to the point that some members of the public and conservation groups urged that it be considered for ESA listing. Understanding the difficulties inherent with managing a listed species, FWC went to work using all available tools to enhance and grow the population. Bears in Florida are no longer at risk, although work continues to enhance their expansion. This is but one example.

A different type of example is one where a species is already listed, but the state does the heavy lifting in regards to its recovery. In Florida the two examples which come to mind are the manatee and the panther. In the case of the manatee, through Florida’s efforts it was down listed several years ago from endangered to threatened. Panthers have rebounded from a population of approximately 30 to an estimated population of 120-230. Certainly there was support from the federal government, but by far the lion’s share of monetary and program assistance was from the state and private sector. I can honestly say that without the state these achievements would not have been realized.

Candidly, I think that states will use whatever resources are necessary to ensure a species does not become listed. This is due to the bureaucracy inherit in dealing with the federal government. No agency can know the details of what a species needs like the state itself.

Please let me know if I can provide further information.

Senator BARRASSO. Well, thank you so very much. We appreciate your being here and traveling from Florida.

I note that our head of Game and Fish in Wyoming is here, Brian Nesvik, who is a former game warden. You probably have a lot of overlap, and have a chance to maybe visit after the hearing, but that you so much for being here with us.

We are now going to turn and go remotely to Leesburg, Virginia, where we are being joined by Jamie Rappaport Clark, who is the President and Chief Executive Officer of Defenders of Wildlife.

Thanks so much for being with us today.

**STATEMENT OF JAMIE RAPPAPORT CLARK,
PRESIDENT AND CEO, DEFENDERS OF WILDLIFE**

Ms. CLARK. Thank you.

Good morning, Mr. Chairman, Ranking Member Carper, and members of the Committee.

My name is Jamie Rappaport Clark, and I am the President and CEO of Defenders of Wildlife, a national non-profit conservation organization dedicated to the protection of all native plants and animals in their natural communities. We represent more than 1.8 million members and supporters across the United States.

Thank you for inviting me to speak about my experiences conserving imperiled species under the Endangered Species Act. My testimony draws from almost four decades of experience in wildlife conservation in the Federal Government, the nonprofit and private sectors, including service as Director of the U.S. Fish and Wildlife Service under President Bill Clinton.

Before I discuss the legislation being considered here today, it is important to first recognize that we are in the midst of an alarming and catastrophic biodiversity crisis. A biodiversity crisis is not a far away problem; it is unfolding here and now in the United States. Study after study has shown that this is a pivotal moment for wildlife, and ultimately, for humanity.

A recent global assessment on the status of biodiversity and ecosystem services found that as many as 1 million species are facing extinction. Just last week, the United Nations Convention on Biological Diversity released a sobering report warning that humanity is at a crossroads, and the extinction crisis is intensifying.

We are losing species faster than ever before in human history, and this devastating loss is even further exacerbated by the impacts of climate change. Our actions now will determine if our country will endure and our planet will sustain our priceless natural legacy for generations to come. If we don't act now, science tells us the consequences will be dire.

The United States can and should lead the way by establishing a national strategy focused on stemming the loss of biodiversity, which includes fully funding the Endangered Species Act. The legislation being considered today would take us in the wrong direction at this critical moment for our planet.

The ESA is our Nation's flagship law for conserving and recovering imperiled species, and is the cornerstone of our commitment to preserving life on Earth, and it is a strong foundation on which to build a national commitment to conserving biodiversity.

Since its enactment more than 45 years ago, it has been remarkably effective at protecting our Nation's biodiversity. Almost every listed species is still with us today, and hundreds are on the path to recovery because of the protections provided by the Endangered Species Act. However, woeful underfunding and inconsistent implementation have rendered it less effective than Congress envisioned, or any of us expected.

The bill before the Committee today does not strengthen the ability of the ESA to conserve imperiled species. Instead, it significantly rewrites key portions of the law to prioritize politics over science.

It inappropriately shifts responsibility for key implementation decisions from the Federal Government to the States, many of which do not have sufficient resources or the legal mechanisms in place to take the lead in conserving listed species.

It places significant new administrative burdens on already overburdened agencies, both Federal and State, and it turns the current process for listing and recovering threatened and endangered species into a far lengthier and less transparent process that precludes public and judicial review of key decisions.

These proposed changes to our Nation's most effective law for protecting species from the finality of extinction will result in significant harm to at risk species and their habitats, undermine collaborative conservation efforts, and blatantly ignore what scientists are telling us over and over in unified voices, further compounding the environmental challenges we are facing today. Preserving our wildlife in their habitat is a responsibility that transcends human lifetimes.

Our future depends on the actions we take now. Turning the tide on biodiversity loss and addressing climate change will not be easy, but our path forward as a society depends on it. At this critical moment for the biological health of our planet, the Nation must renew its commitment to conserving imperiled species and their habitats, not undercut the laws that protect them.

Regrettably, the legislation being considered today would weaken the ESA and make it harder to achieve the progress we must make to confront the disturbing rate of extinction our planet is facing and address the devastating loss of nature that we know is real.

Thank you, Mr. Chairman, for the opportunity to testify, and I am happy to respond to any questions.

[The prepared statement of Ms. Clark follows:]

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Testimony

of

**JAMIE RAPPAPORT CLARK
PRESIDENT & CEO
DEFENDERS OF WILDLIFE**

before the

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

on

S. 4589, THE ENDANGERED SPECIES ACT AMENDMENTS OF 2020

September 23, 2020



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

My name is Jamie Rappaport Clark and I am the President and CEO of Defenders of Wildlife, a national non-profit conservation organization dedicated to the protection of all native animals and plants in their natural communities. For over 70 years, Defenders of Wildlife has protected and restored imperiled species throughout North America by establishing on the ground programs at the state and local level; securing and improving state, national, and international policies that protect species and their habitats; and upholding legal safeguards for native wildlife in the courts. More recently, we launched the Center for Conservation Innovation to pioneer innovative, pragmatic solutions to enhance the effectiveness of endangered species conservation in the United States. We represent more than 1.8 million members and supporters throughout the United States

Before coming to Defenders of Wildlife, I spent 20 years working in conservation as a wildlife biologist in the federal government, first at the Department of Defense and then at the Department of the Interior. From 1997 until 2001, I served as the Director of the U.S. Fish and Wildlife Service (FWS) under President Bill Clinton. In that role, I oversaw the implementation of the Endangered Species Act (ESA or the Act) and presided over the recovery and delisting of key endangered species including the bald eagle, the Aleutian Canada goose and the peregrine falcon. During my confirmation hearing before this committee more than 20 years ago, I pledged to increase the FWS's role in cooperative approaches to species conservation. I firmly believe that involving stakeholders and other federal, state and tribal agency expertise early on reaps long-term benefits for fish and wildlife resources and the economy. Thank you for inviting me here today to speak about my experience conserving imperiled wildlife under the ESA.

As I will describe in my testimony, we are facing an alarming and catastrophic worldwide biodiversity crisis, largely driven by humankind. Development, habitat loss, exploitation, pollution and invasive species now threaten as many as one million species with extinction. These threats are exacerbated by climate change, which is increasingly impacting our planet. To combat these environmental crises, the United States should lead the way. We need a new comprehensive national strategy with supporting policies focused on stemming the loss of biodiversity. The policy should articulate the nation's commitment to a whole-of-government response to tackling species extinction, calling forth a coordinated effort from many different federal agencies, working in collaboration with states, tribes, landowners and other stakeholders, to address the primary threats to biodiversity, ecosystem services and nature.

The national commitment to combatting the biodiversity crisis must start with maintaining and strengthening the ESA, the visionary law that establishes the nation's commitment to conserving and recovering imperiled species. Senator Barrasso's bill, S. 4589, the "Endangered Species Act Amendments of 2020," would unfortunately take us the wrong direction at this critical moment for our planet.

A Biodiversity Crisis of Epic Proportions

The science marshalled over the past few years unequivocally illuminates with stark clarity that this is a pivotal time for wildlife and ultimately, humanity. Last year, the United Nations Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services released a groundbreaking

assessment warning that about one million species are now threatened with extinction.ⁱ In North America alone, nearly 3 billion birds have disappeared since 1970.ⁱⁱ Many once-common species have drastically declined, including monarch butterflies and bumblebees, and more than 10 species in the continental United States have been declared extinct in the past decade. This loss of species is driven by the fact that we have altered over 75% of terrestrial environments and 66% of marine environments.ⁱⁱⁱ Furthermore, we are losing species faster than ever before in human history, at tens to hundreds of times faster than the normal background extinction rate.

Just last week, the United Nations Convention on Biological Diversity released an sobering report announcing that the international community is not doing enough to adequately safeguard and restore biodiversity.^{iv} As part of the United Nations Decade on Biodiversity 2011-2020, more than 150 countries created a list of 20 targets aimed at improving the status of biodiversity. While some progress has been made over the past 10 years, the world has failed to fully achieve a single target, signaling the need to act urgently and place biodiversity at the center of our decision making.

This unprecedented challenge presents an historic moment for conservation and our country—perhaps the most critical one we have ever faced. Our actions now will determine if our country will endure and our planet will sustain our priceless natural legacy – our rich abundance of wildlife and awe-inspiring landscapes – for all generations. If we do not act now, the consequences to our society from the loss of species and ecosystem services will be dire. We must urgently develop and deploy solutions to address the root causes of biodiversity loss: (1) destruction of habitat from development; (2) overexploitation of wildlife; (3) climate change; (4) pollution; and (5) invasive alien species.

The Need for a National Biodiversity Strategy

The biodiversity crisis is not a far-away problem: it is unfolding here and now in the United States. Habitat is being lost at an alarming rate; climate change is visibly harming natural systems; pollution, invasive species and overexploitation are all taking their toll in serious and devastating ways. The U.S. has not developed a broad strategic vision to tackle these challenges, despite overwhelming evidence of the profound impact they will collectively have on our nation. Decades of underfunding and stagnating policies have meant that many conservation needs have been left unmet. For way too long, we have treated wildlife and natural resources as if they were inexhaustible. Our account with Nature is now overdrawn. For our own sake, and the sake of future generations—as well as wildlife itself—it is time to pay our outstanding debt.

To address the drivers of biodiversity loss, ensure society's security and re-establish the U.S. as a global leader in biodiversity conservation, we must establish a national policy of protecting biodiversity and direct federal agencies to use their authorities to advance that goal by preserving habitat, curbing overexploitation of wildlife, and addressing climate change, pollution and invasive species. The national policy should set a goal of protecting at least 30% of the nation's lands and

ⁱ Diaz, S., J. Settele, E. S. Brondizio, et al. 2019. "Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services." Available at: <https://www.ipbes.net/news/Media-Release-Global-Assessment>.

ⁱⁱ Rosenberg, L. V. et al. 2019. "Decline of the North American avifauna." *Science* 366 (6461): 120-124.

ⁱⁱⁱ Diaz, S. et al. 2019.

^{iv} Secretariat of the Convention on Biological Diversity. 2020. "Global Biodiversity Outlook 5." Montreal.

waters by 2030 to protect biodiversity and stabilize our climate (“30x30”).^v This goal will serve as a foundation for eventually protecting half of the nation’s lands and waters by 2050.

The national strategy for protecting biodiversity and ecosystem services should provide clear guidance on how the nation should set goals, make plans and take collaborative action across boundaries to address threats to biodiversity and ecosystem services. The strategy should also recommend ways to improve protections under existing conservation laws and policies, as well as identify new ones that may be needed. As part of this approach, we must commit to strengthening the ESA, deepening protection of biodiversity on federal lands, expanding private lands conservation programs, providing incentives for conservation action, and encouraging collaboration among federal, state, tribal and private stakeholders. In doing so, we will protect our nation’s natural legacy for today and for future generations and reestablish the United States as a global conservation leader.

The Endangered Species Act

Fortunately, we have a strong foundation on which to build such a national commitment to conserving biodiversity. More than 45 years ago, Congress established in the ESA the national goal of protecting all species and the ecosystems on which they depend. The ESA is the nation’s flagship law for protecting wildlife and plants from extinction and the cornerstone of our commitment to preserving life on Earth. This landmark law has been remarkably effective at protecting our nation’s biodiversity: almost every listed species is still with us today and hundreds are on the path of recovery. However, woeful underfunding and inconsistent implementation have rendered it less effective than Congress envisioned. With proper funding and political support, the ESA can achieve its full potential in protecting our most imperiled plants and animals and address the threats we are now focused on.

The most important thing Congress can do to improve the ESA’s effectiveness is to fully fund it. Although Defenders of Wildlife and others work constantly to improve implementation of the Act, the statutory framework established by the ESA – identifying imperiled species, protecting them and their critical habitat from further harm, and mandating recovery plans to restore them from the edge of extinction – is sound and needs no change. For the ESA to work, however, the agencies charged with overseeing and implementing it must have the political will and necessary resources to achieve its visionary purposes and goals. Congress must provide adequate resources – not change the structure of this successful and popular law – to help realize the ESA’s full potential and meet the threat of the looming biodiversity crisis.

The Endangered Species Act Amendments of 2020

The bill before the Committee today does not strengthen the ability of the ESA to conserve imperiled species. At a time when we should be redoubling our commitment to protect biodiversity and stop extinction, Senator Barrasso’s bill would undermine key provisions of the ESA and result in significant harm to at-risk species and their habitats, further exacerbating the environmental challenges we are facing today.

^v Rosa, Lindsay, and Jacob W. Malcom. 2020. “Getting to 30x30: Guidelines for Decision-Makers.” Washington, D.C.: Defenders of Wildlife. <https://defenders.org/sites/default/files/2020-07/getting-to-30x30-guidelines-for-decision-makers.pdf>.

There are numerous provisions in the bill that would weaken the ESA and lead to decreased protections for threatened and endangered species, ultimately condemning them to continued slow declines and challenges. It would significantly rewrite key portions of the ESA to prioritize politics over science, and inappropriately shift responsibility for key implementation decisions from the federal government to the states, many of which do not have sufficient resources or legal mechanisms in place to take the lead in conserving listed species. It would place significant new administrative burdens on already over-burdened agencies, both state and federal. It would turn the current process for listing and recovering threatened and endangered species into a far lengthier and less transparent process that precludes public and judicial review of key decisions.

For the remainder of my testimony I will discuss some of the more significant provisions in more detail.

If Enacted, the Bill Would Inappropriately Shift Responsibility for Implementing the Endangered Species Act to the States

The proposed bill seeks to dramatically reshape the states' role in implementing and administering the ESA, forcing the FWS and the National Marine Fisheries Service (the Services) to defer to the states in many cases when implementing the Act. The bill would require the Secretaries of the Interior and Commerce (the Secretaries) to acknowledge the "primary authority" of state agencies to manage fish and wildlife, and calls for the Secretaries to figure out how to somehow consult with states more than "the maximum extent practicable." In this bill, states are given control over key decisions under the ESA; decisions by a recovery team to modify recovery goals for a species, for example, would require approval by $\frac{3}{4}$ of the state representatives on the recovery team. And as I note below, states and landowners are given one-sided preferential treatment in judicial review.

Perhaps the most concerning aspect of the bill's attempt to elevate state interests relates to recovery planning and implementation. Under the ESA as currently written, the federal government has principal responsibility to develop recovery plans for listed species, though it can and does coordinate with states, local governments, scientists, industry, and nonprofit groups in developing and carrying out such plans.^{vi} Section 203 of the bill at issue would change this, requiring the Services to allow the states to "lead recovery planning and implementation" and giving them an outsized role in developing recovery goals and recovery plans. Given that a quarter of ESA-listed species are known to occur in two or more states and the challenges of coordinating recovery under different states' laws, federal leadership of recovery planning and implementation is particularly important. What if New Mexico grants some authority that Arizona does not for taking the steps necessary for recovery of a species like Mexican gray wolf? Or if one state wants a lower number of wolves than the other because it's politically easier, regardless of the species' needs.

The bill's provisions relating to implementation plans, which the bill proposes as a new mechanism to carry out recovery plans, are particularly concerning. Under Section 203 of the bill, the Services would be required to designate states as implementation plan leads. Thereafter, the states would have the authority to unilaterally change implementation plan provisions without Service approval or even oversight.

^{vi} 16 U.S.C. § 1533(f).

States already play an important role in helping determine the fate of species, both before and after they are listed. The ESA was passed in 1973 as a law of last resort for species conservation, in order to prevent species from going extinct. Until species are designated as threatened or endangered, the states play the primary role in managing and conserving wildlife, fish, and plant species within their borders. It is only after species have reached the threshold where they are likely to become extinct that the ESA's protections come into effect, and this is often after decades of state management and conservation efforts have proven insufficient to stop the species slide towards extinction.

Even after species are listed as threatened or endangered, the states still play an important role as collaborative conservation partners, and participate in recovery planning, including developing conservation plans and agreements.^{vii} States routinely help both develop and implement recovery goals for listed species, collaborate with the Services on conserving threatened, endangered, and candidate species, and can receive federal funding to carry out such activities.

However, the ultimate responsibility for ensuring the ESA meets its national commitment to conserving species rests with – and should remain with – the federal government. The states broadly lack the authorities and resources needed to carry out the conservation of threatened and endangered species; for example, Wyoming and West Virginia lack any endangered species statutes.^{viii} Only a small number of states even give state agencies the authority to promote the recovery of imperiled species, and most states do not protect all animal and plant species listed under the ESA under state law.^x The current federal role in leading implementation of the ESA has proven effective when properly administered and funded. Shifting responsibility to the states would subject actions like recovery planning and implementation to individual state politics and sentiments and could burden often underfunded and understaffed state wildlife agencies. Despite the fact that the ESA is widely popular with voters across the political spectrum, some states have shown a lack of political will to protect endangered species or are openly hostile to their protection. Giving the states dominant roles in every aspect of the implementation of the ESA is a recipe for disaster.

The Bill Would Raise Barriers to Listing Species, While Removing Barriers to Delisting Them

At the heart of the ESA are the listing provisions of section 4, which require the Secretaries to designate species as threatened or endangered.^{xi} Such designations bring those species under the protections of the Act, particularly the prohibitions against take.^{xii} This bill would significantly weaken those protections, delaying listings and making it easier to delist species.

^{vii} See U.S. Fish and Wildlife Service, “Interagency Policy Regarding the Role of State Agencies in ESA Activities, Last updated Feb. 22, 2016, <https://www.fws.gov/endangered/laws-policies/policy-state-agencies.html>.”

^{viii} Camacho AE, Robinson-Dorn M, Yildiz AC, Teegarden T. 2017. Assessing State Laws and Resources for Endangered Species Protection Comments. *Environmental Law Reporter News & Analysis* 47:10837–10844.

^{ix} Kurose S, Hartl B, Greenwald N. 2019. Unready and ill-equipped: How State Laws and State Funding Are Inadequate to Recover America's Endangered Species.

^x *Id.*

^{xi} 16 U.S.C. § 1533(a)(1).

^{xii} 16 U.S.C. § 1538(a)(1).

Most notably, the bill would remove the statutory deadlines placed on the Services to respond to listing petitions. Instead of the current 12-month deadline to decide whether to list a species, the Services would be compelled to work positive decisions to list into a seven-year “national listing work plan,” where the species is given a priority number that determines when the Services will actually list these species. For several of those priority classifications, the Services would be given the option to extend deadlines up to five years, meaning that listing protections can be delayed for years and years as a species moves closer to extinction – or goes extinct. Imagine if California Condors, Florida panthers, or Whooping Cranes had been denied listing for up to a dozen years when their numbers had dwindled to almost nothing; they might not be with us anymore.

The Proposed Bill Would Remove Public Accountability and Transparency from the Act

The ESA is strongly supported by the American public, with 4 out of 5 Americans supporting the Act.^{xxx} In enacting the ESA, Congress empowered the public to ensure that the Services are properly administering the law’s provisions through citizen suits.^{xxv} This bill proposes to significantly reduce public accountability and transparency, weakening public oversight of how federal and state wildlife agencies are carrying out their responsibilities under the law.

For some important decisions under the ESA, the bill would remove or delay judicial review, an essential part of the checks and balances within the federal government. When species are added to the Services’ “national listing work plan” and assigned a priority number, that decision would not be subject to judicial review. Moreover, when the Services delist a species, removing it from the protections of the ESA, the bill would prevent the courts from evaluating that decision until after five years of post-delisting monitoring had been carried out, no matter how flawed the initial decision to delist. During that time the species could be at risk of extinction or even become extinct. These provisions appear aimed at blocking conservation group lawsuits from seeking judicial relief where a species is removed from protection under the ESA while giving industry and other affected parties carte blanche to challenge the Services’ actions if it declines to delist or downlist a species. In cases where the public can still challenge agency actions under the ESA, the bill would put an arbitrary thumb on the judicial scales by declaring that efforts by state, tribal, an even local governments to intervene in ESA cases should presumptively be granted and requiring that such parties be automatically included in all settlement discussions.

The bill would also ensure that the Services and states could make decisions that could significantly impact the survival of listed species without providing the opportunity for public comment, including changing recovery goals or creating or modifying an implementation plan. At the same time the bill requires the federal government to directly solicit and fully consider state comments on listing petitions, it also forces the federal government to withhold disclosing information contained in such comments if the states claim their laws protect such information. These provisions together would allow affected parties to easily shield important information about their activities from disclosure – including information that is essential to the public’s understanding of, for example, whether habitat conservation plans or conservation agreements are working as intended.

^{xxx} Bruskotter JT, Vucetich JA, Stagle KM, Berardo R, Singh AS, Wilson RS. 2018. Support for the U.S. Endangered Species Act over time and space: Controversial species do not weaken public support for protective legislation. *Conservation Letters* 11:e12595.

^{xxv} 16 U.S.C. §§ 1540(g).

These heavy-handed attempts to exclude the public from holding agency – and state – officials accountable for sound decision making are contrary to the rule of law and expose species to the threat of arbitrary and unreviewable actions that could jeopardize their existence.

The Candidate Conservation Agreement with Assurances Provisions of the Bill Would Weaken the ESA’s Core Protections

The Services regularly develop candidate conservation agreements with assurances (CCAAs) under their authority to grant permits for taking species otherwise protected by the ESA’s anti-take provisions.^{xxv} CCAAs cover candidate species, or species that have not been listed yet, and are designed to address the identified threats and conserve the species with the goal of averting the need for ESA protections. Under these CCAAs, if a species ultimately is listed then participants in the agreement are automatically given a permit that covers activities that may result in taking the newly listed species. While CCAAs offer a promising way to protect species before they reach the point where listing is necessary, recent problems indicate the CCAA program needs substantial reform in order to meet its goals. For example, in Texas, the failure of the Texas Conservation Plan to protect sufficient dunes sagebrush lizard habitat led the Texas state government to terminate that CCAA and surrender the permit issued under it.^{xxvi} A recent audit of an existing multi-state CCAA covering the lesser prairie-chicken found that the CCAA was not meeting its conservation goals, and that as written did not allow the U.S. Fish and Wildlife Service to properly assess the CCAA’s performance.^{xxvii}

This bill does not strengthen the CCAA program. It inappropriately gives it undue weight when implementing other parts of the ESA as well. For example, the bill will require the Services to factor in the existence of CCAAs or other conservation agreements covering a species when considering whether to list that species as threatened or endangered. The bill would also require the Services to abide by the terms of all CCAAs entered into prior to March 27, 2017, no matter how effective – or ineffective – such CCAAs have proven to be. The CCAAs I noted before for the lizard and the prairie-chicken were entered into prior to the bill’s March 27, 2017 cut-off, and the bill would thus require the U.S. Fish and Wildlife Service to abide by the terms of these CCAAs that have clearly been demonstrated not to work.

Conclusion

Preserving our wildlife and the places they call home is a responsibility that transcends human lifetimes. Our future depends on the actions we take now to heal the fabric of life. Turning the tide on biodiversity loss and addressing climate change will not be easy. Neither will be rebuilding the economy, warding off future pandemics, confronting and remedying systemic racism and injustice, or restoring the integrity of the federal government itself. But our path forward as a society depends on our taking on those tasks.

^{xxv} Announcement of Final Policy for Candidate Conservation Agreements with Assurances, 64 Fed. Reg. 32726 (June 17, 1999); Candidate Conservation Agreements With Assurances Policy, 81 Fed. Reg. 95164 (Dec. 17, 2016).

^{xxvi} November 8, 2018 Letter from the Texas Comptroller of Accounts to the U.S. Fish and Wildlife Service, https://www.biologicaldiversity.org/species/reptiles/dunes_sagebrush_lizard/pdfs/DSL-plan-withdraw-letter.pdf

^{xxvii} See Western Association of Wildlife Agencies, “2019 Annual Report for the Range-wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie Chicken,” <https://www.wafwa.org/Documents%20and%20Settings/37/Site%20Documents/Initiatives/Lesser%20Prairie%20Chicken/Annual%20Reports/2019%20LPC%20CCA%20Annual%20Report.pdf>

At this critical moment for the biological health of our planet, the nation must renew its commitment to conserving imperiled species and their habitat. An effective national strategy to conserve biodiversity must center on supporting and strengthening the existing legal and policy framework to better protect wildlife, including most importantly the ESA. Any changes to this bedrock law must be judged by whether they actually improve species conservation and stave off species extinctions. Congressional interference in science-based decisions about how to conserve species would only serve to undermine the nation's ability to protect biodiversity.

Regrettably, the legislation being considered today would weaken the ESA and make it harder to achieve the progress we must make to address the alarming rate of extinction our planet is facing.

Thank you for considering my testimony. I would be happy to answer any questions.

Senate Committee on Environment and Public Works
Hearing entitled, “Modernizing the Endangered Species Act: Legislative Hearing on S.
4589, the Endangered Species Act Amendments of 2020.”
September 23, 2020
Questions for the Record for Jamie Rappaport Clark

Senator Carper:

1. The U.S. Fish and Wildlife Service has multiple tools at its disposal to promote voluntary conservation and to work with states and stakeholders to prevent new Endangered Species Act listings. In fact, the U.S. Fish and Wildlife Service is participating in a highly successful initiative with states, industry and conservation organizations, and landowners called “Conservation Without Conflict.” There are examples across the country of how this initiative is moving the needle to help conserve species – from crayfish to sparrows to rabbits. However, this initiative and the development of voluntary conservation agreements require financial resources.
 - a. Do you agree that the U.S. Fish and Wildlife Service could do more to promote voluntary conservation – within the current framework of the Endangered Species Act – if Congress provided more robust federal funding?

Yes, I very much agree. The Endangered Species Act already provides for robust voluntary conservation measures through state cooperative agreements under section 6, as well as voluntary agreements with state, local government, and private parties through the permitting provisions of section 10.

As we discussed during the hearing, the greatest single challenge of implementing the Endangered Species Act over the past several decades has been woeful underfunding. Not only are fundamentally federal activities like listing and delisting underfunded, but recovery planning and implementation has fallen far short and – to your point – so have programs to promote voluntary conservation.

And voluntary conservation agreements – whether with state or local governments, or with private stakeholders – can only work if the activities to be carried out by both parties under those agreements are sufficiently funded. That means that non-federal partners are provided the resources they need to ensure those agreements are effective in conserving imperiled species. But it also means that the relevant government agencies must be able to carry out their responsibilities when it comes to technical assistance, oversight, and enforcement. Unfortunately, we have seen too many situations where participants in voluntary conservation agreements are unable to meet the terms of those agreements, and the Services are unable to adequately monitor compliance with and effectiveness of those agreements. For example, I mentioned in my testimony the failures of the Candidate Conservation Agreement with Assurances between the U.S. Fish and Wildlife Service covering the lesser prairie-chicken. An audit found that among other things that the plan permitholder did not have the resources to properly oversee and manage it – and the U.S. Fish and

Wildlife Service had failed to adequately oversee agreement implementation.¹ This has increased the risk to lesser prairie-chicken populations and led to large-scale habitat degradation.

Furthermore, there are significant uncertainties as to the effectiveness surrounding agreements relating to habitat conservation plans under section 10 and a lack of adequate oversight by the U.S. Fish and Wildlife Service towards Habitat Conservation Plans under its authority.² Given the scope of the nationwide Habitat Conservation Plan program, with over 1,000 incidental take permits approved, it is vital that this program is sufficiently funded to ensure Habitat Conservation Plans are in compliance with their requirements and are being effective. That is likely not possible at current levels of funding, with regional U.S. Fish and Wildlife Service offices left understaffed and overworked.

2. How difficult do you think it would be for the U.S. Fish and Wildlife Service to correct the deficiencies that the courts have identified in the 2017 delisting rule for the Greater Yellowstone Ecosystem grizzly bear?

The grizzly bear is one of the best-studied animals in the United States, and the Fish and Wildlife Service has the expertise and the data available to properly evaluate this population's status. Delisting the Greater Yellowstone Ecosystem population, however, will require remedying certain deficiencies in the 2017 rule. The district court found the 2017 delisting rule for the Greater Yellowstone Ecosystem invalid for three reasons:³

- (1) The U.S. Fish and Wildlife Service failed to evaluate the impact of delisting the Greater Yellowstone Ecosystem population of grizzly bear on the other grizzly populations in the continental United States;
- (2) The U.S. Fish and Wildlife Service failed to use the best available science when it determined that the Greater Yellowstone population was not threatened by a lack of genetic diversity when the scientific literature available did not support that conclusion; and
- (3) The U.S. Fish and Wildlife Service's decision to not require future grizzly population models to be calibrated to ensure consistency with the current model being used was arbitrary and capricious, given that changing from a more conservative model to a less-conservative one could show a fictitious population increase on paper.

The Ninth Circuit Court of Appeals court affirmed the district court's decision in most respects, requiring the Service to remedy the three failures set forth above.⁴ Most of these deficiencies sprang from the same central problem – a failure to follow the clear requirements of the Endangered Species Act, including its requirement that listing decisions be based on the best available scientific information.

Although the U.S. Fish and Wildlife Service certainly has the ability to address these issues, the appellate court was clear as to what was needed, and the agency must conduct these analyses if it

¹ Western Association of Fish and Wildlife Agencies. 2019. 2019 Annual Report for the Range-wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken. https://wafwa.org/wp-content/uploads/2020/07/LPCRWP_AnnualReport_2019.pdf. The audit is contained in Appendix E to the annual report.

² Owley, J. 2015. Keeping Track of Conservation. 42 Ecology Law Quarterly 42:79.

³ Crow Indian Tribe v. U.S., 343 F.Supp.3d 999 (D. Mont. 2018).

⁴ Crow Indian Tribe v. U.S., No. 18-36030 (9th Cir. July 8, 2020).

chooses to go forward with a proposed delisting rule for the population. The grizzly bear currently occupies only 2% of its historical range in the continental United States, and when Congress passed the Endangered Species Act, the lower-48 population was one of its intended beneficiaries.⁵ In particular, the U.S. Fish and Wildlife Service must evaluate the impacts of delisting an individual population on recovery efforts for the broader listed entity. For whatever reason, the agency has yet to do this.

The ongoing recovery of the Yellowstone grizzly bears is an example of how well the Endangered Species Act can work in meeting its central goal of bringing listed species to the point where they may no longer need the Act's protections. But the conflict over the Greater Yellowstone grizzly population also shows why we need the federal government to retain its primary role in recovery and planning, and why the five-year delay of post-delisting judicial review in S 4569 could hurt imperiled species. In the case of the 2017 delisting, the district court held that the U.S. Fish and Wildlife Service had impermissibly bowed to political pressure in refusing to require future grizzly population modeling to correct for differences in models.⁶ Even under the current system, state political pressure can risk conservation goals; this bill would make such an event far more likely. Furthermore, by removing post-delisting judicial review for five years, species declines could occur quickly – and in the case of the grizzly, not be captured by the flawed monitoring practices the district court called out. Had the judicial review provisions of this bill been law during the attempted delisting of the Greater Yellowstone grizzly population, the significant flaws in the U.S. Fish and Wildlife Service's rationale for that delisting would have gone unaddressed for years as that population – and the remnant population – may have started slipping back towards extinction.

Senator Markey:

3. The North Atlantic Right Whale – one of the most iconic species in Massachusetts – is among the world's most endangered whale species, with only approximately 400 whales remaining. While Massachusetts has worked to institute protections for the North Atlantic Right Whale, the whale's habitat spans the entire U.S. eastern seaboard, and not all states have prioritized endangered species protection efforts. What effects could reducing federal Endangered Species Act protections have on the North Atlantic Right Whale?

Federal protections administered under the Endangered Species Act are absolutely critical to the survival and recovery of the North Atlantic right whale. The North Atlantic right whale, once nearly driven to extinction by the American whaling industry, had been on the road to recovery since it was listed as “endangered” under the Endangered Species Act in 1970. However, since 2017, the right whale has experienced a sustained Unusual Mortality Event (UME) that is reversing decades of progress and pushing the right whale toward the brink. Since 2017, there have been 31 confirmed right whale deaths due to human activities, in addition to 11 reports of seriously injured whales. By reducing the Endangered Species Act's protections, those numbers would grow exponentially.

⁵ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 183-184 (1978) (quoting 119 Cong. Rec. 42,913 (1973) (“[T]he continental population of grizzly bears . . . is surely threatened. . . [o]nce this bill is enacted, the appropriate Secretary . . . will have to take action to see that this situation is not permitted to worsen, and that these bears are not driven to extinction”).

⁶ *Crow Indian Tribe v. U.S.*, 343 F.Supp.3d 999, 1017 (D. Mont. 2018).

The authorities of the Endangered Species Act are crucial to combatting the two primary threats to the right whale's existence: ship strikes and entanglement in commercial fishing gear. For example, the National Marine Fisheries Service – also known as National Oceanic and Atmospheric Administration Fisheries – used the Endangered Species Act to promulgate the 2008 Ship Strike Rule. The rule was demonstrably successful; between 2008 and 2017, not one right whale was struck and killed in the mandatory Seasonal Management Areas imposed by the rule. However, as the Gulf of Maine warms faster than 99% of all water bodies due to climate change, the right whale has deviated from its once predictable migration patterns in search of food and suffered several mortalities from ship strikes. The best way to reverse this trend is for the National Marine Fisheries Service to expand the ship strike rule to account for these habitat shifts, an action provided for by the Endangered Species Act.

Likewise, the Endangered Species Act is the best way to hold responsible agencies accountable. While the right whale is protected under the Marine Mammal Protection Act and subject to Atlantic Large Whale Take Reduction Plan regulations since 1997, these regulations have shown time and again they're wholly inadequate for the task at hand. Under the Endangered Species Act's Section 7 consultation obligations, the National Marine Fisheries Service is required to issue biological opinions on the Atlantic Large Whale Take Reduction Plan amendments, but in the past has done so without including the requisite Incidental Take Statement to set limits on incidental take nor measures to minimize take. Following an April 2020 legal ruling, the National Marine Fisheries Service will have to comply with these requirements. If the Endangered Species Act's section 7 requirements were reduced or eliminated, the right whale would lose the benefit of this victory and the Atlantic Large Whale Take Reduction Plan would not be required to ensure that the ongoing authorization and management of the American lobster fishery in U.S. waters will not jeopardize the species' survival and recovery.

The Endangered Species Act is also vitally important in protecting right whales from emerging threats. Two years ago, the National Marine Fisheries Service approved Marine Mammal Protection Act incidental harassment authorizations to geophysical companies for five overlapping seismic blasting surveys from Delaware to Florida. Used to find offshore oil deposits, these seismic blasts can travel up to 2,500 miles away and would have occurred every 10-12 seconds 24/7 for months on end. These deafening sounds mask the “whispers” right whale mothers use to protect their calves from large predators in their calving grounds off South Carolina, Georgia, and Florida. Following a lawsuit brought by Defenders of Wildlife and its co-litigants, the courts ruled that the National Marine Fisheries Service violated the Endangered Species Act by issuing an arbitrary and unlawful biological opinion. The Endangered Species Act's mandates were directly responsible for preventing this reckless offshore drilling exploration.

Finally, as wind power becomes an increasingly popular source of renewable energy, the Endangered Species Act can help ensure offshore wind developments are sited, constructed, operated and maintained to provide this important source of energy while also protecting the right whale from adverse impacts. Many proposed projects are in right whale habitats, and the ships used to construct, operate and maintain these turbines ordinarily travel at high enough speeds to seriously injure or kill right whales. The Endangered Species Act is vital to guaranteeing these turbines, and the people who work on them, mitigate as much risk as possible for this critically endangered species.

While some coastal states, like Massachusetts, have instituted protections for the right whale, the vast majority of states have not and the few laws that are on the books are often under attack by

economic interests impacted by these statutes. Without the Endangered Species Act, protections for the right whale would be piecemeal or nonexistent in much of its habitat. It is imperative that the Endangered Species Act retains the full scope of its statutory protections, otherwise right whales and the many other species that depend on it will lose the best way to fight back against the threat of extinction, both present and future.

4. As you note in your testimony, nearly 3 billion birds have disappeared since 1970 in North America. Here in Massachusetts, there are three birds – the piping plover, the red knot, and the roseate tern – that are considered endangered or threatened. These birds, as well as many other threatened and endangered birds in the United States, cross several states during their annual migration. Federal leadership plays a critical role in coordinating species recovery across states; however, S. 4589 would give states “primary authority” when it comes to managing fish and wildlife. Could you please elaborate on the impacts that this bill could have on threatened and endangered bird species?

States have broad authority to manage resident wildlife. The federal government only steps in under the Endangered Species Act when state management has proven insufficient and species have reached the threshold where they are likely to become threatened or endangered. This bill would weaken the Endangered Species Act’s critical role as a safeguard of last resort, placing primary responsibility for staving off the species’ extinction on state agencies who in many cases have already been unable to conserve those species’ populations.

For bird species this could be extremely problematic. Approximately one in five of global bird species are vulnerable to extinction. There are currently approximately 100 bird species in the United States that are listed as threatened or endangered under the Endangered Species Act.⁷ A National Audubon Society report estimated that two-thirds of North American birds are at risk from the effects of climate change.⁸ As birds vanish from ecosystems it will cause dramatic ripples through ecosystems, interfering with decomposition, pollination, and seed dispersal.⁹

As you point out, birds also tend to be highly mobile and frequently cross state boundaries, particularly during migratory periods. Planning and implementing recovery actions therefore needs a transboundary perspective and coordinated recovery planning. This bill would largely give states control over recovery planning and implementation, risking extinction. States involved in the recovery implementation plans could disagree over which states are supposed to assume recovery responsibilities or may inadvertently rely on populations outside their borders to handle the heavy lifting of recovery. And as I noted in my testimony, the states also simply do not have either the resources or the legal mechanisms to take over primary responsibility for recovery planning and

⁷ U.S. Fish and Wildlife Service. 2020. ECOS. <http://ecos.fws.gov>

⁸ <https://www.audubon.org/sites/default/files/climatereport-2019-english-lowres.pdf>

⁹ Şekerciöğü et al. 2004. Ecosystem Consequences of Bird Declines. PNAS 101:18042-18047.

implementation activities.¹⁰ Historically, for example, state agencies have contributed an average of only 5% of Endangered Species Act conservation funding compared to federal agencies.¹¹

5. In your testimony, you highlight the need for the federal government to redouble its commitment to protect biodiversity and prevent extinction. What kind of proactive measures, including increased funding for the Endangered Species Act, would help the federal government better address the extinction crisis?

Increased funding of the Endangered Species Act is of course critically important; the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have been chronically underfunded in comparison to their obligations under the Endangered Species Act. For example, the U.S. Fish and Wildlife Service receives less than half of what it needs to carry out its responsibilities under the Endangered Species Act.¹² Species recovery has been chronically underfunded for the vast majority of species protected under the Endangered Species Act, with 85% of listed species with recovery plans not receiving the amount needed for recovery under those plans.¹³ Appropriate funding of Endangered Species Act activities, particularly recovery planning, can dramatically improve the Endangered Species Act's efficacy. To put necessary funding in perspective, the amounts needed to fully implement Endangered Species Act recovery would equal approximately one-tenth of one percent of annual discretionary federal spending.¹⁴

While the Endangered Species Act is an essential part of the response, the biodiversity crisis is even bigger and we don't yet have the national goal and national strategy needed to mobilize the all-of-government, society-wide response we need. We need a rededication to the ideals of the Endangered Species Act and those species already determined to be on the brink of existence, and we also must declare our determination to protect all of our Nation's wildlife from further decline, habitats from further loss, and environments from degradation. A national biodiversity strategy would set important goals like protecting at least 30% of our lands and waters by 2030. It would set the policy that federal agencies will use their authorities not just to advance the conservation of Endangered Species Act-listed species, but all species. It would ensure that discrimination of the past that has resulted in huge disparities in access to and benefit from nature are corrected and never again replicated. It would ensure the production of a quadrennial review of the status and trends of the nation's biodiversity to ensure the public can track our progress. It would motivate federal departments and agencies to request, develop, and adopt innovative approaches to conservation. And even beyond the federal response, a national strategy would bring people together from states

¹⁰ Camacho AE, Robinson-Dorn M, Yildiz AC, Teegarden T. 2017. Assessing State Laws and Resources for Endangered Species Protection Comments. *Environmental Law Reporter News & Analysis* 47:10837–10844; Kurose S, Hard B, Greenwald N. 2019. Unready and ill-equipped: How State Laws and State Funding Are Inadequate to Recover America's Endangered Species.

¹¹ Gerber LR. 2016. Conservation Triage or Injurious Neglect in Endangered Species Recovery. *Proceedings of the National Academy of Science* 113:3563–3566; *see also* Defenders of Wildlife. 2019. The Importance of Properly Funding the ESA. <https://defenders-cci.org/analysis/>.

¹² Gerber LR. 2016. Conservation Triage or Injurious Neglect in Endangered Species Recovery. *Proceedings of the National Academy of Science* 113:3563–3566; *see also* Defenders of Wildlife. 2019. The Importance of Properly Funding the ESA. <https://defenders-cci.org/analysis/>.

¹³ Defenders of Wildlife. 2019. Funding needs for the U.S. Fish and Wildlife Service endangered species program, FY 2020". (2019); https://defenders-cci.org/files/ESA_funding_needs_final.pdf.

¹⁴ Defenders of Wildlife. 2019. Over \$1.5 billion per year is needed to recovery Endangered Species Act (ESA)-listed species. https://defenders-cci.org/files/ESA_recovery_costs_2019.pdf

and tribes, private landowners and business – all sectors – to work towards a shared national goal that benefits us all.

Senator BARRASSO. Well, thank you so very much for joining us today remotely. We appreciate it.

We do have a number of Senators who are looking forward to asking questions, and let me start with Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman. I think that ESA reform is long overdue, and I think that it is an issue that, when I was Attorney General for the great State of Alaska, it actually had bipartisan support among all the AGs, particularly the western States' Attorneys General, just because we recognize, both Democrats and Republicans, that although the law has a lot of important aspects to it, there has been a lot of abuse to it as well.

Ms. Priddy, I have some questions for you. One, I appreciated your focus on the ability of States. My State has a really, really professional and outstanding Department of Fish and Game and some of the foremost experts on the species in Alaska, some of the foremost experts on these species in the world. They also understand how imperative it is to be able to balance protection of the species, which we all want, but also economic opportunity for our citizens and jobs.

Let me ask a couple of questions. One, can you talk a little bit more about where you believe the States' role should be, particularly given the expertise that a lot of States bring to these issues and the understanding of the economic balance that needs to be struck, versus Federal agencies that often don't have that deep kind of understanding?

Ms. PRIDDY. Well, I think that States have a very unique perspective on everything that goes on in their State, both economically and for conservation efforts. There are other agencies within the State, also, that can contribute to that, especially in Florida. We have our own Department of Agriculture, we have different environmental commissions that overlook everything. So I see them working together as a group, and being able to address those situations that are unique to their State.

Senator SULLIVAN. Let me ask a follow up. Some of my colleagues on the other side of the aisle who particularly want all the power in the Federal Government, say well, you can't really trust the States. They don't really care about the species or the people. They don't understand the "science." A lot of times, they use the word science.

Trust me, during the Obama administration, I saw the abuse of science in my State of Alaska all the time, all the time. Don't even get me going on that one.

But how about that argument that we often hear, well, you can't really trust the States? Isn't it actually the opposite, the States are on the ground with the people, with the expertise, knowing the species that are unique to the ecosystems of Florida or Alaska?

Isn't it better to trust the States? Isn't that a more effective way to effectuate effective ESA policy?

Ms. PRIDDY. Well, I would certainly take exception to the position that the Federal Government is better, in a better position to manage these endangered species. In fact, having been a Florida Fish and Wildlife Conservation Commissioner, it is really almost offensive.

Senator SULLIVAN. Yes. I agree with that.

Ms. PRIDDY. I have seen first hand how engaged our State has been. Of course, speaking for Florida only, we were able to keep our black bear from being considered for listing because of the exceptional efforts that were made, and I also see how our State on a regular basis provides greater funding than the Federal Government does to species that are already on the list.

Senator SULLIVAN. Let me follow up on that. I agree exactly with what you just said.

Again, I think there is a lot of area for bipartisan reform. Let me give you one example.

Some of the more extreme radical groups, Center for Biological Diversity, for example. They have undertaken this, and trust me, they try to shut down my State all the time, kill jobs, the whole bit.

They have undertaken these examples of multiple listing petitions, where they literally look to list 50, 60, 70, 80. Most people, even my colleagues on the other side of the aisle believe that is the kind of abuse that has taken place under the ESA that needs to be reformed. I think even the Obama administration agreed with that, in general.

Do you agree with that, those kinds of abuses? Are there other abuses to the Federal law right now? We all want to make sure we have robust species, protect our environment, protect our species. But what are some of the abuses that you see in the current ESA that we could address that you think would be important?

Ms. PRIDDY. Absolutely, I don't agree that litigation is the way to go. I think it ties up resources that could be used better elsewhere, working together. Because the goal that everybody wants is the removing or delisting of the species from the list.

I think that the bill having that 5 year period after a species is delisted would be an exceptional opportunity for the States to show what they can actually do. So I think that is a key component of the bill that would definitely help the States.

Senator SULLIVAN. Great, thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Sullivan.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman, and I thank all of our witnesses.

First, I would like to ask unanimous consent to submit letters signed by the Southern Maryland Audubon Society, the Audubon Naturalist Society of Chevy Chase, Maryland, and Born Free USA, an international wildlife conservation and animal protection organization, headquartered in Silver Spring, Maryland, expressing oppositions to the legislation that was drafted on behalf of the thousands of members of these organization, for the record.

Senator BARRASSO. Without objection.

[The referenced information follows:]

September 23, 2020

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

The undersigned Maryland groups write today to express strong opposition to Senator Barrasso's legislation, the Endangered Species Act (ESA) Amendments of 2020 (S. 4589).

For more than 45 years, the ESA has protected thousands of iconic and threatened species, including the bald eagle, California condor, grizzly bear, and humpback whale. Enacted under the Nixon Administration in 1973, the ESA is intended "to halt and reverse the trend toward species extinction, whatever the cost." Unfortunately, the Barrasso bill is all about politics, not science, and will not improve the conservation of endangered species.

Currently, the ESA protects more than 1,600 plant and animal species in the United States and its territories, and millions of acres of land have been designated as critical habitat to allow for species conservation. In Maryland, there are 13 animals and 8 plants listed as endangered or threatened under the Act. Ninety-nine percent of species protected by the ESA have avoided extinction. For example, the Delmarva fox squirrel has been brought back from the brink of extinction. After successful recovery efforts and thanks to the important protections afforded to it by the ESA, it's been removed from the list of threatened and endangered species.

S. 4589 also weighs down the currently over-burdened federal agencies endeavoring to protect and recover imperiled species. It does so by creating arbitrary and infeasible deadlines and requirements, making agency staff jobs, and their efforts to conserve endangered species, even more difficult. What is needed, now more than ever, is increased funding for endangered species conservation, including Endangered Species Act listing, planning and consultation, species conservation and restoration, and species recovery. After decades of being systematically and severely underfunded, more robust funding is needed to recover and conserve our Nation's imperiled animals and plants.

At a time when the planet is facing an unprecedented extinction crisis caused by human-driven factors, we should be mobilizing to reverse this crisis rather than weakening our most important tool to address it.

We write on behalf of our thousands of Maryland members and supporters to express strong opposition to this legislation.

Respectfully,

Bob Lukinic
Conservation Chair
Southern Maryland Audubon Society
Bryans Road, Maryland

Eliza Cava
Director of Conservation
Audubon Naturalist Society
Chevy Chase, Maryland

September 23, 2020

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 legislation entitled the "Endangered Species Act Amendments of 2020" (S. 4589). This bill would fundamentally undermine the Endangered Species Act (ESA) which has proven highly effective at preventing the extinction of species under its protection. The ESA is also broadly popular with the American people – poll after poll has shown broad support, the most recent peer-reviewed research showing support from roughly four out of five Americans.¹ At a time when the planet is facing an unprecedented extinction crisis caused by human driven factors, we should be mobilizing to reverse this crisis rather than weakening our most important tool to address it. We write on behalf of our millions of members and supporters to express strong opposition to this legislation.

Our nation and our planet face an extinction crisis of epic proportion; scientists predict that half of all species will be facing extinction by the end of the century. Study after study in the last several years have warned about this crisis. Last year's global assessment on the status of biodiversity and ecosystem services found that 1 in 8 species on Earth – about 1 million species – are facing extinction.² And just last week, the United Nations Convention on Biological Diversity released an updated report warning that humanity is at a crossroads and the extinction crisis is intensifying.³ In releasing this new report, Inger Andersen, U.N. under-secretary-general and executive director of the U.N. Environment Programme said that protecting nature is still entirely within humanity's reach but we need to start now: "We can no longer afford to cast nature to the side. Now is the time for a massive step up, conserving, restoring and using biodiversity fairly and sustainably. If we do not, biodiversity will continue to buckle under the weight of land- and sea-use change, overexploitation, climate change, pollution and invasive alien species. This will further damage human health, economies and societies, with particularly dire impacts on indigenous communities."⁴

¹ Jeremy T. Bruskotter et al., *Support for the U.S. Endangered Species Act Over Time and Space: Controversial Species Do Not Weaken Public Support for Protective Legislation*, Conservation Letters, e12595 (2018), <https://doi.org/10.1111/conl.12595>.

² <https://ipbes.net/news/Media-Release-Global-Assessment>

³ <https://www.cbd.int/gbo5?ftag=MSF0951a18>

⁴ <https://www.unenvironment.org/news-and-stories/speech/protecting-nature-entirely-within-humanitys-reach-work-must-start-now?ftag=MSF0951a18>

The world has a moral imperative to collaborate on strong actions to mitigate and adapt to the biodiversity crisis. The preservation and support for our bedrock conservation laws – including the ESA – is a vital component of the solution. The U.S. should mobilize relevant agencies across the Federal government to develop a strategy to address this crisis including fully funding the ESA – programs to recover species listed under the ESA have been consistently and significantly underfunded, with recent estimates indicating species receive less than one-quarter of funding scientists indicate is required.⁵

Unfortunately, Senator Barrasso’s bill goes in the opposite direction, dramatically weakening this effective and popular wildlife conservation law:

- The bill is all about politics, not science, and will not improve the conservation of endangered species.
- This bill seeks to impose overweening and inappropriate state control over the most important processes to list, protect and recover imperiled species under the ESA and adds additional bureaucratic barriers to listing but removes barriers to delisting.
- It shields critical decisions to delist species from judicial review, precluding the ability of the public to hold federal decision makers accountable to the law.
- It replaces the current listing process with a far lengthier process. Species already wait years for protection.
- It replaces federal management of recovery planning and implementation with layers of recovery goal development, recovery plan development, and implementation plan development, each dominated by states.
- It weighs down the already over-burdened federal agencies endeavoring to protect and recover imperiled species with arbitrary and infeasible deadlines and requirements, making their jobs — and the prospects for conserving endangered species — even more daunting.

In particular, 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 study⁶ 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.

In recent years, there has been a parade of attacks on the ESA both by opponents in Congress and the current administration. Given the tremendous success of the ESA and the overwhelming need to address the unprecedented extinction crisis, there is simply no reason for legislation that would do nothing other than satisfy political interests in undermining this

⁵ See Gerber LR. 2016. Conservation triage or injurious neglect in endangered species recovery. Proc. Natl. Acad. Sci. U. S. A. 113:3563–3566 and an updated estimate of recovery cost requirements at https://defenders-cci.org/files/ESA_recovery_costs_2019.pdf

⁶ <http://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-esa-report-final.pdf>

crucial wildlife conservation law. Again, we strongly oppose this legislation. Thank you for your attention.

Sincerely,

Alaska Wilderness League Action
Animal Welfare Institute
Appalachian Trail Conservancy
Bat Conservation International
Born Free USA
Center for Biological Diversity
Central Colorado Wilderness Coalition
Christian Council of Delmarva
Clean Water Action
Coalition on the Environment and Jewish Life
Coalition to Protect America's National Parks
Conservation Council For Hawaii
Conservation Law Foundation
Conservatives for Responsible Stewardship
Defenders of Wildlife
Earthjustice
Endangered Habitats League
Endangered Species Coalition
Environment America
Environmental Protection Information Center
Friends of Blackwater, Inc.
Friends of the Earth
Friends of the Sonoran Desert
Gaviota Coast Conservancy
Grand Junction Area Broadband - Great Old Broads for Wilderness
Great Old Broads for Wilderness
Humane Society Legislative Fund
Humane Society of the United States
International Marine Mammal Project of Earth Island Institute
John Muir Project
Juniata Valley Audubon Society
Klamath Forest Alliance
League of Conservation Voters
Los Padres ForestWatch
Maine Audubon
Mass Audubon
National Parks Conservation Association
Natural Resources Defense Council
NH Audubon
Northwest Center for Alternatives to Pesticides

NY4WHALES
Ocean Conservancy
Oceana
Oceanic Preservation Society
Oil Change International
Resource Renewal Institute
RESTORE: The North Woods
Rocky Mountain Recreation Initiative
Rocky Mountain Wild
San Juan Citizens Alliance
San Luis Valley Ecosystem Council
Save Our Allegheny Ridges
Save the Manatee Club
Sierra Club
Southern Environmental Law Center
Turtle Island Restoration Network
Union of Concerned Scientists
Western Environmental Law Center
Western Watersheds Project
WildEarth Guardians
Wilderness Workshop
Wildlands Network
Wildlife Conservation Society
Wolf Conservation Center

Senator CARDIN. Mr. Chairman, I just really want to agree with my friend from Alaska. We want to work in a bipartisan manner. The Endangered Species Act has been a critically important law for the environment, and both Democrats and Republicans agree on it. So reform should be done together.

I take issue with the Chairman's bill not because of the sincerity of it, but because I just don't think it deals with the fundamental problems that we have in the Endangered Species Act, as Senator Carper has pointed out.

In my State, I know that we were successful in dealing with the Delmarva fox squirrel. We got it delisted. But we did that through management, which requires resources. If we are looking at reform, we need to find out how we can get adequate resources to have the right type of management so that we can, in fact, have more success stories.

Over 50 species have been successfully recovered and no longer need Federal protection. That is exactly what the Endangered Species Act is about, is to set up systems so that we can, ultimately, remove the species from the endangered species list.

I want to ask Jamie Clark a question, if I might, and that is, in my State of Maryland and in our region, the Chesapeake Bay is, of course, one of our great environmental challenges, and all the stakeholders in our State and our region come together, Democrats, Republicans, the State government, the local governments, the landowners, the developers, the local governments and wastewater management, our farmers, in an effort to save the Chesapeake Bay.

Part of that is to make sure we have the species that give for a healthy bay. I would just like to get your view as a matter of priority in dealing with the Endangered Species Act, what impact will a change in judicial review have on our efforts versus additional resources that we need in order to deal with the species protections?

Ms. CLARK. Thank you, Senator. Well, first of all, the Chesapeake Bay is a fabulous example of an ecosystem that has, what, five States, multiple jurisdictions coming together to conserve a pretty spectacular ecosystem. It is managed by this national overarching authority of the Endangered Species Act, and one of the most important pieces of legislation to guide recovery of the bay and all of the attendant tributaries and land around that system.

Since the Chesapeake Bay spans five States and numerous endangered species, this bill could introduce all kinds of confusion as to whose [indiscernible]. Without the national overarching Federal involvement and Federal stewardship that is governed by the Endangered Species Act today, there is going to be a complete breakdown, or could be a complete breakdown, over who has authority to make decisions and how those decisions are made without the overarching national imperative.

Judicial review, the whole issue behind the litigation and so much of the debate on litigation today is very much tied to high profile litigation on high profile species. I get that. But the citizen suit provisions in the Endangered Species Act, as well as other laws, really are just there to help hold agencies accountable. I remember that clearly from my time in government, for sure. They hold agencies accountable to uphold the law and allow citizens that engagement.

Citizens deserve and should have a role in holding agencies in our government accountable to help Congress ensure that the laws that they enact [indiscernible] appropriately. The majority of the litigation brought by the environmental community is about deadlines. That is completely tied to inadequate resources, and frankly, the majority of litigation on the ESA is brought by industry and property owners than by conservation groups.

So we can debate the issue of litigation, but it is a check and balance, and it is essential to holding our decisionmakers accountable for upholding the law.

Senator CARDIN. Let me just make one correction: there are six States in the Chesapeake Bay.

Ms. CLARK. Oh, OK, sorry.

Senator CARDIN. I wouldn't want to leave any of our States out. Second, let me just underscore the point that you made in that the Chesapeake Bay Program is basically from the States coming together. It is a State initiated program, as the Endangered Species Act, we want the States to be actively engaged.

Ms. CLARK. Absolutely.

Senator CARDIN. But you need to have an umpire here. You need to have some cohesiveness here, so that everybody does what is right. That is why we have the Federal partnership on the Chesapeake Bay, as we need to be able to enforce our endangered species laws sometimes when States aren't doing what they should be doing on management.

Thank you, Mr. Chairman. I appreciate this hearing.

Senator BARRASSO. Thank you, Senator Cardin.

Ms. Priddy, if I were to just ask you, the bill that we are talking about today seeks to promote regulatory certainty, and it does that by encouraging stakeholders to enter into conservation agreements and to invest in conservation efforts.

We heard from Governor Gordon a number of the things that are being done in Wyoming. This includes ensuring that such agreements and efforts are formally considered when deciding whether or not to list a species under the Endangered Species Act.

So I would like to ask you, the bill also provides increased funding to support proactive, voluntary conservation activities undertaken by private landowners. You found yourself in that situation. How will these provisions further motivate landowners and ranchers to engage in voluntary conservation of the land?

Ms. PRIDDY. Well, ranchers are business people, and business people like certainty, as much as oftentimes there isn't as much as we would like to have. I think that the bill, in considering some of these efforts to be good conservationists, would allow us some more of that certainty to take into consideration while we are doing our business planning.

I know myself, we have a conservation easement on our property. It is an agricultural conservation easement, but we were willing to put that property aside in perpetuity, knowing that that property can never be developed. So it gives the public certainty, and it gives us as landowners certainty.

It is probably not a surprise that whenever ranchers are told, we are from the Federal Government and we are here to help you,

they might meet with some skepticism. So anytime we can have especially Federal regulatory certainty, it is helpful.

Another effort that we are involved in is habitat conservation plan for landowners in our area, which, again, working with the U.S. Fish and Wildlife Service will give you that certainty. One of the problems with seeking that HCP is the length of time that it takes. I think that that is a reflection on the resources that are limited within the Federal Government that have to be spread so thin.

Senator BARRASSO. Let me ask you one other question. In 2018, we had testimony before this Committee by Nick Wiley, who is the former—I think you know—Executive Director of the Florida Fish and Wildlife Conservation Commission. He stated in that testimony, he said, “Current provisions and interpretations of the Endangered Species Act,” he said, “still result in significant roadblocks, limiting,” he said, “our ability to participate as a full, jurisdictional partner.”

So, he cited black bears, manatees, as examples where Florida should have been more closely involved as a State. So how would this legislation improve States’ abilities to participate in the listing and delisting of species? Why would that be good for conservation?

Ms. PRIDDY. Well, I think Florida has so many great examples of species that the State has dedicated tremendous resources, folks on the ground, financial resources. Oftentimes, it is far in excess of what the Federal Government is able to dedicate to the recovery of that particular species, the manatee being a great example. I truly don’t think that the manatee would have recovered like it has unless it had the support of Florida.

The bear, as I mentioned before, we were actually able to keep from being delisted because of efforts that Floridians and the FWC put forth to take the steps and do the research that was necessary to keep it off the list. It is a recovery story that any State would be happy to have.

Senator BARRASSO. Thank you. Thank you for that answer.

I would like to now turn to Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman, and Senator Carper, as well.

I want to start off by saying that the Endangered Species Act, and I hope we can all agree, it has been really successful in a sense that 99 percent of all the wildlife under its protection have been saved from extinction, 99 percent of a success rate.

And while the huge task of recovering a species from the brink of extinction is often a decades long endeavor, the majority of species that have been listed under the ESA are recovering within the timeframes that were projected.

But let’s recognize, though, just how dire of a global crisis we are in. We are in one of the handful, going back to the dinosaurs, one of the handful of global extinction crises. It is estimated right now that one in six species are threatened with extinction in this century alone, one in six. According to a report recently released by the World Wildlife Fund, it is estimated that the global populations of fish, birds, mammals, amphibians, and reptiles declined by 68 percent between 1970 and today.

It is incredible. It really means that we have lost more than two-thirds of all wildlife in the last 50 years. Species are going extinct right now thousands of times faster than natural extinction rates.

These are staggering, tragic numbers that we all have to recognize for the sake of humanity, because this is not just a crisis for wildlife; destruction of habitat, and loss of biodiversity is a threat to humanity; it is a threat to all of us. Because we rely upon nature for food, shelter, medicine, and so much more.

Scientists are telling us that if we want to prevent another pandemic like the coronavirus, for example, from happening, we need to stop destroying forests and other ecosystems. They are directly related to the spread of such global pandemics.

Yet right now, today, in the United States, we are losing, on average, a football field's worth of natural resources, of natural areas to development every 30 seconds. Every 30 seconds, a football field's worth of natural areas are being lost to development.

Given the crisis we are facing, I believe that this bill we are considering today is actually a step in the wrong direction. Rather than focusing on ways we can increase our conservation efforts and increase our funding for protection and to protect species at risk, this bill moves us away from the use of the best available science and would delay and restrict judicial review.

This is not a choice between jobs and our economy and protecting our natural species and wildlife. It is actually something that we can do both. In fact, if we look ahead more than just 2 years or 4 years or 60 years and election cycles and look decades into the future, taking action now will actually save tremendous economic opportunity and well being in future generations.

What I would like to do with the short remainder of my time, about 2 minutes, is ask Ms. Clark, to give you the remainder of my time, just to expand upon the comments you made in your opening statement about this crisis we are facing, this global extinction event that we are in, and what natural biodiversity strategies might address the crisis that we are in.

Ms. CLARK. Thank you, Senator. Well, you did a fabulous job tee-ing it up, so thank you for that. I will just amplify on your comments.

We have 1 million species at risk of extinction, it is huge, huge from every taxonomic group. Seventy-five percent of land and 66 percent of rain habitats are already significantly modified. Populations of wildlife are dramatically reduced worldwide, and certainly here in the United States.

You mentioned the Living Planet Index that came out just a few weeks ago, very sobering news for our world. Coral reefs are now half their historic size, and they are essential to the health of our marine environment. All signs are pointing to dramatic declines of biodiversity, and the looming [indiscernible].

And you also mentioned, Senator, which I would agree with, is that the effects of a biodiversity crisis extend to us. So goes nature, so goes us. We have a half a billion dollars of crops at risk every year because of the loss of pollinators. That will collapse the food industry.

The zoonotic disease, you mentioned coronavirus, the COVID-19 crisis, as well as many other diseases result from a decline in clean, fresh water, and the list goes on and on.

But to the national biodiversity strategy you asked me about, we know we are facing a biodiversity crisis. That is unequivocally clear. Yet we haven't adopted a strategic vision for just that crisis, and we need to. We can, and we should.

We need to set a policy for protecting our natural heritage on a continental scale, and direct Federal agencies working with States, Tribes, and other stakeholders to advance that goal in a very systematic fashion.

Senator BARRASSO. Ms. Clark, if I could just, because the Senator turned over his remaining time, we have Senator Gillibrand wanting to ask a question, so if you wouldn't mind, I want to go to Senator Gillibrand.

Ms. CLARK. Certainly.

Senator BARRASSO. Senator Gillibrand, the floor is yours.

Is she not there?

Senator Duckworth, if you are standing by, if I could turn to you first while we are trying to get Senator Gillibrand connected.

Senator Duckworth.

Senator DUCKWORTH. I am ready to go, Mr. Chairman.

Senator BARRASSO. Thank you. Please proceed, thank you.

Senator DUCKWORTH. Thank you so much. I would like to thank both you and the Ranking Member for having today's hearing, and also to Ms. Priddy and Ms. Clark, I want to thank you both for joining us here today.

My first question has to do with the measuring of success for the Endangered Species Act. My Republican colleagues often point out that only 39 species have ever been delisted from the Endangered Species Act after experiencing a population recovery. However, a different measure puts the Endangered Species Act in terms of how few species that have been listed have gone extinct.

Ms. Clark, can you elaborate why this second measure, where you look at how few of these species have been listed, have actually gone extinct is a better picture of success for the Endangered Species Act? Thank you.

Ms. CLARK. Certainly, thank you, Senator. The Endangered Species Act is a law of last resort. Species come onto the Endangered Species Act and are protected by that statute only after State and other local authorities and protections have failed. So oftentimes, by the time a species is listed and protected by the Federal Government, it is in pretty dire shape and bumping up against extinction.

That typically happens after decades of decline, so we shouldn't expect species to just flip and turn around. It is not like flipping on a light switch when the Endangered Species Act comes into its protective status.

What is remarkable about the number of species on the list is how many of them have continued to sustain, knowing that we got to them almost too late. The fact that so few have gone extinct after being protected by the Endangered Species Act is a remarkable measure of success.

The expectation that species would recover overnight, or even quickly given the dire straits most are in by the time they are pro-

tected by the law, is an inappropriate measure for sure, and often affected by lack of funding that is invested to allow those species to begin their recovery journey.

Senator DUCKWORTH. Thank you. The Endangered Species Act provides a critical framework, as you were saying, to protect endangered and threatened species and their habitats. A study in 2018, I understand, found that one-fourth of listed endangered species lack final recovery plans. Of species that do have plans half of them took more than 5 years to finalize after a species was listed, and half of all recovery plans are more than 20 years old.

In order to ensure that the Endangered Species Act can provide meaningful protection to endangered and threatened species, it needs secure and sufficient funding to make sure that these plans can be completed, updated, and kept relevant, and that the work of saving these species can be completed.

Can each member of the panel briefly speak to the role funding plays in conserving these species? I would like to turn over the remainder of my time to the panelists to answer this question. Thank you.

Senator BARRASSO. Thank you so very much, Senator, I appreciate it.

Senator DUCKWORTH. Thank you.

Ms. PRIDDY. I guess I will go ahead. This is Liesa Priddy.

To address that question, yes, I think that funding is essential to being able to successfully recover these species. But again, I feel that in many cases, it has been the States, on their shoulders, to fund the efforts that are made for these species' recovery. Often, the Federal funding just isn't there to provide all the resources that are needed for each individual species.

Ms. CLARK. I would add that the Endangered Species Act has been severely underfunded for decades, and that speaks to both the State need, as well as the Federal need, so States certainly need more resources, as does the Federal Government. The most recent evaluation suggests that less than 25 percent of the recovery funding that is needed, that scientists say is needed for the species that are listed, has been provided at either the Federal or the State level.

So this is pretty dire. We can't expect species to recover without investment. The States are doing the best they can; the Federal Government is doing the best it can. But this is really, basically an issue about investment and whether or not we are going to address this national commitment that, frankly, is a rounding error of the budget that is deployed for a big part of the government.

Senator BARRASSO. Thank you so much, Senator Duckworth.

Senator Gillibrand, I know we have been having a little trouble technically. Hopefully, you are able to join us now and ask your questions. Thanks so much for your patience.

Senator GILLIBRAND. I am. Thank you so much, Mr. Chairman.

To Ms. Clark, I am concerned with provisions in this bill that would significantly limit the ability for citizens to use judicial review to hold decisionmakers accountable when a species is delisted from the Endangered Species Act. The proposed bill would not allow for judicial review for delisted species until the completion of a monitoring period of at least 5 years.

If the species is delisted prematurely and loses ESA protections, what kind of damage could occur to that species over a 5 year time-frame?

Second, absent judicial review, what remedies would citizens have to reverse a harmful agency decision before the end of the monitoring period?

Last, would you agree that judicial review is important to ensure accountability and national public trust in Endangered Species Act decisions?

Ms. CLARK. Certainly. I will try to tackle them in that order, but they might blend.

The barring of judicial review for a decision to delist is hugely troublesome because it completely eliminates the ability to hold the government accountable for the decision that they make. So if the science is saying something different, and the community or citizens are not allowed to challenge it, the species will continue to decline, continue to lose habitat, it will be in worse shape than it was before delisting, and the citizens are powerless to assert protections.

If there are politically motivated delistings, pretty significant damage can occur. I find that incredibly troublesome, that agencies can't be held accountable for decisions to delist, but they can certainly be challenged if they list. So that seems to be lopsided, because recovery is guided by science, as is the need to list, which gets at your other questions about the importance of judicial review.

The role of litigation is incredibly important, not to undermine or to attack good decisions guided by science. But the citizen suit provisions in this law as well as other environmental laws help hold agencies accountable, help hold them accountable to uphold the law and allow citizens to help Congress ensure that the laws that they enact are doing what they are supposed to.

So to blame litigation is the wrong victim or the wrong target. This is a law that is guided by science. The species tell us how they are doing, and if species are in decline, and there is no way to stop it or no way to interject or intercede, then, worst case scenario, we could watch something go extinct with no ability to stop it.

Senator GILLIBRAND. Well, some of the most visible success stories of the ESA relate to the recovery of iconic, endangered birds, such as the bald eagle and brown pelican. The U.S. Fish and Wildlife Service has also found that more than 46 million people engage in birdwatching, and millions more benefit from their continued presence in the communities and landscapes. Unfortunately, recent studies, including from the Cornell Lab of Ornithology, have found that bird populations are facing long term declines and significant threats from climate change.

Can you talk a little bit about why the ESA has been critical for recovering birds and why it will continue to be so important going forward? Second, would you also elaborate more broadly on the ecotourism benefits of protecting other types of threatened and endangered species?

Ms. CLARK. Sure. Birds are amazing critters, and they are often indicators for the health of our planet, for the health of the ecosystem. While the bald eagle, the brown pelican, the peregrine fal-

con have been unbelievable successes, all told, North American bird populations have declined by nearly 3 billion birds since 1970. That is, I think, it is split, like, a million birds from the forest systems, and a 53 percent decline in grasslands. That is a devastating loss for such a significant group of wildlife that Americans love and enjoy routinely.

We know the success stories that you mentioned, for sure. There are plenty of others that have been delisted due to recovery, and ongoing efforts afforded by the Endangered Species Act are bringing back some amazing birds, like the red cockaded woodpecker, the piping plover, the golden-cheeked warbler, the red knot. It is the Endangered Species Act that is compelling those partnerships and those checks and balances to protect these species from going off the cliff, and it is significantly important.

Birds are so essential to the fabric of life and to the circle, the ecosystem web, that without vibrant bird populations, the entire ecosystems will be in trouble. Right now, I think birds are heavily represented on the list, more than 300 species listed today, and eco-tourism benefits a great segue.

The last survey done by the Fish and Wildlife Service found that more than 100 million Americans participated in fishing, hunting, and other wildlife associated recreation and spend a \$156 billion while doing so. Eighty billion dollars of that was expended by 86 million Americans who engage in wildlife watching, especially bird-watching.

Especially at a time like this, in the middle of all this pandemic and social distancing, birdwatching is escalating off the charts. People want to get outdoors; they want to enjoy nature, and they are willing to invest and pay for it. So threatened and endangered species are particularly popular, again among the birdwatchers, and they often, rare bird alerts, pretty exciting in this country.

The ability to enjoy, whether you are feeding them or counting them or adding them to your life list, the Endangered Species Act has protected some of our most iconic birds, has recovered many of our important birds, and is essential to how we address the biodiversity challenge we are facing today.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Gillibrand.

Senator Van Hollen, thank you for your patience. We look forward to hearing your questions.

Senator VAN HOLLEN. Well, thank you, Mr. Chairman. Thank you and the Ranking Member and to all our witnesses. Let me just associate myself with remarks from some of my colleagues, since a lot has already been said.

You all touched on the issue of funding for the Endangered Species Act. I think, when the Western Governors got together, that was a consensus position, a bipartisan view that we needed more resources.

Ms. Clark, thank you for mentioning the issue of protecting the migratory birds and other birds in Maryland. We have two national wildlife refuges, Eastern Neck and Blackwater Wildlife Refuge, and they both provide essential refuge for endangered species.

Ms. Clark, let me just ask you about the current relationship between the Fish and Wildlife Service and State wildlife personnel, because during the course of these hearings, it has been my impression from all the witnesses that the Fish and Wildlife Service personnel do collaborate very closely with the State personnel. I know that has been true in Maryland.

In fact, we just passed a bipartisan bill, Senator Capito and myself, called the WILD Act, supported, of course, by Senator Cardin, who we heard from earlier, and others. It is part of the ACE Act now, which would expand the relationship between our State stakeholders and the Fish and Wildlife Service. Can you just, based on your experience, can you discuss the nature of that cooperation as it currently exists?

Ms. CLARK. Yes, absolutely. The Fish and Wildlife Service has always taken the relationship and the partnership with the States very seriously. I know I did when I was director, and in fact, Florida is a classic example. Nick Wiley is a good friend. I have great respect for Nick and the work that he did in Florida, and Florida continues to lead the way on a lot of conservation initiatives that benefit species.

Much of the ESA's success is because the Service has developed partnerships with the States to conserve and recover threatened and endangered species. It is not a debate, and it is not a contest. It takes both the Federal Government and the States working together.

The State involvement is particularly important for some of the reasons that were mentioned in the testimony by the Governor and by my colleague from Florida, particularly important given the knowledge base and their relationship with private stakeholders within the borders.

It is important also to note that we talk about the woefully inadequate funding for the States and for the Federal Government to address imperiled species. The last study that was done suggests that the States have only been able to provide about 5 percent of the ESA funding that is necessary to address the needs of the listed species today.

So the current Endangered Species Act is plenty flexible to allow for that State contribution, to respect that State contribution, and to partner with the States to ensure that their roles are expanded and important. But we don't need to risk the act's effectiveness or the national contribution or the national oversight of the law to do that. There is plenty of administrative flexibility.

I have never known, regardless of the political party, there is not been a Fish and Wildlife Director, myself or since me, that has not respected or enjoyed very close relationships working with the States.

Senator VAN HOLLEN. I appreciate that, and as I read the proposed changes, it is hard for me to identify any other Federal law where we are trying to establish a Federal backstop here to protect endangered species where the Federal Government, essentially, relinquishes more ultimate control over the results.

In your experience and looking at the proposed draft, what do you think might have happened in some of what we would consider early success stories? For example, I know the State of Alaska op-

posed adding polar bears to the threatened species list. If this draft were in effect, this proposal, where do you think we would see different outcomes than we have today?

Ms. CLARK. First of all, Federal oversight through the Endangered Species Act only comes into play when the States have been unable to conserve species within their borders using State means or State authorities. There is not one State today that has a law at the State level equal to the Federal Endangered Species Act. In fact, there are two States, Wyoming, and West Virginia, that have no State protection or no State statute protecting species.

Species like the polar bear would likely not have been listed, and then potentially declined even more significantly because the Federal Endangered Species Act is a national commitment. The polar bear is of importance to the United States, and so it allows the transcending or the blending of the State oversight responsibilities and management of endemic species within their borders to be balanced with the national commitment to preserving biodiversity within this country. So it is the blending of those responsibilities.

So I imagine, worst case scenario, there could be a lot of political vetoing of species being added to the list because the camera lens of the Federal Endangered Species Act transcends State politics, and science guides those decisions, and science dictates what species are at the brink of extinction, and how they should be protected. That doesn't mean that the Federal Government should not be working very closely with the States and honoring and respecting State knowledge and State engagement, but this is a Federal law with a national oversight responsibility.

Senator BARRASSO. Senator Van Hollen, Senator, I hope you are driving to the vote, because they have just done the five bells for the ending part of the vote, and I hope somebody else is actually doing the driving.

Senator Carper has not yet asked his questions in this round. Would you mind if I went to him at this point? Do you have any last question?

Senator VAN HOLLEN. No, I don't. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Van Hollen.

Senator Carper.

Senator CARPER. I would say to Senator Van Hollen, pedal to the metal. Just kidding. Get on over here.

I would say to our witnesses, welcome, and thank you for joining us today. Nice to see you.

As I mentioned, this would be a question for Jamie Rappaport Clark. As I mentioned in my opening statement last week, the United Nations Convention of Biological Diversity released a report that highlights the severity of the global biodiversity crisis and specifically, reports suggest that addressing climate change is at the heart of stemming the biodiversity decline.

My question would be, would you explain how recovery actions under the Endangered Species Act can help support species like those red knots we have been talking about, who are threatened or endangered due to climate change?

Ms. CLARK. Climate change is literally reshaping the biodiversity of this country, whether it is affecting habitat or shifting migratory patterns or causing species to adapt in ways that we never would

have expected, possible, or required prior to watching the effects of climate, whether it is increased wildfires, drought, increased temperatures.

The Endangered Species Act is aimed at recovering these species that are protected by its authorities, and it allows for the innovation of science and the partnership with stakeholders focused on, let's talk about the red knot, focused on the red knot's recovery using adaptive science, adaptive understanding [indiscernible] and allows for the decisionmakers and the folks that are involved in recovery of species like the red knot to adjust and address the impacts of changing climate, particularly along the coastlines, which is becoming increasingly significant.

Without the protection and the overarching backstop of the Endangered Species Act, climate and other drivers like habitat loss, invasive species, and so on, would most certainly condemn species to extinction with no kind of check and balance in place.

Senator CARPER. Thank you. One last quick question, if I could. We have talked a good deal about funding today, and I am more confident than ever that adequately resourcing State and Federal agencies will dramatically improve Endangered Species Act implementation. However, legislative solutions that have been proposed in this Congress to provide wildlife funding seem to be focused predominantly on providing funding to States.

As a former U.S. Fish and Wildlife Service Director, do you have concerns whether legislative funding strategy that heavily favors State funding, do you believe Congress should balance the funding needs of both States and Federal agencies?

Go ahead, please, and I will ask you be fairly brief.

Ms. CLARK. Yes. Sorry, I dropped my mouse and couldn't unmute. I apologize.

This is not an either-or, and we keep setting this up as an either-or. We know that funding to protect species on the brink of extinction is woefully inadequate, and it requires for all this energy pushed at States, which we would have to look at where the money goes and how it is tracked and given to State authorities.

The Federal agencies are in dire straits themselves, so there has to be some balance. For all the investment in the States there has to be significant investment in the Federal agencies. That is beyond Fish and Wildlife Service and National Marine Fisheries Service.

We have land management agencies like the Forest Service, the Bureau of Land Management, the National Wildlife Refuge System, that are managing and stewarding these lands for biodiversity conservation, and greater investments need to be made there if we want to save and protect the species that occupy our country.

Senator CARPER. Thank you. Thank you for your responses.

Ms. Priddy, sorry I didn't get to ask a question of you as well, but time just doesn't allow that.

Mr. Chairman, it has been a good hearing. I ask unanimous consent to enter into the record letters and materials from stakeholders expressing concerns for the Endangered Species Act Amendments of 2020 and support for the Endangered Species Act. This includes letters from the National Wildlife Federation, Environmental Defense Fund, National Audubon Society, and National Parks Conservationist Association, as well as other national organi-

zations, and I will also be including letters from the Delaware Ornithological, yes, our own Ornithological Society, Delaware Wildlands—

Senator BARRASSO. You mean the birdwatchers?

Senator CARPER. There you go.

Senator BARRASSO. OK.

Senator CARPER. Delaware Nature Society, Christian Council of Delmarva, Department of Natural Resources and Environmental Control Secretary Shawn Garvin, Delaware State Senator Stephanie Hansen, and the American Birding Association, which is headquartered in Delaware. Thank you.

Senator BARRASSO. Without objection.

[The referenced information follows:]



September 23, 2020

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment
and Public Works
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
U.S. Senate Committee on Environment
and Public Works
Washington, DC 20510

Statement for the Record of the Legislative Hearing on the Endangered Species Act Amendments of 2020

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

On behalf of the National Wildlife Federation and our six million members and supporters, we would like to recognize the conservation leadership of Chairman Barrasso, Ranking Member Carper, and the entire Environment and Public Works (EPW) Committee in the 116th Congress. Notable examples of the Committee's conservation accomplishments include the unanimous Senate passage of *America's Conservation Enhancement Act* (S. 3051), the *America's Water Infrastructure Act of 2020* (S. 3591), and the Committee's passage of *America's Transportation Infrastructure Act of 2019*, (S. 2302), which includes many good provisions on wildlife crossings, climate change, natural infrastructure, and other conservation priorities.

The Senate Environment and Public Works Committee deserves credit for exploring ways to reauthorize, improve and increase funding for the Endangered Species Act (ESA). The National Wildlife Federation (NWF) has concerns that the Endangered Species Act Amendments of 2020, as currently drafted, contains some provisions that may hinder rather than help species recovery. We agree that the ESA should be reauthorized, requires increased funding to recover species, and that aspects of the law truly can be improved. We encourage the Committee to focus its efforts on a limited number of strategic improvements to the law that can achieve bipartisan support, will allow the law to function better, and that will improve the prospects of recovery for more endangered and threatened species.

The starting point for these discussions should focus on increasing funding for both state and federal efforts to recover species in need of conservation efforts. Adequate funding will alleviate many of the problems currently plaguing wildlife recovery efforts, including the growing number of species listed under the ESA, and the backlog of thousands of "species of greatest conservation need" that could be headed toward a federal ESA listing without more proactive, collaborative conservation efforts.

To address these problems, we encourage the Committee to prioritize the Recovering America's Wildlife Act. H.R. 3742. This bill would provide the level of consistent, dedicated funding states and Tribes need to better manage all of the wildlife within their purview - \$1.4 billion annually (requires 25% local match). Providing this level of dedicated funding would ensure state, territorial, and Tribal wildlife agencies have the resources for fully engaging in proactive, collaborative conservation of the full diversity of species – including declining, threatened, and endangered species – within their state, across multiple states, and with the Services, before listing under ESA is necessary.

Similarly, significantly increasing funding for implementation of ESA and other federal wildlife programs will allow the federal agencies to do a better job of carrying out their responsibilities to recover federally listed wildlife, and partnering with states, private landowners, and other partners and species and habitat conservation. Attached please find NWF's priorities for the increased funding needed for better implementation of the broader federal wildlife framework.

Regarding changes to the ESA itself, the National Wildlife Federation would like to see some of the good ideas in the ESA Amendments of 2020 carried over into a bipartisan ESA reauthorization bill next Congress. Our priority areas for improvement are discussed below. NWF does not believe many major revisions to the ESA are needed. We recommend targeted improvements to make sure the ESA can respond to today's wildlife crisis. To ensure this, any ESA legislation should embody the following basic principles:

- (1) all changes to the ESA should truly improve the effectiveness of the law in conserving and recovering species;
- (2) any changes should ensure the best available scientific data remains the primary basis for all ESA decisions;
- (3) the ESA must protect all animals and plants that are threatened or endangered for any reason;
- (4) the role of states in recovering species is critical and should be enhanced and better funded; and
- (5) the U.S. Fish and Wildlife Service and National Marine Fisheries Service need to retain authority over endangered and threatened species until they are recovered.

With these overarching principles in mind, NWF recommends the Committee focus on improving the following parts of the ESA.

Delisting: A clear, durable, and enduring delisting process is needed that recognizes success once species reach recovery goals and adequate management plans are in place.

Science-based prioritization of resources to species in greatest need: Federal wildlife biologists need more flexibility in how they spend the limited endangered species recovery money Congress allocates. Their scarce resources should be expended based on science and the greatest recovery needs of species. The Fish and Wildlife Service has administratively established an effective, science-based species recovery prioritization strategy in response to past litigation. We support language codifying this process.

Prioritize recovery of species: There is widespread support for strengthening species recovery plans. Recovery plans should be developed within 3 years of listing; should include strong and measurable standards; should be based on the best available science; should be reviewed as necessary; should identify habitat critical to the species recovery;

should encourage greater state participation in development and implementation; and should include clear goals to be met prior to a species being downlisted or delisted.

ESA Incentives: The Services and partners have created incentives for government and landowners to work together for the betterment of the many species that depend on private lands. Statutory changes could help institutionalize regulatory assurance policies such as Safe Harbor and Candidate Conservation Agreements. Codifying longstanding policies on conservation banking and pre-listing credits can encourage the Services to set uniform rules and promote private investments nationwide for numerous habitat types. Collaborative cost-share programs such as Partners for Wildlife and agricultural conservation programs are ideally suited to employ conservation and recovery work.

The justification for improving implementation of the ESA is overwhelming. As NWF has documented in our "[Reversing America's Wildlife Crisis](#)" report, America faces a growing wildlife crisis. More than one-third of all species are at-risk or vulnerable to potential extinction in the decades ahead. More than 1,600 species in the U.S. are already listed as threatened or endangered, the Fish and Wildlife Service and National Marine Fisheries Service have received numerous additional petitions for listing, and State and Territorial Wildlife Agencies have identified more than 12,000 species of greatest conservation need through the collaborative development of Congressionally-mandated State Wildlife Action Plans. Significantly increased funding is needed for federal and state agencies and tribes to respond to this crisis, and new and improved legislative authorities are also needed.

We look forward to working with the Committee to increase funding for state wildlife agencies, increase funding for the recovery of federally listed species, improve wildlife conservation and policy across the board, and end the wildlife crisis.



National Wildlife Federation

Northern Rockies, Prairies, and Pacific Regional Center
 240 North Higgins, Suite 2 • Missoula, Montana 59802 • 406-541-6731
 100 W Harrison, South Tower, Suite 410 • Seattle, Washington 98119 • 206-285-8707
 6641 SE Lake Road • Milwaukie, OR 97222 • 503-616-3613

September 23, 2020

The Honorable John Barrasso
 Chairman
 U.S. Senate Committee on Environment and Public Works
 Washington, DC 20510

The Honorable Thomas Carper
 Ranking Member
 U.S. Senate Committee on Environment and Public Works
 Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the National Wildlife Federation and our more than six million members, we write to share our concerns with the Grizzly Bear State Management Act, S. 614. NWF supports delisting grizzly bears in the Greater Yellowstone Ecosystem from the Endangered Species Act, seeing it as the next appropriate step in the evolution of their recovery. However, we do not support legislative intervention in the administrative and judicial process of deciding to list or delist them under the Endangered Species Act.

The recovery of grizzly bears in the lower 48 is a true American conservation success story. They went from being a population on the brink to of extinction when they were listed in 1975 to now expanding their range and living in places they have not been seen for a century. Their rebound in the Greater Yellowstone Ecosystem as well as the Northern Continental Divide Ecosystem is a testament to what can be achieved when stakeholders ranging from the U.S. Fish and Wildlife Service, state wildlife agencies, non-governmental organizations and individuals work together.

Pursuing a legislative delisting of the greater Yellowstone grizzly bear population undermines the ESA and politicizes wildlife management. Instead of going down this road, NWF recommends Congress focus on finding a bipartisan solution to address how species are delisted. A clear, durable and enduring delisting process that recognized success once adequate management plans have been established, and species recovery goals have been met would improve how the ESA functions as a whole. This approach would benefit Yellowstone grizzlies, and other species that have been saved from extinction because of ESA protections.

Uniting all Americans to ensure wildlife thrive in a rapidly changing world.

nwf.org

In addition to improving the delisting process, NWF recommends the FWS reengage a conversation with stakeholders and governors of Idaho, Montana, and Wyoming to address the concerns of the 9th Circuit Court of Appeals -- a strategy for connecting grizzly bear populations in the northern Rockies. The federal-state partnerships that have been forged around delisting have provided an important framework for addressing these problems moving forward. A three-state stakeholder process should be given serious consideration as it could improve the FWS's case for delisting, and broaden public understanding and support for grizzly bear populations in the region.

A similar process has recently been completed in Montana. The Grizzly Bear Advisory Council, formed by Governor Bullock, was comprised of Montanans with a wide range of interests and perspectives including ranchers, conservationists, hunters, loggers, and tribes. The council crafted a series of recommendations for how to manage and conserve grizzlies, especially as the potential for run-ins with people grow due to a greater number of people and bears on the landscape. This is a good process that could be broadened to include Idaho and Wyoming as a way to increase coordination and collaboration amongst the states that will assume management when the bear is delisted. In our view, this approach to addressing the important and complicated issue of grizzly bear management is more durable than pursuing a legislative solution.

The recovery and management of grizzly bears has been and will continue to be a challenge that will depend on people coming together to create solutions that work on-the-ground. We encourage this Committee and this Congress to consider how to best support state efforts to continue grizzly conservation, without undermining essential provisions of the Endangered Species Act.

The National Wildlife Federation stands ready to engage in these important conversations moving forward. We also respectfully request this letter be entered into the hearing record.

Sincerely,



Tom France
Regional Executive Director
National Wildlife Federation



National Wildlife Federation

11100 Wildlife Center Drive • Reston, VA 20190-5362 • 703-438-6000

June 14, 2019

Honorable John Barrasso
Chairman
Environment and Public Works
Committee
United States Senate

Honorable Tom Carper
Ranking Member
Environment and Public Works
Committee
United States Senate

Chairman Barrasso and Ranking Member Carper,

On behalf of the six million members of the National Wildlife Federation, we thank you for your efforts to improve the recovery of endangered, threatened, and imperiled species across our nation.

At key moments during the last century, when wildlife species were at the brink of extinction, Congress stepped in and saved them. The passage of the Federal Aid in Wildlife Restoration Act of 1937 (Pittman-Robertson) facilitated the collaborative recovery of species like whitetail deer, bighorn sheep, elk, wood ducks, and wild turkeys. The Federal Aid in Sport Fish Restoration Act of 1950 (Dingell-Johnson/ Wallop-Breaux) allowed the recovery of populations of bass, trout, walleye, pike, and a range of other freshwater fish. And the Endangered Species Act helped coordinate the recovery of the bald eagle, peregrine falcon, brown pelican, American alligator, grizzly bear, and dozens of other species.

The country and its wildlife urgently need your help again. Right now, more than 1,600 U.S. species are already listed under the Endangered Species Act as either threatened or endangered. Further, the states have identified more than 12,000 species of greatest conservation need. Scientists caution that if we do not take action, we stand to lose one-third of wildlife species in this country by mid-century. We are facing a wildlife crisis that can only be solved through proactive, on-the-ground, collaborative conservation that restores and reconnects habitat and implements key conservation strategies.

Our nation's previous successes show that when we dedicate resources and marshal collaborative efforts, we recover at-risk species. Unfortunately, the funding mechanisms that have been available for large mammals and birds (Pittman-Robertson) and sportfish

Uniting all Americans to ensure wildlife thrive in a rapidly changing world.

nwf.org

(Dingell-Johnson/Wallop Breaux) have not been replicated, even as there is broad agreement that we need to recover and secure the full diversity of wildlife. This significant lack of funding is a driving force behind the wildlife crisis facing our nation, because wildlife professional and partners lack sufficient resources for proactive efforts to restore and reconnect habitat, confront threats from invasive species and disease, and improve species' resilience to climate impacts—all of which have contributed to the 1/3 of all species in the U.S. that are at heightened risk of extinction.

As the Committee on Environment and Public Works considers various policy options, we urge the Members to prioritize addressing this critical missing ingredient: the lack of significant dedicated and predictable funding to support collaborative efforts that would accelerate the recovery of endangered, threatened, and candidate species, as well as conserve species of greatest conservation need to reduce the need for future listings.

As such, we recommend securing the following annual investments:

1. **Resources for States and Tribes: (+\$1,403m)**
 - a. Recovering America's Wildlife Act: \$1,397 million (match required, current \$64m) (+\$1,333m)
 - b. Cooperative Endangered Species Fund: \$100 million (match required, current \$53m) (+\$47m)
 - c. NOAA Species Recovery Grants: \$30 million (match required, current \$7m) (+\$23m)
2. **U.S. Fish & Wildlife Service (+\$242m)**
 - a. Ecological Services:
 - i. Recovery: \$192 million (current \$91m) (+\$101m)
 - ii. Conservation/Restoration: \$40 million (current \$32m) (+\$8m)
 - iii. Planning/Consultation: \$130 million (current \$106m) (+ \$24m)
 - iv. Listing/Delisting: \$51 million (current \$18m) (+\$33m)
 - b. Science Support: \$30 million (current \$17m) (+\$13m)
 - c. Key Appropriations:
 - i. Joint Ventures: \$30 million (match required, current \$12m) (+\$18m)
 - ii. Partners for Fish and Wildlife: \$75 million (match required, current \$52m) (+\$23m)
 - iii. North American Wetlands Conservation Act: \$60 million (match required, current \$55 million) (+\$5m)
 - iv. Theodore Roosevelt Genius Grants: \$1 million (new program)

- v. Neotropical Migratory Bird Conservation Act: \$6.5 million (match required, current \$3.9 million) (+\$2.6m)
 - vi. National Fish Habitat Partnership (within USFWS Fish and Aquatic Conservation program): \$175 million (match required, current \$164.6m) (+\$10.4m)
 - vii. Marine Turtle Conservation Fund: \$5 million (match required, current \$1.5m) (+\$3.5m)
- 3. National Oceanic and Atmospheric Administration/National Marine Fisheries Service (+\$62m)**
- a. Operations, Research, and Facilities—Protected Resources Science and Management: Marine Mammals, Sea Turtles, Other Species: \$180 million (current \$118m) (+\$62m)
- 4. U.S. Geological Survey (+\$24m)**
- a. USGS Cooperative Research Units: \$30 million (current \$17m) (+\$13m)
 - b. Species Management Research Program: \$75 million (current \$64m) (+\$11m)
- 5. Bureau of Land Management (+\$13m)**
- a. Wildlife & Fisheries Management: \$125 million (current \$115.8m) (+\$9m)
 - b. T&E Species Management: \$25 million (current \$21.5m) (+\$3.5m)
- 6. United States Department of Agriculture (+\$15m)**
- a. Natural Resources Conservation Service:
 - i. Working Lands for Wildlife: Maintain current Farm Bill levels of \$175-200m
 - b. Animal and Plant Health Inspection Service
 - i. Equine, Cervid and Small Ruminant Health program (Vet Services cooperative agreements w/state wildlife agencies on Chronic Wasting Disease): \$15m (currently not funded) (+\$15m)

Thank you for your ongoing efforts to accelerate the recovery of the full diversity of America's unrivalled fish, wildlife, and plant resources.

Collin O'Mara
President and Chief Executive Officer



September 21, 2020

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

The Honorable Tom Carper, Ranking Member
Senate Committee on Environment and
Public Works
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

Environmental Defense Fund (EDF) is a national, non-partisan, non-profit organization dedicated to protecting human health and the environment by effectively applying science, economics, and the law. On behalf of over two and a half million members and supporters, EDF opposes Senator Barrasso's Endangered Species Act (ESA) reauthorization legislation, S. 4589, as currently written.

Since the Senator circulated his first discussion draft in July 2018, EDF has been working closely with his office and appreciates the time and effort the Senator and staff have put in on this issue. Individually and through various coalitions, a consistent message from EDF over the past two years has been the need for any ESA reauthorization to be bipartisan. As you know, since its inception, support for the law has always been overwhelmingly bipartisan. Unfortunately, in the nearly thirty years since its last reauthorization, there has been a steep increase in the politicization of ESA, and a bipartisan reauthorization is the only way that an ESA bill will succeed.

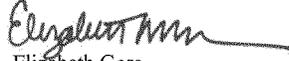
In addition to the need for bipartisanship, EDF has also consistently made the point in meetings and correspondence that the scope of the bill needs to be significantly narrowed. Again, because of the politicization of ESA, we believe that a narrowly tailored bill around a set of specific topics could potentially garner bipartisan support. These topics include:

- Recovery
- Conservation Agreements
- Prioritization of Listing Determinations
- Funding

Given all of his work, we understand Senator Barrasso's desire to introduce S. 4589 before the end of the 116th Congress even though passage this year is unlikely. When the new Congress convenes, EDF encourages a bipartisan, bicameral approach whereby the chairs and ranking

members of the Senate Environment and Public Works Committee and the House Natural Resources Committee identify reauthorization principles and, together, craft legislation. EDF looks forward to continuing our engagement in such a process.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Gore", with a long horizontal flourish extending to the right.

Elizabeth Gore
Senior Vice President, Political Affairs

September 22, 2020

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

The Honorable Tom Carper
Ranking Member
Senate Committee on Environment and
Public Works
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the National Audubon Society, and its 1.9 million members, 22 state offices, 462 affiliated chapters, and 41 nature centers, we write to express our opposition to the Endangered Species Act Amendments of 2020 (S. 4589).

For more than 100 years, the National Audubon Society has worked to protect birds and the places they need. Audubon has been at the forefront of conservation advocacy since its founding, including by helping to pass the bedrock laws that protect birds and other wildlife, such as the Endangered Species Act. For decades, this law has provided a necessary safety net for our most imperiled birds. The law has helped recover numerous beloved species from near-extinction, including the Bald Eagle, Peregrine Falcon, Brown Pelican, and recently, the Kirtland's Warbler. Nevertheless, numerous birds are facing slow recoveries, and more species are facing significant long-term declines. Since 1970, North America's bird populations have declined by three billion birds. And Audubon has found that going forward, two-thirds of the continent's bird species are threatened by climate change.

Audubon has always worked to engage with a variety of partners to advance conservation and find common ground. We work directly with landowners, NGOs, and local, state, and federal partners to find solutions to improve conservation outcomes. To that end, we have appreciated the committee's outreach for input on the Endangered Species Act and its reauthorization. Audubon has maintained that any successful ESA legislation should be bipartisan, limited in scope, and contain funding to support the recovery of threatened and endangered species. Ultimately, any legislative effort to address the ESA must improve conservation outcomes for birds and other wildlife.

We have serious concerns that the Endangered Species Act Amendments of 2020 do not meet these standards, and contain a number of harmful provisions that could set back the conservation of imperiled species. We are concerned that aspects of this legislation could undermine the balance of decision-making and improperly limit the ability of federal agencies and experts to manage threatened and endangered species, and limit the ability of the public to participate in upholding responsibilities under the ESA. And again, perhaps the most critical tool to recover these species will be through additional resources and funding, which is lacking under this legislation.

Our country, and the world, is facing a growing biodiversity crisis. We need to do far more than what has been done in recent decades to help give birds and other wildlife a fighting chance in the decades

ahead. To do so, we must find common ground, and we would look forward to working with the committee on bipartisan solutions to meet this historic conservation challenge.

Sincerely,

Sarah Greenberger
Interim Chief Conservation Officer
Senior Vice President, Conservation Policy
National Audubon Society



NPCA Position for Senate Environment and Public Works Hearing on September 23, 2020

September 21, 2020

Dear Senator,

Since 1919, National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our nearly 1.4 million members and supporters, please consider our position on S. 4589, the Endangered Species Act Amendments of 2020 when it comes before the Senate Environment and Public Works Committee for a hearing on September 23, 2020.

NPCA **opposes** this legislation, which would undermine the ability of the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other federal agencies like the National Park Service, to protect and recover vulnerable species around the country. Congress should instead ensure the agencies tasked with Endangered Species Act (ESA) implementation have sufficient funding and resources to carry out their existing responsibilities efficiently and effectively under the law.

National parks provide habitat for over 600 threatened and endangered species, from Canada Lynx in Yellowstone National Park to the Karner blue butterfly in Indiana Dunes National Park to the Spruce-fir moss spider in Great Smoky Mountains National Park. Just as these species are important components of national park ecosystems, national parks are key to the future recovery of these species under the ESA.

S. 4589 will not serve or promote the ongoing protection and restoration of threatened and endangered national park species. Some of NPCA's specific concerns include:

Sec. 201(c)(1): The bill creates a deliberate imbalance in the consultation process by stating that consultation with states should be "subject to a higher standard." States are important stakeholders in the ESA process. However, they are not the only stakeholders, and in some cases may not be the primary stakeholder. By elevating states, Congress is downplaying and minimizing the role that other agencies and members of the public can and should have in the ESA process.

Sec. 203: The bill structures the creation of recovery teams, implementation teams and implementation to prioritize state leads. States are key stakeholders in the recovery process, however moving forward with recovery under the ESA should not rely solely on state actions. Recovery of a species commonly requires bringing state agencies, federal agencies, and the best academic minds together to craft a path forward for the species. Delegating its implementation specifically to 50 independent state governments would negatively impact many species that exist around the country and across into international borders.

Headquarters
777 6th Street, NW, Suite 700
Washington, DC 20001
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Sec. 204: The bill prevents judicial review for a "monitoring period" after delisting. This gives the public no recourse if the agency decides to delist a species prematurely or takes insufficient measures to make sure it is managed properly in the five years after delisting. It eliminates the checks and balances between the executive and judicial branches.

Thank you for considering our views. Please contact Christina Hazard at chazard@npca.org if you have any questions or concerns.

Sincerely,

Ani Kame'enui
Deputy Vice President, Government Affairs

Headquarters
777 6th Street, NW, Suite 700
Washington, DC 20001
P 800.NAT.PARK | 800.628.7275

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NPCA Position for Senate Environment and Public Works Hearing on September 9, 2020

September 8, 2020

Dear Senator,

Since 1919, National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our nearly 1.4 million members and supporters, please consider our position on S.614, the “Grizzly Bear State Management Act of 2019” when it comes before the Senate Environment and Public Works Committee for a hearing on September 9, 2020.

NPCA is **strongly opposed** to this legislation, which removes Greater Yellowstone Ecosystem (GYE) grizzly bears, including the grizzlies of Yellowstone and Grand Teton national parks, from protections under the Endangered Species Act (ESA).

Congress showed incredible foresight when it passed the Endangered Species Act with bipartisan support in 1973. Since that time, the ESA has been a critically important tool in the restoration of national park species like the California condor, the humpback whale and the Santa Rosa Island fox. The ESA continues to provide an essential safety net to stop and then reverse the decline of scores of other species throughout the country.

When a species is elevated for protection under the ESA, our nation is making a long-term promise to conserve the ecosystem upon which that species depends and provide a program for the conservation of that species.¹ The recovery process is a commitment to management actions that are necessary for the “survival and conservation of the species”² with the ultimate goal of restoring the population to a level that will no longer require expanded protections. It takes hard work, collaboration and time to recover a species.

Grizzly bears were driven to the brink of extinction by eradication programs in the mid-19th century. The GYE population had dropped to as few as 136 bears when the species was listed as threatened under the ESA in 1975. Thanks to the resources and protections of the ESA, the hard work of state and federal scientists, and the willingness of communities to adopt policies and practices to live with bears on the landscape the population is on its way towards recovery.

But recovery is not complete. On the eve of what can be another great success story for the ESA, S. 614 undermines the progress that has been made and negates the investment the people of this country and the people of the GYE have made in the recovery of the Yellowstone grizzly

¹ Endangered Species Act of 1973, Sec. 2(b) Purposes.

² Endangered Species Act of 1973, Sec. 4(f) Recovery Plans.

Headquarters
777 6th Street, NW, Suite 700
Washington, DC 20001
P 800.NAT.PARK | 800.628.7275

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population. Congressionally delisting this species would undermine the decades of hard work and resources that have gone into getting grizzly restoration to this point.

The legislation would also circumvent the crucial role of the judicial system in the implementation of one of the nation's bedrock conservation laws. In 2017, the U.S. Fish and Wildlife Service (USFWS) removed ESA protections from the GYE grizzly bear population. The United States District Court for the District of Montana found that the final rule from USFWS lacked critical analysis and failed to address several threats to the population's long-term survival. These findings were upheld by the United States Court of Appeals for the Ninth Circuit this year.³ The Courts outlined what USFWS must address before this population can be considered for removal from the endangered species list. None of those requirements were unsurmountable and USFWS is now in the process of addressing the Courts' concerns.

The Trump administration did not even seek to challenge two of the three grounds on which the United States District Court for the District of Montana ruled that the GYE grizzly bear delisting was illegal. S.614 is attempting to muscle through a delisting that even the current administration declined to defend.

The goal of the ESA is to recover a species and ensure that once delisted that recovery can be maintained. This population of bears is on the path to recovery but removing federal protections without an adequate plan in place to ensure the long-term health of this population is short sighted and will prevent the recovery of this icon of the American west.

We urge you to oppose S.614 due to its harmful impact on the recovery of grizzly bears in the Greater Yellowstone Ecosystem. The Courts have laid out a practical path that USFWS must follow to secure delisting and ensure the continued success of this important population.

Thank you for considering our views.

Sincerely,

Ani Kame'enui
Deputy Vice President, Government Affairs

³ "Victory: 9th Circuit Upholds Endangered Species Protections for Yellowstone Grizzlies." National Parks Conservation Association, 8 July 2020, <https://www.npca.org/articles/2613>.



Delaware
Ornithological
Society

PO Box 4247
Wilmington, DE 19807

September 23, 2020

The Honorable John Barrasso, Chair
U.S. Senate Committee on Environment and Public Works

The Honorable Thomas Carper, Ranking Member
U.S. Senate Committee on Environment and Public Works

RE: Senate Bill 4589, the Endangered Species Act Amendments of 2020

Dear Chairman Barrasso and Ranking Member Carper,

The Delaware Ornithological Society (DOS) is an all-volunteer, 501(c)3 nonprofit representing hundreds of members in Delaware and adjacent states. Our mission is the promotion of the study of birds, the advancement and diffusion of ornithological knowledge, and the conservation of birds and their environment.

While we understand the Chairman's interest in revisiting the existing ESA statute, we urge that this is not the moment to make extensive and potentially problematic changes to this landmark legislation protecting our most vulnerable species. Rather, it is the moment to fund conservation of at-risk species at levels that result in preventing listings before they occur, and for those species already listed, to fully fund recovery plans so that delisting is ultimately possible.

The Endangered Species Act (ESA) has been highly successful in preventing the extinction of bird species in the U.S. More than 70% of bird species listed under the ESA today have stable or increasing populations (12% recovered and delisted, 16% stable, 42% increasing) (Holmer et al. 2016). Notable success stories include the Bald Eagle, Piping Plover, Kirtland's Warbler, California Condor and others. In the midst of an accelerating anthropogenic mass extinction event (Ceballos et al. 2020) this is a remarkable accomplishment.

In spite of this success, and as a direct result of ongoing anthropogenic changes, primarily habitat loss, many non-listed bird species continue to decline precipitously. Research conducted by the Cornell Laboratory of Ornithology has shown that since 1970, North American breeding bird populations have declined by 2.9 billion birds—a nearly 30 percent decline, or more than 1 in 4 birds lost (Rosenberg et al. 2019). Additional Cornell analyses indicate that 39 bird species that are already considered highly vulnerable and have already lost more than half of their population since 1970 are projected to plummet by another 50% in the next 50 years unless urgent conservation action is taken (Rosenberg et al. in press). These birds are on the brink of slipping into endangered species status.

Even in a small state like Delaware, 184 species of birds were identified by the Delaware Division of Fish and Wildlife as Species of Greatest Conservation Need (SGCN) in the Delaware Wildlife Action Plan. These include 19 species of migratory shorebirds, among them the Federally Threatened Red Knot; 5 species of beach-nesting birds; and 13 species of salt marsh birds. The last group includes two species, Black Rail and Saltmarsh Sparrow, that are already threatened with extinction primarily due to the effects of climate change. Neither of these species are yet listed under the ESA, but both are already in dire need of conservation action.

The Delaware Wildlife Action Plan also identified inadequate funding for monitoring and conservation of Delaware's SGCN as a significant issue facing conservation of these species. Nationally, the Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources, co-chaired by former Wyoming Governor Freudenthal, found that an investment of at least \$1.3 billion annually was needed to adequately fund state implementation of Wildlife Action Plans to prevent further ESA listings and species extinction. The bipartisan Recovering America's Wildlife Act (H.R. 3742) would provide the recommended level of funding to the states, while ensuring that at least 10% of the funds are spent for the recovery of federally listed species.

Here in Delaware, our small grassroots organization has helped lead collaborative conservation efforts for bird habitat over the past decade, raising over half a million dollars in private matching funds for habitat acquisition through our annual Delaware Bird-a-Thon fundraiser, often working with our State and NGO partners to leverage these funds as match for federal dollars. In the case of the Red Knot, we are working tirelessly to make sure our bayshore beaches are protected as a globally critical stopover for this and other species. Federal funds through the USFWS ESA Section 6 Cooperative Endangered Species Conservation Fund recently helped make possible acquisition by the State of additional key Red Knot habitat along the Delaware Bayshore.

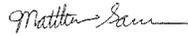
As rewarding as it is to contribute to successful habitat conservation efforts, we know that the projects currently being funded and implemented in our state represent only a fraction of what is needed to conserve the birds we love and the ecosystems of which they are a part. Significant additional investments in funding species conservation and research prior to the need for listing must occur at both the state and federal levels in order to succeed in preventing future extinctions and relieve undue pressure on the ESA safety net. For species that do need to be listed, recovery plans must be funded at levels necessary to meet recovery goals so that the ESA can continue to realize success in species recovery for future generations.

The wholesale changes to the ESA proposed in the Endangered Species Act Amendments of 2020 are deeply concerning as they contain many provisions that could be taken advantage of by actors in bad faith to derail species listing and/or recovery and to erode the scientific basis of ESA decision-making. The limitation on judicial review of delisting decisions is particularly problematic as it would remove an important public safeguard and could greatly extend the overall timeline of delisting-related litigation, while increasing uncertainty regarding species status.

The broad transfer of recovery responsibility and authority to the states that is outlined in the proposed legislation is likewise problematic, as there is not currently a dedicated funding source sufficient to support such a structure, and even more importantly because the proposed process would strip ESA decision-making of the essential federal safeguards provided by the Administrative Procedures Act (e.g. no notice and comment required for "the development, amendment, or modification of an implementation plan.")

We appreciate the efforts of Chairman Barrasso, Ranking Member Carper, and the entire EPW Committee to find bipartisan paths forward for wildlife conservation in the U.S. and stand ready to assist in any way possible in finding common ground upon which to defend our embattled biological diversity and natural heritage.

Sincerely,



Matthew Sarver, DOS Conservation Chair

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October 5, 2020

The Honorable Thomas R. Carper
Hart Senate Office Building
513 Hart Building
Washington, D.C. 20510

Dear Senator Carper:

Despite an unprecedented and protracted period of broad partisan gridlock, the 116th Congress has been marked with a number of exceptional bipartisan conservation achievements. Last year, Congress permanently reauthorized the Land and Water Conservation Fund (LWCF) as part of the John D. Dingell, Jr. Conservation, Management, and Recreation Act. That legislation also included the Wildlife Innovation and Longevity Driver Act. In August, the Great American Outdoor Act, which provides permanent and dedicated Funding for the LWCF, was enacted into law. Just last week, the Senate passed America's Conservation Enhancement (ACE) Act by unanimous consent, and the House is poised to pass this legislation soon. The ACE Act will reauthorize the North American Wetlands Conservation Act, National Fish and Wildlife Foundation Establishment Act, and the Chesapeake Bay Program, which all support critical conservation efforts in Delaware and in our region. On behalf of Delaware Wild Lands (DWL), the oldest and largest land trust in the State of Delaware, we are grateful for these significant accomplishments and the positive impacts they will have on our shared future.

That considered, DWL is concerned that S. 4589, the Endangered Species Act Amendments of 2020, represents a departure from this successful bipartisan approach to conservation.

The Endangered Species Act has been effective in Delaware. Delaware Wild Lands, our supporters, partners, and members of the public take great pride in conserving habitat for threatened and endangered species. Delaware also boasts a booming outdoor economy, and our threatened and endangered species, protected lands and wildlife habitat, along with our national historical park and national wildlife refuges, are a critical part of this success. One critical aspect of this success is the State of Delaware's and DWL's partnership with the United States Fish & Wildlife Service (USFWS).

DWL has a long history of working collaboratively and productively with USFWS. Working with USFWS, DWL has and is advancing the protection, restoration, and enhancement of conservation lands throughout the State of Delaware including habitat for threatened and endangered species. Specifically, USFWS is assisting DWL with a project to reduce trespassing and unauthorized vehicular use on DWL-owned lands that provide critical habitat for the engaged Red Knot and other shorebirds. Additionally, they provided funding and offered technical assistance for a reforestation project on DWL-owned lands, and

Eugene H. Bayard, Esq.
President

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C. Porter Schott, III
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Field Ecologist / Program Manager

Brenna Ness
Land Steward / Program Manager

Ronald J. Haas
Project Manager

Peter S. Martin
Field Ecologist

Deborah P. Turner
Administrative Assistant

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Eugene H. Bayard, Esq.

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The Honorable Thomas R. Carper
October 5, 2020
Page 2

USFWS is helping to fund an 80-acre tree planting on our lands. Each of these projects has received unqualified support from USFWS and their personnel are highly professional and technically experienced.

We have the utmost confidence in USFWS and urge the Senate Committee on Environment and Public Works and Congress to uphold the USFWS' central role in implementing the Endangered Species Act and to preserve opportunities for citizen engagement in the Act.

We strongly recommend that the statutory integrity of the Act be preserved and that Congress provide robust funding for its implementation. We also believe that states, including Delaware, could do even more than they are already doing to conserve and recover species, if states had more adequate financial resources. In addition to adequately funding the federal agencies responsible for implementing the Endangered Species Act, Congress should consider a new funding strategy for states, such as the Recovering America's Wildlife Act.

Thank you for your work to conserve our lands, waters and wildlife and for your consideration in this matter.

Sincerely,



Kate Hackett
Executive Director



Main Office
 Ashland Nature Center
 P.O. Box 700, Hockessin, DE 19707
 302.239.2334 • Info@DelNature.org • DelNature.org
Educate. Conserve. Advocate.

October 7, 2020

The Honorable Thomas R. Carper
 Ranking Member, Environment and Public Works Committee
 513 Hart Building
 Washington, DC 20510

Dear Senator Carper:

Thank you for your vote to pass the Great American Outdoors Act and America's Conservation Enhancement Act. Delaware Nature Society (DelNature) joins our national organization, National Wildlife Federation and our local partners, Delaware Wild Lands, in celebrating these bipartisan accomplishments.

That considered, we are concerned that S. 4589, the Endangered Species Act Amendments of 2020, represents a departure from this successful bipartisan approach to conservation.

The Endangered Species Act has been effective in Delaware, and Delawareans take great pride in conserving habitat for our threatened and endangered species. Delaware also boasts a booming outdoor economy, and our threatened and endangered species, along with our national historical park and national wildlife refuges, are a part of its success.

The State of Delaware and our partners organizations have a highly productive, collaborative relationship with the U.S. Fish and Wildlife Service (FWS). The FWS is a leader in restoring the Delaware River Basin, along with stakeholders, and the FWS has worked successfully with the State of Delaware to recover species such as the Delmarva fox squirrel. We urge the Senate Committee on Environment and Public Works and the Congress to uphold the FWS' central role in implementing the Endangered Species Act and to preserve opportunities for citizen engagement in the Act.

We strongly recommend that the statutory integrity of the Act be preserved and that Congress provide robust funding for its implementation. We also believe that states, including Delaware, could do even more than they are already doing to conserve and recover species, if states had more adequate financial resources. In addition to adequately funding the federal agencies responsible for implementing the Endangered Species Act, Congress should consider a new funding strategy for states, such as the Recovering America's Wildlife Act.

Finally, DelNature would also like to incorporate by reference the comments submitted by the National Wildlife Federation. Thank you for your consideration.

Sincerely,

Emily Knearl
 Director of Advocacy and External Affairs

PRESIDENT Dawn Rittenhouse	EXECUTIVE DIRECTOR Anne Harper	BOARD OF DIRECTORS Dan Barbato Mark Carter Kevin Donnelly Pamela S.Finkelstein JJ Francis Barbara Greenewalt Frederick deL. Greenewalt	Jeffrey Haas Ellen Kohler Blair McDonnell Mary Y. Peck Suzanne Smith Roland Wall Marian R. Young	HONORARY DIRECTORS Bernard Dempsey Lorraine M. Fleming Peter H. Flint Nancy Frederick Michael E. Riska Norman G. Wilder* Lynn Williams * Deceased
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Christian Council of Delmarva

September 15, 2020

Hon. Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Senator Carper:

On behalf of the faith communities of Delaware and the Eastern Shore of Maryland, we wish to express our strong opposition to “The Endangered Species Act Amendments of 2020.”

Faith communities recognize our role as stewards of the Creation, including the various creatures living upon this Earth. For this reason, we have supported since its inception the original Endangered Species Act and note its outstanding successes in preserving and sustaining animal and plant species. The traditional Christian traditions—Catholic, Orthodox, and Protestant—all engage in relevant activities that protect the Creation, as do those of the Islamic traditions and other faiths.

The proposed Amendments seem to have no other purpose than to dilute the original Act, ceding some decision-making power to state and local authorities and encouraging the delisting or downlisting of known endangered species. It is evident that there are those who encourage the weakening of the Endangered Species Act in order to exploit our living natural resources for profit.

We encourage you and your colleagues to oppose vigorously the proposed Amendments and retain the authority and potential of the original Endangered Species Act. We thank you for your vigilance on this matter.

Very truly yours,

Robert P. Hall

Rev. Robert P. Hall, OSL
President

The Episcopal Church in Delaware	-	Rt. Rev. Kevin S. Brown, Bishop Rev. Canon Martha Kirkpatrick, Canon to the Ordinary and Ecumenical Officer
Episcopal Diocese of Easton	-	Rt. Rev. Santosh Marray, Bishop Rev. Nathaniel W. Pierce, Ecumenical Officer
Evangelical Lutheran Church of America Delaware Maryland Synod		Rev. William Gohl, Jr., Bishop Rev. Jason Churchill, Ecumenical Officer
Presbyterian Church, USA New Castle Presbytery	-	Mr. Robert Schminkey, Stated Clerk
Roman Catholic Church Diocese of Wilmington	-	Rev. Roger DiBuo, STL, Ecumenical Officer
United Methodist Church Peninsula-Delaware Conference	-	Rev. Peggy A. Johnson, Resident Bishop Rev. Robert P. Hall, OSL, Ecumenical Officer
Islamic Society of Delaware		Mr. Irfan Patel
Delaware Ecumenical Council on Children and Families	-	LaVaida Owens-White, President Linda S. Heller, President-Elect Brian Sanders, Executive Director
Delaware Interfaith Power and Light (traditional Christian, nontrinitarian Christian, Islamic, Hindu, representatives)	-	John D. Sykes, President Shweta Arya, Outreach Director Lisa Locke, Director of Programs



STATE OF DELAWARE
 DEPARTMENT OF NATURAL RESOURCES AND
 ENVIRONMENTAL CONTROL

RICHARDSON & ROBBINS BUILDING
 89 KINGS HIGHWAY
 DOVER, DELAWARE 19901

OFFICE OF THE
 SECRETARY

PHONE
 (302) 739-9000

OCT 0 2 2020

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

The Honorable Tom Carper
 Ranking Member, Senate Committee
 on Environment and Public Works
 513 Hart Senate Office Building
 Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

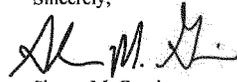
I am writing regarding proposed amendments to the Endangered Species Act (ESA) as proposed by S.4589, the Endangered Species Act Amendments of 2020. The State of Delaware, Department of Natural Resources and Environmental Control (Delaware) supports and values the ESA as a strong and effective tool for protecting and recovering species that were or are at risk of extinction, including several species in Delaware such as the bald eagle, Delmarva fox squirrel, red knot, Atlantic sturgeon, and swamp pink. Any changes to the ESA need to maintain its statutory and scientific purpose, integrity, and effectiveness.

Changes proposed by S.4589 of concern include the use of economic impacts and unspecified commercial data in species listing and delisting decisions and in development of species recovery goals, which should be solely based on the best available science. The provision to allow the Secretary of the Interior to delist or downlist a species irrespective of whether the recovery goals for that species have been achieved is also of concern and contrary to the intent of the ESA.

We acknowledge S.4589's intent to codify expanded federal cooperation with and increased roles of state fish and wildlife agencies, including in the listing and delisting process, recognition of state-led conservation efforts, and coordinated development and implementation of species recovery plans. Delaware and the U.S. Fish and Wildlife Service have enjoyed a highly productive and strong cooperative relationship addressing endangered species, and S.4589 would formalize and strengthen such relationships more broadly nationwide. These additional state-level roles would require additional financial resources for state fish and wildlife agencies through increased federal funding in Section 6 Cooperative Agreements or other funding sources such as the pending *Recovering America's Wildlife Act*. While we appreciate the continued cooperative efforts, that does not outweigh the concern we have regarding delisting decisions.

Thank you for your consideration of our comments on S.4589. Please feel free to contact me or have your staff contact David Saveikis, Director of the Division of Fish and Wildlife, at 302 739-9910 or David.Saveikis@delaware.gov regarding endangered species in Delaware.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin". The signature is stylized and cursive.

Shawn M. Garvin
Secretary



STEPHANIE HANSEN
STATE SENATOR
10th District

SENATE
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Transportation, Chair
Agriculture, Vice-Chair
Environmental & Natural Resources, Vice-Chair
Energy
Health & Social Services
Sunset

U.S. Senator Tom Carper
301 North Walnut Street, Suite 102L-1
Wilmington, DE 19801-3974
Elizabeth_Mabry@epw.senate.gov

September 22, 2020

Dear Senator Carper:

As the Vice Chair of the Delaware State Senate Environmental Committee and former Chair of Delaware's Ecological Extinction Task Force, I wanted to share some perspective on wildlife management issues and the Endangered Species Act from the First State.

For context, nearly half of Delaware's native plants are either threatened or are no longer present in our State. More than three-quarters of the state's freshwater mussel species are gone. One in five of our native fish species have disappeared. The drivers of this precipitous decline in our biodiversity are habitat loss, habitat fragmentation, climate change, and invasive species.

Our state is in a battle to address these challenges and we need our federal partners and the strong federal framework provided by the Endangered Species Act. The Endangered Species Act has been quite successful in Delaware, and our state agencies enjoy a productive relationship with the U.S. Fish and Wildlife Service on many efforts. One recent example is the recovery of the Delmarva Fox Squirrel, once a federally listed endangered species, which is now more plentiful due to translocations, habitat management and land protection implemented with the assistance of our federal partners.

I'm also a former environmental scientist and environmental attorney and through that experience, I cannot emphasize enough the importance of judicial review. Judicial review helps build accountability and public trust and strengthens our nation's environmental laws – for the benefit of all Americans. I have serious concerns about limiting judicial review of Endangered Species Act decisions.

One way the Environment and Public Works Committee could support both states and federal agencies and to improve conservation outcomes is to develop a new funding strategy. Both states and federal agencies could do exponentially more with robust funding; we certainly know that to be the case in Delaware.

Thank you for the opportunity to share these thoughts, as the Environment and Public Works Committee considers the Endangered Species Act Amendments of 2020.

Sincerely,

Handwritten signature of Stephanie L. Hansen in black ink.

State Senator Stephanie Hansen
Senator District 10



October 6, 2020

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 Senator Carper:

The American Birding Association (ABA) applauds the many successes of the Endangered Species Act (ESA) and strongly supports preserving existing legislation, rather than weakening and diluting the ESA as proposed in Chairman Barrasso's proposed reauthorization (S. 4589).

Founded in 1969, the ABA is just a few years older than the ESA itself. Our community of avid birders has seen with our own eyes how magnificent species including the peregrine falcon, brown pelican, and bald eagle have come roaring back from the edge of extinction in less than a half century. Those birds and other iconic national symbols are now a part of our natural heritage we can pass on proudly to our children and grandchildren but only if we stay the course.

It's more than just our pride that is at stake. Birdwatching and related forms of ecotourism and outdoor recreation are a multi-billion dollar industry. They are the lifeblood of countless businesses small and large. The ESA has played, is playing, and must continue to play a vital role in preserving the birds and wildlife on which this enormous industry is built.

Birds are a huge and increasingly important reason people travel to and spend money in communities with otherwise small economies: like the annual spectacle of red knots and other shorebirds feasting on horseshoe crab eggs along the shores of Delaware Bay near our headquarters; or the spectacular courtship dances of prairie-chickens on the high plains of Kansas, Colorado, Oklahoma, and Texas; and rich songs and brilliant colors of birds like the iiwi, the apapane, and the akiapolaau in the rain forests high atop Hawaii's volcanoes.

The livelihoods of so many Americans depend on travel and tourism--Americans who are struggling to weather the impacts of the current global pandemic. Right now is a terrible time to compromise the very safeguards that have proved their value and their effectiveness since the early 1970s. For the birds, the birders, and the businesses that depend on them, we must protect the Endangered Species Act itself, which has done such an outstanding job of protecting our birds and so much of our natural heritage.

Sincerely yours,

Jeffrey A. Gordon

Jeffrey A. Gordon
President

Membership and Billing: P.O. Box 3070, Colorado Springs, CO 80934
Headquarters: 93 Clinton Street # 744, Delaware City, DE 19706
Telephone: 800-850-2473



September 9, 2020

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,

On behalf of our organization and its millions of members and supporters, we write to express our strong opposition to S. 614, the Grizzly Bear State Management Act, which would legislatively delist the Greater Yellowstone Ecosystem (GYE) population of grizzly bears under the Endangered Species Act. If passed, S. 614 will likely cause irreparable harm to this isolated population of roughly 700 bears and will make it much more difficult to recover other grizzly populations in the conterminous United States.

After the U.S. Fish and Wildlife Service removed Endangered Species Act protections for the GYE grizzly bear population in 2017, Wyoming and Idaho — for the first time in more than 40 years — announced grizzly hunts that would have allowed for up to 23 bears to be killed outside of Yellowstone National Park. In 2018, a Montana federal court blocked those hunts, ruling that the Trump administration illegally stripped protections for the GYE grizzlies. As the court noted in its order:

The policy implications of the Greater Yellowstone grizzly delisting are significant, but they cannot affect the Court's disposition. Although this Order may have impacts throughout grizzly country and beyond, this case is not about the ethics of hunting, and it is not about solving human- or livestock-grizzly conflicts as a practical or philosophical matter. These issues are not before the Court. This Court's review, constrained by the Constitution and the laws enacted by Congress, is limited to answering a yes-or-no question: Did the United States Fish and Wildlife Service (hereinafter "Service") exceed its legal authority when it delisted the Greater Yellowstone grizzly bear?¹

The court went on to note that “by delisting the Greater Yellowstone grizzly without analyzing how delisting would affect the remaining members of the lower-48 grizzly designation, the Service failed to consider how reduced protections in the Greater Yellowstone Ecosystem would impact the other grizzly populations.”² For instance, the Service failed to consider how delisting the GYE population of grizzlies would affect two populations of grizzly bears in the mountains of northern Idaho, which are struggling with just a few dozen there total, the few bears that are

¹ *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999 (D. Montana 2018).

² *Id.* at 1004.



thought to inhabit the North Cascades, and the Selway-Bitterroot area, listed as one of six necessary recovery zones, that has no current bear population. Despite having recovery plans on the books to recover grizzly bears in these regions, the Service has not acted on them, and if the Yellowstone population is delisted in isolation, it decreases the likelihood of bears recovering elsewhere.

The 2018 ruling confirmed the illegality of the Service’s fragmented approach to recovery that fails to meet the goal of the Act to recover species across significant portions of their range. “The Service’s approach... does not square with the ESA as a matter of statutory interpretation or policy... The ESA does not permit the Service to use the distinct population segment designation to circumvent analysis of a species’ overall well-being.”³ The court goes on to explain that:

When a species is already listed, the Service cannot review a single segment with blinders on, ignoring the continuing status of the species’ remnant. The statute requires a comprehensive review of the entire listed species and its continuing status. Having started the process, the Service cannot call it quits upon finding a single distinct population segment.⁴

In July 2020, the 9th Circuit Court of Appeals upheld the decision, requiring the Service to “determine... whether there is a sufficiently distinct and protectable remnant population, so that the delisting of the [distinct population segment] will not further threaten the existence of the remnant.”⁵ The 9th Circuit—describing the grizzly bear as an “iconic symbol of the Rocky Mountain west”⁶—also pointed to the lack of “concrete, enforceable mechanisms” to “ensure long-term genetic health of the Yellowstone grizzly,”⁷ and that a “commitment to increase population size” is “required to ensure long-term viability.”⁸

For decades, the courts have repeatedly slammed the Service for prematurely removing federal protections for GYE grizzly bears. If the Service had simply followed the clear mandates of the Endangered Species Act, and the instructions set forth in these decisions by considering the impacts of delisting on the remnant population of bears, the agency could move forward with delisting the GYE grizzly bears in a manner that is consistent with Congress’ clear intent in passing the Act. But this means the Service must consider and address the impacts of delisting on grizzly bears elsewhere in the lower 48 states.

Perhaps most importantly, however, if passed, S. 614 would cynically bypass any judicial review of delisting the GYE grizzly bears. Restricting access to the courts undermines g the

³ *Id.* at 1008-09.

⁴ *Id.* (quoting *Humane Soc’y of the U.S. v. Zinke*, 865 F.3d 585, 601 (D.C. Cir. 2017)).

⁵ *Crow Indian Tribe v. United States*, No. 18-36030 at 41 (9th Cir. 2020).

⁶ *Id.* at 23.

⁷ *Id.* at 19.

⁸ *Id.* at 45.



ability of ordinary Americans, to hold federal agencies accountable to the law whenever the agencies abuse their authority or overstep the clear limits that Congress has placed upon them.

Citizen suits are commonly used by individuals and organizations from across the political spectrum that act as watchdogs against government abuse. The citizen suit is a tool that derives its power directly from the principles of the Constitution to petition our government for a redress of grievances, ensures our civil rights are protected, and ensure equal justice under the law for all parties. Restricting judicial review is inherently undemocratic and sets a terrible precedent regarding access to the courts.

For these reasons, we urge you to oppose S. 614.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Kurose". The ink is dark and the handwriting is fluid and legible.

Stephanie Kurose
Senior Endangered Species Policy Specialist
Center for Biological Diversity

**Petition for a Recovery Plan for the Grizzly Bear
(*Ursus arctos horribilis*) Across Its Native Range in the
Conterminous United States**



PETITIONER

CENTER FOR BIOLOGICAL DIVERSITY

"There seems to be a tacit assumption that if grizzlies survive in Canada and Alaska, that is good enough. It is not good enough for me.... Relegating grizzlies to Alaska is about like relegating happiness to heaven; one may never get there." Aldo Leopold, *A Sand County Almanac*.

Photo: Terry Tollefsbol, U.S. Fish and Wildlife Service

June 18, 2014

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Dan Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20240

Re: Petition to the U.S. Department of Interior and U.S. Fish and Wildlife Service, for Development of a Recovery Plan for the Grizzly Bear (*Ursus arctos horribilis*) across its Native Range in the Conterminous United States.

Dear Secretary Jewell and Director Ashe:

Pursuant to 16 U.S.C. § 1533(f) of the Endangered Species Act and section 5 U.S.C. § 553(e) of the Administrative Procedure Act, the Center for Biological Diversity (“Center”) hereby petitions the U.S. Department of the Interior (“DOI”), by and through the U.S. Fish and Wildlife Service (“Service”), to meet its mandatory duty to develop a recovery plan for the grizzly bear, 16 U.S.C. § 1533(f) by revising and updating its 1993 recovery plan for the grizzly bear (*Ursus arctos horribilis*) for the populations that were identified at the time the species was listed, and by identifying all additional geographic areas where recovery strategies are needed, to ensure full recovery of the species across its native range in the United States.

Since the grizzly bear was listed as a threatened species under the Endangered Species Act (ESA) in 1975, the Service has pursued a fragmented approach to grizzly bear recovery that does not adhere to the law’s intention that listed species be recovered in all significant portions of their range. Instead, the Service has developed recovery strategies for six populations occupying a relatively small portion of the grizzly bear’s historic range, including the Greater Yellowstone Ecosystem (GYE), the Northern Continental Divide Ecosystem (NCDE), the Cabinet-Yaak Ecosystem (CYE), the Selkirk Ecosystem (SE), North Cascades Ecosystem (NCE) and Selway-Bitterroot Ecosystem (SBE), and has, for the most part, only enacted protections or carried out on-the-ground recovery efforts for the first four.

The Service has failed to develop recovery strategies for ecosystems that still contain substantial and sufficient suitable habitat, which is not only an abdication of the Service’s responsibilities under the Endangered Species Act as a legal matter, but leaves grizzly bears endangered across significant portions of their range as a biological fact. Hence, we hereby petition the Service to finally meet the full scope of its obligations under section 4 of the ESA by revising its 1993 recovery plan to include all significant remaining areas of suitable habitat across the grizzly bear’s native range in the western U.S., in addition to those populations that are already covered in the 1993 plan, including at least the Gila/Mogollon complex in Arizona and New Mexico, the Grand Canyon in Arizona, the Sierra Nevada in California, the Uinta Mountains in Utah, and areas of southern Utah.

The Service's failure to develop a plan for recovery and conservation of the grizzly bear in other significant portions of the species' range ignores the important ecological role that grizzly bears played in numerous ecosystems across the western United States. This failure ignores the fundamental principles of conservation biology — the preservation of a species and its ecosystems over the long term depends upon numerous connected populations that can function as a larger meta-population across the landscape.

A comprehensive grizzly bear recovery plan would incorporate and guide species-recovery efforts at the proper landscape scale, would ensure that recovery targets are set at numeric levels that are sufficiently robust to sustain the species across its historic range, and would protect grizzly bear habitat in a holistic manner that would benefit grizzly bears, other endangered species, and ecosystem integrity. It would ensure a precautionary approach and the evolutionary potential of grizzly bears in a world that is rapidly changing due to climate change, nonnative species and human population growth. And it would maximize the potential to protect and restore diverse grizzly bear behaviors across a wider variety of ecosystems. In short, a comprehensive grizzly bear recovery plan is required to ensure the species has sufficient representation, resiliency and redundancy to persist for hundreds of years to come.

Precedents for development by the Service of successful recovery plans that include the entire range of species in the U.S. include plans for the bald eagle, brown pelican and peregrine falcon.¹ In these and other recovery plans, regional targets for numbers of animals combine to form a meta-population that better ensures a resilient, recovered distribution of the species as a whole.

The Center for Biological Diversity ("Center") is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy and environmental law. The Center has more than 775,000 members and online activists dedicated to the protection and restoration of endangered species and wild places. The Center has worked for many years to protect imperiled plants and wildlife — including grizzly bears — as well as open space, air and water quality, and overall quality of life.

The Center and its members are "interested persons" within the meaning of the APA, and hence petition the Service for a comprehensive recovery strategy for the grizzly bear pursuant to the APA and in accordance with the ESA. See 5 U.S.C. § 553(e) (granting any "interested person the right to petition for the issuance, amendment, or repeal of a rule"); *id.* § 551(4) (a "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy"). For all of the reasons set forth in this petition and as a matter of law, the Service is required to respond to this petition by updating and completing the 1993 Grizzly Bear Recovery Plan to incorporate new recovery strategies throughout the grizzly bear's historic range. See 16 U.S.C. § 1533(f).

Should it fail to comply with these mandatory obligations, the Center may pursue relief from a federal district court. 5 U.S.C. § 702 (“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”); *id.* § 551(13) (“agency action” includes “the whole or a part of an agency rule, ... or the equivalent or denial thereof, or failure to act”); *id.* § 706(1) and (2)(A) (granting a reviewing court the authority to “compel agency action unlawfully withheld or unreasonably delayed” and/or to “hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, an abuse of discretion”); *see also* 16 U.S.C. § 1540(g)(1)(C) (“any person may commence a civil suit on his own behalf” “against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary”).

Accordingly, we ask you to respond to this petition expeditiously to inform us that you are commencing a process to complete the recovery plan for the entire grizzly bear species, and moreover, that you include a timeline by which you will conduct and complete this process and commence implementation of all necessary recovery strategies for the grizzly bear species with all deliberate speed.

Sincerely,

Noah Greenwald
Endangered Species Director
Center for Biological Diversity

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Executive Summary

Grizzly bears once ranged throughout most of western North America, from the high Arctic to the Sierra Madre Occidental of Mexico, and from the coast of California across most of the Great Plains. On the West Coast, this adaptable omnivore likely fed alongside California condors on salmon and marine mammal carcasses, while on the Great Plains they fed on the great herds of plains bison. No one knows how many grizzly bears used to live in North America, but an estimated 50,000 to 100,000 likely roamed the American West prior to European settlement.² Within 200 years, excessive killing had reduced grizzly bear populations to perhaps several hundred bears, mostly found in Yellowstone National Park in Wyoming and the northern Rocky Mountains of Montana and Idaho. As a result of its precipitous decline, the grizzly bear was listed as a threatened species under the Endangered Species Act in 1975.

Today there are only 1,500 to 1,800 grizzly bears left in the lower 48 states — around 700 bears in the isolated Greater Yellowstone Ecosystem (GYE); approximately 800 bears in the Northern Continental Divide Ecosystem (NCDE); perhaps 25 to 50 bears in the Selkirk Ecosystem (SE) of Washington and Idaho; about 45 bears in the Cabinet-Yaak Ecosystem (CYE) of Montana and Idaho; and possibly a couple of bears in the North Cascades Ecosystem (NCE) of Washington. The current population represents less than 4 percent of the historic abundance of grizzly bears in the western United States. More importantly, outside of the GYE and NCDE, very little progress has been made recovering grizzly bears. At best, the populations in the Selkirk and Cabinet-Yaak Ecosystems have remained stable. Grizzly bears have been functionally extirpated from the North Cascades, and are now extirpated from the Selway-Bitterroot and San Juan Mountains. The two areas where bears have seen considerable recovery, the GYE and NCDE, include an area that is a mere 4 percent of the bear's historic range and 22 percent of potentially suitable habitat identified through modeling.

To determine recovery potential for grizzly bears, we compiled information from all available studies of grizzly bear habitat within their historic range in the western conterminous U.S., and determined that there is roughly 110,000 square miles of additional habitat that could support recovery of the grizzly bear, which is more than triple the habitat found in the GYE and NCDE. The Mogollon Rim and Gila Wilderness complex in Arizona and New Mexico, Sierra Nevada in California, Grand Canyon in Arizona, Uinta Mountains in northern Utah and potentially other areas appear to harbor sufficiently large blocks of habitat to anchor grizzly bear recovery areas, and warrant further analysis by the U.S. Fish and Wildlife Service.

This additional habitat has the potential to greatly increase grizzly bear numbers and thereby ensure the species' long-term survival. Studies show that additional habitat in the northern Rockies and North Cascades alone could support another 1,500 bears, nearly doubling the population. There are not estimates for how many bears might be able to live in the several other areas in the western U.S. that have the potential to support populations, but given that the total area of available habitat is greater than the GYE and NCDE combined, it is likely that

there is habitat for a substantial number of bears. Based on available habitat and studies of population viability, we recommend an overall recovery goal of 4,000 to 6,000 bears spread across recovery areas with sufficient habitat to support populations. Such a goal would restore these magnificent animals to a closer proximity of their historic range in the western conterminous U.S.

This petition requests that the U.S. Fish and Wildlife Service revise the 1993 Grizzly Bear Recovery Plan to consider the entire historic range of the species. The petition echoes most of the recommendations in the Service's own status review for the grizzly bear that was completed in 2011, which concluded that the 1993 Recovery Plan "no longer reflects the best available and most up-to-date information on the biology of the species and its habitat."³ Such a revision would satisfy the Service's mandatory obligation to develop and implement a plan for the recovery and conservation of the grizzly bear as a threatened species. 16 U.S.C. § 1533(f). A revised recovery plan should:

1. Develop recovery strategies for all significant remaining areas of suitable habitat across the grizzly bear's native range in the western U.S., including those populations that are already covered in the 1993 plan, as well as the Mogollon Rim and Gila Wilderness complex in Arizona and New Mexico, Sierra Nevada in California, Grand Canyon in Arizona, Uinta Mountains in northern Utah and potentially other areas.
2. Develop population targets for each recovery area that ensure population viability with a goal of obtaining a total population of at least 4,000 to 6,000 bears in a meta-population of interconnected habitat.
3. Develop recovery criteria to secure and restore grizzly bear habitat and to address the full spectrum of threats to bears, particularly on public lands.
4. Develop recovery criteria to reduce human-caused mortality across the species' range.

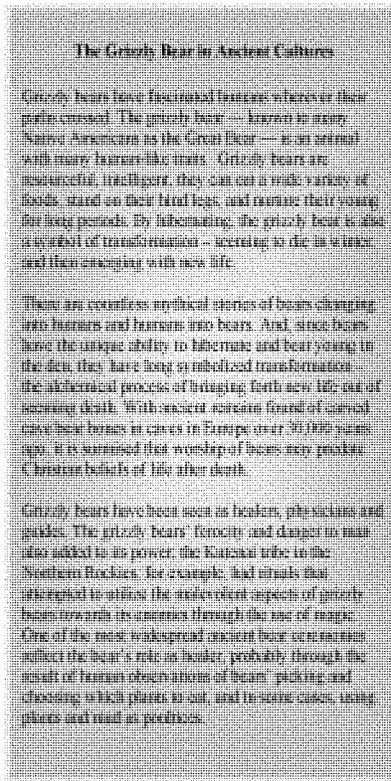
If included in a revised recovery plan, the population and recovery area recommendations included in this petition meet the requirements of the Endangered Species Act to recover endangered species in all significant portions of range and to follow best available science, are precautionary, which is especially important for addressing climate change and increasing human intrusions on grizzly bear habitat, and will recover bears to a representative spectrum of the unique historic habitats they once occupied, helping maintain their adaptability and ability to weather the changing world we live in.

I. Introduction

With one of the largest home ranges of any mammal species and a strong dependence on wild, unfragmented landscapes, the grizzly bear is an excellent “umbrella species” for intact ecosystems in the western United States.⁴ Moreover, grizzly bears are considered a strongly interacting species that exert a substantial influence on the ecosystems they occupy.⁵ The conservation and recovery of the grizzly bear would thus benefit ecosystems across the western United States, as well as the many plant and animal species that depend on these ecosystems. Accordingly, this petition seeks the recovery of grizzly bears to remaining suitable habitat in their native range in the conterminous U.S.

The Endangered Species Act is broadly purposed “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” In accordance with this expansive purpose, Congress, in passing the Endangered Species Act, added a novel geographic aspect to conserving species that was not present in precursor laws, requiring that a species be protected in each “significant portion of its range,” even if the species was secure in other portions of its range. This makes clear that the Act is about more than merely preventing extinction, but rather about recovering species to as much of their historic range as possible. Indeed, Congress explained that the change marked “a significant shift” in how the Fish and Wildlife Services should evaluate whether a species is threatened or endangered.⁶ For the first time, a species like the grizzly bear, although common in Alaska and Canada, could receive protections based solely on its status in the lower 48 States.

The need to revise the recovery plan was recently recognized by the Service itself in a 2011 five-year review, which recommended: “Revise the recovery plan for grizzly bears in the lower 48 States so that it reflects the best scientific and commercial information available.”⁷ The 2011 review and this petition make abundantly clear that the 1993 plan is no longer supported by the best-available science or the most current research in the field of conservation



biology, especially regarding the need to rescue populations that are on the verge of extirpation and to maintain a meta-population that is viable over the long term. A vast amount of science has been assembled since 1993 that has not been incorporated into the existing grizzly bear management and recovery actions. For all of these reasons and more, we call on the Service to develop a new recovery plan for the grizzly bear within its native range in the conterminous U.S.

II. The Grizzly Bear Can and Should be Restored to More of Its Historic Range

A. The Decline of Grizzly Bears in the Western U.S.

Grizzly bears have proven to be particularly vulnerable to human persecution. Between 1800 and 1975 grizzly bear populations in the lower 48 States declined from an estimated 50,000 to 100,000 to perhaps fewer than 1,000 bears.⁸ As the mountainous areas of the western U.S. were settled, the burgeoning mining and logging industries contributed to the increase in human-caused mortality of grizzly bears. Livestock depredation control, habitat deterioration, commercial trapping, unregulated hunting, and protection of human life were leading causes of decline.⁹ Professional hunters/trappers hired by federal and state agencies also greatly contributed to grizzly bear population exterminations as a matter of formal government policy.¹⁰

By 1922 only about 37 populations of grizzly bears remained in the lower 48 States (Figure 1).¹¹ Between the 1920s and 1970s, grizzly bears tended to survive only where human densities were low and in mountainous areas where rough terrain and widely distributed food resources tended to keep bears out of harm's way.¹² Where food sources overlapped with human settlements, bears tended to disappear more quickly than in remote areas, in which high-elevation foods such as whitebark pine seeds kept bears away from people.

Populations of grizzly bears in the lower 48 states are currently relegated to areas of much lower human densities than typifies the joint distribution of brown bears and humans in Eurasia, largely as an artifact of levels of lethal control by people between 1850 and 1950 in the U.S.¹³ And indeed, people can coexist with grizzly bears, using proven successful measures to reduce conflicts. Good sanitation practices that make human food sources less attractive to bears is of foremost importance.¹⁴ Careful management of human-bear interactions, especially in national parks, allows bears to be consistently much closer to people without harmful consequences.¹⁵ Deterrents such as bear pepper spray have been shown to be a viable alternative to firearms for protection during close encounters with bears.¹⁶ Finally, proven management of agricultural attractants such as dead livestock, sheep and cow calves can substantially reduce conflicts.¹⁷

At the time of passage of the ESA and the listing of the grizzly bear as a threatened species in 1975, bears were known to still be present in Montana, Idaho and Wyoming.¹⁸ Small numbers of grizzly bears may also have been present in remote areas of the North Cascades, and there are continued reports up to the present time that grizzly bears occasionally disperse from the Canadian side of the Cascades into the U.S. A grizzly bear was shot in the San Juan National Forest in Colorado in 1979, but none have been found in that ecosystem since then. No resident grizzly bears have been found in the Selway-Bitterroot ecosystem since the time of listing, although the Service considers it to be one of the seven populations where bears persisted and could be recovered.

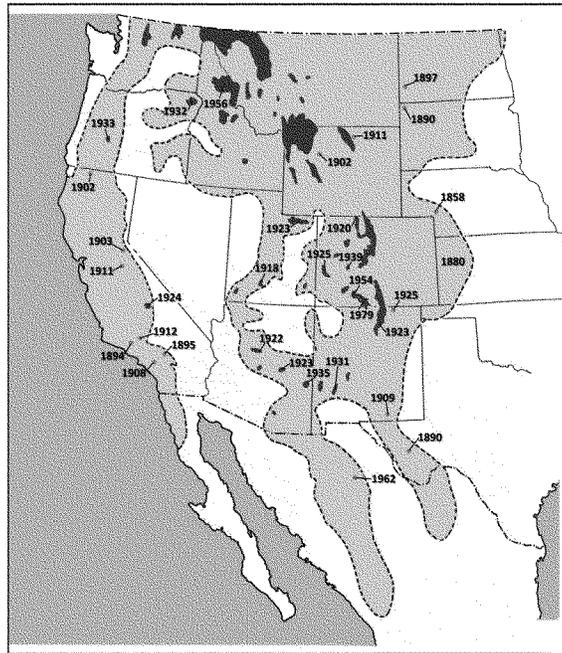


Figure 1. Historic grizzly bear range circa 1850 (light green), remaining range circa 1920 (dark green), and approximate dates of local extirpations, where known. (*D. Mattson, unpublished data.*)

B. Current distribution and population status of grizzly bears and opportunities for additional recovery

As noted above, grizzly bears survive in just five areas. These areas harbor at most between 1,500 and 1,800 bears, occupying roughly 93,000 square miles or less than 1 percent of the species' historic range in the conterminous U.S. (Table 1, Figure 1). The vast majority of remaining bears are confined to the Greater Yellowstone and North Continental Divide Ecosystems. Yet the other recovery areas identified in the 1993 recovery plan are 50 percent larger than Greater Yellowstone and North Continental Divide combined, and at least across the northern Rockies have the potential to create an interconnected meta-population that provides greater security for the species as a whole and a buffer against the projected adverse effects of climate change and nonnative species.

Table 1. Modeled area of suitable habitat and estimated grizzly populations for the grizzly bear recovery areas identified by the 1993 recovery plan.

Recovery Zone	States	Habitat Area (sq mi)	Abundance	Trend Since Listing
Greater Yellowstone	MT, WY, ID	27,599	718 (640-797) ¹⁹	Increased
North Continental Divide	MT	8,836	765 (715-831) ²⁰	Increased
Selkirk Mountains	ID, WA	1,739	30-50	Unchanged
Cabinet-Yaak	ID, MT	2,747	38-48	Unchanged
North Cascades	WA	8,638	~6	Unchanged
Selway-Bitterroot	ID, MT	41,403	0	Unchanged

A number of studies confirm extensive recovery potential in recovery zones other than Greater Yellowstone and the North Continental Divide. Recent research shows the North Cascades has the potential to support a population of over 700 grizzly bears.²¹ There is similarly extensive potential in the Selway Bitterroot with several rigorous studies showing the area could support a robust population ranging from 300 to more than 600 bears, depending on the extent of the area considered.²² The smaller Cabinet-Yaak could support roughly an additional 100 bears²³, and the Selkirks could support roughly an additional 80 to 90 bears, including the portion of the recovery zone in Canada.²⁴ In sum, these studies indicate that even just considering those areas where the Service has developed recovery strategies, grizzly bear numbers could be nearly doubled. Clearly, this is but a small part of the potential for recovering grizzly bears within the conterminous U.S.

C. Additional Potential Grizzly Bear Recovery Areas within Their Historic Range

In 1975, the grizzly bear was protected under the Endangered Species Act across its entire range in the "conterminous United States." It remains protected across this range today. Yet, the Service has never assessed recovery potential within this range. The need to assess the

potential for additional recovery areas was recently acknowledged by the Service in a 2011 status review of the grizzly bear, in which the agency identified a need to conduct studies of habitat suitability in Colorado, New Mexico, Arizona, Utah, California, Nevada, Oregon and southern Washington.²⁵ To facilitate such an assessment, we have compiled all available studies of suitable grizzly bear habitat and compiled them into a single map (Figure 2).²⁶

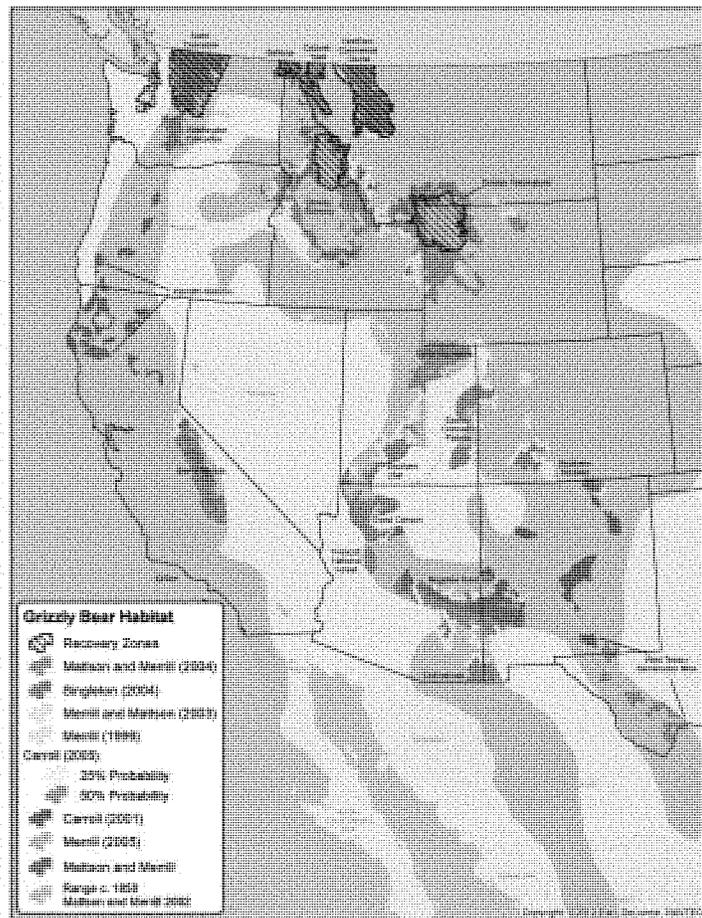


Figure 2. Compilation of analyses of potential grizzly bear habitat in the lower 48 States within the historic range of the grizzly bear.²⁷

Based on available studies, there are several areas that have a high likelihood of having sufficient suitable habitat to act as grizzly bear recovery areas, including the Mogollon Rim and Gila Wilderness complex, Sierra Nevada, Grand Canyon and Uinta Mountains (Table 2). All of these areas have more modeled suitable habitat than both the Cabinet-Yaak and Selkirk recovery zones and appear to contain habitat that is remote enough and productive enough to support a grizzly bear population. In addition, several of the areas have large blocks of suitable habitat nearby that with management of linkage areas could provide additional space for bears and further buttress populations. Those areas include portions of the Prescott National Forest south of the Grand Canyon, the Chiricahua and surrounding Sky Islands south of the Mogollon Rim and Gila Complex, and the Washington Cascades just south of the North Cascades.

Table 2. Potential grizzly bear recovery areas according to available studies.

High Likelihood Recovery Areas	States	Habitat Area (sq mi)
Mogollon Rim and Gila Complex	AZ, NM	14,488
Sierra Nevada	CA	7,747
Grand Canyon	AZ	6,180
Uinta Mountains	UT	6,067

In addition to the above potential core recovery areas, there are several areas of smaller blocks of habitat that considered together may have the potential to support grizzly bear populations, including the Klamath-Siskiyou, southern Rocky Mountains and the eastern Colorado Plateau on the Utah and Colorado border (Table 3). A revised recovery plan should further evaluate the recovery potential of all of these areas.

Table 3. Additional potential grizzly bear recovery areas pending further study.

Additional Potential Recovery Areas	States	Habitat Area (sq mi)
Klamath-Siskiyou	CA, OR	6,861
Southern Rocky Mountains	CO, NM	4,004
Eastern Colorado Plateau	UT, CO	3,856
Southern Utah	UT	3,028

In order to ensure the grizzly bear is recovered to all significant portions of its range, this petition requests that the Service move expeditiously to revise the 1993 recovery plan to include recovery strategies for all additional areas that are found to support sufficient core habitat to support a population. Greater Yellowstone and North Continental Divide – the two areas where substantial recovery has occurred and where removal of protections are being considered – represent a mere 22 percent of the suitable habitat identified in available studies and less than 4 percent of the species' historic range, meaning the bear is not yet recovered.

Restoring grizzly bears to additional areas would restore diverse behaviors that have been lost and increase opportunities for the overall adaptability of the species to the changing world we now live in. It would also benefit the many ecosystems that once harbored these great animals.

E. The Role of Grizzly Bears in the Ecosystem

Grizzly bears are both an umbrella species for the ecosystems in which they are found and a strongly interacting species that can impact the composition and abundance of other species within the ecosystem.²⁸ Grizzly bears can play a central role in the function of ecosystem through a complex web of ecological relations.²⁹ Figure 3 depicts a simplified version of such an ecosystem food web in the Greater Yellowstone ecosystem, wherein energy flows from diverse sources to, and through, bears. Through their activities they can enhance and regulate ecosystem function.

Grizzlies accelerate geomorphic processes, enrich soils, enhance biodiversity, regulate prey populations and transport nutrients from marine to terrestrial systems.³⁰ A large body of research has established the key role that grizzly bears play in enriching upland environments through extraction of salmon from spawning streams and the re-deposition of salmon biomass in the form of carcasses and bear feces.³¹ Bear excavations of roots and rodents have been shown to increase the diversity of plant communities and elevate soil nitrogen levels.³² Grizzly bear predation on calves also regulates, and even limits, boreal moose populations, and has the potential to do the same with interior elk populations.³³

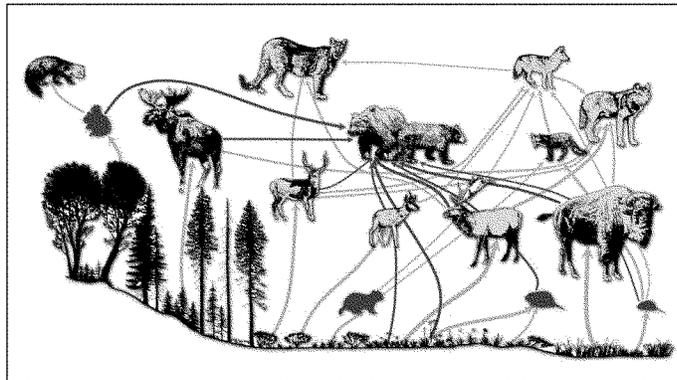


Figure 3. A simplified representation of energy flows from vegetation to herbivores to carnivores in the Yellowstone ecosystem. Flows to grizzly and black bears are shown by blue arrows. (D. Mattson, unpublished.)

The implications of this ecological uniqueness are clear for grizzly bear conservation. First and foremost, the role of grizzlies in ecosystems and the related services they provide are a benefit that should be recognized and considered in conservation planning.³⁴ Second, ecologically functional and otherwise healthy grizzly bear populations need to be a part of conservation goals.³⁵ Finally, grizzlies can provide extraordinary amounts of information about the overall health of ecosystems. Because of the important roles grizzlies play and their grandeur, we should continue to work to recover grizzlies to more of their former range in the lower 48 States.

III. The Need for a Revised Recovery Plan

As demonstrated above, recovery efforts, to date, have focused on just two small portions of the grizzly bear's range centered on Yellowstone and Glacier National Parks. Little action has been taken to recover either the other identified recovery areas, where the status of bears has remained virtually unchanged, or additional areas identified by the Service as potential targets for recovery in Arizona, California, Colorado, New Mexico, Oregon or Utah. As such, the grizzly bear remains unrecovered over significant portions of its range. This, alone, necessitates a new recovery plan that seeks to recover the bear across suitable portions of its historic range. Additional support for a new recovery plan is provided by failings in the existing recovery plan, new science concerning the conservation of grizzly bears – which is presented throughout the petition – and new threats that were not considered in 1993, namely climate change, nonnative species and an ever-growing human population.

A. Existing efforts have not successfully recovered grizzly bears

Grizzly bear recovery efforts in the lower 48 States have had mixed results. The most significant gains have been made by protecting the grizzly bear under the Endangered Species Act and thereby reducing human-caused mortalities.³⁶ One of the primary reasons grizzly bears were protected under the Act was due to excessive killing that extirpated the species from most of its range and continued high levels of human-caused mortality in its remaining range in Idaho, Montana and Wyoming. Human-caused mortality came from hunting, poaching, conflicts with livestock and hunters, and conflicts from poor garbage storage practices resulting in bears being attracted to human developments.

Legal protection ended sport hunting, established penalties for poaching, provided a management framework that reduced conditioning of grizzly bears to human foods and attractants, and reduced other forms of conflict on public lands.³⁷ With endangered species protection, significant resources were appropriated to federal and state agencies that helped to address threats and resulted in significant conservation gains in parts of the species' range in the northern Rocky Mountains.

These recovery gains, however, have primarily been limited to the Greater Yellowstone and North Continental Divide ecosystems, where grizzly bears were most abundant at the time of listing in 1975. Substantially less effort has been dedicated to the other five areas identified in the 1993 recovery plan as having potential for recovery, and no effort has been made to assess the potential for recovery in additional areas or to develop recovery strategies for any areas identified.

By failing to step back and consider the needs of the species as a whole and pursuing a piecemeal approach the Service has failed to develop a recovery plan that fully restores grizzly bears to the wider landscapes of the western United States. For example, even though the Service recognized the importance of a meta-population approach to recovery and stated in the 1993 plan that it would complete an assessment of linkage zones between ecosystems within five years of plan finalization, this has never occurred.³⁸ Similarly, despite the known negative impacts of increasing roads density on grizzly bear populations, the Forest Service has adopted substantially different standards for managing roads in different grizzly bear ecosystems across the northern Rocky Mountains. The lack of a coordinated and unified recovery strategy has also hindered efforts to address major connectivity barriers such as highways, which are currently mitigated only in a haphazard manner by state, federal and tribal agencies.

The lack of a range-wide recovery plan has also reduced the effectiveness of strategies to address continuing sources of human-caused mortality. While significant improvements in sanitation practices have been made in Glacier, Yellowstone and Grand Teton national parks, efforts to address sanitation standards in communities on the periphery of these ecosystems has been haphazard. Inconsistent management approaches have limited expansion of grizzly bears into suitable habitat beyond the core areas of these ecosystems and has resulted in nearly complete isolation of remaining grizzly bear populations. A comprehensive assessment of human-caused mortalities would enhance efforts to reduce conflicts and improve prospects for connectivity.

How Yellowstone Park Resolved Problems with Grizzly Bears

Yellowstone National Park saved the core of Greater Yellowstone grizzly bear's population of more than 2 million acres of largely wild country. Yellowstone provides an essential sanctuary for one of the largest remaining populations in the lower 48.

The Yellowstone was historically a center of human-bear conflicts as well. Human structures were more abundant, and property damage and injuries were common prior to the institution of more rigorous regulations and bear management, especially after grizzly bears were listed under the Endangered Species Act.

Following almost a decade of garbage dumps in 1960 in the park, where scavenging bears feeding had been a popular tourist attraction, hundreds of habituated grizzly bears were killed — an event that the future of Yellowstone's grizzly bears was in doubt. (There was a fierce debate over whether a winter closure would have been to close the dumps more gradually.) The Park Service also initiated new rules to reduce the influence of human foods on grizzly bears and return the population to a more natural diet. It made enforcement of, and public education about, keeping food out of the bear's reach a top priority. And, it placed greater emphasis on habitat protection, closing about 18 percent of the park to overnight camping.

Since the time the bear management programs were initiated, the number of human injuries caused by bears has plummeted from an average of 45 per year to far less than 1 per year. Conflicts today are rare occurrences, despite continuing increases in human visitation to over 3 million people per year.

Today, Yellowstone Park is a shining example of effective management of people in the interest of recovering the grizzly bear.

There is an immediate need to augment existing populations in the Selkirks and North Cascades, to continue augmenting the Cabinet-Yaak population, and to begin the process of creating new populations in the Selway-Bitterroot and elsewhere. To date, efforts in this regard have been sporadic. The Cabinet-Yaak is the only one of these populations to have received any augmentation of bears with the translocation of 13 grizzly bears from the NCDE since the early 1990's.³⁹ Many of the grizzly bears known from this ecosystem are descendants from one of these reintroduced females. Without these translocated grizzly bears, the population would likely have been extirpated during the last several decades.⁴⁰

In 2000, a final environmental impact statement and a proposed 10(j) rule were issued to reintroduce bears to the Selway-Bitterroot, but the proposed rule was never finalized and the Service failed to move forward with reintroduction.⁴¹ The Preferred Alternative set forth a program to reintroduce a minimum of 25 grizzly bears of both sexes over a 5-year period to the Bitterroot ecosystem. The Service anticipated that a grizzly bear population could reach the tentative recovery goal of 280 grizzly bears occupying all suitable habitat within 50 years (assuming an optimal 4 percent growth rate); but more realistically this process would probably take closer to 110 years (2 percent growth rate).⁴² Other experts maintain that a population of 300 to 600 bears could be sustained if the definition of "suitable" habitat were based on biological factors rather than political/societal factors.⁴³ Following the change of presidential administrations in 2001, the Service published a notice of intent to reevaluate the reintroduction and published a proposed rule to remove the existing nonessential experimental rule.⁴⁴ This regulation and the associated nonessential experimental rule putatively remain in effect as the proposed reevaluation and associated removal were never finalized. Thus, even though the final regulations remain in effect, they were never implemented.

The Service completed a revised grizzly bear recovery strategy for the North Cascades in 1997.⁴⁵ The plan called for completing an environmental impact statement on augmentation of the very small, existing grizzly bear population with bears from Canada. Despite this plan, to date the Service has not completed an environmental analysis to conduct much-needed augmentation of the population. This failure is despite the fact that substantial outreach to educate the public about grizzly bear recovery in the area has been completed and that this effective outreach is reflected in significant public support for grizzly bear recovery.⁴⁶

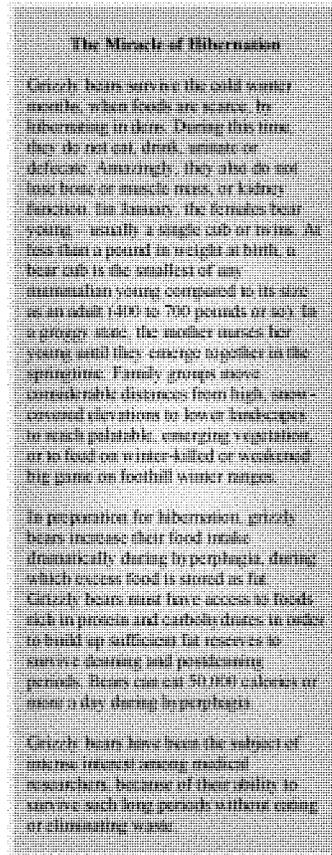
The other immediate action that is needed to further grizzly bear recovery is to protect habitats for existing and potential populations, particularly in the Cabinet-Yaak, Selkirks and Selway-Bitterroot. The greatest needs are to protect remaining secure habitat by limiting road densities, making existing roads more permeable for bears, and ensuring proper storage of trash, all to avoid conflicts between people and bears. In the North Continental Divide, restrictions on road densities adopted on the Flathead National Forest and construction of wildlife underpasses and overpasses on highway U.S. 93 have improved habitat security and connectivity for grizzly bears and other wildlife, demonstrating that such actions can work.⁴⁷ Similar action is needed to ameliorate the negative impacts of U.S. highways 3 and 95 and other

highways as shown in Figure 4 below, which is limiting connectivity between populations in the northern Rockies.⁴⁸

The Cabinet-Yaak population is also threatened by isolation, human attractants on the periphery of the ecosystem, high road densities and two proposed hard rock mines.⁴⁹ The lethality of people in this ecosystem is much higher relative to human population size of any population in the lower 48 states.⁵⁰ Similarly, the Selkirk population is threatened with imminent extinction by high densities of roads and fragmentation, small population size and isolation. For either of these populations to recover immediate action is needed to address these issues.

Even in Greater Yellowstone, where there has been extensive effort toward recovery, several habitat management measures are still needed. Habitat protections do not extend outside of an outdated recovery zone boundary, drawn when bears were at all time low numbers, even though grizzly bears use about 1.7 million acres of additional habitat, 75 percent of which is vulnerable to development.⁵¹ And the population has remained isolated from all other grizzly bear populations. This isolation is not surprising given that the nearest grizzly bear recovery area is 240 miles away in central Idaho where restoration of grizzlies has not yet occurred. Isolation is confirmed by a lack of genetic interchange with any other grizzly bear population during the last 100 years.⁵² As a result, GYE grizzly bears have the lowest genetic heterozygosity of any continental population yet investigated.⁵³ Addressing this problem will require restoring and ensuring linkages to other populations.

In addition to habitat loss and isolation, killing of grizzly bears by people continues to be a serious threat to the survival and recovery of grizzly bears, with roughly 80 percent of all mortality of adult bears caused by people.⁵⁴ The rate at which humans kill grizzlies can be usefully understood as a function of how often bears encounter people (i.e., frequency of contact) and the likelihood, given an encounter, that the bear will be killed (i.e., lethality of encounter).⁵⁵ Some degree of intractable conflict follows from the fact that grizzly bears are large carnivores that pose a threat to human safety and to domesticated animals and



agricultural crops.⁵⁶ Because of that, the successful conservation of grizzly bears will always depend on wild areas with limited human activity and access. This unavoidable reality requires that restrictions on human access and activity be an integral part of grizzly bear management, including management of backcountry human travel and limits on density of open roads on public lands.⁵⁷ Numerous studies have shown that mortality risk for grizzly bears is dramatically higher near roads or, more generally, in areas with greater road access.⁵⁸ The extent of restrictions on human activity and access will necessarily be determined in part by the tolerance of involved people.⁵⁹

In sum, recovery efforts, to date, have been limited in extent and have failed to recover grizzly bears to the majority of areas where recovery potential has been identified. There is an immediate need to take action to recover additional populations through reintroduction, augmentation and protection, restoration of habitat, and reduction of human-caused mortalities.

B. New threats to grizzly bears have arisen since 1993

Climate Change

Like most recovery plans developed in the 1990s, the recovery plan for the grizzly bear did not consider or mitigate for the potential impacts of climate change.⁶⁰ There is little doubt that dramatic climate change is happening at a rapid pace, largely due to anthropogenic forcing.⁶¹ Increases in temperature have accelerated during the last 40 years and are projected to increase in virtually all regions globally. Projections regarding precipitation, especially at a regional level, have remained more uncertain than projections regarding temperatures. Nonetheless, regional climate models have proliferated and improved to the point where researchers have been able to reach increasingly robust conclusions about not only precipitation, but also drought and related effects on vegetation. In North America much of this advance has been driven by the North American Regional Climate Change Assessment Program (NARCCAP) consortium.⁶²

Of great relevance to grizzly bears in the conterminous U.S. is the fact that regional models are in consensus that summertime temperatures will increase substantially in the northern Rocky Mountains over the next 100 years.⁶³ Moreover, even though projections of growing season (June-August) precipitation vary, there is consensus about the incidence of drought, largely driven by increases in growing season temperatures and earlier snow-melt. Recent multi-model forecasts project a substantial increase in drought frequency and severity throughout the northern Rockies,⁶⁴ with demonstrable and projected effects on productivity and ecosystems accentuated by potentially dramatic changes in fire, insect and disease regimes affecting already drought-stressed vegetation.⁶⁵

The effects of climate change are already being seen in the Greater Yellowstone Ecosystem, where one of the grizzly bear's most important foods, whitebark pine seeds, have seen

catastrophic declines.⁶⁶ An estimated 80 percent to 90 percent of current whitebark pine range is expected to be lost over the next 100 years due to climate change, with further losses catalyzed by disease, insects, fire and failed recruitment.⁶⁷ Whitebark pine forests have already undergone major declines during the last decade due primarily to an unprecedented climate-driven outbreak of native mountain pine beetles,⁶⁸ exacerbated by an on-going warming-enhanced epidemic of a non-native fungal pathogen called white pine blister rust.⁶⁹ These two agents synergistically contribute to tree mortality, with blister rust more immediately lethal to small trees and beetles lethal to trees greater than 6 inches in diameter.⁷⁰ Loss of whitebark pine is consequential because of its demonstrable effects on the reproduction and survival of Yellowstone grizzly bears. Female bears eat twice as many pine seeds as do males,⁷¹ and produce more cubs following good, compared to poor, whitebark pine seed crops.⁷² All bears also tend to survive at a higher rate during good seed crops because they are less exposed to human-related risks while exploiting this food, which occurs in remote high-elevation areas.⁷³

In the wake of loss of whitebark pine and other food sources, GYE bears have been turning to eating more meat, including both livestock and elk, leading to increased human conflicts and mortalities.⁷⁴ There is some evidence to suggest that the same phenomena occurred in NCDE in eastern parts of this ecosystem after whitebark pine was decimated by blister rust during the 1980s and 1990s.⁷⁵ There are potentially effective responses to this problem,⁷⁶ but additional resources and skilled agency personnel are needed.

There is little doubt that grizzly bears in the northern Rocky Mountains will be subjected to increasing warming and drying during the next century, with concomitant declines in overall productivity, and that we are seeing just the beginning of climate impacts on grizzly bears and their habitat. The question is not whether grizzly bear densities will decline, but to what extent, which increases the imperative to establish and maintain many large connected populations as a buffer against these climate-forced changes. A new recovery plan would provide a path forward for a viable bear population in a warming world.

Expanded Human Population

Since 1993, when the recovery plan for grizzly bears was developed, the human population of the western United States has seen extensive growth. In Montana, for example, the population grew from 799,065 people in 1990 to 1,015,165 in 2013, a 27 percent increase. Every other western state in the grizzly bear's range has seen similar growth. Such population growth is a substantial impediment to grizzly bear recovery, but it can be addressed by recovery actions like building wildlife-friendly road crossings, improving sanitation measures around core recovery areas and linkage zones, and generally building greater tolerance of bears and understanding of bear needs. Areas of particular concern are Island Park/Henry's Lake in the GYE, the Flathead Valley in the NCDE, and the CYE and SE.

IV. Recommendations for a Revised Range-Wide Recovery Plan

As previously noted, the Service itself identified a need to update the recovery plan for the grizzly bear in their 2011 five-year review of the species, concluding that the 1993 plan “no longer reflects the best-available and most up-to-date information on the biology of the species and its habitat.” We echo the call for an updated recovery plan and in so doing recommend the following revised recovery criteria, all of which are necessary to ensure a comprehensive and unified framework for achieving recovery.

Revised Recovery Criterion 1: Develop recovery strategies for all significant areas of suitable habitat in the grizzly bear’s historic range

The Service should develop a revised recovery plan that includes recovery strategies for additional areas that are found to contain sufficient habitat to support populations, such as the Mogollon Rim and Gila Wilderness Complex, Sierra Nevada, Uinta Mountains and elsewhere, to ensure the grizzly bear is recovered to all significant portions of range. Such an approach is consistent with the Service’s own recovery planning guidance, which calls for using the conservation biology principles of representation, resilience and redundancy.⁷⁷ Representation requires the protection of populations across the full range of ecological settings of a species’ range. Resiliency encompasses population-specific attributes that increase long-term persistence and integrity in the face of disturbance. And redundancy requires establishing multiple populations in each ecological setting to spread extinction risk and increase species’ viability.

Reducing Grizzly Bear Conflicts Along the Rocky Mountain Front

The foothills grasslands of the Rocky Mountain Front east of Glacier National Park is the last remaining place in the lower 48 states where grizzly bears have continuously occupied private pastures. Under the protection of the Endangered Species Act, grizzly bears have expanded their use of this habitat to the west, reaching today as far as 90 miles east of the front. This expansion has been facilitated by a concerted effort among livestock operators, managers and local landowners to reduce human-bear conflicts. Most of these conflicts have been livestock oriented, and focused in areas of concentrated attractants, such as haystacks, calving and lambing areas, feedlots, and riparian areas, especially in the spring and fall.

Conflicts between grizzly bears and residents increased in the 1980’s and peaked in the late 1990’s. Recovery of the bear in this agricultural area was, for years, highly controversial. With the leadership of the state of Montana, the cooperation among livestock operators, and the efforts of a graduate student named Seth Wilson, a coordinated effort was initiated in the late 1990s to improve the practice of coexistence with grizzly bears. This effort started with in-person interviews and GIS technology to map specific situations. The state shared its data on conflicts and locations.

Through this collaboration, a model was developed that quantified patterns of conflicts and identified landscape features that were at highest risk of experiencing conflicts. A productive local discussion emerged about these patterns and what might be done to reduce conflicts. Through extensive dialogue, a local watershed group began to utilize this information to raise funds for fencing calving and riparian areas, reducing haystacks, developing off site water sources using solar pumps, and placing electric fencing around feedlots.

The process built trust and social capital among participants. It improved awareness of the causes and locations of conflicts, which in turn led to solutions. Political support for grizzly bears improved, as agriculturalists found consensus around to reduce conflicts and benefit their livelihood. Because of improved local tolerance and fewer conflicts, grizzly bears have considerably expanded their range since the late of being. The Rocky Mountain Front is an example of what can be done proactively to conserve grizzly bears while maintaining local ways of life.

Recovering grizzly bears to additional habitat areas will clearly meet the goals of these principles. Restoring grizzly bears to the Southwest, for example, would increase representation by reintroducing bears into an area where they forage on Gambell's oak acorns and pinyon pine seeds. Overall, recovery to additional areas would increase redundancy by creating more populations and foster greater resilience by buffering grizzly bears against the uncertainties posed by climate change, invasive species and human population growth.

As previously discussed, reintroductions of grizzly bears from other ecosystems will be needed for all of these additional areas. Any reintroduction efforts must entail introducing enough bears to achieve reasonable prospects of achieving recovery. The Service must take special precautions to prevent poaching and other human-caused mortality, which have plagued recovery efforts in the CYE.

To that end, the Service should work with the states and Forest Service to reduce attractants and other sources of potential conflict. And it must undertake an extensive outreach effort such as has been done in the NCE. It is critical for the public to be sufficiently supportive to limit mortality. As was done with wolves prior to reintroduction, bringing in people from occupied grizzly bear habitat to meet with landowners and others in an area where reintroduction is being proposed can be an effective means of raising awareness about what it is like to live in the company of grizzly bears and how to avoid conflicts. There is enormous opportunity to build on the skill, experience and tools that have proven effective in reducing bear-human conflicts in areas suitable for grizzly recovery.

Revised Recovery Criterion 2: Develop Population Goals for all Grizzly Bear Populations and for the Species Across its Range

In developing a revised recovery plan, the Service should develop population goals for all of the individual recovery areas, as well as for the entire population across its range, in order to ensure the resiliency of the species. Population goals for individual recovery areas will depend on the size and productivity of habitat and proximity to other populations, but as a general rule a minimum goal of 200 to 500 grizzly bears per population should buffer against inbreeding depression and demographic and environmental stochasticity, particularly if populations are interconnected.⁷⁸

For an overall population goal, we recommend the Service set a minimum goal of 4,000 to 6,000 bears and to the maximum extent practical ensure these bears occur in an interconnected meta-population. Two comprehensive reviews of minimum viable populations found that populations within this range across a broad range of species, including grizzly bears, have a high likelihood of long-term persistence.⁷⁹ In an analysis of 102 species, including the grizzly bear, Reed et al., (2003) estimated a mean and median minimum viable population of 7,316 and 5,816 individuals, respectively. Likewise, Traill et al., (2007) combined results from

studies on 212 species, including the grizzly bear, finding that the median minimum viable population was 4,169 individuals. These studies strongly suggest that an interconnected meta-population of 4,000 to 6,000 grizzly bears will have a high likelihood of survival.

We are recommending a meta-population approach in which populations across the historic range of grizzly bears are interconnected, where possible, through habitat linkages because numerous studies have determined that this is the best way to ensure the long-term survival of species, including the grizzly bear.⁸⁰ To date, existing populations remain largely isolated. In particular, the GYE grizzly bear population is totally isolated from all other populations. The three other main surviving populations are also largely isolated. There have been just a few grizzly bears known to disperse from the NCDE to other grizzly bear areas, including the Cabinet-Yaak and Selway-Bitterroot. Thus, any revised recovery plan should seek to address connectivity between both existing and any newly created populations.

The Service has embraced a meta-population approach before for recovery planning. For example, in devising a recovery plan for the Sierra Nevada Distinct Segment (DPS) of Bighorn Sheep, the Service developed a range-wide delisting criterion of 750 individuals across nine geographic regions that comprised the Sierra Nevada DPS meta-population.⁸¹ This meta-population approach recognized that each of the nine sub-populations may increase or decrease over short periods of time, but that the overall meta-population would fluctuate between 600 and 1,000 sheep, while averaging about 750 sheep, or approximately 75 percent of estimated carrying capacity. Importantly, this criterion was separate from demographic delisting criterion that applied to each of the nine geographic sub-units.

As the Service explained for the Sierra Nevada DPS, the meta-population approach is “an important biological principle for long-term survival of bighorn sheep populations, it is equally important as a management concept that prioritizes regional coordination ... and habitat management.” The same is true for grizzly bears. A meta-population recovery criterion is an important biological goal for the long-term persistence of grizzly bears in the lower 48 states. Recovering a meta-population across all of the identified grizzly bear ecosystems and beyond will require improved land-management practices across millions of acres of public lands; this in turn will benefit numerous other species.

Revised Recovery Criterion 3: Protect, maintain and restore grizzly bear habitat across the species’ range by limiting new development and road densities in existing suitable habitat and restoring degraded habitat.

In order to recover the grizzly bear to significant portions of its historic range such that it is secure from extinction and fulfilling its ecological role the Service will need to protect secure habitat by limiting road densities and other development. Grizzly bears do best in large, relatively road-free landscapes. Indeed, road density is a key variable in models of grizzly bear habitat.⁸² Existing roadless areas, however, are not sufficient to support a recovered grizzly bear population and thus bears have no choice but to live in areas with roads and people.

To ensure the recovery of the grizzly bear, a revised recovery plan must develop consistent road density standards for public lands, and restore degraded lands through closing and decommissioning roads. Indeed, in the 1993 plan, the Service stated that roads were the biggest threat facing grizzly bears today.

There is an enormous body of scientific information on the amount of secure habitat that is needed at the scale of a bear's home range and the limits that are required on roads and access. Yet, this information has been applied haphazardly. And there is new research on roads since the 1993 when the recovery plan was developed that should be incorporated in a revised plan.

Revised Recovery Criterion 4: Protect habitat in areas that link grizzly bear recovery areas.

The Service must identify areas that link recovery areas and develop habitat standards to protect these areas. Since 1993 scientific research and management practice have amply demonstrated that new techniques make it possible to reconnect grizzly bear recovery areas, with prospects of establishing connected populations large enough to ensure demographic and evolutionary resilience.

Given the slow dispersal rates and philopatry of female grizzly bears, linkage habitat should not be thought of as a corridor, but more as contiguous occupied habitat. Addressing the problem of fragmentation associated with highways and the continued human development of low-elevation areas is important. Major highway-related fracture zones between grizzly bear recovery areas in the northern Rockies have been identified (Figure 4),⁸³ but little systematic work on a comprehensive scale has been done with this information to improve prospects for bear movement across highways.

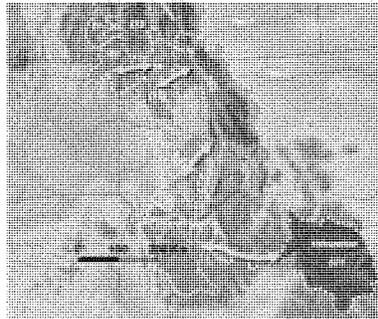


Figure 4. Grizzly bear population fragments identified by Proctor et al. (2012) and potential linkages shown in green together with potential grizzly bear habitat in central Idaho.

There are however, a number of individual projects that have enhanced connectivity. For example, along U.S. 93 north of Missoula, Mont., a collaboration that began in 2001 has resulted in the construction of numerous highway-crossing structures that facilitate east-west movement by grizzly bears and other wildlife within the NCDE. The Confederated Kootenai Salish tribes, Montana Department of Transportation and Federal Highway Administration have been working together to improve opportunities for grizzly bears and other wildlife to cross the highway. Today, there are 40 underpasses and one overpass designed to allow safe wildlife passage. Using remote cameras, sand track beds placed near the highway, and road kill data, researchers identified the places used most heavily by wildlife, including grizzly bears. They used this information to locate the crossing structures, which have reduced road-killed wildlife by 40 percent, and are being used by bears.

In addition, new federal funding is available for highway road projects designed to increase connectivity. Section 1103(a)(13) of the Moving Ahead for Progress in the 21st Century Act allows for federal funding of environmental mitigation activities designed to “reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.”⁸⁴ This provides additional means whereby land management agencies and the Department of Transportation can work together to address grizzly bear connectivity during road construction projects.

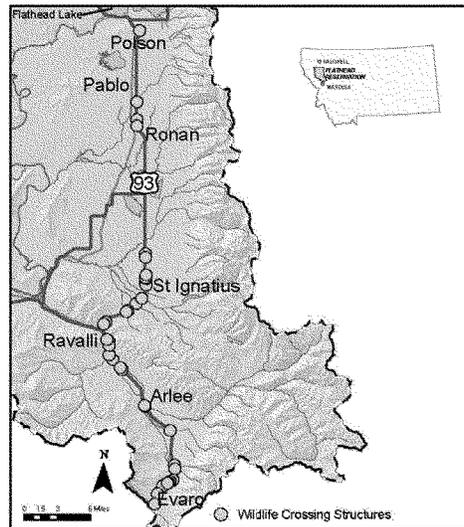


Figure 5. Highway 93 crossing structure locations.
Courtesy of CSKT, MDT, and WTI-MSU

A recovery criterion to address habitat linkages and barriers to connectivity is the best approach to addressing the recommendations in the 2011 status review which identified the following key steps to overcoming connectivity barriers:

- Identify key linkage areas using a data-based approach using GPS collars and modeling.
- Deliver effective linkage conservation in the Northern Rockies on public and private lands found in intervening valleys, and major transportation routes.
- Conserve private lands using easements and acquisitions, sanitation assistance to landowners, and intensive outreach in order for animals to live within, and pass through, areas of low human densities.
- Develop partnerships with the Federal Highway Administration to construct approximately 28 high-priority highway underpasses and appropriate wildlife fencing at crossing areas to guide animals to these underpasses across all seven paved highways between the Canadian border and the GYA.



Figure 6. Grizzly Bear using underpass on Highway 93 north of Missoula

Revised Recovery Criterion 5: Integrated climate change mitigation and adaptation strategy for grizzly bears

The effect of climate change on grizzly bears was not considered in the 1993 recovery plan despite reasonably foreseeable adverse effects on grizzly bear populations. To address these challenges, the Service must work with and provide guidance to federal land-management agencies in developing integrated mitigation strategies (i.e., actions that reduce causes of stress) and adaptation strategies (i.e., actions that help ecosystems accommodate change).

Again, a policy that improves prospects for maintaining larger, connected ecosystems enhances the ability of grizzly bear to adapt to climate change and invasive species and disease.

A comprehensive and integrated climate adaptation and mitigation approach would be consistent with the Service's National Climate Adaptation Strategy and the best scientific information relating to adaptation strategies for wildlife management.⁸⁵ The Great Northern Landscape Cooperative, a partnership of agencies involved in assessing and mitigating the effects of climate change, could also be called upon to address the impacts of climate change, as is being done with sage grouse.⁸⁶ Adopting a criterion that evaluates and institutionalizes climate change adaptation mechanisms would help to ensure that there are adequate regulatory mechanisms on the landscape that will protect the grizzly bear over the next several centuries as climate change intensifies and worsens.

Revised Criteria Criterion 6: Strategies for reducing human-caused mortality

The 1993 Recovery Plan does not explicitly nor comprehensively address the proximal drivers of human-caused mortality. This is a critically important omission because humans have been, and continue to be, the primary cause of premature death for adult grizzly bears. More than anything else, assurance of grizzly bear recovery comes down to decreasing the odds that bears are killed by people, either as a function of how often grizzly bears and people encounter each other or, given that an encounter has happened, the odds that the person will kill the bear. And the problem of human-caused mortality will very likely get worse before it gets better as climate warming affects bear distribution and behavior, especially if bears range more widely and spend more time in habitats near people.⁸⁷

Although the Service has developed some standards that address habitat management — habitat security in particular — little has been done to develop standards or protocols that address specific human behaviors known to increase the risks of fatal conflicts. And much is known about human behaviors leading to conflicts with grizzly bears. Hunter-killed ungulate carcasses, unsecured human-associated attractants, high-risk livestock husbandry practices, and risky backcountry behaviors are all problematic. These human behaviors are all amenable to being changed in ways that can considerably reduce conflicts and related risks of bears dying. But to do so requires well-thought-out, well-resourced and well-tested programs of outreach, education and engagement targeting the people most directly involved in risky situations and behaviors.

The Recovery Plan did identify and describe some people-focused measures to promote recovery, including certain outreach activities. However, the coverage of this issue was far from complete and lacked strategic context or guidance. Given its resources and authority, there is an imperative for the Service to play a much larger role in managing human behaviors that directly drive conflicts, including establishing standards, providing comprehensive strategic planning, partnering with people and organizations that have expertise in outreach and education, and providing resources for costly projects.

Much is known about how to prevent conflicts between grizzly bears and people. There is a large body of experience with bear-proofing communities, enacting food storage orders, building the infrastructure needed to reduce availability of attractants on national forest lands, changing husbandry practices, using electric fencing around beehives and calving areas, and deploying livestock guard dogs.⁸⁸ Furthermore, much has been written about the components of successful community-based efforts which could be replicated and scaled up.⁸⁹

Just as the Service must develop uniform habitat standards, the revised recovery plan must develop standards for addressing human behaviors that drive conflict with grizzly bears. As a first step, the Service must analyze the types, locations, trends and proximal causes of conflicts.⁹⁰ The Service has all of the data needed for such an undertaking. In the revised plan, the Service can then provide a comprehensive assessment of conflicts and mortalities and outline specific strategies and related standards needed to address the human-related drivers of conflict.

Conclusion

The Center hereby petitions the Service to revise its 1993 Grizzly Bear Recovery Plan and develop recovery strategies for all significant portions of the species' historic range that still contain sufficient suitable habitat, including but not limited to the Mogollon Rim and Gila Wilderness complex, Sierra Nevada, Grand Canyon and Uinta Mountains. Such a recovery plan must include revised recovery criteria for population size and distribution, habitat quality and connectivity, and regulatory mechanisms for all identified recovery areas.

Restoring grizzly bears in additional areas across their native range in the western U.S. meets the Endangered Species Act's mandate to recover threatened or endangered species throughout all significant portions of their ranges and to conserve the ecosystems upon which they depend. And it would also allow for additional grizzly bear conservation efforts by states and other partners to further recover the species in suitable areas of the western United States, Canada and Mexico where the species has been extirpated. Only with robust populations occupying protected and connected landscapes across the species' historic range can recovery be achieved in the face of the adverse effects of climate change and other human pressures.

Endnotes

- ¹ See Appendix 1 hereafter for scientific names of taxa mentioned by common name in the text.
- ² U.S. Fish and Wildlife Service 1993
- ³ U.S. Fish and Wildlife Service 2011
- ⁴ Noss et al. 1996, Carroll et al. 2001
- ⁵ Berger et al. 2001, Soulé et al. 2005
- ⁶ (H.R. Rep. No. 412, 93rd Cong., 1 Sess. (1973))
- ⁷ U.S. Fish and Wildlife Service 2011
- ⁸ Servheen et al. 1999, Mattson and Merrill 2002
- ⁹ Storer and Tevis 1955
- ¹⁰ Brown 1985, Robinson 2005
- ¹¹ Merriam 1922
- ¹² Mattson and Merrill 2002
- ¹³ Mattson 1990
- ¹⁴ Herrero 1985, Elfström et al. 2014
- ¹⁵ Herrero et al. 2005, Gunther and Wyman 2008, Haroldson and Gunther 2013
- ¹⁶ Smith et al. 2008
- ¹⁷ Gunther et al. 2004, Wilson et al. 2006, Wilson and Clark 2007
- ¹⁸ U.S. Fish and Wildlife Service 1993
- ¹⁹ IGBST 2012
- ²⁰ Kendall et al. 2009
- ²¹ Mowat et al. 2013
- ²² Merrill et al. 1999, Boyce and Waller 2003, Mowat et al. 2013
- ²³ Mattson and Merrill 2004
- ²⁴ Mowat et al. 2013
- ²⁵ U.S. Fish and Wildlife Service 2011
- ²⁶ Mattson and Merrill 2004, Merrill and Mattson 2003, Merrill et al. 1999, Singleton et al. 2004, Carroll et al. 2001, Carroll 2005 (unpublished)
- ²⁷ Mattson and Merrill 2004, Merrill and Mattson 2003, Merrill et al. 1999, Singleton et al. 2004, Carroll et al. 2001
- ²⁸ Paine (1969, 1980), Jones et al. (1994), Lambeck (1997), Soulé et al. (2005)
- ²⁹ Simberloff (1999), Linnell et al. (2000), Berger et al. (2001), Carroll et al. (2001), Soule et al. (2005), Nawaz et al. (2008)
- ³⁰ Butler (1992, 2012), Hall & Lamont (2003)
- ³¹ Hilderbrand et al. (1999c), Naiman et al. (2002), Moore & Schindler (2004), Winder et al. (2005), Helfield & Naiman (2006), Holtgreive et al. (2009), Quinn et al. (2009)
- ³² Tardiff & Standford (1998), Doak & Loso (2003)
- ³³ Ballard et al. (1981), Gasaway et al. (1992), Messier (1994), Crête & Manseau (1996), Orians et al. (1997), Smith & Anderson (1996, 1998), Singer et al. (1997), Lubow & Smith (2004), Raithel et al. (2007), Barber-Meyer et al. (2008), White et al. (2010), Griffin et al. (2011), Middleton et al. (2013a, 2013b)
- ³⁴ Pyare & Berger (2003), Soulé et al. (2003)
- ³⁵ Conner (1988), Pyare & Berger (2003), Soulé et al. (2003)
- ³⁶ Mattson and Merrill 2002
- ³⁷ U.S. Fish and Wildlife Service 2011
- ³⁸ U.S. Fish and Wildlife Service 1993
- ³⁹ Kasworm, Wayne, pers comm., 1/13/14
- ⁴⁰ Interagency Grizzly Bear Subcommittee for Cabinet Yaak Ecosystem, 2013
- ⁴¹ U.S. Fish and Wildlife Service 2000a
- ⁴² U.S. Fish and Wildlife Service 2000b
- ⁴³ Merrill 2005, Mowat et al. 2013
- ⁴⁴ U.S. Fish and Wildlife Service 2001

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- ⁴⁵ U.S. Fish and Wildlife Service 1997
- ⁴⁶ Morgan et al. 2004
- ⁴⁷ U.S. Forest Service 1995, Peoples way 2014
- ⁴⁸ Proctor et al. 2012
- ⁴⁹ Primm and Wilson 2004
- ⁵⁰ U.S. Fish and Wildlife Service mortality data, 1997-2012, U.S. Census data. 2010.
- ⁵¹ Langer, Jonathan 2004
- ⁵² Miller and Waits 2003, Haroldson et al. 2010
- ⁵³ Paetkau et al. 1998, Miller and Waits 2003
- ⁵⁴ Mattson et al. 1996a, McLellan et al. 1999
- ⁵⁵ Mattson et al. 1996a, 1996b; Mattson 2004
- ⁵⁶ Mattson 1997, 2004
- ⁵⁷ U.S. Fish and Wildlife Service 1993, 2007a, Coleman et al. 2013 Gibeau et al. 2001, Nielsen et al. 2006, Graham et al. 2010, Roever et al. 2010
- ⁵⁸ Mattson et al. 1996a, Benn and Herrero 2002, Johnson et al. 2004, Nielsen et al. 2004, Schwartz et al. 2010
- ⁵⁹ Mattson et al. 1996b
- ⁶⁰ Povillitis and Suckling 2010
- ⁶¹ Marcott et al. 2013, Oreskes 2013, PAGES 2K Consortium 2013, Shi et al. 2013, Trouet et al. 2013
- ⁶² <http://www.narccap.ucar.edu/>
- ⁶³ Meehl et al. 2007, Mearns et al. 2013
- ⁶⁴ Burke et al. 2006, Prudomme et al. 2013
- ⁶⁵ Ciaie et al. 2005, Rehfeldt et al. 2006, 2012 Bentz et al. 2010, Westerling et al. 2011, Liu et al. 2013, Weed et al. 2013
- ⁶⁶ Mattson et al. 2004, Felicetti et al. 2003
- ⁶⁷ Romme and Turner 1991, Bartlein et al. 1997, Warwell et al. 2007, Chang et al. 2013
- ⁶⁸ Macfarlane et al. 2013
- ⁶⁹ Koteen 2002
- ⁷⁰ Six and Adams 2007, Bockino and Tinker 2012, Larson 2011
- ⁷¹ Mattson 2000
- ⁷² Mattson 2000, Schwartz et al. 2006
- ⁷³ Pease and Mattson 1999, Schwartz et al. 2006, Blanchard and Knight 1991, Mattson et al. 1992
- ⁷⁴ IGBST annual reports
- ⁷⁵ Keane and Amo 1993, Keane et al. 1994, U.S. Fish and Wildlife Service grizzly bear mortality data.
- ⁷⁶ IGBST 2009
- ⁷⁷ NMFS and FWS 2010. (Shaffer and Stein 2000)
- ⁷⁸ Lande 1995, Shaffer 1981
- ⁷⁹ Reed et al. 2003, Trail et al. 2007
- ⁸⁰ Shaffer 1992, Bader 2000, Allendorf and Ryman 2002, Reed et al. 2003, Traill et al. 2010
- ⁸¹ FWS 2008
- ⁸² Mattson and Merrill 2004, Mattson and Merrill 2003, Merrill et al. 1999, Singleton 2004, Carroll 2001
- ⁸³ Proctor et al. 2012
- ⁸⁴ Public Law 112-114 (July 6, 2012)
- ⁸⁵ Mawdsley et al. 2009
- ⁸⁶ Finn, S., Personal Communication, Jan. 13, 2014
- ⁸⁷ Schwartz et al 2012
- ⁸⁸ Gehring et al 2010, Gehring et al 2011, Smith et al 2000
- ⁸⁹ Primm and Wilson 2004, Primm and Clark 1996
- ⁹⁰ Gunther et al 2004

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September 23, 2020

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:

On behalf of the International Fund for Animal Welfare (IFAW) and our members and supporters across the United States, I write in opposition to S. 4589, the "Endangered Species Act Amendments of 2020."

Wild animals, plants, and spaces are a collective benefit enjoyed by every member of the United States. These precious and irreplaceable icons of America—among them the bald eagle, the gray wolf, and the monarch butterfly—are part of our nation's natural heritage, and a sacred trust for future generations. They do not recognize boundaries; species cross frontiers in an ongoing search for food and habitat with no regard for state lines. Nor is their importance confined within any state; citizens from around the nation and around the world make pilgrimages in hopes of a glimpse of some rare and illusive species.

Unfortunately, S. 4589 would devolve many critical decisions about threatened and endangered species protections to individual states. The original Endangered Species Act (ESA) recognized that a national approach to species conservation is necessary if we are to protect the most imperiled plants and animals from extinction. In effect, S. 4589 would undermine species recovery efforts. No state has the breadth of vision to oversee recovery efforts for species that range beyond its boundaries, and protections for species valued by Americans across the U.S. should not be susceptible to disruption based on regional whims and politics.

In addition, this bill would implement lengthier and more cumbersome processes for listing species as threatened or endangered under the ESA. Species already face significant wait times for ESA protections, and increasing that wait will only decrease the chances that species will eventually recover.

All of these proposed changes come at a time when wildlife species can ill afford to lose protections. Around the world, as many as one million species are at risk of extinction as a result of human activities.ⁱ Here in the United States, increasingly intense natural disasters like wildfires and hurricanes are destroying habitat at unprecedented rates. Climate change will continue to force species to move into new ranges in search of habitat. And expanding development is moving more and more wildlife out of their traditional habitat into closer contact with humans, putting populations at greater risk for zoonotic spillover events.

Plant and animal species do not exist in a vacuum. They are integral parts of the ecosystems they inhabit and without them, those ecosystems will degrade. We all rely on intact ecosystems for benefits like healthy soil, drinkable water, clean air, medicines, and resilience to fire and flooding. If we do not protect imperiled species, we run a serious risk of losing those essential ecosystem benefits.

IFAW urges you to reject S. 4589. This misguided bill will not streamline or modernize the ESA. Instead, it will undermine species protections, speeding extinctions, limiting resiliency, and imperiling human health and wellbeing.

Sincerely,



Beth Allgood
U.S. Office Director
The International Fund for Animal Welfare

ⁱ Nature's Dangerous Decline 'Unprecedented' Species Extinction Rates 'Accelerating'.
<https://ipbes.net/news/Media-Release-Global-Assessment>



Protecting Montana's wildlife,
land, waters and hunting & fishing
heritage for future generations.

Sept. 4, 2020

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

RE: S. 614, The Grizzly Bear State Management Act

Dear Chair Barrasso and Senate EPW Committee members,

The Montana Wildlife Federation is our state's oldest and largest state-based wildlife conservation and sporting organization. We were formed in 1936 when hunters joined landowners to restore depleted wildlife in our state. We have an 84-year history of working on the difficult issues around our public trust wildlife, habitat, and recreational resources, including grizzly bears.

We do not support a top-down approach to grizzly bear management where Congress intervenes in the recovery of species under the Endangered Species Act as dictated by S. 614. The successful recovery of species requires the careful application of science, cooperative management by state and federal agencies, and the support of the public. The federal court decision that reinstated federal protections for grizzly bears in the Greater Yellowstone Ecosystem remanded the delisting proposal back to the agencies. The court detailed deficiencies in the delisting proposal and the state's approach to mortality management.

MWF believes these deficiencies can and should be addressed to assure the long-term conservation and careful management of grizzly bears and their habitat. It is important to note that these deficiencies were pointed out by professional staff at the U.S. Fish and Wildlife Service prior to the delisting proposal, but these deficiencies were not addressed, and the delisting proposal was overturned by the court.

MWF is supportive of the concept of delisting the Greater Yellowstone Ecosystem population of grizzly bears and the corresponding return to the states of management of our state animal if post-delisting management is done properly. We strongly believe that the conservation of important wildlife species like grizzly bears requires the application of the best available science combined with a careful and measured management approach. Grizzly bears are a conservation reliant species that will require careful management even after recovery and delisting. For

recovery and delisting to be successful, there needs to be careful management of all forms of mortality, linkage management in place to allow for eventual connections between grizzly populations, and commitments and cooperation between state agencies to exercise care when managing grizzly mortality.

Montanans have tremendous pride in the restoration of grizzly bears. The species has made tremendous gains since it was put under federal protection under the Endangered Species Act in 1975. Both the Northern Continental Divide and Greater Yellowstone Ecosystem grizzly populations now meet their recovery goals under the Grizzly Bear Recovery Plan. That's the result of decades of hard work among all stakeholders – including federal land management agencies, state and federal wildlife agencies, farmers and ranchers, hunters, recreational users, rural communities and many others.

We believe the strongest and best decisions on complex wildlife management issues are made when the best available science is applied and a diversity of all interests are brought together. Please respect the solid work that has been done to date to recover grizzly bears and give the state and federal agencies the time and resources needed to rectify the issues identified by the court to improve the post-delisting management plan so that the future of grizzly bears is secure, and delisting can proceed.

Thank you for this opportunity to comment on this bill.

Sincerely,

A handwritten signature in black ink that reads "Tom Puchlerz". The signature is written in a cursive, slightly slanted style.

Tom Puchlerz
President



April 8, 2020

Montana Grizzly Bear Advisory Council
Facilitators Shawn Johnson and Heather Stokes
shawn.johnson@umontana.edu
heather.stokes@umconnect.umt.edu

Re: Hunting Grizzly Bears in Montana

Dear Montana Grizzly Bear Advisory Council:

Thank you for the time, work, and thought that each of you have dedicated to discussing the future of grizzly bear management in Montana—particularly over the past few weeks under such trying circumstances. On behalf of the Natural Resources Defense Council (“NRDC”) and our thousands of members in Montana, we appreciate the opportunity to submit these comments regarding one aspect of grizzly management under consideration: hunting. For the reasons explained below, grizzly bear hunting is unwarranted and unsafe, because it would be unlikely to reduce human-grizzly conflicts and could even increase risk to human safety. Therefore, we urge you to recommend that FWP not hold hunting seasons for grizzly bears in the future, and that it instead focus on continuing its important efforts to provide information and resources to the Montana public about how to live, work, and recreate safely in grizzly bear country.

I. There is Little Evidence that Hunting Grizzlies Would Reduce Conflicts with or Attacks on People.

To provide background information for the Advisory Council’s discussion about this issue, Montana Fish, Wildlife & Parks (“FWP”) prepared a briefing paper (“Brief”) on the history of, and laws pertaining to, grizzly bear hunting in Montana.¹ In its Brief, FWP suggested that some people might support grizzly bear hunting, because “hunting may help bears become warier of humans,” and because hunting could “potentially address conflict bears.”² Similarly, the Brief explained that Montana’s current Grizzly Bear Policy, found within the Administrative Rules of Montana, identifies sport hunting as the “most desirable method” of “minimizing depredations against private property” and “minimizing grizzly bear attacks on humans.”³

¹ See FWP, Support Team Brief on the history of grizzly bear hunting in Montana and review of existing laws, policies, rules, and plans, version 5 (March 30, 2020) (“Brief”).

² *Id.* at p. 1.

³ *Id.* at p. 2; see also A.R.M. § 12.9.1401(1)(c)(ii).

Thus, two of the primary rationales for hunting grizzlies in Montana are that it could minimize conflicts, and that it could minimize attacks on humans. However, there is little evidence to support these assumptions. Montana's Grizzly Bear Policy was adopted in 1972; since then, numerous studies have repeatedly demonstrated that its rationales are incorrect.

II. Hunting Would Be Unlikely to Reduce Conflicts.

It is unlikely that hunting grizzly bears would reduce human-grizzly bear conflicts. Researchers from around the world have studied the effects of hunting on a variety of bear species and consistently found that hunting does not reduce human-bear conflicts. For example, studies of grizzly bears in British Columbia, brown bears in Norway, American black bears in Wisconsin and Ontario, and Asiatic black bears in Japan all found no correlation between the number of bears killed by hunters and the number of human-bear conflicts during that year or subsequent years (Artelle et al. 2016, Sagør et al. 1997, Treves et al. 2010, Obbard et al. 2014, Huygens et al. 2004, respectively). In other words, across all of these countries and continents, a remarkably consistent theme emerged: hunting bears did not reduce conflicts.

The studies' authors suggested several potential reasons for this finding. Artelle et al. explained that bears killed by hunters tended to be older and live farther from human habitation than those involved in conflicts.⁴ Thus, bears targeted by hunters were usually not the same bears involved in run-ins with people. Sagør et al. explained that it can be difficult to distinguish conflict bears from non-conflict bears.⁵ Because non-conflict bears were probably also being shot during removal efforts, efforts to kill conflict bears were not helping to reduce sheep losses.

Treves et al. and Huygens et al. suggested that, following hunting seasons, new bears were just filling vacancies left by killed bears, and then triggering new conflicts.⁶ As a result, conflicts following hunting seasons did not decrease. Treves et al. also pointed out that females with cubs, which could not be killed by hunters (which would also be the case during a grizzly hunt in Montana), would have been left alive to potentially repeat any pre-hunt nuisance behavior.⁷ Lastly, Obbard et al. suggested that, rather than actually reducing conflicts, allowing the hunting of bears may just reduce complaints.⁸ They speculated that *actually* reducing conflicts would require high enough levels of killing to drive bear populations to very low densities—a management approach that may threaten the very viability of the population.⁹

Obbard et al.'s point was recently reiterated by former U.S. Fish and Wildlife Service ("FWS") grizzly bear recovery coordinator Chris Serhveen. Serhveen explained why a conventional hunting season would not reduce conflicts:

⁴ See Artelle et al. 2016, p. 5.

⁵ See Sagør et al. 1997, p. 94.

⁶ See Treves et al. 2010, p. 39; Huygens et al. 2004, p. 200.

⁷ See Treves et al. 2010, p. 39.

⁸ See Obbard et al. 2014, p. 106.

⁹ Id.

The only way you reduce bear conflicts through hunting is to reduce their numbers significantly in specific areas where depredations occur. A normal hunting season won't reduce conflicts. You're taking out just a few bears across large areas, and a lot of the bears you remove probably weren't causing problems. Hunting is too random to ensure the "right" bears get shot. The best way to solve depredation is to capture, recapture, and remove individual problem bears.¹⁰

While the studies above found no correlation between hunting and human-bear conflicts, many of them did find a strong correlation between the availability of natural foods and levels of conflict. For example, Artelle et al. found that during years with lower salmon abundance in Alaska, there were corresponding increases in human-grizzly bear conflicts.¹¹ Likewise, Obbard et al. found that years with lower abundance of natural foods like berries and nuts in Ontario were associated with increased levels of human-black bear conflicts.¹² Treves et al. discussed several other studies that showed that in years of poor wild food availability, bears were more likely to engage in nuisance behavior.¹³ Similarly, Huygens et al. suggested that levels of conflict between humans and black bears in Japan were a consequence of factors other than hunting, including natural food availability.¹⁴

These findings challenge the assumption in FWP's Brief and in Montana's outdated Grizzly Bear Policy that sport hunting could be a useful tool to reduce human-bear conflicts. As Obbard et al. emphasized, "Although it may be intuitive to assume that harvesting more bears should reduce human-bear conflicts, empirical support for this assumption is lacking despite considerable research."¹⁵

Indeed, later in its Brief, FWP acknowledged many of the points made by the researchers, stating that "in the context of Montana grizzly bears, recreational hunting would probably be limited to such a small number of bears that behavioral effects at the population level would be unlikely;" "nuisance females would be largely unaffected by a recreational hunt, potentially allowing their young to learn undesirable habits;" and that, "although a hunt specifically targeting nuisance bears is theoretically possible, it would be logistically difficult and raise ethical issues regarding fair chase."¹⁶

FWP's Brief also quoted a position paper published in 2017 by the International Association for Bear Research and Management that said, in part, "If the primary management goal is to reduce human-bear conflict, the crucial, and, arguably, only efficient and long-term way to do so is

¹⁰ See <https://www.themeateater.com/conservation/wildlife-management/would-hunting-grizzlies-reduce-conflict-with-humans>.

¹¹ See Artelle et al. 2016, p. 5.

¹² See Obbard et al. 2015, p. 105.

¹³ See Treves et al. 2010, p. 38.

¹⁴ See Huygens et al. 2004, p. 200.

¹⁵ Obbard et al. 2015, p. 106.

¹⁶ Brief, p. 5.

through education, outreach, and implementation of practices and regulatory policies that remove bear attractants.”¹⁷

Likewise, as a result of their findings, many of the authors of the studies described above recommended nonlethal approaches to reducing conflicts rather than relying on hunting. Their list of recommendations to reduce conflicts included: increasing public education; more closely managing livestock rather than allowing them to range untended; changing crop rotations to crops that are not attractive to bears in high-risk areas; using electric fences; applying aversive conditioning techniques; promoting, protecting, or restoring natural food production (e.g., through habitat protection); and focusing on understanding the underlying ecology of conflicts to better target mitigation efforts when and where conflicts are most likely to occur.¹⁸

III. Hunting Would Be Unlikely to Reduce Attacks on Humans.

Hunting grizzly bears would also be unlikely to reduce attacks on humans. As a threshold matter, while it is important to prevent any bear attack on a human, it is also important to recognize that these attacks are already extremely rare. For example, between 2000 and 2015 in Montana, there were 25 grizzly bear attacks that resulted in physical injury to humans, and two of those resulted in a human fatality (Bombieri et al. 2019). A recent article put those numbers into perspective:

Statistically, grizzlies really aren't all that dangerous. Yellowstone National Park's website puts it bluntly: the odds of getting hurt by a grizzly in the park are about one in 2.7 million. Combined, grizzly and black bears have killed fewer than three people per year in the U.S. and Canada since 2010. By contrast, in the U.S. alone, 94 people died kayaking in 2017 and 44 died skiing during the 2016-17 season.¹⁹

Also, 95% of all brown bear attacks in the world during that same time period (2000 to 2015) were the result of a bear reacting defensively to an encounter with humans.²⁰ In other words, it's extremely rare for a bear to behave in a predatory way or to seek out an encounter with a human.

Thus, bear attacks are rare. In addition, there is little evidence that sport hunting would reduce this already rare event even further. A recent, comprehensive review of brown bear attacks worldwide found no significant difference in the number of attacks in countries where brown bear hunting is legal and those where it is not (Bombieri et al. 2019). This suggests that hunting brown bears does not result in fewer attacks on humans. Importantly, the study also made clear that hunting *itself* can result in attacks: of the 664 attacks that were investigated, nearly a quarter

¹⁷ Id.

¹⁸ See Artelle et al. 2016, p. 5; Sagor et al. 1997, pp. 94-95; Obbard et al. 2014, p. 106; Huygens et al. 2004, p. 201.

¹⁹ See <https://www.outsideonline.com/2402436/grizzly-bears-habitat-humans> (Oct. 3, 2019).

²⁰ See Bombieri et al. 2019, p. 4.

(123) occurred while the humans were hunting, and of those, 27 occurred while humans were hunting *brown bears*.²¹

Further, nearly half of the attacks (47%) were the result of a defensive reaction of a female with cubs.²² As mentioned above, under FWP's draft grizzly bear hunting regulations, female bears with cubs would not be hunted.²³ Thus, even if hunting were an effective means of reducing grizzly bear attacks, it would not affect half of the bears involved in attacks each year.

Many grizzly bear biologists in the U.S. agree that hunting grizzlies will not reduce attacks on people. According to FWP grizzly bear management specialist Kim Annis, "If the argument is that hunting bears will teach them to be afraid of humans, I don't understand how that would play out. . . . Bears are solitary animals. If someone kills one, it's dead. It would have to stay alive to actually learn something."²⁴ Annis pointed out that "people have been hunting black bears forever and they still come around people. Alaska has allowed hunting of brown bear . . . and there are still conflicts between bears and humans there."²⁵ She continued, "I don't see where there is any evidence that bears learn to fear humans because of hunting. . . . If people want to be able to hunt grizzly bears as a trophy, that's what they should say."²⁶

Similarly, Confederated Salish and Kootenai Tribes grizzly bear specialist Stacy Courville has said, "Dead bears don't learn anything. . . . Unless there is a bear right there standing next to the one that got shot, I'm not sure how bears would learn anything about being hunted."²⁷

Former U.S. Geological Survey grizzly bear biologist David Mattson has also pointed out that, in essence, we've already been hunting grizzlies in the lower 48 states for years, with no indication that it has affected bears' wariness:

Think, for example, of all the grizzlies that have been killed by big game hunters during surprise encounters or in conflicts over hunter-killed elk—increasingly. Or by ranchers and other people in defense of life and property. Functionally this is probably little different from a sport hunt We've essentially been hunting grizzlies in [the] Yellowstone [area], without any evidence that it has affected human safety one way or another.²⁸

Further, a study of brown bears' wariness toward humans in Eurasia concluded that the availability of human foods was a more significant determinant of wariness than hunting

²¹ See Bombieri et al. 2019, p. 4.

²² *Id.* at p. 5.

²³ See FWP, Grizzly Bear Montana Hunting Regulations, p. 4.

²⁴ See https://missoulian.com/news/local/dead-bears-don-t-learn-anything-biologists-balk-at-notion/article_930fd1e3-31ad-571c-ad30-78d11bcd3b73.html (Nov. 30, 2017).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See <https://www.counterpunch.org/2016/01/15/hunting-to-scare-grizzly-bears/> (Jan. 15, 2016).

(Swenson 1999). The author determined that “[t]he availability of human-derived foods apparently caused bears to lose their wariness, even when hunted.”²⁹ This finding speaks to the importance of securing human food and other attractants—both to reduce conflicts and to maintain bears’ wariness toward people.

In sum, the evidence above indicates that hunting bears is unlikely to reduce attacks or make people safer. Indeed, it could have the opposite effect: more hunters in grizzly bear country, moving slowly and silently, and often alone, could result in more startled bears, which could result in more human injuries and deaths. Taking steps to avoid surprising bears, and to prevent them from accessing human foods and other attractants, appears much more likely to maintain bears’ wariness and keep humans and bears safe.

IV. Conclusion and Recommendations

For the reasons described above, hunting grizzly bears in Montana would most likely not reduce conflicts or reduce attacks on humans. It could even put more people at risk. As a result, we urge the Advisory Council to make the following recommendations:

- 1) FWP should not hold hunting seasons for grizzly bears in Montana.
- 2) FWP—and other agencies—should instead continue to provide information and resources (such as assistance with installing electric fencing around attractants, or supplying bear spray) to ensure that those who live, work, and recreate in grizzly bear country can do so safely.
- 3) FWP and the Montana Fish and Wildlife Commission should undertake a rulemaking process to delete the inaccurate and outdated statements in Montana’s Grizzly Bear Policy, including those that say sport hunting is the “most desirable method” of “minimizing depredations against private property” and “minimizing grizzly bear attacks on humans.” This language should be replaced with evidence-based statements that identify strategies such as public education and proactive conflict-prevention as the most effective ways to minimize negative human-bear interactions.

These actions are the best way to reduce human-grizzly bear conflicts and ensure the safety of both humans and bears in Montana. Thank you for considering these comments.

Sincerely,

²⁹ See Swenson 1999, p. 159.

A handwritten signature in black ink, appearing to read "Zack Strong".

Zack Strong
Staff Attorney and
Director, Carnivore Conservation
Natural Resources Defense Council
317 E. Mendenhall St., Suites D and E
Bozeman, MT 59715
406-556-9302
zstrong@nrdc.org

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June 26, 2020

Montana Grizzly Bear Advisory Council
Shawn Johnson, Facilitator shawn.johnson@mso.umt.edu
Heather Stokes, Facilitator heather.stokes@umconnect.umt.edu
Dillon Tabish, Montana Fish, Wildlife & Parks dillon.tabish@mt.gov

Re: Social Tolerance, Conflict Reduction, and Compensation

Dear Montana Grizzly Bear Advisory Council:

Thank you for your ongoing work to develop recommendations regarding grizzly bear conservation in Montana. On behalf of the Natural Resources Defense Council (“NRDC”) and our thousands of members in Montana, we appreciate the opportunity to submit these comments, which build upon the previous comments we provided on April 8, 2020.

Our earlier comments explained why hunting grizzly bears would not reduce human-grizzly conflicts or make people safer. The following comments also explain why hunting grizzlies would not increase social tolerance or public faith in wildlife management. In addition, these comments explain why, instead of hunting, the Council should recommend greater investment in conflict-prevention measures. They also explain why the Council should not recommend an increase in compensation for unconfirmed livestock losses (such as through a “multiplier”).

I. It Is Unlikely that Hunting Grizzly Bears Would Increase Social Tolerance or Public Faith in Wildlife Management.

In our previous comments, we explained why hunting grizzly bears would not reduce conflicts or (already very rare) attacks on people.¹ Likewise, hunting grizzlies would be unlikely to increase social tolerance or to garner public trust in Montana’s approach to wildlife management. For these reasons, we continue to urge the Advisory Council to recommend against proposing or holding a future grizzly bear hunt in Montana.

¹ See NRDC Comments Re: Hunting Grizzly Bears in Montana (April 8, 2020), available at https://www.nrdc.org/sites/default/files/media-uploads/nrdc_comments_for_gbac_re_grizzly_bear_hunting_4-8-2020_3.pdf.

A. Evidence indicates that hunting grizzly bears would not increase social tolerance.

FWP's position is that hunting grizzlies would increase social tolerance. For example, its southwestern grizzly bear management plan states, "Hunting promotes acceptance and tolerance of this large and potentially life-threatening animal by some of the local public who are asked to live with grizzlies."² Similarly, its western grizzly bear management plan says, "FWP strongly believes that regulated harvest of predators builds tolerance by those most negatively impacted by their presence."³ Indeed, FWP's position is that *not* allowing grizzly hunting "would greatly hinder FWP's ability to develop increased tolerance for the species."⁴

However, research—including FWP's—contradicts those beliefs. For example, scientists in Slovenia found no difference in attitudes toward brown bears among residents living where bear hunting was allowed and those living where it was not (Kaczensky et al. 2003). Surveys done by researchers in Wisconsin revealed that, following the first wolf hunting and trapping season held there in decades, there was an overall *decrease* in tolerance towards wolves among residents living in wolf range (Hogberg et al. 2015).

A study conducted in Norway and Sweden found that poaching, motivated by lack of social tolerance, was responsible for nearly half of the annual adult mortality of Eurasian lynx in those countries (Andrén et al. 2006). Poaching occurred even in areas where lynx could be legally hunted. The researchers found no significant relationship between the numbers of lynx poached, and the numbers of lynx allowed to be legally hunted, in any given area. As a result, they concluded, "There does not seem to be a simple relationship between an increased legal harvest and decreased poaching as is commonly expected."⁵

In 2012, FWP reached a similar conclusion with respect to wolf hunting. That year, the agency conducted four surveys (sent to: (1) general households; (2) private landowners; (3) resident wolf license holders; and (4) resident deer and elk license holders) asking thousands of Montanans to rate their overall tolerance for wolves on the landscape before and after the 2011 wolf hunting season.⁶ Survey results indicated that tolerance levels did not change:

Reported tolerance amongst survey respondents for each of the four surveys was the same for both before and after the 2011 Montana wolf hunt. That is, tolerance did NOT significantly change following the 2011 Montana wolf hunt. . . . These

² See FWP, Grizzly Bear Management Plan for Southwestern Montana, Final Programmatic Environmental Impact Statement (2013) ("Southwestern Grizzly Plan"), p. 61.

³ See FWP, Grizzly Bear Management Plan for Western Montana, Final Programmatic Environmental Impact Statement (2006) ("Western Grizzly Plan"), p. 58.

⁴ *Id.*, at p. 60.

⁵ See Andrén et al. 2006, p. 23.

⁶ See Lewis et al. 2012, Selected Results from Four Separate Surveys of Resident Montanans Regarding Montana's Wolf Hunt: Summary of Research.

findings suggest that attitudes and beliefs regarding wolves may be resistant to change and not easily influenced by specific management efforts.⁷

The agency conducted another, similar set of surveys in 2017.⁸ While the surveys “revealed a slight shift in the direction of more tolerance for wolves,” there was no indication that it was attributable to wolf hunting or trapping, as opposed to other aspects of wolf management. Indeed, prior to the surveys being conducted, NRDC had spent two field seasons working with cattle producers and the federal agency Wildlife Services to install fladry around calving pastures in western Montana with histories of wolf depredation. No depredations occurred in any of the pastures while encircled by fladry (Young et al. 2018). Also during that time, other organizations, such as the Blackfoot Challenge, Tom Miner Basin Association, Centennial Valley Association, People and Carnivores, and Defenders of Wildlife—often in collaboration with FWP—were using fencing, range riding, carcass removal, and other techniques to reduce conflicts with wolves. These efforts could have collectively contributed to increased tolerance for wolves among landowners.

Further, survey responses from “general households” (the demographic most representative of the Montana public), revealed no change in tolerance toward wolf hunting or trapping, and no change in the public’s confidence in FWP’s ability to manage wolves, among most respondents.⁹

Courts have also been skeptical of the claim that hunting improves attitudes or decreases poaching. In 1984, a federal court held that the U.S. Fish and Wildlife Service (“FWS”) could not allow a sport hunting season for Minnesota wolves, which were listed as “threatened” under the Endangered Species Act.¹⁰ FWS argued that a sport hunt was needed to “enhance the value of the wolf in the eyes of the public” and reduce the number of wolves illegally killed each year.¹¹ The Court disagreed, reasoning, “While these illegal killings must be stopped, this can hardly be accomplished by allowing a sport season and creating a market in wolf pelts.”¹²

Similarly, in 2006, another federal court held that FWS could not allow Wisconsin to conduct a lethal control program to kill up to 43 wolves for the purpose of “fostering greater social tolerance for wolves.”¹³ The court dismissed FWS’s rationale—that “killing 43 allegedly depredating wolves will increase social tolerance for wolves and ultimately result in fewer illegal killings of wolves”—as a “labyrinthian analysis.”¹⁴ The Court quoted yet another case in which

⁷ *Id.* at pp. 2, 8.

⁸ See Lewis et al. 2018, Better Understanding Montanans Thoughts Regarding Wolves and Wolf Management in Montana: Summary of Research.

⁹ *Id.*

¹⁰ See *Sierra Club v. Clark*, 577 F.Supp. 783 (D. Minn. 5th 1984).

¹¹ *Id.* at 790.

¹² *Id.*

¹³ See *Humane Society of the U.S. v. Kempthorne*, 481 F.Supp.2d 53, 54, 72 (D.D.C. 2006) (vacated on other grounds).

¹⁴ *Id.* at 63.

the judge, when confronted with the same rationale from FWS, noted the agency's contradiction in logic:

I am baffled by the government's position here. I have to be perfectly frank. I have a hard time understanding the notion you kill the wolves to save the wolves.¹⁵

In light of the available evidence described above, it is equally difficult to understand the concept of "hunting the grizzlies to save the grizzlies."

B. To maintain public faith in wildlife management, FWP must manage grizzly bears on behalf of the entire public.

To maintain or enhance public trust in wildlife management and FWP's grizzly bear program, FWP must ensure that it is considering the public as a whole. FWP's grizzly bear management plans insist, without evidence, that hunting grizzlies could increase social tolerance among some people who live in grizzly habitat. Even if this were true, the agency cannot limit its analysis of social tolerance or public attitudes to just a single demographic. Instead, it must consider the impact that hunting grizzlies could have on the public writ large.

Under Montana law, "[t]he responsibility of [FWP's] Wildlife Division is to protect, enhance, and regulate the wise use of the state's wildlife resources for *public benefit* now and in the future."¹⁶ In other words FWP must ensure that its management decisions benefit the public as a whole, not just particular constituencies.

Yet, FWP's grizzly bear management plans only discuss the effect that hunting grizzly bears might have on the social tolerance of a single portion of the public—that is, some of "the local public who are asked to live with grizzlies"¹⁷ and are "most negatively impacted by their presence."¹⁸ Neither plan discusses what effect holding a hunt might have on the attitudes of other, potentially larger demographics, such as those who also live or work in or near grizzly habitat but are not bothered by the presence of the bears,¹⁹ or even consider their presence to be beneficial; those who visit Montana to see grizzly bears; or those (residents and visitors, hunters and non-hunters) who do not support the idea of hunting this particular species. Indeed, a recent survey by the Association of Fish

¹⁵ *Id.* (quoting *Defenders of Wildlife v. Norton*, Civil Action No. 05-1573 (D.D.C. 2005), transcript of preliminary injunction hearing at p. 11).

¹⁶ See A.R.M. § 12.1.101(10) (emphasis added).

¹⁷ See Southwestern Grizzly Plan, p. 61.

¹⁸ *Id.* at p. 8.

¹⁹ See Eneas 2020, p. 47 (explaining that, on the Flathead Indian Reservation, "some tribal members viewed their property as home to the grizzly bear first, and therefore were not bothered by depredation of their livestock").

and Wildlife Agencies revealed that only 33 percent of Americans in the West approve of hunting grizzly bears.²⁰

FWP's grizzly bear management plans laudably emphasize the importance of enhancing "public faith in management"²¹ and avoiding "erosion of public trust and support for the grizzly bear program."²² To achieve these objectives, however, FWP must ensure that it is considering the public as a whole, rather than a few select stakeholders, when making decisions about grizzly bear management, including whether or not to allow grizzlies to be hunted.

II. Rather than Hunting, the Council Should Recommend Increased Investment in Nonlethal Conflict Prevention.

While there is no evidence to suggest that hunting grizzly bears would increase social tolerance, there is clear evidence that the use of proactive conflict-prevention measures—such as electric fencing, scare devices, and guardian dogs—benefits humans and grizzlies alike, by reducing the risk of property damage and livestock losses while keeping bears alive and out of trouble. Opportunities for increased investment in such measures exist at the local, state, and federal levels.

A. There are many ways to effectively reduce conflicts with bears.

i. Electric fencing

If used correctly, electric fencing is a highly effective bear deterrent. It has been used to deter grizzly bears in North America for decades. In the 1970s, electric fences were successfully used to exclude grizzlies from garbage dumps in U.S. and Canadian national parks, including Yellowstone, Denali, Banff, and Jasper.²³ Since then, electric fencing has been used successfully to keep bears from accessing beehives, livestock, fruit trees, and other attractants. Shocks delivered by electric fences not only deter bears, but also aversively condition them to stay away and avoid high human-traffic areas.

Electric fencing can achieve a near-100 percent success rate, when implemented and maintained properly. For example, a recent study of the effectiveness of electric fencing to protect livestock in Montana's Mission Valley found that "[n]o depredations occurred when livestock were inside a properly functioning electric fence and 7 livestock depredations occurred at sites without electrified fencing."²⁴ The researchers found that the probability of depredation without an electrified fence was 50 percent, while the probability with an electric fence was zero.²⁵

²⁰ See Responsive Management and the National Shooting Sports Foundation, *Americans' Attitudes Toward Hunting, Fishing, Sport Shooting, and Trapping* (2009), p. 29.

²¹ See *Southwestern Grizzly Plan*, p. 8.

²² See *Western Grizzly Plan*, pp. 4, 82.

²³ See *Interagency Grizzly Bear Committee, Grizzly Bear Compendium* (1987), pp. 92.

²⁴ See Eneas et al. 2020, pp. 37.

²⁵ *Id.* at p. 45.

Similarly, in Katmai National Park's Brooks Camp Campground in Alaska, the National Park Service utilized electric fencing to protect campers and facilities from bears starting in 1995.²⁶ Fencing deterred bears from approaching the area and decreased human-bear conflicts to zero in following years.²⁷ Additionally, Parks Canada installed an electric fence around the Lake Louise campground in Banff National Park, which eliminated all bear conflicts that had been occurring for decades.²⁸

For more than ten years, Defenders of Wildlife's Electric Fencing Incentive Program has assisted landowners in the Northern Rockies with paying for and installing electric fences to secure livestock, beehives, gardens, and other attractants.²⁹ As of 2019, of 145 program participants surveyed, 99 percent reported that their fence had successfully protected the intended attractant.³⁰

Similarly, in 2018, NRDC and Defenders of Wildlife helped the federal agency Wildlife Services create a new, nonlethal conflict-prevention specialist position in Montana dedicated to installing temporary and permanent electric fencing to reduce conflicts with bears and other native carnivores. Of the dozens of electric fences installed by the specialist in the years since, there have been no instances of livestock depredation or property damage within any of the enclosures.³¹

Both portable and permanent electric fencing have proven highly effective. In 2018, Smith et. al investigated the efficacy of portable electric fencing systems for bear deterrence and confirmed that they were effective in protecting humans, their food, and property from bears in a variety of environments.³² The study implemented field trials of portable electric fencing systems around campsites in Alaska, Montana, and Wyoming. The trials used electric mesh nets to protect food caches in these bear-dense areas for "5,638 user nights with no loss of food, save 1 instance," which "strongly underscores the effectiveness of this tool for protecting people, their gear, and bears from trouble."³³

ii. Scare devices

When used properly, a variety of acoustic and visual repellents can also be used to deter bears. Devices that play recordings of aggressive grizzlies and barking dogs; flares; pyrotechnics; and even loud radios have successfully deterred bears in small areas or near attractants for short periods of time in Canada and near Yellowstone National Park.³⁴

²⁶ See Smith et al. 2018, p. 309.

²⁷ Id.

²⁸ Id.

²⁹ See <https://defenders.org/got-grizzlies>.

³⁰ See <https://defenders.org/sites/default/files/2020-05/Electric-Fence-Incentive-Program-2019-Annual-Report.pdf>.

³¹ See <https://www.nrdc.org/experts/zack-strong/congress-funds-new-nonlethal-conflict-prevention-positions>.

³² See Smith et al. 2018, pp. 311.

³³ Id. at p. 320.

³⁴ Id. at p. 311.

In Montana, devices like the Critter Gitter, which are motion-activated noise makers, have successfully been employed by FWP to temporarily keep bears away from attractants such as chicken coops and garages.³⁵ Similarly, the Get Bear Smart Society—a conservation organization based in Whistler, British Columbia—suggests using air horns and, where circumstances warrant, “bear bangers,” and even emergency flares.²¹

Bears can become accustomed to many of these disturbances within days or weeks, but noise and visual deterrents can reduce conflicts for at least a limited period to allow for the time to implement a more long-term solution. Much like any wildlife management solution, visual and acoustic repellents are not a one-size solution for reducing bear conflicts; however, these repellents, in conjunction with other non-lethal tools, can increase the efficacy of bear-conflict management strategies.

iii. Livestock guardian dogs

Livestock guardian animals have been called the “ultimate disruptive stimulus device” (Shivik 2006). Livestock owners have used guard animals such as llamas, donkeys, and dogs to protect their herds and flocks for centuries. Livestock guardian dogs have proven effective at deterring bears in the U.S. and Europe (Smith et al. 2000). For example, during a study conducted from 1990 to 1993 in Montana’s Absaroka Mountains, 29 sheep were killed by grizzlies in the two years before dogs were used, but only seven sheep were killed in the two years after dogs were employed (Green et al. 1993). In a different study, a lone Great Pyrenees dog was unable to prevent sheep depredations by a grizzly bear in Idaho; however, a lone Akbash Dog in Montana was observed successfully deterring a grizzly:

The dog would stand nose-to-nose with the bear, and if the bear made an offensive move toward the dog, the dog deftly avoided the bear’s attack, quickly circled, and lunged at the exposed flank of the bear. After a series of these bouts that gradually moved the bear away from the sheep, the bear would amble off, and the dog would return to the flock. This series of events occurred several times during the 3-hour period. No sheep were lost during the encounter.³⁶

Similarly, during a three-year project in Norway, the use of herders and livestock guardian dogs resulted in the loss of only a single sheep from brown bears, while the control herd experienced a 15-20 percent loss (Krogstad et al. 1999). Further, Krogstad et al. “documented numerous encounters with brown bears in which the dogs were successful in chasing the bear away.”³⁷

iv. Other measures

Many other conflict-reduction strategies have also proven effective. For example, bear spray is a safe and reliable tool to prevent bear attacks on people. Smith et al. found that bear spray was 92

³⁵ See FWP, 2018 Grizzly Bear Management Progress Report, NCDE Portion of Region 1, p. 5.

³⁶ See Green and Woodruff 1989 in *Bear-People Conflicts: Proceedings of a Symposium on Management Strategies* (1987), p. 51.

³⁷ *Id.*

percent effective at deterring grizzly bears in Alaska and that 98 percent of people carrying bear spray were uninjured by bears in close-range encounters.³⁸ Further, no bears were killed by bear spray.³⁹ By contrast, handguns and long guns were found to be less effective (84 percent and 72 percent, respectively) and resulted in far more human injuries and bear deaths (humans were injured in 56 percent of bear encounters involving firearms; bears were killed in 64 percent of such encounters).

To reduce conflicts in backcountry camp sites, People and Carnivores has installed more than 200 “bear poles” throughout western Montana and northwestern Wyoming.⁴⁰ Bear poles consist of a single horizontal log or pole fixed high off the ground between two trees. These sturdy structures enable backcountry users to make attractants like camp food, game meat, and livestock feed inaccessible to bears by hanging them at least 10 feet above the ground and four horizontal feet from anything a bear could climb.⁴¹

Similarly, the Greater Yellowstone Coalition has helped to purchase and install more than 1,000 bear-proof bins to store groceries and garbage in developed Forest Service campgrounds throughout the Greater Yellowstone Ecosystem.⁴² Meanwhile, coalitions of conservation groups, wildlife and land management agencies, local businesses, and others have reduced human-bear conflicts in communities like Missoula and Big Sky by installing bear-resistant trash cans and better educating residents about how to avoid run-ins with bears.⁴³

B. The Council should recommend greater investment in nonlethal conflict prevention at all levels of government.

The Council should examine, and make recommendations regarding, opportunities that exist at the local, state, and federal levels to expand the use of proactive strategies to help reduce human-grizzly conflicts.

i. Local level

As Montana’s grizzly bear populations expand, it is increasingly important for counties and municipalities in or near the bear’s range to inform residents how to take steps to avoid conflicts, particularly by securing chickens, fruit trees, gardens, garbage and other attractants. As mentioned above, places like Missoula and Big Sky have created successful bear coexistence programs that could serve as models for other Montana towns. Indeed, NRDC and other conservation organizations recently submitted a letter to the Bozeman City Commission and Planning Board pointing to those communities and others as examples and offering recommendations regarding how the City could address ongoing run-ins with black bears, and potential future conflicts with grizzly bears.⁴⁴

³⁸ Smith et al. 2008.

³⁹ Id.

⁴⁰ See <https://peopleandcarnivores.org/bear-poles/>.

⁴¹ Id.

⁴² See <https://buckrail.com/gvc-forest-service-cap-1-million-5-year-project-to-keep-bears-alive-and-people-safe/>.

⁴³ See <http://missoulabears.org/>; <https://www.wcsccommunitypartnerships.org/bear-smart>.

⁴⁴ See NRDC and Conservation Orgs Comments Re Draft Bozeman Community Plan and Human Bear Conflicts (May 11, 2020), submitted with these comments as Attachment A.

ii. State level

At the state level, one way to increase investment in conflict-prevention measures would be to more evenly balance how the Montana Livestock Loss Board (LLB) is funded. Montana law directs the LLB to address livestock depredations by grizzly bears and other large carnivores in two ways: first, by compensating ranchers for depredations that are determined to be “probable” or “confirmed;” and second, by providing grants to ranchers to help pay for nonlethal conflict-prevention measures to help reduce losses.⁴⁵

However, these two programs are not evenly funded. By law, the compensation program receives \$300,000 per year directly from the state general fund.⁴⁶ By contrast, the reduction program receives no direct general fund money, and instead receives only “leftover” funding from the compensation program account if that account exceeds \$300,000 at the end of the fiscal year.⁴⁷ Large amounts paid by the LLB for compensation claims in recent years (over \$230,000 in 2018 and over \$260,000 in 2019) have left little money available for the reduction program.⁴⁸

LLB funding is also inequitably distributed in other ways. For example, the law prevents the LLB from using compensation program funds to pay for administrative expenses.⁴⁹ Instead, those expenses must be paid for out of reduction program funds.⁵⁰ In addition, while compensation program funds may only be used for compensation, reduction program funds may be split between providing grants for nonlethal prevention measures and contracting with the federal agency Wildlife Services (for lethal or nonlethal control).⁵¹

This funding structure disproportionately prioritizes funding for compensation over funding for nonlethal conflict reduction. Instead, the two should be funded equally, with the long-term goal of leveraging the use of conflict-reduction measures to reduce the need to compensate ranchers for livestock losses. The Council should recommend that legislation be introduced to ensure a more equitable approach to investing in compensation and nonlethal conflict prevention (and paying for LLB administrative expenses), while separating any funding for Wildlife Services into its own program and account.

iii. Federal level

Finally, there are several options for generating new resources at the federal level. One opportunity would be to expand the FWS Wolf Livestock Loss Demonstration Project to include grizzly bears, and to increase the annual amount of program funding available for conflict prevention.⁵² Another option could be to encourage the Natural Resources Conservation Service

⁴⁵ See M.C.A. §§ 2-15-3110 et seq.

⁴⁶ See M.C.A. §§ 81-1-112(2); 15-1-122(3).

⁴⁷ See M.C.A. §§ 81-1-112(4).

⁴⁸ See <http://liv.mt.gov/Attached-Agency-Boards/Livestock-Loss-Board/Livestock-Loss-Statistics-2019>.

⁴⁹ See M.C.A. § 81-1-112(2).

⁵⁰ See M.C.A. § 81-1-113(6).

⁵¹ See M.C.A. § 81-1-113(5).

⁵² See 7 U.S.C. § 8351, Note § 6201 et seq.; see also <https://www.fws.gov/endangered/grants/>.

to take any necessary steps, such as revising relevant national conservation practice standards, to enable grant programs such as the Environmental Quality Incentives Program to be used more widely to address human-carnivore conflicts.⁵³

A third opportunity would be for the Council to express support, and recommend that other stakeholders also express support, for the continuation of the \$1.38 million federal appropriation Congress allocated in FY20 to pay for nonlethal conflict-prevention specialists employed by Wildlife Services in Montana and other states.⁵⁴ NRDC and Defenders of Wildlife supported the FY20 appropriation, which enabled Wildlife Services to hire more than a dozen new employees focused exclusively on reducing livestock-predator conflicts, including those involving grizzly bears in Montana.⁵⁵ Stakeholders are seeking a second appropriation this year to ensure that work can continue into the next fiscal year. Support from the Council, agricultural producers, conservation organizations, and others in Montana affected by or supportive of grizzly bear conservation would be compelling.

III. The Council Should Not Recommend an Increase in Funding to Pay for Unconfirmed Livestock Losses.

The Council appears to be considering a recommendation to increase the amount of funding available for compensation so that it can be used by the LLB to pay for unconfirmed depredations. Such a recommendation would be misguided for several reasons.

A. Montana's compensation system is already relatively generous.

First, Montana already takes a relatively liberal approach to compensation. Montana law requires the reimbursement of up to the fair market value ("FMV") of animals whose deaths are determined to be "confirmed" or "probable" depredations.⁵⁶ While some other jurisdictions compensate for probable losses at a lower rate than confirmed losses,⁵⁷ the LLB reimburses 100 percent of FMV for both confirmed and probable losses.⁵⁸

In addition, Montana law allows compensation for losses that may not have been caused by predators. Under the law, a "confirmed" loss is defined as one where there is "reasonable physical evidence that livestock was actually attacked or killed . . . that allows a reasonable inference of wolf, lion, or grizzly bear predation on an animal," even if it "has been largely consumed."⁵⁹ A "probable" loss means one where there is "the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a

⁵³ See <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/cp/ncps/>.

⁵⁴ See <https://westernlandowners.org/usda-wildlife-services-to-use-1-38m-to-implement-and-study-nonlethal-predation-management/>.

⁵⁵ See <https://www.nrdc.org/experts/zack-strong/congress-funds-new-nonlethal-conflict-prevention-positions>.

⁵⁶ See M.C.A. § 2-15-3112(2)(a).

⁵⁷ For example, Washington, Arizona, New Mexico, Alberta, Manitoba, Saskatchewan all compensate probable losses at half the rate of confirmed losses, while Minnesota, British Columbia and Ontario compensate for confirmed losses but not probable losses.

⁵⁸ See, e.g., FWP, Montana Annual Report, Wolf Conservation and Management (2018), p. 13.

⁵⁹ See M.C.A. § 2-15-3112(6)(a).

particular species.”⁶⁰ These definitions do not require certainty of depredation. Such latitude enables ranchers in Montana to be reimbursed for losses even in situations where there is doubt that the losses were due to predation.

Also, the practice of compensating full FMV for probable losses, and the current definitions of confirmed and probable, help to offset situations where actual depredations cannot be compensated (such as when insufficient remains of a carcass prevents making a “confirmed” or “probable” determination).

B. There is no empirical basis for “multipliers.”

Second, there is little precedent, and no scientific justification, for applying specific ratios (or “multipliers”) to compensation for unconfirmed losses. Only two jurisdictions in North America appear to currently use multipliers: Washington and Wyoming. Even in these states, multipliers are not applied to all losses, but are instead limited to specific geographies and predator species.⁶¹ Further, a recent report concluded that there was no clear empirical support for the ratios used in either state (Harris 2020). Specifically, the report could find no “specific numeric justification” for the ratios used by Washington,⁶² and found that the study relied upon for Wyoming’s ratios (Sommers et al. 2010) “suffered from design and analytical flaws, rendering inferences from its results unreliable.”⁶³

C. Increasing compensation would not address the root issue: reducing conflicts.

Lastly, increasing the amount of funding available for compensation so that the LLB could also pay for unconfirmed losses would not contribute to the fundamental objective and need to reduce conflicts—and could even inhibit that goal by disincentivizing coexistence efforts and failing to improve social tolerance. Increasing compensation funding to pay for unconfirmed losses would “only at best address the symptoms and not the cause of the problem.”⁶⁴ It would not provide resources, information, or assistance to landowners and producers desiring to be proactive about protecting their property or livestock. On the contrary, it could risk being counter-productive by disincentivizing producers from expanding their use of proactive conflict-reduction measures (Bulte et al. 2005). Such a result would “reduce husbandry practices [while doing] nothing to decrease depredation” (Morehouse et al. 2018).⁶⁵ No matter how much funding for compensation

⁶⁰ See M.C.A. § 2-15-3112(6)(c).

⁶¹ Washington compensates wolf confirmed wolf depredations at 200% FMV if they occur on grazing sites exceeding 100 acres in size. Wyoming compensates depredations (the state does not distinguish between confirmed and probable) by bears and mountain lions at 350% FMV and by wolves in the northeastern part of the state where they are designated as “trophy game animals” at 700% FMV.

⁶² See Harris 2020, p. 14.

⁶³ *Id.* at p. 20.

⁶⁴ See F. Lamarque et al. *Human-Wildlife Conflict in Africa: Causes, Consequences and Management Strategies* (Rome: Food and Agriculture Organization of the United Nations, 2009), pp. 37-72.

⁶⁵ See Morehouse et al. 2018, p. 2.

might be increased, “in the absence of incentives for rural residents to protect their assets, a permanent state of conflict is assured.”⁶⁶

What is more, investing more in compensation would be unlikely to improve attitudes toward grizzlies. As Richard Harris, FWP’s Grizzly Bear Plan Coordinator, recently reported:

[A]ll the research I’ve reviewed that has attempted to measure producer attitudes rigorously has concluded that attitudes toward predators, per se, are generally not improved as a result of compensation for losses (Agarwala et al 2010, Marino et al. 2016, Montag et al. 2003, Naughton-reves et al. 2003, Naughton and Treves 2005, Rigg et al. 2011, Treves et al. 2009).⁶⁷

Investing more money into compensation to pay for unconfirmed losses would fail to address the root problem (reducing conflicts), risk disincentivizing proactive conflict prevention, and would be unlikely to increase social tolerance. For these reasons, we urge the Council not to advance such a recommendation.

IV. Conclusion and Recommendations

For the reasons described above, hunting grizzly bears would be unlikely to increase social tolerance or public faith in Montana’s approach to wildlife management. Likewise, devoting more funding to compensation for unconfirmed losses would not only fail to increase social tolerance, it could disincentivize efforts to achieve a goal all Montanans should hold in common: reducing human-grizzly conflicts. Instead, the Council should focus on identifying opportunities for greater investment in conflict-prevention measures that would benefit communities and bears alike. As a result, in addition to the recommendations NRDC put forward in its previous comments, we urge the Advisory Council to also make the following recommendations:

- 1) At the local level, in coordination with FWP, all Montana counties and municipalities in or near grizzly bear range should begin, or continue, to inform residents and visitors about the potential presence of grizzlies and take affirmative steps to prevent or reduce human-bear conflicts (see Attachment A, NRDC letter to Bozeman City Commission and Planning Board, as an example).
- 2) At the state level, legislation should be introduced to ensure that general funds appropriated annually to the Livestock Loss Board equally prioritize compensation and nonlethal conflict prevention.
- 3) Agricultural associations, conservation organizations, and other affected stakeholders should urge:
 - a. NRCS to take any needed steps, such as revising its national conservation practice standards, to make more funding available to support conflict-prevention efforts involving grizzly bears and other native carnivores;

⁶⁶ See Nyhus et al. 2005, p. 110.

⁶⁷ See Harris 2020, p. 6.

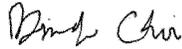
- b. Congress to expand the Wolf Livestock Loss Demonstration Project to include grizzly bears and increased funding for conflict prevention; and
 - c. Congress to approve a \$1.38 million appropriation for Wildlife Services for FY21 to pay for nonlethal conflict-prevention positions and activities in Montana and other states.
- 4) All Montanans living, working, or recreating in or near grizzly bear range should make all reasonable efforts to proactively prevent conflicts, such as by carrying bear spray, securing attractants with electric fencing or other means, and using guard dogs or other strategies to protect livestock.

Thank you for considering these comments.

Sincerely,



Zack Strong
Staff Attorney
Director, Carnivore Conservation
zstrong@nrdc.org



Minah Choi
Program Assistant
mchoi@nrdc.org

Natural Resources Defense Council
317 East Mendenhall St., Suites D and E
Bozeman, MT 59715

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May 11, 2020

Bozeman City Commission
Bozeman Planning Board
agenda@bozeman.net

Re: Comments on Draft Bozeman Community Plan; Recommendations to Incorporate Human-Bear Conflict-Prevention Measures

Dear Bozeman City Commission and Bozeman Planning Board:

Thank you for your leadership and for all that the City has done to keep Bozeman residents safe and supported over the last few months. We are grateful to live in such a close-knit and compassionate community—particularly during such a difficult time.

On behalf of the Natural Resources Defense Council (“NRDC”) and our more than 300 Bozeman-area members, as well as the undersigned Bozeman-area conservation organizations, we appreciate the opportunity to submit the following comments on Bozeman’s Draft Community Plan (“Draft Plan”). Thank you for all of the time, consideration, and effort that has gone into developing the Draft Plan. It is a thoughtful, forward-looking document that will serve as an important guide to help Bozeman successfully navigate the many challenges that the City will face in the years ahead.

We offer the following thoughts and recommendations on one issue that remains, however, largely unaddressed: reducing Bozeman-area human-wildlife conflicts. Specifically, we suggest measures that could be incorporated into the Draft Plan—as well as other City planning documents, municipal ordinances, and the City’s webpage—that could help mitigate human-bear conflicts. Bozeman has a long history of human run-ins with black bears; unless action is taken, not only will those conflicts continue, but residents could also begin to experience encounters with grizzly bears as the Yellowstone-area grizzly population continues to expand northward toward the Gallatin Valley.

Despite Bozeman’s history of human-bear problems, there seem to be very few plans, policies, committees, or ordinances in place aimed at reducing them. By contrast, numerous other communities throughout the Northern Rockies region and across North America have adopted effective measures designed to keep both humans and bears safe. We propose several steps the City could take to help ensure that Bozeman residents and their property remain safe and secure, and that bears remain in the wild and out of harm’s way.

I. Human-Bear Conflicts in Bozeman

For many years, Bozeman residents have regularly encountered black bears. Bozeman Police Department reports published in the Bozeman Daily Chronicle indicate that between 2014 and 2019, there were at least 47 human-black bear conflicts, and dozens more black bear sightings. These are just the published reports—a small fraction of total reports. These reports also do not include calls to the Gallatin County Sheriff’s Office or Montana Fish, Wildlife & Parks (“FWP”), or unreported incidents or sightings (of which there were likely many more). Reported conflicts included: bears trying to access chickens¹ and fruit from trees;² wandering inside garages,³ homes,⁴ and the high school;⁵ eating garbage;⁶ and getting hit by vehicles.⁷

Such incidents can result in property damage and put human safety at risk. In addition, all too often, they can result in bears being killed. For example, FWP captured and euthanized a black bear in Bozeman last summer, because it had become accustomed to food rewards from humans. Before being killed, the bear had visited multiple residential neighborhoods, followed a woman who was walking her dogs in Lindley Park, broke into a backyard livestock enclosure, and frequented homes with bird feeders. FWP’s Regional Supervisor in the Bozeman area described this as “a sad news story with an all-too-common sad ending.”⁸

Unless steps are taken to reduce such incidents, they will continue—and could even increase. As Bozeman continues to grow, more people could come into contact with bears. In addition, climate change is expected to exacerbate fluctuations in “natural food productivity years”—that is, years when natural bear foods like berries are far less available.⁹ Studies indicate that bears use urban areas (and come into conflict with people) more frequently during poor natural food years.¹⁰

¹ See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-sept/article_eb7141bd-fea7-5518-9f91-131575d67a95.html.

² See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-sept/article_75e9b072-4efc-5b36-ba27-54c1fc17cbb4.html.

³ See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-oct/article_96154fb7-a758-5bfe-8945-c0b5b2bbe80b.html.

⁴ See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-sept/article_d3c11fea-c24f-5aba-8cef-6a4cdcff82bf.html.

⁵ See <https://www.youtube.com/watch?v=Y4jBVIW5UY>.

⁶ See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-nov/article_8e2caa5e-6c58-11e4-9f40-873523b6316b.html.

⁷ See, e.g., https://www.bozemandailychronicle.com/police_reports/police-reports-for-oct/article_a600b3be-fe2c-51db-bdb7-eb09940c25c2.html.

⁸ See http://fwp.mt.gov/news/newsReleases/fishAndWildlife/nr_1244.html.

⁹ See Baruch-Mordo, Sharon et al. “Stochasticity in natural forage production affects use of urban areas by black bears: implications to management of human-bear conflicts.” *PLoS one* vol. 9, 1 e85122. 8 Jan. 2014, doi:10.1371/journal.pone.0085122.

¹⁰ *Id.*

Also, while we are not aware of any conflicts between humans and grizzly bears having occurred in the Bozeman area in recent decades, it is possible that such encounters could occur in the near future. As indicated by the maps in Appendix I, the Yellowstone-area grizzly population is expanding northward. It seems likely that dispersing individuals (such as young male bears in search of new territory) could appear near—or even within—Bozeman’s city limits one year soon. Being well-prepared for this scenario in the Bozeman area will benefit both people and bears.

II. Existing Plans and Policies

Despite its history of human-bear conflicts, the City appears to have very few plans or policies in place to reduce the risk of future incidents.

A. City Plans

Bozeman’s Strategic Plan does not mention human-wildlife conflicts. Nor does its Parks, Recreation, Open Space and Trails Plan, its Downtown Bozeman Improvement Plan, its Bozeman Creek Neighborhood Plan, its Bozeman Creek Enhancement Plan, or its Urban Forestry Management Plan.

Encouragingly, Bozeman’s 2009 Community Plan does refer to human-wildlife conflicts several times. For example, it states:

- “Interactions between humans and wildlife created by subdivisions in important wildlife habitat often create situations which are harmful to wildlife.”¹¹
- The “wildlife urban interface [between the City and public lands] poses threats and conflicts for property owners not often encountered in urban areas. Wildland fire and wildlife conflicts are the two most common concerns.”¹²
- “Conflicts with wildlife can also create very emotional and costly situations. Learning to live alongside wildlife like bears, mountain lions and elk will help property owners manage their property in ways which reduces these conflicts.”¹³
- “Bozeman and Gallatin County, along with other municipalities, have prepared a Hazard Mitigation Plan, 2006” in order to address “[t]he safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards.”¹⁴

¹¹ See 2009 Community Plan, available at <https://www.bozeman.net/home/showdocument?id=9641> (June 1, 2009), p. 15-5.

¹² *Id.* at p. G-9.

¹³ *Id.*

¹⁴ *Id.* at p. H-19.

Attachment A

However, the only substantive commitment identified by the 2009 Community Plan aimed at reducing human-wildlife conflicts is to “ensure the maintenance of an adequate transition zone between the community and” nearby national forest and state lands.¹⁵ It is not clear what is meant by “adequate transition zone”—the phrase does not appear anywhere else in the Plan.

Further, neither that phrase nor that commitment appear in the City’s current Draft Plan. The only mention of human-wildlife conflicts in the Draft Plan is:

The habitat needs of larger and/or predatory wildlife species such as deer, moose, bears, coyotes, or similar species will not be met within urban density development and will likely be in conflict with people. Therefore, these types of animals are found to be undesirable within the City boundaries.¹⁶

However, merely finding the presence of large wildlife species to be undesirable and in conflict with people, without identifying any corresponding steps to prevent such conflicts from occurring, is not solutions-oriented.

Finally, the 2009 Community Plan indicates that a 2006 joint City-County Hazard Mitigation Plan addresses, among other things, “hazardous wildlife interactions.” However, the most recent version of the Hazard Mitigation Plan, published in 2019, contains no mention of human-wildlife conflicts or interactions.

B. City Ordinances

Bozeman’s Municipal Code also contains few ordinances designed to reduce human-wildlife conflicts. For example, it does not contain any provisions prohibiting the feeding of wildlife (intentionally or unintentionally), requiring solid waste to be stored in bear-proof containers in high-risk areas, or regulating the planting of vegetation that attract bears (such as fruit trees, berry bushes, and vegetable gardens).

Bozeman ordinances do require that chickens (a common bear attractant) be provided with “predator-proof” houses and enclosures;¹⁷ however, no such protections are required for other domestic animals, such as honey bees (and their hives) or livestock. Similarly, city ordinances require that chicken feed be kept in “predator-proof” containers,¹⁸ but do not require the same of other types of bear attractants, such as barbeques, pet food, or bird seed.

¹⁵ *Id.* at p. 9-9.

¹⁶ See 2020 Draft Community Plan, available <https://www.bozeman.net/home/showdocument?id=10026> (March 17, 2020), p. 58.

¹⁷ See Bozeman Municipal Code § 8.02.070(C)(3), (4).

¹⁸ *Id.* at § 8.02.070(C)(8).

In addition, the use of electrical fencing—an extremely effective bear deterrent—is prohibited in most areas within city limits.¹⁹

III. Other Communities

Several other communities in Montana and other states have taken steps to reduce human-bear conflicts. These examples offer useful ideas for policies and programs that Bozeman could also consider implementing.

A. Missoula

In 2004, an organization called Missoula Bears began to focus on minimizing human-bear conflicts in the Rattlesnake neighborhood in Missoula. Since then, the effort has expanded to include all of Missoula County, as well as the Bitterroot, Blackfoot, upper Clark Fork, lower Clark Fork, and Mission valleys. It has also grown to include a number of partners, including Defenders of Wildlife, FWP, the University of Montana, and the U.S. Fish and Wildlife Service. The group’s mission is to minimize conflicts with bears and other wildlife, while also increasing human safety, minimizing bear mortalities, keeping neighborhoods clean, and “[r]educing the amount of time FWP spends addressing bear conflicts each year, allowing FWP to use their time more effectively in other areas of concern.”²⁰

The group’s website provides regular reports about bear and mountain lion activity in the area. It also provides information about how to effectively use electric fencing, as well as how to prevent bears from damaging bird feeders, fruit trees, gardens, compost, barbeques, coolers, chickens, livestock, livestock feed, pet food, garbage, and other bear attractants.²¹

In 2016, the City of Missoula also designated a “Bear Buffer Zone” in areas around the perimeter of the City that were experiencing bear conflicts. The City adopted ordinances regulating the storage of garbage and allowing the use of electric fences within the zone.²²

B. Big Sky

In 2013, the Wildlife Conservation Society led the formation of the Bear Smart Big Sky Council, a diverse coalition of conservation groups, state and federal agencies, local businesses, and community organizations that came together to provide Big Sky residents with information about, and assistance with, reducing human-bear conflicts. In the time since, the Council has overseen a more than 50% increase in the number of Big Sky residents using bear-resistant trash

¹⁹ *Id.* at § 38.350.060(D)(1).

²⁰ See <http://missoulabears.org/about/our-mission/>.

²¹ See <http://missoulabears.org/>.

²² See Missoula Municipal Code §§ 8.28.085, 12.31.070(D).

cans, and a notable decline in bears relocated and lethally removed each year as a result of coming into conflict with humans.²³

C. Gardiner

Through its website, the Gardiner Chamber of Commerce provides information to visitors, including links to National Park Service instructional videos, about how to avoid surprise encounters with bears and how to react if they do occur; how to carry and use bear spray; how to camp in bear country; and how to safely view bears from vehicles.²⁴ While these guidelines focus more on reducing bear conflicts with recreationists than with urban residents, the website is nonetheless a useful example of how information about living safely with bears might be effectively conveyed to the public.

D. Jackson and Teton County, Wyoming

In 2006, the Town of Jackson and Teton County signed the “10x10 Resolution” to commit to a ten percent reduction in electricity use and a ten percent reduction in fuel use.²⁵ The Resolution also implemented a “Green Building Energy Checklist,” which included potential points for green-certification if there were no fruit-bearing trees or bear attractants on the property’s landscape, in order to reduce human-bear conflicts.

Later, in 2015, Teton County adopted a Resolution titled the “Teton County Land Development Regulations,” which established bear conflict-prevention standards and bear-resistance standards within “Conflict Priority Areas” as determined by data obtained from the Wyoming Game and Fish Department.²⁶ The conflict-prevention standards require the use of bear-resistant containers or enclosures and bear-proof bird feeders. The Resolution also prohibits the feeding of black bears and grizzly bears in all areas of Teton County, outlining the risks posed by supplemental feeding to both human and bear populations.²⁷ The Land Development Regulations can be accessed on the County’s website alongside its Comprehensive Plan.²⁸

E. Boulder and Colorado Springs, Colorado

In 2012, an organization called the Boulder Bear Coalition began investigating ways to reduce human-bear conflicts within the City of Boulder. The organization and City officials identified trash as a major attractant that lured bears into town. Since then, the Boulder Bear Coalition has worked with the City and Colorado Parks and Wildlife to implement a “Mandatory Bear-

²³ See <https://www.wcscommunitypartnerships.org/bear-smart>.

²⁴ See <https://www.visitgardinermt.com/item/229-staying-safe-in-bear-country?highlight=WyJlZWYyIiwYmVhcnRlZl0=>.

²⁵ See <https://www.jacksonwy.gov/DocumentCenter/View/335/10-by-10-Initiative-Final-Report-PDF?bidId=>

²⁶ See Teton County Land Development Regulations, § 5.2.2.

²⁷ *Id.* at § 5.1.3.

²⁸ See <http://www.tetoncountyywy.gov/1188/Comprehensive-Plan-LDRs>.

Attachment A

Resistant Cart Zone” established through the city’s Bear Protection Ordinance in 2014.²⁹ The ordinance requires all trash and curbside compost to be secured from bears at all times by being placed in a bear-resistant cart or container until collected by waste management services. Information on bear-resistant containers and other proactive bear resources are available on the City’s “Co-existing with Bears” webpage.³⁰

More recently, in March 2020, the Colorado Springs City Council established a “Bear Management Area” to help mitigate human-bear conflicts west of I-25. The City enacted two ordinances that require residents and business owners to secure their trash using bear-resistant containers within the Bear Management Area.³¹

F. Other Communities

The Get Bear Smart Society, a conservation organization based in Whistler, British Columbia, describes how communities in many other states, including Alaska, Nevada, Virginia, and New Jersey, as well as in several Canadian Provinces, such as British Columbia and Ontario, have also implemented successful bear-conflict reduction programs.³²

IV. Recommendations

To reduce the potential for human-bear clashes in Bozeman, we recommend that the City of Bozeman consider taking the following steps:

A. Strategic Plan

Section 6 of Bozeman’s Strategic Plan (“A Sustainable Environment”) includes many important recommendations for how to “cultivate a strong environmental ethic” by protecting “clean air, water, open spaces and climate.”³³ One missing component of cultivating a strong environmental ethic, however, is promoting coexistence between humans and wildlife by implementing proactive, non-lethal conflict-prevention methods. Therefore, we propose the following addition to the strategic plan:

6.7 Reduce human-bear conflicts – Develop a plan to mitigate conflicts between humans and bears through the use of proactive, non-lethal measures.

NRDC, and the undersigned organizations, would welcome the opportunity to work with the City to develop such a plan.

²⁹ See City of Boulder Ordinance 8161.

³⁰ See <https://bouldercolorado.gov/wildlife>.

³¹ See <https://coloradosprings.gov/bears>.

³² See <http://www.bearsmart.com/managing-communities/success-stories/>.

³³ See Bozeman Strategic Plan, available at <http://weblink.bozeman.net/WebLink8/0/doc/154660/Electronic.aspx> (March 5, 2018), p. 9.

B. Draft Community Plan and Other City Plans

Similarly, Theme 3 of the Draft Plan (“A City Influenced by Our Natural Environment, Parks, and Open Space”) recognizes important conservation principles shared by the Bozeman community, such as that the City is “home to an outdoor-conscious population that honors and protects our natural environment” and that “[t]he natural environment should be conserved and development should respect significant natural features and systems.”³⁴

Of course, wildlife is a central feature of Bozeman’s natural environment. Therefore, the Draft Plan’s goals should be expanded to reflect the City’s aspirations to coexist with local wildlife—particularly bears. Under Goal EPO-4, we suggest adding a sub-goal identical to the strategic plan provision recommended above:

EPO-4.7 Develop a plan to mitigate conflicts between humans and bears through the use of proactive, non-lethal measures.

Similar provisions could be added to other City plans where relevant.

C. Advisory Board

We applaud the City’s creation of numerous Citizen Advisory Boards to address important issues ranging from climate change to economic development to trails and open space.³⁵ The City should consider forming an additional board, or expand the scope of an existing board, to focus on reducing human-wildlife conflicts—perhaps with an initial emphasis on reducing human-bear conflicts. Particularly given the number of conservation organizations based in Bozeman, and the number of resident wildlife enthusiasts, it is likely that community members would show significant interest in participating on, and would bring considerable expertise to, such a board.

D. Education and Outreach

The City should consider including on its website, or in pamphlets distributed to residents in high-risk bear-conflict areas, information about how to safely live with bears.

E. Conflict monitoring

The City should consider creating and making available to the public a detailed database of human-bear conflicts in the Bozeman area, both to alert residents to the potential presence of bears in their area, and to track improvements in reducing negative human-bear interactions as new policies are put in place.

³⁴ See 2020 Draft Community Plan, available <https://www.bozeman.net/home/showdocument?id=10026> (March 17, 2020), p. 22, 58.

³⁵ See <https://www.bozeman.net/government/citizen-advisory-boards>.

F. City Ordinances

Existing ordinances should be revised, or new ordinances adopted, to incorporate provisions designed to reduce human-bear conflicts, such as designating zones in which bear-proof garbage containers would be required or electric fencing as a bear deterrent would be allowed.

G. Collaboration with Gallatin County

Finally, the City of Bozeman should consider collaborating with Gallatin County to address human-wildlife conflicts at a broader scale. Such partnerships have proven effective in other communities, such as the City of Missoula-Missoula County and Town of Jackson-Teton County examples described above. Bozeman and Gallatin County have worked together on similar issues, such recent efforts to address growth and development in the Bozeman-Belgrade-Four Corners area through the Triangle Community Plan.³⁶ City and County residents both value conservation and wildlife, as demonstrated by the passages of city³⁷ and county³⁸ open space bonds in recent years. Jointly developing a plan to mitigate human-wildlife conflicts would be a productive and timely opportunity for the City and County to benefit our area's human and animal inhabitants alike.

V. Additional Resources

The Get Bear Smart Society's website—<http://www.bearsmart.com/>—provides a wealth of information about bear biology and behavior, effective techniques for deterring bears and managing bear attractants, how to safely live, work, and recreate in bear country, and steps that communities and neighborhoods can take to mitigate human-bear conflicts (such as conducting bear hazard assessments, developing human-bear conflict management plans, and adopting effective ordinances and bylaws).

Similarly, FWP's "Be Bear Aware" website contains an abundance of information specific to living with bears in Montana.³⁹ Finally, NRDC staff and representatives of the undersigned conservation organizations would be happy to offer our thoughts, advice, and help.

VI. Conclusion

NRDC and the undersigned organizations are committed to protecting the planet's wildlife and wild spaces and to ensuring a safe and healthy environment for all living things. An important

³⁶ See <https://gallatincomt.virtualtownhall.net/planning-community-development/pages/triangle-community-plan>.

³⁷ See <https://www.bozeman.net/city-projects/top-trails-open-space-and-parks-program/resources/trails-open-space-and-parks-top-program-background>.

³⁸ See https://www.bozemandailychronicle.com/news/politics/gallatin-county-voters-ok-open-space-levy/article_9e293c89-dbc6-5df5-b65a-1994a79e4322.html.

³⁹ See <http://fwp.mt.gov/fishAndWildlife/livingWithWildlife/beBearAware/>.

Attachment A

focus of many of our organizations' work is to proactively reduce human-carnivore conflicts in the Northern Rocky Mountains and beyond.

We feel reducing human-wildlife conflicts—both to protect human health, safety, and property and to maintain healthy wildlife populations—represents a critical part of the Bozeman environmental ethic. By taking the recommended steps to mitigate conflicts with bears in the Bozeman area, the City can create a more thoughtful and informed community that will make for better neighbors to multiple types of wildlife that are often deemed “nuisance” animals once they start to access unsecured anthropogenic food sources. A commitment to proactively address and mitigate potential run-ins with wildlife is a necessary addition to the City’s Strategic and Community Plans. We would welcome an opportunity to work with the Commission and the Bozeman community to develop and implement a conflict-mitigation plan and our other recommendations above.

Thank you for considering these comments.

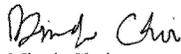
Sincerely,



Zack Strong
Staff Attorney
Director, Carnivore Conservation
zstrong@nrdc.org



Jennifer Sherry, PhD
Wildlife Advocate
jsherry@nrdc.org



Minah Choi
Program Assistant
mchoi@nrdc.org

Natural Resources Defense Council
317 East Mendenhall St., Suites D and E
Bozeman, MT 59715

Dr. Hannah Jaicks
Project Director
Future West
hannah@future-west.org

Lisa Upson
Executive Director
People and Carnivores
lupson@peopleandcarnivores.org

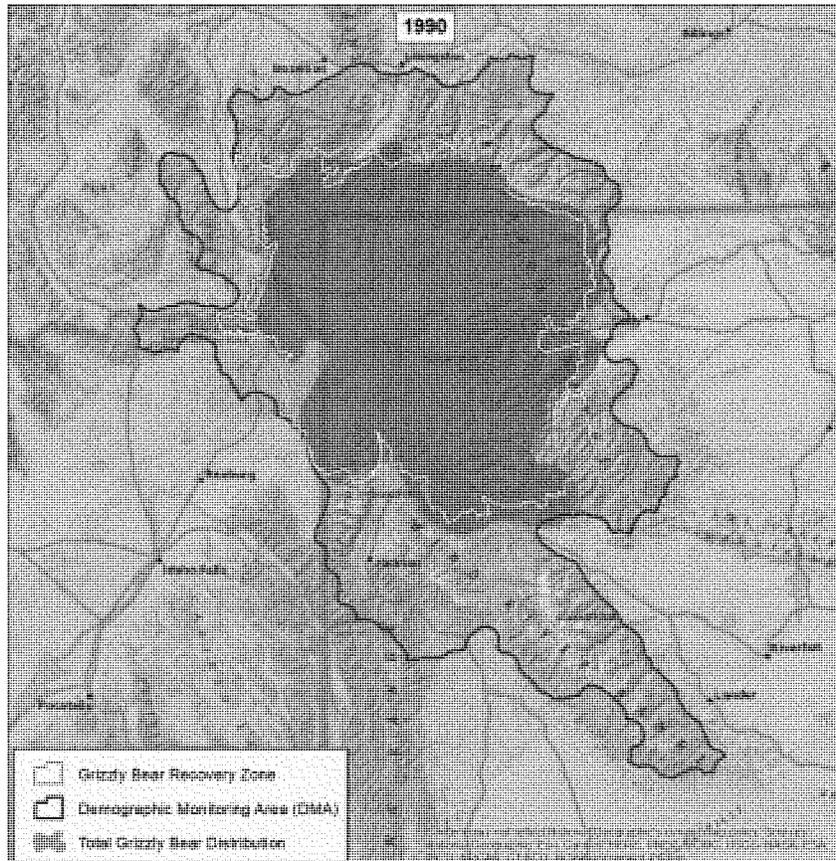
Melly Reuling
Deputy Director
Center for Large Landscape Conservation
melly@largelandscapes.org

Brooke Shifrin
Wildlife Program Associate
Greater Yellowstone Coalition
bshifrin@greateryellowstone.org

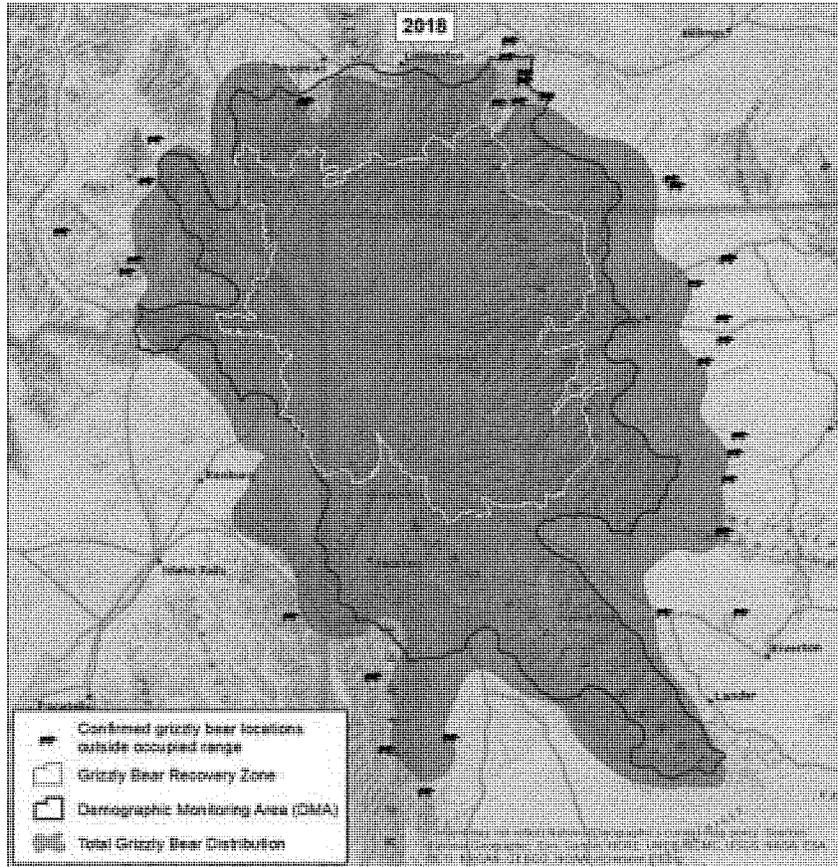
Bonnie Rice
Greater Yellowstone/Northern Rockies Senior
Campaign Representative
Sierra Club
bonnie.rice@sierraclub.org

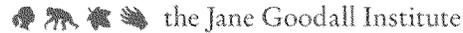
Appendix I

Greater Yellowstone Ecosystem Grizzly Bear Distribution, 1990 and 2018⁴⁰



⁴⁰ See <https://wvfd.wyo.gov/wildlife-in-wyoming/more-wildlife/large-carnivore/grizzly-bear-management>.





Written testimony of

Dr. Jane Goodall, DBE

Founder, the Jane Goodall Institute & UN Messenger of Peace

U.S. Senate Committee on Environment and Public Works

September 23, 2020

Today, as the Environment and Public Works committee discusses proposed amendments to the Endangered Species Act, I am grateful to have this opportunity to affirm my passionate support for the ESA. The ESA has saved many species of animals and plants from being lost forever.

We are already in the midst of the Sixth Great Extinction, and it is essential that we protect this legislation. We are part of and not separate from the natural world- we depend upon it for our very existence. A healthy ecosystem provides us with many benefits – and ecosystems suffer as different animal and plant species become extinct.

Protecting habitat for endangered species not only benefits their recovery but also can help prevent zoonotic disease transmission in the future (as habitat destruction forces animals into closer contact with humans), and greatly enhance ecosystem services, human wellbeing, and sustainability (Kubiszewski et al. 2020).

Though the proposed amendments are presented by some as innovations, they will impose arbitrary state control over the careful process of listing species and critical habitats as endangered and also make it easier to delist them.

As only 10% of states have significant habitat safeguards, this would be a great danger for species in need of protection. The current pandemic has highlighted the danger of animals being forced into closer contact with humans as a result of habitat destruction so that any increase in destruction is undesirable. It would also be another step towards a continued and dangerous lack of respect for the natural world. This proposed state management, which would really result in a lack of state regulation, rampant conversion of habitat for development, and disregard for wildlife, would be disastrous.

These amendments would also reduce the public's ability to comment on proposals for listing species and minimize the ability to challenge the lawfulness of delisting species. This could mean that species that are iconic to the American landscape, including the American Bald Eagle, the American Grizzly Bear, and the Florida Manatee, could be gone, truly gone, forever.

We, the most intelligent species to ever walk on the face of Earth, continue to destroy our only home, imperil countless other species and contribute to the unraveling of the rich biodiversity of life necessary to maintain the health of the planet.

There is abundant evidence showing the success of the ESA, as it has been estimated that over 200 species would have become extinct between 1973 and 2005 if it were not for the actions taken the Act. That success gives me hope.

There is a great need to advance innovative thinking to accelerate further the recovery of endangered species and their habitats – adaptive management, the involvement of local communities, increased funding and research which would provide the necessary data to put conservation plans in place where they are needed most and provide this information to the public in a transparent, digital way. These must be our goals - not weakening the ESA.

Something I believe wholeheartedly is that humans can live in harmony with the natural world and that our extraordinary human intellect, though it has caused great harm, can also be our salvation. I believe as well that only when our clever brain and our human heart work together in harmony can we achieve our true potential.

By opposing these amendments, you have the opportunity to prevent changes to the ESA that are based on disrespect for nature and a cold drive toward monetary gain.

When we have the chance to use our hearts in tandem with our intellect and work together, we can achieve protections that benefit us all. We can ensure that we continue to live in a world where we marvel at the magnificent flight of bald eagles, hear the howl of wolves under the moon, and where our grandchildren know these magical beings as real and alive as they are, not only as images of the past in books of our failures.

Citation

Kubiszewski, I., Costanza, R., Anderson, S., & Sutton, P. (2020). The future value of ecosystem services: Global scenarios and national implications. In *Environmental Assessments*. Edward Elgar Publishing.



Bear spray saves lives

Bear spray is recognized by many agencies and biologists as the most effective way to prevent bear attacks. Its use will keep both hunters and bears safer and avoid unwanted mortalities on all sides.

Putting bears and hunters at risk.

In the Greater Yellowstone Ecosystem, U.S. government data show that elk hunters who hunt in grizzly bear country are a major source of grizzly bear mortality. Between 1992 and 2017, 29% of all grizzly bears killed by humans were elk hunters (see table below). Of all the grizzly bear attacks on humans between 1992 and 2017, most of them—29—occurred on hunters.

In the late summer and fall during a period called *hyperphagia*, bears need to consume a tremendous amount of calories to survive wintertime hibernation. But also during that critical time, elk hunters will leave elk carcasses and gut piles in the field, providing an attractive source of food for grizzly bears. Wyoming's labor laws encourage private hunting guides to carry and be trained in the use of bear spray to maintain their safety.

Firearms are unreliable.

Hunters who rely on firearms, rather than bear spray, to stop a grizzly bear attack put themselves in mortal danger because bullets will not always stop a bear in his or her tracks. A U.S. Fish and Wildlife study found that persons who used firearms during a bear attack avoided injury only about 50% of the time, because many handguns and rifles are not of an adequate caliber to stop a charging grizzly bear. What's more, using firearms during an attack increases the risk of hunters injuring companions or themselves.

PHOTO BY: DON GETTY

Bear spray is far more effective, safe and reliable.

In contrast, bear spray—defined as EPA-registered capsicum products that contain 1% to 2% capsaicin and related capsinoids—is specifically formulated to stop an attack and saves lives of both hunters and grizzly bears.

Several studies confirm that bear spray is far more effective, safe and reliable than firearms, and that people who used bear spray avoided injury almost every time.

For example, a study of close-range bear encounters in Alaska showed that 98% of people who carried bear spray walked away uninjured. The 2% who were wounded received only minor injuries. And the biologists associated with the Interagency Grizzly Bear Committee, which ensures ensure recovery of viable grizzly bear populations and their habitat in the lower 48 states, determined in both 1999 and 2008 that bear spray is far more effective in protecting people from bear attacks than all other methods, including firearms.

Human/grizzly bear encounters and outcomes

Year	Total human injuries from bears	Percent of humans who were hunters injured by bears	Total human-caused grizzly bear deaths	Percent of grizzly bear deaths caused by hunters
1992-2000	38	50% (19 incidents to hunters of 38 total incidents)	72	39% (28 of 72 incidents)
2012	3	66% (2 of 3)	34	32% (11 of 34)
2013	3	0% (0 of 3)	23	17% (4 of 23)
2014	3	33% (1 of 3)	19	37% (7 of 19)
2015	2	100% (2 of 2)	53	26% (14 of 53)
2016	3	100% (3 of 3)	51	14% (7 of 51)
2017	3	66% (2 of 3)	42	36% (15 of 42)

Visitors and hunters in this region should carry bear spray to protect themselves, their companions, and our country's rare and iconic grizzly bears from harm.

Find out more information at <https://tinyurl.com/CarryBearSpray>



**THE HUMANE SOCIETY
OF THE UNITED STATES**

humanesociety.org



THE HUMANE SOCIETY
OF THE UNITED STATES

Government data confirm that grizzly bears have a negligible effect on U.S. cattle and sheep industries

In the United States, data show that grizzly bears (*Ursus arctos*) kill few cattle and sheep. Livestock predation data collected by various governmental bodies differ significantly, however. The most recent data published by the U.S. Department of Agriculture-Animal and Plant Health Inspection Service (USDA)¹ indicate losses many times greater than those collected by states and the U.S. Fish and Wildlife Service (FWS). For instance, the USDA claims grizzly bears killed 3,162 cattle in *nine* states (in 2015), while the FWS verified only 123 such losses in *three* states (in 2013). Montana's Board of Livestock's data show that between 2015 and 2018 cattle losses from grizzly bears numbered 61 or less annually. The USDA's methodology involves collecting data from a few mostly unverified sources, which the USDA then extrapolated statewide without calculating standard errors or using models to test relationships among various mortality factors.² This contravenes the scientific method and results in exaggerated livestock losses attributed to native carnivores and dogs. Unfortunately, this misinformation informs public policies that harm native carnivores, including countless legislative attacks on grizzly bears, wolves and the Endangered Species Act.

The Humane Society of the United States analyzed the USDA's embellished predation numbers. Their data show that farmers and ranchers lose nine times more cattle and sheep to health, weather, birthing and theft problems than to all predators combined. In the USDA reports, "predators" include mammalian carnivores (e.g., cougars, wolves and bears), avian carnivores (e.g., eagles and hawks) and domestic dogs. Domestic dogs, according to the USDA's data, kill 85 percent more cattle than grizzly bears. Also according to the USDA, in the states where grizzly bears live (excluding Alaska), they cause far fewer than one percent of unwanted cattle-calf (hereinafter "cattle") losses by inventory.

The USDA's sheep losses report fails to differentiate between black bears and grizzly bears, making an analysis for grizzly bears impossible. Black bears live in approximately 41 states,³ while in the lower 48 states grizzly bears live in only three: Idaho, Montana and Wyoming. Black bears' and grizzly bears' ranges overlap in those same three states. Grizzly bears also occur in Alaska, but the USDA does not analyze Alaska in their livestock reports.

We present our analysis of the USDA's data sets on cattle deaths in the three, grizzly bear-occupied states (excluding Alaska) and grizzly bears' effects on the national cattle industries. We compare the USDA's cattle data to those of other governmental bodies that also collect this information, which corroborates our findings that while the USDA's predation figures are significantly exaggerated, they are nominal when compared to livestock mortalities from health, weather, theft and birthing problems (we refer to these livestock losses as "maladies"). We describe humane, efficacious and cost-effective non-lethal methods for livestock protection, and show that only a fraction of cattle and sheep growers in grizzly bear-occupied states use non-lethal methods to protect their herds—even as numerous published studies have found that non-lethal methods to protect non-native cattle and sheep from native carnivores are more efficacious and cost effective than the constant slaughter of wildlife that is ubiquitously employed—even on federally protected species.

Dated: Mar. 6, 2019

I. Grizzly bears of the Northern Rocky Mountains remain “threatened” under the Endangered Species Act

On June 30, 2017, the FWS prematurely removed federal Endangered Species Act protections from grizzly bears living in the Greater Yellowstone Ecosystem.⁴ In August, immediately after the required 60-day notice period to the agency, the Humane Society of the United States, the Sierra Club and the Center for Biological Diversity filed suit under the Endangered Species Act. Nine Native American tribes led by the Crow Nation also sued the FWS for failure to consult with the tribes concerning the delisting. The states of Idaho, Wyoming and Montana, and some groups (Safari Club International, National Rifle Association, Rocky Mountain Elk Foundation and others) intervened on behalf of the FWS.

On September 25, 2018, the federal court agreed with the Humane Society of the United States and our co-plaintiffs and restored Endangered Species Act protections to grizzly bears.⁵ After an injunctive order and the final order preventing grizzly bear delisting, their deaths spiked, showing that even with restored ESA protections, grizzly bears were not immune from heavy-handed persecution.⁶ Fig. 15. As of February 2019, defendants have appealed the district court’s decision.

II. USDA data show most livestock die from health, weather and other maladies

The USDA’s reports show that the primary causes of cattle and sheep losses in the U.S. come from health problems, weather, theft and other maladies, but *not* from native carnivores, including grizzly bears.⁷ Nationwide USDA data show that *nine times* more cattle and sheep died from maladies such as illnesses, birthing problems, weather, poisoning and theft (3,990,035), than from all mammalian or avian predators together (474,965). Of the 119 million cattle and sheep inventoried in the U.S. in 2014 and 2015, less than one percent (0.4 percent) died from mammalian and avian predators combined. Figs. 1 - 5. In Idaho, Montana and Wyoming, grizzly bears killed between 0.01 percent and 0.03 percent of cattle inventories. Fig. 3. Of the total unwanted cattle deaths in the Northern Rocky Mountains, between 91 percent and 96 percent came as a result of maladies. Fig. 4.

A. Despite being inflated, USDA data show that few cattle die from grizzly bears, other native carnivores or dogs

In 2015, the USDA inventoried 112.2 million cattle in the U.S.⁸ Of that number, 4.5 million died from *all* unwanted causes. Most of those deaths (3.6 million, or 3.2 percent of U.S. cattle inventory) stemmed from health-related maladies, weather and theft. According to the USDA’s data, mortalities from all predators amounted to 280,570 cattle deaths, representing a mere 0.3 percent of the U.S. cattle inventory—with grizzly bears taking 0.003 percent of the U.S. cattle inventory. Figs. 1 and 2.



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Fig. 1. United States Cattle Inventory and Mortality by Cause

Data from USDA-APHIS (2017), Data Year 2015

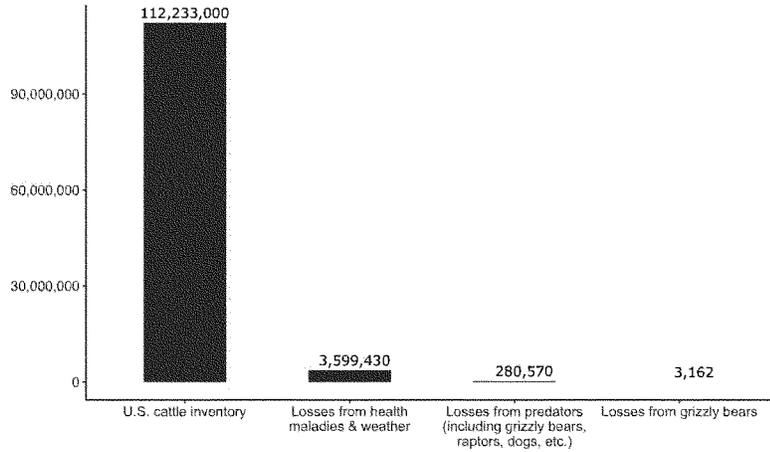


Fig. 2. United States Cattle Mortality by Rank

Data from USDA-APHIS (2017), Data Year 2015

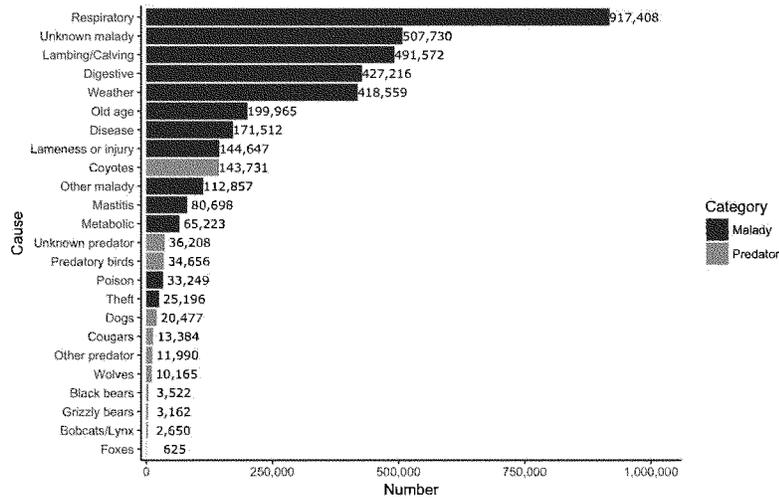


Fig. 3
Cattle Inventory Losses by State
(Unverified data from the USDA-Animal and Plant Health Inspection Service, 2017
(Data year 2015))

State	Cattle Inventory	Cattle losses from maladies (illness, birthing problems etc.)	Percent of cattle inventory losses from maladies	Cattle losses from grizzly bears	Percent of cattle inventory losses from grizzly bears
Idaho	3,020,000	89,050	2.95%	308	0.01%
Montana	3,995,000	80,730	2.02%	952	0.02%
Wyoming	1,880,000	35,600	1.89%	553	0.03%
Total	8,895,000	205,380	2.31%	1,813	0.02%

B. Despite being inflated, USDA data show that few sheep die from grizzly bears, black bears, other native carnivores or dogs

In 2015, the U.S. sheep inventory amounted to 6.8 million individuals. Health, weather, poison, theft and other maladies were responsible for the majority of ranchers' and farmers' losses: 390,605 sheep deaths (or 5.7 percent of the U.S. sheep inventory). In comparison, native mammalian carnivores, raptors and domestic dogs killed 194,395 sheep, or 2.9 percent of the U.S. sheep inventory, with grizzly bears and black bears' contributions amounting to 0.10 percent of the U.S. sheep inventory.⁹ Figs. 5 and 6. The USDA's sheep predation data fail to distinguish between black bears and grizzly bears. Predation of sheep is greater than of cattle, likely because sheep have smaller body size and lack predator-avoidance skills.¹⁰ Despite this, the USDA's data show few sheep growers use non-lethal methods to protect their flocks (*see*: Figs. 16 and 17 below).



PHOTO BY: JOHN E. SWALLOW

Fig. 4
U.S. Cattle: Unwanted losses by cause and state
(Unverified data, USDA-Animal and Plant Health Inspection Service, 2017 (Data year 2015))

States	Total unwanted cattle losses	Cattle losses from maladies (illness, birthing problems, etc.)		Cattle losses from all predators		Cattle losses from grizzly bears	
		Number	Percent of total unwanted cattle losses	Number	Percent of total unwanted cattle losses	Number	Percent of total unwanted cattle losses
Idaho	93,000	89,050	95.75%	3,950	4.25%	308	0.33%
Montana	88,000	80,730	91.74%	7,270	8.26%	952	1.08%
Wyoming	39,000	35,600	91.28%	3,400	8.72%	553	1.42%
Total	220,000	203,380	92.45%	14,620	6.65%	1,813	0.82%

Fig. 5. United States Sheep Inventory and Mortality by Cause

Data from USDA-APHIS (2015), Data Year 2014

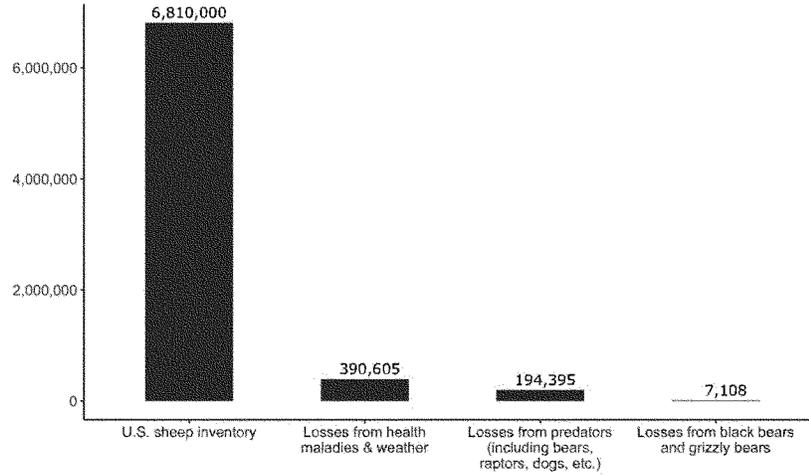
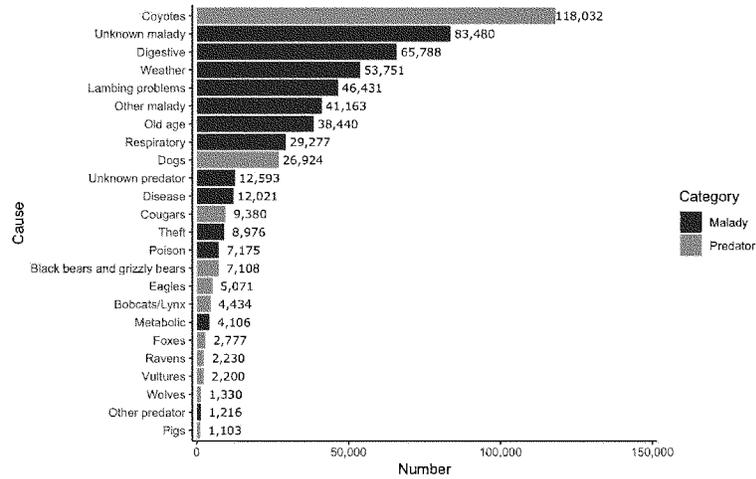


Fig. 6. United States Sheep Mortality by Rank

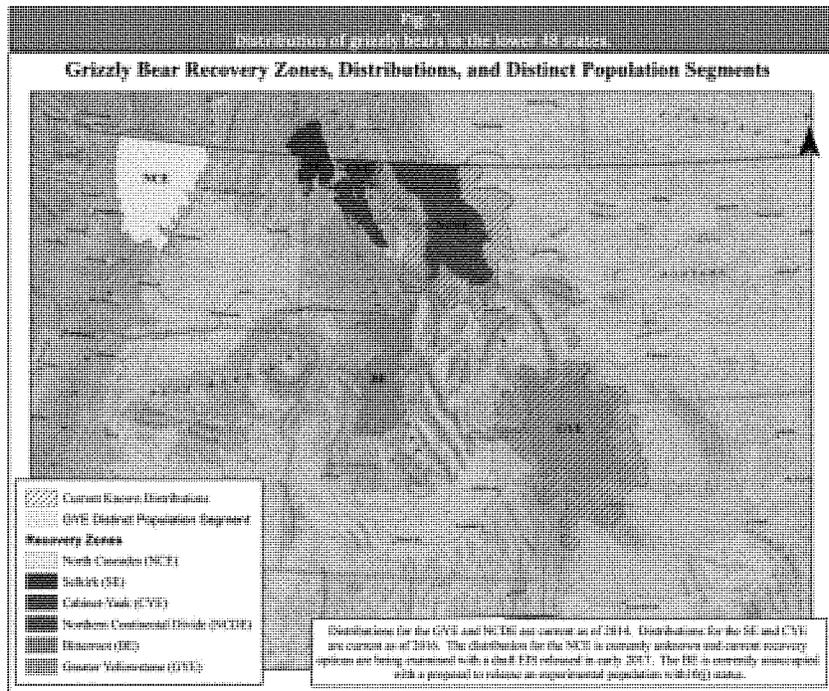
Data from USDA-APHIS (2015), Data Year 2014



III. Even in grizzly bear-occupied states, USDA's data show nominal losses of cattle and sheep to predators

In the lower 48 states, fewer than 1,800 grizzly bears live in Idaho, Montana and Wyoming. They live in subpopulations located in the Cabinet-Yaak Ecosystem (with a subpopulation of about 50 bears),¹¹ the Greater Yellowstone Ecosystem (~700 bears),¹² the Northern Continental Divide Ecosystem (~942 bears)¹³ and the Selkirk Ecosystem (~80 bears). While the FWS also classifies U.S. subpopulations in the Northern Cascades Ecosystem (which extends into Canada),¹⁴ and Bitterroot Ecosystem, neither have occupant grizzly bears. (The Northern Cascades' Canadian portion may have some bears.) Fig. 7.

We detail these subpopulations here because the USDA reported cattle losses to grizzly bears in Arkansas, Colorado, Georgia, Nevada, Oregon and Wisconsin, *places where no grizzly bears live*, either currently or historically, further damaging the credibility of the agency's livestock losses reports.¹⁵ Fig. 8.



*Map courtesy of the FWS.¹⁶

IV. USDA *unverified* losses data for cattle and sheep losses, ranked

Based on data from other governmental agencies, the USDA exaggerates the cattle and sheep losses it attributes to native carnivores and dogs. Also, the USDA reports attribute wolf and grizzly bear deaths in states where neither species exists. Fig. 8. Given that these data are exaggerated, there is value in showing the USDA's cattle and sheep loss numbers in rank order to demystify predator events on cattle and sheep. We show unwanted losses to cattle and sheep in each grizzly-bear-occupied state in the Northern Rocky Mountain region (the USDA's reports excluded Alaska). The data clearly show that health and weather problems are the biggest concerns livestock growers face. Figs. 9-11.

Fig. 8.
USDA (2017) cattle death
claims for grizzly bears
*The six highlighted states have no grizzly bear
populations*

AR	175
CO	270
GA	537
ID	308
MT	952
NV	81
OR	28
WI	132
WY	553

Fig. 9. Idaho Cattle Mortality by Rank

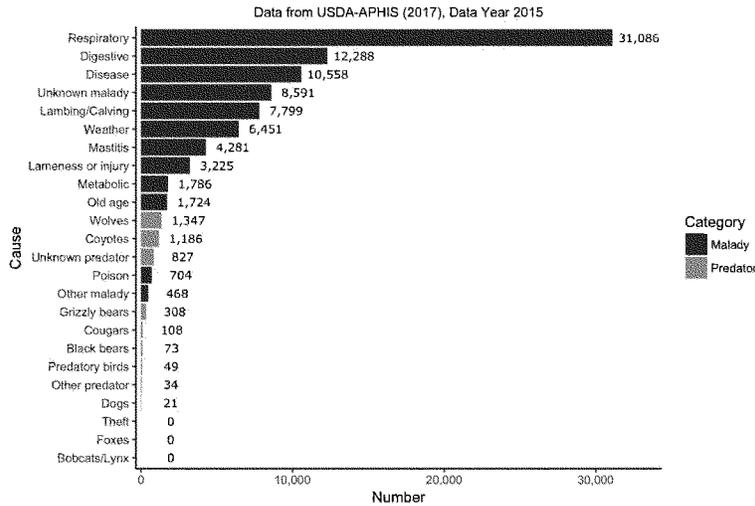


Fig. 10. Montana Cattle Mortality by Rank

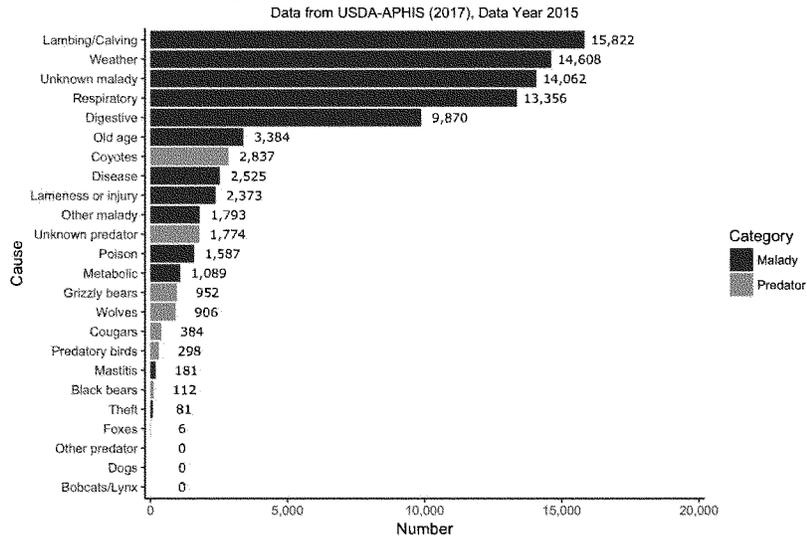
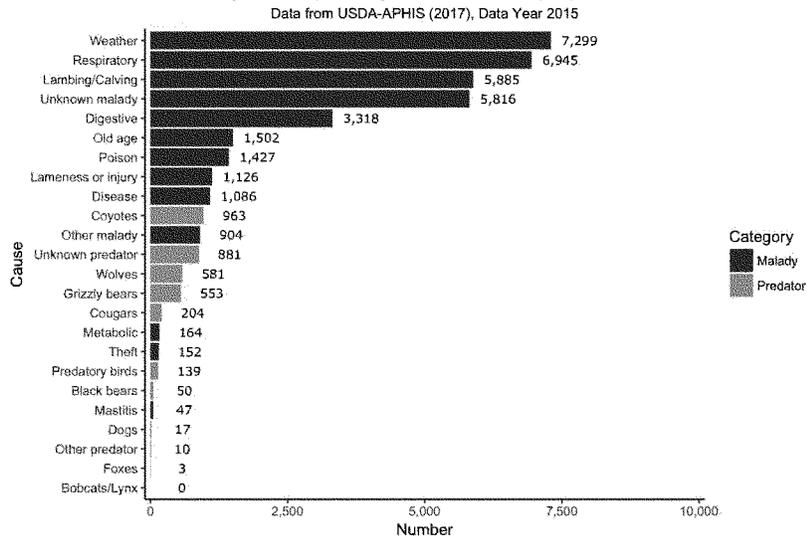


Fig. 11. Wyoming Cattle Mortality by Rank



V. The FWS and Montana Board of Livestock's verified grizzly bear-livestock data from the Northern Rocky Mountain states show that USDA numbers are highly inflated

When other governmental agencies confirm data on livestock losses, the results show many fewer losses than the unverified claims by the USDA. (Again, the USDA did not distinguish between black bears and grizzly bears in its sheep report, precluding our analysis of their data concerning grizzly bear-sheep losses.)

- In 2013 in the Greater Yellowstone Ecosystem (Idaho, Montana and Wyoming), the FWS found that grizzly bears killed 123 cattle and 11 sheep. Fig. 12. In comparison, the USDA claimed that grizzly bears killed 308 cattle in Idaho, 952 in Montana and 553 in Wyoming (data year 2015).
- In the Northern Continental Divide Ecosystem, the FWS found that in 2013, grizzly bears killed 23 cattle and 11 sheep. The USDA's data for cattle deaths attributed to grizzly bears in Montana (statewide in 2015) is 952. Fig. 13.
- The Montana Board of Livestock also found a fraction of grizzly bear-, wolf- and mountain lion-livestock deaths compared with those proffered by the USDA. Fig. 14.

Also, the number of grizzly bears killed in the Northern Rockies is not proportional to the nominal losses of livestock caused by grizzly bears. For instance, in the Greater Yellowstone Ecosystem, from a population that the FWS believes is 700, between 2015 and 2018, federal and state agents and individuals killed more than 250 bears, with a majority of annual mortalities occurring in 2018, the year when this population of grizzly bears had their federal protections restored by a federal district court.¹⁷ Fig. 15.



PHOTO BY: MERVIN REISCHER

Human-caused grizzly bear mortalities result from multiple causes, including mistaken identity kills (by black bear hunters), or because hunters kill elk and leave their carcasses unattended overnight, attracting grizzly bears. Northern Rockies ranchers believe that grizzly bears cause real or perceived threats to livestock.¹⁸ But as the data show, these threats are nominal and can be reduced when ranchers employ non-lethal methods to protect their herds. Members of the Montana-based organization the Blackfoot Challenge offer an example of how ranchers and farmers can successfully reduce livestock mortality from grizzly bears through non-lethal means (see: Section VII).

Fig. 12
Cattle and sheep inventories & mortalities in the range of Greater Yellowstone Ecosystem grizzly bears (2013 data from FWS)¹⁹

State	Cattle Inventory in grizzly bear range	Grizzly bear-cattle deaths	Percent cattle killed by grizzly bears	Sheep inventory in grizzly bear range	Grizzly bear-sheep deaths	Percent sheep killed by grizzly bears
ID	45,769	1	0.020	18,260	0	0.000
MT	105,250	14	0.000	10,050	17	0.002
WY	253,826	108	0.000	52,600	6	0.000
TTL	404,845	123	0.030	80,910	23	0.028

Fig. 13
Cattle and sheep inventories & mortalities in the range of Northern Continental Divide Ecosystem grizzly bears (2013 data from FWS)²⁰

State	Cattle inventory in grizzly bear range	Grizzly bear-cattle deaths	Percent cattle killed by grizzly bears	Sheep inventory in grizzly bear range	Grizzly bear-sheep deaths	Percent sheep killed by grizzly bears
MT	135,000	23	0.017	16,217	11	0.068

Fig. 14
Confirmed and probable livestock losses in Montana (data from Montana Board of Livestock)²¹

Confirmed livestock losses in Montana, 2015-2017							
	Grizzly bear		Wolf		Mountain lion		
	Cattle	Sheep	Cattle	Sheep	Cattle	Sheep	
2018	61	23	45	7	0		50
2017	57	14	50	6	0		29
2016	33	26	46	5	ND		ND
2015	50	32	39	22	ND		ND
Probable livestock losses in Montana, 2015-2017							
	Grizzly bear		Wolf		Mountain lion		
	Cattle	Sheep	Cattle	Sheep	Cattle	Sheep	
2018	20	6	13	6	0		13
2017	31	1	8	2	0		2
2016	43	41	11	5	ND		ND
2015	16	1	7	0	ND		ND

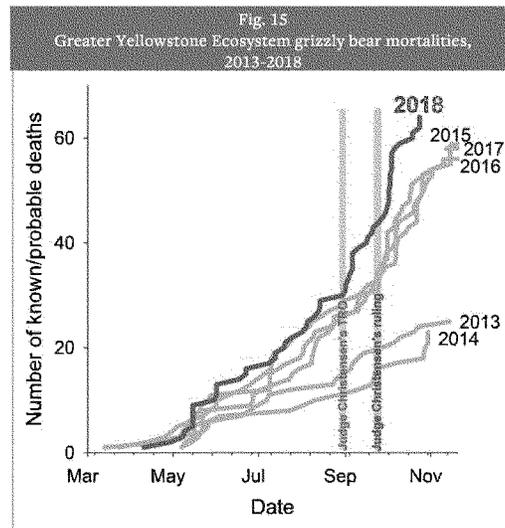


Figure courtesy of David Mattson, Ph.D.

VI. American values concerning predator control

According to a 2017 public attitudes study, lethal predator controls such as shooting animals from aircraft (aerial gunning), neck snares, gassing of pups in dens, leg-hold traps and poisons are unpopular with the American public.²² Predator control is only acceptable to the public if it removes the particular individuals who prey on livestock, damage crops or cause economic losses.²³ Unfortunately, predator control rarely works that way. Predator control agents typically kill random animals instead of the individual animals responsible for livestock losses.

Another recent study indicates that when states or the federal government engage in lethal predator-control activities for the purpose of killing native carnivores to alleviate alleged or real livestock losses, then poaching activities increase.²⁴ This is because community members perceive that native carnivores have little value. Conversely, if no state-sponsored predator control is conducted, fewer people poach wildlife, the opposite of what some surmise to be true.²⁵

VII. Non-lethal methods to protect cattle and sheep are more cost-effective, less cruel and more efficacious

Not only is the public's view of predator control generally negative, but a bevy of studies also contradict the claimed efficacy of lethal predator control programs. Numerous wildlife biologists have declared these programs biologically and fiscally expensive.²⁶ That is, removing native carnivores through predator control harms wildlife and their ecosystems.²⁷ Predator control is also expensive to taxpayers—Wildlife Services receives tax money from municipalities, counties, states and federal appropriations.²⁸ New studies also show that non-lethal measures are the best means for protecting cattle, sheep and other domestic animals. Such methods include sanitary carcass removal, fladry and or turbo fladry, synchronizing birthing seasons with native ungulates, changing livestock types or breeds, spotlights, airhorns, guard animals, range riders, electric fencing and Foxlights.²⁹

In Montana, a coalition of land owners, biologists and governmental officials have implemented the program called the Blackfoot Challenge that has not only reduced landowner conflicts with grizzly bears, but also saved many grizzly bears' lives. The Blackfoot Challenge ensures that grizzly bears cannot access human-food attractants, including livestock, demonstrating that human and grizzly bear coexistence is possible.



The Blackfoot Challenge, based in northwestern Montana, is a coalition of state and federal agents, livestock growers, land owners and non-profits. According to grizzly bear biologists who work on the Blackfoot Challenge, this consortium has reduced human-bear conflicts by 74 percent.³⁰

Obtaining that positive outcome required many years of work, education and building relationships. The outcome: increased human safety, fewer livestock losses and less property damage from grizzly bears (and lately wolves too).³¹

To resolve human-bear conflicts, the Blackfoot Challenge surveyed landowners and ranchers to assemble conflict data. It also used data collected by Montana Fish, Wildlife & Parks. It mapped those data to understand the scale of conflicts, which helped ranchers realize that if even one person was doing the right thing, it would take the whole community working together to achieve positive results.³²

Grizzly bear conflict mitigation involves employing commonsense, non-lethal solutions across entire landscapes, such as using the right kind of electric fencing around calving and lambing pens, boneyards, stored animal feed and around crops. Other strategies include using bear-proof trash receptacles and creating secured dumps in rural communities. And perhaps most importantly, cleaning up calving areas and making boneyards inaccessible to native carnivores.³³ The Blackfoot Challenge accomplished this result because of public and private funding, in-kind donations and donations from partners and the ranching community, which has made services available for free or at low cost to the ranchers.³⁴ According to Wilson et al. (2017), the lessons learned from the Blackfoot Challenge are:

1. Resources need to be coordinated
2. Efforts must be informed by science such as the GIS mapping of conflict areas
3. The process must incorporate all stakeholders' values, and
4. There has to be a decision-making process that allows all stakeholders to discuss issues, make decisions and implement actions.³⁵

Despite the success of the Blackfoot Challenge and its demonstrable benefits, the USDA's data show that few ranchers use non-lethal methods to protect their herds. On average, only 13 percent of cattle growers in grizzly bear-occupied states use all non-lethal methods available to protect their animals. Fig. 16. An average of 19 percent of cattle growers used all non-lethal methods to protect sheep, although an average of 43 percent used guard dogs and an average of 52 percent used fences. Only about one-third used sheds for lambing or penned their sheep at night. On average, fewer than 13 percent removed stillborn or other dead sheep. Fig. 17. This lack of reliance on non-lethal methods in grizzly bear country is tragic.

According to Treves et al. (2016), the published studies that laud the effectiveness of lethal predator control are concentrated in three or four journals, and the scientific methods involved in these studies were insufficient.³⁶ A subsequent study by Eklund et al. (2017) located 27,781 articles concerning predator control; of that number, only 562 met the authors' criteria for having some scientific merit.³⁷ And, of those 562 articles, only 21 used scientific methodologies the authors deemed excellent, a number so insufficient that it prevented the authors from conducting a meta-analysis of the efficacy of predator control.³⁸

Eklund et al. (2017) writes that although the loss of livestock to predators has occurred for thousands of years—likely since livestock were first domesticated—the scientific study of successful interventions is rare, and unfortunately our understanding of the efficacy of predator control is “based on narrative review” rather than sound science.³⁹ In fact, Treves et al. (2016) strongly suggest that all lethal predator control should be suspended until “gold standard” reviews of the efficacy of some predator-control methods are completed.⁴⁰ Eklund et al. (2017) similarly concluded that the science of predator control is vacuous. In yet a third article concerning predator control, Lennox et al. (2018) also recommend against the expensive, broadscale killing of native carnivores, and call upon us all to adapt to and coexist with carnivores because of their ecological benefits—even in urban areas.⁴¹ If grizzly bears are to survive into the next century, we must make a concerted effort to adapt to living with them.⁴²

Fig. 16
Percentage of Cattle Operators Using Non-Lethal Methods (USDA 2017, data year 2015)

State	Percent of operations with any cattle deaths	Percent of operations that used some non-lethal method to protect cattle
ID	6.10%	10.10%
MT	10.60%	14.50%
WY	10.30%	14.00%

Fig. 17.
Percentage of sheep operators using non-lethal methods (USDA 2015, data year 2014)

State	Guard Dogs	Llamas	Donkeys	Fences	Lamb shed	Herding	Night penning	Fright tactics	Remove carrion	Cull	Change Bedding	Frequent checks	Altered breeding season	Other
ID	46.9%	11.3%	23.3%	52.3%	28.4%	4.1%	25.1%	1.4%	8.0%	23.4%	3.7%	19.1%	1.6%	0.9%
MT	38.9%	24.0%	9.3%	37.2%	49.0%	7.9%	48.0%	6.5%	24.5%	23.4%	12.2%	34.5%	0.6%	9.3%
WY	42.9%	2.0%	20.1%	65.1%	26.5%	4.1%	19.7%	1.7%	6.2%	6.3%	6.6%	9.1%	1.7%	6.8%
Avg.	42.9%	12.4%	17.2%	51.5%	34.6%	5.4%	30.9%	3.2%	12.9%	17.7%	7.5%	20.9%	1.3%	5.7%

VIII. Conclusion

The Humane Society of the United States analyzed two data sets compiled by the USDA as part of its livestock reports. We make these data publicly decipherable, and, more importantly, unmask the fraction of losses that livestock operators experience from grizzly bears, other native carnivores and domestic dogs. Using the USDA’s data, we found that native carnivores and domestic dogs allegedly killed 0.4 percent of the 119 million cattle and sheep inventoried in the U.S. in 2014 and 2015. Furthermore, we found that other governmental data for the Northern Rocky Mountain region indicate that the USDA’s attributions of cattle mortalities (and likely sheep deaths too, although the USDA sheep reports do not distinguish between bear species) by grizzly bears and other carnivores are highly exaggerated because of the agency’s suspect methodology.

As this report shows, farmers, ranchers and wildlife managers should fear maladies the most—especially respiratory and birthing problems—that kill nine times more cattle and sheep than all predators (wild mammalian and avian carnivores and domestic dogs) combined. In the face of this evidence, the anxiety of some in society against native carnivores is misplaced. While wildlife managers and cattle and sheep ranchers are quick to kill wolves, coyotes, bears, cougars and bobcats allegedly for livestock protection reasons, the data show that few livestock growers use non-lethal method to protect their herds from predation. In grizzly bear-occupied states, according to the USDA’s data, few livestock growers use non-lethal measures necessary to protect herds from predation.

Wildlife biologists have found that predator-control programs to kill grizzly bears and other native carnivores are unscientific, because most studies advocating predator control do not adhere to the scientific method, including the lack of study control areas for purposes of comparison. Three review articles, published in 2017 and 2018, reviewed the corpus of predator-control studies. All concluded that the use of non-lethal methods to protect livestock was more efficacious than killing native carnivores. While some in society complain about wolves and other carnivores, the reality is we humans are an unsustainable “super predator.”⁴³ Because grizzly bears live in a fraction of their historical

range, it is time that we stop conducting lethal predator controls and trophy-hunting practices on grizzly bears in the guise of livestock protection and or ungulate recruitment.

IX. Methodology

Methods:

All data wrangling and analyses were conducted in R v. 3.5.0 (R Core Team, 2018). We used the R package `tabulizer` (Leeper, 2018) to extract tables from the 2017 USDA report “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015” (1) and the 2015 USDA report “Sheep and Lamb Predator and Nonpredator Death Loss in the United States, 2015” (2). Once extracted, data were combined, summarized, and plotted using R packages `dplyr` (Wickham et al. 2018), `tidyr` (Wickham & Henry, 2018), `ggplot2` (Wickham, 2016), and `extrafont` (Chang, 2014).

Data used from each report:

(1) From the 2017 USDA cattle report, we used data from the following tables: B.1. Number and percentage of cattle over 500 lbs. on Jan. 1, 2016, and calf crop (2015), by state, A.2.d. Number of cattle over 500 lbs. who died in 2015, by cause and by state, A.2.e. Number of calves who died in 2015, by cause and by State, A.2.h. Percentage of operations with any calf deaths due to nonpredator, predator and all causes, by state, A.2.j. Cattle death loss due to nonpredator, predator and all causes, as a percentage of inventory of cattle 500 lb. or more on Jan. 1, 2016, by state, A.2.k. Calf death loss due to nonpredator, predator and all causes, as a percentage of calf crop (2015), by state, C.1.g. Percentage of cattle deaths due to nonpredator causes, by cause and by state, C.2.f. Percentage of calf death loss due to nonpredator causes, by cause and by state, D.1.a. For all operations, number and percentage of cattle death loss due to predators, by predator, D.1.c. Percentage of cattle death loss due to predators, by state and by predator, D.2.d. Percentage of calf death loss due to predators, by state and by predator.

(2) From the 2015 sheep report, we used data from the following tables: B.1. Number of ewes, rams, market sheep and lamb crop, by state, A.2.a. Number of sheep and lambs that died, by State and by cause, A.2.d. Percentage of Jan. 1, 2015, adult-sheep inventory lost in 2014, as a percentage of adult-sheep inventory on January 1, 2015, by cause and by state, B.8. Number of sheep and lambs who died due to enterotoxemia, internal parasites or other digestive problems in 2014, by state, B.9. Number of sheep and lambs who died due to respiratory problems, metabolic problems or other disease problems in 2014, by state, B.10. Number of sheep and lambs who died due to weather-related problems, starvation or lambing problems in 2014, by state, B.11. Number of sheep and lambs who died due to old age, being on back or poisoning in 2014, by state, B.12. Number of sheep and lambs who died due to theft, other nonpredator causes, were found dead or died from unknown nonpredator causes in 2014, by state, C.8. Number of sheep and lambs who died by bears, bobcats or lynx, coyotes or dogs, by state, C.9. Number of sheep and lambs who died by mountain lions (cougars/pumas), wolves or vultures, by state, C.10. Number of sheep and lambs who died by ravens, feral pigs, eagles, other known predator causes or other unknown predator causes, by state.



Endnotes

¹ USDA-Animal and Plant Health Inspection Service, “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015,” https://www.aphis.usda.gov/animal_health/nahms/general/downloads/cattle_calves_deathloss_2015.pdf (2017); USDA-Animal and Plant Health Inspection Service, “Sheep and Lamb Predator and Non-Predator Death Loss in the United States,” https://www.aphis.usda.gov/animal_health/nahms/sheep/downloads/sheepdeath/SheepDeathLoss2015.pdf (2015).

² In their cattle report, the USDA explains its methodology as follows: “The numbers provided in this report are based on a sample of operations and are thus estimates of the true numbers. There is variability associated with each estimate, although the measures of variability (such as the standard error) are not always shown” (emphasis added). USDA-Animal and Plant Health Inspection Service, “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015,” ii.

In their sheep report, the USDA explains its methodology here: “For 2015, death losses by cause were estimated to match NASS’ total death losses published in “Sheep and Goats,” released January 30, 2015. Estimates were generated with SUDAAN® software (Research Triangle Institute, version 11.0.1). Standard errors, where shown, account for the stratified study design...“The number of operations with sheep in 2014 (table A.2.a) was estimated using the number of operations in the sample, weighted by the expansion weight (the number of operations in the population that each sampled operation represents). Similarly, the total number of deaths are estimated by expanding the number of deaths in the sampled operations. For lamb losses, pre- and postdocking losses are captured separately for CO, MT, UT, and WY, while all other Western States count only postdocking losses. The lamb loss estimates in this report are estimated by expanding the postdocking losses for sampled operations in Western States and all losses for sampled operations in Eastern States.” USDA-Animal and Plant Health Inspection Service, “Sheep and Lamb Predator and Non-Predator Death Loss in the United States.”

³ Hank Hristienko and Jr. McDonald, John E., “Going in the 21st Century: A Perspective on Trends and Controversies in the Management of the Black Bear,” *Ursus* 18, no. 1 (2007).

⁴ On June 22, 2017, Interior Secretary Ryan Zinke announced the Yellowstone population of grizzly bears as recovered and delisted it. U.S. Fish and Wildlife Service, “Secretary Zinke Announces Delisting of Yellowstone Grizzly Bear: Partners Celebrate Endangered Species Act Delisting Following Decades of Collaboration,” https://www.fws.gov/news/ShowNews.cfm?_ID=36059&ref=secretary-zinke-announces-delisting-of-yellowstone-grizzly-bear- (2017). Multiple plaintiff groups sued the FWS. One day before Wyoming and Idaho’s trophy hunt on grizzly bears were to commence, Judge Dana Christensen declared the Service’s delisting as premature. In 2018, a record 65 Yellowstone-area grizzly bears died—most as a result of human intervention. Fig. 12.

⁵ The HSUS and co-plaintiffs won litigation against the FWS for delisting grizzly bears on these grounds: First, the court held that the FWS illegally separated out the Greater Yellowstone Ecosystem population despite their connection to, and interdependence with, the other surviving populations of grizzly bears in the United States. Second, the court found that the FWS failed to ensure that sufficient protections would remain in place to protect grizzly bears after delisting. Finally, it concluded that the delisting decision did not take into account scientific evidence indicating the precarious genetic health of this still vulnerable population. See: *Crow Tribe et al. v. United States*, 343 F.Supp.3d 999 (D. Mont. 2018).

⁶ U.S. Geological Survey-Interagency Grizzly Bear Study Team, “Known and Probable Grizzly Bear Mortalities in the Greater Yellowstone Ecosystem,” <https://www.usgs.gov/science-explorer/results/es=Known+and+Probable+Grizzly+Bear+Mortalities+in+the+Greater+Yellowstone+Ecosystem> (2018).

⁷ U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Veterinary Services, “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015.”

https://www.aphis.usda.gov/animal_health/nahms/general/downloads/cattle_calves_deathloss_2015.pdf (2017); U.S. Department of Agriculture-Animal and Plant Health Inspection Service, “Sheep and Lamb Predator and Nonpredator Death Loss in the United States,” <http://usda.mannlib.cornell.edu/usda/current/sgdl/sgdl-05-27-2010.pdf> (2015).

⁸ USDA-Animal and Plant Health Inspection Service, “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015.”

⁹ USDA-Animal and Plant Health Inspection Service, “Sheep and Lamb Predator and Non-Predator Death Loss in the United States.”

¹⁰ F. F. Knowlton, E. M. Gese, and M. M. Jaeger, “Coyote Depredation Control: An Interface between Biology and Management,” *Journal of Range Management* 52, no. 5 (Sep 1999), <Go to ISI>://000082837300001; Philip J. Baker et al., “Terrestrial Carnivores and Human Food Production: Impact and Management,” *Mammal Review* 38 (2008); S. M. Wilson, E. H. Bradley, and G. A. Neudecker, “Learning to Live with Wolves: Community-Based Conservation in the Blackfoot Valley of Montana,” *Human-Wildlife Interactions* 11, no. 3 (Win 2017), <Go to ISI>://WOS:000422844800010; Seth M. Wilson et al., “Natural Landscape Features, Human-Related Attractants, and Conflict Hotspots: A Spatial Analysis of Human-Grizzly Bear Conflicts,” *Ursus* 16, no. 1 (2005/04/01 2005), accessed 2017/04/28, [http://dx.doi.org/10.2192/1537-6176\(2005\)016\[0117:NLFHAA\]2.0.CO;2](http://dx.doi.org/10.2192/1537-6176(2005)016[0117:NLFHAA]2.0.CO;2); Seth M. Wilson, Gregory A. Neudecker, and James J. Jonkel, “Human-Grizzly Bear Coexistence in the Blackfoot River Watershed, Montana: Getting Ahead of the Conflict Curve,” in *Large Carnivore Conservation: Integrating Science and Policy in the North American West*, ed. S.G. Clark and M.B. Rutherford (2014).

¹¹ U.S. Fish and Wildlife Service, “Endangered Species: Mammals: Grizzly Bear (*Ursus Arctos Horribilis*),” <http://www.fws.gov/mountain-prairie/es/grizzlyBear.php> (2019).

¹² U.S. Fish and Wildlife Service, “Questions and Answers: Greter Yellowstone Ecosystem Grizzly Bear Population Proposed Delisting Rule,” <https://www.fws.gov/mountain-prairie/es/GYE%20Grizzly-FAQs.pdf> (2016).

¹³ U.S. Fish and Wildlife Service, “Northern Continental Divide Ecosystem: Grizzly Bear Conservation Strategy,” https://www.fws.gov/mountain-prairie/science/PeerReviewDocs/NCDE_Grizzly.pdf (2013).

¹⁴ The FWS provides: “There have been only four confirmed detections of grizzly bears in the greater NCE in the past 10 years, all of which occurred in British Columbia and may comprise only two individuals (IGBC NCE Subcommittee 2016).” U.S. Fish and Wildlife Service, “Endangered Species: Mammals: Grizzly Bear (*Ursus Arctos Horribilis*),” i.

¹⁵ USDA-Animal and Plant Health Inspection Service, “Death Loss in U.S. Cattle and Calves Due to Predator and Nonpredator Causes, 2015.”

¹⁶ FWS map of grizzly bears: <https://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/GBdistribution.s.jpg>. Last visited December 18, 2018.

¹⁷ U.S. Geological Survey-Interagency Grizzly Bear Study Team. The number of bears found dead is likely a fraction of the true number and perhaps an undercount by over 80%. B. N. McLellan et al., “Rates and Causes of Grizzly Bear Mortality in the Interior Mountains of British Columbia, Alberta, Montana, Washington, and Idaho,” *Journal of Wildlife Management* 63, no. 3 (Jul 1999), <http://dx.doi.org/10.2307/3802805>; Bruce N. McLellan, Garth Mowat, and Clayton T. Lamb, “Estimating Unrecorded Human-Caused Mortalities of Grizzly Bears in the Flathead Valley, British Columbia, Canada,” *PeerJ* 6 (2018/10/11 2018), <http://dx.doi.org/10.7717/peerj.5781>.

¹⁸ U.S. Geological Survey-Interagency Grizzly Bear Study Team.

¹⁹ U.S. Fish and Wildlife Service, *Livestock Losses and Grizzly Bears: Perspectives on Livestock Loss and Risks*, by Chris Servheen (Government memo, 2014).

²⁰ *Ibid.*

- ²¹ George Edwards, *Montana Livestock Losses Board, Tables of Losses from 2015-2018* (email: 2018). Mr. Edwards notes that these claims are only the ones where ranchers came forward, Wildlife Services verified the claims and then the ranchers contacted the Montana Livestock Losses Board for reimbursement. As such, the claims may be underrepresented.
- ²² K. Slagle et al., "Attitudes toward Predator Control in the United States: 1995 and 2014," *Journal of Mammalogy* 98, no. 1 (Feb 2017), <http://dx.doi.org/10.1093/jmammal/gyw144>.
- ²³ *Ibid.*
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New England Aquarium's statement for the record

Before the Senate Committee on Environment and Public Works

Hearing on "Modernizing the Endangered Species Act: Legislative Hearing on S. 4589, the Endangered Species Act Amendments of 2020"

September 23, 2020

Chairman Barrasso, Ranking Member Carper, Senator Markey and members of the Environment and Public Works Committee,

The New England Aquarium (Aquarium) thanks the Chairman, Ranking Member, Senator Markey, and the Committee members for considering this statement in their deliberations regarding S.4589, "The Endangered Species Act Amendments of 2020."

Founded in 1969, the New England Aquarium is global leader in ocean exploration and marine conservation and a catalyst for global change through public engagement, commitment to marine animal conservation, leadership in education, innovative scientific research, and effective advocacy for a vital and vibrant ocean. For decades, the New England Aquarium has worked tirelessly to protect ecosystems from human impacts and conserve threatened and endangered animals and habitats.

The Aquarium wholeheartedly supports the goals set forth by Congress in 1973 when it passed the Endangered Species Act (ESA). As an organization, we have extensive experience conducting research on, rescuing and rehabilitating, and sustaining *ex situ* populations of endangered species. Based on this experience, we argue that the ESA is not only working, but has been successful—99% of the species it protects have been prevented from going extinct. While the Aquarium recognizes the challenges of implementing ESA, the Aquarium is concerned that S. 4589 does not reflect the complexity inherent in saving species from extinction and as a result, the proposed amendments will result in more species becoming extinct, not fewer as the law intended.

Every year, additional scientific assessments confirm that the planet is facing an extinction crisis¹. Just last week on September 15, 2020, the UN published its *Fifth Biodiversity Outlook* (GBO-05) that synthesizes comprehensive evidence of the growing biodiversity crisis and the urgent need for action that "collectively can move our societies into a more sustainable co-existence with nature."² The COVID-19 pandemic has demonstrated the profound and negative impacts that occur as a result of destroying the biodiversity and the

¹ <https://ipbes.net/global-assessment>

² <https://www.cbd.int/gbo5>

systems that sustain human health and well-being. Loss of biodiversity increases the opportunities for pathogens to pass between wildlife and people³.

As a bedrock environmental law in the United States, ESA plays a vital role in overcoming the challenges associated with the impending extinction crisis and the ongoing and unprecedented global loss of biodiversity and habitat. Efforts to strengthen ESA, not weaken it as S. 4589 does, will help accelerate the recovery of listed species so that they can be delisted, rather than accelerate their extinction.

As an organization, the Aquarium unequivocally supports strong, science-based decision making, which is a primary tenet of the ESA. The Aquarium is concerned that S. 4589 ultimately will not improve the recovery of endangered species and diminishes the importance of science in the process. Below the Aquarium outlines our primary concerns with S. 4589.

In our reading of the bill, S. 4589 shifts responsibility for implementing ESA to states. ESA already provides states with the opportunity to participate in recovery planning and implementation, including informing decision-making on proposals to list species. The Aquarium is concerned that by transferring responsibility to states, implementing the law will be uneven and even ineffective. Many states lack the legal authority, resources, and/or political resolve to implement the ESA. For example, only 4% of states have the authority to promote the recovery of imperiled species, 36% of states protect all animal and plant species listed under the ESA, and 54% of states require that listing decisions be based on sound science⁴.

With respect to implementation of S. 4589, the Aquarium has specific concerns about listed species that are not confined to a single state or that migrate across state lines and/or into federal lands or waters.

This is particularly the case for the application of the ESA for North Atlantic right whale conservation. With about 400 individuals remaining in the species, North Atlantic right whales are the only large whale species listed by the IUCN as Critically Endangered. The habitat of North Atlantic right whales is primarily along the eastern seaboard of North America, in state and federal waters of the United States from Florida to Maine, and into Canada. As this habitat includes the entire U.S. eastern seaboard, shifting responsibility for their conservation will require all 14 coastal states to be engaged with possible extraordinary burdens on federal, state, and local officials and any scientists that participate in a recovery team required to remain in place until a species is ultimately recovered and delisted as stipulated in the bill. Based on failures by North Carolina's state government to assist in the reintroduction and recovery of red wolves in a National Wildlife Refuge, the Aquarium justifiably has concerns about the uniform level of

³ <https://www.nature.com/articles/d41586-020-02341-1>

⁴ <https://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-esa-report-final.pdf>

commitment that would be required by all 14 states to ensure equal implementation of the law to ensure the recovery of North Atlantic right whales, as well as other marine species.

As proposed in S. 4589, the process detailed would introduce delays and reduce the probability that effective conservation of North Atlantic right whales will be achieved in a reasonable time frame. As evidence of the ineffectiveness created by large and burdensome teams, the Atlantic Large Whale Take Reduction Team (ALWTRT) is demonstrably the least effective of current Take Reduction Teams, which are authorized under the Marine Mammal Protection Act⁵. One of the greatest problems for North Atlantic right whale conservation and recovery is the slow pace of management action in the United States. Were recovery teams created under the ESA to be equally as cumbersome as the ALWTRT, effective conservation management for North Atlantic right whales will be further reduced and the likelihood that this species will ever be delisted (except by extinction) will be diminished greatly.

As an organization with a specific focus on science for conservation of marine wildlife, the Aquarium strongly supports the science-based emphasis and strength in the application of science of the ESA. For marine species, ESA is appreciably more powerful than other laws, including the Marine Mammal Protection Act. The ESA construct of “jeopardy” is particularly amenable to scientific review. A powerful example of this is a recent paper demonstrating that the recovery of North Atlantic right whales has been constrained by human-caused mortalities⁶. Using a combination of field data and modeling, the authors show that the recovery of North Atlantic right whales—even when their abundance was increasing—is limited by whale deaths caused by human activities. As the ESA requires that federally-authorized activities cannot jeopardize ESA-listed species’ recovery, this is a powerful, direct link between science and conservation management, unavailable in other legislation.

In addition to the arguments outlined above regarding the bill’s proposal to shift responsibility for implementing ESA to the states, the Aquarium is also concerned that S. 4589 will prevent public input, federal accountability from judicial review, and overall transparency of the process to the American people. The Aquarium has diligently responded to Federal Notices regarding proposed changes to the implementation of ESA by U.S. Fish and Wildlife Services and NOAA and appreciates the opportunity to share our scientific expertise and experience as part of an open and transparent process that encourages not only civic engagement and participation, but accountability by the federal government to the wishes of the American people they are entrusted with working on behalf of. Exempting efforts by the Secretary to revise recovery goals for a species from notice and comment and to shield state information and data from disclosure runs contrary to the rule of law. The Aquarium opposes these provisions in S. 4589.

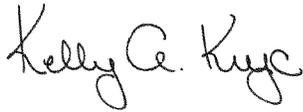
⁵ <https://www.sciencedirect.com/science/article/pii/S2351989415300093>

⁶ <https://royalsocietypublishing.org/doi/full/10.1098/rsos.180892>. Note first author is now a scientist at the Aquarium.

The Aquarium also recognizes and celebrates the role of each of the three branches of government and opposes any effort to diminish the ability of the American people or American organizations to exercise their right to judicial review of federal agencies responsible for promulgating rules and regulations to ensure that ESA is implemented effectively and efficiently.

ESA is a fundamental environmental law in the United States, and the Aquarium will gladly work with Congress and the federal agencies to strengthen implementation of the law with the goal of recovering species so they can be delisted. Efforts to weaken the law, as S. 4589 does, will only accelerate extinction of species when what is needed most is a the political resolve and resources required to address the unprecedented extinction crisis facing humanity.

Sincerely,



Kelly A. Kryc, Ph.D
Director of Ocean Policy
New England Aquarium



Peter Corkeron, Ph.D.
Senior Scientist and Chair, Kraus Marine
Mammal Conservation Program
Anderson Cabot Center for Ocean Life
New England Aquarium



Testimony to the Senate Committee on Environment and Public Works
Successful State Stewardship: A Legislative Hearing
to Examine S. 614, the Grizzly Bear State Management Act
September 9, 2020

The Humane Society Legislative Fund and the Humane Society of the United States thank Chairman Barrasso and Ranking Member Carper for the opportunity to express our views on S. 614, the Grizzly Bear State Management Act, pursuant to your hearing on the legislation.

We oppose S. 614 for the reasons detailed in this document, and we urge the Senate not to pass this harmful bill.

In 2017, due to pressure from trophy hunters, ranching lobbies and the northern Rocky Mountain states, the U.S. Fish and Wildlife Service (FWS) issued a final rule removing grizzly bears of the Greater Yellowstone Ecosystem (GYE) from the Endangered Species Act's (ESA) list of threatened species. The rule was overturned by two federal courts—the District of Montana in 2018, and the Ninth Circuit Court of Appeals in 2020—with the judges finding that FWS had violated the law and ignored the best available science in its rush to delist the population.

The federal court rulings correctly and objectively applied the law

Judicial review of delisting actions serves as a critical check to ensure that FWS faithfully carries out the ESA, including its mandate to make decisions solely on the basis of the best available science. The rulings overturning the 2017 delisting rule underscore the important role the courts play in ensuring fair administration of the ESA. Some have mischaracterized these rulings as politically motivated, or as prioritizing ideology over science. But even a quick read of the opinions shows this is untrue. The district and appeals courts simply held FWS accountable, determining that the agency had violated the ESA and disregarded the best available science—including the scientific opinion of its own biologists and grizzly bear recovery coordinator—in order to delist the population as quickly as possible. As the District of Montana held, FWS “cannot negotiate away its obligation to make decisions solely on the basis of the best available science.” *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999, 1018 (D. Mont. 2018). These opinions confirm what the drafters of the ESA understood: judicial review is necessary to ensure that listing decisions are made on the basis of science, not politics.

GYE grizzly bears must remain listed because they still face threats to their survival

According to a recent study, a majority of academic-affiliated grizzly bear biologists believe GYE grizzly bears should retain federal ESA protections because they face extinction. Indeed, grizzly bears once ranged from northern Mexico to Alaska and numbered as many as 50,000 in the contiguous 48 states in the early 1800s. Today, however, wild grizzly bears number less than 2,000 in the contiguous 48, with fewer than 1,000 bears in the GYE, and face a lack of genetic

connectivity to other grizzly bear populations. On top of that, GYE grizzly bears' major food sources—white bark pine seeds and cutthroat trout—have all but disappeared due to climate change and invasive species. The Interagency Grizzly Bear Study Team did not “debunk” the harms to the population from the loss of these staple food sources. Their review found that omnivorous grizzly bears can adapt by seeking new food sources, but it ignored the new threats that GYE bears encounter as a result of this dietary shift. Now, GYE bears have adopted a more heavily meat-based diet, but they must abandon the safety of national parks to find this food. Outside park boundaries, they are exposed to more human-caused mortality, resulting in record numbers of dead bears since 2015: roughly 325 deaths, according to the latest figures from the U.S. Geological Survey.

Livestock losses from grizzly bears are statistically nil, and claims are grossly exaggerated

In 2013, according to FWS, Wyoming ranchers grazed 253,826 cattle and 52,600 sheep amongst the GYE grizzly bear population. Remarkably, only 108 cattle (0.042% of the inventory) and 6 sheep (0.011% of the inventory) were killed by grizzly bears that year. Montana's cattle inventory in the GYE that year was 105,250 animals and its sheep inventory 10,050 animals, according to FWS; GYE grizzly bears in Montana killed 14 cattle that year and 17 sheep. The Montana Board of Livestock confirmed that in 2018 grizzly bears (including those from the Northern Continental Divide Ecosystem/Glacier National Park population) killed 61 cattle and 23 sheep statewide. These livestock mortality figures are statistically nil. By contrast, U.S. Department of Agriculture data indicate that *nine times* more cattle and sheep die every year from disease, respiratory problems, birthing problems and poisoning than from wild native carnivores, domestic dogs and raptors *combined*.

Delisting will be immediately followed by ineffective state-sponsored trophy hunts that will harm the population

Following the 2017 delisting, Idaho and Wyoming rushed to open trophy hunts on the vulnerable GYE population, proposing to charge out-of-state hunters up to \$600 for the right to legally kill a grizzly bear for the first time in decades. These bears are killed for nothing more than trophies; no one hunts grizzly bears just for food. Trophy hunting serves no legitimate management purpose: studies have shown that hunting native carnivores does not reduce conflicts with humans or livestock, and to the contrary increases conflict in many cases by disrupting populations' social and territorial dynamics. Trophy hunting also causes severe and irreparable harm to grizzly bear populations. Killing a female orphans her dependent young, all but guaranteeing their death. Killing females also reduces the very few breeding females left in the GYE population, which is devastating as bears produce only a few cubs in their lifetimes. Studies show that, even with hunter education courses, hunters are incapable of distinguishing between male and female bears—or even between grizzly bears and black bears. Trophy hunting would also harm the already perilous genetic health of the population by removing the fittest adults from the gene pool. Open season should not be immediately declared on this isolated and beloved population, but that is what will happen if delisting occurs.

Non-lethal strategies must be adopted to address human and livestock conflicts

Delisting—and the liberalized killing of bears that will follow—is neither necessary nor effective for addressing bear conflicts with humans and livestock. Instead, FWS should encourage states, federal land managers and landowners to adopt proven non-lethal practices to keep both bears and people safe. The few livestock conflicts that occur are frequently associated with human-caused problems such as poor husbandry practices. The Blackfoot Challenge in northwestern Montana, a partnership of ranchers, state and federal wildlife agents and land managers, has demonstrated that when agencies and communities work together, they can implement commonsense measures and change social norms that almost entirely eliminate threats to bears and wolves. As a result, grizzly bear conflicts have declined by over 90% in the organization's service area.

In most years, run-ins with elk hunters are the leading human cause of grizzly bear deaths in the GYE. But these attacks are avoidable. An Alaska study shows that bear spray is 98% effective in stopping grizzly bear attacks, and most people who use it walk away uninjured. In comparison, firearms only are about 50% effective at stopping grizzly bear attacks. Bear spray is the most effective deterrent available and does not result in dead bears, yet neither the U.S. Forest Service nor any GYE state requires hunters in the field to carry bear spray. In 2019, after a series of bear attacks on elk hunters, a coalition of NGOs petitioned Idaho, Montana and Wyoming to adopt rules requiring hunters to carry bear spray in the field in grizzly country, but all three states declined to adopt this commonsense rule.

Grizzly bear tourism earns billions of dollars for local GYE economies

According to the National Park Service, Grand Teton and Yellowstone national parks generated \$1.4 billion in revenues for local economies of the northern Rockies states in 2019, including supporting over 15,000 jobs, thanks to 7.4 million park visitors. A 2017 FWS report showed that, since 2011, hunting numbers had plummeted by 21%, with big game hunters declining by 2.4 million, while wildlife watchers had increased by 28%. A study by the University of Wyoming found that wildlife watchers spent nearly twice (\$365 million) the amount spent by big game hunters (\$206 million) in Wyoming. In short, it makes enormous economic sense to let grizzly bears live and keep them protected for wildlife tourism.

**Testimony submitted to the Senate Committee on Environment and Public Works
*Successful State Stewardship: A Legislative Hearing to Examine S. 614, the Grizzly Bear State
Management Act***

September 21, 2020

Thank you, Chairman Barrasso and Ranking Member Carper for the opportunity to submit this testimony outlining my views regarding S. 614: *Grizzly Bear State Management Act of 2019*.

A recovered and secure grizzly bear must be large enough and occupy enough extensive contiguous secure habitat to have a 95 percent probability of persisting for at least several centuries as a wild, free ranging, self-sustaining species. Such a population would have the size and habitat to sustain themselves in the face of the genetic, demographic, environmental and catastrophic uncertainties that constitute life in the natural world.

None of grizzly bear sub-populations in the lower 48 states in and of themselves meet this criteria. This is manifestly true of the Yellowstone bear sub-population because these bears live on a biological island separated geographically from other grizzly sub-populations and have been for at least a century. As long as the Yellowstone grizzlies live on this island, they can never be a secure population and will require national protection and oversight to assure their continued survival. There must be a national policy overriding different state's regulations to assure protected linkage habitat to other bear sub-populations.

S. 614 would remove the essential federal protections under the ESA and do nothing to assure the protected and secure interstate linkage habitat that is essential for a truly recovered and secure Yellowstone grizzly population.

S. 614 would grant the states the right to systematically target grizzlies attempting to recolonize former occupied habitat outside of an artificial "Demographic Monitoring Area" for elimination and this will guarantee that true grizzly recovery will be stopped in its tracks. A wide ranging slow-reproducing top-level opportunistic omnivore such as the grizzly cannot be turned over to the provincial interests of the livestock driven agendas of the state game departments of the Yellowstone region.

S. 614 would turn "back the clock" and assure that all the time and money spent toward true recovery of these bears would be for naught and will snatch "defeat right out of the jaws of victory". These bears must be allowed to disperse into all biologically suitable habitat to achieve true recovery and the bears themselves will show us that habitat. State management will not allow them to do that.

I oppose S.614.

Thank you

/signed/

Chuck Neal
Ecologist USDI (retired)
Author-- GRIZZLIES IN THE MIST
1526 Alger Avenue
Cody, Wyoming 82414

**Testimony submitted to the Senate Committee on Environment and Public Works
Successful State Stewardship: A Legislative Hearing to Examine S. 614, the Grizzly
Bear State Management Act**

September 21, 2020

Thank you, Chairman Barrasso and Ranking Member Carper for the opportunity to submit this testimony outlining my views regarding S. 614: *Grizzly Bear State Management Act of 2019*.

I am opposed to S. 614 and respectfully ask that the Senate Committee not support this unfortunate and ill-conceived bill.

I am a wildlife biologist by training and a 52-year resident of Wyoming, having received my Ph.D. from the University of Wyoming after completing 8 years of research on the behavior and ecology of coyotes on the National Elk Refuge outside Jackson and Grand Teton National Park. Prior to that, I earned my Masters of Science degree completing research on golden eagles in the west-central desert of Utah. After completing my graduate work, I conducted wildlife assessments and inventories for the proposed siting of numerous, oil and gas wells and pipelines, an extensive uranium extraction proposal and the reconstruction of Jackson Lake Dam in Grand Teton N.P. My work addressed the potential impacts of the proposed activities to species of special concern including raptors, carnivores and big game populations, and of course species protected by the Endangered Species Act.

In addition to extensive field investigations as a professional consultant, I worked for 25 years as a documentary filmmaker producing wildlife programs for television. I have filmed a variety of threatened and endangered species including black rhinos and African elephants, polar bears, whooping cranes, and California condors, gray wolves and black-footed ferrets. I was also the first to film the critically endangered Giant Panda in the wilds of China in 1982.

I have filmed grizzly bears in Wyoming (Yellowstone and Grand Teton National Parks), Montana (Glacier N.P.) and at Alaska's McNeil River and in Denali and Katmai N.P.s. I also spent nearly two months filming on Kodiak Island, home of the largest grizzlies- the Kodiak sub-species. Over the years, I have spent hundreds of hours following and observing grizzly bears and have interacted extensively with bear biologists in order to accurately portray the grizzly's story to the viewing public through my own productions and for extended segments within other network productions.

My last career position was Executive Director of the Jackson Hole Conservation Alliance, a non-profit environmental organization based in Jackson Wyoming. (I am now retired). During my tenure with the Alliance, I witnessed the dramatic arrival of the gray wolf into the ecosystem, and I closely followed the successful growth and range expansion of the Greater Yellowstone Ecosystem (GYE) grizzly bear population.

During the various but related chapters of my life I have gained a substantial understanding of the complexity of ecosystems, their functioning and the role they play in sustaining our own health and contentment. And I have also come to understand the critical role large and unique apex species such as grizzly bears play in maintaining ecosystem health and function.

Sadly, I have also witnessed the diminishment of habitats from the Amazon Basin to the Arctic, from the sagebrush steppe of Wyoming to subtropical rainforests of southern China.

But for me, what is most distressing is how the GYE, the largest relatively intact temperate forest region in the world, is being choked by relentless human visitation and development, and how we are willingly managing every naturally wild thing into submission simply to appease a comfortable human experience. This ecosystem, these bears and future generations of humans deserve better than to allow this persistent, incremental deterioration and manipulation to go on. De-listing the GYE grizzly bear population with this legislation would be yet another tragic step in the dismantling of the Greater Yellowstone's ecosystem complexity and function.

The phrase Greater Yellowstone Ecosystem had its genesis with the pioneering work of brothers Frank and John Craighead. Their work on Yellowstone's grizzly population in the 1960s-70s, lead them to coin the name "Yellowstone Grizzly Bear Ecosystem." Years later this concept of large landscape ecosystems lead to the formation of the environmental organization- the Greater Yellowstone Coalition, of which I was a founding Board member. The Coalition's objective then, and as it continues today is to manage the area as one ecological unit, ignoring political boundaries as much as possible and allowing the system to function as free of human interference as possible.

This ecosystem concept of landscape management has taken hold around the world. Let us not now allow this history to be abused by de-listing the GYE's apex component, the grizzly bear and turning its future over to heavy-handed, homocentric management objectives.

I will keep my specific comments succinct; I will not dwell on the legitimacy of the GYE grizzly bear population estimates used by various interests, or the many environmental factors influencing population trends. I will not dwell on the moral question of sanctioning the killing of grizzly bears in order to allow hunters to claim a "trophy reward." These are all legitimate social and biological concerns and worthy of much greater discussion than is appropriate here.

However, I will focus on what we can realistically assume to happen if the Greater Yellowstone grizzly bear population is de-listed and its management is turned over to the states of Idaho, Montana and Wyoming.

Allow me to present several scenarios laying out plausible, future conditions. First, there appears to be a tenuous consensus that the current grizzly population is approximately 750, with some professional estimates ranging as high as 1,000 and 1,200.

The “2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem” (p.4) calls for “**Maintaining at least 500 bears in the GYE...**” (Emphasis added.) Similarly, the 2016 “*Memorandum of Agreement Regarding the Management and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem*” (p.4) calls for the three states; Idaho, Montana and Wyoming to “**Maintain a minimum population size of 500 bears within the DMA (Demographic Monitoring Area) of the GYE.**” (Emphasis added.)

In Wyoming, the grizzly bears outside the DMA will be aggressively managed: meaning greatly reduced in numbers and not counted toward overall ecosystem’s mortality limits. With the current de-listing proposal, it’s only what happens to the bears within the DMA that counts.

Though not required, the three states consider a minimum population of 600 bears to be a level below which more restrictive management strategies will take effect- making the 600 figure a significant threshold within their collective management plans. This then provides a buffer of 100 bears to the 500 required by the Conservation Strategy.

With this base line understanding, if the GYE grizzly population’s management authority is turned over to the states with their current management plans, we can assume efforts will be taken to bring the population to near the 600 level. This means that at this point in time, at least 150 grizzly bears can be killed, primarily through hunting and agency removal.

If we accept that there may be as many as 1,000 grizzlies occupying their native habitat in the GYE, then upwards of 400 bears would be killed in order to approach the 600 target. And, if the extreme population estimate of 1,200 bears is accepted as official, then we can assume upwards of 600 grizzly bears would be killed. Again, this mortality figure does not take into count the bears outside the DMA that will be aggressively controlled.

In the case of Wyoming, Grizzly Bear Hunt Areas 7 and 8 are outside the DMA and have an “any grizzly bear” quota of 12 with the potential to kill bears over bait if the Wyoming Game and Fish Department determines it is necessary to meet management objectives (Sec. 7. Chapter 68. Grizzly Bear Hunting Season. 2018). Hunting over bait is perhaps the most un-sportsman-like method of hunting and should never be part of any de-listing agreement.

These realistic scenarios do not take into account that these reductions will occur over several years, during which time new bears will be born and recruited into the population. This annual recruitment will increase the overall number of bears to be killed in order to approach the population objective of 600. How many more will be killed? No one knows.

Clearly, we can anticipate that the goal of the three states will be to reduce the GYE grizzly bear population to near their agreed upon 600 level. And if there is any doubt of this, we need look no further than the history of wolf management in these same three states.

At the end of 2016, the year before wolves were de-listed in Wyoming, the wolf population in the state and outside Yellowstone N.P was estimated to be 269. The *“Wyoming Gray Wolf Monitoring and Management – 2018 Annual Report.* (p.i) states: **“In 2018 the Wyoming Game and Fish Department implemented a wolf hunting season with the biological objective to reduce the wolf population to approximately 160 wolves...”** (Emphasis added.)

At the end of 2019, the population within Wyoming’s Trophy Game Area was estimated to be 175, a 35 percent decrease over four years, and just 9 percent above Wyoming’s stated population objective of 160. This was accomplished with just four years of “sport hunting” and aggressive management removal.

If Wyoming’s wolf management history is any indication, we can expect a similarly aggressive reduction in grizzly bear numbers once the state gains management authority. (Similar goals and trends can be seen with Montana and Idaho’s wolf management history in the GYE.)

I submit Wyoming as an example because the state has the largest segment of the GYE’s primary grizzly habitat and population- approximately 58 percent. This includes Yellowstone and Grand Teton N.Ps. where grizzly bear hunting is prohibited, but included in the population count (*Memorandum of Agreement Regarding the Management and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem. 2016, p.5*). It’s safe to say that Wyoming’s management actions will have the single, greatest long-term impact on the ecosystem’s grizzly population.

Regardless of the final numbers one wants to subscribe to, one thing stands out: if management authority of the GYE grizzly population is given to the three states with management plans as currently written, and with the clear history of managing large carnivores for minimum numbers, we can anticipate that hundreds upon hundreds of grizzly bears will be killed. I seriously doubt that the American public will tolerate this level of killing.

Also, reducing and holding the grizzly bear population to near 600 will significantly jeopardize the chances of natural genetic flow between the GYE and the nearest grizzly population- Montana’s Northern Continental Divide population. Even with the current number of bears- 750, there is no evidence that active connectivity and the successful exchange of genetic material has occurred. What then will be the chances with a drastically reduced population and the perpetual killing that will likely be concentrated at the edges of the population- the grizzly occupied habitat outside the DMA?

Will future management of the GYE grizzly bear population rely on “pickup truck” connectivity: arbitrarily hauling bears between populations? Will the great bear’s long-term survival in the GYE depend upon humanity keeping its heavy finger on the scale of natural ecosystem functions? Will the great bear’s longevity be determined more by human factors than by their own extremely evolved survival wits? Is this what the authors of the Endangered Species Act considered to be the successful recovery of a species? I think not.

I respectfully ask this Senate Committee to not pass S.614. Wyoming, Montana and Idaho are not ready to properly manage the Greater Yellowstone Ecosystem’s iconic grizzly bears.

A dead bear is not a recovered bear.

Thank you,

/ signed /

Franz J. Camenzind, Ph.D.
P.O. Box 1870
Jackson Wyoming
83001

**Testimony of the Rocky Mountain Tribal Leaders Council
Senate Committee on Environment & Public Works
Hearing on S. 614, the Grizzly Bear State Management Act
Wednesday, September 9, 2020**

Chairman Barrasso, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to provide testimony for the record of the hearing on S. 614, the Grizzly Bear State Management Act (Enzi, R-WY). My name is Gerald Gray and I am the Chairman of the Little Shell Tribe of Chippewa Indians, and Chairman of the Rocky Mountain Tribal Leaders Council's ("RMTLC") Board of Directors. This testimony is provided on behalf of the RMTLC.

The Rocky Mountain Tribal Leaders Council serves tribal nations located in Montana, Wyoming, Idaho, and Alberta, specifically the Blackfeet Nation, the Chippewa-Cree, the Confederated Salish & Kootenai Tribes, the Crow Tribe, the Eastern Shoshone, the Fort Belknap Indian Community, the Fort Peck Tribal Executive Board, the Little Shell Tribe of Chippewa Indians, the Northern Arapaho Tribe, the Northern Cheyenne, the Shoshone-Bannock Tribes of Idaho, and the Piikani Nation of the Blackfoot Confederacy.

The RMTLC member tribes have connections to the lands and cultural resources now found within the Yellowstone National Park and the Greater Yellowstone Ecosystem. These lands are home to the grizzly bear, which is integral to the religious and cultural practices of our tribes. The grizzly bear holds a unique position in our traditional cultures, ceremonies, and spiritual practices.

The RMTLC, its predecessor—the Montana & Wyoming Tribal Leaders Council ("MWTLIC"), the Great Plains Tribal Chairman's Association ("GPTCA"), the Blackfoot Confederacy, as well as tribal nations, and organizations from across the country have long fought to protect the sacred grizzly. In 2014, the MWTLIC approved an Official Resolution (No. 11, Dec 2014-04), stating that "the sovereignty and spiritual rights of Tribal Nations in Montana and Wyoming are threatened by the proposed delisting of the Yellowstone grizzly bear from the Endangered Species Act protections by the US Fish & Wildlife Service." Further, the RMTLC member tribes are signatories to *The Grizzly: A Treaty of Cooperation, Cultural Revitalization and Restoration* ("Grizzly Treaty"), which aims to revitalize the ancient relationship between Indian tribes and the grizzly, as well as restore balance to land stewardship.

The RMTLC also expressed concerns regarding the delisting of the grizzly bear directly to this Committee, and to the House Committee on Natural Resources. In March 2018, the RMTLC informed Chairman Barrasso of our objection to grizzly bear delisting, and the reinstatement of grizzly trophy hunts. The letter also offered alternative management plans set forth in the Grizzly Treaty. Further, in October 2018, the RMTLC joined the GPTCA, and the Blackfoot Confederacy in providing testimony to this Committee, which stated that any attempt to legislatively nullify the ruling in *Crow Tribe et al v. Zinke* and strip ESA protections from the grizzly bear would violate the federal-Indian trust responsibility. Finally, the RMTLC testified before the House Committee on Natural Resources in May 2019, expressing concern about delisting the grizzly, and support for the Tribal Heritage and Grizzly Bear Protection Act (H.R. 2532), which would ensure permanent protections for grizzly bears, and guarantee Indian tribes a role in conserving and managing the species.

S. 614, the Grizzly Bear State Management Act would direct the Secretary of the Interior to reissue a final rule relating to removing the Greater Yellowstone Ecosystem population of grizzly bears from the Federal list of endangered and threatened wildlife. The intent of the Grizzly Bear State Management Act is inconsistent with the Rocky Mountain Tribal Leaders Council's efforts to protect the sacred grizzly bear. The RMTLC appreciates your attention to this testimony, and we would be pleased to further discuss this issue.

Senator BARRASSO. At the same time, I would like to enter into the record, over 100 stakeholders have submitted letters in support of the Endangered Species Act Amendments of 2020. These includes letters from the Wyoming Game and Fish Department, Wyoming Stock Growers Association, Wyoming Farm Bureau Federation, and the Wyoming Association of Conservation Districts, other State wildlife agencies as well as local and national conservation, sportsmen, agriculture, and governmental interest have also written in support.

I ask unanimous consent to enter these letters of support from stakeholders into the hearing record, and without objection, it is so done.

[The referenced information follows:]


WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82006
 Phone: (307) 777-4600 Fax: (307) 777-4699
 wgfd.wyo.gov

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September 14, 2020

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 offer my strong support for your work on legislation for much needed and overdue reform of the Endangered Species Act (ESA or the Act). We supported the amendments presented in 2018, and the current proposed Endangered Species Act Amendments of 2020 once again address many of the concerns Wyoming has regarding the application of the Act in listing, recovery, and delisting of species.

As you know, Wyoming has led the conservation and recovery of species for decades. I can point to several examples of our success and commitment to responsibly and collaboratively recover threatened and endangered species, most notable of which are the Black Footed Ferret and Grizzly Bear recovery efforts, not to mention our work to avert ESA listing of the Greater Sage-grouse in 2015 by working with numerous partners and stakeholders to create a sage-grouse conservation strategy. The success of Wyoming's sage-grouse conservation effort speaks to the importance of state and local government involvement in wildlife management.

This Endangered Species Act Amendments of 2020 offer significant improvements to the ESA as it is currently written and implemented. The provisions offered in these amendments would allow states to play an early, equal, and more active role in the recovery of species they work so hard to conserve on the ground, and to exercise the statutory authority they have to manage and conserve wildlife within their borders. We support the language in the bill addressing consistency in the standards for Recovery Teams, ensuring they are held accountable for upholding the goals of the Act, as well as the importance given to scientific data used to inform listing and delisting decisions. The specific timelines laid out in the draft legislation would also guide more streamlined implementation of the Act, a certain improvement over the current process. One of our largest concerns has been the limited flexibility decision makers have had to address changes to the science or information available for a species. This legislation would provide necessary added flexibility for both federal and state partners to address these changes.

I respect and support your work to make the Act a better tool for wildlife conservation, as it was meant to do originally. We are committed to working with all involved to create and execute this new, needed legislation.

Sincerely,

Brian R. Nesvik
 Director



WYOMING STOCK GROWERS ASSOCIATION

Guardian of Wyoming's Coto Country since 1872

President- Scott Sims, *McFadden*

Region I Vice President- Kahla Mills, *Gillette*

Region III Vice President- Leif Hanson, *Kaycee*

Region V Vice President- Darla Griffin, *Riverton*

Young Producers Assembly- Will Hudson, *Sinclair*

First Vice President- David Kane, *Sheridan*

Region II Vice President- Dan Frank, *LaGrange*

Region IV Vice President- Brad Mead, *Jackson*

Executive Vice President- Jim Magagna, *Cheyenne*

September 16, 2020

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 2020

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 II of the proposed legislation takes several important steps that assure the opportunity for state and local governments to assume an active role in the identification, listing, recovery, and delisting of species.

In our experience, recovery goals have far too often been a moving target subject to expansion based on non-scientific evidence or the whims of the judicial system. The establishment of balanced state-federal recovery teams with the requirement for an affirmative vote of at least ¾ of state agencies to modify recovery criteria will go far toward assuring the stability and longevity of recovery goals.

Chairman Barrasso
June 2, 2018
Page 2

"Shaping and Living The Code of The West"

P.O. BOX 206, CHEYENNE, WY 82003 • PH: 307.638.3942 • FX: 307.634.1210

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM

Timely development and implementation of recovery plans will serve to expedite species recovery by incentivizing participation and commitment by a diversity of interests. WSGA particularly commends the provision of opportunity for feedback from “persons with a direct interest in the land”.

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 provision in Section 204 effectively precluding judicial review of a delisting during the post-delisting monitoring period is an essential component of meaningful ESA reform. WSGA commend you for the inclusion of this critical provision. Provisions providing for transparency in litigation will further serve to discourage disruptive litigation.

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 certainty to remain eligible to receive funding under other conservation programs. Thank you for including this important provision in the legislation.

The process for prioritizing status reviews and findings as provided in Title V is an essential step toward 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 VI 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.

Finally, we commend you for providing roe meaningful funding enhancements that will help to assure that the objectives of these ESA changes are fully and effectively implemented.

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
Executive Vice President

“Shaping and Living The Code of The West”

P.O. BOX 206, CHEYENNE, WY 82001 • PH: 307.638.3942 • FX: 307.634.1210

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM



www.wyfb.org
800.442.8325 | 307.721.7719
P.O. Box 1348, Laramie, WY 82073

18 September 2020

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 Chair of the Senate Environment and Public Works (EPW) Committee you have worked diligently to seek solutions to issues created by the Endangered Species Act (ESA) that we in Wyoming as well as the rest of the United States have been trying to deal with. The changes you continue to promote were not developed in a vacuum. Our previous Wyoming Governor Matt Meade, while serving as chair of the Western Governor's Association, sought to develop a bi-partisan solution to the issues with the ESA. This effort was forwarded to Congress and the EPW Committee has attempted to develop legislation that incorporates these suggestions.

The Wyoming Farm Bureau (WyFB) Federation has provided comments in support of many of these concepts. As the legislation has been developed and incorporated into "The Endangered Species Act Amendments of 2020" we once again would like to express our support of this effort.

Wyoming Farm Bureau continues to support efforts to engage states and local government entities in the recovery efforts, which we feel can lead to better outcomes and quicker recovery of a species. WyFB, however, feels that the recovery process has not worked well. The current process is weighted towards a "ride to the horizon" process where recovery goals are established, process put into place to reach these goals, and then when they are reached, litigation assures the goal posts are moved. This process results in a cynical view of the ESA by affected landowners. We can do better, and the ESA Amendments of 2020 work towards a solution.

We feel limiting judicial review of a delisting or downlisting decision will support faster recovery of a species and set the path towards more successes than the current act.

We reiterate our support for our comments made in June of 2018 on the ESA Amendments of 2018 as they relate to the current efforts.

Agriculture...Keeping Wyoming Strong



Wyoming Farm Bureau Federation

www.wyfb.org
800.442.8325 | 307.721.7719
P.O. Box 1348, Laramie, WY 82073

During Governor Meade's introduction to his efforts to improve the ESA he noted the dismal recovery record of the current law. We feel any efforts to provide for more successes should be pursued.

Sincerely,

A handwritten signature in cursive script that reads 'Ken Hamilton'.

Ken Hamilton
Executive Vice President

Cc: WyFB Board
SGA Chairs
NER Chairs



Wyoming Association of Conservation Districts
517 E. 19th Street - Cheyenne, WY 82001 - Phone: 307-632-5716 - Fax: 307-638-4099
www.conservwy.com

September 18, 2020

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

Re: Wyoming Association of Conservation Districts Support of legislation "The Endangered Species Act Amendments of 2020"

Dear Chairman Barrasso,

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 2020.

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.

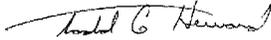
The Districts have over 70 years of experience in implementing on-the-ground conservation projects and practices. In the past 10 to 20 years species conservation has changed from on-the-ground conservation of species and their habitat to in-the-courtroom litigation, appeals, and lawsuit settlement agreements. There have been far more resources by federal agencies dedicated to legal fees and buy-offs than there has been habitat. Local decision-making, rather than litigation is the most efficient way to achieve positive results in species recovery.

This bill provides opportunity for cooperation between federal agencies, state and local governments on species conservation measures. Land management decisions are best made at a state and local level. Conservation Districts throughout Wyoming already work with landowners to deliver locally-led conservation and offer unmatched knowledge and expertise within their districts. Providing states and their residents the opportunity to be more actively engaged in the ESA decision-making-process will only strengthen on the ground management.

The "ESA 2020 Amendments" make several important changes that align with WACD's goals and mission. This bill clearly reflects WACD policies and 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 the greatest chance of success in species recovery.

Thank you for your leadership and dedication on this important issue. WACD commends and appreciates your work in crafting legislation that helps to promote collaborative conservation. In addition, WACD offers our support and assistance to your efforts moving forward.

Respectfully,



Todd Heward
President



October 7, 2020

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

RE: Comments Endangered Species Act Amendments of 2020.

Chairman Barrasso,

Thank you for your leadership and commitment in introducing S.4589, the Endangered Species Act Amendments of 2020. The Arizona Game and Fish Commission (Commission) appreciates this effort as an extension of your support for allowing states to take a more formal, active and cooperative role in all aspects of Endangered Species Act (ESA) implementation. I am happy to extend the support of the Commission, as expressed by our unanimous vote at this September's public meeting of the Commission in Greer, Arizona. The Arizona Game and Fish Department has provided comments for your review and consideration, those comments are included with this letter. It is our hope that this important legislation will bring the ESA in line with Congress' original intent.

Since the enactment of the ESA in 1973, and its last amendment and authorization in 1988, state agencies have grown considerably. While the role of state wildlife agencies has always been to act as stewards of the people's wildlife, agencies now have enhanced staff, greater expertise, improved habitat management techniques, better science, and stronger relationships with both public and private land managers than was common over 30 years ago. The Commission is grateful for your efforts to ensure political support to realize these authorities such as under Section 6; providing states with more flexibility and allowing 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

5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086

GOVERNOR: DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN KURT R. DAVIS, PHOENIX | LELAND S. "BILL" BRAKE, ELGIN
 JAMES E. COUGHNOUR, PAYSON | TODD G. GEILER, PRESCOTT | ERIC S. SPARKS, TUCSON DIRECTOR: TY E. GRAY DEPUTY DIRECTOR: TOM P. FINLEY

Arizona Game and Fish Department Comments on Endangered Species Act Amendments of 2020
October 7, 2020
Page 2

The Endangered Species Act Amendments of 2020 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 Commission is ready to provide any assistance your office may need to ensure its passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt R. Davis', with a stylized flourish at the end.

Kurt R. Davis
Chairman, Arizona Game and Fish Commission

Cc: Ty Gray, Director
Jim deVos, Assistant Director, Wildlife Management Division

Arizona Game and Fish Department Comments

The Arizona Game and Fish Department (Department) appreciates the opportunity to review the proposed Endangered Species Act Amendments of 2020. We support your efforts to modernize that Endangered Species Act (ESA), and thus support this bill's introduction in the Senate, contingent upon the following required change:

Under Section 6 (c)(1) Definition of State, the word "also" needs to be inserted so the text reads "In this subsection, the term "State" *also* includes..."

Failure to include this insertion would eliminate the state's ability to enter into cooperative agreements with the Secretary, which gives the state the ability to work on threatened and endangered species for recovery, and the ability to receive Cooperative Endangered Species Conservation funds. With this letter, we also offer the following additional comments which may help improve the success of your efforts.

We are supportive of the inclusion of language that codifies state's authorities and an increased collaboration with the states, however we want to highlight that there are over 40 years of case law and policy changes that have occurred in regards to the ESA that have not been included in this amendment. We believe a thorough comprehensive review of those administrative records will allow for the necessary changes to be codified into this amendment before it is presented before Congress.

§1531 Section 2 Congressional Findings and Declaration of Purposes and Policy

The Department appreciates and supports the inclusion of state jurisdictional authorities under (a)(4), the inclusion of cooperation with state agencies under (c)(2), and the inclusion of conservation actions that can preclude the need to list species (c)(4). State agencies have more flexibility to implement actions to improve a species status before the regulatory effects of the ESA restrict those actions.

§1532. Section 3 Definitions

The Department agrees with all the additions to the Definitions Section, but have further clarification suggestions below.

We call attention to the term "expertise" in the proposed definition (3)(B) as this word is subjective and could be misinterpreted without a specific definition.

Regarding definition (8)(A), the U.S. Fish and Wildlife Service (USFWS) proposed a definition of "habitat" (FWS-HQ-ES-2020-0047) under court mandate in August 2020 to be the foundation for the definition of "critical habitat." The Department disagreed with the USFWS's preferred alternative, and instead proposed new language which defines habitat as:

The physical places that are ecologically necessary to the survival of an individual for one or more life processes. Habitat includes areas where individuals of the

species do not presently exist but have existing ecological attributes for one or more life processes necessary to the survival of an individual.

We believe the inclusion of the definition of “habitat” is prudent within this amendment to help clarify the meaning of “critical habitat.” In addition, the term “essential for the conservation of the species” within the definition of “critical habitat” has been subject to varied interpretation across USFWS regions, and in certain cases, has inappropriately regulated hundreds of thousands of acres. We contend that “critical habitat” should only be declared to preserve the existing population’s status while other actions are implemented to improve that status, and this should be codified in the amendment under Section 4(b)(2).

The definition of an Impacted State (14) is too narrow, and should include a state that would be affected by any regulation. There are many instances where critical habitat was designated in states where no known population of a species existed, but because of the phrase “essential for the conservation of the species,” the unoccupied state was affected. We recommend a better term of “Affected State,” using common meaning of being “influenced or touched by an external factor.”

This amendment failed to incorporate the proposed Revision of the Regulations for Listing Species and Designating Critical Habitat (FWS-HQ-ES-2018-0006). The Department was in support of the proposed changes which clarified the terms “Foreseeable Future (M-37021),” “Not Prudent,” and clarified when the Secretary would designate unoccupied areas as critical habitat (Section 4). We believe this should be codified in the ESA through this amendment.

§1533. Section 4 Determination of Endangered Species and Threatened Species

Throughout this section are timelines for when the Secretary must complete certain tasks (i.e. Approval of Modification of Recovery Goals within 90 days, initiate a status review within 30 days, etc.). These timelines have subjected the USFWS to numerous procedural third-party lawsuits under Section 11(g). The Department would caution the inclusion of these timelines, however, if necessary and at a minimum, ensure that the USFWS has enough time to accomplish these tasks to avoid procedural litigation. Similarly, petitioners have found value in multi-species petitions to ensure failure of the procedural timeline. A value added insertion limiting these petitions to one species is warranted as has been defined in policy within the past few years.

The Department believes the amendment missed an opportunity under (b)(2) to amend the language for the Secretary to not approve critical habitat when the species is a habitat generalist. In the early years of the implementation of the ESA, many species (e.g. Bald eagle, Peregrine falcon, etc.) were listed without a critical habitat designation due to the variety of habitats they occupied. Current practice is to designate all habitat where the species occurs, or is likely to occur, as critical habitat because it is deemed “essential for the conservation of the species.” The Secretary has the authority to make this determination, but rarely rejects these inappropriate designations. We believe this should be codified in the ESA through this amendment.

The Department would suggest a fundamental change in wording under (b)(2) which would outline a process for the “inclusion” of critical habitat, rather than the current process established for “exclusion” of areas for critical habitat. Clearly, designating critical habitat required to prevent the

extinction of a species is grounds for “inclusion.” A new process would require proof that the designation is necessary to prevent extinction. As written, the ESA requires proof associated with “exclusion” of habitat, that is, to prove that habitat should not be included. Thus, a fundamental change in wording would require justification for including those habitats in the designation, and not justification for not including them in the designation.

The Department appreciates and supports the inclusion of state notifications in the recovery plan goals formation and amendment processes under (a)(4), the delisting, downlisting, and uplisting process under (a)(5), and the petition process under (b)(3). In addition, we appreciate the recognition of state laws that may prohibit public release of species information under (b)(9)(C).

The Department supports and will embrace the inclusion of the leadership role of states in recovery planning and the development of implementation plans throughout (f) Recovery and Implementation. However, wording of this inclusion could be adjusted to be more clear. First, the intent for including the language in (f)(1)(A)(iii)(III) is unclear, and it is used again in (f)(4)(A)(i)(III). Second, state leadership of (f)(2) is not mentioned until section (f)(2)(D) and then again in (f)(4). Moving the text from (f)(4) to the beginning of (f) would ensure clarity of that leadership role.

Related, if a state elects to lead a Recovery Team, Implementation Team, or elects to develop Recovery Plans or Implementation Plans, the Secretary should make available federal funds to states to complete those efforts and tasks through Section 6 (d). Cost savings from the federal government for states to conduct those activities should not be a cost burden to the states. Without this additional funding, some states would find it difficult to elect that leadership role, which contradicts the reason for allowing it to occur. We believe this should be codified in the ESA through this amendment.

Under (f)(1)(B)(i)(I) the Department would like to add the language “or a similar state or multi-state approved conservation plan or agreement” following the phrase “to develop a recovery plan” in recognition that regardless of its name, the purpose of conservation plan or agreement remains the same as a recovery plan. Such agreements are mentioned under (f)(9) for consideration when making a listing decision under (a)(1). Adoption of state led conservation efforts that are identified in a “conservation plan or agreement” by the federal government as the “recovery plan” will solidify the proposed state leadership role in recovery and implementation planning as described in (f)(10). This same insertion should occur throughout the document where states have the option to lead the development of a “recovery plan,” but only if approved by all “Affected Parties.”

It has been our experience that the post-delisting monitoring under (g) does not occur without federal assistance, even though Section 6(d)(1)(G) allows for post-delisting monitoring. The federal government places the burden on the states to fund this federal requirement.

District Court decisions have intervened in the procedures under (h) which have made this particular function of the Secretary implausible. Multidistrict Litigation Settlements now established priority actions and timelines in three-year increments since 2011. This Amendment missed the opportunity to address the court system effectively removing this procedure from the

Secretary. This issue is closely related to our first comment in Section 4 related to the timeframes to complete certain actions and Section 11(g) litigation.

Similar, while we agree with its inclusion of (j), court mandated Multi District Settlements will impede the procedure from ever occurring. Changes to timeframes are warranted, as we commented above, to ensure that enough time is allocated to the USFWS (or States as proposed in the amendment) to reduce procedural litigation under Section 11(g) by third parties.

A caveat to the inclusion of (j)(3) is that the Secretary will make decisions on what constitutes a priority species, without any state influence in that determination. As such, Priority 1 (j)(3)(A)(i) and Priority 2 (j)(3)(A)(ii) species determinations, and the subsequent listing decisions, will be made by USFWS personnel without state input. We have differed in opinion with the USFWS on listing decisions on many occasions, and are reluctant to agree with a priority ranking system that is based solely on input from USFWS employees. We offer a recommendation that items under Section (j) be run through a Committee that offers states the ability to comment on the priority ranking (similar to CITES Appendix I and II Species).

§1535. Section 6 Cooperation with States

The Department appreciates and supports the inclusion of state jurisdictional authorities under (a), but would appreciate a reference section number for this statement under (a)(1)(B) “except as otherwise provided in this Act.” Without reference to a particular section, the Department is unaware of any instance where the Secretary may exercise a “specific authority to manage a threatened species or an endangered species.”

There is a fatal flaw in this document under (c)(1) amended definitions that passively excludes states from entering into cooperative agreements with the Secretary. We believe the intent of the insertion was to include Native American tribes within the definition of a “state,” but as written passively excludes “states.” As written, this section does not allow for states to enter into cooperative agreements. It is through the cooperative agreements that the states are authorized to work on threatened and endangered species for the purposes of implementing recovery actions through the submission of annual work plans, and the ability of states to receive Cooperative Endangered Species Conservation Funds through the USFWS. A revision under (c)(1) is necessary to include the word “also” in the statement “In this subsection, the term “State” *also* includes...”

Similar, this amendment fails to codify 50 CFR § 17.21, 17.31, and the insertion of direction from Deputy Director Rowan Gould’s Memorandum of June 13, 2012 regarding the Joint Task Force on Endangered Species Act Policy - Take Working Group. Failure of consistent application of 50 CFR § 17.21 and 17.31 led to the necessity of the Deputy Director’s Memorandum to clarify and reaffirm states take authorities. Codification of those in this Amendment would reduce individual interpretation of those authorities.

§1536. Section 7 Interagency Cooperation

Under (a)(2), the Department has had considerable difficulty with federal funding agencies recognizing state’s authorities under Section 6, and have held federal funding to ensure compliance

with (a)(2). This practice has limited the Secretary's ability to implement Cooperative Agreements established with the states under Section 6(b), and the ability for the Secretary to allocate funds for actions under Section 6(d). Throughout Section 7, there needs to be language inserted that exempts federal agencies when working with states on the implementation of activities for species covered under Section 6(b).

§1539. Section 10 Exceptions

Under (j)(2)(B), this amendment missed the opportunity to treat each member of an essential experimental population outside of the National Wildlife Refuge or the National Park System as a threatened species due to the successes of release efforts within those boundaries. Members of experimental populations outside these boundaries are fully protected (i.e. endangered status), even though the population is designated experimental. This limits states abilities through Section 6 to capitalize on those successes and reintroduce populations in similar adjacent habitat. Similar, it also limits the state's ability to work within those boundaries without an appropriate Section 10 permit. Modifications to this language should occur to designate a nonessential experimental population in adjacent habitat in conjunction with essential experimental populations designations, and allow for the treatment of those populations within the National Wildlife Refuge or the National Park System as threatened for Section 6 authorities to apply.

The Department appreciates the opportunity to review this important document and look forward to its passage to modernize and improve the efficacy of the Endangered Species Act.

September 23, 2020

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) thank you for your continued work to modernize the Endangered Species Act (ESA or "Act") through S.4589, the *Endangered Species Act Amendments of 2020*. Your bill represents a long-awaited step forward in restoring common sense to species conservation that will ultimately restore the effectiveness of the ESA. As groups who represent hundreds of thousands of livestock producers and land managers across this country, we offer our support to your legislative effort.

PLC is the only national organization dedicated solely to representing the roughly 22,000 cattle and sheep producers 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 is the national trade organization representing the interests of the over 100,000 sheep ranchers located throughout the country who have produced America's lamb and wool since 1865.

Collectively, we previously offered commentary on your discussion draft in 2018 and have remained supportive of the concepts contained in the bill you ultimately introduced. Each provision in this bill addresses a key failure of the ESA that compromises species recovery efforts. As producers whose primary livelihoods are based on healthy ecosystems that sustain our livestock and our communities, we support the intentions of the ESA, despite its failings at multiple levels over the last several decades.

Natural resource management efforts, including species conservation and recovery, are most successful when all landowners and managers are engaged in complementary activities. Put simply, an ESA listing has historically been perceived as a punitive response to "failed" pre-listing conservation efforts because many of these pre-listing conservation efforts have not been given credence under the Act. S.4589 recognizes that ranchers are intimately engaged in proactive, voluntary conservation efforts that benefit species – both those imperiled and with thriving populations – far before any federal authority seeks to require additional regulatory protections. These voluntary conservation efforts are time- and labor-intensive activities that ranchers seek out for the benefit of the habitats they manage, and should be recognized for the conservation value they add. Equally, federal authorities should be able to consider the full scope of on-the-ground conservation activities when evaluating potential protections under the Act so they are best able to consider all factors when directing resources to the most beneficial use. The ESA is too often punitive and unduly burdensome for America's ranching community, so this provision is a key improvement of the most recent bill.

We appreciate the continued affirmation that wildlife management is an authority delegated to states, except in specific circumstances like those provided for under the Act. Further, the undersigned groups appreciate the recognition that the ESA provided for a step-by-step process to evaluate a

species' status, develop a plan to recover the species if imperiled, and return the species to state management once recovery objectives are met. Without question, that process has been violated or unreasonably extended in many circumstances, so the effort to codify the prioritization system and the defense of the Service's authority to work with states to demonstrate recovery during the 5-year post-delisting monitoring period is widely appreciated by our groups. Clear metrics and clear expectations are critical for success of recovery efforts and help to incentivize good-faith participation from all participants.

Chairman Barrasso, thank you for your continued recognition that the ESA desperately needs significant improvement. While our groups' collective previous comments reflected our industry's desire to make more aggressive changes to the Act, we acknowledge the need to build a larger coalition that provides for legislative success. We are hopeful that in building a legislative record on S.4589, we are able to work with the committee to ensure future implementation of the Act does not elicit the same economic and social harm for ranchers and rural communities that we have seen in the past. Strong local economies and motivated private landowners are key to leveraging success for species that are most imperiled.

Thank you for the opportunity to work with you and the Committee. We appreciate the opportunity to provide our input on behalf of our members – the nation's food and fiber producers. We stand ready to aid the Committee as it works to bring the ESA into the 21st Century.

Sincerely,

American Sheep Industry Association
 Association of National Grasslands
 Public Lands Council
 National Cattlemen's Beef Association
 American National CattleWomen
 Alabama Cattlemen's Association
 Arizona Cattle Growers' Association
 Arizona Cattle Feeders' Association
 Arkansas Cattlemen's Association
 California Cattlemen's Association
 Colorado Cattlemen's Association
 Colorado Livestock Association
 Colorado Wool Growers Association
 Florida Cattlemen's Association
 Hawaii Cattlemen's Council
 Idaho Cattle Association
 Indiana Beef Cattle Association
 Indiana Sheep Association
 Iowa Cattlemen's Association
 Kansas Livestock Association
 Kentucky Sheep and Wool Producers
 Louisiana Cattlemen's Association
 Maryland Cattlemen's Association
 Meat Sheep Alliance of Florida
 Michigan Cattlemen's Association
 Minnesota Lamb and Wool Producers Association
 Minnesota State Cattlemen's Association
 Mississippi Cattlemen's Association

Missouri Cattlemen's Association
Montana Association of State Grazing Districts
Montana Public Lands Council
Montana Stockgrowers Association
Montana Wool Growers Association
Nebraska Cattlemen
Nevada Cattlemen's Association
New Mexico Cattle Growers Association
New Mexico Wool Growers, Inc
North Dakota Lamb and Wool Producers Association
North Dakota Stockmen' Association
Ohio Cattlemen's Association
Oklahoma Cattlemen's Association
Oregon Cattlemen's Association
South Carolina Sheep Industries Association
South Dakota Cattlemen's Association
Tennessee Cattlemen's Association
Texas Cattle Feeders Association
Texas & Southwestern Cattle Raisers Association
Utah Cattlemen's Association
Washington Cattle Feeders Association
Washington Cattlemen's Association
West Virginia Cattlemen's Association
Wisconsin Cattlemen's Association
Wyoming Stock Growers Association
Wyoming Wool Growers Association



Intermountain Forest Association

2218 JACKSON BLVD, STE 10, RAPID CITY, SD 57702

605-341-0875 FAX 605-341-8651

September 20, 2020

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

Senator Barrasso:

The Intermountain Forest Association (IFA) 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 and Tribes have a vested interest in the effective management of natural and wildlife resources within their borders. However, input from individual states is often discounted as a result of 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,

A handwritten signature in black ink, appearing to read "Ben Wudtke". The signature is fluid and cursive, written over a white background.

Ben Wudtke
Executive Director



Board of Directors
 Michael W. Mobley, President
 Bruce E. Dandy, Vice President
 Sheldon G. Berger, Secretary/Treasurer
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General Manager
 Mauricio E. Guordado, Jr.

Legal Counsel
 David D. Boyer

September 21, 2020

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

Re: Support for Endangered Species Act Amendments of 2020

Dear Chairman Barrasso:

On behalf of United Water Conservation District (United), I write in support of the Endangered Species Act Amendments of 2020. United appreciates your work, and that of committee members and staff, to bring the legislation 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 over 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, avocados, 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.

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.



The Honorable John Barrasso, MD
Senate Committee on Environment and Public Works
September 21, 2020
Page 2

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 that the potential for future listings, and the support of cooperative conservation that is reflected in the legislation would be extremely helpful and productive.

United also understands that the legislation 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 legislation. 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,

A handwritten signature in black ink, appearing to read "Mauricio E. Guardado, Jr.".

Mauricio E. Guardado, Jr., General Manager



ph. 202.406.3600
 f. 202.406.3602
 www.afbf.org

September 22, 2020

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 nearly 6 million member families across the United States, I commend you for your leadership in the development of S. 4589, the Endangered Species Act Amendments Act of 2020. This is an important first step at making reasonable improvements to the ESA and reauthorizing the law for the first time in over 30 years.

Farmers and ranchers play a critical role in protecting endangered and threatened species and it is important that the Endangered Species Act (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 occur to some extent on privately owned lands and more than one-third occur 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.

Historically, federal coordination with farmers and ranchers has been lacking and at best inconsistent. Listing decisions have been 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 47 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.

The “ESA Amendments of 2020” would make several important updates to the law that align with AFBF policies:

- The bill provides for better cooperation between the federal agencies and state and local governments on species conservation measures.
- The bill updates the recovery planning process. AFBF believes recovery planning should be a streamlined process that fully considers the important perspectives and input provided by farmers, ranchers, and private landowners.
- The bill improves transparency for decisions made under the law. AFBF believes listing decisions should be made using sound, peer-reviewed science that is readily available to landowners and the public.

AFBF commends your efforts to identify improvements to the ESA that achieve these objectives and we look forward to working with you to further these goals and to address the many other deficiencies currently limiting the effectiveness of the law. As this legislation advances, we would welcome the opportunity to discuss the addition of language that identifies and includes assurances that the Secretary will provide to landowners and others as part of conservation agreements under the ESA - including candidate conservation agreements with assurances, safe harbor agreements, and habitat conservation plans.

The scope and reach of the ESA are far more expansive today and cover activities and situations not contemplated when it was originally enacted. We applaud your efforts to update and improve the processes and procedures that the ESA put in place forty-seven 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 you to make the Endangered Species Act more workable for private landowners and thus more beneficial for the species that it is intended to help.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Schlegel". The signature is written in a cursive style with a large, stylized initial "P".

Paul Schlegel
Vice President of Public Affairs



September 24, 2020

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 2020

Dear Senator Barrasso:

The American Forest Resource Council (AFRC) is pleased to offer its support for the Endangered Species Act Amendments of 2020, S.4589, introduced on September 16.

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. In the decades since, northern spotted owl populations have continued to decline due to competition from the barred owl and the loss of habitat to catastrophic wildfire as federal forests have become overstocked given the precipitous drop in active forest management. 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 2020 take appreciable steps to improve implementation of the ESA. Title II will improve coordination and input from States which have some of the best local knowledge and information about the 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

American Forest Resource Council
700 N.E. Multnomah, Suite 320 • Portland, Oregon 97232
Tel. 503.222.9505 • Fax 503.222.3255

made by State, private, and other stakeholders. Title III 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 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 2018 Consolidated Appropriations Act 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.

Thank you for your leadership on the Endangered Species Act Amendments of 2020 and we look forward to working with you and the Committee as the legislation is considered further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Travis Joseph".

Travis Joseph
President



The voice of fish and wildlife agencies

1100 First Street, NE, Suite 825
 Washington, DC 20002
 Phone: 202-838-3474
 Fax: 202-350-9869
 Email: info@fishwildlife.org

September 21, 2020

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

Dear Chairman Barrasso:

The Association of Fish and Wildlife Agencies (Association) would like to thank you for the opportunity to review your bill, for introducing the *Endangered Species Act Amendments of 2020* (S. 4589), and for your thoughtful efforts on how to improve implementation of the Endangered Species Act (ESA, Act) via your proposed 2020 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 since 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, which is the Act's fundamental purpose. 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 our Principles for Improvement, which would provide more effective and consistent conservation and protection of species through the development and implementation of recovery plans constructed through collaborative recovery teams and processes; provide consistent processes for uplisting, downlisting, and delisting of a 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; codify the current and supported workplan and prioritization process used by the US Fish and Wildlife Service which will allow for more effective management of workloads and ensure that species in need of priority attention receive it; increase transparency of ESA decisions; and help focus collaborative efforts on management actions that will recover species to the point of no longer needing protections under the Act.

ASSOCIATION OF FISH & WILDLIFE AGENCIES
www.fishwildlife.org

The Honorable John Barrasso, M.D.
September 21, 2020
Page 2

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 since 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 are needed by the state agencies to successfully implement these proposed changes, and the *Recovering America's Wildlife Act* offers an opportunity for proactive, dedicated stateside funding unto such ends. Further, more financial resources are needed by the federal agencies to administer and implement the ESA with the necessary recovery efforts, consultations, permitting, technical assistance, and coordination functions if we are to successfully recover species so they no longer warrant protections of the Act.

We deeply appreciate the opportunity afforded by your draft legislation for States to play a much more integral role in ESA implementation in concert with our Federal agency partners in species management and recovery. Thank you for your leadership on this important issue, and please do not hesitate to contact me if I can provide additional information.

Sincerely,



Sara Parker Pauley
President



Robert C. Lanham, Jr, President
Dan K. Fordice, III, Senior Vice President
Lester C. Snyder, III, Vice President
Jeffrey L. DiStefano, Treasurer
Stephen E. Sandherr, Chief Executive Officer
Jeffrey D. Shoaf, Chief Operating Officer

September 22, 2020

The Honorable John Barrasso
Chairman
Committee on the Environment and Public Works
U.S. Senate
Washington, DC 20510

Dear Chairman Barrasso,

On behalf of the Associated General Contractors of America (AGC) and its more than 27,000 construction contractor firms, suppliers and service providers across the nation, I am writing to express our support for S. 4859, the Endangered Species Act (ESA) Amendments of 2020. Thank you for your continued leadership and effort to focus the ESA on the recovery of species, building partnerships, and finding solutions that work in the real world.

The current administration has taken bold steps to update the rules implementing the ESA related to consultations, critical habitat, and threatened species. AGC supports the ESA Amendments of 2020 because it builds on those improvements by empowering States and Tribes in the recovery of species, permitting the prioritization of resources, promoting recovery and delisting, and incentivizing engagement in voluntary conservation efforts. AGC also supports studying the administrative and litigation expenses associated with the ESA. AGC hopes the bill's focus on recovery planning and stakeholder involvement will garner bipartisan support.

Again, AGC appreciates your leadership on this important issue. ESA Amendments Act of 2020 would help protect species while enabling critical infrastructure projects to continue. AGC looks forward to working with the Committee to modernize the ESA.

Sincerely,

Jimmy Christianson
Vice President, Government Relations
The Associated General Contractors of America



P.O. Box 966
Hemphill, Texas 75948
409-625-0206

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

September 18, 2020

Re: The Endangered Species Act Amendments of 2020

Dear Mr. Chairman,

On behalf of the members of the American Loggers Council, representing professional timber harvesters in 36 States across the United States, we write in support of the recently introduced Endangered Species Act Amendments of 2020.

The Endangered Species Act first passed in 1973 is a well-intentioned act that was meant to protect both flora and fauna that was considered imperiled and in imminent danger of extinction. We support the original intent of Congress to protect those species that are in imminent danger of extinction, but over the past 47 years, we believe that the original intent of Congress has become mired in agency bureaucracy and judgements issued from courtrooms whose agendas are not based on the best scientific and commercial data available.

While listing of endangered species is important, so is the delisting decision when recovery goals have been met that allow the States to continue management of the species without the need for federal intervention. Designing and implementing a recovery plan is a critical component of any listing, and empowering the states and other interested parties working in partnership with the federal agencies through federal-state conservation partnerships to meet recovery goals is an important component of the Endangered Species Act Amendments of 2020.

The public has the right to know who the serial litigants are and the dollars that are being spent in litigation and settlements to those that continue to abuse the Endangered Species Act as a means to shut down projects that do not necessarily have an impact on the species but were based more on a procedural issue. The Endangered Species Act Amendments of 2020 would allow for the disclosure of that information.



P.O. Box 966
Hemphill, Texas 75948
409-625-0206

The American Loggers Council applauds the efforts found in the Endangered Species Act Amendments of 2020 to reign in some of the bureaucratic inefficiencies of the ESA and to provide the opportunity for those of us living and working in areas impacted by ESA listings, to be a part of the recovery process.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Dructor", written over a horizontal line.

Daniel J. Dructor
Executive Vice President
American Loggers Council



American Road
& Transportation
Builders Association

250 E Street, S.W.
Suite 900
Washington D.C. 20024

P 202.289.4434
W artba.org

September 22, 2020

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

Dear Chairman Barrasso:

The more than 8,000 members of the American Road & Transportation Builders Association (ARTBA) strongly support the "Endangered Species Act (ESA) Amendments of 2020." We applaud your proposal to constructively updating the ESA in a manner which achieves both species protection and an efficient regulatory structure.

One of the many values of the ESA that it helps to ensure transportation projects are delivered in a manner that benefits both the environment and the communities served by those projects. Unfortunately, the ESA is falling short of its stated goals and is in need of updating.

Specifically, your 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 would help achieve this goal by requiring use of the "best scientific and commercial data" during the ESA decision making process. ARTBA also appreciates the legislation's goal of increasing transparency in ESA litigation by requiring publication of all filed complaints as well as notification to any affected state or county of a proposed ESA settlement.

ARTBA supports this attempt at common sense legislative reform to the ESA and looks forward to working with you to secure its enactment.

Sincerely,

A handwritten signature in black ink that reads "David Bauer". The signature is written in a cursive, flowing style.

David Bauer
President & C.E.O



September 23, 2020
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 and Production Council (AXPC) appreciates the opportunity to voice its support for the Endangered Species Act Amendments of 2020. We appreciate your leadership on this important issue and the steps you have taken to update the Endangered Species Act (ESA).

As you know, AXPC is the national trade association representing the largest independent oil and gas producers in the United States. Our member companies operate in many states around the country, including Wyoming. Dedicated to safety, health, environment, science and technological advancement, AXPC members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate.

AXPC supports the modernizations being sought through the Endangered Species Act Amendments of 2020. These changes would better reflect present-day voluntary conservation efforts and practices to the ESA. AXPC's 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.

The Endangered Species Act of 2020 elevates the role of the states and creates a partnership between the states and federal government in implementing the ESA. In addition to the state and federal partnership, the legislation would provide farmers, ranchers, landowners, local governments, and environmental and conservation groups with a formal opportunity to provide input into the recovery planning and implementation process, which will create increased regulatory certainty for stakeholders who participate in conservation practices.

In keeping with the original intent of the ESA, this legislation puts an emphasis on species recovery. Requiring recovery goals, along with the creation of recovery teams staffed with federal, state, and local wildlife management agencies will help ensure conservation efforts are working and that species can receive proper designation once recovery goals are achieved.

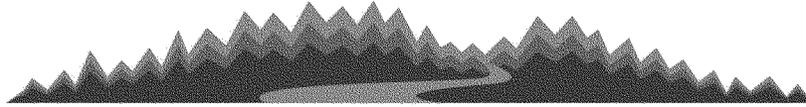
The Endangered Species Act Amendments of 2020 will make much needed updates to the ESA to better protect and preserve threatened and endangered species and their habitat. The legislation will create a holistic approach in the implementation of the ESA, greater transparency, increased regulatory certainty, and encourages conservation practices.

Thank you for the opportunity to provide feedback on this legislation. AXPC looks forward to working with you and your committee staff on this legislation and future legislative initiatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Bradbury".

Anne Bradbury
CEO, American Exploration and Production Council



Black Hills Regional Multiple Use Coalition

P.O. Box 9496 • Rapid City, SD 57709 • 605-341-0875 • Fax 605-341-8651

September 20, 2020

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

Senator Barrasso:

The Black Hills Regional Multiple Use Coalition (BHRMUC) 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,

Don Hausle

Don Hausle
President



OFFICE
500 South Gillette Avenue
Suite 1100
Gillette, Wyoming 82716
(307) 682-7283
(307) 687-6325 FAX
www.ccgov.net

Carol J. Seeger, Commissioners
Administrative Director

BOARD OF COMMISSIONERS
D.G. Reardon, Chairman
Rusty Bell
Robert Maul
Del Shelstad
Colleen Faber

September 17, 2020

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

RE: Endangered Species Act Amendments of 2020

Dear Senator Barrasso:

On behalf of the Campbell County Board of Commissioners, please accept this letter as our support for the above referenced legislation which we understand will be heard by the Committee on Environment and Public Works on September 23, 2020.

We appreciate the work that has been done on this legislation improving and building upon the amendments made in 2018 which enhanced coordination and cooperation with local governments regarding listing decisions and species recovery objectives. We support the proposed 2020 amendments which increase the appropriation authorization with the focus of the increased funding being on recovery plan implementation and voluntary conservation efforts by private landowners. We believe the amendments strengthen the role of states in the implementation of the Act and the opportunity the Act affords states to demonstrate their ability to manage species without federal intervention. Allowing conservation activities to be a factor in determining whether a species should be listed, downlisted or delisted will best serve achieving the goals of the Act.

Thank you for your continued efforts on this important piece of legislation and if there is anything Campbell County can do to assist, please do not hesitate to contact our office.

Sincerely,

D.G. Reardon
Chairman

cc: andrew.harding@epw.senate.gov
jake.kennedy@epw.senate.gov
christina.rabuse@epw.senate.gov

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.


COLORADO FARM BUREAU
Promoting and protecting the future of agriculture and rural values.

September 17, 2020

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 Colorado Farm Bureau (CFB), Colorado's largest agriculture organization representing more than 24,000 member families from around the state, supports the proposed amendments to the Endangered Species Act (ESA), furthering species restoration and coordination. Our diverse membership is a great representation of the success in stewardship and implementation that goes into providing for the continued use and stewardship of our natural resources.

We would like to express our gratitude for the work of Senator Barrasso and the members of the committee. CFB recognizes that the ESA is largely antiquated and in dire need for modernization and clarification. In the last 30 years, Congress has been unable or unwilling to pass meaningful reform to the ESA. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have been left unchecked while fundamentally altering and over-stretching the limits of their control through an onslaught of rulemakings and listings. Comprehensive reform requires clear and effective prioritization.

Chief among these priorities should be promoting stakeholder involvement and states input, as well as modernization of the agencies charged with the implementation of the Act. Thus far, federal coordination with farmers and ranchers is inconsistent and lacking. Agricultural lands are the buffers between wildlife habitat and development and approximately 76 percent of all listed species live on privately owned lands. Farmers and ranchers play a critical role in providing for 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.

Congress intended for the ESA to protect species from extinction, but the law fails to accomplish this purpose by replacing recovery with agenda and politics. Unfortunately, the law does not provide adequate incentives for species conservation and bears heavy penalties for working-lands and those producing food, fuel, and fiber for the world.

We applaud your efforts to update and improve the processes and procedures put in place 45 years ago to better serve the needs of the public and the people affected by the ESA's provisions. ESA implementation must be outcome-based, have regulatory clarity, and ultimately bring people together to achieve the recovery and success of listed species. We stand at the ready to lend ourselves to this effort and future discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Vorthmann".

Chad Vorthmann
 Executive Vice President





FLORIDA FARM BUREAU FEDERATION

THE VOICE OF AGRICULTURE

October 1, 2020

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 continued leadership in the development of the Endangered Species Act Amendments of 2020. As in the 2018 bill, these amendments will help to satisfy the need for state agencies and affected parties to have more substantive 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. The Florida Fish and Wildlife Conservation Commission (Commission) actively monitors the populations and habitats of our threatened and endangered species including the Atlantic Sturgeon, the American Crocodile, the Everglades Snail Kite, and the Florida Panther. The Commission is committed to maintaining the species on state lands and through cooperative partnerships with private landowners in an effort to help each species thrive in a state with an ever-increasing human population.

The Gopher Tortoise (*Gopherus Polyphemus*) is a state-designated threatened species that is a perfect example of a success story for recovery and a model for other southeastern states. The Commission instituted a tortoise and burrow relocation program years ago and this effort has been highly successful where human development has migrated towards active tortoise populations. Additionally, the Commission created Best Management Practices (BMPs) for private landowners that use an incentive approach to maintain and enhance resident populations located on private property. Using incentive BMPs has proven to be much more successful than a regulatory management approach.

Similar programs are in place for the other listed species and the Florida Panther's (*Puma [=Felis] concolor cory*) range and breeding population continue to expand. The Commission works closely with agriculture and other landowners to educate and develop programs to promote symbiotic land management practices that help the Florida Panther 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. As such, we are encouraged to see language that promotes cooperative relationships between

state agencies and private landowners in recovery and implementation plans. The Gopher Tortoise success in Florida emphasizes the success of this type of cooperative incentive-based approach to management.

We do request that any amendments to the Endangered Species Act include economic effects as a consideration in the listing of a species. Also included should be a landowner incentive program for species management.

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.

We support the 2020 Amendments to the Endangered Species Act.

Kind regards,



John L. Hoblick
President
Florida Farm Bureau Federation

Court Boice, Curry County Oregon Commissioner



September 19, 2020

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 2020." – September 23, 2020 Meeting

Purpose: To amend the Endangered Species Act of 1973 to increase transparency, to support regulatory certainty, and to reauthorize that Act, and for other purposes.

Dear Wyoming – U.S. Senator Barrasso – Chair Senate Environment and Public Works Committee...

As you know, we have in our special Southwest Oregon Corner; varied habitats for the Northern Spotted Owl, Snowy Plover, Bald Eagle, Marbled Murrelet, Pacific Martin and various other Wildlife and Fish. Nearly all are either on the "E.S.A. watch list", threatened list, endangered list or changing from one level of listing to a more restrictive measure or another. These routine and at times premature listings severely restrict our Timber Harvest and especially tragic the Catastrophic Fires that incinerate so many of our Wildlife we're desperately trying to protect. The overall and consistent results are negatively impacting our livability, watersheds, air quality, economic vitality, school supports, and public safety.

The Endangered Species Act Amendments of 2020 reauthorization is critically important. The new provisions will enhance the federal-state conservation partnership, and encourage protection through regulatory certainty, increased transparency, and resource prioritization. Very good news to me that this legislation will improve the role of the states in implementing the ESA, and also provides farmers, ranchers, landowners, other regulated entities, and environmental and conservation groups all a more formal seat at the table in the recovery planning and implementation process. From our perspective it will also improve the status review status of a listed species. The bill prioritizes resources for species recovery, ensuring conservation and recovery dollars flow to species most in need.

Again your work and concerns are greatly assisting Rural America with these wise legislative amendments. Those efforts will aid our County in a variety of ways. Oregon sends sincere gratitude to you and your terrific staff.

Court Boice, Curry County Oregon Commissioner

541.247.3220 541.661.6150 P.O. Box 794 Gold Beach, Or 97444 boicec@co.curry.or.us

Rare to the planet! Combining a Big Ocean, Big Trees, Big Mountains, Pristine Rivers and the Wildest Fish...



September 21, 2020

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 your efforts to reform the federal Endangered Species Act of 1973 (ESA). As I understand, the proposed "Endangered Species Act Amendments of 2020" would amend the ESA to increase transparency, increased regulatory certainty, and to reauthorize that Act. I believe the proposed bill is a positive step to address some of the reforms needed to streamline the ESA regulatory process and maximize certainty and outcomes of compliance – a process the DBBC is all too familiar with.

The DBBC is comprised of the eight irrigation districts of Central Oregon that conveys irrigation water to nearly 9,000 farms and ranches in Central Oregon. Agriculture continues to contribute to the region's economy through job creation, capital investment, and reliable economic activity. From thriving farmers' markets in Bend and Tumalo, to internationally competitive farms in Madras, Redmond, and Terrebonne, farming is a critical part of our region's way of life. Irrigation districts play an invaluable role in conveying water supplies throughout the Deschutes Basin to many farm and ranch families, as well as to regional schools, parks, and commercial enterprises.

The DBBC and its members have struggled with elements of the ESA in recent years, specifically related to the Oregon Spotted Frog. We have worked closely with Federal agencies and various regional stakeholders and have seen the value of a state-federal partnership as we contend with conservation and recovery at the regional level.

Having spent the last 12 years developing the Deschutes Basin Habitat Conservation Plan to address threatened and endangered species in our basin, we know firsthand the complications and unintended consequences that can occur as a result of unclear or complicated ESA language and interpretation. As an example, it was difficult for us to obtain the "best scientific and commercial data" for the Oregon Spotted Frog. Is little or no data the "best available"? Lastly, as part of the process a "citizen" lawsuit was brought by 2 environmental groups. One group in particular has a 10-member board and a staff of over 100 people. That resembles a corporation more so than a "citizen". In this case, the DBBC prevailed in Federal court yet the 2 environmental groups were paid for their legal expenses that appear to be more like corporations than they do "citizens".

PO Box 919 - Madras, OR 97741

DBBC Member Districts

*Arnold Irrigation District • Central Oregon Irrigation District • Lane Pine Irrigation District • North Unit Irrigation District
 Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District
 DBBC President - Craig Horrell 541-548-6047 - chorrell@dbbc.org*

As I noted the DBBC believes this to be a step in the right direction in modifying some of the ESA provisions and very much appreciate your efforts in doing so.

We appreciate your consideration of our input. If you have any further questions regarding our comments, please do not hesitate to contact me at (541) 548-6047, or at chorrell@coid.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'CHORRELL', written in a cursive style.

Craig Horrell
President



*Elephant Butte Irrigation District
Of New Mexico*

530 South Melendres
Las Cruces, NM 88005-2826

Telephone
(575) 526-6671
Fax (575) 523-9666
Dispatch Fax (575) 526-8391
Warehouse Fax (575) 526-1530
Engineering Fax (575) 541-5716

www.ebid-nm.org

Staff Members

Gary L. Esslinger, Treasurer/Manager
Leo Barrett, Maintenance Project Director
Gail Norvell, Finance Director
James Narvaez, Irrigation System Director
Delyca Maciel, HR/Safety Director
Erek Fuchs, Groundwater Resource Director
Zack Libbin, P.E., District Engineer
Patrick Lopez, SCADA Systems Director

Board of Directors

Michael McNamee, President
Robert Sloan, Vice President
Sam Salopek, Secretary
Jerry Franzoy
James Salopek
Greg Daviet
Joe Paul Lack
Steve Lyles
Keith Deputy

September 16, 2020

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

RE: The Endangered Species Act Amendments of 2020

Dear Chairman Barrasso:

On behalf of the Elephant Butte Irrigation District (EBID), I write in support of “The Endangered Species Act Amendments of 2020.” We at EBID 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 in our area such as the Southwest Willow Flycatcher and the Yellow-billed Cuckoo.

Of particular importance to EBID is 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.

Finally, the Act 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 "Endangered Species Act Amendments of 2020" 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



September 22, 2020

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 your efforts to reform the federal Endangered Species Act of 1973 (ESA). The proposed “Endangered Species Act Amendments of 2020” would amend the ESA to increase transparency, increase regulatory certainty, and reauthorize that Act. This proposed bill is a positive first step to address the need for pragmatic reforms that will streamline the ESA regulatory process and maximize certainty and outcomes of compliance. This will serve to improve its effectiveness in conserving and recovering species.

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 original intent of the ESA emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers. Instead, the ESA is being implemented at the expense of irrigated agriculture, which is happening in several Western states under current interpretation of the Act. As a result, Western family farmers and ranchers continually face a daunting number of federal regulatory and policy decisions that stem from how the ESA is being implemented. Such federal water resource policies and regulatory practices continue to threaten the economic foundations of rural communities in the arid West by making farming and ranching increasingly more difficult and expensive.

In short, the ESA is not working in the West today.

Federal agency implementation of the ESA has had significant impacts on how producers manage land and water. Importantly, in some areas (e.g. Central Valley Project in California, Klamath Project in Oregon and California, Deschutes River Basin in Oregon, Truckee-Carson River Basins in Nevada), once-certain federal water supplies that were originally developed by the Bureau of Reclamation primarily to support new irrigation projects, in recent years, have been targeted and redirected to ESA purposes. So, in the West, stored water supplies – one of the few certainties in Western irrigated agriculture – have now been added to the long list of existing “uncertainties.” This fact has resulted in reduced crop yields of the foodstuffs that feed our nation while placing rural agricultural communities themselves at risk of extinction.

Wyoming Governor Matt Mead, as Chairman of the Western Governors' Association (WGA), launched the Species Conservation and ESA Initiative in June 2015. Representatives from the Alliance played a prominent public role in several of the 2015 WGA public meetings and webinars, and we participated in every WGA workshop. We applaud the fact that several of the ideas drawn from the Initiative and others are reflected in your bill.

The Alliance generally supports the "Endangered Species Act Amendments of 2020". The legislation includes a number of provisions of interest to our members. For example, some support the "delisting, down-listing, and up-listing" provisions, as well as the more informed process for species recovery provisions of the bill. Others believe the controls placed on intervention and attorneys' fees are long overdue.

Our organization is on record as supporting the improved state-federal consultation provision relating to conservation and recovery of wildlife. Interestingly, in the five years since the WGA initiative – due in part, to the political dynamics within some of our individual Western states – our members' views of the role of states in species recovery have evolved, resulting in a range of perspectives.

Some of our members believe the committee's legislation levels the playing field in a number of areas for states, landowners, and conservation groups. Others, however, are concerned with the new emphasis and elevated role and authority of states in ESA decision making and implementation. They believe this provision has the potential to cause challenges for projects or project impacts that cross state lines, or where state interests may be in conflict with the ESA. They have concerns with new, complex recovery program requirements and the authority, process, and make-up of the implementation teams that would develop and prescribe "site-specific" management plans. They worry that species recovery and site-specific plans developed by the state and teams of stakeholders from across the species' range could create significant regulatory challenges, or undercut their ability to manage their own land, energy, or water resources.

In addition, it appears terrestrial species, including wolves and grizzly bears, may be the focus of some parts of the bill, such as Section 206. We would like to better understand the implications of Section 206 and work with you to prevent unintended consequences for aquatic species, including listed fish. We also believe some of the definitions surrounding ESA implementation – including "best scientific and commercial data", and "citizen suits"- could be improved.

Despite these concerns, we continue to believe that collaboration and consultation with states and private stakeholders as partners are needed to meet the objectives of the ESA. At the same time, the focus of reforming the ESA should emphasize that the law is applied consistently and without conflict of interest.

We especially appreciate the significant effort you and your staff have put into advancing ESA reform to this point, as well as your willingness and interest in continuing to work with us and others to refine this important bill, which has the potential to form the foundation for ESA modernization.

We appreciate your consideration of our views. If you have any further questions regarding our comments, please do not hesitate to contact me at (541)-892-6244, or at dan@familyfarmalliance.org.

Sincerely,



Dan Keppen
Executive Director



P.O. Box 1696
Tallahassee, Florida 32302
Phone: 850.222.5646
www.FloridaForest.org

September 24, 2020

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

Dear Chairman Barrasso:

We would like to express our support for the Endangered Species Act (ESA) Amendments of 2020.

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 124 listed species. Upon review of USFWS information, five of the top ten states are in the Southeastern United States, forestry in this part of the country have dealt with the complexities of staying in compliance with ESA for many years. Individuals involved in forestry and 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 2020 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. Florida has demonstrated their ability to respond to these conditions through the state administered wildlife best management practices program, education/outreach and extensive mitigation projects.

Thank you for this opportunity to provide input and we encourage hasty passage of the Endangered Species Act Amendments of 2020.

Sincerely,

Alan Shelby
Executive Vice President



1101 K Street, NW, Suite 700, Washington, D.C. 20005
Phone: 202-463-2705 • Fax: 202-463-4702
www.hardwoodfederation.com

September 16, 2020

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:

On behalf of the Hardwood Federation, I would like to convey our support for your efforts to reform the Endangered Species Act. The U.S. hardwood products industry is an important contributor to the U.S. economy, adding \$348 billion to the economy according to a 2018 economic impact study. Additionally, hardwood producers and manufacturers directly support more than 685,000 jobs in 25,000 facilities, generating \$35 billion in annual income. Related industries, including transportation, retail, forest ownership and logging, support more than 1.1 million jobs, generate an additional \$67 billion in income, and add another \$212 billion to the economy. 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 The Endangered Species Act Amendments of 2020 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



September 15, 2020

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 2020

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 transparent and responsive to the needs and perspectives of states, local communities and others. These goals are reflected in the proposed Endangered Species Act Amendments of 2020.

HFHC gives a voice to 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 2020 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.

Thank you for bringing forth the Endangered Species Act Amendments of 2020, 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



1010 W. Jefferson St., 951, Boise, ID 83702 | www.iwua.org
P: 208-344-6600 | 208-344-2744 | iwua@iwua.org

September 15, 2020

SENT VIA USPS & EMAIL: andrew_harding@epw.senate.gov,
jake_kennedy@epw.senate.gov, christina_rabuse@epw.senate.gov

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

RE: The Endangered Species Act Amendments of 2020

Dear Chairman Barrasso:

On behalf of the Idaho Water Users Association (IWUA), I write to express our gratitude and support for your efforts to improve the Endangered Species Act (ESA) through the Endangered Species Act Amendments of 2020. This balanced legislation is a vital step in the process to improve the ESA by increasing transparency and regulatory certainty. We appreciate your leadership on this issue.

IWUA is a non-profit corporation representing canal companies, irrigation districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals throughout Idaho. Our purpose is to promote, aid and assist in the development, control, conservation, preservation, and utilization of Idaho's water resources. IWUA has long maintained that amendments to the ESA are necessary. At its recent Annual Convention, IWUA members reaffirmed this by adopting Resolution 2020-4 (Endangered Species Act). A copy of this Resolution is attached.

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.

IWUA is pleased to see efforts to modernize the ESA and return to an emphasized paradigm where species conservation can be achieved in cooperation with state and local

The Honorable John Barrasso, MD
September 15, 2020
Page 2

interests. It is important that these efforts include farmers and ranchers, instead of being accomplished at the expense of agriculture – an all-too-often occurrence in Western states under the current interpretation of the ESA.

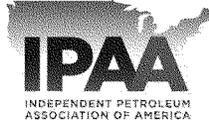
Thank you, again, for your leadership on this critical issue and please know that IWUA stands ready to work with you to advance these important discussions.

Please do not hesitate to contact me at paul@iwua.org if you have further questions.

Sincerely,



Paul L. Arrington, Executive Director



September 21, 2020

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

Dear Chairman Barrasso:

On behalf of the Independent Petroleum Association of America (IPAA), I write to express our support for your legislation, The Endangered Species Act Amendments of 2020. 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.

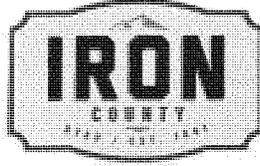
IPAA represents thousands of independent oil and gas explorers and producers that want to ensure species and their ecosystems are preserved for future generations. IPAA's members are active participants in federal, state, and private efforts to protect and conserve endangered and threatened species.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

The Endangered Species Act Amendments of 2020 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



COMMISSIONERS Alma L. Adams; Michael P. Bleak; Paul Cozzens

ASSESSOR - Cindy W. Builoch **ATTORNEY** – Chad E. Dotson **AUDITOR** - Dan Jessen

CLERK - Jonathan T. Whittaker **RECORDER** – Carri Jeffries

SHERIFF – Kenneth K. Carpenter **TREASURER** / Nicole B. Rosenberg

P.O. Box 429, 68 South 100 East, Parowan, Utah 84761 435.477.8300. F 435.477.8847

September 15, 2020

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

Honorable Senator Barrasso,

Iron County, Utah provides this letter in support of amending the Endangered Species Act (ACT) after more than 30 years of initial passage. While the ACT has provided some valuable provision to protect species in peril of decline and extension, it has also been used to stymie management of natural resources and prohibited managers and landowners from properly caring for lands under their control.

We understand the proposed amendment, if passed, will:

- increases the authorization of appropriations by approximately 15 percent over currently appropriated levels;
- focus funding on recovery plan implementation and voluntary conservation efforts by private landowners;
- include provisions to enhance the federal-state conservation partnership;
- encourage conservation through regulatory certainty, increased transparency, and resource prioritization;
- elevate the role of the states in implementing the ESA;
- provide farmers, ranchers, landowners, other regulated entities, and environmental and conservation groups a more formal seat at the table in the recovery planning and implementation process;
- ensure that a status review of a listed species will occur when its recovery goals are met, and that conservation activities by stakeholders will be weighed as a factor when determining whether to list, downlist, or delist a species;
- delay judicial review of a delisting rule during the post-delisting monitoring period required under section 4(g) of the ESA, allowing states to demonstrate their ability to manage the species without federal protections and stopping the ability of activist judges to overturn delisting rules based on policy preferences in conflict with the “best scientific and commercial data available” required under the ESA; and
- prioritize resources for species recovery, ensuring conservation and recovery dollars flow to species most in need.

Iron County commends you for your forward thinking in attempting to make the ACT more meaningful to local concerns, and allowing state and those that own or use the land more control over developing conservation for the species of concern. We further encourage the full Committee to support this proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Cozzens", with a long horizontal flourish extending to the right.

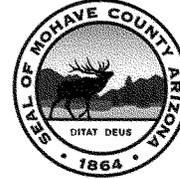
Paul Cozzens
Chairman, Iron County Commission

MOHAVE COUNTY BOARD of SUPERVISORS

P.O. Box 7000 700 West Beale Street Kingman, Arizona 86402-7000
 Website - www.mohavecounty.us TDD - (928) 753-0726

District 1 Gary Watson (928) 753-0722	District 2 Hildy Angius (928) 758-0713	District 3 Buster D. Johnson (928) 453-0724	District 4 Jean Bishop (928) 753-8618	District 5 Ron Gould (928) 758-0739
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County Administrator/County Engineer
 Sam Eilers
 Telephone (928) 753-0729



Clerk of the Board
 Ginny Anderson
 Telephone (928) 753-0731

September 17, 2020

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:

The Mohave County Board of Supervisors has voted to support the contents and passage of the Endangered Species Act (ESA) Amendments of 2020. Rural counties, such as ours, in the Southwestern portion of the United States will drastically benefit from the passage of these amendments. Protection of our most endangered species in this Country is crucial; however, revisions to the Endangered Species Act have been needed for some time.

We wanted to take this time to applaud your emphasis on several key aspects of this proposal and specifically on your emphasis to include local government more in the discussion and process. While state and local government have always had a role in the ESA, these new amendments will ensure that local governments have more involvement in species listing, delisting and recovery. This is the step in the right direction as many times it is local governments who understand the population and conditions of an area better than federal and wildlife agencies. If nothing else, the explicit input will provide broader confirmation on conditions or better identify gaps where adequate data does not exist.

By including states and local governments in the recovery process, we strongly believe that we can finally focus on stopping these populations from further decline. Mohave County for example 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 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.

Furthermore, Mohave County fully supports 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.

We also appreciate the emphasis on 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, we

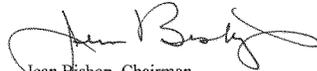
are hopeful that this problem will eliminate itself. Listing a species that is not truly endangered can be very burdensome on local government and economic development opportunity.

An example of this can be seen in the 2017 delisting of the Hualapai Mexican Vole. 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. Had the state and county been more involved in the recovery of this species from the onset, it wouldn't have taken thirty years to properly delist the Vole.

We again want to applaud the work you have done on these amendments. Overall, the language on performance, conservation agreements, best science, and transparency appear to be fully acceptable. The amendments introduced lay out a clear path of implementing a recovery plan and also includes details on revising those plans and ensuring we all come to the same goal of actually trying to save an endangered species and getting its population to grow. We are hopeful that the changes included in these amendments will finally fix many of the issues that have plagued the ESA for decades.

Thank you for the opportunity to comment.

Sincerely,



Jean Bishop, Chairman
Mohave County Board of Supervisors



September 22, 2020

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 2020." 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.

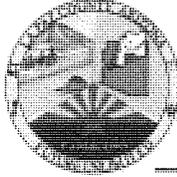
In summary, Klamath Water Users Association strongly supports the draft "Endangered Species Act Amendments of 2020" and look forward to working with you further to advance this important legislation. Please do not hesitate to contact me at (541) 883-6100 if you have further questions.

Sincerely,



Tricia Hill, President
Klamath Water Users Association





La Paz County Board of Supervisors

1108 Joshua Avenue
Parker, Arizona 85344

(928) 669-6115 TDD (928) 669-8400 Fax (928) 669-9709

www.co.la-paz.az.us

D. L. Wilson	- District 1	Ron Drake	- County Administrator
Duce Minor	- District 2	Diane Green	- Clerk of the Board
Holly Irwin	- District 3		

September 21, 2020

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 the opportunity to comment on this updated draft which contains a wide variety of input, including from our county, submitted in 2018. We are pleased to note that most of the changes are comprehensive to reflect the outcomes of recent federal court cases and revolve around making the processes of listing and management up to date and clarified. La Paz County has several ESA issues, associated with both the Lower Colorado River and the land area in both the Mojave and Sonoran Deserts. As such we have had first-hand knowledge and experience working with the 1973 ESA, and welcome the proposed revisions which should simplify operations under the Act, as well as make it current and consistent with federal court rulings which have occurred over the past 47 years.

In reviewing the current proposal, we found the redline version the easiest to work from, and in the comments below, the page references are to that copy which the Committee staff supplied us, with other materials.

With the 2018 draft, we were encouraged with the inclusion of local governments, which was quite specific, along with strong representation and inclusion of the States. We take note that the role of States remains a strong centerpiece of the current re-draft. We are disappointed that the role of local governments seems to have been diminished with the issuance of the current version.

Specifically, on page 4 of the Redline, we believe local government should be defined as counties, boroughs, or parishes within the United States. We further believe that at the appropriate places throughout the re-draft that "affected local government jurisdictions" should be added where States are specified.

In addition, we strongly believe local government should be explicitly named as part of both Recovery Teams and Implementation Teams. Local governments, along with States, should be

notified of potential listings, critical habitat designations, and land acquisitions which are proposed or planned within their jurisdictions. Such notifications should invite, within a time limit, the opportunity to comment on the action. It is critical that the Recovery and Implementation have membership that can bring local knowledge and experience to the table.

We are concerned that 1532 (8)(A) on page 2 defining critical habitat may not be consistent with the 2018 decision by the Supreme Court regarding the dusky gopher frog. The language in the definition in the draft at paragraph (ii) would still allow unoccupied habitat to be designated as critical if the Secretary determined the habitat was required for conservation of the species. As we recall, that was the basis for the Fish and Wildlife Service designation of unoccupied critical habitat which the Supreme Court rejected.

We are pleased to see language on modification to Recovery Plans, at (4)(C) on page 6. Often in our experience, Recovery Plans get cast in concrete, even when new information becomes available, or that experience shows the adopted plan is not recovering the species.

We are pleased to see language which makes Recovery Teams subject to the Federal Advisory Committee Act (FACA). We agree with the removal of language at (f)(1)(C) on page 15 that left Recovery Teams exempt from FACA. Transparency is essential as such plans are being prepared and adopted to avoid the application of bias from among Team members and to assure that permanent records are kept of preparation and deliberation.

We concur with the language associated with conservation agreements and candidate conservation agreements (pp 22-23). The proposed language bring clarity to both the process and the expected outcomes of committed conservation actions by signatories.

The National Listing Workplan is an excellent addition. It will assure the public is fully aware of actions and review being undertaken by the Fish and Wildlife Service, and have such notice well in advance of decisions, so that agencies, units of government, and the public can fully participate in the listing process, and be able generate information about species on the list well in advance of decision-making.

The language in Section 6, beginning on page 28, needs to be amended to include the role of local government, in addition to the role of States in the cooperative processes. The State is fully empowered in the process, but it would be desirable to provide for delegation to local governments and at least inclusion in cooperative agreements.

The draft does not propose significant changes to either the Section 7 or Section 10 processes for consulting regarding projects that may affect endangered or threatened species or adversely affect habitat. We have always been perplexed regarding different standards for mitigation between the two Sections, when the difference is simply whether or not there is a federal nexus for the project. In fact, Section 10 language actual creates a higher standard for proposals on private land than does Section 7. The Section 7 language for "reasonable and prudent measures," (page 35, (b)(4)(ii)), and the Section 10 language for "to the extent practical," (page 48, (a)(2)(B)(ii)), should be made consistent.

In reviewing the draft, we were pleasantly surprised to find Section 1544, which evidently was in the original ESA, and is carried forward in the re-draft. Expenditure accounting for ESA

implementation appears something that has never been required or enforced. In our region, for example, the Government Accountability Office (GAO) found over \$100 million had been spent on desert tortoise listing recovery and monitoring in 2002 by a broad cross section of federal agencies, most notably the Fish and Wildlife Service and Bureau of Land Management. We have no idea what that figure is in 2020, but many more millions, perhaps up to \$250 million or more, have been expended, without recovery. The Department of Defense has become a major player in tortoise research and projects. An annual accounting is essential for public and agency awareness of efficacy and appropriate program direction.

Again, thank you for the opportunity to comment. We look forward to hearings and will follow this closely since we have direct involvement with the Act and its application.

Sincerely,



D. L. Wilson
Vice-Chairman
La Paz County Board of Supervisors



106 Lafayette Street, Suite 3G
Yarmouth, Maine 04096

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

Letter to Senate EPW on ESA Amendments Sept. '20

Dear Senator Barrasso:

I have reviewed the Endangered Species Act Amendments of 2020, and I commend you for introducing these long-overdue amendments that both streamline and expand the conservation capacities of the Endangered Species Act. I strongly support your amendments.

For your background, I started my career (1973-1976) in the office of the Assistant Secretary for Fish, Wildlife, and Parks at the Interior Department, the principal office that drafted the 1973 ESA legislation. Later, I served as assistant to the Chief of the Office of Endangered Species (1977-1980). I have been involved in all previous amendments to ESA, and during my tenure as CEO of the National Fish and Wildlife Foundation (1986-1999), I funded hundreds of endangered species conservation projects.

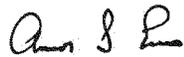
The world of conservation has changed significantly since the landmark passage of the ESA in 1973. Almost all our states now host active, if not robust, endangered species programs, an unheralded success attributable to the original legislation. When the original legislation was passed, the potential role of private landowners was largely unrecognized. Today 71% of the American landscape is in private ownership, and 80% of endangered species habitat lies on private lands. For the past 30 or more years, ESA's focus has veered more towards regulatory compliance rather than an incentive-based construct to maximally engage both state agencies and private landowners in endangered species recovery. Your legislation addresses these issues forthrightly.

Section 203 expands the role and potential leadership of state conservation agencies in species recovery planning and implementation. Section 205 similarly enhances the cooperation and engagement of Indian Tribes. Section 301 elevates the need to implement voluntary conservation agreements to benefit species and their habitats, and specifically encourages landowners' engagement in voluntary conservation agreements. Section 302 stipulates Conservation Agreements as factors in listing decisions: a long-overdue benefit for engaging industry and large corporate landowners, and ranch and forest owners.

Additionally, I support Section 602 for a study to review conservation factors and providing a report to Congress on factors affecting successful conservation activities. Historically entrepreneurial nonprofits have contributed more to species recovery than our federal agencies. I also strongly support Section 604, requiring a study of litigation expenses under section 4(a). Nothing has retarded the recovery of endangered species for the last 30 years more than environmental litigation on listing species. Finally, I support the increased funding authorizations provided in your proposed legislation.

Today's headlines on western forest fires underscore the detrimental impacts the environmental movement has had on America's treasured landscapes. Environmental litigation and the impress of regulatory prohibitions and legislation have prevented proper forest management across our western forests since the passage of the Wilderness Act. We are now paying the piper in lives, treasure, and we now bear witness to an ecological apocalypse across our western forest landscapes. These fires are destroying more and more endangered species habitat annually. It is time to bring proper and maximally engaged state and private management to our conservation priorities. I strongly support all of the provisions in your Endangered Species Act Amendments of 2020.

Respectfully, Amos S. Eno

A handwritten signature in black ink, appearing to read "Amos S. Eno". The signature is written in a cursive, slightly slanted style.

President, LandCAN



**STATE OF MISSISSIPPI
DEPARTMENT OF AGRICULTURE AND COMMERCE**

ANDY GIPSON
COMMISSIONER

September 17, 2020

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

Dear Chairman Barrasso:

The Mississippi Department of Agriculture and Commerce thanks you for your leadership in the development of the Endangered Species Act Amendments of 2020. The Endangered Species Act (ESA) of 1973 is outdated and should be modernized. Emphasis on elevating states' role, increasing transparency, and providing regulatory certainty in the implementation of the ESA is a welcomed and needed change. Agriculture is Mississippi's number one industry, and farmers and ranchers are critical to the protection of endangered and threatened species.

Mississippi has a robust history with regards to conservation and management of natural resources. Our state is predominantly rural and privately owned, with 34,700 farms, 10.4 million acres of farmed land, and 19.7 million acres of forestland. Farmers and landowners across the state work annually with state and federal agencies on important conservation issues and have had great success. From creating extensive critical habitat for black bears to bringing back the American alligator from near extinction, Mississippi is a leader in conservation. Our conservation success is a result of a great partnership among landowners, farmers, state and federal agencies, agricultural associations, and conservation associations. However, improvements to the ESA could be made that would better facilitate federal coordination with the states and their stakeholders.

Under the current ESA, listing decisions are often made without current, accurate, local data. Better decisions can be made with more input from local experts and stakeholders. Mississippi is fortunate to have access to applied conservation research and reliable scientific data. This access is through partnerships among various state agencies, universities, and private entities. Many of our university scientists are considered experts in their fields and are recognized nationally and internationally. State-led and university-conducted research has been instrumental in making conservation decisions for our state. Amendments to the ESA that elevate the role of states in listing decisions would provide opportunities to gain current localized data on species that are in need of protection.

The Honorable John Barrasso
September 17, 2020
Page 2

In closing, thank you once again for your consideration to expand the role of states, to increase transparency, and to provide regulatory certainty in implementation of the ESA. Mississippi agencies and stakeholders welcome the opportunity to improve conservation efforts in our state. We look forward to seeing improvements made to the ESA and the resulting benefits to the species that it is intended to protect.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Gipson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andy Gipson
Commissioner



September 16th, 2020

The Honorable John Barasso, MD (R-WY)
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.

In 2018, the MWGA sent a letter on strong support of your legislation to modernize the Endangered Species Act (ESA). A copy of the just-referenced letter is provided herewith.

A little over two years have gone by since that 2018 letter was sent. However, the passage of time has only heightened the need for ESA reform.

As stated in MWGA's 2018 letter, the ESA is fundamentally broken in that clearly recovered species, such as the Greater Yellowstone Ecosystem Grizzly Bear Population, are barred from being returned to state management due to federal lawsuits. This problem is exemplified by the fact that legislation has been introduced in the US Senate to congressionally delist this recovered population. The just-recited problem is also exemplified that Montana's gray wolf population was only removed from the auspices of the Endangered Species Act (ESA) through Congressional action, not through the ESA delisting process.

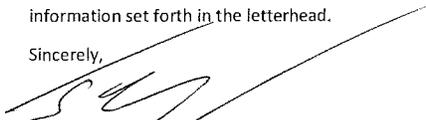
What is more, Montana's sheep and wool producers know from first-hand experience in working with our state fish and game agency, and with the U.S. Fish and Wildlife Service, that there is a clear lack of flexibility in the Act's implementation and enforcement. It is clear to MWGA's membership that state wildlife management agencies should play a greater role in ESA management given that states are instrumental in developing state-specific species recovery plans.

In addition, as the ESA is currently enforced and governed, landowners, such as our members, can find themselves in a situation where, when they take a beneficial management action on their own private land, such actions could lead to greater restrictions on their land due to the new presence of an endangered species. MWGA's membership strongly supports the concept of executing safe harbor-type agreements with private landowners -- a step that could lead to habitat improvement for species protected under the ESA. The species that comes to mind for this concept here in Montana is the greater sage grouse, which such species could benefit from improving the sagebrush ecosystem.

MWGA's membership is under no illusion that there is a magic bullet for ESA reform. However, this does not mean ESA reform is not warranted or critically necessary. Consequently, we appreciate and endorse your bill, The Endangered Species Act Amendments of 2020. If signed into law, your legislation would take a giant leap forward in modernizing the ESA, while maintaining and enhancing the underlying purpose of the ESA to protect at-risk species from extinction.

Thank you for your time and consideration of these comments submitted by MWGA's membership. Should you have any questions about MWGA's support of ESA reform or should you need clarification about issues that were raised in this missive, please feel free to reach out to using the contact information set forth in the letterhead.

Sincerely,



James E. Brown Esq.
Director of Public Affairs
MWGA

Cc: MWGA Board

Encl: (1)

MONTANA
WOOL GROWERS
ASSOCIATION
EST. 1883

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:

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



September 14, 2020

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

RE: Endangered Species Act Amendments of 2020

Dear Senator Barrasso, MD:

The members of the Montana Wood Products Association would like to take this opportunity to thank you for your in-depth review of the Endangered Species Act (ESA) and crafting important and long-awaited amendments to the Act.

Montana is home to five endangered species and 10 threatened species, including the grizzly bear, bull trout and the Canada lynx. The US Forest Service, Region One, has nine lawsuits involving ESA complaints currently awaiting court decisions. Most notably involving the grizzly bear and the Canada lynx. These lawsuits have stymied hazardous fuel reduction projects from moving forward with important environmental analysis and project implementation.

The issues surrounding lynx critical habitat were compounded with a 2015, Ninth Circuit Court *Cottonwood* decision that the U.S. Forest Service needed to reinstate consultation with U.S. Fish and Wildlife Service at the programmatic level. As a result, courts halted projects during the consultation process throughout 18 national forests inhabited by lynx. In 2018, a partial legislative fix was achieved, but "new information" claims under the *Cottonwood* decision continue to have damaging implications for forests in Montana and across the West. Therefore, we support ESA reforms leading to better resource management on the ground and a path forward for species down-listing or delisting.

Montana's elected leaders and interested stakeholders are working together to keep the sage grouse and the little brown bat from receiving an adverse ESA listing and to secure a path forward to delist the grizzly bear in Montana. Therefore, there are several provisions in the proposed amendments to the ESA that not only strengthen federal-state conservation partnerships and decision-making processes, but also provide an important path to species recovery, down-listing, or delisting.

It is important that recovery goals be based on the best scientific and commercial data available, to the maximum extent practicable, and contain objective and measurable biological criteria. In addition, development of recovery plans, implementation plans and implementation must be informed by

feedback from parties with a direct interest in the land in which the relevant species is believed to occur, including qualified scientists and representatives of private and public landowners, agricultural and energy production, natural resource commodity groups and user industries, homebuilders, water resources groups, outdoor recreation groups, environmental groups, and land, habitat, and wildlife conservation groups.

We support that the Secretary shall provide the state the opportunity and increased flexibility to lead recovery and implementation planning, and implementation to expedite threatened or endangered species recovery by supporting state-level initiatives and partnerships.

We support encouraging conservation activities that gives weight to voluntary conservation agreements benefiting species and their habitats, that include states, tribes, local governments, landowners, and other impacted stakeholders

Since Montana has been ground zero for litigation for the past 30 years, it is imperative that the Secretary make publicly available any action brought for an alleged failure by the Secretary to perform any non-discretionary act or duty under section 4 of the ESA. Each affected party should be given a reasonable opportunity to move to intervene in the action prior to a filling of a motion for a consent decree or to dismiss the case pursuant to a settlement agreement. In addition, any settlement discussions relating to the action should include each intervenor that is an affected party.

Again, we wish to express our sincere appreciation for your review of the Endangered Species Act and to bring forward much anticipated amendments that will aid in recovering species of concern and that gives states and impacted parties equal standing in their recovery.

Best wishes,

Julia Altemus

Julia Altemus
Executive Director

September 21, 2020

The Honorable John Barrasso Chairman,
Environment and Public Works Committee
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.

Thank you for your unwavering dedication to bring the Endangered Species Act (ESA) into the 21st century. Although ESA is often linked to challenges in the Western U.S., natural resource managers and industry professionals across the country work under outdated ESA requirements/rules/statute. NACD welcomes the updates to the ESA statute included in the *Endangered Species Act Amendments of 2020*.

Land management decisions are best made locally and by the communities impacted by them. Local experts offer unmatched expertise and knowledge. All too often, decisions made in Washington, D.C., even those in good faith, hinder management on the ground and leave a bevy of red tape. Providing states and their residents, including local governments, farmers, ranchers and other landowners, the opportunity to more actively engage on ESA only strengthens on-the-ground management. Conservation districts throughout the country already work with these landowners to deliver locally-led conservation, and these efforts will be supported if they are able to more actively engage in the ESA process to provide this local knowledge.

Expanding funding for voluntary conservation would better relationships between government and landowners. Voluntary and incentive-based conservation practices have worked well for local communities to protect our nation's natural resources for decades. Working with landowners instead of prescribing a regulation helps achieve stronger results, ultimately leading to better management of endangered species.

Over 1,650 species are listed as threatened or endangered, yet, in 2018, only three percent of listed species have successfully achieved recovery. Species recovery is not only a success for natural resource managers, it's also in the best interest of the species. Recovery of the black-footed ferret is a prime example of ESA success. In 1981, a Wyoming rancher discovered the species, which had previously been deemed extinct, on their ranch. Collaborative efforts between the rancher, federal and local government, tribal and additional partners ultimately led to recovery of the black-footed ferret. Unfortunately, ESA often leaves species on life-support, keeping them from achieving recovery that would allow for downlisting or delisting of the species. Yet, with the proper amendments to ESA, species can flourish. Local management efforts can help move this process forward and lend to species recovery.

Local decision-making, rather than litigation, is the most viable way to address environmental challenges and achieve positive results for our nation's threatened species. NACD appreciates your commitment to championing ESA issues and your crafting of this important legislation that offers meaningful solutions.

Sincerely,

A handwritten signature in cursive script that reads "Tim Palmer".

Tim Palmer
President
National Association of Conservation Districts



September 22, 2020

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), and the 3,069 counties, parishes and boroughs we represent, thank you for your efforts to modernize the Endangered Species Act (ESA) through S. 4589, the *Endangered Species Act Amendments of 2020*. Counties appreciate your leadership to ensure species conservation policy is based on the best-available scientific data with the maximum level of involvement from state and local governments. This legislation offers significant improvements to the ESA, and counties hope to see Congress act on it as soon as possible.

Counties recognize the importance of the ESA as an essential safeguard for America's fish, wildlife and plants, and therefore support modernizing it to better achieve conservation goals. We strongly support provisions of S. 4589 that would ensure greater consultation between federal and state wildlife agencies in the development of recovery goals for threatened and endangered species. State and local governments currently serve as important partners with the federal government in resource and wildlife management decisions through Cooperating Agency Status under NEPA and the coordination process mandated under the National Forest Management Act and the Federal Land Policy and Management Act. Furthermore, states and many county governments employ wildlife biologists, land management experts and other individuals with scientific training to develop detailed plans that can inform federal agencies with on-the-ground data.

Many counties have also developed data that can currently assist state wildlife agencies in drafting and implementing wildlife conservation plans. These verifiable, scientific data should be incorporated into federal agency plans, which would reduce timelines and ensure data consistency. For example, the State of Utah has provided funding to every county in the state to develop its own resource management plan to coordinate management actions with state and federal agencies. Similarly, counties in Wyoming have developed county-level socioeconomic baseline data to use in resource management decisions. We appreciate that the 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 policies.

NACo also supports provisions in the bill to ensure greater 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 science and a transparent decision-making process that follows consistent, reliable timelines. 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 necessary environmental protections.

Finally, S. 4589 encourages the development of candidate conservation agreements that would be credited by the U.S. Fish and Wildlife Service when making a listing or delisting determination. Federal agencies should 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. This legislation would help achieve these goals.

NACo stands ready to work with you to promote balanced, locally supported solutions to species conservation challenges through increased transparency in listing and delisting decisions and better utilization of existing scientific data and wildlife conservation agreements, including CCAAs. We appreciate your efforts on this important issue. Counties hope Congress will act swiftly to modernize the ESA by passing the *Endangered Species Act Amendments of 2020*.

Sincerely,

A handwritten signature in black ink that reads "Matthew D. Chase". The signature is written in a cursive style with a large, looping initial "M".

Matthew D. Chase
Executive Director
National Association of Counties



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

Government Affairs

James W. Tobin III
Executive Vice President & Chief Lobbyist

September 22, 2020

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

Dear Senator Barrasso:

On behalf of the more than 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 legislation you authored, the *Endangered Species Act Amendments of 2020*, is an excellent starting point towards reforming the ESA. 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. Specifically, 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 this 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 positive 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.

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 further improvements need to be made. 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 considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Tobin III". The signature is stylized and somewhat cursive, with the first name "James" being the most prominent part.

James W. Tobin III



Vince Malta
2020 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

William E. Malkasian
Chief Advocacy Officer / SVP

Shannon McGahn
SVP Government Affairs

September 8, 2020

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

Re: "Endangered Species Act Amendments of 2020"

Dear Chairman Barrasso:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), thank you for introducing the "Endangered Species Act (ESA) Amendments of 2020." This is an important first step at reforming the ESA and reauthorizing the law for the first time in over 30 years. NAR looks forward to working with you to recognize and strengthen the role of private landowners and the regulated community to conserve and recover species.

The "ESA Amendments of 2020" would make several important updates to the law. First, the bill provides for better cooperation between the federal agencies and state and local governments on species conservation measures. NAR is committed to ensuring that private landowners and the regulated community can engage state and local officials to protect and recover species.

Next, NAR commends efforts to revise the recovery planning process under the law. Establishing meaningful recovery goals promotes the downlisting and delisting of species when recovery is achieved. Recovery planning should be a streamlined process that fully considers the important perspectives and input provided by private landowners and the regulated community.

Additionally, NAR supports the language to improve transparency for decisions made under the law. We believe that the ESA process for listings, critical habitat designations and other decisions must be informed by publicly available data and allow for full public participation, better data collection and quality, and transparency.

Finally, the legislation calls for reauthorizing the ESA for the first time since 1988. As you are aware, the ESA was first enacted in 1973, and has remained unauthorized since October of 1992. It is essential that Congress fulfill its duty to review, revise and reauthorize statutes to ensure that they remain effective and continue to fulfill their intended purpose.



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Thank you again for your leadership on this important issue. NAR and its members are committed to promoting effective and balanced improvements to the ESA that support the protection of fish, wildlife, and plant populations as well as responsible land, water, and resource management.

Sincerely

A handwritten signature in black ink, appearing to read "Vince Malta". The signature is fluid and cursive, with a prominent initial "V".

Vince Malta
2020 President, National Association of REALTORS®



National Association of State Departments of Agriculture
4350 North Fairfax Drive
Suite 910
Arlington, VA 22203
Tel: 202-296-9680
www.nasda.org

September 21, 2020

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) supports the goal of conserving threatened and endangered species. 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's role in the implementation of the ESA which has been a long-term policy priority of NASDA. 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.

NASDA supports provisions of the legislation that mandate reliance on the "best scientific and commercial data available" when making decisions regarding listing and delisting of species, as well as when assessing status and recovery of endangered species. NASDA likewise supports provisions of the legislation that elevate the role of states and provide farmers, ranchers, and environmental groups, a more formal seat at the table in recovery planning and implementation. We appreciate the inclusion of language that supports cooperation with states to the maximum extent possible in implementation. NASDA supports greater partnership between the states and the Services on gathering species and habitat data, the petition and determination processes, preparation of recovery plans, identification of recovery areas, and subsequent status decisions.

NASDA would like to acknowledge that no legislation is perfect. As the bill advances through the legislative process, NASDA would support amendments that address other policy priorities including preservation of private property rights and allowance for a balance between agricultural production and species conservation.

We look forward to working with you to effectively modernize the ESA. If you have any questions, please contact Zach Gihorski, Associate Director, Policy (zach.gihorski@nasda.org).

Sincerely,

A handwritten signature in cursive script that reads "Barbara P. Glenn".

Barbara P. Glenn, Ph.D.
Chief Executive Officer

NASDA grows and enhances agriculture by forging partnerships and creating consensus to achieve sound policy outcomes between state departments of agriculture, the federal government, and stakeholders.



September 22, 2020

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

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 2020, a bill that would accomplish many of the recommendations found in the attached NASF Position Statement - Improving the Effectiveness of the Endangered Species Act. This is an update of our 2015 position paper that was just very recently adopted by our membership. 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, and 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, but we 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.

In addition, special interests frequently use the Endangered Species Act to promote policy positions that delay or severely hamper needed management activities on federal lands such as those administered by the USDA Forest Service and Department of Interior Bureau of Land Management. Changes to the Act that would facilitate an increase in the scope and scale of federal land management are badly needed.

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.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Josten". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Greg Josten
NASF President
South Dakota State Forester



Box 820285 • Memphis, TN 38182-0285
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September 22, 2020

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

Dear Chairman Barrasso:

The National Cotton Council (NCC) appreciates your leadership in correcting inconsistencies and problems within the Endangered Species Act (ESA) by drafting the Endangered Species Act Amendments of 2020. For the last four decades, Congress has failed to act to improve the many problems with ESA and has instead allowed the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the "Services") unfettered power to implement the law any way they choose. The result has been inconsistent application of the law, a lack of transparency in the process, reliance on questionable science, and the use of the law as a blunt force weapon against farmers and landowners.

When the ESA was created in the 1970s, no one visualized the ultimate reach of the law. Based on very tenuous connections to federal funding provided for countless projects and programs, ESA is now used at the federal level to control everything from what small businesses or homeowners can do on an acre of land to what pesticides can be allowed for use by farms and state and local governments. In the meantime, as the lists of endangered and threatened species continue to grow, the Services are failing to show an associated recovery of species or protection of their habitat.

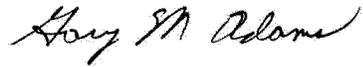
Under the ESA, the federal government often fails to work cooperatively with state and local governments or with private individuals and businesses. Farmers, who work hard to be good stewards of the land and its resources, are often targeted punitively. Federal mitigation requirements and/or fines are expensive and can be very detrimental to a family farm. With the abject failure of the Services to

recover many species, the ESA appears more as a means of generating revenue than as a recovery tool for declining species.

We believe your amendments add clarity of actions, outline a way to begin prioritizing species recovery plans, allocate more funds, and provide a process to leverage partnership support for species recovery through positive engagement.

We support and applaud the efforts of the Committee to improve the ESA and look forward to working with the Committee to improve the law so that it benefits both species protection and landowners.

Sincerely,

A handwritten signature in cursive script that reads "Gary M. Adams".

Dr. Gary Adams
President & Chief Executive Officer
National Cotton Council



August 22, 2020

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 National Grazing Lands Coalition (NatGLC) supports the Endangered Species Act Amendments of 2020. This legislation engages critical stakeholders influencing species recovery and conservation and establishes a path forward for species protected under the Endangered Species Act (ESA).

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. This is achieved through science based technical assistance, research, and education. The Endangered Species Act Amendments of 2020 reinforce these principles.

The Endangered Species Act Amendments of 2020 focus funding resources on recovery plan and voluntary conservation efforts. Recovery plans ensure a path forward for species listed under ESA by leveraging the best available scientific and commercial data and allowing for timely reviews after recovery goals are met. This allows the Secretary to downlist, delist, and uplist species with confidence, direct resource to those species most in need, and minimize court conflicts that drain agency resources.

Enhancing the federal-state conservation partnership through Title II increases on the ground engagement and expedites species recovery through voluntary conservation. State-level initiatives and partnerships increase the flexibility of recovery practices and account for unique factors affecting the species. Likewise, it provides producers a more formal seat at the table. These considerations advance the ultimate goal of conservation – ensuring imperiled species and their ecosystems are protected for generations to come.

Transparency is essential to conservation. Title IV aids in transparency of listing decisions made from sound science. Further, the section provides needed transparency to the amount of taxpayer dollars spent on litigation.

As a producer-led organization, we understand the value of engaging ranchers and landowners in management decisions, and believe grazing can coexist and often support shared recovery outcomes with state and federal agencies. The proposed legislation engages stakeholders like producers as well as grants states the needed flexibility to meet the unique needs of species across the country.

On behalf of our organization, thank you for your work. We support the passage of the Endangered Species Act Amendments of 2020.

Sincerely,

Chad Ellis
 Chair
 National Grazing Lands Coalition

NatGLC Board of Directors

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 - The Public Lands Council

NATIONAL
Aquaculture
ASSOCIATION

September 22, 2020

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:

On behalf of the 3,000 farms in the United States that raise and market aquatic animals and plants, it is our pleasure to voice support for your effort to amend and update the Endangered Species Act to better reflect the investment of land, money and expertise as well as the nationwide conservation ethic supported and embraced by Americans since 1973 when the Act was signed.¹

In addition to the improvements proposed, we suggest that new language be adopted to create a captive-bred exemption for listed species with the Act that mirrors the captive-bred exemption within the Convention on International Trade in Endangered Species of Wild Fauna and Flora that the Act authorizes the United States to implement (Section 8A). A captive-bred exemption under the Act should also preempt state, tribal or local listings. In conformance with the Convention the U.S. Fish and Wildlife Service has codified captive-bred exemption requirements within 50 CFR Part 23 that are unavailable to U.S. farmers, ranchers or breeders because the Act does not authorize similar exemptions in the United States.

During 2020, the American Fisheries Society, the world's oldest and largest organization dedicated to strengthening the fisheries profession, advancing fisheries science, and conserving fisheries resources, is celebrating its 150th anniversary. The AFS was founded in 1870 by citizen scientist's intent on rebuilding declining sport and commercial fisheries in the United States and drew upon European fish hatchery and husbandry experience and technology (Murphy 2020a and 2020b). We request that under ESA Section 4(d) the value of conservation aquaculture for the conservation benefits gained at no cost to the taxpayer be recognized. These conservation benefits include, but are not limited to, the animal husbandry experience, knowledge, applied science and services that have been and could be to a greater extent shared by the farming and ranching communities to assist state and federal agencies in the recovery of listed or at-risk species through public or private captive breeding directed towards population recovery (Fernandez 2005; Rieser 2012; Froehlich et al. 2017). The farming community has shared with

¹ The National Aquaculture Association is a U.S. producer-based, non-profit association founded in 1991 that supports the establishment of governmental programs that further the common interest of our membership, both as individual producers and as members of the aquaculture community. For over 29 years NAA has been the united voice of the domestic aquaculture sector committed to the continued growth of our industry, working with state and federal governments to create a business climate conducive to our success, and fostering cost-effective environmental stewardship and sustainability.

Barrasso Letter
September 22, 2020
Page Two

species recovery efforts husbandry experience and knowledge related to the American alligator, several native and nonnative sturgeon species, abalone, alligator snapping turtle, at-risk salmon species, Eastern oyster, elkhorn and staghorn corals, dwarf seahorse, steelhead trout and marine and freshwater fish hatchery management and operation. When commercial cultured species are listed under the ESA, then farms close and this expertise disappears. An outcome to interest in farming the Nassau grouper and shortnose sturgeon.

Thank you for the opportunity to comment and support much needed modernization of the Endangered Species Act. Please do not hesitate to contact us to answer questions or provide additional comments.

Sincerely,



Jim Parsons
President

References

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- Murphy, B.R. 2020a. AFS roots: The founding five. *Fisheries* 45(1): 6-19.
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- Rieser, A. 2012. *The Case of the Green Turtle: An Uncensored History of a Conservation Icon*. The John Hopkins University Press, Baltimore, Maryland. 352 pp.



STATE OF NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
600 E. BOULEVARD AVE. DEPT 602
BISMARCK, ND 58505-0020

DOUG GOEHRING
COMMISSIONER

September 22, 2020

Senator John Barrasso
307 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Barrasso,

I am writing to express my support of your bill on Endangered Species Act reforms. North Dakota's top two industries are agriculture and energy production, both of which are greatly impacted by the provisions of the Endangered Species Act (ESA).

You have crafted a bill that brings impacted States, Tribes, and local governments into the discussion about how best to use their resources. The spirit of cooperative federalism that has been such a prominent theme recently is a strong force in this bill. It is no secret that agricultural production has classically been seen as direct opposition to wildlife conservation goals. This couldn't be further from the truth. Farmers and ranchers are the original conservationists, the health of the environment is directly tied to successful agricultural production.

This bill takes that cooperative spirit one step further, to bring the landowners to the table as well. A scientist who is studying the environment for a few months can never hope to know the land as intimately as the people who have lived and worked on that land for generations. Since the passage of the ESA, landowners have been told what type of conservation is best for their land based on the ideal environment for a given species. The problem with striving for the ideal is that reaching an ideal is impossible. Under the provisions in this bill, the scientists can bring the ideal situation to the table and landowners can bring a realistic understanding of their land.

The proposed changes create a system that includes the regulated community. Should this bill pass, industry, the people with the most on the line, will be able to join the regulatory community at the table to create a recovery plan consisting of clear, realistic, measurable goals. This simple change provides surety to stakeholders that if they invest in recovery and meet the goals, a species will be delisted.

I support this bill because the proposed changes to the ESA have the potential to be beneficial for all of the groups impacted by ESA decisions.

Respectfully,

Doug Goehring
North Dakota Agriculture Commissioner

NORTH DAKOTA
GAME & FISH
DEPARTMENT

"Variety in Hunting and Fishing"

GOVERNOR, Doug Burgum

DIRECTOR, Terry Steinwand
DEPUTY, Scott A. Peterson

100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095
Phone: (701) 328-6300
FAX: (701) 328-6352

September 22, 2020

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

Dear Chairman Barrasso:

The North Dakota Game and Fish Department (NDGFD) appreciates your efforts in introducing the *Endangered Species Act Amendments of 2020* (S. 4589). The NDGFD views the Endangered Species Act (ESA) as an important tool for the conservation of rare and declining species. It has undoubtedly helped keep rare species on North Dakota's landscape.

The proposed amendments provide states with a greater seat at the table, including the review of the listing/delisting process, recovery planning and implementation. This will afford state agencies a better opportunity to prioritize the resources available to conserve species, as well as the ability to better manage delisted species without federal oversight.

Additionally, including private landowners and conservation groups in the implementation planning process will show greater transparency, improved communication and exchange of information, and ultimately strengthen the ESA's effectiveness by providing early partner involvement. This is especially important in North Dakota where the majority of land is held in private ownership. Without private landowner buy-in, very little can be accomplished.

We also appreciate and support the request for more financial resources. The ESA recovery has been historically underfunded. If additional fiscal resources can be directed to the appropriate state and federal conservation entities, meaningful conservation of rare and declining species can be achieved on a regional and nationwide scale.

The NDGFD supports the amendments provided in your legislation and is encouraged by the opportunities they would provide for state agencies in the planning and implementation of the ESA. Thank you for your leadership on this important issue.

Sincerely,



Terry Steinwand
Director



P.O. Box 218 • Hulett, WY 82720
 P: 307.467.5252 F: 307.467.5418
 www.neimanenterprises.com

September 23, 2020

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.

 TORCH AWARD



SFI®



NATIONAL ENDANGERED SPECIES ACT
REFORM COALITION

1050 Thomas Jefferson Street, NW, 6th Floor
Washington, DC 20007
tel. 202.333.7481 fax 202.338.2416
www.nesarc.org

September 16, 2020

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

Re: "Endangered Species Act Amendments of 2020"

Dear Chairman Barrasso:

On behalf of the National Endangered Species Act Reform Coalition (NESARC), I am writing to express our gratitude for the development and introduction of the "Endangered Species Act (ESA) Amendments of 2020." This is an important first step at making reasonable improvements to the ESA and reauthorizing the law for the first time in over 30 years. NESARC looks forward to continuing our work with you to ensure the legislation recognizes and strengthens the importance and value that private landowners and the regulated community have in the implementation of the ESA to conserve and recover species.

NESARC is the country's oldest broad-based, national coalition dedicated solely to achieving improvements to the ESA and its implementation. Our membership includes agricultural interests, cities and counties, commercial real estate developers, conservationists, electric utilities, energy producers, farmers, forest product companies, home builders, landowners, oil and gas companies, ranchers, realtors, water and irrigation districts, and other businesses and individuals throughout the United States. NESARC and its members are committed to promoting effective and balanced legislative and administrative improvements to the ESA that support the protection of fish, wildlife, and plant populations as well as responsible land, water, and resource management.

The "ESA Amendments of 2020" would make several important updates to the law that align with long-standing NESARC priorities and principles. First, the bill provides for better cooperation between the federal agencies and state and local governments on species conservation measures. NESARC supports increased state and local involvement in the ESA decision-making process. As the bill moves through the legislative process, we are committed to working with you to ensure that private landowners and the regulated community are able to engage on equal footing with other stakeholders, including state and local partners, to achieve the protection and recovery of species.

The Honorable John Barrasso MD
Re: "Endangered Species Act Amendments of 2020"
September 16, 2020

Next, NESARC commends efforts to revise the recovery planning process under the law. Establishing meaningful recovery goals provides objectives for everyone to work toward and promotes the downlisting and delisting of species when recovery is achieved. Recovery planning should be a streamlined process that fully considers the important perspectives and input provided by private landowners and the regulated community.

Additionally, our coalition applauds language in the legislation to improve transparency for decisions made under the law. We believe that the ESA process for listings, critical habitat designations and other decisions must be informed by publicly available data and allow for full public participation, better data collection and quality, and transparency. We commend your initial efforts to identify improvements to the ESA that achieve these objectives and look forward to working with you to further these goals.

NESARC also supports provisions in the bill that direct the Secretary of the Interior to implement standard procedures, develop templates, and undertake other actions to simplify and streamline the process for developing and executing conservation agreements. As this legislation advances, we would welcome the opportunity to discuss the addition of language that identifies and includes assurances that the Secretary will provide to landowners and others as part of conservation agreements under the ESA - including candidate conservation agreements with assurances, safe harbor agreements, and habitat conservation plans - and that promotes collaborative conservation.

Finally, the legislation calls for reauthorizing the ESA for the first time since 1988. As you are aware, the ESA was first enacted in 1973, and has remained unauthorized since October of 1992. It is essential that Congress fulfill its duty to review, revise and reauthorize statutes to ensure that they remain effective and continue to fulfill their intended purpose. In the case of the ESA, a three-decade span between authorizations has resulted in poor outcomes for species and a significant increase in litigation that can be directly attributed to an outdated law that requires Congressional attention.

Thank you for your leadership on this important issue. Please do not hesitate to contact me, or NESARC's Executive Director, Jordan Smith, if we may be of additional assistance.

Sincerely,



Ryan R. Yates
Chairman



RICH NOLAN
President & CEO

September 23, 2020

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:

On behalf of the National Mining Association (NMA), thank you for your continued efforts to modernize the Endangered Species Act (ESA) through reforms that improve species outcomes while respecting the views of parties with a direct interest in the land in which the relevant species is believed to occur. Your legislation, the Endangered Species Act Amendments of 2020 (S. 4589), much like your discussion draft in the previous Congress, provides concrete steps to ensure improved species recovery, proper recognition of existing conservation efforts – voluntary or otherwise – being done by stakeholders, all while ensuring a balanced approach is taken to promote land access and responsible resource development.

This legislation thoughtfully prioritizes resources through use of a classification system focused on implementing recovery plans for the most imperiled species. This framework is designed to correct one of the most significant criticisms of the ESA, that it perpetuates threatened or endangered status for species. The bill would improve the quality of listing decisions and recovery planning through the prioritization of states' role in ESA implementation and ensures that stakeholders have a more established seat at the table in the recovery planning and implementation process.

The bill also provides time for species management efforts undertaken, as part of the recovery process, to be implemented and have an opportunity to yield results before being blunted by judicial review. Further, the legislation provides greater transparency not only in the listing process but also the review to be undertaken when established recovery goals are met. Greater transparency with respect to the science used in making listing decisions will also enhance the integrity of decisions.

The Honorable John Barrasso
September 23, 2020
Page Two

The need to weigh species conservation and recovery with the economic needs of those who live and work in the area is a hallmark of this legislation. The Endangered Species Act Amendments of 2020 strikes the right balance to achieve both objectives.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Nolan", with a stylized flourish extending to the right.

Rich Nolan



NEW MEXICO ASSOCIATION OF CONSERVATION DISTRICTS NMACD

163 Trail Canyon Road
Carlsbad, NM 88220

575 361-1413
conserve@nmacd.org

September 21, 2020

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

***Re: New Mexico Association of Conservation Districts Support of legislation
"The Endangered Species Act Amendments of 2020"***

Dear Chairman Barrasso, 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 75 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,

James Williams, NMACD President



September 11, 2020

The 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 2020"

Dear Chairman Barrasso:

Thank you for your efforts to streamline and improve implementation of the Endangered Species Act (ESA). NRECA writes to express support for your draft legislation, "The Endangered Species Act Amendments of 2020," aimed at increasing transparency and regulatory certainty.

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities committed to responsibly delivering affordable and reliable electricity in a manner that conserves our natural resources. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans across 56 percent of the nation's landscape.

Electric cooperatives are local energy and technology providers that serve nearly every American landscape and ecosystem. Tied closely to their mission to improve the quality of lives in their local communities, electric co-ops care about ensuring America's imperiled wildlife are made available for future generations to enjoy. However, the ESA is failing its stated mission by not adequately recovering listed species, while imposing expensive compliance costs that intrusively hamper those that live and work in rural areas. NRECA's members believe a balance can be achieved that not only supports environmental protections but also ensures the deliverability of reliable and affordable electricity. Your legislation strikes that balance.

The Endangered Species Act was last reauthorized in 1992. With less than a three percent recovery rate, the time has come to use past experiences to update this important law. Among many improvements for electric cooperatives, "The Endangered Species Act Amendments of 2020" would set clear recovery goals around established and measurable criteria as well as grant a clear Administrative pathway for a listed species to be downlisted or delisted, once deemed recovered. Additionally, your legislation would encourage voluntary conservation activities, something many cooperatives have a long history of implementing to benefit wildlife and their habitats. Finally, your legislation would provide much-needed transparency, which would help all

affected stakeholders, including cooperatives, receive timely notice of petitions and opportunity to provide the best data possible to support listing deliberations.

Thank you for your leadership on this important issue. NRECA is grateful to have been participants in this open and transparent evaluation of the ESA and look forward to working with you to advance this legislation in the Senate with the eventual mutual goal of improving the ESA and protecting our abundant natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Finkel', with a large, stylized flourish at the end.

Louis Finkel
Senior Vice President, Government Relations
National Rural Electric Cooperative Association



September 23, 2020

The Honorable John Barrasso
 Chairman
 Senate Committee on Environment and Public Works

Dear Chairman Barrasso:

On behalf of 400 members of the National Stone, Sand, and Gravel Association (NSSGA) I am writing to commend you on holding today's hearing, Modernizing the Endangered Species Act: Legislative Hearing on S. 4589, the Endangered Species Act Amendments of 2020.

NSSGA represents aggregates producers and those who manufacture equipment and services that support the construction industry. Our members are essential to the work of this country, and we represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel consumed annually in the United States. Our members employ more than 100,000 hard-working men and women and are responsible for the essential raw materials found in every home, building, road, bridge and public works project.

Our members care deeply about the environment and often establish critical habitats and other enhancements on their sites that benefit local species and promote biodiversity. However, the ESA permitting process often hampers many aggregates operations as they are tied up in bureaucratic red tape -- that many times does not lead to improving outcomes for the species. As you well know, the current process of obtaining ESA permits can impact infrastructure projects negatively, causing delays, oftentimes stopping projects in their tracks, adding enormous costs to permitting new, job-creating operations.

That is why we appreciate your work in drafting S.4589, which clarifies ESA goals to ensure species are removed from the list when desired population levels are met. Further, we are pleased this bill will promote standardized and transparent scientific decisions and increase consultation with local communities and stakeholders, who should be leading efforts to protect local wildlife.

These reforms build upon recent administrative action to further increase transparency and the effectiveness of the ESA and reduce overly burdensome regulations faced by aggregates producers. NSSGA supports these efforts to cut ineffective red tape and allow aggregates producers to focus on supplying critical construction materials to infrastructure projects instead of spending years tied up in permitting that does not advance critical conservation efforts.

We greatly appreciate your attention to this important issue and work to modernize the ESA to better protect our nation's wildlife. Thank you for your consideration of our views and please do not hesitate to reach out should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Johnson', is written over a light blue horizontal line.

Michael W. Johnson
 President and CEO
 National Stone, Sand & Gravel Association



22 September 2020

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 2020

Dear Chairman Barrasso,

The National Wild Turkey Federation is pleased to offer support for the Endangered Species Act Amendments of 2020. The NWTF is a national non-profit organization dedicated to the conservation of the wild turkey and the preservation of our hunting heritage. Our 250,000 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 legislation, it is evident that many of the proposed amendments are based largely on recommendations that were outlined in the Western Governor's 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.

We also support the stated sense of Congress and the specific amendments to the Act that direct funding to and encourage the implementation of proactive actions to preclude the need for listing a species. It is well known that precluding listing of a species will be the most economic approach in the

long-term. Further, we appreciate the requirement that existing conservation agreements in place for a species should be considered as a factor in listing decisions.

Finally, we support the idea that judicial review of a decision to delist a species should not take place until after the post-delisting monitoring period has expired. Just as we agree that the states should be involved in the listing and recovery process, we also believe that they are well suited to manage recovered populations. After the Secretary determines that a species has met recovery goals, the state and federal agencies should be allowed to manage the species sustainably. Often litigation occurs with the announcement of delisting, and the ability to monitor long-term management for effectiveness is precluded. Requiring that agencies report the fees that they pay to litigants is consistent with the Open Book on Equal Access to Justice Act that passed as part of the John D Dingell, Jr. Conservation, Management and Recreation Act (PL 116-9). This will help Congress to better understand who is receiving these payments.

Thank you for your leadership to improve the Endangered Species Act. Responsible reforms of the ESA are long overdue. We believe that the amendments contained in this bill 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,

A handwritten signature in cursive script, appearing to read "Rebecca A. Humphries".

Rebecca A. Humphries
Chief Executive Officer



September 14, 2020

Senate Committee on Environment and Public Works
Att: Senator Barrasso
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Support of Endangered Species Act Amendments of 2020
MAZ20148

Dear Senator Barrasso:

Please accept this correspondence as the vigorous support of the Organizations noted above for the proposed 2020 Amendments of Endangered Species Act ("The Proposal") targeting enhanced partnership efforts between Federal and State species managers in implementation of the Endangered Species Act. The Organizations were active participants in the Western Governors Association collaborative meetings and efforts organized by the Western Congressional Caucus addressing species conservation and ESA reform and are thrilled to see that process continue to move forward with this Proposal. The Organizations have also participated in a wide range of cooperative efforts around specific species, and it has been our experience that in these cooperative meetings that almost all species specific information, including population counts; specific habitat management actions public and private lands and other critical information that is being provided is coming from state species managers rather than federal species managers. Poor implementation of species management standards after a

species is listed on the ESA is a major challenge that is faced by those seeking access to public lands in a sustainable manner. Many of these challenges are addressed by the Proposal.

Prior to addressing our basis for support of the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 250,000 registered OHV users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to ensure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands. Colorado Snowmobile Association ("CSA") was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport. The Idaho Recreation Council ("IRC") is a recognized, statewide, collaboration of Idaho recreation enthusiasts and others that will identify and work together on recreation issues in cooperation with land managers, legislators and the public to ensure a positive future for responsible outdoor recreation access for everyone, now and into the future. For purposes of this correspondence TPA, COHVCO, CSA, and IRC will be referred to as "The Organizations". The Organizations have been heavily involved in a wide range of Endangered Species management efforts including listing, delisting and more generally focused habitat conservation efforts throughout the Western United States, addressing species including the Canadian Lynx, Wolverine, Sage Grouse and numerous plant and mollusk species based in the California desert area.

The Organizations welcome the Proposal's review and programmatic update of the Endangered Species Act ("the Act") as this review and updating is badly needed based on our experiences with ESA issues and efforts. It is important to remember when the current iteration of the ESA was passed in 1973, cutting edge technology in the home was a kitchen toaster. Just as a home where a toaster is the most advanced technology is badly in need of an update by 2020, Legislation such as the ESA, that has remained largely unchanged since the toaster are equally in need of an update. The Proposal provides that badly needed update.

As a result of the badly out of date structure of the ESA, the ESA is simply not reflecting the management situation on the ground for many species, and this has become a major hurdle to species management. The Organizations believe that the ESA must become both more efficient and more consistent in its impacts between species over time and effectively achieve species populations that allow for the delisting of species. Additionally, our involvement with habitat challenges facing all species have included more generalized efforts targeting landscape level efforts around poor forest health and the impacts of various invasive species that have severely negatively impacting both terrestrial and aquatic habitats for all species. Often simply streamlining landscape level planning on forest health has to start with a major effort simply targeting ESA management issues that are being applied in the area, despite the fact that these standards often are out of date.

These experiences have allowed the Organizations to identify process-related restrictions in efforts to avoid listings of species and delist species once they are listed. It has been our experience that much of the concerns that are driving possible listings of species are based on a lack of scientific research around the species and challenges that may be resulting in the decline of the population, as exemplified around the management of the Canadian Lynx after listing on the ESA. The lack of science for management results in efforts that in no way relates to the challenges facing the species and, in some situations, has resulted in further negative impacts to the population. The Proposal facilitates the development of high-quality scientific information around issues prior to listing rather than listing the species with the hope of development of science at some point later, which can often take decades to develop while faulty science is applied on the ground. This Legislation is a major step towards developing this resource.

The lack of certainty around the basis for listing of a species also greatly complicates any efforts to delist the species as there is simply insufficient information for subsequent efforts to provide a defensible basis for delisting a species. The implementation of population goals that automatically trigger delisting efforts for any species has become a major hurdle as often the desire to simply have more of a species trumps the desire to have a sustainable population of that species. As a result of the difficulty in delisting a species, too often the ESA listing process has also become an alternative method of challenging projects for those that have chosen not to participate in the more general NEPA process around the project.

The additional clarity in management during the times when state recovery teams are working is a significant benefit as a recovery team process is anticipated to take several years. The Organizations welcome this timeframe as developing high quality management for the species must be the standard rather than simply seeking fast management solutions for the species. The Organizations would like to see additional clarity around the use of a possible listing during the recovery team process, as it has been our experience that these time periods often run much longer than expected and managers often rely on this ambiguity as the basis for closure or restrictions in the planning process.

The Organizations would ask that we be included in any further public efforts, collaborations or other efforts around this initiative as this issue and challenge is very important to our members. If you have questions please feel free to contact either Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com or Fred Wiley, ORBA's Executive Director at 1701 Westwind Drive #108, Bakersfield, CA. Mr. Wiley phone is 661-323-1464 and his email is fwiley@orba.biz.

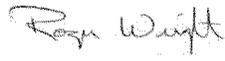
Respectfully Submitted,

Scott Jones, Esq.
Authorized Representative of One Voice



Fred Wiley, ORBA President and CEO;

321

A handwritten signature in cursive script that reads "Roger Wright".

Roger Wright, President – United Snowmobile
Alliance



September 14, 2020

Senate Committee on Environment and Public Works
Att: Senator Barrasso
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Support of Endangered Species Act Amendments of 2020
MAZ20148

Dear Senator Barrasso:

Please accept this correspondence as the vigorous support of the Organizations noted above for the proposed 2020 Amendments of Endangered Species Act ("The Proposal") targeting enhanced partnership efforts between Federal and State species managers in implementation of the Endangered Species Act. The Organizations were active participants in the Western Governors Association collaborative meetings and efforts organized by the Western Congressional Caucus addressing species conservation and ESA reform and are thrilled to see that process continue to move forward with this Proposal. The Organizations have also participated in a wide range of cooperative efforts around specific species, and it has been our experience that in these cooperative meetings that almost all species specific information, including population counts; specific habitat management actions public and private lands and other critical information that is being provided is coming from state species managers rather than federal species managers. Poor implementation of species management standards after a species is listed on the ESA is a major challenge that is faced by those seeking access to public lands in a sustainable manner. Many of these challenges are addressed by the Proposal.

Prior to addressing our basis for support of the Proposal, we believe a brief summary of each Organization is needed. ORBA is a national not-for-profit trade association of motorized off-road related businesses formed to promote and preserve off-road recreation in an environmentally responsible manner. One Voice is a grassroots Organization that focuses on insuring that local experiences and challenges are conveyed to decision makers in Washington overseeing these areas and issues for resolution. The United Snowmobile Alliance (“USA”) is dedicated to the preservation and promotion of environmentally responsible organized snowmobiling and the creation of safe and sustainable snowmobiling in the United States. United Four-Wheel Drive Association (“U4WD”) is an international organization whose mission is to protect, promote, and provide 4x4 opportunities world-wide. Collectively ORBA, One Voice, USA and U4WD will be referred to as “The Organizations” for these comments. The Organizations have been heavily involved in a wide range of Endangered Species management efforts including listing, delisting and more generally focused habitat conservation efforts throughout the Western United States, addressing species including the Canadian Lynx, Wolverine, Sage Grouse and numerous plant and mollusk species based in the California desert area.

The Organizations welcome the Proposal’s review and programmatic update of the Endangered Species Act (“the Act”) as this review and updating is badly needed based our experiences with ESA issues and efforts. It is important to remember when the current iteration of the ESA was passed in 1973, cutting edge technology in the home was a kitchen toaster. Just as a home where a toaster is the most advanced technology is badly in need of an update by 2020, Legislation such as the ESA, that has remained largely unchanged since the toaster are equally in need of an update. The Proposal provides that badly needed update.

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streamlining landscape level planning on forest health has to start with a major effort simply targeting ESA management issues that are being applied in the area, despite the fact that these standards often are out of date.

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recovery team process, as it has been our experience that these time periods often run much longer than expected and managers often rely on this ambiguity as the basis for closure or restrictions in the planning process.

The Organizations would ask that we be included in any further public efforts, collaborations or other efforts around this initiative as this issue and challenge is very important to our members. If you have questions please feel free to contact either Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com or Fred Wiley, ORBA's Executive Director at 1701 Westwind Drive #108, Bakersfield, CA. Mr. Wiley phone is 661-323-1464 and his email is fwiley@orba.biz.

Respectfully Submitted,



Scott Jones, Esq.
Authorized Representative of One Voice



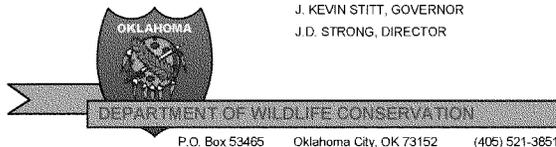
Fred Wiley, ORBA President and CEO;



Roger Wright, President – United Snowmobile Alliance

WILDLIFE CONSERVATION COMMISSION

Bruce Mabrey CHAIRMAN	Bill Brewster MEMBER
Robert S. Hughes II VICE CHAIRMAN	John D. Groendyke MEMBER
Leigh Gaddis SECRETARY	Rick Holder MEMBER
James V. Barwick MEMBER	John P. Zelbst MEMBER



J. KEVIN STITT, GOVERNOR

J.D. STRONG, DIRECTOR

P.O. Box 53465 Oklahoma City, OK 73152 (405) 521-3851

September 18, 2020

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 2020

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 2020 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 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 recovery. Giving State wildlife agencies greater weight in ESA decision-making 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 a lack of adequate funding and resources for species of greatest conservation need.

Letter to Chairman Barrasso
September 18, 2020
Page 2 of 2

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 procedures, is essential for properly managing species recovery and achieving the stabilization that ultimately leads to downlisting or delisting of species.

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



September 17, 2020

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

Jim Stone, Chair
 Ovando, Montana

Duane Coombs, Vice-Chair
 Battle Mountain, Nevada

Shelly Kelly, Secretary
 Broken Bow, Nebraska

Russell Davis, Treasurer
 Ordway, Colorado

Jim Bob Collins
 Mitchell, Oregon

Jerry Doan
 McKenzie, North Dakota

Jim Faulstich
 Highmore, South Dakota

Thomas N. McAvoy, Jr.
 Scotland, Connecticut

Pat O'Toole
 Savery, Wyoming

Bill Owen
 Yale, Virginia

Gary Price
 Blooming Grove, Texas

Bill Sproul
 Sedan, Kansas

Jay Tanner
 Grouse Creek, Utah

Reese Thompson
 Vidalia, Georgia

Dear Chairman Barrasso,

On behalf of the Board of Directors of Partners for Conservation, I write in support of the proposed language included in Endangered Species Act Amendments of 2020 (Amendments) to amend and reauthorize the Endangered Species Act of 1973 (Act). Our organization appreciates your leadership and the leadership of the members of the Committee in efforts to return to the original intent of a more collaborative approach to the recovery and conservation of species subject to 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 our experience, that collaboration through partnerships 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 the first choice rather than the approach of last resort.

The principles and language included in the Amendments reflect the collaborative process undertaken by the Western Governors' Association (WGA) launched in 2015 by Wyoming Governor Matt Mead and continued through their Working Lands Roundtable that has 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, increased implementation investment, 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,

Jim Stone
 Chairman



**ROCKY MOUNTAIN
ELK FOUNDATION**

September 16, 2020

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 Rocky Mountain Elk Foundation (RMEF) appreciates the opportunity to comment on The Endangered Species Act (ESA) Amendments of 2020. RMEF is a nonprofit conservation organization with a mission to ensure the future of elk, other wildlife, their habitat and our hunting heritage. RMEF represents nearly 235,000 members nationwide. Since inception in 1984, RMEF has permanently protected or enhanced nearly eight million acres of North America's most vital habitat for elk and other wildlife.

The primary goal of the ESA is to recover species at risk of extinction. However, outdated language impedes species recovery and is often open to misinterpretation and misuse. Vulnerability to litigation also undermines implementation of the ESA: Presently, an increasing number of decisions for species conservation are being made by the courts, not by experienced wildlife professionals within the federal and state agencies tasked to administer the ESA.

RMEF supports modernization of the ESA, including many provisions outlined in this bill. Title II (Enhancing the Federal-State Conservation Partnership) specifically addresses the need to improve consultation with state wildlife agencies. RMEF supports the proposed language to create an elevated level of engagement with states for species status reviews and recovery goalsetting, as well as planning and implementation of the ESA. In addition, RMEF appreciates language in Title IV (Strengthening Conservation Decision-making Through Increased Transparency) to create an open record of science-based decisions and litigation transparency.

As such, RMEF supports The Endangered Species Act Amendments of 2020 and recommends Congress pass this important legislation to restore the ESA's effectiveness. Thank you for the opportunity to comment on this critically important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kyle Weaver".

R. Kyle Weaver
President & CEO



September 22, 2020

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's Support of the "Endangered Species Act Amendments of 2020."

Dear Chairman Barrasso,

Safari Club International (Safari Club) wishes to express its support for the bill entitled "The Endangered Species Act Amendments of 2020" (ESA Amendments of 2020). This comprehensive piece of legislation would 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 45,000 members worldwide. Safari Club has participated in many lawsuits that demonstrate the need for the changes included in the ESA Amendments of 2020. 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 that wolf population, and the Western Great Lakes Distinct Population Segment of gray wolves. Safari Club also recently participated in litigation regarding the FWS's ongoing efforts to delist the Greater Yellowstone Ecosystem population of grizzly bears. Those cases, among many others, 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, prolongs unnecessary listings of recovered populations, and overly complicates the analysis of how conservation agreements contribute to species recovery and long-term conservation. The ESA Amendments of 2020 provides an important foundation for improvements to the ESA to address these problems and others.

The Role of States in Decisions to List, Recover, and Delist Species

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, even though the continued listing would serve to disincentivize the 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 an appellate court 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 2020's recognition that state input must be a priority. Safari Club supports the bill's requirement that the Secretary consult "to the maximum extent possible" with impacted states and agencies. Safari Club similarly supports the requirement that the Secretary "give full and fair consideration to any comments or recommendations received from an impacted State." In addition, the bill properly would require the Secretary, upon receiving a petition concerning the listing status of a species "give full and fair consideration to any State or Tribal comments submitted" in response.

The ESA Amendments of 2020 similarly would 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 would require that the Secretary "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.

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. 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 2020 would 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.

Safari Club Support for Endangered Species Act Amendments of 2020
September 22, 2020
Page 3 of 3

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 2020 would 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.

Safari Club appreciates the efforts of all those who participated in the work to develop the ESA Amendments of 2020. 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 about these comments, please contact Jeremy Clare, Litigation Counsel and CITES Manager, at jclare@safariclub.org.

Sincerely,



Scott Chapman
President, Safari Club International

cc:
Andrew Harding, andrew_harding@epw.senate.gov
Jake Kennedy, jake_kennedy@epw.senate.gov
Christina Rabuse, christina_rabuse@epw.senate.gov

South Carolina Department of
Natural Resources



Robert H. Boyles, Jr.
 Director

Kevin R. Ryan
 Director of
 Government Affairs

September 22, 2020

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

RE: Endangered Species Act Amendments of 2020

Dear Chairman Barrasso:

Thank you for the opportunity to comment on your proposed Endangered Species Act (ESA) Amendments of 2020. The ESA has been a vital management tool for the South Carolina Department of Natural Resources (SCDNR) as we strive to fulfill our mission to be the steward of our state's natural resources.

We work tirelessly providing the U.S. Fish and Wildlife Service with scientific data to affect good decisions in the management, monitoring and surveying of species which are listed and proposed for listing in South Carolina. We believe the proposed amendments will provide additional clarification on many aspects of the ESA and implementation steps utilized by the USFWS. We are also pleased to see that it provides a strong basis for state involvement with all listing and management decisions. As I am sure you agree, state agencies play a critical role in on-the-ground protection, management, and recovery of these species.

We sincerely appreciate your efforts to enhance the ESA and for allowing us the opportunity to be a true partner in ensuring species recovery and conservation.

Regards,

A handwritten signature in black ink that reads "Kevin Ryan". The signature is written in a cursive, slightly slanted style.

Kevin R. Ryan
 Director of Government Affairs



J.R. Simplot Company
P.O. Box 27, Boise, Idaho
83707 0027
208 780 7318 Business
208 985 4972 Cell

September 17, 2020

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 2020.

Simplot is a privately held agribusiness corporation based in Boise, Idaho. The Company employs more than 13,000 employees worldwide and is engaged in a number of businesses including food processing, farming, fertilizer manufacturing, mining, ranching and other enterprises related to agriculture. The majority of Simplot's U.S. operations are in the upper Midwest, Mississippi River Valley and in the West. These operations include extensive activities on federal lands such as mining and cattle grazing.

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). Simplot has numerous grazing permits and federal mineral leases. As part of the process of securing approvals to conduct these activities, Simplot engages in scientific, policy and economic discussions with federal agencies as to whether listing a particular species is consistent with the 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. We note that a key goal of the 2020 amendments is elevating the role of states in implementing the ESA. Simplot has long had a collaborative relationship in the states where we operate. Recognizing the important role of the states will provide all parties including farmers, ranchers, landowners, regulated entities as well as environmental and conversation groups an opportunity for more direct involvement in the actions that lead to decisions whether to list, down-list or remove a species from the ESA.

While we recognize the importance of the ESA in protecting listed species, Simplot like many others land users across the U.S. has become increasingly concerned that the Act is being used by some groups and activist judges to eliminate multiple-uses of public lands. The 2020 amendments address those concerns by rightly protecting the ability of states to effectively



manage species using the best scientific and commercial data available to meet the requirements of the ESA.

Simplot prioritizes innovative conservation activities in our operations to conserve listed species, however, we recognize that 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 2020 amendments take a needed step by increasing appropriations to focus on recovery plan implementation and voluntary conservation efforts by private landowners. Furthermore, the 2020 amendments provide regulatory certainty, resource priority and most importantly increased transparency to ensure that recovery funding is used for the species most in need.

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
President and CEO





October 7, 2020

October 7, 2020
 The Honorable John Barrasso
 U.S. Senator, Wyoming
 Chairman, Senate Committee on Environment and Public Works
 Washington, D.C.

RE: The Endangered Species Act Amendments of 2020

Dear Mr. Chairman;

Thank you for inviting the Society for Range Management (SRM) to provide testimony on the Endangered Species Act Amendments of 2020. The Society for Range Management's mission is to lead the Stewardship of Rangelands based on sound ecological principles. Our members earnestly understand and value our role in managing rare and protected species as critical components of our rangelands.

SRM supports legislation that expands state and local agency involvement on species recovery teams. This process requires qualified rangeland/habitat ecologists, with demonstrated knowledge of affected species and their habitats, to make scientifically developed recommendations for recovery efforts.

SRM supports the conservation of species and the maintenance and/or restoration of their habitats through the application of sound ecological principles supported by rigorous research.

SRM believes that the provisions in Title II intend to enhance federal and state partnerships and improve the process of species recoveries. Past and current recovery plans have proven to be most effective when federal agencies partner with local experts to restore habitat for threatened and endangered species.

Under Title III, voluntary conservation programs provide flexibility for government agencies and local stakeholders to work under cooperative agreements that improve critical habitat while allowing for multiple-use management of rangelands which, where appropriate, SRM strongly supports.

SRM finds that provisions in Titles IV, V, VI, and VII collectively improve the transparency and efficiency of decision-making made by the Secretary of the Interior and recovery teams, and strengthens trust between public agencies and stakeholders.

For the reasons expressed above, the Society for Range Management supports The Endangered Species Act Amendments of 2020, with the merits of scientifically-sound and ecological-based decision-making, increased emphasis on state and local involvement, and transparency of the review and recovery process.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Hart", written in a cursive style.

Dr. Charles Hart
President,
Society for Range Management



**Western Association of
Agricultural Experiment Station Directors**

**5890 Britannia Drive
Reno, NV 89523
<http://www.WAAESD.org>**

September 16, 2020

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 Western Region's land-grant university agricultural experiment station directors, I am pleased to write a letter supporting several key elements included in "The Endangered Species Act Amendments of 2020."

Species conservation was the first project undertaken after the Western Extension Directors Association 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. Western Region land-grant university scientists and Extension specialists 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.

As Governor Mead stated in the kickoff of 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 Endangered Species Act Amendments of 2020 make significant improvements to the Act by: including provisions for use of the best scientific and commercial data available; including qualified scientists to assist with development and implementation of recovery plans; providing transparency; encouraging voluntary conservation activities; and clarifying pathways for listing, delisting, downlisting, and uplisting.

The WGA workgroups had significant discussion on whether economic and social considerations should be included in listing or delisting decisions. These factors are not in the amendments; however, many of stakeholders thought these were important considerations. We support the recommendations that resulted from the collaborative process sponsored by the WGA. Therefore, we caution delegating the Secretary authority to act on his/her own initiative and recommend that action should only follow the required status review.

We support efforts that bolster the scientific integrity that is the foundation of the Endangered Species Act. Land-grant universities are a valuable source of scientists from Agricultural Experiment Stations and specialist from Cooperative Extension who should be among the go-to experts during ESA decisions. Land-grant university scientists and specialists can add research results, contribute to data interpretation, and bring relevant field experiences and knowledge of the species and ecosystem to the table. Scientists and specialists with both habitat and species-specific experience should be included. Participating scientists and specialists would best serve committees in a technical advisory capacity.

Thank you for your leadership on this important issue. WAAESD is grateful for the opportunity to work with you to make the ESA work better. Please do not hesitate to contact me at bhess@unr.edu or (307) 760-3319 if you have any questions or seek additional information.

Sincerely,



Bret W. Hess
Executive Director



September 21, 2020

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 2020 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,

A handwritten signature in black ink, appearing to read "Kathleen Sgamma".

Kathleen Sgamma
 President

1775 Sherman St., Ste 2700 Denver, CO 80203
 ☎ 303.623.0987 ☎ 303.893.0709 🌐 WesternEnergyAlliance.org



Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

October 7, 2020

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 2020

Dear Chairman Barrasso:

I am writing on behalf of Westlands Water District to express the District's support of your efforts to modernize the Endangered Species Act of 1973 through the proposed "Endangered Species Act Amendments of 2020." The Endangered Species Act was enacted forty-seven years ago, and it is incomprehensible that the Act has been left largely unchanged for four and a half decades, despite the lessons learned through its implementation over that long period. In its existing form, the Endangered Species Act not only fails communities, businesses, and property owners, it often fails the species it was enacted to protect from extinction. In California, there are numerous case studies demonstrating that the Endangered Species Act is in dire need of modernization. Westlands applauds your leadership in this effort.

Westlands Water District is a public agency of the State of California, created by the State Legislature for the primary purpose of supplying irrigation water to approximately 600,000 acres on the westside of the San Joaquin Valley in Fresno and Kings Counties. Farmers served by Westlands produce more than sixty high-value crops, including permanent crops such as almonds, pistachios, and citrus as well as row crops such as melons, sweet corn, broccoli, and lettuce. Westlands' principal source of water is the Central Valley Project, a reclamation project operated by the United States Bureau of Reclamation. Over the last twenty-five years, the quantity and reliability of Central Valley Project water available to Westlands and the farmers it serves has continuously diminished because of the Endangered Species Act's implementation. Today, because of biological opinions issued by the Department of the Interior's United States Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service pursuant to Section 7, Westlands can expect, on average, to receive less than half of the water it contracts with the United States to purchase. Sadly, the numerous species sought to be protected by these biological opinions have continued to decline, often because of the conflicting mandates of the Endangered Species Act.

The Endangered Species Act was intended 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 Act anticipated it would be applied in a way that would foster collaboration and efficiency to further its purposes. Unfortunately, the Act has been implemented in a manner that fosters litigation, rather than collaboration, and often leads to absurd results, including inter-species conflict.

While the current text of the legislation would improve transparency and regulatory certainty, Westlands believes that additional amendments of the Endangered Species Act will further its original purpose and your objectives in introducing the legislation. For instance, in its present form, the Act often requires a species-by-species approach to protection of listed species, and this often leads to inter-species conflict. One potential improvement to the Act would be to provide for a more holistic approach to systemwide species protection, which could be accomplished, at least in part, by consolidating authority to administer the Act in a single Department, the Department of the Interior.

In addition, Westlands is eager to suggest other potential amendments that would clarify provisions of the Endangered Species Act Amendments of 2020. As an example, in its present form, the text of the legislation could be interpreted, as making applicable to proposed federal actions, state laws of general application enacted by states to protect listed species. It is Westlands’ hope the draft legislation would be amended to clarify that state laws of general application will not affect the Section 7 consultation process.

Again, thank you for your leadership in efforts to modernize the Endangered Species Act. Westlands looks forward to working with you and your staff to achieve enactment of this important legislation.

Sincerely,

Shelley Ostrowski

Shelley Ostrowski
Deputy General Manager, External Affairs
Westlands Water District
P.O. Box 6056
Fresno, CA 93703



September 21, 2020

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 Wisconsin Farm Bureau Federation (WFBF) appreciates the efforts of the Chairman to seek additional input from stakeholders on the Endangered Species Act (ESA). The ESA has not been updated in 15 years and WFBF believes it is long overdue.

Thank you for introducing The Endangered Species Act Amendments of 2020. The ESA has worked as intended for protecting species that are on the verge of extinction but continues to hinder efforts once a species has been recovered. There are few success stories that the ESA can point to as a process that worked from designation, recovery, and delisting.

The gray wolf is a prime example of faults in the current ESA process. Under the umbrella of the ESA, 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 make these decisions prone to politics and legal battles based on procedure 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 hundreds or thousands of miles away. Wisconsin farmers have their hands tied when it comes to defending their livestock from depredating wolves and there is no mechanism to manage the population.

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.

The WFBF supports The Endangered Species Act Amendments of 2020.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Bragger'.

Joe Bragger
President
Wisconsin Farm Bureau Federation



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

September 22, 2020

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 soliciting input from Western Landowners Alliance (WLA) regarding the Endangered Species Act Amendments of 2020. We appreciate the work you and your staff have put into the bill and wish to provide the following comments.

The Western Landowners Alliance consists of members from 10 western states, representing more than 14 million deeded and leased 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. WLA supports application of The Endangered Species Act (ESA or Act) not only as a last stop measure to prevent species extinction, but a tool for species recovery. 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.

We are encouraged to see a number of landowner priorities for species conservation reflected in this bill, including funding to support proactive, voluntary conservation, and assuring that states and federal agencies have the appropriate resources to work towards both proactive conservation and species recovery. Additionally, we support efforts to increase transparency and predictability in the implementation of the Act and provide landowners and federal land permittees with greater access to voluntary conservation agreements. While WLA approves of certain provisions contained in the bill, there are also proposals that we take no formal position on or require further discussion and refining. WLA does not convey implicit support or opposition for proposals that are excluded from our comments below. Instead, we choose to focus on those proposals that we believe directly relate to WLA priorities.

Title II – Enhancing the Federal-State Conservation Partnership

Section 201

westernlandowners.org

PO Box 6278, Santa Fe, NM 87502

info@westernlandowners.org



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

WLA is concerned about proposed language directing the Secretary to define in regulation the term "Appropriately Qualified Scientist or Other Qualified Person." Impartial evaluation of the best available science is bedrock to the integrity of the Act. In granting the Secretary the authority to define this term, we are concerned about the potential for politically motivated determinations of what the "appropriate qualifications" are for scientists.

Sections 202 & 203

WLA does not have extensive policy recommendations regarding the role of states in the ESA implementation, but 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 influences how states participate in species conservation efforts. States and federal agencies may also introduce bias into recovery efforts, complicating those efforts and potentially impairing or prolonging species recovery. Delays in recovery efforts adversely impact both species and landowners.

WLA also notes that authority currently exists for states to exercise concurrent jurisdiction with federal agencies to implement the Act. These authorities for species recovery along with other authorities granted under Section 6 of the Act warrant further examination.

Title III – Encouraging Conservation Activities Through Regulatory Certainty

Sections 301 & 302

WLA generally supports the amendments proposed in these sections, particularly those that require voluntary conservation agreements and other voluntary conservation activities and investments to be considered in ESA determinations. Section 302 codifies this by requiring the Secretary to consider a conservation agreement entered into or endorsed by the Services in determinations under Section 4 of the Act. Opportunities for voluntary conservation and providing certainty for landowners is a priority for our organization and our members.

Landowners often invest their own funds in the development and implementation of voluntary conservation agreements. While the avoidance of a listing is not the only reason landowners engage in conservation activities, a clear process to recognize voluntary conservation activities would likely incentivize greater involvement and build support for voluntary conservation agreements among private landowners and federal land permittees.

Section 303

WLA believes the proposal in this section for conservation agreements to serve as regulatory mechanisms under Section 4 of the Act warrants further evaluation for potential unintended consequences. If a landowner enters into a conservation agreement and implements conservation



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

measures in good faith but is later advised that those changes are not adequately conserving species, that landowner should not be penalized.

Sections 304 & 305

WLA is generally supportive of the amendments proposed in Sections 304 and 305. While codifying CCAAs and SHAs in statute may create enhanced certainty and predictability in utilization of these tools, it is essential to reserve administrative flexibility and ensure that the Secretary retains authority to develop new tools and improve CCAAs and SHAs as necessary. Section 304 affirmatively states that a participant in a CCAA may not be precluded from enrolling applicable land, or otherwise participating, in any other federal conservation program. This is an important recognition of the vital habitat, connectivity and other ecosystem services that landowners provide and creates opportunities to further support land management practices that provide numerous societal benefits.

Section 306

WLA supports the amendments proposed in this section. The development of templates, standard procedures, and a simplified application and approval process for conservation agreements would make these tools more appealing and reduce the financial burden they can create for agreement enrollees and the Services. WLA does note that further discussion is required around the amendments that would reduce the burdens associated with reporting and monitoring under the agreements. Monitoring is an important element of agreement implementation and is essential to ensure that agreed upon management actions and habitat conditions are creating meaningful conservation uplift for species in question. Given the scarcity of funding available to support proactive and voluntary conservation, WLA notes the importance of ensuring that activities supported by these funds are actually providing a benefit to wildlife, habitat and working lands.

Additionally, through on-the-ground experience developing programmatic conservation agreements, we identified a need for dedicated funding to support long-term agreement implementation, including compliance and monitoring. Often, local leaders with the ability to translate complex federal processes and to build support for collaborative, voluntary conservation work lack resources to effectively garner landowner support and enrollment in conservation programs. Enabling locally trusted leaders and organizations to take on the long-term burden of holding a permit when a state or other party cannot is key to the success of proactive conservation initiatives.

Title IV – Strengthening Conservation Decision-making Through Increased Transparency

Section 401



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

WLA is generally supportive of the amendments proposed in Section 401. 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 V – Optimizing Conservation Through Resource Prioritization

Section 501

WLA recognizes the 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 further appreciates the emphasis on conservation activities and the recognition that these activities will be considered and allowed time to demonstrate success in the new proposed prioritization process.

We believe that the structure of the 7-year work plan proposed in this section warrants further examination and refinement but support the concept of allowing the Services greater discretion in prioritizing and managing their workload while providing greater predictability to states and other impacted parties on listing timelines. In theory, this predictability builds in additional time for voluntary conservation efforts to come together and demonstrate success.

However, no amount of prioritization or extended timelines will address or accelerate species recovery efforts if the Services and state fish and wildlife managers lack resources to meet the demands of their workload. Adequate funding for staff and recovery efforts is necessary to process status reviews and accompanying 12-month findings in a timely manner. To reduce the rising costs to landowners and taxpayers associated with threatened and endangered species, it is critical that Congress invest in proactive, voluntary conservation before the threat of a listing is imminent. We appreciate your efforts to address these needs in reauthorizing the Act.

Title VII – Reauthorization

WLA supports reauthorization of the Act with sufficient funding dedicated to advance proactive conservation efforts and better support landowners in the conservation and recovery of wildlife species. We understand that it is difficult to determine appropriate funding levels in any reauthorization of the Act given the diversity of competing needs and interests for limited funds.

We believe that the funding levels proposed in this section reflect substantial analysis and balanced consideration of how to best prevent species extinction, accelerate recovery of listed species and provide cost-effective, proactive solutions that avoid the need to list at-risk species in the first place. WLA expresses particular support for the funding stipulations that generate new funding for the implementation of recovery plans and creates mandatory, dedicated funding for private lands-based conservation and conservation agreements. We encourage further bipartisan discussion on means to



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

provide additional technical resources and funding for proactive conservation efforts and support further dialogue on proposals beyond reauthorization to facilitate better implementation of the Act.

In closing, WLA appreciates the progress and improvement in this version of the bill. It takes valuable strides towards promoting proactive, voluntary conservation, advancing species recovery and supporting the critical role that private landowners and federal permittees/lessees play in providing habitat and other services for at-risk species. Where we believe the bill would benefit from further discussion and improvement, we look forward to working with you to clarify or refine these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "L Allison".

Lesli Allison
Executive Director


WYOMING WATER DEVELOPMENT OFFICE

6920 Yellowtail Road
Cheyenne, WY 82002

Phone: (307) 777-7626
wwdc.state.wy.us

Mark Gordon
Governor

Commissioners

Gerald E. Geis	Sheridan Little
Clinton W. Glick	Mike Parcel
Ronald E. Kailey, Jr.	Larry Suchor
Mark Kot	Rodney Wagner
Kellen K. Lancaster	Bill Yankee

Brandon L. Gebhart, P.E.
Director

September 21, 2020

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

Subject: Endangered Species Act Amendments of 2020

Dear Senator Barrasso,

I have had the opportunity to review the proposed, Endangered Species Act Amendments of 2020. The proposed legislation provides needed structural changes and encourages partnerships in the development of species recovery planning and implementation using scientific and commercial data. The Wyoming Water Development Office believes that increased stakeholder participation allows the impacted States a voice in the process and will result in more effective recovery programs.

There are several sections of the proposed legislation I would like to mention, specifically:

- Section 202 requires a solicitation of comments from States and Tribes to a listing petition. It also requires "full and fair consideration" of comments received and written justification to the decisions of the Secretary. This provides transparency in the process and allows an affected party the opportunity to participate fairly.
- Section 203 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 what is to be accomplished and how it will be beneficial to the listed species.
- Section 203 allows an impacted State to request establishment of a recovery team, "comprised solely of parties with a direct interest in the land in which the species are believed to occur". This creates more balance in the process and will likely result in more effective species recovery acceptance and success.
- Section 203 authorizes a recovery team to propose modifications to a recovery goal. This allows new developments and the advancement of scientific and commercial data to inform decisions of the recovery goals.
- Title III recognizes the importance of voluntary participation in conservation agreements. This will provide protections to landowners and encourage voluntary

participation in the implementation of a recovery program. This can have a greater impact on the success of species recovery.

- Section 402 provides affected parties with notice in legal proceedings, the right to intervene in legal actions, and disclosure of legal fees paid by agencies. This will provide transparency and balance to the process.

As one of Wyoming's representatives to the Platte River Recovery Implementation Program, it is easy to see that the changes presented in this legislation will have real, positive impacts on ESA recovery programs. A balanced recovery team, allowance of modifications to recovery goals and developing goals and implementation plans based on scientific and commercial data would greatly benefit the success of the Platte River Recovery and Implementation Program and others like it.

The Wyoming Water Development Office very much supports the proposed Endangered Species Act Amendments of 2020 legislation. It will give all affected parties a greater voice in the recovery and implementation process and provide a scientific based species recovery program.

I appreciate you bringing this legislation forward and offer my support to your endeavor and this legislation. Please feel free to contact me if you have any questions.

Respectfully

A handwritten signature in black ink, appearing to read "Brandon Gebhart". The signature is fluid and cursive, with the first name being the most prominent.

Brandon Gebhart, PE
Director



Mark Gordon
Governor

WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



K. Luke Reiner
Director

September 28, 2020

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

RE: Wyoming Department of Transportation Support for the Endangered Species Act
Amendments of 2020

Dear Chairman Barrasso:

The Wyoming Department of Transportation (WYDOT) is pleased to write in support of the Endangered Species Act (ESA) Amendments of 2020. These amendments allow ample opportunities for state input and involvement and also provide clear guidance for WYDOT and other state departments of transportation (DOTs) in addressing ESA issues. Enhanced regulatory clarity and certainty along with state agency involvement will help state DOTs balance advancing important transportation projects while protecting vulnerable species and habitats.

Further, WYDOT appreciates the inclusion of provisions that it previously supported in the 2018 ESA discussion draft bill, which include: (1) Elevating the role of state conservation agencies in species management, (2) Increasing transparency associated with carrying out species conservation, (3) Providing regulatory certainty for states to facilitate participation in conservation and recovery activities, and (4) Giving greater weight to evidence and information provided on behalf of state governments.

The ESA Amendments of 2020 effectively build on these provisions and enable a transparent and inclusive process that enables cooperation between federal and state agencies as well as other relevant stakeholders in protecting endangered species while promoting efficient status reviews and updates and effective recovery plans and implementation plans.

In conclusion, we commend your leadership in advancing this meritorious legislation to improve the Endangered Species Act reauthorization.

Sincerely,

Luke K. Reiner
Director

Senator BARRASSO. I want to thank all of our witnesses for being part of the hearing today. The hearing record will remain open for 2 weeks.

I want to thank the witnesses for their time, their testimony today.

The hearing is adjourned.

[Whereupon, at 11:59 a.m., the hearing was adjourned.]

