

**TESTIMONY OF DAN ASHE, DIRECTOR
U.S. FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
HEARING ON “THE STATUS OF THE FISH AND WILDLIFE SERVICE’S RESPONSES TO
COMMITTEE SUBPOENAS AND THE CONTINUED LACK OF TRANSPARENCY ABOUT ITS
IMPLEMENTATION AND ENFORCEMENT OF AMERICAN WILDLIFE LAWS”**

September 10, 2014

Good morning Chairman Hastings, Ranking Member DeFazio, and Members of the Committee. I am Dan Ashe, Director of the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to discuss the Service’s extensive efforts to respond to the Committee’s multiple requests for documents related to various topics. Since I last testified before this Committee, the Chairman and I have had the opportunity to speak on several occasions regarding various issues. I appreciate the opportunity to have had those conversations and I welcome a continued dialogue with the Committee and its Members.

The Committee plays a key oversight role in ensuring that the Service fulfills its conservation and public service mission, the foundation of which rests in the numerous wildlife and natural resources conservation laws enacted by the Congress. The Service and the Department of the Interior (Department) recognize and respect the Committee’s oversight role of the federal agencies within its jurisdiction. I hope that, through our conversations, we can continue to accommodate the Committee’s legitimate oversight interests while protecting Department and Service employees’ ability to carry out their important work.

Committee Oversight and Document Requests

Since the beginning of the 113th Congress, the Department and its bureaus have received 37 letters from the House Natural Resources Committee related to document requests on 16 distinct topics. The Department oversees the process used to respond to such requests by each of the individual bureaus, including the Service. To date, during this Congress, the Department has provided the Committee with more than 60,000 pages of documents and a number of related briefings. The Department has dedicated nearly 34,000 staff hours and more than \$2 million in resources toward responding to Congressional document requests, most of which were from this Committee.

For the Service, there have been four separate issues subject to seven document requests and subpoenas between March 7, 2013 and May 30, 2014. Those issues include: a Document request and subpoena regarding enforcement of Migratory Bird Treaty Act (MBTA) and the Eagle Act, a document request and subpoena regarding the listing of the White Bluffs Bladderpod under the Endangered Species Act (ESA), a document request regarding the determination whether to list the sage-grouse under the ESA, and a document request regarding the scientific integrity policy.

The following information provides the current status of the Department's responses to these requests.

Document Request and Subpoena regarding Enforcement of MBTA and the Eagle Act

On May 16, 2013, the Committee requested documents from the Service pertaining to the enforcement of the MBTA and the Eagle Act against energy companies, including: (1) copies of documents related to Service investigations, as well as referrals to the Department of Justice, created between January 2009 and the present; (2) copies of communications between the Service and representatives from wind energy companies; (3) copies of policies, legal analysis, and emails related to enforcement discretion under the MBTA and Eagle Act; (4) communications between the Service and the American Wind Wildlife Institute; and (5) documents related to meetings concerning proposed revisions to the eagle take regulations.

Since receiving the Chairman's original letter of request for MBTA and Eagle Act enforcement documents on May 16, 2013, and its subpoena issued on March 11, 2014, the Department has provided over 11,000 pages of documents to the Committee on the following dates: September 18, 2013, December 2, 2013, December 13, 2013, February 26, 2014, March 10, 2014, March 20, 2014, March 24, 2014, April 3, 2014, April 25, 2014, May 9, 2014, June 27, 2014, and July 11, 2014. Of the nearly 34,000 hours of staff time noted above, Service staff spent thousands of hours reviewing years of records and files to comply with this request of the Committee.

In addition to providing these document productions, the Department and the Service have also made senior staff and myself available to the Committee. On December 17, 2013, Committee staff met with Mr. William Woody, Chief of the Service's Office of Law Enforcement, who answered questions related to enforcement of the MBTA and the Eagle Act. Between March 26, 2014 and April 3, 2014, I testified before this Committee on this issue, spoke with Chairman Hastings over the phone and met with Committee staff with Chief Woody.

During the April 3, 2014, meeting, the Service sought to provide accommodations to improve the efficiency of getting information to the Committee. In its March 11, 2014, subpoena, the Committee asked for documents related to a broad set of investigations by the Office of Law Enforcement of violations of the MBTA and/or the Eagle Act. Responding to this request would have required an inordinate amount of time from the agency's professional law enforcement personnel, taking them away from critical work investigating wildlife crimes. The Service offered to instead provide case summaries in the short term and provide in-camera review of any of the cases the Committee was interested in based on those summaries. The Committee has not yet requested such in-camera review.

Despite these efforts to respond to the Committee's requests for documents, on March 11, 2014, the Committee issued a subpoena reiterating parts of the previous request as well as requesting additional new documents. With the Service's July 11, 2014, letter, the Service completed its work

to respond to the May 2013 request and the March 2014 subpoena. Any further documents that are provided on this issue will be transmitted by the Office of the Secretary.

Document Request and Subpoena regarding the Listing of the White Bluffs Bladderpod under the ESA

On March 7, 2014, the Committee requested documents from the Service pertaining to the listing determination and the critical habitat designation for the White Bluffs bladderpod, including: (1) a copy of the report entitled, “Evidence for Recognition of *Physaria Tuplashensis* (Brassicaceae)”, explanations of how it was obtained and if it underwent peer review, and communications between the Service and the authors; (2) communications between the Service and the peer reviewers for the listing determination and critical habitat designation; (3) all documents related to the peer reviewer selections; (4) all documents relating to conflict of interest, financial disclosures, prior policy positions, sources of funding, or recusals from the peer reviewers of the listing determination and critical habitat designation; (5) all documents related to the charge questions and instructions given to peer reviewers; and (6) all communications between the Service and the Center for Biological Diversity related to the White Bluffs bladderpod.

The Department and the Service continue to cooperate with the Committee to provide information that is responsive to its concerns about these issues. Since receiving the Chairman’s original letter on March 7, 2014, and its subpoena issued on April 7, 2014, the Department has provided approximately 80 documents totaling more than 700 pages to the Committee on April 2, 2014, and April 18, 2014. To compile this information, Service staff spent many hours reviewing records and files to comply with the Committee’s request. The Service also responded in writing on this issue to additional letters from the Committee on this subject on June 6, 2014, and July 25, 2014.

In addition to providing the written documents, the Service has also met in person or held phone calls with the Committee on four occasions between April 1, 2014 and July 1, 2014. During this period I spoke with Chairman Hastings on the telephone twice and met with the Chairman in person once. I also met separately with Committee staff. Field Supervisor Ken Berg was interviewed by the Committee staff on the telephone.

We believe the Department’s responses to the Committee on this subject have provided all documents responsive to this request.

Document Request regarding the Determination whether to List the Sage-Grouse under the ESA

On March 7, 2013, the Committee requested documents from the Department pertaining to the National Technical Team Report, “A Report on National Greater Sage-Grouse Conservation Measures,” (NTT Report) including: (1) information on how much money the Department has spent on sage-grouse conservation measures; (2) how many full time employees are assigned; (3) does the NTT report adequately and accurately reflect scientific findings in each of the regions where a regional management plan is being considered; (4) a description of what additional or differing data and science were utilized to support the March 2010 finding that the greater sage-

grouse warrants listing; (5) a list of all authorizations or permitted activities that have been submitted or proposed to BLM for approval; and (6) a list of dates and locations of all upcoming public meetings BLM has scheduled, and internal deadlines for required decisions by FWS (and others) relating to sage-grouse in 2013 and 2014.

The Committee also requested other documents as follows: (7) all documents, including internal memoranda, related to implementation and enforcement of Instruction Memos 2012-043 and 2012-044; (8) all documents, including internal memoranda and any letters sent to state agencies, officials or employees, or any non-governmental organizations (NGO) related to any state program being exempt from compliance with aforementioned memos; (9) all drafts of aforementioned memos, including those sent to the Office of the Solicitor, state agencies, or NGO; (10) all documents related to the creation, implementation, enforcement and/or rescinding of Nevada State BLM Instruction Memoranda 2012-056, 2012-057, and 2012-058; (11) all documents related to the establishment and the authority to establish the National Technical Team; (12) all documents related to the selection and appointment of National Technical Team members; (13) all documents, including peer reviewer comments, related to implementation and enforcement of the NTT Report; (14) all documents related to BLM's decision to develop alternatives included in the Sub-Regional Sage-Grouse Environmental Impact Statement; and (15) all documents related to the analyses of socio-economics impacts related to the sage-grouse.

Since receiving the Chairman's original letter on March 7, 2013, the Department has provided nearly 3,000 pages and more than 80 documents to the Committee on May 8, 2013, May 14, 2013 and August 21, 2013. In addition, Department staff met with Committee staff on July 11, 2013, and based on that conversation, provided additional information to the Committee in a July 25, 2013 letter.

Document Request regarding Scientific Integrity Policy

On July 31, 2013, the Committee requested documents from the Service pertaining to complaints about scientific integrity policy violations at a Service field office. The Committee asked for documents as follows: (1) all documents related to an OIG Management Advisory issued July 11, 2013; (2) all documents contained in certain files maintained by the Service's Human Resources Department or the Office of the Solicitor; (3) a description of actions taken by the Service in response to investigations; and (4) a copy of all correspondence provided to the Office of the Inspector General regarding this issue.

Since receiving the Chairman's original letter on July 31, 2013, the Department provided 7 documents totaling more than 70 pages to the Committee on January 27, 2014, and April 18, 2014. In addition, a briefing was provided to Committee staff on September 13, 2013.

Conclusion

The Service recognizes, respects, and values the oversight role of Congress and this Committee. The Service has a consistent track record of making our leadership available to the Committee to answer questions and to listen. Requests for information in writing and requests for documents are important components of the oversight process. However, the process of responding to

expansive and numerous document production requests is a significant drain on Service resources, diverting staff with expertise away from their primary responsibilities to support on-the-ground conservation. I hope we can work together to find efficient ways to get the Committee the information it needs to carry out its legitimate oversight role.

Thank you again for this opportunity. I will be pleased to answer any questions that you may have.