

Testimony of Gregory Sheehan
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Before the House Committee on Natural Resources
On H.R. 424, the “Gray Wolf State Management Act”; H.R. 717, the “Listing Reform Act”; H.R. 1274, the “State, Tribal, and Local Species Transparency and Recovery Act”; H.R. 2603, “Saving America’s Endangered Species (SAVES) Act”; and H.R. 3131, the “Endangered Species Litigation Reasonableness Act”

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Introduction

Good morning Chairman Bishop, Ranking Member Grijalva, and Members of the Committee. I am Greg Sheehan, Acting Director for the U.S. Fish and Wildlife Service (Service). I appreciate the opportunity to testify before you today on five bills to amend the Endangered Species Act of 1973 (ESA). I have spent most of the last five years of my career as the Director for the Utah Division of Wildlife Resources, where I was very involved in the implementation of the ESA from the State perspective. I dealt with individual species issues in Utah and was involved in broader policy discussions through the Western Governors’ Association and my participation on the Joint Federal/State Task Force on Endangered Species Act Policy. I was also Chair of the Threatened and Endangered Species Policy Committee for the Association of Fish and Wildlife Agencies (AFWA). I am hopeful that those experiences will give me a solid framework from which to serve in my new role as Acting Director of the Service.

Each of the bills – H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131 – is focused on improving implementation of the ESA to reduce or eliminate certain burdens on the public and to help achieve the ESA’s statutory purpose to conserve threatened and endangered species and their ecosystems. In general, the Administration supports these bills and the Service welcomes the opportunity to work with the Committee to address some recommended technical modifications.

The Administration is committed to making the ESA work for the American people. While the ESA has had some success since its passage over 40 years ago, challenges still remain. Implementation of the law regularly generates controversy among private landowners, regulated industries, and environmental advocates alike. In particular, in western states, the law and certain species have become lightning rods for intense disagreement. My goal as the Acting Director of the Service is for the organization to be a better neighbor and partner to the public and the states. The Federal role under the ESA in preventing extinctions and facilitating recovery is critical; but States and the people on the ground who have long been stewards of the land are in the best position to be the primary caretakers of species over the long term.

I look forward to discussing these issues and working with the Committee to address them in these and other legislative efforts.

Background

The ESA is one of our nation’s most important wildlife conservation laws. It is implemented jointly by the Service and the National Marine Fisheries Service (NMFS, together, “the

Services”). The law’s stated purpose is to provide a program and means for the conservation of threatened and endangered species and the ecosystems upon which they depend. When a species is designated as threatened or endangered – or “listed” under the ESA – it is in urgent need of help. The law directs the Services to use the best available scientific and commercial information to determine whether a species needs to be listed, to identify and address the threats to the species, and to facilitate the recovery of the species.

Successes under the ESA almost always involve partnerships between the Service and others – states, tribes, territories, local governments, private landowners, and other Federal agencies. Partnership efforts guided by the Service have led to several recent decisions to delist species due to recovery. These include the Yellowstone population of grizzly bear, Louisiana black bear, Oregon chub, Delmarva fox squirrel, Virginia northern flying squirrel, Modoc sucker, island night lizard, and brown pelican. Conservation partnerships have also prevented the need to list a number of species that were once in trouble, including the New England cottontail, dunes sagebrush lizard, and arctic grayling in Montana.

Despite these successes, there are also challenges and frustrations with implementing the Endangered Species Act. I find it helpful to think of the ESA as a hospital, where critically ill patients are admitted in hopes of recovery. We have done a pretty good job of keeping those patients from dying, but not so well on getting them discharged in healthy condition. Therefore, we need to step up our efforts to quickly diagnose the problems, define recovery actions, and get those patients back out into society. The ESA hospital was never intended to keep all patients indefinitely. I want the Service and our partners to be more successful in recovering listed species so that the ESA is not needed for their protection.

Making the Service more successful in achieving species recovery is a multi-faceted endeavor:

1. A collaborative partnership with states, tribes, territories, local governments, and landowners is essential for achieving the conservation objectives of the ESA. The Service has made some important investments in this area, including through our development of policy and tools for voluntary conservation agreements, the establishment and support of a Joint Federal/State Task Force on Endangered Species Act Policy and our support and active participation in the Species Conservation and the Endangered Species Act Initiative of the Western Governor’s Association. We will build on those efforts to ensure we have a strong foundation of trust and partnership as we continue to seek to improve implementation of the ESA.
2. Our ability to succeed in conservation efforts is also dependent on our people on the ground, who need to have the skills and ability to work with landowners and agencies on solutions that serve the needs of both the species and the landowners. Our Partners for Fish and Wildlife program and Joint Ventures programs have been great models for that approach, and I would like to see those kinds of relationships with landowners and local communities reflected more broadly throughout the Service, including in our endangered species recovery work. The Service has made progress in recent years, but there is still more work to do.

3. Being more successful in species recovery also requires effective and creative agency policy. I fully support the recent direction from Congress through the appropriations process to focus more intently upon the mandatory duties associated with recovery of listed species – timely development of recovery plans, reviews every 5 years of the status of listed species, and timely rulemaking to downlist or delist species that are recovering. There are many competing demands for our limited time and energy, and we must have clear agency policy that establishes our priorities and encourages conservation partnerships.
4. Our legislative authorities are clearly the backbone for successful implementation of the ESA and recovery of listed species. The bills under consideration by this Committee are all focused on helping improve implementation of the Act, and we look forward to working with the Committee on these measures as they move through the legislative process.

To that end, we offer the following comments on the individual bills under consideration today:

H.R. 424 – Gray Wolf State Management Act

H.R. 424, the Gray Wolf State Management Act, would require the Service to reissue the 2011 Western Great Lakes population delisting rule and the 2012 Wyoming population delisting rule. It would also insulate both rules against judicial review. Each of these delisting rules was based on the best available science, was consistent with the requirements of the ESA, and reflected extensive work with the relevant states and a deliberative and lengthy public comment process. The legislation would not legislatively delist these wolf populations, rather it would reinstate science-based rules that went through the public rulemaking process.

Earlier this year, the Federal government prevailed in litigation challenging the 2012 Wyoming delisting rule, and has accordingly delisted that population and transitioned management to the state. This legislation would not, in the Service's view, affect our recent rule that reaffirmed the delisting of the Wyoming population.

The Service determined that the Western Great Lakes gray wolf population has exceeded recovery goals and is biologically recovered. Our delisting rule was challenged and vacated, and that decision is currently under appeal.

H.R. 717 – Listing Reform Act

H.R. 717, the Listing Reform Act, would allow the Service to prioritize petitions other than by the order received, except that listing petitions would not be prioritized over delisting petitions. The legislation would also remove the 90-day and 12-month finding deadlines for petitions. Finally, it would add an option for warranted but precluded findings for petitions to list species as threatened if the listing or critical habitat designation would result in significant cumulative economic impacts.

The provision allowing the Service to prioritize petitions based on need would give the Service more flexibility to implement the ESA. We believe that removing the deadlines for reviewing

petitions would give the Service even more flexibility and reduce the potential for future litigation.

The Service would, however, like to work with the Committee regarding the bill's proposed warranted but precluded determination on petitions for threatened listings to better understand how economic impacts should be appropriately considered.

H.R. 1274 – State, Tribal, and Local Species Transparency and Recovery Act

H.R. 1274, the State, Tribal, and Local Species Transparency and Recovery Act, would require all data used to make a listing determination to be made available to affected states prior to making a listing determination. It would also modify the term “best scientific and commercial data available” to include all data submitted by states, tribes, and local governments.

The Service has worked to address concerns regarding transparency of the data used to make listing determinations, but recognizes that complications remain. The Service would recommend modifying this legislation to require the Service to consider all data submitted by states, tribes, and local governments, rather than automatically deeming that data to be the “best scientific and commercial data available” as currently required in the bill. Defining that term to automatically include data submitted by states, tribes, and counties, without regard to its quality, would be a significant departure from scientific integrity standards.

H.R. 2603 – Saving America's Endangered Species (SAVES) Act

H.R. 2603, the Saving America's Endangered Species (SAVES) Act, is bipartisan legislation that would prevent nonnative species that are found in the U.S. from being treated as federally threatened or endangered. We understand the primary intent of this legislation is to reduce duplication in the regulation of nonnative species in the U.S. The Service notes that the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) serve different purposes and species, and would welcome the opportunity to discuss this further. We also understand that a secondary goal of the legislation is to reduce regulation of the interstate movement of nonnative species in the U.S. The Service currently authorizes activities with nonnative captive-bred wildlife that benefit the conservation of listed species. Based on our initial analysis, we note that bill as introduced could create enforcement challenges related to wildlife trafficking. We welcome the opportunity to work with the sponsor and Committee to examine these efforts.

H.R. 3131 – Endangered Species Litigation Reasonableness Act

H.R. 3131, the Endangered Species Litigation Reasonableness Act, would subject awards to prevailing parties in ESA citizen suits to judicial code standards. This legislation would in effect limit attorneys' fees for successful citizen plaintiffs in ESA cases against the federal government. The time and cost of litigation is one of the significant challenges we face in implementing the ESA. As currently drafted, it is unclear whether the legislation would require that all prevailing fee awards be paid through annual appropriations, rather than having the option to pay through the Judgment Fund as is current law. The Service would welcome the opportunity to work with the Committee to clarify this aspect of the legislation.

Conclusion

The Service supports the goals of these bills and welcomes the opportunity to work with the Committee to address some technical modifications. The Service is committed to making the ESA work for the American people to accomplish its purpose of conserving threatened and endangered species and protecting the ecosystems upon which they depend. While the ESA has had some success since its passage over 40 years ago, there are greater opportunities ahead. I look forward to discussing these issues and working with you to address them in these and other legislative efforts.