

# Committee on Natural Resources

Rob Bishop, Chairman  
Hearing Memorandum

September 24, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff — Melissa Beaumont (x5-7107)

Hearing: Legislative hearing on **H.R. 6364 (Rep. Don Young)**, to amend the Endangered Species Act of 1973 to increase State and local involvement in management plans. **September 26, 2018, 2:00PM; 1324 Longworth House Office Building.**

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**H.R. 6364 (Rep. Don Young), “Localizing Authority of Management Plans Act of 2018” or the “LAMP Act”**

## Summary of the Bill

H.R. 6364 amends the Endangered Species Act of 1973 (ESA) to improve the outcomes for species conservation and recovery by allowing federal agencies to enter into cooperative agreements with States, local governments, tribes, and other non-federal entities to better manage species and conserve habitat. The bill also permits the delegation of authority for species management within States that maintain robust programs for management of species.

## Cosponsors

[27 Cosponsors](#)

## Invited Witnesses (In alphabetical order)

*Mr. Robert Dreher*  
Senior Vice President  
Conservation Programs & General Counsel  
Defenders of Wildlife

*Mr. Jamie Johansson*  
President  
California Farm Bureau  
Sacramento, CA

*Mr. Gregg Renkes*  
Director  
Office of Policy Analysis  
U.S. Department of the Interior  
Washington, DC

*Mr. David Sauter*

County Commissioner  
Klickitat County  
Lyle, WA

*Mr. Jonathan Wood*  
Attorney  
Pacific Legal Foundation  
Washington, DC

## **Background**

### *The Endangered Species Act of 1973*

The Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) sets out the broad goal of conserving and recovering species facing extinction. The law authorizes federal agencies to identify imperiled species and list them as either threatened or endangered as appropriate<sup>1</sup>. The law further requires agencies to take necessary actions to conserve those species and their habitats.<sup>2</sup> The Secretary of the Interior, through the U.S. Fish and Wildlife Service (FWS), has responsibility for plants, wildlife and inland fisheries. The Secretary of Commerce, through the National Marine Fisheries Service (NMFS) is responsible for implementing the ESA with respect to ocean-going fish and some marine mammals.<sup>3</sup> Congress made its most significant amendments to ESA in 1978, 1982, and 1988, although the overall framework has remained essentially unchanged since its original enactment in 1973.<sup>4</sup>

Despite the worthy goal set out by the ESA to conserve and protect species, in the 44 years since its enactment, less than 2 percent of species have recovered enough to warrant removal from the list of endangered and threatened species.<sup>5</sup> In fact, many of those species were delisted after it was discovered that federal agencies used erroneous data in the original listing.<sup>6</sup> In total, to date there have been 2,334 listings<sup>7</sup> under the ESA. In that time the Secretaries have delisted 72 species, but only 42 distinct species have been removed, either entirely or partially throughout their range, due to population recovery.<sup>8</sup>

In addition to failing to achieve meaningful recovery for species, implementation of the ESA disincentivizes conservation and can lead to increased conflict between people and species

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<sup>1</sup> 16 U.S.C. 1533.

<sup>2</sup> *Id.*

<sup>3</sup> CONG. RESEARCH SERV., RL31654, THE ENDANGERED SPECIES ACT: A PRIMER 15 (2016).

<sup>4</sup> A History of the Endangered Species Act of 1973, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, [https://www.fws.gov/endangered/esa-library/pdf/history\\_ESA.pdf](https://www.fws.gov/endangered/esa-library/pdf/history_ESA.pdf) (last visited Sept. 18, 2018).

<sup>5</sup> ECOS Environmental Conservation Online System, Listed Species Summary (Boxscore), U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/box-score-report> (last visited Sept. 19, 2018).

<sup>6</sup> ECOS Environmental Conservation Online System, Delisted Species, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/delisting-report> (last visited Sept. 19, 2018).

<sup>7</sup> *Supra*, note 5.

<sup>8</sup> *Supra*, note 6.

through unpredictable and expansive restrictions on land use.<sup>9</sup> Excessive litigation and a lack of transparency in federal ESA decision making has only exacerbated these problems and reduced the ESA's effectiveness in recovering species.<sup>10</sup>

In many cases, implementation of the ESA has caused increased burdens for those living in close proximity to the protected species.<sup>11</sup> Often States and local communities have the most knowledge about the species located in their State and can bring the greatest amount of resources to conservation efforts.<sup>12</sup> They are eager to stabilize species populations to prevent listings that can have a major economic impact on State and local communities through restrictions on land use.<sup>13</sup> Yet, too often federal management of threatened and endangered species fail to take advantage of the wealth of knowledge of State and local officials and of the successful conservation measures implemented by States.<sup>14</sup>

Despite these shortcomings in how the ESA has been implemented since its enactment, the ESA and its overall goal of conserving and recovering species remains widely popular and accepted.<sup>15</sup> ESA modernization should prioritize effective species recovery while maintaining the core principles of the Act.

*H.R. 6364*

States and local governments play an essential role in species recovery and have been involved in actions to conserve and protect species from extinction since the enactment of the ESA in 1973. The ESA itself recognizes the importance of State cooperation but fails to provide meaningful provisions that fully utilize the expertise and abilities that States, tribes, and local governments can provide in species conservation.<sup>16</sup>

Over the years, the workload for federal agencies responsible for implementing the ESA has increased dramatically and cannot keep pace with the expanding number of petitions to list species under the Act. According to the Government Accountability Office, FWS received 170

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<sup>9</sup> COMMITTEE ON HOUSE NATURAL RESOURCES, ENDANGERED SPECIES ACT CONGRESSIONAL WORKING GROUP, REPORT FINDINGS AND RECOMMENDATIONS, (2014) *available at*

[https://naturalresources.house.gov/uploadedfiles/esa\\_working\\_group\\_final\\_report\\_and\\_recommendations\\_02\\_04\\_14.pdf](https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf); *See also: Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) *available at* [https://naturalresources.house.gov/uploadedfiles/testimony\\_holsinger.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf).

<sup>10</sup> *Hearing on Examining Policy Impacts of Excessive Litigation Against the Department of the Interior, Before the Subcomm. on Oversight & Investigations of the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017), *available at* [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_ov\\_hrg\\_06.28.17.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_06.28.17.pdf).

<sup>11</sup> *Supra*, note 9.

<sup>12</sup> *Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) *available at* [https://naturalresources.house.gov/uploadedfiles/testimony\\_holsinger.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> *See e.g.*, Letter from John Hickenlooper, Governor, State of Colorado, and Matt Mead, Governor, State of Wyoming, to Steve Ellis, Deputy Director, Bureau of Land Management, U.S. Dep't of the Interior, and Leslie Weldon, Deputy Chief, National Forest System, U.S. Forest Service, U.S. Dep't of Agriculture, Sept. 29, 2014, *available at* [http://westgov.org/images/editor/LTR\\_GSG\\_Rollup\\_Mtgs\\_FINAL.pdf](http://westgov.org/images/editor/LTR_GSG_Rollup_Mtgs_FINAL.pdf).

<sup>15</sup> *See e.g.*, Memo from Ben Tulchin, Ben Krompack, and Kiel Brunner, Tulchin Research, to Interested Parties, Jul. 6, 2015, *available at* <https://earthjustice.org/sites/default/files/files/PollingMemoNationalESASurvey.pdf>.

<sup>16</sup> 16 U.S.C. § 1535

petitions to list 1,446 species between fiscal years 2005 and 2010 alone, some of which called for listing of hundreds of species at one time.<sup>17</sup> Excessive litigation brought by environmental organizations has also overwhelmed the agencies and has only worked to drain resources away from actual species recovery.<sup>18</sup>

States and local governments are more than capable of assisting FWS and NMFS in carrying out on-the-ground species management. Many are willing to cooperate with federal agencies and leverage their valuable resources to help conserve and recover both listed and candidate species located in their States.<sup>19</sup> Unfortunately, in the past, federal agencies have neglected to utilize these key resources to the detriment of species and stakeholders who are directly affected by a listing decision on a species.

This regrettable scenario is exemplified by FWS's decision to list the lesser prairie chicken (LPC) as threatened under the ESA in 2014.<sup>20</sup> The decision to list the LPC was based upon credible documentation of habitat loss occurring from the conversion of grassland to other uses.<sup>21</sup> However, FWS failed to take into consideration extensive State-crafted voluntary conservation measures, most notably, the LPC range-wide conservation plan (RWP).<sup>22</sup> The RWP is a collaboration of States, private industry, and conservation organizations that works to address threats to the LPC throughout its range by coordinating voluntary conservation plans to minimize and mitigate impacts and conserve LPC habitat.<sup>23</sup> FWS's failure to consider this plan led to a lawsuit and reversal of the decision to list the species.<sup>24</sup>

This situation is just one instance that highlights the need for empowering on the ground stakeholders, such as States, to be able to meaningfully include local interests and knowledge in efforts to conserve and recover species. The LAMP Act accomplishes this by allowing FWS and NMFS to enter into cooperative agreements with States, local governments, tribes, and other non-federal entities to better manage species and improve habitat conservation. The bill also allows these federal agencies to delegate authority for managing and preserving species to States that

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<sup>17</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-304, ENVIRONMENTAL LITIGATION: INFORMATION ON ENDANGERED SPECIES ACT DEADLINE SUITS (2017), <http://www.gao.gov/assets/690/683058.pdf>. (For example, FWS received a "mega-petition" in 2007 petition calling for the listing of 674 species in the Southwest and Mountain-Prairie regions and in 2010, which requested the listing of 404 aquatic species).

<sup>18</sup> *Supra*, note 9.

<sup>19</sup> See e.g., *Hearing on Conservation, Consultation, and Capacity: States' Views on the Need to Modernize the Endangered Species Act: Hearing before the S. Comm. on Environment and Public Works*, 115<sup>th</sup> Cong., (2017) (testimony of Nick Wiley, Executive Director, Florida Fish & Wildlife Conservation Commission and President, Association of Fish and Wildlife Agencies) available at [https://www.epw.senate.gov/public/\\_cache/files/8/8/8853f26b-a20d-4c00-ac7a-73628be39385/44C20FCA68F0754FE50B19390C4064C5.wiley-testimony-05.10.2017.pdf](https://www.epw.senate.gov/public/_cache/files/8/8/8853f26b-a20d-4c00-ac7a-73628be39385/44C20FCA68F0754FE50B19390C4064C5.wiley-testimony-05.10.2017.pdf)

<sup>20</sup> Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Lesser Prairie-Chicken 79 Fed. Reg. 19973, (May 12, 2015) available at <https://www.gpo.gov/fdsys/pkg/FR-2014-04-10/pdf/2014-07302.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> Lesser Prairie Chicken, ASSOCIATION OF FISH AND WILDLIFE AGENCIES, [https://www.wafwa.org/initiatives/grasslands/lesser\\_prairie\\_chicken/?usessl=1](https://www.wafwa.org/initiatives/grasslands/lesser_prairie_chicken/?usessl=1) (last visited Sept. 19, 2018).

<sup>23</sup> *Id.*

<sup>24</sup> Devin Henry, *Court vacates lesser prairie chicken's threatened status*, THE HILL (Sept. 2, 2015) available at <https://thehill.com/policy/energy-environment/252548-court-vacates-lesser-prairie-chickens-threatened-status>.

already have robust conservation programs in place, ensuring that resources and responsibilities are allocated to those most capable of utilizing and executing them.

### **Cost**

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

### **Administration Position**

No current Administration position is available at this time.

### **Major Provisions of H.R. 6364**

**Section 1. Short Title.** This act may be cited as the “Localizing Authority of Management Plans Act of 2018” or the “LAMP Act of 2018”.

**Section 3. Voluntary Cooperative Management Agreements.** This section amends section 6 of the ESA to permit the relevant Secretary to enter into a cooperative management agreement with any State or group of States, political subdivision of a State, Indian tribe, local government, or non-federal person for managing listed species, candidate species, and for managing or acquiring an area to provide habitat for a species.

**Section 4. Delegation of Authority to States.** This section allows the relevant Secretary to delegate authority to a State that establishes and maintains an adequate program for conservation of endangered and threatened species to manage species within that State. It allows the Secretary to provide financial assistance to any State that has entered into a cooperative agreement, been delegated authority for conservation of a listed species in the State, or assists in monitoring candidate species and recovered species.

### **[Effect on Current Law \(Ramseyer\)](#)**