ESA AT 50: THE DESTRUCTIVE COST OF THE ESA

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER, WILDLIFE AND FISHERIES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

July 18, 2023

Serial No. 118–49

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.govinfo.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE
52–976 PDF WASHINGTON : 2024

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OVERSIGHT HEARING ON ESA AT 50: THE DESTRUCTIVE COST OF THE ESA

Day, July 18, 2023
U.S. House of Representatives
Subcommittee on Water, Wildlife and Fisheries
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 2:09 p.m. in Room 1324, Longworth House Office Building, Hon. Cliff Bentz [Chairman of the Subcommittee] presiding.

Present: Representatives Bentz, McClintock, LaMalfa, Boebert, Duarte, Hageman, Westerman; Huffman, Peltola, Hoyle, Magaziner, Dingell, Porter, and Grijalva.

Also present: Representatives Pfluger; and Beyer.

Mr. BENTZ. The Subcommittee on Water, Wildlife and Fisheries will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Good afternoon, everyone. I want to welcome our witnesses, Members, and our guests in the audience to today's hearing. The Subcommittee is meeting today to hear testimony on a hearing entitled, "ESA at 50: The Destructive Cost of the ESA."

I ask unanimous consent that all other members' opening statements be made part of the hearing record if they are submitted in accordance with Committee rule 3(o).

I also ask unanimous consent that the gentleman from Texas, Mr. Pfluger, be allowed to participate in today's hearing.

Without objection, so ordered.

Mr. HUFFMAN. Mr. Chairman, I wonder if I could ask unanimous consent that Representative Don Beyer of Virginia have permission to sit on the dais and participate today.

Mr. BENTZ. So ordered.

Mr. HUFFMAN. Thank you.

Mr. BENTZ. I now recognize myself for an opening statement.

STATEMENT OF THE HON. CLIFF BENTZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. BENTZ. The purpose of today's hearing is to review and acknowledge the destructive cost of the Endangered Species Act. Witnesses will testify to the costs the ESA imposes upon communities, states, ratepayers, businesses of all sizes, other species deserving protection, the environment, our children, and the infirm, among many others.

Some here today will no doubt ask and possibly even suggest, given its incredible cost, why hasn't Congress repealed this law? The answer is that we all want species to be safe. We all want to avoid causing species to go extinct. And the ESA was a well-intentioned law attempting to do this.

But after 50 years of the ESA and untold billions in expenditures paid many times by small communities and families, and not the nation, and with questionable benefits, it is definitely time to come up with a better plan. Today, we will bring the cost of this law to the attention of the nation. Soon we will introduce amendments to the Act that will improve its protections of species without destroying people and communities, without costing more money than we can possibly find to address these issues.

I am absolutely certain we will hear from some folks across the aisle in an effort to hide or justify the horrific cost of this law, that today's hearing is simply another effort to get rid of the ESA. It is not. But it most certainly is an attempt to understand the ESA's cost. It is absolutely possible to question the cost of the ESA without questioning the need to protect species, even though some here will say otherwise.

Cost does matter. Money isn't free, and understanding what we get for what we spend is always relevant. And there are certainly costs other than just money that will be addressed today.

Here are some of the costs the ESA imposes that our witnesses will review this afternoon:

(1) the cost incurred by agencies implementing the ESA.

(2) the cost incurred by many species, as water is taken from them and given to others because of the ESA.

(3) the cost of the nation of extraordinarily amounts of delay and astounding amounts of money spent on the ESA in the context of NEPA compliance.

(4) the cost of community destruction as activities such as logging and forest management are stopped by the ESA.

(5) the cost of the young and the old as they breathe air heavy with smoke from wildfires as they ravage our fuel-burdened forests kept that way because of lawsuits and bureaucracy, creating a virtual, veritable Gordian knot of astounding complexity.

(6) the insane cost of ESA mitigation credits, a Jabberwocky construct that is driving the cost of electrical transmission, and thus the cost of rate and tax payers across the West, through the roof, and this is not to mention the insane impact this is having on land use and land values.

(7) the cost to ratepayers along the Columbia River far into the billions as almost a billion per year of ratepayer money is being spent on fresh water, when the focus should be on the sea.

(8) the cost of flood insurance which, because of lawsuits based on the ESA, will soon skyrocket in price and time taken to issue such insurance, as FEMA becomes the new frontier of ESA compliance.

I could easily go on, but I will leave it to other Members to raise the additional costs in their districts of the ESA.

What we do know is that the ESA is failing in one of its core missions: recovering endangered and threatened species. As many here know, only 3 percent of listed species have been delisted. Yet, our constituents are being asked to pay billions of dollars each year in both direct and indirect costs to subsidize failed species conservation actions.

Worst of all, the ESA's implementation desensitizes private landowners who are working hard to benefit species conservation,

like my constituent Sean Vibbert, who grows wildflowers that create habitat for monarch butterflies. For example, the U.S. Fish and Wildlife Service estimates that recovering the Oregon spotted frog, the species affecting Mr. Vibbert's operation, will cost $2.8 billion. That is the estimate. I will say again, $2.8 billion for one species. How useful is a recovery plan when the odds of it being implemented at that cost are so slim?

The issue before us today is not whether these species should be protected. The issue is are the management decisions made by these services the right ones, and are the costs associated with these decisions worth it, both for the species conservation and the costs imposed on our constituents?

Take the case of the northern spotted owl in Oregon, where studies have shown the listing of that owl and its 9.6 million acres of associated critical habitat have caused the loss of 32,000 timber jobs. The cost we are examining today, as indicated previously, are not just the businesses, but also the cost to our constituents and other species. The status quo is not good enough, nor is it sustainable.

I am certain we will hear today that there is nothing to see here, and that even to raise these issues is to attack species. I assure you, questioning what we are having to pay and who is having to pay it for such modest benefit in recovered species is exactly what my constituents want me to do. And I believe this hearing will go a long way in addressing this concern.

With that, Mr. Huffman.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman, and good afternoon, everyone. Happy 50th anniversary to the Endangered Species Act, for those who celebrate.

I think we should be celebrating the ESA. This is a historic and popular conservation law which has prevented countless species from going extinct. It has also enabled the recovery of some iconic species like the bald eagle and the humpback whale. But so far this year, my Republican colleagues have been much more interested in using the platform of this Committee to villainize, attack, and misinform people about the ESA.

It is almost hard to believe that 50 years ago this landmark legislation was spearheaded by Republican environmental champions. Today, Republican environmentalists are the most critically endangered species in politics. And you don't have to take my word for it. You can just look at what happened last week. There was a Republican amendment that they tried to pass to the NDAA involving the ESA. The Department of Defense didn't ask for it, didn't need it, didn't want it. However, all but two Members, two Republican members of the House Natural Resources Committee, voted to categorically exclude the Department of Defense and all of their defense contractors from the Endangered Species Act without so much as having a hearing on the radical language that would have gutted a big part of the ESA. Thankfully, it failed.

But the consequences of what Team Extreme tried to do last week to the ESA are staggering. There are 400 ESA-listed species

on military lands. There are 60 species found only on military lands. Exempting DOD could push dozens of endangered species toward extinction. And fortunately for those species, 25 Republicans joined Democrats in defeating that terrible amendment, but all but two Republicans on this Committee, including Chair Westerman and Chair Bentz, voted for it.

And now we hear about a new House GOP working group to modernize the Endangered Species Act. Talk about euphemisms. Look at how they vote. That is what they want to do. And today, Team Extreme is at it again.

We can expect to hear the usual anti-ESA tropes in this hearing, like how threatened and endangered species, not climate change, are responsible for wildfires and drought in the West. We will also hear how the ESA is Hotel California, where species check in but never leave, never get off the list.

If you want to find an actual problem with the Endangered Species Act, we should be talking about listing, not delisting, because the fact is political opposition to listing and the lack of agency resources for listing means that species are often listed too late in the game, when their population has declined so much that they have to remain on the endangered or threatened list because they face such an uphill battle to recovery.

We will also hear tales today, tall tales, about how the ESA stops vital projects from moving forward. We have to look at the facts, folks, not the rhetoric. The reality is, according to a scientific review of over 88,000 ESA consultations over 7 years, zero projects were stopped, and zero projects were extensively altered as a result of jeopardy or adverse modification findings.

So, when you look past all the fake narratives and anti-ESA rhetoric, you discover ESA is actually sensible, it is quite flexible, and it is reasonable.

Meanwhile, we have a biodiversity crisis. Too many species are on the brink of extinction. We don't have time for the Republican Majority to hold hearings that scapegoat imperiled species and pretend like climate change doesn't exist. These species are going extinct. Three of them go extinct every hour. By the end of our opening statements, we will have 10 minutes until another species is driven to extinction.

Now, the ESA has kept 99 percent of listed species from going extinct. It is our strongest backstop against extinction for myriad species. And the simple truth is that extreme MAGA Republicans want to dismantle it. The only hearings they have held in this Congress have been about weakening and eliminating ESA protections, including delistings before a science-based decision can even be made. And last week, of course, they tried to write a huge part of the U.S. economy out of the Endangered Species Act categorically.

This landmark law has given us a shining example of species recovery. If we funded it right and supported collaborative efforts, we could prevent a lot of biodiversity loss. Imagine if we prioritized wildlife and habitat as much as we prioritize subsidizing the fossil fuel industry. Last year, the United States offered over $22 billion in subsidies to the fossil fuel industry. If we put half that much into ESA implementation, into protection of wildlife and critical

habitat, imagine the kind of world that we could have, and imagine fights and political theater like this that could be avoided.

With that, Mr. Chairman, I yield back.

Mr. BENTZ. I now recognize the Full National Resources Committee Chairman, Mr. Westerman, for his opening statement.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. WESTERMAN. Thank you, Chairman Bentz, for holding this hearing, and thank you, Ranking Member Huffman, for your much-anticipated opening remarks. I was expecting to hear most of those things that you said. And I would ask the question: What is so radical about taking a fresh look at a law that is 50 years old that was put in place by Republicans and championed by Republicans?

And you are looking at a Republican that doesn't want to do away with the ESA, he wants to make the ESA work, wants to make it something that is effective, that really is about helping species, helping biodiversity, and improving it. And as a forester, I can tell you one of the biggest things we could do would be to work on healthy habitat that promotes great biodiversity, that promotes the welfare of endangered species. And it is really the only thing we can do.

We have a bill that Representative Dingell, who just stepped out, will be working on. The Democrat version is Recovering America's Wildlife Act. We are going to call our version Restoring America's Wildlife Habitat Act, because when it comes to wildlife, really, the only thing you can do is restore the habitat.

And we are seeing thousands, if not millions, of acres of habitat on Federal lands that is being mismanaged, that is being destroyed by catastrophic wildfire, that is being destroyed by insects and disease. And if we really cared about endangered species, we would truly care about the forest habitat, the water habitat, the wetlands, and the ecosystems that promote good habitat and species recovery.

And I think it is fair that we look back on a bill that is 50 years old. We celebrate the victories of it. We have a strong population of bald eagles. We have grizzly bears. We have wolves that should be off the Endangered Species Act. That is not me saying that, that is the Obama administration and other administrations that tried to delist the wolf, but they are still on the list.

So, I think it is our responsibility, as stewards of the American taxpayers' dollar, as stewards of policy, to take a fresh look at the ESA, and let's go back and look at the purpose of the ESA. And I quote when it was established: "The purpose of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." It didn't say "preserved," it said "conserved" and that is a valid point.

"To provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth." Unfortunately, litigants now use the ESA as a control tactic to preserve lands, or try to preserve lands and pursue radical agendas. I heard the word "radical" and "extreme." Well, there is not anything much more radical and extreme than to take well-

meaning laws and misuse them and misapply them that are actually defeating the purpose of the law in the first place.

Instead, we should be pursuing a noble conservation mission. And today's hearing is about examining the cost associated with the ESA. And I don't want to make it just about the financial cost, but it is also the cost when we lose species, when we tie up resources inside our Federal agencies that could be used in going toward actually helping endangered species, but they are tied up in the regulatory and the litigation process, and not able to do the work and the jobs that many of them went to college and made their career path to go out and help with endangered species.

For these and many other reasons, the House Committee on Natural Resources Republicans, and I would invite any Democrat that wants to join, we are partnering with the Congressional Western Caucus and Chairman Dan Newhouse to lead a working group of Members from across the country that will engage with local communities that are most impacted by the ESA, and develop policy proposals to modernize and renew the ESA for the 21st century.

And, again, I would hope this would be a bipartisan effort. It is not because we haven't made this open to our friends across the aisle. It is because they don't want to be part of the group. This work is absolutely necessary for the future of species conservation and our constituents because the status quo just isn't good enough anymore.

Again, I want to thank Chairman Bentz and thank our witnesses for being here today. I look forward to asking questions of our witness after hearing their testimony, and I yield back.

Mr. BENTZ. Thank you, Mr. Chairman. I now recognize the Full Natural Resources Committee's Ranking Member, Mr. Grijalva, for his opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Mr. Chairman, and thank the Ranking Member.

Today, as the Ranking Member noted, some of us are celebrating 50 years of the Endangered Species Act. Others are trying to gut it. And the Endangered Species Act is supported by over 90 percent of the American people. So, you would think our Committee could come together with the shared goal of recovering and conserving our shared wildlife heritage for current and future generations, just like Congress did 50 years ago for the original ESA, with our late friend, John Dingell, leading the efforts in this House of Representatives.

Fifty years ago, when the Endangered Species Act was enacted, we knew far less about our country's biodiversity. Most people were unaware of how quickly our climate would change from the burning of fossil fuels, but the ESA was ahead of its time. Today, we are grappling with the consequences of our own actions. We are now facing unprecedented rates of global warming, habitat destruction, and degradation, and our world is at the risk of losing 1 million species.

Today, we ask our colleagues across the aisle what modernization of the ESA looks like. They don't have good answers. I think we should focus on the goal of recovery. We are still behind in developing recovery plans, and many species get less than $1,000 per year for recovery efforts.

We have drafted the Extinction Prevention Act to provide funding for some of those underfunded, most imperiled species. And last year, House Democrats secured $125 million for species recovery in the Inflation Reduction Act. Not one Republican voted for the bill, although they have been taking credit for the projects lately.

Instead of wringing our hands or chipping away at ESA's protections and then complaining about that it is not working, Congress should do more of what it did in the IRA. We should invest significantly in species conservation, set our visionary wildlife conservation laws, and use the ESA as an example of success.

And with that, Mr. Chairman, I yield back.

Mr. BENTZ. I will now introduce our witnesses.

Ms. Janet Coit, Deputy Administrator for the National Oceanic and Atmospheric Administration in Washington, DC; the Honorable Martha Williams, Director of the U.S. Fish and Wildlife Service in Washington, DC; Mr. Jonathan Wood, Vice President of Law and Policy at the Property and Environment Research Center in Bozeman, Montana; Mr. Daniel Ashe, CEO of the Association of Zoos and Aquariums in Silver Spring, Maryland; Mr. Justin Jahnz, CEO of East Central Energy in Braham, Minnesota; and Mr. Sean Vibbert, owner of the Obsidian Seed Company in Madras, Oregon.

Let me remind the witnesses that under Committee Rules, you must limit your oral statements to 5 minutes, but your entire statement will appear in the hearing record.

To begin your testimony, please press the "talk" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning.

I now recognize Deputy Administrator Coit for 5 minutes.

STATEMENT OF JANET COIT, ASSISTANT ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Ms. COIT. Good afternoon, Subcommittee Chair Bentz, Ranking Member Huffman, Full Committee Chair Westerman, Full Committee Ranking Member Grijalva, and members of the Subcommittee. Thank you for the opportunity to testify today. My name is Janet Coit, and I am the Assistant Administrator for NOAA Fisheries.

Throughout my career, the Endangered Species Act, or ESA, has been a common thread. In the mid-1990s I was counsel to the U.S. Committee on Environment and Public Works, working for the late, great Senator John Chafee, where I focused on reauthorization of the ESA. My work is coming full circle, as I am now the head of

NOAA Fisheries, one of the agencies responsible for implementing ESA.

The Endangered Species Act is one of the foundational laws that underpins the critically important work that NOAA Fisheries does to recover marine and anadromous species while supporting economic and recreational opportunities. As you noted, this year marks ESA's 50th anniversary, and the law's purpose and goals remain as relevant today as they were in 1973.

The ESA has been remarkably successful in preventing the extinction of 99 percent of the species listed under the Act, recovering some of America's most iconic species and putting many on the road to recovery. By promoting conservation of habitats and preventing the loss of biodiversity, the ESA has provided myriad benefits across the nation and beyond.

Over the past 50 years, the ESA has led to innovation and conservation to support species and the habitats on which they depend. NOAA Fisheries is committed to evolving in response to stakeholder and species needs to implement ESA more effectively and efficiently. Importantly, we continue to make improvements to the way we analyze and implement the law, especially to ensure that we are meeting current challenges such as how the impacts of climate change affect species and habitats.

Climate change poses an ever-increasing threat to native biodiversity, and is accelerating the extinction crisis. Scientists estimate that as many as 1 million species are in danger of extinction, many within decades. We must continue to expand our scientific understanding and bring focused attention and investments in order to protect and recover listed species and their habitats before it is too late. No one wants to see marine mammals, fish, sea turtles, corals, or other creatures go extinct. Not on our watch.

To that end, the Bipartisan Infrastructure Law and Inflation Reduction Act are providing historic levels of funding towards state, tribal, and local efforts to conserve habitats that support listed species. With new funding under these laws, NOAA is able to catalyze habitat restoration projects that conserve fisheries and protected species, while also strengthening the resilience of coastal ecosystems and communities. Sustained investments like these are critical to ensure the future of diverse and productive ecosystems.

I have been fortunate over the past couple of years to witness firsthand some of the work of our NOAA scientists and fishery managers. While in California last year, I visited our Southwest Fisheries Science Center, where NOAA scientists and partners are studying endangered white abalone. In 2019, captive-bred juvenile white abalone were released for the first time into coastal waters off northern California.

Similar efforts are underway in Florida, where they are looking at ways to breed and outplant more resilient coral species. Last year, I visited our partners at Mote Marine Laboratory, where scientists are exploring options to scale up recovery efforts for critically endangered corals, some of our most productive ecosystems throughout Florida and the Caribbean.

And we are seeing endangered marine mammals like the Hawaiian monk seal begin to rebound. A recent population

assessment shows a 2 percent increase annually since 2013, reversing at least six decades of steep population decline.

While we are acknowledging 50 years of successes, there is much more work to do. Climate change and other human and environmental impacts continue to threaten protected species and make recovery even more challenging. When I look ahead at the next 50 years, I envision new science, technological advances, and stronger partnerships aimed at conserving listed species and the network of habitats needed to preserve biodiversity. The ESA will continue to provide a critical safety net to our nation's fish and wildlife for years to come.

But to ensure success, we must both work together with states, tribes, and a broad array of partners, and provide sufficient resources now and into the future. I am proud of the work NOAA Fisheries has done over the last 50 years to uphold the Endangered Species Act and to put listed species on the road to recovery. I look forward to working with you and others to chart a successful route through the challenges ahead. I know we all feel a sense of urgency and responsibility, and I am happy to be here, and would be pleased to answer your questions. Thank you.

[The prepared statement of Ms. Coit follows:]

PREPARED STATEMENT OF JANET COIT, NOAA FISHERIES ASSISTANT ADMINISTRATOR

Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, thank you for the opportunity to testify. The National Oceanic and Atmospheric Administration (NOAA) is responsible for the stewardship of the nation's living marine resources and their habitat. Backed by sound science and an ecosystem-based approach to management, NOAA Fisheries provides vital services for the nation, including management and sustainment of our fisheries, ensuring safe sources of seafood, and the recovery and conservation of protected species and healthy ecosystems. The resilience of our marine ecosystems and coastal communities depends on healthy marine species, including protected species such as whales, sea turtles, salmon, and corals. Under the Endangered Species Act (ESA), NOAA Fisheries works to recover marine and anadromous species while preserving robust economic and recreational opportunities. There are more than 160 endangered and threatened marine and anadromous species under NOAA's jurisdiction. Our work includes: listing species under the ESA, monitoring species status, designating critical habitat, implementing actions to recover endangered and threatened species, consulting with other federal agencies, conserving marine mammals, developing ESA policies, guidance, and regulations, and working with partners to conserve and recover listed species. NOAA Fisheries shares the responsibility of implementing the ESA with the U.S. Fish and Wildlife Service.

This year marks the 50th anniversary of the ESA. Recognizing that the value of our natural heritage is incalculable, Congress enacted the ESA nearly unanimously in 1973, in acknowledgement of the broad public support for the prevention of species extinction. The ESA is the nation's foremost conservation law for protecting wildlife and plants in danger of extinction. It plays a critical, science-based role in preventing the extinction of imperiled species, promoting their recovery, and conserving their habitats. Its purpose and goals remain as relevant today as they were 50 years ago, or perhaps more so. Today, the impacts of climate change pose an ever-increasing threat to native biodiversity. Scientists estimate that as many as one million species are threatened with extinction.

The ESA has been remarkably successful in preventing the extinction of 99% of the species listed under the Act, recovering some of America's most iconic species, and putting many on the road to recovery. From Eastern Pacific gray whales to humpback whales along the Atlantic coast, NOAA Fisheries, in carrying out its statutorily mandated responsibilities pursuant to the ESA, has been integral to species recovery and efforts to remove species from the Threatened and Endangered Lists.

Recovering species can provide economic opportunities such as enhanced fishing and recreating opportunities, wildlife-based tourism, and responsible wildlife

watching. NOAA Fisheries protects marine species while supporting ocean-based economic growth by providing scientific advice on the impacts to protected marine species and their habitat from near-term and long-term effects of competing ocean uses.

To continue to carry out ESA's important goals, NOAA Fisheries works closely with its many partners, including states, tribes, other federal agencies, industries, and conservation organizations in its efforts to conserve and recover ESA-listed species. These efforts include implementing our "Species in the Spotlight" initiative, which we began in 2015 to bring greater attention to, and leverage resources and partnerships to save, nine of our highly at-risk species. The nine species in the spotlight are: Atlantic salmon, Cook Inlet beluga whale, Hawaiian monk seal, Sacramento River winter run Chinook salmon, southern resident killer whale, the Pacific leatherback turtle, central California coast coho salmon, North Atlantic right whale, and white abalone. The Species in the Spotlight Program has been tremendously successful in leveraging new partnerships and resources for conservation and recovery of these species.

Through use of our Section 6 grants, we have also partnered with many coastal states to support management, research, monitoring, and outreach activities that have direct conservation benefits for listed species under the ESA within those states. Through this grant program, states have undertaken critical management and recovery activities and conducted vital research for endangered species as varied as white abalone, Atlantic and shortnose sturgeon, marine turtles, and Hawaiian monk seals. In addition, the Bipartisan Infrastructure Law and Inflation Reduction Act are providing historic funding to support state, tribal and local efforts to conserve habitats that support listed species. With funding provided under these laws, we are able to support and catalyze fish passage projects that restore access to healthy habitat for migratory fish, habitat restoration projects that support fisheries and protected species while also strengthening the resilience of coastal ecosystems and communities, and capacity building and on-the-ground restoration projects that advance the coastal habitat restoration priorities of tribes and underserved communities.

We also continue to seek science-based innovations to address threats to species and support their recovery in ways that can minimize risks to species and costs to industry. One such new initiative—the Advanced Sampling and Technology for Extinction Risk Reduction and Recovery—focused on reducing extinction risk and supporting recovery of protected species through technological innovation. New and better data is also critical to our efforts.

Our work with partners to conserve and recover threatened and endangered species is ongoing and evolving. Over the past few decades, we have improved our implementation of the statute, which has resulted in the recovery of species and prevention of species extinctions. We continually seek to expand our partnerships and cooperative conservation efforts, and improve and strengthen our implementation of the ESA to bring greater benefits to listed species and surrounding communities. For instance, a recent NOAA partnership with the Federal Emergency Management Agency has provided communities with incentives for taking local actions that both mitigate flood risk to homeowners and businesses, and protect ESA-listed species through preservation of the natural and beneficial functions of floodplains, resulting in lower flood insurance premiums and reduced property damage and loss from flooding.

Over the past 50 years, the ESA has led to innovation, conservation and science to support species and the habitats on which they depend. Healthy ecosystems support fisheries, tourism and community health. By promoting conservation of habitats and preventing the loss of biodiversity, the ESA has provided myriad benefits across the nation, and beyond. The United States is a model for others as we seek to support economic development while ensuring the continued existence of the species, great and small, with which we share our earth.

Conclusion

NOAA is proud to continue to lead the world in conducting ocean science, serve the nation's coastal communities and industries, ensure responsible stewardship of our ocean and coastal resources, and foster economic growth and opportunity by recovering marine resources to sustainable levels and providing scientific advice on the impacts to protected marine species and their habitat from near-term and long-term effects of competing ocean uses. We value the opportunity to continue working with this Subcommittee on these important issues. Thank you, Members of the Subcommittee and your staff, for your work to support NOAA's mission. I am happy to respond to your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. JANET COIT, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Ms. Coit did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative González-Colón

Question 1. NOAA's National Marine Fisheries Service has jurisdiction under the Endangered Species Act for seven species of threatened corals found in Puerto Rico's waters. Could you discuss some of the work your agency is conducting in Puerto Rico to protect and facilitate the recovery of these species of coral? Including through NOAA's Habitat Blueprint Framework and the Puerto Rico Northeast Marine Corridor and Culebra Island Habitat Focus Area—which I understand is one of only 11 Habitat Focus Areas established by NOAA across the nation.

Question 2. In November 2020, NOAA proposed to designate critical habitat for five species of threatened Caribbean corals in waters off the coasts of southeastern Florida, Puerto Rico, the U.S. Virgin Islands, and Navassa Island. Similarly, in October 2022, NOAA proposed to designate critical habitat for the Nassau grouper in waters off these jurisdictions.

Could you discuss the status of these proposed critical habitat designations for these species? When does NOAA expect to finalize and implement them?

Question 3. On September 8, 2022, NOAA published a proposed rule to list the queen conch as a threatened species under the Endangered Species Act (ESA). When does NOAA expect to finalize this rule? And what sort of engagement has NOAA conducted with relevant stakeholders in Puerto Rico, particularly to address the concerns of commercial fishermen on the Island who rely on the queen conch fishery for their livelihoods?

Question 4. Could provide status report on the following listed species found in Puerto Rico under NOAA's jurisdiction, including, if available, how much NOAA has spent to support each species' recovery and conservation on the Island since Fiscal Year 2018?

Question 5. Could you submit a status report on the following listed species found in Puerto Rico under NOAA's jurisdiction, including how much NOAA has spent to support each species' recovery and conservation on the Island since Fiscal Year 2018?

5a) Sea turtles: green sea turtle, leatherback sea turtle, hawksbill sea turtle

5b) Nassau grouper

5c) Corals: elkhorn coral, staghorn coral, boulder star coral, mountainous star coral, lobed star coral, rough cactus coral, and pillar coral

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Mr. BENTZ. Thank you, Assistant Administrator Coit.

I now recognize Director Williams for 5 minutes.

STATEMENT OF THE HON. MARTHA WILLIAMS, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Ms. WILLIAMS. Good afternoon, Chairman Bentz, Ranking Member Huffman, Full Committee Chair Westerman, and members of the Subcommittee. I appreciate the opportunity to testify before you today.

We need the Endangered Species Act now, more than ever. Unprecedented and prolonged heat in the Southwest; ocean temperatures in the 90s off of Florida; flooding and extreme weather in places not used to it like Vermont, Pennsylvania, and New Hampshire; drought, the likes of which we have not seen before in the West; wildfires raging in Canada sending unhealthy air into much of our country, these are bad for people, but they are even

worse for populations of wildlife, fish, and plants that have adapted over millennia to certain ecosystems.

Climate stressors, degraded and fragmented habitats, invasive species, and disease are pushing to the brink of collapse some of the very symbols that set us apart as a nation, our rich diversity of wildlife, fish, and plants. And yet I have hope for the future. I am hopeful, because where you give nature a chance, it has a remarkable ability to heal.

Thanks to the Endangered Species Act, sea turtles return 23 years or more after they hatch, coming in off of the ocean by moonlight to lay over 100 eggs and return to the sea that same night. After over 100 years of absence, salmon can spawn in a stream after removing a barrier to their return. Wood ducks can thrive because we work together to plant rice. A child can still see the wonder of a firefly, and cow elk can chatter to each other on a cold winter morning.

I am hopeful because as each of us are exposed to these examples, we can't help but be in awe of nature. At our very core, Americans care about the ecosystems that serve as resilience and buffer against storms that help keep our water clean, that provide our food, and the pollinators that are key to its production.

I am hopeful because when we are down, when we need it most, we turn to nature, as in the pandemic, when so many reconnected with the outside world.

I am hopeful because of the many partnerships catalyzed by the Endangered Species Act, even those centered around the species that are so controversial. Without the Endangered Species Act, I wouldn't have this hope.

Fifty years ago, in 1973, a nearly unanimous Congress passed this incredibly consequential bipartisan Act, which President Nixon signed into law. The Endangered Species Act was a response to a ground swell of public concern over the steady and precipitous decline of wildlife and habitat. Unregulated market hunting wiped out the passenger pigeon, a species that once numbered in the billions. Other species nearly face similar fates. Southern sea otters were hunted to near extinction during the fur trade. Bison were decimated, and many populations of migratory birds were drastically reduced, killed for their feathers. Raptors like the peregrine falcon and our nation's symbol, the bald eagle, came close to extinction due to toxins in the environment.

Congress enacted the Endangered Species Act because when we lose a species we become poorer as a country. The law states the policy of Congress that all Federal departments and agencies seek to conserve listed species and use their authorities to further the purposes of the ESA. It does not grant discretion to give up on a species and allow it to blink out. The ESA serves as an emergency room for America's fish, wildlife, and plants. It stems extinctions. Almost all of the species protected by the ESA are still with us today.

The ESA, too, stabilizes hundreds of species in decline. We all seek to move species from the emergency room to full recovery. Some require more effort and tools to get there. Federal agencies and project proponents engage in thousands of consultations each

year to ensure that their actions won't jeopardize a species' existence.

Through the combination of incentives and regulation, the ESA serves as a powerful catalyst to collectively bring all that we can to protect and conserve and move species through the continuum of recovery. It encourages partnerships between Federal Government, state, tribal, and local governments, private landowners, conservation organizations, and other interested parties. It provides flexibility for partners to work on voluntary conservation agreements, and we recognize that those partnerships are critical to the long-term conservation of our species.

Moreover, Federal agencies and our partners are continually evolving and improving how we implement this law for people and for the species. No doubt this immense investment of effort, collaboration, and dedication underpins the Endangered Species Act. This work is done day in and day out, year after year, and is essential for conserving our natural heritage for the future.

I look forward to working with this Committee, and I am here to answer any answer any questions you may have. Thank you, Chair.

[The prepared statement of Ms. Williams follows:]

PREPARED STATEMENT OF MARTHA WILLIAMS, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Introduction

Good afternoon, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Martha Williams, Director of the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department). I appreciate the opportunity to testify before you today on the Endangered Species Act (ESA or the Act).

The Service's mission is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. For more than 150 years, the Service has collaborated with partners across the country and around the world to carry out this mission.

Congress directed the Secretaries of the Interior and Commerce to implement the ESA, and the Service takes on that role for the Department. The ESA is a cornerstone of the Service's mission. Through this law, Congress set a public policy to address the loss of biodiversity and prevent species extinctions. The ESA turns 50 this year. A look back at our country's accomplishments under the Act demonstrates that the ESA achieves its fundamental purpose. Moreover, the Federal government and its partners are continually evolving and improving how we implement the law for people and species. The ESA remains as important today as it was when it was enacted, arguably even more so.

The ESA's history, and what led Congress to enact it nearly unanimously and President Nixon to sign it into law, provides context for both how we implement it now and for its future. The ESA built upon previously enacted laws like the Lacey Act, Migratory Bird Treaty Act, Pittman-Robertson Act, National Wildlife Refuge Administration Act of 1966, Endangered Species Preservation Act of 1966, and Endangered Species Conservation Act of 1969. A groundswell of public concern over the steady and precipitous decline of wildlife and habitat from overharvest and habitat loss and degradation catalyzed the ESA. In addition to recognizing the decline of species, these laws considered the migratory nature of many species and how conservation in one part of a species' range might be ineffectual without similar efforts in other areas of the species' range.

From the founding of the United States through the enactment of the ESA in 1973, a number of species were reduced to extinction. A notable example is the extinction of the migratory passenger pigeon, a species that once numbered in the billions and was thought to be an unlimited food resource that could never be extinguished. Although local protective laws were adopted as the species' severe decline became clear in the latter 1800s, habitat destruction and commercial hunting eventually eliminated wild passenger pigeons. The last known individual died in a zoo

in 1914. Similarly, populations of birds like storks, herons, and whooping cranes were drastically reduced due to hunting for their plumage, as well as widespread habitat loss. Raptors like bald eagles and peregrine falcons declined due to toxins in the environment.

Mammals like sea otters, bison, bears, and wolves were reduced through hunting or predator control efforts to remnant populations in the lower 48 States.

Over time, and through the actions of citizens, there was a growing understanding that the effects of generations of unregulated take and ecosystem degradation led to species extinctions, and that the loss of biodiversity harms our country. Growing public awareness and action led to Congressional action. Not only was the ESA an important step forward for the United States, but it is also one of the most comprehensive wildlife conservation laws enacted by any Nation in the world.

At its core, the purpose of the ESA is to conserve imperiled species and the ecosystems upon which they depend. Congress noted in the findings of the ESA that: (1) various species of fish, wildlife, and plants in the U.S. have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation; (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction; (3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people; and (4) the United States has pledged itself as a sovereign State in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to relevant international agreements.[1] The ESA requires our Nation to be cognizant of the effects of human activities on imperiled species.

Looking forward, the ESA is an essential tool in conserving America's wildlife heritage. The law enables us to prevent catastrophic harm to species and provides the foundation to do the long work of redressing past harms to species. The ESA has been successful in stemming the tide of species extinctions. Almost every single species that has been protected by the ESA is still with us today, and hundreds are on the path to recovery. However, the threats to biodiversity conservation and to maintaining the rich array of fish, wildlife, and plants that help make our Nation so special have only increased. It takes a collaborative, and, most often, long-term effort to create the right conditions for recovery. The Service and our partners do that work in the context of economic and communities' needs. The law allows for a flexible, measured approach that incorporates species protections in the course of development activities that help our economy prosper. It is important to note the value of the protection of our precious wildlife and ecosystems, which are treasured national resources and economic assets in their own right. Successful recovery of species, and conservation of biodiversity and the ecosystems that support biodiversity, benefit our society in many ways. These benefits range from tourism to natural ecosystem services such as pollination, water filtration, or helping protect coastal communities from storm surges.

Discussion of the Endangered Species Act

The ESA provides a multi-faceted and well-outlined system for protecting our Nation's wildlife, ecosystems, and biodiversity. The Act has prevented the extinction of hundreds of species and continues to protect and preserve some of our Nation's most beloved animals and plants. The Act accomplishes this through science-based processes that identify species that are threatened and endangered. The Act identifies prohibitions for endangered species, which can be applied to threatened species through a 4(d) rule, and requires that Federal agencies both use their authorities to conserve listed species and ensure that their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat.

The Act also provides the basis to develop and implement a road map for recovery of each species. These processes occur day in and day out, year after year, and cumulatively have protected, stabilized, and recovered a myriad of species.

For example, through the ESA, we have recovered our national symbol, the bald eagle. We have also recovered the American alligator, which after surviving for millions of years, became endangered due to market hunting and loss of habitat and required protection under the ESA. Each of these species is a part of their ecosystem, each with a unique biological community, performing services that are essential to our combined well-being. By conserving them, guided by the best-available science, we help protect healthy air, land, and water for everyone. The

[1] The Endangered Species Act of 1973 (16 U.S.C. §§ 1531).

ESA mandates or supports collaboration, rigorous science-based processes, recovery of species, comprehensive environmental reviews, and ongoing commitment, all hallmarks of effective environmental conservation in the United States.

Collaboration

A key component of the Service's work is to proactively conserve at-risk species before they require the protections of the ESA. This includes encouraging voluntary conservation, educating the public about wildlife, and monitoring species. Implementing conservation efforts before species are listed and their habitats become imperiled increases the likelihood that simpler, more cost-effective non-regulatory conservation options are available, and that conservation efforts will succeed. In other words, preventative care can be both less difficult and less expensive than emergency care of a species in many cases. Removing or reducing identified threats to a declining species can, in some cases, head off the need to list the species. States, which have primary jurisdiction over wildlife and plants before ESA listing, are critical partners in at-risk species conservation.

Through innovation and building upon decades of experience implementing the ESA and conservation actions in general on the ground, the Service has developed a number of programs that encourage voluntary conservation of declining, candidate, or listed species. These voluntary programs also provide regulatory predictability to landowners. For example, Safe Harbor Agreements are voluntary agreements with the Service or National Marine Fisheries Service (NMFS) involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as endangered or threatened under the ESA. In exchange for taking actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the Safe Harbor Agreement, the Service will not require any additional or different management activities by the participants without their consent. Candidate Conservation Agreements with Assurances (CCAAs) are voluntary agreements that provide incentives for non-Federal landowners to conserve unlisted species that either are, or are likely to become, candidates for listing in the future. For the length of the agreement, landowners agree to undertake specific activities that address the identified threats to the target species. In return for the participant's voluntary conservation action(s), the Service issues an Enhancement of Survival Permit under section 10(a)(1)(A) of the ESA. The permit, which goes into effect if the covered species is later listed as endangered or threatened under the ESA, provides assurances that, if the species is subsequently listed, the Service will not require the permittee to conduct any additional conservation measures without consent. Additionally, the permit authorizes a specific level of incidental take of the covered species, should listing occur.

Partnerships are key to all the Service's work, including our proactive efforts. We prioritize coordination with the NMFS, other Federal, State, and local agencies, Tribes, nongovernmental organizations, companies, and private citizens. We work with our many partners to find collaborative solutions to help address any human-wildlife conflicts or differing species needs. In some cases, these collaborative efforts are sufficient to prevent a species from being listed, such as in the case of the Virgin River spinedace in Arizona, Nevada and Utah, the New England cottontail in New York and Maine, and the Cumberland sandwort in Tennessee and Kentucky. Other examples of successful collaborations are relayed in the recovery section below.

Science-based Processes

Implementation of the ESA is grounded in science. The Act requires the Service use the best available scientific and commercial data to make its determinations. For example, when the Service receives a petition to list or reclassify a species, we follow a comprehensive, science-based process mandated by the ESA and the Administrative Procedure Act to evaluate the petition and determine whether a species may warrant listing under the ESA. We (or the NMFS for most marine species) must make a finding within 90 days of receiving a petition (to the extent practicable) as to whether or not there is "substantial information" indicating that the petitioned listing may be warranted. If this preliminary finding is positive, a scientific status review is conducted to inform a 12-month finding (i.e., within 12 months of receipt of the petition). The 12-month finding may result in a "not warranted" finding, a "warranted but precluded" finding (meaning the species is identified as a candidate species but listing is precluded at that time by higher priority actions), or a "warranted" finding. If the Service makes a finding that listing is warranted, we publish a concurrent proposed rule to list the species under the ESA with a public comment period of 60 days. The ESA directs the Service to make a final listing determination within one year of the proposed rule.

In addition to the petition process, under the ESA, the listing, delisting, and reclassification process may be initiated by a status review such as candidate assessment, five-year review, or discretionary review. Through these reviews, we may identify species for which the best scientific and commercial data available indicate that a proposal for listing or reclassification is appropriate, which would be available for public comment prior to a final rule.

Public engagement, through the ability to petition the Service and the public comment process, is an important component of the ESA. The public may also request the Service hold a public hearing on a proposed rule.

A species is added to the List of Endangered and Threatened Wildlife or the List of Endangered and Threatened Plants when it is determined, following a science-based process, to be an endangered species or threatened species because of any of the following factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; other natural or man-made factors affecting its survival.

Due to the number of petitioned species and the time required to carefully conduct our scientific assessments and public engagement process, the Service has a methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the ESA. This methodology is intended to allow us to address our outstanding workload strategically, as our resources allow, and to provide transparency to our partners and other stakeholders as to how we establish priorities within our upcoming workload.

The Service is also cognizant of the importance of tailoring protections for threatened species where appropriate. For example, when the Service is developing 4(d) rules for protecting threatened species, in some cases it is most appropriate to apply the full prohibitions afforded to endangered species under section 9 of the ESA, along with a standard set of exceptions for the Service, NMFS, and State agencies, to benefit threatened species. In other cases, the 4(d) rule may be tailored to provide additional exceptions, and we may incentivize known beneficial actions for the species or remove prohibitions on forms of take that are considered inconsequential to the conservation of the species. We put in place protections that will both prevent the species from becoming endangered and promote the recovery of species. The exact exceptions are science-based; they may depend on the species' biology, conservation needs, and threats affecting the species.

In addition, for both endangered and threatened species, section 10 of the ESA provides a permitting process to authorize take incidental to non-Federal activities. The cumulative effect of such take authorizations is considered through science-based processes to ensure it does not jeopardize the continued existence of the species. Permits may authorize take of listed species incidental to, and not the purpose of, an otherwise lawful activity, such as residential or commercial development. Non-Federal entities must develop a conservation plan that meets specific requirements as identified in the ESA, apply for an incidental take permit, and once issued, implement the project as specified in their permit. The Habitat Conservation Plan (HCP) program creates creative partnerships that allow public and private sectors to work with the Service to address listed and at-risk species in an ecosystem context, generate long-term commitments to conserve such species, and deliver regulatory assurances to project proponents. HCPs can also include conservation measures for vulnerable plant and animal species that are not listed federally as endangered or threatened.

Effectively protecting listed species requires addressing their habitat needs, including designation of critical habitat. A critical habitat designation follows a science-based process to identify those specific areas that are essential for species conservation. Because habitat loss or degradation is frequently a key threat for many species that face extinction, a critical habitat designation is an important tool for species recovery. Critical habitat is also an important tool to educate the public and other Federal agencies regarding the conservation needs of listed species. Critical habitat designations do not create a park or preserve, nor do they affect activities by private landowners where there is no Federal funding or authorization involved. They only affect Federal agency actions or federally funded or permitted activities, as the ESA requires Federal agencies to ensure their actions are not likely to destroy or adversely modify designated critical habitat.

Recovery

When a species is delisted due to recovery, it is an accomplishment of great magnitude. Successful delisting most often is the result of the sustained work of multiple partners to address threats and conserve ecosystems. This work provides

benefits not only to the imperiled species but often also to other fish, wildlife, plants, and the public.

The Service strives to recover listed species to delist or downlist them due to recovery. For most listed species, recovery is not a quick fix, and requires coordinated efforts and commitments from many stakeholders over many years. Thus far, more than 100 species of animals and plants have been delisted based on recovery or reclassified from endangered to threatened based on their improved conservation status. Many of these successes have resulted from collaboration with partners. For example, this June, the Service announced a final rule delisting the Okaloosa darter, in the Florida Panhandle, due to its recovery. Long-term partnerships with Federal, State, local and private citizens, contributed to the recovery of this fish, which was previously near the brink of extinction. A key partner in this effort was the U.S. Air Force, who worked to improve Okaloosa darter habitat on Eglin Air Force Base. Another example is in February 2023, the Service published a proposed rule to delist the wood stork, a large wading bird that inhabits a number of southeastern States. Since its listing in 1984, the breeding population has doubled, the number of nesting colonies have more than tripled, and their breeding range has expanded significantly. Other examples of recovered and delisted species include: the black-capped vireo, snail darter, Monito gecko, brown pelican, Borax Lake chub, Kirtland's warbler, interior least tern, San Benito evening primrose, Virginia northern flying squirrel, lesser long-nosed bat, Delmarva Peninsula fox squirrel, Hawaiian hawk, and desert milkvetch. Hundreds of species are stable or improving due to the collaborative efforts of Federal agencies, State and local governments, Tribes, and stakeholders across the country. Cumulatively, these successes are the result of an immense amount of effort, collaboration, and dedication by the Service and our partners, including individual citizens, and are essential to conserving our natural heritage for future generations of Americans.

The Service has been proactive and resourceful in utilizing specialized funds to further our recovery work. The Service is currently using Inflation Reduction Act (IRA) funds to increase recovery planning capacity and capabilities to help ensure timely, effective, and streamlined processes so we can ensure recovery plans are in place to provide the roadmaps for on-the-ground implementation actions that are necessary to recover species and remove them from the Endangered Species list. We are also using IRA funds to support strategic implementation of on the ground recovery actions for listed species. We have placed a particular emphasis on listed species pertaining to the four focal species groups identified by Congress (Hawaii and Pacific Island plants, butterflies and moths, freshwater mussels, and southwest desert fish) as well as species that have historically needed additional resource investments to achieve recovery. For example, our 2018 State and Federal expenditures report notes that no agency reported expenditures for 668 listed species, and 55 percent of listed species had reported expenditures of $10,000 or less.

However, there is a substantial amount of work left to be done. Approximately 1,683 U.S. species remain on the Endangered Species list. These listed species require action be taken by the Service and others to protect their habitat and ensure their survival so that these populations no longer need the protections of the ESA to prevent extinction.

Environmental Reviews

Environmental reviews of Federal or federally funded projects play an important role in helping to prevent extinctions and facilitate recovery. The Service plays a key role in environmental reviews for projects under multiple authorities, including the ESA, National Environmental Policy Act, Clean Water Act, Fish and Wildlife Coordination Act, and the Marine Mammal Protection Act. The Service's reviews under these laws generally serve to identify harm to fish, wildlife, and plant species and recommend or prescribe ways to eliminate, reduce, or minimize such harm. Most often, such reviews constitute a small part of the overall scope, timeline, and process of an individual project, but they are critical to providing long-term conservation benefits.

Since November 2022, the Service has received more than 87,000 requests for project reviews under these authorities. The Service's current workload is composed of work related to the full gamut of industry sectors, such as communications, energy development and transmission, mining, agriculture, forestry, commercial and residential development construction, transportation, national security/military, and water resource development.

The Service's largest role in environmental reviews is through section 7 of the ESA. Under section 7 of the ESA, Federal agencies must consult with the Service or NMFS when any action the agency carries out, funds, or authorizes may affect either a species listed as threatened or endangered, or any critical habitat des-

ignated for it. The purpose of the consultation is to ensure that any action Federal agencies carry out, fund, or authorize will not jeopardize the continued existence of any endangered species or threatened species or destroy or adversely modify their designated critical habitat.

If a Federal agency determines its proposed action may affect a listed species or designated critical habitat, formal consultation is required (except when the Service or NMFS concurs, in writing, the proposed action "is not likely to adversely affect" listed species or designated critical habitat). Formal consultation is a process between the Service or NMFS and a Federal agency that determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat and concludes with the issuance of a biological opinion and incidental take statement by either of the Services.

Informal consultation is an optional process between the Service or NMFS and a Federal agency, prior to formal consultation, to determine whether a proposed Federal action may adversely affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the Federal agency's assessment of potential effects or to suggest possible modifications to the proposed action, which could avoid potentially adverse effects.

On average, the Service completes about 1,002 formal section 7 consultations each year, with an average of 118 days for completion, and 78 percent of consultations completed in 135 days or less. On average, the Service also completes about 11,123 informal section 7 consultations each year, with an average of 35 days for completion. The amount of time Service staff spend reviewing and advising on a project can vary greatly depending on: (1) the completeness of information we receive from the Federal agency and applicant (i.e., whether we receive adequate information to analyze the effects of the project on listed species and critical habitat); (2) the complexity of the proposed project; and (3) the number and status of listed species and critical habitats in the project area. These environmental reviews not only help protect the species and ecosystems we are entrusted with protecting, but they can also improve the overall quality of the project itself from an environmental standpoint.

The Service can experience increases in our environmental review workload in response to program or project funding received by other agencies. For example, we anticipate that project funding under the Bipartisan Infrastructure Law (BIL) and IRA will further increase the Service's environmental review workload, primarily through additional ESA section 7 consultations. Neither the IRA nor the BIL include funding for section 7 consultations for projects funded by Federal agencies other than the Department of the Interior (DOI) (with the exception of the wildland fire management provisions of the BIL). Using this limited transfer authority, the Service has entered into transfer funding agreements with the U.S. Forest Service (USFS) and DOI's Office of Wildland Fire (OWF) to establish a dedicated workforce to carry out consultations on this vital work. These agreements will ensure dedicated Service staff can consult on USFS and OWF wildfire risk reduction projects in a timely manner. It is also enabling the development of expertise and relationships specific to USFS and OWF wildfire risk reduction activities, which is further facilitating efficient and timely environmental reviews. The President's FY 2024 budget proposes to expand existing transfer authorities by enabling Federal agencies to transfer funds provided under BIL to the Service and the National Marine Fisheries Service. This authority in concert with existing authorities will improve efficiencies and increase capacity for environmental planning and consultation. In addition, by enabling dedicated staff to engage in programmatic approaches and the development of technological solutions, the Service is further streamlining project approvals to support more efficient consultations for these priority projects.

Ongoing Commitment

To meet the needs of the species the Service stewards, and to provide clarity for our partners and stakeholders, our implementation of the ESA must be durable and responsive to changing environmental conditions and species status. To this end, our implementation remains dynamic through status reviews such as candidate assessments, five-year reviews, or discretionary reviews.

To continue to improve, evolve, and innovate within the authority granted by the ESA, the Service also reviews and, at times, adapts implementing regulations. In 2019, we conducted comprehensive reviews and revisions of the regulations governing reclassifying species, critical habitat, and environmental review consultations. More recently, in June 2023, we proposed further revision to those regulations, primarily for the purpose of incorporating lessons learned, ensuring that the regulations are clear to the public and to our practitioners, and providing a well-

grounded framework for effectively achieving the purposes of the ESA. While we recently proposed changes to these 2019 regulations, it is important to recognize that much of the 2019 regulations are not proposed for revision, including the explicit recognition of programmatic consultations and other alternative consultation frameworks that provide efficiencies, and the deadline for issuing concurrence with findings on not likely to adversely affect.

The Service also reviews and adapts our guidance, internal processes, and tools for partners and stakeholders, with the goal of increasing clarity, accessibility, efficiency, and effectiveness of ESA implementation. For example, to help address our growing consultations workload, the Service has worked to update and streamline processes for project proponents, including revising the regulations governing section 7 consultations and working with Federal agencies to develop programmatic consultations. We have also developed the Information for Planning and Consultation (IPaC) system which we are utilizing to automate portions of the consultation process. In FY 2022, IPaC delivered 23,425 streamlined consultation documents and generated over 103,500 official species lists in response to user requests, saving taxpayers the equivalent of approximately 40,690 biologist hours. In addition, we are continuing to develop refined species ranges to better inform project planning and consultations while reducing the need for in-person technical assistance.

The Service requires sufficient funding, personnel, and other resources to effectively carry out its statutory obligations across all aspects of the ESA. The ESA directs the Service to submit to Congress an annual report for prior fiscal years that contains reasonably identifiable Federal expenditures by all Federal agencies made primarily for the conservation of endangered and threatened species pursuant to the ESA, and by States receiving grants under section 6 of the ESA. For FY 2020, Federal and State agencies identified domestic and foreign expenditures related to species and land totaled $1,264,141,486. This included the Service's $104,759,637 identified domestic and foreign expenditures related to species conservation in FY 2020.

There are many species for which the Service or other stakeholders have few resources available to engage in recovery efforts. Less than $5,000 was reported by any Federal or State agency for 27 percent of the species listed in 2020. Federal funding is often necessary to leverage the collaborative conservation necessary to guide species back from the brink of extinction and restore populations to self-sustaining levels. The Administration's budget request provides significant resources to support the increasing costs of maintaining current recovery programs to reduce human/wildlife interactions, manage captive populations until reintroductions back to the wild are possible, and support our State, Tribal, and local partners who have insufficient resources to recover these species. These costs rise as the human population rises and as human development increasingly impacts wildlife habitat.

Other areas of ESA implementation also require sufficient resources as provided in the Administration's budget request. For example, between 2003 and 2022, Service environmental review staff decreased by 20 percent while new species were listed and economic activity, litigation, and the complexity of species analyses increased. As noted above, project funding under the IRA and BIL is expected to increase the demand for Service technical assistance and section 7 consultations, but neither law provided funding to the Service for section 7 consultations for projects funded by Federal agencies other than the DOI (except for the wildland fire management provisions of the BIL). Our work with USFS and OWF on wildland fire risk reduction funded by the BIL, and our recovery plan updates funded by the IRA, demonstrate how effective and efficient the Service can be when provided with appropriate funding. Accordingly, the Administration's budget request provides funding necessary to significantly bolster the planning and consultation workforce and maximize the productivity and effectiveness of the program.

The ESA is critically important as we look to the future—we face an ongoing extinction crisis and serious threats to biodiversity. The extinction crisis is accelerated by climate change and invasive species, which are making many areas of historical habitat for plants and animals unsuitable for their continued survival. Scientists estimate that as many as 1 million species are in danger of extinction, many within decades.[2] Preventing extinctions and recovering species requires

[2] IPBES (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. S. Díaz, J. Settele, E.S. Brondízio, H.T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K.A. Brauman, S.H.M. Butchart, K.M.A. Chan, L.A. Garibaldi, K. Ichii, J. Liu, S.M. Subramanian, G.F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y.J. Shin, I.J. Visseren-Hamakers, K.J.

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science-based conservation and investing sufficient resources to help address the growing impacts from habitat loss, climate change, and invasive species before it is too late.

Conclusion

Assessing the needs of wildlife and plants, encouraging proactive voluntary conservation and partnerships, working with landowners to conserve species and their habitats while keeping working lands working, and recovering and monitoring species are some key responsibilities under the ESA that require sufficient resources. Investing in our wildlife, fish, and plants, is not only important to species and their habitats, but also provides numerous other benefits including cleaner air, cleaner water, more climate resilient landscapes, and provides places where people can recreate and be in nature, which are of innumerable intrinsic and economic value to the Nation and its people. Our investments in these species and ecosystems make all the difference to future generations—which species will they see in the wild, and which species, like the passenger pigeon, will only be known through textbooks and museums. The ESA is a critical tool in helping to conserve not only species, but also our shared natural heritage.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE MARTHA WILLIAMS, DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE

Ms. Williams did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Bentz

Question 1. This year, USFWS proposed two rules to classify several species of surgeon as endangered under the Endangered Species Act. If either of these rules moves forward, every person and company operating in the United States would be prohibited from selling, delivering, transporting and shipping any of these sturgeon species even though all foreign sturgeon species are farm-raised and have a positive effect on the wild populations.

Question 2. I am informed that as a result of such a listing, the vast majority of the living members of the species, approximately 80% are estimated to exist on farms, will be destroyed because they will lose all economic value and will no longer be farmed. Assuming that such a figure is accurate, explain to me how a listing decision that results in the actual destruction of 80% of the members of a particular species that exist on earth conserves the species?

Question 3. As Administrator of FWS, would you support amending the ESA to ensure you had the flexibility to ensure that your listing decisions would not actually result in the destruction of the vast majority of the members of a species that you are trying to protect? It would seem to make ense to provide you the authority to draw a clear distinction between wild sturgeon populations and captive-bred or farm-raised, and hybrid species so that a listing of the wild population would not result in the destruction of the majority of these populations that would no longer have any economic value if they are listed as endangered?

Questions Submitted by Representative González-Colón

Question 1. According to the U.S. Fish and Wildlife Service's (the Service) website, there are 69 listed species in Puerto Rico under the Service's jurisdiction. This includes our emblematic Puerto Rican parrot. I've long commended the Service's work to protect this endangered species under its Puerto Rican Parrot Recovery Program, which is a great example of how the federal government should partner with state and private stakeholders. Whereas in the 1970s only 13 Puerto Rican parrots remained, I understand today there are approximately 690 on the Island—including both wild populations and those in captive breeding aviaries.

Could you discuss the Service's work under the Puerto Rican Parrot Recovery Program, and what challenges remain to eventually downlist and then hopefully

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Willis, and C.N. Zayas (eds.). IPBES secretariat, Bonn, Germany. 56 pages. https://doi.org/10.5281/zenodo.3553579.

delist this species? That is, what else is needed to achieve the Puerto Rican parrot's recovery?

Question 2. Could you discuss the Service's efforts to incentivize private landowners in Puerto Rico to take conservation measures to benefit listed species? Especially through the Partners for Fish and Wildlife Program and the Coastal Program.

Question 3. Could you submit a status report on the following listed species found in Puerto Rico under the Service's jurisdiction, including, if available, how much the Service has spent to support each species' recovery and conservation on the Island since Fiscal Year 2018?

3a) Amphibians: Puerto Rican rock frog (coquí guajón), coquí llanero, golden coquí, Puerto Rican crested toad

3b) Birds: Puerto Rican parrot, yellow-shouldered blackbird, Puerto Rican broad-winged hawk, Puerto Rican nightjar, Puerto Rican plain pigeon, Puerto Rican sharp-shinned hawk, elfin woods warbler

3c) Puerto Rican harlequin butterfly

3d) Antillean manatee

3e) Reptiles: green sea turtle, leatherback sea turle, hawksbill sea turtle, Mona ground iguana, Mona boa, Puerto Rican boa

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Mr. BENTZ. Thank you.

I now recognize Mr. Wood for 5 minutes.

STATEMENT OF JONATHAN WOOD, VICE PRESIDENT OF LAW AND POLICY, PROPERTY AND ENVIRONMENT RESEARCH CENTER, BOZEMAN, MONTANA

Mr. WOOD. Chairman Bentz, Ranking Member Huffman, thank you for inviting me to participate in this important and timely discussion of the Endangered Species Act on its 50th anniversary.

Living in Bozeman, Montana, I have the great fortune of living next to one of the nation's largest intact ecosystems, an ecosystem that supports grizzly bears, gray wolves, and countless other cherished wildlife. But living in Montana means I also get to see firsthand how well-intentioned Federal policies can sometimes go awry, and produce conflict where what we were aiming for was conservation. Too often, the ESA has been an example of such a policy.

It is true that over the last 50 years only 1 percent of listed species have gone extinct. That is a critically important accomplishment that we should all celebrate, and that we should make sure that we don't lose. However, in passing the ESA, Congress set more ambitious goals: to recover the species to the point that they were no longer at risk. And it is that goal on which we are falling short.

As you have heard today, only 3 percent of listed species have recovered to date. In fact, PERC's research has shown that of the 300 species the Service predicted to recover by 2023, only 13 have. We can and must do better.

The lack of recoveries reflects a fundamental problem in the implementation of the ESA. Incentives matter, and too often we have gotten the incentives wrong. Regulations penalize landowners who conserve rare species and their habitats, alienating vital partners. Instead, we must encourage states, tribes, and private landowners to invest in habitat restoration and other proactive recovery efforts.

To the Biden administration's credit, it has recognized the critical importance that incentives play in conservation, and committed to pursue conservation in ways that "honor private property rights and support voluntary stewardship." Today, I will discuss some ways that the ESA can be better implemented to align with this vision of conservation as something "done with private landowners, not to them."

First, regulations for threatened species should be more creatively used to encourage proactive recovery efforts. In my written testimony, I discuss how those regulations could chart road maps to recover species like the grizzly bear, giving legal effect to the recovery goals identified in recovery plans, allowing states to resume management authority gradually as those goals are met, and rewarding incremental progress toward species recovery. This approach could avoid tremendous conflict in the resources it wastes.

But using that approach means rejecting the proposal to restore failed and illegal policy of regulating threatened species as if they were endangered. The Administration's own actions demonstrate that that proposal would be a step backwards for species. Every time the Service has listed an animal during this Administration and considered what was the best approach to recover that species, it has rejected endangered-level regulations. Again, every single time, and yet the current proposal is to automatically treat threatened species as if they endangered without considering what is best for those species.

The other critical opportunity is to find ways to encourage habitat maintenance and restoration. Many of these habitats will not exist if we simply leave them alone. We have to encourage proactive activity to maintain and restore them. States and private conservation organizations have pioneered many tools for achieving this purpose, including things like habitat leases. But those are under-used in the context of the ESA.

Critical habitat designations, on the other hand, can't motivate that kind of proactive engagement in conservation. At best, they can conserve existing features on lands where those features could not be changed without a Federal permit. Critical habitat designations are especially unhelpful in private lands that are currently unoccupied, unsustainable, or unsuitable for a species.

In the Weyerhaeuser case, for instance, there was no reason to think that an unwanted designation that lowered the value of private land would encourage a private landowner to convert their land into habitat for the dusky gopher frog. That is really difficult work, and you don't get there by alienating a landowner. In the wake of that Supreme Court defeat, the Service's refusal to follow a consistent definition of habitat or to address incentives in its designations only exacerbates conflict at the expense of conservation.

I will conclude on the issue that we should hope to be the conclusion for every listed species: delisting. A prompt and efficient delisting process is essential to reward states, tribes, and private landowners for their role in recovering species. It is noteworthy that, despite all the conflict around delisting, there has not yet been a single species that has recovered, been transferred to state

management, and backslid back on the list. Every time states have taken control of species, they have managed to sustain those recoveries.

Litigation encouraged by overly generous attorneys' fees has been a significant obstacle to the Service's ability to delist species and take other critical steps to recover species. It is often said that you get what you pay for, so perhaps it shouldn't be a surprise that heavily subsidizing disruptive litigation while penalizing landowners' voluntary habitat restoration has produced too much of the former and far too little of the latter. If the ESA is going to recover more species in its second half century than it did in its first, it is essential that it be implemented in ways that get the incentives right. Species must be an asset for the private landowners who provide habitat and undertake recovery efforts, rather than continuing to be a liability.

I look forward to your questions.

[The prepared statement of Mr. Wood follows:]

PREPARED STATEMENT OF JONATHAN WOOD, VICE PRESIDENT OF LAW AND POLICY, PROPERTY AND ENVIRONMENT RESEARCH CENTER (PERC)

Main Points

- While thankfully few species regulated by the Endangered Species Act have gone extinct over the last 50 years, the statute has fallen far short in its ultimate goal of recovering endangered and threatened species.
- The principal reason that only 3% of listed species have recovered is that the statute penalizes landowners who accommodate rare species or conserve their habitats, creating perverse incentives.
- This failing recovery rate can't be explained away with claims that the ESA simply needs more time. The recovery rate for species the Fish and Wildlife Service predicted would recover by now is a mere 4%.
- To recover more species, the ESA and its implementation must be reformed to improve incentives for states, tribes, and landowners to invest in habitat restoration and proactive recovery efforts.

Introduction

Chairman Bentz, Ranking Member Huffman, and members of the committee, thank you for the invitation to participate in this important and timely discussion of the Endangered Species Act on the 50th anniversary of its enactment. Over the last half-century, less than 1% of listed species have gone extinct, a significant and laudable accomplishment. But Congress set a more ambitious goal in the ESA: to recover species so that they were no longer at risk. Unfortunately, the ESA has not been effective at recovering species, with only 3% of listed species achieving this goal. This summer, the Property and Environment Research Center will publish a report analyzing the Fish and Wildlife Service's progress in recovering species, some of the findings from which are previewed below.[1] One of our key findings is that the Service has recovered only 13 of the 300 species it predicted would recover by now, a 4% recovery rate for those species. This suggests that the failing recovery rate can't be excused by claims that it is too soon to judge the ESA's effectiveness at recovering species.

Instead, the lack of recoveries—even among those species projected to recover by now—is due to a more fundamental problem. Incentives matter. And the ESA too often gets them wrong. It imposes regulations that penalize landowners who conserve rare species and their habitats, making them liabilities rather than assets. As Michael Bean, former EDF and Obama admin official, has observed, "anyone who

[1] *See* Katie Wright & Shawn Regan, *Missing the Mark: How the Endangered Species Act Falls Short of Its Own Recovery Goals*, Property & Environment Research Center (forthcoming 2023).

wishes to improve the law's results should start by addressing the[] need [for] positive incentives" to engage in recovery efforts.[2]

To the Biden administration's credit, it has recognized the importance of incentives in many of its initiatives, including America the Beautiful, and committed to pursue conservation in ways that "honor private property rights and support voluntary stewardship."[3] PERC has proudly supported the administration when it has acted consistent with this commitment, including a proposed ESA rule streamlining permitting for voluntary conservation efforts.[4] Unfortunately, the administration's vision of conservation as something "done with private landowners, not to them"[5] has not been borne out in its implementation of the ESA. Several high-profile regulatory decisions and proposals have needlessly provoked conflict with states and landowners while doing nothing to benefit species or—worse—directly undermining incentives to restore habitat and recover species.

The Property and Environment Research Center

PERC is the national leader in market solutions for conservation, with over 40 years of research and a network of respected scholars and practitioners. Founded in 1980, PERC is nonprofit, nonpartisan, and proudly based in Bozeman, Montana. Through research, law and policy, and innovative applied conservation programs, PERC explores how aligning incentives for environmental stewardship produces sustainable outcomes for land, water, and wildlife. With many of the most prominent ESA conflicts in our own backyard, , PERC and its affiliated scholars have long advocated reforms to the ESA and its implementation to empower states to take the lead in recovering species, to remove perverse incentives for private landowners that set species back, and to create the positive incentives needed to spur habitat restoration and proactive recovery efforts.[6]

An emergency room that doesn't heal and discharge patients

The ESA is generally effective at preventing extinctions, with 99% of listed species remaining around today. This doesn't necessarily mean that the statute can be credited with "saving" all of these species from extinction, of course. That would only be true if every listed species would have gone extinct without the ESA. According to the Center for Biological Diversity, at least 83% of domestic listed species would have persisted without the act.[7] Thus, the ESA may have saved as many as 291 species from extinction.[8] That is a significant achievement, even if considerably more modest than the oft used 99% figure suggests.

But the ESA's goal isn't merely to prevent extinctions. "In a word, the Act's goal is recovery," Michael Bean has observed.[9] Congress made this clear by declaring the ESA's purpose to "conserve" endangered and threatened species,[10] and by defining conservation in recovery terms: as the steps necessary "to bring any [listed species]

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[2] *See* Eric Holst, *The "dean of endangered species protection" on the past, present, and future of America's wildlife*, EDF Growing Returns (2017).

[3] *See, e.g.*, Conserving and Restoring America the Beautiful (2021).

[4] *See* PERC, Comment Supporting FWS' Proposed Conservation Benefit Agreement Rule (Apr. 10, 2023). *See also* PERC, Comment Supporting the BLM's Proposed Conservation Leasing Rule (July 5, 2023); Brian Yablonski, *New Big-Game Migration Partnership Highlights Incentives for Private Working Lands*, PERC.org (May 31, 2022); Brian Yablonski, *A Strong Start to America the Beautiful*, PERC.org (May 19, 2021).

[5] *See* Robert Bonnie, Keynote Address for the University of Wyoming's 150th Anniversary of Yellowstone Symposium: The Importance of Private, Working Lands to Yellowstone in the Twenty-First Century (May 20, 2022).

[6] *See Missing the Mark, supra* n. 1; Jonathan Wood & Tate Watkins, *Critical Habitat's "Private Land Problem": Lessons from the Dusky Gopher Frog*, 51 Envtl. L. Rep. 10,565 (2021); Jonathan Wood, *The Road to Recovery: How Restoring the Endangered Species Act's Two-Step Process Can Prevent Extinction and Promote Recovery*, PERC Policy Report (2018).

[7] *See* Noah Greenwald, et al., *Extinction and the U.S. Endangered Species Act*, PeerJ (2019).

[8] *See id.* This should be thought of as an upper limit, rather than a reliable estimate of the number of extinctions avoided. The CBD study assumed that listed species would have the same extinction rate as species identified as endangered on the IUCN Red List. *See id.* at 2. But the IUCN's endangered category covers species more vulnerable than those listed as endangered—much less those listed as threatened—on the ESA list. *See, e.g.*, J. Berton C. Harris, et al., *Conserving imperiled species: a comparison of the IUCN Red List and U.S. Endangered Species Act*, 5 Conservation Letters 64 (2012).

[9] *See* Michael J. Bean, *The Endangered Species Act: Science, Policy, and Politics*, in The Year in Ecology and Conservation Biology, Annals of the New York Academy of Science (2009)

[10] *See* 16 U.S.C. § 1531(b) (identifying the ESA's purposes as to "conserve" ecosystems, endangered and threatened species, and species covered by treaties and international commitments).

to the point at which [ESA regulations] are no longer necessary."[11] Virtually every operative provision of the ESA is tied to this recovery mandate.[12]

Unfortunately, the ESA hasn't succeeded at recovering imperiled species. Over the last 50 years, only 3% of listed species have recovered and been delisted.[13] And only 58 species have improved to the point that their status could be upgraded from endangered to threatened.[14] But this may actually overstate the ESA's success because roughly half of these recoveries and status upgrades were foreign or plant species subject to relatively little regulation under the ESA. Still other species, like the bald eagle, recovered for reasons unrelated to the ESA.[15]

One reason commonly offered for the ESA's anemic recovery rate is that recovery takes a long time and 50 years is too soon to judge the law's effectiveness. To test this assertion, my PERC colleagues have analyzed the Service's success at recovering species that it previously predicted could recover by now.[16] From 2006 to 2014, the Service reported to Congress projections of when species would recover, including 300 domestic species projected to recover by 2023.[17] To date, only 13 of those species have recovered.[18] This is a mere 4% recovery rate for the species that should have recovered relatively quickly. That this rate isn't materially different from the overall recovery rate suggests a more fundamental problem than a mere lack of time. And the gap between the recoveries the Service predicted and what has been achieved is growing, even when the 44 recovered species without projected recovery dates are included.

Even looking at incremental progress toward recovery paints a bleak picture. For decades, the Service reported to Congress whether listed species were improving, stable, or declining, a practice it abruptly ended in 2012. According to those reports, the number of species declining was 2–8 times the number improving.[19] Another measure of incremental progress would be the percentage of recovery actions identified in recovery plans that have been completed or partially completed. On the ESA's 30th anniversary, the Service reported that it has achieved less than 25% of the recovery objectives for 76% of species.[20] To update this result, my PERC colleagues have calculated the percent of species with less than 25% of recovery actions marked "complete" or "partially complete" in the Service's ECOS database. That number has increased over the last 20 years, to 85%.[21] Thus, by any reasonable measure, the ESA is falling significantly short in achieving its primary goal of recovering species.

The other reason often given for the lack of recoveries is inadequate funding. Funding to provide positive incentives for voluntary recovery instead of regulations that create perverse incentives for private landowners could boost the recovery rate.[22] But calls for more funding tend to favor paperwork and bureaucracy over conservation. A recent Defenders of Wildlife paper, for instance, recommends doubling the Service's budget to nearly $850 million but would allocate only 30% of that money to on-the-ground recovery efforts.[23] Moreover, focusing on the Service's budget ignores the huge contributions of other federal agencies, states, and private parties. Prior to 2020, the Service reported government spending on

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[11] 16 U.S.C. § 1532(3).

[12] *See* 16 U.S.C. §§ 1532(5) (definition of critical habitat), 1533(d) (standard for threatened-species regulations), 1533(f) (standard for recovery plans), 1534 (standard for land acquisition), 1535 (standard for collaborating with states), 1536 (standard for inter-agency consultation), 1539(j) (standard for establishing experimental populations).

[13] *See* FWS Environmental Conservation Online System, *Delisted Species*.

[14] *See* FWS Environmental Conservation Online System, *Reclassified Species*.

[15] *See* Jonathan Adler, *The Leaky Ark: The Failure of Endangered Species Regulation on Private Land*, in Rebuilding the Ark: New Perspectives on Endangered Species Act Reform (2011).

[16] *See Missing the Mark, supra* n. 1.

[17] *See* FWS, *Recovery Reports to Congress. See also Missing the Mark, supra* n. 1.

[18] *Compare* FWS, *Recovery Reports to Congress with FWS, ECOS: Delisted Species. See Missing the Mark, supra* n. 1. This data was used in an earlier study to claim that 90% of listed species recover by their projected recovery date. *See* Kieran Suckling, et al., *On Time, On Target*, Center for Biological Diversity (2012). However, that study considered a nonrandom selection of a mere 10 species with projected recovery dates. Its results can't be reproduced by scientifically rigorous means.

[19] *See* Langpap, et al., *The Economics of the U.S. Endangered Species Act: A Review of Recent Developments*, 12 Rev. of Enviro. Econ. & Pol'y 69, Fig. 3 (Dec. 2017).

[20] FWS, *Recovery Report to Congress Fiscal Years 2003–2004* 24 (2004).

[21] *See* FWS, *ECOS: Species With Recovery Plans. See also Missing the Mark, supra* n. 1.

[22] *See, e.g.*, Wood & Watkins, *supra* n.2 (advocating the purchase of habitat or incentives for habitat restoration instead of designating land as critical habitat).

[23] *See* Megan Evansen, et al., *Funding Needs for the Fish and Wildlife Service's Endangered Species Programs: 2024* (2022).

endangered and threatened species each year.[24] According to these reports, federal agencies and states spent more than $14 billion on listed species from 2011–2020. The Service was responsible for only 13% of the spending. If the costs borne and investments made by private landowners and conservation groups were included, this share would fall even further.

Efforts to recover the grizzly bear are a good example. In 1993, the Service estimated that it could recover most grizzly populations by 2023 and all populations by 2033 for $26 million.[25] From 1994 to 2020, the Service spent nearly $35 million on grizzlies, adjusted for inflation.[26] But states and federal agencies spent another $100 million. Despite the grizzly receiving more than five times the anticipated funding, no populations have been delisted.[27] And while two of the populations are biologically recovered and may be delisted in the near future, the other four populations are not on track to meet their 2033 projected recovery date.

Incentives Matter

Too few species have recovered due to the failure to account for the incentives of states, tribes, and private landowners whose cooperation is essential to recovering species. The law imposes strict regulations on land where rare species and their habitats are found, effectively penalizing landowners who accommodate rare species and conserve their habitats. Sam Hamilton, former Director of the Service, summed up the problem well: "the incentives are wrong here. If a rare metal is on my property, the value of my land goes up. But if a rare bird occupies the land, its value disappears."[28] As a consequence, the ESA can create perverse incentives for landowners to "shoot, shovel, and shut up" or preemptively destroy habitat before a species' presence triggers regulatory consequences. These perverse incentives matter because two-thirds of listed species depend on private land for habitat.[29]

Reforming the ESA and its implementation to provide positive incentives to states, tribes, landowners, and conservationists who conserve rare species and contribute to their recoveries would better serve both people and wildlife. Even modest tweaks could address perverse incentives and reward recovery progress, thereby making a big difference in species recovery without sacrificing the ESA's effectiveness at preventing extinctions. Three of those opportunities are discussed below.

1. Tailor regulations for threatened species to better align the incentives of states, tribes, and landowners with the interests of imperiled species

In the ESA, Congress authorized the designation of two categories of species: 1) endangered, those currently at risk of extinction; and 2) threatened, those likely to become endangered in the foreseeable future. Congress intended these two categories to be treated very differently but, due to a misguided and illegal Service policy, that hasn't been the case for almost all of the last 50 years. Instead, both categories have been largely treated the same, undermining incentives for states, tribes, and landowners to recover species.

Congress explicitly limited the statute's burdensome "take" prohibition to endangered species. It did so, according to the bill's Senate floor manager, John Tunney (D-CA), because it wished to "minimiz[e] the use of the most stringent prohibitions," which it believed should "be absolutely enforced only for those species on the brink of extinction." Instead, for threatened species, Congress designed the ESA to "facilitate regulations that are tailored to the needs of the animal" and encourage states to "to promote the[ir] recovery."[30] Congress even gave states the power to veto threatened-species regulations to encourage them to develop their own programs, although Service policy has effectively nullified that provision.[31]

Unfortunately, the Service has ignored this congressional direction for most of the ESA's history. Instead, it has operated under an illegal rule, known as the "blanket" 4(d) rule, regulating threatened species as if they were endangered without regard

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[24] *See* FWS, *Endangered and Threatened Species Expenditures Reports*.
[25] FWS, *Revised Grizzly Bear Recovery Plan* (1993).
[26] *See* FWS, *Endangered and Threatened Species Expenditures Reports*.
[27] *Cf.* Leah Gerber, *Conservation triage or injurious neglect in endangered species recovery*, 113 PNAS 3,563 (2016) (finding that government allocation of recovery spending bears little relationship to species' needs or the effectiveness of that spending).
[28] Betsy Carpenter, *The Best Laid Plans*, U.S. News and World Report, vol. 115, no. 13 (1993), p. 89.
[29] *See* FWS, *ESA Basics: 50 Years of Conserving Endangered Species* (2023).
[30] *See* Congressional Research Service, A Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, 1979, and 1980, at 358 (statement of Sen. Tunney).
[31] *See* Temple Stoellinger, *Wildlife Issues are Local—So Why Isn't ESA Implementation?*, 44 Ecology Law Q. 681 (2017).

to whether that approach fit the needs of the animal or encouraged recovery.[32] In 2018, PERC published a report showing that this rule undermined incentives for states, tribes, and private landowners to recover species.[33] If regulations loosened gradually as species recovered, as Congress originally envisioned, states, tribes, and landowners would have an incentive to contribute to their recovery. Fortunately, the Service repealed this regulation in 2019, explaining that this reform would "incentivize conservation for both endangered species and threatened species" by giving "[p]rivate landowners and other stakeholders . . . more of an incentive to work on recovery actions" through the promise of reduced regulation.[34]

However, last month, the Service proposed to restore the blanket rule and eliminate these incentives.[35] The move is puzzling because the Biden administration's own actions demonstrate that this change would be bad for species. The rescission of the blanket rule does not stop the Service from imposing endangered-level regulations on a threatened species if that's what's best for the species. So the administration could have taken that approach with any of the 12 wildlife species it has listed as threatened. It has rejected that approach in every case, finding less restrictive regulation better encourages species recovery. The Service doesn't reconcile its proposal to restore the blanket rule with its consistent rejection of that rule's approach when it has considered what's best for species. Nor does the Service dispute its earlier determination that discarding the blanket rule in favor of less restrictive, tailored regulations produces better conservation incentives. Indeed, the Service doesn't even address recovery incentives in the proposed rule.

That the Biden administration has consistently rejected the blanket rule's approach when it has considered what's best for species is neither a coincidence nor should it be a surprise. The National Marine Fisheries Service has never had a blanket rule but has always tailored threatened-species regulations to the needs of the species. It has found it appropriate to impose endangered-level regulation for threatened species only 3% of the time.[36] Indeed, NMFS has far more often found no regulation of threatened species to be the better approach.[37] It simply doesn't make sense to reflexively regulate threatened species as if they were endangered when federal agencies virtually always reject that approach whenever they consider what's best for species. But perhaps most alarming about the Service's proposal is that if the unscientific, one-size-fits-all blanket rule is restored the Service has announced that it will no longer consider what's best for each species before applying it.[38]

The Service has also not used its authority to tailor regulations for threatened species to its fullest potential. When it passed the ESA, Congress described the Service as having "an almost infinite number of options"[39] to design rules that encourage states, tribes, and landowners to recover species. But the Service's rules have been more cookie-cutter than creative, pervasively regulating take with a few recurring exemptions for activities with trivial impacts, regulated under other federal laws, or approved by the Service through other means.[40]

In crafting tailored rules, the Service hasn't generally considered whether its rules penalize voluntary conservation by private landowners. When it proposed to list the lesser prairie chicken population in Kansas, Colorado, Oklahoma, and North Texas as threatened, it proposed to strictly regulate ranching through the region. PERC and other conservation organizations objected that this would irrationally punish the very landowners who were voluntarily conserving the bird's grassland habitat.[41]

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[32] *See* Jonathan Wood, *Take It to the Limit: The Illegal Regulation Prohibiting the Take of Any Threatened Species Under the Endangered Species Act*, 33 Pace Envtl. L. Rev. 23 (2015).

[33] *See Road to Recovery, supra* n. 6.

[34] *See* 84 Fed. Reg. 44,753, 44,757 (Aug. 27, 2019).

[35] *See* 88 Fed. Reg. 40,742 (June 22, 2023).

[36] *See* Ya-Wei Li, *Section 4(d) Rules: The Peril and the Promise*, Defenders of Wildlife White Paper 1 (2017).

[37] NMFS has issued regulations governing take of only 19 of the 47 threatened species under its charge. *See* NMFS, *Protective Regulations for Threatened Species Under the Endangered Species Act* (last visited July 10, 2023).

[38] *See* 88 Fed. Reg. at 40,747 ("If this proposal is finalized, for threatened species that use the blanket rules found at 50 CFR 17.31(a) and 17.71(a), we will not make necessary and advisable determinations for the use of those blanket rules in future proposed or final listing rules.").

[39] H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973.

[40] *See* Li, *supra* n. 31.

[41] *See* PERC, Comment on Proposed Lesser Prairie Chicken 4(d) Rule (Sept. 1, 2021); National Wildlife Fed'n, Comment on Proposed Lesser Prairie Chicken 4(d) Rule (Aug. 31, 2021); Turner Enterprises & Turner Endangered Species Fund, Comment on Proposed Lesser Prairie Chicken

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While the Service ultimately decided, in response to our comments, to regulate ranchers less strictly than it had originally proposed, it also rejected any obligation to consider "the costs of [its] rules on landowners, assessment of previous conservation provided by landowners and other groups, and calculation of what incentives for conservation [its] rules provide."[42] If the Service were focused on crafting threatened-species rules that put species on the road to recovery, as the ESA requires, it would never ignore whether it is encouraging or discouraging recovery efforts.

Nor has the Service considered how tailored rules might encourage recovery efforts by giving effect to recovery plans. Although the ESA requires the Service to prepare recovery plans for every species, these plans are non-binding. Indeed, recovery plans are generally treated as an afterthought, prepared only after key regulatory decisions are made and battle-lines drawn. FWS Director Martha Williams has, in an article co-authored with former Obama administration officials, argued that prioritizing regulatory decisions before recovery plans "is a missed opportunity" for those regulations to support "a larger conservation strategy."[43]

A more effective approach to designing regulations for threatened species would be to use them to further the goals identified in a recovery plan. Rules that automatically reduce federal regulation as recovery goals are met would give effect to recovery plans, better encourage voluntary recovery efforts, and reduce conflict over the delisting of recovered species. If this approach had been used for the grizzly bear, for instance, more of its populations would likely be recovered or on their way and much conflict could have been avoided.[44] When the species was listed, there were a mere 136 grizzlies in the Greater Yellowstone Ecosystem. When the Service set a recovery goal of 500 bears in this ecosystem, it could have designed a regulation that would gradually transfer management authority to states as each population made progress toward their recovery goals, with federal regulation fading entirely once recovery goals were met. This would have encouraged recovery efforts and have allowed the states to build trust with the conservation community over time. Instead, federal regulations for the grizzly bear are indifferent to progress toward the species' recovery and, despite the Greater Yellowstone population now exceeding 1,000 bears, efforts to delist it are fraught due to some conservation group's distrust of state management.

Recovery recommendations:

1. Permanently ditch the blanket 4(d) rule and tailor regulations to the needs of each threatened species.[45]
2. Use threatened-species rules more creatively to give effect to recovery plans and reward states and landowners for incremental progress toward recovery.[46]
3. To reduce delisting conflict, automatically transfer management to states when recovery goals are met.[47]
4. Revive the ESA's federalism provisions by encouraging states to develop recovery programs and restoring state's veto of federal threatened-species regulations.[48]

2. Only designate areas as critical habitat if the designation is likely to produce a net conservation benefit for the species

Often critical habitat designations offer little conservation upside but can have large conservation costs, including perverse incentives for landowners to destroy habitat, to prevent habitat features from developing naturally, and to forgo investments in habitat restoration. In fact, Service officials have long taken a dim view of critical habitat designations. Director Williams, in the co-authored article mentioned above, observed that critical habitat designations "have very little

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4(d) Rule (Aug. 16, 2021); The Nature Conservancy, Comment on Proposed Lesser Prairie Chicken 4(d) Rule (Aug. 2, 2021).

[42] *See* 87 Fed. Reg. 72,674, 72,717 (Nov. 25, 2022).

[43] *See* David J. Hayes, Michael J. Bean, Martha Williams, *A Modest Role for A Bold Term: "Critical Habitat" Under the Endangered Species Act*, 43 Envtl. L. Rep. 10,671, 10,672 (2013).

[44] *See, e.g.*, David Willms, *Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery*, in The Codex of the Endangered Species Act: Volume II: The Next Fifty Years (forthcoming 2023).

[45] *See Road to Recovery, supra* n. 6.

[46] *See id.* Jonathan Wood, *Testimony on the Recovering America's Wildlife Act*, U.S. Senate Comm. on Environment and Public Works (December 8, 2021).

[47] *See* Willms, *supra* n. 44.

[48] *See* Stoellinger, *supra* n. 33.

impact" from a "conservation perspective."[49] Bruce Babbitt, the Secretary of the Interior during the Clinton administration, once even remarked that the ESA's critical habitat provisions could be eliminated with "no real world consequences" for species.[50]

The reason that critical habitat designations may do more harm than good is that they make the presence of habitat features (or the potential to create them) a significant liability for landowners while often providing no protection to those features. Studies have found that designations reduce the value of private land by as much as 70%.[51] And, unless use of land designated as critical habitat requires some sort of federal permit or approval, a landowner is as free to rid their land of any habitat feature after the designation as they were before. That is, in many cases, a perfect formula for preemptive habitat destruction and foregone investments in habitat restoration, especially when it comes to private land or land that requires active habitat management or restoration.[52]

Despite broad recognition of the limited role critical habitat designations can play, recent decisions from the Service needlessly provoke landowners and threaten to encourage counter-productive designations. For instance, the Service recently rescinded its definition of "habitat," which had limited critical habitat designations to areas currently suitable for a species.[53] That definition was adopted in response to a *unanimous* Supreme Court decision holding that land can't be designated as critical habitat unless it first qualifies as habitat for the species.[54] In that case, a timber company and forest landowners challenged the designation of 1,500 acres of private land in Louisiana as critical habitat for the dusky gopher frog, despite the fact that the land couldn't support the frog unless the landowner converted the forest to longleaf pine, repeatedly burned the land to limit understory growth, and managed a shallow pond as breeding habitat.[55] The Nature Conservancy's efforts to restore frog habitat in Mississippi demonstrate just how difficult and costly an undertaking this would have been for the landowners, if they were inclined to pursue such an effort.[56]

The dusky gopher frog critical habitat designation gave the landowners no reason whatsoever to pursue such efforts, however. If anything, it prevented future collaboration by alienating the landowners. And even if a federal permit were someday required to use the land, the absence of habitat features means that the permit could not be conditioned on creating any such features. As the Service recently acknowledged, the Constitution limits the conditions that can be imposed on land-use permits to the mitigation of any harm the permitted activity poses to existing habitat features.[57] Permits can't be used to compel landowners to create habitat where there isn't any. Instead, as the Supreme Court recognized nearly 3 decades ago, purchasing land or compensating states and landowners for habitat restoration are the proper means "for preventing modification of land that is not yet but may in the future become habitat for an endangered or threatened species."[58]

To be effective, the critical habitat program should directly consider whether designations encourage landowners to conserve and restore habitat or create perverse incentives. Congress has directed the Service to consider the costs critical habitat designations impose on states, tribes, and private landowners. Because these costs affect whether landowners conserve and restore habitat—or preemptively destroy it[59]—they are a critical factor in determining whether critical habitat designations contribute to the species recovery.

Consider the Service's recent designation of 10,000 acres of forestland owned by the Skipper family in Alabama as critical habitat for the black pinesnake.[60] The apparent reason the Skipper's land was selected is that they had partnered with the state of Alabama to establish a wildlife management area and voluntarily managed

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[49] Hayes, Bean, & Williams, *supra* n. 48.
[50] *See* Julie Cart, *Species Protection Act 'Broken'*, LA Times (Nov. 14, 2003).
[51] Auffhammer, et al., *supra* n. 31. *See* Wood & Watkins, *supra* n. 5.
[52] *See* Wood & Watkins, *supra* n. 5.
[53] *See* 87 Fed. Reg. 37,757 (June 24, 2022)
[54] *See Weyerhaeuser v. Fish and Wildlife Serv.*, 139 S. Ct. 361, 368-69 (2018). I was one of the attorneys representing the private landowners in *Weyerhaeuser*.
[55] *See* Wood & Watkins, *supra* n. 5.
[56] *See id*.
[57] *See* 88 Fed. Reg. 31,000, 31,001 (May 15, 2023).
[58] *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 702-03 (1995)
[59] *See* Dean Lueck & Jeffrey Michael, *Preemptive Habitat Destruction under the Endangered Species Act*, 46 J. Law & Econ. 27 (2003).
[60] *See* Complaint, *Skipper v. Fish and Wildlife Serv.*, Case No. 21-cv-94 (D. Ala. filed Feb. 26, 2021).

their timber harvesting to benefit longleaf pine, white tail deer, and other species. After the Service penalized this voluntary conservation, the family withdrew from the program. The Service took this step despite concluding that the critical habitat designation would impose costs on the Skippers without any benefit to the species.[61] It also didn't consider how penalizing the Skippers' voluntary conservation would encourage them and others to restore habitat or engage in recovery efforts.

Instead, the Service resists any obligation to engage in this sort of analysis before imposing burdensome critical habitat designations on private landowners. Indeed, it has recently proposed to eliminate a regulatory requirement that it determine, before designating unoccupied areas like the Skippers's land, that the area "will contribute to the conservation of the species."[62] Yet it has offered no explanation why it would want to designate private land as critical habitat if it won't contribute to conservation.

Recovery recommendations:

1. Define "habitat" to limit critical habitat designations to areas currently suitable for a species.[63]
2. Account for perverse incentives directly in the critical habitat designation process.[64]
3. Purchase land that contains valuable habitat or potential habitat, rather than regulating it.[65]
4. Compensate private landowners for restoring habitat or meeting benchmarks for species recovery.[66]

3. Reward investments in recovery by promptly delisting species

The list of endangered and threatened species is sometimes referred to as "Hotel California," after the popular Eagles' song, because once species get on the list, they seemingly "can never leave." While the limited progress in recovering species is mostly due to the Endangered Species Act's lack of incentives to restore habitat and undertake other proactive recovery efforts, it also reflects an unnecessarily slow and ineffective process for upgrading the status of recovered species. The recurring conflict over delisting is puzzling because no recovered species transferred back to state management has ever regressed and ended up back on the list. Claims that states can't sustain recovery progress without federal oversight have no evidence to support them.

There are several reasons why biologically recovered species may loiter on the list. The Service may set an objective recovery target only to move the goalpost once it's met. Or it may determine a species has met a recovery target and its status should be changed but then not follow through with a proposal to upgrade the species' status. Or it may move forward with a delisting only to be hamstrung for years by litigation.

The gray wolf is the poster child for these problems. When the Service reintroduced wolves to Yellowstone National Park in 1995, it set a recovery target of 100 wolves each in Idaho, Montana, and Wyoming. Within a decade, this target had been far surpassed, with a total of 835 wolves in the Northern Rockies in 2004.[67] Rather than the recovered population being promptly delisted, it took 14 years of petitions, analysis, litigation, more analysis, more litigation, congressional intervention, more analysis, and more litigation before wolves in all three states were delisted. Today, after a decade of state management, there are nearly 3,000 wolves in this population, yet the Secretary of the Interior has threatened to move the goalposts by relisting them in response to controversial state hunting regulations.[68]

Bureaucratic and legal hurdles would be merely frustrating if they didn't affect the incentives to recover species. But, thanks in part to the Service's failure to use threatened-species rules creatively to encourage recovery, the primary incentive for

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[61] *See* Industrial Economics, *Screening Analysis of the Likely Economic Impacts of Critical Habitat Designation for the Black Pinesnake* (Oct. 22, 2014).
[62] *See* 88 Fed. Reg. at 40,769.
[63] *See* Wood & Watkins, *supra* n. 6.
[64] *See id*.
[65] *See id*.
[66] *See id*.
[67] Endangered and Threatened Wildlife and Plants; Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife, 73 Fed. Reg. 10514, 10523 (February 27, 2008).
[68] *See* Deb Haaland, *Wolves have walked with us for centuries. States are weakening their protections*, USA Today (Feb. 7, 2022).

states and landowners to invest in recovery efforts under the Endangered Species Act is the prospect that success will be rewarded by delisting the species, removing burdensome federal regulations, and returning management to states and tribes. If prompt delistings aren't perceived as a realistic outcome, recovery efforts will be discouraged.

The only interests that benefited from the years of conflict over wolf delisting were the litigation groups paid more than $600,000 in attorney's fees by the government.[69] Litigation has been a recurring and unfortunate problem under the ESA. According to the Forest Service, for instance, ESA litigation threatens to hamstring the agency's ability to protect habitat from catastrophic wildfires in 87 national forests.[70] The lucrative attorney's fees offered to environmental litigants, which can greatly exceed their actual litigation costs, has created perverse incentives for environmental organizations to prioritize litigation over on-the-ground conservation.

In 2014, for instance, Oregon sold 355 acres of state trust land in the Elliott State Forest. Any conservation organization could have purchased the entire parcel for $787,000, or a little over $2,000 per acre.[71] Instead, several litigation groups threatened to sue anyone who purchased the property. When a timber company bought the land, they carried through on that threat, arguing that an ESA permit was required to harvest trees on 49 of the acres due to the presence of marbled murrelets.[72] When they won an injunction, they filed an attorney's fees motion seeking $1.2 million from the private landowners.[73] From a conservation perspective, it is absurd to spend more than $24,000 an acre litigating over an ESA permit and the speculative conservation benefits it might provide when the land could have been permanently conserved for a small fraction of that cost. Yet the ESA encourages precisely this result by subsidizing litigation at the expense of on-the-ground conservation.

Conflict over delistings can also undermine recovery efforts more directly. In 2020, Colorado voters narrowly approved a referendum calling for the reintroduction of wolves to the state. At the time, wolves were proposed for delisting nationwide and the Service had acknowledged the current delisting was unlawful, so it was assumed the plan would proceed free of any ESA obstacles. But that wasn't to be so. In 2022, a court overturned the delisting, throwing Colorado's plan into doubt. The plan has been further complicated by the arrival of a reproductively active pack from Wyoming in 2021. Because the wolves naturally returning to Colorado and the wolves to be introduced are all from the recovered Northern Rocky Mountain population, there is no bona fide ESA concern here. Instead, the problem is that the ESA penalizes recovery progress by regulating recovered populations as endangered when they grow enough to cross state lines.[74] Similar problems have arisen from wolves expanding into California, Oregon, and Washington.

Recovery recommendations:

1. Propose status changes immediately when recommended in a status review.[75]
2. Use post-delisting monitoring as a cooling-off period for litigation.[76]
3. Courts should overturn delistings only on proof that the species remains endangered or threatened.[77]

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[69] Joint Stipulation, Defenders of Wildlife v. Salazar, 09-cv-77 (D. Mont. 2013); Order, Defenders of Wildlife v. Gould, 08-cv-56 (D. Mont. 2009).

[70] *See* Statement by Chris French, Deputy Chief, Forest Serv., Before the House Natural Resources Committee, Federal Lands Subcommittee, on H.R. 200, 1473, 1567, & 1586 (Mar. 23, 2023) (ESA litigation threatens forest restoration work throughout 87 national forests).

[71] *See* Zach Urness, *Elliott State Forest sale closes amid controversy*, Statesman Journal (June 12, 2014).

[72] *See* Center for Biological Diversity, *Court Halts Logging of Elliott State Forest Tract Sold to Private Timber Company* (June 28, 2022).

[73] *See* Faith Williams, *Wildlife Org. Attys Seek $1.2M Fees In Marbled Murrelet Fight*, Law360 (July 12, 2022).

[74] *See* PERC, Comment on the Proposed Establishment of an Experimental Population of Gray Wolf (Apr. 18, 2023).

[75] *See* Jonathan Wood, *Modernization of the ESA*, PERC.org (Sept. 16, 2018).

[76] *See* Willms, *supra* n. 44.

[77] *See* Amicus Brief of Pacific Legal Foundation and PERC, *Crow Indian Tribe v. United States*, No. 18-36030 (9th Cir. filed May 30, 2019).

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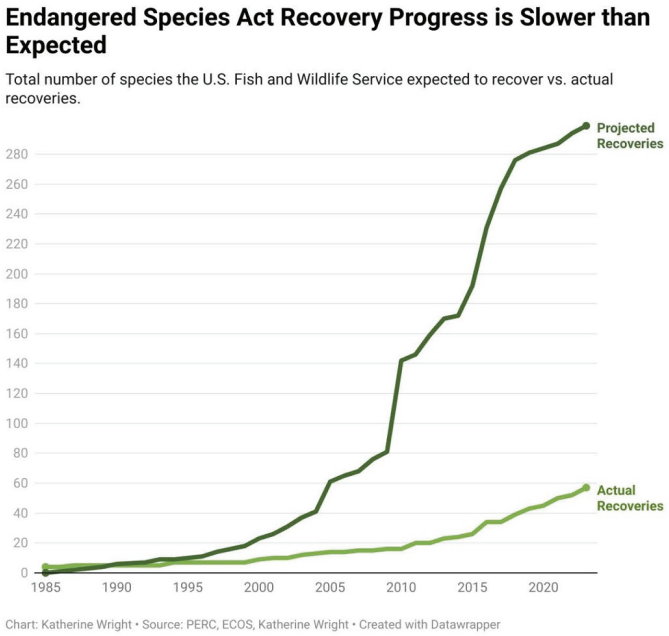
ATTACHMENTS

Charts and graphs from Katie Wright & Shawn Regan, *Missing the Mark: How the Endangered Species Act Falls Short of Its Own Recovery Goals*, Property and Environment Research Center (forthcoming 2023).



Sources for projected recovery dates: FWS, *Report to Congress on the Recovery of Endangered and Threatened Species: Fiscal Years 2013–2014* (2014); *Fiscal Years 2011–2012* (2012); *Fiscal Years 2009–2010* (2010); *Fiscal Years 2007–2008* (2008); *Fiscal Years 2005–2006* (2006).

Source for actual recoveries: FWS, ECOS.

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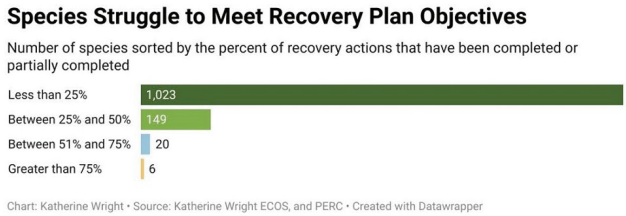

Source for recovery plan data: FWS, ECOS.

Mr. BENTZ. Thank you.

I now recognize Mr. Ashe for 5 minutes.

STATEMENT OF DAN ASHE, PRESIDENT AND CEO, ASSOCIATION OF ZOOS AND AQUARIUMS, SILVER SPRING, MARYLAND

Mr. ASHE. Good afternoon, Mr. Chairman and Committee members. It is a pleasure and an honor to testify before you on the Endangered Species Act. I am the President and CEO of the Association of Zoos and Aquariums, and our vision is that a modern accredited aquarium or zoo is a wildlife conservation organization.

Our membership of 253 facilities in 13 countries lives this vision every day. They have played leading roles in some of the ESA's most celebrated successes, like the inspiring rescue and recovery of the California condor. They collectively contribute over $250 million annually in direct support for wildlife conservation. Their education programs annually reach more than 360 million people.

AZA accredited members support the notion of a strong and protective legal framework for endangered and threatened species. They are enthusiastic partners in saving species from extinction, and also frustrated and disappointed regulated parties.

Unfortunately, as we approach the ESA's 50th anniversary, its once rock solid political support has significantly eroded, and the timing couldn't be worse, when it is facing challenges not envisioned when it was enacted or even when it was last reauthorized in 1992, namely the planet's sixth mass extinction, fueled by demands of a growing and increasingly affluent human population, and accelerated by climate change, exotic and invasive species, the explosion of illegal trade, and wildlife trafficking.

We cannot stop extinction. But through effective implementation of laws like the ESA, we can save many species, like these inspiring examples in which AZA accredited members have played instrumental roles:

The heroic rescue and rehabilitation of dozens of endangered manatees and thousands of endangered sea turtles every year.

Oregon Zoo's innovations in facility design and husbandry that are facilitating groundbreaking research on captive polar bears.

An exciting new partnership between Cincinnati Zoo, the Fish and Wildlife Service, and private landowners in Texas to use captive bred ocelots to restore genetic diversity into the dwindling wild population of ocelots.

San Diego Zoo's Frozen Zoo, with over 10,000 cryopreserved living cell lines representing over 1,000 taxa and a seed bank with 65 million samples, the largest and most diverse collection of its kind in the world.

The Florida Reef Tract Rescue Project, an AZA partnership with the state of Florida and NOAA Fisheries that has collected thousands of corals at 19 facilities in 12 states, and creating the potential for future restoration and recovery.

Despite being long-standing and trusted conservation partners, our members are increasingly frustrated by long delays in the permit application process. In our view, this is not the result of

infirmities in the law, but a result of completely inadequate funding and staffing to handle their permitting workloads.

Wildlife Encounters in Winter Haven, Florida has been in a 3-year still unsuccessful struggle for approval to move captive bred macaws to support a Bolivian Government re-wilding project.

Cincinnati Zoo's application to import captive Asian elephants from a European zoo is still pending after 18 months.

Smithsonian National Zoo has waited nearly a year for an export permit to return pandas to China, as required by their lease agreement with China.

Alaska Sealife Center waited 4 years for renewal of its permit to rehabilitate rescued walruses, an essential government service that they provide at their own cost.

AZA members are proud to support ESA successes through captive breeding for reintroduction, rescue of endangered species, and care of confiscated wildlife. However, their experience with delays and in permitting is frustrating, disruptive of conservation efforts, and deleterious to animal care and well-being.

Our members support the ESA. They do not object to the need for compliance. But the delays in achieving compliance are unacceptable. A strong and effective Endangered Species Act has never been more relevant and important. And most important in our view is the need to adequately resource the agencies charged with its implementation. Thank you very much.

[The prepared statement of Mr. Ashe follows:]

PREPARED STATEMENT OF DANIEL M. ASHE, PRESIDENT AND CEO, ASSOCIATION OF ZOOS AND AQUARIUMS

Good afternoon Mr. Chairman and Committee Members. It is a pleasure and honor to testify before you on the Endangered Species Act.

I am testifying today in my capacity as President and CEO of the Association of Zoos and Aquariums and also as a wildlife conservation professional who has worked on and with the law for over 40 years. That includes 13 years as a member of the Professional Staff of the former Committee on Merchant Marine and Fisheries, the House Committee that brought the original law, its predecessor laws, and all subsequent reauthorizations to the House floor. And, of course, I spent 22 years with the U.S. Fish and Wildlife Service.

The Association of Zoos and Aquariums is a professional membership and accrediting organization. AZA accreditation is the global gold standard for a modern zoological facility, and our membership includes 253 accredited facilities in 13 countries. They reflect the highest standards in animal care and presentation, guest service, and education. They are leaders in the conservation of wild life and wild places, and attached to this testimony is our latest report on our members' conservation, scientific and educational contributions. It shows that they collectively are among the world's largest wild life conservation organizations, contributing over $250 million annually in direct support for conservation efforts. Their education programs reach over 360 million people.

AZA-accredited members have been integral to many successes in endangered species conservation, from California condors to Florida corals, wolves to whales, sea turtles to desert tortoises, manatees to mussels, and American burying beetles to Hawaiian birds. They are dedicated partners in endangered species conservation who support the notion of a strong and protective legal framework. They are regulated parties who understand and support the need for compliance, but also suffer frustrations with lengthy delays in achieving compliance due to substantially underfunded and overburdened federal agencies. Later in this testimony, I'll give some specific examples of our members' partnership successes and their permit frustrations.

December 28, 2023, will mark 50 years since former President Richard M. Nixon signed the Endangered Species Act (ESA), which has rightfully earned status as the global gold standard for species and biodiversity protection. Its successes are

undeniable, and many include where zoos and aquariums accredited by the Association of Zoos and Aquariums have played crucial roles. The ESA has helped make the U.S. a global leader in biodiversity conservation. I and AZA's membership are ardent advocates of the ESA, especially the public servants who dedicate their careers to make it work. But, at 50, the law is in precarious political posture and is being asked to address challenges not envisioned when it was enacted or even when it was last reauthorized in 1992.

Political Posture. The ESA's foundations of political support, once solid to bedrock, have significantly eroded. It was designed with an eye toward things like the bald eagle and American alligator, and without even an inkling it would be called upon to confront a planetary mass extinction. The ecological framework that supports the planet's amazing diversity of biological life is unraveling. We know the cause—expanding human population and affluence. So, the ESA, in many respects, stands between us and our human desires. We like to believe that we can have our cake and eat it too, but economic growth and even simple human pleasures, like watering our lawns, often stand in stark conflict with species protection. People and policymakers express concern for species, even diminutives like delta smelt and razorback chub, but when those species stand between us and our hot tubs, our golf greens, or our winter vegetables, we quickly ask questions like, "So, remind me again, why is the delta smelt important?"

In 1973, the original law passed 92-0 in the U.S. Senate and 355-4 in the House of Representatives. In 2013, the late-Congressman John Dingell (D-MI), who was one of the 355 votes favoring passage, told me, "The ESA could likely not garner a simple majority vote in today's Congress."

The point is, like the biological diversity it seeks to protect, the law is in crisis. Its political situation is untenable and unsustainable. It has become, like so many issues of our day, hyper-partisan. And the agencies charged with its implementation are squeezed between critics on one side, who think they are being over-regulated, and critics on the other, who think the agencies are too timid.

The resulting lack of consensus places those agencies—the U.S. Fish and Wildlife Service and NOAA Fisheries—in a position of increasing isolation, with hostile constituencies on all sides, and has made it difficult for the agencies to secure the funding needed for robust implementation and broader success.

Challenges Unforeseen. When the law was enacted and reauthorized, I believe it was under the general assumption that we can stop extinctions. That's a false premise, and many large-scale phenomena make extinctions inevitable.

We are living amidst the planet's sixth mass extinction. The last was 65 million years ago, caused by a meteor collision and resulting in extinction of the dinosaurs, and millions of other species, creating opportunity for mammals to thrive. Today's extinction crisis is unique, as it is driven by the ecology and economy of one of those mammal species—*homo sapien*. Humans, particularly the most affluent and consumptive humans—like you and me—are on an unwitting, undeniable path to exterminate a large proportion of the planet's diversity of life. We cannot stop it, but through laws like the ESA, we can save many species if we set ourselves to the task and if we don't wait until the last moment when a species is gasping for its last breath.

Climate Change was beginning to be understood in the late-1980s and early-1990s, but even as recently as then, we had no context for the challenges that it would present. Consider a species like the polar bear. Its sea-ice habitat is rapidly disappearing, but we have no way to protect that habitat on any time scale relevant to the conservation of the bear or restore or replace it as has been successfully done with species like red-cockaded woodpecker.

Likewise, the emergence of exotic and invasive diseases and their effect on species conservation was never contemplated. Human society was caught flat-footed by the COVID-19 pandemic. Our response required trillions of dollars, massive social disruption, and the disease still took millions of lives.

Likewise, conservationists are now confronting exotic and invasive diseases like white-nosed syndrome, in bats, chytrid fungus in salamanders and frogs, sylvatic plague in prairie dogs, and highly pathogenic H5N1 avian influenza in birds with the most meager resources and tools. By comparison, it's like fighting wildfires with a garden hose.

Of course, poaching and illegal trade have always been issues, the explosion of wildlife trade and trafficking and the sophistication of the trafficking networks in the past two decades was never envisioned, and current regulatory and enforcement capacities are overwhelmed.

And science has always been an essential ingredient in ESA implementation. When the original law was enacted, the U.S. Fish and Wildlife Service operated the

world's preeminent system of wildlife research facilities, including the Patuxent, Maryland, and Madison, Wisconsin, laboratories where Rachel Carson acquired the majority of the scientific experience and knowledge that powered her impactful work. Today, those labs are shadows of their former selves, and, in my opinion, the implementing agencies are falling further and further behind, especially in the rapidly developing field of genomic science.

Mr. Chairman and Subcommittee Members, the ESA is not unlike any other area of endeavor. If we look for failure, we can find it. If we look for success, we find that, and in my view, in much more abundance.

Endangered Species Partnership. Partnership has always been a hallmark of success in species conservation. As I mentioned earlier, AZA member facilities have been integral partners in some of the most dramatic and some of the most unheralded ESA successes. Without zoological professionals with experience in the husbandry of Andean condors and non-native ferret species, the courageous efforts to capture and breed the last remaining wild California condors and black-footed ferrets would have been impossible. Without the expertise of facilities like SeaWorld, Brevard Zoo, National Aquarium, Texas State Aquarium, and New England Aquarium, the rescue and rehabilitation of dozens of endangered manatees and thousands of sea turtles every year would not be possible. Red wolves, prairie chickens, right whales, chimpanzees, manta rays, cheetahs, and the list goes on and on.

And our members are joining the Services, as well as State and Tribal agencies, at the cutting edge of endangered species conservation.

AZA members, like Oregon Zoo, are doing groundbreaking research on captive polar bears, which is difficult, expensive, and dangerous to conduct on free-ranging bears. Using standard training and enrichment techniques, captive bears can be monitored while walking, running, swimming, eating, and sleeping. Their biophysical parameters can be measured, helping to ground truth remote data from wild bears. Their behaviors can be monitored in response to sound and other disturbances, providing crucial data for siting of facilities in critical habitats. Instrumentation can be tested before it is applied to wild bears. And behavioral research is crucial in helping inform efforts to reduce escalating human-bear conflicts.

Genetic diversity in the recovery of small populations is an ever-present challenge. AZA members have provided invaluable assistance in an innovative "cross-fostering" program for the Mexican wolf. Husbandry experts at AZA member facilities like El Paso Zoo and Brookfield Zoo can precisely time the birth of captive wolf pups and then in orchestration with partners, place those pups into wild dens. These captive-reared pups bring new genetic diversity into the wild population, with the added benefit that the captive-reared pups are raised, from birth, as wild wolves, reducing the likelihood that they will have socialization issues, and addressing concerns expressed by ranchers and adjoining communities.

The rapid evolution in genetic technologies is bringing both challenge and opportunity to the field of endangered species conservation, and AZA member facilities are leaders in exploring the opportunities. One example is biobanking. In 1975, San Diego Zoo Wildlife Alliance had the incredible foresight to create their "Frozen Zoo", and today, with over 10,000 cryopreserved living cell lines representing over 1,000 taxa and a seed bank with 65 million samples, it is the largest and most diverse collection of its kind in the world. This visionary investment now represents a crucial resource for saving species amidst the ongoing extinction crisis. Samples from the SDZWA Frozen Zoo have already been deployed in the conservation of black-footed ferret, mountain yellow-legged frog, Przewalski's horse, California condor, and a courageously innovative effort to save the northern white rhino from the brink of extinction. The collections maintained by AZA member facilities represent an invaluable storehouse of genetic diversity that will aid conservation decades into the future.

The ability to respond rapidly to agency needs is also a hallmark of AZA member facilities. Stony coral tissue loss disease was first observed, in 2014, in the northern parts of the Florida Reef Tract, and it has now spread throughout the entire ecosystem, the largest coral reef in the continental United States. Around 50% of the 45 species of reef-building corals in the Florida Reef Tract are vulnerable to this disease, including five species listed as threatened under the ESA. In response to the disease, Florida's Fish and Wildlife Conservation Commission requested assistance from the Association of Zoos and Aquariums to rescue and hold representative and diverse populations of coral. In 2018, AZA launched the Florida Reef Tract Rescue Project, aiming to collect and house thousands of corals for future restoration. Currently, nearly 80% of the 2,283 rescued corals are managed at 19 AZA facilities in 12 states, from SeaWorld and Disney in Orlando to the Butterfly

Pavillion in Colorado. These dedicated facilities have born over 80% of the financial and in-kind investment in the rescue project. Before this project, AZA facilities were already working on conservation efforts for threatened corals in the 1990s and early 2000s, which laid the foundation for the success of the Florida Reef Tract Rescue Project and contributed to coral reef science and understanding globally.

Regulatory Delay and Frustration. Our aquarium and zoo members are also part of the regulated community. They require ESA authorization to move animals domestically and across international borders. These authorizations are often directly tied to conservation efforts, such as reintroducing Mexican wolves, black-footed ferrets, California condors, and blue-throated macaws. Despite being long-standing and trusted partners in conservation with the U.S. Fish and Wildlife Service and NOAA Fisheries, our members are increasingly frustrated by long delays in the permit application process resulting from agencies not adequately resourced to handle their permitting workload.

One of our members, Wildlife Encounters, based in Winter Haven, Florida, has been struggling, for three years, to gain authorization to move captive-bred macaws to Bolivia in support of a reintroduction project with the Bolivian government. Another, Cincinnati Zoo and Botanical Garden, has an application to import captive Asian elephants from a European Zoo, which remains pending after nearly 18 months. The Smithsonian's National Zoo has been waiting nearly a year for an export permit to send Pandas back to China under their lease agreement with China. Alaska Sealife Center recently waited four years to receive a renewal of its permit to rehabilitate rescued walruses, an essential government service that many of our members provide at their own cost.

I wish we could say these are isolated and extreme examples, but the list continues. AZA members are proud to support the implementing agencies through captive breeding for reintroduction, rescue of endangered species, and care of confiscated wildlife. However, their experience with permitting is almost always frustrating, and frequently disruptive of conservation efforts, and deleterious to animal care and wellbeing.

Our members support the ESA. They do not object to the need for compliance, but the delays in achieving compliance are unacceptable. And if long-standing and trusted partners are encountering such lengthy compliance delays, and especially in such simple and low-risk cases as mentioned here, it is not hard to imagine that complex energy, transportation, and infrastructure projects are experiencing the same and worse.

We do not attribute these delays to any infirmities in the law, but rather, to the fact that the agency is not adequately funded to meet their legal obligations, and especially the regulated community's needs. I do also want to commend the Service for their willingness to discuss our concerns and to consider possible solutions. We are hopeful for progress, especially if they can acquire additional funding that is commensurate with their mandated responsibilities.

Mr. Chairman and Committee members, human ecology and economy is driving the planet's sixth mass extinction event. We cannot stop extinction, but we can slow it, and we can save some species from it. A strong and effective Endangered Species Act has never been more relevant and important. And in our view, the most important need is to adequately resource the agencies charged with its implementation.

Thank you!

Mr. BENTZ. Thank you, Mr. Ashe.

I now recognize Mr. Jahnz for 5 minutes.

STATEMENT OF JUSTIN JAHNZ, CHIEF EXECUTIVE OFFICER, EAST CENTRAL ENERGY, BRAHAM, MINNESOTA

Mr. JAHNZ. Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, my name is Justin Jahnz. I am the Chief Executive Officer of East Central Energy, headquartered in Braham, Minnesota.

ECE is a not-for-profit, rural electric cooperative that serves nearly 66,000 member consumers. ECE manages over 8,000 miles of distribution lines, which includes rights-of-ways and acreage around substations.

I appreciate the opportunity to testify today and offer a perspective on how the Endangered Species Act affects the ability of electric cooperatives to provide affordable and reliable power.

ECE is one of about 900 electric cooperatives nationwide, providing electricity to approximately 42 million Americans in 48 states. Electric cooperatives are guided by seven principles, including an inherent concern for community. We live in the communities we serve, and we care about the environment. We support the underlying goals of the ESA. However, we think it is important to highlight how even a well-intentioned law can create real-world challenges.

The 50th anniversary of the ESA provides a great opportunity to discuss ways to improve the Act so it works better for both species and communities, a goal I think we can all agree on. I have seen the value of voluntary conservation measures and how they can benefit species like the monarch butterfly. In my experience, the best way to preserve the struggling monarch butterfly is through voluntary conservation efforts, rather than government regulation.

In the early 2000s, East Central Energy began developing a utility vegetation management plan that had a heavy emphasis on ecosystem and ecology. We knew intuitively that creating an ecosystem of compatible plants would provide many benefits to our environment.

In 2018, Alicia Kroll, an ECE employee, came to the Environmental Committee and proposed the idea of a monarch way station project on ECE property. Eventually, the decision was made by our executive team and the board of directors to set aside two 2-acre plots for pollinator habitat creation. Around this time an innovative, multi-state, multi-industry candidate conservation agreement with assurances for the monarch butterfly was being promoted within the Rights-of-Way as Habitat Working Group at the University of Illinois, Chicago.

As we explored this opportunity more, we learned that the CCAA was a roadmap for energy and transportation land managers to reduce or potentially remove key threats to the monarch butterfly that occur on our rights-of-way. ECE was the first rural electric cooperative in the nation to receive a certificate of inclusion into the Monarch CCAA. Today, the habitat at our headquarters is in its fourth full growing season, and is now well established and beautiful, I might add. This year, the remaining portion of land immediately adjacent to the current habitat will be converted back to native plants, as well.

As part of the enrollment in the CCAA, annual monitoring occurs. The target for the Midwest Region is six stems of milkweed per acre and 10 percent cover of nectar plants. In 2022, ECE averaged 556 stems of milkweed per acre and 21 percent nectar cover in its rights-of-way. ECE's success is due to our two-plus-decade commitment to performing voluntary integrated vegetation management. Many other co-ops are currently working to implement similar strategies. Listing the monarch and associated critical habitat designations could derail these important efforts.

The costs associated with protecting these species can vary greatly. Each additional cost that co-ops incur when complying with species listing is felt directly by our members because electric

cooperatives operate at cost. Keeping our rates as affordable as possible is important because co-ops serve 92 percent of this country's persistent poverty counties.

ECE has been fortunate that our voluntary compliance costs have been manageable. We have been able to adapt many of our standard practices to benefit the monarch. However, any changes to daily operations if the monarch is listed under the ESA could significantly increase costs to those unprotected by an agreement like the CCAA, especially if their vegetation management programs need to change.

Additionally, there could be uncertainty if any critical habitat is assigned with the listing.

We can do better. Electric cooperatives support the underlying goals of the ESA, and we think it can be improved to work better for both endangered and threatened species and the communities where they are found. My written statement includes several recommendations on ways to improve the ESA with a greater focus on species recovery, increased transparency, greater stakeholder engagement, and several other recommendations.

Thank you for the opportunity to testify, and I would be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Jahnz follows:]

PREPARED STATEMENT OF JUSTIN JAHNZ, CHIEF EXECUTIVE OFFICER, EAST CENTRAL ENERGY COOPERATIVE

Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, my name is Justin Jahnz, and I am Chief Executive Officer for the East Central Energy Cooperative which headquartered in Braham, Minnesota. ECE is a not-for-profit rural electric cooperative that serves nearly 63,000 member-consumers. ECE manages over 8,000 miles of distribution power lines, which include rights-of-way and acreage around substations.

I appreciate the opportunity to testify today and offer a perspective on how the Endangered Species Act (ESA) affects the ability of electric cooperatives to provide affordable and reliable power. I am here today on behalf of ECE and the National Rural Electric Cooperative Association (NRECA).

ECE is one of about 900 electric cooperatives (co-ops) serving electricity to approximately 42 million people in 48 states covering 56% of America's landmass. We are governed by elected boards of directors made up of the people we serve. Co-ops provide service to some of the poorest, most rural parts of our country with an average of just 10 customers per mile of line. That's far fewer than other types of electric utilities. Despite these challenges, co-ops strive to be forward-thinking and evolutionary to address a multitude of energy industry challenges and meet member expectations. It is this commitment to community that pushes ECE to expand its commitment to environmental stewardship.

Electric cooperatives, environmental stewardship, and the Endangered Species Act

Electric co-ops are guided by seven principles, including "concern for community." We live in the communities we serve, and we care about the environment. We support the underlying goals of the Endangered Species Act (ESA); however, we think it is important to highlight how even a well-intentioned law can create real world challenges.

The 50th anniversary of its passage provides a good opportunity to discuss ways to improve the ESA so it works better for both species and communities, a goal I think we can all agree on. A majority of my testimony will focus on ECE's on the ground experiences working to conserve the monarch butterfly, I will also provide a perspective from some of my fellow electric cooperatives that are working to conserve other species such as the northern long-eared bat.

In the early 2000s, ECE began developing a utility vegetation management plan that had a heavy emphasis on ecosystem ecology and sound arboricultural practices. We knew intuitively that creating an ecosystem of compatible plants would provide

many benefits including maintenance cost (present and future), as well as ecological diversity, and quality wildlife habitat. After several years of implementation, we began to realize the benefits of the program in all areas.

ECE continues to use an Integrated Vegetation Management (IVM) program, which is generally defined as the practice of promoting desirable, stable, low-growing plant communities that will resist invasion by tall growing tree species through the use of appropriate, environmentally sound, and cost-effective control methods. These methods can include a combination of chemical, biological, cultural, mechanical, and/or manual treatments. When a compatible ecosystem is established, the non-target plants become assets that prevent invasion by undesirable species. This ecological diversity is also extremely beneficial to many wildlife species.

ECE and the monarch butterfly

In 2018, Alicia Kroll, an employee from ECE's billing department with a background in zoology, came to the environmental committee and proposed the idea of a "monarch waystation" project on ECE property. The committee members discussed the idea and decided to explore some options and expand the scope. Eventually the decision was made by the executive team and board of directors to set aside two 2-acre plots for pollinator habitat creation. Around this time, an innovative, multi-state, multi-industry Candidate Conservation Agreement with Assurances (CCAA) for the Monarch butterfly was being promoted within the Rights-of-Way as Habitat Working Group at the University of Illinois Chicago.

As we explored more, we learned that the CCAA was a roadmap for energy and transportation land managers to reduce or potentially remove key threats to the Monarch butterfly that occur on rights-of-way By implementing conservation measures, such as targeted herbicide applications, brush removal, planting and seeding native vegetation, and providing idle land set-asides, it is projected that total enrolled acres could contribute over 300 million stems of milkweed over the coming decades.

ECE was involved with our national trade association, NRECA, in advising the CCAA program authors to write the agreement in a way that the terms could be achievable and affordable for co-ops, granting them greater regulatory certainty in the event that the monarch is listed under the ESA in the coming years. Even though the decision to list the Monarch butterfly under the Endangered Species Act has not yet been made, ECE applied and enrolled as a participant anyway in the spring of 2020. Habitat set-aside areas were one of the final pieces that would qualify ECE for the terms of the agreement. The hope was that we could help show the benefit of voluntary participation in the program and encourage our fellow cooperatives to join the effort.

After hearing about this program, ECE's substation manager mentioned the recent reconstruction of one of our substations. The topsoil had just been spread but not seeded for turf grass. He asked if we'd like to do a pilot project for installing pollinator habitat there instead of manicured lawn. We jumped at the chance and today the project is flourishing. Moving forward, we hope to use this as a template for projects at our some of our other 35 distribution substations.

All our hard work paid off. ECE was the first rural electric cooperative in the nation to receive a Certificate of Inclusion into the Monarch CCAA. Today the habitat at our headquarters is in its fourth full growing season and is now well established. We have some walking trails around the perimeter and the area is enjoyed by employees on their breaks. This year, the remaining portion of land immediately adjacent to the current habitat will be converted back to native plants as well. This area was primarily invasive species surrounding a small pond. This conversion will provide a cohesive natural habitat for local wildlife while helping to filter runoff to the pond. ECE also hosts an annual Pollinator Week Event both online and in-person for members and the general public. This showcases the work ECE does to protect monarchs and pollinators and encourages members to do the same with native seed packets available and habitat experts on hand.

The benefit to enrolling in the CCAA is that it puts individual cooperatives in the drivers' seats of their operations. By moving toward a future that considers right-of-way management as pollinator habitat management, collectively, we can provide quality habitat to help stabilize Monarch populations. In return for using best management practices, the CCAA provides regulatory certainties and maximizes operational flexibility for ongoing management activities in the event of listing.

As part of the enrollment in the CCAA, annual monitoring occurs where conservation measures such as targeted herbicide applications are applied. The target for the Midwest region is six stems of milkweed per acre and 10% cover of nectar plants. In 2022, ECE averaged 556 stems of milkweed per acre and 21% nectar cover in

it's rights-of-way. The data shows milkweed and forage is available to monarch butterflies when conservation measures are applied.

ECE was one of the first to receive a Certificate of Inclusion, but we are excited that we were not the last. In Minnesota we have been joined by Kandiyohi County, Polk County, Northern Natural Gas, and the Minnesota Department of Transportation. And many other co-ops across the nation have joined the CCAA or may join in the near future. Nationwide over 30 organizations have submitted applications to join, if each of these submitted applications are approved, we would be able to protect at least 800,000 acres of monarch butterfly habitat. ECE is committed to working with its colleagues to ensure additional progress is made to preserve the monarch butterfly.

Electric cooperatives and the northern long eared bat

Many electric co-ops have long followed reasonable conservation practices for the Northern Long Eared Bat (NELB or bat) that balances their mission of providing reliable, affordable electricity with stewardship of species that live in and around our rights-of-way. Many co-ops proactively implement measures that protect a variety of bat species, including vegetation trimming in the early spring to limit impacts to the still-hibernating bats, the installation of bat boxes, and wrapping utility poles.

The Northern Long Eared Bat is found in 37 states, the District of Columbia and Canada. It was listed as Endangered by the Fish and Wildlife Service in November 2022. The listing is unique for several reasons including the massive size of the bat's range and the fact that the NLEB decline in population numbers in recent years is due not to human activity or habitat impacts, but overwhelmingly, to the devastating impact of White-Nose Syndrome (WNS), a fatal disease-causing fungal pathogen. This disease has caused approximately 97–100% of NLEB species declines across 79% of its range. If this disease had not emerged, it is unlikely the Northern Long Eared Bat would be experiencing a dramatic population decline.

The Endangered Species Act does not sufficiently provide for compliance mechanisms in cases, such as this, where species declines have little to do with human-species interactions or habitat impacts. In this case, increasing regulatory requirements on industries, such as electric co-ops, will do little to preserve the NLEB or aid in its recovery, but it may place unnecessary strain on providers of electricity and could hamper efforts to develop and incorporate into the grid renewable sources of energy such as wind generation.

Endangered Species Act costs

Costs associated with protecting species can vary greatly depending on the species, the habitat in question, and any restrictions of implementation that are associated with the listing. But each additional cost that co-ops incur when complying with species listings is felt directly by our members because electric cooperatives operate at cost. Keeping our rates as affordable as possible is an important consideration because co-ops serve 92 percent of the country's persistent poverty counties.

ESA compliance costs can vary greatly among species. ECE has been fortunate that to date our voluntary compliance costs have been minimal, we have been able to adapt many of our standard practices to benefit the Monarch. Aside from additional hours for annual monitoring and reporting and fees associated with enrollment in the CCAA, we have not seen a significant difference in cost. However, any changes to daily operations if the Monarch is listed, could incur significant costs to those unprotected by an agreement like the CCAA especially if their vegetation management program needs to change. A listing could create fear of incidental take which would potentially hinder efforts to remove invasive plant species. Removal of invasive vegetation has been a very effective habitat restoration tool. Additionally, there could be uncertainty if any critical habitat is assigned with the listing.

In some instances, ESA costs can be significant. Earlier this year the Committee heard from one of my co-op colleagues, Fred Flippance. In his testimony he noted that thirty cents of every dollar of the Oregon based Harney Electric Cooperative's power bill goes to fish and wildlife mitigation on the Columbia River System.

Conclusion and Endangered Species Act recommendations:

Electric co-ops support the underlying goals of the ESA, and we think it can be improved to work better for both endangered and threatened species and the communities where they are found. With that in mind we offer the following recommendations:

- A greater focus on species recovery;
- Focus critical habitat designations on specific geographic areas that are actually habitable where habitat features are present for one or more relevant species' life stages; and are sufficiently habitable for a species' long-term survival;
- Increase transparency in how the Act is implemented;
- Utilize data that is thorough, balanced, and based on scientific standards and impartial peer review;
- Prioritize proactive stakeholder collaboration, and state and local government engagement.
- Consideration of economic impacts in threatened species designations.
- Assess data and impacts within a reasonably foreseeable future timeframe.

A successful recovery of the Monarch Butterfly relies heavily on collective stewardship of lands across much of the nation. Instituting a cohesive plan for Monarch recovery through stakeholder's integrated vegetation management could accomplish more than enforcement through restrictive regulations. Unduly burdensome regulations would hinder cooperation and cause undue harm to time tested, science-based, proven protocols for promoting beneficial vegetation along utility rights-of-ways. Collaboration is key; restrictions are not.

ECE believes that through collaboration, education, and awareness, electric cooperatives can begin to focus on a future where ESA is implemented in a manner that benefits both species and communities and where pollinator habitat is synonymous with utility vegetation management. In that future, healthy ecosystems can exist under every power line, and work as nature intended while also providing affordable and reliable electricity.

Thank you for the opportunity to testify here today. I am happy to answer any of your questions.

Mr. BENTZ. Thank you, Mr. Jahnz.

I now recognize Mr. Vibbert for 5 minutes.

STATEMENT OF SEAN VIBBERT, OWNER, OBSIDIAN SEED COMPANY, MADRAS, OREGON

Mr. VIBBERT. Thank you, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. My name is Sean Vibbert, sixth-generation farmer of a 131-year-old farm in central Oregon. I am honored to be invited here on the 50th anniversary.

I have to admit, I am a little nervous being here, not talking to you guys, but I have never left the farm for a day-and-a-half during harvest. But I feel it is important to do so. I am in the middle of Kentucky bluegrass harvest, and I have delayed 2 days of harvesting 195 acres of blue flax for Utah's conservation efforts.

I was here in March, and I have to say I sat in on a hearing here in this very room, and I was very impressed. At the same time, very disheartened being in here. I have three points to make.

First of all, single species management of the ESA, in my view, is misguided.

The other point is we don't even know if the mitigation efforts in my area for the spotted frog that are underway are effective or even work.

And finally, it is sad, but no one species should take precedence over a community, its citizens, or other species. And I guarantee

you I am on the ground, I have seen the other species that are hurting from what is going on.

I am not here to advocate repeal of the ESA. In fact, I am far from it. I have worked hard to become the second-largest wildflower seed producer in the United States. I produce up to 27 different varieties a year that go into strip mining rehabilitation; fire rehab; sage grouse habitat improvement; and pollinator improvement with the Monarch Corridor, which emphasizes two species, the bumblebee and the monarch butterfly. I guess you could say that is my contribution to Team Extreme.

The seed companies that I deal with depend on me for three of the varieties. I hold, basically, the corner on the market: purple coneflower, upright yellow prairie coneflower, and black eyed Susan. If they don't have them, the projects don't get done. If I don't have the water, I can't get them planted.

It doesn't make any sense that I have a species to the south of me, 75 miles where I get my water through Wickiup Reservoir, that has a stable population to most scientists that have studied it, affecting me trying to do work for a species that is getting ready to go on the list in November. It doesn't make any sense at all.

If you look at my written testimony, you will see a little bit about where I draw water from. I won't overwhelm you about it, but I will basically say this. It is like we have a certain amount of water because we were sued by the Center for Biological Diversity to supply, and over the course of the next 3 years, ramp up to 500 CFS, even in the winter time, for a frog that is underneath the snow and the mud for habitat. It is not even being used. Water going down the river that is being wasted. And it is like having a bathtub, and you can't fill it because the plug is out of it. That is what we are up against. And I don't have the water, nor do my counterparts behind me that came to support me to water their cattle, raise their crops. It has been very costly.

And you guys don't understand what it is costing you and us. For those of you that are on the climate change bus, the people behind me had to truck in 30 million tons of feed last year to their farm, they usually raise it on their farm. They couldn't do it because there was no water available to us. We had to save it for the frog, and that taxes infrastructure.

Certainly, the carbon emissions, it has been gut wrenching to live where I live. Just last week, at this time a farmer committed suicide because he didn't have any hope. Now, I don't agree with that, but I will tell you what. I wonder, I question when we started pitting species for human life. Thank you.

[The prepared statement of Mr. Vibbert follows:]

PREPARED STATEMENT OF SEAN VIBBERT, OWNER, OBSIDIAN SEED COMPANY

My name is Sean Vibbert. I am a sixth-generation farmer and continue to farm with my family in Jefferson County, the central most part of Oregon. My family homesteaded here over 130 years ago.

My great, great, great grandfather began our family operation when he homesteaded here. Throughout the years, our family farmed dryland wheat, livestock, alfalfa, peppermint and garlic. We now exclusively farm grass and wildflower seed.

I have been actively farming since age 14. Through a lot of sweat, hard work and determination in the intervening years culminating ten years ago when I bought out the rest of the family, my wife and I now own and operate the place.

I am proud beyond words to be in charge of a 4,000 deeded acre agriculture operation.

Farming is one of those careers that can last for generations. I have two sons, ages 17 and 13 and a daughter who is 20 years old. As a sixth-generation farmer, of course, I would love to see my kids run our farm someday. However, I recently had a conversation with my oldest son on this subject.

We were riding in the pickup together after working ten straight 18-hour days. (My two sons say they are struggling to keep up with "the old man.") I asked my son if this was something he really wanted to do. He said "yes, I do, Pop. But are we going to have any water so I can farm?" That hit me. Hit me hard.

On Vibbert Ranch, we grow up to 27 different varieties of wildflower seed and three varieties of perennial grasses. I am proud to have become the second largest producer of wildflower seed in the United States. Depending on the years and varieties, we grow, clean, certify and ship around 3.5 million pounds of grass and flower seed varieties per year. Most of our seed is sent to the midwestern states for use in the so-called Monarch Corridor, a point I will return to later.

Our farming operation obtains water for irrigation from North Unit Irrigation District (NUID), the junior water rights holder in the Deschutes River Basin. Unlike native flowers that can survive with minimal water in their natural habitat and are sparsely populated, our operation is water dependent because we are putting the wildflowers through high scale production, and it is densely populated. Water is absolutely essential to our operation.

Central Oregon has a very unique climate that allows for these specific seeds to be grown here. Several varieties of perennial wildflowers can take up to one to two years before they are established to the point they will enter the flowering and seed production phase. In my area, those varieties produce in half that time. Certain perennials I can raise as annuals on the farm. This practice can only be done in one other place in the world, on the east side of the Andes Mountains in Chile.

Based on the microclimate, my area is the only place in the United States where one can plant a crop of Kentucky bluegrass in August and expect a crop the following July. Without water, 85% of the world's supply of carrots and 92% of the world's supply of rough stalk blue grass could not be obtained. Blue grass is used for lawns, golf courses and sports fields, among other uses.

Here we have extreme changes in temperatures in a 24-hour period of time. We can see swings from 85 to 30 during the day. Cold hard winters add to our excellent vernalization capabilities. Vernalization is the exposure of plants to low temperatures in order to stimulate flowering and enhance seed production.

Since 2020, we have been living under the Deschutes Basin Habitat Conservation Plan (HCP) that was some 12 years in the making and was promoted as a strategy to share water resources in the basin while enhancing fish and wildlife habitat. The U.S. Fish and Wildlife Services (USFWS) is a party to this "voluntary" agreement which covers two species, the Oregon spotted frog and the bull trout. It was designed to provide certainty to water managers for the next 30 years. The only "certainty" it has provided, however, is the certainty that we will not have any irrigation water for our farms after the next few years.

After appreciating how difficult it will be to have any irrigation water at all after year seven of the HCP, I joined a non-profit organization called Perfect Balance USA, which was started by Jeremy and JoHanna Symons, who are farmers in my community. The mission of Perfect Balance is to educate communities on how food gets from farm to table, and how to collectively preserve water for our ecosystems, endangered species and farmland.

I want to address four issues related to the cost of the Endangered Species Act. These issues include the cost of: (1) uncertain mitigation effectiveness; (2) single species management; (3) hidden costs; and (4) effects on community and people.

Cost of Uncertain Mitigation Effectiveness

The implementation of the HCP and curtailing water releases began just as our county was (and still is) experiencing the most severe drought in the history of irrigation here. Yet, we do not know if the conservation measures, including ramping up and down (mostly down) of irrigation releases working to protect the threatened species actually are working. That is due in large part to the hopelessly slow and cumbersome processes within the federal bureaucracy. As an example, it was just in May 2023 that the USFWS released a ***draft*** recovery plan for the frog which was federally listed almost ***ten years ago***.

If it took a decade to write a *draft* recovery plan, how long will it take to have a recovery plan finalized and implemented that is doing anything different than

what the HCP is already doing? There has to be some solution to streamlining the federal bureaucracy.

If it took ten years to produce an idea to cure a problem on my farm that may or may not work, my family would have been out of business many generations ago.

The farmers who rely on irrigation in my community have been anxiously waiting to see how the USFWS will work to increase the population of the Oregon spotted frog. We have received little to no information regarding any recovery efforts. According to biologists retained by Perfect Balance, as well as USFWS biologists, the main cause of decline of Oregon spotted frog populations is due to predation by the bull frog. The bull frog is a larger species of frog that preys on Oregon spotted frog eggs and tadpoles. One bull frog can lay up to 20,000 eggs annually while a spotted frog lays only about 600 eggs a year. Additionally, the bull frog competes with the Oregon spotted frog for habitat and food.

In June, 2022, Perfect Balance filed a Freedom of Information Act (FOIA) request to USFWS requesting any information related to the recovery efforts of the Oregon spotted frog. The response we received was disheartening as there has been little to no tangible effort of recovery.

Collectively, the eight irrigation districts who are part of the HCP pay $150,000 each year to the Deschutes Basin Conservation Fund that USFWS oversees. The HCP has been in place for three years, so that is $450,000 total funding paid to the USFWS for the Oregon spotted frog recovery efforts. The purpose of this money is supposed to be used to support activities that will "improve conditions for Oregon spotted frogs in the Upper Deschutes Basin." However, as reported in the response to our FOIA request, as of December 31, 2022, only $96,002 have been spent on recovery efforts. We have yet to see any positive impact from the money that has been spent.

Essentially, our irrigation district patrons have been told that we are paying USFWS to implement a plan that will likely result in the loss of our generations-old livelihoods in order to save a species that they have no apparent urgency to save based on their actions to date.

There is plenty of evidence that the ESA has not worked in the last fifty years as there have been 1,715 species listed as either threatened or endangered.[1] However, only 54 species have ever been delisted due to recovery from the Endangered Species List. USFWS likes to tout this as a win as only 23 species have gone extinct (roughly only 1%).[2] With this statistic, USFWS fails to recognize the purpose of the ESA—to conserve species to the point where they no longer need to be protected. Under that purpose, USFWS has only been 3.15% successful. Again, if I only had a 3.15% success rate within my business, I would have gone out of business a long time ago, and I certainly would not be touting that percentage as a success.

Costs of Single Species Management

The single species management implemented under USFWS of focusing on the recovery of Oregon spotted frog in our region is causing damage to other species, including a *listed* species, in the region. For example, the timing of water releases to benefit the frog affects the navigation of the listed bull trout during that time. As a result, one or the other will suffer by the water release.

As another example, due to lack of water for irrigation during the prime growing season, I am struggling to grow wildflower seed that goes to help the Monarch butterfly recovery efforts in the mid-west. I am the main grower of three varieties of wildflower seed (purple coneflower, yellow coneflower and black-eyed Susan) that are used in the Monarch Butterfly Corridor. However, because of the mismanagement of one endangered species, I am only producing wildflower seed at 40% of my farm's capability.

The Monarch butterfly is a species that is critically imperiled and is set to receive a listing status from USFWS by the end of this year. Further, one of my own senators, Jeff Merkley of Oregon, has been involved in programs such as the Monarch Joint Venture, which is a nonprofit organization that works to build partnerships between federal and state agencies, other nonprofits, community groups, businesses and academic programs working to conserve Monarch butterflies and other pollinators.

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[1] Environmental Conservation Online System. https://ecos.fws.gov/ecp/report/species-listings-by-year-totals

[2] U.S. Fish and Wildlife Service. https://www.fws.gov/press-release/2021-09/us-fish-and-wildlife-service-proposes-delisting-23-species-endangered-species#:~:text=In%20total%2C%2054%20species%20have,due%20to%20 successful%20recovery%20efforts.

Senator Merkley reintroduced the Monarch Action, Recovery, and Conservation of Habitat (MONARCH) Act as well as the Monarch and Pollinator Highway Act during the 118th Congress. At the end of 2022, Congress appropriated $10 million in federal funds, a $6 million increase over what was approved the previous year. The $10 million included $3 million available through the Monarch and Pollinator Highway program, a program that I may not be able to provide seed for. If Monarch conservation is so vastly important, why is USFWS making decisions that are directly making a negative impact on the Monarch?

Hidden Costs of the ESA

It is no secret that there is constant litigation over the ESA. Congress included a cause of action under the ESA to hold USFWS accountable when implementing species listing and recovery practices. While this cause of action was included with the best intention, years later, it is being used by activist environmental groups to profit from attorney's fees as part of the litigation to enforce the Act.

Perfect Balance knows of two ESA cases related to the Oregon spotted frog. The first was two non-profit organizations, the Center for Biological Diversity and Western Watersheds, attempting to force the USFWS to comply with the ESA mandatory listing timeline for the species. This case was consolidated with dozens of other "ESA timeline violation cases" before the District of Columbia District Court in 2011. The USFWS settled the case which eventually involved a total of 1,053 species for a total of $295,760 in attorney's fees alone.

The second suit involved the Center for Biological Diversity and WaterWatch suing USFWS and the Bureau of Reclamation (BOR) to stop operations and water usage out of Wickiup Reservoir. The irrigation districts in my area (including my own) intervened in the lawsuit, resulting in a partial settlement where the irrigation districts agreed to limit the water flowing to our farms. Soon after, the environmental group plaintiffs filed a motion for preliminary injunction to stop any water being released from Wickiup Reservoir. Even though the plaintiffs lost the motion for preliminary injunction, because of the partial settlement that required the irrigation districts to participate in the HCP, the plaintiffs were paid a total of $85,440 in attorney's fees for simply filing the suit, even though they lost the injunction, and the case was settled.

Cost to Communities

The ESA requirements are crippling the entire Central Oregon economy and it is having a trickle-down effect. In rural communities, all the industries are connected. Farmers no longer are providing locally grown food, so it is being sourced and freighted from miles away. Farmers are laying off their employees, many of whom are migrant workers. Jobs are being lost, businesses are closing, and property taxes are struggling to get paid. Schools, police, fire departments and many other agencies will eventually suffer financial burdens The high cost of food and living is contributing to increased homelessness.

The cost of hay in our area has increased to $400.00 per ton, resulting in the numbers of starving animals exponentially increasing. Dog and cat food have also increased by around 25%. Those who have not sold their pets and livestock then have to have their feed trucked in from sometimes hundreds of miles away, making it more expensive and costly to the environment in terms of greenhouse gas emissions caused by trucking.

Farmers not being able to steward their fields has impacts on other wildlife as well. Deer, elk, birds, amphibians, and beneficial insects also have lost their habitat. Without irrigation, many of the fields that wildlife once grazed in are now lying dormant. Instead of farmers growing young crops that sequester carbon and produce oxygen, we are left with pastures and fields that will grow weeds if we are not using harsh herbicides and pesticides to control them. These herbicides and pesticides are left on the ground and can eventually end up in the aquafer and potentially into the water supply. Even if we do spray the weeds, the fields are left as dirt after the wind blows the topsoil away.

Communities are not only impacted financially but socially as well. The legacy that farmers pass down to each generation is something that we all hold dear to our hearts. When you are the fifth or sixth generation on a farm and are the first generation to lose it, there is a severe mental toll on the entire family. According to the National Rural Health Association, the suicide rate among farmers is three and a half times higher than among the general population and is increasing. The suicide rate for farmers increased by 48% between 2000 and 2018. As regulations and environmental activists make it hard to keep family farming operations alive, the mental toll on farmers gets even more severe.

I would like to thank this Committee for holding this hearing and for having a discussion related to the costs of the ESA. While there are many financial costs associated with the ESA, there are plenty of other costs that just as egregiously impact our communities and its people.

Thank you.

Mr. BENTZ. Thank you. I will now recognize Members for 5 minutes for questions, and we will begin with Chairman Westerman, recognized for 5 minutes.

Mr. WESTERMAN. Thank you, Chairman Bentz, and thank you again to the witnesses for being here today. A lot of familiar faces.

Dr. Williams, in 2013, you co-authored an article with other Obama administration officials. And in that article, you stated that critical habitat designations "have very little impact from a conservation perspective." I and my colleagues have been engaged in a bipartisan effort under the CRA to reverse the Service's rescission of "habitat" definition. This definition limits designations to areas that can actually support species, which is in line with the article that you helped author in 2013.

So, given your views on the limited conservation benefit of critical habitat, it seems that the work the Service is doing under your leadership not only contradicts the views expressed in the article, but also alienates landowners and distracts from recovering species.

In that same article, you also noted that making controversial regulatory decisions like critical habitat designations before considering how best to recover species results in missed opportunities to promote recovery, which I agree with that. So, what policy reforms are needed for the Service to focus on recovery planning first, and avoid the "fire, aim, ready" problem that you identified in that article?

Ms. WILLIAMS. Chairman Bentz, Chairman Westerman, thank you for that question.

First off, I did write that article. I did not write that article in my official capacity, and especially not in my capacity as the Director of the Fish and Wildlife Service. I think that critical habitat designation is quite misunderstood, and sometimes we hang our hats on it when, really, the heart of the Endangered Species lies elsewhere: section 4, listing; section 7, consultations; and the like.

To answer your question, I think there are a number of layers to this. Yes, I very much agree with you. Were the Fish and Wildlife Service and our sister agency not so chronically starved in funding, we could put more into recovery planning. Thanks very much to the Inflation Reduction Act, we are able to now put $62.5 million into recovery planning, and that is very important.

But to get to the proposed changes in the critical habitat designation regulation, I don't believe that the last administration's changes were reasoned or moderate, nor were they helpful. What the proposed regulation under this Administration does, and I think sometimes it has been mischaracterized, is it finds that very reasoned and steady attempt to have a durable solution to critical habitat designation going forward.

In fact, when I was the Director of the Montana Department of Fish, Wildlife, and Parks, I wrote a comment letter in opposition

to the previous administration, adding a definition of critical habitat into the regulations because I didn't think it helped me then as a State Director; it hindered. So, just to know that the regulations this Administration and under my tenure as Director of the Fish and Wildlife Service is meant to be very reasoned and durable, and does not change consultations or many of the other issues that people have raised.

Nonetheless, I look forward to working with you, Chair Westerman, on these issues that I know you care about very much, as well as me.

Mr. WESTERMAN. Thank you.

Mr. Wood, what role do private lands and states play in recovering species, and how did the ESA and current regulations make it so that species are a liability to the people who are actually trying to protect them?

Mr. WOOD. Private landowners are the most important conservationists. The Fish and Wildlife Service has found that over two-thirds of species depend on private land for their habitat. And too often, because we lead with regulations rather than recovery planning or on-the-ground conservation efforts, the signal that an ESA listing sends to private landowners is a penalty that immediately your ability to use your land is restricted by the take prohibition. If your land is designated critical habitat, its value may go down. It is all stick, and it is only later that we start thinking about what the carrot should be to encourage the maintenance and restoration of that habitat.

Mr. WESTERMAN. And we are often told that all we need is more money, just more money to recover species. Why do we need good policy reforms, and not just money to make a difference?

Mr. WOOD. Because right now what we are doing is making species and their habitat a liability, and then trying to use funding to make up for that. It is sort of like you have dug a hole and then tried to fill it up, when it would be better off to start from a perspective of how do we make species and their habitat an asset at the front end so we are not having to fix that policy error.

Mr. WESTERMAN. Thank you, Mr. Chairman. I yield back.

Mr. BENTZ. Thank you. The Chair recognizes Ranking Member Huffman for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman, and thanks to the witnesses. I want to dig in a little further to this idea of voluntary and incentive-based conservation as an alternative, perhaps, it has been suggested, to some of the more prescriptive aspects of the ESA.

I think there is this notion that we have heard a few times already today that, if we did less of the listing, less of the critical habitat designation, and in fact, we have actually seen some bills to take away those authorities and constrain them, that we could then better support voluntary initiatives. And we have heard some success stories on that type of conservation here today. We love those stories. It is great to see, and thanks for everybody who does that.

But Mr. Ashe, I want to start with you. Do you think that voluntary conservation efforts alone are going to get us very far down the road with respect to the Endangered Species Act?

In other words, if we took away these prescriptive authorities that are the teeth in the Endangered Species Act, what would happen to some of these voluntary efforts that we all want to see?

Mr. ASHE. Thank you, Mr. Huffman. I would start with, when we talk about voluntary efforts, and particularly incentive-driven voluntary efforts, I mean, again, I will get back to my main point: that takes funding.

The most important incentive-based programs are things like Working Lands for Wildlife and efforts like that, where we are in partnership with the Agriculture Department. It takes funding to drive that.

But no, if we think about something like the manatee, one of the key ingredients in recovery to date of the manatee has been reduction in boat collisions. That required a regulation to reduce speeds in areas where manatees congregate. If we had relied on voluntary measures, it wouldn't have happened. You have to have enforceable measures to achieve those objectives. And you assume people basically will comply with the law, and they did in Florida. And we worked in partnership with the state of Florida to enforce those speed restrictions.

So, incentive-based and voluntary conservation measures play a significant role in achieving recovery objectives, but there are clearly instances where they don't work, and they are not sufficient.

Mr. HUFFMAN. Thank you.

Director Williams, does the presence of that backstop, I mean, we would all prefer to avoid more prescriptive things like listings and designations, take enforcements, things like that. Do those authorities, as a backstop, have a beneficial effect in terms of motivating voluntary conservation efforts that can help avoid listings?

Ms. WILLIAMS. Thank you for that question, Ranking Member Huffman.

In answering that, I would echo Mr. Ashe in that voluntary conservation is incredibly important, and it is very much a part of the underpinning of the Endangered Species Act. But the voluntary conservation alone does not get us to where we need to be for so many species.

And yes, often, when species or candidates are at risk, are declining, there is an incentive to get voluntary conservation agreements in place that provide assurances if that species were to be listed. So, yes, I think that the specter of listing can help spur conservation to happen. We would like to be in the spot of helping species before having to get there.

Mr. HUFFMAN. Similarly, if that backstop did not exist, is it fair to assume that some of these voluntary partnerships might not materialize?

Ms. WILLIAMS. I think that is the case that we have seen over time.

Mr. HUFFMAN. I want to ask about science. Assistant Administrator Coit, it has been suggested in some of our prior hearings in context of several bills we have considered that Members of Congress ought to make the call on which species get listed and delisted. And we have a lot of interesting Members of Congress. We have dentists and tree experts, and the Chairman is a pretty good

water lawyer, but we don't have the kind of wildlife science resource capacity that resource agencies actually have. And the ESA was kind of set up to take the politics out of these decisions, wasn't it?

Why is it important that we leave these tough decisions to the scientists at these agencies?

Ms. COIT. I appreciate the question, Ranking Member Huffman.

I think a core tenet of ESA is that these decisions on listing should be based solely on the basis of the best scientific and commercial data available, and that is in the purview of the scientific community. And while we ask for input on those decisions, it is essential to the integrity of the ESA that they be made based on science. That is a core principle.

Mr. HUFFMAN. Thank you. I yield back.

Mr. BENTZ. The Chair recognizes Representative McClintock for 5 minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. The Ranking Member just told us that we are losing three species every hour. So, let me get this straight. The ESA has recovered 58 species in 50 years at enormous cost, and yet we are losing three species every hour. Now, that doesn't sound to me like a very effective program.

Fortunately, the claim is simply extreme junk science. Variations of it have circulated around the Internet for many years. The BBC, which is hardly a right-wing cable network, thoroughly debunked this claim in 2012. In part, it reported, and I quote, "The International Union for Conservation of Nature, the IUCN, has listed 801 animal and plant species, mostly animal, known to have gone extinct since 1500." And then they asked the question, "If it is really true that up to 150 species are being lost every day, shouldn't we expect to be able to name more than 801 extinct species in 512 years?"

Mr. Chairman, I ask unanimous consent to enter into the record the BBC expose entitled, "Biodiversity loss: How accurate are the numbers?," dated April 25, 2012.

Mr. BENTZ. So ordered.

[The information follows:]

Biodiversity loss: How accurate are the numbers?

BBC News, April 25, 2012, by Richard Knight
https://www.bbc.com/news/magazine-17826898

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Twenty years ago, the Earth Summit in Rio resulted in a Convention on Biological Diversity, now signed by 193 nations, to prevent species loss. But can we tell how many species are becoming extinct?

One statement on the Convention's website claims: "We are indeed experiencing the greatest wave of extinction since the disappearance of the dinosaurs."

While that may (or may not) be true, the next sentence is spuriously precise: "Every hour three species disappear. Every day up to 1SO species are lost."

Even putting aside the apparent mathematical error in that claim (on the face of it, if three species are disappearing every hour, 72 would be lost every day) there is an obvious problem in generating any such number. No-one knows how many species exist. And if we don't know a species exists, we won't miss it when it's gone.

"Current estimates of the number of species can vary from, let's say, two million species to over 30 or even 100 million species," says Dr Braulio Dias, executive secretary of the Convention on Biological Diversity. "So we don't have a good estimate to an order of magnitude of precision," he says.

It is possible to count the number of species known to be extinct. The International Union for Conservation of Nature (IUCN) does just that. It has Listed 801 animal and plant species (mostly animal) known to have gone extinct since 1500.

But if it's really true that up to 150 species are being lost every day, shouldn't we expect to be able to name more than 801 extinct species in 512 years?

Professor Georgina Mace, who works in the Centre for Population Biology at Imperial College London, says the IUCN's method is helpful but inadequate. "It is never going to get us the answers we need," she says. That's why scientists prefer to use a mathematical model to estimate species loss.

Recently, however, that model has been attacked in the pages of Nature. Professor Stephen Hubbell from the University of California, Los Angeles, says that an error in the model means that it has—for years—over-estimated the rate of species loss.

The model applies something called the "species to area relationship" to habitat loss. Put simply, an estimate is made of the number of species in a given area, or habitat—the larger the area, the greater the number of species are said to be in it.

Then the model is worked backwards—the smaller the area, the fewer the species. In other words, if you measure habitat loss, you can use the model to calculate how many species are being lost as that habitat gets smaller.

The problem, says Hubbell, is that the model does not work in reverse. "The method," he says, "when extrapolated backward, doesn't take into account the fact that you need to remove more area to get to the whole range of a species than you need to remove area to find the first individual of a species."

Hubbell's point is that if you increase a habitat by, say, five hectares, and your calculations show that you expect there to be five new species in those five hectares, it is wrong to assume that reversing the model, and shrinking your habitat, eliminates five species.

That's because it takes more area to establish extinction—to show that every individual in a species has been eliminated—than it does to discover a new species, which requires coming across just one individual of that species. Hubbell says when corrected the model shows about half as many species going extinct as previously reported.

Unfortunately for scientists trying to measure species loss, the problems don't end there. They also need to calculate the 'background rate' of extinction. If you want to work out the impact of human life on biodiversity, you need to know how many species would have gone extinct anyway without us being here. Mace says that is difficult.

"Background rates are not constant either," she says. "If you look back through the history of life on Earth, there have been major periods of extinctions. Extinction rates vary a lot."

The level of uncertainty faced by researchers in this field means it is perhaps not surprising that no-one can be sure of the scale of species loss. It also means that when a representative of the Convention of Biological Diversity claimed "every hour three species disappear" he must have known it was too precise.

But the fact that the precise extinction rate is unknowable does not prove that the problem is imagined.

Braulio Dias, executive secretary of the Convention on Biological Diversity, says: "We know that the drivers behind species loss are mostly increasing—land conversion and degradation, pollution, climate change. And of course the human population is still growing and consumption is growing—and most of that consumption is not sustainable."

Professor Hubbell, too, thinks species loss is a serious issue, even though he believes it has been exaggerated.

There is, though, one other problem faced by anyone who wants to call attention to the issue—the fear that people are inclined to care more about so-called charismatic animals (mostly larger animals which we recognise) than the millions

of nameless and microscopic organisms which are also included in species loss models.

Hubbell says we should be at least as concerned about such seemingly unimportant species.

"The proportion of the world's species that are charismatic organisms is really tiny," he says. "From a biomass point of view, this is a bacterial planet. It's a very parochial view to assume that we should care only about elephants and zebras."

But if people do care more about charismatic animals than bacteria, which seems likely, then it might prove difficult to get those people to take the issue seriously unless such animals are threatened.

A number of charismatic species, or sub-species, have become extinct in the wild, but have been kept alive in captivity thanks to the efforts of enthusiasts and campaigners.

Others have gone extinct—like the Pyrenean Ibex or the Baiji river dolphin. But compared to the number of species which exist in the world, even taking the lowest estimates of that number, such known cases are very few.

According to IUCN data, for example, only one animal has been definitely identified as having gone extinct since 2000. It was a mollusc.

Mr. MCCLINTOCK. Mr. Vibbert, you said this, and we all agree with it, that no one wants to see a species go extinct if it can be prevented. Why shouldn't captive breeding programs be used to meet ESA requirements? They have been used to bring species like the California condor back from the very brink of extinction. Why can't that same process be used when it is cheaper than the extreme requirements of, for example, setting aside hundreds of thousands or even millions of acres of land and placing it off limit for productive use?

I am told that such a provision, simply allowing captive breeding programs to be used to meet the ESA requirements, would all but solve the pumping restrictions involving the delta smelt that have desiccated California's Central Valley.

Mr. VIBBERT. Thank you for the question, because it is not about the smelt, and it is not about the frog. It is about the water. And it is really about power, control.

And my grandfather told me back when I was in high school, he told me he didn't want me to come back to farm. He said, "Find another job. Be a teacher, biologist. Do something. Don't come back."

Mr. MCCLINTOCK. Forgive me, but I only have a few minutes. Let me move to Mr. Wood.

Any reason why we shouldn't be able to use captive breeding programs to meet these requirements and maintain these species at healthy levels?

Mr. WOOD. It is not ideal. I think most people would like to see ecosystems conserved, but it absolutely plays a vital role, and often can be far more effective than some of the other tools that are used.

Mr. MCCLINTOCK. Yes. We are told that somehow they are different, but biologists told me that the difference between a species bred in captivity and one in the wild is the difference between a baby born at a hospital and a baby born at home. Is that accurate?

Mr. WOOD. That is right. In terms of the role they can play in the ecosystem, if you were to——

Mr. MCCLINTOCK. By the way, I have a bill that would do exactly that.

Mr. Chairman, I would sure like to get a hearing on that bill in the near future. Can I get your commitment to do that?

Mr. BENTZ. Of course.

Mr. MCCLINTOCK. Thank you.

Mr. Wood, what can be done to make ESA rulings more transparent? One of the recurrent complaints we hear is that the rules are announced without clear scientific basis or authority, making it difficult, if not impossible, to determine if the decision is actually following the facts, or whether the facts are simply being selected to support the decision. Is that a legitimate concern? And if so, what can be done to correct it?

Mr. WOOD. I think there is a problem in a lack of consistency across decisions. Different policy judgments will be made or different readings of the science will vary from administration to administration, from decision to decision. The repeal of the habitat definition is a good example of this, where the Service's purported reason to go without a definition, to essentially fly blind in the critical habitat space, was they wanted the flexibility to decide what habitat might mean from one species to the next, rather than defining the term and following a consistent, clear policy.

Mr. MCCLINTOCK. One of the great ironies of the ESA is that it often works against the species that it is supposed to protect. A prime example is the spotted owl. Protecting spotted owl habitats put them off limits to forest management. The lack of forest management caused catastrophic build-up of excessive fuels. The wildfires that resulted wiped out the very spotted owl habitats that they were supposed to protect.

For example, the Rim Fire in my district, in the Sierra Nevada, wiped out 46 spotted owl habitats; the King Fire another 32. What would have been a more effective way to protect the spotted owl?

Mr. WOOD. To encourage the maintenance and restoration of the habitat. It is one of the fundamental problems.

When the ESA was enacted, the assumption was if we just leave species alone, they will magically recover, and that is simply not true. We need incentives to encourage people to go out and do the hard work of restoring habitat and pursuing proactive recovery efforts.

Mr. MCCLINTOCK. Thank you. I yield back.

Mrs. PELTOLA. The Chair recognizes Congresswoman Peltola for 5 minutes.

Mrs. PELTOLA. Thank you. I am just sitting over here having an existential crisis. This is just a really difficult conversation, listening to farmers talk about the lack of water, and kind of the Sophie's Choice between how do we feed people and make sure that all of the species that we have are being protected, as well. But I am going to get off that topic and ask Assistant Administrator Coit a quick question.

In Alaska, we have ANILCA, Alaska National Interest Lands Conservation Act. And this Act requires that on Federal lands the top priority be subsistence, and the top user group be rural people who live in proximity to that resource when it is in shortage. And I am wondering, Administrator Coit, how do you balance a law like

ANILCA and a law like Endangered Species Act if they are conflicting.

Ms. COIT. Thank you for that question.

As you know, section 10(e) of the Endangered Species Act exempts the taking of listed animals for subsistence purposes by Alaska natives. That helps prevent the conflict that you just referenced.

Mrs. PELTOLA. And it also—if I may, sorry, it also prevents rural people, because ANILCA isn't just for natives, it is for rural people, whatever their ethnicity is.

Ms. COIT. On the general question, in terms of statutory requirements, ANILCA, like any other law, is something that we are required to take into account and satisfy. So, harmonizing ESA and ANILCA is our responsibility, and I am not aware of specific conflicts between the two, but I can look into that further.

Mrs. PELTOLA. OK. And I would like to ask, if I might, Mr. Chairman, the same question of Director Williams.

Ms. WILLIAMS. Thank you, Mr. Chair and Congresswoman Peltola.

For the Fish and Wildlife Service to get to a specific conflict between the Endangered Species Act and ANILCA, as an example that has come up throughout today, is that we will do our very best to prevent having that direct conflict. And the Fish and Wildlife Service Alaska Region has been paying more and more attention to subsistence work, and would try to prevent that from even happening, the conflict.

So, I think the first answer is to not get to that conflict, and for us to be doing our very best to be working with communities and Alaska natives before getting to that.

Mrs. PELTOLA. OK. And to Mr. Vibbert. I guess I would just like to yield my time to you in the event that you would like to add anything to this conversation, the larger conversation, not ANILCA, of course.

Mr. VIBBERT. Well, yes, and I am sorry that I interrupted. I know you had time, but what I was saying, it would be too easy to do, that has been proposed in my area with the spotted frog, and the Fish and Game don't want to do that.

And what it boils down to is the river that I am near, the Deschutes River, flows high all year long, and it has had effect on certain species of fish and wildlife. And some of the implementation by the scientists, and when I say that, I say that loosely, as far as experts go, because in my opinion, an expert is a has-been drip under pressure. You can find a scientist who will believe one way, and you could find one who is vice versa.

There has to come a point here where we all come together and do what is best for the community and the species at hand.

I have a notebook on all of you guys, Googled it. And I will tell you, you have an all-star cast here. And the disheartening part about it is when I was here, there were some that just didn't ask the people that were actually on the ground what is going on, and it is hurtful. I know you guys wouldn't want to be treated the same way. And we are trying to supply something to you.

Mr. BENTZ. Thank you. The Chair recognizes Congresswoman Duarte for 5 minutes.

Mr. DUARTE. Thank you, Chairman.

It has been an exciting first year as a Congressman. We have heard about all kinds of things on the Endangered Species Act in this Committee. We have heard about wolves being released into Yellowstone and over-populating and still not being delisted. We have heard the same thing with grizzly bears. We recently had a major court decision come down in favor of lobstermen who hadn't had a right whale fishing line incident within the last 24 years, but we are still required to restrict their practices further because of a claim of Chevron deference by an agency that wanted them to possibly go out of business.

I live in the Central Valley. I represent Modesto down through Fresno, where we grow a lot of almonds. We have a lot of irrigated farmland coming out of the Sierra Nevada. A lot of those areas that are irrigated in my district are supplied with water out of the delta. And we have seen in the last 20, 30 years an incredibly unsuccessful effort to save the delta smelt—it is dead, it has been dead for a few years, find me one if you can—to save the salmon. Their numbers are low, they are very low.

We are flushing 70 to 90 million acre-feet of water a year out into the ocean from our water projects in California. We have devastated our groundwater. It has fallen dramatically. It actually causes infrastructure problems with the subsidence related. It has devastated rural communities, farm families. It has devastated farm workers and, again, provided no benefits.

Are you, Administrator Coit or Director Williams, are you accountable to deliver results, or are you simply charged to disburse of our resources as you will, without accountability for results?

That is a question.

Ms. WILLIAMS. Chairman Bentz and Congressman Duarte, as a public servant, I believe that, for the Fish and Wildlife Service the buck does stop with me, and I am accountable. But at the same time, to measure the success of the endangered species purely on delisting I don't think is fully accurate with the purposes for which the Act was enacted.

Mr. DUARTE. Great. I will move on to Ms. Coit, because I have a lot more I would like to talk about. Thank you.

Ms. COIT. Thank you. I agree with what Director Williams said. I do care deeply about the persistence of the lobster industry, and working closely with them.

And, yes, we are responsible to uphold the law, implement the law, and to ensure that we have our results when it comes to these species that have a multitude of challenges and are on the brink of extinction often by the time they are listed.

Mr. DUARTE. Thank you. So, here is the last time the Endangered Species Act was reauthorized right here, and that was about, what, 40 million acres, or 30 million acres of critical habitat? And since it failed to be reauthorized, then expired, we have 250 million acres of critical habitat.

Now, a good chunk of that I know is the 10 percent of California's land area that is designated to fairy shrimp critical habitat, fairy shrimp and vernal pool critical habitat. When we talk about fairy shrimp we are talking about sea monkeys, literally—

back in the comic books, at least when I was a kid. These have survived unevolved since 300 million years ago, when the entire surface land area of the globe was one continent, Pangaea. I don't believe that we could absent the Earth of fairy shrimp species if we tried.

But nonetheless, in California 10 percent of the land area of California, including great swaths of private farmland, are designated fairy shrimp critical habitat. Now, Fish and Wildlife says what is critical habitat? This is a document I can provide. Critical habitat is the specific areas within geographic areas occupied by the species that contain physical or biological features. Critical habitat, going forward, designations affect only Federal agency actions or federally funded or permitted activities. Critical habitat designations do not affect activities by private landowners if there is no Federal nexus. That is, no Federal funding or authorization.

Is that true today? Are private landowners burdened with critical habitat designations today?

Ms. WILLIAMS. Chairman Bentz and Congressman Duarte, in fact it is true that the provisions of section 7 for critical habitat applied to the nexus of Federal landownership, or if there is any funding or grantmaking through that Federal agency.

Mr. DUARTE. Thank you.

Mr. BENTZ. The Chair recognizes Representative Dingell for 5 minutes.

Mrs. DINGELL. Thank you, Mr. Chairman.

We have a moral obligation to be good stewards of our nation's rich wildlife and ensure we can share these iconic species with generations of Americans to come.

Protecting America's wildlife is something that is deeply important to me and, quite frankly, something my late husband, John Dingell, took to heart. He was an avid outdoorsman, angler, and hunter, with a deep appreciation of our country's natural resources. And strengthening our nation's conservation and environmental policies was a core value to him.

In fact, as all of you know here, he was the lead author of the Endangered Species Act that was enacted 50 years ago. Ten years ago, on the Endangered Species Act 40th anniversary, he warned of the dangers of partisan bickering and political agendas in undermining the survival of the ESA. And, unfortunately, today's hearing is kind of an example of that.

Contrary to this hearing's title, the ESA has really been successful in preventing the extinction of at-risk species. According to the Center for Biological Diversity, the ESA is credited with saving 99 percent of the species it protects from extinction. At a time when our nation is facing the compounding effects of climate change, habitat loss, pollution, and species over-exploitation that all threaten the viability of many species of wildlife and plants, we need to redouble our conservation efforts, not undermine them.

I really am concerned about the recent attacks on the ESA that we are seeing in the Congress, from attempts to congressionally delist imperiled species to attempts to hinder Federal agencies' ability to protect species from extinction.

And wildlife is paying a toll. A report has recently found that 49 percent of the bird species worldwide have declining populations. And one of the men said to me, "Butterflies are sissy things." Well, I don't think the monarch butterfly is, and we have seen an 85 percent decline in two decades. This should alarm all of us. But it only represents a small fraction of the number of species in decline.

Mr. Ashe, I am going to ask you a few questions. Today, there are over 1,600 domestic species listed as threatened or endangered under the ESA, yet we only hear about a handful of them. Why do only certain species in decline garner such emotional responses that lead to conflicts on the merits of the ESA?

Mr. ASHE. My experience, Congresswoman Dingell, is the species that generate the most conflict and the most notoriety are the ones where we wait until the last minute to really seriously address their conservation needs. So, we have heard a lot of discussion about proactive conservation measures, and I think that is really important, and certainly reflected in the work that has been done on the greater sage grouse to try to get ahead of the species before it needs the protection of the Endangered Species Act.

The species I think that get the most notoriety, generate the most conflict, are the ones that are in the most trouble, and where you have the least flexibility in protecting and conserving them.

Mrs. DINGELL. So, if I understand you correctly, we know that over 99 percent of species under the ESA have not gone extinct. But when a species is caught too late, there are too few left to rebuild the species, and limited options left for recovery.

So, Mr. Ashe, why are imperiled species like this in such bad shape?

Mr. ASHE. Imperiled species like?

Mrs. DINGELL. The 1 percent, the ones that we all fight about.

Mr. ASHE. Again, mostly in my experience, those are species that are habitat-limited species. And we have heard, again, discussion about water. Water is habitat for something like the delta smelt. And when its availability is limited, those are difficult issues to deal with.

I worry about the polar bear, for instance. There are actually a lot of polar bears in the world today, over 20,000, but their habitat is going away, and we have no way to create sea ice habitat. So, it is those species where habitat is the limiting factor that are the most difficult ones to deal with.

Mrs. DINGELL. I am going to be out of time, Mr. Chair, but I do want to say I think ESA has been a critical tool. But I think it is important to recognize how we can further strengthen by doing some things ahead of time, like RAWA, which I want to work with all of my colleagues in before species need to be listed. Thank you, Mr. Chair, and I yield back.

Mr. BENTZ. The Chair recognizes Congresswoman LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

Mr. Vibbert, when you talk about the 500 CFS that is required, what stream, what river was that? I am sorry, I didn't catch it.

Mr. VIBBERT. Say that again.

Mr. LAMALFA. The 500 CFS that is required year-round you were saying——

Mr. VIBBERT. Right now, under our HCP, we are ramping up to eventually what will be 500 CFS over the course of, I think it is over the next 3 years. We are at 100 right now, during the winter.

Mr. LAMALFA. OK. What river is this on?

Mr. VIBBERT. This is on the Deschutes River. The little Deschutes.

Mr. LAMALFA. Now, is there a dam on that above the——

Mr. VIBBERT. There is Crane Prairie, which has now been set aside strictly for spotted frog nursery, and then Wickiup below that. And then it flows into the bend area before it passes through to me down in the lower Deschutes.

Mr. LAMALFA. So, the water running down the river is not being stored. Are those reservoirs getting full?

Mr. VIBBERT. No.

Mr. LAMALFA. They don't fill anymore?

Mr. VIBBERT. No, and we will never fill again because, if you do the numbers, if you look at my written testimony, I believe by Year 5 the frog will be allotted 187,000 acre-feet, and our reservoir holds 200,000. So, anybody with a cork brain and a glass eye could tell you it is not going to work.

Mr. LAMALFA. We have similar on the Klamath and on the Trinity, too.

Mr. VIBBERT. Yes, yes, I know. I feel for you.

Mr. LAMALFA. The farmers I feel for there, as well as the generation of electricity.

In the *Weyerhauser v. Fish and Wildlife* case a while back here, the court had ruled that Fish and Wildlife and NMFS may withhold from designated areas as critical habitat if the economic impacts outweigh the benefit to the species. So, run with that a little bit, OK?

I need to shift gears here. On FEMA flooding lead-up, we have a dire housing shortage in California. So, for Administrator Coit and Director Williams, permitting has already been required to go through extensive ESA procedure in California. Is there anything you can see—there is no longer the ability to utilize the letters that were supposed to allow development to go forward in the interim. Do you see anything, Administrator or Director, that is going to allow those agencies to signal that FEMA can proceed with their letter reviews while the agencies investigate the program?

Would you consider something similar to a compliance agreement while FEMA works with NOAA and Fish and Wildlife to figure out if there is an actual adverse impact?

Ms. COIT. I will start with that, the answer there. I know that is an issue of concern, and I appreciate you raising it.

As you note, FEMA is the action agency and the party with whom we are consulting on that. I do not have a specific answer for the question you just posed about the compliance agreements, but I am aware of how important it is.

Mr. LAMALFA. Is that something you can work with us on a little bit?

Ms. COIT. I will look into it and get back to you directly on that.

Mr. LAMALFA. Thank you.

Director Williams, anything on that?

Ms. WILLIAMS. Congressman LaMalfa, I am very happy to work with you on that. But I believe, really, that NOAA has been the lead agency there. I am happy to work with you.

Mr. LAMALFA. OK, thank you.

In Mr. Wood's testimony, you referenced a PERC study that says the recovery rate for species that the Fish and Wildlife is predicted to recover is about 4 percent. I am not sure where 99 percent was coming from earlier. Is this an accurate percentage for the recovery of species your agency believe would recover?

Mr. WOOD. Yes. What that gets at is the Service predicted time wouldn't be the constraint—that they predicted would recover by 2023. And our success at recovering those species is——

Mr. LAMALFA. OK. Let me direct that to Ms. Williams, too, please.

Ms. WILLIAMS. Congressman LaMalfa, can you ask that question again?

Mr. LAMALFA. As brought out in the PERC study that the recovery for species Fish and Wildlife predicted would be 4 percent. Is that an accurate number that you agree with?

Ms. WILLIAMS. Congressman LaMalfa, the 3 percent, I think that PERC is correct in the number of species delisted. But then again, the 99 percent are the species that have not gone extinct.

And I am aware of Mr. Wood's chart on the trajectory of recovery of species, and I think that it is very accurate that with many species, that recovery is a trajectory, and it is a continuum, and it doesn't happen overnight due to a number of factors, whether it is climate, habitat fragmentation, habitat loss, disease, over-utilization of the species.

Mr. LAMALFA. Right. Thank you.

My time has flown by. I yield back, Mr. Chairman.

Mr. BENTZ. Mr. Magaziner, you are recognized for 5 minutes.

Mr. MAGAZINER. Thank you, Chairman.

When people ask me how it is serving in Congress, I usually say it is pretty good. The people are nice, and it is not always as partisan as the media would have you believe. We do work together sometimes. But then there are days like this, when some of my colleagues are attacking the Endangered Species Act. The Endangered Species Act, which has saved some of our country's most iconic symbols, from the bald eagle to the American alligator, multiple species that have been protected by this Act. The Endangered Species Act works. Ninety-nine percent of species listed have avoided extinction, as we just heard.

And this historic anniversary of the Act should also remind us not only of the progress that we have made, but of our need to continue to modernize the Endangered Species Act to align with the realities of climate change and the need to preserve funding in order to actually enforce and implement measures to save our most vulnerable species.

Protections under the Environmental Species Act are premised on strong Federal-State partnerships. And this is important. We have seen this in our home state of Rhode Island. The orange American burying beetle, one of nature's most efficient composters, once thrived across 35 U.S. states, virtually disappeared during the 20th century. And Block Island, Rhode Island, in my district was

one of the few remaining refuges left. But thanks to the Endangered Species Act, the beetle is now being reintroduced in its former range. And that is just one example.

In Rhode Island, the piping plover population is rebounding, as well. The number of nesting pairs of the piping plover population has increased ninefold since 1986, when it was listed.

We have heard already about the bald eagle population, which reached nationwide lows of 487 nesting pairs, only 487 in 1963, and have now rebounded dramatically, and are back in Rhode Island. That is just another unquestionable Endangered Species Act success. And as a result, the bald eagle was federally delisted in 2007.

There is still a risk that climate change will stall the progress we have made, so we need to update our tools to act on climate change's adverse impacts on species and their habitats. And we see this in Rhode Island, we see it all across the country: rising sea levels, beach erosion, warming temperatures are threatening numerous species of birds, fish, and other wildlife, and also the Americans that make a living from fishing, including in my district. Climate change threatens them, as well. So, we do need to update the Endangered Species Act to account for climate risks.

But, unfortunately, some of my colleagues are trying to move in the opposite direction, and water down the ESA, and cut the funding that we need to enforce it. And I always think it is important that we not paint with a broad brush, again, because we don't want to be partisan. And I know that many of my colleagues on the other side believe in the Endangered Species Act and don't want to see it watered down. But there are some who, I swear, if there were five animals left in a given species, would want to shoot four of them and pat themselves on the back for saving the fifth. And we have to move away from that.

So, for the sake of vulnerable species impacted by climate change, and also to protect coastal communities like those I represent, we need to support the thousands of people who are working and living in coastal communities who need healthy fish and animal populations in order to make a living.

Ms. Coit, can you just talk a little bit about how NOAA Fisheries is integrating climate change considerations into the policies that you are putting forward?

Ms. COIT. Certainly, thank you for that question. As you mentioned, climate change is negatively affecting threatened and endangered species. The marine heatwaves that we are seeing are particularly serious when it comes to coral reefs and some of our productive habitats.

We are required to make decisions based on the best available science, so we are taking a look at the climate change impacts to the ecosystems and the habitats as part of our decision-making, and we are working on things like the Climate Ecosystem Fisheries Initiative to try to both expand our scientific understanding and do a better job of predicting.

Mr. Ashe mentioned the loss of sea ice. Predicting what is going to happen so that we can make sure that we make decisions that are appropriate for conservation——

Mr. MAGAZINER. And quickly, as we head into appropriations season, can you just speak to the importance of sufficient resources to enforce the Act?

Ms. COIT. Yes. Without the resources, from the listing decisions, to the recovery plans, to the consultations that are needed for the projects that support our infrastructure, we are not able to do our jobs. So, we need sufficient funding if we are going to succeed in implementing the Endangered Species Act in a way that is going to promote conservation of species and also the economic objectives of this country.

Mr. MAGAZINER. Thank you, I yield back.

Mr. BENTZ. Congresswoman Hageman is recognized for 5 minutes.

Ms. HAGEMAN. Thank you.

Since the Endangered Species Act was first passed in 1973, only about 3 percent of species have been delisted, not because they haven't recovered, but because the U.S. Fish and Wildlife Service and a variety of environmental groups have a vested interest in keeping them on the list.

The gray wolf and the grizzly bear in Wyoming, as well as the gray wolf and the Preble's jumping mouse are just additional examples of this. In fact, the greater Yellowstone grizzly bear has been recovered for well over a quarter of a century in Wyoming, yet we are still not able to get it delisted.

Mr. Brian Nesvik from the Wyoming Game and Fish Department has been at the forefront of these recovery efforts for almost 30 years. He testified just a few months ago on the current state of the greater Yellowstone grizzly. Specifically, he highlighted the fact that the species has not only recovered far beyond the recovery threshold, but has also expanded far beyond its suitable range. Human-bear conflict potential has risen exponentially with this expansion in range.

In 2020, nearly 8,000 square miles of grizzly bear range was outside of the designated management area, including on private lands. Just last week, a large male grizzly wandered within 20 miles of Billings, Montana. People now deal directly with grizzly bears that have wandered into rural and agricultural areas. These same people were once promised that the bears would not be allowed to permanently occupy the lands where they work, live, and recreate on a daily basis. And unless we choose to act, this promise will remain broken, and these populations will continue to expand completely unmanaged. The Fish and Wildlife Service, in fact, has found that the greater Yellowstone ecosystem is fully saturated with grizzly bears, and that they exceed the numbers that are healthy for that particular area.

Director Williams, considering the fact that the state of Wyoming has invested over $59 million in grizzly bear recovery and management, going from 136 bears in 1973 to over 1,100 currently, which is double the recovery numbers that was part of the recovery plan, do you support transitioning to the Wyoming State Management Plan and delisting the grizzly bear?

Ms. WILLIAMS. Chairman Bentz, Congresswoman Hageman, as we have had these conversations before, I absolutely support the transition to state management. And at the same time, the Fish

and Wildlife Service must adhere to the five factors for delisting for grizzly bears.

And we had previously proposed delisting the greater Yellowstone ecosystem for grizzly bears, and the district court rejected that delisting. And now we have a petition before us from Wyoming, where we are going through those factors and have to look at not only the numbers of the bears, but also the other factors of the statute. And we are doing that right now.

Ms. HAGEMAN. Ms. Williams, are you intentionally pushing grizzly bears onto private lands?

Ms. WILLIAMS. Chairman Bentz, Congressman Hageman, indeed, I am not pushing grizzly bears onto private land. As we know, many of these species do not distinguish between political boundaries or landowners.

Ms. HAGEMAN. Well, I understand that, but that is why we have recovery plans, and geographic areas, and identify critical habitat, and those sorts of things.

Mr. Vibbert, I understand your frustrations. Washington, DC is full of people who don't understand the on-the-ground situation, whether it has to do with climate, or weather, or property, or vegetation, or water. And as a result, they oftentimes are making decisions that are not based upon the on-the-ground situation, but are actually counterproductive to recovery and protection of the species. And I have seen this in a variety of contexts.

So, again, I understand the frustration that you have with what is happening to your own property and your own situation. Can you provide us with a bit more detail about how you have been impacted by the Endangered Species Act?

Mr. VIBBERT. Actually, right before I came in here I got a phone call from Millborn Seed in South Dakota asking me how my purple coneflower looked this year. I have 110 acres of it. I was supposed to be the guy to put it out for the Monarch Corridor for this next year.

And because everything in agriculture, timing is everything. And we had a period where we had to stop our canals, and then go off a live river flow because Wickiup had been completely drained. And I know we are going through a drought. My family has seen lots of them in 131 years, but nothing like this because we have something else sucking it down at a time when it is asleep in the ground.

So, I had to tell them I am not going to have the poundage for them that they wanted because it is a perennial crop and it didn't come up in time during our season. We have a very unique system, a microclimate, 85 degrees during the day, 30 at night. There is only one other place in the world, and that is in Chile, in the shadows of the Andes Mountains. It is going to cost me around $350,000 in lost revenue.

Ms. HAGEMAN. And also an impact on the monarch butterfly.

Mr. BENTZ. The gentlelady's time has expired.

Ms. HAGEMAN. Thank you. I yield back.

Mr. BENTZ. The Chair now recognizes Congressman Beyer for 5 minutes.

Mr. BEYER. Mr. Chairman, thank you very much, and thank you for welcoming me to the Committee.

Director Williams, I think we all recognize that the Endangered Species Act is a balancing act with many different concerns that citizens have. We have heard again and again today that only 3 percent of these species over these many years have actually been delisted. I think it was Mr. Wood who said in the original legislation it talked about bringing any listed species to the point of which ESA regulations are no longer necessary.

What is your perspective on what we have often called the most successful piece of legislation in American history? Is it 99 percent successful, or is it dramatically disappointing because only 3 percent have been delisted?

Ms. WILLIAMS. Mr. Chair and Congressman Beyer, that is quite a question.

I think I would restate that the Endangered Species Act is indeed more important now than ever, and in some respects it has been remarkably successful in preventing extinction. We have talked about the species we have prevented from blinking out and those that have been delisted. And in between there is this continuum of species that need the conservation efforts that come to play with the Endangered Species Act. And I think, by and large, those are remarkably successful. They take time, they take work, they take many, many partnerships. And I still think that they are worth it.

But, as you say, we also at the Fish and Wildlife Service are very careful to be close to communities, paying attention to communities and people, while at the same time following the science and the law. So, I think the Endangered Species Act is incredibly important, incredibly successful, but it is a challenge, and it is something that we can always work to improve, and work together to do a better job.

Mr. BEYER. Congresswoman Hageman mentioned, when she was asking about the grizzly bear, that there were five specific goals that had to be—were these in the legislation? Are they too conservative?

Again, asking you, Director Williams.

Ms. WILLIAMS. Thank you, Mr. Chair and Congressman Beyer. Indeed, they are. They are the five factors that are set out in the Endangered Species Act section 4 for listing and delisting. They are the same factors. And I think they were prescient, and I think that they are completely applicable today.

And some of the challenges of getting to delisting are sometimes the focus on delisting alone, instead of the whole continuum of recovery. But I think they are still applicable today.

Mr. BEYER. Thank you.

Director Ashe, I want to welcome you back. And your incredible work on ivory in years past was heroic, and we are very grateful for that. When you were Director, we had the blanket 4(d) rule for Fish and Wildlife. It was repealed in the Trump administration, and replaced in the Biden administration. What is your feeling on it right now?

How do you respond to the criticism from my Republican friends that just by treating a species as threatened, you could always go to endangered species for individual species that really need it, that we restrict our flexibility by doing the blanket rule.

Mr. ASHE. I think that in my view, the Fish and Wildlife Service's ability to promulgate a special rule, a 4(d) rule for a threatened species, and the framework they set in place, where when you list a species as threatened the default is that all of the protections of the law apply unless you sculpt them to the needs of that species, and I think the Fish and Wildlife Service then, and the Fish and Wildlife Service now is very innovative in the application of 4(d) rules.

And as an administrator, I would say it is a much better position to be in to be loosening a restriction than adding a restriction, from an administrative and a regulatory standpoint. So, I applaud them for reinstating that rule. I think it actually makes the threatened species designation meaningful, but also allows you to sculpt the regulations as necessary.

Mr. BEYER. Thank you very much.

And Director Williams, again, one of the things that former Director Ashe complained about was the incredible delay times on permits. Why is that? What can we do at Fish and Wildlife to make permitting happen in a non-bureaucratic way?

Ms. WILLIAMS. Mr. Chair, Congressman Beyer, thanks for that question.

I think Mr. Ashe provided one of the answers in that our international affairs program has been chronically starved, and not always supported by other administrations. So, I have worked very hard to reconstitute that program, provide them the leadership that they need. And we have been having meetings with AZA to try to get to a better spot with our permits. But we have been under-staffed. These are complicated, and I think we can find a better path forward.

Mr. BEYER. Thank you, Mr. Chairman. I yield back.

Mr. BENTZ. The Chair recognizes Congresswoman Boebert for 5 minutes.

Mrs. BOEBERT. Thank you, Mr. Chairman.

Mr. Wood, can you please elaborate on why the Biden administration rescinding important ESA reforms made by the Trump administration that modernized the ESA, including the regulatory definition of "habitat," are misguided and bad for rural America?

Mr. WOOD. Sure. As I discuss my written testimony and discussed today, the only place critical habitat can really provide value is areas where the land triggers that Federal nexus, it is going to require a Federal permit to damage existing habitat features. It cannot serve to encourage the restoration of habitat or the active maintenance of habitat.

Trump's definition of "habitat," which we had some disagreements with on the margin, but was overall correct in saying habitat is only those areas suitable for a species, serves to make it easier to designate precisely those areas where critical habitat doesn't work and, worse, creates perverse incentives by making the potential to establish habitat a liability for landowners.

Mrs. BOEBERT. Thank you. I am going to come back to you in just a second.

Director Williams, should the gray wolf be delisted in the Lower 48?

Ms. WILLIAMS. Mr. Chair, Congresswoman Boebert, we are in the midst of petitions and litigation on that very issue.

Mrs. BOEBERT. Would you agree that they need to be delisted?

Ms. WILLIAMS. When they meet the five criteria of the Endangered Species Act, yes.

Mrs. BOEBERT. There are over 6,000 wolves in the Lower 48 United States, and the initial agency recovery goal was 650 wolves. So, both Obama and the Biden administrations have supported delisting the gray wolf, including when Mr. Ashe was Director. It shouldn't take an Act of Congress or more than a decade to delist a recovered species. So, I would say that that has met that criteria. And you are saying, once it meets that criteria, then, yes, it should be delisted. And I would say that this takes away from our precious resources, from other species that actually need our help that are on the Endangered Species Act.

And Mr. Wood, back to you. Are you aware of a statutory provision that authorizes the Fish and Wildlife Service to require mitigation under section 7?

Mr. WOOD. Nothing that explicitly requires it. But under section 7 they have to consult over Federal projects.

Mrs. BOEBERT. OK. Or do you agree that section 7 does not include the words "mitigation" or "offsets," and such requirements for section 7 were never authorized by Congress?

Mr. WOOD. I believe, with the first part, from what I understand, often mitigation is proposed by Federal agencies as a way to avoid more extensive consultations. So, there is some uncertainty there.

But you are right that the words, I believe, don't appear in that section of the statute.

Mrs. BOEBERT. Thank you.

Director Williams, why did Fish and Wildlife Service not allow public review and not allow public comment for its recently-released ESA compensatory mitigation policy?

Ms. WILLIAMS. Mr. Chair, Congresswoman Boebert, we follow the Administrative Procedures Act, the law, when we put forward any rulemaking. And I don't believe that APA applies to mitigation policies. So, we did follow the law in putting those forward.

Mrs. BOEBERT. Why is it that the Fish and Wildlife Service is proposing to burden landowners with onerous ESA-related prohibitions when the agency has insufficient information to support a listing of the dunes sagebrush lizard?

Ms. WILLIAMS. Mr. Chair, Congresswoman Boebert, indeed, I have spent a long time, a career of working on the dunes sagebrush lizard. I am looking at my previous colleague, Mr. Ashe, and the science was very clear on the dunes sagebrush lizard. In fact, I brought with me the proposed listing.

What happened with dunes sagebrush lizard is an example of the positive conservation outcomes of the possibility of a listing happening that didn't happen. And they could be extinct in all of their range.

Mrs. BOEBERT. So, I would say this is yet another species of whom it appears the Fish and Wildlife Service is basing a listing decision on the precautionary principle. The Service appears to be speculating about the future trends, even while it admits it can't be certain because of the species habitat, and it is on private lands.

Ms. WILLIAMS. If that is a question, Congresswoman Boebert, indeed, a threatened status talks about foreseeable future, but endangered status does not. Those are threats before us right now to the dunes sagebrush lizard's habitat.

Mrs. BOEBERT. As long as we could get the actual recovered species off of the list, then I think we can make a lot of progress.

Mr. Chairman, I yield.

Mr. BENTZ. Thank you. The Chair recognizes himself for 5 minutes.

It shouldn't be too surprising that the caption of our hearing prompted defensive remarks. But that wasn't the goal. The goal is to have folks who know talk about the cost that this Act imposes over and above that which the agencies are spending.

So, I am just going to ask first, Director Williams, if you believe that the ESA listing of the frog has cost the Oregon community money. We have heard a very clear statement of it from one of our witnesses today. I simply need somebody from the government to acknowledge that this law is causing communities and others to bear a cost. Can you say that that is the case?

Ms. WILLIAMS. Mr. Chair, indeed, today I have heard that, and I look forward to visiting even more. And there can be costs to communities. And as we discussed yesterday, there also can be benefits.

Mr. BENTZ. Yes, and there have been enormous costs. Let's talk about the spotted owl. Can you give us the cost to the forest industry in Oregon of the listing of the spotted owl?

Ms. WILLIAMS. Mr. Chair, indeed, that happened before my time as the Director.

Mr. BENTZ. Would you agree that it was in the billions?

Ms. WILLIAMS. In the millions?

Mr. BENTZ. Billions.

Ms. WILLIAMS. In the billions? I do not know the answer to the direct cost.

Mr. BENTZ. OK, well, how about the indirect cost?

I simply need the agencies who are in charge of this law to acknowledge that it costs, when implemented, billions of dollars in many situations, especially when we talk about our forests. Can you agree with that?

Ms. WILLIAMS. Mr. Chair, as we talked about, yes, we produce reports.

Mr. BENTZ. No, stop. I have the report right here. I am about to ask you about it.

Ms. WILLIAMS. Great.

Mr. BENTZ. I want to know about the impact of your implementation of the Endangered Species Act. Does it cost communities, in many cases, billions?

And, by the way, your cohort needs to get ready, because I am going to ask her the same question, Deputy Administrator Coit.

Ms. WILLIAMS. Mr. Chair, I cannot answer that question.

Mr. BENTZ. That is fine, but one of the things I am going to suggest, and as I told you yesterday, I propose an amendment to the Endangered Species Act at the very end, the last paragraph, where you are to provide a report on your cost. I think you should also be reporting on society's cost in general.

And, again, I don't want to get into a debate about the benefits. Those are already a given by virtue of the existence of the law.

Deputy Administrator Coit, NOAA Fisheries published a recovery plan for the right whale in 2005 that stated the total estimated cost of recovery cannot be determined, as it will likely take numerous decades and many management activities that are currently impossible to predict. Studies, however, show that vessel speed restrictions, which are being proposed by your agency, these restrictions could result in a loss of 340,000 American jobs, and nearly $84 billion—billion—in economic contributions. Do you agree or disagree?

Ms. COIT. Those are not numbers that I can agree with. We have an economic assessment of the cost of the proposed vessel speed rule, and we are updating that as we look at the comments in the rule. But it is nowhere near that number.

Mr. BENTZ. Yes. If I recall correctly, it was like $24 million, as opposed to $84 billion. So, you are off just a bit.

I want to shift to Mr. Jahnz. I know up in my part of the world in Oregon, the local utilities had to move all of their power lines away from crossing vast expanses of sagebrush and over adjacent to county roads, following the county roads in the most jabberwocky way I have ever seen in my life, the purpose of which was to assist the sage grouse, we hope.

There is no doubt in the world that the ratepayers are paying for that. Is the same thing true, is your utility having to pay for protections, shall we say, implemented by those in charge of the Endangered Species Act?

Mr. JAHNZ. Chairman, at this point we haven't had to do a lot of that. But I have to tell you that, as I sat here today and listened to the commentary from my fellow witnesses, I am reminded of President Reagan's comment, "In the current crisis, government is not the solution, government is the problem."

And I think as we think about the Endangered Species Act and the intention of it, it is meant to improve the situation, it is meant to save these resources. And the voluntary acts of organizations like East Central Energy are moving forward without government intervention, and they are solving the problem. We are envisioning a habitat in our rights-of-way that promote monarch habitat, that promote diversity of species, and we are doing all of it without restriction.

Mr. BENTZ. And I am very happy that you are doing that, but the purpose of this hearing is to call out the cost of the Act, so that people don't just blissfully overlook that which is imposed upon the folks that have to bear the burden, many of them in the West, of these Acts.

With that, I yield back and I recognize Congressman Pfluger for 5 minutes.

Mr. PFLUGER. Thank you, Mr. Chairman. Thank you for letting me waive on to this Committee. As you know, I represent the 11th Congressional District in Texas, which encompasses a large part of the Permian Basin in West Texas.

I am extremely disappointed to see the dunes sagebrush lizard as a listed endangered species at this point. The day before we celebrate our nation's independence, the U.S. Fish and Wildlife Service

announced that it would be proposing the listing of the dunes sagebrush lizard as an endangered species under the ESA. And I believe this is, once again, Mr. Chairman, an attack, a weaponization of a Federal agency, and specifically against the most prolific energy-producing region in the world.

I do have many questions, but before I get to them there has been a tremendous effort, both by the state and private stakeholders in initiatives to protect this particular species. And quite frankly, this proposal is a slap in the face of conservationists who are in that area, who have lived and worked in that area for many, many years, who know that area. And like many other agencies that I talk to, the response I get when, "When was the last time you visited the Permian Basin"—and I will ask you, Director Williams, when was the last time you visited the Permian Basin?

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, actually, I lived in Oklahoma for a long time, but I have not visited it in the past 2 years.

Mr. PFLUGER. Thank you, OK.

And Mr. Chairman, that is generally the response I get.

Director Williams, is this listing in response to a negotiated settlement?

Ms. WILLIAMS. Mr. Chair, no, this listing is not in response to a negotiated settlement. It is due to the science and the law.

Mr. PFLUGER. Were there other private parties that were part of this listing?

Ms. WILLIAMS. Mr. Chair, no, in fact, there are private parties who the Service has worked with over decades, like you mentioned, where we have worked to streamline compliance options like candidate conservation agreements, safe harbor agreements, habitat conservation plans. So, we have been working with private parties in these conservation efforts.

Mr. PFLUGER. And Director Williams, are you an advocate for renewable energy?

Ms. WILLIAMS. Mr. Chair, Congressman, indeed, yes, renewable energy is important.

Mr. PFLUGER. Can you tell us the impact that this will have on renewable sources of energy, such as wind and solar, and the building of wind and solar?

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, there are times where the Fish and Wildlife Service, we make our decisions based on the science and the law, and are working with individuals the best we can to ameliorate any impacts.

In this instance, the loss of shinnery oak habitat that the dunes sagebrush lizard relies on is irreversible. We have not found a way to recreate that habitat.

Mr. PFLUGER. Will you provide the Committee with a list of peer-reviewed group representatives, their affiliations that reviewed the dunes sagebrush lizard?

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, absolutely.

Mr. PFLUGER. You talk about the science. I am questioning your science. I am going to go ahead and just say it out loud. I am questioning your science here, because the report on the DSL done at the end of 2022 shows that there has been a net conservation gain for this particular species. And these private and state-led

conservation efforts are working, yet the Service still listed the DSL, the dunes sagebrush lizard. So, how does the Service decide to list this species where 98 percent of the lands have a private supplemental conservation effort?

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, it is wonderful when conservation agreements can help with the species. And, indeed, perhaps there are benefits to that, but not enough to bring the species to the point where it doesn't need to be listed.

Mr. PFLUGER. There have been hundreds of millions of dollars spent in an effort to do real conservation. And I am questioning because you haven't been to the Permian Basin recently, and I am very disappointed in that, to tell you the truth, similar to the Secretary of Energy, similar to FERC, similar to the EPA, similar to many other agencies.

But will you please answer this? Was this species listed in an attempt to kill the fossil fuel industry?

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, absolutely not.

Mr. PFLUGER. So, you will share the peer-reviewed documents and the science, because the stakeholders in my area, who have a vested interest in providing affordable, reliable energy to this country have reported back that none of that has actually been done, that the stakeholder communication, that the work between Fish and Wildlife at the state and local level has not happened. So, I am questioning your science.

And Mr. Chairman, I would like to see the documents, the peer-reviewed documents that Fish and Wildlife Service has.

Ms. WILLIAMS. Mr. Chair, Congressman Pfluger, as the Director of the Fish and Wildlife Service, I do want to take this opportunity to support the hardworking employees of the Fish and Wildlife Service, and the science and the work that they put into this, and that is not questionable. You may question me, but I will not question our employees.

Mr. PFLUGER. My time is expired, Mr. Chairman. Thank you. I yield back.

Mr. BENTZ. With that, I thank the witnesses for their testimony and the Members for their questions.

Members may have additional questions for the witnesses, and I ask that they respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 1 p.m. Eastern Time on Friday, July 21. The hearing record will be held open for ten business days for these responses.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 4:13 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submission for the Record by Reps. Bentz and Westerman

Associated Builders and Contractors
Washington, DC

July 24, 2023

Hon. Cliff Bentz, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee on Water, Wildlife and Fisheries:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 members, we appreciate your efforts to examine the Endangered Species Act and thank you for holding the hearing, "ESA at 50: The Destructive Cost of the ESA" last week.

Additionally, ABC thanks the Western Caucus' for launching the Endangered Species Act Working Group and supports its goals to examine how the ESA is implemented by federal agencies, the practical impacts on the American people, how litigation is driving ESA decision-making, and how success is defined under the ESA.

ABC supports the Endangered Species Act's purpose of protecting species threatened with extinction and recognizes the need for science-based, data-driven actions that conserve those species and the habitats on which they depend. ABC knows that much-needed reforms to modernize the ESA and make ESA consultations more efficient and effective will be required as the Biden administration looks to implement over $1 trillion in federal spending for critical infrastructure, energy and technology projects throughout the country. The ABC-supported RESTART Act (S. 1449), introduced in the U.S. Senate, addresses some of the much-needed reforms to the ESA to make the consultation process more efficient. S. 1449 would shorten timelines for consultations and allow states to assume the responsibility of consultations under the ESA to allow for more local input and reduce the burden on the federal government. ABC encourages this subcommittee to consider the RESTART Act and further efforts to improve and modernize the ESA to better serve our nation's communities and endangered species.

ABC members stand ready for the opportunity to build and maintain America's infrastructure to the benefit of the communities that it will serve and appreciates your consideration of our concerns.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative & Political Affairs

Submission for the Record by Rep. Grijalva

Center for Biological Diversity

July 17, 2023

Re: Natural Resources Committee Hearing on the Endangered Species Act at 50

Dear Chairman House Natural Resources Committee Member:

Nearly 50 years ago, President Nixon signed what has become one of the world's most successful conservation laws—the U.S. Endangered Species Act. In a short but powerful statement, Nixon declared:

> Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans. I congratulate the 93d Congress for taking this important step toward protecting a heritage which we hold in trust to countless future generations of our fellow citizens. Their lives will be richer, and America will be more beautiful in the years ahead, thanks to the measure that I have the pleasure of signing into law today.[1]1

Since its enactment in 1973, the Act has saved countless imperiled species from extinction and has put hundreds more on the road to recovery. Thanks to the Endangered Species Act, iconic species like the humpback whale, bald eagle, and snail darter are still with us today. And along the way it has protected millions of acres of forests, mountains, rivers, deserts, beaches and oceans—as well as the fragile, fascinating and interconnected web of life. Simply put, it is our most powerful tool to combat the extinction crisis and stem the loss of biodiversity currently facing our country and the global community.

The Endangered Species Act is also incredibly popular with the American public, which overwhelmingly supports the law. Nine out of 10 Americans support protections for endangered species and the Act, recognizing the importance of preserving our nation's biodiversity.

Today's hearing should be a celebration of the Act's stunning record of success. Instead, anti-wildlife Members of Congress are doing everything they can to undermine the law and shove species closer towards extinction. So we face a choice. We can starve and emaciate this landmark law to the point of uselessness and rob future generations of wolves, bears, turtles, and sage grouse, or we can protect and strengthen the Act, continuing to save the natural world around us for another 50 years and honoring our commitment to save each and every species from the oblivion of extinction.

Sincerely,

STEPHANIE KUROSE,
Senior Policy Specialist

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ATTACHMENT

A Promise to the Wild:
The Endangered Species Act
50 Years of Extraordinary Success

The letter with full pictorial report can be viewed on the Committee Repository at:
https://docs.house.gov/meetings/II/II13/20230718/116150/HHRG-118-II13-20230718-SD004.pdf

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[1] Richard Nixon, Statement on Signing the Endangered Species Act of 1973. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/255904