

**Testimony of
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U.S. Fish and Wildlife Service, Department of the Interior
Before the
House Committee on Natural Resources,
Subcommittee on Water, Wildlife, and Fisheries
On
H.R. 3119, To provide for the issuance of a Manatee Semipostal Stamp; H.R. 6784, ESA
Flexibility Act; H.R. 6854, Habitat Enhancement Now Act; and H.R. 7157, Strengthen
Wood Product Supply Chains Act**

February 14, 2024

Introduction

Good morning, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director for Policy for 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 four bills related to funding for manatee conservation, the Endangered Species Act (ESA), waterfowl conservation, and Lacey Act implementation.

The mission of the Service is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service's efforts to achieve this mission span a wide variety of programs, including those established to conserve marine mammals, recover ESA-listed species, conserve migratory birds, protect against the spread of injurious species, and regulate wildlife trade. A number of these programs are relevant to the legislation before the Subcommittee today.

Manatee Conservation

The Service oversees the protection of the West Indian manatee under both the ESA and the Marine Mammal Protection Act. The Service works with federal, state, and private sector partners to protect manatees by performing project consultations under Section 7 of the ESA, assessing population status and trends, preparing and publishing stock assessments, and facilitating the development and implementation of conservation plans. The West Indian manatee is a charismatic marine mammal comprised of two subspecies, the Antillean manatee and the Florida manatee. The West Indian manatee can be found in coastal and riverine areas of North America, Central America, and South America and some islands in the Caribbean basin. They prefer habitats with plenty of submerged aquatic vegetation, a source of freshwater, and protection from severe wave action. While the manatee has no natural predators, they face threats from collisions with watercraft, entrapments in water control structures, entanglement or ingestion of fishing gear or marine debris, pollution, and loss of habitat.

Endangered Species Act

The Service and National Marine Fisheries Service (NMFS) share primary responsibility for implementation of the ESA. In enacting the ESA 50 years ago, Congress set a public policy for helping recover endangered and threatened species, with the added benefit of proactive conservation to help prevent additional species from needing to be listed. Protections provided under the ESA can also help address the loss of biodiversity and contribute to preventing species extinctions. Almost every species that has been protected by the ESA is still with us today, and hundreds are on the path to recovery. The original impetus of the ESA was the extinction and decline of an alarming number of fish, wildlife, and plant species, and the recognition that these species are of ecological, economic, educational, recreational, cultural, esthetic, and scientific value to the nation and its people. The range of threats to biodiversity and conservation of species have only increased since the law's passage. Those species listed as endangered are at the highest level of risk and require greatest protection. The protections afforded endangered species should not be weakened or diminished.

Waterfowl Conservation

Migratory bird populations and their habitats are facing increasing challenges, including development, drought, extreme temperatures, and wildfires. To address this, the Service is working across our programs to conserve waterfowl populations and improve waterfowl habitat. Grants are being provided to states and Tribes for wildlife restoration, key national wildlife refuges are actively managed for waterfowl populations, and the Service's Partners for Fish and Wildlife Program works with willing private landowners in all 50 states and territories to support habitat restoration and enhancement projects that benefit waterfowl and other species. Notably, the Service administers the North American Wetlands Conservation Act (NAWCA), which has provided more than \$2.1 billion in grants for over 3,300 projects in the United States, Canada, and Mexico since 1991. Last year alone, NAWCA leveraged more than \$74.1 million in partner funds with a \$39.4 million investment to conserve, restore or enhance more than 106,600 acres of wetlands and associated upland habitats for waterfowl.

Lacey Act Implementation

In implementing the Lacey Act, the Service is responsible for prohibiting the importation of any fish, wildlife, or plants taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or foreign law. We collaborate closely with other federal agencies, including NMFS, the Animal and Plant Health Inspection Service (APHIS), and Customs and Border Patrol (CBP). The Service's Fish and Aquatic Conservation (FAC) program evaluates and lists injurious wildlife under the Lacey Act. The Service also co-chairs the Aquatic Nuisance Species Task Force, which coordinates interagency, national initiatives to prevent the introduction of invasive and injurious species into our nation's ecosystems. The Service's Office of Law Enforcement (OLE) enforces the Lacey Act at the border. Every day at ports of entry, OLE inspects imports and exports and monitors wildlife trade for suspected Lacey Act violations. Ensuring injurious and invasive species do not enter the United States is critical to protecting the health of native species, ecosystems, and humans. As the lead U.S. law

enforcement agency on wildlife trafficking, the Service's OLE depends on its ability to thoroughly vet imports and exports to ensure compliance with the law.

The Service appreciates the Subcommittee's interest in our mission. We offer the following comments on the four bills under consideration today and look forward to discussing our views with the Subcommittee.

H.R. 3119, To provide for the issuance of a Manatee Semipostal Stamp

H.R. 3119 would require the issuance of a semipostal stamp with the image of a manatee for purposes of conserving the species and its habitat in the United States. The legislation would direct funding from sales of the stamp to the Service for a period of at least two years to implement West Indian manatee conservation projects in Florida and Puerto Rico.

In addition to the work described above, the Service is engaged in ongoing monitoring and response to Unusual Mortality Events (UMEs). In March 2021, a UME was declared along the Atlantic coast of Florida. The UME, which began in December 2020 and is still ongoing, is characterized by chronic malnutrition associated with the loss of foraging habitat in the Indian River Lagoon. Early data indicate over 1,515 manatee deaths were recorded in the UME area between December 1, 2020, and January 5, 2024. There were 205 manatee rescues in the same area during that time. The Service implemented a Joint Incident Command with the Florida Fish and Wildlife Conservation Commission (FWC) in November 2021 to enhance and supplement existing efforts and partnerships and coordinate other response activities intended to support the UME investigation. Investigations into the UME are ongoing, and efforts are underway to develop projects that will improve water clarity, reduce algal blooms, and decrease the chance of future UMEs.

Given the importance of long-term warm-water availability to the Florida manatee, the Service and FWC have been working cooperatively with partners and in 2020 finalized a Warm Water Habitat Action Plan. This key plan provides the framework for the development of regional warm-water networks as some industrial sources transition offline in the years to come. Currently, over 60 percent of Florida manatees overwinter at industrial warm water sites.

In Puerto Rico, the Service consistently collaborates with the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and other partners to manage the Antillean manatee population in Puerto Rico. Priorities include working to minimizing threats, in particular from watercraft collisions which have recently increased.

In addition, the Service oversees the John H. Prescott Marine Mammal Rescue Assistance Grant Program, which provides funding to support the recovery, treatment, rehabilitation, and release of stranded marine mammals, as well as scientific research. To date, the Service has awarded more than \$4 million in funding to conservation organizations and state agencies to support manatee conservation through the Prescott program. For the last two funding cycles, the Prescott Grant priorities for the Florida manatee have been UME-focused. The Caribbean Manatee Conservation Center, the only authorized manatee rehabilitation facility in Puerto Rico, has also

received Prescott Grant funding to support their efforts for the Antillean manatee population in Puerto Rico. The PRDNER also received funding from the most recent funding cycle.

Over 20 manatee rescue and rehabilitation partners are federally authorized by the Service to respond to manatees in distress and/or provide care and treatment, including one in Puerto Rico. This program, known as the Manatee Rescue and Rehabilitation Partnership, operates on a team approach, and in 2023, collaborated to rescue 147 manatees. Several new facility partners have been authorized to help with the increasing number of rescued manatees.

The Service supports the goals of H.R. 3119. Funding generated from sales of a manatee semipostal stamp could provide additional resources for manatee conservation. The Service would welcome the opportunity to work with the sponsor to ensure that the legislation is consistent with recommendations in the U.S. Government Accountability Office (GAO) 2005 evaluation of semipostal stamps.¹ These recommendations include annual reporting by the Postal Service and relevant federal agencies; involvement of partners to sustain semipostal stamp support; clear communication about how proceeds will be used; and efficient delivery and implementation of proceeds. The Service defers to the U.S. Postal Service on the operational and financial implications of H.R. 3119.

H.R. 6784, ESA Flexibility Act

H.R. 6784 would amend Sections 4(d) and 9(a) of the ESA to change how species listed as endangered under the ESA are protected. H.R. 6784 provides that the Secretary can either issue a 4(d) rule to protect an endangered species or allow it to be protected by Section 9(a) of the ESA. The Service opposes H.R. 6784.

For a species listed as threatened under the ESA, in some cases it is most appropriate to apply the full prohibitions afforded to endangered species under section 9 of the ESA (which outlines prohibited acts), 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 the Service 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.

However, the ESA consistently affords the highest level of protections to species of wildlife and plants that are listed as endangered. Under Section 9, it is unlawful to import or export, ‘take’ (such as kill, wound, harm, capture, or harass), engage in commerce, or violate any regulation promulgated by the Secretary related to an endangered species of fish or wildlife.

The differences between how threatened and endangered species are treated under the ESA are rooted in the difference in how close they are to being in danger of extinction. Under the ESA, the term “endangered species” means a “species which is in danger of extinction throughout all or a significant portion of its range” whereas a “threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a

¹ U.S. Government Accountability Office, *Factors Affecting Fund-Raising Stamp Sales Suggest Lessons Learned*, September 2005, <https://www.gao.gov/assets/gao-05-953.pdf>.

significant portion of its range.” The ESA follows the science-based and commonsense approach of providing the most comprehensive protection for the species most significantly and urgently at risk of extinction.

H.R. 6784 would authorize the Service to provide less protection to endangered species through a 4(d) rule. This is an unnecessary weakening of the ESA. It would effectively result in no distinction between endangered and threatened species regarding the prohibited actions under Section 9, in that either category of listed species could receive full or partial protections. Further, the ESA provides the flexibility to permit activities that would normally be prohibited under section 9 of the ESA. The Service and NMFS have the authority to issue permits for activities that may result in take associated with scientific purposes, for enhancing propagation or survival of wildlife or plants, or for incidental taking of endangered wildlife.

In addition, while species-specific 4(d) rules have a critical role to play in protections for threatened species, they require additional staffing and resources not required when applying the full suite of Section 9 prohibitions. The Administration recently published a proposed rule revising the Service’s implementing regulations under Section 4(d), which would reinstate the “blanket” 4(d) rule option while continuing to allow for species-specific 4(d) rules for threatened species. The blanket rule option was previously in place between the 1970s and September 2019. Where appropriate, blanket 4(d) rule protections help prevent further declines in the species’ status, and can also address situations where there is a heightened risk of population loss or an unknown cause of species declines. In addition, blanket rules require fewer resources and personnel hours to develop. These same considerations would apply to any species-specific 4(d) rules promulgated related to endangered species under H.R. 6784.

H.R. 6784 also provides that any species-specific 4(d) rule issued by the Secretary for a threatened or endangered species would not be operable in a state that has a Section 6 cooperative agreement unless the state adopts the regulation. Absent state adoption of the regulation, the statutory Section 9 prohibitions would apply for endangered species. Creating a nationwide patchwork of different regulatory protections for endangered species would be confusing and inefficient for the regulated community and would undermine the Secretary’s ability to achieve the conservation purposes of the ESA.

Existing ESA protections are critical to stabilization, improvement, and recovery of endangered species. These are the species at greatest and most urgent risk of extinction, and once a species is extinct, it is gone forever. Maintaining these protections is important to retaining the strength and success of the ESA and carrying out its foundational purpose of preventing extinction and recovering listed species.

H.R. 6854, Habitat Enhancement Now Act

H.R. 6854 would establish two grant programs in the Department to sustain populations of migratory waterfowl through the protection, restoration, and management of habitat. The first grant program would award funding to place, build, and maintain hen houses in the prairie pothole region to improve nesting success rates. The second grant program would award funding to eligible entities in California to establish cover, create new brooding ponds, and carry out

conservation activities on private lands. Each program would receive \$1.5 million annually from Fiscal Year (FY) 2024 through FY 2028 out of amounts otherwise appropriated to the Office of the Secretary of the Interior.

Waterfowl species are not only important for ecosystem function and biodiversity, but they are also drivers of wildlife-related recreation and bring significant economic benefits to local communities across the country. During the 2022-2023 hunting season, almost one million people participated in approximately 20 million waterfowl hunting trips, targeting desired species such as mallards, green-winged teals, wood ducks, and others. In addition to hunters, the Service estimates that 96.3 million people participate in bird watching each year. Together, these groups were part of \$394 billion in economic benefits to local communities from equipment, travel, licenses, and fees associated with outdoor recreation in 2022. Waterfowl enthusiasts are also important partners for conservation. Through sales of the Migratory Bird Hunting and Conservation Stamp, or Duck Stamp, the Service has conserved nearly six million acres of habitat through the National Wildlife Refuge System. In addition, the sales of guns, ammunition, and other outdoor equipment has provided more than \$14 billion to a variety of conservation activities through the Pittman-Robertson Wildlife Restoration Act.

The Service supports the goals of H.R. 6854 to improve habitat for migratory waterfowl and increase the resources available for conservation. However, the Service believes that the provisions of H.R. 6854 are largely duplicative of existing efforts through NAWCA, the Partners for Fish and Wildlife Program, and the State and Tribal Wildlife Grant Programs. NAWCA actively supports millions of dollars in grants to a large number of projects for the protection, restoration, and enhancement of wetlands and uplands habitat for associated migratory birds. Similarly, the Partners for Fish and Wildlife Program, which originated in the prairie pothole region, works closely with a wide range of partners to support habitat restoration and enhancement with waterfowl in mind. Additionally, the State and Tribal Wildlife Grant Programs support a range of wildlife and habitat conservation activities, including for waterfowl. These existing conservation partnerships have been successful in advancing on the ground projects that benefit waterfowl, habitat, hunters, and bird watchers.

One area of difference is that hen houses are not explicitly permitted to receive NAWCA grants, which focus on long-term conservation actions that benefit a wide variety of species. The Service notes that hen houses require frequent maintenance and are used primarily by mallards. The Service believes focusing on more permanent projects that support a broad range of waterfowl and associated species should be a greater priority for conservation. However, we would welcome the opportunity to discuss the eligibility of hen houses under existing sources of funding with the sponsor and the Subcommittee.

Additionally, the Service is concerned that the funding amounts authorized for these programs would be insufficient. Many of the NAWCA Standard Grants are over \$1.5 million for one project. Under H.R. 6854, the Service would either be limited in the number of projects that could be supported or would need to provide smaller grant amounts to reach a larger number of

applicants. Finally, ensuring that funding under H.R. 6854 is additive, rather than drawing from existing programs, would maximize the impact of this legislation. We would welcome the opportunity to work with the sponsor and the Subcommittee on this legislation.

H.R. 7157, Strengthen Wood Product Supply Chains Act

H.R. 7157 would amend the Lacey Act Amendments of 1981 (Lacey Act) to restructure how the Service, NMFS, and APHIS enforce Title 16 of the U.S. Code by imposing new procedures for the inspection and detention of fish, wildlife, or plants imported into the United States. Under H.R. 7157, the relevant Secretary of jurisdiction, depending on the species involved, has up to five days to inspect a shipment and either issue a detailed notice of detention to the importer or release the shipment. H.R. 7157 would require the Secretary to allow shipments to be transported to private bonded facilities within 10 days of being detained. It would also require the Secretary to release or seize detained imports within 30 days of detention. Additionally, H.R. 7157 would require the Secretary to provide importers with the results of any tests conducted on detained imports, as well as sufficient information so as to allow the importer to replicate those tests. Under H.R. 7157 if a shipment is seized, the importer can request an administrative review and the Secretary would have 30 days to release the shipment or affirm the seizure. Finally, H.R. 7157 provides importers with the option to seek relief from the courts if the Secretary affirms a seizure or fails to meet the deadline to make such a determination. The Service opposes H.R. 7157.

The Service's wildlife inspectors are at the front lines at our ports of entry and are responsible for enforcing our wildlife laws, including the Lacey Act. They track shipments, review permits, identify species, and request testing and analysis as needed. The Service has a responsibility to facilitate the legal wildlife trade and ensure the efficient and timely movement of commerce. We also have a responsibility to prevent the introduction and spread of injurious species into the U.S. and to combat the illegal wildlife trade. The Service is concerned that many of the provisions in H.R. 7157 would impede our ability to accomplish both sides of our mission, to facilitate legal commerce and protect our natural resources.

The definition of detained merchandise in H.R. 7157 conflates inspection with detention of shipments. The Service does not need to detain shipments in order to inspect them. Detention of shipments is used by Service inspectors when additional information is needed to process a shipment. Additionally, H.R. 7157 would place strict deadlines on the Service that would be challenging to meet. The bill's 5-day deadline to release or issue a detention notice for a shipment and the subsequent 30-day deadline to release or seize a shipment are insufficient. There are instances where an importer's application is incomplete and needs to be revised or additional information is needed. In other instances, the Service may need to obtain information from a foreign government, or may be processing molecular sampling, eDNA, and other specific analyses that take time. Under the deadlines of H.R. 7157, this information may not be finalized in time, which could result in the unnecessary detention or seizure of shipments. The 30-day seizure deadline also conflicts with the current 60-day deadline for notification of a seizure that

is required under the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). H.R. 7157 also establishes a process that conflicts with the existing processes available for importers to petition the Secretary to reclaim seized property under CAFRA, and it is not clear whether the bill intends to supersede the requirements and processes under CAFRA.

The Service is also concerned that several of the provisions in H.R. 7157 would impede or undermine investigations. H.R. 7157 would require the Service to notify an importer of the detention of a shipment, the reason for the detention, and a description of any tests being conducted. In an ongoing investigation, much of this would be considered sensitive information, and providing it to a possible subject of the investigation would compromise the Service's law enforcement efforts. Additionally, H.R. 7157 would require the Service to provide the results of any tests conducted on detained shipments as well as sufficient information so that the tests could be replicated. There is no precedent for requiring federal law enforcement agencies to provide lab results to importers outside of legal proceedings and doing so could risk providing evidence to bad actors ahead of a criminal investigation. Further, H.R. 7157 does not distinguish separate processes for civil and criminal matters. As such, under H.R. 7157, an entity could potentially file a civil claim for the release of a shipment while a criminal investigation is ongoing.

Finally, the Service lacks the authority to move detained shipments to bonded facilities and has concerns about this provision. Only CBP can authorize transfers of imports under their facilities to other bonded facilities. While the Service understands that the cost associated with demurrage and detention at ports can strain importers, allowing shipments to be relocated to locations outside of the control of the U.S. is contrary to the intent behind the Lacey Act and runs the risk of introducing and dispersing undetected invasive or injurious organisms into our ecosystems absent proper clearance at ports of entry. Additionally, allowing shipments to move to a different location, pre-seizure would create an added layer of complexity in enforcement.

The Service would welcome the opportunity to discuss the intent of the legislation with the sponsor and the Subcommittee to better understand how the Service and our partner agencies can better work with importers to ensure the successful and safe movement of goods.

Conclusion

The Service appreciates the Subcommittee's interest in funding for manatee conservation, the ESA, waterfowl conservation, and Lacey Act implementation. We welcome the opportunity to work with the sponsors and Subcommittee on the four bills under consideration today.