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CONSERVATION, CONSULTATION, AND CAPACITY: STATE VIEWS ON THE NEED TO MODERNIZE THE ENDANGERED SPECIES ACT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

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CONSERVATION, CONSULTATION, AND CAPACITY: STATE VIEWS ON THE NEED TO MODERNIZE THE ENDANGERED SPECIES ACT

WEDNESDAY, MAY 10, 2017

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee met, pursuant to notice, at 10:37 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Wicker, Fischer, Rounds, and Ernst.

Senator BARRASSO. Good morning. I call the Environment and Public Works Committee to order and like to defer to the Ranking Member, Senator Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. I thank the Chairman.

I apologize to our witnesses, some of whom have come quite a distance. The Democratic leader in the Senate has called for an emergency caucus meeting to discuss the issues leading up to the dismissal of James Comey as our FBI Director and to discuss how we might move quickly to ensuring that a special prosecutor is assigned and put to work right away.

If I have the opportunity to return at the end of our caucus meeting, I will come back, and perhaps some of my colleagues will as well.

I really appreciate the Chairman's understanding of this and giving me a chance to give the opening statement first.

Good to see you all. Thank you. This is important stuff.

I am very interested, and I know my colleagues are, to learn more from our State witnesses about your experiences with the Endangered Species Act, the roles that States play, the partnerships that they have cultivated, and the lessons that you have learned, the challenges that you face, and what you think we need to know. I am not sure we could have gathered a more knowledgeable or relevant panel. Altogether, our witnesses represent nearly a century of natural resource, environmental, as well as fish and wild, experience, which leads me to believe you must have started very early in your lives.

This is our second Endangered Species Act hearing this year. I would like to emphasize a couple points that struck me from our

first hearing on this very important issue. The first is that the world is experiencing an exponential increase of species in peril. The International Union for the Conservation of Nature has declared that almost one-third of all known species of plants and animals, some 22,000-plus species, are currently at risk of extinction.

The second is that there are so many species ending up on the endangered list. If, as we will hear from our witnesses today, States are concerned about and equipped to handle species conservation in their States, then why are so many species in trouble? Are there funding challenges? Are there legal challenges?

The Endangered Species Act should be the last backstop against extinction, and the evidence clearly shows that when States, when Federal agencies, when stakeholders collaborate effectively, we can better prevent species from being listed in the first place.

We established at our last hearing that there is generally ample notice that species are at risk. Often, biologists and citizens know years and sometimes even decades in advance that a plant or an animal is in trouble. Governor Freudenthal disclosed at our earlier hearing that until recently, despite this notice, States really haven't focused on all those non-game species that are struggling, and therefore their status becomes critical and a source of contention.

The question is, then, are States focusing on them now? How much and with what resources? And how effectively? Hopefully, our State experts here today can help us appreciate the lay of the land and thus help us understand what the Federal Government needs to do to be a better partner to get this critical job done.

I have to say, the numbers are not encouraging. I understand that States spend about a quarter of what the U.S. Fish and Wildlife Service invests to protect Endangered Species Act listed and candidate species. If we include all the Federal agencies spending, the collective State investment is, I think, about 4 percent. Granted, this likely means we need to invest more in our States. But it also means that States have some soul searching to do. And if you need the ESA and the Federal agencies to back you up because you will not or cannot carry this burden, then we need to know that.

Congress always intended endangered species protection and restoration to be a joint and collaborative effort among Federal agencies and their State partners, and a host of landowners, along with business interests, and conservationists. Our goal should be to make sure we are firing on all cylinders given the magnitude of trouble our fellow inhabitants on this planet face today.

I say these things with the greatest of respect, as a recovering Governor, for the work that you do and the unique capacity you have to understand the challenges in your States, how best to resolve them, and the partnerships that you need to reach these goals. But in this particular instance you are front and center in a fight not only for State interests, but also a national concern for species that are part of our natural heritage. These plants and animals travel and disperse with little concern for our political boundaries.

If indeed you tell us it is time to modernize this crucial Act, then please let us know how the changes you propose will make all of us better equipped to conserve, to protect, and to restore these

plants and critters and places that they call home. This isn't just our legal obligation; I think it is our collective moral duty as well.

Mr. Chairman, I deeply appreciate the chance to go first, and I hope I have a chance to come back and be with all of you a bit later this morning. Thank you so much.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you very much, Senator Carper. I think, as you know, the Democrats have invoked the 2-hour rule. That means this hearing will only go until about 11:30 this morning, which is 2 hours after the Senate gaveled in. So we will be adjourning at 11:30.

Today, the Environment and Public Works Committee continues its efforts to consider feedback from State officials on the need to modernize the Endangered Species Act.

The Endangered Species Act was enacted in 1973 to conserve species identified as endangered or threatened with extinction, and to conserve the ecosystems upon which those species depend. State governments, particularly their State fish and wildlife agencies, play a central role in fulfilling the Endangered Species Act's mission.

Some have tried to argue that the Federal Government, not the States, is the only entity capable of saving endangered species, and that the States should take a back seat on wildlife conservation for species at risk of extinction. Well, endangered species don't care whether the Federal Government or a State government protects them; they just want to be protected.

Combined, our nation's 50 State fish and wildlife agencies are a formidable wildlife conservation machine. Since enactment of the Endangered Species Act almost 45 years ago, State fish and wildlife agencies have enhanced their staff, their expertise, their habitat management techniques, their science capability, their relationships with private landowners and local communities, and political support. And again, these are the State fish and wildlife agencies.

According to a 2014 to 2015 survey of State fish and wildlife agencies conducted by the Association of State Fish and Wildlife Agencies, our States' wildlife conservation machine is comprised of 50,000 highly trained and highly motivated employees, including 11,000 degreed wildlife biologists, 10,100 law enforcement officers, 6,000 employees with advanced degrees, 2,211 employees solely dedicated to educating and informing the public about wildlife conservation issues. An additional 190,000 volunteers nationwide devote their time and energies to wildlife conservation in support of State agencies.

In recent years, State governments and their State fish and wildlife agencies have increasingly voiced concerns that the Endangered Species Act isn't living up to its conservation potential. So have counties, wildlife managers, homebuilders, construction companies, farmers, ranchers, and other stakeholders.

The Endangered Species Act impacts us all. Ninety-nine point 4 percent of all the counties in the United States are home to at least one species listed as endangered. That is according to a recent analysis of Fish and Wildlife Service data by the National Associa-

tion of Counties. So we must all be concerned when the Endangered Species Act isn't living up to its conservation potential.

We are fortunate that national and regional stakeholder groups have already been working for several years in bipartisan ways to identify challenges with the Endangered Species Act and opportunities to make the statute work better.

In March 2016 the Association of Fish and Wildlife Agencies adopted a set of principles to modernize implementation of the Endangered Species Act, to better promote fish and wildlife conservation, and to better facilitate the participation of landowners and other stakeholders.

In June 2016 the Democrat and Republican Western Governors' Association unanimously adopted the Western Governors' Association's Endangered Species Act policy under the leadership of Wyoming Governor Matt Mead. The Association of State Fish and Wildlife Agencies, the Western Governors' Association, other bipartisan groups, and individual stakeholders consistently hit on three themes when they discuss ways to modernize the Endangered Species Act.

Conservation. How can the Act better incentivize conservation activities to, No. 1, avoid listing of species as endangered or threatened, and No. 2, recover species when they are listed as endangered or threatened?

Consultation. How can the Act better facilitate the Federal Government's consultation with State and local governments so that decisionmaking is based on the best available information and State and local capacity is adequately leveraged?

Capacity. How can the Act provide sufficient resources to fulfill the mission of the Act and better allocate those resources to species most in need?

According to feedback from across the nation and across the political spectrum, modernization of the Endangered Species Act in these areas could lead to better outcomes for imperiled species, for government entities, for private parties and other stakeholders.

So I look forward to hearing more from our witnesses about common sense, bipartisan opportunities to modernize and strengthen the Endangered Species Act to make it work better for wildlife and for people.

We would now like to hear from our witnesses, starting with Nick Wiley, who is the Executive Director of the Florida Fish and Wildlife Conservation Commission and the President of the Association of Fish and Wildlife Agencies.

Thanks so much for joining us today.

STATEMENT OF NICK WILEY, EXECUTIVE DIRECTOR, FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Mr. WILEY. Good morning, Chairman Barrasso and Ranking Member Carper and members of the Committee. I appreciate the opportunity to speak with you today. My remarks will represent the views of the Florida Fish and Wildlife Conservation Commission and the Association of Fish and Wildlife Agencies, or AFWA.

My views regarding the Endangered Species Act are shaped by over 31 years of experience as a professional wildlife biologist and a State fish and wildlife agency administrator. During this time, I

have been fortunate to work in Florida, where we have an amazing diversity of fish and wildlife resources featuring a number of iconic species that have been benefited from listing under ESA, including bald eagles, manatees, Florida panthers, sea turtles, and American crocodiles.

My direct experience and work with States across the nation reflect that ESA has served our nation well as a strong tool for protecting and recovering species that are on the brink of extinction. State fish and wildlife agencies really value and appreciate how ESA has driven many conservation success stories.

We also see firsthand, however, that ESA has not adapted well to the tremendous changes across our nation's conservation landscape. Federal agencies do not have sufficient capacity or funding to keep pace with ESA workloads, resulting in delays and litigation.

The ESA is often viewed by private landowners and businesses with great trepidation rather than opportunity for cooperative conservation. It is troubling that the primary purpose for the ESA has shifted over time from an effective focus on rescuing species from the brink of extinction to a broad brush that perpetuates the highest level of Federal regulatory protection even when the threat of extinction has been eliminated and ongoing protection is assured under State management.

State fish and wildlife agency directors generally believe the ESA is not performing as it should and is not sufficiently leveraging State agency expertise and cooperation. We believe there are many areas where ESA should be improved, refocused, and modernized to effectively deal with the scope, scale, and complexity of today's conservation challenges.

When we talk about modernizing ESA, we are talking about improving how ESA is administered and implemented. We are talking about optimizing partnerships with State agencies and better utilizing our growing expertise and conservation capacity. And we are also talking about keeping ESA decisions in the hands of conservation professionals at State and Federal agencies, rather than in the judicial system.

With these concerns in mind, AFWA developed a list of general principles for improving ESA. These principles were developed by State ESA practitioners and calibrated with the Western Governors' Association and the National Governors' Association, reflecting the national scope and significance of ESA. We are hopeful the ideas and recommendations presented in AFWA's general principles will inspire and guide a constructive and collaborative path to a more effective ESA.

Coupled with improving ESA, we also believe that addressing the life needs and habitat requirements of declining species to prevent ESA listing is more prudent and more economically and biologically sound approach to managing species that are otherwise trending toward listing. Through State wildlife action plans, the State agencies have identified species of greatest conservation need and key actions needed to conserve them. We want to continue working with Congress to more fully fund this preventative approach through legislation like the Recovering America's Wildlife Act introduced last Congress.

State fish and wildlife agencies want to be even more value added in ESA implementation to the degree we each have capacity and funding authority. We are suggesting an opt in approach that opens doors for the fullest cooperation with State agencies that have or will develop capacity and concurrent authority. We are not suggesting that all 50 States are ready to fully engage, but many are, if we can get a seat at the table.

Yet, the way ESA is constructed and interpreted, State agencies can be involved in key decisions only at the discretion of Federal agencies. Although section 6 requires a maximum extent practicable cooperation, this provision has never been fully realized. As the primary trustee for fish and wildlife resources, State agencies should have the option to serve as a full jurisdictional partner in all ESA processes and decisions, as originally intended by Congress.

We believe conservation of our fish and wildlife resources, particularly protecting and recovering endangered species, is at the core of our American values. The current version of ESA accomplished much, and we should be proud of this. But we can't afford to let ESA rest on its laurels and continue to decline. The time is ripe for ESA to be upgraded to a more cooperative model, and we are hopeful for strong bipartisan support to move this forward.

Thank you, and I welcome your questions.

[The prepared statement of Mr. Wiley follows:]

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Testimony before the Senate Committee on Environment and Public Works

"Conservation, Consultation, and Capacity: States' Views on the Need to Modernize the Endangered Species Act"

Nick Wiley, Executive Director, Florida Fish and Wildlife Conservation Commission and President, Association of Fish and Wildlife Agencies

May 10, 2017

Chairman Barrasso, Ranking Member Carper, and members of the Committee I appreciate the opportunity to speak with you today. I want to start with some background about my professional experience. I have worked as a fish and wildlife conservation professional for over 31 years, most of that time in Florida. I have served as Executive Director for the Florida Fish and Wildlife Conservation Commission for over seven years. I have a bachelor's degree in biology from Georgia Southern University and a master's degree in wildlife science from Auburn University. I currently serve as President for the Association of Fish and Wildlife Agencies (AFWA). As you may know, AFWA represents the collective perspectives of the 50 state fish and wildlife agencies (state agencies) nationwide.

I have professional experience specific to the Endangered Species Act (ESA) in a number of ways including work to preclude listing of candidate species, listing and delisting species, coordination of ESA regulations with private landowners, and species recovery planning. I have worked closely with our state agency experts on management and recovery of high profile listed species including West Indian manatees, Florida panthers, snail kites, American crocodiles, red-cockaded woodpeckers, and Florida scrub jays. On the national level, I served as chair for the AFWA Threatened and Endangered Species Policy Committee for five years and currently serve as co-chair for the State-Federal Joint Task Force on ESA Implementation.

My remarks today will represent the views of AFWA and the Florida Fish and Wildlife Conservation Commission. I will cover 5 key points in this session including: 1) AFWA priorities for ESA improvement adopted by 50 state agencies; 2) the intended roles and authorities for state agencies as ESA was adopted and amended by Congress; 3) the degree to which these roles and authorities were actually realized; 4) a better path forward leveraging state agencies'

expertise and authority along with funding to address at risk species to preclude the need for ESA listing; and 5) examples of success stories illustrating why state agencies are well positioned to exercise much stronger roles and authorities in a new, modernized version of the ESA.

Let me pause on this last point to make something clear. The state agencies support and value the ESA as a strong and effective tool for protecting and recovering species that are on the brink of extinction. Most state agencies believe, however, that the ESA is not performing as it should and is not sufficiently leveraging cooperation between federal agencies and state agencies. We believe there are many areas where ESA needs to be improved, strengthened and refocused to perform as originally intended by Congress when enacted 44 years ago. The ESA simply has not adapted well to the tremendous changes across our nation's conservation landscape and needs to be modernized to effectively deal with the scope and scale of imperiled species challenges we face today. When we talk about modernizing the ESA, we are talking about improving how the ESA is administered and implemented; we are talking about recognizing the state agencies as full partners with concurrent authorities as originally intended by Congress; we are talking about more effectively leveraging the expertise and conservation delivery by the state agencies; and we are talking about keeping the ESA decisions in the hands of the conservation professionals in state and federal agencies rather than the Court system.

The federal agencies responsible for administering the ESA are working diligently to implement the law as adopted by Congress and interpreted by the Courts. But in spite of their best efforts, these agencies cannot keep pace with the growing number of species subject to petitions for federal listing. They simply do not have capacity to handle the growing workloads associated with the petition and listing process, regulatory responsibilities, take permitting, administering conservation incentives, assurances and mitigation programs, Section 7 consultations, addressing litigation, recovery planning, and managing through the recovery and delisting process. Moreover, many of these administrative responsibilities take their focus and funding away from the conservation work on the ground needed to actually recover listed species leaving much of this responsibility to the state agencies.

State agencies appreciate the value of the ESA as a landmark federal law to protect and recover the imperiled species listed under the Act. The ESA was last amended and authorized in 1988. Enacted in 1973, over the almost 44 years of implementation, we have learned much about the conservation of listed species and their recovery needs, such as how to facilitate, not proscribe, private landowner involvement. The AFWA General Principles for Improving Implementation of the ESA, approved by the State Agency Directors in March 2016, are in the Appendix, but below is a brief description of some of them and why we want to improve our ability to recover species under the ESA. These General Principles were developed through initial discussions with

state agencies' endangered species experts serving on AFWA's Threatened and Endangered Species Policy Committee and were further honed by the State Agency Directors. AFWA continues to participate in the Western Governors' Species Conservation and Endangered Species Act Initiative led by Governor Matt Mead (WY), and continues to coordinate with those staffs. Further, AFWA's principles are also consistent with the policy recommendations adopted by the National Governors Association. The modernization ideas are all congruent, and AFWA in cooperation with the Governors is utilizing all of these ideas as we contemplate future ways to improve implementation of the Act and more quickly recover species listed under the ESA.

Elevate the Role of State Fish and Wildlife Agencies

Central to AFWA's General Principles is the recommendation to increase opportunities for state agencies to serve as equal partners with federal agencies and have a more formal, active role and more fully participate in ESA implementation actions as intended by Congress under Section 6 Cooperative Agreements. State agencies, as the trustees of fish and wildlife, should be full jurisdictional partners to implement ESA; not just one of many stakeholders in the process.

Legislative history of the ESA, excerpts from which are in the Appendix, substantiate that Congress intended approved Section 6 agreements to avoid preemption of state law. State agencies have broad expertise, experience and often comprehensive data sets and analyses on many species, but primarily for those species having secure and dedicated funding sources for management, because before they were listed, these species were solely under the state's management and jurisdiction. These data and state agencies' interpretations should be more readily utilized by our federal partners throughout the ESA processes. State agencies should be afforded the opportunity to participate in all implementation aspects of the ESA from listing decisions, to recovery plan development and conservation recovery efforts on the ground, to decisions regarding down-listing and delisting of recovered species.

Many state agencies particularly want a stronger role in providing guidance and support for private landowners on the use of state and federal conservation incentive programs. State agencies want to work with federal agencies to help engage private landowners as partners in conservation and provide them more certainty and less trepidation regarding ESA implementation. State agencies have the responsibility but have not been able to fully exercise the authority under the ESA because of misunderstanding and misinterpretation by the federal executive branch agencies and courts, of the comprehensive nature of Section 6 as intended by Congress.

The Florida Fish and Wildlife Conservation Commission enjoys a strong and productive working relationship with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries

Service (NMFS) with regard to ESA implementation, but current provisions and interpretations of the ESA still result in significant roadblocks limiting our ability to participate as a full jurisdictional partner. Recent work with ESA reclassification petitions regarding black bears and manatees provide examples where the state agency should have been more closely included as a full jurisdictional partner. We were critical in collecting and analyzing data but were not fully brought into the final decision making discussions and process for actions related to these two species even though it was our science and our conservation actions on the ground that were under consideration. Those decision making processes lasted more than a year, and the state was not kept fully apprised of progress or status of decisions other than being told it was being reviewed. These delays can impact the state agency's ability to implement state-based conservation actions, for example updating our state species management plans under review.

Restore the Distinction Between Threatened and Endangered Species

A key recommendation in AFWA's General Principles is to restore the distinction between threatened and endangered species to provide greater flexibility for managing these categories differently and more effectively. Congress intended that the states have the opportunity to lead the management of threatened species, including the provision of "take" as a means of conservation of the species, as substantiated in the 1973 ESA Legislative history. Unfortunately, the USFWS promulgated a default rule (50 CFR 17.31) in the mid-1980s that applies all Section 9 restrictions for endangered species to threatened species unless the Secretary determines otherwise. This essentially eliminated the distinction between the two listing categories.

Improve the Listing Process

AFWA General Principles recognize that the actual listing process is not working efficiently and effectively and the full value of state agency engagement and support is not being realized, particularly regarding statutory timelines for ESA listing decisions, how best available science generated by state agencies is utilized in the process, how preexisting state led conservation efforts are treated, and how state boundaries are considered. AFWA is recommending improvements to the listing process by establishing more realistic time frames for listing decisions so there is more time to work with state agencies, ensure the best available science is fully and accurately considered, and provide more flexibility for recognizing state boundaries, state agency led recovery efforts, and species with data deficiencies.

Adjustments of ESA listing decision time frames would provide opportunity to improve the quality of petitions submitted so they are more science informed and initial evaluation can more readily ascertain the need to move forward with further consideration. AFWA supports a provision authorizing a prioritization process for species considered for listing to focus resources and energy on the species most in need of immediate recovery efforts with a clear

path for other petitioned species. The process needs to insure that all state species data are utilized and considered, giving great weight to the state data and its interpretation by state agencies in decision-making. In some cases, this improvement can preclude the need to list a species under the ESA because of the quantity and quality of state data. Moreover, federal agencies should consult with state agencies, as a full jurisdictional partner, to assess recommendation of listing actions including 90 day findings and 12 month reviews. The current work plan recently designed by USFWS to address Multi-Species Listing Petitions is a step in the right direction and should be utilized to prioritize petitioned species. This system should help reduce the litigation over missed deadlines and allow the prioritization of species most in need of assistance while letting successful, ongoing state-led conservation efforts to continue uninterrupted.

Litigation, court decisions and a "preservation is the only way" attitude has moved the goal posts on what "endangered species" means. The goal posts need to be recalibrated to be more consistent with Congress' intent with respect to what constitutes a threatened or endangered species. Currently, the threshold of what constitutes "endangered species," in many circles and particularly with high-profile species, is inconsistent with the population status that is backed by science-informed fish and wildlife conservation. Testament to this problem is the negative reaction by some interests to down-listing the West Indian manatee from endangered to threatened. The species now numbers well over 6,000 individuals compared to 1,200 individuals in 1991. It is hard to argue on a scientific basis that the West Indian manatee is in "danger of extinction throughout all or a significant portion of its range," which is the statutory definition of "endangered". We seemed to have lost perspective for what constitutes an "endangered species."

Species that are robust in population or that fully occupy their range should be maintained under state agencies' management authority with a state-led conservation plan until the ESA would otherwise be triggered due to declining populations. The listing under the ESA of a population that is healthy today only ties the hands of and places unmanageable burdens on local communities and state agencies when there is nothing we can do today that will positively affect the status of a population 50 or 100 years from now.

These improvements in the listing process would be an important step toward leveraging the value of strong state based conservation efforts while reducing the cost and regulatory implications of federal listing under the ESA. For example, Florida's state imperiled species listing process is robust and widely respected. It identifies and implements focused management for species well before the need for federal listing. Florida's process requires development of management plans which should be considered in any listing decision by the USFWS. For example, there are 19 species included in Florida's Imperiled Species Management

Plan that are petitioned for federal listing. Because these species have comprehensive science and stakeholder informed state plans and protection, there is a strong conservation program in place at the state level that should preclude the need for federal listing.

The gopher tortoise is a good example where flexibility is needed to recognize state boundaries under the ESA listing process. The gopher tortoise is a candidate for federal listing across its range east of the Mississippi River including the states of Alabama, Florida, Georgia and South Carolina. Florida has a comprehensive and successful gopher tortoise conservation program that includes listing it as state threatened species, a "no tortoise left behind" policy, legal protection of tortoises on both public and private lands, and a funding source that ensures long-term conservation and habitat protection. ESA listing decisions should give recognition of state conservation efforts, and federal listing should not be considered in states that have effective state-based conservation programs. This approach would further incentivize and reward state led conservation efforts rather than add even more workload, unneeded regulatory burden, and cost associated with federal listing.

Strengthen and Leverage State Cooperation in the Recovery Planning Processes

AFWA Guiding Principles recommend statutory enhancement and clarification of state agencies' role in the recovery planning process. It should be clarified under ESA that recovery teams should be established to develop science-informed recovery plans for prospectively listed species and that state agencies have the option to lead recovery planning and implementation. Whether a state agency leads recovery planning or not, it should be required that the state agency or agencies and the Secretary agree on the size and composition of the recovery team, with the state agency director deciding which state agency experts sit on the recovery team. Recovery can be expedited by supporting and continuing state level conservation initiatives, management plans and partnerships to recover listed species. Further, require that once an approved recovery plan's population and/or habitat objectives established by the recovery team are reached, the Secretary must initiate the delisting process.

Iconic, high profile species are more likely to have recovery plans that are up to date; however, many plans for other species are not actively being implemented or updated or have never been written. State agency staff work on management and recovery while the federal focus is often regulatory. State agencies would prefer a more collaborative approach that focuses on biological recovery goals and implementation of strategies that achieve these goals. For example, the flatwoods salamander was listed in 2009, but a federal recovery plan has yet to be finalized. State agency biologists are currently forming a working group to address management and conservation of this species in the absence of a recovery plan.

Relocate Critical Habitat Designation to Recovery Plan Development

Another area where ESA implementation can be improved and strengthened is to relocate the designation of critical habitat to recovery plan development and provide more discretion for the Secretary to designate or not designate critical habitat based comprehensively on continued implementation of state conservation plans or initiatives, state lessons learned, implications for communities, funding availability, and other aspects that directly impact the recovery of a species. The scope of critical habitat should be better defined and clear guidance given to when designations are needed or required. In Florida, designation of critical habitat for manatees and panthers was lengthy, controversial, and litigious and created barriers and delays to conservation and recovery.

Revise Down-listing and Delisting Processes

AFWA General Principles recognize the need to address issues with the process for down-listing and delisting species once recovered. There should be increased reliance on and great weight given to actually achieving recovery plan population and habitat goals. One of our greatest challenges to delisting species after meeting recovery objectives continues to be the federal agencies' ongoing revision of a species' recovery goal once we have successfully reached or surpassed the recovery population and habitat goals. We need look no further than the ongoing saga to delist the Grizzly bear in the Greater Yellowstone Ecosystem -- years after state agencies have met the Grizzly bear population recovery goal in the recovery plan, the USFWS continues to increase the population threshold which changes the requirements for delisting. The ESA should be clear in specifying that achievement of recovery goals as determined by the recovery team should initiate the delisting or down-listing process. Also, the ESA should be clarified to create more ecological and geographical flexibility for down-listing and delisting regarding valid listable entities regardless of how they were originally listed. The ESA should emphasize timely execution of the down-listing and delisting process to realize conservation successes and reduce unnecessary regulatory burdens, reflecting the mirror image of the current 12-month listing timeline that allows for public comment. And finally, recovery and reclassification should acknowledge State boundaries as the state agencies are the trustees for fish and wildlife in the states. Federal agencies should be able to reclassify or delist species within a specific State, but the courts have interpreted ESA in a manner that limits this option.

ESA changes are needed to provide more specificity and flexibility in the delisting process to alleviate lengthy and unnecessary regulatory burdens on local communities by allowing both the listing and delisting of a species as a Distinct Population Segment (DPS), and other improvements. Unfortunately, there are less statutory details provided for the delisting process, and we deduce that Congress assumed that delisting, which is the objective of the ESA, would quickly follow the recovery of a species because protections of the ESA were no longer

required. That has not been the case with a number of species, and delisting can take decades and require overcoming many obstacles even after species' recovery goals are met. Further, once a species is delisted, it should return to state jurisdiction for sustainable conservation as designed by the state agency, with a report to the Secretary after 5 years and during which should be protected from judicial review. This will allow state agencies and local communities to work together to sustain and grow the recovered population without the lengthy uncertainty that accompanies litigation and jeopardizes further conservation on the ground.

These issues regarding recovery planning are important in Florida. For example, panthers cannot be delisted regardless of the success and sustainability of recovery within the state. Delisting is dependent on actions in other states. The ESA should specify flexibility for recovery success to be recognized within state boundaries thereby providing further incentives for states to invest more in recovery and foster greater cooperation for species recovery in partnership with private landowners. Additionally, manatee down-listing would have been faster and less controversial had the USFWS been able to consider the down-listing of just the Florida population, and not have been required to include the Puerto Rico population.

Improve Implementation of Section 10(j), Experimental Introductions

Changes and clarifications also are needed under Section 10(j) of ESA regarding use of experimental introductions of listed species to improve or accelerate recovery often under unique conditions. This ESA tool should be used in a more cooperative manner where state agencies are working in partnership and in agreement with federal agencies. For example, the Secretary and state agencies should share in decisions regarding boundaries of 10(j) releases, and it should be clarified that federal agencies must comply with state permitting authorities before 10(j) individuals are released. This will ensure better coordination between state and federal agencies and ensure that state conservation efforts for other high priority species are not compromised by the release of 10(j) individuals.

Jurisdiction Authorities; State-Federal Relationship and ESA Section 6

Let me briefly review the jurisdictional authorities for fish and wildlife in the state-federal relationship. Fish and wildlife conservation was one of "The powers not delegated to the United States by the Constitution, ... [and thus] are reserved to the States respectively, or to the people" (10th Amendment). In the United States, fish and wildlife are owned by the public and managed as trust resources by state agencies. State agencies have primacy for managing fish and wildlife within their borders and have concurrent management authority with federal agencies on migratory birds, inter-jurisdictional fishes, and the topic of today's discussion – threatened and endangered species. Just for clarification, candidate species are under the management authority of state agencies, not the federal agencies. Only Congress can give a

federal agency authority to preempt the states' authority for management of fish and wildlife, and then only for certain federal actions. The ESA is one example, but in doing this, Congress explicitly affirmed that the federal authority they gave the federal agencies exists concurrent with the pre-existing authority of the state agency (defined in the ESA as the state fish and wildlife agency) for listed fish and wildlife species.

Section 6 of the ESA gives the Secretary explicit direction on how Congress expected the federal-state jurisdictional relationship to work. It starts with Sec. 6.(a) GENERAL—" In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States". Section 6 goes on to describe agreements that the Secretary may enter into to allow a qualified state to implement the ESA. These cooperative agreements contemplated that the Secretary, upon the state's demonstration of the appropriate authority and adequate program design, would authorize an approved state to lead ESA activities by delegating his or her concurrent authority to the state. The state would then be directing research and management of listed species, not just applying the Secretary's program for each species.

Unfortunately, the Section 6 authorities available to the states have never been fully realized by the states. Admittedly in the first dozen or so years of the ESA, only a few states had the capacity and political support to realize the authorities under Section 6. Hence, the Secretary through the USFWS exercised through rule and policy, a very significant portion of the ESA authority. Since the mid-1980s, many states have enhanced their staff, expertise, habitat management techniques, science capability for listed species, relationships with private landowners and local communities, and political support that would enable them to more fully exercise their authorities and roles in implementing the ESA as Congress originally intended as substantiated in the 1973 Legislative history. We believe in implementing the ESA, the concept of "cooperation with the state agency" should apply to all actions under the entire Act and afford states of varying sizes and capacities the opportunity to opt into decision-making and recovery of species consistent with their capacity and authorities. We should we willing to accept any and all assistance state agencies are willing to provide to the federal agencies.

Clarification and validation of state authorities under Section 6 and through more comprehensive Section 6 agreements would provide a path forward for state agencies to opt into exercising more authority for ESA implementation tailored to the available capacity and interest of each state agency. Without more clarity in this regard, sharing ESA workload with state agencies is a major challenge. Working with the USFWS, the Florida Fish and Wildlife Conservation Commission was able to amend the standard Section 6 agreement to share workload regarding incidental take permitting through a set of mutually agreeable guidelines. Unfortunately due to questions about authority and threat of litigation, we have not exercised

this option in our Section 6 agreement that could provide much needed assistance to the USFWS.

Conservation Capacity in State Fish and Wildlife Agencies

I would like to expand a bit on state agencies' growing capacity. In 2014-2015 under AFWA President Larry Voyles (AZ), we conducted a survey to better understand state agencies' individual and collective resources to manage fish and wildlife within their borders. We discovered that state agencies employ nearly 50,000 highly-trained and highly-motivated employees and leverage the efforts of 190,000 volunteers. Collectively, state agencies have about 11,000 degreed wildlife biologists, 10,100 law enforcement officers, and nearly 6,000 employees with advanced degrees. State agencies have 2,211 employees solely dedicated to educating and informing the public regarding wildlife and issues that affect conservation. Nationwide, state agencies coordinate the efforts of 189,393 volunteers who devote their time and energies to wildlife conservation, multiplying our full-time workforce by about 5.5 times.

State agencies are proud of their successes with recovering listed species and restoring declining species to sustainable populations so the provisions of the ESA are not necessary. For most state agencies, it has been a challenge building capacity, funding and staffing to do this necessary conservation work. Insufficient funding to federal agencies for recovering a listed species often thrusts an unfunded fiscal burden on state agencies to manage the federal regulatory requirements of a federally listed species. If the federal agencies believe there is a compelling need to list a species under the ESA then it should be followed by a specific congressional funding request under Section 6 or other programs to fund the execution of the new federal burden on its citizens, industries and communities. Because of the dearth of federal funding for the recovery of listed species, state agencies have been creative in developing new and innovative funding sources above and beyond the conservation funding contributed by sportsmen and sportswomen. Over the last few decades by stretching limited funding, state agencies have built considerable expertise and capacity in response to the growing need to address at-risk and imperiled species. Congress has provided a helping hand for these efforts by funding development of State Wildlife Action Plans through the State and Tribal Wildlife Grants Program. We are grateful for this recognition of the value of state based conservation, but we are only able to scratch the surface with this level of support and with the growing list of petitions and possible listings it is a growing federal and fiscal burden on state agencies.

AFWA recently convened a Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources co-chaired by Governor Dave Freudenthal and Bass Pro Shops founder and CEO John L. Morris and including executives from major corporations and leadership from the nation's leading non-governmental conservation organizations. This panel validated the serious need for

a more complete funding model that enables state agencies to more fully deliver conservation actions for all fish and wildlife. While the Wildlife Restoration Program and the Sport Fish Restoration and Boating Trust Fund are successful for providing reliable and dedicated funding to state agencies for the conservation and management of species that are hunted and fished, respectively, there is no concomitant, dedicated funding source to state agencies for the conservation and management of species that are neither hunted nor fished, which today are many of the species trending toward listing under the ESA. State agencies need a dedicated funding source commensurate with their conservation challenges to restore, conserve and manage these at-risk species that comprise state agencies' species of greatest conservation need. We are seeking a national funding solution to address a critical, nation-wide fish and wildlife conservation issue that is of national importance. To accomplish this goal, they recommended a sweeping initiative to dedicate $1.3 billion annually to the Wildlife Conservation Restoration Program under the Wildlife Conservation and Restoration Program to state agencies to effectively implement State Wildlife Action Plans. In response to this recommendation during the last Congress, Representatives Don Young (AK) and Debbie Dingell (MI) introduced the Recovering America's Wildlife Act (HR 5650) that would fully fund this initiative. Further, this recognized need also is supported by section 1.4.1 Principles of the Environmental Protection policy position which was adopted by the National Governors Association in February 2017.

The Recovering America's Wildlife Act would provide critical resources equipping state agencies to sustainably lead proactive, voluntary, incentive-based conservation efforts that would preclude the need to list species under the ESA. As an observation, the state agencies believe that addressing the life needs and habitat requirements of declining species before they reach the point where ESA application is required, is the more prudent, economically and biologically sound approach to managing species trending toward listing. Through State Wildlife Action Plans, the state agencies have comprehensively identified species of greatest conservation need and outlined the key actions needed to conserve them.

Benefits of Leveraging Full ESA Partnership with State Agencies

ESA issues are not restricted to the west, as these Appendix graphs and maps of listed species by state illustrates. Following the 2010 filing of the so called "mega-petition" and others that covered 404 aquatic species in the southeast, state agencies comprising the Southeastern Association of Fish and Wildlife Agencies (SEAFWA) developed the Southeast At-Risk Species (SEARS) program in partnership with the USFWS Southeast Region Office. The purpose of this program is to cooperate and coordinate among the states to address the conservation needs of at-risk species.

Implementation of this program has resulted in numerous beneficial actions to date. The state agencies categorized species into bins related to conservation and information needs associated with each species. This categorization approach later became the foundation of the system adopted by the USFWS for their own national work plan. The outcomes of this collaborative approach have been remarkable: a) 98 species do not require protection of the ESA because of existing conservation actions, updated surveys, and reevaluation of threats to their survival; b) five species have been "upgraded" from endangered to threatened; c) four species have been delisted; and d) five species were listed as threatened instead of endangered because of the overall efforts. The voluntary conservation efforts developed for these species also provide benefits for many more species (both imperiled and common) on the landscape. State agencies worked across state boundaries and cooperatively with the USFWS utilizing state agency funds and funding from ESA Section 6 grants and State Wildlife Grants.

The bottom line is state agencies are effective at leveraging partnerships, relationships, expertise, capacity and funding to conserve fish and wildlife. And while we may not be able to preclude the need to list every species, we can bring great value as a full partner in ESA implementation in many ways and could do much more with a more clarified and strengthened role through ESA modernization and additional resources.

State agencies often do the greatest share of work managing federally listed species and dealing with associated challenges. We are on the ground, in the communities, and on the front lines. Citizens, businesses and landowners are more likely to reach out to state agencies for assistance with listed species than our federal partners, and we find ways to step up and help; often finding innovative ways to fund our efforts like specialty license plates and donations.

Yet the way the ESA is constructed and interpreted, state agencies can be involved in key decisions in the listing process only at the discretion of the federal agencies. In many cases, rather than being an integral part of the decision-making process, state agencies are relegated to submitting comments along with all other stakeholders or members of the public who file comments. Even when we are invited to be more involved in the decision making process, there is a point where the federal curtain closes, and we are left outside as decisions are finalized and approved. In my seven years working with the State-Federal ESA Joint Task Force, it has become clear to me that most state agencies would like to have the option to be much more involved in ESA decisions and in some cases, exercise their concurrent authority for steps in the decision-making process because of impacts to other state managed species and conservation efforts.

States Serve as Essential Partners in Cooperative Conservation Success Stories

I want to finish by offering some conservation success stories where federal and state partners worked closely together to implement ESA and the state agency played a key role by providing

the majority of funding, staff resources, and key regulatory and enforcement support. These conservation successes clearly demonstrate the essential leadership role state agencies have taken in species recovery and clearly validate the credibility of state agencies to have standing as full and equal partners under a modernized ESA.

Surveys of Florida manatees in recent years show their numbers at over 6,000, up from 1,200 back in 1991, and the highest numbers since the surveys began. Just last month, the USFWS reclassified the manatee as a threatened, and no longer an endangered species.

Florida hosts one of the largest nesting aggregations of loggerhead sea turtles in the world, and has seen a 32 percent increase in nests since 1989. The number of green sea turtle nests on our beaches has increased from less than 500 in the early 1980s to a record number of over 37,000 in 2015.

Florida has one of the highest populations of breeding bald eagles in the lower 48 states, with 1,499 active bald eagle nests in 2014, the last official estimate. This compares to only 88 bald eagle nests in 1973. Nationally, acting through regional recovery teams for bald eagles, many state agencies established activity zones to protect nesting bald eagles from activities that could be deleterious during the nesting and chick-rearing season, and some state agencies enforced those restrictions through county zoning laws. Most landowners are very proud to have bald eagles on their property and accommodate temporal restrictions on land management activities such as agriculture or timber harvest to retain the use of their land for bald eagles. Now, of course, the bald eagle has been delisted but is still protected.

Further, the Florida panther, our state's official mammal, is another sign of progress. Numbering as few as 20 to 30 in the 1970s and 1980s, there are now an estimated 120 to 230 adults. And the big news: Biologists recently documented a female panther and kittens north of the Caloosahatchee River, a natural barrier to panther habitat expansion. Just days later north of the river, trail cameras identified another female panther. This one engaged in mating behavior with a male panther. These are major milestones on the road to recovery for the Florida panther, with the kittens presumed to be the offspring of the first wild female panther documented north of the Caloosahatchee River since 1973!

Moving north along the East Coast, Delmarva Fox Squirrels in the Mid-Atlantic were recently delisted due to the great work of MD, DE, VA and PA. They worked closely with federal, industry, academic and conservation partners, and most importantly private landowners. In this case, a listed species was recovered predominately on private lands without the use of a Habitat Conservation Plan or Safe Harbor Agreements. In the 1980s in Maryland, incidental take for landowners, for example accidentally running over a Delmarva Fox Squirrel with their tractor, was authorized by the Maryland Department of Natural Resources under the authority

of their section 6 cooperative agreement with the USFWS. That is a testament to the trust and value of state agencies' relationships with families and communities when they work side-by-side to recover America's wildlife.

Eastern Peregrine falcons were recovered largely by state agencies and Cornell University under permits from the USFWS. This subspecies was extirpated in the wild, but through intense recovery efforts, is now restored throughout its historical range and beyond. Cornell University used a captive breeding program to breed several subspecies from around the world creating a hybrid Peregrine falcon with greater vigor and adaptability. State agencies located and constructed hacking boxes for the captive-bred fledglings and placed them on towers, mountain ledges, bridges and buildings where an adequate prey base existed. They also placed nesting trays in these same places as the fledged birds matured to breeding age. This included areas outside of historic Eastern subspecies range under the guidance of the recovery team. The result is that our eastern United States citizens now enjoy a robust and healthy population of Peregrine falcons. Differentiation of the subspecies can only be determined by certain anatomical measurements requiring the bird in hand, but in appearance, behavior, and hunting activity, it is a Peregrine falcon. North American Peregrine Falcons are now delisted and can once again under permit be used in falconry.

The New England Cottontail Regional Initiative is another excellent example of how multiple state agencies worked together in partnership with USFWS, other federal agencies and NGO partners across state boundaries to recover imperiled species and preclude the need for ESA listing. This was a heroic 10 year proactive conservation effort across six New England states. They coordinated and orchestrated implementation of habitat management regimes in 31 of 47 Focal Areas with targets as fine as the parcel level. More than $41.6 million was dedicated to conserving this candidate species, and because of their conservation actions on the ground across the range of this species, the New England Cottontail Regional Initiative was successful, and protections of the ESA were not warranted. The New England Cottontail Regional Initiative was so successful that these conservation efforts are being expanded by the state agencies to all young forest species.

Thank you for the opportunity to share the perspectives of Florida and the 49 other state fish and wildlife agencies.

Appendix

General Principles for Improving Implementation of the Endangered Species Act

Adopted March 18, 2016

Objective Statement: Improve Endangered Species Act implementation to ensure its future by making it a more effective conservation program for fish and wildlife, and more acceptable to private landowners. This improved implementation would be directed and managed by state and federal fish, wildlife, and natural resource professionals.

Principles for Improvement:
1: Enables more effective and consistent conservation and protection of species.
2: Ensures fish, wildlife and natural resource professionals make Endangered Species Act decisions.
3: Facilitates the opportunity for robust utilization of state fish and wildlife agency concurrent jurisdictional authorities in Endangered Species Act implementation as Congress originally intended.
4: Focuses on management actions that will recover species to the point that provisions of the Endangered Species Act are no longer necessary, and the species can be delisted or down-listed.
5: The approach is apolitical and politically viable because it has bipartisan support.
6: Better incentivizes private landowner participation in application of the Endangered Species Act.

Recommendations for Improvement:

I. Implement Preventive and Restorative Management: improve cooperation between state and federal agencies to preclude the need to list species by addressing species life needs and habitat requirements, more fully recognize and integrate state-led conservation efforts, and improve processes and guidelines for listing decisions. Secure funding sources for these actions.

II. Elevate the Role of State Fish and Wildlife Agencies: increase opportunities for state fish and wildlife agencies to take a more formal and active role and fully participate in Endangered Species Act implementation actions as intended by Congress under Section 6 Cooperative Agreements.

III. Improve the Listing Process: make the best decision within a more realistic timeframe; prioritize species considered for listing; and insure all state fish and wildlife data are utilized and

fully considered in the listing determination whether such data are published or not; and include state agency expertise in the process of interpreting these data and drawing conclusions.

IV. Require the Development of Science-Based Recovery Plans for Listed Species Directed by Recovery Teams: enhance States' role including the opportunity to lead recovery planning and implementation, expedite recovery by supporting state level initiatives and partnerships; and increase flexibility and feasibility for recovery plan applicability.

V. Relocate Critical Habitat Designation to Recovery Plan Development and Create More Flexibility: create more flexibility for the Secretary to exercise discretion to designate or not designate critical habitat, better define the scope, scale and basis for critical habitat designations and include clear guidance on when such designations are needed or required.

VI. Revise Down-listing and De-Listing Processes: increase reliance on and give great weight to recovery plan population and habitat objectives to inform the initiation of the delisting or down-listing process and create more ecological and geographic flexibility for downlisting and delisting valid listable entities, regardless of how they were originally listed; expedite down-listing and de-listing processes to realize conservation successes and reduce unnecessary regulatory burdens.

VII. Restore the Distinction between Threatened and Endangered Species Categories: return to Congressional intent providing greater flexibility to manage these listed species differently; afford state fish and wildlife agencies the opportunity to manage threatened species as Congress intended; and allow take as a possible means of "conservation" in the Act.

VIII. Fully Utilize State Conservation Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, Safe Harbor Agreements and Habitat Conservation Plans: provide consistency and guidance on utility.

IX. Provide Certainty and Incentives for Private Landowners: enhance clarity and increase conservation incentive options available; expedite the process for concluding these conservation agreements to enhance certainty to private landowners.

X. Enhance Endangered Species Act Funding: sufficient funding should facilitate successful conservation outcomes, species recovery, and delisting; enhance funding to states and federal agencies for all aspects of Endangered Species Act implementation.

XI. Improve Implementation of 10(j) Experimental Populations to Enhance Species Recovery: provide guidance on when the use of 10(j) experimental populations are appropriate and standardize post delisting monitoring plans.

XII. Science and actual conservation work to recover species should drive Endangered Species Act decision making: devolve the role of litigation and more fully realize Congressional intent for Endangered Species Act implementation.

XIII. Establish more Consistent Implementation Procedures and Processes: improve consistency and timeliness of administrative processes and actions implemented under the Act.

Legislative History of the 1973 ESA Bill On Passage: Excerpts

Senate Consideration and Passage of S.1983, With Amendments, from the Congressional Record, July 24, 1973, pages 342-425

Sen. John Tunney (CA):

"On the other hand, it was well established in the hearing record that most of the States possess much greater wildlife management resources than does the Federal government. Clearly any effort on the part of the Federal government to encourage the restoration of threatened or endangered species would fail without the assistance of the state agencies. This bill is designed to permit and encourage state endangered species programs that are in concert with the purposes of this Act."

"Subject to the provisions of this Act which provide maximum protection for species on the brink of extinction, States with active endangered species programs are given full discretion to manage threatened species which reside in their boundaries."

Sen. Ted Stevens (AK):

"Sections 6 and 16 provide for cooperation with the states. They provide the major backbone of the Act. Presently the states have an extensive network of endangered species legislation. Unfortunately, not all states have as yet implemented such programs. This bill will assist those states not yet involved to implement such programs and will, if the states do not, provide for Federal preemption."

"As Dr. Ralph Mac Mullen, president of the International Association of Game, Fish, and Conservation Commissioners observed, state wildlife agencies employ over 5800 law enforcement officers across the Nation. Formal Endangered Species programs are being implemented in over 30 states."

"Dr. Mac Mullen further observed that if the Federal government were to take away the right of the states to manage these species and to preempt the states, State Legislatures would not be willing to appropriate the necessary funds to protect endangered species."

House Committee Report 93-412 (to accompany HR 37)

"The principal areas of discussion during the hearings and markup of legislation centered on the proper role of the state and Federal governments with regard to endangered species programs..."

"Any bill which is designed to deal with the complicated issues involved in the protection of endangered species must do so in light of least two competing considerations: first, protection of endangered species is not a matter that can be handled in the absence of coherent national and international policies... Second however, the States are far better equipped to handle the problems of day to day management and enforcement of laws and regulations than is the Federal government..."

"Regulatory jurisdiction is given to the Federal government under this legislation and if a cooperative agreement is successfully negotiated and signed, to the states as well."

"Where a cooperative agreement has been put in effect the bill allows concurrent jurisdiction over the species affected in both the state and federal judicial system."

"In all other respects ... [than adherence to actions specifically permitted or prohibited by the Federal agencies]... the state law is not preempted but is merely subject to the "floor" of regulations under the Act."

House Consideration and Passage of HR 37 with Amendments:

Cong. James Grover (NY):

"Second, we have adequately protected legitimate state interests, power, and authorities by providing for concurrent Federal/State jurisdiction..."

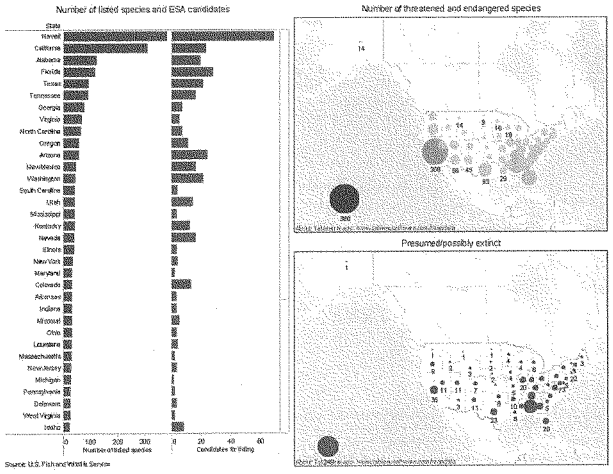
"It is imperative to realize, as the Committee did, that the greater bulk of the enforcement capabilities concerning endangered species lie in the hands of the state fish and game agencies and not the Federal government. It is on a state level that habitat areas will be located, and it is on a state level where this new Federal law will be implemented, subject to overall Federal criteria and guidelines."

House Conference Report 93-740 (to accompany s. 1983 as reported by the House-Senate Conference Committee)

"As finally approved, the Act will have the effect of giving the states fundamental roles with respect to resident species for a given period of time... The conferees hope that this device will impel the states to develop strong programs to avoid the alternative of federal preemption."

"It should be noted that the successful development of an endangered species program will ultimately depend on a good working arrangement between the federal agencies, which have

broad policy perspectives and authority, and the state agencies, which have the physical facilities and personnel to see that state and federal endangered species policies are properly executed."



Source: http://ecowest.org/biodiversity/endangered-species/

Senate Environment and Public Works Committee
Hearing entitled *"Conservation, Consultation, and Capacity: State Views on the Need to Modernize the Endangered Species Act"*
May 10, 2017
Questions for Nick Wiley

Chairman Barrasso:

1. Director Wiley, at our hearing in February, former Wyoming Governor Dave Freudenthal testified that section 6 of the ESA, which requires cooperation with the states to the maximum extent practicable, might be the most under-utilized provision of the ESA. When it comes to implementation of the ESA, Governor Freudenthal testified that "ultimate authority rests with [the U.S. Fish and Wildlife Service] and, absent statutory direction from Congress, shared information and decision making [with the states] remains the exception and not the rule." To what extent should states be consulted regarding the implementation of the ESA?

State fish and wildlife agencies (state agencies) should be given the opportunity to participate in all aspects of the ESA to the extent that they have the authority and capacity to do so. Section 6 should be the instrument under which the state agency and the Secretary agree to the level of participation (from in cooperation with the Secretary, to mutual agreement, to an agreed to level of delegation of authority from the Secretary to the state agency) for ESA actions from listing through recovery and delisting. While the Secretary retains the final decision-making authority, a state agency should be given the opportunity to exercise its concurrent authority to the extent the state agency has the authority and capacity to do so.

2. Director Wiley, stakeholders have expressed concerns that the Endangered Species Act does not require the federal government to prioritize the order in which it reviews listing petitions. They say the current process required by the Endangered Species Act leads to rushed decisions based on incomplete information, inefficient allocation of already scarce resources, and regulatory uncertainty—all of which impede the statue's ability to conserve and recover the species most in need. Do you believe that enacting in statute a system for prioritizing the review of listing petitions would help alleviate some of these problems and lead to the more efficient allocation of resources for species conservation? If so, please explain.

Yes, I believe enacting a statute to prioritize review of listing petitions is needed. The Fish and Wildlife Service has adopted by rule a new process for prioritizing listing petitions. We believe this approach has promise and should be validated by legislative changes. This approach, however will not fully resolve the issues with heavy workloads and meeting tight deadlines. These issues will continue to plague the listing process without legislative solutions that address timelines required for review of petitions and listing decisions. We believe the federal agencies have learned much about ways to more efficiently allocate resources and partner with state agencies to share the workload, but the current framework for the review process in ESA includes barriers such as unreasonable timelines that could be and should be addressed.

3. Director Wiley, some environmental groups claim that enhancing the role of state fish and wildlife agencies in managing threatened and endangered species would be tantamount to gutting and repealing the Endangered Species Act. Do you agree?

Certainly not, and the state agencies successes, funded largely by funds from hunters, anglers, boaters and recreational shooters, at fish and wildlife conservation for the last 100 years clearly refutes that inaccurate myth. The state agencies support the ESA and its goals, but we assert there are different and better ways to achieve the ESA goals and objectives by giving the state agency the opportunity to exercise its authority as Congress originally intended. The tools of the ESA are overwhelmingly regulatory, which has its niche. But by providing that the state agency be able to exercise its authority, you bring in enhanced science, landscape level conservation plans that are already being implemented, relationships of state agencies with landowners, counties and local governments, and the cooperative expertise of other state agencies. And, polls substantiate that state fish and wildlife agencies are among the most trusted of all government agencies when it comes to trusted sources of information about fish and wildlife.

4. Director Wiley, in Director Coit's written testimony, she noted that her department receives each year only $17,500 through ESA section 6 and $23,000 through ESA recovery funding. I am struck by the smallness of these amounts. In 2015, noted conservationist Lowell Baier wrote in his book, Inside the Equal Access to Justice Act, that when all costs are considered, including free reimbursements and related personnel costs, federal taxpayers spend as much as $137 million per year on environmental litigation relating to the Endangered Species Act alone. Do you agree that species would be better served if more of those taxpayer dollars flowed to state agencies like yours and Director Coit's to be spent on conservation and recovery activities, and fewer flowed to lawsuits against the U.S. Fish and Wildlife Service?

Most decidedly, yes. State agencies have the expertise, capability, relationships with private landowners, county and local governments, other state government agencies, and NGOs to deliver fish, wildlife and habitat conservation on the ground. In the three opportunities that you have provided to me and my state colleagues from NC, WY, CO, AZ and RI to address your Committee, we have demonstrated the state agency successes in recovering listed species and addressing the life needs and habitat requirements of declining species before they reach the need to be listed. The state agencies need more funds to succeed, and funds for the FWS to defend litigation, and subsequently flowing to litigants, can be much better spent on the ground in conservation activities. We appreciate your efforts Mr. Chairman, to begin to tighten up the circumstances from which environmental litigant attorneys receive costs from frivolous or unfounded lawsuits and find ways to redirect these fiscal resources to the conservation and restoration of species.

5. Director Wiley, you stated in your written testimony, "State agencies often do the greatest share of work managing federally listed species and dealing with associated challenges." Specifically, what type of work does your state agency perform, and what type of work do federal agencies perform, when managing federally listed species and dealing with associated challenges?

FWC works with land managers and other state agencies on issues relating to many federally listed species. For example, the Agency has one staff dedicated to conservation and recovery of snail kites – no federal funding is used in this position. The position coordinates snail kite issues between the USFWS and FWC lake restoration and exotic species control activities. Additionally, FWC funds the annual monitoring of all snail kite nesting in the northern half of the range. The USFWS focus is on regulatory aspects of snail kite recovery and the interactions with the Army Corp of Engineers and other state entities on the restoration of the Everglades. This is a common scenario with most federally threatened and endangered species in Florida, where FWC handles coordination of management issues, delivers management on the ground and conducts research to address state level management challenges and support recovery efforts.

Florida has an active red cockaded woodpecker safe harbor program, managed by the FWC. FWC staff enroll landowners and conduct site visits to ensure compliance with the program goals. Similarly, FWC staff work closely with other state agencies, county and municipal governments on the development of large scale Habitat Conservation Plans. HCPs are part of the federal process for receiving an Incidental Take permit, and HCP planning grants flow through state agencies. Our staff manage the process of receiving and reviewing the grant applications; the USFWS makes final determinations on grant awards, however all grant funds are managed by the state agency as part of the Section 6 program.

Florida has robust conservation programs for federally listed panthers, manatees and sea turtles with the majority of funding stemming from the sale of specialty license plates. For Florida Panthers, FWC established its lead role in panther research and management in the late 1970's and we continue that role today. We have contributed hundreds of peer-reviewed scientific publications on panther biology, conservation and management. Currently, FWC devotes 5 full-time positions to panther activities (2 management biologists, 2 research biologists and a panther veterinarian) and one half-time panther outreach specialist. The USFWS is responsible for managing the FL Panther NWR. Additionally, USFWS Ecological Services staff review development projects to ensure habitat losses are mitigated. The majority of "boots on the ground" efforts for managing panthers outside federal lands is done by FWC/state staff.

Manatees have been a conservation success story in large measure because of state efforts, working with our federal partners. FWC staff handle all efforts related to carcass recovery/cause of death determinations and rescues in Florida. For population monitoring key components are done by FWC or USGS and then we collaborate on other efforts such as modeling the results of the data collected. Both FWC and FWS staff comment on water access permits but the state carries the larger share of the work on implementing rules for boat speed zones, developing county specific manatee protection plans, habitat restoration projects and educational outreach materials for the public. The state has 39 staff working on manatees for research and management compared to the FWS who has 2-3 dedicated to manatee conservation.

FWC staff conduct or oversee most turtle stranding efforts in the state and the collection of nesting data for almost all the state's sandy beaches. The state manages a group of several thousand volunteers who collect data essential for monitoring sea turtle populations in Florida. State staff provide recommendations on permits for structures proposed for and activities

conducted on state beaches to maintain healthy nesting habitat for turtles and reduce anticipated threats of take from those activities. Both FWC and FWS provide comments on port dredging activities and beach nourishments to offset impacts to sea turtles and their habitat. FWC also works with oceanaria that hold and rehabilitate injured turtles for eventually release and to find permanent locations for un-releasable turtles. FWC has 23 staff working on marine turtles in research and management efforts.

6. Director Wiley, you have highlighted the positive impact state fish and wildlife agencies have in contributing to the implementation of the ESA, despite not having a seat at the decision table. In your opinion, what can be accomplished if state fish and wildlife agencies are given a seat at the decision table? What opportunities to improve species conservation and recovery might be lost if we fail to modernize the ESA?

The state agencies will bring savings in time, money, improved science-informed decisions, enhanced delivery of conservation on the ground, more species delisted, and improved landowner cooperation. FWS listing decisions under the ESA too often do not give appropriate consideration of and deference to state agency data and analyses. The species under consideration for listing are largely resident fish and wildlife for which the state agencies have the best and most recent data. State agency staff are credentialed and professional practitioners with great expertise at delivering landscape level conservation on the ground through national programs such as the Migratory Bird Joint Ventures; National Fish Habitat Partnerships; Farm Bill programs, etc. And once species are delisted, state agencies are prepared with programs both incentive and regulatory as appropriate, to recover species. For example, the objective in ID was to maintain 100 wolves post-delisting. ID now boasts 100 wolf packs under state management. That is unarguable success under the authority of the state agency. My testimony points to successes with the peregrine falcon, bald eagle, Delmarva fox squirrel, and New England cottontail where successes were led by state agencies. Given the authority and adequate funding, those successes by the states are repeatable nationwide.

If we fail to modernize ESA, we will continue to see important conservation efforts and capacity of state and federal agencies get bogged down in litigation. We will continue to see a process that is more combative and polarized than necessary. We will continue to see the expertise and capacity of state fish and wildlife agencies sit on the shelf while overburdened federal agencies continue to struggle to administer ESA. We will continue to see more species listed and less focus on prevention and recovery. We will continue to see more of a regulatory approach than a cooperative approach where state and federal agencies are working as equal partners with landowners, conservation organizations other stakeholders.

7. Director Wiley, the Southeastern Association of Fish and Wildlife Agencies created the Southeast At-Risk Species (SEARS) Program to cooperate and coordinate among the states to address the conservation needs of at-risk species. Please elaborate on why the southeastern states created the SEARS Program, and what state, regional, and national benefits it has generated with regard to species conservation and recovery.

More than 400 of the 550 species pending ESA listing decisions are found in the southeastern United States; many of these species are on state endangered species lists and included in State

Wildlife Action Plans. State agencies house much of the data and conservation information on these species. SEARS was developed to formalize the commitment of state agencies in the southeast to work across state lines to help address the data and conservation needs for these species. One of the first actions of the program was to 'triage' the petitioned species by categorizing them based on conservation need and data available. This categorization scheme was adopted by the USFWS as the 'binning' system that they are now using in addressing the listing backlog (https://www.fws.gov/endangered/what-we-do/listing-workplan-prioritization.html). The binning system, as an outgrowth of SEARS, has led to more efficient review of species and increased collaboration between states and the USFWS. Once categorized by SEARS, data deficient species were targeted for additional collaborative studies. For example, a joint project between Georgia and Florida gathered additional data on the Say's spiketail butterfly – these data led to the withdrawal of the species from the petitioned list by the petitioners. Other state-provided data, such as for the Florida bog frog, led to not warranted decisions during the 90 day finding. For the sicklefin redhorse – a fish found in Georgia and North Carolina – conservation across state lines and via a Candidate Conservation Agreement led to a not warranted 12 month finding. These are just a few of the success stories – across the southeast, more than 100 species within the USFWS backlog of at-risk species have been withdrawn by the petitioners or had not warranted findings. The collaborative approach embodied by the SEARS program – between state agencies and between states and federal entities – has helped focus data sharing and conservation actions to prevent unwarranted listing, and allow limited conservation dollars to focus on more of the truly imperiled species.

Ranking Member Carper:

8. Does your state have a law that requires the listing, protection and recovery of endangered species, and if so, does that law cover both plants and animals?

Yes, our state does have such laws. Rules related to endangered and threatened species are found in Chapter 68A-27 of the Florida Administrative Code. Federally listed species are added to or removed from the listing rule within this chapter based on federal listing decisions with no further assessment from the state. The process for listing non-federal species, as well as the criteria for evaluating listing status, are included in the rule. The listing rule requires that a management plan is developed for the state-listed species, and requires that a timeline is set for the development of the management plan. Protections (prohibitions on take) and permitting standards are also included.

The State of Florida provides legal protections for plants through our Florida Department of Agriculture and Consumer Services. This state agency maintains a list of threatened plant species and a conservation program (http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/Forest-Health/Florida-Statewide-Endangered-and-Threatened-Plant-Conservation-Program).

9. Does your state law prohibit the killing or wounding of endangered or protected species, actions that are known as a "take?"

Yes, the prohibitions on take are clearly defined in state law for both federally listed and state listed species.

State listed species prohibitions:
No person shall take, possess, or sell any threatened species included in this subsection or parts thereof or their nests or eggs except as authorized by Commission rule or by permit from the Commission or when such conduct is authorized in a management plan as defined in this Chapter and approved by the Commission, or as authorized in Commission-approved guidelines.

Federally listed species prohibitions:
No person shall take, possess, or sell any of the endangered or threatened species included in this subsection, or parts thereof or their nests or eggs except as allowed by specific federal or state permit or authorization.

10. Does that law define changes to habitat that adversely affect endangered or threatened species as "take?"

Yes our state laws do address habitats. Take is defined in Chapter 68A-27 and is very similar to the federal definition of take; this definition applies to state listed species. 'Harm' is included in the definition of take, and addresses significant habitat modification in the same manner as the federal definition.

Take – to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. The term "harm" in the definition of take means an act which actually kills or injures fish or wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The term "harass" in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

11. Is it fair to say that first and foremost, your state is seeking closer collaboration with your federal partners in the endangered and threatened species conservation process and more federal financial resources for species conservation? Do you believe progress can be made administratively under the current law?

In Florida, we already enjoy a very collaborative relationship with our federal partners regarding ESA implementation; possibly the most collaborative relationship of any state. We could always improve these relationships, but administrative changes under current law will not be sufficient to truly establish my agency as a full and equal partner in ESA implementation. Without specific legislative changes to the ESA, in spite of good faith efforts by our federal partners, my agency and others across the nation will continue to be on the sidelines of ESA decisions except as the federal agencies see fit under their discretion to involve us. This partnership with state agencies

that share authorities with federal agencies should not be left to the discretion of staff in federal agencies across different administrations. This partnership and shared authorities should be clarified and stipulated in law for consistency and continuity in ESA implementation nationwide for the betterment of protecting and recovering imperiled species.

12. Does your state have a conservation plan or efforts underway to prevent species, including non-game species, from becoming threatened or endangered? If so, do you feel you have adequate funding to successfully implement that plan?

Yes. Florida's State Wildlife Action Plan is a comprehensive statewide strategy aimed at "keeping common species common". The plan is focused on Species of Greatest Conservation Need (SGCN), which are primarily non-game, with the intent of identifying species in decline or at the greatest risk of becoming imperiled in the future. The agency has a process for prioritizing information and management needs for SGCN, and focuses funding efforts on actions that can address suites of species. State listed species are a subset of the SGCN; the state listing process is intended to identify and target declining species before the species meet the criteria for federal listing. State Wildlife Grants and matching funds are used to implement actions on the state's highest priority conservation issues. However, with more than 900 species on the SGCN list (including 59 state listed species), we do not have adequate funding or resources to address all species' needs. Without sustainable and predictable funding, many states are unable to appropriately understand and implement management for non-game species that face declining populations – thus many are on a fast track for endangered species listings at the federal level. This situation is a primary reason state fish and wildlife agencies are seeking new funding solutions through legislation such as the Recovering America's Wildlife Act (HR 5650) that was filed during the 114th Congress.

13. How much does your state spend on all species management and conservation (all plants and animals, including fish, game and non-game species)?

The FWC agency budget for 16/17 was $378,738,269.

14. How many employees do you employ in your fish and wildlife/game agency?

FWC employs approximately 3,018 employees. Of those, 2,118.5 are FTEs and about 900 are temporary.

15. How much do you spend for imperiled non-game species conservation and what percentage is that relative to the total amount invested in all species conservation? How many employees are devoted to non-game species conservation work?

It is difficult to comprehensively calculate our expenditures across the agency on imperiled non-game species conservation because of the interrelated and integrated aspects of management in FWC. For example our Division of Law Enforcement enforces a wide array of laws that protect and benefit imperiled species as part of their routine duties. Similarly, our habitat management on Wildlife Management Areas both general (such as prescribed fire) and directed (such as Red cockaded woodpecker nest box work), benefit imperiled species, but for the purposes of this

question we have only included specific programs and funding sources that are exclusively used for imperiled species.

Using that method FWC spent $26,525,779 in FY15-16, and we have 111 staff devoted to imperiled non-game species conservation work.

16. How much and what percentage of your non-game species conservation spending comes from federal funds? How much does the state invest? What is the source of that funding?

Federal funds accounted for $8,334,660, or about 31% of the total spent on Imperiled Species. The primary source for state funds ($18,191,119) comes from a portion of vehicle registrations, the sale of specialty license plates, and mitigation fees.

17. States have primary authority for species management and conservation until species are imperiled; the Endangered Species Act is intended to be a last backstop against extinction. Species are typically listed after state management has proven insufficient to protect habitat and prevent species decline. If states have the capacity and resources to address species conservation and recovery, why do you believe so many species are imperiled, especially considering the ample notice that often exists that species are at risk?

First, I would not agree with the premise of this question. The reasons a species is listed under ESA are complex and are not necessarily correlated with sufficiency of state management programs. In fact, because state agencies are not engaged fully in listing decisions, species can be listed even when state management programs are fully sufficient to maintain and protect a species' status. Moreover, neither state agencies nor federal agencies have authorities or resources to protect all habitats before listing is necessary much less prevent all species declines. This is certainly a challenge important to all US citizens that state and federal governments should be seeking to address cooperatively.

Hunters, anglers, recreational shooters and boaters remain the greatest funding source to most states for fish and wildlife conservation, including those species hunted and fished and associated habitats for those not hunted or not fished. State licenses and stamps required for hunting and angling are matched by federal excise taxes on shooting sports equipment (guns, bows, ammunition, etc) and fishing equipment (rods, reels, etc), plus the federal gasoline excise tax attributable to outboard motors, to fund programs that deliver fish and wildlife conservation on the ground for their citizens. Some states benefit from funds from license plates and vehicle registration fees (FL), Lottery funds (AZ), constitutional dedication of a portion of state sales tax to conservation (MO, AR), or modest general funds in only a few states, but by far it is the hunter, angler, boater and shooter who provide the financial underpinning for conserving our Nation's fish and wildlife resources via the state fish and wildlife agencies. We need broader support for natural resources conservation at the state and federal level. One way to support this is through supporting the Association of Fish and Wildlife Agencies (AFWA) initiative from its Blue Ribbon Panel on sustaining America's Diverse Fish and Wildlife which I will further address in question 18.

18. Do you believe this Committee should focus energy on proposals that seek to prevent species from being listed in the first place?

This is certainly an important area for the attention of this Committee to focus on in addition to improving the ESA. We support a much more robust partnership and funding for prevention of listing, and have proposals to more fully fund State Wildlife Action Plans. This program is already working on a small scale but would provide much of the necessary prevention if fully funded.

In 2016, the AFWA convened a Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources http://www.fishwildlife.org/files/Blue_Ribbon_Panel_Report2.pdf to consider this very concern. One outcome from the recommendations issued by the Blue Ribbon Panel was the filing of Recovering America's Wildlife Act by Congressman Young and Congresswoman Dingell during the past Congress (HR 5650). We anticipate this Act will be filed again during this Congress. It would provide funding to more fully and strategically implement State Wildlife Action Plans and provide the preventive measures needed to keep many species from declining to the point listing would need to be considered. The Act would direct annual, permanent funding to the existing Wildlife Conservation Restoration Program that is nested within the Wildlife Restoration Program to be apportioned to state fish and wildlife agencies for the purposes of effectively implementing each state's State Wildlife Action Plan.

19. Both of your testimonies included the Association of Fish and Wildlife Agencies' General Principles for Improving ***Implementation*** of the Endangered Species Act. Does the title of that document reflect that many of your recommendations could be incorporated into ESA processes administratively?

We are not confident many of our recommendations can be addressed administratively. The fairly significant discretion that Congress gave the Secretary in administering the ESA has been significantly diminished by federal courts in response to litigation by the environmental community; or by administrative action by the executive branch seeking to minimize litigation risk by implementing rules that in practice narrow the exercise of its own authority under the Act. Federal court decisions often require legislative remedies. Administrative rules can be changed by the federal agency following due process.Two examples which demonstrate the narrowing of discretion are the one that I mention in my testimony where, in spite of the statutory fact that Congress created 2 statutory categories of protection for a reason, the FWS in the 1980s promulgated a rule that provided the same section 10 restrictions to threatened species that the law imposes for endangered species. Second, while Congress intended that a qualifying state agency operating under an approved section 6 agreement could issue incidental take authority, and several state agencies did, the FWS relied on an Assistant Solicitor's opinion in 1977 to declare that only the Secretary had the authority to allow take. The most egregious example of FWS and NOAA not exercising the discretion provided by Congress under the Act was to not utilize section 6 to its fullest intended use to allow state agencies to exercise their authority as jurisdictional partners under the ESA. All of these issues require legislative remedies.

20. These principles recommend increasing conservation incentive options for private landowners. Can you give some examples of what would be helpful?

Incentive options for private landowners include payments for ecological services that reduce threats to imperiled species and contribute to recovery efforts. Ecological services include habitat created and maintained in association with working lands. Some options for incentive payments are direct payments, reduced tax burdens, providing more regulatory certainty, and expedited permitting. In addition, incentives for market-based conservation land uses such as habitat exchanges and habitat mitigation banks are also viable options for landowners.

21. Both of your testimonies referenced a 2014-2015 Association of Fish and Wildlife Agencies survey, conducted to better understand state agencies' individual and collective resources to manage fish and wildlife within their borders. You shared some statistics gathered in that process. Would you please share the survey results in their entirety for the hearing record so that the Committee can review them?

We are glad to share these survey results. The report is provided as an attachment.

22. The Association of Fish and Wildlife Agencies cites the explicit need, as does your testimony, for more resources at both the federal and state levels to meet the basic responsibilities under the Act and develop effective responses to species challenges. Can you give us an idea of how severe the funding gap is, and how it is impacting the process, from listing and de-listing decisions to recovery efforts?

The Association believes that the most effective and efficient way to address declining and listed species is the application of preventative conservation to preclude the need to list species. The Association's Blue Ribbon Panel Initiative to which I spoke in my testimony, estimates the need for $1.3 billion dollars annually to address this conservation need at the state level. It is contemplated that some of these funds will be applied to listed species because they are the species in the greatest need of conservation as determined by the state. We are unable to estimate costs required at the federal level.

23. You were quoted in testimony before this Committee last year saying that in your region, the U.S. Fish and Wildlife Service and the affected state fish and wildlife agencies have a "no daylight approach" where you all strive to ensure that there is no daylight on wildlife conservation programs between the Service and the states – and that you have "long standing collaborative and positive relationships." Is that still a reasonable and fair assessment of your position?

In Florida we do have a "no daylight between us" approach with the U.S. Fish and Wildlife Service. That does not mean we agree on every detail or that we cannot occasionally take a slightly different position on a specific issue. What it means is that we establish a relationship of trust and transparency, through adherence to the 3 Cs: Communication, Coordination, Cooperation.

24. You mentioned that administrative rules regarding collaboration with private landowners are "all over the board and not very clear as far as what landowners can and cannot do." Can you explain how those rules could best be clarified administratively?

There should be a clear context that provides transparency and accountability for the administering agency and a level playing field for landowners. Species-based conservation targets, including population viability targets and requisite habitat targets, are needed to provide context and certainty for regulatory requirements. Permitting requirements should be explicitly tied to imperilment threat abatement within the context of the conservation targets. These permitting requirements should be administered consistently. Moreover, mitigation requirements that directly affect land use on private lands are not developed in a collaborative and transparent manner. There is a complex menu of approaches landowners could take in dealing with federally listed species. It is good these approaches and options exist, but each option is complicated and hard for landowners to understand or trust, and federal agencies do not have sufficient staff to handle the associated workload. Landowners frequently express frustration and feel that they can only take advantage of these opportunities if they hire a legal advocate or consultant. Many landowners do not have the resources to afford this kind of help and feel these options are out of reach. This is an area where more assistance and engagement of state fish and wildlife agencies would benefit implementation of ESA.

25. Would you say that the U.S. Fish and Wildlife Service plays a critical role with states to accomplish the goals of the Endangered Species Act?

Yes, I would agree fully with this statement.

26. What would you say are the top three crucial functions that the U.S. Fish and Wildlife Service performs when it comes to the management of threatened and endangered species?

1) Working with partners to delist species that have met requirements of recovery plans
2) Coordinating and facilitating recovery efforts with state agency partners
3) Evaluating listing petitions and making listing decisions.

Senator Booker:

27. Mr. Wiley, in your testimony you reference the recommendation of the Blue Ribbon Panel on Saving America's Diverse Fish and Wildlife Resources for a federal initiative to dedicate $1.3 billion annually to state fish and wildlife agencies for the conservation of at risk species that are neither hunted nor fished. You go on to reference the bi-partisan bill introduced in the House by Congressman Young and Congresswoman Dingell, the Recovering America's Wildlife Act.

    Could you explain what that bipartisan bill would do, and whether you and the Association of Fish and Wildlife Agencies support that bill?

I fully support this bill, my agency supports the bill, and the Association of Fish and Wildlife Agencies support the bill. Established user-pay systems for hunters and anglers that provide funding for natural resource management have been a tremendous conservation success story for North America. However, thousands of species under state management jurisdiction that are not hunted or fished (non-game) have no comparable sustainable and predictable dedicated funding source in place to support their conservation. This is the impetus behind the Panel's recommendation and bi-partisan bill; to provide state fish and wildlife agencies with sustainable funding to conserve non-game species. All state fish and wildlife directors along with the Association of Fish and Wildlife Agencies support legislative efforts to attain this funding and the 115th Congress version of the Recovering America's Wildlife Act (HR 5650 in the 114th Congress). In Florida, additional funding would be used to prevent and reduce species listing by managing habitat, stabilizing populations, and decreasing and removing threats to non-game wildlife.

The State Conservation Machine

Survey Questions

ASSOCIATION of FISH & WILDLIFE AGENCIES

Association of Fish & Wildlife Agencies in cooperation with the Auburn Study & the Department Social Science Research Program

**Questions marks with an * are required*

Our Contribution to Conservation

1. What state/province do you represent? *
2. How many total full time employees does your agency have?
3. How many total part-time employees (part-time, contract, seasonal, limited, etc.) does your agency have?
4. What percent of employees come from the following general areas? *(Total should add to 100 percent)*

Wildlife, freshwater fisheries, or coastal fisheries	_____%
Forestry	_____%
Parks	_____%
Watercraft and/or Off-Highway vehicles	_____%
Shooting Ranges	_____%
Other	_____%

5. What percentage of your workforce lives in rural areas or small towns (<100,000 population)?
6. How many fully certified law enforcement officers are within your agency?
   NOTE: Includes commissioned employees in non-LE position by not reserve officers
7. How many commissioned fish & wildlife conservation officers does your state have that are housed in other agencies?
   NOTE: If different from the prior question. NOTE: If wildlife conservation is only a portion of an officer's duties, please count as partial FTEs (e.g.: 3 commissioned officers who devote 50% of their time to conservation would be reported as 1.5 FTEs)
8. How many education/information/marketing/outreach employees dos your agency have?
   NOTE: if these responsibilities are a portion of the employee's responsibilities, please count as partial FTEs
9. How many degreed biologists (B.A., B.S., B.Sc., etc) wildlife managers does your agency have?
   NOTE: may include Biologists, Fish culturist, Hatchery managers, Game & Fish assistance, Water quality specialists, Strategic wildlife planner, Wildlife area managers, Wildlife specialists and supervisors, and Wildlife tech positions.
10. In your agency, how many employees have advanced degrees?
11. How many of those are terminal degrees? (PhD, JD, DVM, etc.)

12. How many volunteers does your agency have?
NOTE: Include formal volunteers

13. What is your agency's total annual budget?

$ _____

14. What percent of your budget comes from the following areas?
Total should add to 100 percent.

Wildlife Restoration (PR)	_____%
Sportfish Restoration (DJ)	_____%
Other USFWS grants (SWG, ESA, CVA, BIG, etc)	_____%
State general fund	_____%
Sales tax dedicated to state wildlife agency	_____%
Non-general fund state dedicated revenue stream (i.e. state lottery, tribal gaming)	_____%
Other state grants	_____%
Hunting/Fishing licenses	_____%
Shooting range revenue	_____%
Watercraft registration fees	_____%
U.S. Coast Guard Boating Safety Grants	_____%
Off-highway vehicle registration/fees	_____%
Trust/Donation	_____%
Endowments	_____%
Entry or use fees (access to wildlife areas, launch ramps, etc.)	_____%
Retail sales (magazines, t-shirts, etc.)	_____%
Contracts (small grants and contracts with government, private or NGO 3rd parties)	_____%
Other	_____%

15. What is the total quantity of land managed or administered? *(Including fee title, lease, license, conservation agreements, inter-agency agreements, grazing allotments, right-of-ways, etc.) In acres*

16. What is the total quantity of water (lake, reservoirs, wetlands and riparian corridors) managed or administered? *In acres*

17. Please estimate how much wildlife habitat has been improved due to private land owner agreements. *In acres*

18. In the following questions, we are interested in the capacity of conservation agencies.
If the information is not applicable, respond with "NA"
If the information is not available, respond with "I"

	Land	Shooting Facilities	Hatcheries	Other Structures	Habitat Improvements
Owned a fee title (in Acres)					
Owned a Fee Title (number)					
Managed (though partnership, agreement., etc)					
Fair Market Value of those acquired/completed in the past year					
Total Estimated Fair Market Vlue (only if readily available)					
Total estimated visitors per year					

19. Vehicles- Fair Market Value of those acquired in the past year - *(include all vehicles, including Heave Equipment, ATV, Boats, etc.)*

20. Total Vehicles- number of vehicles *(including Heavy Equipment, ATV, Boats, etc.)*

21. Please estimate the direct economic value of the commercial fisheries resources over which your agency has administered responsibilities.
    Respond "NA" if this question is not applicable to your state

22. Partnerships- include the number of entities that have signatory authority with active, formal agreements (e.g. landowners, trusts, university, other state agencies, agencies from other states, etc.)

23. Use the Area below to provide any comments about your state agency that may not be accurately reflected in the questions.

24. What is the name, phone number, and email address of the person that might be able to answer clarifying questions.

The State Conservation Machine

Survey Responses

ASSOCIATION of FISH & WILDLIFE AGENCIES

Association of Fish & Wildlife Agencies' Implementation Issue Team, Assess Grants & Data Governance Subcommittee, Recovery Act Grants Program

*Questions marks with an * are required

Our Contribution to Conservation

1. What state/province do you represent? *
   N (46). 47 state agencies replied representing 46 states (PA Fish & Boat Commission and PA Game Commission)

2. How many total full time employees does your agency have?
   N(46). Min (48) | Mean (677) | Max (2,788) | Sum (31,808) | Adj Sum (34,516)

3. How many total part-time employees (part-time, contract, seasonal, limited, etc.) does your agency have?
   N (46). Min (0) | Mean (271) | Max (1,945) | Sum (12,754) | Adj Sum (13,840)

4. What percent of employees come from the following general areas? *(Total should add to 100 percent)*

Wildlife, freshwater fisheries, or coastal fisheries	**N (46) | Min (0%) | Mean (60%) | Max (100%)**
Forestry	**N (45) | Min (0%) | Mean (3%) | Max (20%)**
Parks	**N (45) | Min (0%) | Mean (9%) | Max (100%)**
Watercraft and/or Off-Highway vehicles	**N (45) | Min (0%) | Mean (1%) | Max (44%)**
Shooting Ranges	**N (45) | Min (0%) |Mean (1%) | Max (9%)**
Other	**N (45) | Min (0%) |Mean (21%) | Max (69%)**

5. What percentage of your workforce lives in rural areas or small towns (<100,000 population)?
   N(39) | Min(8) | Mean(73) | Max(100) | Sum(-) | Adj Sum(-)

6. How many fully certified law enforcement officers are within your agency?
   N(45) | Min(0) | Mean(164) | Max(853) | Sum(7,550) | Adj Sum(8,371)

7. How many commissioned fish & wildlife conservation officers does your state have that are housed in other agencies?
   N(42) | Min(0) | Mean(34) | Max(281) | Sum(1,477) | Adj Sum(1,752)

8. How many education/information/marketing/outreach employees dos your agency have?
   N(44) | Min(0) | Mean(43) | Max(418) | Sum(1,951) | Adj Sum(2,211)

9. How many degreed biologists (B.A., B.S., B.Sc., etc) wildlife managers does your agency have?
   N(42) | Min(0) | Mean(216) | Max(869) | Sum(9,270) | Adj Sum(10,995)

10. In your agency, how many employees have advanced degrees?
    N(36) | Min(9) | Mean(116) | Max(570) | Sum(4,287) | Adj Sum(5,909)

1 Text in red are based on small sample sizes and may not be reliable estimates

11. How many of those are terminal degrees? (PhD, JD, DVM, etc.)
N(37) | Min(0) | Mean(15) | Max(125) | Sum(552) | Adj Sum(741)

12. How many volunteers does your agency have?
N(40) | Min(0) | Mean(3,714) | Max(41,260) | Sum(152,257) | Adj Sum(189,393)

13. What is your agency's total annual budget?
N(46) | Min(11.6M) | Mean(110.3M) | Max(520M) | Sum(5.185B) | Adj Sum(5.627B)

14. What percent of your budget comes from the following areas?
Total should add to 100 percent.

Wildlife Restoration (PR)	**N(46) | Min(0) | Mean(15) | Max(43) %**
Sportfish Restoration (DJ)	**N(46) | Min(0) | Mean(9) | Max(29) %**
Other USFWS grants (SWG, ESA, CVA, BIG, etc)	**N(46) | Min(0) | Mean(4) | Max(30) %**
State general fund	**N(46) | Min(0) | Mean(8) | Max(44) %**
Sales tax dedicated to state wildlife agency	**N(46) | Min(0) | Mean(3) | Max(61) %**
Non-general fund state dedicated revenue stream (i.e. state lottery, tribal gaming)	**N(46) | Min(0) | Mean(6) | Max(55) %**
Other state grants	**N(46) | Min(0) | Mean(3) | Max(30) %**
Hunting/Fishing licenses	**N(46) | Min(0) | Mean(35) | Max(67) %**
Shooting range revenue	**N(46) | Min(0) | Mean(0) | Max(3) %**
Watercraft registration fees	**N(46) | Min(0) | Mean(2) | Max(12) %**
U.S. Coast Guard Boating Safety Grants	**N(46) | Min(0) | Mean(1) | Max(3) %**
Off-highway vehicle registration/fees	**N(46) | Min(0) | Mean(1) | Max(14) %**
Trust/Donation	**N(45) | Min(0) | Mean(1) | Max(11) %**
Endowments	**N(45) | Min(0) | Mean(0) | Max(7) %**
Entry or use fees (access to wildlife areas, launch ramps, etc.)	**N(45) | Min(0) | Mean(3) | Max(57) %**
Retail sales (magazines, t-shirts, etc.)	**N(45) | Min(0) | Mean(0) | Max(5) %**
Contracts (small grants and contracts with government, private or NGO 3rd parties)	**N(45) | Min(0) | Mean(3) | Max(22)%**
Other	**N(46) | Min(0) | Mean(7) | Max(40) %**

15. What is the total quantity of land managed or administered?
N(46) | Min(400) | Mean(9,110,314) | Max(365,500,000) | Sum(428,184,751) | Adj Sum(464,626,007)

16. What is the total quantity of water (lake, reservoirs, wetlands and riparian corridors) managed or administered? *In acres*
N(38) | Min(195) | Mean(3,273,337) | Max(28,800,000) | Sum(127,660,153) | Adj Sum(166,940,200)

17. Please estimate how much wildlife habitat has been improved due to private land owner agreements. *In acres*
N(30) | Min(-) | Mean(1,112,133) | Max(29,400,000) | Sum(34,476,136) | Adj Sum(56,718,804)

18. In the following questions, we are interested in the capacity of conservation agencies.
If the information is not applicable, respond with "NA"
If the information is not available, respond with "!"

What is your Agency's capacity for Owned in Fee Title(Acres)
- ***Land***- N(39) | Min(34,750) | Mean(480,968) | Max(4,600,000) | Sum(1,923,8719.4) | Adj Sum(24,529,367)
- ***Shooting facilities***- N(19) | Min(0) | Mean(401) | Max(5,587.1) | Sum(8,022.1) | Adj Sum(20,456)
- ***Hatcheries***- N(26) | Min(30) | Mean(606) | Max(1,500) | Sum(16,358.3) | Adj Sum(30,899)
- ***Other structures***- N(5) | Min(15) | Mean(1,077) | Max(3,875) | Sum(6,459) | Adj Sum(54,902)
- ***Habitat improvement***- N(9) | Min(2,000) | Mean(163,075) | Max(4600,00) | Sum(1,630,750.41) | Adj Sum(8,316,827)

What is your Agency's capacity for Owned in Fee Title(Numbers)
- ***Land***- N(33) | Min(25) | Mean(355) | Max(3,926) | Sum(12,077) | Adj Sum(18,116)
- ***Shooting facilities***- N(34) | Min(0) | Mean(9) | Max(64) | Sum(313) | Adj Sum(456)
- ***Hatcheries***- N(39) | Min(2) | Mean(9) | Max(83) | Sum(374) | Adj Sum(477)
- ***Other structures***- N(15) | Min(3) | Mean(645) | Max(4,500) | Sum(10,317) | Adj Sum(32,885)
- ***Habitat improvement***- N(3) | Min(12) | Mean(206) | Max(750) | Sum(823) | Adj Sum(10,493)

What is your Agency's capacity for Managed(though partnership, agreement, etc)

- ***Land*- N(31) | Min(0) | Mean(296,470) | Max(2,300,000) | Sum(9,487,027.99) | Adj Sum(15,119,951)**
- ***Shooting facilities*- N(22) | Min(0) | Mean(5) | Max(20) | Sum(111) | Adj Sum(246)**
- ***Hatcheries*- N(15) | Min(0) | Mean(1) | Max(8) | Sum(15) | Adj Sum(48)**
- ***Other structures*- N(6) | Min(0) | Mean(111) | Max(500) | Sum(777) | Adj Sum(5,661)**
- ***Habitat improvement*- N(7) | Min(0) | Mean(40,892) | Max(2760,00) | Sum(327,138) | Adj Sum(2,085,505)**

What is your Agency's capacity for Fair Market Value for those acquired in the past year

- ***Land*- N(24) | Min(0) | Mean(6,117,299) | Max(44,415,000) | Sum(152,932,485) | Adj Sum(311,982,269)**
- ***Shooting facilities*- N(10) | Min(0) | Mean(87,727) | Max(415,000) | Sum(965,000) | Adj Sum(4,474,091)**
- ***Hatcheries*- N(9) | Min(0) | Mean(227,553) | Max(2,275,525) | Sum(2,275,525) | Adj Sum(11,605,178)**
- **Other structures- N(7) | Min(0) | Mean(1,781,250) | Max(8,500,000) | Sum(14,250,000) | Adj Sum(90,843,750)**
- ***Habitat improvement*- N(4) | Min(0) | Mean(4,140,000) | Max(13,000,000) | Sum(20,700,000) | Adj Sum(211,140,000)**

What is your Agency's capacity for Total Estimated Fair Market Value

- ***Land*- N(6) | Min(22,313,233) | Mean(821,413,245) | Max(3,683,000,000) | Sum(5,749,892,716) | Adj Sum(41,892,075,502)**
- ***Shooting facilities*- N(3) | Min(39,000) | Mean(472,250) | Max(1,000,000) | Sum(1,889,000) | Adj Sum(24,084,750)**
- ***Hatcheries*- N(2) | Min(5,000,000) | Mean(12,166,667) | Max(25,000,000) | Sum(36,500,000) | Adj Sum(620,500,000)**
- ***Other structures*- N(3) | Min(20,000,000) | Mean(33,696,510) | Max(50,000,000) | Sum(134,786,041) | Adj Sum(1,718,522,023)**
- ***Habitat improvement*- N(2) | Min(0) | Mean(172,825,387) | Max(500,000,000) | Sum(518,476,160) | Adj Sum(8,814,094,720)**

What is your Agency's capacity for Total estimated visitors per year

- ***Land*- N(9) | Min(150,000) | Mean(3,454,935) | Max(10,000,000) | Sum(34,549,347) | Adj Sum(176,201,670)**
- ***Shooting facilities*- N(7) | Min(1,000) | Mean(40,313) | Max(130,000) | Sum(322,500) | Adj Sum(2,055,938)**
- ***Hatcheries*- N(6) | Min(200) | Mean(27,321) | Max(100,000) | Sum(191,250) | Adj Sum(1,393,393)**
- ***Other structures*- N(1) | Min(175,000) | Mean(237,500) | Max(300,000) | Sum(475,000) | Adj Sum(12,112,500)**
- ***Habitat improvement*- N(1) | Min(100,000) | Mean(100,000) | Max(100,000) | Sum(100,000) | Adj Sum(5,000,000)**

19. Vehicles- Fair Market Value of those acquired in the past year
    N(41) | Min(0) | Mean(11,934,926) | Max(394,868,116) | Sum(501,266,889.23) | Adj Sum(608,681,223)

20. Total Vehicles- number of vehicles *(including Heavy Equipment, ATV, Boats, etc.)*
    N(42) | Min(0) | Mean(1,012) | Max(6,800) | Sum(43,515) | Adj Sum(51,611)

21. Please estimate the direct economic value of the commercial fisheries resources over which your agency has administered responsibilities.
    N(21) | Min(0) | Mean(341,161,007) | Max(2,094,000,000) | Sum(7,505,542,143) | Adj Sum(17,399,211,332)

22. Partnerships- include the number of entities that have signatory authority with active, formal agreements (e.g. landowners, trusts, university, other state agencies, agencies from other states, etc.)
    N(32) | Min(0) | Mean(1,037) | Max(15,115) | Sum(34,220) | Adj Sum(52,885)

Senator BARRASSO. Well, thank you so much for your thoughtful testimony.

I would like to now turn to Mr. Larry Voyles, who is the Director of the Arizona Game and Fish Department and the former President of the Association of Fish and Wildlife Agencies.

Thank you for joining us, Mr. Voyles.

STATEMENT OF LARRY VOYLES, DIRECTOR, ARIZONA GAME AND FISH DEPARTMENT

Mr. VOYLES. Thank you, Chairman Barrasso and Ranking Member Carper. I am Larry Voyles, and I am pleased to be here speaking to you today as Director of Arizona Game and Fish.

My career has put me in a position that I believe enables me to shed light on some important aspects of the Endangered Species Act. I have gained the insights through a 42-year career with the Department, including 9 years as Director, and I served under three Governors from both sides of the aisles, both Republican and Democrat.

I have also served as past President of the Association of Fish and Wildlife Agencies. I am a charter member on the State and Federal Joint Task Force on ESA Administration. I serve a special detail to the U.S. Fish and Wildlife Service, and I am a member of the Office Strategy Team that convened legal scholars to recommend enhancements to the ESA that would significantly improve conservation of imperiled species, and hopefully so dramatically that bipartisan support in Congress can be assured.

Scholars first surveyed State directors, assessing their willingness to be more deeply involved in ESA administration, and in that survey more than 90 percent of directors surveyed overwhelmingly affirmed their willingness. ESA is an essential tool to conserve America's imperiled wildlife. It is an Act, however, that shows its age. It is time to modernize the Act to take advantage of the unparalleled conservation capacity of most of today's State fish and wildlife agencies.

My experience with the ESA tells me that it is critically important that we strengthen the provisions in section 6 of the ESA. Section 6 states, "In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States." Those are clear and straightforward words, but as you will note in my written testimony, not so simple in practice. Nearly 44 years after enactment, Federal agencies still have not promulgated rules to guide in administering these simple phrases.

Now, what is it about that that I think makes it so important? It is important for us to foster cooperation intended by section 6 because State fish and wildlife agencies bring a wealth of resources and authorities that enable us to conserve endangered species far more effectively when that cooperation can be optimized.

For a moment, please consider what makes this true. Consider that the importance of the States to effectively care for our nation's threatened and endangered species can be evaluated two ways: quantitatively and qualitatively. This may sound a little repetitive because the Chairman already visited these numbers, but quantitatively, the resources provided by States collectively are impres-

sive and factually eclipse that of their Federal partners, demonstrated by the following figures:

State and wildlife agencies own, manage, or administer conservation on more than 464,000,000 acres of land and 167,000,000 acres of lakes, reservoirs, and wetlands; State and wildlife agencies employ nearly 50,000 people and leverage the efforts of 190,000 volunteers; States employ 11,000 wildlife biologists—that is nearly the entire work force of the U.S. Fish and Wildlife Service—and 10,000 wildlife enforcement officers; nearly 6,000 of our employees hold advanced degrees; and States' collective budgets contributes $5.6 billion toward wildlife conservation annually.

Qualitatively, States have achieved unrivaled successes and are crucial to accurate decisionmaking in all phases of endangered species conservation. This can clearly be seen in one example from my State. The Arizona Game and Fish Department collected data and published peer reviewed papers on Sonoran Desert tortoises for nearly 30 years. Contrary to claims in listing petitions, our quality data and expertise established an accurate picture of Desert tortoise conservation needs while delivering conservation actions precluding the need for listing the species. This reduced regulatory impacts to much of Arizona's landscape.

Another prime example of the multitude of State led efforts is the lesser prairie-chicken conservation program in five western States administered by the Western Association of Fish and Wildlife Agencies. Voluntary cooperation of States, landowners, land management agencies, and industry has conserved 16 cites, totaling 133,000 acres. The species populations are stabilizing and the endowed funding exceeds $50 million.

My professional experience spending virtually the life of the ESA shapes my final thought. The ESA is an important tool for conserving America's imperiled wildlife that has become stagnant and needs modernizing. Neither Federal nor State agencies alone can meet the conservation challenges we face. States must have the opportunity to elect participation in listing decisions, recovery planning and implementation, developing private landowner conservation incentive programs, and decisions to down-list or de-list species. Only our working together under an ESA that mandates effective cooperation with States delivers the capacity needed to conserve imperiled species into the future.

Thank you.

[The prepared statement of Mr. Voyles follows:]

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TESTIMONY OF LARRY D. VOYLES

DIRECTOR
ARIZONA GAME AND FISH DEPARTMENT
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
"Conservation, Consultation and Capacity; States Views on the need to Modernize the Endangered Species Act"

Chairman Barrasso and Ranking Member Carper, I am Larry Voyles, and I appreciate the opportunity to appear before you today as Director of the Arizona Game and Fish Department (AZGFD) and as a Past President of the Association of Fish and Wildlife Agencies (AFWA) to share my perspectives on improvements to the Endangered Species Act (ESA). All 50 state fish and wildlife agencies (state agencies) are members of AFWA.

I served as President of the AFWA from September 2014 to September 2015. I have worked for the Arizona Game and Fish Department for over 42 years starting out as a District Wildlife Manager with responsibilities for wildlife management, wildlife biology, fisheries management, public affairs and law enforcement at a district level in 1974. After a decade in the field as a wildlife manager, I rose through the ranks ultimately to the position of Director, a position I have held since 2008. During my tenure as director I have served under three Governors, including one Democrat and 2 Republicans. I have served on a variety of national boards including as a member of the Board of Directors for the Council to Advance Hunting and the Shooting Sports, the Wildlife and Hunting Heritage Conservation Council, Co-Chair of the Agency/Industry Coalition, the US Sportsmen's Alliance Youth Program Advisory Council, and Chair of the Western Association of Fish and Wildlife Agencies Legal Committee. Perhaps most importantly, I currently sit on the Federal/State Joint Task Forces for ESA Implementation, and for Federal Aid Administration.

I take great pride in AZGFD and the new entrepreneurial business models we have developed for the support of state-led conservation. This approach to conservation has charted innovative relationships with businesses and industries that either benefit directly from good conservation or benefit indirectly when successful conservation efforts reduce the need for listing under the Endangered Species Act (ESA). The AZGFD has successfully simplified hunting and fishing license structures and reduced fees while at the same time increasing participation and total revenues for conservation. The Department is also currently pioneering efforts to develop customer relationship information technologies in order to better

understand and meet the needs of outdoor enthusiasts. These innovative approaches to conservation are the reason why I'm before you today. We can do better.

In keeping with the overarching themes of these hearings, my goal today is to share with you some thoughts, perspectives and recommendations on how the ESA can be improved in the arena of "Conservation, Consultation, and Capacity" and my discussion will be organized around these themes. A little background regarding how conservation is delivered in America will help to highlight the relevancy of these themes.

The amazing abundance of fish and wildlife that we enjoy today is a direct result of integrated systems of conservation delivery, conservation regulation and funding for conservation. When I delivered an address to the first Canadian Wildlife Congress on America's system of conservation in 2012, I described a metaphor for these integrated systems as "The Three Machines of Conservation." In essence I described the critical interrelationship of systems conservation delivery by the federal lands and resources management agencies, the state agencies, and private sector conservation by both non-profit and for profit organizations, corporations, and individuals, under the principles of the public trust doctrine. This doctrine holds that fish and wildlife is managed on behalf of the public. Although this doctrine has roots in Roman and English common law, its administration in America is a singular outgrowth of our system of democracy and the concept that government exists to serve the people. Our abundance of fish and wildlife can be attributed directly to the integrated resources, capacities and authorities that have been brought to bear in helping to define our collective fish and wildlife reality. The amazing conservation success stories of the twentieth century have their roots in the integrating power of the North American Model of Wildlife Conservation and can serve to help inform how we can improve upon our efforts to conserve and recover our most imperiled species of fish and wildlife.

Similarly, any discussion of improvements to the ESA must include analysis of how the power of these machines of conservation can be better integrated and brought to bear in the restoration of imperiled species. As an observation, we believe that the word "consultation" does not adequately characterize the desired state-federal relationship in ESA implementation, and we prefer the word "cooperation" which implies robustly working together to implement the ESA. The state agencies appreciate the value of the ESA as a landmark federal law to protect and recover the imperiled species listed under the Act. The ESA was last amended and authorized in 1988. Enacted in 1973, over the almost 44 years of implementation, we have learned much about the conservation of listed species and their recovery needs, such as how to facilitate, not proscribe, private landowner involvement. The AFWA General Principles for Improving Implementation of the ESA, approved by the State Directors in March 2016, are in the Appendix, but below is a brief description of some of them and why we want to improve our ability to recover species under the ESA.

Key Principles

First, increase opportunities for the state agencies to take a more formal and active role and fully participate in all aspects of ESA implementation as intended by Congress, through the authority of Section 6 Cooperative Agreements. Legislative history of the 1973 ESA, excerpts from which are in the Appendix,

substantiate that Congress intended approved Section 6 agreements to avoid preemption of state law. State agencies have broad expertise, experience and often comprehensive data sets and analyses on listed species because before they were listed, the species were under state management jurisdiction. These data and the state agencies' interpretations should be more readily utilized by our federal partners throughout ESA processes. State agencies should be afforded the opportunity to participate in all implementation aspects of the ESA from listing decisions, to recovery plan development and conservation recovery efforts on the ground, to providing guidance to private landowners in the use of federal incentive programs that provide them more certainty, to decisions regarding down-listing and delisting of recovered species. The state agencies have the responsibility of the comprehensive nature of Section 6 as intended by Congress, but have not been able to exercise the authority under the ESA because of misunderstanding and misinterpretation by the federal executive branch agencies and courts.

Second, restore the distinction between threatened and endangered species listed under ESA to reflect Congressional direction and provide greater flexibility to manage these categories differently. Congress intended that the state agencies have the opportunity to lead the management of threatened species, including the provision of "take" as a means of conservation of the species, as substantiated in the 1973 ESA Legislative history. Unfortunately, the U.S. Fish and Wildlife Service (FWS) promulgated a default rule (50 CFR 17.31) in the mid-1980s that applies all Section 9 restrictions for endangered species also to threatened species unless the Secretary determines otherwise. This approach differs from the National Oceanic and Atmospheric Administration (NOAA), which has not adopted this rule in its application of Section 9. This rule essentially eliminated the distinction between the two listing categories.

Third, improve the listing process. This involves a consideration of adjusting the listing process decisions to a more realistic time frame in order to appropriately utilize the best available science. We appreciate recent efforts to improve the petition process, and we support a provision authorizing a prioritization process for species being considered for listing that will focus resources and energy on the species most in need of immediate conservation. The process needs to ensure that all state agencies' data are utilized and considered in decision-making, and giving greater weight to the those data and the states agencies' interpretation. In some cases, this may preclude the need to list a species under the ESA because of the quantity and quality of the state agency data supporting an appropriate science-based determination. However, state agency's data must be shared between state and federal partners in a way that upholds State privacy laws and respects private property rights.

Fourth, require ESA recovery teams to develop science based recovery plans for listed species and provide appropriate opportunities for the state agencies to lead recovery planning and implementation. The state agency and the Secretary must agree on the size and composition of the recovery team, with the state agency director having exclusive decision-making over which state agency experts sit on the Recovery Team. Recovery can be expedited by supporting and continuing state level initiatives and conservation partnerships to recover listed species. Further, require that the Secretary must initiate the delisting process once an approved recovery plan's population and/or habitat objectives established by the Recovery Team are reached.

Fifth, directly associate critical habitat designation to recovery plan development while jointly providing more discretion to designate or not designate critical habitat based comprehensively on continued implementation of state agency conservation plans or initiatives, state lessons-learned, implications for communities, funding availability, and other aspects that directly impact the recovery of a species. The scope of critical habitat should be better defined and clear guidance given to when designations are needed or required.

Additionally, create more specificity and flexibility in the delisting process to alleviate lengthy and unnecessary burdens on local communities by allowing both the listing and delisting of a species through Distinct Population Segment (DPS) designations of species and other applicable conservation approaches. Unfortunately, there are fewer statutory details provided for the delisting process, and we deduce that Congress assumed that delisting, which is the objective of the ESA, would quickly follow the recovery of a species because protections of the ESA were no longer required. That has not been the case, and delisting can take decades and require overcoming many obstacles even after species recovery goals are met. Further, once a species is delisted, it should return to state agency jurisdiction for sustainable conservation as designed by the state agency, with a species status report to the Secretary after 5 years. Improvements are also needed to Section 10(j), experimental populations, to improve recovery of these species often under unique conditions, with agreement by the state agency and the Secretary on geographic boundaries of 10(j) species reintroductions. Finally, the Secretary shall comply with all required state permits before 10(j) individuals are released.

Let me quickly describe the jurisdictional authorities for fish and wildlife in the state-federal relationship. Fish and wildlife conservation was one of "The powers not delegated to the United States by the Constitution ... [and thus] are reserved to the States respectively, or to the people" (10th Amendment). In the United States, fish and wildlife are owned by the public and managed as trust resources by the state agencies. . The state agencies have primacy for managing fish and wildlife within their borders and have concurrent management authority with federal agencies on migratory birds, inter-jurisdictional fishes, and the topic of today's discussion – threatened and endangered species. For added clarification, candidate species under the ESA are under the management authority of the state agencies, not the federal agencies. Only Congress can give a federal agency authority to preempt the state agency's authority for management of fish and wildlife, and then only for certain federal actions. The ESA is one example, but in doing this, Congress explicitly affirmed that the federal authority they gave the federal agency exists concurrent with the pre-existing authority of the state agency (defined in the ESA as the state fish and wildlife agency) for listed fish and wildlife species.

Section 6 of the ESA gives the Secretary explicit direction on how Congress expected the federal-state jurisdictional relationship to work. It starts with Sec. 6.(a) GENERAL—" In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States." Section 6 goes on to describe agreements into which the Secretary may enter to allow a qualified state agency to implement the ESA. These cooperative agreements contemplated that the Secretary, upon the state agency's demonstration of the appropriate authority and adequate program design, would authorize an approved state agency to lead ESA activities by delegating his or her concurrent authority to

the state agency. The state agency would then be directing research and management of listed species, not just applying the Secretary's program for each species.

Unfortunately, the Section 6 authorities available to the state agencies have never been fully realized by the state agencies. Admittedly in the first dozen or so years of the ESA, only a few state agencies had the capacity and political support to realize the authorities under Section 6. Hence, the Secretary through the FWS exercised through rule and policy, a very significant portion of the ESA authority. In general since the mid-1980s, the state agencies have enhanced their staff, expertise, habitat management techniques, science capability for listed species, relationships with private landowners and local communities, and political support that would therefore enable them to more fully exercise their authorities and roles in implementing the ESA as Congress originally intended as substantiated in the 1973 Legislative history.

The following outlines a brief summary of perspectives and recommendations on how the ESA can be improved in the arenas of "Conservation, Consultation, and Capacity".

Conservation

Due principally to litigation, additional court interpretation of federal rule and policy has led to a pathway of unraveling the ESA by eliminating the discretion to the Secretary to exercise his or her best professional judgment, as Congress originally intended. The ESA has become a regulatory tool for litigants to direct federal land management activities that meet their ideals, rather than to serve as an effective conservation machine. The way to improve this misguided condition is to tap into the capacity, conservation experience and expertise of the state agencies as a means to achieve desired conservation outcomes. Modernized delivery of ESA conservation through the state agencies is very different now in the state agency model of conservation delivery compared to 1973 when the ESA was enacted. ESA modernization needs to include integration of effective conservation by the state agencies implemented far enough in advance to proactively preclude the need to list species, through effective management of a species' life needs and habitat requirements.

One prominent example of state agencies providing proactive conservation of native species, occurring in our own Southwest, reflects the work of the Colorado River Fish and Wildlife Council states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming executing the three-species conservation agreement and strategy for Roundtail Chub *(Gila robusta)*, Flannelmouth Sucker *(Catostomus latipinnis)*, and Bluehead Sucker (*Catostomus discobolus)* in an effort to expedite conservation actions for the three species. The conservation measures and benefits outlined in this agreement and individual state agency strategies are designed to achieve the following benefits:

- Establish and/or maintain populations that contribute to conservation within their historic ranges;
- Identify, reduce, and/or ameliorate species threats through appropriately focused conservation efforts;
- Encourage participation of Federal and non-Federal partners into ongoing conservation efforts.

These efforts are intended to ameliorate threats (i.e., those that would be articulated under the five listing factors of Section 4 of the ESA) affecting populations throughout their respective ranges, while achieving the "three R's" of species conservation through the following lenses:

1) Resiliency – Establishing populations in high quality/suitable habitat having reduced or managed threats;

2) Redundancy – Expanding the range of populations within waters capable of supporting expanded populations; and,

3) Representation – Ensuring preservation of genetic diversity through appropriate replication of populations within their natal watersheds.

Over the first ten years of the agreement, the Council states and partners implemented significant conservation for the three species. These efforts resulted in implementation of 60% of the conservation objectives, through hundreds of projects throughout the species' ranges. On January 5th, 2017, the Council states reaffirmed their commitment to the agreement and its continued implementation, with no predetermined expiration date. The Council states have a renewed confidence in their capacity to continue protection and conservation of these unique fish species throughout their range.

These successes are not limited to the western U.S. Throughout the nation, state agencies are leading and supporting many innovative and collaborative efforts to keep common species common, prevent declines of imperiled species, and recover listed threatened and endangered species. There are many groundbreaking state-led conservation partnerships across the nation that have yielded significant conservation outcomes, including:

- Historic, state-federal efforts to conserve habitat for the iconic sage grouse and hundreds of other species that rely on sagebrush habitat;
- Delisting of the Louisiana black bear;
- Range-wide collaborative conservation of the Gopher Tortoise;
- Innovative Red-cockaded Woodpecker recovery efforts within the "Eastern North Carolina Sentinel Landscape;" and
- State-federal conservation efforts for the Lesser Prairie Chicken.
- The National Fish Habitat Partnership efforts, established 20 partnerships across all 50 states, and focused on restoration of fish habitat and ensuring clean water through state-led and community-based voluntary conservation efforts.

These efforts showcase the state agencies' capacity, expertise, experience, and relationships with private landowners to focus, coordinate, and integrate budget and staff resources to deliver effective conservation. Additional ongoing, practical applications of this conservation framework include:

- Realizing conservation benefits of including state agencies in prioritizing recovery plans and appropriately integrating/considering state agency data and analysis for petitioned species;
- Enhancing conservation effectiveness by sharing capacity and expertise among state agencies in conservation, recovery and delisting species;
- Demonstrating and proving effectiveness of the state agencies' efforts that preclude the need to list and accurately reflect conservation of species trending towards listing;

- Approaching species conservation through the state agencies preference and desire to manage at landscape scales, compared to the single species approach of ESA which can be inconsistent and run counter with the landscape approach;
- Providing necessary incentives through management by the state agencies, and landowner conservation incentives that are focused on all species, not just those protected by the ESA. When the nation was in crisis during the dust bowl era in the 1930's, the ingenious act of creating the Farm Bill and incentivizing private landowners to conserve soils and the environment literally changed the future of farming and our nation. By comparison, for listed species, no incentive is offered to the landowner to keep common species common, or to delist recovered species; and,
- Placing priority investment and focus of the ESA on conservation (vs. litigation), thus returning management of listed species to the professional state agency and federal practitioners, and away from the courts.

Capacity

More than 2,200 species are listed as threatened or endangered under the ESA, and more than 500 additional species have been petitioned for listing. Using an average cost of recovery of a single species at greater than $125 million, think for just one minute what that may mean for the species at risk in the future. Our nation's conservation future is in your hands. The manner by which we respect and manage our natural resources for the next generation is the measure by which we will all be judged. How does the public share and embrace the need for conservation at that cost?

As reflected in excerpts from the ESA Legislative history included in the Appendix, Congress repeatedly recognized that state agencies had far greater capacity in biologists and law enforcement agents to carry out the on the ground provisions of the Act, than did the Federal government. Congress intended the Federal government to establish a framework and policies for a national program that would be implemented through robust cooperation between the state agencies and FWS and NOAA-Fisheries.

Collectively, the 50 state agencies own, manage, or administer fish and wildlife conservation on more than 464 million acres of land and 167 million acres of lakes, reservoirs, wetlands, and riparian areas. These include properties under fee title ownership (24.5 million acres) as well as those leased or licensed in conservation agreements, grazing allotments or right-of-ways. For perspective, that land area is equivalent to about 4.7 times the landmass of California or 16.3 times the size of Pennsylvania, and 167 million acres is nearly 2.8 times the combined acreage of the Great Lakes. In addition, an estimated 56.7 million acres have been improved for the benefit of wildlife through private landowner agreements with the state agencies. Further, state agencies own 192,000 water rights and foster 53,000 formal partnerships to carryout fish and wildlife conservation.

The state agencies employ almost 50,000 women and men, including 11,000 degreed wildlife biologists, about 6,000 staff with advanced degrees, and 10,100 law enforcement officers. Further, they leverage the efforts of nearly 190,000 volunteers. Annually, the state agencies contribute more than $5.6 billion to conservation through their collective annual budgets. Clearly, the contribution of the 50 state fish and wildlife agencies is enormous and integral to wildlife conservation in North America.

This capacity was exemplified in the case of the Sonoran Desert Tortoise, which was petitioned for listing in 2008. Although the petitioners cited a litany of challenges that threatened the future of the tortoise, AZGFD staff and partners had amassed 30 years of data on the biology and status of the species, and were able to successfully refute the petitioners' claims with scientifically credible data. Department data also proved critical to refuting erroneous information about tortoise habitat in the Phoenix metropolitan area, and demonstrated that economic development in that area was not a significant threat to the species. Further, the Department worked with partners to draft a Candidate Conservation Agreement that articulated significant conservation actions being implemented by ten signatory agencies throughout the tortoise's Arizona distribution. Our unprecedented set of data, coupled with commitments described in the CCA, contributed to a not warranted decision by the FWS.

State agencies often do the lion's share of work to manage federally listed species, and deal with associated conservation challenges. We are on the ground and on the front lines. Citizens, businesses and landowners are more likely to reach out to the state agency for assistance with listed species than to our federal partners, and state agencies are better positioned and experienced to find ways to provide necessary assistance and leadership.

State agencies have the unique ability, and need, to work with local development and industry to help ensure economic growth while managing our diverse fish and wildlife resources. The Arizona Game and Fish Department developed HabiMap®, a geospatial planning tool that gives industry a front loaded view on all fish and wildlife resources that may be affected by a proposed project. This web-based automated tool provides industry with instant access to information and data to assist in initial risk assessment, thus providing significant cost-savings throughout project development. This landscape scale wildlife information decreases risk, and can help avoid unexpected costs. HabiMap® also provides information, data, and analyses that otherwise would take hundreds of hours of AZGFD staff time each month. This provides a considerable cost savings to the Arizona Game and Fish Department, the state, and to industry. These and similar tools developed or being developed in other states provide capacity otherwise unavailable to FWS.

The state agencies are proud of their successes in recovering listed species and in proactively restoring declining species to sustainable levels so that the provisions of the ESA are not necessary. However, that does not mean that the state agencies are adequately funded to do this work. In general, under the American system of funding fish and wildlife conservation, over 75% of the budgets of state agencies come from fees voluntarily paid by hunters, recreational shooters, anglers and recreational boaters, in the form of hunting and fishing licenses and stamps, which are matched by federal excise tax revenues on hunting and shooting sports equipment and fishing tackle, and federal gasoline excise taxes attributed to boaters. Some state agencies rely exclusively on these funding sources. Others are fortunate to have additional funding mechanisms, such as state General Funds (MO), real estate transfer tax revenues (FL), or a portion of state lottery funds (AZ) dedicated to conservation.

The general public responds by saying that they pay federal and state taxes and therefore protect habitat on federal public lands, and fund federal management programs for species where both the state agencies and federal government have concurrent authority for ESA and Migratory Bird Treaty Act species. In fact,

hunters, anglers, shooters and boaters pay those same taxes, but in addition they voluntarily pay the fees and taxes I described above to provide conservation dollars for the state agency programs which benefit all of our citizens. However, these funds are inadequate for the state agencies to fulfill their conservation obligations to their citizens to manage and sustain the extraordinary biological diversity for which they are statutorily responsible.

North America's fish and wildlife conservation model and its conservation based delivery system is unparalleled. The fundamental tenets of this model and associated contributions of state agencies, combined with the collective efforts of diverse partners that state agencies continue to develop and maintain, are foundational and have contributed resoundingly to its effectiveness.

Consultation

For the purposes of this testimony we are defining consultation as shared authorities and robust cooperation, as originally intended by Congress under the ESA. As outlined earlier, state agencies have the conservation experience, expertise and capacity, and should have the opportunity to be full partners in the ESA decision-making process. Section 6 of the ESA gives the Secretary explicit direction on how Congress expected the federal-state jurisdictional relationship to work. As specifically noted in Sec. 6.(a) GENERAL—" In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States" The legislative history of the ESA demonstrates that Congress intended that state agencies with qualified endangered species programs lead in the conservation and recovery of threatened species (see Sen. John Tunney's 1973 floor remarks in consideration of S.1983, in the Appendix). Here I provide a number of examples of ways in which that robust cooperation is lacking or unavailable, and where true collaboration and recognition of shared authorities could improve ESA processes and species recovery.

Unfortunately, due to the litigation pathway of unraveling the ESA, the state agencies feel the ESA has become a regulatory tool rather than a conservation machine. The ESA currently mandates that ESA recovery planning and actions use the best available science and also provide for the development of measurable recovery goals. However when challenged through litigation, the arbiter of disagreement over what constitutes "best available science" or "scientifically defensible goals" is a judge who may have little or no training in the complexity of the scientific process. Litigious groups capitalize on this "biology by Judge" to drive a lucrative business model. Amending the ESA to raise the bar for this kind of litigation designed to thrust the judiciary into the role of making decisions about science, would be appropriate. In addition, eliminating later amendments to the Equal Access to Justice Act (EAJA) would fundamentally restore the original purpose of EAJA (i.e., to assist and protect the rights of poor individuals litigating the government), and would eliminate the lucrative litigation-based NGO business model that has subsequently flourished. This propensity for litigation has alienated the state agencies and discouraged them from participating in the decision process. Consequently, much of the "best available science," which is generated and owned by the state agencies is not being used. These changes would help ensure that the evaluation of what constitutes "best available science" would be done by state agency and Federal scientists and not by judges.

Better collaboration and joint decision making with state agencies will result in better and more consistent application of consultations under Section 7 of ESA. In 1995, former President Clinton signed executive order 12962 regarding recreational fisheries, in which he stated, "All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 et seq.). Within 6 months of the date of this order, the [FWS] and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will: (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA." Nonetheless, inconsistent Section 7 recreational fisheries consultations continue as a direct result of excluding state agencies in evaluations, which lead to take determinations that lack an appropriate science based decision. For example, the endangered Razorback Sucker occurs in the Colorado River, resulting in numerous Section 7 evaluations with respect to Rainbow Trout stocking, and take determinations have varied considerably. Among the Colorado River states some have received "not likely to adversely affect" decisions based upon the following criteria: trout stocking would occur upstream of existing Razorback Sucker populations, and although spatial overlap may occur at times, the river's natural thermal regime and turbidity would segregate the two species; "take" was not reasonably certain to occur. In certain areas in Arizona, "take" was considered reasonably certain to occur despite the fact that the local thermal regime separate the species more effectively.

Proactive conservation involving state agencies allows industry and development to continue while providing appropriate resources to offset impacts upfront. Unfortunately, ESA roadblocks have led to delays and bottlenecks. For private landowners, Candidate Conservation Agreements with Assurances (CCAAs), Safe Harbor Agreements (SHAs), and Habitat Conservation Plans (HCPs) are available to provide the landowner protection from Section 9 take issues in exchange for certain proactive management actions. However, implementation is inconsistent among FWS regions and often difficult to implement. Although state agencies are encouraged to develop these agreements, the FWS has not made these efforts a priority. A specific example from Arizona involves a CCAA developed by AZGFD and submitted to FWS on April 18, 2014. The agreement provided a framework to conserve an ESA candidate fish species, the Roundtail Chub, on over 9 million acres. To date, this agreement has yet to receive final approval by FWS and progress stalled as a result of lack of staff resources and inconsistencies regarding the conservation agreement review process. Thus, this comprehensive, proactive conservation project has come to an unfortunate halt.

Finally, delisting is often stalled, not for the lack of meeting recovery criteria, but instead, working through legal action after those criteria are met. The Northern Gray Wolf and the Greater Yellowstone population of Grizzly Bear both serve as excellent examples of this situation. In both cases, after recovery criteria had been met, the FWS changed the recovery objectives for the species. In the Gray Wolf example, FWS further refused to finalize its July 16, 2013 proposed rule to delist the Gray Wolf in the continental United States even after acknowledging in the proposed rule that, 1) the original listing was not a listable entity (species, subspecies, or Distinct Population Segment) and therefore violates the ESA, and 2) the Gray Wolf species is viable and not likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Transformation to a modern conservation machine

As I previously stated, I've had the unique opportunity to witness the changes that have occurred to state agencies over the entire lifespan of the ESA. This evolution has been extraordinary and has transformed state agencies into modern conservation machines. The state agencies are among the preeminent and vested authority on fish and wildlife in the United States. Federal agencies, other state agencies, local governments, tribes, conservation groups, businesses – even other countries – look to state fish and wildlife agencies for accurate data and information on fish and wildlife species and habitats. These partners often need to know which species are most important, where their habitat is located, what habitat is needed to maintain movement across the landscape, and how species should be managed and conserved. This information is vital to help communities grow, develop, live and recreate in accord with our environment.

To improve the state agencies' capability to provide this information to their many customers, and strengthen their leadership position on fish and wildlife matters, we have innovated and refined how we do business.

When the Western Governors adopted their Wildlife Corridors Initiative Report in 2008, they created the Western Governors' Wildlife Council and tasked its members with developing policies and tools to identify and conserve crucial wildlife habitat and migration corridors across the region. In that report, the Wildlife Council provided direction on how to address these management needs by working across political and legal boundaries and collaborating with other managers and the public. By putting these approaches into operation, the state agencies' important work to conserve the public's fish and wildlife resources will be enhanced, while at the same time facilitating necessary economic development in the region. Now guided by Western Governors' policy resolution 13-04, the Wildlife Council will soon be providing information on important fish and wildlife habitat that is compatible across the West and available to the public.

The Wildlife Council first approached the Governors' directive by launching regional pilot projects in 2010 with support from a grant from the Department of Energy. The year-long pilot projects allowed the Wildlife Council to test the framework outlined in their White Paper, helping to refine their vision.

In August 2011, the Wildlife Council established a plan to develop a West-wide tool with the goal of launching a public and regionally compatible crucial habitat GIS tool by 2013. All the while, the Wildlife Council has continued to support the development of state-specific CHATs in individual states.

The Western Governors launched Crucial Habitat Assessment Tool (CHAT) in December 2013 as the Western Governors' CHAT and managed it through 2014. In April 2015, the Western Governors transferred full responsibility for CHAT to the Western Association of Fish and Wildlife Agencies (WAFWA) and the tool was renamed the Western Association of Fish and Wildlife Agencies CHAT.

Arizona, California, Kansas, Montana, Nevada, New Mexico, Oregon, Washington and Wyoming have already developed state-specific information on priority species and habitat. In addition, the Southern Great Plains CHAT provided information specific to the lesser-prairie chicken, a species with habitat

ranging across five states. Other states are continuing to develop individual systems to provide additional state-specific information.

The WAFWA represents 23 state agencies and Canadian provinces, spanning from Alaska to Texas and Saskatchewan to Hawaii - an area covering nearly 3.7 million square miles of some of North America's most wild and scenic country, inhabited by over 1500 premier fish and wildlife species.

WAFWA is a strong advocate of the rights of states and provinces to manage fish and wildlife within their borders. The AFWA and WAFWA have been a key organization in promoting the principles of sound resource management and the building of partnerships at the regional, national and international levels in order to enhance fish and wildlife conservation efforts and the protection of associated habitats in the public interest.

In Arizona, HabiMap® has been used to assist in identifying preferred routes for transmission lines such as SunZia and South Line, routing new highway development such as Interstate-11, and informing land management decisions by the BLM, USFS, and our Arizona State Land Department. Beyond fish and wildlife, industry has been the biggest benefactor from the use of these CHAT tools. Predictable mitigations, avoidable conflicts, and anticipated costs have allowed industry to adopt and even champion these tools.

Perhaps the most comprehensive example of this is our work on the Lesser Prairie Chicken. On March 31, the WAFWA submitted to the FWS its third annual report detailing achievements under the Lesser Prairie-Chicken Range-wide Conservation Plan. Among other highlights, WAFWA reported on the purchase of an ecologically significant piece of property in Kansas, which permanently protects nearly 30,000 acres of high-quality lesser prairie-chicken habitat.

The range-wide plan is a collaborative effort of the state fish and wildlife agencies of Texas, New Mexico, Oklahoma, Kansas and Colorado and is administered by WAFWA. It was developed to promote conservation by providing a blueprint for lesser prairie-chicken conservation through voluntary cooperation of landowners, land management agencies and industry participants. This plan allows participants to continue operations while restoring and maintaining habitat and reducing development impacts to the bird and its habitat. "As we close out our third year of implementation, we're really hitting our stride," said Alexa Sandoval, Director of the New Mexico Department of Game and Fish and Chairman of the Lesser Prairie-Chicken Initiative Council. "We are encouraged that despite an oil and gas industry downturn, support for this collaborative conservation approach remains strong. We commend all of our partners for their participation in the range-wide plan."

The plan was endorsed by the FWS in 2013, and as part of the conservation effort, the state agencies agreed to report annually on the overall progress of the plan. Findings for 2016 include:

- **Land conservation efforts on private land increasing**
  By the end of 2016, WAFWA was conserving 16 sites totaling 133,703 acres either through fee title ownership or long-term contractual agreements. Three of those sites, totaling 33,053

acres, are permanently conserved through perpetual conservation easements or fee title ownership. The other 13 sites were 10-year contracts with private landowners, covering 100,650 acres across the range, three of which were executed during the past year.

Most significantly, a 29,718-acre land acquisition by WAFWA was finalized in June 2016, permanently protecting high-quality habitat in the sand sagebrush eco-region. The property was purchased from a willing seller and will continue to be managed as a working cattle ranch using livestock as the primary tool to create optimum habitat for the bird. In addition, 1,781 acres of privately owned native rangeland is now permanently protected in the mixed grass eco-region. WAFWA purchased a perpetual easement on the property that protects the conservation values of the site. The easement is held by Pheasants Forever.

- **Lesser prairie-chicken population stable**
  The annual lesser prairie-chicken aerial survey used to monitor populations was conducted from March through May 2016. The latest survey showed population trends have been stable after five years of data collection. An estimated breeding population of 25,261 birds was documented in 2016, which scientists say is not statistically different from the estimate of 29,162 birds in 2015 given the variability associated with the survey methodology. Aerial surveys for 2017 are underway and will run through mid-May. Results are anticipated in early July.
- **Industry projects generate mitigation credit, offset by conservation**
  In 2016, 114 industry related projects were processed and mitigated. There continues to be a surplus of credits available with a range-wide positive value of 71,639 units. This reflects the continued low energy prices that have slowed industry development in the region. WAFWA has focused on committing enrollment and mitigation fees for conservation contracts to benefit the bird and to ensure companies have available mitigation credit to develop as energy prices rebound. In July 2016, WAFWA developed a process to address non-payment of enrollment fees that provides several options to help companies stay enrolled in the program.
- **Technology enhances conservation decision-making**
  During 2016, significant progress was made in database development and accessibility. Highlights include the integration of impact and conservation sites into a relational database to ensure all habitat impacts are offset by an appropriate conservation site. In addition, a custom website was developed that provides participating companies a way to submit and approve new projects as well as view past submissions. WAFWA and the FWS can also use the web interface to obtain site-specific summary statistics, habitat mitigation credit balances and raw data.
- **Cooperative efforts enhancing conservation**
  A renewed cooperative effort between Natural Resources Conservation Service, Pheasants Forever and WAFWA will enhance program promotion, monitoring activities, and conservation planning and delivery. There was also continued effort to work with state fish and wildlife agencies to identify and pursue research and management needs. Those activities

included lesser prairie-chicken translocation efforts that moved birds from the shortgrass to sand sagebrush eco-region.

AZGFD has led in the development and application HabiMap® to realize the conservation of fish and wildlife habitat while meeting the objectives of development projects. The use of web-based, landscape scale geospatial wildlife information to instantly inform the earliest stages of Interstate-11 planning is cutting edge and is revolutionizing approaches to identifying and minimizing impacts to Arizona's natural resources. This unprecedented capability allows up front risk assessment and promotes cost effective development. For example, the Interstate 11 has the potential to fragment wildlife habitat both during construction and after completion. The Department is working with the Arizona Department of Transportation's Intermountain West Corridor team to provide critical data regarding Arizona's diverse resources. This collaborative effort will ensure that wildlife, habitat, connectivity, and wildlife safety issues are considered early in the design phase to avoid costly retrofitting later on. By designing connectivity features and habitat preservation efforts into the project as critical elements, there can be connectivity along the length Arizona's I-11 corridor, maintaining healthy and sustainable wildlife populations and habitat for present and future generations. The Department's efforts result in cost savings, highway safety, sustainable wildlife resources, and efficiency improvements to the state. The state will save money as the Department evaluates and addresses habitat, connectivity and safety up front, reducing the need to redesign and retrofit. Planning safe passage options for wildlife along the I-11 corridor will greatly reduce the number of vehicle/wildlife collisions, while improved connectivity will help maintain healthy and sustainable wildlife populations for all Arizonans to enjoy. The Department's tools under development to provide critical data and analyses for the I-11 corridor will also be used in future projects. Further, the state agencies are actively engaged in discussions about how to take the HabiMap® tool and applications as well as other similar state-led efforts and make them seamless across the country, even extending to our Canadian Provincial counterparts to improve management across the lifecycles and ranges of shared species like red knots and neotropcial songbirds, caribou and moose, wolverines and gray wolves, sage grouse, waterfowl, and more.

I have dedicated my life to conservation. I believe that the content of these comments contain the essential components to revolutionizing conservation, both in the US and beyond. Our nation has already set the standard for conservation throughout the world. Today I humbly ask this committee to recognize that changes must be made, if we continue to lead the world in our commitment to conservation.

Thank you very much for the opportunity to share our perspectives and I would be pleased to answer any questions.

Appendix

General Principles for Improving Implementation of the Endangered Species Act

Adopted March 18, 2016

Objective Statement: Improve Endangered Species Act implementation to ensure its future by making it a more effective conservation program for fish and wildlife, and more acceptable to private landowners. This improved implementation would be directed and managed by state and federal fish, wildlife, and natural resource professionals.

Principles for Improvement:
1: Enables more effective and consistent conservation and protection of species.
2: Ensures fish, wildlife and natural resource professionals make Endangered Species Act decisions.
3: Facilitates the opportunity for robust utilization of state fish and wildlife agency concurrent jurisdictional authorities in Endangered Species Act implementation as Congress originally intended.
4: Focuses on management actions that will recover species to the point that provisions of the Endangered Species Act are no longer necessary, and the species can be delisted or down-listed.
5: The approach is apolitical and politically viable because it has bipartisan support.
6: Better incentivizes private landowner participation in application of the Endangered Species Act.

Recommendations for Improvement:

I. Implement Preventive and Restorative Management: improve cooperation between state and federal agencies to preclude the need to list species by addressing species life needs and habitat requirements, more fully recognize and integrate state-led conservation efforts, and improve processes and guidelines for listing decisions. Secure funding sources for these actions.

II. Elevate the Role of State Fish and Wildlife Agencies: increase opportunities for state fish and wildlife agencies to take a more formal and active role and fully participate in Endangered Species Act implementation actions as intended by Congress under Section 6 Cooperative Agreements.

III. Improve the Listing Process: make the best decision within a more realistic timeframe; prioritize species considered for listing; and insure all state fish and wildlife data are utilized and

fully considered in the listing determination whether such data are published or not; and include state agency expertise in the process of interpreting these data and drawing conclusions.

IV. Require the Development of Science-Based Recovery Plans for Listed Species Directed by Recovery Teams: enhance States' role including the opportunity to lead recovery planning and implementation, expedite recovery by supporting state level initiatives and partnerships; and increase flexibility and feasibility for recovery plan applicability.

V. Relocate Critical Habitat Designation to Recovery Plan Development and Create More Flexibility: create more flexibility for the Secretary to exercise discretion to designate or not designate critical habitat, better define the scope, scale and basis for critical habitat designations and include clear guidance on when such designations are needed or required.

VI. Revise Down-listing and De-Listing Processes: increase reliance on and give great weight to recovery plan population and habitat objectives to inform the initiation of the delisting or down-listing process and create more ecological and geographic flexibility for downlisting and delisting valid listable entities, regardless of how they were originally listed; expedite down-listing and de-listing processes to realize conservation successes and reduce unnecessary regulatory burdens.

VII. Restore the Distinction between Threatened and Endangered Species Categories: return to Congressional intent providing greater flexibility to manage these listed species differently; afford state fish and wildlife agencies the opportunity to manage threatened species as Congress intended; and allow take as a possible means of "conservation" in the Act.

VIII. Fully Utilize State Conservation Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, Safe Harbor Agreements and Habitat Conservation Plans: provide consistency and guidance on utility.

IX. Provide Certainty and Incentives for Private Landowners: enhance clarity and increase conservation incentive options available; expedite the process for concluding these conservation agreements to enhance certainty to private landowners.

X. Enhance Endangered Species Act Funding: sufficient funding should facilitate successful conservation outcomes, species recovery, and delisting; enhance funding to states and federal agencies for all aspects of Endangered Species Act implementation.

XI. Improve Implementation of 10(j) Experimental Populations to Enhance Species Recovery: provide guidance on when the use of 10(j) experimental populations are appropriate and standardize post delisting monitoring plans.

XII. Science and actual conservation work to recover species should drive Endangered Species Act decision making: devolve the role of litigation and more fully realize Congressional intent for Endangered Species Act implementation.

XIII. Establish more Consistent Implementation Procedures and Processes: improve consistency and timeliness of administrative processes and actions implemented under the Act.

Legislative History of the 1973 ESA Bill On Passage: Excerpts

Senate Consideration and Passage of S.1983, With Amendments, from the Congressional Record, July 24, 1973, pages 342-425

Sen. John Tunney (CA):

"On the other hand, it was well established in the hearing record that most of the States possess much greater wildlife management resources than does the Federal government. Clearly any effort on the part of the Federal government to encourage the restoration of threatened or endangered species would fail without the assistance of the state agencies. This bill is designed to permit and encourage state endangered species programs that are in concert with the purposes of this Act."

"Subject to the provisions of this Act which provide maximum protection for species on the brink of extinction, States with active endangered species programs are given full discretion to manage threatened species which reside in their boundaries."

Sen. Ted Stevens (AK):

"Sections 6 and 16 provide for cooperation with the states. They provide the major backbone of the Act. Presently the states have an extensive network of endangered species legislation. Unfortunately, not all states have as yet implemented such programs. This bill will assist those states not yet involved to implement such programs and will, if the states do not, provide for Federal preemption."

"As Dr. Ralph Mac Mullen, president of the International Association of Game, Fish, and Conservation Commissioners observed, state wildlife agencies employ over 5800 law enforcement officers across the Nation. Formal Endangered Species programs are being implemented in over 30 states."

"Dr. Mac Mullen further observed that if the Federal government were to take away the right of the states to manage these species and to preempt the states, State Legislatures would not be willing to appropriate the necessary funds to protect endangered species."

House Committee Report 93-412 (to accompany HR 37)

"The principal areas of discussion during the hearings and markup of legislation centered on the proper role of the state and Federal governments with regard to endangered species programs..."

"Any bill which is designed to deal with the complicated issues involved in the protection of endangered species must do so in light of least two competing considerations: first, protection of endangered species is not a matter that can be handled in the absence of coherent national and international policies... Second however, the States are far better equipped to handle the problems of day to day management and enforcement of laws and regulations than is the Federal government..."

"Regulatory jurisdiction is given to the Federal government under this legislation and if a cooperative agreement is successfully negotiated and signed, to the states as well."

"Where a cooperative agreement has been put in effect the bill allows concurrent jurisdiction over the species affected in both the state and federal judicial system."

"In all other respects ... [than adherence to actions specifically permitted or prohibited by the Federal agencies]... the state law is not preempted but is merely subject to the "floor" of regulations under the Act."

House Consideration and Passage of HR 37 with Amendments:

Cong. James Grover (NY):

"Second, we have adequately protected legitimate state interests, power, and authorities by providing for concurrent Federal/State jurisdiction..."

"It is imperative to realize, as the Committee did, that the greater bulk of the enforcement capabilities concerning endangered species lie in the hands of the state fish and game agencies and not the Federal government. It is on a state level that habitat areas will be located, and it is on a state level where this new Federal law will be implemented, subject to overall Federal criteria and guidelines."

House Conference Report 93-740 (to accompany s. 1983 as reported by the House-Senate Conference Committee)

"As finally approved, the Act will have the effect of giving the states fundamental roles with respect to resident species for a given period of time... The conferees hope that this device will impel the states to develop strong programs to avoid the alternative of federal preemption."

"It should be noted that the successful development of an endangered species program will ultimately depend on a good working arrangement between the federal agencies, which have

broad policy perspectives and authority, and the state agencies, which have the physical facilities and personnel to see that state and federal endangered species policies are properly executed."

Senate Environment and Public Works Committee
Hearing entitled *"Conservation, Consultation, and Capacity: State Views on the Need to Modernize the Endangered Species Act"*
May 10, 2017
Questions for Larry Voyles
Responses Provided: June 15, 2017

Chairman Barrasso and Ranking Member Carper – In response to a set of questions posed to me after my testimony before your committee, my staff and I have provided clarifying responses for each question posed. It is apparent from your questions that you believe certain environmental organizations oppose the efforts of the state wildlife agencies to modernize ESA. In our opinion, many of these organizations advocate for a different approach to conservation than that of the state wildlife agencies. Steadfastly, we have provided case studies, conservation success stories, and examples of species recovery in state-led programs. Our message is clear and unequivocal: bring the full capacity of state wildlife agencies into meaningful partnerships with federal agencies to amplify conservation and strengthen ESA. In contrast, many environmental organizations seemingly promote activism over science-based conservation. This view was expressed by one of the founders of the Center for Biological Diversity in an interview in High Country News (December 28, 2009) where Kieran Suckling offered these thoughts:

When asked were you hindered by not having science degrees? He responded "No. It was the key to our success. I think the professionalization of the environmental movement has injured it greatly. These kids get degrees in environmental conservation and wildlife management and come looking for jobs in the environmental movement. They've bought into resource management values and multiple use by the time they graduate. I'm more interested in hiring philosophers, linguists and poets. The core talent of a successful environmental activist is not science and law. It campaigning instinct. That's not only not taught in the universities, it's discouraged."

Congress has been clear in its intent for implementing actions in recovery of imperiled species using science and law as foundational principles. I urge you and your committee members to consider the offer that the state wildlife agencies are making; that is to become full partners in endangered species recovery and not to take the bait offered on philosophical principle alone.

Chairman Barrasso:

1. Director Voyles, at our hearing in February, former Wyoming Governor Dave Freudenthal testified that section 6 of the ESA, which requires cooperation with the states to the maximum extent practicable, might be the most under-utilized provision of the ESA. When it comes to implementation of the ESA, Governor Freudenthal testified that "ultimate authority rests with [the U.S. Fish and Wildlife Service] and, absent statutory direction from Congress, shared information and decision making [with the states] remains the exception and not the rule."

   To what extent should states be consulted regarding the implementation of the ESA?

RESPONSE: State agencies have the local conservation experience, expertise and capacity, and should have an increased opportunity to be full partners in the Endangered Species Act (ESA) decision-making process. They therefore need the opportunity to perform a more active role participating in all aspects of ESA implementation to amplify conservation with the combined responsibility of state and federal conservation entities. This level of coordination was originally intended by Congress as specifically noted in Section 6 ([a] GENERAL—"In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States"), wherein authorities provide the Secretary explicit direction on how Congress expected the federal-state jurisdictional relationship to work through approved Section 6 agreements to avoid preemption of state law and otherwise expand the conservation capabilities of the Act. These cooperative agreements contemplated that the Secretary, upon the state agency's demonstration of the appropriate authority and adequate program design, would authorize the state agency to lead recovery actions by delegating authority to states and not simply have a state agency be subservient to federal agencies.

From our view, Section 6 authorities available to the state agencies have never been fully realized. Admittedly, in the initial years following ESA enactment, only a few state agencies had the capacity and political support to realize the authorities under Section 6 and, as a result, the Secretary, through the U.S. Fish and Wildlife Service (FWS), was left to exercise significant portions of the ESA authority. More recently, however, our state wildlife agencies have enhanced their staff capacity, expertise, habitat management techniques and overall science capability for listed species. In addition, state personnel have developed relationships with private landowners and local communities, and built social support for recovery that enables these agencies to more fully exercise their authorities and roles in implementing the ESA. As noted in my written testimony, state wildlife agencies possess both the human and financial resources that transcend those of the federal agencies, and that further provide significant conservation capacity and expertise to implement provisions of the Act. Prior to any ESA listing, state wildlife agencies have applied comprehensive conservation strategies for all species through our respective jurisdictions and have, as a result, accumulated broad expertise, experience and often comprehensive data sets, analyses and research on these species. These data, combined with our wildlife expertise and human/financial resources, should be more fully utilized and leveraged in the implementation of the ESA to optimize species conservation outcomes envisioned under the Act. State agencies typically execute the bulk of work in managing listed species and they possess the capacity to effectively participate in all implementation aspects of the ESA - from listing decisions, to recovery plan development and conservation recovery efforts on the ground, to collaborating with private landowners and industry and in analyzing decisions regarding down-listing and delisting of recovered species.

2. Director Voyles, Stakeholders have told us that the ESA could be modernized to more effectively conserve species to avoid their listing in the first place, and to recover species that are already listed as endangered or threatened.

   How do you think the ESA could be modernized to better incentivize pre-listing and post-listing conservation and recovery activities by states, private landowners, and other stakeholders?

RESPONSE: State wildlife agencies have broad expertise, experience and often comprehensive data sets and analyses on listed species because before they were listed, these species were under the sole management and jurisdiction of the states. Our data and scientific analyses should be more readily utilized by our federal partners throughout all elements of ESA implementation. This includes listing decisions, recovery plan development and conservation recovery efforts on the ground, providing guidance to private landowners in the use of federal incentive programs that provide them more certainty, and decisions regarding down-listing and delisting of recovered species. State wildlife agencies have the responsibility of the comprehensive nature of Section 6 as intended by Congress, but have not been able to exercise the authority under the ESA because of misunderstanding and misinterpretation by the federal executive branch agencies and courts.

ESA modernization needs to include the integration of effective conservation by the state wildlife agencies implemented far enough in advance to proactively preclude the need to list species, through effective management of a species' life needs and habitat requirements. We believe Congress could modernize the ESA through language that requires increased opportunities for state wildlife agencies to take a more formal and active role and fully participate in all aspects of ESA implementation as intended by Congress, through the authority of Section 6 Cooperative Agreements.

Upon this integration, the state wildlife agencies will be able to provide better incentives to industry and landowners for prelisting, post-listing, offsetting impacts, and mitigation. Examples of efforts that have provided better incentives include:

Western Association of Fish and Wildlife Agencies (WAFWA) Lesser Prairie Chicken (LPC) Model: The WAFWA Mitigation Framework incentivizes avoidance and minimization of impacts to LPC habitat from development. The metrics system within this framework provides a pathway to mitigate for impacts to habitat through a biologically-based system that incorporates space, time and habitat quality to define both habitat impact units and habitat offset units. The mitigation system also utilizes a 2:1 mitigation ratio to ensure that offsets are greater than impacts, resulting in a net conservation benefit for the LPC.

The WAFWA Mitigation Framework functions as a platform to balance impact and habitat offset units in that a portion of the offset units are allocated at the sign-up based on current acreage and habitat quality. Additional offset units are generated annually and the quantity reflects potentially usable acreage and habitat quality. The landowner is incentivized to manage for quality habitat because their annual payment is based on the acreage and evaluation score of the enrolled property. If the participant does not follow the recommended management plan for the property, the offset units are reduced, as are the annual payments to the participant.

HabiMap®: In Arizona, HabiMap® has been used to assist in identifying preferred routes for transmission lines by project proponents such as SunZia and South Line, routing new highway development such as Interstate 11, and informing land management decisions by the BLM, USFS, and our Arizona State Land Department. Beyond fish and wildlife, industry has been the biggest benefactor from the use of these Crucial Habitat Assessment Tools (CHAT). Predictable

mitigations, avoidable conflicts, and anticipated costs have allowed industry to adopt and even champion these tools.

3. Director Voyles, some environmental groups claim that enhancing the role of state fish and wildlife agencies in managing threatened and endangered species would be tantamount to gutting and repealing the Endangered Species Act. Do you agree?

RESPONSE: Clearly, those claims are either made in ignorance of the role state wildlife agencies play in threatened and endangered species conservation or they are intentionally disingenuous. The recommendations provided in my testimony and the AFWA proposal would not result in "gutting" the ESA or removing federal authority, rather, the proposals provide a pathway to capitalize on the capacity, experience and demonstrated track record of state wildlife agencies to successfully conserve wildlife. It is my hope that Congress will realize that only through a stronger partnership between state and federal agencies will the intent of the ESA ever be realized.

In my judgment, the litigation strategy of some organizations undermines the very intent of Congress when ESA was implemented. This is evident from a published statement of Kieran Suckling, who founded the Center for Biological Diversity: "New injunctions, new species listings and new bad press take a terrible toll on agency morale. When we stop the same timber sale three or four times running, the timber planners want to tear their hair out. They feel like their careers are being mocked and destroyed – and they are. So they become much more willing to play by our rules…Psychological warfare is a very underappreciated aspect of environmental campaigning." This is not the intent of AFWA and state wildlife agencies in seeking ESA modernization.

As it sits today, the ESA has been commandeered by litigious groups that are concerned that the combined conservation power of an effective state/federal partnership would render ineffective the ability of third party lawsuits against the FWS to drive conservation via litigation. Thus, their power would diminish if states had an increased capacity to influence listing decisions and manage threatened and endangered species. Rather than supporting state efforts to implement conservation activities, these litigious organizations' efforts reside in the court room to list as many species as possible, requiring land use restrictions, financial commitments from the FWS, and diminishing management activities allowed under the ESA.

Of the more than 800 species the Arizona Game and Fish Department manages, only 44 species, less than 6%, are listed under the ESA. Although this number is higher than we would like it to be, since 1983 Arizona has implemented a nongame and endangered wildlife program and implemented conservation actions to promote population numbers to keep species from being listed under the ESA. As an example, environmental litigants have petitioned for an additional 51 Arizona species to be included under the ESA in the last five years. Deflecting unsubstantiated listing claims requires substantial effort and financial resources by both FWS and the state.

In Arizona, nearly 100% of the on-the-ground conservation for threatened and endangered species is implemented by the state wildlife agency, or under the authority of the state. My agency alone annually spends over $4.5 million dollars directly on conserving nongame and

endangered wildlife; this includes listed species and species we are working hard to preclude from listing. However, one of the state wildlife agency's most effective roles in nongame and endangered species conservation is in communication and cooperation with other federal, state, local, Native American and private partners to implement conservation projects for these species. Our staff has local relationships and knowledge of natural areas and the wildlife that occupies them, and an awareness and understanding of the values and needs of local landowners and managers that is essential to developing and maintaining conservation partnerships.

Some of our state wildlife agency's biggest success stories derive from these partnerships. For example, the Arizona bald eagle population has grown nearly 600% since the species was listed in 1978 and subsequently delisted in 2011. The success of Arizona's population is not solely due to the species being listed under the Endangered Species Act, but because our partnerships generate nearly $250,000 annually for bald eagle conservation, and allow us to continue to implement proactive conservation measures to protect breeding pairs long-after the species was removed from ESA protection. In spite of this success, litigious organizations constantly strive to relist desert-dwelling bald eagles rather than support or even recognize the effective conservation implemented by the professional biologists in my agency.

4. Director Voyles, in Director Coit's written testimony, she noted that her department receives each year only $17,500 through ESA section 6 and $23,000 through ESA recovery funding. I am struck by the smallness of these amounts. In 2015, noted conservationist Lowell Baier wrote in his book, Inside the Equal Access to Justice Act, that when all costs are considered, including free reimbursements and related personnel costs, federal taxpayers spend as much as $137 million per year on environmental litigation relating to the Endangered Species Act alone.

   Do you agree that species would be better served if more of those taxpayer dollars flowed to state agencies like yours and Director Coit's to be spent on conservation and recovery activities, and fewer flowed to lawsuits against the U.S. Fish and Wildlife Service?

   RESPONSE: The ESA, as implemented today, has become a regulatory tool for litigants to direct federal wildlife and habitat management activities that meet their ideals through costly and lengthy litigation that in turn consumes funding allocated to the federal agencies for recovery. By diverting the funding from conservation to litigation, the federal government's effectiveness in contributing to the overarching conservation machine is drastically reduced, leaving the state wildlife agencies as the primary driver for on the ground conservation.

   Many state wildlife agencies have modest budgets, as indicated by Director Coit in her testimony, yet it is striking to note that even with limited funding, those agencies have demonstrated their ability to achieve significant success in keeping common species common and conserving and recovering imperiled species. This success far outshines that demonstrated by the FWS especially given the comparatively few species over which it has exerted sole management authority. Overall, the collective capacity of state wildlife agencies is substantial and examples such as the state-led prelisting and recovery programs for roundtail chub, Louisiana black bear, gopher tortoise, Apache trout, southwestern bald eagle and American pronghorn demonstrate the ability of states to more effectively direct funding to achieve meaningful conservation on the ground. Further, landscape scale projects for non-listed species

benefit all species including listed species. For example, state-led habitat restoration projects in grasslands have not only increased habitat for American pronghorn, but the population trend for many grassland-obligate bird species is also increasing as a result. Simply, multiple species benefit from state-led conservation efforts, and it is time to recognize these grassroots efforts as being key to keeping common species common and in recovering imperiled wildlife across the North American continent.

A primary reason why state wildlife agencies have been so successful in achieving conservation is that our conservation delivery is amplified by comprehensive management for all wildlife rather than single species management as practiced by the FWS. True, dedicated funding to states for threatened and endangered species is meager. We receive only $460,000 of Section 6 funding to recover 44 listed wildlife species in Arizona. A first glance leaves the impression that the only benefit to ESA protected species comes from dedicated threatened and endangered species funding, which is woefully underfunded, but these funds are only part of the true picture. Under the comprehensive management approach practiced by state wildlife agencies, conservation for game species and nongame species are integrated to maximize benefit for all wildlife.

A modernized ESA that recognizes and utilizes the capacity of state wildlife agencies to effectively implement conservation would redirect funding away from the "litigation sink" that exists at the federal level, and toward the effective conservation delivery machine provided by state wildlife agencies. Reallocation of funds away from the courts to the states would not "gut" the ESA as suggested by some, but would instead bolster the effectiveness of the ESA to meeting its purpose as intended by congress.

5. Director Voyles, how do the number of biologists and conservation officers that are employed by state wildlife agencies compare to the number employed by federal land and wildlife management agencies?

RESPONSE: During FY2016, state wildlife agencies employed almost 50,000 men and women, including 11,000 degreed wildlife biologists, about 6,000 staff with advanced degrees and 10,100 law enforcement officers[1]. Further, our agencies leveraged the efforts of nearly 190,000 volunteers. Annually state wildlife agencies contribute more than $5.6 billion dollars to conservation through our collective budgets.

The 2016 President's budget request for the FWS totaled $2.966 billion[2]. The budget included $1.4 billion available under permanent appropriations, most of which were to be provided directly to states for fish and wildlife restoration and conservation. The FWS estimated staffing

[1] Association of Fish and Wildlife Agencies and Arizona Game and Fish Department. (2017). The conservation machine. DOI: 10.13140/RG.2.2.19173.19681. Retrieved from https://goo.gl/8g4E26 July 6, 2017.

[2] USFWS. 2016. Budget Justifications and Performance Information Fiscal Year 2016. The United States Department of the Interior, Fish and Wildlife Service.

at 8,977 full time equivalents (FTE) in 2016. While these employees do contribute to effective conservation, imagine for a moment how much more effective this nation's conservation machine would be if we could combine the efforts of the 50,000 state conservation employees with the federal conservation workforce.

6. Director Voyles, how can the ESA be modernized to take advantage of the capacity that industry and private land owners can bring to bear on conservation and restoration of imperiled wildlife, rather than being restrictive and punitive to stakeholders within those groups?

   RESPONSE: The simple answer is to fully incorporate into Section 6 the state wildlife agencies' authorities for managing wildlife and funding those activities. This clearly was the intent when Congress enacted Section 6, however, implementation has had varied success. Currently, Section 6 allows for dual management with the FWS as long as the state submits a management plan for threatened and endangered species.

   The Lesser Prairie Chicken Range-wide conservation Plan (RWP) is a great example of giving authority to the states for conservation efforts. The RWP describes a locally controlled and innovative approach for maintaining state authority to conserve the LPC. The goal of the RWP is to conserve the LPC for future generations while facilitating continued and uninterrupted economic activity throughout the entire range which includes portion of TX, OK, CO, KS, and NM. The RWP identifies a two-pronged strategy for LPC conservation: (1) the coordinated implementation of incentive-based landowner programs and (2) the implementation of a voluntary mitigation framework, which reduces threats and provides resources for off-site conservation activities.

   In the three years since the RWP implementation, 170 companies have voluntarily enrolled and participate in the mitigation program. This includes avoiding and minimizing their impacts on approximately 8.1 million of the 41 million acres occupied by LPC. When impacts cannot be avoided or minimized, an impact fee is paid for off-site mitigation. To date, $62.3 million has been collected and placed in a non-wasting endowment, and the interest from this conservation fund has allowed the states to implement conservation on 133,703 acres with 16 landowners. In addition, the 14 landowners with 10-year agreements will receive over $18 million in payments to conserve LPC.

   This conservation plan works because the FWS endorsed the plan's operation and then gave the state wildlife agencies the authority to approve projects for companies enrolled in the effort. In the first three years this translates into nearly 1,000 projects that have received approval to continue, without concerns for delays that might have been caused by concern for lesser prairie chicken. This type of predictability and certainty of costs are key elements touted by the companies enrolled in the RWP.

7. Director Voyles, stakeholders have expressed concerns that "biology by judge" is the result of litigation against U.S. Fish and Wildlife Service implementation of the Endangered Species Act. Are you aware of this concern? If so, please share your views on it.

RESPONSE: "Biology by judge" is not just a concern, but a fact that has materialized as a result of litigation involving species listed under ESA. For example, in recent years, federal judges reviewing litigated ESA cases have ruled that both the northern gray wolf and grizzly bear remain protected by the ESA in spite of the fact that both species had surpassed established recovery goals by hundreds (grizzlies) or thousands (wolves) of animals. This obvious lack of judicial restraint by judges who have no biological training or expertise and are inadequately prepared to evaluate and weigh technical merits of complex population viability models, flies in the face of the ESA that mandates the use of the best scientific data and expertise available. These actions are undertaken despite noted conservation progress being achieved toward established recovery plans and goals, and can only be construed as litigious actions to keep species listed under the ESA. Alternatively, litigants opposing ESA delisting or supporting ESA listing have learned to focus efforts and resources at challenging ESA decisions in court, rather than directing said resources to species conservation efforts. Because of widespread abuses of the Equal Access to Justice Act, a majority of these court activities are currently funded by the Federal Government. In so doing, litigants have become successful in diverting Federal agency resources to ESA litigation and away from species conservation actions, while also attempting to gain a foothold toward circumventing adopted recovery plans, collaborative agreements, and science to force state and federal agencies to bend to their desires through the judicial system. While most listed species have specific species recovery goals/objectives and clear de-listing requirements the perpetuation of these legal challenges come at the expense of effective species conservation. Furthermore, the dominance of judicial judgements and rulings, in the context of rendering species recovery decisions, serves to undermine and run counter to Congressional intent of applying sound science and collaborative conservation through the ESA.

The ESA appropriately provides for public contribution and evaluation of listing, recovery and delisting processes. However, current application of the ESA has diverted the focus away from constructive conservation – away from biologists and professionals trained and experienced to affect meaningful conservation – and, instead, toward an unintended outcome of creating a process that is burdened and consumed by procedural challenges and litigation. I again refer to the quote by Kieran Suckling referenced under question 3.

When ideology and philosophy are allowed to supersede science and the implementation of sound conservation intended under the ESA, the results are that wildlife resources are no longer managed in trust for our public as a whole, but instead are managed through the courts for those skilled and successful litigants bent on using the ESA as a vehicle to manipulate and control resource management decisions. As evidenced through FWS's recent Multidistrict Litigation settlement, the FWS was forced to direct the bulk of its national resources and budgets toward administering ESA timelines and technicalities (such as meeting 90-day and 12-month finding requirements for petitioned species) related to overwhelming petition filings in order to avoid incurring even more costly court-awarded judgements. Within this administrative and legal context, successful challenges over ESA process and procedure serve to divert resources to addressing court related activity and away from collaborating with states and other conservation partners to work toward recovery of listed species, as originally intended under the ESA.

8. Director Voyles, you have recommended that 10(j) populations should only be used when the Secretary and state agency agree on the boundaries within which those populations are to be

released. You have also recommended that the Secretary comply with any state permits before 10(j) individuals are release. Please explain.

RESPONSE: The use of "experimental populations" under Section 10(j) of the ESA, when collaboratively applied, has become an effective and successful driver for species reintroductions, as intended by Congress in the development of the Act. In my state of Arizona alone, for example, the application of 10(j) population designations has facilitated successful reintroductions of California condors (1996), Mexican gray wolf (1998, revised 2015), black-footed ferret (1996) and the expansion and near recovery of the experimental population range of Sonoran pronghorn in 2011. Arizona's record on contributing to these reintroduction projects is well established, with my agency continuing to dedicate personnel and associated resources to the ongoing management and long-term recovery of these species in Arizona.

Species management flexibility provided through 10(j) population designations generally promote improved cooperation among resource management agencies involved in reintroduction and also serve to encourage innovation in addressing on-the-ground management challenges. The increasing use of "cross-fostering" techniques utilizing captive wolf pups to improve Mexican wolf pack genetic diversity and population recruitment serves as an excellent innovative example of the flexibility experimental population designations provide species managers. As noted in Section 10(j), an experimental population can be applied if (among other Section 10 provisions), "...the Secretary determines that such release will further the conservation of such species," and "...before authorizing the release of any population..., the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species." In order to make such determinations, it is incumbent upon the Secretary to base such decisions on the best available science, to include knowledge and expertise relating to the landscape and habitats in which experimental populations are proposed to be released. This approach is outlined in Section 6 of the Act as state agencies serve an obvious role in providing such knowledge and expertise, and additionally possess well established networks among various stakeholders that will ultimately be affected by 10(j) population designations. Furthermore, given the framework of operating within joint state and federal statutory authorities, 10(j) population designations require increased coordination to ensure joint compliance with required permitting processes and provide required bi-directional recognition of associated authorities. State wildlife agency involvement in the management of experimental populations demonstrates both the capability and credibility they provide to successful reintroduction projects. Accordingly, we state wildlife agencies feel a framework that provides more robust coordination with our agencies on the establishment of experimental population designations, and that provides appropriate recognition of joint regulatory authorities will result in an improved framework for guiding the successful management of species having 10(j) designations.

9. Director Voyles, the Arizona Game and Fish Department developed HabiMap Arizona, which it describes as "a user-friendly, web-based data viewer to make information contained within the *State Wildlife Action Plan* available to the public, planners, and our partners." The tool is used "to help inform landscape-scale planning, to provide initial risk assessment for early project planning, and to gain a general understanding of Arizona's wildlife conservation potential." Please elaborate on this tool and your department's development of it. Please elaborate on how it

can be used to facilitate project planning, generate cost savings, and enhance the mitigation of project impacts on threatened and endangered species.

RESPONSE: HabiMap® was developed to be an integral component of Arizona's *State Wildlife Action Plan* to display and analyze priority wildlife areas throughout the state. HabiMap® represents the first state-specific Crucial Habitat Assessment Tool (CHAT). In an unprecedented and bipartisan initiative, the Western Governors' Association (WGA) launched the west-wide CHAT in 2013. The Western Association of Fish and Wildlife Agencies (WAFWA) assumed full administrative responsibility for the long term operation, maintenance, and improvement of the CHAT. This nationally-recognized, state-based wildlife conservation tool provides the most up-to-date, credible, and defensible wildlife data and analyses for landscape-scale conservation across 17 western states at multiple scales (including threatened and endangered species range-wide scales) and identifies a roadmap for conserving, restoring, and mitigating for threatened, endangered and other sensitive species.

Like HabiMap®, CHAT gives industry the ability to incorporate region-wide threatened and endangered species conservation priorities early in the project planning phase, resulting in better-informed project siting and risk assessment. This helps avoid project delays, increased costs, and last minute conflicts while avoiding and minimizing impacts to threatened and endangered species. CHAT also provides conservation partners landscape scale information on where mitigation efforts are most effectively implemented.

The CHAT approach can be used to focus on a single species or suite of species to engage conservation partners and industry in the preclusion or delisting of species under the ESA as demonstrated by the WAFWA Lesser Prairie Chicken Initiative and Southern Great Plains CHAT. The LPC initiative is a successful partnership between states, industry, and private landowners that has demonstrated a locally controlled and innovative approach for conserving threatened and endangered species. Crucial Habitat Assessment Tools like Arizona's HabiMap®, the west-wide WAFWA CHAT, and the Southern Great Plains CHAT provide prime examples of the capacity, expertise, and initiative the states possess to manage and conserve threatened and endangered species.

Ranking Member Carper:

10. Does your state have a law that requires the listing, protection and recovery of endangered species, and if so, does that law cover both plants and animals?

RESPONSE: Arizona state law does not require the duplicative act of co-listing or additional listing beyond those Arizona species considered threatened or endangered under ESA. The Arizona Game and Fish Department's *State Wildlife Action Plan, 2012-2022* identifies specific Arizona Species of Greatest Conservation Need, their distribution, a list of stressors each species faces (including climate change), and conservation actions needed to protect and conserve those species and their habitats. As a result of this approach, our focus on conservation is actually much broader than that focused on state listed species, because the SWAP provides conservation

actions for a broad suite of species, and hence is more effective than a state endangered species law in full-scale conservation.

The Arizona Department of Agriculture administers and enforces the Arizona Native Plant Act (A.R.S. §3-901 - 934). Listed protected native plants may not be legally possessed, taken or transported from the growing site without a permit from the Arizona Department of Agriculture. The Act protects "highly safeguarded native plants" the survival of which are in jeopardy or which are in danger of extinction throughout all or a significant part of their ranges, including plant species listed as threatened or endangered under the federal ESA of 1973. Civil and criminal penalties are provided for violations of the Arizona Native Plant Act (A.R.S. § 3-932 – 934).

11. Does your state law prohibit the killing or wounding of endangered or protected species, actions that are known as a "take?"

RESPONSE: Title 17, Arizona Revised Statutes, classifies all wildlife in Arizona, both resident and migratory, and encompassing all federally-listed threatened or endangered species, as property of the state, and prohibits the take of all such wildlife unless authorized by law (A.R.S. §§ 17-102; 17-309; 17-314). "Take" is defined as pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the use of any trap or device that may result in the capture or killing of wildlife (A.R.S. § 17-101(20)). Criminal enforcement and civil penalties are provided in Title 17 for unlawful take of wildlife.

A.R.S. § 17-314 authorizes criminal prosecution and the imposition of enhanced civil penalties for the unlawful taking, wounding, killing or possession of any federally-listed endangered species. The statute directs that the minimum penalties assessed by the Arizona Game and Commission be for not less than $8,000, and doubled or tripled for a second and third verdict or judgment.

A.R.S. §17-320 provides that in the event the jaguar (*Felis onca*) is delisted under the federal ESA, an unlawful killing, wounding or possession of a jaguar in this state is subject to criminal enforcement and the assessment of up to $72,500 in civil penalties.

12. Does that law define changes to habitat that adversely affect endangered or threatened species as "take?"

RESPONSE: It seemingly is apparent from this question that there is misunderstanding of the effort to modernize ESA. We are not seeking to reduce the protections provided by ESA but rather amplify them with a higher degree of collaboration and alignment of resources. Where the ESA provides for important protection for habitat, the Arizona definition of an unlawful "take" of wildlife is focused on actions directed toward the wildlife. That said, there is a policy adopted by the Arizona Game and Fish Commission that mandates mitigation for habitat damage at a 1:1 ratio for unavoidable impacts to habitat for all species. Further, it is important to note that within the Arizona Game and Fish Department there are 17 full-time staff dedicated to the effective management of habitat to ensure that habitat quality is maintained for all wildlife species.

Habitat conservation is an important element of my Department's management program as evidenced by this high level of staffing.

13. Is it fair to say that first and foremost, your state is seeking closer collaboration with your federal partners in the endangered and threatened species conservation process and more federal financial resources for species conservation? Do you believe progress can be made administratively under the current law?

RESPONSE: An important consideration with the modernization of the ESA through administrative repair is that much like chaff from wheat, which is blown in the wind without direction or certainty, administrative repair is not always an enduring proposition. One of the testimonies to the effectiveness of the ESA is that it has withstood the test of both time and courts and remains largely intact. Such would not be so if the sole remedy was an administrative fix.

14. Does your state have a conservation plan or efforts underway to prevent species, including non-game species, from becoming threatened or endangered? If so, do you feel you have adequate funding to successfully implement that plan?

RESPONSE: My agency has produced and implemented a Nongame and Endangered Wildlife Conservation Plan detailing the needs and objectives for all nongame species conservation projects to recover the species that are listed, or to preclude their listing under the ESA. In addition, each state wildlife agency, Arizona included, has created a *State Wildlife Action Plan* for the implementation of conservation projects under the congressionally approved FWS State Wildlife Grant Funds.

State wildlife agency-led investment strategies such as the Conservation and Reinvestment Act of 2000, and the Recommendations of the Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources of 2016 demonstrate a history of state-initiated movements to fund nongame and endangered species conservation. However, the success or failure of these initiatives rests entirely with Congress's ability to recognize the importance of investing in the conservation of nongame species. According to the Government Accounting Office, once listed, the average cost of recovery of a single species can exceed $125 million. However, state wildlife agencies can implement proactive conservation measures to prevent species listings for a fraction of that cost. But that investment needs to be made now, to recognize those savings in the future.

15. How much does your state spend on <u>all</u> species management and conservation (all plants and animals, including fish, game and non-game species)?

RESPONSE: In the past 2 fiscal years, my agency allocated in excess of $95 million annually toward conservation, management and habitat restoration for <u>all</u> 800+ Arizona wildlife species we manage. In addition, my agency was awarded more than 139 external contracts in support of wildlife conservation projects that resulted in an additional $17.2 million received annually for the benefit of wildlife.

16. How many employees do you employ in your fish and wildlife/game agency?

RESPONSE: A key pillar of our successful business model is maintaining a highly qualified and engaged workforce passionate for wildlife. Arizona's state wildlife agency has one of the most creative, entrepreneurial and highly educated workforces in state government. Our Wildlife Series positions (biologists) and most Law Enforcement positions (game rangers) require a minimum of a Bachelor's degree in a wildlife-related science.
Currently, the Department's workforce consists of a total of 623 employees including part-time and temporary workers. We also have a large contingent of unpaid volunteers who help meet Department work goals and objectives. The Department considers these volunteers essential in our overall Workforce Profile. As a demonstration of the importance of volunteers to the Arizona conservation machine, annually we have 2,500 concerned volunteers that contribute about 80,000 hours of on-the-ground efforts.

The Arizona Game and Fish Department is the second largest statewide law enforcement agency in Arizona. Our officers are often the first responders to rural community emergency calls, boating and off-highway vehicle accidents. To manage operations consistent with revenue, our temporary workforce (part-time employees, interns and volunteers) plays an important role in helping the Department meet its goals and objectives. The use of volunteers lets us maintain a flexible workforce without incurring additional costs involved with hiring full-time employees and allows us to actively engage with our constituents. Recent examples of the creativity we employed to expand our capacity given the constraints of a cap on our workforce include partnerships with Quail Forever and the Mule Deer Foundation. In true government/private partnering my agency has worked with these two non-profit organizations to fund and hire biologist positions that are delivering on shared mission objectives. This approach has allowed my agency to expand its capacity to take advantage of new opportunities and resources and to meet our public trust responsibility to manage all wildlife species in Arizona.

17. How much do you spend for imperiled non-game species conservation and what percentage is that relative to the total amount invested in all species conservation? How many employees are devoted to non-game species conservation work?

RESPONSE: This number is difficult to quantify as my agency operates under the tenants of the North American Model where wildlife is a public trust resource, and as such, the Department manages for all wildlife as part of its mission. Directly, my Department spends in excess of $95 million annually on conservation for all wildlife, and of that amount, over $4.5 million (~5%) is allocated directly for the sole purpose of conserving nongame and endangered wildlife, which includes listed species. This figure does not comprehensively include law enforcement, habitat restoration, habitat enhancements, and landowner agreements that are implemented for the benefit of both game and nongame species. The landscape approach to wildlife conservation is well demonstrated by examples: a wildlife water created for elk has an additional benefit for nongame species by simultaneously creating habitat for imperiled native frogs, and a grassland restoration project to remove invasive woody vegetation for American pronghorn provides improved and expanded habitat for prairie dogs and black-footed ferrets. In 2016-2017 alone the Department spent an additional $4.2 million on habitat improvements which leveraged $3.9 million in partner funding toward these same habitat projects, thus increasing the investment and

benefit to nongame species to ~13% of the total funding spent for management and conservation of all wildlife in Arizona.

The number of employees directly devoted to nongame and endangered species conservation work is 26 FTE. However, this is a gross underrepresentation of the number of employees performing nongame and endangered species duties. Many more employees' job duties require some level of nongame and endangered species conservation activities, including those in our Research and Habitat branches, the Landowner Access Program, and our Law Enforcement officers. For example, the creation of HabiMap® is a costly effort that is essential to endangered species management and protection in Arizona, yet none of the endangered species funding mentioned above is infused in the funding support for HabiMap®.

18. How much and what percentage of your non-game species conservation spending comes from federal funds? How much does the state invest? What is the source of that funding?

RESPONSE: My agency allocated a base program budget of $4.5 million toward nongame species conservation in Fiscal Year 2017. Of that amount, 34.6% (or $1.55 million) comes from federal funds (State Wildlife Grant, Section 6 funding). The remaining $2.94 million (65.4%) is comprised of non-federal funding (see funding sources listed below response). We've been awarded an additional $12 million of federal and $9.7 million of non-federal funds through other contracts and grants from federal, state, and municipal agencies and non-governmental organizations to implement conservation on their behalf; primarily to meet mitigation and conservation commitments. These additional grants and contracts provide additional conservation benefit to nongame wildlife (other grants and contracts are not part of the $4.5 million). In addition to these funds, the Department maintains an active habitat acquisition fund through which habitat is acquired for sensitive species conservation. There is a current fund balance of about $10 million, and several properties are being considered for acquisition at this time.

Non-federal Funding Sources ($4.5 million nongame base budget):

- Heritage (a % of revenue from the Arizona Lottery)
- Sport Fish and Wildlife Restoration (administered through the USFWS, but by law these dollars are solely for the state fish and wildlife agencies, for the purpose of describing our budgets below, all PR and DJ dollars are recognized as state dollars)
- Wildlife Conservation Fund (a % of the revenue from Tribal Gaming)
- Game and Fish Fund (license and tag sale revenue)
- State Tax Nongame Check-off

It is important to note that the $4.5 million allocated for nongame species management under-represents the actual expenditure of funds that benefit nongame wildlife. Because we approach wildlife conservation comprehensively at landscape scales there is an amplified beneficial effect for nongame associated with management for all other wildlife we manage. For example, the Department recently provided $150,000 in state generated Heritage (lottery) funding towards a $3,675,000 landscape level project that restored 15,230 acres of grassland and provided year round water for grassland obligate wildlife species on over 400,000 acres of habitat. This project

benefits nongame species as well as game species including American pronghorn, Gunnison's prairie dogs, black-tailed prairie dogs, western burrowing owls, and Ferruginous hawks to name a few. This project coordinated funding from NRCS EQIP ($1,275,000), NRCS Water Quality Initiative ($930,000), EPA Impaired Waters funding ($420,000) FWS Partners for Wildlife Program funding ($100,000), and the AZ Department of Agriculture Open Spaces funding ($800,000). For every dollar of state wildlife funding, $23.50 of other funding was leveraged toward habitat improvement projects that benefit all wildlife in the project area.

19. States have primary authority for species management and conservation until species are imperiled; the Endangered Species Act is intended to be a last backstop against extinction. Species are typically listed after state management has proven insufficient to protect habitat and prevent species decline. If states have the capacity and resources to address species conservation and recovery, why do you believe so many species are imperiled, especially considering the ample notice that often exists that species are at risk?

RESPONSE: The statement that "*Species are typically listed after state management has proven insufficient to protect habitat and prevent species decline*" does not fairly represent how wildlife are currently managed within the states capacity and resources.

Prior to enactment of the ESA, the state wildlife agencies had accomplished amazing success at species management and repatriation. White-tailed deer were extirpated from much of their historical range, yet by active conservation this species is now widespread and occupies much of its former range. Wild turkeys are now thrilling hunters and wildlife-watchers in most of North America. True, these are hunted species and some will mischaracterize this as nothing more than conservation to aid the hunter. But, rather than debate this statement, let's look at the broad picture in Arizona. Being fortunate to share climates from tropical and temperate zones, each with their unique wildlife communities, Arizona is home to rich diversity of wildlife species. In fact, Arizona has more than 800 wildlife species, of which, 44 are listed. While this number is unfortunate and my Department and our federal partners are working hard at recovery, the fact of the matter is that more than 750 species are common and abundant thanks to the species and habitat management provided the Arizona Game and Fish Department. State management is successful and is responsible for keeping common species common; to characterize this otherwise is disingenuous.

20. Do you believe this Committee should focus energy on proposals that seek to prevent species from being listed in the first place?

RESPONSE: Yes. Without question, the goal of all conservationists should be to avoid listing, since listing is a sign that the concept of "keeping common species common" has not worked. Listing has seldom resulted in recovery to the point of delisting, so listing is a last resort. I believe that modernization of ESA, as I and my counterparts from other state wildlife agencies have identified as major needed steps, can help avoid listings, speed recovery and delisting and make a lasting contribution to effective conservation. I also believe your Committee should look for opportunities to improve other components of the ESA such as more effective prelisting conservation, recovery planning, delisting and post-delisting. Congress should seek to modernize the ESA through language that requires increased opportunities for the state wildlife agencies to

take a more formal and active role and fully participate in all aspects of ESA implementation as intended by Congress, through the authority of Section 6 Cooperative Agreements.

21. Both of your testimonies included the Association of Fish and Wildlife Agencies' General Principles for Improving ***Implementation*** of the Endangered Species Act. Does the title of that document reflect that many of your recommendations could be incorporated into ESA processes administratively?

RESPONSE: I believe that a reexamination of the *Association of Fish and Wildlife Agencies' General Principles for Improving the Implementation of the Endangered Species Act* will clarify that administrative improvement alone is insufficient to achieve a fully modernized ESA. ESA regulations and administrative policy have been a living paradigm of new ideas on interpretations of ESA through ligation or changes in administration. Unfortunately, these changes have led to short lived failures absent codification, rarely resolving issues and creating more bureaucratic process. An excellent example of this is how the FWS, through the recent administrative process of a Species Status Assessment (SSA), makes decisions on when a species warrants protection under the ESA. This is a process whereby scientists from a wide variety of entities that have relevant information work together to provide the FWS with the most accurate status assessment possible to aid the Service in determining true status for species being evaluated. While sounding good on paper, the issue is that there are no regulatory guidance in place that dictate the state wildlife agencies that share management authority with the Federal agencies must be allowed to play an effective role in this process. In most cases, the state wildlife agencies are the entity with the majority of the data used in the SSA, yet are not always effectively involved in the SSA. This has resulted in some important failures of the SSA process over the last few years across the nation.

I do contend that administrative change alone is insufficient to modernize the ESA in a way that will truly deliver the conservation and protection needed to benefit the species it is intended to protect and recover. For example, the rules for administrating Section 6 require significant modification in order to reduce the current ambiguity and provide sufficient clarity to better outline states' roles and responsibilities in implementing the ESA across the broader array of ESA components including pre-listing conservation, listing, recovery planning, delisting and post-delisting.

22. These principles recommend increasing conservation incentive options for private landowners. Can you give some examples of what would be helpful?

RESPONSE: One the greatest conservation minds in history, Mr. Aldo Leopold stated "*Conservation will ultimately boil down to rewarding the private landowner who conserves the public interest*" (**Conservation Economics,** in *The River of the Mother of God and other essays*). Leopold's words especially hold true when discussing endangered species recovery, since the majority of the land base in the United States is privately owned.

Since the late 1890s the citizens of the United States have established that the management of wildlife species is an essential function of government. Incentive programs have long held an essential role in the conservation of our natural resources. Out of concern for soil conservation,

following the dust bowl in the 1930s, evolved the incentive-based Farm Bill we know today. In the 1960s and 70s, concern for imperiled wildlife and clean water generated the ESA and the Clean Water Act. Unfortunately, the incentives based programs have never kept pace. As a shared interest of all citizens, the Farm Bill programs have expanded over the past 30 years to meet the public's expectations for clean air, water, and healthy soils. Unfortunately, no equivalent incentive program has been established for our imperiled wildlife species.

Arguably, the management of endangered species and their associated habitats has received the same level of public support and are valued by the public just as highly as clean air and water. However, without adequate incentive programs, the financial burden to ensure quality habitats for endangered species has largely fallen to state wildlife agencies and the private landowner. Some attempts have been made by federal agencies, for example the FWS's Partners for Fish and Wildlife Program, the Working for Wildlife Program administered by the Natural Resource Conservation Service, and the Livestock Indemnity Program administered by the Farm Service Agency. All of these programs are limited in their effectiveness for endangered species recovery due to funding, or limitations in policy or rule. These limitations impose an administrative hurdle, or require the private landowner to give up so much control over their property that participation by private landowners is too low to positively affect endangered species populations.

Programs dedicated to providing incentives to private landowners that are specifically designed to manage for endangered species with the appropriate level of funding are essential. One incentive option for private landowners would be a "pay for presence" program included in the conservation title of the Farm Bill that incentivizes private landowners to manage their farms or ranches in a way that promotes habitat for endangered species or incentivizes tolerance for endangered species. For example, wolf recovery in Arizona is a controversial topic due to wolves turning to livestock as a food resource. This situation is rife with conflict pitting private enterprise against the public trust responsibility to recover endangered species. A program that provided incentives to ranchers to allow wolves to expand their territories without harm or harassment that provides a financial incentive payment that makes the rancher economically sustainable will eliminate the inherent conflict in wolf recovery and ensure rural economies are not hindered by endangered species recovery. The most important aspect of any incentive program for private landowners is that participation in the program is voluntary or is the private landowner's choice or decision.

This concept could be applied to any endangered species as long as the program is flexible enough to provide incentives that work economically for the landowners and meet the public trust responsibilities for endangered species management. This program would also allow for any partner, such as state wildlife agencies, non-profit organizations, local communities, or other interested stakeholders to assist in endangered species recovery by providing the delivery mechanism for these programs.

Another option would be to assess the current programs designed for endangered species recovery on private lands, and to identify areas for legislative action, changes in rule or administration, increase or reallocated staff and financial resources, and other opportunities for improvement. Any assessment of the current programs should be transparent and at a minimum

include input from private landowner's themselves, non-profit organizations representing agricultural, wildlife, and recreation, state fish and wildlife agencies, and local units of government. For example, the Working Lands for Wildlife Program administered by NRCS is a joint effort to preclude ESA listing or to recover listed species. This program originally identified eight target species that were chosen without widespread input from state wildlife agencies, local units of government, or other stakeholders. The program has been successful in regards to the Sage Grouse Initiative, but has been limited in the recovery of the seven remaining target species. There are several reasons for the lack of progress related to those other species, including limiting participation to agricultural producers only, insufficient staffing and incentive funding for private landowners, and private landowner's resistance to regulatory control placed on them through ESA if they were to participate. Many of the limitations can be resolved through administrative changes, transparency, and appropriate resources.

"The conservation of natural resources is the fundamental problem. Unless we solve that problem it will avail us little to solve all others." -**Theodore Roosevelt**. Since the early 1900s, leaders of our country have recognized that the citizens of the United States value wildlife and our nation's natural resources. Incentives for private landowners will ensure that the public trust responsibility for managing endangered species will be met now and into the future.

23. Both of your testimonies referenced a 2014-2015 Association of Fish and Wildlife Agencies survey, conducted to better understand state agencies' individual and collective resources to manage fish and wildlife within their borders. You shared some statistics gathered in that process. Would you please share the survey results in their entirety for the hearing record so that the Committee can review them?

RESPONSE: Association of Fish and Wildlife Agencies and Arizona Game and Fish Department. (2017). The conservation machine. DOI: 10.13140/RG.2.2.19173.19681. Retrieved from https://goo.gl/8g4E26 July 6, 2017.

In closing, I want to thank Chairman Barrasso and Ranking Member Carper for the opportunity to respond to your thoughtful questions. I believe this bipartisan dialogue is an important step forward in improving America's amazing systems of conservation.

Larry D. Voyles
Director
Arizona Game and Fish Department

Senator BARRASSO. Well, thank you so much for being with us today and for your testimony.

I would like to next turn to Janet Coit, who is the Director of the Rhode Island Department of Environmental Management.

Thanks so much for being with us today. Welcome to the Committee.

STATEMENT OF HON. JANET COIT, DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Ms. COIT. Good morning, Chairman Barrasso and members of the Committee. It is good to be here. My name is Janet Coit, and I am the Director of the Rhode Island Department of Environmental Management. We oversee the fish and wildlife agency and also have authority over all of the environmental protection and natural resource laws. I have worked under two Governors and been the Director for 6 years, and am proud to now work for Governor Gina Raimondo.

Testifying before the Senate Environment and Public Works Committee today is really an honor and a little bit surreal. I worked as a professional staff member and the counsel for the Committee many, many years ago, leaving 20 years ago, right when this Committee was about to report out the Kempthorne-Chafee-Baucus-Reid Endangered Species Recovery Act. And even though that was two decades ago, I just wanted to spend a few moments talking about that experience, and I think it does bear looking at that bill, S. 1180.

That was reported by a bipartisan vote of 15 to 3 after a very extensive process. We had 3 years of negotiations and hearings. It was wonderful to work for Senator John Chafee, who was the fantastic Republican Chairman of this Committee who held conservation values very dear. He liked to quote Yogi Berra, and he would say "you can see a lot by looking," and given that philosophy, we did many, many field hearings.

And we went to Wyoming and talked to ranchers about black-footed ferrets; we traveled with John Turner, who was the Director of the U.S. Fish and Wildlife Service. We went and met power companies and timber companies. We talked to farmers and ranchers and took a look at what was actually happening, and it was very, very clear then, and is now, that the Endangered Species Act has a very different impact and reputation in different regions of this country.

So I am pleased to give you the Rhode Island perspective, and also my perspective, which is a different one; it is one of a policy staffer for the EPW Committee who now is overseeing a State agency with considerable budget constraints, a very important and critical mission, and really the need to have public engagement and buy in if we are going to be successful.

So turning to some of the major points I want to make. The time is moving too fast here. So, first, strong Federal role, critical. Until the Endangered Species Act was enacted in 1973, signed into law by Richard Nixon, we didn't have a really strong set of legal authorities to protect threatened and endangered species, so that Act is really one of the finest conservation laws in the world and has had many, many successes. And it is critical to have that Federal

backstop to ensure that, whatever happens, we know we have authorities to protect threatened and imperiled species.

So I just want to say that I know everyone here and my comments, too, are about making the Act more successful. More successful for conservation, more successful for State agencies. We are all geared toward doing that, and there is a tremendous workload, and it would be wonderful if you could have a bipartisan bill as you did 20 years ago.

I think this Committee is known for working through intractable issues with respect, and I think that a lot of work will be needed in order to get a bipartisan Endangered Species Act modernization bill, but that it is possible if people are very thoughtful and take a look at how this Act touches down so that we don't undermine some of the work that is needed in places like Rhode Island in the northeast while we listen to some of the experiences from the West.

The next point I want to make is just to endorse the need for strong State agency engagement. We are the boots on the ground. Our biologists are foresters, and we are intermittently involved in the community, so we know both the conservation and the science, but also the industries and the companies, the landowners that we need to work with. So full participation and engagement of the State agency is critical in listing decisions, in recovery plans, in monitoring, in outreach, in collaboration.

And I can say that in the northeast, with Region 5, we have a very close working relationship, and that gets me shortly to my point about the New England cottontail. But Wendi Weber, the head of Region 5, has been terrific at reaching out to the States to collaborate.

Adequate resources. I won't repeat what my colleagues have said, but the adequate resources for conserving species are critical to any reforms, and an ounce of prevention is worth a pound of cure. We all want to keep species from getting on the list. That is the success. And once on, getting them off.

So I want to again mention the State wildlife action plans. We put a tremendous amount of working into those, working with stakeholders, and they are really serious science based documents with lists of critical species and with strategies, and they help us spend resources wisely. So the States have those plans. Unfortunately, at least in my State of Rhode Island, we don't really have sufficient resources to carry them out.

Let me just summarize one last point. The New England cottontail is a great example of how an imminent listing motivated people to get together really coordinated or kicked off by the U.S. Fish and Wildlife Service, but then with the States as equal partners, the Wildlife Management Institute administered the process, and by doing that we were able to take a species that was about to be listed, that had lost 86 percent of its habitat, and prevent it from being listed so that Secretary Jewell was able to announce that listing was not warranted.

And we have a whole cadre of private landowners, partners, and excited folks who are working together on conserving the New England cottontail, and we have captive breeding programs, and we are seeing that species, and the 65 other species that depend on

that young forest habitat, flourish because of the way we worked collaboratively across many States.

Then I will just end by saying what you have so many times in this Committee, that one size does not fit all. We are very resource constrained. Fortunately, the sportsmen and women of this country have seen to it that we have funding for game species. It has been decades that we have been looking for an adequate source of funding for non-game species.

In a State like mine, 80 to 85 percent of the funds we have are already restricted to game species. It is very difficult to find the resources to put toward our engagement with the Endangered Species Act or the whole host of non-game species that are under our authority and stewardship as a State agency.

So thank you. I look forward to any questions, and thank you very much for having me.

[The prepared statement of Ms. Coit follows:]

TESTIMONY OF JANET COIT
DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
Regarding the Need to Modernize the Endangered Species Act
May 10, 2017

Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee. It is good to see my home-state senator, Senator Whitehouse.

My name is Janet Coit, and I am the Director of the Rhode Island Department of Environmental Management (RIDEM). The RIDEM has authority over all environmental protection and natural resource laws in Rhode Island. My Department's Natural Resources Bureau encompasses a wide range of authorities and programs including fish and wildlife, agriculture, state parks, beaches and campgrounds, forestry, environmental police, marine fisheries, and management of the state's two major fishing ports. I have been the director for over six years, serving two governors – and am proud to work for Governor Gina M. Raimondo.

Testifying before the Environment and Public Works Committee (EPW) holds special meaning for me as I used to be a professional staff member and later counsel to this Committee, serving under another Republican Chairman, the late-Senator John Chafee. Twenty years ago, I left that position to move to Rhode Island, just as this Committee was wrapping up work on the Endangered Species Recovery Act of 1997 – the Kempthorne-Chafee-Baucus-Reid bill. That bipartisan legislation was reported out of EPW by a vote of 15-3. And, despite the passage of twenty years, a careful review of that bill may provide useful. Its goals were: (1) to maintain and improve conservation of endangered and threatened species, (2) to improve and expedite recovery, and (3) to reduce the regulatory burden on property owners. That legislation, S. 1180, was the product of more than three years of hearings and negotiations. Of course, that was a very different time. Still, I believe that effort demonstrates both the careful work that is needed to reauthorize the Endangered Species Act, and the bipartisan track record of EPW, where senators with a wide range of experiences and perspectives can hammer out a good compromise even on issues that seem intractable.

Please allow me one more comment about the past. It was truly an honor to work for Senator John Chafee, and I learned a tremendous amount from him that has guided me in my career. He was a staunch and effective supporter of the environment who felt that leaving the land better than you found it was core to conservative principles and good citizenry. He was proud of our strong environmental laws and felt they were central to maintaining the vitality of our communities. He liked to quote President Teddy Roosevelt, and also Yogi Berra. One of his favorite Yogi Berra quotations was: "You can see a lot by looking." Under his leadership, the EPW Committee Members and staff made many field trips – some with U.S. Fish and Wildlife Service (USFWS) Director John Turner – to talk to ranchers, farmers, timber

companies, fisherman, municipal leaders and others in the west. Those experiences made it clear to all that the Endangered Species Act has a different reputation and impact in different regions of the nation. That remains true today. And, I am honored to offer testimony from the perspective of Rhode Island, and also from my perspective – that of a former Committee-staffer who now oversees the fish and wildlife agency and other conservation and environmental programs in Rhode Island, who works across state lines in New England, and who confronts the management reality of competing priorities, limited funding, and a mission that requires public support and understanding in order to achieve success.

People in Rhode Island are thrilled to see bald eagles soaring and nesting again in our state, peregrine falcons diving from city buildings, piping plovers successfully nesting on our beaches. We have the largest population of the federally-endangered American Burying Beetle in the world on Block Island – and in 2015 the General Assembly made it the official state insect! Volunteers have rallied to help with conservation of the New England Cottontail. And, our fishermen – while sometimes frustrated by the morass of regulations they must contend with day to day – have a strong interest in avoiding endangered whales and sea turtles and protecting the species upon which their livelihoods depend.

The Endangered Species Act is one of our strongest and most important environmental laws. And it has had many successes – even while the greatest success is keeping plants, fish and wildlife off the list. All of my comments are aimed at increasing the success of our combined efforts to protect the ecosystems that support the diversity of life on our planet.

STRONG FEDERAL ROLE

Until the enactment of the Endangered Species Act in 1973 – signed into law by President Richard Nixon – the federal government did not have strong enough legal authority to list and conserve plants and "any member of the animal kingdom." The ESA has been tremendously important, and ultimate decision making for listing and conservation belongs with the federal government.

Rhode Island is one of several states that lacks a state-level law to protect threatened and endangered species. Thus, we depend on the clear protections and enforcement mechanisms, and the consultations under the federal ESA as a foundation for our conservation work.

The debate is really about the mechanisms and tools to perform conservation work – and how to give our states and our species the best chance to succeed. I applaud you for looking for common sense reforms, a difficult task that requires a careful and thoughtful approach and, more importantly, resources. No modernization effort will be successful without adequate resources at the federal, and especially the state level, to carry out the enormous workload ahead.

STRONG STATE AGENCY ENGAGEMENT

I will not take the time to review the broad authorities that states have over the fish and wildlife within their borders. The Committee is well aware of that fact, and it is reaffirmed in the Endangered Species Act. State fish and wildlife agencies are the key on-the-ground and in-the-water biologists, foresters and managers who work with partners and landowners to conserve land, water and wildlife.

The states should and do play a central role in habitat conservation and fish and wildlife management. Our state wildlife action plans provide comprehensive science-based strategies for habitat conservation and identify Species of Greatest Conservation Need. While this list only catalogues the important species for the various states and regions, it provides a roadmap for research, and helps us spend our limited research dollars on meaningful and impactful projects, and keeps us from spending both money and time on projects that will not benefit the greater good.

Federal decisions will be improved and our recovery efforts hastened by full participation and engagement of our state fish and wildlife agencies in ESA implementation. Indeed, any successful effort to promote conservation would benefit from strengthening state engagement and opportunities to play a bigger role in:

- Listing decisions – Data and input from state agencies are critical sources of scientific information, and better communication with the public is needed. Ensuring broad scientific input is essential to confidence in listing decisions.
- Target Populations/Recovery plans – Essential to ensure adequate representation from the states in developing and implementing recovery plans.
- Monitoring – States have the best capacity and knowledge, and are on the front lines for the management and monitoring of species. Resource constraints are limiting.
- Outreach – Coordinating messages, strategies and outreach with state agencies who have relationships and intimate knowledge of their communities is essential to success.
- Collaboration – Working with the states to partner with locally impacted industries, non-governmental organizations and communities on information and data gathering increases both the resources being brought to bear on a given issue, as well as increasing the buy in of that information and the decisions that stem from them.

The states stand ready to work with the Committee on ESA reform. By tapping our collective experiences, working with the regulated community and with the environmental community, I believe a bi-partisan modernization bill can be developed to reform the ESA in a manner that improves efficiency and effectiveness and maintains the Act's original intent. Decisions under the ESA are based on science, and improved through full engagement of multiple scientific sources. For many species, like the American Burying Beetle – with the only natural population of this endangered critter east of the Mississippi River in Block Island – our state biologists have the best data from which to set targets and make recovery decisions. Fortunately, in Rhode Island the USFWS is in routine communication with RIDEM on recovery plans.

NEED FOR ADEQUATE RESOURCES

Our nation's state fish and wildlife agencies have a strong track record of recovering wildlife species when we combine robust collaboration with sound science and sufficient financial resources. For most mammals, birds and sportfish, this is possible because of the $1 billion in annual funding that sportsmen and women pay in excise taxes through the Pittman-Robertson and Dingell-Johnson programs that support state-level conservation. However, for the more than 20,000 so-called "non-game" species of wildlife, states collectively receive less than $110 million annually (state/tribal wildlife grants, section 6 funding, etc.), despite the fact that most of the species of greatest conservation risk are in this category.

The best way to facilitate collaboration and proactive, non-regulatory measures is ensuring that there are sufficient resources for the state agencies to implement voluntary recovery measures before more expensive emergency room measures (often regulatory) are needed. As the adage goes: An ounce of prevention is worth a pound of cure. The best investment we can make to save species and reduce the need for regulatory restrictions under the Endangered Species Act is investing significantly in the State Wildlife Action Plans, which are currently funded through the $62 million State and Tribal Wildlife Grants program. These Action Plans, developed collaboratively with local stakeholders, lay out the steps

necessary to recover wildlife and avoid regulatory approaches. By investing in their implementation, you will save species and reduce both regulation and litigation. The Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources made recommendations last year to save thousands of species by ensuring states have sufficient resources for collaborative, proactive measures.

Unfortunately, the RIDEM has experienced shrinking pains over the past fifteen years. My department has been reduced from 540 to 390 FTEs, while our authorities and scope have grown. Our Division of Fish and Wildlife (DFW) has 47 staff (seven less than ten years prior), who handle management of commercial marine fisheries, as well as the traditional land-based fish and wildlife conservation, recreation, research and management responsibilities. Ninety percent of the funding to our DFW carries restrictions (such as hunting license revenues) and only five percent of our federal funding is available for endangered species work.

RIDEM receives only $17,500 each year through ESA section 6 and $23,000 each year through ESA recovery funding – which covers just a fraction of the obligations and initiatives we carry out relating to conservation of candidate, threatened and endangered species. While my department would relish the opportunity to engage further, that would require additional staff and funding. Right now, in order to follow through on our commitments, we must depend on partners and draw funds from non-ESA sources, which diminishes our conservation impact for other native species. For example, our small marine fisheries staff is working on a complex section 10 permit to address conservation of the endangered Atlantic Sturgeon to protect our fisherman from violating the ESA – using limited state funds for this purpose. This marine team is also involved in recovery plans for the sturgeon, whales, sea turtles and other species. We have no dedicated funding for this work, and it has a very significant impact on our state program. I know this to be true in other states; so, for many states, an increased state role would require additional federal funding.

Some states may not have capacity to deliver. This is an important point. Any modernization effort that calls on increased state engagement will have an uneven impact in the fifty states. One size does not and will not fit all. More resources are needed at the state and federal level if we are to succeed with any ESA reforms. Investing in conservation, wildlife and the outdoors pays off. The Outdoor Industry Association just released The Outdoor Recreation Economy report last month that quantifies that the outdoor recreation economy generates $887 billion in consumer spending annually, sustains 7.6 million American jobs and generates $65.3 billion in federal tax revenue and $59.2 billion in state and local tax revenue each year. Protecting wildlife and habitats makes economic sense and investing up front pays dividends in the future.

COLLABORATION TOWARDS A DEFINED GOAL – NEW ENGLAND COTTONTAIL

As with any effort, working together requires attention to process, ground rules, and identification of a defined goal up front. Success usually depends on building trust and understanding over time. I want to highlight an example that demonstrates the powerful value of engagement, cooperation and collaboration between the states and the USFWS. I believe that the Northeast Region of the USFWS, and the northeast directors, have an especially constructive working relationship fostered through open communication and a commitment to solving problems together. This is especially important when dealing with range-wide issues that cover multiple states. In the northeast, this is frequently the case, as it was with the New England Cottontail, which inspired the popular *Adventures of Peter Cottontail* by Thornton W. Burgess.

The New England Cottontail (NEC), the only rabbit native to New England, was classified as a candidate for ESA protection in 2006. While Rhode Island and other states had already been interested in this species, a formal effort kicked off in 2008 that had the right team and approach to commit to

conservation. That effort – involving six states, tribes, federal agencies, non-profits like Wildlife Management Institute, academia and others – was successful, culminating in the 2015 announcement by the Secretary of the Interior that listing under the ESA was no longer warranted.

It is valuable to look at the strategies that led to success. They included:

- Team approach. Everyone involved knew it could not be done alone.
- Commitment. The executive team committed to a goal to "promote recovery, restoration and conservation of NEC so listing is not necessary." And they committed funds and staff, and agreed to follow through.
- Dedicated Resources: The States and regional office of the Service pooled resources to fund habitat restoration efforts and facilitate collaboration among stakeholders.
- Business model. The group developed by-laws, metrics, annual performance reviews and made a commitment to adaptive management. States signed conservation on the ground agreements with the USFWS in support of the conservation plan.
- Private Landowner Engagement. From the start, partners worked on a Working Lands for Wildlife strategy where farmers and timber companies agreed to reestablish young forests while continuing to farm or timber their private property.
- Clear goals. Critical to the success was the collaboration around setting population targets and measurable objectives to address threats – specific goals like the number of acres in conservation. With this, the states and other team members had a high level of certainty that the conservation effort would be effective

In Rhode Island, along with the USFWS, the Natural Resources Conservation Service has been a critical partner in implementing the private lands strategy, while my department is creating hundreds of acres of early successional habitat on state lands.

RIDEM has spent over $1.7 million on the NEC conservation effort, and engaged with many partners – with great messages about the benefits to NEC and other species. We have funded:

- University Rhode Island Regional Genetics Laboratory
- Captive breeding program at Roger Williams Park Zoo
- Establishment and monitoring of a newly established population on Prudence Island
- Redistribution of RI Captive Bred NECs and their progeny to populations in other states
- Creation of young forest habitats on state and private properties
- Outreach and a volunteer program (supporting research on distribution and abundance)

This was a significant partnership, with over 100 participants. And, in Rhode Island, there was no controversy or outcry, even when conservation maps encompassing major portions of the state were unveiled. That is because the messages were on target, and all participants were able to explain the goals

and approach. People generally support conservation when they understand how it impacts them and believe it is science-based and likely to succeed. In cases where success avoids the restrictions under the ESA, you have a motivated group of stakeholders.

While the NEC model was intense and time-consuming, I believe it can be replicated to result in other successful initiatives to avoid listings. We certainly are eager to continue this approach. Having said that, RIDEM could not sustain this level of funding and participation across too many fronts.

INCENTIVIZE EARLY ACTION

Incentivizing early action with states and private landowners is all upside. As mentioned earlier, this was a big focus of the bill approved by this committee in 1997. One way to incentivize early action was described above with the NEC.

At RIDEM, our marine fisheries program is also geared to making science-based and conservative management decisions to ensure we avoid putting species at risk. The tripwire of triggering the ESA is a powerful motivator to promote progressive management strategies. Fishing businesses partnering with state and federal scientists have found many ingenious ways to prevent unintended and unwanted bycatch of endangered species through improvements in gear technologies (e.g., turtle exclusion devices or TEDs), electronics (e.g., pingers to keep whales and dolphins away from nets), and management strategies such as whale alerts and "move along" networks. Continuing this partnership and research will continue to improve our success in the marine environment and will help keep species from being listed in the first place.

Other approaches that encourage conservation on private lands through "safe harbor" agreements, mitigate threats and incidental take, and expand existing tools and opportunities to prevent species from being listed provide an area for further exploration.

CLIMATE CHANGE

Rhode Islanders are concerned about climate change – and over the changes they see now: sea levels have risen, rainfall is more intense, more high temperature days, and warming waters. In fact, the waters off New England are changing at a much faster pace than almost anywhere else on the planet. These changes are affecting species and habitat, and making it even more important to share data and promote scientific research to understand the complex interactions that come with these changes. We are concerned about the impact of acidification on our shellfish, a more indirect and esoteric outcome of increased carbon dioxide in our atmosphere, but no less impactful.

As our lobstermen and gillnetters cope with gear restrictions to prevent harming endangered whales, we observe that copepod abundance and distribution changes could be the reason for an increased number of gear interactions as historical feeding grounds for whales are now finding their way further inshore. Thus, the measures imposed on our fishermen who are reducing traps and vertical lines, may not be successful if right whales are traveling and moving from traditional feeding areas to places where they are more likely to encounter fixed gear.

We also find that some of our iconic cold water New England species, like winter flounder and Atlantic cod are in periods of prolonged low recruitment and may be facing a productivity regime change given the changing marine environment. Coupled with the expansion of warmer water species in to these same New England waters, which changes the dynamics of the ecosystem by introducing large numbers of new predators and prey into areas where they were not before, we find ourselves under-resourced examine these issues and to design and implement the needed research in an effort to keep new species from facing

listing. This is an area where the states require further collaboration with the National Marine Fisheries Service to understand better the complexities associate with climate change and to develop new tools and new thinking to protect our traditional resources from becoming listed. Also, we want to take advantage of the new opportunities as they arise.

In 1973, climate change was not on the minds of the sponsors of the ESA. Adaptive management was, however, and the need to look at cumulative impacts and protect critical habitat. Issues around critical habitat designation have been particularly challenging, and earlier legislation would have moved that to later in the process – as part of the recovery plan. The federal agencies face a tremendous backlog when it comes to listing decisions, consultations, habitat conservation and recovery plans. Improved implementation of the act will require exploration and use of flexible tools and multi-species approaches that improve efficiency and effectiveness – and this work becomes more urgent as we look at the rate of change in our state. Fortunately, the Act has many flexibilities now that can and should be expanded.

In Rhode Island, we take preserving our natural heritage for future generations very seriously. We want to conserve the diversity of ecosystems upon which species depend – and do it in a way that increases understanding and buy in with a high likelihood of success. I will close by once again, referring to former Chair Senator John Chafee. He often said, "give nature a chance, and she will rebound – but you must give nature that chance." I see the ESA as the critical federal backstop to ensure that we give nature a chance. I appreciate the Committee Members interest and commitment to conservation. Thank you.

Senate Committee on Environment and Public Works
Responses to question following the May 10, 2017 hearing entitled
"Conservation, Consultation, and Capacity: State Views on the Need to Modernize the Endangered Species Act"

Questions for Janet Coit,
Director, Rhode Island Department of Environmental Management

Chairman Barrasso:

1. Director Coit, in your written testimony, you noted that your department receives each year only $17,500 through ESA section 6 and $23,000 through ESA recovery funding. I am struck by the smallness of these amounts. In 2015, noted conservationist Lowell Baier wrote in his book, Inside the Equal Access to Justice Act, that when all costs are considered, including free reimbursements and related personnel costs, federal taxpayers spend as much as $137 million per year on environmental litigation relating to the Endangered Species Act alone.

   Do you agree that species would be better served if more of those taxpayer dollars flowed to state agencies like yours to be spent on conservation and recovery activities, and fewer flowed to lawsuits against the U.S. Fish and Wildlife Service?

   Answer: I agree that more funding for state agencies is needed to improve species conservation and recovery activities. Also, spending money on conservation rather than litigation makes sense. Improved collaboration and coordination between state agencies and the U.S. Fish and Wildlife Service could result in redirection of funds and resources to investment in species monitoring, protection, and habitat management. And, a new or better strategy to resolve or settle multiple lawsuits would be welcome.

   Conservation efforts aimed at preventing species from becoming threatened or endangered are more effective than efforts to recover a species after it has been listed. The New England cottontail (NEC) strategy is an excellent example of that approach, and Candidate Conservation Agreements bring people together at a time when states have more options. Increased funding for non-game species is needed for conservation efforts to be successful. Increasing the federal investment in the State Wildlife Action Plans, funded through the State and Tribal Wildlife Grants program, would be a smart and effective way to improve conservation successes. Also, please note that the Rhode Island Department of Environmental Management (RIDEM) invests significantly more funding in protecting endangered species than what we receive in federal funding through the ESA. Millions of dollars from State Wildlife Grants and Wildlife and Sport Fish Restoration have been spent on species recovery and animal protection, including piping plover and New England cottontail.

2. Director Coit, some environmental groups claim that enhancing the role of state fish and wildlife agencies in managing threatened and endangered species would be tantamount to gutting and repealing the Endangered Species Act. Do you agree?

   Answer: From the Rhode Island perspective, the Department of Environmental Management has been a part of effective regional collaborations by state agencies and the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in the northeast for several species, including the New England cottontail. This demonstrates that partnership and resource sharing can produce positive results. State agencies have valuable expertise, and state biologists have important population data and intimate knowledge of local natural resources. This knowledge and expertise support the position that state fish and wildlife agency input should be integral to strategic decision-making for candidate and listed species, and that states should take a central role in developing science-based recovery plans.

   This type of collaborative approach provides an improved opportunity for all state and federal agencies to make an impact in the recovery process and to avoid complications related to litigation. That said, this approach to management for species of concern is still being tested and will take years until results are realized. The ESA has been an important forcing mechanism and backstop that has brought public and private partners to the table in the northeast region.

3. Director Coit, in your written testimony, you referenced Rhode Island's encouragement of technological innovation to protect wildlife. In March, Senators Carper, Inhofe, Booker, Boozman, Whitehouse, and I introduced the bipartisan "Wildlife Innovation and Longevity Driver" Act, or "WILD Act". This legislation created five cash prizes for technological innovation, including one to promote wildlife conservation and one for protecting endangered species.

   Can you expand on how Rhode Island's Department of Environmental Management is encouraging use of technology and innovation to prevent the need to list species in the first place under the Endangered Species Act?

   Answer: In Rhode Island, with regard to wildlife, we have invested significantly in work, conducted at the genetics laboratory at the University of Rhode Island (URI) focused on identifying New England cottontails based on genetic markers. New techniques and development of the capacity to run samples from other New England states to support on-the-ground research for this imperiled species have been an important part of the restoration process. This project has been a collaboration with numerous partners within the state of Rhode Island, around New England, and in the U.S. Fish and Wildlife Service. Importantly, the NEC restoration effort will improve young forest habitat relied on by at least 65 other species.

With regard to marine species, we have approached new technologies from numerous angles. These include: improving harvest and discard information by participating in projects that use tablets and smart phone applications to record fishermen information; supporting use of gear technologies to reduce bycatch; and piloting progressive management strategies that reduce bycatch (e.g., sector program, aggregate program). Strategies to reduce bycatch help keep marine species from becoming imperiled.

Warming waters, acidification and other issues associated with climate change are posing new challenges and will call for innovative solutions. Cash prizes have been effective in the past at promoting new approaches to problem-solving. At a recent national meeting, I heard this same message from the Honorable Matt Mead, Governor, State of Wyoming, in the context of capturing carbon emissions from coal-fired power plants.

4. Director Coit, in an article in Eco-RI (Rhode Island) entitled "Trump's Win Creates Concerns About Environment, "Rhode Island Governor Gina Raimondo stated that Trump's win "puts an even greater burden on states to take action and be creative" with regard to the environment." You were quoted in the article stating: "Now we have to stop, regroup, and guess that the leadership will have to come from the state level. I guess we have to look at ourselves more."

a. Can states like Rhode Island lead on environmental issues, such as taking care of species that need help?

Answer: States can and do lead on many environmental issues, and cross-state collaborations and sharing of best practices are extremely valuable given budget constraints. As mentioned, Rhode Island does not have a state law that protects at-risk species. And, in the northeast, many of the imperiled and listed species are migratory and/or have ranges that cover multiple states (with varying capacities); federal efforts provide an important consistency and backstop. In addition, it is important to recognize that states are not uniformly prepared and may differ in their willingness and ability to contribute to or lead on ESA matters.

I am proud that RIDEM has been a leader in taking proactive steps to conserve fish and wildlife, beyond what is required under federal law. Areas where we have led include management of tautaug, whelk, menhaden, river herring and sea ducks. Also, we have been willing to test progressive strategies, particularly as regards marine fisheries. However, one state cannot effectively do this alone or comprehensively. In order to succeed, we need a working partnership among states, the federal government, and other stakeholders. The cumulative impact of the efforts of many partners within a species range is needed to make progress in the recovery of species.

As mentioned above, species like the piping plover and New England cottontail are examples of restoration work that the RIDEM has supported as part of a large initiative with many partners. Rhode Island does not have sufficient staff to work independent of the U.S. Fish and Wildlife Service on conservation of threatened and endangered species.

RIDEM staff biologists possess notable expertise in some areas of species populations, e.g., American burying beetle and sea ducks. Where expertise and local data and knowledge exist, there should be a clear opportunity for state input and a collaborative approach to evaluation for listing decisions and establishment of strategies for restoration, recovery and delisting.

b. Are states capable of leading on species issues?

Answer: While states are "capable of leading on species issues" and play a critical and historic role on management of fish and wildlife, it would be a mistake to frame the ESA discussion as an "all or nothing" scenario for federal rule. Depending upon the species and depending upon the state, there are important opportunities for state leadership. However, species do not respect state boundaries and their ranges and life cycles may cross jurisdictional lines. Further since many states lack a state-level law to protect threatened and endangered species, it would be easy to envision a patch-work scenario where levels of habitat protection differ from state to state in ways that discourage recovery. Ultimate decision making for listing and recovery of threatened and endangered species belongs with the federal government.

Ranking Member Carper:

5. Does your state have a law that requires the listing, protection and recovery of endangered species, and if so, does that law cover both plants and animals?

   Answer: Rhode Island does not have a state law that requires the listing, protection and recovery of threatened and endangered species.

6. Does your state law prohibit the killing or wounding of endangered or protected species, actions that are known as a "take?"

   Answer: Rhode Island does maintain a separate state list of endangered species; however, statutory authority to protect listed species is limited to those federally listed species under the ESA. Rhode Island General Law § 20-37-1 states, "It is the policy of this state to contribute to the maintenance of a high quality environment within the state and elsewhere for the benefit of the safety, health, and welfare of its citizens by forbidding the importation, sale, offering for sale, transportation, storage, traffic, ownership, or other possession or use of any dead or live animal or plant or any part of the skin, other tissues, or body, whether raw, manufactured, processed, or preserved, of any species of animal or plant considered by the United States secretaries of the interior or commerce to be under the provisions of the Federal Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq."

7. Does that law define changes to habitat that adversely affect endangered or threatened species as "take?"

Answer: No. Rhode Island General Laws do not define changes to habitat as "take" of a species.

8. Is it fair to say that first and foremost, your state is seeking closer collaboration with your federal partners in the endangered and threatened species conservation process and more federal financial resources for species conservation? Do you believe progress can be made administratively under the current law?

   Answer: Yes. That is a fair description of the Rhode Island position. The endangered and threatened species conservation process will not be successful without adequate resources, and more are needed at state and federal levels to carry out the tremendous workload, particularly as relates to conservation of so-called "non-game" species. Rhode Island would not be interested in obtaining sole responsibility for the administration of and actions associated with endangered species recovery.

   Progress can be made administratively under the current law, and my testimony provides examples of how flexibility and collaboration under the ESA have worked in many instances in the northeast. Approaches that are working include: State Conservation Agreements, Candidate Conservation Agreements (including with Assurances), Safe Harbor Agreements, and Habitat Conservation Plans. Codifying standards for increased collaboration for states that want to engage further in ESA decisions may be valuable to ensure consistent national standards. With sufficient financial resources, more progress can be made under the current law. There are many good examples of non-regulatory approaches that have worked to conserve candidate species taking advantage of existing flexibility under the ESA.

9. Does your state have a conservation plan or efforts underway to prevent species, including non-game species, from becoming threatened or endangered? If so, do you feel you have adequate funding to successfully implement that plan?

   Answer: Yes. RIDEM, with assistance from The Nature Conservancy and the University of Rhode Island, was the first state in the nation to publish its ten-year revision of our State Wildlife Action Plan (WAP). The 2015 RI WAP is a comprehensive plan that provides direction to and coordination of wildlife conservation efforts over the coming decade. Rhode Island is home to almost 900 vertebrates and an estimated 20,000 invertebrate wildlife species that range from the scenic coastline to upland and wetland forests. Included in this natural diversity are a suite of mammals, birds, reptiles and amphibians, fish and invertebrates that the State has identified as species of greatest conservation need.

   No. Rhode Island does not have adequate funding to successfully implement these plans for all threatened and endangered species. The RIDEM and our Division of Fish and Wildlife have been downsized in the past ten years. And, the vast majority of our funding is restricted and not available for non-game conservation. Only five percent of our federal

funding is available for endangered species work. The constraints on our staff and resources make it impossible to implement fully the RI WAP.

Some current examples where RIDEM resources are stretched thin include our work on Jonah crabs. This was a completely unregulated marine species, and RIDEM has adopted regulations to begin to get that fishery under control in order to keep it from becoming a stressed population. Additionally, RIDEM has developed a research project in partnership with URI to procure some fundamental biological information on this species which could be used for analytical assessments in the future (using State and Tribal Wildlife Grants funds). We are about to launch two new projects, one on Atlantic sturgeon and one on windowpane flounder, using the same concept, and stretching federal funds. We always try to be resourceful and seek out opportunities to partner with scientists, stakeholders, and state and federal agencies to conserve species before they are imperiled.

10. How much does your state spend on all species management and conservation (all plants and animals, including fish, game and non-game species)?

Answer: The RIDEM Division of Fish and Wildlife spends about $9.5 million annually on all species management and conservation including freshwater, marine fisheries and wildlife. This includes spending on habitat management, scientific research, outreach, monitoring, hatcheries and the administrative support staff to accomplish these projects. Not included are public access projects like boat ramps, fishing or hunting access or shooting ranges.

11. How many employees do you employ in your fish and wildlife/game agency?

Answer: The RIDEM Divisions of Fish and Wildlife and Marine Fisheries have a total of 47 fulltime staff, 13 contractual staff and 17 seasonal staff.

12. How much do you spend for imperiled non-game species conservation and what percentage is that relative to the total amount invested in all species conservation? How many employees are devoted to non-game species conservation work?

Answer: The RIDEM Divisions of Fish and Wildlife and Marine Fisheries spend approximately $600,000 annually, which represents 6% of the total spent on all species conservation. Currently, the equivalent of three staff members and one seasonal employee are devoted to imperiled non-game species conservation for wildlife, freshwater and marine fisheries. Additionally, contractual agreements support American burying beetle habitat management and piping plover restoration projects.

13. How much and what percentage of your non-game species conservation spending comes from federal funds? How much does the state invest? What is the source of that funding?

Answer: Approximately $580,000 or 70% of the funding for non-game species conservation in Rhode Island derives from federal funds. This is primarily from the State and Tribal Wildlife Grant program funded through the USFWS Wildlife and Sport Fish Restoration program; we receive a small amount from the ESA and for White-Nose Syndrome. Hunting and fishing license receipts and state general fund dollars are used for match along with in-kind match provided by partners for projects that are conducted through contractual agreements. Partner projects, like piping plover protection, use in-kind match. Match totals about $280,000 for all non-game projects.

The match requirement for State and Tribal Wildlife Grants (65/35) has been challenging for states to match directly; to address this, we have been partnering with organizations like the University of Rhode Island and The Nature Conservancy to leverage their in-kind match (such as work by professors), as well as the time and expertise of staff and talented graduate students.

14. States have primary authority for species management and conservation until species are imperiled; the Endangered Species Act is intended to be a last backstop against extinction. Species are typically listed after state management has proven insufficient to protect habitat and prevent species decline. If states have the capacity and resources to address species conservation and recovery, why do you believe so many species are imperiled, especially considering the ample notice that often exists that species are at risk?

Answer: As mentioned above, I do not believe that Rhode Island, nor many other states, have the capacity, resources or authority needed to address fully species conservation and recovery. Additional funding for conservation is needed at the state and federal levels.

However, the suggestion that insufficient state management is the main or typical reason for species decline over-simplifies the myriad threats that affect healthy and sustainable wildlife populations. Wildlife diseases, invasive species, illegal trade, habitat loss and climate change are examples of impacts to species over which no single entity, neither federal nor state, has control. In Rhode Island, our experience has been that success can be best achieved through processes that rely on sound science and strong partnerships. The regional process and governance that was established to keep NEC from being listed is an excellent example of the type of collaboration that yielded positive results.

In the marine environment, many threats are related to climate change, and many at-risk marine species transit in and out of jurisdictions and/or are managed in federal jurisdictions where some have been subject to overfishing. Conservation and recovery efforts for marine species (which are often migratory) need to be developed with input from stakeholders and good collaboration with states and the federal government.

15. Do you believe this Committee should focus energy on proposals that seek to prevent species from being listed in the first place?

Answer: Yes. An ounce of prevention is worth a pound of cure. Focusing on proactive proposals that prevent species from being listed makes sense and may be more successful and more economical in species recovery, provided there is enough support for restoration work. Providing incentives to landowners for early action, enhancing non-regulatory approaches, and engaging states and partners before a species is threatened or endangered are all beneficial. The ESA allows for "safe harbor" agreements and other tools that could be used and expanded to prevent candidate species from being listed. In these cases, the protections of the ESA often provide the catalyst that drives party to come together to develop effective conservation strategies.

16. If the Rhode Island Department of Environmental Management could play a larger role in threatened and endangered species management, would you have the capacity?

    Answer: The Rhode Island Department of Environmental Management does not have the capacity to play a larger role without the infusion of additional staff and funding. There is significant expertise and knowledge within RIDEM, but not sufficient capacity.

17. Do you believe Rhode Island would be able to manage threatened or endangered species found in several states without federal intervention and collaboration?

    Answer: No. Rhode Island lacks the capacity and the authority to drive conservation outcomes across several states; leadership from and collaboration with the federal government is necessary to be effective. Ultimate authority and decision making under the ESA belongs with the federal government.

18. How difficult would it be for the State of Rhode Island to enter into voluntary conservation agreements with landowners if neighboring states were not taking similar actions to reduce negative impacts on species – for example, cottontails?

    Answer: It would be very difficult for the State of Rhode Island to encourage landowners to enter into voluntary conservation agreements if we were not part of a range-wide effort. For example, with a species like NEC, without the larger effort, our landowners may not see the value in a local approach or be motivated to engage in a limited effort with little chance of success.

19. You noted in your testimony that "the tripwire of triggering the ESA is a powerful motivator to promote progressive management strategies." One issue you did not mention was the value of the deadlines set by the U.S. Fish and Wildlife Service. It seems deadlines played an important role in decisions by the Service not to list as endangered several species that were subject to effective conservation agreements, including: the Artic Grayling in Montana, the Dunes Sagebrush Lizard in New Mexico and Texas, the Bi-State and Greater Sage Grouse and of course, the New England Cottontail. Do you think a deadline is an important regulatory driver? Do you think that helps keep partners and states motivated?

Answer: Deadlines under the ESA are useful in that they motivate conservation action to prevent listing decisions. The potential for a candidate species to be listed can sound the alarm and bring people to the table in an effort to turn things around. However, given funding constraints, evaluation of the reasonableness of the current deadline structure may be in order.

20. How was the multi-state effort for the conservation of the cottontail rabbit conceived and organized?

Answer: USFWS Region 5 invited the relevant northeast states together for initial discussion and engaged the services of the Wildlife Management Institute to facilitate the discussion and process to meet the regional conservation goal of keeping NEC from being listed. Partners included in the process all had vested interest in the recovery of the species. States included were those that contain portions of the historic range for this species, and thus a clear interest in recovery actions. Again, another benefit to this partnership is the protection of the more than 60 other species that rely on the healthy young forest habitat protected, improved or created through this effort.

My testimony outlines some of the key strategies, including clear goals, private landowner engagement, and dedicated resources from the USFWS and the states. Region 5 has been a leader in using these strategies and partnering with state agencies.

21. Would the process to manage the cottontail have been faster or slower if it had been managed by states alone? What about more or less expensive?

Answer: Without the federal leadership, initiative and investment to manage the process, the NEC conservation effort would not have achieved success.

22. Would the Rhode Island Department of Environmental Management be able to sustain the level of investment that was required to recover the New England Cottontail – time, expertise and funding – in several species conservation efforts simultaneously?

Answer: No. The NEC work required a dedicated commitment from RIDEM that could not be sustained if Rhode Island had to engage at that level on several species conservation efforts simultaneously. More funding and greater internal capacity would be necessary. Also, to be clear, the New England cottontail has, to date, not been recovered. The NEC conservation work involves a long process that has only just begun; so, the results will become clear in time. Having said that, there are plenty of reasons to believe that the collaborative approach taken in the NEC effort is and will be effective in the recovery of this species.

23. As a state environmental director, would you say the management of endangered species is analogous to your air quality challenges as a downwind state? What options do you

have to convince other states to reduce their emissions of pollutants to protect your air quality? Are these options available in the context of managing species?

Answer: In this respect, the analogy to cross-state air pollution holds true: it is impossible for Rhode Island on its own to ensure the conservation or recovery of species where we are a small part of a larger range or host the critter only during part of its life cycle. Rhode Island conservation work fits in a larger context, and for Atlantic sturgeon, piping plover, sea turtles, New England cottontails, Right whales and many other species, Rhode Island habitats are a small piece of a larger mosaic of critical habitat. Under the ESA, Rhode Island does not have strong tools to encourage or force other states to take action; we count on the federal agencies to play that role. Thus, there is a need for strong federal laws, national leadership, and coordinated regional and state processes based upon sound science to address multi-jurisdictional environmental issues.

24. In your testimony, you mentioned the Endangered Species Recovery Act of 1997, which was a bipartisan proposal, but ultimately did not become law. How long did the negotiations take in this Committee and what was involved in them?

Answer: The bipartisan effort – led by Senators John Chafee (R-RI), Dirk Kempthorne (R-ID), Max Baucus (D-MT) and Harry Reid (D-NV) – that resulted in the Endangered Species Recovery Act of 1997 being reported out of the Senate Committee on Environment and Public Works (EPW) took years of concerted effort. The Committee held oversight hearings and explored ideas to improve the ESA for more than one session. When Congress convened in 1995, then-Chairman John Chafee and then-Ranking Member Max Baucus made reauthorizing the ESA a high priority. That year, the Subcommittee on Drinking Water, Fisheries and Wildlife held six hearings, three in the field (in Oregon, Idaho and Wyoming), where Committee members and staff examined local conflicts and visited landowners and businesses. Through that process, the Senators leading the effort identified and agreed on key areas for reform. The states had a strong voice in this process, and ultimately the EPW leaders worked closely with the federal agencies to develop a package of reforms.

25. You also mentioned that 1997 was a very different time. What are the principles and circumstances you believe are necessary to engage in a bipartisan conversation now?

Answer: As the head of a state agency, I constantly work to understand and respect stakeholders and to develop and explain decisions and policies with the engagement of the public. Consensus comes through a process that allows different views to be heard and considered, and where the decisions and policies are grounded in experience and factual information. It helps to assume the good intentions of the people who express widely different views, and to not make disagreements personal. When considering ESA, it would make sense to articulate a bipartisan set of common goals up front, and to base the conversations and hearings to follow on the tools, policies, funding and other means needed to achieve those goals. I believe it is possible for the EPW Committee members to engage in a bipartisan conservation now around conservation and the ESA. Even though

the times are different than they were twenty years ago, people are not very different. There is a lot of interest from a wide variety of people across the country in collaborating around successful efforts to conserve species and habitat and meet the goals of the ESA.

26. The Committee vote on the Endangered Species Recovery Act of 1997 was 15-3, which is an impressive accomplishment. Can you tell us how specifically you achieved that high level of bipartisan success? Do you believe that level of bipartisan collaboration is possible now in both the Senate and House?

Answer: The legislation (S. 1180) that was approved by the Senate Environment and Public Works Committee in 1997 was the result of a lengthy, thoughtful and bipartisan process. The Senators agreed to spend time, both in D.C. and in field hearings, examining conflicts and exploring areas of common ground. I believe the high level of bipartisan support came from the long hours and days spent together exploring issues, visiting states, developing common goals, and ultimately negotiating in good faith on a compromise. Once a compromise package was agreed on by the principle EPW leaders, they agreed up front to stick together and defend their compromise bill against amendments from all sides. Without such an upfront agreement, the compromise would not have held together.

27. Do you agree that the Endangered Species Act, in its current form, already provides substantial flexibility for implementation improvements and administrative changes, especially for collaborating with states? If so, do you think it is reasonable to suggest that we should first try to adequately resource state and federal agencies before making any substantive changes to the Act?

Answer: Yes. The ESA includes substantial flexibility now, including for effective collaborations with the states. I believe it is reasonable and important to increase resources as a first step towards improving conservation outcomes. However, some improvements to the ESA may merit amendments to be lasting and effective. I would hope that any such effort would be bipartisan and coupled with a commitment to increase funding to the states and under the State and Tribal Wildlife Grants.

28. Given that we are now experiencing what many have termed a Sixth Extinction, do you agree that now more than ever it is important to maintain a strong national standard for species protection and management?

Answer: Yes. Until the enactment of the ESA in 1973, the federal government did not have strong and sufficient legal authority to protect threatened and endangered species. Given the complexity of this work, the need to collaborate, and the considerable threats to fish and wildlife and habitat, it is more important than ever to maintain strong national standards, and to take full advantage of the best science, including the data and expertise of state agencies, to expand and develop new tools, and to work effectively with states, private landowners and other partners on conservation.

Senator Booker:

29. Ms. Coit, in your testimony you point out that States collectively receive less than $110 million in funding each year for conservation of the more than 20,000 species of wildlife that we do not hunt or fish, despite the fact that most of the species at the greatest risk of decline are in this category.

    Could you talk about what impact it would have in Rhode Island if there was substantially more funding provided to States for conservation of these species, and whether this would lead to a need for less federal involvement under the ESA?

    Answer: As stated above, I believe that federal involvement will always be necessary to ensure effective conservation. Increased funding to the states would improve on the ground and in the water actions that protect and restore habitat and lead to the recovery of imperiled species. This is a huge area of need and opportunity. In my opinion, if Congress were to enact legislation to increase dramatically funding for non-game species, you would move the ball further down the conservation field than any ESA reform bill could ever achieve.

    If Rhode Island had more resources, RIDEM would do more research on threats and more work to develop effective mitigation measures to keep species from being listed in the first place. We would hasten the pace and impact of our recovery efforts. Additional resources to the states would allow stronger partnerships to be developed between the federal government and the state agencies to better manage habitat and avoid conflicts. Given resource constraints, states are often not able to be proactive in our work on public lands, with private landowners and with universities, NGOs and businesses. At present, federal involvement in listed species often manifests as mandates without sufficient interaction with the impacted local landowners, businesses and communities who may have good ideas for how to solve problems locally in a sustainable manner. The ability to tailor a conservation approach to fit our own communities is important to successful outcomes; with additional resources, we could do much more to ensure tangible, lasting outcomes for conservation, including implementation of our RI WAP.

Senator Duckworth:

I am concerned by the lack of scientific rigor within the Trump Administration, which recently announced plans to disband an important EPA scientific panel and favors massive cuts to science programs across the Federal Government.

31. Ms. Coit, can you address why it is so important that the best available science – and not partisan ideology – continue to drive ESA decisions?

Answer: A core principle of the ESA is that the basis for listing decisions under the law be made based on the best available science. The reason for this is clear: that is the only way that decisions under the act will be sound. There is no place for partisan ideology in a listing determination; it is a clinical, biological diagnosis. And, the purposes of the ESA cannot be achieved unless the decisions fundamental to the actions and considerations required under the Act are based on science.

32. Do you believe State agencies currently have the expertise and capacity to generate that science without support from the Federal Government?

Answer: No. Federal expertise and investment are critically important to ensuring that the "best scientific and commercial data" are the basis for listing decisions, and for assessing whether actions jeopardize listed species and developing recovery plans. However, it would be a mistake not to recognize that state agencies have considerable scientific expertise on species, and that expertise and cutting-edge science are also found within an array of entities, such as colleges and universities and non-government organizations, as well as within state and federal agencies. When federal departments build partnerships with state agencies, local universities, and non-governmental organizations they strengthen the scientific process and build public confidence in decisions under the ESA.

Senator BARRASSO. Well, thank you. We appreciate you being here.

For my colleagues on the Committee, since the Democrats have brought into play the 2-hour rule, we are going to have to adjourn at 11:30, which gives each of us time for questioning. But to make sure each of you have the time, I will turn to Senator Inhofe first, and I will reserve my time.

Senator INHOFE. Thank you, Mr. Chairman. I appreciate that.

Let me remind you, Director Coit, that the experiences that you shared with us 20 years ago with John Chafee, that was my first year. He also came to Oklahoma, if you remember, and studied our system. So you are right, he had eyes on all the time.

Director Voyles, you are the guy that brought up the lesser prairie-chicken. You know, we had the wide conservation plan, five States. Oklahoma, my State was one of those States. And we worked hard. We worked for a long period of time. We had meetings in all five of the States, and we came up with some conclusions as relates to the lesser prairie-chicken. And even though we went through all that work, in fact, we went through so much work that a Texas court came in and said that the fish and wildlife was violated because they didn't consider properly the conservation plan that was put forward. So right now we are in the process of looking at this and seeing what we can do.

But there doesn't seem to be any incentives for people to really work with these conservation efforts. I would like to have you give us your opinion as to the seriousness of that particular conservation effort and why they are not incentivized in our system to participate.

Mr. VOYLES. Senator Inhofe, Senator Barrasso, the lesser prairie-chicken, I think, is the classic example of what States can do when they integrate together and work with partners both in the private sector as well as the public sector. It is plowing ground to the future, I think of the way conservation will be done. Fifty million dollars of investment, hundreds of thousands of acres of lands and road, and yet there was a finding by the U.S. Fish and Wildlife Service that the species needed to be listed. The courts disagreed with that.

I would argue that the lack of a formal process for the States to be at the table in the decision process for listing leaves a hole, and I think there is a certain balance value in having the State wildlife agency being able to be a part of that discussion.

Senator INHOFE. I think that Director Wiley suggested the same thing. I think that is well taken.

Director Wiley, did you want to comment in terms of some of the ideas you have? It is not real clear in your written statement whether or not you had some type of a State intervention, a trigger point, where States would be involved and take over the function of the Federal Government. Is that accurate?

Mr. WILEY. Well, in a couple different ways, yes, sir. And I agree fully that States don't have enough of a formal role in the decision-making process. We do get involved early on and try to collaborate and partner, but then the curtain closes. And the way things are constructed, we kind of have to sit outside and wait for decisions.

We believe one idea is right now we have classification where you have threatened species and endangered species. We believe the original intent was for once a species is no longer warranted for listing as endangered, it is changed to a threatened status, that the States should then take the lead in managing that species.

Senator INHOFE. Exactly. Which reminds me also in Oklahoma we have the American burying beetle, and it fits in the categories that should be. Fish and Wildlife seems to move the goalpost. They come out and say this is what we want to accomplish, and then, once you accomplish that, they move the goalpost, and that is one of the problems that we have.

In the case of the American burying beetle, its listing was only known to be in eastern Oklahoma and Block Island, Rhode Island. So you are familiar with that also.

Now, since the listing, science has used all these things. The problems have been pretty much resolved. Now, I think that shows that, since the inception of the Endangered Species, there have been 1,652 listings and only 40 de-listed in terms due to recovery. So, to me, it shows that that system is broken.

And I think this hearing is really good. Already some really good recommendations have been made by this Committee. So we want to get through all of our questioners, but I really think, Mr. Chairman, this is going to be one of the real accomplishments of this coming year, something we have worked on for a long time, since I was there with John Chafee 20 years ago.

Thank you.

Senator BARRASSO. Well, thank you, Senator Inhofe, for your ongoing leadership over the decades.

Senator Wicker.

Senator WICKER. Let me ask you about private landowners. Private landowners working with the U.S. Fish and Wildlife Service in partnership. Of course, our goal is to get all sides involved in working on ways in which we can accommodate private landowners and conserve species at the same time.

Mr. Wiley, do you think the Endangered Species Act needs clarity on the ability of the U.S. Fish and Wildlife Service to work in partnership with private landowners in order to use innovative measures such as Memorandums of Agreement that do not require Federal Register notice, but are negotiated directly with landowners?

Mr. WILEY. Yes, sir, Mr. Chairman. Yes, sir. We feel like a lot of work could be done to clarify in the law the importance of private landowners and the importance of working with landowners to achieve conservation. The Fish and Wildlife Service does make an effort, and that should be applauded, but right now their hands are tied in many cases. Landowners view, in many cases, a listing as a very serious threat to how they use their land. We believe there is a lot better way forward if the States can be more engaged and more involved working on the ground, because we have those relationships and we feel like we can really be helpful.

Senator WICKER. Well, as I understand it, there are landowners in Mississippi with more than 4 million acres who are seeking to do this. In what ways are their hands tied?

Mr. WILEY. Well, first, there's a serious workload issue as far as just the time it takes when you have a willing coalition of landowners like these forestry landowners that want to sit down and say what can we do to take conservation measures and put in place now. There's a time lag. It takes years, in many cases, to develop, even when the parties are agreeable. It just takes years to pull those things together just from a workload case; it's a time consuming process. And beyond that, right now the administrative rules are kind of all over the board and are not very clear as far as what landowners can and can't do, and how the right type of conservation programs that can be put in place.

Senator WICKER. Is there some recommendation you would have to this Committee about streamlining the rules or making the process more efficient?

Mr. WILEY. Yes, sir. We have actually a suite of recommendations we believe that would really be helpful, particularly moving from rules to actual overarching legislation and law.

Senator WICKER. OK. Now, you mentioned a backlog in that regard. What about the backlog of species petitions awaiting review by the U.S. Fish and Wildlife? Do you think 12 months is enough time to craft a U.S. FWS approved voluntary conservation plan for interested stakeholders, for example?

Mr. WILEY. With current capacity, it is not for the volume that we are having to deal with, the Fish and Wildlife Service and NOAA Fisheries. It is not enough time.

Senator WICKER. What do you recommend?

Mr. WILEY. We recommend applying a workplan approach, a prioritization approach. But also actually looking at the species that are being petitioned and the threats, and putting them in the proper order and priority. And some may take more time; some might be feasible to do more quickly. Right now it is just a shotgun, everything is coming all at once, and it is hard to handle it. And the Service has taken some steps in that regard, but we have some ideas on how to move that further along.

Senator WICKER. How do you set a different time on an ad hoc basis, though?

Mr. WILEY. I don't think it would be on an ad hoc basis. I think you could set it up, frame it up for the law to have some flexibility so that when the experts look at a species as it comes in, they can then make decisions about where it would fit into that framework of timelines.

Senator WICKER. Thank you very much.

And thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Wicker.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

First of all, let me just say that, after having had the opportunity to work as Governor in South Dakota for 8 years, I have a huge amount of respect for the individuals that work at the local level with regard to game and fish, recreational opportunities, management of those game species and no-game species.

I look at the South Dakota Game Fish and Parks, and the amount of work that they have done and the amount of respect that they garner in the work that they do, and the cooperative way

in which they try to put together local agreements with landowners, trying in an affirmative way to create good relationships so that the recreational opportunities of our citizens are enhanced and the availability to access private lands and so forth.

Along with that, they have that obligation and responsibility to work with the Federal Government and U.S. Fish and Wildlife Service to fulfill our responsibilities with regard to the Endangered Species Act, and I think they do a marvelous job of balancing those challenges.

I am just curious. Director Voyles, you said in your testimony that you explain that the authority of section 6 cooperative agreements allows for States to have a greater or greater opportunities to participate in the implementation of the ESA. But you also mention that State agencies have not been able to exercise this authority due to misunderstandings and misinterpretation by the Federal executive branch agencies and courts.

Could you elaborate on how executive agencies and courts have misinterpreted section 6 authority and how this has impacted the ability of States to participate effectively in ESA implementation?

Mr. VOYLES. Thank you, Senator Rounds, Mr. Chairman. What we found in the administration of section 6 is the focus has primarily been, from the Federal agencies has primarily been on applying section 6 to a shared funding opportunity, but not the full suite of opportunities for the States to participate at the table in collaboration on ESA related decisions and processes.

As an example, during the 90-day petition review process, where they take a look to determine if a species warrants a further analysis and a 100-day recommendation of other lists or not, State data, unless it is conveyed and in the files of the Federal agencies beforehand, the courts have ruled they cannot access that data and information from the States. Clearly, the intent of the ESA was that we would be working together collaboratively. Yet, we have a legal determination that we cannot.

There is no hardwiring of the States in terms of our ability to participate on recovery teams and recovery planning. That is a decision at the will of the U.S. Fish and Wildlife Service, as to whether they include a representative from the State; and they will make the determination who that representative will be. That is not really the full relationship that was envisioned, I don't believe. I believe section 6 was intended to be the balancing of the 10th amendment concerns and issues of the States, and it is not functioning that way.

Senator ROUNDS. Thank you.

Mr. Chairman, just in the interest of time, I will yield back the remaining part of my time.

Senator BARRASSO. Thank you very much.

Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman. I will just ask one question here that I am interested in.

I am interested in the topic is sort of the consistency with which the Fish and Wildlife enforce and makes specific actions. We all realize States are different, but in our State we have had some concerns from our State regulators that Fish and Wildlife has been inconsistent in its approach for requiring habitat protections in the

State, even compared with what they are doing in other States. And in particular, rather than going through the formal rulemaking to designate critical habitat, they have been establishing buffer zones. And these buffer zones are critical habitat in all but name, but they haven't been through the subject of the formal rulemaking, public notice, or comment.

As a result, it is unclear, the footprints are unclear. There has been no consideration for the economic impact and even has impacted some of our ability to do some reclamation activities.

I am just wondering have either or all three of your States had that inconsistency, and have you had this issue with buffer zones being created instead of critical habitat?

Ms. COIT. I will start and say, no, we haven't had that experience. If I can harken back to the New England cottontail example, that was an example where up front there was an agreement on conservation on the ground and what we would all strive to do. And the NRCS is actually the Federal agency that is helping us work with private landowners and doing those agreements rather quickly, and I think that is because we set out in advance, working collaboratively equally with the U.S. Fish and Wildlife Service on what the goals would be. So I would say our experience in Rhode Island is a very collaborative experience with the U.S. Fish and Wildlife Service, and NMFS, as well.

Senator CAPITO. And consistent? Either of the two?

Yes, Mr. Voyles.

Mr. VOYLES. In Arizona, we have not had the experience with buffers, but what we have had is we have had an application of principles applied to how we can manage or deal with a given species that varies and is sometimes diametrically opposed to what is allowed for another species. So species to species there are inconsistencies in the way the rules are applied.

Also, we have had situations where the Colorado River is a major dividing line between regional offices for U.S. Fish and Wildlife Services, so Region 2 is on the east side of the river and Region 8 is on the west side of the river. And we have had opposing decisions on what we can do as far as stocking rainbow trout ruled by one office in the same water that is being ruled the other way by the other office. So there are geographic inconsistencies, but right up on the same river.

Senator CAPITO. On the same river.

Mr. Wiley.

Mr. WILEY. Yes, Mr. Chairman. Yes, I would say that we haven't had that buffer experience, but we have seen how things are different in different parts of the country in different States. To me, one way to help is, because how well States collaborate with each other and we share information, I think having a seat at that table, being there when that decision was made to consider buffers versus critical habitat as a workaround, maybe, I think we would have called them on that, and we would have been there saying there is a better way. So that is why we are looking for more of an open door there.

Senator CAPITO. All right. Thank you.

Thank you, Mr. Chair.

Senator BARRASSO. Thank you, Senator Capito.

Senator Ernst.

Senator ERNST. Thank you, Mr. Chair.

Mr. Voyles, in your testimony you spoke about the importance of State agency participation in the implementation of ESA, and over the years, despite their on the ground experience and expertise, States have not always had as much say in the process as they would have liked. From your time at the Game and Fish Department, can you provide an example of a time when both a species and stakeholders would have been better served had the Federal Government taken more State data or recommendations into account?

Mr. VOYLES. Thank you, Senator Ernst, Mr. Chairman. I can think of several instances. One example would be a very politically divisive recovery effort, the Mexican wolf. There has been a 25-year effort to revise the recovery plan for Mexican wolf. The original recovery plan was developed in the 1980s, and it is outdated.

It has been extremely politically divisive, and in the process, at one point in time, we had to fight for a seat at the table to be a part of the recovery plan process. And when we were fighting for that seat, the recovery team that was convened, the Science and Planning Subgroup, had no ungulate biologist on the team. There was nobody that understood population dynamics for the prey species that those wolves would have depended upon. That is what we do for a living; we had the expertise. And we ultimately got a seat, but we had to fight our way in. It was not easy.

That should be a hardwired event. We shouldn't have to try and fight a way in and bring political pressure to bear to be able to get a seat at that table. And it was important that we were there because some of the population dynamics they were pursuing would have failed. There simply wasn't the prey base to be able to support the kind of wolf numbers that they were talking. So that is an example of having to kind of scratch and claw to get in, as opposed to being a full partner, as envisioned in section 6.

Senator ERNST. So you think that just by having the State involved from the very beginning in those discussions, that a lot of conflict would have been avoided and perhaps a better plan would have been put in place?

Mr. VOYLES. Absolutely. And we still don't have a revised plan. Now, we do have a full seat at the table now; it has been reconstituted, and I think we have more powerful science coming to bear now. We have improved their modeling a great deal by bringing State scientists into the picture, and I think we have a lot, hopefully a better trajectory on the next route, on a final hope for a revision. I think that could have reduced this 25-year timeline by orders of magnitude.

Senator ERNST. Thank you. I appreciate that, and I do think States should be involved, especially when they have the expertise actually in dealing with a certain species.

Ms. Coit, in your testimony you also emphasize the importance of State fish and wildlife agency participation in ESA implementation. You noted that conservation efforts would be aided by increasing the utilization of data from State agencies. Are Federal partners ignoring or are they choosing not to use State data in favor of their own data?

Ms. COIT. We have recently had a very good experience. I think it has evolved and improved over time. So the U.S. Fish and Wildlife Service and NMFS is using State data, and we are sharing data. I think they are extremely open to that in Rhode Island, and we have had that experience, but it has gotten better over time, according to my staff. In some areas we have the capacity and expertise, and in other areas we don't; it might be a university or another entity. So I think we are all wanting the absolute science to come into the process so the decisions can be made on science.

Senator ERNST. So is there a lack of communication in those examples?

Ms. COIT. I am bringing the Rhode Island experience. We have a very good working collaborative relationship with the U.S. Fish and Wildlife Service and NMFS. A lot of our endangered species conflicts are in the marine environment.

Senator ERNST. OK. Fantastic.

I will yield back my 17 seconds, Mr. Chair. Thank you.

Senator BARRASSO. Thank you very much, Senator Ernst.

In the little time that is left, Director Wiley and Voyles, at our hearing in February, Gordon Myers, the Executive Director of the North Carolina Wildlife Resources Commission, who also served as President of the AFWA's southeastern association, he testified that State governments have enhanced their capacity really over the past 30 years to make greater contributions to implementation of the Endangered Species Act.

Do you agree with Director Myers that States are in a much better position today than they have ever been before to contribute to the conservation and recovery of the species under the Endangered Species Act?

Mr. WILEY. Mr. Chairman, we absolutely do. There are States that are still working to get there. We are all working to do better, but if you look at the transition and transformation of State fish and wildlife agencies over the last 20, 30 years, it is amazing what we can do and what we are doing, and I really think now is the time to give some regard to that.

Senator BARRASSO. Thanks.

And Mr. Voyles.

Mr. VOYLES. Mr. Chairman, if you noted on my bio, I started in professional wildlife conservation the year after ESA was implemented, and at that time we had one biologist on staff that was what we called a non-game biologist. I have over 100 people now on staff that deal with conservation of non-hunted and non-fish species. Clearly, Arizona has grown exponentially in our ability to deal with ESA listed species, as well as species at risk.

The other thing that I want to point out is State wildlife agencies are an incubator of innovation, and some of the innovative solutions that are taking place, and I think the lesser prairie-chicken example really highlights that, there is a $50 million endowment that has been built by partnerships with industry.

Some of those States, if you were to ask what is your appropriation for endangered species, they might not look so spectacular, but they have generated an endowment through partnerships that enables them to be very effective. In our State, we have contracts operation where we are able to deal with species outside of our appro-

priation methodology through contracts that range $7 million to $10 million a year of revenue streams for unique operations.

So that kind of innovation is coming out of the States, and we are really, I think, at the cutting edge of public-private partnership in America.

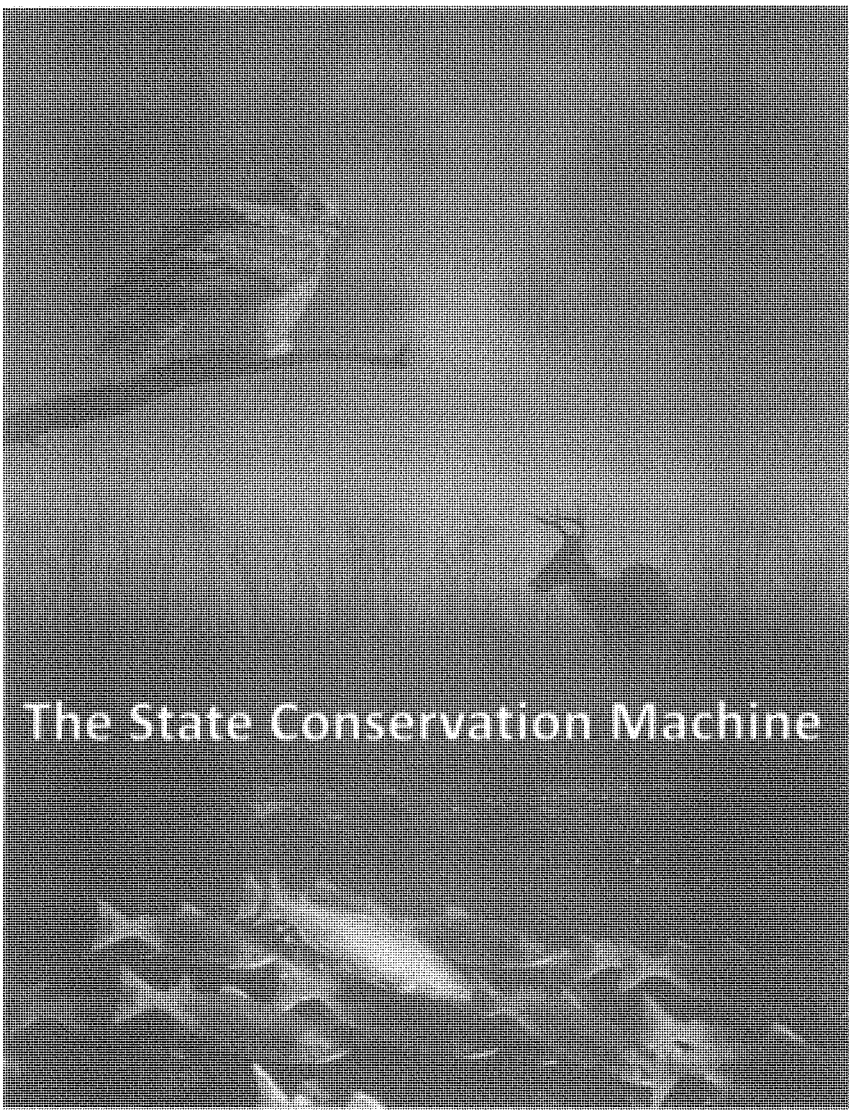
Senator BARRASSO. Well, our time has expired.

Ms. Coit, I had a question for you, but I am not going to go beyond the rules of the Senate. It has to do with how much money is available and the impact of the Equal Access to Justice Act, the book, Inside the Equal Access to Justice Act, where Lowell Baier talks about just how much money of Federal taxpayer dollars is spent per year on environmental litigation relating to the Endangered Species Act, and it sounds like how little money you get, and how we can best make sure that the money goes in the right direction. But I will submit that question to you in writing, consistent with the rules of the Senate.

This hearing is now adjourned. Thank you.

[Whereupon, at 11:31 a.m. the Committee was adjourned.]

[Additional material submitted for the record follows:]


The State Conservation Machine

Executive Lead: Larry Voyles- Director, Arizona Game and Fish
Technical Lead: Loren Chase, PhD- Human Dimensions Program Manager, Arizona Game and Fish

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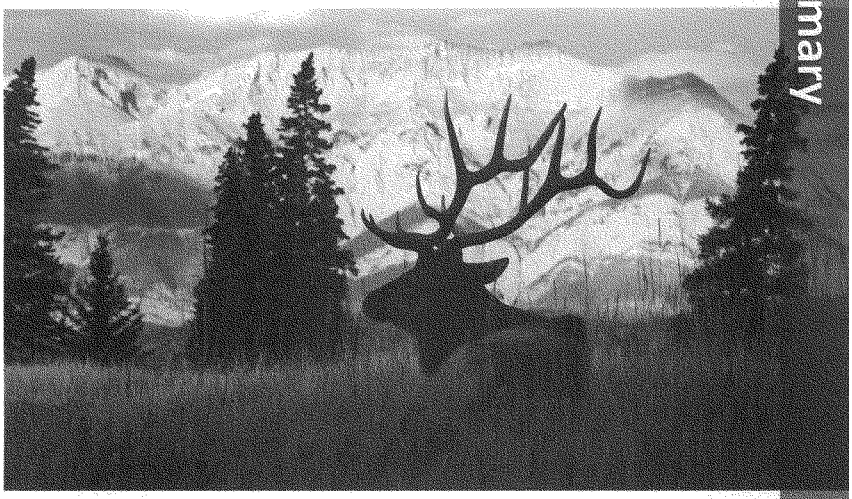
Executive Summary

This manuscript presents the results of surveys of the 50 state wildlife agencies to assess their collective contributions to the unique system of conservation that exists in America today.

In total, the 50 state wildlife agencies own, manage, or administer wildlife conservation on more than 464 million acres of land and 167 million acres of lakes, reservoirs, wetlands, and riparian areas. State wildlife agencies employ nearly 50,000 employees and leverage the efforts of 190,000 volunteers. Collectively, state agencies have 11,000 degreed wildlife biologists, 10,100 law enforcement officers, and nearly 6,000 employees with advanced degrees. Annually, state wildlife agencies contribute more than $5.6 billion to conservation through their collective annual budgets.
Clearly, the contribution of the 50 state fish and wildlife agencies is enormous and integral to wildlife conservation in North America.



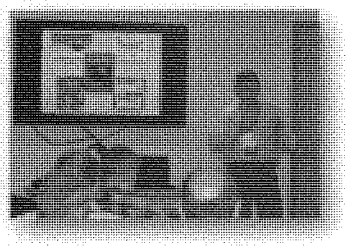
"The conservation of natural resources is the fundamental problem. Unless we solve that problem it will avail us little to solve all others."
~ President Theodore Roosevelt

Background

Understanding the logistical foundations of these conservation sectors and their contributions is essential to any discussion of the future of conservation in America...

Wildlife conservation in America today is delivered through the combined efforts of state fish and wildlife agencies, federal land and wildlife management agencies, non-governmental organizations, and private landowners (most notably farming, ranching, and private lands timber). The scope and scale, in terms of the capacity of each of these sectors, is essential to the delivery of conservation in America today, yet there has been only limited effort to quantify the roles of the non- federal sectors in delivering a robust and complex system of conservation.

Understanding the logistical foundations of these conservation sectors and their contributions is essential to any discussion of the future of conservation in America, as is an understanding of the threats to these foundations. Discussions of the future of conservation in America run the gamut, from debates over the value of hunter- and angler-funded conservation systems and whether this has led to a focus that favors conserving only those species for which people hunt and fish, to debates over the role of wildlife conservation on our nation's health and well-being, to debates over the appropriate relationship between wildlife regulatory laws and the economy.



Larry Voyles presenting at the Association of Fish & Wildlife Agencies Annual Meeting, September 2015

The importance of telling the story of the critical role of state fish and wildlife agencies in the fabric of America's conservation system was a part of Director Larry Voyles platform for his 2014-15 term as president of the Association of Fish and Wildlife Agencies. A dialogue was initiated around the need for policy makers and academicians to understand the scope and scale of conservation delivery through the state wildlife conservation institutions, as well as the support mechanisms that enable those institutions to deliver conservation at the scale and magnitude Americans have come to expect.

"The importance of telling the story of state fish and wildlife agencies is critical to the fabric of America's conservation system."
~ Larry Voyles, Director of Arizona Fish and Game and President of the Association of Fish & Wildlife Agencies 2014-15

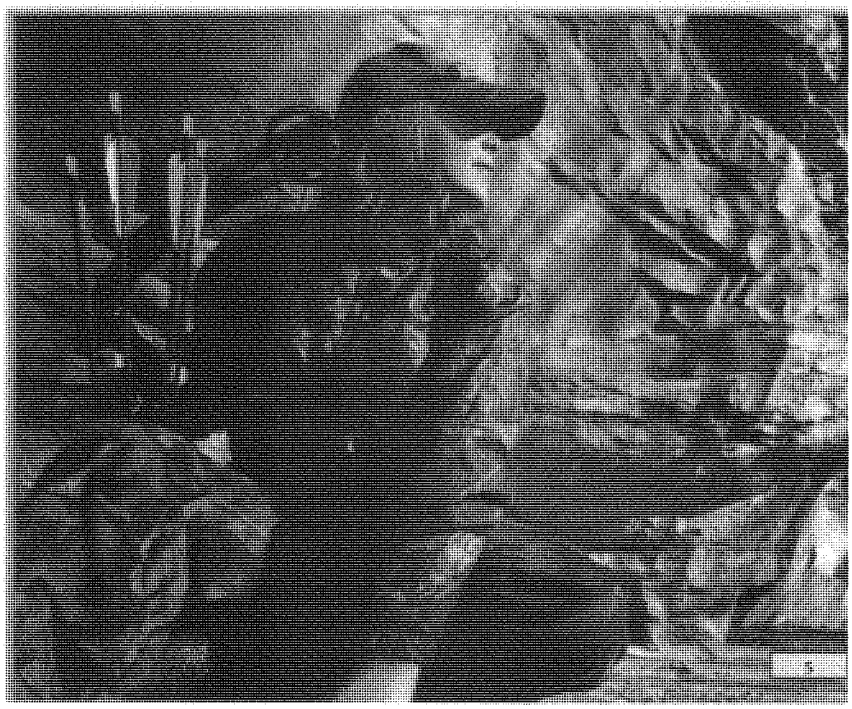
The Association and the Arizona Fish and Game Department aggregated and began defining information on state agencies' collective contributions to the fabric of America's conservation tapestry by researching existing sources such as the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation and other economic, sociological, and human dimensions research. Much of the story of who we are, what we do and why we do it already existed within the body of literature, but it had yet to be compiled and distilled into a concise message.

To tell this story in a contemporary and comprehensive manner, a survey was initiated to provide a national level understanding of:

1. **The state conservation land trust** - lands and waters managed or controlled by state wildlife agencies;
2. **The state conservation intellectual talent** - the professional human capacity that is performing wildlife conservation across the nation;
3. **The state financial investment in conservation** - the collective financial capacity of the state agencies.

State agencies must improve the communication of basic information:

- ***Who*** we are
- ***What*** we do
- ***Why*** we do it



Purpose of the Report

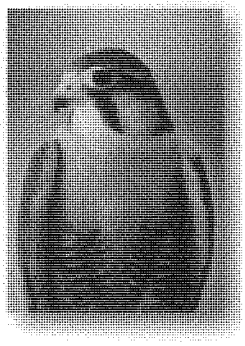
This report is intended to help inform the national dialogue on the future of wildlife conservation in America by quantifying the magnitude of the collective conservation effort put forth by state fish and wildlife agencies. It is important that conservation partners are aware that state fish and wildlife agencies shoulder the preponderance of wildlife conservation delivery and have a fundamental responsibility well founded in common law. State conservation efforts have yielded breathtaking returns on investment, but because the future success of the state systems of conservation faces challenges, the actions and decisions we make today may well determine the future of America's wildlife legacy for tomorrow

Approach

The elegant simplicity of wildlife conservation in North America is that citizens of states own the wildlife. This concept, known as the public trust doctrine, underpins the North American Model of Wildlife Conservation. Its roots are in common law and it invests authority and trust responsibility for wildlife to the states, rather than to a national entity disconnected from local issues. A byproduct of this dispersed decision-making and authority system is that the aggregate conservation efforts of all states are not quantified in a central location, so the magnitude of this collective influence is underappreciated and not commonly understood.

...state fish and wildlife agencies shoulder the preponderance of wildlife conservation delivery and have a fundamental responsibility well founded in common law.

To build awareness, researchers sent inquiries to the leadership of each of the 50 state fish and wildlife agencies. Agency directors were instructed to reply or authorize executive staff to reply on behalf of the state. With an inquiry of this magnitude, compounded by the fact that each agency is structured slightly differently (e.g. some agencies include parks, some are divisions of natural resource agencies, some split management of wildlife and fish into separate agencies), the questions may apply differently to each state. As such, researchers felt that executive leaders were in the best position to give the most accurate information because they understood the study intent and parameters



Researchers electronically sent the 30-question inquiry to agency directors. Between September 2014 and August 2015, 46 states participated in the study. Contact information was collected from each state's correspondent so researchers could get any needed clarification. Where appropriate, researchers produced centrality, summary, and cross-tabular data. In some cases, summary data intended to reflect continental-scale contribution did not have data from all 50 states. In these cases, missing values from states were replaced with the mean of the remaining states. For example, 42 states reported having a total of 43,515 vehicles, for an average of 1,037 vehicles per state. The remaining eight states were multiplied by the state average (8 x 1,037) and then added to the reported total to estimate the total as if all agencies had reported or had ready access to those data. Therefore, the report gives an estimate of 51,804 total vehicles used for conservation on a daily basis, the numbers being slightly different due to rounding.

The elegant simplicity of wildlife conservation in North America is that citizens of states own the wildlife.

The Conservation Land Trust

The lands and waters managed or controlled by the state, territorial, and provincial wildlife agencies

State fish and wildlife agencies are responsible for managing or administering 464,646,000 acres of land, including lands under fee title ownership (24.5 million acres) as well as those leased or licensed in conservation agreements, grazing allotments or right-of-ways. Further, state agencies manage or administer 166,940,000 acres of water, in the form of lakes, reservoirs, wetlands, and riparian corridors. That is equivalent to 3.7 times the combined acreage of the Great Lakes, or 154 Great Salt Lakes. State agencies have a stake in enhancing all wildlife habitat and therefore also have improved wildlife habitat not owned directly by the agencies. An estimated 56,719,000 additional acres have been improved for the benefit of wildlife through private landowner agreements. Further, agencies own 192,000 water rights and foster 53,000 formal partnerships to carryout wildlife conservation.

State fish & wildlife agencies are responsible for managing 464,646,000 acres of land...

To accomplish this work, state wildlife agencies own nearly 52,000 passenger vehicles, law enforcement trucks, heavy equipment, ATVs, and boats. The fair market value of that collective fleet of vehicles is an estimated $609 million dollars.

...state agencies manage 166,940,000 acres of water... equivalent to 3.7 times the combined acreage of the Great Lakes...

The Conservation Intellectual Talent

The professional human capacity that is performing wildlife conservation across the North American Continent

State fish and wildlife agencies employ nearly 50,000 highly-trained and highly- motivated individuals. Agencies collectively have 34,516 full-time employees (FTE) and 13,840 part-time employees. About one-fourth of agency employees, or 10,995 people, are degreed biologists, 5,909 of whom have advanced degrees and 741 terminal degrees (e.g. PhD, JD, DWM). That represents an advanced education achievement 46 percent higher than the U.S. population average. In addition, 8,371 fully certified law enforcement officers and 1,752 law enforcement FTE equivalents from state agencies other than the agency responsible for wildlife conservation also are part the conservation workforce (e.g., state troopers who spend time on wildlife- based activities).

[State fish and wildlife employees] represent an advanced education achievement 46 percent higher than the U.S. population average.

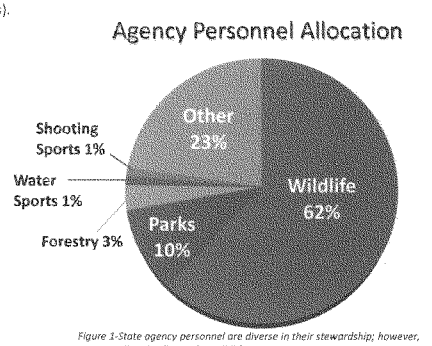
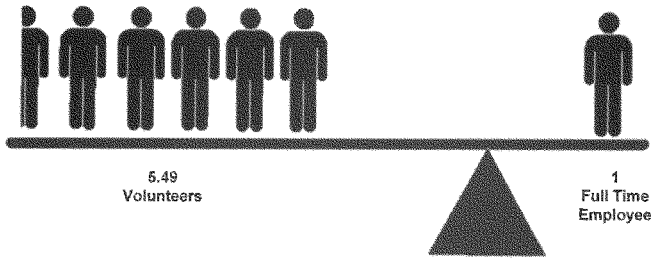


Figure 1-State agency personnel are diverse in their stewardship; however, most are directly allocated to wildlife.
**Note* percentages may not add to 100% because of rounding and the diversity of how state agencies are organized.*

State wildlife agencies have 2,211 employees solely dedicated to educating and informing the public regarding wildlife and issues that affect conservation. Nationwide, agencies coordinate the efforts of 189,393 volunteers who devote their time and energies to wildlife conservation, multiplying our full-time workforce by about 5.5 times



The Financial Investment in Conservation

The fiduciary capacity of the state, territorial, and provincial conservation agencies

The collective annual budget of state wildlife agencies is an extraordinary $5.63 billion dollars. That amount is the annual equivalent of paying the entire New York Yankees' roster for more than 25 years, and greater than the total economic impact of eight NFL Superbowls. An estimated 58.8 percent ($3.3 billion) comes from hunting- and fishing-related activities, either directly through the sale of licenses, tags, and stamps, or indirectly through federal excise taxes on hunting, recreational shooting, and angling equipment. These expenditures reinforce the assertion that hunters, recreational shooters, and anglers disproportionally fund conservation. However, 41.2 percent of state wildlife agency funding comes from areas other than hunting and fishing, suggesting that agencies are diversifying their revenue sources

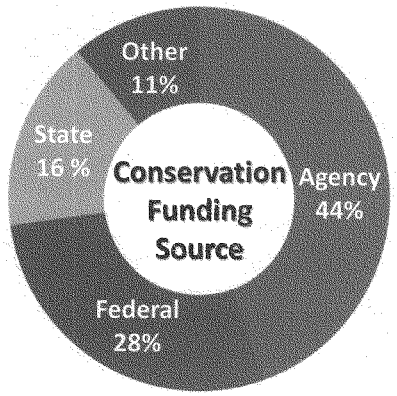


Figure 2- Conservation is funded by diverse sources

CONSERVATION FUNDING SOURCE	
State Agency	44%
License Sales	35%
Entry Fee	3%
Small Grants	3%
Watercraft	2%
Trust	1%
OHV	1%
Federal	28%
Pittman-Robertson	15%
Dingell-Johnson	9%
USFWS	4%
Coast Guard	1%
State-Level	16%
General Fund	8%
Non-General Fund	6%
Sales Tax	3%
Other	11%

Conclusions

Modernizing forces are changing wildlife conservation in North America. Industrialization, urbanization, advancement of technology, and the proliferation of higher education have brought a standard of living much different from, and largely unknown to, prior generations. An interesting side effect of modernization is that North Americans are becoming more divorced from nature, a topic often discussed in conservation literature.

[There] is a diversification of cultural heritages that brings ever-broadening perspectives, opinions, and knowledge regarding wildlife.

This disconnect from nature is reflected in the stagnation of interest in consumptive forms of wildlife and outdoor recreation, including hunting and angling. Some states have observed a decline in the raw number of people hunting and fishing. Many states' numbers have held steady, while a select few have shown slight increases. Overall, population growth has outpaced the growth of hunting and angling participation to the point that per capita rates of hunters and anglers are declining in nearly all states, gradually becoming less represented in American society. Under the historical model of wildlife conservation funding, these declines in consumptive activities result in waning wildlife conservation revenues.

Concurrent with these shifts is a diversification of cultural heritages that brings ever-broadening perspectives, opinions, and knowledge regarding wildlife. Many citizens of diverse ancestral backgrounds are settling in urban America and becoming disassociated with nature. Though urban-dwellers are a component contributing to a coupled human-natural system, many urbanites are unaware or misinformed regarding the consequences of human action toward the environment. As recently as two generations past, American society was largely agrarian.

Although the topic of wildlife conservation may be immaterial for the average North American, it remains relevant to everyone. The ecosystem services (the benefits society obtains from nature) that are a consequence of wise wildlife stewardship are at the foundation of the economic wealth, political stability, and cultural solidarity for all North Americans. Yet a major problem remains: most citizens do not know who has legal authority and responsibility for wildlife conservation. They do not understand the success of wildlife management methods, nor do they understand the support foundations that enable those successes Most importantly, they don't know why this is crucial to us all.

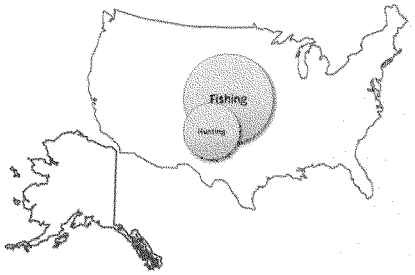


Figure 3 - If the populace of the United States were proportional to the land mass depicted here, the Venn diagrams in the center represent the percentage of US citizens who hunt (1.4%), fish (7.6%), or participate in both (3.0%). (2011 National Survey)

The purpose of this report is to fill that information gap partially caused by this disconnect with nature. Specifically, this report provides information that quantifies the enormous magnitude of effort put forth collectively by state wildlife agencies toward conservation. The return on investment has been substantial as agencies annually contribute $5.6 billion to conservation. State wildlife agencies employ nearly 50,000 highly- educated employees working and leveraging the efforts of 190,000 volunteers. Finally, fish and wildlife agencies manage or administer more than 464 million acres of land and 167 million acres of lakes, reservoirs, wetlands, and riparian areas.

...most citizens do not know who has legal authority and responsibility for wildlife conservation.

Much of the conservation funding and land trust has been built and funded with hunters and anglers as the primary benefactors. With the growing separation from nature and the corresponding decline in hunting and fishing, agencies have come to realize that being relevant to hunters and anglers is critical but not sufficient for long-term sustainability.

To continue their impressive contribution to conservation, state agencies will need to shore up the logistical and financial underpinnings of the state conservation system. Contemporary efforts to bolster current systems of funding by organizations such as the Council to Advance Hunting and the Shooting Sports and the Recreational Boating and Fishing Foundation, among many others, will be needed to secure future funding. Exploring entrepreneurial models and new products and services that encourage all citizens who benefit from wildlife conservation to contribute to its conservation will be critical to broaden funding models. Being funded from a wider audience will result in broader societal support for wildlife conservation, which in turn will result in greater financial and political resiliency of state fish and wildlife agencies.

...agencies have come to realize that being relevant to hunters and anglers is critical but not sufficient for long-term sustainability

The need for new and broader funding is reflected in both recent recommendations made by AFWA's Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources. The first recommendation is to secure an additional $1.3 billion for the Wildlife Conservation Restoration Program with existing revenue from the development of energy and mineral resources on federal lands. The second is to establish a forum that would examine the impact of societal changes on the relevance of fish and wildlife conservation and make recommendations on how to transform agencies to engage and serve broader constituencies. The first recommendation broadens participation in wildlife conservation funding. The second aims to attract a broader audience outside of our traditional customers.

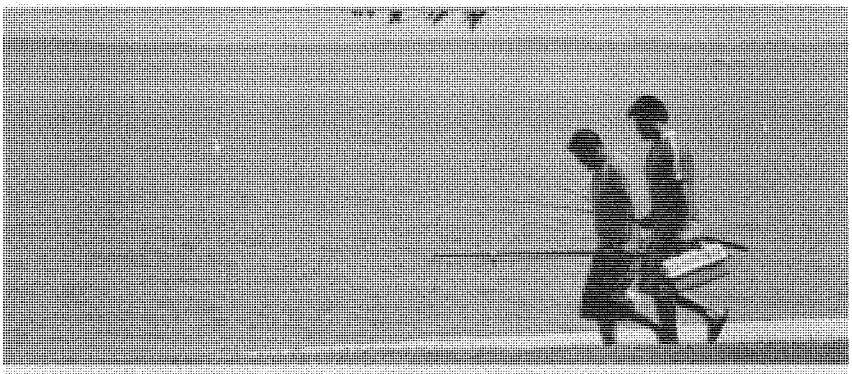
These useful recommendations may take time to implement, as they call for large, sweeping changes within a network of institutions. Yet state agencies can begin this transformation by utilizing four steps:

1. **Tell our story, and tell it often** – Ensure citizens know who delivers wildlife conservation and associated products and services and where the financial resources come from to pay for it;
2. **Tell our story to the right people** – Understand to whom we must be relevant, comprehend their expectations for products and services, and work to be relevant to them;
3. **Tell our story in the right way** – Research which products and services customers want, then deliver the products and services using language and channels the customers trust and value;
4. **Tell the value of our story** – Recognize products and services that have value for our customers and monetize them.

Many states have already begun to move down this pathway. Specifically, Florida has seen an opportunity wherein a small percentage of real estate proceeds go toward the conservation of wildlife. New Jersey dedicates a portion of corporate business tax revenues to the preservation of open space, directly benefiting wildlife. Other states such as New Mexico, Colorado, and Arizona have monetized the growing market of wildlife viewing, each using different methods. Still other agencies are exploring entrepreneurial models by monetizing other products and services that state wildlife agencies are already delivering with or without compensation.

Although wildlife management might not be immediately salient to many North Americans, the ecosystem services that are a consequence of wise wildlife stewardship have great value. By apprising citizens of the role that state fish and wildlife agencies play in delivering these important products and services, we solidly ensure our collective relevancy to future generations of North Americans.

**State survey questionnaire and responses are available upon request.*



PHOTOGRAPHERS:

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Arizona Game & Fish (pg 3, 6, 7, 11); AFWA Staff (pg 4); Ohio DNR (pg 5); Virginia Game and Inland Fisheries (pg 7); Utah DNR (pg 9); Maryland DNR (pg 12)