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THE PRESIDENT'S FISCAL YEAR 2016 BUDGET REQUEST FOR THE FISH AND
WILDLIFE SERVICE AND LEGISLATIVE HEARING ON ENDANGERED SPECIES
BILLS COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WEDNESDAY, MAY 6, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room
406, Dirksen Senate Building, the Honorable James Inhofe
[chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Wicker, Fischer, Rounds,
Barrasso, Crapo, Boozman, Sullivan, Capito, Cardin, Merkley,
Whitehouse, Booker, Markey, Gillibrand.

Senator Inhofe. Our meeting will come to order.

Let's do this. We have five members. One is Senator Enzi, one is Senator Booker and the other three will be here, who have legislation that they have introduced that does affect Fish and Wildlife. So we have said we would be happy to have them make a brief statement as to their legislation. And this is your opportunity, since you are the first one here, Senator Enzi, we will recognize you.

STATEMENT OF THE HONORABLE MIKE ENZI, A UNITED STATES SENATOR
FROM THE STATE OF WYOMING

Senator Enzi. Thank you, Mr. Chairman, Ranking Member. I appreciate this opportunity to testify before you on S. 736, the State, Tribal and Local Species Transparency Act. I appreciate the committee's efforts to focus on the Endangered Species Act. We have some of the richest wildlife habitat in North America and it supports a number of industries, including tourism, guiding, recreation, agriculture, just to name a few.

The successes in Wyoming have come from State management of wildlife based on science collected from State, local, tribal and Federal wildlife officials. An example of that is we have recovered an extinct species. The black-footed ferret was considered extinct. Near Meeteetse, Wyoming, I think its population is about 85, they found a few of these, they captured them, they put them into captivity for a while so they could get the best genetic breeding on them. They have expanded dramatically and they have been released back into the wild and they are doing well out there now.

That is an effort that relied on science from a variety of sources, including State and Federal biologists. It has resulted in restoring North America's only ferret species.

However, these types of partnerships aren't the norm. In too many cases, the data Federal agencies rely on to make a

listing are not shared with the key State partners. Making matters worse, there are instances when State, local and tribal science is ignored completely.

For that reason, I introduced this bill to include those people. I did it last year with a number of my colleagues and again in this Congress. It is designed to ensure that the Federal Government adheres to its statutory responsibilities to cooperate with the States under the Endangered Species Act and second, to ensure that the best available scientific data is used in the listing decisions.

Section 6 of ESA already requires the Secretary to "cooperate to the maximum extent practicable with the States." Despite the statutory charge on the Federal Government, States have noted cases where the ESA listing decisions are made in the dark, and express that Federal agencies often duplicate analyses in conservation plans that are already generated by the States.

We know that science from State, local and tribal officials plays an effective role in wildlife management. For example, in December, 2010, the Fish and Wildlife Service proposed to list the dune sagebrush lizard as endangered under the ESA. Texas officials raised concerns that the Fish and Wildlife listing proposal depended on scant, outdated data from the 1960s to determine the lizard's known distribution and assumed that the lizard was locally extinct in certain areas where the State of

Texas had verified that it was present.

After research and field surveys conducted in cooperation with the States, the local government and other affected stakeholders, the Fish and Wildlife Service reversed its earlier determination to list the dune sagebrush lizard as endangered in June of 2012. As a result, the lizard continues to co-exist with State economic activities in the area that produces 14 percent of the Nation's oil and 47,000 jobs.

The bill also ensures that the best scientific and commercial data available to the Secretaries of Interior or Commerce is used in ESA listing decisions. Hearings on this bill in the House during the last session of Congress revealed numerous examples of Federal agencies not including data or information in decisions where they are required to utilize the best scientific and commercial data available.

I can go into an example of grizzlies in Wyoming, they were measuring footprints instead of checking the DNA of the hair of the bears in the feeding areas.

The legislation you are considering today is designed to address such inadequacies. S. 736 does not favor one science over another or require multiple county or State submissions of conflicting data. The Secretary of Interior or Commerce would continue to have the final decision on what constitutes best available scientific and commercial data. However, S. 736 would

ensure that they incorporate and provide proper respect for data provided to them by States, tribes and local governments.

I will keep my comments short because I know you are covering a number of different things today. You are going to be taking testimony from others, including Director Ashe. I have to say that he has been extremely helpful with the Wyoming wolves, improving the Wyoming plan for wolves, which has led to an increase in the number of wolves but a decrease in the number of conflicts.

I will say there are a number of these other bills I have co-sponsored as well as helped author. In particular, I want to recognize Senator Gardner for his work with the Wyoming delegation to ensure that States with existing approved or endorsed plans are adequately protected under this legislation. I thank you, Mr. Chair.

[The prepared statement of Senator Enzi follows:]

Senator Inhofe. Thank you, Senator Enzi. Consider me a co-sponsor.

Senator Booker?

Senator Booker. Mr. Chairman, I would happily defer to Senator Heller. I know he will want to speak and leave. I am going to be here for the entire hearing. And there is a tradition; we are both from the PAC 12. We always let USC go before Stanford, because you save the best for last.

[Laughter.]

Senator Inhofe. We also have Senator Gardner here, so we will go ahead with you, Senator Heller.

STATEMENT OF THE HONORABLE DEAN HELLER, A UNITED STATES SENATOR
FROM THE STATE OF NEVADA

Senator Heller. Mr. Chairman, thank you.

Senator Inhofe. And I say to my fellow Senator, try to keep it within five minutes. We have a big agenda today.

Senator Heller. Certainly, I will give it my best effort, my best PAC 12 effort, let's put it that way.

I do want to thank my friend from New Jersey for his help and support and for his efforts for his school. I know how important that is to him as it is for all of us. Thank you very much.

Again, Mr. Chairman, thanks for holding this hearing today. I know you have a number of pieces of legislation on today's agenda. My bill, the Common Sense in Species Protection Act, is one of them.

As you are well aware, I grew up in the State of Nevada. We understand the importance of being good stewards of our natural treasures. We are very blessed in our State. But we also understand the importance of economic development. As you are probably well aware, hunting, camping, horseback riding in your State is just as revered in our State. We still to this day, my wife and I, when opportunity avails itself, get our horses out and we will pack our horses into the Sierras, or take some crest trail that spooks my wife a little bit. But we

continue to do so.

Needless to say, I just want to make sure that the activities that I have enjoyed over the years, my family, my children, are continued for future generations. I think that is why we are here today. I again appreciate, Mr. Chairman, your efforts to hold this hearing.

I think it is important that we have effective environmental laws that balance the need to protect wildlife and the environment while allowing for reasonable economic development. Unfortunately, the Endangered Species Act, I believe, is a prime example of a law that has proven to be out of date and frankly, ineffective. Since the last time it was reformed 30 years ago, it has less than a 2 percent effective recovery rate. I know these days you get medals for just participating, but when I was in school, 2 percent definitely was a failing grade. It is clear the law is not serving wildlife or frankly, our western ways of life as it should.

While my bill is not a cure-all, it is a simple reform aimed at modernizing the ESA, making the listing process more transparent. When the U.S. Fish and Wildlife makes a listing decision, it not only aims to protect the species itself, it also affords some protection to the ecosystems that these species rely upon.

They frequently make what is called a critical habitat

designation, which of the lands that are essential for the conservation of that particular species. Activities on these lands, as you can imagine, Mr. Chairman, are heavily restricted. States like Nevada, where mining, ranching, energy production and outdoor recreation all serve as a central component to our local economy, these restrictions have been and can be very devastating.

My bill does not take away from Interior's to limit these types of activities. What it does require, though, is that the Department of Interior report the full economic impact of any proposed critical habitat designation to the public before it makes a decision. Specifically, rather than a very limited economic analysis that they can currently conduct, which by the way is very limited, the Service must determine the effect a designation would have on property use and values, employment and revenues for the States and local governments. Additionally, it requires the Service to exclude areas from critical habitat designation if the benefit of keeping it a multi-use purpose far exceeds the benefits a restriction would have for the wildlife.

Access to all lands, particularly public lands, is vital to Nevada's character and its economy. Restricting the multiple use of those lands in a non-transparent and irrational fashion is not an option for Nevadans who rely heavily on them for their

livelihood. Whether it is the greater sage grouse, the long-eared bat, the lesser prairie chicken or any other species the agency is making a decision on, it is critical that at a minimum that we had this simple common sense step to that process.

So before I conclude, I would like to briefly touch on Senator Cory Gardner's Sage Grouse Protection and Conservation Act. I will let him discuss the details of his bill. But as an original co-sponsor, I want to underscore the importance of this measure to the State of Nevada. Fish and Wildlife is expected to make a decision on whether to protect the greater sage grouse under the Endangered Species Act this fall. Should it get listed, our rural way of life and our local economies would be devastated. All grazing, all hunting, all recreation, all mining and energy production in over 19 million acres of public lands in Nevada would all come to a screeching halt.

Given the threat of a listing, the 11 western States, home to sage grouse, have been working diligently on State-specific conservation plans. These plans specifically aim to address each State's unique threats to sage grouse while protecting their local economies. So it is important to States and the Interior has said they play a major factor in their listing determinations.

My time has run out, Mr. Chairman, and I will cut my comments short. I again want to thank you for our efforts on

hearing these bills. I think it is important. We are determined in these western States that our rural way of life can be strengthened. I think we can work together to make this happen.

So thank you, and again I want to thank the gentlemen to my right and left for their efforts and your committee for hearing these bills.

[The prepared statement of Senator Heller follows:]

Senator Inhofe. Very good. Thank you. Senator Gardner?

STATEMENT OF THE HONORABLE CORY GARDNER, A UNITED STATES SENATOR
FROM THE STATE OF COLORADO

Senator Gardner. Thank you, Chairman Inhofe. To Senator Booker, not everybody can be in the Mountain West Conference. We understand that.

[Laughter.]

Senator Gardner. Thank you, Chairman Inhofe and Ranking Member Boxer, for this hearing today on the Endangered Species Act, including my legislation, S. 1036. It has been just around 10 years ago that I first testified before the EPW committee on the need to look at how we can do a better job of recovering the species under the Endangered Species Act. The Sage Grouse Protection and Conservation Act is a part of that continuing effort.

Thank you to co-sponsors here, Senator Heller and others, about the this discussion and the importance of this legislation. I certainly welcome the opportunity to make this a truly successful bipartisan effort.

The Act that we have introduced is designed to allow States to create and implement State-specific conservation and management plans, State-specific plans that would allow us to protect and restore greater sage grouse populations and their habitats and require Federal agencies to honor the hard work and massive investments by the States to protect sage grouse within

their borders. It is important to note that this legislation is not a mandate. Again, this is an optional approach. A State may choose to defer to Federal agencies for sage grouse protection. A State opts into this legislation.

In 2011, Secretary of the Interior Salazar invited western States to craft State plans for the management of sage grouse on all lands, State and Federal. These plans were to be submitted and considered by the Secretary as the preferred management alternative for sage grouse within each State as part of the land use plan process. My legislation keeps that promise and allows States to prescribe management of sage grouse within their borders.

Colorado and other States have spent years crafting these plans and spent hundreds of millions of dollars, all with the cooperation and participation of interested stakeholders and the Federal agencies. Since 2010, States, Federal agencies, landowners and stakeholders are voluntarily protecting over 4.4 million acres of private property for sage grouse. We have made tremendous progress, and my legislation seeks to keep that momentum moving forward.

This incredible cooperation among States, the Federal agencies, landowners and stakeholders will no doubt end the moment that there is a listing of the sage grouse this September when the Federal land use plans are released in May or June,

because those land use plan amendments will largely ignore the efforts of the States.

The Sage Grouse Protection and Conservation Act ensures that sage grouse will be managed appropriately, whether they occur on Federal, State or private lands. It will prohibit the Secretary's proposed withdrawal of 16.5 million acres across the west from agricultural activity, energy development and outdoor recreation, which will cost jobs and devastate our local economies.

This legislation represents an extremely important effort to keep all parties at the table to conserve the species. I look forward to working with members of the committee and colleagues in a bipartisan fashion to get this important legislation across the finish line and signed into law. I would like to submit a series of letters we have in support of the Sage Grouse Protection and Conservation Act, if I may do so.

Senator Inhofe. We will put that into the record of this hearing.

[The referenced information follows:]

Senator Gardner. I thank you, Chairman and Ranking Member, for the opportunity to be with you today.

[The prepared statement of Senator Gardner follows:]

Senator Inhofe. Thank you, Senator Gardner.

Senator Booker?

STATEMENT OF THE HONORABLE COREY BOOKER, A UNITED STATES SENATOR
FROM THE STATE OF NEW JERSEY

Senator Booker. Thank you very much, Chairman Inhofe and Ranking Member Boxer, for giving me a chance to talk about my Refuge Cruel Trapping Act, which would ban the use of body-gripping traps in the national wildlife refuge system.

Leg-hold traps have been banned in over 90 countries. Again, that is 90 countries that have banned the cruel leg-holding traps. Yet even in the United States they are not banned in wildlife refuges.

Jaw traps operate by slamming shut with bone-crushing force on any animal that trips the device. Terrified animals break legs, chew off limbs, dislocate shoulders and tear muscles as they try to break free of these traps.

Strangulation neck snares are perhaps the cruelest of all the trapping devices. The snare is designed to tighten around an animal's neck as he or she struggles. Animals trapped in neck snares suffer for days and days and the death is often slow and painful.

Not only are body-gripping traps cruel but they also are indiscriminate. Too often the animals caught in these traps are not the animals that are actually targeted.

I will give one example of this. In 1989, a New York State Department of Agriculture study examined the effectiveness of

using leg-hold traps for coyote control. The study found that 10.8 non-targeted animals were trapped for every coyote. That is more than ten to one, the animals caught in these cruel traps were not their intended targets.

And what types of non-targeted animals are being maimed and killed by these cruel body-trapping traps? Here are some illustrations. The endangered species, such as the lynx, are being maimed and killed. The lynx is caught, in this picture, in a strangulation snare trap that I mentioned earlier.

Iconic species, such as the bald eagles, are being maimed and killed. At the time this picture was taken, the bald eagle was still listed as an endangered species.

Common, everyday animals, even such as raccoons, are being maimed and killed, as we see in this picture. This is a leg-hold trap shown here. Last month in Missouri on public land a mountain lion paw was found torn off in one of these traps. They found nothing but the torn paw of a mountain lion.

And common animals, such as our pets, cats and dogs, are regularly, routinely caught and killed in these cruel traps.

This last picture is an animal, a beagle named Bella. Bella was a 20-month old hunting dog who was killed in the steel jaws of a conibear trap. Bella's owner was devastated and obviously with anger asked, what was this type of deadly trap doing on public land? I wonder that too.

Our wildlife refuges attract more than 47 million visitors a year. Nearly all those visitors, more than 99 percent, are using our refuge system for recreational purposes, not for trapping. Why would those 47 million visitors need to worry about the safety of their pet or even worse, the safety of their children? Just two days ago a 12-year old boy in North Carolina was taken to an emergency room after a body-gripping snare snapped shut on his hand while he was doing chores by a pond in his neighborhood. It took six doctors hours to release this boy from the trap.

An American public overwhelmingly agrees that we should not be using these traps. Seventy-nine percent of Americans believe trapping on wildlife refuges should be prohibited. Charles Darwin called the leg-hold trap one of the cruelest devices ever invented by man. He said, "Few men can endure to watch for five minutes an animal struggling in a trap with a torn limb. Some will wonder how this cruelty can have been permitted to continue in these days of civilization."

He said that in 1863. And I echo those words now today. How can such cruelty be permitted on wildlife refuges, of all places, where we are trying to preserve wildlife habitat? I urge my colleagues to support S. 1081 and join me in banning these cruel body-gripping traps from wildlife refuges. Thank you very much.

[The prepared statement of Senator Booker follows:]

Senator Inhofe. Thank you, Senator Booker. That is a wake-up call.

Our last presenter here with legislation will be a part of this committee, he is coming to this committee. Senator Thune?

STATEMENT OF THE HONORABLE JOHN THUNE, A UNITED STATES SENATOR
FROM THE STATE OF SOUTH DAKOTA

Senator Thune. Thank you, Mr. Chairman. I appreciate you and Senator Boxer holding this hearing today, and particularly giving me the opportunity to make a couple of comments about this bill.

On March 4th, I introduced S. 655, which is a bill to prohibit the use of funds by the Secretary of the Interior to make a final determination on the listing of the northern long-eared bat under the Endangered Species Act of 1973. Listing the northern long-eared bat under the Endangered Species Act is a misguided attempt by the Fish and Wildlife Service to protect the species which is suffering death loss and reduction in numbers from a fungus called white nose syndrome, not because of habitat loss.

Mr. Chairman, even the Fish and Wildlife Service has acknowledged that "White nose syndrome alone has led to dramatic and rapid population level effects on the northern long-eared bat. The species likely would not be imperiled were it not for this disease." The Congressional Research Service has informed me that during the last 10 years, no species has been listed in the United States under the Endangered Species Act naming disease as a primary factor for reduction in numbers in the listing.

I point that out, that the white nose syndrome has been detected in only 25 of the 39 States included in the northern long-eared bat's range. Yet as a result of this misguided listing of the species, thousands of jobs are going to be placed at risk, including more than 1,500 timber industry jobs in my home State of South Dakota. My concern is that the Fish and Wildlife Service has insufficient supporting data to warrant listing the northern long-eared bat as a threatened species, particularly given the absence of white nose syndrome in so much of its range.

In addition, I believe the Fish and Wildlife Service failed to adequately gather and consider credible information available from State government entities and other non-Federal sources before making its decision to list the northern long-eared bat.

Mr. Chairman, let me just say, what concerns me the most is that with the listing of this northern long-eared bat, once again we have a Federal agency that is throwing aside common sense and listening to special interest groups that, based on their actions, do not have the best interests of the people of this Country in mind.

Along with the listing of the northern long-eared bat, the Fish and Wildlife Service has also published a proposed rule called the 4(d) rule which was designed to offer protection to forest management practices that would actually enhance the

northern long-eared bat's habitat. It is my understanding that litigation filed by the Center for Biological Diversity regarding the 4(d) rule raises a purely procedural claim that is that the Fish and Wildlife Service must perform NEPA analysis on the 4(d) rule prior to finalizing it.

It is likely that the Center for Biological Diversity will seek a stay or preliminary injunction request on the interim 4(d) rule. If an injunction is granted, forestry practices would not be exempt from the take prohibitions of the Endangered Species Act, which would be an uncalled for blow to the timber industry and other industries in the eastern two-thirds of the United States.

Mr. Chairman, to summarize, many of my colleagues and I are deeply disappointed that in listing the northern long-eared bat, the Fish and Wildlife Service has failed to adequately address the real reason even it recognizes the decline of the northern long-eared bat, and that is white nose syndrome, and not the loss of habitat. I believe much more progress could have been made if the Fish and Wildlife Service had taken the funds it is using to list the northern long-eared bat and use those funds for research and other tools to diminish the effects of the white nose syndrome.

We all know that Congress stepped in and took control of another ESA listing by removing the northern Rockies gray wolf

off the ESA list because the Fish and Wildlife Service was too timid to do it. That may be what is necessary regarding the northern long-eared bat. In the case of the northern Rockies gray wolf, the Congress stepped in because nearly everyone acknowledged that the wolf was a recovered species.

In the case of the northern long-eared bat, the issue isn't whether the species is in trouble, it is whether the ESA listing provides the kind of help the species needs and other species like it. The answer to that is a firm no.

So I would hope, Mr. Chairman, that you all could work with me on this issue. It has a very detrimental impact on the economy of the Black Hills of South Dakota. And it doesn't address the fundamental problem, which is the disease that this bat is facing, not the habitat. This will have profound impacts on the habitat and on our ability to continue to produce timber in the Black Hills, something that is very important to the economy of that region and a lot of jobs.

Thank you, Mr. Chairman.

[The prepared statement of Senator Thune follows:]

Senator Inhofe. Thank you, Senator Thune. We look forward to working on your legislation in this committee. I am sure it didn't go unnoticed to Director Ashe that of all the comments that were made in legislation that is being proposed here, it brings up the problem of a lack of transparency, secrecy, local input, these are things that people are concerned about, myself included.

STATEMENT OF THE HONORABLE JAMES N. INHOFE, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. So we will have our opening statements here. The last time that we had a hearing on the Fish and Wildlife Service budget was when I was chairman many years ago, in 2003. It has been that much time since we have had a hearing on this. The Endangered Species Act has gone from a well-intentioned piece of legislation in the 1970s to one that is dictated by environmental activist groups taking advantage of the adversarial system.

In 2011, the Service entered into closed door settlements with environmental groups that has required the Service to make final listing decisions on hundreds of species but has not provided documents about how these settlements were developed despite repeated requests from Congress. The species covered by these settlements is staggering, covering almost the entire Country, as we have been observing. It includes the lesser prairie chicken, the northern long-eared bat, the greater sage grouse and numerous freshwater mussels and fish.

The ESA recovery rate is a mere 2 percent, even though the entire Federal Government spent \$1.2 billion on species conservation in 2013. This Administration touts its success as delisting more species than any other Administration and it has. Yet, when you look at the math on this thing, you note that it

has delisted 12 species and yet listed several hundred at the same time. So we are getting deeper and deeper in that hole.

In recent years, the Service has been too focused on listing more species instead of focusing on the goal of the Act to recover species. The Fish and Wildlife Service is forced to designate habitat because of lawsuits instead of a comprehensive understanding of the species and its surroundings.

The Endangered Species Act has to be reformed to clarify the focus and achieve real results. It can no longer be an ATM machine for environmental groups looking to make money off statutory deadlines.

In addition to a conversation with Director Ashe about the budget and how ESA can be fixed, I would like to use this opportunity today to examine all legislation within the Endangered Species Act nexus. That has been referred to this committee.

Some of these bills are very narrowly tailored to address local issues. Others are bills that address overarching problems with the direction of ESA. In examining these bills, I hope to have a more clear direction in moving forward as to how we can modify the Endangered Species Act and return to its purpose.

As a part of the ESA modernization, I want to bring the conversation efforts to a more local level. I think we heard

that from those who are proposing legislation, Director Ashe. The five-State plan among Colorado, New Mexico, Oklahoma, Kansas and Texas to address the lesser prairie chicken was a thoughtful, thorough plan. It was a plan developed by local communities who know the land and the animal population. But the Fish and Wildlife Service has listed the lesser prairie chicken as threatened, which only works to discourage the efforts. And you know the efforts that took place in those five States.

That is demoralizing, when they all come together, they work, they spend their money, their resources. I am not saying they are totally ignored. Because it could have been an even worse outcome.

But anyway, communities are not incentivized to develop their own plans if the Fish and Wildlife Service will systematically reject them. I hope we do not see Fish and Wildlife make the same mistakes on the sage grouse and other species.

I want to thank our witnesses for their time today. I would like to extend a special welcome to Director Ashe. Director Ashe came to Oklahoma at my request and we were pleased to show him the way that Oklahomans are working to protect and develop the species. I believe when you came that you really did listen and actually learn some yourself. So I thank you for

that.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thanks so much.

Director Ashe, thank you for dedicating your working life to protecting God's species. I heard them called by Senator Thune, I think he said a special interest. Well, let's take a look at what they look like. The American eagle, which was saved by the ESA, the very symbol of America. If we listen to the folks on this side of the aisle and they were here then, the ESA never would have passed and we might have lost this great symbol. And the lesser prairie chicken also needs to be checked out as well.

So thank you for that and taking all the heat that you take. That is a compliment, because it means you are doing something and you are fighting for what you promised you would fight for.

Now, I think it is important to note that today, we are looking at a series of bills, eight Republican bills and one Democratic bill. I want to say to Senator Booker, thank you. That is, you know, a heart stopping presentation. I hope we will all work together on that bill.

But today, I received a letter from the following organizations against every single Republican bill on the agenda. And these are bipartisan groups. Many of these groups

were started by Republicans.

We have to remember, I think it was Richard Nixon who signed the Endangered Species Act, Richard Nixon. And all these back-door efforts we are looking at today have to stop.

So here are the groups that wrote against every single Republican bill. You know, sometimes I have to pinch myself that this is really the Environment and Public Works Committee, not the Anti-Environment and Public Works Committee. Today it feels like the Anti-Environment and Public Works Committee. It is a bad, bad thing.

So let me tell you the groups that wrote against these Republican bills. The American Bird Conservancy, the Animal Welfare Institute, The Audubon Society, Born Free USA, the Center for Biological Diversity, the Center for Food Safety, Clean Water Action, Defenders of Wildlife, Earth Island Institute, Earth Justice, Endangered Species Coalition, Friends of the Earth. The Humane Society of the United States of America, the International Federation of Fly Fishers, the International Fund for Animal Welfare, the League of Conservation Voters, the National Resources Defense Council, Oceanus, Sierra Club, Southern Environmental Law Center, the Union of Concerned Scientists, the Wild Earth Guardians and the Wyoming Wildlife Advocates.

I ask unanimous consent to place these into the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Then there is a Denver Post article, Cory Gardner Wrong on Greater Sage Grouse, and an explanation of why that is wrong.

So I just really want to say this, Mr. Chairman. I respect your views, I disagree strongly with them, and we will have hand to hand combat on the Floor if these bills get that far, which they may get voted out of this committee.

But I want to make a point here. Recent polling of the American people shows that 84 percent support the Act that was signed in a bipartisan way by an overwhelming voice vote in the Senate. And again, signed into law by Richard Nixon. It has a strong record of success. I showed you the eagle. It is the whooping crane, the California condor, the brown pelican, species of sea turtle, this is a heritage for America. This is just as much a heritage, frankly, as our magnificent rivers and streams and mountains and forests.

So wildlife-related recreation is a significant industry. And they are expressing their concern, the fishermen are, about some of these radical bills. Wildlife-related recreation was a \$145 billion activity in America in 2011. Native plants and animals can provide life-saving medicines. So this Endangered Species Act shouldn't be back-door repealed this way with oh, you have to consider even more economics, you have to say that State scientists know more than national scientists.

Let's not turn everyone against everyone. Let's work together for the best science and very clear moves to protect a species where it makes sense. Where it doesn't make sense, the law is already clear, they can't do it.

So I look forward to working together maybe to moderate some of these radical bills. But if we don't moderate these radical bills, then we are going to have to get all of the people out there in this Country motivated to weigh in against what the Republicans are trying to do here today with this series of bills that really are a back-door repeal of the Endangered Species Act.

Thank you, Mr. Chairman.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Director Ashe, you are recognized for five minutes.

STATEMENT OF THE HONORABLE DAN ASHE, DIRECTOR, UNITED STATES
FISH AND WILDLIFE SERVICE

Mr. Ashe. Thank you, Senator. It is a joy to be here in front of the committee again. I am going to spend my time this morning just talking to you about the budget and the context for our budget for this year.

The President's budget is about a \$135 million increase for the U.S. Fish and Wildlife Service, a 9 percent increase. We certainly realize that in these difficult times that that is a significant investment. I hope that you will agree with me that it is a good investment.

When you think about our budget, it really is a budget that is built on priority. And that is priority landscapes and priority species. We are putting those priorities behind efforts grounded in partnership and really epic scale partnership.

The best example of that is the greater sage grouse. We started more than five years ago by reaching out to our State partners and building a framework for cooperative management of the sage grouse to hopefully avoid the need for a listing. We have worked hand in glove with former Governor Dave Friedenthal, a Democrat from Wyoming, and we are working today with Governor Matt Meade, a Republican from Wyoming. Wyoming has built a great framework for sage grouse conservation.

We built a sage grouse task force with the Western Governors Association, which is chaired by Governor Hickenlooper from Colorado, a Democrat and Governor Meade from Wyoming, a Republican. We built a conservation objectives team report jointly with our State colleagues to identify the actions that will be necessary to conserve the sage grouse and hopefully avoid the necessity to list it under the Endangered Species Act.

We reached out to the BLM and the U.S. Forest Service and they began a public and transparent process of land management planning to help conserve the sage grouse. We reached out to the U.S. Department of Agriculture and the Natural Resource Conservation Service has been an exemplary partner, putting over 4 million acres, almost \$400 million of investment in private lands, to incentivize and encourage conservation of the sage grouse.

Another example is in Harney County, Oregon, where we are signing candidate conservation agreements with assurances for ranchers. We now have nearly a million acres of private ranch land signed up in Oregon to conserve the sage grouse. We had a rancher, Tom Strong, who coined perhaps the best conservation phrase of the year last year, What's Good for the Bird is Good for the Herd, recognizing that there is an economy between good, sustainable ranching and good conservation of the sage grouse.

Examples of working with the EPA and the Corps of Engineers

and the USDA and NOAA and the Great Lakes States to keep the Asian carp out of the Great Lakes, and our budget provides enhancement for that. Examples in the Great Plains, working with the range States to conserve the lesser prairie chicken, as the chairman said, not through Fish and Wildlife Service, Federal regulation, but by standing behind a five-State, range-wide plan.

These types of examples require field capacity. They require innovative, energetic, professional people in the field and that is what our budget will do for us.

Monday, a Washington Post editorial writer, E.J. Dionne, began his column with the observation that there are few moments of grace in our politics these days. But Mr. Chairman and members, I am here to tell you that there are many moments of grace every day by the men and women in the United States Fish and Wildlife Service and their partners, people like Angela Sitz, who forged those relationships and those candidate conservation agreements in Harney County Oregon. People like Andy Ewing, the manager of San Diego Bay National Wildlife Refuge, and San Diego County declared May 20th, 2014, as Andy Ewing Day because of his exceptional work with local communities.

People like Jeremy Coleman, our white nose syndrome coordinator, who despite this devastating disease in bats,

maintains an infectious enthusiasm that we can be successful. People like Greg Noydecker, who has worked with the ranchers in the Big Hole Valley in Montana to avoid the need to list the Arctic grayling and who has forged friendships with ranchers like Don Reese, lasting, durable friendships. People like Pam Scruggs, in our International Affairs program, who worked two years ago in the Convention on International Trade and Endangered Species on the listing of sharks to prevent the finning practice in sharks. When we went to the CITES COP and she met for the first time some of her international counterparts, one of them from Germany said, oh, you are the famous Pam Scruggs, because she had done such good work with them.

People like Dave Hendricks, who is the manager of Neosho National Fish Hatchery. When I went to Neosho, Missouri and met with Dave, the mayor came and the city and town councilmen came and told me of the role that Dave and his team plan in that community. So these are the people and the work of the U.S. Fish and Wildlife Service. And they deserve your support.

[The prepared statement of Mr. Ashe follows:]

Senator Inhofe. Thank you, Director Ashe. We will have a five-minute round of questions, we will not have a second round. Because we do have another panel.

First of all, as I said in my opening statement, Director Ashe, the Fish and Wildlife request for fiscal year 2016 is another \$23 million specifically for listing alone. Now, the Service's budget justification references a backlog of 609 other petitions for listing that are in addition to settlement agreements. I would just say, if you look, for example, at the burying beetle, that originally came from the east coast and the populations now have been expanded and are found in my State of Oklahoma and Nebraska, in Arkansas and some other areas. We went through this thing.

When I go back to Oklahoma, it doesn't matter who we talk to in the rural areas. It can be farmers who are concerned about, can they go out and plow their fields without disrupting this critter's habitat? People who might be drilling, people who might be doing anything on the land, it is something that is very, very costly.

What about the delisting? You are requesting more money for listing, and yet that is not the problem. It is the delisting. Do you think that we have an adequate system to address the delisting and when is that going to be set in place?

Mr. Ashe. Mr. Chairman, the increases in our budget are

actually, we are directed to fulfilling our responsibilities, like five-year status review, which support the analysis of species that are already listed and will support our review to determine if they should be downlisted or delisted.

For instance, with the American burying beetle, we are initiating next month a range-wide comprehensive status review for the species. So we will engage the Service's experts, the States, other experts, and we will use that status review to determine whether delisting or downlisting of the American burying beetle -

Senator Inhofe. No, wait a minute. You are going to do this study to see how many should be delisted? Is this what we are looking at?

Mr. Ashe. We are going to do it to determine the status of the species, and then based on that, we could make a proposal to downlist -

Senator Inhofe. Well, no, we are talking about having listed, remember the 12 versus hundreds that I used in my opening statement? Why is it that we are spending all this time on listing and not delisting? We have talked about this for a long period of time. I can remember letters sent back, and I have copies right here, back to 2011, addressing this, along with some sue and settle problems that we have.

But it is the delisting. What is my answer to the people

when I go back to western Oklahoma and they say, how much longer is it going to be until we do something with this vast, this growing beetle or whatever you want to refer to it as?

Mr. Ashe. It will be this coming month, when we start the status review.

Senator Inhofe. How long do you think that review will take?

Mr. Ashe. I can't really give you that answer right now, Mr. Chairman.

Senator Inhofe. Can you tell me within six months how long it will take?

Mr. Ashe. I could tell you it would take 6 to 18 months, would be my guess, to do the status review.

Senator Inhofe. All right, 6 to 18 months, somebody write that down. We want to get some conclusion on this thing.

So the backlog for delisting or downlisting the species, right now you can't tell us what the specific backlog is for delisting or for downlisting species today?

Mr. Ashe. I can tell you we have a backlog of species, we have over 200 species that are already listed and for which we have not developed recovery plans.

Senator Inhofe. Okay.

Mr. Ashe. And so we have, we definitely have a backlog of need to deal with status assessment of species to consider

delisting or downlisting. But Mr. Chairman, I think what you realize, and I hope all the other members realize, we have an affirmative duty to list. The law requires us to deal with petitions. The law requires us to make 12-month findings on listing.

So by law, our highest priority is to consider the listing of species. The law does not give us any latitude to do that. When I have a petition, I have 90 days to make a determination on the petition. If I make a positive finding on that at 90 days, I have one year to do a status review.

Senator Inhofe. The mission, though, originally, and you probably have done a lot of study on this, all the way back to 1970, was to list, but also to delist if you are successful. You could almost come to the conclusion that you are not successful if you haven't found an opportunity to delist some amount, some numbers of species, or downlist them, and yet we keep adding more and more to the list.

So that is what I think everyone wants to see, the results. I think you would say this morning, recognize the fact that sometimes you list something and all of a sudden some programs are successful, as in, I would say, the burying beetle, because it is now found in places where it never was found back when it was originally listed from east coast information. Is that correct?

Mr. Ashe. But in order to show that, Senator, you or I or others may believe that. But in order to propose a delisting or a downlisting, I have to show that. So that is the purpose of a five-year review.

Senator Inhofe. So it might be a flaw in the process, though. You are doing your job but perhaps we need to make some changes in the Act.

Mr. Ashe. I think the most important things, Mr. Chairman, are the resources to do the job. The job is doable, and I think we are showing, as you acknowledge, in this Administration, by the end of this Administration if we stay on course we will not just have delisted more species than any other Administration. We will have delisted more, due to recovery, more species than all previous Administrations combined. So I think we are focusing on delisting. We need the resources to do the five-year status assessments. We need the resources to do the recovery planning. We need the resources to do the delisting.

So when you are looking at our delisting budget, or our listing budget, that is our budget for listing and delisting. And so we need the resources to do that.

Senator Inhofe. My time has expired, but I will show you where we got the information in terms of the listing. And that is why I wanted to bring it up this morning.

Senator Boxer?

Senator Boxer. Thanks so much, Mr. Chairman.

Well, the fact that you are delisting shows that the ESA is working. I am just looking at the different Administrations. Ronald Reagan Administration, they delisted 5 due to recovery, Bush 1, Clinton 6, Bush 2, 7 and Obama 11. So that says to me you have flexibility in this law. And yet all these bills that the Republicans have filed say, well, we just need more flexibility. That is just a cover. That is just a cover. That is just what they say. They just want to stop this Act from functioning.

I feel that the way the Obama Administration has proven that this Act works is when you see this recovery. So I want to ask you about Senator Gardner's bill which is so controversial that there has been a big op-ed in his own paper back home, and all these groups oppose it. He basically says, for six years, you can't do a thing about the greater sage grouse. And as I look at the ESA, its beauty is its flexibility. I think we are proving it in real terms on the ground.

So I would like to ask you, what would it mean to this particular species if all of a sudden your hands were tied for six years? It would mean that the States would develop the plans, you are out of it completely for whatever God knows reason, and then the States decide what we can do on Federal lands. So if you could tell me how you think that would impact

the recovery of the sage grouse, the saving of the sage grouse?

Mr. Ashe. I think as you said, the Gardner bill essentially defers completely to State plans that do not exist other than in the State of Wyoming, as I said, we have a very good plan for sage grouse conservation. But it defers to State plans that don't exist and provides no standards for those plans at all. So there is no functional standard that goes into place for those plans.

So my sense about the Gardner bill is that it is simply delay. In the meantime, what we will see for sage grouse is more fragmentation, more loss of habitat and we will move toward a crisis by delay.

Senator Boxer. Right. Well, this bill is even worse. It says for six years you can't do any listing. So it basically, what it does for the sage grouse, it repeals the Endangered Species Act for six years. It is a make believe there is none because we don't like what is happening.

But your comment, what's good for the bird is good for the herd I thought was a real takeaway. The fact is, when we work together on this with the flexibility that we have, everybody is a winner. I don't see a situation where that hasn't been the case.

In my own State, the Federal Government acting as a catalyst has brought together everybody in terms of our

endangered species. My God, we have had huge successes with conservation plans drawn up by the entire region.

You are pointing out that employees in your shop are being cited in San Diego as heroes, this is what it is. This shouldn't be about, well, my State scientists know better than your State scientists. This isn't about that. It is about let's do what is right to protect God's species. That is our job. We inherited them. And they are glorious.

And what right do we have to sit here and say that, who cares how many species die off? Well, that is not right. It is a moral issue to me. It may not be to the next person, and I don't preach about it. They can decide what they think is moral and what they don't think is moral.

But the fact is, if we work together, it is a win-win all across the board. So can you tell us a little bit about the flexibility in the law that so many people are excited to see changed, either changing it by the back door or even perhaps as Senator Inhofe said, maybe the law needs to be changed so that you have more flexibility. Tell us about the flexibility in that visionary law that was signed by Richard Nixon that has been supported across the board by bipartisanship and 82 percent of the people support it in the Nation. Tell us about the flexibility.

Mr. Ashe. There are some key flexibilities in the law, one

of which was mentioned earlier. When we listed the northern long-eared bat, we did so with the 4(d) rule that clarifies that white nose syndrome is the principal threat and therefore we can provide, we can insulate a broad range of activities from the regulatory restrictions in the law. We used the same tool with the lesser prairie chicken range-wide plan, where we listed the bird as threatened but we deferred largely to the well-designed, comprehensive conservation strategy that five States worked together on.

When we designate critical habitat, we can remove areas from critical habitat for economic, for social or for reasons or national security. And we do that on a regular basis. So there are many flexibilities in the law. We provide a candidate conservation agreement with assurances, tells a rancher that if a species is listed and you continue to implement this voluntary agreement, then you need do nothing further in the law, so we can provide regulatory predictability for ranchers and farmers. We are doing that throughout the Country today.

Senator Boxer. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator. Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman.

Director Ashe, the challenge in South Dakota in a lot of cases is one of trying to coordinate between the agency and individual farmers and ranchers that have contracts established

for landownership or at least the availability for leases and so forth. Sometimes there are permanent leases on land. The relationship becomes strained on an occasional basis, and it is unfortunate.

Part of it is because of the tactics that in many cases are being employed by law enforcement officers who are also doing what I believe is their best to make communications with landowners. But in this time in which we see across the Country a concern about interaction between law enforcement personnel and individuals in the public, let me just share with you a letter that we got. I have tried to abbreviate a little bit. But I want to share with you some of the frustration that individual farmers and ranchers that have had leases for years with U.S. Fish and Wildlife, what they have shared with us.

South Dakota landowners and farmers have allowed waterfowl production area easements with U.S. Fish and Wildlife Service for years. They believe that they have found in many cases a rather difficult and uncooperative approach in determining which acres are actually protected by the Federal easements. In some cases there is no math, it is simply an agreement that had been done perhaps back in the 1940s.

Now, in the particular case that I am going to share, the constituent related to us that he had a story about a Fish and Wildlife agent appearing in their front yard with a flak jacket

and side arms, intimidating them simply by his appearance and his tone. I am particularly troubled as the taxpayer dollars are funding this type of aggressive approach to citizens who are voluntarily and proactively enacting conservation measures on their own land as they have been doing for generations.

How do I respond to them when they ask me why they are being made to feel as if they are law breakers, as if they are at risk? And as if rather than being a partner they are being seen in almost an adversarial type of role?

It is just one example. I have a lot of examples, literally relating back to the time in which I was Governor. In fact, I actually asked to have one of your officers removed from his post because of the interaction with local sportsmen in the central South Dakota area.

But there seems to be a breakdown in terms of the attitude of who knows best. Whether or not it is simply a matter of if you are a Federal officer, he seemed to have the upper hand when it came to the citizens that are literally paying the bill for the services. And in a lot of cases, trying to cooperate in allowing for easements for waterfowl production areas.

How do I respond?

Mr. Ashe. I don't know the specifics of the case, so I would like to find those out and I can come talk to you personally about that, Senator. I would like to do that.

Senator Rounds. Yes, sir.

Mr. Ashe. But I will theorize here that if a law enforcement officer goes to a landowner in South Dakota, it would be because we have purchased an easement. So it would not be voluntary. So that would have been an easement that we have purchased and the taxpayer has paid for.

Senator Rounds. On a voluntary basis.

Mr. Ashe. Sure. It was a voluntary transaction. But the taxpayer has an interest in that property because we have paid for it. So we do aerial surveys and so they must have seen something on the ground that caused them concern. Because we don't send a law enforcement officer unless they have observed what they believe to be an easement violation.

Senator Rounds. For an easement violation you would send an armed officer in a flak jacket?

Mr. Ashe. Not always, but it, I mean, our officers are like, if a Montgomery County police officer were to come to my home, they would have a side arm and they would be wearing protective gear that sworn officers wear. So I understand that that can be intimidating to people. I do understand that.

Senator Rounds. It is not a way to get more easements, that is for sure.

Mr. Ashe. But I would say overall, we have an extraordinarily positive relationship with landowners in South

Dakota. We have hundreds of people waiting to have the Fish and Wildlife Service secure easements on their property because of the relationship that we have.

So this could be an exception and I would like to look at it and come talk to you personally.

Senator Rounds. I would like that opportunity. My tie is expired, but I would like an opportunity to visit further.

Mr. Ashe. Thank you, Senator.

Senator Rounds. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Rounds.

Senator Booker?

Senator Booker. Thank you very much, Chairman Inhofe.

Senator Boxer keeps talking about Richard Nixon. I would rather talk, this was passed in 1973 to a unanimous vote in the Senate, as well as a 355 to 4 vote in the House. And President Nixon said there is nothing more priceless and more worthy of preservation than the rich animal array of life with which our Country has been blessed. And that is very true.

And the success that this legislation has had, it has had more success, frankly, than most governmental departments can have: 99 percent of the wildlife under its protections have been preserved. But more importantly, when it comes to the time line, it has often taken the huge task of recovering species over decades and the majority of the ones that you are

recovering are within the original time lines that were projected. It didn't go over. This often takes decades to accomplish this.

And you have saved countless species. Senator Boxer put up the bald eagle. But there is the Florida panther, the California condor, the gray wolf, the American alligator. And while these successes are impressive, the reality is we are in a global crisis of species extinction that is shocking. Shocking. Most people have no idea that it is estimate between one-sixth and one-half of all the species of all species on the planet earth are threatened with extinction in this very century. That is chilling.

Scientists now believe that the planet is currently faced with a mounting loss of extinctions that threaten to rival the five great mass extinctions of the past. People are saying we are now in the next major mass global planetary extinction. And that is unacceptable.

According to a Living Planet report released in 2014 by the World Wildlife Fund, it is estimated that the world's populations of fish, birds, mammals, amphibians and reptiles fell by over 52 percent of all life on earth, 52 percent between 1970 and 2010. Stated another way, our planet earth lost half of its wildlife in 40 years. That is shocking and stunning and has implications that cannot be monetized.

So I think our focus should be on strengthening rather than weakening the ESA. You have talked about flexibilities, you have talked about how under the Obama Administration, delisting has been done more than the previous Presidents since this has passed. So I would like to run through questions, keeping your answers as short as possible, because the great Senator Inhofe runs a tight ship here. Can you do that for me?

Mr. Ashe. I can try.

Senator Booker. In relation to the Refuge From Cruel Trapping Act that I spoke about earlier, you would agree with me that wildlife management within the refuge system should be as humane as possible, yes or no?

Mr. Ashe. Yes.

Senator Booker. Okay. And Director, in your written testimony, you describe some trapping activity on the refuge system in New Jersey. But I know you are aware that New Jersey, similar to other States, has banned the use of leg-hold traps.

Mr. Ashe. Yes.

Senator Booker. Yes, you are aware, okay. And in some States like New Jersey the ban on leg-hold traps, the Fish and Wildlife Service complies with those States' bans and currently prohibits the use of leg-hold traps.

Mr. Ashe. Yes.

Senator Booker. Go ahead, give a little flavor.

Mr. Ashe. We reserve the right to do our job. In some cases, with States like California and other places where they have large-scale bans on certain trapping methods, we do in some cases use methods that are not authorized by State law. Where we have to for conservation of the endangered clapper rail or other things.

Senator Booker. Very narrowly tailored.

Mr. Ashe. Very narrowly defined.

Senator Booker. Very narrowly defined, not the kind of trapping that is being proposed to be done on our refuges. So Director, in relation to the Endangered Species Act, you would agree that listing and delisting decisions are best made by science and the available science there is, right?

Mr. Ashe. Yes.

Senator Booker. So you would agree that listing and delisting decisions should be made by experts, scientists, not by Congress?

Mr. Ashe. Correct, yes.

Senator Booker. And this is especially true that these decisions should be made based on science by the agency, not by all the political forces that often work, the science of the agency best is insightful in cases like the sage grouse, the gray wolf, where political emotions often run awry? But the design of your regulatory regime is that science should prevail,

is that correct?

Mr. Ashe. That is correct.

Senator Booker. Okay. So finally, in my last 30 seconds, Director, I note that funding levels for the Federal Endangered Species program have been insufficient, not just for listing, but also for the delisting process. So can you please describe the importance, especially for those people who are looking for delisting, that we have better funding for you to implement the ESA?

Mr. Ashe. As I said to the Chairman, I think that the major impediment to further progress on delisting of species is our capacity to drive recovery. One of the big increases in our budget for this year is in our cooperative recovery program, where we are looking for species in and around national wildlife refuges, where a relatively small investment can make a quantum leap in terms of recovery and getting species off the list.

Just this last year, we delisted the first fish ever due to recovery, the Oregon chub, because of that little effort, little bit of funding that got it over the edge. So we are showing that by some relatively modest effort, we can make quantum leaps in recovery and delisting. Those increases are reflected in our budget.

Senator Booker. Mr. Chairman, thank you for indulging me. The more resources you have, the more delisting you could

probably do. Thank you, sir.

Mr. Ashe. Exactly.

Senator Inhofe. Thank you, Senator Booker.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman, and thank you Director, for being here today.

The Fish and Wildlife Service budget request seeks \$164.8 million for land acquisition. That is \$58.5 million in discretionary funding and \$106.3 million in mandatory funding in fiscal year 2016. That is an increase of \$117.2 million from your 2015 levels.

Now, the national wildlife refuge system has a deferred maintenance backlog totaling \$1.28 billion. So why are you proposing to acquire more Federal land when we have this huge maintenance backlog? I think we should be addressing that. What is your response?

Mr. Ashe. Two-fold. First with regard to the maintenance backlog, I need to note that in the last five years, we have decreased our maintenance backlog by 50 percent, one-half. So five years ago our maintenance backlog was \$2.6 billion. We have managed that effectively. We got a lot of help from the American Reinvestment and Recovery Act. We have scrubbed projects throughout the refuge system, we have placed priority where necessary. And we have reduced our backlog by 50 percent.

So I feel like the Fish and Wildlife Service has been an excellent steward of our maintenance backlog. Our total maintenance backlog now is less than 4 percent of our asset value, which I would say any private company would envy that type of maintenance backlog.

So I think we are a very good steward of national wildlife refuges.

Senator Fischer. I have a bunch of questions. With the recovery funds, wasn't that just a one-time shot, though? So how much of that backlog was reduced due to a one-time shot?

Mr. Ashe. I can't give you the exact figure, but a substantial amount. Because we got a substantial funding for facilities and for roads through the Reinvestment Act.

Senator Fischer. Moving forward then, you still have to look at that \$1.28 billion that I don't anticipate you are going to get another one-time shot to address it.

Mr. Ashe. But I would say that our acquisitions, those planned acquisitions, are not going to substantially increase our maintenance backlog. We are actually very careful now too, as we acquire lands, that we don't acquire liabilities. So we look before we leap in terms of land protection and conservation. I think we are doing an excellent job.

The other thing is, a lot of our effort is geared toward easement, particularly in the Dakotas. Our principal investment

is to conserve lands through easement, conservation, where we don't inherit a maintenance backlog. Because we have good stewards, those ranchers and farmers on the landscape.

Senator Fischer. In my State as well. You are looking, I believe, at supporting 34 land acquisitions and over 100,000 acres. Do you have plans for any acquisitions in the State of Nebraska?

Mr. Ashe. We have active conservation projects in the rainwater Basin, which we have conservation projects along the Platte River. I don't think we have any specific proposals in this budget for Nebraska, but we do have active acquisition efforts through the North American Wetlands Conservation Act and with our Federal Duck Stamp funding and other measures.

Senator Fischer. Senator Rounds and I were discussing the Niobrara Confluence in the Ponca Bluffs Conservation Area. He and I have, as you know, a directed interest there. Are you moving ahead with plans there on acquiring that land through easements? As you know, both Senator Rounds and I have heard from hundreds of landowners who have concerns with that.

Mr. Ashe. I am not aware of that in particular, but let me get back to you for the record.

Senator Fischer. That would be good. Are you going to move forward with any acquisition plans or plans to establish a refuge or conservation areas if you do meet local State

opposition?

Mr. Ashe. Our longstanding policy is that we do not establish refuges over the objections of State and local parties, and certainly not members of Congress. I believe we have a very strong record in that regard. Just in the last year, we have withdrawn efforts in California, in Alabama, and we have moved through public controversy in places like the Everglades headwaters in Florida where we had significant opposition. But we sat down, we worked through those efforts.

So I think we have a very good track record.

Senator Fischer. I appreciate that. In the area that I live in, we do have wildlife refuges, and it is important to have that local buy-in so that you can have a more welcoming atmosphere for people to come and enjoy the beauty that surrounds us as well.

Mr. Ashe. We believe the same thing, Senator. I believe we have proven that, as I mentioned, Andy Ewing and his role in San Diego. Andy is an exceptional individual, but that is not the exception in the Fish and Wildlife Service; by and large it is the rule.

Senator Fischer. Thank you, sir. Thank you, Mr. Chairman.

Senator Inhofe. Senator Berkley?

Senator Berkley. Thank you, Mr. Chairman.

The Endangered Species is not broken. Since this

bipartisan law was enacted in 1973 under President Nixon, it has been 99 percent successful in recovering listed species. I am a firm believer that our policy should be driven by science, especially when it comes to preserving biodiversity in our American heritage. No one wants to see a species get listed.

For example, I don't want to see the sage grouse listed. I can tell you a lot of folks in Oregon don't want to see it listed. And you can bet the sage grouse doesn't want to see it listed. So that means they are close to, or inching closer to extinction.

The fact is that it is our responsibility not to politicize the science or the biology needed to recover a particular species, but to heed the warning signs given to us by science and address the issues so a species can recover. So I am very pleased that you are here to testify today.

I wanted to focus specifically on the sage grouse. I understand the Federal plans for sage grouse conservation on BLM lands are going to be finalized and we will have that later this month?

Mr. Ashe. Senator, their schedule right now is to finalize the plans in early June.

Senator Berkley. Okay, I look forward to that. My understanding is that these plans have been developed collaboratively with input from States and local stakeholders to

help inform how it should be designed?

Mr. Ashe. There has been, over the course of three full, more than three years, been exhaustive public process.

Senator Berkley. So there is a genetically distinct group of sage grouse in California and Nevada. My understanding is that the efforts to preserve them have led to a not warranted decision in terms of listing. Are there lessons learned from that population that can be applied to the balance of the population of sage grouse?

Mr. Ashe. There certainly are, the bi-State sage grouse is shared between Nevada and California. They suffer from the same types of threats, largely habitat disturbance. In that case we have BLM and the Forest Service commit to conservation plans that will conserve the sage grouse. We have Natural Resource Conservation Service also engaged there on private lands. We had cooperation from the two States.

So that is a microcosm of the larger discussion and public process that we have going on with the greater sage grouse.

Senator Berkley. There is a plan in Oregon that is called SageCon, that is about Oregon working with stakeholders on private lands and State lands to try to stabilize the population and hopefully to prevent the necessity of being listed. Are there insights from that that have been incorporated into the plans for the BLM lands?

Mr. Ashe. Yes, I think the State of Oregon has been a great partner in this context. We expect to have a very substantive, strong program through the SageCon effort in Oregon. Again, they are a very close collaborative relationship between the planning at the State level and the planning that BLM and the Forest Service are doing. So that kind of ongoing discussion, so that the planning process that BLM is doing and the Forest Service is doing are informed by the planning process at the State level and vice versa.

Senator Berkley. Excellent. That sort of collaboration gives the best chances for success. One of the things that we have really been encouraging are the candidate conservation agreements with assurances. The Secretary of Interior came out and publicized those agreements. Ranchers have taken a close look at them. Many have signed up. But few have been fully enrolled. That enrollment process has yet to be completed.

Is there anything that we should do to encourage the acceleration of the enrollment process so that these ranchers who are willing to enter these agreements on how they manage their own lands are protected from future ill effects, if you will, of a listing?

Mr. Ashe. I think some of that is a little bit organic. We have to continue to build spokespeople in the ranching community, people with whom we have a trust relationship, who

can help us kind of expand that relationship. I think that is happening.

The other thing is the topic of the day, which is the budget resources. We have to have the people in the field who can go out and meet with these people. Because a lot of times they are not going to sign up -

Senator Berkley. I am almost running out of time. The point I want to make is, many ranchers have signed up. But it is up to the Fish and Wildlife Service to complete the enrollment process.

Mr. Ashe. Right.

Senator Berkley. So they are waiting. They are willing partners, they are ready partners. But we need to complete and honor the deal.

Mr. Ashe. That is our resource constraint.

Senator Berkley. Well, I will certainly work with my colleagues. I think both sides of the aisle benefit greatly from these sorts of voluntary efforts. Now my time has expired, but I hope that these collaborative efforts that are going on in Oregon will be effective in stabilizing the population preventing the necessity to have a listing.

Mr. Ashe. Thank you, sir.

Senator Berkley. Thank you.

Senator Inhofe. Thank you, Senator Berkley. Senator

Crapo?

Senator Crapo. Thank you, Mr. Chairman.

Director Ashe, I want to use my time to talk with you about the greater sage grouse. As I am sure you are very well aware, in March of 2012, the U.S. Fish and Wildlife determined that the greater sage grouse across the 11 western State range was warranted for listing under the Endangered Species Act, but precluded because of other, higher priorities. This decision placed the greater sage grouse on a candidate list whereby, due to court order, the Service must address its conservation status and decide by September 30th of this year whether to list the species.

As a result of that, States across the west, including Idaho, have been working with various Federal agencies involved, namely Fish and Wildlife Service and the Bureau of Land Management, on conservation management plans that will protect the grouse and take into account unique circumstances within each State. It has been the hope of all of those discussing this that we could use this collaborative process to avoid a listing and if any kind of activity was required, to work on something collaboratively to make it successful.

However, what I want to focus my questions on is a letter that came from your office in October of 2014. I ask unanimous consent to make this letter a part of the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Crapo. You are probably familiar with the letter I am referring to. I have a copy for you if you want it, but I know you are familiar with it. In this letter, the Fish and Wildlife Service seems to have once again moved the goalpost and basically acted, at least many of us in Idaho feel, unilaterally by proposing land withdrawals on millions of acres in sage brush focal areas.

That seems to us to be contradictory to the collaborative effort that we are all seeking to engage in, because now the maps that came in conjunction with this letter have essentially put parameters on the entire discussion about how to come up with sage grouse protection plans that we feel are impediments to the collaborative process, rather than helping that process move forward. I would appreciate your observation on this.

Mr. Ashe. Sir, the letter there refers to what we would call strongholds, what the BLM has called sage grouse focal areas in their planning process. It doesn't move the goalpost. What that is is a refinement. Previously we had identified priority habitat for the sage grouse. We were looking for protections. If we are going to avoid the need to list, then we have to show that there are meaningful protections in place across the priority habitat.

The BLM asked us to refine that. Is there a best of the best habitat? And so that is what we did. We provided them

with really what is the very best, highest quality habitat where we do need the strongest protections possible.

So if we are going to reach a not warranted conclusion, then we need to see large pieces of the landscape where sage grouse, where we are highly confident that sage grouse are going to persist into the future. So those strongholds, or sage grouse focal areas, are key to that.

It doesn't mean nothing can happen in there. It means that we will have, with oil and gas, we will have no surface occupancy without exceptions. It means with grazing that those areas will receive priority in terms of the BLM's analysis. Because grazing, as we saw in Harney County, Oregon, can be helpful to sage grouse conservation. But they will receive priority in terms of the evaluation process to make sure that we are meeting our grazing standards.

Senator Crapo. Let me interrupt there. Are you telling me that in these areas that there are not necessarily going to be automatic withdrawals, but a State like Idaho, for example, could propose management plans that would satisfy the requirement that these areas would require for proper treatment?

Mr. Ashe. We have recommended that they be withdrawn from the Mineral Leasing Act. So from hard rock mining, we have recommended that those areas be withdrawn. Because the Mineral Leasing Act provides us with no way, once a claim is made under

the Mineral Leasing Act, provides us with very limited tools to protect sage grouse.

Senator Crapo. So Idaho is more focused primarily on the grazing side of this question.

Mr. Ashe. Correct. And I believe they came to us with some legitimate questions and concerns about how grazing would be managed. I think we have answered those questions. Many of them.

Senator Crapo. My time has run out. I would just say, there is still a very high level of anxiety.

Mr. Ashe. I understand.

Senator Crapo. We have a very strong and I think a very capable and effective plan and planning process underway. We want to be able to collaborate with you to be able to make that happen, rather than having rigid edicts come down that interfere with our ability to do exactly what the objective is, which is to protect the sage grouse.

Senator Inhofe. Senator Whitehouse?

Senator Whitehouse. Thank you very much, Chairman.

Today's hearing unfortunately continues something that would have dismayed the predecessor in my seat, John Chaffee of Rhode Island, who is to this day revered as an environmental leader by his home State. But by my count, we have Republican amendments which, eight to zero, go against the protections of

the Endangered Species Act. We recently had a hearing on the Clean Power Plan in which the majority's witnesses were completely stacked in favor of the polluter interests. We have an absolutely Republican wall of antagonism to the new EPA rule protecting the waters of the United States. And their budget efforts are a relentless attack against those who protect our resources and our godly heritage of nature.

It causes me to wonder, is there a single Federal environmental protection that our Republican friends like today. When I consider the Republicans in the past who helped build these protections, again, I am somewhat dismayed that there is this relentless single-mindedness, apparently as is the case now.

I don't have a sage grouse in Rhode Island. There is not one to be found.

Mr. Ashe. There used to be a sage hen.

Senator Whitehouse. Was there a sage hen?

Mr. Ashe. A heath hen, it was the eastern sage grouse. It is no longer with us.

Senator Whitehouse. Well, there is an instructive point that I did not know. Helps remind us why we do the Endangered Species Act.

I want to ask you a different question. Rhode Island is a coastal State. Coastal States are seeing a triple whammy coming

from climate change. We are seeing the same land habitat changes that non-coastal States experience. We are also seeing that the margin between land and sea, sea level rise that is threatening to or beginning to overwhelm features like salt marsh. And third, we are seeing the changes in the sea itself, the warming temperatures, the increased acidification. We haven't seen acidification of the oceans measured to increase like this in, forget the lifetime of our species on the planet and millions and millions of years.

So what particular attention should the Fish and Wildlife Service be giving to those coastal areas where the climate effects are coming at us through so many different vectors?

Mr. Ashe. You have hit many nails on the head there, Senator. I think the phenomenon of climate change is one which is an overarching threat to the conservation of species. Sea level rise being one actually where we have given better tools to managers than anywhere else.

So we actually see innovation in places like the Albemarle Peninsula in North Carolina where we are working with Duke Power and the State of North Carolina and the Nature Conservancy and others to begin to plan for an orderly transition of that landscape. We manage nearly half a million acres of national wildlife refuges there. The future for those refuges is to become estuarine habitat, not the pocosin bogs that they are

today.

So we are working with partners to kind of realize that and plan for the future. But that as well is a resource constraint. We need better science. We need more people in the field to work with local communities in terms of how we can adapt, how we can build alliance with private landowners to better manage land, so that we can make an orderly transition occur.

So certainly sea level rise, whether it is sea turtle or piping plover or red knot and horseshoe crabs, climate change is a large, overarching factor that we have to understand better if we are going to be good stewards of these creatures.

Senator Whitehouse. With eight seconds remaining, I don't think I can top the way you ended. So I will leave it there. Thank you very much.

Senator Inhofe. Thank you, Senator Whitehouse. Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman. Director Ashe, good to see you. I have so many questions for you that I could spend the next three days asking you questions. So we are going to submit a number for the record, and if you can try to answer these succinctly, it would be helpful so we can get through at least a couple in the five minutes that I have.

First, I want to talk about the Alaska National Interest Lands Conservation Act. Are you familiar with ANILCA?

Mr. Ashe. I am.

Senator Sullivan. Great. There are a lot of Alaskans who actually don't think your agency is that familiar with ANILCA, because there is a strong sense in my State that your agency continually violates that important Act. And to Senator Whitehouse's comments, I will tell you this, today's hearing but more your actions would bring great dismay to one of Alaska's great predecessors in the U.S. Senate, Ted Stevens, who crafted ANILCA, knew it was a finely-crafted balance and yet, it is being ignored by your agency, I think, on a daily basis.

Let me give you the latest example. The President's recent announcements on the 1001 area, ANWR. As you know, the coastal area of ANWR, the 1002 area of ANWR, very important place, laid out in ANILCA, whole chapters on it in ANILCA. And critical that the Federal Government was tasked with either looking at developing it for oil and gas, looking at the resources there, recommendations to Congress, or perhaps someday making it a wilderness.

But do you think there is any other branch of government in the Federal Government that has the power to either develop the 1002 area for oil and gas or make it a wilderness besides this body, Congress?

Mr. Ashe. No, I do not.

Senator Sullivan. Okay, then how can the President of the

United States a couple of months ago say he is going to submit a bill to make the 1002 area wilderness, which is fine, he has a right to do that, it has to be approved here, it won't go anywhere, but then in the meantime say, I am going to "manage" the 1002 area for wilderness anyway? That is what he said on Air Force One to big fanfare.

How can he manage the 1002 area for wilderness when you don't have the authority to do that? Can you explain that to me? This is a huge issue for my State. I think you are violating the law, I think the President is violating the law. How do you do that?

Senator Boxer. Can we have order?

Senator Inhofe. We have order already.

Senator Boxer. He wouldn't let him answer the question.

Senator Inhofe. Stop the clock and give him at least one more minute.

Senator Sullivan. How do you manage the 1002 area for wilderness when you don't have the authority to designate wilderness, the 1002 area? Go read ANILCA. There is not a lawyer in town who thinks your agency has that authority.

Mr. Ashe. There are lawyers who in the Interior Department who agree very much. Mr. Sullivan, we are managing the 1002 area as we are managing it today for what we call minimal management.

Senator Sullivan. No agency, Republican or Democrat, has ever said they are going to manage the 1002 area for wilderness with the exception of yours. First time ever.

Mr. Ashe. We are managing the 1002 area to protect the wilderness value that is represented there. That is our duty.

Senator Sullivan. Let me ask a follow-up question. If there is a President in 2017, he is a Republican, he submits legislation to develop the 1002 area for oil and gas development. It doesn't go anywhere, it is a tough issue. Can that President, say it is President Cruz, President Rubio, President Paul, can that President say, I am now going to "manage" the 1002 area for oil and gas development?

Mr. Ashe. We have produced a comprehensive conservation plan.

Senator Sullivan. Can you answer that question?

Mr. Ashe. The President would have to, we would have to change our conservation plan. We have gone through the lawful administrative process of developing a comprehensive plan.

Senator Sullivan. Not designating 1002 as wilderness without Congressional approval.

Mr. Ashe. We have a comprehensive conservation plan for the management of the refuge which has been developed through a public process.

Senator Sullivan. Can a President in 2017 manage the 1002

area for oil and gas, even through a comprehensive management plan?

Mr. Ashe. No.

Senator Sullivan. Can a President now manage the 1002 area for wilderness? The answer has to be no if you said no to the other question.

Mr. Ashe. The President is not managing it.

Senator Sullivan. The President said he was going to manage the 1002 area for wilderness. He doesn't have the authority to do that.

Mr. Ashe. The United States Fish and Wildlife Service is managing the Arctic National Wildlife Refuge.

Senator Sullivan. No, the 1002 area is different. Look at ANILCA.

Mr. Ashe. No. The 1002 area is part of the Arctic National Wildlife Refuge. The law makes no distinction between the 1002 area and the remainder of the refuge.

Senator Sullivan. It makes a huge distinction. There is an entire chapter called the 1002 chapter in ANILCA. That is why it is called the 1002 area. There is a gigantic distinction. Director Ashe, I think that your agency has been violating the law. I have so many other questions, Mr. Chairman. We will submit them for the record. This is incredibly disturbing and a whole host of different ANILCA

sections.

I am going to ask one more question, Mr. Chairman, if I may.

Senator Inhofe. Senator Sullivan, you have another good minute, because you were interrupted. Please go ahead.

Senator Sullivan. So in Alaska there is a provision, what we believe is the "no more" provision of ANILCA. Do you believe that that exists?

Mr. Ashe. It does exist.

Senator Sullivan. So the "no more" clause says there should be, that ANILCA, according to Ted Stevens and others, was a finely balanced designation. We have almost 60 million acres of wilderness. We have State parks that are bigger than Rhode Island, individual State parks. We have a lot of wilderness; we love our wilderness.

But we don't think there should be any more, and neither did the Congress. Do you think that there can be any more wilderness, managed, designated or otherwise, without the express permission of this body?

Mr. Ashe. There can be no designated wilderness without Congressional action.

Senator Sullivan. Then how can the President of the United States say he is going to manage the 1002 area for wilderness? He can't.

Mr. Ashe. The President has said, the U.S. Fish and Wildlife Service is going to manage the refuge to protect the wilderness value that resides there. We have ample authority to manage the refuge in a way that preserves and protects its wilderness character.

That does not mean it is Congressionally designated wilderness. We have gone through a lawful administrative -

Senator Sullivan. Are you familiar with 1002(e) of ANILCA?

Mr. Ashe. Not the number, no.

Senator Sullivan. That is the one that says there are exploration plans that have to be approved by the Secretary in the 1002 area. The State of Alaska put together an exploration plan under that provision. You rejected it. Why wouldn't you want to work with the State of Alaska on a plan like this?

Mr. Chairman, I will submit the additional questions I have for the record.

Senator Inhofe. Thank you, Senator Sullivan. Senator Markey? Now, I think, Senator Markey, it might be a good time for us to relate our story from last week.

Senator Markey. Please.

Senator Inhofe. Oddly enough, while we disagree on a lot of issues, I have always Senator Markey to be a very close friend. We bumped into each other with our wives last week. He was joking around, I guess I was joking more than he was, after

meeting his wife, who was really dolled up. She looked really good. I told her that, too.

[Laughter.]

Senator Inhofe. And they kidded me because my wife was wearing blue jeans and her Save the Ridley Sea Turtle tee-shirt. Now, are you paying attention to this? The sea turtle, yes.

Senator Boxer. I hope she is not out here today for this hearing.

Senator Inhofe. But anyway, I think sometimes people try to say that conservatives or Republicans are not concerned about a species. In fact, when you say how many people would answer yes, we need a U.S. Fish and Wildlife, I think most Republicans would be on that list. It is just that we need some reforms there. We will talk about the Ridley sea turtle at a later time.

Senator Markey?

Senator Markey. Thank you, Mr. Chairman, very much. And by the way, your wife looked tremendous that day as well.

[Laughter.]

Senator Markey. There will be no graciousness gap that opens up in this hearing. And like you are saying, it did demonstrate that there areas of common agreement where we can work together. And your wife gave me a deep insight into you, that you have been married to her for 56 years. Is that right?

Senator Inhofe. That is correct.

Senator Markey. Incredible. That is a reason to believe that we can find areas of agreement.

Senator Inhofe. So welcome, sir, we appreciate your being here.

On the 1002 issue, as we know, that question of whether or not that area is so special, so important that there should not be some extra protections, especially if there is going to be oil drilling and especially if the oil companies then want to export the oil overseas. It is one thing to say that they want to drill for America, but to drill and simultaneously be saying that we have a surplus in America, let's export our oil while drilling on this special land is a big question for the Country, very big question. And that deserves a big, big debate.

With regard to Chatham, Massachusetts, which you know very well from your long service with the great Congressman Gerry Studds, there has been work done on the Monomoy Refuge for decades to support conservation efforts while maintaining historic fishing practices and small scale bay scalloping. I appreciate the Service's work with Chatham as the Monomoy Refuge has developed its comprehensive conservation plan. My hope is that the final plan will continue the partnership between Chatham and the Fish and Wildlife Service that has worked so well over the years. Can I get a commitment from you that you

will keep me informed of the plan developments as it moves toward being finalized, so that we can understand how closely you are going to be working with Chatham in order to ensure that there is a continued comprehensive partnership?

Mr. Ashe. Senator, I would be glad to come up personally and talk to you before we make any final decisions.

Senator Markey. That is a very important issue to me.

Critics of the Endangered Species Act and the Fish and Wildlife Service's efforts to implement it are often concerned with the amount of funds that the President's budget requests for supporting endangered species conservation. How do inadequate resources hinder the species conservation and delisting efforts of the Service?

Mr. Ashe. I think the lack of support for doing five-year assessments, inadequate support for the scientific investigation and information that we need, we have increases in our budget this year for our State college, for State and tribal wildlife grants. That would be an important investment in our State partners' capacity to do work in endangered species conservation and to provide us the work or the information that we need to make better listing and better delisting decisions.

So resource constraints, in my view, are the principal reason that we are not making the progress that we could otherwise make.

Senator Markey. So several of the bills being considered today will likely cause the cost of managing the Endangered Species program to increase dramatically. Do you believe the agency has the capacity to absorb these costs without requiring additional Federal funds?

Mr. Ashe. No, we don't. Several of the bills that are before you today would essentially create separate causes of action. I hear constant criticism of the state of litigation that we have to deal with now. But if these bills pass, it would establish new causes of action against the United States Fish and Wildlife Service.

Senator Markey. And again, I will just list the bills. S. 112 would require the agency to produce separate economic impact analyses for each State and locality affected by critical habitat designations. S. 292, 736, 855 would require the agency to publish massive amounts of raw scientific data. S. 293 would make litigation more cumbersome and delay court decisions. S. 736 would force the agency to review potentially massive amounts of unqualified scientific information. And S. 855 would raise takings compensation above fair market value and require the agency to relist species every five years until recovery. Those are massive additional costs that the Fish and Wildlife would have to absorb without any increase in appropriations.

Mr. Ashe. Correct.

Senator Markey. And finally, Director Ashe, last week my colleagues on the other side of the aisle passed out a bill from this committee that would raise barriers to EPA using science to inform its decisions. Today we are considering a bill that would require the Fish and Wildlife Service to use any information, any information submitted to it by State, tribal or county governments in its decisions. Has the current best available science and commercial data standard served the conservation of wildlife well over the years, or do we need to change it?

Mr. Ashe. I think it has served us very well. And we are held accountable. So if a State or local government or tribe provides us with information that represents the best available and we ignore it, I mean, we are held accountable for that by the courts. So I believe that provision has worked miraculously well to make sure that these decisions are science-driven.

Senator Markey. And I agree with you, I think any data would just paralyze you. The best available data allows you to ensure that you are hearing all of those views that actually could substantively impact on the decision which you have to make. I agree with you 100 percent, and I yield back, Mr. Chairman. Thank you.

Senator Inhofe. Thank you, Senator Markey. Senator Barrasso?

Senator Barrasso. Thank you very much, Mr. Chairman.

Director Ashe, welcome. A couple of questions on the grizzly bear, sage grouse and the gray wolf. On the grizzly bear, the grizzly bear reached their population goal I believe several years ago in Wyoming, were delisted. The population goal at the time was 500 bears.

Subsequently, a lawsuit forced your agency to backtrack on the delisting to complete a study on white bark pine. The result of the study showed that white bark pine was largely a non-issue, ultimately you could still move forward with the delisting.

But my question is, what is the current target population goal for that same population today? It was 500 initially.

Mr. Ashe. The 500 was one part of the recovery standard. We said a minimum of 500 bears to ensure that the population would be genetically connected to the larger grizzly bear population in the lower 48 and Canada. So that was one part of our recovery standard. We don't have a number that we are shooting for, but I can tell you, we agree that grizzly bears are recovered. We are working with the State of Wyoming and Idaho and Montana literally as we speak to try to put together the frame for a potential delisting proposal.

Senator Barrasso. That would be helpful. People in my State feel that the bar has been raised, the goalpost has been

moved in terms of the total counts. Thank you on your efforts there.

The sage grouse, the State of Wyoming, as you know, said that it has worked very hard to create a plan to protect the sage grouse. Your office has been very helpful to us in that regard. You have worked collaboratively with our State. Just last week, your staff praised Wyoming's plan in a meeting with my staff. Wyoming, as you know, has worked in good faith to create a workable plan. Because we know that such a listing of sage grouse would be economically bad for our State, and because we believe we know best how to protect the bird in Wyoming.

With that said, isn't it true that despite all this good work, Wyoming's plan isn't enough to avoid a listing that my State has tied to all the other States that have to develop plans to protect the sage grouse? And if their plans don't add up, that Wyoming could still face a listing?

Mr. Ashe. The Wyoming plan by itself would not be sufficient to avoid a listing. So that is why we have come together with all 11 range States and the BLM and the Forest Service and the Natural Resource Conservation Service. It is through that collaborative, comprehensive process that we have the potential to get to a not-warranted determination.

But like with Wyoming, Wyoming made difficult decisions to conserve the sage grouse. So conservation involves sacrifice.

At some level we have to make tradeoffs. Wyoming has made them well. And the BLM and the Forest Service are now in the process, and I believe they are doing an extraordinary job.

Idaho has been a good partner. Hopefully we will see other States, their plans take shape here very quickly, Oregon, Montana, Colorado. But it is that collective effort that will get us across the finish line.

Senator Barrasso. Is it also true that even if all the States meet Wyoming's standard and the bird isn't listed by Fish and Wildlife that the agency could still be sued, could lose in court the position that Wyoming has already faced with the wolf delisting and the grizzly bear delisting?

Mr. Ashe. It is possible.

Senator Barrasso. We are just concerned, because it seems in spite of the agency's best efforts, sometimes the lawyers don't have the winning record that we would like in these cases when it comes to defending and delisting.

Mr. Ashe. And I would say, in that context of that question, we have a \$4 million increase proposed in our budget. Because if we were to get to a not-warranted, then we are going to have to defend that record. So we are going to have to be able to put together an administrative record that we can bring to court. We are going to have to have the people power to implement the agreements that we have forged in the context of

this collaborative effort. So we need that capacity dearly.

Senator Barrasso. And in terms of the gray wolf, has Wyoming met every goal that Fish and Wildlife has set to protect the gray wolf, including developing a wolf protection plan that lives up to your agency's standards?

Mr. Ashe. Yes.

Senator Barrasso. So do you believe it is time to once again delist the wolf?

Mr. Ashe. I do.

Senator Barrasso. Thank you. Thank you, Mr. Chairman. No further questions.

Senator Inhofe. Thank you, Senator Barrasso. Senator Capito?

Senator Capito. Thank you. Thank you, Mr. Chairman, thank you, Director, for being with us today.

I am going to talk about the northern long-eared bat, no surprise there, we talked about it when you came to visit me. It is in 37 different States. I am interested to know what steps the Service has taken to prepare for the flood of new Section 7 consultations that will be required for the development of new transportation projects, additional renewable energy exploration, commercial and residential construction, electricity transmission projects, forest management projects. In this budget that you have put before us today, are you making

any adjustments there to try to meet this heavy demand?

Mr. Ashe. Makes me tired just listening to you.

[Laughter.]

Mr. Ashe. Yes, I mean, one of the largest increases in our budget is for our consultation and planning function within what we call ecological services. So I think yes, we are preparing for that. One of the things that we have been trying to do through the budget is to build that capacity. We know as the economy continues to recover that the demands on the Fish and Wildlife Service increase. We are anticipating significant additional need to have field capacity to deal with it.

But with the long-eared bat, I think the 4(d) rule, the interim 4(d) rule provides significant flexibility. I think with the increases that are proposed in the President's budget, I anticipate that we will be able to manage that workload well.

Senator Capito. When do you expect to have the final rule? You have an interim rule now?

Mr. Ashe. We have an interim rule now. We will be going through a public comment process. I am thinking by the end of the year we should have a final rule.

Senator Capito. Obviously, the concern there since it is such a wide-ranging species and it being in 37 States, and in the eastern part of the United States, obviously where West Virginia is located, the backlog of consultations and I know you

are short-staffed in West Virginia anyway. It concerns me in terms of being able to move these projects forward.

Mr. Ashe. Thank you. It does concern me too. I think we have built in a responsible increase in the budget that will help. The increase that we have in the budget I think is going to allow us to hire an additional 50 people in this area. Of course, that would be nationwide. But I think that capacity is going to be key to us dealing effectively with the northern long-eared bat and the lesser prairie chicken and the other species that we have listed. But I think again, our record shows that we can do that.

I will note with the long-eared bat that the Indiana bat has been listed for over 20 years as an endangered species. It occupies much of the same habitat, has the same basic life history as the northern long-eared bat. And we have been managing that well and without significant controversy. So I think with the northern long-eared bat we have excellent cooperation from our State partners. And we have been working not just with State fish and wildlife agencies, but with State forestry agencies and I think we have laid the groundwork for a very cooperative, successful endeavor.

And we will learn as we go along. The interim final rule is another innovation in flexibility that the law allows us. We put in place an interim rule, now we are going to hear

additional public comment and make adjustments if necessary in the final rule.

Senator Capito. Thank you so much.

Senator Inhofe. Thank you, Senator.

Director Ashe, thank you very much for the time that we have had here. You did an excellent job. I would ask you, if you don't mind, to come back to the anteroom so we could have a real quick word on something unrelated.

Mr. Ashe. Thank you, Senator, always, for your kindness when I am here.

Senator Inhofe. Senator Boxer?

Senator Boxer. I want to add my voice of thanks. I think that you showed us today you are a voice of reason. I think you showed us today the flexibility that you bring to this job that is in the Act. And I think you proved today that this number of bills that have been put into play in this committee, which are very sad to me, because I think they undermine the ESA, are not necessary. Because we can deal with you as a human being who is smart, you know your way around the block, you understand, you have a broad range of knowledge on these issues. Plus, you know how to keep your cool under what I thought was rude questioning.

Senator Inhofe. That is getting a little out of hand there, Senator.

Senator Boxer. I have the right of free speech. And that

is my opinion, and I will say it again, I thought you held our cool under what I thought was rude questioning.

I have done my share of that kind of questioning, so I think I can say I know it when I see it.

So thank you, Mr. Ashe, and thank you, Mr. Chairman.

Senator Inhofe. Let me applaud Senator Sullivan for his passion, his representation of his State. It means a lot to us and to the system.

Mr. Ashe. And Senators, if I could, I would just say last night I was looking back, because I do believe that the Endangered Species Act should be reauthorized, and I think there could be room for improvement of the law. I looked back and the last time it was reauthorized was in 1998. You are both former members of the Committee on Merchant Marine and Fisheries in the House of Representatives.

The base legislation for that was H.R. 1497 in the 100th Congress. The sponsors were Gerry Studds, Democrat from Massachusetts, Don Young, Republican from Alaska, Walter Jones, the committee chairman, a Democrat from North Carolina, and Bob Davis, the ranking Republican on the committee from Michigan. So I think it is possible to bring people of goodwill together. And we could do the same thing and we could pass legislation that improves the law.

Senator Inhofe. Thank you very much, Director Ashe. Would

you mind coming up to the anteroom now, because I want to have a real quick word with you. I would ask the second panel to please be seated.

The second panel is David Bernhardt, partner in Brownstein Hyatt Farber Schreck. He is the former solicitor for the Department of Interior. Gordon Cruickshank, the County Commissioner from the Valley County in Idaho; and Donald Barry, Senior Vice President, Conservation Program, Defenders of Wildlife.

What I would like to ask you to do is go ahead. Let's start with you, Mr. Bernhardt, for your opening statement.

STATEMENT OF DAVID BERNHARDT, PARTNER, BROWNSTEIN HYATT FARBER
SCHRECK, FORMER SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. Bernhardt. Good morning, Mr. Chairman, members of the committee. I appreciate the invitation to testify before you today. I request that my written statement be included in the record.

Senator Crapo. [Presiding.] Without objection.

Mr. Bernhardt. By way of background, I have worked on ESA issues for over 20 years, including while serving as the Solicitor of the Department of the Interior, as an attorney in private law practice, and as a congressional aide. Given the scope of the hearing and the time, I will make four brief points.

First, many of the decisions made by the Fish and Wildlife Service are decisions of great public consequence, and as such they should be made with as much care and as much forethought and foresight as our Government can muster. These decisions have the potential to greatly impact the particular species at issue, but equally important, if not even more so, also people and communities where the particular species are present.

Unfortunately, at times these decisions are driven by deadlines, some imposed by statute, some established by courts, and some imposed by the Service's own agreement with imposing litigants.

In my opinion, these deadlines often have as their

consequence less care and thought in crafting the underlying decision, less review of the legal sufficiency of the decision to be made, and I believe that the arbitrary time lines often undermine the credibility of the merits of the decision itself with the public.

But you don't need to take my word for that. Recently, the Ninth Circuit Court of Appeals provided a view of a biological opinion prepared under a court deadline on a very significant matter. It upheld the legality of the opinion, but it questioned whether anyone is served by the imposition of tight deadlines in matters of such consequence. The court explained the biological opinion as a jumble of disjointed facts and analysis. It further pointed out that deadlines become a substantive constraint on what an agency can reasonably do. And it said that future analysis should be given the time and the attention that these serious issues deserve. I ask your committee to look at the validity of maintaining these deadlines.

Second, despite the significant conflict and acrimony that exists in the implementation of the Act, I believe things might have been a lot worse. We must recognize that over the last 20 years, those charges with implementing the Act, including Don Barry, who sits to my left, have developed and significantly expanded initiatives primarily related to sections 7 and 10 of

the Act, such as multi-species conservation plans, safe harbor agreements, no surprises policies. Director Ashe talked about these earlier today.

These administrative changes have been meaningful to the individuals, to entities, and even entire communities who have been able to use these tools to successfully resolve their particular challenges while providing the species protections under the Act. But, unquestionably, much more can and should be done to incentivize private landowners and States to be encouraged to engage in meaningful conservation efforts, and we should strive to further efforts that minimize conflict while still protecting species.

Third, the controversy and conflict associated with the implementation of the Act may actually get much worse than it is today if the current Administration finalizes two regulations and one policy. One of the regulations is related to the designation of critical habitat; one regards the interpretation of a term called "adverse modification"; and the policy is one that describes how the Service intends to utilize its authority to exclude areas from critical habitat designation.

While the Service and NOAA Fisheries should be commended for making the effort to provide greater clarity to its employees and to the public on these issues, they have missed the mark and they have developed proposals that are untethered

to the text of the Act itself.

Finally, regarding the legislative proposals before you today, they are quite varied. Some reflect longstanding policy debates and others raise new questions. But they should be welcomed in the course of a meaningful dialogue framed by whether the Act of today can or should be improved after the decades of experience that we have actually living under it.

I think we can incentivize and create improvements to the Act while at the same time effectively protecting species.

I welcome your questions.

[The prepared statement of Mr. Bernhardt follows:]

Senator Inhofe. [Presiding.] Thank you very much.

We will recognize Senator Crapo for the purpose of an introduction.

Senator Crapo. Thank you very much, Mr. Chairman. It is really an honor for me today to be able to introduce my good friend, Commissioner Gordon Cruickshank. Today the committee is going to hear from Commissioner Cruickshank from the Valley County of Idaho, representing the National Association of Counties. Commissioner Cruickshank has been a county commissioner in Valley County since 2007. Prior to joining Valley County's Commission, Commissioner Cruickshank spent 16 years with the Valley County Road Department, with much of that time spent as the road superintendent managing 750 miles of roadways and bridges.

Commissioner Cruickshank's experience as a county commissioner and road superintendent enables him to present a valuable perspective on the impact of the Endangered Species Act on local governments, especially rural counties throughout the West with the large presence of ESA-listed species and large tracts of federally-managed land in their jurisdictions.

As Commissioner Cruickshank will testify, county governments are responsible for a wide range of responsibilities, including county government buildings, roads and bridges, schools, and municipal water systems. Compliance

actions and costs associated with ESA listing species present challenges to all of these government functions, and the challenges are exacerbated when such listings are the result of closed door settlements that do not properly address the best available science or economic impacts.

County governments across Idaho and the County are committed to clean air and water, and the proper stewardship of our natural resources, but ESA listing determinations lacking in transparency and absent a proper accounting to the socioeconomics and costs to local governments do not help commissioners such as Commissioner Cruickshank to manage county resources while also preserving viable wildlife populations.

Again, I thank Commissioner Cruickshank for coming here to testify. I think we are going to learn a lot from his wisdom, Mr. Chairman.

Senator Inhofe. Thank you.

Commissioner Cruickshank, let me just observe that I am sure, as you watched the first panel, there is a tendency for people in Washington to think all the wisdom comes from Washington. I can assure you that the majority on this committee don't agree with that. We welcome you and your local perspective on the problems that we are faced with.

STATEMENT OF GORDON CRUICKSHANK, COUNTY COMMISSIONER, VALLEY
COUNTY, IDAHO

Mr. Cruickshank. Thank you, Mr. Chairman.

Chairman Inhofe, Ranking Member Boxer, and distinguished members of the committee, thank you for inviting me to be here today on behalf of the National Association of Counties to share with you why the Endangered Species Act matters to counties.

Through both my career in public service and involvement with NACo, I have seen firsthand the impacts of the ESA on my county, my State, and counties nationwide. In the 40 years since the ESA was enacted, our Nation has learned many lessons about how to protect endangered and threatened species. The ESA should be updated and improved to reflect those lessons.

NACo has identified three key elements that should be considered as Congress examines the legislation to update and improve the ESA.

First, ESA decisions must consider the socioeconomic impacts, as well as species impacts. Counties recognize the importance of the ESA; however, its requirements often result in unintended impacts on our local economies and the people we serve. For example, Valley County was recently identified as the potential site of a mine that could create over 400 jobs, 1,000 indirect jobs, and provide \$20 million in annual wages. However, concerns over mine impacts on listed salmon populations

and threats of litigation have slowed approval of the project and the hundreds of jobs that could come with it.

My county's ability to promote economic growth through outdoor recreation and tourism has also been impacted by the ESA. Recreation activities in Idaho contribute over \$6 billion in direct consumer spending and support 77,000 jobs statewide. Recent decisions by the Forest Service have resulted in the closure of many roads that people rely on. Access has been restricted during our peak tourist seasons due to concerns over sedimentation impacts on listed species.

Like 70 percent of counties in the United States, we are a rural county, and our natural resources are a vital part of our economy. Limiting access to outdoor recreation and natural resources limits our ability to grow and thrive.

Again, the impacts on the local economy must be considered by Federal agencies as part of the ESA decision-making process.

Second, the Federal Government must reduce the cost of ESA compliance to local governments. Permitting requirements and extended review time substantially increase project costs and delay project delivery, diverting limited funds from other critical county services. In general, for every year a project is delayed, the construction costs increase by approximately 10 percent.

For example, in Attawa County, Oklahoma, the Stepps Ford

bridge project was ready to move forward after receiving the necessary Federal environmental permits. Construction was halted by the U.S. Fish and Wildlife Service after it decided to reconsider the project's impact on a listed species of catfish. Construction sat idle for over 170 days and cost an additional \$270,000.

For counties, every dollar spent on regulatory compliance or project delays takes away from funds available for other critical services like law enforcement, firefighting, and ensuring public health.

Third, State and county governments must be treated as cooperating agencies when enacting conservation measures and settling ESA litigation. Local governments have every incentive to work with the Federal Government to promote species conservation, and this collaborative approach has been successful.

For example, a listing of the Bi-State sage grouse would have impacted nearly 82 percent of Mono County, California's land area. The county took a leadership role in the Bi-State sage grouse conservation and cooperated with relevant Federal and State agencies in California and Nevada to provide technical support to landowners to limit local impacts on grouse populations. The county's efforts led to the announcement that the Bi-State sage grouse would not be listed. Clearly,

solutions can be found.

Counties work every day to protect and preserve their natural resources and environment. We are keenly aware of the historical, economic, and aesthetic values of our local environment, and work diligently to provide a sustainable future for our communities. Collaboration and consultation between all levels of government is critical to the success of the species conservation efforts. Locally-driven conservation must be given time to work.

Counties must also be confident that their collaborative efforts will be defended in court by Federal agencies and that they will have a seat at the table during settlement negotiations. Counties stand ready to work with the committee and Congress to better promote species conservation while safeguarding local economic stability.

Thank you.

[The prepared statement of Mr. Cruickshank follows:]

Senator Inhofe. Thank you, Commissioner.

Mr. Barry.

STATEMENT OF DONALD BARRY, SENIOR VICE PRESIDENT, CONSERVATION PROGRAM, DEFENDERS OF WILDLIFE

Mr. Barry. Mr. Chairman, I would like to submit my written testimony for the record and just make a few oral remarks.

Senator Inhofe. Without objection.

Mr. Barry. I would like to make basically six key points today.

First of all, not one of the bills before this committee would actually promote the conservation and recovery of listed species, with the possible exception of the one from Senator Hatch, which would authorize the waiver of NEPA provisions for doing juniper removal, although the BLM already has that adequate authority. Collectively, we think that all of the proposals in front of this committee would become the equivalent of a legislative wrecking ball, accelerating extinctions and not promoting recovery.

In my testimony I quote Mark Twain, who once said that I have lived through many terrible things, some of which actually happened. And I have a feeling that when you hear a lot of the dire predictions of widespread economic ruin from listings, you find that they rarely, if ever, come to pass.

I would like to submit for the record a copy of an ENE news article from last June which highlighted some of the consequences that were anticipated for the listing of the Lesser

prairie chicken that includes a number of quotes from folks from the oil and gas industry describing the likely ruin that would occur from it; and then it includes quotes from them a few months after the listing of the prairie chicken where they are basically saying everything is working just fine.

That, to me, is an example of how, frequently, the predicted dire economic consequences really seem to happen.

Many of these proposals also seem to be extreme solutions in search of problems, ostensibly addressing problems while in fact the Fish and Wildlife Service already has adequate authority and flexibility for dealing with the type of issues that are addressed. A good example of that has to do with provisions mandating the exclusion of areas from proposed critical habitat because of economic consequences. This is the one area of the Act where Congress, back in 1973, specifically gave permission and authority for the Fish and Wildlife Service to take economics into account, and the Service does this quite frequently.

When they designated a critical habitat for the Northern Spotted Owl, they cut out 4.2 million acres of land because of the economic impacts from including those areas in the critical habitat. I think when they designated a critical habitat for the jaguar, they cut out something like 94,000 acres of land, again, because of economic impacts.

So the Act currently works for the Fish and Wildlife Service and gives them authority for taking economics into account with critical habitat.

I think one of the other big concerns that we have in the conservation community is that a number of the provisions in front of the committee today really distort and attack the concept of science and best available science. They decree and define what is best available science. In the case of State or local and county data, it all is decreed to be best. There is an example, I believe, that the Fish and Wildlife Service encountered with regards to the Gunnison sage grouse where the State said one thing and one of the local counties said something exactly opposite.

So if the Fish and Wildlife Service is required to consider them both best available, but they are conflicting, how do reconcile something like that?

We may disagree with a number of the decisions the Fish and Wildlife Service makes, but they have the ability right now to weigh the strength of the science that they have in front of them, to discount those that they think those recommendations that come in that they believe are weaker than others. And I think that to have Congress coming in and putting its thumb on the scale and decreeing some things as best available science is inappropriate.

I think Dan Ashe also, earlier, really hit the nail on the head when he said that the big problem here is resources. The endangered species program is not broken, it is just starved. Over the last, I think, back to about 2007 or 2004, there has been an 11 percent actual decrease in funding for the Endangered Species Act when you take into account inflation. So the level of funding has been coming down while their responsibilities have been going up, and I think some of the problems that have been discussed before are really a representation of the fact that you have way too few people trying to do too much. They are doing the best job they can, but they are not going to be getting everything at A+ if they are stretched to the breaking point.

Lastly, I would just say that the ESA, I think, has been a success. It has been mentioned that 99 percent of the species that are listed are still in existence and have been preserved.

Dan brought up the last time the ESA was reauthorized. I was on the floor of the House with Walter Jones, Sr., the chair of the House committee that had jurisdiction over the ESA, and we had broad bipartisan support for that bill. I think it is possible at times to think back on those days as the way it ought to be, but it is hard for me to envision or to imagine how even a reasonable package of endangered species amendments could make it through this Congress and retain that sense of

reasonableness and balance.

Thank you very much.

[The prepared statement of Mr. Barry follows:]

Senator Inhofe. Thank you, Mr. Barry.

You know, I know what you are saying there, but I think from a local perspective you have heard several of us talk about problems that we have.

And, Commissioner, when you mentioned a seat at the table, that kind of drove home to me a problem that I think we have said in several other ways during the course of this hearing. Dan Ashe, as I mentioned, came out to Oklahoma and was good enough to sit down and talk to the people. We had, on the Lesser Prairie chicken, five States involved, and the five States all came in. I think if they were to complain about one thing in the way the process worked, and I say this to all who are in the audience also, is that they didn't really have a seat at the table when a decision was made. They would come in and they will present their case, and then that is evaluated by the Fish and Wildlife. All of a sudden they pick up the paper and their decision has come out, and they weren't a part of that, they didn't have the opportunity, and I think you said it well, to have a seat at the table.

Is this kind of what you are getting at?

Mr. Cruickshank. Mr. Chairman, yes, it is. Quite often we are heard, but, however, when those decisions are made, we are not at the table; and then that impacts our local residents and could impact our economy. And by not having a seat at the

table, how do you go back to the people that we are closest to? We are the part of the government that is closest to the people, and you try to explain to them or they try to come back to you and say why didn't you fight for us better, when we weren't at the table of the decisions to understand why the decision was made the way it was.

So that is all we are asking, is to be involved all the time, clear through the entire process, so that it doesn't have that big of an impact on the county; and just to be listened and to be heard and understand why those reasonings happen. We need a seat at the table and we have shown with the Bi-State example that came in.

And I can give you another example in Washington State where counties got together and they brought 200 stakeholders and helped to restore 3,400 acres of salmon habitat. It took the counties to be involved. They were there, they were helping with it, and that was a success story.

So we are just asking to be involved, be educated, and we are there to help in any way.

Senator Inhofe. Obviously, you are an elected official, so you have a lot of people saying you must not have the power that you should have in this position if you were able to present a better case. Is that somewhat accurate of the complaints that you hear from your constituents?

Mr. Cruickshank. Yes, Mr. Chairman.

Senator Inhofe. Because I think we have been through the same thing, those of us up at this table. The other area that has been brought up by this committee is a lot of the things that are done in secret and, again, not having a seat at the table on the settlements that are made on sue and settle, and this is something that a couple of those bills would address that for transparency purposes.

Mr. Bernhardt, do you kind of agree to the seat at the table argument?

Mr. Bernhardt. I think there are certainly ways that the Service can -- yes, Mr. Chairman. As a matter of fact, there are various places in the Act where the Act guarantees a seat of the table, for example, certain places in section 7 an applicant has a seat at the table. There had been policies developed to include State and local governments in decision-making, but I think what you are hearing here today is a view that those don't go far enough; and certainly that is something that Congress can look at.

In terms of the settlements themselves, as any lawyer will tell you, you often are looking at best ways to clear your docket, and at times when I was solicitor I went down and visited with the Service about these large listing cases, and what struck me on one of those visits is I sat down with Dale

Hall, who had been both a career employee in the Fish and Wildlife Service and then subsequently was the director during the last half of the Bush Administration. I went to Dale and I said, Dale, look, we have all these cases. There is probably an opportunity to settle them. I would really like to get your thoughts on this.

And Dale said to me something that I will never forget; he said, absolutely there is no way we should settle those cases. And I said, why, Dale? And he turned to me and he said, look, I was here the last time as a career employee the last time a major settlement was initiated, and I can tell you that there was no additional resources and there was a priority of time lines that were put down on all of the local offices; and I know, I know that packages were developed and sent upstairs that didn't pass muster, but went ahead and went into the Federal Register because no one was reviewing them, and I don't think we should repeat that.

And I think that was very good advice by Dale Hall, and I turned around and walked back up to my office and went on to other issues.

Senator Inhofe. Dale Hall was a very good Oklahoman.

Mr. Bernhardt. Yes, he is.

Senator Inhofe. Well, in your testimony, Mr. Bernhardt, you discuss the problems with the critical habitat rules, and I

would ask you do you have any specific suggestions on how to overcome that objection or that problem that we are having.

Mr. Bernhardt. Well, I think Mr. Barry inadvertently misspoke when he said that critical habitat exclusions were developed in 1973. They actually, if you look at the legislative history, you will see that there were changes made in 1978 and they were a direct result of Congress seeing the TVA v. Hill decision by the Supreme Court and essentially saying, oh my goodness, what did we do. So when they looked at the Act to revise or improve it, their thought was as follows: let's leave the listing part pretty much intact, we think that is okay. But at this point of critical habitat designation, we would like that determination made at essentially the same time as the listing, or commensurate with it; and when you do that, secretary, you must look at the economics of the consequences of listing plus the critical habitat designation, and for other issues we are going to give you the authority, we are going to delegate you the authority to exclude certain areas, as Mr. Barry said.

Now, what has happened over the last many years is at times the secretary has used that; at other times they have not, and it is entirely discretionary. So one thing to look at is should that provision be beefed up in some way.

This Administration has a proposal that would actually say

there are laying out a policy on how to do these exclusions so there is more clarity to their employees, and that is good. At the same time, if you are from a western State, their proposal is essentially to not use these exclusions on Federal lands, or at least use them very rarely. So that is an area that you can look at in terms of how you structure an act and ensure that these decisions regarding economics that are important to people are more robustly factored in. But that is something that Congress looked at in 1978 and came to where they wanted to be, and maybe the balance needs to be a little differently.

Senator Inhofe. Thank you.

Senator Crapo?

Senator Crapo. Thank you very much, Mr. Chairman

Commissioner Cruickshank, I have a couple of questions for you. I want to focus on the idea of the value or utility of relying on people who live where the land is or live on the land and in the neighborhood being able to come up with the kinds of solutions and protections to put in place to protect their land. You have heard even here today where some we will call those who think that we need to make some improvements or some fixes anti-fish and wildlife or anti-environmental protection or species, and that has always frustrated me, coming from a beautiful State like Idaho. I first want to just ask your observation on this. I would assume that you live in Valley County because you think

it is a beautiful, wonderful place, and that you would like to be able to protect and preserve the species and the environmental heritage that is there as much as any Washington, D.C. or Californian or person from any other part of Idaho. Would you agree with that?

Mr. Cruickshank. Yes, I would, Senator.

Senator Crapo. And you would also like to have a local resource-based economy be able to thrive there, correct?

Mr. Cruickshank. Yes, I would.

Senator Crapo. And the question I have is do you believe that it is possible for people to live in Valley County and protect the beautiful place that they live in and still have jobs and build businesses and have an economic future?

Mr. Cruickshank. Yes, Senator, I do. Over the years, like I have stated, we have learned many valuable lessons on how we treat the natural resources or how we protect the land. I grew up farming, so I grew up nurturing the ground and knowing how it could produce, and that is how we made our living. So the counties are there. We want to safeguard our Nation's wildlife and our fish and our plants, and in my county alone we have spent millions of dollars to either resurface roadways or change culverts out to make more fish-friendly passageways for the salmon recovery and things like that; and I am proud to say that the salmon river that flows through Valley County is some of the

prime spawning areas for that salmon, but while we still maintain access to our residents to enjoy that area. And that is some of the concerns, because some of those accesses have been closed. You can imagine if the road was closed going to your home, you would be upset too, and the residents come to us and say why is this happening to us. So that is why we are involved.

But we are seeing where we are doing the best we can and then being told we are not doing enough. And this all comes at a cost to the county, to the time and the efforts that we do, but we are not being recognized as we are doing anything to really help. But in essence we are, we are doing what we can within our financial means. So when you talk about what can we do better, when you talk to the local stakeholders, sometimes it may not be all about the science; it may be that the local stakeholder knows where that population thrives better than other areas that have been looked at.

Senator Crapo. Well, there certainly, I don't think, is any substitute for involving people who know the land and who know the circumstances around it. I just wanted to get that out because sometimes it is a little frustrating to have your motives challenged and to have your commitment to protecting our wonderful earth challenged because you believe there may be a better way to do it.

Another criticism that happens, though, and happens quite often, is that it is said, well, maybe the people who live there in Idaho, or maybe the people who live in Wyoming or Oklahoma, maybe they really do love the land and really do love the environment, but they don't have the capacity, they don't have the education, they don't have the experience to really protect the land; we have to bring in the Federal Government or we have to bring in the experts from somewhere to tell them how to do it.

My question is do you believe that local governments, working in conjunction with the Federal agencies and the others who are involved in the land management have the capacity to provide the necessary protection of the environment and the species that we seek to protect?

Mr. Cruickshank. I believe that it all has to be taken into consideration. The science can be brought into the equation, but I think what is lacking is that the Federal Government explaining how that science works to the local stakeholders and the local people that live there. They love the land and they love everything about it, and they understand what they see on the ground; and quite often what they see on the ground doesn't maybe match with what the science says. So I think working together, sitting down together, and I have done this with groups as well, and we can come and find a lot of

common ground that we all agree on. Sometimes it is a little bit of that right at the very end, the 10 percent or so that we may have to try to work out, but a lot of times we agree, but it is just a matter of getting around the table, educating, understanding what we are trying to accomplish. I believe we can get there, and that is why we are asking to be involved all the way through the process, and I think the counties are willing to do that.

Senator Crapo. Well, thank you. And I appreciate you taking your time to come here to Washington, D.C. to share this with us.

Mr. Cruickshank. Thank you, Senator, and thank you, Chairman.

Senator Inhofe. Well, thank you. Just kind of building on what Senator Crapo is saying, there is kind of an irresistible temptation by a lot of people, when their argument is not too good, to start name-calling, and I sit here and it is very difficult, very difficult to have someone say, well, they probably just don't care about endangered species, they don't care about the environment. It is just not true at all. That is why I brought up this thing with Senator Markey. He and I are good friends, and yet we don't agree on very much.

But when our wives ran into each other and my wife was wearing her Save the Ridley sea turtle t-shirt, I was kind of

reminded. You might remember, in fact, Dan, you might remember this, Ila Loetscher was the turtle lady, very famous. She died at 100 years old. She was lauded in National Geographic and everything else, and the reason is the Ridley sea turtle at that time only laid its eggs in two places in the world: Vera Cruz and very south Texas, on South Padre Island.

I can remember growing up as a small child, and with my kids, teaching them to do the same thing. During the hatching season, we would actually spend the night up there and make sure that those little critters that would get out, they would hatch and they can make it to the ocean without other people either trying to get them for boots or critters trying to get them.

Anyway, I hope people keep in mind that Republicans and Democrats are both very sensitive to this beautiful world that we have and the environment that we live in.

You were squirming a little bit, Mr. Barry, when Mr. Bernhardt made some comments. Did you want to make any response to that?

Mr. Barry. Well, one of the big challenges, I think, for the State fish and wildlife agencies is having adequate resources to accomplish their work as well. I was sort of paying attention to what was happening with a lot of the State fish and wildlife agencies' budgets when the recession hit, and they all took a huge beating. There is a wide variation among

State fish and wildlife agencies as to the amount of resources that they have available for fish and wildlife conservation. You have some States like California and Florida that are putting in a lot of money. Idaho is another one of those States that puts in a lot of money. But there are other States that are putting in next to nothing. I think Kansas put in something like \$34,000 last year or in 2013 on endangered and threatened species conservation. So there is a wide variation from State to State to State, and that is one reason why, I think, having sort of a uniform one-size-fits-all approach to activities under the Endangered Species Act can be ill advised at times, because not every single State, even if they have the desire, has the resources to be able to engage as actively as they would like to.

David and I were talking before the hearing. I logged in 12 years at the Interior Department as an attorney, I was a chief counsel for the Fish and Wildlife Service for a number of years. I was Jim Watts' wildlife lawyer, if you will. And I think the Endangered Species Act has been a remarkably successful statute given the amount of work that is involved in it. When I spent eight years under Secretary Babbitt, we adopted almost all of the reforms that David referred to, and spent many, many years working with State and local officials. I spent half my time probably walking in the woods with private

landowners that owned large forest areas and that. So the Act is a challenge. I think it can work. I think it just needs more resources.

Senator Inhofe. Well, I just would observe that the complaints that you hear up here and that you heard during the course of this hearing really wouldn't be corrected by more resources, in my opinion. We are talking about transparency; we are talking about getting involved in these lawsuits. The sue and settle thing is out in the open. We can participate, and then when the decisions are made, to have local participation. That doesn't, in my opinion, cost any more.

Mr. Bernhardt, did you want to say anything about that, since you brought that subject up?

Mr. Bernhardt. Well, first off, I think that a lot has changed in our society since 1973, too. If you look at the number of biologists at the BLM or the Forest Service, what you would see that wildlife considerations, and I think this is laudable, wildlife considerations are an important aspect of their decision-making, irrespective of the Endangered Species Act. And that is not to minimize the importance of the Act, that is just a reality of where we are as a Country. I think that it is very important for these decisions, because I think they are important decisions and I think they have great consequence, and my view is that it is important for those

decisions to be transparent, that the transparency facilitates public confidence in the decision.

And I think that there should be ways for a broader public to be able to see things like settlement documents, if that is required. There are means for Congress to be able to see those. There is an ability in this day of electronic media and electronic availability to ensure that the underlying basis of decisions is available, while still protecting those interests that Mr. Ashe raises in his testimony, such as copyright and State disclosure requirements and the protection of the species. Those things can be worked through. And I think what we should do is strive to make improvements that enhance public confidence in the Act, while at the same time protecting species and trying to minimize conflict.

Senator Inhofe. That is a good statement.

Senator Crapo, do you have anything further?

Senator Inhofe. Let me apologize to the second panel, because we were late in getting you started and, as you can see, there is not as much participation as there should be. However, every Senator up here is represented by staff, and I can assure you that your testimony will be very seriously taken into consideration on the acts that we are putting together for the future. And I thank you very much for being here.

We are now adjourned.

[Whereupon, at 12:03 p.m. the committee was adjourned.]