



**Testimony of Donald Barry
Senior Vice President for Conservation Programs
Defenders of Wildlife**

**Before the
Committee on Environment and Public Works
U.S. Senate**

**Legislative hearing on S. 112, S. 292, S. 293, S. 468, S. 655, S. 736,
S. 855, S. 1036, S. 1081**

May 6, 2015

Mister Chairman and Members of the Committee:

My name is Don Barry and I am the Senior Vice President of Conservation Programs at Defenders of Wildlife, a national non-profit conservation organization dedicated to the protection of imperiled wildlife and plants in their natural communities. We represent more than 1.2 million members and activists.

Thank you for inviting me here to discuss these various bills related to the Endangered Species Act (ESA). I'd like to note that I have been involved in ESA issues for 40 years, having served for many years as the Chief Counsel for the U.S. Fish and Wildlife Service and later as the Assistant Secretary for Fish and Wildlife and Parks, overseeing the programs and policies of the National Park Service and U.S. Fish and Wildlife Service. I helped draft all of the key implementation regulations for the ESA in the mid-1970's and have been involved in every reauthorization and major amendment to the ESA since the original law was passed in 1973.

During my 40-year career in wildlife conservation, I've seen many efforts to undermine our nation's wildlife laws and programs, but I can honestly say to you, that this Congress is already unparalleled in its sweeping attacks on this country's wildlife and natural heritage. To date, we have seen 44 proposals introduced in Congress that would cripple endangered species conservation, 26 of which

were proposed in the Senate alone. Despite the attractive or conservation sounding titles for most of these bills, with the possible exception of S. 468, not a single one of them will actually enhance the conservation of endangered species in this country or stimulate their recovery. Additionally, many of them are solutions in search of problems. The humorist Mark Twain once said “I have lived through some terrible things in my life, some of which actually happened.” If he were alive today, he would be chuckling at the dire, economy-wrecking narratives ascribed to the Endangered Species Act, none of which actually happened.

All eight of the Endangered Species Act bills before you today would directly undermine our nation’s stewardship responsibility, although some have more harmful practical effects than others. The most egregious attack on the ESA comes from Senator Rand Paul of Kentucky. His bill, S. 855, encompasses so many destructive and damaging amendments to the ESA, and so completely undermines endangered species conservation and recovery in this country, it should be more accurately renamed the “Extinction Acceleration Act.” Senator Paul’s bill would, among other things, devastate the recovery of imperiled species by automatically removing them from the endangered species list after five years, whether or not they’ve biologically recovered. It would stymie the future listing of additional imperiled species by requiring the prior consent of affected governors and a joint resolution of Congress. Whether a species is endangered or not is a biological and scientific matter, not a political one. Determining the biological status of imperiled species should be left where it is today: in the hands of professional biologists in the federal government.

But there is more in Senator Paul’s bill: the proposal would also allow a state governor to override federal protection for all species found entirely within the state’s borders. Our best available data indicate that approximately 900 species—over half of listed US species—could lose protections if this bill became law. All Hawaiian species. All Puerto Rican species. About 200 species in California. And charismatic species such as the spectacled eider, Puerto Rican parrot, golden cheeked warbler, Hawaiian monk seal, Sonoran pronghorn and over a dozen butterflies. All could be dropped from the list whether or not they are recovered. I would also point out that resident species are only listed under the ESA when the affected states have failed to stop their decline. There is little doubt that this one provision in Senator Paul’s bill would result in the extinction of many currently listed species.

Other anti-ESA proposals before this Committee would create excessive red tape and burdensome reporting requirements for the Fish and Wildlife Service, severely handicap the designation of critical habitat, limit citizens access to court, target individual species, and circumvent the planning process under the National Environmental Policy Act (NEPA).

S. 112, introduced by Senator Dean Heller (R-NV), would require federal wildlife agencies to prioritize short-term economic considerations over conservation values each time they designate critical habitat, even if doing so would jeopardize the species’ recovery. By requiring the agencies to do a hugely burdensome and speculative analysis of the “incremental and *cumulative* economic effects of *all* actions to protect the species and its habitat,” this bill significantly increases the opportunity

for economic considerations to be injected inappropriately into listing decisions themselves. Congress explicitly rejected the consideration of economic effects as part of the listing process decades ago, and has limited the analysis of economic effects solely to the designation of critical habitat. The bill would also hamstring federal wildlife agencies with a new hugely burdensome set of bureaucratic requirements that do nothing to promote the conservation and recovery of listed species.

S. 292, introduced by Senator John Cornyn (R-TX), would require federal wildlife agencies to publish, on the Internet, all raw data that is the basis for each proposed and final listing determination. This bill could have a chilling effect on scientific research by undermining the ability of scientific professionals to do their work. It could also have a harmful effect on imperiled species vulnerable to poaching or illegal collection by revealing their locations to the public. The disclosure requirements would certainly burden agencies, and squander limited agency resources.

S. 293, introduced by Senator John Cornyn (R-TX), would severely limit citizen enforcement of the ESA by barring the recovery of legal fees from settlement cases, which would perversely drive up the ultimate costs of successful litigation. Not only does this proposal discard historic checks and balances for holding the Executive Branch accountable for complying with the law, it would also mandate state and county approval for all settlement agreements reached in federal court, regardless of whether those parties have any actual injury or harm.

S. 468, introduced by Senator Orrin Hatch (R-UT), would create a new Categorical Exclusion (CE) under NEPA, foreclosing thoughtful, science-based public planning for conifer control projects intended to conserve sage-grouse or mule deer on Bureau of Land Management (BLM) and Forest Service lands. This bill is largely unnecessary, as Federal agencies are already removing encroaching conifers from tens of thousands of acres of public and private lands in the West. Moreover, BLM already has the ability to issue CEs for vegetation-related projects up to 1,000 acres, and fire projects up to 4,500. This bill is yet another attempt to undermine NEPA through a "death by a thousand cuts" strategy, and it could have major negative effects on wildlife, watersheds and other public resources.

S. 655, introduced by Senator John Thune (R-SD), aims to block funding for a listing decision on the imperiled northern long-eared bat, a listing decision which the U.S. Fish and Wildlife Service has already finalized and has now gone into effect. There seems to be no practical effect of this bill as currently written. However, the bill's attempt to thwart the listing process for the bat offends the science-based decision-making process under the ESA. Congress should not be injecting politics into any listing decisions, much less one for a highly imperiled bat species that has already declined by 96% in the northeastern portion of its range.

S. 736, introduced by Senator Mike Enzi (R-WY), would require that federal wildlife agencies utilize all state, tribal, and county-provided data in listing decisions, even if such data is not developed by scientists, or is of poor quality. The agencies already consider data generated by states,

tribes, and counties if that data is the best science available. This anti-science proposal does nothing to improve the science used in ESA decisions, and would instead result in the use of deficient and less sound information. A similar provision prioritizing all state-generated data, regardless of its quality, appears in S. 855.

S. 1036, introduced by Senator Cory Gardner (R-CO), would prohibit the U.S. Fish and Wildlife Service from listing the greater sage-grouse under the ESA for at least six years, and require the Secretaries of Interior and Agriculture to support western states in developing statewide sage-grouse conservation plans. There is an unprecedented planning process currently underway for sage-grouse. The National Greater Sage-Grouse Planning Strategy is working to amend 98 federal resource and land use plans with additional measures to conserve sage-grouse on approximately 60 million acres of federal public lands in the West. We will know in August whether these revised plans will be sufficient to conserve the grouse, as well as hundreds of other species that depends on sagebrush habitat. Senator Gardner's proposal would reset the clock on this planning process by requiring the administration to evaluate and apply state conservation strategies to federal lands, wasting millions of dollars invested in the current planning process and delaying conservation action for sage-grouse for years longer. Moreover, the bill effectively transfers management of 60 million acres of federal lands that are home to sage-grouse to western states. This is right in line with several other attempts in the current Congress to simply give away federal lands to the states.

These eight bills are just a few of the 44 anti-ESA proposals that have been introduced in the early days of this Congress.

If proponents of these bills are really interested in helping species recover and avoiding further extinctions, they would be better advised to support critically needed funding increases for the U.S. Fish and Wildlife Service rather than advancing these damaging legislative proposals that only undermine the ESA. Since FY 2010, the Service's already inadequate endangered species program budget has declined by 11 percent when adjusted for inflation. The impacts of this reduction in funding come into even sharper relief in light of the fact that the Service now has responsibility for nearly 280 additional species listed since then. And these cuts have had real on the ground impacts – for example when “red tide” events resulted in the death of more than 40 endangered Florida manatees several years ago, funding cuts prevented the Service from restoring important sea grass feeding habitats affected by the die off, delaying manatee recovery. The president's FY 2016 budget requests an increase of \$23.2 million for the Service's endangered species program which includes an \$11 million increase for recovery and a \$5.5 million increase for Section 7 consultation. I urge the members of the Committee to support these modest increases rather than advancing these ill-advised proposals.

Overall, these bills would individually and collectively take a legislative wrecking ball to the landmark Endangered Species Act. For decades, the ESA has been an indispensable safety net for fish, wildlife and plants on the brink of extinction. These proposals ignore the law's wide popularity and achievements, which include stopping the slide towards extinction of species like the whooping

cranes, manatees, California condors, grizzly bears, brown pelicans, alligators, gray whales, and peregrine falcon. The ESA has been effective because it requires that decisions under that law be based upon the best available science – not politics. It has also been successful because it gives individual citizens the right to hold agencies accountable for complying with the law. These lynchpins of the ESA would be obliterated by the bills pending before this Committee.

Forty years ago, our country was at an environmental crossroads. Americans saw that things were terribly wrong with their environment. Smog choked our air, rivers were so polluted they caught on fire, and species like the whooping crane were headed toward extinction.

We realized as a nation that a choice needed to be made: do we conserve our natural heritage or let it continue to decline and disappear? Our answer to that question was as farsighted as it was dramatic: we chose to be a country that conserves our air, land, water and imperiled species. In passing the Endangered Species Act, our leaders embraced key values that still guide conservation thinking to this day. The importance of those environmental values remains the same – it is the political values of some in Congress that have changed. The late Senator James Buckley, who was elected to the Senate by the Conservative Party in New York once said in defending the ESA that “conservation should be a conservative value.” That statement is as true today as it was when Senator Buckley said it.

Now, once again we find ourselves as a nation at a crossroads: down one road is the continued slide towards extinction; down the other road is the continued conservation and recovery of our nation’s imperiled species. Which road we choose will define our nation for decades to come.

These proposals before you need to be seen for what they are: threats to our nation’s natural heritage that, as President Nixon said, are “a heritage which we hold in trust to countless future generations.” We owe it to them to be good stewards of our lands and wildlife and should not play politics with our natural heritage. I urge you to protect it all for your children and generations to come.

Thank you.