

**STATEMENT OF DAN ASHE, DIRECTOR  
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR  
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
ON  
THE U.S. FISH AND WILDLIFE SERVICE'S FY 2016 BUDGET REQUEST  
AND**

**S.112, COMMON SENSE IN SPECIES PROTECTION ACT OF 2015; S.292, 21ST CENTURY  
ENDANGERED SPECIES TRANSPARENCY ACT; S.293, A BILL TO AMEND THE ENDANGERED  
SPECIES ACT OF 1973 TO ESTABLISH A PROCEDURE FOR APPROVAL OF CERTAIN SETTLEMENTS;  
S.468, SAGE-GROUSE AND MULE DEER HABITAT CONSERVATION AND RESTORATION ACT OF  
2015; S.655, 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; S.736, STATE, TRIBAL, AND LOCAL SPECIES  
TRANSPARENCY AND RECOVERY ACT; S.855, ENDANGERED SPECIES MANAGEMENT SELF-  
DETERMINATION ACT; S.1036, A BILL TO REQUIRE THE SECRETARY OF THE INTERIOR AND  
THE SECRETARY OF AGRICULTURE TO PROVIDE CERTAIN WESTERN STATES ASSISTANCE IN  
THE DEVELOPMENT OF STATEWIDE CONSERVATION AND MANAGEMENT PLANS FOR THE  
PROTECTION AND RECOVERY OF SAGE-GROUSE SPECIES, AND FOR OTHER PURPOSES; AND  
S.1081, A BILL TO END THE USE OF BODY-GRIPPING TRAPS IN THE NATIONAL WILDLIFE  
REFUGE SYSTEM.**

May 6, 2015

Good morning Chairman Inhofe, Ranking Member Boxer, and Members of the Committee. Thank you for the opportunity to testify before you today on the U.S. Fish and Wildlife Service's (Service) Fiscal Year 2016 budget request. I also appreciate the opportunity to testify before you today on eight bills related to the Endangered Species Act and a bill related to the National Wildlife Refuge System. We look forward to working with you on the Service's efforts to conserve, protect, and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people.

**U.S. Fish and Wildlife Service's FY 2016 Budget Request**

As Americans, our iconic landscapes reflect our unique way of life. We want to maintain these places for people of all ages to enjoy and experience our heritage. We want future generations to be able to go hunting, fishing, biking, camping, boating, and wildlife watching. We want our children to inherit a sense of wonder and the sheer joy of being in the outdoors. We also want to preserve the other benefits to society provided by the natural environment, such as clean water and air, wetlands to reduce storm damage, native plants to help prevent erosion and control wildfires, and pollinators for our food supply.

At the same time we recognize that life is about balance. We need the outdoors for relaxation and recreation, but we also need places to work and live, we need places to shop and to make the products that we depend on.

The Service recognizes the need for this balance and is actively pursuing conservation to foster and support the Nation's growing economy and human population. We have proposed a budget that is strategically crafted to help us achieve this goal.

We are investing in the conservation of our wildlife and habitat to provide those myriad health and economic benefits to U.S. communities. Investing in the next generation of Americans is also critical, so we are creating new ways to engage young audiences in outdoor experiences, both on wildlife refuges and partner lands. With 80 percent of the U.S. population currently residing in urban communities, helping urban dwellers to rediscover the outdoors and its benefits is a priority for the Service.

The President's Fiscal Year 2016 discretionary budget request supports \$1.6 billion in programs for the Service, an increase of \$130.7 million over the 2015 enacted level to fund the agency's high-priority needs. The budget also contains an additional \$1.4 billion available under permanent appropriations, most of which will be provided directly to States for fish and wildlife restoration and conservation.

This budget invests in: science-based conservation and restoration of our lands, water, and native species while considering the impacts of landscape-level changes like changing climate; expansion and improvement of recreational opportunities – such as hunting, fishing and wildlife watching – for all Americans, including urban populations; increased efforts to combat illegal wildlife trafficking, which is an international crisis; and the operation and maintenance of our public lands.

**America's Great Outdoors** – This initiative, a Service priority, seeks to empower all Americans to share the benefits of the outdoors, and leave a healthy, vibrant outdoor legacy for generations to come. A critical component of America's Great Outdoors is the National Wildlife Refuge System (Refuge System), which offers rewarding and convenient outdoor adventures, including world class hunting and fishing opportunities, to an increasingly urban society. Funding for the operation and maintenance of the Refuge System is requested at \$508.2 million, an increase of \$34.0 million above the 2015 enacted level. Included in that increase, is \$5.0 million for the Urban Wildlife Conservation Program, which will extend opportunities to engage more people in urban areas.

The budget also requests \$108.3 million for grant programs administered by the Service that support America's Great Outdoors goals. Programs such as the State and Tribal Wildlife Grants are a key source of funds for our State and Tribal partners and their efforts to conserve and improve wildlife and the landscapes on which they depend.

**Wildlife Trafficking** – Wildlife trafficking is an international crisis, imperiling some of the world's most recognized and beloved species as well as global security. The poaching of African elephants and rhinos for ivory and horn stands at unprecedented levels – it is a slaughter, and if it continues unabated, we will likely see these species go extinct in our or our children's lifetimes. Illegal trade in wildlife also undermines the conservation of scores of other species. The President is requesting an increase of \$4.0 million for the Service to combat expanding illegal wildlife trafficking and support conservation efforts on the ground in Africa and across

the globe, an additional \$4.0 million to expand the Service's wildlife forensics capability to provide the evidence needed for investigating and prosecuting wildlife crimes, and an additional \$2.0 million for the African Elephant and the Rhinoceros and Tiger Conservation Funds.

**Ecological Services** – The budget includes \$258.2 million to conserve, protect and enhance listed and at-risk wildlife and their habitats, an increase of \$32.3 million compared with the 2015 enacted level. These increases include a \$4.0 million program increase to support conservation of the sagebrush steppe ecosystem, which extends across 11 States in the intermountain West. Conservation of this vast area requires a collaborative effort unprecedented in geographic scope and magnitude. To achieve sustainable conservation success for this ecosystem, the Service has identified priority needs for basic scientific expertise, technical assistance for on-the-ground support, and internal and external coordination and partnership building with western States, the Western Association of Fish and Wildlife Agencies and other partners.

Additionally, the budget request contains a \$4.0 million increase to ensure appropriate design and quick approval of important restoration projects that will be undertaken in the Gulf of Mexico region in the near future. The Gulf of Mexico Watershed spans 31 States and is critical to the health and vitality of our Nation's natural and economic resources. The 2010 Deepwater Horizon oil spill dramatically increased the urgency of the Service's work in the Gulf region and our leadership responsibilities. Over the course of the next decade, billions of dollars in settlement funds, Clean Water Act penalties and Natural Resource Damage Assessment restitution will be directed toward projects to study and restore wildlife habitat in the Gulf of Mexico region. The Service is in high demand to provide technical assistance and environmental clearances for these projects and this funding will ensure that this demand can be met.

**Fish and Aquatic Conservation** – The budget request includes a total of \$147.5 million for Fish and Aquatic Conservation, a program increase of \$4.9 million from the 2015 enacted level. Within its fisheries program, the Service is requesting an additional \$1.0 million for fish passage improvements to help make human communities and natural resources more resilient to extreme weather events by restoring natural stream channels, which helps reduce flooding. This partnership program also generates revenue and jobs for local communities. The Service is also requesting an additional \$2.4 million for efforts to control the spread of invasive Asian carp. This budget also maintains the funding increase provided to the National Fish Hatchery System by Congress in the 2015 appropriations bill, which will allow the Service to continue hatchery operations, working with States, Tribes and other partners and stakeholders to chart a financially sound course forward to conserve our Nation's fish and aquatic species.

**Land Acquisition** – The 2016 Federal Land Acquisition program builds on efforts started in 2011 to strategically invest in the highest priority conservation areas through better coordination among Department of the Interior agencies and the U.S. Forest Service. This budget includes \$164.8 million for Federal land acquisition, composed of \$58.5 million in current funding and \$106.3 million in proposed permanent funding. The budget provides an overall increase of \$117.2 million above the 2015 enacted level. An emphasis on the use of these funds is to work with willing landowners to secure public access to places to recreate, hunt, and fish.

**Powering Our Future** – The Service continues to support the Administration’s “all-of-the-above” energy strategy by engaging in early planning, thoughtful mitigation and the application of sound science not only for traditional sources of energy but also in the development of new, cleaner energy to help mitigate the causes of climate change. The budget proposes \$16.8 million, an increase of \$2.6 million, for environmental clearances and other activities associated with energy development.

**Landscape Level Understanding** – The budget request includes \$69.7 million, an increase of \$12.2 million above the 2015 enacted level, for landscape level science and conservation. Global and national conservation challenges such as development pressure, climate change, resource extraction, wildfire, drought, invasive species and changing ocean conditions require an unprecedented effort to better understand threats and inspire coordinated action to address them.

The President’s request for the Service includes an important increase for Landscape Conservation Cooperatives (LCCs). The budget requests an increase of about \$8 million for LCCs and Adaptive Science over the fiscal year 2015 appropriation. LCCs are at their core voluntary, non-regulatory collaborations with States, Tribes, and others stakeholders. Together, we work at the large landscape scale, identify common priorities, invest in the science needed to make smart conservation decisions, and then work together to meet our shared goals. The growing commitment to the LCCs by our partners is demonstrated by the formal participation of over 270 organizations on LCC committees and the increasing leveraging of resources.

Partners are now calling upon LCCs to take on larger roles. For example, LCCs are working with 15 Southeastern States to facilitate the development of a shared conservation vision. The effort is identifying the areas that are most important for wildlife in the Southeastern United States, allowing all partners to coordinate conservation investments and leverage resources into the future. Similarly, at the request of Northeastern States, LCCs are knitting together multiple state wildlife action plans into a single regional conservation strategy. LCC investments are also prioritizing fish passage projects across the Great Lakes, ensuring that native fish can move into historical spawning grounds while minimizing the likelihood that invasive species expand their range. In addition, LCCs are working with partners in the West to understand the impacts of invasive species and fire management on wildlife and develop strategies to keep native wildlife healthy. Providing funding at fiscal year 2016 request level will position LCCs to meet these conservation priorities and many others identified collaboratively with our partners.

**Cooperative Recovery** – Species recovery is another important Service priority addressed in this budget. For 2016, the President requests a total of \$10.7 million, an increase of \$4.8 million over the enacted level, for cooperative recovery. The focus will be on implementing recovery actions for species nearing delisting or reclassification from endangered to threatened, and actions that are urgently needed for critically endangered species.

**Legislative Proposals** – In addition to our funding requests, the Service is proposing three legislative changes to reduce costs and enhance State and Federal conservation programs.

First, the Service is requesting authority, similar to that of the National Park Service and the National Oceanic and Atmospheric Administration, to seek compensation from responsible

parties who injure or destroy Refuge System or other Service resources. Today, when Refuge System resources are injured or destroyed, the costs of repair and restoration falls upon our appropriated budget for the affected refuge, often at the expense of other refuge programs. In 2013, refuges reported seven cases of arson and 2,300 vandalism offenses. Monetary losses from these cases totaled \$1.1 million dollars.

We also support the extension of the authority that applies the interest from the Pittman-Robertson fund to conservation projects under the North American Wetlands Conservation Act (NAWCA). Interest from Pittman-Robertson funds is a critical source of income for NAWCA projects. Since 1994, \$348 million has been provided, contributing to stabilizing waterfowl populations on the continent and enhancing hunting, fishing, and other outdoor recreation. Unless the Act is amended to extend the provision, this key source of funding for NAWCA projects will be lost.

Another legislative proposal would provide stability to the purchasing power of the Federal Duck Stamp. Our proposal would give clearly defined and limited authority to the Secretary of the Interior, after appropriate consultation with the Migratory Bird Conservation Commission, to periodically increase the price of the Federal Duck Stamp to keep pace with inflation. We appreciate Congressional approval last year of the first increase to the cost of a Duck Stamp in many years, and we hope this provision will allow the funds generated by the stamp to keep up with inflation.

### **Endangered Species Act Overview**

The Endangered Species Act (ESA) provides a critical safety net for America's native fish, wildlife, and plants. And we know it can deliver remarkable successes. Since Congress passed this landmark conservation law in 1973, the ESA has prevented the extinction of hundreds of imperiled species across the nation and has promoted the recovery of many others – like the bald eagle, the very symbol of our Nation's strength.

Earlier this year, in recognition of its recovery, the Service delisted the Oregon chub, a fish native to rivers and streams in the State of Oregon. The recovery of the Oregon chub is noteworthy because it is attributable in significant part to the cooperation of private landowners who entered into voluntary conservation agreements to manage their lands in ways that would be helpful to this rare fish. In some cases, landowners agreed to cooperate in reintroducing the fish into suitable waters on their property. The help of private landowners and the cooperation of state and federal partners were critical to the success in bringing this fish to the point at which it is no longer endangered and no longer in need of the protection of the ESA.

As the Oregon chub example makes clear, private landowners can hasten the recovery of endangered species through their cooperative efforts. The Oregon chub is just one of many endangered species that landowners are helping recover through voluntary agreements with the Service known as "safe harbor agreements." These agreements provide participating private property owners with land-use certainty in exchange for actions that contribute to the recovery of listed species on non-Federal lands. Safe harbor agreements with Texas ranch owners have helped restore the northern aplomado falcon to the United States, from which it had been absent

for roughly a half century. In the southeastern United States, more than 400 landowners have enrolled nearly 2.5 million acres of their land in safe harbor agreements for the endangered red-cockaded woodpecker. These landowners have effectively laid out the welcome mat for this endangered bird on their land, as a result of which populations of this endangered bird are growing on many of these properties.

In October 2013, the Service withdrew its proposal to list the Coral Pink Sand Dunes tiger beetle, a species found in Kanab, Utah. The Service was able to withdraw its proposal based on an amendment to an existing conservation agreement that sufficiently addressed the threats to the beetle by enlarging an existing conservation area, and targeting additional areas of habitat for protection. This was a joint effort among the Bureau of Land Management, Utah Department of Natural Resources, Kane County and the Service.

Last summer, the Service announced its determination that listing the Montana population of Arctic grayling was not warranted. Private landowners in the Big Hole and Centennial valleys in Montana worked through a voluntary Candidate Conservation Agreement with Assurances (“CCAA”) to achieve significant conservation of grayling within its range. Since 2006, over 250 conservation projects have been implemented under the CCAA to conserve Arctic grayling and its habitat. Habitat quality has improved and grayling populations have more than doubled since the CCAA began in 2006. The cooperation between the federal and state partners serves as a model for voluntary conservation across the country.

The ESA provides great flexibility for landowners, states and counties to work with the Fish and Wildlife Service on voluntary agreements to protect habitat and conserve imperiled species. Through Safe Harbor Agreements, Candidate Conservation Agreements, Habitat Conservation Plans, Experimental Population authority, and the ability to modify the prohibitions on take of endangered species in Section 9 by crafting special rules for threatened species under Section 4 (d), the Act allows and encourages creative, collaborative, voluntary practices that can align landowner objectives with conservation goals.

## **Improving the ESA**

The Administration is working hard to continually improve our implementation of the ESA. Our efforts are guided by four broad themes: (1) ensuring the use of best science and increasing transparency; (2) engaging the states as fuller partners; (3) incentivizing voluntary conservation efforts; and (4) focusing our resources on delivering more successes.

In the coming weeks we will be announcing actions that the Administration will take over the next 18 months to continue improving the execution and implementation of the ESA, consistent with these four themes. Some of these ideas are already in progress. We are working with states to finalize a proposal that would give credit for early conservation action to any state that develops a program to advance the conservation of candidate or other at risk species. This entirely voluntary program will create a tangible reward for states and landowners who participate if the species becomes listed in the future. We will also propose revisions to our 1981 mitigation policy and our 2003 guidance on conservation banks. Both revisions will help clarify the permitting process and because conservation banks provide advance gains for species, should

also expedite permitting. We will be announcing additional actions in the coming weeks but wanted to give you this summary of some of the most important actions we are taking to make the ESA work even better.

The most significant step that Congress can take in improving effectiveness of the ESA is to provide the resources needed to get the job done in the field. To that end we ask that Congress support the President's budget request for Fiscal Year 2016.

### **S. 292 the 21st Century Endangered Species Transparency Act and S. 736, the State, Tribal, and Local Species Transparency and Recovery Act**

If enacted, S. 292, the *21st Century Endangered Species Transparency Act*, and S. 736, the *State, Tribal and Local Species Transparency and Recovery Act* would establish a requirement to make publically available on the internet the best scientific and commercial data that are the basis for each listing determination. S. 736 would amend the ESA to require the Service to provide states with all data used in ESA section 4(a) determinations prior to making its determination, and define "best available scientific and commercial data" to include all data submitted by a state, or tribal or county government.

#### *"Best Available" Data*

The decisions that the Service makes with respect to listing or delisting of species must be made "solely on the basis of the best scientific and commercial data available." Congress added this explicit directive in 1982, in response to the perception that some listing decisions then were being influenced by non-scientific considerations. Congress made clear then that the threshold decision of whether a species is an endangered or threatened species is a scientific judgment to be informed by the best available information alone.

Often, the states are among the best sources of such information, particularly with respect to game and other actively managed species. However, some states lack authority or programs to conserve certain species that are eligible for protection under the ESA, such as invertebrates and plants, and therefore collect insufficient data. Counties and other units of local government generally have neither jurisdiction nor programs to manage wildlife. Relevant and highly credible data and information may also come from such sources as universities, museums, conservation organizations, and industry. Thus, to define data submitted by a state, tribal or county government as always constituting the "best scientific and commercial data available" – as S. 736 does – would be incorrect in many cases and would serve to exclude or override data and information available from other credible sources. Section 4(b)(1) of the Act already requires the Service to take into account the efforts and views of states and their political subdivisions when making listing decisions, and Section 4(i) requires the Service, if it makes a listing determination at odds with the recommendations of a state, to provide that state with a written explanation of the reasons for doing so. Finally, it should be noted that defining all data submitted by states or counties as the "best available," would create a quandary if there were conflicting data from such sources. A concrete recent example concerned several counties in Kansas who took strong exception to the conservation plan for the lesser prairie-chicken that the

state proposed. The counties and the state took diametrically opposed positions based on conflicting data. In this example, both cannot be the “best available.”

The Service already makes available through *Regulations.gov* the information upon which our listing determinations are based, but with recognition of the limitations posed by state law, copyright, or other factors. As noted, the studies, reports, and research publications by state agencies or their employees are often the best studies and analyses available to the Service. A broad-ranging requirement to post on the internet this state data – particularly if that requirement extends to the raw data underlying such studies and analyses – would almost certainly elicit a number of well-considered concerns from the states themselves. Those concerns would start with the fact that in some instances state law prohibits the release of certain wildlife data. For example, Texas Government Code Section 403.454 prohibits the disclosure of information that “relates to the specific location, species identification, or quantity of any animal or plant life” for which a conservation plan is in place or even under consideration. We note that S. 292 recognizes the limitations posed by state law, although other factors also need to be considered when determining what information is suitable to post on a publicly accessible website.

Even where there is no state law barrier to releasing the raw data underlying state studies, there are many reasons why states would be reluctant to have that data widely disseminated via the internet. To the extent that such data reveals the location of rare or sensitive species, its disclosure would put such species at added risk, both from collectors or vandals as well as from people with entirely innocent motives, such as the desire to get an up-close photo of an eagle and its young in their nest, or of prairie-chickens displaying on their mating grounds.

The ability of states, and of scientific researchers generally, to gather wildlife data often depends upon the willingness of private landowners to grant them access to their lands. Many landowners can reasonably be expected to be less likely to grant such access if they know that the data collected on their land would be posted on the internet. Their concerns might include the well-being of the wildlife on their land as well as their own sense of privacy and desire not to have to contend with trespassers, vandals, and simple curiosity seekers. The disclosure requirement that the sponsors of S. 292 intend to produce better scientific data could have the unintended consequence of reducing the amount and quality of such data. While the Service is willing to explore other approaches, it has generally found satisfactory to most states and researchers its current records management process. As part of that process, the Service makes available all of the relevant scientific and commercial data that it has and on which it relies in making a listing determination under section 4(a)(1) of the ESA. The data is generally maintained at the field office that is the lead for making the listing determination. Additionally, a list of literature, studies, and other relevant data used in making the determination and copies of pivotal documents are posted on *Regulations.Gov*, the government website for electronic records and public comments. These documents are generally made available to the public electronically upon request. However, there may be limitations to the release of certain data if it falls within one of the exceptions to disclosure under the Freedom of Information Act (for example, the Service sometimes obtains from the Defense Department certain high resolution photographs that the Department requests not be released to the public because of national defense considerations). In these cases, the Service refers the requester to the party from which the data originated. Further, in many circumstances, such as peer-review published literature, the Service

relies on a synthesis or analysis of data that is summarized by the prevailing scientific expert or author of the paper. In such circumstances, the Service relies on the expert evaluation and analysis of the data and may not have in its possession or be able to obtain the underlying data.

The Administration is working to address the underlying concerns that may have motivated S. 292 and S. 736 using existing authorities and welcomes input from Congress as we move toward increased transparency using modernized methods. As such, S. 292 and S. 736 are not necessary and we cannot support them.

### **S. 293, To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements**

S. 293, would amend the ESA to require the Service to publish all complaints received pursuant to the ESA within thirty days of being served in order to provide notice to all affected parties. Those affected parties would then have a “reasonable opportunity” to move to intervene, during which time parties would be prohibited from moving for entry of a consent decree or to dismiss the case pursuant to a settlement agreement. The bill would create a rebuttable presumption that any affected party moving for intervention would not be adequately represented by the existing parties. If the court grants a motion to intervene, the bill requires the court to refer the case to mediation or a magistrate judge for settlement discussions including any intervenors. Finally, the bill revises the attorneys’ fees provision, effectively prohibiting the payment of attorneys’ fees to plaintiffs in any case that settles and adds a new provision that requires each state and county where the species at issue occurs to approve of the settlement.

When the Service settles an ESA case, it is because we are unlikely to be the prevailing party, and settlement of the case will both save the Government the time and expense of further litigation and will result in terms more favorable to the Government than what we might expect from a court if the case went to trial. We do not give away our discretion to decide the substantive outcome of any agreed upon actions, and the notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions. It is important that we retain the ability to settle ESA litigation on favorable terms and reduced cost to the Government.

If this bill were enacted and a burdensome process were imposed, the prohibition against the award of reasonable attorney fees will make it highly unlikely that any plaintiff will agree to settle a case. Instead, plaintiffs would likely press the courts for summary judgment, seeking a remedy that may be far less favorable for the Service and forcing the Government to incur litigation costs far in excess of the reasonable attorney fees associated with a settlement agreement. In addition, the requirement that each State and County within the range of the species must approve any settlement will make it nearly impossible to achieve the concurrence necessary to pursue settlement.

When deadline cases have been litigated in the past, courts have frequently imposed very short deadlines. Therefore, removing the incentive for settlement is likely to accelerate the timing of listing determinations and other actions required by deadline, thereby reducing the opportunity for interested parties to participate in the decision-making process. In addition, the necessity of

fully litigating each case would greatly increase the administrative burdens and costs borne by the Service and the courts, with no offsetting benefit.

The Department opposes S. 293 because it will greatly diminish the opportunity to settle deadline lawsuits brought under the ESA, where it is in the interests of the Government and taxpayer to do so.

### **S.112, the Common Sense in Species Protection Act**

S. 112, the Common Sense in Species Protection Act, amends the ESA of 1973 to make exclusion of specific areas from a critical habitat designation a mandatory duty, rather than a discretionary one. The effect of this change would be to create another cause of action for legal challenge to critical habitat designations, creating greater litigation risk, more litigation, and more litigation costs to the Service and the Government.

The bill goes well beyond the requirement published in the revised 50 CFR 424.19, that was directed by the President's February 28, 2012, memorandum, which directed us to take prompt steps to revise our regulations to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat. In particular, the bill would require that the economic analysis assess the impacts not merely of the proposed designation of critical habitat, but of "all actions to protect the species and [its] habitat." This would represent a marked reversal of the principal embodied in the ESA since 1982 that the decision whether a species is threatened or endangered should be a scientific one, not one skewed by economic or political considerations. In addition, the bill would require that the draft analysis be published versus our practice of making it available, but not publishing. By codifying the requirements set forth in these lines, it could limit any future discretion to change these provisions by revising the regulations and would result in requiring additional resources to "publish" the draft economic analysis. The Service believes that the revised regulation adequately establishes these requirements and incorporates public involvement in the rulemaking process and a revision to the ESA is not necessary, therefore we cannot support S. 112.

### **S. 855, the Endangered Species Management Self-Determination Act**

The Department opposes S. 855, which would make dramatic changes to the ESA. First, it would require the consent of the Governor of each state in which a species occurs before a species could be listed as threatened or endangered. Second, the list of threatened and endangered species would not become effective without a joint resolution of Congress. Third, that list would terminate after five years, thus necessitating a repeat of the entire process of seeking gubernatorial and congressional consent. The net effect would be an endless cycle in which species would gain and then lose legal protection and the Service's resources would be spent on repetitive processes rather than on meaningful conservation. During periods in which a lapsed listing was awaiting a new congressional resolution, any conservation gains could be wiped out or substantially reduced.

For species that occur in a single state, the bill allows the Governor of that state to exercise exclusive authority over that species, including the exclusive authority to issue any permits, enforce regulations, and specify recovery goals. This provision thus potentially removes federal protection from nearly all the listed species in Hawaii, the Florida panther, the California sea otter, Attwater's prairie-chicken, the San Joaquin kit fox, and hundreds of other currently listed species. The potential extinction of any listed species impacts more than just the state in which it is found; it impacts the Nation as a whole.

Finally, the bill creates a perverse incentive for property owners to propose uses of their property that are incompatible with conserving listed species that occur thereon. It does so by allowing a property owner to submit to the Service a proposed use and to request of the Service a determination whether that proposed use would violate any provision of the ESA. If the Service determined that it would, the property owner would be entitled to be compensated by an amount equal to 150 percent of the fair market value of the property. Thus, by proposing an incompatible use, a property owner could secure compensation that is far in excess of the actual value of the property, thus creating an incentive for such owners to propose such uses for the sole purpose of securing excessive compensation.

**S. 655, 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**

Bats are a critical component of our nation's ecology and economy, maintaining a fragile insect predator-prey balance. Without bats, insect populations can rise dramatically, with the potential for devastating losses for our crop farmers and foresters. In the United States, the northern long-eared bat is found from Maine to North Carolina on the Atlantic Coast, westward to eastern Oklahoma and north through the Dakotas, reaching into eastern Montana and Wyoming. Throughout the bat's range, states and local stakeholders have been some of the leading partners in both conserving the long-eared bat and addressing the challenge presented by white-nose syndrome.

On April 2, 2015, the Service published its final decision to protect the northern long-eared bat as a threatened species under the ESA primarily due to the threat posed by white-nose syndrome, a fungal disease that has devastated many bat populations. Concurrently, the Service issued an interim 4(d) rule that eliminates unnecessary regulatory requirements for landowners, land managers, government agencies and others in the range of the northern long-eared bat. We designed the interim 4(d) rule to provide appropriate protection within the area where the disease occurs for the remaining individuals during their most sensitive life stages, but to otherwise eliminate unnecessary regulation. The Service has invited the public to comment on this interim rule as the Service considers whether modifications or exemptions for additional categories of activities should be included in a final 4(d) rule that will be finalized by the end of the calendar year.

The Service has finalized the listing determination for the northern long-eared bat, made effective on May 2, 2015. The Department cannot support S. 655.

## **S. 468, Sage-Grouse and Mule Deer Habitat Conservation and Restoration Act**

S. 468 would establish a new categorical exclusion under the National Environmental Policy Act (NEPA) for certain vegetation management projects on lands administered by the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). Under the bill, the removal or treatment of pinyon and juniper trees for the purposes of conserving or restoring Greater Sage-Grouse or Mule Deer habitat would be eligible for a categorical exclusion. The BLM shares Senator Hatch's strong interest in conducting pinyon and juniper vegetation treatments and supports the goals of S.468, but has some concerns with the bill as introduced. We would like to work with him and the Committee to narrow the proposed categorical exclusion to a more narrowly defined set of circumstances, in addition to establishing a sunset for the provision.

The BLM treats thousands of acres of pinyon and juniper annually to improve habitat for the Greater Sage-Grouse and other sagebrush-dependent wildlife species, provide opportunities to establish native vegetation, and reduce the risks of resource damage from catastrophic wildfires. Before undertaking vegetation treatments, the BLM engages in robust public involvement and tribal consultation to assess both existing resource conditions and the potential impacts of proposed treatments. Consideration of resources, such as cultural values, archaeological sites, wildlife species, native vegetation, drought conditions, and invasive weeds, ensures that treatments can be undertaken in the areas where they will be most effective and can be conducted in a manner that does not adversely impact other resources.

The BLM recognizes that there are many acres of sage-grouse habitat that require removal or treatment of encroaching pinyon and juniper, but a broad categorical exclusion as provided for under this bill would not ensure an adequate analysis of impacts to other significant resources would occur. For example, the bill does not include any limit to the scale, method, or effect of a vegetation treatment that would be covered by the categorical exclusion. The BLM believes a categorical exclusion would be inappropriate in cases of large spatial scales, controversial or high-impact types of treatments, and in areas with sensitive resources that could be adversely impacted. The BLM and USFS have found that the current approach of landscape-level Environmental Assessments increase efficiency of vegetation treatments while offering the flexibility to use available resources. We also recommend planning a sunset on a possible categorical exclusion to ensure an opportunity to evaluate and consider the use and impact of this special tool over a specific and limited period of time.

The BLM is interested in working with Senator Hatch and the Committee to further explore opportunities for increasing the efficiency of pinyon and juniper treatments to advance the goals of S. 468 without obviating the benefits of meaningful NEPA analysis.

## **S. 1036, A bill to require the Secretary of the Interior and the Secretary of Agriculture to provide certain Western States assistance in the development of statewide conservation and management plans for the protection and recovery of sage-grouse species, and for other purposes**

S. 1036 would prohibit the USFWS from making a listing determination of the Greater Sage Grouse for a period of no less than six years and subordinate federal land management authority

to undefined state land use plans. This unnecessary delay would subvert the West-wide partnership to conserve an iconic animal and the unique American landscape on which it depends. The bill runs counter to the fundamental principle that science should govern determinations under our nation's environmental laws by legislating the conservation status of a species under the ESA without regard to science. More practically, by preventing the FWS from determining whether the sage grouse warrants protection under the ESA for at least six years, the amendment precludes any opportunity for reaching a not warranted determination by September of this year. For more than five years, a diverse coalition of federal agencies, states, private landowners, and other stakeholders have worked tirelessly to map the long-term future of America's sagebrush systems, a future that includes healthy wildlife populations, abundant outdoor recreation opportunities, and strong, working communities.

The Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service (USFS), are completing an unprecedented and proactive planning effort to conserve the uniquely American habitat that supports the Greater Sage-Grouse and other iconic wildlife species, outdoor recreation, ranching, and other traditional land uses. Through close coordination with Governors, State Wildlife Agencies, and the Service, this partnership has created a new model for wildlife conservation, one that spans 11 states and offers a path forward to find a balance between a full range of resources, including the conservation of crucial wildlife habitat and resource uses. The BLM and USFS planning effort is designed to work in harmony with the State Greater Sage-Grouse plans from the Natural Resources Conservation Service's Sage-Grouse Initiative. Combined with the Secretary's wildland fire strategy, the efforts are a significant step for the conservation of sage-grouse habitat.

S. 1036 would – for no clear benefit to the species, landscape, or American public, including people who live and work in sage-grouse country – shelve this historic initiative, erase the progress the partnership has made toward rescuing a landscape in trouble, remove for the duration any chance of securing Greater Sage-Grouse and its habitat without the protections of the ESA, explicitly prevent the Service from reaching a “not warranted” determination this fiscal year and prolong the uncertainty for all those who live and work in the sagebrush steppe.

Indeed, this bill would dismantle many of the important tools the partners have put in place, not just to protect sage-grouse, but to forge a new way of doing species conservation business in the West, and across the nation, a way that focuses on landscapes, cooperation and balanced solutions. After decades of rancor over public land management and wildlife conservation in the West, government, working with its citizens and those who live closest to the resource, has shown there is a third way, a solution. The federal land management plans have been designed to focus development away from the habitat most important for the species, while allowing for continued economic development in areas of less conflict.

The Service's decision on whether or not the Greater Sage Grouse warrants protection under the ESA depends greatly on the certainty that planned conservation actions will be implemented and will be effective. The BLM and Forest Service stand poised to finalize and implement their plans.

The bill would create a significant impediment to sage-grouse conservation and will erase more than five years of partnership-driven effort and millions of dollars of investment in federal planning efforts focused on sage-grouse. The immediate suspension of federal plans will be detrimental to grouse conservation and sound management of the larger sagebrush-steppe landscape, as will the immediate reversal of actions the federal land management agencies have already implemented. The federal land management plans were developed to address the very threats that led to sage-grouse's decline across the majority of the species' range. Importantly, these plans were developed locally and in concert with many cooperators and are tailored to address specific, identified threats within the planning areas.

Thousands of hours of collaborative work incorporating the best science went into these plans. If they are completed and the federal land managers ensure they will be implemented, these plans could help preclude the need to list sage-grouse. Accordingly, the Department opposes S. 1036.

### **S. 1081, A bill to end the use of body-gripping traps in the National Wildlife Refuge System**

The Service appreciates the Senator Booker's interest in ensuring trapping practices on National Wildlife Refuge System lands are humane but we have some concerns with the bill as written. Trapping is an important management tool that the Service uses to protect threatened and endangered species, such as piping plover and loggerhead sea turtles, protect migratory birds, and manage other wildlife populations. In addition, trapping programs help protect Service infrastructure investments, such as impoundment dikes used to manage wetlands for a myriad of migratory birds, wetland habitats, and rare plants. Restricting trapping methods will result in expenditure of additional Service resources, staff time, and taxpayer money. The Service values its close relationship with State fish and wildlife agencies, and relies on their authority, expertise, and assistance for help in meeting wildlife population objectives. We seek, where appropriate, to complement state regulations in regards to hunting, trapping, and fishing and this bill appears to restrict the Service's ability to complement state trapping program regulations. We are also concerned with enforcing this legislation as it appears to conflict with the Alaska National Interest Lands Conservation Act (ANILCA) by not exempting subsistence use from the prohibitions on trapping. We look forward to working with Senator Booker to address these concerns.

#### *National Wildlife Refuge System*

The National Wildlife Refuge System (Refuge System), to which S. 1081 would apply, is a national network of lands and waters devoted solely to the conservation of wildlife and habitat. The 563 national wildlife refuges and thousands of waterfowl production areas across the United States teem with millions of migratory birds, serve as havens for hundreds of endangered species, and host an enormous variety of other plants and animals. The Refuge System and its over 150 million acres, offers about 47 million visitors per year the opportunity to fish, hunt, observe and photograph wildlife, as well as learn about nature through environmental education and interpretation. These visitors make refuges an important economic driver, generating nearly \$2.4 billion for local economies each year returning nearly \$5 for every dollar appropriated to the Refuge System.

### *Trapping on National Wildlife Refuge System Lands*

Trapping is often used on Refuge System lands to accomplish wildlife management objectives. Wildlife management objectives vary between refuges but may include: controlling predators for the protection of threatened or endangered species, managing invasive species populations that impact refuge habitats and infrastructure, and providing management of species to provide a safe place for wildlife and our visitors. These objectives are identified in the trapping plans that are developed when opening a refuge to trapping. The decision to permit hunting, trapping and fishing on national wildlife refuges is made on a case-by-case basis that considers biological soundness, economic feasibility, effects on other refuge programs, and public demand.

Trapping is also viewed by the Service as a legitimate recreational and economic activity when there are harvestable surpluses of furbearing mammals. ANILCA allows for subsistence uses in Alaska, including trapping.

#### *Examples of Trapping:*

Blackwater National Wildlife Refuge, Maryland – Nutria are South American semi-aquatic rodents similar to native muskrat and beaver. They breed year round and can give birth to two or-three litters of four to-nine young each year. Nutria is a highly invasive species that eat plants, including their roots, causing severe negative impacts on wetland environments. At the Blackwater National Wildlife Refuge in Dorchester County, Maryland, nutria destroyed nearly half of the marshlands vital for native wildlife in the 1990s. In a 2004 economic study commissioned by the Maryland Department of Natural Resources, they found that, without action, over 35,000 acres of Chesapeake Bay marshes could be destroyed by nutria within 50 years with annual economic losses estimated in the hundreds of millions.

To eradicate nutria, the Service works with USDA Wildlife Services to implement a monitoring and trapping program to eradicate nutria from Blackwater National Wildlife Refuge. The program has tested a variety of traps and trapping strategies for their efficiency in capturing nutria under various natural conditions. While box traps can be used where appropriate, body-gripping traps proved to be more effective and at times more selective in the types of species trapped. Since nutria are a semi-aquatic species, box traps that need to be set on dry ground cannot be used exclusively. Also, body-gripping traps that have been used on the Refuge could be set to reduce the incidence of capture of non-target species, even differentiating between nutria and native species such as muskrat. The program is currently in a monitoring and bio-security phase of the eradication protocol. The refuge will need to continue the use and/or availability of use of the body-gripping traps to address any re-occurrence until eradication is finally achieved throughout the Delmarva Peninsula.

Trapping on New Jersey National Wildlife Refuges – National Wildlife Refuges in the State of New Jersey allow for management trapping programs. Trapping at these Refuges is vital for controlling predator species to protect endangered beach nesting bird species such as piping plover, least tern, black skimmer, and other endangered wildlife such as bog turtles. Traps are also used to protect waterfowl during banding operations. When waterfowl are caught in traps, raccoons will predate on the birds before staff can get to them to band and release the birds.

Traps for these predator species are needed to prevent predation on these birds. Traps also protect infrastructure investments including:

- Protecting for Water Control Structures – beavers block these up with debris which undermines the structure, weakens them, and causes failures.
- Protect Impoundment Dikes – muskrat and beavers burrow into them thereby weakening the integrity of the dike, which can lead to failure. Impoundment/water control structure failure can result in: uncontrolled flooding upstream of homes and businesses; release of contaminated sediment contained in the impoundment from past human activities; and adverse impacts on wildlife and aquatic plants dependent on those managed wetlands.
- Beavers will block streams and other waterways that can and often do result in flooding roads and trails preventing safe access to destinations.

The use of body-gripping traps in these examples is of great importance to achieving critical conservation objectives and could be restricted by S. 1081. We are happy to work with Senator Booker and the Committee to address our concerns in this legislation.

## **Conclusion**

In closing, Mr. Chairman, America's fish, wildlife, and plant resources belong to all Americans, and ensuring the health of imperiled species is a shared responsibility for all of us. The native species and ecosystems of our planet support billions of people and help drive the world's economy. Despite the challenges we face, I am incredibly optimistic about the future. With the President's budget request we can help preserve the values Americans support, leave a legacy to our children and grandchildren, and sustain species and habitat.

In implementing the ESA, the Service endeavors to adhere rigorously to the congressional requirement that implementation of the law be based strictly on science. At the same time, the Service has been responsive to the need to develop flexible, innovative mechanisms to engage the cooperation of private landowners and others under the ESA and other laws, both to preclude the need to list species where possible, and to speed the recovery of those species that are listed. The Service remains committed to conserving America's fish and wildlife by relying upon the best available science and working in partnership to achieve recovery.

Thank you for your work on behalf of the American people, and for your support of the U.S. Fish and Wildlife Service. I am happy to answer any questions you may have.