

U. S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

State Field Hearing – August 23, 2007

Endangered Species

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Good morning Senator Inhofe, my name is Bob Sullivan.

For 32 years I have been an independent oil and gas producer. Eighteen of those years have been either sideways or negative financial experiences for me and my family. Fourteen years have been positive. Needless to say, exploring for domestic oil and gas reserves is a high risk, volatile business. As a point of interest, I pay for the food, clothing, shelter, and education for my wife and six children out of the same checking account that I pay for drilling exploratory wells. The health of our industry is a very personal matter to me.

I appreciate the opportunity to appear here today, and I offer my remarks on behalf of the Oklahoma Independent Petroleum Association, which is an association of approximately 1700 Oklahoma independent oil and gas producers who have similar concerns. In Oklahoma, independent producers make up the majority of the energy industry producing 96% of our state's crude oil and 88% of our natural gas. In the minds of you and your fellow legislators, we independent producers should not be confused with major oil companies who are fully integrated with transportation, refining, marketing, and research and development capabilities. We independents live or die with production revenues at the wellhead and the associated costs. Part of these costs includes providing gross production tax to the state that accounts for over \$1 billion of the state's \$7 billion budget.

As an independent producer, as an Oklahoman, and as an American, I am very concerned about the problems our industry faces regarding the Endangered Species Act (ESA).

The ESA is in dire need of significant reforms to ensure protection and recovery of threatened and endangered species while allowing for economic natural resource development. Since its inception, only 20 species have been recovered, equating to a success rate of less than 1.5%. The following information provides examples of why ESA reform is needed.

1. Improved Data

- The U.S. Fish and Wildlife Service (USFWS) uses limited or incomplete data, deemed “best available” data, to make listing, policy and critical habitat decisions. For example, the American Burying Beetle, located in the eastern part of Oklahoma, was listed as an endangered species in 1989. This listing was based on museum and collector's data - not actual comprehensive field or survey data. Since its listing, the beetle has been found in

many areas and is more widespread than originally thought which raises questions regarding its initial listing.

- Oil and gas exploration and production activities have been conducted in eastern Oklahoma for well over 50 years. There is no evidence or data that indicates the American Burying Beetle population has been affected in any manner by oil and gas exploration and production activities in wintertime or summertime, yet our industry is implementing various requirements to avoid a “taking”. There is no scientific data showing that the USFWS’s “baiting away” requirements are effective in protecting the American Burying Beetle. For all we know, this technique draws them to our sites.
- For many years in Oklahoma, the USFWS’s policy was to allow oil and gas construction activities to occur in the winter months when the American Burying Beetle was thought to hibernate. In 2002, the USFWS Tulsa Field Office changed its policy related to winter time oil and gas construction activity without any notification to the public and without new data to support such a change. This change in policy came to light when the USFWS Tulsa Field Office determined that a winter pipeline construction project to connect a natural gas well would adversely affect the American Burying Beetle. The project was unnecessarily delayed costing the operator, royalty owners, the State of Oklahoma, and other various parties millions of dollars.

2. Scheduled Recovery Plan Updates. The ESA requires that the USFWS conduct a status review of each listed species every 5 years. The 1991 Recovery Plan for the American Burying Beetle is being reviewed and updated this year for the first time. New information needs to be considered and incorporated into these plans on a timely basis. For example, the American Burying Beetle is thriving in Oklahoma, and it is apparent that industry’s activities are not harming the species; however, our industry continues to implement requirements to protect it.

3. Management Action Plans. There are no requirements for the USFWS to clearly identify, prioritize and fund specific data or research needs to determine the true threats to a listed species. In addition, there are no specific management actions or goals to remediate those threats, or to monitor the progress of those actions to determine if they are effective. Species like the American Burying Beetle have been studied for years with little knowledge gained about the species that can be used to promote its recovery.

4. Consistent Protection Requirements. In many instances, species cross USFWS regional jurisdictions. The various USFWS regions do not have consistent protection requirements. For example, in Oklahoma, the requirement for oil and gas operators to avoid “taking” an American Burying Beetle is different from the requirements in Arkansas and Texas.

5. Listing and Critical Habitat. Listing requirements should be better defined and critical habitat should be eliminated or more narrowly defined and designated only if alternative

options do not exist or do not work. Other options to avoid listing and critical habitat designations should include voluntary pre-listing activities and voluntary conservation efforts by industry, associations, and private citizens.

- 6. Economic Impacts.** The USFWS does not consider the economic impacts to industries such as the oil and gas industry during listing decisions or internal policy decisions to protect a species. The impacts to the oil and gas industry operators, especially small operators, can be costly. These costs cannot be transferred to a customer as compared to other industries.
- 7. Timing of Protection.** In some instances, the USFWS begins protection of a species before it is formally listed. These USFWS's pre-listing requirements are passed on to other federal agencies like the Bureau of Land Management where they are incorporated into their permit to drill requirements.
- 8. Unnecessary & Unproductive Litigation.** Many environmental groups file lawsuits to force the USFWS to list a species or to designate critical habitat. A large portion of the USFWS's budget over the past few years has gone to fighting these types of lawsuits instead of protecting the species. Changes should be made to the ESA to limit the number of lawsuits and utilize available funds where it is most needed – protecting the listed species.

Finally, on a related issue, legislation is being considered that will greatly expand the jurisdiction of the Clean Water Act by changing the waters that are federally regulated from “navigable waters” to “waters of the U.S.”. If this occurs, it will increase the number of Corps of Engineers’ Section 404 permits our industry would have to obtain resulting in more endangered species consultations with the USFWS.

We can do better than this, and I am confident that you can lead us to a better regulatory climate. Independent producers stand ready to assist with sensible regulatory improvements.

Thank you for the opportunity to present this opinion today.