

LEGISLATIVE HEARING ON A DISCUSSION DRAFT BILL, S. ____, THE
ENDANGERED SPECIES ACT AMENDMENTS OF 2018

Tuesday, July 17, 2018

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:50 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Capito, Wicker, Fischer, Rounds, Ernst, Sullivan, Cardin, Merkley, Gillibrand, Booker, Markey, Duckworth, and Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

Today we will consider the Endangered Species Act Amendments of 2018, and I would like this discussion draft to serve as the foundation for a bipartisan effort to modernize the Endangered Species Act. If we work together, Republican and Democrat, we can ensure that this important law fulfills the full conservation potential and works better for species, as well as for people.

Congress last reauthorized the Endangered Species Act with amendments of substance in 1988, 30 years ago. Even the U.S. Constitution has been amended more recently than the Endangered Species Act.

Stakeholders are making it clear that the Endangered Species Act can be improved. A major goal of the Endangered Species Act is the recovery of species to the point that protection under the statute is no longer necessary.

Since the ESA was signed into law, only 54 out of 2,393 species listed in the U.S. and foreign countries have been delisted because they have recovered. That is less than 3 percent.

Now, as a doctor, if I admit 100 patients to the hospital and only 3 recover enough under my treatment to be discharged, Governor, I would deserve to lose my medical license with numbers like that.

When it comes to the Endangered Species Act, the status quo is not good enough. We must do more than just list species and leave them on life support. But that is what we are doing now. We need to see species recovered.

In June of 2015, as then-chairman of the Western Governors Association, Wyoming Governor Matt Mead took on the challenge of identifying opportunities to modernize the Endangered Species Act. Now, the Western Governors Association represents governors of 19 western States and three U.S. territories in the Pacific. He launched the GWA's Species Conservation and Endangered Species Act Initiative.

Three years later, Governor Mead's groundbreaking initiative has facilitated a bipartisan dialogue of stakeholders from across the political spectrum. They have resulted in three annual reports, the adoption of a bipartisan Western Governors Association Policy Resolution, and the adoption of bipartisan Western Governors Association policy recommendations.

This month I released a discussion draft, the Endangered Species Act Amendments of 2018, and it is based on the Western Governors Association's principles and policies. Earlier this

year I received a supportive letter from the GWA signed by its chair and its vice chair, Republican Governor Daugaard of South Dakota and Democratic Governor Ige of Hawaii. It commended our efforts to address "this polarizing topic in an inclusive, thoughtful manner."

It noted, "The proposed bill reflects this fact and offers meaningful bipartisan solutions to challenging species conservation issues." It continued, "The proposed bill is generally consistent with the Western Governors Association recommendations, and the Western Governors Association offers its support for the portions of the bill that are consistent with existing Western Governors policy."

The discussion draft was also shaped by input from two EPW Committee hearings last year. We heard from a diverse bipartisan group of witnesses and panelists, including former Democrat Wyoming Governor Dave Freudenthal, and Fish and Wildlife directors from across the Country. Each of these witnesses and panelists acknowledged that the Endangered Species Act could work better. Many believe the foundation established by the Western Governors Association was a good starting point for modernizing the Act.

The discussion draft elevates the role of States in partnering with the Federal Government to implement the Endangered Species Act. It affords States the opportunity to

lead wildlife conservation efforts, including through the establishment of recovery teams for listed species, and developing and implementing recovery plans. It provides for increased regulatory certainty so stakeholders are incentivized to enter into voluntary conservation and recovery activities. It increases transparency. It codifies a system for prioritizing species listing petitions so limited resources flow to the species most in need.

Over the 45-year life of the Endangered Species Act, the capacity of State wildlife agencies has grown significantly. According to the Association of Fish and Wildlife Agencies, States now spend over \$5.6 billion on conservation and employ approximately 240,000 people and volunteers. Of that number, 50,000 are employees, including over 11,000 degreed wildlife biologists, over 10,000 wildlife law enforcement officers, and 6,000 employees with advanced education degrees.

Combined, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service employ only 11,661 people, so the substantial resources of the States are not located in Washington, D.C. These State agencies are in the field every day working to protect wildlife.

The draft bill has received broad support from conservation and stakeholder groups alike. Over 100 organizations have already written to the Committee to express their support of

this effort, so I look forward to working with the members of this Committee and the larger stakeholder community to find a bipartisan pathway to meaningful modernization of the Endangered Species Act based on the Western Governors Association's recommendations.

I now turn to Ranking Member Carper for his statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman.

To our lead-off witness, Governor, great to see you.
Welcome. Thank you for your leadership in Wyoming and among our
Nation's governors.

As a recovering governor, I recognize the critical and
sometimes challenging role that States play in implementing our
Federal laws. The Endangered Species Act, one of our Nation's
most popular environmental protection statutes, is one example
of just such a law.

I also appreciate the ability of our governors to come
together with stakeholders and solve difficult issues on the
ground.

Governor Mead, I understand from colleagues, that you
spearheaded, and the Chairman has alluded to this, a bipartisan
three-year process through the Western Governors Association to
discuss the improvements to the Endangered Species Act, and I
commend you for doing so. I think we commend you for doing so.

I very much look forward to hearing from you and our other
witnesses today on what we all believe is an important topic.
But I have to be honest, as well. I am not fully convinced that
a similar process is possible right now in Washington, D.C. Our

colleagues in this Congress have put forward and advanced a myriad of legislative proposals to weaken and, in some cases, undermine the Endangered Species Act. The current Administration has repealed policies from the previous Administration that would have helped endangered species to recover, and I am told that the Department of Interior plans to release new regulations this week that could harm our Nation's most imperiled species.

Further, the draft legislation we are considering today includes provisions that go beyond the legislative recommendations proposed by the Western Governors Association last year. Even the text that is based on the WGA's recommendations contains problematic details. To my knowledge, none of the Democratic governors who supported that resolution can endorse this draft, at least not as it is currently written.

I hasten to add that this process seems to be skipping another important step, and that is discussing and incorporating the views of the other 31 States. For example, my home State of Delaware has a compelling story to tell. The Endangered Species Act has successfully recovered a number of species in our State recently, including the Delmarva fox squirrel and the bald eagle.

Delaware is proud to host and help recover threatened species like the red knot, a tiny little bird that flies all the

way from the North Pole down to Brazil and stops for lunch one place along the way, Delaware, and keeps on going. Another bird called the piping plover, we have helped that one recover, too. People travel from all over the world, far and near, to view these special birds from our beaches along the Atlantic Ocean and along the Delaware Bay. In fact, I joined some of the birders just a couple months ago at our beloved wildlife refuges. We are blessed with two of those.

The First State also enjoys a wonderful working relationship with the U.S. Fish and Wildlife Service. Our region is working with landowners, industry partners, and nonprofit organizations to successfully prevent new listings.

Now, let me just say, no law is perfect. I know that and I think we all know that. But in Delaware's experience, changes to the Endangered Species Act have not been a prerequisite for the law to work. I continue to believe that our State, along with the Service and all States, could do exponentially more to recover species and prevent new listings with additional resources.

The Western Governors Association seems to agree with this assessment. I also remember that all of our witnesses at previous endangered species hearings agreed that funding is a serious challenge. Yet, in recent years, Congress has underfunded the Endangered Species Act, and the draft

legislation that we are holding this hearing on today does not provide a meaningful funding solution for species conservation.

Instead, the legislation proposes several changes to the Act that cause, for me, some real concerns. For one, it creates a new definition for how the Fish and Wildlife Service should consider scientific information. This change could actually prevent the best available science from guiding species management, especially in an Administration that consistently denies and undermines science.

It also includes a judicial review prohibition that limits the public's opportunity to challenge delisting decisions that may not be supported by the best available science or are otherwise not fully compliant with the law.

Having said all that, I want to again acknowledge the thoughtfulness that went into the Western Governors Endangered Species Act Initiative. Having said that, I am having a hard time understanding how this legislation, in particular, will better recover species or better serve the American people.

Perhaps this hearing will serve to further my understanding or perhaps it will cause us to go back to the drawing board and draw on the expertise and the insight of some of those other 31 States whose input apparently has not been sought when the legislation before us was being crafted. If we do that, it may enable our Committee to come together, as we have on several

occasions in this Congress, in working to truly conserve our Nation's treasured wildlife for future generations.

Thank you, Mr. Chairman.

Again, Governor, welcome.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Well, thank you very much, Senator Carper.

Today we are going to hear from two panels. Each member of the Committee has an option to either ask one five-minute round from either panel or a three-minute round from each panel, but we are going to follow this procedure to ensure that we complete the hearing by noon because we have a couple of roll call votes scheduled for later this morning and we want to be able to cast those votes.

On the first panel we will soon hear from Matt Mead, Governor of Wyoming, and on the second panel we will hear from Bob Broscheid, the Director of the Colorado Parks and Wildlife, and Matt Strickler, who is the Secretary of Natural Resources, the Commonwealth of Virginia.

I want to remind the witnesses your full testimony will be made part of the official hearing record.

I would like to take a moment now to introduce Wyoming Governor Matt Mead, who has been serving as Governor since January of 2011.

Born and raised in Jackson, Wyoming, he graduated law school from the University of Wyoming. Since then, he has engaged in the private practice of law, as well as worked as a prosecutor and as a United States Attorney.

Governor Mead has served in the past as Chair and also Vice Chair of the National Governors Association's Natural Resources Committee. He also worked as the Co-Chair of the State and Federal Sage-Grouse Task Force. From 2015 to 2016, he served as Chairman of the Western Governors Association, where, as I mentioned before, he led the Species Conservation and Endangered Species Act Initiative. That initiative serves as the inspiration of the discussion draft that we are examining today.

Governor Mead also has a farm and ranch operation in Southeast Wyoming, and I hope that Governor Mead will tell us about his experience in Wyoming and within the Western Governors Association, balancing the interests of citizens while efficiently conserving and effectively conserving wildlife.

Governor Mead, it is an honor to welcome you as a witness before the Environment and Public Works Committee. Thank you for traveling to Washington to be with us today. I know Frontier Days is coming to Cheyenne and I know you are going to be very busy over the next week and a half at home, but I am so grateful you take time to be with us today.

Governor, please proceed.

STATEMENT OF THE HONORABLE MATT MEAD, GOVERNOR OF THE STATE OF WYOMING

Governor Mead. Chairman Barrasso, Ranking Member Carper, and Ranking Member Carper, I hope you give me your notes on how to recover from the governor's arm, but it is an honor for me to be Governor of Wyoming.

Senator Carper. I am still working on those notes.

Governor Mead. Thank you, sir.

Senator Carper. One of my favorite things as governor -- this should not take away your time -- was coming and testifying before Congress when I was chairman of the NGI. I just loved it, and I hope you enjoy it as well. Thank you.

Governor Mead. I do.

And to all the members of the Committee, thank you for the privilege and the opportunity to be with you this morning and the opportunity to speak about the Endangered Species Act amendments and the discussion draft.

To start out, I want to share with you, I have witnessed some of the greatest successes of the Endangered Species Act in 1987 on a ranch near Meeteetse, Wyoming. Biologists removed from the wild the last 18 black-footed ferrets in the world. Before that, they were believed to have been extinct. Today, due to collaborative efforts among multiple partners, ferrets

have been reintroduced to eight States, as well as Canada and Mexico.

Another example, when listed as threatened in 1975, biologists estimated as few as 136 grizzly bears remained in a few isolated areas of Yellowstone National Park within the Greater Yellowstone Ecosystem. Upon delisting in 2017, conservative estimates show that more than 700 bears inhabit an area the size of New Jersey, Delaware, and Connecticut combined, and continue moving into areas where people have not seen them in generations. These success stories are a testament to the ESA's ability to prevent extinction.

The ESA provided part of the incentive for folks to work together to keep the greater sage-grouse from being listed. Wyoming brought together diverse interested groups to develop a scientifically based and commonsense strategy for preserving the bird. Wyoming's plan served as a model for other western States and Federal agencies. Preventing the need to list sage-grouse is a success story.

I have also witnessed some of the ESA's greatest failings. It took five lawsuits and 15 years to delist a recovered gray wolf population in Wyoming. Grizzly bears are embroiled in litigation for the second time. Canadian lynx were listed more than 18 years ago and still have no discernible path to recovery. In fact, nearly 30 percent of all listed species have

no recovery plan, and litigation often dictates U.S. Fish and Wildlife Service priorities and workload.

The ESA hasn't been substantially amended since 1988, so now it is time, in my view, to have this discussion, and, again, I so appreciate the opportunity. As evidence that this is the time to have this discussion, there are currently bills before Congress to prevent listing greater sage-grouse and lesser prairie chickens for 10 years. Before this, there were bills proposing to delist gray wolves in part of the Country and to prevent judicial review of already delisted species.

I supported legislation to delist gray wolves in Wyoming because it appeared at the time the only viable option, and I will continue to support efforts to protect gray wolf delisting until we can address the root of the problems.

But I have to frankly say that that process of Congress, by popular vote, making the decisions on individual species is not the best way to go. Addressing root problems would obviate the need for Congress to intervene with respect to individual species. That would be better legislation, better policy, and better for wildlife.

The Chairman's discussion draft offers real bipartisan, which is so critical, way to correct deficiencies in the ESA implementation, while maintaining science-based decision-making. As was said, this was my initiative ay Western Governors, and I

just want to give a little more context on that.

That was open to everybody. We extended an open invitation to anyone interested in species conservation and endangered species issues to engage in meaningful dialogue. For three years, the initiative included 11 work sessions, 8 webinars, several surveys, questionnaires, two reports outlining opportunities for ESA improvement. To ensure transparency, work sessions and webinars were recorded and posted on YouTube. This process helped inform the Western Governors and, in 2016 and again in 2017, Western Governors adopted bipartisan policy resolutions that included specific recommendations for improving the ESA and species conservation.

A number of WGA recommendations are reflected in this discussion draft bill. A couple of them, when Congress adopted the ESA in 1973, it did not require the Fish and Wildlife Service to act on petitions by a date certain. In 1978, Congress amended the ESA, giving the Fish and Wildlife Service two years to make a final determination on a proposed rulemaking. If the Fish and Wildlife Service failed to act within those two years, it had to withdraw.

In 1982, after complaints that listing decisions were being delayed, Congress acted, adding the current requirement that the Fish and Wildlife Service act on a substantial 90-day finding within 12 months of the date received. Congress did not choose

the 12-month deadline for any specific scientific reason; it was simply an arbitrary timeline meant to spur action on potential species listings.

The Fish and Wildlife Service receives hundreds of petitions to list species at a time, but it does not have the resources to meet the deadlines. The resulting litigation allows courts, not scientists, to prioritize agency workloads and frequently impedes local species conservation efforts that can take years to develop and implement.

After 36 years of the status quo, this discussion draft addresses this source of conflict in a scientifically based, practical way by codifying the framework of the Fish and Wildlife Service's National Listing Work Plan. This Work Plan has been praised by environmental groups and conservation groups, but, despite its broad support, the National Listing Work Plan extends the current statutory deadline and, if a court took issue with this, we would fully expect deadline-driven litigation to rise again.

This discussion draft also, we believe in Western Governors, enhances the roles of States in several ways. It contemplates States leading recovery teams, developing and implementing recovery plans, consulting with Federal agencies in a meaningful way on all aspects of ESA implementation.

Of course, this is a start, and we believe it is a very

important start. We understand people will have concerns. One of the concerns that I have heard is critics of enhancing the role of States and ESA generally distrust the State's ability to manage wildlife. However, Congress did not adopt the ESA because it distrusted the States' ability to manage wildlife. To the contrary, Congress and other supporters of the ESA recognized the important role States play in wildlife management. For example, during its adoption, New York Representative James Grover, speaking in favor of the ESA, argued, "the greater bulk of the enforcement capability concerning endangered species lies in the hands of the State fish and game agencies, not the Federal Government."

The House Committee on Merchant Marine and Fisheries Report on the ESA also explained the important role States would play, stating "The States are far better equipped to handle the problems of day-to-day management and enforcement of laws and regulations for the protection of endangered species than is the Federal Government."

There are numerous examples about the importance Congress recognized States would play. Unfortunately, much of Congress's vision never materialized due to inadequate Fish and Wildlife Service funding for State recovery efforts.

Through amendment, the ESA can give back State incentives that Congress originally envisioned. The provisions of this

discussion draft take a needed step in returning the ESA to its original vision that garnered near unanimous support from Congress when passed.

In conclusion, first, I would note this discussion draft does not erode authority of the Secretary of Interior or Secretary of Commerce. Every time the discussion draft offers a greater role to States, the Secretary retains final decision-making authority.

Second, the draft does not remove science from decision-making. On the contrary, decisions that list, up-list, down-list, delist, or decline to list must be based on the best scientific or commercial data.

This discussion draft stems from a State-led, bipartisan effort conducted over several years. Environmental, sportsmen, ag, and energy interests all have commended the WGA process. I would also note that after we got the process through the Western Governors, I took it to the National Governors Association, and the National Governors Association -- and I don't want to overstate this -- broadly adopted many of the policies of the WGA. It is not as extensive, and I want to be careful there, but the NGA has also taken a look at this.

So, this draft represents a reasonable way to elevate the WGA process into a national dialogue. As said by Mr. Chairman, the WGA submitted a letter of support for the provisions of this

bill that are consistent with WGA policy.

So now we have an opportunity improve the Endangered Species Act for wildlife and for people. We can encourage innovative conservation practices that obviate the need to list species. We can facilitate faster and more cost-effective species recovery. We can improve transparency, reduce litigation, and ensure that science dictates species management decisions, not Congress or the courts. Perhaps most importantly, we can see the ESA reauthorized for the first time in a generation.

Thank you again very much for the opportunity, and I appreciate the warm welcome this morning. Thank you.

[The prepared statement of Governor Mead follows:]

Senator Barrasso. Well, thank you very much, Governor. I will tell you there are a number of interns from my office who are here from Wyoming, a number from Casper, and they were delighted to hear your testimony, so people are listening in the room and people from Wyoming are going to be calling their parents very shortly to say what a great job you did. Thank you very much. I appreciate it, Governor.

Governor Mead. Thank you, Mr. Chairman.

Senator Barrasso. A couple of questions, then we will go back and forth around the panel.

Over the last several decades there have been a series of efforts to amend the Endangered Species Act. They weren't successful for a variety of reasons, so can you kind of distinguish for this Committee the difference between past efforts to amend the Endangered Species Act and what the Western Governors Association is doing? Do you think the discussion draft reflects the policy, principles, and recommendations kind of in a bipartisan way?

Governor Mead. Thank you, Mr. Chairman. I think it is different than past efforts. There is no question, when I announced this was going to be my initiative, I immediately got pushback, saying this is too tough an issue. To Senator Carper's comments, it is a tough time to get this through Congress. I get that. But this is an important enough issue

and it is an exciting enough issue. The opportunity in Wyoming and across the Nation to address wildlife issues, I think we have an enthusiastic group of governors and citizens that are ready to move forward.

In 1998, Senator Kempthorne got moving on this as an individual senator. His efforts were killed by Senator Lott. In 2005, California Representative Pombo got some improvements through the House and it died in the Senate.

But this effort began at the State level. It involved local input; it has been transparent. We have included ranchers; we have included wonderful groups that have helped us out, like the Natural Conservancy and Audubon. We have had, as I said, not only WGA involvement, but NGA involvement. And we have learned a lot. We have over 40 years of knowledge.

So, this is the time, and I think it is different because it has been bipartisan; it has been an effort by Republican and Democratic governors, and Independent, as well.

As we see now Congress taking up individual species to decide whether they remain listed or delisted, it also shows that it is the time. And there is good news out there, Mr. Chairman. What we have done in Wyoming and in the West with regard to sage-grouse shows that voluntary efforts can go a long way to preventing a species from being delisted.

I acknowledge it is difficult, but I also acknowledge that

we have gotten it through Western Governors, we have addressed it with National Governors. This can be and should be a bipartisan effort.

Senator Barrasso. Can you explain a little bit more about why States should be a more equal partner with the Federal Government in implementing the Endangered Species Act? We showed the chart about just how involved States are in terms of the number of personnel and the commitment of resources, because things really have changed.

Governor Mead. Mr. Chairman, I had not seen that chart until it was held up this morning. I think that is very telling in terms of the amount of expertise and the money. Just on grizzly bears, for example, the State of Wyoming spent approximately \$50 million in the recovery of grizzly bears. That is one State on one species. There is no question, looking at your chart and otherwise, from my knowledge working in Wyoming as Governor, States have not only put in resources, but they have a great amount of expertise.

Also, I would think it is really important to point out States care about endangered species. It is not only a quality of life issue. Why do we live in our States? This species, that species. But it also is an economic driver particularly, I know, in the State of Wyoming for tourism. It is very important. We have a trust responsibility with regard to

wildlife. We care about our habitat.

I would also point out that to the extent there is a concern that States are not the one to lead this, I just think the expertise and the money, and over the 40 years, I think that States have become much more engaged. In fact, in my view, States are the leaders in terms of species conservation.

Senator Barrasso. It does seem that too frequently, in terms of trying to promulgate a rule for delisting a species under the Endangered Species Act, that it gets derailed by litigation, and we have seen that happen in Wyoming. Under this discussion draft, a decision by the Secretary of Interior to delist a species is not then subject to judicial review until the expiration of a five-year monitoring period.

Could you talk a little bit about this cooling off period, why it is important and how we respond to those who claim that delaying judicial review could have an impact on the delisted species?

Governor Mead. I think that is really an important point, Mr. Chairman, because I think, on the one hand, if you don't have that opportunity, as you said, a cooling off period, I think you are going to lose local support and I think you are going to lose voluntary efforts. People want to engage in this. On the sage-grouse, oil and gas companies and the ranchers, they were very excited about having a plan to go forward. But they

also needed to know that there was going to be fruit at the end; that if they do their work, there was going to be a reward. And with the amount of lawsuits that are out there, it hurts the opportunity to have a decent management plan.

I would also point out, as you know, in the working draft, that in that cooling off period, if something, you know, whether it is a weather condition or something else, there is still an opportunity for the Secretary to have an emergency listing. So, you won't fall off a cliff, in other words, if something unanticipated happens.

But I think if you want to build that local support, if you want to have voluntary efforts, if you want to get away from this notion, that is unfortunate but is out there, that finding endangered species in your State or on your land is bad news story and you want to turn it into good news story, you have to show the voluntary efforts, and the cooperative effort at the local and State effort are going to work and that it is just not a race to the courthouse on everything you try to do.

Senator Barrasso. Thank you very much, Governor.

Senator Carper.

Senator Carper. Thank you.

Governor, thanks again for your efforts to spur meaningful conversation about improving the Endangered Species Act.

Several times in your testimony today you mentioned the word

funding, and I think it is appropriate that you do because I believe, and I know that my colleagues believe, that funding has got to be part of the conversation.

The Western Governors Association's Endangered Species Act recommendations from last year stated, among other things, this is a quote right from the recommendations, "Congress should allocate additional funding to the services to implement the Endangered Species Act." It went on to say, "Governors will work with Congress to identify priorities for fundings that will facilitate voluntary species conservation efforts and improve the efficacy of the Endangered Species Act." That is part of one of the recommendations and I very much appreciate and I agree with this recommendation.

Yet, the draft legislation that we are considering today, as far as I know, does not tackle funding challenges at the State or the Federal level. So, let me just ask you. This is not a trick question, but do you believe that the Congress should address these issues? You have spoken to it already in your recommendations, but do you think that Congress ought to address these issues and, if so, how?

Governor Mead. Senator, it is a good question. You are exactly right. Funding was part of our discussion. We were not equipped to say what that funding level, what full funding looks like, but I would also add to that that I don't know these

numbers, but what funding is going to recovering a species, what funding is going to partner with the States, versus funding that is used for litigation. Just in the work that I have had in the seven, almost eight, years, you sometimes get in these discussions with Federal folks and State folks and local folks; let's do this so we can avoid litigation. It shouldn't be litigation driven; it should be how to improve the opportunity for a species, in my mind.

So, absolutely, funding has to be part of it and, as I said, reauthorization, this would be the first time in a generation. But, in my view, we need to make sure we are spending money in the right areas and actually recovering and helping species, versus just gearing up to avoid, it is money for litigation strategy versus for species strategy.

Senator Carper. All right. I have one more question, if I could.

Governor, your testimony mentions legislative proposals to prevent Endangered Species Act listings for the greater sage-grouse and lesser prairie chicken for 10 years. Your testimony also acknowledges that the Endangered Species Act, and presumably the threat of a listing, provided part of the incentives for States, for stakeholders, and for the Federal Government to work together to successfully conserve those species.

Chairman Barrasso's legislative proposal, as far as I know, does not include the 10-year listing prohibition, for which I commend him, but the listing prohibition language seems to arise at every turn, whether it be in the annual appropriations process or during our consideration of the NGAA.

What negative impacts do you think a 10-year sage-grouse listing prohibition could have on collaborative conservation efforts in Wyoming or even more broadly?

Governor Mead. Thank you, Senator. It is a tough issue, but, as I tried to articulate in my testimony, Congress addressing individual species I do not think is the way to go. I think you have other things to do. And to think that a species rides on a popular vote, when science may direct otherwise, I don't think is the best way to go.

Having said that, because I think it is important to acknowledge this, I did support that with regard to the gray wolves. I think for those who are reluctant to take on this heavy lift, who say, geez, can Congress get it done, and I mean that respectfully, it should be a red flag. When Congress is having to take that up, and it was with gray wolves over multiple, multiple years, 20 years, and multiple, multiple lawsuits, and people doing the right thing, and the numbers have reached their goals, and you still can't get the species delisted. That is why those things happen.

Is it the best way to do it? No, but I think it is a red flag that is borne out of frustration for where is the end-game. We have done everything you have asked. We have reached the goal line in terms of habitat and species, and we still can't get it delisted. That is the frustration that causes that, I think, and that is why, in my view, this is the time for us to engage and make improvements, so that we are not leaving it, again, respectfully, to Congress to make a popular vote on a species.

Senator Carper. All right. Thank you again for your testimony and your thoughtful responses.

Governor Mead. Thank you, Ranking Member.

Senator Barrasso. Thanks, Senator Carper.

Senator Ernst.

Senator Ernst. Thank you very much, Mr. Chair.

Thank you, Governor, for being here, and thanks for being a leader in this area. We really do need folks stepping up and discussing this, so thank you very much.

We do talk about, of course, delegating more authority to the States, and a lot of times people just have this knee-jerk reaction that because you are delegating more authority to the States, you are somehow weakening the law. I don't necessarily believe that is true. I think in this case it is a good idea.

Now, the draft legislation before us does elevate the role

of the States. I think that is important. But it also allows the Secretaries of Interior or Commerce to overrule the States' recommendations. So, do you believe, and I think I have heard this, but do you believe that simply allowing States to make recommendations that can ultimately be overruled by the Federal Government amounts to a weaker Endangered Species Act?

Governor Mead. Thank you, Senator. I think it makes it stronger, and the reason I think it makes it stronger, the States aren't asking for veto power; the Secretary still has that power. If the States, in the estimation of the Secretary, are going the wrong direction, he or she, the Secretary, can say that is not the way we are going to go.

But, Senator, if I am taking your question right, the role of the States, and I mean this respectfully to our good partners in Fish and Wildlife Services, shown by the chart there, they don't have as many people and, frankly, the expertise lies in the States. It really does.

The sage-grouse effort, and I have heard people at the Interior say this, is one of the greatest conservation efforts ever and, with respect, it was led at the local level and the State level, started by my predecessor, Governor Freudenthal. If the State hadn't done that, we would not be where we are. Without the State and the States', collectively, initiative on that, the Federal Government, Fish and Wildlife Service would

not have been able to do that.

So, this increased role shouldn't be viewed as usurping any authority; it should be building a collaborative partnership that is going to be much more effective, and still the Secretary will retain that opportunity, as you said, Senator, to say, no, I don't think this is the right way to go. And the working draft has that mentioned many times; we want greater State participation, but if it is not working, in the Secretary's view, it is not going to happen.

Senator Ernst. Very good. Well, I do appreciate that.

I am going to point out a couple examples that I am familiar with. Our Ranking Member mentioned the piping plover. We actually have the piping plover in Iowa as well; it is part of its breeding territory up and down the Missouri River. I learned so much about the piping plover --

Senator Carper. Could I just ask?

Senator Ernst. Yes, go ahead.

Senator Carper. Do you mean the piping plover is two-timing Delaware?

Senator Ernst. It is. Actually, we have a much greater territory than Delaware, so it is.

But I learned so much about the piping plover and the pallid sturgeon in the Missouri River from the Missouri River floods of 2011. Just an example of where big Federal Government

doesn't necessarily work very well with the actual landowners or people on the ground, during that flood event, we saw a lot of boats moving and down the Missouri River as it flooded.

The perception, whether it was correct or not, was that the Federal Government was more concerned about the pallid sturgeon and the piping plover than they were about the landowners and the homeowners whose homes were under water for four months during that flood event. So, the perception, whether it was correct or not, was that Federal Government was not communicating with local landowners.

Now, as we move forward, we have other examples. Now the water has receded, people are trying to get their lives back to normal, but now we see those fish habitats, the breeding areas for the piping plovers being put into place along the Missouri River without input from those local stakeholders. Again, the perception is that the Federal Government cares more about the Endangered Species than they actually about those that reside in the areas.

Some of the water has been redirected away from those breeding grounds and so forth, and it has caused erosion from some of the land where people live; they have homes along the river. So, there is a mistrust between the Federal Government and the folks along the Missouri River.

Do you believe that if there was collaboration with folks

in the middle, from the State and local government, that that would help get rid of that misperception?

Governor Mead. In a word, absolutely. Even beyond that, if you want to have voluntary efforts for your private landowner, your farmer, your rancher, you have to have that trust involved in that. And I do mean this respectfully, if they hear the Federal Government is going to come in and have this plan, it is just not going to be as effective if it is more organically grown at the State level and the local level; and that is why that partnership I think is a real opportunity for species.

You mentioned sturgeon. One thing I have learned in this, we all become very centered on our own world. I have heard of sturgeon, but the piper plover, it is an education. There are a lot of species I have learned about.

But I think you are exactly right, Senator, to have that trust and to have that local involvement absolutely is critical. You brought up Mother Nature. For example, one of the things, people say States can't be trusted. Let's look at the polar bear, for example. That is listed because of climate change. The State isn't going to be able to do that. The long-eared bat, which I don't know if you have long-eared bats, but it is listed --

Senator Ernst. Small brown bat.

Governor Mead. -- because of a fungus. So, you know, those who say States can't be trusted because look at the polar bear, the long-eared bat, that is outside of the States' control and maybe the Federal control as well. But that State participation, the local participation is absolutely, I think, critical for better success in the Endangered Species Act.

Thank you, Senator.

Senator Ernst. I agree wholeheartedly. Thank you, Governor.

Senator Barrasso. Thank you, Senator.

Senator Van Hollen.

Senator Van Hollen. Thank you, Mr. Chairman.

Governor, thank you for your testimony and I commend the bipartisan process you used with respect to the Western Governors Association on your recommendations. Do you know whether the Western Governors Association Democratic governors that supported your process, whether they have supported this draft bill?

Governor Mead. Senator, I don't know the answer to that. I am not disclosing private conversations, but some of the Democratic governors I have talked to, they believe in the work, they believe in the draft; their fear, frankly, Senator, is that, in this process, that it will not go forward as we, the Western Governors or National Governors, envisioned. That is

why, as a condition of some of the letters you have said and even the Western Governors' work, they have made clear we reserve the right to withdraw our help on this if it goes awry.

Senator Van Hollen. No, I appreciate that. I haven't heard from any Democratic governors who were part of the Western Governors Association about supporting this draft, not a one. I haven't seen a piece of paper. So, until I do, while I recognize they supported your process, I am going to assume, I have an open invitation to them, that they do not support the current draft.

Look, we all recognize there are things we can do in a bipartisan way to improve laws that are on the books. But, in my view, you took the right approach getting everybody around the table. To my knowledge, we have not followed that approach in drafting this piece of legislation here.

And let me just give you one example. There are lots of provisions in this bill. There is a provision in this bill related to Federal employees. It requires that governors and States give feedback on the performance of individual employees of the Fish and Wildlife Service.

Now, I recognize there are constant communications between the States and the Federal Government, but do you think it would be appropriate for you, for example, to be told that the Federal Government is going to weigh in on the performance of your State

employees?

Governor Mead. No, I don't agree with that. But I do want to say this. I think that this process, and why I do support the working draft as it is consistent with Western Governors, is that it is a good start to a process.

And, Senator, I would not make the assumption that Democratic governors don't support the working draft. I would say that they would support provisions in the draft, but maybe not everything in there. So, to get started, what I am doing, what I think is best is getting Western Governors involved and National Governors involved.

Senator Van Hollen. I appreciate that, but, Governor, you just pointed out that you disagree with a particular provision in this draft, and I share your disagreement with that. There are obviously going to be honest disagreements sometimes between Fish and Wildlife employees and State employees, and I am not sure why would we want to give people that cudgel over certain Federal employees who are doing their job, some of whom, as you know, have gotten death threats for their work on endangered species.

My time, apparently, has run out. Thank you, Mr. Chairman.

Governor Mead. Thank you, Senator.

Senator Barrasso. Thank you, Senator Van Hollen.

Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman.

Governor, thank you. I appreciate the hard work you are doing, and I know it is an effort that, in my experience, has a lot of bipartisan support. When I was attorney general of Alaska, where this issue is a huge issue, I co-chaired the Endangered Species Act Working Group with my Democratic co-chair, Gary King, who was the former attorney general of New Mexico.

And particularly the Western AGs, we saw a lot of common ground where we didn't think this should be a partisan issue at all, but how to best work on the recovery of listed species and employing the best science and giving the States a more prominent role. So, let me talk to that issue.

I know Senator Ernst talked about it, I know you believe it, but I would disagree a little bit. I think in terms of expertise, particularly the State of Alaska, we have thousands of State employees who are the top experts in the field probably in the world with regard to science and expertise on endangered species, including the polar bear, I might add.

So, the role of the States, from your perspective, should be heightened. Why shouldn't it include a veto on decisions? And let me give you an example. I know there are issues of cross-boundaries, where the species are moving across boundaries. What if you happen to be in a State the size of a

continent in some ways and there is no cross-boundary issue, like my State?

Governor Mead. Well, Senator, of course, I am sure you know this, you have never met a governor who wouldn't like greater authority in all things, but I think that, as the working draft, you need to make sure the Secretary has that authority. And I appreciate the magnitude of Alaska and the challenges you have there, but oftentimes these are cross-State.

Senator Sullivan. Correct. And where I see that as an issue cross-State, I get it; one State shouldn't have a veto. I am asking, and maybe it is unique to my State, which, again, is so big, has so many species. We care about them way more than the Feds do, and keeping them healthy and sustainable.

But can you see an example where, if there isn't a cross-boundary challenge, like there are in lower 48 States, that the State could even have more authority, particularly when the State has as much knowledge, if not more knowledge, than the Feds?

Governor Mead. Senator, I appreciate what you are saying. I guess what I would tell you, perhaps, in the way of context is this came out of Western Governors. There were certainly some things that I wanted more.

Senator Sullivan. Sure.

Governor Mead. Others wanted less. I think if you start

carving off a State, the State of Alaska, the State of Hawaii, the territories, that my goal is to get this moving forward, and I just worry about that hurting the process. But I do appreciate what you are saying, sir.

Senator Sullivan. Well, look, I appreciate the hard work and, again, bipartisan work.

Let me ask another issue that relates to expertise beyond the Federal Government. One that is particularly important, again, in Alaska, but it is in the draft bill, so I think it should have bipartisan support, the whole issue of traditional knowledge.

In my State, that typically means Alaska Native communities that have been harvesting and watching the species for literally thousands and thousands of years. You might know the example of the bowhead whale, where western scientists had a number that was very, very different from the whaling captains of the Inupiat communities on the North Slope, and it ended up that the whaling captains and the traditional knowledge ended up being right on the numbers, way more than the western scientists.

So, I am glad to see the issue of traditional knowledge being highlighted in this. Do you care to speak on that topic? I think it is an important one that doesn't get a lot of recognition. There are a lot of people who know a lot about species who don't necessarily have a Ph.D. in biology from

American University.

Governor Mead. I think it is an important component. The draft bill, of course, says there is going to be scientific or commercially best data available. And I am not familiar with the example you gave, but it rings true to me in that, as we were working on, for example, the gray wolf, I would have local ranchers say I have three of them in my back pasture and your experts show that there are none in this part of the State.

Senator Sullivan. Right.

Governor Mead. So, I think more information and the more credible information you can have is certainly helpful.

Senator Sullivan. I know my time is expiring here, but if I can ask one final question, Mr. Chairman.

There has been an issue where Federal agencies, in my view, have abused their statutory authority by having examples of listings that stretch the definition of the foreseeable future in making listing decisions. Let me give you an example.

The bearded seal was listed as threatened based on projections of what was going to happen 100 years in the future. Nobody knows what is going to happen 100 years in the future. Yet, we have more and more Federal agencies that are making claims that we are going to list this species because, 100 years from now, we believe it is going to be threatened.

Now, mostly that relates to climate change, and certainly

climate change is happening in Alaska, there is no doubt about that, but to be able to say, for a Federal agency, therefore, we are going to list a species that is healthy now, but we think it is going to be unhealthy 100 years from now, I just think that is an abuse of authority, and I am certainly hopeful that this legislation can rein in that kind of decision-making that doesn't have any statutory basis. It happens in my State all the time.

Do you care to comment on that or is that an issue that you guys are trying to take --

Governor Mead. Thank you, Senator. We struggled with that at Western Governors for the very reason that you said, and not only because you add foreseeable future to the issue of climate change and you see climate change in Alaska, you add foreseeable future and climate change, and then you are going to list a species.

What do you do about it? What local work can be done? What State work can be done? What Federal work can be done? You have to have an opportunity to say we are concerned about this, so here are the steps you can take. And whether it is climate change or whether it is fungus in long-eared bat, if you just say it is listed based upon our view of 100-year foreseeable future, how do you motivate the local rancher or the fisherman or the concerned environmentalist to have a voluntary

effort to do something about it? So, I do think we have to be careful on that, and that is something that certainly the Western Governors and the staffs are saying we have to be careful with that term, foreseeable future.

Senator Sullivan. So, there is bipartisan concern on that issue?

Governor Mead. Lots of bipartisan discussion on that. I don't know that we came with a resolution that is helpful, but I think that certainly is part of the concern that was discussed.

Senator Sullivan. All right, thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Sullivan.

Before heading to Senator Cardin, I want to enter into the record a letter from the Western Governors Association of support and going title by title of the bill. And this letter of support is signed by Governor of Hawaii, a Democrat, Vice Chair of the Western Governors Association, Governor Ige. So, there has been a submission by a Democrat Senator. There was a question earlier asked.

Additionally, I have a number of letters that over 100 stakeholders have written in support of the draft Endangered Species Act Amendments of 2018 and a bipartisan process to improve the ESA. They represent interests in every State, including State wildlife agencies, local governments, sportsmen

and conservation groups, energy, forestry, agriculture, livestock, and water groups.

I ask unanimous consent to submit these supportive letters to the record as well. Without objection, they are submitted.

[The referenced information follows:]

Senator Barrasso. Senator Cardin.

Senator Cardin. Thank you, Mr. Chairman. Thank you for convening this hearing.

Governor, thank you very much for your efforts. We do appreciate the fact that we are having this discussion and you are bringing Democrats and Republicans together in a bipartisan manner.

The Endangered Species Act has been an extremely important policy of this Country and has achieved a great deal in restoring species in delisting. Every time we get a delist, it is a major accomplishment.

In our area, Senator Carper and my area, we have the Delmarva fox squirrel that was delisted. That is an incredible accomplishment in our community and is a success of the Endangered Species Act.

I point that out because one of our objectives is to have action plans that can preserve species and make them healthier so that they can be delisted, and in many cases the challenges there are financial. So, one of the issues that I think we all could agree on, let's make sure that we have adequate funding so that the Endangered Species Act can in fact work.

I want to also just thank you for your attention to the realities of climate change as it relates to endangered species.

Sometimes it is controversial for us to mention those words, so I appreciate you saying that directly. It is important on adaptation as it relates to endangered species. There are things that you can't do as a result of management of the species because of the exterior factors that are changing. We want to change the exterior factors, but you don't have that ability to make that immediate impact, so you have to adapt to the current status, and I appreciate the manner in which you dealt with that.

I want to deal with one area that has brought us some concern, and that is the modifications you make in judicial review, and the process and your recommendations. You mentioned that governors like to have a lot of power. That is very true. I was a speaker of my State assembly, and I remember standing up to our governor. Legislatures like a lot of power.

But judicial review is checks and balances in our system and, because we have strong checks and balances, it makes for a much more open process where people have an opportunity for input because they know that there is always the possibility of the judicial branch getting involved in the process.

So, I just really want to wave a concern. A lot of people who are very much committed to the working of the Endangered Species Act have brought at least to my attention their concern on the modifications you make in your proposal on judicial

review, and I would just urge us to step back a moment and recognize that it is in all of our interests to make sure that we do have checks and balances in our system. It is very possible that State officials in your State will act responsibly and will have a very open process, but in other States they may not, and the judicial review gives us that opportunity for balance in our system; and I think, when you look at policies today in Washington, it has never been more important.

So, I just point that out. I welcome your thoughts on it, but I would just ask you to be open-minded as we look at ways that we may make this more effective.

Governor Mead. Senator, if working on this doesn't do anything else, it keeps you open-minded, so I will do that. I would say this with regard to judicial review. Absolutely important to have checks and balances. We know that and it is important.

But, in this context, I mentioned in my opening comment about the years and the multiple lawsuits with regard to gray wolves long after the population numbers had been reached. And if you want to have voluntary efforts, and I just want to highlight the sage-grouse work we have done in the State of Wyoming with ranchers, energy companies, Audubon Society, to have those voluntary efforts, you also have to know that if you do right and you take care of the species and you get to those

goal lines, that there in fact can be a delisting; that you have reached your goal.

So there has to be a point, and that is why I think with the Chairman's comment about a cooling off period, we need to be able to see that it works. And in the working draft, the Secretary, of course, does continue to have the authority for emergency listing. I would never suggest that courts not be part of the process, but I am suggesting that, as you see now individual species being addressed by Congress, it is borne out of frustration that there is no end in sight, and that is not, in my view, the best way to address species conservation.

Senator Cardin. And I would underscore that, at times, Congress and the statute have left those areas either ambiguous or not in the best interest, giving the courts little discretion as to how they review. The gray wolf is an example of maybe the statute not being appropriate for dealing with the circumstances in different regions of our Country.

So, I just point out that if we draft the statute correctly, judicial review is an extremely important part and can be done in a timely way, but allows for a more open, transparent process as the administrative areas move forward.

Thank you.

Governor Mead. Thank you, Senator.

Senator Barrasso. Thank you, Senator Cardin.

Senator Sullivan, you had one last question?

Senator Sullivan. Yes, sir, Mr. Chairman.

Governor, I just wanted to touch on, again, this is a really bipartisan issue that we had in a hearing a couple years ago, the Obama Administration's Fish and Wildlife Service Director Dan Ashe, in a hearing like this, we were talking about opportunities for bipartisan reforms to the ESA that I don't think has been amended since 1988 significantly, but it went to this issue of multiple listings.

So, you would have certain groups come and they are trying to get a listing where they file dozens, if not more, species in one petition, and that, of course, gums up the entire process, which may have been their intent. Even Director Ashe, under President Obama, was saying we don't think that is helpful; we think we should be able to reform that to have a much more narrow process.

So that, at least in a hearing here, was something that was a very bipartisan view. Did the Governors get to that issue of multiple listings? It kind of goes to some of the other topics we have been talking about.

Governor Mead. We did in the discussions. Just a history, last time I was here testifying was on the House Side, it was with Dan Ashe, and Director Ashe and I have had that conversation at times about that multiple listing.

I just want to underscore one of the things you said. Part of the problem that we have with multiple listings and part of the problem that we were trying to address with Western Governors is this issue of when a species is listed, or when multiple species are thrown out there, you are spending money and time in areas that it doesn't need to be spent.

Who suffers from that? It is not the people; it is the species. And that is, in my view, one of the reasons that it needs to be helped, is we are spending a lot of time, money making sure that attorneys are employed, but we are losing money and resources for species. And that is why, when we addressed this as Western Governors, it was bipartisan because the Western Governors, governors, the Country cares about species. Let's be smart about how we are spending our money and our time, and let's not have a system that is open to abuse that causes those delays.

Senator Sullivan. Great point. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Well, thank you, Senator Sullivan.

I would say that a significant number of environmental and conservation organizations have voiced their enthusiasm to work with this Committee in this bipartisan effort, Governor, to modernize the Endangered Species Act. Among these groups are the Western Agriculture and Conservation Coalition, which

includes the Environmental Defense Fund, the Family Farm Alliance, the Nature Conservancy, the Wyoming Stock Growers Association, the National Audubon Society, and the California Farm Bureau. Additionally, the National Wildlife Federation and the Theodore Roosevelt Conservation Partnership have echoed this willingness.

So, I look forward to working with these and other organizations that believe the status quo isn't good enough and the Endangered Species Act can be improved, and I ask unanimous consent to submit these letters for the record.

[The referenced information follows:]

Senator Carper. I object. No, I don't object.

Senator Barrasso. Do you have something you would like to add?

Senator Carper. Can I ask a consent request of my own?

Senator Barrasso. Yes.

Senator Carper. I do not object.

I ask unanimous consent to enter into the record a 2017 letter from the Delaware Department of Natural Resources and Environmental Control, which recommends that the statutory and scientific integrity of the endangered species be maintained.

I also ask unanimous consent to enter into the record additional letters and supplemental materials regarding the draft legislation that we are considering today.

Senator Barrasso. Without objection, and there is none.

Senator Carper. Thank you.

[The referenced information follows:]

Senator Barrasso. Governor Mead, thank you so very much. We appreciate your being here. You are welcome to stay and listen to the discussion of the next panel. There are a number of interns from Wyoming who are here listening. I hope you will get a chance to visit with each of them.

But thank you so much for being here. We look forward to being with you this weekend and the following weekend and all through the week at Frontier Days.

Governor Mead. Mr. Chairman, I just thank you for your leadership.

Senator Carper, thank you for your leadership as well.

When we discussed this with Western Governors, we recognized that it is up to us, and we hope we got you all a good start, and we appreciate your continued bipartisan work. So, thank you very much for the time today and for your efforts. It is appreciated very much.

Senator Barrasso. Well, Senator Rounds was a former governor and Senator Rounds was trying to get here to visit and ask a couple questions, but he seems to be unavoidably delayed.

Governor Mead. Likely effectively endangers the rest of the members leaving, so thank you.

Senator Barrasso. Thank you, Governor. Appreciate it.

Our next panel, and I invite them to the come to the table,

is Bob Broscheid, who is the Director of the Colorado Parks and Wildlife, and Matt Strickler, who is the Secretary of Natural Resources for the Commonwealth of Virginia.

Thank you both for being here. I am grateful that you would take time to be with us. I hope you have enjoyed and benefitted from the testimony of Governor Mead.

As you are readying your testimony, we ask that you limit your testimony to give minutes so that there will be time for questions from the Committee.

With that, Director Broscheid, welcome to the Committee, and please proceed at your leisure.

STATEMENT OF BOB BROSCHEID, DIRECTOR OF COLORADO PARKS AND
WILDLIFE

Mr. Broscheid. Thank you, Mr. Chairman, and thank you for the warm welcome. Good morning, Chairman, Ranking Member Carper, and members of the Committee. Thank you for the opportunity to represent the Governor of Colorado, John Hickenlooper, who couldn't be here and asked me to come in his stead, and to discuss our or my experiences as a State director who is on the front lines of management of threatened and endangered species conservation.

As I provided in my written testimony, Governor Hickenlooper has not taken a position on this draft, but remains very supportive of the Western Governors Association process that Governor Mead laid out, and continuing this dialogue with Congress towards bipartisan practical solutions that improve the implementation of the Endangered Species Act.

For the past 25 years, I have had the privilege to work in partnership with many Federal, State, and local government agencies, non-governmental organizations, and private landowners on many issues associated with Endangered Species Act implementation.

The Endangered Species Act, as Congress laid out in the passage, is premised on the State and Federal partnership

approach; however, there are frustrations and certainly disagreement on all sides about what is broken and why, but more notably how do we fix it. These frustrations are evident in the enormous number of lawsuits being litigated and discussed in courts all over the Country on both sides of these issues.

For Colorado, we maintain 960 species that inhabit our State border, of which 210 species fall under some level of special concern. My agency spends an average of \$8 million of State funding per year on those 210 special status species. In the last 10 years, my agency alone has spent in excess of \$100 million on just two species of sage-grouse. Our expenditures are viewed as not only in conserving a threatened species or endangered species, or one that could be, but we view them as investments to prevent the need for that listing.

Additionally, Congress congressionally appropriated revenue sources such as Farm Bill conservation programs, and Land and Water Conservation Fund also provide very critical support, but it is not enough. Draft legislation as you had discussed with the previous panelist is being considered in the House right now as Recovering America's Wildlife Act, and it is intended to alleviate this financial shortfall and provide much needed funding for those species at risk all over the Country.

However, one of the provisions in the discussion draft talk about State involvement. Not all States have the same

technical, financial, or political wherewithal to engage in all aspects of the Endangered Species Act. We believe it is important to include provisions that allow each State the opportunity to opt in to whatever desired level of engagement. I believe this is consistent with what Congress intended some 45 years ago, when the Endangered Species Act was passed.

The other role from the States is our desire to be better engaged in the Act is not solely about shifting or the loss of a species from State to Federal jurisdiction, or about veto power. It is also about better ensuring that other State interests and authorities are fully considered in the listing and recovery process. These authorities, such as water rights, land use development, private property rights, and air quality, are all some of the factors that influence State and local economies and recovery of those species.

So, Mr. Chairman, I will keep my comments very short, so thank you very much.

[The prepared statement of Mr. Broscheid follows:]

Senator Barrasso. Well, thank you so much for being with us today and for sharing your comments.

Now I would like to turn to Mr. Strickler. Thank you.

STATEMENT OF MATTHEW J. STRICKLER, SECRETARY OF NATURAL
RESOURCES, COMMONWEALTH OF VIRGINIA

Mr. Strickler. Good morning, Chairman Barrasso, Ranking Member Carper, members of the Committee. Thank you for inviting me to testify today on this draft legislation and this important topic of conserving the shared natural heritage of Virginians and all Americans.

My name is Matt Strickler. I serve as Secretary of Natural Resources for Governor Ralph Northam. I oversee the Commonwealth's Department of Game and Inland Fisheries and Department of Conservation and Recreation, which together lead our efforts to protect native Virginia wildlife and plants, including State and federally-listed threatened and endangered species.

Virginia currently has 89 ESA listed species, ranging from a flying squirrel, to five varieties of sea turtles, to the Atlantic sturgeon, a fish that can reach 14 feet long and 800 pounds, and has been around since the time of the dinosaurs.

We have strong, collaborative working relationships with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on Endangered Species Act issues. Those relationships have led to some impressive accomplishments in conserving and recovering populations of imperiled species.

Collaboration among Fish and Wildlife Service, Department of Game and Inland Fisheries, the College of William and Mary, and other partners conserved critical bald eagle nesting areas in the Chesapeake Bay watershed and reduced the impacts of land disturbance, a key to the eagle recovery effort and ultimate delisting in 2007.

Fish and Wildlife Service, Game and Inland Fisheries, and the Nature Conservancy have worked together to protect endangered red-cockaded woodpecker habitat in Southeast Virginia. Now the population is expanding on Federal, State, and private lands.

And the restoration plan co-developed by the Fish and Wildlife Service and Game and Inland Fisheries is bringing freshwater mussels back from the brink of extinction in Southwest Virginia's Clinch, Powell, and Holston Rivers, one of the most biologically diverse areas on the North American continent.

We certainly have work left to do, but Governor Northam and I see species conservation and recovery as an opportunity, not a hurdle. We believe that when our lands and waters are kept natural and clean enough to support a health and diverse ecology, they are better able to support a healthy and diverse economy. These places become more attractive for use by hunters, anglers, hikers, bikers, paddlers, and the like. And

they become more desirable places to live, work, play, start a business, and raise a family.

Speaking to the draft bill before us today, I agree with the Chairman's assessment that we need to do more for threatened and endangered species than keep them on life support. But the most important thing we can do is commit greater resources to the vital task of recovery. I also agree that the Endangered Species Act can be strengthened, and I respect the dialogue initiated by the Western Governors Association to explore potentially beneficial ideas.

The discussion draft released by the Chairman, however, contains provisions that would hinder Virginia's ability to make the most of our partnerships with Federal agencies by complicating proven and established species protection and recovery processes. The Commonwealth of Virginia cannot support the legislation in its current form.

More generally, I am also concerned that even well-intentioned efforts to amend the ESA could open the door to provisions that would harm its essential purpose. Some of the provisions suggested in this draft and in the Western Governors Association report would do that. However, the primary reason many species are where they are is precisely because States, including Virginia, have not had the resources or the political will to do the jobs themselves. That is why the Endangered

Species Act is so important; it separates the complicated scientific and management questions of biodiversity conservation from local political pressures.

As a practical matter, I believe this bill would make working with adjacent States to recover shared species more difficult. As a philosophical matter, these resources do not belong just to Virginia or to Wyoming or to any other single State; they belong to all Americans.

In the view of Virginia, the existing Act and regulations strike the appropriate balance of shared responsibility between State and Federal agencies. We have multiple opportunities to participate in and provide information to ESA decision-making, including recovery planning and implementation, and we offer information and recommendations on proposals to list species, as well.

We know that the Fish and Wildlife Service and the National Marine Fisheries Service are viewing the scientific information we provide them and using it when it is the best available. It is our view that the best way to improve implementation of the ESA and to recover more species faster is for Congress to provide adequate funding for science and management of these resources and their habitat.

Federal agencies should absolutely be held accountable for how these funds are spent and should be required to document

progress and results. But we should not forget that the ESA, as written, has a 99 percent success rate at preventing the extinction of listed species and that 90 percent of species with recovery plans are on track to meet their goals on schedule. To use the Chairman's medical analogy, if you look at the Endangered Species Act as an emergency room, an ER doctor with a 99 percent success rate of keeping patients alive is pretty impressive.

Moving forward, Virginia hopes to work with Congress to improve the Endangered Species Act and secure the kind of funding for Federal and State wildlife agencies that is necessary to speed recovery of ESA-listed species.

Thank you.

[The prepared statement of Mr. Strickler follows:]

Senator Barrasso. Well, thank you so much for your testimony.

Mr. Broscheid, Director, the challenges surrounding implementation of the Endangered Species Act don't just affect the West. We talk about the Western Governors Association, but according to the U.S. Fish and Wildlife Services' seven year work plan, there are over 360 additional species that are going to be considered for listing by 2023, so in the next five years; and many of these species are in States in the East, the South, and the Midwest.

In terms of the numbers on the list, Colorado between 21 and 40, but if you look at Virginia, North Carolina, Florida these places, the East and the South, seem to really be impacted. A staggering 68 species are going to be considered in Virginia alone; 43 in Tennessee, 42 in Florida, 41 in North Carolina. Dozens more are going to be considered in other States throughout the Country.

I would just say, shouldn't these States be given a greater role to play in helping prevent these listings in the first place, by protecting species, and if the listings do occur, have the States have a greater role in helping recover these species?

Mr. Broscheid. Mr. Chairman, thank you for that question. Absolutely, I agree on all of those points. You talked previously with the Governor, and I agree with his response.

State wildlife agencies maintain very broad police powers within their borders. We in Colorado maintain a very strong scientific and research program, as well as the landowner connections that we have with local governments, private landowners, and then can work across State lines, like the Governor mentioned about sage-grouse.

We are engaged. In Colorado we are aware of those numbers, and with the limited amount of funding that we have available, we are having to make decisions about where to put that funding to have the biggest impact; prioritize, essentially.

Our role in recovery plannings and listing and delisting and down-listing processes, as well as bringing the best available science. In most cases, States are the only ones who have that, in conjunction with universities, and I think that affords us an opportunity to sit at the table and discuss this. If these are going to be science-based decisions, let's make sure we have the best available science.

Senator Barrasso. We had a hearing in February, this past, of 2017, and at the time Jamie Rappaport Clark, President and CEO of the Defenders of Wildlife, a former director of U.S. Fish and Wildlife Service under President Clinton, acknowledged, said, "Certainly, the ESA could work better, absolutely."

I guess you agree with that. Then I would say why is it important for States to have more of a say?

Mr. Broscheid. Mr. Chairman, States are concerned, first of all. They are very concerned about threatened and endangered species, and their management and their future survival; that they won't need the protections of the Act. States like mine have been very lucky about the funding that is available, non-Federal funds that we can commit to this.

But I think in the broader sense, in the highest level, it is talking about economies; it is talking about working landscapes; private landowners that have very large ranches. It is about our water supply; it is about all of those things that, as a State, we are very concerned about, and I think that should afford us an opportunity and a seat prominently at the table when we talk about listings and recovery.

Senator Barrasso. Senator Carper.

Senator Carper. Senator Booker has been good to come not once, but twice today. I am going to yield to him so he doesn't miss a chance to ask questions, then I will ask later.

Senator Barrasso. Senator Booker.

Senator Booker. Thank you very much. It is not often that Delaware defers to New Jersey, but I am grateful for that, sir.

[Laughter.]

Senator Booker. Mr. Chairman and Ranking Member, I want to start off by just saying that the Endangered Species Act has been incredibly successful by any measure, but statistically,

when I was mayor of the City of Newark, I used to write, In God We Trust, but everybody else bring us data. The data is compelling: 99 percent of the wildlife under the Endangered Species Act protection has been saved from extinction. Ninety-nine percent. We have a great track record.

And while the huge task of recovering a species from the brink of extinction often takes decades, the majority of the species that have been listed under the ESA are recovering within the time frames that have been projected.

Now, I want to just emphasize for the record how dire our current situation is on the planet Earth. We are in a global extinction crisis of a proportion that most Americans don't understand.

It is estimated that, right now, more than one in six species on the planet are threatened with extinction in this century alone. According to a report released by the 2016 World Wildlife Fund, it is estimated the global populations of fish, birds, mammals, amphibians, reptiles declined 58 percent between about the time I was born, 1970, and today, meaning that we have lost more than half of all the wildlife on the planet, more than half of all the wildlife on the planet Earth in the last 50 years.

Species today are going extinct thousands of times faster than natural extinction rates. Again, this is staggering. This

is stunning, that half of all the wildlife on the planet Earth, in my lifetime, have gone.

So, given this extinction crisis, I just believe that we are considering a bill that, in its total conception, is taking us in the wrong direction. It is a step in the wrong direction. And rather than focusing on what we have heard from the other testimony that I sat in earlier, on the urgent need to increase resources to do a better job at protecting species. Governors from both sides of the aisle would echo that we need more investment on the Federal level to deal with the crisis.

And this is not just about animals; this has a profound impact on human beings, on every American. And I just believe that this bill would move us away from the best available science and would delay and restrict, ultimately, judicial review.

So, in the few moments I have left, Mr. Strickler, the bill we are considering today would prevent any legal challenge to delisting determination by the Fish and Wildlife Service for five years. So, the Fish and Wildlife Service, if they make a mistake, which we all do, and prematurely delist a species, this mistake couldn't be challenged for five years in court.

I am wondering about that particular section. Do you have an opinion about that and do you believe it is going to help the crisis we have, the endangered species crisis we have right now

in America and beyond?

Mr. Strickler. Senator Booker, thank you for the question. I certainly understand the sentiment behind this proposal. I think, as a practical matter, it is concerning to the Commonwealth of Virginia.

As you mentioned, species recovery is a question of science, and science is an evolving process. We are always finding out more than we currently know about listed species and the ecosystems they live in. And judicial review is the tool that we have to make sure that we are doing things right as Executive and Legislative Branches. If there is a situation where we make a delisting decision that we find out, two years later, was an error, having to wait three more years for someone to be able to challenge that is not really the place we want to be, so, for that reason, I think it is perhaps misguided.

Senator Booker. And it is a balance. I don't think there is an American who doesn't think we are overly litigious in many ways, but it is really a balance between having the courts have the flexibility necessary so that science can actually guide. I guess that is next question I have in the few seconds I have remaining, is one of the strengths of the ESA as we know it is the flexibility it provides the Fish and Wildlife Service to update recovery plans as those facts change on the ground, but this bill would require unanimous agreement among members of a

recovery team in order to change the goals of a recovery plan, even if new scientific evidence emerged of an increased threat to species.

Do you believe that this change would help or hurt the efforts to protect endangered species?

Mr. Strickler. Thank you for the question, Senator. I think it would hinder species recovery efforts. And, again, I understand where this is coming from. States have expressed frustration in the past when recovery criteria are set through the recovery planning process and then, because of new data, new science coming in to the equation, the end-game changes a little bit as far as what is necessary to recover a species; and some people think that is shifting the goalpost. Really, it is just following the best available science, and I think this provision would prevent us from doing that.

Senator Booker. I am grateful, sir.

Thank you very much, Mr. Chairman.

Senator Barrasso. Thank you.

Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman.

During our last hearing on the Endangered Species Act, we heard about the bipartisan process previous leaders of this Committee embraced, developed, refine, and ultimately passed the Endangered Species Recovery Act of 1997. I am concerned that

the current discussion draft diverges from that bipartisan model, as evidenced by numerous conservation stakeholders who have already come out in opposition to the current draft.

As we look to modernize ESA, it is important that we always remember the foundational policy goals of this seminal Act: to protect and recover our Nation's endangered species and ecosystems. And we must never forget that ESA has been incredibly successful in pulling back more than 99 percent of listed species from the brink of extinction.

Any effort to reform this critical law must recognize this fact and be very careful to guaranty that, at the very least, we do no harm when it comes to modifying our current science-based framework. And that is where my questioning is going to go to, Mr. Strickler. I think I am going to address you first.

In your testimony, you noted that the Federal Government reviews your department's scientific information and will use it so long as it represents the best available data. Can you explain why it is so important to use the best available science when justifying the Endangered Species Act decisions and describe how this bill might negatively impact the way the U.S. Fish and Wildlife Services uses State data?

Mr. Strickler. Senator Duckworth, thank you for the question. The importance of using the best available science is because these species are critically imperiled and we may not

have another chance to get it right if we are not using the best available science. In many cases, as the Chairman and others have noted, the best available science is science that is being produced by State agencies. In other cases, the best available science is being produced by research universities or nonprofit groups, or the Federal Government itself and, in many cases, the Fish and Wildlife Service.

So, I think elevating State-produced data above data produced and science conducted by other stakeholders that have just as much concern, just as much care for the species that are under Endangered Species Act protection really runs a risk of kind of marginalizing potentially very good science and may put us in a situation where delisting listed species is easier, but actually recovering them in a meaningful ecological or biological sense is more difficult.

Senator Duckworth. Thank you.

I want to address funding a little bit, as well. Although this draft bill dramatically redefines the State's role in species management, it does fail to provide new resources to address the current funding shortfalls that hinder both Federal and State species conservation programs. This is a serious shortcoming, since, even with the strongest law, it will be weakly enforced if it does not have vital funding.

Again, Mr. Strickler, in your opinion, should Congress

prioritize using any ESA modernization effort to significantly increase Federal funding to help States better implement species recovery efforts?

Mr. Strickler. Thank you, Senator, for the question. I think that funding is the critical question here. Mr. Broscheid mentioned that his State has been in triage mode, basically, with having to prioritize the most critically endangered species, and we are too, and that is certainly something that is experienced across the Country.

And a big part of that is because, at least the information that I have shows about a quarter of federally-listed species receive \$10,000 or less per year towards their recovery. That is just inadequate, and we are never going to make the progress that we need, regardless of what States are doing, if that is the kind of commitment that the Federal Government is able to make.

Senator Duckworth. Thank you.

With my remaining time, Mr. Broscheid, can you talk a little bit about the funding needs for States in terms of Federal funding for the management of endangered species?

Mr. Broscheid. Senator, I agree with Mr. Strickler. It is essential. It is everything. To recover habitats, to conduct the science, to sit on recovery teams and develop these recovery plans all take resources right now that are coming from State or

legislatively, at the State level, appropriated dollars. Certainly, funding is probably the biggest impact to and prevention of recovery of species of not just to prevent them from extinction, but to move them from off the list, where they don't need the protections of the Act anymore.

Senator Duckworth. Thank you so much.

Thank you, both of you gentlemen, for being here today.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Duckworth.

Senator Merkley.

Senator Merkley. Thank you very much.

Appreciate all your testimony. In your testimony, you have spoken to the importance of collaboration between Federal and State agencies, and true collaboration is very helpful and essential to understanding what is going on at both levels and how those things interact. To that end, I want to understand a few of the practical events of the bill.

Secretary Strickler, what is the practical effect of a governor appointing half the members of the recovery team? Does it make it easier or harder for local interests to influence recovery outcomes?

Mr. Strickler. Senator Merkley, thank you for the question. I think, from perhaps some perspective, it makes sense for localities and States that are in the area, physical

area of a threatened or endangered species to have a greater role in recovery, but I think this particular provision would throw things out of balance. In one sense, when a species is listed, it means that the States where that species exist have not done an adequate job of conserving the species in the first place, so to give the States the primary authority and an equal number or majority of members on a recovery team I think kind of goes against common sense, perhaps.

The other thing I think that is worth noting is that there are other States that perhaps these species don't exist that have an interest in protecting these species. We certainly, in Virginia, have folks who visit the West and appreciate Western States' wildlife and have an interest in making sure that that wildlife is conserved. So, for those reasons, I think that is where we come down on that.

Senator Merkley. So just in terms of basic collaboration understanding, it makes sense to have a very rich dialogue with local experts, local decisionmakers, but your concern is about the formal structure of the recovery team? Does that take us to the issue of the unanimous vote being required to be able to update a plan?

Mr. Strickler. Yes, sir. I think that that particular provision would make it very challenging if new science was introduced, to be able to kind of do adaptive management and

shift on the fly the way that we are working to recover species.

Back to your original question, I apologize for not answering it very articulately, but collaboration is absolutely necessary to this process, and it is collaboration among States, it is collaboration between the States and the Federal Government. At least in Virginia, and I certainly can't speak directly to the experience of other States, but we feel like we have that relationship.

Our Department of Game and Inland Fisheries and our Department of Conservation and Recreation Natural Heritage Program work closely on a daily basis with Fish and Wildlife Service. There is nothing that Fish and Wildlife Service is planning to do with respect to threatened and endangered species in Virginia that our fish and wildlife agencies do not know about and are not working hand-in-hand with the Federal Government on.

Senator Merkley. We have a situation out in the West where Oregon put together a whole team of State experts of all kinds to try to develop a plan because we wanted to avoid a Federal listing, but it was the Federal listing that motivated us to develop that plan. Not only did we do the State plan, but we also then used extensive use of candidate conservation agreements, because essentially said if you do these things on your own private land, then you are protected from additional

measures that might be adopted if we do get listed. That combination really motivated people to come together.

I am looking at the structure here and seeing if essentially Federal action depends upon full signoff by a State, then essentially Oregon wouldn't have acted on the sage-grouse; the Federal Government would have kicked in late in the process at great stress and odds, rather than having had a true collaboration.

Is there a possibility this could actually undermine the type of collaboration that acts early and quickly on an endangered species?

Mr. Strickler. Thank you for the question. I think, just to go back to your initial point, the things that you mentioned, candidate conservation agreements, safe harbor agreements, proactive conservation work to try to preclude listing or take positive conservation steps before a species is listed, those things really show the flexibility of the ESA as it is written. Of course, there are processes that can be improved and that are always improving and would make things a little more seamless with respect to those kinds of voluntary agreements, but they are really helpful and they are able to be entered into under the Act, and I think that is a very valuable thing.

Senator Merkley. Thank you.

Senator Barrasso. Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Secretary, good to have you here.

Mr. Chairman, the Secretary was on my staff over on the Natural Resources Committee, so I am used to actually having him sit next to me in a hearing. So it is good to see you on the other side of the dais as the Secretary from the State of Virginia.

Matt actually is an oyster farmer. That is what he did in a previous life, so I am looking forward to harvesting the pearls of wisdom from you here today. He has always been a commonsense, smart, pragmatic advisor.

You say in your testimony that the best way to improve implementation of the Endangered Species Act and to recover more species faster is for Congress to provide adequate funding for science and management of those resources and their habitat.

What does adequate funding look like? How much more do we need to appropriate? Where is the need the greatest?

Mr. Strickler. Senator Markey, thank you for the question and for your kind remarks. It is good to see you again.

The answer of how much is enough is a difficult one to answer and perhaps is one that congressional appropriators need to deal with, and not me, but I think it is safe to say that we are not there yet. At the risk of being redundant, again, the information that I have received is showing that about a quarter

of threatened and endangered species are receiving less than \$10,000 a year towards recovery, and that is just not acceptable. We are not going to be able to make meaningful progress in recovering these species or doing much more than, as the Chairman mentioned, keeping them on life support, without a significant dedication of resources.

Senator Markey. So, we have prevented 99 percent of listed species from going extinct because of the Act, but it always depends upon the best science.

In your opinion, how much of that success has been dependent upon using the best science in order to ensure that the Endangered Species Act works?

Mr. Strickler. Thank you for the question. In my opinion, the science is critical; it is the most important piece of ensuring that the Endangered Species Act works successfully.

Senator Markey. And what would the impact be of this draft legislation that is being presented to us in terms of the role that science will play in making decisions?

Mr. Strickler. Thank you for the question. I think that there is some frustration that has been expressed, and this may be based on some experience, that States aren't having science that they produce, at least in their minds, adequately considered by the Fish and Wildlife Service when they are making listing and delisting decisions and recovery planning and things

like that.

My experience and Virginia's experience is that the Fish and Wildlife Service does take the State concerns into account and is using State science when it is the best available. I think that the current process is working, and we are skeptical of upsetting that balance.

Senator Markey. In your testimony, you mentioned that this draft legislation contains provisions that would hinder Virginia's ability to work with Federal agencies under the Endangered Species Act. Can you elaborate on that?

Mr. Strickler. Yes, sir. I think one of the key points here is when you are setting up a recovery plan, for example, under this new legislation, one State has to be the lead. We share threatened and endangered populations of a lot of aquatic species in the Tennessee River watershed with Tennessee. Without the Federal Government, the Fish and Wildlife Service being able to step in and be a referee to that process, I don't think things would work as well trying to recover these species if Virginia and Tennessee were pointing fingers at each other without a central node to kind of coordinate things and point everybody in the right direction.

Senator Markey. Finally, this draft legislation currently limits judicial review of the Endangered Species Act on decisions such as the delisting of species. What would, in your

opinion, the impact of reduction of judicial review have in terms of your State's role but, in general, our ability to protect endangered species?

Mr. Strickler. Yes, sir. Thank you for the question. I don't want to be redundant on this point either, but I think limiting judicial review and limiting the ability of citizens to hold their government accountable for decisions that, in the view of the citizens, they think are not the right decisions, you know, if people bring court challenges that are frivolous or not adequate, they are going to be rejected. We have seen that in the past. Litigation is an important tool. It is not the only tool, but it is an important tool for species recovery.

Senator Markey. Thank you. Thank you. We are proud of you sitting down there. We thank you for your service.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you.

Senator Carper. Mr. Strickler, do I understand you once served in the House of Representative as a professional staffer?

Mr. Strickler. With great trepidation, I will answer yes.

Senator Carper. Who were some of the members you worked with in that time before?

Mr. Strickler. I had the privilege, first, of working for then Ranking Member Ed Markey, and when he moved over to this venerable body I worked for Peter DeFazio from Oregon, and then,

more recently, for Raul Grijalva from Arizona.

Senator Carper. Of those three, who would you say was your favorite to work for?

[Laughter.]

Senator Markey. Or, to put it another way, who hired you the first time?

Mr. Strickler. I was hired by Senator Markey.

Senator Markey. Thank you. Excellent choice.

Senator Carper. I have no further questions. Well, I have one.

Thank you both for being here today and for bringing your sense of humor, and for your commitment and your service.

Mr. Secretary, your testimony mentions the economic opportunity to maintain diverse ecology and for restoring our lands and our water. You state that "these places become more attractive for use by hunters, anglers, hikers, and bikers in Virginia."

I grew up in Virginia; I grew up in Danville and Roanoke. You drive down Route 81, Interstate 81 on your way from Maryland on your way to North Carolina, where my wife is from. We drive down Route 81, where I used to take my hunting dogs and go hunting for quail, so I have great affection for Virginia, especially that part of Virginia.

As I said in my opening statement, which I think you were

here to hear, we share this experience in Delaware, and that is that we want these places to become more attractive for use by hunters and anglers, bikers and hikers. Not only do people travel from far and near to see the endangered species, all kinds of threatened and endangered species on Delmarva Peninsula and in Delaware, but when they do, they spend money and they support our local economies.

Would you just elaborate on how habitat restoration and species conservation can bolster economies in Virginia and beyond?

Mr. Strickler. Yes, Senator Carper. Thank you for the question.

I think, directly speaking with respect to individual species, there are industries and economies that we have seen pop up in Virginia around recovery of threatened and endangered species. Humpback whales is a great example. For a long time in Virginia, you would never see a humpback whale off the coast. Now we have whale watching trips; people pay money to go off of Virginia Beach and see humpback whales in the wintertime. It is a great thing.

Last week I was down in far Southwest Virginia on a trip with the Natural Conservancy and some local partners who are working with the Fish and Wildlife Service and others to recover a number of threatened and endangered mussel species on the

Clinch River. It is a really fascinating effort because these mussels, when they are recovered, they filter 10 gallons of water a day.

So, when you have a few of them in the river, your river is not going to be really clean. When you have thousands of them in the river, your water quality is going to be much better. That is improving water quality that supports one of the best trophies, small mouth bass fisheries, in the Country, and people are coming from far and wide to participate in that fishery, to participate in water sports and things like that.

This is a river system that was decimated by the vestiges of pollution related to the coal industry only a decade or so ago, and we have really brought it back and now we are seeing tourism pop up around the recovery and the restoration efforts that are made possible and driven by endangered species recovery.

Senator Carper. Mr. Broscheid, a last quick comment. Anything you want to mention with an eye toward helping steer us toward some kind of principal compromise on what is a difficult issue, important issue. In closing, quick thought?

Mr. Broscheid. Senator, thank you very much.

I agree. I think as far as the West goes and the State of Colorado, half the State is private and half is mixed Federal land, along with some State trust lands out there. It gets

complicated.

The old saying is habitat is where it's at; that's where the species live. And if you can work towards habitat conversation, you will likely have recovery of species, of a suite of species that reside in the habitat. But that is not necessarily the case all the time.

Sage-grouse is a perfect example. We have a population that is Gunnison sage-grouse that is located mostly in the Gunnison Basin and small parts of Utah. We have conserved, at the time of the listing, warranted listing, 85 percent of that habitat, working with local governments, the Federal agencies, and those entities to secure 85 percent of that habitat. The bird was still listed as threatened, despite already a discussion or decision by the Service that that would be needed.

I think my point is that birds will fluctuate, and anybody who does bird hunt knows one year you may have a great year, and the next couple maybe not. Birds do that naturally. This is the information that is coming out of the science that we are starting to learn. So, securing the habitat doesn't necessarily mean that species will recover; we have to include in there what the scientific and daily needs of that species are. But it does get trickier when you add in a significant amount of Federal land, private land, and State lands within the borders of a State.

Senator Carper. All right.

Just very briefly, the same question. A word of advice for counsel as we look for principal compromise on what is an important issue, but a difficult issue, Mr. Strickler.

Mr. Strickler. I apologize, Senator. Could you just repeat the question?

Senator Carper. I asked Mr. Broscheid, a word of advice, as we conclude here today, for us as we look for some kind of principal compromise on what is admittedly an important, but difficult issue.

Mr. Strickler. Sure. I think I would just add a little bit of insight to continuing answering your previous question on the economics of species recovery.

As we look at protecting these habitats and these ecosystems that support threatened and endangered species, we are also protecting and conserving land that has multiple uses. The outdoor recreation economy is huge business, almost \$1 trillion in annual consumer spending in the United States. That is about \$22 billion in Virginia alone.

We, as the Commonwealth, have a land conservation strategy that focuses on biodiversity conservation and multiple uses, watershed protection, things like that. When you have those kinds of synergies, you can protect threatened and endangered species, and also get economic benefits.

I think the last point I would make is if the Committee would just keep in mind the significant interest that States like Virginia, that unfortunately have, through mismanagement, lost a lot of our iconic wildlife species decades and centuries ago, but don't take for granted what you have, when you have it, as far as iconic wildlife. Our folks have to travel all the way across the Country to see bison or elk or mountain lions, and that used to not be the case. But the places where they do exist are special because they exist, not in spite of them.

Senator Carper. Thank you.

Thank you both very, very much.

Senator Barrasso. Well, those special places are called Wyoming, so thank you.

[Laughter.]

Senator Carper. And there is a Wyoming in Delaware, just south of Dover, Camden Wyoming.

Senator Barrasso. Director Broscheid, just a couple quick things.

Title 1 of this discussion draft is intended to really make States equal partners in implementing the Endangered Species Act. Some defenders of the status quo claim that States can't really adequately conserve wildlife or really don't have interest to do so. The Sierra Club actually went so far as to say authority over wildlife decisions to often hostile State

management, is their phraseology about the bill.

I think you have served in high level positions both in the Colorado Parks and Wildlife and in the Arizona Game and Fish Departments. Are States hostile to protecting wildlife in their States? What is your experience?

Mr. Broscheid. Mr. Chairman, I think hostile is a strong word. I think it is more of frustration. I think the frustration comes from, and the Governor alluded to this a lot earlier, it is created by uncertainty in decision-making processes. You are told something, this is the best science of conservation, and then as you start marching down the road spending millions and millions of dollars that you probably don't have, and then to have those goalposts move constantly, it creates a frustration to a point that folks that you have to work with towards conservation. It makes private landowners, it makes even individuals in Federal land management agencies, as well as the Fish and Wildlife Service, very frustrated when, at the end of the day, a lot of these decisions are being decided in courts and judges are making these decisions, whether there is science in that decision or not.

It is really borne out of our frustration, Mr. Chairman, I think, where you see some States that may have constructive criticism for the Act.

Senator Barrasso. Well, I appreciate everyone being here

today. The hearing has been very useful in outlining the need to modernize the Endangered Species Act in a manner that I think captures the expanded conservation capacity and expertise of our States around the Country. I think we need to move beyond the current failing policy of listing species and then leaving them on life support.

Over the weekend, Eric Vance, a Maryland-based science writer, editorialized about endangered species in the Washington Post. The headline, this is page A15, Saturday, July 14th, "We Are Losing the Fight to Save Endangered Species." And he stated, "Modern conservation is increasingly about maintaining insanely thin populations with shallow gene pools." He said, "Not only is this expensive and often futile, but also it undermines the whole point of wildlife management."

That is how today's Endangered Species Act operates. For 30 years, defenders of the status quo have prevented prior Congresses and Administrations from improving the law, so I believe we need to act. We need the Endangered Species Act to work better.

I appreciate the Western Governors Association to come together on a bipartisan basis; done an excellent job identifying the policies that we can adopt to do just that.

Now it is our turn. I look forward to working across the aisle with members who will join me in using the Western

Governors Association's bipartisan work to make the Endangered Species Act work better for both wildlife and for people.

So, I appreciate your being here today. Members may submit follow-up questions for the record. The hearing record will be open for the next two weeks.

I want to thank all of the witnesses today for your time and testimony, especially Governor Mead. Grateful that you would take the time to be with us to share your thoughts, your experience, your leadership. We are very grateful and appreciative.

With that, the hearing is adjourned.

[Whereupon, at 11:41 a.m. the committee was adjourned.]