

## **Testimony before the Senate Committee on Environment and Public Works**

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Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee, and thank you for inviting me here today. I'm Bob Broscheid, and I'm the Director of the Colorado Division of Parks and Wildlife, and the immediate past president of the Western Association of Fish and Wildlife Agencies. I want to thank Chairman Barrasso for taking on the challenge of working towards reauthorizing and improving the Endangered Species Act, and for his recognition of the central role that needs to be played by states, especially state wildlife agencies, if the ESA is to succeed in its goals.

The draft bill being discussed today proposes to update the ESA. This draft drew significantly from Governor Mead's multi-year species conservation initiative, and reflects a number of proposals that received the full-throated support of the Western Governors Association. While I want to make it clear that Governor Hickenlooper has not taken a position on this or any other specific language, he wholeheartedly supports the dialog and the process WGA has followed, and the value WGA places on bipartisan, practical solutions to improving the ESA. This approach has reflected the style of both Governors Hickenlooper and Mead, which is to understand problems, come up with solutions that have broad-based support, and figure out how to implement solutions without getting trapped in partisan disputes that derail efforts to make this law work better.

Ultimately, we believe that a key to improving the effective implementation of the ESA is to empower state wildlife agencies, who often have the most expertise and experience managing at-risk species, to leverage their expertise and resources to achieve better species protection and restoration, and to provide better incentives for state wildlife agencies and other stakeholders to invest in conservation and recovery. The discussion draft addresses a number of specific features of the ESA that parties reached some consensus on during the WGA process, but empowering state wildlife agencies is a theme throughout the draft and a much needed step toward improving recovery of our nation's most imperiled species.

I'm here today to speak to you on behalf of wildlife professionals, particularly state wildlife agencies. Many people don't really have any idea what their state wildlife agencies do, or have the misconception that they only manage wildlife for hunting and fishing. This is a really outdated image that unfortunately continues to persist. But the fact is, state wildlife agencies are on the frontlines of conserving and recovering species. We are required by state statutes, and for some even the state constitution, to conserve all wildlife species, and to preserve and protect the habitat these species need to thrive today and for future generations. This is what we do – every day. We work in partnerships with agricultural communities, conservation organizations, and local communities to find ways to continue protecting and enhancing habitats and species and to understand how to do that in the face of constantly shifting

challenges. Colorado Parks and Wildlife, like all wildlife agencies, is staffed with professionals who have committed their careers to species and habitat conservation. We have expert biologists, wildlife officers and managers, and boots on the ground in communities throughout the state.

I have spent my entire career managing wildlife for state wildlife agencies. I began my career in Arizona, starting as a biologist with the Arizona Game and Fish Department and ultimately serving as Deputy Director of the agency. Now in Colorado, I've spent the last 5 years as the head of the state Division of Parks and Wildlife. I've been at this for more than twenty years. During that time, I have seen tremendous success through collaboration between the states, the federal government, landowners, and private industry. I've also witnessed these same entities work at odds with each other creating unnecessary obstacles to conservation initiatives. I have professional experience specific to the Endangered Species Act in a number of ways, including work to preclude listing of species, listing and delisting species, coordination of ESA regulations with private landowners, and species recovery planning. I have worked closely with state agency experts on management and recovery of high profile listed species including Canada lynx, greenback cutthroat trout, sage-grouse, lesser prairie chicken, and many others. Directors of state wildlife agencies across the country have similar experiences.

One thing we have all seen is that learning from the past to improve the ESA should not be a hot-button partisan issue. Species conservation matters to everyone on both sides of the aisle, and there are some common sense fixes that can work for everyone. And not just everyone in the west, as evident by the US Fish & Wildlife Service's national listing workplan. The workplan lays out the listing decisions the Service intends to make over the next 5 years or so – and except for Nevada, the states with the most upcoming listing decisions are not even in the west – they are primarily in the southeast. Appalachia and the Pacific Coast states are also facing between 10 and 20 listing decisions in each of their states in that time. Getting this statute right, so that it works for states, incentivizes stakeholders, and brings a decent funding stream to species conservation, should be important to every member of this Committee.

When it adopted the ESA, Congress envisioned a partnership between states and the federal government. The hearings and debates leading up to passage of the Act made clear that cooperation and partnership between the states and the federal government was essential to achieve the goals of the Act. Section 6 of the Act, which mandates cooperation with the States "to the maximum extent practicable," was seen by many, including Senator Ted Stevens, to be "the major backbone of the Act." The conference report for the Act made it clear that the success of the Act would depend on a good working arrangement between the Federal agencies and the state agencies.

I want to emphasize: it's not just that state wildlife agencies were expected to play a prominent role in implementation of the Act, but that the *success of the Act was seen to depend on productive partnerships* between the state and federal wildlife agencies. Unfortunately, over the years the agencies have not always been able to live up to that vision,

and without states as equal partners, the Act hasn't always worked as intended. As a result, we see state expertise and resources used inefficiently, which in turn creates unnecessary local frustration and resentment, and impairs cooperation. We see partnerships that don't function well, and missed opportunities for species conservation.

Why is this the case?

The ESA is premised on a strong federal-state partnership. It contemplates strong state conservation programs, but states struggle when they are accorded little authority in the listing and recovery processes. When relationships are at their worst, state wildlife agencies get frustrated by a process that leads them to view the Service as untrustworthy. They see the Service withholding information, using state staff and resources but dismissing and sometimes not even responding to the states' substantive input. From the state wildlife agency view, "cooperation" on ESA efforts sometimes gets reduced to filing comments on proposed rules, helping staff Service conservation efforts, and responding to conflicts, all the while not being given authority to participate in critical decisions. The absence of an enhanced state role continues to strain limited federal resources and undermines local government and stakeholder/landowner willingness to participate in conservation and recovery efforts, and it also makes it difficult internally for us to be seen as a partner to the Service.

We know there's a better way to do this. That's why Governor Mead embarked on the species conservation initiative and why I'm here today.

Without compromising the federal role, the ESA should also seek to ensure a meaningful role for state wildlife agencies – those that want to exercise it. Forty-five years ago when the ESA was adopted, many states lacked the dedicated resources and expertise that we have today for species and habitat conservation. That has changed. Over the last 45 years, states have taken significant steps, both financial and political, to ensure species and habitat conservation. Due in large part to these investments, it is time to strengthen and refocus the ESA to realize the state role as originally intended by Congress 45 years ago.

A stronger role for the state agencies is also critically important because, although the federal agencies responsible for administering the ESA are working diligently to implement the law as adopted by Congress and interpreted by the Courts, they are simply overwhelmed by the work. In spite of their best efforts, these agencies cannot keep pace with the growing number of species subject to petitions for federal listing. They just do not have capacity to handle the growing workloads associated with the petition and listing process, regulatory responsibilities, take permitting, administering conservation incentives, assurances and mitigation programs, addressing litigation, recovery planning, and managing species through the recovery and delisting processes. States can and should play a leading role in some of these functions.

Until a species is listed under the ESA, it is a state trust species, and falls under the management jurisdiction of the state wildlife agency. But after listing, the states—without which species recovery cannot succeed—often find themselves on the outside looking in. Even

during the listing process, state agencies find themselves consigned to the same role as other members of the public; they are invited to comment and share data, but not to sit at the table and participate meaningfully in the decision. This is an inefficient use of our resources. Given the opportunity to partner with the Services, and some autonomy or flexibility to make our own decisions about our activities, we can achieve better outcomes for species and better collaboration with the communities whose cooperation is crucial for long-term success.

Recent work in Colorado with the US Fish & Wildlife Service regarding a petition to list the Gunnison sage-grouse provides an example where the state agency should have been more closely included as a full jurisdictional partner. We were critical in collecting and analyzing data and in working with counties, landowners, and ranchers to implement conservation programs, but we were not fully brought into the final decision making process related to this species, even though it was our science and our conservation actions on the ground that were under consideration. The listing process lasted multiple years, and the state was on the outside looking in, not kept fully apprised of progress, and not participating in critical decisions that changed the focus of the listing decision and left our partners on the ground feeling confused, frustrated, and betrayed.

This is not an isolated example. Any director of a state wildlife agency, in the west or across the country, has a similar story.

This statute is a work in progress. Given all the changes in the human environment and in natural ecosystems, we'd be crazy to think that an act adopted in 1973 can't be improved upon, based on our experiences over the last forty-plus years. The ESA was last reauthorized and amended in 1988. It was a bipartisan issue and effort then, just like it should be today. We have learned a lot about the conservation of listed species, their recovery needs, and how to incentivize and facilitate private landowner involvement since then. It is time to apply that knowledge to improving the ESA to better achieve the conservation and recovery of listed species.

Today, thanks to the efforts of Governor Mead, the WGA, Senator Barrasso, and others, we hope to be on the path towards making that happen. The principles upon which improvements can be based include providing more options for states to enter into a partnership with the federal government on more equal footing. Specific areas that have been supported by the WGA to empower state wildlife agencies to play a more central role and promote better working partnerships include

- (1) providing for better pre-listing conservation tools – and putting those tools in the hands of states as well as the federal agencies;
- (2) improving the petition and listing processes, and giving states a formal role in these processes;

(3) letting states take the lead in planning and implementing management and recovery of listed species;

(4) giving states flexibility to use their expertise and resources to engage in creative approaches and to enlist the support of local governments and communities; and

(5) recognizing the need to provide state wildlife agencies with the ability to protect their data from a FOIA request if they share it with the federal government. Many states, including Colorado, have enacted restrictions on our ability to share sensitive wildlife data, especially regarding wildlife on private lands. We are constantly being asked by the FWS, the USGS, the BLM, the Forest Service, to share our data with them because they can't do their jobs without it, and they don't have the resources to gather it themselves. We want to help – and often we do. But we put ourselves at risk when we do it.

I have seen over the years that although sometimes states and the federal agencies play well together, it seems to depend entirely too much on who's in control at the federal level. In my experience, legislative changes are needed to enshrine states' role in ESA implementation, and to formalize a role for the states, rather than subjecting them to always having to seek the favor of partnership from the federal agencies. This should be a peer-to-peer relationship. Congress should take the opportunity to nudge the Act towards its original vision of a partnership that accords states a meaningful role.

Give us the ability to be true partners at the table, trust our expertise and our commitment, and you will be amazed at what we can do.