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

Before the
Committee on Environment and Public Works
Subcommittee on Fisheries, Water, and Wildlife
U.S. Senate

Federal Interactions with State Management of Fish and Wildlife

February 9, 2016

Mr. Chairman and members of the Subcommittee:

My name is Donald Barry and I am the Senior Vice President for Conservation Programs for Defenders of Wildlife. I have worked on federal fish and wildlife and public lands conservation programs for more than 41 years, having gone immediately to work for the Department of the Interior and the U.S. Fish and Wildlife Service after graduation from law school in 1974. I have logged in almost 25 years of service at the Interior Department and in Congress, having worked as both a staff attorney and as Chief Counsel for the Fish and Wildlife Service, as the General Counsel for Fisheries and Wildlife for the Chairman of the House Merchant Marine and Fisheries Committee, and as the Assistant Secretary for Fish and Wildlife and Parks, overseeing the programs of the National Park Service and the Fish and Wildlife Service.

I helped draft all of the core implementation regulations for the Endangered Species Act in 1975 and reviewed, approved and in many cases personally negotiated dozens of the state Cooperative Agreements authorized under Section 6 of the ESA. I have also worked closely with state fish and wildlife agencies on the passage of a wide range of federal wildlife conservation laws ranging from the North American Wetlands Conservation Act to the Wallop-Breaux Act and the National Wildlife Refuge System Improvement Act of 1997. All of these experiences have given me deep

respect and appreciation for the dedicated men and women of both the Fish and Wildlife Service and of the state fish and wildlife agencies.

I also have a deep professional connection to wildlife and public land conservation issues in Alaska that goes back almost four decades. In 1977, I was assigned the task of being the lead staff attorney at the Department of the Interior for work on the passage of the Alaska National Interest Lands Conservation Act (ANILCA) and was the chief negotiator for the Department for two of the Titles that became part of ANILCA. I was also a member of the Fish and Wildlife Service's ANILCA planning team, becoming deeply involved in the development of all of the language that ended up in ANILCA dealing with fish and wildlife conservation, national wildlife refuges, and subsistence hunting and fishing. I have also visited every national wildlife refuge in Alaska and am familiar with the current disagreement between the Service and Alaska Fish and Game over the state's desire to dramatically accelerate the killing of predators within national wildlife refuges.

With regards to this dispute which appears to be the primary reason for this hearing, there is absolutely no doubt in my mind that the Fish and Wildlife Service is correctly reading the requirements of ANILCA and other federal laws governing the management of national wildlife refuges in rejecting the state's predator killing proposal. Moreover, the Service is acting in a manner that is consistent not only with ANILCA and National Wildlife Refuge System laws, but also with a post-ANILCA 1983 Department of the Interior Policy Statement on State/Federal fish and wildlife jurisdictional relationships, with the 1982 MOU signed between the Fish and Wildlife Service and the Alaska Department of Fish and Game on the management of wildlife on national wildlife refuges in that state, and with various federal court opinions dealing with past federal/state jurisdictional disagreements over the management of wildlife. Please see the Service's *Federal Register* proposed rulemaking barring the state's predator program from national wildlife refuges in Alaska (81 Fed. Reg. 887 (Jan. 8, 2016)(to be codified at 50 C.F.R. Parts 32 and 36)).

Moreover, Defenders of Wildlife and a coalition of other national organizations strongly oppose an amendment blocking the finalization of this FWS rule, offered by Senator Sullivan and recently added to S. 659, the Bipartisan Sportsmen's Act. A copy of a letter from nine organizations highlighting this opposition is attached to this testimony. This provision is a direct attack on an important agency rulemaking. This poison pill runs directly counter to the "bipartisanship" the sponsors of the legislation state they are seeking. If the provision does not prevent Senate passage of the bill, it will undoubtedly produce strong opposition from the Administration and seems certain to make the bill a candidate for a veto by the President, should it get to his desk in its current form. I will return to the Alaskan predator control dispute later in my testimony but will first discuss the status and quality of federal and state collaboration and cooperation on wildlife management issues writ large, using a nation-wide focus to more accurately frame this important and sensitive issue.

The purported focus of this hearing is on the ambiguously worded topic of "Federal and State interactions" with regards to the management of fish and wildlife. What is mystifying and bizarre to me, however, is why, for a hearing designed to focus on the interactions between the Fish and Wildlife Service and state fish and wildlife agencies, Dan Ashe, the Director of FWS, would be denied a chance to testify in person? A request by the Subcommittee's Minority staff to have Director Ashe testify at this hearing was rejected by Majority staff and it should be pretty clear to most observers that if this was intended to be a truly constructive hearing, that the Director of the

Fish and Wildlife Service should be sitting in this chair next to Mr. Regan and not me. Since that was prevented from happening, I will do my best to be a surrogate in providing a federal perspective on state and federal wildlife interactions.

There is a real danger in setting up a hearing like this because it can easily create the impression that strong disagreements between FWS and State fish and wildlife agencies are the norm and that there is constant wildlife warfare between the feds and the states over jurisdiction and turf. Nothing could be further from the truth. Playing on this false impression is like focusing on the hole and not the rest of the donut, since for dozens and dozens of fish and wildlife conservation programs, the state and federal biologists are linked arm in arm and are working closely and collaboratively and successfully with each other. That is the true norm, not the fight in Alaska over predators.

And you don't have to take my word for it – just listen to the observations and direct quotes from a state fish and wildlife director himself. Last Thursday, I called Nick Wiley, the head of the Florida fish and wildlife agency that I have worked with in the past and admire. I told Nick that I was going to be a witness for this hearing, and asked him to share his candid and honest assessment of the quality of the working relationship he had with the Fish and Wildlife Service. Here are his exact words:

> He said that in his region, the Service and the affected state fish and wildlife agencies have a "no daylight approach" where they all strive to ensure that there is no daylight on wildlife conservation programs between the Service and the states. He said that the Service and the states all "stay close and work together," that they have "long standing collaborative and positive relationships," that there will be the "occasional tug of war and disagreement but that you work together to process through those disagreements in a constructive way and then move on." He also was confident that the other state fish and wildlife agency directors in his region would feel the same way and that it was his opinion that with a few exceptions, nationwide, the relationship between the Fish and Wildlife Service and state wildlife agencies was "excellent."

It is easy to see how he could feel that way when you look at the long list of ongoing, collaborative wildlife conservation programs undertaken together by federal and state authorities for many decades. Here is just a sampling of some of those programs:

The National Wildlife Refuge System

As a general matter, the Service enjoys strong collaborative relationships with state partners in managing the National Wildlife Refuge System (Refuge System). These relationships were emphasized in statute with the passage of the 1997 Refuge System Improvement Act, a law that I was heavily involved in the passage of. The Improvement Act requires that comprehensive conservation plans, required for each refuge to guide its management, be developed "in consultation with" affected state conservation agencies and "be consistent to the maximum extent practicable" with conservation plans of the state in which the refuge is located. The law also requires that hunting and fishing of resident wildlife be "consistent with" State laws, regulations and plans to the "maximum extent practicable." And it requires the timely and effective "cooperation" and "collaboration" with Federal agencies and state fish and wildlife agencies during the course of "acquiring and managing refuges." It must be noted, however, that while this language signals a

strong and persistent emphasis on close coordination and collaboration with affected states, "to the maximum extent practicable" does not give the states veto authority or mandate acceptance of all state recommendations, reserving instead final refuge decision-making for the Service.

Refuge Hunting / Fishing Coordination – The Service does rely heavily on the expertise and data of state fish and wildlife agencies when reviewing and administering hunting or fishing programs on refuges. For each proposed opening of a refuge, the Service sends a letter to the appropriate state fish and wildlife agency requesting their comments and recommendations. In addition, the Service consistently adopts state hunting and fishing regulations on Refuge System lands, publishing additional, *more restrictive* regulations only when they are needed to meet the purposes and mission of the specific refuge or Refuge System. Thus, the Service always reserves the right to be more protective of refuge resources when necessary to comply with federal wildlife refuge law. This federal reservation of final decision-making authority on refuge hunting and fishing programs has certainly not been an impediment to these wildlife dependent forms of recreation. Since the passage of the 1997 Improvement Act, the Service has worked with its state partners to open over 100 new refuges to hunting or fishing opportunities, and expanded hunting or fishing programs on nearly 100 additional refuges.

Refuge System Strategic Vision – Just as the Improvement Act is peppered with references to consultation and collaboration with states, the importance of the federal/state relationship is highlighted in the Refuge System's vision document, *Conserving the Future: Wildlife Refuges and the Next Generation*, which maps out a strategic vision for the Refuge System over the next decade. Throughout the vision document there is acknowledgement of the important federal/state relationship and a strong encouragement to continue to develop and expand these relationships:

> "Today this partnership between state and federal agencies is nowhere stronger than in the field and on Refuges. No matter the logo on their shoulders, state and federal wildlife managers roll up their sleeves together. They assist each other with prescribed burning and fighting wildfires. They patrol and enforce conservation laws together. They maintain roads, water control structures, and enhance habitat. They below to the same scientific and professional organizations and collaborate on studies and research." (Page 22)
>
> "We have worked especially closely with state fish and wildlife agencies in planning and administering the Refuge System, relying both on the authority and the expertise these agencies have in managing fish and wildlife." (Page 10)
>
> "Vision: The Service will enhance its close relationship with the state fish and wildlife agencies. We will coordinate with them on management of fish and wildlife within the Refuge System and on establishing population objectives." (Page 12)

Wildlife and Sport Fish Restoration Program (WSFR)

WSFR administers federal aid grants to states, insular areas and the District of Columbia (hereinafter States) to conserve fish, wildlife and habitats, and to provide opportunities for hunting, sport fishing and recreational boating. Most of the grant programs require States to provide non-federal matching funds.

- Wildlife Restoration (Pittman-Robertson) – $810 million in 2015. Apportioned to States by formula for projects to conserve wild birds and mammals and their habitats, and to provide access to public lands, hunter education, and shooting ranges. Supported by excise taxes on firearms, ammunition, and archery equipment.

- Sport Fish Restoration (Dingell-Johnson) – $348 million in 2015. Apportioned to States by formula for projects to conserve fisheries and to provide boating access and aquatic education. Supported by excise taxes on fishing gear, boat import duties, and gasoline taxes.

- State Wildlife Grants – $54 million in 2016. Ninety percent of funds are apportioned to States by formula, 10 percent is awarded competitively for projects to conserve "species of greatest conservation need" identified in State Wildlife Action Plans (SWAPs). Many projects focus on preventing species from listing as endangered or threatened. SWAPs constitute a national blueprint for conserving America's wildlife diversity. Funds are appropriated annually by Congress.

- Clean Vessel Act (CVA) – $12 million in 2015. Competitively awarded to the States to promote clean water by preventing improper disposal of sewage. Projects construct and operate pump-out stations for recreational boaters and inform boaters of the importance of proper disposal of their sewage. Supported by excise taxes on fishing gear, boat import duties, and gasoline taxes.

- Boating Infrastructure Grants (BIG) – $12 million in 2015. Awarded competitively and non-competitively to the States to construct, renovate, and maintain tie-up facilities for transient boaters in vessels 26 feet or more in length, and to produce educational materials about the program. Supported by excise taxes on fishing gear, boat import duties, and gasoline taxes.

- National Coastal Wetlands Grant Program – $17 million in 2015. Awarded competitively to the States to protect, restore and enhance coastal wetlands. Supported by excise taxes on fishing gear, boat import duties, and gasoline taxes.

- Multistate Conservation Grant Program – $6 million/year. Awarded competitively for national or regional projects identified by the States through the Association of Fish and Wildlife Agencies. Supported by excise taxes on firearms, ammunition, and archery equipment, and by excise taxes on fishing gear, boat import duties, and gasoline taxes.

Migratory Bird Hunting Program

There may be no area of cooperative wildlife management between the Service and the states that is as well managed and organized as the annual migratory bird hunting program. First authorized a century ago with the passage of the Migratory Bird Conservation Act, the Service's heavy reliance on annual state bird and habitat survey data, as well as the utilization of north-south regional flyways for developing fall hunting regulations provides extremely close regulatory interactions between the federal and state governments. While working as a staff attorney for the Service, the migratory bird hunting program was one of my areas of responsibility so I have witnessed this extremely effective regulatory coordination process first hand.

Endangered Species Program

Sections 6 and 4 of the Endangered Species Act (ESA) – Section 4 mandates consideration of the conservation efforts being made by affected states as one of the listing criteria for species under the ESA. It also requires close coordination and communication with the states in other provisions in Section 4 as the listing process for a resident species moves forward. Section 6 directs the Secretaries of the Interior and Commerce to cooperate to the "*maximum extent practicable*" with the states in carrying out ESA programs. In 1994, the Fish and Wildlife Service and National Marine Fisheries Service (Services) published a new policy regarding the role of State fish and wildlife agencies in implementing the ESA (59 FR 34275; July 1, 1994). The policy recognized that, in the exercise of their general governmental powers, the States possessed broad trustee and police powers over fish, wildlife, and plants and their habitats within their borders. It also acknowledged that *unless preempted by Federal law*, the states possessed primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats. The policy noted that state agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants, information that is critical for the section 4 listing process. It also acknowledged that state agencies, because of their authorities and their close working relationships with local governments and landowners, were in a unique position to assist the Services in implementing all aspects of the Act. As with section 4, section 6 of the Act directed that the Services "*cooperate to the maximum extent practicable*" with the States in carrying out programs authorized by the Act. Once again, you see the dichotomy of a strong Congressional emphasis on close coordination and reliance on the states, while still reserving ultimate and final ESA decision-making to the Services.

Cooperative Endangered Species Conservation Fund (CESCF) - $48.7 million in Federal funding in FY 2015 under four grant programs that are available through the CESCF. Funds for each grant program are described below:

Authorized under section 6 of the ESA, the CESCF provides grants to States and Territories (hereinafter States) to participate in a wide array of voluntary conservation projects for candidate, proposed, and listed species. The program provides funding to States for species and habitat conservation actions on non-Federal lands. States must contribute a minimum non-Federal match of 25 percent of the estimated program costs of approved projects, or 10 percent when two or more States implement a joint project. A State must currently have a cooperative agreement with the Service to receive grants. Most States have entered into these agreements for both plant and animal species.

- *Traditional Conservation Grants*: Over 220 grants totaling $11.5 million were awarded to States and Territories in FY 2015 to implement conservation projects for listed species and at-risk species. Funded activities include habitat restoration, species status surveys, public education and outreach, captive propagation and reintroduction, nesting surveys, genetic studies, and development of management plans.

- *Habitat Conservation Planning Assistance Grants*: Eleven grants totaling $4.7 million were awarded to nine States to support the development of Habitat Conservation Plans (HCPs) through support of baseline surveys and inventories, document preparation, outreach, and similar planning activities.

- *HCP Land Acquisition Grants*. Twelve grants totaling $20.3 million were awarded to States to acquire land associated with approved HCPs. Grants do not fund the mitigation required of an HCP permittee; instead, they support land acquisition by the State or local governments that complement mitigation.

- *Recovery Land Acquisition Grants*: Twenty-two grants totaling $12.2 million were awarded to States in FY 2015 for the acquisition of habitat for endangered and threatened species in support of approved recovery goals or objectives.

International species conservation – the Convention on Endangered Species (CITES)

Section 8 of the ESA implements CITES and FWS has the lead responsibility for implementing that treaty on behalf of the United States. Since the first Conference of the Parties for CITES in 1976, the states have had a representative on the US delegation and work extremely closely with FWS in deciding which domestic species, if any, should be proposed for inclusion on one of the Appendices under the Convention.

Wildlife Law Enforcement

The working relationship between federal and state wildlife law enforcement officers is extremely close and mutually supportive and has been for many, many decades. Since the passage of the Lacey Act at the beginning of the last century, the violation of state wildlife laws is also a violation of federal wildlife law. State and federal law enforcement officials back each other up in major enforcement actions and cross-deputize each other when necessary and appropriate. The Service and other federal agencies routinely provide invaluable enforcement training programs for state wildlife officers, developing even stronger bonds of friendship and trust in the process.

Rejecting aggressive predator control programs for national wildlife refuges in Alaska

Having described above, numerous examples of the more accurate collaborative norm – the "donut" if you will of federal/state interactions on wildlife, I will now turn to the current Alaskan "hole" that obviously is the true focus and reason for this hearing. For the reasons that follow, it is my strong belief the Service's proposed rejection of the state of Alaska's aggressive predator killing program is absolutely consistent with, and required by, not only ANILCA, but also by the 1997 Refuge Improvement Act. Moreover, the exercise of the Service's authority to say "no" is also consistent with the 1982 MOU between the Service and Alaska Fish and Game, as well as the reservation of primary federal authority for wildlife refuge decision-making in a Secretary James Watt-era Interior Department policy statement on federal/state wildlife jurisdictional authority. If the state were to challenge a final federal refuge rulemaking of this sort in court, I have no doubt that they would lose, which is probably why there is now an effort to block the Service from taking final action by legislation.

Establishing the Purposes of National Wildlife Refuges in Alaska under ANILCA

Sections 302 and 303 of ANILCA set out the purposes for each of the new and expanded national wildlife refuges in Alaska. In every instance for every wildlife refuge, the first stated purpose out of

four purposes listed was the conservation and preservation of the "*natural diversity*" of the particular refuge. This was not casually or accidentally chosen statutory language but rather it was intentionally and specifically chosen by the Service's ANILCA wildlife refuge planning team to prevent exactly the sort of anti-predator initiative now being promoted by the state. As noted correctly in the Service's proposed rulemaking, managing refuge wildlife populations for "natural diversity" was intended to ensure that a natural ecological balance be maintained, particularly between predator and prey, and that one species not be aggressively suppressed in order to benefit another.

It is also worth noting that under Section 302 and 303, each statement of purpose for a given refuge included a non-inclusive list of key species that were of particular importance for the refuge. By my count, eight of the new or expanded refuges specifically mentioned bears and three mentioned wolves, in addition to other furbearers as being species of special interest and priority for a refuge. It escapes me how the Service could possibly adopt regulations designed to aggressively drive down the numbers of predators that are specifically noted in the statement of purposes of a given refuge, let alone satisfy the mandate to manage wildlife for the "natural diversity" of the refuge? The whole guiding purpose of ANILCA was for this country to finally get large landscape scale conservation planning right, not only in setting aside entire watersheds for protection from future development, but also to shed outdated views on "good wildlife" (that you would promote and make money off of) and "bad wildlife" (predators and other species that you would suppress and aggressively manage.

Title VIII of ANILCA Dealing With Subsistence Opportunities For Rural Alaskans Does Not Preclude the Fish and Wildlife Service From Barring State Predator Controls

Providing for the continued opportunity for subsistence hunting and fishing by rural Alaskans was an important goal under ANILCA as expressed in detail in Title VIII of the law. The priority status of subsistence hunting and fishing under ANILCA was also signaled by including providing for its continued opportunity as a purpose for each new or expanded wildlife refuge under Section 302 and Section 303, with the sole exception of the Kenai Wildlife Refuge. However, in all instances under Section 302 and Section 303, the inclusion of subsistence as a purpose of each refuge was made subordinate to being consistent with the first enumerated primary purpose of conserving fish and wildlife, including maintaining the natural diversity of fish and wildlife species in each refuge. This subordination of subsistence uses to a dominant priority goal of wildlife conservation is further recognized in Section 802 (1) which reaffirms that the exercise of that opportunity must be consistent with the purposes for which a given wildlife refuge was established (in each case, the "maintenance of natural diversity") and the maintenance of "healthy populations of fish and wildlife." Moreover, Section 815 expressly states that nothing in Title VIII modifies or repeals the National Wildlife Refuge System Administration Act of 1966, nor authorizes the use of fish or wildlife in a manner which is inconsistent with the purposes for which conservation areas like wildlife refuges were established.

To be clear, the Fish and Wildlife Service's proposed rulemaking that the state is upset about expressly states that it is not intended to apply to subsistence uses within refuges but rather is focused on addressing the killing of predators for sport hunting. I only have brought up Title VIII and subsistence in my testimony because if subsistence activities are clearly subordinate to the overarching refuge management goal of maintaining refuge wildlife populations in their natural

biological diversity, then sport hunting is surely subject to those standards as well, especially given that Section 804 of ANILCA establishes nonwasteful subsistence uses as a preferential higher priority use than sport hunting.

The Protective Refuge Management Standards under the 1997 Refuge Improvement Act Are Not Preempted or in Conflict with ANILCA

The 1997 Refuge Improvement Act significantly elevated the protective stewardship standards for the management of wildlife refuges and the Refuge System as a whole by requiring the Secretary and the Director to manage the Refuge System so as to "…ensure that the biological integrity, diversity, and environmental health…" of the System are maintained. The Service in the preamble for its proposed rulemaking rejecting the state of Alaska's predator control program makes the clear and convincing connection between the mandatory directive in ANILCA to maintain the biological natural diversity of species within wildlife refuges in Alaska and the equally emphatic stewardship standard under the 1997 Refuge Act to ensure the biological integrity, diversity and environmental health of refuges and the System as a whole. The Service thus, makes the convincing case that the 1997 stewardship standards are not in conflict with nor preempted by ANILCA, and are therefore yet one more justification for the Service's decision to reject the predator proposal from Alaska.

It should also be noted that while the 1997 Refuge Improvement Act in several places recognized the unique and special role that states were to play with regards to the management of individual refuges, in every instance, Congress qualified the directives with the use of the words "to the maximum extent practicable," obviously reserving the right of the Service to conclude that in a given case it might not be practical to adopt state recommendations while still complying with federal wildlife refuge law.

The 1982 MOU Between FWS and the Alaska Department of Fish and Game (AF&G) Reaffirms the Primary Authority of the Service to Reject the State's Predator Control Program on Refuges

It has been said by some that the MOU signed by the Service and AF&G prevents the Service from rejecting the state predator program on wildlife refuges. Actually, the language of the MOU says the exact opposite in numerous places. In particular, under the MOU, AF&G expressly agreed to

> *"…recognize the Service as the agency with the responsibility…on Service lands in Alaska to conserve fish and wildlife and their habitats and regulate human use."*

The MOU went on to say that AF&G also conceded that it would need to:

> *"…manage fish and resident wildlife populations in their natural species diversity on Service lands."*

Similarly, the Service acknowledged its obligation to:

> *"…manage the fish and wildlife habitat on Service lands so as to insure conservation of fish and wildlife populations and their habitats in their natural diversity."*

The MOU most importantly goes on to state that the Service agreed to:

> *"…adopt refuge management plans whose provisions -- including provision for animal damage control – are in substantial agreement with the Department's fish and wildlife management plans, unless such plans are determined formally to be incompatible with the purposes for which the respective refuges were established." (underlining added)*

This language is dispositive of which agency has the last word on predator control programs on wildlife refuges in Alaska and that agency is the Fish and Wildlife Service. Under this language that I just cited, the Service only committed to (and the state accepted that limited commitment by signing the agreement) have its approved predator control program be in "substantial agreement" with what the state wanted, and was reserving the right to differ from and reject state proposals where warranted. Moreover, the Service expressly reserved the right to reject a state predator control program that it found to be incompatible with the purposes of a given refuge (i.e. managing wildlife populations for natural diversity).

Finally, the state further acknowledged under the MOU that it recognized:

> *"…that the taking of fish and wildlife by hunting, trapping, or fishing on Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Refuge goals, objectives, or management plans."*

Again, this demonstrates that AF&G acknowledged that the Service had final administrative decision-making and control over compatibility findings for proposed hunting and trapping activities on refuges.

Summary of My Testimony

I believe that my testimony has demonstrated that the true "norm" or "donut" in the interaction of state and federal wildlife agencies is the presence of very close, supportive and cooperative working relationships. While that may not be true in every state in the country, it is clearly true in the clear majority of states, and while disagreements or disputes might arise time to time, the vast majority of them are settled constructively and in good faith. The dispute over the Service's rejection of the State of Alaska's proposed and highly aggressive predator control program is not the norm for state/federal wildlife relations but rather an infrequent "hole" in those relations. The Service's rejection of Alaska's predator proposal is solidly based upon the agency's statutory obligations under ANILCA, the 1997 Refuge Improvement Act, and the 1966 Refuge Administration Act. It is also consistent with the 1982 MOU with the Alaska Department of Fish and Game as well as with a 1983 Department of the Interior policy statement on federal and state jurisdictional issues involving public lands and wildlife. The Service has taken a courageous and correct step and it would be a major mistake for Congress to block the agency from finalizing its predator rule for national wildlife refuges in Alaska.

I am happy to take any questions at this time from the members of the Senate Subcommittee.

****ATTACHMENT****

Center for Science and Democracy at the Union of Concerned Scientists * Clean Water Action * Defenders of Wildlife * Earthjustice * Environment America * Environmental Defense Fund * League of Conservation Voters * Natural Resources Defense Council * Sierra Club

RE: Please Oppose S. 659 ("The Bipartisan Sportsmen's Act of 2015")

January 29, 2016

Dear Senator,

On behalf of our millions of members and supporters nationwide, we write to convey our strong opposition to S. 659 ("The Bipartisan Sportsmen's Act of 2015"). This bill contains anti-environmental provisions that threaten our lands, waters, wildlife and the health of our communities.

We understand that prior to the committee markup of this legislation, some members of the Senate – as well as some of our groups – opposed particular provisions of underlying bill. Those sections include language that would further weaken the Environmental Protection Agency's authority to regulate lead and any other chemical used in firearms, ammunition, and sport fishing equipment, and to allow individuals to possess firearms at any area open to the public at water resources development projects. We urge that these provisions be removed or amended prior to any Senate floor consideration of this legislation.

Further, during the January 20 Environment and Public Works Committee markup of S. 659, a number of incredibly damaging amendments were added to the bill. These non-negotiable, poison pill amendments, listed below, must be removed from this legislation for the sake of our environment and our public health.

Barrasso Amendment #1, which strips gray wolves of existing federal protections and undermines the Endangered Species Act.

This provision would undermine science-based decision making under the Endangered Species Act (ESA) by removing federal protections for gray wolves in Michigan, Minnesota, Wisconsin, and Wyoming. The amendment overrides two federal court decisions that found the state management plans at issue were illegal under the ESA because they did not sufficiently protect wolves. Further, this amendment includes "no judicial review" clauses covering both court decision overrides – thus stripping the ability of citizens to further challenge these wolf delistings. The appeals processes on the two federal court decisions impacting wolves in Wyoming, Michigan, Minnesota, and Wisconsin are still underway. It would be damaging for Congress to meddle in the ESA listing status of a particular species at any stage, but now is an especially bad time as these cases are still playing out in the courts.

Last year, 25 senators, 92 members of the House, and more than 150 organizations opposed this same wolf delisting legislation and all the other anti-Endangered Species Act riders that were added to Fiscal Year 2016 appropriations bills. And this same wolf delisting legislation was highlighted in the White House's Statement of Administration Policy on the House Department of Interior

Appropriations Bill, H.R. 2822, which opposed sections that would "limit the ability of the [U.S. Fish and Wildlife Service] to properly protect, based on the best available science, a number of species including . . . certain gray wolf populations." Further, last month 70 scientists wrote a letter urging that wolves in Great Lakes region and beyond remain protected under the ESA until the legal requirements for delisting are met.

Crapo-Carper-Fischer Amendment #1, which guts Clean Water Act safeguards that protect our streams, rivers, and lakes from excessive pesticide pollution.

This provision axes all Clean Water Act protections for waterways into which pesticides are directly applied. If enacted, this legislation would result in the direct application of pesticides into streams and rivers without any meaningful oversight, as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) – the law under which pesticides are registered – does not require tracking of such pesticide applications. A Clean Water Act pesticide general permit (PGP) that took effect in late 2011 lays out commonsense practices for applying pesticides directly to waters that already fall under the jurisdiction of the Clean Water Act. There is no need to change these protections because the system has worked well ever since these safeguards were put into place four years ago. Alarmist predictions by pesticide manufacturers and others have failed to bear any fruit. Americans rely on the Clean Water Act to protect our rivers, lakes, and streams from pesticides because FIFRA's mere registration requirements have not and will not protect our waters from these toxic chemicals. Already, nearly two thousand U.S. waterways are contaminated by pesticides.

Nearly 150 human health, fishing, and environmental organizations oppose legislation such as this provision that would gut Clean Water Act safeguards that protect communities from toxic pesticides. Further, last year the Environmental Protection Agency reported that they have been getting very good data since the PGP took effect, and they had not been made aware of any issues associated with the PGP.1

1 Testimony of Ken Kopocis, Deputy Assist. Administrator, Office of Water, U.S. Envtl. Prot. Agency, before the House Transportation and Infrastructure Committee (March 18, 2015): "We have not been made aware of any issues associated with the Pesticide General Permit. Nobody has brought an instance to our attention where somebody has not been able to apply a pesticide in a timely manner . . . [t]here have been no instances. We've been getting very good data. . . ." *available at* http://transportation.house.gov/calendar/eventsingle.aspx?EventID=398705

Sullivan Amendment #1, which prohibits the Fish and Wildlife Service from implementing new conservation measures for wolves and brown bears on national wildlife refuges in Alaska.

This amendment would prohibit the U.S. Fish and Wildlife Service from finalizing a rule to regulate non-subsistence hunting of wolves, bears, and other large carnivores on national wildlife refuges across Alaska. The proposed rule rejects various anti-predator recommendations from the state of Alaska that were designed to dramatically suppress carnivores in order to boost game populations. The state's recommendations flouted the Alaska National Interests Lands Conservation Act mandate that national wildlife refuges in Alaska be managed to conserve fish and wildlife populations, including carnivores, in their natural diversity. The Service's proposed rule promotes wildlife conservation by prohibiting certain unethical practices on refuge lands, such as the use of

traps or bait in bear hunting, hunting wolves and coyotes during denning season, and hunting bear cubs or bear sows with cubs.

We strongly urge you to stand up for our lands, waters and wildlife by opposing S. 659. Thank you for your consideration.

Sincerely,

League of Conservation Voters
Earthjustice
Sierra Club
Natural Resources Defense Council
Environmental Defense Fund
Defenders of Wildlife
Clean Water Action
Center for Science and Democracy at the Union of Concerned Scientists
Environment America