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Committee on Environment  
and Public Works Washington, D.C.

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## MODERNIZATION OF THE ENDANGERED SPECIES ACT

WEDNESDAY, FEBRUARY 15, 2017

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:06 a.m. in room 406, Dirksen Senate Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Inhofe, Capito, Boozman, Fischer, Moran, Rounds, Ernst, Sullivan, Shelby, Carper, Booker, and Harris.

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

Senator Barrasso. I will call this hearing to order.

I would like to start by welcoming the newest member of the committee, Senator Richard Shelby from Alabama, who has been appointed to the committee with the confirmation of Jeff Sessions from this committee to be the Attorney General. Welcome, Senator Shelby.

Senator Shelby. Thank you. Mr. Chairman, I am here to support you and do some good things for the environment, right?

Senator Barrasso. Yes, sir.

Senator Shelby. And for jobs.

Senator Barrasso. Then you are on the right committee. Appreciate you being here.

Senator Shelby. Number one, support the Chairman, right?

Senator Barrasso. As we discussed before and as Governor Freudenthal can attest, I do not need your support when I am right.

Senator Shelby. I know. We understand. I will be with you when you are right.

Senator Barrasso. Thank you, so much. Welcome to the committee.

I call this hearing to order.

The Endangered Species Act, which is the topic of this

discussion, was enacted to conserve species identified as endangered or threatened with extinction and to conserve ecosystems upon which those species depend.

Those of us from Wyoming know the important role the Endangered Species Act plays in responsible environmental stewardship. Wyoming is one of the most beautiful States in the Nation. We are home to Yellowstone and Grand Teton National Parks, numerous national forests, pristine lakes, and scenic waterways.

Our wildlife is diverse and abundant. We have thriving populations of grizzly bears, wolves, elk, and bison, to name a few. People travel from around the world to come to Wyoming because our State's natural resources are spectacular.

We in Wyoming are not alone in our natural bounty or in our resolve to conserve species within our borders. Every State in our Nation works hard and invests heavily to protect the unique species of that State.

States throughout the west are collaborating tirelessly with stakeholders to conserve species like the Sage Grouse throughout the west, the Arctic Grayling Fish in Montana, the El Segundo Blue Butterfly in California, and the Columbian White-Tailed Deer in the Pacific Northwest.

The Great Lakes region, like the west, grapples with the Gray Wolf. In the southeast, specifically, in North Carolina,

it is the Red Wolf; in the Great Plains, the Lesser Prairie Chicken; in the south and elsewhere, the Northern Long-Eared Bat; and in the Northeast and Midwest, the Rusty Patch Bumblebee.

99.4 percent of counties in the United States are home to at least one species listed as endangered. That is according to a recent analysis of Fish and Wildlife Service data done by the National Association of Counties.

Here is the problem. The Endangered Species Act is not working today. We should all be concerned when the Endangered Species Act fails to work.

States, counties, wildlife managers, home builders, construction companies, farmers, ranchers, and other stakeholders are all making it clear that the Endangered Species Act is not working today.

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. Of 1,652 species of animals and plants in the United States listed as either endangered or threatened since the law was passed in 1973, only 47 species have been delisted due to recovery of the species.

In other words, the Fish and Wildlife Service has concluded that less than 3 percent of species in the United States under the protection of the Endangered Species Act have recovered

sufficiently to no longer necessitate the protection of the statute. As a doctor, if I admit 100 patients to the hospital and only 3 recover enough under my treatment to be discharged, I would deserve to lose my medical license.

The Western Governors Association, the Association of Fish and Wildlife Agencies, and other stakeholder groups have been working to identify challenges with the Endangered Species Act, and opportunities to make the statute work better. The Bipartisan Association of Western Governors has taken on this cause because the Endangered Species Act has not been updated in any significant way for almost 30 years. Wyoming's current, Governor, Matt Mead, has played an especially important role by leading the WGA's Species Conservation and Endangered Species Act Initiative.

Governor Mead has worked with other western States to develop an Endangered Species Act policy for the WGA, including specific recommendations for improvements to species conservation and to the Endangered Species Act. The western governors unanimously adopted the Endangered Species Act policy at the WGA meeting last June.

This year, the Western Governors Association continues to lead efforts to identify consensus-based solutions to modernize statutes, regulations, and policies, to make the Endangered Species Act work better for wildlife and for people.

As our committee explores the need to modernize the Endangered Species Act, I hope we can emulate the bipartisanship leadership that we had here on this committee and that the WGA has demonstrated in this Act.

When I talk about the bipartisanship in this committee, I hope we can replicate last year's bipartisan success when the entire committee joined together, Republican and Democrat, to modernize the Toxic Substances Control Act, achieving the first major environmental reform in that area in roughly 40 years

[The prepared statement of Senator Barrasso follows:]

With that, I would like to turn to the Ranking Member, Senator Carper, for his testimony.

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

Senator Carper. Thank you, Mr. Chairman.

It is great to be with all of you this morning. To the current governors and other special guests, thank you for joining us from across the country.

I have a statement I am going to read in just a minute but I want to preface it by saying this. Unfortunately, on the Democratic side, we have some emergency meetings that have been called and we will be in and out of the hearing.

I apologize for that. It is not something we had planned but we value your testimony and are going to participate as much as we can.

Coming in, I spoke with the governor and with Matt who works for our Chairman, behind me is Christophe Tulou who when I was governor was our Secretary of Natural Resources and Environmental Control, someone I worked with for many years. We have some very smart people at the desk, Dan and Jamie and our other guests.

A question I would like us to ask is why do we have the ESA? Why do we have the Endangered Species Act? Why did we create it all those years ago? Do we still need it? Is it perfect? Is it written in stone?

I have been reading through the Old Testament and they talk

about tablets and stone. Well, it is not in stone.

Everything I do, I know I can do better. I think that is true for all of us. It is probably true for most statutes but I want to make sure that at the end of the day, the original purpose for the Endangered Species Act to preserve the species that the good Lord put on this planet to share this planet with us, that we have done them no harm.

At the same time, going back to our new member, Richard Shelby, just a kid here, welcome aboard.

To make sure that while we make some improvements to the Endangered Species Act, we do so in a way that is true to the original intent of the law.

I am also always interested in how we create a more nurturing environment for job creation and job preservation. I know he is too. All of us are. I hope we will be true to that too.

Here is my statement.

According to the International Union for the Conservation of Nature, better known as IUCN, almost one-third of all known species of plants and animals, 22,784 species, are currently at risk of extinction.

According to Harvard conservation biologist E.O. Wilson, one of the world's preeminent scholars on biodiversity, if we continue on our current path, half of all species worldwide are

likely to go extinct in the next century.

That is a troublesome warning that, if allowed to become reality, would have tremendously detrimental implications for our global ecosystem.

There is much talk in the halls of Congress these days about "modernizing" the Endangered Species Act, and a host of other environmental protections. In each case, we need to be very thoughtful about what modernization means, the proposals we review and the consequences they would inflict.

Nowhere is that exercise of wisdom and humility more appropriate than when we explore changes to the Endangered Species Act: a lifeline that Congress first extended in 1973 to species struggling to adapt to a world forever altered by the presence of one species in particular, us, human beings.

The House Committee on Merchant Marine and Fisheries, on which I once served a long time ago when Richard and I were in the House together, soberly noted in its report to accompany the original Endangered Species legislation: "If the blue whale, the largest animal in the history of this world, were to disappear, it would not be possible to replace it, it would simply be gone, irretrievably forever."

The value of this law, however, is not just the inherent value of the animals and plants that share this planet with us, but also the benefits we gain from protecting the places where

they live and thrive.

The National Fish and Wildlife Foundation estimate that the natural habitats we have protected in the lower 48 States alone provide a total roughly of \$1.6 trillion per year in benefits. I had to look twice at that number, \$1.6 trillion per year in benefits.

It comes as little surprise, then, that the Endangered Species Act passed Congress in the 1970s nearly unanimously. While much has changed over the past 40-plus years, apparently our desire for thriving species and healthy habitats has not.

As we consider our witnesses' views on the need to modernize the Act, we should also keep in mind its purpose: to prevent the extinction of species and to do our best to restore those at risk. I, for one, am reluctant to do anything to compromise the successes we have achieved.

Another observation is: it has been a long time since we in Congress last reauthorized the Endangered Species Act. What I find interesting is that, given the opportunity to make changes, the compulsion over time was not to weaken, but rather to strengthen the law, to make it more effective in protecting species in peril.

For example, Congress adopted an amendment to address the position of the Reagan Administration and ensure that listing decisions were based solely on biological and scientific

factors, not economic calculations. That was in the Reagan Administration.

At that same time, Congress also saw fit to set deadlines to ensure that federal agencies made responsive and timely determinations in response to the listing petitions they received.

As a former Governor, I will be especially interested in our witnesses' perspectives on the proper role and the success of States in managing species so they do not end up on threatened and endangered species lists.

Along those lines, I am particularly curious whether all of our government agencies at all levels have the resources they need to protect species and help them recover if they end up in peril.

I have a unanimous consent request, Mr. Chairman, that the rest of my statement be entered for the record. I ask unanimous consent to also offer for the record a letter we received from 31 conservation organizations highlighting their support for the Endangered Species Act.

Chairman Barrasso. Without objection, they are entered into the record.

[The referenced information follows:]

Senator Carper. With that, I say thank you all and welcome.

Senator Barrasso. As Senator Carper mentioned, there are some additional meetings that members may have to get to and there are two roll call votes. Members may be coming and going throughout the testimony but I want to thank all the witnesses for being here today.

As you know, your entire statement will be included in the record. We ask that you try to keep your statements to five minutes so that we may have time for questions.

I would like to start by first introducing the first guest, the Honorable David Freudenthal who served as the Democratic Governor of Wyoming from 2003-2011. Governor Freudenthal served as U.S. Attorney for Wyoming from 1994 to 2001 and before that as an attorney in private practice.

Governor Freudenthal has returned to his roots and currently serves as an attorney providing legal counsel on domestic and international environmental and natural resource issues.

In each of his positions, Governor Freudenthal has accumulated a wealth of experience with the Endangered Species Act. I hope that Governor Freudenthal will tell us about his extensive leadership in balancing stakeholder interests from across the political spectrum to effectively and efficiently

addressing challenges posed by the grizzly bear, the wolf, the Sage Grouse and other species.

Governor Freudenthal, it is a distinct honor to welcome you here today as a witness before the Environment and Public Works Committee so that we might benefit from your years of experience and your insight on this important topic.

As a Democrat, your presence underscores the bipartisan opportunity that we have to modernize the Endangered Species Act.

Thank you for traveling to Washington today. We look forward to hearing your testimony.

Senator Carper. Mr. Chairman, may I just add, how does a Democrat with a name like Freudenthal get elected governor of Wyoming? I was hoping you would address that in your opening remarks.

Senator Barrasso. We can start with his overall strength, his wife, Nancy; his talent; the upbringing he had in Thermopolis, Wyoming where my wife is from as well.

Senator Carper. I have heard a lot of good things about Thermopolis.

Senator Barrasso. It is Hot Springs County down to the roots.

Senator Carper. That explains it.

Senator Barrasso. He is a beloved figure and many say the

best governor in the history of the State of Wyoming.

Senator Carper. Are you going to sit there and take that?

STATEMENT OF DAVID D. FREUDENTHAL, FORMER GOVERNOR, STATE OF  
WYOMING

Mr. Freudenthal. Mr. Chairman, Ranking Member and members of the committee, thanks for the opportunity to appear.

It really does offer a tempting rebuttal but in the interest of the economy of time, I will move on to the substance of the matter. However, he is correct that his best asset and mine are our spouses. As you know, politics is a team sport.

When I was younger, in law school I wrote a Law Review article extremely critical of the ESA. This would have been about the time of TVA v. Hill, one of the early acts, the snail darter.

Over time, I have significantly changed my view in that I think we need a statement about the preservation of species. I think it is important that we do it but it is equally important that we do it in a way that functions properly.

You read the goals and they are very noble and the language is very noble, yet Congress gave an incredibly broad grant of authority which has been sort of used and abused over the period of time by different Administrations and by court decisions.

Now we have this mechanism that, by and large, has sand in the gears, I think, in terms of making it work. As much as a member of the Executive Branch, it offends me to have to ask for legislative action, I actually believe that we have to amend it

in a way that protects the original goals but makes it so that it functions.

As you can tell from my testimony, I have war stories as long as my arm but I want to summarize the basic points I think need to be looked at.

First of all, I think the listing process has to be disciplined. One of the reasons that the system does not work is it is just too flooded. The gate for getting in is too low. We do not require enough information from somebody filing a petition to invoke the power of the Federal Government.

It not only affects the species, but it affects the rights of a lot of other people, both property rights and personal rights. That threshold for invoking the power of the Federal Government should be raised.

I do not mean that it should be raised that it becomes prohibitive, but it needs to be more than what occurs now. I give Mr. Ashe credit. They have offered some rules which were pretty strong but by the time they were adopted by their own response and the comments, it essentially said, this is the status quo.

They inserted some things that I think are valuable, one species per petition, but they lost a lot of the ground they had in terms of the nature of the requirements of a petition, in part because a lot of that is not defined in the statute and the

case law has been fairly fluid.

They also abandoned what I thought were some of the best components of the original rewrite of the listing process which was to empower the States because even though all wisdom resides in D.C., all knowledge resides in the field.

The local game and fish people not only know the biology and the species but they know the ground. That gives them a different perspective. It is not perspective as anybody who has been governor can tell you, game and fish agencies are not stooges for economic development. They are advocates for those interests, you appoint people to those agencies because they believe in that mission.

Yet, somehow, that gets discounted as it works its way through the system and the decision-making is centralized in D.C.

I also think that this vagueness in the statute leads to what I call moving the goalpost. We went through it on wolves, we went through it on grizzly bears, and we went through it on the Sage Grouse. You think everything is done and is fine and then here comes somebody with a new theory and Fish and Wildlife moves the goalpost.

As you can tell from my testimony, we have been at bears forever and we have been at wolves forever. The Sage Grouse, I will tell you, while they ended up not listing it, by the time

they were through integrating it into the federal land plans, we may have been better off with the listing because at least the rules were clear. You knew what you could do under Section 7 and Section 10 of the statute.

I am hopeful that it will work out but there are days, both when I was governor and since then in private practice, that you wonder whether or not at least with listing you had some kind of a framework.

I also think that you need to rethink warranted but precluded which has to do with this kind of I call it wildlife purgatory. You are either listed or you are not so you are just hanging out there.

What happens then, particularly for public land States because remember public land States are hit most severely by this because of the interaction of NEPA, ESA and all of the land planning because nearly everything involves federal action which triggers the application of the statute.

What happens is that the land Land Management Agency has essentially become a species management agency by virtue of, for the Forest Service, it is called species of concern and for BLM, it is called the sensitive species. They, in effect, impose listing standards on the management of those species because there are candidate species.

The other thing is I have come to believe, particularly

when I was governor, we required mitigation for a couple of large, significant oil and gas developments where the spacing was such and some of that stuff was on five acre spacing. That clearly has an impact on the habitat.

The mistake we made, not that I made many mistakes when I was governor, I made a lot, but one of them was that we allowed the resource to be dissipated into what I call postage stamp chunks. We did not think about the species life cycle to make sure it was preserved so mitigation became kind of watered down.

I have become a big believer that mitigation that is the preservation of the very best of the habitat and the very best of the species on a genetically diverse basis is really important. It will only occur if you guys amend this statute to place some kind of discipline in what it is going to be.

Our course I cannot leave as a former governor without endorsing the work of the Western Governors Association. Remember that is a group made up of both coastal States and inland States. It deserves serious consideration as you move forward on bipartisan basis, particularly on the funding aspect because there is no free lunch. ESA is as large an unfunded mandate as you have out there.

We learned that both as governor and then again as a member of the blue ribbon panel which I reference in my testimony.

With that, I look forward to the dialogue and the

questions.

[The prepared statement of Mr. Freudenthal follows:]

Senator Barrasso. Thank you very much, Governor Freudenthal.

Senator Carper.

I want to again thank you very much for what you said, Governor.

You mentioned Richard Nixon. You also mentioned as governor, you did not make many mistakes. We know that is not true. We have another recovering governor over here who knows that.

Not many Democrats quote Richard Nixon. I do. One of the things that Richard Nixon said is the only people who do not make mistakes are the people who do not do anything. As we take up his work, we want to be careful that we do not make any significant mistakes. Maybe some tiny ones would be okay but we want to make sure that we are temperate in that.

There are no Democrats here. That is very unusual, especially on an issue like this which is especially important to all of us. We are going to be in and out of our other meetings as quickly as we can so do not take our absence as we are not interested.

You will get questions for the record, a number of those and I will just telegraph a picture if I can.

One of the things I always look for in a diverse panel like this where we have a contentious issue is to try to develop

within the panel consensus. What can we agree on? To the extent we can keep that in mind in the context of your testimony, questions and answers to questions and certainly to questions for the record, I would really appreciate it.

Thank you all so much. I apologize.

Senator Barrasso. Thank you, Senator Carper.

Our next witness is Gordon S. Myers, Executive Director, North Carolina Wildlife Resources Commission; and President of the Southeastern Association of Fish and Wildlife Agencies.

Thank you so much, Mr. Myers, for joining us. We look forward to hearing your testimony.

STATEMENT OF GORDON S. MYERS, EXECUTIVE DIRECTOR, NORTH CAROLINA  
WILDLIFE RESOURCES COMMISSION AND PRESIDENT, THE SOUTHEASTERN  
ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. Myers. Thank you very much for the opportunity to be here.

Good morning, Chairman Barrasso, Ranking Member Carper and committee members.

I am Gordon Myers, Executive Director of the North Carolina Wildlife Resources Commission. Thank you for this opportunity to testify on modernizing the ESA on behalf of my fellow State Fish and Wildlife directors.

The States appreciate the value of the ESA as a landmark federal law to protect and recover imperiled species. After nearly half a century of implementation, we have learned much about the conservation of listed species, their recovery needs and how to facilitate and not proscribe private landowner involvement.

The ESA gives explicit direction on how Congress expected the federal/State jurisdictional relationship to work. Section 6 states "In carrying out the program, the Secretary shall cooperate to the maximum extent practicable with the States." Unfortunately, the Section 6 authorities available to the States have never been fully realized.

Attached to my written statement is the Association of Fish

and Wildlife Agencies' general principles for improving implementation of the ESA. AFWA continues to actively participate in the Western Governors Species Conservation and ESA Initiative led by Governor Matt Meade of Wyoming.

As a general observation, the States believe that addressing life needs and habitat requirements of declining species before triggering ESA protection is the most prudent, economical and biologically sound approach to managing species tending towards listing.

We are working with Congress to identify permanent and dedicated funding sources to build much needed capacity for the species of greatest conservation need. Today I will share six recommended improvements to the ESA and briefly highlight examples that demonstrate State-led conservation delivery.

First is to increase opportunities for Fish and Wildlife agencies to take a more formal and active role to fully participate in all aspects of ESA implementation as intended by Congress.

Second is to restore the distinction between threatened and endangered species to reflect original congressional direction, thereby providing greater flexibility to manage these categories differently.

Third is to improve the listing process, making sure to consider a more realistic timeframe for listing decisions, how

to best utilize available science, give weight to State data and its interpretation by the States and to prove the quality of petitions that are submitted.

Fourth is to require recovery teams to develop science-based recovery plans for listed species and further require that after recovery plan population or habitat objectives are reached, the Secretary must initiate delisting process.

Fifth is to relocate critical habitat designations to the recovery plan development process and give the Secretary more discretion to designate or not designate critical habitat.

Finally, sixth is to expedite the process for down or delisting of recovered species.

Throughout the Nation, States are leading or supporting many innovative efforts to keep common species common, prevent declines of at risk species and recovery of threatened and endangered species.

I will share two examples. The first focuses on the Tar River Spiny mussel, a federally-endangered mussel restricted to the Tar and Neuse River Basins in North Carolina. Between 2014 and 2016, the State, along with our partners, augmented existing populations by introducing more than 9,500 Tar River Spiny mussels propagated at one of our State conservation aquaculture facilities.

Follow up surveys indicate high survival and growth rates

as well as suggest propagation and stocking into best available habitat, including unoccupied habitat, has tremendous potential to assist in species recovery.

However, potential ESA regulatory impacts associated with introductions form a barrier to gaining support.

Let me also share an example of how the States are coordinating and focusing resources on at risk species. Following the 2010 mega-petition filing that covered 404 aquatic species across the Southeast, the States developed the Southeast At-Risk Species Program in partnership with the Fish and Wildlife Service Southeast Region Office.

This broad partnership among the States, the Fish and Wildlife Service, universities, corporate and private partners focuses surveys, monitoring and research on priority at-risk species. It integrates and documents voluntary conservation actions all the while working across jurisdictional boundaries throughout the Southeast.

To date, the outcomes have been extraordinary. Four species have been listed as threatened rather than endangered, eight species have been down-listed to threatened and 93 species have been precluded from listing.

These range-wide conservation partnerships are capable of remarkable conservation outcomes. After all, many hands make light work.

Much has changed since the ESA was enacted 44 years ago. We cannot do the same thing over and over and expect different results. To realize the greatest potential of our partnerships, it is time to make substantial investments in capacity while also modernizing the ESA to fully engage our States and private partners to conserve and recover at-risk and listed species.

Thank you once again for this opportunity this morning.

[The prepared statement of Mr. Myers follows:]

Senator Barrasso. Thank you very much, Mr. Myers.

Our next witness is James Holte who is President of the Wisconsin Farm Bureau Federation. Mr. Holte, thanks so much for joining us. We look forward to your testimony.

STATEMENT OF JAMES HOLTE, PRESIDENT, WISCONSIN FARM BUREAU  
FEDERATION

Mr. Holte. Good morning, Chairman Barrasso, Ranking Member Carper and members of the committee.

My name is Jim Holte. I am a beef and grain farmer from Elk Mound, Wisconsin. I also serve as President of the Wisconsin Farm Bureau Federation and as a member of the American Farm Bureau Federation Board of Directors.

I appreciate the opportunity to speak with you today about the Endangered Species Act and specifically, one of the listed species that impacts many farmers throughout the State of Wisconsin, the gray wolf.

I included many pertinent statistics about Wisconsin's population in my written testimony which I hope you will take some time to review. Today, I would like to share with you a story of one of our young farm families from Medford, Wisconsin which has experienced devastating wolf depredation.

I have heard many personal stories from farmers about the loss of livestock and how it has impacted their farms, lives and their families. These stories are powerful, emotional and very real.

The story of fourth generation farmers Ryan and Cheri Klussendorf takes place in June of 2010. They own and operate a 100 cow rotationally grazing dairy farm and had just moved a

group of young calves out to pasture for the summer.

In early July, they received a call in the middle of the night from a local county sheriff that a large group of young cattle were out in the roadway not far from their farm. This occurred several more times over the next two months as passing motorists knocked on their door in the middle of the night because cattle were out and agitated.

In late August, there another middle of the night visit from the local sheriff resulted in a citation for animals at large.

Ryan was able to start farming at the age of 21 because he was able to keep costs low by grazing cattle. Now, the liability he faced every night while his cattle were on pasture was a serious public safety hazard with potentially devastating impacts to his life.

They asked the local district attorney and sheriff's office for help but were told "There is nothing we can do for you. Buy a gun."

On the morning of November 7, 2010, the family started chores. Some of the cows were already in the barnyard to be milked, which was rather unusual because they normally are brought in from the pasture.

As Ryan headed to the pasture to bring in the rest of the cows, he found what was left of cow 2042. The gruesome scene

told the story of the deadly attack on this three year old cow. She was bitten in the back of the leg until all the tendons and ligaments were severed, she was dragged down from behind after she could no longer stand and the pack of wolves started eating her alive.

The pasture was a blood bath and her corpse was unidentifiable other than the tags from ears were found 100 feet away. This was the worse summer of Ryan's life. His stomach sinks every time the phone rings late at night; he sleeps with a window open no matter the time of the year so he can listen to the traffic on the road.

He springs out of bed at night thinking there is a knock at the door when it is only the icemaker in the kitchen. This happened more than six years ago and yet the events during the summer of 2010 impact every decision the Klussendorfs make for their cattle and their farm management practices.

All of Ryan and Cheri's cows are now within 200 feet of their farmyard at night. Calves are no longer put on pasture. The cost has been burdensome but the emotional toll, the increased stress on the family and the animals has been tremendous.

Ryan was a husband, a father and a farmer. Right now, he cannot protect his cows and his family's livelihood without the risk of being prosecuted because it is illegal to shoot a wolf

in Wisconsin. The graphic images of this incident are included in my written testimony.

The Klussendorfs are not the only farmers who have been impacted which is why the Wisconsin Farm Bureau continues to support the decision to delist the gray wolf and allow State wildlife officials to manage wolf populations.

Interactions between farmers, their livestock, rural residents and wolves continue to escalate without a remedy in sight. During the last 15 years, the gray wolf's endangered status has undergone numerous changes. Many have not been based on scientific evidence that the population numbers for this species have been met and exceeded but flaws in the Act make these decisions prone to politics and legal battles.

While the recovery status of the gray wolf in the Western Great Lakes Region continues to be fought in courtrooms and determined by federal judges, Wisconsin farmers continue to have their hands tied when it comes to protecting their livestock and their livelihoods.

Congressional action needs to occur and our farmers continue to lobby Congress for this change. The ESA has been successful for species recovery but it has failed to remove the species once the population adequately recovered.

Congress intended for the ESA to protect species from extinction. However, it prioritizes species listing over actual

recovery and habitat conservation. The law fails to provide adequate incentives for working land species conservation and imposes far reaching regulatory burdens on agriculture.

Reform of the ESA should include a focus on species recovery and habitat conservation that respects landowners. Coordination with other State and Wildlife agencies to leverage private incentive-based conservation efforts can better achieve long term conservation goals.

I appreciate the actions and efforts by this committee to address needed reforms to the Endangered Species Act and the serious nature of the gray wolf situation in Wisconsin.

Thank you for your time. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Holte follows:]

Senator Barrasso. Thank you very much, Mr. Holte, for your compelling testimony. We appreciate you sharing your story.

Our next witness is the Honorable Jamie Rappaport Clark, President and CEO of Defenders of Wildlife. Thank you very much for joining us today. We look forward to your testimony.

STATEMENT OF JAMIE RAPPAPORT CLARK, PRESIDENT AND CEO, DEFENDERS  
OF WILDLIFE

Ms. Rappaport Clark. Thank you, Mr. Chairman, Ranking Member Carper and other members of the committee.

I am Jamie Rappaport Clark, President and CEO of Defenders of Wildlife, a national, nonprofit conservation organization dedicated to the protection of all native animals and plants and their natural communities.

From 1997 to 2001, I served as Director of the U.S. Fish and Wildlife Service under former President Bill Clinton. For 16 years prior to that, I was a wildlife biologist for both the Department of Defense and the Department of the Interior.

Thank you for the opportunity to present the views of Defenders at today's oversight hearing on modernizing the Endangered Species Act.

For almost 45 years now, the Endangered Species Act has protected our most imperiled species helping bring back the bald eagle, the American alligator, the Stellar sea lion, the peregrine falcon and many others from the brink of extinction.

It is a law that once enjoyed amazing bipartisan support. It passed the Senate in 1973 unanimously. It is a law that American people still support. A national poll conducted just last December found that 81 percent of voters believed that saving at risk wildlife from extinction is an important goal for

the Federal Government.

It is a law that many other countries look to as a model for expressing their own commitment to future generations.

When President Nixon signed the Endangered Species Act into law, it represented the collective determination of the American public that we would not sit by and watch our species go extinct. It is a law that embodies a lofty vision of protection and preservation of species grounded in clear conservation principles.

Simply put, the Endangered Species Act works. It is important to remember that the Act is a tool of last resource to save species, the final measure when all others have failed to protect plants and animals on the brink of extinction.

It is an alarm bell that sends a warning signal about the state of our natural world, giving us an opportunity to find ways to save imperiled species and their habitat, plan for their recovery and be responsible stewards of our environment.

Endangered species and the plants put in place to restore them are increasingly presented as barriers or annoyances to unfettered development or unchecked planned use activities. The Act has become a lightning rod for those who want less oversight and less protection from government.

That is not what the American people want for our wildlife which brings us to today's oversight hearing. In my over 35

years of experience, talk of modernizing the Endangered Species Act has amounted to one thing, a euphemism for undermining and weakening the statute.

In just the past two years in this Congress, we have seen over 130 bills or riders proposed that all without exception would have weakened or undermined the Act and its purposes veering away from the American value of conservation and protection for future generations.

The Endangered Species Act is not broken. It does not need to be fixed. In fact, it is enormously flexible. It has been improved by continuous administrative reforms that have made the law work better, both for the species it is designed to protect and for the landowners and other stakeholders affected by its provisions.

Federal agencies have made significant advances in implementing the Act from habitat conservation plans that integrate development and species conservation to candid conservation agreements with assurances that provide upstream solutions and regulatory certainty to landowners. That process is continuing.

Defenders is deeply engaged in thinking through new ways to make the Act work better and to make it more transparent for all stakeholders.

It is also important to remember that for many species,

recovery occurs not over years or months, but over decades. We cannot rush nature towards recovery but we can rush its destruction by weakening the single greatest tool we have to protect it.

The Act's strength is in its simple purpose, to prevent the extinction of threatened and endangered species and to promote their recovery. Local, State, tribal and federal agencies working with interested stakeholders continue to do some innovative, cutting edge work that guarantees the best chance for species survival.

The biggest problem the Endangered Species Act faces is not a need for modernization. It is a need for funding. Conflict surrounding the Act arises when government agencies lack the resources to fully implement the law.

Starving the federal and State agencies that are committed to preventing species extinction and providing for the diversity of life across our country seriously undermines the goals of the law.

This debate should not be about the law. Rather, it should be about our commitment to its purposes and goals. Once a species is gone, it is gone forever. Let us not be the generation that bears the inglorious reputation of condemning our species to irrevocable extinction. We can and must do better for our children and grandchildren. They deserve it.

Thank you.

[The prepared statement of Ms. Rappaport Clark follows:]

Senator Inhofe. [presiding] Thank you, Ms. Rappaport Clark.

What you are witnessing right now is we are swapping the Chair back and forth between Senator Barrasso and me because we are in the middle of two votes right now. I have already voted on the first and that is what he is doing now.

Before we hear from Dan Ashe, we know the next witness but we know him in a different life. Why don't you take just a moment and tell us a little bit about your incarnation before your presentation?

Mr. Ashe. Thank you, Senator Inhofe.

It is a joy to be back here once again. From 2011 to January of 2017, I served as Director of the United States Fish and Wildlife Service. My confirmation was considered in a hearing by this committee.

STATEMENT OF DAN M. ASHE, PRESIDENT AND CEO, ASSOCIATION OF ZOOS  
AND AQUARIUMS

Mr. Ashe. Today, I sit here as President and Chief Executive Officer of the Association of Zoos and Aquariums or as we affectionately call it, AZA. AZA represents 232 accredited aquariums, nature centers, science centers and zoos that annually host more than 186 million visitors, generating more than \$17 billion in economic activity and employing over 175,000 Americans.

I believe we bring a somewhat unique perspective to this important discussion. We are a partner with our governments in species conservation but we are also a directly and significantly regulated party.

As a partner, AZA members contributed over \$186 million to conservation in 2016 alone.

Senator Inhofe. Are you into your presentation? What are you doing now?

Mr. Ashe. I am making my presentation.

Senator Inhofe. Yes, go ahead. You are going to have to get out to Tulsa and see, where you least expect them, spectacular aquariums. We have them.

Mr. Ashe. I will be there.

Senator Inhofe. I will look for you.

Mr. Ashe. We support more than 1,000 field conservation

and research projects here in the U.S. and in more than 100 other countries. From this practitioner perspective, the law is working to save species. It is a catalyst for organizations like ours and our members to participate in conservation.

A good example is the partnership between AZA accredited zoos, the Federal and State governments and other organizations to conserve the California condor. Without that effort, the California condor would be extinct today.

It began with a bold decision to remove all California condors from the wild back in the early 1980s. Like so many other efforts to recover endangered species, it has required continuous effort and extraordinary dedication. The Los Angeles Zoo, the San Diego Zoo, the Oregon Zoo, and many others have played integral roles in that effort.

AZA accredited aquariums and zoos have supported recovery of Florida manatees, spending over \$6 million in the last five years alone. Tampa's Lowry Park Zoo, Sea World, the Mote Marine Laboratory and Aquarium have long partnered to rescue, rehabilitate and release injured and ill Florida manatees and conduct crucial research that is answering questions about manatee biology, health and behavior so that we can better understand the species and inform management decisions and the public.

Especially since Senator Barrasso is the new Chairman, I

have to mention the effort to recover black-footed ferrets which were once believed extinct and were rediscovered near Matesee, Wyoming in 1981.

Last July, I had the privilege to join Wyoming rancher, Christina Hogg and her family and many others in reintroducing 35 ferrets to this incredible landscape. ChristinaHogg sent me this little cardholder which I keep in my office until today to remind me of the importance of partnership with private landowners and what we can do when we work together with private landowners.

We are proud of our history, zoos and aquariums, but we are far from done. Building on the success of existing conservation and species preservation efforts, AZA and its members are launching a new effort we call SAFE, Saving Animals From Extinction.

Through SAFE we are challenging ourselves to provide urgent leadership and create a collective movement that is strong enough to turn the tide against the massive wave of animal extinctions.

As regulated parties, our members, their 186 million visitors and their communities depend upon an efficient and effective regulatory structure within the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

As any regulated party from time to time, we have

frustrations but overall, the process is professional and predictable as evidenced by the vibrant economy surrounding AZA aquariums and zoos. It works.

Mr. Chairman, as you and committee members consider the future of this great law, I would suggest careful consideration of context. Scientists estimate that the total number of mammals, birds, reptiles, amphibians and fish has declined by more than 50 percent since 1970, leading many to conclude that we are living amidst the planet's sixth mass extinction event.

It is being driven by the ability of human beings to change the very physics underlying the earth's ecology, the molecular composition of the atmosphere, the moisture of soil, and the temperature and acidity of oceans.

Mr. Chairman, saving species from extinction is very challenging. It will become increasingly challenging in the future. The Endangered Species Act is the world's gold standard. It has helped us to achieve miracles.

It is not perfect and we can make it better, but as this Congress considers its future, your goal should be to make it stronger, faster and better for the 21st century because life literally depends upon it.

Thank you, Mr. Chairman, as always, for the opportunity to be here with you. I look forward to a dialogue with you.

[The prepared statement of Mr. Ashe follows:]

Senator Inhofe. It is nice to have you back. I would say when you made the statement that when you work on a partnership basis, as you personally came out on two occasions to western Oklahoma and discovered that the landowners want the pristine environment the same as you might from another perspective.

It is easy to sit in Washington and talk about how everything is working well but when you are out in the States is where you really have problems.

I am going to start the questions since I am the only one here. I am not going to be encumbered by any short timeline.

Why don't you ask your questions first?

Senator Barrasso. [presiding] Thank you, Senator Inhofe, for holding down the fort as people are back and forth with the votes. There are two votes so some of the members are waiting for that second vote to start. As a result, they will be back.

I would like to start with Governor Freudenthal, if I may.

In 1973, the Congress was controlled by the Democrats but with a Republican President, they enacted the Endangered Species Act as we discussed earlier. Cliff Hansen, former Governor of Wyoming and then Senator for Wyoming, supported it.

The last significant amendments took place in 1988, almost 30 years ago. Since that time, a lot has changed. Do you agree with the stakeholders who argue that the time really has come to modernize the Endangered Species Act? Would you give us your

thoughts on that?

Mr. Freudenthal. Senator, the world has changed. This Act has just too much sand in the gears to get where it needs to go. Some of these things need congressional adjustment so that we actually get where we want to go as Dan Ashe indicates in a more efficient, more logical kind of fashion and employ the resources that are there.

There is a history, as you know. There have been a couple of times when they have tried to redo the ESA and it got lost in two sides wanting the whole loaf. I think the opportunity now is to arrive at some compromises that address the portions that could function better.

There is no suggestion that it not be continued, at least not in the Senate so far, but if we think it is going to function in the way we wanted it, we are going to have to change it. The proof of that is when everybody talks about how much is not being done. We forget maybe we could do more if we did it right, faster and better and frankly, if we employed the resources of the State.

Senator Barrasso. Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

Let me say from our experience, I had the opportunity to chair this committee for a number of years. We have had problems and some have been pretty serious. I categorize them

in three groups.

One is that the States, during this process, seemed to be ignored. The second thing is the delisting just never happens. We talk about it and it never comes about. Third, the stakeholders and the landowners are pretty much ignored.

I will start with you, Governor. In Oklahoma, we set in motion, and you will remember this, Dan Ashe because you were there at the time, a five State partnership with New Mexico, Colorado, Kansas and Texas.

We got together and spent a lot of time on this. We sat down and decided what we were going to do with the problems facing the Lesser Prairie Chicken by bringing all the States together, the agencies together, industries, conservation groups and private landowners.

Despite this, the Fish and Wildlife listed the species as threatened. That listing was so wrong that the courts reversed it. Yet, Fish and Wildlife continued moving forward.

As a former Governor of a State, isn't this a little frustrating when you go to this much work? That is not an easy thing to do, to get five States all in one room for a long period of time.

Mr. Freudenthal. Senator, I am familiar a bit with the Lesser Prairie Chicken. Obviously it is complicated. From my experience I would say they ought to be required at the outset

if they are going to list to tell you what is required to get it delisted so that does not continue to move.

Secondly, they need to recognize that if they want to do this on a scale that does something for the species, multistate cooperation is difficult and it is expensive to put together. At some point, they have to become a partner with the States.

The problem with the Act is it has the cooperation component but it has this role where they are also judge and jury. At some point, those two roles have to be reconciled. If you are going to be partners in putting together a recovery effort, yet you have to be guarded.

As I say, they would always come and talk to us about the wolf, the bear and that and say, we really cannot say anything because that would be pre-decisional. We have to somehow reconcile the fact that cooperation means people actually can sit down and work together.

The problem I have with it is that they are judge and jury and at the same time they want to be a cooperator. We have to reconcile those two roles because what happens now is cooperation with the States is clearly secondary because the decision-making role is so subject to judicial review.

Senator Inhofe. Excellent.

Mr. Myers, getting back to the delisting dilemma that we are sometimes face, in 1989, Fish and Wildlife listed the

American Burrowing Beetle. This was the hardest thing for me to explain back home, not just to road builders and farmers, about why they cannot do something because there is a bug down there because it had disappeared from its former range. That was the reason for doing it in the first place.

It seems the information relied on for the listing was based on anecdotal historical evidence and poorly performed surveys; yet, nearly 30 years later, the beetle is a thriving and stable species but we are still not delisting.

Mr. Myers, how could that system be improved?

Mr. Myers. I guess I would mention a couple of things. One is I do not know the specifics of the case but I would first mention that many States, in fact, have very good data on species. I think it is important to assure integration of State data into any decisions.

Relative to the delisting, I think, as Governor Freudenthal pointed out, specific triggers are very important. I think integration of those triggers upfront in the listing process is also key but once those triggers obtained, whether they are habitat or population objectives that should key and bring forward the delisting process.

Of course often the courts end up becoming a very big problem in moving along those decisions.

Senator Inhofe. What I hear from both of you is that maybe

a system should be set up that when a listing goes into place, state at that point the conditions and the timeline of delisting and then expand that even further and go into others that are already listed because there are many on that list right now.

The last question I have, Mr. Chairman, would be for Mr. Holte. Our Oklahoma farmers and ranchers are just now learning about a petition to list the Monarch Butterfly under the Endangered Species Act.

They were not aware that there was a problem. They did not know anything about it until they woke up and found that was going on. The Monarchs need milkweed to breed; yet, milkweed is poisonous to cattle. It is clear that a listing will directly affect our agricultural community, yet they were left in the dark.

We are talking about modernizing now. Changes are going to be made. What are your thoughts about that, Mr. Holte?

Mr. Holte. I would respond that I think the communication to farmers and others might be enhanced by a better line of communication with general farm organizations, commodity groups, and State Departments of Natural Resources.

I would admit that when I, my neighbors or colleagues arise in the morning, the first thing we think about is not the Endangered Species Act. It is producing our livelihood in production of food and fiber.

Opportunity to share that information and concerns before they are actually listed and then the opportunity to work with States with incentive-based programs could maybe solve the situation before we get to a listing situation. Those processes could be very helpful, I believe.

Senator Inhofe. Thank you very much.

Senator Barrasso. Thank you, Senator Inhofe. I appreciate it.

Governor Freudenthal, I wanted to talk about Wyoming and the time you were governor. The wolf population really has exceeded recovery goals I think since about 2002. The Yellowstone population of the grizzly bears has exceeded recovery goals for a decade. They both remain listed.

In the case of the grizzly bear, it is not because of scientific judgment of Fish and Wildlife, but because of litigation. Can we talk about that in terms of is the Endangered Species Act working when species have exceeded the recovery goals for a decade and continue to be listed?

Mr. Freudenthal. Mr. Chairman, the numbers are correct. Everyone agrees it is a robust population. The bear is hung up, I think, in part, over concern from the Fish and Wildlife Service that they want to engage in post-delisting management. Under the statute, that is not contemplated.

The problem I see is that the language that is in the

statute was intentionally broad. As lawyers, we are very good at taking broad language and creating new law, particularly law that works to whatever client we have.

I think if we could end up with a clarifying in the statute as to when those targets are hit and they need to be established at the time of listing, and then if they are going to deviate from those targets later, which is what they tended to do.

If you look at the history of both those species, the area over which there were management prescriptions imposed grew significantly over the decades involved. Each of those was really unreviewable. At some point, we had to say this is what is needed. The courts have to be bound by that. The only way they will be is if the language of the statute is modified.

The rules and regulations vary over Administrations and then the administrative judgments vary. Nobody argues that the wolf population is not robust. I would argue that if we did it right and thought again about distinct population segment and thought about that as part of the State management, they would not have needed the rider to allow Montana and Idaho to proceed. In Wyoming, we were still in dispute with the Fish and Wildlife Service.

There has to be reconciliation between the nobility of the goals and the implementation. The perfect examples are the wolf and the grizzly bear.

I sympathize with Mr. Holte because I was the prosecutor in some of those cases, not in your district, and people are defending their livelihood. I think we have not understood that if we can structure it right, they would be equally interested in defending the wolves.

It is not that people are against having the wolf present. Some are; as you know, some of our friends are. Most people say, look, I can live with this but I have to know what the rules are and I have to have some assurance that in the context of those rules, whatever judgment I execute will be respected, both in terms of prosecution and in terms of recovery.

Senator Barrasso. So we need to improve the certainty?

Mr. Freudenthal. Absolutely.

Senator Barrasso. Mr. Ashe, last summer, the Western Governors Association unanimously passed a policy resolution to modernize the Endangered Species Act. There was an article in E&E last June. In your comments, you remarked about the Western Governors Association saying, "I think the resolution is a great place to begin a dialogue. If we can continue that dialogue and if we can keep it bipartisan and then start to take the resolution and build that into more specific principles and legislative language, then I think it represents the best opportunity that we have had in a long time to think about reauthorization of the Endangered Species Act."

Do you still agree that the Endangered Species Act needs to be modernized and that the Western Governors Association bipartisan policy resolution represents a decent place to start the discussion?

Mr. Ashe. I do agree that the WGA resolution represents a good step forward. The statement you made earlier about a bipartisan effort on this committee, I think obviously is what is going to happen or needs to happen if we are going to have an effective debate about the future of the Endangered Species Act.

Hats off to Governors Mead and Bullock and the leadership of the WGA and the U.S. Fish and Wildlife Service under my leadership supported that effort. We supported it financially, and we supported it by providing our expertise.

I would encourage bipartisan communication and discussion about the future of this law. It cannot be premised, I do not think, Senator, on a notion that the law is broken. I believe that the law is working well. I will mirror Senator Carper's remark saying can it be better, can it work better? Of course, it can. I do not think a debate, the starting point of debate should be that the law is broken.

Senator Barrasso. Ms. Rappaport Clark, you said in your testimony, "The ESA is not broken." You went on to say, "It does not need to be fixed."

In 2013, you authored an article in BioScience entitled,

"The Endangered Species Act at 40, Opportunities for Improvement." In the article, you argued for modernization of the Endangered Species Act. You highlighted five areas for reform. You concluded that "These ideas were 'just the tip of the iceberg.'" The vast majority of Americans, I think, agree with you.

There was actually a poll conducted by Morning Consult in 2015 that said 63 percent of registered voters favor updating and modernizing the Endangered Species Act. Only 10 percent oppose modernization.

While we may not agree precisely on what changes need to be made to the Endangered Species Act, it does sound like we do agree that some changes are needed. Are you willing to work with the committee on ESA modernization?

Ms. Rappaport Clark. Thank you, Senator Barrasso, for that question. There are a couple of things.

I would echo what I am hearing on this panel that certainly the Endangered Species Act could work better, absolutely. Before I get too far into my response, yes, I am happy to work with this committee, for sure, as I have for years.

Again, the Endangered Species Act, as we stay focused on the purposes and the goals and the objectives, what we end up debating are the implementation mechanics. I think you have heard a lot of that conversation today.

I believe I have seen it happen through both Democratic and Republican Administrations. A lot of the challenges we are hearing conversation about I believe can be fixed administratively. There is a lot more rigor that can go into the Endangered Species Act.

I remain concerned about these times given the 100-plus amendments that occurred in the last Congress which seemed disconnected from the purposes and goals. I believe the American public enjoys and supports this law. As long as we are working to strengthen its ability to achieve its goals and vision, absolutely, it can work better.

A huge issue though which I think undercuts a lot of the frustration you are hearing is this law is starving. I have watched it happen since my time as director through Dan's time as director, the chipping away of the funding fabric and the ability of the federal and State agencies to save species at risk of extinction is very dire.

To the degree this committee can work with the appropriators to adequately fund, I think you will see a lot of this frustration begin to erode.

Senator Barrasso. Thank you.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. We appreciate you and Senator Carper for holding such an important hearing.

It really is important to the people of Arkansas.

Thank all of you for being here. We do appreciate your testimony.

This is not a question, Ms. Clark, but I think the reason we are seeing so much backlash in the sense of people introducing legislation in an effort to kind of push things back the other way is I think we have had instances where things have, sometimes rightfully, sometimes wrongfully, appeared pretty heavy-handed in the sense of using the power of the Endangered Species Act.

Arkansas is a natural State. It is so important for so many different reasons, including \$1.55 billion to the State, 25,000 jobs annually in the case of sports people. However, I and many others, as we have heard today, have grown concerned that the Endangered Species Act at times has been implemented in a manner that hurts Arkansas families, farms, businesses and communities with disputable benefits at times to wildlife.

Director Myers, critical habitat designation has caused unease and even fear with private landowners concerned for the use of their property if it is within the circle. Under Section of the ESA, private landowners are required to consult with the Fish and Wildlife Service when their property use requires a federal permit or funding. Do we really need critical habitat designation to apply to private landowners?

Mr. Myers. Thank you, Senator, for the question.

As you stated, Section 7 consultation is triggered when a federal action agency is permitting or funding a project on private land where a listed or threatened species is present. That consultation will result in whether or not that permit or funding is allocated for that particular land management activity.

In my view, critical habitat designation has no further effect on those situations but it can cause unnecessary anxiety as you have pointed out. I would just further my view that designation of that habitat could be eliminated on private lands.

Senator Boozman. Tell me how it affects agriculture?

Mr. Myers. With agricultural practices, it is a similar situation. If they are receiving say farm bill allocations and there is critical habitat that overlays, there are those conditions under which if those species are present, as they go through their planning process with FSA or NRCS, they could be precluded from receiving some of those funds.

Senator Boozman. Often there is little data available for a petitioned species other than required under Section 4 listing criteria. However, when developing a recovery plan, much more refined data on life needs and habitat requirements is realized.

Does it make sense that the need for critical habitat

designation occurs with the recovery plan development and not at the listing?

Mr. Myers. Senator, absolutely. I think there are many examples that show that as you go into that recovery plan process, there is much more comprehensive amounts of data and much more information through stakeholders and partners.

Of the simple examples I have encountered, the Atlantic Sturgeon is a simple example of there was critical habitat designated that included reaches of rivers that were above dams where that species of fish never would be occurring.

Had those designations come subsequent to or during the recovery planning process, I think it would have been refined and been more targeted.

Senator Boozman. Director Ashe, it is good to see you. There is lots of talk about the frivolous lawsuits that come about. It does seem there is perhaps an economic incentive for lawyers to do that in the sense that their attorney fees are paid regardless of if they win the case or not. Can you explain why this has become the norm?

Mr. Ashe. Attorney fees are paid only if they win their case. They are not paid whether they win the case or not. As I have testified before, when somebody takes on the Federal Government that is a big chore.

We get sued by States, energy industry, and NGOs. When

they win, the law provides their attorney fees and costs should be paid but it is only when they win. I would say that is not a substantial burden for the Federal Government because number one, they do not win that often and two, it is not a big expense for us.

Senator Boozman. In regard to that, how much time and effort is spent by the agency in man hours and the hassle factor where you could have that ability to do other things directly in line with your mission? I would say, certainly all lawsuits are not frivolous and this and that, but there is enough smoke here that there actually is some fire.

Mr. Ashe. Whether and how to compensate people for successful challenge against the Federal Government is a legitimate thing for the Congress to consider. It is kind of outside my area of expertise but it is kind of a fundamental question of justice. To what extent do you want, does the Congress want to provide recompense to people who challenge their Federal Government and win?

Senator Boozman. Right, but it does take a lot of resources from the agency.

Mr. Ashe. It takes resources but again, as others have mentioned here, Senator, the biggest challenge for the U.S. Fish and Wildlife Service in implementing the law is not the challenge that we face in the courts. It is the lack of

capacity for us to do the work that the law requires.

When we talk about recovery and recovering species, we proved in the last Administration I think that where you make a dedicated investment and dedicated effort, we can recover species and get them off the list. We delisted due to recovery more species than all previous Administrations combined.

Where you dedicate the resources, where you build capacity, where we build partnership with our State colleagues, we can achieve success. I think we have shown that.

If I could take one minute, I would tell you a number of suggestions have been made here today to make recovery standards binding at the time of listing to move critical habitat designation up to recovery planning.

If you push everything up to the point at which you list the species, you are going to create a huge backlog. If we push everything up to the point at which we make a listing determination, it is going to make the work impossible to do listing, to do critical habitat, to do recovery planning, and to make that all binding at the time that you list the species is an incredible burden.

I would urge the committee to think about that carefully.

Senator Boozman. Thank you very much.

Thank you, Mr. Chairman.

Senator Inhofe. [presiding] Thank you, Senator Boozman.

Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Governor Freudenthal, it is good to see you once again. I could not agree more with your comments regarding the Western Governors Association. That is an organization that is bipartisan in nature but it is made up of leaders in the western part of the United States from many different points of view but they come together and work through issues that are important to them.

With the amount of federal lands with which they have to work and the different ecosystems they are all involved with, they really do a marvelous job of trying to come together and find consensus.

You talked about moving the goalpost and changing the course when someone has a new theory with regard to how we respond to these listings and so forth. Is this the result of a lack of perhaps up to date science at the agency, and if so, how should the scientific process be improved to make sure that we are using the most accurate science and have clear goals for species conservation?

Mr. Freudenthal. As you know, as former governors, we believe in the Western Governors' largely bipartisan operation and it always has been.

I think what happens is, as I mentioned in my testimony, we

develop missions that people want to insert into the ESA. In the case of Sage Grouse, the science sort of took a back seat to the Administration's desire to impose landscape scale planning which is a legitimate policy but should actually be manifested not through an ESA listing where you piggyback it onto the Sage Grouse.

What happens is people develop new ideas. I am not a scientist but I will say the new ideas seem to conveniently align with the policy of the given Administration. In the recent rules, they stuck in the word "credible." That was essentially a reflection of the status quo. We need to strengthen the kind of science that can be brought to bear on these decisions.

I am nervous about peer review. I have a son who is a scientist. It is a lot like lawyers judging each other. We are pretty kind to each other but I think the legislation has to have some yardstick that says the science has to have either been, you have to talk to the scientists, something that formulates whether it is required it be peer reviewed.

For instance, in the attempt to change the listing, they wanted the proponent to offer kind of both sides of the argument. That got struck before they finalized it. At some point, you have to say science is a lot like a lot of other things. Some of it is statistical and some of it is opinion.

You have to differentiate opinion from what I would call statistical or more supportable facts.

I am not quite sure how you word it but one of the things that has to come out of this is better definition so that Director Ashe's successors and others, as well as the States, begin to get a sense of certainty and what the target is.

The problem is that the ESA will work if we stop putting bells and whistles on it to accomplish other purposes. Suddenly it becomes how do we get the western States to behave? How do we save 11 State Sage Grouse or sagebrush ecosystems? You end up saying that is not what the ESA is for. The ESA is supposed to be species-specific and not necessarily become a fulcrum by which you lift up certain policy preferences.

I think the key is to get back to the notion of what is the science related to that species and how is that science validated? I, obviously, disagree with Dan. I think more of it can be done up front so that we would know what the objective was on Sage Grouse, know the objective on bears, know the objective on the wolf so you could actually focus the limited resources we have.

Senator Rounds. This may have been covered since we are all popping in and out. If it is, I will move on.

I am curious both with Governor Freudenthal and also Director Myers. In 2015, we held an oversight subcommittee

hearing on the practice of sue and settle. Particularly in this hearing, we heard testimony discussing the impact of the 2011 legal settlement between the Fish and Wildlife Service and the Center for Biological Diversity and Wild Earth Guardians that required the agency to issue a final listing decision on more than 250 species.

Can you explain what impact the practice of sue and settle has on the ability of States and local units of government with whom you should be working to work constructively together toward species conservation? I would like your thoughts on it. Director Ashe, would you like to begin?

Mr. Ashe. As I testified before, the notion of sue and settle, number one, I think is illegal. It would be illegal for the U.S. Fish and Wildlife Service to encourage someone to sue us and then settle. That is not what happened.

What happened is the law contains very strict deadlines. We found ourselves I think in 18 federal district courts arguing deadline lawsuits. We threw a lasso around that and pulled the plaintiffs to the table and forced them to settle. It was not a cozy agreement. It was actually a forced settlement.

That allowed us to then put together a timeline that would allow us to meet the requirements under the law and get the courts to then hold to that timeline.

I would say from the standpoint of our State and local

partners, it was very successful because we were able to push the big controversial things to the back, like Sage Grouse, which gave us three years to work with our State colleagues and sit down.

We formed a Sage Grouse Task Force with 11 range States. It gave us the space to make a good decision. The same happened with Arctic Grayling. It gave us the space to work with the State of Montana and ranchers in the Big Hole Valley of Montana and avoid the need to list the Arctic Grayling.

I think it worked to the advantage of our partners for us to have a logical, predictable, sensible schedule that everyone could see.

Senator Rounds. I apologize to the Chair but would you mind if the Governor would respond to that as well? Thank you.

Mr. Freudenthal. An old lawyer mentor of mine told me that a bad settlement is better than a good lawsuit. That is only true if you are in the room when it is being settled and when it is being approved.

This is sort of we are going to settle it and then we will issue and you can comment on it, particularly on something that is broad and affects an immense number of people and their rights.

I do not assert collusion. It is kind of fun as a rotary speech matter, but I do not do that as a matter of lawyer

ethics. It is one that has a convenient outcome. People settle when the outcome works for both of them. It is the people on the outside, the States, private property owners, interest groups who are confronted with a de facto end game that is finished.

I would also take exception on the question of we need to define win when it comes to the attorneys fees. They do not have to win the whole case; they have to win one point and that opens it up.

You do not want to discourage settlement but you have to formulate the settlement in the context of the people who are broadly affected by it because these are public policy questions. These are not just two private litigants engaged. At some level, you have to let others participate.

Director Ashe asserts that this was better for us. For those of us on the receiving end, it may not have felt that way but we would love to have been in the room when they were talking about what the terms of the settlement were to have some standing.

Remember, even intervenors do not necessarily have standing to participate in the settlement depending on the posture of the litigation. I would argue that sue and settle, I do not want to discourage people from settling but I do think that settlement has to be subject to a higher level of scrutiny when it involves

significant rights of non-parties across the board in a public policy context.

Senator Rounds. Thank you.

Thank you for your patience, Mr. Chairman.

Senator Barrasso. [presiding] Thank you, Senator Rounds.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Mr. Holte, thank you for being here today. I appreciate your sharing of experiences about the real challenges and the costly consequences that ag producers face due to ESA policies. I am a cattle rancher. I can empathize the producer and the family you mentioned.

In your testimony, you heightened the general need to modernize the ESA from a listing and delisting perspective. We have tremendous assets in agriculture. Chief among them are our producers.

Can you discuss the tools available to landowners that promote species recovery and are these programs voluntary or incentive-based?

Mr. Holte. I probably do not have real personal experience with the tools to assist in that. Much the frustration which I think was somewhat apparent in my testimony, most of the frustration was with an animal that has reached recovery status or well exceeded recovery status and yet, through legal means,

delisting does not occur or is not maintained.

To be frank with you, I do not know if I can answer your question real well.

Senator Fischer. I think it is clear that better engagement is necessary and we have to have that engagement with landowners in order to address the deficiencies many of us feel are within the ESA.

As we look to modernize that Act, in your view, are there any mechanisms dealing with consultation that you think might be helpful so that we can enhance a discussion with local landowners and bring them to the table?

Mr. Holte. As I mentioned earlier, you may not have been able to be here, but the first thing farmers think of when they get up in the morning is not the Endangered Species Act. It is very much about the livelihood they are producing and the people they are feeding.

We have a great network in agriculture of general farm organizations, commodity organizations and we work closely with our State Departments of Agriculture and Natural Resources.

It is an obvious conduit to get to farmers. Many States, including Wisconsin, for sure, have a great ag press organization, a great network of agricultural press people, both in radio and print which are somewhat untapped at times, I think, in the area you mentioned.

Those would be some suggestions I would throw out.

Senator Fischer. Thank you, sir.

Governor, I do not know if you know but Nebraska has 23 natural resource districts. That is a system that is very unique to my State. Each of these NRDs is located within an individual watershed which allows the local people to develop programs to best serve the local natural resource management needs of that area.

In your testimony, you discussed mitigation as an important mechanism to preserve species. An NRD within the Missouri River Watershed has worked on the levee system that protects drinking water for two-thirds of Nebraskans as well as safe guard Offutt Air Force Base where STRATCOM and the 55th are located.

However, under ESA rules, this NRD would be required to purchase land for mitigation for future development. Certainly it is equally important so that we protect species and deliver this necessary levee project to the area.

In your experience, Governor, what are the different tools currently available to mitigate the impact of projects on species?

Mr. Freudenthal. Mitigation was actually developed, as you know, in the Army Corps of Engineers 404 bank context. There is a pretty good set of U.S. Fish and Wildlife Service rules that relate to banking.

However, now we have mitigation options, in lieu fee where you pay into a fund or project-sponsored activities. You also have something called exchanges which have not really evolved to a definition.

I think on mitigation, I would think about structuring the mitigation so that it responds to the nature of the impact. In some cases, something like the Sage Grouse, that is a much longer time frame than it is for some other species which are able to respond more quickly to habitat changes.

The problem with the Sage Grouse is they fall in love with one parcel of ground and they are dependent on certain levels of sagebrush. They are not necessarily the smartest species the Lord ever created, so they need a different formulation. In that context, you want it to be responsive to the impact.

I think the issue for the people doing what your folks are doing is that we are looking for some degree of permanence to make sure the impact is offset over the life of it. I do not know that has to be a permanent easement. For some species, it does but it has to be more than some of the stuff that is going on, repeatedly doing 5 and 10 year leases. That is meaningless in terms of species.

My thought is the committee needs to integrate some kind of discipline corresponding mitigation to the kind of impact, its nature and extent, as opposed to having that kind of float out

there so your folks would have a set of rules.

You need rules and consistency on mitigation just like you do on everything else where everybody has their own idea. Mitigation is not like art, is not in the art of the beholder. It either works or it does not.

I think some yardsticks could be put in so your folks would know what they need to do and how it would be responsive to the impact they are trying to offset.

As long as I am on that subject, one of the worse things they are doing now is going from a no net loss provision, which was present clear back to the 1980s. I think it is a 1981 set of rules. Now we have gone to net gain with no definition.

Neither the ESA nor NEPA or any of the land management statutes contemplate using the authorization by the Federal Government as a vehicle to impose an additional tax on the activity of net gain. I get no net loss. That makes sense. It is a federal resource, you want to protect it.

To say that in addition to everything else you are going to do we are going to slap this other tax on as a matter of policy. That is important in the context of mitigation because it sets the bar as to what the impact is you are trying to offset. I get it, no net loss. I do not understand net gain.

Other than that, I am entirely neutral.

Senator Fischer. Got that. Thank you, sir.

Senator Inhofe. Mr. Chairman, before you go on, may I have about 30 seconds to clarify something that was said?

First of all, I would say to my friend, Dan Ashe, I have heard him talk about it before, that you have had more delistings than anyone has.

Since its inception, total listings have been 1,652. The total number of delistings during that time has been 47, 47 out of 1,600. Ten of those 47 were because they became extinct, so it is really 37 out of 1,600. You were responsible for 16 delistings, 1 out of 100.

Senator Barrasso. Senator Carper.

Senator Carper. Thank you. Again I apologize to our witnesses for not being able to join you for most of this hearing. I appreciate very much what is going on.

I am going to telegraph a pitch here. I think pitchers and catchers report for spring training this week. I am going to telegraph a pitch. The pitch that I telegraphed is what are a couple of areas where you think there is broad consensus, if we are to make any changes at all? What might they include?

When you have a controversial hearing, I think this, from what I am told, is constructive. There is a lot of controversy and not a whole lot of agreement. Help us find a few nuggets of agreement here today. Why don't we start with that? Dan, do you want to go first? Mr. Ashe, where do you think there is

agreement among the witnesses?

Mr. Ashe. I think the first broad consensus needs to be that the benchmarks --

Senator Carper. Be very brief.

Mr. Ashe. The first point is I think we need to start with the consensus that we are trying to strengthen the law and our ability to save endangered species.

Secondly, I think we can come agreement about enhanced capacity for States and federal agencies to do their job and looking for ways to build and strengthen capacity, both in the field capacity and the science needed to support these decisions so they have a underlayment and firmament in science.

Senator Carper. Good. Jamie Clark, can you give us two, just very briefly. You can agree or disagree, that is okay. Repetition is good.

Ms. Rappaport Clark. Not that I often agree with Dan but absolutely funding with funding for the federal and State oversight agencies, I believe that we could make great strides in addressing imperiled species challenges across our country as well as our habitat.

Secondly, if I have two, an underlying consensus issue is to increase the transparency with which the Endangered Species Act is implemented. I think that will cross over all the elements of the law.

Senator Carper. All right, thank you.

Mr. Holte.

Mr. Holte. I think it might be more obvious and we have not said it, we support the Endangered Species Act and the thought behind it. It is the right thought and the right direction to go. That is the first one.

Secondly, probably for myself, it is the experience of having a species that has very definitely recovered but we cannot get it delisted. It is the frustration of either too much broadness in the Act or allowing the legal system to cause us headaches.

Senator Carper. Thank you.

Mr. Myers.

Mr. Myers. I would reflect what Dan said about building capacity. It is very important. I would also say as Governor Freudenthal said, there is sand in the gears. We need to use our existing capacities as effectively and efficiently as possible into addition to building that capacity.

As Mr. Holte has mentioned, I think the delisting delays and those choke points are very important and is probably common ground.

Senator Carper. Thanks.

Governor.

Mr. Freudenthal. Senator, I advocate more funding but I am

careful of the biblical admonition about new wine and old wineskins. We need to do more than that.

I do not know that there is agreement on this panel. I think the reason there is not agreement is it gets to be very nuance, the interrelationship between significant portions of the range and DPS gets to -- that is pretty tricky.

There are probably things we could agree on but everybody is so tentative about this because this has been tried twice before and it failed. I would argue that there is agreement about a discussion of problems but we are a long way about agreement as to how the corrections in the different areas would occur because it is a complicated interrelationship that has evolved over the period of time, particularly with some of the case law. Everybody sees an advantage for them in that.

At some stage, you guys are going to have to convene something that everybody puts down their spears and says, okay, is there something that we can move on. I would say that we really have not crossed the threshold you established in your initial comments.

Senator Carper. Thank you.

Christophe Tulou, Senior Aide and former Secretary of the Delaware Department of Natural Resources and Environmental Control, is sitting right behind me. He was talking to a member of our EPW Committee on the Minority side. He was talking to me

about something called the sixth mass extinction.

Apparently a number of scientists, maybe most, concluded that we are now living in the midst of what is termed a "sixth mass extinction," one caused by human alteration of the planet.

I would like a quick yes or no answer. Do you all agree that we are now experiencing a sixth mass extinction of species, just yes or no? Governor, do you want to start?

Mr. Freudenthal. The truth is I am not qualified to answer. I am not familiar.

Senator Carper. Thank you.

Mr. Myers.

Mr. Myers. I would echo the same answer. I am not qualified to answer that.

Senator Carper. Thank you.

Mr. Holte. Three in a row.

Senator Carper. Ms. Rappaport Clark.

Ms. Rappaport Clark. Yes.

Senator Carper. You said yes?

Ms. Rappaport Clark. Yes.

Mr. Ashe. Yes.

Senator Carper. All right. Thank you.

I have a question, if I could, for Mr. Myers, Mr. Holte and the Governor.

Mr. Chairman, let me know when I need to slow down.

I am wondering how it is that the population of a species declines so much that it has to be protected under the Endangered Species Act in the first place. I want to ask a couple questions about that, if I might.

First, are States well aware generally years in advance of species in their jurisdiction that are declining? That is one question. The second question is, should we expect the States, who as I listened to your testimony, feel left out, unengaged and willing to take on more responsibilities under this Act? Shouldn't we expect our States to do a better job of managing species so they do not end up in so much trouble?

Mr. Myers, do you want to go first and then we will ask the two fellows on either side of you?

Mr. Myers. I would point out that for over a decade now, State wildlife action plans have been guiding the work of State agencies. With development of State wildlife grants and these alternative funding sources, we have built capacity, significant capacity.

I mentioned in my testimony and in greater detail in my written testimony, using the a southeast example, that we have created the Southeast At Risk Species Program where we are triaging across State boundaries and looking across those territorial jurisdictions range-wide at species.

We are applying financial and human resources much more

wisely and effectively than we have in the past to optimize those results. These are species that are not listed at this point in time, so I would say the States have made tremendous strides in building capacity but also in using their existing capacities more wisely.

Senator Carper. Thank you.

Mr. Holte. I would say in Wisconsin, we have a State law that recognizes endangered species. We have our own list. That is periodically reviewed as far as the species listed and those delisted.

In the last review, I think we added six or seven species and we delisted 15. To me, that says that our State is appropriately interested, active and capable of managing the situation.

One other point I would make is in the area I am most familiar with, the gray wolf. There was a three year period of time in which wolves were delisted in Wisconsin before court action was taken and listed them again.

During that three year period of time, our Department of Natural Resources held three hunting seasons in which several hundred wolves were taken but the total population only decreased nine percent, well in excess yet of our goal.

I think there is a lot of capacity and appropriate expertise at the State level to deal with these issues in

conjunction with the Federal Government.

Senator Carper. Governor.

Mr. Freudenthal. I have three observations. One really has to do with the history of game and fish agencies. They were initially created for management of species that people were interested in for either hunting or fishing or other things.

It is really only within the last 10 or 15 years largely driven by federal grants that the State agencies have shifted their focus. That accounts, I think, for part of the problem in that species habitat and species conditions deteriorate over time. Fifteen years is a pretty short period in terms of the States focusing on it.

Second, I don't want to get into the issue about whether climate change is manmade. I will leave that to you. However, climate is changing. You see that and those are things that State agencies try to account for it but they account for it in the same gradual nature that it occurs.

I think the question you raised is the correct one. I would argue that really the history of game and fish agencies does not, until recently, in a relative sense, focus on the question of species maintenance or species enhancement. It has by and large been hunting, fishing, the hook and bullet crowd.

I love them but now our agencies have a much broader mission. One of the things I learned when I was governor was

how much money we spent in game and fish that was beyond the traditional mission that those game and fish agencies had.

That is, I don't know, maybe a 15 or 20 year history. That is a relatively short time in the life of a species.

Senator Carper. I have one last point, if I could. You mentioned trying to figure out how much you are spending in these agencies. One of the things I mentioned in my testimony is what does the preservation of our species or protection of our natural resources, whether animals, birds or fish, mean for us economically in our State?

We have a lot of people who come to our State to hunt for ducks, we have a lot who come to our State who want to fish our inland bays and also the Atlantic Ocean which is right off our coast. We actually tabulated how much we realized in economic development. There is a real positive there. We have to keep that one in mind.

I am going to ask a question for the record. I will mention the question here. It is hard to get anything done around here, as you know, even on a good day for things that are not controversial.

When you have something that is controversial, we do not have a lot of good days yet this year. It is especially challenging. I think the Chairman and I have a good personal relationship and have a real interest in collaborating and

finding areas where we can collaborate.

We talk about the 80-20 rule is our colleague from Wyoming, Mike Enzi, whom you know well, Governor. Mike Enzi has the 80-20 rule. He says 80 percent, the things we agree on, why don't we focus on that. The 20 percent of things we don't agree on, why don't we just not focus on that and come back another day.

I don't know that this is the 80 percent or the 20 percent but I think we need to spend some time focusing on it and finding out.

I will just close with this. I would ask, if you were in our shoes, what are some of the things you would do to try to find consensus to grow and develop consensus going forward? Give us your counsel.

The second thing just for the record, the Chairman has heard me say this before and my colleagues have as well, I was born in West Virginia not too far from where Senator Capito grew up. My dad and grandfather took me fishing at a very young age, probably three or four, and hunting, a little bit older than that. I have memories still of the New River, fishing in the New River and other bodies of water.

I remember my dad and my grandfather just being outraged at seeing trash in the water, along the shore, or on the docks and literally taking the time to clean it up.

I got to be a Boy Scout later on in life. My wife and I

had two boys became Eagle Scouts and we were very much involved in what they do. The idea is I think we have a moral obligation to leave this planet better than the way we found it.

There are ways to do that. There are ways to do that we do not impede our economic growth and economic opportunity. We have to be smart enough to figure out how can we be true to the advice my dad used to give me and my sister on our responsibility of stewardship to his planet.

The other thing my dad used to say to my sister and me -- my dad was a Chief Petty Officer in the Navy for like 30 years. He was tough as nails. He used to say a couple things over and over. One of the things he would say over and over to my sister and me was just use some common sense. He did not say it so nicely. He said it a lot.

Out of that I take the notion that we should use some common sense in what we do here and our responsibilities.

He also used to say had chores to do around our house, our garden and the yard and so forth. He was always saying if the job is worth doing, it is worth doing well. If the job is worth doing, it is worth doing it well. He said it a lot.

Out of that, I took the idea that everything I do, I can do better. I think the same is true of all of us. I think the same is probably true of most programs that we develop in our States and for our country.

Our challenge here is a way to do this better. My hope is by working together, by communicating, compromising, and collaborating, we will find the path forward is true to both our stewardship responsibilities and our responsibility to make sure we have jobs for people in this country.

Thank you.

Senator Barrasso. Thank you, Senator Carper. Thank you for your thoughtful comments.

Senator Ernst.

Senator Ernst. Thank you very much.

Thanks to our panel. I think there are a lot of other hearings going on this morning but I appreciate the fact that you are here today to share some thoughts.

I would like to redirect to State and local control or collaboration in some of these projects. I know the Chair mentioned the Monarch Butterfly. This is a great example of where Iowa has really stepped up to the plate. We have what is the Iowa Monarch Conservation Consortium. It is a great example of how collaborative local-based approaches should be made prior to listings.

The Consortium involves the Iowa State University, the Farm Bureau, the Iowa Department of Natural Resources, the Iowa Department of Agriculture and Land Stewardship, the Nature Conservancy and many others. They are using science-based

approaches in efforts to establish the best ways to increase habitat that will benefit the Monarch Butterfly.

We are really glad that they have come together in this manner to head off a problem that we do see. We would much rather see that rather than heavy handed government approaches. I think this is a great way of how we leave the environment better than we found it.

Ms. Rappaport Clark, I would like to direct this question to you. Do you support a greater role for States in the implementation of the ESA?

Ms. Rappaport Clark. Absolutely, Senator. The States are very important collaborators and partners in all wide range of species conservation given their knowledge base, given their relationship with local landowners, and given their relationship with local entities.

I believe that the Endangered Species Act over the years has demonstrated, your Monarch example is a very good one, that there is enough flexibility in the law to expand those partnerships and there is enough flexibility in the law to celebrate and ensure more rigor in those partnerships.

The Federal Government cannot do this alone. The Federal Government steps in when everything else has failed. It is a last resort. The Endangered Species Act is not a law that leads conservation; it is a law that is there to prevent the

extinction.

To the degree we move upstream and States, tribes, other local stakeholders are engaged and resourced to be able to take care of our natural resources, that is a win-win all around.

Senator Ernst. That is wonderful. What are the best ways we can be communicating out there when there is a species that is approaching endangered status? How is that communicated to the States and local government so they can proactively embrace this rather than having the Federal Government come in and instruct them how to do so?

Ms. Rappaport Clark. There are a number of ways. Certainly I think you have heard some of my colleagues on the panel talk about their own State endangered species list. To a large degree, the States have a tremendous capacity of knowing what is certainly endangered or imperiled within their own borders.

However, oftentimes some of these species extend beyond State borders. The Federal Government, the Fish and Wildlife Service and NOAA Fisheries, maintain a list of candidate species which I call the yellow blinking light, what are those species trending towards endangerment and that should provide incentive for everyone interested and capable to come together to prevent the need to list so there is that upstream solution and the upstream capacity to engage early on.

Senator Ernst. Mr. Ashe?

Mr. Ashe. Thank you, Senator.

I think yes to greater State engagement and involvement. I think we have been realizing that over the last decade or so. I think key to that is a predictable schedule. We talked earlier about the multi-district litigation settlement.

What the U.S. Fish and Wildlife Service is involved in now is a process of planning the next schedule, looking at their listing obligations, sitting down with our State partners and NGO partners and looking forward and setting up a schedule, a predictable schedule for doing the work of the Endangered Species Act.

The Monarch Butterfly is a great example of that where we said we have a petition, we are considering the need to list the Endangered Species Act; let us engage all of our partners now and start working on conservation.

We are working with the Natural Resource Conservation Service to put in place assurances so that agricultural producers will know if they do good work for the Monarch Butterfly, it will not be a disadvantage to them.

The Natural Resource Conservation Service has been a tremendous partner in providing those kinds of assurances to producers.

Senator Ernst. Okay.

I am going to ask one more question for the entire panel. It focuses on do you believe that we can not only support economic growth, but we can also balance that with the way we protect different species? How do we strike that balance?

I am going to pose that to you but I am going to give you a quick example of something we have seen in Iowa. Then I will ask you to respond to that first question.

On January 11, 2017, the Fish and Wildlife Service listed the Rusty Patched Bumblebee on the Endangered and Threatened Species List under the Endangered Species Act. The rule was set to go into effect on February 10 but was delayed under the current Administration until March 21. As of yesterday, the way I understand it, the NRDC has filed a suit on this delay.

In Iowa, several counties in the central Iowa area would be included in this listing as historical areas where the bee used to exist. There has not been a sighting of this bee in Iowa since 2000 according to the Fish and Wildlife Service. That is concerning to me. This listing will tie the hands of farmers while really doing nothing to increase the habitat for the bee.

Can you speak to the economic balance that we have to have between actually promoting economic development and protecting habitat?

Yes, sir.

Mr. Freudenthal. Thank you for the question, Senator. I

would make two observations.

One, it is entirely possible but it will not occur unless we end up with the circumstance where we give meaning to partnership. The truth is the States are limited partners in an instance where the Federal Government is the general partner making the decisions. The States contribute resources to try to implement them.

I think until there is some degree of sharing of authority, you are not going to have a sharing of information or have that information become decision relevant. Regarding the Monarch, it is interesting to me it stands out because we focus on these examples of cooperation because there are so few.

In fact, we need to figure a way that it is not the exception but is the rule. I think the only way you do that is redefine this as a general partnership and not a limited partnership because from the State's point of view, we are the limited partner. They make a decision; we get to figure out how to implement and pour in resources to try to get it there.

I think those kind of structural changes need to be effected so that when something like this is going to happen, somebody can say, just a minute. The significant portion of the range does not include or this is a habitat designation. What does that mean?

A more practical example in Wyoming is you can have a nest

for a raptor that has not been occupied in 7 or 10 years and people have to adjust their activities around it when in fact, don't get me started.

Let me say the point you raise is the correct one. The issue is the resolution of it. That is why everyone is so nervous because somehow we are going to upset this balance when, in fact, the lack of balance is what keeps us from making this Act function the way it should where everybody is paddling the canoe in the same direction.

The only way you get there is if everyone is actually a partner and there is not a general partner who makes the decisions and calls the shots and their limited partners get to contribute resources.

Senator Ernst. Collaboration, yes. Thank you.

Mr. Holte. Senator, I would respond. I am optimistic. I think these things can happen. The one factor I think we sometimes overlook is discussion around our organization occasionally called "farmer common sense." I am pretty sure it is very similar to Senator Carper's father's common sense. It might be difficult to legislate.

What gives me optimism is the obvious bipartisanship this committee has and the attitude they have towards these issues. If you can maintain that working together attitude, I am confident that State relationships as well as the actions of

this committee will be successful.

Senator Ernst. Thank you.

Yes, Ma'am.

Ms. Rappaport Clark. Senator, I firmly believe that economic security and environmental security are flip sides of the same coin. They do go hand in hand.

While I do not know the specifics of the bumblebee you mentioned, I do know a number of these species and bat species that are facing serious declines in this group called "pollinators," are essential to the food crops of this country.

They are sounding the alarm that something is going wrong. If we lose the pollinators, that whole segment of the food chain, we are going to be really threatening the agriculture fabric of this country.

I would say one last issue for many threatened and endangered species is they provide tangible benefits to all of us as humans, whether they play valuable roles in clean water, food, medicines and things we do not even know yet. They are sounding the alarm.

Protecting that whole fabric of species' existence is really important to the economic platform of who we are as a country.

Senator Ernst. Going back to the bumblebee example, if it has not been cited in Iowa for 17 years, there is no reason

there could not be habitat somewhere but that should be done in a collaborative effort with local authorities and those individual farmers.

Sir, did you have one closing comment and then I will relinquish my time?

Mr. Myers. Yes. I would add you absolutely can find that balance. Just a simple example that comes to mind is forestry practices in the southeast as it relates to prescribed fire.

Using prescribed fire protects their investment and their forests but also provides great habitat and also recovery potential for both T&E species as well as species that are tending towards listing.

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

Senator Barrasso. Thank you very much, Senator Ernst.

Thanks to Senator Carper for coming back. I appreciate all of you being here today.

If there are no more questions, members may submit follow-up questions for the record. The hearing record will be open for the next two weeks.

At this time, I would like to ask unanimous consent to enter into the record the 2013 article published by Ms. Rappaport Clark in BioScience, the 2015 Morning Call poll, the 2016 ENE Article 7 documents submitted by the Western Governors Association, plus a statement by Senator Johnson.

Senator Carper. I object.

Senator Barrasso. Hearing no objection.

Senator Carper. I do not object.

[The referenced information follows:]

Senator Barrasso. I want to thank all of the witnesses for their time and testimony today.

This hearing is adjourned.

[Whereupon, at 12:04 p.m., the committee was adjourned.]