

**Testimony of Matthew H. Mead, Governor of Wyoming
Before the
United States Senate
Committee on Environment and Public Works**

**Views of State Officials on the Discussion Draft Bill, S.____, the Endangered Species Act
Amendments of 2018**

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

Thank you for the opportunity to speak today about the Endangered Species Act Amendments of 2018 discussion draft. I am honored to be here in my capacity as Governor of the State of Wyoming.

I have witnessed some of the greatest successes of the Endangered Species Act (ESA). In 1987, on a ranch near Meeteetse, Wyoming, biologists removed from the wild the last 18 black-footed ferrets in the world. Today, due to collaborative efforts among multiple partners, ferrets have been reintroduced in eight states as well as Canada and Mexico. Two years ago, biologists released ferrets back to the ranch in Wyoming where the last ones had been removed nearly 30 years earlier.

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

The ESA provided part of the incentive for folks to work together to keep the Greater sage-grouse from being listed. Wyoming brought together diverse interested groups to develop a scientifically based and common sense strategy for preserving the bird. Wyoming's plan served as a model for other western states and federal agencies. Preventing the need to list sage-grouse is a success story, one that the ESA should encourage in conserving other species.

I have also witnessed some of the ESA's greatest failings. It took five lawsuits and fifteen years to delist a recovered gray wolf population in Wyoming. Grizzly bears are embroiled in litigation for the second time. Canada Lynx were listed more than 18 years ago and still have no discernable path to recovery. Nearly 30% of all listed species have no recovery plan, and litigation dictates U.S. Fish and Wildlife Service (FWS) priorities and workload.

The ESA has not been amended substantively since 1988. It is time now to discuss amendments. There are currently bills before Congress to prevent listing Greater sage-grouse and lesser prairie chickens for ten years. There were bills proposing to delist gray wolves in part of the country and to prevent judicial review of already delisted species. I supported legislation to delist gray wolves in Wyoming because it appeared the only viable option at the time. I will continue

offering support for efforts to protect gray wolf delisting until we address the root problems. Addressing root problems would obviate the need for Congress to intervene with respect to individual species. That would be better legislation, better policy, and better for wildlife.

The Chairman's discussion draft offers real bipartisan solutions to correct deficiencies in ESA implementation while maintaining science-based decision-making. In my experience, cooperation and collaboration yield better results than bitter partisanship and harsh rhetoric.

In June 2015, I was elected Chairman of the Western Governors' Association (WGA). The WGA consists of nineteen politically and geographically diverse states, as well as 3 US-flag islands. The Governors - six democrats, twelve republicans, and one independent - represent lands that comprise 68% of the United States. The WGA works in a bipartisan way to develop policy and take action on issues of critical importance to western states, including ESA implementation.

The value of bipartisan cooperation on western issues through the WGA cannot be overstated. When there is a good faith effort to get along, things get done. Whether R's or D's, red states or blue, we all care about the West and its future. Western Governors choose civil discourse. We communicate regularly, speak candidly, listen to different opinions, and partner with non-government organizations as we work toward agreements that are acceptable to all members and lead to constructive action. A hallmark of leadership is the ability to achieve results—to be proactive and productive – and the WGA provides a good leadership model.

Each incoming WGA Chairman designates an initiative during that governor's tenure as Chairman. I led the Species Conservation and Endangered Species Act Initiative (Initiative). This Initiative sought to (1) create a mechanism for states to share best practices in species management; (2) promote and elevate the role of states in species conservation efforts; and (3) explore ways to improve the efficacy of the ESA. To further these goals, I worked with the WGA to establish a bipartisan, transparent and inclusive process aimed at bringing a diverse group of stakeholders together to explore ways of improving the ESA and species conservation generally.

To begin, we extended an open invitation to anyone interested in species conservation and endangered species issues to engage in a meaningful dialogue. Next, we engaged professional facilitators from the University of Wyoming's Ruckelshaus Institute to lead group discussions. This ensured every participant's opinions were accurately represented and fully considered. Governors from politically and geographically diverse states agreed to host these work sessions, and ultimately thousands of people participated in some way over the course of the Initiative.

For the first three years, the Initiative included eleven work sessions, eight webinars, several surveys and questionnaires, and two reports outlining opportunities for ESA improvement. To ensure transparency, work sessions and webinars were recorded and posted to YouTube. In smaller sessions that were not recorded, extensive notes were taken to preserve the discussion record. Collectively, these activities helped inform Western Governors about successes and opportunities in species management. In 2016, and again in 2017, Western Governors adopted bipartisan policy resolutions that included specific recommendations for improving the ESA and species conservation.

A number of the WGA recommendations are reflected in this discussion draft bill. Other WGA recommendations identified opportunities for regulatory and policy changes in the executive branch that would provide greater incentive for voluntary conservation and improve ESA implementation. For purposes of my testimony, I will provide a couple of examples where the discussion draft incorporates WGA statutory recommendations.

Timelines/Litigation

When Congress adopted the ESA in 1973, it did not require the FWS to act on petitions it received by a date certain. In 1978, Congress amended the ESA, giving the FWS two years to make a final determination on proposed rulemaking. If the FWS failed to act within two years, it had to withdraw the rulemaking.

In 1982, after complaints that listing decisions were being delayed, Congress added the current requirement that the FWS act on a substantial 90-day finding within 12 months of the date received. Congress did not choose this 12-month deadline for any scientific reason, nor did it account for FWS resource availability. It was simply an arbitrary number meant to spur action on potential species listings. Today, these rigid timelines discourage voluntary conservation and lead to endless litigation.

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

After 36 years of the status quo, this discussion draft addresses the source of conflict in a scientifically based, practical way by codifying the framework of the FWS's National Listing Work Plan. In 2016, the FWS adopted its National Listing Work Plan to prioritize substantial 90-day findings and ensure decisions are made on petitions within seven years. Through this work plan, the FWS addresses species facing the greatest threats first, while species undergoing active conservation efforts receive a lower priority.

The most litigation prone groups support this science-based approach to provide flexibility when considering petitions and have stopped, or greatly reduced, deadline driven lawsuits. In 2016, one of these groups publically praised the FWS for developing the work plan.

Despite its broad support, the National Listing Work Plan extends the current statutory deadline. If a court took issue with it, we would fully expect deadline driven litigation to rise again. This discussion draft ensures the current, broadly accepted practice of the FWS fits with the law—a practical solution.

Enhancing the Role of States

This discussion draft enhances the role of states in several ways. It contemplates states leading recovery teams, developing and implementing recovery plans, consulting with federal agencies in a meaningful way on all aspects of ESA implementation, and providing helpful species data to

the FWS. Each of these provisions can lessen resource strains on the federal agencies, lead to faster and more robust species recovery, encourage innovation in species management, and engender broader support for the ESA.

Critics of enhancing the role of states in ESA implementation generally distrust the states' ability to manage wildlife. Congress did not adopt the ESA because it distrusted the states' ability to manage wildlife. To the contrary, Congress and other supporters of the ESA recognized the important role states play in wildlife management. In his 1973 testimony supporting the ESA, Dr. Laurence R. Jahn, President of the Wildlife Management Institute, testified that state agencies were involved with "rescuing many species" from statehood. Congress intended the ESA to support state wildlife management efforts, not usurp them. The ESA's legislative history is replete with comments emphasizing the importance of a strong state/federal relationship to implement the ESA.

The House of Representatives Conference Report recognized that state involvement in implementation was critical to the ESA's ultimate success:

It should be noted that the successful development of an endangered species program will ultimately depend upon a good working arrangement between the federal agencies, which have broad policy perspective and authority, and the state agencies, which have the physical facilities and the personnel to see that state and federal endangered species policies are properly executed.

H.R. Rep. No. 93-740, at 26 (1973).

New York Representative James Grover, speaking in favor the ESA, argued, "the greater bulk of the enforcement capability concerning endangered species lies in the hands of the State fish and game agencies, not the Federal Government." This sentiment was confirmed by Cynthia Wilson of the National Audubon Society when she noted that the federal government was "dreadfully undermanned" to implement the ESA.

The House Committee on Merchant Marine and Fisheries Report on the ESA also explained the important role states would play in ESA implementation:

The states are far better equipped to handle the problems of day-to-day management and enforcement of laws and regulations for the protection of endangered species than is the Federal government. It is true, and indeed desirable that there are more fish and game enforcement agents in the state system than there are in the federal government. Any reasonable and responsible program designed to protect these species must necessarily take into account this fact.

H.R. Rep. No. 93-412, at 20-21 (1973).

These are a few of myriad examples where drafters of the ESA signal intent for states to assume a large role in ESA implementation. For more examples, see Congressional Research Service, *A Legislative History of the Endangered Species Act of 1973, as amended 1976, 1977, 1978, 1979, and 1980* (1982). Unfortunately, much of Congress's vision never materialized due to inadequate FWS funding for state recovery efforts. Through amendment, the ESA can give back state incentives that Congress originally envisioned. The provisions of this discussion draft take a needed step in returning the ESA to its original vision that garnered near unanimous support from Congress.

Conclusion

As consideration of this discussion draft begins, I note that constructive dialogue requires knowing more than what is in the bill. It also requires understanding what is not in the bill.

First, the discussion draft does not erode any authority of the Secretary of Interior or Secretary of Commerce. Every time the discussion draft offers a greater role to states, the Secretary retains final decision-making authority. For example, if a state fails to develop a scientifically sound recovery plan, the Secretary may reject that plan. If a state-led recovery team recommends delisting or down listing of a species, the Secretary can reject the recommendation. The Secretary remains the final arbiter on species recovery.

Second, this draft does not remove science from decision-making. Decisions to list, uplist, down list, delist, or decline to list must be based on the best scientific or commercial data. The Secretary must give state data great weight but is not obligated to rely upon it—best science available still prevails. Through incorporation of the National Listing Work Plan framework, the discussion draft actually creates greater scientific integrity in ESA implementation.

This discussion draft stems from a state-led, bipartisan, multi-disciplinary effort conducted over several years. Environmental, sportsmen, agriculture and energy interests have all commended the WGA process. This discussion draft represents a reasonable way to elevate the WGA process into a national dialogue. WGA submitted a letter of support for the provisions of this bill that are consistent with WGA policy. It also notes provisions where the WGA takes no position. The letter recognizes the difficulty of amending the ESA. It also reserves the right for governors to withdraw their support if the discussion draft changes in ways that deviate from WGA policy or that weaken the ESA. Like others, I condition my support upon Congress pursuing a true bipartisan solution to some of these challenging issues.

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

Thank you. I am happy to answer any questions you may have.