

**Dr. Alan Foutz
President
Colorado Farm Bureau**

**Testimony
Before the Committee on Resources
United States House of Representatives**

**Hearing on the Abuses of the Endangered Species Act: the So-Called “Preble’s
Meadow Jumping Mouse.”
September 18, 2006**

Mr. Chairman and members of the Committee:

My name is Alan Foutz. I am a farmer from Akron, Colorado and I serve as President of the Colorado Farm Bureau and serve on the Board of Directors of the American Farm Bureau Federation. I am here today on behalf of both organizations. My comments revolve around the Preble's meadow jumping mouse, but can certainly apply to several other species under the jurisdiction of the Endangered Species Act (ESA).

The Endangered Species Act is broken and it needs fixed. The scientific standard needs to be improved. One should not be able to simply pick a theory or perceived problem and have nearly automatic standing or "credit" when filing a listing request, or as in most of the cases, filing a lawsuit demanding listing. There should be clear scientific evidence before regulations are imposed or actions are taken. A perfect example of the necessity to improve the scientific standard is the Preble's meadow jumping mouse.

The scientific peer review policy has not been effectively utilized as intended. In the case of the Preble's meadow jumping mouse, the U.S. Fish and Wildlife Service violated this policy by commissioning an unnecessary review of (Ramey et al. 2005) outside of the comment period on the proposed rule to delist Preble's. The (Ramey et al. 2005) study underwent at least five independent reviews and an additional four reviews prior to publication in the journal *Animal Conservation*. Further review, particularly by an agency employee, Dr. Tim King of the U.S. Geological Survey, was an unnecessary taxpayer expense.

Upon examination of physical and genetic differences, (Ramey et al. 2005) concluded Preble's was not unique from at least two other subspecies of meadow jumping mice. The (Ramey et al. 2005) study disproved that there were differences in skull measurements of the alleged subspecies. The U.S. Fish and Wildlife Service has insisted that (Ramey et al. 2005) undergo scores of reviews, even after publication. However, the agency did not require such reviews for two unpublished papers it relied upon in the original listing of Preble's: (Ryon 1995) and (Riggs et al. 1997).

Dr. King's study fails to meet standards of quality, reliability, integrity and reproducibility under the Data Quality Act. When comparing Preble's to other subspecies, the King study used no samples within a four-hour drive (250 miles) of the Front Range of Colorado. Some samples were taken from as far away as 600 miles, or a nine-hour car trip. Given how long it would take a mouse in South Dakota to find a mate in Colorado, it's no wonder that there may be slight genetic variations. Even with the bias in sampling, the King study could demonstrate less than one-half of one-percent genetic variation between Preble's and other purported subspecies of meadow jumping mice.

This mouse is not threatened with extinction throughout all or even a significant portion of its range. The U.S. Fish and Wildlife Service has failed to consider that Preble's is

found in higher numbers, and in more places than ever known before. Historically, Preble's was found in fourteen (14) hydrologic units in eastern Colorado and southeastern Wyoming. When it was listed, the U.S. Fish and Wildlife Service could find the mouse in only nine (9) hydrologic units, including all that were historically occupied and three (3) where it had never been known to occur.

More populations of Preble's are now known to exist than at any time before. At the time of listing, Preble's was documented at only twenty-nine (29) sites. Today, it has been found at no fewer than one-hundred and twenty-six (126) sites.

As is the case with most species on the Endangered Species List, listing has been a hindrance to conservation efforts, not a help.

Farmers and ranchers have been proactively managing their lands for production and species conservation for generations. When a species is added to the Endangered Species List, many times, conservation efforts agricultural producers already have set in place to help a species are altered by agencies in such a way that the species is actually harmed. Farmers and ranchers know best how to manage their land. It is their livelihood, and many times wildlife viewing adds to their job security and enjoyment. Species conservation practices benefit both the agricultural producer and wildlife. By partnering together and working with agricultural producers to develop species conservation practices, the U.S. Fish and Wildlife Service can accomplish what the Endangered Species Act was intended to do. Such proactive efforts have shown that species can be recovered to the point where they do not need to be included on the Endangered Species List. One example is the mountain plover conservation efforts here in Colorado.

The mountain plover is a small shorebird found in the western Great Plains. It was proposed for listing under the ESA in 1999. As with many such species, little was known scientifically about the bird. It was believed that conversion to agricultural lands destroyed plover habitat, and it was feared that a listing would have severe impacts on agriculture. Scientists really didn't know much about the bird, because it was believed that many lived on private lands, and private landowners were reluctant to let state or federal officers onto their land.

Private landowners also did not want to see the plover listed without scientific justification for listing. The Colorado Farm Bureau Board of Directors determined that it was important to find out the status of the bird, and that meant identifying and studying plovers on private lands.

Convincing our members to open their lands to researchers to study plovers was a tough sell. Not because our members did not want to protect and enjoy plovers on their lands, but because of the restrictions that would be placed on their lands if the species was listed and their land was identified as habitat. To our members' credit, they recognized the need for good scientific information. Colorado Farm Bureau entered into an agreement with Colorado Division of Wildlife, Fish & Wildlife Service, the Rocky Mountain Bird

Observatory and the nature Conservancy to open their lands to inventory and study mountain plovers.

The result was a three year study of movements, locations and nesting behavior of mountain plovers on agricultural lands. Colorado Farm Bureau members provided over 300,000 acres of their private lands for the study. Participation was strictly voluntary. Farm Bureau members donated their land and their time as field volunteers to the research effort.

Some of the results were surprising. Researchers found that rather than agricultural lands destroying habitat, they actually provided important nesting habitat for the species, and that many of the agricultural practices that would have been restricted under a listing were actually beneficial for the plovers. One aspect of the study found higher nesting success on cultivated agricultural lands than on native rangelands.

Mountain plovers were still at risk from farm machinery plowing inhabited fields. Farmers are more than willing to avoid nests, but they often cannot see nests while operating large machinery. To remedy that situation, the Farm Bureau and the Rocky Mountain bird Observatory developed a unique program where farmers could call a toll-free number 72 hours before plowing. The Observatory would send someone out to survey the field and flag plover nests, allowing farmers to avoid flagged nests.

As a result of these and other conservation efforts, the Fish & Wildlife Service determined that listing the mountain plover was not warranted, and they withdrew the proposal. Farmers benefit because they can continue their operations. The mountain plover benefits because its nesting habitat is enhanced by certain agricultural practices.

Colorado farmers and Colorado Farm Bureau learned some valuable lessons from this positive experience. First, we learned that farmers and ranchers want to protect species and that they are willing to meet halfway if government officials are also willing to meet halfway. Second, flexible cooperation between landowners and the Services is the best way to make the ESA work for landowners and promote species recovery. Third, we all learned that practical solutions to potential conflicts do not need to cost a fortune, but might be as simple as a toll-free phone call. Lastly, we all learned the value of obtaining good scientific data to combat unfounded stereotypes.

Based on our experience with the mountain plover, Colorado farmers who were once reluctant to open their lands are now enthusiastically participating in local working groups to help conserve the greater sage grouse.

This solution would not have been available to us if the mountain plover had already been listed. Under the ESA, once a species is listed, section 9 taking prohibitions and section 7 consultation requirements impose restrictions that stifle creative solutions that we found for the mountain plover. Furthermore, had the mountain plover already been listed, we would not have been able to develop the scientific knowledge about the plover that could guide in its recovery. The same stereotype about agricultural lands

encroaching on plover habitat would have been perpetuated upon listing, to the detriment of farmers and plovers alike.

The ESA needs to be amended to provide flexibility to farmers, ranchers and the government to enter into voluntary agreements to protect and enhance already listed species on private lands in return for some incentive for the landowner. That incentive might be direct payments, tax credits, or simply the removal of disincentives and restrictions under the ESA. Our experience in Colorado has shown that farmers and ranchers want to protect species.

Almost 80 percent of all listed species occur to some extent on privately owned lands. Nearly 35 percent of listed species occur exclusively on privately owned lands, meaning that these species are totally dependent on private landowners. All this indicates that farmers and ranchers are doing a good job in protecting species on their lands. They need the tools to be able to do it better.

Farm Bureau has long supported the use of cooperative conservation as a way to implement the Endangered Species Act. We are convinced that cooperative conservation is the way to make the Endangered Species Act work for both landowners and for species, producing a “win-win” situation for both. It has certainly worked for us in Colorado with the mountain plover and, we hope, with the greater sage grouse.

In general, any ESA cooperative cooperation program should

- Be voluntary with the landowner.
- Focus on providing active species management. Projects should emphasize innovative active improvements or active management activities, instead of just passive management through restrictions on land use.
- **Not** focus on sales of lands or purchases of easements.
- Incorporate removal of existing regulatory disincentives, such as land use restrictions. Many landowners would more readily accept removal of ESA restrictions instead of incentive payments. Safe Harbor and No Surprises agreements and incidental take agreements should be explored whenever appropriate.
- Recognize plans that are locally developed. People at the local level have better knowledge of the landscape, needs of species that inhabit the landscape, and needs of landowners. They are also more focused on developing practical solutions to ESA problems.
- Be flexible with the landowner and the agency. Landowners can develop creative solutions for ESA situations that should be recognized. In addition, different landowners have different needs that could be addressed through different types of incentives. The landowner should have a wide array of incentives to choose from.
- Be exempt from critical habitat designation. Critical habitat is designed to encompass lands “that may need special management” protections, such as provided by cooperative conservation agreements. To include land covered under cooperative conservation agreements in critical habitat would be redundant and duplicative.

- Provide certainty to the landowner that once an agreement is in place, no further management obligations or restrictions will be imposed. The same “No Surprises” policy that applies to habitat conservation plans should be applied as well to all cooperative conservation agreements.

Thank you for your time and your consideration of the Colorado Farm Bureau comments on this very important issue.