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Excessive Endangered Species Act Litigation Threatens Species Recovery, Job Creation and Economic Growth

WASHINGTON, D.C. – Today, the Committee on Natural Resources held a full committee oversight hearing to examine how excessive Endangered Species Act (ESA) related litigation impacts species recovery, job creation and the economy. This was the first hearing in series that will be held by the Committee to take a fair look at the ways in which the ESA is working well and areas where it could be improved and updated.

"The purpose of the ESA is to recover endangered species – yet this is where the current law is failing – and failing badly. Of the species listed under the ESA in the past 38 years, only 20 have been declared recovered. That's a 1 percent recovery rate. I firmly believe that we can do better. In my opinion, one of the greatest obstacles to the success of the ESA is the way in which it has become a tool for excessive litigation. Instead of focusing on recovering endangered species, there are groups that use the ESA as a way to bring lawsuits against the government and block job-creating projects," **said Chairman Doc Hastings (WA-04).** *"By strengthening and updating the Endangered Species Act, improvements can be made so it's no longer abused through lawsuits and instead can remain focused on fulfilling its true and original goal of species recovery."*

Due to rigid timelines, vague definitions in the Act and the propensity of some groups to sue the federal agencies as a way of generating taxpayer-funded revenue, the ESA has become taken over by lawsuits, settlements and judicial action. According to information provided to the Committee, Interior Department agencies currently have a combined total of over 180 pending ESA-related lawsuits. In July 2010, the Interior Department agreed to a settlement with the Center for Biological Diversity and the Wild Earth Guardians that covered 779 species in 85 lawsuits and legal actions.

At the hearing, **Karen Budd-Falen, an attorney specializing in private property rights and rural counties and communities,** explained how the ESA has become a tool for litigation. *"With specific consideration of the ESA, if the federal government fails to respond to a petition to list a species within the 90 day time period mandated by the ESA, an environmental group can sue and almost always get attorneys fees paid. In these cases, the court is not ruling that the species is in fact threatened or endangered, but only that a deadline was missed by the FWS."*

U.S. Fish and Wildlife Director Dan Ashe acknowledged that prolonged and costly lawsuits plague the ESA, and divert time and resources away from species recovery. "*We*

fully agree with the concern that our resources are better spent on implementing the ESA than on litigation." According to Mr. Ashe, *"our FY 2011 resource management allocation for listing and critical habitat was $20.9 million, of which we spent at least $15.8 million taking substantive actions required by court orders or settlement agreements resulting from litigation."*

ESA litigation also has been used to block and delay important development projects, stifling economic activity and job creation. **Doug Miller, General Manager of Public Utility District No. 2 of Pacific County, Washington**, discussed a renewable energy wind project in Washington state that was abandoned due to the ESA's overly-burdensome regulatory process. According to Mr. Miller, the Radar Ridge Project was intended to *"meet the renewable needs of our green power retail customers, and provide an economic boost to Pacific County… The Project would have also generated 250-300 temporary jobs and 9 permanent positions in Pacific County, along with indirect benefits to local businesses serving this workforce."* After the decision was made not to proceed with the project due to lengthy and costly regulations, Mr. Miller concluded that a *"reliable permitting process is needed under the ESA to permit renewable energy projects … more formal oversight by Congress of the permitting process is needed to insure that waste of public resources can be avoided … [and] a need exists for independent review of FWS decisions, short of litigation, to insure that the agency makes its decisions without delay, and on the basis of the best available scientific information."*

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