

Chairman Rob Bishop
Opening Statement
Full Committee Oversight Hearing
"Federal Agencies' Selective Enforcement of ESA Consultation"
Committee on Natural Resources
July 29, 2015

Every day, Americans are required to comply with an ever growing list of federal regulations which restrict their freedoms and hinder their efforts to create jobs and grow our economy. From nearly every agency, the Obama Administration's regulatory onslaught continues at a fever pitch, killing jobs and condemning our nation's economy to the anemic growth we are currently experiencing.

No agency has done more to add to the expanding federal regulatory burden than the EPA. Imagine our surprise when it appeared that the EPA was shirking its duties under the Endangered Species Act at the same time it seeks to finalize two of the most expensive and far-reaching regulations in the last 50 years. Today, we hope to discover that the EPA and the Fish and Wildlife Service are not selectively enforcing a critical component of the ESA to speed up the very rules that threaten to slam the brakes on the American economy.

While well-intentioned, the ESA has caused more than its fair share of headaches for Americans, moving far afield of the original intent of 40 years ago. . Instead of a law focused on saving species in danger of extinction, it has become a political tool for radical environmentalists to exact retribution on those seeking to make use of our natural resources.

Instead of an open, transparent, and science-based regulatory scheme that would make partners of states, we have been left with an opaque, litigation-driven system that resolves controversial policy questions through closed-door settlement agreements. Recent proposals by this Administration serve only to highlight that the status quo is unacceptable and that improvements in transparency, science, and state-federal collaboration are long overdue.

But while there is growing consensus that ESA improvements can and should be made, it is hypocritical for agencies like the EPA to expect everyday Americans to follow its regulations while they are able to evade them. They even are trying to evade answering our questions. Amidst EPA's confusing statements about their expertise on ESA, they communicated to the Committee last week that they didn't have a witness that could speak on this topic on the agency's behalf.

In March 2014, then Chairman Vitter of the Senate Environment and Public Works Committee, wrote to Administrator McCarthy and Director Ashe asking, among other things, if EPA was required by law to consult with the Fish and Wildlife Service with regard to EPA's rule on new source performance standards. In response to this and 16 other detailed questions, Director Ashe responded, and I quote: "To date, the EPA has not asked the [Fish and Wildlife Service] to engage in section 7 consultation on the proposed [new source performance standard] rule." As of today, more than sixteen months later, the EPA has still not responded to the letter.

Then, during a hearing before this Committee in March of this year, I asked Director Ashe if EPA had consulted on its rule for *existing* power plants. Director Ashe responded that EPA had not requested consultation on the rule. Ultimately, in a letter following that hearing, Ashe stated that the determination of whether EPA's action may affect endangered species, and therefore require ESA consultation, *could only be completed by the EPA*, given their expertise with Clean Air Act issues.

While some trying to follow the law can wait years to complete a consultation, federal agencies are ignoring the basic question of whether sweeping EPA regulations "may affect" listed species or critical habitat.

Courts and agencies have repeatedly emphasized that this is an intentionally low threshold. Courts have stated that "[a]ny possible effect, whether beneficial, benign, adverse or of an undetermined character" triggers the requirement, and one court even went as far as to say that the *mere presence of a listed species was enough to require consultation*.

It should not be this difficult to get straight answers as to whether these two massive rules “may affect” listed species. But, we will hold the federal agencies accountable until we do.

I should note at this time that we received unsigned and unsolicited written remarks from EPA late last night on this issue as well as the belated first few documents supplied in response to the letter sent by Chairman Inhofe and myself. If EPA believes a few pages of unrequested testimony is a fair substitute for coming before this Committee and answering questions in front of the American people, then it sorely misses the point of this institution. I will continue to press forward with our questions until EPA has answered them to my satisfaction.

I thank the witnesses for attending this hearing and I look forward to learning more about this process.