



Statement of

The Honorable David Sauter
Commissioner, Klickitat County, Washington
on behalf of the National Association of Counties

before the

Committee on Natural Resources
U.S. House of Representatives

for the hearing

Legislative Hearing on Endangered Species Act Modernization Bills

September 26, 2018

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Final Testimony
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Chairman Bishop, Ranking Member Grijalva, and members of the U.S. House Committee on Natural Resources, on behalf of the National Association of Counties (NACo), thank you for your invitation to testify today in support of your efforts to modernize the Endangered Species Act (ESA). County governments appreciate the Committee's efforts to ensure that this landmark conservation law better protects species and their habitat using the best available scientific data and cooperative efforts between the federal government and its intergovernmental partners, including local governments.

My name is David Sauter, and I am serving my third term on the Klickitat County, Washington Board of Commissioners. Klickitat County is bordered by the Gifford Pinchot National Forest to the West and the Columbia River to the South. We are a rural county with a population of about 21,000 people.

The Importance of ESA Modernization to Counties

Klickitat County historically relied on a resource-based economy of timber harvests, ranching, farming and fishing. I have lived in the county my entire life and have witnessed the detrimental impacts of ESA listings firsthand. I have seen a prosperous, well-kept community demoralized and discouraged when its mill closed because of a lack of timber supply due to the listing of the Northern spotted owl – a mill that provided strong, middle class jobs for generations, the closure of which resulted in a blighted community with high unemployment and a reduced standard of living. I have witnessed farm and ranch families struggling to continue generations-old operations as they attempt to comply with resource management plans that were made without meaningful consultation of state and local expertise – the very people that are on the landscape and have direct, real-world experience with local issues. We need a new approach to species conservation policy that ensures good stewardship of resources without ignoring the voices and economic needs of local communities. This is why it is imperative that we modernize the ESA.

The National Association of Counties, which represents America's 3,069 counties, parishes and boroughs, has adopted into the *American County Platform* several goals for modernizing the ESA to ensure the legislation meets its mandate and serves as a strong part of our nation's conservation legacy. NACo's platform specifically highlights the importance of the ESA, and further states:

"NACo supports reforming the ESA to mandate that the federal government treat state and county governments as cooperating agencies with full rights of coordination, cooperation, consultation and consistency to decide jointly with appropriate federal agencies when and how to list species, designate habitat and plan and manage for species recovery and de-listing."

As this language makes clear, America's counties support the Committee's efforts to modernize the ESA. We appreciate your leadership in developing common sense bills that ensure the maximum level of involvement for county governments in ESA processes and that ESA policies are based on the best available scientific data. If enacted, the nine ESA modernization bills under consideration by the Committee would greatly improve how we protect species and conserve their habitat while assuring

that our nation's resource management policies are built through a strong federal-state-local partnership.

While counties hope to see all nine ESA modernization bills under consideration by the committee (H.R. 6344, H.R. 6360, H.R. 6346, H.R. 6354, H.R. 6345, H.R. 3608, H.R. 6364, H.R. 6356 and H.R. 6355) enacted into law, my testimony will focus on three particularly important pieces of legislation to be considered by the Committee, each of which will promote federalism and greater transparency under the ESA: H.R. 6345, The EMPOWERS Act; H.R. 3608, the Endangered Species Transparency and Reasonableness Act; and H.R. 6364, the LAMP Act.

H.R. 6345, EMPOWERS Act of 2018 (Rep. Stevan Pearce, N.M.-02)

The Ensuring Meaningful Petition Outreach While Enhancing Rights of States (EMPOWERS) Act would require federal agencies making listing decisions under the ESA to meaningfully consult with state governments before a listing determination is made. It also mandates federal agencies provide an explanation when their decisions diverge from the findings or advice of a state government.

County governments strongly support H.R. 6345 because it will strengthen the role that state governments and their political subsidiaries play in the ESA process. State game and fish departments assist the federal government in species and habitat conservation efforts. Further, states and many counties have adopted their own resource management plans (RMPs), which can provide existing, verifiable and scientific information that the federal government can use in its species, habitat or natural resource management plans.

I can give you an example of where this approach has been very successful in my county: the Oregon spotted frog was listed as a threatened species under the ESA in 2014. The U.S. Fish and Wildlife Service (USFWS) initially proposed to include a large portion of the Glenwood Valley of Klickitat County, including private property, as the frog's critical habitat. The residents and the county were highly concerned about the potential impacts that the designation would have on ranching and county road operations. To help address these concerns, our county government facilitated meetings between USFWS, the Washington Department of Fish and Wildlife, and local ranching interests. It took considerable time and effort to build trust between the parties, but eventually these meetings culminated in an agreement that was signed by over 20 private landowners and was incorporated into the critical habitat designation in 2016. It was a win-win for all involved, especially the frogs. This example illustrates what can happen when federal agencies trust their local partners and engage in meaningful consultation and dialogue before finalizing decisions.

We want to thank Congressman Pearce for sponsoring this common-sense legislation that recognizes the need for the federal government to include state and local governing partners in developing the best possible species conservation policies. If federal, state and local governments craft and implement resource management decisions in good faith, policies are more likely to be accepted by local residents, thus increasing the possibility of future intergovernmental cooperation on other important community issues.

H.R. 3608, The Endangered Species Transparency and Reasonableness Act (Rep. Tom McClintock, Calif.-04)

Too often, ESA decisions do not conform to the process spelled out under the ESA, but instead are mandated by court decisions forced on the federal government through the abuse of our legal system by special interest groups. To make matters worse, these lawsuits may require taxpayers to pay the legal fees of entities who sue on technical grounds to prevent common-sense, locally-supported species and habitat management plans from being implemented. According to the U.S. Department of the Interior, from 2012 to 2017, the federal government entered into 96 separate settlement agreements or consent decrees and paid out \$1.7 billion in legal fees.¹

This system needs to be fixed to prevent further abuse. This is why counties support H.R. 3608, the Endangered Species Transparency and Reasonableness Act, and urge its adoption by Congress. If enacted, this bill would require USFWS to track, report to Congress, and make available online information on ESA lawsuits and attorney payouts from those lawsuits. This bill would also put in place the same \$125 per hour cap on attorney's fees for suits filed under the ESA as for those filed under the Equal Access to Justice Act.

I can give an example of why this is important: Klickitat County is home to large wind energy farms. We are proud to have the most wind turbines of any county in Washington State and third-most in the nation behind a couple of counties in Texas. Wind projects now make up nearly one-third of the entire tax base of the county. These are very capital-intensive projects that are on tight construction schedules. Many of these projects were threatened with litigation by third parties and most paid out some form of settlement to maintain their construction schedules. Unfortunately, lawsuits have become a whole new industry in my county, holding up projects until a settlement can be extracted. This cycle of litigation and settlement is likely to have a chilling effect on the county's flourishing and much-needed wind energy industry. Conservation policy should be based on good stewardship of the land, not profit incentives for special interests. Limiting opportunities to "sue and settle" represents a step in the right direction.

Additionally, under current law, the science used to justify ESA listing decisions may not be publicly available. H.R. 3608 would address this issue by mandating federal agencies to make publicly available the data used for ESA listing decisions and to make the data accessible through the Internet. The bill also requires the federal government to disclose to states all data justifying an ESA listing decision and defines the term "best available scientific and commercial data" to include data provided by affected states, tribes, and local governments. Species listings and recovery decisions should be based on the best available scientific data and consistent, reliable timelines. Counties have developed data that can assist our federal partners in species conservation plans, and we encourage the federal government to use this data where available.

H.R. 6364 (Rep. Don Young, Alaska-AL), LAMP Act of 2018

The LAMP Act would allow the federal government to enter into cooperative management agreements with state and local governments, tribes and non-federal stakeholders to improve endangered species recovery and habitat management. States with strong, scientific approaches to species conservation would also take the lead in species conservation efforts. Under the LAMP Act, the ESA would become a

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https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3368_promoting_transparency_and_accountability_in_consent_decrees_and_settlement_agreements.pdf

more collaborative conservation statute that welcomes the input and expertise of non-federal governing partners for species and habitat protection.

Counties support the adoption of H.R. 6364 because this legislation would empower county governments by ensuring federal support for local management solutions. In a time of strained resources and manpower within the federal government, developing cooperative solutions to our environmental challenges can lead to greater efficiencies in decision making and improve long-term recovery. County governments have already served as partners to federal agencies in implementing various species conservation plans and creating new opportunities for these partnerships to flourish will lead to better outcomes for communities and the environment.

Conclusion

Once again, thank you, Chairman Bishop, Ranking Member Grijalva, and Committee members for holding today's legislative hearing on the ESA. We must pull together and work in a bipartisan, constructive manner to ensure that our approach to the mutually-shared objective of species recovery and protection is driven by coordination between federal, state and local governments. We hope Congress acts on and the president signs all of the ESA modernization bills before the Committee and appreciate the opportunity to express counties' support for these important efforts.