

Honorable Chairman Hastings, Representative Lummis and Members of the Natural Resources Committee,

I appreciate the opportunity to appear before the Natural Resources Committee and testify in behalf of sportsmen, concerning “*State and Local Efforts to Protect Species, Jobs, Property and Multiple Use Amidst a New War on the West*”.

I have some materials that I will give to the Committee which I have obtained from individuals which wanted their story to be told but due to time constraints, I will not be able to cover all of them. With your permission I would request these materials be added to the record.

My testimony will focus on the two species which are most likely to impact Wyoming’s Sportsmen and our non-resident hunters which come here seeking the adventure of a lifetime!

We have seen both the grizzly bear and the gray wolf meet and maintain recovery objectives. Both of these species have been removed from federal protections and both have been relisted as a result of the courts being used by litigants to maintain protections when these species have met and continue to exceed recovery goals.

While both of these species have followed similar paths, they both have taken different paths to get us where we are today.

## **GRIZZLY BEARS**

Grizzly bears remain an icon of the Untamed Wild West. In 1975, grizzly bears were given federal protections to allow their numbers to increase and to ensure that they had room to roam. Throughout this entire process, wildlife biologists were continually developing and modifying techniques designed to afford some level of comfort in stating the obvious; grizzly bear numbers were increasing. As those numbers continue to increase, it is only natural to expect that you will see greater conflicts between this magnificent animal and the humans which reside in proximity to their recovery areas.

I have provided you with a map as I believe the visual speaks volumes as to the successfulness of efforts to protect and restore grizzly bears to a sustainable population. You can see the recovery area outlined in red, the identified and accepted suitable habitat outlined in purple. The blue dots identify 2012 Capture Location Sites. The continued expansion of grizzly bears is a good sign that we have healthy and robust populations of bears; however, it also demonstrates the fact that

we will most assuredly continue to see an increase in human/bear conflicts. We have recently seen about 4-5 incidents this year and hunters have yet to enter the remote areas in pursuit of their quarry. Just two years ago, we saw two people in Wyoming that lost their lives to grizzly bear encounters and a few more that were injured but survived the ordeal. Most of these incidents resulted in the grizzly bears (if they could be found and confirmed the perpetrator) ultimately forfeiting their lives as well.

In 2012, within Wyoming but excluding National Parks, there were 28 known or probable human-caused mortalities of grizzly bears. A known mortality occurs when the carcass of the bear is found and a probable mortality denotes that no carcass was found but the bear is believed to have sustained an injury that would result in the death of the animal. Cubs-of-the-year whose mother is a known mortality is considered probable mortalities. In 2012, 4 cubs-of-the-year were counted as probable mortalities but the WY G&F report didn't identify in which category they occurred.

According to the WY G&F report; 3 grizzly bears dies from Natural causes, 11 were killed in self-defense, 12 were removed by agency personnel, one was killed after being struck on a highway and one was mistakenly killed by a black bear hunter.

Of the 12 removed by agency action; 5 were removed due to livestock depredation, 6 were removed due to property damage and human food rewards and one individual was removed because it had become extremely habituated to humans.

The report also noted that 5 of the 12 bears removed by agency personnel occurred outside of the Suitable Habitat Boundary. Several of the reported self-defense mortalities and the mistaken identification by a hunter are currently under investigation.

I mention this information for two reasons; first, I believe too many people believe that ESA protections prevent the death of grizzly bears; and second, grizzly bears are a human health and safety issue that often is not given adequate consideration.

Grizzly bears were delisted at the request of the USFWS and this decision was based upon the best available science but the agency tasked with making the decision as to whether or not threats have adequately been addressed and recovery goals obtained and sustained over a considerable period of time. Litigants were able to successfully obtain court orders to trump this decision and grizzly bears have once again been placed under federal protections.

It appears as though, given the time the USFWS, has been able to collect scientific data that demonstrates the perceived threats were there but that grizzly bears are able to switch to alternative food sources and will continue to maintain and sustain themselves at recovery level objectives.

This does highlight a flaw within the ESA; wildlife management is not an exact science. Multiple factors can and do influence behavior and responses from our vast wildlife resources. The very nature of the beast, so to speak, is of its ability to surmount and overcome challenges they face in our Untamed Wild West.

## **GRAY WOLVES**

The gray wolf is an entirely different tale to be told.

Gray wolves were first listed as threatened and endangered in the lower 48 states in 1974. In 1978, saw the reclassification of the Gray Wolf in the United States and Mexico, with the determination of Critical Habitat in Michigan and Minnesota. In 1994, under a specially created and newly established classification; Nonessential Experimental Population of gray wolves were defined and brought into what is now known today as the Northern Rocky Mountain (NRM) Distinct Population Segment (DPS). The DPS designation was adopted in 2003, when wolves in the NRM had obtained and maintained recovery objectives for three consecutive years.

The primary three states contained with the NRM DPS are Idaho, Montana and Wyoming. All three states presented the USFWS with their preferred gray wolf management plans. It is not surprising for me to see that when you look at the official USFWS website the Nonessential Experimental Population Segment is now only mentioned as an Experimental Population. Words do matter and it is important as you look at the ESA and how it has morphed into something far different than its original intended purpose.

It is important to understand that initially, these three states were collectively tasked with recovering this Nonessential Experimental Population of Gray Wolves within this specific geographical region known as the NRM DPS. Wolf experts were asked to review all three state wolf management plans to determine if collectively, they would allow for gray wolves to be maintained and sustained. Some expressed concerns about Wyoming's plan but ultimately 10 out of the 11 experts stated that gray wolves would be maintained and sustained under all three unique state plans. It wasn't long however until Wyoming and its plan was placed under closer

scrutiny. Wyoming's plan was and remains a plan that would contain wolves to areas of the state where they have suitable habitat and are the least likely to get into conflict with current and well established uses that Wyoming citizens desire to maintain. Wyoming was first isolated by the other two states and the USFWS in an attempt to force Wyoming to reconsider the plan adopted by its citizens. In 2005, we saw for the first time, actions that were applied to Idaho and Montana. Both states were awarded greater management flexibility under the newly established 10(j) rules of the ESA.

In 2008, we saw the USFWS remove the NRM DPS from federal protections and saw the implementation of the 10(j) rules which were afforded only to Idaho and Montana. The importance of this step was that now states and Tribes with approved USFWS plans were now able to better address "*unacceptable impacts*" to wild ungulate populations. Wyoming was excluded from this reprieve for our wild ungulates because the USFWS was unwilling to accept Wyoming's wolf management plan. Because Wyoming had made changes to our plan during the 2007 legislative session, Wyoming was included in the recommendation to remove federal protections; however, the 10(j) ruling allowing for greater management flexibility to protect our wild ungulate populations was NOT available or afforded to Wyoming.

In 2009, Wyoming was once again treated differently than the other states within the NRM DPS. The USFWS, who actually helped Wyoming modify its 2007 plan to conform to their requested changes, once again declined in 2009 to defend Wyoming's plan and claimed it did not contain an adequately regulatory mechanism for the purpose of the ESA.

Wyoming was once again forced to defend the legitimacy of their wolf management plan and wolf management decisions were once again turned over to the courts.

2011 saw the final delisting of the NRM DPS, excluding Wyoming.

2012 finally saw the delisting of gray wolves for Wyoming; however, that action was challenged in two different District courts outside the state of Wyoming. One of those courts has remanded authority back to the Wyoming District court; while the other, located in Washington, D.C. seeks to determine whether or not Wyoming should have the ability to manage wolves according to their wolf management plan.

This also highlights another problem caused by the ESA and the manner in which it is implemented, for it is ultimately Wyoming and the citizens of this state that will be tasked and burden with the costs of maintaining and sustaining this recovered

Nonessential Experimental Population of gray wolves found within its borders; yet, a court far removed from the area impacted may decide how Wyoming and its citizens will live with a species they have recovered.

The ESA working group created by the Natural Resource Committee has asked for an open and honest discussion and seeks to answer the following questions:

### **How is ESA success defined?**

This is one of the major problems within the ESA. To some success is simply the listing of a species; to others, success is not achieved until a listed species is once again removed from federal protections.

Here is a story recently ran on FOX5 news from Las Vegas, NV about the Desert tortoise.

[http://www.fox5vegas.com/story/23256865/desert-tortoise-faces-threat-from-its-own-refuge#.UhunqKDj\\_WE.gmail](http://www.fox5vegas.com/story/23256865/desert-tortoise-faces-threat-from-its-own-refuge#.UhunqKDj_WE.gmail)

### **Desert tortoise faces threat from its own refuge**

For decades, the vulnerable desert tortoise has led a sheltered existence.

Developers have taken pains to keep the animal safe. It's been protected from meddlesome hikers by the threat of prison time. And wildlife officials have set the species up on a sprawling conservation reserve outside Las Vegas.

But the pampered desert dweller now faces a threat from the very people who have nurtured it.

Federal funds are running out at the Desert Tortoise Conservation Center and officials plan to close the site and euthanize hundreds of the tortoises they've been caring for since the reptiles were added to the endangered species list in 1990.

Officials expect to put down more than half the 1,400 tortoises at the research and holding facility in the coming months in preparation for closure at the end of 2014.

Is this success?

### **How do we measure ESA progress?**

I believe this is another problem within the ESA as no current process requires an assessment or process to determine if progress is being made. The ESA, some would argue, is more about stopping progress than it is about protecting species. Listing is a well-defined and relatively simple process; whereas, removing a species from federal protection is anything but defined. Often, in Wyoming, we have seen the goal posts moved once a species has met recovery goals and new bench marks have been established.

### **Is the ESA working to achieve its goals?**

The first paragraph in your email introduction states clearly: "The Endangered Species Act (ESA) was created four decades ago in 1973 to preserve, protect and recover key domestic species. Since that time, over 1,400 U.S. domestic species and sub-species have been listed. Most species remain on the list and hundreds more could potentially be added within just the next two years." It would appear as though the mission of the ESA has continued to expand without ever having actually achieved many of its goals.

### **Is species recovery effectively prioritized and efficient?**

With a recovery rate of around 1% for species listed as threatened or endangered; clearly, it would cause the common person to conclude that the ESA is flawed and anything but efficient. It would also appear as though the purpose has expanded beyond preserving, protecting and recovering key domestic species to include all species.

### **Does the ESA ensure the compatibility of property and water rights and species protection?**

It would appear as though more weight is given to species protection over that of property and water rights. I know of local businesses which have been negatively impacted by indirect impacts associated with continued protections of recovered species. The town of Dubois, WY has probably suffered more than any other town in Wyoming.

### **Is the ESA transparent, and are decisions open to public engagement and input?**

The ESA has definitely become much more than transparent. Some organizations, it would appear, have been able to turn the ESA and some species into a cash cow. Decisions are open to the public and input is readily obtained; however, it would

appear as though nothing carries as much weight as litigation. This in turn causes the public to lose faith in the process and I believe puts species more at risk because the public is pushed aside by those who benefit from species listing. Notice I said listing not recovery of the species. Once a species is delisted or removed from federal protections, it can no longer be a cash cow.

### **Is litigation driving the ESA? Is litigation helpful in meeting ESA goals?**

As a member of a group that has been forced to turn to litigation in order to get fair consideration of Wyoming's wolf management plan I can state that litigation is necessary at times. However, I do wonder whether or not litigation is driving the ESA. Unfortunately, as I stated earlier, I believe some organizations attempt to stop delisting from occurring as recovered species don't seem capable of generating money as do species which remain listed and under current threats, whether those threats are real or imagined.

### **What is the role of state and local government and landowners in recovering species?**

I believe it was the intent of those who created the ESA to involve state and local government as well as private landowners; however, I believe their role has been greatly diminished due to the lack of understanding of the powers they have under the ESA. Landowners should be more involved with recovery efforts as successful recovery efforts are more likely to occur if landowners and affected communities rally around threatened or endangered species.

### **Are changes to the ESA necessary?**

Yes, I believe that the ESA is in need of some changes.

## **POSSIBLE SOLUTIONS**

**States should be given equal status with the USFWS and decision making powers should be equally shared between the Secretary of Interior and Governor of each respective state.**

States are better suited to manage our wildlife resources than the US Fish & Wildlife Service (USFWS). States are already paying the costs for species recovery. States are better suited to work collectively with effected communities and assess & understand the actual economic impacts. The USFWS adds complexity to the

process and allows litigants to search for courts that are far removed from the impacted areas and thus easier to manipulate.

One need only look at how the wolf delisting has occurred in Wyoming to see an exact example of the debacle the ESA has become. From the very beginning Wyoming has been thwarted from implementing a plan the people of Wyoming desired.

It is ultimately Wyoming citizens which will ensure that the species remains recovered. It is the Wyoming citizens which have been obligated to shoulder the cost; both indirectly and directly. It is our wildlife resources which are being sacrificed on the altar of wildlife worshipers because some would prefer to feed wild animals rather than allowing Wyoming's citizens to be fed via our own wildlife resources. It is Wyoming's citizens which are faced with the possibility that someone else may determine our fate.

Couple this with the fact that Wyoming is spending on average one million dollars a year managing grizzly bears even though this species has surpassed recovery goals, was delisted in 2007 only to be relisted by people that are not tasked with paying the management costs nor forced to live daily with the potential threat of a grizzly bear encounter. The USFWS orders the destruction of several grizzly bears every year yet hunting them is unacceptable. The truth is that sportsmen were and remain the first conservationists. We put our money where our mouths are, so to speak.

## **SINGLE SPECIES MANAGEMENT DOES NOT WORK**

**Congress needs to amend the ESA to stopped single species management from trumping management of the whole ecosystem.** One of the problems within the ESA is that it forces one species to take a higher priority over the complete ecosystem and other species within it. There are a lot of examples of how good intentions have led to bad outcomes simply because by protecting one species we have altered the natural balance. If something is NOT changed soon, we will soon see species being listed as a direct result from species which Congress has either protected via treaty or granted protections under the ESA.

Wildlife populations are highly variable. By granting protections to some species, the ESA is potentially causing some species to be maintained at much higher densities than would have naturally occurred. This in turn may be causing



significant impacts to species from increased competition for food, space and water. It also may cause some species to be more at risk of predation since some species appeared to have been more migratory in the past, are now becoming year round residents. An example of this would be raven's (protected under the Mexican Bird Treaty) and sage grouse (a species currently under threat of listing).

## **UNFUNDED FEDERAL MANDATES**

The ACT states; *encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.*

**The ESA is costing states millions of dollars.** In Wyoming, grizzly bears have a price tag of approximately one million dollars per year. The USFWS has contributes \_\_\_\_\_ per year towards grizzly bear management costs.

What recourse currently exists for states to recuperate the costs of a listed species? As I stated earlier, the states are task with both the burden and cost of protecting a listed species; yet, the ESA is protecting that species for the entire nation. More needs to be done to understand the actual costs of the ESA to affected states.

## **GOVERNMENT ACCOUNTABILITY**

**The USFWS also needs to be held accountable for commitments they make.**

Wyoming was told that wolves would have no economic impact to the state; yet, countless people have been impacted by the Nonessential Experimental Population of gray wolves foisted upon the state. People should not be told there will be no economic impact and then left to suffer under continued protections of a recovered species. How is the USFWS held accountable for statements they make at the onset to listing a particular species? It appears as though they can make any statement and then simply walk away once the process has started.

## **HUMAN HEALTH & SAFETY**

**Human health & safety also seems to be something that needs to be added to the ESA.** As the grizzly bear distribution map I presented shows, grizzly bears are expanding beyond their Primary Conservation area and their identified suitable habitat. This will continue to cause an increase in human/grizzly bear conflicts. Is it acceptable for the USFWS to put human lives at risk? Can we honestly state that the constitutional guarantee that no person or class of persons shall be denied the same protection of the laws that is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and pursuit of happiness when only a very few states subject their citizens to the risk of a grizzly bear encounter we continually endure in our state?

**Another issue is with regards to diseases associated with Nonessential Experimental Population of Gray Wolves; *Echinococcus granulosus* (E.g.).** I have included a letter from the USFWS to an individual which had contacted US Senator John Barrasso (R-WY). While the letter is meant to dispel concerns about this tapeworm, it also leaves some questions unanswered. How much more at risk are those which live in close proximity to wolves than those which live elsewhere? Once again, are we as westerners being exposed to threats that other US citizens are not? It appears that more research should have been conducted prior to gray wolves being introduced. Congress needs to ensure that the ESA cannot continue to create different classes of people nor put human lives at risk by exposing them to threats imposed upon them by the continued protection of recovered species.

**The Congress finds and declares that the United States** has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

- (A) migratory bird treaties with Canada and Mexico;
- (B) the Migratory and Endangered Bird Treaty with Japan;
- (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
- (D) the International Convention for the Northwest Atlantic Fisheries;
- (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
- (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
- (G) other international agreements;

How do the grizzly bear, wolf, and other species discussed here today fit into the international intent of the ACT?

We are the envy of the World because of our abundant and rich wildlife resources.

Thanks for your time and service in the US House of Representatives and for the opportunity to provide my thoughts and comments pertaining to the ESA and its impact on Wyoming's Sportsmen and Sportswomen.

Respectfully submitted,

Robert A. Wharff  
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WY SFW