THE ENDANGERED SPECIES ACT IN SOUTHEASTERN NEW MEXICO
CONGRESSIONAL HEARING
US HOUSE OF REPRESENTATIVES—COMMITTEE ON RESOURCES
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Welcome and Introduction – the need for balance and a systems approach

- Mr. Chairman, Congressman Pearce, distinguished Committee members, thank you for the opportunity to provide the State's perspective on the Endangered Species Act (ESA) in Southeastern New Mexico.
- My dad, Philip Prukop, was a farmer and rancher. He recognized that understanding signs in nature would help him understand his business. I learned from him as others here have learned that Nature serves as an environmental barometer—as an indicator of what's going on in our world. Understanding what was going on around him helped Dad make good decisions about how to manage his land and how to deal with the challenges presented by the environment he worked in. He knew that there were many things he could not control and he knew he had to learn to work with Mother Nature to accomplish his goals.
- Here in the Pecos River Basin of Southeastern New Mexico endangered fish are not the problem—they are only an indicator, a symptom. Rather, it's management of water—the river itself….and other surface waters and groundwaters that make up the system that feeds the Pecos River.
- Impacts to fish species are symptoms that the ecosystem is not functioning naturally, and when investigated, it's easy to see that impacts to wildlife of this sort are related to the problems of downstream delivery of water. The loss of fish species is a sign of what humans are doing to change natural water systems. These signs tell us that we are damaging the ecosystem, damage that extends far beyond the species itself and into the lives of everyone affected. An important concept I'll expand upon later as we discuss how to make the Endangered Species Act more effective involves conservation of systems, as opposed to single-species or single-issue management.
- Another point to remember as our discussions proceed is that in striving for the balance we all wish to attain between environmental concerns and the needs of humanity, we must be thoughtful in making quality of life decisions and careful in understanding long-term economic impacts in the region.

- We believe the ESA is a very important law—one that is important to habitat protection and species conservation in the United States, and appreciated and supported by many Americans, including many New Mexicans.
- After 30 years of implementation much has been learned, and approaches to implementation of the ESA have evolved to address the complexity of managing endangered and threatened species on public and private lands. Examples for private lands include the use of Habitat Conservation Plans and "safe harbor" initiatives. We need to continue this effort to improve the act in a manner that achieves species conservation and habitat protection while allowing for managed growth.
- We advocate thoughtful, careful review of the ESA. However, Congress must be careful not to make wholesale changes that will undermine the purpose of the law.
- On this, it seems there is potential for agreement across a wide spectrum of interested parties. The best pathway is to work together in ways that will conserve habitat while, for example, observing private property rights. Methods that emphasize incentives for landowner participation in listed species conservation (as with the lesser prairie-chicken in New Mexico, see below) are one example of an ESA model that needs to be continued and expanded upon.

The ESA in New Mexico Today

- The U.S. Fish and Wildlife Service Web site lists 42 species listed as threatened or endangered in New Mexico (29 animals, 13 plants) under the Endangered Species Act. Subtracting those species that are considered extirpated from New Mexico, or those listed twice due to the existence of an experimental population designation (e.g., Mexican wolf), there could be considered to be 22 threatened or endangered animals present or occasional in New Mexico.
- New Mexico currently has several wildlife species considered as candidates under the ESA including: the lesser prairie chicken, the black-tailed prairie dog, sand dune lizard, yellow-billed cuckoo and Texas hornshell mussel.
- At the state level, there are 118 species listed as threatened (70) or endangered (48) under the New Mexico Wildlife Conservation Act (WCA). Twenty-four of these are also listed under the Endangered Species Act (2 of the species listed under the WCA would currently be considered irregular in New Mexico, therefore don't appear on the ESA list for New Mexico).
- In the Pecos River Basin, we currently have two federally listed fish species—the Pecos bluntnose shiner and the Pecos gambusia; one candidate mollusk—the Texas hornshell;

and four invertebrate species that are proposed for federal listing. Other fish species listed at the state level for this area are: the blue sucker, gray redhorse, Mexican tetra, Pecos pupfish, bigscale logperch and the greenthroat darter. Two state-listed reptiles (the plainbelly water snake and western river cooter) also occur in the Pecos River.

- There are three federally listed threatened plant species in the Pecos River Basin of Southeastern New Mexico: the Pecos sunflower, gypsum wild buckwheat and the Sacramento Mountain thistle; and one endangered plant known as Kuenzler's cactus.

Effective use of ESA in New Mexico

- The State of New Mexico and its agencies have worked cooperatively with Federal agencies and other interested parties to seek innovative and workable solutions to solving ESA issues in New Mexico.
- Partnerships between agencies and private landowners and groups have also been very important in implementing ESA projects. As an example, ESA partnerships working on recovery of the lesser prairie chicken include a southeast New Mexico working group comprised of state and federal agencies, industry representatives, and the conservation community to discuss potential conservation actions. This group has been in place for 18 months, working to develop specific guidelines that could be implemented through Bureau of Land Management (BLM) plans, regulations, stipulations, etc. Through such cooperative work the state management plan now includes better survey and habitat information, habitat protection and improvement work by federal and private landowners, and better management of Game Commission-owned properties specifically intended for the lesser prairie chicken. Both state Wildlife Partnership Funds and federal Partners for Fish and Wildlife projects have been applied on private ranches in New Mexico to benefit lesser prairie chickens.
- In another example involving a candidate species in several western states, multi-party (public and private stakeholders) black-tailed prairie dog working groups have developed state management plans, including in New Mexico, where multiple cooperators have signed a Memorandum of Understanding (MOU) to support the plan of the New Mexico working group. This effort has promoted the availability of various incentive programs for private landowners interested in maintaining prairie dogs. Implementation of state management plans will likely lead to removal of the prairie dog as a candidate species within the next few years.

- Another example of public-private collaboration in New Mexico involves a threatened plant species. The Pecos sunflower occurs in the Pecos River drainage at Santa Rosa and the Roswell/Dexter region. It is a wetland species associated with springs and seeps (not the river proper). Its largest population is at Bitter Lake National Wildlife Refuge where it is managed by the US Fish and Wildlife Service (USFWS). Most other populations are on private lands, but a few are on BLM and Bottomless Lakes State Park. The greatest threats to this species are salt cedar encroachment and aquifer depletion (drying habitats). On a very positive note, two ranchers with state trust land springs (one near Fort Sumner and another near Bottomless Lakes) have volunteered to re-establish Pecos sunflower on their ranches. The State Land Office (SLO) and the State Forestry Division of the Energy, Minerals and Natural Resources Department have assisted these ranchers by successfully seeding Pecos sunflower in suitable habitats on their ranches.
- I'd like to mention one more example in New Mexico of a recovery effort to illustrate the successful use of the recovery team concept. The Gila Trout Recovery Team has been in place for more than 20 years. From the very beginning with this species there was a long-term commitment of state and federal wildlife agencies, land managers (primarily Forest Service, especially Gila National Forest) and others to save this species, our New Mexico state fish. Once the recovery plan was drafted, the recovery team remained in place and was very active in managing the recovery of this species. There was also general support for this effort in both the conservation and angling communities. Today populations have been restored sufficiently to be able to withstand some habitat impacts such as wildfire. The USFWS is currently working on a downlisting package, with a special rule to allow for some angling for this species under state management.

General "successes" and opportunities to build on experiences from ESA

- Some "new" funding sources have been put in place that ESA efforts can take advantage of, especially for conservation on private lands. Examples include state Landowner Incentive Grants, the federal Private Stewardship Grant Program, the High Plains Partnership, and increases in funding to Farm Bill conservation title programs.
- "New" regulatory programs under ESA Section 10 have been developed for landowners, both pre-listing (e.g., Candidate Conservation Agreements with Assurances) and post-listing (e.g., Habitat Conservation Plans).

- All of the above programs can be beneficial, but agencies do not have existing infrastructure to successfully administer these new tools. So federal funding mechanisms must be pursued and secured.
- USFWS has become more receptive to partnering with state agencies in recent years. In New Mexico, the state collects much of the biological field data on endangered species that may be figured into Section 7 consultations, etc. The downside, however, is the continuing decreases in ESA Section 6 funding to states. States lack sufficient agency staff to participate directly in biological opinions and other related ESA activities.
- Unlike with wildlife, the ESA does not protect threatened or endangered plants or their habitats on private, municipal, or state trust lands unless the activities of those landowners are federally funded or require a federal permit. Most threatened and endangered plant species management in southeastern NM occurs on federal lands. The ESA has been effective in avoiding direct impacts to these plants on federal lands, which is important and can be considered successful implementation. If federal land populations are safe, then private land populations usually do not need to be an emphasis for recovery, unless they are critical to the species. Land use projects on federal lands have been modified because of these species, but we do not know of an instance where a project has been stopped because of a threatened or endangered plant. Incentive programs for private landowners, such as grants for habitat improvement or purchase of conservation easements, need to be funded to support the ESA so that recovery plans can be implemented with willing landowners.
- The ESA Habitat Conservation Plan provisions have been successful. They provide certainty and flexibility for states, landowners, and federal agencies. It's the kind of forward thinking that will protect species over the long term, instead of the reactive approach that is less successful and that creates last-minute surprises for landowners and the private sector. Habitat Conservation Planning efforts need continued refinement, such as a legal requirement that plans be consistent with species recovery and set measurable recovery-based biological goals. Review by independent scientists and allowing for greater public involvement in plan development should also be a part of the process. As with other aspects of implementing the ESA these efforts need additional support and funding.

The Economics of the ESA in New Mexico

- Regarding economics of the ESA, it is essentially always the case that expenditures to recover a listed species are far greater than expenses to promote conditions that avoid

listing to start with. Also, if people objectively consider the true long-term economic cost of altering landscapes in ways that put species at risk, the actual cost of resource extraction would be higher than the costs we have historically considered. This is the argument of short-term economic gain versus longer-term economic implications of unwise resource use or management. This relates to who pays: the current generation or subsequent generations. Many types of resource use are possible in the face of at risk species and judicious conservation of habitat systems. The conflict generally comes when there is near-term income motivation fueling the resource use that views any appreciable environmental considerations as reducing the bottom line.

- In New Mexico, we believe the positive impact has outweighed negative impacts, and in cases like the Pecos River and management of fish species, maintenance of surface flows has likely had positive economic impact (e.g., to sport fishing and government funds paid for water leasing, etc).

What needs improvement

- We would likely get more conservation benefit from focusing efforts on listing actions as opposed to critical habitat designation. Such listing actions would be: completion of findings on proposed rules, review and determination of petitions, review of candidate species for which "warranted but precluded" determinations were made, completing listing, down-listing and de-listing packages. In other words, putting more effort into maintaining an appropriate list of species that would be protected under the ESA, versus time spent on determination of critical habitat designation, which recently have been frequently challenged in court and have had to be redone multiple times (e.g., Mexican spotted owl).
- Given these statements, however, we do not support HR2933—The Critical Habitat Reform Act of 2003--because it would create unattainable standards and eliminate the habitat protections that endangered species need to recover. The recommended changes ignore the need for species sustainability and habitat conservation—making the endangered species designation available only to those species perilously close to extinction.
- We also do not support HR662 and S2009—Sound Science for the Endangered Species Act Planning Acts. By requiring government agencies to “give greater weight” to some kinds of science over others, it seeks to restrict the use of important methods that scientists currently use to assess species’ protection. Using the “best available science” is a laudable goal, making value judgments about science is not. It’s also important to mention that just as science is needed to implement endangered species protections, industry and other

developers must also share the burden of using science to determine how best to carry out their activities in an environmentally compatible manner.

- We need to adequately identify issues related to ESA statutory language and requirements versus issues related to ESA implementation within the USFWS and the Department of Commerce.
- We need greater federal incentives for state conservation efforts to avoid listing.
- We should establish reasonable rewards for landowners who self-report and self-conserve listed species.
- We must adequately fund ESA recovery efforts so there can be an effective test of what the ESA is supposed to do. Thus far, the ESA has not adequately addressed recovery. Funding of recovery programs shows positive association with species improvement, but funding for recovery on a per species basis has substantially diminished since 1980.
- Recovery teams often disband after recovery plans are written, leading to no direct oversight or recovery implementation. There are excellent models of recovery teams being actively involved in management such that successful recovery was accomplished. This approach needs to be replicated.
- The Administration and Congress should do more to support Habitat Conservation Planning. It should recognize the ESA on military and other public lands. Unfortunately, the Administration and Congress have under-funded ESA implementation, and states and landowners are growing increasingly frustrated with the law itself *instead of with the way it is being implemented.*

The Need for More Collaboration

- There is reason for the federal agencies to reach out to the stakeholders in the ESA debate. Private landowners, environmental groups, and others all belong at the table. This is the essence of collaborative conservation.
- Here in New Mexico, we can tout a few successes in that regard. For instance The Nature Conservancy has done some very important habitat protection on private land, while working with agencies and other landowners cooperatively. Additionally, Senator Domenici's efforts to get Middle Rio Grande stakeholders into collaborative programs to protect the Rio Grande silvery minnow are promising. These efforts take a long time, especially in complicated western situations involving habitat and water rights. But they are worthwhile—and they are much more constructive than the court battles that create long-term hostility among potential allies.

- In our state, a variety of state agencies have been involved in ESA management challenges in the Pecos River Basin. The New Mexico Interstate Stream Commission (ISC) has provided technical assistance in the form of hydrologic modeling to calculate ESA depletions and offsets using an innovative integrated groundwater and surface water model – this kind of collaboration should continue.
- In addition, the New Mexico Department of Game and Fish (NMDGF) and the ISC have undertaken a significant state investment in biologic research to determine the habitat needs of the fish in the Pecos River, in conjunction with federal agencies and stakeholders. This work resulted in the identification of flow regimes that would be most successful in achieving recovery of listed fishes. The ISC also worked with other agencies, individuals and groups to take other actions to aid with ESA compliance including: the bypass of inflow water through Sumner Reservoir, establishing a fish conservation pool in Sumner Reservoir, pumping water from the Lynch Ranch to maintain flows in critical habitat, and a water leasing and forbearance program with the Fort Sumner Irrigation District.
- In another example on the Pecos River, a Cooperative Conservation Plan was developed by State and Federal agencies for the Pecos pupfish in lieu of federal listing.
- Additionally, current efforts by state agencies (ISC and NMDGF) to establish a Conservation Agreement in lieu of federal listing of four invertebrate species are moving forward. These four invertebrate species, if listed, could adversely impact New Mexico's efforts to implement a long-term compliance plan to the Pecos River Compact, so precluding listing is of paramount importance.

Recommended Improvements to the ESA in New Mexico

The gloom and doom regarding the ESA is exaggerated. The law has been under-funded, understaffed, and in some cases poorly administered—but the mere facts that species like the peregrine falcon are being removed from the endangered species list and the bald eagle is recovered nationwide are indications that the ESA is working in very big ways.

Here are some ways to make the ESA more effective:

- Acknowledge that the ESA is about listed species and listing species, not avoiding species listing. The ESA is designed to protect threatened and endangered species, but is not designed to prevent species from becoming threatened or endangered. Once a species is actually listed, the likelihood of success in recovering the species is very low. Hence,

additional legislation is needed to manage species that are identified at some stage prior to actual threat or endangerment, e.g., as in "species at risk."

- The ESA must be amended to foster an ecosystem management approach to conservation of species and preservation of habitat. A mechanism to address ecosystem management issues (conservation of systems) must be included as a statement in the "purpose" section of the Act and then be fleshed out in the regulatory steps. Such an approach should incorporate protections for candidate and proposes species. This does not, however, imply that any individual species should ever be discounted.
- The Act should provide stronger habitat conservation provisions in conjunction with private interests.
- The ESA should include provisions to reward landowners who self-report and self-conserve listed species, i.e., emphasize incentives for landowner participation in listed species conservation (e.g., tax incentives).
- We need greater federal incentives for state conservation efforts to avoid listing.
- We should provide the opportunity for USFWS biological opinions re: ESA to be written jointly with state agencies.

Closing Remarks

- We appreciate the opportunity to appear, and to hear the issues raised by people here in New Mexico.
- Reauthorization of the ESA is a high priority in New Mexico. We support continuance of the ESA and strongly support reforms that make it more effective in achieving the original intent of the Act.
- We also strongly support adequate funding of federal ESA implementation programs.
- We support a stronger role for states in working as collaborators with the federal government and others to achieve ESA goals in an effective and timely manner. However, the State of New Mexico cannot afford for the Federal Government to abdicate its responsibility by weakening the ESA and its funding levels and burdening states with compliance.
- We are willing and capable partners in the reform of the ESA. We anticipate hearing from you in the future and welcome future collaboration.
- Thank you.