Committee on Resources

Witness Testimony

STATEMENT OF

THE AMERICAN FARM BUREAU FEDERATION

TO THE

HOUSE RESOURCES COMMITTEE

REGARDING

H.R. 3160

COMMON SENSE PROTECTIONS FOR THE ENDANGERED SPECIES ACT

Presented by:

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Good morning. My name is Steve Appel, and I am a wheat and barley farmer from Dusty, Washington (which is both the name of the town and an adjective describing the town). I serve as president of the Washington State Farm Bureau and a member of the board of Directors of the American Farm Bureau Federation. I am here representing both organizations.

It is a pleasure for me to testify in support of H.R. 3160, the Common Sense Protections for Endangered Species Act (ESA).

Washington State has experienced first-hand the economic and social upheaval that the Endangered Species Act can cause. Beginning with the northern spotted owl, the marbled murrelet, and now every salmon run in the Northwest, the Endangered Species Act has turned life in our state upside down.

One need look no further than the National Marine Fisheries Service (NMFS) proposed rule governing the taking of Pacific salmon to illustrate the lengths that federal agencies will go to control our daily lives in the name of endangered species protection. The rule states that it "is important that individuals alter their daily behaviors" to reduce the impact on "climate change that affects ocean conditions" which might possibly affect salmon. The rule lists behaviors that need to be altered include "individual decisions about energy consumption for heating, travel, or other purposes," and "individual maintenance of residences or gardens." NMFS is relying on a very tenuous and scientifically untested chain of causation as a basis for seizing control of everyday life decisions.

As if that were not enough, NMFS is proposing 200-foot buffers along all waterways, and has claimed the authority to regulate groundwater withdrawals and the authority to supersede state water law and take away established water rights, all in the name of salmon recovery.

Mr. Chairman, it is about time someone put some common sense into the Endangered Species Act.

H.R. 3160 provides a good start toward accomplishing this.

The bill provides incentives to private landowners, in the form of a "no surprises" provision and a provision allowing "safe harbor" agreements. Since most listed species are found on private property, we are absolutely convinced that the only way for the Act to succeed is to provide incentives for landowners to manage listed species on their property. This approach provides a "win-win" situation for both species and landowner.

Even though the "no surprises" and "safe harbor" policies have been promulgated administratively, we believe the only way to provide legal certainty for these programs is to authorize them through legislation as HR 3160 does. From our standpoint, the inclusion of incentives is a necessary and crucial part of any ESA reauthorization bill. We suggest that other tools such as "candidate conservation agreements" and other incentives be added to the bill to provide affected parties with a wider array of conservation choices.

The bill further requires that these conservation efforts undertaken by private landowners as well as by state, local and tribal governments and be recognized and considered in any ESA decision. It is important to recognize that listing should be the last resort to recovering species, and that species can also be saved by voluntary private actions. It is also important to recognize that merely listing a species does not guarantee its recovery and that it stands a better chance with private landowner management through incentives.

In Washington State there are numerous state and local initiatives to conserve salmon. It is important, as this bill would provide, that these initiatives be permitted to work before federal mandates are imposed.

Other sections of the bill give state, local and tribal governments more of a role in ESA decision-making and species recovery. We fully support efforts to allow parties that are actually affected by ESA actions to have a bigger role in making those decisions, instead of having such decisions dictated from Washington, D.C. The bill gives state and local governments greater input opportunities, requires the Secretary to consider that input and to respond in writing if there is disagreement with that input giving reasons why there is disagreement, and also allows state, local and tribal governments to develop management and recovery plans for species.

Allowing local input to local problems will provide better solutions that are in the best interests of all affected parties. Community-developed solutions consider and meet the needs of all. It would prevent the imposition of overreaching and unreasonable mandates such as those contained in the NMFS salmon proposal.

Another sorely-needed common sense amendment allows exceptions to the Section 9 "taking" prohibitions for actions protecting public health and safety. The provision would provide that such activities as operation, maintenance and repair of pipelines, transmission lines or firebreaks, or maintenance, repair or use of rights-of-way, or emergency repairs to any non-federal facility from an emergency or disaster shall not be considered the "taking" of any listed species. Common sense would seem to dictate that people should be allowed to rebuild their lives and clean up from hurricanes, tornadoes, floods or other natural disasters

without fear of prosecution under the Endangered Species Act. Common sense would also dictate that public health and safety concerns should supersede incidental harm to a species. It is a commentary on the current state of the law that such provisions are even necessary to include in the ESA, but the fact is that they are. The ESA reaches so far into people's lives that such basic actions taken in response to most basic human needs could be prohibited by the ESA.

Another common sense provision allows a permit applicant to participate in the Section 7 consultation process. Heretofore, only the permitting federal agency and either Fish and Wildlife Service (FWS) or NMFS have participated in this required consultation and deciding the fate of the permit applicant who has the most at stake. Why not give the applicant itself the chance to describe the proposed program and to describe what types of alternatives might be reasonable? Why not allow the applicant and FWS or NMFS to directly negotiate how a project might be structured that will satisfy ESA requirements, instead of having the permitting agency negotiate for the applicant?

Allowing the applicant early entry into the process will minimize miscommunication, eliminate unreasonable delays, and allow better and more informed decisions.

Common sense also dictates that ESA decisions must be made on the basis of sound science. The bill contains some provisions that move toward this goal. Provisions that prioritize verifiable field-tested data ahead of modeling data, and that require peer review of scientific data used in making decisions under the ESA are helpful. Peer review is critical to ensure that data used in ESA decisions is at least credible. In our view, however, these amendments do not go far enough.

We see the real problem to be the "best science available" approach. In reality, this is a non-standard because there is no measurable floor by which it can be judged. "Best science available" can be as little as a master's thesis, and that remains unchanged even with the changes made by HR 3160.

The law requires FWS or NMFS to make a determination whether a species is endangered, threatened or neither. Such a determination requires a minimum amount of supporting evidence to justify such a determination. "Best science available" sheds no light on what that minimum standard is or should be. We believe that the goal of sound science in ESA decisions can be better obtained by adding a threshold standard by which the evidence can truly be judged. We offer some suggestions for improvement at the end of our statement.

The bill also provides that the responsibilities of federal agencies under the ESA shall not supersede their primary mission set forth in authorizing or other legislation. This common sense statement clarifies an enormous problem that has long plagued government agencies and those they serve. Federal agencies administering legislatively-mandated programs have been forced to halt or alter those programs when a listed species is discovered. Seemingly conflicting responsibilities of the ESA have prevented these agencies from doing the jobs they were created to do. The Fish and Wildlife Service and NMFS have used the ESA to gain management authority over federal lands that are supposed to be managed by the Forest Service or Bureau of Land Management.

We recognize the responsibility that the Endangered Species Act places on federal agencies to recover species. However, it should not hamstring the federal agencies from doing their jobs. This common sense amendment clarifies this by providing that their responsibilities under the ESA should be consistent with their overall mission.

In conclusion, Farm Bureau realizes this bill will not solve all of the problems that the Endangered Species Act is currently causing across the country. But it is a step in the right direction. By providing some simple, common sense direction to the Act, this bill takes a giant step toward eliminating overzealous and overreaching administration of the law. Maybe there is hope after all that NMFS won't be in our living rooms telling us where to set our thermostats.

I would be happy to answer any questions that the committee might have.

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