

**Testimony of
Matthew J. Strickler,
Deputy Assistant Secretary for Fish and Wildlife and Parks,
Department of the Interior
Before the
House Committee on Natural Resources,
Subcommittee on Water, Wildlife, and Fisheries
On
H.R. 7408, America's Wildlife Habitat Conservation Act**

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Introduction

Good morning, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Matthew J. Strickler, Deputy Assistant Secretary for Fish and Wildlife and Parks within the Department of the Interior (Department). I appreciate the opportunity to testify before you today on H.R. 7408, the America's Wildlife Habitat Conservation Act.

Generations of habitat loss and the spread of invasive species and disease, all exacerbated by a rapidly warming climate, put ever-increasing pressure on America's wildlife. Many species are being pushed to the brink and we are facing a biodiversity crisis, increasing the need to protect species under the Endangered Species Act (ESA) and complicating efforts to recover species. The U.S. Fish and Wildlife Service (Service) is doing everything we can to leverage partnerships to accomplish our conservation mission. Working with others, we implement strategic, science-based conservation measures on the ground to conserve and improve habitat, recover species, and conserve species under the ESA, which can also help prevent the need for listing. When given the tools and resources to accomplish this work, the Service, together with states, Tribes, territories, landowners, and non-federal partners can do great things – and nature, when given a chance, can rebound.

In 2000 and 2001 respectively, Congress created the State and Tribal Wildlife Grant Programs, which led to the development of the State Wildlife Action Plans (Action Plans). These plans were a historic progression in wildlife management by state fish and wildlife agencies. Collectively, they provided the first nationwide blueprint for conserving fish and wildlife. State wildlife agencies identified over 12,000 rare, declining, and imperiled species of fish and wildlife and the conservation actions needed for their recovery. The critically important conservation work envisioned in these plans cannot be implemented without sufficient resources, and the resource needs are great. However, Congress has never supported these programs at the levels needed for them to reach their full potential. In FY 2010, Congress appropriated \$90 million, which was the high point for funding the Action Plans. More recently, the State Wildlife Grant (SWG) Program's average annual appropriation has been about a third less, or \$67 million per fiscal year.

In 2015, the Blue-Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources, convened by the Association of Fish and Wildlife Agencies, estimated that \$1.3 billion is needed each year to fully implement the Action Plans. Demand for Tribal Wildlife Grant Program funds by Tribes is similarly high and yet only about 25 percent of applicants are awarded funds each

year due to insufficient funding for the program. Dedicated, robust, predictable, and reliable funding that addresses the resource needs of states and Tribes for their conservation goals would be transformational. Making this investment in conservation today will yield long-term benefits, including strengthened wildlife populations, improved ecosystem function, job creation and economic development, enhanced recreation opportunities, and health and safety benefits for local communities.

Congress has the opportunity to once again enact a significant and holistic investment in the conservation of our nation's wildlife. The Department supports many of the goals identified in the legislation, including conserving and improving habitat, recovering listed species and preventing the need to list species under the ESA, and extending good neighbor and stewardship contracting authorities to the Service. However, this bill falls short, as we believe robust, predictable funding is essential to address the resource needs of states and Tribes for the conservation of at-risk species and recovery of listed species. Additionally, we have significant concerns with many of the provisions in the legislation. While we appreciate and support the goals of some parts of this legislation, as a whole and as written, we oppose this legislation.

The Department strongly opposes the rescissions of the Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA) funding in this legislation. The Infrastructure Investment and Jobs Act, which we commonly refer to as the Bipartisan Infrastructure Law or BIL, has been a transformational investment. This investment, which provided significant and dedicated funding in a number of discrete areas, has dramatically expanded the Service's ability to support locally led projects benefitting people and wildlife. It has enabled us to identify new approaches to addressing long-standing, complex conservation challenges across the nation, including in the Klamath Basin, the sagebrush ecosystem, and Lake Tahoe, as well as nationwide efforts to restore fish habitat connectivity. We have seen that the habitat restoration work done under BIL supports good paying jobs today and makes investments in nature that will provide sustained economic and ecosystem dividends far into the future. The funding that would be rescinded by H.R. 7408 was provided by Congress to address aging water infrastructure across the West, water conservation and energy efficiency, as well as for collaborative ecosystem restoration projects to improve the health of fisheries, wildlife, and aquatic habitat. These are programs that need more investment, not less.

Additionally, we believe that more needs to be done if we are to meet the conservation challenges that we face as a nation. The Department does not currently support the legislation as drafted and recommends changes to the structure of the proposed legislation to ensure the reliable funding needed to address the escalating challenges facing wildlife and meet the growing resource needs of states, Tribes, and territories, as well as the Service. The Department also has concerns with and opposes several of the ESA implementation provisions. My testimony below addresses these suggestions and concerns in greater detail. We welcome the opportunity to work with the Chairman on this legislation.

Title I – Wildlife Conservation and Restoration

The Service appreciates the intent and the purpose of Title I of H.R. 7408 to conserve and improve habitat, recover listed species, and prevent the need to list at-risk species. However, the Service has numerous recommendations that are necessary to accomplish the goals of the

legislation and meet the challenges facing America's wildlife today. Similar to the SWG Program, Title I of H.R. 7408 would authorize additional resources for states and territories to implement their Action Plans and to restore habitat for the conservation of species at risk.

The SWG Program has a 20-year track record of collaborative conservation success. Through the SWG Program, each State and territory has developed science-based Action Plans, often with input from Tribes, which provide a roadmap for fish and wildlife conservation in every corner of America. State agencies have begun to address the highest priority needs identified in the Action Plans and have demonstrated the value of timely, collaborative, science-based actions taken to conserve wildlife and their habitats before they become too rare or costly to restore. Conservation work funded by the SWG Program and guided by the Action Plans has helped candidate species avoid listing under the ESA and helped threatened or endangered species progress toward recovery.

The Service understands that the annual appropriation of \$300 million authorized in H.R. 7408 is intended to address the backlog of habitat restoration work identified in the Action Plans. This beneficial intent would be best supported through predictable funding, but the ultimate effectiveness of this provision under the bill is tied to annual appropriations. As noted above, the Blue-Ribbon Panel determined that \$1.3 billion is needed each year to fully implement the Action Plans, but recent annual appropriations for the SWG Program have been about \$67 million per fiscal year – far short of the need.

State and Tribal partners often pursue projects under their Action Plans that require either planning years in advance or sustained funding over a similar time period. Similarly, state and Tribal partners will likely need to build additional capacity to develop and implement the grants that H.R. 7408 proposes. Without the surety provided through dedicated funding, it would be difficult for partners to hire additional full-time employees and efficiently plan and implement projects. The Service notes that other mandatory funding streams, including through the Wildlife Restoration (also known as Pittman-Robertson) grant program, have been particularly successful because partners are able to reliably plan for future projects and supplement their capacity. For the reasons stated above, it was the recommendation of the Blue-Ribbon Panel that robust, predictable funding be made available, and the Service looks forward to working toward this goal with the Chairman and Subcommittee.

In addition, we have numerous comments and suggestions regarding the specific provisions in Title I of H.R. 7408, which are outlined below.

The Service notes that many of the allowable uses of the funding under H.R. 7408 do not include a requirement to facilitate recovery of listed species or prevent the need to list at-risk species. The Service recommends strengthening the connection between the allowable uses of funding and the recovery of listed species and proactive conservation of at-risk species. Additionally, the Service is concerned that some of the restrictions on land acquisition in H.R. 7408 would be difficult to implement for the states. The ability for states to acquire lands is an important tool for the conservation of species of greatest conservation need. Limiting the ability of states to acquire lands with funds appropriated under H.R. 7408 only when “no other source of funding is available to purchase such land” could lead to challenges and delays with critical conservation

work. The Service suggests this provision be limited to “when no other source of Department of the Interior funding is available to purchase such land.” This would clarify that other funds would still be needed for the required non-federal match. The Service supports the provisions in H.R. 7408 that would allow grant projects to be funded with a 10% non-federal match, instead of a 25% non-federal match.

Further, a holistic approach to recovering species listed under the ESA, and preventing at-risk species from needing to be listed, will require additional resources for the Service, as outlined in the President’s Budget. Such resources would help recover listed species by supporting development of recovery plans and implementation of activities identified in existing recovery plans. The Service requires sufficient resources to effectively carry out its statutory obligations under the ESA. There are many species for which the Service or other stakeholders have few resources available to engage in recovery efforts. This fact was highlighted in the Service’s FY 2020 Endangered and Threatened Species Expenditures Report, which found that for 27 percent of listed species, less than a total of \$5,000 were reported by federal and state agencies as expended per species.

Other areas of ESA implementation also require additional resources, as outlined in the President’s Budget. Between 2003 and 2022, Service environmental review staff decreased by 20 percent while new species were listed and economic activity and litigation increased. The number of projects received by the Service has increased significantly since 2022, reflecting the investments made through the BIL and IRA. We anticipate that project funding under the IRA and BIL will further increase the demand for Service technical assistance and consultations under Section 7 of the ESA. Additional resources are necessary to ensure that the Service can help federal action agencies fully meet their responsibilities under section 7(a)(2) of the ESA in a timely manner. In addition to the requested funding to increase environmental permitting capacity, the President’s Budget also proposes to expand our existing authorities to allow federal agencies to more effectively transfer funds provided under BIL to both the Service and the National Marine Fisheries Service (NMFS) to complete permitting activities.

The Service carries out robust collaboration efforts on voluntary conservation agreements under Section 10 of the ESA. Having the resources necessary to support these efforts to work with our partners is another important component of being able to holistically address the recovery of listed species and improve the ecological health of at-risk species. Voluntary landowner conservation agreements provide conservation benefits for species and regulatory predictability for landowners and other partners.

The Service appreciates that H.R. 7408 would dedicate 10 percent of the appropriated funds to a competitive innovation grant program. The program would catalyze new techniques, tools, strategies, and collaborative partnerships to benefit species of greatest conservation need. Some of America’s most cutting-edge conservation initiatives – including efforts to conserve species at landscape scales by working across state and Tribal boundaries – have received timely and critical support from the SWG Program.

The Service notes that we would not be capable of undertaking this grant program with the prescribed administrative funding level of 0.33 percent for Title I. This administrative funding

level would not allow for the Service to meet its fiduciary program integrity and compliance responsibilities or support states and territories with federal financial assistance processes. This funding level would not be sufficient for the Service to comply with federal environmental laws including the ESA, the National Historic Preservation Act, and the National Environmental Policy Act – requirements for all habitat restoration projects. The funding level is also insufficient for the Service to help states and territories develop the required biennial rigorous accountability measures for the program and prepare summary reports for Congress.

The Service is able to administer large grant programs, such as the Wildlife Restoration program, efficiently with low administrative funding rates. This is due to multiple factors, including scales of efficiencies generated by grants with large funding, well-established implementation policies and procedures, and an expert staff of grant management professionals located around the country to collaboratively support state efforts. These efficiencies would not be in place for a new grant program and would not be achievable with an administrative funding rate of 0.33%. In addition, the Service manages the administrative funding for the Wildlife Restoration and Sport Fish Restoration grant programs in accordance with the Administrative Improvement Act's (16 U.S.C 669h and 777h) explicit administrative expense criteria. The Administrative Improvement Act restricts use of Wildlife Restoration and Sport Fish Restoration administrative funding to the direct implementation of those two grant programs, negating the ability for the Service to use that funding to administer H.R. 7408.

To address this concern, the Service recommends an administrative funding level of three percent to administer Title I. A three percent administrative rate is consistent with the rates identified for the competitive innovation grant program in Title I, with the Tribal Wildlife Conservation and Restoration in Title II, and the Wildlife Conservation Restoration Program (Pub L. 106-553).

Lastly, as currently drafted, H.R. 7408 is integrated within the Wildlife Conservation and Restoration Program (Pub L. 106-553) and the Wildlife Restoration Act (16 U.S.C. 669). It appears that some of the current language in H.R. 7408 would apply only to the Wildlife Conservation Restoration Program, yet others would apply to the Wildlife Restoration Act in its entirety. This would impact all the programs within the Wildlife Restoration Act, in both how these grant programs would be implemented and how revenue generated by the states under H.R. 7408 could be spent.

The Service welcomes the opportunity to work with the Chairman and Subcommittee to address these comments, concerns, and recommendations.

Title II – Tribal Wildlife Conservation and Restoration

Title II of H.R. 7408 would establish a Tribal Wildlife Conservation and Restoration Account authorized at \$20 million per year through FY 2029. The bill directs the Director of the Bureau of Indian Affairs (BIA) to establish a noncompetitive grant program to distribute funding to Tribes. The grants would be used for conservation and restoration programs for habitat and wildlife.

The BIA notes concerns with the funding match requirement in Title II. Requiring Tribes to match federal funding is often a significant barrier to participation. Additionally, while the BIA appreciates the funding and authorization of this program in Title II, it would like to further discuss the use of noncompetitive grants as \$20 million in formula distribution will amount to a small per-Tribe funding amount. The BIA suggests explicitly including Tribal Conservation Law Enforcement Officers (CLEO) as a use of funds. CLEO are critical to the success of Tribal conservation and fish and wildlife management on Tribal lands and inclusion in this statutory authority would ensure they are effectively supported.

Title III – Conservation and Management for Wildlife Refuges

Title III of H.R. 7408, grants the Service good neighbor authority (GNA) and stewardship contracting authority (SCA) for restoration services, as requested in the Service's FY 2024 budget proposal. The Service conducts a wide range of restoration services on our lands, including treating insect- and disease-infested trees, removing hazardous fuels, utilizing prescribed burns, and managing invasive plant species. GNA and SCA would supplement the Service's capacity to conduct these projects with support from states, counties, Tribes, and local partners. The U.S. Forest Service and Bureau of Land Management have a proven and successful record of engagement with non-federal partners to expand their capacity for critical restoration services on federal lands using GNA and SCA. Extending these authorities to the Service would improve our ability to protect and improve wildlife habitat on our lands, including on national wildlife refuges, and reduce impacts to adjacent lands. The Service strongly supports the inclusion of GNA and SCA for ecosystem restoration in H.R. 7408 and appreciates the Chairman's support for these provisions. However, the authorization here is much broader than is necessary for the Service to accomplish its habitat restoration objectives.

Additionally, this title would provide the Service with GNA for a suite of recreation services. Improving and expanding public access and compatible wildlife-dependent recreational opportunities is a priority for the Service. We work with a wide array of partners, through cooperative agreements, lease agreements, and special use permits to enhance our recreation facilities. As it is unclear exactly how this authority could be used and what impacts it might have on wildlife habitat, we have some concerns, but look forward to learning more and working with the Committee to avoid unintended consequences.

The Service greatly appreciates the collaborative approach of the Chairman's staff on this legislative language. We welcome the opportunity to continue working together to provide additional technical assistance on this Title. The Service recommends including additional language to ensure that projects conducted under these agreements align with management goals, existing law, and the Service's conservation mission. We would also appreciate the opportunity to work with the Subcommittee to better understand how the provision regarding GNA for recreation would complement our existing authorities and strengthen our ability to work with partners.

Title IV – Incentivizing Wildlife Conservation on Private Lands

The Service has a number of concerns regarding Title IV of H.R. 7408 and strongly opposes Sections 401 and 402. The Service shares the Chairman's interest in addressing issues related to species location data and the Freedom of Information Act (FOIA) and would appreciate the

opportunity to work with the Chairman and Subcommittee on recommended improvements to Section 403.

Title IV would require the Secretary of the Interior to consider net conservation benefits of Candidate Conservation Agreements with Assurances (CCAAs) or programmatic CCAAs when determining if a species is considered threatened or endangered under the ESA. This title would codify language regarding CCAAs and programmatic CCAAs within Section 10 of the ESA that would reflect a number of changes to existing policy regarding such agreements.

Regulatory policy regarding CCAAs and programmatic CCAAs is outlined in 50 CFR 17.22. This legislation would expand the scope of parties covered by such agreements by changing the language from applying only to non-federal landowners so that it also requires the inclusion of federal agencies if the covered party consents to the request by the agency. It would also exempt CCAAs and programmatic CCAAs from Section 7 consultations. Both changes undermine the purpose of Section 7 of the ESA. That purpose helps ensure that any action authorized, funded, or carried out by a federal agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of habitat of such species. While the Service and NMFS are the primary agencies responsible for implementing the ESA, all federal agencies are responsible for utilizing their authorities to further the purposes of the ESA.

H.R. 7408 would create a new 120-day deadline for the Secretary to determine whether or not to approve a CCAA. At the same time, the bill decreases the level of responsibility of the non-federal parties to the agreement and increases the administrative workload for the Service, both in setting up and implementing the agreement. This includes requiring the Service to determine baseline conditions in the plan area and eliminating the already very narrow instances in which a covered party may need to take additional conservation measures due to unforeseen circumstances.

H.R. 7408 also limits the species that can be included in a CCAA to “candidate species” defined as candidate and proposed species. Currently, unlisted species that either are, or are likely to become, candidates for listing in the future are eligible for inclusion in CCAAs. By narrowing the range of at-risk species that may be included in a CCAA, this legislation would limit voluntary conservation agreements for other at-risk species that are likely to become listed in the future. H.R. 7408 would enable a party to a programmatic CCAA to enroll other parties in the agreement and convey any existing permit authorization to them as well. It would also require the Secretary to go through a public comment process on any programmatic CCAA, but would remove the comment period for permit applications under CCAAs and the process for objecting to permit issuance. Further, H.R. 7408 requires the Secretary to provide a written explanation for denials of CCAAs and adjustments that would enable the Secretary to approve the proposed agreement, even though this type of agreement may in some cases not be in the best interest of the candidate species.

The Service works collaboratively with landowners in developing CCAAs. In return, the Service issues Enhancement of Survival Permits that provide assurances that, if the species is subsequently listed and no other changes have occurred, the Service will not require the

permittee to conduct any additional conservation measures without consent. Additionally, the permit authorizes a specific level of incidental take of the covered species, should listing occur. The current CCAA and programmatic CCAA regulations provide incentives for non-federal landowners to voluntarily conserve candidate species, as well as other non-listed at-risk species, by providing a net conservation benefit through one or more of the following actions: protecting existing populations and habitats; restoring historical populations; restoring or creating new habitat; and declining to undertake potentially damaging activity. This system effectively balances proactive voluntary conservation and minimization of risk for non-federal landowners.

Additionally, in February 2023, the Administration published a proposed rule regarding Section 10(a)(1)(A) Enhancement of Survival and Section 10(a)(1)(B) Incidental take Permits. These changes would improve implementation and streamline the conservation programs associated with the issuance of enhancement of survival permits and incidental take permits, including permits associated with CCAAs. The proposed regulatory revisions would increase efficiency and flexibility by combining Safe Harbor Agreements and CCAAs into one agreement type so that one agreement can cover both non-listed and listed species.

Title IV of the America's Wildlife Habitat Conservation Act would unnecessarily upend the balance the Service has established through the CCAAs and impose additional procedural requirements and uncertainty to a successful voluntary conservation program for which the Service has existing authority.

Title IV would also prohibit the Secretary from designating as critical habitat privately owned or controlled land that is subject to a land management plan that meets certain criteria. Critical habitat could not be designated on private land that is subject to a management plan that is similar to an integrated natural resources management plan, or was prepared in cooperation with the Department and state agencies, or meets other criteria, such as that the Secretary determines will maintain the population of the species and minimize impacts of activities that would likely result in incidental take of the species.

When the Service designates critical habitat, we follow a science-based process to identify those specific areas that are essential for species conservation. Critical habitat designations are an important tool to educate the public and other federal agencies regarding areas essential for recovery of listed species. These designations do not create preserves or parks, nor do they affect activities by private landowners where there is no federal funding or authorization involved. Critical habitat designations affect federal agency actions or federally funded or permitted activities. The ESA requires federal agencies to ensure that their actions are not likely to destroy or adversely modify designated critical habitat.

The language in this section would effectively force the Service to identify any existing land management plans, compare them to the bill's criteria, and determine whether or not they would sufficiently minimize and mitigate impacts to the species. This will add additional analytical requirements to an already challenging designation process that must be completed within statutory deadlines, and the bill does not include funding for additional personnel. The Service developed a joint policy with NMFS for excluding areas from designations of critical habitat. This 2016 policy provides guidance for implementing Section 4(b)(2) of the ESA that allows

discretionary exclusion of specific areas from a designation of critical habitat based on specific circumstances. The policy provides details on consideration of conservation plans and partnerships, and Section 10 of the ESA permitted plans as the basis for excluding areas. The proposed language of this Title would add confusion for the Service and public, and would be unnecessary considering the guidance outlined in the 2016 policy. The Administration opposes these sections and believes they would undermine the science-based process used to protect listed species.

In addition, this Title would prohibit the Secretary from making information on the occurrence or specific location of a species of fish, wildlife, or plant on privately owned or controlled land publicly available in response to FOIA requests. The Department would be able to provide such information publicly if a written request is submitted by a federal or state agency or an educational or research institution, and also the private party concerned.

The Service appreciates the Chairman's interest in this issue. While FOIA contains several exemptions that agencies can use to withhold certain types of information, such as confidential business information or national security-related information, location information on protected or at-risk species generally doesn't qualify for an exemption. The Service's inability to withhold location information impacts our ability to work effectively with partners and has other harmful implications for vulnerable species. Many Federally recognized Tribes have listed species on their lands, and some have declined to share information about species locations due to FOIA concerns. Certain state wildlife agencies have shared concerns regarding public release of state-owned data. We have also found that many private landowners or companies are often unwilling to provide the Federal government details regarding species that are listed or under review that occur on their property because they are concerned about that information being disclosed to the public through FOIA. Some researchers and museum collectors have also refused to share information on certain rare species due to FOIA concerns. These concerns of our partners have a chilling effect on research and collaborative conservation, and they may result in an underestimation of the contribution of private lands to conservation and make it harder for the Service to assess population and habitat status. Further, some species can be put at risk by FOIA disclosures of their exact locations due to increased threats from wildlife trafficking, or because there is an unsustainable demand for people to see them in their habitat.

The Service encourages the Chairman and Subcommittee to adjust the proposed FOIA exemption to apply to information regarding the occurrence, or specific location of data regarding species that are protected under the ESA or other statutes, and at-risk species, regardless of whether they occur on Federal, state, Tribal, or private lands. The Service would appreciate the opportunity to work with the sponsor and Subcommittee on technical assistance on Section 403.

Title V – Forest Information Reform

Title V of H.R. 7408 includes the language of the Forest Information Reform Act (H.R. 200). This language states that neither the Department of the Interior nor the Department of Agriculture are required to reinitiate consultation on a land management plan when a species is listed as threatened or endangered, critical habitat is designated, or new information concerning a listed species or critical habitat becomes available. This language is related to the *Cottonwood*

decision and complications regarding forest management. The Administration recognizes that this is an important issue. The Departments of the Interior and Agriculture have worked closely together to provide technical assistance on legislation on this topic in the past.

The Administration believes important nuances are missing from the language in H.R. 7408. For example, stating that the Secretary shall not be required to reinitiate consultation on a “completed land and resource management plan that has no on the ground effects” would be an important distinction that would help prevent harmful unintended consequences of this legislation. The Service has recommended changes to Title V and would welcome the opportunity to work with the Chairman to provide technical assistance.

Title VI – Providing for Greater Incentives to Recover Listed Species

Title VI of H.R. 7408 would modify the section 4(d) requirements and protections for species listed as threatened under the ESA. If the Secretary issues a threatened species regulation that includes any prohibitions provided for endangered species, such as prohibitions on import or export, or take, the Secretary must also establish recovery goals, provide for decreasing stringency of regulation as these goals are met, and provide for state management after these goals are met. The legislation provides that such a regulation would not apply to a state that has entered into a cooperative agreement with the Secretary unless the state also adopts such regulation. H.R. 7408 would also enable states to develop recovery strategies for threatened or candidate species and petition the Secretary to use that strategy as the basis for any 4(d) regulations for that species within that state. The Service strongly opposes Title VI.

The Service has multiple concerns with Title VI of H.R. 7408. It is unclear how the proposed requirement for the Secretary to establish objective, incremental recovery goals would relate to current statutory requirements for recovery planning under section 4(f) of the ESA or to the proposed state recovery strategies, particularly with regard to the statutory requirement under section 4(f)(4) of the ESA to provide for public notice, review and comment before approval of a recovery plan. Under this Title, a state would take on management of a species after recovery goals are met and before a species is removed from the list of threatened species – but only if the state is willing to take on this management. This language would introduce greater complexity and confusion over jurisdiction and management of species and interrupt continuity of recovery activities. This legislation would increase the Service’s procedural requirements and workload associated with listing a species as threatened with a 4(d) rule, all of which would still be subject to the statutory timeframes for making listing determinations. As evidenced in the President’s recent budget requests, the Service lacks sufficient funding to handle our listing workload under the existing listing process. Absent the resources to carry out these additional procedural steps, we will face an even greater risk of deadline litigation. In addition, the proposed requirement to evaluate and make findings on petitions from states to adopt state recovery strategies will add substantially to the workload of an already under-resourced staff and will likely open another avenue of deadline and merits challenges to Service listing determinations.

Under this Title, if the Service were to approve a state’s petition to utilize a state recovery strategy for a threatened or candidate species as the basis for any regulations issued regarding the species within the state, the Service would be forced to adopt the strategy as the regulation itself. By preventing the Service from writing its own regulations, this Title raises Administrative

Procedure Act concerns by not allowing public notice and comment, and would increase the likelihood of the Service having to deny a petition and go through multiple iterations with a state, greatly increasing the amount of resources expended by both the Service and the state. This legislation also places the burden on the Service to establish criteria for future evaluation of state recovery strategies and requires the Service to revise 4(d) regulations should the recovery strategy be ineffective in conserving the relevant species. The required deference to state regulatory mechanisms and recovery strategies would appear to make federal protection under the ESA deferential to state law. The Service notes that this legislation would likely create a state-by-state patchwork of different regulations across the range of a species.

The Service has the existing ability to tailor 4(d) rules to species' needs and can currently craft rules in a manner that allows for greater flexibility than this legislation affords. In addition, whenever the Service proposes listing a species as a threatened species and identifies the protections that are necessary and advisable for the conservation of that species, states are afforded an opportunity to review and comment on the proposed rulemaking.

Title VII – Rescissions and Repeals

The Department is concerned that H.R. 7408 would rescind \$750 million in funding provided to the Bureau of Reclamation (Reclamation) under the BIL and the unobligated balance on the \$25 million in funding provided to Reclamation under Section 50232 of the IRA. Additionally, H.R. 7408 would rescind \$700 million in BIL funding provided to the National Oceanic and Atmospheric Administration. The Administration strongly opposes the rescinding of BIL and IRA funds and using them as offsets.

Section 50232 of the IRA provides \$25 million to Reclamation for the design, study, and implementation of projects (including pilot and demonstration projects) to cover water conveyance facilities with solar panels to generate renewable energy. Solar panels placed over canals have the potential to create new benefits and derive additional value from existing federal water resource projects. Since enactment of the IRA, Reclamation has been working with stakeholders and Tribes across the West on potential projects that can support water conservation and energy efficiency. On July 28, 2023, the Executive Co-Sponsors of Reclamation's Program Management Plan for IRA transmitted an Internal Call for Proposals (CFP) to Reclamation's regional directors requesting responses by October 30, 2023. Reclamation received multiple proposals from the regions, reviewed the proposals, and has begun to make selections and allocations.

In December 2023, the Biden-Harris Administration announced the first project under this new authority, with nearly \$6 million for the Gila River Indian Community in Arizona to construct and install solar panels over the Casa Blanca Canal. Reclamation will work with the Gila River Indian Community to cover 2,782 linear feet of the Casa Blanca Canal with approximately 2,556 solar panels. The solar panels are expected to generate 1.31 megawatts of clean energy, providing 2.26 million kilowatt-hours of annual electricity to the Gila River Indian Community. This project will help inform similar projects to better understand their impacts and make that information publicly available.

The remaining funding is planned to be used on similar opportunities across the West, with additional allocations expected to occur in February 2024. Without different types of projects

spread out across the West, the ability of Reclamation and its partners to analyze the costs and benefits of solar panels over canals and their efficacy in different environments will be significantly reduced. Projects related to those that will be funded with Section 50232 of the IRA have received much support. This support includes a letter from 125 groups requesting that Reclamation develop an initiative to deploy solar panel systems over Reclamation's canals to produce renewable energy, reduce water loss, and help protect habitat managed by the Department. This effort has also received letters of support from the Legislative Director of the Sierra Club, local municipalities, Tribes, universities, and Reclamation's operating partners.

The BIL provides \$3.2 billion to address the extraordinary operation and maintenance needs of aging water infrastructure across the West and \$250 million for the design, study, and construction of aquatic ecosystem restoration and protection projects.

To date, Reclamation has committed \$836 million in aging infrastructure funding and \$51 million in aquatic ecosystems funding. Aging and inefficient water infrastructure is a major cause of water supply issues for thousands of communities across our country. Building on \$240 million allocated in 2022, Reclamation announced in April 2023 that an additional \$585 million in funding is being provided to 83 projects in 11 states to increase drought resilience and improve water delivery systems. Among the 83 projects selected for funding are efforts to increase canal capacity, provide water treatment for Tribes, replace equipment for hydropower production, and provide necessary maintenance to aging project buildings. Specific examples of the important work being done with this funding include \$4 million for lining 6 miles of the New York Canal in Idaho to promote safety and conserve water lost to seepage, \$10 million to rehabilitate or replace fish screens at the headworks at the North Unit Irrigation District main canal in Oregon, \$6 million for repairs to the Fort Laramie Canal in Wyoming, and \$35 million to restore safe, long-term operation of the Truckee Canal in Nevada.

As noted in Reclamation's March 2023 Asset Management Report, the estimated total funding for Major Rehabilitation and Replacement (MR&R) over the next five years is \$7.3 billion, with approximately \$3 billion of anticipated MR&R activities planned to be funded by Reclamation. Future BIL investments in the nation's aging water infrastructure are critical to ensuring the safety of these projects to deliver clean, reliable water to communities, irrigators, ecosystems, and economies across the West. Reducing the funding would significantly reduce Reclamation's ability to fund water and power projects that support resilience and reliability of the nation's critical water infrastructure.

The \$44.6 million for aquatic ecosystems restoration and protection projects announced in December 2023 includes widespread interest in Reclamation's new WaterSMART Aquatic Ecosystems Restoration Program, with 18 projects across 8 states. Applications received in the second application period, which closed on January 24, 2024, collectively request approximately \$200 million in federal funding. Together, the \$44.6 million already allocated and the new proposals recently received represent a demand of almost \$250 million, which is the total amount of BIL funding allocated to the WaterSMART Aquatic Ecosystem Restoration Program over the five-year period from 2022 to 2026. Accordingly, the funding from BIL is crucial to the implementation of this new program to support collaboratively developed ecosystem restoration projects that provide widespread regional benefits and improve the health of fisheries, wildlife, and aquatic habitat through restoration and improved fish passage. Additional BIL funding will

be used for future funding rounds to provide widespread economic and environmental benefits, as well as to improve the health of fisheries and critical habitats.

The Biden-Harris Administration strongly opposes the use of BIL and IRA funding as offsets. This funding was appropriated to Reclamation by Congress for its critical work on canals, aging infrastructure, and aquatic ecosystems.

H.R. 7408 would also repeal three programs administered by the Service. The programs to be repealed include one to prevent, control, and eradicate invasive species in alpine lakes, a second to eradicate Asian giant hornet populations, and a third to address invasive species in Alaska, Hawaii, and U.S. territories. While these are important activities for conservation, the Service does not currently receive appropriations under these authorities and would continue to address invasive species through other successful programs.

Conclusion

The Department appreciates the opportunity to testify on H.R. 7408, the America's Wildlife Habitat Conservation Act. We agree with the goals of parts of this legislation, including the need to conserve and improve habitat, recover listed species, advance proactive conservation of at-risk species, and extend good neighbor and stewardship contracting authorities to the Service. However, as a whole and as written, we oppose this legislation. Robust funding is essential to address the resources needs of states and Tribes for the conservation of at-risk species and recovery of listed species. Additionally, the Department strongly opposes the proposed funding offsets and we have concerns with many of the provisions related to ESA implementation. We would welcome the opportunity to work with the Chairman and the Subcommittee to address our concerns and recommendations. More can be done, and needs to be done, to change our trajectory and set our nation on a path to a strong and durable conservation future.