

House Committee on Natural Resources
Subcommittee on Water, Wildlife and Fisheries
“ESA at 50: The Destructive Cost of the ESA”
July 18, 2023

My name is Sean Vibbert. I am a sixth-generation farmer and continue to farm with my family in Jefferson County, the central most part of Oregon. My family homesteaded here over 130 years ago.

My great, great, great grandfather began our family operation when he homesteaded here. Throughout the years, our family farmed dryland wheat, livestock, alfalfa, peppermint and garlic. We now exclusively farm grass and wildflower seed.

I have been actively farming since age 14. Through a lot of sweat, hard work and determination in the intervening years culminating ten years ago when I bought out the rest of the family, my wife and I now own and operate the place.

I am proud beyond words to be in charge of a 4,000 deeded acre agriculture operation.

Farming is one of those careers that can last for generations. I have two sons, ages 17 and 13 and a daughter who is 20 years old. As a sixth-generation farmer, of course, I would love to see my kids run our farm someday. However, I recently had a conversation with my oldest son on this subject.

We were riding in the pickup together after working ten straight 18-hour days. (My two sons say they are struggling to keep up with “the old man.”) I asked my son if this was something he really wanted to do. He said “yes, I do, Pop. But are we going to have any water so I can farm?” That hit me. Hit me hard.

On Vibbert Ranch, we grow up to 27 different varieties of wildflower seed and three varieties of perennial grasses. I am proud to have become the second largest producer of wildflower seed in the United States. Depending on the years and varieties, we grow, clean, certify and ship around 3.5 million pounds of grass and flower seed

varieties per year. Most of our seed is sent to the midwestern states for use in the so-called Monarch Corridor, a point I will return to later.

Our farming operation obtains water for irrigation from North Unit Irrigation District (NUID), the junior water rights holder in the Deschutes River Basin. Unlike native flowers that can survive with minimal water in their natural habitat and are sparsely populated, our operation is water dependent because we are putting the wildflowers through high scale production, and it is densely populated. Water is absolutely essential to our operation.

Central Oregon has a very unique climate that allows for these specific seeds to be grown here. Several varieties of perennial wildflowers can take up to one to two years before they are established to the point they will enter the flowering and seed production phase. In my area, those varieties produce in half that time. Certain perennials I can raise as annuals on the farm. This practice can only be done in one other place in the world, on the east side of the Andes Mountains in Chile.

Based on the microclimate, my area is the only place in the United States where one can plant a crop of Kentucky bluegrass in August and expect a crop the following July. Without water, 85% of the world's supply of carrots and 92% of the world's supply of rough stalk blue grass could not be obtained. Blue grass is used for lawns, golf courses and sports fields, among other uses.

Here we have extreme changes in temperatures in a 24-hour period of time. We can see swings from 85 to 30 during the day. Cold hard winters add to our excellent vernalization capabilities. Vernalization is the exposure of plants to low temperatures in order to stimulate flowering and enhance seed production.

Since 2020, we have been living under the Deschutes Basin Habitat Conservation Plan (HCP) that was some 12 years in the making and was promoted as a strategy to share water resources in the basin while enhancing fish and wildlife habitat. The U.S. Fish and Wildlife Services (USFWS) is a party to this "voluntary" agreement which covers two species, the Oregon spotted frog and the bull trout. It was designed to provide certainty to water managers for the next 30 years. The only "certainty" it has

provided, however, is the certainty that we will not have any irrigation water for our farms after the next few years.

After appreciating how difficult it will be to have any irrigation water at all after year seven of the HCP, I joined a non-profit organization called Perfect Balance USA, which was started by Jeremy and JoHanna Symons, who are farmers in my community. The mission of Perfect Balance is to educate communities on how food gets from farm to table, and how to collectively preserve water for our ecosystems, endangered species and farmland.

I want to address four issues related to the cost of the Endangered Species Act. These issues include the cost of: (1) uncertain mitigation effectiveness; (2) single species management; (3) hidden costs; and (4) effects on community and people.

Cost of Uncertain Mitigation Effectiveness

The implementation of the HCP and curtailing water releases began just as our county was (and still is) experiencing the most severe drought in the history of irrigation here. Yet, we do not know if the conservation measures, including ramping up and down (mostly down) of irrigation releases working to protect the threatened species actually are working. That is due in large part to the hopelessly slow and cumbersome processes within the federal bureaucracy. As an example, it was just in May of 2023 that the USFWS released a ***draft*** recovery plan for the frog which was federally listed almost ***ten years ago***.

If it took a decade to write a ***draft*** recovery plan, how long will it take to have a recovery plan finalized and implemented that is doing anything different than what the HCP is already doing? There has to be some solution to streamlining the federal bureaucracy.

If it took ten years to produce an idea to cure a problem on my farm that may or may not work, my family would have been out of business many generations ago.

The farmers who rely on irrigation in my community have been anxiously waiting to see how the USFWS will work to increase the population of the Oregon spotted frog. We have received little to no information regarding any recovery efforts. According to

biologists retained by Perfect Balance, as well as USFWS biologists, the main cause of decline of Oregon spotted frog populations is due to predation by the bull frog. The bull frog is a larger species of frog that preys on Oregon spotted frog eggs and tadpoles. One bull frog can lay up to 20,000 eggs annually while a spotted frog lays only about 600 eggs a year. Additionally, the bull frog competes with the Oregon spotted frog for habitat and food.

In June, 2022, Perfect Balance filed a Freedom of Information Act (FOIA) request to USFWS requesting any information related to the recovery efforts of the Oregon spotted frog. The response we received was disheartening as there has been little to no tangible effort of recovery.

Collectively, the eight irrigation districts who are part of the HCP pay \$150,000 each year to the Deschutes Basin Conservation Fund that USFWS oversees. The HCP has been in place for three years, so that is \$450,000 total funding paid to the USFWS for the Oregon spotted frog recovery efforts. The purpose of this money is supposed to be used to support activities that will “improve conditions for Oregon spotted frogs in the Upper Deschutes Basin.” However, as reported in the response to our FOIA request, as of December 31, 2022, only \$96,002 have been spent on recovery efforts. We have yet to see any positive impact from the money that has been spent.

Essentially, our irrigation district patrons have been told that we are paying USFWS to implement a plan that will likely result in the loss of our generations-old livelihoods in order to save a species that they have no apparent urgency to save based on their actions to date.

There is plenty of evidence that the ESA has not worked in the last fifty years as there have been 1,715 species listed as either threatened or endangered.¹ However, only 54 species have ever been delisted due to recovery from the Endangered Species List. USFWS likes to tout this as a win as only 23 species have gone extinct (roughly only

¹ Environmental Conservation Online System. <https://ecos.fws.gov/ecp/report/species-listings-by-year-totals>

1%).² With this statistic, USFWS fails to recognize the purpose of the ESA -- to conserve species to the point where they no longer need to be protected. Under that purpose, USFWS has only been 3.15% successful. Again, if I only had a 3.15% success rate within my business, I would have gone out of business a long time ago, and I certainly would not be touting that percentage as a success.

Costs of Single Species Management

The single species management implemented under USFWS of focusing on the recovery of Oregon spotted frog in our region is causing damage to other species, including a *listed* species, in the region. For example, the timing of water releases to benefit the frog affects the navigation of the listed bull trout during that time. As a result, one or the other will suffer by the water release.

As another example, due to lack of water for irrigation during the prime growing season, I am struggling to grow wildflower seed that goes to help the Monarch butterfly recovery efforts in the mid-west. I am the main grower of three varieties of wildflower seed (purple coneflower, yellow coneflower and black-eyed Susan) that are used in the Monarch Butterfly Corridor. However, because of the mismanagement of one endangered species, I am only producing wildflower seed at 40% of my farm's capability.

The Monarch butterfly is a species that is critically imperiled and is set to receive a listing status from USFWS by the end of this year. Further, one of my own senators, Jeff Merkley of Oregon, has been involved in programs such as the Monarch Joint Venture, which is a nonprofit organization that works to build partnerships between federal and state agencies, other nonprofits, community groups, businesses and academic programs working to conserve Monarch butterflies and other pollinators.

Senator Merkley reintroduced the Monarch Action, Recovery, and Conservation of Habitat (MONARCH) Act as well as the Monarch and Pollinator Highway Act during the 118th Congress. At the end of 2022, Congress appropriated \$10 million in federal

² U.S. Fish and Wildlife Service. <https://www.fws.gov/press-release/2021-09/us-fish-and-wildlife-service-proposes-delisting-23-species-endangered-species#:~:text=In%20total%2C%2054%20species%20have,due%20to%20successful%20recovery%20efforts>.

funds, a \$6 million increase over what was approved the previous year. The \$10 million included \$3 million available through the Monarch and Pollinator Highway program, a program that I may not be able to provide seed for. If Monarch conservation is so vastly important, why is USFWS making decisions that are directly making a negative impact on the Monarch?

Hidden Costs of the ESA

It is no secret that there is constant litigation over the ESA. Congress included a cause of action under the ESA to hold USFWS accountable when implementing species listing and recovery practices. While this cause of action was included with the best intention, years later, it is being used by activist environmental groups to profit from attorney's fees as part of the litigation to enforce the Act.

Perfect Balance knows of two ESA cases related to the Oregon spotted frog. The first was two non-profit organizations, the Center for Biological Diversity and Western Watersheds, attempting to force the USFWS to comply with the ESA mandatory listing timeline for the species. This case was consolidated with dozens of other "ESA timeline violation cases" before the District of Columbia District Court in 2011. The USFWS settled the case which eventually involved a total of 1,053 species for a total of \$295,760 in attorney's fees alone.

The second suit involved the Center for Biological Diversity and WaterWatch suing USFWS and the Bureau of Reclamation (BOR) to stop operations and water usage out of Wickiup Reservoir. The irrigation districts in my area (including my own) intervened in the lawsuit, resulting in a partial settlement where the irrigation districts agreed to limit the water flowing to our farms. Soon after, the environmental group plaintiffs filed a motion for preliminary injunction to stop *any* water being released from Wickiup Reservoir. Even though the plaintiffs lost the motion for preliminary injunction, because of the partial settlement that required the irrigation districts to participate in the HCP, the plaintiffs were paid a total of \$85,440 in attorney's fees for simply filing the suit, even though they lost the injunction, and the case was settled.

Cost to Communities

The ESA requirements are crippling the entire Central Oregon economy and it is having a trickle-down effect. In rural communities, all the industries are connected. Farmers no longer are providing locally grown food, so it is being sourced and freighted from miles away. Farmers are laying off their employees, many of whom are migrant workers. Jobs are being lost, businesses are closing, and property taxes are struggling to get paid. Schools, police, fire departments and many other agencies will eventually suffer financial burdens. The high cost of food and living is contributing to increased homelessness.

The cost of hay in our area has increased to \$400.00 per ton, resulting in the numbers of starving animals exponentially increasing. Dog and cat food have also increased by around 25%. Those who have not sold their pets and livestock then have to have their feed trucked in from sometimes hundreds of miles away, making it more expensive and costly to the environment in terms of greenhouse gas emissions caused by trucking.

Farmers not being able to steward their fields has impacts on other wildlife as well. Deer, elk, birds, amphibians, and beneficial insects also have lost their habitat. Without irrigation, many of the fields that wildlife once grazed in are now lying dormant. Instead of farmers growing young crops that sequester carbon and produce oxygen, we are left with pastures and fields that will grow weeds if we are not using harsh herbicides and pesticides to control them. These herbicides and pesticides are left on the ground and can eventually end up in the aquifer and potentially into the water supply. Even if we do spray the weeds, the fields are left as dirt after the wind blows the topsoil away.

Communities are not only impacted financially but socially as well. The legacy that farmers pass down to each generation is something that we all hold dear to our hearts. When you are the fifth or sixth generation on a farm and are the first generation to lose it, there is a severe mental toll on the entire family. According to the National Rural Health Association, the suicide rate among farmers is three and a half times higher than among the general population and is increasing. The suicide rate for

farmers increased by 48% between 2000 and 2018. As regulations and environmental activists make it hard to keep family farming operations alive, the mental toll on farmers gets even more severe.

I would like to thank this Committee for holding this hearing and for having a discussion related to the costs of the ESA. While there are many financial costs associated with the ESA, there are plenty of other costs that just as egregiously impact our communities and its people.

Thank you.