TESTIMONY OF JAMIE RAPPAPORT CLARK
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HOUSE COMMITTEE ON NATURAL RESOURCES
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Mister Chairman and members of the Committee, I am Jamie Rappaport Clark, Executive Vice President of Defenders of Wildlife. Founded in 1947, Defenders of Wildlife has over 500,000 supporters across the nation and is dedicated to the protection and restoration of wild animals and plants in their natural communities.

As you know, prior to coming to Defenders of Wildlife, I worked for the federal government for almost 20 years, for both the Department of Defense and the Department of the Interior. I served as Director of the U.S. Fish and Wildlife Service from 1997 to 2001. Thus, I have seen the Endangered Species Act from different perspectives: that of an agency working to comply with the law; working for and then leading the agency charged, along with other federal agencies, states, and private landowners, with implementing the law; and now leading a conservation organization working to ensure that the law is fully implemented to conserve threatened and endangered plants and wildlife.

The common lesson I have drawn from all of these experiences is that the Endangered Species Act is one of our most farsighted and important conservation laws. For more than 30 years, the Endangered Species Act has helped rescue hundreds of species from the catastrophic permanence of extinction. But the even greater achievement of the Endangered Species Act has been the efforts it has prompted to recover species to the point at which they no longer need its protections.

Recovery is what the Endangered Species Act is all about. It is because of the act that we have wolves in Yellowstone, manatees in Florida, and sea otters in California. We can marvel at the sight of bald eagles in the lower 48 states and other magnificent creatures like the peregrine falcon, the American alligator, and California condors largely because of the act.

Recovery Efforts Hamstrung by Lack of Support and Political Interference

Mister Chairman, because I know the difficulties faced by the dedicated professionals in the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and other federal agencies implementing this law, I am reluctant to criticize those who are currently administering the Endangered Species Act. However, because I know how successful the act can be in recovering species and because of the deep regard I have for those dedicated professionals administering the act, I cannot ignore the damage that has been done to endangered species conservation under the current administration. Rather than enhancing recovery efforts to expand on existing successes, I firmly believe that this administration is actually hamstringing species recovery. It has undermined the scientific integrity of its Endangered Species Act programs with political interference and slowly starved the program of needed resources.

Those are serious charges, but look at the facts:

The top career professional position in charge of federal endangered species efforts has been vacant for more than a year, and the position has yet even to be advertised for filling.

The Fish and Wildlife Service programs involved in implementing the Endangered Species Act have lost at least 30 percent of the staff they once contained. In some areas, that rate may be close to 50 percent.

There has been a consistent and continuing failure by the administration to request adequate resources for endangered and threatened species conservation in the budgets presented to Congress. The fiscal year 2008 request is at least 20 percent ($40 million) below the minimum level needed.

Fewer listings of endangered and threatened species have occurred in this administration than in any previous one and 277 species remaining on the candidate species list still await initiation of the listing process. The 57 species brought under the protection of the Endangered Species Act in the last six years is just one quarter the number protected in the four years of the administration of President George Herbert Walker Bush. Listing is the crucial first step in catalyzing public and private recovery efforts.

The Interior Department's Office of Inspector General (OIG) has confirmed that former Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks Julie MacDonald was " heavily involved with editing, commenting on, and reshaping the Endangered Species Program's scientific reports from the field." The scope and magnitude of political interference revealed by OIG interviews is unprecedented in my experience. In one example cited by the OIG, a listing decision required by law to be rooted in science was instead ruled by the personal views of Deputy Assistant Secretary MacDonald, only later to be overturned by a court that refused to ignore the science. This and numerous other examples of political interference detailed in the OIG report have seriously compromised the integrity and credibility of the endangered species program.

More recently, as Dr. DellaSala details in his testimony, the administration has interjected political considerations heavily into recovery planning for the northern spotted owl. A so-called "Washington oversight committee," which initially consisted of Deputy Assistant Secretary MacDonald and other senior-level administration political appointees, instructed the spotted owl recovery team of scientists and other experts to stop work on development of their conservation approach and develop a second approach that would offer greater "flexibility." The increased flexibility option would result in weakening owl habitat protections by (1) delegating authority to the Forest Service and BLM to decide where to place blocks of owl habitat without creating lines on a map, (2) providing no information on total habitat acreages to be managed for owls, and (3) no longer anchoring spotted owl recovery to the Late Successional Reserves established under the Northwest Forest Plan. Frankly, the extent of this political interference in recovery planning so far exceeds anything I have ever encountered that it is astonishing for its sheer audacity.

An Administrative Rewrite of the Endangered Species Act Behind Closed Doors

Finally, the issues raised by the potential revisions to the administrative rules that guide implementation of the Endangered Species Act, some of which are dated as recently as March, are a source of great concern.

We appreciate the opportunities afforded some of us to discuss the very broad outlines of Endangered Species Act regulatory revisions with Deputy Secretary Scarlett, Director Hall, and Fish and Wildlife Service and NOAA-Fisheries career staff. However, we have found neither our discussions nor the widely circulated, two-page fact sheet particularly illuminating.

In fact, the discussions and fact sheet have raised more questions and concerns than they have answered or allayed. Moreover, in addition to the very general descriptions provided by the administration, we have draft regulations dated as recently as two months ago that propose changes of such significance that they would seriously undermine the ability of the Endangered Species Act to protect and recover imperiled species.

Although the administration maintains that the leaked documents do not reflect its current intentions, the information they have provided so far contains scant information on which of these regulatory changes or portions of them remain on the table. Regardless, there are no guarantees that revisions off the table now will not find their way back to the table in any proposed or final rulemaking.

As we noted in our meetings with Deputy Secretary Scarlett and Director Hall, we believe that the interests of endangered and threatened species recovery would best be served by working together openly on matters for which there is support among a wide variety of interests. In the absence of any inclusive process like this, however, it is only prudent that the Congress and organizations like Defenders of Wildlife focus on existing examples of specific administrative rule changes because we already have seen several iterations of them and we may see still more. These changes are of deep concern for at least four reasons.

First, although early intervention to halt the decline of species is clearly advisable, the proposed changes would almost certainly have the effect of only allowing listing – and the conservation measures prompted by a listing – once species are in extreme peril. The effect of postponing corrective action will be to make recovery and eventual delisting of species even harder and more expensive than it already is and more unlikely to occur in any reasonable time frame.

Second, over the years, the Section 7 consultation process between the Service and other federal agencies has been one of the act's most successful provisions in reconciling species conservation needs with other objectives. For example, progress towards the conservation of species such as the grizzly bear and piping plover would have been virtually inconceivable without the beneficial influence of Section 7. Yet, the proposed changes and fact sheet descriptions appear to reduce the scope of Section 7, reduce the role of the Fish and Wildlife Service in its implementation, and weaken the substantive standards that apply to federal agency actions. The net effect of these changes, like those described above with respect to listing, will almost certainly be to make species recovery less likely rather than more likely.

Third, the draft regulations would re-define the term "conservation" so that it no longer would be synonymous with recovery and remove the term "recovery" from many places in the regulations. Proposed rule changes, for example, would re-word the statutory language on recovery plan contents to remove statements that the goal of plan requirements is the conservation and survival of species and remove the term "recovery" and the language describing it as a goal from the reasons to delist a species. We find it difficult to reconcile these proposed changes with improving recovery of species under the Endangered Species Act.

Fourth, the proposed regulatory revisions of March 2007 construe the Endangered Species Act mandate for federal-state cooperation to mean delegation of current federal responsibilities to the states. The proposed changes would give the Secretaries of the Interior and Commerce very broad discretion to grant states authority to assume responsibility for carrying out much of the endangered species program. The proposal would allow states to "request and be given the lead role in many aspects of the Act, including, but not limited to, Section 4, Section 7, and Section 10 of the Act." The administration's fact sheet on the regulation changes appears to describe a similar delegation of responsibility to the states, a fact acknowledged in meetings with the administration.

As stewards of the plants and animals within their borders, states are important partners in the conservation of threatened and endangered species. The Endangered Species Act gives states wide opportunities to create their own programs for protection and recovery, and to contribute to federal efforts as well. By increasing the legal protections given to imperiled plants and animals within their borders, state endangered species laws can complement the federal law, supplementing protection of species already listed so that recovery can be achieved. Strong state laws and state Wildlife Action Plans also can protect species not listed under the federal act, thereby lessening the need for federal listing.

As of 2005, however, most of the existing 45 state endangered species acts merely provide a mechanism for listing and prohibit the direct killing of listed species. The scope of state prohibitions on take generally is narrower than the ESA's take prohibition. For instance, only nine states make it illegal to harm listed species. Massachusetts is the lone state to bar the "disruption of nesting, breeding, feeding or migratory activity." Georgia is the only state to explicitly include destruction of habitat in its take prohibitions, and it doesn't apply to private lands. No mechanisms exist in 32 state endangered species laws for recovery, consultation, or critical habitat designation. Just five states require recovery plans. And five states have no endangered species law at all, simply relying on the federal act or nongame programs.

In response to a nationwide survey conducted by Defenders of Wildlife and the Center for Wildlife Law on state endangered species protection in 1998, state agency staff identified a number of constraints to assumption of a greater role in conservation of endangered species. These included a general lack of funding and staff and a reluctance or lack of preparation to take on more responsibilities under the federal law.

Most significantly, however, state agency staff pointed to the difficulties created by a patchwork of inconsistent and sometimes ineffective state laws in protecting and recovering

species that occur in multiple states. This situation remains unchanged in 2007. The administration's draft regulations propose to resolve this dilemma by requiring that a state "provide for coordination with all other States within the current range of the species affected by such granted authority or delegated activities." But this approach fails to address the concerns identified by state fish and wildlife agency staff. It also appears to place little value on the broad, interstate view and coordination that can be provided by the Fish and Wildlife Service or NOAA-Fisheries for species having multi-state distributions.

The administration's proposed delegation of Endangered Species Act authority to the states is a change to the law of such significance that it should be brought to Congress for its consideration, not put in place by means of administrative fiat. There is no evidence in three decades of Endangered Species Act legislative history that Members of Congress or administration officials were sufficiently unhappy with the relative federal and state roles to even raise it as an issue on the six occasions in which Endangered Species Act amendments were discussed and adopted between 1976 and 1988.

A More Constructive Approach to Improving Conservation of Imperiled Species

The general theme of all the administrative rule changes we have seen from, or discussed with, the administration is a withdrawal of the Fish and Wildlife Service and NOAA-Fisheries from implementation of the Endangered Species Act. Having hamstrung the endangered species program by starving it of resources and injecting political considerations into its science, the administration's rewrite of the ESA rules now would have the Fish and Wildlife Service and NOAA-Fisheries shed the responsibility entrusted to them by Congress on the basis that the agencies lack sufficient resources and expertise.

Defenders of Wildlife is committed to improving protection and recovery of endangered and threatened species under the Endangered Species Act, and we have worked with you, Mr. Chairman, and others toward that end. But all indications ranging from leaked documents to discussions with administration officials are that the administration is considering policy changes of such scope and magnitude that they should be brought to Congress for its consideration as amendments to the Endangered Species Act.

Major changes to the Endangered Species Act are on a fast track behind closed doors. A spokesperson for the Interior Department was quoted in an April 26 *Washington Times* article as saying, "When we put out proposed regulations, we will hold a press conference and tell everyone what we are doing."

We have asked the administration to adopt a different, more constructive approach. We have asked that they work with a broad array of stakeholders to find common ground on ways to improve conservation of imperiled species prior to going forward with any proposal. The success of the common endeavor we seek hinges on openness and transparency. A key first step in that direction is for the administration to share the text of any changes in the Endangered Species Act regulations currently are under consideration in a collaborative manner, not by holding a press conference and publishing proposed regulations.

Mister Chairman, the absence of meaningful congressional oversight of the Administration's implementation of the Endangered Species Act for the past six years has contributed to each

of the problems I have described today. As you are well aware, under previous leadership of this Committee, hearings were devoted more to undermining the Endangered Species Act, rather than making sure that those charged with implementing the law were doing so in a manner that would achieve successful conservation of endangered species. I am pleased that, under your leadership Mister Chairman, and as today's hearing demonstrates, Congress is reasserting its rightful place in conducting oversight.

I urge you to continue to make full use of this Committee's oversight authority in the weeks and months ahead to insist that the administration work cooperatively with Congress and stakeholders rather than hurriedly pursuing unilateral amendments to the Endangered Species Act via administrative rulemaking. Preventing the extinction of important plants and wildlife is of such critical importance that close oversight is essential to assure the appropriate protection of our natural resources and responsible stewardship by this administration.

Thank you for considering my testimony. I'll be happy to answer questions.