



The voice of fish and wildlife agencies

1100 First Street, NE, Suite 825  
Washington, DC 20002  
Phone: 202-838-3474  
Fax: 202-350-9869  
Email: [info@fishwildlife.org](mailto:info@fishwildlife.org)

July 16, 2018

The Honorable John Barrasso, M.D.  
Chairman  
Senate Committee on Environment and Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Endangered Species Act Amendments of 2018 discussion draft legislation

Dear Chairman Barrasso:

The Association of Fish and Wildlife Agencies (Association) would like to thank you for the opportunity to review your discussion draft bill and for your thoughtful efforts on how to improve implementation of the Endangered Species Act (ESA, Act) via your proposed 2018 amendments. While there undoubtedly have been a number of conservation success stories under the existing ESA, several directors of state fish and wildlife agencies (state agencies) testified before the Committee on Environment and Public Works in 2017, on some of the ways the ESA and its implementation could be modestly improved to more effectively and efficiently recover species listed as federally threatened or endangered under the Act. Further, the state directors who testified referenced the Association's General Principles for Improving Implementation of the ESA (GPs), which included Principles for Improvement and Recommendations for Improvement, and suggested these be considered during further deliberations on how to improve the Act and associated recovery outcomes. We greatly appreciate your serious review and contemplation of those suggestions.

The state agencies support and value the ESA as a strong and effective tool for protecting and recovering species that are at risk of extinction. There are many different state experiences with and perspectives on the ESA, and the perspectives in this letter do not supersede or alter the views or input of any state and should not be viewed as representing the perspective of any individual state.

The amendments that you propose to the ESA are reflective of and consistent with our Principles for Improvement, which would ensure more effective and consistent conservation and protection of species; ensure fish and wildlife natural resource professionals make ESA decisions; facilitate the opportunity for state agency expertise to be utilized and participate in ESA implementation as Congress intended; focus on management actions that will recover species to the point of no longer needing protections under the Act; and better incentivize private landowner participation in ESA implementation. Additionally, the GPs include Recommendations for Improvement to the Act, and the following highlighted recommendations from our GPs are addressed to some degree through your proposed amendments as follows:

- *Implement Preventive and Restorative Management*: more fully recognizes and integrates state-led conservation efforts and improves processes and guidelines for listing decisions.
- *Elevate the Role of State Fish and Wildlife Agencies*: increases opportunities for state fish and wildlife agencies to take a more formal and active role and fully participate in Endangered Species Act implementation actions on Recovery Teams and in Recovery Planning, and improves cooperation between state and federal agencies in ESA decisions and potential litigation impacts.

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- *Improve the Listing Process*: makes the best decision within a more realistic timeframe; allows the prioritization of species considered for listing; and ensures all state fish and wildlife data are utilized and fully considered in the listing determination whether such data are published or not; and includes state agency expertise in the process of interpreting these data and drawing conclusions. Further, also affords states the opportunity to protect sensitive data or data protected by state privacy laws that may be shared during ESA decision-making.
- *Require the Development of Science-Based Recovery Plans for Listed Species Directed by Recovery Teams*: enhances the States' roles including the opportunity to lead recovery teams, planning and implementation; will help expedite recovery by integrating and supporting state level initiatives and partnerships through states' enhanced implementation roles.
- *Revise Down-listing and De-Listing Processes*: increases reliance on and gives great weight to state data and to recovery plan population and habitat objectives to inform the initiation of the delisting or down-listing processes; expedites down-listing and delisting processes when recovery objectives are met and as initiated by the Recovery Team to acknowledge conservation successes and reduce unnecessary regulatory burdens.
- *Provide Certainty and Incentives for Private Landowners*: enhances clarity and increases conservation incentive options available; expedites the processes for concluding these conservation agreements to enhance certainty to private landowners; improves regulatory certainty for private landowners and increases assurances for the FWS for voluntary conservation actions on private lands.
- *Enhance Endangered Species Act Funding*: requires the FWS to submit annually to Congress a budget for implementation of the work plan, which provides transparency for the financial resources needed to implement the work plan.
- *Improve Implementation of 10(j) Experimental Populations to Enhance Species Recovery*: requires state agency approval of the boundaries of the 10(j) experimental population and receipt of a state permit, if required, before release of individuals in a 10(j) population; precludes 5-year post-delisting monitoring plans and timeframe from litigation while states monitor a species' population during the required post delisting monitoring period.
- *Establish more Consistent Implementation Procedures and Processes*: improves consistency, certainty and timeliness of administrative processes and actions implemented under the Act.

State wildlife agencies have a public trust responsibility to manage our citizens' fish and wildlife resources within their borders, and most state agencies believe that the ESA is not performing as it should or could to leverage cooperation between federal and state agencies to ensure conservation of species is more collaborative, efficient, recovery-focused and successful. The Association believes these proposed amendments to the ESA are largely consistent with our GPs and the testimony provided by state fish and wildlife directors in 2017, and supports the overall intent to improve species conservation outcomes and provide more effective uses of state and federal capacity and expertise. We must, however, recognize that more financial resources will be needed by the state agencies and federal agencies to successfully implement all of these proposed changes and Recovering America's Wildlife Act (H.R. 4647) offers an opportunity for proactive, dedicated stateside funding unto such ends.

We deeply appreciate the opportunity afforded by your draft legislation for States to play a much more integral role in ESA implementation and for them to be treated as equal partners and leaders with the Federal government in species management and recovery. Thank you for your leadership on this important issue, please do not hesitate to contact me if I can provide additional information or support.

Sincerely,



Virgil Moore  
President