June 12, 2018

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

Re: Safari Club International Comments in Support of the "Endangered Species Act Amendments of 2018."

Dear Chairman Barrasso;

Safari Club International (Safari Club) wishes to express its support for the bill entitled the "Endangered Species Act Amendments of 2018" (ESA Amendments of 2018). This very comprehensive piece of legislation attempts to address many of the failings of the existing Endangered Species Act. In particular, Safari Club agrees with the bill's provisions that would: (1) increase the role of states in ESA decision-making; (2) facilitate the participation of states and other affected parties in ESA litigation, and more specifically in settlement discussions over the resolution of these cases; (3) prohibit litigation over species delistings until the completion of the five-year post-delisting monitoring period; and (4) provide regulatory status for conservation agreements for the purpose of listing and delisting decisions.

Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 48,000 members worldwide. Safari Club has participated in many of the lawsuits that have demonstrated the need for the changes included in the ESA Amendments of 2018. For example, Safari Club helped the U.S. Fish and Wildlife Service (FWS) defend the delistings of the Northern Rocky Mountain Distinct Population Segment of gray wolves, Wyoming's portion of the wolf population and the Western Great Lakes Distinct Population Segment of gray wolves. Safari Club is currently participating in litigation that addresses the role of the state of New Mexico in the conservation and management of the Mexican wolf experimental population. Those cases show that the ESA suffers from flaws that undervalue if not discourage the role of states in species recovery. The ESA allows states and affected parties to be excluded from negotiations intended to resolve listing and delisting litigation, facilitates challenges to delistings, and prolongs unnecessary listings of recovered populations. The ESA overly complicates the analysis of how conservation agreements contribute to species recovery and long-term conservation. ESA Amendments of 2018 provide an important foundation for improvements to the ESA to address these problems.

The Role of States in Decisions to List, Delist, Recover Experimental Populations, Etc.

One of the most troubling aspects of the litigation history of ESA delistings is the inadequacy of the ESA's current recognition of states' invaluable, if not essential, role in species recovery and conservation. For example, a D.C. federal district court ruling invalidated a delisting of the recovered Western Great Lakes (WGL) population of gray wolves, despite the fact that the continued listing would serve as a disincentive to states to participate in species recovery. The ESA, as it exists now, simply did not give the district court an unequivocal explanation of the crucial role played by states in species recovery. Even though a Court of Appeals reversed that district court's error, the WGL wolves remain on the endangered species list and the ESA continues to be missing an indelible message about the role of states in ESA decision-making.

Safari Club supports the ESA Amendments of 2018's recognition that state input must be given enhanced status. Safari Club supports the bill's acknowledgement that comments offered by states should "be afforded greater weight by the Secretary than a comment received from any other individual." Section 101(c)(1)(A). Safari Club similarly supports the bill's requirement that the Secretary consider the state's input at a higher standard than to "the maximum extent practicable." Section 101(c)(1)(B). In addition, the bill properly requires the Secretary, upon receiving a petition concerning the listing status of a species to "take into consideration and give great weight to" any State comments submitted in response.

The ESA Amendments of 2018 similarly afford states enhanced status in litigation involving listing decisions. While the bill does not authorize automatic party status for a state in the settlement of lawsuits involving ESA-based decision-making, it does require that the Secretary must "provide notice to, consult with and otherwise take appropriate actions to include, each impacted State" when the Secretary prepares to or enters into a settlement agreement in the case. Section 107(3).

Delay of Litigation Until After the Post-Delisting Monitoring Period

One of the most practical and valuable aspects of the bill is the prohibition against litigation challenges to delisting decisions until after the five-year monitoring period required following a species delisting. Section 102. Under the existing law, litigants can file suit immediately after the FWS finalizes its decision. This requires a court, when reviewing that decision, to evaluate the validity of the delisting before the FWS's judgment can be proven by the success or failure of the affected states' conservation efforts following the removal of federal protections. Contrary to the forecasts of those who think federal protection should be a permanent status, states have proven to be excellent custodians of delisted populations. For example, the post-delisting history of the Northern Rocky Mountain (including Wyoming's) wolf population demonstrates that Idaho, Montana and Wyoming have successfully managed their delisted wolves. The lack of federal protection has not placed the wolves in jeopardy. By mandating a stay of litigation until the end of the post-delisting monitoring period, the ESA Amendments of 2018 prevent litigation and premature restoration of federal protections from interfering with the demonstration of the accuracy and efficacy of states' abilities to manage and conserve post-delisted species.

Establishment of Regulatory Status for Conservation Agreements

The ESA does not clearly identify or define the phrase "adequate regulatory mechanism," yet the law conditions listings and delistings on the presence of such mechanisms. Conservation agreements are an extremely effective mechanism used by states and other affected parties to prevent the need for listings and conserve delisted species. Because the ESA does not expressly recognize conservation agreements to qualify as adequate regulatory mechanisms, the question of their status to fulfill listing criteria requirements has been the subject of multiple lawsuits. The ESA Amendments of 2018 put an end to the oft-litigated question and allow the states, federal agencies and others to focus on creating effective agreements, rather than defending them in court. Section 202.

Safari Club appreciates the efforts of all those who participated in the work to develop the ESA Amendments of 2018. The bill is a major achievement in that it represents the agreements of many parties with divergent interests and motivations. Safari Club is pleased that the bill incorporates components that, if passed, will make some clear improvements in the way listing decisions will be made and carried out in the future.

If you have any questions or need any further input, please contact Anna Seidman, Director of Legal Advocacy Resources and International Affairs at aseidman@safariclub.org.

Sincerely,
Paul Babaz

President,
Safari Club International

cc:
Matthew Leggett: matt_leggett@epw.senate.gov
Andrew Harding: andy_harding@epw.senate.gov.