

**WRITTEN TESTIMONY OF
SAM RAUCH
DEPUTY ASSISTANT ADMINISTRATOR FOR REGULATORY PROGRAMS
FOR THE NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON
IMPLEMENTATION OF THE *ENDANGERED SPECIES ACT***

**BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY, HEALTH CARE, AND ENTITLEMENTS
U.S. HOUSE OF REPRESENTATIVES**

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Introduction

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify before you today. My name is Sam Rauch and I am the Deputy Assistant Administrator for Regulatory Programs for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) in the Department of Commerce. NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management.

This year we celebrate the 40th Anniversary of the *Endangered Species Act (ESA)*. The purpose of the *ESA* is to conserve threatened and endangered species and their ecosystems. Congress passed the *ESA* on December 28, 1973, recognizing that the natural heritage of the United States was of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people." It was understood that, without protection, many of our nation's living resources would become extinct. There are more than 2,140 species listed under the *ESA*. A species is considered endangered if it is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become endangered in the foreseeable future. The U.S. Fish and Wildlife Service (USFWS) within the Department of the Interior and NMFS share responsibility for implementing the *ESA*. NMFS is responsible for 93 marine species, from whales to sea turtles and salmon to Johnson's sea grass.

NMFS Implementation of the *ESA*

NMFS conserves and recovers marine resources by doing the following: listing species under the *ESA* and designating critical habitat (section 4); developing and implementing recovery plans for listed species (section 4); developing cooperative agreements with and providing grants to States for species conservation (section 6); consulting on any Federal agency actions where the agency determines that the action may affect a listed species or its designated critical habitat and to minimize the impacts of incidental take (section 7); partnering with other nations to ensure that

international trade does not threaten species (section 8); enforcing against violations of the *ESA* (sections 9 and 11); cooperating with non-federal partners to develop conservation plans for the long-term conservation of species (section 10); and authorizing research to learn more about protected species (section 10).

How Species are Listed or Delisted

Any individual or organization may petition NMFS or USFWS to “list” a species under the *ESA*. If a petition is received, NMFS or USFWS must determine within 90 days if the petition presents enough information indicating that the listing of the species may be warranted. If the agency finds that the listing of the species may be warranted, it will begin a status review of the species. The agency must, within one year of receiving the petition, decide whether to propose the species for listing under the *ESA*. NMFS may, on its own accord, also initiate a status review to determine whether to list a species. In that instance, the statutory time frames described above do not apply. The same process applies for delisting species.

NMFS or the USFWS, for their respective species, determine if a species should be listed as endangered or threatened because of any of the following five factors: 1) present or threatened destruction, modification, or curtailment of its habitat or range; 2) overutilization for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) inadequacy of existing regulatory mechanisms; and 5) other natural or manmade factors affecting its continued existence. The *ESA* requires that listing and delisting decisions be based solely on the best scientific and commercial data available. The Act prohibits the consideration of economic impacts in making species listing decisions. The *ESA* also requires designation of critical habitat necessary for the conservation of the species; this decision does consider economic impacts.

The listing of a species as endangered makes it illegal to “take” (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do these things) that species. Similar prohibitions usually extend to threatened species. Federal agencies may be allowed limited take of species through interagency consultations with NMFS or USFWS. Non-federal individuals, agencies, or organizations may have limited take through special permits with conservation plans. Effects to the listed species must be minimized and in some cases conservation efforts are required to offset the take. NMFS’ Office of Law Enforcement works with the U.S. Coast Guard and other partners to enforce and prosecute *ESA* violations.

Interagency Consultation and Cooperation

All Federal agencies are directed, under section 7 of the *ESA* to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Federal agencies must also consult with NMFS on activities that may affect a listed species or its designated critical habitat. These interagency consultations are designed to assist Federal agencies in fulfilling their duty to ensure Federal actions do not jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Biological opinions document NMFS’ opinion as to whether the Federal action is likely to jeopardize the continued existence of listed species or adversely modify their designated critical habitat. Where appropriate, biological opinions provide an exemption for the “take” of listed species while specifying the extent of take allowed, the Reasonable and Prudent Measures necessary to minimize impacts from the Federal action, and the Terms and Conditions with which the action agency must comply. Should an

action be determined to jeopardize a species or adversely modify critical habitat, NMFS will suggest Reasonable and Prudent Alternatives, which are alternative methods of project implementation that would avoid the likelihood of jeopardy to the species or adverse modification of critical habitat. Nationally, NMFS conducts approximately 1,200 *ESA* consultations per year.

Species Recovery

Recovery of threatened and endangered species is a complex and challenging process, but one which also offers long-term benefits to the health of our environment and our communities. Actions to achieve a species' recovery may require restoring or preserving habitat, minimizing or offsetting effects of actions that harm species, enhancing population numbers, or a combination of all of these actions. Many of these actions also help to provide communities with healthier ecosystems, cleaner water, and greater opportunities for recreation, both now and in future generations.

Partnerships with a variety of stakeholders, including private citizens, federal, state and local agencies, tribes, interested organizations, and industry, are critical to implementing recovery actions and achieving species recovery goals. Several NMFS programs, including the Species Recovery Grants to States and Tribes and the Pacific Coastal Salmon Recovery Fund, and the Prescott Marine Mammal Rescue Assistance Grant Program provide support to our partners to assist with achieving recovery goals. From 2000-2012 the Pacific Coastal Salmon Recovery Fund has provided \$1.03 billion in funding to support partnerships in the recovery of listed salmon and steelhead. From 2003-2013 the Species Recovery Grants to States has awarded \$37 million to support state recovery and research projects for other listed species. From 2001-2013 the Prescott Program awarded over \$44.8 million in funding through 483 grants to Stranding Network members to respond and care for stranded marine mammals.

Endangered Species Act Successes

The *ESA* has been successful in preventing species extinction—less than 1 percent of the species listed have gone extinct. Despite the fact that species reductions occurred over often very long time periods, in its 40 year existence, the *ESA* has helped recover over 30 species. NMFS has recently delisted the Eastern population of Steller sea lion, our first delisting since 1994 when NMFS delisted the now thriving eastern population of Pacific gray whales. Between October 1, 2010, and September 30, 2012, of the 70 domestic endangered or threatened marine species listed under the *ESA*, 27 (39 percent) were stabilized or improving, 16 (23 percent) were known to be declining, 6 (8 percent) were mixed, with their status varying by population location, and 21 (30 percent) were unknown, because we lacked sufficient data to make a determination.

In addition to Pacific gray whales and Eastern Steller sea lions, *ESA* recovery actions have stabilized or improved the downward population trend of many marine species. For example, listed humpback populations are currently growing by 3-7 percent annually. In 2013, we saw record returns of nearly 820,000 adult fall Chinook salmon passing the Bonneville Dam on their way up the Columbia River to spawn. This is the most fall Chinook salmon to pass the dam in a single year since the dam was completed in 1938, and more than twice the 10-year average of approximately 390,000. A substantial number of Hawaiian monk seals are alive today because of

direct interventions by the NMFS Recovery Program. Because of these efforts directed at monk seals, the population is 30 percent larger than if we had not acted, offering hope for future recovery and assurance our actions are making a difference.

Conclusion

Extinctions are currently occurring at a rate that is unprecedented in human history. Each plant, animal, and their physical environment is part of a much more complex web of life. Because of this, the extinction of a single species can cause a series of negative events to occur that affect many other species. Endangered species also serve as “sentinel” species to indicate larger ecological problems that could affect the functioning of the ecosystem and likely humans as well. As importantly, species diversity is part of the natural legacy we leave for future generations. The wide variety of species on land and in our ocean has provided inspiration, beauty, solace, food, livelihood and economic benefit, medicines and other products for previous generations. The *ESA* is a mechanism to help guide conservation efforts, and to remind us that our children deserve the opportunity to enjoy the same natural world we experience.

Thank you again for the opportunity to discuss implementation of the *Endangered Species Act*. I am available to answer any questions you may have.

Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department Of Commerce

Mr. Rauch has served as the Deputy Assistant Administrator for Regulatory Programs since 2006, though taking a two-year reprieve from this role to oversee the agency's core missions as the Acting Assistant Administrator for Fisheries from 2012 to 2013. In his deputy role, he oversees NOAA Fisheries' regulatory actions and programs, including those to support the conservation and recovery of marine mammals and endangered species; ensure economically and biologically sustainable fisheries; and promote habitat stewardship through restoration and conservation. Coordination of the NOAA Fisheries' aquaculture activities and outreach, and the agency's National Environmental Policy Act programs are also under his purview.

From 2004 to 2006, he served as the Assistant General Counsel for Fisheries where he supervised a team of attorneys, paralegals, and support staff responsible for providing legal counsel to NOAA Fisheries. Prior to joining NOAA, Mr. Rauch served as a trial attorney and the Assistant Section Chief for the Wildlife and Marine Resources Section of the Environment and Natural Resources Division, U.S. Department of Justice. Mr. Rauch holds a J.D. from the Northwestern School of Law of Lewis & Clark College, an M.S. from the University of Georgia, and a B.A. from the University of Virginia. He has also received many honors during his career, including NOAA General Counsel Awards (1998, 2002, 2004, 2005, 2010); Department of Justice Special Achievement Awards (1997, 1998, 2000, 2002); and Department of Commerce Gold Medal (2007), Bronze Medal (2011), and the Presidential Rank Award (2011).