

BARRIERS TO ENDANGERED SPECIES ACT DELISTING, PART II

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
THE INTERIOR

AND THE

SUBCOMMITTEE ON HEALTH CARE,
BENEFITS AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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BARRIERS TO ENDANGERED SPECIES ACT DELISTING, PART II

Wednesday, April 21, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE INTERIOR, JOINT WITH THE
SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND
ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 9:04 a.m., in Room 2154, Rayburn House Office Building, Hon. Cynthia Lummis [chairman of the Subcommittee on Interior] presiding.

Present from Committee on Interior: Representatives Lummis, Gosar, Buck, Palmer, Lawrence, Cartwright, and Plaskett.

Present from Committee on Health Care, Benefits, and Administrative Rules: Representatives Jordan, Walberg, Lummis, Meadows, DeSantis, Mulvaney, Hice, Carter, Cartwright, and DeSaulnier.

Also Present: Representatives Chaffetz and Pearce.

Mrs. LUMMIS. All right. Well, I think we will get going so the director can get back to work.

The Subcommittees on Interior and Administrative Rules will come to order. Without objection, the chair is authorized to declare a recess at any time.

Thank you, Director Ashe, for being here today, and thank you, committee members. This is a joint hearing, as I said, of Interior and the Administrative Rules Subcommittees of the Oversight Committee. And it is also the second part of the hearing examining barriers to species recovery under the Endangered Species Act.

Yesterday, we heard from panelists and members of the Interior Subcommittee regarding the challenges facing species recovery efforts, and we heard good ideas from both sides of the aisle about the challenges with getting species recovered and off the endangered list. We heard a lot about litigation and rigid statutory deadlines that cause problems for both the Fish and Wildlife Service and local conservation planning, not just dollars but in personnel and man-hours. We also heard about State and local efforts to conserve species and prevent listings.

I hope the Fish and Wildlife Service, the rest of the administration, and our colleagues in Congress will be able to work together to improve the Endangered Species Act. It has not been reauthorized in over 25 years.

Director Ashe, I know you have had a busy week appearing first before the Natural Resources Committee on Tuesday to discuss

critical habitat rules and then here today, as well as committees I probably don't even know about. I appreciated hearing you say a couple days ago that the gray wolf in Wyoming and the Great Lakes has recovered. You have said that on numerous occasions.

We appreciate your science and acknowledgement of that even though removing it from the endangered species list has been blocked by seemingly endless litigation. It is an example of one of the frustrations that Members of Congress, people who conserve species on the ground, in the States, and in the Service are having with this endless litigation. There was one of the people who testified yesterday who brought in a chart of the history of litigation on the gray wolf, how many times the Service has recommended delisting, proposed rules for delisting, and how many times environmental litigation, that industry has chosen to go to a non-knowledgeable judge and get it back on the list.

So hopefully, we can discuss some other species today and other areas where the ESA and this administration's implementation of the ESA can be approved for the 21st century. I am hoping that Congresswoman Plaskett may have some thoughts on the endangered corals that she testified about yesterday at least in her statements and the frustrations they are having in the Virgin Islands with this subject.

So what we see, quite frankly, is that people in their communities who now have an environmental ethic embedded in their regulatory regimes, in their people's hearts, and in the manner in which their communities conduct business has not been recognized and the ESA doesn't keep up with it. We seem to have an environmental litigation industry that is protecting its own status by keeping the ESA back on a 21st century statutory and regulatory trajectory, the old command-and-control, the Federal Government knows best.

But that is not the case anymore with regard to endangered species. Expertise lies in our communities, and we should be taking advantage of it as we advance the Endangered Species Act to a 21st century model that actually will recover species.

I was disappointed to see that U.S. Fish and Wildlife Service revised the proposed rule for the process to consider listing petitions. I had previously complimented the proposed rule because it gave States a larger involvement in the process and improved the quality and accuracy of the species information being submitted to the Fish and Wildlife Service.

It would have, under its proposed implementation, improve the Service's ability to more effectively manage the petitions and hopefully focus more on science instead of unproductive litigation. Unfortunately, when the rule was reported out a couple days ago, that provision was weakened. And it looks like, to me, that groups involved in the environmental litigation industry who are trying to protect their own turf may have had influence over the end result of that because they are making a business out of suing you over petitions.

And catering to litigation-focused organizations isn't going to get us anywhere. They refuse to entertain ESA changes whatsoever because they have a very lucrative business model, and it is working

for them, and they don't want to surrender to people who are really more concerned about recovering species on the ground.

That said, I hope we can have a rational discussion today to find common ground on what should be our common goal of an Endangered Species Act that serves both species and the people of the 21st century.

Director Ashe, thanks again for joining us today, and I look forward to our discussion.

Mrs. LUMMIS. I would now like to recognize Mr. Cartwright for an opening statement.

Mr. CARTWRIGHT. Thank you, Madam Chairman. And I thank the chairs for holding this important hearing. I welcome the opportunity to look for ways to improve the administration of the Endangered Species Act.

The ESA is the strongest and most important Federal law protecting imperiled wildlife and plants. For 40 years, the ESA has helped prevent the extinction of our nation's wildlife treasures, including beloved American icons such as the bald eagle, the humpback whale, and the green turtles. My own State of Pennsylvania has 14 federally recognized endangered or threatened species, including the northern long-eared bat and northeastern bulrush, which are both known to be present in my own district.

The protection and recovery of these species has demonstrated the clear merits of this nationwide scientific approach to protecting our wildlife. As has been mentioned, the ESA has prevented 99 percent of the species listed as endangered or threatened from becoming extinct.

During this time, the Fish and Wildlife Service has continued to improve its methodologies. Scientific advances have given us a much deeper understanding of nature and allowed for better programs for protecting endangered species and starting them onto the road to recovery.

The regulatory tools of the FWS have also become more effective through the use of the Candidate Conservation Agreements, the CCAs, and the Habitat Conservation Plans. The FWS has been able to work proactively with private groups to find a balance between economic activity and the protections needed for vulnerable species. These programs represent a win-win and allowing for productive use and enjoyment of our lands while also allowing endangered species to recover and keeping them from becoming endangered in the first place.

However, CCAs and Habitat Conservation Plans, like the rest of the Fish and Wildlife Service's programs, only work because they are based on sound science. No two agreements or plans are alike. Each has different circumstances with different implications for various species.

And there are no shortcuts in science. And the agency has to do the work in order to be able to approve these plans. It takes time and it takes funding. And when funding is cut, work backs up and it becomes harder and harder to run highly effective offices. This is also true in the private sector. If you don't put the right money toward the resources, things don't work.

Resource-intensive programs such as the CCAs and the HCPs are no exception. In addition, when an agency loses staff to budget

cuts, it becomes increasingly difficult for it to function. With these budget cuts come missed statutory deadlines such as those for reviewing a petition to place a species on the endangered species list. These missed deadlines are what lead to lawsuits from concerned citizens who have a right to see their petitions acted on in a timely manner.

I urge my colleagues to consider the benefits of better funding for the Fish and Wildlife Service. I would also like to remind them that the fastest way to see more species removed from the endangered species list is by giving FWS the resources it needs to ensure the species' recovery.

So I thank our Director Ashe for appearing today, and I thank him for his service and the vital work he is doing to protect our nation's wildlife. Director Ashe, I look forward to hearing your testimony this morning.

And I yield back.

Mrs. LUMMIS. I thank the gentleman. I understand that the chair of the Regulatory Committee does not have an opening statement? Very good.

We also have with us today Representative Pearce of New Mexico. Welcome to this committee hearing. We will waive you on to fully participate in this hearing. Without objection, so ordered. Thank you.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

And we will now recognize our distinguished witness. I am pleased to welcome the Honorable Dan Ashe, director of the U.S. Fish and Wildlife Service. Welcome, Mr. Ashe.

Pursuant to committee rules, witnesses will be sworn in before they testify. So please rise and raise your right hand.

[Witness sworn.]

Mrs. LUMMIS. Let the record reflect that the witness answered in the affirmative.

Thank you. Please be seated.

In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

And, Mr. Ashe, you are recognized.

STATEMENT OF DAN ASHE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. ASHE. Thank you, Mrs. Lummis and committee members. And I just would say, Mrs. Lummis, I hope perhaps this is not the last time I have the opportunity to testify before a committee on which you are a member, but you've always—even in disagreement, you've always treated me with great courtesy, and I for one will miss your thoughtful contribution to the many debates that we've been involved in and wish you the best —

Mrs. LUMMIS. Thank you very much.

Mr. ASHE.—in your retirement.

The—and apologies to you—and Mr. Hice was here a moment ago—but some of what I'll say today is a little bit repetitive of what I said in—before the Natural Resources Committee the other day.

But the—back in 1972 it was the 92nd Congress of the United States, and President Richard Nixon, who joined in creating a visionary and powerful law, the Endangered Species Act, with the goal of preventing species' extinction. And it has been remarkably successful. Ninety-nine percent of the species that are listed are still with us today.

And think about the context of that. The United States population has grown by 65 percent in that period of time from 210 million to 323 million people. Our gross domestic product has increased 314 percent, 5—from \$5.25 trillion to \$16.5 trillion economy. And our individual per capita gross domestic product has increased from \$24,000 to \$51,000. So we have prospered as a species, we have prospered as a nation, and we have prospered individually during that time.

And because of the Endangered Species Act and the other great environmental laws of that era, we have prospered in our time without erasing important parts of the natural heritage of our children and grandchildren.

And in this administration I believe we've built on this great legacy of success. We have delisted more species due to recovery than any prior administration. And before the end of this administration, with some good graces, we will have delisted, due to recovery, more species than all previous administrations combined.

And we—it's not just that. We have forged innovative and effective partnership, as the chairwoman has indicated, to conserve species before listing is necessary and averting the need to list species like the Arctic grayling in Montana, the Sonoran Desert tortoise in Arizona, the New England cottontail, and the greater sage grouse.

And many things have contributed to that, but several things have specifically enabled it: First, the multidistrict litigation settlement early in this administration that got us out of court and onto a sensible schedule that allowed these partnerships to grow and blossom; and very powerful and progressive partnership with the Natural Resource Conservation Service in the U.S. Department of Agriculture, which has incentivized voluntary private land conservation on working landscapes; also, our ability to set priorities and focus on how to achieve them to accomplish recovery with the limited dollars that we have been able to secure from—with the help of our Appropriations Committees.

And finally, because we have believed in the—and adhered to the words of Henry Ford, who said, "Obstacles are those frightening things that you see when you take your eyes off of your goal." And so I prefer and we have preferred not to see barriers but to focus on the objectives of recovery, to apply ourselves to recovery, and I believe our record is an exceptional one that we can achieve and accelerate recovery if we gather resources, gather partners and partnership and put them to the task.

So I look forward to today's hearing and discussing how we might continue that record of success.

[Prepared statement of Mr. Ashe follows:]

**TESTIMONY OF DAN ASHE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE,
DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. HOUSE OF
REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT
REFORM, SUBCOMMITTEE ON INTERIOR, REGARDING BARRIERS TO
RECOVERY AND DELISTING OF LISTED SPECIES UNDER THE
ENDANGERED SPECIES ACT OF 1973**

April 21, 2016

Introduction

Good morning Chairwoman Lummis, Ranking Member Lawrence, and Members of the Subcommittee. I appreciate the opportunity to testify before you today on the Endangered Species Act of 1973 (ESA). At the Committee's request, my testimony will focus on the U.S. Fish and Wildlife Service's (Service) work to recover and delist species protected under the ESA and challenges related to that process.

The ESA is one of the nation's most important conservation laws. It is implemented jointly by the Service and the National Marine Fisheries Service (NMFS). The law's stated purpose is to provide a program and means for the conservation of threatened and endangered species and the ecosystems upon which they depend. The ESA provides a safety net for species that are at risk of going extinct. When a species is designated as threatened or endangered – or "listed" under the ESA – it is in dire need of help. The Service uses the best available scientific and commercial information to determine whether species need to be listed, to identify and address the threats to the species, and to facilitate the recovery of the species.

Success of the ESA

In 1988, Congressman John Dingell, a sponsor of the original ESA, wrote the following about the passage of the law in 1973. "The goal Congress set then was unparalleled in all of history. Our country resolved to put an end to the decades – indeed, centuries – of neglect that had resulted in the extinction of the passenger pigeon and the Carolina parakeet, and the near extinction of the bison and many other species with which we share this great land. If it were possible to avoid causing the extinction of another species, we resolved to do exactly that... When Congress passed the Endangered Species Act, it set a clear public policy that we would not be indifferent to the destruction of nature's bounty."

The ESA has been successful in its essential goal to conserve listed species, which effectively protects the nation's biological diversity heritage for the benefit of future generations of Americans. Since it was enacted by Congress in 1973, the ESA has successfully prevented the extinction of more than 99 percent of the over 1,500 species it protects.

The continued success of the ESA is predicated upon the Service's partnerships with states, other Federal agencies and private landowners, as demonstrated by several conservation achievements that recently culminated in "delisting" several recovered species. Partnerships developed and maintained by the Service have sustained years of recovery efforts for a myriad of species. As a

result, during the Obama Administration, the Service has delisted more species due to recovery than during any prior administration and we are on track to delist more than all previous administrations combined. Recently delisted species include the Louisiana black bear, Oregon chub, Delmarva fox squirrel, Virginia northern flying squirrel, Modoc sucker, island night lizard, and brown pelican.

The ESA has also advanced the recovery of many other listed species. And though still endangered, many other species – among them the California condor, black-footed ferret, whooping crane, and Kirtland’s warbler – have had their populations increase to or near their highest levels in decades. Additionally, under the ESA the Service has “downlisted” a number of species from endangered to threatened due to successful recovery efforts. Recently, the Service downlisted the Santa Cruz cypress, wood stork, and two populations of green sea turtles, and has proposed to downlist the West Indian manatee.

There have also been more than two dozen imperiled species that were candidates for listing under the Act that have been conserved through proactive efforts and no longer require consideration for listing during this Administration alone. Partnerships have been essential to this type of proactive work to conserve species that are candidates for listing to the point where they don’t need the protection of the ESA. Recent examples include the Sonoran desert tortoise in Arizona, the New England cottontail in six northeastern states, and the greater sage grouse in eleven western states. Ensuring the conservation of these species and the ecosystems upon which they depend is good for a myriad of other wildlife species and for humans who use the same ecosystems for hunting, fishing, outdoor recreation, and other services like clean air and water. These conservation success stories are also a measure of the success and importance of the ESA.

The Recovery Process

Recovering species to the point where they are ready for delisting and no longer need the protections of the ESA often requires focused conservation efforts over many years, often decades, to implement recovery actions that include, for example, habitat restoration, best management practices for various human activities, and consistent monitoring. The status of the population and the severity and scope of threats the species faces are important factors in the length of time it takes to achieve full recovery.

The recovery and delisting of the bald eagle was the culmination of a 40-year conservation effort. The Aleutian Canada goose recovery took 34 years. Efforts to recover the whooping crane have been underway since the 1940s when fewer than 20 cranes remained. Those efforts have been dramatically successful, with a wild population today of more than 250 birds. Likewise, the California condor and black-footed ferret, both of which were so perilously close to extinction that no individuals of either species remained in the wild, have made extraordinary progress. Today condors and ferrets have been successfully bred in captivity and reintroduced to the wild, where they have successfully produced wild-born offspring.

Despite the dramatic progress toward recovery that each of these species has made, the whooping crane, California condor and black-footed ferret are still endangered species and will likely remain so for many more years. That outcome – a long and seemingly slow recovery

period – is the virtually inevitable consequence of waiting until a species has been greatly depleted before beginning efforts to recover it. It is often the case that the longer that conservation actions for a species are postponed, the more time that a species remains on the endangered list. By beginning conservation efforts early, it may be possible to shorten the time that a species spends on the endangered species list, or even to avoid the need to place it on that list at all.

Gray Wolf

The gray wolf is an iconic example of the ESA's success in preventing extinction and promoting recovery. Wolves were extirpated from most of the Lower 48 states by the middle of the 20th century, with the exception of northern Minnesota and Isle Royale in Michigan. The gray wolf first gained federal protections when it was added to the U.S. List of Endangered Native Fish and Wildlife in 1967, with the listing of the Timber Wolf in the Great Lakes region. By 1978, wolves were listed as an endangered species throughout the contiguous United States and Mexico, except for those wolves in Minnesota classified as threatened. With the protections afforded by the ESA, wolves were able to repopulate the Western Great Lakes (WGL) and Northern Rocky Mountain (NRM) regions, both through natural dispersal and the reintroduction of wolves into Yellowstone National Park and central Idaho in 1995 and 1996.

Since the species was first listed, the gray wolf has rebounded from the brink of extinction to exceed population targets set for the WGL and NRM and continuing to expand their range into Washington and Oregon. In 2011, the Service determined that gray wolves were successfully recovered in the WGL and NRM states of Montana, Idaho, eastern Washington, eastern Oregon, and north central Utah and delisted those distinct population segments. In 2012, the Service delisted gray wolves in the state of Wyoming. In 2014, the final rules delisting gray wolves in Wyoming and in the WGL were vacated by district courts, and ESA protections were reinstated for these populations. The wolves maintain federal protections while those decisions are on appeal.

The Service continues to manage gray wolves under the ESA, with the exception of wolves in Idaho and Montana. The Service works in close partnership with state agencies throughout the wolf's range, and this cooperative effort is largely to thank for the rebound in wolf populations since the species was first listed. Wolf restoration has been an amazing success due to both the resiliency of wolves and the cooperative efforts of Federal, State, and Tribal agencies, conservation groups, and private citizens, including ranchers, sportsmen, and outfitters.

Litigation

The ongoing litigation regarding the status of wolves in Wyoming and the WGL is a high profile example of a species' delisting being challenged legally. However, the Service has delisted 28 domestic species due to recovery and has received challenges for only four of those species: the gray wolf, Northern Virginia flying squirrel, bald eagle, and the Greater Yellowstone Ecosystem (GYE) population of the grizzly bear. Despite legal challenges, the Service has continued to pursue and successfully finalize delisting rules using the tools available through the ESA. We successfully defended the Northern Virginia flying squirrel and bald eagle delistings and both

species have been removed from the Federal List of Endangered and Threatened Wildlife. The Service recently issued a new proposed rule to delist the GYE population of the grizzly bear, and, as mentioned above, the Service is appealing the D.C. District Court decisions on our gray wolf delisting.

During 2009 and 2010, the Service faced more than 20 lawsuits in numerous district courts challenging missed deadlines for more than 100 species. The Department of Justice asked the Judicial Panel on Multidistrict Litigation to transfer 20 petition deadline cases from seven district courts and assign them to the U.S. District Court for the District of Columbia. After the Panel agreed to do so, the District Court consolidated all of the cases, and referred the consolidated case to the court's mediation process, and that mediation ultimately led to the 2011 Multidistrict Litigation (MDL) settlement agreements.

The MDL provided predictability for stakeholders and local communities. The settlements have allowed the Service to establish and make available to the public a multi-year schedule for listing determinations on our candidate species. Stakeholders knew in advance, in some cases years in advance, when we would be reviewing these candidates to determine whether a listing proposal was still warranted.

Since the MDL agreements were approved and the Service made its work plan public, we have seen an almost 96 percent reduction in species subject to lawsuits filed for missed deadlines on petition findings. The MDL settlements have made our listing activities more certain and predictable, and have allowed the Service to focus more of our limited resources on actions that provide the most conservation benefit to the species that are most in need of help.

When the Service settles a deadline case, we agree to a schedule for taking an action that is already required by the ESA. We do not agree to an outcome, rather we agree to a date certain to complete our work. We do not give away our discretion to decide the substantive outcome of our work, for example whether a species should be listed under the ESA or should not be listed. The notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions.

Emerging Threats and Recovery

Listing under the ESA becomes necessary when a species declines, or threats to it increase, to the point where it is in danger of extinction throughout all or a significant portion of its range (an "endangered species") or it is likely to become an endangered species in the foreseeable future (a "threatened species"). Recovery of species is not a static examination of these threats and efforts to address them. Recovery is an ongoing, evolving process that must continue to factor in both the conservation actions taken and the emerging new threats to listed species as they develop. Two key evolving threats to species nationwide are expansion of the human population and the effects of a rapidly changing climate.

Our growth into a nation of more than 300 million people creates more potential for threats to the health and well-being of the fish, wildlife, and plant resources that sustain us economically, aesthetically, and recreationally. Ensuring that America's threatened and endangered species

continue to be protected and recovered requires a renewed commitment by all of us to maintain a strong, effective ESA, one that is responsive to both the needs of our imperiled resources and the concerns of our citizens.

The Earth's climate is changing rapidly. The effects of this change have been documented across the planet. A growing body of evidence has linked this accelerating climate change and related impacts with observed changes in fish and wildlife, their populations, and their habitats in the United States. For example, many species of threatened and endangered songbirds in Hawaii are now at greatly increased risk due to disease vectors that are spreading as a result of climate change. Higher water temperatures resulting from climate change have a negative impact on many native trout and other cold- and cool-water fish populations across the country. Salmon populations in the northwest face increased risk of disease and contaminant impacts exacerbated by climate change. Across the continental United States, climate change affects the migration cycles and body condition of migratory songbirds. Shifts in the range of species have been documented, causing birds to have to adapt quickly to different conditions which in turn, can impact their ability to find the food they need for successful reproduction. Rising sea levels combined with storm surges affect fish and wildlife habitats, particularly along the Atlantic and Gulf Coasts and in the Pacific Islands, including habitats on our coastal National Wildlife Refuges used by many birds for nesting or during migration. Polar bear population declines have already been observed in Canada, and extirpations of Bay checkerspot butterfly populations in the San Francisco Bay area are also documented. Ongoing and projected climate change impacts were part of the basis for the recent decision to list the rufa red knot as a threatened species.

New challenges lie ahead in the conservation of threatened and endangered species as a result of the effects of climate change. Many imperiled species are already existing and surviving at the limits of their ecological tolerance due to known threats, such as habitat conversion and fragmentation, limited water supplies, environmental contaminants and invasive species. The additional stress of the effects of a rapidly changing climate creates the potential for more listings and adds to the urgency of recovery actions.

Although the effects of climate change are considered and assessed in our implementation of the ESA, we recognize that climate change effects vary by species and location, and can interact with other conditions such as habitat fragmentation or invasive species. The effects of climate change may be negative for some species but positive or neutral for others. Also, even when such effects are negative, that does not automatically mean that a species warrants listing under the ESA or that recovery is precluded.

Funding

The conservation needs of listed, proposed, candidate, and otherwise at-risk species are great, and growing with the increasing threats facing them. At the same time, resources available to address these needs are limited. We continually seek to improve the efficiency and effectiveness of our work, which is why we have aggressively undertaken efforts in recent years to improve implementation of the ESA. These include clarifying rules and policy regarding critical habitat designations and exclusions, the petition process, and cooperation with state agencies. Despite these successful efforts, with over 1,500 listed species and many more at risk, we must regularly

make difficult choices among a great variety of actions, including statutory and discretionary actions and on-the-ground and regulatory efforts. For example, we are faced with decisions between putting resources toward recovery actions to help prevent the extinction of a species or putting those resources toward final actions to move a species to delisting; between implementing on the ground recovery actions for one species and recovery planning for another. Shifting too far in one direction puts the Service's work out of balance and has consequences for our other responsibilities under the ESA.

To that end, the most significant step that Congress can take to improve the effectiveness of the ESA is to provide the resources needed to get the job done in the field. We therefore ask that Congress support the President's budget request for endangered species conservation for Fiscal Year 2017.

Conclusion

The Service continues to make improvements to the implementation of the ESA. However, regardless of what we can do to improve implementation of the ESA, the fact is that recovery is not a simple or fast process. There will always be complicating biological and human factors to contend with. Recovery of listed species is often a lengthy, intricate process, reflective of the long periods of time that the species faced impacts leading to listing. As our world continues to evolve, climate change impacts are felt, and our economy and populations grow, species will face growing threats that will impact the recovery process. With limited resources available, it is important for the Service to balance multiple mandates under the ESA, including preventing species from going extinct and bringing them off the list through recovery efforts.

The ESA was enacted in 1973 to protect plants and animal species threatened with extinction. While the challenges we face now are large and daunting, the Act has been extraordinarily effective in preventing extinctions, moving species towards recovery, and has spurred unprecedented voluntary species conservation efforts across the nation. Our citizens and leaders should be proud of the ESA. It is a reflection of the value we as Americans place on the staggering biological diversity of the planet, and our responsibility to conserve it. This biological diversity is our natural heritage. It inspires awe and is critical to the survival of us all. We should be proud of what we've accomplished, and together, we should embrace and overcome the challenges posed to conserving our wildlife for the benefit of current and future generations of Americans.

Thank you for your interest in endangered species conservation and for the opportunity to testify.

Mrs. LUMMIS. I thank the director, and now each member will have 5 minutes to ask questions.

And I will begin.

Director Ashe, I do want to ask about how the rule that was proposed came to look different when it was released this week. I was hopeful that some of the ideas that had been put forward with regard to consulting carefully with States and local governments before a listing decision is made or a petition is responded to by the Service, that that would create the kind of opportunity for States to be on notice, for local governments to provide the science it has with regard to species and that we could have and begin that up-front dialogue.

When the rule was reported out this week, it didn't look like that anymore. So how did that occur, that change?

Mr. ASHE. So we published our proposed rule making changes to the petition process, and we received much critical comment, I guess I would say, from—certainly from organizations that petition the U.S. Fish and Wildlife Service but from members of the public at large, from Members of Congress, and—who felt like the changes we were proposing were too burdensome. But in our re-proposal—and we have re-proposed, not finalized those regulations, so we're putting them out again with revision for additional public comment.

They retain, in my view, the essential elements of the original proposal. That is, the petitioner is limited to one petition per species, so they can't send us a petition with 400—you know, 404 species, which we have received, what's so-called mega-petitions. So they—the petition has to be limited to—each petition is limited to one species. And then also they have to provide that petition to the States where the species reside 30 days ahead of time. They have to notify the State. And so that process of notification will allow our State partners to be aware, to engage, to provide us with information ahead of the listing petition—us receiving the listing petition so we have that available to us as we begin the process of considering the petition.

Mrs. LUMMIS. It sounds like the comments you received said it would be burdensome to provide States with that up-front involvement. Do you believe it would be burdensome?

Mr. ASHE. I do not. You know, the original proposal that we made I did not believe was excessively burdensome. We were requiring them to provide the petition to the States in advance, and then we were requiring them to incorporate information that they would receive from the States as they finalized their petition process.

They felt—Members of Congress, others felt that that was unduly burdensome, and so we have backed off on that. But we have not backed off on the basic proposition that they should notify the States 30 days ahead of sending the petition to us so that then our State partners, should they desire, can engage with us at that point.

Mrs. LUMMIS. Have you seen during your years as director an increase in the scientific knowledge with regard to species at the State and local levels?

Mr. ASHE. I think yes. States are extremely competent. Our State fish and wildlife agency counterparts are extremely competent, professional, scientific organizations. And yes, they—although State budgets, like ours, have struggled and States in many regards have lost important capacity, but as a whole, our State partners are extraordinarily professional, competent managers.

Mrs. LUMMIS. In my State of Wyoming, what I have observed is a tremendous leap in the ability of local and State governments to respond to the recovery process through—using conservation easements, going hand-in-hand with the NRCS. And you pointed out earlier that the NRCS has become a really good partner with regard to conservation. I would echo that sentiment.

But I am concerned that the scientific knowledge resident and the recovery efforts resident in the States is not being acknowledged by the greater Endangered Species Act community, particularly the environmental litigation industry. I would observe that we are in the 21st century, that changes have been made, that locals are embedded with an ethic and an understanding that wasn't present in the 1950s, probably wasn't present in 1973 when the ESA was adopted.

But the act and the way it is being implemented is failing to keep up with the expertise on the ground, the ethos of the people in this country and that it still remains a command-and-control, heavy-handed, regulatory regime when States and local governments and individuals are far more able to recover species in a way that is vibrant and can get them off the list.

Assuming that you also are in your last 8 months or so, 9 months in your position, as am I, what advice would you give with regard to the future implementation of ESA?

Mr. ASHE. Well, I think in—you know, with all due respect, I would disagree with your characterization. I think that the ESA and our implementation of the ESA has changed, and the emblem of that is the—this greater sage grouse. So rather than start from the beginning, you know, an answer that is, well, we just need to decide whether to list the species or not list the species, we built a partnership.

We started in 2005 and we worked with the Western Association of Fish and Wildlife Agencies to build a corpus of science between the Federal Government and the Western Association of Fish and Wildlife Agencies. We gathered the United States Geological Survey. We built a partnership, the Sage Grouse Initiative, with the Natural Resources Conservation Service that put nearly \$500 million worth of technical assistance on the ground with private landowners. We built a partnership with the Bureau of Land Management and Forest Service to plan over 70 million—on over 70 million acres of the public estate. And we got—and we were able to find that the listing of the sage grouse was not warranted.

And that is really emblematic of the way we're implementing the Endangered Species Act today. And as you've said, to me, that's a 21st century conservation model, and that is the way we need to do business more in the future.

But I will say that, you know, the regulatory power of the Endangered Species Act is necessary. When you need it, you need it. And when a species is on the verge of extinction, you often need

to take strong measures to protect it. We should use that as a last resort, and I think that's been our record.

Mrs. LUMMIS. My time is expired.

I yield to the gentleman—oh, welcome.

Mrs. LAWRENCE. Thank you.

Mrs. LUMMIS. Do you have questions?

Mrs. LAWRENCE. Yes.

Mrs. LUMMIS. All right. I yield to the ranking member, Mrs. Lawrence.

Mrs. LAWRENCE. Thank you. And thank you, Director, for being with us, and to Madam Chair, thank you for this hearing. I have a few questions, and you already started addressing it.

In studying this process, the reason species are listed for protection under the Endangered Species Act is a failure of the States to protect them from extinction. Do States have the ability to be proactive and to implement their own conservation efforts before a species needs to be considered for listing?

Mr. ASHE. Many States do, and I believe that when we list a species on the endangered species list, Mrs. Lawrence, that it is a failure for all of us, that it's telling us that we as a country have failed to protect it, and there could be many contributors to that. Sometimes, it's beyond our control like the northern long-eared bat that was mentioned here before that is being—the extinction of the crisis facing the bat is being driven by an invasive fungus that came from Europe to which they have not developed natural defenses. And so sometimes there are things completely unanticipated that none of us are prepared to deal with.

But I would say, going back to the analogy with the sage grouse, that partnership would not have taken hold were it not for the important incentive that was provided by the Endangered Species Act. People came together because they wanted to avoid the listing. They—States engage because they wanted to retain their authority to manage the species. And so it was really that—the specter of a listing that sparked that partnership. And without that, I don't think that partnership would have emerged and would not be as effective. And that's—the Endangered Species Act is important as a regulatory tool. It's important as a—to incentivize that kind of partnership as well.

Mrs. LAWRENCE. And one of the things I really wanted to highlight, in fact, States have sometimes failed to provide the plans to protect the species, and sometimes that deficiency has been the grounds for court to reverse an agency's decision to delist. If I could read a quote pertaining to the Wyoming gray wolf case, "A failure to explain how a State plan to allow virtually unregulated killing of wolves in more than 50 percent of the State does not constitute a threat to species." There are other examples. Could you please comment on that? Because that is something that when—the frustration sometimes that we see in States and communities is why aren't you delisting it? But there has to be a plan provided by the States.

Mr. ASHE. You know, the—when we delist a species, we kind of have to walk backwards and defeat the original reason that we listed the species. So we have to go back through the five factors that the law outlines for making a listing decision. And we have to show

not just that the species is recovered but that the threats have been eliminated. And so most often that requires State-based plans and regulations so that we can say once we delist it, we're not just going to go right back. And that does require effective, defensible State plans.

In the case of the Wyoming wolf, as you mentioned, the judge disagreed with our determination that the Wyoming plan was an adequate—provided an adequate regulatory basis, and we're working with Governor Mead and the State of Wyoming now to see if we can remedy those deficiencies, and I believe that we will be able to do that.

Mrs. LAWRENCE. And when looking at the frustration that we have heard during this hearing, that is an area that I feel the partnership could be stronger in developing the plans with the State, you know, so there isn't that reversal of delisting because we have a clear and structured plan to ensure that we don't retreat back to it.

Thank you, and I yield back my time.

Mr. ASHE. Thank you.

Mrs. LUMMIS. I thank the gentlelady and yield to the gentleman from Ohio, Mr. Jordan. You are —

Mr. JORDAN. I thank —

Mrs. LUMMIS.—recognized.

Mr. JORDAN. I thank the chair and thank her for her work on this issue and a host of others.

Director, this is not even close to being an area I have any expertise in. I think in my 9 years at Congress this is the first time I have ever had a committee where we even talked about this particular issue.

So let me just ask some basic questions and maybe you can give me some numbers. You said in your opening testimony in your time at Fish and Wildlife you have delisted more species than all the previous administrations combined. Is that correct?

Mr. ASHE. We have currently delisted more than any previous administration. If we stay on track, and I believe we will, then we—by the end of this administration, we will have delisted more than all administrations combined.

Mr. JORDAN. How many species are currently listed —

Mr. ASHE. I believe —

Mr. JORDAN.—as endangered?

Mr. ASHE. I believe it's 28, I believe, currently.

Mr. JORDAN. Twenty-eight, that is it?

Mr. ASHE. That's it.

Mr. JORDAN. Okay. How many have you delisted?

Mr. ASHE. Excuse me. Twenty-eight —

Mr. JORDAN. Twenty —

Mr. ASHE.—are the number that have been delisted due to recovery. I believe that's the number.

Mr. JORDAN. How many are listed is what I asked. How many species are currently listed, all the species that are listed as endangered?

Mr. ASHE. Domestically, about—a little over 1,600 species are listed and another, I think, 400 foreign species.

Mr. JORDAN. Two thousand species currently listed as endangered.

Mr. ASHE. That's right.

Mr. JORDAN. Okay. Two thousands. And how many have you delisted?

Mr. ASHE. Twenty-eight.

Mr. JORDAN. Twenty-eight. Wow. Okay. And do you list more in a year than you delist?

Mr. ASHE. Yes.

Mr. JORDAN. The list is getting bigger?

Mr. ASHE. The list is getting bigger.

Mr. JORDAN. Wow. So when are we ever going to fix—I mean, so we have got 2,000. You have only delisted 28. This is what you have done, this administration, or is that—how many have been delisted in all the years since we have—how long have we had the law, since '73?

Mr. ASHE. Seventy-two.

Mr. JORDAN. So since '72. So in 44 years, how many species, once put on the list, have actually come off the list? Is that the 28 number?

Mr. ASHE. I should get the number for you. Some species have come off the list because they have—because they are extinct. But—so I believe the total number is in the range of 40 or 42, but I can get that for you for the record.

Mr. JORDAN. Holy cow. Two thousand on the list and only 40 ever come off. I mean, the idea is to actually get them to come off the list, right?

Mr. ASHE. The idea is to—twofold, to prevent extinction and to recover —

Mr. JORDAN. But you just told me some of them that come off the list come off because they were extinct, so that was a failure.

Mr. ASHE. That would be a failure.

Mr. JORDAN. Yes.

Mr. ASHE. Most—and in several of those cases, they were probably extinct before we listed them, but we have taken them off the list because they are extinct in the wild.

Mr. JORDAN. Okay. So I just had no idea what the numbers were. Two thousand on the list, 28 have come off the list in 44 years, and some of them that came off the list were because they actually—that species went extinct. And we are adding more to the list each year than we are ever bringing off. Is that a fair summation?

Mr. ASHE. Yes.

Mr. JORDAN. Holy cow. I had no idea it was that—okay. Well, I mean, with all due respect to your opening statement, but you say you are doing a great job? I mean, the goal is to get these species off the list and—because let me ask this question. When the species goes on the list, what implications does that have for private property owners in a respective area where this species is located?

Mr. ASHE. When a species is listed, the law prevents take of a species, so that could be harm, harassment, kill. So the law prevents the—I'll say injury to a species and its habitat.

Mr. JORDAN. Could it mean that a person involved in agriculture may not be able to farm exactly the way they were before?

Mr. ASHE. It usually does not mean that.

Mr. JORDAN. Usually does not, but it could.

Mr. ASHE. It can.

Mr. JORDAN. Okay. That is all I have.

Mr. MEADOWS. Will the gentleman yield?

Mr. JORDAN. I would be happy to yield.

Mr. MEADOWS. Director Ashe, I have dealt with the U.S. Fish and Wildlife.

Mr. ASHE. Yes, sir.

Mr. MEADOWS. Your characterization that it may not affect other aspects of private property —

Mr. ASHE. I did not state that.

Mr. MEADOWS.—I think is a—okay.

Mr. ASHE. I did not.

Mr. MEADOWS. That is what the gentleman was getting to. If you can make that clearer for the committee because it does. It is not just the taking of that particular species; it is other activities that potentially could endanger that species, which has a very broad definition according to Fish and Wildlife, is that not correct?

Mr. ASHE. My answer was that the law prevents injury to the species or its habitat. So —

Mr. MEADOWS. Or risk —

Mr. ASHE. Or what?

Mr. MEADOWS. Or risk of injuries to that species. I will be glad—I will yield back. I appreciate the patience of the chair, but I think further clarification, Director Ashe, would be in order.

Mr. ASHE. All right.

Mrs. LUMMIS. The gentleman yields back.

I recognize Mr. Cartwright of Pennsylvania.

Mr. CARTWRIGHT. Thank you, Chairwoman Lummis. And may I also say I am going to miss you when you are gone, too.

Director Ashe, when Congress passed the Endangered Species Act in 1972 and President Nixon signed it into law, we did so because many of our nation's species had "been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation."

Congress recognized that our imperiled species were valuable to the Nation and that extinctions could be prevented. My question is do you believe American species continue to face challenges to their survival and that they still need protection?

Mr. ASHE. We face extraordinary challenges. As I said, you know, today, our nation stands at 323 million people. By the middle of the century, the projections are that we'll have 400 million people in the United States of America. Globally, we stand at 7.3 billion people. By the middle of the century, we expect the planet—to share the planet with 9.5 billion other people. And so as we occupy more space on the planet, that means there is less space for all the rest of creation. And so unless we work hard to make that space for them, they will disappear.

And so what I think we have shown with the Endangered Species Act and the—it is true, recovery is a long-term endeavor. It took—the black-footed ferret is a great example. It took centuries for us to get to the place where we believed the black-footed ferret was extinct in the wild. And then in the early '80s they were discovered in Wyoming. And we have brought the black-footed ferret,

a species once thought to be gone, we have brought it back to the point where we are now talking about recovery of the black-footed ferret. That takes decades to accomplish.

It's like—it's not like a sports injury. You know, an injury takes an instant to happen, a concussion or a broken bone. It takes much longer to recover from that injury.

Mr. CARTWRIGHT. Now, let me jump in here, Director Ashe. My colleague from Ohio, Mr. Jordan, just sort of cast up the idea that we are getting behind at FWS about taking endangered species off the list. It is not really a matter of showing up to work late and letting the paperwork pile up, is it?

Mr. ASHE. No, it's not.

Mr. CARTWRIGHT. You have to make sure they are ready to come off the list because of efforts taken to preserve these species. Would you describe the process for delisting a species, please?

Mr. ASHE. So to delist a species we do have—we have to—first of all, we have to understand the causes of its decline. And so oftentimes, it's not crystal clear what is causing the decline in a species. So we have to gather the information. We have to understand what we can do to bring the species back. We have to build partnership. We have to put those efforts onto the ground. We have to gather the resources to put those efforts on the ground. We have to demonstrate, in fact, that recovery is working and the species have rebounded, and then we have to prove that the threats have been eliminated and that we have adequate mechanisms in place to sustain that recovery.

So it's scientifically and technically challenging. It's—it involves social and cultural work and understanding. It involves the ability to project into the future and see what's going to—and understand well what's going to happen in the future.

Mr. CARTWRIGHT. Well, not to interrupt you but, Director Ashe, I understand that the effort to bring back the American bald eagle from near extinction took a long time. Am I correct that the bald eagle first received protection in 1967?

Mr. ASHE. It did. It was one of the—you know, it was one of the species listed in a predecessor law to the now Endangered Species Act.

Mr. CARTWRIGHT. And would you tell us when the bald eagle was finally delisted from the Endangered Species Act, Director?

Mr. ASHE. It was delisted in 2008 and —

Mr. CARTWRIGHT. So 40 years, right?

Mr. ASHE. Forty years of hard work involving the Federal Government, the Fish and Wildlife Service. We banned the pesticide DDT. In large part that was the limiting factor for bald eagles. So we had to ban that pesticide. You have to have time for those pesticides to cleanse, you know, be removed from the ecosystem to the extent that eagles could continue to reproduce. The—rivers like to Potomac River here in Washington, we restored rivers so that the fish in the river could sustain bald eagle —

Mr. CARTWRIGHT. So a lot of work went into it, and I say thank God that Congress had the foresight to pass this law and that President Nixon signed it into law.

Mr. ASHE. Amen.

Mr. CARTWRIGHT. Thank goodness we all had the patience to wait those 40 years and save our national bird.

Mr. ASHE. Amen.

Mr. CARTWRIGHT. I yield back.

Mrs. LUMMIS. I thank the gentleman and Mr. Mulvaney, the gentleman from South Carolina, is recognized.

Mr. MULVANEY. I thank the chair.

Director Ashe, thank you for doing this. And like many of us, I will fully admit I know this much about what we are talking—you have forgotten more since you sat down than I will ever know about this particular issue. But I do know a little bit and I want to ask you a little something about the long-eared bat situation because it strikes me that this may be a little bit different in terms of how it has become threatened, how it has—it is not technically endangered. I think it is threatened.

Nothing that mankind is doing is threatening this bat, correct? The bat is threatened by an invasive virus from Europe. That is the cause of its status. You said before that one of the things you have to do is to determine the causes of a species' decline, sometimes they are not clear, but here it is really, really clear. It is one of those we know exactly what is threatening this creature, and it is this white-faced virus or something like that, right?

Mr. ASHE. Correct.

Mr. MULVANEY. Yet, by virtue of listing it, we have implications for agriculture, silviculture, a bunch of different industries that have absolutely nothing to do with the reason the creature is threatened, right?

Mr. ASHE. So just a couple of points. Yes, you are generally right. I would say back up a little bit. The white-nose syndrome came to the United States because man brought it. It was brought in trade into the United States. So it came here as a result of human economic activity. And then, yes, it is the disease that is driving it, but what's important to understand is we listed it as threatened with—and when we list a species as threatened, the law provides us the ability to tailor the restrictions of the law. And so we did so. We published what we call a 4(d) rule for section 4(d) of the Endangered Species Act.

And we have exempted all of the activities that you spoke of from regulation except for protection of known hibernacula. So we're protecting them in their caves when they're hibernating. And we're protecting known nesting trees. So when they're having pups, which is a short period of time between June and August, protecting known nesting trees. So we're protecting the very sensitive life stages for the animal to help hopefully support sustaining and ultimately recovering it. But we've exempted all of the activity —

Mr. MULVANEY. I get that —

Mr. ASHE.—that you talked about.

Mr. MULVANEY.—and I understand that you have tailored some of the restrictions and so forth. But I guess what I am getting at is none of the restrictions that you have placed on other industries, property owners, farmers, has anything to do with whether or not this creature will survive. Either we are going to figure out a way to solve the virus problem, the bat itself it going to evolve to the

point where it can deal with the virus, or it is going to become extinct.

Mr. ASHE. But what are the restrictions that you believe we have placed on people?

Mr. MULVANEY. My understanding is that you have got restrictions on where trees can be harvested, the time that they can be harvested, you can't harvest within a quarter-mile of a cave where the bat has lived or lives, you can't harvest within 150 feet of a known maternity roost tree.

Mr. ASHE. Right.

Mr. MULVANEY. And, again, I know this much about this.

Mr. ASHE. They're pretty narrow restrictions.

Mr. MULVANEY. It is, and I understand you tailor—I get that, but again, it doesn't speak to the survivability of the creature.

Mr. ASHE. But it does because if we—so this is a species that is so—taken in the context of a human illness, say I had an illness and I was—you know, and I was facing that illness, a cancer or something else, the doctor would want to protect me from other infection or things that were going to cause me kind of further damage, right, so that I could recover. And that's what we're doing with protection of hibernacula and nesting trees is we're trying to keep additional disturbance from —

Mr. MULVANEY. True, and I get that, and I might be more sympathetic if this particular creature only nested in a particular kind of tree. My understanding—again, fairly new to the topic—is that it doesn't. It doesn't pick pines over oak or —

Mr. ASHE. No, it does not. It's fairly —

Mr. MULVANEY. It will nest just about anywhere.

Mr. ASHE.—classic —

Mr. MULVANEY. My question, as we sit here and do the cost-benefit analysis, yes, to the extent manmade activity caused the problem in the first place through trade and a virus coming in from Europe, the people who are effectively being punished had nothing to do with that and nothing to do with any other thing regarding the decline of this species. So —

Mr. ASHE. So the restriction—it's important to hear all the words—are known nesting trees. So what we're saying is where we know of a nesting tree—we're not requiring people to go out and do surveys, we're not—we are just saying where we know there's a nesting tree, we should provide a buffer around it for 2 months while they're having —

Mr. MULVANEY. Very briefly if I may, and I am sorry to cut you off but my time—if you could maybe talk 20 seconds if the chairwoman will give us about the efforts that FWS is doing on research on the disease, because that is ultimately what is going to save this creature or not.

Mr. ASHE. Yes, and Congress has been very helpful and leaders like Pat Leahy in the Senate have been enormously helpful in getting us funds to do research on the nature of the disease, the vectors, the way that it spreads across the country and how we can prevent it or limit its spread. But ultimately, that is going to be the way that we help these bats recover is to help them find a way to get them through this crisis, this health crisis. And that's where we're focusing our efforts. And that's when we did our 4(d) rule on

the listing. That's what I said is we need to spend our time on the problem, not spend our time regulating a lot of activities that aren't the problem.

And I've taken criticism from the environmental community for that. We've stood up and said we're going to focus—as I said in my statement, we're going to focus on the problem, and we're going to do that like a laser beam. And Congress has been very helpful in getting us funds and the United States Geological Survey, the funds that are needed to learn more about and tackle the white-nose syndrome problem.

Mr. MULVANEY. I thank the chairlady.

Mrs. LUMMIS. And thank you for asking the question. It is a 39-State issue —

Mr. MULVANEY. Right.

Mrs. LUMMIS.—with the bats, so it affects a lot of people in this room. Thank you.

The chair now recognizes the gentleman from California, Mr. DeSaulnier, for 5 minutes.

Mr. DESAULNIER. Thank you, Madam Chair, and thank you, Director Ashe, for being here.

I want to ask a couple questions more related to things I think sometimes seem tangential to the argument. And of course in so many things here it is about balance. And certainly, the ESA has proven over the history of its implementation and its action into law as balance.

So coming from northern California, and as you know, we have many discussions around our drought and our infrastructure for water that you are in the middle of about the ESA. As somebody from that area, the act was meant to be driven by analysis and science and proper funding of that. And it helps, in my experience, when you have that proper analysis when there are lawsuits that seem like they are out of balance when it comes to one side or the other.

So, first off, on the science over the history of the act, have we provided enough analysis and enough funding—you just mentioned that we have provided some more—in your view both to defend your actions but to do it in a way that I believe the original act was passed in that it would be less politicized, although there is always a role of course for politics and subjective view, but that the science would direct us?

Mr. ASHE. No. I think in the, you know, history of the law have we—you know, science, you know, if we look at the challenges that we face in implementing the law, you know, oftentimes people focus on litigation as a challenge. And I would say, you know, as an administrator, litigation can be frustrating. But science and the availability of information to empower innovative and creative solutions to understand the causes and the solutions to species' decline is a much greater challenge and obstacle to our work than something like litigation.

Mr. DESAULNIER. Yes, at least in my experience maybe you could—if you have the proper analysis from a staff position similar to land use so that when you do have private rights of action—and they can come from the left—you can more properly defend it and maybe avoid having the lawsuit entered into in the first place.

Mr. ASHE. That's absolutely correct. And with two of the species that are delisted, the northern flying squirrel and the bald eagle, our delisting decisions were challenged in court. And so it's that scientific information, that credibility that comes from being an agency that speaks to the science is what helps us get past those and ultimately to delist those species.

Mr. DESAULNIER. And on the other side that in northern California we find to be quite compelling is the economic benefit of the ESA when properly done. So the subjective opinion is the ESA is something that tree-huggers like and people who disproportionately want to save the planet. But at least in northern California, as you know, our fishing industry is very important to us.

And it is a big discussion about not just preserving the delta for places for places for people to enjoy, but the fishing industry is a significant part of both Oregon and California's economy. So it is \$1.5 billion. It is not a lot in the context of a \$3 trillion GDP for California. But could you speak to all that and what kind of analysis you do for situations like that? So it is not just protecting the environment. It is also an economic factor in certain areas.

Mr. ASHE. Sure. A lot of times in the context of California water, what we learned last year was the—most of the pumping restrictions that occurred last year were restrictions that were put in place by the California Water Resources Board for—because cities like Chico and Sacramento were bringing in water that was saline. And so what that tells you is that, you know, the delta smelt essentially has been protecting those local water supplies because it's been protecting those fresh-water outflows for all of these years. And so it's a community-sustainability issue.

And also, as Secretary Jewell noted earlier this week in her speech on conservation, the outdoor economy is a huge economy. It provides more to the U.S. economy than pharmaceuticals and automotive jobs combined. And so it's—and so protecting these natural systems and the economies that depend upon those natural systems, it's not just about species.

Mr. DESAULNIER. Right. So the delta smelt in our instance is the canary in the coal mine for our fishing industry —

Mr. ASHE. Right.

Mr. DESAULNIER.—and it is a good thing to remember that, while I agree with many of the critics of the ESA, there are certainly situations where there is overreach from an economic and a scientific perspective. But that is why there is a private right of action. But in this instance it is good, I think, to remember that it can be an economic development tool as well when properly administered.

Thank you, Madam Chair.

Mrs. LUMMIS. The gentleman yields back.

The chairman of the full committee is recognized, the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you.

And I want to follow up on what Mr. DeSaulnier was talking about. And, Mr. Ashe, I have got to ask you. The Fish and Wildlife Service relies on science and data to make these decisions?

Mr. ASHE. We do.

Mr. CHAFFETZ. And who pays for the science and data?

Mr. ASHE. Science can come from the U.S. Fish and Wildlife Service, it can come from the United States Geological Survey, it can come from the Corps of Engineers so the taxpayer pays for a lot. It can come from States. So —

Mr. CHAFFETZ. But ultimately, it is all paid for by taxpayers, correct?

Mr. ASHE. Not all of it. Much of it comes from industry. So we rely on industry in many respects for science. We rely on NGOs for science.

Mr. CHAFFETZ. And does the Fish and Wildlife Service do all these studies and science themselves or you rely on contractors and, as you said, industry as well?

Mr. ASHE. We—all of the above.

Mr. CHAFFETZ. Is all of that science and data released to the public?

Mr. ASHE. All of the scientific—all of the science that we use in making our decisions is available to the public.

Mr. CHAFFETZ. When? Like when in the process do you make that science and data available to the public?

Mr. ASHE. We—it's constantly available. So with the greater sage grouse, for instance, we had a Web site for greater sage grouse, and as the information was made available to it—to us, we posted it on our —

Mr. CHAFFETZ. Do you make the raw data available?

Mr. ASHE. If the raw data is available to us, we provide it. But sometimes, like in the case of, say, the State of Texas, they have constitutional restrictions against providing the source data because of private property concerns and other things. So they provide us with the peer-reviewed science —

Mr. CHAFFETZ. But anything that you generate, you believe, is available to the public and the scientists prior to you making —

Mr. ASHE. If —

Mr. CHAFFETZ.—a recommendation on a rule or —

Mr. ASHE. We do, yes. If we —

Mr. CHAFFETZ. All of it?

Mr. ASHE. All of it.

Mr. CHAFFETZ. Let me ask you about the move to push the Mexican wolf outside of its previous habitats, its historic range if you will. Do you anticipate that the geographic area being different, the historic range for the Mexican wolf? You published —

Mr. ASHE. I'm not following you. Sorry.

Mr. CHAFFETZ. U.S. Fish and Wildlife Service has this map here, and it shows the historic range for the Mexican wolf. It doesn't include Utah. To be right to the point, we are scared to death that you are going to push forward a rule that says we are going to make the Mexican wolf—and push it up into Utah. Is that the goal? Is that the intention?

Mr. ASHE. No. In fact, our current 10(j) rule for Mexican wolf says that if wolves go north of I-40, that we will capture them and —

Mr. CHAFFETZ. I-40 in Arizona?

Mr. ASHE. I-40 in Arizona and New Mexico.

Mr. CHAFFETZ. In New Mexico?

Mr. ASHE. Yes.

Mr. CHAFFETZ. Do you believe you have the authority to reestablish a species outside their historical range?

Mr. ASHE. Historical range is a concept that reasonable people will disagree upon. So range is what's important as we think about recovering a species, and what we need to know is what is the kind of habitat within which we can accomplish recovery, and so we look at range. And historical range is important context for all of our decisions, but what's important in thinking about recovery is where can the species exist and where does the—where do the habitat conditions exist? And so that is what is relevant to us as we build a recovery plan for a species like Mexican wolf.

Mr. CHAFFETZ. So it is your goal and intention that any Mexican wolf that goes north of I-40 you will recapture and bring back to where?

Mr. ASHE. South of I-40 to the recovery zone. And that is our current—that is the current rule and the current practice that we're following while we work with the States—New Mexico, Arizona, Colorado, and Utah—on a recovery plan. We've agreed with the four States that, in building that recovery plan, we will start first with a habitat analysis, looking at Mexico and southern Arizona and New Mexico, what you call historical range, and that we will look at the habitat and determine if that habitat can support recovery. If it can, then we will give that a chance to work with Mexico and in southern New Mexico —

Mr. CHAFFETZ. I just want to be crystal clear —

Mr. ASHE.—and Arizona.

Mr. CHAFFETZ.—that you have no intention of trying to push the Mexican wolf up into Utah because, based on figure 1.1 in the documents you have, there is no Utah on this map, and I want to make sure that is still the case.

Madam Chair, thank you, and I yield back.

Mrs. LUMMIS. I thank the gentleman and recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Madam Chairman. And thank you, Director Ashe, for being here.

I would suggest that there may be a problem and a potential listing of an endangered species, the wily bluegill in my neck of the woods, because last Sunday I didn't find many at the end of my fly line.

Mr. ASHE. Boy, that's a shame.

Mr. WALBERG. We will —

Mr. ASHE. The Pennsylvania Boat—Fish and Boat Commission is responsible for that.

Mr. WALBERG. Well, we will keep checking it out.

[Laughter.]

Mr. WALBERG. According to witnesses in prior hearings, over the years, the amount of litigation under the ESA has increased exponentially. At least that was what was indicated. Why do you think that has occurred?

Mr. ASHE. I am sorry. I didn't —

Mr. WALBERG. We are still thinking bluegill? Sorry about that?

Mr. ASHE. I was still thinking bluegill. I'm—I apologize for that. Your question —

Mr. WALBERG. Litigation has increased and why?

Mr. ASHE. What I'll have to do to get back to you for the record whether litigation has increased. I actually think that litigation has decreased during this administration because we engaged in this multidistrict litigation settlement. So we had cases out there, you know, dozens and dozens of cases in 18 Federal courts, and we threw a rope around them, we pulled them all in, and we forced a settlement. And so we have gotten ourselves out of this, what we call deadline-driven litigation. And so I think actually litigation has declined during this administration substantially.

Mr. WALBERG. Well, that would conflict with exponential increases talked about by a number of witnesses. We are concerned that —

Mr. ASHE. Yes.

Mr. WALBERG.—settlements are taking place.

Mr. ASHE. We had one large settlement at the beginning of this administration. People—and the people call it the MDL, multidistrict litigation settlement, but what that has done, it has gotten us out of court because the law has very stringent deadlines that we're held accountable to, and so deadline-driven litigation was multiplying in Federal courts all over the country. We kind of—like I said, we threw a rope around it, we forced the litigants to a common table, and we reached a settlement that allowed us to implement a sensible, priority-driven schedule for dealing with our obligations under the law.

Mr. WALBERG. So then you would say that this has allowed you to increase your management?

Mr. ASHE. It has. It's gotten—like I said, it's gotten us out of court and on the ground so that we've been able to build partnership's in Montana's Big Hole Valley and avoid the listing of the Arctic grayling and working in the—with five New England States to avoid the listing of the New England cottontail and build those partnerships, so getting out of court and getting our biologists on the ground.

Mr. WALBERG. The Endangered Species Act requires you to consult in many cases receive input from counties. What level of engagement does the ESA require between Federal and local officials?

Mr. ASHE. Well, whenever we take an action under the Endangered Species Act, a listing or delisting action, we are—you know, the law actually requires us, which is rather antiquated—the law requires us to publish notification in papers of local or regional distribution. So we actually view that as an artifact. We—there are much better ways for us to communicate with local governments than newspaper.

But we engage at the local level. We provide notification. We do public hearings like now in our proposal to delist the grizzly bear, we're doing—we had a public meeting in Cody a couple of weeks ago. We had a public meeting in Bozeman, Montana, last week. So we actually have public meetings. We take public comments —

Mr. WALBERG. With that input, has that provided valuable assistance?

Mr. ASHE. It provides extremely valuable —

Mr. WALBERG. On-the-ground information coming from locals?

Mr. ASHE. Yes, from local people, from ranchers. We—you know, we—with—in the context of the greater sage grouse, we were de-

veloping candidate conservation agreements with assurances. We—our biologists were out on the ground meeting with individual ranchers in those cases like in Wyoming and other places getting individual ranchers to sign up for conservation agreements, voluntary conservation agreements.

Mr. WALBERG. You know, I guess my question comes from a concern that while we by law have to notify, we deal with them to a point, and yet too often we hear the locals saying it did not impact us as human beings —

Mr. ASHE. Right.

Mr. WALBERG.—with an economy issue that comes into place of being able to work in coordination with the Federal Government to the point of it being positive. I would encourage more involvement rather than less and more consideration of the local concerns as a very, very important part of this whole endangered species and management of our wildlife services.

My time is expired. I yield back.

Mr. ASHE. And I agree with you on that point, sir.

Mrs. LUMMIS. The gentleman yields back.

The chair recognizes the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Madam Chairman.

Director Ashe, you made a statement earlier in your testimony that implementation of the ESA has changed, and it really has. In previous testimony, you testified in 2011 that your agency spent \$15.8 million of its \$20.9 million listing program budget on taking substantive actions required by court orders or settlement agreements resulting from litigation, otherwise known as sue-and-settle. In terms of sue-and-settle, isn't that how the lesser prairie chicken got listed was from a sue-and-settle suit, a consent decree? It is. You know —

Mr. ASHE. The lesser prairie chicken was part of the multidistrict litigation settlement, but what that settlement did was it enabled us to push the deadline back beyond the legal—the strict deadline in the law. So it gave us more time —

Mr. PALMER. But the problem —

Mr. ASHE.—to work.

Mr. PALMER.—is is that under sue-and-settle you are bypassing Congress, you are bypassing States, you know, and that settlement, which—the Fish and Wildlife Service acknowledged that meeting the settlement demands will require substantially all the resources in the listing program, but it also shows that environmental agencies successfully precluded all interested parties from participating in the regulatory process. It eliminated the warranted-but-precluded option, and tied up most of the agency's listing program funds.

The problem with these sue-and-settle cases is that outside groups are acting as plaintiffs against Fish and Wildlife Service. And what I want to know is when these suits are filed, how many of them have you litigated to the point of if you lost at the lower court that you appealed?

Mr. ASHE. Well, the—all of the cases that were involved in multi-district litigation were deadline cases. We had no defense. And so there is no appeal.

Mr. PALMER. I understand. I understand exactly how —

Mr. ASHE. Right. They're deadlines, so we either —

Mr. PALMER. Right.

Mr. ASHE. We make the deadline or we don't, and so if we don't make the deadline, the law doesn't give us an excuse —

Mr. PALMER. But that is not true if you litigate. If you litigate the case and you lose in court, there is an appeal process. If you enter into a consent decree, there is no appeal.

Mr. ASHE. If the law tells us that we have to make a decision in a year and we don't make the decision in a year, the judge says you're guilty and puts us on a schedule to make the decision. There is no appeal. The Justice Department won't take that case on appeal because we're going to lose it on appeal because it's a simple matter of the law. The law says —

Mr. PALMER. All right.

Mr. ASHE.—we have to make a decision.

Mr. PALMER. Okay. Let me —

Mr. ASHE. You're —

Mr. PALMER. Let me clarify. When an outside group brings a suit against the Fish and Wildlife Service, do you go to court or do you enter into a consent decree?

Mr. ASHE. Well, it depends on the —

Mr. PALMER. It's one or the other.

Mr. ASHE. It depends on the context. With the —

Mr. PALMER. No, sir. I am asking you, have you litigated any

Mr. ASHE. Yes.

Mr. PALMER.—cases? Okay.

Mr. ASHE. We are right now litigating—we're appealing the Wyoming wolf case, we're appealing the Great Lakes wolf case, we're appealing dozens of cases where the decision is a substantive decision and we believe we can win on appeal.

With a deadlined case, which most litigation under the Endangered Species Act are deadlined cases, there is no appeal.

Mr. PALMER. Okay. Let me ask you about this. You said that you also—some of the data is provided by NGOs. Who are some of the—I am not going to ask you to give me the list now. I would like for you to provide the committee with a list of NGOs that have provided data that Fish and Wildlife Service has utilized in its determination process.

Mr. ASHE. Okay.

Mr. PALMER. I would also like to know if any of the NGOs have sued the Fish and Wildlife Service? Are you —

Mr. ASHE. For sure.

Mr. PALMER. They have?

Mr. ASHE. You know, Defenders of Wildlife, Safari Club —

Mr. PALMER. All right.

Mr. ASHE.—National Rifle Association —

Mr. PALMER. Thank you.

Mr. ASHE.—Audubon Society. They were—the State of Alaska. We just yesterday got a notice of intent from the State —

Mr. PALMER. I didn't ask for a list.

Mr. ASHE.—of New Mexico so we're —

Mr. PALMER. With all due respect, sir, I want to try to get through —

Mr. ASHE. All right.

Mr. PALMER.—a couple other things here. And what I would like to know is, prior to any suit being filed, have you or anyone at the Fish and Wildlife Service had meetings with any of these NGOs or activist groups or individuals or individual or any groups acting in support of or on behalf of any potential plaintiff against the Fish and Wildlife Service?

Mr. ASHE. We meet with all of these groups on a regular basis. I meet —

Mr. PALMER. Are those meetings regarding —

Mr. ASHE. If you're asking a question of whether we have ever—whether I've ever met with any of these NGOs and orchestrated a lawsuit that we could settle, absolutely not, never.

Mr. PALMER. Okay. Thank you, Madam Chairman.

Mrs. LUMMIS. The gentleman yields back, and I recognize the gentlewoman from the Virgin Islands, Ms. Plaskett.

Ms. PLASKETT. Thank you. Thank you, Madam Chairwoman.

Good morning, Mr. Ashe. How are you?

Mr. ASHE. Good morning. I'm well, thank you.

Ms. PLASKETT. Good. You know, I had a couple of questions to you about the recovery, the road to recovery for our nation's species. And I am interested in that for a variety of reasons. One is of course I know that you have a very difficult job at Fish and Wildlife Service, but I am also interested in it because, being from the Virgin Islands, you know, fishing and our waterways are enormously important to us. And the list that our coral have been put on is really a balancing for us in terms of our own economic recovery.

Can you tell us, what are some of the reasons species become endangered or threatened and if you expect the number of those threats to increase over time?

Mr. ASHE. Yes. And your coral, I think, is a great example. So coral certainly can be affected by harvest, you know, people harvesting coral, and there's a vibrant worldwide trade in coral, which is a constant, ongoing threat and one that we are fairly good at managing. We have an international treaty, the Convention on International Trade and Endangered Species, where we can regulate sustainable trade in things like coral.

The difficulty comes in, the more insidious effects, and with coral, the effects being driven by global climate change like rising ocean temperatures —

Ms. PLASKETT. Correct, yes.

Mr. ASHE.—and acidification of the oceans are potentially devastating impacts on coral. And so in order to recover coral, we have to become expert on climate change and the physical changes that that's driving in the environment that's going to impact those corals. And then we have to then learn how we might be able to abate those impacts and to protect and ultimately restore coral reef environments is a very, very challenging proposition.

Ms. PLASKETT. So in the Virgin Islands, you know, we don't really have issues with regard to harvesting of our coral.

Mr. ASHE. No.

Ms. PLASKETT. And we have an enormous amount of enforcement that goes on along our waterways. And we recognize that not only

is the coral important to our tourism to attract people to come and view it, but also because it creates a really great barrier for us —

Mr. ASHE. Right.

Ms. PLASKETT.—to keep our beaches very calm and some of the most beautiful beaches in the world. But the climate change issue is really an issue that has affected us in terms of the water temperature rising, runoff from the hills coming into the water, all kinds of issues. But one of the things I wanted to ask you about and, you know, as climate change of course increases, that will mean of course that the coral will become more and more of an issue and its extinction very real.

But one of the things I wanted to ask you is how do you balance then the need for places like the U.S. Virgin Islands or American Samoa and Guam where fishing rights and fishing needs are really important and the Virgin Islands for us to do development to ensure that we have the right balance? Do you do a balancing act in that respect?

You know, one of the things that I know that the Democrats are concerned with is funding for your agency. We have requests for biological opinions so that our developers can move forward that takes almost 2 years now for a biological opinion to be done. How do you balance that, the needs of the people of some of these areas to be able to grow their economies with the need to balance the care of the endangered species?

Mr. ASHE. Thank you. And so once a species is listed, that decision we make solely based—on the basis of the science and the threats facing the species. But once a species is listed and we develop critical habitat, we can take into consideration economic and other factors. When we do a biological opinion, if we write a—what's called a jeopardy opinion on a project or proposal, we create things called reasonable and prudent alternatives. And so we can balance those things.

But you have, you know, put, you know—put a point on a very important issue is most of the work that we do under the Endangered Species Act is allowing things to happen, authorizing take of injury to species. We do that through things like biological opinions. To make those things move promptly, we have to have experts in the field. We have to have biologists and other experts in the field to allow those things to happen.

If you fly into Las Vegas and you—as you look to the north and the west, you're going to see the world's largest commercial solar facility, the BrightSource Ivanpah solar facility. It fits in the middle of critical habitat for the desert tortoise. That was possible because we had biologists on the ground working with BrightSource and the project sponsors to make it happen, to work it into that environment and offset the effects on the desert tortoise. So we can do that and we do do that, but it takes people, resources, science to allow those decisions to be made —

Ms. PLASKETT. Well, I guess, you know, in closing, my concern is that it takes too long. You know, we have developers who come and they are excited about doing a project. They are willing to make the mitigation and the changes that Fish and Wildlife, that National Marine Fisheries request. But by the time they get around to giving an opinion or giving them the mechanisms that

they need, it is 2 and 3 years out, and they pull themselves, pull their money, and the people of the Virgin Islands are—as I said yesterday, our lifestyles, our livelihoods are about to be extinct because of that as well.

So my question is what is the amount of funding and the support that you need moving forward to ensure that places that are not as large as Las Vegas and have the influence and the power but smaller places like American Samoa or the Virgin Islands can do what they need to do to create a sustainable balance between the environment and people being able to live and work and remain in their homes?

Mr. ASHE. Well, I'd refer you to our pending request before the House and Senate Appropriations Committees. We have increases in our budget for listing, increases in our budget for recovery, increases in our budget for candidate conservation, all—and increases in our budget for science, all things that will help put people on—in—on the ground, in the field that are going to help make those kind of decisions.

Ms. PLASKETT. Thank you for the extension in the time, Madam Chairwoman. And I will be very supportive of that appropriation. And I know that my colleagues on the other side who are interested in getting this delisting done would need to support that as well so that you can move it along and the economies can grow. Thank you.

Mrs. LUMMIS. The gentlewoman is welcome.

And the gentleman from North Carolina, Mr. Meadows, is recognized for 5 minutes.

Mr. MEADOWS. Thank you, Madam Chairman. Thank you for your leadership on this particular issue.

And Ms. Plaskett was starting to sound like a Republican. I am going to start to sound like a Democrat, and so let's see if —

Ms. PLASKETT. Never. Never, Mr. Meadows.

Mr. MEADOWS. I didn't say you were one —

Ms. PLASKETT. How dare you.

[Laughter.]

Mr. MEADOWS.—I said you started to sound like one. It is a big difference. So let's look at this because I have had a lot of experience with U.S. Fish and Wildlife as a developer. And so I can speak to and address some of the concerns that were just raised by my colleague opposite. And yet at the same time probably have a long track record from a conservation standpoint of not only set-asides but allowing for what I would say responsible development.

One of the frustrations—you just heard it from my colleague—is a lack of response in a timely way from U.S. Fish and Wildlife, and not just U.S. Fish and Wildlife. Let's face it. It is a number. But we get into this struggle, Director Ashe, where U.S. Fish and Wildlife many times inserts itself either late in the process or gets involved in the process in what I would say a turf war, trout waters in western North Carolina being a prime example of that, whether it is a local jurisdiction, a State jurisdiction, U.S. Fish and Wildlife, their buffer set-asides and so forth.

So that being said, some of those aspects really hurt conservation processes, i.e., if you have anything that potentially could be viewed under the jurisdiction, it is best either not deal with it or

try to make sure that you don't have to deal with it. And so if the budget requirement—what we would like to hear at this committee is if indeed the appropriations are given because we can always ask for additional money—is a plan on how that would actually speed up the process because more money doesn't always speed up the process. You know, bureaucracies can grow. You have an unbelievable staff behind you. They are the ones, I know, that are doing the work. You are getting the heat. One day, it will be fair that they will get the heat as—no.

[Laughter.]

Mr. MEADOWS. But as we look at this, let me go a little bit further because I am troubled by two or three things that have come up in your testimony, and knowing that it is coming from someone who wants to help you.

You mentioned about the litigation. Mr. Palmer was talking to you about the litigation and how that timeframe, that you are missing your deadlines. And so you are going to get a verdict against you because you are missing the timeframes. So how do we make sure that we make those timeframes? Are they too short, 90 days?

Mr. ASHE. The timelines are—well, just briefly, we get a petition to list. I have —

Mr. MEADOWS. No, I knew the process.

Mr. ASHE. Yes.

Mr. MEADOWS. So —

Mr. ASHE. It's about —

Mr. MEADOWS.—yes or no, are they too short?

Mr. ASHE. They're —

Mr. MEADOWS. There are people behind you that are nodding their head yes, so —

Mr. ASHE. They're—they are strict deadlines. I will say that.

Mr. MEADOWS. All right. So you haven't answered yes or no. Are they too short in —

Mr. ASHE. No. No. They're not too short.

Mr. MEADOWS. So then why are you missing them?

Mr. ASHE. Because I don't have the dollars to match those deadlines. And so I think —

Mr. MEADOWS. So if we gave you 100 percent of your request, would you meet all the deadlines?

Mr. ASHE. I—during this administration —

Mr. MEADOWS. You are under oath.

Mr. ASHE. I have met—we have met our deadlines and so —

Mr. MEADOWS. No. The sue-and-settle part, in your testimony just a few minutes ago, that is not what you said. You said that the reason you had to go into some of these settlements was because you were going to miss your deadline and the judge was going to rule against you. You can't —

Mr. ASHE. But that was —

Mr. MEADOWS.—have it both ways.

Mr. ASHE. That was the backlog that I inherited. And what we did was we settled the case, and we came up with a —

Mr. MEADOWS. Because the timeframe was too short?

Mr. ASHE. Because the times frames had been—you know, we had—we —

Mr. MEADOWS. Why do you not want to say the timeframe is too short?

Mr. ASHE. The time—the timeframes are the timeframes. What I have to do is manage with —

Mr. MEADOWS. But we could change those.

Mr. ASHE. You can change those so —

Mr. MEADOWS. So shouldn't we change those?

Mr. ASHE. It's up to you to determine whether you —

Mr. MEADOWS. I am giving you a softball. Shouldn't we change those timelines and make those longer?

Mr. ASHE. It would depend on the entire context of a proposal to change the deadlines. The deadlines are an important aspect of administering the law. These are —

Mr. MEADOWS. No, they are an important aspect of making a decision, which necessarily doesn't —

Mr. ASHE. If —

Mr. MEADOWS. It doesn't make you implement the intent of the law necessarily.

Mr. ASHE. Well, these are challenging decisions, and prior to the timelines being —

Mr. MEADOWS. So would you support extending the timeframe?

Mr. ASHE. Given the overall context, I could support changing the timeframes.

Mr. MEADOWS. All right. Thank you. So let me finish out. That was a long ways to get to yes on that, so let me tell you my other concern. Having dealt with sound science and sometimes what I would call arbitrary science in terms of protected areas, your comments to Chairman Chaffetz with regards to the recovery area, you indicated that you are dealing with Utah and Colorado in terms of the recovery plan. If it is truly that north of I-40 you are going to bring the Mexican wolf back, there is no recovery plan because the way that you said it was if there is habitat there, that you are going to allow that to continue on. And there is habitat in Utah and Colorado that would probably be very similar to New Mexico and Arizona.

Mr. ASHE. There is.

Mr. MEADOWS. So if that is the case, is your testimony that you are going to allow that recovery process to go above I-40 into Utah and Colorado?

Mr. ASHE. I'm going to let the science decide where the —

Mr. MEADOWS. So the answer is yes, then? If you were talking about habitat —

Mr. ASHE. A couple things —

Mr. MEADOWS.—Director.

Mr. ASHE. First of all, we have a recovery plan for the Mexican wolf. The States of Utah, Colorado, New Mexico, and Arizona have asked us to revise that recovery plan, which we are doing in cooperation with those States. We have agreed to let the science decide. We're going to look at where the habitat is. But in the meantime, as I explained to Mr. Chaffetz, we are agreeing to limit the wolves to south of I-40. So we have —

Mr. MEADOWS. In the meantime. But Mr. Chaffetz's point was will ultimately the folks in Utah and Colorado have to worry about the Mexican wolf reintroduction into a place that was not histori-

cally their habitat? Yes or no? Should they be concerned about that?

Mrs. LUMMIS. I —

Mr. MEADOWS. And I will yield back.

Mrs. LUMMIS. I am sorry. I am going to stop you because I am trying to get through this.

Mr. GOSAR. He is like a Democrat. He goes on forever.

[Laughter.]

Mrs. LUMMIS. You may answer the question.

Mr. ASHE. I don't believe the people of Utah and Colorado need to be worried about anything. They're being represented by their State officials in the context of this recovery plan, and they're being—their interests are being represented well.

Mrs. LUMMIS. The gentleman yields back.

The chair recognizes Mr. Hice of Georgia.

Mr. HICE. Thank you, Madam Chairman.

And, Director Ashe, it is good to see you again, appreciate you being here.

Mr. ASHE. Thank you, sir.

Mr. HICE. It's a pleasure finding out that we actually grew up within a few miles of each other.

Mr. ASHE. Right.

Mr. HICE. So you will appreciate my concern that the bat seems to be endangered with the Atlanta Braves these days, and anything you can do to recover that would be greatly appreciated.

[Laughter.]

Mr. HICE. Being a Nationals fan, now I have to, you know, go with the home team.

Well, let's go continue down these lines of the recovery plans. They obviously have decreased, and yet they are important to getting certain species off and removed from the endangered list. Just from another perspective of trying to wrap my mind around it, why have the number of recovery plans decreased when they are vital to removing some of the species who perhaps are not endangered any longer?

Mr. ASHE. Again, I don't believe the number of recovery plans have decreased. Of the 1,600 plus species that are listed under the law I believe we have recovery plans for nearly 1,300. So—and of the species that have been listed more than 3 years—it takes time to recovery plan. Of the species that have been listed more than 3 years, 85 percent of those species have recovery plans. So I think we've been—again, we've been making good progress in building recovery plans, but it's a lengthy—it is a lengthy process as well.

Mr. HICE. Well, the information that we have had is recovery plans have decreased from 843 in the '90s to 177 today. Are you saying that is not accurate?

Mr. ASHE. Oh, no, we have way—we have far more than 177 recovery plans.

Mr. HICE. Okay. If you could provide that information —

Mr. ASHE. I will do that.

Mr. HICE.—to committee, I would appreciate that.

Mr. HICE. So then you are saying that the recovery plans have not decreased, and therefore, there is no problem with the ability of FWS to recover and delist species?

Mr. ASHE. The recovery is a challenging endeavor, as we've talked about in a number of respects. Recovery is a very—can be a very difficult, very challenging, long-term—it is a long-term endeavor. I would say, an example that —

Mr. HICE. So the recovery plan is not interfering with the ability to delist species that need to be delisted?

Mr. ASHE. I would say, yes, the availability of a recovery plan can be a limitation in the—like in the case we were just talking about with the Mexican wolf. I think a revised recovery plan can help us in building a pathway to long-term recovery for the wolf, and that's why we're working on it. So in some cases it can be a necessary step that we need to take, and it can be a limiting factor, but in most cases where we have recovery plans, we're working toward —

Mr. HICE. Well, how come we are not seeing species delisted?

Mr. ASHE. I think the majority of species that are listed and a strong majority of the species for which we have recovery plans are stable or increasing. And so I think across the board we are making progress toward recovery. It's a slow —

Mr. HICE. It seems to me that we have a lot more species getting on the list than we have species that deserve it getting off the list.

Mr. ASHE. Well, I think the species that deserve it—again, in this administration, as I said, we've targeted investments to species that are near the end of that process of recovery, and we're getting them off the list. And I think we're getting better at recovery. We're building durable partnerships to, you know, achieve that long-term success. And I think the record that I'm talking about for this administration will be a short-lived record because I think we're seeing—or beginning to see the effects of several decades of work on recovery, and we're showing that targeted investments can get species over that final hump. And so I think the record that I'm talking about and I'm proud of, I think it'll actually be a pretty short-lived record.

Mr. HICE. I think you are making this very difficult for me to wrap my mind around because it does not appear to me —

Mr. ASHE. All right.

Mr. HICE.—that species are getting off the list. It is an enormous battle to get species off the list that deserve to be off the list while more and more are getting on the list. And it all obviously creates problems.

Let me go back to a question because I have only got about 30 seconds here. You said earlier that you have multiple meetings with local governments and different groups and all that sort of thing, and yet we heard testimony just yesterday as to how often Federal Government tends to ignore in your case local governments, which is the truth. I mean, you may be meeting, but local government input is important, and it appears as though that really is not taking place, although as your testimony, meetings are happening.

Mr. ASHE. Well, again, not to be argumentative, but I think that input is happening, and we—the—recently—earlier this year, we lived through the occupation of the Malheur National Wildlife Refuge, and if you were listening to that debate, you heard the people in Burns saying that, you know, they were solving their problems

their way because the U.S. Fish and Wildlife Service is working with them and has worked with them for a decade on a comprehensive conservation plan for the Malheur National Wildlife Refuge.

Mr. HICE. So was the testimony yesterday accurate or inaccurate?

Mr. ASHE. If I'm hearing it correctly, I believe it's largely inaccurate. I think that Harney County, Oregon, which—where the Malheur Refuge exists, we have a candidate conservation agreement with assurances, and during the Malheur occupation, John O'Keeffe, the head of the Oregon Cattlemen's Association, was saying we are working our problems out with the Federal Government, and we're working through the candidate conservation agreement process. We have come to an agreement. And so we're working at the county level, at the municipal level, which not to say that we're perfect or infallible, but I think we are demonstrating that we can and do work well at the local level. We can do more if we have more people in the field to do that kind of work.

Mrs. LUMMIS. The gentleman's time is expired.

Mr. HICE. Thank you, Madam Chair.

Mrs. LUMMIS. We are expecting votes. I have done a disservice to the four remaining members by running a very ample and generous clock. So with their permission, I would like to give each of them on a rotating basis the opportunity to ask one question, and we will rotate through one question at a time for the remaining four members here until votes are called. Votes have not yet been called.

So, gentlemen, are you okay with that? And it would happen in this order: Mr. Buck, Mr. Carter, Mr. Gosar, Mr. Pearce. Are you okay with that? Sorry. I did you a disservice because the clock I ran was very generous.

Mr. Buck, you are recognized.

Mr. BUCK. I don't know how I can just ask one question, but I will do my best.

Thank you very much for being here.

Mr. ASHE. Yes, sir.

Mr. BUCK. Congressman Palmer asked you a question earlier. I think it was at the end of his questioning. And he said do you or anyone in Fish and Wildlife Service basically coordinate on these sue-and-settle cases? And your answer was that you don't. And my follow-up question to you is are there institutional, ethical rules in the Fish and Wildlife Service that would prevent that? And do you have a comfort level that those rules are being followed?

Mr. ASHE. Yes, I do. And it would be an ethical and a legal violation. I can provide those to you for the record. And yes, I'm talking about the Fish and Wildlife Service writ large. We do not do that. There is absolutely no, no evidence to show that that has ever occurred. If it did occur, it would be a serious infraction.

Mr. BUCK. Thank you.

Mrs. LUMMIS. Okay. And you will get another question, Mr. Buck. I am just going to rotate through until votes are called.

Mr. Carter of Georgia is recognized.

Mr. CARTER. Thank you, Madam Chair.

Mr. Ashe, the Georgia Department of Natural Resources has had great success with the State wildlife grants. In fact, Georgia DNR

was awarded a wildlife grant to restore the longleaf pine forest, and that was a great program. It was one that we are hoping is going to be able to keep the gopher tortoises off of the endangered species list, and it is working well.

It is my understanding that to be eligible for those grants that a State or territory must develop a comprehensive wildlife conservation strategy, is that correct?

Mr. ASHE. That is correct.

Mr. CARTER. So it is my understanding that all 50 States have done that —

Mr. ASHE. I think that they have.

Mr. CARTER.—and that would lead me to believe that—and I hope—and I think you would agree that all of our States have an interest in addressing their unique situations in trying to face the issues in each State. Would you agree with that?

Mr. ASHE. I do agree with that.

Mr. CARTER. Good. Well, it has been a great program, and I compliment you on it. And Georgia Department of Natural Resources has done well with it.

Mr. ASHE. Yes, Deb Forrester is a great leader in Georgia —

Mr. CARTER. Yes.

Mr. ASHE.—and I would just say that, again, in our fiscal year '17 budget, we have proposed a sizeable increase for the State and tribal wildlife grants, and that's exactly what you're talking about. We have an interest in helping build capacity for our State partners as well.

Mr. CARTER. Great. Well, any time we can get it to the States

Mr. ASHE. Yes.

Mr. CARTER.—I am for it. Thank you.

Mr. ASHE. Thank you, sir.

Mr. CARTER. Thank you, Madam Chair.

Mrs. LUMMIS. The gentleman from Arizona, Mr. Gosar, is recognized.

Mr. GOSAR. Thank you, Chairwoman.

Director Ashe, have you studied upon the draft compatibility determination for the Havasu National Wildlife Refuge announced by the Service last week that aims to close significant areas to motorized boating on Lake Havasu?

Mr. ASHE. I have not.

Mr. GOSAR. Wow. You know, your deputy director Jim Kurth knew detailed information about this proposal when I questioned him on March 22nd, yet you claim to know nothing, which seems unbelievable. Remember where I stopped on here because I have got a couple of other questions to drill you on.

Mrs. LUMMIS. Thank you. The gentleman from New Mexico, Mr. Pearce, is recognized.

Mr. PEARCE. Thank you, Madam Chair. Thanks, Mr. Ashe, for being here.

You made a comment that says the people of New Mexico have nothing to be concerned about. You might be interested to know that today they are filing suit against you for releasing wolves in a pattern that they don't agree with. So they do find a little bit to be concerned about.

But my question is really about the bald eagle. The recovery of the bald eagle is complete. It is nice, it is safe, it is good, it is grand. You still charge people \$250,000 for taking of bald eagles, don't you?

Mr. ASHE. Under the Bald and Golden Eagle Protection Act —

Mr. PEARCE. Yes.

Mr. ASHE.—yes, sir.

Mr. PEARCE. So you do that? You charge them \$250,000 under something.

Mr. ASHE. I don't believe we've charged anybody \$250,000, but

Mr. PEARCE. But you have the right to do that?

Mr. ASHE. The law provides for penalties, yes, sir.

Mr. PEARCE. Okay. Because that is a fairly serious matter. You have a national bird but you also have an endangered species.

Mr. ASHE. It's not an endangered species.

Mr. PEARCE. You have a species that was endangered that might slip back onto the list and so we are going to protect them by significant fines, is that more or less a value judgment?

Mr. ASHE. We have a law that we are responsible for implementing. The law provides protection for bald and golden eagles.

Mr. PEARCE. Okay. So my question is, sir, how come? Why? In this revised rule to ensure long-term monitoring and protection of eagles while facilitating renewable energy development, you give 30 years, 30 years. Wind farms can take as many bald eagles as they want. It is as if the species doesn't exist. It is what it says, sir.

Mr. ASHE. No, it does not, sir. It does not say they can take as many bald eagles as they want.

Mr. PEARCE. The revised rule—result of extensive stakeholder engagement and public comment extends the maximum permit 10-year to 30 years subject to 5 year recurring —

Mr. ASHE. They would have to have a permit. The permit would authorize us to —

Mr. PEARCE. And you have given a permit. You have given permits for those —

Mr. ASHE. We have not given any 30-year permits —

Mr. PEARCE. You have given 5-year permits, which then work into the 30-year permits. You have given 5-year permits or not?

Mr. ASHE. We —

Mr. PEARCE. I can provide the document where it says that you did. I don't know if you actually did or not.

Mr. ASHE. We have given, I think, a couple of permits, but the law, again, requires them to get a permit. It requires them to —

Mr. PEARCE. So if you get a permit from you all, it is okay. Have you given any permits to oil and gas wells? Oil and gas is where we make our living in New Mexico. Oil and gas is how we do it. So you have given permits to wind farms to take for 5 years any number of eagles they want. Have you done that to any oil and gas

Mr. ASHE. If—yes.

Mr. PEARCE.—operator in the country?

Mr. ASHE. If they applied for a permit, we would give them a permit.

Mr. PEARCE. You would give it to them ——

Mr. ASHE. If they met ——

Mr. PEARCE.—not you would review it, you would give it to them?

Mr. ASHE. If they met the requirements of the law ——

Mr. PEARCE. Oh, now if they met ——

Mr. ASHE.—they would get a permit.

Mr. PEARCE.—the requirements. Oh, now that is ——

Mr. ASHE. Isn't that important? Isn't it important to meet the requirements of a law?

Mr. PEARCE. I don't know. How come a wind far can kill as many as they want?

Mr. ASHE. They can't kill as many as they want. They ——

Mr. PEARCE. It says this in here.

Mr. ASHE. Show me ——

Mr. PEARCE. You get a permit, you can do what you want.

Mr. ASHE. Show me the words "you can kill as many as you want."

Mrs. LUMMIS. The gentleman from ——

Mr. PEARCE. I would yield back.

Mrs. LUMMIS. Thank you. The gentleman ——

Mr. PEARCE. Thank you.

Mrs. LUMMIS.—from Colorado is recognized.

Mr. BUCK. We are much mellower in Colorado. It has nothing to do with the marijuana laws ——

[Laughter.]

Mr. BUCK.—we are just mellower people.

My car broke down. This is a true story. My car broke down. I went to a ranch house and asked the rancher for some help, and when he found out I was with the feds, he turned bright red.

Mr. ASHE. Oh, boy.

Mr. BUCK. Yes, that is the way I felt also.

Mr. ASHE. Yes.

Mr. BUCK. And his concern was his ranch area, he was having some problems with the sage grouse.

Mr. ASHE. Right.

Mr. BUCK. And it is in western Colorado. And he was very upset about the plan that had been implemented because what he wanted to do was he wanted to—and he said I could send my grandson out with a .22 and take care of this issue. What we need to do is we need to kill the predators of the sage grouse, not build more habitat for the sage grouse. And when he brought the subject up to the people that were gathering the information, they were not thrilled with the idea of having teenagers out killing critters.

If my car breaks down again in the same place and I see that rancher again, what do I tell him?

Mr. ASHE. I think—well, I think you tell him that, you know, I hope his fears are not justified. I think we have been working with ranchers, and I was told by a rancher, Jim Stone in Montana, that, you know, Dan, if you ask a rancher for help, he'll give you the shirt off his back. If you tell him what he has to do, he'll fight you tooth and nail. And I think that's the approach we've been bringing to the sage grouse, and we have been working extensively with the agriculture community. And we do not see ranching as a problem.

We actually see ranching as part of the solution, to keep lands working, but to make sure that we are ranching to standards that are going to support both.

And in Harney County, Oregon, what I—which I referred to before, we had a rancher, Tom Strong, who said, you know, what's good for the bird is good for the herd. And so I think what we're trying to do is work with the ranching community. And we may stumble. And I understand that people are concerned about uncertainty, and we're going to have to prove ourselves in the long run. But I think we're going to do that, Congressman, and I hope the next time you see that rancher, he might agree with you.

Mrs. LUMMIS. Mr. Gosar is recognized.

Mr. GOSAR. So, Mr. Ashe, yesterday, Lake Havasu Mayor—and I would like to place this in the record—City Mayor Mark Nexsen sent a letter to the Havasu Refuge manager and yourself raising serious concerns about the draft compatibility determination, asking several questions, asking the Service to conduct an additional public meeting in Lake Havasu and requesting an extension of public comment period by an additional 60 days. Given that you don't even understand what is going on here and profess that, you know, you followed all the laws, which in this case are blatantly wrong, how do you expect the American people to understand this flawed proposal to close down more motorized boating on Lake Havasu in 30 days?

Mr. ASHE. How do I expect the American people —

Mr. GOSAR. To understand that you didn't follow process and you know nothing about this even though this was brought up previously to your under-person and you still know nothing about it?

Mr. ASHE. Mr. Gosar, I would suggest—and if you want to have a conversation with me about Lake Havasu that you invite me to your office so that we can have a conversation. What you appear to want to do is confront me in a public hearing—in a congressional hearing. If you want to know —

Mr. GOSAR. You know, Mr. Ashe, this is my time. You have invited this. You have absolutely invited this because in March 22 I actually had a conversation with the person underneath you who knew all about this. And when you understand this whole process—and I find it offensive that you have no idea about what is going on here. So I am going to ask you one more time. Are you going to adhere to the mayor's request and grant a 60-day extension of the public comment period?

Mr. ASHE. If the mayor has requested an extension, we will consider it.

Mr. GOSAR. Will you adhere to the mayor's second request and host an additional public meeting in Lake Havasu?

Mr. ASHE. If he has requested it, we will consider it.

Mr. GOSAR. Well, you know, I am really taken back by your arrogance that you—you are here to serve, which is what I am here to do, and where you hear an unnecessary need that has been brought up like this that is so egregious in this application I expect better from you.

I have got another line of questioning after this.

Mrs. LUMMIS. Okay. Mr. Pearce is recognized.

Mr. PEARCE. Thank you, Madam Chair. Thank you again, Mr. Ashe.

I am reading from a news release by Brian Hires. Is he an employee of the Fish and Wildlife Service?

Mr. ASHE. I do not know.

Mr. PEARCE. If he uses the email address fws.gov, is that an indicator that he might be in the agency?

Mr. ASHE. It would be.

Mr. PEARCE. Okay. So he quotes down in that that the new revisions, talking about a new proposed rule, simplify the original proposal that petitioners coordinate with States and remove the proposed require for petitioners to certify they provided all relevant information on a species. So my question is, so you all have removed the requirement that the litigants who are trying to sue to get things settled provide all the relevant data. Why is that? Wouldn't we want all the relevant data?

Mr. ASHE. The point of petitioners is that they may or may not have access to all of the relevant data, and it's—and they—their position is it is our responsibility to assemble all of the relevant data. And so—and that's a fair position on their point, I would say. And a petitioner, in the case of delisting, might be a State. It might be an oil company. It might be the Safari Club. And so —

Mr. PEARCE. But in this case it was the Center for Biological Diversity in Arizona —

Mr. ASHE. That's —

Mr. PEARCE.—petitioning for the sagebrush lizard —

Mr. ASHE. That is —

Mr. PEARCE.—to be listed, which you and I discussed at length in my office a couple of years ago. And I would remind you, sir, that the things they presented were not all of the relevant data. In fact, it was me holding a public town hall where we got the guy who wrote the original report 30 or 40 years ago. He came in and showed the pieces of the report that were being omitted by the litigant, Center for Biological Diversity, and he showed where his report concluded exactly the opposite of the conclusion they were drawing.

When I asked him had Fish and Wildlife Service contacted him to find out the underlying report, you all were moving towards a listing of threatened or endangered in that species, and it was only after he began to talk publicly that, no, he had not been contacted by Center for Biological Diversity or you all.

And I draw great concern from the fact that you are reducing the requirement for litigants, people who are going to sue to get species listed, you are going to reduce that.

And I would yield back, Madam Chair.

Mr. ASHE. We're not reducing requirements. We're reducing the—some of the requirements that we had proposed. But the net result of our rule that Mrs. Lummis referred to is that the requirements on petitioners will be increased, not decreased.

Mr. PEARCE. It sure says here in the news release that it is going to remove the proposed requirement for petitioners to certify —

Mr. ASHE. Going to remove the —

Mr. PEARCE.—that they provided all relevant, all relevant information, all relevant information that is significant.

Again, I yield back.

Mrs. LUMMIS. Thank you. The gentleman's time is expired. And thank you for joining us today. Votes have just been called, so Mr. Buck, you have one more question, and Mr. Gosar, you have one more question, and then we will wrap it up.

Mr. BUCK. Director, the question I have is I am looking at a timeline that was part of the hearing yesterday. It was an exhibit in the hearing yesterday. And it concerns the northern Rocky Mountain wolf. And it is listed, delisted, listed, delisted, lawsuit listing it, lawsuit delisting it. Can you give some guarantee to the people of this country that we are going to delist the gray wolf? Not once and for all, I understand that who knows what is going to happen down the road, but can we get some certainty on this?

Mr. ASHE. I can tell you my firm belief is that we are—we will see the delisting of the northern Rocky Mountain wolf. We—it is recovered, and we are working with the State of Wyoming now and with the States of Oregon and Washington and the Great Lakes. We are also working there, and we're going to work through that process. It's going to take us longer than we would have hoped it would take, but we will see the delisting of those species, I believe, in the near future.

Mr. BUCK. I am sorry to ask two questions —

Mrs. LUMMIS. Go ahead.

Mr. BUCK.—but near future —

Mr. ASHE. What would be near future?

Mr. BUCK. Yes.

Mr. ASHE. In the case of the Great Lakes, we're appealing that. I think we're going to win on appeal. I would expect that within the next 6 months.

In the case of the Wyoming wolf, we're working with the State to revise their management plan. It depends upon the speed with which we can do that. But I would hope certainly within 6 months to a year we would see that species delisted as well.

Mr. BUCK. Thank you.

Mrs. LUMMIS. Mr. Gosar, you are recognized.

Mr. GOSAR. So, Mr. Ashe, I find something interesting. In your testimony earlier you said the law prevents injury to a species, yet the Service has been producing genetically modified wolves ever since the January 2015 announcement, and 45 percent of those died last year on your watch. The population of the Mexican wolves in the wild actually declined by 12.5 percent. You are doing a terrible job of managing those wolf populations.

And so I want to come back also to on January 16, 2015, the United States Fish and Wildlife Service announced its decision to list the Mexican wolf as an endangered subspecies and arbitrarily, arbitrarily expanded the range of the wolves in which they can roam in Arizona and New Mexico under section 10(j) of the ESA.

Why did your agency—and going back for a second, now you understand why Colorado and Utah should be, should be scared about what is coming. Why did your agency violate the Antideficiency Act and fail to secure the funding for the 10(j) nonessential experimental Mexican wolf population program before implementing this new program?

Mr. ASHE. I'm not aware of any allegation that we have violated the Antideficiency Act. If you have that evidence, I would ask you to give it to me and I'll look into it.

Mr. GOSAR. Well, you run a tight ship here. Regional Director Tuggle admitted this fact on a conference call with stakeholders announcing the program. You know, you want my disdain, you got my disdain because you come in front of numerous committees with lack of evidence, lack of science, lack of accountability throughout your agency. And that is what you deserve. And it is a shame that you sit in that position.

I yield back.

Mrs. LUMMIS. The gentleman's time is expired.

And before I thank our witness and adjourn the meeting, I would like to make a request, Director. There is a letter dated February 23, 2015, wherein Committee Chairman Chaffetz and I requested the raw data for sage grouse, and we have not received that response yet. So if you could refer back to this letter of February 23, 2015, and respond to that letter, we would be very grateful.

Mr. ASHE. Thank you.

Mrs. LUMMIS. Okay.

Mr. ASHE. I will.

Mrs. LUMMIS. Thank you. I would like to thank you once again for your generous time this week and appearing before us today.

Mr. ASHE. Thank you.

Mrs. LUMMIS. If there is no further business, without objection, the subcommittee stands adjourned. Have a good weekend.

Mr. ASHE. Thank you very much.

[Whereupon, at 10:55 a.m., the subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

**House Committee on Oversight and Government Reform
Thursday, April 21, 2016
9:00 am**

Oversight Hearing on

“Barriers to Endangered Species Act Delisting – Part II”

Question from Chairman Cynthia Lummis, Subcommittee on the Interior

1. In response to a question about the California Bay Delta, you addressed the impacts of Fish and Wildlife Service and National Marine Fisheries Service biological opinions concerning the operation of the State Water Project and Central Valley Project in California in the 2014-2015 water year and stated that most of the restrictions on water deliveries were not attributable to the restrictions established by the Endangered Species Act biological opinions but were instead due to requirements imposed by California’s State Water Resources Control Board related to water quality.

However, the attached information from the California Department of Water Resources and the U.S. Bureau of Reclamation indicates that in water year 2015-2016, the biological opinions have, in fact, resulted in cumulative reduction in water deliveries to the State Water Project and the Central Valley Project, through April 17, 2016 of in excess of one million acre feet.

Can you address the apparent discrepancy in your statement regarding the cause of the pumping reductions in the Delta? Do you agree with the state and federal water agencies that it is, in fact the biological opinions that are the primary cause of these reductions? Do you agree with the estimates that these biological opinions have resulted in a cumulative reduction in excess of one million acre feet in the 2015-2016 water year?

Response: In 2014-2015 (Water Year 2015) export limitations were primarily attributable to actions under the State Water Resources Control Board’s Water Right Decision 1641 (D-1641). The statements made during testimony were, therefore, accurate, but only applied to that water year. Conditions affecting operation of the Central Valley Project and State Water Project (projects) vary from year to year based on a variety of factors, including hydrologic and tidal conditions, reservoir storage levels, water quality requirements, priority of water rights, contractual obligations, and endangered species protection measures. The 2008 Delta Smelt Biological Opinion for ongoing operation of the projects is designed so that when risks to Delta Smelt survival are high, exports are curtailed to mitigate those risks. Risks to Delta Smelt include, but are not limited to, entrainment by water diversions including pumps operated by both State and Federal water projects, toxic substances and poor water quality, and low flows which reduce available food supply and increase vulnerability to predation. For Water Year 2016 (the current year and the year depicted in the first slide), conditions have indicated high risk to Delta Smelt on top of historic low population estimates. To reduce

risk of entrainment of Delta Smelt during 2016, there have been instances where the projects reduced exports either proactively or pursuant to requirements in the biological opinions. However, the figure representing the total export reductions for 2016 will not be available until the end of this water year, when the Bureau of Reclamation calculates this information.

Questions from Congressman Steven Pearce (R-NM-3)

1. **When designating critical habitat, are there any barriers or limits on location? Does the Fish and Wildlife Service have to designate critical habitat within a historic range?**

Response: When the U.S. Fish and Wildlife Service (Service) proposes an animal or plant for listing, Section 4 of the Endangered Species Act (ESA) also requires the Service to designate critical habitat for the species, to the maximum extent prudent and determinable. The Service designates critical habitat based on the best available scientific information regarding what areas an animal or plant species needs to survive, reproduce, and recover.

Critical habitat is defined in the statute to include both the specific areas within the geographic area occupied by the species at the time it was listed on which are found those physical or biological features that are essential to the conservation of endangered and threatened species and which may require special management considerations or protection, along with those areas that were not occupied by the species at the time of listing but which are essential for its conservation. Critical habitat represents areas that are needed for recovering a species—the ultimate goal of the ESA. These areas are determined on a case-by-case basis depending on the conservation needs of the species. While the Act does not require critical habitat to be within the historical range of the species, most designations tend to fall within the historical range of the species.

2. **When designating critical habitat does the Fish and Wildlife Service take into account economic factors? Does the agency take into account potential job loss? Who does this analysis within the agency?**

Response: Yes, the ESA requires the Service to take into consideration the economic and other impacts of designating critical habitat for a specific species. Under our regulations, the Service makes both the proposed rule and draft economic analysis available for public review and comment at the time of the proposed critical habitat designation. The proposed designation is also submitted to independent peer review. It is only after this public comment period, peer review, and consideration of the impacts of the designation and potential exclusion of specific areas that the Service makes a final designation of critical habitat.

The Service contracts with independent firms with expertise in conducting economic analyses of critical habitat designations. These contractors follow applicable laws and executive orders that provide guidance on how to conduct an economic analysis and what factors should be evaluated. Executive Order 12866 and OMB guidance Circular A-4 are the guiding documents that the Service follows when considering the economic impacts of a critical habitat designation. As described in these guidance documents, when considering economic impacts, the analysis considers the incremental impact of the designation of critical habitat. In other words, the Service assesses the impact of critical habitat above and beyond any baseline impacts that would occur absent critical habitat designation. These baseline impacts include impacts due to the listing of the species and other conservation plans, land management plans, best management practices, or regulations that protect the habitat. Any incremental impacts due to designation of critical habitat are evaluated further to determine if it is likely that there would be a significant economic impact as defined under E.O. 12866 (i.e., greater than \$100 million in any given year). The types of economic impacts included in these analyses are largely the real or perceived costs of modifications to projects and activities that occur in or affect designated critical habitat, and costs to Federal agencies due to the increased complexity of consultation under critical habitat standards (e.g., consulting under both the jeopardy and adverse modification standards). These analyses may theoretically indirectly indicate a potential for job losses; however, the consideration of the economic impact of a critical habitat designation does not explicitly include an analysis of potential job loss.

- 3. For the New Mexico Jumping Mouse, why did the Fish and Wildlife Service designate a ranching allotment as critical habitat and not the adjacent property within the Valles Caldera National Preserve? Was this area not within the historic range? Is the area different in any way? Has the agency looked for mice on the preserve? If so, please send any and all scientific documentation to my office.**

Response: Critical habitat designated by the Service was based on the best assessment of the areas that meet the definition of critical habitat for the New Mexico Meadow jumping mouse (jumping mouse). At the current rate of population extirpations, without substantial conservation efforts, the mouse has a high probability of extinction in the next ten years. Because the species is imperiled, with isolated populations, the Service designated critical habitat in all areas where the jumping mouse was known to occur at the time of listing in an effort to prevent its extinction. Within the ESA's definition of critical habitat, the Service can designate critical habitat in areas outside the geographical area occupied by the species if it is determined that these areas are essential for the conservation of the species. In the case of the jumping mouse, not all areas adjacent to occupied habitat – including areas of Valles Caldera – were included because these areas did not meet the definition of critical habitat. For more details on the criteria used to identify critical habitat, please refer to the final designation of critical habitat rule for the jumping mouse (81 FR 14264, pages 14,295-14,297). In this listing and critical habitat designation, the Service referenced the jumping mouse Species Status Assessment (SSA) Report (Service 2014) developed by species experts.

The SSA Report was made available for peer review and public comment on June 20, 2013.

The Service reviewed information (Frey 2005, p.6) indicating a jumping mouse historical record within the Valles Caldera National Preserve (VCNP) from the base of Redondo Peak in a beaver pond, and possibly in the vicinity of Redondo Creek. Both Redondo Creek and San Antonio Creek were evaluated. However, neither area met the definition of critical habitat because the habitat was not deemed to be essential for the conservation of the species. Neither area was occupied at the time of the listing. In addition the areas are highly degraded and lack dense herbaceous vegetation. They are not likely to be restored to suitable habitat. Additionally, recent surveys by VCNP found no jumping mice. Based on this information, it was concluded that the area is unoccupied.

- 4. When is the last time the Fish and Wildlife Service conducted population surveys for the New Mexico Meadow Jumping Mouse? Please send any and all surveys done to my office. Were these surveys used to designate habitat? Were these surveys peer reviewed by scientists?**

Response: The Service does not conduct general surveys for the jumping mouse because we do not have the resources to do so. However, for the past two years, monitoring surveys were conducted on the Bosque Del Apache National Wildlife Refuge. These surveys consistently found a few mice each year.

As required by section 4(b)(2) of the ESA, the Service used the best scientific data available to designate critical habitat. For the jumping mouse rule, the Service relied heavily on the analysis of biological information reviewed in the peer reviewed SSA Report. For a detailed review of this assessment, see chapter 3 of the SSA Report.

- 5. How many mice have the Fish and Wildlife Service actually found in the Sacramento Mountains? Please send all documentation.**

Response: Below is a summary of the current jumping mouse distribution in the Sacramento Mountains, New Mexico.

In 2005, the jumping mouse was captured at two localities within the Sacramento Mountains in southern New Mexico, Otero County (Frey 2005, p. 38). In 2010, the jumping mouse continued to occupy at least one of the 2005 localities (Forest Service 2010, p. 2). In 2012, the subspecies was detected at two additional sites (Forest Service 2012d, pp. 2–3). As there is a lack of continuous suitable habitat, it is unlikely that the jumping mouse is currently present throughout each stream segment where the four localities occur. See below for more detail on the number of individuals identified in each case.

Middle Silver Springs Creek, at Junction of Turkey Pen Canyon and Forest Road 405, Sacramento Mountains, Lincoln National Forest, Otero County. In 2005, one

jumping mouse was captured at the Junction of Turkey Pen Canyon and Forest Road 405 that contained well-developed riparian habitat (Frey 2005, p. 31). Based on surveys and museum records from 1988 to 2005 and recent visual surveys, we think much of the habitat was historically occupied with individuals documented in 1902 and 1977 (Morrison 1989, pp. 7, 9; Frey 2005, pp. 30–31; Frey *et al.* 2009, p. 4).

Cox Canyon and Rio Peñasco, Sacramento Mountains, Lincoln National Forest, Otero County. Based on surveys and museum records from 1988 to 2012 and recent visual surveys, we think much of the habitat was historically occupied (Morrison 1989 pp. 7–10, Frey 2005, pp. 32–33; Forest Service 2012d, entire; Service 2012). In 2012, two jumping mice were captured at the intersection of Cox Canyon and the Rio Peñasco (Forest Service 2012a, entire; 2012c, entire; 2012d, pp. 2–3).

Mauldin Spring, Wills Canyon, Sacramento Mountains, Lincoln National Forest, Otero County. In 2012, one jumping mouse was captured at Lower Mauldin Spring within a grazing exclosure with permanent flowing water (Forest Service 2012b, entire; 2012c, entire; 2012d, pp. 2–5). In 2013, another jumping mouse was captured at Upper Mauldin Spring within a grazing exclosure with permanent flowing water (Forest Service 2013, entire).

Agua Chiquita Creek, Sacramento Mountains, Lincoln National Forest, Otero County. In 2005, 2010, and 2012, jumping mice were found within a series of fenced livestock exclosures (Frey 2005, p. 34; Forest Service 2010, entire; Service 2012, pp. 1–2). In 2005, one jumping mouse was captured at a site that contained well-developed riparian habitat within a small wet meadow (Frey 2005, p. 34). Interestingly, this site was surveyed in 2009 (400 trap nights), but no jumping mice were captured, yet in 2010, one jumping mouse was captured at Sand and Barrel Springs in the same general area along Agua Chiquita Creek (Forest Service 2009, p. 2; 2010, p. 2). During subsequent surveys in 2012, no jumping mice were captured; however, one was observed while checking traps (Forest Service 2012d, p. 2; Service 2012, p. 1).

6. **Does the Fish and Wildlife Service plan on transplanting mice into areas designated as critical habitat? If so, why weren't the areas where the mice are designated as critical habitat?**

Response: The Service has no plans on transplanting mice into areas designated as critical habitat at this time. The 2014 recovery plan outline for the jumping mouse is a strategy to guide the conservation and recovery of the species. It is based on the final Species Status Assessment Report.

7. **In regards to the New Mexican Meadow Jumping Mouse, why hasn't the agency held a meeting with those affected as well as the implementing agency (Forest Service)? Has the Fish and Wildlife Service been working with the Forest Service to determine where they construct fences and barriers to protect the mouse? If so, has the agency been working with lessees on where these barriers are constructed? Have the agencies agreed to compensate lessees for any obstructions to water**

rights?

Response: The Service has held many joint meetings with the U.S. Forest Service (Forest Service) and livestock grazing permittees to discuss how best to manage areas designated as critical habitat for the jumping mouse. The Service is continuing consultations with the Forest Service, primarily with the Santa Fe and Lincoln National Forests, to provide technical assistance on best management practices within designated critical habitat. As recently as April 26, 2016, Service representatives met with permittees and the Santa Fe National Forest to finalize consultation for the jumping mouse. The Service plans to have similar meetings on the Lincoln National Forest.

8. **In regards to the Mexican Wolf, are you working with Mexico on recovery efforts since 90% of the historic range is in Mexico? Please send all information on interactions between the agency and the Mexican government. Do you plan to increase the habitat within the US outside the current range?**

Response: The Service has been working with the Mexican government on Mexican wolf recovery issues since the 1970s when the last Mexican wolves were captured in Mexico and placed in a binational captive breeding program in an effort to keep the species from going extinct. The Service now has 55 captive breeding facilities in the U.S. and Mexico that breed wolves as part of the Mexican Wolf Species Survival Plan. As part of the Species Survival Plan, the Service transfers Mexican wolves among these facilities yearly to ensure the best breeding pairs to maintain the genetic diversity of the captive population. The Service began releasing Mexican wolves in the U.S. in 1998, while Mexico began releasing Mexican wolves into the wild in 2011. As of 2015, there are a minimum of 97 Mexican wolves in the U.S., and fewer than 20 in Mexico.

The Service completed the Mexican Wolf Recovery Plan in 1982. In December 2015, the Service engaged the states of Arizona, Colorado, New Mexico, and Utah; Federal agencies in Mexico; and independent scientists in both countries in Mexican wolf recovery planning workshops to review scientific information that will inform our development of a revised recovery plan. Per a recent settlement agreement, the revised recovery plan will be completed by November 2017.

As part of these recent recovery planning workshops, the Service is completing a model that will help inform our development of recovery criteria regarding the number of wolves, number of populations, and connectivity needed to achieve recovery by evaluating extinction risk of various recovery scenarios. With this information, the Service will look at the availability of habitat and prey from the general vicinity of Interstate 40 south into the Sierra Madre Occidental and Sierra Madre Oriental in Mexico to determine where on the landscape Mexican wolf recovery can occur. If the Service is not successful in finding sufficient suitable habitat with adequate prey in this area for recovery, we will look elsewhere for additional suitable habitat to achieve Mexican wolf recovery.

Based on the results of the habitat analysis in Mexico, the Service plans to discuss with the Mexican government the number of wolves and populations, as well as areas for recovery, to which they are willing to commit to in Mexico for Mexican wolf recovery. The Service will also work with the Mexican government to determine the actions, costs, and timeframe necessary to accomplish wolf recovery actions in Mexico. Based on these discussions, the Service will determine, based on the best scientific information available, if the level of Mexico's commitment, when combined with the Mexican Wolf Experimental Population in the U.S., is sufficient to achieve recovery of the Mexican wolf. If it is not, the Service intends to look elsewhere for additional suitable habitat to achieve Mexican wolf recovery, or to adjust the population objectives of the Mexican Wolf Experimental Population.

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House Committee on Oversight and Government Reform
Thursday, April 21, 2016
9:00 am

Oversight Hearing on

“Barriers to Endangered Species Act Delisting – Part II”

Questions from Congressman Paul Gosar to Director Ashe

1. **Director Ashe, have you studied up on the draft recreational boating Compatibility Determination (CD) for Havasu National Wildlife Refuge announced by the Service April 12th that aims to close significant areas to motorized boating activities on Lake Havasu? Your Deputy Director, Jim Kurth, knew detailed information about this proposal when I questioned him on March 22nd, yet you claimed to know nothing about this pressing matter when I questioned you at the hearing.**

Response: Yes, I have been made aware of the draft recreational boating Compatibility Determination for Havasu National Wildlife Refuge.

2. **How many new acres will restrict horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational boating if the CD is implemented?**

Response: Fluctuating water levels affect the width of the river and varies throughout the seasons, dam releases, and other environmental factors making it difficult to provide consistent acreage. We are providing the estimated acreages based on January 2015 water levels. Below are the total acres that were proposed motorized boating restrictions in the withdrawn draft CD:

In total approximately 4,500 acres¹ were proposed to have restriction changes.
 ~4,000 acres (proposed 30hp motor limit and no-wake allowed) in Topock Marsh.
 ~500 acres were in the proposed ~2-mile expansion of the existing ~17.5-mile regulations. No-wake restrictions were also proposed in this same ~2-mile area.

3. **Does that figure include all areas within the main channel of the lower Colorado River, in the backwaters of the lower Colorado River, within the 4,000 acre Topock Marsh, within the ½ mile no-wake zone form May 2015, the no-wake restrictions in the Topock Marsh, the horsepower restrictions in the Topock Marsh, and the proposed area from the no-wake zone down to Mesquite Bay?**

Response: The numbers in the previous response included all areas within Havasu National Wildlife Refuge (Refuge) jurisdiction. No new restrictions were proposed in the existing ~17.5 mile stretch on the main River channel (which includes the ½ mile no-wake zone designated in 2015). The total number of restricted acres described in question 1 included all

¹ Acres refers to acres of water surface from January 2015 and is subject to change throughout the year.

proposed restrictions in Topock Marsh and the proposed ~2-mile area from the no-wake zone down to Mesquite Bay.

4. **How many total acres within the Refuge, including the Havasu Wilderness Area, already restrict horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational-towed devices?**

Response: The following are existing restrictions on the Refuge:

- Approximately 4,400 acres of the ~17.5-miles (within the main River channel and its backwaters) prohibit water-skiing, tubing, wake boarding or other recreational towed devices as well as wake and personal watercraft as indicated by signs and buoys. This includes:
 - Approximately 150 acres of Devil's Elbow are designated no-wake.
 - Approximately 26 acres near the I-40 bridge and Topock 66 Marina are designated no-wake.
- Approximately 100 acres of Mesquite Bay are closed to motorized watercraft.

5. **How many total acres on Lake Havasu already restrict horsepower, have no-wake zones or prohibit certain motorized boating activities, including restrictions by BLM and other government agencies?**

Response: The Service does not know how many acres are impacted by boating restrictions imposed by other government agencies including the BLM. Within Refuge jurisdiction, approximately 100 acres of Mesquite Bay are closed to motorized watercraft. North of Mesquite Bay is the ~100 acre no-wake restriction of 2015.

6. **Of the 700 acres of the Havasu reservoir on the Refuge, how many acres will have restricted horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational boating if the CD is implemented?**

Response: Approximately 700 acres within the Refuge portion of the ~19,300 acre Lake Havasu Reservoir will have restricted uses.

It is important to note that at the southern end of the Refuge, the Refuge boundary is defined by the state line bisecting the river. Therefore, the California side of the river channel is not within the Refuge boundary and is not included in these ~700 acres. As such, applicable California regulations will remain unchanged.

7. **In a July 10th response from your agency to my letter objecting to the May 2015 boating restrictions for the Havasu Refuge which were made two days before Memorial Day and without public comment, the Service stated that these arbitrary restrictions were lawful under its regulations in the form of 50 CFR 32.22. That particular regulation deals with regulations for hunting and fishing within the Refuge. The Service is now citing a different regulation to justify these restrictions. Was that a mistake or did your agency fail to identify the proper authority prior to making the May 2015 closure?**

Response: The no-wake zone was established in May 2015 based on the following facts as identified by Refuge staff and visitors: (1) wake-causing motorized boating in the area impacts crucial riparian and wetland habitat needed for foraging, breeding, loafing and nesting for a wide variety of residential and migrating birds including the Clarks and Western grebe and endangered Ridgeway's rail; (2) wake-causing motorized boating in the area posed threats to non-motorized boaters because wakes generated by high speed motorized boats in narrow channels and backwaters cannot readily dissipate resulting in unsafe conditions and potential to capsize or swamp non-motorized users; (3) wake-causing motorized boating in the area is impacting refuge-dependent wildlife in the area causing shoreline erosion of their habitat, bird strikes, vegetation destruction and floating nest disturbance. The Service takes all concerns regarding risks to visitor and natural resource safety seriously and is committed to being responsive when conflicts arise. Safety concerns regarding wake speeds and water depth brought to the attention of refuge management prompted further evaluation of uses impacting refuge resources.

Although the header for 50 CFR 32.22 relates to Sport Fishing, all boating regulations for the Refuge fall under this category. It was appropriate to have boating restrictions under 50 CFR Part 32 when making fishing compatible with the refuge-specific mission, Service mission, and to ensure public safety. On September 13, 2005 the Refuge regulations were revised in the Code of Federal Regulations and 50 CFR 32.22 paragraph D incorporated subparagraphs 1 through 6 to include regulations on Topock Marsh, 17 miles of the main river channel and Mesquite Bay. The May 2015 ½ mile backwater no-wake designation was an extension of the 17-mile existing regulations.

The regulatory guidelines used to make this designation is present not only in the Code of Federal Regulations (50 CFR 32.22 and 25.21), but also in the guiding legislation for the National Wildlife Refuge System and The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966. The Improvement Act states, "Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety." The threshold to determine compatibility is outlined in the Improvement Act and Service policy. The threshold is high and the Refuge Manager has the authority to impose restrictions to make an activity compatible. Wildlife-dependent recreational opportunities, such as fishing, get precedence over non-wildlife uses.

8. **The Service has since changed its justification for the May 2015 restrictions as the CD states these restrictions were lawful under 50 CFR 25.21 (e). This regulation allows temporary closures in the "event of a threat or emergency endangering the health of the general public or Refuge resources." This isn't the EPA Animas spill and there is no pending threat or emergency. Further, the CD states that a NEPA categorical exclusion was allowed for the May 2015 restrictions "due to the absence of controversy related to environmental impacts." There was plenty of controversy and the Service knew about it as documented in multiple Freedom of Information Act requests. I will ask you again, what legal authority does your agency cite to go around arbitrarily closing motorized boating activities in areas utilized by recreational enthusiasts for decades?**

Response: No areas have been or are proposed to be closed to motorized boating.

The Service believes the May 2015 decision met the considerations discussed in 50 CFR 25.21. The regulation states, "In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice." The threat may relate to the endangerment of refuge users as well as to protect the resources of an area.

The Service takes all concerns regarding risks to visitor and natural resource safety seriously and is committed to being responsive when conflicts arise. Because this area is shallow and narrow, high-speed boats may not be able to safely share the waterway with non-motorized craft thereby creating a threat to users. Safety concerns regarding wake speeds and water depth were brought to the Service's attention. The Service investigated the matter and found that there were conflicts in uses posing safety concerns and impacts to resources. This review prompted further evaluation of all boating uses impacting refuge resources. The Refuge found the no-wake designation in the backwater, known to some visitors as "speed alley," to be a necessary action for the continued safety of the public and the protection of area resources.

The now withdrawn draft CD stated that a National Environmental Policy Act (NEPA) categorical exclusion was allowed for the May 2015 restrictions "**due to the absence of controversy related to environmental impacts.**" This allowance specifically states controversy related to environmental impacts, not recreation. The Service is aware of little to no controversy regarding the effects that boating restrictions will have on natural resources.

9. **I appreciate you granting our request to hold a public meeting in Lake Havasu City. Why wasn't a meeting scheduled here in the first place? Why did the Service only schedule two public meetings on this matter, both on the same Tuesday at the same location in Laughlin, Nevada?**

Response: The Service's compatibility policy 603 FW 2, section 2.12A(9) provides guidance on public review and comment. The Service is required to provide an opportunity for public review for a minimum of 14 days. No public meetings are required. In this case, however, we believed it was important to hear from the community directly, so we initially committed to holding two public meetings at a venue in Laughlin, Nevada because it could accommodate a large group and was easily accessible to interested parties in three states. Due to significant community interest in Lake Havasu City, the Service agreed to hold a third public meeting in Lake Havasu City. We secured a venue in Lake Havasu City, however there was concern the location would be unable to accommodate the expected number of participants. After our public announcement of the Lake Havasu City meeting, the Mayor of Lake Havasu City and others offered use of the Aquatic Center, which could hold a large capacity of people. We were pleased to accommodate that request once we became aware of the availability.

- 10. On April 29th, 21 bipartisan members of the House expressed concern about the CD and requested a 60-day extension of the comment period. This same request has been made by Lake Havasu City Mayor Mark Nexsen, the Arizona Game and Fish Department and the Lake Havasu Area Chamber of Commerce. Will the Service adhere to these requests for a 60-day extension of the public comment period? If not, why not?**

Response: The Service is committed to better understanding the concerns raised by local stakeholders and encourages public participation. As such, a public meeting was held on May 2, 2016 in Lake Havasu City and two additional meetings were held in the surrounding area of Laughlin on May 3, 2016. Due to the level of interest in recreational boating on the Refuge, the Service decided to expand the public comment period from 30 days to 60 days making the new closing date June 13, 2016. For ease of access, the Draft CD was made available for review and comment at the following website: www.fws.gov/refuge/havasu

- 11. Is the agency intent on seeking to impose the CD prior to Memorial Day Weekend?**

Response: The Service did not impose any new restrictions prior to Memorial Day weekend, 2016. The draft CD was withdrawn following the close of the comment period.

- 12. Will you scrap the CD announced April 12, 2016?**

Response: The CD released on April 12, 2016 was a draft proposal. It was not finalized. The Service intends to work with local community leaders and others before moving forward with any revised proposal.

- 13. The current refuge manager has demonstrated a clear conflict of interest and disregard for public involvement in this process. If the Service chooses to move forward with the CD, will you encourage Regional Director Tuggle to make the final decision as to whether or not to implement the CD and remove that decision from the current refuge manager?**

Response: The Service is unaware of a conflict of interest. The Refuge Manager is an employee of the Service and was acting within the scope of her position and authorities when she designated the no-wake zone to ensure visitor safety and initiated the draft CD.

As directed by the Improvement Act, the Service promulgated regulations establishing the process for determining whether the use of a refuge is a compatible use (50 Code of Federal Regulations Part 26.41). The regulations direct the Refuge Manager to only permit a new use, or expand or renew an existing use, if it is determined the use is a compatible with the Refuge's purpose. These regulations outline the procedures for documenting compatibility determinations including what a compatibility determination must contain and who has the authority to make the final decision. The regulations give the authority for making the decision to the Refuge Manager and Regional Refuge Chief.

All decisions on final determination are made after close coordination with Regional Director, Dr. Benjamin Tuggle.

14. What is the primary justification for the expanded boating restrictions found in the CD?

Response: Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and consistent with public safety and the purpose of the Refuge. The provisions to determine compatibility is outlined in the Improvement Act and Service policy. The Refuge Manager has the authority to impose restrictions to make an activity, such as boating, compatible with the purpose of the Refuge.

The Refuge Improvement Act of 1997 states the following:

“(3) With respect to the System, it is the policy of the United States that— (A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established; (B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

(4) In administering the System, the Secretary shall— ‘(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System; (B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;”

In 1990, the U.S. Fish and Wildlife Service (Service) began a Comprehensive Management Plan (CMP) for the lower Colorado River refuges (U.S. Fish and Wildlife Service 1994). The CMP specifically addressed boating in the following goals and objectives:

“Goal #12 is to reduce levels of non-wildlife oriented recreation on the River channel that runs through the lower Colorado River refuges, to eliminate all non-wildlife oriented recreation that is not compatible, to increase the quality experience related to natural values by all River visitors, and to raise public awareness of the lower Colorado River ecosystem values.

Objective #2 under Goal #12 is to protect wildlife resources by implementing the appropriate zoning policy for sensitive areas of the Refuges, especially those pertaining to endangered species. Each Refuge Manager will review existing refuge zoning regulations and implement zones that take into account refuge purposes and the proximity to other jurisdictions that are more conducive to the non-wildlife oriented uses (i.e., water-skiing areas, jet skiing areas).

The CMP provided a list of secondary uses not planned to occur at any of the lower Colorado River National Wildlife Refuges because they do not conform to uses, which could be, in a

regulated manner, “compatible” with the purposes of the Refuge, or they have been determined to be harmful to refuge resources. The CMP underwent close coordination with a number of entities, as well as public comment and the NEPA process.

Additionally, the Fish and Wildlife Service Manual 603 FW2 states the Service will “...reevaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. Additionally, a Refuge Manager always may reevaluate the compatibility of a use at any time.”

To comply with the Improvement Act and Service Manual standards, the Service proposed several restrictions in the draft CD.

15. What objective analysis, science and statistics do you have to support the CD?

Response: The purpose of a CD is to determine if a use is compatible or not compatible with the Service mission and Refuge purpose(s). Per the Service Manual 603 FW 2, “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.”

The Refuge is required to maintain biological integrity, diversity, and environmental health for the benefit of migratory birds and all other species that feed, breed, and shelter on the Refuge. Recreational high-speed boating can adversely impact Refuge habitats and wildlife. Refuge staff and visitors have witnessed the flushing of birds, nest disturbance, bird strikes, and habitat destruction from wake-causing motorized boating. Because boats produce emissions, turbulence from propulsion, wakes, pollution and noise, the Refuge Manager must evaluate where these specific uses may occur as these factors may affect wildlife use patterns, use of particular habitats, feeding behavior and early departure of migratory birds dependent on the Refuge as a resting ground. As the land management agency responsible for the protection of endangered species and other wildlife, all potential impacts must continue to be evaluated for their compatibility with the refuge purpose.

The withdrawn draft CD found that boating is compatible with the National Wildlife Refuge System mission and the Refuge purpose with proposed restrictions. The Service is committed to working collaboratively with local community leaders to find a path forward that both meets the needs of the community and the purpose of the Refuge as well as supports the Service’s mission.

16. What alternatives, if any, were considered prior to releasing the CD?

Response: The Service is responsible for reviewing existing refuge zoning regulations and implementing zones that take into account refuge purposes and the proximity to other jurisdictions that are more conducive to the non-wildlife oriented uses (i.e., open water for

high-speed uses, like Lake Havasu). Based on sound professional judgment, refuge management evaluated area locations and uses to determine potential negative impact to refuge resources and visitors participating in priority public uses. The Service considered several alternatives, including a “no action” alternative when developing the draft CD, before pursuing the alternative with proposed restrictions identified in the draft CD.

17. Other than employees within the Service, who was consulted prior to releasing the CD and what is your record of consultation?

Response: The Service believes the draft Compatibility Determination was consistent with the principles outlined in the Comprehensive Management Plan of 1994, the current guiding document for Havasu National Wildlife Refuge management. The CMP underwent public comment in 1991 and NEPA prior to its completion in 1994.

During the CMP planning process, meetings were held with the following agencies and organizations: Arizona Game and Fish Department; California Department of Fish and Game; Nevada Department of Wildlife; California Department of Parks and Recreation; Arizona State Parks; BLM; Bureau of Indian Affairs; Department of the Air Force; Chemehuevi Indian Tribe; Fort Mojave Indian Tribe; Colorado River Indian Tribe; City of Lake Havasu, Arizona; City of Blythe, California; City of Needles, California; Colorado River Environmental and Wildlife Society (Martinez Lake, Arizona); Sierra Club; Audubon Society; Yuma Rod and Gun Club; Palo Verde Rod and Gun Club; Lake Havasu City Chamber of Commerce; Parker Arizona Chamber of Commerce; Golden Shores/Topock Chamber of Commerce; Arizona Wildlife Federation; Arizona Department of Environmental Quality; Arizona Department of Water Resources; Arizona State Lands Department; Arizona Nature Conservancy; Lake Havasu City Bass Club; and Arizona Trappers Association. The U.S. Bureau of Reclamation was also a cooperating agency in this project.

Public meetings were held as follows:

August 28, 1991, Yuma, Arizona
 August 29, 1991, Blythe, California
 August 30, 1991, Lake Havasu City, Arizona
 August 31, 1991, Needles, California

18. According to the Service’s own estimates, nearly three million visitors vacation at Lake Havasu each year and a typical holiday weekend draws nearly 50,000 boaters to the area. According to a 2008 Lake Havasu City Tourism Survey, nearly 75% of tourists are interested in water skiing, wakeboarding or boating while visiting Lake Havasu. The survey also revealed tourists spend more than \$200 million and support nearly 4,000 full-time equivalent jobs. Did the Service carefully consider the economic impacts that could result from the CD? If so, what specific actions did the Service take to mitigate any economic harm?

Response: Currently, 17.5 miles of the Colorado River on the Refuge restrict certain uses.

It is important to note that significant numbers of visitors participate in several priority public uses including hunting, fishing, wildlife observation and photography, environmental education and interpretation on the Refuge. Due to the number of uses on the Refuge, the Service anticipates visitors would continue to visit the Refuge in large numbers and bring commerce to the local area. To highlight one of the many user communities that visit the Refuge, anglers and fishing groups are some of the highest users of Lake Havasu. High-grossing fishing tournaments continue to bring these wildlife-dependent users to the area. According to Lake Havasu City's Convention and Visitors Bureau, fishing tournaments on Lake Havasu can require up to \$200 solely for team admission. We also expect the fishing community will continue to use boating vendors in the Havasu area and fishing continues to be allowed in all areas of proposed restrictions. As another example of tourist activities, the Refuge is part of a major migratory bird migration route along the western coast of the United States making the Refuge a birding hotspot with 318 bird species drawing in bird enthusiasts and wildlife photographers, all of whom will continue to add to the local economy.

- 19. In November 2013, the Fish and Wildlife Service inflated costs for fixing a broken water supply line by millions of dollars and attempted to terminate the rainbow trout stocking program at Willow Beach, threatening 1,700 jobs and \$75 million in associated economic output. It took significant efforts from myself, Senator McCain, and others to reverse that terrible decision. Why does the Service continue to ignore important associated economic impacts for Mohave County prior to implementing new restrictions and unilaterally changing programs?**

Response: The U.S. Fish and Wildlife Service (Service) has completed construction of a long-term water supply system for the Willow Beach National Fish Hatchery. With recognition of your support, the Service announced the successful completion of the floating pipeline project on August 5, 2016.

The Service understands that the fish supplied by our National Fish hatcheries provide important economic and recreational opportunities to the states, tribes, and recreational communities. Since its construction, the Willow Beach National Fish Hatchery has long helped provide economic benefits to Arizona. It was devastating to the Service, Tribes, the local community and many others when, due to age and wear, the hatchery experienced a significant water supply system failure, leading to the loss of 40,000 fish in 2013. Tremendous efforts were made to save as many fish as possible and to look at potential alternatives to repair the system.

Early cost estimates to completely revamp the system and implement safeguards against a future failure were very high. For more than a year, the Service met with the Arizona Game and Fish Department, Mohave County of Arizona, and the National Park Service to develop viable, less costly solutions. The team agreed on a project proposal (Floating Pump) that provides a sufficient and reliable water supply system at an estimated cost is \$776,448. In a partnership agreement, the Arizona Game and Fish Department (AZG&FD) and the Service agreed to share costs, with AZG&FD providing \$389,000.

Following a competitive bid process, Performance Systems, Inc. was selected to complete the project for \$801,506. Modifications were made to take additional precautionary measures, including installation of safety measures for regular maintenance and creation of a barrier to prevent invasive quagga mussels from entering the pipeline. This increased costs by an additional \$211,704. The Service is covering these additional costs through its operations and maintenance accounts.

Now that testing of the new water conveyance system is completed, trout production will recommence at Willow Beach NFH. To better meet the needs of anglers, the Service will continue to work with AZG&FD to expedite initial production of trout and shorten the timeframe for catchable size trout to be available. The Service will also work on a stocking schedule with the AZG&FD to ensure that the fishing experience can be enjoyed the entire season.

20. I want to now turn my attention to the Mexican Wolf, an issue that is very important to the Southwestern States. On November 13, 2015, the four Governors from the states of Arizona, Colorado, New Mexico and Utah sent a bipartisan letter expressing serious concerns and a unified position in opposition to the "Service's [new] planned approach to recovery plan development" for the Mexican gray wolf. On December 11, 2015, House Committee on Oversight and Government Reform Chairman Chaffetz, Subcommittee of Interior Chairman Cynthia Lummis, House Natural Resources Committee Chairman Rob Bishop and several of our colleagues reiterated those very valid concerns in a letter to you and Secretary Jewell. In a February 3, 2016 response to that letter, you stated, "The Service has initiated recovery planning discussions with the States of Arizona, Colorado, New Mexico and Utah; Federal agencies in Mexico; and independent and objective scientists from the United States and Mexico."

21. Why exactly is the Service having planning discussions with Colorado and Utah?

Response: The Service has a unique relationship with the states in recovery and management of threatened and endangered species, as laid out in the Endangered Species Act. The states of Colorado and Utah have been involved in recovery planning for the Mexican wolf since 2003, when our recovery planning efforts were focused on a Distinct Population Segment that included those states up to Interstate 70. Subsequently, they were invited to participate in the Mexican Wolf Recovery Team that was appointed in 2010, which focused on the Mexican wolf subspecies rather than a Distinct Population Segment. During that recovery planning effort, some scientific experts on the Science and Planning Subcommittee of the recovery team considered habitat north of I-40 in Arizona and New Mexico as potentially suitable habitat for recovery efforts. More recently, Colorado and Utah have also been participating in the recovery planning workshops that commenced in December 2015 to assist the Service in the development of our revised Mexican wolf recovery plan which is due to be published in November 2017.

22. The wolf has had no presence in these states historically. Are you all looking at expanding the habitat of the Mexican wolf to include territories in Colorado and Utah?

Response: The Service has no current plans to reintroduce Mexican wolves into either Utah or Colorado. The Service, the states of Arizona, Colorado, New Mexico, and Utah; the Mexican government, and scientists from both countries are currently assessing the amount of suitable habitat and prey in Mexico that could contribute to recovery. We will consider this information in combination with our population objective of 300 to 325 wolves in the Mexican Wolf Experimental Population Area to determine whether recovery is possible south of I-40 in the southwestern United States and in Mexico. If, based on this information, we are not successful in identifying sufficient habitat to support recovery, we will look elsewhere for additional suitable habitat to achieve Mexican wolf recovery. Recent genetic evidence in published scientific literature indicates that gene flow occurred between Mexican wolves and other gray wolf subspecies as far north as Utah.

23. Despite the fact that 90% of the Mexican wolf's historic range is in Mexico, the Service seems committed to restoring Mexican wolves only in the United States. Why?

Response: The Service has demonstrated a commitment to binational collaboration with Mexico in Mexican wolf recovery since the inception of the binational Mexican wolf captive breeding program in the early 1980's. We continue to have an active relationship with federal agencies in Mexico to implement field activities for the reintroduction efforts in both countries. In addition, Mexico federal agencies have participated in our recovery plan revision processes in 2003 and 2010, as well as our current series of workshops. In April, we held a recovery planning workshop in Mexico City (following December 2015 and March 2015 meetings in Arizona) to ensure robust participation by Mexico federal agencies and independent scientists. In addition to gathering and assessing scientific information at the workshop, we also discussed avenues for binational collaboration in the recovery of the Mexican wolf. The Service and federal agencies in Mexico will continue to explore mechanisms for a binational recovery effort.

Applicable information for determining areas suitable for Mexican wolf recovery includes suitable habitat features, adequate prey, and low human density. As is our standard, the Service will use the best available scientific information to evaluate appropriate areas for Mexican wolf recovery. We expect to complete the recovery plan by November 2017.

24. You also stated in your February 3, 2016 response "The revised recovery plan will also provide estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal." Do you have any preliminary estimates of those costs and time that you can share with the Committee today?

Response: No. The information on costs and time will depend on the actions needed to recover the Mexican wolf. This information will be provided in the draft recovery plan, which is currently under development and is expected to be completed by the end of 2016.

25. On January 16, 2015 the United States Fish and Wildlife Service announced its decision to list the Mexican wolf as an endangered subspecies and arbitrarily expanded the range the wolves can roam in Arizona and New Mexico under Section 10(j) of the ESA.

Why did your agency violate the Anti-Deficiency Act and fail to secure funding for the 10(j) nonessential experimental Mexican wolf population program before implementing this new program? Regional Director Tuggle admitted this fact on a conference call with stakeholders announcing the program.

Response: The Service did not arbitrarily expand the range into which Mexican wolves can be released and disperse in New Mexico and Arizona in the revised 10(j) Rule. The revised 10(j) Rule thoroughly analyzed the expansion of the Mexican Wolf Experimental Population Area (MWEPA). This expanded area will promote Mexican wolf population growth, genetic diversity, and management flexibility. The regulatory flexibility provided by our revisions to the 1998 Final Rule, including expansion of the MWEPA, will allow the Service to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior. There is no basis for the allegation that the Service has in any way violated the Anti-Deficiency Act in its implementation of the revised 10(j) Rule.

- 26. The Service has been producing genetically modified wolves ever since the January 2015 announcement and 45% of those died last year. On your watch the population of the Mexican wolves in the wild actually declined by 12.5% last year. Why is the Service doing such a terrible job managing Mexican wolf populations?**

Response: The experimental population has demonstrated several years of strong growth in recent years (2011-2014). The Mexican wolf pups that were documented in the wild in 2015 were all born in the wild to wild parents, which demonstrate that the population continues to self-perpetuate and is not demographically reliant on releases from captivity. In the 2014 Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, we projected a 10 percent average annual growth of the population, which anticipates that there will be years with less than and greater than that projected growth rate. It is normal for population growth of any species to fluctuate over time.

Recovering the Mexican wolf into its historic landscape has unique challenges unlike other gray wolf recovery programs. In the Northern Rocky Mountains, gray wolves were captured in Canada and released directly into Yellowstone National Park and the Central Idaho, Wilderness. In contrast, the reintroduction of the Mexican wolf has been reliant on the release of captive bred Mexican wolves because Mexican wolves were completely eliminated from the wild by the 1980s. We captured seven of the last remaining wolves and developed a binational captive breeding program. From this captive population of 7 founder wolves, we began releasing wolves back into the wild in the Apache National Forest in 1998. In addition, unlike Yellowstone National Park, which was a large swath of protected lands to reintroduce wolves into, the Apache National Forest is a working landscape, and thus we need to address effects of wolves on livestock production, hunting, and recreation.

- 27. I have heard serious concerns from cattleman and ranchers in my district since you made that arbitrary decision in January 2015. How many Mexican wolf attacks have**

occurred since that January 16, 2015 decision? How many attacks have occurred since the wolf was first listed in 1976 and been under your agency's care?

Response: There have been no Mexican wolf attacks on humans since the reintroduction program began in 1998. Any person has the right to take a Mexican wolf in self-defense or the defense of another person.

We recognize that livestock depredation occasionally occurs. Between 1998, when our reintroduction effort began, and 2013, we documented 184 confirmed cattle depredations by Mexican wolves. More recently, in 2014, we documented 30 cattle mortalities from wolves; in 2015, we documented 52 cattle mortalities and 8 cattle injuries, and so far in 2016 we have documented 8 cattle mortalities.

28. Has the service done genetic testing on Mexican wolves? If so, how many? What were the results?

Response: Yes, we conduct genetic testing. We monitor the genetics of the wild population by taking blood samples from every canid handled, as well as through the collection and testing of scat in some areas. All samples are sent to the University of Idaho for species confirmation, meaning the samples are determined to be from a pure Mexican wolf, pure coyote, pure dog, etc. Since reintroduction of Mexican wolves began in 1998, the Fish and Wildlife Service has detected three instances of hybridization between Mexican wolves and domestic dogs. In all three cases the offspring were removed and euthanized. We have not detected other evidence of Mexican wolves hybridizing with dogs or coyotes.

29. Mr. Ashe, we know that the Endangered Species Act requires Fish and Wildlife Service (FWS) to consult with and receive input from counties affected by petition listings and regulations written as a result of ESA listings. And in your testimony you talked about the successful partnerships the Service has engaged in over the years to carry out your work. However, this committee, the Natural Resources Committee, and dozens of Members offices are flooded with complaints about how the Service blatantly disregards state and local input when formulating new regulations and policy. I am not sure we can even count how many law suits you have pending against your agency from states who clearly feel that they were not involved in the decision making process. Just this week New Mexico state officials notified your agency regarding their intent to sue over your new plan to release captive Mexican wolves into New Mexico to "cross-foster" with wild packs in an attempt to infuse some DNA diversity into the wild population. I don't know how you choose to define collaboration, but all these law suits don't really sound like the rosy kumbaya cooperation your agency tries to depict to this committee. Why is New Mexico planning to sue you from your perspective?

Response: The Service values the partnership we have with the New Mexico Department of Game and Fish, and it remains our policy to consult with the States and others in our joint efforts to recover species. Recovery of the Mexican wolf remains the Service's goal. We have a statutory responsibility and the authority to recover the Mexican wolf and strive to do so in a collaborative manner with our partners. We continue to engage the State of New

Mexico in the Mexican Wolf Recovery Program, even though they have withdrawn as a partner agency. We are also involved in meetings with them regarding their recent notice of intent to sue regarding the Service's continued activities to recover the Mexican wolf so that it can be delisted and returned to state management. The remaining lead agencies have primary regulatory jurisdiction and management authority of the Mexican wolf in Arizona and New Mexico. Graham, Greenlee, Gila, and Navajo counties in Arizona, and the Eastern Arizona Counties Organization are designated as cooperators to the reintroduction project with an interest in Mexican wolf management. The MOU, which expired in 2008, was revised and signed by the cooperators in and subsequent to 2010. The Service remains committed to involving all partners and vested parties in managing Mexican wolves.

- 30. The Mexican wolf has lingered on the Endangered Species list for more 40 years. The Service has utilized the same flawed recovery plan for the Mexican wolf since the early 1980s. This plan does not comply with federal law as it does not contain objective and measurable recovery data for delisting as required by 4(f)(1) of the ESA. Why has your agency failed to comply with those requirements of law? How much longer do you expect the Mexican wolf to linger on the Endangered Species Act?**

Response: The Service intends to publish a final revised recovery plan by November 2017 that incorporates the best available scientific information. The revised recovery plan will, to the maximum extent practicable, provide measurable and objective criteria which, when met, will enable the Service to remove the Mexican wolf from the list of endangered species and turn its management over to the appropriate states and tribes. The revised recovery plan will also provide estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal.

Our greatest conservation need at the current time is to improve the genetic health of the experimental population, which has a high level of relatedness and is experiencing inbreeding. We will improve the experimental population's genetic health by releasing additional Mexican wolves from the captive population, which is more genetically diverse because we are able to actively manage breeding pairs to maintain gene diversity. The experimental population is expected to contribute toward the recovery of the Mexican wolf; however, the establishment of additional populations of Mexican wolves in Mexico or the US is likely to be necessary to achieve recovery based on our current scientific understanding, though that cannot be confirmed until the recovery plan is developed. Expediency in improving the genetic health of the experimental population is critical to moving the Mexican wolf toward recovery.