

**ENDANGERED SPECIES ACT  
IMPLEMENTATION:  
SCIENCE OR POLITICS?**

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**OVERSIGHT HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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Wednesday, May 9, 2007

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**OVERSIGHT HEARING ON “ENDANGERED  
SPECIES ACT IMPLEMENTATION: SCIENCE  
OR POLITICS?”**

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**Wednesday, May 9, 2007  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C.**

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The Committee met, pursuant to call, at 10:03 a.m. in Room 1324, Longworth House Office Building. Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Young, Christensen, Napolitano, Holt, Grijalva, Costa, Sarbanes, Miller, Markey, DeFazio, Kind, Capps, Inslee, Baca, Sandlin, Gilchrest, Pearce, Brown, Heller, Sali, and Lamborn.

**STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST  
VIRGINIA**

The CHAIRMAN. The Committee on Natural Resources will come to order, please.

Last week, Julie MacDonald resigned her position as Deputy Assistant Secretary for Fish, Wildlife and Parks at the Department of the Interior, ending what many staff felt was a reign of terror. Unfortunately, when she packed up she left behind a lot of baggage, including an agency that seems bent on abdicating its mandated responsibilities under the Endangered Species Act to protect God’s creatures for future generations.

From changes in regulations to poorly developed legal reviews that have left the agency sorely vulnerable to attack in the courts, the evidence of a systematic effort to undermine the law and species protection is quite clear. This is an agency that seems focused on one goal—weakening the law by administrative fiat and it is doing much of that work in the shadows, shrouded from public view.

For example, we know that the Department has been contemplating for some time a major rewrite of regulations to implement that law. We know this because a copy of draft regulations was leaked to the media. As Chairman of the Committee with oversight of this matter, I asked for copies of the same draft regulations, but received no response from the Department; that is, until Monday, two days before this hearing.

That response from Director Dale Hall said, and I quote, “The Department has made no final decision on whether to propose any regulatory changes to the ESA.” Yet, the letter includes a chart prepared, ironically, by the Center for Biological Diversity with the Fish and Wildlife Service’s editorial notes describing their “current draft proposal.”

While Fish and Wildlife has gone to extreme lengths to keep these documents away from the Committee, special interest groups challenging ESA decisions have found it easy enough to get their hands on a version of them.

Just last week, on May 1, 2007, the American Forest Resource Council had to amend a complaint it filed in court on March 7, 2007, citing a regulation that is not even on the books but is rumored to be under consideration—apparently, top secret consideration—at the Interior Department. Just how the timber industry was able to procure the draft regulation is a matter of much speculation.

What is clear, however, is that the timber industry has better access to information from the Bush Administration than the People’s Representatives in the Congress of the United States.

Proposed changes to the regulations are not the only way the administration seeks to undermine the law. While much attention in recent days has focused on Julie MacDonald, the Inspector General issued a report that shed light on problems that run far deeper than those she caused and those will be the focus of much of this hearing today.

For all of its talk about faith and religious values, I find it impossible to reconcile that public persona with this administration’s flagrant lack of regard for the work of the Creator’s hand. As well, I do not find pushing policies that imperil God’s creatures and that place at greater risk of extinction plants that provide life-saving drugs to be in keeping with His grand design.

For me to sit here and suggest that the Department is on a sad and irresponsible mission to undercut species recovery is an understatement. What we are seeing here—if we could actually see behind the cloak of secrecy surrounding the Interior Department—is a complete disregard for the very science that has equipped us to be responsible stewards of this earth with which we have been blessed.

We must ask ourselves as a nation, how do we want this government to run the Endangered Species Program—entangled in politics, or enlightened by science?

That concludes my opening statement.

[The prepared statement of Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II,  
Chairman, Committee on Natural Resources**

Last week, Julie MacDonald resigned her position as Deputy Assistant Secretary for Fish, Wildlife and Parks at the Department of the Interior, ending what many staff felt was a reign of terror. Unfortunately, when she packed up she left behind a lot of baggage, including an agency that seems bent on abdicating its mandated responsibilities under the Endangered Species Act to protect God’s creatures for future generations.

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seems focused on one goal—weakening the law by Administrative fiat and it is doing much of that work in the shadows, shrouded from public view.

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For all of its talk about faith and religious values, I find it impossible to reconcile that public persona with this Administration’s flagrant lack of regard for the work of the Creator’s hand. As well, I do not find pushing policies that imperil God’s creatures and that place at greater risk of extinction plants that provide life-saving drugs to be in keeping with His grand design.

For me to sit here and suggest that the Department is on a sad and irresponsible mission to undercut species recovery is an understatement. What we are seeing here—if we could actually see behind the cloak of secrecy surrounding the Interior Department—is a complete disregard for the very science that has equipped us to be responsible stewards of this Earth with which we have been blessed.

We must ask ourselves as a Nation, how do we want this government to run the Endangered Species Program—entangled in politics, or enlightened by science?

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The CHAIRMAN. I recognize the Ranking Member, Mr. Sali.

**STATEMENT OF THE HONORABLE BILL SALI, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO**

Mr. SALI. Thank you, Mr. Chairman.

As someone who has spent a good deal of time reviewing the impact of the Endangered Species Act, I can assure everyone within the sound of my voice that no one who originally voted for this legislation ever envisioned that this Act would be used to smash the dreams of millions of Americans.

Our forefathers who sacrificed everything for our freedom would be shocked to learn that Americans are unable to fully utilize their property because of a blind salamander, ferry shrimp, fountain darters, ground beetles and kangaroo rats. In fact, there are 2,489 domestic and foreign species listed under the Endangered Species Act. The Fish and Wildlife Service has designed critical habitat for 487 species, yet despite spending billions of dollars designating millions of acres for critical habitat and disturbing the lives of millions of property owners who must in some cases pay exorbitant fees to develop their land, only eight domestic species have ever been recovered in more than 30 years.

There is no question that politics and not the Department of the Interior are running the Endangered Species Act, and it has been hijacked by misguided Federal judges and radical environmental organizations whose sole interest is not to recover species, but to gorge themselves on taxpayers' money.

The Fish and Wildlife Service has not initiated a listing decision on its own since 1995. Instead of recovering species, the Service must spend its meager dollars preparing and defending itself against an endless barrage of lawsuits. It has gotten so bad that the Service has now hired a full-time attorney that does nothing except monitor the legal filings against the agency.

This is not a new problem. It started with the Clinton Administration and has continued unabated in the Bush Administration. Organizations like the Center for Biological Diversity know that they can go to Federal court and sue the agency over a listing or critical habitat designation. They know they will win. They will be handsomely compensated for suing, and they can then hire more lawyers to file or threaten to file even more lawsuits.

Meanwhile, species continue to languish under the Endangered Species Act with little, if any, hope of ever recovering. This Act has become a powerful weapon to stop or limit development in this country.

Mr. Chairman, instead of criticizing political appointees within the Department of the Interior for doing their job, this institution would be better served by asking how we can improve the Endangered Species Act. There is no one who can objectively say that this program is working effectively with a less than 1 percent recovery rate because the only entities that are profiting from the Act are those groups who endlessly sue the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

In the past four years, millions of dollars have been paid to litigants in hundreds of court cases. Just imagine if these funds had been used for the original purpose of the Act, which was to recover and then remove species from the list, it is time to stop this madness.

Federal policymakers have a right to question the conclusions of career biologists. These employees are hard-working, dedicated public servants, but they are not infallible.

I look forward to hearing from our witnesses and want to hear their perspectives on how we can restore the Endangered Species Act to its original intent. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Oregon, Mr. DeFazio.

**STATEMENT OF THE HONORABLE PETER A. DeFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. DEFAZIO. Thank you, Mr. Chairman. Thank you for calling this hearing, particularly in light of recent revelations I believe this is very timely. I will be brief, but I recently gave a speech to the assembled timber industry in the Pacific Northwest, and I started with the quote, you know, "Those who forget history are doomed to repeat it." And then I went on to talk about unintended consequences.

Here we have an administration that has bent over backwards for industry, and some in industry think that this administration,

by perverting science, by substituting political judgment for science is doing them a big favor. If you want to change the protections and the management of the land, you can't go beyond the existing law, and this administration clearly is attempting to do that.

If you want to have a fair and honest debate, as the gentleman on the other side of the aisle recommended about reauthorization of the Endangered Species Act, and updating the Act, and modifications to it, we should have that. We haven't debated that issue since 1996, when Mr. Pombo and Mr. Young stopped short of a reasonable proposal from the other side of the aisle to update the Act with a mischievous proposal that was just so ridiculous that Newt Gingrich wouldn't even bring it to the Floor of the House.

So here we are today fast forward. This administration is basically repeating everything done by the Bush One Administration in an attempt to provide favors to industry, and instead of providing favors what they created was a train wreck, a train wreck in my region that ended up in the courts, and a temporary suspension of all Federal timber harvesting, and they are about to repeat that in my region by again ignoring scientific and biological advice, and substituting political opinion improperly and probably illegally.

So I am hopeful that this will be a wake up call both to the industry and to the administration, and that they don't do further damage and begin to comply with the law, and if we need to discuss and debate changes in the law, let us do that.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. I have no statement at this time, Mr. Chairman.

The CHAIRMAN. The gentlelady from the Virgin Islands, Ms. Christensen.

Ms. CHRISTENSEN. I have no statement either, Mr. Chairman.

The CHAIRMAN. The gentleman from Arizona, Mr. Grijalva.

**STATEMENT OF THE HONORABLE RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. GRIJALVA. Thank you, Mr. Chairman. Just to thank you for the hearing, and given the official distortion and manipulation that is now well chronicled that has happened to the Endangered Species Act, that has hampered recover, that has hampered a real look at what this Act should be and should be doing, I think this hearing is very timely and necessary.

Hopefully, in the light of day and not in some back room, in a dark room, can we talk about the changes that need to occur in the Act, and the kinds of protections that need to be put in place with the bureaucracy so the distortion and manipulation that is well chronicled does not occur again, and toward that end, I thank you very much for this hearing, Mr. Chairman.

The CHAIRMAN. We will now proceed with today's witnesses. The first panel is composed of the following individuals: The Honorable P. Lynn Scarlett, Deputy Secretary, Department of the Interior; Ms. Jamie Rappaport Clark, Executive Vice President of Defenders of Wildlife; Dr. Francesca T. Grifo, Senior Scientist and Director of Scientific Integrity Program, Union of Concerned Scientists; and Mr. Jeff Ruch, Executive Director, Public Employees for Environmental Responsibility

Mr. SALI. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. SALI. Mr. Chairman, I am in receipt of a statement from a deputy regional forester who apparently has taken issue with some statements that have been ascribed to him in the testimony of one of the witnesses that will be before us today.

In light of that, Mr. Chairman, and given the high stakes potentially of this hearing that is being presented, I would ask that we swear in the witnesses that will appear before the Committee today.

The CHAIRMAN. The Chair would like to allow the individual in question to submit his testimony, and pursuant to Committee Rule 4[f], the Chairman may, and I stress the word "may" administer oaths to any witness before the Committee, and it is a discretionary action and this particular Chairman has chosen not to swear witnesses in.

Mr. SALI. Mr. Chairman, then I would like to point out that under the False Statements Accountability Act of 1996, witnesses should be aware that giving false testimony to Congress could result in penalties equal to that under the Federal perjury statute, five years in prison and up to \$250,000 in fines.

The CHAIRMAN. The witnesses may proceed. Deputy Secretary Scarlett, you may proceed. As with all witnesses, the Committee does have prepared testimony, and without objection it will be considered as read, and printed in the record, and witnesses are encouraged to keep their oral testimony five minutes in length.

**STATEMENT OF THE HONORABLE P. LYNN SCARLETT,  
DEPUTY SECRETARY, U.S. DEPARTMENT OF THE INTERIOR**

Ms. SCARLETT. Thank you very much, Mr. Chairman, and Members of the Committee. Thank you for inviting me to discuss the Department of the Interior's implementation of the Endangered Species Act.

Secretary Kempthorne, the Department, and the U.S. Fish and Wildlife Service strongly embrace effective implementation of the ESA to fulfill its goals. As a life-long bird watcher, I am both professionally and personally committed to these goals.

Secretary Kempthorne's success in addressing complex issues springs from his bipartisan approach to solutions. While a United States Senator representing the State of Idaho, he worked cooperatively with then Secretary Babbitt on legislation, Senate Bill 1180, the Endangered Species Recovery Act of 1997, legislation that emphasized species recovery. It required that listing decisions be based in empirical field tested and peer reviewed scientific data. It provided incentives and opportunities for state, landowners, and the public to participate in decisionmaking.

These goals remain the centerpiece of Secretary Kempthorne's vision for implementing the Endangered Species Act.

After Secretary Kempthorne's confirmation in May 2006, he directed the Department, with other agencies, to seek idea son cooperative conservation. This effort culminated in 25 cooperative conservation listening sessions held throughout the country. Of the written comments we received, more than 80 percent touched on

the Endangered Species Act. Several consistent themes on the ESA emerged from those sessions.

First, the ESA should focus on ecosystem health and species recovery; second, states should have a greater role in species protection; third, ESA tools should enhance cooperative conservation opportunities; fourth, ESA decisions must be informed by science; fifth, the ESA is often burdensome for landowners without corresponding significant benefits to species; and finally, regulatory terms and implementation practices are unclear and inconsistent.

To address these comments, Secretary Kempthorne asked Fish and Wildlife Service Director Dale Hall, who is with me here today, to assemble a group of Fish and Wildlife Service employees with expertise in the ESA to develop draft ESA regulatory concepts for consideration.

Recent administrations, Democratic and Republican, along with Governors, academics and conservationists, have identified aspects of the Endangered Species Act as currently implemented that limit efficiency, effectiveness, and conservation results.

The Service's work related to threatened and endangered species has been in large part driven by lawsuits. The Service's most current estimate shows that it has 41 lawsuits involving listing decisions for seven species, a petition findings for almost 300 species, including a majority of the candidate species, critical habitat for six species, and five-year reviews for 89 species.

We believe available resources would be better spent focusing on actions that directly benefit species, such as developing and implementing recovery plans and forming conservation partnerships. The Service has greatly improved the Endangered Species Act administration in protecting species. A host of cooperative conservation grant programs promote partnerships with states, landowners and others. The Service, I believe, employs rigorous procedure to ensure that the best available science supports ESA determinations.

I want to underscore Secretary Kempthorne's and my personal commitment to transparency, quality, and integrity of science used to inform ESA and other land management decisions. We do not promote, tolerate, or endorse suppression of scientific information.

The Service continues its long record of vigorous implementation of the ESA. The Service intends to publish final listing determinations for 38 species and proposed critical habitat for 12 species in Fiscal Year 2008. The Service also focuses on recovery activity.

There is no better institutional knowledge and expertise for making the ESA work on the ground than our Fish and Wildlife Service career employees, and their colleagues in NMFS with day-to-day responsibility for the ESA's implementation. It is these experts who prepared a draft ESA document that is still undergoing refinement. It focuses on enhancing state involvement in all aspects of the ESA with continued oversight and final decisionmaking resting with the Service and NMFS. It creates for the first time regulations focused on the recovery process. This document differs in significant ways from the draft of an earlier document circulated by Salon.com.

The document does not, for example, change the definition of jeopardy in any way as it exists in current regulations. Greater emphasis is placed on cooperative partnerships to implement the ESA.

The Department does not now have a complete proposal for improving the ESA regulations. No decision has been made as to whether to proceed with proposing changes to implementing regulations.

Any proposed regulatory changes would, of course, be proposed in the Federal Register for full public review and comment. We believe that if the public has a full opportunity to review proposals with the concepts now under consideration, they will affirm that these concepts will enhance the effectiveness of the ESA and its implementation.

The Department and Service are strongly committed to carrying out our statutory obligations with regard to species recovery, and to working with our partners and with the Congress toward that important goal.

I appreciate the hearing, and thank you very much. I would be happy to answer any questions.

[The prepared statement of Ms. Scarlett follows:]

**Statement of P. Lynn Scarlett, Deputy Secretary,  
U.S. Department of the Interior**

Mr. Chairman and Members of the Committee, thank you for inviting me to appear before you today to discuss the Department of the Interior's implementation of the Endangered Species Act of 1973 (ESA). Secretary Kempthorne, the Department, and the U.S. Fish and Wildlife Service strongly embrace effective implementation of the ESA to fulfill its goals.

**A Commitment to Recovery**

Secretary Kempthorne's success in addressing complex issues springs from his bipartisan approach to solutions. While a United States Senator representing the State of Idaho, he worked cooperatively with then-Secretary Babbitt on legislation, S. 1180, the Endangered Species Recovery Act of 1997, legislation that emphasized species recovery.

The legislation was successfully reported by the Senate Environment and Public Works Committee although it was ultimately not enacted. Secretary Kempthorne's bill set strict requirements for prioritizing and developing recovery plans for listed species; required that listing decisions be based on empirical, field-tested, and peer-reviewed scientific data; and provided incentives and opportunities for states, landowners, and the public to participate in decision-making. These goals remain the centerpiece of Secretary Kempthorne's vision for implementation of the ESA.

At his confirmation hearing before the Senate Energy and Natural Resources Committee last spring, then-Governor Kempthorne reiterated his strong desire to work collaboratively on ESA issues. He stated at that hearing, "I am intent upon saving species. I am not content with triage, where you simply say that they are endangered and then you move on to list the next species. I will always ask, 'What are we doing to actually restore species, instead of just listing them?'" Throughout his career as a Senator and Governor, the Secretary has focused on species recovery.

**Background**

Some of the discussion today will no doubt focus on a draft of regulatory concepts obtained and published by an online magazine a little more than a month ago. That document was largely the product of discussions, in 2005, among agency officials of the Departments of the Interior and Commerce about ways to improve the ESA.

It was a deliberative document that was not yet complete, nor had it been formally reviewed within the Department or by other relevant agencies, and not issued as a formal proposal. Many concepts at that time remained unresolved and under critical discussion.

After Secretary Kempthorne's confirmation in May 2006, he directed that the Department, with other agencies, seek ideas on Cooperative Conservation and a range of issues. This effort culminated in 25 Cooperative Conservation Listening Sessions, held throughout the country, where more than 30,000 people provided their input and ideas, through either written or spoken comments, on a range of issues, including the ESA. Of the written comments received, more than 80 percent commented on the ESA, with many commenting on what they perceived as impediments to cooperative conservation.

Several consistent themes on the ESA emerged from the Listening Sessions:

- The ESA should focus on ecosystem health and species recovery;
  - States should have a greater role in species protection;
  - ESA tools should enhance cooperative conservation opportunities;
  - ESA decisions must be informed by science;
  - The ESA is often burdensome for landowners without corresponding significant benefits to species; and
  - Regulatory terms and implementation practices are unclear and inconsistent.
- To address these comments, Secretary Kempthorne asked FWS Director Dale Hall to assemble a group of career FWS employees with expertise in the ESA to develop draft ESA regulatory changes for consideration. The resulting draft document differs in significant ways from an earlier document circulated by salon.com.

In the 20 years since ESA regulations were originally promulgated, the Service and the National Marine Fisheries Service (NMFS) have learned a great deal about how best to implement the provisions of the Act. Recent Administrations—Democratic and Republican—along with governors, academics, and conservationists have identified aspects of the ESA as currently implemented that limit efficiency, effectiveness and conservation results. A collaborative group composed of diverse interests last year reported to the U.S. Senate that “All agree, at least in principle, that if new approaches could be identified that would both improve the effectiveness of habitat conservation efforts for species and reduce the burden upon landowners and other regulated interests, those new approaches should be embraced.” In 2005, the Administration reviewed the Service’s ESA program with the Program Assessment Rating Tool (PART) and found that the program lacked adequate performance goals and was limited by strict deadlines and regulations.

Chief among the needed improvements is a faster rate of recovering species. Roughly 1,300 domestic species of plants and animals are listed as either threatened or endangered. To date, just 20 of these species have recovered and no longer need the protections of the Act. Just one out of three listed species is considered stable or improving, compared to last year.

Another opportunity for improvement is to fulfill the Act’s vision of robust partnerships with states, many of whom have significant expertise in wildlife and plant biology.

Also, many landowners could be stronger conservation partners by maintaining habitat to attract at-risk species if we could clarify inconsistent practices and unclear terminology that are tangling us in litigation.

Consider designation of critical habitat, which has received significant attention and critique in recent years. Former Secretary Bruce Babbitt wrote in a New York Times op-ed piece shortly after leaving office that, in its struggle to keep up with court orders, the Service had diverted its best scientists and much of its ESA budget away from more important tasks like evaluating candidates for listing and providing other protections for species on the brink of extinction.

Protection of habitat is a key to sustaining and recovering endangered species. However, the critical habitat process as currently practiced under the Act is not an effective means of conserving habitat. The Service has characterized the designation of critical habitat as the most costly and least effective class of regulatory actions it undertakes.

The Service’s work related to threatened and endangered species has been in large part driven by lawsuits. The Service’s most current estimate shows that it has 41 lawsuits involving listing decisions for 7 species; petition findings for almost 300 species, including a majority of the candidate species; critical habitat for 6 species; and 5-year reviews for 89 species.

In sum, too much time is spent responding to litigation rather than putting in place on the ground actions to recover species. We believe available resources would be better spent focusing on actions that directly benefit species, such as improving the consultation process, developing and implementing recovery plans, and forming conservation partnerships with states, tribes, and private landowners.

#### **Improving Administration of the ESA**

The Department has greatly improved ESA administration and protecting species, yet effectiveness remains constrained under current rules. Under the banner of the Department’s Cooperative Conservation Initiative, a host of grant programs promote partnerships with states, landowners, and other citizen stewards to protect and enhance habitat for threatened and endangered species. These and related grant programs also help maintain, protect, and restore habitat in ways that help prevent the need to list species as endangered or threatened.

For example, more than \$67 million in grants was provided to 27 states in 2006 to support conservation planning and acquisition of vital habitat for threatened and endangered fish, wildlife and plants. The grants, awarded through the Cooperative

Endangered Species Conservation Fund, will benefit species ranging from orchids to bull trout that are found across the United States. Recovery Land Acquisition grants benefit 63 listed and 11 candidate species, including several Hawaii forest birds: the 'akepa, 'kiopo'au, and Hawaii honeycreeper. Habitat Conservation Planning grants will benefit 111 listed species and 13 candidate species, including Canada lynx, grizzly bears, bull trout, bald eagles, gray wolves, west-slope cutthroat trout and Columbia River redband trout. Habitat Conservation Plan Land Acquisition grants benefit 40 listed species and 3 candidate species including, including several core populations of federally listed plants, such as San Jacinto Valley crownscale and slender-horned spineflower.

The Department has also focused on other means of encouraging voluntary conservation. The Service uses such tools as Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, Safe Harbor Agreements, Habitat Conservation Plans and Conservation Banking, which provide for close cooperation with private landowners, state, tribal, and local governments, and other non-federal partners that are particularly important in our implementation of the ESA.

Over the past few years, the Service has improved the Recovery Program, establishing a process whereby recovery needs of species can better be prioritized and addressed by Service Regions, and developing a new recovery implementation database for better tracking of recovery actions. The Service has streamlined Section 7 consultation processes for several kinds of activities, such as hazardous fuels treatment projects, habitat restoration, and recreational activities in the Pacific Northwest, cutting completion time for consultations under the program while maintaining species protections.

We have improved the science that underlies all of our decisions, including decisions made under the ESA. I want to underscore Secretary Kempthorne's and my personal commitment to transparency, quality, and integrity of science used to inform ESA and other land management decisions. Science is the foundation of all of our conservation efforts. The Department, through the Service and the U.S. Geological Survey, has a long tradition of scientific excellence.

The FWS works closely with the U.S. Geological Survey in a science partnership to enhance the administration of the ESA by the Service. Through a Science Support Partnership program, USGS addresses priority science needs of the FWS to inform their ESA decisions. The Service and the USGS together are developing the best scientific information available for the listing determination for the polar bear.

Consistent with its long-standing policies on peer review and information standards under the ESA, the Service employs rigorous procedures to ensure that the best available science supports ESA determinations. The Department and the Service have established guidelines, following the direction of the Information Quality Act (section 515 of P.L. 106-554), to ensure and maximize the quality, objectivity, utility, and integrity of the information that we disseminate to the public. Service guidelines establish the policy and procedures for reviewing, substantiating, and correcting the quality of the information disseminated.

Under no circumstance do we promote, tolerate, or endorse suppression of scientific information. Building upon the Service's ESA peer review policy established in 1994, we also follow the guidelines for federal agencies delineated in the "Final Information Quality Bulletin for Peer Review," released by the Office of Management and Budget on December 16, 2004.

In January 2005, the Service formed a Science Committee, to strengthen collaboration on science issues throughout the Service and to help identify needs and opportunities that cut across programs and regions. The Committee provides advice and recommendations to the Director concerning science needs, especially those related to meeting field needs for research, technical assistance, and scientific information and training.

Committee members have been chosen for their distinguished service, with every attempt made to appoint those who represent a diverse array of Service programs, regions and scientific backgrounds. The Department's goal in taking these actions is to ensure openness and transparency in the science that underlies and informs our decisions.

We also continue to address critical habitat, listing, and recovery planning priorities under the ESA. Starting in Fiscal Year 2004, the Service saw an increase in petition litigation. In response, the Department approved a shift of critical habitat funds to listing funds in order to comply with our petition deadlines in 2005 and 2006. The program expects continued litigation in Fiscal Years 2007 and 2008.

For Fiscal Year 2008, the Service currently anticipates making final listing determinations for 12 species and proposed listings for 8 species. In terms of critical habitat, the Service intends to publish final listing determinations for 38 species and proposed critical habitat for 12 species in Fiscal Year 2008. In Fiscal Year 2007,

the Service currently anticipates publishing 17 final critical habitat rules, and 17 proposed critical habitat rules. The Service finalized critical habitat for 29 species and completed listing actions for 15 species in Fiscal Year 2006.

We are also rightly focused on recovery activities. For the past several years, the Service has increased the involvement of the public in recovery planning. Public involvement early on and throughout the planning process ensures recovery actions are feasible and establishes support for implementation of recovery actions following completion of a recovery plan. Scientific peer review and public review ensure plans are based on the best available science and information.

The Service has developed recovery plans on approximately 87 percent of listed species. The development of high quality recovery plans is a priority for the Service's Recovery Program. Recovery plans are essential to the effective and efficient implementation of recovery actions, not only by the Recovery Program, but by other Service programs, Departmental bureaus, other Federal agencies, and other partners.

During Fiscal Year 2008, the Service expects to prepare recovery outlines for species added to the list in Fiscal Year 2007 and to complete final recovery plans for 10 species, resulting in 88 percent of species listed 2.5 years or more having approved recovery plans in Fiscal Year 2008. We estimate that, in Fiscal Year 2007, the Service will complete final recovery plans for 11 species. In Fiscal Year 2006, final recovery plans for 40 species were completed, including Atlantic salmon and 20 California vernal pool species; revised final recovery plans were drafted for 19 species; and draft plans for an additional 9 species were published.

#### **Endangered Species Act Success Stories**

We know that the measure of success under the ESA is recovery of listed species, and the cumulative years of ESA partnerships described above are achieving good results. In recent months, the Service announced the recovery of several species that have come to symbolize the promise of the ESA: grizzly bears, wolves, and bald eagles.

**Grizzly Bears.** The Service announced at the end of March that the Yellowstone population of grizzly bears would be removed from its "threatened" status on the list of threatened and endangered species. Grizzly numbers in the Yellowstone ecosystem have increased from an estimated population of 136 to 312, when they were listed as threatened in 1975, to more than 500 bears today.

The bears will now be managed under a comprehensive conservation strategy developed by state and federal scientists and managers that includes intensive monitoring of Yellowstone bears, their food, and their habitat. The conservation strategy incorporates the best available science and allows state and federal agencies to adjust management in response to new scientific information or environmental and bear population changes. State and federal managers will continue to work cooperatively under this framework to manage and maintain healthy grizzly bear populations throughout the Greater Yellowstone area.

The grizzly bear's remarkable comeback is the result of years of intensive cooperative recovery efforts between federal and state agencies, conservation groups, and individuals. Such cooperation is necessary, for these bears require a great deal of space.

**Gray Wolves.** Recognizing the success of gray wolf efforts under the ESA and highlighting the cooperation and collaboration among states, tribes, conservation groups, federal agencies and citizens in affected areas, the Service announced in January 2007 that the western Great Lakes population of gray wolves was being removed from the list, and that it was proposing to remove the northern Rocky Mountain population of gray wolves from the list.

When the wolf was first listed as endangered in the 1970s, only a few hundred wolves remained in Minnesota. Recovery criteria outlined in the Eastern Timber Wolf Recovery Plan include the assured survival of the gray wolf in Minnesota and a population of 100 or more wolves in Wisconsin/Michigan for a minimum of five consecutive years. The recovery plan identified 1,250 to 1,400 as a population goal for Minnesota. That State's wolf population has been at or above that level since the late 1970s, and the Wisconsin/Michigan wolf population has been above 100 since the winter of 1993-94, achieving the latter numerical goal in the recovery plan. Wolf numbers in the three states have exceeded the numerical recovery criteria established in the species' recovery plan.

The minimum recovery goal for wolves in the northern Rocky Mountains is 30 breeding pairs and at least 300 wolves for three consecutive years, a goal that was attained in 2002 and has been exceeded every year since. The Service believes that with approved state management plans in place in Montana and Idaho, threats to the wolf population will have been reduced or eliminated in those states. The north-

ern Rocky Mountain Distinct Population Segment includes all of Montana, Idaho and Wyoming, the eastern one-third of Washington and Oregon, and a small part of north-central Utah.

While the Service has approved wolf management plans in Montana and Idaho, it has determined that Wyoming's state law and wolf management plan are not sufficient to conserve that State's portion of a recovered northern Rocky Mountain wolf population. If Wyoming's plan is not approved before the Service takes final action on this proposal, wolves would continue to be protected under the ESA in the significant portion of their range in northwest Wyoming, excluding the national parks, which have adequate regulatory mechanisms for wolf conservation.

Bald Eagles. Finally, the Department continues efforts toward delisting the bald eagle, which has recovered in the lower 48 states from a population estimated at 417 nesting pairs in 1963, to a current population estimated at over 7,000 breeding pairs. The threats to the species have been reduced; reproductive success has increased to a healthy level; and the population is growing and distributed across 47 of the lower 48 states (Vermont does not currently have a nesting population of bald eagles).

In February of this year, the Service announced that the final decision on whether to delist the bald eagle would be postponed to no later than June 29, 2007. The additional four months will give the Service time to complete additional analyses related to the final rule and put in place management guidelines and procedures that will make it easier for the public to understand ongoing Bald and Golden Eagle Protection Act safeguards, ensuring that eagles continue to thrive once delisted.

#### **Listening Sessions and the ESA Regulations**

After 25 Listening Sessions on Cooperative Conservation, in which the ESA was mentioned more than any other issue, the Service assembled a group of career employees, including Assistant Regional Directors from across the country and employees in the Washington Office's Endangered Species program, along with career professional staff from NMFS, to develop a draft of proposed regulations for consideration. There is no better institutional knowledge and expertise for making the ESA work on the ground than these career employees with day-to-day responsibility for the ESA's implementation. To ensure that legal advice was readily obtainable, representatives from the Department's Office of the Solicitor and the Department of Commerce and the National Oceanic and Atmospheric Administration's Office of General Counsel were also available.

The draft document prepared by this team and which is still undergoing refinement, focuses on enhancing state involvement in all aspects of the ESA, with continued oversight and final decision making by the Service and NMFS; creating, for the first time, regulations focused on the recovery process; providing more clear and effective tools to private landowners, municipalities, cities, states, tribes and others to conserve and recover listed species through more efficient permitting processes; creating a more efficient process for federal action agencies to consult with the Service and NMFS under Section 7, and emphasizing the role all federal agencies have in recovering listed species; and providing guidance for the species listing petition process, clarifying language used in the listing and critical habitat processes, and recognizing existing conservation efforts when making listing decisions.

This document differs in significant ways from the draft of the earlier document circulated by Salon.com. The current draft document strongly emphasizes the recovery process, the definition of "jeopardy" as it exists in current regulations is unchanged; rather, greater emphasis is placed on cooperative partnerships to implement the ESA. The Department does not yet have a complete proposal for improving the ESA, and no decision has been made as to whether to proceed with proposing changes to the implementing regulations. Work continues on concepts and language that could become proposed rule changes.

Our goal in this work is to greatly improve ESA implementation by strengthening its conservation purposes while also removing some disincentives that deter many from engaging in activities that would benefit species. Any regulatory changes would, of course, be proposed in the Federal Register for full public review and comment. We believe that, if the public has a full opportunity to review a proposal with the concepts now under development, they will affirm that these concepts will enhance the effectiveness of the ESA and its implementation.

The Department and the Service are strongly committed to carrying out our statutory obligations with regard to species recovery and to working with our partners toward that important goal. Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you and other members of the Subcommittee might have.

The CHAIRMAN. Thank you. Ms. Clark.

**STATEMENT OF MS. JAMIE RAPPAPORT CLARK,  
EXECUTIVE VICE PRESIDENT, DEFENDERS OF WILDLIFE**

Ms. CLARK. Thank you, Mr. Chairman, and Members of the Committee.

I am Jamie Rappaport Clark, Executive Vice President of Defenders of Wildlife. Prior to coming to Defenders, I worked for the Federal government for almost 20 years, for both the Department of Defense and the Department of the Interior. I served as Director of the Fish and Wildlife Service from 1997 to 2001. Thus, I have seen the Endangered Species Act from a variety of perspectives.

I know the difficulties faced by the dedicated professionals in the Fish and Wildlife Service, the National Marine Fishery Service, and other Federal agencies implementing this law, and bring no criticism against these committed professionals currently administering the ESA. However, I cannot ignore the damage that has been done to endangered species conservation by political appointees in the current administration.

Rather than enhancing recovery efforts to expand on existing successes, I firmly believe that this administration is actually harming species recovery. It has undermined the scientific integrity of its programs with political interference and has slowly starved the program of needed resources. I realize that these are serious charges, but let us look at the facts.

Fewer listing of endangered and threatened species have occurred in this administration than in any previous one, and that is not because there is a lack of candidates in serious need of protection. The 57 species protected in the last six years is just one quarter of the number protected in the four years of the first President Bush's administration.

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

The Fish and Wildlife Service programs involved in implementing the Endangered Species Act have lost at last 30 percent of the staff that they once contained. There has been a consistent and continuing failure by the administration to request adequate resources for endangered species conservation, and the budgets presented to Congress. The Fiscal Year 2008 request is at least 20 percent below the minimum level needed.

The Interior Department's Office of Inspector General has confirmed that former Deputy Assistant Secretary Julie MacDonald was "heavily involved with editing, commenting on, and reshaping the endangered species program's scientific reports from the field."

This went on for many years. The scope and magnitude of political interference revealed by IG interviews is unprecedented in my experience. More recently, as Dr. DellaSala details in his testimony, the administration appears to have interjected political considerations heavily and to recovery planning for the Northern Spotted Owl.

I should say here that no one is arguing that science alone should dictate policy. Science is the foundation on which sound policy decisions depend, but when political interference tries to force

the scientific process toward a particular answer, that foundation is undermined and ultimately you wind up making very bad policy choices.

The problems are even broader than what I have described so far. Draft regulations dated as recently as two months ago proposed changes of such significance that they no doubt would seriously undermine the Endangered Species Act in numerous ways identified in my written statement.

Defenders appreciates the opportunities provided by Deputy Secretary Scarlett to discuss the very broad outlines of ESA regulatory revisions. However, neither our two brief meetings nor our widely circulated two-page fact sheet have been particularly illuminating thus far. In fact, frankly, the discussions and the fact sheet have raised more questions and concerns than they have answered or allayed.

Rather than to continue to work behind closed doors on a comprehensive rewrite of the Endangered Species Act regulations, we have asked the administration to work with a broad array of stakeholders to find common ground on ways to improve conservation of imperiled species before going forward with any proposal.

Success in finding common ground hinges on openness and transparency. A key first step in that direction is for the administration to share the text of any changes in the Endangered Species Act regulations currently under consideration in a collaborative manner. In the absence of any inclusive process like this, however, it is only prudent for Congress and Defenders to focus on the changes we have either seen in draft or discuss with the administration, and the general theme in each case is a clear withdrawal of the services from their Federal responsibility to oversee implementation of the ESA. It is as though having starved the endangered species program and dismantled and demoralized its staff the administration now wants to wash its hands of carrying out the law all together by turning it over to states and other Federal agencies that, frankly, are ill equipped to take it on at this time.

Mr. Chairman, the absence of meaningful congressional oversight of the administration's implementation of the Endangered Species Act for the past six years has certainly contributed to each of the problems I have described today. I am pleased that under your leadership and as today's hearing demonstrates, Congress is reasserting its rightful place in conducting oversight of this critically important law.

I urge you to continue to make full use of this Committee's oversight authority in the weeks and months ahead, to insist that the administration work cooperatively with the Congress and interested stakeholders to protect and recover endangered species rather than hurriedly pursuing unilateral regulatory amendments to the Endangered Species Act.

Thank you. I will be happy to answer any questions you or other members of the Committee might have.

[The prepared statement of Ms. Clark follows:]

**Statement of Jamie Rappaport Clark, Executive Vice President,  
Defenders of Wildlife**

Mister Chairman and members of the Committee, I am Jamie Rappaport Clark, Executive Vice President of Defenders of Wildlife. Founded in 1947, Defenders of

Wildlife has over 500,000 supporters across the nation and is dedicated to the protection and restoration of wild animals and plants in their natural communities.

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

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

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

#### **Recovery Efforts Hamstrung by Lack of Support and Political Interference**

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

Those are serious charges, but look at the facts:

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

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

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

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

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

More recently, as Dr. DellaSala details in his testimony, the administration has interjected political considerations heavily into recovery planning for the northern spotted owl. A so-called "Washington oversight committee," which initially consisted

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

### **An Administrative Rewrite of the Endangered Species Act Behind Closed Doors**

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

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

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

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

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

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

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

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

Fourth, the proposed regulatory revisions of March 2007 construe the Endangered Species Act mandate for federal-state cooperation to mean delegation of current federal responsibilities to the states. The proposed changes would give the Secretaries

of the Interior and Commerce very broad discretion to grant states authority to assume responsibility for carrying out much of the endangered species program. The proposal would allow states to “request and be given the lead role in many aspects of the Act, including, but not limited to, Section 4, Section 7, and Section 10 of the Act.” The administration’s fact sheet on the regulation changes appears to describe a similar delegation of responsibility to the states, a fact acknowledged in meetings with the administration.

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

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

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

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

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

#### **A More Constructive Approach to Improving Conservation of Imperiled Species**

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

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

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

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

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

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

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

#### Response to questions submitted for the record by Jamie Clark

##### Questions from the Republican Members

- (1) During your four years as Director of the U.S. Fish and Wildlife Service, did you always accept without question or modification the scientific recommendations of our [sic] agency's wildlife biologists?**

I sought to make sure I understood the scientific findings of the U.S. Fish and Wildlife Service's biologists as well as the limitations and level of uncertainty associated with those findings. I did not edit, comment on, or reshape scientific findings from those biologists.

- (2) What is the role of the Deputy Assistant Secretary for Fish, Wildlife and Parks in terms of reviewing listing petitions, five year species reviews and designations of critical habitat designation? Are they [sic] legally obligated to accept at face value the scientific recommendations for listing, five year reviews and critical habitat designations?**

In my experience, the Deputy Assistant Secretary for Fish, Wildlife and Parks did not personally review listing petitions or five-year species reviews. On occasion, individuals in this position were briefed to ensure that they were aware of such decisions and to assist them in understanding the scientific basis of the decision, and any potential ramifications that it might have. As I recall, designations of critical habitat required the approval of the Assistant Secretary for Fish, Wildlife and Parks. Under the Endangered Species Act, designation of critical habitat involves both scientific and economic recommendations. During my tenure, the Assistant Secretary did not seek to modify or influence the science underlying critical habitat designations, but may have chosen to address concerns about economic impacts in a manner consistent with the science but different than the approach recommended by the Fish and Wildlife Service.

- (3) As you know and have testified, the Act requires that once a species is listed a critical habitat designation is required. Did you designate critical habitat for every species listed during your tenure as Director? Why not?**

No. In 1995 Congress imposed a moratorium on all Endangered Species Act listing activities in a rider to a defense supplemental appropriations bill. That moratorium was in place for an entire year. No funding could be spent on any activities funded through the listing account, which included both actual species listings as

well as critical habitat designation, with the result that an extensive backlog developed of more than 400 species in need of listing. Once the moratorium was lifted and the Fish and Wildlife Service could again spend funding on activities under the listing account, the Service found that it was "not prudent" to use limited listing account dollars on critical habitat designation before more of the backlogged species could be given at least the basic protections of the Act. Thus, the overriding priority was getting species onto the list, getting them under the Act's protection rather than designating critical habitat which, while important, was overshadowed by the need to provide the Act's protection to species in great need.

**(4) In terms of staff time and resources, how big of an issue were lawsuits filed against the Fish and Wildlife Service over listing and designation of critical habitat? Was this a big deal, an annoyance or a non-factor?**

Given the extensive backlog of more than 400 species in need of listing that resulted from the 1995 moratorium imposed by Congress on all Endangered Species Act listing activities, I believed then, and I believe now, that the litigation to compel critical habitat designation, while important, detracted from the Fish and Wildlife Service's more pressing and important efforts to get imperiled species onto the list and under the Act's protection.

**(5) Ms. Clark, you testified previously before this Committee that as Director you tried to improve the Act's effectiveness, increase the role of states, tribes and landowners, have less regulation and more incentives for property owners. In fact, you stated that: "We are constantly evaluating implementation of the Endangered Species Act to ensure its implementation in as fair, flexible manner as we can make possible". Was that a political decision you or the Secretary made? In the final analysis, isn't that exactly what the current leadership of the Fish and Wildlife Service is trying to accomplish?**

Under my leadership and that of Interior Secretary Bruce Babbitt, the only changes to the Endangered Species Act regulations were ones to provide support for conservation on private lands under section 10 of the law. These limited changes were proposed after extensive consultation with representatives of conservation and regulated community interests. In contrast, what has been leaked from this administration and provided in fact sheets and discussions indicates that major changes to nearly every aspect of Endangered Species Act implementation are actively under consideration. Changes have been drafted or described with respect to listing determinations, critical habitat designation, state involvement, section 7 consultation, and private lands conservation. In sum, these changes appear to exceed in scope and magnitude almost anything Congress has ever done in amending the law during the last 30 years. There has been no meaningful consultation to find common ground with conservation interests prior to formally proposing changes in how the Endangered Species Act is carried out. From the outside, it appears as though a wholesale re-write of the law is taking place in an effort to accomplish administratively that which former Representative Pombo could not accomplish legislatively.

**(6) What is the value of critical habitat designation without a recovery plan for the affected species?**

The value of critical habitat designation and every other conservation provision under the Endangered Species Act is enhanced by the completion of a recovery plan.

**(7) When you were the Director of the Fish Wildlife Service did the President's budget reflect the needs of the ESA programs?**

In general, yes. The lack of support by some in Congress to adequately fund listing and critical habitat designation, as evidenced by the 1995 moratorium and subsequent appropriation acts, adversely affected budget requests and funding for those activities.

**(8) When you were the Director of the Fish and Wildlife Service how many ESA lawsuits were there?**

I have no records of this statistic. This information likely can be supplied by the U.S. Fish and Wildlife Service.

**(9) Do you think lawsuits effect [sic] the way the agency can do its job to protect species?**

Yes. Lawsuits can both positively and negatively affect the way an agency does its job to protect species.

- (10) How many lawsuits has your organization, the Defenders of Wildlife, filed against the FWS under the ESA to date? Would you say that these lawsuits drive the implementation of the Law? Do these lawsuits follow science or do they circumvent science in the same way your organization is claiming the Bush Administration is with their implementation policies?**

We do not tally the lawsuits filed by Defenders of Wildlife according to the statute being challenged. Most lawsuits involved challenges under multiple statutes in any case. Lawsuits by Defenders of Wildlife do not drive implementation of the ESA. Rather, these lawsuits seek to compel compliance with the Endangered Species Act in a manner that is in accord with the best available scientific information.

- (11) In your testimony, you state that you know how successful the Act can be in recovering species. To my knowledge only 1 percent of the species have been recovered and removed from the list. Fifteen of those removed were due to data errors. How is 1 percent a success? What is your definition of recovery?**

Bringing grizzly bears, brown pelicans, peregrine falcons, and soon the bald eagle back to a point at which the protection of the Endangered Species Act is no longer necessary is my definition of recovery. Recent scholarly work by Scott et al. (2005) estimated that the Endangered Species Act had prevented the extinction of 227 species and found a positive correlation between the number of years a species is listed and improvements in its status. As I said in my testimony, these successes amply demonstrate how successful the Act can be in recovering species. In my view they ought to be celebrated, not denigrated.

- (12) You speak highly of career scientists and their ability to do their jobs. The FWS has convened career scientists and managers to develop these proposed changes to the ESA regulations. If you support career individuals, why wouldn't you support the Bush Administration's ground-up efforts utilizing career individuals to develop regulations to improve the implementation of the Act? If you are concerned about public involvement, won't the Service need to go through a public NEPA review process prior to implementing any changes? Why isn't that sufficient?**

I do not believe that the comprehensive re-write of the Endangered Species Act regulations that is now underway came at the request or initiative of career Fish and Wildlife Service scientists and managers. I believe these career individuals are faithfully trying to provide the least damaging responses to policy directions given by political appointees that clearly are intended to largely remove the Service from its federal responsibility to oversee implementation of the Endangered Species Act. It's as though having starved the endangered species program budget and dismantled and demoralized its staff, the administration now wants to wash its hands of carrying out the law altogether by turning it over to states and other federal agencies that are ill-equipped to take it on.

With respect to public involvement, in the long run it will be far more productive for the administration to work openly with stakeholders and Congress on those matters for which there exists broad support. There potentially are a number of such areas of agreement. Defenders of Wildlife and six other major conservation organizations have asked Secretaries Kempthorne and Gutierrez to work with us and other stakeholders to find common ground in conservation of imperiled species prior to going forward with any proposal. The success of the common endeavor we seek hinges on openness and transparency. A key first step in that direction is for the administration to share the text of any changes in the Endangered Species Act regulations currently are under consideration in a collaborative manner, not by holding a press conference and publishing proposed regulations. In any case, I welcome the support indicated in the question for subjecting any forthcoming proposal to the requirements of the National Environmental Policy Act. From everything I have seen so far, there is no question that the proposal under development by the administration will be a major federal action significantly affecting the quality of the environment.

- (13) During your tenure at Interior, is it your contention that the Deputy Assistant Secretary or other officials never edited, commented or reshaped ESA scientific reports?**

Yes.

**(14) Did the OIG find that Julie MacDonald had broken any laws?**

According to the Report of Investigation concerning Deputy Assistant Secretary of the Interior MacDonald, the Department of the Interior's Office of Inspector General, "confirmed that MacDonald has been heavily involved with editing, commenting on, and reshaping the Endangered Species Program's scientific reports from the field" and "determined that MacDonald disclosed nonpublic information to private sector sources, including the California Farm Bureau Federation and the Pacific Legal Foundation." The Report states further that "the OIG Office of General Counsel's review of this investigation indicates that MacDonald's conduct violated the Code of Federal Regulations (C.F.R.) under 5 C.F.R. 9 2635.703 Use of Non-public Information and 5 C.F.R. 5 2635.101 Basic Obligation of Public Service, Appearance of Preferential Treatment."

**(15) Do you or do any of the officers or full-time employees of Defenders serve on any FACA Committees for Dol or Commerce?**

Yes, as of May 20, 2007, the following:

- Michael Leahy, Department of Commerce Industry Trade Advisory Committee on Forest Products (ITAC 7)

**(16) How many lawsuits does Defenders currently have against either Dol or Commerce? How many have they filed since you joined them? How many had they filed in the 4 years prior to you joining?**

The following is a list of cases on which we are currently a party against the Departments of the Interior or Commerce:

- Defenders of Wildlife v. Gutierrez, No 05-2191 (right whale)
- Butte Environmental Council v. Kempthorne, No 05-629 (vernal pools)
- Stevens County v. DOI, No 06-156 (Little Pend Oreille - grazing)
- Defenders of Wildlife v. Kempthorne, No 06-180 (Fl black bear)
- American Bird Conservancy v. Kempthorne, No 06-02631 (red knot emergency listing)
- Cary v. Hall, No 05-4363 (African antelope)
- Communities for a Greater Northwest v. DOI, No 1:06-01842 (grizzly intervention)
- State of Wyoming v. DOI, No 06-0245J (Wyoming wolf intervention)
- Defenders of Wildlife v. Kempthorne, No 04-1230 (lynx)
- Conservation Northwest v. Kempthorne, No 04-1331 (Cascades grizzly)
- Defenders of Wildlife v. Kempthorne, No 05-99 (wolverine)
- Tucson Herpetological Society v. Kempthorne, No 04-75 (flat-tailed horned lizard)
- The Wilderness Society v. Kempthorne, No 98-2395 (National Petroleum Reserve - Alaska)

We do not keep records of lawsuits filed in relation to the tenure of the Executive Vice President.

**(17) Why is litigation so necessary to protect species? Doesn't that imply that the law needs revision?**

Failing all else, litigation may be necessary to protect species in those unfortunate circumstances in which agencies fail to follow the law.

**(18) You mention the Southern sea otter as a success of the ESA. Congress enacted specific legislation detailing how DOI was supposed to deal with an experimental population of translocated animals. Yet, during your tenure at FWS, the provisions of the law were not adhered to. In addition, your agency did not request funding for the provisions in that law. Because of FWS lack of adhering to the law, commercial fishermen, those who were supposed to be protected from the effects of the translocated sea otters were put out of business. Do you see this as a success? Do you see this as a precedent that will make it more difficult to get private landowners to support reintroduction efforts of listed species in the future? Are you aware that FWS has now decided to declare the translocation program a failure and walk away from their obligations under the law?**

The southern sea otter is an example of how, when the Endangered Species Act is applied properly and vigorously, significant progress can be achieved toward recovery. Although this species remains at risk and faces a number of significant threats, under the ESA significant strides have been made. Following the fur trade of the 1800s, the southern sea otter was believed to be extinct throughout its range. In the late 1930s, a small remnant population was discovered along the Big Sur coast. Although that population received protection under California law, it was not

until enactment of the Marine Mammal Protection Act in 1972 and the Endangered Species Act in 1973 that federal law ushered in an era of increased protection and gradual population growth and range expansion. Especially notable in this regard was the use of the take prohibitions of these two laws in the mid-1980s to reduce high levels of mortality that were occurring as a result of incidental capture and drowning in fishing nets and the cooperative management approaches made possible with the State of California to impose fishery closures and gear restrictions to reduce take to comply with federal law. The Endangered Species Act also helped reduce the risk of oil spills by application of the section 7 consultation process to impose various standards regarding vessel traffic and oil spill response along the sea otter range, as well as to address the threat of spills caused by offshore oil exploration and development. In addition, the ESA has been critically important in promoting a wide range of recovery actions under section 4, including the recovery plan issued in 2003. As a result of these actions, the southern sea otter population has increased from approximately 1,200 in the early 1980's to approximately 2,750 animals today. The species' range has expanded from Point Purisma (in the south) to Point Conception (in the south). The northern end of the range has stayed at around Half Moon Bay.

At the time legislation was enacted to provide for translocation of southern sea otters, there were hopes that a population of southern sea otters at San Nicolas Island would grow to somewhere between 150 and 500 individuals. That population size was never realized and current numbers approximate only 40 animals. The Fish and Wildlife Service used a team of experts, the Southern Sea Otter Recovery Team, to help them evaluate the efficacy of this program. The Service did not walk away from anything or fail to adhere to the law, rather they used the best available science and advice from scientific experts, which indicated that the future existence of southern sea otters would benefit from natural range expansion to the south, rather than impeding population growth through a "no-otter" or management zone. The Service's biological opinion under the Endangered Species Act found that "continuing the containment program and restricting the southern sea otter to the area north of Point Conception (which marks the current legal boundary between the parent range and the management zone, with the exception of the translocation zone at San Nicolas Island) is likely to jeopardize its continued existence." Thus, the provisions of the translocation law were fully adhered to by the Service because continuing enforcement of the so-called "no otter" or "management" zone would have resulted in a violation of the Endangered Species Act's prohibition on jeopardy. In fact, the commercial fishing industry filed a lawsuit in 2000 in an effort to force the Service to capture and remove sea otters from the sea otter enforce to the management zone. When the Service and environmental group interveners opposed this lawsuit, the commercial fishing group plaintiffs withdrew their case.

In addition to the likelihood of jeopardy, enforcement of the management zone would have conflicted with the essential premise of the translocation law. As it was enacted in 1986, the understanding of the law was that the management zone would be enforced in exchange for the establishment of a successful experimental population at San Nicolas Island. That has not occurred, even to this day. Although the Service has published a draft EIS to evaluate what should be done about the translocation, the agency has not yet "decided to declare the translocation program a failure", although such a conclusion does appear to be justified by the lack of success with the experimental population. I assume that, if the Service reaches such a conclusion, it would not "walk away from its obligations under the law" but would instead follow applicable legal requirements and procedures in reaching a final decision and carrying out the necessary conservation and management actions.

With regard to funding, the Service and other agencies typically do not seek specific earmarks for money for individual actions, such as those referred to in the question. In any event, the Service would not be allowed to seek funding to undertake an action that would violate section 7(a)(2) of the Endangered Species Act.

No commercial fishing interests have been "put out of business" because of the translocation law. To the extent commercial fishing interests are experiencing financial difficulties, their problems are the result primarily of years of unsustainable harvesting practices and the effects of coastal pollution and habitat degradation. Defenders of Wildlife and other environmental groups have been exploring with commercial fishing groups various ways to address the common concern over coastal pollution and habitat degradation, which are problems that pose a serious threat to marine wildlife and the livelihood of fishing businesses.

The experience with the sea otter translocation law has had no effect on the interest of private parties to support Endangered Species Act conservation programs. As the record of the Endangered Species Act implementation demonstrates, the private sector has responded well to species conservation efforts when appropriate regu-

latory and other incentives are available. Such voluntary participation post-dates the southern sea otter translocation program.

Today, the southern sea otter continues to face a number of serious threats. These include, as identified in the Recovery Plan: habitat degradation (oil spills and other environmental contaminants which lead to infectious disease) and human take (including shooting, entanglement in fishing gear, and harassment) and food resource limitations. Just as the Endangered Species Act helped bring the sea otter to the point of its current population size and expanded distribution, it is continuing to play a critically important role in moving forward with actions to hopefully achieve full recovery. Foremost among these is the implementation of the recovery plan, which is being carried out by a recovery implementation team representing all affected stakeholders. In addition, important research is underway, as directed by that plan in an effort to identify and halt the current threats to species recovery.

**(19) How many species currently listed under the ESA are species that are not found in the United States? Why is it necessary to list species under the ESA that are not found in the United States? If the concern is about trade in those species, doesn't CITES provide the necessary [sic]**

As of May 12, 2007, the U.S. Fish and Wildlife Service identifies 567 species found in other countries that are listed under the Endangered Species Act. One favorable conservation consequence of listing these species under the Endangered Species Act is that federal agencies are required under section 7 to ensure that they do not authorize, fund, or carry out actions in other nations that would be likely to jeopardize these species' continued existence. Also, by listing foreign species under U.S. law, it can provide the necessary impetus for the parties to CITES to add a species to an appendix under the treaty and regulate international trade in that species.

The CHAIRMAN. Thank you. Dr. Grifo.

**STATEMENT OF DR. FRANCESCA T. GRIFO, SENIOR SCIENTIST  
AND DIRECTOR OF SCIENTIFIC INTEGRITY PROGRAM,  
UNION OF CONCERNED SCIENTISTS**

Ms. GRIFO. Good morning. My name is Francesca Grifo, and I am a Senior Scientist and Director of the Scientific Integrity Program at the Union of Concerned Scientists, a leading science-based non-profit working for a healthy environment and a safer world. I am also a biologist.

Thank you, Mr. Chairman, Ranking Member Sali, and Members of the Committee, for the opportunity to speak to you about the problem of political interference in the work of Federal scientists.

In March 2006, almost 6,000 biologists wrote a letter asking Congress to protect the integrity of science in the implementation of the Endangered Species Act. One of the act's great strengths is its foundation in sound scientific principles, and its reliance on the best available science. The biologists urged that objective scientific information and methods be used in listing species; that the habitat needs of endangered species are scientifically well informed; and that the Endangered Species Act standard of best available science must rely on impartial scientific experts.

Losing species means losing the potential to solve some of humanity's most intractable problems, including hunger and disease. The Endangered Species Act is more than just a law—it is the ultimate safety net in our life support system.

Unfortunately, time and again science has conflicted with political goals. Americans lose and politics wins. At the Fish and Wildlife Service science itself appears to be endangered. More than 12,000 scientists, including 52 Noble Laureates, have signed a scientist statement condemning political interference in science. UCS

has compiled over 70 examples of the misuse of science in its *A to Z Guide to Political Interference in Science*.

In 2005, in an attempt to assess the state of science at the Fish and Wildlife Service, UCS and public employees from Environmental Responsibility surveyed more than 1,400 Fish and Wildlife scientists. The scientists reported that pressure to alter scientific reports for political reasons has become pervasive. At field offices around the country, Fish and Wildlife scientists tell of being asked to change scientific information, remove scientific facts, or come to conclusions that are not supported by the science.

More than half of all our respondents, and that is 233 scientists, knew of cases where commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention, and more than two out of three staff scientists—again that was 303 scientists—and nearly nine out of ten scientist managers—knew of cases where U.S. Department of the Interior political appointees have injected themselves into ecological service’s determinations.

More than four out of five, that is 351 scientists, said that funding to implement the Endangered Species Act is inadequate. All those numbers should be zero.

One scientist noted that, “I have been through the reversal of two listing decisions due to political pressure. Science was ignored, and worse, manipulated to build a bogus rationale for reversal of listing decisions.”

Another remarked that, “Department of the Interior officials have forced changes in Service documents, and worse, they have forced upper level managers to say things that are incorrect.”

While a third scientist wondered, “Why can’t we be honest when science points in one direction but political reality results in making a decision to do otherwise? Morale and credibility will improve if we are honest, rather than trying to twist the science to make politicians happy.”

These survey results illustrate an alarming disregard for scientific facts among the political appointees entrusted to protect threatened and endangered species. There is evidence of politics trumping science in the listing of the Greater Sage Grouse, the Gunnison Sage Grouse, Gunnison’s Prairie Dog, Roundtail Chub, Tabernaemontana Rotensis, Trumpeter Swan, and the White-tailed Prairie Dog. Politics won in the critical habitat designation of the Bull Trout, the Florida Panther, the Marbled Murrelet, the Pallid Sturgeon, Piping Plover, Interior Least Tern, Red Frog, and Salmon and Steel Head, and these lists are illustrative, not exhaustive.

The Union of Concerned Scientists urges this Committee to enact reforms. To ensure the work of Federal scientists will not be subject to political manipulation, the Department of the Interior should increase transparency in the decisionmaking process to expose the manipulation of science, and make other political appointees think twice before altering or distorting documents.

Open communication among scientists is one of the pillars of the scientific method. Department of the Interior scientists should be free to disseminate their research results. Interior should adopt media and communication policies that ensure taxpayer-funded sci-

entific research is accessible to Congress, the media, and the public. Scientists should be proactively made aware of these rights.

I want to thank the House for approving the Whistle Blower Protection Enhancement Act. It is now time for the Senate to act on this important piece of legislation.

Finally, there are three immediate actions: Secretary Kempthorne should send a clear message to all political appointees that substituting opinions for science is unacceptable. In light of the demonstrated pervasiveness of political interference in the Endangered Species Act decisions during the past years, Interior should engage in a systematic review of all Bush Administration decisions to ensure that the science was not altered or distorted. At the very least, Secretary Kempthorne should require an immediate re-evaluation of decisions where political interference has been exposed.

Given the number of recent attempts to undermine the Endangered Species Act science by Members of Congress and political appointees, congressional committees of jurisdiction must act to safeguard the role of science in protecting highly imperiled species.

We look forward to working with the 110th Congress on bipartisan legislation, and other reforms to address this issue. Thank you very much. I will be happy to answer questions.

[The prepared statement of Ms. Grifo follows:]

**Statement of Francesca T. Grifo, Ph.D., Senior Scientist with the Union of Concerned Scientists Scientific Integrity Program**

*This testimony is presented by Dr. Francesca Grifo, Senior Scientist with the Union of Concerned Scientists (UCS), a leading science-based nonprofit working for a healthy environment and a better world. The full testimony is submitted for the record. Dr. Grifo will summarize her statement for the Committee on the problem of political interference in the work of federal government scientists. This written testimony contains an overview of the problem of political interference in science, a summary of the UCS survey of U.S. Fish and Wildlife Service (FWS) scientists, a summary of documented abuses of science in Endangered Species Act decisions, and recommended government reforms needed to restore scientific integrity to the federal policy making process.*

Chairman Rahall, Ranking Member Young, and Members of the Committee, the Union of Concerned Scientists appreciates the opportunity to testify today on an extremely important issue—the federal government’s implementation of the Endangered Species Act and whether the science used to enforce the law has been compromised.

In 1972, President Richard Nixon asked Congress to pass “a stronger law to protect endangered species of wildlife.”<sup>1</sup> But over the years, the law’s lofty goals have been compromised. Indeed, in March 2006, 5,738 biologists wrote a letter asking Congress to protect the integrity of science in the implementation of the Endangered Species Act.<sup>2</sup> “One of the great strengths of the Endangered Species Act is its foundation in sound scientific principles and its reliance on the best available science,” their letter states. The biologists urged that “objective scientific information and methods” should be used in listing species, that the habitat needs of endangered species are “scientifically well-informed” and that the Endangered Species Act standard of “best available science” must rely on “impartial scientific experts.”

“Losing species means losing the potential to solve some of humanity’s most intractable problems, including hunger and disease,” the biologists concluded. “The Endangered Species Act is more than just a law—it is the ultimate safety net in our life support system.”

Unfortunately, time and time again, when scientific knowledge has seemed to be in conflict with its political goals, the current administration has manipulated the process through which science enters into its decisions. At many federal agencies

<sup>1</sup>Michael J. Bean, “Endangered species, endangered act?” *Environment*, 1 Jan. 1999.

<sup>2</sup>“Letter from Biologists to the U.S. Senate Concerning Science in the Endangered Species Act.” March 2007. Available online: [http://www.ucsusa.org/scientific\\_integrity/restoring/science-in-the-endangered.html](http://www.ucsusa.org/scientific_integrity/restoring/science-in-the-endangered.html).

and departments, including the Department of the Interior, this has been accomplished by placing people who are professionally unqualified or who or who have clear conflicts of interest in official posts and on scientific advisory committees; by censoring and suppressing reports by the government's own scientists, and by actually omitting or distorting scientific data.

### **Scientific Integrity**

Successful application of science has played a large part in the policies that have made the United States of America the world's most powerful nation and its citizens increasingly prosperous and healthy.

Although scientific input to the government is rarely the only factor in public policy decisions, scientific input should always be weighted from an objective and impartial perspective. Presidents and administrations of both parties have long adhered to this principle in forming and implementing policies. Recent actions, however, threaten to undermine this legacy by preventing the best available science from informing policy decisions. UCS has compiled over seventy examples in its *A to Z Guide to Political Interference in Science*.<sup>3</sup>

The misuse of science has occurred across a broad range of issues such as childhood lead poisoning, toxic mercury emissions, climate change, reproductive health, and nuclear weapons. Experts at the Food and Drug Administration (FDA) charged with ensuring the safety of our food and drug supply, report being pressured to alter their scientific conclusions. Scientists nominated to serve on scientific advisory boards report being asked about their political leanings. And scientists studying climate change have been effectively barred from communicating their findings to the news media and the public.

Misrepresenting and suppressing scientific knowledge for political purposes can have serious consequences. For example, the FDA had pronounced the pain medication Vioxx safe, but as many as 55,000 Americans died before it was withdrawn from the market.<sup>4</sup>

This misuse of science has led Russell Train, the EPA administrator under Presidents Nixon and Ford, to observe: "How radically we have moved away from regulation based on independent findings and professional analysis of scientific, health and economic data by the responsible agency to regulation controlled by the White House and driven primarily by political considerations."<sup>5</sup>

On February 18, 2004, 62 preeminent scientists articulated these concerns in a statement titled "Restoring Scientific Integrity in Policy Making."<sup>6</sup> In this statement, the scientists charged the Bush administration with widespread and unprecedented "manipulation in the process through which science enters into its decisions."

In the years since the statement was released, more than 12,000 scientists have signed on to the scientists' statement. Signers include 52 Nobel laureates, 63 National Medal of Science recipients, and 195 members of the National Academy of Sciences. A number of these scientists have served in multiple administrations, both Democratic and Republican, underscoring the unprecedented nature of the current level of political interference in science. Individual scientists have been joined by several major scientific associations, including the American Association for the Advancement of Science, the American Public Health Association, the American Geophysical Union, and the Ecological Society of America, which have addressed the problem at society wide meetings and have begun to investigate how to defend science from political interference.

### **Voices of Fish and Wildlife Service Scientists**

Political interference has been pronounced in those federal agencies tasked with implementing the Endangered Species Act.

In 2005, UCS and Public Employees for Environmental Responsibility (PEER) distributed a 42-question survey to more than 1,400 Fish and Wildlife Service (FWS) biologists, ecologists, botanists and other science professionals working in Ecological Services field offices across the country to obtain their perceptions of scientific integrity within the FWS, as well as political interference, resources and morale. Nearly 30 percent of the scientists returned completed surveys, despite agency directives not to reply—even on personal time.

The scientists reported that pressure to alter scientific reports for political reasons has become pervasive at the U.S. Fish and Wildlife Service. At field offices around

<sup>3</sup> Available Online: <http://www.ucsusa.org/atoz.html>.

<sup>4</sup> Dr. David Graham, Testimony to the Senate Finance Committee, 18 November 2004.

<sup>5</sup> Russell E. Train, "The Environmental Protection Agency just isn't like it was in the good old (Nixon) days." [www.girstmagazine.com](http://www.girstmagazine.com), September 22, 2003.

<sup>6</sup> Available Online: [http://www.ucsusa.org/scientific\\_integrity/interference/scientists-signon-statement.html](http://www.ucsusa.org/scientific_integrity/interference/scientists-signon-statement.html).

the country, Fish and Wildlife scientists tell of being asked to change scientific information, remove scientific facts or come to conclusions that are not supported by the science.

### *I. Political Interference with Scientific Determinations*

Large numbers of agency scientists reported political interference in scientific determinations.

- Nearly half of all respondents whose work is related to endangered species scientific findings (44 percent) reported that they “have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.” One in five agency scientists revealed they have been instructed to compromise their scientific integrity—reporting that they have been “directed to inappropriately exclude or alter technical information from a FWS scientific document,” such as a biological opinion;
- More than half of all respondents (56 percent) knew of cases where “commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention;” and
- More than two out of three staff scientists (70 percent) and nearly nine out of 10 scientist managers (89 percent) knew of cases “where U.S. Department of the Interior political appointees have injected themselves into Ecological Services determinations.” A majority of respondents also cited interventions by Members of Congress and local officeholders.

### *II. Negative Effect on Wildlife Protection*

While a majority of the scientists indicated that agency “scientific documents generally reflect technically rigorous evaluations of impacts to listed species and associated habitats,” there is evidence that political intrusion has undermined the FWS’s ability to fulfill its mission of protecting wildlife from extinction.

- Three out of four staff scientists and even higher proportions of scientist managers (78 percent) felt that the FWS is not “acting effectively to maintain or enhance species and their habitats, so as to avoid possible listings under the Endangered Species Act;”
- For those species already listed as threatened or endangered under the ESA, more than two out of three scientists (69 percent) did not regard the FWS as effective in its efforts toward recovery of those listed species;
- Nearly two out of three scientists (64 percent) did not feel the agency “is moving in the right direction;” and
- More than two-thirds of staff scientists (71 percent) and more than half of scientist managers (51 percent) did not “trust FWS decision makers to make decisions that will protect species and habitats.”

### *III. Chilling Effect on Scientific Candor*

Agency scientists reported being afraid to speak frankly about issues and felt constrained in their roles as scientists.

- More than a third (42 percent) said they could not openly express “concerns about the biological needs of species and habitats without fear of retaliation” in public while nearly a third (30 percent) did not feel they could do so even inside the confines of the agency;
- Almost a third (32 percent) felt they are not allowed to do their jobs as scientists; A significant minority (19 percent) reported having “been directed by FWS decision makers to provide incomplete, inaccurate or misleading information to the public, media or elected officials;” however,
- Scientific collaboration among FWS scientists, academia and other federal agency scientists appears to be relatively untainted by this chilling effect, with a strong majority (83percent) reporting they felt free to collaborate with their colleagues on species and habitat issues.

### *IV. Resources and Morale*

While we cannot ascribe low staff morale to any one cause, the tenor of staff responses and their level of concern about a misuse of science are cause for concern.

- Half of all scientific staff reported that morale is poor to extremely poor and only 0.5 percent rated morale as excellent;
- More than nine out of ten (92 percent) did not feel that the agency “has sufficient resources to adequately perform its environmental mission;” and
- More than four out of five (85 percent) said that funding to implement the Endangered Species Act is inadequate.

### *In Their Own Words*

As part of the survey, the scientists were also asked how best to improve the integrity of scientific work at Fish & Wildlife—two-thirds of respondents provided written responses. By far the concern mentioned most often was political interference. The scientists' words paint a vivid picture of political misuse of science.

One scientist noted that “I have been through the reversal of two listing decisions due to political pressure. Science was ignored...and worse manipulated to build a bogus set of rationale for reversal of these listing decisions.”

Another remarked that “[r]ecently, DOI officials have forced changes in Service documents, and worse, they have forced upper-level managers to say things that are incorrect...,” while a third explained that “As it stands, [fish and wildlife] regional headquarters, [the Interior Department] and White House leadership are so hostile to our mission that they will subvert, spin or even illegitimize our findings.”

One biologist wondered “Why can't we be honest when science points in one direction but political reality results in [the agency] making a decision to do otherwise? Morale and credibility will improve if we are honest rather than trying to twist science to make politicians happy.”

These survey results illustrate an alarming disregard for scientific facts among the political appointees entrusted to protect threatened and endangered species. The ESA requires the best available science be used as the basis for listing and recovery decisions.

### **Abuse of Endangered Species Science**

In our *A to Z Guide to Political Interference in Science*, the Union of Concerned Scientists has documented specific instances where endangered species data has been compromised.<sup>7</sup> The following examples address two fundamental facets of the ESA: decisions to list a species as endangered or threatened; and designation of critical habitat.

#### *Listing Decisions*

##### **Greater Sage Grouse**

Julie MacDonald, the former Deputy Assistant Secretary for Fish and Wildlife and Parks at DOI, also interfered with the science behind the proposed listing of the Greater sage grouse, a highly threatened ground bird in the American west. A partial copy of Ms. MacDonald's edits and commentary on a scientific review by agency biologists of the state of scientific knowledge of the bird and its habitat was obtained by the New York Times. Many of her comments challenged specific statements made by biologists, questioned the methodology behind studies, and dismissed conclusions without providing a scientific basis for her criticism. Her baseless interference cast enough doubt on the status of the greater sage grouse that an expert panel recommended against listing the bird for protection.

##### **Gunnison Sage Grouse**

Gunnison Sage grouse have experienced significant declines from historic numbers; only 4,000 breeding individuals remain in southwestern Colorado and southeastern Utah. FWS biologists and field staff were prepared to list the Gunnison sage grouse as endangered and designate a critical habitat, when the ESA listing for this distinct species was abruptly delayed and eventually reversed by Julie MacDonald and other Department of the Interior officials. These officials greatly edited the scientific reports of the scientists, reducing the substantial listing proposal to a mere outline of information, and finally concluded on a “not warranted” listing for this imperiled bird.

##### **Gunnison's Prairie Dog**

The Gunnison's prairie dog, a distinct species from the white-tailed prairie dog, had 90% of its historical range in Arizona, New Mexico, Utah, and Colorado, reduced by the combined pressures of oil and gas drilling, urban sprawl, sylvatic plague, and continued shooting and poisoning. Preliminary studies by FWS scientists showed that the Gunnison's prairie dog was a candidate for ESA listing until explicit orders from Julie MacDonald reversed their decision and precluded further study.

##### **Roundtail Chub**

The Roundtail Chub of the lower Colorado River Basin was concluded to be a distinct population segment by the FWS scientists studying the fish from the field

<sup>7</sup>Supporting documentation detailing these examples of political interference in science is available at: <http://www.ucsusa.org/atoz.html>.

office of Arizona, but the pending decision was reversed by FWS officials. The extinction of this population segment, which is imperiled by a combination of non-native fish introductions and degradation of its stream and river habitat, would result in the species being eliminated from roughly a third of its range.

#### **Tabernaemontana rotensis, a rare island tree**

Approximate thirty plants remain of the species *Tabernaemontana rotensis*, a medium-sized tree with white flowers and orange-red fruit that grows in the Northern Mariana Islands. In 2000, the FWS published a rule recognizing *T. rotensis* as a species and proposing to list it as an endangered species, but this decision was reversed by the Department of the Interior in April 2004. Documents show that DOI decision was influenced by comments from the Air Force, which manages the lands upon which *T. rotensis* is primarily found. This decision runs counter to the recommendations of the Pacific Islands office of FWS, the primary scientists that work on the species, and the peer reviewers of the proposed rule, who all supported listing, and to virtually all of the published literature.

#### **Trumpeter Swan**

According to documents released through the Freedom of Information Act, as well as testimony from consulting scientists, then FWS director Steve Williams based decisions concerning the status of rare trumpeter swans on a scientifically flawed report that lacked outside peer review and seriously misrepresented another study. The attempt to list the imperiled trumpeter swans in Montana, Wyoming, and Idaho as a distinct population segment from the plentiful tundra swans of the same region would have forced the FWS to halt the popular swan hunting season in Utah. A formal complaint from PEER prompted director Steve Williams to convene a scientific panel to review the matter; the panel concluded that the FWS documentation was inadequate for use in a species determination. Williams overruled the panel's decision and continued to refuse protection to the trumpeter swan.

#### **White-Tailed Prairie Dog**

The white-tailed prairie dog is suffering severe declines, having vanished from 92 percent of its historical habitat in higher-elevation grasslands across the western half of Wyoming, western Colorado, eastern Utah, and southern Montana. Documents show that then Assistant Secretary MacDonald directly tampered with a scientific determination by FWS biologists that the white-tailed prairie dog could warrant Endangered Species Act protection, and further, prevented the agency from fully reviewing the animal's status. Specifically, she changed scientific conclusions, and added erroneous scientific information, and ordered the finding to be changed from positive to negative.

#### *Critical Habitat Designation*

#### **Bull Trout**

Officials at the U.S. Fish and Wildlife Service deleted chapters detailing the economic benefits of protecting the bull trout, a threatened species in the Pacific Northwest, from an independent and peer-reviewed cost analysis of establishing a critical habitat for the species. The final published report included no material on the estimated \$215 million in economic benefits, and exaggerated the \$230 to \$300 million in costs estimated by the researchers. These costs would primarily fall on hydro-power, logging, and highway construction. White House officials claimed that the methodology of including benefits with costs in a financial analysis was discouraged, despite having used the same methodology themselves to justify administration-supported policies.

#### **Florida Panther**

According to FWS biologist Andrew Eller, Jr., FWS officials have knowingly used flawed science in the agency's assessment of the endangered Florida panther's habitat and viability in order to facilitate proposed development in southwest Florida. Eller says agency officials knowingly inflated data about panther population viability by erroneously assuming that all known panthers are breeding adults, discounting juvenile, aged, and ill animals. They have also minimized assessments of the panthers' habitat needs by equating daytime habitat use patterns (when the panther is at rest) with nighttime habitat use patterns (when the panther is most active). An independent scientific review team has confirmed that the information disseminated by the FWS about the Florida Panther contains serious errors.

#### **Marbled Murrelet**

The Bush administration overruled the opinions of its own government scientists in deciding that the marbled murrelet in California, Oregon, and Washington was

not genetically or ecologically distinct from bird populations in Canada and Alaska. These birds were listed as threatened under the Endangered Species Act in 1992, as they were disappearing rapidly from the three northwestern states as their coastal forest habitat came under pressure from human development and logging. In a review of the bird's status, prompted by the trade group American Forest Resource Council, the regional offices of the FWS argued that the murrelet of the Pacific Northwest was ecologically distinct from its cousins in Canada. However, the federal FWS ignored these scientists and moved to reduce its protected habitat by 95% and eventually initiated plans to delist the bird.

#### **Pallid Sturgeon, Piping Plover and Interior Least Tern**

In late 2000, a group of scientists that had been studying the flow of the Missouri river concluded a ten year, independently reviewed study recommending a river management system mimicking natural seasonal fluctuations. The scientists contended that such a river plan would comply with the Endangered Species Act by helping to protect two species of birds (the threatened piping plover and the endangered interior least tern) and one species of fish (the endangered pallid sturgeon). However, the Bush administration intervened by creating a new team of scientists who worked under incredibly short deadlines, contained only two of the original 15-member river review team, and eventually released an "amendment" to the original document which was not subject to peer-review. The conclusion of the new team greatly softened the recommendation for river flow, and also insisted that the changes in water level would only affect the sturgeon.

#### **Red Frog**

In April 2006, the FWS finalized plans to reduce by nearly 90 percent the critical habitat set aside for the protection of a rare species of California frog. According to FWS, a new analysis had shown that the cost of maintaining the original critical habitat for the red-legged frog was too high and would unfairly burden homeowners and ranchers. But the analysts who made the cost estimates argued that the numbers were skewed, since they were not permitted to factor in any monetary benefits of protecting the land.

#### **Salmon**

A panel of scientific experts found that there was a strong scientific basis for excluding hatchery-raised fish when measuring the size of wild salmon populations in the Pacific Northwest. Such population counts are central to determining protection status and habitat needs under the Endangered Species Act. This central recommendation was deleted from the final report of the advisory committee. As the panel's lead scientist, Robert Paine, put it, "The members of the panel were told to either strip out our recommendations or see our report end up in a drawer." The Bush administration subsequently released new determinations which combine hatchery and wild fish, thus inflating the population counts of several endangered or threatened naturally spawning fish. The removal of the extensive, up-to-date scientific record compiled by the advisory committee leaves these populations open to legal challenges calling for their delisting.

#### **Strategies To Weaken The ESA**

Just this year, the Administration has attempted to weaken the ESA in ways that undermined the original intent of the ESA as passed by Congress. In March 2007, for example, the Department of the Interior's Office of Solicitor sent out a memo responding to questions raised by the FWS about the definition of an "endangered species"—an issue that had been raised in a 2001 federal appellate court decision. The troubling memo concludes that when considering whether a species is endangered, government officials only have to consider its jeopardy in the current habitat it occupies, not its historical range.<sup>8</sup>

Thirty-eight biologists were so concerned about the potential impact of this memo that they sent a letter to Interior Secretary Dirk Kempthorne and warned that the memo's conclusions "will have real and profoundly detrimental impacts on the conservation of many species and the habitat on which they depend." The letter states, "Congressional intent about the act is clear: The Endangered Species Act is intended to allow species to be restored throughout large portions of their former range."<sup>9</sup>

<sup>8</sup>"The Meaning of "In Danger of Extinction Throughout All or a Significant Portion of its Range." Memo to Director, U.S. Fish and Wildlife Service from the Office of the Solicitor, United States Department of the Interior, 16 Mar. 2007.

<sup>9</sup>Letter to Secretary Dirk Kempthorne regarding proposed changes to the Endangered Species Act, 30 Apr. 2007.

### **Systemic Problems Require Systemic Solutions**

The problem of political interference in science will not be solved by a new Administration or the resignation of additional political appointees. There will always be pressure on elected officials from special interests to weaken environmental laws. For that reason the Union of Concerned Scientists urges this committee to enact systemic reforms:

#### *Transparency in Scientific Decisions*

Scientists at the FWS recommended more transparency in the decisions making process. Said one FWS biologist, “Plac[e] much more scrutiny on the decision-making process between the draft scientific document and the final decision. The work is great until it hits the supervisory chain, and then things are dropped, changed, altered (usually without written record) and then finalized with dismissive responses to concerns.”

To ensure the work of federal scientists will not be subject to political manipulation, the Department of the Interior should increase transparency in the decision-making process to expose manipulation of science and make other political appointees think twice before altering or distorting scientific documents. We make the following recommendations:

- The DOI should publish a statement explaining the scientific rationale for each listing decision and recovery plan. The statement should justify and defend how FWS staff reconcile scientific and economic data to make the final decision. The statement must include the scientific documentation that went into the decision and the names of the FWS employees and officers involved in the process.
- If FWS scientists have significant concerns with or criticisms of the decision, they must also be able to submit a statement explaining their disagreement. This would provide them with an opportunity to make their concerns public and provide FWS with an opportunity to explain how they have addressed the concerns or why they are not significant.
- DOI should establish a formal and independent scientific review board for agency policies and decisions.

#### *Scientific Freedoms*

Scientists should be allowed basic freedoms to carry out their work and keep up with advances in their field. One FWS scientist recommended, “Encourag[ing] scientists to keep abreast of scientific information (e.g., Membership in professional societies, pay for them to attend professional] meetings) and allowing scientists to do their job-make sure they can focus on getting the science right before they are bombarded with the social, political and economic angles that come with each issue.”

- DOI scientists should be free to publish their tax-payer funded research in peer-reviewed journals and other scientific publications and be able to make oral presentations at professional society meetings. The only exception should be if the publication or presentation of the research is subject to Federal export control, national security, or is proprietary information.

#### *Scientific Communication*

Open communication among scientists is one of the pillars of the scientific method. For society to fully reap the benefits of scientific advances, information must also flow freely among scientists, policy makers, and the general public. The federal government must respect the constitutional right of scientists to speak about any subject, including policy-related matters and those outside their area of expertise, so long as the scientists make it clear that they do so in their private capacity, and such communications do not unreasonably take from agency time and resources. Scientists should be proactively made aware of these rights and ensure they are exercised at their agencies.

- DOI should adopt media and communication policies that ensure tax-payer funded scientific research is open and accessible to Congress, the media, and the public. The policy should:
  - Affirm that scientists and other staff have the fundamental right to express their personal views, provided they specify that they are not speaking on behalf of, or as a representative of, the agency but rather in their private capacity.
  - Create an internal disclosure system to allow for the confidential reporting and meaningful resolution of inappropriate alterations, conduct, or conflicts of interest that arise with regard to media communications.
  - Include provisions to actively train staff and post employee rights to scientific freedom in all workplaces and public areas.

*Whistleblower Rights*

In the past, scientists who have attempted to disclose political interference with science have been found ineligible for whistleblower protection. Under the Whistleblower Protection Enhancement Act, H.R. 985, which recently passed in House of Representatives, these disclosures are protected. Whistleblower protections for scientists who report abuse of science would help ensure that basic scientific freedoms of federal scientists are respected.

- Congress should pass the Whistleblower Enhancement Act, which would give federal scientists the right to expose political interference in their research without fear of retribution. The House has approved this measure, and it's time for the Senate to act.
- DOI scientists who provide information or assist in an investigation regarding manipulation or suppression of scientific research should be given adequate protection from retaliation.
- DOI should fully investigate any retaliatory actions against a scientist who expresses their concerns within or outside of the agency.

*Immediate Actions*

There are several immediate actions that the Interior Department and Congress should take to prevent political interference in science and reinforce the scientific foundation of the Endangered Species Act:

- Interior Department Secretary Dirk Kempthorne should send a clear message to all political appointees that substituting opinions for science is unacceptable.
- In light of the demonstrated pervasiveness of political interference in Endangered Species Act decisions during the past several years, the Interior Department should engage in a systematic review of all Bush administration decisions to ensure that the science behind those decisions was not altered or distorted. At the very least, Secretary Kempthorne should require an immediate reevaluation of decisions where political interference has been exposed.
- Given the number of recent attempts to undermine the scientific underpinnings of the Endangered Species Act by Members of Congress and political appointees, congressional committees of jurisdiction must act to safeguard the role of science in protecting highly imperiled species.

**Restoring Scientific Integrity Throughout Government**

In the 109th Congress, the Union of Concerned Scientists strongly supported comprehensive legislation to protect fact-based information from distortion in order to give policymakers the best data on which to make decisions that affect each and every American.

The "Restore Scientific Integrity to Federal Research and Policymaking Act," sponsored in the House by Representatives Henry Waxman (D-CA) and Bart Gordon (D-TN) drew 80 sponsors. The prime sponsor of its Senate companion was Sen. Richard Durbin (D-IL).

We look forward to working with the 110th Congress on comprehensive bipartisan legislation and other reforms to restore scientific integrity to federal policymaking.

The CHAIRMAN. Thank you. Mr. Ruch.

**STATEMENT OF MR. JEFF RUCH, EXECUTIVE DIRECTOR,  
PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY**

Mr. RUCH. Mr. Chairman and Members, my name is Jeff Ruch, and I am the Executive Director of Public Employees for Environmental Responsibility, otherwise known as PEER. We are a service organization for scientists, law enforcement officers, land managers, attorneys, who face crises on environmental issues, and as such, we act as sort of a giant shelter for battered staff, and in this context we see the underside of many of these conflicts.

In doing this work, we have interviewed scores of scientists work on the ESA where we have surveyed hundreds of them. We have deposed managers under oath in litigation, and we have sparked and monitored official investigations, and our conclusions are these:

One, is that political manipulation is now thoroughly corrupting Endangered Species Act science. It has become widespread and it

has become routine, to the point where even field biologists in remote stations can get a call from a deputy assistant secretary and be told to change a number. It is extraordinary.

Second, that this political interference, particularly under former Secretary Gail Norton and her leadership team, Craig Manson, Paul Hoffman, Julie MacDonald, none of them had scientific backgrounds, was directed from the top, and included and was enforced by kind of a dissemble to succeed policy in which the perpetrators of fraud were promoted, and scientists who persisted in disclosing inconvenient facts were ostracized, marginalized, or in extreme cases, fired.

Finally, that these problems are not limited to the Department of the Interior. The surveys and other work we have done in NOAA, NOAA Fisheries, finds just as extensive, if not more, intense political interference with the work that they are doing.

Now, to me, I was somewhat surprised when I read Ms. Scarlett's testimony that she did not mention Julie MacDonald, and the Department itself has been silent with respect to that particular affair, and it is unclear whether Interior's posture is whether Ms. MacDonald did anything wrong, or whether it was unfortunate that she was caught doing what she was doing.

But the approach of ignoring the elephant in the front row of this hearing room itself sends a very strong message to people who work for the Department of the Interior, and that is that political interference will continue to be tolerated and woe to those that interfere.

Moreover, it is significant that the Department has announced no steps to correct the errors that were identified by its own Inspector General.

I would like to comment for just a second about litigation. The reason that environmental groups can bring in and win these lawsuits is that they are relying upon the science generated by the agency's own specialists. The burden that these groups have to show, the burden is on the plaintiff. They have to show that the agency action, they have to show that the Federal government is acting in an arbitrary and capricious fashion. They must demonstrate that the Federal government's action has no rational basis. That is one of the heaviest burdens in jurisprudence.

But the reason these groups consistently win these suits is because the agency's own information has been manipulated and it is difficult to defend before a Federal judge of any political persuasion.

Because it is clear that the Department of the Interior has apparently no intention of acting in regard to these matters, we would urge the Congress to step in, and we would ask that the Congress take acts to improve accountability, transparency, and integrity.

In terms of accountability, we would urge that the Committee focus not only on removing managers that perpetrate these kind of actions, but also pay some attention to the scientific, political prisoners of conscience whose careers have been jeopardized because they have proceeded with information that is correct but politically inconvenient.

One of the cases we want to draw your attention to is Rex Wahl, a Bureau of Reclamation biologist who has been sitting at home at taxpayers' expense for nine months for the crime of committing candor in disclosing information about pending Reclamation projects.

The second thing we would urge is transparency. We would echo the comments made by Dr. Grifo from the Union of Concerned Scientists, and add one more. NOAA and the Department of Commerce are about to adopt a far-ranging, unprecedented gag order that prevents its personnel from making any kind of statement that is of official interest, even on their own time, at a scientific conference, at any place without prior review and approval. We would think that the Congress should step in and ban these sort of non-disclosure policies because they are the antithesis of transparency.

Finally, with respect to integrity, we would echo that whistle blower protection is sorely needed as these scientists have almost no legal protection when they are just trying to do their jobs. We would also urge that the Committee legitimize involvement by scientists and professional societies so that efforts to promote integrity of science is no longer considered a conflict of interest as it is under current policy.

Finally, we would urge that the Congress enforce the laws that allow members of the Civil Service to directly communicate with the committees without fear of appraisal. We hope that the Congress takes acts to ensure that taxpayer funds are no longer used to perpetrate fraud.

[The prepared statement of Mr. Ruch follows:]

**Statement of Jeff Ruch, Executive Director,  
Public Employees for Environmental Responsibility**

Good morning. My name is Jeff Ruch and I am the Executive Director of Public Employees for Environmental Responsibility (PEER).

PEER is a service organization dedicated to protecting those who protect our environment. PEER provides legal defense to federal, state, local and tribal employees dedicated to ecologically responsible management against the sometimes onerous repercussions of merely doing their jobs. In addition, PEER serves as a safe, collective and credible voice for expressing the viewpoints otherwise cloistered within the cubicles. Headquartered in Washington, D.C., PEER has a network of ten state and regional offices. Most of our staff and board members are themselves former public employees.

On a daily basis, public employees in crisis contact PEER. In our D.C. office alone, we average five "intakes" per day. A typical intake involves a scientist or other specialist who is asked to shade or distort the truth in order to reach a pre-determined result, such as a favorable recommendation on a project. It is in this context that PEER hears from scientists working within the U.S. Fish & Wildlife Services (FWS), as well as the National Marine Fisheries Service (NMFS). My remarks reflect the input we have received from these scientists who feel unable to openly voice their concerns.

In this morning's testimony, I will 1) describe how official manipulation and distortion of Endangered Species Act (ESA) science has become pervasive; 2) explain how scientists are often caught in the political crosshairs of their own agency management with little recourse; and 3) suggest how Congress can ameliorate this state of affairs.

**I. Official Manipulation and Distortion of ESA Science Is Pervasive**

I do not mean to suggest that the type of political interference described in this testimony originated with the present administration. The ESA has been plagued by politics since its inception.

In December 1997 PEER published a white paper entitled *War of Attrition: Sabotage of the Endangered Species Act by the U.S. Department of the Interior*. In that white paper we detailed political intervention by then-Interior Secretary Bruce Babbitt and his top aides to reverse the findings of agency scientists in eight high-profile ESA cases. In each case, environmental groups successfully sued Interior and forced the listing or other action the political intervention was intended to prevent.

The principal difference in the intervening decade is that what was an occasional event during the Clinton administration is now a daily occurrence. The handful of cases PEER cited during the Clinton years is dwarfed by the scores of such cases being reported under the current Bush administration. The cases under Clinton where politics trumped science appear to have been triggered by complaints from state governors or other high-profile dynamics. By contrast, under the current Administration, political intervention has become a matter of routine.

One of the unique aspects of the ESA is the status it accords to the role “the best scientific and commercial data available” as either the sole or principal guide for the Secretary to make determinations relative to the Act [ see, for example, 16 U.S.C. § 1533 (b) (1) (A) and 16 U.S.C. § 1536].

From the earliest days of the current Administration, however, there has been a profound tension between the facts reported to it by civil servants and its political goals. For example, after promising during her confirmation hearings to faithfully report the scientific findings of agency specialists, five months later, on July 11, 2001, then-Interior Secretary Gale Norton provided the Congress with a letter that substantially altered biological findings from FWS concerning effects of oil development in the Arctic National Wildlife Refuge. All 17 of the major changes made in the FWS evaluation by the Secretary or her immediate staff (as no other member of her leadership team had yet been confirmed) pointed in one direction—to minimize the biological impacts of oil drilling. When questioned about the changes Ms. Norton ascribed them to typographical errors.

This willingness to rewrite scientific and technical findings to serve political aims has continued unabated and, by some measures, has accelerated. In 2002, following a PowerPoint presentation by presidential counselor Karl Rove to Interior political staff, the scientific determination of water levels needed to support threatened coho salmon in the Klamath River was suddenly cut in half without any biological analysis, in violation of the ESA. At the behest of Bureau of Reclamation officials, the conclusion of a draft biological opinion prepared by a NMFS team was altered to lower the minimal in-stream flow levels below what the fisheries scientists believed necessary for the survival of coho salmon in the Klamath River. Late that summer, the Klamath experienced the largest fish kill in the history of the Pacific Northwest.

In the ensuing years, the political rewrite of ESA scientific documents has become a routine practice. Last fall, for example, the conclusion of a scientific assessment on whether the Gunnison’s prairie dog should be listed under the ESA was changed under orders by a political appointee—Interior Deputy Assistant Secretary Julie MacDonald, an engineer by training, who has been quite energetic in rewriting biological opinions. In this case, a draft opinion which found listing of the Gunnison’s prairie dog to be scientifically warranted sparked this terse e-mailed directive:

“Per Julie please make pd finding negative. Thanks”

In other words, all of the scientific analysis would remain unchanged, only the conclusion (the positive recommendation) would change. This suggests a blatant, almost casual, approach to political interference with ESA science.

At the same time, PEER has received scores of complaints from FWS and NMFS scientists about similar acts of manipulation. To find out how widespread this experience was, in 2005, PEER in partnership with the Union of Concerned Scientists (UCS) surveyed more than 1,400 FWS biologists, ecologists and botanists working in field offices across the country to obtain their perceptions of scientific integrity within the agency. The survey had a 30% rate of return and produced some of the following results:

- Nearly half of all respondents whose work is related to endangered species scientific findings (44%) reported that they “have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.” One in five agency scientists said they have been “directed to inappropriately exclude or alter technical information from a FWS scientific document”;
- More than half of all respondents (56%) cited cases where “commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention”; and
- More than a third (42%) said they could not openly express “concerns about the biological needs of species and habitats without fear of retaliation” in public while nearly a third (30%) felt they could not do so even inside the confines of

the agency. Almost a third (32%) felt they are not allowed to do their jobs as scientists.

In essays submitted on the topic of how to improve integrity at FWS, many biologists cited Julie MacDonald by name. Most essays, however, were couched in more general terms:

- “We are not allowed to be honest and forthright, we are expected to rubber stamp everything. I have 20 years of federal service in this and this is the worst it has ever been.”
- “I have never seen so many findings and recommendations by the field be turned around at the regional and Washington level. All we can do at the field level is ensure that our administration record is complete and hope we get sued by an environmental or conservation organization.”
- “Recently, [Interior] officials have forced changes in Service documents, and worse, they have forced upper-level managers to say things that are incorrect...It’s one thing for the Department to dismiss our recommendations, it’s quite another to be forced (under veiled threat of removal) to say something that is counter our best professional judgment.”

Later that year, the two groups surveyed 460 NMFS scientists charged with administering the ESA. More than a quarter (27%) of the scientists returned the surveys with even more disturbing results:

- An even stronger majority (58%) knew of cases in which high-level Commerce Department appointees or managers “have inappropriately altered [NMFS] determinations;”
- More than one third (37%) have “been directed, for non-scientific reasons, to refrain from making findings that are protective” of marine life; and
- Nearly one in four (24%) of those conducting such work reported being “directed to inappropriately exclude or alter technical information from a...scientific document.”

In essays submitted on the topic of how to improve the integrity of scientific work at the agency, the predominant concern raised by the NMFS scientists was political interference:

- “It seems that we are encouraged to think too much about the consequences and how to get around them, rather than just basing our recommendations on the best available data.”
- “[I]t is not uncommon to be directed to not communicate debates in writing. I have also seen written documents that include internal discussions/debate purposefully omitted from administrative records with no valid reasoning.”
- “Removing the implication that an ESA Section 7 Jeopardy determination is never or almost never justified—this view is frequently held and expressed by managers. A huge problem is that a Sec. 7 consultation for ESA, whether the science is good or bad, that does not cause problems for an action agency is not heartily scrutinized. But a determination that results in more protection for the species and restricts an agency action or lengthens their timeline is always scrutinized and pressure may be applied to change the determination even if valid.”

Not every manipulation of ESA science is blatant. Some are subtle, involving re-interpretations or technical guidance that on their face appear neutral but are, in fact, designed to skew scientific results. For example, in January 2005, Dale Hall, the then-FWS Southwest Regional Director, issued a new policy forbidding biologists from using wildlife genetics to protect or aid recovery of endangered and threatened species. As a result, agency biologists are prohibited from even considering unique genetic lineages in protecting or recovering wildlife in danger of extinction.

By prohibiting consideration of individual or unique populations, Hall’s policy allows FWS to declare wildlife species secure based on the status of any single population (even a population in captivity, such as within a zoo). This means the agency could pronounce species recovered even if a majority of populations were on the brink of extinction or permit approval of development projects that extirpate whole populations.

While seemingly neutral on its face, the policy was timed to block the ESA listing of the Lesser Prairie-Chicken, as well as to water down the recovery plans for the Mexican Spotted Owl and the Southwest Willow Flycatcher as well as a number of desert fish species, among other species.

This policy even provoked a rare, though fruitless, internal protest. Then-Mountain-Prairie Regional Director Ralph Morgenweck, attacked the new policy, citing several examples where genetic diversity has been critical to species’ survival because it allows wildlife to adapt to emerging threats, diseases and changing conditions. In his memo of protest, Morgenweck stated:

“I have concerns that the policy could run counter to the purpose of the Endangered Species Act to recover the ecosystems upon which endangered and threatened species depend. It also may contradict our direction to use the best available science in endangered species decisions in some cases.”

Mr. Morgenweck’s protest was ignored. Shortly thereafter, the author of the policy, Dale Hall, was nominated and confirmed as the Director of the FWS.

Lastly in this regard, one important measure of the pervasiveness of official scientific fraud and distortion is the high success rate by conservation groups in winning ESA lawsuits against the government. In order for these non-profit groups to prevail in court, they must show that the federal government acted in an arbitrary and capricious manner. This is one of the heaviest burdens in civil jurisprudence in that the plaintiffs must show that the government agency had no rational basis for its decision.

The way in which these, often small, groups prevail is by showing that the Secretary of Interior or Commerce ignored their own scientists. In other words, ESA lawsuits against Interior or Commerce are powered almost exclusively by the research generated (and then suppressed or rewritten) by the agency itself.

## **II. Scientists Are Caught in the Political Crosshairs with Little Recourse**

In our experience, biologists in FWS and NMFS typically have little interest in politics; their passion is the resource. It often comes as quite a shock when they find themselves caught up in the political winds blowing out of Washington, DC. In those instances, these specialists are like deer caught in the headlights, not knowing where to run, as a truck barrels down threatening to flatten their careers.

Compounding the risks is the relative delicacy of scientific careers, which may be derailed by agency actions that would not trouble other professionals. In some scientific disciplines (particularly those within FWS and NMFS), the “publish or perish” dynamic means that if an agency prevents the submission of manuscripts to peer reviewed journals the scientist is put at a (sometimes fatal) competitive disadvantage. Being denied permission to attend a professional conference or present a paper at such a conference can cause grievous career harm. When administered as punishments these tactics can be quite devastating, but they do not rise to the legal standard of a “personnel action” within federal civil service law and thus are very difficult to challenge or review.

On the other hand, some agency tactics for punishing scientists who disclose inconvenient truths are far from nuanced:

- One Bureau of Reclamation biologist represented by PEER has been home on paid administrative leave for nine months. His supposed offense was sending e-mails to federal agencies and an environmental group pointing out problems in Bureau filings and reports. The biologist, Charles (Rex) Wahl., was also the agency NEPA (National Environmental Policy Act) coordinator whose job it is to keep stakeholders informed. Originally, Reclamation proposed to fire Wahl for being “subversive” and revealing “administratively controlled information.” This January, the Bureau withdrew those charges and instead proposed dismissal on the grounds of causing “embarrassment” for putting the agency in a “negative light.” For good measure, the Bureau also dismissed his wife, Cherie, from her temporary clerk-typist position. Meanwhile, Rex Wahl sits at home and collects his pay;
- A FWS biologist who protested diversion of critical habitat found her e-mail privileges “suspended” until the end of the fiscal year; and
- A biologist who raised concerns about growing damage cause by off-road vehicles was abruptly removed from that program and re-assigned to a position with no duties in an office that has no phone or computer.

Unfortunately, wronged federal scientists who seek vindication face steep challenges.

### **A. Federal Scientists Have Scant Legal Protection**

This Congress is currently reviewing legislation to strengthen the distressingly weak Whistleblower Protection Act. I will not reiterate the arguments in that debate except to note that scientists who raise concerns about the quality of studies or the validity of findings often have no legal protection at all.

In the federal civil service, scientists risk their jobs and their careers if they are courageous enough to deliver accurate but politically inconvenient findings. For openers, the practice of “good science” is not recognized as protected activity under the federal Whistleblower Protection Act, unless 1) the scientist is reporting a falsification or other distortion that violates a law or regulation; or 2) the scientific manipulation creates an imminent danger to public health or safety.

Absent those unusual circumstances, a disclosure of a skewed methodology, suppression of key data or the alteration of a data-driven recommendation is treated as if it were a policy dispute, for which the disclosing scientist has no legal protection or standing.

In 2003, nearly half of the federal civilian workforce (in the Departments of Homeland Security and Defense) lost traditional civil service protections. In these agencies, the emerging management regime resembles a private sector, at-will employment system. Scientists in these agencies can easily be fired, de-funded, transferred or otherwise redirected simply because the results of their scientific work cause political displeasure.

On, May 30, 2006, Justice Samuel Alito cast his first deciding vote in *Garcetti v. Ceballos* (126 S. Ct. 1951) which held that public servants have no First Amendment rights in their role as government employees. The central premise of this ruling is public employees per se have no free speech status because their speech is owned by the government.

The court held that civil servants enjoy First Amendment rights only when they act outside their work role and go public. Thus, under the Supreme Court's formulation, telling an inconvenient truth at work allows no constitutional defense against on-the-job retaliation.

The only protection the Court identified for public servants is whistleblower legislation. Unfortunately, the federal Whistleblower Protection Act has been interpreted to exclude disclosures made within the scope of duty. Thus, internal agency communications often lack any legal protection whatsoever—constitutional or statutory.

The only body of law that protects government scientists is the handful of environmental statutes, such as the federal Clean Air Act, that protect disclosures made by any employee, public or private sector, that further the implementation of those acts. The ESA, however, has no such whistleblower provision. Moreover, the Bush administration has recently ruled that all but two of the six environmental laws with such whistleblower provisions are off-limits to federal employees under the doctrine of sovereign immunity—based on the old English common law maxim that “The King Can Do No Wrong.”

### **B. Agencies Reward Scientific Fraud**

Compounding this daunting legal climate is the tendency by the agencies to promote or reward the very officials who perpetrate the distortions of scientific work. The reason behind this perverse dynamic seems evident—managers who dissemble to achieve a pre-determined result are simply doing the bidding of the agency's top political appointees. In another context, then-Department of Justice Chief-of-Staff Kyle Sampson expressed the concept when he testified that the distinction between politics and performance was “artificial.”

To convey just how widespread this “lie to succeed” culture has become in federal service, consider two recent examples:

- In 2005, a Commerce Office of Inspector General report found that a key NMFS biological opinion on the effects of diverting Sacramento River water from the San Francisco Bay Delta to thirsty Southern California had been improperly altered to find no adverse effects. The responsible party identified by the Inspector General was one James Lecky, a regional official. Shortly thereafter Mr. Lecky was promoted to become the agency's Director of Protected Resources, in which position he oversees production of all the biological opinions on threatened and endangered species; and
- One of the rare instances in which FWS has admitted that it committed scientific fraud involves use of skewed biology in assessing the habitat needs and population of the endangered Florida panther (discussed in the following section). The central figure in this episode was Jay Slack, the Field Supervisor of the FWS South Florida Field Office in Vero Beach. Mr. Slack fired the FWS biologist, Andrew Eller, who had challenged the fraud. Following a whistleblower complaint waged by PEER, Mr. Eller was restored to FWS in a courthouse steps settlement. Shortly thereafter, Mr. Slack received a Meritorious Service Award. Six months later in February 2006, Slack was promoted to serve as Deputy Regional Director of the FWS Mountain-Prairie Region, responsible for the eight-state area of Colorado, Montana, Wyoming, Utah, Nebraska, Kansas and the Dakotas.

### **C. Profiles in Biological Courage**

From reports that PEER has received there are regions where political pressure to change scientific findings is particularly acute. This is not meant to suggest that other regions do not have these problems, only that further congressional investigation into this topic would likely find fertile ground in these suppression “hot spots.”

These hot spots coincide with swelling populations pushing against shrinking wild-life habitats:

**Southwest Florida:** The challenges facing federal biologists in South Florida are almost beyond description. Attached to my testimony is a letter by Ann Hauck on behalf of the Council of Civic Associations [Attachment I] which conveys how deep-seated the difficulties in that fast-growing region are.

In that region, FWS biologists are forbidden from issuing ESA “jeopardy letters”—no matter how destructive the development project. As these new developments sprawl across the tattered habitat of the endangered Florida panther, avoiding a finding of jeopardy remains quite a challenge for FWS. The agency had to resort to using scientific fictions to inflate panther population and inaccurately minimize habitat needs. Here are some of the fictions which FWS admitted that it employed, in response to a Data Quality Act challenge filed by PEER and FWS biologist Andy Eller:

- Relying on daytime habitat use patterns (when the panther is at rest) while ignoring nighttime habitat use patterns (when the panther is active);
- Assuming that all known panthers are breeding adults, discounting juvenile, aged and ill animals; and
- Using population estimates, reproductive rates, and kitten survival rates not supported by field data.

Then-FWS Director Steven Williams, who made the formal admission of error in response to the PEER/Eller challenge, resigned the day before it was announced. As it was announced, the FWS Southeastern Regional Office held a press conference in which it declared that not one single decision or biological review would change as a result of the decision.

**Pacific Northwest:** Fishery biologists in both NMFS and FWS working on issues involving dams and their management, especially within the Federal Columbia River Power System, are being subjected to a severe form of cognitive dissonance. These scientists are being asked to ignore evidence as to the negative effect these structures are having on listed fish populations and to overestimate the salutary effect of various mitigation measures.

One FWS biologist has described an impending “biological train wreck” on the Columbia River, pitting survival of endangered fish populations against rising power rates and threats of artificially manipulated floods, in describing a concerted effort by agency officials to obstruct implementation of the ESA.

**Southwest:** Booming population growth in the arid Southwest is pushing many species toward extinction but federal recovery plans are tangled in inter-agency and political conflict. For example, FWS scientists find endangered and threatened fish of the Gila River basin in Southern Arizona and Western New Mexico continue to decline because key steps in approved recovery plans are not implemented by their own agency, particularly control of nonnative game fish managed by the state wildlife agencies which are supposed to be assisting in federal recovery plan implementation.

A recovery plan is a basic provision of the Endangered Species Act. It outlines the steps needed to prevent possible extinction of a federally-listed species and to restore a healthy self-sustaining species. The recovery plans are sound but there is no consistent follow-through. The conflicting mandate of the FWS to protect native fish versus the state wildlife agencies’ promotion of sport fishing has stalemated effective actions in addressing root causes of the continuing deterioration in the status of the native species.

In all of the above-described settings, scores of federal scientists are struggling mightily to respect their professional ethics while maintaining a career in federal service.

### **III. Congress Can Restore Scientific Integrity**

Congress has the ability to address the deterioration in the integrity of official ESA science. PEER would offer the following recommendations:

#### **A. Insist on Accountability for Political Appointees and Managers**

Any progress in this area will be problematic unless those political appointees and managers who perpetrate scientific fraud or manipulation suffer negative career consequences. For example, the Interior Department has yet to condemn the conduct of the recently-resigned Julie MacDonald. The continued silence from Secretary Dirk Kempthorne sends a strong signal that misrepresenting agency scientific research is a practice is endorsed by Interior leadership. The posture of Interior appears to be that unless the interference is publicly exposed in an embarrassing fashion re-writing scientific documents for non-scientific reasons is a “no-harm-no-foul” infraction.

Significantly, the only recent instance in which Interior Department leadership embraced the concept of scientific integrity has been as a tool to punish what it perceived to be scientists with an agenda. In 2002,

*The Washington Times* cooked up a scandalous hoax in which the central allegation was that several FWS, U.S. Forest Service and Washington State scientists had hatched a plot to close large sections of Western public lands by planting phony samples of fur from the threatened Canada lynx. *The Washington Times* then attempted to sell ad space to PEER and other environmental groups so that the “other side” of this story would be printed in their pages.

Despite repeated internal and external investigations that debunked this hoax (the scientists had sent in outside samples to test the private DNA laboratory but these samples were never part of the lynx habitat survey), Members of Congress, abetted by top Interior officials, decried how ESA science had “gotten out of control.”

When the furor died down and the scientists were vindicated, a somewhat sheepish Interior Department published a Code of Scientific Ethics, as a face-saving step to show that it had done something to ensure that its scientists would never again go out of control. Although Interior issued a press release with the Code attached, the Code never appeared within any Interior manuals. There remains broad confusion as to its status, meaning and application.

This semi-official Interior Code of Scientific Conduct has among its provisions the following:

- “I will act in the interest of the advancement of science and contribute the best, highest quality scientific information.”
- “I will neither hinder the scientific and information gathering activities of others nor engage in dishonesty, fraud, deceit, misrepresentation, or other scientific, research or professional misconduct.”
- “I will place quality and objectivity of scientific activities and information ahead of personal gain or allegiance to individuals or organizations.”

Interior’s Code of Scientific Conduct [the full text can be seen in Attachment II] should be formally promulgated and made explicitly binding on its political appointees and managers.

### **B. Transparency Will Deter Distortions**

Supreme Court Justice Louis Brandeis once said “Sunshine is the best disinfectant,” and his prescription has application here.

Congress should require that internal alterations of scientific reports become part of the public record, so that the evolution of official findings can be traced. In particular, alterations by political appointees of FWS and NMFS scientific documents should be reported to the Congress with a mandatory written explanation for the basis of the alteration.

If these changes to scientific conclusions must be explained in the clear light of day, it should deter some of the grosser distortions. Conversely, if Interior or Commerce Department leaders argue that the changes their political appointees make are appropriate, they should not mind sharing that justification with the rest of us.

Retrospectively, the Interior Department has yet to correct the scientific misrepresentations made by Ms. MacDonald that were identified by the Inspector General. The Interior Department should affirmatively correct these errors now, rather than waiting for them to be invalidated one-by-one through court orders produced by ESA challenges.

Moreover, Ms. MacDonald was not acting as a lone rogue. Her actions fit into a pattern of scientific misrepresentations perpetrated by her former colleagues, including Deputy Assistant Secretary Paul Hoffman and former Assistant Secretary Craig Manson. If Interior is not willing to go back and correct the errors made by these political appointees, then the Congress should step in and order an independent review of the revisions made by Interior appointees since 2002. This congressionally-chartered scientific “Truth Commission” would identify the errors that need to be corrected. Correcting the ESA scientific record now would prevent much future litigation, and render several existing lawsuits moot.

### **C. Stop Suppression of Science by Prohibiting Agency Gag Orders**

One of the most disturbing findings of the PEER/UCS surveys was that federal scientists were unsure about what they could or could not say or write to colleagues in academia or other agencies. As a result, the natural give-and-take of scientific development is stunted by politically-inspired public communication policies that require all communications be officially vetted.

PEER believes that the confusion among scientists is the direct result of deliberately vague policies that generally restrain agency scientists from interacting with outsiders. For example, the FWS on May 5, 2004 held an all-staff “Town Meeting”

to tout its “scientific excellence.” That afternoon, all employees were supposed to take part in an “interactive discussion” via telephone conference, Internet connection or satellite download with then-Director Steve Williams.

At that meeting, Mr. Williams announced that FWS would begin concerted interaction with professional societies. He was then asked by a participant whether he would address the Interior ethics guidelines which still discourage agency scientists from more than passing involvement with associations dedicated to raising and protecting scientific standards. The ethics guidelines classify these professional societies as the sources of potential conflict of interest. Ironically, agency lawyers are free to participate in state bar or legal association activities but scientists have no comparable freedom.

In other instances, agency constraints on scientists are not as subtle. For example, on March 29, 2007, the Commerce Department posted a new administrative order on “Public Communications” requiring that agency climate, weather and marine scientists obtain agency pre-approval to speak or write, whether on or off-duty, concerning any scientific topic deemed “of official interest.”

This new order, which becomes effective this month, would repeal a more liberal “open science” policy adopted by the National Oceanic & Atmospheric Administration on February 14, 2006. The agency also rejected a more open policy adopted last year by the National Aeronautics and Space Administration. This new policy also was rushed to print despite an ongoing Commerce Office of Inspector General review of communication policies that was undertaken at congressional request.

Although couched in rhetoric about the need for “broad and open dissemination of research results [and] open exchange of scientific ideas,” the new order forbids agency scientists from communicating any relevant information, even if prepared and delivered on their own time as private citizens, which has not been approved by the official chain-of-command:

- Scientists must give the Commerce Department at least two weeks “advance notice” of any written, oral or audiovisual presentation prepared on their own time if it “is a matter of official interest to the Department because it relates to Department programs, policies or operations.”
- Any “fundamental research communication” must “before the communication occurs” be submitted to and approved by the designated “head of the operating unit.” While the directive states that approval may not be withheld “based on policy, budget, or management implications of the research,” it does not define these terms and limits any appeal to within Commerce; and
- It is so all-encompassing that the only exception is for National Weather Service employees who may “as part of their routine responsibilities to communicate information about the weather to the public.”

While claiming to provide clarity, the new Commerce order gives conflicting directives, on one hand telling scientists that if unsure whether a conclusion has been officially approved “then the researcher must make clear that he or she is representing his or her individual conclusion.” Yet, another part of the order states non-official communications “may not take place or be prepared during working hours.” This conflict means that every scientist who answers an unexpected question at a conference puts his or her career at risk by giving an honest answer.

The rights of non-national security agency scientists should not vary from agency to agency. Congress should ban the Commerce Department and other similar gag orders and allow federal scientists to freely communicate and argue about science.

#### **D. Strengthen Whistleblower Protections and Extend Them to Scientists**

The House of Representatives (H.R. 985) recently passed legislation that extends civil service whistleblower protection to federal scientists who report data manipulation or suppression. Enactment of that legislation would help address many of the problems discussed at this hearing.

In addition to strengthening the scope and application of federal whistleblower statutes, PEER suggests three specific steps that directly address ESA and related science:

1. Enact a Whistleblower Provision for ESA. As noted earlier, ESA lacks the type of whistleblower protection that exists in several other environmental statutes. Applying this sort of whistleblower protection to ESA (PEER would also urge application to the National Environmental Policy Act) will mean that federal scientists working on these issues would be able to do their jobs free from the prospect of reprisal for doing their jobs too well on a controversial or politically-charged issue.
2. Clarify Laws So That Federal Scientists Are Not Barred by Sovereign Immunity. Most would agree that federal agencies should not be above the law, but executive branch agencies are doing just that with respect to environmental

whistleblower laws. The re-emergence of the sovereign immunity doctrine is rooted in the argument that Congress did not explicitly indicate its intent to waive sovereign immunity. Thus, Congress could put this legal shibboleth to flight by affirmatively declaring that these laws apply to the federal government in the same manner as they apply to the private sector.

3. Legalize Federal Scientist Participation in Professional Societies. Anything that increases the transparency of agency scientific decision-making, particularly by involving knowledgeable, credible and disinterested outside specialists contributes to the factors safeguarding scientific integrity. Congress should make it explicitly clear that federal employee involvement with professional organizations dedicated to improving the quality of science is not a real or apparent conflict of interest but is just the opposite—an activity which furthers the agency mission. Congress should revive the stillborn 2005 FWS initiative on professional openness by a) directing agency ethics offices to encourage rather than discourage staff involvement in professional societies; and b) promoting, through resolution, appropriation language or other mechanism, federal participation and partnerships with outside scientific bodies.

#### **E. Put Some Teeth into the Right to Communicate with Congress**

Congress itself can also play a direct role in strengthening the scientific integrity within federal service. The threat of disclosure to Congress can deter or reverse informational distortions.

Unfortunately, the ability of federal employees to communicate with Congress is tenuous.

During the past few years there have been many instances where scientists and technical specialists have been constrained from communicating findings directly to Congress. Probably the most prominent example involved Richard Foster, the actuary for the Medicare program, who was prevented from informing Congress the pending prescription drug bill that was ultimately enacted would cost approximately \$150 billion or more than had been previously estimated.

In its examination of that case, the Congressional Research Service (CRS) opined that the restraints placed on Mr. Foster forbidding him from revealing the “true” cost estimates violated prohibitions (the “Lloyd Lafollette Acts”) against interference with communications between a federal employee and a Member of Congress. Notwithstanding that finding, CRS was silent as to what could or should be done either in that case or to prevent future violations. A review of those prohibitions shows that Congress envisioned the denial of appropriated funds to support such violations but Congress failed to provide a means for invoking that sanction. Without a way to enforce it, the law becomes merely a rhetorical prop.

PEER would suggest that Congress put some teeth in laws that safeguard its right to receive information from federal employees. Authorizing citizen suits to recover appropriated funds misused in restricting communication directly from the salaries paid to officials who violate this law would allow Members of Congress to directly enforce these laws. This somewhat personal yet public benefit remedy would allow individual suppressors of information to be judged in the bright light of day.

#### **Conclusion**

On the issue of political interference with ESA science, 1) the Science Advisor to the President; 2) the Chief Science Advisor to NMFS) and 3) and the Science Advisor to the Interior Secretary have all been conspicuously silent. Presumably, it is their jobs to take the lead in identifying and rooting out misuse of science but, in actuality, these positions function as cheerleaders and apologists.

It is precisely because political interference has become so ingrained in these two agencies, Interior and Commerce, charged with implementing ESA that a dramatic reversal will be required to purge the political content from ESA scientific findings. The first step toward pursuing this improvement is admitting the problem.

If, however, the current administration does not concede that its political intrusions have obstructed ESA, it is unlikely to seek any remedies—and that job will fall to Congress and the courts.

**ATTACHMENT I**

*The Council of Civic Associations, Inc.  
24910 Goldcrest Drive  
Bonita Springs, Florida, 34134  
(608) 238 0539*

May 9, 2007

To The House Committee on Natural Resources:

The attached report has been prepared by the Council of Civic Associations, Inc., a not-for-profit organization founded in 1996. We are affiliated with over 70 civic organizations, government liaisons and community leaders in South Florida. Our goal is to make government at all levels accountable for enforcing the laws for which they are responsible. We believe laws enacted for the benefit of all citizens are being ignored in order to benefit specific special interest groups.

The following contains excerpts from a report submitted by the Council of Civic Associations, Inc., (CCA) to the House Committee on Natural Resources on March 8, 2007. This 28-page report and attachments document the disregard for the enforcement of existing laws that has become commonplace among governmental bodies at the federal, state and local levels. It further documents the proactive marginalizing or outright silencing of governmental employees who conscientiously attempt to live up to the responsibilities of their positions.

Although the House Committee on Natural Resources May 9th hearing will focus on the implementation of the ESA, the Committee should take note that the Clean Water Act is a vital component to protecting endangered species in Florida, where there are seven endangered, species, seven threatened species and 21 species of special concern that are wetland-dependent.

At the same time, the public agencies which are charged with protecting resources are missing in action. The U.S. Environmental Protection Agency (USEPA) office in SW Florida has been closed and the West Palm Beach office has been stripped of its former authority with key staff reassigned to report to Atlanta. The Southwest Florida U.S. Fish & Wildlife Service (USFWS) ecological field office responsible for area permit review, including biological opinions has also been closed. Mr. Bubba Wade, a Sr. Vice President of U.S. Sugar, is a governing board member of the South Florida Water Management District and represents sugar interests on the Board.

As you conduct your committee's oversight activities, we would ask you to direct attention to:

1. The absence of any meaningful cumulative analysis of the scores of new developments covering thousands of acres taking place in the midst of what is universally known as some of the most sensitive wildlife habitat in the U.S., including Picayune Strand State Forest, Big Cypress National Preserve, Florida Panther National Wildlife Refuge (NWR), Ten Thousand Island NWR, Rookery Bay National Estuarine Research Reserve, J.N. Ding Darling NWR, Estero Bay Aquatic Preserve and public lands purchased with federal funding, e.g., Southern Golden Gate Estates and Fakahatchee Strand.

The slash pine forests, including hydric pine flatwoods, which are rare outside of SW Florida, have been identified as an imperiled ecosystem due to a loss of 88 percent from 1900 to 1989 (Source: Noss and Peters, 1995). Hydric pine flatwoods support 31 mammal, 139 bird, 40 reptile, 17 amphibian and 22 fish species, including 100 federally listed species, 274 migratory bird species occur in SW Florida; 175 of these are found in aquatic habitats. Of the 992 plants species found in hydric pine flatwoods, 98 species are state listed (Source: Florida Game and Fresh Water Fish Commission [Wood, 1994]).

As a FWS spokesperson stated:

"The panther represents what is left of the eco-system, a symbol of everything else that is going to disappear unless habitat is set aside."

2. The decision of the USFWS to stop issuing jeopardy biological opinions (JBOs) for any of the myriad of proposed developments destroying the tattered shreds of endangered species habitat in this region. The question your committee should answer is—what good is the ESA if the principal federal enforcement agency is scared to death to use it? Even the U.S. Army Corps of Engineers (USACE) Jacksonville District Chief Regulatory Office, Dr. John Hall (RET.), claimed in an e-mail that "the political pressure on FWS is evident to anyone who reads the records of their BO's on the panther." "In my opinion, they play politics themselves."

Some examples include—

- A FWS field biologist was told to re-write the biological opinion for Winding Cypress [permit proposal], which is located in the middle of a swamp at the headwaters of Rookery Bay National Estuarine Reserve. He was told to write the opinion with a “positive spin,” and when he refused, it was re-written for him. The developer—a major political donor—complained to his superiors. “I was told to back off under threat of insubordination.” According to the biologist, “the compensation proposed was less than the formula used at that time projected.” In a personal e-mail, the biologist commented “A lobbyist for Van Ness Feldman, and a good friend of Jay’s (former FWS Vero Beach Ecological Services director)” intervened during the deliberations on panther habitat compensation for Winding Cypress. The FWS scientist was reassigned to another state.
  - The FWS issued 58 recommendations of denial within the 1998-2001 time frame and 15 incidental taking comments. Since 2000, the FWS has issued 20 biological opinions that have permitted major destruction of panther habitat. About 16,000 acres were destroyed or degraded in 11 of these projects.
  - Facing pressure from developers and Collier County leaders, FWS shrank the panther focus area last December by nearly 900,000 acres, an area roughly the size of Rhode Island. Land is vitally important for a species that requires up to 200 square miles of territory per creature. Yet, the FWS has never issued a “jeopardy biological opinion” that would halt a development in panther habitat. There have been 40 Florida panther deaths since 2000 and 11 died last year on Florida roads. This represents arguably more than 10 percent of the panther population.” (Source: Naples Daily News).
  - The FWS is now allowing developers to partially write their own biological opinions to—speed things up—on whether their project would doom the Florida panther to extinction (St. Petersburg Press).
  - Naples Reserve, adjacent to the east boundary of Winding Cypress is the single project that FWS elevated to the Corps for permit denial. The Service request for denial went all the way to DC but was rejected by the Corps and the permit was issued.
  - The FWS is not the lone recipient of political interference on the Winding Cypress project. The CCA was informed by a reliable source that Mr. Bob Szabo of the lobbying firm, Van Ness Feldman was brought in specifically to talk to Mr. Jimmy Palmer, regional administrator, USEPA, Atlanta, regarding the project. An e-mail, from Palmer to the West Palm Beach office, dated 9/17/2002, states: “Cool your jets and focus on the status of the matter. Bob Szabo (Van Ness Feldman—Wash. D.C.) is a friend of mine who is wired tightly into some VERY high places. He (and others) are (sic) voicing concerns about how Bruce [Boler] conducts his business.” (Note: Boler was an USEPA biologist who claimed it was permitted even though it did not meet water quality criteria at the time). Boler moved to another federal agency. He claims the developers were the ones most anxious to get rid of him because he objected to the development funded report that said wetlands create pollution.
3. A plethora of biological, hydrological or other technical objections to development projects having been reversed, suppressed, diluted or otherwise obviated for reasons completely apart from technical merits of those objections.

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RECOMMENDATIONS: The following is a list of recommendations compiled by regional, state and federal regulatory sources to address some of the serious deterioration of natural resource protections in Florida:

1. Congress should request a report by an independent source, e.g., the National Academies of Science, to determine how the Nation’s only national estuary program established for preservation, the Charlotte Harbor National Estuary Program (NEP) area, had its resources so thoroughly degraded by federal actions in the ten years since it was established that it now needs a complete restoration program. EPA establishes NEPs yet during the worst of the destruction the EPA leadership remained silent. The EPA Office of Inspector General (IG) should investigate corruption at the top and how science-based information is not reported under the current leadership structure. The IG should report on the degradation that occurred since the designation of the NEP and what management reforms at the federal level are needed to ensure a restoration plan can be initiated and successfully carried out.
2. The federal government should investigate questionable land deals for Everglades Restoration, e.g., Palm Beach Aggregates and the South Florida Water District (Source: Palm Beach Post).
3. Congress must authorize the formation of an independent oversight committee to review USACE projects (McCain/Feingold legislation).

4. Congress should form an independent authority to carry out the 404 wetlands program and, in so doing, reduce the USACE role to that of a commenting agency. At the heart of the problem is a conflict of culture: the agency's role to find engineering solutions—weirs, canals, ditches, reservoirs—to accommodate the needs and impacts of growth while purporting to protect naturally functioning wetlands.

5. Congress must authorize the EPA to withdraw Florida's authority to issue NPDES discharge permits under Clean Water Act (CWA). In a press release dated August, 2003, Senator Joseph Lieberman states: "The Florida Department of Environmental Protection/South Florida Water Management Department permit and certification programs are not meeting CWA standards."

6. Congress must amend the Clean Water Act to add clarity and certainty. At the same time, Congress must develop independent oversight to remove political and special interest influence.

7. Congress must require that there is better, more streamlined communication between the agencies, whether they are federal or state. There is a long, unnecessary history of one agency not knowing (and not caring) what the other agency is doing. The result is that developers are able to play one agency against the other to the detriment of the environment.

8. Fundamentally, the CWA will only be effective if the regulatory agencies decide to embark upon meaningful enforcement of the ESA and CWA. This means that both civic and criminal enforcement must be allowed.

## Attachment II

### U.S. DEPARTMENT OF INTERIOR THE CODE OF SCIENTIFIC CONDUCT

To the best of my ability:

> I will act in the interest of the advancement of science and contribute the best, highest quality scientific information for the Department of the Interior.

> I will conduct, manage, judge, report, and communicate scientific activities and information honestly, thoroughly and without conflict of interest.

> I will be responsible for the resources entrusted to me, including equipment, employees' time, and funds. I will be accountable for the prompt and accurate collection, use, and reporting of all financial resources and transactions under my control.

> I will disclose the research methods to the local communities, Indian tribes, and other individuals whose interest and resource uses are studied; and respect the confidential and proprietary information provided by those individuals to the fullest extent permitted by law.

> I will neither hinder the scientific and information gathering activities of others nor engage in dishonesty, fraud, deceit, misrepresentation, or other scientific, research or professional misconduct.

> I will welcome constructive criticism of my scientific activities and information, participate in appropriate peer reviews, and critique others' work in a respectful manner amid objective scientific review.

> I will be diligent in the creation, use, preservation, and maintenance of collections and data records; adhere to established quality assurance and quality control programs; follow the records retention policies of the Department; and comply with Federal law and established agreements related to the use, security, and release of confidential and proprietary data.

> I will know, understand and adhere to standards of public information dissemination and the formal publication of scientific information and respect the intellectual property rights of others.

> I will be responsible in all scientific activities for both the collection and interpretation of data I collect and the integrity of conclusions I present.

> I will place quality and objectivity of scientific activities and information ahead of personal gain or allegiance to individuals or organizations.

### Response to questions submitted for the record by Jeff Ruch

#### Questions from Republican Members

##### (1) Would you agree that if you phrase a question a certain way in a survey you can get the response you are looking for?

Phrasing of survey questions affects both response rate and response pattern.

If the Republican Members are interested in ensuring that a dispassionate survey of U.S. Fish & Wildlife Service (FWS) scientists has been conducted, PEER stands ready to assist you in conducting your own survey of that cohort.

The PEER/UCS survey questions were vetted by a committee on current and former FWS employees so that each statement on the survey form reflected the precise concern being voiced by their colleagues.

Attached are that full survey and the results. Should the Republican Members have problems with the phrasing of any particular item in the survey, please do not hesitate to share it.

The essay question offered FWS employees a free form venue to vent on the issue of scientific integrity in any manner they chose. I would request that the Republican Members read the essays written by the scientists and hear the concerns directly from the horse's mouth.

**(2) What do you think of Mr. Horn's testimony where he describes making policy decisions after receiving differing scientific recommendations? Do you agree that in those cases it is necessary for a policy person to make decisions that not all scientists would agree with?**

I found Mr. Horn's testimony to be disjointed and contradictory. Mr. Horn is not a scientist but is a lobbyist for the recreational vehicle industry.

On one hand, he appeared to be saying that all ESA decisions are not based on pure science but are judgment calls and then proceeds to attack the decision to consider listing the polar bear as a "triumph of politics over science." Go figure.

As explained at the hearing, the ESA lays out a distinct role for what have been labeled "policy considerations." Otherwise, the ESA decisions are, by law, required to reflect the best available science.

An untrained "policy person" (i.e., political appointee) has no business acting as a scientific referee or peer review committee of one.

**(3) Would you agree that science is never clear cut, that two scientists could research an issue and come up with different results or opinions?**

I am not a scientist.

From my experience as a lawyer I believe that, on many issues, scientific consensus is possible and that courts frequently assess scientific evidence for purposes of determining whether a legal threshold has been met.

Conversely, there are instances where scientists interpret the same facts differently. That is precisely why proposed Administration policies restricting the speech and publication of research by federal scientists are inimical to the promotion of scientific integrity.

## Results of U.S. Fish and Wildlife Service Ecological Services Survey

### RESPONSE RATE<sup>1</sup>

	#returned/#sent	Percent Responding
National	414/1410	29.4%
Region 1	149/614	24.3%
Region 2	41/140	29.3%
Region 3 <sup>2</sup>	8/81	9.9%
Region 4	77/262	29.4%
Region 5	39/144	27.1%
Region 6	42/105	40.0%
Region 7	27/67	40.3%

### RESOURCES

1. USFWS Ecological Services has sufficient resources to adequately perform its environmental mission.<sup>3</sup>

	<input type="checkbox"/> <i>strongly agree</i>	<input type="checkbox"/> <i>agree</i>	<input type="checkbox"/> <i>don't know</i>	<input type="checkbox"/> <i>disagree</i>	<input type="checkbox"/> <i>strongly disagree</i>
<b>National</b>	<b>1.2%</b>	<b>4.8%</b>	<b>1.9%</b>	<b>40.3%</b>	<b>51.4%</b>
Management	2.6%	7.7%	0%	33.3%	56.4%
Staff	0.9%	4.3%	2.4%	41.5%	50.6%
Region 1	0.7%	2.0%	2.7%	33.6%	61.1%
Region 2	2.4%	4.9%	0%	41.5%	51.2%
Region 4	1.3%	11.7%	1.3%	50.6%	33.8%
Region 5	0%	2.6%	0%	51.3%	46.2%
Region 6	0%	4.8%	2.4%	31.0%	61.9%
Region 7	7.4%	0%	7.4%	33.3%	51.9%

<sup>1</sup> There is no return rate for management and staff breakdowns because we were unable to know the current position of each survey recipient.

<sup>2</sup> Results for Region 3 (Great Lakes Region) were not tabulated and are not included in this document due to the extremely low response rate.

<sup>3</sup> A certain percentage of responses for most questions were left blank. These figures are not included causing, in many cases, the percentages listed to equal less than 100%.

2. My office efficiently uses the resources available to it.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>15.0%</b>	<b>45.7%</b>	<b>7.7%</b>	<b>22.9%</b>	<b>8.5%</b>
Management				
30.8%	46.2%	5.1%	10.3%	7.7%
Staff				
11.3%	45.4%	8.5%	25.6%	8.8%
Region 1				
10.7%	42.3%	10.1%	25.5%	10.7%
Region 2				
12.2%	48.8%	4.9%	24.4%	9.8%
Region 4				
16.9%	39.0%	3.9%	29.9%	10.4%
Region 5				
12.8%	51.3%	15.4%	12.8%	7.7%
Region 6				
35.7%	50.0%	4.8%	7.1%	2.4%
Region 7				
18.5%	48.1%	0%	25.9%	7.4%

3. Based on the program's role in fulfilling the mission of Ecological Services, for each program listed below indicate whether the resource allocation is: *excessive*, *adequate*, *inadequate* or *don't know*.

a. Endangered Species Act

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>1.2%</b>	<b>10.6%</b>	<b>84.8%</b>	<b>3.1%</b>
Management			
0%	10.3%	88.5%	1.3%
Staff			
1.5%	10.4%	84.5%	3.7%
Region 1			
0.7%	3.4%	94.6%	1.3%
Region 2			
2.4%	14.6%	80.5%	2.4%
Region 4			
1.3%	7.8%	85.7%	3.9%
Region 5			
0%	12.8%	82.1%	5.1%
Region 6			
0%	9.5%	88.1%	2.4%
Region 7			
0%	40.7%	51.9%	7.4%

## b. Partners for Wildlife

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>1.9%</b>	<b>29.0%</b>	<b>41.5%</b>	<b>27.1%</b>
Management			
2.6%	35.9%	50.0%	11.5%
Staff			
1.8%	27.1%	40.2%	30.5%
Region 1			
0%	14.1%	49.0%	36.9%
Region 2			
0%	46.3%	36.6%	14.6%
Region 4			
2.6%	35.1%	41.6%	19.5%
Region 5			
2.6%	33.3%	53.8%	10.3%
Region 6			
0%	21.4%	28.6%	50%
Region 7			
11.1%	55.6%	14.8%	18.5%

## c. Section 404 Clean Water Act

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>0%</b>	<b>11.4%</b>	<b>60.6%</b>	<b>28.0%</b>
Management			
0%	16.7%	73.1%	10.3%
Staff			
0%	10.1%	57.9%	32.0%
Region 1			
0%	3.4%	59.7%	36.9%
Region 2			
0%	22.0%	36.6%	41.5%
Region 4			
0%	15.6%	67.5%	16.9%
Region 5			
0%	12.8%	71.8%	15.4%
Region 6			
0%	11.9%	59.5%	28.6%
Region 7			
0%	11.1%	77.8%	11.1%

## d. FWCA

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>0.2%</b>	<b>18.8%</b>	<b>44.0%</b>	<b>36.5%</b>
Management			
0%	23.1%	60.3%	16.7%
Staff			
0.3%	18.0%	40.5%	40.9%
Region 1			
0%	10.1%	44.3%	45.6%
Region 2			
0%	29.3%	22.0%	46.3%
Region 4			
0%	27.3%	44.2%	27.3%
Region 5			
0%	23.1%	53.8%	23.1%
Region 6			
2.4%	7.1%	59.5%	31.0%
Region 7			
0%	14.8%	59.3%	25.9%

## e. NEPA

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>0.7%</b>	<b>21.0%</b>	<b>48.6%</b>	<b>29.2%</b>
Management			
0%	20.5%	62.8%	16.7%
Staff			
0.9%	20.4%	46.0%	32.3%
Region 1			
1.3%	17.4%	50.3%	30.9%
Region 2			
0%	29.3%	39.0%	31.7%
Region 4			
0%	32.5%	35.1%	31.2%
Region 5			
0%	17.9%	56.4%	25.6%
Region 6			
0%	7.1%	57.1%	33.3%
Region 7			
0%	11.1%	74.1%	14.8%

## f. Contaminants

*excessive*     *adequate*     *inadequate*     *don't know*

<b>National</b>			
<b>1.7%</b>	<b>10.9%</b>	<b>60.6%</b>	<b>26.6%</b>
Management			
0%	11.5%	83.3%	5.1%
Staff			
1.8%	10.7%	55.2%	32.0%
Region 1			
0.0%	13.4%	59.1%	27.5%
Region 2			
4.9%	12.2%	51.2%	29.3%
Region 4			
0%	15.6%	53.2%	31.2%
Region 5			
0%	5.1%	76.9%	17.9%
Region 6			
2.4%	9.5%	57.1%	31.0%
Region 7			
3.7%	0%	88.9%	7.4%

**PROFESSIONALISM**

4. I feel free to openly collaborate with my scientific colleagues employed in academia or other agencies on species and habitat issues.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>25.6%</b>	<b>57.0%</b>	<b>1.7%</b>	<b>10.1%</b>	<b>4.3%</b>
Management				
38.5%	51.3%	0%	6.4%	3.8%
Staff				
22.9%	57.9%	2.1%	11.3%	4.6%
Region 1				
28.2%	55.7%	1.3%	10.1%	4.0%
Region 2				
17.1%	46.3%	2.4%	24.4%	7.3%
Region 4				
31.2%	46.8%	2.6%	13.0%	5.2%
Region 5				
28.2%	66.7%	0%	2.6%	2.6%
Region 6				
26.2%	69.0%	2.4%	2.4%	0%
Region 7				
18.5%	59.3%	0%	7.4%	7.4%

5. I am afforded appropriate time and resources to keep up with advances in my profession.  
 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
3.4%	33.3%	2.2%	44.2%	16.2%
<b>Management</b>				
1.3%	35.9%	1.3%	41.0%	19.2%
<b>Staff</b>				
4.0%	32.6%	2.4%	45.1%	15.2%
<b>Region 1</b>				
2.7%	30.2%	2.0%	46.3%	17.4%
<b>Region 2</b>				
4.9%	31.7%	4.9%	43.9%	14.6%
<b>Region 4</b>				
5.2%	35.1%	0%	42.9%	16.9%
<b>Region 5</b>				
5.1%	46.2%	2.6%	23.1%	23.1%
<b>Region 6</b>				
0%	28.6%	4.8%	54.8%	11.9%
<b>Region 7</b>				
3.7%	40.7%	0%	37.0%	14.8%

6. I am allowed to publish work in peer-reviewed scientific journals regardless of whether it adheres to agency policies and positions.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
0.7%	20.0%	53.9%	16.9%	7.0%
<b>Management</b>				
0%	26.9%	46.2%	15.4%	9.0%
<b>Staff</b>				
0.9%	18.3%	56.1%	16.8%	6.7%
<b>Region 1</b>				
0%	22.1%	55.7%	13.4%	6.0%
<b>Region 2</b>				
0%	14.6%	53.7%	24.4%	7.3%
<b>Region 4</b>				
1.3%	20.8%	51.9%	16.9%	9.1%
<b>Region 5</b>				
2.6%	12.8%	59.0%	15.4%	7.7%
<b>Region 6</b>				
0%	26.2%	57.1%	14.3%	2.4%
<b>Region 7</b>				
0%	11.1%	37.0%	37.0%	11.1%

7. I am encouraged to actively participate in scientific professional societies and organizations  
 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>6.0%</b>	<b>50.2%</b>	<b>5.8%</b>	<b>30.7%</b>	<b>6.0%</b>
Management				
6.4%	51.3%	2.6%	33.3%	3.8%
Staff				
5.8%	50.3%	6.4%	30.2%	6.4%
Region 1				
7.4%	51.7%	4.7%	28.9%	4.7%
Region 2				
2.4%	48.8%	9.8%	36.6%	2.4%
Region 4				
5.2%	39.0%	9.1%	31.2%	15.6%
Region 5				
7.7%	33.3%	5.1%	48.7%	5.1%
Region 6				
9.5%	57.1%	2.4%	26.2%	4.8%
Region 7				
3.7%	74.1%	3.7%	14.8%	0%

8. I respect the integrity and professionalism of USFWS decision makers.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>0.5%</b>	<b>32.6%</b>	<b>9.4%</b>	<b>36.0%</b>	<b>18.6%</b>
Management				
0%	44.9%	9.0%	26.9%	16.7%
Staff				
0.6%	29.9%	9.5%	38.4%	18.6%
Region 1				
0%	27.5%	10.7%	37.6%	20.1%
Region 2				
0%	19.5%	12.2%	41.5%	26.8%
Region 4				
1.3%	39.0%	6.5%	33.8%	18.2%
Region 5				
2.6%	38.5%	5.1%	41.0%	12.8%
Region 6				
0%	45.2%	7.1%	38.1%	7.1%
Region 7				
0%	22.2%	14.8%	37.0%	18.5%

## CLIMATE

9. I work in an environment of mutual trust and respect.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>8.0%</b>	<b>48.1%</b>	<b>2.7%</b>	<b>27.1%</b>	<b>12.1%</b>
Management				
3.8%	56.4%	2.6%	23.1%	10.3%
Staff				
8.8%	46.0%	2.7%	28.0%	12.5%
Region 1				
4.0%	43.6%	2.7%	34.2%	12.8%
Region 2				
12.2%	36.6%	4.9%	24.4%	22.0%
Region 4				
15.6%	41.6%	2.6%	19.5%	18.2%
Region 5				
2.6%	64.1%	2.6%	25.6%	5.1%
Region 6				
11.9%	69.0%	0%	11.9%	7.1%
Region 7				
3.7%	37.0%	3.7%	40.7%	7.4%

10. I feel that I am allowed to do my job as a scientist.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>6.8%</b>	<b>56.8%</b>	<b>3.6%</b>	<b>22.0%</b>	<b>9.9%</b>
Management				
9.0%	56.4%	5.1%	17.9%	9.0%
Staff				
6.4%	56.7%	3.4%	22.6%	10.4%
Region 1				
2.7%	58.4%	4.0%	23.5%	10.1%
Region 2				
9.8%	43.9%	2.4%	24.4%	19.5%
Region 4				
11.7%	48.1%	3.9%	27.3%	9.1%
Region 5				
5.1%	66.7%	2.6%	20.5%	5.1%
Region 6				
11.9%	69.0%	4.8%	9.5%	4.8%
Region 7				
0%	44.4%	0%	29.6%	18.5%

11. Within the agency I can openly express my concerns about the biological needs of species and habitats without fear of retaliation.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>12.6%</b>	<b>49.0%</b>	<b>7.5%</b>	<b>18.1%</b>	<b>11.6%</b>
Management				
12.8%	51.3%	5.1%	15.4%	11.5%
Staff				
12.2%	48.5%	8.2%	18.9%	11.6%
Region 1				
10.7%	51.7%	7.4%	17.4%	10.7%
Region 2				
12.2%	41.5%	9.8%	19.5%	17.1%
Region 4				
14.3%	44.2%	5.2%	16.9%	19.5%
Region 5				
7.7%	48.7%	10.3%	25.6%	7.7%
Region 6				
19.0%	50.0%	7.1%	19.0%	4.8%
Region 7				
3.7%	37.0%	11.1%	25.9%	14.8%

12. Outside the agency I can openly express my concerns about the biological needs of species and habitats without fear of retaliation.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>5.6%</b>	<b>38.4%</b>	<b>13.0%</b>	<b>29.2%</b>	<b>12.8%</b>
Management				
2.6%	48.7%	9.0%	20.5%	15.4%
Staff				
6.4%	35.4%	13.7%	31.7%	12.5%
Region 1				
5.4%	39.6%	13.4%	29.5%	10.1%
Region 2				
4.9%	29.3%	7.3%	39.0%	19.5%
Region 4				
5.2%	46.8%	13.0%	20.8%	14.3%
Region 5				
10.3%	41.0%	17.9%	20.5%	10.3%
Region 6				
2.4%	40.5%	11.9%	38.1%	7.1%
Region 7				
3.7%	3.7%	11.1%	40.7%	37.0%

**MISSION**

13. USFWS fosters a work place ethic consistent with the agency's mission to "conserve, protect and enhance fish and wildlife and their habitats for the continuing benefit of the American people."

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagrees*

<b>National</b>				
7.7%	<b>44.9%</b>	<b>6.0%</b>	<b>29.7%</b>	<b>9.9%</b>
Management				
11.5%	55.1%	3.8%	17.9%	9.0%
Staff				
6.7%	42.7%	6.4%	32.3%	10.4%
Region 1				
8.7%	39.6%	9.4%	28.9%	11.4%
Region 2				
0%	31.7%	4.9%	48.8%	14.6%
Region 4				
10.4%	46.8%	3.9%	24.7%	14.3%
Region 5				
2.6%	53.8%	7.7%	30.8%	2.6%
Region 6				
16.7%	52.4%	2.4%	23.8%	4.8%
Region 7				
0%	48.1%	7.4%	22.2%	11.1%

14. USFWS Ecological Services is acting effectively to maintain or enhance species and their habitats, so as to avoid possible listings under the Endangered Species Act.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>1.9%</b>	<b>13.3%</b>	<b>9.2%</b>	<b>52.2%</b>	<b>22.9%</b>
Management				
2.6%	17.9%	0%	61.5%	16.7%
Staff				
1.5%	12.5%	10.4%	50.9%	24.4%
Region 1				
2.7%	9.4%	10.1%	56.4%	20.8%
Region 2				
0%	12.2%	2.4%	48.8%	36.6%
Region 4				
2.6%	19.5%	9.1%	44.2%	24.7%
Region 5				
0%	5.1%	15.4%	56.4%	23.1%
Region 6				
2.4%	9.5%	4.8%	59.5%	23.8%
Region 7				
0%	29.6%	11.1%	40.7%	14.8%

15. USFWS Ecological Services is effectively accomplishing efforts toward recovery of Endangered Species Act listed species.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>1.2%</b>	<b>19.1%</b>	<b>10.1%</b>	<b>48.3%</b>	<b>20.5%</b>
<b>Management</b>				
1.3%	19.2%	7.7%	48.7%	21.8%
<b>Staff</b>				
1.2%	19.2%	10.7%	48.2%	20.1%
<b>Region 1</b>				
0.7%	13.4%	8.7%	55.0%	20.8%
<b>Region 2</b>				
0%	4.9%	0%	56.1%	39.0%
<b>Region 4</b>				
1.3%	27.3%	6.5%	42.9%	22.1%
<b>Region 5</b>				
0%	12.8%	23.1%	48.7%	15.4%
<b>Region 6</b>				
4.8%	16.7%	9.5%	52.4%	16.7%
<b>Region 7</b>				
3.7%	44.4%	22.2%	18.5%	7.4%

16. In my opinion, USFWS Ecological Services is moving in the right direction.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>0.7%</b>	<b>21.0%</b>	<b>12.8%</b>	<b>44.0%</b>	<b>20.3%</b>
<b>Management</b>				
1.3%	25.6%	17.9%	38.5%	15.4%
<b>Staff</b>				
0.6%	20.1%	11.3%	45.4%	21.3%
<b>Region 1</b>				
0.7%	16.8%	12.8%	48.3%	20.1%
<b>Region 2</b>				
0%	17.1%	9.8%	43.9%	29.3%
<b>Region 4</b>				
1.3%	32.5%	10.4%	35.1%	20.8%
<b>Region 5</b>				
0%	10.3%	15.4%	56.4%	15.4%
<b>Region 6</b>				
0%	26.2%	11.9%	38.1%	21.4%
<b>Region 7</b>				
0%	18.5%	14.8%	51.9%	11.1%

**MANAGEMENT**

17. I trust USFWS decision makers to make decisions that will protect species and habitats.  
 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>0.5%</b>	<b>20.0%</b>	<b>10.6%</b>	<b>37.7%</b>	<b>29.7%</b>
<b>Management</b>				
1.3%	34.6%	11.5%	28.2%	23.1%
<b>Staff</b>				
0.3%	16.5%	10.4%	40.2%	31.1%
<b>Region 1</b>				
1.3%	16.1%	10.7%	40.9%	29.5%
<b>Region 2</b>				
0%	9.8%	7.3%	36.6%	46.3%
<b>Region 4</b>				
0%	29.9%	10.4%	29.9%	28.6%
<b>Region 5</b>				
0%	28.2%	7.7%	35.9%	28.2%
<b>Region 6</b>				
0%	23.8%	9.5%	45.2%	21.4%
<b>Region 7</b>				
0%	11.1%	14.8%	25.9%	40.7%

18. Scientific input from Ecological Services research staff receives appropriate consideration in decisions regarding protection of species and habitats.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>3.1%</b>	<b>23.2%</b>	<b>19.3%</b>	<b>33.8%</b>	<b>18.1%</b>
<b>Management</b>				
5.1%	28.2%	19.2%	30.8%	12.8%
<b>Staff</b>				
2.7%	22.0%	18.9%	35.1%	19.5%
<b>Region 1</b>				
1.3%	20.1%	14.1%	40.3%	19.5%
<b>Region 2</b>				
4.9%	12.2%	22.0%	31.7%	29.3%
<b>Region 4</b>				
7.8%	35.1%	22.1%	19.5%	14.3%
<b>Region 5</b>				
2.6%	23.1%	28.2%	28.2%	15.4%
<b>Region 6</b>				
2.4%	33.3%	16.7%	31.0%	16.7%
<b>Region 7</b>				
0%	7.4%	14.8%	48.1%	25.9%

19. My Regional Directorate will stand up for scientific staff or supervisors who take controversial stands.

	<input type="checkbox"/> <i>strongly agree</i>	<input type="checkbox"/> <i>agree</i>	<input type="checkbox"/> <i>don't know</i>	<input type="checkbox"/> <i>disagree</i>	<input type="checkbox"/> <i>strongly disagree</i>
<b>National</b>					
<b>2.2%</b>	<b>17.6%</b>	<b>25.6%</b>	<b>30.0%</b>	<b>23.4%</b>	
Management					
2.6%	28.2%	21.8%	32.1%	15.4%	
Staff					
2.1%	15.5%	26.2%	29.0%	25.9%	
Region 1					
1.3%	16.1%	26.8%	35.6%	18.8%	
Region 2					
2.4%	7.3%	14.6%	26.8%	48.8%	
Region 4					
5.2%	19.5%	24.7%	19.5%	29.9%	
Region 5					
0%	12.8%	33.3%	35.9%	17.9%	
Region 6					
2.4%	40.5%	35.7%	14.3%	7.1%	
Region 7					
0%	7.4%	14.8%	44.4%	33.3%	

20. My office supervisor will stand up for scientific staff who take controversial stands.

	<input type="checkbox"/> <i>strongly agree</i>	<input type="checkbox"/> <i>agree</i>	<input type="checkbox"/> <i>don't know</i>	<input type="checkbox"/> <i>disagree</i>	<input type="checkbox"/> <i>strongly disagree</i>
<b>National</b>					
<b>13.3%</b>	<b>43.0%</b>	<b>13.0%</b>	<b>14.5%</b>	<b>14.7%</b>	
Management					
15.4%	53.8%	11.5%	9.0%	7.7%	
Staff					
12.8%	40.2%	13.4%	16.2%	16.5%	
Region 1					
4.7%	36.2%	20.1%	20.1%	17.4%	
Region 2					
9.8%	39.0%	4.9%	12.2%	31.7%	
Region 4					
19.5%	35.1%	6.5%	13.0%	23.4%	
Region 5					
20.5%	56.4%	7.7%	10.3%	5.1%	
Region 6					
26.2%	59.5%	11.9%	2.4%	0%	
Region 7					
22.2%	48.1%	7.4%	18.5%	3.7%	

**CANDOR**

21. USFWS routinely provides complete and accurate information to the public on ESA issues.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>6.5%</b>	<b>42.5%</b>	<b>19.8%</b>	<b>23.2%</b>	<b>7.5%</b>
Management				
9.0%	44.9%	14.1%	17.9%	14.1%
Staff				
5.8%	42.7%	20.4%	24.4%	6.1%
Region 1				
6.0%	45.6%	14.8%	25.5%	8.1%
Region 2				
2.4%	31.7%	24.4%	26.8%	14.6%
Region 4				
6.5%	49.4%	15.6%	19.5%	9.1%
Region 5				
5.1%	30.8%	41.0%	17.9%	5.1%
Region 6				
14.3%	42.9%	9.5%	31.0%	2.4%
Region 7				
7.4%	33.3%	29.6%	18.5%	7.4%

22. USFWS technical information is easily accessible to interested members of the public.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>4.1%</b>	<b>48.3%</b>	<b>22.2%</b>	<b>21.3%</b>	<b>3.4%</b>
Management				
6.4%	56.4%	16.7%	17.9%	2.6%
Staff				
3.4%	46.0%	23.5%	22.6%	3.7%
Region 1				
2.7%	45.0%	26.2%	23.5%	2.7%
Region 2				
4.9%	58.5%	17.1%	14.6%	4.9%
Region 4				
3.9%	42.9%	29.9%	15.6%	6.5%
Region 5				
5.1%	48.7%	23.1%	20.5%	2.6%
Region 6				
11.9%	64.3%	9.5%	14.3%	0%
Region 7				
0%	48.1%	14.8%	20.6%	2.7%

23. I have been directed by USFWS decision makers to provide incomplete, inaccurate or misleading information to the public, media or elected officials.

frequently  occasionally  seldom  never  not applicable

<b>National</b>				
1.4%	7.7%	9.4%	68.1%	11.8%
Management				
0%	9.0%	14.1%	74.4%	2.6%
Staff				
1.8%	7.6%	8.5%	66.8%	13.4%
Region 1				
2.0%	7.4%	13.4%	65.1%	11.4%
Region 2				
0%	19.5%	4.9%	61.0%	12.2%
Region 4				
3.9%	7.8%	3.9%	70.1%	11.7%
Region 5				
0%	2.6%	12.8%	69.2%	15.4%
Region 6				
0%	4.8%	9.5%	71.4%	14.3%
Region 7				
0%	11.1%	14.8%	63.0%	7.4%

#### SCIENTIFIC INTEGRITY.

24. In my experience, scientific documents generally reflect technically rigorous evaluations of impacts to listed species and associated habitats.

strongly agree  agree  don't know  disagree  strongly disagree

<b>National</b>				
7.5%	54.3%	13.8%	18.1%	4.3%
Management				
10.3%	60.3%	10.3%	11.5%	3.8%
Staff				
7.0%	53.4%	14.3%	19.5%	4.6%
Region 1				
5.4%	52.3%	11.4%	24.2%	4.0%
Region 2				
2.4%	51.2%	14.6%	29.3%	2.4%
Region 4				
6.5%	50.6%	13.0%	19.5%	9.1%
Region 5				
7.7%	59.0%	23.1%	7.7%	2.6%
Region 6				
19.0%	57.1%	7.1%	11.9%	2.4%
Region 7				
7.4%	63.0%	18.5%	3.7%	3.7%

25. USFWS strives to substantially incorporate independent peer review in formulating and validating scientific findings.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>7.7%</b>	<b>52.2%</b>	<b>16.4%</b>	<b>18.8%</b>	<b>3.6%</b>
<b>Management</b>				
11.5%	64.1%	6.4%	15.4%	0%
<b>Staff</b>				
6.7%	50.0%	18.3%	19.8%	4.6%
<b>Region 1</b>				
8.7%	55.0%	12.8%	19.5%	3.4%
<b>Region 2</b>				
4.9%	56.1%	7.3%	29.3%	2.4%
<b>Region 4</b>				
1.3%	45.5%	24.7%	19.5%	6.5%
<b>Region 5</b>				
5.1%	51.3%	25.6%	10.3%	7.7%
<b>Region 6</b>				
19.0%	59.5%	7.1%	11.9%	2.4%
<b>Region 7</b>				
7.4%	63.0%	14.8%	11.1%	0%

26. I have been directed to inappropriately exclude or alter technical information from a USFWS scientific document.

*frequently*     *occasionally*     *seldom*     *never*     *not applicable*

<b>National</b>				
<b>2.2%</b>	<b>8.9%</b>	<b>9.2%</b>	<b>68.8%</b>	<b>10.4%</b>
<b>Management</b>				
2.6%	12.8%	9.0%	71.8%	3.8%
<b>Staff</b>				
2.1%	8.2%	9.1%	68.3%	11.9%
<b>Region 1</b>				
2.7%	6.0%	12.1%	67.8%	11.4%
<b>Region 2</b>				
0%	19.5%	9.8%	68.3%	2.4%
<b>Region 4</b>				
3.9%	6.5%	7.8%	70.1%	10.4%
<b>Region 5</b>				
2.6%	7.7%	10.3%	69.2%	10.3%
<b>Region 6</b>				
0%	11.9%	4.8%	73.8%	9.5%
<b>Region 7</b>				
3.7%	14.8%	7.4%	59.3%	14.8%

27. I have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.

frequently  occasionally  seldom  never  not applicable

<b>National</b>				
<b>3.6%</b>	<b>14.0%</b>	<b>13.3%</b>	<b>39.4%</b>	<b>29.2%</b>
<b>Management</b>				
5.1%	11.5%	14.1%	48.7%	20.5%
<b>Staff</b>				
3.4%	14.9%	13.1%	37.2%	31.1%
<b>Region 1</b>				
2.0%	12.1%	14.1%	46.3%	25.5%
<b>Region 2</b>				
7.3%	26.8%	12.2%	24.4%	29.3%
<b>Region 4</b>				
6.5%	15.6%	14.3%	42.9%	19.5%
<b>Region 5</b>				
5.1%	7.7%	10.3%	33.3%	43.6%
<b>Region 6</b>				
0%	9.5%	21.4%	54.8%	14.3%
<b>Region 7</b>				
3.7%	18.5%	14.8%	14.8%	48.1%

28. As a norm, USFWS scientific documents and reports rely upon the best available science.

strongly agree  agree  don't know  disagree  strongly disagree

<b>National</b>				
<b>15.0%</b>	<b>60.1%</b>	<b>9.2%</b>	<b>11.6%</b>	<b>2.9%</b>
<b>Management</b>				
21.8%	61.5%	3.8%	9.0%	2.6%
<b>Staff</b>				
13.1%	60.1%	10.4%	12.5%	3.0%
<b>Region 1</b>				
16.1%	59.1%	8.7%	11.4%	4.0%
<b>Region 2</b>				
7.3%	46.3%	12.2%	31.7%	2.4%
<b>Region 4</b>				
15.6%	59.7%	3.9%	14.3%	5.2%
<b>Region 5</b>				
10.3%	69.2%	15.4%	2.6%	2.6%
<b>Region 6</b>				
21.4%	59.5%	9.5%	7.1%	0%
<b>Region 7</b>				
11.1%	66.7%	11.1%	7.4%	0%

**POLITICAL INFLUENCE**

29. I know of cases where U.S. Department of Interior political appointees have injected themselves into Ecological Services determinations.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>43.2%</b>	<b>30.0%</b>	<b>22.9%</b>	<b>2.7%</b>	<b>0.5%</b>
Management				
51.3%	37.2%	10.3%	0%	0%
Staff				
41.8%	28.4%	25.6%	3.4%	0.6%
Region 1				
53.7%	27.5%	17.4%	0.7%	0%
Region 2				
36.6%	34.1%	29.3%	0%	0%
Region 4				
20.8%	31.2%	42.9%	2.6%	1.3%
Region 5				
38.5%	33.3%	20.5%	5.1%	2.6%
Region 6				
57.1%	26.2%	14.3%	2.4%	0%
Region 7				
66.7%	29.6%	0%	3.7%	0%

30. I know of cases where political appointees from other federal departments or agencies (for example, OMB, CEQ, USDA, DOD) have injected themselves into Ecological Services determinations.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>21.3%</b>	<b>21.0%</b>	<b>51.0%</b>	<b>5.3%</b>	<b>0.7%</b>
Management				
29.5%	23.1%	41.0%	3.8%	1.3%
Staff				
19.8%	20.4%	53.0%	5.8%	0.6%
Region 1				
20.1%	24.2%	53.0%	2.0%	0%
Region 2				
17.1%	26.8%	51.2%	4.9%	0%
Region 4				
18.2%	16.9%	54.5%	7.8%	1.3%
Region 5				
25.6%	15.4%	48.7%	5.1%	5.1%
Region 6				
31.0%	19.0%	45.2%	4.8%	0%
Region 7				
33.3%	22.2%	37.0%	7.4%	0%

31. I know of cases where members of Congress have injected themselves into Ecological Services determinations.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>26.3%</b>	<b>28.0%</b>	<b>40.3%</b>	<b>3.9%</b>	<b>0.7 %</b>
<b>Management</b>				
29.5%	24.4%	33.3%	9.0%	2.6%
<b>Staff</b>				
25.9%	28.7%	42.1%	2.7%	0.3%
<b>Region 1</b>				
28.2%	26.8%	42.3%	2.0%	0%
<b>Region 2</b>				
29.3%	29.3%	34.1%	4.9%	2.4%
<b>Region 4</b>				
22.1%	28.6%	42.9%	5.2%	0%
<b>Region 5</b>				
23.1%	30.8%	41.0%	0%	5.1%
<b>Region 6</b>				
21.4%	28.6%	42.9%	7.1%	0%
<b>Region 7</b>				
37.0%	29.6%	25.9%	7.4%	0%

32. I know of cases where state, tribal or local governments/elected officials have injected themselves into Ecological Services determinations.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
<b>23.7%</b>	<b>31.9%</b>	<b>37.0%</b>	<b>6.3%</b>	<b>0.5 %</b>
<b>Management</b>				
24.4%	29.5%	34.6%	9.0%	1.3%
<b>Staff</b>				
23.8%	32.6%	37.2%	5.8%	0.3%
<b>Region 1</b>				
26.2%	31.5%	37.6%	4.0%	0%
<b>Region 2</b>				
34.1%	26.8%	36.6%	2.4%	0%
<b>Region 4</b>				
20.8%	31.2%	39.0%	7.8%	0%
<b>Region 5</b>				
25.6%	23.1%	46.2%	0%	5.1%
<b>Region 6</b>				
19.0%	40.5%	26.2%	11.9%	0%
<b>Region 7</b>				
22.2%	44.4%	22.2%	11.1%	0%

33. I know of cases where commercial interests have inappropriately induced the reversal or withdrawal of USFWS scientific conclusions or decisions through political intervention.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
	<b>25.4%</b>	<b>30.9%</b>	<b>36.2%</b>	<b>5.6%</b>
<b>Management</b>				
	26.9%	34.6%	7.7%	1.3%
<b>Staff</b>				
	25.3%	32.3%	36.0%	5.2%
<b>Region 1</b>				
	26.2%	30.2%	38.3%	4.7%
<b>Region 2</b>				
	34.1%	31.7%	29.3%	2.4%
<b>Region 4</b>				
	18.2%	31.2%	39.0%	6.5%
<b>Region 5</b>				
	33.3%	41.0%	23.1%	0%
<b>Region 6</b>				
	21.4%	28.6%	38.1%	9.5%
<b>Region 7</b>				
	33.3%	33.3%	29.6%	3.7%
				0%

34. Political influence on Ecological Services determinations is balanced between influence from commercial/economic interests and influence from environmental/conservation interests.

*strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
	<b>3.9%</b>	<b>18.8%</b>	<b>21.3%</b>	<b>32.9%</b>
<b>Management</b>				
	3.8%	25.6%	16.7%	29.5%
<b>Staff</b>				
	4.0%	17.1%	22.0%	34.1%
<b>Region 1</b>				
	3.4%	12.8%	18.8%	36.2%
<b>Region 2</b>				
	2.4%	22.0%	12.2%	41.5%
<b>Region 4</b>				
	1.3%	35.1%	28.6%	23.4%
<b>Region 5</b>				
	7.7%	10.3%	20.5%	38.5%
<b>Region 6</b>				
	4.8%	23.8%	19.0%	28.6%
<b>Region 7</b>				
	7.4%	7.4%	11.1%	40.7%
				33.3%

## JOB SATISFACTION

35. I would recommend that young scientists consider USFWS Ecological Services as a career.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
14.3%	45.7%	9.7%	21.3%	7.7%
<b>Management</b>				
20.5%	48.7%	7.7%	16.7%	5.1%
<b>Staff</b>				
12.8%	45.4%	10.1%	22.3%	8.2%
<b>Region 1</b>				
12.8%	44.3%	12.8%	19.5%	8.7%
<b>Region 2</b>				
9.8%	43.9%	12.2%	26.8%	7.3%
<b>Region 4</b>				
16.9%	49.4%	3.9%	20.8%	6.5%
<b>Region 5</b>				
15.4%	59.0%	5.1%	10.3%	10.3%
<b>Region 6</b>				
19.0%	40.5%	14.3%	23.8%	0%
<b>Region 7</b>				
7.4%	22.2%	18.5%	33.3%	18.5%

36. My personal job satisfaction at Ecological Services has increased over the past few years.

 *strongly agree*     *agree*     *don't know*     *disagree*     *strongly disagree*

<b>National</b>				
4.3%	25.1%	7.5%	36.7%	24.4%
<b>Management</b>				
5.1%	24.4%	7.7%	34.6%	24.4%
<b>Staff</b>				
4.0%	24.7%	7.6%	37.8%	24.7%
<b>Region 1</b>				
2.0%	20.1%	10.1%	37.6%	27.5%
<b>Region 2</b>				
7.3%	31.7%	4.9%	34.1%	22.0%
<b>Region 4</b>				
3.9%	33.8%	3.9%	40.3%	15.6%
<b>Region 5</b>				
5.1%	38.5%	2.6%	33.3%	20.5%
<b>Region 6</b>				
2.4%	23.8%	9.5%	47.6%	14.3%
<b>Region 7</b>				
0%	11.1%	14.8%	22.2%	51.9%

37. I feel that Ecological Services values my professional expertise and applies it to achieve the greatest scientific benefit to agency decisions.

	<input type="checkbox"/> <i>strongly agree</i>	<input type="checkbox"/> <i>agree</i>	<input type="checkbox"/> <i>don't know</i>	<input type="checkbox"/> <i>disagree</i>	<input type="checkbox"/> <i>strongly disagree</i>
<b>National</b>	<b>6.3%</b>	<b>47.6%</b>	<b>9.7%</b>	<b>23.4%</b>	<b>12.1%</b>
Management	10.3%	53.8%	10.3%	15.4%	10.3%
Staff	5.2%	46.0%	9.8%	25.3%	12.8%
Region 1	4.7%	45.6%	8.7%	25.5%	13.4%
Region 2	7.3%	36.6%	19.5%	17.1%	19.5%
Region 4	7.8%	48.1%	5.2%	23.4%	14.3%
Region 5	10.3%	46.2%	10.3%	25.6%	7.7%
Region 6	9.5%	69.0%	9.5%	7.1%	4.8%
Region 7	0%	37.0%	11.1%	37.0%	14.8%

38. Ecological Services offers opportunity for advancement based on scientific expertise, not just on administrative and supervisory expertise.<sup>4</sup>

	<input type="checkbox"/> <i>strongly agree</i>	<input type="checkbox"/> <i>agree</i>	<input type="checkbox"/> <i>don't know</i>	<input type="checkbox"/> <i>disagree</i>	<input type="checkbox"/> <i>strongly disagree</i>
<b>National</b>	<b>0.5%</b>	<b>22.0%</b>	<b>3.9%</b>	<b>29.7%</b>	<b>10.1%</b>
Management	1.3%	32.1%	0%	16.7%	9.0%
Staff	0.3%	19.5%	4.9%	33.2%	10.7%
Region 1	0%	18.1%	5.4%	26.8%	12.1%
Region 2	0%	24.4%	0%	39.0%	9.8%
Region 4	1.3%	19.5%	6.5%	32.5%	5.2%
Region 5	0%	12.8%	2.6%	33.3%	15.4%
Region 6	0%	35.7%	0%	19.0%	9.5%
Region 7	0%	33.3%	0%	33.3%	7.4%

<sup>4</sup> Nearly 33% of responses to this question were blank due to an error in the survey document – no answer choices.

## 39. Morale within Ecological Services is:

	<input type="checkbox"/> excellent	<input type="checkbox"/> good	<input type="checkbox"/> fair	<input type="checkbox"/> poor	<input type="checkbox"/> extremely poor	<input type="checkbox"/> don't know
<b>National</b>	<b>0.5%</b>	<b>11.6%</b>	<b>34.5%</b>	<b>30.4%</b>	<b>19.6%</b>	<b>1.4%</b>
Management	1.3%	12.8%	42.3%	30.8%	11.5%	1.3%
Staff	0.3%	11.6%	32.3%	30.5%	22.0%	1.5%
Region 1	0.7%	8.1%	31.5%	32.9%	22.8%	1.3%
Region 2	0%	9.8%	39.0%	26.8%	24.4%	0%
Region 4	1.3%	23.4%	33.8%	22.1%	15.6%	1.3%
Region 5	0%	12.8%	33.3%	35.9%	12.8%	2.6%
Region 6	0%	9.5%	38.1%	33.3%	11.9%	4.8%
Region 7	0%	0%	29.6%	37.0%	33.3%	0%

## 40. My current position at USFWS is:

<input type="checkbox"/> Management/Supervisory	<input type="checkbox"/> Non-Supervisory/Staff
<b>National</b>	<b>18.8%</b>
Management	100%
Staff	0%
Region 1	16.1%
Region 2	29.3%
Region 4	13.0%
Region 5	25.6%
Region 6	26.2%
Region 7	33.3%

41. My current grade level is:

 7                       9-12                       13-15

National		
1.7%	80.0%	16.2%
Management		
0%	32.1%	67.9%
Staff		
2.1%	92.4%	4.0%
Region 1		
1.3%	82.6%	13.4%
Region 2		
0%	78.0%	22.0%
Region 4		
1.3%	76.6%	19.5%
Region 5		
2.6%	79.5%	12.8%
Region 6		
0%	78.6%	21.4%
Region 7		
0%	77.8%	22.2%

42. The integrity of the scientific work produced by USFWS Ecological Services could best be improved by:

Essay Response

No Response

Essay Response	No Response
<b>National</b>	
66.9%	33.1%
Management	
71.8%	28.2%
Staff	
65.5%	34.5%
Region 1	
75.8%	24.2%
Region 2	
58.5%	41.5%
Region 4	
57.1%	42.9%
Region 5	
76.9%	23.1%
Region 6	
64.3%	35.7%
Region 7	
70.4%	29.6%

### Results of 2005 USFWS Ecological Services Survey

Below are essay responses to the following survey question:

42. *The integrity of the scientific work produced by USFWS Ecological Services could best be improved by:*

This is a sample of some of the most compelling or representative answers from each region. The essay responses are sorted according to region, Region 1 through Region 7, ending with responses for which the region is unknown (due to missing postal stamp on return envelope). Within each region the responses are displayed according to one of eleven popular topics or miscellaneous (category twelve). Each response is preceded by a code indicating several things about that particular respondent. The code is: survey number assigned by PEER—region—state—manager (M) or staff (S).

Please let me know if you have any questions about this information.

#### REGION 1 (Pacific: CA, NV, ID, OR, WA, HI)

#### I: Removing politics/political influence over scientific decisions

414-R1-OR-M

Removal of Julie McDonald from Dept of Interior. I have never before seen the boldness of intimidation demonstrated by a single political appointee. She has modified the behavior of the entire agency.

I believe there should be a through investigation of her abuse of discretionary authority and modification of science information provided in FWS documents.

407-R1-CA-S

The biological determinations of the field offices should not be ignored and overridden by non-biologists in the Interior. If they must override field office biological determinations they should do so early in the process rather than at the last minute.

405-R1-NV-S

Exposing interference at the department level (Julie MacDonald)

004-R1-CA-S

Staying true to biological analyses regardless of the political climate.

013-R1-ID-S

Reducing the influence of employees in the assistant secretary of Interiors office on field office decisions.

014-R1-ID-S

I do not know if improvement is possible in this political climate. I have been through the reversal of two listing decisions due to political pressure. Science was ignored—and worse manipulated to build a bogus set of rationale for reversal of these listing decisions. I have very little hope for any improvement—and I fear that the current trend of political meddling will only worsen in the next four years.

019-R1-NV-S

I have never seen so many findings and recommendations by the field be turned around at the regional and Washington level. All we can do at the field level is ensure that our administration record is complete and hope we get sued by an environmental or conservation organization.

028-R1-HI-S

It is wrong that non-scientists take our work and use only the parts of it they like and cut out the rest.

036-R1-ID-S

Removing the politics from supposed “Scientifically-based” decisions. At least tell the public the decisions are based on policy and don’t try to hide behind science.

038-R1-CA-S

There needs to be a fire wall between political appointees in the Dept of the Interior and FWS so that we can produce rules and reports without political interference

040-R1-HI-S

Remove politics from the process. Everyone is afraid to make any decisions or conduct any action that would be views as controversial. Biologists on the bottom just try to keep their heads down and stay out of trouble. They have absolutely no power. All they can do is write memos to the files defending their positions that only come to light if the files get FOIA’d. The process really is broken, but not in the ways discussed by politicians and the press.

042-R1-WA-S

Dept of Interior is making substantial changes to the Ecological Services related decision with no scientific analysis or basis.

045-R1-CA-S

Figuring out a way to reduce political influence on decisions, Interference from politicians and commercial interests undermine successful implementations of the Act. Those people with power defiantly get more advantageous BOs and receive priority in processing.

056-R1-WA-S

The Dept. of the Interior should be using the scientific information generated by FWS ecological services staff and making decisions based on science and not on political agendas of the current administration.

057-R1-WA-S

Only do those things if we are committed to making science-based rather than political-based decisions. No sense in making science more credible if we have no intention of using science in the decision-making process.

060-R1-OR-S

Keeping politics out of our staff work and working from a collaborative and objective point.

061-R1-WA-S

Separating scientific findings from management decisions that are not based solely in science.

066-R1-WA-S

Allowing USFWS scientists to make decisions, rather than having them dictated by the DOI.

075-R1-OR-M

If the DOI would allow FWS to determine or resolve issues using scientific and other information, without interference during the development of studies and documents. There are a number of cases in Region 1 where DOI managers such as Manson have called biologists in the field offices or even at home to question work, thus [averting] the entire FWS structure and process.

079-R1-CA-M

Reducing or eliminating interference from DOI political appointees (Craig Manson, etc.) and their special assistants (especially Julie MacDonald).

084-R1-WA-M

Removing political appointees from USFWS science determinations,

098-R1-OR-S

Taking politics out of the decision making process.

100-R1-ID-S

Less direct involvement by DOI, minimize DOI changes to FWS Federal Register publications.

102-R1-NV-S

Do not mix politics with biology.

104-R1-ID-S

Making decisions based on the best current science.

107-R1-OR-S

Doing work based on science rather than political commercial interests and direction. We are not allowed to be honest and forthright, we are expected to rubber stamp everything. I have 20 years of federal service in this and this is the worst it has ever been.

108-R1-NV-S

Relieving managers and supervisors from the pressures of political influence.

111-R1-CA-S

Stop letting the BIA lawyer Julie MacDonald rewrite USFWS documents with no factual support.

112-R1-WA-S

USFWS is getting quite a bit of pressure from the DOI these days and most bios I know expect that pressure level to increase over the next four years. The Biologists I know who deal with controversial ESA issues are striving to maintain a good administrative record of the recommendations that are brought forth to management. So that they can provide that documentation if needed. It appears that at the DOI level, politics comes into place and sometimes trumps science.

113-R1-HI-S

Removal of political influence at higher levels.

116-R1-OR-S

Support for conservation plans that allow time to actually go into effect rather than changing or doing away with them as a result of politics. In general, let science and not politics dictate decisions more.

118-R1-CA-S

Not allowing political influence to drive the decision making process.

126-R1-HI-M

Biologists being able to write their documents with our changes because of politics and concern about upsetting some group. Just let us do our jobs and don't tell us we don't know how to write valid scientific documents because we do. That's what we were hired to do in the first place.

129-R1-CA-S

Not allowing DOI to override a scientifically sound federal register rule-making decision.

132-R1-WA-S

Science not politics.

137-R1-CA-S

Keeping politics out of biological decision making.

## **II: Increasing funding or resources**

004-R1-CA-S

Provide technical staff with sufficient resources (bucks, bodies and brains) to get the best possible product out.

040-R1-HI-S

Dramatically increase funding and permanent staff.

032-R1-CA-S

Allowing for more staff to complete the mission of the FWS. More staffing would improve the turnaround time on projects and allow staff to address litigious workload. Increase turnaround time would improve the public perception of FWS.

020-R1-CA-M

Several important projects have and are under funded. Good science takes time. More time requires more funding. Additional staff can improve time deadlines-more staff requires more funding. The balance between a well done project and making a deadline is funding.

028-R1-HI-S

We are also terribly under funded by the Bush Administration. We are putting out fires and have no funds to do the real work of recovery, implementing recovery actions or doing proactive conservation.

045-R1-CA-S

Finding needs to be increased drastically; not cute. And you can't recover species we don't invest some serious dollars into recovery and reduce some of the threats.

046-R1-WA-S

A budget increase to fund more technical staff and distribute large workload.

053-R1-WA-S

More resources and staff, we are overworked which leads to poor morale and poor work performance. The resources are suffering because ES can't do the job adequately.

101-R1-CA

Appropriations that meet work-load demands.

111-R1-CA-S

Hire more biologists to do all the work we are swamped with. We cannot turn out good documents in the time allotted with current staff levels.

113-R1-HI-S

Substantially increase funding.

118-R1-CA-S

Fully funding ecological services in order to proactively deal with issues, instead of constantly reacting

127-R1-ID-M

Improved funding for research specific to the work of ecological services. Sufficient staffs to thoroughly manage interpret and integrate scientific information.

### **III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

062-R1-WA-S

Financial support for staff to participate in professional societies and training.

114-R1-WA-S

More time to do research and more time to attend scientific meetings. More time to publish; now I can't do anything but crank out biological opinions.

118-R1-CA-S

Allowing scientists to fully keep abreast of the most recent science literature.

122-R1-HI-S

Allowing biologists time to keep up with the scientific advances in the field and time to use scientific techniques in conducting their work. Also providing them with real opportunities for career advancement based on scientific expertise, not supervisory.

124-R1-WA-S

Having the financial resources to keep up with scientific developments (i.e., modeling, quantitative process) that we could incorporate into our analysis.

132-R1-WA-S

Increased training and professional development

138-R1-OR-S

Assuring that ES staff are given opportunities to receive appropriate training, attend scientific conventions and participate in or conduct science research.

### **IV: Improving the quality of FWS management.**

410-R1-OR-S

I think the service is being set up for a hall that is now being directed from within. Reduced funding for "white hot" programs (Partners, Jobs in the Woods), management changes to proposed recovering plans to make ESA look like a terrible program, and agreement by new appointees that "ESA should be changed".

012-R1-ID-S

Empowerment of staff biologists with funds to be directed to the projects they are working on. The model for this is the Partners Program and Candidate Species Program.

041-R1-WA-S

Hiring properly trained supervisors who have a background in species conservation as well as business administration and supervision.

082-R1-ID-M

Hiring management that has experience and interests in conservation. Don't know how this can be accomplished as much of our management in the last four years has been appointed or removed outside the normal hiring practices.

094-R1-CA-S

Careful consideration of filling vacancies and promotions to place competent, qualified people as supervisors and mid-level management. There is way too much cronyism and nepotism placing "friends" in higher grade positions that could have been filled by new blood off the list.

099-R1-OR-S

More financial resources to have enough staff time to adequately research, review and assess impacts to our trust resources.

104-R1-ID-S

Supervisors managing biologists should have a biology background.

115-R1-WA-S

Making sure supervisors and coordinators who review ESA and section 7 consultations actually know the law and our handbook for implementing it (send them to mandatory training).

Foster an atmosphere where supervisors and coordinators don't seem to flourish by keeping a low profile instead encourage risk taking (when reasonable) and confidence and don't be afraid to make politically unpopular decisions

125-R1-HI-S

Providing strong leadership in the USFWS from the top down. The message we are receiving from the current administration is that our agency is not important.

132-R1-WA-S

Continued development of meaningful partnerships

137-R1-CA-S

You need to recognize that what goes on in field offices can often approach the ideal of what FWS mission is-but as it goes up the chain getting closer to DOI, this ideal becomes lost in career/ego protection for those in executive service.

#### **V: Restoring the research arm to FWS (now with USGS)**

057-R1-WA-S

Give us back our research branch. Improve and encourage training and peer conferences.

084-R1-WA-M

Return of Biological Research Branch to the USFWS (away from the USGS).

124-R1-WA-S

Recombining with USGS biological Resources Division.

133-R1-OR-M

Bring back our research agency.

#### **VI: Restoring the conservation ethic to FWS.**

411-R1-WA-S

I am discouraged that no matter what the project, somehow we will ok it. We have to. We cannot stop a project.

409-R1-WA-

Slowing advancements past GS-12 without supervising, based on proven scientific publishing's in peer-reviews journals.

002-R1-CA-S

FWS could actually follow the law and implement regulations. Stop making excuses to the public, developers and politicians for doing their job.

017-R1-OR-S

Emphasizing habitat needs for fish and wildlife above partnering or political agenda. The USFWS can be proud of its history and those leaders who shaped the high standards on refuges, migratory protection and development of the ESA. The service needs to proudly defend the existing FWS institutions and Acts and continue to recover habitat.

019-R1-NV-S

It is the unwillingness of decisions makers to do the right thing for the resource. At the field level, my supervisor is faithful to the resources but is frequently told to back off from the regional office and DC.

025-R1-ID-S

By Balancing development concerns (short term) with long term sustainability.

041-R1-WA-S

Giving nationwide guidance and policy on section 7 procedures that emphasize and explain the portion of the regulations giving “the benefit of the doubt to the species.” Giving standardized trainings on section 7 procedures so all will implement it correctly.

043-R1-CA-S

Reducing retaliatory reprisals from management for doing complete assessments.

044-R1-WA-S

Full support by immediate supervisors and management to “err on the side of the resources” rather than with the project proposals.

069-R1-WA-S

Things can be improved by having an administration in Washington, D.C. that supports what we do.

080-R1-CA-S

Upper management seems to have no backbone when it comes to upholding the ESA.

117-R1-WA-S

An administration that values conservation that supports environmental laws enacted by congress that balances issues of public vs. commercial interests.

122-R1-HI-S

USFWS appears to value science rigor, but does not reward their staff for their scientific expertise. I personally feel I have very little opportunity for career advancement within FWS beyond my current level (GS-12), despite carrying out extensive research on my own time and publishing numerous scientific papers. I have reached the end of the line and am wondering if I mistakenly gave up my scientific career.

129-R1-CA-S

Focusing more attention on relationship with other state and public agencies, groups and offices.

137-R1-CA-S

Recognizing that we are beyond “striking a balance” because we are dealing with threatened and endangered species—already out of balance. To balance need to lean more on the side of conservation.

**VII: Increasing the transparency of scientific decisions, through, for example, peer review.**

018-R1-WA-S

Allowing the science basis for decisions to be clear and available to the public

027-R1-CA-S

Please look closely at what is happening to the Recovery Implementation money. In our office about one tenth of the money makes it to the Recovery Branch and about one quarter of that makes it to recovery implementation—in spite of the fact that contracts are lined up for spending the money on recovery. Where does the rest of the money go? Is this happening in other offices?

029-R1-HI-S

For conservation to be effective, we need society to better understand the negative ramifications of global habitat destruction and degradations. We know enough

Now to know we need to reverse these trends but society ignores it.

062-R1-WA-S

More active role in conservation of non-listed species-> FWCA

067-R1-CA-S

We are also often at the mercy of peer-reviewed academic science, which generally sucks.

084-R1-WA-M

Improved use of external peer review.

088-R1-NV-S

Increased coordination between USFWS Fisheries and the USFWS Ecological Services.

090-R1-ID-S

Internal steps to increase peer review and transparency in general.

091-R1-ID-S

Greater transparency in justification for making biological decisions. More public awareness of the decision making process.

101-R1-CA

Getting rid of critical habitat would be big help. It is too big of a drain on resources fro real little value.

117-R1-WA-S

What I have seen in the last 4 years is an increase in bureaucratic red tape, mindless administrative tasks, overturning of science-based decisions with our really making those decisions transparent to the public.

**VIII: Decreasing control of contractors and client agencies over scientific conclusions.**

411-R1-WA-S

Working with most (not all) tribes is a problem. They know that if they grumble long enough-that political pressure will ease restrictions.

408-R1-CA-M

We're becoming a third world country in that our resources can be bought by commercial interest, no matter what the law.

013-R1-ID-S

I feel some of the change toward involving public and stake holders has improved the quality of our recovery planning documents.

074-R1-OR-S

Producing scientific work. Not by using other agencies' scientific research.

135-R1-CA-S

By having our entire budget come directly to the Service and not through another agency such as BOR. When parts of our budget come through BOR (Bureau of Reclamation) the only items that receive attention are those of interest to BOR and their political friends.

136-R1-CA-S

Focusing on conservation strategies first and deadline second.

**X: Settling or changing the role of lawsuits.**

008-R1-OR-S

If the environmental groups stopped suing us and imposing ridiculous timeframes to make listing and critical habitat determinations. We are not given enough time or funding to evaluate and make scientific decisions because of court determined deadlines which, is counter productive to the environmentalist goals of protecting species.

060-R1-OR-S

Getting back to the spirit of the ESA rather than being paralyzed by the process of ESA. (For example, the recovery work is insignificant compared to the amount of time and money used to defend lawsuits.

110-R1-CA-S

Ensure Recovery money is spent appropriately.

136-R1-CA-S

Focusing more on settling lawsuits than fighting against them. We need to get the funds to take care of our listing critical habitat backlog so we're now in perpetual crisis mode.

**XI: Creating a career ladder for agency scientists.**

120-R1-HI-M

Develop a two track structure at FWS:

One track is management and administration.

One track is science analysis.

The scientific track analyzes the environmental and biological issues and stays current with the science literature and perspectives. The admin track deals with policy. Both tracks would write independent final analyses that are part of the admin record.

133-R1-OR-M

Create an advancement path based on scientific research.

**XII: Miscellaneous.**

006-R1-CA-S

Ecological Services doesn't produce scientific work. Opinions are not based on science/data. Millions of dollars are wasted yearly on well-intentions but poorly designed/implemented/analyzed projects that don't get us information or recover species. Supervisors need to know they are tasking staff with things they can't do. This also leads to poorly conducted contract work. Because staff are simply not trained in experimental design and estimation of techniques.

**REGION 2 (Southwest: AZ, NM, TX, OK)**

**I: Removing politics/political influence over scientific decisions**

143-R2-OK-S

Reduce politically-based interference with agency scientists and scientific decisions by requiring challenges to be made through formal channels and to be based on science or other applicable grounds, not mere greed.

148-R2-TX-M

Decreasing political influence including the pressure and willingness of upper and mid-level managers to respond to it.

151-R2-AZ-S

Keeping it scientific and biological when the decisions require it. Biological opinions are supposed to be based on biology, not political expediency or [cowering] to some user group.

160-R2-OK-S

Less influence by political staff

163-R2-AZ-M

Biological, not politically based decisions. Being able and encouraged to implement the real intent of laws, ESA, CWA, NEPA etc. not implementation based on needs of industry.

164-R2-AZ-M

Getting rid of Julie McDonald.

167-R2-AZ-S

Providing rigorous documentation of scientific decisions is already required. I wish managers would provide similar documentation, (phone records, and memos to file) of those when marching orders are given by a member of congress, an appointee, an RD etc. In other words, it should be documented when a scientific process is usurped by political considerations

170-R2-NM-S

Allowing biologists to make biological assessments before the injections of politics.

171-R2-NM-M

Allowing scientific rather than political decisions.

## **II: Increasing funding and resources.**

143-R2-OK-S

Increase funding for all ES activities, but especially those less popular with special interests, including ESA, see 404 CWA and Environmental Contaminants.

394-R2-NM-M

Having adequate staff and providing adequate funding for all FWS program mandates.

159-R2-OK-M

Provisions of more adequate staff and funding levels.

178-R2-TX-M

Better funding, filling vacancies, money to obtain peer review.

## **III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

151-R2-OK-S

Greater staffing levels would allow more training, more time to keep up with literature and more time spent producing quality products. I have a stack of literature 18" high that needs to be logged, read and filed!

152-R2-TX

Stay up to date.

169-R2-AZ-S

Allowing and paying for scientists to remain current in their specialty field.

## **IV: Improving the quality of management.**

140-R2-TX-S

Removing fat at the top of the bureaucratic food chain, which increases distortions of goals or objectives both up and down the chain.

158-R2-TX-S

The Texas state Admin is commonly referred to by the staff as Dr. Evil; his underling is Minnie Me: No integrity or leadership.

170-R2-NM-S

In region 2, the regional director is more a tuned with the Cattle Growers Association than his own ES biologists.

173-R2-NM-M

After 4 years they have selected managers who will parrot their beliefs as a result with few exceptions the entire echelon of FWS are not advocates for the fish and wildlife.

## **VI: Restoring the conservation ethic to FWS.**

163-R2-AZ-M

We need to get back to being advocates for the fish and wildlife resources, not advocates of development and big industry.

**II: Increasing the transparency of scientific decisions, through, for example, peer review.**

158-R2-TX-S

Quit giving lip service to peer review and working with others—start doing it.

**IX: Expanding use of partnerships.**

175-R2-OK-S

Most importantly, the Partners for Fish and Wildlife program is the only way to affect listed and declining species on private lands. This program is severely underfunded and still too focused on waterfowl and wetlands. This program is the only way to “shelter” recovery money from litigious HCP suits, etc.

**REGION 3 (Great Lakes: MN, IA, IL, IN, WI, MI, OH, MO)**

**I: Removing politics/political influence over scientific decisions**

181-R3-MN-S

Re-instating ecological services field office oversights on restoration grant programs. More money is now funneled into programs such as private stewardship grants which are administered by non-biologist bureaucrats in the regional office who give out the money without sufficient scientific oversight or accountability to project effectiveness.

182-R3-WI-S

Political influence has been moving downward ever since and it is a corrosive, negative force on environmental agencies.

**II: Increasing funding or resources.**

181-R3-MN-S

Filling positions vacated in the past four years. The work load is the same or greater, but there are fewer people due to budget cuts

**III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

179-R3-WI-S

Encouraging scientists to keep abreast of scientific information (e.g., Membership in professional societies, pay for them to attend prof meetings.) and allowing scientists to do their job—make sure they can focus on getting the science right before they are bombarded with the social, political and economic angles that come with each issue.

181-R3-MN-S

Encouraging participation actively in professional societies (we currently have no resources for this and must do it at our own time and expense). Reinstating our training budget, this is now laughably small. We are priced out of most technical training, unless we do it at our own time/ expense, providing access to current scientific journals (hard to do now unless there is a large university in town).

185-R3-MI-M

Here in ES field station we are under pressure to respond to issues on a timely basis and have to prioritize issues. This type of environment is not conducive to research (which requires large blocks of uninterrupted time and access to facilities and technicians).

**V: Restoring the research arm of FWS (now with USGS).**

182-R3-WI-S

Restoring research as a function of USFWS—loss of Region 8 crippled us.

185-R3-MI-M

Give us back our research arm! USGS-BRD should be part of USFWS so that we can better integrate applied needs in the field with the research expertise of scientists who do research full-time.

**VIII: Decreasing control of contractors and client agencies over scientific conclusions.**

180-R3-WI-S

Allowing ES staffs to more directly participate in development and implementation if surveys and studies related to the End Spp etc. rather than farm everything out to DNR and contractors.

184-R3-IN-S

Professionalism is downplayed at ES in favor of cooperation and diplomacy. Washington prefers to look at the big pictures but in my opinion it's the wrong big picture.

**REGION 4 (Southeast: GA, AL, AR, FL, KY, LA, MS, TN, NC, SC, PR)**

**I: Removing politics/political influence over scientific decisions**

191-R4-FL-S

Too many managers (gs-13) are too political (easily swayed by calls from regional offices and or politicians.) to make the correct decisions based on science.

192-R4-AR-S

Have politicians keep their noses out of things they don't know anything about. Have them stop meddling with changes to the endangered species act for political or monetary gain.

195-R4-TN-S

Field offices have highly qualified biologists who can make decisions and findings about species and habitats based on sound science. These findings are based on biological and ecological needs of the species and are but one facet to be considered in making a final decision. Wildlife laws have provisions and procedures for considering non-biological issues. Bottom line: Let ES biologists do their jobs; then incorporate their findings in the decision-making process as provided for in federal laws. Don't short cut around established procedures.

198-R4-FL-S

Making decisions based upon actual science and true effects to listed species after a full, complete and rigorous analysis of project impacts. Findings need to be based upon biology and ecology, not what is politically acceptable or tolerable to the applicants, politicians, developers and public.

213-R4-FL-S

Taking the politics out of the scientific decision making process; taking the fear and career intimidation off the backs of the biologists; promoting professionalism and integrity among the scientists.

218-R4-FL-S

Better support from Field Supervisors, Regional Office Line Supervisors and Washington Staff for Field Biologists instead of allowing politics or their career aspirations to override resources decisions.

222-R4-FL-S

Isolating FWS from politics.

226-R4-LA-S

Not watering down decisions made by staff by caving into political pressure!!!

236-R4-FL-S

Better separation of political appointees from decision making within FWS.

254-R4-NC-S

Removing politics and economics from the equation.

**II: Increasing funding or resources.**

194-R4-AL-M

As budgets fall and salaries benefits, solicitor cost is almost everyone becomes desk jockey.

203-R4-KY-S

Providing adequate staff, funding and support for the biologists to do our job.

204-R4-FL-S

Additional personnel and more appropriate/better use of experienced staff on critical issues.

218-R4-FL-S

Additional Staff to allow more in depth study on individual projects consultations. Workload is so heavy that decisions must be made without complete review of information.

225-R4-MS-S

Increase staffing levels. Instead of two people covering 32 counties, at least double that so four folks could cover 8 counties. More staff = more proactive work at county level before more land clearing starts.

239-R4-NC-S

Improved funding.

236-R4-FL-S

Adequate funding from congress and the administration.

242-R4-MS-S

Adequately funding the programs involved.

262-R4-FL-S

More staff resources to tackle the heavy work-load.

**III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

187-R4-FL-S

More support from agency staff to participate and interact with professionals, organizations, agency researchers, and university researchers. Also funding to attend organize and influence professional society workshops.

259-R4-GA-S

Scientific and policy documents cannot keep pace with the barrage of impacts. Therefore, biologists spend almost all of their time fulfilling permit applications and have no time to monitor whether or not recommendations or requirements are implemented. This disparity means that true impacts to species are not fully understood by biologists

260-R4-FL-S

Each biologist is over-worked, not allowing for quality work and more time is spent on administration paper work every year.

225-R4-FL-M

Our office doesn't really do research. We could benefit by subscribing to a citation database software or having annual scientific needs assessments and improve cooperation from the USGS.

201-R4-FL-S

Better communication and information sharing, providing journal articles to staff.

211-R4-NC-S

Enhancing access to peer reviewed literature via internet ( the inter library loan is often unavailable or too slow to meet timelines for projects). Increasing funds to direct applied research targeting project "review issues (especially to thresholds of environmental change and resulting impacts to listed species.) Evaluation of standards within the Agency, including better support/backing of scientific staff and recognition of time to collect, synthesize and interpret best available info.

243-R4-MS-S

Increase collaborative studies with university and state fish and wild life agencies and other federal agencies. This would ensure that study results would be more accepted by the scientific community.

**IV: Improving the quality of management.**

401-R4-GA-S

I feel that much of my time is spent on clerical type duties because management doesn't have the time to analyze efficiency of our operation.

199-R4-FL-M

Reducing rather than penalizing integrity.

248-R4-FL-S

I believe that the real problem with the agency lies with upper level management. Most of the time the fundamental science used to formulate biological opinions is sound and the lead biologist submit a quality product to the supervisor. Upper level management then buckles under political pressure and the recommendations/biological opinion initially submitted is revised and watered down to all the permit to be granted.

201-R4-FL-S

Removal of "air of fear" that staff experience just from asking questions of top management—even those non-scientific questions. I was once told after a staff meeting that it is not in my best interest to put the Field Supervisor "on the spot" with questions. In the 2 years following I have not asked any more questions even though I am unsure about issues in my office—for fear of reprisals

253-R4-FL-S

Remove [Vero Beach Field Supervisor Jay] Slack.

215-R4-FL-MS

Could be best improved by managers at all levels who are willing to listen; set aside political influences for "a moment", consistently interact with staff, remove biases toward researchers, empower staff, etc.

240-R4-MS-S

Reduce the RO supervisory staff and increase the technical staff.

241-R4-MS-S

Favoritism when hiring should be eliminated (climbers are bad scientists).

**VI: Restoring the conservation ethic to FWS.**

206-R4-FL-S

Starting at the executive office and working downwards electing/ appointing decision makers with a commitment to conservation ethic and support for endangered species recovery.

225-R4-MS-S  
Reward management for making tough decisions on the side of the species not on the political side that favors development.

228-R4-GA-S

Promoting the priority of getting out into the field to learn the ecosystems

239-R4-NC-S

More backbone and less dog and pony show-more on the ground action.

**VII: Increasing the transparency of scientific decisions, through, for example, peer review.**

209-R4-AR-S

Providing more regulatory authority and law enforcement capabilities in other programs such as CWA, MBTA and ESA.

248-R4-FL-S

Better peer-review.

**X: Settling or changing the role of lawsuits.**

258-R4-FL-S

Not having the workload be directed by litigations.

**XI: Creating a career ladder for agency scientists.**

234-R4-FL-S

Developing employees instead of losing them.

**XII: Miscellaneous.**

194-R4-AL-M

More LE and ESA, fills, contaminants, water quality issues. Greater cooperation by the EPA and state environmental quality division. The EPA is totally uncooperative in CWA; state division is probably the worst in the nation.

234-R4-FL-S

Consistent and accountable application of funds.

239-R4-NC-S

Stopping the USFWS from raising and stocking exotic species, particularly fish.

246-R4-FL-M

Undergrad and Grad schools need to offer Ethics courses.

**REGION 5 (Northeast: ME, DE, RI, NY, MD, NJ, WV, PA, VA, NH, MA, VT)**

**I: Removing politics/political influence over scientific decisions**

264-R5-NH-S

Getting the political appointees off our backs and let us do our jobs.

275-R5-ME-S

Keeping science and politics totally separate. Why can't we be honest when science points in one direction but political reality results in USFWS making a decision to do otherwise? Morale and credibility will improve if we are honest rather than trying to twist science to make politicians happy.

293-R5-MD-S

A top-down emphasis put on quality science (and the willingness to listen to it!). As it stands, FWS regional HQ, DOI and White House leadership are so hostile to our mission that they will subvert, spin or even illegitimize our findings. Without changing the leadership, having this discussion is probably futile.

276-R5-PA-M

Having regional office and Washington office staff who have the courage and integrity to stand up to political pressure and commercial/business interests. It is at this level that scientific/biological determinations by field staff are not supported or are over-turned.

Contrary to what the administration says—the issue is not peer review or failure to use “good science.” The “goodness” of our science is only questioned when it yields an answer that is in conflict with a commercial or political interest.

278-R5-VA-M

Incorporate commercial/economic and political concerns in making final recommendations and decisions, but don't manipulate the science to minimize or erase competing environmental concerns. (emphasis in original)

281-R5-VA-S

That the FWS scientific findings drive regulation and action for species and habitat rather than be altered due to political influence from within DOI.

**II: Increasing funding or resources.**

398-R5-MD-S

If ecological service offices were given actual project money, we could spend more time doing projects rather than time spent trying to find ways to pay for staff/projects.

263-R5-NH-M

More discretionary funding to contract for targeted or focused scientific studies. The money is needed early, when the issue concern is first identified, not later when it has reached crisis stage or we are facing litigation.

266-R5-PA-S

Adequate funding base programs so biologists have necessary time to perform the job they have been trained to do (as opposed to chasing soft dollars to keep program alive)

270-R5-VA-S

Increase the number of field biologists and decrease the number of upper management. Too many highly paid supervisors that don't work directly on species conservation or work in the field. In R5 we lost field staff in 2004 while gaining several upper level positions. In my office they are applying for raises for all supervisors.

287-R5-NJ-S

Increasing staffing and funding to allow appropriate time and attention to the issues related to project review, recovery, and candidate assessment.

282-R5-ME-M

Providing adequate funding and staffing levels.

Continued budget cuts affect the long-term mission of the Service to adequately protect wildlife and habitat.

283-R5-DE-S

More funding—offices are chronically under-staffed; we're expected to do more with less; the best, most dedicated biologists are over-worked and vulnerable to burn-out; when you're over-worked, quality of work tends to suffer.

**III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

398-R5-MD-S

Promoting more participation in professional societies.

267-R5-PA-S

Sufficient funding and authorization for scientists to attend at least one professional meeting per year.

394-R5-MD-M

Providing more technical courses at NCTC instead of a slew of touchy-feely ones.

284-R5-ME-S

Better access to and collaboration with USGS biologists. Better relationships with universities and the Coop Program.

**IV: Improving quality of management.**

271-R5-NJ

ES program has been hurt by too many regional office appointees with lack of experience and no field office work.

273-R5-VA-S

Holding management accountable and implement consequences to them for poor performance.

279-R5-VA-M

Better leadership. The Service creates excellent staff biologists, but we do not groom leaders. Good biologists are hired for supervisory positions with little regard for supervisory skills.

**V: Restoring the research arm of FWS (now with USGS).**

399-R5-ME-S

Restoring research and scientific investigation capabilities to the service.

394-R5-MD-M

Giving back our research program from USGS.

287-R5-NJ-S

Returning our research arm which was transferred to USGS decreasing coordination with research scientists.

**VI: Restoring the conservation ethic to FWS.**

265-R5-NY-S

Using the precautionary principle as the norm rather than having the burden of proof lie with the resource agency.

288-R5-ME-S

Political decisions should be made at the HQ level, not at the regional or field level.

286-R5-NJ-S

Improving support of an [sic] field offices by the Regional Office.

285-R5-PA-M

By learning that at some point, it may be necessary to say “no” (i.e., not everything is “win-win”).

**VII: Increasing the transparency of scientific decisions, through, for example, peer review.**

284-R5-ME-S

State/regional peer review teams to review Service programs.

281-R5-VA-S

Allowing the science to speak for itself and be available to the public.

**VIII: Decreasing control of contractors and client agencies over scientific conclusions.**

267-R5-PA-S

Support from politically appointed administrators on issues involving other federal agencies as well as state agencies.

**XI: Creating a career ladder for agency scientists.**

293-R5-MD-S

Inclusion of scientist-only positions within [Ecological Services].

**REGION 6 (Rocky Mountain Plains: CO, MT, KS, NE, ND, SD, UT, WY)**

**I: Removing politics/political influence over scientific decisions**

302-R6-WY-S

Allowing us to do our jobs without political influence.

304-R6-NE-S

Conclusions drawn by Field Office; scientifically sound and based on best scientific data available; must be supported by [Regional Office] and [Washington Office], not patently dismissed due to inconvenience and inconsistency with current political whims.

305-R6-WY-S

Eliminate the control that DOI political appointees have over the scientific decision making process. Decisions have to be allowed to be made based on the best science available—there is far too much influence by DOI political appointees, state and local government elected officials and commercial interests.

308-R6-NE-M

Prevent political appointees from re-writing agency policies/guidances that weaken our ability to properly administer federal environmental laws.

311-R6-CO-S

Keeping politics out of the scientific investigations.

315-R6-UT-M

Non-interference with political appointees, from our national directorate to DOI and CEQ. Our agency does an excellent and scientific and protective job to the best of its ability given political intervention and public indifference.

316-R6-UT-S

Removing politics from the process.

325-R6-WY-S

Having the best scientific data speak for itself. Too often, the scientific data and the recommendations of field employees are dismissed by higher-ups and by those not wanting to make waves or go against the wishes of the current administration.

327-R6-MT-M

Reducing the direct intervention by Department of the Interior political Appointees who often overturn the findings of scientific documents and replace them with political determinations.

332-R6-ND-M

For appointed positions, appointing agency career professionals, rather than politically-connected lawyers, judges and industry lobbyists whose principle agenda is the dismantling of legitimate agency missions, budgets and workforce.

333-R6-NE-M

The current Administration is having a profound negative impact on the ability of the USFWS to do its job through political influence and budget reductions to Ecological Services Program areas.

**II: Increasing funding or resources.**

302-R6-WY-S

Adequate funding!!! (emphasis in original)

305-R6-WY-S

Provide adequate funding and resources.

310-R6-CO-S

Provide sufficient funding to deal with the mandates as directed by Congress.

312-R6-WY-S

Funding at an appropriate level to handle the current workload with sound scientific survey methods for gathering information on listed and sensitive species.

324-R6-MT-S

More staff, so we'd have more time to devote to writing our documents.

**III: Devoting more attention to professional development, such as access to scientific literature and time to review it.**

311-R6-CO-S

Providing funds to keep staff up to date on current scientific findings and training.

318-R6-WY-S

More funding to hire more biologists which would allow biologists to undertake more scientific work and devote more time to this part of the position.

319-R6-MT-S

A lot of our "best available science" is quickly becoming outdated—funding is needed to help support new research.

**IV: Improving quality of management.**

300-R6-SD-S

Elimination of Regional Offices—they provide minimal value to field offices while consuming huge resources for high graded—often inexperienced or incapable employees.

317-R6-KS-S

Reduce layers of management. We could trim one-fourth to one-third of the Washington and Regional office staffs and have absolutely no negative effect on the biological work of the agency. Management used to exist to serve the field staff, but this has reversed in the past 5-10 years. They take the money, we do the work, they make decisions regardless of what our data show.

396-R6-MT-M

Stronger leadership qualities in Field Supervisors, and other supervisors, in holding field bios to use of best science, and correct interpretation of scientific research results. Too many field bios are poorly trained and get emotionally attached to species and/or conservation issues. Those bios use "err on side of species" to justify ludicrous rationales, requirements and they waste precious resource dollars. Damage credibility of USFWS biologists.

More training for biologists and managers in ES law, regulation and POLICY. Many field biologists don't have a clue as to what these cover or what or how or where they evolved.

**V: Restoring the research arm of FWS (now with USGS).**

316-R6-UT-S

Giving us back our research arm—BRD.

**VI: Restoring the conservation ethic to FWS.**

315-R6-UT-M

We need to raise public awareness of the purpose of the laws we are charged to uphold (NOT just ESA) and garner their support against the saboteurs currently in power! Public resources are being sacrificed for private gain—irreversible losses. Hard to keep protecting the public's interests in public's resources when they don't care or are misinformed!! (emphasis in original)

334-R6-CO-S

Instill an organizational climate that encourages non-SES employees to aggressively engage SES and political appointees in the application and interpretation of scientific principles, without fear of either short term or long term (career) retribution.

413-R6-NE-M

Removing the political oversight at the Departmental level that has rendered the U.S. Fish and Wildlife Service to a position that is no longer effective in protecting fish and wildlife resources.

**VII: Increasing the transparency of scientific decisions, through, for example, peer review.**

303-R6-NE-S

FOIA, FOIA, FOIA! Keep our agency honest through whatever means available.

334-R6-CO-S

Demonstrate to the public that the approaches/principles used by FWS to assess risk to declining species are similar to those used by other disciplines (e.g., bankers and farmers) to assess future risk and conserve their trust resources.

**XI: Creating a career ladder for agency scientists.**

330-R6-NE-S

Currently, hiring and promotions are based on one's knowledge in law and policy. Little consideration is given to level of education or publication history. This is evident as Bachelor of Science graduates fill high ranking positions. This failure is occurring at the Directorate level where one Regional Director does not have a scientific background and it is evident in her lack of support for her agency's mission.

**XII: Miscellaneous**

303-R6-NE-S

Get us real whistleblower protection through Congress.

334-R6-CO-S

Require annual training of staff level biologists on "scientific principle." Now, training is "optional" and most ES training courses emphasize process.

336-R6-MT-M

Hiring younger biologists who have more advanced degree and more modern skills.

**REGION 7 (Alaska)**

**I: Removing politics/political influence over scientific decisions**

357-R7-Fairbanks-S

Keeping the politics out of science. Allowing biologists to do their jobs.

351-R7-Anchorage-S

Remove DOI political appointees from the review and approval process.

349-R7-Fairbanks-M

I have been and continue to be proud of the job the USFW does with respect to conserving fish and wildlife. The clear problem is with this Administration's political appointees. Recently, DOI officials have forced changes in Service documents, and worse, they have forced upper-level managers to say things that are incorrect and not reflective of the agency's view on an issue. This, I believe, goes too far. It's one thing for the Department to dismiss our recommendations, it's quite another to be forced (under veiled threat of removal) to say something that is counter our best professional judgment.

344-R7-Anchorage-S

Biologists at lower levels are prevented from releasing information that might hurt the pro-development interests.

340-R7-Fairbanks-S

Removing the influence of DOI political appointees in producing scientific documents.

339-R7-Juneau-M

Use science/biology, not politics.

403-R7-Juneau-M

Removing oversight of political appointees, such as the DOI Alaska Issues appointees, who review our draft letters and change them before career employees can sign them.

402-R7-Anchorage-M

Allowing us to do our jobs without political interference.

**II: Increasing funding or resources.**

361-R7-Anchorage-S

Staff resources are dwindling in Alaska—everyone is overworked and burned out!!!

346-R7-Juneau-S

Steady funding streams (more than 1 year budget cycle) to develop meaningful trend analysis.

337-R7-Fairbanks-S

Resources to use modern tools for managing and retrieving/analyzing information—GIS, databases, computer-assisted modeling of populations.

**IV: Improving quality of management.**

361-R7-Anchorage-S

Having a Regional Directorate willing to stand up to the ACOE by approving 404 denials recommended by ES staff. We have been told to run any potential "denials" through the Assistant RO for "pre-approval"—which are then not granted for release—we have to rewrite the letters.

352-R7-Anchorage-M

Having the Director be a career position not a political appointee.

**VI: Restoring the conservation ethic to FWS.**

344-R7-Anchorage-S

There is a culture of fear of retaliation in mid-level management. If the manager were to speak out for resources, they fear loss of jobs or funding for their programs. (So they go into “duck&cover” mode and wait for the politics to change.)

**VIII: Decreasing control of contractors and client agencies over scientific conclusions.**

357-R7-Fairbanks-S

Not vetting comment letters (drafts) before the state, private industry, other agencies—asking for their input and then changing our letter to suit their needs.

**XII: Miscellaneous**

343-R7-Anchorage-S

For endangered species program: Making designation of critical habitat optional (not mandatory) thus decreasing multitudinous lawsuits.

337-R7-Fairbanks-S

Training in decision-making processes that recognize scientific uncertainty. Biologists trained to evaluate discrete issues using standard statistical approaches are ill-equipped to deal with complex issues for which too little information is available.

**REGION UNKNOWN**

**I: Removing politics/political influence over scientific decisions**

383-RU-S

Leaving politics out of ESA decisions.

374-RU-S

Less intervention from political appointees—of course that would require a revamp of the system and greater level of integrity (willingness to suffer professionally) at mid-level management levels.

365-RU-S

Excluding political powerbrokers from intimidating Service scientists.

**II: Increasing funding or resources.**

393-RU-S

Receiving support required, including funding.

386-RU-S

Adequate funding to assess resources to make good evaluations.

366-RU-S

Increasing the number of staff biologist to handle an ever increasing workload.

**IV: Improving quality of management.**

378-RU-S

Having a Director willing and able to stand up to Interior would help spread back bone to the Regional Directorates. Right now our Direction is so worthless none of our management can expect support.

**V: Restoring the research arm of FWS (now with USGS).**

363-RU-S

Long-term research and population monitoring is almost non-existent in the non-governmental scientific sphere, and has become rare with government scientists. Ecological Services does not have adequate staff to do this work and funding and personnel has dropped severely—especially after Region 8 became USGS-BRD. Bring back the scientific staff and dedicate them to long-term management related research.

**VI: Restoring the conservation ethic to FWS.**

387-RU-S

Focusing in a more comprehensive manner on the needs of all rare species and their stressors.

386-RU-S

Movement away from GPRA based acres as the only method of evaluation. We are neglecting the animals.

**VII: Increasing the transparency of scientific decisions, through, for example, peer review.**

367-RU-S

Placing much more scrutiny on the decision-making process between the draft scientific document and the final decision. The work is great until it hits the supervisory chain, then things are dropped, changed, altered (usually without written record) and then finalized with dismissive responses to concerns.

**VIII: Decreasing control of contractors and client agencies over scientific conclusions.**

386-RU-S

Careful scrutiny of programs that seek outside funding to perform work that should be done by consulting firms. Due to underfunding and poor management of existing funds, we are becoming a consulting firm.

The CHAIRMAN. Thank you, ladies and gentlemen.

Let me ask my first question to Deputy Secretary Scarlett in regard to the IG report. In his testimony, Mr. Ruch just now, the Public Employees for Environmental Responsibility, points out that the Interior Department has “yet to condemn the conduct of the recently resigned Julie MacDonald.”

Mr. Ruch also says that the Interior Department should correct Ms. MacDonald’s scientific misrepresentations that have been identified by the Inspector General.

My question is, has the Department submitted a formal response to the Inspector General?

Ms. SCARLETT. There has been a verbal response to the IG, and the IG provides us with a form. I believe that form was being submitted to him yesterday or today. But I could go beyond that. I will say that—

The CHAIRMAN. Yes. My question is, do you expect to clear the air on this matter?

Ms. SCARLETT. Ms. MacDonald has now resigned. We went through a lengthy process. I personally received the IG report, gave it to the Assistant Secretary for Fish, Wildlife and Parks, who reviewed it thoroughly, did fact checking and follow up, and subsequently provided to a board that Secretary Kempthorne has created, an accountability board, to further review those findings. Upon the completion of that effort, Ms. MacDonald did resign.

We view the details of Ms. MacDonald’s matter as a personnel matter. However, I will say from a matter of policy that Secretary Kempthorne is strongly, strongly supportive of accountability. He has gone to the Government Ethics Office and asked for a list of best practices. We are methodically going through the Department to implement all of those at 100 percent level. So from a policy standpoint, yes, we expect an accountable, professional staff that at all times is respectful and utilizes science with integrity.

The CHAIRMAN. So do you expect to take corrective action to repair the damage created by Ms. MacDonald to the Interior Department itself?

Ms. SCARLETT. This is the first time I had heard that particular suggestion with respect to reviewing the science. Let me say again that several steps have already been taken to further ensure that the Department is, one, that is accountable and operates with integrity.

By the way, I want to reenforce that I believe that the Department is generally with both career and non-career employees one of the highest professional standards, but we have created an accountability board to further ensure that all actions—that people

are held accountable for actions. We have, as I said, created an ethics process whereby we are putting in place 80 ethics best practices. Many of them we already had underway, but we are making sure that we have all 80 of those best practices.

With respect to the science itself, working with the Fish and Wildlife Service we continue to strive to ensure that the best science is undertaken to inform the decisions that we take. Many of those decisions are ongoing, and we will continue to review them, review the science, and ensure that that science is brought to bear in those decisions.

The CHAIRMAN. Let me ask the rest of the panel to respond to the Deputy Secretary's response just now, beginning with you, Mr. Ruch.

Mr. RUCH. This is the first we had heard that there was an accountability board identifying 80 best practices, and we are curious as to whether or not they are sort of bigger than a bread box.

We noted in our testimony that the Department of the Interior had already adopted a Code of Scientific Ethics but never bothered to incorporate it into its manuals. We are not sure who it applies to, but it appeared it doesn't apply to political appointees.

We are not at all clear, based upon those statements, that the Department of the Interior is distancing itself from the conduct of Ms. MacDonald or is prepared to offer any assurances to its professional staff that such interference will not be tolerated in the future.

The CHAIRMAN. Dr. Grifo.

Ms. GRIFO. Thank you. Given the context of the political interference that we are documenting across agencies, across departments, it is hard for us to take this seriously until we see what this really looks like. If there is this accountability board, could we have them on the web so that we can see who they are? Could we have perhaps, you know, nonprofits and other groups represented on this accountability board?

These 80 best practices, you know, could we have comment and review of those from beyond the agency or the Department?

I mean, I think these are important first steps, but the proof will be in the pudding. I mean, when we see the details, we will be able to make a final judgment.

The CHAIRMAN. Jamie.

Ms. CLARK. Well, at a top level, it is interesting that the Department is forming an accountability board, and that they, you know, are very concerned about the manipulation of science, and concerned about Julie MacDonald. But what I still find very troubling is that if they don't count suppression or manipulation of science, and frankly, why did they leave Julie MacDonald in place for so long. Her legacy, if you will, goes back over many species that you heard both Mr. Ruch and Dr. Grifo lay out.

And so whether it is the Code of Science Ethics, which I have read, and I agree with, but there is a glaring omission, as I understand it in talking to career folks, in that political appointees were specifically excluded from that. So if you create this wall for career employees to be have one way and political appointees to behave another, then it is ripe for problems that we are seeing now.

The CHAIRMAN. Thank you. The Chair does have further questions, but noting my time has expired and noting that there are 14 Democrats here and four Republicans, I do want to yield at this time to the Ranking Minority Member for his questions.

Mr. SALI. Thank you, Mr. Chairman.

Ms. Clark, you would agree with me that the goal of the Endangered Species Act is to have zero species become extinct?

Ms. CLARK. I would agree with you that the goal of the Endangered Species Act is to conserve threatened or endangered species and protect the habitat they depend on, and as an ultimate goal, you are right. As a country, we should not allow and condone the extinction of species.

Mr. SALI. Ms. Grifo, you would agree with that as well?

Ms. GRIFO. Yes, I would.

Mr. SALI. OK. In terms of science, leaving apart the requirements of the Endangered Species Act, what is the acceptable rate of extinction of species, Ms. Clark?

Ms. CLARK. I think that that is a bit of red herring. I don't think that there is an acceptable "level" of risk for species. I think that we deal with these issues one at a time, and I don't think any scientist or policy person would agree that there is a "right" number for losing creatures on this earth.

Mr. SALI. So you believe that the scientific goal should be zero, the same as it is under the legal standard of the Endangered Species Act. Is that correct?

Ms. CLARK. Well, again, I didn't agree with you straight out. The way that you represented the goal of the Endangered Species Act is "zero" extinction. I represented it differently in that the goal, the purpose of the Endangered Species Act is to provide for the conservation of species on the brink and to protect their habitat. That is different than the way that you characterized it.

Mr. SALI. Well, Ms. Grifo, I guess I would ask you. What is your view in terms of science? Is there an acceptable rate of extinction of species?

Ms. GRIFO. Well, I would say that what I am sure we can all agree on is the fact that we are at a one-year anniversary of the last time any species was listed. That is certainly not the way to get at the—

Mr. SALI. OK, but that is not my question. My question is, in terms of science, is there a rate at which we would say, yes, species ought to become extinct at this rate throughout time?

Ms. GRIFO. No.

Mr. SALI. There is no—

Ms. GRIFO. It is a much more complicated question than that. The question of extinction, yes, there are background rates of extinction, but those are on geological time scales. What we are seeing right now in this country is not on that time scale. It is not a part of any sort of natural extinction process.

Mr. SALI. OK. How can we determine what is natural and what is unnatural?

Ms. GRIFO. There are gray areas in all of these issues. There are areas of uncertainty, but I think it is very clear that what we are seeing in this country is not about that. It is not a rate that is happening. Storms and other things that are non-human oriented are

not causing these extinctions. It is very clear to us that invasive species that—habitat degradation that, you know, we can go through the litany of causes are what are causing these extinctions, and it is fairly clear to make the link from those threats back to us, and that is why we have the responsibility to work with the Endangered Species Act to prevent that.

Mr. SALI. Well, as we look at the fossil records, it is fairly clear that there have been a huge number of species that have become extinct, and so I am trying to reconcile how do we look at that series that happened before there was an ESA, before there was even a Federal government in this country, before there was even a country here, how do we reconcile that huge number of species that have become extinct with the requirements of the Endangered Species Act, which is essentially, as I look at it, a goal of zero, Ms. Grifo?

Ms. GRIFO. I would say that I would welcome the opportunity to come with a group of my colleagues and have this very interesting intellectual conversation with you, but the topic of today's hearing is really about the political interference in science, and the fact that the Act as it stands is not functioning.

Mr. SALI. Well, if I were to suggest to you that I think probably everyone around this series of seats up here agrees that there is politics involved in this, and that it just depends on which political side you happen to be on whether you think it is good or bad in terms of any particular result. Would you agree with that comment?

Ms. GRIFO. No. What I would agree with is that the Endangered Species Act has parts of it where, for example, listing. We are looking at best available science and commercial data. That is the basis of the Act, and the basis of those listing decisions. There are others where after we have—

Mr. SALI. So are you suggesting that there—

Ms. GRIFO. Could I finish?

Mr. SALI.—is no politics in this?

Ms. GRIFO. I am about to get to that part.

Mr. SALI. OK.

Ms. GRIFO. There are other parts of the Act, such as, you know, critical habitat designation, where we take the best available science, and then pull that together with economic and other concerns, and that is the place where we have an open debate in the light of day where everyone can see it and participate about how we weigh those things.

I am not here to tell you that science is the basis of every policy decision. That is not what this is about. What this is about is the fact that outside of the realm of public discourse, outside of our democracy—

Mr. SALI. So you would agree that there is politics in these decisions no matter what?

Ms. GRIFO. I agree that there is a point in these decisions where we do take into account economic and other considerations, and we do that with the best available science, not a manipulated or changed science.

The CHAIRMAN. And by other considerations, you would include politics?

Ms. GRIFO. I would include economic considerations.

Mr. SALI. Well, you said economic and other considerations. By other considerations, you would agree that that includes politics, correct?

Ms. GRIFO. I would agree that economics often gets political.

Mr. SALI. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. DeFazio was here first. OK, Dale, do you have any questions? Let me recognize you. I am sorry. I am sorry.

Mr. KILDEE. I will be very brief. I was a little late. But you know, I think there is a difference between reviewing and weighing science, and to force changes in a scientific report, and I think that is what it is really all about, that we find evidence that there has been changes forced into scientific report, which is really dangerous.

I served on the Budget Committee for six years, and we expected our budget experts to add up for us and say that 2 billion plus 2 billion was 4 billion. We didn't go back and say, no, make it 2 billion plus 2 billion is 3 billion because that fits our needs more, and I think it is extremely important that we can review and weigh the science with the other factors, but just to force changes in the sciences is dishonest, I think, and certainly dangerous, and that is all I have to say, Mr. Chairman.

The CHAIRMAN. Thank you, Dale. The gentleman from Maryland, Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

I think I would like to make a comment first before I have four just short questions. In the Endangered Species Act, the big picture is simply that human activity very often is not compatible with nature's design. Even though the science is some understanding of what parking lots do to the ecology, what sprawl does to the ecology, what a whole range of air pollutants do to the ecology, and it is all integrated together. So unless we tease out what we are doing to cause species not to be sustainable, the ultimate end to that is that human beings are not sustainable because we depend on the resources that we are trying to protect. So it is a closed loop.

And to manipulate science by any means is doing a huge disservice to the public. To take politics into consideration while you are understanding the basics of that science is always acceptable, but for politics to manipulate and change that science so that 2 billion plus 2 billion equals 3 billion is not acceptable. So I hope the Ranking Member and Ms.—I can't see your name.

Ms. GRIFO. Grifo.

Mr. GILCHREST. Grifo. Can get together really. I sincerely think that some of us on this side of the aisle should sit down and go through the process of understanding the science behind the ecology. That would be very beneficial.

The questions I have is just very quickly. Mr.—is it Ruch?

Mr. RUCH. Ruch.

Mr. GILCHREST. Ruch, Mr. Ruch. The situation with Rex Wahl—

Mr. RUCH. Yes.

Mr. GILCHREST.—and the Bureau of Reclamation?

Mr. RUCH. Yes.

Mr. GILCHREST. A Reclamation project. What is the status of that right now?

Mr. RUCH. He is still awaiting a decision. He has been at home on paid administrative leave for nine months, going on 10.

Mr. GILCHREST. And he is on administrative leave because?

Mr. RUCH. He was originally charged with subversive activities in e-mailing information to the Army Corps and other groups. That was withdrawn. He is now charged with causing embarrassment, which we didn't know was an offense, and we are awaiting a decision by the agency.

Mr. GILCHREST. This is the Department of the Interior?

Mr. RUCH. This is the Department of the Interior, Bureau of Reclamation.

Mr. GILCHREST. The NOAA gag order, can you make a further comment on that, on scientists, that they can't make statements unless—we have heard about this one—they can't make statements unless those statements to the Rotary Club or to another agency is vetted through the—

Mr. RUCH. Correct.

Mr. GILCHREST.—political appointee?

Mr. RUCH. This policy is about to become final next week according to the schedule laid out by the Department of Commerce, and what it says is—there is two parts. One has to do with on-duty statements, and those are subject to approval, but I think the more controversial one is all off-duty statements that are—deemed of official interest is the term they use—are also subject to review and approval.

So for a scientist attending a conference, if he is asked a question and is unsure what the departmental policy is, he is not allowed to depart from the policy, so as we understand the policy, he is supposed to say "No comment."

Mr. GILCHREST. Interesting.

Mr. RUCH. And the point of all this was that the scientific process involves collaboration, interaction with colleagues, but the way these rules are increasingly being interpreted, Federal scientists are, in essence, being kept more and more in kind of an intellectual monastery where they are not allowed to talk or interact or share information.

Mr. GILCHREST. Ms. Scarlett, you may not have anything to do with that, but if you do, can you give us some kind of comment. If you don't, fairly you don't.

Ms. SCARLETT. I am unaware of NOAA's policies.

Mr. GILCHREST. You don't have anything like that in Interior?

Ms. SCARLETT. I am not aware that we have anything like that.

Mr. GILCHREST. So in the Interior Department, you wouldn't have anything to limit an employee from making comments to the Rotary Club or to the Corps of Engineers about an issue?

Ms. SCARLETT. I am not aware that we have any policy.

Mr. GILCHREST. Are you aware of Rex Wahl's situation?

Ms. SCARLETT. I am not. I heard about it for the first time in the testimony this morning.

Mr. GILCHREST. Can you give us some idea of what this draft document is all about that was on Salon Magazine, and what the status of that is now?

Ms. SCARLETT. Yes, Congressman. Going back a year and a half or two years, understanding that there have been decades now of implementation of the ESA, and increasingly, including in the last administration, issues raised about limitations on its effectiveness, partly through lack of clear terminology that has promoted some litigation, the disincentives for citizen stewardship created in some of the ways that the Act is implemented, a process began within the Department to put a number of concepts on the table for possible regulatory changes.

That process was not completed. It was, if you will, a putting of everything but the kitchen sink on the table from a variety of people. When Secretary Kempthorne arrived and was confirmed at the end of May of last year, he asked that that effort completely stop; that we put essentially that effort on the back shelf, and that we hold 25 cooperative conservation listening sessions around the country on a variety of issues, not simply ESA, to hear what it is people had to say about conservation.

In that process, some 80 percent of written comments that came in actually mentioned ESA, and in particular, said that some of the provisions of the way we implement ESA stood in the way of cooperative conservation and citizen stewardship. There were many comments on the growing abilities of states, their own biological expertise, particularly for species in those states, and that they could play a better role as envisioned in Section 6 of the Act when it was originally passed.

So we went out after those listening sessions and reviewed those comments. Those are posted, by the way, on a website, [Cooperativeconservation.gov](http://Cooperativeconservation.gov). It is very transparent.

Secretary Kempthorne then asked Dale Hall, who is here with me today, and his team of Endangered Species Act experts, that is, his associate regional directors in charge of implementing ESA in each of the regions, as well as his headquarters' experts, including Bryan Arroya, who heads up the ESA program here, and he is also with me today, to sit down with NMFS, and look at those comments from the cooperative conservation listening session and themselves write what they thought would be the best way to move forward in improving the way we implement the act.

We have a document that is underway. It is not complete. It continues to be revised, reviewed, and refined. It has been wholly and 100 percent written by those experts without the hand of the political appointees of the Department, excepting Dale Hall himself, of course, as head of the Fish and Wildlife Service has been engaged.

That is what that process is, and it differs significantly this product from that which ended up on [Salon.com](http://Salon.com).

Mr. GILCHREST. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman for Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Ms. Scarlett, is there ongoing work within the Department to systematically review decisions that Ms. MacDonald may have improperly influenced? Yes or no.

Ms. SCARLETT. There are a number of decisions that were made over time, some of which are completed decisions, if you will, some of which are ongoing. What we are doing and in fact really with

the leadership of Dale Hall, dating back a year or so ago, we created a process, a process for reviewing these status of each and every ESA decision, whether it is critical habitat, recovery or otherwise, making sure that we are staying apace with legal requirements, but also ensuring that Dale had the full latitude to apply the science expertise of those within his department.

Mr. DEFAZIO. But that is avoiding the question. She was very influential on a number of decisions, particularly as pertained to critical habitat on the Sage Grouse, the Bull Trout, and perhaps the Spotted Owl.

Are you reviewing what influence she might have had? For instance, in the IG report on page 8, it says, "Agents note in a number of e-mails and comments on the Bull Trout CHD"—critical habitat decision—"MacDonald forced, forced a reduction in critical habitat in the Klamath River from 296 to 42 miles."

Ms. SCARLETT. I am not aware of a current action underway with respect to Bull Trout. With respect to the Northern Spotted Owl, which you mentioned, that

The process is ongoing, and Dale Hall's folks and the recovery team, which includes numerous scientists, are actively involved in addressing that.

Mr. DEFAZIO. OK, let us turn to the Spotted Owl. We had a plan submitted by scientists in the region September 2006. That plan was rejected by something called the Washington Oversight Team. Was Ms. MacDonald a member of that team?

Ms. SCARLETT. Ms. MacDonald might have been a part of that team.

Mr. DEFAZIO. Yes, she might have been. Who was part of that team? Were you a part of the team?

Ms. SCARLETT. I chair that team or I should say—

Mr. DEFAZIO. OK. Now, could you tell me your credentials in the area of biology and science, your professional credentials? Do you have any?

Ms. SCARLETT. I am not a scientist, sir.

Mr. DEFAZIO. You are a political scientist, is that correct?

Ms. SCARLETT. Recover planning, as was noted earlier, is—

Mr. DEFAZIO. OK, that is fine. Ma'am, just answer the questions, please.

So you are a member of the team. You are not sure whether Ms. MacDonald—you were the Chair but you don't know whether Ms. MacDonald was a member or not. Now, that is kind of odd for a Chair, isn't it?

Ms. SCARLETT. No, because—

Mr. DEFAZIO. If you were the Chair, you must have known who came to your meetings.

Ms. SCARLETT. Well, it was precisely because it was in flux. This was a team that included Dale Hall. It included his recovery team people from the Northwest. It included people from the Bureau of Land Management, from the Forest Service and others, and this is because this recovery planning effort actually involves several different documents—the recovery plan.

Mr. DEFAZIO. Right.

Ms. SCARLETT. Critical habitat.

Mr. DEFAZIO. True.

Ms. SCARLETT. As well as BLM and Forest Service Resource Management Plan.

Mr. DEFAZIO. I am familiar with the process. Thank you.

Ms. SCARLETT. Therefore, they all took part.

Mr. DEFAZIO. On the list I have says that she was a member of the oversight team, so she may have been.

Ms. SCARLETT. The reason that I used that terminology is that the membership has been in flux and it has been some months since she has not participated.

Mr. DEFAZIO. OK. So we don't know whether or not she was really a member of the team or whether or not she may have had undue influence, but we know there was a particular focus on critical habitat.

October 17th, with the rejecting by this Washington Oversight Team, which she may or may not have been a number of, that you are the Chair of, so certainly familiar with this, you rejected the plan proposed by the scientists in the Northwest, and you ask for a rewrite, and you ask for an additional option, an option two, is that correct?

Ms. SCARLETT. Let me clarify, and I am going to read to you—I am going to read to you a letter—

Mr. DEFAZIO. We have documents that—

Ms. SCARLETT. Yes.

Mr. DEFAZIO.—substantiate that, ma'am.

Ms. SCARLETT. Let me read to you a letter that I have received because it pertains to testimony today. "Dear Dominick, it is with both surprise and displeasure that I have become aware of a statement in your testimony to the—

Mr. DEFAZIO. Ma'am, I am not—you may—

Ms. SCARLETT. "I categorically deny making such a statement."

Mr. DEFAZIO. Excuse me. I am asking about factual things. I am not asking you about the opinion or the testimony of a future panelist here.

Ms. SCARLETT. All right.

Mr. DEFAZIO. So we don't need to reject his testimony right now. I am asking about factually documented e-mails, so it was rejected on October 17th, is that correct?

Ms. SCARLETT. No. No. Factually—

Mr. DEFAZIO. It wasn't?

Ms. SCARLETT. No.

Mr. DEFAZIO. And you didn't ask for a rewrite?

Ms. SCARLETT. Factually—

Mr. DEFAZIO. You didn't ask for a rewrite and the addition of an option two?

Ms. SCARLETT. Sir, would you like me to answer?

Mr. DEFAZIO. Yes, I am asking, yes or no. It wasn't rejected?

Ms. SCARLETT. The document—

Mr. DEFAZIO. You just sent it back.

Ms. SCARLETT. The document was not rejected. It was a draft, and as a draft, we always expect further improvements. What we asked were three things:

Number one, I commended the group for having written a very outstanding document but suggested that its organization would merit some reorganization for better readability.

Number two, the document identified in it the Bard Owl as a significant threat to the Northern Spotted Owl, and yet when you read the recovery planning proposals there was nothing in there to address the Bard Owl. We asked whether there was any scientific or other information that could help us try to address the threat of the Bard Owl in the recovery plan.

Number three, we asked whether, given the large landscape scale, using the exact same science and the exact same recovery goals, there might be a way to utilize an adaptive management approach and ask that they retain the existing management approach they were proposing, but could they consider and propose an adaptive management approach alongside that. So those were the three requests—

Mr. DEFAZIO. OK. So that would be where the option two came from. It said, “The less defined second option was requested by Interior Department political appointees and other high-level officials in Washington, D.C.” said Dave Wesley. Not Dominick DellaSala. And he was the leader of the agency’s Spotted Owl recovery team.

Ms. SCARLETT. Again, if I could just—

Mr. DEFAZIO. Right.

Ms. SCARLETT. If I could simply repeat. What we had—you know, a recovery plan is a management plan, and what we were trying to do is to get the best possible management plan. The document that we received was an outstanding document. I commended the Service for it. But we were asking whether, because of the large landscape scale, it might be possible to create performance measures and an adaptive management approach as an option for the public to consider.

The idea is to have a recovery plan that put out two options. Let us consider them, one, an option that was adaptive management, the other a more traditional one with lines on a map that said these are the conservation areas. That is what we did.

The science remains absolutely identical in both of those options.

Mr. DEFAZIO. So then it isn’t true that you focused on just option two. You didn’t require them to just submit option two so that—

Ms. SCARLETT. Absolutely not. We wanted multiple options.

Mr. DEFAZIO. OK. So at no point you restricted them to option two?

Ms. SCARLETT. No.

Mr. DEFAZIO. OK. And you are basing that on—I am running out of time here? OK, sorry.

Yes, Don. Well, we are trying to get in a few facts here, and we are going to end up—Mr. Former Chairman, if you could, please, it is my time. I am not yielding, and I will end now, but let me just say we are going to be back in the courts, and we are going to have another mess because of the perversion that has gone on here, and I will come back for a second round, and continue the line of questioning. Thank you.

The CHAIRMAN. The Chair appreciates the gentleman from Oregon, the Ranking Minority Member has just arrived. The Chair will recognize him.

Mr. YOUNG. I have already been recognized, but thank you, Mr. Chairman.

[Laughter.]

Mr. MILLER. In a dark night with no flashlight.

[Laughter.]

Mr. YOUNG. That is the greatest compliment I have ever had, Mr. Miller.

[Laughter.]

Mr. YOUNG. Madam Secretary, were there any regulatory changes in the Endangered Species Act during the Clinton Administration?

Ms. SCARLETT. I believe in the Clinton Administration there were several regulatory—ESA regulatory proposals made. I do not believe that they were finally implemented, but perhaps Jamie Clark would be best positioned to answer that.

Mr. YOUNG. Ms. Clark?

Ms. CLARK. During the Clinton Administration, there were administrative updates, if you will, to the Endangered Species Act. They were done through open public notice and comments, things like peer review, enhancing the role of states.

Mr. YOUNG. Not much difference to what has occurred here? Much of the same thing.

Ms. CLARK. Well—

Mr. YOUNG. Madam Secretary, what was the goal of those policy changes? Do you have any idea what the goal was? Anybody?

Ms. SCARLETT. You are asking me about the—

Mr. YOUNG. Yes.

Ms. SCARLETT.—Clinton Administration goals?

Mr. YOUNG. Yes.

Ms. SCARLETT. When I look at those goals, they were very much the same as the goals that we have: enhancing partnerships, the role of states, enhancing and clarifying the requirements for science and documents, and improving the opportunity for conservation partnerships, et cetera, and a focus on recovery.

Mr. YOUNG. Do you recall whether a Republican Congress ever enacted legislation or a rider to an appropriations bill that would prevent or prohibit these changes from occurring?

Ms. SCARLETT. I am not aware of any such rider being enacted.

Mr. YOUNG. It has not, in fact.

What is the goal of the current potential regulatory changes of the Endangered Species Act? What is your goal?

Ms. SCARLETT. Our fundamental and central goal is to enhance recovery and to do so by enhancing the opportunity for cooperative conservation partnership, partnerships with states and so on.

Mr. YOUNG. Well, there is not much difference from that than what Secretary Babbitt tried the same thing, I believe, under the Clinton Administration, same proposal.

Ms. SCARLETT. These kinds of concepts have been in play in academia among the western Governors, as well as among administrations, both Democratic and Republican. That is the focus on recovery, better opportunity for states, and better opportunity for citizens and landowners to participate in conservation.

Mr. YOUNG. And if I can, Mr. Chairman, my concern here is, and of course, I am probably the only person on this Committee that has ever voted for the Act itself, and it is probably the worst vote I made because we were misled at that time in what the Act was supposed to do, and the Act has been implemented and used by

groups to try not to preserve species, but to impede any type of development or growth, and that is the unfortunate thing.

We have two cases in Alaska right now, which very, very concerns me in this Act. One is the Polar Bear. Oh, boy, we are going to save the Polar Bear. There is no shortage of Polar Bears, no science was ever studied. Yet it is possibly being put on the Endangered Species Act which will affect any type of fossil fuel development in the United States.

We have another—without any science again—another beginning of the Beluga Whale. No science, no study, but the species is declining in Cook Inlet, which also is my largest port, and if they are put on the Endangered Species Act without any type of cooperation with the state, it shuts down the port and the main entry for any goods coming in the State of Alaska.

So we have to, as this Committee, Mr. Chairman, and I think the members of the Committee, instead of just pointing the finger at the administration, come up with some alternatives. We must save the species if that is what we are seeking to do, but let us not forget that we have the human factor involved also, and it is ironic to me, and I will speak to my good Chairman, that most of this Act has been really forcibly put upon the western states, and I don't consider California too western anymore. It has been infested by those liberal elements that I am not sure what they are, but Oregon is getting there, and Washington is right behind it, and I am afraid Alaska may be next.

But it seems to me that this Act has been used—

The CHAIRMAN. What about West Virginia?

Mr. YOUNG.—over and over again.

The CHAIRMAN. What about West Virginia?

Mr. YOUNG. Well, no, no, that is what I am saying. It has not—when was the last time West Virginia—

Mr. DEFAZIO. Where are we getting done?

Mr. YOUNG. Mr. Chairman.

Mr. DEFAZIO. Where is Oregon getting?

Mr. YOUNG. Close to California, not quite yet, you are getting there.

Mr. Chairman, I have to ask you, and what I am leading up to, it seems to me like a lot of this Act is not used in the eastern states to a great degree.

The Flying Squirrel?

The CHAIRMAN. We have someone on the next panel.

Mr. YOUNG. The Flying Squirrel? 1985, the Flying Squirrel, which is 1985, 1995, that is 22 years ago, and I am just saying if we want to protect the species, then I think we ought to rewrite this Act because what I think the administration is trying to do is discouraging those landholders private entirety of protecting the species.

Now, I want to go through the story, and I will be quiet. My dad died and he left a ranch to my brothers and myself, but he left 21 acres in the middle of that ranch that you cannot touch. It is probably the only place, Mr. Miller, in California you have yet you can see everything as it was many, many, many years ago.

Now, every place around that ranch they farmed it right up to the quick. We call it the quick. No more fence rules, no more noth-

ing. And low and behold, the Golden Garter Snake was going to be put on the endangered species list, and low and behold, guess where most of those garter snakes were located—in those 21 acres.

Now here comes Fish and Wildlife and says Endangered Species Act, you have to have a buffer zone around the 21 acres, which would have taken in the whole ranch. Instead of patting him on the back and giving him “Good job, Russ, you did great, you saved the Golden Garter Snake for us, here is something you can have, a plaque to put up on your wall, continue that good work,” they want to put a buffer zone, or did, they are not going to do it now, a buffer zone around there, and what you call “Shoot, shut up, and shovel,” and this is what this Act is doing.

So we better listen to the administration, and come up with some new ideas, and how we can make this thing work better. If not, we have failed. Never was the intent of that. I am saying I am the only one on this Committee ever voted for the dumb act, and 1 percent recovery rate of the whole thing—1 percent. Yet the imposition upon every landholder private has been untold and taken away from those peoples, and taken without compensation.

Thank you, Mr. Chairman.

The CHAIRMAN. Since the gentleman from California has been honored by the vicious attack by the gentleman from Alaska, I will recognize him to defend himself.

[Laughter.]

Mr. MILLER. Well, I would rather get back to the subject of the hearing. I have been on this Committee for 33 years, so Mr. Young and I have been back and forth at one another for a long time.

Ms. SCARLETT, according to court documents that I have looked at show that Deputy Assistant Secretary Julie MacDonald allowed the California Farm Bureau’s lobbyist to make copies of internal Interior document deliberations in an attempt to really damage or undermine the review process of the threatened Delta Smelt. That was in 2004. Are you aware of that?

Ms. SCARLETT. I am aware of that. I have read the same things you have read.

Mr. MILLER. What actions were taken in response to that?

Ms. SCARLETT. First, let me say Ms. MacDonald has resigned and is no longer with the Department.

Mr. MILLER. Everybody in this government is resigning. I want to know what happened in the Department.

Ms. SCARLETT. OK. Well, let me go through sequentially.

Second, working with Dale Hall about 12-15 months ago we worked out a process so that Dale would work directly with his Fish and Wildlife Service people on the science and information and generation of packages, and that the Washington office, including—

Mr. MILLER. That was in response to what?

Ms. SCARLETT. That the Washington office and Ms. MacDonald would appropriately apply their role of overseeing and looking at quality control, but that the documents themselves would be developed in the field by the Fish and Wildlife Service people, and that was out of concern that we wanted a process in which that—

Mr. MILLER. But there were other scientific documents that Ms. MacDonald edited and reviewed and changed, is that not correct?

Ms. SCARLETT. Ms. MacDonald, fulfilling her role as a deputy assistant secretary—

Mr. MILLER. Not as a scientist.

Ms. SCARLETT. That is correct, but as her role of fulfilling the role of overseeing and reviewing documents certainly did edit documents appropriately. Remember the documents come in and they are not simply about science. Oftentimes there is quality control issues, issues that pertain to whether the document actually has substantiated claims made, or whether it is coherent and consistently written.

Mr. MILLER. Have you reviewed her actions on the Smelt decision, on the vernal pools and Tiger Salamander and the Split Tail?

Ms. SCARLETT. I have not reviewed her decisions on those specific issues.

Mr. MILLER. Well, let me tell you something. You know, this is a very, very serious matter because, you know, as the courts—the state courts made a determination that the California may have to shut down its pumps because it is out of compliance to pump water from the north to the south, which is obviously a very important event in the California economic and social life.

They are now telling us that they believe that they have equivalency permits based upon the work done at the Federal agency. We now learn that the Federal agency work may very well have been undermined and changed, and in a scientific fashion, not just editing what she knew something about, but editing the scientific findings and determinations and suggestions of scientists.

So now our state people are suggesting—I don't think I agree with them, but they are suggesting that somehow they have an equivalency permit based upon a series of processes and findings here that may in fact be fraudulent.

Ms. SCARLETT. Sir, I am not familiar with the equivalency permit as to what—

Mr. MILLER. OK. Let us just talk about what you are responsible for, and each one of these determinations, which is absolutely critical to operation of the California water programs, the Federal and state water programs, we now have this woman wandering around here changing the content and the findings of these determinations.

Ms. SCARLETT. What I can say is that on the Delta Smelt, Steve Thompson, who heads up the California and Oregon office out there, or California and Nevada office, is the individual in charge with overseeing the process and decisionmaking on Delta Smelt, and all my interaction on that issue has been with him and with him only.

Mr. MILLER. So your testimony would be that you believe that the existing protections for the Delta Smelt are sufficient for recovery?

Ms. SCARLETT. I can't speak to that. I would have to defer to Steve Thompson and the Fish and Wildlife Service and their judgment on that as scientists.

Mr. MILLER. Well, my concern is that Mr. Thompson's and others' determinations may be built upon these actions by Julie MacDonald.

Ms. SCARLETT. Certainly the Fish and Wildlife Service, I believe, on an ongoing basis continues to examine the science and the foundations of the decisions that it is rendering, and that is the case with the Delta Smelt.

Mr. MILLER. Well, it is interesting that, you know, a number of your career biologists and other scientists have made it clear that this doesn't represent their work. In fact, she took their names off some of the reports, so we don't know what it represents now.

Ms. SCARLETT. Congressman, as we go forward with all of these endangered species issues, we are striving to uphold the greatest integrity in our science and—

Mr. MILLER. That is my concern. That is my exact concern.

Ms. SCARLETT.—we will continue to do that

Mr. MILLER. That we know how difficult and we know the splits in Congress and in society and everywhere else around the Endangered Species Act, and the theory is that at the end of the day we rely on good science, and sometimes you like the decisions and sometimes you don't, but when you have a person like this wandering around with reported conflict of interests in terms of her own land ownership she and her husband has in the Sacramento Valley, you start to get very concerned about what happens here.

Do you understand the level of concern? We are talking about the economy of the State of California, and decisions that have been made one way or the other—forget whether I agree or disagree with them—but now we find out that we have this individual wandering around making determinations based upon her beliefs.

Ms. SCARLETT. Let me state again, Ms. MacDonald has resigned from the Department. We are striving to ensure the highest integrity of science—

Mr. MILLER. In 2004, in 2004, she—

Ms. SCARLETT.—and will continue to do that.

Mr. MILLER.—is letting people come into the office to take e-mails to undermine the government's case. 2004. This is 2007. She has resigned. That is no gift to the country. She has been wandering around there for three more years. This is a serious, serious ethical and legal problem for the Department, and it is a serious problem in terms of what we now can rely on or not rely on on at least two species, maybe three species that are absolutely critical to determining how we provide for the health of San Francisco Bay and the San Joaquin/Sacramento Delta. Absolutely critical in terms of the future planning of this state.

What are you going to do?

Ms. SCARLETT. Congressman, we are striving—I can move from this moment forward, and we have been over these last months assuring what I believe is a process of integrity. Our Fish and Wildlife Service head of the Endangered Species Act Program and his counterparts in the regions are striving to utilize the best science and do so in a transparent way properly. Documents that are presented to the Department are reviewed to ensure that they have legal sufficiency, that they are coherent and clearly stated, and that is the policy of this Secretary, and that is what I am striving to do.

On an ongoing basis, on an ongoing basis for—

Mr. MILLER. The process broke down in this instance? Did the policy break down?

Ms. SCARLETT. I believe it is extraordinarily important, as everyone—

Mr. MILLER. No, no, no. Did the policy break down?

Ms. SCARLETT. As everyone around this table has said, it is imperative that science proceed with the utmost—

Mr. MILLER. And I am asking you, everybody agrees to that, we all agree to that. In this instance, did the policy break down with the involvement of Julie MacDonald in these decisions?

You are striving for something but you have a person wandering around exerting exactly opposite energy of what you say you are striving for.

Ms. SCARLETT. Sir, we created a process so that there would not be the sort of direct engagement in the field, but rather the appropriate departmental review process.

Mr. MILLER. So let me ask you. You created this policy—

Ms. SCARLETT. Which we think is the appropriate way to proceed.

Mr. MILLER. Did you create this policy knowing of her activities, so you worked around her, and she resigned now? Is that what you are telling us? You and—

Ms. SCARLETT. No.

Mr. MILLER.—the regional office are working around her involvement?

Ms. SCARLETT. No. As the ESA decisionmaking has unfolded over many years, including most recent years, Julie MacDonald strived to do what she thought was her duty to ensure quality product.

Mr. MILLER. Oh, give me a break. Give me a break on this, OK?

Ms. SCARLETT. As we—

Mr. MILLER. My time has run out. If you believe that, if you believe that, then we are in very serious trouble here, and the underpinnings of the integrity of this Department are in very serious trouble.

Ms. SCARLETT. Sir.

Mr. MILLER. And the ripples—

Ms. SCARLETT. Sir, let me—

Mr. MILLER.—of her activities are a real consequence.

Ms. SCARLETT. Sir, let me complete the sentence. As we became aware that there might have been some direct engagement with scientists in the field, we thought that that was not the appropriate way to proceed, and consequently we made assurances that that would not be how the decision process would unfold.

Mr. MILLER. But in a number of cases, that is how it unfolded at the end of the day, with all due respect. That is how it unfolded over the last three years.

The CHAIRMAN. The gentleman's time has expired.

Mr. MILLER. It has expired. Mr. Chairman, I would like to make a request. I think at some point it is very important that the Committee staff have the ability to interview people from the Department, and former people from the Department under oath to make a determination. This has huge ramifications for the State of California, and I would like to discuss that with you later. I am not

asking you to make a decision now, but I would like very much to discuss that with you later.

The CHAIRMAN. The Chair understands.

We will recognize the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. I would join with the gentleman who just spoke. The wolf issue is a very major issue in New Mexico, and the current program managers can't tell us one thing about how many wolves are running loose outside the tract area, and I would like to under oath talk to the people who are implementing the wolf program in New Mexico because it does, it eats away at the very economic basis of our Western way of life because the grazing permits are being taken away from people whose livestock are being killed by the wolves, and all the people who are going to make sure that New Mexico has got all the wolves it need.

By the way, when the wolves kill too many animals in Arizona, they bring them to New Mexico to release them, and I would like to get that under oath. So I would share the gentleman's request for a panel where we talk to people under oath.

Ms. Scarlett, we had testimony from one of the witnesses that the Bush Administration is choking off the funding. Yet when I look at the funding I see in comparative years, if we take today and move back four years, take the end of the Clinton Administration, move back four years, see conservation, 3.8 under Clinton, 9.7 under Bush; listing, 4.4 million under Clinton, 12 million under Bush; consultation, 16 million under Clinton, 47 million under Bush; recovery, 36 versus 67. That doesn't feel like we are choking funding off.

Are we choking funding off? Can you make some sort of an assessment about the choking of funding?

Ms. SCARLETT. Sir, we have taken extraordinarily seriously our responsibilities under the Endangered Species Act, and I believe the budget numbers that you just described reflect that. I will add to that, that under the President's vision of cooperative conservation we have also increased cooperative conservation grants by some 50 percent. Those grants being precisely the vehicle through which we work with landowners to get on-the-ground recovery, and that to the tune of some 320 million in our proposed 2008 budget.

Mr. PEARCE. Yes, the starving of funding is a curious statement.

Are you familiar with any of the scientists? We have been hearing a lot about science. Are you familiar with any scientists in the agencies who have misused facts?

I would direct your attention to the lynxes.

Ms. SCARLETT. I was going to say, sir, there was an instance several years ago in which some lynx's hair samples were—

Mr. PEARCE. Yes, there were three Forest Service employees, there were two Fish and Wildlife employees, and there were two State of Washington Department employees who basically falsified information so that in one article it said the culture inside the agencies is one that approves of lying and cheating on the part of the scientists involved.

So when I hear about science, I realize we also need to balance it out by the internal agencies' willingness to achieve its agenda no matter what methods of science are used.

Whatever happened to those people? We see Ms. MacDonald has resigned, and we see her—we are going to get her in here under oath or get you here under oath. Whatever happened to these Fish and Wildlife Service employees for lying and cheating? This is according to the newspaper that they did that.

Ms. SCARLETT. Sir, it has been about four years. I don't recall what actually occurred with them. What I do know is that it was that instance that actually resulted in our beginning to craft a Code of Scientific Conduct to try and create procedures whereby we could better assure that that would not happen, and that there would be accountability should it happen.

Mr. PEARCE. I was up about two or three years ago flying over a central Arizona project, and they were pointing out one down, that they would empty out, and then some environmental group brought suit so that they couldn't put the water back in. So the ended up getting \$25 million, this environmental group got \$25 million in order to allow them to put the water back in. That seems and feels like extortion.

You have 111 suits right now that agencies and NGO's have brought against you—environmental groups. Do any of those groups ever make money off those lawsuits? Do they ever get settlements from the agency or someone?

Ms. SCARLETT. There are instances where there are settlements. There are also instances where their attorney's fees are paid.

Mr. PEARCE. Fees that are paid.

Ms. SCARLETT. That is correct. I do not have the tally though of what that would be.

Mr. PEARCE. So Defenders of Wildlife has four suits on this block of stuff. Defenders of Wildlife could actually draw revenue. They could draw cash payments for the outcome of that suit. Is that more or less correct, Mr. Scarlett?

Ms. SCARLETT. In the disposition of lawsuits, it is possible that organizations receive either attorney fees and/or settlement.

Mr. PEARCE. So the Defenders of Wildlife, when I get the word that the Defenders of Wildlife actually has received cash settlements, that would be somewhat accurate? It could be accurate?

Ms. SCARLETT. It could be accurate that there are cash settlements and attorney's fees paid.

Mr. PEARCE. As far as the wolf involved in western New Mexico—by the way, it is now—I will use this point to say that we have had spottings as far away as maybe 200 miles away in New Mexico. People are getting concerned. The last things the wolves did was go into a corral, they were chasing the horse. It ran back to its house, felt like it could get sanctuary. They attacked and killed the horse inside the corral there right behind the house. They have killed pets.

What is the agency doing to see that no human life is taken because we had testimony in this Committee last year that the most provocative thing to a wolf is a baby crying or laughing? That was testimony that came from a scientist, a specialist. So I worry about my constituents when the wolves in my district actually come up and take a horse right out of its pen, and I mean they strip it down to where it is a skeleton left, it looked like piranhas had been associated with it. It was not a very pretty thing, and in fact then the

next week they killed another horse right in the same area. Meanwhile the agency is trapped by people who would be bring lawsuit to keep it from touching any of the wolves, and they are supposed to. Their law says, the regulation says it is supposed to.

What is being done to protect the innocent live in the 2nd District of New Mexico because Fish and Wildlife puts the killer wolves, the ones who are too big a danger in Arizona, they get brought to New Mexico, and New Mexico is a releasing point? I would like to take them to Central Park and release them there. If it is good for western New Mexico, it is good for every place. I think we should bring them here and put them loose on the mall. That would be nice. If it is OK for New Mexico, it ought to be good for anyplace.

But tell me what is being changed about that.

Ms. SCARLETT. Sir, the Department and the Fish and Wildlife Service recognize the challenges of large species, be it wolf, grizzly bear or others, that do pose threats to human settlements, property, domestic livestock and so forth. The Endangered Species Act does require that we protect species that are threatened or endangered of extinction, and I believe the Department has done that well.

We have just recently proposed the de-listing of the Gray Wolf in a portion of its range. As we do that, we do so with a very careful management plan in cooperation with states to help ensure that those wolves are managed in such a way that on the one hand they thrive, and on the other hand they do not pose threats to people.

So it is a challenge. These are predator species. On the other hand we try to both ensure that human populations and domestic livestock are protected by working with states in their management as well as with local communities, and then at the same time fulfill our responsibilities, but it is an ongoing challenge.

Mr. PEARCE. The ranchers out in western New Mexico wish they would be listed as an endangered species where they could get that same protection from the U.S. Government. Thank you. Appreciate it, Mr. Chairman.

The CHAIRMAN. The gentleman from Wisconsin, Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. I want to thank you for holding this very important hearing, and for the testimony that we have had here today, and quite frankly, it is astounding, you know, just hearing the reports and the accounts, and it is not just limited to the Department of the Interior, but virtually every Federal agency in this administration in regards to the political manipulation of facts and scientifically based studies, and I am talking about political appointees in the Pentagon, I am talking about the U.S. Attorney scandal right now, I am talking about the revision and re-writing of global climate change and global warming reports.

Now this ESA is really just the tip of the iceberg of what we have been seeing consistently through the administration. I am not confident that this matter with Julie MacDonald will be held right internally, I wouldn't be surprised if she gets the Medal of Freedom Award by this administration at the end of the day.

In all seriousness, reading the IG's report should be a call for action on this, and yet given Secretary Kempthorne's glowing praise for her at the time of her resignation, I am not at all confident that

the Interior Department has the willingness or capability of bringing some accountability to this matter, and that is tragic because not only has the Congress lost confidence of this administration and in this agency in dealing with this, but more importantly, the American people are because they see this manipulation that has been taking place over the last six years in this administration.

I know this has been uncomfortable for you, Ms. Scarlett, but that is the way it has to be, and I want to specifically ask you a question in regards to the process of de-listing the grizzly bears right now, and the American Bald Eagle, and whether or not the proposed changed rules that is pending at Fish and Wildlife has had any influence in that decision as far as de-listing of the Grizzly at Yellowstone and the American Bald Eagle that we are about to move forward on.

Ms. SCARLETT. Let me speak first to the Bald Eagle. The Fish and Wildlife Service has been working for some time on a de-listing proposal for the Bald Eagle. When the Bald Eagle or if the Bald Eagle is de-listed, it comes under the protection of the Bald & Golden Eagle Protection Act. Therefore, it will continue to have significant protections.

Mr. KIND. I understand that, and I submitted a letter to you, or to Secretary Kempthorne dated April 13, signed by 25 of my colleagues, including the Chair and Mr. Miller here, questioning the wisdom of redefining the definition of "disturb" under the Bald & American Eagle Protection Act, and this is important.

Ms. SCARLETT. It is.

Mr. KIND. It is an important factor, and as far as maintaining the appropriate protection for the Bald Eagle, which is an incredible success story, and the American people see it as such. But if we blow this now—

Ms. SCARLETT. Yes.

Mr. KIND.—in redefining definitions that have common meanings and common practice, then we are not going to be able to list it in one of those successful stories.

Ms. SCARLETT. Sir, I believe the definition that we now have builds upon the very common practice that you are talking about. There were earlier definitions that have been repudiated. The one that is currently under consideration builds upon common practice and the experience of our Fish and Wildlife Service.

Mr. KIND. Well, if I could request a written response to the letter that we have submitted, and I will give you another copy of the letter today, and perhaps a briefing, and I am taking the lead on it, and if you have someone that is specifically—and I have had conversations with Director Hall about this matter myself for some reassurance, because all the fly always counsels were raising concerns about this definition, and perhaps most importantly, most of the state fish and wildlife agencies are saying themselves are saying that the proposed redefinition was unworkable, and wouldn't provide adequate protection for the Bald Eagle, and it is important that they are on board with all of this given the reliance Fish and Wildlife has in working with the state agencies in the implementation of these practice plans.

So if you could submit that written response or have someone respond to us, and then I would like to sit down with someone.

Ms. SCARLETT. Be happy to do that, and we concur that it is imperative that that definition of disturb build on common practice, and assure the long-term survivability and flourishing, indeed, of the Bald Eagle.

Mr. KIND. And as far as Mr. Ruch and Dr. Grifo and Ms. Clark is concerned, we have heard some very good recommendations on what type of action that perhaps the Congress can take as far as tightening up these procedures to see that the science is being pursued and implemented, and what we would be asking from you is maybe some specific proposals and what action this Committee, this Congress can be taking, assuming that the administration themselves or the agency is incapable of implementing changes in light of the IG's reports and all the other reports coming out.

I have heard the need of greater transparency, greater whistleblower protection, perhaps changing the definition of the standard of proof from arbitrary and capricious to something that might—we might have to look at in that regard, in regards to the definition of proof that we currently have to show, but we would be looking for some specific proposals, and I think some of that is already in your written testimony. I haven't had a chance to review everyone's written testimony yet, but that would be very helpful as we move forward.

Thank you all again, and thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado, Mr. Lamborn. I apologize for not recognizing him earlier as he was the first here today.

Mr. LAMBORN. Mr. Chairman, thank you.

We have had some discussion today about the role of science and I think there has been a—some people may have given the impression that science never varies and people are always in agreement, and all scientists are going to look at a problem and come up with the same answer and conclusion.

Dr. Grifo, I hope I pronounced that correctly.

Ms. GRIFO. Yes.

Mr. LAMBORN. Wouldn't you agree with me that scientists can look at the same set of facts and in good faith come up with differing conclusions?

Ms. GRIFO. Yes, sir, and that is the purpose of peer review. That is the purpose of exchanges at scientific meetings. I mean, I am not going to sit here and tell you that every scientist is in lock-step on every topic. But I think the problem that we have seen at Interior and with Fish and Wildlife is that there is no clear policy that even allows the career scientists to be at those meetings, to publish in those—

Mr. LAMBORN. Well, that is OK. I didn't ask about that.

For instance, what is a species and what is a subspecies? I mean, a subspecies is not a species, but yet you have the lumpers and the splitters, you know, to use a colloquial term, in the scientific community, and some will say that subspecies shouldn't get extra protection and others would say it is separate and should get.

Don't you agree then that we have these good faith disputes and if scientists can't agree, you know, what is a bureaucrat going to do?

I mean, it is not as clear-cut as maybe some of the panel have intimated. Wouldn't you agree with that?

Ms. GRIFO. The Endangered Species Act asks for the best available science, and that is what we need. Now, that best available science can come from a number of different sources, and it can reflect a variety of different opinions.

Unfortunately, what we are seeing is that when there is a reconciliation of those opinions, that the science is being changed before that open process even occurs, and that is the problem, sir.

Mr. LAMBORN. Well, and the reason I bring this up, in Colorado, we have the Tree Bulls Meadow Jumping Mouse, and then it was getting additional protection, and yet a scientist came along and said, hey, that is genetically identical to the Bear Lodge Jumping Mouse, which is not threatened up north, north of Colorado. So that has created all kinds of turmoil, and millions, tens of millions of dollars of expense to the taxpayers, and private property owners.

Ms. GRIFO. Could I respond?

Mr. LAMBORN. No, that was just a comment.

Ms. GRIFO. OK.

Mr. LAMBORN. Thanks for your willingness though.

Ms. GRIFO. OK.

Mr. LAMBORN. Ms. Clark, a question for you, a conceptual question. If there is a species that is common and thriving in another country, like Canada, let us say, but its total territory in the U.S., it is under threat, and wherever it lives in the U.S., and its habitat and it itself is under threat and in danger. What should we do? Should we assume that because the species itself, its future on the planet Earth is assured, but in the U.S. it is under threat. Should we take steps to protect it in the U.S. where it is under threat?

Ms. CLARK. The U.S. Endangered Species Act does under the definition of species provide protection to species, subspecies and distinct vertebrate segment, and the policy defining distinct vertebrate segment, at least while I was at Interior, did in fact acknowledge that the United States had an obligation to protect the species within its borders because the reach of the law as it relates to consultation, obligations for recovery, and interagency coordination happens only within the United States.

So there actually are a number of species on the list, the Woodland Caribou, the Northern Rockies Wolves, Marble Murrelet, all of which a decision was made that they were important to the ecology of the United States, and the Endangered Species Act should afford them protection under the rules of the U.S.

Mr. LAMBORN. So hypothetically speaking, if there is a lynx or a be Polar Bear or anything else, and it is thriving in Canada, and it only historically was ever marginally in the U.S., that marginal existence in the U.S. would trigger all kinds of action against private landowners or anything like that who might step in the way of that species where it is 1 percent existence in the U.S.?

Ms. CLARK. Well, the existence, and having suitable range in the United States affords the opportunity of the Endangered Species Act to provide that protection. Yes, it does. Today's law allows for the protection of the U.S. range species in danger from their status in the United States.

Mr. LAMBORN. OK. So the law doesn't contemplate the existence of that species in other like neighboring countries?

Ms. CLARK. It can, but there is the opportunity given the reach of the law, the other sections of the law—recovery, consultation—to declare the U.S. population a distinct vertebrate segment because it recognizes the international borders. That was done by policy years ago.

Mr. LAMBORN. Along a similar vein, and I know Representative Young, who was here a few minutes ago, would come down on this, but I question whether the original intent of the law and those who passed it in Congress 30 some years ago, for instance, wanted insects to be on the list of endangered species, and I noticed that in your comment you refer to how it is good that we are bringing back the wolf, the Timber Wolf, and the manatee, and I believe the eagle is the other species you cite, and those we would all agree deserve and need protection, and it is wonderful what is happening.

But were insects intended by the original passage of the law?

Ms. CLARK. Yes, absolutely they were, Congressmen, because if you look at the ecological web of life, we don't differentiate between charismatic mammals or insects, fish, amphibians, reptiles, about the ecological connectivity of the fabric of what makes up the systems and the unique habitat systems in this country.

And so there are a number of insects—butterflies, they are insects. Most wouldn't debate that. And so it suggests some level of taxonomic arrogance to decide whether a wolf gets protection and a Bay Checkerspot Butterfly does not. These species are afforded legal protection regardless of taxonomic classification.

Mr. LAMBORN. Excuse me?

Ms. CLARK. I just summarized by saying all the species, whether they are an insect, a mammal, a reptile, if they are in danger of extinction or threatened with endangerment should be afforded legal protection.

Mr. LAMBORN. Thank you.

The CHAIRMAN. The Chair recognizes the gentlelady from the Virgin Islands, Ms. Christensen.

Ms. CHRISTENSEN. Thank you, Mr. Chairman.

I was particularly interested in this hearing. Unfortunately, I had another just about equally important hearing so I have been back and forth, but I want to thank you for holding this hearing because it deals with two issues that have been of great concern to me. One is the weakening of the Endangered Species Act.

In my time serving on the Committee on National Parks, we have fought back unsuccessfully in the last Congress some encroachments on that using exaggerated issues regarding the Department of Defense or Native American populations, and today, I haven't completely gotten through all of the testimony either, but I notice reports of reducing staff, which also undermines the ability of the Department to address the issues concerning the Endangered Species Act.

But another issue that, as Mr. Kind said, goes far beyond just this one agency is the changing of reports and the replacement of scientists by not only industry people, but religious ideologies, and so the reports don't come out based on the best available science.

One of the reports that I dealt with as a physician was the one coming out of the agency on health care, quality and research on health disparities. The first report actually showed that there were major disparities between racial and ethnic minorities and the rest of the population, and when it got to the Office of the Secretary, that report was changed so that the report as it came out initially showed that there were no disparities. Luckily, some of the Committee members over here had them go back and issue the original report.

So I am hoping that beginning to look at this one issue today in this agency will help to reverse some of that, and it is important that we be able to have confidence in the reports coming out of the administration.

I guess, about to ask one question that I am sure it has probably been asked. Again, I would ask Deputy Secretary Scarlett, because it is important that we are able to have confidence in the reports coming out, if all of those reports that came out under Ms. MacDonald, are they being reviewed and can we anticipate that they will be revised or looked at and revised, if necessary, using the best available science?

Ms. SCARLETT. Congresswoman, this issue has come up several times this morning. Let me just say right now as clearly as I can where there is evidence of science manipulation, we want to correct that, and we will explore where those incidences are and address them.

I do want to say that I believe we are applying scientific integrity. I think that in the Fish and Wildlife Service we have outstanding scientists. I trust them. I rely on them. I defer to their judgment, and Secretary Kempthorne likewise does as well. If there are incidences and specific examples of interference, we will look at those and take whatever steps are appropriate.

Ms. CHRISTENSEN. Deputy Secretary Scarlett, my workings with you, you know, I have worked with you on issues at home and other places, and I found you to be a person of integrity. I think though that everyone of the reports that has come out under the personnel who resigned needs to be reviewed because unless we look at all of them we won't know if there were some decisions that were made that were not based on science. To me, the assumption should be there that all of them may have some flaw and need to be looked at.

Mr. Chairman, I have no further questions.

The CHAIRMAN. The gentleman from South Carolina, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. I will be brief. I notice a lot of other questions need to be asked, but I was going to ask Dr. Grifo, if I might. Let me give you an example and see how you would respond.

There is a species that is currently at an historic population level but whose habitat may be significantly altered in the next 50 to 100 years. Should the Fish and Wildlife Service list this species today?

Ms. GRIFO. That is a question for the process that the Endangered Species Act requires, the best available science. We need to have the career biologists do their part, whatever advisory committees are appropriate do their part. I mean, that is not for me to an-

swer. The important thing is that we have a process that this Act enables, and the important thing is that we do not manipulate the science going into that process. That is what is critical to the outcome.

Mr. BROWN. I would like, if I may, Mr. Chairman, is to yield my available time to Mr. Pearce.

Mr. PEARCE. Thank the gentleman for yielding.

Ms. Clark, I was hearing your comment about equal protection for any species. So if you had to choose or if we had to choose between a species and a forest dying, which would you choose?

If it is a matter of the trees and the forest dying, or in spraying to protect the trees, you might kill the butterflies there, what decision would you have made as director?

Ms. CLARK. I don't make decisions in the hypothetical, Congressman.

Mr. PEARCE. Well, it is not hypothetical. Let us go to New Mexico right now, Cloudcroft, New Mexico. We have 50 or 60 thousand acres that have already died, every tree there. They have a disease which started about two years. The Forest Service made the decision not to spray for the butterflies and for the Spotted Owl. Meanwhile the forest is going to simply die. Cloudcroft, New Mexico, sits nestled in there, and the fire alarm, the fire danger among the citizens is extraordinarily high. People are bringing suits to keep from cutting the trees.

My question is then in the non-hypothetical, would you spray and kill butterflies or would you save the forest?

Ms. CLARK. There is a provision in the Endangered Species Act that—

Mr. PEARCE. I am asking what you would do. Would you make the decision to spray and save the trees and kill butterflies or would you do what has been done right now?

Ms. CLARK. I am not going to give you a yes or a no, sir. I would make the decision—

Mr. PEARCE. That is OK then. I would reclaim my time then. I am just asking your input because a decision has been made and we got people who are very gravely at risk because of decisions that are made.

Ms. Scarlett, you might want to think about that because it is an issue that we will be bringing up. It is a very difficult issue, and we have a community at risk, the same sorts of qualitative decisions are being made every day, and so that in this Committee two years ago we heard a city councilman from San, I think, Bernardino or one of the Sans out there in California, and she says, our community is the greenest of the green, and she said, I am the greenest of the green commissioners on the city council, and she said, we can't even build a room on the back of a house to accommodate invalids in our town because of the Endangered Species Act. She said the Endangered Species Act is broken from the eyes of an environmentalist, from the eyes of the greenest of the green, the Endangered Species Act is broken beyond belief, and you need to fix it.

I doubt that we hear that testimony here today, but I would yield the gentleman back his time. Thank you.

Mr. BROWN. Mr. Chairman, I yield back my time.

The CHAIRMAN. The gentleman from New Jersey, Mr. Holt.

Mr. HOLT. Thank you, Mr. Chairman.

Ms. Scarlett, I would like to pursue some of the line of questioning that Ms. Christensen and others have been following that really has to do with the environment in which the scientists operate so that we can have good science.

First of all, you said you were unaware of any gag order at the Interior Department. Are you familiar with the memo that was sent to Fish and Wildlife Service employees instructing them not to talk about the relationship between climate change and Polar Bears?

Would you call that a gag order?

Ms. SCARLETT. I am aware of that particular memo. I could answer it or I have with me Dale Hall who actually wrote the memo who could describe its purposes and intent.

Mr. HOLT. Well, I have other questions I want to get to, so let me just ask. Would you call that a gag order when it says, let us see—anyone approved for travel from the Fish and Wildlife Service “will not be speaking on or responding to these issues.”

Ms. SCARLETT. My understanding of the memo which pertained to some international travel is that we had a delegation going to a meeting, and an inquiry had come as to what the subject matter of the meeting was, and the memo was intended to say that for the purposes of the Fish and Wildlife Service attending the meeting, their topic was not climate change; that they were to speak on the topics in which they had expertise, and that was the intent. It was not intended to be a gag order, but rather a clarification of what the purpose of the travel was who was going, and as in any international delegation, to have assignments clearly appropriated.

Mr. HOLT. Well, this gets at my point. It seems to me that you have a lot of remedial work to do, you and the others heading the agency, with 30 percent of the staff positions vacant in the Ecological Services Program, with the top professional position in charge of Federal endangered species efforts vacant for the better part of a year. I have to ask whether people feel comfortable in those jobs, if you are having trouble filling those positions because it is a very uncomfortable position to be in, or whether you are choosing not to fill those positions so that the ESA will not be enforced.

Ms. SCARLETT. Sir, neither of those.

Mr. HOLT. Neither of those.

Ms. SCARLETT. This Department remains strongly committed to fulfilling the provisions of the Endangered Species Act, and I have with me today Bryan Arroya who is actually serving in the capacity of head of the ESA program to which you allude.

Mr. HOLT. Now, there were earlier questions about what steps have been taken to correct what might be manipulation of science by a now retired or resigned official, and you seem to say that you were not making the effort to review and correct any of the errors that might be in there.

You owe it not just to your employees, and not just to us, but to the country to do everything you can to restore the environment of good science there, and that would include making sure that any errors in science, any manipulation in science that occurred for whatever reason, political are not, are corrected, and that the posi-

tions are filled with people who are competent in their area, and that they are told when hired that they will be free to practice the science.

You have some real remedial work to be done regardless of what happens to individuals who are fired or who resign, and other departments have faced this. A few of them have tried to deal with it, but this is a critical situation throughout our government—the politicization of science and the disparaging of scientifically trained staff, and my time has expired, but I just want to make sure that you understand the seriousness of the task in front of you.

Ms. SCARLETT. Sir, let me reaffirm that where there is evidence of science manipulation we will act upon it. I take that challenge and charge very seriously. You will find no greater champion of integrity in science than myself and this Secretary, and we will strive to take whatever actions we can to ensure that that is publicly evidenced as well as internally.

Mr. HOLT. You and he should sit down with every memo that passed through the hands and that might have been subject to alterations or manipulation, you should be sitting there at the table with scientists going through word by word and correcting those.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman, and I think much of the discussion or a big part of it has been about the Endangered Species Act itself, and the philosophical differences we might hold here regarding that Act. I want to get back to the scheduled substance of this hearing which had to do with manipulation that occurred, and in my mind there is no doubt, and the distortion that happened to the integrity and the empirical information that people use, that we use to make decisions under the Endangered Species Act. That is the fundamental issue, I think, at this hearing, and I agree with my colleagues, as they have said, that this is almost a pathological behavior on the part of the administration, not only in the Interior Department, but in other departments as well.

Let me ask, with the exception of the Deputy Secretary, the three witnesses, part of our responsibilities that our Chairman talked about at the beginning has to do with the oversight and remedy that we need to talk about on the issue of distortion, manipulation, and the debasing of science and fact as part of the decisionmaking, and if you could for the record and briefly each one of you a central one or two recommendations that you mention in your testimony, if you could elaborate on those that would help guide this committee in terms of oversight and remedy for the long haul, and we can begin with Ms. Clark.

Ms. CLARK. Thank you, Mr. Grijalva.

I will leave it to my colleagues to talk about some of the transparency and whistle blower issues, but we are quite concerned, I am quite concerned about the kind of administrative policies that are under rewrite. I am very interested in working with the Department.

I absolutely believe in the Deputy Secretary's and the Secretary's goals, and so whether it is—certainly it might not be their intent from our perspective the effect of what we know about the regs that are under revision will seriously, in essence, rewrite the imple-

mentation goals of Section 4, the listing provisions, the recovery provisions, the consultation provisions, and clearly I don't know how else to interpret "delegate to the states" other than delegate to the states, you know, states that are ill-equipped to take on some of these challenges, though I certainly agree that greater participation and collaboration and openness is important.

So while I was asked earlier whether the Clinton Administration developed regs to implement the Act, and Secretary Scarlett answered our purpose quite well, the issue that concerns me is that while I believe we were working really hard to make the Endangered Species Act "function" better, we never lost sight of the goal of achieving species recovery, and through some of the processes that I understand are underway—of course, not having seen this version of the draft regs—we stand ready to work with this Department, but I really fear it is on a fast track, and I urge the Congress to pay careful attention to the regulatory process underway because what was not achieved legislatively in the last Congress could easily be achieved administratively, and that would be a real nail in the coffin for the Endangered Species Act.

Mr. GRIJALVA. Yes, I am looking forward to seeing how Mr. Hall and the Department identify frivolous petitions as we go along in this process.

If the other witnesses want to make one central recommendation, I would appreciate that, or a couple.

Ms. GRIFO. Yes, I think one of the most important things, and it has come up several times this morning already, is open communication. In response to the Department of Commerce media policy, we have sent a long letter—10 plus pages—to Secretary Gutierrez about the problems in that Department of Commerce policy, and we are happy to make that available.

But some of the central things in that are that, you know, when you become a scientist and work for the Federal government, you are not giving up your First Amendment rights, you are not giving up your ability to talk about your taxpayer-funded research results, and we have to really honor the work that these biologists are doing and allow them that opportunity to take advantage of that central pillar of the scientific method, which is communicating those results, talking about those results.

To have a Fish and Wildlife Service scientist at a professional meeting have to not be able to answer a question? I mean, there is no clear policy that we could find on those websites. This is something that could happen very quickly. We have a model media policy that could be adopted tomorrow by the Interior Department.

Mr. GRIJALVA. Sir?

Mr. RUCH. I think the central thing this Committee could do is open up the black box of decisionmaking in the Department of the Interior. We have heard today about the formation of an accountability board. We don't know who is on it. We don't know what standards they meet. We don't know anything about it. We have heard now about an internal review process that is not spelled out that no one has heard of before.

If there is a paper trail and a transparent process where when these changes are made, when the scientists from the Department

are overruled, there is a record and there is a written justification, we wouldn't have need for this hearing.

The other thing I would add very quickly is that the ability of civil servants to communicate with the Congress, to talk to you and your staff, need to have some enforcement behind it because, to the extent that you have the ability to see into the opacity of these agencies directly, that would be a very strong preventative step.

Mr. GRIJALVA. Thank you, and I think the resignation of Ms. MacDonald does not remedy the issue that we are dealing with here, and I would hope that each one of her decisions, each one of her reviews are looked at very carefully and in a very transparent way, examined for the appropriateness and to assure there was no manipulation or distortion of that information.

Mr. Chairman, if I may for the record like to ask you if I may enter into the record a letter that I and Congressman Mitchell sent to Director Hall dealing with the de-listing of the Southwest Desert Bald Eagle, and accompanying information. Given some of the things that we have all read and heard about regarding manipulation, I would request that his response be made available to all the Committee as well.

Thank you.

The CHAIRMAN. Without objection, the gentleman's letter will be made part of the record. And you are asking for written responses, are you? And we would ask the persons to whom those questions are directed to respond for the record.

[The letter submitted for the record follows:]

**Congress of the United States**  
**Washington, DC 20515**

May 8, 2007

H. Dale Hall  
Director  
U.S. Fish and Wildlife Service  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

RE: Delisting of Southwestern Eagle

Dear Director Hall:

We are writing to express our concern at the Fish and Wildlife Service's determination that the Southwestern desert nesting bald eagle ("Southwestern eagle") may not be listed as an Endangered Distinct Population Segment when the bald eagle nationwide is removed from the Endangered Species list. Arizona's unique desert nesting eagle is still at grave risk of extinction without Endangered Species Act protection, and merits continued protection as an Endangered Distinct Population Segment.

On August 30, 2006, the Service concluded that the Southwestern eagle is not a Distinct Population Segment and will not be eligible for continued Endangered Species Act protection upon the Service's announced nationwide bald eagle delisting. This proposal reverses three decades of recognition of the desert eagle as a Distinct Population Segment and contradicts peer reviewers' recommendations against delisting the population.

Experts, including the Fish and Wildlife Service's own scientists, treat the Southwestern eagle as distinct and have recommended its continued protection under the Endangered Species Act. The fact that the Southwestern eagle occupies an ecological setting unique among eagles has been acknowledged by the Service and others for three decades. It is reproductively, biologically, geographically and behaviorally isolated. Historically, the Fish and Wildlife Service has managed the Arizona bald eagle as a population distinct from all other eagles in the U.S. and it has its own recovery plan and recovery program.

Moreover, eagle experts recognize that with only 43 known breeding pairs and continued threats, the desert eagle should not be delisted. The same peer-review panel that approved the delisting of the bald eagle nationally also recommended continued protection for the Southwestern eagle, writing:

"We do not believe that the Southwest Bald Eagle population is secure, and we question whether even current numbers can be sustained without active management and habitat protection. USFWS may wish to reconsider the possibilities of designating the Southwest recovery region as a Distinct Population Segment (DPS) and deferring delisting of the

Southwest population until data are available that demonstrate the population is sufficiently large and self-sustaining."

The former Chairman of the Southwestern Bald Eagle Management Committee, Robert Magill, similarly concluded in his review of the proposed bald eagle delisting rule that:

"the bald eagle should continue to be protected as a threatened species in the Southwest until realistic delisting goals can be established and obtained...the conclusion that the bald eagle in the Southwestern Recovery Region no longer needs protection from the Endangered Species Act is incorrect."

The Southwestern eagle is of important spiritual and cultural value to the Native American tribal people of Arizona and the Southwest. The San Carlos Apache Tribe and other Arizona tribes are opposed to the delisting of this population. The San Carlos Tribe believes, and we concur, that the delisting of this small, unique population of eagles would violate the Federal government's trust responsibility to the Native nations of the Southwest.

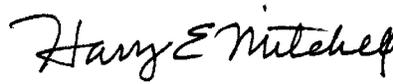
Based on the opinions of experts, as well as the Fish and Wildlife Service's management of the population as an entity with distinct characteristics, behaviors, and habitats, it is clear that the Southwestern eagle deserves special consideration under the Endangered Species Act. We strongly urge the Service to reconsider its decision regarding the species and to protect the species as a distinct population segment.

We would appreciate a prompt response explaining how the Service intends to protect the Southwestern eagle. If you have any questions regarding this letter, please feel free to contact our staff members, Rachel Kondor (Grijalva) at [rachel.kondor@mail.house.gov](mailto:rachel.kondor@mail.house.gov) - (202) 225-2435, or Seth Scott (Mitchell) at [seth.scott@mail.house.gov](mailto:seth.scott@mail.house.gov) - (202) 225-2190.

Sincerely,



Raúl M. Grijalva  
Member of Congress



Harry E. Mitchell  
Member of Congress

The CHAIRMAN. The gentlelady from California, Ms. Capps.

Ms. CAPPs. I concur with the remarks that my fellow Californian, Mr. Miller, by requesting further questioning of staff of the Department, if necessary, under oath referred to a minute ago by Jeff Ruch.

Turn this microphone on so I can face the witnesses, and thank you for being here today, particularly my constituent who is our Deputy Secretary Scarlett from my district in California.

We all understand that the ESA designates critical habitat in order to ensure the recovery of endangered species. Now, in 2005, the Department issued a rule to cut back habitat along the Pacific Coast for the threatened Snow Leaf Plover by over 40 percent. I am using the Plover as an example for many such rules, and its final rule, because I want to highlight the—I quote from the preamble to the rule on this and many other examples. The Bush Administration has included the following statement. I am quoting from that rule, and I have a copy of it here.

“In more than 30 years of implementing the ESA, the Service has found that the designation of critical habitat provides little additional protection to most listed species while preventing the Service from using scarce conservation resources for activities with greater conservation benefits.”

It is my understanding that some attorneys working for the Department oppose the inclusion of this statement in critical habitat designations, being of the opinion that this inappropriate language.

So I want to ask you, Secretary Scarlett, what is the legal justification for including this statement in a final rule on critical habitat designation?

Ms. SCARLETT. Congresswoman, nice to see you.

I am not an attorney so I am hesitant to give the legal justification for that terminology. It is language that was proposed by the Assistant Secretary Craig Manson, a former judge and a lawyer. So I would prefer to be able to get back to you with a legal opinion on that, which appears to be what you are asking for.

Ms. CAPPS. I would appreciate that in writing, but while we are having that conversation perhaps in a non-legal way. There must have been some reason for putting this statement in the rule.

Ms. SCARLETT. Let me speak in a non-legal way, not trying to present the legal justification, but for some time now, and including, I believe, and Jamie could speak to this in the previous administration, there has been concern that critical habitat as practiced has not really added advantages to species or enhanced their survivability, if you will.

One of the things that we have been actually looking at in the proposed or possibly proposed changes to the ESA regulations would be language that we think would breathe life into critical habitat by actually defining it and strengthening its purposes and role toward recovery. But I think it is in light of the history of critical habitat which added on to the context of other protections of the species really didn't add much value that that language was proposed.

Ms. CAPPS. And let me ask you a question then about the value, and what studies there are to determine this statement that you just made. You aligned it with the previous administration, but you must affirm it if its presence still in the rule, that there is no need, you know, for additional protection.

Is this based on studies?

Ms. SCARLETT. Let me clarify. There often is need for significant protection of species. The issue at hand is whether critical habitat as implemented has provided that additional protection, and yes, there are a number of academic studies that have evaluated critical habitat and its role in helping species recovery that are very critical of that role.

Ms. CAPPS. Let me then thank you. I look forward to some more statements because it says in the—where I quoted, it says, “The designation provides little additional protection,” so that is in the rule.

Dr. Grifo, you referred to a lot of this in your opening statement. I am not sure you mentioned the Plover specifically, but it doesn't matter. I mean, that is of interest along the Pacific Coast very much, but whether you talk about this rule with respect to that

issue, that species or others, the same rule has been used many times.

Ms. GRIFO. Yes. I would say—I mean, right now we are looking at about 30 species for possible scientific problems in the way that they were listed or in the way that the critical habitat was designated, and I would just like to say as an aside that really less than half of those, I mean a bit less than half of those have anything to do with Julie MacDonald, so this is a much broader problem than that.

Ms. CAPPS. Right.

Ms. GRIFO. We have many, many other specific examples that we are looking at that at this point do not have her influence on them.

But I would say, you know, I go back to the Endangered Species Act. I mean, there is a process under which, you know, the critical habitat is designated, and if we want to have a full, open, scientific debate about the value or non-value of that, then let us have that in the open and draw those conclusions and move on. But at this point the law that we have says we will designate that critical habitat, that that is an important part of the whole process.

Ms. CAPPS. Just finally if I could add, I know the red light is on, are you aware of studies on both sides of this issue or many sides of it?

Ms. GRIFO. There are many sides of this issue.

Ms. CAPPS. Yes.

Ms. GRIFO. And I would also say that it depends on the particular taxa that we are talking about. I mean, depending on the organism and the way that it uses its range and habitat, there is going to be a range of effects.

Ms. CAPPS. Thank you. I look forward to the written statement, but I also think we need more questioning.

The CHAIRMAN. Let me go to the gentleman from Maryland who has been very patient and with us from the very beginning this morning, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

I remember where I was when my 16-year-old daughter told me she wanted to be a scientist because I was so excited about it, and the testimony today has left me sort of with a sinking feeling in the pit of my stomach because my ambition for her, she will make her own mind, but if she was going to be a scientist is that at one point she would be on the public sector side of that and contributing in ways that so many scientists that you have described are trying to do, and I have to worry about—you know, we talk about climatic change in the global sense. There is definitely a climatic change underway with respect to the scientific community being able to bring forth its best research.

So the other thing I have sort of been engaged in informally is my own little research project. I am sitting on committees that have looked back at some of the overreaching that is going on with respect to these agencies, and as best I can tell, maybe there is not a handbook, but there is certainly plenty of evidence that there might be on how you undertake to destroy the reputation of government and sell the idea that there is no such thing as good government in this country, and the three-point approach is you can either reduce resources dramatically, which makes it tougher for

people to do their jobs; or you can do outsourcing with no oversight, which then leads to poor performance which reflects back on the agency; or you can have political interference of the kind that we have discussed today.

Everyone does it—sort of customizes, depending on the agency. We have seen how the army did it in the case of Sergeant Tillman and Jessica Lynch. We have seen what happened at GSA over Lorena Doan. We have seen what the Council for Environmental Quality in the White House did with respect to crossing out whole portions of the scientific reports on global warming. We have seen what the Department of Education did with respect to the Reading First Program. We have seen what the Vice President and his folks did with respect to the CIA, et cetera, et cetera, et cetera.

I am going to ask you a question that may sound sarcastic but it is not. Can you describe to me what you think may be some of the unique or special vulnerabilities that exist within the agency that is the focus today to this kind of political interference?

In other words, if I was out to do the kind of distortion that you have described, what would be the most effective way for me to accomplish that?

You have talked about phone calls actually coming into the field, telling people out in the field to change a number, to change a sentence, to change a conclusion. That seems pretty heavy-handed and not particularly sophisticated way of going about it. But describe to me, what are the particular vulnerabilities that this agency has, that this program has to this kind of interference? We will start with you.

Mr. RUCH. Scientific careers are delicate things, and a career can be derailed in a lot of way that isn't even considered a formal personnel action. So suddenly not being invited to conferences, being forbidden from making presentations, those sort of things are the—and preventing them from publishing—are the kind of things that are generally unchallengeable, management discretion that are life and death decisions for that scientist's career.

There is another layer, and that is the scientists have almost no legal protection. Generally, what the conflict is—these scientists they are not whistleblowers. They are not trying to go on 60 Minutes. They are just trying to do their job, and there is no overall protection for these scientists who are basically just trying to do what they have always done, and for the most part the people that we see are utterly stunned in that they were doing the same thing they were always doing. They just weren't paying attention to the political whims behind them, and when they suddenly recognize that they were institutionally inconvenient, it sort of shattered their entire world.

An additional problem is the recent U.S. Supreme Court decision, Justice Alito's first swing vote, that ruled that government employees at all levels of government lack any First Amendment protection when they are speaking as government employees. That is sort of a devastating decision in terms of the role, and the rationale was because government owns their speech.

So for people to enjoy constitutional protection, they almost have to kind of stand up and rebel, which is itself a stance fraught with professional danger, and then you add onto that the utter, almost

inapplicability of whistle blower statutes. So traditionally under the Civil Service Law, in order to be a whistle blower somebody has to be reporting a violation of law, and imminent danger, gross waste or mismanagement, taking out a key recommendation. Watering down a methodology, suppressing information usually doesn't rise to that level.

So for the most part you have people that are going into battle that don't even think that there is supposed to be a fight without any arms.

Mr. SARBANES. Yes.

Ms. CLARK. If I could respond to that. I think what is most chilling to me, having spent a lot of time in Federal government, is there is something special about a career biologist, a career scientist. They are incredibly passionate, incredibly committed, and they want to be heard. That doesn't mean that their decision rules or their recommendation rules, and that is not what we are talking about here because, you know, it is important. I mean, let me give you some of the sound bites I have heard.

It is things like "I have never seen such disregard for career biologist opinion. I have never been so summarily dismissed," and then when you have two of the highest ranking career officials remove from their positions, after considerable long careers, highly recognized, highly respected, and shunted off into other positions, that sends this reverberating chill through the agency that is indescribable.

Many of these biologists are single income or balancing dual careers, which is very difficult to balance dual careers in geographic locations, and so what I hear is, you know, it is easier to shut up. It is amazing that there are decisions being made that career people aren't even signing off on anymore.

It is one thing to have a recommendation bubble up to Washington and have a policy decision to do something different, that is the right of the political appointee. It is another thing to call down into the ranks of the—I mean, for a GS-9 to get a call from a deputy assistant secretary is pretty overwhelming, and the way that the Service deals with that, which I have found really interesting, is when they are under fire they start—I mean, you see it in the work that UCS computed.

What they put on e-mail is truly a cry for help, you know. "Per Julie, change this." So it is very clear to anybody that is watching that that is what has triggered it. You know, there were times during my time at the Department where decisions did not follow the recommendations of the career biologists, but I do not recall one instance where we forced the changed of the underpinning information.

Mr. SARBANES. Thank you for your testimony. I think I am out of time.

Ms. GRIFO. Can I also?

Mr. SARBANES. Mr. Chairman, can we get one more response? Yes.

Ms. GRIFO. OK, thank you very much.

I just want to further emphasize some of the things that my colleagues have made, and I would just direct you to—from our Fish and Wildlife Service survey that we did. One of the questions is an

open-ended essay question, and all of the responses from the scientists are on our website, and there are hundreds of them, and you will hear, you know, in their own words what you have heard echoed here.

But I would also like to broaden it out somewhat because I believe that vulnerability exists wherever you have science-based agencies. I believe that, in particular, you know, Fish and Wildlife is subject to this because it is a regulatory agency. It is what we are seeing at the Food and Drug Administration. It is what we are beginning to investigate at the Environmental Protection Agency, and so on.

So I think there is special vulnerabilities when you have a science agency that is mixed with the regulatory function because when we look at some of the other purely science-based agencies, the National Science Foundation, a great deal of USGS, we are not seeing problems to this degree. So it isn't something that is inherent in a Federal scientist. It really has to do, I think, very much with that regulatory action.

I would just close by saying that we have now surveyed or asked this question to nine different agencies, and we have 700 scientists that have come back and said to us, "I am afraid to talk about the mission-driven work of my agency for fear of retaliation." That is huge.

Mr. SARBANES. Those are very helpful answers.

Mr. Chairman, I would just note, the last time I checked we were trying to recruit more people in math and science and technology in this country in order to compete, and obviously what we have heard described today is not helping us with that at all. Thank you.

The CHAIRMAN. I thank the gentleman from Maryland.

I recognize the gentlelady from California, Ms. Napolitano. Oh, I am sorry, I am sorry. Excuse me, excuse me. The gentleman from Washington, Mr. Inslee is recognized who has also been very patient and attentive all morning.

Mr. INSLEE. Thank you.

Ms. Scarlett, my name is Jay Inslee. I represent part of the State of Washington. We care very strongly, my constituents, about the Evergreen State. We want the Federal government to follow the law in protection of our salmon, and our orcas and our owls and our murrelets, and the sad fact is that under your leadership, we have negligence, incompetence, and political hackery.

I have to tell you that I am more upset after this hearing than I was beginning listening to this situation because a fish rots from hits head, and this Julie MacDonald situation is not some rogue employee that has run countercurrent to this administration and this leadership, and you have shown a stunning lack of awareness of that or willingness to deal with this situation, and I want to know about your involvement in these decisions.

I am told that you are Julie MacDonald's supervisor, or at least in her management above her, is that correct?

Ms. SCARLETT. I am not her supervisor. I am as Deputy Secretary, of course, the number two in the department. She reports or she reported to the acting assistant secretary and/or assistant secretary.

Mr. INSLEE. And were you the person who specifically refused to follow scientific information when you were on this “Washington Oversight Committee” that overruled the scientists and the recovery team that worked assiduously to create an option for the Spotted Owl recovery plan, and you came back and told them that you didn’t want them to have a recovery with designated territory for the owl? You wanted a different approach, and said that you should look at new science even though those scientists specifically told you that that science should not be perverted to be used to do exactly what you did. Was that you who did that?

Ms. SCARLETT. That is wildly incorrect. We have a recovery team, a recovery planning team that prepared a draft recovery plan for the Northern Spotted Owl. When we met with that team as they presented the draft to a group of us, and I was part of that, I did three things.

First, I commended them on an outstanding report. I did suggest as they go through the draft that they might want to re-organize it a little bit for clarity and readability.

Second, in the report they noted that the Bard Owl was a significant threat to the Northern Spotted Owl, and yet the recovery plan actually presented no information on how to address the Bard Owl, so we asked if there was any science or any method to perhaps include Bard Owl and address that issue.

And the third thing that we did was to say, given that this is a very large landscape scale challenge, would it be possible, and it was a question, would it be possible to develop a second option— one option that was based on lines on a map for conservation areas and a second that would be based on performance rules and an adaptive management approach.

They presented us with a final draft, which included both options, the original and that one. The science was absolutely unaltered and remained the same in both of them.

Mr. INSLEE. You were specifically told that the southern range information should not be used to eliminate the mapped owl recovery areas, and that is exactly what you suggested to be done, and in fact the option that was generated eliminated the owl recovery—

Ms. SCARLETT. Sir, that is inaccurate. That is simply inaccurate.

Mr. INSLEE. OK, well, let me ask you. Did the option two eliminate the mapped owl recovery areas? Just tell me. Did it or not?

Ms. SCARLETT. What option two does is to present using the exact same science in an adaptive management approach.

Mr. INSLEE. Listen. I am going to ask the question.

Ms. SCARLETT. So we have retained both options—

Mr. INSLEE. You will excuse me, but I will ask the questions.

Ms. SCARLETT. Yes.

Mr. INSLEE. We have a certain responsibility in this democracy and right now I will be asking them and you will be answering them.

Ms. SCARLETT. That is right, and I—

Mr. INSLEE. And my question is did option two eliminate the mapped owl recovery areas? Yes or no?

Ms. SCARLETT. Option two presents an adaptive management approach to addressing the recover of the Spotted Owl using the same science.

Mr. INSLEE. I am going to ask this question until I get an answer. Did the option two eliminate the mapped owl recovery areas? Let us get this over. It did, didn't it?

Ms. SCARLETT. Option two is an adaptive management approach.

Mr. INSLEE. It eliminated the mapped owl recovery areas, didn't it?

Ms. SCARLETT. It is an adaptive management approach.

Mr. INSLEE. And your answer is yes, isn't that, correct?

Ms. SCARLETT. Sir, these are management options. They are not about science. The science is the same in both of them. And so my answer to you, if you are asking about any change in science, there was no change in science. They read exactly the same.

Mr. INSLEE. Ma'am.

Ms. SCARLETT. One uses lines on a map for the management approach, and the other uses an adaptive management approach. This was agreed upon by the recovery plan team in full, and both options are in the recovery plan proposal on the street.

Mr. INSLEE. Ma'am, you have grossly undervalued my sense of persistence and patients. A mapped out recovery area is an area commonly defined in the English language and in biology—my dad was a biology teacher so I have some background—that basically gives a geographic protection of the range of the Spotted Owl. That is very important as the science have told you on repeated occasions.

When the scientists in the recovery team came to you and suggested an option that retained those MOCAs, mapped owl recovery areas, you, as a political appointee without a science degree, came back and said that is not good enough for us. Send us an option that does not include mapped owl recovery areas, and I am going to ask you a really simple question, and there is no excuse not to answer this yes or no.

Does option two include mapped owl recovery areas?

Ms. SCARLETT. Sir, option two is an adaptive management approach and no scientist at anytime came to us and said we absolutely needed the mapped approach. That is simply an inaccurate statement.

Mr. INSLEE. Ms. Scarlett, I was hopeful going into this hearing that this debacle at the Department under the leadership of the new Secretary of Interior that we would hope to reorient this agency to do the job for the American people. But your abject refusal to even recognize a simple fact that because of your political decision you asked scientists to come back with something that eliminated the principal protection—let me finish.

Ms. SCARLETT. Sir, I did not do that.

Mr. INSLEE. No, excuse me.

Ms. SCARLETT. The premise is simply wrong, and I will not answer the question in that way.

Mr. INSLEE. Fine. Well, I am just telling you I am still hopeful that the Secretary can help clean up this agency, but I think it would be helpful to have your resignation because you refuse to recognize how sick this situation is, and your refusal to cooperate

on this issue in a host of ways, including the simple recognition of what happened here, I think you ought to give serious consideration to turn this post to somebody else who can help re-orient this agency. The country deserves it. The new Secretary deserves it.

Ms. SCARLETT. Sir, I uphold science and its integrity as an absolute imperative. The premise of your question is simply inaccurate. Whatever that information was provided to you is not accurate.

I was at no time told that the mapped recovery option is the only scientifically valid option, and incidently, I do have a letter from someone on the recovery team who is alleged to have made that comment, and who categorically refutes it.

Mr. INSLEE. I would have more. My time is expired.

The CHAIRMAN. The gentlelady from California, Ms. Napolitano.

Ms. NAPOLITANO. Thank you, Mr. Chair.

What I am hearing and what I have been listening to on the video conference is very, very distressing. The administration during the last several months, I believe it is Ms. Scarlett, de-listed the Virginia Northern Planes Squirrel, has de-listed the grizzly bear, and is talking about down listing the Manatee. Meanwhile, there are a number of other candidate species that are eligible for listing. It is growing. But there is no effort being made to list any of these.

How are we going to recover endangered species if they are not listed? Some day the human being species may be on the endangered list.

Ms. SCARLETT. Let me say first that the decisions on the Grizzly and the other species that you mentioned are—since the matter here is a discussion of science—each of those species, according to the Fish and Wildlife Service and with no interjection or intervention from Washington, had determined that those species had met their recovery goal. According to the Act, therefore, they moved, and this has been a many, many, many year process in the making for several of those species, they moved toward proposing those de-listings.

With the Manatee, that has not yet occurred. What has come out is a five-year status review of the Manatee. That is a science report, and that science report indicates that the trends for the Manatee show that it is not any longer in danger of extinction. But whether they act upon that to actually propose a de-listing or a down listing, I believe in the case in question, has not yet been undertaken.

The Service does continue to list species, and it has a balancing act of doing the critical habitat designations, recovery planning. I am pleased to say they have accomplished by 2008 some 88 percent of all species listed more than two and a half years will have a recovery plan, and that is an extraordinarily important step in the protection of these species.

Ms. NAPOLITANO. Well, then I would pose the question to you, what happened to the Bull Trout? I am reading some of the testimony that he submitted for today's hearing. He is former Bull Trout coordinator of Fish and Wildlife Service and discussed the role the scientists played in providing peer review for the recovery plan, and a five-year status review for the Bull Trout. That was back in 2004.

Ms. SCARLETT. I am not familiar with the Bull Trout issue that you are describing in particular.

Ms. NAPOLITANO. I am sorry.

Ms. SCARLETT. We can get more information for you.

Ms. NAPOLITANO. OK, because I would like to have that writing because despite those efforts the recovery in the five-year species review were never finalized, and I would like to have that in writing, Mr. Chair.

And I certainly, listening to the gentlemen, I would hope that nothing ever deters a public servant from talking to a Member of Congress. I don't care if they call them a whistle blower. They need to help us protect our species, and help us be able to hold administrators accountable. That is the role we should be playing. There should be no deviation from that. That is law, and we should not deviate from that, and I would admonish any administrator that they should also keep in mind that they work for the general public. Although the administration may have appointed them, their responsibility is to the citizens and to those charges that they have been given.

Thank you, Mr. Chair.

The CHAIRMAN. Thank the gentlelady. The Chair has a house-keeping matter. We do have a series of votes on the House Floor currently underway. The Committee will stand in recess until 1:30, and would ask this panel, I know it has been a long morning and we appreciate your patience and responses, if you would come back at that time because there are a second round of questions from members that are not here now but they will return at that time to ask a second round of questions.

[Recess.]

Mr. DEFAZIO [presiding]. The Committee come back to order. Chairman Rahall will be back around 2 o'clock, and I will chair during the interim, so we will pick up where we left off. Are we on the Republican round or the Democratic round? Do you know?

Mr. SALI. I think it is your turn.

Mr. DEFAZIO. OK. All right, all right. Thank you.

Mr. SALI. And then it is mine.

Mr. DEFAZIO. Yes, I understand that. I was being fair there in asking. I left when Grace was asking questions.

I would like to address some further questions to Ms. Scarlett. The oversight team which you chair, how do they each decisions? What sort of process do you follow? Is it consensus? Do you have votes? How do you do it?

Ms. SCARLETT. You are talking about the Northern Spotted Owl recovery team oversight group?

Mr. DEFAZIO. Yes.

Ms. SCARLETT. OK, because that—

Mr. DEFAZIO. Well, there is an oversight committee that has a list of people, Jim Case and Lynn Scarlett, David Verde, Julie MacDonald, Julie Jacobson, et cetera, et cetera, that I assume that is that group.

Ms. SCARLETT. Yes, and that group, just for clarification, is solely focused on the Northern Spotted Owl recovery plan.

Mr. DEFAZIO. OK. Good.

Ms. SCARLETT. It is not a standing committee that does other things.

Mr. DEFAZIO. OK.

Ms. SCARLETT. Basically, what it really is is a review team more than an oversight team I would characterize it as. There is a recovery planning team. That team includes many scientists, the Fish and Wildlife Service leads that team, but it also has representatives from the Forest Service, the Bureau of Land Management, and other entities. They worked out in the Northwest to develop a recovery plan for the Northern Spotted Owl. They brought in that recovery plan in draft form for the oversight team to review.

One of the reasons that that review is so important—

Mr. DEFAZIO. And that is the plan that was rejected and sent back, and when they asked for modifications?

Ms. SCARLETT. Well, let me clarify because it really was not rejected and sent back. It was an excellent plan in a draft form, which I verbally praised because it was an excellent plan, but there were, as I said earlier, three challenges to it.

Mr. DEFAZIO. Right.

Ms. SCARLETT. On, in its structure it was difficult to read. It was organized in a kind of backwards way, so we suggested that when they go back and do the redraft they write it in a different order, same words, but different order.

Mr. DEFAZIO. Sure.

Ms. SCARLETT. As I mentioned—

Mr. DEFAZIO. I understand.

Ms. SCARLETT. OK.

Mr. DEFAZIO. And at what point did you ask for option two to be developed?

Ms. SCARLETT. So at that meeting in which we had the Forest Service and the Bureau of Land Management and others reviewing the option one, I believe it might have been the Forest Service that asked the team or the two representatives who were there presenting it, they asked them—you have presented a plan that actually draws lines on a map for the recovery areas. Is there a way to do this differently? Are there other options?

And the team said this is just one option. There are other ways to go about doing this recovery.

Mr. DEFAZIO. The team of scientists in the Northwest by consensus said that they thought there were other options available?

Ms. SCARLETT. The individuals, the two individuals that were representing the team at that meeting.

Mr. DEFAZIO. So two individuals who were representing that team made that recommendation. OK.

So when you asked for development of the second option, see how accurate you think this is. This is from a chronology provided by the Audubon Society, and they say, October 26-27, full team met. "Mr. Lohofner admitted Forest Service, BLM, were driving the recovery plan revisions demanded by the oversight committee," which is consistent with what you just said, "and stated that the end product would have to be flexible enough to be acceptable to the Forest Service and BLM."

Is that correct? I mean, that is sort of what you are saying, that they wanted that.

Ms. SCARLETT. I can't speak to the conversation that Rhen might have had.

Mr. DEFAZIO. Right.

Ms. SCARLETT. All I know is what we discussed at the meeting that I attended. I can't speak to conversations that Rhen or others had subsequent to that.

Mr. DEFAZIO. Sure. But prior to that, on October 19, there was an e-mail from the Pacific Region office that said, "The team will no longer make decisions by consensus." Is that correct?

Ms. SCARLETT. I don't know. I don't recall.

Mr. DEFAZIO. OK. But it seems like you usurped their decision-making process. Then we had two members of the team in Washington who agreed to be driven by the Forest Service and/or BLM at some level. We are not certain which.

Then it went on to say, and to quote, "Ensure we are exploring the options described by the decisionmakers." That would be the oversight team, is that correct, the decisionmakers?

Ms. SCARLETT. I would assume they are referencing the—

Mr. DEFAZIO. Yes. Well, this is not an official Wildlife Service memo. Maybe you are not particularly familiar with that, but it seems like that would probably refer to the oversight, the oversight team.

Now, the oversight team, it seems, got a little later on a bit more prescriptive about what they wanted in option two, which was in fact e-mails that came, and I believe one of them was, and I have moved places here so all my voluminous papers are—here we go.

"We just received new direction from Lynn Scarlett, Deputy Secretary of the Interior, concerning the NSO recovery plan." We are now into early January. It says, "Both options are due in Washington by February 5. These options are to address the recent direction we received from D.C. Two Word files are attached below."

And it is very specific about de-linking option one, and I mean, there is very many prescriptive sorts of things. So you are saying this was generated locally by the scientists and at the direction or, or just sort of the inquiry about a little more flexibility for Forest, but this is awfully prescriptive. There is actually five major points here about how you would develop option two, which are very prescriptive.

Do you remember that?

Ms. SCARLETT. I do not, and as a matter of fact, the meeting that I attended we did not give prescriptions. Again, we simply said is there a way to do another option. We think it is good policymaking on something this complex to be able to have several options to consider, all of which used the same science and are focused on recovery.

That particular memo may be somebody's notes or—

Mr. DEFAZIO. Mr. Wesley, and it has dates and, you know, all the facts.

Ms. SCARLETT. I don't know what they are but I certainly never gave any five-point directive or seven-point directive or whatever it is.

Mr. DEFAZIO. OK. But now that essentially option two has become the preferred alternative of the oversight group, how did you

reach the determination? Was that again by consensus or vote or did it just sort of come out?

Ms. SCARLETT. I don't know that that is correct. I believe that the recovery plan that is out for review, the proposed recovery plan puts both options forward.

Mr. DEFAZIO. OK. So then you are not favoring option two at this point in time? They are both out for discussion?

Ms. SCARLETT. I believe they are both out for discussion.

Mr. DEFAZIO. OK. What science was used—we have talked a lot about science to develop option two, because there are—it says here, and this is another memo, this is earlier—sorry to jump around. This is dated October 18, and this was after the first discussion in Washington about maybe having some more flexibility and asking that the draft be somewhat revised.

And point 1[a] is emphasized, “The new science indicating habitat variability across the range and de-emphasize the past.”

Ms. SCARLETT. Let me clarify again. The science for both options, both the MOCA option, the mapped owl conservation area option, and option two utilize the same science, but that science that you are referencing pertains to there had been an earlier perspective that owls favored only old growth forest areas.

Some more recent science suggests that that picture is much more complex.

Mr. DEFAZIO. And so the recent science would be then references to the Olsen study, and the Franklin study, is that correct?

Ms. SCARLETT. I don't know, sir.

Mr. DEFAZIO. OK. Well, those seem to be what is being relied upon here since they are the only two studies extant recently in the literature which questioned the range and viability.

Ms. SCARLETT. And they were relied upon, by the way, for both options. I want to underscore that.

Mr. DEFAZIO. Well, that is unfortunate because the author of the Olsen study says, and it says actually within the published version, “We do not recommend that the forest managers use our modeling results as a prescription for managing habitat either within the Oregon coast range or elsewhere until similar studies have been conducted. Likewise, the small amount of variability in fitness parameters attributable to habitat variables in our models should not be used to argue that habitat has little influence on owl demography.”

So I guess maybe we relied more on the second one from Mr. Franklin since that one says don't use this to change anything.

Ms. SCARLETT. Sir. Sir, the recovery planning team utilized the science that it had available, the best available science.

Mr. DEFAZIO. OK. So your review group just sort of cursory—

Ms. SCARLETT. We did not—

Mr. DEFAZIO.—and you didn't really review these things—

Ms. SCARLETT. We did not—

Mr. DEFAZIO.—and you don't understand the underlying science.

Ms. SCARLETT. Sir, we did not question the science that was presented to us.

Mr. DEFAZIO. OK, but if this is accurate.

Ms. SCARLETT. The report—

Mr. DEFAZIO. If that is the science that was used and the scientist who created it said that, do you think you should base a plan on it?

Ms. SCARLETT. The plan, it is my understanding in my discussions with the Fish and Wildlife Service, is not based on a single scientific study.

Mr. DEFAZIO. OK. No, we have a second one. Here we go.

Ms. SCARLETT. But rather—

Mr. DEFAZIO. Mr. Franklin is the only other—Allen Franklin—the only other study extant which questions this same, the habitat, and he says in a letter, as he and his co-authors have repeatedly noted, their data is just a first approximation and “in itself should not be considered definitive.”

So the science on which option two is based, the authors of the science say it shouldn't be based there, but you are saying that we had spontaneous movement in this direction, just a couple members of the team showed up and the Forest Service—

Ms. SCARLETT. No.

Mr. DEFAZIO.—and BLM, and it was not directed by you or anybody else on this oversight team that this option be developed, that you follow this new science, and all that it is just sort of a coincidence we ended up here.

Ms. SCARLETT. No, sir, that is not what I am saying. What I am saying is that there is science on the Spotted Owl and the kind of habitat it needs, and the kind of threats that it has. The recovery planning team looks at the composite of that information.

Mr. DEFAZIO. OK, what does your group do in terms of looking at the work of that team?

Ms. SCARLETT. And then that group wrote a draft recovery plan. That plan—

Mr. DEFAZIO. We are repeating ourselves. We are up to the current—

Ms. SCARLETT. If you would like to understand the process, I am trying to go through it.

Mr. DEFAZIO. OK.

Ms. SCARLETT. Because it was really fairly straightforward.

Mr. DEFAZIO. Very.

Ms. SCARLETT. The material comes in. We look at it. It looked good. It looked as though it was going to be at least a way from a land management standpoint to try to achieve recovery goals. But because we are talking about a large landscape scale, because we also were told, including in the recovery plan science information itself, that this was a dynamic situation, and that they were learning more about the bird, we asked in light of that whether it would be prudent to have an adaptive management approach.

Those at the table said we can go back to the group and see so that—

Mr. DEFAZIO. Who were those at the table? Which two members of the team?

Ms. SCARLETT. I don't recall.

Mr. DEFAZIO. OK.

Ms. SCARLETT. It was the Fish and Wildlife Service, the lead—

Mr. DEFAZIO. It would be useful for you to provide those names to the Committee.

Ms. SCARLETT. We could provide that.

Mr. DEFAZIO. Thank you.

Ms. SCARLETT. And those individuals said we can explore this. We will go back to the recovery planning team. They did and the recovery—

Mr. DEFAZIO. And are you aware that the team by consensus, which was no longer allowed having adopted the further one, was not very happy with this directive?

Ms. SCARLETT. I don't know their disposition. I did not speak to them directly, but what I am told is that they rolled up their sleeves and they developed a second option, and I am told that at least at the point in time at which it was advanced to us that there had been consensus on that option.

Again, remembering that like the NEPA process where we ask ourselves for good management decisions to have options, this was about giving us some choices to reflect on, and the public because both options are out for public review.

Mr. DEFAZIO. Sure. This has nothing to do with the desire of the agencies to target the last remaining old growth in Pacific Northwest and a desire of those agencies to pick up the harvest by targeting those areas. Nothing at all.

Ms. SCARLETT. I believe—

Mr. DEFAZIO. This is all about the owl and its recovery and the ecosystem.

Ms. SCARLETT. I believe the agencies in question who have large areas of land to manage up there were looking for recovery planning options that would give them some guidance and ability to help both fulfill their mission and at the same time—

Mr. DEFAZIO. Well, unfortunately, there is also a legal mission that is required.

Ms. SCARLETT.—recover the—

Mr. DEFAZIO. And I am afraid you are going to be tested legally if you pursue option two, and I think you would be found wanting and we will be back right where we were with Cy Jamison in Bush one which is under injunction and losing what little timber harvest we have left.

Thank you. My time has expired.

Mr. Sali.

Mr. SALI. Thank you, Mr. Chairman.

Ms. Scarlett, I just want to state for the record that I appreciate your effort to respond today in spite of being cut off repeatedly, in spite of being, I think, really demeaned today, and I want you to know I appreciate your service to the country, and the difficult job that you have.

Ms. SCARLETT. Thank you.

Mr. SALI. Ms. Clark, do you believe that science is the factor that should drive all determinations for a listing?

Ms. CLARK. I think, Congressman, that science is the foundation upon which decisions are made, and by law the decision on whether or not to add a species to the list is by law made on the best available science.

Mr. SALI. And that should be our sole criteria for a listing?

Ms. CLARK. For determining whether or not a species should be afforded legal protection, it is science.

Mr. SALI. And do you think the same thing is true for designation of critical habitat?

Ms. CLARK. Well, by law, designation of critical habitat is based on the best available science, and scientific and economic considerations, and so that is a part of the law where economics, the economic impacts and benefits are weighed as well.

Mr. SALI. And so we shouldn't just use science when we are making a determination for critical habitat for a listed species, is that correct?

Ms. CLARK. Oh, current law suggests otherwise. Current law allows for both science and the economics to be factored in.

Mr. SALI. And when the agency is carrying out a five-year species review, should science, best available science be the sole standard that we make those determinations by, whether there should be a change or not?

Ms. CLARK. When determining whether a species is endangered or threatened, science should be the dominant factor.

Mr. SALI. I am asking about the five-year species review that the agency is required to—

Ms. CLARK. Well, the five-year species review is to determine status. Is an endangered species still endangered?

Mr. SALI. Right.

Ms. CLARK. Should it be threatened? That, sir, is a scientific underpinning because it is the status of the species that is being evaluated.

Mr. SALI. And Dr. Grifo, do you agree with the comments that Ms. Clark just made?

Ms. GRIFO. I do.

Mr. SALI. So that best available science should be the sole factor for listing. Do you agree with that?

Ms. GRIFO. That is the law.

Mr. SALI. And you believe that for designation of critical habitat it is best available science and economic considerations I think—

Ms. GRIFO. That is the legislative framework we have, and I think that underscores why it is so important that we get the best available science, and have that, because it is so important in making these decisions.

Mr. SALI. And best available science should drive the species review whether to continue a listing in its then current form or change it to some other designations. You agree with that?

Ms. GRIFO. I would agree with Jamie Clark, yes.

Mr. SALI. And so for both of you, I guess I am asking, do you think we ought to just follow part of the law or all of the law?

Ms. CLARK. Do you think we should just? I didn't hear.

Mr. SALI. Should the Fish and Wildlife Service be required to follow all of the law or just part of the law, or can we just pick and choose what we want to follow?

Ms. CLARK. Well, it never occurred to me that agencies could pick and choose what part of Federal law they would want to follow, sir. So my assumption is that the Fish and Wildlife Service would follow all the laws that they are charged with overseeing.

Mr. SALI. Well, I am looking at 16 U.S.C. 1531[b] which deals with the listing decision, and it requires, and I am quoting from

the statute, the determination be made “solely on the basis of the best science and commercial data available.”

Commercial data, does that indicate to you that there is some economic impact in the listing decision or not?

Ms. CLARK. It does not actually. The commercial data part of that, I believe, was intended to take into account international commerce, trade, and things like that. It was never to bring into account the economic impacts of—

Mr. SALI. You would agree that that is not best available science though when we start talking about those areas, correct?

Ms. CLARK. Well, it affects the status of the species. Absolutely, I would agree that it does that.

Mr. SALI. And so it would be correct—

Ms. CLARK. The trade in the species, the commercial impacts of utilization of the species, that is the kind of commercial—

Mr. SALI. It would be correct to say—I am sorry. It would be correct to say that best available science is not the sole driving consideration under a listing decision because the law requires inclusion of commercial data available in making and conducting that decision, correct?

Ms. GRIFO. The other part of that is that, you know, for many species the science is part of that commercial data. I mean, that commercial data is often based on a scientific process, and I think, you know, the source is not nearly as important as making sure that we have a direct conduit—

Mr. SALI. I want to make sure—

Ms. GRIFO.—from the suppliers to the process.

Mr. SALI. OK, on that point I want to make sure I understand. You are saying that that trade between countries is a scientific determination.

Ms. GRIFO. No. What I am saying is that in certain instances commercial data may also be related to scientific information. Fisheries, for example, a lot of the information that we have on fisheries is very well collected under a commercial framework. That is all we are saying, and that in many instances—

Mr. SALI. Wouldn't that be scientific information though at that level?

Ms. GRIFO. Well, if it is peer reviewed, if it goes through a scientific process. You know, there are other determinants of what is science. If it is evidence-driven, if it—

Mr. SALI. Other determinants. So you would be changing your testimony about—

Ms. GRIFO. No.

Mr. SALI.—best available science?

Ms. GRIFO. If it is evidence-driven, you know, it becomes part of a scientific process.

Mr. SALI. Well, is it science or is it commercial data?

Ms. GRIFO. In some instances, it could be both, and that is not a detriment to the science nor is that a detriment to the commercial data. It is simply an instance in which population information is sometimes based on fisheries' data on catches.

Mr. DEFAZIO. So your testimony is that—

Ms. GRIFO. But traditionally in the Act—

Mr. DEFAZIO.—commercial data is science?

Ms. GRIFO. No, that is not what I have said. Let me be clear. We can talk about a definition of science and what is a scientific process and what is not a scientific process, and then we can take that framework and we can look at what comes in from commercial sources, and we can evaluate through a scientific process, through an evidence-driven process whether that is appropriate information to take into account. That is all I am saying.

Mr. SALI. Should commercial data, as required by the statute, be included in the listing decision that is not scientific data?

Ms. CLARK. It hasn't thus far. I mean, I am not sure I am following your question, Congressman. But the clause, the listing criteria, the clause that we are talking about, the link of the commercial data is to the science status of the species, and that science process that informs the decision. They aren't independent issues that are weighed.

Mr. DEFAZIO. Well, do you believe that science or commercial data?

Ms. CLARK. I believe that commercial—

Mr. DEFAZIO. The information you are talking about that should be considered.

Ms. CLARK. It all relates to the status. Science which can subsume the commercial information is what informs the decision on status of a species.

Mr. SALI. Do I understand your testimony then to be that notion of commercial data is just surplusage in the language of the statute?

Ms. CLARK. No, not at all. I would agree 100 percent with Dr. Grifo's recitation of the fisheries instance, for example.

Mr. SALI. Well, let me approach this just a little differently here. When you were hired by the Defenders of Wildlife, do you believe that that organization took your political views into account in making that decision?

Ms. CLARK. That was never a part of my interview. No, I don't believe that they did.

Mr. SALI. Do you think it is very likely that Ms. Scarlett would be hired ever by the Defenders of Wildlife?

Ms. CLARK. I wouldn't suggest one way or the other. I would certainly—I am not the hiring official, but certainly I believe that Secretary Scarlett could—I would love for her to apply. I mean, you know, that would be fine.

What is important to people—

Ms. SCARLETT. I might be looking for a job after this meeting.

Ms. CLARK. That is right.

[Laughter.]

Ms. CLARK. That is right. What is important to Defenders of Wildlife, if we want to talk about my organization, is a commitment and a passion to conserve wild plants and animals in their natural communities.

Mr. SALI. Do you think there is a political dynamic in this hearing today?

I mean, it seems like the people on this side of the benches tend to agree more maybe with the work that Ms. Scarlett has done, and the folks on that side tend to agree with the points that you are trying to bring.

Do you think there is a political element in this hearing today?

Ms. CLARK. Well, actually, Congressman, what is interesting for me is it seems like it is not much difference in that in previous congresses it was just literally flipped.

Mr. SALI. And so the politics—I guess my point is this. You represent, and Dr. Grifo, I would be happy to hear your comments on this as well, you represent nonprofit organizations that in my view pretty clearly have a political bent, and your testimony before us is that we are encouraged to believe essentially your position, and not trust what the Fish and Wildlife Service has been doing, and so I am wondering if it is OK for politics to be a part of your organization, and for you to come and advocate certain things in front of this Committee, but it is not OK for the government agencies to have anything political as a part of their work on the Endangered Species Act.

Why is it we should take your testimony as the gospel truth and follow everything you suggest, and not listen to the agency? Why is it OK for there to be politics involved in your opinions but not in the government agency?

Mr. DEFAZIO. I am going to suggest that you want to hold that thought because I went over by six minutes, the gentleman's—

Mr. SALI. Mr. Chairman, I want to point out that you went over by five minutes your first turn, and by nine minutes your second.

Mr. DEFAZIO. Nine?

Mr. SALI. Yes.

Mr. DEFAZIO. OK, we will give you—OK, I thought it was six. I must have gotten it upside down. Let us hear the answer, please.

Ms. CLARK. I will give you a couple of answers to that.

First, yes, I am representing proudly Defenders of Wildlife, but I am also representing a 20-year career in the Federal government, including a big chunk of time as both a career biologist and as director of the Fish and Wildlife Service. So I believe I come with more than just my Defenders of Wildlife knowledge.

Yes, I think it is a huge disappointment that we have reduced the importance of a law like the Endangered Species Act to a political debate. This is not about making “political decisions” based on a science framework. Administration after administration has the opportunity to do that. Some get caught. Some go through the gauntlet.

What we are talking about is if in fact the science underpinning by which political appointees make decisions has been tinkered with or disrupted to change the foundation. That is what I presumed this hearing was about. It is not to suggest that political appointees of either party can't make a decision.

Mr. SALI. And Ms. Clark, I appreciate the comment that you just made because I do believe that this whole area is just rife with really partisanship and I want to state for the record that I do believe that the work of protecting species is important work. You know, whether we get into a debate about the law, whether we have commercial data or best available science as a standard, you know, is that really getting the job done, and I am not sure that it is.

I hope you will excuse me today for, I think, what were some fairly pointed questions. My intent was to get to this notion that

politics does seem to be driving this, and I am going to suggest on both sides of the aisle, and in the meantime the species that we all, I think, are hoping to protect are not getting the benefit of the best work that we can give them. Thank you.

Mr. DEFAZIO. I thank the gentleman.

Ms. GRIFO. Could I respond?

Mr. DEFAZIO. Who is that? We are way over, but just go ahead.

Ms. GRIFO. Very quickly. Very, very quickly.

I mean, I think that we can agree absolutely that obeying the law as written is not a partisan issue. I think we can agree that valuing the science is not a partisan issue. I mean, these are things, these are values that I think pervade, you know, both sides of the aisle, and very importantly.

But I think the important thing here is that, you know, what we are bringing forward is not our word. You know, you don't have to believe us. It is the documented examples of things like, you know, tract changes where the science is changed. I mean, that is clearly a partisan issue, and together we should agree that fixing that and making sure that that does not happen, because we all value the science, is an issue that is truly nonpartisan. Thank you.

Mr. DEFAZIO. Thank you. Mr. Inslee.

Mr. INSLEE. Thank you.

Ms. Scarlett, you have interjected some levity but I have to return to a real serious issue. First, I want to ask you what does MOCA mean in this context?

Ms. SCARLETT. Mapped owl conservation area.

Mr. INSLEE. Has that ever been changed to managed owl conservation area?

Ms. SCARLETT. Yes.

Mr. INSLEE. And in October 18, 2006, what was the definition of MOCA?

Ms. SCARLETT. Say that again.

Mr. INSLEE. In October 18, 2006, what was the definition of MOCA?

Ms. SCARLETT. Sir, I don't know if there was a different—if that acronym was used with a different set of words at that time.

Mr. INSLEE. Well, it is either mapped or managed owl conservation areas, right, one of the two?

Ms. SCARLETT. That is my recollection.

Mr. INSLEE. And it is specifically designated geographic areas for the protection of Spotted Owls, right?

Ms. SCARLETT. As used in the context of the recovery planning process, yes.

Mr. INSLEE. Now, I had asked you earlier if your committee which you chair required the planning teams regionally to present to you an option that eliminated the MOCA concept. As best I could tell, you hadn't.

I want to refer you to a memo dated October 18, 2006, titled "Northern Spotted Owl Recovery Plan Options". Have you seen that document before that is before you?

Ms. SCARLETT. I am looking at it right now, I think.

Mr. INSLEE. I have been told that it is a memo generated by your committee and sent back to the region to basically encapsulate

your direction to them from your committee, from this Washington Recovery Committee. Is that what that is?

Ms. SCARLETT. I believe what this might be is a summary. It was not generated by me, but I believe subsequent to the meeting one of the members of the committee tried to summarize and capture what the discussion was, so I think it is better characterized not so much as a direction as it was a summary of what was the conversation on next steps.

Mr. INSLEE. Well, it says, "The recovery team will develop two options that tier off the existing draft recovery plan," and then it has further information.

Ms. SCARLETT. That is correct, and that was a summary of the conclusion of the meeting.

Mr. INSLEE. And on page two, I refer you to paragraph two, which is option two as I understand. It says, "Provincial habitat targets," and then it has bullets, and if you read along with me, it says, "Eliminate the MOCA concept and instead establish provincial habitat target."

Do you agree that is what it says?

Ms. SCARLETT. I agree that is what it says.

Mr. INSLEE. And wouldn't you agree that this memo, which appears to be the summary of what you did, called for eliminating the MOCA concept?

Ms. SCARLETT. No, I do not agree to that statement because we did not conclude that we would eliminate the concept. What we asked for was option one, which retained that concept, and then adding to that option two so that we would have two options to consider.

Mr. INSLEE. And you ordered them to come up with an option two that eliminated the MOCA concept, didn't you?

Ms. SCARLETT. We asked them to come up with a concept that utilized adaptive management, sir, based on the same science foundation. If the issue today is the interference or changing of science, the science foundation, for anyone that reads both options, reads exactly the same.

As managers and as the discussion that Mr. Sali just presented indicated, it is incumbent upon us to try and figure out what are the best management options to achieve recovery goals. We put forth—we asked the team to come up with two, the one they had originally come up with, and an alternative so that we could consider both, and that is what has been done.

Mr. INSLEE. Ma'am, I have given you every chance in the world to honestly answer this question.

Ms. SCARLETT. And that is an honest answer.

Mr. INSLEE. Every chance in the world, including the memorandum from your own committee saying what you did. I am just telling—

Ms. SCARLETT. Sir, that is an honest answer because if you look at this document, it includes option one, which still has the MOCAs, and therefore I am not going to sit before you and answer that we asked for the elimination of it.

Mr. INSLEE. I am going to ask you one more time. Did you not ask for option two that would require the elimination of the MOCA

concept, and that is the language of the memo? Did you not do that?

Ms. SCARLETT. We asked for an option that did not use the MOCA concept.

Mr. INSLEE. Thank you. We could have saved 20 minutes if you had answered that question.

Ms. SCARLETT. No, sir, if I may.

Mr. INSLEE. Let me ask you one more question here. The Endangered Species Act, I assume you believe it gives the administration the authority to look at issues of habitat destruction and how that habitat has been destroyed, including cutting down old growth forests, is that correct?

Ms. SCARLETT. Could you repeat that again?

Mr. INSLEE. I am sorry. The Endangered Species Act gives the authority to the agency to consider issues of habitat destruction, including looking at reasons why habitat is being destroyed and how the Federal government can consider their preservation?

Ms. SCARLETT. Absolutely the Act takes into account habitat modification and its impacts on species.

Mr. INSLEE. And including how that habitat is being destroyed, correct? Like if you cut down the old growth, that is a thing to be concerned about.

Ms. SCARLETT. The Act includes consideration of any changes in the habitat that might affect the species.

Mr. INSLEE. OK. Then why is the agency taking such a short-sighted approach on Polar Bears and global warming? I want to read from a document dated December 27, 2006, for immediate release. It says, "Interior Secretary Kempthorne announces a proposal to list Polar Bears as threatened under Endangered Species Act," and it says on page two, "While the proposal to list the species is threatened cites the threat of receding sea ice, it does not include a scientific analysis of the causes of climate change. That analysis is beyond the scope of the Endangered Species Act review process which focuses on information about the Polar Bear and its habitat conditions, including sea ice."

Now, the fact of the matter is, is that global warming is causing the melting of the Arctic ice. The Polar Bear survival as a species is dependent upon the existence of that Arctic ice. Your administration under your leadership refuses to consider the human activities that are at least in part responsible for melting of the habitat that keeps these bears alive.

Now, you just got done telling me that it is part of your job to look at habitat destruction and the reasons for that habitat destruction, and your refusal to look at the reasons why the Arctic ice is melting would be just as glaringly incompetent as refusals to look at clear cutting the old growth for Spotted Owls.

Now, the fact of the matter is your administration under your leadership is refusing to consider the reason for the habitat destruction that could lead to the extinction of Polar Bears, isn't that correct?

Ms. SCARLETT. No, that is certainly not correct, sir. Since 2001, President Bush has affirmed that climate change is occurring, and that there are anthropogenic or human-caused reasons for that.

I currently chair a climate change committee in the Department of the Interior with some 60 plus participants, including many U.S. Geological Survey scientists. We are looking at its impacts across the lands and waters that we manage.

In the instance that you cite with respect to the Polar Bear, the entire focus of that proposed listing was indeed the change in habitat, the sea ice melting. The reason for the particular language that you cite there is that the Fish and Wildlife Service comprises biologists. Therefore, their scientific expertise is biology. They were able to import information about sea ice and sea ice melting, but they did not feel that they were competent to judge or write about the causes of climate change. That we look to our U.S. Geological Survey and many other bodies, the Intergovernmental Panel on Climate Change—

Mr. INSLEE. That is correct, and your approach is magnificently short-sighted because you do have the authority under this Act to have those other agencies of the government look at the causes of climate change and the reasons why the Arctic is melting, and you are sitting there telling me we can't use taxpayer dollars to find out why the climate change is occurring—

Ms. SCARLETT. Sir, we are doing that.

Mr. INSLEE.—under this—well, excuse me. Then I guess you are—

Ms. SCARLETT. We are absolutely doing that but in—

Mr. INSLEE. You are telling me this document then that came out of Secretary Kempthorne's office dated December 27, 2006, is a bunch of hoey, is that what you are telling us?

Ms. SCARLETT. No. What I am saying to you is that in the context of the Endangered Species Act, the Act directs the Fish and Wildlife Service to look at five factors that might affect species, one of which is habitat.

So in the context of their proposed listing, they looked at habitat and they did write up significant comments with respect to sea ice, and the sea ice trends. But in the context of ESA, that is the limitation of what their charge is.

Their charge is not in that document to turn around and re-do the Intergovernmental Panel on Climate Change report, but the administration and the Department are very actively engaged in that. In fact, we have frequent presentations by our U.S. Geological Survey people reporting on their science as it relates to that issue.

Mr. INSLEE. I will just ask one more crack at this and then I will—

Mr. DEFAZIO. Excellent.

Mr. INSLEE.—be finished. Thank you, Mr. Chair, for your indulgence.

Do you agree or disagree with this document that came out of the Secretary's office that said that a scientific analysis of the causes of climate change is beyond the scope of the Endangered Species Act? Do you agree or disagree with that statement?

Ms. SCARLETT. I agree that that is an accurate statement. The focus of the ESA is on the habitat and the document clearly cites the change in habitat, including sea ice melting. It is not a forum for talking about larger climatology and atmospheric chemistry. There are places for that, and we are engaged in those efforts.

Mr. INSLEE. I wish it was so, and thank you. You have given me two answers to the same question. Thank you very much.

Mr. DEFAZIO. I thank the gentleman. If the gentleman can stay for a few moments.

Mr. INSLEE. Briefly.

Mr. DEFAZIO. Well, Mr. Rahall is supposed to be here too, and I have 10 constituents waiting in my office. I am wondering if you would take the Chair, but let me just do some quick business.

I have a unanimous consent request for a statement from Representative Saxton, a letter directed to Secretary Kempthorne from Wayne Gilchrest and Mr. Saxton, a statement by the Ranking Member Don Young, testimony by Robert Hallock, former Fish and Wildlife employee, and a statement by the Wildlife Society regarding the final TWS position statement on the Endangered Species Act, and without objection we will enter those into the record.

[The information follows:]

**Statement of The Honorable Jim Saxton, a Representative in Congress  
from the State of New Jersey**

The Endangered Species Act is often called the “crown jewel” of our nation’s environmental laws because it is the only environmental statute that aims to protect both threatened and endangered species and the habitats on which they depend. The ESA has been a remarkably successful statute. It has saved many species from extinction and helped to restore such iconic wildlife as the gray wolf and bald eagle across much of their historic range.

Congress remains committed to the goal of protecting endangered species for future generations of Americans, and it is important that the Administration and Congress work together to ensure that any changes in the way the Act is implemented be accomplished in the open and with full opportunity for public vetting. I have expressed my concerns over reports that the Administration is considering overhauling the Act through regulatory and policy changes. Congressman Gilchrist and I sent a letter to Secretary Kempthorne on April 18, 2007, regarding some troubling administrative policy changes to the ESA that were reported in the media, and I will submit that letter here for the record as well.

I want to reiterate my opposition to any attempt to rewrite the ESA administratively, especially if those changes might weaken in any way the critical safety net that the ESA represents for species and habitat. While I am, of course, open to suggestions to improve implementation of the Act on the ground and strengthen its ability to recover species, any broad changes to the ESA should have full deliberation in Congress.

I look forward to this hearing and to future dialogues over how we can best fulfill the promise of the ESA and protect America’s wildlife heritage.

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[The letter to DOI Secretary Kempthorne submitted for the record by Mr. Saxton follows:]

**Congress of the United States**  
**Washington, DC 20515**  
 April 18, 2007

The Honorable Dirk Kempthorne, Secretary  
 Department of the Interior  
 1849 C Street, N.W.  
 Washington DC 20240

Dear Secretary Kempthorne:

We are concerned about draft Endangered Species Act (ESA) regulations that were recently made public through an apparent internal leak in the US Department of the Interior. We understand that this document is not final or ready for public consumption. However, it raises Congressional concerns about the possibility that the Department of Interior may attempt to make significant changes to the statute without Congressional involvement.

As you know, Congress considered controversial statutory changes to the ESA a few years ago. In reviewing these proposed regulations, we notice that a number of the same changes, which were not passed into law by Congress, are being considered for regulatory changes within the US Fish and Wildlife Service (USFWS). Nearly every aspect of the law would be affected by this proposal, including endangered species recovery, consultation, listing, critical habitat, and cooperation with the states.

We object to any administrative attempt to rewrite the ESA, and we believe a number of proposals in the draft regulations rise to the level of statutory changes. Specifically, the draft regulations:

1. Change the criteria for determining a species to be "threatened" so that it must be endangered or extinct or within an arbitrarily shortened time period. In order for a species to be considered "endangered" or "threatened", it requires that the species would have to be in danger throughout its entire range, unlike current regulations.

*Currently, a species is considered "endangered" if it is in danger of extinction throughout all or a significant portion of its range. The term "threatened species" means any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. "Range" includes both currently occupied and historic range of a species. The draft regulations would change this to include only areas currently occupied by the species. They would also change the definition of "foreseeable future" to mean 20 years or 10 generations, which does not adequately take into consideration the biology of individual species as intended by Congress. For example, 10 generations is a short time for butterfly species living only a few weeks and 20 years is much too long a time period to use to measure their decline and effectively prevent its extinction.*

2. Allow the USFWS to avoid designating "critical habitat" for a listed species if it is not specifically in danger from habitat loss.

*Under current law, the USFWS must designate critical habitat for a species when it is listed, with narrow exceptions. The protection of habitat for a species ensures that it is available when the species is once again in sufficient numbers to be "recovered"—or no longer in need of protection under the ESA. This change specifically rejects the intent of Congress in requiring the establishment of critical habitat under the ESA.*

3. Virtually remove the requirement that federal agencies consult with the USFWS when taking action that may "jeopardize the continued existence" of listed species or "destroy or adversely modify" habitat critical to listed species;

*The Endangered Species Act prohibits federal agencies from jeopardizing the continued existence of listed species or causing "destruction or adverse modification" of critical habitat areas. Currently, agencies must receive from the USFWS a finding of "no adverse modification" to critical habitat or "no jeopardy to the continued existence of the species"-- or instructions on how to modify the agency action. The USFWS determines which agency actions, under these requirements, must be mitigated or modified. Under the draft regulations, the acting agency is responsible only for the impact on listed species of actions over which it believes it has legal discretion and which are known to actually harm the listed species. The acting agency would be solely responsible for making these determinations and would need only enter into agreements with other agencies (not necessarily the USFWS) to meet the consultation obligation. This effectively nullifies the Congressional intent for the consultation process under ESA.*

4. Lower the standard that indicates when a federal agency action is jeopardizing the continued existence of a listed species, so that the action can be modified; and

*The ESA and current regulations do not allow actions of federal agencies to jeopardize the continued existence or recovery of a listed species. The draft regulations change this to allow such actions to continue unless they "appreciably increase the risk of extinction." The draft regulations also remove the regulatory definition of "recovery" altogether. This represents a dramatic change in the current standard.*

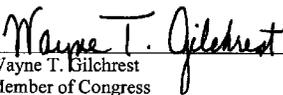
5. Delegate significant federal authority to the states.

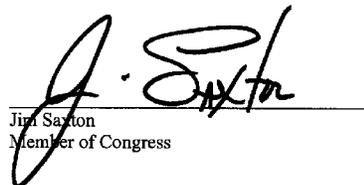
*The draft regulations establish that states may request and may be given the lead role in almost every aspect of the Act, including, but not limited to, Section 4, Section 7, and Section 10. While states are essential partners in the conservation of endangered species, the ESA does not permit such significant delegation of federal authority to states. Should this proposed authority be fully implemented at the state level, the protection of rare and wide-ranging species would be subjected to a patchwork of authorities. Species and habitats are not confined within political boundaries.*

The Endangered Species Act is a landmark conservation law that has provided a critical safety net for species on the brink of extinction. Any broad changes to the ESA, which is a cornerstone of conservation in America—must have the full deliberation of the United States Congress.

As always, we look forward to continuing to work with you to increase funding and improve implementation of the Endangered Species Act.

Sincerely,

  
Wayne T. Gilchrest  
Member of Congress

  
Jim Saxton  
Member of Congress

[The statement submitted for the record by The Honorable Don Young follows:]

**Statement of The Honorable Don Young, Ranking Republican,  
Committee on Natural Resources**

Mr. Chairman, I want to compliment you for holding this hearing. I am one of only nine members of the current House of Representatives who voted for the Endangered Species Act in 1973.

I supported that Act because I felt then, as I do now, that we have a responsibility to help conserve and restore wildlife species. It is for this reason why I have sponsored, co-sponsored and voted for efforts to protect a diverse group of species including elephants, rhinoceros, tigers, Great Apes, neotropical migratory birds and marine turtles.

Having said that, I can assure everyone within the sound of my voice that no one who voted for this legislation ever envisioned that this Act would be used to smash the dreams of millions of Americans.

Our forefathers who sacrificed everything for our freedom would be shocked to learn that Americans are unable to fully utilize their property because of a blind salamander, fairy shrimp, fountain darters, ground beetles and kangaroo rats.

In fact, there are 2,489 domestic and foreign species listed under the Endangered Species Act. The Fish and Wildlife Service has designed critical habitat for 487 species. Yet, despite spending billions of dollars, designating millions of acres of critical habitat and disturbing the lives of millions of property owners who must, in some cases, pay extortion fees to develop their land, only 8 domestic species have ever been "recovered" in more than 30 years.

There is no question that politics and not the Department of the Interior are running the Endangered Species Act. It has been hijacked by misguided federal judges and radical environmental organizations whose sole interest is not to recover species but to gouge themselves on taxpayer money. The Fish and Wildlife Service has not initiated a listing decision on its own since 1995. Instead of recovering species, the Service must spend its merger dollars preparing and defending themselves against an endless barrage of lawsuits. It has gotten so bad that the Service has now hired a full-time attorney that does nothing except monitor the legal filings against the agency.

This is not a new problem. It started in the Clinton Administration and has continued unabated in the Bush Administration. Organizations, like the Center for Biological Diversity, know they can go to federal court and sue the agency over a listing or critical habitat designation. They know they will win, they will be handsomely compensated for suing and they can then hire more lawyers to file or threaten to file more lawsuits. Meanwhile, species continue to languish on the Endangered Species Act with little, if any, hope of ever recovering.

In my own State, the National Marine Fisheries Service is investigating whether beluga whales in the Cook Inlet should be listed on the Endangered Species Act. The agency is responding to a petition filed by an organization that has a political agenda of driving a stake in the heart of economic development in Alaska. This Act has become a powerful weapon to stop or limit development in this country.

Mr. Chairman, instead of criticizing political appointees within the Department of the Interior for doing their job, this institution would be better served by asking how we can improve the Endangered Species Act. There is no one who can objectively say that this program is working effectively with a less than 1 percent recovery rate because the only entity that is profiting from the Act are those groups who endlessly sue the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

In the past four years, millions of dollars has been paid to litigants in hundreds of court cases. Just imagine, if these funds had been used for the original purpose of the Act which was to recover and then remove species from the list.

It is time to stop this madness. Federal policy makers have a right to question the conclusions of career biologists. These employees are hardworking dedicated public servants but they are not infallible. I look forward to hearing from our witnesses and want to hear their perspectives on how we can restore the Endangered Species Act to its original intent.

[The testimony submitted for the record by Robert Hallock follows:]

**Statement submitted for the record by Robert J. Hallock**

**Subjects**

Department of the Interior staff makes changes to Fish and Wildlife Service February 8, 2006 redesignation of Critical Habitat for the endangered Kootenai River white sturgeon that prevent its recovery. This is a documented case history of misuse of the best available scientific information during rule making, and subsequent obstruction of regulatory processes under the Endangered Species Act (ESA) by the Bush Administration appointees within the Department of the Interior and the Army Corps of Engineers for political purposes. Several remedies widely applicable to the ESA are offered below.

**Qualifications**

By Robert J. Hallock, PhD., 33 years with Fish and Wildlife Service (Service), Division of Ecological Services, responsible for administration of the ESA. I was the

Fish and Wildlife Service's Kootenai River white sturgeon (Kootenai sturgeon) Recovery Team Leader. I am the primary author of the Fish and Wildlife Service's Interim Rule published in the Federal Register on February 8, 2006, expanding designation of critical habitat for the sturgeon in the Kootenai River within northern Idaho. I was the Fish and Wildlife Service consultation biologist directly involved with Corps of Engineers' operations of Libby Dam, on the Kootenai River in Montana.

#### **Background, Status of the Surgeon, and Urgency to Conserve**

The Endangered Species Act was passed by Congress to insure that the species diversity of the United States was not threatened by untempered economic growth and development. As implemented it is a balance between development and the goals of the ESA. The Act primarily accomplishes Congress' goals through listing and recovery of species at risk of becoming extinct. Key to protection and recovery of a species is the development of the biological opinions on Federal activities including the proper use of essential primary constituent elements of designated critical habitat.

Designation of Critical Habitat falls under section 4 of the Act. Such determinations are supposed to be made "on the basis of the best scientific data available." By definition, critical habitat "means (i) the specific areas within the geographical area occupied by the species at the time it is listed in accordance with provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." Recovery of the Kootenai sturgeon is dependent upon restoring sufficient water depth to allow migration into otherwise suitable designated Critical Habitat to spawn, and incubate embryos.

Background and urgency for listing and development of critical habitat: The Kootenai sturgeon numbered about 7,000 in 1980, but only about 1,400 when listed in 1994, and fewer than 500 of these fish remain today. They have not successfully reproduced since 1974, coincident with the operations of Libby Dam, Montana. As a result of operating the Kootenai River for hydroelectric power generation and flood control, this dam has significantly altered spawning season flows, depths, and water temperatures of the river. Since Libby Dam, annual average maximum water depth within designated critical habitat has been reduced by about 12 feet. This loss in depth has precluded known use of this critical habitat for 15 out of the last 16 years that intensive monitoring has taken place. The exception being 2006, when the Corps failed to follow its established, previously consulted upon, flood control procedures, and caused a high water event only 3 feet shallower than the unregulated annual average annual peak flow event within this newly designated critical habitat. Under these conditions in 2006 about one third of radio tagged females in spawning condition did migrate into this critical habitat.

#### **Intervention**

A senior Department of the Interior official forced the Service to change the essential primary constituent element for water depth to a level not recommended by the Service, not supported by the available scientific data and information, and not leading to survival or recovery.

For 12 years the Army Corps of Engineers has ignored the Reasonable and Prudent Alternative measures to provide greater flows of three biological opinions (1995, 2000, and 2006) that found jeopardy to the continued existence of the species based upon their proposed actions. The biological recommendations addressed the critical need to restore spawning habitat by enhancement of powerhouse releases through either use of the spillways or installation of the additional existing generators, turbines, and related facilities now stored within the powerhouse at Libby Dam. Biologists of the Idaho Department of Fish and Game have documented population declines, and they have estimated that the remaining adult sturgeon die at 9% per year. Because the reduced water depth, most sturgeon continued to spawn over unsuitable sandy substrate downstream of the newly designated critical habitat. Because of these unsuitable conditions, millions of eggs and embryos perish annually.

Besides Army Corps of Engineers' years of failures to follow earlier and existing biological opinions, the Corps' staff has begun insinuating pending "stock limitation". Stock limitation would be used as an excuse to evade responsibility to use their authorities to recover the Kootenai sturgeon because an argument could be made that there would not be enough spawning sturgeon remaining to demonstrate a reproductive response, no matter what form of habitat restoration occurs. The Service and the Recovery Team, including State, Tribal, and Canadian entities, believe recovery is achievable.

### Specific Points of Intervention

The following is a list of extraordinary efforts by the staff of the Secretary of the Interior to intervene, to delay, and to nullify the regulatory process of designation of critical habitat, leading to obstruction of subsequent consultation under section 7, and how and why this is occurring:

- Abuse of the “Data Quality Act” which is supposed to assure quality, objectivity, and integrity of Federal government information. In practice, the Secretary’s staff inserted inappropriate information to minimize accountability of the regulated agencies in advance of critical habitat designation (rule). Initially they attempted to eliminate a measurable depth criterion of at least 7 meters altogether. Then they required the Service to arbitrarily reduce recommended minimum water depth to at least 5 meters.

No sturgeon spawning migration or successful recruitment has been documented in the designated critical habitat with minimal flows resulting in water depths of only 5 meters. This critical habitat rule facilitates legal challenges from affected third parties such as Anheuser-Busch (hop farms), downstream Canadian hydroelectric operators, or conservation groups. Any litigation delays effective recovery actions. In addition, insertion of the Secretary’s staff’s arbitrary 5 meter depth criterion made my critical habitat rule useless during the subsequent ESA section 7 consultation for Libby Dam that was signed 10 days later (February 18, 2006). This consultation addressed the most significant of the essential critical habitat features: minimum water depth suitable for normal spawning migration behavior, survival, and recovery. Had the original draft critical habitat recommendation, greater than 7 meters, stood, the February 18, 2006 biological opinion would have had the same clear minimum water depth standard, and it would have led to recovery.

- Anti-ESA/regulatory language. The Secretary’s Office required the insertion of boiler plate propaganda falsely claiming that the designation of critical habitat is of little value for conservation of listed species, and that litigation resulting from these tardy or faulty rules wastes agency resources. Because of the Interior staff’s arbitrary reduction in critical habitat need for depth discussed in the bulleted item above, the Secretary’s required inserted language becomes a self-fulfilling prophesy. This Interim “final” Rule is flawed, and it does not provide for either survival or recovery of the Kootenai sturgeon.
- In an overt attempt to obstruct future section 7 consultation, Julie McDonald forced the Fish and Wildlife Service to insert faulty consultation baseline language into the February 8, 2006 Interim Rule designating critical habitat for Kootenai sturgeon, Federal Register, Vol. 71, No. 26, Feb. 8, page 6389. MacDonald inserts: “In some cases, the PCEs may exist as a result of ongoing Federal actions. However, the Service does not foresee that continued operations of Libby Dam in a manner consistent with past operations would result in adverse modification of critical habitat. These conditions are part of the current baseline conditions.” As our Interior Solicitor has pointed out, if this were true there would be no need for the Corps to have consulted on the operations of Libby Dam three times each with the Fish and Wildlife Service and National Marine Fisheries Service. Also, no special management could subsequently be recommended to the Corps by the Service to address the ongoing adverse modification of critical habitat.

On a conference call with me, Susan Martin and others of the Service’s Spokane Field Office, Dale Hall, Director of the Fish and Wildlife Service, was adamant that this baseline insertion in the Kootenai sturgeon Interim Rule was out of line. He vowed that he would deal directly with Julie MacDonald, and to have this passage removed. Unfortunately, he failed. As cited above this language remains in the published Kootenai sturgeon critical habitat Interim Rule.

- The Secretary’s Office’s recent creation of required special internal procedures, “concept papers,” to provide themselves and their preferred special interests an advanced, closed-door, opportunity to intervene in the process prior to the publication of even Proposed Rules. Rules are supposed to be based solely on best available scientific information. This unnecessary and inappropriate procedure serves only political ends while attempting to shield key portions of the Administration’s deliberative process from public review.
- Direct alteration of the quality of scientific information relied upon. Direction to misclassify four peer reviewed research papers by the U.S. Geological Survey as “gray literature”. This weakens the information on altered physical parameters leading to the primary constituent element, the minimum 7 meter depth criterion, and invites Data Quality Act challenge by affected third parties. It is widely understood that USGS peer review process and research quality is second to none.

- Also in the concept paper phase, the Secretary's staff arbitrarily eliminated all quantification of essential physical-habitat features, the Primary Constituent Elements including the essential minimum 7 meter water depth.
- When the Service resisted, the Secretary's staff "cherry picked" an outlier data point (5 meters) from the best available scientific data to misrepresent as the essential physical habitat feature for water depth. This alone rendered this published Interim "final" Rule useless for the conservation of the Kootenai sturgeon.
- The arbitrary 5 meter water depth criterion inserted personally (as documented in "track changes") by Julie MacDonald of the Secretary's staff essentially nullified the section 7 consultation regulatory requirement upon the Army Corps of Engineers to provide greater flows and essential water depths. The Corps was no longer obligated to provide flows within the newly designated critical habitat sufficient to meet even a minimal water depth for proper spawning migration behavior. That February 18, 2006 section 7 consultation which relied in part upon my interim critical habitat rule is now in Court. Thus, the Secretary's required boiler plate claiming that critical habitat is resulting in unwarranted litigation has already become a self-fulfilling prophesy assured by the behavior of the Secretary's own staff.
- Deputy Assistant Secretary Julie MacDonald arbitrarily inserted unreferenced materials in my Federal Register notice of February 8, 2006, misrepresenting the Army Corps of Engineers' performance in providing sufficient flows during the previous 12 years. The insertion was to the effect that the Corps had been in compliance with prior jeopardy biological opinions on the operations of Libby Dam. The fact is that they have repeatedly failed to implement the flow enhancement measures specified in 1995 and 2000 jeopardy biological opinions. The unacknowledged fact is that the Corps has been sued and lost in District Court for noncompliance with the biological opinions. It is also significant that MacDonald (or possibly the Corps as ghost writers for MacDonald) failed to reference the litigation history of noncompliance to be consistent with the Data Quality Act. Julie MacDonald's insertions also contain a favorite misrepresentation by some Corps' Northwestern Division staff that the "(t)he declines [of Kootenai sturgeon] are believed to be due to recruitment failure largely related to lack of appropriate spawning and rearing habitat". The Corps (through MacDonald) is trying to make the impression that appropriate spawning and rearing habitat is naturally lacking. The truth is that the critical spawning/incubation habitat still exists but requires adequate flows and water depth to make it accessible. Presence of suitable habitat and the ability of sturgeon to reach and use it was documented as an unintended consequence of the Corps' deliberate disregard of their own flood control procedures in spring of 2006.\* The Corps' action resulted in high flows and water depths, and in response a third of the radio tagged females in spawning condition did occupy and use this critical habitat. This proved that the suitable spawning/incubation habitat existed, and that it is the Corps' operations of Libby Dam that are precluding normal migration and utilization by spawning and incubating sturgeon.
- Delays forced upon the Fish and Wildlife Service. The chronic intervention by the Secretary's staff in late 2005, including their newly required "concept paper" phase delayed the process to the extent that procedural deadlines set by the Court could no longer be met even with a 60 day extension to February 1, 2006, granted by the Court. Thus, the current critical habitat rule is uniquely labeled "Interim Rule", with internal language stating that it "does constitute a final rule". Yet this rule calls for public comment, a unique label and rule.
- During the fall of 2005, it appeared that Julie MacDonald and her assistant Randal Bowman were intending to set up this Interim Rule for failure through a third party challenge under the Data Quality Act. However, during January 2006 their strategy changed to one of direct obstruction through arbitrary insertion of erroneous primary constituent elements and unreferenced information that would not support either survival or recovery of the Kootenai sturgeon. From that time it appeared impossible to overcome this politically motivated obstruction from the Department of the Interior.
- Intimidation of powerless Fish and Wildlife Service staff by political appointees through the Senior Executive Service (SES) personnel in management positions. Throughout the attached documentation it is evident that numerous Fish and Wildlife Service biologists at field, regional, and central office staff levels attempted to adhere to the best available scientific information during the formulation of this Kootenai sturgeon Interim Rule. However, the Fish and Wildlife Service staff was ultimately unable to resist political intervention and total disregard of the Data Quality Act by Julie MacDonald and her assistant, Randal

Bowman, seeking early political intervention on behalf of economic special interests. The Endangered Species Act regulatory processes were deliberately subverted by the Bush Administration appointees acting through compliant Civil Service managers and Senior Executive Service personnel.

### **Remedies**

If you truly want the regulatory agencies to conduct business as Congress has prescribed in the laws, than you need to replace all SES positions in the regulatory agencies with regular Civil Service positions. In this way agencies may again have stable public servants as leaders and their staffs will have sufficient autonomy to do their jobs without fear of retaliation.

Senior Executive Service has created a systemic cancer within the regulatory agencies, where the smallest of decisions are subjected to political review and the best available scientific information becomes negotiable. SES was created by the Civil Service Reform Act of 1978, and now most of the top positions in the Fish and Wildlife Service, Regional Director up, are SES. It is about money in exchange for political control. SES employees have higher pay scales and compete for bonuses from a dedicated bonus source in exchange for loyal political obedience. These SESers have hire and fire authority over regular civil servants, yet like their appointed political masters in the Departments, few have been held accountable for adverse personnel actions or poor resource decisions, including those involving the ESA. They have for decades systematically selected and promoted regular Civil Service line officers for similar levels of obedience even when that obedience means that laws could be violated. With such a top down structure well established it should be no surprise that the purposes of the ESA are not reliably fulfilled in response to shifting political priorities in the Executive Branch.

- Accountability for Federal employees for disregard of requirements of the Endangered Species act is almost unheard of. While adequate provisions exist within the Act, for political reasons they rarely enforced. In some instances where politics has been given priority over best available science, known threats to currently listed species have been perpetuated. Some of these treats may be closely linked to take, a prohibited action under section 9. Where it can be demonstrated that such actions were outside the scope of the Endangered Species Act or established consulted upon agency procedures, the potential of criminal liability exists. Accountability has also been lacking when politics has trumped best available scientific information in a high proportion of recent listing decisions. Some of these poor decisions have been reversed by the courts. However, this may take years. In the interim threats commonly remain unaddressed, as species continue to decline.

The problem here is that investigations involving Endangered Species Act are initiated within the Service's Division of Law Enforcement, (a subdivision of the Department of the Interior) prior to referral to the Department of Justice. Since frequently Interior officials are involved directly or in some way complicit, these investigations do not occur or they do not reach the Department of Justice for prosecution. This has become a classic case of the fox guarding the hen house.

As a remedy, Congress could redirect that all potential instances of wrongdoing under the Endangered Species Act now be referred directly to the Department of Justice for investigation and prosecution if warranted. Further, a tracking system is suggested to allow Congress to assess performance by the Department of Justice.

- Abolish the so-called Data Quality Act and anything else that comes up administratively to carry out the same objectives. This is nothing more than a poorly disguised tool to aid special economic interests and the Federal action agencies serving these special interests evade Federal laws and regulations, including the ESA under the veil of "sound science".

\*The Army Corps of Engineers has been forced to publicly admit that their 2006 spill at Libby Dam of up to 31,000 cfs was a result of deliberate repeated failure to follow their own flood control procedures. The Corps has yet to admit to why they deliberately disregarded their primary mission and authorities three times in 2006 alone. Nor have they taken disciplinary actions against those responsible for the adverse effects. Effects of this spill included: 1) Unreported lost hydroelectric revenue of approximately \$20 million that will never be included in the annual Treasury payments by Bonneville Power Administration. Unreported agricultural losses were also in the \$ millions. 2) Due to extended periods of elevated dissolved gas in the water during this forced spill, there was unauthorized injury of threatened bull trout in the Kootenai River below Libby Dam documented by Montana Department of Fish Wildlife and Parks, 3) The Corps was responsible for generating unwarranted fear of flooding in the local communities, and 4) The Corps has lost credibility as an agency charged with assuring public health and safety. The Corps' After

Action Report of this spill event omitted disclosure of the extensive economic losses, omitted any credible explanation of why they disregarded their own established procedures on three occasions in 2006 alone, and arbitrary omission an external peer review on their After Action Report consistent with the Data Quality Act.

Calls for a Department of Defense Inspector General whistleblower investigation, FBI investigation, and Service's Division of Law Enforcement investigation have all been ignored. No one has been yet been held accountable within the Corps, suggesting that they were working under orders from high in the Administration. I can offer only two explanations for this Corps operational failure 1) it was an arrogant and irresponsible attempt to resist regulatory recommendations under the ESA from both the Service and National Marine Fisheries Service to adopt a more fish friendly flood control procedure, and 2) it would serve to maintain the status quo and the optimization of hydroelectric operations in the U.S. and Canada, and agricultural operations in Idaho, especially 50 acres of hops owned by Anheuser-Bush Inc. that are planted within the levees along the Kootenai River.

**Supporting information for testimony of Robert J. Hallock at House  
Committee on Natural Resources, Full Committee Oversight Hearing**

Subject: Chronology of Julie MacDonald's intervention into Kootenai sturgeon Critical Habitat Interim Rule (FR Vol. 71, No. 26 Wed. Feb. 8, 2006, Pages 6383-6396)

Julie MacDonald, Deputy Assistant Secretary of the Interior, was directly involved in the technical details during Fish and Wildlife Service's development of the Interim Rule expanding the designation of critical habitat for the Kootenai sturgeon, published in the Federal Register on February 8, 2006, under a Court order.

This discussion involves a listing decision under section 4 of the Endangered Species Act and by definition it is supposed to be developed "solely on the basis of the best scientific and commercial data available". However, the communications identified below document how Ms. MacDonald regularly inserted the administration's policy and distorted the scientific information during development of this Interim Rule redesignating critical habitat for the Kootenai sturgeon.

The following annotated chronology tracks the development of two of the significant flaws which Ms. MacDonald forcibly inserted into this Interim Rule:

1) One flaw involves a policy matter that inappropriately establishes a baseline condition of the existing Federal agency operations of Libby Dam for subsequent consultations. These ongoing operations of Libby Dam known are known to have been causing recruitment failure among Kootenai sturgeon for 30 consecutive years. This flawed baseline condition, established in this critical habitat rule by Julie MacDonald, constrained the Fish and Wildlife Service during section 7 consultation and allowed the Federal actions agencies to avoid full utilization of their authorities to conserve the Kootenai sturgeon. This is precisely what occurred in a biological opinion on Libby Dam operations issued on February 18, 2006 just 10 days after this Interim Rule.

2) The other flaw involves arbitrarily ("cherry picking the data") to minimize the depth metric in the Primary Constituent Elements (PCE). This was also intended to minimize the regulatory burden, and it resulted in a management threshold metric not likely to support or conserve the endangered Kootenai sturgeon. Thus subverted politically, this critical habitat Interim Rule becomes ineffective, and the DOI required boiler plate additions to the critical habitat rules condemning the process become a self-fulfilling prophecy.

Throughout this process you will see attempts (ultimately unsuccessful) by various staff of the Fish and Wildlife Service to resist Ms. MacDonald in order to develop a functional and defensible critical habitat consistent with the Endangered Species Act.

The dates below are arranged by the date upon the most recent e-mail in a communication string. Some of these e-mail communication strings include relevant attachments with Julie MacDonald's input in track changes.

09-23-05: Guidance is sought on how to address this baseline issue initiated by the Corps of Engineers involving Kootenai sturgeon. Reference is made to inappropriate use of baseline in the ongoing resignation of critical habitat for bull trout and the possible poor precedent for the ongoing redesignation of critical habitat for Kootenai sturgeon.

11-29-05: e-mail message from Jesse DELia

Julie MacDonald becomes directly involved in the drafting of the sturgeon critical habitat rule. The attachment: Kootenai comments(11-18-05) includes her comments in track changes. Within this iteration of the draft rule the faulty baseline language

has already been inserted in both the Primary Constituent Elements discussion and in the Section 7 Consultation discussion, page 33 and 39 respectively:

“Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the Kootenai sturgeon. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.”

My primary constituent elements section with specific metrics, including at least 23 feet (7 meters) of river depth have been removed entirely. In their place is inserted on page 33 “We have not changed the existing PCEs in this rulemaking.” This is not based on the best scientific information available in 2005.

01-19-06: Draft rule returned from Fish Wildlife and Parks (DOI, MacDonald). This iteration includes my suggested insertion within the flawed baseline paragraph now moved into the Special Management Considerations and Protections section: “However, the current ongoing operations of Libby Dam do not provide for sufficient flows and depths of the Kootenai River that are features essential to the conservation of the sturgeon.” In addition two narrative PCEs are reinserted, neither has specific measurable metrics. DOI required “boiler plate’ subsections discrediting the critical habitat process is still present within the Supplementary Information section.

01-25-06, 12:16 PM: Includes terse, accusatory comments and directions from Julie MacDonald to Ren Lohofener, e-mail of 01-21-06. Note MacDonald’s reference to her data, underlined for emphasis. **Includes another iteration with more of Julie MacDonald’s “rewrite” of 01-20-06, and her comments shown in track changes.**

My sentence inserted in the flawed baseline discussion remains on page 26.

In the background information section page 6 Julie MacDonald has misrepresented the data and “cherry picked’ and the lowest end of the range depth where any sturgeon egg has been recovered by one researcher working only in the Kootenai River, 16.5 feet (5 meters). She then relied upon that to replace my 23 feet (7 meters) management criterion in the PCEs. In her 01-20-06 draft rule on page 6 Ms. MacDonald now states “The data indicates that Kootenai Sturgeon actually spawn at depths roughly greater than 16.5 ft(5 m)...”. Then on page 24 MacDonald changes the PCE metric to read” A flow regime “to produce depths of at least 16.5 ft(5 m)...”. Julie MacDonald, said to be an engineer by training, is here functioning as a biologist.

The required DOI political boiler plate discrediting the critical habitat process has been removed from this document.

MacDonald inserts an almost entirely new background section. Of particular interest is the first full paragraph found on page 6 involving the role of the Army Corps of Engineers. There are numerous implications:

1) First, is obvious that no one in the Fish and Wildlife Service wrote this new background section. It came from MacDonald to the Service. I certainly did not write this although I am identified as principal author at the end of this Interim Rule.

2) There are no citations for the information in this paragraph. A different standard is used to measure the veracity of materials inserted by Julie MacDonald in to the rule. There is a double standard on information quality involved here. I have no entries to identify the source of this misrepresented information in the administrative record for this Interim Rule. Data Quality Act disregarded by MacDonald

3) Because the several misrepresentation(s) in this paragraph mirror those perpetuated by the Army Corps of Engineers staff over the past 11 years (involving non-compliance with the Reasonable and Prudent Alternatives of 3 Jeopardy Biological Opinions) it is apparent that staff from the Army Corps either directly wrote this paragraph for MacDonald or otherwise communicated it to her.

4) First sentence attributes the declining population of sturgeon as “due to recruitment failures largely related to lack of appropriate spawning and rearing habitat.” We have heard Dave Ponganis of the Corps make this same misleading claim for years. To the contrary spawning and rearing habitat has been always been there in the braided reach. However, the Corps operations of Libby Dam have reduced water depth, and this has in most years been altering normal behavior of sturgeon during their spawning migration and causing them to spawn unsuccessfully elsewhere over unsuitable sandy substrate.

5) The third sentence is a half truth at best. The Corps has disregarded the RPAs of our 3 jeopardy biological opinions over an 11 year period. The RPAs I am referring to are Service recommendations to use the spillways at Libby Dam specifically to augment flows, in excess powerhouse capacity, to allow the sturgeon to migrate and reproduce normally. By refusing to perform the most obvious recommended ex-

periment involving flows the Corps has suppressed a logical adaptive approach to conservation. If you do not do the experiment you don't have to evade the results if they are inconvenient.

01-25-06, 3:04 PM: Series of e-mail messages in a mode of "triage" in response after the fact to MacDonald's manipulation of the data involving depth needs for migration of Kootenai sturgeon spawners. The direct conference call mentioned was supposed to include Julie MacDonald and me. If MacDonald was on the call she was not announced. During that call I explained how inappropriate this 5 meter depth criterion was, and how it was not supported by the citation relied upon by MacDonald in her inserted background section on page 6 or on page 24, her inserted PCEs. The Service staff really had no alternatives, but to include MacDonald's edits. At this point MacDonald had essentially assumed my role as primary author of this Interim Rule.

(A total of 5 e-mail strings, including attachments with MacDonald's input in track changes sent in separate e-mails)

[NOTE: Additional information submitted for the record has been retained in the Committee's official files.]

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]The Final TWS Position Statement on the ESA prepared by The Wildlife Society follows:]



## **THE WILDLIFE SOCIETY**

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### **Final TWS Position Statement**

#### **The Endangered Species Act**

The Endangered Species Act (ESA) of 1973 is a fundamentally sound and vital tool in this nation's efforts to conserve biological diversity. The law has been successful in achieving its primary goal of preventing species extinctions. Only 9 of the more than 1,272 species (including subspecies and vertebrate populations) protected by the ESA over the last 32 years have been declared extinct. Based on the risk of extinction, it is estimated that many times this number may have become extinct without the ESA.

Although only 14 U.S. species have been declared recovered and removed from the ESA's lists, most species are listed because of habitat loss and threats that require significant time, funding, and commitment to reverse through restoration, enhancement, management, or protection. In addition, most plants and animals are listed at a point at which population sizes and number of populations have reached critically low levels. For example, fewer than about 1,000 individuals were estimated to exist for half of listed vertebrate species when they were first protected under the ESA. Half of plant species were estimated to have had fewer than 120 individuals remaining when they were first listed under the ESA. Recovery of species with so few remaining individuals is likely to be more difficult, require more time, and cost more. Listing rare and declining species before they reach such critically low levels would likely provide more options with respect to conservation efforts and increase the probability and speed of recovery.

Effectiveness in recovering most species has been constrained by insufficient funding levels. Improvements in status of listed species are correlated positively with number of years of protection under the ESA, amount of funding, and number of recovery plan tasks completed. Greater commitment and integration of federal, tribal, state, local, and private resources will be needed to increase the effectiveness of the ESA in achieving its goals of preventing extinction and recovering species. In addition, a more effective ESA must be complemented by broader societal commitments to fully address larger sociocultural and socioeconomic issues that frequently drive species extinction.

The policy of The Wildlife Society, in regard to the ESA, is to:

1. Support maintaining the firm statutory duties and strong substantive standards imposed by the current law to prevent extinctions and recover species.
2. Support efforts to increase effectiveness of threatened and endangered species conservation under the ESA through improvements to the law and its funding, administrative implementation, and integration with efforts by other parties.

3. Encourage commitment of greater federal, tribal, state, local, and private resources to the purposes of the ESA through education and support for financial and regulatory incentives.
4. Promote more efficient use of existing resources through efforts to lower ESA transactional costs, particularly in listing decisions and critical habitat designations.
5. Support dedicated federal funding for state and tribal surveys and monitoring to better ascertain the status of species at risk. Upon acceptance of a petition for listing, funding should be made available to document the species' current status.
6. Support adequate funding under section 6 of the ESA to assist states in building a strong partnership for conservation of candidate, threatened, and endangered species and for appropriate monitoring of delisted species.
7. Encourage greater partnerships with state fish and wildlife agencies, Native American tribes, local governments, private landowners, and NGOs in carrying out complementary conservation efforts on private and other nonfederal lands to recover listed species and prevent the need to list additional species.
8. Support development solely by scientists and agency experts of recovery plan biological objectives, quantitative interim and final recovery targets, and assessments of whether an implementation strategy is likely to achieve biological goals, with a broader set of participants contributing to the development of an implementation strategy to achieve those goals.
9. Encourage federal agencies to continue and expand current proactive efforts at all levels of management to conserve endangered, threatened, and other at-risk species using existing authorities, as required by ESA section 7(a)(1).
10. Support measures to restore, enhance, manage, and protect all occupied and unoccupied habitats on public lands that are essential to recover endangered and threatened species and work with landowners to achieve the same objectives on private lands. When a species' recovery is deemed dependent on protection of particular habitats, they should be identified in a spatially explicit manner within that species' recovery plan.
11. Support establishment of market-based strategies including tax incentives, conservation credits, simpler safe harbor agreements, and expanded use of Farm Bill conservation programs and Interior Department private lands programs to assist and encourage private landowner actions contributing to recovery of listed species or conservation of species that are candidates for listing.
12. Assure that decisions under the ESA are transparent, replicable, and based on robust analyses of the best scientific data available, including population models, where appropriate.

13. Encourage federal ESA decision-makers to solicit and use the expertise of state fish and wildlife agencies, Native American tribes, and others in a consistent and open manner.
14. Encourage federal agencies to work with ESA decision-makers, state fish and wildlife agencies, and other experts from the scientific community in section 7 interagency consultations to resolve areas of scientific disagreement or uncertainty during development of biological assessments and to design actions conservatively when faced with scientific uncertainty about project impacts or the adequacy of offsetting measures.
15. Support strong funding for the State Wildlife Grants and Landowner Incentive programs and encourage broad governmental and non-governmental partnerships in the implementation of State Wildlife Action Plans as one mechanism to slow the addition of new species to the federal list of threatened and endangered species

Approved by Council September 2006. Expires September 2011.

Mr. DEFAZIO. Just to clarify Mr. Sali's point as best as we can on the commercial factors, I mean, this quotation a little longer, it says, "Solely on the basis of the best available scientific and commercial information regarding a specie's status without reference to possible economic or other impacts of such determination."

But there does not seem to be an otherwise, according to staff, definition of commercial data, so we will have to continue to plumb the depths of that, but my understanding is economic considerations come in at the top of designation of critical habitat and/or the "God Squad" being convened to determine the fate of a species. Commercial data, at least in consideration of salmon generally, and that is, as was stated by one of the witnesses, which is, we catch fish, we have to document the fish we catch, and that can be submitted a part of an argument about the viability of the species.

Finally, just one last thing to Secretary Scarlett, and hopefully this time we will agree. We have an interagency problem here which you could resolve satisfactorily. Chairman Rahall has a large number of petitions regarding the record of decision on the de-listing of the, or listing, is it a de-listing? De-listing of the Northern Flying Squirrel, and I won't read the formal name, and these were postmarked on the date that comments closed, but the Postal Service delivered them after that date, and apparently, according to Chairman Rahall, thus far the position of the Department has been that they can't accept them even though, for instance, the IRS says, gee, if you mailed your check by midnight, it is OK.

What do you think? Can we help these people out?

Ms. SCARLETT. I would prefer to turn to my expert Dale Hall on this.

Mr. DEFAZIO. OK.

Ms. SCARLETT. He is the one that would know the procedures and rules with respect to the timing.

Mr. DEFAZIO. Is the gentleman—

Ms. SCARLETT. He says we will—

Mr. HALL. Yes, I wasn't aware that they were late comments, so we will take them.

Ms. SCARLETT. He said we will take them.

Mr. DEFAZIO. OK, great. Excellent. We end on a positive note. The Chairman will be happy if he ever comes back. I will be happy

if he comes back, too, because I have to go meet my constituents but I appreciate Mr. Inslee taking over.

I thank the panel for sitting for such a long time, the interruption, your patience, and your answers, and look at that, perfect timing, we solved your flying squirrel problem. So the next panel.

The CHAIRMAN. The next panel is composed of Mr. Dominick A. DellaSala, Chief Scientist and Executive Director, National Center for Conservation Science & Policy; Ms. Judith Schoyer Rodd, Director, Friends of Blackwater; Mr. John Young [Retired] Biologist, U.S. Fish and Wildlife Service; and Mr. William P. Horn, Attorney at Birch, Horton, Bittner & Cherot.

Lady and gentlemen, we welcome you to the Committee. We do have your prepared testimony and it will be made a part of the record as if actually read, and you are encouraged to keep your oral testimony within the five-minute limit.

Dr. DellaSala, do you want to proceed?

**STATEMENT OF MR. DOMINICK A. DELLASALA, CHIEF SCIENTIST AND EXECUTIVE DIRECTOR, NATIONAL CENTER FOR CONSERVATION SCIENCE & POLICY**

Mr. DELLASALA. Thank you, Mr. Chairman, Distinguished Committee Members.

My name is Dominick DellaSala. I am Executive Director and Chief Scientist for the National Center for Conservation Science & Policy, which is a conservation science policy think tank in Ashland, Oregon. I, for the past year, have served on the Fish and Wildlife Service recovery team.

By now the Committee has heard several allegations related to my testimony, and I submitted it for the record, but I am going to summarize here. I would like to set the record straight on the recovery process that I witnessed as a recovery team member.

To begin with, the recovery team did not include any of the well-recognized published, established, independent owl scientists. This was unusual in the terms of recovery team makeup.

The second point I would like to make is that the team came up with a draft in September, in part that was based on mapped reserves of old growth forests. That draft was sent back to Washington, D.C. on September 29. It came back to us with direction from the Washington Oversight Committee. We were told first that the Washington Oversight Committee "rejected the draft," and instead sent us instructions to develop two independent options based on this new direction.

I have extensive documentation of that provided as e-mails from different recovery team members that I could submit in addition to my testimony. Some of those are summaries from discussions that were had with recovery team members and Lynn Scarlett.

During this process, we were told to do the following: Use "new science"; second, increase emphasis on the Bard Owl; third, de-emphasize old growth habitat protections; fourth, de-link the recovery plan from the Northwest Forest plan protections.

I want to point out the so-called "new science" that is based on just two studies, both options one and two significantly reduce the amount of old growth forest habitat based on interpreting those two studies, and it has already been read by Congressman DeFazio

the specific caution noted by the researchers not to apply their studies in management recommendations at this time.

In addition to that, we had conference calls with those researchers that warned us against doing this. We had other input from those researchers to the recovery team that said don't use our results to develop habitat provisions. That advice was ignored. The habitat provisions made it into the draft in both options one and two. It is not based on the best available science at this time.

Now, despite the authors' warnings, now we have a document that would reduce old growth habitat under both options, and contrary to earlier statements on the September draft submission, it did include provisions about the Bard Owl. That is not true that we did not have provisions in the plan about the Bard Owl. The recovery team acknowledged this as a threat, had specific actions in there.

I will point out that when a species like the Spotted Owl is faced with multiple threats, including the Bard Owl and habitat loss, you protect more habitat, not less. There is a very strong body of conservation science that supports that statement.

Now, what we got were two options. Option one has the mapped owl conservation areas, or MOCAs, but significantly reduces by 27 percent the amount of habitat capable for Spotted Owls compared to the Northwest Forest plan. Option two does not have any mapped reserves. It is difficult as a scientist for me to evaluate an option that does not have maps, but based on an exercise we did as recovery team members it appears that that option would result in about 823,000 acres of old growth forest being left out of the reserve network.

We have an owl that is declining. We have the prevailing science that says it needs habitat protected in fixed reserves. There is only 7 million acres of the 24.4 million acres of Federal old growth left. Every acre is precious.

So what is motivating this? First of all, in my testimony I have documented the timber settlement agreement that was reached between the industry and this administration in 2001. That was led by the American Forest Resources Council. It was designed to triple the amount of old growth logging in the Pacific Northwest.

The administration settled and delivered on those processes through a five-point plan that was designed to weaken the habitat protections for listed species, including the owl and fish throughout the Northwest. That is what is playing out here in this recovery process.

The recovery process throughout was inappropriately interfered politically. It is not based on the best available science. The authors themselves of the studies that were cited warned against using it in this manner. Yet it still appears in the recovery plan.

I think what we have now is a product that is not based on the principles of the Endangered Species Act with respect to the best available science being used to develop objective measurable criteria. Instead, we have a recovery plan that was politically motivated and is most likely to reduce habitat at a time when we are witnessing an accelerated decline for the threatened Northern Spotted Owl.

Thank you.

[The prepared statement of Mr. DellaSala follows:]

**Statement of Dominick A. DellaSala, Ph.D., Chief Scientist and Executive Director, National Center for Conservation Science & Policy**

Chairman Rahall and committee members, thank you for this opportunity to testify on scientific integrity and the Endangered Species Act. My name is Dominick DellaSala. I am Executive Director of the National Center for Conservation Science & Policy, a science-based conservation organization in Ashland, OR. Since last June, I have served as a member of the U.S. Fish & Wildlife Service (USFWS) appointed recovery team for the threatened Northern Spotted Owl.

There are three key points I will make today in my response to the draft recovery plan for the Northern Spotted Owl published in the Federal Register on April 26, 2007:

1. what was supposed to be a science-based plan was derailed by a pattern of political interference (see Exhibit A);
2. the recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP; and
3. while oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and Bureau of Land Management (BLM) to have an inappropriate amount of influence that resulted in a recovery plan that is not based on the best available science.

Throughout my testimony I will be referring to options 1 and 2 of the draft plan. For simplicity, Option 1 is based, in part, on the fixed network of mapped habitat reserves—called Late-Successional Reserves or LSRs—initially established under the NWFP. Option 2 does not rely on fixed reserves but rather lets the Forest Service and BLM decide where blocks of habitat will be located according to a “rule set” detailed in the recovery plan (see Appendix B of the plan). Both options are inadequate to recover the owl.

**(1) Spotted owl recovery plan and process was derailed by political interference**

Distinguished Members, in 1991 one of the Northwest’s most famous judges, The Honorable William Dwyer said that the debate over the Northern Spotted Owl is about more than this one species. As he recognized, under the law, the owl was the indicator species of the remaining old-growth forest; all but a small fraction of which is now gone (Seattle Audubon v. Evans, 777 F. Supp. 1081, 1088 (1991). Judge Dwyer’s ruling set the stage for the adoption of the landmark Northwest Forest Plan.

In April 2006, under pressure of lawsuits by both the timber industry and conservation groups, the USFWS agreed to prepare an updated recovery plan for the threatened Northern Spotted Owl (an early draft was published in 1992 but it was never officially adopted because the Secretary of Interior assumed at the time that the NWFP would serve as a de facto recovery plan). The agency assembled a multi-stakeholder team consisting of representatives from federal and state agencies, timber industry, and conservation groups to develop an updated recovery plan. This team did not include any of the many well-recognized, independent scientists with expertise in owl biology. The USFWS charter document under which the recovery team made decisions emphasized that *“recommendations for recovery actions from the Team will be made in a collaborative manner, striving for the highest level of consensus possible.”*

In late September of 2006, the recovery team forwarded its draft plan to USFWS headquarters in Washington D.C. for internal review. The team recommended a recovery strategy that was anchored mostly in the existing LSR network. We reached consensus on this approach because it was the most scientifically credible way to recover the owl. The recovery team also agreed it was the most efficient way to integrate the NWFP and the recovery plan. The scientific rationale for using fixed reserves for conserving spotted owls and other old-growth dependent species has been repeatedly reaffirmed in the scientific literature (e.g., Courtney and Franklin 2004, Thomas et al. 2006, Noon and Blakesley 2006, Stritholt et al. 2006). For instance in a USFWS-commissioned five-year “status review” of the Northern Spotted Owl in 2004, two scientists, Drs. Steven Courtney and Jerry Franklin concluded that:

- *“the Reserve and Matrix strategy of the NWFP has been successful and is performing as expected” (Chapter 9, page 9); and*
- *the NWFP has made important contributions to protect and recover the endangered owl and without the plan the situation of Northern Spotted Owls would be far bleaker” (Chapter 9, page 15).*

In addition, the latest analyses of demography of spotted owls (Anthony et al. 2006) has shown that owls are reproducing and surviving better on federal land managed under the NWFP than on non-federal lands where logging is much greater (i.e., the annual rate of owl population declines on nonfederal lands was more than twice that on federal lands).

Although the recovery team agreed that a network of protected LSRs would be the foundation of the spotted owl recovery strategy, we did not reach consensus on specific habitat provisions for the owl, particularly in the southern part of its range. The team agreed to forward our science-based recommendations to USFWS headquarters on the condition that the draft plan undergo rigorous scientific peer review, and that substantive revisions be made, if necessary, pending results of peer review. The USFWS initially rejected this request for peer review, citing insufficient time as a constraint, although more than five months elapsed during which the agency prepared the draft for publication. The recovery team was notified on April 24, 2007 (two days before public release of the draft plan) that the peer review process is finally underway.

In late September, the Pacific Regional Director of the Fish & Wildlife Service, Ren Lohofener, notified the recovery team of the existence of a “Washington [DC] Oversight Committee,” consisting of high-ranking officials from the departments of Agriculture and Interior, who would scrutinize the draft recovery plan (detailed in attached Exhibit A). At the time, the oversight committee included Julie MacDonald, who was under investigation for political interference in other ESA matters and recently resigned from her position. On October 17, the recovery team was told that the Oversight Committee rejected the September draft recovery plan, in part, because it was based on the NWFP’s network of LSRs and therefore did not provide enough “flexibility.” The Oversight Committee instead directed the recovery team and federal agency staff to rewrite the plan, and to include a second alternative—Option 2—that does not rely on fixed habitat reserves.

I want to emphasize that Option 2 is not a product of the recovery team. In fact, on February 7, Mr. Ren Lohofener, Pacific Regional Director of USFWS, gave direction to the team to “don’t spend any more time on Option 1, the majority opinion of the Washington oversight committee is they prefer Option 2.” This new direction was not based on sound science but was designed to give the Forest Service and the BLM the discretion to exempt public forests from the NWFP in response to “friendly” lawsuits filed by the timber industry (known as the “global settlement agreement”—see attached Exhibit B) to triple the amount of logging in the region. The USFWS also received direction from the Oversight Committee to do the following.

- De-emphasize past science and rely on “new science”—we were told to base habitat recommendations on a handful of studies in the southern part of the owl’s range. Two of those studies point to the owl’s reliance on a mixture of forest age classes (Franklin et al. 2000—northern California Klamath province, Olson et al. 2004—Oregon Coast Range). However, the authors of both of the studies specifically cautioned against using the results to guide forest management actions for spotted owls. A third study, also in the southern range near Roseburg, Oregon did not conclusively confirm spotted owl use of younger forests. Unfortunately, the USFWS ignored these warnings and wrote a draft plan that inappropriately recommended region-wide habitat criteria that significantly underestimate the old growth habitat needs of the owl. The clear intent of this directive was to downplay the importance of old growth habitat to allow additional old growth logging on federal lands (detailed below).
- “Flip and switch” the presentation of threats to the spotted owl in the draft plan by minimizing the importance of habitat loss and placing more emphasis on Barred Owls—An October 25 memo directed the recovery team to “indicate [the Barred Owl] was [the] only threat given priority number 1” and summarize the habitat threats discussion into less than a page.” An untitled document dated October 27 and distributed to the team at a meeting in Portland by Dave Wesley, recovery team leader, contained instructions from Lynn Scarlett, Deputy Director of Interior, directing the recovery team to make the new option (Option 2) “less focused on habitat preservation.” Although Barred Owls have emerged as a recent threat to spotted owls (Kelly et al. 2003, Crozier et al. 2006), the science of conservation biology and endangered species management is clear on this point—when a species is faced with multiple threats it is best to conserve more habitat for it, not less.
- “De-link the recovery plan from the Northwest Forest Plan”—On October 18, we received notice from the USFWS to “de-link the owl plan from the Northwest Forest Plan” to provide the Forest Service and BLM with more “flexibility” (see attached Exhibit A). On October 26, Mr. Lohofener admitted that the Forest

Service and BLM were driving the recovery plan revisions demanded by the Oversight Committee, and stated that the end product would have to be flexible enough “to be acceptable to the Forest Service and BLM.” Under intense questioning from recovery team members, both Dave Wesley, USFWS recovery team leader, and Cal Joyner, the Forest Service representative on the recovery team, explained that “flexibility” meant giving the Forest Service and BLM discretion to alter or eliminate Managed Owl Conservation Areas (or MOCAs as in Option 1 of the draft recovery plan) from the recovery plan. Notably, the BLM is currently revising its forest plans on 2.4 million acres in western Oregon and is considering alternatives that do not include fixed reserves (see Exhibit B) and the Forest Service recently excluded from NEPA its forest plan revisions (Federal Register Vol. 71, No. 241, Friday, December 15, 2006, pp 75481-75495.). It should be noted that one of the primary reasons why the owl was listed in 1990 was “inadequacy of regulatory mechanisms.”

**2) The recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP**

Option 1 vs. NWFP—a comparison of the habitat provisions in Option 1 vs. the habitat provisions in the NWFP for the LSRs (Tables F1 and F2 in Appendix F (errata copy) of the draft recovery plan vs Table F1 and Table 3-8 in Lint 2005) indicates that Option 1 could reduce the estimated amount of habitat capable for owls by 27%.

This is mainly because the Option 1 reserve network (MOCAs) does not include all of the existing LSRs. Option 1 also lowers the habitat bar for owls in two additional ways: (1) setting delisting thresholds for suitable owl habitat at 50-70% within the reserve network (instead of the 100% late-successional goal for LSRs under the NWFP), and (2) allowing delisting to be considered when an arbitrary 80% of the MOCAs in the Option 1 reserve network meet the low regional habitat criterion. Both of these provisions could result in premature delisting of the owl if habitat is judged to be sufficient based on this standard.

Option 1 vs. Option 2—Option 2 could result in even greater reductions than Option 1 because the rule set allows the Forest Service and BLM to consider smaller reserves by limiting the size of owl habitat blocks relative to Option 1. When applying the rule set for Option 2, the recovery team estimated that 823,000 acres of old-growth habitat could be left out of the network of habitat blocks compared to Option 1 (unpublished recovery team exercise). In particular, because Option 2 does not include fixed habitat reserves, only includes an “example” of possible habitat block locations (Appendix B), and does not include total acreage figures, it may not meet the requirements of the Endangered Species Act regarding “measurable, objective” standards for delisting criteria.

I would like to point out that only about 7 million acres of the 24.4 million acres of public forests in the PNW is currently old growth (Strittholt et al. 2006) and not all of this is protected (e.g., 1 million acres of old forest can be logged in the “matrix”). This represents but a fraction (15%) of historic conditions (all ownerships) and therefore every acre of old growth is important. Conversely, the vast majority of public and non-federal lands include younger forest age classes.

I would also like to point out that recent demography studies of spotted owls found that 9 of 13 study areas across the range of the owl had declining populations and the rate of decline was accelerating (Anthony et al. 2006). The bottom line here is that the owl is declining from multiple causes at a time when the USFWS is proposing a recovery plan that lowers the bar on habitat protections under both options.

The flexibility the administration desires cuts both ways—in fact—there is an even stronger scientific case to be made for enlarging reserves for the spotted owl due to the increased threats posed by Barred Owls and loss of habitat from fire. I and other team members mentioned this repeatedly during recovery team meetings, yet this science-based recommendation was rejected by the USFWS. Unfortunately, the habitat provisions in both options could result in the need to up-list the owl to endangered status in the future should populations continue to decline and habitat be further reduced by logging facilitated by inadequate regulatory mechanisms. This could eventually result in less flexibility not more.

**3) While oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and BLM to have an inappropriate amount of influence that resulted in a recovery plan based more on the timber objectives of land managers than on the best available science.**

In closing, I want to underscore the unusual makeup of the recovery team and the change in process under which it operated when the Oversight Committee took charge late in the process. Typically, recovery plans are developed by recognized experts in the ecology and management of the listed species to ensure that recovery objectives and delisting criteria are based on best available science (Department of the Interior and Department of Commerce 1994). Under the ESA, the purpose of recovery plans is to get listed species to recover to the point where delisting is warranted and protection under the ESA is no longer needed. In order for a listed species to move from the “intensive care unit” to a viable population, recovery plans must be based on best available science. Obviously, that was not the case here as the USFWS did not include the highly recognized owl experts on the recovery team whose seminal work was cited and, in some cases, misrepresented.

The political interference documented in this case led to misapplication of habitat provisions under both options and the creation of Option 2, which is by no means a recovery team product nor was it generated out of consensus. In fact, according to a news story in the Land Letter on May 3, Dave Wesley, leader of the agency’s spotted owl recovery team, stated “the less-defined second option was requested by Interior Department political appointees and other high-level officials in Washington, D.C.”

Therefore, in spite of nearly a year of participation as a recovery team member, I cannot stand by this document. The agency, however, did eventually and only recently agree to conduct peer review of the plan. Should peer review confirm the scientific flaws noted in my testimony, the recovery plan should be rewritten by working closely with recognized owl scientists to ensure it is based on the best available science without further political interference. Clearly, in the case of the draft spotted owl recovery plan science took a back seat to politics.

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NOTE: Exhibits have been retained in the Committee’s official files.

**Response to questions submitted for the record by  
Dominick A. DellaSala, Ph.D.**

**Questions from Republican Members**

I would like to thank the members of the Committee for the opportunity to respond to these follow-up questions from the hearing. My responses to each question are set out below. In general, a number of the questions appear to raise issues of a legal nature. While I am not an attorney, my testimony before the Committee was offered as a conservation biologist and scientist. Nonetheless, I have attempted to respond to the Committee's questions to the best of my ability.

- (1) What role should the states have in protecting endangered species? Do you agree with Ms. Rodd that the Fish and Wildlife Service should not devolve management responsibilities to the states? States control road building, energy development, including alternatives, and home development which could affect listed species.**

**Response:** The Endangered Species Act is a federal environmental law. It already recognizes an appropriate role for the states in a number of places explicitly in the following provisions: (1) 16 U.S.C. § 1531(a)(5) finds that encouraging state involvement in species protection is important to the success of the Act; (2) § 1531(c)(2) recognizes a congressional policy of cooperation with states to resolve water resource and endangered species issues; (3) § 1533(b)(1)(A) directs the Fish & Wildlife Service to consider state efforts to protect species in making listing decisions; (4) § 1533(b)(1)(B) directs the Fish & Wildlife Service to consider in making listing decisions species identified by states as in need of protection; and (5) § 1535 generally establishes a program for cooperation with states in species conservation. The ESA also implicitly recognizes cooperation with the states as, for example, 16 U.S.C. § 1532(13) includes officers, employees, agents, departments, and instrumentalities of states as "persons" generally subject to all applicable requirements of the Act. One of the reasons we need a nation-wide law for threatened and endangered species is because many species cross state lines or are subjected to impacts that come from outside a particular jurisdiction. Because the ESA is a federal law, any role for the states in protecting listed species should be consistent with the purposes of the ESA and should comply with its provisions.

- (2) Many endangered species are located on private property. Do you believe that the agency should not weigh the effects of proposed listings on land owners in their deliberations to list a species?**

**Response:** Section 4 of the ESA sets out the factors the Fish & Wildlife Service may consider in determining whether a species should be listed as threatened or endangered (see 16 U.S.C. § 1533(a)(1)(A)—(E)). These factors are appropriately focused on sources of biological threats to a species because the question of whether a species faces a sufficiently imminent risk of extinction to warrant listing is fundamentally one of biology. The ESA also appropriately allows consideration of the effects of a listing on private property owners and others in provisions other than the listing criteria of section 4 (see, for example, 1533 U.S.C. § (b)(2) which allows the Fish & Wildlife Service to exclude specific areas of habitat critical to a species from designation as critical habitat for economic reasons so long as the exclusion will not result in the extinction of the species). This separation of the biological question of whether a species should be listed as threatened or endangered from other issues about how to respond to a listing is logical and well-founded. From a scientific perspective, the effect of a listing on a land owner is not germane to the biological question of the degree of risk the species faces.

- (3) When the agency designates critical habitat doesn't the law allow the balancing of scientific findings with economic and other considerations?**

**Response:** Section 4(b)(2) of the ESA specifically provides that: "the Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned" (see also 50 C.F.R. §§ 424.12 to 424.21—regulations that govern designation of critical habitat recognizing role of economic impacts and other considerations in final habitat designations). Thus, it would appear that the ESA and its implementing regulations already allow the consideration of economic issues in making a critical habitat determination under specific circumstances and standards. In my view, this approach adequately allows the balancing of scientific findings with economic and other considerations.

**(4) As a biologist, have you ever been in a position where there were other scientists that did not agree with a position you took based on research?**

**Response:** Many apparent disagreements among scientists arise at first because they are addressing different but related issues, working from different assumptions, collecting different data, or using different methodologies. When they compare assumptions and data and analyze them objectively to determine which are most appropriate and reliable, areas of disagreements are usually reduced or eliminated. It is for this reason that focusing on science and relying on the best available scientific and commercial data—as the ESA does—provides the best foundation for reliable decisions about species and their conservation.

In addition, while it is certainly not unusual for scientists to disagree over research findings, these disagreements are best resolved through the peer review process of which I have participated throughout my 20-year career. Peer review is the gold standard by which quality science is objectively judged. When disagreements over published articles occur, they also may be resolved through point and counter point articles and additional research. In this manner, scientists benefit by rigorous, independent review and exchange of ideas, and decision makers benefit by having the best science available to make informed policy choices.

As subject editor for two scientific journals, *The Natural Areas Journal* and *Conservation Biology*, I have overseen the peer review process using a refereed and independent (blind) peer review process. This is the best standard we have for resolving scientific debate. My own research, which includes over 150 published articles, has gone through this type of rigorous, independent peer review.

**(5) What do you think of Mr. Horn's testimony where he describes making policy decisions after receiving differing scientific recommendations? Do you agree that in those cases it is necessary for a policy person to make decisions that not all scientists would agree with?**

**Response:** There is a legitimate and appropriate difference between science and policy. Scientific issues depend on detailed observations, objective analysis of data, and carefully drawn conclusions based on the facts and analysis. Policy issues often reflect other values, including societal ones. The key, however, is for policy makers to explain their policy choices in light of setting aside such findings where they choose to do so. Only with such clear and careful articulation of the grounds for policy choices can the public and others evaluate whether a policy choice is appropriate in light of the broader policy choices and standards set forth in our laws.

Agency officials or decision-makers sometimes choose to ignore scientific findings in making policy choices. In these cases, the foundation on which those decisions were made is undermined with the likely outcome of a poor and risky decision. For this reason, it is important that decisions by policy persons are made in an open and transparent manner so that consequences can be appropriately weighed by society. Far worse, however, are the cases in which decision-makers seek to manipulate, distort, overturn, or suppress scientific findings in order to make them comport with their policy preferences. There were numerous examples given by witnesses at the May 9 hearing that point to an unprecedented manipulation of science by agency officials in this administration. These efforts essentially rely on subterfuge to deprive the public and the Congress of any ability to evaluate the soundness of decisions. In my view, this is an inappropriate approach to the intersection between science and policy that I have tried to focus in on one particular instance—the preparation of a draft recovery plan for the Northern Spotted Owl—in my testimony to the Committee. Indeed, under the Endangered Species Act, the overriding policy of the Fish & Wildlife Service must be “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species”. 16 U.S.C. §1531(b). In the case of the spotted owl recovery plan, preconceived outcomes got in the way of sound science.

**(6) Would you agree that science is never clear cut, that two scientists could research an issue and come up with different results or opinions?**

Science is often quite clear cut, especially where there is sufficient information to draw reliable conclusions. In cases where it is not, scientists lack enough information to draw reliable inferences. Even in these situations, however, scientists often have methods of analysis that can provide useful and reliable insights in the face of uncertainty and risk assessment and most often couch their statements in probability terms. Where scientists do “research an issue and come up with different results or opinions,” as I noted above, it often involves different assumptions, analytical methods, and so on. For that reason, these apparent differences can usually be

resolved—if not immediately then over time—by scientists working together, comparing their results, refining their analyses, and stating their confidence limits. The idea—suggested by the question—that there is no such thing as a right answer in science, is resolvable through peer review and statements of confidence in the findings.

In addition, reputable scientists would not reach hasty conclusions when the facts are largely unknown or in dispute. The risks to endangered species, and society, go up when policy decisions are based on scientific uncertainty (e.g., findings that have low confidence levels or have limited application) and poor choices. This is especially troubling when the science is outright ignored, manipulated, or interfered with in order to support preconceived outcomes. To illustrate this point, I would like to discuss a particular case where hasty or incorrect policy decisions could lead to more costly measures or, even worse, changes that are impossible to reverse.

In the case of threatened Northern Spotted Owl, there is a scientific consensus that the owls' survival depends on protecting old-growth forests from logging. This is based on more than two decades of research (see Anthony et al. 2006). The draft spotted owl recovery plan, however, falsely concluded that the owl does not need a high proportion of old-growth forests to survive. This conclusion was based on just two studies (Franklin et al. 2000, Olson et al. 2004) in the southern portion of the owls' range where owls were reported using a mixture of forest age classes (not just old growth). However, a third study (Dugger et al. 2005) by some of the same researchers in a nearby study area could not confirm these findings. When a small number of studies produce results that are inconsistent with a larger body of work, the proper scientific approach is to treat these with great caution and work to 1) confirm whether they are correct or not, and 2) if correct, how far can they be reliably extrapolated? The following statements from these researchers underscore my concerns:

- "...we do not recommend that forest managers use our modeling results as a prescription for managing habitat either within the Oregon Coast Range or elsewhere until other similar studies have been conducted." (Olson et al. 2004).
- "I have repeatedly noted that the monograph (Franklin et al. 2000) represents just a first approximation of these relationships, which form the basis for future studies, but in itself should not be considered definitive." (Dr. Alan Franklin in a November 21, 2006 letter to Paul Phifer, Fish & Wildlife Service, which was forwarded to the recovery team).

Unfortunately, these warnings were ignored by Fish & Wildlife Service which instead chose habitat provisions for the owl that low-ball old-growth protections based on false interpretations of the two studies. This is a clear-cut example of making hasty decisions that could result in premature delisting of the owl, or even worse, continued and irreversible habitat losses. In this case, science was misapplied and statements of scientific uncertainty ignored in order to support a preconceived outcome dictated by the Washington Oversight Committee as detailed in my testimony.

Because conservation science is the science of "crisis management," especially in the case of endangered species, prudent decision making should be based on the precautionary principle. Old growth habitat once logged takes many decades to re-grow. Because the owl requires old growth over most of its range, as most owl biologists have concluded, logging these forests pushes the species closer to extinction and could trigger an up-listing to endangered status, resulting in decisions more costly socially and economically. Most notably, the owl is an indicator species of old-growth forests, which contain a broad suite of values widely supported by society. These were considered in the Northwest Forest Plan, and any action that weakens the Plan has implications that reach beyond the fate of the Northern Spotted Owl.

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Ms. RODD. Chairman Rahall.

The CHAIRMAN. Yes, ma'am.

**STATEMENT OF MS. JUDITH SCHOYER RODD,  
DIRECTOR, FRIENDS OF BLACKWATER**

Ms. RODD. Thank you for the opportunity to appear before your Committee.

My name is Judith Schoyer Rodd. I am the Director of Friends of Blackwater, a citizen's organization with 1,000 dues-paying members, and offices in Tucker County and Charleston, West Virginia.

We West Virginians are extremely proud of our beautiful mountains, rivers, and rural communities, and we are fierce and zealous in their defense and protection. We are particularly proud of the West Virginia Highlands, a little bit of Canada in Appalachia.

I am here on behalf of the Save our Squirrel, or SOS Coalition, a consortium of 25 groups that have banded together to prevent the U.S. Fish and Wildlife Service from removing Federal endangered species protections from the West Virginia Northern Flying Squirrel, *Glaucomys sabrinus fuscus*.

Our coalition member groups include the Wilderness Society, the National Wildlife Federation, the American Lands Alliance, the Center for Biological Diversity, the Southern Appalachian Bio Diversity Project, the Southern Appalachian Forest Coalition, Heartwood, Stewards of the Potomac Highlands, and the Maryland Conservation Council.

Ginny, a flying squirrel as we like to call her, and her babies are the signature species of our state's highest mountains. Ginny is a relic of the last ice age. When the glaciers retreated, Ginny's ancestors were isolated on the high mountain ridges of six West Virginia counties and one in Virginia.

Ginny has evolved a remarkable lifestyle, surviving a demanding and specialized habitat—feeding at night on underground fungi that grow in the cool, moist forest and mountain tops.

Ginny has been on the Federal endangered species list since 1985. In the fall of 2006, officials at the Fish and Wildlife Service announced a fast-track de-listing proposal for Ginny. The proposal developed in secret without input from official recovery plan authors is to strip all Federal protections from the West Virginia Northern Flying Squirrel. This proposal generated a huge negative public reaction. The agency says that the public cannot see 2,325 pages in the agency's files on de-listing.

Members of Congress, this isn't national security. What can be so secret about a squirrel? The agency's stealth de-listing plan is illegal and absurd procedurally and substantively.

Fish and Wildlife Service admits it has no idea how many squirrels there are. The threats to Ginny and her habitat are growing, not shrinking. The meager scientific data on Ginny's habitat and likely future has been cherry picked and mischaracterized to support a clearly pre-determined conclusion.

The leading scientist who has studied the squirrel for decades has opposed the de-listing proposal. More than 5,000 people have sent comments to Fish and Wildlife Service opposing the plan, and we have submitted a 50-page comment letter refuting every assertion in the agency's proposal.

People in the agency tell us they have no funding to implement the recovery plan, and instead they are planning how to scrap the recovery plan altogether. Certainly it would solve a lot of problems for everyone but the species and its habitat. It is shameful and shocking to learn that what we are experiencing in West Virginia is a symptom of a greater problem—the attempted rollback of endangered species protection across America by political appointees who appear to despise the very law they are sworn to uphold.

We join with Americans everywhere in saying that we will not tolerate any rollback of the protections of the Endangered Species Act.

As I speak to you today, Ginny is nursing her babies in a birch-barked line nest. Ginny can survive the cold mountain nights, but she can't protect herself from Beltway machinations. It is up to us to protect Ginny, and all the other wonderful parts of the creation.

Our SOS, Save Our Squirrel Coalition represents millions of Americans who expect nothing less from our government, and that is why I would like to thank you for the opportunity to come to Washington and tell our story. I have included further remarks in my written testimony, and will be happy to take any questions.

[The prepared statement of Ms. Rodd follows:]

**Statement of Judith Schoyer Rodd, Director, Friends of Blackwater,  
on behalf of the "SOS!—Save Our Squirrel" Coalition**

Thank you for the opportunity to appear before your committee. My name is Judith Schoyer Rodd. I am the Director of Friends of Blackwater, a citizen organization with one thousand dues-paying members, and offices in Tucker County and Charleston, West Virginia.

We West Virginians are extremely proud of our beautiful mountains, rivers, and rural communities, and we are fierce and zealous in their defense and protection. That is why I am appearing today on behalf of the "SOS!—Save Our Squirrel" Coalition, a consortium of 25 groups that have banded together to prevent the U.S. Fish and Wildlife Service from removing federal endangered species protection for the West Virginia Northern Flying Squirrel, (*Glaucomys sabrinus fuscus*). Our Coalition member groups include The Wilderness Society, American Lands Alliance, The Center for Biological Diversity, Southern Appalachian Biodiversity Project, Southern Appalachian Forest Coalition, Heartwood, Stewards of the Potomac Highlands, and Maryland Conservation Council.

"Ginny" the flying squirrel, as we like to call her, is the "signature species" of our State's highest mountains. Ginny is a relic of the last Ice Age. When the glaciers retreated, Ginny's ancestors were isolated on the high mountain ridges of six West Virginia counties (and one in Virginia.) Ginny has evolved a remarkable lifestyle, surviving in a demanding and specialized habitat, feeding at night on underground fungi that grow in the cool, moist, forested mountaintops.

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This proposal generated a huge negative public reaction. The agency says that the public cannot see 2,325 pages in the agency's files on de-listing. Members of Congress—this isn't national security. What can be so secret about a squirrel?

The agency's stealth "de-listing" plan is illegal and absurd—procedurally and substantively. Fish and Wildlife admits it has no idea how many squirrels there are. The threats to Ginny and her habitat are growing, not shrinking. The meager scientific data on Ginny's habitat and likely future has been "cherry-picked" and mischaracterized, to support a clearly predetermined conclusion. The leading scientist who has studied the squirrel for decades has opposed the de-listing proposal.

More than 5,000 people have sent comments to Fish and Wildlife opposing the plan, and we have submitted a fifty-page comment letter, refuting every assertion in the agency's proposal. Members of Congress, people in the agency tell us they have had no funding to implement the recovery plan, and instead they are planning

how to scrap the recovery plan altogether. Certainly it would solve a lot of problems—for everyone but the species and its habitat!

It is shameful and shocking to learn that what we are experiencing in West Virginia is a symptom of a greater problem. The attempted rollback of endangered species protection across America—political appointees who appear to despise the very law they are sworn to uphold. We join with Americans everywhere in saying we will not tolerate any rollback of the protections of the Endangered Species Act.

As I speak to you today, Ginny is nursing her babies in a birch-bark lined nest. Ginny can survive the cold mountain nights, but she can't protect herself from Beltway machinations. It's up to us to protect Ginny—and all of the other wonderful parts of the Creation. Our "SOS—Save Our Squirrel" Coalition represents millions of Americans who expect nothing less from our government. That's why I thank you for this opportunity to come to Washington and tell our story. I have included further remarks in my written testimony and I will be happy to take any questions.

#### **Issues in FWS implementation of the Endangered Species Act nationally.**

I would like to make the following points about the importance of endangered species recovery plans. The Endangered Species Act requires FWS to develop recovery plans for endangered species. Recovery plans are a roadmap for protection and recovery of the species. For a species to be de-listed or downlisted, it must meet the recovery criteria contained in the recovery plan.

The Bush Administration has completed fewer recovery plans than any administration since the Carter administration. To date, the Bush Administration has completed just 100 recovery plans, compared to 577 under the Clinton administration and 174 under the first Bush administration. Moreover, the Bush administration has interfered with development of recovery plans to an unprecedented degree.

The Apache trout recovery plan is one example. Then-regional-director Dale Hall went around the Apache Trout Recovery Team to revise the Apache Trout Recovery Plan to make it easier to de-list the trout. Over the objections of the Team Members the weaker, revised plan was adopted. The Northern Spotted Owl recovery plan is another example of interference in the development of recovery plans.

The Bush administration has also ignored recovery plan criteria in order to speed downlisting and de-listing of species, and not only in the case of the West Virginia northern flying squirrel. For example, in April 2006, FWS recommended downlisting the Florida manatee from endangered to threatened, even though it admitted the manatee had not yet met the downlisting criteria established by a panel of scientists in 2001 to assess the manatee's progress, and contained in the recovery plan. FWS claimed it ignored those criteria and instead followed the legal definitions of "endangered" and "threatened." FWS cancelled its downlisting plans shortly afterward after an outcry from scientists and the public.

I also wish to address the recently leaked proposed changed Fish and Wildlife Service regulations for the Endangered Species Act, which exemplify the contrarian approach of the administration to science. The administration's draft regulations would limit scientists' ability to do what is needed to recover species. This developing regulatory package is an attempt to formalize the administration's approach of suppressing and distorting endangered species science to get the outcomes it wants. Specifically, the proposed changes would tie scientific hands regarding decisions about whether to list a species as threatened. A species should be listed as threatened if it is likely to become endangered within "the foreseeable future". Currently, this definition is left up to scientists, because it varies case by case. The draft regulations would arbitrarily define "foreseeable future" as "10 generations or 20 years, at the discretion of the Service" in most cases. What would that mean for species like the WV Flying Squirrel, which is threatened in the long term by global warming?

The draft regulations also improperly devolve authority to the states. Currently, States are encouraged to participate in recovery planning, listing decisions and critical habitat designations, but the U.S. Fish and Wildlife Service maintains the ultimate responsibility and authority to make a scientifically-based, non-political decisions. It often does so over the objections of state agencies, which are more beholden to local political pressure. The Administration's draft regulations say "States, may request and be given the lead role in almost every aspect of the Act, including, but not limited to, [listing, consultation, and Habitat Conservation Plans.]" There are many reasons, from political pressure in-state to resources of the state agency, for caution when handing such responsibilities to the states.

#### **Comments On the Proposed De-Listing of the West Virginia northern flying squirrel**

The proposed de-listing rule for the West Virginia northern flying squirrel (WVNFS) is deeply flawed and fails to meet the basic requirements of the Endan-

gered Species Act for recovery of a species. The squirrel is not going to “fly solo” as the Fish and Wildlife Service claims but instead will glide into extinction under this proposal. Here are the problems with the proposal.

1. The Administration’s process for this de-listing proposal violates the Endangered Species Act by ignoring the WVNFS Recovery Plan standards and fails to provide a post-de-listing monitoring plan for public review and comment.
2. There is no credible information on the flying squirrel population, which in turn does not allow assessment of population trends.
3. There is inadequate and misleading information on flying squirrel habitat.
4. There are flaws in the modeling for flying squirrel presence, capture counts and habitat needs.
5. The plan relies on the good intentions and interest of others to protect the squirrel after de-listing despite an inadequate regulatory framework and lack of funding.
6. There is inadequate analysis of ongoing and cumulative impacts on flying squirrels, including failure to examine the devastating effects of:
  - Climate Change
  - Energy Development
  - Private Land Development and Highway Construction
  - Timbering

#### **Process Concerns**

##### **Ignoring the Recovery Plan is Violation of the Endangered Species Act**

The WVNFS de-listing proposal is the clearest crystallization to date of a heretofore background effort by the Bush administration to dispense with recovery plans by arguing that objective, measurable, concrete de-listing criteria should be overridden by the five non-criteria-based listing factors. The Fish and Wildlife Service (FWS) throws out the Recovery Plan for the squirrel by saying it is too old and is irrelevant because “new light” has been shed and “new information has become available” which is never explained. The recovery plan was amended as recently as 2001 and the Service has not and cannot demonstrate that the recovery criteria are scientifically inadequate. The recovery plan’s requirement of population stability is the bedrock of conservation biology and cannot credibly be replaced by an unscientific concept of “persistence,” and the recovery plan’s requirement of perpetual habitat protection is another important principle of conservation biology.

It is quite evident that there is nothing inadequate with the recovery criteria in the plan. The de-listing proposal and 5-year review certainly do not demonstrate any inadequacies. To the contrary, its justification for designating the species as recovered follows the same general logic as the plan: the population is healthy, the species life history is sufficiently known to be managed, the habitat is currently protected, the habitat will be protected into the foreseeable future. Furthermore, the de-listing proposal and 5-year review repeatedly state that these have been accomplished by implementing the plan. However the logic doesn’t match the facts on the ground.

It is no accident the Service tries to denigrate the Recovery Plan because it cannot meet the goals for de-listing the squirrel as outlined by the Plan. First, the Recovery Plan requires that 80% of the core habitat (Geographic Recovery Areas or GRA’s) for the squirrel have a stable or increasing population for at least ten years. There is no data indicating whether the WVNFS is stable, increasing or decreasing. How does the Service deal with this problem? It throws out the goal because it would prevent de-listing. While not alerting the reader that it is violating this provision of the recovery plan, the Service substitutes the demographically meaningless and undefined concept of “persistence” to replace population measures. Secondly, the recovery plan requires that all core habitat areas be managed for the species in perpetuity. The de-listing proposal admits that they are being managed under a multiple-use mandate that will result in continued logging of important squirrel habitat. And thirdly, the recovery plan requires that high elevation forests be protected in perpetuity, while the de-listing proposal notes that they may be completely destroyed by global warming.

##### **Process Out of Order: Need for Comment Period on the Post-De-listing Monitoring Plan**

It is clear from the December 19, 2006 Federal Register Notice and the meeting on February 9, 2007 between Friends of Blackwater and the FWS that the agency does not have a post-de-listing monitoring plan in place. This is a problem for a number of reasons. The ESA requires that a post-de-listing monitoring plan be published simultaneous with the de-listing rule. Unless and until such a plan is distrib-

uted to the public, this de-listing rule is arbitrary, capricious, and not in accordance with the law.

Any purported plan has not undergone full public scrutiny. The public has a right to comment on the full range of what is proposed in de-listing the flying squirrel. In failing to provide the post-de-listing monitoring plan at this time, the FWS is fragmenting the commenting process and denying the public the opportunity to provide fully informed comments. A second comment period will be required when the post-de-listing monitoring plan is completed. The 5-Year Review and the post-de-listing monitoring plan are inextricably linked. In order to understand if the assertions of species viability after de-listing contained in the 5-Year Review are true, it is necessary to know the monitoring steps proposed to ascertain the state of squirrel viability. This critical information is missing since the post-de-listing monitoring plan has yet to be written.

#### **FOIA Request and the Comment Period Deadline**

Friends of Blackwater submitted a FOIA request (#2006-00988) on the West Virginia northern flying squirrel proposed de-listing rule Sept 10th, 2006. We received materials from that FOIA request on December 19th. Friends of Blackwater appealed the partial denial of 2,325 pages of documents. This appeal was submitted on Feb 2, 2007 (Appeal Number 2007-060). We received phone confirmation that more documents would be released in February. We have yet to receive any of the released documents.

We would like an official explanation for the long delay in the release of these materials. When can we expect to receive these documents? Withholding documents undermines the rule making process, and lessens public trust in federal agencies. It further undercuts the ability of the public to make informed comments when denied access to legally releasable materials that serve to illuminate the proposed de-listing. The signatories of this letter request that the comment period remain open until all documents have been received and reviewed.

#### **Population Concerns**

The foundation of wildlife biology is understanding the population ecology of a species and its habitat. In the absence of population data the utmost caution must be observed in considering any action they may directly impact a species or its habitat.

The proposed rule states that de-listing is justified because of “an increase in the number of individual squirrels” (proposal at 75924). At the time of listing, ten squirrels were known at four sites; between 1985 and 2005 there were 1,141 captures at 107 sites (proposal at 75926). An unknown portion of the captures were recaptures, thus the 1,141 captures do not represent 1,141 squirrels. The population size was not known or estimated at any point between 1985 and 2005. These data do not in any manner support the Service’s assertion that the population has increased since 1985, nor has the Service provided any additional data to support the strange assertion. The only valid conclusions one can draw about WVNFS populations trends are 1) the population size is not known now or at any time between 1985 and 2005, 2) the 1985 to 2005 population trend is not known, 3) the current population trend is not known, 4) some capture sites have been used relatively continuously since 1985, some have been used sporadically, some have been abandoned, and many are lacking in sufficient data to determine whether use has been consistent, sporadic or abandoned between 1985 and 2005, and 5) the Service has completely dropped the ball on WVNFS monitoring, having consistently failed over a 20-year period to fund or establish demographically useful surveying methodology.

A recent analysis of all federally listed species in eight northeast states determined that all had persisted and 93% had increased in size or remained stable since listing (Suckling 2006). Under the proposal’s “persistence” criteria, all of them should be removed from the endangered species list. Some such as the piping plover, roseate tern, and green sea turtle have done considerably better than persist, they have dramatically increased in size, yet none have been proposed for de-listing because, unlike the case of the WVNFS, the Service is requiring that the species meet scientific recovery criteria established in recovery plans. The Service’s procedure in this case is to ignore the recovery plan and proceed to de-list in the absence of any explicit recovery criteria based on the nearly meaningless and poorly defined concept of “persistence.” This clearly violates the Endangered Species Act requirement that the Service scientifically demonstrate the species is recovered.

#### **Data Analysis of Captures from Field Reporting Forms for WVNFS**

To further clarify the number of endangered squirrels captured as stated in the Fish and Wildlife Service’s proposed rule, we analyzed data from a digital database of squirrel captures provided by the West Virginia Department of Natural Resources

from 1988 through 2006. This data analysis concluded there were a total of 1,199 captures during this time period with only 79 recaptures. However, there were some 327 captures that did not include any information about ear tag numbers placed on captured squirrels with no clear reason for this lack of information. These 327 records represent a distinct anomaly in the capture data that seemed to indicate that there may have been as few as 793 unique captures.

Due to this and several other inconsistencies within the data source we obtained copies of the actual field reporting sheets from the West Virginia Department of Natural Resources office in Elkins, West Virginia in order to try to further understand these and other inconsistencies in the capture data.

Data from available field capture forms was then entered into an Excel Spreadsheet. A total of 1,233 documents representing research from years 1985 to 2006 were entered for assessment. As a means of trying to keep the information as accurate as possible, forms that were illegible (in part or whole), forms that were duplicates of others, as well as type written forms that appeared to be summary in nature but lacked definitive information were excluded for the purpose of data analysis. After excluding data that fell into those categories, capture data was assessed for some 1,147 separate events.

Upon review of the capture data, 104 events had been recorded as recaptures and 114 events were recorded as unknown. For the purpose of analysis it was assumed that unknown meant it was not possible for any number of reasons to determine whether the animal had been captured in previous field studies. This led to the determination (based solely on the exclusion of captures recorded as recaptured or unknown) that only 929 events remained as possible unique captures.

Further analysis of the data included assessment of the assignment of tag numbers during capture events. During 275 captures the animal was not tagged. Reasons for the lack of tagging ranged from escape of the animal to "not applicable". These 275 events also included several nestlings that were not tagged at the time the data was recorded. Without tagging of these animals on initial capture it cannot be known if they were ever recaptured. Analysis of the data from these 1,147 captures presents several inconsistencies in the actual collection of the field data.

**To summarize, analysis results show 114 events where initial capture or recapture was unknown; 275 instances where a tag number was not assigned to an animal; and 104 events that were definitively recaptures. When these numbers are considered, unique squirrel captures over the last 21 years may only number 654 individuals. Considering that the squirrel only has an average life span of four years this is a very small number indeed.**

#### **Ecological Issues**

In examining the Fish and Wildlife Service's Five-Year Review of the status of the squirrel on which the proposed delisting rule is based, one anticipates an extensive review of current literature related to the WVNFS alongside results of independent research performed by the agency, supported by expert opinions. Instead one encounters a synthesis of some current and relevant information alongside numerous unfounded assertions. Also troubling is the use and indeed heavy reliance on unpublished, non-peer reviewed science such as Menzel 2003. Instead of a comprehensive and objective review of the status of WVNFS, the Five-Year Review fails to address relevant ecological information and basic principles of conservation biology. In an effort to correct these deficiencies we present some of the ecological issues that are ignored by the agency.

- The WVNFS has been documented and is known to inhabit deciduous forests at lower elevations and should not be considered an obligate to spruce fir forests.
- The WFNS is typically considered to inhabit forests with older growth characteristics such as an all-aged forest structure, vertical diversity, down woody debris, and a high level of diversity of plants, animals, fungi, mosses, and lichens. Although the WVNFS is associated with this habitat it can exist across a broad range of forest habitats but needs forests with older growth conditions in enough places across its range to persist.
- Protecting only old growth spruce forests will not ensure the protection of northern hardwoods. Northern Hardwoods communities must also be protected in reserves of sufficient size. Without knowing the spatial needs of the WVNFS it is presumptuous to assume that just protecting small portions of forest will be sufficient to recover the species.
- It is essential to not only maintain reserves of spruce and northern hardwoods but also to retain their connectivity across the landscape. Any loss of connectivity via road building, large-scale logging, etc. should be considered as

a substantial threat that has not been abated at the scale appropriate to recover the species. Studies indicate that roads can have major impacts to the ability of flying squirrels to move across the landscape (Weigl et al. 2002).

- Other forest health issues that compound the threats to the WFNVS include: the loss of Eastern Hemlock to the Hemlock Woolly Adelgid, the loss of Fir to Balsam Woolly Adelgid, the loss of Beech due to Beech bark Disease, and the impacts of Oak Decline in northern hardwood communities. Even if it were true that all threats at the time of listing the WVNFS have been abated (which they most certainly have not) there are new threats which are growing that may have untold consequences for the WVNFS. De-listing this species now would strip away the protections offering it the best chance for survival.

### **Red Spruce**

#### *Role of Spruce in Boreal Habitat*

High elevation spruce in the Southern Appalachians is a relict of widespread spruce occurrence during the Pleistocene. However, spruce is just one component of this habitat. The proposed de-listing and the modeling on which the de-listing proposal relies focus on spruce to the exclusion of other components of boreal habitat. It is simplistic to imagine that spruce and elevation by themselves determine preferred habitat for *G. sabrinus fuscus*.

#### **Habitat Age-Class and the Squirrel**

One of the most consistent factors associated with *G. sabrinus fuscus* is older growth trees and old growth conditions. This should be a primary focus of recovery efforts. However, this is in direct opposition to efforts to “restore” spruce forests, as this is likely to involve harvesting mature tree to be replaced with new regeneration. Even if spruce regeneration is successful, which is highly unlikely under a climate change scenario, these immature trees are unlikely to provide good habitat in any foreseeable future.

#### **Food Sources**

The use of food sources by *Glaucomys sabrinus fuscus* is critical to an understanding of their habitat use. One study of the *G. sabrinus fuscus* fecal pellet contents, done by Donna Mitchell of the WV DNR in 1998 gives us some insight into what the squirrel eats. Entitled “Spring and Fall Diet of the West Virginia Northern Flying Squirrel” it was published by the American Midland Naturalist in 2001. The pellets studied were collected from 115 captured squirrels from 1989 to 1991 in the spring and fall. No information was collected for winter and summer food sources. The spring samples show equal consumption of buds from red spruce and beech trees and fungus associated equally with both conifer and broadleaf trees. In the fall, fungi were more widely eaten, as were beechnuts. Lichen and mosses were also found in the samples. This small study supports the contention that the squirrel forages in both northern hardwood and conifer habitat and is not limited to red spruce forest types.

#### **Model Used to Plan Management is Flawed**

Over simplistic models of habitat requirements cannot be used solely to justify the de-listing of the WVNFS. The interpretation of this information has led the FWS to draw conclusions on the ecology of WVNFS and its population that are unsubstantiated. The de-listing proposal for *Glaucomys sabrinus fuscus* is heavily based on habitat modeling (Menzel, 2006). While this modeling is useful as an interesting addition to characterizing *G. sabrinus fuscus*, the study should not be promoted as definitively characterizing the habitat of *G. sabrinus fuscus*. The model contains untested assumptions, is based on limited data, is a simplified model that does not account for important variables in the species’ biology, and remains an unverified and untested model. The model is also being applied outside of its intended scope and for purposes that are not supported by the study that the model is based on.

#### **Threats to squirrel from second home and energy development, logging, road building, and climate change**

Road building, mining, gas development, industrial wind and second home development are all increasing and pose significant threats to the WVNFS due to habitat fragmentation and removal which the Fish and Wildlife Service ignores.

Threats to the squirrel from logging continue on both private and public land. While the Monongahela National Forest claims to have protected the squirrel from logging under their old and new management plans, they in fact allow logging in all hardwood stands occupied by the squirrel as well as logging in mix hardwood and conifer stands to encourage red spruce to dominate the canopy. They also allow logging to thin red spruce stands. The Fish and Wildlife Service’s claim that the

Forest Service's management plans protect the WVNFS has never been substantiated.

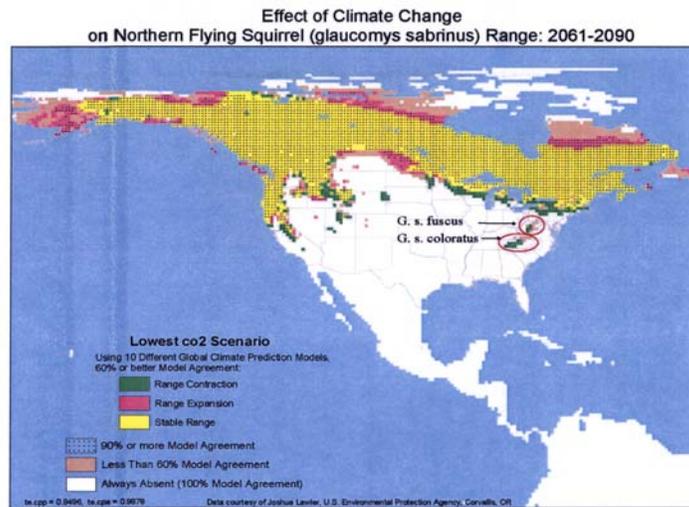
There is a strong scientific consensus that spruce-fir forests will disappear from the Southern and Central Appalachians (and probably the United States) under even the most conservative global warming models. While some components of the northern hardwood forest will likely remain in the region, it will likely cease to function as a discrete ecological community. This will likely result in the extinction of the WVNFS. In the medium term (i.e., next 100 years), global warming is probably the greatest threat to the squirrel's existence, yet the de-listing proposal provides only a cursory glance at the issue. This violates the Endangered Species Act requirement to employ the best available scientific information in making de-listing decisions. The proposal's passing reference, moreover, is miscited, misinterpreted, and relies on criteria disallowed by the Endangered Species Act. The final decision must provide a thorough review of the large body of published scientific studies examining the likely impact of global warming on the WVNFS and its habit. (See attachment III)

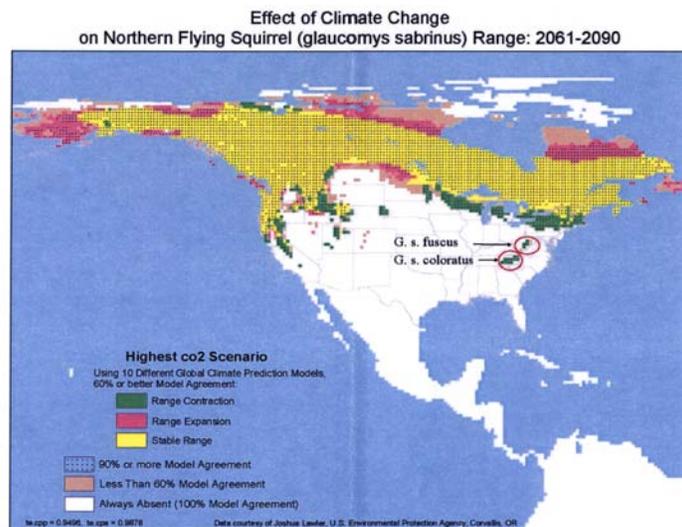
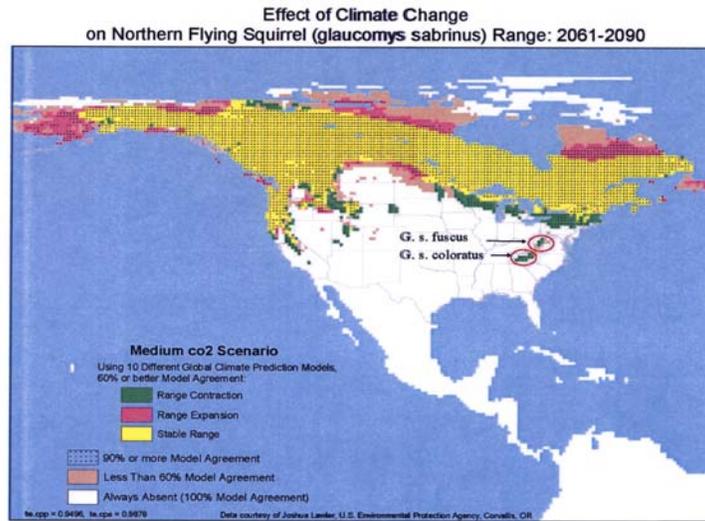
#### Experts Excluded from Process

Research professors Dr. Peter Weigl and Dr. John Pagels, who were on the Appalachian northern flying squirrel Recovery Team and had developed much of the methodology to carry out the recovery goals, were not invited to work on the de-listing process. They were not told that de-listing was being considered, only downlisting. Their years of research would have been invaluable to the Fish and Wildlife Service personnel working on the Five Year Review of the West Virginia northern flying squirrel. However, they were not consulted and much of their research was not used. Dr. Weigl made clear in his comments submitted for this comment period that he is opposed to de-listing *Glaucomys sabrinus fuscus*. Dr. Pagels raised a number of important concerns about de-listing as well

#### Conclusions and Recommendations

We believe that the Fish and Wildlife Service has no scientific basis for de-listing, let alone downlisting to threatened the WVNFS. We believe that the shoddy work revealed in the proposed rule to de-list and the Five Year Review show an attempt by the current administration to move away from the hard science of recovery plan criteria and to de-list any species that has become a bother. This proposal has undermined the public's confidence in the scientific work of the Service. We ask this committee to demand that the Service convene a blue ribbon panel of independent scientists to review this proposal and the data that it is based on and come up with a new plan for the WVNFS that will ensure its protection into the future. Without such a plan it will not "fly solo" but come crashing to the ground and glide into extinction.





**Response to questions submitted for the record by Ms. Judith Rodd**

- (1) Ms. Rodd, you talk about leaked proposed changes to the Fish and Wildlife Service's ESA regulations. The Director of the Fish and Wildlife Service in a letter to Chairman Rahall has indicated that these "draft regulations" were "never adopted by the Department or the U.S. Fish and Wildlife Service and represented just one point of view on the issue". Do you believe the Service should have any regulatory authority to modify how the Endangered Species Act works?

The Fish and Wildlife Service has no "regulatory authority" to modify the substantive requirements and protections of the ESA without Congressional action. The leaked draft regulations go far beyond any permissible interpretation or application of the ESA. They are therefore illegal on their face.

- (2) You seem to object to the notion that authority be devolved to the states. Doesn't the Governor and the West Virginia legislature care about the West Virginia Northern Flying Squirrel? Based on the fact that the federal government has recovered less than 1 percent of the 2,400 listed species, don't you think you might have a better outcome at the state level?**

The federal Endangered Species Act has not only prevented the extinction of 99% of all species ever listed, it has also put the majority of listed species on an upward recovery trend. The Fish and Wildlife Service found in 2004 that of those species with a known trend, 68% are stable or improving. When properly funded and implemented by the federal government, the Endangered Species Act is successful at its core purpose.

- (3) You mentioned in your testimony that the Service has no funding to implement the recovery plan for the West Virginia Northern Flying Squirrel. Do you know how many species have recovery plans? Do you know what the Congressional appropriation was for ESA Recovery efforts in FY'06? Do you know that figure was \$16 million more than the last year of the Clinton Administration?**

Currently, 1312 species are listed as endangered or threatened, of which 1077 have approved recovery plans. While appropriations for recovery have certainly increased during the Bush administration, the Bush administration has used these funds far less efficiently than did previous administrations. The Clinton administration completed 577 recovery plans over eight years. The Reagan administration completed 243 plans over eight years. To date, the Bush administration has completed only 100 plans over six years.

In the face of this need and its own poor record at completing recovery plans, the Bush administration has consistently requested cuts to recovery funding. In FY'06 Congress appropriated \$73 million for endangered species recovery—\$9 million more than the amount the administration requested that year. In FY'07 the administration once again requested a cut to recovery funding, requesting \$65 million for recovery. The House of Representatives again demonstrated that Congress values endangered species recovery more than the White House by approving \$70.6 million for recovery in FY'07.

- (4) If this species has been listed since 1985, what has happened for the past 22 years?**

Under agreements with the U.S. Fish and Wildlife Service, the West Virginia Department of Natural Resources and the Monongahela National Forest have conducted nestbox surveys for the flying squirrel. Out of the 4,000 nestboxes put up only 2% were occupied by the squirrel. Because the nest box survey protocol differed from year to year and the surveys were not done on a regular basis the results cannot be used to calculate the squirrel population.

- (5) One of the reasons that the Fish and Wildlife Service has a lack of financial resources is the endless number of lawsuits. While I am sure you support lawsuits, since members of your coalition filed many of them, but wouldn't it be better for the plaintiffs to take their financial judgements and to spend some of that taxpayer money helping Ginny and her kids and not just hiring more attorneys? Are you for Ginny or more lawyers?**

In passing the Endangered Species Act, Congress specifically recognized the need for citizen enforcement of the Endangered Species Act by including a citizen suit provision. The need for this provision has never been more clear. The present administration has taken almost no action to protect the nation's endangered species except under court order. Indeed, all of the 57 species newly protected by this administration have followed court order.

Moreover, the administration's claims that litigation is draining the coffers is almost entirely baseless. Attorneys fees paid to conservation organizations that successfully sue to force protection of endangered species are not paid out of the Fish and Wildlife Service's budget. Instead, they come from the budget of the Department of Justice. Reflecting this fact, the Fish and Wildlife Service's own budgetary documents fail to show substantial expenditures on litigation related expenses beyond carrying out the duties that are required under the law and necessary for the conservation of species.

Rather, records show that at the end of 2005, the Fish and Wildlife Service found themselves in the awkward position of not having spent over \$500,000 dollars that they had set aside for litigation related expenses precisely because attorney's fees

are not paid from their budget. This money was instead spent on making findings to determine if additional species required the protections of the Act, which is one of the agency's primary duties.

- (6) You state in your written testimony that it would be improper to devolve authority to the states with regard protecting endangered species. However, states have always has primacy with regard to wildlife management in their states. Has West Virginia adopted any state management measures to protect the flying squirrel?**

The West Virginia state code gives the state primacy over wildlife. However the state has no state Endangered Species Act (ESA) but instead has an agreement with the United States Fish and Wildlife Service which charges that agency with enforcement of the ESA and the funding of research on endangered species. The West Virginia Department of Natural Resources does much of the field work on endangered species using federal funds and submits reports to Fish and Wildlife.

- (7) In your written testimony, you list road building, mining, gas development, industrial wind, and second home development as significant threats to the flying squirrel. These are actions controlled by the State, correct? With the limited resources the Fish and Wildlife Service has to implement the ESA, shouldn't the state be responsible and take actions to limit the effect these activities have on the flying squirrel?**

Much of this work is regulated by the federal government such as road building and mining. The state has very limited funding to do the work. and would be unable to carry out the task.

- (8) How does mining effect the flying squirrel? Are you recommending that mining, gas development and wind energy not be pursued in West Virginia as alterative fuel sources?**

In some cases strip mining removes the forest habitat of the West Virginia northern flying squirrel. Mining and energy development are continuing with the West Virginia northern flying squirrel on the endangered species list. The Fish and Wildlife Service staff consults with companies and individuals about the effects of their activities on the squirrel and outlines ways to avoid harm to the squirrel and in some cases suggests mitigation measures.

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The CHAIRMAN. Mr. Young.

**STATEMENT OF MR. JOHN YOUNG [RETIRED],  
 BIOLOGIST, U.S. FISH AND WILDLIFE SERVICE**

Mr. YOUNG. Mr. Chairman, my name is John Young. I was a biologist with NOAA Fisheries and the U.S. Fish and Wildlife Service for my entire 30-year career. My work with both agencies was relative to implementation of the Marine Mammal Protection Act and Endangered Species Act. I retired in 2005.

In 2002, I was selected as the first and today the only Bull Trout coordinator for the Fish and Wildlife Service. My understanding is that the Pacific Region of the Fish and Wildlife Service is currently planning to refill this position after nearly a two-year vacancy.

As Bull Trout coordinator, my job was to serve as a conduit between field staff of the Fish and Wildlife Service, the scientific community, the public, and the managers of the Fish and Wildlife Service in preparing three documents required under the ESA after a species is listed as threatened or endangered: a recovery plan, a

critical habitat designation, and a five-year review of the species status.

All of the information I am providing to you today, including my written testimony, is reflected in the respective administrative records for these three initiatives. The administrative records are available from the Pacific Region of Fish and Wildlife Service in Portland, Oregon.

To prepare the recovery plan, the Fish and Wildlife Service established recovery teams across the range of Bull Trout in Washington, Oregon, Nevada, Idaho, and Montana. Recovery teams were made up of biologists and other stakeholders representing other Federal agencies such as the Forest Service and Bureau of Land Management, state fish and wildlife agencies, private timber companies, private utility companies, private ranchers and farmers, and others.

The recovery plan was drafted and released for public comment. The draft plan was also peer reviewed by fishery biologists identified by the American Fishery Society. Peer reviewers included U.S. Forest Service research biologists, university professors, biologists working for private timber industry corporations, biologists working for state fish and wildlife agencies, and others, and included some of the most prominent Bull Trout researchers as reflected by the current scientific literature.

Public and peer review comments were considered and the draft recovery plan was edited accordingly. To date, the final recovery plan for Bull Trout has not been released.

To prepare the critical habitat proposal, a team of Fish and Wildlife Service biologists worked with recovery team members to describe habitat necessary to support the recovery of those populations identified in the draft recovery plan as essential to the survival and recovery of Bull Trout.

Again, public comment was solicited and peer review initiated, and again peer review affiliations ranged from Federal and state agencies to private timber companies and academia.

Based on public and peer review input, the amount of critical habitat proposed for Bull Trout was reduced significantly in the draft final designation submitted by staff biologists to Fish and Wildlife Service managers.

An economic analysis of the effects of the critical habitat proposal was prepared concurrently by a private contractor and released for public comment. At the direction of the Fish and Wildlife Service Washington office some 50 pages of this analysis describing the potential economic benefits of Bull Trout critical habitat designation were deleted. Therefore, the economic analysis only described potential negative economic effects of the proposed designation.

The economic analysis also, by policy direction, vastly overestimated the potential negative economic effects of critical habitat designation by including all costs incurred pursuant to the conservation of Bull Trout since listing in 1998, and by double and triple counting costs of conservation measures that benefit multiple species of listed fish, but were assessed in full to each of the respective species.

Subsequent dialogue with Fish and Wildlife Service Washington office, and the Office of the Assistant Secretary for Fish, Wildlife

and Parks resulted in numerous categories of exclusions of areas from the Bull Trout critical habitat designation. None of these exclusions were based on science, and the rationale for several categories of exclusions was either unclear or illogical.

The final critical habitat designation for Bull Trout was a fraction of that presented to Fish and Wildlife Service managers following public comment and peer review, and the result was a designation of scattered patches of critical habitat across the Pacific Northwest, not reflective of the connected habitat representing the life history requirements of this species.

Accordingly, the critical habitat designation is currently being litigated by several conservation organizations.

In 2004, a five-year review of the status of Bull Trout was initiated in response to a request from the Governor of Idaho. For this project, a panel of experts was convened to assist Fish and Wildlife Service biologists and managers in designing a process for both collecting information relative to the status of Bull Trout, and also for subsequent decisionmaking.

Panel members were chosen through a literature searching process with the most qualified individuals were identified based on their contributions to the scientific literature. Panel member affiliations included the Fish and Wildlife Service, academia, and the U.S. Geological Survey, and others.

As was the case with the draft recovery plan and the critical habitat proposal, the draft five-year review was then submitted for peer review by scientists from a diversity of affiliations. The result of the review was that some populations of Bull Trout were in an improved conservation status since listing. Some populations were in a degraded conservation status, and overall the populations of Bull Trout in the United States were still appropriately listed as threatened under the ESA.

To date, this review has not been released, and my understanding is that the Fish and Wildlife Service intends to begin work on a new five-year review for Bull Trout.

The intent in responding to the ESA requirements for preparing a recovery plan, a critical habitat designation and a five-year review was to create a transparent scientifically based process that the public, the scientific community, and the managers in the Fish and Wildlife Service and the Office of the Assistant Secretary for Fish, Wildlife and Parks could track.

The transparent process and the scientific basis for these initiatives are reflected in the administrative records held by the agency, and available for public and congressional review. The failure to finalize these initiatives consistent with a carefully developed processes and peer reviewed scientific information I have described has resulted in a lowering of morale among Fish and Wildlife Service scientific staff; a reduced respect for the work of the agency from scientific peers, and the public; the willingness of the scientific community to assist the Fish and Wildlife Service in such initiatives in the future; and a tremendous waste of labor and associated budget within the Fish and Wildlife Service.

Thank you.

[The prepared statement of Mr. Young follows:]

**Statement of John A. Young, Biologist (Retired),  
NOAA Fisheries and U.S. Fish and Wildlife Service**

This statement is submitted by John A. Young. I was a biologist with NOAA Fisheries and the U.S. Fish and Wildlife Service for my entire 30-year career. My work with both agencies was relative to implementation of the Marine Mammal Protection Act and the Endangered Species Act (SEA). retired in 2005.

In 2002 I was selected as the first, and to date the only, Bull Trout Coordinator for the U.S. Fish and Wildlife Service (USFWS). My understanding is that the Pacific Region of the USFWS is currently planning to re-fill this position after a nearly two year vacancy.

As Bull Trout Coordinator, my job was to serve as the conduit between field staff of the USFWS, the scientific community, the public, and the managers of the USFWS in pre-paring three documents required under the SEA after a species is listed as threatened or endangered: a Recovery Plan, a Critical Habitat Designation, and a 5-year review of the species status. All of the information I am providing to you today is reflected in the respective administrative records for these three initiatives. The administrative records are available from the Pacific Region of the USFWS in Portland, Oregon.

**Bull Trout Recovery Plan**

To prepare the Recovery Plan the USFWS established Recovery Teams across the range of bull trout in Washington, Oregon, Nevada, Idaho and Montana. Recovery Teams were made up of biologists and other stakeholders representing other Federal agencies, such as the Forest Service and Bureau of Land Management, State fish and wildlife agencies, private timber companies, utility companies, private ranchers and farmers, and others. The recovery plan was drafted and released for public comment. The draft plan was also peer reviewed by fishery biologists identified by the American Fisheries Society. Peer reviewers included U.S. Forest Service research biologists, university professors, biologists working for private timber industry corporations, biologists working for State fish and wildlife agencies, and others, and included some of the most prominent bull trout researchers as reflected by the current scientific literature. Public and peer review comments were considered and the draft recovery plan was edited accordingly. To date the final recovery plan for bull trout has not been released.

**Bull Trout Critical Habitat Designation**

To prepare the critical habitat proposal, a team of USFWS biologists worked with recovery team members to describe habitat necessary to support the recovery of those populations identified in the draft recovery plan as essential to the survival and recovery of bull trout. Again, public comment was solicited and peer review initiated and, again, peer reviewer affiliations ranged from Federal and State agencies to private timber companies and academia. Based on public and peer review input, the amount of critical habitat proposed for bull trout was reduced significantly in the draft final designation submitted by staff biologists to USFWS managers.

Subsequent dialogue with the USFWS Washington Office and the Office of the Assistant Secretary for Fish, Wildlife and Parks resulted in numerous categories of exclusions of areas from the bull trout critical habitat designation. None of these exclusions were based on science, and the rationale for several categories of exclusions was either un-clear or illogical.

For example, the entire "action area" of the Federal Columbia River Power System (FCRPS) (i.e., the Federal hydro power projects on the Columbia and Snake Rivers) was deleted from the critical habitat designation. "Action area" is a term of art under the SEA and indicates the scope of habitat that a species that is affected by project operations occupies. So, if an adult bull trout migrates through a dam on the mainstream Columbia River and is potentially affected by dam operations, the "action area" includes the spawning grounds high up in the watershed (sometimes a hundred miles or more distant from the mainstream river) where the adult fish was born and returns to reproduce. The problem with excluding these areas from a critical habitat designation is that the operators of the FRPS—the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Bonneville Power Administration—only control operations on the mainstream Columbia and Snake Rivers. These agencies have absolutely no discretionary authority over upstream habitat occurring on private farms and ranches, State lands, or Federal lands managed by the Forest Service or Bureau of Land Management. While an argument might be made that exclusion of the mainstream Snake and Columbia River areas directly managed by the agencies operating the FRPS is appropriate, blanket exclusion of the FFCRPS "action area" is completely illogical. USFWS staff identified this category

of exclusion as inappropriate, but USFWS managers were overruled by the Office of the Assistant Secretary for Fish, Wildlife and Parks.

Another example of an illogical, unsupportable category of exclusion is that of all reservoirs within the range of bull trout habitat. There are hundreds of large and small reservoirs built for irrigation water storage, flood control, and hydro power generation in the Pacific Northwest. Operators of these reservoirs include Federal Agencies, private utility companies, private associations of ranchers and farmers, and State and local governments. Operational plans for these reservoirs are diverse, depending on their purpose. Some, but certainly not all, of the operators of reservoirs have consulted with the USFWS under the SEA and have accordingly considered the conservation of bull trout when designing their annual operation plans. Most pertinent to this discussion is that the exclusion of all reservoirs within the scope of proposed bull trout critical habitat was made at the direction of the Office of the Assistant Secretary for Fish, Wildlife and Parks without an analysis of the status of individual operational plans, any associated conservation measures, and the effect of those plans and measures on the habitat necessary for the continued survival and recovery of bull trout. Again, the efficacy of this blanket exclusion was questioned at the staff level, but again USFWS managers were directed to include this exclusion category in the final critical habitat rule by the Office of the Assistant Secretary for Fish, Wildlife, and Parks.

The final critical habitat designation for bull trout was a fraction of that presented to USFWS managers following public comment and peer review, and the result was scattered patches of habitat across the Pacific Northwest not reflective of connected habitat, representing the life history requirements of this species. Accordingly, the critical habitat designation is currently being litigated by several conservation organizations.

#### **Bull Trout Proposed Critical Habitat Economic Analysis**

An economic analysis of the effects of the critical habitat proposal was prepared concurrently by a private contractor and released for public comment. At the direction of the USFWS Washington Office, 50+ pages of this analysis describing the potential economic benefits of the proposed bull trout critical habitat designation were deleted. Therefore, the economic analysis only described potential negative economic effects of the proposed designation.

The data presented in the Economic Analysis has also been skewed, by policy, to over-estimate costs associated with a critical habitat designation for bull trout. For example, fish passage facilities on the hydro power projects in the Pacific Northwest were built long before bull trout were listed as threatened and were designed primarily to pass salmon and steelhead from their spawning grounds to the Pacific Ocean and back again. These facilities are expensive to build and maintain, and do benefit some populations of migratory bull trout, as well as the salmon and steel head they were originally built for. However, in the economic analysis of proposed bull trout critical habitat the full cost of construction and operation has been attributed as a cost relative to the bull trout critical habitat designation. There was no attempt to pro-rate costs by species based on the degree of benefit. More astounding is the fact that these same full costs of construction and operation are also reflected in the NOAA Fisheries Economic Analysis of proposed critical habitat for species of salmon and steelhead under that agency's jurisdiction. The public, therefore, is being intentionally misled to believe that the costs of designating critical habitat and the general conservation of listed species of fish in the Pacific Northwest are multiples of the actual costs incurred.

Another troubling policy currently being implemented is direction to include all costs associated with the conservation of a species since listing in the economic analysis of a proposed critical habitat designation. For bull trout, which were listed in 1998, some 5 years prior to the initiation of the critical habitat designation, the costs include all conservation efforts implemented during this 5-year period. This policy of including all costs within a document prepared ostensibly to address the critical habitat proposal, and clearly titled as relevant only 10 the critical habitat proposal, is disingenuous at best.

#### **Bull Trout 5-year Review**

In 2004, a 5-year review of the status of bull trout was initiated in response to a request from the Governor of Idaho. For this project, a panel of experts was convened to assist USFWS biologists and managers in designing a process for both collecting information relative to the status of bull trout and also for subsequent decision-making. Panel members were chosen through a literature searching process where the most qualified individuals were identified, based on their contributions

to the scientific literature. Panel member affiliations included the U.S. Forest Service, academia, the U.S. Geological Survey and others.

As was the case with the draft Recovery Plan and proposed Critical Habitat designation, the draft 5-year review was then subjected to peer review by a diverse group of scientists, and the document was edited accordingly. The result of the 5-year review was that some populations of bull trout were in an improved conservation status since listing, some populations were in a degraded conservation status, and overall the populations of bull trout in the United States were still appropriately listed as threatened under the SEA. To date, this review has not been released, and my understanding is that the USFWS intends to begin work on a new 5-year review for bull trout. The inescapable perception is that policy makers in the Office of the Assistant Secretary are looking for a different result.

### **Summary**

The intent in responding to the SEA requirements for preparing a recovery plan, a critical habitat designation, and a 5-year review was to create a transparent, scientifically-based process that the public, the scientific community, and managers in the USFWS and the Office of the Assistant Secretary for Fish, Wildlife and Parks could track. The transparent process and the scientific basis for these initiatives are reflected in the administrative records held by the agency and available for public and congressional re-view. The failure to finalize these initiatives based on the carefully developed processes and peer reviewed scientific information I have described has resulted in a lowering of morale among USFWS scientific staff, a reduced respect for the work of the agency from scientific peers and the public, a reduced willingness of the scientific community to assist the USFWS in such initiatives in the future, and a tremendous waste of labor and associated budget within the USFWS.

### **Observations on the Critical Habitat Process in General**

It is clearly stipulated in the SEA that critical habitat be designated within a year of a listing of a species as threatened or endangered. The unwritten policy of the USFWS under both the current administration and the preceding administration is that critical habitat is of little value beyond the consultation requirements associated with listing, and critical habitat development is not initiated unless and until the agency is sued to do so. Because the SEA is abundantly clear in this regard, the agency almost never prevails in such litigation and is routinely directed by the court to work out a schedule for completing critical habitat designation with the litigants.

This unwritten policy of resisting a basic requirement of the SEA represents poor management at its worst. If the intent is to influence Congress to modify the requirements of the SEA, it has not been successful. What has resulted is a pattern of reactive management where the agency is litigated, forced to work out a schedule for completing a critical habitat proposal where planning alternatives are limited, and then forced to refocus existing labor and budgetary resources to meet the mandates of the court. The court costs of successful litigants that the agency must assume, negative publicity to the agency resulting from the public perception that the agency is not doing its job, and a demoralized work force associated with this "head buried in the sand" management approach are the unnecessary and avoidable by products of such poor management practices.

### **Response to questions submitted for the record by John Young**

#### **Questions from the Minority Members**

1. I do not disagree with former Secretary Babbitt and former Director Clark relative to the regulatory value of critical habitat. The listing of a species results in regulatory protections that are not particularly enhanced by the designation of critical habitat (except in the rare case where unoccupied critical habitat is designated to provide for the recovery of a species whose range has been severely depleted). The identification of critical habitat, however, does serve to inform and educate the public as to specific areas that are important to the survival and recovery of listed species. Despite agency views on the value of critical habitat, it is important for the agency to follow the law and avoid unnecessary lawsuits and the public perception that the agency is not interested in fulfilling its mission to implement the ESA.
2. Yes. However, the balancing must be based on sound economic and other considerations with supporting logic. In the case of bull trout, many of the considerations were illogical, as I have documented in my written testimony and which is clearly reflected within the administrative records for the bull trout critical habitat initiative.

3. Yes. In the cases of bull trout recovery planning, critical habitat designation, and the 5-year review we sought peer review from expert scientists with a variety of backgrounds and affiliations to work through any such disagreements. Scientific peer review is the mechanism to work through any such situations where scientists disagree.
4. Yes. However, if the policy maker has two opinions from two scientists, it would be appropriate to seek further input from additional peer reviewers to ensure that all facets of the scientific disagreement have been appropriately reviewed.
5. Yes. Federal scientists must document their findings based on the scientific literature and, where appropriate, expose those findings to scientific peer review so that the entire basis for any conclusions are transparent to the public, other scientists, and policy makers.
6. Yes.
7. Yes, definitely. Critical habitat is defined in the ESA as habitat necessary to provide for the "conservation" of the species in question.  
 "Conservation" is defined in the ESA as those measures necessary to provide for the survival and recovery of the species in question. One would not expect to recover a species if the life history requirements that have resulted in the evolution of the species over thousands of years are ignored.

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The CHAIRMAN. Mr. Horn.

**STATEMENT OF MR. WILLIAM P. HORN, ATTORNEY,  
BIRCH, HORTON, BITTNER & CHEROT**

Mr. HORN. Thank you. Mr. Chairman, my name is William Horn, and I appreciate the opportunity to appear today to discuss the Endangered Species Act, and the interactions of policy and science in its implementations. Let me add that my comments arise from my prior tenure as Assistant Secretary of the Interior for Fish, Wildlife and Parks, my present service on the National Academy of Sciences' Environmental Board, and my long-time representation of the U.S. Sportsmen's Alliance.

The implementation of the ESA from my perspective both as an insider and also as a private practitioner over the last 15 plus years is always an exercise in both policy and science, and frankly, it can't be any other way.

One incontrovertible fact is that Congress has never provided the Department or the Service with the infinite resources to administer the program, and as a result, program administrators, regardless of their political stripe or their status as political or careers, are compelled to make unescapable policy choices regarding which species to focus on first, which recovery programs to pursue, which listing decisions take priority, and so long. There just simply aren't the staff and the dollars to do everything all at the same time. Choices need to be made.

Science plays, obviously, an important role in making those choices, but it is my submission that only the most naive would conclude that science always provides clear answers for every ESA decision. For example, in Florida's Everglades, the water management regime necessary to bring back the Cape Sable Seaside Sparrow adversely impacts two other listed birds, the Everglade's Kite and Wood Stork. Someone has to make a policy decision appropriately informed by relevance science about which water management approach should be pursued, which one of those three species gets priority over the others because there is no simple way to pick something that takes care of all three simultaneously.

Now, these types of limitations became very evident to me on an issue that showed up on my desk in 1986. At that time only seven California Condors remained in the wild and they were dying regularly. Half of the condor recovery team argued that the remaining birds needed to be captured, and to be made part of a captive breeding program then untested. The other half of the recovery team were adamant that captive breeding was scientifically unproven. The birds should be allowed to remain in the wild, and even to die with dignity in the wild, as one member put it.

Ultimately, I made a policy decision to try the unproven science, capture the remaining birds, and embark on a breeding program, an effort that was delayed while we were sued by environmental plaintiffs who argued that that decision was contrary to accepted science.

Now, as the Committee may know, the captive breeding program turned out to be an enormous success, and had we waited for some kind of scientific consensus to arise from the battling members of the recovery team or we had accepted the environmentalists view of good science at that time, wild condors would likely be extinct today.

Now, the obvious thesis of this hearing is that this administration is somehow singularly responsible for making a variety of ESA decisions to not list in contravention of scientific information.

We would submit that a proposed listing, earlier related, represents another example of an environmental gesture triumphing over science, and that concerns the proposed listing of Polar Bears. And although the bear populations are at historic highs throughout the Arctic, and Canada successfully manages these populations, the Service is now proposing to list all Polar Bears as threatened based on one disputed model that predicts major shrinkage of sea ice in 45 years.

The U.S. sporting community, Canada, the Alaska Department of Fish and Game and others have reacted strongly, contending that the science does not support the conjecture contained in this one model. We believe that good science would acknowledge that the bears had previously survived at least two major climate warming periods. Good science would recognize the present overall health of the bears. Good science would also recognize the present sport hunting programs, which Canada administers, which provide important funding would be cut off and terminated if the listing proceeds. Unfortunately, instead of good science, we see an environmental gesture in this particular case.

Let me just conclude by noting that any attempt to run this program on pure science is divorced from reality. There is no pure science in many circumstances because the answers aren't clear or they are clearly provisional. The scientists disagree, often strongly, and predictive models usually are even more at odds.

With such uncertainties inherent in wildlife management necessitate policy judgments by responsible and accountable officials, and someone ultimately other than the dueling scientists has to make calls on whether or not to capture the condors or choose the appropriate Everglades water flow regime to benefit the sparrow, storks, or the kites. That type of balance in this system just cannot be escaped and should be recognized by all of those who take this

program seriously, and care deeply about all of the species that it seeks to protect.

Thank you.

[The prepared statement of Mr. Horn follows:]

**Statement of William P. Horn, on behalf of the  
U.S. Sportsmen's Alliance**

Mr. Chairman: My name is William P. Horn and I appreciate the opportunity to appear before the Committee to discuss implementation of the Endangered Species Act (ESA) and how matters of policy and science interact. These comments arise from my tenure as Assistant Secretary of the Interior for Fish, Wildlife and Parks from 1985-1988, my present service on the National Academy of Sciences Board on Environmental Science and Toxicology, and my long term representation of the U.S. Sportsmen's Alliance and its interests in wildlife conservation, scientific management of wildlife, and related ESA issues.

Implementation of the ESA is an exercise in both policy and science. It cannot be any other way. One incontrovertible fact is that Congress has never provided the responsible agency—the Department of the Interior and its U.S. Fish and Wildlife Service (FWS)—with infinite resources to administer the program. As a result, program administrators are compelled to make choices regarding which species to focus on, which recovery programs to pursue, which listing decisions take priority, etc. These unescapable choices—that have afflicted every Administration, Democrat or Republican, since 1973—require policy decisions and it goes without saying that policy choices are political choices.

Science plays an important role in making these choices but only the most naive would conclude that science provides clear answers, and clear policy choices, for every ESA decision. For example, in Florida's Everglades the water management regime to benefit the Cape Sable Seaside Sparrow adversely impacts other listed species such as the Everglades Kite and the Wood Stork. The scientists who constitute the recovery team for each species are making focused judgments, and recommendations, designed to benefit "their" species even if it means hindering the conservation or recovery of the other species. Someone has to make a policy decision, appropriately informed by relevant scientific data, about which water management approach should be pursued and that someone is usually a senior policy maker (i.e., a political appointee) and not a biologist in his or her white lab coat.

The limitations of "science" were very evident in one major issue that arrived on my desk during my term as Assistant Secretary. In the late 1980's, only seven California Condors remained in the wild following a series of deaths from power line collisions and unknown causes. One half of the condor recovery team scientists argued that the remaining birds needed to be captured and become part of a captive breeding program. The other half were adamant that captive breeding was scientifically unproven, the birds should be allowed to "die with dignity" in the wild. Ultimately, I made a policy decision to try the unproven science, capture the remaining birds, and embark on the breeding program—an effort that was delayed while the Department was sued by a group of environmentalist plaintiffs which opted for the "die with dignity" approach. As the Committee may know, the captive breeding program turned out to be a great success and today approximately five dozen condors in at least two separate populations exist in the wild. Had we waited for some kind of consensus to arise from the battling scientists, wild condors would likely be extinct.

In the same time frame, FWS received from a group of Stanford University professors a petition to list a purported subspecies of Bay Checkerspot butterflies. However, the lepidopterist taxonomists were hopelessly divided over whether or not the butterflies were a bona fide subspecies. That was the crucial issue as if they were a subspecies, they would be eligible to be listed and if not, there were sufficient numbers of this species elsewhere that listing would not be warranted. Ultimately, I made a policy decision to list the butterfly by siding with those taxonomists claiming it was a subspecies.

This happens to be one area where there is no "pure" science to help resolve disputes. The taxonomy community is famous for being divided between "lumpers" and "splitters." The former take a dim view of subspeciation and are much inclined to group things at the species level. In contrast, the latter leans toward dividing (i.e., splitting) species into smaller and smaller subspecies. For ESA purposes, this is important since "subspecies" are eligible for listing and the taxonomic determination, as in the butterfly case, drives the listing decision. A policy maker (i.e., a political appointee) who, in effect, puts the splitters in charge will end up listing many more

subspecies compared to a policy maker who puts lumpers in charge of speciation determinations. Both sides of the taxonomic community can claim the mantle of good science, yet a policy maker who goes with one side will surely be criticized by the other for departing from good science.

A fundamental problem with the present ESA is that it does not allow for enough policy judgments. For example, the statute provides for the listing of six different types of “species”: at one end are “endangered species” and at the other end “threatened distinct population segments.” It was always my policy judgment that more attention—and finite resources—needed to be directed toward “endangered species” as these “species” are on the brink of extinction. On the other hand, a “threatened distinct population segment” means that only this limited segment is in serious trouble and that the species, or subspecies, as a whole is likely doing alright. The Act clearly contemplated allowing Interior and FWS to make these kinds of distinctions, especially between “endangered” and “threatened” species, but court rulings over the years have largely erased this intended and needed flexibility.

The sloppy language of the Act has been construed by courts to create a situation where, in essence, every listed species must be recovered regardless of cost or consequence. Of course, without infinite resources, the agency lacks the ability to do everything it is supposed to do under the Act: review species, list species, engage in consultation with other federal agencies, issue biological opinions, conserve species, recover species, fulfill the international side of the program, and enforce the taking proscriptions. When senior policy makers attempt to make needed choices, informed by scientific information, to establish priorities and decide which endangered species, endangered subspecies, endangered population segment, threatened species, threatened subspecies, or threatened population segment requires attention over another, litigation is almost automatic from those adherents of the species given second or third priority. A federal court then commandeers the program and directs the commitment of finite staff and monetary resources until the next court moves a different species to the head of the list. No application of “science” in a policy/political vacuum is going to solve these inherent problems with the ESA.

Repeated judicial intervention has also been a bane of the program and many of the rulings have little to do with science but a lot to do with the badly written Act. Please note that this trend is hardly recent. During Secretary Bruce Babbitt’s tenure at Interior, during the Clinton Administration, the Department and FWS were the target of incessant ESA lawsuits—mostly from the “environmental” side. Career staff complained repeatedly about how ESA program resources were being commandeered by the courts and how difficult it was to administer the program amid a welter of often conflicting judicial edicts.

A more recent example of judicial overreach is the lynx. Every wildlife biologist knows that lynx populations are tied inextricably to their primary prey species—snowshoe hares. In addition, the lynx is a northern species primarily occupying habitats in Alaska and Canada where populations are unendangered and unthreatened. In contrast, lynx populations in the northern tier of the Lower 48 states cycle up and down with the relative abundance of hares. When the lynx population shrinks, as it always does in this natural cycle, it contracts and lynx numbers in states such as Maine or Minnesota drop. The FWS, aware of this cycle, declined to list as endangered or threatened the naturally marginal lynx POPULATION SEGMENTS in the Lower 48. This science-based decision was rejected by a U.S. District Court in D.C., based on the sloppily written ESA, and now these lynx are listed as a threatened distinct population segment. Of course, listing won’t do much for lynx abundance in these states since no Act of Congress or federal court can keep snowshoe hares at perpetually high levels. If the Committee is serious about ensuring a primary role for science in ESA decisionmaking, it should amend the Act to ensure greater judicial deference to the expert determinations of the FWS.

We all have a front row seat to the next case of the courts v. science. In Yellowstone, the previously threatened distinct population segment of grizzly bears has reached numbers substantially greater than the recovery goal set 20 years ago in its recovery plan. Indeed, it’s safe to say that this population of bears recovered years ago, and should have been delisted then, but the agency is genuinely fearful of political fallout from delisting and judicial intervention. The “usual suspects” have announced their intention to challenge in court, this completely warranted and scientifically established delisting, and it will be interesting to see if science (and FWS) prevail over those interests with an apparently vested interest in keeping the recovered bears on the ESA list.

The obvious thesis of this hearing is that the Bush Administration is singularly responsible for making ESA policy decisions, such as listings, in contravention of scientific information. A pending proposed listing, however, represents the triumph of politics—and gesture making—over science. Polar bear populations are at historic

highs throughout the Arctic and Canada so successfully manages six (of the 19) populations that they sustain both subsistence and sport hunting. Similarly effective management in Canada, by FWS in Alaska, and in other countries has led FWS to conclude that no present hunting, habitat alteration, etc. are causing adverse impacts on these populations. Nonetheless, in response to a lawsuit filed in California, FWS is now proposing to list all polar bears as threatened under ESA based on one disputed model that predicts shrinking sea ice in 45 years.

Canada and the Alaska Department of Fish and Game, among others, have reacted strongly to this proposal contending that the science does not support the conjecture enshrined in this one model. Good science would recognize that there are many climate change sea-ice models, some of which predict differing levels of near-shore and multi-year sea ice during summer months from 40 to 100 years from now. Good science would acknowledge that polar bears have previously survived at least two major climate warming periods (centuries before humans loosed carbon dioxide into the atmosphere). Good science would recognize that changing sea-ice conditions will benefit some seal species that serve as prey for the bears. Good science would note that present studies indicate that polar bear survival may be more dependent on certain snow conditions for denning rather than sea-ice conditions. Good science would recognize the overall health of polar bear populations. Good science would also recognize that if any bear population segments deserved listing, it would be the two or three populations for which little information is available so no one knows conclusively if these populations are indeed threatened.

Unfortunately, instead of good science, we see a political gesture. We understand the desire of some interest groups to turn the polar bear into their poster child for “global warming.” We’re bitterly disappointed that the Interior Department, so far, has bought into this kind of gesture-making and is trumping good science and conservation. In fact, listing would hurt bear conservation efforts by barring U.S. citizens from participating in the Canadian sport hunting program and cut off a primary source of funding for important conservation and scientific management programs.

Let me conclude by noting that any attempt to rely on “pure science” to run the ESA program is divorced from reality. There is no “pure science” as in many instances answers aren’t clear or are completely provisional. Scientists disagree, often strongly, and predictive models are usually more at odds. Such uncertainties, inherent in wildlife management, necessitate policy judgments by responsible and accountable officials. Someone other than dueling or competing scientists have to make the calls on whether or not to capture the condors or choose an Everglades water flow regime to benefit the sparrows, the storks, or the kites. Fundamentally the availability of only finite staff and funding resources—per Congress—mandate that policy choices be made. Priorities have to be set because all elements, and all species, cannot be treated equally despite what the law may provide. Those too are policy decisions—not science. Under these immutable circumstances it would be naive, at best, and counterproductive to try to administer the ESA program on the basis of a myth—“pure science.”

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#### **Response to questions submitted for the record by William P. Horn**

1. I cannot recall a listing of an otherwise healthy species of fish or wildlife based solely on a single model that predicts population declines over a 45 year or greater time span. There have been instances where a species was in some difficulty (e.g., spotted owls) and population models predicted a further decline in overall numbers. The approach underlying the present proposed listing of all polar bears is unprecedented since the worldwide population of the bears is at or above record highs. Please note that if a presently healthy population can, or must, be listed based solely on one model that projects problems 45 years or further into the future, many otherwise presently healthy species will become eligible for listing now.
2. There are dozens of listings of distinct population segments (DPS’s) as endangered or threatened species. Some of the highest profile species are DPS’s, including Yellowstone grizzly bears, lynx in the Lower 48 states, and numerous salmon runs on the West Coast. In these cases, the overall species is healthy (e.g., there are tens of thousands of grizzly bears in Alaska and Canada) but a specific population segment is determined to be in jeopardy.
3. The Act includes an effective hierarchy with endangered species on top and threatened distinct population segments at the bottom. Clearly, limited resources ought to be focused on endangered species—facing extinction—rather

than on population segments of otherwise healthy species especially when those segments are only “threatened.”

4. The proposed listing of the polar bear is a major mistake on many levels. First, the listing will terminate the single most effective polar bear conservation program—the sport hunting program administered in Canada that generates hundreds of thousands of dollars of revenue to fund tangible, on-the-ground conservation and management activities. Second, the bear MIGHT be in trouble 45 years from now IF the one model regarding sea ice shrinkage turns out to be correct. It strikes me as foolish to expend finite resources now, as the result of a listing, on the presently healthy polar bears rather than direct those resources at genuinely endangered species. Third, listing the bears based on a 45 year projection will set a precedent that will likely compel the listing of many Arctic species that are otherwise presently healthy. This would further skew the allocation of limited resources away from presently endangered species.
5. We regard the listing of the polar bear as an environmental gesture—a bald faced effort to make the bear the “poster child” for global warming doomsayers. There is nothing in the ESA that empowers the Secretary of the Interior to begin to regulate CO<sub>2</sub> emissions within the U.S. or in the world (i.e., China or India) so the listing will do little or nothing to address the purported root cause of Arctic sea ice shrinkage—excessive CO<sub>2</sub> output into the atmosphere. In addition, there is nothing in the legislative history of the ESA indicating Congress ever contemplated or intended the ESA to be used to regulate human activity on such a broad scale.
6. Listing all polar bears as threatened, as presently proposed, would not provide the Fish and Wildlife Service any authority to protect or conserve polar bear habitat in Canada or any other foreign country. Since only two of the 19 bear populations are found within the U.S. (Alaska), the listing is really only a gesture since the listing would not empower FWS to do much of anything to beneficially impact conservation of the other 17 bear populations.
7. A variety of environmentalist interests challenged my decision to capture the remaining wild California Condors in the mid-1980’s and embark on the ultimately successful captive breeding program to save the species from extinction. The Department and FWS were initially enjoined from conducting the capture program by U.S. District Court in Washington, D.C. as a result of the environmentalist lawsuit challenging the capture/captive breeding decision. Most of the arguments against the decision claimed that there was insufficient scientific justification to embark on the captive breeding effort and that once the birds were captured, they would never be returned to the wild. This led to one of the plaintiffs commenting that it was preferable to have the condors “die with dignity” in the wild rather than be captured for the then unproven captive breeding program. Ultimately, the courts upheld the Department’s decision and the capture/breeding program proceeded—and succeeded.

It is likely that such arguments would be used again today. Unfortunately, there are many interests whose primary interest is using the ESA to impose land use controls and other restraints on human activity rather than focus on bona fide wildlife conservation and species recovery. Keeping species in the wild, even at the risk of extinction, advances this regulatory agenda. Moreover, other interests will fight to maintain a listing for these same reasons even though sound scientific data demonstrates that a listed species has recovered and warrants delisting.

8. Federal employees, including scientists, retain their First Amendment rights. Furthermore, agency scientists have an obligation to provide the best data and scientific judgments—consistent with applicable law—to senior policy makers. However, there is often no bright line between a scientific dispute and a policy issue. Our system recognizes that the elected President and his executive branch team make the policy decisions. Career personnel have an obligation to adhere to those policy judgments. If career personnel want to make independent policy (and contradict Presidential appointees and others confirmed by the Senate), they need to give up their protected civil service status and enter the political arena.
9. Clearly there must be interaction between research and management for both to be effective and serve the public interest. It’s clear though that management decisions usually fall in the policy realm where accountable political appointees hold sway. Accordingly, it is well established that much research is asked for to enable an agency to deal with pressing management issues. Smart managers, though, realize that they should ask the researchers where research is needed and where it will ultimately help an agency discharge its duties under applicable law including the ESA.

The CHAIRMAN. Thank you very much. I appreciate your testimony and patience in being with us all morning and into the afternoon.

Let me ask you, Ms. Rodd, the first question, if I might. Could you please explain the flaws and the serious concerns that you have with the process at the Fish and Wildlife Service has undertaken to de-list the squirrel?

Ms. RODD. Certainly. Thank you for the opportunity.

We are very concerned because in this case the recovery plan has been thrown out as a standard by which the recovery is being measured. The squirrel is—we are told that the squirrel population is persistent. We are told that the habitat is protected and the threats are going down.

The recovery plan sets up a way to measure these things. You measure a basic population. You look at trends over 10 years. No measures of population have been made. The agency itself admits they have no understanding of what the population is.

So they have turned to this strange term “persistence”, which means once in a while a squirrel pops up, and that is their science for going all the way from endangered to no protection at all. The habitat that they have described is not an agreement with all the major scientific papers. They describe the squirrel as being totally dependent on a Red Spruce habitat, when in fact it uses both Red Spruce and Northern Hardwoods. And so when they say, well, we will protect Red Spruce, they are losing half the habitat. This misdefinition of habitat could be fatal to the squirrel.

Third, they talk about threats decreasing, and in that case they say, we are protecting the squirrel on the Monongahela National Forest, and there won't be any logging under the new forest plan. But reading the details of the new forest plan logging is allowed in all the habitats where the squirrel exists. It is allowed in Red Spruce habitat which they have singled out for protection, but they still are allowing logging. It is allowed in the Northern Hardwood habitat, and it is allowed in Hemlock, which is another place where the squirrel is found. So it is not being protected from logging.

It is not being protected from road building. They claim that flying squirrels have the ability to slide 140 feet and therefore could cross a four-lane highway and be fine. This is absurd. They base this on one study, one letter, anecdotal instance of a squirrel crossing a power line, and they compare that to a four-lane highway.

They also would, in order for the squirrel to glide the 140 feet, you would have to plant 200 feet trees along the edge of any highway to allow them to get that amount of glide going.

We also find a flaw in their numbers. They are saying that 1,147 squirrels have been found over 21 years, and that is enough to say the squirrel is fine. We looked at the original field notes for every one of those captures, and we are able to confidently claim that they have only caught 654 squirrels in 21 years. That is 30 a year. They didn't even go back and look at the basic research to see what was there.

We are very upset with the shoddy science being done here, and we are upset that the recovery plan is being thrown out, which apparently, I am surprised to learn, is happening all over the place. We are part of a national trend. We don't like it.

The CHAIRMAN. So what would be your recommendations for correcting these faults?

Ms. RODD. We would like a Blue Ribbon scientific panel to be convened on this rule, proposed rule, to review the science and come up with a recommendation. We would like this panel to consist of independent scientists, scientists that are not part of the agency, either Fish and Wildlife or the Forest Service. That is what we would recommend.

The CHAIRMAN. OK. Mr. Young, let me ask you, as a former employee at Fish and Wildlife you have perspectives certainly that none of us have, and I have a question regarding the role that science and peer review have in ESA decisions.

If the work that scientists provide that Fish and Wildlife Service has ignored, as we understand happened with the Bull Trout, what incentive is there for outside scientists to devote time to peer reviewing ESA decisions?

Mr. YOUNG. Well, that is a good question, Mr. Chairman, and I am sorry Congressman Inslee is not here because my response reflects some of his constituents, I believe.

The CHAIRMAN. We will share your responses.

Mr. YOUNG. Little incentive. For instance, when the critical habitat designation came out as it did come out, our partners in Washington Department of Fish and Wildlife, several of our partners there who were members of recovery teams and participated in the critical habitat process, and participated as peer reviewers as well, were incensed and basically expressed outrage and I am sure it was just a knee-jerk reaction, but at least initially said don't come back and ask us for any help again because you are just wasting our time.

It is disingenuous to ask a peer reviewer who has a career, or a group of peer reviewers, they have careers, they have their own duties to do, to devote time to reviewing hundreds of pages of documents sometimes, providing helpful guidance with their expertise, and then to see the final result that reflects none of their input. So it is damaging to the agency in that regard, I believe.

The CHAIRMAN. What guidelines or what documents, rather, are available to guide Fish and Wildlife employees when it comes to making critical habitat designations?

For example, how do they know what is to be included in an economic impact analysis?

Mr. YOUNG. Well, the economic impact analysis is done by private contractors, so they are guided by the Washington office, and there is a staff member in the Washington office who is an economist, the sole economist, as I understand, in the U.S. Fish and Wildlife Service. Of course, that person doesn't make the policy that guides these contractors. That is done by others in the Department.

So I can't really respond beyond that. You know, there are people who provide guidance through the economist in Fish and Wildlife Service.

The CHAIRMAN. OK. Are the peer reviewers paid?

Mr. YOUNG. Peer reviewers are not paid.

The CHAIRMAN. They are not paid.

Mr. YOUNG. No. No, they are voluntary, and you know, as the Bull Trout coordinator I worked hard to develop relationships with these people, and with these agencies so that they would take the time, and their supervisors would allow them to take the time to help us with peer review, and in the case of the five-year review of the panel that guided the whole five-year review process. In that case, even our regional director, it appeared to me, was so nervous about making a decision that he wanted an outside panel to guide the process that led to the decision to be totally transparent in the record.

The CHAIRMAN. OK. We thank you for your testimony today. Appreciate it very much.

The Committee will stand adjourned.

[Whereupon, at 2:48 p.m. the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A letter from Gail S. Olson, Ph.D., submitted for the record by The Honorable Jay Inslee follows:]

May 16, 2007

The Honorable Jay Inslee  
U.S. House of Representatives  
Washington, D.C.

Dear Congressman Inslee:

I am a wildlife biologist who has conducted research on the relationships between Northern Spotted Owls and their habitat for the past 8 years. I (along with 6 co-authors) published a paper on some of the results of that research in the *Journal of Wildlife Management* in 2004 and it has been cited several times in the draft Northern Spotted Owl Recovery Plan. Specifically, results published in my paper have been used to support the habitat provisions for both Options 1 and 2 in the Plan. I strongly believe this to be at least a misinterpretation of my research results and at worst deliberate misuse.

One of the key findings described in the paper was that a mixture of older forest and young or non-forest was positively associated with owl survival and reproductive output within one study area in the Oregon Coast Range. We anticipated the temptation to use this information to write habitat prescriptions when we discussed the "Management Implications" of the research. On p. 1052 of Olson et al. (2004), we stated: "...we do not recommend that forest managers use our modeling results as a prescription for managing habitat either within the Oregon Coast Range or elsewhere...". This statement is alluded to within the Recovery Plan (p. 36) and the claim is made that these results were used only to establish de-listing guidelines and not to set management prescriptions. However, it is difficult to imagine that delisting criteria and habitat prescriptions can be completely de-linked, and the rest of the Plan as written does not appear to separate the two concepts.

Therefore, I believe it is reasonable to assume that my research results were used to set habitat provisions in the Plan. Therefore, I believe it is important to reiterate the reasons why we made that statement in the paper.

1. The amount of variation explained by the models is low. That means that the habitat variables that we examined are not strong predictors of owl population parameters (survival and reproductive output). Many other factors likely have an influence, including habitat components not examined in this study.

2. The habitat variables we used in the study were assessed by transcribing aerial photography images. Errors in this process may misrepresent the amounts of certain habitat types.

3. Our results may reflect unique conditions within our study area and may not be representative of other areas. Replication of this study in other areas is necessary to determine whether our results were typical or anomalous.

In addition to these general caveats, I've identified at least 5 key areas where the results of my research were misapplied within the Plan.

1. Definition of owl habitat. The habitat variables used in our analyses were not the same as those that will be used in measuring "habitat-capable" acres in the pro-

visions within the Plan. Although there may be some overlap in the definitions, no effort was made to determine what this overlap is. Therefore, specific values from my research may translate to entirely different values of the habitat definitions used in the Plan.

2. Scope of analyses and scale of measurement. Our research was conducted within a study area known to be historically inhabited by spotted owls. The aim of our study was to see if we could determine differences in owl demographic performance within this area based on the habitat in the area immediately surrounding owl nest trees and activity centers (owl territories). Thus our study only assessed habitat at a relatively small scale and not across entire landscapes. To infer that the same pattern of habitat found within 1500m of owl territory centers can be applied to landscapes as a whole requires additional assumptions that are certainly not supported by my research and also is contrary to what most ecologists believe about the importance of scale in studying wildlife-habitat relationships.

3. Misinterpretation of habitat fitness potential. The Plan bases much of its support for the habitat provisions on a measure called "habitat fitness potential", which was developed by Franklin et al (2000) as a means of combining the affects of habitat on owl survival and productivity into a single measurement. Because they used a common population modeling method based on a projection matrix, they used the symbol  $\lambda_h$  as short-hand notation to represent habitat fitness potential. This likely has led to confusion and the assumption that this measurement can be equated to the more widely used  $\lambda$  which is a population projection measure used to measure population trends in northern spotted owls (c.f. Anthony et al. 2006). In general, values of  $\lambda$  indicate whether a population is increasing ( $\lambda > 1.0$ ), decreasing ( $\lambda < 1.0$ ), or stable ( $\lambda = 1.0$ ). However, values of  $\lambda_h$  cannot be similarly interpreted because they are based on animals already recruited into the population. They are also idealized values based on the assumption that the models used to estimate the survival and reproductive output parameters used to calculate habitat fitness potential are accurate. They are NOT based on direct analyses of the data collected from spotted owls within those individual territories.

4. Appendix D. The most obvious example of poor use of science in the Plan is found in Appendix D, which purports to describe what habitat fitness potential is and it does nothing of the sort. First, there is no information on how habitat fitness potential is calculated, which is necessary for any understanding of what it is. Second, the analyses presented to determine the province-specific habitat threshold values are completely ad hoc. The "limited data set" attributed to the Olson et al. (2004) paper consisted of 6 data points where were intended as visual examples only, and no data were provided on specific habitat values within the paper. Thus they were estimated from a figure (Figure 5) that was never intended to be used in such a way. The graph in Figure D.2. is not of the true relationship between  $\lambda_h$  and the habitat variable, which can be calculated directly because  $\lambda_h$  was computed based on a formula containing habitat values. Even the analysis based on Figure D.3., which is supposedly taken directly from the Olson et al (2004) Figure 2 is incorrect in that it does not accurately estimate the maximum value, which is known. In general, none of the analyses in Appendix D that relate to Olson et al. (2004) were necessary or appropriate.

5. Lack of uncertainty measures. It is a major tenet of modern scientific analyses that the uncertainty of estimates be reported so that the results can be properly interpreted. Estimates are commonly given with confidence intervals or other measures of variance. The Plan repeatedly ignores such uncertainty and does not consider how such uncertainty may affect the recommendations of the Plan.

In summary, my general impression with respect to the use of my research is that the Recovery Team lacked an understanding of the methodologies used and deliberately ignored warnings against using it to write management prescriptions. I was never asked to answer questions regarding either the methodology nor the recommendations, which further leads me to believe that clarity on these issues was not desired. I hope this letter provides some of this clarity and sets the record straight on what can and cannot be inferred from my research.

Sincerely,

Gail S. Olson, Ph.D.

[Northern Spotted Owl Recovery Plan Options, October 18, 2006, submitted for the record by The Honorable Jay Inslee follows:]

**Northern Spotted Owl Recovery Plan Options**  
October 18, 2006

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**General concept**

The Recovery Team will develop 2 options that tier off the existing draft recovery plan. Each of the options may require revision of the introduction section (though we could write a generic one for each option), recovery strategy, criteria, and actions, and implementation schedule and cost estimates. The current concept is to have one larger document with the background section unchanged, and include the current option along with the 2 new options. The options would need to develop the recovery strategies, criteria and actions.

We also need to do a “reorganization and emphasis” rewrite of the existing draft – which would not be a new option. A separate group can likely do this task with approval by the recovery team.

The time we have to do these tasks is undefined, but we need to assume time will be short. From the perspective of the team, this may be acceptable since many team members are pressed for time.

Also, the options below do not build in time for conducting a risk assessment. Such a risk assessment, though, could be conducted during the public comment period.

**Decision process**

*Consensus:* It will need to be decided if the team continues with consensus decision-making. This decision will obviously be influenced by our given timeline.

*Coordination with decision-makers:* Reasonable coordination with decision-makers will help ensure the team is having the desired discussions. The method and timing of coordination should be outlined as early as possible.

**Options**

**1: Keep plan as submitted September 29, 2006**

**1A: Reorganize the September 29, 2006 plan**

- Emphasize the new science indicating habitat variability across the range, and de-emphasize the past
- Reorganize the plan to bring the habitat targets to the fore
- Clarify language relating to the Northwest Forest Plan, with emphasis on Forest Service and BLM land and resource management plan (LRMPs) revisions
- Clarify language relating to barred owl and fire
- More clearly state the plan’s recognition of management flexibility, including the potential for a mosaic approach (should also provide some context here – fact that this effort has not been undertaken before)
- Retain the Managed Owl Conservation Areas (MOCAs) – Note change of name from “Mapped” to “Managed”

Timeline: 2 weeks, no new analysis would be included

**2: Provincial habitat targets**

- Eliminate the MOCA concept and instead establish provincial habitat targets
- Describe in narrative the rule set for distribution and size of either habitat or the spotted owl population
- Revise the habitat criterion to describe provincial targets
- Would require revision of the population distribution recovery criterion
- Would require revision of some of the recovery actions

Timeline: Minimum of 4 weeks. It is unclear if new analysis is required, or can we just build off of the information existing in the September 29<sup>th</sup> plan. For example, can we just aggregate the MOCA acreage within each province, set a provincial habitat target and eliminate the individual MOCA boundaries, and then describe a habitat distribution and size rule set? If this is what needs to be done, do we need new analysis?

**3: Range-wide habitat targets with some sub-range-wide delineations**

- Eliminate the MOCAs and provincial boundaries and establish range-wide habitat targets
- Establish some sub-range-wide delineations (e.g., north, south, east and west) that will allow us to discuss variation across the range
- Would require revision of the population distribution and habitat recovery criteria
- Would require revision of some of the recovery actions

Timeline: Minimum of 8 weeks. It is unclear what this option fully entails, yet it is assumed new analysis will be required given the option's scope.

