

Senate EPW Subcommittee Holds ESA Oversight Hearing

*Monita Fontaine testifies on behalf of NESARC,
stresses need for ESA improvements*

The Senate Environment and Public Works Subcommittee on Fisheries, Wildlife and Water held its first hearing this Congress on the Endangered Species Act on Thursday, May 19th. The hearing was chaired by Senator Lincoln Chafee (R-RI). Other members participating in the hearing were full Committee Chairman James Inhofe (R-OK), Subcommittee Ranking Member Hillary Rodham Clinton (D-NY), Senator James Jeffords (D-VT), and Senator Frank Lautenberg (D-NJ). Witnesses testifying before the Committee included the former Fisheries Subcommittee Chairman **Mike Crapo** (R-ID); **Craig Manson**, Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior; **James H. Lecky**, Senior Advisor for Intergovernmental Programs, National Marine Fisheries Service; **Robin Nazzaro**, Director for Federal Land Stewardship Issues, Natural Resources and Environment Team, Government Accountability Office; **John Kostyack**, Senior Counsel, National Wildlife Federation; **Reed Hopper**, Principal Attorney, Environmental Regulation, Endangered Species, and Wetlands, Pacific Legal Foundation; **Jamie Rappaport Clark**, Executive Vice President, Defenders of Wildlife; and **Monita Fontaine** of the National Marine Manufacturers Association, who represented NESARC.

The hearing served as an opportunity for witnesses to lay out their views on the current law, and to identify potential opportunities for updates and improvements. While the witnesses' views on the present Act varied, the suggestions for improvements to the Act had a number of common themes. There was widespread support for many of the proposals that NESARC has been advocating, including providing incentives for private landowners, increasing the role of states, changing elements of the critical habitat program and improving decisionmaking by ensuring better development of scientific data.

The hearing began with Chairman Chafee announcing that Senators Inhofe (R-OK), Jeffords (I-VT), Clinton (D-NY), Crapo (R-ID), and Lincoln (D-AR) have joined him in sending a request to the Keystone Center to initiate a stakeholder dialogue on the issue of critical habitat. "As one of the Act's most debated and litigated provisions, my colleagues and I are beginning to explore new ways to address this issue," said Chafee of the Keystone exercise to discuss critical habitat. The letter of request is attached.

In his opening statement, Chairman Chafee stated that he considers this hearing a "starting point" for discussion on ways to improve the ESA. Further, he noted that S. 1180 (105th Congress), the Endangered Species Recovery Act of 1997, which passed the Committee by a vote of 15-3, was a good example of bipartisan legislative improvements to the ESA and that he considered that bill a potential basis for updating the Act this Congress. Chairman Chafee noted the bicameral press conference held

in February with Senator Crapo, House Resources Committee Chairman Richard Pombo (R-CA), and Rep. Greg Walden (R-OR), and vowed to continue efforts to work across party lines and across the Capitol to bring about legislative improvements to the ESA.

In his remarks, full Committee Chairman Inhofe noted that the ESA is one of our most popular environmental laws despite the fact that it has not yet reached most of its stated objectives. He stated that “we have recovered only a tiny fraction of the 1300-plus species on the list. And, half of all the species that have been taken off the endangered species list were removed because the original data was in error and they never should have been added in the first place...The reasons for this less-than-stellar record are numerous and complicated. But clearly we ought to be able to do better.”

Senator Mike Crapo, the Subcommittee’s previous Chairman, testified that there are a number of promising ideas for implementing the vision of a stronger ESA. In his prepared testimony, Senator Crapo directly quoted from NESARC’s White Paper, stating that “a coalition of businesses has called for changing the debate from a ‘clash over existing terms and programs to new tools that improve the Act.’” He called for ensuring direct recovery work for listed species by setting recovery goals and budgeting each year to make progress toward them. Crapo also stated that we must create and improve incentives by codifying an effective “No Surprises” policy, and speed the writing of habitat agreements, and the use of special rules for threatened species. He said that we should find responsible ways to increase funding, some of which should come from private sources by turning from litigation to conservation. Finally, he testified that the role of states should be enhanced and that options for promoting landowner involvement in protection and recovery should be explored. Crapo said that if a legislative proposal for updates to the ESA would yield a less contentious and more effective law, there will be enough votes to win passage of a bill.

Asst. Secretary Craig Manson testified that, while the Department of the Interior has made great strides in improving administration of the ESA, Congressional action is needed in order to update and improve implementation in certain areas. Specifically, he stated that the designation of critical habitat continues to be a challenge and a source of controversy. Manson’s written testimony states that the listing and critical habitat program is now operated in a “first to the courthouse” mode. The Service is no longer operating under a rational system that allows them to prioritize resources to address the most significant biological needs. Manson called for using available resources on actions that directly benefit species such as improving the consultation process, development and implementation of recovery plans, and voluntary partnerships with states, tribes, and private landowners.

NMFS Senior Advisor James Lecky testified that improvements can be made to the Act that would aide in recovery. Specifically, he called for making the recovery planning process more timely by focusing efforts on collaborative recovery actions. Lecky also stressed the importance of improving the quality of conclusions drawn from data used to implement the ESA and ensuring that decisions are based on the best data available. He spoke of existing efforts to improve species listing determinations, and stated the need for improvements to the Section 7 consultation process. Finally, Lecky urged Congress to increase the conservation partnership role of States, commenting that “States often have a more constant working relationship with property owners and local governments.”

Robin Nazzaro (GAO) testified that federal officials need to do more to make sure new research is a part of their ongoing species management decisions. As an example, Nazzaro explained that the Fish and Wildlife Service has spent over \$100 million on research and recovery efforts for the

endangered desert tortoise, with little knowledge on the species status, key threats or the effectiveness of management options. She stressed the importance of using adequate data in making listing decisions.

John Kostyack, on behalf of the National Wildlife Federation, testified that the ESA has worked to keep species from going extinct and it has generally stabilized and improved the condition of species. However, he said that revisions to the Act should include efforts to have federal officials implement recovery plans and encourage proactive conservation; provide more landowner incentives; protect critical habitat and integrate its deadline with recovery plans; and provide adequate funding for implementation

Reed Hopper, on behalf of the Pacific Legal Foundation, testified that species protection efforts need to balance economic growth and ecological goals. His testimony highlighted several examples of where this clash has resulted in litigation which has usurped funding that could have been otherwise applied to species conservation efforts. He called for improvements that would balance species protection with human needs.

Jamie Rappaport Clark (Defenders of Wildlife) testified that the Act has been successful in preventing the extinction of many species, but that the Act can be improved. She called for more effective regulatory protection and more and better incentives to encourage voluntary habitat management and restoration, with species recovery as the overarching, governing standard. Clark noted that incentives are especially important for private landowners, many of whom have demonstrated a "keen eagerness to be true partners in species conservation." She said that economic consideration should play a role in determining how best to protect habitat, but they should never be allowed to trump science or be used to effectively block recovery. Clark also noted that we should also look for opportunities to enhance the role of the states in helping to recover listed species where appropriate.

Finally, Monita Fontaine testified on behalf of NESARC, laying out the areas of improvement that the coalition has collectively embraced over the past 18 months. She called for voluntary conservation efforts, the increased role of States, increased funding of voluntary and state programs, strengthening of the Critical Habitat designation process, improving Habitat Conservation Planning procedures, and ensuring an open and sound decision-making process. She pointed out that less than one percent of the over 1,300 species listed as threatened or endangered in the U.S. have been recovered over the past 30 years, and called for legislative updates to the Act to make it work better.

Chairman Chafee did not address the timeframe for legislation in the Senate. He said that the panel plans to hold several more hearings, but as of now no others have been scheduled.

Witness testimony that was submitted for the record may be found on the EPW website at http://epw.senate.gov/hearing_statements.cfm?id=237959. Do not hesitate to contact us with additional questions.

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