



November 14, 2018

The Honorable John Barrasso  
Chair  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas R. Carper  
Ranking Member  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman Barrasso, Ranking Member Carper,

Please accept the following written testimony regarding the November 15 oversight hearing titled “*Examining Funding Needs for Wildlife Conservation, Recovery, and Management.*” The Endangered Species Act has been severely underfunded by Congress for decades. In 1988, Congress required the wildlife agencies to provide cost estimates in each animal and plant’s recovery plan, yet Congress has *never* used the information in those recovery plans to guide funding for the Act.<sup>1</sup>

Based on these recovery plan cost estimates from the expert, career-scientists at the federal wildlife agencies, roughly \$2.3 billion per year is needed to fully fund the recovery of every animal and plant currently protected by the Endangered Species Act.<sup>2</sup> This is roughly the same amount of federal funding given to oil and gas companies to subsidize extraction of fossil fuels on public lands each year, and just 0.1% of the total given in tax cuts by the Republican majority to corporations and the wealthiest Americans during this Congress. We believe saving our natural heritage from extinction is worth this modest investment.

Instead, the U.S. Fish and Wildlife Service receives less than 80 million dollars per year for recovery of endangered species—just 3 percent of what is needed. Despite inadequate funding, the Endangered Species Act has been incredibly effective, saving more than 99% of the animals and plants under its care from extinction. If the Act had adequate funding, there is no question many more species could be fully recovered, but unfortunately, none of the witnesses chosen for this hearing will be discussing the funding needs of the 1,800 currently listed species.

We are also providing written testimony to strongly oppose the “Endangered Species Act Amendments of 2018.” The draft legislation is little more than a gift to polluters and special interests that have deliberately fomented a fraudulent, far-right myth that the Endangered Species Act isn’t meeting the

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<sup>1</sup> See generally, 16 U.S.C. § 1533(f)(1)(B)(iii).

<sup>2</sup> See Attachment

recovery objective of the Act. The scientific data show that not only has the species and threatened animals and plants under its care, but it has put most of these species on a path to recovery or stabilized their precipitous declines.

Chairman Barrasso's legislation ignores a basic scientific fact — recovery of endangered species takes time. The Bald Eagle was one of the first species protected under the Endangered Species Act, but nonetheless it still took 40 years to recover the Bald Eagle nationwide before it was finally delisted in 2007.<sup>3</sup> At its lowest point, the North Atlantic Right Whale was reduced to around 270 individuals, including just 51 breeding females.<sup>4</sup> Right Whales only give birth to one calf every four years and do not begin to reproduce until they are at least 10 years old. As a result, scientists at the National Marine Fisheries Service believe that recovery of this magnificent whale will take centuries. The fact that we have not lost Right Whales to extinction is a testament to the effectiveness of the Endangered Species Act. But Chairman Barrasso's legislation would deem this conservation success a failure because Right Whales haven't arbitrarily been recovered already.

Indeed, nearly half of the plants and animals protected under the Endangered Species Act have been on the list of threatened and endangered species for less than 20 years. It is simply not biologically possible for most endangered animals and plants to have recovered in such a short amount of time. However, many species *are recovering* at the pace expected by scientists and at the rate predicted within their recovery plans. Chairman Barrasso's claim that the Endangered Species Act is not meeting the recovery mandate is simply false — it is ludicrous to demand that endangered species recover faster than what is biologically possible — and is not a rational basis for changing this highly effective law.

Chairman Barrasso's draft legislation would gut the Endangered Species Act and effectively put the States in charge of conserving all endangered animals and plants. It is worth remembering that under the United States' approach to wildlife management, it is the States that have the original responsibility to manage wildlife populations.<sup>5</sup> When wildlife is protected under the Endangered Species Act, it is because the States have *failed* to meet their duties and responsibility to be good stewards of the environment. The States fail to manage wildlife — and especially non-game species — because they do not provide sufficient resources to manage their wildlife and most states have inadequate legal mechanisms to protect them. In fact, the state of Wyoming does not have a state-level equivalent to the Endangered Species Act at all. Nor does Wyoming have *any* legal mechanism to protect plants within its boundaries. A recent study of state-level protections found that only 18 states provide protections to plants, even though plants make up a majority of the species protected by the Endangered Species Act.<sup>6</sup> If Chairman Barrasso's draft legislation were to become law, nearly 1000 endangered plants and animals would quickly be put back on a path to extinction.

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<sup>3</sup> *Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife*, 72 Fed. Reg. 37346 (July 9, 2007).

<sup>4</sup> Valdivia, A. S. Wolf, K. Kieran Suckling, 2018 *Marine mammals and sea turtles listed under the U.S. Endangered Species Act are recovering*, bioRxiv preprint first posted online May. 15, 2018; doi: <http://dx.doi.org/10.1101/319921>; see also, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>

<sup>5</sup> *Geer v. Connecticut*, 161 U.S. 519 (1896).

<sup>6</sup> Camacho, A.E., M. Robinson-Dorn, A.C. Yildiz, T. Teegarden, *Assessing State Laws and Resources for Endangered Species Protection*, 47 *Envtl. L. Rep. News & Analysis* 10837, 10843 (2017).

We would like to make two additional observations regarding the draft legislation. First, according to the Congressional Budget Office, over 250 major laws have had their authorizations expire.<sup>7</sup> These expired laws cover approximate \$300 billion in spending, nearly half of the federal government's non-Defense discretionary spending. The disingenuous talking point that the Endangered Species Act must be "modernized" because its authorization has expired ignores the reality that this is true of hundreds of laws passed by Congress. If reauthorization is such an important concern, then we recommend the Environment and Public Works Committee pass a clean reauthorization of the Endangered Species Act to fully fund the law, without using it as an excuse to pursue an extreme partisan agenda to gut this critically important law.

Second, Chairman Barrasso's hearings surrounding his draft legislation — much like the recommendations of the Western Governors Association — have been little more than a dog-and-pony show designed to create the illusion of an inclusive process. The "recommendations" from the Western Governors Association (WGA) were not representative of the comments and recommendations made by those that participated in the many stakeholder meetings and events from 2015 to 2016. In fact, the official "recommendations" from the WGA on how to change the Endangered Species Act were sent to both the National Governor's Association and to Congress *before* the process for consideration input from stakeholders was complete. Likewise, Chairman Barrasso's staff invited representatives from the environmental community to discuss the draft legislation only in the context of an off-the-record event behind closed doors. Any feedback or input provided can be ignored, taken out of context, or manipulated purely for partisan gain.

Additionally, we would like to register our strong opposition to H.R.4647 – the Recovering America's Wildlife Act (RAWA), H.R.2591 – the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act of 2017, and S. 1514, the Hunting Heritage and Environmental Legacy Preservation (HELP) for Wildlife Act.

The Recovering America's Wildlife Act is simply the wrong approach to getting funding for at risk animals and plant species because it further increases the dependency of conservation on the endless extraction of oil and gas from public lands and offshore waters. One of the largest single threats to our environment is climate change, and if we heed the warnings of the Intergovernmental Panel on Climate Change and are serious about protecting at risk animals and plants, then the United States needs to quickly phase out the use of fossil fuels.<sup>8</sup> Increasing our addiction to fossil fuels by inextricably linking conservation to fossil fuel development dooms both our climate and our wildlife to a bleak future. Protecting at risk species is the morally right thing to do, and if our country can afford enormous tax breaks for the richest corporations on the planet, then it can also afford to conserve our natural heritage.

Neither H.R. 2591 nor S. 1514 help conserve our natural heritage in any fashion and are not worthy of further discussion or review.

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<sup>7</sup> Congressional Budget Office, 2016, *Unauthorized Appropriations and Expiring Authorizations*, available at: <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51131-uaea-house2.pdf>

<sup>8</sup> IPCC 2018. Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, available at: [http://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf)

Finally, we would like to note that in the years since Senator Barrasso has been chairman of the Environment and Public Works Committee, he has never explained how any of his legislative proposals would actually benefit a single, specific threatened or endangered plant or animal anywhere in the United States, let alone in Wyoming. None of the legislative proposals being considered at the November 15 hearing will not actually benefit the recovery of any currently-listed species. We request that the Chairman consider and reflect on this reality.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brett Hartl", with a long horizontal flourish extending to the right.

Brett Hartl  
Government Affairs Director  
Center for Biological Diversity