Energy, Minerals & Natural Resources Dept.
Matthias Sayer - Deputy Cabinet Secretary

Interstate Oil and Gas Compact Commission
2018 Annual Conference
Coeur d'Alene, ID

ESA Modernization 2018

The Endangered Species Act

Section 2: Findings and Purposes
Section 3: Definitions
Section 4: Listing, Critical Habitat Designation, Recovery, Monitoring
Section 5: Land Acquisition
Section 6: Cooperation with States
Section 7: Interagency Cooperation
Section 8: International Cooperation
Section 8A: Convention Implementation
Section 9: Prohibited Activities
Section 10: Exceptions, including Permits
Section 11: Penalties and Enforcement

Findings

- Some species of fish, wildlife and plants are now extinct
  "as a consequence of economic growth and development untempered by adequate concern and conservation."
- Other species are in danger of extinction.
- Species have aesthetic, ecological, educational, historical, recreational, and scientific value.

Purposes

"… to conserve endangered and threatened species and the ecosystems on which they depend."

With a 3% recovery rate over 45 years, the Act requires modernization to better protect species, and to treat property owners, states and local stakeholders as partners rather than obstacles

- Proposals coalesce around several themes:
  - Incentivizing voluntary conservation
  - Expanding the roles of states
  - Adjusting the listing and delisting process
  - Increase focus on habitat and landscape-level conservation

2018 Modernization Proposals:

- Senator John Barrasso
  - Endangered Species Act Amendments of 2018
- Congressional Western Caucus
  - House ESA Modernization Package (9 bills)
- Regulatory Revisions
- Recover America's Wildlife Act

Photo: Flickr/Alan Krakauer

Endangered Species Act Amendments of 2018

- Sen. John Barrasso (July 2, 2018 discussion draft / not filed)

Western Governors' Species Conservation and Endangered Species Act Initiative

Western Governors' Association

Wyoming Governor Matthew H. Mead

JUNE 2016

Wyoming Association of Conservation Districts — conserving natural resources

Trails Preservation Alliance

Western Energy Alliance

Petroleum Association of Wyoming

RMEF

Association of Fish & Wildlife Agencies

IPAA — Independent Petroleum Association of America

U.S. Chamber of Commerce

Texas Parks & Wildlife

Farm Bureau

National Association of Counties — NACo

WAFWA — Western Association of Fish & Wildlife Agencies

Photo: Flickr/Julio Mulero

Endangered Species Act Amendments of 2018

- significant amendments:

Sec. 101 (§3) Definitions:

- requires Sec to define certain new terms—"great weight", "maximum extent possible" (higher standard than existing "maximum extent practicable"

Sec. 102 (§4) Recovery Teams:

- listings must include recovery goals that upon fulfillment will result in delisting;
- Allows modification of recovery goals;
- Sec must make delist decision w/in 90 days of report from recovery team

Photo: Flickr/Alan Krakauer

Endangered Species Act Amendments of 2018

- significant amendments:

<u>Sec. 103 (§§ 2 & 4) State-Federal consultation re conservation and recovery:</u>

- Sec must notify governor and state agency of impacted state w/in 15 days of receipt of petition and give great weight to their comments;
- Sec must allow states opportunity to lead recovery planning and implementation;
- Eligible state agency has 1 year to submit draft RP

Photo: Flickr/Tony Morris

Endangered Species Act Amendments of 2018

- significant amendments:

Sec. 105 (§ 6) Cooperation with states / tribes

- Sec must consult with states to “maximum extent possible”, replacing “maximum extent practicable”

Sec. 106 (§ 10j) Consultation re experimental populations

- Sec must comply with state permitting requirements

Sec. 107 (§ 11g) State participation in settlement

- Sec must provide notice to impacted states when preparing to enter a settlement agreement related to failure to perform a non-discretionary duty under the Act

Endangered Species Act Amendments of 2018

- significant amendments:

Sec. 202 (§ 4) Conservation Agreements Regulatory Mechanisms

- Conservation Agreements entered or endorsed by Sec shall be considered regulatory mechanisms under the Act

Sec. 203 (§ 4f) Voluntary Conservation Agreements

- Any party that has entered into and is in compliance with a voluntary conservation agreement shall not be required to carry out additional mitigation measures if such would require additional expenditure or adoption of additional restrictions on property rights

Sec. 204 (§ 4f) CCAAs

- Sec shall honor terms of CCAAs

Sec. 205(§ 4f) Safe Harbor Agreements

- Sec may enter SHAs that provide for take of other listed species that are drawn to property because of its improved conditions

Western Caucus Bipartisan ESA Modernization Package

Collection of Nine separate bills:

- H.R. 6356, the LIST Act, introduced by Rep. Andy Biggs (AZ)
- H.R. 6345, the EMPOWERS Act, introduced by Rep. Steve Pearce (NM)
- H.R. 6344, the bipartisan LOCAL Act, introduced by Rep. Scott Tipton (CO)
- H.R. 6355, the PETITION Act, introduced by Rep. Bruce Westerman (AR)
- H.R. 6364, the LAMP Act, introduced by Rep. Don Young (AK)
- H.R. 6360, the PREDICTS Act, introduced by Rep. Ralph Norman (SC)
- H.R. 6346, the bipartisan WHOLE Act, introduced by Rep. Mike Johnson (LA)
- H.R. 6354, the STORAGE Act, introduced by Rep. Paul Gosar (AZ)
- H.R. 3608, the Endangered Species Transparency and Reasonableness Act, introduced by Rep. McClintock (CA)

Photo: Flickr/Joel Deluxe

Western Caucus Bipartisan ESA Modernization Package

THE LIST ACT

REP. ANDY BIGGS

Less Imprecision in Species Treatment Act (H.R. 6356)
-committee hearing 9/26/18

- Authorizes the Secretary of the Interior to de-list species upon receipt of measurable scientific data demonstrating the species has been recovered.
- Minimizes frivolous lawsuits and fraudulent petitions.

WESTERN CAUCUS

Photo: Flickr/Joel Deluxe

Western Caucus Bipartisan ESA Modernization Package

THE EMPOWERS ACT

REP. STEVE PEARCE

The Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act (H.R. 6345)
-9/27/18 committee vote 20Y - 12N

@ WESTERN CAUCUS

- Ensures consultation with states prior to a listing decision
- Requires decision-makers to provide an explanation when their decisions diverge from findings of states

Western Caucus Bipartisan ESA Modernization Package

- Codifies voluntary conservation programs—Species Recovery Agreements, Habitat Reserve Agreements—to offset costs associated with species conservation
- Establishes grant and loan programs to encourage voluntary conservation

Western Caucus Bipartisan ESA Modernization Package

THE PETITION ACT

REP. BRUCE WESTERMAN

Providing ESA Timing Improvements That Increase Opportunities for Nonlisting Act (H.R. 6355)

-9/27/18 committee vote 19Y – 14N

- Allows the Secretary of Interior to declare a 'petition backlog' when too many frivolous petitions stack up and USFWS becomes vulnerable to lawsuit.
- Ensures more resources are going to species that are truly threatened and endangered while also protecting valid petitions concerning endangered species.

WESTERN CAUCUS

Photo: Flickr/Joel Deluxe

Western Caucus Bipartisan ESA Modernization Package

THE LAMP ACT

REP. DON YOUNG

The Localizing Authority of Management Plans Act (H.R. 6364)

-committee hearing 9/26/18

- Allows Secretary of the Interior to enter into cooperative management agreements with states local governments, tribes and other non-federal persons in order to better manage species and improve habitat conservation.
- Empowers states to take the lead on robust species conservation programs already in place

WESTERN CAUCUS

Photo: Flickr/Joel Deluxe

Western Caucus Bipartisan ESA Modernization Package

No Surprises

THE PREDICTS ACT

REP. RALPH NORMAN

-committee hearing 9/26/18

The Permit Reassurance Enabling Direct Improvement for Conservation, Tenants, and Species Act (H.R. 6360)

- Codifies the requirements for Habitat Conservation Plans, Candidate Conservation Agreements with Assurances and Safe Harbor Agreements found in agency regulations.
- Provides certainty and rewards the good behavior of public and private entities that uphold their agreements to help recover species.

WESTERN CAUCUS

Western Caucus Bipartisan ESA Modernization Package

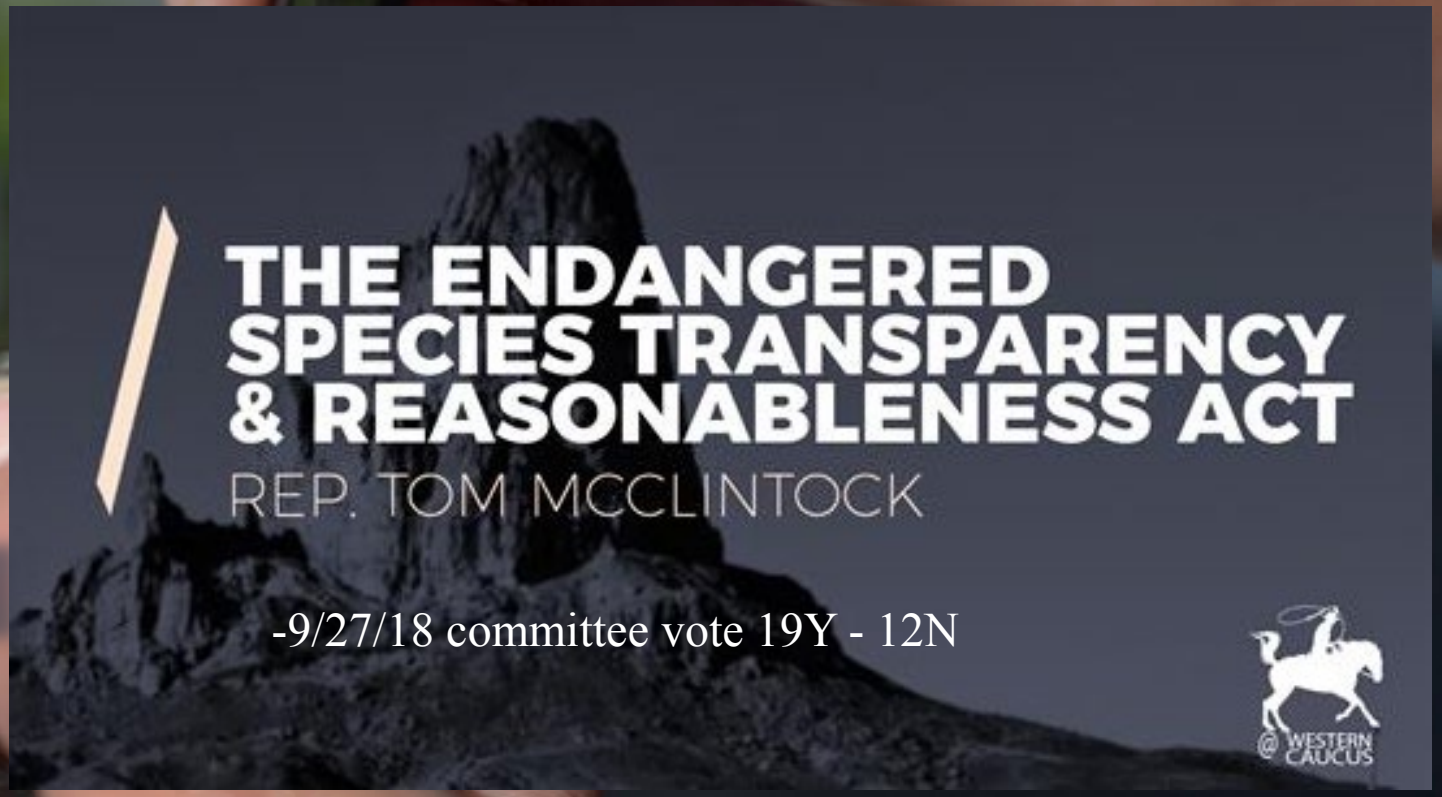
Ensures that conservation measures occurring outside of critical habitat can be substituted for lands impacted by proposed actions

Western Caucus Bipartisan ESA Modernization Package

Prohibits the designation of certain critical water infrastructure—storage, diversion, delivery facilities—as critical habitat

Western Caucus Bipartisan ESA Modernization Package

- Requires federal agencies to publish data relied on to make listing decisions online
- Caps attorneys' fees payable under the Act at $125 per hour



Proposed Revisions to Interior Regulations

- Revisions focused on Sections 4 and 7
- Public Comments Due September 24

Proposed Revisions to Interior Regulations

50 CFR 424

- Delisting decisions made using same standard as listing decisions—T or E, or extinct?;
- "foreseeable future" clarified for threatened species—future threats and species' responses probable
- Criteria for designating Critical Habitat (occupied before unoccupied);
- Economic Impact analysis
- Rescinding blanket 4(d) rule for future threatened species listings—clearer distinction between T and E

Proposed Revisions to Interior Regulations

50 CFR 402

- Alternative consultation mechanisms (including possibility of expedited consultation);
- Revise definitions of “destruction or adverse mod” and “effects of the action”—”as a whole”
- Offset / mitigation measures will not be held to higher standard than other portions of action
- General improvements to consultation process

Section 6 (16 U.S.C. § 1535) Cooperation with the States

"perhaps the most important section"

- Senator Tummey (D-Cal)

"the major backbone of the Act"

– Senator Stevens (R-AK)

Section 6 (16 U.S.C. § 1535) Cooperation with the States

- "Whatever role was envisioned for the states by the Congress in the 1973 ESA, it appears to have been of greater magnitude than the one that resulted."
- "In hindsight it is difficult to discern why back in the 1970s the states did not assert the authority originally intended for them under Section 6 of the ESA."

Petition for Rulemaking

- Under approved Cooperative Agreements allow states to voluntary assume greater responsibilities for conservation of some or all resident T&E species;
- Section 4(d) and 9(a) take prohibitions would not apply in participating states, state take law governs;
- Allow state wildlife agencies to issue take authorization permits (incidental take)
- Allows states to apply to prepare recovery plans for endemic species and an enhanced state role on recovery teams
- Require compliance with state permitting requirements for experimental populations

RECOVERING AMERICA'S WILDLIFE ACT

THE

BLUE RIBBON PANEL

ON SUSTAINING AMERICA'S DIVERSE FISH & WILDLIFE RESOURCES

WE BELIEVE That collaboration—not regulation—is the best path toward securing a future where fish and wildlife and natural resource-based enterprise thrive.

WE BELIEVE America's fish and wildlife are resources worth sustaining.

WE BELIEVE

That by working together, we can advance a solution for funding a 21st century model of conservation.

- Provides $1.3 Billion in dedicated annual funding to state fish and wildlife agencies for conservation of
- Funds from revenues generated by energy and mineral extraction royalties currently collected (Outer Cont. Shelf Lands & Mineral Leasing Act)

TBD . . .