



September 22, 2020

The Honorable John Barrasso, MD
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Safari Club International's Support of the "Endangered Species Act Amendments of 2020."

Dear Chairman Barrasso,

Safari Club International (Safari Club) wishes to express its support for the bill entitled "The Endangered Species Act Amendments of 2020" (ESA Amendments of 2020). This comprehensive piece of legislation would address many of the failings of the existing Endangered Species Act. In particular, Safari Club agrees with the bill's provisions that would: (1) increase the role of states in ESA decision-making; (2) facilitate the participation of states and other affected parties in ESA litigation, and more specifically in settlement discussions over the resolution of these cases; (3) prohibit litigation over species delistings until the completion of the five-year post-delisting monitoring period; and (4) provide regulatory status for conservation agreements for the purpose of listing and delisting decisions.

Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 45,000 members worldwide. Safari Club has participated in many lawsuits that demonstrate the need for the changes included in the ESA Amendments of 2020. For example, Safari Club helped the U.S. Fish and Wildlife Service (FWS) defend the delistings of the Northern Rocky Mountain Distinct Population Segment of gray wolves, Wyoming's portion of that wolf population, and the Western Great Lakes Distinct Population Segment of gray wolves. Safari Club also recently participated in litigation regarding the FWS's ongoing efforts to delist the Greater Yellowstone Ecosystem population of grizzly bears. Those cases, among many others, show that the ESA suffers from flaws that undervalue if not discourage the role of states in species recovery. The ESA allows states and affected parties to be excluded from negotiations intended to resolve listing and delisting litigation, facilitates challenges to delistings, prolongs unnecessary listings of recovered populations, and overly complicates the analysis of how conservation agreements contribute to species recovery and long-term conservation. The ESA Amendments of 2020 provides an important foundation for improvements to the ESA to address these problems and others.

The Role of States in Decisions to List, Recover, and Delist Species

One of the most troubling aspects of the litigation history of ESA delistings is the inadequacy of the ESA's current recognition of states' invaluable, if not essential, role in species recovery and conservation. For example, a D.C. federal district court ruling invalidated a delisting of the recovered Western Great Lakes (WGL) population of gray wolves, even though the continued listing would serve to disincentivize the states to participate in species recovery. The ESA, as it exists now, simply did not give the district court an unequivocal explanation of the crucial role played by states in species recovery. Even though an appellate court reversed that district court's error, the WGL wolves remain on the endangered species list and the ESA continues to be missing an indelible message about the role of states in ESA decision-making.

Safari Club supports the ESA Amendments of 2020's recognition that state input must be a priority. Safari Club supports the bill's requirement that the Secretary consult "to the maximum extent possible" with impacted states and agencies. Safari Club similarly supports the requirement that the Secretary "give full and fair consideration to any comments or recommendations received from an impacted State." In addition, the bill properly would require the Secretary, upon receiving a petition concerning the listing status of a species "give full and fair consideration to any State or Tribal comments submitted" in response.

The ESA Amendments of 2020 similarly would afford states enhanced status in litigation involving listing decisions. While the bill does not authorize automatic party status for a state in the settlement of lawsuits involving ESA-based decision-making, it would require that the Secretary "provide notice to, consult with and otherwise take appropriate actions to include, each impacted State" when the Secretary prepares to or enters into a settlement agreement in the case.

Delay of Litigation Until After the Post-Delisting Monitoring Period

One of the most practical and valuable aspects of the bill is the prohibition against litigation challenges to delisting decisions until after the five-year monitoring period required following a species delisting. Under the existing law, litigants can file suit immediately after the FWS finalizes its decision. This requires a court, when reviewing that decision, to evaluate the validity of the delisting before the FWS's judgment can be proven by the success or failure of the affected states' conservation efforts following the removal of federal protections. Contrary to the forecasts of those who think federal protection should be a permanent status, states have proven to be excellent custodians of delisted populations. For example, the post-delisting history of the Northern Rocky Mountain (including Wyoming's) wolf population demonstrates that Idaho, Montana and Wyoming have successfully managed their delisted wolves. The lack of federal protection has not placed the wolves in jeopardy. By mandating a stay of litigation until the end of the post-delisting monitoring period, the ESA Amendments of 2020 would prevent litigation

and premature restoration of federal protections from interfering with the demonstration of the accuracy and efficacy of states' abilities to manage and conserve post-delisted species.

Establishment of Regulatory Status for Conservation Agreements

The ESA does not clearly identify or define the phrase “adequate regulatory mechanism,” yet the law conditions listings and delistings on the presence of such mechanisms. Conservation agreements are an extremely effective mechanism used by states and other affected parties to prevent the need for listings and conserve delisted species. Because the ESA does not expressly recognize conservation agreements to qualify as adequate regulatory mechanisms, the question of their status to fulfill listing criteria requirements has been the subject of multiple lawsuits. The ESA Amendments of 2020 would put an end to the oft-litigated question and allow the states, federal agencies and others to focus on creating effective agreements, rather than defending them in court.

Safari Club appreciates the efforts of all those who participated in the work to develop the ESA Amendments of 2020. The bill is a major achievement in that it represents the agreements of many parties with divergent interests and motivations. Safari Club is pleased that the bill incorporates components that, if passed, will make some clear improvements in the way listing decisions will be made and carried out in the future.

If you have any questions about these comments, please contact Jeremy Clare, Litigation Counsel and CITES Manager, at jclare@safariclub.org.

Sincerely,



Scott Chapman
President, Safari Club International

cc:

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