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February 14, 2018

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

Dear Chairman Barrasso:

Western Governors offer these comments regarding proposed legislation to amend the Endangered Species Act (ESA). The Western Governors' Association (WGA) appreciates the Chairman's willingness to productively engage with Governors, and that the Chairman has approached this polarizing topic in an inclusive, thoughtful manner. The proposed bill reflects this fact and offers meaningful, bipartisan solutions to challenging species conservation issues.

WGA represents the Governors of the 19 western states and 3 U.S. territories in the Pacific. The association is an instrument of the Governors for bipartisan policy development, information-sharing, and collective action on issues of critical importance to the western United States. Issues surrounding the ESA and its implementation are increasingly important to Western Governors.

Congress passed the ESA in 1973, codifying the responsibility to protect imperiled species and the habitats upon which they rely. Since then, the ESA has prevented a number of extinctions and facilitated the recovery of some of our nation's most iconic species. Yet, the ESA is not perfect. We can and should continually strive to make it work better for wildlife and people.

For more than two years, the WGA Species Conservation and Endangered Species Act Initiative has engaged a diverse and bipartisan collection of interested organizations to discuss ways of improving the ESA's effectiveness and efficiency. Using a series of public workshops, facilitated work sessions, substantive webinars, and other tools, WGA gathered valuable insight that enabled Governors to adopt a series of recommendations for improving the ESA in June 2017.

Most of the WGA recommendations seek regulatory improvements because the rulemaking process does not require amending the statute. However, some recommendations can only be implemented through congressional action. The proposed bill is generally consistent with the WGA recommendations, and WGA offers its support for the portions of the bill that are consistent with existing Western Governors' policy. In other instances, the proposed bill addresses issues where WGA has no formal policy and as to those, WGA takes no position. With respect to each section of the bill:

## **Title I – Enhancing the Federal-State Partnership**

### Section 101. Definitions

Western Governors support directing the Secretary of the Interior to define the terms “great weight” and “maximum extent possible.” Both terms enhance the Secretary’s consultation requirements with states when implementing the ESA.

### Section 102. Recovery Teams

Governors support establishing recovery teams that are empowered to develop and implement recovery plans, propose modifications to recovery plans when appropriate, and recommend delisting and downlisting, at which point the Service shall initiate a status review of the species for purposes of considering delisting or downlisting of a listed species once the established recovery goals are met. Governors also support providing impacted states the opportunity to lead the recovery team, if they so choose.

Too often, species that meet or exceed recovery goals for more than a decade remain listed. This prevents the allocation of resources to species that are truly imperiled, reduces public support for the species on the landscape, erodes support for the ESA with critical landowners, and leads to increased tension between state and federal wildlife management agencies.

Western Governors support the provision of this section that delays judicial review of a determination to delist a species until the conclusion of the statutorily mandated post-delisting monitoring review period as long as there is a federally reviewed and endorsed conservation plan in place. Delaying judicial review will allow state management plans to be implemented and evaluated for success.

### Section 103. State-Federal consultation relating to conservation and recovery of wildlife.

Roughly 30 percent of all listed species have no recovery plan: some species languish more than 15 years with no discernable path to recovery. For species without recovery teams, Western Governors support empowering states to lead recovery plan development and implementation, subject to plan approval from the Secretary. This would reduce federal agency workload, allow for more efficient species recovery, and utilize local expertise to ensure local support for recovery efforts.

### Section 104. Consultation with States regarding land acquisition.

Western Governors support language requiring the Secretary seek and give great weight to comments provided by states regarding proposed land acquisitions within that state’s boundaries. This is consistent with WGA policy that seeks meaningful consultation opportunities for all ESA matters potentially impacting states.

Section 105. Cooperation with States and Indian Tribes.

Western Governors stress that states have primary management authority over all fish and wildlife within their borders and appreciate the language in this section recognizing this fact. Governors also support improving consultation requirements between states and the Secretary when implementing the ESA.

Section 106. State consultation regarding experimental populations.

Western Governors do not take a position regarding the specific language of this section; however, Governors generally support efforts to require increased consultation with states on matters related to ESA implementation.

Section 107. State participation in settlements.

Western Governors do not take a position regarding the specific language of this section; however, Governors generally support efforts to require increased consultation with states on matters related to ESA implementation.

Section 108. Award system for State agencies.

No position.

Section 109. State feedback regarding U.S. Fish and Wildlife Service employees.

No position.

**Title II – Encouraging Conservation Activities through Regulatory Certainty**

Western Governors generally support efforts to improve regulatory certainty for public and private stakeholders that can encourage conservation. However, the Governors take no position with respect to the specific language in title II.

**Title III – Strengthening Conservation Decisionmaking through Increased Transparency**

Sec. 301. Policy relating to best scientific and commercial data available.

Western Governors support transparency, but also support protecting sensitive information about species or information that identifies the property of a specific landowner from disclosure under the Freedom of Information Act. Landowners frequently decline to participate in voluntary conservation programs because they fear information about their property will become part of the public record. Since private landowners control nearly 70 percent of all habitat in the United States, protecting privacy and providing certainty are critical for proper ESA implementation.

Sec. 302. Transparency of information.

Western Governors support requiring state approval before a federal agency releases state provided data. In many cases, states possess data that their laws prohibit disclosing to the public. If states provide this data to the federal agencies, and those agencies release that data to the public, states could be liable for violating their sunshine laws. Requiring state consent prior to federal agencies releasing state-provided data will alleviate this concern and result in better data for federal agencies to rely upon when making listing determinations.

Sec. 303. Information provided to States.

Western Governors support providing states with all information used in the federal decision-making process, subject to well-defined exceptions, and receiving comment from affected states prior to making a listing decision. Frequently, states possess valuable species information that federal agencies will find persuasive in listing determinations. This provision allows the federal agencies to make better decisions based on the evaluation of state data.

Sec. 304. Transparency in litigation.

No position.

**Title IV—Optimizing Conservation Through Resource Prioritization**

Sec. 401. Prioritization of listing petitions, reviews, and determinations.

Western Governors support the creation of a prioritization system for addressing listing petitions, reviews, and determinations. Congress established the current listing deadlines in 1982 to encourage timely determinations from the federal agencies. However, after more than 35 years, these arbitrary deadlines have outlived their usefulness. They discourage voluntary conservation, limit the development of good science for informed decision-making, and give rise to significant litigation.

Creating a prioritization schedule ensures the immediate protection of species at the greatest risk of extinction. Further, delaying listing determinations for species with active conservation plans provides incentive for states, local government, and private individuals to engage in proactive, voluntary conservation. Incentivizing conservation can eliminate the need to list a species, which is always better than a threatened or endangered finding. Finally, a prioritization schedule gives the federal agencies flexibility to prioritize their workload without the fear of litigation.

**Title V—Studies to Improve Conservation**

No position.

**Title VI—Reauthorization**

Sec. 601. Reauthorization.

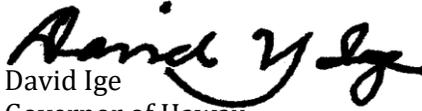
Western Governors support efforts to reauthorize appropriations for the ESA.

Western Governors acknowledge that any congressional effort to amend the ESA will be complicated and spark diverse opinions. WGA supports your work to modernize the ESA and appreciates your efforts to conduct this process in a thoughtful, bipartisan manner. Each Governor reserves judgment on whether to continue supporting this bill as it moves through the legislative process. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Dennis Daugaard  
Governor of South Dakota  
Chair, WGA



David Ige  
Governor of Hawaii  
Vice Chair, WGA