

## **Endangered Species Act: The Perspective of the Western Governors**

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The Western Governors' Association – an organization of 19 Western states and 3 U.S. Flag Islands – recently passed a policy resolution on the subject of the Endangered Species Act (#13-08). Attached please find that resolution for the hearing record. In their resolution, the Governors identified several key issues regarding the impact of the ESA – as currently administered – on Western states.

States possess broad trustee, police powers and primacy over fish, wildlife and water within their borders. Above all, Western Governors state through their resolution that any changes to the ESA and its administration should recognize the legal responsibilities of states and their long-standing record of expertise in managing and conserving species.

I am pleased to be here today to deliver the Governors' principles for ESA reform. They are:

### ***Issue 1: States should be full and equal partners in administering and implementing the ESA***

*WGA Policy Resolution 13-08 – Paragraphs A-5, A-10, B-2 (bullet 7)*

- Given the impact ESA listing decisions have on vital state interests, states should be full and equal partners in administering and implementing the ESA. Federal agencies should work with states in a meaningful and productive manner on all ESA matters potentially impacting the states.
- Section 6(a) of the ESA states: "In carrying out the program authorized by the Act, the Secretary shall cooperate to the maximum extent practicable with the States." Section 6 contemplates a structure for cooperative agreements for the conservation of endangered and/or threatened species. The ESA is premised on a strong federal-state partnership. But the Act and its implementation need to provide expanded, meaningful opportunities for states to comment, participate, or take the lead before the federal government makes any number of decisions under the ESA. Such participation is largely optional under the current scheme and has been provided inconsistently.
- State conservation plans for the Lesser Prairie Chicken and the Sage-Grouse are two examples of species for which many states have developed detailed conservation plans for species management that could be used as an alternative conservation method to listing.
- Some states have expressed a need to define the role for states in the post-listing environment (such as administration of a mitigation fund for a species). This is also the case for the management of threatened species under ESA Section 4(d).

- The federal agencies that oversee the administration of the ESA should work within Section 6 of the Act to provide opportunity for states to engage in the shared goal of conserving wildlife.

***Issue 2: The use of sound science in ESA decisions***

*WGA Policy Resolution 13-08 – Paragraphs A-12, B-2 (bullet 4)*

- Both chambers of Congress recently included language in the draft committee reports accompanying their Interior Appropriations bills, directing federal agencies to use state wildlife data and analyses to inform management decisions (language attached).
- State agencies often have the best available science, expertise and other scientific and institutional resources such as mapping capabilities, biological inventories, biological management goals, state wildlife action plans and other important data. This wealth of resources is highly valuable; the federal government should recognize, consult, and employ these vast resources in developing endangered species listing, recovery and delisting decisions.
- State involvement could include bringing state experts into the peer review process.

***Issue 3: Clarity and transparency of terminology and criteria***

*WGA Policy Resolution 13-08 – Paragraphs A-7-a, A-8, A-11; B-2 (bullets 1 and 2)*

- Simple definitions for some of the key terms used in the ESA would create more clarity and consistency in the administration of the Act.
- Issues identified in the WGA resolution include:
  - the meaning of “foreseeable future;”
  - concerns over the expanded definition of “critical habitat;”
  - a request for quantifiable and objective recovery criteria;
  - the need for a definition of “significant portion of the range.”

***Issue 4: Provide adequate incentives and/or funding***

*WGA Policy Resolution 13-08 – Paragraphs A-7 (items b-e), A-13, B-3 (bullet 5)*

- The negative economic impacts of federal ESA decisions fall solely on states, local communities, businesses, jobs, and private property owners.”
- The WGA policy resolution also highlights economic incentives for landowners to participate in conservation.

- Section 6 of the ESA authorizes the Cooperative Endangered Species Conservation Fund. The WGA resolution asserts that this fund “should be funded and managed as a block grant, with state discretion on spending priorities.”
- Current federal landowner incentives may encourage organizations to make a business out of conservation measures following the listing of a species. This disincentive to conservation prior to a listing decision could be addressed by working with the Service to ascertain how mitigation banks operate post-listing and if the Service finds them useful.

Thank you for the chance to share the perspective of the Western Governors.