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“The Endangered Species Act: How Litigation is Costing Jobs and Impeding True Recovery
Efforts”

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Introduction

The Endangered Species Act is our nation’s primary wildlife conservation statute designed to protect biological diversity. It grew out of an emerging consensus that the protection of both charismatic animals and other lesser-known species, once deemed valueless, is necessary if we are to succeed in protecting not only the species we find charismatic, but also the ecosystems on which they, and ultimately we, depend. As human understanding has grown, we have learned that ecosystems, not unlike a woven sweater, can begin to unravel when even a single thread is pulled out. When many threads are pulled, holes develop, and what was once a warm and protective sweater no longer exists. The same is true for an ecosystem that loses its parts, even those that may at first blush seem minor. For example, scientists have recently learned that a species as imposing as the grizzly bear, monarch of the Yellowstone ecosystem, relies on a species as little noticed as the white-bark pine for its survival - and that protecting the bear alone without the pine is inadequate, for the bear would have little to eat at certain times of year. The Endangered Species Act encompasses this scientific understanding of the interconnection between species, protecting both greater species and the smaller ones that allow the great creatures to survive. In the end, by protecting the full range of the tangled, and still poorly understood, web of life the Act ultimately protects humanity itself.

Because the Act protects species, as it must, wherever they are found, regardless of land ownership, and because it protects all species great and small, regardless of their popularity or immediately perceived value to humanity, it has engendered a continuing level of controversy. However, this controversy neither indicates that the task of protecting biodiversity is unimportant or unpopular, nor that the Endangered Species Act is not working as intended.

There are two false assumptions imbedded in the title of this hearing. First, that litigation directed at enforcing the Endangered Species Act is costing jobs. Second, that litigation enforcing the Act is impeding true recovery efforts. Both of these misguided charges obscure more meaningful inquiry into the source of the problems some members of this Committee apparently perceive.

Litigation is a tool to enforce the law. Congress writes our laws, but it generally must rely on the executive branch to enforce them. However, at times, especially when Congress is concerned about whether the executive branch is willing or able to enforce a particular law, Congress has enacted provisions encouraging private citizens to enforce, or compel the executive branch to follow, the law. These “citizen-suit” provisions, found in most environmental and civil rights statutes, represent a bedrock principle of our democracy: the idea that citizen oversight can

make our government institutions better. They are most useful in situations where the volume of legal enforcement necessary to fully implement a law may outgrow the capacity of federal agencies, where the desire of private litigants to enforce the law may exceed that of federal officials, or when a law places obligations, such as deadlines for action, on federal agencies and Congress desires outside help to ensure that these federal agencies comply with the law. The citizen-suit provision in the Endangered Species Act serves all three of these functions.

Accordingly, because litigation, whether conducted solely by government prosecutors or by private citizens, is merely a tool to increase compliance with the law, a charge that litigation is costing jobs is, at base, a charge that enforcing the law is costing jobs. There is little difference between having a law that is unenforced or unenforceable, and having no law at all. Thus, to the extent some members of this Committee perceive a conflict between enforcement of the Endangered Species Act and economic activity, this Committee should not be considering whether it wants the law Congress has passed enforced via litigation, but whether it likes the law it has written or believes it should be amended. The question of whether the Endangered Species Act should be enforced is only a component of the larger issue: what does Congress think of the Act itself?

Similarly, the second false assumption imbedded in the title of this hearing, that litigation to enforce the Endangered Species Act is impeding the recovery of species, also serves to obscure the fundamental inquiry. The clearly stated goal of the Endangered Species Act is to recover species from the edge of extinction. Congress drafted the various provisions of the Act to achieve this end. Thus, if members of this Committee perceive a conflict between enforcing the Endangered Species Act through litigation and achieving the Act's goal of recovering species, the source of the perceived problem is not with the enforcement of the Act, but with the Act's efficacy. Enforcement is simply implementation. The Committee's concern should be with whether the law works when enforced, not with limiting enforcement. Unenforced laws are worse than meaningless because they engender disrespect for both the rule of law and the legal system.

In short, the two assumptions contained in the title of this hearing hide more fundamental questions that should be explored. The basic inquiry here is not, and should not be, whether litigation directed at enforcing the Endangered Species Act is a problem, but whether Congress wants the Endangered Species Act enforced as written and believes it is effective in meeting its goals. To focus on the litigation enforcing the law as the source of the problems some members of this Committee perceive masks the actual conflict. Simply put, if this Committee does not want the Endangered Species Act enforced -- it does not want the Act. This Committee should openly acknowledge and debate the root cause of the problems some of its members perceive. Unfortunately, the title of this hearing indicates this Committee may be inappropriately focused on shooting the messenger, those who litigate to enforce the Endangered Species Act, rather than examining the questions behind the message: Are endangered species worth saving, does this nation remain committed to the saving them, and is the Endangered Species Act an effective means to achieve this end? As discussed below, the answer to these questions is clearly -- yes.

I. The Endangered Species Act is Needed

A. The Endangered Species Act Protects Valuable Natural Resources

The vast variety of species with which humans share this planet are of incalculable value to us. As stated by Representative Evans on the House floor in 1982:

[I]t is important to understand that the contribution of wild species to the welfare of mankind in agriculture, medicine, industry, and science have been of incalculable value. These contributions will continue only if we protect our storehouse of biological diversity ... [O]ur wild plants and animals are not only uplifting to the human spirit, but they are absolutely essential – as a practical matter – to our continued healthy existence.

128 Cong. Rec. 26,189 (1982) (Statement of Rep. Evans of Delaware).

As Americans, we have celebrated the comeback of the bald eagle, the very symbol of our country, from a low of 487 nesting pairs in the continental United States to more than 9,000 nesting pairs. In large part, the Endangered Species Act is responsible for the eagle's recovery. Similarly, we now enjoy the company of approximately 3 million American alligators, a species we almost lost before it was protected under the Act and quickly recovered. The whooping crane, a symbol of wisdom, fidelity, and long life in many cultures, has also benefited from protection under the Endangered Species Act, rebounding from a low of 16 individuals to approximately 400. However, though the Act has prevented the extinction of this species, the Whooper is not yet ready to graduate from the Act's protection. Such charismatic creatures the Act has pulled back from the brink of extinction are frequently invoked in hearings on the Endangered Species Act. The law, however, does not deny its protective shield to creatures whose pictures may never grace a wildlife calendar.

While some have criticized the Endangered Species Act for protecting “bugs and weeds,” these invertebrates and plants are frequently of the most utilitarian value to humans. As expressed by Harvard professor E. O. Wilson, if we do not protect the little things that run the world:

New sources of scientific information will be lost. Vast potential biological wealth will be destroyed. Still undeveloped medicines, crops, pharmaceuticals, timber, fibers, pulp, soil-restoring vegetation, petroleum substitutes, and other products and amenities will never come to light ... it is also easy to overlook the services that ecosystems provide humanity. They enrich the soil and create the very air we breathe. Without these amenities, the remaining tenure of the human race would be nasty and brief. The life-sustaining matrix is built of green plants with legions of microorganisms and mostly small, obscure animals – in other words, weeds and bugs.

The Diversity of Life at 346-47.

On a global scale, 25 to 40 percent of pharmaceutical products come from wild plants and animals. Kellert, Stephen R., *The Value of Life: Biological Diversity and Human Society*

(1996). A full 70 percent of pharmaceutical products are modeled on a native species, despite only 0.1% of plant species having been examined for their medicinal value. Dobson, Andrew P. Conservation and Biodiversity, Scientific American Library (1996). Invertebrate pollinators are also of high value to humanity. A variety of pollinators, such as some butterflies and bats, are currently protected by the Endangered Species Act, although others are not. The loss of pollinators threatens ecological and economic systems across the country. Committee of the Status of Pollinators in North America, National Research Council, Status of Pollinators in North America, National Academies Press (2006).

One of the Endangered Species Act's explicit purposes is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1532(b). This vision of ecosystem protection appears frequently throughout the Act's legislative history. Rosmarino, Nicole J., Endangered Species Act Under Fire: Controversies, Science, Values & the Law, University of Colorado (2002) The economic benefits healthy ecosystems provide humanity dwarf even our national debt. Economists estimate the global value of "ecosystem services" at \$33 trillion annually and in the U.S. alone at \$300 billion annually. Pimentel, David, et al., Economic and Environmental Benefits of Biodiversity, BioScience 47(11) (1997) at 747-57; Costanza, R. et al., The Value of the World's Ecosystem Services and Natural Capital, Nature 387 (1997) at 253-260. Even these dramatic estimates are conservative, as the value of ecosystems ultimately equates to the value of everything – as without ecosystems humans could not survive. Leakey, Richard et al., The Sixth Extinction: Patterns of Life and the Future of Humankind (1995). Moreover, most of the services, currently provided to us for free by ecosystems, are so intricate and provided on such a massive scale that it would not be feasible to replicate them at any cost even if scientists possessed the knowledge to do so. The tremendous value of ecosystems is placed at risk by the continued erosion of the biodiversity. Ehrlich, Paul R. and Wilson, E.O., Biodiversity Studies: Science and Policy, Science 253 (1991) at 758-62.

Additionally, endangered species are of great aesthetic, symbolic, and recreational value. Animals and nature are ubiquitous in our children's fairy tales and stories, which inform social codes of conduct. Continued destructiveness towards nature may consequently impact human cognition and social relations. "The more we know of other forms of life, the more we enjoy and respect ourselves. Humanity is exalted not because we are so far above other living creatures, but because knowing them well elevates the very concept of life." Wilson, Edward O. Biophilia: The Human Bond with Other Species, Harvard University Press (1984) at 115. The recreational value of wildlife is also very significant. The U.S. Fish and Wildlife Service has determined that approximately 87 million adult Americans, or 38 percent of the adult population, spend more than \$120 billion in the course of wildlife-related recreation annually. These expenditures support hundreds of thousands of jobs. U.S. Department of the Interior, 2006 National Survey of Fish, Hunting, and Wildlife-Associated Recreation. These jobs are every bit as valuable to those who hold them as are the jobs the Committee perceives at risk from enforcement of the Endangered Species Act. In short, the protection of biodiversity appears well worth the effort. Just as a nation should not squander its fiscal resources, it should not squander its natural ones. The Endangered Species Act is central to our national effort to conserve our irreplaceable natural resources.

B. The Present Rate of the Loss of Species Is Alarming

The current rate of species' extinction worldwide is estimated at 1,000 times the natural rate of extinction and is increasing. The impact of seven billion humans on species diversity is comparable to that of the asteroid that wiped out most life on Earth 65 million years ago. Like geologists do today, future intelligent beings, should there be any, will be able to mark the current human-caused extinction epoch by observing the number and diversity of fossils preserved in future rock layers. Unless these trends are reversed, by the year 2020 up to 20 percent of all extant species will no longer exist. Wilson, Edward O., *The Diversity of Life* at 346. According to the International Union for the Conservation of Nature, one in every four mammals is facing a high risk of extinction in the near future. Almost half of all tortoises and freshwater turtles are threatened. More than one-fifth of the world's birds face extinction according to Birdlife International. One third of the world's amphibians are also vanishing. Stokstad, E., *Global Survey Documents Puzzling Decline of Amphibians*, *Science* 306: 391 (2004). At least two out of every five species on earth will go extinct due to human-caused climate change if greenhouse gas emissions are not promptly curtailed. Flannery, Tim, *The Weather Makers*, *Atlantic Monthly Press* (2005) at 183.

Moreover, there is a trickle-down effect from species' extinction as the loss of one species leads to the loss of other dependent species. For example, researchers recently calculated that the extinction of nearly 6,300 plants listed as threatened or endangered by the International Union for the Conservation of Nature would also result in the loss of nearly 4,700 species of beetles and 136 types of butterflies. Lian Pin Koh, et al., *Species Coextinctions and the Biodiversity Crisis*, *Science* 305 (2004) at 1632-34.

In sum, there should be no legitimate debate over whether or not our planet's biodiversity is rapidly diminishing. There should also be little debate that this loss is attributable to human activities and dramatic human population increases:

Human demographic success has brought the world to this crisis of biodiversity. Human beings – mammals of the 50-kilogram weight class and members of a group, the primates, otherwise noted for scarcity – have become a hundred times more numerous than any other land animal of comparable size in the history of life. By every conceivable measure, humanity is ecologically abnormal. Our species appropriates between 20 and 40 percent of the solar energy captured in organic material by land plants. There is no way that we can draw upon the resources of the planet to such a degree without drastically reducing the state of most other species.

Wilson, Edward O., *The Diversity of Life* at 272. Over ninety-nine percent of scientists agree that a serious, world-wide loss of biodiversity is likely, very likely, or virtually certain. Rudd, Murray A., *Scientists' Opinions on the Global Status and Management of Biological Diversity*, *Conservation Biology* 25(6) (2011) at 1165-1175. There is also strong scientific consensus that humans are responsible for this extinction crisis. *Id.* Indeed, last year the United Nations marked the first ever International Year of Biodiversity to call attention and spur action to address this problem. The United States Endangered Species Act serves as a model for many

other nations and exhibits our national commitment to the international effort to save the diversity of life on Earth.

II. The Endangered Species Act Enjoys Widespread Public Support

As a remedy to stem the tide of extinction and protect species for the use and enjoyment of future generations the Endangered Species Act enjoys widespread public support. Passed almost unanimously by Congress and signed into law by President Nixon in 1973, the Endangered Species Act has consistently remained popular. In 1999, university researchers concluded that 84 percent of the American public supported the current Endangered Species Act, or an even stronger version of the law. Czech, Brian and Krausman, Paul R. Public Opinion of Endangered Species Conservation and Policy, *Society and Natural Resources* 12(5) (1999) at 469-79. A poll commissioned by the Endangered Species Coalition and conducted by Harris Interactive between February 16 - 20 of this year, found that despite the ensuing decade of attacks on the Act since 1999 and the controversies over its implementation and enforcement, an identical 84 percent of Americans adjusted for age, sex, race/ethnicity, education, region of the country, number of adults in the household, and number of phone lines in the household, supported or strongly supported the Endangered Species Act. While support was strongest among Democrats (93%), the majority of Republicans (74%) also supported or strongly supported the Act. The majority of Americans of both political parties (64%) also believe that the Act is a safety net providing balanced solutions to save wildlife and plants at risk of extinction. In short, the protection of endangered species is a broadly supported American value. Extinction is not.

III. The Endangered Species Act Is Effective

Not unlike the biblical Noah, checking off the animals boarding his Ark, two by two, the Endangered Species Act operates based on a list. Species on the list receive the Act's protections while unlisted species do not. The leading cause of species imperilment in the U.S. is habitat destruction. Wilcove, David S. et al., *Quantifying Threats to Imperiled Species in the United States*, *Bioscience* 48(8) (1998) at 607-15. The protective provisions of the Endangered Species Act, particularly those that protect a listed species' designated critical habitat, are effective at stemming habitat destruction and recovering species. Listed species with a designated critical habitat are twice as likely to be recovering as those without designated critical habitat. Suckling, Kieran F. and Taylor, Martin, *Critical Habitat and Recovery*, in *The Endangered Species Act at Thirty* (2006) at 86.

Additionally, research shows that as of 2006 the Endangered Species Act had prevented the extinction of at least 227 species. Scott, Michael J., et al. *By the Numbers*, in *The Endangered Species Act at Thirty*, Island Press (2006) Vol. 1 at 16-35. Accordingly to the U.S. Fish and Wildlife Service, only nine of the approximately 1,445 domestic species ever added to the Endangered Species Act list have been declared extinct. Seven of these were mostly likely extinct before they received the Act's protection. Thus, the Act has only failed two species: a success rate in preventing extinction of over 99 percent. Conversely, protection under the Act has successfully recovered at least 22 species. Accordingly, the Endangered Species Act is succeeding in recovering species at least twice as often as it has failed. Indeed, if the seven

species that were likely extinct before they were listed under the Act are discounted, the Endangered Species Act is succeeding in recovering species at a rate more than 10 times that at which it fails.

IV. Enforcement through Litigation has Increased the Effectiveness of the Endangered Species Act

While the Endangered Species Act has been over 99 percent successful in preventing extinction, it is still criticized by some because 1,397 species remain on the domestic protected species list, while only 22 have been finally recovered. However, this criticism is misplaced. The task of recovering species from the edge of extinction is difficult. The Endangered Species Act has been on the job for 38 years. However, many of the species currently protected by the Act, have not been listed nearly so long, but were added more recently. Moreover, pursuant to the requirements of the Act, the U.S. Fish and Wildlife Service has estimated the costs of, and planned for, the recovery of many endangered species on long time lines often exceeding 50 years. Government Accountability Office, *Endangered Species: Time and Costs Required to Recover Species are Largely Unknown* (2006).

Perhaps more importantly for purposes of the Committee's inquiry into conflicts between the Endangered Species Act and economic activity, one must recognize that the timeline for species recovery is dependent on the resources devoted to recovery – and the strength of the protective regulations implemented to achieve recovery. Thus, increasing the rate of recovery will require additional resources and more, not less, protective regulations – the type of regulations that have the potential to affect economic activity. Any criticism of the rate of species recovery must recognize that this rate can only be increased by greater, not reduced, effort and thus calls for more effective enforcement of, or strengthening of, the Endangered Species Act.

Additionally, the rate of species recovery is also dependent on how close to the abyss of extinction species are when they are first offered the protections of the Act. For example, seven species were likely already extinct before they were first listed. Many others have been listed only when their populations have fallen to incredibly low levels. The size of a vertebrate population at the time of listing is often so low that only the establishment of captive breeding populations will avoid extinction. Wilcove, David S., et al., *What Exactly is an Endangered Species? An analysis of the U.S. Endangered Species List: 1985-1991*, *Conservation Biology* 7(1) (1993) at 87-93. This occurred in the well-known cases of the Mexican wolf, the black-footed ferret, and the California condor whose protection came only after each had dwindled to fewer than two dozen individuals.

The majority of the cases filed by WildEarth Guardians pursuant to the citizen-suit provision of the Endangered Species Act have involved efforts to compel the federal agencies responsible for administering the Act to meet the deadlines prescribed by Congress for making listing decisions. This effort to protect all deserving species under the Act sooner rather than later increases their chances for recovery and also serves to shorten the timeline needed to recover a species. Importantly, for this Committee's inquiry into perceived conflicts between the Endangered Species Act and economic activity, adding species to the list before they are at the

verge of extinction allows greater flexibility and accommodation of activities that might conflict with recovery through the Act's regulatory mechanisms.

Having an accurate and complete list of endangered species protected by the Act benefits those trying to save species, by allowing them to begin protecting and recovering deserving species sooner. It also benefits those engaged in planning economic activities that may be affected by a species listing by allowing them to modify their plans or activities to accommodate the needs of endangered species before devoting significant resources to those plans. An incomplete or inaccurate list of endangered species benefits no one. Thus, litigation directed at listing species that need the protection of the Endangered Species Act – to make the list complete and accurate - is beneficial to all parties concerned.

In short, the debate should not focus on diagnosis (listing), but on the course of treatment (protection and recovery) we apply to listed species. Diagnosis is simply information upon which future decisions can be made. We understand this when it comes to visiting the doctor's office. Accurate and timely diagnosis of disease is critical. Only once the diagnosis is made do we begin to discuss our treatment options with our doctor, with choices spanning the spectrum from intensive intervention to doing nothing. Our understanding of the Endangered Species Act, the law under which we provide emergency room care to species in need, should be no different. Accordingly, the Act provides that listing decisions must be based solely on the best available science and not account for economic impacts. The perceived conflict between economic activities and protecting endangered species should not influence listing decisions, but may be appropriately debated when we decide how to recover listed species and what level of economic dislocation we will tolerate in those efforts.

However, because this Committee appears concerned that litigation conducted by WildEarth Guardians and others is somehow interfering with species recovery, it is important to note that both Guardians and the Center for Biological Diversity have recently entered into separate, but overlapping, settlement agreements with the U.S. Fish and Wildlife Service. In *Re Endangered Species Act Section 4 Deadline Litigation*, Misc. Action No. 10-377 (EGS) (U.S. District Court for the District of Columbia). For those concerned that the process of listing species under the Act is overly litigious, these settlement agreements are good news. In its separate settlement, Guardians has agreed not to file litigation enforcing the Act's listing deadlines for the next five years. In return, the U.S. Fish and Wildlife Service has agreed to make final listing decisions for all the species the Agency had previously concluded warranted the protection of the Act, but for which the Service had not made final listing decisions in its 2010 Candidate Notice of Review. Thus, the Service will be making final decisions for the species which it has preliminarily concluded are most deserving of the Act's protections. Neither agreement requires the Service to list any particular species, but only to complete its analysis and make a final decision. Most of the species that will receive final listing decisions under these settlement agreements have been waiting for more than two decades for action. The agreements promise an end to this waiting and will result in a more accurate and complete endangered species list upon which future decisions can be made. Recovery efforts for the species the Service ultimately concludes deserve listing will begin sooner, and with this head start, recovery efforts should also be both more efficient and less disruptive to economic activity

than if these species are allowed to continue declining without legal protection while waiting for action.

These settlement agreements would not have come to pass without litigation to enforce the Act's deadlines. In that sense, the litigation that led to the agreements benefitted both the enforcement of the Endangered Species Act and the quicker recovery of species which should in turn reduce the economic impacts of species protection. Any contrary conclusion is unwarranted.

V. There are Actions that could Increase the Rate of Species Recovery

A. Listing Decisions should be made Promptly and in Keeping with the Endangered Species Act's Deadlines

Finally, in response to this Committee's apparent concern that species are not recovering rapidly or efficiently, there are actions Congress could take to increase the rate of recovery. As discussed above, the difficulty of recovery is proportional to the degree of imperilment a species faces when it is first added to the endangered species list. The Endangered Species Act provides a two to two-and-one-half year timeline for making a decision as to whether or not to add a species to the endangered species list once it has been petitioned for listing. The Act also provides that the responsible agencies may add a species to the list on their own initiative. In practice, Congress has failed to fund the U.S. Fish and Wildlife Service listing program at levels sufficient for it to timely address either the number of citizen petitions it receives or the number of species sliding towards extinction. Nor has the Service requested adequate funding for these tasks. Thus, the Service has been in chronic violation of the listing deadlines that Congress provided in the Act to compel agency action. These delays have caused WildEarth Guardians and others to litigate to enforce Congressional mandates and spur prompt action. Species continue to decline while the agency delays addressing their status and deciding whether or not they deserve the Act's protections, thereby rendering recovery efforts more difficult. Accordingly, if the goal of Congress is to increase the rate and potential success of recovery efforts, the first step is to fund the listing program at levels that will allow the U.S. Fish and Wildlife Service to avoid breaking the law. Identification of the problem (prompt listing action) is the first step to its resolution (quicker recovery).

Funding the Service at a rate sufficient for it to comply with the settlement agreements it recently entered with WildEarth Guardians and the Center for Biological Diversity will not only increase the recovery prospect for the species that receive final listing decisions by forcing action more promptly, but will avoid a return to litigation as the only means available to Guardians, the Center, and others to enforce the Act's deadlines.

B. Critical Habitat Designation should be Required for All Listed Species

As a related matter, Congress amended the Endangered Species Act in 1978 to require the Fish and Wildlife Service to designate critical habitat for a species, to the extent determinable and prudent, at the time of listing. As discussed above, listed species with a designated, and thus

protected, critical habitat are twice as likely to be recovering as those without designated critical habitat. Suckling, Kieran F. and Taylor, Martin, Critical Habitat and Recovery, in The Endangered Species Act at Thirty (2006) at 86. Accordingly, to increase the rate of recovery, Congress should also fund the Service at levels sufficient to allow the Agency to designate critical habitat for species at the time they are first listed. As an additional benefit, the prompt designation of critical habitat supports better planning by those entities whose economic activities might need to be modified to protect listed species. Additionally, because Congress applied the requirement to designate critical habitat only to species designated after 1978, if Congress desires to increase the rate of species' recovery it should remove the exemption for species listed prior to 1978 and require the designation of critical habitat, to the extent prudent and determinable, for all listed species, including those that have been on the list the longest.

C. Deadlines for the Preparation of Recovery Plans should be Established, Recovery Plans should be Made Enforceable, and Recovery Plans should be Fully Funded.

Lastly, and again if the concern is with increasing the rate of species' recovery, Congress should focus on Section 4(f) of the Endangered Species Act, 16 U.S.C. § 1533(f), the provision that requires the preparation of recovery plans for listed species. Unlike the other provisions of Section 4, the recovery planning provision contains no deadlines. Thus, this most important task of planning for species recovery may linger incomplete for many years. The responsible agencies have developed a goal of preparing a recovery plan for each listed species within two and one-half years of listing. However, in practice this timeline is not always followed. For example, the National Marine Fisheries Service failed to prepare recovery plans for the Sperm, Fin, and Sei Whales for more than 30 years until compelled to do so by a lawsuit filed by WildEarth Guardians. Accordingly, if Congress desires recovery to occur more rapidly, it should establish deadlines requiring prompt recovery planning.

Furthermore, recovery plans are generally not enforceable by citizens. Thus, the actions the responsible agencies determine are necessary to recover species are undertaken solely at the pleasure of the agencies. Again, the agencies do not always implement the recovery plans they have prepared or delay their implementation. Accordingly, to compel agencies to carry out the tasks they have determined are necessary to recover listed species, Congress should consider making the development and implementation of recovery plans more enforceable by citizens. An unenforceable or unimplemented plan that simply gathers dust in an agency's file cabinet is of little utility. Thus, conversely, the problem this Committee perceives with delayed recovery efforts is not caused by too much litigation, but by the inability of citizens to force federal agencies to do what they said they should and would do – through litigation forcing the implementation of recovery plans.

Section 4(f) does require the responsible agencies to prepare timelines and estimate the costs of recovery actions. The success of these plans and the adherence to their timelines for action thus hinge on the amount of funding available. Accordingly, if this Committee desires to increase the rate of species recovery, Congress can drive that effort through funding, and it should take steps to insure both that the agencies request sufficient funding to meet their recovery plans and that Congress provides it.

CONCLUSION

The Endangered Species Act is this nation's commitment that the tragic and irreparable extinctions of species that occurred prior to the Act's passage will not be repeated. In passing the Act, Congress not only recognized that sharing this world with the vast variety of species on it increases human joy and well-being, but is, in the end, essential to human life. Existence without our fellow companions on this planet would not only be lonely, it would be impossible. The protection of fragile and unique species is not without cost. Frequently, these species have been driven to the edge of the abyss by untempered human expansion and monopolization of resources. Allowing for their survival requires a measure of restraint on our part. However, the perception that saving species from extinction costs jobs is shortsighted. Saving species is not only of substantial economic benefit, it allows for sustainable economic development by preserving resources so that they may be enjoyed and used by future generations. Our children will not forgive us if they are able only to learn of the wolf's howl, the prairie chicken's dance, or the bear's roar in museums. More importantly, our descendents will not survive, or will survive only in a more hostile and unforgiving world, without all the little things, the bugs and weeds, that drive our ecosystems and allow the larger forms of life to thrive. Humans cannot pollinate their crops without the assistance of beetles, bees, butterflies, and bats. And humans will suffer if the mysterious storehouse of adaptations and unique properties found in plants and animals are thrown away without understanding. Driving species to extinction is not unlike burning a library. Driving species to extinction before we even begin to understand them is like burning the library without once reading the books.

Fortunately, extinction is not an American value. Since its passage, and despite numerous controversies, the American people have consistently and overwhelmingly supported the Endangered Species Act. This support cuts across all lines that might otherwise divide us. The Act is working, and will work even better with increased enforcement and renewed effort. Litigation, the focus of this hearing, is nothing more than a means to enforce the Act. More importantly, litigation has shown success in ensuring the Act is implemented as Congress intended. Though litigation is adversarial, such disagreements in a civil society are necessary to promote change, force action, and reach resolution. Congress recognized as much when it provided mechanisms for, and requested citizens to help, the government implement the Act and meet the obligations it placed on itself. It is inappropriate to denigrate successful litigation, brought by citizens, that has forced the government and others to follow the law. To do so, is to attack the law itself. If Congress does not want a law enforced it should not have such a law. WildEarth Guardians does not believe that this nation wants to abandon the Endangered Species Act, and it is proud of its efforts to enforce our bedrock national commitment to never again drive a species to extinction. Rather, Guardians believes this nation is committed to insuring our rich flora and fauna, and the ecosystems on which they depend, survive and flourish for future generations.