

Testimony of

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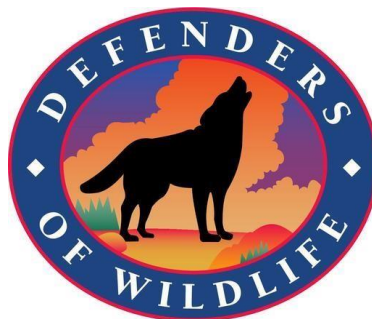
before the

**SUBCOMMITTEE ON WATER, OCEANS AND WILDLIFE
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UNITED STATES HOUSE OF REPRESENTATIVES**

on

“WOW 101: THE STATE OF WILDLIFE”

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Good afternoon, Chairman Huffman, Ranking Member McClintock and Members of the Subcommittee:

My name is Jamie Rappaport Clark and I am the President and CEO of Defenders of Wildlife, a national nonprofit conservation organization dedicated to the protection of all native animals and plants in their natural communities. Thank you for inviting me here today to speak about my views on the state of wildlife.

For over 70 years, Defenders of Wildlife has protected and restored imperiled species throughout North America by establishing on-the-ground programs at the state and local level; securing and improving state, national and international laws and policies that protect species and their habitats; and upholding legal safeguards for native wildlife in the courts. We represent more than 1.8 million members and supporters.

Before coming to Defenders of Wildlife in 2004, I spent 20 years working in conservation as a wildlife biologist in the federal government, first at the Department of Defense and then at the Department of the Interior. From 1997 until 2001, I served as the director of the U.S. Fish and Wildlife Service under President Bill Clinton. In that role, I oversaw the implementation of many of the nation's most important laws and programs protecting imperiled species and biodiversity, including the Endangered Species Act, the Migratory Bird Treaty Act and the National Wildlife Refuge System Improvement Act.

Simply put, the nation's wildlife faces unprecedented challenges. Human activities are exacting an increasingly heavy toll on wildlife and the habitats on which they depend, at the same time as policy attacks by some in Congress and the Trump administration undermine essential frameworks for protecting wildlife and public lands. More and more species, such as the southern resident orca population, teeter on the brink of extinction. And vital and irreplaceable wildlife habitats, such as the coastal plain of the Arctic National Wildlife Refuge, are at grave risk of industrialization.

As we gather here today, the nation's wildlife is caught up in the planet's sixth mass extinction. The Endangered Species Act (ESA), although highly effective at preventing extinction, has never been adequately funded and is now under significant political attack by some in Congress and the Trump administration. Climate change is accelerating and may be the single greatest threat to the nation's biodiversity. Lack of adequate funding is severely limiting the nation's ability to protect biodiversity and recover imperiled species at all levels of government. The nation's network of protected habitats that make up the National Wildlife Refuge System, an assemblage unparalleled in the world, is under relentless political attack. Conflicts between people and wildlife continue to lead to the killing of predators and other species—some of which are imperiled—based on long-held but misguided social intolerance.

Other serious wildlife threats are abundant. Hundreds of species of migratory birds are now at greater risk of being killed by oil company operations and other industrial activities due to a 2017 Trump administration policy change. Some 1,500 species of native animal and plant species that live in the nation's southern borderlands region, including as many as 62 species that are imperiled, will be impacted by President Trump's efforts to construct additional wall along the U.S.- México border. And

in the ocean, critically imperiled North Atlantic right whales and numerous other marine mammals face new threats from the Trump administration's decision to allow seismic testing in a huge swath of the Atlantic and its proposal to allow oil and gas drilling in the Southern Atlantic. Wildlife trafficking continues to be a worldwide problem, one that threatens a wide range of imperiled species and is fueled in part by demand from the United States. There are escalating attempts to diminish the federal government's longstanding leadership on the Endangered Species Act and management of the National Wildlife Refuge System, as well as other laws and programs, that threaten to fundamentally weaken national conservation efforts to fight species extinction. Finally, we face the challenge – and the opportunity – of building a broader, more inclusive constituency for wildlife and nature to secure their future. My written testimony offers greater detail about each of these profound threats to wildlife.

The Extinction Crisis

Scientists recognize that we are in the midst of the sixth mass extinction, with species disappearing 100 times faster than normal due to human activities ranging from habitat destruction to overharvest to threats from invasive species.¹ Half of all species may become in danger of extinction in the next century. And it's not just extinction that concerns us: over the last 50 years, global wildlife populations have declined by 60 percent due to accelerating habitat loss, climate change and other human-caused factors.² The combination of the loss of individuals and entire species means the wildlife that make up natural ecosystems—the ecosystems on which we depend—are disappearing before our very eyes.

Unlike previous global extinction events, this crisis is largely being caused by man himself. Faced with the impact of our own hand on the diversity of life, we have a responsibility to ourselves, to our children and to the planet itself to act. As famed scientist E.O. Wilson has said, “The one process now going on that will take millions of years to correct is loss of genetic and species diversity by the destruction of natural habitats. This is the folly our descendants are least likely to forgive us.”³ It is up to us to halt and reverse this destructive trend.

Biodiversity decline is the proverbial canary in the coal mine, a symbol of what we are doing to the Earth. And what befalls the earth ultimately will come back to haunt us. As Congress once understood, there are many reasons to be alarmed about the loss of biodiversity, not the least of which is its ultimate impact on humans. In addition to their intrinsic value, threatened and endangered

¹ Ceballos, G., et al. 2015. Accelerated modern human-induced species losses: Entering the sixth mass extinction. *Science Advances Magazine*. Retrieved from http://advances.sciencemag.org/content/1/5/e1400253?ikey=d418e48e12c0f66ddbaedf7686eef20a9c9486bb&keytype2=tf_ipsecsha

² World Wildlife Fund. 2018. Living Planet Report - 2018: Aiming Higher. Grooten, M. and Almond, R.E.A.(Eds). *World Wildlife Fund, Gland, Switzerland*. Retrieved from https://c402277.ssl.cf1.rackcdn.com/publications/1187/files/original/LPR2018_Full_Report_Spreads.pdf?1540487589

³ Edward O. Wilson, *Biophilia* 121 (1984).

species provide tangible services and benefits to people, playing important roles in providing us with clean water, food, medicines and more. The value of Earth's biodiversity "is, quite literally, incalculable," the House report for the Endangered Species Act stated back in 1973. "Sheer self-interest impels us to be cautious."⁴

And we are not powerless to stop the loss of biodiversity. Over 1,600 species of fish, wildlife and plants in the United States are protected under the ESA; many more need such protection to avoid extinction and to recover. The ESA is incredibly successful, with less than one percent of listed species declared extinct and hundreds now on the path to recovery. This success comes from protections and tools in the law, including the prohibition on taking and trade in endangered species and the requirements of recovery planning⁵, section 7 consultations⁶ and habitat conservation planning.

But the success of the Endangered Species Act is now threatened as never before. Ignoring what scientists from all over the world tell us, attacks on wildlife and important habitats continue to accelerate. At this critical juncture, the Trump administration's anti-wildlife agenda includes proposals to weaken endangered species regulations and defund endangered species programs—the exact opposite of what is needed to conserve biodiversity. Further, decades of underfunding by Congress have meant that there are still too many species that don't receive essential funding and support, with the reality of extinction increasing daily due to inattention and lack of conservation investment.

A mounting volume of ESA-related legislation proposed by Congress over the past decade has sought to roll back and undermine ESA protections. No legitimate proposals to strengthen our ability to conserve biological diversity or even engage in informed debate have been introduced to date. Over 115 legislative proposals were proposed just last Congress aimed at "updating" or "modernizing" the ESA, and not even one would have improved species conservation.⁷ Many would have stripped existing protections or blocked future protections for at-risk and listed species, accelerating those species' decline and potentially condemning them to extinction. Other legislative proposals would have interfered with the ESA's science-based listing process, redefining "best available science" and injecting economic considerations into listing decisions, considerations which must not factor into science-based determinations about whether a species needs protections under the ESA.

The ESA's citizen lawsuit provision has been another target of proposed legislative "fixes." This crucial provision allows members of the public to hold federal agencies accountable to Congress's directives in the ESA through the federal court system. The availability of judicial review is essential to the rule of law, ensuring that federal agencies and officials properly implement the laws enacted by

⁴ H.R. Rep. 93-412, pp. 4-5 (1973).

⁵ Troyer, Caitlin M and Leah R. Gerber. 2015. "Assessing the impact of the U.S. Endangered Species Act recovery planning guidelines on managing threats for listed species." *Conservation biology: the journal of the Society for Conservation Biology* 29 5: 1423-1433.

⁶ Malcom, J., & Li, Y. 2015. Reality of implementing section 7 of the US ESA. *Proceedings of the National Academy of Sciences*. 112 (52) 15844-15849; <https://doi.org/10.1073/pnas.1516938112>

⁷ Defenders of Wildlife. 2018. *Summary of Legislative Attacks on the Endangered Species Act in the 115th Congress*. Retrieved from <https://defenders.org/sites/default/files/publications/chart-of-esa-attacks-in-115th-congress.pdf>

Congress. By including an explicit mechanism for reviewing agency decisions, the drafters of the ESA wisely intended that the courts—not Congress—resolve disputes over the agencies’ implementation of the law.

To reverse the downward spiral toward extinction, Congress and the administration must uphold and fund—not undermine—the Endangered Species Act and other bedrock environmental laws and programs.

Warning on Warming: Climate Change a Major Threat to Wildlife

The scientific community is united in recognizing that climate change represents a national and, indeed, a global emergency. The Fourth National Climate Assessment⁸ (Climate Assessment) and the U.N. Intergovernmental Panel on Climate Change Special Report on Global Warming⁹ issued in 2018 warn of severe consequences from current warming trends for both human and natural communities. The congressionally-mandated Climate Assessment includes a comprehensive review of climate change effects on forests,¹⁰ ecosystems and biodiversity,¹¹ coasts¹² and oceans.¹³ Importantly, these threats are not some concern for the distant future, they are already occurring. Defenders of Wildlife has catalogued current, injurious climate change impacts on dozens of species throughout North America.¹⁴

In stark contrast to the serious realities of climate change, the Trump administration has been dismissive of the science and relentless in dismantling U.S. policy to mitigate and manage for impacts. President Trump’s two most egregious actions were announcing our withdrawal from the Paris Climate Agreement, which seeks international cooperation to address global warming at a potentially manageable level, and signing Executive Order 13783,¹⁵ which rescinded or initiated

⁸ U.S. Global Change Research Program. 2018. *Fourth National Climate Assessment: Volume II: Impacts, Risks, and Adaptation in the United States*. Retrieved from <https://nca2018.globalchange.gov/>

⁹ IPCC. 2018. Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. World Meteorological Organization, Geneva, Switzerland, 32 pp.

¹⁰ U.S. Global Change Research Program. 2018. *Fourth National Climate Assessment: Volume II: Impacts, Risks, and Adaptation in the United States. Chapter Six: Forests*. Retrieved from <https://nca2018.globalchange.gov/chapter/6/>

¹¹ U.S. Global Change Research Program. 2018. *Fourth National Climate Assessment: Volume II: Impacts, Risks, and Adaptation in the United States. Chapter Seven: Ecosystems, Ecosystem Services, and Biodiversity*. Retrieved from <https://nca2018.globalchange.gov/chapter/7/>

¹² U.S. Global Change Research Program. 2018. *Fourth National Climate Assessment: Volume II: Impacts, Risks, and Adaptation in the United States. Chapter Eight: Coastal Effects*. Retrieved from <https://nca2018.globalchange.gov/chapter/8/>

¹³ U.S. Global Change Research Program. 2018. *Fourth National Climate Assessment: Volume II: Impacts, Risks, and Adaptation in the United States. Chapter Nine: Oceans and Marine Resources*. Retrieved from <https://nca2018.globalchange.gov/chapter/9/>

¹⁴ Defenders of Wildlife. *Field Guide to Climate Change*. Retrieved from <https://defenders.org/climate-change-guide>

¹⁵ Exec. Order No. 13783, 3 C.F.R. 2017. Retrieved from <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-energy-independence-economic-growth/>

revocation of many of our nation's efforts to reduce greenhouse-gas emissions from the electricity sector, federal mining and drilling operations and other sources. The executive order also directed federal agencies to tear down policies and guidance on preparing for and enhancing the resilience of human communities and our lands, waters and wildlife against climate change effects. Remaining adaptation strategies for fish, wildlife, plants, freshwater ecosystems and oceans have either been revoked by this administration or left to languish.

The administration's agenda on climate change has been manifested in its decision-making under the Endangered Species Act. Former Secretary of the Interior Ryan Zinke refused to protect the Pacific walrus based on an inappropriate and unscientific short timeframe for climate modeling. Recovery plans and outlines developed under this administration have de-emphasized management actions to ameliorate climate change impacts on imperiled plants and animals, even when those threats were a factor in the federal listing. For instance, the threat of climate change and sea-level rise was discussed extensively in the 2013 listing of the Florida bonneted bat,¹⁶ but the 2019 recovery outline fails to even mention sea-level rise.¹⁷ Also, the U.S. Fish and Wildlife Service (FWS) in 2013 determined that climate change is a threat to the Preble's meadow jumping mouse,¹⁸ whereas the 2018 recovery plan states that "global climate change constitutes an unknown threat to Preble's mouse populations."¹⁹

Fortunately, there is a legislative remedy to manage threats posed to wildlife by climate change and the Trump administration's abdication of its responsibility to address them. The Safeguarding America's Future and Environment (SAFE) Act is designed to protect American communities, wildlife, and habitat from increasingly destructive effects of climate change. This bill builds on the National Fish, Wildlife and Plants Climate Adaptation Strategy to forge an integrated federal program to respond to ongoing and expected impacts of climate change by conserving, protecting and restoring fish, wildlife and plants. It would codify policies and strategies that have been lost or ignored in this administration and would be a major step forward in protecting wildlife and other natural resources from the dire threat of a warming world.

Funding Shortfalls for Wildlife Conservation

Increased funding for wildlife conservation is needed now more than ever. We have the tools to stem the tide of extinction, but only if they are fully funded and implemented. Although the Endangered Species Act is a powerful and effective tool for conserving imperiled species, a perennial

¹⁶ Endangered Species Status for the Florida Bonneted Bat, 50 C.F.R. pt. 17 (2013).

¹⁷ South Florida Ecological Services. U.S. Fish and Wildlife Service. 2018. *Recovery Outline for Florida Bonneted Bat (Eumops floridanus)*. Retrieved from https://ecos.fws.gov/docs/recovery_plan/Final%20FLBB%20recovery%20outline.pdf

¹⁸ 12-Month Finding on Two Petitions to Delist the Preble's Meadow Jumping Mouse, 50 C.F.R. pt. 17 (2013).

¹⁹ Dept. of the Interior. U.S. Fish and Wildlife Service Mountain-Prairie Program. 2018. *Recovery Plan: Preble's Meadow Jumping Mouse (Zapus hudsonius preblei)*. Retrieved from https://ecos.fws.gov/docs/recovery_plan/Final_Draftpreblesrecoveryplan_10032018_signed.pdf

lack of funding has left too many species on the edge of existence, with many receiving less than \$1,000 per year for their management and conservation. Overall, federally threatened and endangered species have received less than a quarter of the funding scientists have determined is needed for their recovery. Last month a coalition of over 200 organizations urged Congress to more than double funding for endangered species conservation efforts, noting the urgent need for additional resources for listing, recovery planning, habitat conservation planning and collaborative funding programs under the ESA.²⁰ These efforts are currently funded at about \$252 million, but recent analyses show that \$486 million is needed to put imperiled species on the path to recovery. Every listed species requires a minimum of \$50,000 each year to ensure they remain a part of our natural heritage.

States and tribal governments also have powerful and important roles in determining the fate of species—both before and after species are federally listed. As with federal programs, state and tribal programs to protect imperiled species also suffer from severe funding shortfalls. One important federal program that helps states and tribes protect declining species is the State Wildlife Grants Program, which provides federal funding for a variety of conservation needs that each state identifies in a State Wildlife Action Plan.²¹ The plans identify “species of greatest conservation need” and outline steps needed to conserve those species before they become rare and costly to protect. However, more funding is still needed to help states and tribes keep species from becoming imperiled and to support their programs that help recover threatened and endangered species.

States also need to take more responsibility for prioritizing this conservation imperative. States have broad authority and responsibility for protecting and managing their native fish, wildlife, and plants and their habitats. Yet, according to a 2017 report by the U.C. Irvine School of Law, state expenditures make up only 5 percent of ESA spending.²² States simply must do more to address the current extinction crisis by placing greater emphasis and devoting additional resources to imperiled species conservation.

Providing sufficient funding for wildlife conservation will help ensure sustainable populations and safeguard our nation’s rich biological diversity for the benefit of all Americans. That means funding for ESA implementation, Farm Bill conservation programs and wildlife programs administered by federal land management agencies, such as the U.S. Forest Service, Bureau of Land Management and the Department of Defense, as well as state and tribal fish and wildlife agencies.

National Wildlife Refuges Under Siege

²⁰ CBD, et al. 2019. *Endangered Species Act Funding*. Retrieved from https://www.biologicaldiversity.org/campaigns/esa/pdfs/community_ESA_funding_letter.pdf

²¹ Association of Fish and Wildlife Agencies. 2011. *State and Tribal Wildlife Grants Program: 10 Years of Success*. Retrieved from http://www.fishwildlife.org/files/StateWildlifeGrants_10YearSuccess-Report.pdf

²² Camacho, A., et al. 2017. U.C. Irvine School of Law Center for Land, Environment, and Natural Resources. *The Limitations of State Laws and Resources for Endangered Species Protections*. Retrieved from <https://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-esa-report-final.pdf>

From the Arctic to the Caribbean, the Atlantic to the Pacific, the National Wildlife Refuge System is key to conserving wildlife and biodiversity in America. At 850 million acres, the Refuge System includes units in every state and U.S. territory, many just an hour drive from urban communities. Yet, despite its incredible value to wildlife, ecosystems and the public, the Refuge System is under unprecedented political assault.²³ At the behest of special interests, the Trump administration has launched a series of efforts to divest refuge lands and waters from public ownership, exploit natural resources, allow for the use of toxic (neonicotinoid) pesticides, and subvert management and override protections for imperiled species on refuges nationwide. This extreme agenda threatens the very concept of national wildlife refuges, to the detriment of wildlife and millions of people who use and enjoy our remarkable National Wildlife Refuge System.

Arctic National Wildlife Refuge, the crown jewel of the Refuge System, is an example of reckless politics at play and a harbinger of a public land system in peril. At more than 19 million acres, this awesome expanse of mountains, rivers, wetlands, tundra and lagoons is now under threat from oil and gas exploration and leasing.²⁴ Congress opened the refuge's coastal plain to oil and gas development in 2017, bypassing legislative debate and undermining more than half a century of protection for the refuge. Now the administration is rushing to lease the coastal plain as soon as next winter. Oil exploration would occur at the height of polar bear denning season, when heavy seismic-testing vehicles could run over dens, crushing mother bears and cubs and hastening the species' decline. Fossil fuel development would also have devastating impacts on caribou, musk oxen, ice seals and hundreds of species of migratory birds. Drilling would permanently alter this vital landscape and turn the coastal plain into an industrial oil field, replete with well pads, pipelines, oil spills and pollution. Congress should advance legislation immediately to restore protections to Arctic National Wildlife Refuge.

Izembek National Wildlife Refuge, also in Alaska, is another jewel under threat.²⁵ This remote reserve is habitat for half the world's population of emperor geese and, every autumn, more than 90 percent of the global population of Pacific black brant. Most of the refuge is also congressionally designated wilderness—the highest level of protection afforded to public lands. These values notwithstanding, the Trump administration is pursuing plans to force an unnecessary and destructive road through the heart of this vital preserve. The proposal would sacrifice some of the most ecologically important wildlands on the planet, stripping them of wilderness designation and refuge protections and undermining conservation of imperiled species. Congress should block the administration's attempt to plow a road through Izembek.

With passage of the National Wildlife Refuge System Improvement Act over two decades ago, Congress greatly diminished the ability of special interests to pressure local managers to make poor

²³ Keatinge, J. Defenders of Wildlife. 2017. *Keeping Wildlife First in Our National Wildlife Refuge System*. Retrieved from <https://defendersblog.org/2017/10/keeping-wildlife-first-national-wildlife-refuge-system/>

²⁴ Rappaport Clark, J. Defenders of Wildlife. 2018. *Defending the Arctic Refuge*. Retrieved from <https://medium.com/wild-without-end/defending-the-arctic-refuge-fad5cd988d4b>

²⁵ Lavin, P. Defenders of Wildlife. 2018. *Izembek: A National Wildlife Refuge System Gem*. Retrieved from <https://medium.com/wild-without-end/izembek-a-national-wildlife-refuge-system-gem-8b31af81523f>

resource management decisions. It strengthened the integrity of the system, providing an overarching “wildlife first” mission and structure for science-based decision-making, and firmly established wildlife conservation as the Refuge System’s core purpose. Today, however, the Refuge System’s mission is being eroded. Although completely incompatible with the longstanding wildlife conservation purposes of Arctic National Wildlife Refuge, Congress took the unprecedented step of making oil drilling a purpose of the refuge to circumvent the legal requirements of the Refuge Improvement Act. In the case of the Izembek refuge, the administration is attempting to end run the Improvement Act by pursuing a land exchange to facilitate construction of an incompatible road through the heart of the refuge. And, as detailed below, the Trump administration is jeopardizing the integrity of Lower Rio Grande National Wildlife Refuge by granting waivers of law to permit the construction of a damaging wall along the U.S.-México border.

Finally, the National Wildlife Refuge System will not truly be able to meet its wildlife conservation mission unless it is adequately funded. The Cooperative Alliance for Refuge Enhancement (CARE), a 25-year-old diverse coalition of 23 sporting, conservation and scientific organizations representing more than 16 million Americans estimates a need of at least \$900 million annually for Refuge System operations and maintenance, approximately twice the current level annually appropriated. Congress should fully fund the Refuge System at the \$900 million-dollar level.

Resolving Human-Wildlife Conflicts Through Coexistence

When human activities conflict with imperiled wildlife, particularly predators, the response too often is to control the “offending” wildlife. This trend unfortunately dominates wildlife management across much of the world, with destructive cycles of conflict followed by more killing. Grizzly bears, Florida panthers and gray wolves are examples of species in the United States that were extirpated from the vast majority of their historic range due to social intolerance.

Moreover, as humans continue to demand more from the natural world, our land use and development is increasingly affecting ecologically important and imperiled species, including birds, bats and other wildlife. There are numerous cost-effective, field-tested conflict deterrence tools that can support people sharing and coexisting on the landscape with wildlife. Research is also underway to advance new technologies for wildlife coexistence. Yet without proactive policies and funding to implement these innovative tools, human-wildlife conflicts will continue to warp attitudes, trigger actions and complicate future development activities across the country.

Federal agencies such as FWS, U.S. Forest Service, Bureau of Land Management and U.S. Department of Agriculture Wildlife Services urgently need to incorporate nonlethal conflict deterrence measures as the “tool of first resort” for addressing human-wildlife conflicts. Agency policies and funding should support proven mechanisms such as:

- Utilizing deterrence tools such as fladry, guard dogs and food storage lockers, which scare off predators or disrupt appetitive behaviors;

- Making infrastructure improvements, such as wildlife crossings over or under roads and highways, which are proven to reduce vehicle collisions and increase habitat connectivity;
- Incentivizing wildlife conservation, such as compensating landowners for species presence, which increase people's social acceptance of wildlife; and
- Incorporating "Smart from the Start" principles in renewable energy siting decisions to minimize negative impacts on wildlife and habitat while expanding renewable energy development to fight climate change for the benefit of people and wildlife.

Restoring Protections for Migratory Birds

The Migratory Bird Treaty Act (MBTA) is one of the oldest and most successful conservation laws in the nation. Over a century ago, many bird species were in decline due to unrestricted commercial and recreational hunting fueled by a demand for their feathers. However, in 1918, Congress passed the MBTA, which made it illegal to kill, hunt, pursue, trade or possess most species of native birds. Since its enactment, the MBTA has been credited with saving millions of birds, including the snowy egret and sandhill crane, and currently protects more than a thousand species from unnecessary death and harm.

Today, birds face many new threats—from expanding infrastructure to increased industrial activity. According to the 2016 State of the Birds report, more than one-third of bird species in North America are at risk of extinction, and over 40 percent of the world's bird species are in decline.²⁶ Climate change, habitat loss, collisions with power lines, communication towers and open oil pits all pose serious threats to birds.

For decades, the incidental killing, or take, of birds from industrial activities was enforceable under the MBTA. This critical backstop not only held offending industries accountable, but it also provided an incentive for companies to work with FWS to implement best management practices to help minimize bird deaths. In practice, FWS and the Department of Justice have prosecuted only particularly egregious violations of the MBTA, such as the BP Deepwater Horizon oil spill, which killed more than 1 million birds.

Yet, in December 2017, the Trump administration abruptly reversed this policy by issuing a radical reinterpretation of the MBTA, eliminating long-standing protections for migratory birds against incidental take.²⁷ Under this new policy, only actions that are meant to purposefully harm birds are covered under the law, ending enforcement for incidental take from industrial activities. This move eliminates the incentive for companies to comply with the MBTA and engage with agencies on actions

²⁶ North American Bird Conservation Initiative. State of the Birds. 2016. *The State of North America's Birds 2016*. Retrieved from <http://www.stateofthebirds.org/2016/wp-content/uploads/2016/05/SoNAB-ENGLISH-web.pdf>

²⁷ Jorjani, D., Principal Deputy Solicitor Exercising the Authority of the Solicitor Pursuant to Secretary's Order 3345. DOI. Dec. 22, 2017. Memorandum. *The Migratory Bird Treaty Act Does Not Prohibit Incidental Take*. Retrieved from <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>

that reduce harm to birds. Without coverage for incidental take, BP would not have been required to pay millions of dollars to restore critical bird habitat impacted by the oil spill.

The Trump administration's policy eviscerates the law as we know it and subverts our nation's treaty obligations to migratory birds. At a time when many bird species are threatened with extinction, we should be implementing policies that benefit bird conservation, not stripping away protections that have existed for over a century. Congress should overturn the administration's radical MBTA reinterpretation.

Walled Off: Border Wall Threatens Irreplaceable Wildlife and Habitat

Walls or other physical barriers currently extend across nearly 700 miles of our 1,933-mile shared boundary with México. President Trump has proposed billions more for new border wall construction, beginning in the Lower Rio Grande Valley in southern Texas. Walls, steel bollards and "fences" block wildlife migration routes, trap and drown animals during floods, increase mortality of endangered and vulnerable species and irreversibly damage fragile landscapes. Construction of new wall segments is already underway in Lower Rio Grande Valley National Wildlife Refuge, which provides irreplaceable habitat for hundreds of species, including rare migratory birds and the imperiled ocelot. More broadly, the U.S.-México border cuts through the ranges of more than 1,500 native animal and plant species that would be threatened by additional border wall. Peer-reviewed research published in *Bioscience* and signed by more than 2,500 scientists declared the border wall would be a disaster for biodiversity.²⁸

To make matters worse, wall construction doesn't even need to comply with congressionally mandated safeguards for wildlife, our environment and communities. The Trump administration has waived dozens of environmental, public health and public planning laws to expedite construction under the 2005 REAL ID Act, which gave the Secretary of Homeland Security unprecedented power to waive any federal, state or local law to construct barriers and roads along the border. This sweeping legal provision has already been invoked 11 times under the Trump and George W. Bush administrations to exempt the department from nearly 50 environmental laws, including the National Environmental Policy Act (NEPA), the ESA and the National Wildlife Refuge Improvement Act, to build more border barrier.

It is long past time for Congress to revisit the waiver authority granted under the REAL ID Act. Acting under that unbounded invitation to disregard the law, the Department of Homeland Security has repeatedly waived our most basic environmental protections for communities and natural resources. By allowing Executive Branch officials to effectively repeal enacted laws that apply to their own conduct, it subverts the rule of law and violates the Separation of Powers clause of the Constitution. Wall construction along any portion of our southern border is devastating to border communities, lands and

²⁸ Peters, R., et al. 2018. Nature Divided, Scientists United: US – Mexico Border Wall Threatens Biodiversity and Binational Conservation. *BioScience* 68: 740-743.

wildlife. It is imperative that Congress not provide additional funding and repeal the sweeping authority to waive enacted laws contained in the REAL ID Act.

Protecting Marine Life from Irreversible Harm

Without action, more than half of the world's marine species will face extinction by the end of the century.²⁹ Yet as the need to protect marine wildlife and their ocean habitats grows more pressing every year, the Trump administration announced plans to roll back protections for nearly a dozen marine national monuments and national marine sanctuaries— threatening whales, dolphins, sharks, sea turtles, seabirds, fish, deep-sea corals and countless other vulnerable marine species.³⁰

Marine mammals along the South Atlantic coast, many of which are already under threat from fisheries bycatch, ship strikes and noise pollution, are now at even greater risk following the Trump administration's decision to allow seismic testing off the Eastern Seaboard from Delaware to Florida.³¹ Seismic testing includes the use of seismic air guns to search for oil and gas deposits under the ocean floor. These air guns fire sound waves at the ocean floor every 10 seconds around the clock for months on end. Seismic blasting disturbs marine life at every level of the food web and has devastating impacts on zooplankton and marine mammals.³² At a time when the survival of the critically imperiled North Atlantic right whale is at stake, scientists warn that seismic blasting could have devastating impacts on the species.³³ Seismic testing also threatens to disrupt commercial and recreational fisheries.

Yet seismic testing is only the beginning: flying in the face of strong bipartisan opposition from southeastern coastal states and local governments, the Trump administration also plans to open up the South Atlantic coast to offshore oil and gas drilling for the first time in more than 30 years.³⁴ If this plan proceeds, it will expose marine and coastal ecosystems to the risks of catastrophic spills like Deepwater Horizon and the cumulative pollution caused by smaller, but chronic, oil spills and leaks.³⁵ By threatening irreversible damage to coastal and ocean ecosystems and marine wildlife, oil

²⁹ UNESCO. 2017. Rio+20 Ocean. *Facts and figures on marine biodiversity*. Retrieved from <http://www.unesco.org/new/en/natural-sciences/ioc-oceans/focus-areas/rio-20-ocean/blueprint-for-the-future-we-want/marine-biodiversity/facts-and-figures-on-marine-biodiversity/>

³⁰ Rappaport Clark, J. Huffington Post. 2017. *Protect Marine Monuments and Sanctuaries, Protect Vital Wildlife Habitat*. Retrieved from https://www.huffingtonpost.com/entry/protect-marine-monuments-and-sanctuaries-protect-vital_us_598e1457e4b0ed1f464c0aa9

³¹ Defenders of Wildlife. Press Release. 2018. *National Marine Fisheries Service Authorizes Seismic Airgun Blasting*. Retrieved from <https://newsroom.defenders.org/national-marine-fisheries-service-authorizes-seismic-airgun-blasting/>

³² McCauley, R., et al. 2017. Widely used marine seismic survey air gun operations negatively impact zooplankton. *Nature Ecology & Evolution* 1: Article No. 0195.

³³ Clark, C., et al. 2015. A Letter to President Obama on the Impact of Seismic Surveys on Whales. Retrieved from https://usa.oceana.org/sites/default/files/statement_atlantic_seismic_5mar15.pdf

³⁴ Defenders of Wildlife. Press Release. 2018. *President Trump Proposes Catastrophic Plan to Expand Offshore Drilling*. Retrieved from <https://newsroom.defenders.org/president-trump-proposes-catastrophic-plan-to-expand-offshore-drilling/>

³⁵ McKey, H. Defenders of Wildlife. 2015. *Five Years Later: Failing to Learn from an Environmental Tragedy*. Retrieved from <https://defendersblog.org/2015/04/five-years-later-failing-to-learn-from-an-environmental-tragedy/>

exploration and drilling also imperil the tourism and fishing industries and related businesses that are the economic lifeblood of southeastern coastal communities.

Seismic activity and offshore drilling threaten marine life and the coastal economies that depend on them. It is imperative that Congress stop the expansion of offshore drilling and halt the use of seismic air guns to protect marine wildlife and their ocean habitats.

International Conservation: Combating Wildlife Trafficking

Wildlife trafficking is one of the most lucrative forms of illegal activity, with an estimated annual global value of \$7 billion to \$23 billion.³⁶ About 350 million plants and animals per year are sold on the black market. Every region of the world is experiencing the negative impacts of illegal wildlife trade as natural resources are stolen by poachers and traffickers. Discussions on combating wildlife trafficking have focused mainly on elephants, rhinos and tigers in Africa and Asia. Often forgotten, however, is the fact that wildlife trafficking occurs across all continents and threatens a wide range of imperiled species, including exotic birds, sea turtles, coral, caimans, crocodiles, iguanas, pangolins and land tortoises. Moreover, demand from the United States fuels it.

The United States is one of the world's largest consumers of legal and illegal wildlife and wildlife products, not only because of its high demand for trafficked goods, but also because of the lack of funding and capacity for domestic enforcement at its borders and ports of entry. Much of the world's trade in illegal wildlife is either driven by U.S. consumers or passes through U.S. ports in route to other destinations, making the United States a key player in wildlife trafficking.

While numerous federal and state agencies are involved with enforcing wildlife laws in the United States, FWS holds the primary authority for inspecting wildlife shipments at ports of entry. Wildlife inspectors, FWS's front-line defense against illegal wildlife entering the country, are tasked with ensuring that wildlife shipments, both imports and exports, comply with national and international wildlife protection laws. Of the 328 recognized ports of entry to the United States, only 18 are designated for the import/export of wildlife and staffed full-time by wildlife inspectors. FWS enforcement officials are thwarted by inadequate budget and staffing and an overwhelming workload.

New strategies are desperately needed to counter the growing crisis of illegal wildlife trade that threatens our planet's natural heritage. The United States has many strengths in this challenge, including data collection capacities beyond those of almost any other country, dedicated (but far too few) wildlife inspectors, and high-level political recognition of the serious threats posed by wildlife trafficking. Congress should advance strategies to improve our analysis of collected data, increase funding for efforts to combat wildlife trafficking here at home—particularly law enforcement and

³⁶ Defenders of Wildlife. 2015. *Combating Wildlife Trafficking from Latin America to the United States: The illegal trade from Mexico, the Caribbean, Central America and South America and what we can do to address it*. Retrieved from <https://defenders.org/sites/default/files/publications/combating-wildlife-trafficking-from-latin-america-to-the-united-states-and-what-we-can-do-to-address-it.pdf>

wildlife inspection at U.S. ports of entry—and reduce U.S. consumer demand for illegal wildlife products.

Federalism and Wildlife Management

Although the relationship between federal and state authority over wildlife has sometimes been a subject of controversy, federal and state wildlife agencies work closely and constructively together to conserve wildlife. Unfortunately, recent directives from the Trump administration and legislative proposals from some members of Congress threaten to undo this close working relationship and disrupt imperiled species conservation by improperly subordinating federal wildlife responsibilities to the states.

State wildlife agencies serve an essential role in managing resident species of fish and wildlife. Although their historic focus has been the management of game species, state wildlife agencies increasingly work to conserve declining and imperiled species. Using federal funding from the State Wildlife Grant program, states have developed and are implementing comprehensive wildlife strategies, called State Wildlife Action Plans, that focus on conserving species of greatest conservation need. States play important roles in the recovery of endangered species and can receive federal funding for that purpose under section 6 of the ESA.

But it is the federal government, acting on behalf of the American people, that has the authority for the protection and conservation of endangered and threatened species, migratory birds, marine mammals and many fish populations in the United States. The federal government is responsible for conservation and management of wildlife and habitat on our federal lands, including the National Wildlife Refuge System, National Parks, National Forests and BLM's public lands. Federal land managers generally work in coordination with state wildlife managers, but the courts have consistently upheld the federal authority for wildlife on federal public lands. Indeed, the legal framework governing this collaborative effort between the federal government and the states has long been settled: under the Constitution the federal government has paramount authority for wildlife on federal public lands and for wildlife protected under the ESA, the Marine Mammal Protection Act, the MBTA and other federal laws, although states have general authority for resident fish and wildlife resources.³⁷

Federal authority for wildlife conservation is now at risk, however, from administrative policies pursued by the Trump administration and from legislative proposals made by some members of Congress. In 2018, then-Secretary of the Interior Ryan Zinke issued a memorandum that characterizes states as “the first-line authorities for fish and wildlife management” and commits the Department of the Interior to “defer to the States in this regard except as otherwise required by Federal law.”³⁸ The

³⁷ Nie, M., et al. 2017. Fish and Wildlife Management on Federal Lands: Debunking State Supremacy. *Environmental Law* 47: 797-932.

³⁸ Memorandum of the Secretary of the Interior, “State Fish and Wildlife Management Authority on Department of the Interior Lands and Waters.” September 10, 2018.

memorandum directs the bureaus and offices of the Department to review all regulations, policies and guidance pertaining to the conservation and management of fish and wildlife species on federal lands that are more restrictive than state provisions and to make recommendations “to better align” their regulations, policies and guidance with state provisions.

Secretary Zinke’s memorandum failed even to acknowledge the statutory responsibility of the federal government, and his own Department in particular, for endangered and threatened species, for marine mammals, and for management of the National Wildlife Refuge System and other federal land systems. It would be both inappropriate and illegal to “defer” to the states in carrying out these primary federal responsibilities for wildlife conservation. The Department of the Interior has not released its internal review of its regulations and policies concerning fish and wildlife management. However, we are deeply concerned that its recommendations for changes to “better align” federal policies with state interests will undercut federal authority for fish and wildlife conservation, hamstringing federal officials from seeking appropriate protection for wildlife and habitat on federal lands and allow irreparable damage to wildlife and habitat from unbridled development on federal lands.

The Trump administration has demonstrated over and over again that it only cares about oil and gas and other extractive uses on our federal lands and waters. Secretary Zinke’s memorandum confirms that fact by attempting to outsource federal responsibilities for fish and wildlife to the states. The administration is also ceding wildlife management to Alaska in rolling back federal protections for bears and wolves on federal lands in the state, for example, rescinding the National Park Service predator conservation rule and relaxing bear baiting in Kenai National Wildlife Refuge. Finally, the Trump administration is actively downgrading protections for sage-grouse on 60 million acres of federal lands with the purpose of aligning federal conservation measures with weaker state management schemes—a stark example of this administration’s abdication of federal wildlife authority on public lands.

These administrative efforts to subordinate federal authority for wildlife conservation to the states are coupled with recent legislative efforts to undercut the primary federal responsibility for implementing and enforcing the Endangered Species Act and to delegate federal authority improperly to the states. Senator Barrasso, chairman of the Senate Environment and Public Works Committee, for example, released a discussion draft of a bill last year that would inappropriately shift responsibility for implementing the ESA to the states and require federal agencies to “acknowledge and respect the primary authority of state agencies to manage fish and wildlife within their borders.” Senator Barrasso’s proposal would give states the presumptive lead for recovery planning, require federal efforts to reintroduce endangered or threatened species to comply with state permit requirements and give states veto authority on reintroduction. This discussion draft would also declare that state information always be deemed “the best scientific and commercial data available,” require the secretary of the Interior to provide written explanations to affected states whenever federal officials do not act in accordance with state wishes, and even require the director of the FWS to invite state

officials to review federal employees in the performance of their duties and their attentiveness to state interests.

Similarly, legislative proposals that were introduced in this committee last year would have mandated reliance on any information, even erroneous or irrelevant data, submitted by states and counties;³⁹ allow states and counties to effectively veto decisions to list species by barring the secretary of the Interior from acting unless he or she can prove that information submitted by such governments is “incorrect”, regardless of the sufficiency of such information to overcome the scientific evidence showing the need to list;⁴⁰ and allow the Secretary to delegate management of endangered species to states, or even to local governments, corporations or private individuals.⁴¹

These efforts to shift authority for implementation of the ESA to the states ignore the fact that states generally lack the legal authority under state law, the biological expertise, or the funds to effectively conserve imperiled species. A recent study by the University of California Irvine School of Law found that few state ESA laws protect all endangered species within their state, require consultation with expert fish and wildlife agencies on the effects of state approved projects on listed species and protect against harm to listed species’ habitat⁴². This study also highlighted that many state ESA laws do not require decisions to be based on sound science and that virtually no states have authority to plan for species recovery.⁴³ The authors of the study conclude: “[W]ithout significant state law reforms in most states, the proposed devolution of federal authority and responsibility over threatened and endangered species to states is likely to undermine conservation and recovery efforts, lead to a greater number of species becoming imperiled, and result in fewer species recovered.”⁴⁴ Another study by Indiana University’s Maurer School of Law similarly found pervasive shortcomings in state ESA laws, concluding: “There is no good reason to believe that state governments with smaller budgets and weaker laws will achieve greater conservation success than the federal program.”⁴⁵

Efforts to undermine the federal government’s role in implementing the ESA ignore and devalue the national commitment made by Congress in enacting the ESA. Just as this country has committed to civil rights, it has also made a national commitment to conserve species under the ESA. Reflecting that national commitment, ultimate responsibility under the ESA lies with the federal government to make science-based decisions about the status of imperiled species and actions necessary to ensure their continued existence and ultimate recovery. The protections imperiled species receive should not depend on the sentiments, economic interests or politics of states.

³⁹ H.R. 3608, Endangered Species Transparency and Reasonableness Act.

⁴⁰ H.R. 6345, Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act of 2018.

⁴¹ H.R. 6364, Land Ownership Collaboration Accelerates Life Act of 2018.

⁴² Camacho, A., et al. 2017. U.C. Irvine School of Law Center for Land, Environment, and Natural Resources. *The Limitations of State Laws and Resources for Endangered Species Protections*. Retrieved from <https://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-esa-report-final.pdf>

⁴³ Id. at 10837-10838.

⁴⁴ Id. at 10837-10838.

⁴⁵ Fischman, R., et al. 2018. State Imperiled Species Legislation, 48 Env’tl. L. 81, 124.

Building a Broader Movement for Wildlife Conservation

A critical challenge – and opportunity – for the future of wildlife conservation is building broader public support for and engagement with wildlife and for nature. The young people of our increasingly diverse nation are the future protectors of our wildlife heritage. Their desire and ability to carry the torch for conservation will greatly depend on how much we invest in developing a much broader and committed constituency for the environment.

Too often our nation's youth and communities of color are left out of decision-making processes that directly impact their quality of life and access to nature. Future generations will only fight to protect our public lands if they see the relevance of these places to their own lives and experiences and understand their value. We cannot underestimate the importance of supporting initiatives that create opportunities and incentives for all Americans to get out and enjoy the outdoors. We need to:

- Connect young people and diverse communities to our public lands and make sure that diverse voices are included and heeded in federal government decision-making about the use, enjoyment and conservation of our natural resources;
- Diversify the workforce that manage and protect our wildlife, public lands, and environment; and
- Uphold the laws that give all of our communities in federal decision-making, including NEPA, the Equal Access to Justice Act and citizen suit provisions within them.

Everyone deserves to see our magnificent wildlife and wild places firsthand – not just in picture books and films that show what once was – and make the real connections that lead to actions that carry the legacy forward. We risk losing everything if we do nothing to impassion, train and activate the next generation of wildlife defenders.

Extinction or Recovery?

Like the authors of the Endangered Species Act before them, today's leaders are at a conservation crossroads. Despite the ESA's incredible success, a new extinction crisis looms. Will we choose extinction or recovery?

We must once again commit ourselves to action to address today's challenges and improve the conservation status of hundreds of species whose recovery prospects remain uncertain. Unlocking the vast—but still unrealized—conservation potential of the ESA will again require our leaders to affirm the conservation values that underpin the ESA and help define our nation.

Defenders of Wildlife is working tirelessly to address the profound challenges facing wildlife. We are focused and working diligently in the field, in the policy realm, and in the courts to conserve species and their habitat and improve the effectiveness of the ESA and other laws. We are working everyday with federal agencies, states, landowners and other stakeholders to design and implement strategies to conserve species locally and at a landscape-scale, across jurisdictions and landownerships nationwide.

We are especially proud of our coexistence program. For decades, we have been working with lawmakers, conservation professionals, scientists, states, tribes, local communities and private landowners to develop innovative and effective methods for minimizing conflicts with imperiled predators, including wolves and bears. Our coexistence program has helped ranchers across the West address the presence of predators on the landscape through nonlethal deterrents, better animal husbandry practices and other innovative tools. In the Southeast, we have worked closely with the state of Florida, other conservation groups and private landowners to pave the way for recovery of the Florida panther. Through our coexistence efforts we are minimizing conflict and building social acceptance for these species.

We have also launched the Center for Conservation Innovation to pioneer innovative, pragmatic solutions at the intersection of science, technology and policy to improve the effectiveness of endangered species conservation in the United States. We are leading the way to develop the first web-based ESA recovery plan, which can be updated readily and regularly to reflect the best available science on a species. By relying on the power of data analytics, technology and interdisciplinary approaches, the Center for Conservation Innovation is helping federal and state agencies, as well as other interested stakeholders, take advantage of science and technological advances to improve how they implement the ESA.

Today, the Trump administration and all too many in Congress seem to have forgotten the values underlying the ESA and other landmark conservation laws. Congress and the administration must respond quickly and responsibly to the unprecedented threats facing wildlife and their habitat. In addressing the challenges highlighted throughout this testimony, Defenders of Wildlife recommends that Congress focus on four key areas:

- 1) Increase funding for programs that conserve imperiled species at the federal, state and tribal levels;
- 2) Reject policy attacks on the highly successful legal and policy frameworks that exist to protect and restore species, especially attacks targeting the ESA;
- 3) Restore the legal protections that have been significantly compromised in recent years including enacting:
 - The Arctic Cultural and Coastal Plain Protection Act (H.R. 1146) to protect the coastal plain of Arctic National Wildlife Refuge from oil drilling;
 - The necessary removal of the reoccurring rider in Interior appropriations legislation barring FWS from considering listing the greater sage-grouse under the ESA;
 - The Safeguarding America's Future and Environment (SAFE) Act (H.R. 4490, 115th Congress) to address climate impacts by re-establishing the national strategy for fish, wildlife and plants;
 - The Scientific Assistance for Very Endangered North Atlantic Right Whales Act (H.R. 1568) to better protect right whales from threats pushing them to extinction;

- The Rescinding DHS' Waiver Authority for Border Wall Act (H.R. 1232) to repeal the Department of Homeland Security's right to waive all laws to construct additional border wall; and
 - Legislation to overturn the Trump administration's action to reduce protections for birds under the Migratory Bird Treaty Act; and
- 4) Support new approaches to wildlife conservation that strengthen vital conservation efforts and improve their effectiveness for people and wildlife.

In pursuing these urgent priorities, policymakers can be confident that their efforts are supported by the overwhelming majority of Americans. Poll after poll confirms this fact. Most recently, a 2018 study by researchers at The Ohio State University found that roughly four out of five Americans support the Endangered Species Act.⁴⁶ Addressing today's leading wildlife challenges is not only consistent with the nation's values, a commitment to science and our responsibility to future generations, it is also strongly supported by the American people.

Defenders of Wildlife looks forward to assisting in any way possible to implement these recommendations. Thank you again for the opportunity to testify.

⁴⁶ Bruskotter, J.T., et al. 2018. Support for the U.S. Endangered Species Act over time and space: Controversial species do not weaken public support for protective legislation.