April 24, 2023

**Re: Vote NO on Legislation Providing for Congressional Disapproval of the Final Rule Protecting the Lesser Prairie-Chicken Under the Endangered Species Act**

Dear Senator,

On behalf of our XX organizations and our millions of members and supporters, we write to express our strong opposition to S.J. Res. 9, which would nullify the final rule issued by U.S. Fish and Wildlife Service in November 2022 protecting the lesser prairie-chicken under the Endangered Species Act.

Using the Congressional Review Act to rescind protections for the lesser prairie-chicken or any other endangered wildlife or plant could have disastrous consequences. The Congressional Review Act is a blunt instrument with far reaching impacts. Upon enactment of a CRA resolution, the underlying rule becomes void and an agency is prevented from future issuance of a rule that is “substantially the same” without an act of Congress. For an endangered species, use of the CRA could prevent the Fish and Wildlife Service from ever protecting the lesser prairie-chicken under the Endangered Species Act in the future, even if its populations collapsed or just a handful of individual birds remained. Simply put, a vote to approve a CRA resolution for an endangered species is a vote to condemn that species to extinction.

President Reagan signed into law the Endangered Species Act Amendments of 1982, which made clear that all decisions regarding the listing of species as threatened or endangered were to be made “*solely* on the basis of the best scientific and commercial data available.”[[1]](#footnote-1) The reason for this important clarification in the law is simple. Whether or not a species is facing extinction is a scientific question only. The Endangered Species Act contains numerous provisions to provide flexibility and address any hardships that might arise after a species is listed, but short-term political expediency and purported economic costs should not influence listing decisions themselves.

The listing process under the Endangered Species Act requires that the Service consider all relevant science and data regarding any decision to list a species. State fish and wildlife agencies are given special additional procedural privileges to ensure their scientific assessments are fully considered.[[2]](#footnote-2) Every listing decision undergoes scientific peer review and public notice and comment. In contrast, the CRA ignores all of these rigorous and transparent processes, sidelines all meaningful debate, and provides only an unnuanced yes or no choice about any federal agency decision.

Known for the males’ elaborate calls and showy displays of reddish-orange air sacs while performing their spring mating dances, the lesser prairie-chicken is a highly imperiled ground-nesting bird that once roamed the southern Great Plains by the millions, but today has declined to roughly 27,000 birds — including a decline of 20% since 2021 — and now is found in less than 10% of its former habitats. After nearly three decades of waiting for protection, the Fish and Wildlife Service issued a final rule in November 2022 protecting the lesser prairie-chicken under the Endangered Species Act. Two populations are now protected: a Texas and New Mexico population is listed as endangered, while a separate northern population in Texas, Oklahoma, Kansas and Colorado is listed as threatened. In making its final determination, the Service specifically found that existing voluntary conservation actions by States and the oil and gas industry “will not be enough to offset…habitat losses,” and that “the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore some of what has been lost, and overall viability for this species will continue to decline.”[[3]](#footnote-3)

The Congressional Review Act is an extreme law that has been abused by anti-environmental members of Congress who want to permanently strip away protections for our environment, wildlife and natural heritage. Using it here would set an extremely dangerous precedent and would put some of our most iconic species at risk of disappearing forever.

For these reasons, we urge you to oppose S.J. Res. 9 when it comes to the floor.

Sincerely,

Center for Biological Diversity

Animal Welfare Institute

Bat Conservation International

Buffalo Field Campaign

Christian Council of Delmarva

Defenders of Wildlife

Endangered Habitats League

Endangered Species Coalition

FOUR PAWS USA

Friends of Ballona Wetlands

Friends Of Blackwater, Inc.

Friends of the Earth

Heartwood

Howling For Wolves

Humane Action Pennsylvania

Humane Action Pittsburgh

Humane Society Legislative Fund

Kentucky Heartwood

League of Conservation Voters

North Central Washington Audubon Society

Northeastern Minnesotans for Wilderness

NY4WHALES

Oceanic Preservation Society

Partnership for Policy Integrity

Predator Defense

Primate Conservation Inc

Resource Renewal Institute

RESTORE: The North Woods

Rocky Mountain Wild

Standing Trees

The #RelistWolves Campaign

The Humane Society of the United States

The Rewilding Institute

The Urban Wildlands Group

Western Watersheds Project

WildEarth Guardians

World Animal Protection

Zoo New England: Franklin Park Zoo & Stone Zoo

1. Pub. Law 97-304, Oct. 13, 1982, 96 Stat 1411. [↑](#footnote-ref-1)
2. 16 U.S.C. 1533(b)(5)(A)(ii). [↑](#footnote-ref-2)
3. 87 Fed. Reg. 72674, 72708, Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment, *available at*: <https://www.federalregister.gov/documents/2022/11/25/2022-25214/endangered-and-threatened-wildlife-and-plants-lesser-prairie-chicken-threatened-status-with-section>. [↑](#footnote-ref-3)