

**TESTIMONY OF  
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BEFORE THE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

*Full Committee Legislative Hearing*

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**Introduction**

Thank you for this opportunity to share our views on these bills that offer improvements to the Endangered Species Act (ESA). I applaud the sponsors for their work toward solutions that can lead to a more science-driven process for species conservation and reduction in the regulatory burdens and costs for both landowners and businesses. I particularly appreciate the leadership of Representatives Gohmert and Olson in authoring two of these bills, which would be helpful not only to Texans, but for communities across the country.

In my role as Texas Comptroller of Public Accounts, I serve as the chief steward of the state's finances, acting as tax collector, chief accountant, chief revenue estimator, and treasurer for all of state government, in addition to administering a number of other programs focused on the Texas economy. One of these programs focuses on working with community leaders, businesses, landowners, and other stakeholders to encourage, develop and implement practical, effective, science-based solutions to ESA challenges in Texas.

The ESA is a powerful law that can be inflexible and costly, with far-reaching effects on local economies. It can threaten agricultural production, oil and gas exploration, real estate development, and many other important economic activities. It can involve burdensome and expensive requirements that may not have a significant nor a lasting beneficial impact on species conservation.

I believe states need, and must be involved in, an open, transparent process for reviewing and conserving species that includes *all* stakeholders, both public and private. Engaging stakeholders is essential to getting acceptance and buy in with respect to the ESA. This is especially true in states such as Texas, where more than 95 percent of all property is privately owned. Through collaborative work with other state agencies, universities, local communities, environmental organizations, and industry stakeholders, we have developed unique expertise in how state involvement in ESA issues can facilitate species conservation while maintaining local economic health and diversity.

With my time today, I'd like to share examples of our experience that highlight the value of state involvement in the ESA decision-making process, through the gathering of additional scientific data as well as information on economic impacts. The bills under review today expand the states' ability to become involved in ESA decisions, allowing for the use of more complete science in species reviews, and providing an opportunity to balance the requirements of species management with the unique economic needs of affected communities.

## Background

As a sixth-generation Texan from a farming family, I've spent much of my time in public service focused on natural resource and private property concerns. My direct experience with endangered species issues began before my current role as comptroller. In 2007, as a state senator, I created a stakeholder-driven process to develop a plan to conserve listed species in the Edwards Aquifer and maintained an active role to assist the stakeholders as they worked through an array of extremely difficult issues. This aquifer is the primary water source for more than 2 million people in south-central Texas, serving domestic, agricultural, industrial, and recreational needs. Use of this aquifer was a source of contention among these various interests for more than 50 years.

This stakeholder-driven process led to the successful creation of a Habitat Conservation Plan (HCP) that resolved the water dispute while providing protection for listed species in the aquifer. This program received a 2013 U.S. Fish and Wildlife Service (FWS) Partners in Conservation Award for its success in using collaboration and partnership to address endangered species and water-resource issues.

In 2009, the Texas Legislature gave the Comptroller's office its initial responsibilities in this area and when I became comptroller in 2015, I expanded our agency's existing endangered species work. Our office currently works on ESA-related issues in three areas:

- **assisting state and local agencies and stakeholders.**

The Comptroller's office works with state agencies, local communities, private landowners, and businesses to facilitate science-based, collaborative solutions to ESA challenges. As part of this role, I serve as the presiding officer of our state's Interagency Task Force on Economic Growth and Endangered Species. The task force, created by the Texas Legislature in 2009, helps state agencies, local governments, communities, and other stakeholders work within ESA restrictions as efficiently and cost-effectively as possible.

- **gathering new scientific data.**

Our agency administers \$15 million in appropriations to fund research on little-known species under consideration for ESA listing. We contract with public state universities for scientific research on species being considered for protection under the ESA, thus filling gaps in our understanding of the species, while also ensuring that federal regulators have the most complete and reliable information possible before making decisions that can have a profound effect on private property rights and local economies. This research is reviewed through open, transparent discussions and updates with stakeholder workgroups comprising of landowners, industry and environmental representatives, FWS, and the scientific community.

- **managing conservation plans.**

The Comptroller's office holds the permit for the Texas Conservation Plan (TCP) for the dunes sagebrush lizard, whose habitat includes portions of the Permian Basin, one of the nation's most important oil and gas production areas. This 30-year program offers energy producers and landowners regulatory certainty in exchange for implementing specific conservation measures for the lizard. Since the TCP's implementation, fewer than 300 of 200,000 acres of its Texas habitat have been disturbed by program participants. FWS cited the TCP favorably in its 2012 decision not to list the species.

Working with stakeholders, state and federal agencies and researchers, the Comptroller's office has achieved numerous successes that demonstrate the value of state input and meaningful participation in ESA programs. To date, our efforts include:

- contributing scientific data that led to an FWS decision not to list the Sprague's pipit, a migratory bird that winters in large portions of South and West Texas with agricultural and oil and gas operations.
- establishing a nationally recognized monarch butterfly research program to gather data on the species and its habitat across its migratory pathway in Texas. If the monarch butterfly is listed under the ESA, communities and numerous economic sectors across the country could be significantly affected.
- developing a comprehensive research initiative to study the status of and threats to freshwater mussels in our state, and to identify conservation approaches to minimize the impact of a potential listing. If a listing of these species requires specific flows in our watersheds, our ability to develop and manage the state's water resources could be affected dramatically, threatening the availability of municipal, industrial, and agricultural water supplies during droughts.

Our efforts are intended to ensure FWS has the most complete information possible to make more informed decisions, while strengthening the role of stakeholders and the state in those decisions.

Through this work, we've identified three key areas for enhancing species conservation. These include: 1) a meaningful role for state involvement in aspects of ESA implementation to provide for more effective outcomes, 2) state-sponsored data gathering to ensure better science-based decision-making, and 3) the need for a consideration of economic impacts in listing and conservation decisions. Through all of these areas, management, transparency, and fairness are absolutely critical.

### **State Involvement and Leadership Provides More Effective ESA Outcomes**

Meaningful incorporation of state input to ESA programs, including close coordination and the use of state expertise, can greatly improve species outcomes. States have unique relationships and infrastructure in place to work with landowners, communities and industries effectively. Through their universities, they also have access to a wealth of research data, monitoring initiatives and other resources that can lead to better listing decisions.

In Texas, we work with a number of agencies that have expertise on conservation issues and support research and initiatives on species of concern. The Texas Parks and Wildlife Department, for instance, is charged with protecting our state's fish and wildlife resources. The Texas Commission on Environmental Quality oversees the management of state water quality. The Texas Department of Transportation funds research on species of interest that may be affected by road projects. The Texas State Soil and Water Conservation Board provides technical assistance to landowners and administers water quality and pollution prevention programs. The Texas General Land Office manages large swaths of state land and our coastal resources. The Texas Department of Agriculture works closely with agricultural producers and is the state's lead agency in regulating pesticide use.

All of these areas of expertise are critical when addressing species of concern.

To ensure FWS and the National Marine Fisheries Service (services) make the best-informed decisions, the ESA should require them to request and *use* state agency information and participation while implementing the law. When working with states, the services should not only work closely with state agencies responsible for fish, plant and wildlife resources, but also with other state agencies that have information relevant to species status and threats, or that may be affected by ESA actions. This coordination could occur directly with individual agencies or through the governor's office in each state.

State-led initiatives offer us a tremendous opportunity to enhance species conservation, but they won't succeed without proper management and oversight. Even if everything works properly, those who *want* the process to fail will attempt to derail any success. This is why proper management is an absolute must, especially in ensuring the best available science is used.

### **Science-Based Decisions**

At present, the bulk of time and resources devoted to ESA activities is directed towards the listing process itself. Improvements to the listing process, driven by new data from the states, will increase our ability to prioritize species for review and lead to more informed decisions. It also could save time and resources needed for the development of appropriate conservation plans.

Currently, petitioners have to meet a *very* low bar in terms of species information needed to start the listing process. The services must make their initial listing decision, called a 90-day finding, based on data submitted by the petitioner as well as readily available information. This lack of access to all relevant data can force the services to spend scarce time and funds on species that ultimately may not require listing. And in a state such as Texas, again largely privately owned, a positive 90-day finding can limit landowners' ability to develop and use their property even if the species isn't ultimately listed.

Because of the large number of species under review for listing, an in-depth study of every species simply is not possible. Currently, decisions on species must be made on the "best scientific and commercial data available." But often, relatively little is known about the population, range, habitat and needs of these species, providing a poor basis for decisions that can have major economic consequences. In many instances, the available data is decades old. For instance, the last study on the Chihuahua catfish, a species slated for a listing decision in 2020, was conducted in the late 1990s. Do we want to make a decision on its status based on limited data from decades ago?

The best way to ensure economically sound decisions are made is to ensure the science is good and *current*. Better decisions will have fewer impacts on state and local economies, plus ensure a more positive result for the species in question.

As I noted earlier, the Texas Legislature appropriated \$15 million in the last five years to our office to support the study of species under review for listing in our state, gather new data and fill gaps in our understanding of these species. Our office has focused this funding mainly on "game-changing" species, those species that, if listed as endangered, could involve significant economic impacts to specific areas or important economic sectors. I'd like to provide the following examples of this work, as well as the diverse set of regions and stakeholders included

in our programs. This work is being conducted openly and transparently, and research conducted with state funding is subject to rigorous peer review.

- Twelve different freshwater mussel species found in Texas river basins are under review for listing. We have allocated more than \$3.6 million to support research on their distribution and genetics, and on appropriate conservation tools. River authorities, agriculture groups, environmental organizations and energy producers are all involved in our stakeholder process to fine-tune the science and identify conservation opportunities.
- Because of the importance of Texas landscapes to the monarch butterfly along its migratory pathway, and the large number of economic sectors that may be affected if this species is listed, we funded more than \$1 million in research to increase understanding of the butterfly in Texas. Stakeholders involved in this working group include communities, scientists, agricultural interests, environmental groups, landowners and industry representatives.
- The spot-tailed earless lizard is found in the Permian Basin and the Eagle Ford shale, two important oil and gas producing areas in Texas. Our office has funded nearly \$2 million in research to identify additional habitat areas, learn more about threats to the species, and discuss potential conservation efforts that may be needed, in partnership with farmers, landowners, environmentalists, and the oil and gas industry.
- The Louisiana pine snake historically was found in longleaf pine forests in important timber-producing areas of East Texas. This snake, currently proposed for listing as threatened, has not been seen in Texas since 2012. We supported research to determine if any additional snakes could be found in the state. We are working closely with the state wildlife agency as well as the forestry industry to develop ways to manage habitat in the snake's historical range while still continuing timber activities.

Our job here is *not* to be scientists. Rather our job is to understand the ESA and the science required for it, as well as the species themselves, and to communicate effectively with researchers so we can make sure their work is useful to FWS in its decisions. Even so, the staff members managing our endangered species work do have scientific and legal backgrounds related to species conservation. Dr. Robert Gulley, director of our Economic Growth and Endangered Species Management Division, has a doctorate in anatomy with over a decade of work in biomedical research as well as more than a quarter-century of experience as an environmental attorney, including serving seven years working on ESA cases as senior trial attorney at the U.S. Department of Justice. In addition, his staff members have scientific and conservation backgrounds.

### **Economic Considerations *Must* Be a Part of the Discussion**

I believe that you cannot make fully informed decisions regarding species without considering the economies of the regions where they live. There *is* a link between environmental protection and economic success. For example, communities and businesses often rely on the same resources for economic growth, such as clean water, that the species needs to remain viable. As the ESA is written, however, there is very little space for economic considerations. This omission is remarkable in light of the potential impacts on our nation's resources.

In many voluntary conservation programs, stakeholders include economic considerations to create successful programs. In the case of the Edwards Aquifer program, for instance, a key portion of the program involved compensating farmers in the western range of the aquifer for restricting water use in times of drought, thus making more water available for the species. For

the dunes sagebrush lizard, industry participation resulted in a plan that minimized oil and gas drilling and infrastructure in the lizard's habitat, while allowing for some continued activity for an industry that is vital to our state economy and state tax revenues.

To create similar successful outcomes under the ESA, as the services review species for listing, they *must* be able to take into account economic factors, especially when analyzing the scope and scale of potential threats to a species. To adequately consider these threats, the services should incorporate economic data on the *future* development of industries that may be affecting the species, and take into account any potential changes to industrial technology that may decrease the impact on the species. Services staff often do not have significant expertise in these economic areas. Engaging stakeholders is one of the best ways to gather this important economic data to make more informed decisions.

The consideration of economic impact in critical habitat designations is an example of how the ESA can effectively take into account economic impacts. An area can be excluded from critical habitat designation if it is deemed the benefits of exclusion outweighs the benefits of designating the area. Economic impacts is a part of the basis for this decision. This consideration of economic impacts should be included in listing decisions, especially in cases of threatened designations where the ESA already provides the ability to craft flexible approaches to provide a benefit to the species.

### **Bills Will Encourage Conservation**

The bills before you today incorporate many of these concepts I've discussed — state coordination, transparency, usage of more complete data, an open process, reduced regulatory burdens, and consideration of economic impacts. I believe they are very important bills and an important step towards more effective species conservation.

The Listing Reform Act by Representative Olson (H.R. 717) provides time for science based decisions and acknowledges the importance of economic considerations. Giving the services flexibility in reviewing petitioned species rather than requiring adherence to a strict and arbitrary deadline allows them to make better use of limited resources and work first on species truly in need. This flexibility also gives the services additional time to receive more complete data from the states and other parties to give them a more complete view of the status of the species. And allowing for consideration of significant, cumulative economic effects that could result from a threatened listing decision or designation of critical habitat provides opportunities to further engage with industry and other stakeholders in developing effective conservation programs for species in important economic areas.

Representative Gohmert's Saves Act (H.R. 2603), delisting non-native species, takes into account stakeholder input and economic considerations to provide additional opportunities for species conservation, reduces the federal regulatory burden on those working to conserve species, and allow for continued economic activities in our local communities.

Representative Newhouse's bill, the State, Tribal and Local Species Transparency and Recovery Act (H.R. 1274), directing the services to incorporate state, local and tribal data in its decisions is key to opening up the process and ensuring more complete data. The Gray Wolf State Management Act of 2017 by Representative Peterson (H.R. 424) is another bill emphasizing the importance of state involvement in managing species within their borders.

Finally, while Texas handles a large amount of litigation, our office isn't heavily involved in this process. Even so, we support efforts such as the Endangered Species Litigation Reasonableness Act (H.R. 3131) by Representative Huizenga to bring more equity into the litigation process. The proposed changes should minimize litigation by ensuring attorney fees are only awarded to those parties who prevail in the litigation.

### **In Closing**

These bills and my comments today address several significant changes that can be made to improve the ESA's effectiveness, but it should only be part of a larger effort to modernize a statute that has received too little Congressional reform over the years. Many groups across the country, including the Western Governors' Association, have developed proposals to encourage proactive, voluntary science-based species conservation and ESA implementation. In general, these recommendations align with our thoughts on how to improve the ESA. I encourage you to review their recommendations and incorporate them in future legislation as you continue your work on this very important issue.

My office will remain engaged in working with stakeholders and continue funding research on species to develop collaborative, transparent solutions. We are available as a resource to you and your staff as you continue your work. I look forward to working with you as you move forward in making the ESA a more workable and effective tool for species conservation, while still allowing economic opportunity for our communities and citizens.