



Testimony of Todd Staples, Texas Agriculture Commissioner Before the United States House Committee on Natural Resources

On H.R. 4284
September 9, 2014

Good morning, Chairman Hastings, Ranking Member DeFazio and members of the Committee. My name is Todd Staples, and I serve as the Texas Agriculture Commissioner. Thank you for the opportunity to testify on Congressman Neugebauer's H.R. 4284, the "ESA Improvement Act of 2014."

I commend and appreciate the leadership of Chairman Hastings and the members of the House Committee on Natural Resources in their pursuit of reforming the Endangered Species Act (ESA).

The ESA regulatory system has evolved into a rare conundrum where the burden of proof, and related costs, is placed on landowners or communities to prove a regulatory action is not necessary; instead of placing that burden on the regulatory agency to prove the benefits of the regulations would outweigh the costs. This results in numerous regulatory burdens being enforced with certain costs but obscure benefits. Add to that the fact that activist groups are driving this regulatory scheme and it's not hard to see how the ESA, in its current form, contradicts basic American scientific regulatory standards, and our basic sense of justice as costs are unnecessarily and unfairly shifted to private individuals in an attempt to achieve a public good.

Even worse than the cost-benefit discrepancy is how success is measured by ESA. Since 1973, more than 1,500 domestic species have been listed for protection under ESA. Yet in that same time, less than two percent of species have been de-listed. If our goal is to preserve species, shouldn't a measure of success be the number of species propagated to a de-listing level?

The vast Texas landscape is rich and diverse, and our citizens have long taken tremendous pride in protecting our cherished natural resources. Approximately 95 percent of Texas land is privately owned. Texas leads the nation with over 130 million acres devoted to farms and ranches. Our landowners are responsible for managing the natural resources, which help sustain our state's population of 26 million; feed and clothe the world; provide a healthy environment; and create the jobs that power our dynamic economy. In Texas, we believe in sound decision making, private property rights and the fact that government is not the answer to every problem. Over time, ESA has evolved to conflict with these principles and has been a source of concern for Texans for decades.

Greater state and local authority over species and habitat management is one way to fix the ESA. Under the current law, far flung activist groups have hijacked the process of listing species as endangered. At the same time, input from local, state, and regional officials — the very people impacted by listing decisions — is not required for such action. Activists have successfully gamed the system. This has led to burdensome and ineffective federal management of species, while collaborative conservation efforts by states have been ignored. Local, state and regional officials are better equipped and should be given the opportunity to coordinate species management efforts with stakeholders.

As all biological systems are in flux, local authorities and scientists can respond more quickly and effectively than the federal government to the constant changes with the endangered and threatened species ecosystems. This is better for the species, too, as local residents and authorities know the species best.

I support the reforms put forth in H.R. 4284 that would require the U.S. Fish and Wildlife Service (FWS) to coordinate with interested states on a "State Protective Action" (SPA) and approve it if it meets established criteria. SPAs would preclude the need for a listing in many circumstances and keep species management authority at the state and local level where stakeholders and species can be simultaneously better protected.

The saga of the Lesser Prairie-Chicken (LPC) is a prime example of what an SPA could prevent in the future. Despite years of painstaking work by states, municipalities, farmers, ranchers, energy developers, including millions of dollars and acres invested into a range-wide conservation plan, this March FWS proceeded to list the LPC as threatened under ESA. Stakeholders in Texas, New Mexico, Oklahoma, Kansas and Colorado were shocked given FWS issued a press release back in October 2013 touting their plan as “a model for state leadership in conservation of a species proposed for listing under the ESA.” It’s clear the system isn’t working as designed if voluntary conservation plans like the range-wide plan, which was supported by FWS, is not enough to prevent a listing.

Looking back, Texas appears to have dodged a bullet in 2012 when industry and private landowners developed a conservation agreement for the Dunes Sagebrush Lizard (DSL). This agreement was approved by FWS. Fortunately, state and agriculture stakeholders, along with the oil and gas industry, partnered together to invest in a study that followed scientific processes and identified previously unknown areas of habitat for the DSL. This study demonstrated to FWS that the call for listing the DSL as endangered was both unfounded and unwarranted. Texas leads the U.S. in the production of crude oil with thirty-six percent of total U.S. production. The listing of the DSL would have been devastating not just to our economy, but to every American worker who pays a gas bill every month.

Currently, more than a hundred species of plants and animals are listed as federally threatened or endangered in Texas. Alarming, our state could experience a dramatic increase in listings in the coming years. 77 species in Texas are presently being considered for listing, meaning future designations could result in large swaths of Texas being declared habitat for endangered or threatened species, resulting in one of the largest land and water grabs in modern times. With a history that includes decimation of agriculture to protect the spotted owl and the delta smelt, the time for Congress to stop the abuse of ESA is now. In fact, it’s never been more pressing.

Texas will have a difficult time enduring the burden of regulation and possibility of over-litigation should the endangered species list grow. In 2010, Texas was sued by a group alleging a “taking” of the endangered whooping crane during the 2008-2009 drought. Ultimately, the defendants — the Texas Commission on Environmental Quality, Guadalupe-Blanco River Authority (GBRA), San Antonio River Authority and the Texas Chemical Council — spent millions of dollars in legal fees and thousands of man-hours defending the state’s water system and the rights of the water users against this frivolous claim, and ultimately prevailed. This is a crystal clear example where there was zero benefit for a species and outrageous expenses to taxpayers. The time and money spent in this one case could have gone towards proven species management practices and prosecuting true violations of environmental laws.

We have seen success with state- and landowner-led conservation efforts. A prime example of state-led conservation is the Recovery Credit System for the endangered golden-cheeked warbler. The Texas Department of Agriculture convened a working group in 2005 in response to a FWS Biological Opinion, which recommended Fort Hood’s participation in an off-site conservation program. Fort Hood maintains programs to protect habitat on base. However, training activities inherently risk destroying surrounding habitat. To mitigate such losses, a recovery credit system was developed where private landowners with qualifying habitat in surrounding counties enter into contracts and work with specialists to determine species management practices for the enhancement of suitable golden-cheeked warbler habitat. I might point out this process brought together a diverse group of stakeholders who often have adverse opinions but the process allowed for constructive collaboration to address a challenge that resulted in a benefit to the species and, remarkably, landowners volunteering to collaborate.

The fact is that Texas landowners understand the value of natural resource preservation. Take the exotic wildlife managers and their actions toward the scimitar-horned oryx, addax and dama gazelle. Near extinction in their native Africa, the three antelopes have thrived under the management of Texas ranchers and to the benefit of wild populations. In 1979, there were 32 scimitar-horned oryx in a Texas breeding program. Since then, that number increased to approximately 9,000 animals. The population of addax has grown from two known animals in 1971 to more than 4,000. Less than 10 dama gazelles were in Texas in 1979; propagation efforts by private landowners have resulted in a population growth to close to 900 today.

While FWS is overwhelmed by litigation, states and landowners are eager to lead. I strongly encourage FWS to work with state and local leaders to ensure that proper species management throughout Texas and the nation.

I applaud the Committee's work on H.R. 4284 as well as H.R. 4315, the "Endangered Species Transparency & Reasonableness Act" which passed the House in July. As your committee continues to discuss ways to improve species conservation, I support legislative efforts that aim to:

- Revise the provisions of ESA to establish a more rigorous scientific data threshold in determining the status of a species.
- Ensure the party initiating a listing is responsible for demonstrating the need for such designation. This contrasts with current practices in which property owners facing the regulations that accompany a listing carries the burden of proving a species is not threatened or endangered.
- Require flexibility in conservation plans so all stakeholders impacted by a species listing have the opportunity to benefit from and participate in activities that protect and promote the targeted species.
- Prevent federal agencies from settling listing lawsuits without the consent of affected parties.
- Reform the Equal Access to Justice Act to prevent abuse by activist groups and establish a "loser pays" clause to prevent frivolous lawsuits.
- Provide a clear process for analyzing the costs and benefits of a listing during the initial stages of the process. This analysis should demonstrate that the objective, quantifiable benefits of listing a species outweighs the cost of implementation and the restrictions placed on affected stakeholders.
- Prohibit FWS from regulating activities that lead to the propagation of the species.
- Refocus ESA on species recovery and proliferation.

In closing, I urge Congress to take action to provide true relief to the people of Texas and the United States. Compared to other states, Texas has a broad variety of ecosystems. From coastal prairies to pine forests to deserts and mountains, our ecological profile is enormous. Our state is sincerely committed to responsible and sustainable stewardship of plants and animals that balances survival of both man and our environment, and in a manner that does not punish individual land owners, and violate their Constitutional rights.

Thank you for the opportunity to appear before you today.

