

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

September 24, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff — John Strom (x57107)

Hearing: Legislative hearing on **H.R. 6344 (Rep. Scott Tipton)**, to amend the Endangered Species Act of 1973 to encourage voluntary conservation efforts.
September 26, 2018, 2:00PM; 1324 Longworth House Office Building.

H.R. 6344 (Rep. Scott Tipton), “Land Ownership Collaboration Accelerates Life Act of 2018 or the “LOCAL Act of 2018”

Bill Summary

H.R. 6344 is a bipartisan bill to codify several longstanding practices and regulatory language that facilitate voluntary conservation through programs such as species recovery agreements and habitat reserve agreements. These two voluntary conservation programs empower the Secretary of the Interior and the Secretary of Commerce to enter into agreements with non-federal landowners to offset, at least, a portion of the costs associated with conserving endangered and threatened species under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.). Both programs also contain monitoring, reporting, and technical assistance provisions to ensure that the non-federal landowners can and are fully implementing the agreements.

H.R. 6344 also establishes a grant program and no interest loan program to encourage non-federal landowners to undertake voluntary conservation of endangered or threatened species and reduce ESA-related burdens imposed on private property owners. Grants are limited to activities that directly promote the conservation of endangered species. Priority for funding is given to applicants proposing activities that promote conservation of listed species while continuing to make economic and productive use of the land. Under the habitat conservation planning loan program, the Secretaries may make 10-year no-interest loans to assist in the creation of a habitat conservation plan pursuant to section 10(a) of the ESA.

Cosponsors

[22 Cosponsors](#)

Invited Witnesses (In alphabetical order)

Mr. Robert Dreher
Senior Vice President
Conservation Programs & General Counsel
Defenders of Wildlife

Mr. Jamie Johansson
President
California Farm Bureau
Sacramento, CA

Mr. Gregg Renkes
Director
Office of Policy Analysis
U.S. Department of the Interior
Washington, DC

Mr. David Sauter
County Commissioner
Klickitat County
Lyle, WA

Mr. Jonathan Wood
Attorney
Pacific Legal Foundation
Washington, DC

Background

The Endangered Species Act of 1973

The Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) sets out the broad goal of conserving and recovering species facing extinction. The law authorizes federal agencies to identify imperiled species and list them as either threatened or endangered as appropriate.¹ The law further requires agencies to take necessary actions to conserve those species and their habitats.² The Secretary of the Interior, through the U.S. Fish and Wildlife Service (FWS), has responsibility for plants, wildlife and inland fisheries. The Secretary of Commerce, through the National Marine Fisheries Service is responsible for implementing the ESA with respect to ocean-going fish and some marine mammals.³ Congress made its most significant amendments to ESA in 1978, 1982, and 1988, although the overall framework has remained essentially unchanged since its original enactment in 1973.⁴

Despite the worthy goal set out by the ESA to conserve and protect species, in the 44 years since its enactment, less than 2 percent of species have recovered enough to warrant removal from the list of endangered and threatened species.⁵ In fact, many of those species were delisted after it

¹ 16 U.S.C. 1533.

² *Id.*

³ CONG. RESEARCH SERV., RL31654, THE ENDANGERED SPECIES ACT: A PRIMER 15 (2016).

⁴ A History of the Endangered Species Act of 1973, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, https://www.fws.gov/endangered/esa-library/pdf/history_ESA.pdf (last visited Sept. 18, 2018).

⁵ ECOS Environmental Conservation Online System, Listed Species Summary (Boxscore), U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/box-score-report> (last visited Sept. 19, 2018).

was discovered that federal agencies used erroneous data in the original listing.⁶ In total, to date there have been 2,334 listings⁷ under the ESA. In that time the Secretaries have delisted 72 species, but only 42 distinct species have been removed, either entirely or partially throughout their range, due to population recovery.⁸

In addition to failing to achieve meaningful recovery for species, implementation of the ESA disincentivizes conservation and can lead to increased conflict between people and species through unpredictable and expansive restrictions on land use.⁹ Excessive litigation and a lack of transparency in federal ESA decision-making has only exacerbated these problems and reduced the ESA's effectiveness in recovering species.¹⁰

In many cases, implementation of the ESA has caused increased burdens for those living in close proximity to the protected species.¹¹ Often States and local communities have the most knowledge about the species located in their State and can bring the greatest amount of resources to conservation efforts.¹² They are eager to stabilize species populations to prevent listings that can have a major economic impact on State and local communities through restrictions on land use.¹³ Yet, too often federal management of threatened and endangered species fails to take advantage of the wealth of knowledge of State and local officials and of the successful conservation measures implemented by States.¹⁴

Despite these shortcomings in how the ESA has been implemented since its enactment, the ESA and its overall goal of conserving and recovering species remains widely popular and accepted.¹⁵ ESA modernization should prioritize effective species recovery while maintaining the core principles of the Act.

⁶ ECOS Environmental Conservation Online System, Delisted Species, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/delisting-report> (last visited Sept. 19, 2018).

⁷ *Supra*, note 5.

⁸ *Supra*, note 6.

⁹ COMMITTEE ON HOUSE NATURAL RESOURCES, ENDANGERED SPECIES ACT CONGRESSIONAL WORKING GROUP, REPORT FINDINGS AND RECOMMENDATIONS, (2014) available at https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf; See also: *Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115th Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) available at https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf.

¹⁰ *Hearing on Examining Policy Impacts of Excessive Litigation Against the Department of the Interior, Before the Subcomm. on Oversight & Investigations of the H. Comm. on Natural Resources*, 115th Cong. (2017), available at https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_06.28.17.pdf.

¹¹ *Supra*, note 9.

¹² *Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115th Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) available at https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf.

¹³ *Id.*

¹⁴ See e.g., Letter from John Hickenlooper, Governor, State of Colorado, and Matt Mead, Governor, State of Wyoming, to Steve Ellis, Deputy Director, Bureau of Land Management, U.S. Dep't of the Interior, and Leslie Weldon, Deputy Chief, National Forest System, U.S. Forest Service, U.S. Dep't of Agriculture, Sept. 29, 2014, available at http://westgov.org/images/editor/LTR_GSG_Rollup_Mtgs_FINAL.pdf.

¹⁵ See e.g., Memo from Ben Tulchin, Ben Krompack, and Kiel Brunner, Tulchin Research, to Interested Parties, Jul. 6, 2015, available at <https://earthjustice.org/sites/default/files/files/PollingMemoNationalESASurvey.pdf>.

In its current form, the ESA does not prevent voluntary conservation efforts by non-federal landowners. However, the ESA and its accompanying regulations often fail to incentivize voluntary conservation efforts. Too often landowners are penalized through costly regulatory burdens and land use restrictions that lead to decreased property values and expensive mitigation requirements.¹⁶ Private landowners provide a significant majority of habitat for listed species,¹⁷ and instead of acting as a disincentive to conservation, the ESA should work to provide incentives to utilize private landowners as key partners in recovering species.

Voluntary conservation efforts can provide substantial results for species recovery.¹⁸ One recent example is the voluntary creation of the Gopher Tortoise Initiative, which brought together the State of Georgia, FWS, local industries, and environmental groups to work on raising \$150 million to preemptively recover the species through habitat restoration and tortoise reintroduction.¹⁹ This is just one of many projects that exemplify how voluntary conservation is an effective practice that merits inclusion in the ESA. The LOCAL Act would work to incorporate additional voluntary conservation measures under the ESA by providing federal wildlife managers with additional tools to facilitate species recovery by encouraging non-federal landowners to commit their land to long-term conservation projects.

Under the LOCAL Act, the Secretaries would have the authority to enter into species recovery agreements (SRAs) with non-federal landowners for a minimum period of five years. SRAs obligate the non-federal landowner to implement a management plan designed to contribute to species recovery. In exchange for fully implementing the management plan, the landowner is eligible to receive an annual payment covering a percentage of the annual costs of the SRA. Payments range from 60 percent of the annual cost in the case of a 10-year agreement to 100 percent in the case of a 30-year agreement.

Similarly, habitat reserve agreements (HRAs) will allow the Secretaries to enter into contracts or easements with non-federal landowners to make payments in exchange for the landowner carrying out the terms of the HRA. The Secretaries must issue standards and guidelines for the development and approval of HRAs. Activities otherwise required under the ESA are not eligible for inclusion in HRAs. For each of the fiscal years 2019-2024, the LOCAL Act authorizes \$27,500,000 to be appropriated by the Secretary of the Interior and \$13,333,333 to be appropriated to the Secretary of Commerce to carry out the HRA program.

The second component of the LOCAL Act creates two new incentive programs for voluntary conservation by establishing a private party conservation grants program and a habitat

¹⁶ Jonathan Wood, THE ROAD TO RECOVERY, PROPERTY AND ENVIRONMENT RESEARCH CENTER, (2018) *available at* <https://www.perc.org/wp-content/uploads/2018/04/endangered-species-road-to-recovery.pdf>, at 14.

¹⁷ *Id.*

¹⁸ See e.g., The 2014 Lesser Prairie-Chicken Range-wide Conservation Plan Annual Progress Report, Western Association of Fish and Wildlife Agencies, (2015) *available at* https://www.wafwa.org/Documents%20and%20Settings/37/Site%20Documents/Initiatives/Lesser%20Prairie%20Chicken/LPC%20Annual%20final%20report%20033312015_FINAL%202.pdf.

¹⁹ *Supra*, note 16; see also: Gopher Tortoise Initiative, THE GEORGIA CONSERVANCY, <https://www.georgiaconservancy.org/gophertortoise/> (last visited Sept. 19, 2018).

conservation planning loan program for State and local governments. Private party conservation grants are paid to private landowners to offset the burden of ESA conservation measures and to benefit listed species. Eligible landowners must provide documentation that their proposed use of the land at issue may result in the taking of a listed species. Conservation aid disbursed under this program is based on the agreed on fair market value of the foregone proposed use of the land. The habitat conservation planning loan program makes available no interest loans to local and State governments to assist in the development of habitat conservation programs as required under section 10 of the ESA.

Major Provisions of H.R. 6344

Section 3. Threatened and Endangered Species Incentives Program. Section 3 amends section 5 of the ESA to empower the Secretaries to enter into species recovery agreements with non-federal landowners to contribute to the recovery of one or more listed species and protect, enhance, or restore land to become habitat for a listed species.

Section 4. Habitat Reserve Agreements. Section 4 amends section 10 of the ESA to direct the Secretaries to establish a program for entering into habitat reserve agreements with non-federal landowners to protect, manage, or enhance suitable habitat on private property for the benefit of endangered species or threatened species. The Secretaries shall issue standards and guidelines for the development and approval of habitat reserve agreements. Up to \$27,500,000 is authorized to be appropriated to the Secretary of the Interior and \$13,333,333 is authorized to be appropriated to the Secretary of Commerce for each of the fiscal years 2019 through 2024 for this program.

Section 5. Private Party Conservation Grants. Section 5 amends section 13 of the ESA to authorize the Secretaries to provide conservation grants to promote voluntary conservation of listed species by private, non-federal landowners by using financial conservation aid to reduce the burden of conservation measures imposed on private property owners by the ESA. The Secretaries are also authorized to provide requested technical assistance to private landowners to enhance the conservation effects of the grants.

Section 6. Habitat Conservation Planning Loan Program. Section 6 amends the ESA to establish a no-interest loan program to assist the development of conservation plans under section 10(a) of the ESA. The term of any loan issued is 10 years. If no conservation plan is developed within 3 years of the date of the loan, the loan's term is reduced to 4 years. If no incidental take permit is issued within 4 years after the date of the loan, the loan's terms is reduced to 5 years.

Cost

The Congressional Budget Office has yet completed a cost estimate of this bill.

Administration Position

Unknown.

[Effect on Current Law \(Ramseyer\)](#)