

**Opening Statement for Chairman Labrador
House Committee on Natural Resources
Subcommittee on Oversight and Investigations**

“ESA Consultation Impediments to Economic and Infrastructure Development”

March 28, 2017

Many, including myself, strongly believe that the Endangered Species Act, last authorized nearly 30 years ago, is in serious need of reform. That is a priority that I expect the full Natural Resources Committee, under Chairman Bishop’s leadership, to explore later this Congress. Today’s hearing will examine one specific section of the Act, and provide more evidence of just how dysfunctional and problematic the Endangered Species Act, and its implementation by the federal government, has become.

Nearly every imaginable action with a federal nexus—including thousands of activities critical to the development of our nation’s infrastructure, energy, and resources, must undergo a “section 7” consultation with the Fish and Wildlife Service, the National Marine Fisheries Service, or both. This includes activities such as building and maintaining roads, bridges, schools, water facilities, hydropower dams, electrical transmission lines, grazing, mining, forest thinning, and even fire suppression efforts. Because so much discretion is left to these federal agencies to determine whether a species is present, how they may be impacted by the project, and what must be done to avoid impacts, the regulatory impediments are sweeping.

Worse, even when project applicants have, in good faith, sought to follow the section 7 process, the threat of litigation always looms, and can impact the results of the process. Such unnecessary litigation does not help protect species, and instead serves only to enrich private interests, draw resources away from conserving species and habitats, and prevent the law from working as intended.

Indeed, the Endangered Species Act has become a lawyer’s dream. Lawsuits extort mitigation requirements that are unrelated to projects as the price to complete consultation. Lawsuit after lawsuit can result in blocking a project entirely. And, taxpayers foot the bill, paying tens of millions of dollars in attorneys’ fees and grants to certain groups to file endangered species lawsuits. One of the groups testifying here today, the Defenders of Wildlife, has been party to more than 80 Endangered Species Act-related lawsuits in just the past five years.

In theory, project applicants should expect to navigate—or at least be given certainty of—the outcome of the consultation process within 135 days or less, but that is rarely what

happens. Projects are stalled, federal agencies force costly surveys or studies, and often require questionable or unattainable mitigation measures, sometimes at a cost of millions of taxpayer dollars, all due to section 7. Consultations are frequently handled inconsistently between service regions, and are often delayed by local service employees.

We will hear testimony today about one egregious example of a mining project, that would have generated many local jobs and benefits to rural Montana, that was held up in the processes for 30 years due to the Services' shifting requirements during its section 7 consultation.

A 2015 study found that 20% of formal consultations undertaken by the Fish and Wildlife Service between 2008 and 2015 went well beyond the statutory 135-day timeframe. The National Marine Fisheries Service has a far worse record, with just over 70% of their formal consultations exceeding required deadlines. In addition, the Services often unilaterally delay the start or the end of consultation—sometimes requiring projects to undergo years of studies, lengthy extensions, and negotiations before starting the clock on the consultation process.

Inconsistency, increased process and legal costs, and a lack of certainty about the consultation process severely hinders our nation's ability to provide necessary public services and discourages investment in critical projects needed to boost our economy. Reform is needed to improve consistency between regions, adherence to timelines, and to hold the employees of the services accountable for completing consultations in an efficient, timely, and effective manner.

I look forward to hearing from the witnesses here today, and am appreciative of their willingness to share their stories and expertise regarding the flaws in the ESA consultation process.