**STATEMENT OF**
**P. LYNN SCARLETT, DEPUTY SECRETARY,**
**U.S. DEPARTMENT OF THE INTERIOR,**
**BEFORE THE**
**HOUSE COMMITTEE ON NATURAL RESOURCES,**
**REGARDING**
**IMPLEMENTATION OF THE ENDANGERED SPECIES ACT OF 1973**

**MAY 9, 2007**

Mr. Chairman and Members of the Committee, thank you for inviting me to appear before you today to discuss the Department of the Interior's implementation of the Endangered Species Act of 1973 (ESA). Secretary Kempthorne, the Department, and the U.S. Fish and Wildlife Service strongly embrace effective implementation of the ESA to fulfill its goals.

**A Commitment to Recovery**

Secretary Kempthorne's success in addressing complex issues springs from his bipartisan approach to solutions. While a United States Senator representing the State of Idaho, he worked cooperatively with then-Secretary Babbitt on legislation, S. 1180, the Endangered Species Recovery Act of 1997, legislation that emphasized species recovery.

The legislation was successfully reported by the Senate Environment and Public Works Committee although it was ultimately not enacted. Secretary Kempthorne's bill set strict requirements for prioritizing and developing recovery plans for listed species; required that listing decisions be based on empirical, field-tested, and peer-reviewed scientific data; and provided incentives and opportunities for states, landowners, and the public to

participate in decision-making. These goals remain the centerpiece of Secretary Kempthorne's vision for implementation of the ESA.

At his confirmation hearing before the Senate Energy and Natural Resources Committee last spring, then-Governor Kempthorne reiterated his strong desire to work collaboratively on ESA issues. He stated at that hearing, "I am intent upon saving species. I am not content with triage, where you simply say that they are endangered and then you move on to list the next species. I will always ask, 'What are we doing to actually restore species, instead of just listing them?'" Throughout his career as a Senator and Governor, the Secretary has focused on species recovery.

**Background**

Some of the discussion today will no doubt focus on a draft of regulatory concepts obtained and published by an online magazine a little more than a month ago. That document was largely the product of discussions, in 2005, among agency officials of the Departments of the Interior and Commerce about ways to improve the ESA.
It was a deliberative document that was not yet complete, nor had it been formally reviewed within the Department or by other relevant agencies, and not issued as a formal proposal. Many concepts at that time remained unresolved and under critical discussion.

After Secretary Kempthorne's confirmation in May 2006, he directed that the Department, with other agencies, seek ideas on Cooperative Conservation and a range of issues. This effort culminated in 25 Cooperative Conservation Listening Sessions, held

throughout the country, where more than 30,000 people provided their input and ideas, through either written or spoken comments, on a range of issues, including the ESA. Of the written comments received, more than 80 percent commented on the ESA, with many commenting on what they perceived as impediments to cooperative conservation.

Several consistent themes on the ESA emerged from the Listening Sessions:

- The ESA should focus on ecosystem health and species recovery;
- States should have a greater role in species protection;
- ESA tools should enhance cooperative conservation opportunities;
- ESA decisions must be informed by science;
- The ESA is often burdensome for landowners without corresponding significant benefits to species; and
- Regulatory terms and implementation practices are unclear and inconsistent.

To address these comments, Secretary Kempthorne asked FWS Director Dale Hall to assemble a group of career FWS employees with expertise in the ESA to develop draft ESA regulatory changes for consideration. The resulting draft document differs in significant ways from an earlier document circulated by salon.com.

In the 20 years since ESA regulations were originally promulgated, the Service and the National Marine Fisheries Service (NMFS) have learned a great deal about how best to implement the provisions of the Act. Recent Administrations—Democratic and Republican—along with governors, academics, and conservationists have identified

aspects of the ESA as currently implemented that limit efficiency, effectiveness and conservation results. A collaborative group composed of diverse interests last year reported to the U.S. Senate that "All agree, at least in principle, that if new approaches could be identified that would both improve the effectiveness of habitat conservation efforts for species and reduce the burden upon landowners and other regulated interests, those new approaches should be embraced." In 2005, the Administration reviewed the Service's ESA program with the Program Assessment Rating Tool (PART) and found that the program lacked adequate performance goals and was limited by strict deadlines and regulations.

Chief among the needed improvements is a faster rate of recovering species. Roughly 1,300 domestic species of plants and animals are listed as either threatened or endangered. To date, just 20 of these species have recovered and no longer need the protections of the Act. Just one out of three listed species is considered stable or improving, compared to last year.

Another opportunity for improvement is to fulfill the Act's vision of robust partnerships with states, many of whom have significant expertise in wildlife and plant biology.

Also, many landowners could be stronger conservation partners by maintaining habitat to attract at-risk species if we could clarify inconsistent practices and unclear terminology that are tangling us in litigation.

Consider designation of critical habitat, which has received significant attention and critique in recent years. Former Secretary Bruce Babbitt wrote in a *New York Times* op-ed piece shortly after leaving office that, in its struggle to keep up with court orders, the Service had diverted its best scientists and much of its ESA budget away from more important tasks like evaluating candidates for listing and providing other protections for species on the brink of extinction.

Protection of habitat is a key to sustaining and recovering endangered species. However, the critical habitat process as currently practiced under the Act is not an effective means of conserving habitat. The Service has characterized the designation of critical habitat as the most costly and least effective class of regulatory actions it undertakes.

The Service's work related to threatened and endangered species has been in large part driven by lawsuits. The Service's most current estimate shows that it has 41 lawsuits involving listing decisions for 7 species; petition findings for almost 300 species, including a majority of the candidate species; critical habitat for 6 species; and 5-year reviews for 89 species.

In sum, too much time is spent responding to litigation rather than putting in place on the ground actions to recover species. We believe available resources would be better spent focusing on actions that directly benefit species, such as improving the consultation process, developing and implementing recovery plans, and forming conservation partnerships with states, tribes, and private landowners.

**Improving Administration of the ESA**

The Department has greatly improved ESA administration and protecting species, yet effectiveness remains constrained under current rules. Under the banner of the Department's Cooperative Conservation Initiative, a host of grant programs promote partnerships with states, landowners, and other citizen stewards to protect and enhance habitat for threatened and endangered species. These and related grant programs also help maintain, protect, and restore habitat in ways that help prevent the need to list species as endangered or threatened.

For example, more than $67 million in grants was provided to 27 states in 2006 to support conservation planning and acquisition of vital habitat for threatened and endangered fish, wildlife and plants. The grants, awarded through the Cooperative Endangered Species Conservation Fund, will benefit species ranging from orchids to bull trout that are found across the United States. Recovery Land Acquisition grants benefit 63 listed and 11 candidate species, including several Hawaii forest birds: the 'akepa, 'kiopo'au, and Hawaii honeycreeper. Habitat Conservation Planning grants will benefit 111 listed species and 13 candidate species, including Canada lynx, grizzly bears, bull trout, bald eagles, gray wolves, west-slope cutthroat trout and Columbia River redband trout. Habitat Conservation Plan Land Acquisition grants benefit 40 listed species and 3 candidate species including, including several core populations of federally listed plants, such as San Jacinto Valley crownscale and slender-horned spineflower.

The Department has also focused on other means of encouraging voluntary conservation. The Service uses such tools as Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, Safe Harbor Agreements, Habitat Conservation Plans and Conservation Banking, which provide for close cooperation with private landowners, state, tribal, and local governments, and other non-federal partners that are particularly important in our implementation of the ESA.

Over the past few years, the Service has improved the Recovery Program, establishing a process whereby recovery needs of species can better be prioritized and addressed by Service Regions, and developing a new recovery implementation database for better tracking of recovery actions. The Service has streamlined Section 7 consultation processes for several kinds of activities, such as hazardous fuels treatment projects, habitat restoration, and recreational activities in the Pacific Northwest, cutting completion time for consultations under the program while maintaining species protections.

We have improved the science that underlies all of our decisions, including decisions made under the ESA. I want to underscore Secretary Kempthorne's and my personal commitment to transparency, quality, and integrity of science used to inform ESA and other land management decisions. Science is the foundation of all of our conservation efforts. The Department, through the Service and the U.S. Geological Survey, has a long tradition of scientific excellence.

The FWS works closely with the U.S. Geological Survey in a science partnership to enhance the administration of the ESA by the Service. Through a Science Support Partnership program, USGS addresses priority science needs of the FWS to inform their ESA decisions. The Service and the USGS together are developing the best scientific information available for the listing determination for the polar bear.

Consistent with its long-standing policies on peer review and information standards under the ESA, the Service employs rigorous procedures to ensure that the best available science supports ESA determinations. The Department and the Service have established guidelines, following the direction of the Information Quality Act (section 515 of P.L. 106-554), to ensure and maximize the quality, objectivity, utility, and integrity of the information that we disseminate to the public. Service guidelines establish the policy and procedures for reviewing, substantiating, and correcting the quality of the information disseminated.

Under no circumstance do we promote, tolerate, or endorse suppression of scientific information. Building upon the Service's ESA peer review policy established in 1994, we also follow the guidelines for federal agencies delineated in the "Final Information Quality Bulletin for Peer Review," released by the Office of Management and Budget on December 16, 2004.

In January 2005, the Service formed a Science Committee, to strengthen collaboration on science issues throughout the Service and to help identify needs and opportunities that cut

across programs and regions. The Committee provides advice and recommendations to the Director concerning science needs, especially those related to meeting field needs for research, technical assistance, and scientific information and training.

Committee members have been chosen for their distinguished service, with every attempt made to appoint those who represent a diverse array of Service programs, regions and scientific backgrounds. The Department's goal in taking these actions is to ensure openness and transparency in the science that underlies and informs our decisions.

We also continue to address critical habitat, listing, and recovery planning priorities under the ESA. Starting in fiscal year 2004, the Service saw an increase in petition litigation. In response, the Department approved a shift of critical habitat funds to listing funds in order to comply with our petition deadlines in 2005 and 2006. The program expects continued litigation in fiscal years 2007 and 2008.

For fiscal year 2008, the Service currently anticipates making final listing determinations for 12 species and proposed listings for 8 species. In terms of critical habitat, the Service intends to publish final listing determinations for 38 species and proposed critical habitat for 12 species in fiscal year 2008. In fiscal year 2007, the Service currently anticipates publishing 17 final critical habitat rules, and 17 proposed critical habitat rules. The Service finalized critical habitat for 29 species and completed listing actions for 15 species in fiscal year 2006.

We are also rightly focused on recovery activities. For the past several years, the Service has increased the involvement of the public in recovery planning. Public involvement early on and throughout the planning process ensures recovery actions are feasible and establishes support for implementation of recovery actions following completion of a recovery plan. Scientific peer review and public review ensure plans are based on the best available science and information.

The Service has developed recovery plans on approximately 87 percent of listed species. The development of high quality recovery plans is a priority for the Service's Recovery Program. Recovery plans are essential to the effective and efficient implementation of recovery actions, not only by the Recovery Program, but by other Service programs, Departmental bureaus, other Federal agencies, and other partners.

During fiscal year 2008, the Service expects to prepare recovery outlines for species added to the list in fiscal year 2007 and to complete final recovery plans for 10 species, resulting in 88 percent of species listed 2.5 years or more having approved recovery plans in fiscal year 2008. We estimate that, in fiscal year 2007, the Service will complete final recovery plans for 11 species. In fiscal year 2006, final recovery plans for 40 species were completed, including Atlantic salmon and 20 California vernal pool species; revised final recovery plans were drafted for 19 species; and draft plans for an additional 9 species were published.

**Endangered Species Act Success Stories**

We know that the measure of success under the ESA is recovery of listed species, and the cumulative years of ESA partnerships described above are achieving good results. In recent months, the Service announced the recovery of several species that have come to symbolize the promise of the ESA: grizzly bears, wolves, and bald eagles.

***Grizzly Bears***. The Service announced at the end of March that the Yellowstone population of grizzly bears would be removed from its "threatened" status on the list of threatened and endangered species. Grizzly numbers in the Yellowstone ecosystem have increased from an estimated population of 136 to 312, when they were listed as threatened in 1975, to more than 500 bears today.

The bears will now be managed under a comprehensive conservation strategy developed by state and federal scientists and managers that includes intensive monitoring of Yellowstone bears, their food, and their habitat. The conservation strategy incorporates the best available science and allows state and federal agencies to adjust management in response to new scientific information or environmental and bear population changes. State and federal managers will continue to work cooperatively under this framework to manage and maintain healthy grizzly bear populations throughout the Greater Yellowstone area.

The grizzly bear's remarkable comeback is the result of years of intensive cooperative recovery efforts between federal and state agencies, conservation groups, and individuals. Such cooperation is necessary, for these bears require a great deal of space.

***Gray Wolves.*** Recognizing the success of gray wolf efforts under the ESA and highlighting the cooperation and collaboration among states, tribes, conservation groups, federal agencies and citizens in affected areas, the Service announced in January 2007 that the western Great Lakes population of gray wolves was being removed from the list, and that it was proposing to remove the northern Rocky Mountain population of gray wolves from the list.

When the wolf was first listed as endangered in the 1970s, only a few hundred wolves remained in Minnesota. Recovery criteria outlined in the Eastern Timber Wolf Recovery Plan include the assured survival of the gray wolf in Minnesota and a population of 100 or more wolves in Wisconsin/Michigan for a minimum of five consecutive years. The recovery plan identified 1,250 to 1,400 as a population goal for Minnesota. That State's wolf population has been at or above that level since the late 1970s, and the Wisconsin/Michigan wolf population has been above 100 since the winter of 1993-94, achieving the latter numerical goal in the recovery plan. Wolf numbers in the three states have exceeded the numerical recovery criteria established in the species' recovery plan.

The minimum recovery goal for wolves in the northern Rocky Mountains is 30 breeding pairs and at least 300 wolves for three consecutive years, a goal that was attained in 2002

and has been exceeded every year since. The Service believes that with approved state management plans in place in Montana and Idaho, threats to the wolf population will have been reduced or eliminated in those states. The northern Rocky Mountain Distinct Population Segment includes all of Montana, Idaho and Wyoming, the eastern one-third of Washington and Oregon, and a small part of north-central Utah.

While the Service has approved wolf management plans in Montana and Idaho, it has determined that Wyoming's state law and wolf management plan are not sufficient to conserve that State's portion of a recovered northern Rocky Mountain wolf population. If Wyoming's plan is not approved before the Service takes final action on this proposal, wolves would continue to be protected under the ESA in the significant portion of their range in northwest Wyoming, excluding the national parks, which have adequate regulatory mechanisms for wolf conservation.

***Bald Eagles.*** Finally, the Department continues efforts toward delisting the bald eagle, which has recovered in the lower 48 states from a population estimated at 417 nesting pairs in 1963, to a current population estimated at over 7,000 breeding pairs. The threats to the species have been reduced; reproductive success has increased to a healthy level; and the population is growing and distributed across 47 of the lower 48 states (Vermont does not currently have a nesting population of bald eagles).

In February of this year, the Service announced that the final decision on whether to delist the bald eagle would be postponed to no later than June 29, 2007. The additional

four months will give the Service time to complete additional analyses related to the final rule and put in place management guidelines and procedures that will make it easier for the public to understand ongoing Bald and Golden Eagle Protection Act safeguards, ensuring that eagles continue to thrive once delisted.

**Listening Sessions and the ESA Regulations**

After 25 Listening Sessions on Cooperative Conservation, in which the ESA was mentioned more than any other issue, the Service assembled a group of career employees, including Assistant Regional Directors from across the country and employees in the Washington Office's Endangered Species program, along with career professional staff from NMFS, to develop a draft of proposed regulations for consideration. There is no better institutional knowledge and expertise for making the ESA work on the ground than these career employees with day-to-day responsibility for the ESA's implementation. To ensure that legal advice was readily obtainable, representatives from the Department's Office of the Solicitor and the Department of Commerce and the National Oceanic and Atmospheric Administration's Office of General Counsel were also available.

The draft document prepared by this team and which is still undergoing refinement, focuses on enhancing state involvement in all aspects of the ESA, with continued oversight and final decision making by the Service and NMFS; creating, for the first time, regulations focused on the recovery process; providing more clear and effective tools to private landowners, municipalities, cities, states, tribes and others to conserve and recover listed species through more efficient permitting processes; creating a more

efficient process for federal action agencies to consult with the Service and NMFS under Section 7, and emphasizing the role all federal agencies have in recovering listed species; and providing guidance for the species listing petition process, clarifying language used in the listing and critical habitat processes, and recognizing existing conservation efforts when making listing decisions.

This document differs in significant ways from the draft of the earlier document circulated by Salon.com. The current draft document strongly emphasizes the recovery process, the definition of "jeopardy" as it exists in current regulations is unchanged; rather, greater emphasis is placed on cooperative partnerships to implement the ESA. The Department does not yet have a complete proposal for improving the ESA, and no decision has been made as to whether to proceed with proposing changes to the implementing regulations. Work continues on concepts and language that could become proposed rule changes.

Our goal in this work is to greatly improve ESA implementation by strengthening its conservation purposes while also removing some disincentives that deter many from engaging in activities that would benefit species. Any regulatory changes would, of course, be proposed in the *Federal Register* for full public review and comment. We believe that, if the public has a full opportunity to review a proposal with the concepts now under development , they will affirm that these concepts will enhance the effectiveness of the ESA and its implementation.

The Department and the Service are strongly committed to carrying out our statutory obligations with regard to species recovery and to working with our partners toward that important goal. Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you and other members of the Subcommittee might have.