



TESTIMONY OF JANET COIT
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BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
Regarding the Need to Modernize the Endangered Species Act
May 10, 2017

Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee. It is good to see my home-state senator, Senator Whitehouse.

My name is Janet Coit, and I am the Director of the Rhode Island Department of Environmental Management (RIDEM). The RIDEM has authority over all environmental protection and natural resource laws in Rhode Island. My Department's Natural Resources Bureau encompasses a wide range of authorities and programs including fish and wildlife, agriculture, state parks, beaches and campgrounds, forestry, environmental police, marine fisheries, and management of the state's two major fishing ports. I have been the director for over six years, serving two governors – and am proud to work for Governor Gina M. Raimondo.

Testifying before the Environment and Public Works Committee (EPW) holds special meaning for me as I used to be a professional staff member and later counsel to this Committee, serving under another Republican Chairman, the late-Senator John Chafee. Twenty years ago, I left that position to move to Rhode Island, just as this Committee was wrapping up work on the Endangered Species Recovery Act of 1997 – the Kempthorne-Chafee-Baucus-Reid bill. That bipartisan legislation was reported out of EPW by a vote of 15-3. And, despite the passage of twenty years, a careful review of that bill may provide useful. Its goals were: (1) to maintain and improve conservation of endangered and threatened species, (2) to improve and expedite recovery, and (3) to reduce the regulatory burden on property owners. That legislation, S. 1180, was the product of more than three years of hearings and negotiations. Of course, that was a very different time. Still, I believe that effort demonstrates both the careful work that is needed to reauthorize the Endangered Species Act, and the bipartisan track record of EPW, where senators with a wide range of experiences and perspectives can hammer out a good compromise even on issues that seem intractable.

Please allow me one more comment about the past. It was truly an honor to work for Senator John Chafee, and I learned a tremendous amount from him that has guided me in my career. He was a staunch and effective supporter of the environment who felt that leaving the land better than you found it was core to conservative principles and good citizenry. He was proud of our strong environmental laws and felt they were central to maintaining the vitality of our communities. He liked to quote President Teddy Roosevelt, and also Yogi Berra. One of his favorite Yogi Berra quotations was: "You can see a lot by looking." Under his leadership, the EPW Committee Members and staff made many field trips – some with U.S. Fish and Wildlife Service (USFWS) Director John Turner – to talk to ranchers, farmers, timber

companies, fisherman, municipal leaders and others in the west. Those experiences made it clear to all that the Endangered Species Act has a different reputation and impact in different regions of the nation. That remains true today. And, I am honored to offer testimony from the perspective of Rhode Island, and also from my perspective – that of a former Committee-staffer who now oversees the fish and wildlife agency and other conservation and environmental programs in Rhode Island, who works across state lines in New England, and who confronts the management reality of competing priorities, limited funding, and a mission that requires public support and understanding in order to achieve success.

People in Rhode Island are thrilled to see bald eagles soaring and nesting again in our state, peregrine falcons diving from city buildings, piping plovers successfully nesting on our beaches. We have the largest population of the federally-endangered American Burying Beetle in the world on Block Island – and in 2015 the General Assembly made it the official state insect! Volunteers have rallied to help with conservation of the New England Cottontail. And, our fishermen – while sometimes frustrated by the morass of regulations they must contend with day to day – have a strong interest in avoiding endangered whales and sea turtles and protecting the species upon which their livelihoods depend.

The Endangered Species Act is one of our strongest and most important environmental laws. And it has had many successes – even while the greatest success is keeping plants, fish and wildlife off the list. All of my comments are aimed at increasing the success of our combined efforts to protect the ecosystems that support the diversity of life on our planet.

STRONG FEDERAL ROLE

Until the enactment of the Endangered Species Act in 1973 – signed into law by President Richard Nixon – the federal government did not have strong enough legal authority to list and conserve plants and “any member of the animal kingdom.” The ESA has been tremendously important, and ultimate decision making for listing and conservation belongs with the federal government.

Rhode Island is one of several states that lacks a state-level law to protect threatened and endangered species. Thus, we depend on the clear protections and enforcement mechanisms, and the consultations under the federal ESA as a foundation for our conservation work.

The debate is really about the mechanisms and tools to perform conservation work – and how to give our states and our species the best chance to succeed. I applaud you for looking for common sense reforms, a difficult task that requires a careful and thoughtful approach and, more importantly, resources. No modernization effort will be successful without adequate resources at the federal, and especially the state level, to carry out the enormous workload ahead.

STRONG STATE AGENCY ENGAGEMENT

I will not take the time to review the broad authorities that states have over the fish and wildlife within their borders. The Committee is well aware of that fact, and it is reaffirmed in the Endangered Species Act. State fish and wildlife agencies are the key on-the-ground and in-the-water biologists, foresters and managers who work with partners and landowners to conserve land, water and wildlife.

The states should and do play a central role in habitat conservation and fish and wildlife management. Our state wildlife action plans provide comprehensive science-based strategies for habitat conservation and identify Species of Greatest Conservation Need. While this list only catalogues the important species for the various states and regions, it provides a roadmap for research, and helps us spend our limited research dollars on meaningful and impactful projects, and keeps us from spending both money and time on projects that will not benefit the greater good.

Federal decisions will be improved and our recovery efforts hastened by full participation and engagement of our state fish and wildlife agencies in ESA implementation. Indeed, any successful effort to promote conservation would benefit from strengthening state engagement and opportunities to play a bigger role in:

- Listing decisions – Data and input from state agencies are critical sources of scientific information, and better communication with the public is needed. Ensuring broad scientific input is essential to confidence in listing decisions.
- Target Populations/Recovery plans – Essential to ensure adequate representation from the states in developing and implementing recovery plans.
- Monitoring – States have the best capacity and knowledge, and are on the front lines for the management and monitoring of species. Resource constraints are limiting.
- Outreach – Coordinating messages, strategies and outreach with state agencies who have relationships and intimate knowledge of their communities is essential to success.
- Collaboration – Working with the states to partner with locally impacted industries, non-governmental organizations and communities on information and data gathering increases both the resources being brought to bear on a given issue, as well as increasing the buy in of that information and the decisions that stem from them.

The states stand ready to work with the Committee on ESA reform. By tapping our collective experiences, working with the regulated community and with the environmental community, I believe a bi-partisan modernization bill can be developed to reform the ESA in a manner that improves efficiency and effectiveness and maintains the Act's original intent. Decisions under the ESA are based on science, and improved through full engagement of multiple scientific sources. For many species, like the American Burying Beetle – with the only natural population of this endangered critter east of the Mississippi River in Block Island – our state biologists have the best data from which to set targets and make recovery decisions. Fortunately, in Rhode Island the USFWS is in routine communication with RIDEM on recovery plans.

NEED FOR ADEQUATE RESOURCES

Our nation's state fish and wildlife agencies have a strong track record of recovering wildlife species when we combine robust collaboration with sound science and sufficient financial resources. For most mammals, birds and sportfish, this is possible because of the \$1 billion in annual funding that sportsmen and women pay in excise taxes through the Pittman-Robertson and Dingell-Johnson programs that support state-level conservation. However, for the more than 20,000 so-called "non-game" species of wildlife, states collectively receive less than \$110 million annually (state/tribal wildlife grants, section 6 funding, etc.), despite the fact that most of the species of greatest conservation risk are in this category.

The best way to facilitate collaboration and proactive, non-regulatory measures is ensuring that there are sufficient resources for the state agencies to implement voluntary recovery measures before more expensive emergency room measures (often regulatory) are needed. As the adage goes: An ounce of prevention is worth a pound of cure. The best investment we can make to save species and reduce the need for regulatory restrictions under the Endangered Species Act is investing significantly in the State Wildlife Action Plans, which are currently funded through the \$62 million State and Tribal Wildlife Grants program. These Action Plans, developed collaboratively with local stakeholders, lay out the steps

necessary to recover wildlife and avoid regulatory approaches. By investing in their implementation, you will save species and reduce both regulation and litigation. The Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources made recommendations last year to save thousands of species by ensuring states have sufficient resources for collaborative, proactive measures.

Unfortunately, the RIDEM has experienced shrinking pains over the past fifteen years. My department has been reduced from 540 to 390 FTEs, while our authorities and scope have grown. Our Division of Fish and Wildlife (DFW) has 47 staff (seven less than ten years prior), who handle management of commercial marine fisheries, as well as the traditional land-based fish and wildlife conservation, recreation, research and management responsibilities. Ninety percent of the funding to our DFW carries restrictions (such as hunting license revenues) and only five percent of our federal funding is available for endangered species work.

RIDEM receives only \$17,500 each year through ESA section 6 and \$23,000 each year through ESA recovery funding – which covers just a fraction of the obligations and initiatives we carry out relating to conservation of candidate, threatened and endangered species. While my department would relish the opportunity to engage further, that would require additional staff and funding. Right now, in order to follow through on our commitments, we must depend on partners and draw funds from non-ESA sources, which diminishes our conservation impact for other native species. For example, our small marine fisheries staff is working on a complex section 10 permit to address conservation of the endangered Atlantic Sturgeon to protect our fisherman from violating the ESA – using limited state funds for this purpose. This marine team is also involved in recovery plans for the sturgeon, whales, sea turtles and other species. We have no dedicated funding for this work, and it has a very significant impact on our state program. I know this to be true in other states; so, for many states, an increased state role would require additional federal funding.

Some states may not have capacity to deliver. This is an important point. Any modernization effort that calls on increased state engagement will have an uneven impact in the fifty states. One size does not and will not fit all. More resources are needed at the state and federal level if we are to succeed with any ESA reforms. Investing in conservation, wildlife and the outdoors pays off. The Outdoor Industry Association just released The Outdoor Recreation Economy report last month that quantifies that the outdoor recreation economy generates \$887 billion in consumer spending annually, sustains 7.6 million American jobs and generates \$65.3 billion in federal tax revenue and \$59.2 billion in state and local tax revenue each year. Protecting wildlife and habitats makes economic sense and investing up front pays dividends in the future.

COLLABORATION TOWARDS A DEFINED GOAL – NEW ENGLAND COTTONTAIL

As with any effort, working together requires attention to process, ground rules, and identification of a defined goal up front. Success usually depends on building trust and understanding over time. I want to highlight an example that demonstrates the powerful value of engagement, cooperation and collaboration between the states and the USFWS. I believe that the Northeast Region of the USFWS, and the northeast directors, have an especially constructive working relationship fostered through open communication and a commitment to solving problems together. This is especially important when dealing with range-wide issues that cover multiple states. In the northeast, this is frequently the case, as it was with the New England Cottontail, which inspired the popular *Adventures of Peter Cottontail* by Thornton W. Burgess.

The New England Cottontail (NEC), the only rabbit native to New England, was classified as a candidate for ESA protection in 2006. While Rhode Island and other states had already been interested in this species, a formal effort kicked off in 2008 that had the right team and approach to commit to

conservation. That effort – involving six states, tribes, federal agencies, non-profits like Wildlife Management Institute, academia and others – was successful, culminating in the 2015 announcement by the Secretary of the Interior that listing under the ESA was no longer warranted.

It is valuable to look at the strategies that led to success. They included:

- Team approach. Everyone involved knew it could not be done alone.
- Commitment. The executive team committed to a goal to “promote recovery, restoration and conservation of NEC so listing is not necessary.” And they committed funds and staff, and agreed to follow through.
- Dedicated Resources: The States and regional office of the Service pooled resources to fund habitat restoration efforts and facilitate collaboration among stakeholders.
- Business model. The group developed by-laws, metrics, annual performance reviews and made a commitment to adaptive management. States signed conservation on the ground agreements with the USFWS in support of the conservation plan.
- Private Landowner Engagement. From the start, partners worked on a Working Lands for Wildlife strategy where farmers and timber companies agreed to reestablish young forests while continuing to farm or timber their private property.
- Clear goals. Critical to the success was the collaboration around setting population targets and measurable objectives to address threats – specific goals like the number of acres in conservation. With this, the states and other team members had a high level of certainty that the conservation effort would be effective

In Rhode Island, along with the USFWS, the Natural Resources Conservation Service has been a critical partner in implementing the private lands strategy, while my department is creating hundreds of acres of early successional habitat on state lands.

RIDEM has spent over \$1.7 million on the NEC conservation effort, and engaged with many partners – with great messages about the benefits to NEC and other species. We have funded:

- University Rhode Island Regional Genetics Laboratory
- Captive breeding program at Roger Williams Park Zoo
- Establishment and monitoring of a newly established population on Prudence Island
- Redistribution of RI Captive Bred NECs and their progeny to populations in other states
- Creation of young forest habitats on state and private properties
- Outreach and a volunteer program (supporting research on distribution and abundance)

This was a significant partnership, with over 100 participants. And, in Rhode Island, there was no controversy or outcry, even when conservation maps encompassing major portions of the state were unveiled. That is because the messages were on target, and all participants were able to explain the goals

and approach. People generally support conservation when they understand how it impacts them and believe it is science-based and likely to succeed. In cases where success avoids the restrictions under the ESA, you have a motivated group of stakeholders.

While the NEC model was intense and time-consuming, I believe it can be replicated to result in other successful initiatives to avoid listings. We certainly are eager to continue this approach. Having said that, RIDEM could not sustain this level of funding and participation across too many fronts.

INCENTIVIZE EARLY ACTION

Incentivizing early action with states and private landowners is all upside. As mentioned earlier, this was a big focus of the bill approved by this committee in 1997. One way to incentivize early action was described above with the NEC.

At RIDEM, our marine fisheries program is also geared to making science-based and conservative management decisions to ensure we avoid putting species at risk. The tripwire of triggering the ESA is a powerful motivator to promote progressive management strategies. Fishing businesses partnering with state and federal scientists have found many ingenious ways to prevent unintended and unwanted bycatch of endangered species through improvements in gear technologies (e.g., turtle exclusion devices or TEDs), electronics (e.g., pingers to keep whales and dolphins away from nets), and management strategies such as whale alerts and “move along” networks. Continuing this partnership and research will continue to improve our success in the marine environment and will help keep species from being listed in the first place.

Other approaches that encourage conservation on private lands through “safe harbor” agreements, mitigate threats and incidental take, and expand existing tools and opportunities to prevent species from being listed provide an area for further exploration.

CLIMATE CHANGE

Rhode Islanders are concerned about climate change – and over the changes they see now: sea levels have risen, rainfall is more intense, more high temperature days, and warming waters. In fact, the waters off New England are changing at a much faster pace than almost anywhere else on the planet. These changes are affecting species and habitat, and making it even more important to share data and promote scientific research to understand the complex interactions that come with these changes. We are concerned about the impact of acidification on our shellfish, a more indirect and esoteric outcome of increased carbon dioxide in our atmosphere, but no less impactful.

As our lobstermen and gillnetters cope with gear restrictions to prevent harming endangered whales, we observe that copepod abundance and distribution changes could be the reason for an increased number of gear interactions as historical feeding grounds for whales are now finding their way further inshore. Thus, the measures imposed on our fishermen who are reducing traps and vertical lines, may not be successful if right whales are traveling and moving from traditional feeding areas to places where they are more likely to encounter fixed gear.

We also find that some of our iconic cold water New England species, like winter flounder and Atlantic cod are in periods of prolonged low recruitment and may be facing a productivity regime change given the changing marine environment. Coupled with the expansion of warmer water species in to these same New England waters, which changes the dynamics of the ecosystem by introducing large numbers of new predators and prey into areas where they were not before, we find ourselves under-resourced examine these issues and to design and implement the needed research in an effort to keep new species from facing

listing. This is an area where the states require further collaboration with the National Marine Fisheries Service to understand better the complexities associated with climate change and to develop new tools and new thinking to protect our traditional resources from becoming listed. Also, we want to take advantage of the new opportunities as they arise.

In 1973, climate change was not on the minds of the sponsors of the ESA. Adaptive management was, however, and the need to look at cumulative impacts and protect critical habitat. Issues around critical habitat designation have been particularly challenging, and earlier legislation would have moved that to later in the process – as part of the recovery plan. The federal agencies face a tremendous backlog when it comes to listing decisions, consultations, habitat conservation and recovery plans. Improved implementation of the act will require exploration and use of flexible tools and multi-species approaches that improve efficiency and effectiveness – and this work becomes more urgent as we look at the rate of change in our state. Fortunately, the Act has many flexibilities now that can and should be expanded.

In Rhode Island, we take preserving our natural heritage for future generations very seriously. We want to conserve the diversity of ecosystems upon which species depend – and do it in a way that increases understanding and buy in with a high likelihood of success. I will close by once again, referring to former Chair Senator John Chafee. He often said, “give nature a chance, and she will rebound – but you must give nature that chance.” I see the ESA as the critical federal backstop to ensure that we give nature a chance. I appreciate the Committee Members interest and commitment to conservation. Thank you.