

**PROTECTING THE RIGHTS OF
PROPERTY OWNERS: PRO-
POSED FEDERAL CRITICAL
HABITAT DESIGNATIONS
GONE WILD**

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Wednesday, May 14, 2014 in Batesville, Arkansas

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**OVERSIGHT FIELD HEARING ON PROTECTING
THE RIGHTS OF PROPERTY OWNERS: PRO-
POSED FEDERAL CRITICAL HABITAT DES-
IGNATIONS GONE WILD**

**Wednesday, May 14, 2014
U.S. House of Representatives
Committee on Natural Resources
Batesville, Arkansas**

The committee met, pursuant to call, at 10:00 a.m., in Independence Hall, University of Arkansas Community College, 2005 White Drive, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representative Hastings.

Also Present: Representative Crawford.

The CHAIRMAN. The House Committee on Natural Resources will come to order. The committee is meeting here in Batesville, Arkansas to hear testimony on “Protecting the Rights of Private Property Owners: Proposed Federal Critical Habitat Designations Gone Wild.”

Since Mr. Crawford, your congressman, is not a member of the Natural Resources Committee, without objection, he can sit on the committee.

By way of introduction, I am Congressman Doc Hastings, and I have the privilege of representing the 4th District in Washington State. My district is in the eastern part of the State, for those of you that are familiar with the State. It runs from the Oregon border to the Canadian border. It is largely rural in nature, very diverse agriculture, mainly because of the irrigated crops that we grow, and I could make a whole list of what those crops are. But I will say the slogan “an apple a day keeps the doctor away” is appropriate for my district. So if you want to promote Washington apples, then you are certainly welcome to do so.

But it is my privilege to be here, and I am here largely because of the efforts of your congressman, Rick Crawford, and because of the impact the Endangered Species Act may have on this area with the potential listings that are being suggested.

So with that, let me turn it over to your congressman, Rick Crawford, for the purposes of introduction.

Rick.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Again, I want to thank the Chairman not only for being here but for allowing me the latitude to participate on the Natural Resources Committee. I am not a member. However, this is very important to our district.

Thank you all for being here today.

Being that this is a congressional hearing, we are going to begin, as we do with every session of the House of Representatives, with a prayer and posting of the colors and the Pledge of Allegiance.

I would now like to recognize Pastor David Insell of Believers Community Church of Batesville to offer today's prayer.

[Prayer.]

Mr. CRAWFORD. I would now like to recognize Cub Scout Pack 600, Trey Moody and Ben Gunderman, to post the colors.

[Colors.]

Mr. CRAWFORD. If you would remain standing as our Cub Scouts lead our Pledge of Allegiance.

[Pledge of Allegiance.]

[Applause.]

Mr. CRAWFORD. Cub Scouts, don't go anywhere. I have a presentation for you. If you want to come up here, we would like to present our Cub Scouts Pack 600 with a flag that has been flown over the House of Representatives to commemorate their service today.

[Applause.]

Mr. CRAWFORD. And I would like to recognize finally Mayor Elumbaugh to say a few words before we get started.

Mr. ELUMBAUGH. Congressman, thank you very much, and welcome everyone here to the city of Batesville. The city of Batesville is the oldest city in the State of Arkansas. So, guys, we are so thankful that you are here this morning. Hopefully you will have the opportunity to go out and explore our community, see some of the historic homes on Main Street, as well as our beautiful White River.

With that being said, I would like to recognize a few of the individuals in the audience today. We have Judge Robert Griffin. I have a city councilman, I think, Mr. Tommy Bryant in the audience; a Coram court member, Mr. Lackey Moody. So glad to have you guys here today.

And, Congressman, we greatly appreciate you facilitating this meeting, and your staff. It means a lot for us here in the community. We believe in transparency, and like I said, welcome here. I know we have individuals from Jackson County. Mr. Lacey, I see you out there in the crowd. Glad to have our neighbors over here.

So again, hope you enjoy your day. And committee, thank you so much for taking time out of your busy schedule and being here. Everyone enjoy. Thank you.

[Applause.]

The CHAIRMAN. Thank you very much.

Let me explain kind of how House committees work. The committee starts generally with the Chairman and members making an opening statement, and we try to keep those opening statements to within a 5-minute time period.

Then after the members make their opening statement with their observations, we will go to our panel, where they will have an opportunity to present their statements. I will repeat this later on, but they have all submitted a statement for the record, and we will ask that they keep their oral statements within 5 minutes.

Then after that, Mr. Crawford and I will ask questions as may come up, and as long as there is interest, we will continue with that process.

So that is the way the committee process works.

So with that, I will recognize myself for my opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. As I mentioned, I am pleased to be here in Batesville this morning with Congressman Crawford as part of the committee's continued oversight of the Endangered Species Act. That law is a law that has not been reauthorized for over 25 years. And it is a law that was designed to protect species, but in its practice it has a recovery rate of less than 2 percent.

It is important that Congress and its committees listen firsthand to how the Endangered Species Act impacts rural communities.

While legitimate questions remain about whether listing two mussels this year under ESA was warranted to begin with, today's hearing has two specific purposes: first, to hear from a variety of affected Arkansas private property owners and other local interests about the potential impacts of the Federal Government's critical habitat designations on private property owners; and two, to explore concrete legislative solutions, such as H.R. 4319, a bill that was introduced several weeks ago that is sponsored by Mr. Crawford and the other three members of the Arkansas delegation.

A little bit of background. The Obama administration has allowed a "sue and settle" approach to dictate how Federal taxpayer-funded resources are used to prioritize endangered species activities. This happens when extreme environmental groups sue the Federal Government, which in turn then settles with that group behind closed doors. Now, that settlement happens without input from the very people that are potentially impacted by that settlement.

Nationwide, ramped-up ESA listings and habitat designations through closed-door settlements are disrupting many facets of American life including rural economies, recreation, energy development, and private landowners' use of their own property. Here in Arkansas and in other southeast States, the Fish and Wildlife Service has proposed to designate 769 miles of rivers and streams in 28 Arkansas counties as critical habitat for the Neosho Mucket and the Rabbitsfoot Mussel. I am told that in several areas these species haven't been seen for years, or at all.

Now, the Fish and Wildlife Service, in response to several groups' petition—and these several groups, by the way, in their petition they say, and I quote, "a Southeast freshwater extinction crisis exists"—is also in the process of deciding whether another listing is warranted for 370 more species of crayfish, plants, mollusks, moths, flies, frogs, and fish. Now, the geographic area for this is essentially the whole southeastern part of the United States. It is not a small area.

Listing hundreds of new ESA species could significantly alter hydropower-producing dams, agriculture, logging, mining, fish aquaculture, and a host of other vital economic and private interests.

I want to note that we invited those people that petitioned to have these species listed to testify here in front of this committee, but they declined to do so. Now, I think that is a bit, honestly, irresponsible, because it was their petition that caused the listing that has the potential negative impact on people in this area, and they were invited to attend a congressional hearing and refused to do

so. Well, I just don't think that is a very good policy, to be very honest with you.

Despite what some say, these policies do have costs. Last year the Obama administration finalized a regulation that effectively shut out Congress, States, and the American public from accurately identifying the true costs of ESA listings. Already, millions of acres of public and private property nationwide have been included in habitat designations that will dramatically impact the future of those lands.

I believe that the analysis put forward for these proposed mussel designations vastly understates the costs to the citizens of this State. Longer term, legislation is needed to require more transparency for the true costs of these listings and habitat designations, and to limit them to areas where the costs do not outweigh the benefits.

So, I appreciate the efforts of my colleagues and others to do just that and look forward to hearing from our witnesses today on how to improve the outlook for maintaining these species and to protect private property rights.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HON. DOC HASTINGS, CHAIRMAN, COMMITTEE ON
NATURAL RESOURCES

I'm pleased to be in Batesville this morning with Congressman Crawford as part of the committee's continued oversight of the Endangered Species Act. It is a law which has not been reauthorized in 25 years, and it is a law that was designed to protect species but has a less than 2 percent recovery rate. It is important that Congress travel to listen firsthand how the Endangered Species Act impacts rural America.

While legitimate questions remain about whether listing two mussels last year under ESA was warranted to begin with, today's hearing has two specific purposes: (1) to hear from a variety of affected Arkansas private property owners and other local interests about the potential impacts of the Federal Government's critical habitat designations on private property owners and (2) to explore concrete legislative solutions, such as H.R. 4319, a bill introduced several weeks ago by my colleague, Congressman Crawford, and co-sponsored by Congressmen Cotton, Womack and Griffin, to address this problem.

The Obama administration has allowed a 'sue and settle' approach to dictate how Federal taxpayer-funded resources are used to prioritize endangered species activities. This happens when an extreme environmental group sues the Federal Government, which in turn settles with that group behind closed doors. That settlement happened without input from the very people the decision affects. Nationwide, ramped up ESA listings and habitat designations and closed-door settlements are disrupting many facets of American life including rural economies, recreation, energy development, and private landowners' use of their own property.

Here in Arkansas and in other southeast States, the Fish and Wildlife Service has proposed to designate 769 miles of rivers and streams in 28 Arkansas counties as critical habitat for the Neosho Mucket and the Rabbitsfoot mussel. I'm told that in several areas the species haven't been seen for years, or at all.

The Service, in response to several groups' petition they call "a Southeast freshwater extinction crisis," is also in the process of deciding whether listing is warranted for another 374 species of crayfish, plants, mollusks, moths, flies, frogs, and fish. The geographical area for this petition is in Arkansas, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia. Not a small area.

Listing hundreds of new ESA species could significantly alter hydropower-producing dams, agriculture, logging, mining, fish aquaculture, and a host of other vital economic and private interests.

I want to note that we invited the head of the Fish and Wildlife and representatives of the petitioning groups to explain their views. Each declined to be here, which unfortunately demonstrates how little regard they apparently have for those most affected by their litigation and the potential sweeping policies that follow.

They are the ones responsible for what we are hearing about today and their absence says a lot.

Despite what some say, these policies *do* have costs. Unfortunately, last year the Obama administration finalized a regulation that effectively shut out Congress, States and the American public from accurately identifying the true costs of ESA listings and critical habitat designations. Already, millions of acres of public and private property nationwide have been included in habitat designations that will dramatically impact the future value and multiple uses of those lands.

I believe the analysis put forward for these proposed mussel designations vastly understates the costs to the citizens of Arkansas and other States. Longer term, legislation is needed to require more transparency for the true costs of these listings and habitat designations, and to limit them to areas where the costs do not outweigh the benefits.

I appreciate the efforts of my colleague and others to do just that and look forward to hearing from our witnesses on how to improve the outlook not just for species but for the American people. We can help truly endangered animals but we cannot stand idly by when policies mandated the Federal Government and their environmental friends stand to make rural America THE endangered species.

The CHAIRMAN. With that, I will yield to Mr. Crawford for his opening statement.

STATEMENT OF THE HON. RICK CRAWFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. CRAWFORD. I thank the Chairman again for coming to Batesville today to hear firsthand from my fellow Arkansans about the wide-ranging and direct impact that actions by the Federal Government have on us, its citizens.

I would also like to thank the witnesses who have agreed to appear today and share with us their knowledge and experience.

And last, I want to thank all in attendance for making the time to be here as well.

Today's hearing asks a few simple questions. Should the Federal Government measure the actual cost to lives and livelihoods of designating a particular area as critical habitat? And should the Federal Government weigh that cost against the conservation benefit?

Last year I learned that a significant portion of the waterways in my district could be designated critical habitat for the Neosho Mucket and Rabbitsfoot Mussels. I also learned at the time that the U.S. Fish and Wildlife's new method of measuring the economic impact of such a broad designation, with the potential to affect tens of thousands of my constituents and countless farms, small and large businesses, and municipalities, would be entirely made up of merely the cost of Federal agencies consulting with each other on compliance.

Under this so-called incremental approach, now favored by Fish and Wildlife Service, there would be no consideration for the potential loss of the use of land and water and for activities such as farming and manufacturing which use water or the waterways falling under this designation. The Federal Government would not examine how this broad designation could cost the people and businesses of my district the loss of the use of their land, the loss of their jobs, or the very real threat of new, burdensome, and unexpected regulatory costs.

This incremental approach basically measures the cost of paperwork and bureaucracy. It hides the real and true economic impact of designating areas as critical habitat from the American public and fails to provide the needed information to measure and reveal the true cost to lives and livelihoods weighed against the relative benefit gained.

It has not always been this way. The U.S. Fish and Wildlife Service used an approach in the past for many years that measured the true cost of designating particular areas in terms of lost use, increased cost and loss of jobs. This so-called cumulative approach gives a true picture of the cost of designating a particular area as critical habitat and permits an accurate and transparent measure of the true impact on people, businesses, and municipalities, versus the benefits gained.

In response, I have recently introduced legislation called the Common Sense in Species Protection Act, or H.R. 4319, which not only calls for the true measure of the cost of a designation in lives and livelihoods but for that cost to be considered when the Federal Government decides which areas will and will not be covered. This legislation simply requires the Federal Government to be more transparent, accountable, and fair to those potentially impacted by critical habitat designations.

I would like to point out that this legislation does not change the actual listing process at all. The very last part of the bill specifically states that. It does, however, say that Fish and Wildlife Service should go back to using the cumulative method and measure the real cost to those who live and work inside proposed boundaries.

I am very happy that we are here in Batesville today to hear firsthand from fellow Arkansans about their concerns on this important issue. Even now, as Fish and Wildlife Service reopens the comment period yet again, the economic analysis only considers the cost of government bureaucracy and ignores the true cost to the lives and livelihoods of those who live across the proposed area.

Once again, thank you, Mr. Chairman, for coming here to Batesville to hear the concerns of those who will be most impacted not only by the critical habitat designation but by the manner in which the economic impact is calculated. I encourage all here today who have something to say to please write down your thoughts on one of the comment forms in the back. We will read all of them, and all will be submitted to become part of the official record of this hearing.

And with that, I yield back.

The CHAIRMAN. I thank the gentleman very much, and I again want to thank him for asking us to be here. I think this is a very important hearing, and I will say that by way of background. I mentioned I am from the Northwest, and the Endangered Species Act for the last generation-and-a-half has had an impact on the Northwest from the standpoint of logging and fish, particularly salmon in the Columbia River system. So we have been impacted for some time, but most of the impacts of the Endangered Species Act nationwide, not entirely but most of it, has been in the Pacific Northwest.

With this mega-listing that happened several years ago by the Obama administration, it is now affecting other parts of the country, and you are seeing now firsthand, and that is the reason for this hearing, and I want to again thank Rick for pressuring us hard to come here, and I am glad that we are here.

Now we are going to hear from our witnesses, and as I mentioned earlier, all of you were asked to submit a written statement which will be part of the record. But I would ask you to keep your oral remarks within the 5 minutes.

We have these little timing lights here. You have one in the middle of your table. I will explain how that works. It is kind of like a traffic light. When the green light is going, you are just doing famously well because you have a total of 5 minutes. And then when the yellow light comes on, that is just like when you are going through the traffic lights, you speed up. Then comes the red light. If you could just wrap up your remarks within that timeframe, we would very much appreciate it.

Also, at the front of the room there are comment forms if anybody here would like to comment on what we are talking about here, which is principally the Endangered Species Act, or you can go to the Natural Resources Committee Web site. It is naturalresources.house.gov. If you press "Contact Us," then you can make your comments there. So I would invite you to do that.

Our witnesses here today are: Mr. Marcus Creasy, who is from the Arkansas Cattlemen's Association out of Heber Springs here in Arkansas; Mr. Peter Day, Director, Camp Ozark from Mt. Ida, Arkansas; Ms. Cynthia Dohner, the Southeast Regional Director of the U.S. Fish and Wildlife Service from Atlanta—thank you for being here; Mr. Joe Fox is the State Forester from the Arkansas Forestry Commission in Little Rock; Mr. Gregory Hamilton, Ph.D., Senior Research Economist from the University of Arkansas Little Rock, Institute for Economic Advancement; Mr. Roland McDaniel, Principal, Senior Scientist at GBMc and Associates out of Bryant, Arkansas; Mr. Gene Pharr, a farmer in Lincoln, Arkansas; Mr. Randy Veach, President of the Arkansas Farm Bureau in Little Rock; and Mr. Curtis Warner, Director of Compliance and Support for the Arkansas Electric Cooperative Corporation out of Little Rock.

As I mentioned earlier, there were two individuals that we did invite, Mr. Noah Greenwald, the Endangered Species Director for the Center for Biological Diversity, one of those that was pushing the petition to list these species from Portland, Oregon; and Ms. Cyn Sarthou, Executive Director of the Gulf Restoration Network of New Orleans, to testify in front of this committee. Since the impact of their petition has such a huge impact, I thought it would be only right that they attend. But they did not, and I think their empty chairs, frankly, speaks volumes about where we are in this.

So, with that, let me recognize Mr. Marcus Creasy with the Arkansas Cattlemen's Association.

You are recognized for 5 minutes.

**STATEMENT OF MARCUS CREASY, ARKANSAS CATTLEMEN'S
ASSOCIATION, HEBER SPRINGS, ARKANSAS**

Mr. CREASY. Thank you, Mr. Chairman. First I would like to thank you and the committee for coming to Arkansas to hold a field hearing at Congressman Crawford's request. My name is Marcus Creasy. I am a cattle producer from Drasco, Arkansas. I am also the Immediate Past President of the Arkansas Cattlemen's Association. We have been working with endangered species since 2010/2011 with the notification of the Yellow Cheek Darter. That has come into my part of the world, personally touches our county, so we have been dealing with this for just a little while.

Before I start right into my written testimony, I would like to make note that we have some additional comments. When friends from across the United States understood we were coming in to give testimony, I have a paper that I would like to leave to put into the official record from our friends.

The CHAIRMAN. Without objection, that will be part of the record.

Mr. CREASY. Thank you, sir, from our friends from across the West that have been dealing with endangered species and the critical habitat designations, so I would like to include those.

But for my comments, I feel this hearing today is imperative for you to hear directly from the producers affected by U.S. Fish and Wildlife's regulation overreach with designations of critical habitat and economic impact studies that are not all inclusive, as has been stated already. Many times, critical habitat designations list cattle as being detrimental to populations of species listed, as well as their habitat. Also, many times critical habitat designations are expanded to include private property owned by cattlemen even when the primary constituent elements for the listed species' habitat are not present; for example, the Yellow Cheek Darter that we dealt with.

A prime example is that Darter in the 4 forks of the Little Red and their tributaries above the Greers Ferry Dam. Not only did this designation include language to list cattle ranching as being a negative impact upon species population and habitat, but initially a large percentage of the designation was outside of those high-water marks for those streams, while all the primary constituent elements that have to be present for the healthy habitat lie within those high-water marks.

At this point, what is needed for the extra acreage to be included in the designation, if not for control? And why would the economic analysis not include the negative economic impact from taking this acreage out of production or limiting the landowner's property rights, as we have already kind of heard?

When we as cattlemen are listed as an adverse modification within the critical habitat designation, why are those points left out of the economic impact? Why are stakeholder meetings not scheduled? Why are they not coming to we, as producers, directly when they know that it is supposedly adversely affecting these species?

These are questions we have with U.S. Fish and Wildlife's overreaching regulations. We understand that they have a job to do, we do understand that, but there needs to be adequate transparency. There needs to be full and thorough economic studies complete on

all implications before designation is set, and then open lines of communication with all involved so that those designations have minimal impact to the established economy inside the designation while allowing for protection of the species and its habitat.

It is hard for us at the end of the day to believe the only impact is agency consultation when cattle production keeps being listed as an adverse modification. Therefore, we have concerns with critical habitat designations and believe the U.S. Fish and Wildlife should be more transparent with information concerning listing of species and the critical habitat designations, more complete with their economic analysis and not just limit those economic impacts to agency consultations, and more forthcoming with open lines of communication to stakeholders' involvement.

Arkansas is a rural State. Farming and ranching are still the lifeblood to a large percentage of our local communities and their survival. Understanding that Fish and Wildlife has a job to do, it would be nice if they would remember that point.

Again, on behalf of the cattlemen of Arkansas, I would like to thank the committee for showing their concern of Federal agency overreach and hosting this field hearing today, and would also like to thank Congressman Crawford and his staff for standing up for Arkansas agriculture.

I would be more than happy to answer any questions that the committee might have at this time. Thank you again very much.
[The prepared statement of Mr. Creasy follows:]

PREPARED STATEMENT OF MARCUS CREASY, ARKANSAS CATTLEMEN'S ASSOCIATION,
HEBER SPRINGS, ARKANSAS

First I would like to say thank you to the committee for coming to Arkansas to hold a field hearing at Congressman Crawford's request. My name is Marcus Creasy and I am a cattleman from Drasco, AR. I am also the Immediate Past President of the Arkansas Cattlemen's Association.

I feel this hearing today is imperative for you to hear directly from the producers affected by U.S. Fish and Wildlife's regulation overreach with designations of Critical Habitat and economic impact studies that are not all inclusive. Many times Critical Habitat designations list cattle as being detrimental to populations of the species listed as well as their habitat. Also many times Critical Habitat designations are expanded to include private property owned by cattlemen even when the primary constituent elements for the listed species' habitat are not present.

A prime example would be Critical Habitat for the Yellow Cheek Darter in the 4 forks of the Little Red River and their tributaries above the Greers Ferry Dam. Not only did this designation include language to list cattle ranching as being a negative impact upon species population and habitat, but initially a large percent of the designation was outside the high water marks for these streams while all the primary constituent elements that have to be present for the healthy habitat for species growth is not outside the high water mark.

At this point what is the need for the extra acreage to be included in the designation if not for control, and why would the economic analysis not include the negative economic impact from taking this acreage out of production or limiting the land owner's property rights? When we as cattlemen are listed as an adverse modification within the Critical Habitat designation why are those points left out of the economic impact, why are stakeholder meetings not scheduled?

These are the questions we have with U.S. Fish & Wildlife's overreaching regulation. We understand they have a job to do, but there needs to be adequate transparency, there needs to be full and thorough economic studies complete on all implications before designation is set, and then open lines of communication with all involved so that designations have minimal impact to the established economy inside the designation while allowing for protection of the species and its habitat.

It is hard for us at the end of the day to believe the only impact is agency consultation when cattle production keeps being listed as an "adverse modification," therefore we have concerns with critical habitat designations and believe the U.S.

Fish & Wildlife should be more transparent with information concerning listing of species and critical habitat designations, more complete with their economic analysis and not just limit economic impacts to agency consultations, and more forthcoming with open lines of communication to stakeholders involvement.

Arkansas is a rural State and farming and ranching are still the lifeblood to a large percent of our local communities and their survival. Understanding that U.S. Fish & Wildlife has a job to do, it would be nice if they would remember this point.

Again on behalf of the cattlemen of Arkansas, I would like to thank the committee for showing their concern of Federal agency overreach and hosting this field hearing here today and would also like to thank Congressman Crawford and his staff for standing up for Arkansas agriculture.

I would be more than happy to answer any questions the committee might have, again thank you for allowing me to give testimony.

The CHAIRMAN. Thank you very much, Mr. Creasy.

I will now recognize Mr. Peter Day, Director of Camp Ozark from Mt. Ida, Arkansas.

You are recognized for 5 minutes.

**STATEMENT OF PETER DAY, DIRECTOR, CAMP OZARK,
MT. IDA, ARKANSAS**

Mr. DAY. Again, I would also like to thank Chairman Hastings, Congressman Griffin for bringing this to Arkansas. I am Pete Day. I work for Camp Ozark and Camp War Eagle, and we are a residential summer camp. We are an educational and Christian summer camp in Mt. Ida, Arkansas, specifically Camp Ozark is. Camp Ozark is located along the banks of the Upper Ouachita River, close to the RF4A. We are actually on that section of designated habitat.

Every summer, Camp Ozark brings over 5,000 campers from 35 different States to Arkansas for a summer camp experience. We have campers from many foreign countries that come to Arkansas to participate in the summer camp experience. Our camp not only gives kids an impact on their lives, but we are actually the second-biggest employer in our county in Arkansas.

Our impact on our county is over \$8.2 million a year, and that has doubled from 10 years ago when we first did the study. So we have a significant not only cultural impact but economic impact on our area.

In addition to many summer staffers, we have year-round employees who depend on the success of our camp to support their families. We offer over 120 programs and classes to our campers. And as you can imagine, many of them center around the Ouachita River. We feel blessed to have our property along that river and certainly appreciate the value of that resource.

Every summer, our campers look forward to fishing, canoeing, and swimming in the river. We think it has truly been a major factor in our camp's success, and it is certainly one of the things that helps draw families to Camp Ozark every year. It is why younger siblings can't wait to follow older ones to camp, and why we now have former campers and staffers that bring their children to our facilities. The picturesque Ouachita River retreat truly has become a family tradition for thousands of people across this country.

We are concerned that the proposed critical habitat designation for the Rabbitsfoot Mussel along the Upper Ouachita will interfere

with many of our river activities, and it has become a major part of our experience. In addition, the designation on our portion of the river seems to be especially burdensome since, to my understanding, it has not been confirmed that in this section of river there is a mussel that has actually been there.

Furthermore, we are disappointed that the Service is not required to take into consideration the major economic impact that such designation has on this area's businesses and local economy. I, too, appreciate and applaud the efforts that are underway to change that by requiring the Service to conduct true economic impact studies. It only makes sense that when considering the critical habitat designations, the agency should have an accurate picture of how the proposals will actually affect communities and the property owners who live there.

As you know, once these designations are in place, they can be extremely rigid and limiting on exactly what kinds of activities are permitted. Even seemingly minor acts like boating could conceivably be found to have an adverse impact.

We are concerned that the critical habitat designation would greatly interfere with many of Camp Ozark's river activities. If our campers are unable to enjoy the river as they have for decades, it would be a blow to our recruitment efforts, a potential blow to our operation, and our local economy.

We think it is important to preserve our environment and take care of our natural resources. We feel fortunate to be along the Ouachita, and we feel a duty to protect it. However, we do favor a commonsense approach, and we oppose the critical habitat designation.

Again, thank you for coming to Arkansas, and thank you for your time. We appreciate it.

[The prepared statement of Mr. Day follows:]

PREPARED STATEMENT OF PETER DAY, DIRECTOR, CAMP OZARK, MT. IDA, ARKANSAS

My name is Pete Day, and I'm with Camp War Eagle and Camp Ozark. Camp Ozark is a residential and educational Christian summer camp in Mt. Ida, Arkansas. We're located along the upper banks of the beautiful Ouachita River.

We are proud to have been operating there for more than three decades now, and we have grown into a world-class facility that every summer draws 5,600 campers from 35 States and several foreign countries. We have a major economic impact on our part of the State. In fact, we are one of the top two employers in Montgomery County, and have an estimated impact of \$8.2 million on the Central Arkansas economy every year. In addition to our many summer staffers, we have many year-round employees who all depend on the success of our camp to support their families.

We offer over 120 programs and classes to our campers. As you can imagine, many of them center around the Ouachita River, which we feel blessed to have along our property. Every summer, our campers look forward to fishing, canoeing, and swimming in the river—we think it has truly been a major factor in our camp's success, and it is certainly one of the things that helps draw families to Camp Ozark every year. It's why younger siblings can't wait to follow older ones to camp, and why we now have former campers and staffers bringing *their* children to our facilities. Our picturesque Ouachita River retreat truly has become a family tradition for thousands of people across the country.

We are concerned that the proposed Critical Habitat designation for the rabbitsfoot mussel along the Upper Ouachita will interfere with many of the river activities that have become a major part of our kids' camp experience. In addition, a designation on our portion of the river seems especially burdensome, since by my understanding, it has not been confirmed that this section actually harbors the species. Furthermore, we are disappointed that the Service is not required to take into

consideration the major economic impact that such designation has on an area's businesses and local economy. I appreciate and applaud the efforts underway to change that . . . by requiring the Service to conduct a *true* economic impact study. It only makes sense that when considering Critical Habitat designations, the agency should have an accurate picture of how the proposals will *actually* affect communities and the property owners who live and work there.

As you know, once these designations are in place, they can be extremely rigid and limiting on exactly what kinds of activities are permitted. Even seemingly minor acts like boating could conceivably be found to have an adverse impact.

We are concerned that critical habitat designation would greatly interfere with many of Camp Ozark's river activities. If our campers are unable to enjoy the river as they have for decades, it would be a blow to our recruitment efforts, and a potential blow to our operation AND to our local economy.

We think it's important to preserve our environment, and to take care of our natural resources. We feel fortunate to be along the Ouachita, and we feel a duty to protect it. However, we favor a common-sense approach, and we oppose this Critical Habitat designation.

Again, thank you for coming to Arkansas, and for listening to my concerns regarding this important issue.

The CHAIRMAN. Thank you very much, Mr. Day, for your testimony.

I now will recognize Ms. Cynthia Dohner, the Southeast Regional Director of the U.S. Fish and Wildlife Service from Atlanta.

You are recognized for 5 minutes.

STATEMENT OF CYNTHIA DOHNER, SOUTHEAST REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, ATLANTA, GEORGIA

Ms. DOHNER. Thank you, sir. Good morning, Chairman Hastings and Representative Crawford. I am Cindy Dohner, the Southeast Regional Director for U.S. Fish and Wildlife Service, and I appreciate the opportunity to testify on the Service's experience with designating critical habitat under the ESA.

Here in the Southeast, we are committed to ensuring plants and animals and their habitats stay forever wild while accomplishing conservation in a way that keeps working lands working. We are responsible for implementing the law as it stands and are relying on its flexibilities to proactively conserve species and gain control of our workload.

The Southeast is a hotspot of aquatic biodiversity, and many of those species may be in trouble. We are encouraging voluntary conservation to hopefully avoid the need to list and provide regulatory certainty to landowners through agreements when protection under the Act is needed.

Between our listing work plan and petitions, the Southeast Region is required to determine if more than 400 species need Federal protection over the next decade. Forty-eight are in Arkansas. We need stakeholders to be engaged and help us in this work as we move forward. We are working to raise awareness that listing has consequences for landowners. The decision to add a plant or an animal to the Endangered Species List triggers all other ESA requirements, including the requirement to consider if critical habitat is essential for species recovery.

Critical habitat proposals are based on the best available scientific and commercial information. Private landowners are key to species conservation and providing that information. There are a

variety of tools we can use to encourage voluntary efforts and assist landowners to use lands as needed in a way that helps conserve species.

I know Arkansans are interested in our ESA actions for the Neosho mucket and the rabbitsfoot mussels. We proposed listing and critical habitat for the two mussels in October 2012. Since then, we finalized their listing and provided 150 days for public comment on a proposal that designates 783 river miles as critical habitat in Arkansas. It is less than 8 percent of the State's total stream miles. The proposed critical habitat is limited to the river itself.

I believe that confusion over what critical habitat is and what it is not is at the heart of many of the concerns we hear. Critical habitat designations do not affect landownership and do not impose liens. They do not allow the government to take or manage private property. They do not establish a refuge or other conservation areas. Designating critical habitat affects those activities that are performed, funded, or authorized by a Federal agency such as building a dam or a highway. If that activity is likely to have an impact on a listed species or the critical habitat, the Federal agency consults with the Service, and then we develop conservation measures that allow the activity to go forward while conserving the species.

The Service has consulted for decades on Federal actions in Arkansas simply due to the presence of other listed mussels, fish, in the same rivers, or proposed critical habitat with the Neosho mucket and the rabbitsfoot. There are 37 species currently listed in the State of Arkansas. Ninety-nine percent of these informal consultations, 99 percent, were completed in less than 30 days with no project delays.

I recognize that some stakeholders are concerned about the economic impacts of critical habitat. The ESA does not allow us to consider economic impacts in our listing decision, but does require us to evaluate and consider probable economic impacts resulting from critical habitat. Since critical habitat applies only to Federal actions, the economic analysis identifies costs primarily associated with interagency consultation.

For the two mussels, the average person should not incur any additional cost associated with critical habitat designation over and above what is required for the listing.

Last month, Director Ashe and I came to Little Rock and met with numerous stakeholders, some of which are here today. I am happy to say that the 60-day comment period opens today, as committed during that meeting, and in June we will host two public meetings, one in Batesville and another in Benton.

Raising awareness and requesting engagement on these issues and all of these species that are imperiled began nearly 18 months ago when we met with groups in Hot Springs. I let them know that it is not my goal to add plants and animals to the Endangered Species List. Instead, in the Southeast we are working with the States, industry, Federal agencies, and private landowners to employ innovative conservation strategies so Federal protection for many species is not needed. We want State species to stay under the State management.

With the States leading the way, and sound science as our guide, we are prioritizing species and pulling resources to acquire the best science, documenting conservation activities already taking place, and using voluntary, non-regulatory tools to proactively conserve as many at-risk species as possible, thereby preventing the need to list species under the ESA.

The results are promising. Together, we have determined listing is not needed for nearly 40 species, and we are working to put together conservation tools and put these tools in place that provide landowners with stability and clear expectations. This collaborative effort will help States maintain management authority over the species.

I appreciate the opportunity to testify today and would be glad to answer any questions.

[The prepared statement of Ms. Dohner follows:]

PREPARED STATEMENT OF CYNTHIA K. DOHNER, SOUTHEAST REGIONAL DIRECTOR,
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Good morning Chairman Hastings and members of the committee. I am Cindy Dohner, Southeast Regional Director for the U.S. Fish and Wildlife Service (Service) within the Department of the Interior. As Regional Director, I provide leadership and oversight for the Service's conservation work across 10 southeastern States, Puerto Rico, and the U.S. Virgin Islands. Mr. Chairman, I appreciate the opportunity to discuss the Service's administration of the Endangered Species Act (ESA), especially our experience with critical habitat designations and the proactive work with States we are doing in the Southeast.

The Service is committed to making the ESA work for the American people to accomplish its purpose of conserving threatened and endangered species and protecting the ecosystems upon which they depend. In passing the ESA, Congress recognized we face an extinction crisis. Since that time, the ESA has prevented the extinction of hundreds of species and promoted the recovery of many others. This great conservation work has helped achieve Congress's call to preserve the Nation's natural resource heritage, and it has happened alongside sustained economic development. It is more important now than ever to have an effective, collaborative approach to conserving imperiled species.

The Service's biologists are working to complete the actions identified in its 5-year listing workplan that was solidified in the Multi-District Litigation settlement agreement. The workplan is publicly available at www.fws.gov/Endangered/improving_esa/listing_workplan_FY13-18.html. At the same time, the Service is taking proactive steps with multiple partners to limit the need to list species where possible.

Here in the Southeast Region, we are working with States, industry, Federal agencies, and large private landowners to employ creative, innovative, and voluntary strategies in the implementation of the ESA that are producing positive results for conservation, industry, and local economies. The results of this State-led collaboration are promising so far. Through these collaborative efforts, the Service has determined that listing is not needed for nearly 40 species, and are working with partners to put in place conservation tools that provide landowners with stability and clear expectations.

Our objective is to conserve species in a way that comports with the ESA, protects our southern way of life, continues to allow working lands to work, considers the probable economic impacts where possible, and ensures the enduring tradition of outdoor recreation that is so important to many of our citizens. I look forward to adding my perspective to this discussion today about the proposed critical habitat designation for the federally listed Neosho mucket and rabbitsfoot mussels.

LISTING AND DESIGNATING CRITICAL HABITAT

Listing a species under the ESA is initiated either by the Service or through a petition from the public. This process is defined under Section 4(a) of the ESA. If listing is warranted, the Service must evaluate the information in its files and gather as much information on the species as possible from States, conservation partners, industry, and researchers, among others, to ensure we are using the best scientific and commercial information available to develop a listing proposal based

on the factors described in Section 4(a) of the ESA. The proposal identifies threats (e.g., modification of habitat) and possible measures to address those threats, and any proposal must also have a public comment period and stakeholder engagement. We need to ensure that stakeholders such as landowners and businesses are engaged in the process during the proposed listing because it is that action—whether to list or not—that triggers the regulatory compliance under the ESA and the other statutory requirements.

There are numerous species that are listed under the ESA that do not have critical habitat designated at this time. For example, in Arkansas there are 37 listed species, and only two have critical habitat designated and two have critical habitat proposed.

When the Service proposes an animal or plant for listing, another statutory requirement under Section 4 of the ESA is triggered to consider whether there are areas of habitat determined to be essential to the species' recovery and to designate any such areas as critical habitat. The Service proposes critical habitat designations based on the best available scientific and commercial information on what an animal or plant needs to survive, reproduce, and recover. This proposal is then evaluated by interested stakeholders and the public. It is only after this public comment period and stakeholder involvement that the Service makes a final determination on the boundaries of the critical habitat.

Critical habitat designations do not affect land ownership or impose liens on property. Designating critical habitat does not allow the government to take or manage private property nor does it establish a refuge, reserve, preserve, or other conservation area. It also does not allow government or public access to private land. The designation only affects those activities that are performed, funded or authorized by permit of a Federal agency.

Under Section 7(a)(2) of the ESA, Federal agencies are required to consult with the Service to ensure that their actions do not jeopardize the continued existence of a listed species or adversely modify its critical habitat that the species needs to recover. The Service works with Federal agencies through the consultation process to avoid or minimize impacts to a species and critical habitat by developing appropriate conservation measures that can be incorporated into the project or, if needed, a biological opinion. In most cases, these conservation measures would be carried out regardless of whether critical habitat is designated because the species is listed under the ESA. Interagency consultation on critical habitat often does not result in additional conservation measures beyond what would already be required because of the listing itself in areas occupied by the species.

The Service may exclude an area from critical habitat if it determines the benefits of excluding the area outweigh the benefits of including it as critical habitat, provided such exclusion will not result in the extinction of the species. Critical habitat exclusions are possible for lands that have secure, long-term conservation plans in place that are being implemented and benefit the species, and/or based on national security or economic impacts.

Just last week, the Service published a proposed policy to provide greater predictability, transparency and consistency regarding how the Services consider exclusions from critical habitat designations. Under the ESA, the Service evaluates the economic, national security and other impacts of a designation and may exclude particular areas if the benefits of doing so are greater than the benefits of designation. This proposal describes the general policy position of the Service for considering different types of impacts (e.g., impacts to voluntary conservation agreements, impacts to national security, economic impacts) and is intended to provide greater predictability and transparency to the process of considering exclusions within a critical habitat designation.

CONSIDERING ECONOMIC IMPACTS

The Service is required under section 4(b)(2) of the ESA to evaluate and consider probable economic and national security impacts along with other relevant factors resulting from the designation of critical habitat. Since critical habitat applies only to Federal actions, draft economic analyses identify costs primarily associated with interactions (consultations) between Federal agencies.

The ESA does not allow the Service to consider economic impacts when making listing determinations. For that reason, the Service focuses its economic impact analyses on the incremental effects resulting from a critical habitat designation. These impacts are over and above economic impacts that result from the listing action itself. This methodology is supported by Executive Order 12866, Office of Management and Budget Circular A-4 (issued in 2003), a 2008 Memorandum Opinion from the Solicitor of the Department of the Interior and relevant case law. The

Service has consistently used this approach for economic analyses of critical habitat designations that occur in most States, including those in the Southeast, since 2007. This approach was codified in revisions to the ESA implementing regulations in October 2013.

Economic impacts of designating critical habitat are weighed against the benefits of designating critical habitat. Based on our experience and analysis with other listed mussels in Arkansas and the Southeast Region, the data suggests that the average person will not incur any additional costs associated with critical habitat designation over and above that required by the listing unless they are required to avoid adverse modification of critical habitat.

PROPOSED CRITICAL HABITAT FOR NEOSHO MUCKET AND RABBITSFOOT MUSSELS

The Service proposed listing the Neosho mucket as endangered and rabbitsfoot as threatened in October 2012 after identifying both species as candidates in 1984 and 1994 respectively. Designating critical habitat for the two mussels was proposed along with the listing. The proposed designation totals approximately 783 river and stream miles for both mussel species in Arkansas, as well as segments of rivers and streams in Alabama, Kansas, Kentucky, Illinois, Indiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania and Tennessee. Notably, Arkansas is one of the remaining strongholds for rabbitsfoot with many small and sizable populations, in part because of the Natural State's legacy of conservation and its commitment to stewardship. The proposed critical habitat is limited to the river itself, below the normal high water mark and not the watersheds. In Arkansas this is less than 8 percent of the State's total stream miles as defined by the Arkansas Department of Environmental Quality. This proposed designation underwent an independent peer review and was available for public comment for a total of 150 days to ensure it was based on the best scientific, commercial, and economic data available.

The benefits of the final critical habitat designation for the two mussels will include public awareness of the presence of the mussels and the importance of habitat protection, and, where a Federal nexus exists, ensure there is no adverse modification of critical habitat. According to the Service's economic analysis of the critical habitat designation for both mussel species, the estimated cost for additional Federal actions because of the designation will be between \$4.4 million and \$5.9 million over 20 years. Most of those costs are administrative (i.e., costs of determining effects to the critical habitat and preparing a biological assessment) and will be borne largely by Federal agencies during required consultations with Service on the impacts of their actions.

Federal agencies that fund, permit or perform actions that could negatively impact the protected mussels—or adversely modify their critical habitat—are required agency to consult with the Service under section 7(a)(2) of the ESA. Some of those activities might include building a dam or a road, or allowing a private logger to harvest trees from a National Forest. If the activity is likely to have an impact on the mussels or their critical habitat, the Service and the Federal agency work together through the informal or formal consultation process to ensure that the activity does not jeopardize the species or adversely modify the critical habitat and to find a reasonable conservation measures that would accomplish the goal of the project and conserve the species.

The Service understands that designating critical habitat for Neosho mucket and rabbitsfoot has caused concerns for some Arkansans. We are listening and considering the concerns expressed about the proposed designation on the private sector in Arkansas, particularly on small businesses, industry, and agriculture. A critical habitat designation itself, without a Federal nexus, does not legally affect private landowners. The Service provided the public with three opportunities to submit comments on the proposed listing and critical habitat designation since it was announced in October 2012. We received 49 comments and anticipate additional comments when the comment period for the proposed critical habitat designation is reopened for a fourth time. Public involvement into the Service's ESA actions ensures that we have the best available scientific and commercial data available. In the case of rabbitsfoot and Neosho mucket, we can substantiate that public involvement in the rulemaking process is working. For instance, the Association of Arkansas Counties provided the Service with additional scientific information to the Service during a public comment period. As a result, the Service evaluated the information and is modifying the proposal as appropriate.

The Service has consulted with Federal agencies for decades on actions in Arkansas because of the presence of other listed mussels, such as the pink mucket and the winged mapleleaf, found in the same rivers as proposed critical habitat for the rabbitsfoot. The vast majority of the consultations were handled efficiently and

informally by the Service's Arkansas Field Office. In fact, 99 percent of the consultations completed in the last 5 years with other Federal agencies such as the Natural Resources Conservation Service (NRCS) and Farm Service Agency were done in less than 30 days. These informal consultations did not delay any projects. This is important trend data that demonstrates a productive track record in Arkansas.

The Service does not expect to require additional conservation measures for the proposed critical habitat for the two mussel species beyond those generated by the listing. We have indicated the final designation—expected later this year—would be smaller as a result of information shared during comment periods. The Service will soon announce an additional 60-day comment period on the proposed critical habitat designation and associated draft economic analysis. A final designation will consider all information received during the four public comment periods.

The Service already is reviewing the direct, indirect and cumulative effects of Federal projects on the Neosho mucket and rabbitsfoot due to their listing in Arkansas rivers. For example, the Service informally consulted with Peco Foods on its plans to build a fully integrated poultry complex in Randolph and Clay Counties in northeastern Arkansas. The project required an Arkansas Pollutant Discharge Elimination System permit for the processing plant's proposed sewer outfall. The original plans proposed to discharge into a reach of the Black River where five federally protected mussel species are known to occur, including the rabbitsfoot. Possible ammonia concentrations below the outfall would likely have been too toxic for the mussels to survive. The Service worked with Peco Foods to determine the occurrence of federally protected mussels within the potential affected area. Surveys discovered a previously undocumented rabbitsfoot mussel bed near the proposed outfall and no federally protected species in an area upstream. As a result, Peco Foods was able to relocate its outfall to an alternate location 650 feet upstream of the original proposed location, which minimizes the impacts on the listed species. The cooperation between the Service and Peco Foods on the project's potential impact to listed species resulted in no delays in the permitting process and successfully avoided adverse effects to federally protected mussels.

The Service has continued its communication with stakeholders in Arkansas regarding the effects of the proposed critical habitat designation for the two mussels since finalizing their listing in September 2013. We have engaged stakeholders including the Governor of Arkansas, county judges, industry associations, and others to further clarify our species listing actions and critical habitat and what they mean to Arkansans. The Service met with the staff of the entire Arkansas congressional delegation last November on this matter, and I personally met with Arkansas Attorney General and his staff in February 2014 to discuss the implications of the proposed designation.

Last month, the Director and I traveled to Little Rock to meet with numerous stakeholders including the Agricultural Council of Arkansas, Arkansas Chamber of Commerce, Arkansas Cattlemen's Association, Arkansas Farm Bureau, Arkansas Forestry Association, Arkansas Game and Fish Commission, Arkansas Secretary of Agriculture, Association of Arkansas Counties, and the oil and gas industry, as well as several county judges and State representatives. This meeting was a productive dialog with stakeholders on ESA actions where we answered questions and heard concerns about the size and implications of the proposed critical habitat designation and the way we consider economic impacts.

We are committed to continuing this engagement with stakeholders in Arkansas and other affected States as we move forward in finalizing the critical habitat designation for the two mussel species. We are also committed to continuing to work closely with the Arkansas Game and Fish Commission on conservation actions for other species.

ENGAGING LANDOWNERS IN ESA LISTING AND CRITICAL HABITAT ACTIONS

I first came to Arkansas to discuss many of these ESA-related issues with stakeholders in October 2012. I met with farmers, industry representatives, association groups such as the Association of Arkansas Counties and the Arkansas Forestry Association in Hot Springs to address concerns about impending listing decisions under our workplan. At that time, I informed them of the Southeast Region's plan to evaluate the need to list 61 candidates, including the Neosho mucket and rabbitsfoot, as well as Mega-Petition, one of the largest petitions ever received by the Service to list 404 aquatic and aquatic-dependent species found in the Southeast. Since then, the Service has continued to engage these stakeholders and others on not only the listing and critical habitat designation for the two mussels, as well as other listing actions.

Between our listing workplan and other petitions under the ESA, the Southeast Region is required to evaluate whether more than 400 species need Federal protection. Of this total, 48 species occur in Arkansas. The Service's goal is to ensure, in working with partners, that sufficient conservation measures are in place such that these species would not warrant listing under the ESA. With the States leading the way and sound science as our guide, the Service and our partners—State agencies including the Arkansas Game and Fish Commission, other Federal agencies, universities, industries, and large private landowners—are prioritizing species and coordinating our resources. Partners are acquiring the best science, documenting conservation activities already taking place, and using voluntary, non-regulatory conservation programs to proactively conserve as many of these species as possible, so listing will not be necessary. The Service also is encouraging State, Federal, and private landowners to use voluntary conservation tools that protect private land interests and provide incentives and regulatory certainty for landowners to manage lands and waters in ways that benefit at-risk species. The Southeast Region is developing more than 20 voluntary conservation agreements covering many species, including one that would cover 28 at-risk cave species in Arkansas.

Another part of the Service's at-risk conservation effort is that we are working closely with the Southeast Association of Fish and Wildlife Agencies' Wildlife Diversity Committee and moving aggressively to share expertise, available science and monitoring data that I believe is crucial to our efforts to evaluate the status of fish, wildlife and plants that are included in our listing workload. The States are leading the way, and I believe this expanded partnership will help us efficiently speed progress in our collective effort to achieve the conservation needed to render the listing of as many species as possible unnecessary. Using the ESA proactively, it is possible to manage species in need and secure conservation as well as keeping working lands working.

If together we can address the need to protect additional plants and animals without listing, landowners and the species benefit. From the landowner perspective, proactive conservation is voluntary and flexible while the ESA can be more rigid and includes regulatory requirements. Fish, wildlife and plants benefit when we focus limited resources where they are most needed. This helps species on a larger, landscape scale. Another benefit is counted in savings to the American taxpayer. In general, it costs less money to protect a species that is beginning to face threats than it does to recover critically endangered species.

This collaborative effort with Federal and State agencies, industry, and private landowners is at work conserving at-risk species in Arkansas. The Service is developing voluntary agreements with the Arkansas Game and Fish Commission, NRCS, and The Nature Conservancy (TNC), including a Candidate Conservation Agreement with Assurances that includes 20 aquatic species. One example: The Service is part of a coalition of a dozen organizations and associations led by TNC, the Arkansas Farm Bureau, the Arkansas Game and Fish Commission and the Association of Arkansas Counties, to work collaboratively to develop simple best management practices to make it easier for the counties to maintain and repair rural, unpaved roads while reducing costs and improving water quality. This is important to us all because about 85 percent of Arkansas county roads are unpaved. These roads are critically important to local economies and these actions may minimize erosion and improve the health of lakes and rivers. Reducing sedimentation, thereby improving water quality, from unpaved roads is key to conserving many of the aquatic species that need to be evaluated over next 5 years. We also support the use of voluntary conservation programs like those offered by the NRCS and the Service's Partners for Fish and Wildlife Program, to conserve and enhance fish and wildlife habitat, which are essential for helping preclude the need to list at-risk species in Arkansas.

This proactive conservation of at-risk species is starting to pay dividends, and we have determined that listing is not needed for nearly 40 species—some based on new information, some on voluntary conservation actions, and some are already secure. For example, the Service recently announced that five southeastern crayfishes that occur in parts of Alabama, Georgia and Mississippi will not require Federal protection due to new scientific information. The crayfish species were withdrawn from the Mega-Petition and precluded needing to be listed. Our partnerships are growing, and we believe the ESA is working.

CONCLUSION

In closing, Mr. Chairman, I would like to emphasize the importance the Service places upon having a science-driven, transparent decisionmaking process in which people and businesses in affected communities can participate easily and effectively.

The Service and I are committed to conserving America's fish and wildlife by relying upon strong partnerships and creative solutions to achieve conservation.

Thank you for your interest in endangered species conservation here in Arkansas and the Southeast Region, and ESA implementation more generally. I appreciate the opportunity to testify here today in Batesville. I would be pleased to answer to any questions you and other members of the committee might have.

The CHAIRMAN. Thank you very much for your testimony.
I will now recognize Mr. Joe Fox, State Forester with the Arkansas Forestry Commission, from Little Rock.
You are recognized for 5 minutes.

**STATEMENT OF JOE FOX, STATE FORESTER, ARKANSAS
FORESTRY COMMISSION, LITTLE ROCK, ARKANSAS**

Mr. FOX. Thank you, Mr. Chairman. Thank you for coming to Arkansas, and Representative Crawford, thank you for inviting and having this committee here.

It is my pleasure to be here today to provide testimony on behalf of the Arkansas Forestry Commission and the State's private landowners, forest landowners, regarding the process of designating critical habitat. The Forestry Commission is dedicated to the conservation and wise development of the natural resources of our Nation and of our natural resource-rich State. We are firmly committed to the ideal that through a strong partnership of public agencies and private citizens, those conservation efforts can be furthered to achieve a beneficial outcome for all.

However, to effectively develop these partnerships, an open and candid dialog must occur between all parties that could be potentially impacted. I am going to use two examples to show where that process was not fully used and identify potential impacts to private landowners.

The first example is the critical habitat designations for the Neosho Mucket and Rabbitsfoot Mussel. These critical habitat designations impact watersheds that include greater than 40 percent of the surface area of the State. Ninety percent of this land is privately owned. Approximately 75 percent of the land is productive timber land that contributes in excess of \$125 million annually to the economy of the State. There is a typo in my written comments right there; \$125 million is the correct number.

The U.S. Fish and Wildlife Service, in conducting their economic impact analysis, concluded there would be limited cost impact to the private landowner as a result of the critical habitat designation. Fortunately, the Arkansas forest landowners that are contributing the \$125 million annually mentioned previously will not experience any significant impacts to their ability to conduct timber operations.

Through the use of the Arkansas Forestry Best Management Practices, over 89 percent of private forest landowners voluntarily promote and improve water quality when conducting forestry operations on their property.

However, the second example I will use is the current proposed guidance for conservation measures being developed for the potential listing of the northern long-eared bat as an endangered species. They include maintaining the spring and summer, spring staging/

fall swarming forested habitat within a 5-mile radius of known or assumed long-eared bat hibernacula; the avoidance of clearing timber of suitable spring staging and fall swarming habitat within a 5-mile radius of the hibernacula; the avoidance of prescribed burning or other sources of smoke in known or assumed hibernacula during that swarming/staging season; and whenever possible, conducting prescribed fire outside of the summer maternity season; the avoidance of burning or other sources of smoke within a quarter-mile of known northern long-eared bat hibernacula during the hibernation season.

The Fish and Wildlife Service describes forest habitat suitable for the northern long-eared bat as forest with trees greater than 3 inches diameter at breast height and typically greater than 66 percent canopy cover; although they also indicate that a single tree, if less than 1,000 feet from a known hibernaculum, is considered a potential roost. The NLEB hibernacula are potentially found everywhere in Arkansas, but especially in the Karst geology of North Arkansas.

A single hibernaculum has an associated buffer of 50,000 acres. A single hibernaculum has an associated annual timber value income of over \$1 million. A single hibernaculum has an associated 625 potential private landowners. Logging could be greatly curtailed between April 1st and November 30. That is when we log in Arkansas, pretty much. And prescribed fire could be eliminated.

Exclusion of logging and managing forest and prescribed fire would have a negative impact on wild turkey or bobwhite quail or the restoration of short-leaf pine forests. It could affect the entire State. Ninety percent of Arkansas is part of the range of the northern long-eared bat.

The northern long-eared bat is in trouble because of white nose syndrome, which has nothing to do with critical habitat. It is a disease transported from bat to bat.

This is a problem that really could sting the forest industry in Arkansas and private landowners, and we are quite worried about what could happen with the critical habitat designation for northern long-eared bat.

Thanks for the opportunity to speak.

[The prepared statement of Mr. Fox follows:]

PREPARED STATEMENT OF JOE FOX, STATE FORESTER, ARKANSAS FORESTRY
COMMISSION, LITTLE ROCK, ARKANSAS

Mr. Chairman, members of the committee, it is my pleasure to be here today to provide testimony on behalf of the Arkansas Forestry Commission regarding the process of designating critical habitat. The Forestry Commission is dedicated to the conservation of the natural resources of our Nation and our State. We are firmly committed to the ideal that through a strong partnership of public agencies and private citizens those conservation efforts can be furthered to achieve a beneficial outcome for all.

However, to effectively develop those partnerships an open and candid dialog must occur between all parties that could be potentially impacted. I am going to use two examples to show where that process was not fully used and identify potential impacts to private landowners.

The first example is the recent critical habitat designations for the Neosho Mucket and Rabbitsfoot Mussel.

- These critical habitat designations impact watersheds that include greater than 40 percent of the surface area of the State.
- 90 percent of this land area is privately owned.

- Approximately 75 percent of the land area is productive timber land that contributes in excess of \$325 million annually to the economy of the State.

The U.S. Fish and Wildlife Service in conducting their economic impact analysis concluded there would be limited cost impact to the private landowner as a result of the critical habitat designation. Fortunately, the Arkansas forest landowners that are contributing the \$325 million mentioned previously will not experience any significant impacts to their ability to conduct timber operations. Through use of Arkansas Forestry Best Management Practices over 89 percent of private forest landowners voluntarily promote and improve water quality when conducting forestry operations on their property.

The second example I will use is the current guidance for conservation measures being developed for the proposed listing of the northern long-eared bat (NLEB) as an endangered species.

- Maintain spring staging/fall swarming forested habitat within a 5-mile radius of known or assumed NLEB hibernacula.
- Avoid clearing of suitable spring staging and fall swarming habitat within a 5-mile radius of known or assumed NLEB hibernacula during the staging and swarming seasons.
- Avoid prescribed burning or other sources of smoke in known or assumed NLEB habitat during the swarming/staging or hibernation season, or coordinate with the local FWS office.
- Whenever possible, conduct prescribed burns outside of the summer maternity season. Burns conducted during the summer maternity season should be low/moderate intensity to minimize direct impacts to NLEB.
- Avoid burning or other sources of smoke within 0.25 mile of known or assumed NLEB hibernacula during hibernation season, or coordinate with the local FWS office.

The Fish and Wildlife Service describes forest habitat suitable for the NLEB as forest with trees greater than 3 inches diameter at breast height and typically greater than 66 percent canopy cover. Although they also indicate that a single tree, if less than 1,000 feet from a known hibernaculum, is also considered a potential roost. NLEB hibernacula are potentially found everywhere in Arkansas, especially in the Karst geology of northern Arkansas.

- A single hibernaculum has an associated buffer of approximately 50,000 acres.
- A single hibernaculum has an associated timber value of \$1.07 million in the buffer area.
- A single hibernaculum has an associated 625 potential private landowners being impacted.
- Staging, maternity, and swarming season of the NLEB would eliminate forest harvesting operations from April 1st through November 30th.
- Presence of a hibernaculum would effectively eliminate prescribed burning within the recommended 5-mile buffer year round.
- The short seasonal migration distances of the NLEB and the potential abundance of hibernacula could create a continuous landscape that would be severely impacted by the conservation measures proposed.
- Exclusion of prescribed burning activity in this area would have a negative impact on maintaining habitat for species such as the wild turkey.
- Exclusion of prescribed burning in this area would significantly reduce efforts to restore native shortleaf pine forests and associated species such as the northern Bobwhite quail.
- Restriction of harvesting activity during the recommended timeframe would severely disrupt the forest economy valued at approximately \$400 million dollars annually.

The Fish and Wildlife Service is seeking to have the NLEB listed as a direct result of population decline due to White Nose Syndrome (WNS). The conservation measures proposed within the NLEB Interim Conference and Planning Guide are not directly related to WNS, but rather, to promote habitat conservation with a tenuous connection to increased WNS resistance. These measures are unrealistic in light of the negative impact they would have on forest landowners. The Arkansas Forestry Commission would encourage the Fish & Wildlife Service to engage in a dialog that would provide for development of conservation measures that can be implemented in a manner mutually beneficial to the NLEB and the forest landowners of the State of Arkansas.

Again, I would like to thank the committee for this opportunity to provide comment regarding the process for designation of critical habitat by the Fish and Wildlife Service.

The CHAIRMAN. Thank you very much, Mr. Fox, for your testimony.

I will now recognize Mr. Gregory Hamilton, Ph.D., Senior Research Economist at the University of Arkansas Little Rock Institute for Economic Advancement.

The gentleman is recognized for 5 minutes.

STATEMENT OF GREGORY HAMILTON, PH.D., SENIOR RESEARCH ECONOMIST, UNIVERSITY OF ARKANSAS LITTLE ROCK, INSTITUTE FOR ECONOMIC ADVANCEMENT, LITTLE ROCK, ARKANSAS

Dr. HAMILTON. Mr. Chairman, committee members, one could say that we have a conundrum because of the current interpretation of the Endangered Species Act. Society is trying to maximize the net social benefits of preserving endangered species that have social values but not well-defined monetary values, while considering only a select group of preservation costs.

In such a situation, a counterfactual economic impact analysis underestimates the impacts of critical habitat designation, creating a potential misallocation of resources to preservation activities. However, including the full costs of preservation is to invalidate the Endangered Species Act.

The economic impact analysis is a tool that shows how an event affects economic activity within an economy or between economies. An economic impact analysis uses causal models that trace the interrelationships between inter-industry expenditures and final demand expenditures. Economic impact models predict how a specific event or events can be expected to change output, income, and jobs within communities.

An economic impact analysis of a critical habitat designation requires a counterfactual analysis. A counterfactual study simulates events that are contrary to the present situation. In the case of a critical habitat designation, the possible removal or limitation of economic activity must be considered by simulating the effects upon a study area by either removing or reducing the activity by an appropriate magnitude.

Counterfactual questions that could be asked include: What would be the economic effects upon the counties in Arkansas that have a potential critical habitat designation if restrictions are placed on the use of area rivers and their surroundings? How could critical habitat designation effect road improvements, bridge improvements, timber and agricultural uses; recreational uses; water treatment and water quality investments; and mining, oil and gas operations, for example?

Economic impact analysis must be defined in terms of some location or at some level of geography. The choice of geography is important since it establishes the study area, enabling a distinction between events that occur within the study area from those that are outside the study area. In the case of a critical habitat designa-

tion, a restriction of an activity like the loss of economic tourism can have economic impacts in a study area, but at the national level there are offsetting impacts.

Often, U.S. Fish and Wildlife Service analyzes the economic impacts based upon Census-tract boundaries that include the designated areas. However, these areas may exclude many businesses and community interactions that are impacted by potential restrictions that may be imposed under the Endangered Species Act. In this case, a mis-specified study area results in an underestimate of the true economic impact.

Regulations and restrictions have both allocative and distribution effects. Critical habitat designations may cause economic activity to simply relocate to other locations in the Nation. This is a local allocative effect that is offset by redistribution effect elsewhere, although there is no guarantee that redistributive effects will equal the allocative effects.

Economic impact studies of critical habitat designation often presume that they are equal when they only consider consultation and administrative costs in their analysis.

Road improvements and other economic development projects create wealth and well-being. The benefit from these improvements will not accrue to these communities if the projects are not built, so this is a net loss to the community regardless of whether or where the projects are eventually located. Many economic activities cannot simply be moved to alternative locations.

The Endangered Species Act prohibits the use of economic considerations in the decision to list a species as endangered. At the time of listing an endangered species, the Endangered Species Act also requires the Fish and Wildlife Service to propose to designate a critical habitat. This decision can take into account considerations of probable economic impact designations.

In the baseline incremental approach, the listing establishes the baseline, and the incremental costs are a consequence of the designation. The primary incremental costs are the consultation costs with Fish and Wildlife Service. Costs associated with the allocative and distribution effects are considered to be a consequence of the listing decision and are excluded from consideration.

The coextensive approach contends essentially that the listing and the critical habitat designation are the same event focused on preserving an endangered species. As such, the resources committed to the preservation entail both the listing and the critical habitat designation and should be the focal point. An economic impact analysis based on the coextensive approach would have a fuller accounting of costs by incorporating both the designation and listing costs.

A problem with the coextensive approach is that the Endangered Species Act requires listing decisions to be based solely on the best available science and commercial information. This is the same requirement that enables the baseline incremental approach to reduce the full cost of preserving endangered species by excluding the cost of listing from the economic impact analysis. Hence, we have a conundrum.

Thank you.

[The prepared statement of Dr. Hamilton follows:]

PREPARED STATEMENT OF GREGORY L. HAMILTON, PH.D., SENIOR RESEARCH ECONOMIST, UNIVERSITY OF ARKANSAS LITTLE ROCK, INSTITUTE FOR ECONOMIC ADVANCEMENT, LITTLE ROCK, ARKANSAS

What Would a True Economic Impact Analysis of a Critical Habitat Designation Incorporate?

One could say that we have a conundrum because of the current interpretation of the Endangered Species Act. We are trying to maximize the net social benefits of preserving endangered species that have social values but not well defined monetary values while considering only a select group of preservation costs. In such a situation a counterfactual economic impact analysis underestimates the impacts of critical habitat designation creating a potential over-allocation of resources to preservation activities. However, including the full costs of preservation is to invalidate the ESA.

The Purpose of Economic Impact Analysis

Economic impact analysis (EIA) is a tool that shows how an event affects economic activity within an economy or between economies. An EIA uses causal economic models that trace the interrelationships between interindustry expenditures and final demand expenditures. Economic impact models predict how a specific event or events can be expected to change output, income, and jobs within communities.

The purpose of EIA is to analyze the effects of an event on a particular study area. EIA is often used in policy modeling to predict the consequences associated with a policy change such as tax rate change, infrastructure investments, or changes in environmental standards.

Counterfactual Economic Impact Analysis

An EIA of a Critical Habitat Designation (CHD) requires a counterfactual impact analysis. A counterfactual study simulates events that are contrary to the present situation. In the case of a CHD, the possible removal or limitation of economic activity must be considered, by simulating the effects upon a study area by either removing or reducing the activity by an appropriate magnitude. Counterfactual questions that could be asked include: What would be the economic effects upon the 34 counties in Arkansas that have a potential CHD if restrictions on the use of area rivers and their surroundings are placed? How would CHD effect road improvements, bridge improvements, timber and agricultural uses; recreational uses; water treatment and water quality investments; and mining, oil and gas operations for example.

Economic Impact of a Critical Habitat Designation: Considerations

EIA is an established method of analysis that traces its heritage back to 1758 and the French economist Francois Quesnay and, in modern times, Wassily Leontief in 1936 (Miernyk, W, 1966, pages 4–5). A unifying theme between these two economists is the emphasis they placed on economic interdependences. Economic interdependence results in several considerations that have significant consequences on the predictive power of an EIA. In an EIA the study area must be defined, and distinctions must be made between events that effect the allocation of resources as opposed to the distribution of resources.

Economic interdependence between economic agents occurs across different geographical areas. Any EIA must be defined in terms of some location or at some level of geography. The geography may be at a county level, State level, national level, or combination of subnational geographic units. The limiting factor is often the availability of data. The choice of a geography is important since it establishes the study area enabling a distinction between events that occur within the study area from those that are outside the study area. In the case of a CHD, a restriction of an activity like the loss of economic tourism can have economic impacts in a CHD study area but at the national level there are offsetting impacts. In such a situation, at the national level there are no net economic impacts although the CHD area has a loss of economic activity.

Often U.S. Fish and Wildlife Service analyzes the economic impacts of CHD based on Census-tract boundaries that include the designated areas. However, these areas may exclude many business and community interactions that are impacted by potential restrictions that may be imposed under the Endangered Species Act (ESA).

In this case a misspecified study area results in an underestimate of the true economic impact. (HISTECON Associates, Inc., 2013, page 5)

Allocative effects are resource using effects. The allocation of resources between alternative uses has economic costs in terms of what is forgone. This is the concept of economic cost or opportunity cost. Opportunity cost is the value of the best forgone alternative use for the resources. A distribution effect on the other hand focuses on who gets what. Concerns about fairness and equality are often the consequence of uneven distribution effects.

Regulations and restrictions have both allocative and distribution effects. As already noted restriction resulting from a CHD may cause economic activity to simply relocate to other locations in the Nation. This is a local allocative effect that is offset by redistribution effect elsewhere. Although, there are no guarantees that distributional effects will equal the allocative effects. EIA studies of a CHD often presume that they are equal when they only consider consultation and administration costs in their analysis.

Road improvements and other economic development projects create wealth and well-being. The benefit of these improvements will not accrue to these communities if the projects are not built, so this is a net loss to the community regardless of whether or where the projects are eventually located. Many of the economic activities cannot simply be moved to alternate locations. Prime examples of these are bridges, paving county roads, harvesting timber from previously cultivated tree stands, parks and recreation areas, and “highest-in-structure” drilling sites for natural gas. In each of these cases, the lost opportunity would be unavailable absolutely to any other location because of the unsuitability or non-comparability of the alternatives. They are foregone opportunities. (HISTECON Associates, Inc., 2013, page 9)

What is the Difference Between Coextensive Approach and the Baseline-Incremental Approach?

The Endangered Species Act (ESA) prohibits the use of EIA in the decision to list a species as endangered. The ESA also requires the Fish and Wildlife Service to concurrently or up to a year later propose to designate a critical habitat. The CHD decision can take into account consideration of probable economic impacts of the designation. (U.S. Fish and Wildlife Service, 2011)

In the baseline-incremental approach, the listing of the endangered species establishes the baseline and the incremental costs are a consequence of the CHD. (Sinder, 2004, page 163) The primary CHD costs are the agencies consultation costs with the Fish and Wildlife Service. CHD's cost associated with the allocative and distribution effects are considered to be a consequence of the listing decision and are excluded from consideration in an EIA.

The coextensive approach contends essentially the listing and the CHD are the same event focused on preserving an endangered species. As such the resources committed to the preservation entail both the listing and the CHD and should be the focal point of the EIA. One possible interpretation of the coextensive approach is that it views the ESA as a process where the baseline is the way the world was before the listing and the event would be the process of listing and obtaining CHD. An EIA based on this coextensive approach would have a fuller accounting of costs by incorporating both the costs of the CHD and listing costs.

A problem with the coextensive approach is the ESA requires listing decisions to be based solely on the best available sciences and commercial information. This is the same requirement that enables the baseline-incremental approach to reduce the full economic costs of preserving endangered species by excluding the cost of listing from EIA.

One could say that we have conundrum because of the current interpretation ESA. We are trying to maximize the net social benefits of preserving endangered species that have social values but not well defined monetary values while considering only a select group of preservation costs. In such a situation a counterfactual EIA underestimates the impacts CHD creating a potential misallocation of resources to preservation activities. However, including the full costs of preservation is to invalidate the ESA.

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The CHAIRMAN. Thank you very much, Dr. Hamilton.

I would next recognize Mr. Roland McDaniel, but he, I understand, has been delayed because of the weather and he is on his way, and hopefully we can get his testimony in before we break.

So I will then go next to Mr. Gene Pharr, who is a farmer from Lincoln, Arkansas.

Mr. Pharr, you are recognized.

STATEMENT OF GENE PHARR, FARMER, LINCOLN, ARKANSAS

Mr. PHARR. Good morning, Chairman Hastings and Representative Crawford. We appreciate you holding this meeting so we can talk about our concerns.

I am Gene Pharr, and I raise poultry and beef in northwest Arkansas, where Benton and Washington Counties are proposed as critical habitat for the Neosho Mucket. We are the home to the corporate headquarters of Wal-Mart, Tyson Foods, J.B. Hunt, and a fast-growing population. Yet, Benton and Washington County still rank number 1 and 2 in all livestock production in our State.

We believe that critical habitat designation will lead to unwarranted lawsuits and litigation against private landowners, with little risk placed on those who filed the lawsuit since the U.S. Government picks up the legal fees for those filing the lawsuit.

There are several examples of this overreach despite the declaration that private lands would not be overburdened by the critical habitat designations. We have already seen several examples of that, however.

The dusky gopher frog occupies habitat in Mississippi, though frogs are not currently present in Louisiana, nor have they been for more than 50 years. The Endangered Species Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time it is listed. Yet, the U.S. Fish and Wildlife Service designated more than 1,500 privately owned acres in Louisiana as critical habitat that just happened to be adjacent to the habitat in Mississippi. While there are no current development plans for that property, the forest is a managed farm. The private landowners have been prohibited from harvesting timber due to this critical habitat designation. This appears to be an arbitrary attempt to stop the harvesting of timber on private land under the guise of limiting potential future development.

In California, the Castaneda family raises irrigated row crops, including strawberries. The family decided to convert their farm into vineyards, which requires deep ripping of the ground before they are able to plant their grapevines. Their farm happened to be in a critical habitat area for the California tiger salamander, which

lives in burrows or holes. Sonoma County advised the family to contact U.S. Fish and Wildlife.

Consultation with U.S. Fish and Wildlife Service was not part of the approved development permitting process, and since the farmers had never seen the species on their property, they proceeded with the ground preparation. A citizen's group saw the family ripping up the ground and filed suit. The Castanedas are now tied up in a legal battle and are bound up in what could be years of permitting and litigation costs.

While several States have recently gained the right to use the herbicide Enlist, Arkansas is still not included in the EPA's approved list. We understand that one of the reasons Arkansas has not been endorsed for the Enlist usage is because of the pending critical habitat designations. We believe we are at this point because of the close relationship between the Center for Biological Diversity and the U.S. Fish and Wildlife Service. They agreed to a stipulated settlement that not only listed certain species as endangered but required the designation of critical habitat as a part of the listing. This new development essentially streamlines the overall listing process, opening the door for non-government organizations, like the Center for Biological Diversity and Wild Earth Guardians, to come into Arkansas and the South and Southeast and basically extort private landowners through litigation or the threat of litigation.

Those of us who farm in northwest Arkansas operate under some of the most significant regulatory constraints in the country. You can likely understand that the threat of any additional regulation would be viewed with skepticism and a fair amount of concern.

Allow me in my conclusion to offer my additional support for Congressman Crawford's bill, H.R. 4319, the Common Sense in Species Protection Act of 2014. Thank you for your time and consideration of these comments.

[The prepared statement of Mr. Pharr follows:]

PREPARED STATEMENT OF GENE PHARR, POULTRY FARMER, BOARD OF DIRECTORS,
ARKANSAS FARM BUREAU

Good morning. I appreciate the opportunity to be here this morning and to share the concerns of some of the farmers and ranchers in my part of the State.

I am Gene Pharr, and I raise poultry and beef in northwest Arkansas, where Benton and Washington counties are proposed as critical habitat for the Neosho Mucket.

We are home to the corporate headquarters of Wal-Mart, Tyson Foods, J.B. Hunt and a fast-growing population. Yet Benton and Washington counties still rank No. 1 or No. 2 in all livestock production in our State.

We believe the critical habitat designation will lead to unwarranted lawsuits and litigation against private landowners, with little risk placed on those who file the lawsuit, since the U.S. Government picks up the legal fees for those filing the lawsuit.

There are several examples of this overreach, despite declarations that private lands would not be overburdened by the critical habitat designations. We have already seen several examples of that, however.

The Dusky Gopher Frog occupies habitat in Mississippi, though frogs are not currently present in Louisiana nor have they been for more than 50 years. The ESA explicitly defines critical habitat as the "specific areas within the geographic area occupied by the species at the time it is listed." Yet the USFWS designated more than 1,500 privately owned forested acres in Louisiana as critical habitat that just happen to be adjacent to the habitat in Mississippi. While there is no current development plans for this property, the forest is a managed timber farm. The private land owners have now been prohibited from harvesting timber due to this critical

habitat designation. This appears to be an arbitrary attempt to stop the harvesting of timber on private land under the guise of limiting potential future development. The cost of the potential future development has been estimated to be upward of \$30 million, according to USFWS.

In California, the Castaneda family raises irrigated row crops, including strawberries. The family decided to convert their farm into vineyards, which requires deep ripping of the ground before they are able to plant their grape vines. Their farm happened to be in a critical habitat area for the California Tiger Salamander, which lives in burrows or holes. Sonoma County advised the family to contact USFWS. Consultation with USFWS was not part of the approved development permitting process, and since the farmers had never seen the species on their property, they proceeded with ground preparation. A citizen group saw the family ripping the ground and filed suit. The Castanedas are now tied up in a legal battle and are bound up in what could be years of permitting and litigation costs.

In Arkansas, we are excluded from the EPA's approved list for the herbicide Enlist. While several States have recently gained the right to utilize Enlist, EPA has cited the need for more studies in Arkansas because of the critical habitat areas that have been designated.

We are at this point now because of the close relationship between the Center for Biological Diversity and the USFWS. They agreed to a stipulated settlement that not only listed certain species as endangered, but required the designation of critical habitat as part of the listing. This new development essentially streamlined the overall listing process, opening the door for non-government organizations like the Center for Biological Diversity and Wildearth Guardians to come into Arkansas, the South and Southeast and, basically, extort private land owners through litigation, or the threat of litigation.

Those of us who farm in northwest Arkansas operate under some of the most significant regulatory constraints in the country. You can likely understand then that the threat of any additional regulation would be viewed with skepticism and a fair amount of concern.

Allow me, in conclusion, to offer my additional support for Congressman Crawford's bill, H.R. 4319, the Common Sense in Species Protection Act of 2014.

Thank you for your time and your considerations of these comments.

The CHAIRMAN. Thank you very much, Mr. Pharr.

I see that Mr. McDaniel has joined us.

Would you like me to go to another witness before you, or are you absolutely prepared to proceed?

Mr. MCDANIEL. I am ready to proceed.

The CHAIRMAN. In that case, Mr. McDaniel, we will recognize you. You are the Principal and Senior Scientist for GBMc & Associates, from Bryant, Arkansas.

You are recognized for 5 minutes.

**STATEMENT OF ROLAND MCDANIEL, PRINCIPAL, SENIOR
SCIENTIST, GBMc & ASSOCIATES, BRYANT, ARKANSAS**

Mr. MCDANIEL. Thank you, Representative. My name is Roland McDaniel. I am a partner and senior scientist with GBMc and Associates, an environmental consulting firm located in Bryant, Arkansas. I have over 34 years of experience as an aquatic biologist in the State of Arkansas, first as a regulator at the State agency and the last 22 years as a private consultant. I have a B.S. degree in wildlife and fisheries management and a Master's degree in biology with a focus on aquatic ecology. My Master's thesis was a comprehensive life study assessment of the Yellowcheek Darter, *Etheostoma moorei*, which is now an endangered species in Arkansas. So in some way, I have been dealing with threatened and endangered species for over 38 years.

The U.S. Fish and Wildlife Service proposed critical habitat for the Rabbitsfoot Mussel and Neosho Mucket in October of 2012. The comment period for the proposed action was extended and reopened for an additional 60-day comment period to end October 28, 2013. The strains included in the critical habitat units directly impact 30 counties, 28 for the Rabbitsfoot Mussel and two for the Neosho Mucket. Should all the proposed critical habitat units be adopted as proposed, the targeted watersheds cover approximately 42 percent of the geographical area of Arkansas as indicated by the map.

The Endangered Species Act defines a threatened and endangered species as follows. Threatened species are any species which are likely to become an endangered species within the foreseeable future. An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range.

As stipulated in the Environmental Species Act, the U.S. Fish and Wildlife Service, herein referred to as the Service, is required to identify critical habitat required to support the designated species. Critical habitat is defined in Section 3 of the Endangered Species Act as: one, specific areas within a geographic area occupied by the species at the time of the listing in accordance with the Act and on which are found those physical or biological features to points essential to the conservation of the species and which may require special management consideration or protection; two, the specific areas outside the geographical area occupied by the species at the time of its listing upon a determination that such areas are essential for the conservation of the species. These two points are quite critical, and we feel like the Service and the designation of the critical habitat, particularly for the Rabbitsfoot Mussel, went far outside the scope of those indicated as required for critical habitat.

According to the Species Service Assessment Form, which they use in designating a species, the Rabbitsfoot Mussel had an LPN of 9, which indicates threats are moderate, and this was first concluded in 1996 when it was first considered for listing. That listing was rescinded, or the consideration was rescinded, and additional information developed up to and through 2010, that LPN of 9 did not change. Nine is the highest number out of 12, with an LPN of 1 being the lowest, which means the most critical.

The LPN assessment of 9 indicates threats are of a moderate magnitude and the threats are non-imminent, most are ongoing, and the threats are imminent overall. The listing of the LPN of 9 is the lowest in the imminent category. In other words, it is the lowest of those which are determined to be a candidate for listing.

The status report ultimately categorized the condition or population of the Rabbitsfoot Mussel throughout the multi-State range of the Rabbitsfoot Mussel, often an opinion comparing limited qualitative data to determine population status. Butler in 2005 categorized the extant population based on mostly qualitative information, comparing recent survey data post-2000 largely to qualitative data provided in the historical documentation.

Several stream segments in Arkansas that were once thought to no longer harbor or support viable Rabbitsfoot Mussels have recently been determined to harbor populations, and we will talk more about that later. This information is currently in press based

on information from the Arkansas Game and Fish State malacologist, and the new information really begs the question: Was the Service justified in its designation of the Rabbitsfoot Mussel as a threatened species, especially if there are other populations one or more of the other States have not yet determined to exist or accounted for?

The Neosho Mucket, on the other hand, identified as a candidate in 1984—and we agree and had no comments related to that listing.

The critical point of the species listing of critical habitat—

The CHAIRMAN. Mr. McDaniel, I know you weren't here for the opening, but we asked you to keep your oral remarks within 5 minutes. Your full statement will appear in the record, and that is what that timing light is there for. So if you could wrap it up here in another 10 seconds, I would appreciate it very much.

Mr. MCDANIEL. OK. We think that the Service greatly overstepped its boundaries. One of the key points that is not indicated is the listing of the critical habitat provides a roadmap not only for the Service but also for outside entities such as the Center for Biological Diversity to bring lawsuits against not only business entities but also individuals who they think have resulted in a taking due to individual actions on land that they own specifically.

Thank you.

[The prepared statement of Mr. McDaniel follows:]

PREPARED STATEMENT OF ROLAND E. MCDANIEL, SENIOR SCIENTIST, GBMC & ASSOCIATES, BRYANT, ARKANSAS

1.0 INTRODUCTION

My name is Roland E. McDaniel. I am a Partner and Senior Scientist with GBMc and Associates, an environmental consulting firm located in Bryant, AR. I have over 34 years of experience as an aquatic biologist in the State of Arkansas, first as a regulator with the State agency (Arkansas Department of Environmental Quality) and the last 22 years as a private consultant. I have a B.S. degree in Wildlife and Fisheries management and a M.S. degree in biology with a focus on Aquatic Ecology. My masters thesis was a comprehensive life history assessment of the Yellowcheek Darter (*Etheostoma moorei*), which is now an endangered species in Arkansas. So in some way I have been dealing with threatened and endangered species for over 38 years.

The Arkansas Association of Counties contracted with GBMc and associates to review the scientific basis and justification for the proposed critical habitat (CH) designation. The following testimony is a result of that effort and will focus on:

- Background for the proposed CH designations,
- A consideration of the service definition of Occupied Habitat,
- Physical and biological features required by the Rabbitsfoot mussel,
- Summaries the CHU proposed for the Rabbits foot mussel in Arkansas,
- Streams considered but not yet proposed as critical habitat, and
- Potential ramifications of the proposed action.

Additional details, maps and tables supporting this testimony can be found in the document at the end of this written testimony. (GBMc, 2013, Review of Proposed Critical Habitat Designation for Rabbitsfoot Mussel (*Quadrula cylindrical cylindrical*) and Neosho Mucket (*Lampsilis rafinesqueana*)).

2.0 BACKGROUND

The U.S. Fish and Wildlife Service (Service) proposed critical habitat for the Rabbitsfoot Mussel (*Quadrula cylindrical cylindrical*) and the Neosho Mucket (*Lampsilis rafinesqueana*) on October 16, 2012. The comment period for the proposed action was extended and reopened for an additional 60-day comment period to end October 28, 2013. The proposed critical habitat for the Rabbitsfoot Mussel

included 1,654 river miles across 15 States. The proposed action designating critical habitat for these two mussel species proposed 13 habitat units across Arkansas covering approximately 800 river miles (approximately 48 percent of the total proposed).

The streams included in the critical habitat units directly impacts 30 counties (28 Rabbitsfoot Mussel and 2 Neosho Mucket). Should all the proposed critical habitat units be adopted as proposed, the targeted watersheds cover approximately 42 percent of the geographical area of Arkansas.

The Service Species Assessment and Listing Priority Assignment Form are used by the Service to evaluate the species being proposed for action under the Endangered Species Act (ESA). The form for the Rabbitsfoot Mussel was approved on June 4, 2008 by the Regional Director and concurred by the Acting Director on October 29, 2009. This document provides a summary of information related to the distribution, biology, threats to the species, rationale for proposed listing and a ultimately a "listing priority" number.

The Rabbitsfoot Mussel was first identified as candidate in November 15, 1994 (59 FR 58982). At which time the species was assigned a category 2 until 1996 (61 FR 7596) when the listing was discontinued due to lack of information. The Rabbitsfoot Mussel was added to the candidate list again in the November 9, 2009 (74 FR 57804) with a Listing Priority Number (LPN) of 9 (out of 12), indicating threats determined to be moderate magnitude but imminent overall. The notice dated November 10, 2010 (75 FR 69222) again listed the Rabbitsfoot Mussel as candidate species and again with a LPN of 9. Even with the additional information developed after Butler (2006) from 2006–2010, there was no change in the priority ranking of 9 out of 12, with a LPN of 1 being the most urgent listing priority.

According to the Service Assignment form an LPN of 9 indicates threats of a moderate magnitude; some of the threats are non-imminent, most are ongoing, and the threats are imminent overall. An LPN of 9 is the lowest in the imminent category. A LPN of 10 would indicate non-imminent condition. This listing is rather subjective and has resulted due to the "reduction in range and most of its extant populations are declining and /or isolated" (77 FR 63476). This assessment was based largely on Butler (2005), the status report for the Rabbitsfoot Mussel. This status report ultimately categorized the condition of populations throughout the multi-State range of the Rabbitsfoot Mussel often as an opinion comparing limited qualitative data to determine population status. Butler (2005) categorized extant populations based on "qualitative information" comparing recent survey data, post 2000, to largely qualitative descriptors provided in the historical documentation.

As provided later in this testimony, several stream segments in Arkansas that were once thought to no longer support viable populations of the Rabbitsfoot mussel, have recently (2012–2013) been determined to harbor populations. This information is currently in press (personal communication with Bill Posey, Arkansas Game and Fish Commission State Malacologist, 2013). This new information begs the question. "Was the Service justified in its designation of the Rabbitsfoot mussel as a threatened species, especially if there are other populations one or more of the other 14 States not yet accounted for?"

The Neosho Mucket was first identified as candidate species on May 22, 1984 (49 FR 21664) status 2 category until 1996. The designation was discontinued due to lack of information. It was relisted as a candidate in October 30, 2001 (66 FR 54808). The 2001 listing priority assigned was 5 (out of 12). Listing priority was reassessed in 2010 and changed from 5 to 2, indicating threats to the conservation of the species were imminent and high in magnitude.

3.0 OCCUPIED HABITAT

In the determination of critical habitat units, the Service chose to *expand* the definition of critical habitat to include stream segments which had not been demonstrated to harbor populations of the target species (Rabbitsfoot Mussel and Neosho Mucket). As provided in the proposed listing (77 FR 63475) the Service provides that:

"Therefore, where one occurrence record was known from a river reach, we considered the entire river reach between the uppermost and lowermost locations as occupied habitat except lakes and reservoirs."

These definitions and their application in the determination of the proposed Critical Habitat Units (CHU) raised three primary considerations that are not supported including:

- The proposed CHU includes long distance stream segments, large portions of some of which have not been documented to harbor and/or support the target species,
- Portions of selected CHU demonstrate conditions (e.g. hypolimnetic releases and year round reduced water temperatures) that are not conducive to mussel population development and are not supportive of the target species considered in this proposal, and
- That the entire river reach provides critical habitat ESSENTIAL to the conservation of the individual species implies that critical habitat identified as necessary for Rabbitsfoot Mussel (both substrate and flow refugia) occurs in the entire proposed reach.

4.0 PHYSICAL OR BIOLOGICAL FEATURES OF CRITICAL HABITAT FOR THE RABBITSFOOT MUSSEL

In describing the required habitat types, the proposed critical habitat descriptions provide that:

“Although little is known of the specific habitat requirements for the Neosho Mucket and the Rabbitsfoot Mussel it can be determined that they require flowing water, geomorphically stable river channels and banks with suitable substrate, adequate food, the presence and abundance of fish hosts, adequate water and sediment quality, and few or no competitive or predaceous invasive (nonnative) species” (page 3 of Draft Environmental Assessment).

Comment: If little is known about the specific habitat requirements for these species, critical habitat designations may be too broad. There is simply not enough information to make an accurate critical habitat designation.

Preferred hosts of the Rabbitsfoot Mussel based on Yeager and Neves (1986) and Fobian (2007) are *Cyprinella galacturus*, *Cyprinella venustus*, *Cyprinella spilopterus*, and *Hybopsis amblops*.

Comment: As illustrated in the Fishes of Arkansas (Robinson and Buchanan, 1988) species distribution of these fish species is predominately relegated to the northern portion of the State. While populations of the Rabbitsfoot Mussel exist in the Saline, Ouachita, and Little Rivers, it seems most appropriate to designate critical habitat in areas where successful host species and the Rabbitsfoot Mussel coexist in the northern portions of Arkansas.

Several of the proposed critical habitats are located within the influence of hypolimnetic (cold water) discharges from reservoirs or spring dominated flows. Vaughn and Taylor (1999) reported extinction gradients downstream of impoundments, contributing this reduction of mussels to altered flow regimes and reduced water temperatures.

Comment: The critical habitats proposed in streams that are impacted/controlled by hypolimnetic or other cold water releases are not preferred habitats for the Rabbitsfoot Mussel and should be removed for the proposed critical habitat units.

Additionally, Butler (2005) often used the condition of patchy distribution of individual populations as a reason to characterize the status as declining. This apparent patchy distribution does occur and is routinely reported in survey results, often demonstrated as collections of the Rabbitsfoot Mussel in clustered sites and excluded from long reaches within the proposed CHU. The “patchy distribution” reflects the natural selection by the Rabbitsfoot Mussel to selectively occupy habitats that allow “rabbitsfoot to remain in the same general location throughout their entire lives. These patches of stable habitat may be highly important for the rabbitsfoot since it is typically does not burrow, making it more susceptible to displacement into unsuitable habitat” (77 FR 63472). Therefore, the patchy distribution is not an indication of population status but actually a function of habitat selection by the Rabbitsfoot. The Rabbitsfoot mussel has been described by as a “habitat specialist”, roughly translated to mean that the Rabbitsfoot prefers a very special habitat type and is not generally distributed throughout the streams it inhabits.

Last, Butler (2005), and the public notice of proposed critical habitat relied extensively and quoted frequently personal opinions in the assessment of current population conditions which were not and cannot be substantiated.

5.0 CRITICAL HABITAT UNITS (CHU) PROPOSED FOR ARKANSAS (LISTED FROM LONGEST TO SHORTEST)

The Rabbitsfoot Mussel is fairly widespread in Arkansas streams. Several “robust” populations are found throughout Arkansas: the White River, Black River, Spring River, Ouachita River, Saline River, and Little River. According to Harris et al. (2009), there are large populations in the Spring and Black Rivers.

The proposed modifications seek to reduce the total critical habitat less to approximately one-third of the 800 river miles that proposed. After review of the basis for the proposed designation of the 12 CHU, comments are provided to modify 6 of the 12 proposed CHU including:

- Saline River Proposed CHU RF5, from 179.2 river miles (RM) to approx. 50 rm,
- Ouachita River ... Proposed CHU RF4b from 98.1 rm to approx. 15 rm,
- Black River Proposed CHU RFb from 57.2 rm to approx. 25 rm,
- Spring River Proposed CHU RF10 from 39 rm to approx. 20 rm,
- Ouachita River ... Proposed CHU RF4a delete the total CHU of 13.6 rm, and
- SF Spring River .. Proposed CHU RF11 delete the total CHU, 10.2 rm.

There are no comments or recommended changes to the other 6 CHU.

The following section provides highlights of each proposed modification of the CHU. The summary provides percent ownership of riparian habitats, an overview of the stated basis for the designation as proposed critical habitat, and comments justifying proposed modifications to the individual CHU.

5.1 Saline River Proposed CHU RF5 Reach Length—179.2 River Miles

- 92 percent of riparian areas privately owned;

Comment: Critical habitat should be reduced to account for the area where populations identified with supporting documentation, Propose a reduction of the Saline River critical habitat unit modified from 179.2 river miles to approximately 50 river miles, where populations actually exist

5.2 Ouachita River Lower Reach—Proposed CHU RF4b—Reach Length 98.1 River Miles

- 100 percent of riparian habitat privately owned;

Comment: The hypolimnetic (cold water) releases from the 3 mainstem Ouachita River reservoirs (that is reinforced by releases from Caddo River impoundment entering Ouachita River at Arkadelphia), limits the development of the Rabbitsfoot Mussel and does not represent critical habitat for the Rabbitsfoot Mussel. Therefore the critical habitat of this reach should be modified to include the Ouachita River where populations of the Rabbitsfoot Mussel have been quantified.

5.3 Black River—Proposed CHU RF9—57.2 River Miles

- 86 percent of riparian habitat privately owned;

Comment: Documentation of existing populations in the Black River but not downstream of Black Rock, therefore the CHU should be modified to include the Black River from Pocahontas downstream to Black Rock.

5.4 Spring River—Proposed CHU RF10—39 River Miles

- Riparian Habitat 100 percent privately owned;
- Rabbitsfoot routinely documented in Spring River downstream of Ravenden, AR, but not upstream of that point; and
- Water temperatures of Spring River controlled by spring fed source (reduced temperature adversely impacts reproduction/development of warm water mussel species). Water temperatures and flow conditions not supportive of species upstream of Ravenden, AR.

Comment: Due to decreased water temperatures resulting for the spring fed source and 2007 survey that identified upstream extent of populations, the CHU for the Spring River should be modified.

5.5 Ouachita River—Upper Reach—Proposed CHU RF4a—13.6 River Miles

- Riparian Habitat approximately 82 percent privately owned;
- AGF mussel database indicated three listed collections from 1988 (one relic shell and 3 live mussels) nothing before or after;
- No other documented occurrence;
- 13.6 river mile CHU not essential for the conservation of the species, and not confirmed as present at listing.

Comment: CHU should be eliminated based on lack of documentation, limited population, not documented at time of listing, and isolation by main stem reservoirs

5.6 South Fork Spring River—Proposed CHU RF11—10.2 River Miles

- 2002 initial documentation dead and relics only, no live mussels;
- 2003 intensive survey failed to document presence (Marten, et. al, 2009);
- Single live specimen identified just upstream AR Hwy 289 (Harris, 2007 et. al); and;
- Small watershed and limited reach size (10.2 river miles) and lack of documented population prevents this CHU from meeting the “essential for conservation of the species” requirement for being adopted as a CHU.

Comment: The CHU RF11 should be eliminated from further consideration.

6.0 CONSIDERED BUT NOT PROPOSED AS CRITICAL HABITAT FOR RABBITSFOOT MUSSEL

The following waterbodies were evaluated as potential critical habitats for the Rabbitsfoot Mussel, however they were not included in the previous proposed action for various reasons:

1. Illinois River
2. Current River
3. Cassatot River
4. Little Missouri River
5. War Eagle Creek

It is likely that some or all of these waterbodies will be proposed as critical habitat in the new public slated for release in the near future. The addition of these stream segments will only increase the “footprint” of the watersheds impacted by the proposed CH designation.

Also, the addition of “newly” discovered viable populations should call into the ultimate question related to the necessity of listing at all.

7.0 NEOSHO MUCKET

The Neosho Mucket is estimated to be extirpated from approximately 62 percent of historical range with only 9 of 16 historical populations remaining, and only one of those listed as the remaining large viable population.

Comment: No proposal to modify the proposed CHU.

8.0 FACTORS NOT CONSIDERED IN THE INCREMENTAL COST ANALYSES

The following actions were not considered in the “cost analyses” but are true cost associated with the proposed action.

8.1 Cost to Small Business

There are several dischargers into the proposed CHU that are regulated through the National Pollutant Discharge Elimination System (NPDES) permit system as administered by ADEQ. As provided in there are 29 direct discharges and 91 indirect dischargers into the proposed CHU. As a result of the designation of the CHU, these discharge permits will be subjected to an increased level of regulation, including potential need for formal and/or informal consultation with the Service to determine the potential for effects on the listed species and the critical habitats.

Comment: While the draft economic assessment (DEA) takes into account potential costs to small businesses for consulting and permitting purposes, the proposed critical habitat designation does not take into account the full

cost of project delays due to permit issues and modifications or the cost for implementing conservation measures determined necessary by the Service.

8.2 Blueprint for Litigation

The designation of the critical habitat over large reaches of stream segments provides a road map or a blueprint for those individuals and/or groups looking to profit from the government regulation. These CHU designations will result in litigation against private landowners and businesses for lawsuits claiming a “take” of the protected regardless whether there is basis for the claim or not. GBMc experienced this first hand in assisting an individual to defend his actions in a tributary of the South fork of the Little Red River, designated as habitat for the Yellowcheek darter.

The CHAIRMAN. Thank you very much, Mr. McDaniel, and I am sorry I had to interrupt you, but we are trying to keep it on track here.

I now would like to recognize Mr. Randy Veach, who is the President of the Arkansas Farm Bureau based out of Little Rock.

Mr. Veach, you are recognized for 5 minutes.

STATEMENT OF RANDY VEACH, PRESIDENT, ARKANSAS FARM BUREAU, LITTLE ROCK, ARKANSAS

Mr. VEACH. Mr. Chairman, thank you for being here in Arkansas, and thanks to Rick Crawford, Congressman Crawford, for requesting the field hearing and getting it here in Arkansas so that we could express our views to you.

My name is Randy Veach. I am a third-generation row crop farmer from rural Mississippi County. I am serving in my sixth term as President of Arkansas Farm Bureau, which is the State’s largest agriculture advocacy organization.

I appreciate the opportunity to speak to you this morning on behalf of the farmers and the ranchers and private landowners who will be adversely affected by the critical habitat designation being proposed as part of the Endangered Species Act.

I speak especially about the U.S. Fish and Wildlife Service’s over-protection of two aquatic species, the Neosho Mucket and the Rabbitsfoot Mussel.

We want to express our support also for Congressman Crawford’s bill, H.R. 4319, the Common Sense—and really, that is what we need to be looking at is common sense—in Species Protection Act of 2014, which amends the Endangered Species Act to require government agencies in charge of determining critical habitat designation, such as Fish and Wildlife, to perform a true analysis of how such a designation will affect the areas, lives and livelihoods, and that is what we are talking about.

This issue involving critical habitat is very important to Arkansas, and I am going to tell you just exactly how important it is. There are more than 700 miles of rivers and streams in our State connected to this proposed critical habitat. Thirty-one counties are affected. Roughly 90 percent of these river miles pass through private property, and that is a disproportionate impact on productive land.

In this area, Arkansas has more than 21,000 family farms, 7.4 million acres of farmland, more than \$2.9 billion worth of agriculture income, which accounts for over a half-a-million jobs, a half-a-million jobs. Farmers in these areas produce more than 78

million broiler chickens, more than 6 million laying hens, 606,000 acres of rice, 780,000 acres of soybeans, 8.6 million acres of forestland, and thousands and thousands of head of cattle.

This area in Arkansas represents almost half of the Nation's proposed critical habitat area for these two species. Last year, the U.S. Fish and Wildlife issued a final rule that would implement an incremental approach to analyzing the economic impact of critical habitat designation versus a full analysis. This approach would require U.S. Fish and Wildlife to only consider the direct cost of government agencies instead of considering costs to all stakeholders. This is a short-sighted approach.

A process that allows a full and complete economic impact study before critical habitat areas are declared would clearly be a better approach. Our farmers and ranchers and landowners are often overloaded with unnecessary and burdensome regulations. Designating that much critical habitat without considering economic effects on the area will no doubt compound that problem. Quite frankly, it will affect our lives and our livelihoods, and that must be reflected in any evaluation of critical habitat designation.

A recent analysis, economic analysis performed by the Association of Arkansas Counties determined that the minimum cost of the habitat designation statewide would be at least \$20 million, more than \$20 million, and that number we have already been talking about is probably doubled or tripled when we understand the full impact. That \$20 million is five times the impact that U.S. Fish and Wildlife has projected for Arkansas and all of the other States involved, 11 other States.

But there is a more important fact. Let me tell you what this really means. Every 6 seconds around the globe, a child dies of malnutrition-related causes. Now, if we are restricted or prohibited or diminished in the productivity of the farmers and ranchers in this State, that number will only increase.

We recognize the Endangered Species Act is necessary for the protection of legitimately threatened and endangered species. However, its implementation through critical habitat designation should not go without considering the true economic impacts to the human species, the lives and livelihoods of people in Arkansas. It should not be used as a mechanism for environmental non-government organizations and law firms to essentially extort from private landowners.

Director Ashe was in Arkansas recently, and we greatly appreciate him being there, but he repeatedly said that the critical habitat area would not mean any further restrictions. In fact, he indicated that regardless of whether you were inside or outside of a critical habitat area, that the Endangered Species Act would still apply. In other words, any activity that might impact endangered species would require U.S. Fish and Wildlife permission or permit, regardless of whether you were in a critical habitat or not.

In conclusion, I hope Congress takes control of this issue. The men and women of Congress passed the Endangered Species Act. In my view, the implementation of the Endangered Species Act by the U.S. Fish and Wildlife Service amounts to rewriting the law and implementing it in a way that is not consistent with the intent of Congress.

Thank you for the opportunity, and God bless.

[Applause.]

[The prepared statement of Mr. Veach follows:]

PREPARED STATEMENT OF RANDY VEACH, PRESIDENT, ARKANSAS FARM BUREAU,
LITTLE ROCK, ARKANSAS

Mr. Chairman and members of the committee, I want to welcome you to Arkansas. Thank you to Rep. Rick Crawford for requesting the field hearing.

My name is Randy Veach, a row-crop farmer from rural Mississippi County. I am serving my sixth term as president of Arkansas Farm Bureau, the State's largest agriculture advocacy organization, with more than 190,000 member families.

I am eager to speak to you this morning on behalf of farmers, ranchers and private land owners who will be adversely affected by the Critical Habitat Designations being proposed as part of the Endangered Species Act. I speak specifically about the U.S. Fish and Wildlife Services' (USFWS) overprotection of two aquatic species, the Neosho Mucket and the Rabbitsfoot mussels.

We want to express our support for Congressman Crawford's bill, H.R. 4319, the Common Sense in Species Protection Act of 2014, which amends the ESA to require government agencies in charge of determining a critical habitat designation—such as USFWS—to perform a true analysis of how such a designation will affect an area's lives and livelihood.

This issue involving critical habitat and the Endangered Species Act is very important to Arkansas.

There are more than 700 miles of rivers and streams in our State connected to this proposed critical habitat, and 31 counties in Arkansas that could be impacted. Roughly 90 percent of these river miles pass through private property, a disproportionate impact on productive land.

In this area, Arkansas has more than 21,000 family farms, 7.4 million acres of farmland, more than \$2.9 billion worth of agricultural income, which accounts for a half million jobs. Farmers in these areas produce more than 78 million broiler chickens, more than 6 million laying hens, 606,000 acres of rice, 780,000 acres of soybeans, and 8.6 million acres of forestland.

This represents almost half of the Nation's proposed critical habitat area for these two species.

Last year, the USFWS issued a final rule that would implement an "incremental approach" to analyzing the economic impact of critical habitat designations versus a "full analysis." This approach would require USFWS to only consider the direct cost to government agencies, instead of considering costs to all stakeholders. This is a short-sighted approach.

A process that allows a full and complete economic impact study before critical habitat areas are declared would, clearly, be a better approach. Our farmers, ranchers and landowners are often overloaded with unnecessary and burdensome regulations. Designating that much critical habitat without considering the economic effects on the area will, no doubt, compound that problem. Quite frankly, it will affect our lives and our livelihood, and that MUST be reflected in any evaluation of critical habitat designations.

A recent economic analysis performed by the Association of Arkansas Counties determined the minimum cost of the habitat designation in our State would be more than \$20 million, five times the total impact USFWS projected for Arkansas and 11 other States.

We recognize that the Endangered Species Act is necessary for the protection of legitimately threatened and endangered species; however, its implementation through critical habitat designation should not go without considering the true economic impacts to the human species, in other words our lives and livelihoods. It should not be used as a mechanism for environmental Non-Government Organizations and law firms to essentially extort from private land owners.

USFWS Director Dan Ashe was in Arkansas last month to meet with a number of stakeholders on this issue, which we appreciated. He said repeatedly that being in a critical habitat area would not mean any further restrictions. He, in fact, indicated that regardless of whether you were inside, or outside, of the critical habitat area that the Endangered Species Act still applied. In other words, any activity that might impact an endangered species would require USFWS' permission and/or a permit, regardless of whether you were in the critical habitat area or not.

If this is true, then why have critical habitat designation?

In conclusion, I hope Congress takes control of this issue. The men and women of Congress passed the Endangered Species Act. In my view, the implementation of

the ESA by the U.S. Fish & Wildlife Services amounts to rewriting the law and implementing it in a way that is not consistent with the intent of Congress.

Thank you, and God bless America.

The CHAIRMAN. Thank you very much.

And certainly last but not least, we have Mr. Curtis Warner, Director of Compliance and Support for the Arkansas Electric Cooperative Corporation from Little Rock.

STATEMENT OF CURTIS WARNER, DIRECTOR OF COMPLIANCE AND SUPPORT, ARKANSAS ELECTRIC COOPERATIVE CORPORATION, LITTLE ROCK, ARKANSAS

Mr. WARNER. Thank you, Chairman Hastings, Representative Crawford. Thank you for this opportunity to testify on the important issue of the Fish and Wildlife Service's critical habitat designations under the Endangered Species Act.

I would especially like to thank Congressman Crawford for requesting that the committee hold a field hearing on this timely and important topic right here in Arkansas.

We also want to recognize Senator Pryor for his work to address this important issue in the Senate.

My name is Curtis Warner, and I am the Director of Compliance and Support for Arkansas Electric Cooperative Corporation. I have worked for AECC for 35 years. The AECC, which is based in Little Rock, is one of the Nation's leading generation and transmission cooperatives. We have assets about \$1.6 billion. AECC provides wholesale electricity to the State's 17 electric distribution cooperatives. Together, we provide electricity to more than 500,000 homes, farms and businesses. Altogether, the electric cooperatives of Arkansas have assets of over \$4.5 billion. These assets are in the form of power plants, substations, transmission lines, and they form the infrastructure that is needed to supply reliable and affordable electric service to our members.

When most people think of the Endangered Species Act, they think of the western parts of the country. However, this is quickly changing. According to the Service's own listing plan, every State in the Nation will be affected by at least one listing decision within the next 5 years. Here in Arkansas, we are already dealing with several species, including the Indiana bat and the interior least tern.

The electric cooperative system covers about 62 percent of the land area of the State. We serve members in all 75 counties. With these and so many additional species expected to be listed in the upcoming years, AECC and its members will continue to deal with Endangered Species Act issues for many years to come.

Here is an example of an impact we have already had. AECC has been a leader in developing clean, renewable energy in Arkansas. We own three run-of-river hydroelectric projects in the Arkansas River. If shown to be low impact, they can be eligible for renewable energy credits, or RECs, which AECC can then sell and use to reduce rates to our members. Well, our projects are very low impact.

At our Dam 2 hydroelectric station near Dumas where these RECs are currently worth about \$350,000 a year, we had trouble

gaining low impact certification due to the nearby habitat of the interior least tern. This caused about a year's delay and lost revenue from the sale of those RECs.

We have been looking at developing additional sites on the Arkansas River, but due to ESA concerns like this, it would be very difficult to develop any more of these clean, renewable resources.

Another example came when AECC was attempting to site a wind project. Working with a major turbine vendor, AECC had an opportunity to install the first prototype of a new, state-of-the-art wind turbine at a very promising location in the northern part of the State. Unfortunately, when the vendor learned that northern Arkansas was also the territory of the endangered Indiana bat, they backed out of the project, citing the ESA concerns and the delay to the project that would be caused.

AECC suffered an impact because we had the loss of a clean, renewable energy resource. That particular landowner lost a considerable amount of money and potential royalties he would have gotten from the sale of the energy generated by those wind turbines.

We are pleased that our congressional delegations are looking to make more commonsense changes to the Act so that it works better for both people and threatened, endangered species. Representative Crawford's bill does just that. A key feature of the legislation requires a draft economic impact analysis be issued concurrently with a proposal to designate the critical habitat.

As the current law is implemented, no real-life economic analysis is produced by the Service when a critical habitat is proposed. This leads people to believe that establishment of critical habitat has essentially zero economic impact. However, those that have tried to construct infrastructure projects like ours within a designated critical habitat area know there are significant economic impacts. Those impacts come from project delays, environmental studies, cost of mitigation, land use constraints, and simply the difficulty to site a new facility. Whatever the form, these impacts raise the costs to our projects and, in turn, raise the electric rates to our members.

Requiring a real economic analysis and having it available for public review is a very important benefit of the Crawford bill. This will give much-needed transparency to the process, and the AECC supports this idea.

In conclusion, AECC greatly appreciates the work of this committee and its efforts to reach out to a new generation of stakeholders that would be affected by implementation of this Act.

Finally, I want to thank Representative Crawford and our congressional delegation for putting a national spotlight on issues we face here in Arkansas as we are implementing the Endangered Species Act.

Thank you for the privilege of providing this testimony, and I look forward to answering any questions.

[The prepared statement of Mr. Warner follows:]

PREPARED STATEMENT OF CURTIS Q. WARNER, DIRECTOR, COMPLIANCE & SUPPORT,
ARKANSAS ELECTRIC COOPERATIVE CORPORATION

INTRODUCTION

Chairman Hastings, Ranking Member DeFazio, Representative Crawford, members of the Natural Resources Committee, thank you for this opportunity to testify on the important issue of the U.S. Fish and Wildlife Service's ("Service's") Critical Habitat Designations under the Endangered Species Act ("ESA" or the "Act"). My name is Curtis Q. Warner, and I am the Director of Compliance & Support for Arkansas Electric Cooperative Corporation ("AECC").

I would especially like to thank Representative Crawford for requesting that the committee hold a field hearing on this timely and important topic here in Arkansas. We also want to recognize Senator Pryor for his work to address this important issue in the Senate.

As a result of these strong oversight efforts by Arkansas' Congressional Delegation, the U.S. Fish and Wildlife Service recently made the decision to reopen for public comment, the proposed critical habitat designation for the Neosho mucket and rabbitsfoot mussels. This will be the second time the proposal has been reopened for comment at the request of our Congressional Delegation.

AECC would also like to thank the Delegation for providing the opportunity to discuss issues in an open forum with Service Director Dan Ashe. We were pleased that Director Ashe took time to travel to Little Rock on April 17 and listen to our concerns about this important rulemaking. With such a widespread critical habitat as is being proposed for the two listed mussels, this rulemaking will have a very significant impact in Arkansas. For that reason, AECC believes that stakeholders be allowed as much time as necessary to provide input on the proposal.

AECC BACKGROUND

AECC, based in Little Rock, is one of the leading generation and transmission ("G&T") cooperatives in the Nation with assets of about \$1.6 billion and annual energy sales of about \$736 million in 2013. AECC provides wholesale electricity, at some of the most competitive rates in the Nation, to the State's 17 electric distribution cooperatives. Those cooperatives own AECC and are its members. AECC and its 17 members combine to provide electricity to more than 500,000 farms, homes, and businesses in Arkansas. All together, the Electric Cooperatives of Arkansas have assets of over \$4.5 billion dollars invested here in Arkansas. These assets, in the form of power plants, substations, and transmission and distribution lines, form the infrastructure needed to supply electric service to our member-consumers.

AECC generates and transmits electricity statewide and delivers it to the distribution cooperatives. From there, the distribution cooperatives own and operate a system of distribution lines to provide electric service to their members. Both G&T and distribution cooperatives were formed to provide reliable electric service to their member-consumers at the lowest possible cost.

I have had the good fortune of serving AECC members for more than 35 years. Since I began work at AECC in 1979, I have participated in performing environmental reviews and permitting for all of AECC's power plants, electric substations, and transmission lines. This includes preparation of five Environmental Impact Statements, numerous environmental and engineering reports, and testimony for 16 hearings involving new utility projects before the Arkansas Public Service Commission. Once a review is complete, my staff and I take part in acquiring and maintaining the regulatory permits necessary to construct and operate these facilities. Those permits are subject to many layers of Federal, State, and local regulations and requirements. Often those regulations overlap, and occasionally they conflict with each other. And sometimes, as in the case of the Endangered Species Act, those regulations can even conflict with themselves.

AECC'S EXPERIENCE WITH ESA

When most people think of the Endangered Species Act, they think of the western parts of the country. We've all heard about the spotted owl and the desert tortoise. However, given the 2011 settlement agreement between the Service and environmental plaintiffs, this is quickly changing. According to the Service's listing work plan, every State in the Nation will be affected by at least one ESA listing decision in the next 5 years. Here in Arkansas, we're already dealing with several species including the Indiana bat, Arkansas fatmucket, pink mucket, interior least tern and red-cockaded woodpecker.

The electric cooperative system covers about 62 percent of the land area of Arkansas. We serve members in all 75 Arkansas counties. With these and so many

additional species expected to be listed in the next few years, AECC and its member cooperatives will continue to deal with ESA issues for years to come.

An example of a recent ESA impact is from siting a transmission line in Saline County. AECC submitted its proposed line route to the Service for review, and the Service requested a buffer zone around a small unnamed tributary to the Saline River so that listed mussels that might be present in that stretch of the river would not be impacted. The small intermittent tributary itself wasn't designated critical habitat—the proposed critical habitat was almost a mile away. (Note that this is an overhead line. The only soil disturbance would be the initial clearing of vegetation for line reliability and the area in the immediate vicinity of pole placement.)

In order to comply with the Service's initial recommendation, the route of the transmission line would have been moved to the middle of a farmer's field. This would have caused delay for AECC and would have created a physical and economic impact to the farmer for many years having to avoid poles when working the area. Fortunately, AECC was able to work with the Service's local office and move the line to a more practical location.

AECC has been a leader in developing clean, renewable energy in Arkansas. AECC owns three run-of-river hydroelectric projects on the Arkansas River. If shown to be low-impact, which they are, they can be eligible for renewable energy credits ("RECs") which AECC can sell and use to reduce rates to our members. At our Dam 2 hydroelectric station, where these RECs are currently worth about \$350,000 a year, AECC had trouble gaining low-impact hydroelectric facility certification due to the habitat of the interior least tern in the area. This caused about a year's delay and lost revenue from the sale of RECs. We have also been looking at developing additional sites on the Arkansas River to harness more renewable energy; but, due to ESA concerns like this one, it would be very difficult to develop any new projects under the current regulatory environment.

Another specific example came when AECC was attempting to site another type of renewable energy project—this time a wind project. A few years ago, AECC had performed a 2-year wind study to determine the best places to site utility-scale wind turbines in Arkansas. Working with a major turbine vendor, AECC had an opportunity to install the first prototype of a new state-of-the-art wind turbine at a very promising location as part of a demonstration project. Unfortunately, when the vendor learned that northern Arkansas was a territory of the endangered Indiana bat, they backed out of the project citing ESA concerns and the delay to the project which would occur.

Often times trying to protect one species could harm another, effectively tying our hands as we try to develop a project. For example, look at the measures to protect mussels verses the measures to protect birds and bats. In the case of the two mussel species that prompted this hearing, agencies such as the Corps of Engineers recommend that to minimize siltation in runoff to wetlands and streams, which could do harm to the mussels' habitat, we should restrict land clearing to the drier months as much as possible—in Arkansas that would be in the summer. Farmers and landowners prefer that we build power lines during drier periods; this reduces rutting and damage to farm fields and property. However, other agencies such as the Service have recommended that we delay the clearing of trees until the winter months in order to protect roosting birds and bats. Clearing trees in winter is the worst time to clear due to the soggy ground and rainy weather—both of which would tend to increase siltation of area streams potentially harming the mussels to protect birds and bats.

And after October of this year, this will become an even bigger constraint as another species—the northern long-eared bat—is listed. At that point any clearing of trees will have to be coordinated through the Service. In many cases field surveys will have to be conducted, at no trivial expense, to determine if any of the species are present in the area. This will cause delays and extra costs to almost every new power line construction project, no matter how small. It will also be a significant impact to private landowners and the timber industry.

THE IMPORTANCE OF TRANSPARENCY AND CONSISTENCY IN ESA LISTING DECISIONS

AECC's mission is to provide reliable and affordable power to our members in a responsible manner.

As part of the Nation's electric grid infrastructure, many of AECC's projects cost in the millions of dollars. In the case of new generating stations, it can be in the hundreds of millions of dollars. As an electric cooperative, all of these costs are passed directly on to our members. So, in order to meet our requirements of reliability and affordability, it's very important that our projects are within budget and on time.

As you know, every action and new regulation by the Federal and State government can make permitting and compliance even more difficult, costly and time-consuming than it already is. This extends to something seemingly as benign as a “threatened or endangered listing” of a relatively unfamiliar plant or animal species by the Service, which is the subject of this hearing today. The consequences of listing a species can be very far reaching, so the process needs to be done with care, and in an open and transparent manner.

We are pleased that our Congressional Delegation is looking to make common sense changes to the ESA so that it works better for both people and threatened species. Representative Crawford’s Common Sense in Species Protection Act of 2014 (H.R. 4319) does just that. But in so doing, the bill avoids any changes to the ESA listing process itself.

A key feature of this legislation requires that a draft economic impact analysis be issued concurrently with a proposal to designate critical habitat under the ESA. It will also ensure that the methodology used in designating critical habitat under the ESA properly reflects the true economic impact to people and businesses, including electric cooperatives and our members.

This economic analysis needs to include the real costs of a critical habitat designation, not just the costs that government agencies incur to administer an ever increasing bureaucracy. Requiring a real economic analysis and having it available for public review is a very important benefit of the Crawford bill that will give transparency to the process, and AECC supports this idea.

Capturing the real costs of a critical habitat designation is paramount to this reform effort. However, in order to capture the real costs, you have to get the methodology correct. AECC’s national association, the National Rural Electric Cooperative Association participates in a broad-based coalition supporting reasonable improvements to the ESA, such as this bill. The National Endangered Species Act Reform Coalition has noted that this bill makes several key improvements by:

- clarifying the scope of the economic analysis by requiring the Secretary to examine both the “incremental and cumulative” effects of “all actions to protect the species and its habitat,”
- expanding the scope of the area to be analyzed to include each State and locality that is “the subject of, or affected by, the proposed designation,”
- requiring the assessment of economic effects on a “quantitative and qualitative basis,”
- requiring the economic impact analysis to specifically address public and private economic effects on possible uses of land and property values, provision of water, power and other public services, employment, and revenues available for State and local governments, and finally
- mandating that the economic impact analysis comply with the guidelines issued pursuant to the Data Quality Act.

AECC strongly supports these provisions.

These modifications to current law are important because, as the ESA is currently implemented, no real-life economic analysis is produced by the Service when critical habitat is proposed. This leads people to believe that establishment of critical habitat has essentially zero economic impact. However, those that have tried to construct infrastructure within designated critical habitat know that there are significant economic impacts.

These impacts come in different forms: project delays, additional environmental studies, cost of mitigation, land use constraints, and difficulty in siting new facilities. Whatever the form, these impacts raise the costs of projects—which in turn raise electric rates to our co-op members. And finally, it’s important for an entity like AECC that needs to schedule and budget for such projects to have transparency from the beginning so we have a clear understanding of what those impacts may be.

But these impacts aren’t just felt by businesses such as AECC; they also affect individual landowners. Take my earlier example where a new transmission line almost got moved into the middle of a field. Being in or even near a designated critical habitat is a burden that can cause land use constraints on property owners and decreases their property values. We know this because in Arkansas many of these property owners are the rural property owners that we serve in our cooperative service territories.

To address this issue, Representative Crawford’s bill, H.R. 4319, will mandate the exclusion of property from a critical habitat designation where the economic impacts analysis shows that the benefits of the parcel’s exclusion outweigh the benefits of including the parcel within the critical habitat designation. This is obviously com-

mon sense; but, it is also a protection rural property owners need, and AECC strongly supports this idea.

I would note that the U.S. Fish and Wildlife Service has announced a draft policy prioritizing the types of properties that may be excluded from a critical habitat. As this draft policy was just announced on Friday, May 9, we are still reviewing this proposal. However, from initial review, while well-intentioned, the draft policy is inadequate and only reinforces the need for certainty that would be provided by H.R. 4319.

CONCLUSION

AECC greatly appreciates the work of this committee in its efforts to reach out beyond the interior West to the new generation of ESA stakeholders that will be affected by implementation of the Act. We look forward to partnering with you as you continue your work to make common-sense changes to the ESA.

Finally, I want to thank Rep. Crawford and our Arkansas Congressional delegation for putting a national spotlight on the issues we face as the ESA is implemented at home here in Arkansas. Legislation such as that proposed by Rep. Crawford and Senator Pryor seek to make modest but significant changes to the ESA that can provide the transparency we need while protecting the species that inhabit the Natural State.

Thank you for the privilege of providing this testimony. I look forward to receiving your questions at the appropriate time.

The CHAIRMAN. Thank you very much, Mr. Warner, for your testimony.

We will now go into the part where we as Members get to ask questions and follow up on some of the comments. So I will start first by recognizing our host, Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Section 3 of the Endangered Species Act explicitly requires that critical habitat not include an entire geographical area for species but rather should only include specific areas within a geographical area occupied by the species that are essential to the conservation of the species.

For just Arkansas, the Fish and Wildlife Service's proposed critical habitat designations for the Rabbitsfoot Mussel and the Neosho Mucket would impact 30 counties, most of which is privately owned property.

First, Mr. Creasy, in your opinion, are the critical habitat designations specific and essential? And to your knowledge, did the Fish and Wildlife Service consult with you about specific areas of your land that would be included in the proposal before it was issued?

Mr. CREASY. Obviously, again, as stated earlier, they have a job to do. Basically put, no, we received no notification, we received no consultation. Going forward, obviously that is what we request and that is what we are looking for you guys as legislators to try to change up some of the regulation that occurs.

Cattle producers obviously are going to be affected by more than just the stream that this mussel lives in. We have property that borders those, and our concern, of course, is if you have cattle drinking from those streams, how does that actually affect, and what regulations are going to come into play? Again, they are talking about only governmental interaction. But should something occur on the ground, how does that actually affect the economy if we have to take land out of production because of a mussel in a stream that lies next to those?

But at the end of the day, no, we have not received consultation from cattle producers. We are concerned that that gets missed somehow in the big picture of things.

Mr. CRAWFORD. OK, thank you.

Mr. Veach, would you like to weigh in on that?

Mr. VEACH. Well, I think that there are all kinds of effects that are hard to even weigh out and to put a finger on. I think that any time you restrict the activity—and, as Mr. Pharr said in his comments, there are already burdensome regulations going on in these areas. They are complying, all the producers are complying to these regulations. And when you continue to add more onto that, you end up taking the profitability out of the farmers' and ranchers' pockets. Once you do that, when you take the profitability away, then we are not sustainable. The farmers and ranchers are not sustainable when they are not profitable. That is a basic definition of sustainability is to be profitable. When we are not, we are not sustainable. When we are not sustainable, neither is the abundant, affordable, safe supply of food that we have all become so used to.

Mr. CRAWFORD. Thank you.

Mr. Day, you have a kind of a unique situation. We have heard from farmers, but what are your thoughts regarding that same question?

Mr. DAY. Well, we have the same concerns. I mean, we are just very worried that we won't be able to do what we have been able to do over the last—since 1949 in our location. So, yes, we are exactly in the same boat, and I would echo what these guys have said, for certain.

Mr. CRAWFORD. OK. It is my understanding that Congress, originally concerned with how Federal agencies were interpreting critical habitat in the original Endangered Species Act, amended it in 1978 to limit its designation to specific rather than broad areas.

Mr. Pharr, do you believe that Fish and Wildlife Service is designating critical habitat in a limited manner intended by Congress?

Mr. PHARR. It does not appear to me that it is in a limited manner. It appears to be very widely spread, much more so than is needed.

Mr. CRAWFORD. Obviously, we are here talking about the most pressing issue for us right now, the Rabbitsfoot Mussel and the Neosho Mucket. But, Mr. Fox, you had some interesting testimony regarding a bat.

But the same question to you. Do you believe the Fish and Wildlife Service is designating critical habitat in a limited manner intended by Congress?

Mr. FOX. Well, I would have to answer no. I think it is a general manner rather than a limited manner. But I would say on the mussels issue, as far as forested land, current forest practice and management and logging practices would protect both the mucket and the mussel, leaving trees. Trees clean the water in several ways. Our forests clean the air. So healthy forests, good forest management, which includes logging and prescribed fire, would actually be good for clean water and in this case I think would also be good for the bat as well.

So I think it is more about our practices in the forest than the extent of the habitat. I think the habitat—I think we could coexist I guess is what I am trying to say.

Mr. CRAWFORD. Thank you.

I yield back.

The CHAIRMAN. Thank you all for testifying. It has been alluded to several times that the Northwest or the West has been hit. I think, Mr. Veach, you alluded to that, and certainly Mr. Pharr with the statements that you mentioned. I will just say on a personal note I have been living kind of through that in the time that I have been in Congress.

Let me ask, then, in that vein a question to six of you, or five of you. Mr. Creasy, Mr. Day, Mr. Fox, Mr. Pharr, and Mr. Veach, I want to ask you this question.

In a January 10, 2014 news bulletin that was issued by the Arkansas Office for Fish and Wildlife Service they state, and I will quote—and it is a long quote, but I think you will get the sense of it—“For most landowners, the designation of critical habitat will have no impact. For example, it will not prohibit a farmer from allowing cattle to cool down in a river or from driving a vehicle through a stream on their property. Critical habitat is primarily a tool to alert Federal agencies that they are required to make a special effort at conservation when they work in an area designated as critical habitat or fund others to work there or permit work by others.”

Now, you heard the testimony today from the Fish and Wildlife, testimony that the average person will not incur any costs associated with that. Do you agree that that would be the case?

And we will start, Mr. Creasy, with you.

Mr. CREASY. I don't agree with that. I think that if a landowner, a cattle producer is not under an NRCS contract or within government scope of anything—we are the ultimate conservationists. At the end of the day, we depend upon the land, we depend upon the water to be able to produce cattle for a growing world. So at the end of the day, if we are not engaging the Federal Government with anything, we simply want to be left alone.

But if you have a cattle producer who has cattle going out to drink from a stream and they disturb some of the constituent elements of either the mussel, the fish, or whatever that endangered species may be, the question I sometimes have asked back to Fish and Wildlife is what is the economic impact if that ranger down the river sees that cow go in and disturb water, and now all of a sudden he has disturbed the constituent elements of a species, and all of a sudden an animal has took—

The CHAIRMAN. OK. I want to get others to answer that question.

Mr. CREASY. OK.

The CHAIRMAN. But the point is—and I don't want to put words in your mouth, but you are not necessarily comforted by the fact that that statement is out there.

Mr. CREASY. No, sir, not at all. Not at all, sir.

The CHAIRMAN. OK. All right.

Mr. Day?

Mr. DAY. Yes. We are not comforted by that statement either based on what we have observed and seen. The examples that have

been shown to us through the situations that have happened out West, that would certainly cause us great concern as well, just the evolution of the process. Our specific part of it is a little more unique because we are not just crossing through the stream. We are using the stream. We are canoeing, we are fishing. It is a part of what we do.

So we don't know how we fit into a statement like that, and that is a big concern for us.

The CHAIRMAN. Mr. Fox?

Mr. FOX. Sure. There is definitely a cost to forest landowners to leave trees in the riparian zone beside the creek or the stream. There is definitely a cost. But I would add that for the last 20 years Arkansas has had our best management practices for forestry, which are pretty much water driven for protection of the streams, and 89 percent of our forest landowners, by our monitoring effort at the Forestry Commission, conform to the voluntary best management practices.

I much prefer a voluntary system as we have in our forestry community, but there is a voluntary cost that our forest landowners practice, and it is usually in the leaving of those trees beside the stream.

The CHAIRMAN. I want to finish up with Mr. Pharr.

Mr. PHARR. Mr. Chairman, I don't agree with the statement either. I think all you would have to do is look at the forester, the people in the Pacific Northwest that were affected by the Spotted Owl. I think that would pretty much answer what could happen to us.

The CHAIRMAN. And Mr. Veach?

Mr. VEACH. Yes, I disagree with the statement as well. I think the U.S. Fish and Wildlife are the only ones that actually do believe that statement. I think that if that is the statement, why not do an economic impact to see exactly what the impact will be? Why shut that door? Why don't we do a complete economic impact and let's make sure if they are right or not? But we don't believe that they are.

I think one of the things that is not taken into consideration there is civil lawsuits. Once these habitats are designated, then we have to face civil lawsuits for individuals that can get all those charges paid for by the U.S. Government. But those lawsuits could amount to a lot and actually shut farms down.

The CHAIRMAN. I will have a follow-up to that. My time has expired.

I recognize Mr. Crawford.

Mr. CRAWFORD. Thank you once again, Mr. Chairman.

Last summer the Obama administration finalized a rule, ignoring opposing comments, a 10th Circuit Court of Appeals opinion, letters from Members of Congress on how it must conduct economic analyses for critical habitat designations. The rule requires Federal agencies administering ESA to only analyze costs of the actual habitat designation but ignore all other costs associated with listing a species.

Mr. Warner, in your view, is the executive order the best way to implement ESA? And why is it important to accurately document

the costs of ESA and what the impacts of the rule on rural areas would be?

Mr. WARNER. Well, in general, my personal opinion is that ruling the country by executive order is not the way to do things on something as diverse as the Endangered Species Act.

[Applause.]

Mr. WARNER. I think decisions like that should be dealt with by Congress, where there is a lot of input from across the country on decisions like this.

As far as the economic analysis, certainly if you don't know the true cost of what you are doing, you are going to be making some pretty stupid mistakes.

Mr. CRAWFORD. Thank you.

Mr. McDaniel, in your written testimony you point out that Fish and Wildlife Service chose to expand critical habitat to include an entire river reach where populations of these mussels are not now present. Can you elaborate why this is problematic?

Mr. MCDANIEL. Well, it goes against the definition and the designation of what critical habitat is supposed to be. The Rabbitsfoot Mussel has been described to me by my mussels experts as a habitat specialist. What that means is they select very specific habitats to choose to live in. As you have shown on that map, for the 180 miles of the Saline River, there are large stretches in that proposed critical habitat that are not conducive and would never harbor Rabbitsfoot Mussel because the habitat is not what they like.

So by expanding from the uppermost to the lowermost point of where they have historical record is a complete misuse of the occupied habitat that is required for the critical designation.

Mr. CRAWFORD. Thank you.

Serial litigants often say the litigation saves species from extinction. They point to the mega-settlements and mega-petitions that could add over 757 species to the list in the next few years, an increase of over 50 percent of the current listings that have taken 40 years.

Mr. Veach, do you agree with that?

Mr. VEACH. I don't know. I know that there are, I think, 47 or so more species that are being submitted for endangered species in Arkansas alone. As you go around the States, other States, it is that many and more. I think that this thing is actually exploding on us, and I think the more that it grows, then the bigger problem that it becomes. I think, just like Mr. McDaniel was saying a while ago, some of these areas are not even the habitat that they would like to be in anyway.

So I think that we just keep expanding this, and it has kind of taken on a life of its own and growing, and if we don't get a handle on it, if Congress doesn't get a handle on it, then it is going to put all of us out of business.

Mr. CRAWFORD. Thank you.

Mr. Warner, do you want to weigh in on that one?

Mr. WARNER. Well, I really don't have anything else to add. I think that that says it.

Mr. CRAWFORD. Thank you.

I yield back.

The CHAIRMAN. Let me follow up on my last line of questioning.

Ms. Dohner, I want to ask you on this because you heard what your fellow panelists said about the statement that was issued by the Arkansas Fish and Wildlife Department. To be kind, there is suspicion that it won't work. Like I say, that is being kind, and I have lived through that in the Northwest.

Now, as I understand it, a couple of years ago, and I don't know if you were involved with this, but the Fish and Wildlife teamed with the Florida Fish and Wildlife Conservation Commission in an attempt to streamline the permitting processes within the States to give the States more authority on ESA consultation.

Now, this follows in line, in a way, with what Mr. Fox said. Mr. Fox suggested that voluntary compliance—or to put it a different way, those that are affected should be part of the decisionmaking process, and it appears to me this is what the attempt was by Fish and Wildlife, trying to team with Florida.

However, last year the Center for Biological Diversity and the Conservancy of South Florida, two environmental groups, threatened a lawsuit against Fish and Wildlife to prevent this from happening.

Now, it just seems to me that when there is an effort for you to do the right thing, somebody sues, and that has been brought up several times. As a matter of fact, the subject of legislation that we passed out of my committee within the last month was more local control.

But wouldn't you say, as somebody who is tasked with administering this law, that the effort with Florida was a good effort, but that these continuous lawsuits slow down the desired idea of saving species?

Ms. DOHNER. Yes, sir, I would say that is a good effort, and I was involved with that. That was an agreement between Fish and Wildlife and the Florida Conservation Commission. We are currently still working on those agreements. We have to develop step-down plans. We are currently working through that.

The CHAIRMAN. What is the basis of the lawsuit that denies you from doing that? Is there something in the law that says you can't consult, you can't enter into agreements?

Ms. DOHNER. Sir, what we did is we developed an agreement under the—

The CHAIRMAN. No. What is the basis of the lawsuit? What is the reason why you had to stop this process?

Ms. DOHNER. The agreement we have with the Fish and Wildlife Conservation Commission allowed them to manage more of the species and allowed them to work with private landowners as needed to issue permits and things like that, as long as it follows a plan that we both work on for an individual species or a suite of species.

The CHAIRMAN. Right. I just want to make sure I understand. So what you were doing, then, your effort was to consult with local people that are affected on the ground to try to effect an outcome that would be good for all parties involved with local input. Is that correct?

Ms. DOHNER. Right, and it would give the State more authority over the management of the species, sir.

The CHAIRMAN. OK. Now, the Center for Biological Diversity, which is one of those that brought this mega-suit in the first place, didn't like that why?

Ms. DOHNER. They didn't like that because they said they didn't believe we had the authority to work with the State in this manner through the Section 6 agreement. But like I stated earlier, we are continuing on that effort in developing these step-down plans, either for individual species or a suite of species, to allow them to go forward to manage the species.

The CHAIRMAN. Well, I thank you for your answer, and that is very enlightening, and it is the reason why we had legislation that passed out of our committee, to deal with more local consultation. The frustration that I have heard at home for a number of years is they will ask and then ignore whatever solutions. In fact, there are efforts—in front of our committee we had testimony that there are more people on the State level actively involved in managing wildlife and saving species on the State level than these national environmental groups are doing any place, any place in the country.

Now, we have found in our committee that ESA, frankly, has become a litigious dream, and I will say that very bluntly.

Well, I thank you for your statement, and I encourage you to continue to try to do that. I will tell you, you have support from our committee precisely on getting more local people involved in the whole process, including listing and including managing.

So, with that, I will yield again to Mr. Crawford.

Mr. CRAWFORD. All right. Thank you, Mr. Chairman.

Recently, the Committee on Natural Resources passed legislation requiring the Fish and Wildlife Service to post its scientific data that formed the basis for its listing decisions online so that independent commenters and American citizens can review them in advance.

Mr. CREASY, would you support that concept?

Mr. CREASY. Yes, sir, I would. The more transparency, the better.

Mr. CRAWFORD. Mr. Day?

Mr. DAY. Yes, absolutely, of course.

Mr. CRAWFORD. Mr. Pharr?

Mr. PHARR. Yes, sir, I would.

Mr. CRAWFORD. Mr. Veach?

Mr. VEACH. Yes, yes.

Mr. CRAWFORD. Ms. Dohner, would you support that?

Ms. DOHNER. Sir, I believe we need to be as transparent as possible and provide the information when we can. Yes, sir.

Mr. CRAWFORD. OK. That is good news. I appreciate that.

Mr. Pharr, in your written testimony you alluded to examples in California where citizen groups have sued farmers for using their own land that also had been part of a critical habitat designation. Do you fear the same thing might happen here in Arkansas?

Mr. PHARR. Yes, sir, I think it certainly could.

Mr. CRAWFORD. Can you see any specific areas of concern for you and your operation?

Mr. PHARR. Not particularly in my operation since I don't have any rivers or creeks through my operation. But certainly my family owns farms where a creek goes through the farm, and I could see

having to do things along the creek to prevent cattle getting in it or whatever.

Mr. CRAWFORD. Mr. Creasy?

Mr. CREASY. We have some operations within the watershed proposed up here that would fall within creeks and boundaries. So I could see things going forward.

Mr. CRAWFORD. Mr. Veach?

Mr. VEACH. Yes, I think so. I think that one of the examples that Mr. Pharr brought up is some of those consequences that you don't think about all the time in these designations, that the herbicide Enlist has not been cleared for Arkansas because of those critical habitat designations. That is one of the tools we will certainly need going forward with the agriculture production.

Mr. CRAWFORD. Thank you.

Ms. Dohner, I have had some experience working on some projects that obviously were subject to public comment. I am just curious, how heavily weighted are these public comments toward other Federal agencies as opposed to citizens who want to weigh in and be heard? Because it has been my observation that some of these public comments really have no interest in hearing from citizens but rather other Federal agencies that support their position. Is that common?

Ms. DOHNER. Sir, I wouldn't agree with that, no. I believe that during the comment period we received quite a bit of information, including detailed comments from the Arkansas Association of Counties, and we are looking at those, and because of that we are responding in a letter that says that we will make changes to this critical habitat designation that will result in a reduction in the amount of area proposed.

So I believe that we have to consider all comments that we receive to make sure that we have the best science in the commercial data, including the information from private landowners to other Federal agencies.

Mr. CRAWFORD. Excellent. Thank you.

Yield back.

The CHAIRMAN. This will be the final question. Then I will turn it over to Mr. Crawford to kind of wrap it up.

I just have three questions here, first for Mr. Day.

A number of panelists testified about the economic impact that has been a common theme, which I totally agree with. Could you be very specific with where your camp is and what the economic impact is in that local area specifically, if you have knowledge? Can you talk about that?

Mr. DAY. Yes, certainly. We are in Montgomery County, Arkansas, which most of the land in Montgomery County is U.S. Forest Service land. So we have very limited opportunities for business in Montgomery County. We are the number two employer in the county. Our direct economic impact is about \$5 million just as far as what we spend on employees and hiring staff that spend money in a two-county area. I have worked with Mr. Hamilton, actually, and have done some multipliers and some modifications to that, and the actual multiplied economic impact approaches \$10 million. So it is very significant to a rural economy that doesn't

have any real opportunities for other businesses to come into this area. So it is a big deal.

The CHAIRMAN. Not to be redundant, but you feel that these listings would adversely affect that economic activity?

Mr. DAY. Oh, absolutely. We are very, very concerned about it. We have operated along the banks of the Upper Ouachita since 1949, and it has been an integral part of what we do. Looking at the things that have happened, yes, we are very concerned about how that would affect us, our ability to have continued impact not only on the economy but just on the kids that we impact from 35 States and multiple foreign countries. So, yes, very concerned.

The CHAIRMAN. Mr. Warner, you mentioned briefly in your oral statement about the renewable energy and the impact there. Could you elaborate a bit? Because of the non-permitting, the potential indirect costs that may accrue to your ratepayers because of that activity?

Mr. WARNER. Well, we have invested in renewable energy over the years primarily because it was economical for us to do so. These Arkansas River hydro projects were very beneficial, good for our State, and a good source of clean, renewable energy.

The fact that we may lose—basically a lost opportunity to take advantage of that in the future is what concerns me. If we are trying to develop additional sites on the Arkansas River or wind turbines up in the northern part of the State but we can't because of the proximity to critical habitat or it is just too difficult to site a facility, the State, our members, the environment loses because we can't develop those renewable energy resources.

In the case of the Arkansas River, the river is going downstream. It is considered a low-impact hydro facility on the river. But I don't know that we could permit and build those facilities today with the current regulatory environment. I know that in the northern part of the State, with the northern long-eared bat and Indiana bat and the other species that are in that area, wind developers, if you look across the State, all the wind farms that have ever been built, there aren't any in Arkansas. Part of the reason is the Endangered Species Act issues in the northern part of the State. Our wind is not as good as most places, but we do have that concern compounding our problem.

The CHAIRMAN. Finally, Mr. Fox, I have a question for you. The Center for Biological Diversity—there is that organization again; it keeps coming up—in its petition to the Fish and Wildlife Service, said that in listing the mussels, they fault the loggers for, and I will quote, “failing to follow best management practices.”

Now, my understanding of best management practices for forests is multiple use, obviously harvesting, obviously thinning, obviously prescribed burning, whatever the case may be. Did they ever say—or are you familiar with that, that that is part of what their petition said, that you were at fault?

Mr. FOX. I was not familiar with that, no.

The CHAIRMAN. OK. Well, what would your response be to that?

Mr. FOX. Well, I would strongly, strongly disagree with that. Farmers and foresters are the original conservationists. If we can't come back, in our case, in the woods every 5 to 7 years, sometimes it is once every 30 years, and harvest again, then we are out of

business. It would be the most ignorant thing we could do to ruin our environment.

Having said that, the forestry community, much because of the Northwestern problem with the Spotted Owl, girded ourselves several years ago so that we did have best management practices. We monitor those practices for their efficiency, to see if they are doing what they are supposed to do, their effectiveness. We monitor behind a certain amount of loggers every year on a random sample to see if they are being followed on public land and private land, and our current monitoring shows 89 percent compliance with voluntary best management practices.

I strongly disagree with that statement, and I think we are the conservationists that can protect the mussels, the quality of the streams, and the quality of our air.

The CHAIRMAN. Well, thank you, and thank all the panelists.

Let me turn it over to my colleague, Mr. Crawford, again, our host, for his closing statement, and then I will wrap it up.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Again, I want to thank the Chairman for coming and for the committee.

I think what we have seen here today is a demonstration of a marked contrast between environmental activism versus active environmentalism. And farmers, as we have heard here today, and ranchers and foresters, are active environmentalists. They derive their livelihood from the land, and I believe they can be trusted because of that to be good stewards of that land without an overreach of the Federal Government.

I want to thank them for the testimony.

Thank you for being here.

I also want to thank the University of Arkansas Community College at Batesville, Chancellor Deborah Frazier; Heath Wooldridge, Director of the Physical Plant; Mark Cartwright, the Events Coordinator; and for all the assistance from our maintenance team, Joshua Bishop, Bill Jackson, Christian Bernard, and Lori Bell; and Independence County Sheriff's Department. Sheriff Steve Jeffery, if you are here, we appreciate you. And finally, State Representative James McLean. I saw him earlier. I don't know if he has left or not, but I appreciate him being here.

And with that, thank you all very much.

And once again, thank you, Chairman Doc Hastings.

The CHAIRMAN. Thank you very much.

[Applause.]

The CHAIRMAN. Let me just wrap up a couple of thoughts here. First of all, many times questions arise after the panel has been dismissed, and you may get a letter from one of us asking a follow-up, and if that happens I wish you would be able to respond as timely as you can.

I want to make the tie-in with what several members of the witnesses said and what I said earlier, that those of us in the Northwest have been more greatly affected by ESA in the long term. I would just tell you right now, with this multiple listing and with the potential listings and critical habitat designations here in the Southeast, this issue is not going to go away. In fact, I believe it

is going to get worse for you, and I would encourage all of you—your presence here today I think is certainly aware of that.

But I will tell you just from our experience, it is going to get worse. I will cite one case in point because we had a member here from the forest industry. Forestry used to be a big industry in the Northwest. But since the listing of the Spotted Owl, which supposedly its demise was because of the lack of old growth, although now science says it is because of a predator and not the lack of old growth—at any rate, the economic activity on Federal forest lands is that harvesting has gone down by 90 percent—that is 9-0—in 20 years. Equate that to the jobs and the mills that are no longer there. So that is an effect of having a listing.

Mr. Veach, you said Congress should take control. That is precisely what the committee I have the privilege to chair is trying to do with the four bills that we have passed out right now that we think will highlight some of what the Endangered Species Act badly needs, and that is more transparency, more local control, and we have to get a handle on the litigation. Those are three themes that are wrapped up in those pieces of legislation.

So, once again, I want to thank you. On a personal note, this is the first time that I have had the privilege to visit Arkansas. I am from the dry part of Washington State, but because of the rain I am sure people will associate this with Seattle. But at any rate, in fact, my part of the State is so dry that when it rains, we call it inventory.

[Laughter.]

The CHAIRMAN. So, at any rate, again, I thank the witnesses very, very much for your testimony.

Rick, thank you very much for being honest to have this hearing here. I think it was a very, very valuable hearing.

But I would just again simply say for all of you here that took time to come, this issue is not going to go away, and you should engage yourself in this issue as much as you can.

If there is no further business before the committee, the committee stands adjourned.

[Applause.]

[Whereupon, at 11:44 a.m., the committee was adjourned.]

