

**TESTIMONY OF STEVE GUERTIN, DEPUTY DIRECTOR,
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR,
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER AND WILDLIFE, REGARDING S. 1153, S. 1175,
S. 1202, S. 1232, H.R. 1300, S. 1381, S. 1650, S. 2530, and S. 2560**

July 16, 2014

Introduction

Chairman Cardin, Ranking Member Boozman, and Members of the Subcommittee, I am Steve Guertin, Deputy Director of the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department). Thank you for the opportunity to testify on bills that address a range of Service responsibilities and the conservation of our nation's fish and wildlife for the benefit of our citizens.

In addition to these efforts already underway in the Senate, there remains much work to be accomplished on the legislative front for the conservation of our nation's fish and wildlife. Among the Department's top priorities are the Administration's proposal to achieve full and permanent funding of the Land and Water Conservation Fund, reauthorization of the North American Wetlands Conservation Act to leverage funds for projects that conserve and restore waterfowl habitat, and authority to increase the price of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) to restore its purchasing power. The price of the Duck Stamp has not changed since 1991, while the cost of purchasing land has tripled. Increasing the price of the Duck Stamp is critical to ensuring migratory waterfowl populations thrive in the future, maintaining our hunting tradition and a linchpin for the economies of many states. We look forward to working with Congress to pass Duck Stamp legislation during the 113th Congress.

The hearing today comes at a time when the nation's living resources are impacted by forces acting upon large landscapes and ecosystems such as: habitat fragmentation or loss due to land use changes; invasive species; fish and wildlife disease; contamination; wildfire; floods; and drought—all exacerbated by climate change. These legislative actions are critically important to conserving, protecting, and restoring habitat for trust species. Strategic efforts to provide quality habitat is essential to the persistence, recovery, and success of species. The legislative progress we seek would also support the U.S. economy because the nation's natural resources—including water, fish, wildlife, and forests—are among our most valuable economic assets.

The Department appreciates the support and leadership of the Subcommittee across many conservation issues as well as this opportunity to discuss the legislation that you are considering.

S. 2560, the United States Fish and Wildlife Service Resource Protection Act

Thank you for the opportunity to provide the Department's views on S. 2560, "The United States Fish and Wildlife Service Resource Protection Act." The Department strongly supports this bill, which mirrors the Administration's proposed draft bill language and intent. Mr. Chairman, the Department greatly appreciates your leadership on this important bill.

The Service manages over 150 million acres of Refuges and 71 National Fish Hatcheries. Refuges welcome over 47 million visitors each year, who participate in a wide variety of recreational activities including: hunting, fishing, wildlife observation, photography, interpretation, and education. Refuges and the visitors they draw are vital to local economies, generating nearly \$2.4 billion each year. These visitors come to enjoy the world's premier network of public lands devoted solely to the conservation of wildlife and habitat and it is the responsibility of the Service to manage these lands and their associated facilities for conservation purposes and to support safe and rewarding visitor experiences.

When Refuge lands are damaged or injured, the taxpayer bears the cost of restoration. The Service does not have sufficient statutory authority to seek compensation from responsible parties who injure or destroy Service resources, and then apply the compensation to directly address the damages. Therefore the cost of restoration either comes from appropriated dollars or is added to the operations and maintenance project list to be addressed when funds are available. Damages could include: illegal cutting of vegetation, destruction of real property and facilities (e.g., kiosks, visitor centers), fires, and abandoned debris. This is a more frequent concern for Refuges but also National Fish Hatcheries.

In contrast, the National Park Service exercises authority under the Park System Resource Protection Act (PSRP A - 16 USC 19jj) to recover compensation and repair damages, and the National Oceanic and Atmospheric Administration uses similar authority under the National Marine Sanctuaries Act.

As an example, in 2012, 336 burglary and theft offenses and 54 arson offenses were reported on Service lands. Criminal fines recovered from these cases totaled over \$220,000, but no restoration funds resulted from these investigations. Similarly, over 3,200 vandalism offenses, totaling over \$270,000 in fines were documented. To repair the damages caused by these offenses, the Service must use tax-payer funded, base allocations to pay for assessing, repairing, replacing or restoring structures, habitat and other resources injured by the responsible party. Alternatively, the repair needs would be added to the existing substantial list of operational and maintenance needs.

S. 2560 provides a much needed remedy to this issue. The bill would provide civil and administrative authority for seeking compensation from responsible parties that injure or destroy National Wildlife Refuge System or other Service Resources. It would allow the Service to recover costs for assessing injury and to restore, replace or acquire equivalent resources without further congressional appropriations. Under this authority, damages would be used to reimburse assessment costs; prevent or minimize resource loss; abate or minimize the risk of loss; monitor ongoing effects, and/or restore, replace, or acquire resources equivalent to those injured or destroyed.

This legislation is one of the Service's top legislative priorities and we look forward to working with you, Mr. Chairman, and the Subcommittee to enact S. 2560 during the 113th Congress.

H.R. 1300, to amend the Fish and Wildlife Act of 1956 to reauthorize the volunteer programs and community partnerships for the benefit of national wildlife refuges, and for other purposes.

The Department strongly supports H.R. 1300, which would reauthorize the National Wildlife Refuge System Volunteer and Community Partnerships Enhancement Act of 1998 (Act). H.R. 1300 would reauthorize volunteer programs and community partnerships for the benefit of Refuges for 2014 through 2018.

The Act, as amended, has enabled the Refuge System to expand its volunteer programs and encourage environmental education efforts. The Act also helps the Service develop and grow community-based partnerships with refuge Friends organizations. These locally established, nonprofit citizen organizations have many different names, but they all share a passion for wildlife and wild places. They are some of the Service's best ambassadors to local communities—sharing their knowledge, information, and enthusiasm with their neighbors. They help conservation happen at the local level.

The Act also helps the Service meet mandates of the National Wildlife Refuge System Improvement Act of 1997 by strengthening public involvement and partnerships that support the six priority wildlife-dependent public uses, which include hunting, fishing, wildlife observation, photography, environmental education, and interpretation.

A fundamental concept of the Service's mission is to work with others to conserve wildlife for future generations. We recognize that to be successful, we must inspire the American people to connect with their wildlife heritage and participate as stewards of our system of lands. Volunteers play a vital role in helping communities establish this connection with nature. They are individuals who are inspired to serve their communities and the nation, parents who want to be good stewards of the land and set examples for their children, retired people willing to share their wealth of knowledge, concerned citizens of all ages who want to learn more about conservation and how they can make a difference, and passionate people who enjoy the outdoors and want to conserve these resources for future generations. They help implement conservation measures, provide environmental education and recreational opportunities to the American people, organize and carry out special events, and perform many other valuable services for fish and wildlife conservation and for the Refuge System and its visitors.

Volunteers donate millions of hours of their time each year and those volunteer hours continue to increase. In Fiscal Year 2011, 46,880 volunteers contributed over 1.7 million hours of work to benefit Service programs. This is equivalent to 826 full-time employees. In dollars, the value of their vital work in Fiscal Year 2011 alone was nearly \$37 million. In Fiscal Year 2012, the volunteer program skyrocketed with over 56,000 individuals, nearly 43,000 of which volunteered for the Refuge System alone. These volunteers donated over 2.15 million hours of their time, equivalent to over 1,000 full-time employees. Their donated time is valued at almost \$47 million, leveraging appropriated volunteer funding at a ratio of \$10 of volunteer services for each dollar appropriated to coordinate volunteers.

S. 1202, the Safeguarding America's Future and Environment Act (SAFE Act)

The Department applauds the leadership of Senator Whitehouse and former Senator Baucus for introducing S. 1202, the Safeguarding America's Future and Environment Act. We are very supportive of the need for and intent of this legislation, and greatly appreciate this Subcommittee's continued work to highlight the impacts of climate change on natural resources and the need for adaptation measures.

S. 1202 calls for the development of a National Fish, Wildlife, and Plants Climate Adaptation Strategy (Strategy). As the Department has testified in prior Committee hearings, such a strategy was released publicly on March 26, 2013. The Strategy was developed through a unique partnership led by the Service, the National Oceanic and Atmospheric Administration, and the New York Division of Fish, Wildlife, and Marine Resources (representing state fish and wildlife agencies more broadly), and involving a wide variety of other federal, state, and tribal partners. The Strategy is a framework for coordinated, unified, nation-wide action to facilitate the conservation of the nation's natural resources and the protection of the important services they provide in a changing climate. It provides recommendations, goals, and actions to be implemented across the federal government, states, and other entities. The Strategy was initiated not to direct individual agency adaptation plans, but to provide an accepted set of priority considerations for all stakeholders to guide their efforts and facilitate cooperation across jurisdictional boundaries.

Working closely with partners, the Service is continuing to lead a Joint Implementation Working Group formed to promote interagency implementation of the Strategy and report on implementation progress. Agencies at all levels of government are now working collaboratively to implement the Strategy, and act as a forum for coordination between federal, state, and tribal agencies and other stakeholders. This Working Group will help engage stakeholders and conservation partners in implementation of the Strategy, develop a process and tools to evaluate implementation and progress, facilitate communication and coordination on climate change adaptation activities among federal, state and tribal governments, and oversee future revisions of the Strategy.

The impacts of climate change pose a serious, systemic threat to the wildlife and ecosystems that help support human society, and we appreciate the role of this legislation in the growing national policy discussion about how to sustain our natural and public trust resources as they adjust to the impacts of climate change. We would be happy to provide working group recommendations on how S. 1202 might be made even more effective and efficient, and we would be pleased to work with the Subcommittee on this legislation.

S. 1153, the Invasive Fish and Wildlife Prevention Act

Adverse impacts from invasive species are among the most significant challenges facing the conservation of native fish and wildlife populations, and the economic impact of invasive species in the United States has been estimated to range well into the tens of billions of dollars each year. The introduction into the wild of harmful, nonnative species can become a long-term, expensive burden to public and private sectors alike. With the increasingly global nature of our economy

and transportation systems, the importation of potentially invasive species into the United States will continue, as will the risks—and costly impacts—they impose on our economy, environment, and public health. Preventing the introduction and spread of harmful species is the most cost-effective approach to eliminating or reducing these threats.

The Department supports the intent and purpose of S. 1153, the Invasive Fish and Wildlife Prevention Act to prevent the introduction of non-native, invasive species into the United States or, once introduced into the country, to prevent their introduction into new ecosystems within the country. The Department has concerns with certain provisions of the bill and we would like to work with the Subcommittee and the bill's sponsor, Senator Gillibrand, to address them.

First, we would like to describe some provisions in S. 1153 that the Department believes would improve our ability to list species as injurious. We support the bill's risk screening concept for unregulated "non-native wildlife taxa novel to the United States" and believe this approach is more protective of U.S. environments and economies than the current approach under the Lacey Act. We have developed risk screening approaches that we believe can be used for assessing the risk of these species prior to importation and can be implemented within the timeframe identified by the bill and with only modest increases in resources. Other aspects of the bill that we believe would help streamline and expedite the listing process include statute-specific temporary emergency listing authority and providing the Secretary with discretion to forego certain time-consuming economic analyses. However, other provisions of the bill would appear to actually increase the administrative burden for listing species as injurious wildlife, which would be inconsistent with the stated purpose to establish an improved regulatory process for injurious wildlife.

The Department has concerns about several provisions of S.1153. Under current authorities, any individual or institution must obtain a permit from the Service when importing or transporting injurious wildlife across state lines for authorized purposes. In contrast, the bill would create two categories of injurious wildlife and establish broad exemptions from permitting requirements for taxa listed as either Injurious I or Injurious II. Although the permit exemption for Injurious I taxa is more narrow, restricted to qualified zoos and aquarium institutions, this exemption extends to all qualified institutions for Injurious II taxa. Moreover, the bill would allow any person to transport an individual animal across state lines for noncommercial purposes without a permit, if that animal was lawfully owned prior to the taxa being regulated as Injurious II. We are concerned that movement of prohibited species without a permit will undermine the effectiveness of the current injurious wildlife prohibitions and create significant law enforcement challenges.

In addition, current declaration regulations would need to be changed under S. 1153 to require all imports of live wildlife to be declared electronically, using species-specific data elements. The Service acknowledges the conservation and invasive species management benefits of collecting the import information as described in S. 1153. Although this could be accomplished under the Service's current declaration process, we cannot guarantee a public database as envisioned under the bill can be created once the Service's data is collected by U.S. Customs and Border Protection under the International Trade Data System (ITDS). We would be happy to work with the Subcommittee to address some uncertainties under ITDS, such as how wildlife trade data will

be collected, the role the Service will play in oversight of the data and its collection, who owns the data, and what ability the Service will have to obtain the data and provide it in a public database. The Department also has concerns with the bill's sections covering penalties and sanctions, and we would appreciate the opportunity to provide the Subcommittee with technical assistance on revised language associated with civil and criminal penalties.

Although the Department believes S. 1153 includes elements that could enhance our efforts to reduce or eliminate the impact of harmful species, we are concerned that the bill also includes provisions that would undermine our ability to implement and enforce the law's prohibitions on importation and interstate transport of injurious wildlife. We look forward to working with the Subcommittee to address these concerns to craft a more robust and effective approach to the prevention and containment of injurious species.

S. 2530, A bill to amend title 18, United States Code, to prohibit the importation or exportation of mussels of certain genus, and for other purposes

The Department opposes S. 2530 as drafted. S. 2530 proposes to: (1) add quagga mussel (*Dreissena rostriformis bugensis*) as "injurious wildlife" under 18 U.S.C. 42(a); and (2) exempt public water systems or associated water conveyances, storage or distribution facility or operators from the statute's prohibition on importation and interstate transport of all injurious wildlife.

Both the zebra mussel (*Dreissena polymorpha*), listed as injurious wildlife by Congressional action, and the quagga mussel are invasive freshwater mollusks that negatively affect the natural environment, as well as electric power generation, irrigation, recreation, and other economic sectors. The nonnative mussels also outcompete native mussel species, including threatened or endangered species. In the Great Lakes alone, zebra mussels have overwhelmed municipal and industrial water system infrastructure, and the cost to clean affected pipes and machinery is estimated by the Sea Grant Program at the University of Wisconsin to be \$250 million a year. The zebra and quagga mussels are carried by recreational or commercial boats and other equipment from one waterbody to another. Despite the cooperative action of the Service, states, tribes and other partners, these mussels have crossed the 100th Meridian and have been documented in several western states.

The Department does not object to the inclusion of quagga mussel on the list of "injurious wildlife," as proposed by S. 2530. However, the Department opposes the proposed statutory exemption of any public water system or associated water conveyance, distribution, or storage facility or operator from the 18 U.S.C. 42 prohibitions against the importation and interstate transport of any "injurious wildlife." Such a broad statutory exemption would not only limit our ability to respond to evolving challenges and to work with operators of these systems to implement new control technologies, it would set a deleterious precedent for other injurious wildlife. The Service is aware of the concern about the impact of this statute on public water distribution systems and would welcome the opportunity to work with the Subcommittee on an approach to address this concern while upholding the purposes and value of this important conservation law.

S. 1175, the Infrastructure Facilitation and Habitat Conservation Act of 2013

S. 1175, the Infrastructure Facilitation and Habitat Conservation Act of 2013, would require the Secretary of the Treasury to create a direct loan and loan guarantee program to enable eligible public entities the ability to acquire interests in real property pursuant to habitat conservation plans (HCPs) approved by the Secretary of the Interior under the Endangered Species Act. S. 1175 would require the Secretary of the Interior, through the Service, to review applications submitted to the U.S. Department of Treasury to ensure that the applicant is implementing an HCP that has been approved by the Service; the acquisition would likely be completed, and the applicant has a complementary plan for sustainable infrastructure development that provides for the mitigation of environmental impacts. The Department appreciates Senator Feinstein's leadership on this issue and interest in accelerating implementation of approved Habitat Conservation plans; however, the Administration is still reviewing this legislation and will provide the Administration's views to the Committee after completing an in-depth analysis.

S. 1232, the Great Lakes Ecological and Economic Protection Act of 2013

S. 1232, the Great Lakes Ecological and Economic Protection Act of 2013, would amend the Clean Water Act to achieve the goals established in the Great Lakes Restoration Initiative Action Plan, the Great Lakes Regional Collaboration Strategy, and the Great Lakes Water Quality Agreement of 1978. The legislation would establish the Great Lakes Interagency Task Force and specifies its membership, including the Administrator of the Environmental Protection Agency (EPA), the Chair of the Council on Environmental Quality, and the Secretaries of State, Agriculture, Commerce, Housing and Urban Development, Transportation, Homeland Security, Army, and Health and Human Services.

EPA would have a lead role in carrying out S. 1232, and we defer to them to provide the Administration's overall views on this legislation. We would note for the Subcommittee's information, however, that the Service recommends amending S. 1232 to include the Secretary of the Interior as a member of the Great Lakes Interagency Task Force. The Service, along with other DOI bureaus, is actively involved in Great Lakes conservation, protection, and restoration and would make key contributions to the efforts of such a task force. We would be happy to further discuss DOI activities, programs, and authorities that contribute to Great Lakes conservation and work with the Subcommittee as you consider this legislation.

S. 1381, the Big Cats and Public Safety Protection Act

The Department supports the intent of S. 1381, the Big Cats and Public Safety Protection Act. Amending the Lacey Act Amendments of 1981 by clarifying provisions of the Captive Wildlife Safety Act to prohibit individuals from breeding or possessing prohibited wildlife species would significantly address the current public safety concerns with large cats. While we support the intent and purpose of S. 1381, there are several aspects of the bill that raise concerns and may limit or eliminate the beneficial aspects that the bill could provide, and we would like to work with the Subcommittee to address these concerns.

The prohibitions under S. 1381 would not apply to certain individuals or institutions. One of the entities that would be exempt from the prohibitions is a wildlife sanctuary that meets certain requirements. The bill amends the requirements that a wildlife sanctuary must meet, and the Service supports this additional requirement. However, the bill does not modify the current exemption in the Captive Wildlife Safety Act that applies to State colleges, universities, or agencies, State-licensed wildlife rehabilitators, and State-licensed veterinarians. This exemption is overly broad and would allow individuals who may have little experience or conservation expertise, such as an individual licensed as native wildlife rehabilitator, to breed and sell big cats. Although we recognize the benefit of allowing some individuals or State institutions to breed, acquire, and transfer big cats, the Service recommends amending S. 1381 to tighten up this exemption and we would be happy to work with the Subcommittee to provide technical drafting assistance.

The Department also has concerns with the enforceability of S. 1381. Both the Captive Wildlife Safety Act and this bill, which amends that Act, are drafted in a way that would pose enforcement challenges and result in the Service being unable to complete a civil or criminal prosecution if an individual were to violate the provisions of this legislation. The Service would only be able to enforce strict liability forfeiture. We would appreciate the opportunity to provide the Subcommittee with technical assistance on revised language associated with civil and criminal penalties.

S. 1650, A bill to amend the Migratory Bird Treaty Act to exempt certain Alaska Native articles from prohibitions against sale of items containing nonedible migratory bird parts, and for other purposes.

The Department recognizes the economic and cultural need in Alaska Native communities to improve their quality of life with opportunities to benefit from their unique handicrafts and other traditional items. However, the Department does not support S. 1650. This bill would amend the Migratory Bird Treaty Act (MBTA) to provide statutory authority for activities that may be in violation of current international migratory bird conservation treaty obligations.

The MBTA implements four international treaties the United States holds with Canada, Mexico, Japan, and Russia. These treaties protect a wide range of avian families and species that migrate through or stopover in the United States and the treaty nations. The MBTA prohibits “take,” possession, sale, barter, purchase, shipment, or transport of birds, feathers, eggs or other such products, and it is in part designed to protect bird populations from vulnerability to the demands of commercial use. For example, in 1886, 5 million birds were estimated to be killed for their feathers. When Congress passed the MBTA in 1918, it sought to put an end to the commercial trade in birds and their feathers that, by the early years of the 20th century, had devastated populations of many native bird species.

S. 1650 would allow Alaskan Natives to make and sell any handicraft or clothing made from the nonedible parts of federally protected bird species from birds taken in a manner that is not wasteful, provided these are made without the use of mass copying devices. Our understanding is that migratory bird treaty obligations greatly limit such activities. The Service is working closely with the Alaska Migratory Bird Co-Management Council to more clearly define these

limitations, but this review is not complete. We would be pleased to keep your Subcommittee apprised of these efforts and to continue to work with you to address this very important issue.

Conclusion

Thank you for the opportunity to provide testimony on this range of legislation that addresses multiple responsibilities of the Service for the conservation of our nation's fish and wildlife for the benefit of our citizens. In particular, Mr. Chairman, thank you for your leadership on S. 2560, "The United States Fish and Wildlife Service Resource Protection Act." The Department also appreciates the Subcommittee's interest in considering bills that would address the threats of climate change and invasive species to our nation's wildlife. I am happy to answer any questions the Subcommittee may have and we look forward to working with the Subcommittee members as you consider these bills.