

**STATEMENT OF R. LYLE LAVERTY,
ASSISTANT SECRETARY FOR
FISH AND WILDLIFE AND PARKS,
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
REGARDING
IMPLEMENTATION OF THE ENDANGERED SPECIES ACT**

May 21, 2008

Mr. Chairman and Members of the Committee, I am Lyle Lavery, Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior. I thank you for the opportunity to share with you the Department's recent actions relating to our implementation of the Endangered Species Act. This is my first appearance before you and your Committee since my confirmation as Assistant Secretary, and it is my great pleasure to be here today.

I am accompanied today by Mr. Ren Lohofener, Regional Director for the U.S. Fish and Wildlife Service's Pacific Region, and Mr. Ed Shepard, the Bureau of Land Management's Oregon State Director. These gentlemen have made themselves available, at your request, to respond to any questions that you or other Members of the Committee may have about the spotted owl recovery plan and the Western Oregon Plan Revisions.

Let me begin by mentioning our most recent listing activity. As you know, Mr. Chairman, Secretary Kempthorne announced last week that he accepted my recommendation of Fish and Wildlife Service Director Dale Hall's decision to list the polar bear as a threatened species under the Endangered Species Act. The listing is based on the best available science, which shows that loss of sea ice threatens, and will likely continue to threaten, polar bear habitat. This loss of habitat puts polar bears at risk of becoming endangered in the foreseeable future, the standard established by the ESA for designating a threatened species.

In making the decision, the Secretary also announced that he was using the authority provided in Section 4(d) of the ESA to develop a rule that states that if an activity is permissible under the stricter standards imposed by the Marine Mammal Protection Act, it is also permissible under the Endangered Species Act with respect to the polar bear. This rule, which we have issued as an interim final rule and which is effective immediately, will ensure the protection of the bear while allowing for continued development of our natural resources in the arctic region in an environmentally sound way.

Past Hearings on ESA Implementation and Science

During the time my nomination was pending before the Senate last year, this Committee held several hearings at which general implementation of the ESA was discussed, and the Department's process for reviewing ESA-related decisions and the use of science and

policy in that process were discussed in detail. At that time, both Deputy Secretary Lynn Scarlett and Fish and Wildlife Service Director Dale Hall affirmed that science is the cornerstone of the Service's work, including our decision-making under the ESA, and reiterated the Department's absolute commitment to the scientific integrity of that process. We have taken many actions, both before and since, that I will briefly discuss this morning.

I should begin by acknowledging that Secretary Kempthorne has, since the time of his confirmation, placed a strong emphasis on ethical conduct and scientific integrity as we carry out our work for the American public. I know that throughout his career in public service, the Secretary has exhibited, and continues to exhibit, a commitment to the quality and integrity of science in the decision-making process. He, along with Deputy Secretary Scarlett, has been effective in setting a high standard in this regard.

As Director Hall noted before the Committee last July, both science and policy have roles in the implementation of the ESA. Under the ESA, the Service must use the best available science, be explicit about the level of uncertainty in that science, and leave it to decision makers to choose among available options that achieve the objectives of the Act when making a decision. He also acknowledged that policy decisions in critical habitat designations are appropriate in the section 4(b)(2) exclusion process of the ESA, pursuant to which the Secretary must weigh the benefits of exclusion against the benefits of inclusion, and that

... the assimilation, application, and interpretation of science often represent the beginning point in making policy decisions under the ESA. The peer review process, agency leadership, and the public comment process help to ensure high quality decisions.

Recent Management Activities

As I mentioned above, the Committee's hearings were held last year while my nomination was pending in the United States Senate. Because of my unique position at the time, still an outsider but, by virtue of the position to which I had been nominated, extremely interested in the issues, I was fortunate to have both the time and opportunity to reflect on what I was hearing and reading and what actions would, in my mind, address the problems and add real value to the process.

I determined that it was important for me to immediately set a firm tone on the issues of ethical behavior and how policy and science should interact in the Department. One of my commitments, and one of the first actions I took after confirmation, was to meet with my staff and the Department's Ethics Officer for a comprehensive briefing on the Department's ethics standards. I also committed to explaining, and have explained, to my staff that any contacts they have with field personnel at either the Fish and Wildlife Service or the National Park Service regarding questions of science must and will be through established organizational channels, and only with my prior approval. I documented my commitment with a letter to all National Park Service and Fish and

Wildlife Service employees on my first day as Assistant Secretary. I strive to ensure that everyone in my office treats everyone else, and is in turn treated, with dignity and respect.

I have met with Fish and Wildlife Service Director Dale Hall and National Park Service Director Mary Bomar and affirmed this commitment to professional behavior and the personal code of conduct when it comes to the interaction between career and political staff.

In a similar vein, in July of last year, Service Director Hall appeared before you and presented his views on ESA implementation and the various actions he had taken as Director to ensure that the Service implements the ESA with the utmost scientific integrity. Several of these important recent steps discussed at that hearing include:

- the issuance, in February 2006, of a memorandum detailing the Director's views on how science should be used in making recommendations and decisions, as well as the process by which science would be reviewed in a policy and legal context; and
- clarification of the division of responsibilities for ESA reviews and decisions between the Service and the Assistant Secretary's Office, including that the formulation of science would be the responsibility of the Service, while discussions between the Director's office and Assistant Secretary's office would focus on policy decision-making.

The Service also announced this past January that it is implementing a code of scientific conduct, a series of guidelines applicable not only to scientists, but to managers and executives within the Service, including the Director. Moreover, while it applies to scientific conduct, it extends to include the translation and application of science used to inform resource management decisions. The code is modeled on other codes developed and implemented by professional organizations, such as The Wildlife Society and The American Fisheries Society, and these organizations have praised this effort as an important ingredient of organizational integrity. The code is intended to provide uniform policies for Service employees to follow as they conduct and manage scientific activities, with the utmost regard for maintaining and enhancing the Service's reputation for professionalism, integrity and objectivity.

All of these taken together serve as potent examples of the seriousness with which Secretary Kempthorne, Deputy Secretary Scarlett, and I, along with Director Hall and others in the Department, are treating the issue of scientific integrity and the commitment we have made to ensuring that our science-based decisions are made according to the highest possible standards.

Update on Decision Reviews

Finally, let me provide you with a brief update on the Service's progress on revision of the seven ESA decisions. The process for reviewing decisions established by the Service was one of the subjects discussed in detail by the Committee and Director Hall at the July

2007 hearing. For that reason, I will not go into detail on that process, but will instead highlight the letter sent to you, Mr. Chairman, by the Service's Deputy Director Kenneth Stansell in November 2007. That letter forwarded the Service's conclusion that revisions to seven of the eight decisions should be made and provided a small amount of detail about each decision.

Currently, Mr. Chairman, work is on-going for four of the seven decisions. In November 2007, the Service published a proposed rule to revise the listing of the Preble's meadow jumping mouse, and the Service expects to make a final listing determination by June 2008. Work on the revision of the critical habitat designation for the Preble's meadow jumping mouse will begin in June 2008, with a final decision expected in June 2010. A proposed rule to revise designation of critical habitat for the 12 Hawaiian picture-wing flies was also published in November 2007 and a final critical habitat determination is expected in November 2008. A proposed rule to revise critical habitat for the Canada lynx was published in February 2008, and a final critical habitat determination is expected in February 2009.

Work on the critical habitat for the arroyo toad and the finding for the white-tailed prairie dog will begin in fiscal year 2009.

FWS has allocated approximately \$1 million from fiscal year 2008 and identified \$1.12 million from the fiscal year 2009 budget request for the Endangered Species Program for work related to revising six of the seven decisions under the ESA. Revision of the seventh decision, involving the listed entity for the Preble's meadow jumping mouse, is not included in the list above because the revision will be completed in fiscal year 2008 and funding has come from the base allocation for the recovery program from fiscal years 2007 and 2008 due to our delisting proposal.

Conclusion

I believe the Department and the Service have made great strides over the past year in ensuring that our ESA decision-making processes are clearly delineated and that we maintain a strong emphasis on ethical conduct and continue our commitment to maintaining the integrity of the science used in the decision-making process. Again, thank you and I am happy to answer any questions that you may have.