

**U.S. FISH AND WILDLIFE SERVICE:
FISCAL YEAR 2004 BUDGET**

HEARING
BEFORE THE
SUBCOMMITTEE ON FISHERIES,
WILDLIFE, AND WATER
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

ON

REVIEW OF THE PROPOSED BUDGET FOR THE U.S. FISH AND WILDLIFE
SERVICE FOR FISCAL YEAR 2004

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MARCH 18, 2003
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**U.S. FISH AND WILDLIFE SERVICE:
FISCAL YEAR 2004 BUDGET**

TUESDAY, MARCH 18, 2002

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND WATER,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:01 a.m. in room 406, Senate Dirksen Building, Hon. Michael D. Crapo [chairman of the subcommittee] presiding.

Present: Senators Crapo, Thomas, and Jeffords [ex officio].

**OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S.
SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. The hearing will come to order.

Good morning. This is the hearing on the U.S. Fish and Wildlife Service budget of the Fisheries, Wildlife and Water Subcommittee of the Environment and Public Works Committee.

I welcome everybody. First, I want to apologize for the fact that the hearing has been delayed for one hour. I know that that has caused everybody to alter their schedules. It probably will cause us to have a lower attendance at the hearing because other Senators' schedules have not been able to be changed accordingly.

In fact, one of the things that has delayed this hearing is the fact that we have the budget on the floor of the Senate right now, as well as a number of other issues going forward, that will cause most of the Senators who would otherwise have been here to have to readjust their schedules the best they can and be elsewhere as well.

But, in any event, I appreciate that you, Mr. Williams and Mr. Jones, adjusted your schedules to make yourselves available on such short notice with our changed scheduling.

I should say that, for those members of the subcommittee who could not make it today, we will be certain to make sure their statements can be submitted for the record and provide the Fish and Wildlife Service with any written questions that subcommittee members who aren't able to be here would like to submit to you for answers in writing.

Today the Subcommittee on Fisheries, Wildlife and Water will hear testimony from Steven A. Williams, the Director of the U.S. Fish and Wildlife Service, and I understand that joining you, Mr. Williams, will be Marshall Jones, the Deputy Director of the Fish and Wildlife Service. Mr. Jones, we welcome you with us here as well.

This subcommittee, in my opinion, is long overdue in its oversight of the Service's budget. The budget justifications that each agency publishes are very useful tools for understanding the request levels, the priorities, and the policy direction that the agency and the Congress are giving to the issues under the jurisdiction of the Fish and Wildlife Service.

I did want to note that, as often happens to us, the documents that we need for this process which are critical for examining the agency's plans and spending priorities were very late in getting to the committee. This is an issue which we deal with constantly in terms of needing the materials we need for review with the committee. Without these budget justifications, it is very difficult for members of the staff and the committee members to prepare for budget hearings and reviews like this.

Most of us got the green books just late Friday afternoon. I would expect that in the future we won't see that kind of delays or situations where we face several hundred-page documents to deal with just a few days before a hearing.

For several years now, the Fish and Wildlife Service has been forced to dedicate a significant portion of its Endangered Species Act-related budget to resolving court orders and court-approved deadlines as a result of litigation. The vast majority of this litigation is aimed at procedural aspects of the Endangered Species Act, not substantive protections or recovery actions.

If preventing extinction and recovering species is truly the goal of this law, then we have our work cut out for us because the Fish and Wildlife Service has very little in the way of discretionary funds to prioritize species with the greatest needs or those who would benefit the most from conservation actions. Instead, the courts, rather than biologists, drive the species which need attention because of the litigation.

It has been a long time since we have had a serious discussion with regard to the Endangered Species Act and its reform. For far too long, the ESA has been insufficient in its implementation and ineffective at accomplishing its objectives, but there simply hasn't been a political will to make the changes necessary to improve it.

Whether it's the designation of critical habitat, the Section 7 consultation process, or habitat conservation planning, there are many components of the Act that were good ideas in theory, but just have not been working in practice.

It is appropriate to hold the subcommittee's first hearing on this budget because the budget priorities reflect, in my opinion, many of the failures of the Endangered Species Act. Although I am a critic with regard to much of the Endangered Species Act and the way it is being implemented, I certainly recognize that there are many successful programs that the U.S. Fish and Wildlife Service does carry out, including the National Wildlife Refuge System.

Just last Friday, the Refuge System celebrated its 100th anniversary at the place where it started, Pelican Island, Florida. The Refuge System has been enormously successful in conserving wildlife habitat in this country. We need to find solutions that will make the threatened and endangered species a success story, just as the Wildlife Refuge System has been.

I intend to ask a lot of pragmatic questions about the Endangered Species Act and to introduce legislation to foster debate during this Congress. The only way to sustain our Nation's fish and wildlife and its plants is to make sure that the Endangered Species Act works better for species and for people. It is my hope that this committee will address the failures of the Endangered Species Act through the practical reforms that we will propose.

Director Williams, again, we appreciate your joining us, and following the introductory statement of Senator Jeffords, we will proceed with your testimony.

Senator Jeffords?

**OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S.
SENATOR FROM THE STATE OF VERMONT**

Senator JEFFORDS. Thank you, Senator Crapo. I would like to join you in welcoming the Assistant Secretary, Steve Williams. I think this is the first time he has appeared before this committee since his confirmation hearing.

Last week's celebration of the Centennial of the National Wildlife Refuge System is a testament to the fine work of the Fish and Wildlife Service. In these difficult fiscal times, the Service budget request for the year 2004 is nearly \$4 million more than requested last year. While I have concerns about some of the funding requests and reductions, I am confident that the Service's request will focus us on their mission to work to conserve, protect, and enhance fish, wildlife, and their plants, and their habitats for the benefits to the American people.

We need to continue to protect and conserve our valuable resources by committing adequate fiscal resources to get the job done. I look forward to your testimony.

Senator CRAPO. Thank you, Senator Jeffords, and I indicated, before you arrived, I apologized for the inconvenience in having to re-adjust the timing for our hearing today, but I appreciate your adjusting your schedule and being able to be here.

Senator JEFFORDS. No problem.

Senator CRAPO. Before we turn to you, Mr. Williams, I have been asked by Senator Inhofe, the chairman of the full committee, to read a brief statement. This will give you an indication of one concern he has with your budget.

So on behalf of Senator Inhofe, I would like to read the following statement. He has been detained, and because of the change in the timing of the hearing, has not been able to make it himself personally. His statement reads:

Fish and Wildlife Service has proposed expanding the Ozark Plateau National Wildlife Refuge in northeast Oklahoma by nearly 12,000 acres. This proposal has been met with opposition from many local citizens.

I am currently opposed to this proposal, as I am concerned about how the Refuge's expansion would impact the area's tax base. In tough economic times such as this, I cannot support an initiative that would potentially harm the local communities.

What is the current status of this proposal and what can be done to address those concerns? And is it true that some of the money for the Refuge may come from funds set aside for the Tar Creek remediation?

Thank you, and I would appreciate a response at your earliest convenience.

Senator CRAPO. I am certain that we can get you a written copy of this statement, so you have the questions that Senator Inhofe has asked, so you can respond to him on that.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

I would like to welcome Director Steven Williams for coming today to discuss the proposed budget for the Fish and Wildlife Service. It has been some time since the committee has held such a hearing, and I am looking forward to hearing from you regarding the funding of some of the projects at the Fish and Wildlife Service.

However, I would first like to bring to your attention a problem back in my State of Oklahoma. The Fish and Wildlife Service has proposed expanding the Ozark Plateau National Wildlife Refuge in northeast Oklahoma by nearly 12,000 acres. This proposal has been met with opposition from many local citizens. I am currently opposed to this proposal as I am concerned about how the refuge's expansion would impact the area's tax base. In tough economic times such as this, I cannot support an initiative that would potentially harm the local communities. What is the current status of this proposal and what can be done to address these concerns? Additionally, is it true that some of the money for the refuge may come from funds set aside for the Tar Creek remediation?

As I have stated in the past, I am a strong believer in cost-benefit analysis and strong science. It is critical that we get the most from our money, and I feel it is important to promote programs that have a proven track record. I am pleased that the Service has demonstrated a commitment to providing performance information to highlight projects that deserve additional funding. By knowing which projects work best, we can strengthen proven investments.

As this year is the centennial anniversary of the National Wildlife Refuge System, I am pleased by the renewed commitment to our nation's natural heritage and support the \$25.5 million increase in requested funding from fiscal year 2003. It is my understanding that there is currently a tremendous maintenance backlog for current refuges. Hopefully, this increase will assist in alleviating this problem.

Additionally, there are a number of partnership programs that I feel are extremely important. There is one in particular I would like to bring to the committee's attention the Partners for Fish and Wildlife program. This is a voluntary initiative that works with local landowners, the people who work and know the land, to help promote habitat restoration projects on their property. And I am pleased that the budget request increases funding for this program by \$38 million.

I would also like to take this opportunity to express my concern with the difficulties the military has faced as a result of the Endangered Species Act. The Armed Services have acted as stewards of their lands. As a direct result, the property where they train has become home to a number of endangered species. Unfortunately, ESA has become an obstacle to training our men and women who so bravely protect this nation. These obstacles could cost the lives of those who serve us—this is completely unacceptable. I believe that military encroachment is a serious issue that must be dealt with now.

As we are on the brink of war with Iraq, military readiness is more critical than ever. Unfortunately, the ability to train our troops has become limited due to current environmental law. This problem will only get worse over time unless addressed immediately. Already the Armed Services train in fear of a court ordered injunction as a result of environmental litigation—litigation that seeks to extend current law beyond what was intended by Congress.

The proposed Department of Defense legislation would not exempt the military from the Endangered Species Act. The Armed Services would use Integrated Natural Resources Management Plans, or INRMPs, in coordination with the Fish and Wildlife Service, in place of critical habitat designations. Our service men and women risk their lives to preserve the freedoms this nation holds dear. At the very least, they deserve the best available training.

[The prepared statement of Senator Murkowski follows:]

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Thank you, Mr. Chairman, and thank you, Mr. Williams, for coming this morning. I am looking forward with great interest to your comments on the Fiscal Year 2004 budget of the Fish and Wildlife Service.

As you know, the activities of the Fish & Wildlife Service are important to all residents of Alaska, and often become highly controversial, as the Service struggles to balance the variety of interests it must serve.

Mr. Chairman, you may recall that my State of Alaska is one of those western States that is dominated by a pattern of Federal land ownership which makes doing business a very different experience than in States that are dominated by privately held lands. The Federal government owns 65% of the land mass of the State of Alaska a figure equaled only by your own State of Idaho and exceeded only by Nevada.

Among other elements, Alaska has the sometimes dubious distinction of hosting fully 88% of the total acreage of the National Wildlife Refuge System. We have one refuge the Yukon Delta which is the size of the State of Maine. Although we have only 4% of the Refuge System's more than 500 components, we have more than 88% of the total acreage. In fact, by the time all land conveyances under the Alaska Native Claims Settlement Act are complete, the Refuge system will own more than one-fifth of my State more than 120,000 square miles of land equal to the entire State of New Mexico.

The Service's influence on Alaska does not stop with its management of Refuges, of course. It is intimately involved with the day to day lives of Alaskans as it manages subsistence fishing and hunting activities under the Alaska National Interest Lands Conservation Act. Its involvement in the land-use permitting process is one of the keys to whether Alaska will ever enjoy the benefits of efficient transportation, energy distribution, and communications systems. In short, it has a very significant effect on the ability of individual Alaskans to earn their livelihoods from one day to the next, and its impact can run the gamut from a soft pat to a harsh blow.

Finally, let me note that I understand you have recently named Mr. Rowan Gould to be the new director of the Alaska region. I look forward to meeting him in a few days, and to working with you both in the months ahead.

[The prepared statement of Senator Baucus follows:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Thank you, Mr. Chairman, for calling this important hearing on the U.S. Fish and Wildlife Service's budget. The activities of the Fish and Wildlife Service have a tremendous impact on my State and I appreciate the opportunity to discuss some important funding issues with our only witness today, the Director of the U.S. Fish and Wildlife Service, Steve Williams.

First, I was pleased to hear from Director Williams that the Service will move ahead with its final rule to down-list the gray wolf to threatened status. Gray wolf recovery efforts have been a success. Wolf populations in the Northern Rockies are now healthy and growing. It just makes sense to implement the Endangered Species Act as intended, which means removing the wolf from the list of threatened and endangered species, and returning management control over the wolf back to the States.

I was particularly pleased that the final rule will allow for increased management flexibility for State and federal wildlife officials in order to reduce conflicts between wolves and livestock. However, Montanans are anxious to begin managing the wolf themselves. Because the gray wolf recovery program has been such a success, and wolf populations are so healthy, we've seen more and more wolves in Montana. This raises more and more concerns about livestock depredations, or attacks on domestic pets. It's past time for Montana to take over full management responsibility for the wolf. That means de-listing the wolf in Montana and/or the Northern Rockies region, or providing some other regulatory mechanism that would allow this to happen.

Montana has developed a wolf management plan that, from what I understand, is very good. Yet, Montana has to wait as the Service moves forward with a proposed plan to delist the wolf nation-wide. The Northern Rockies, and a few other States such as Minnesota, have born the brunt of wolf recovery efforts. We have healthy populations right now. I don't see why we can't move forward to delist the wolf in these areas where we have healthy populations, so that the States can have the flexibility and authority that they need to best manage wolf populations for the benefit of their citizens.

I know that Montana has concerns about the financial costs of assuming management of the wolf, and that is a legitimate concern. This is an issue that I'd like to continue to explore with the Service as we move towards giving management of the wolf back to Montana.

In general, Mr. Williams, I'd like to raise several concerns with you about the status of Fish and Wildlife funding and staffing levels in Montana and Region 6. During your confirmation hearing, I asked you to look into the fact that Montana seems to have received the very, very short end of the stick when it comes to the Fish and Wildlife Service's staffing and budget. I asked your immediate supervisor, Craig

Manson, and the Assistant Secretary of the Interior, Lynn Scarlett, the same thing. Everyone promised to look into this problem. So far, nothing has happened. I received a short note from Ms. Scarlett over a year ago, telling me that the situation warranted a closer look by the Service and the Department of Interior, but again, nothing has happened.

Mr. Chairman, this situation is getting out of hand. Montana has only 18 permanent and 5 one-year term Fish and Wildlife Service ecological services employees. That's it, for the entire State. To cover millions of acres of Forest Service, Bureau of Land Management and other federal lands, and countless activities that occur across the State on private and State lands.

Activities in Montana that could potentially or actually impact endangered, threatened or other sensitive species include: timber harvests and hazardous fuels reduction projects, irrigation development, coal mine development and expansion, new or expanded coal and gas fired power plants, new hydroelectric generating facilities, highway projects, airport facilities, sewage treatment plants and cellular tower placements. Many if not all of these activities could require some level of consultation with the Fish and Wildlife Service, to address or reduce impacts to fish and wildlife.

I am very concerned when I hear that the Service may not be able to meet all of the demands placed upon it just by other federal agencies, particularly by the Forest Service. We're working hard in Montana to preserve natural resource jobs, particularly jobs in Montana's timber industry. It is imperative that the Service provide adequate staff to assist the Forest Service in its efforts to manage timber resources, reduce hazardous fuels in our National Forests, and protect and enhance habitat for endangered and threatened species.

Mr. Chairman, Montana is a growing State, and we're trying hard to continue to grow our economy, to provide more and better paying jobs for the citizens of our State. That means more projects, more improvements, more activity, and more potential for conflicts with fish and wildlife recovery goals.

As Montanans, we prize our first-class landscapes, our pristine rivers and streams. We're proud of our outdoor heritage and our abundant fish and wildlife. We don't believe that economic growth and protecting fish and wildlife and their habitat are mutually exclusive goals. Our farmers and ranchers are good stewards of their lands.

But, a lack of resources has made it awfully hard for the Fish and Wildlife Service to respond in a proactive way to Montanans' needs or the needs of our fish and wildlife populations. There's only so much that 18 full-time, permanent employees can do, in a State the size of Montana, with as many endangered, threatened and other sensitive species that we have, including grizzly bears, wolves, lynx, bull trout, sage grouse, prairie dogs, Yellowstone cutthroat trout, fluvial arctic grayling, sturgeon, and the list goes on. We need more people; that's just common sense.

More people means important federal, State and private sector projects more forward more quickly, more efficiently, and that potential problems are addressed up front. More people means the Service can work more pro-actively with the State and local land-owners on species conservation efforts, to avoid the need to list a particular species, or to help land-owners cope with the presence of an endangered or threatened species on their property. For instance, a few Service employees have done wonderful things working with ranchers and local citizens along the Blackfoot River in Montana to improve habitat for bull trout.

The needed investment by the Department of Interior and the Service in these kinds of efforts is minimal when compared to the long-term benefits to species and to the citizens of this country, in terms of enhanced wildlife habitat, healthier forests, reduced conflicts, continued economic growth, and fewer lawsuits.

My sense that the State of Montana has been treated unfairly here only grows when I look at the uneven distribution of Service staff and resources in other States and regions, including three new offices and over 90 ecological services employees in Oregon, and well over 100 ecological services employees in the State of Washington. This difference in staffing levels is just striking. I would like to explore this issue further with Director Williams.

Mr. Chairman, I have worked hard in the past to propose common sense reforms to the ESA, in order to help the Fish and Wildlife Service and other agencies implement the Act more effectively, and with greater sensitivity to the needs of private landowners and States. I was proud of these efforts and the efforts of many of my colleagues on this committee. But, no matter what may or may not happen with ESA reform this Congress or in any other Congress, we have to adequately fund the Fish and Wildlife Service, and we have to put adequate staff where it's needed the most.

I am pleased that the Administration has proposed overall increases in the Fish and Wildlife Service's budget for fiscal year 2004 over previous budget requests. However, I believe we can do much more, and I will explore this more specifically with Director Williams in the questions I submit for the record.

Thank you again Mr. Chairman, for holding this hearing; and thank you, Director Williams, for taking the time to testify today.

Senator CRAPO. With that, Mr. Williams, please proceed with your testimony.

STATEMENT OF HON. STEVEN A. WILLIAMS, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY HON. MARSHALL JONES, DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. WILLIAMS. Thank you. Mr. Chairman, Senator Jeffords, I do appreciate the opportunity to testify before you today and report on the administration's fiscal year 2004 budget request for the Fish and Wildlife Service.

Before I discuss our budget request, I would like to mention our recent decision to down-list gray wolves throughout much of its range. Wolves are coming back, and their new status highlights our progress toward recovering them across their range. Our final rule will give us greater management flexibility for most gray wolf populations, as we work toward removing gray wolf populations from the list of endangered and threatened species.

I would now like to highlight a few items in our fiscal year 2004 budget request, starting with the Endangered Species Program. The 2004 request is \$3 million above the 2003 request level. An increase of \$3.2 million is required to address the growing listing program litigation-driven workload. This additional funding is necessary to address listing actions required by court orders or settlement agreements.

Additional high-priority recovery actions, including immediate actions needed to stabilize critically-imperiled species and actions that could lead to delisting newly recovered species, will be implemented nationwide with an additional \$2 million over the 2003 request.

We are requesting \$103.6 million to implement the fisheries program's vision for the future through increased funding for hatchery operations and hatchery maintenance and increased emphasis on aquatic invasive species. This request will help to do more for aquatic resources and the people who value and depend on them through enhanced partnerships, scientific integrity, and a balanced approach to conservation.

Significant funding increases will support high-priority needs of the National Wildlife Refuge System. Last year the President's budget requested the largest increase in the system's history to celebrate the Refuge System's centennial earlier this month. This year the administration request builds on that substantial increase with another \$25.5 million.

To date, our Partners for Fish and Wildlife Program has worked with 28,700 private landowners through voluntary partnerships to implement on-the-ground habitat restoration projects covering approximately 360,000 acres across the country. We are requesting an additional \$9.1 million in the 2004 request to increase the pro-

gram's capabilities to enter into meaningful partnerships resulting in on-the-ground habitat restoration accomplishments.

A \$3 million increase for the Joint Venture Program will provide a total of \$10.4 million or full funding for that program. As of December 2002, partners have contributed approximately \$1.5 billion to protect, restore, or enhance almost 5 million acres of U.S. wetlands, grasslands, forests, and repairing habitat.

Our law enforcement program would hire nine additional Wildlife Inspectors to interdict and deter the illegal trade in protected species. In addition, manatee protection efforts will be accelerated in Florida by protecting manatees from boat strikes and enforcing speed zones in refuges and sanctuary areas with a \$0.5 million increase.

The President's 2004 budget continues to support active participation on the part of the States and other partners in resource conservation efforts. To this end, the budget provides \$247 million for five Service grant programs that facilitate State and local conservation efforts.

The budget includes \$50 million to continue the Landowner Incentive and Private Stewardship Programs. We are requesting \$86.6 million for the Cooperative Endangered Species Conservation Fund. Our budget includes \$60 million, including \$5 million for a tribal set-aside, for State and tribal wildlife grants.

In addition, we requested \$50 million for the North American Wetlands Conservation Fund. This fund protects and restores wetland ecosystems that serve as habitat and resting areas for migratory game and non-game birds and supports non-regulatory private/public investments.

I thank you very much for the opportunity to testify. We appreciate the committee's interest and support, and I look forward to working with you in the future.

Senator CRAPO. Thank you very much, Mr. Williams.

Senator Thomas, did you want to make an opening statement before we begin the questioning?

**OPENING STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR
FROM THE STATE OF WYOMING**

Senator THOMAS. Very briefly, Mr. Chairman, thank you. I wanted to focus, and I will ask a question in a little bit, on the Endangered Species thing. In Wyoming, of course, we have a good deal of that, and I have been a little surprised lately to get information that during the 30 years we've had about 1,800 species enrolled on the Endangered Listed with about 15 recovered.

Now I see in the budget, apparently, you have increased the amount of money for listing and reduced the amount for recovery. It just seems to me like that's the wrong emphasis, and it certainly has shown up to be the wrong emphasis in Wyoming with regard to grizzly bears, with regard to wolves, and a number of others.

So I just will share that and would have some questions about it, Mr. Chairman.

Senator CRAPO. All right, thank you.

Mr. Williams, I will ask a question first, and my question, as you might guess, is in the area of the Endangered Species Act. You, ob-

viously, are getting from a number of us concerns about the budget allocations in terms of that.

One of the greatest stated needs of the Service, and, in fact, that's true with regard to the previous administration's Fish and Wildlife Service as well, is the need to address the train wreck that the ESA's listing and critical habitat designation system faces. In your opinion, why is the system broken down and what can be done to address the failure?

Mr. WILLIAMS. Early on in the history of the Endangered Species Act, a lot of attention was paid to dealing with petitions to list and listing decisions. At that time, for a number of reasons, the review of petitions to list and listing decisions were done without, for the most part, designating critical habitat, which the law requires. As a result, we received numerous lawsuits and continue to be involved in numerous lawsuits challenging this and demanding the designation of critical habitat.

The actual designation process itself is time-consuming. It consumes quite an amount of staff time in trying to put together biologically significant and legally defensible critical habitat designations. So we have a bit of a backlog that's caught up with us.

In terms of designating critical habitat, it is particularly difficult for certain species, where there's not a lot of information known about that species, at the time of the listing. As we're learning more about particular species, like its life history, and so on, designating critical habitat at the time of its listing is very difficult.

In a nutshell, we have really had a couple of things going on. One is increased lawsuits requiring us to designate critical habitat, inadequate resources to deal with listing petitions, and the developing critical habitat designations, and some of the timeframes in the Endangered Species Act. Given the workload that we're currently under, it is difficult for us to comply.

We had hoped to, and had put into plan, a process, a system to prioritize our actions in terms of what species to list when and which are the higher priority, to try to match up our duties with the funds that we have. Unfortunately, court rulings have negated our ability to prioritize on a biological basis, and the avalanche of lawsuits and settlements that we have to contend with make it very difficult.

I would just point out to you that we are in settlement agreements or in the process of settlement agreements where we have to commit actions of the Service out to 2005, 2006, and in the very near future we may be having to make commitments out to 2007 or 2008, because of the limited resources that we have.

So that's kind of the difficult position we find ourselves in, trying to respond to courts, not having the ability to prioritize and focus our efforts where we think we should go, but we're driven largely by lawsuits.

Senator CRAPO. Well, thank you. I note from the material you have provided that, as of the middle of January this year, the Service's litigation workload is 32 active lawsuits with respect to 32 species, 35 court orders involving 340 species, and 26 notices of intent to sue involving 27 species.

As you may be aware, most of the bipartisan congressional bills addressing critical habitat over the last decade or so have focused

on moving the critical habitat designation phase of the Endangered Species Act to that period where we actually know more about the species and have the evaluation concluded and the recovery process, the planning stage for the recovery process.

I suspect, given the answer you just gave, that I know what your answer to this next question will be, but I wanted to ask it. And that is, do you endorse moving the critical habitat designation to the recovery planning stage?

Mr. WILLIAMS. Senator, I think that makes quite a bit of sense. As you have said, it is at that time when we are developing recovery plans that we have a better understanding of the species' habitat needs.

As a biologist, changing the time or the period when we would have to do critical habitat designation makes sense from a biological perspective. I think it also makes sense in terms of the workload, just the practical workload that we're required to complete under the Act as it is written now.

There are some, as you well know, that question the benefits of critical habitat designation, particularly at the time of listing. So that would be something about which we would certainly be happy to work with you and this committee.

Senator CRAPO. Thank you very much. My time for my first round of questions has expired. Senator Jeffords?

Senator JEFFORDS. Thank you.

Mr. Williams, as you probably know, the Department of Defense is seeking changes to the several environmental laws as part of the Readiness Initiative in the Department's 2004 authorization bill. One of the proposals would eliminate the designation of critical habitat on all lands, quote, "owned or controlled," unquote, by the military if an Integrated National Resources Management Plan, known as INRMP, has been developed under the Sikes Act.

However, under the Endangered Species Act, DOD can request that the Fish and Wildlife Service exclude specific parcels from critical habitat designations altogether, if the designation would conflict with training needs under section 4(b)(2) authority or work with the Service to develop a solution for both training and species protection under Section 7(a)(2).

It seems to me that the current law provides for making training and critical habitat designation compatible. The Service's recent report to Congress on the Sikes Act and INRMP states that, quote, "The Fish and Wildlife Service has established effective partnerships with the military services to facilitate cooperative, collaborative natural resource management on installations while the military continues to successfully carry out its missions."

Do you know of any instances where the existing regulatory structure did not result in an agreement?

Mr. WILLIAMS. I may need to provide an answer for the record on specifics, but if I could comment just in general on that. The Act does allow us, in the process of designating critical habitat, to exclude certain lands where the benefits of exclusion outweigh the benefits of inclusion. It also provides some leeway to recognize management efforts, in this case INRMPs and the Department of Defense installations, to the species and provide some flexibility. Although it has and may continue to be challenged by the courts,

these provisions give us some opportunity to exclude those areas if in the long run the benefits to the species outweigh including them.

I am not aware at this time of any areas, and specifically the latter part of your question, to identify any areas specifically, but we certainly will provide you an answer for the record, if that is okay.

Senator JEFFORDS. The Sikes Act requires that INRMPs be prepared in cooperation with the Service and the State Fish and Wildlife Services. In addition, the Service must comment on implementation and effectiveness of INRMPs and be involved in the formal review process every five years.

In fiscal year 2002, the Service spent 3.1 million hours, equal to 30 full-time employees, in INRMPs. What is the Service's budget request for 2004?

Mr. WILLIAMS. Excuse me a second.

[Mr. Williams confers with staff.]

Senator if it is okay with you again, we would provide you a breakdown we have in our budget documents. It would appear in a variety of accounts. We would have to break that down specifically to dollars spent working with the Department of Defense.

Senator JEFFORDS. I would appreciate it if you would do that.

Mr. WILLIAMS. We are happy to do that.

Senator JEFFORDS. What would the impact be on the Service's budget if the DOD proposal wasn't enacted?

Mr. WILLIAMS. I'm sorry?

Senator JEFFORDS. What would the impact on the Service's budget be if the DOD proposal wasn't enacted?

Mr. WILLIAMS. Are you referring to what was in the defense authorization bill?

Senator JEFFORDS. Yes.

Mr. WILLIAMS. Okay. I don't know that it would have a major budgetary impact. We are working with, as required by the language in the bill, working with the Department of Defense to address their concerns. We have a one-year period to address their concerns about take under the Migratory Bird Treaty Act. I think that is what you are referring to, hopefully.

We have a December 2003 deadline. We are meeting regularly with the Department of Defense, and I can't envision right now that that would have a major impact on our budget, but certainly we appreciate the opportunity to work with them in this one-year time period, again, that is referenced in the defense authorization language.

Senator JEFFORDS. The INRMP proposal.

Mr. WILLIAMS. Oh, in the INRMP proposal?

Senator JEFFORDS. Yes, right.

Mr. WILLIAMS. Again, with your indulgence, I think we need to do a little research on that, and we will provide you a response for the record.

Senator JEFFORDS. In fiscal year 2002 the Service was involved in the development, review, and/or implementation of INRMPs for 225 military installations. If enacted, what impact will the DOD proposal have on the existing INRMPs, and how many species would be impacted?

Mr. WILLIAMS. Again, we would be happy to provide you specifics on that. My personal experience, with working with INRMPs is

from the State perspective, as part of that partnership with Defense and the Fish and Wildlife Service. From that experience, the time that we spent working with Defense I have always considered it as time well spent. A lot of our Department of Defense lands, as you well know, contain excellent habitat and also provide habitat for a number of threatened and endangered species, which sometimes causes Defense some problems in terms of training and readiness.

But INRMPs, in and of themselves, I think provide an excellent vehicle for State/Federal cooperation to provide improved fish and wildlife conservation on those Federal lands. Personally, I enjoyed my efforts, enjoyed my time, working with the Department of Defense folks and thought it was time well spent, again for fish and wildlife conservation within the States that I have worked.

Senator JEFFORDS. There are three criteria set out in The Federal Register that the Fish and Wildlife Service used to determine whether INRMPs can provide special management for lands such that the lands no longer meet the definition of critical habitat. Some have suggested that codifying these criteria could solve the problem the military says it is trying to address in the INRMP and critical habitat designation. What do you think of that suggestion?

Mr. WILLIAMS. I would like to have some time to review that. I have not personally dealt with that, but we certainly will look into that and consider whether codifying is in the best interest of the whole process.

Senator JEFFORDS. I am pleased to see that for the second year in a row the President is requesting an increase in the budget for the National Wildlife Refuge System. However, it appears that the funding will be for operation and maintenance, not for the establishment of new refuges. Are these proposals for new refuges? If so, are they being considered for authorization by the administration?

Mr. WILLIAMS. The increase, the \$25.5 million that is requested for an increase in the Refuge System is to deal specifically with the operation and maintenance and backlog maintenance on existing refuges. That increase would not be directed toward the acquisition, whether through fee-simple acquisition or through easements.

It is, again, coupled with last year's increase, it is our attempt to take care of the facilities and lands that we currently own rather than spending that on acquiring additional lands.

Senator JEFFORDS. Thank you. Thank you, Mr. Chairman.

Senator CRAPO. Thank you very much. Senator Thomas?

Senator THOMAS. Thank you, Mr. Chairman. Thank you, Mr. Williams.

We just happened to visit yesterday with the Defense Department, and they still believe there is a great deal of work to do. There were, I think, six proposals and only one or two of those have actually been put into effect. So there is considerable—and I think you were asked one question. You might think Camp Pendleton may have a place where you actually are having some problems both in the back country and on the coast for landing exercises. I guess it would be pretty hard to imagine that, if the military needs something for training, that that wouldn't be made available to them.

Back to the endangered species, what is your emphasis? Is it just to keep listing more species or is the recovery equally as important?

Mr. WILLIAMS. Senator, our emphasis would like to be on recovery actions. That is, as I understand it, the ultimate goal, of course, of the Endangered Species Act is to keep species from being listed as threatened and endangered and, in the absence of that, to recover those species that are listed.

The —and I will use the term again—the avalanche of lawsuits and settlements, court orders, focused on listing and critical habitat designation has really consumed the majority of our time and a lot of our funding. We are not in the position to focus the efforts of those individuals and those dollars on recovery like we would like to.

This budget does request an additional \$2 million for recovery actions. The problem we find ourselves in is that we are not able to set the priorities, our priorities. Our priorities are set largely by the court systems and plaintiffs that have brought suit against us.

Senator THOMAS. I believe your budget is divided between listing and recovery, and your listing is up and recovery is down actually.

Mr. WILLIAMS. I believe we have a \$2 million increase on the recovery side.

Senator THOMAS. I don't agree with you.

Mr. WILLIAMS. I'm sorry, Senator. I am comparing it to the 2003 budget request. With the late enactment of the 2003 budget, it is easy to get the figures messed up, and I apologize for that.

The increase that we are requesting for listing is to just try to keep our head above water in terms of meeting the court settlements.

Senator THOMAS. No, and I understand what you're saying, but this has been going on for 30 years. Now there ought to be some sort of an effort, rather than to just say, "We're getting sued." Are there changes that need to be made? Are there changes that need to be made in how it is done, so that you don't end up—we shouldn't be governing by lawsuits.

Mr. WILLIAMS. Well, we share that sentiment. We would be happy to work, again, with this committee and with Congress to improve upon the act.

There are a number of areas that, although I do not profess to be an expert in the act, but a number of areas that are obvious to me where it might be fruitful for discussion: listing, critical habitat designation, consultations, and so on.

Senator THOMAS. You know I have a bill in that would seek to deal a little bit with it. It would require there be more science and more information in the listing process. This nominating process is pretty perfunctory. I think we can show you one, the Preble's mouse in Wyoming, where there obviously wasn't enough information in the beginning.

So this bill would require more science, more information, and along at the same time as listing, a plan for recovery. So that you don't get in the grizzly bear thing, where you have exceeded the numbers by hundreds, but yet you can't get the range determined. So do you think that might be helpful?

Mr. WILLIAMS. Well, we recognize that oftentimes we don't have the science that we would like to have. Sometimes a particularly rare species—I mean, by the very definition, the rare species, not a lot is known about them. Sometimes the only science available to us, therefore, becomes the best science available to us.

We do not have the research capability that I think we need to fulfill our duties under the Act. I know you are aware that a few years our research capabilities, our research section, were moved to the U.S. Geological Survey. So we don't have that research component within the Service that we had historically.

That calls upon, and we've had numerous discussions in moving forward on better coordination between the Service and the U.S. Geological Survey. We do rely heavily, then, in the absence of our own research capability, on research and work done at universities, by private consultants, outside biologists, on peer-reviewed journal articles, on any information that we can get to help make those decisions on, again, whether it be listing or critical habit designation, or what it might be.

But we certainly have a real need for improved science. I don't know that that would streamline or shorten the time it would take us to respond to petitions to list or consultations, under the Act, but certainly it would help us in making better decisions.

Senator THOMAS. You might also want to consider requiring that the nominees do a little better job and have a little stiffer requirements in order to submit information and not make nominating such an easy task.

Thank you, Mr. Chairman.

Senator CRAPO. Thank you, Senator.

Mr. Williams, my next question was going to be the one that Senator Thomas just asked, although I would just comment at this point. Obviously, there's a lot of interest on our part with regard to the designation process and how best science is used and when the science is available.

I expect that, whether it is through Senator Thomas' efforts or my own or others, that we will be seeing some legislative focus on this in this Congress, and, hopefully, we will be able to provide you some legislative relief in terms of the ability to more effectively utilize the resources that you have in your budget for species recovery and the kinds of things that we all want to see happening.

In that context, I encourage you and your team to focus on what would be the best solutions; that if you could have reform, what would those reforms be? And maybe I will turn that into a question, not for you to answer right now, but perhaps to just submit a written response on.

If we could do something in the process to try to address the paralysis that the agency faces through the litigation that it is dealing with, what would be the best thing we could do at our level?

Senator CRAPO. Now let me go on to another question. On page 5 of your budget submission, the Service states that your operational plan will contain new long-term and annual performance goals and measures to guide the delivery of the Service program implementation, management reform, and budget formulation.

We often hear well-grounded comments about that the regional-level biological opinion supporting Section 7 consultations and de-

termination of mitigation efforts for section 10 habitat conservation plans are moving forward at a snail's pace. Considering that, at least with regard to Section 7 consultations, Congress has already set forth a performance goal, why can't the Service meet the statutory expectations of the Endangered Species Act? Are these expectations unrealistic?

Mr. WILLIAMS. If I could just start out by, hopefully, putting that question and my answer in context, in 2002 we did approximately 77,000 consultations, 72,000 of which were informal consultations and 5,000 formal consultations. I think in most cases it is safe to say that we have been able to meet the performance expectations. In some cases I would agree that we have had difficulty.

There are a number of problems that may lead to that. One is in certain regional offices, again, the workload that we're under. In some cases we have received, I will just say it, inadequate biological assessments upon which we consult and write biological opinions. In some cases we have received notice of an initiation of formal consultation, and then some time elapse, in some cases a lot of time elapse between then and when we receive the biological assessment, again, upon which we write our biological opinion.

I would say that in a few notable cases, we have turned those biological opinions around very quickly, with a lot less time than we would like, because the action agency was late in providing us information upon which to do our biological opinions.

So workload, the product we get to review, and when we get that product sometimes causes us problems. An example of how things can go smoothly, when we can bring the staff power to bear, is how we have dealt with the Fuels Treatment Program and our consultations with BLM, Forest Service, and others, where we were able to staff up, put people on those consultations, and move them along quickly because of, obviously, the importance of fuel treatment and fire suppression in the West.

We do continue to look for ways to streamline the consultation process. One is very common-sense, relatively easy to do with the cooperative action agencies, and that is for our folks and the action agency to sit down at the onset of the development of the action agency's biological assessment and work through it, so that we are all on the same page when it comes time for us to develop a biological opinion. We are doing that to some degree. It is my goal to do that to a much larger degree with those agencies that we are consulting with.

We have also undertaken a process of developing counterpart regulations. Two quick examples would be under the President's Healthy Forest Initiative and also with the Environmental Protection Agency and the Department of Agriculture dealing with pesticide registration.

So those counterpart regulations should continue to ensure protection for threatened and endangered species, but also provide, again, a more streamlined process, a more timely process, for consultation.

We would always like to have a little more time to complete our work, but I don't know that it is unreasonable if we could staff up the way that we would like to. But I think we have a pretty good track record, with some exceptions that I will agree to, of turning

around our biological opinions and consulting with agencies, and doing so in a way that makes sense to the agency and makes sense for the species involved.

I would just conclude by saying that out of 77,000 total consultations, 72,000 were informal; that gives us a good indication that we can work cooperatively with these agencies. We are working together, and we can deal with whatever conflicts there might be up front, negating the necessity of going to actual formal consultation. That is what I would like to see us doing.

Senator CRAPO. I appreciate that objective and would just encourage your continued focus on this. Section 7 consultations are one area where I think regulatory solutions or cooperation between the agencies can make a lot of progress, and I would encourage you to continue focusing on that.

My next question deals, again, with critical habitat and economic analysis. The previous administration wrongfully tried to justify their position that there was no economic impact of critical habitat because the economic impacts all occurred at the initial listing. I say that they were wrong, these arguments were wrongful because the courts have rejected these arguments.

The cost of economic analyses are, as you say on page 63 of your submission, equal to or greater than the costs associated with preparing the rest of the designation. Are there different ways to address the methodology for economic analysis that will be both informative and provide policymakers with adequate information?

Mr. WILLIAMS. Yes, Senator, I would say that I don't share, nor does the Department of the Interior share, the previous view about the economic impact of critical habitat. There are a number of folks within the Service and the Department, that are working towards a more realistic, a more consistent approach to economic analysis for critical habitat designations.

At times can appear to be somewhat of a moving target, as court decisions in different parts of the country come down, trying to assess if there is agreement on the decision handed down, and if there is, how we incorporate that into the economic analysis.

It is an area that is certainly ripe for improvement, and the Department is working, as I said, working at improving our economic analysis, so that it truly reflects the impacts, the potential impacts, that designating critical habitat will have on society, on those folks that are within that area.

Senator CRAPO. Thank you very much.

In your budget submission, on page 13, the Service is requesting a \$3 million increase in the listing program as a result of litigation-driven workloads. What are the major contributing factors that have led the courts essentially directing the priorities of the Service as a result of litigation?

Mr. WILLIAMS. One of the things, as I mentioned earlier, is a backlog of critical habitat designations. Early in the process, the Service, in the process of listing a species, on numerous occasions indicated that, that it was not prudent to designate critical habitat, for a variety of reasons, one of which may be that there's little benefit to the species.

Those determinations were challenged by a variety of plaintiffs. The courts agreed with the plaintiffs. We find ourselves in a situa-

tion now where not only are we faced with new petitions to list, new decisions to list, and critical habitat designations that must go along or shortly thereafter the listing, but also the backlog of critical habitat designations that we didn't do before. That is one factor, I believe.

Another factor is in the volume of lawsuits that are out there in the country, although primarily, the western part of the country, but the volume of lawsuits and court decisions that are handed down have an impact on, it almost seems like on a weekly basis—I am exaggerating a bit, but certainly on a monthly basis—critical habitat designations that are in process, and we have to go back and rethink, so that when that designation comes out, we don't get sued. That is another contributing factor.

Our request for the additional \$3.2 million for listing/critical habitat designation, hopefully, will be adequate to meet, and provide the resources we need to meet, the court demands for 2004.

I would conclude by saying—and I have mentioned this previously—we tried to implement a priority system a few years ago that would allow us to match our responsibilities, our duties under the Act with the dollars that are out there to benefit the species that we are concerned about. However, that was rejected by the court system. As you have said, we are largely driven now by court decisions.

Senator CRAPO. Thank you. On page 72 of your submission you state that the workload on Section 7 consultations has grown from 40,000 in 1999 to 72,000, as you just indicated a minute ago, in 2002. Can we assume that the number of Federal actions has not almost doubled in the last three years, or have the Federal action agencies used Section 7 consultation to avoid litigation and place the workload on the Fish and Wildlife Service?

Mr. WILLIAMS. Well, I am happy that the other Federal agencies aren't here.

[Laughter.]

Senator CRAPO. Can you answer that question?

[Laughter.]

Mr. WILLIAMS. No, I don't know if I could. I don't know if I would characterize it that way.

In terms of what we have submitted in our budget relative to consultations, the \$2 million decrease that you see in that budget is due to a reduction or an elimination of an earmark that was in the budget for some number of years dealing with southern California habitat conservation plans. We feel that the growth in the section 6 portion of our budget and other grants that flow through the agency provide those folks in southern California the opportunity to compete for those funds.

As we tried to remain fiscally-conservative and constrained by the difficult budget situation we all find ourselves in, we have reprogrammed dollars in our budget to increase what we think we need to deal with our listing duties for 2004. So please don't take the \$2 million decrease as an indication that we don't think it is important or that we think that we can cut back on our responsibilities. It's not that. It is that we removed an earmark where we think that time has run out on the necessity for that earmark for southern California.

Senator CRAPO. What do you think accounts for the almost doubling of the actions in three years of the consultations?

Mr. WILLIAMS. I wouldn't be surprised, in all seriousness, that some of it isn't fear of litigation, where action agencies—and maybe rightfully so—want to make sure that every “i” is dotted and “t” is crossed to avoid litigation that would slow the process. I don't know that I could back that up with factual information, but from talking with folks in other agencies, I kind of get that sense.

Senator CRAPO. Could you hold on for just one second?

Mr. WILLIAMS. Yes, sir.

[Senator Crapo confers with staff.]

Senator CRAPO. All right, thank you.

Mr. Williams, because of our time-budgeting pressures and our budget pressures on the floor today, you may get off the hook earlier than some of us wanted to let you off the hook today, but I have a critical meeting with the Whip team at noon, which is in about eight minutes.

There's a bunch of other questions I wanted to ask you, one set of which I am going to ask you, but there are a number of others that I won't have time to get to that I would like you to respond to in writing, and we will submit those to you.

Mr. WILLIAMS. Yes, sir.

Senator CRAPO. —at the conclusion of the hearing.

Senator CRAPO. But the issue that I wanted to go into before I conclude is the question of the news that there's going to be a downlisting of the wolves under the Endangered Species Act. As I assume you are aware, in Idaho that affects part of Idaho but not the rest of Idaho.

One of the questions that I have is, how will the downlisting of wolves affect the ability of Idaho to delist its population in the future?

Mr. WILLIAMS. I think the downlisting, the final rule that I signed, will help Idaho to delist in the future. I say that for this reason: The final rule identifies three distinct population segments. Idaho, obviously, is in the Western DPS.

The management plan that Idaho has put together, the management plans that Montana and Wyoming are working on, and we are working in concert with them, will set the foundation. I'm sorry, those management plans, coupled with the status of the wolves in that distinct population segment above recovery goals for the last three years, really sets the stage for the Service to move forward with a delisting.

We have also announced with the final rule an advanced notice of a proposed rule to delist wolves and we will be working on that. In fact, we are working on that now.

So it is a logical progression to move a species from endangered to threatened. As we have indicated with the gray wolves, the next step, when recovery goals are met and they are being met; and when management plans are put together

and they are in the process of being put together is delisting. That is where we should head, and it is a decision based primarily on the biology of wolf populations. They are at a point now where we believe protections will be in place in the very near future that would allow us to delist, which, in my mind, is a success that we

should all take some credit for, even though I know that has caused difficulties in Idaho and in other States.

If we move to delisting, the States will, working with us, provide the management flexibility to assure the continued survival of those populations, but also allow land managers, private landowners, ranchers, farmers, the ability to deal with wolves that are causing depredation to livestock, for instance.

So I am anxious and we are anxious to move this process along and to really be part of an effort to fulfill the real intent of the Endangered Species Act. That is to remove species, to recover species, to get them into positions where States can manage them on their own.

Senator CRAPO. I appreciate that, and as I understand it, the downlisting that is to occur will only impact a portion of the wolf population in Idaho in north Idaho, but our experimental wolf population, which is in the remainder of Idaho, will not be affected by the downlisting.

The question I have is, when we get to the delisting stage, which of course we hope is soon, will that require a separate delisting for both wolf populations in Idaho or will that delisting stage cover all the wolf populations in Idaho?

Mr. WILLIAMS. Delisting would cover the entire distinct population segment, including all of Idaho.

Senator CRAPO. As you know, the wolf recovery process has been very successful in Idaho and, frankly, very successful in many other areas as well. Do you support the State of Idaho managing its wolf population prior to delisting, since our State management plan is already in place and wolf recovery clearly is successful in Idaho?

Mr. WILLIAMS. Part of the 10(j) non-essential experimental population, there's some flexibility there that allows folks to manage/control wolves that are causing depredation, again, to livestock.

The northern part of Idaho under the downlisting rule will receive what we call the 4(d) rule, which closely mirrors the 10(j) rule, the only difference being—and it is a small difference—but folks would be allowed to take control actions for pets, for instance. Both cover domestic livestock, sheep, and cattle.

We support what Idaho wants to do in terms of managing wolves as long as it's consistent in this interim period, when we go from threatened to delisted. I am not aware of any problems with—in fact, we have been working with Idaho on their management plan.

I am hesitating a bit because I have always thought about it in terms of, once the species is delisted, I am comfortable with Idaho's management program and their efforts to monitor wolves for the next five years. But as long as it is consistent, obviously, with the law, we will be supportive of what Idaho wants to do after delisting.

Senator CRAPO. Well, I appreciate that, and I realize that that question of who has management authority in the interim period is a critically-important question. I appreciate your support and acknowledgment of the Idaho plan, of the Idaho management plan and its success, and would like to work with you to see if we can overcome any administrative hurdles that there may be to Idaho assuming management now in the interim timeframe.

One last question, and I apologize, I am going to have to ask you to answer it quickly, and then I will maybe have to follow up with you later after the hearing because I've got to wrap up the hearing and then get to this next meeting.

But one of the big issues with the States, obviously, is the financial impact that management of the species has on them when they assume management. I realize this may be a legislative issue rather than an issue at your level, but I would like your opinion on whether it is proper that, when under a Federal law like the Endangered Species Act, the State is caused to incur costs to manage a species, that the Federal Government support in providing the funding for that management.

Mr. WILLIAMS. Well, I will try to answer it quickly, but I can't answer it without saying, for 17 years at the State level I was very much aware of when the Federal Government was going to require us to do certain things. We would like to provide technical assistance. We would like to provide, obviously, the financial assistance, and we do in a way in terms of the State wildlife grants.

Our request includes \$60 million for State wildlife grants, which could be used for those States that are developing wolf management plans. There are opportunities, or there are some grant programs, through the Service that can assist those States, particularly in dealing with wolf management plans.

Do I think unfunded mandates, whether they come from the Federal or the State level, are the best situation? No, I don't think any of us would agree with that.

We will continue to do our best to work with all those States that are developing their management plans, at least in providing the technical assistance, if we can't provide direct financial assistance.

Senator CRAPO. Well, thank you very much, and I do want to thank you and the Service for your attention to the issue, both the downlisting and, ultimately, the delisting and working with the States. We appreciate the new attitude that we have been experiencing in the last little while and look forward to working with you.

I did just want to get you on record as much as I could with regard to the interest of the States in having the support on these unfunded mandates.

I need to say, before I close, that Senator Inhofe's statement will be entered into the record, as will the statements of any other Senators who were not able to be here.

I would ask you if you would be willing to answer questions that Senators who weren't here are willing to submit to you.

Mr. WILLIAMS. Yes, sir, we will.

Senator CRAPO. All right, I apologize again for having to abruptly close this hearing. I am already very late to a meeting that I am not supposed to be late to. So we will conclude the remainder of our questions, and so forth, in writing and in subsequent follow-up.

Again, I thank you for your attention to these matters and for coming here today.

This hearing is closed. Thank you.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. STEVEN A. WILLIAMS, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, and members of the committee, I appreciate this opportunity to testify before you today and report on the Administration's fiscal year 2004 budget request for the Fish and Wildlife Service.

Our budget request for 2004 is almost \$2.0 billion, consisting of \$1.3 billion in current appropriations under the purview of this subcommittee as well as \$674.0 million in permanent appropriations.

The request continues key Administration priorities such as the Secretary's continued emphasis on conservation partnerships through a revised Cooperative Conservation Initiative that focuses on existing successful programs.

The Service's Partners for Fish and Wildlife, North American Wetlands Joint Venture, Coastal and Refuge Challenge Cost-share programs are all included in this year's Cooperative Conservation Initiative. The budget provides \$15.0 million in increased funding for these programs, including \$9.0 million for Partners, \$3.0 million for Joint Ventures and \$3.0 million for Refuge Challenge Cost-share.

Our main operating account—Resource Management—is funded at \$941.5 million, a net increase of \$38.0 million over the 2003 request. We note this account is funded at \$30.0 million over the recently signed 2003 Omnibus spending bill.

The request includes \$7.0 million for fixed pay and other cost increases. The budget also includes a \$3.4 million general decrease for travel and transportation costs as well as an \$8.1 million reduction tied to information technology streamlining savings. Last, funding for several lower priority projects has been redirected to higher priorities.

President's Management Agenda

We support the President's Management Agenda and continue to create a citizen-centered organization by evaluating and implementing strategies to integrate budget and performance management, conduct work force planning, competitively outsource with the private sector, expand e-government, and provide greater accountability to the American people.

The Service has worked closely with the Department over the past year to develop a more business-like approach to strategic planning and the 2004 budget. Substantial new performance information is contained in our justifications along with the series of traditional information that has supported previous congressional decision-making on the budget request.

Last, the National Fish Hatchery System and Partners for Fish and Wildlife Program were evaluated under the Administration's Program Assessment Rating Tool during the 2004 budget process. I will discuss more on the PART process later.

Fisheries Vision for the Future

We request \$103.6 million, a net increase of \$8.8 million over the 2003 request to implement the Fisheries Program's 'Vision for the Future' through increased funding for hatchery operations and hatchery maintenance and increased emphasis on aquatic invasive species. For comparative purposes, this level is \$3.0 million below the recently signed 2003 Omnibus spending bill, largely attributed to unrequested projects included in the Omnibus bill.

Our 'Vision for the Future,' with the backing of this Presidential budget request, will help to do more for aquatic resources and the people who value and depend on them through enhanced partnerships, scientific integrity, and a balanced approach to conservation. This 'Vision' will help the Service better support the sport fishing community, which has historically been one of this agency's most valuable and valued partners. It also will help efforts to restore imperiled species.

We seek a total of \$58.0 million for the National Fish Hatchery System, a net increase of \$8.0 million above the 2003 request level. The National Fish Hatchery System was one of over 200 programs evaluated using the Administration's Program Assessment Rating Tool during the fiscal year 2004 budget process. New goals were developed consistent with the President's Management Agenda, the Department's Draft Strategic Plan, and the Fisheries Vision. This year's increase is a direct reflection of the program's shift toward becoming more performance oriented.

\$5.0 million will support operations:

- \$1.6 million will support an additional 29 priority recovery tasks prescribed in approved Recovery Plans in 2004, an increase of 11 percent.
- \$2.5 million will implement 32 additional restoration/recreation projects to conserve and restore aquatic resources, roughly 72 percent of all restoration activities.
- \$900,000 will be used to conduct 16 high priority projects addressing science and technology objectives supporting valuable recreational fisheries and recovery of imperiled species.

\$3.0 million will improve the hatchery system's aging infrastructure to good and fair operational conditions to meet fishery management and recovery plan requirements. Of this total, \$2.5 million will be directed toward 16 additional high priority deferred maintenance projects. The remaining \$500,000 will enable the Service to complete Condition Assessments on 75 percent of its field stations in 2004, and to streamline maintenance reporting and accountability by implementing the Service Asset and Maintenance Management System (SAMMS).

An additional \$1.0 million will prevent the introduction of aquatic invasive species, detect and rapidly respond to aquatic invasive species, and control and manage aquatic invasive species such as Asian carp in the Mississippi drainage and Asian swamp Eel in the Everglades.

We also note that while this year's budget focuses on much needed increases for the hatchery system, we continue to strongly support aquatic habitat needs through a variety of programs. For example, the budget continues base funding for fish passage projects, for aquatic habitat restoration, and for other projects, some of which will be discussed below.

Partners for Fish and Wildlife

To date the Partners program has worked with 28,700 private landowners through voluntary partnerships to implement on-the-ground habitat restoration projects covering 360,000 acres across the country.

The Partners Program was also one of over 200 programs evaluated using the Administration's Program Assessment Rating Tool during the fiscal year 2004 budget process. This year's increase is a direct reflection of the program's achievement of annual performance goals.

We are requesting an additional \$9.1 million in the 2004 request to increase the program's capabilities to enter into meaningful partnerships resulting in on-the-ground habitat restoration accomplishments.

For example, the Service will work with the California University of Pennsylvania on a landscape-scale habitat restoration program in the Buffalo Creek Watershed, Washington County, Pennsylvania and Brooke County, West Virginia to install streambank fencing, cattle crossings, and constructing alternate watering sources for livestock. And, in Alaska, the Service will work with the Chickaloon Village to restore fish passage within the Moose Creek watershed to restore all five species of Pacific salmon to the watershed.

During 2004, the Partners program will:

- enhance or restore a total of 66,365 acres of wetlands through voluntary agreements to help improve fish and wildlife habitats;
- enhance or restore a total of 287,507 acres of upland habitat through voluntary agreements to help improve fish and wildlife populations;
- enhance or restore a total of 830 miles of riparian and stream habitat through voluntary agreements to help improve fish and wildlife populations.

National Wildlife Refuge System

Significant funding increases will support high priority needs of the National Wildlife Refuge System. Last year, the President's Budget requested the largest increase in the system's history to celebrate the Refuge System's Centennial in March 2003. This year the Administration request builds on that substantial increase with another \$25.5 million. For comparative purposes, this is a \$33.6 million increase over the recently signed 2003 Omnibus spending bill.

Together with last year's request, this totals over \$82.0 million for much needed operations and maintenance projects within the refuge program.

A \$5.0 million increase will provide startup costs for new and expanded refuges including Vieques, Midway Atoll, and Don Edwards. Invasive species encroaching upon the refuge system will be addressed with an additional \$2.1 million to combat nutria, Tamarisk and Giant Salvinia, among others.

We will fund additional Challenge Cost Share projects under the Cooperative Conservation Initiative with \$3.0 million; support additional Comprehensive Conservation Plans with \$2.0 million; and control Chronic Wasting Disease on the refuge system with \$500,000.

Other priorities include \$1.6 million for refuge law enforcement, \$2.0 million for Land Management Research Demonstration Units, \$1.0 million for environmental education, and \$7.0 million for refuge specific priorities.

On the maintenance front, additional maintenance funding will upgrade the SAMMS module with \$2.0 million.

Endangered Species

The endangered species program is funded at \$129.0 million, \$3.0 million above the 2003 request level. The program funding will support operations that enhance

implementation of the Endangered Species Act, one of the nation's most significant environmental laws.

An increase of \$3.2 million is required to address the growing listing program litigation-driven workload. This additional funding is necessary to address listing actions required by court orders or settlement agreements.

Additional high priority recovery actions, including immediate actions needed to stabilize critically imperiled species and actions that could lead to delisting nearly recovered species will be implemented nationwide with an additional \$2.0 million. Potential actions include, for example, propagation and habitat restoration for aquatic species in the Southern Appalachians and Lower Tennessee Cumberland ecosystems, a region containing the highest diversity of freshwater fishes and snails in the United States and the highest diversity of freshwater mussels and crayfishes in the world.

Other Operations Increases

A \$3.0 million increase for the Joint Venture program will provide a total of \$10.4 million for the program, in line with target levels. As of December 2002, Plan partners have contributed approximately \$1.5 billion to protect, restore, or enhance almost 5 million acres of U.S. wetlands, grasslands, forests, and riparian habitat, more than one-third of the 16 million acres of U.S. habitat objectives under the Plan.

Our law enforcement program will hire nine additional wildlife inspectors with an additional \$1.0 million to interdict and deter the illegal trade in protecting species thus sustaining biological communities. In addition, manatee protection efforts will be accelerated in Florida by protecting manatees from boat strikes and enforcing speed zones in refuges and sanctuary areas with a \$500,000 increase.

Easements and Land Acquisition

The President's budget request reduces our traditional land acquisition program by \$29.6 million to a \$40.7 million level to fund high-priority conservation easements or acquisition of land from willing sellers. For comparative purposes, the account is funded at \$32.2 million below the recently signed 2003 Omnibus spending bill. Highlights include \$5.0 million for conservation easements on the Quinault Indian Reservation in Washington State and \$5.0 million for the Baca Ranch in Colorado.

Construction

The Construction account totals \$35.4 million, roughly equal with last year's request. This request level will fund 19 dam safety, road and bridge safety, and other priority projects at national wildlife refuges, fish hatcheries, and law enforcement facilities. Highlights include replacement of the Great Lakes fish stocking vessel M/V Togue, replacement of the office building at Cabo Rojo NWR in Puerto Rico, and \$1.0 million to begin an aircraft replacement program to support important migratory bird surveys important to setting hunting regulations.

Grant Programs

We will continue conservation efforts through cooperation, consultation and communication with all stakeholders including States, the District of Columbia, Territories and Tribes. The President's 2004 budget continues to support active participation on the part of the States and other partners in resource conservation efforts. To this end, the budget provides \$247.0 million for five Service grant programs that facilitate State and local conservation efforts.

Recognizing the opportunities for conservation of endangered and threatened species through partnerships with private landowners, the budget includes \$50.0 million to continue the Landowner Incentive and Private Stewardship programs.

We are requesting \$86.6 million for the Cooperative Endangered Species Conservation Fund, \$2.3 million below the 2003 request level, and \$6.1 million above the 2003 Omnibus spending bill. The proposed funding level would provide \$50.0 million to support Habitat Conservation Plan Land Acquisition; \$17.8 million for Recovery Land Acquisition grants to help implement approved species recovery plans; \$7.5 million for traditional grants to States; and \$8.9 million for HCP planning assistance to States.

The budget includes \$60.0 million (including a \$5 million tribal set-aside) for State and Tribal Wildlife Grants, roughly level with the fiscal year 2003 request level, and \$4.6 million below the 2003 Omnibus spending bill.

A \$50.0 million request for the North American Wetlands Conservation Fund includes an increase of \$6.0 million above the 2003 request level, and \$11.3 million above the 2003 Omnibus spending bill. This Fund protects and restores wetland ecosystems that serve as habitat and resting areas for migratory game and non-game

birds, and supports non-regulatory private-public investments in the U.S., Canada, and Mexico.

International Conservation

\$7.0 million is available for the Multinational Species Conservation Fund, \$2.0 million above the 2003 requested level.

Conclusion

Thank you very much. We appreciate the committee's past support, and look forward to working with the committee in the future.

RESPONSES OF STEVEN WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR CRAPO

Question 1. In your budget submission on page 13 the Service is requesting a \$3 million increase in the listing program as a result of litigation-driven workload. What are the major contributing factors that have led to the Courts essentially directing the priorities of the Service as a result of litigation?

Response. Essentially, for many years, the U.S. Fish and Wildlife Service (Service) has been unable to comply with all of the non-discretionary deadlines imposed by Section 4 of the Endangered Species Act (ESA) for completing mandatory listing and critical habitat (listing program) actions within available appropriations. The majority of private litigants have therefore repeatedly sued the Service because it has failed to meet these non-discretionary deadlines. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct listing resources to the listing program actions most urgently needed to conserve species.

Question 2. The Service requests a decrease of just over \$2 million for Section 7 consultations and HCPs. Your stated justification for this reduction is funding support available through other programs. How exactly do you intend on addressing the backlog in developing biological opinions for Section 7 consultations with a decrease in funding?

Response. The decrease is a targeted elimination of the Natural Community Conservation Plan (NCCP) earmark. Activities conducted under this program are also excellent candidates for funding through grant programs such as the Cooperative Endangered Species Conservation Fund or the Private Stewardship Grant program. Eliminating this earmark will not alter the amount of funds available to provide consultation services to Federal agencies.

Question 3a. On page 72 of your submission you state that the workload on Section 7 consultations has grown from 40,000 Federal actions in 1999 to 72,000 Federal actions in 2002. Can we assume that the number of Federal actions has not almost doubled in the last 3 years? Or have Federal action agencies used Section 7 consultation to avoid litigation and placed the workload on the FWS?

Response. The increased number of consultations does in part reflect the fact that many Federal agencies have recognized their legal duty to consult with the Service when their actions may affect listed species or critical habitat. But the increased number also reflects the effects of adding many species to the list in the late 1990's. The majority of Section 7 consultations completed by the Service are resolved informally with the action agency and applicant. The Service informally resolved consultations on the vast majority (98 percent in fiscal year (fiscal year 2001) of Federal actions by working with the action agency and the applicant to avoid adverse effects to listed species or habitats. The Service also encourages applicants to consult as early as possible in the project planning process, thereby identifying and resolving endangered species conflicts while the project design is still flexible.

Question 3b. Have you investigated the possibility of charging back Section 7 consultation fees to the action agencies as a means of funding this process and reducing the backlog?

Response. The Department's fiscal year 2001 Appropriations Act (P.L. 106-291) included explicit authority for the Service to be reimbursed for expenses incurred when conducting Section 7 consultations on hazardous fuels reduction projects. The Service may explore whether this type of authority might expedite the process for other activities. At the informal consultation stage, reimbursable agreements are made with various agencies to provide technical assistance so that the process proceeds more expeditiously at the formal stage.

Question 4. Of the 72,000 consultations for Federal actions noted in your submission only 53 actions were determined to be likely to jeopardize the species. What does this say to you about the “conservation by permit” system at work in the country today, and wouldn’t a system of applied conservation based on the best interests of the species rather than chances of Federal actions be preferred?

Response. We believe that the low number of jeopardy consultations is due largely to the cooperative approach to conservation that arises when action agencies seek the expertise of Service biologists. Involvement of endangered species specialists through the consultation process typically leads to project designs that avoid jeopardy or adverse modification of critical habitat. Effective and adaptive consultation practices and the availability of well-trained staff have been, and will continue to be, the primary factors in maintaining this remarkable rate of success.

Question 5. What has the Service done to assist small landowners take part in the Section 10 HCP system?

Response. The Service has worked with local units of government to develop programmatic permits such as those used in Texas for the Houston toad. We have also set aside a portion of our Habitat Conservation Plan (HCP) Planning Assistance grant funds to target small landowners who want to develop an HCP. Additionally, under the 5-point policy, we provide authorization for streamlined approval for low-effect HCPs—an effort targeted specifically at small landowners. The results to date indicate additional effort is needed in this area.

Question 6. In light of the courts decision in the Mexican Spotted Owl case, what do you see as the possible implications on HCPs and the exclusion of HCP covered lands from critical habitat thereby fulfilling the promised role of HCP resumed by former Sec. Babbitt?

Response. We expect to preserve the exclusion for lands covered by HCPs using the procedures of section 4(b)(2) of the Act.

Question 7. I would like to applaud the Service and the Secretary for the Partners for Fish and Wildlife program. It is certainly a success and it fulfills, what I think all of us agree, is the best objective of conservation—a voluntary system of Federal, State and local partnerships for species.

However, it occurs to me that the funds used in these voluntary efforts could also be used as credits for a mitigation bank. In this way we could leverage conservation funding and begin to use the Act as a carrot for positive change rather than a stick against reasonable development. What progress is the Service making in developing Endangered Species Conservation banking?

Response. On May 8, 2003, the Service published its guidance for the establishment, use, and operation of conservation banks (68 Fed Reg 24,753). Prior to the issuance of this guidance, the Service had successfully entered into agreements with landowners for the establishment of these banks, mainly in the southeastern and southwestern portions of the country. In response to the new guidance, increased interest on the part of landowners and increased effort on the part of the Service to establish conservation banks for endangered and threatened species has occurred. The Service is currently working on more than 40 conservation banks with private landowners and State and local governments. Several agreements are being developed with landowners in States that are new to conservation banking, including Oregon, Colorado, Utah, Arizona, and Kentucky.

Question 8. In my home State of Idaho, and throughout the Pacific Northwest, controversy continues to rage over the endangered Pacific salmon. In the operation of the National Fish Hatchery System, does the Service use the same ESU regimen employed by NMFS? In other words, in light of the Alsea case, does the FWS count hatchery raised fish as endangered species for the purposes of determining the overall numbers of species? Does FWS allow the take of endangered fish species under its jurisdiction for commerce?

Response. The Endangered Species Act permits the Service to make listing decisions for subspecies and distinct population segments (DPS). Although NMFS’s “evolutionary significant unit” (ESU) is equivalent to a “distinct population segment,” the Service does not use the term, “ESU.”

In making its listing decision the Service has always considered the presence of hatchery fish. For example, in listing the Atlantic Salmon DPS, the Service accounted for the hatchery fish in making its listing decision.

With regards to the taking of endangered fish species under its jurisdiction, the Service does not allow the take of wild fish species listed as endangered or their progeny for commercial purposes.

Question 9. You have expressed concerns over the cost of critical habitat designations. Obviously, the need for such designations and possible ways to streamline the process are important questions for legislative and administrative reform. In the in-

terest of making the existing process work more efficiently until such reforms can be implemented, do you believe that third parties can assist by providing better peer review and comments on the issues relevant to a designation, both from the biological and economic analyses perspectives. If this is the case, doesn't that argue for sharing the relevant information with the other interested parties?

Response. Please see our response to Question 10 below.

Question 10. Why does FWS often refuse to release such information, as is happening now with the pygmy owl in Arizona? Isn't there a way to develop a process that protects this data to the degree necessary to ensure that privacy and State concerns are satisfied but still make it available to affected parties?

Response to Questions 9 and 10. Under the Endangered Species Act, the Service must ensure that listing and critical habitat decisions are based on the best available science. To this end, when making listing and critical habitat decisions, the Service consults with experts both inside and outside the Federal Government and considers data from Federal and State agencies, other stakeholders, and the general public during the rulemaking process. In addition, the Service's peer-review policy allows for input from three appropriate and independent experts regarding the adequacy of scientific data used to support listing and critical habitat decisions. The Service is currently drafting interim peer review guidance that will clarify the objectives and procedure for implementing the Service's 1994 peer review policy.

In 2003, the General Accounting Office reviewed the Service's listing program and determined that the Service's policies and practices generally ensure that listing and critical habitat designation decisions are based on the best available science and that the Service consults with a wide range of experts and stakeholders.

While the Service's process in making listing and critical habitat decisions allows for the sharing of data such that the public may adequately participate, there are certain circumstances in which the release of sensitive information could result in harm to listed species through collection, as well as threats from both unintentional and malicious harassment of animals. The Service must also be sensitive to the privacy concerns of landowners. For example, the Service does not release information that contains landowner names and addresses.

Question 11. Two recent court decisions, involving the Canada lynx and the Santa Ana sucker, indicate that Section 7 consultations will not go forward until critical habitat designations have been made. Can you estimate what the cost these decisions will be to the government, action agencies, and regulated entities if all actions subject to Section 7 must come to a halt until such designation determinations are made? What does the Service intend to do about these decisions?

Response. The Service is not able to predict the number of future actions that may be affected or estimate the costs to the government or regulated entities under Section 7. However, we note that with regard to the lynx decision, the injunction is currently on appeal, and we expect that it will be lifted soon. The Service recently issued a final rule designating critical habitat in response to the Court's decision in the San Ana sucker matter. We expect this injunction will also be lifted soon.

Question 12. It would seem to be an efficient use of resources to delist species that have met their recovery goals so that funds that are spent on them can be used to address other species on the list. What efforts are being made by the Service to delist species that have met recovery goals? Where does delisting in the Service's priorities? How much is the Service's budget request for delisting activities?

Response. Because recovery and delisting are the ultimate goals of the ESA, they are a high priority for the Service. We have specific funds set aside for general program activities which include delisting funds. For fiscal year 2004, the Service requested a \$2 million increase in funds that would stabilize species on the brink of extinction and implement final recovery actions for species on the brink of recovery that would ultimately lead to their downlisting or delisting in the next few years.

Question 13. What 12 species do you expect to list in this calendar year?

Response. The Service issued final listing rules in fiscal year 2003 for the following species: Scotts Valley polygonum, Canada lynx, Sonoma County DPS California Tiger Salamander, Columbia Basin DPS of the Pygmy Rabbit, *Loamatium cookii*, and the *Limnanthese floccose* ssp. *Grandiflora*.

Question 14. You state that you expect to work with EPA on NPDES water quality criteria programs. In light of the court decision in [Micco suki Tribe] what assurances can you offer the western States that temperature variations in trans-basin water transfers will not unduly burden the western water use system?

Response. As you know, the Miccosukee case, *Miccosukee Tribe v. So. Florida Water Mgmt. Dist.*, 280 F.3d 1364 (11th Cir. 2002), is now before the United States Supreme Court, and the United States has filed a brief supporting reversal of the decision. With this in mind, while the Environmental Protection Agency is respon-

sible for administering the NPDES water quality criteria programs, the Service will coordinate closely with EPA to ensure that its involvement in the process is carried out efficiently and that such transfers are consistent with applicable statutes.

Question 15. As I read your budget submission, it appears that the number of new HCP applications seems to be declining from previous years. In fact in 2003 you expect only 10.5 thousand acres of HCP coverage for 10 new HCPs. Is this an acceptable pace for HCP processing? Is this a possible reason for HCP application decline?

Response. The Service believes that the apparent decline is not the result of inefficiencies in processing, but is likely the result of a trend toward regional HCPs which may result in a decline in the total number of applications received; however, we expect these regional HCPs will increase the number of activities and acres covered.

Question 16. One indication of whether a law is working or not is the number of lawsuits that are brought under it. The Service has said that it will only be able to work on listing and critical habitat issues that are required by court order. That indicates that there are serious problems with the listing process and the critical habitat process. What is the Service doing to correct these problems with the listing process and the critical habitat issue?

Response. As previously noted in April 2003 testimony before this subcommittee, the Department of the Interior welcomes the opportunity to work with Congress in developing a legislative solution to the crisis surrounding the Section 4 listing program. Currently, the Department is developing critical habitat policy in order to provide the greatest conservation benefit to threatened and endangered species in the most cost-effective manner.

Question 17. Last year at this time the credibility of the Service was shaken by incidents of employees planting false data on Canada lynx and a preliminary report from the National Academy of Sciences that the actions taken in shutting off water in the Klamath Basin the year before were not supported by the scientific evidence. What has the Service done in the past year to better assure that decisions are supported by sound science? What actions were ever taken against the employees who planted the false evidence in the Canada lynx incident?

Response. The Service has undertaken a number of actions to ensure that decisions are supported by sound science. Some of these actions include the development of personnel standards which specify disciplinary consequences for inappropriate or unacceptable behavior related to science, the establishment of interim draft guidance for the implementation of the Service's peer review policy, and the creation of a new position of Science Advisor to the Director of the Service.

As previously noted in our May 2002 testimony before the House Resources Committee, the two Service biologist involved in the submission of unauthorized genetic samples during population surveys of the Canada lynx were subjected to appropriate administrative action.

Question 18. It would seem to be an efficient use of resources to de-list species that have met recovery goals so that funds that are spent on them can be used to address other species on the list. What efforts are being made by the Service to de-list species that have met recovery goals? Where does de-listing stand in the Service's priorities? How much funding are you seeking for de-listing activities?

Response. Please see the answer to Question 12 above.

Question 19. The Department and the Service have indicated that they are seeking more partnerships and greater cooperative efforts with landowners in the administration of the ESA. Yet the 2004 budget request for the Landowner Incentive Program, which provides funding for technical assistance to private landowners for enhancement of species and habitat on their property, is \$10 million less than for fiscal year 2003. If the goal is greater cooperation, shouldn't this program funding be increased instead of being cut? Why is this program being cut?

Response. As you know, the Department is committed to what Secretary Norton has termed the "4 Cs" in order to achieve conservation goals through communication, consultation, and cooperation with local stakeholders. Over the course of the past several years, the Department has greatly expanded the number of programs that advance this conservation ethic. Thus, while our competing priorities have resulted in one of these programs, the Landowner Incentive Program, being funded at \$10 million less than fiscal year 2003, it is also the case that this is the same funding level as the fiscal year 2002 enacted level for this program, which allows us to maintain this valuable program.

Question 20. Does the FWS have any plans for rulemaking or policy guidance that would allow the listing and delisting process to move forward in an expedient fashion?

Response. Currently, the Department is developing a critical habitat policy in order to address critical habitat designation, which should help expedite the listing process.

Question 21. Does the FWS have any plans to allow for greater collaboration and coordination with other agencies on the listing and delisting of species? If so, what are those plans?

Response. In order to facilitate greater collaboration, the Service published the Policy for Evaluation of Conservation Efforts (PECE) policy. This policy provides guidance to Service personnel for use in determining whether conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents will contribute to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. It also provides information to groups interested in developing agreements or plans that would contribute to making it unnecessary to list a species under the ESA. It is designed to ensure consistent and adequate evaluation by the Service of future or recently implemented conservation efforts identified in such documents when making listing decisions. We expect that this policy will facilitate the development by States and other entities of conservation efforts that improve a species' status so as to make listing unnecessary.

Question 22. The Charles M. Russell Wildlife Refuge in Montana allows for only a 30-ft. easement for public access and this has led to inadequate road access in some cases, and in others, to close access. Because of soil conditions, road construction requires double the easement allowed for on the Refuge. The FWS should be willing to work with the counties and the public in insuring adequate all-weather access through the refuges? Do you have any plans to address this situation?

Response. Within the Charles M. Russell Wildlife Refuge in Montana, there are only a small number of county roads that cross the refuge. These roads have 66-foot wide easements. The vast majority of roads in the refuge that provide public access are administered by the Service, and therefore are not associated with easements. We are not aware of any problems associated with public access resulting from inadequate roads easements.

Question 23. The Thunder Basin Grasslands Prairie Ecosystem Association is composed of a group of private, State and Federal landowners in Northeast Wyoming that is interested in developing an innovative multi-species approach to conservation of habitat and species for future listings. Current provisions for HCP's and CCA's do not provide for a multi-species approach. Is the Service interested in working to develop provisions in law, rules and regulations for a multi-species approach to conservation?

Response. The Service does provide multispecies approaches through HCPs and Cooperative Conservation Agreements (CCA). The law, as well as the Service's regulations, provide for these activities. The Service is engaged in a large scale effort to work with all of our partners on the development of HCPs and CCAs.

Question 24. What is the FWS's policy on delisting endangered species when target recovery numbers are reached? Please answer this question as it applies broadly to listed species and specifically as it applies to the grizzly bear.

Response. Recovery plans, developed by the Service and stakeholders for listed species, identify delisting goals. When a species reaches those delisting goals, the Service considers removing it from the Federal Lists of Endangered and Threatened Wildlife and Plants. To delist a species, the Service follows a process similar to when we consider a species for listing under the ESA: we assess the population and its recovery achievements; we assess the existing threats; and, we seek advice from species experts inside and outside of the Service.

If the Service determines that the threats have been sufficiently reduced, then we may consider delisting the species. When delisting species, the Service first proposes the action in the Federal Register. At this time, the Service also seeks the opinion of independent species experts, other Federal agencies, State biologists, and the public. After analyzing the comments we received on the proposed rulemaking, we decide whether to complete the proposed action or maintain the species status as is. Our final decision is announced in the Federal Register.

As a result of the collaborative efforts among the Service, the States and other Federal agencies the Service believes that the Yellowstone Grizzly bear population has achieved its recovery goals and the Service plans to initiate the delisting process in fiscal year 2004.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

Question 1. In your testimony you mention that there is a \$0.5 million increase for manatee protection. Documents provided by USFWS indicate a budget request that is almost a \$0.5 million reduction from the almost \$1 million appropriated for fiscal year 2003. Can you please explain this discrepancy for the record?

Response. In fiscal year 2004, the Administration requested \$1 million for manatee protection efforts. In previous budgets, the request was shown solely under in the Endangered Species Recovery program, however about half of the funds were being used for the enforcement of speed zones in manatee protection zones, a law enforcement activity. Therefore, in fiscal year 2004, the Service's request identified \$500,000 for law enforcement activities with the remaining \$500,000 going to the Service's Endangered Species Recovery program.

Question 2. In your testimony, you mention the burden that lawsuits have placed on the Service. Manatee protection has been the subject of many lawsuits and in settling the suits, USFWS has agreed to establish 14 new manatee protection zones. Manatee protection is a complicated issue in Florida but all parties involved agree that enforcement of manatee protection rules is crucial to protecting these creatures. Does USFWS have enough resources to enforce currently established manatee protection areas? Will the Service have enough resources to enforce newly established areas as mandated by the settlement? What level of funding do you believe will fully fund the enforcement of all federally mandated manatee protection zones? Is this level of funding consistent with your funding request for fiscal year 2004? If not, why not?

Response. In 2004, the Service received \$500,000 to support our initial increase in law enforcement activities to uphold boating speed limits in manatee protection areas and safeguard the animals from boat strike deaths. This funding, coupled with a new partnership with the Florida Fish and Wildlife Conservation Commission, will allow us to conduct 13 task force operations in fiscal year 2004, providing targeted enforcement efforts in the highest priority manatee protection zones. In addition, our law enforcement program will redirect resources from other investigative efforts to staff and fund the task force operations needed to protect manatees.

Question 3. USFWS was recently sued for not complying with the manatee settlement because the Service did not implement several manatee speed zones. One reason that USFWS gave for not implementing the speed zones was that the Service wanted to wait for the State of Florida to act in order to avoid duplicating State efforts. Given the supremacy of Federal endangered species laws over State laws and the differences in settlement agreements that Florida and USFWS entered into, could you explain why USFWS wanted to wait for the State of Florida to act on manatee zones before it did? Could you also characterize your view of the relationship between the Federal and State level of manatee protection and enforcement?

Response. The State of Florida and the Service are working together on the issue of manatee protection. While working to coordinate our efforts, the State and the Service are trying to avoid duplicating efforts in order to maximize our resources. As with other species, local law enforcement is critical to our efforts.

As a result of a court decision, the Service was required to designate the manatee protection areas. After analyzing 145 sites in Florida, the Service determined that there were 13 sites which required immediate protection. As such, the Service moved forward with the designation of these protection areas. The Service and the State continue to work together closely on all aspects of manatee recovery as collaboration is key to the recovery of the species.

At times, however, the State is unable to provide adequate protection for manatees. For example, the State's designated speed zones in the Pine Island and Estero Bay areas in Lee County, FL, were invalidated in a local court proceeding in December 2003. After evaluating the area and the likelihood of harm to manatees without the State speed zones, we are proceeding with an emergency designation of a manatee refuge covering the exact same area. Our emergency regulation would establish the same protections that had been provided by the State regulations, before they were vacated. We are also proceeding, as our regulations require, to develop a proposed rule to make this new refuge permanent. However, should the State be able to reinstate its speed zones in all or part of this area at any time in the future, we will consider withdrawing our refuge designation here.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR
BAUCUS

Question 1. Please tell me why the U.S. Fish and Wildlife Service (USFWS) is proceeding with a nation-wide strategy for down-listing, and eventually de-listing, the gray wolf, rather than focusing first on States with healthy wolf populations, like Montana? These States should have priority in the process.

Response. The gray wolf population in Montana, Idaho, and Wyoming has met recovery goals and the Service is committed to pursuing a proposal to delist the species. On April 1, 2003, the Service downlisted the Western Distinct Population segment to threatened. Decisions to delist the gray wolf will be made on a population basis, rather than nationwide.

Based on our review of State management plans, peer review comments, and the States' response to those comments, the Service is confident that both Montana and Idaho wolf management plans are adequate to maintain their share of the tri-State wolf population above recovery levels. In fact, Secretary Norton recently announced that both Idaho and Montana's plans contain an appropriate balance between necessary protections for wolves and management tools to allow protection of people, property, pets, and livestock such that the Department will propose to give those two States more authority to manage their wolf populations.

Question 2. Please tell me how USFWS can give Montana management authority over wolves prior to a national de-listing?

Response. As noted above, Montana has created a State management plan that will adequately maintain their share of the tri-State wolf population above recovery levels. However, delisting cannot be proposed until all three States containing wolves from the Western District Population Segment have produced State management plans that will successfully provide for protection of these species. While Montana and Idaho have adequate post-delisting plans, the Service has concerns about Wyoming's plan and cannot go forward with a delisting for this population segment of gray wolf until those concerns are addressed.

Question 3. Please explain to me the differences in staffing between Region 6 and Region 1, the Pacific Region? How many ecological services staff does the Pacific Region have? How many ecological services staff does Region 6 have?

Response. In the Service's Ecological Service's Region 1 office there are approximately 546 staff members. In Region 6, there are approximately 232 staff members.

Question 4. How can the USFWS explain the striking difference in staffing levels in these two Regions?

Response. A key reason for the difference in staffing levels in these two Regions is the difference in the number of species for which each Region is the lead and the associated workload. The Service allocates resources to the regions based on consideration of the number of species present in the region and identified priorities and workloads; the staffing levels reflect this. Region 1 is the lead for work involving 814 species, including 647 species already listed under the ESA and 167 that are proposed or candidates for listing. Region 6 is the lead for work involving 73 species, including 55 listed species and 18 others that are proposed or candidates for listing.

Question 5. Does the USFWS believe that the ecological services staff in Montana are able to meet all of their responsibilities and act in a proactive fashion to help the State and landowners conserve species and prevent listings?

Response. The Service does believe that the ecological services staff in Montana are able to meet all of their responsibilities and proactively assist the State and landowners in the conservation of species and prevention of listing.

Question 6. What will the USFWS do to increase staffing levels in Montana and Region 6?

Response. The Service will continually review funding for the Region based on the criteria listed in our response to Question 4 above. Additionally, through the Service's workforce planning activities, if skills or competency gaps are identified at locations in Montana and Region 6, the Service will consider all available tools to fill these gaps. Funds will be allocated based on reviews and other competing priorities in the President's Budget.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR
INHOFE

Question 1. The Fish and Wildlife Service has proposed expanding the Ozark Plateau National Wildlife Refuge in northeast Oklahoma by nearly 12,000 acres. This proposal has been met with opposition from many local citizens. What is the current

status of this proposal? In order for the proposed expansion to proceed, whose approval will it require?

Response. In regard to the current status of the proposal to expand the Ozark Plateau National Wildlife Refuge, the Service released an Environmental Assessment, Land Protection Plan, and Conceptual Management Plan for public review in November 2002. The Region extended the review period twice and public review ended on April 11, 2003. The Service is currently considering the input received during the public review period.

Question 2. If approved, some of the funding for the expansion of Ozark Plateau will come from the bankruptcy settlement of a former mining company at the now Tar Creek Superfund site. Is this correct? If so, please explain why these funds are being used to purchase refuge land. Additionally, please explain in detail the sources of funding for the \$3.2 million proposed expansion. Do any of the funds require congressional action?

Response. In the 1990's, when two mining companies responsible for significant portions of releases of hazardous wastes at the Tar Creek superfund site went bankrupt, the Department of Interior collected a portion of their allocation of damages for injuries to Federal trust resources through a Natural Resources Damage Assessment and Restoration Program (NRDAR) claim. The settlement documents for these bankruptcies specifically listed migratory birds and federally listed endangered and threatened species (gray bat, Ozark cavefish, and bald eagle) as the injured trust resources targeted in the claim.

To expend the bankruptcy funds, the Department, working through the Service, prepared and publicly circulated a Partial Restoration Plan and Environmental Assessment that addressed alternatives for using settlement funds collected in the NRDAR claim. Subsequent to public review of the Restoration Plan and Environmental Assessment in 2000, the Department issued a Finding of No Significant Impact, that determined the use of part of the bankruptcy funds to purchase lands for the Ozark Plateau National Wildlife Refuge would satisfy the regulatory requirement that the settlement moneys be used for the federally listed endangered and threatened species and migratory birds impacted by the mining at the Site. The Service is actively working with the Oklahoma Department of Wildlife Conservation, Oklahoma Department of Environmental Quality, and the Tribes in Ottawa County to identify further joint restoration opportunities in Ottawa County. In addition, the Department is currently working with other trustees to determine the total appropriate compensation for other Federal, State, and Tribal resources injured by releases from the mine site.

Funds paid under the NRDAR provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are separate from funds identified for the remediation or cleanup of a superfund site. Remediation funds are administered by the Environmental Protection Agency, and earmarked to remove or remediate the hazardous substances in the actual mine area. NRDAR funds are also separate from any funds that may be used to compensate citizens for adverse health effects resulting from the Tar Creek site.

The majority of the funds to purchase lands and conservation easements for the Ozark Plateau NWR would come from the Land and Water Conservation Fund (LWCF). Congress appropriates specific funding amounts from the LWCF for land acquisition at national wildlife refuges annually. The refuges must compete on a national basis with each other for the limited annual LWCF funding available. A minority of the funds for the Ozark Refuge would come from the NRDAR program as described above. Congressional action is not required to expend NRDAR funds.

Question 3. In Fiscal Year 2001, the FWS paid Adair County and Delaware County approximately 52 percent of the funding they were entitled to under the refuge revenue sharing program. If the FWS acquired the proposed 11,933 acres, how will the expansion of this refuge impact the local tax base? Do you anticipate more than a 52 percent compensation for the loss of tax revenue?

Response. Land acquired in fee by the Service is removed from the county tax rolls. To help offset lost tax revenues, the county receives an annual payment in lieu of taxes, as provided by the Refuge Revenue Sharing Act of 1935 (16 U.S.C. 7145:49 Stat. 383, as amended). If not enough revenues are available in the fund to make full payments, the Service distributes the funds proportionately nationwide. Refuge Revenue Sharing payments usually exceed the property taxes paid by the previous private landowners in cases where agricultural exemptions exist, and this has still been the case for many of the Ozark Plateau properties, even at a less than 100 percent entitlement level.

Question 4. There are currently many hunters and fishermen in this area. Will the FWS allow hunting, fishing and trapping on the lands incorporated into the refuge?

Response. Expansion of the refuge would provide additional compatible opportunities for recreation on tracts with gated caves for hunters, wildlife observers, wildlife photographers, and for environmental education, interpretation, and scientific research. The Refuge will allow hunting on refuge tracts that are large enough to provide safe, quality hunts where provisions exist to protect neighboring landowners from hunter trespass. The Refuge would not directly target acquisition of game fish waters, except as incidental to acquisition of lands with cave or forest resources. Fishing currently occurs on Spavinaw Creek in Delaware County which flows a short distance through one Refuge unit.

Question 5. Locals have expressed concern regarding the use of roads on lands that fall within the refuge expansion. Would those living in the area (as well as on in-holdings) be allowed continued use of the roads?

Response. The Refuge will not close any currently used roads that access neighboring landowners' properties. Any individual who has an inholding within government property would retain their legal right to access their property by existing roads or easements. The Service will only purchase properties which have a legal ingress/egress easement or existing public road. The Service has no intention of acquiring properties which may exist only as an inholding within a private property, as those habitats would be better protected through management agreements or technical assistance.

Question 6. The U.S. Fish & Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are developing a new regulatory definition for "adverse modification" that will determine what projects may be conducted within critical habitat. In developing a new definition for adverse modification, how will FWS distinguish "adverse modification" from "jeopardy?"

Response. In light of the decision in *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Department, in cooperation with the Department of Commerce, is developing a new regulatory definition for "adverse modification." We cannot discuss the content of this rulemaking as it is still in the drafting stage, however, as you correctly note in your question, the rulemaking will address the distinction between the jeopardy and adverse modification standards. We will keep you informed of our progress.

Question 7. Some believe that adverse modification should apply when a project impacts one of the "primary constituent elements" identified by FWS during the designation of critical habitat. Where on the spectrum between recovery and jeopardy do you believe that adverse modification should lie?

Response. As stated in our previous answer, we cannot discuss the content of this rulemaking, but will keep you informed of developments in this matter.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. There is an \$8 million increase in the fisheries budget request for 2004. However, I do not think that any of this additional money is going to the 2 fish hatcheries in my State of Vermont. Could you please elaborate on what criteria were used to determine which hatcheries would be getting a funding increase?

Response. The President's budget request for fiscal year 2004 included an \$8.075 million increase for National Fish Hatchery operations and maintenance, and a \$768,000 increase for fish and wildlife management within the fisheries program of the Service. The fisheries program uses its Fisheries Information System, including the Fisheries Operational Needs System (FONS), to identify priority projects for increased funding. Field staff identify projects, which are then evaluated and ranked by Regional Offices. Final selection is made at the Washington, DC, office in conjunction with the budget justification.

Question 2. I was disappointed to see the funding request for the Multi Species Conservation Fund was only \$7 million. While this is an increase of \$2 million over last year's request, it is far short of the combined authorized level. The 5 programs within that fund have produced great results in the conservation of elephants, rhinoceros, tigers, great apes and neotropical birds.

As you may know, this committee passed legislation last year that would have established a similar program for the conservation of marine turtles. While I do not want to drain funding from these already under-funded programs, the marine turtle warrants similar attention.

Do you have any suggestions for getting more species and more funding to these successful programs?

Response. The Administration's fiscal year 2004 budget request for the Multinational Species Conservation Fund represents a 40 percent increase over the fiscal year 2003 request. While the fiscal year 2004 request is below the amounts authorized for these programs, given the competing priorities, the Administration and the Service were pleased to request an increase in funding for the programs under the Multinational Species Conservation Fund.

As you mentioned, the Fund has played a vital role in providing successful on-the-ground support to range countries involved in elephant, great ape, migratory bird, rhino and tiger conservation and in generating local matching resources from these countries and non-governmental organizations to benefit these species. The Service is aware of the threats facing marine turtles and is reviewing S. 1210, the Marine Turtle Conservation Act of 2003, passed by the Senate. We would be happy to review any other proposals the committee members might have regarding expanding the species covered by the Multinational Species Conservation Fund.

Question 3. The land acquisition budget request is almost \$30 million less than last year's request. While I agree that unmet operation and maintenance should be addressed, does the decrease in land acquisition funding mean that there will be no growth in the land-based programs within the entire Fish and Wildlife Service?

Response. The Federal side of the Land and Water Conservation Fund has made an outstanding contribution to protecting America's land over the past 38 years. The Service does not have an exact forecast on what the land acquisition picture will look like in the future. The current reality is that we are faced with increasing pressure associated with socioeconomic factors such as urban sprawl, recreational development and general population growth. With these factors in mind it is very difficult to gauge whether the pace of land acquisition has crested or it is still on the rise. However, this request reflects a more limited Federal land acquisition program with increased emphasis on conservation partnerships. This request also reflects an emphasis on the need to balance land acquisition against maintaining lands already under our jurisdiction. The amounts included in the budget will be used to fund high priority projects that are important in the Service's program to protect the Nation's wildlife. The Administration is dedicated to protecting and passing on to future generations of Americans our important recreational and scenic lands, wildlife habitats, improved waterways, and cultural resources.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR
MURKOWSKI

Question 1. The Greenbook (p. 11) notes progress toward competitive sourcing of some activities, after a contractor identified some 3,233 positions engaged in commercial-type activity. I see that last year 25 positions in realty management were converted to private contract. Specifically what realty management activities were converted? Janitorial services? Property assessment?

Response. The Service used the direct conversion method for 25 realty acquisition management support functions. Specifically, the positions included 9 appraisers, 4 land surveyors, 4 cartographic technicians, 4 biologist/global information specialist positions, 3 survey technicians, and 1 cartographer.

Question 2. This year you are studying another 100 or so positions for conversion, all of which are office automation clerk/assistant positions, but would not convert any until next year. Is this effort being guided by a plan developed by the original contractor, the Service, or the Department, and is the apparent slow pace of conversion a part of the plan?

Response. For fiscal year 2003, 107 office automation clerical positions were studied using the streamlined approach. The study was carried out by a contractor under an approach approved by the Department. The completion of the study, delivered in September 2003, resulted in the work remaining in-house.

Question 3. In 1904, you have asked for another \$1 million to study another 346 positions. Would this be done under a contract or in-house? What types of positions will be studied?

Response. The Service will be studying all animal caretaker positions (over 100) and all biological technician positions (over 550) by standard competition in accordance with the new Circular A-76.

Question 4. It's noted (pp. 11-12) that an independent audit noted "reportable conditions." It's also noted that "substantial corrective actions" are being developed to

correct “material weaknesses.” What exactly are the “reportable conditions,” “substantial corrective actions,” and “material weaknesses?”

Response. The referenced audit was performed on the Service’s financial statements for fiscal years 2001 and 2002. A brief outline of the “reportable conditions;” “material weaknesses;” and “corrective actions” follows.

A. Finding (Material Weakness): The Service needs to improve processes, controls and financial reporting relating to buildings, structures, and construction work in progress.

Corrective Actions:

- Established policies for real and personal property assets.
- Conducted a comprehensive inventory to verify the existence of Service real property assets and also to validate financial information relating to the assets.
- Implemented internal controls to ensure that real property data is entered timely and accurately into the Service’s financial system.
- Established a project action team to determine the organizational structure, policies, procedures, technical guidance and standards required to be implemented in the Service to ensure high quality financial information is maintained and reported relating to Service property, plant and equipment.

B. Finding (Material Weakness): The Service needs to improve its controls and processes associated with accounting and financial reporting.

Corrective Actions:

- Developed checklists to ensure that major accounting operations functions are followed and that required reconciliations and analytical procedures are performed.
- Hired additional professional staff and participated in Departmental financial management recruiting programs to ensure appropriate resources are available to prepare timely and accurate financial statements.
- Established standard operating procedures for selected accounting functions.

C. Finding (Material Weakness): The Service needs to improve its processes for identifying and reconciling transactions with other Department Bureaus. (This was a material weakness for all Department Bureaus.)

Corrective Actions:

- Implemented a quarterly reconciliation process for transactions with other Department Bureaus
- Implemented policies and procedures established by the Department for intra-Departmental transactions.

D. Finding (Material Weakness): The Service did not properly accrue accounts payable at year-end.

Corrective Action:

The Service contracted with an independent CPA firm to develop accounts payable accrual methods based on statistical methodologies. These methods were implemented for fiscal year-end and quarterly reporting beginning in July 2003.

E. Finding (Reportable Condition): The Service needs to improve its controls and processes associated with accounting for and reporting of capital equipment

Corrective Actions:

- Established policy requiring timely entry of acquisitions and disposals into the Service personal property system.
- Developed reports, processes, and guidelines to facilitate reconciliations between the personal property system and the Service’s financial system.

F. Finding (Reportable Condition): The Service needs to improve its security and general controls over its financial management systems

Corrective Actions:

- Implemented an entity-wide security program in the Service that conforms to the Department security program
- Issued technical bulletins on software development and change control, service continuity, and access controls

G. Finding (Reportable Condition): The Service does not monitor and enforce financial and performance reporting requirements for grantees

Corrective Action:

The Service established reporting policies to ensure that required reports are received from grant recipients in accordance with established timeframes, and are entered into the Service’s grant tracking system.

H. Finding (Reportable Condition): The Service needs to improve controls over the interface between its electronic acquisition system (IDEAS-PD) and the Service’s fi-

nancial system, and also needs to improve the reconciliation process between the two systems

Corrective Actions:

- Corrected problems with the automated interface between IDEAS-PD and the financial system
- Developed reports and implemented processes to facilitate periodic reconciliations between the two systems

Question 5. It's noted (p. 12) that Law Enforcement has implemented a no-cost internet service for filing import/export declarations at the port where the import or export will occur. If on-line filing is permissible, does the Service allow telephone filing, and if not, why not, since both are remotely filed. What has been done to make the system user-friendly for individual trappers who wish to send furs to an auction outside the country? Have shipments from individuals gone up or down over the past few years? Has the length of time it takes to clear shipments from individuals trappers gone up or down, and why? Does the person filing pay different fees depending on whether a physical inspection is needed?

Response. In 2003, the Service's Office of Law Enforcement implemented a no-cost internet service for declaring wildlife shipments which is available for use by all importers and exporters, including fur trappers. Called "eDecs," this easy-to-use system speeds the declaration process for both our wildlife trade customers and wildlife inspectors, expediting shipment clearance and facilitating legal trade. For example, fur trappers who frequently send similar shipments to similar destinations no longer need to fill out paper forms over and over repeating basic information that remains the same from one shipment to the next. The system not only stores basic identifying data for users, it also keeps a list of the species they declare so that they can select information from this list rather than retyping species data each time they file a declaration. Trappers can access past declarations and communicate directly with wildlife inspectors by e-mail to ask questions and resolve any problems. No special software is required to use the system. Recent upgrades include the addition on an on-line billing and payment feature for importers and exporters subject to user fees.

Although the Service has been able to take advantage of the public's widespread access to the Internet to offer the ease and convenience of on-line filing, our legal mandates and data collection requirements limit our ability to offer telephone filing as an option for wildlife importers and exporters. With eDecs, the user or inspector can print out the declaration form needed for the shipment to clear Customs and fax or present it at the appropriate port along with any permits that might be required. With on-line filing, we can automatically collect the information about the type and quantity of wildlife in trade that we need to fulfill our trade monitoring and reporting responsibilities under the Convention on International Trade in Endangered Species. Use of a telephone filing system would require Service staff to retrieve and manually input this information into our trade data base, adding another step to the clearance process.

While the Service does not have the number of shipments declared for import or export currently on hand, we do know that introduction of our electronic declaration system has reduced the amount of time needed to clear shipments from individual trappers. Trappers can more easily communicate with inspectors and more quickly input and share data and documents. Most importantly, they do not have to travel to the actual port where imports or exports will occur. For example, a trapper working in a remote location can send a shipment to a designated port, have the shipment held while completing all the necessary documentation remotely, and then have it exported without ever having to physically meet with an inspector or travel to the port. Once a shipment has been cleared, a trapper can print out the declaration (without needing to get it physically stamped).

Any shipment requiring Service clearance may be subject to physical inspection. Our user fees reflect the full range of inspection duties and do not vary based on whether or not a physical inspection is conducted.

Question 6. This year marks the Refuge system Centennial. It looks as though activities are scheduled for nearly every Refuge. What is the estimated cost of these activities, including the time Refuge and other Service employees are putting in to support them?

Response. The National Wildlife Refuge System's records show that there were 236 local events held during the centennial year. The average cost to the government for the local events was approximately \$3,000. The signature event was held at Pelican Island National Wildlife Refuge, the nation's first National Wildlife Refuge. This national event cost \$917,000, of which private partners contributed approximately \$243,000.

Question 7. The Greenbook notes (p. 63) that although the Service has in a number of cases deemed it “not prudent” to designate critical habitat, the courts have held the Service to be in error in a number of cases. Do you agree? In your view, have these cases been pursued adequately? In how many cases has the Service settled with plaintiffs? Are there cases you feel should have been pursued but were not? If so, why?

Response. Prior to the U.S. Court of Appeals for the Ninth Circuit’s decision in *Natural Resources Defense Council v. U.S. Department of the Interior*, 113 F.3d 1121 (9th Cir. 1997), the Service found designation of critical habitat “not prudent” under the ESA. The NRDC decision, however, held that Section 4 of the ESA has strict, non-discretionary duties and deadlines for the processing of listing and critical habitat actions, and rendered indefensible the vast majority of our findings that designation of critical habitat was not prudent. Subsequent to that decision, U.S. Court of Appeals for the Tenth Circuit, in *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999), held that district courts have no power to allow us to allocate funds to the highest priority actions, and must instead order us to act as soon as possible on whatever backlogged action comes before them.

Most courts have followed the Tenth Circuit’s lead. We believe that these cases have been adequately pursued; however, we are no longer operating under a system that allows us to prioritize resources to address the most significant biological needs. We currently estimate that we have settled approximately a dozen of these critical habitat-related litigations. As noted above, given the information provided above, we believe that settlement has been a prudent course in these matters.

Question 8. The Greenbook notes (p. 65) that challenges to critical habitat designations are increasingly based on a ruling from the 10th Circuit Court that addressed the proper extent of required economic analyses. Does the Service regard this as dispositive for cases in other areas?

Response. The Service considers the *New Mexico Cattlegrowers* decision to be mandatory authority for the 10th Circuit. The Service has also incorporated this holding into all of its economic analyses and, as required under the decision, includes all the attendant costs associated with the designation of critical habitat in its economic analysis.

Question 9. The Greenbook notes (p. 64) that any interested party may petition for listing or delisting, then discusses the steps that follow. However, all of the described steps involve listing. Please describe the process for delisting. Is the timeline for steps toward delisting the same as for listing, or longer? Please explain.

Response. Delisting is the removal of a species from the Federal Lists of Endangered and Threatened Wildlife and Plants, and results from successful recovery efforts, a determination that the listing was in error, or, in some cases, a finding that the species is extinct. In cases where delisting is considered due to recovery, the Service follows a process similar to that which is followed when a species is considered for listing. The Service must determine that the species is not threatened based on a number of factors, including population size, recruitment, stability of habitat quality and quantity, and control or elimination of the threats.

If the Service determines the threats have been sufficiently reduced, we may consider either downlisting or delisting the species. When down-or delisting, we first propose the action in the Federal Register, and at the same time seek the opinion of independent species experts, other agencies, including State biologists, and the public. Based upon an analysis of comments received, the Service makes a decision on whether to complete the proposed action or maintain the species status as it is. A final decision is announced in the Federal Register.

If the delisting action results from a petition, the timeline is the same as for petitions to list.

More detailed information on this topic can be found on our website at <http://endangered.fws.gov/recovery/index.html#program>.

Question 10. The Greenbook notes (p. 67) that the necessity of responding to court orders on listings has prevented the Service in recent years from conducting listing activities according to species’ greatest risk of extinction, and that the Service is in the process of developing a system to prioritize its activities. If this is your view, what efforts has the Service made to educate the public about this problem? Would you say more public relations effort has gone into this issue or into publicizing the Refuge Centennial?

Response. A great deal of effort and resources have been directed toward making the public aware of the problems surrounding the Section 4 Program. The Department has testified before Congress on several occasions concerning the problem. Moreover, the Service has responded to media and public inquiries on the problem and has provided the public with news releases to describe the problem. In addition,

the Service's main webpage, located at www.endangered.fws.gov, contains a great deal of information on the Section 4 Program.

The Refuge Centennial is a 1-year event that the Service worked hard to publicize, but endangered species issues are a long-term commitment that the Service has been addressing as a significant part of its mission. This has involved a great deal of outreach, coordination, and public education.

Question 11. The Greenbook identifies planned reductions in travel funding, noting that this will reduce the frequency of employee relocations from one office to another. It also notes that Service employees "frequently travel to meetings such as professional associations." Does the Service limit reimbursement for travel to such meetings to personnel who are actively engaged at the meeting, such as giving a speech or seminar, or is it common to reimburse employees who are simply attending?

Response. The Service does not have an absolute policy to reimburse employees for travel related costs of attending meetings of professional associations. Rather, the reimbursement is left to the discretion of the individual employee's supervisor. If the supervisor determines that the attendance at such meetings benefits the Service, the supervisor can approve reimbursement for travel costs. Among the benefits that can be derived are: receiving training in industry standards, professional development, continuing education, and promoting awareness of Service projects and initiatives.

Question 12. What is the currently accepted definition of "adverse modification" as it applies to critical habitat? Please describe how this adequately discriminates between modifications that are likely to be adverse to the species continued existence, modifications that may be adverse, and modifications where the effect is unknown. Is there a policy which requires dealing with the latter as though the unknown effect will be adverse? Would you recommend any changes in the statutes covering this issue?

Response. Adverse modification is currently defined in our regulations as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The issue of how to handle situations where modifications are likely to or may adversely affect the species and modifications where the effects are unknown is not contained in this definition. Congress contemplated the issue of inadequate information during the development of the 1979 amendments to the ESA and the Service implements the ESA in accordance with the intent expressed in the Conference Report (No. 96-697, at 1442, section 4). This report reads: "The amendment will permit the wildlife agencies to frame their Section 7(b) opinions on the best evidence that is available or can be developed during consultation. . . . This language continues to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate to the consulting agency that its action will not violate Section 7(a)(2)." Thus, the Service evaluates the best available information that will assist in formulating a reasonable estimate of the anticipated effects. This is extremely fact specific and, therefore, results vary with each individual situation. No statutory changes are recommended.

Question 13. In an inset (p. 81), the Greenbook notes that an independent study estimated that without the Endangered Species Act, 172 species might have become extinct between 1973 and 1998 instead of just seven species. Do you agree that the ESA was the deciding factor in all these cases? Of the 172 species, how many are now considered to be "recovered?"

Response. The Greenbook references a study by Mark Schwartz, a biologist at the University of California Davis (Schwartz, M., 1999, Choosing the Appropriate Scale of Reserves for Conservation, *Annu. Rev. Ecol. Syst.* 30:83-108). In this study, Schwartz developed a modeled estimate of the number of listed species expected to go extinct since listing, assuming that extinction is a random process and the ESA provides no benefits protecting listed species from extinction. He found that 192 (we incorrectly cited 172 in the Greenbook) of the 1143 then-listed species would have gone extinct under these assumptions, compared to only 7 listed species then known to have become extinct. Because Schwartz's study was a modeled estimate, it did not identify specific species likely to have become extinct. Because we don't know which species would likely have become extinct, we cannot determine which of those species would now be considered recovered.

Question 14. The Greenbook notes (p. 83-86) that in fiscal year 2002, one species was delisted due to recovery, one species was proposed for delisting, and one species was downlisted, although you had hoped to delist three species. This fiscal year, you

are also hoping to delist three and to downlist two. Now that we are well into fiscal year 2003, do you still anticipate meeting this goal? Are some of these the same species for which delisting was not completed last year?

Response. In fiscal year 2003, the Service proposed and finalized the reclassification of five species and delisted two species due to recovery. One of the species delisted in fiscal year 2003, the Hoover's woolly star, was proposed for delisting in fiscal year 2002.

Question 15. I understand you are hoping to delist a total of four species in fiscal year 2004. Are any of these species which were scheduled for earlier delisting?

Response. Yes. A proposed listing rule for the Tinian Monarch was published on February 22, 1999, and a final rule was originally scheduled for fiscal year 2003. However, finalizing this delisting rule was delayed due to the need to further address the threat of potential establishment of a brown tree snake population on the island of Tinian.

Question 16. To what degree are endangered species recovery planning and recovery activities hindered by litigation affecting listing, delisting and the designation of critical habitat?

Response. We believe the litigation has impacted recovery planning and activities to some degree, as we must balance all of our priorities with the funding requested and provided. In order to meet court orders and settlement agreements related to the Service's listing program, the Administration has requested increases for the listing program. This increase affects how much we request for all of our priorities, not just recovery.

Question 17. The Greenbook notes (p. 138) that the Refuge Roads program created by TEA-21 is limited to maintenance of public-use roads and to constructing parking lots, roadside rest areas and bicycle/pedestrian facilities. In Alaska at least, traditional means of access are protected by the Alaska National Interest Lands Conservation Act, including the use of snowmachines. Would you support allowing the Refuge Roads program, or other public-lands road and trail programs, to be used to mark and maintain snowmachine trails where snowmachining is a legal activity?

Response. Service regulations classify snow machines as off road vehicles. By law, the Refuge Roads program is currently limited to public use roads, parking lots, rest area facilities and provisions for bicycles and pedestrians. As a result, by law the Service may not use Federal Lands Highway funding for such trails because this is not an eligible program activity.

Alaska refuges do not have specifically marked or identified trails just for snow machines. In general, persons travel openly by snow machine without being limited to specific trails. The Service has not identified any need to within our priority systems mark and maintain snow machine trails.

Question 18. The Service is one of the key players in the management of subsistence in Alaska under Title VIII of the Alaska National Interest Lands Conservation Act. How has this affected the Service's cost of operation? Has the total cost been identified for fiscal year 2004?

Response. The Service, in coordination with the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the U.S. Forest Service, is the lead Federal agency for administering the Federal Subsistence Management Program in Alaska. The program began in 1990 with the primary emphasis on managing subsistence hunting on public lands in Alaska, with minimal jurisdiction for managing subsistence fisheries. The Service received an initial appropriation in the early 1990's of \$4.225 million to administer the program.

Following the expansion of jurisdiction into navigable waters pursuant the Ninth Circuit Court ruling in *Katie John v. United States*, the Service received an additional \$11.027 million in fiscal year 2001 to take on this new and significant role in managing subsistence fisheries. These funds provide for the administration and operation of the Federal Subsistence Board and support for ten Regional Advisory Councils in regulating subsistence hunting and fishing on the public lands in Alaska; liaison and coordination with the Alaska Department of Fish and Game and with participating agencies; law enforcement operations; subsistence resource and harvest monitoring programs through agreements with the State, Native organizations and others; and communicating with Alaskans about the program. The approximate Service funding in fiscal year 2004 for Alaska subsistence issues is \$15.09 million, with a total of about \$4.2 million for refuges and \$10.89 million for fisheries; however, other agencies also provide funds for Alaska subsistence issues.

Question 19. The Greenbook (p. 5) indicates you are requesting an additional 35 full-time equivalency positions (FTEs). However, p. 1 of the "Field Station List in the back of the book seems to indicate 41 new positions in Alaska alone. Which is the accurate number? Of those identified in the "Field Station List," six are identi-

fied as “Assistant Regional Director—Subsistence Management.” Why does subsistence management require so many assistant regional directors?

Response. The table on page 5 of the Greenbook reflects the total FTE change for fiscal year 2004 in all appropriations. The table on pages 33 and 34 shows that this consists of an increase of 84 FTEs in the Resource Management appropriation, 2 in the Multinational Species Conservation Fund and a decrease of 51 FTEs allocated by the Bureau of Land Management for Wildland Fire Management. FTE use may vary widely on an annual basis depending on a number of factors including planned work, availability of contractor for seasonal work, summer hiring program, volunteer support, and position vacancies.

There is only one Assistant Regional Director for Subsistence Management. The funding and FTEs indicated on the Field Station List represent the total staff assigned to the office.

Question 20. The Service presently charges a \$55 inspection fee for each export shipment of fur pelts and products. For individual trappers and operators handling only small numbers of skins, this can be cost-prohibitive, forcing them to sell at a lower price to a consolidator. Years ago, there was an exemption for shipments valued at less than \$25,000, which was adopted after a study indicated that it was not cost-effective to apply the same rules for small shipments. Has the Service conducted a study to determine that the \$55 fee for shipments of even one or two items is appropriate to the cost of inspection for small shippers v. large? What can the Service do to reduce harm to small businesses by ensuring that costs are more equitably distributed?

Response. The Service’s \$55 inspection fee per shipment was introduced in 1996 following four separate analysis of our import-export license and user fee policies. These studies, which were conducted by the Department of the Interior, Office of the Inspector General, General Accounting Office, and independent non-government organizations, all recommended that we should change our regulations to recover the full cost of inspections provided to individuals and businesses.

Our current user fee system falls short of the goal of full “user funding,” since today it only recovers about 50 percent of the costs of the wildlife inspection program from the businesses we regulate. The fee system, however, deals uniformly with the business community, requiring all commercial wildlife importers and exporters to be licensed and pay a standard inspection fee of \$55 per shipment, regardless of value. The nature of inspection services and the administrative support they require make it difficult to make a direct correlation between shipment value and inspection costs. Shipments of high value do not necessarily require more time or work to inspect than less valuable shipments.

The present fee system reflects the belief that the uniform application of license and fee requirements would be the most equitable and administratively efficient way to operate our wildlife inspection program and uphold our wildlife trade enforcement responsibilities. We have not conducted a study to analyze the appropriateness of our uniform \$55 inspection fee because much of the same work at the same cost must be completed to inspect and clear any shipment regardless of its size or value. We are, however, planning to re-examine our fee structure as part of our ongoing effort to maintain an effective and efficient wildlife inspection program. While adequate cost recovery must, of necessity, remain an objective, we are also committed to dealing fairly with wildlife-based businesses.

We demonstrated this commitment several years ago when we exempted certain North American fur shipments from our basic per-shipment user fee. This exemption, which applies to shipments containing 100 or fewer furs from animals taken in the United States, Canada, and Mexico, was intended to reduce the economic burden on individuals who trap, hunt, and trade small quantities of furs. This exemption remains in effect.

Question 21. It is my understanding that the computer systems used by the Service to track fur imports and exports are not compatible with those used by the Customs Service, which results in additional delays and costs. What steps are being taken to correct this problem?

Response. In July 2000, the Service terminated participation in the U.S. Customs Service’s Automated Commercial System (ACS). Over the years, our wildlife inspection program had experienced numerous and persistent problems using the system’s automated broker interface to file and collect wildlife trade data. Even while operating on ACS, the Service continued to require most importers and exporters to file both electronic and paper entries. ACS only allowed joint Customs/FWS processing of a limited number of large volume commercial imports. Service inspection responsibilities, however, encompass personal imports, small commercial shipments, museum and scientific imports, mail shipments, and all wildlife exports. We thus failed

to achieve the paperwork reduction and customer service goals that were the original reason for joining ACS.

At that time, we made a commitment to pursue the independent development of an automated declaration system for all wildlife imports and exports regardless of shipment size, purpose, and method of transport (which we describe in our response to Question 5) and to work toward a long-term goal of re-establishing direct electronic linkage with Customs for clearing wildlife shipments. While lack of linkage has created an additional workload for our wildlife inspectors, it has not produced inordinate delays or additional expense for our import/export customers.

We are now participating in an interagency effort to create an International Trade Data System, which will link all Federal inspection agencies dealing with imports and exports.

