



## Endangered Species Act Reform

### July 2018

#### Key Messages:

- We appreciate that congressional committees are tackling the difficult problem of Endangered Species Act reform. We understand reforms must be balanced with the goal of species conservation and appreciate the careful consideration of policies that impede utility operations with little to no benefit for conservation.
- In particular, NWPPA supports H.R. 6360, “the PREDICTS Act” (Norman), which would prevent the addition of new conservation requirements after a project developer and resource agency have reached an agreement on conservation measures. We strongly support codifying this common sense, “no surprises” policy.
- NWPPA also supports policies that increase local and state participation in species conservation and encourages voluntary conservation measures.

#### Background

NWPPA supports preserving species that are endangered or threatened and understands that utility operations can impact species’ habitats. However, only 2% of more than 1,650 species listed as threatened or endangered under the Endangered Species Act (ESA) has been recovered, and conservation laws like the ESA can have a considerable impact on our ability to deliver reliable and affordable energy.

The electric utility industry generally supports ESA modifications. NWPPA supports reforming the ESA to:

- Encourage voluntary conservation
- Increase state and local government roles
- Improve the critical habitat designation process
- Strengthen habitat conservation planning procedures
- Establish delisting criteria

Habitat conservation plans (HCPs) that allow for reasonable economic activity (including energy production and delivery) should be the preferred means used by the federal government to protect species. In addition, benefits to other, non-covered species under an existing HCP should be recognized and credited under any future ESA action.

In particular, NWPPA supports the common-sense “No Surprises” policy, which encourages long-term commitments regarding species conservation without fear of additional mitigation requirements for covered species beyond those agreed to at the time an “incidental take permit” is approved. NWPPA supports H.R. 6360, “the PREDICTS Act” which would codify these policies to provide a more predictable regulatory process.

In July 2018, House Republican members of the Congressional Western Caucus introduced a suite of nine individual bills aimed at reforming the ESA by increasing the role of state and local stakeholders, capping attorney’s fees, reducing petition backlogs, increasing predictability and more. Senate Environment and Public Works Committee Chairman John Barrasso (R-WY) has proposed separate legislation focused on state-level recovery teams and increased transparency for legal expenses, among other reforms.

On July 19, the Trump Administration proposed several changes to key ESA regulations. The proposal would eliminate the “blanket 4(d) rule” which automatically extends the same “take” protections used for endangered species to threatened species; define the term “foreseeable future” to provide a more consistent and limited scope to listing decisions; clarify that areas unoccupied by a species will only be designated as critical habitat if occupied areas are inadequate for recovery; streamline rules related to consultation requirements; and allow cost-benefit analysis to be considered when making listing determinations. These proposals do not require Congressional approval but are subject to standard rulemaking procedures and a 60-day comment period.

Proposals to update or reform the landmark conservation law can be controversial, but NWPPA advocates for a pragmatic approach that considers the economic impact of regulations on public power while balancing the need for robust species protection.