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House Committee on Natural Resources
Subcommittee on Water, Wildlife, and Fisheries

Legislative Hearing on H.R. 180, Endangered Species Transparency and Reasonableness Act of 2025; H.R. 4033, Sturgeon Conservation and Sustainability Act of 2025; Discussion Draft, H.R.____, To amend the Marine Mammal Protection Act of 1972 to [____]; and H.R. 4293, To amend the Sikes Act to increase flexibility with respect to cooperative and interagency agreements for land management off of installations.

July 22, 2025

Good morning, Chair Hageman, Ranking Member Hoyle, and members of the Subcommittee. My name is J Shirley, and I am the Principal Deputy Director, Acting Director for the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to provide this testimony on the following legislation: H.R. 180, Endangered Species Transparency and Reasonableness Act of 2025; H.R. 4033, Sturgeon Conservation and Sustainability Act of 2025; Discussion Draft, H.R.____, To amend the Marine Mammal Protection Act of 1972 to [____]; and H.R. 4293, To amend the Sikes Act to increase flexibility with respect to cooperative and interagency agreements for land management off of installations.

The Administration is focused on streamlining regulations and making sure they work for the American people. The legislation before the Subcommittee today would amend the Endangered Species Act, Marine Mammal Protection Act, and Sikes Act. Since its passage in the last century, the Endangered Species Act has been mired in outdated perspectives and limited to static and antiquated efforts to protect dynamic and evolving species and their place in the global community. We are excited to talk with you about ways to bring conservation into this century and adopt an "America first" approach to harness American innovation in support of conservation. The Service appreciates the sponsors and Subcommittee's focus on these topics, and we look forward to working with you on them.

H.R. 180, Endangered Species Transparency and Reasonableness Act of 2025
H.R. 180 would amend the ESA in multiple ways, including changes to data utilized in making listing determinations, publication and advance provision of data to states, requiring a database of litigation-related expenditures, and changing the funding source of litigation awards. The Service supports the goals of H.R. 180, but would welcome the opportunity to work with the sponsor and Subcommittee on modifications to help improve several provisions in the legislation.

H.R. 180 would direct the Secretary to publish on the Internet the best scientific and commercial data available that is the basis for each proposed or final rule listing a species as endangered or threatened, with exceptions at the request of a state or under an agreement with the Department

of Defense. The Service currently provides a substantial amount of supporting information in published rulemakings and supplemental information in our rulemaking dockets, including Species Status Assessments, information on peer reviews, and studies or reports utilized in our decisions that are not readily available elsewhere. The Service also complies with requirements to protect classified information related to the Department of Defense. We appreciate this being codified into law. However, we generally do not disseminate species-specific location information due to concerns about take, illegal trafficking, and privacy concerns for impacted private property owners raised by our state, landowner, and private sector partners. In addition, we note potential legal issues regarding intellectual property rights, as best available scientific and commercial data sometimes includes information for which we are able to provide citations in our regulatory documents but that we unable to publish in full, such as peer-reviewed publications that require a subscription.

Similarly, H.R. 180 amends section 6 of the ESA to require the Secretary to provide any states affected by a listing determination, reclassification, or critical habitat designation, with all data being used to justify that determination *in advance* of making the determination. The Service values our partnership with states who provide critical insights and information. This legislation also amends ESA definitions to include all scientific and commercial data provided by a state, tribe, or county government within the definition of "best scientific and commercial data available."

H.R. 180 would also require the Secretary (as well as the Secretary of Commerce) to submit an annual report detailing federal expenditures for covered lawsuits regarding the ESA within 90 days after the end of each fiscal year. The bill includes a wide variety of information on ESA-related litigation required to be made available in a searchable online database that would be updated monthly. Multiple agencies would submit their information to the Department of the Interior (DOI), who would be responsible for the report and database.

The Service notes that DOI and the Service do not have the requisite legal information and expertise needed to implement this section. In addition, attempting to do so would be inefficient and take staff time away from fulfilling our existing statutory responsibilities. We also note that the majority of ESA-related lawsuits are related to deadlines.

Lastly, this legislation would change the funding source of any costs of litigation, such as attorney and expert witness fees, awarded by the court and paid out by the Secretary of the Interior in citizen suits under the ESA. As drafted, the language would change the current practice from attorneys' fees for ESA claims being paid from the Judgement Fund to instead being drawn from the Service's appropriated funds. The Service opposes this section of the bill as it may negatively impact the Service's overall resources and ability to fulfill its statutory responsibilities. The Service would instead recommend that the Judgment Fund continue to be the source of awarded litigation costs and fees and that the current ESA statutory language in 16 U.S.C. 1540(g)(4) be amended to state that fee rates be capped and adjusted for inflation (in line with the Equal Access to Justice Act).

As previously stated, the Service appreciates and shares the sponsor's interest in transparency and reasonableness under the ESA. The Service would welcome the opportunity to work with the sponsor and the Subcommittee on the legislation.

H.R. 4033, Sturgeon Conservation and Sustainability Act of 2025
H.R. 4033 would exempt farmed sturgeon in captivity from certain requirements and protections under the ESA and we support this bill. Specifically, the bill would provide exemptions from section 9(a)(1), including take, harm, import and export, and commercial sale, and section 7(a)(2), regarding consultation of federal projects and actions. These exemptions would apply only to farmed sturgeon that are legally held in captivity or in a controlled environment. These exemptions also apply to progeny of the captive sturgeon. The language specifies that any person holding any sturgeon or progeny must be able to demonstrate that it qualifies as legal, farmed sturgeon, and maintain and submit to the Secretary, upon request, any inventories, documentation, and records that the Secretary may require through regulation. The Service supports the sponsor's efforts in H.R. 4033 to address the challenging regulatory situation with certain U.S. Endangered Species Act-listed foreign sturgeon species. We would welcome the opportunity to work with the sponsor and Subcommittee to address potential enforceability issues and unintended consequences of the legislation as currently written.

There are multiple sturgeon species that are at risk of extinction around the globe, and several are listed on the U.S. Endangered Species List, including the Chinese sturgeon and beluga sturgeon. Foreign sturgeon species face numerous threats in their native range countries, including habitat loss, poaching, and wildlife trafficking.

The Service understands the complexity around certain foreign species of sturgeon that are on the U.S. Endangered Species List that are farmed in the U.S., and the impacts the listing has had on certain American aquaculture businesses. We recognize the challenges created for the sturgeon aquaculture industry by the inclusion of foreign sturgeon species on the U.S. Endangered Species List, as appropriate mitigation and enhancement of the species in the wild that is required under this law can be nearly impossible to fulfill internationally.

H.R. 4033 is broadly applicable to all farmed sturgeon, not just foreign sturgeon species, which are required to have appropriate provenance paperwork. The Service supports H.R. 4033 but would recommend modifications to ensure greater precision of applicability. We would welcome the opportunity to work with the sponsor and the Subcommittee on this legislation.

Discussion Draft, H.R.____, To amend the Marine Mammal Protection Act of 1972 to [____]
As currently written, this discussion draft would amend the Marine Mammal Protection Act of 1972 (MMPA) in multiple ways, including adding new findings, changing several definitions, making significant changes to the process for incidental take authorizations, making changes related to stock assessments, and adding a new section on objective application of best available

scientific and commercial data, among other changes. The Service appreciates the sponsors' interest in marine mammals and intent to modernize the MMPA. We would welcome the opportunity to work with the sponsor and the Subcommittee to address a number of technical and implementation challenges with the legislation as currently drafted. The Administration notes that the President's 2026 Budget proposes to merge the National Marine Fisheries Service's (NMFS) Office of Protected Resources and associated ESA and Marine Mammal Protection Act implementation responsibilities into the Service, which will reduce redundancies and streamline permitting activities.

The MMPA was enacted in 1972 in partial response to growing concerns that certain marine mammals were in danger of extinction or depletion because of human activities. The MMPA set forth a national policy to prevent marine mammal species and population stocks from declining, because of human activities, beyond the point at which they cease to be significant functioning elements of the ecosystems of which they are a part. The MMPA includes a general moratorium on the taking and importing of marine mammals and sets forth several exceptions or processes by which take may be authorized. In general, under the law, before authorizing such take it is necessary to demonstrate that there is only a minor impact on the status and trend of the marine mammal stock.

Under the MMPA, the authority to manage marine mammals is shared between the Service and NMFS, in consultation with the Marine Mammal Commission. The Service is responsible for the management of polar bears, walruses, sea otters, and manatees. NMFS is responsible for the management of whales, dolphins, porpoises, seals, and sea lions.

Section 2 of the MMPA established that some marine mammals are or may be, at risk of extinction or depletion due to human activities. Congress recognized that marine mammals are resources of significant international value, not only for their aesthetic, recreational, and economic roles, but also for their vital contributions to the overall health and stability of marine ecosystems. This discussion draft adds new findings to section 2 and amends several core definitions in section 3 of the MMPA, including the terms "optimum sustainable population," "harassment," "strategic stock," "potential biological removal level," and "minimum population estimate." It also adds definitions for "negligible impact" and "serious injury."

The analyses the Service conducts under the MMPA require estimating before a specified activity occurs what its likely impacts are given the best available scientific information. Additionally, the discussion draft adds a definition for "serious injury," which is defined as "a visible, physical injury that, based on relevant peer-reviewed and statistically significant data…" Other definitions would also result in technical challenges with implementation, which may make it more difficult to make the determinations required to authorize incidental take.

This discussion draft amends section 101 of the MMPA and makes changes to the process for incidental take authorizations, including incidental take regulations and incidental harassment authorizations. Currently, incidental take regulations can be authorized for 5 years for non-

military readiness activities and 7 years for military readiness activities, and the discussion draft removes those timeframes. It is unclear, as drafted, if an authorization would not expire for a specified activity or if the Service could still issue an authorization for a specified period of time.

Under the MMPA, incidental harassment authorizations can be issued for 1 year. This discussion draft would allow the holder of an incidental harassment authorization to request a 1-year extension, which we support to assure that authorized individuals have some flexibility on the time in which they can complete their planned activities.

In addition, the discussion draft makes changes to the process for determining when an application is complete, allowing the applicant to request the Secretary to proceed on the basis of the information provided by the applicant. The discussion draft also adds a provision that any conditions of an incidental take authorization shall not result in more than a minor change to the specified activity. The Service also notes that the discussion draft would both amend the timeframe for the Service to complete an incidental take authorization, and if it is not completed, deem it approved. The discussion draft also removes the requirements for consultation under the ESA under section 7 and the National Environmental Policy Act (NEPA). The discussion draft would also amend sections 103 and 112 of the MMPA to require a number of considerations the Secretary would need to take into account in promulgating regulations under each section, related to take of marine mammals, and broader implementation of the MMPA, respectively.

The discussion draft also amends Title I of the MMPA to add a new section on "objective application of best available scientific and commercial data." The Service currently uses the best available scientific and commercial data in implementing the MMPA and is implementing the President's EO 14303, *Restoring Gold Standard Science.* The Service would welcome the opportunity to work with the sponsor and Subcommittee to ensure consistency with EO 14303 and effective implementation practices.

Finally, the Service defers to NMFS on certain sections of this discussion draft that pertain to parts of the MMPA that NMFS has the lead for implementing, including amendments to section 118 on taking incidental to commercial fishing operations and section 11 in the discussion draft related to North Atlantic Right Whales and Regulations.

The Service appreciates the sponsor's interest in marine mammal issues and intent in modernizing the MMPA. The Service stands ready to provide the sponsor with technical assistance to help improve the substance and feasibility of this discussion draft to achieve the sponsor's intent.

H.R. 4293, To amend the Sikes Act to increase flexibility with respect to cooperative and interagency agreements for land management off of installations

H.R. 4293 amends the Sikes Act to clarify that the Department of Defense (DOD) may enter into cooperative and interagency agreements, including with the U.S. Fish and Wildlife Service (Service), to manage lands off of installation property for military or state-owned National Guard installation activities and operations. Section 103A(a)(2) of the Sikes Act authorizes cooperative

and interagency agreements for work off of installations for current or anticipated military activities, which the Service believes encompasses military and National Guard operations as currently written. However, the Service supports H.R. 4293 and the additional clarification it provides for cooperative and interagency agreements regarding military or state-owned National Guard operations authorized under the Sikes Act.

Enacted in 1960, the Sikes Act bolsters cooperation by the Department of the Interior, DOD, and state fish and wildlife agencies to conserve and rehabilitate natural resources on military or state-owned National Guard installations. Most installations are required to work with the Service to develop and implement an Integrated Natural Resources Management Plan (INRMP), which focuses on the ecosystem-based management of natural resources in alignment with stewardship requirements while supporting and enhancing military operations. This engagement with DOD has a significant conservation impact, as the DOD manages nearly 27 million acres of land and water. Over the last 10 years, the Service has demonstrated the effectiveness of our work under the Sikes Act by supporting over 300 installations through national partnerships with Air Force and Army. Additionally, the Service recently created a Military Lands Working Group, involving representation from across the agency to respond to military service partner needs, align programs and policies, and streamline coordination.

The Sikes Act not only improves conservation through activities like threatened and endangered species recovery or invasive species control, but it also strengthens DOD readiness and neighboring properties directly. Specifically, using the Sikes Act as the vehicle for partnering with DOD, the Service has played a pivotal role in working outside installation fence lines through programs such as the Recovery and Sustainment Partnership and Sentinel Landscapes. Working off installation property and leveraging partnerships with private and public landholders, the Service has helped prevent encroachment around military installations by maintaining buffer zones, improving security and safety for military personnel, minimizing noise, and reducing wildfire risks from training exercises.

For example, in 2024, the Service announced the downlisting of the red-cockaded woodpecker from endangered to threatened status under the Endangered Species Act. This success was largely the result of five decades of collaborative conservation between the Service and DOD working with conservation groups, state and local governments and private landowners to preserve forested habitat to expand woodpecker populations and reduce regulatory pressures on military training and mission. Similarly, the Service's 2023 Annual Military Conservation Partner Award was awarded to Eglin Air Force base in Florida for their role in helping to delist the Okaloosa darter while reducing erosion of military infrastructure and rehabilitating critical road systems for military transportation. These examples show how working under the authority of the Sikes Act, the Service and DOD continue to achieve efficient and effective success and synergy between conservation and military mission.

The Service supports H.R. 4293 and looks forward to working with Congress, the DOD, and state agencies to continue this successful work on and off military installations for the benefit of military personnel, our country's national security, and expanding outdoor recreation.

Conclusion

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions that you may have.