

## **Defenders of Wildlife and others**

### **Oppose Destructive and Unnecessary Provisions that Would Harm Imperiled Species and Public Lands in the House and Senate National Defense Authorization Bills**

June 8, 2015

Dear Senator,

We are writing to urge you to oppose efforts to include provisions in the National Defense Authorization Act for 2016 (NDAA) that would undermine the laws that safeguard our nation's lands and wildlife. The House version of the bill, H.R. 1735, includes a number of provisions that would harm imperiled species and our public lands. These destructive and unnecessary provisions have nothing to do with national security. Many were specifically opposed in a May 12, 2015 Statement of Administration Policy on the House bill. Some of the House provisions have also been included in or proposed to the Senate version of the bill. We urge you to vote "NO" on any additional amendments to the NDAA that would undermine environmental protections and to work in conference to remove those already included in versions of the legislation.

### **Oppose Amendments to the Senate NDAA Bill that are Destructive to Endangered Species and Federal Lands**

#### **Gardner Amendment 1709**

Gardner amendment 1709 would delay a listing decision for the greater sage-grouse for at least 6 years, during which time federal agencies would be required to follow state plans to manage sage-grouse, regardless of whether they adequately protect this imperiled bird. In doing so, this amendment would interfere with the ongoing National Greater Sage-Grouse Planning Strategy, wasting the millions of dollars that have been invested in the strategy, delaying sage-grouse conservation and creating a patchwork of inconsistent and inadequate direction for sage-grouse management on federal lands to the detriment of sage-grouse and other public values. The amendment overrides a pending Endangered Species Act (ESA) listing decision and undermines the Act by inappropriately injecting politics into a decision that should be based on the best available science. Moreover, requiring federal agencies to manage federal lands in accordance with state sage-grouse strategies inappropriately rescinds federal authority on 60 million acres of public lands.

#### **Lee Amendment 1687**

Like the Gardner amendment, Lee amendment 1687 delays a listing for the greater sage-grouse, but for at least 10 years instead of 6. It also overrides the ESA and transfers oversight of as many as 60 million acres of federal lands that are home to sage-grouse to western states by requiring that all federal conservation strategies comply with lesser state guidance for managing the bird. State actions that override federal conservation strategies would not be subject to judicial review, nor would the 10-year delay for listing the greater sage-grouse. Additionally, the amendment removes necessary ESA protections for the threatened lesser prairie-chicken and the endangered American burying beetle. This non-germane rider would do nothing to enhance military readiness. Instead, it would jeopardize the conservation and recovery of the threatened lesser prairie-chicken and the endangered American burying beetle and derail ongoing planning processes for the greater sage-grouse.

### **McCain Amendment 1633**

McCain amendment 1633 waives federal law for border security activities on national parks, national monuments, national forests, national wildlife refuges and other public lands administered by the Secretaries of Interior and Agriculture within 100 miles of the international border between the United States and Mexico and within the larger Tucson and Yuma sectors of the U.S. Border Patrol. This unnecessary amendment could result in damage to millions of acres of America's treasured public lands, cost taxpayers millions of dollars and harm Border Patrol assets. The Department of Homeland Security—which has described similar legislation as “unworkable”—already has unprecedented authority to operate on federal public lands along the border. Such a measure would undermine the effective coordination between land management agencies and the Border Patrol, cripple the Department of Homeland Security's capacity to adapt to emerging threats, politicize tactical decisions and threaten the quality of life in border communities.

### **Flake Amendment 1715**

Flake amendment 1715 is an unnecessary and overly broad provision that would encroach on the President's authority to establish national monuments on public land and undermine the highly successful process already in place for coordination between the Department of Defense and federal land managers. This amendment was not requested by the Department of Defense, would undercut a time-tested conservation law and reverse the chain of command by requiring the Secretary of Defense to approve a decision made directly by the Commander in Chief. Additionally, by mandating a list of required exemptions and undermining the current cooperative process, it could actually decrease federal land management flexibility necessary to adapt to future military systems and activities which aren't specifically identified.

As the legislative process progresses, we also urge you to oppose and work to remove the attached list of anti-environmental provisions currently included in the House and/or Senate versions of the NDAA legislation.

Again, please vote “NO” on any additional amendments to the NDAA that would weaken safeguards for our lands and wildlife, and please also work in conference to remove those already included in the current versions of the bill.

Thank you for your consideration.

Sincerely,

Defenders of Wildlife and others

## Attachment to June 8, 2015 Letter to the U.S. Senate Opposing Amendments to the Senate NDAA Bill that are Destructive to Endangered Species and Federal Lands

### Oppose Provisions Included in the House and/or Senate NDAA Bills that are Destructive to Endangered Species and Federal Lands

Provisions currently included in the House and/or Senate versions of the NDAA could further jeopardize the existence of the greater sage-grouse across much of the West, would circumvent longstanding protections for federal lands, weaken protections for threatened southern sea otters and remove necessary federal protections for the lesser prairie-chicken and the American burying beetle.

### Destructive and Unnecessary Endangered Species Provisions

**Imperil Sage-Grouse and Undermine Management of Federal Public Lands:** House Section 2862 would delay a listing decision for the greater sage-grouse for at least ten years under the Endangered Species Act (ESA) and undermine the outcome of ongoing state and federal conservation planning processes. The Department of Defense (DOD) did not request this provision which will do nothing to enhance military readiness. There is little overlap between greater sage-grouse priority areas for conservation and military reservations. Moreover, the ESA already includes exemptions for national security and for DOD. Section 2862 would also take the unprecedented step of transferring oversight of as much as 60 million acres of federal lands that are home to sage-grouse to western states by requiring that all federal conservation strategies comply with lesser state guidance for managing the bird. Populations of greater sage-grouse, which is currently a candidate for listing under the ESA, have plummeted by as much as 90 percent from historic numbers. The potential for listing is driving an unprecedented planning process to implement new measures to conserve sage-grouse and its habitat across the West. Delaying a decision on listing and interrupting the ongoing conservation efforts—and putting states in charge of managing sage-grouse on federal lands—would remove incentives and potential safeguards necessary to save the species. Additionally, the “no judicial review” language included in this provision would strip citizens of the ability to challenge this listing delay or any state actions that override federal resource management plans.

**Jeopardize Recovery of the Threatened Lesser Prairie-chicken.** House Section 2865 would jeopardize lesser prairie-chicken recovery by statutorily delisting the imperiled bird and preventing its relisting for at least six years. Moreover, it would impose arbitrary restrictions on whether the Secretary of the Interior can relist the lesser prairie-chicken after that time, in complete disregard for the species’ biological status and need for federal protections. The species currently occupies less than 15 percent of its former range and its population dropped by 50 percent between 2012 and 2013, eliminating any doubt that the species requires protections under the ESA. Although the U.S. Fish and Wildlife Service (FWS) determined in 1998 that the lesser prairie-chicken warranted federal protection, it was not listed until 2014. The listing was accompanied by a special 4(d) rule that exempts numerous land use activities, including oil and gas development and agricultural uses that meet certain standards. Contrary to the hysterical predictions of economic ruin of the oil and gas industry from prairie-chicken listing, the industry has already indicated it has easily adjusted to FWS’s listing decision.<sup>1</sup> DOD did not request this provision to delist the species and it will do

---

<sup>1</sup> McEwan, M. “Oil Producers Adjust to Lesser Prairie-Chicken Listing.” *Midland Reporter-Telegram* (Aug. 25, 2014).

nothing to enhance military readiness. Finally, the ESA already includes exemptions for national security and for DOD.

**Jeopardize Recovery of the Endangered American burying beetle.** House Section 2866 would immediately and permanently remove the American burying beetle from protection under the ESA and prevent it from receiving any protections in the future. The American burying beetle formerly occupied a vast range encompassing 34 states and the District of Columbia, and may have numbered in the tens of millions. The beetle's decline is not well understood, but the most cogent hypotheses see it as a victim of gaps in the food chain, which reduced the number of large carcasses that the beetle depends on for reproduction. In fact, the decline and eventual extinction of once-plentiful birds like the passenger pigeon and the greater prairie-chicken have been linked to the beetle's decline.<sup>2</sup> This meddlesome, anti-science amendment would cause yet another disruption of the food chain, which is sure to have further similar ripple effects. While the beetle has made gradual population gains thanks to captive breeding programs and reintroduction efforts made possible by its protected status under the ESA, the species has not yet recovered. This provision would be a virtual death sentence for this indicator species, which restores valuable nutrients to the soil, and which has not stopped a single project from proceeding under the ESA's consultation process since 2008, nor required a significant modification of any project. DOD did not request this provision to delist the beetle and it will do nothing to enhance military readiness. The ESA already includes exemptions for national security and for DOD.

**Exempt Southern Sea Otters from Protections:** House Section 312/Senate Section 304 would weaken both the Endangered Species Act (ESA) and Marine Mammal Protection Act by unnecessarily giving the U.S. Navy broad exemptions to both statutes, allowing their activities to potentially kill, injure and otherwise harm threatened sea otters off two Southern California islands without review. Current law already provides the Navy with the ability to ensure that protecting does not impede military readiness; there is no need for a sweeping exemption from environmental law.

### **Destructive and Unnecessary Federal Lands Provisions**

**Permanently Withdraw Federal Lands:** House Section 2842(a) would permanently withdraw from the public thousands of acres of BLM lands in Alaska, Nevada and New Mexico that currently are being provisionally utilized by the Department of Defense (DOD) for military activities. Through this arbitrary process, Section 2842(a) would circumvent the established environmental review process that helps the public, land managers and the military make equitable determinations on how best to manage public lands. It would also establish a dangerous precedent in allowing these public lands to be potentially sold to private entities instead of being returned to the public when they are no longer needed for military purposes.

**Undermine the Antiquities Act:** An unnecessary and overly broad provision in House Section 2863 would encroach upon the President's authority to proclaim national monuments and undermine effective coordination between our national security and land management agencies on joint use of our public lands. National monuments and other protected public lands already properly take into account national security needs and allow for military training exercises, as appropriate. Neither the DOD nor any other national security agency has requested any amendments to the

---

<sup>2</sup> Sikes, D.S. 2002. A review of hypotheses of decline of the endangered American burying beetle (Silphidae: *Nicrophorus americanus* Olivier). *Journal of Insect Conservation* 6: 103–113.

Antiquities Act or land management procedures on national monuments. Past national monument proclamations, including the recent Organ Mountains-Desert Peaks National Monument, have specifically clarified that the designation will not prohibit continued national security activities in the area, including military overflights. By removing this successful process of cooperation and discussion and case-by-case review of monument proclamations, this proposed carte blanche authority could result in haphazard and uncoordinated decisions that risk damaging the very sites and values that national monuments have been established to protect without providing any discernable national security benefits.

**Upend Management of Desert National Wildlife Refuge:** House Section 2842(b) gives over full jurisdiction of more than 800,000 acres of National Wildlife Refuge System lands to the Air Force upon request. These lands make up over half of the Desert National Wildlife Refuge, the largest refuge in the contiguous United States. Encompassing six major mountain ranges and nearly 1.6 million acres in Nevada, Desert National Wildlife Refuge provides the highest quality, intact habitat for desert bighorn sheep and other wildlife that depend on Great Basin and Mojave Desert ecosystems. Under Section 2842(b), only hunting, fishing and trapping would remain subject to refuge management laws following transfer to the military, while all other refuge management requirements would apply only to the extent they support and are relevant to Air Force authorities and responsibilities. Section 2842(b) would also prevent wilderness designation, waive National Environmental Policy Act safeguards and strip the Fish and Wildlife Service of its authority to conserve wildlife species and their habitats on the affected lands.

**Undermine Public Planning Processes and Conservation on Public Grazing Lands:** Section 1081(b)(10) in both House and Senate bills, although described as a clerical amendment, would significantly expand upon the damaging grazing rider attached to the FY 2015 NDAA. This "technical" fix would create a new categorical exclusion under the National Environmental Policy Act, waiving public planning requirements for existing allotment management plans (AMPs) in cases where Congress has failed to allocate sufficient resources to the Bureau of Land Management and the U.S. Forest Service to timely renew the associated grazing permits. This new waiver could result in mismanagement of millions of acres of public lands under outdated AMPs until the federal agencies are finally able to update the plans. A second provision in subsection (b)(10) would extend this new categorical exclusion—and all of the 2015 rider—to national grasslands in the West, affecting management of fish and wildlife and other public values across broad expanses of the Great Plains and the Intermountain West. Finally, a third provision in subsection (b)(10) would effectively prohibit ranchers from working with sporting and conservation organizations to voluntarily retire their grazing permits, an increasingly popular tool to conserve wildlife, watersheds and other values on public lands.