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Fischman Serves as Witness in Endangered Species Act Hearing

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An environmental law expert from the Indiana University Maurer School of Law served as an expert witness today (April 18) as part of a congressional hearing on the Endangered Species Act (ESA).

Professor Rob Fischman participated in one of three panels convened by the U.S. House Natural Resources Subcommittee on Water, Wildlife, and Fisheries as lawmakers consider four Congressional Review Act (CRA) resolutions challenging the implementation of certain aspects of the ESA.
Two of the resolutions involve the conservation status designations of the northern long-eared bat and the lesser prairie chicken. The U.S. Fish and Wildlife Service, citing a deterioration in the animal’s conditions, designated the bat as an endangered species under the ESA in November 2022. The lesser prairie chicken’s northern distinct population was deemed threatened, and the southern distinct population endangered, last fall.

The CRA is a rarely-used oversight tool Congress may use to overturn final rules issued by federal agencies. The CRA can be used anytime during a Congress but is most often used during a change in administration and when there is a shift in majority control.

Legislators calling for the delisting of the species from those respective lists said a commonsense habitat conservation plan that protects wildlife while safeguarding the nation’s economy is needed.

“The proponents of these bills are saying we need commonsense conservation plans—that these lists are going to shut down infrastructure projects, shut down other activities,” Fischman said. “But my research shows that’s not true. You often need something like a listing to prompt people to go to the table to collaborate on a solution.”

Fischman, the George P. Smith, II Distinguished Professor of Law, researches the relationship between law and conservation implementation as well as collaborative governance. He is the co-author of *Federal Public Land and Resources Law*, one leading casebooks on the subject.

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In his testimony, he noted that the ESA is often used as a last-ditch effort to slow extinction efforts, when greater foresight—and funding—could have a much greater impact.

“Most declining species in the United States are not on the brink of extinction,” he told the subcommittee. “A conservation program for sustaining these species could succeed with much greater flexibility than the ESA. The ESA often demands modification of commercial activities because we do not take reasonable measures until species are at a relatively high risk of extinction. If we had a set of programs to slow unsustainable practices before biodiversity reached the point of potential collapse, then we would avoid many of the train wrecks that have tarnished the image of the ESA.”

The third resolution would rescind a Biden administration move that stopped a Trump administration rule on designating critical habitats, while the fourth involves the protection of the North Atlantic right whale.

The subcommittee is responsible for matters concerning America’s water resources, federal irrigation projects, generation of electric power from federal water projects, interstate water issues and fisheries management.

Lowell Baier ’64, a prominent author, attorney, historian, and conservationist, was also in attendance to hear Fischman’s testimony. The Law Building, Baier Hall, is named in his honor.

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