Testimony Before the Subcommittee on Conservation, Energy, and Forestry
Committee on Agriculture, U.S. House of Representatives
Regarding the implications of the Endangered Species Act
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Good Morning. I would like to begin my testimony by explaining how the Forest Landowners Association, of which I am the current president, was formed. The founder of the Forest Landowners Association was a gentleman by the name of Bill Oettmeier who was a forester in Georgia with a forestry degree from Penn State. Bill was concerned by the lack of funding for forestry research in the South and traveled to Washington, DC to ask Congress for money. When he got here, he was asked whom he represented and he replied, "I represent myself." Needless to say he didn't get anywhere. So he went back to Georgia and organized the Forest Farmers Association in 1941. The 1940s were a time when stewards of timberlands were challenged by the unforeseen consequences of well-intentioned legislation. Well, you might say things have not changed all that much in the last 74 years and that is what brings me here today.

Members of the Forest Farmers Association, which is now called the Forest Landowners Association, own and operate more than 40 million acres of forestland in 48 states. The majority of the members of the FLA are families who have owned and managed their property for generations. In this regard, for more than 100 years my family has owned and been good stewards of private working forestlands in southern Georgia. Today, I am the most current steward and manager of our family timberlands.

The focus of today's hearing is the cost of litigation under the ESA, and private landowners are certainly not strangers to this issue. For example, as recently as two weeks ago, a coalition of prominent activist groups sent letters to nineteen forestland owners and timber companies, whom the activists believed *might* be considering the purchase of five parcels of forested lands that were for sale. The seven page, single-spaced letter, which reads like a legal brief, warns that "If you purchase any of these parcels, we intend to commence litigation to obtain an injunction" to prevent you from taking any action that would result in harm to or take of threatened or endangered species. The letter also states that in the event of such litigation the groups will seek to recover their costs and fees, as well as the fees of their expert witnesses, under the "Citizen Enforcement" provisions of the ESA. 16 U.S.C. § 1540(g)(4). These threats were made despite the fact that, as the letter concedes, listed species had not been located on more than half the parcels of land at issue. Needless to say, the cost to a private landowner of defending against such a lawsuit, let alone also facing the litigation over the other sides' costs and fees is daunting. Lawyers I have asked have estimated the costs of injunctive hearings, trials including scientific testimony, and appeals could easily exceed $2 million.

That such tactics will find increasing use in my part of the country is also a real concern to FLA. That is because the Southeast Regional Office of the U.S. Fish & Wildlife Service has been deluged by lawsuits from activists groups that are designed to trigger that agency's obligation to make decisions about whether to list a species under the inflexible and very tight legal

timeframes provided for by the ESA. Presently, the Southwest Region of the Fish & Wildlife Service is obliged to make decisions regarding whether or not to list more than 400 species, over twelve states in the Southeast. Similarly massive decisions are being faced by Fish & Wildlife Regions across the country. Among the species currently under consideration for listing are river mussels, minnows, moths and flies – about which very little is known or publicly available; in fact, in many cases, simply finding and making a proper identification of the specifies in the wild requires a PhD in biology. Yet, upon the listing of any of these species, the full range of severe civil and criminal penalties provided for by the ESA come into play, both for harm to the species itself as well as its critical habitat, sometimes even when the species itself is not present in the habitat.

In short, my members and I are greatly concerned that the draconian, one-size-fits-all approach of the ESA has resulted in it being used primarily as a powerful tool in the hands of those who would halt land management activities, while the actual needs of species, including humans, who inhabit the land have become secondary.

I would also like to share with you today a personnel story about how the ESA has financially impacted my family forest business In March of 2000 we had a devastating wildfire that destroyed a portion of our family timberland. This particular tract of timber contained a colony of red cockaded woodpeckers, which are on the endangered species list. The result of the fire was that most of trees were killed that day, the rest would die over the next few months and

the woodpecker cavity trees were killed. I immediately sought help from the Fish and Wildlife Service to determine what to do to avoid a taking and to be able to recover some type of income by selling the dead and dying timber. In response, the Fish and Wildlife Service sent me the recovery guidelines. I explained that recovery on this site was not going to be possible since all of the trees were either dead or dying and I needed information to prevent me from performing an activity that would cause a taking under the Endangered Species Act. We wound up harvesting what we could and leaving the remaining timber until it could be established that no woodpeckers were still in this stand. We salvaged some of the wood as pulpwood and the rest we pushed up and burned. As a result my family business suffered even greater economic loss beyond the damage from the fire. The economic loss to us as a result of not being able to sell the wood was $250,000-$300,000. I could have never contacted the Fish and Wildlife Service and move forward with clearing the down timber, but then I would have exposed myself and family to potential litigation if it was discovered that we cleared an area where a listed endangered species has once lived and the cost of that litigation would most likely have been beyond our financial ability.

We currently have active red cockaded woodpecker clusters on other parts of our property, which require management on, anywhere from 60 to up to 300 acres per cluster. Due to the presence of the listed species, I have a loss of timber income on 600 acres of my land that equates to roughly $36,000 in annual growth rate income plus the costs of required management activities. I would like to let you know that all of the management activities and reporting to the Fish and Wildlife Service related to the endangered species has been voluntary.

The Endangered Species Act process and litigation are NOT about saving species. It is about spending American taxpayer money at a time when American jobs are scarce, private property rights are being taken and the federal deficit is trillions of dollars. Certainly, the federal government can find a better way to help private forest landowners who provide so many public benefits rather than lining the pockets of radical environmental groups and their "pro bono" (i.e. allegedly free) attorneys and spending money on a program that by the federal government's data is a complete failure.

In closing, no one, myself included, is questioning the importance of protecting endangered species. Indeed, in my particular case, I have wound up with colonies of listed woodpeckers on my land that I consider and account for in my management activities without any federal or state funding. If the ESA cannot be reformed to help ease the concern of litigation placed upon the private landowners, then the tsunami of listings and heavy-handed tactics used by some groups threaten to do real harm to generations of forest landowners who have been and remain good stewards of land as well as to the species and their habitat.

While I am here, I would also like to bring to the committee's attention to another issue that greatly impacts private forest landowners' ability to maintain and manage their timber. Congress has long recognized that growing forests have unique economic attributes that do not necessarily match easily with general tax principles. It can take decades before a forest stand is harvestable. This investment in forests ties up large amounts of capital in the land, but the forest owner must also bear substantial annual costs to maintain the forest (including fire

prevention, road maintenance and pest control) to improve the growth and productivity of the trees. Additional costs are incurred for replanting after harvest as well as for environmental protections and set-asides for wetlands, protected species and other significant resources. Moreover, healthy forests provide significant societal value by consuming carbon dioxide, curtailing erosion, creating wildlife habitat, sourcing drinking water and maintaining natural open space for human recreation for which the forest owner receives little or no compensation. In response, Congress has crafted specific provisions in the Internal Revenue Code to reflect this unique economic framework and challenge, known as timber tax provisions. These timber tax provisions have well-served the nation, consumers and manufacturers, forest owners and the environment. As Congress examines various options for tax reform, on behalf of more than 11 million private forest landowners, I strongly urge you to consider, as Congress has long recognized, that timber is a long-term investment, decisions to invest in timber were made decades ago, and changing the tax treatment would significantly and negatively impact investments in working forests that contribute to economic growth, environmental quality and diversity of species.

Thank you