

BRIEF ANALYSIS

No. 276

For immediate release:

Thursday, August 6, 1998

The Endangered Species Act: First Step toward Fixing a Costly Failure

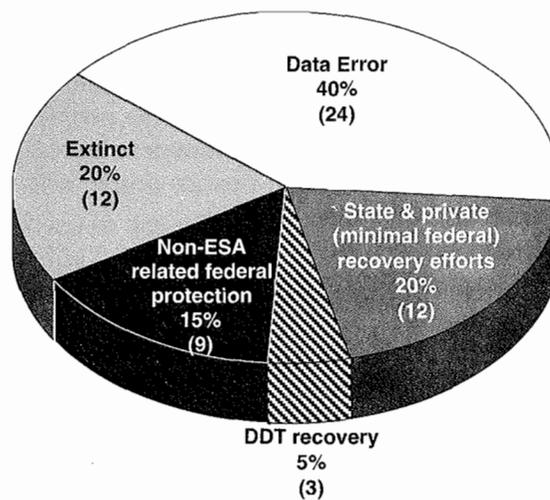
Declaring that “The Endangered Species Act works,” Secretary of the Interior Bruce Babbitt has announced that within the next two years the United States Fish and Wildlife Service (USFWS) will remove (delist) 33 species from the endangered species list. His claim comes as the ESA is being considered for renewal — the law authorizing it having lapsed in 1992. These 33 delistings will mean that a total of 60 species have been removed from the endangered species list.

Should Secretary Babbitt brag about the success of the act or apologize for its failure? Suppose a federal education program for high-risk students enrolled 1,139 U.S. children and 565 foreign kids but graduated only 60 in 26 years, at a cost of billions. This is the record of the ESA.

Record of Failure. Measured by any reasonable standard, the ESA has failed. Even counting all the delistings as “successes,” they account for only 3.5 percent of the species listed in the 26 years since the ESA was enacted. A more careful examination of the facts shows that of the 60 species delisted:

- 12 were delisted due to extinction.
- 24 were delisted because of “data errors” — they either were undercounted when added to the list or were later determined not to be distinct species.
- 9 exist solely on federal lands and are therefore federally protected without the ESA.
- 3 were decimated by a pesticide, DDT, and recovered largely due to the DDT ban in 1972.
- 12 remaining species are conserved by state agencies or private organizations, with only minimal contributions by the federal government. [See the figure.]

Reasons for Endangered Species Delisting



Source: Brian Seasholes, Competitive Enterprise Institute (1998); Thomas Lambert and R. J. Smith, *The Endangered Species Act: Time for a Change* (1994).

No delisting was attributable to ESA protection.

The Cost of Failure. The true cost of the ESA is hard to estimate because, in addition to billions in federal spending, state governments and the private sector have spent additional tens of billions for this program with no common accounting system. The government has estimated that to recover all currently known endangered species would cost more than \$4.6 billion. This estimate is misleading because it is for recovery costs alone; for every dollar thus far spent on recovery, federal agencies have spent more than \$2.26 consulting with scientists and stakeholders and developing the species list. Even the recovery cost estimate is low, since dozens of species on which much more money has been spent have not

been delisted. Millions of dollars have been spent on species that were wrongly listed — like the Tumamoc globeberry, a gourd in southern Arizona. And estimates for the recovery of the Northern spotted owl alone range from \$21 billion to \$46 billion, depending on which recovery plan is finally selected. These are only the direct costs.

The lost jobs, forgone wages, delayed and halted development, increased construction costs and difficult-to-measure social costs — such as community disruption, increased suicide and divorce rates — are even greater. The true costs should be measured in houses, homeless shelters and

hospitals not built or significantly delayed; medical and technological discoveries not advanced; and funds not available for education, crime control and other health, safety and environmental matters — including species lost or still declining.

For example, the day before San Bernadino and Riverside counties in California were to break ground on a new hospital, the USFWS listed the Delhi Sands flower-loving fly as endangered. Eight Delhi flies were found on the hospital site and the USFWS threatened to prosecute the counties if they built the hospital as planned. According to Ike Sugg, a wildlife specialist at the Com-

petitive Enterprise Institute, while the counties and the USFWS have been negotiating:

- Hospital construction has been delayed for more than a year.
- The counties have spent more than \$4.5 million dollars — more than half a million per fly.
- The counties may have to spend millions more to buy land to establish a fly preserve.

One USFWS official demanded that Interstate 10, an eight-lane freeway adjacent to the hospital site, be shut down or slowed to 15 miles an hour during the two months of the fly's above-ground lifespan.

Just being more careful with the allotted monies would improve species protection. The government spends an average of \$107,000 satisfying paperwork and reporting requirements to list and delist, exclusive of the costs of monitoring species and developing or implementing habitat conservation plans. Thus, the species that were wrongly listed cost us more than \$3.9 million. How many biologists could have been hired to preserve species at that cost? How many hundreds of thousands of acres could have been set aside to preserve truly endangered species?

Based upon its record of costly failure, the best policy might be to end the federal government's role in endangered species protection entirely. Since in the current legislative environment this is unlikely, perhaps the best policy is to minimize the damage the current act causes.

Causes of Failure: Perverse Incentives. One problem with the ESA is that it creates perverse incentives to destroy species and their habitat. Over 75 percent of the listed species depend on private land for all or part of their habitat requirements. Yet if people provide suitable habitat for an endangered species, their land becomes subject to severe regulation if not confiscation. As a former USFWS official stated: "The incentives are wrong here. If I have a rare metal on my property, its value goes up. But if a rare bird occupies the land, its value disappears. We've got to turn it around to make the landowner want to have the bird on his property."

Even Michael Bean of the Environmental Defense Fund recently acknowledged that "increasing evidence suggests that at least some private land owners are actively managing their land so as to avoid potential

endangered species problems...by avoiding having endangered species on their property." Mr. Bean admitted that this was not the result of a desire to harm the species or the environment but, rather, a rational response to the incentives in the current act.

Formula for Success: Make Allies of Landowners.

The Fifth Amendment to the Constitution prohibits the taking of private property for any public purpose without the payment of "just compensation." When the government imposes land use restrictions on private property to preserve species habitat and the land loses value, a "taking" has occurred and the property owner should be compensated.

Returning to the school metaphor used earlier, if the government required private citizens to house students enrolled in a special education program and demanded that they regulate their activities so as not to disturb the students' studies, the government would have to compensate the people whose homes were involved. The government also is constitutionally obligated to compensate people who must "house" protected species.

The fear of uncompensated takings leaves an owner three options: kill an endangered species member, destroy species habitat or lose the value of his land. Honoring the Fifth Amendment would shield the landowner from choosing between his welfare and that of the endangered species.

Conclusion. For the first 26 years of the ESA, the federal government used the threat of fines, imprisonment and federal management to force state and local officials and property owners to protect species. This produced the "shoot, shovel and shut up" syndrome, the opposite of its intended effect. Clinging to this approach will guarantee continued failure.

The survival of many endangered species literally rests with American property owners. At a minimum, to improve the chances of species recovery the government needs to swear an environmental Hippocratic oath to "do no harm." This entails assuring that landowners who protect a species valued by the public will be compensated by the public. Other ESA problems will remain, but this is a good first step.

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