

What's Wrong with the ESA? What isn't?

A VIRULENT TOOL IN THE RAPE OF RURAL AMERICA. BY JEFF GOODSON

The Endangered Species Act is broken. It has utterly failed in what it set out to do, and 30 years of lawsuits have transformed it from a simple environmental law into the most virulent tool in the rape of rural America. There are a lot of problems with the ESA. What follow are the most important:

Species That Aren't Species

The ESA was originally designed to protect species from extinction. The term "species," however, has since been twisted from a biological into a legal term. Today it's so broadly

species. Take means to capture or kill, but U.S. Fish & Wildlife Service (FWS) interprets the term to include everything from common ranching, farming and construction activities, to backyard playgrounds. Even a simple walk in the woods can now qualify as take.

Junk Science

FWS says it uses the best available data when it lists endangered species. The dirty little secret among professional biologists is that a lot of it is junk science—and not just the population estimates used at listing. In 1998 a

federal claims court found that the U.S. Forest Service used bad spotted owl data to block logging in California, and last year the National Academy of Sciences found no scientific basis for cutting off water to Klamath farmers (*RANGE*, Spring '02). Earlier this year, the National Marine Fisheries Service had to rescind critical habitat designation for 19 fish populations after admitting that "We just designate everything as critical, without an analysis

of how much habitat" is actually needed.

Biological Fraud

Less common than junk science is outright biological fraud. In the latest known incident, seven government biologists planted captive lynx fur in two national forests during a federal endangered species survey and then fraudulently submitted the samples for DNA analysis (*RANGE*, Spring '02).

Irreversible Decisions

No matter how bad the science, delisting a species is almost impossible. In 30 years, only nine U.S. species have been delisted because of taxonomic revision or new information. The Concho water snake, one of them, was

listed in 1986 after a college professor convinced FWS that only 600-800 survived. Ten years and \$1.5 million later, the agency finally delisted this snake when up to 70,000 were found slithering around the landscape.

Biased Administration

Lawyers use the term "arbitrary and capricious" to describe government bias in program administration. Administration of the ESA may be more arbitrary and capricious than any environmental program in America. The most recent ruling was from a federal judge in Oregon, who found that wild and common hatchery salmon of the same species were treated differently at listing.

Expensive Compliance

ESA compliance is a high-dollar proposition. On private property, Section 10 of the act usually requires expensive habitat conservation plans and the donation of mitigation land. On the public domain, compliance may be impossible altogether except through costly litigation.

Irrelevant People

In 1978, environmentalists used the snail darter to try and stop the Tellico Dam. The lawsuit went to the U.S. Supreme Court, which confirmed that Congress didn't care about people when it passed the ESA. To this day, FWS argues that it cannot assess impact on people during the listing process.

Economic Damage

The Supreme Court's Tellico Dam opinion stated that "The plain intent of Congress...was to halt and reverse the trend toward species extinction, whatever the cost..." Since then, the ESA has left a trail of economic damage from the northwest (spotted owl) to the southeast (red-cockaded woodpecker) and everywhere in between—from the Klamath Basin (salmon and steelhead) and Southern California (California gnatcatcher), to Arizona (Mt. Graham red squirrel), Oklahoma (burying beetle), and central Texas (golden-cheeked warbler, black-capped vireo and cave invertebrates). After 30 years, even FWS recognizes the damage. In an exceptionally rare printed admission in 2001, the agency stated that "the halt on logging late-successional forests...during the early 1990s had a dramatic impact on people who depended on Bureau of Land Management and Forest Service timber supply for work."

Lockdown of the Public Lands

The ESA is the tool of choice for locking down the public domain. As environmentalists Andy Kerr and Mark Salvo recently noted in *RANGE*, Spring '02: "Pending and imminent ESA actions to protect the mountain plover,



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Canadian lynx with snowshoe hare, its main food source. Seven government biologists planted captive Canadian lynx hair in two national forests during a federal endangered species survey last year, to "prove" habitat. This is biological fraud. Even so, the workers were not fired.

defined as to include simple population segments—a definition used to list common species like the gray wolf and Canadian lynx.

Species That Aren't Endangered

Likewise, "endangered" no longer means in danger of extinction; today it includes threats in any part of a species' range. A number of listed organisms aren't biologically endangered at all—they're just rare in the United States. The lynx, for example, has the largest range of any wildcat in the world; more than 18,000 lynx skins were traded from 1995-1999.

The Definition of Take

The ESA prohibits the "take" of endangered



Sockeye salmon, not endangered. FWS uses "best available data" when naming endangered species. The dirty little secret among professional biologists is that a lot of it is "junk science." Earlier this year the National Marine Fisheries Service had to rescind critical habitat designation for 19 fish populations after admitting, "We just designate everything as critical, without an analysis of how much habitat" is needed.

mountain quail, sage grouse (the spotted owl of the Sagebrush Sea), yellow-billed cuckoo and other species will dramatically affect public lands livestock grazing." Most communities battered by the ESA had thrived for generations off sustained multiple use of the public lands. Ranching, farming and logging communities in the northwest, southwest and southeast have been especially hard hit.

Litigation Abuse

Dozens of ESA lawsuits are active at any given time, filed by organizations like the Center for Biological Diversity, the Sierra Club and the Natural Resources Defense Council. The granddaddy of ESA litigation, Jasper Carlton of the Biodiversity Legal Foundation, filed a single lawsuit in 1992 on behalf of 443 species. A few years later he was simultaneously pursuing individual lawsuits to force-list the lynx, wolverine, fisher, grizzly bear, Spalding's catchfly, painted rock snail and Amargosa toad. As Carlton put it: "Instead of one lawsuit, we bring 10, 15, 20 lawsuits."

Abuse as a Property Control Tool

For environmentalists, force-listing species through litigation is a favorite property control tactic. Jasper Carlton once complained that FWS was "avoiding listing species that are wide-ranging and have implications for landscape-scale protection: lynx, wolverine, fisher, bull trout." Since then, environmentalists have greened the federal agency and front-burnered the strategy of suing to list species with landscape implications. These include not just terrestrial species, but aquatic species that can be used to control stream flow and water quality on a watershed scale. Of 85 species identified last year as candidates for

listing in the continental U.S., over half are aquatic.

Children Playing God

It's bad enough that the ESA empowers FWS to play God, but the individuals who make those profound decisions are neither elected nor accountable. Many aren't even professional biologists with the experience and seasoning necessary to judiciously defend the biology on which their decisions are based. A federal biologist in Austin, Texas once had the audacity to tell a landowner that the loss of his 750-acre ranch would mean the extinction of a bird found in dozens of Texas counties.

Unjust Compensation

The fifth amendment of the Bill of Rights states: "...nor shall private property be taken for public use without just compensation." Like Bill Clinton's definition of "is," environmental lawyers hotly debate the meaning of "take" in this constitutional context. But the simple truth is that when the government takes the use of property, it takes the property. Landowners everywhere have had government take the use of their property through the ESA without just compensation.

Environmental Damage

Another dirty little secret about the ESA is the extent of environmental damage it causes. In central Texas, golden-cheeked warbler habitat wastes massive volumes of groundwater. A handful of aquatic species has rendered 45 million acre-feet of the Edwards Aquifer as inaccessible as Pluto. Those listings are ultimately responsible for the environmental impact of every infrastructure project required to produce the water to replace it.

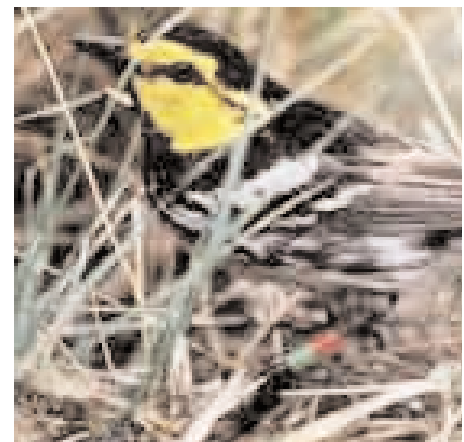
Likewise, managing for old-growth forest to protect some species demonstrably increases wildfire damage. It can also threaten highly endangered species like Kirtland's warbler that rely on pre-climax vegetation, and drive less common pre-climax species to the edge of extinction.

Incentive to Kill

Not surprisingly, the property and natural resource damage inflicted by the ESA generates a profound incentive to "shoot, shovel and shut up." No landowners in their right minds want endangered species habitat damaging their property and natural resources, and smart landowners ensure that habitat either doesn't develop or doesn't survive.

It Doesn't Work

At the end of the day, the biggest problem with the Endangered Species Act is that it doesn't work. FWS says the ultimate goal of the ESA is the recovery and subsequent preservation of endangered species and the ecosystems on which they depend. Today, after 30 years, there are 1,258 U.S. species on



The golden-cheeked warbler likes to hang out around cattle in the cedar thickets of Texas and New Mexico. The government wants to remove cattle grazing (a contradiction) "to save the bird."

the endangered species list. Incredibly, only seven have recovered.

As long as the ESA establishes an incentive to kill, it will fail as conservation law. Habitat will be conserved and species will be saved when landowners have an incentive to conserve, and get just compensation when the use of their land is taken for the public use of species preservation. ■

Jeff Goodson is president of JW Goodson Associates, Inc., a property consulting company. Contact him by calling 1-800-998-8481 or write <jwgoodson@aol.com>. Goodson's "Protecting Yourself" and "The Land Snatchers" follow....

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Protecting Yourself

A MATTER OF SURVIVAL. BY JEFF GOODSON

The environmentalists want your land. In 1973, Congress passed the Endangered Species Act and gave them a way to get it. Because of how the ESA is written and interpreted, it's difficult and expensive to defend against. Until Congress fixes it, here's how to protect yourself and your property.

Know What Species Affect You

There are 1,258 species now listed in the United States. You can't defend yourself if you don't know which ones affect you. Find out

knowledgeable attorney to protect biological information from discovery in court, and get a written agreement that prevents your consultant from divulging biological information without your consent.

Limit Property Access

Limit access to your land. Fence your property, including streams, and clearly post it as private. Aggressively prosecute trespassers—government and private alike. Work with state legislators to increase trespass penalties, and work with neighbors and local police to improve trespass enforcement.

Avoid environmental easements that provide permanent access, and don't donate road easements just so the mail can be delivered. Utility rights-of-way are even worse. They're almost always ground-surveyed for endangered species—data that becomes public—and the right of access exists for the life of the right-of-way. Keep private land private and keep strangers out.

Fight Environmental Espionage

Environmental espionage is the collection of environmental data on private property without the landowner's knowledge or consent. That includes surveying for endangered species, often paid for with state and federal funds. Few things infuriate Americans more than being spied on. Be vigilant about environmental espionage, expose it where it occurs, and don't make it easier for environmentalists to spy on your property. Unless you've hired them specifically to represent you, keep biologists off your land. Period.

Check Out Land Before Buying

When you buy land, research it first. Real estate contracts often entitle the buyer to survey for endangered species before closing. When in doubt, exercise the option and negotiate with the seller to help pay for it. Sellers without habitat are usually tickled to establish that fact.

Manage Your Property

Keep endangered species habitat from developing on your property. If you live in the southeast, don't let mature pine savanna develop and attract red-cockaded woodpeckers. If you live in central Texas, clear cedar before it becomes golden-cheeked warbler habitat and improve the hydrology and biodiversity of your land at the same time. If you

already have habitat, don't improve it. If it's not climax vegetation, leave it alone. If you have habitat that requires periodic fire, keep fire out. In both cases, natural vegetational succession will eventually fix your problem.

Understand the biology of species that affect you. Know which predators prey on them, and don't do anything to discourage them. Fire ants are a scourge of biblical proportions, but killing them also makes life safer for cave bugs and other endangered species. If the government wants your fire ants dead, let FWS kill 'em.

Act First, Ask Questions Later

Sometimes it's better not to know. When it comes to land management, act first and ask questions later. Having your reins jerked is better than a kick in the withers. If the feds have a problem, make them come to you.

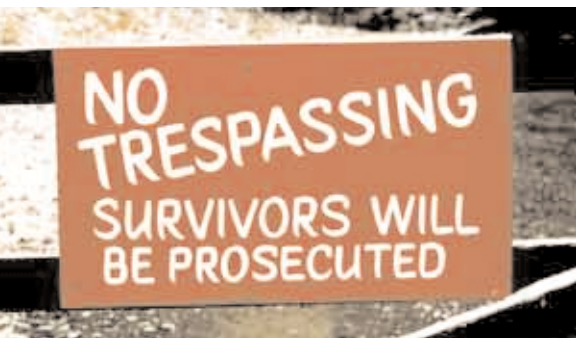
Sue Back

Environmentalists love litigation. For years, organizations like the Natural Resources Defense Council, Sierra Club and Center for Biological Diversity have sued aggressively to force-list species and cheat people out of their land. Hire creative lawyers and sue back. Sue FWS for bad science in the listing process, for not delisting when evidence no longer supports listing, for not designating critical habitat, and for inadequate economic impact analysis in critical habitat designation. Sue environmentalists for conspiring to damage your property, and depriving you of your constitutional property rights. Sue bad neighbors—both public and private—for property damage if endangered species on their land affect you.

Remember that endangered species materially and demonstrably damage property—they threaten property ownership, take property use, degrade property resources, increase property management and development costs, and reduce property value. Litigation is expensive, but it's the most effective defense against the ESA. Team up with others and hire a good lawyer. And once you're in, don't compromise or agree to binding arbitration. Environmentalists love to settle for half—your half.

Pass Local Laws

A lot of ESA implementation relies on city, county and state governments. Local government is far more accessible and responsive than Washington, D.C. Pass laws that restrict local government's ability to implement habitat conservation plans, to buy habitat, to indefinitely postpone land acquisition decisions, or to pay less than unencumbered value for property.



JEFF GOODSON

which species occur in your area, what their habitat is, and where habitat is located. Remember that habitat can hurt you even if it's not on your property—land located close to habitat, upstream of it, or just overlying the same aquifer is also at risk.

Know What's Coming

Eighty-five animals were named in 2001 as new candidates for listing in the continental U.S. Sooner or later, most will make the formal cut. Get involved now to stop final listing of those that would affect you. It's easier to keep a species off the list than to protect yourself after it's listed.

Get Professional Help

When it comes to listing, the U.S. Fish & Wildlife Service (FWS) only has to listen to biological opinions. A lot of good biologists recognize the bad science surrounding the Act, and many work as consultants. They're not cheap. But if they successfully fend off listing of a species that would affect you, or limit the damage by downgrading a final designation from endangered to threatened, they're worth the cost.

Team up with other exposed landowners and hire your own biologist to represent you. But get references—biologists who try to represent both sides are dangerous. Work with a

Get Loud

Call your congressmen, early and often. Don't bug 'em, but keep your problem in front of them. Get others to do the same. Whether you voted for them or not, your representatives represent you. Make them aware of how the ESA materially damages their constituents. Write articles, talk to local television and radio media, and speak to local civic and children's groups. Educate people about how the ESA destroys property, families and communities. Keep your problem—and your elected representatives—in the glare of public scrutiny.

Make Your Corporate Enemies Bleed

Go after the corporations that finance the environmental organizations that want your land. Most environmental organizations are tax-exempt 501(c)(3) operations, and a list of corporations that bankroll them is available to the public. Find out who their corporate sponsors are, and make 'em bleed. Some big-city corporate executives think it's cute to give big bucks to environmental organizations that destroy their clients' way of life. But as Ford Motor Company found out after giving \$5 million to the Audubon Society, local Ford dealers didn't think it was so cute

when they were hit with a boycott. Let 'em feel your pain, from the bottom up.

Document Land and Water Rights Endangered species do as much damage to private property rights on the public lands as they do on private land. If you ranch, farm or log the public domain, documenting your historical grazing, timber, access and water rights is key to their protection.

Finally...

Until Congress fixes it, the best strategy for protecting yourself from the ESA is education, good land management, political action, economic sanction and litigation. Know what's out there, manage your property, call your congressman, boycott your corporate enemies, and sue the hell out of those who want to cheat you out of your land. ■

The Land Snatchers

DRIVING DOWN PROPERTY VALUE. BY JEFF GOODSON

When environmentalists finally figured out in the 1980s that they didn't have enough money to buy up all the land they wanted, a three-part land control strategy evolved. The first part was to keep people from using the private property that environmentalists couldn't afford. The second was to increase the amount of tax money going to buy land. The third was to use environmental regulations to drive down the price of property targeted for acquisition. The Endangered Species Act was perfect for all three.

How environmentalists use endangered species to cheat people out of their land is one of the most sordid stories in the rape of rural America. And how endangered species drive down property value is a dirty little secret that no one wants to talk about—not the appraisal industry, not the government real estate men, and especially not the environmentalists.

Here's the deal: In two very rare situations, endangered species can actually increase property value. One occurs when habitat creates a land shortage on the edge of a growing city like Austin, Texas, and renders large areas of property unusable. The value of the habitat-contaminated property is destroyed, of course, but the value of uncontaminated property can actually increase. The second situation occurs when a land trust buys habitat at substantially higher prices than the value of comparable land without habitat.

Both are exceptional cases. Under virtually all circumstances, endangered species devalue property dramatically because they reduce the highest and best use of property at appraisal. The most common way of appraising property involves assessing its market value

based on highest and best use, a term defined as a property's "reasonably probable and legal use...." Both major appraisal standards used today—the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions—require that environmental restrictions be taken into account when determining highest and best use. The federal standards, for example, require appraisers to identify all applicable land use and environmental regulations, whether local, state, regional or national. These include everything from wetlands, floodplain and coastal zone regulations to endangered species.

Endangered species are by far the worst. In practice, when a species is listed under the ESA its habitat is protected under the definition of "harm" and all or virtually all use of habitat is prohibited. The highest and best use then effectively becomes no use, and property value drops through the floor—often by 90 percent or more. The land snatchers then cite property appraisal standards to argue that they must take habitat into account in appraising property value, and step in to condemn the property or buy it from so-called willing sellers at the heavily devalued appraisal price.

The system is neat, and it works. So neat that environmentalists will go to almost any legal extreme to avoid paying unencumbered value for land contaminated with habitat. What they fear is establishing legal precedents that require them to pay just compensation for the land that they take.

When government takes private property for a public use, like protection of endangered species, the fifth amendment requires it to pay just compensation. Just compensation is the difference in value between what land was worth before the government took it for habitat, and the value of the land after it was taken for the public good. Typically, however, no compensation is paid, much less just compensation.

For too long, government and the environmentalists have used the Endangered Species Act to cheat people out of their land. It's time for the land snatchers to pay for what they take. ■



Limit access to your land. Fence your property, including streams, and clearly post it as private. Aggressively prosecute trespassers—government and private alike.

The Coup Counties

WESTERN WYOMING COMMISSIONERS OUTLAW GRIZZLIES AND WOLVES. BY CAT URBIGKIT

Grizzly bears and gray wolves may be protected predators, but they are not welcome in western Wyoming. Fed up with mandates from the federal government, county commissioners took action, adopting resolutions prohibiting the presence, introduction or reintroduction of grizzly bears and wolves within the boundaries of their counties.

This spring, when the U.S. Forest Service (FS) proposed to institute a regulation requiring stringent adherence to food storage rules throughout the Wind River Mountain Range and other areas of western Wyoming, Fremont County Commissioners called “bull----” and drew a line in the sand.

The food storage rules had been in effect for about 10 years in wilderness areas adjacent to Yellowstone National Park in the official grizzly bear recovery zone. They were a way to require campers to keep clean camps so grizzly bears wouldn't be lured into human presence searching for food. The rules may have been an important component in keeping grizzlies out of trouble when there were so few that each one was a critical component of recovery, but that time is long past.

Forest Service officials proposed to greatly increase the land mass the rules would apply to beginning last April, including the Bridger-Teton and Shoshone National Forests, and hundreds of miles of land outside the official grizzly bear recovery zone.

Instead of imposing fewer restrictions on human use due to bear recovery, the feds proposed even more restrictions, backing them



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“Those who hold this view are arrogant and intrusive and have no regard for historic uses in the West that have occurred for generations.

“I don't blame the wolves or the grizzly bears for being what they are, but local governments are fed up with having things crammed down our throats and having local views being perceived as insignificant. People here are being treated as though they don't matter.”

In front of a standing-room only crowd of more than 125 people at the courthouse in Lander, Fremont County Commissioners passed resolutions declaring both wolves and grizzlies to be unacceptable species and threats to the public health, safety and livelihood, of the county's

citizens. One resolution stated: “By the authority vested in us, [we] do hereby oppose and prohibit the U.S. Forest Service to implement the proposed food storage order within the boundaries of Fremont County.”

The action came after the commission spent nearly two hours talking with Shoshone National Forest and Wyoming Game and Fish Department officials about their plans for grizzly management. The crowd that came to listen to the discussion was overwhelmingly opposed to grizzlies throughout the county and to having to abide by new rules in order to use national forest lands inhabited by bears.

Fremont County Commission Chairman Scott Luther (who is also a Lander police-

up with the possibility of fines up to \$5,000. The order requires that unattended food, beverages, animal carcasses and refuse be stored in a manner unavailable to bears, such as in bear-resistant containers, suspended at least 10 feet in the air, or in hard-sided trailers or vehicles. They justified the regulation by citing concern for human safety, but residents of western Wyoming weren't duped. They knew it was really to protect bears from humans, not the other way around. It was another way to control people.

“A lot of what happens with predator conservation isn't driven by a concern for the species so much as it is a desire to eliminate other users of national forests,” said Sublette County Commission Chairman Bill Cramer.

man) told Shoshone National Forest Supervisor Becky Aus: "All these resolutions will be in force in the County of Fremont. Our sheriff is the highest law enforcement official in this county—not the Forest Service rangers or the BLM rangers—our sheriff. He will enforce our orders. I just want to make that perfectly clear. Federal officials behave as if grizzlies have more rights than humans. Our citizens aren't going to comply with their regulations. We're taking a stand here and we're not backing down. The entire slate of Fremont County elected officials—from the coroner to the clerk of court—are unanimous on this issue."

Commissioner and rancher Doug Thompson said residents of the county "dislike the intrusion into our homes by something we have no control over." Outfitter Jim Allen said, "It may cost as much as \$25,000 to implement the new rule" in his business. Feed store owner Art Baker presented petitions with more than 1,500 signatures of citizens opposed to the order and to grizzly presence throughout the Wind River Mountains.

Obviously frustrated, Forest Service Supervisor Aus said, "Our expectations for this meeting are a little bit different from what we have encountered."

Fremont County's bold action provided an inspiration for others. The Lander City Council passed resolutions opposing the food order and the presence of wolves and bears in the county, citing concerns about allowing predators in city-managed recreational areas such as the youth recreation camp in Sinks Canyon near Lander. And Lincoln County Commissioners, on the western side of the Continental Divide, agreed with their counterparts on the east side and adopted resolutions identical to Fremont County's.

"What [the commissioners] did was completely invalid," said U.S. Fish & Wildlife Service (FWS) senior resident agent for Wyoming, Dominic Domenici. "County law does not take precedence over federal law or state law. If the commission wants changes in federal regulations or management, they need to address those, instead of this knee-jerk, Freeman-kind of attitude that has come out. Anybody who violates the law, inside or outside Fremont County, as far as wolves or bears, we'll deal with as we always have."

Fremont County Commissioner Crosby Allen said, "The Constitution refers to all citizens as free men. It was arrogant and ignorant

on his part to make such a statement."

Commissioner Doug Thompson argued that the reason for passing the resolution was frustration with bureaucrats and federal agencies and their disrespect for private property rights and for people earning their living off the land. Scott Luther stated that Domenici ought to resign "if that's the way he feels toward U.S. citizens. It's appalling that a top-ranking U.S. official accuses us and tries to twist things around just because we don't agree."

Lincoln County Commissioners came to the defense of their Fremont County counterparts. "Somewhere or another we've got to take a stand and say, 'You can't keep destroy-

concerned that Sublette County's citizens had virtually no voice in determining where grizzlies should or should not exist within the county. A newly approved grizzly bear plan provides even less protection to livestock producers than provisions now in effect while the species is federally protected. The new plan calls all of northwestern Wyoming biologically suitable and socially acceptable and the Forest Service cited the plan as justification for the food storage order.

The same day, Park County Commissioners joined in the fray, voting to strongly urge the federal government to remove grizzlies and wolves from federal protection and let state officials take over management authori-



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Bridger Wilderness, Wyoming. Tourism is a major part of the state's economy so grizzly and wolf are becoming economically and socially unacceptable. A county commission movement to bar them started in western Wyoming.

ing our economic structure.' These darn bureaucrats think that they can run over us, but we are the elected officials," Stan Cooper said. "That gives us a heck of a lot more authority than the bureaucrats have."

With 70 percent of Lincoln County federal land, every new regulation imposed on users of that land has an economic impact on the county, and the county sees the economic value of the land decreasing every year.

About 400 people turned out for a public meeting in the small town of Afton to voice opposition to the food storage proposal. At that meeting, the FS announced it would scale back the area covered by the order.

A few days later, members of the Sublette County Commission weighed in, unanimously passing a resolution that grizzly bears and gray wolves are economically and socially unacceptable species in Sublette County.

Green River Valley Cattlemens Association member Albert Sommers led a contingent of about a dozen cattlemen,

ty. Both species were declared by Park County officials to pose a constant and stressful threat to citizens of the county.

The pressure on the Forest Service proved to be enough—for now. The agency announced it would delay the order, taking time to work with local officials in addressing their concerns.

In late April 2001, the governors of Idaho, Montana and Wyoming agreed to work together in preparing delisting proposals to the feds for both grizzlies and wolves. Unfortunately, FWS is expected to rule that state management must provide for continued protection of delisted animals over a broader range. States would have to adhere to restrictions such as the food storage order. Local officials wonder why delisting would be any better than the status quo. ■

Cat Urbigkit is a shepherd and reporter from western Wyoming, as well as co-owner of the Sublette Examiner based in Pinedale.

WHAT A RACKET!

WE COULD HAVE NEVER IMAGINED IN OUR WILDEST DREAMS WHERE ALL THAT FUSS OVER THE ENDANGERED SPECIES ACT WAS HEADING. BY JIM BEERS

I was married with three kids and living on Long Island when they passed the Endangered Species Act in 1973. I was the only U.S. Fish & Wildlife Service-U.S. Game Management Agent in New York City at that time. Prior to that I had been an agent in Nebraska and a biologist in North Dakota. Only a year later we moved into Washington where my wife and I still live. No one I knew in those days could have ever imagined in their wildest dreams where all that fuss over endangered species was heading.

There were questions in my mind right from the start about the ESA. Tales about how “endangered” bald eagles were seemed silly. Five years earlier I had lived on the Aleutian island of Adak and “flocks” of 30 bald eagles were common in the dumps. Yarns about the peril big cats were in didn’t gel with the fur records I reviewed while prosecuting an international fur dealer for smuggling. After working on a state refuge in Utah, I doubted that protection was helping any of these species. Carefully managed renewable resources with users paying for the management was always a far better alternative than building a fence around things and letting whatever happens, happen.

By the time I started putting together the pieces and understanding where it was all going, I, like a lot of others who should have known better, simply got swept along. It has gotten worse and more dangerous to the nation each year and the time to modify it or simply chuck it never gets better, only worse with the passage of time.

There are many problems big and small, biologically, socially, legally, and otherwise with the Act and its enforcement. The following observations are but a few of the most important ones.

First, the Act as implemented is simply a mockery of the U.S. Constitution. For over

200 years, the fish, wildlife, and plants of the United States remained where the Constitution put them—under the authority and jurisdiction of the governor and legislature of each state where they are found. The only exceptions to this were the fishery resources on the high seas or in border waters like the Great Lakes. The Constitution provides for change if a *treaty* was signed by the President and ratified by two-thirds of the Senate. Arti-



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Immature bald eagle in the foreground may not have his fancy dress yet but he obviously knows how to fish. Tales about how “endangered” bald eagles were seemed silly. Five years earlier I had lived on the Aleutian island of Adak and “flocks” of several dozen bald eagles were common.

cle VI states, “All treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land.”

In 1917 the U.S. signed such a treaty with Britain (on behalf of Canada) that named approximately 200 migratory bird species that each country agreed to manage jointly for mutual benefit. Those species then came under federal authority and each state had to comply with federal mandates concerning those birds. The ESA purportedly authorizes similar federal authority *over any plant or animal, flock, herd, or stand that the federal government names* based on the 1973 United Nations Convention on International Trade in Endangered Species (UN CITES).

What a racket! That U.N. Convention is not a treaty in the sense stated in the Constitution. It is an agreement through an inter-

mediary (the U.N.) with a whole lot of nations, some of which comply only partly to share common values and procedures to minimize factors harmful to fish, wildlife, and plants. The point here is not that we shouldn’t comply but that it is *not* a legal basis for stripping the states of their authority over fish and wildlife and plants that was placed there by an extremely successful Constitution. In the case of named migratory birds, if Canada reneged on the treaty we could revoke it and go on. Similarly, if certain signatory countries or the U.N. bureaucracy renege, revocation on our part is problematic and certainly not even mentioned to date. So, if you accept this whimsical basis for modifying this key component for fish and wildlife management in the United States, well the rest of it is a piece of cake.

The Fifth Amendment to the Constitution states, “nor shall private property be taken for public use, without just compensation.” No one involved with the ESA believes that anymore. Tell it to all the poor folks who were told there was critical habitat on their property. Were they paid

for the things they could no longer do or sell with their property? Tell it to the man who had to pay the government to put a room on his own house for his invalid wife because an eagle nested on nearby government property. Biologically, birds nest elsewhere with the wind but no matter, the myths of federal biology long ago began serving only government purposes. The taking of private property now feeds the growing juggernaut of government land acquisition by creating dispirited citizen owners and enthusiastic bureaucracies, politicians, and a myriad of profiting interest groups and realty middle-persons.

Politicians have been largely perverted by their ability to exercise broad powers under the Act. Each year many of them tell us of the tax dollars they send here and the ways in which they are “working” to “save” things.

The truth is nothing has been saved except agency growth rates and bureaucratic career advancements.

The bureaucrats' unfettered authority derived from this burgeoning Act has poisoned agencies from the Fish & Wildlife Service and Forest Service to the Army Corps of Engineers and the Environmental Protection Agency. While federal bureaucrats issue permits for and dump tons of poisons for years on the spawning grounds of "endangered" Potomac River sturgeon, western ranchers are arrested for shooting grizzly bears *in their yards!* While western ranchers lose stock to wolves and midwesterners lose pets to wolves, the agencies that put them there tell courts that they *are not responsible* for them.

Federal bureaucrats have formed numerous unholy alliances with crooked academicians to generate nonsense biology about Species X. These "facts" are the basis for listings and the same academicians then turn around and get grants for Species X. This increases their graduate student level, the attention paid to their species, their status at the University, and—like their busy federal partners—their salaries and retirement packages.

While all of this was going on the species in endangered species evolved too. "Sub-species" were being listed. When no one objected, they started naming "races" to the list. When that didn't get shot down, they began listing "populations." The latest listing group is the "distinct population segment" (all you need is some sort of state or county border for this one). Next it will be a fence or culvert that serves as the basis for federal intervention.

What does it matter anyway? When you can bring large parts of rural America to its knees over wolves that number in the millions in Russia and hundreds of thousands in Canada and Alaska, you can get away with anything. When the same federal bureaucrats and academicians and Non-Government Organizations (NGOs) bribe the UN CITES delegates to list more than 20,000 plants and thousands of animals on lists that bar commerce or transport, no one is watching. When you can have over a half million elephants (that's right, consider what it takes to maintain that number!) in Africa and still prevent any commerce and nearly all shipping while crops and children are trampled routinely, you can only shake your head.

The ESA interlocks with the Marine Mammal Protection Act, the Animal Welfare Act, and the UN CITES appendices as they all

get bigger budgets each year and more bureaucrats are "needed" and more "protection" is "given" more "species." The same animal rights and environmental gangs likewise profit from all the doom and gloom ("all the rainforests," "one fourth of all animals," etc., etc.) while the media and nature film crews rake it in. The power and money all this generates is astounding. As a fine old fur dealer once told me, "Such a deal."

Then there's the effect on state and federal



COURTESY JIM BEERS (SHOWN WITH FISH)

conservation and management programs. Between hiring ideologues from animal rights and environmental NGOs and getting state agencies hooked on grants, managing renewable natural resources as started by Teddy Roosevelt hasn't a chance. Refuges, which were specifically authorized by Congress for waterfowl management, are diverted to "Pre-Columbian Ecosystems," which means nothing but it sounds good and can employ large numbers in an incalculable goal. When the (good?) citizens of California voted many years ago to "save" their mountain lions from hunting, the randy lions multiplied rapidly while attacks on Californian *Homo sapiens* went up dramatically killing more than a few. California refused to either manage or hunt their lions. So when the lions discovered where the bighorn sheep in the Sierra Nevada have their young each spring, they congregated there and ate sheep to their hearts' content. And as the bighorn sheep that generate high-dollar hunting-license revenue to the state went down while thriving in all the surrounding states, did California have to address its lion blunder? Certainly not! The bighorn sheep (just in California mountains) was listed on the federal list and then USDA began sending federal animal damage control agents and all their equipment into California each spring to "manage" those lions and "save" those federally listed sheep. The term "crooked as a pan of guts" was a favorite of my old Nebraska supervisor and that often comes to mind when discussing this business.

The accumulation of all this power at the fingertips of the central government ought to give pause to all of us without going through all these horror stories.

In the 1920s, Germany instituted gun registration because of a deadly fear that the Russian Revolution with all its horrors perpetrated by armed peasants and factory workers would spread to Germany. They felt good in the late '20s when they had succeeded; little did they imagine Hitler and his agenda lay only a few years in their future. He rounded those guns up right away and to this day people ask why the Germans didn't stand up to him. Think about all this plant and animal authority being at the fingertips of a radical administration that gets in because of a war or other such emergency. Do you really want a cabinet secretary from one of these extremist gangs to have this kind of authority?

I could go on about how nothing has been "saved" by the ESA. I could go on about the benefits of management and user-pays systems that are tried and true. I could spin you around with numbers that would generate "discussion" with experts that would tell you nothing and send you to bed shaking your head. Instead, understand that the world is as good an environment today as it has ever been. The U.S. is loaded with species no one could have forecast just 20 years ago: turkeys, deer, moose, elk, and coyotes. Others like bobwhite and antelope are down, but so what?

We should study and manage what is going on in our environment and provide as much human use and biological diversity as is practical with a comfortable and productive life for our citizens. The ESA approach of growing the federal government *ad infinitum* and stopping all management and use programs is nuts. We should advance our agenda actively and the first step in restoring the American environment is tossing out the ESA (it hasn't been authorized by Congress for years) and replacing it with voluntary incentives for the management agencies (i.e., the states) and reinstatement of Constitutional protection for property owners and wildlife users. Stopping the slow and steady loss of autonomy to U.N. bureaucrats wouldn't be a bad effect of all this either.

Other than that Mrs. Lincoln, how was the play? ■

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