

# THE ENDANGERED SPECIES ACT: Is It the Biggest Mess in America?

*Finding an "endangered" species on your property could be the end of life as you've known it. And the effects could last indefinitely. Although there have been attempts to modify the Endangered Species Act, the environment is a political hot potato.*

BY BARBARA LABARBARA

The day before San Bernardino County was to start construction on its new hospital in Cofton, Calif., the Fish and Wildlife Service listed the Delhi Sands Flower-Loving Fly as endangered. Eight such flies were found on the hospital's new property.

The county was forced to relocate the hospital and set aside 8 acres — 1 acre/fly — for the flies' habitat. It was also required to create a corridor that would allow the flies to migrate to similar habitat.

In addition, the county must redesign an intersection near the hospital to protect the fly from moving traffic.

Total cost to the taxpayers: \$4.5 million.

Stories like this lead many to say the Endangered Species Act (ESA) is broken, and it needs to be fixed.

## Agency in charge

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting and enhancing fish and wildlife and their habitats. The service manages the 93-million-acre National Wildlife Refuge System, enforces federal wildlife laws, administers the ESA, and conserves and restores wildlife habitat, such as wetlands.

According to Sen. Craig Thomas (R-Wyo.), constant pressure to list species is causing the service to manage under the threat of environmental lawsuits. The agency has published a priority list in the *Federal Register*, which says, because they have limited funds, they will respond to requests for listings first and to delistings last.

## Endangered Species Recovery Act of 1997

In 1997 Sen. Dirk Kempthorne (R-Idaho), who is now governor of Idaho, was successful in bringing the most comprehensive endangered-species bill out of committee since the original ESA was enacted in 1973.

The Endangered Species Recovery Act

(ESRA) of 1997 focused on species recovery and protecting communities, and it had bipartisan support.

At the time Kempthorne said, "We are spending millions of dollars, but not a single species has been saved as a result of recovery plans developed under the current ESA." He continued, "Over half the species on the list don't have recovery plans. This bill changes that. It makes the ESA work better, while treating individuals and property owners more fairly."

ESRA died before it reached the floor.

Dan Kunsman, Thomas' press secretary, says getting the bill out of committee was a great accomplishment, but there were too many people who wanted it to go further and too many people who said it went too far.

States have their own lists of endangered species, which are usually longer than federal lists. However, species do not enjoy the same protection under state law as afforded by the federal government. They are managed in a less stringent, less threatening way.

## New approach: targeted solutions

Protecting and preserving endangered species is a public goal, but attempts to reform the entire ESA have failed.

Consequently, a number of lawmakers are

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looking to make incremental changes to the law. Future ESA action lies with isolating components of the act for revision.

There are more than 50 bills before the 106th Congress ranked by relevance to "endangered species." The Florida Panther, Stop Taking our Property, Bear Protection, Pacific Salmon Recovery and Northern Rockies Ecosystem Protection acts are among the bills Congress will be expected to address this year.

The Northern Rockies Ecosystem Protection Act of 1999 (H.R. 488) was introduced by congressmen from New York, Georgia, Ohio, New Jersey and California. The bill would designate millions of acres in the states of Idaho, Montana, Oregon, Washington and Wyoming as wilderness, wild and scenic rivers, national parks, and preserve study areas. Two of the extensive targeted areas are Hells Canyon/Chief Joseph National Preserve and Flathead National Park.

If this bill passes, which is not likely, no new road construction, timber harvest, oil or gas leasing, mining, or other development would be allowed. A program for road closures based on the needs of wildlife would be implemented.

What's interesting is that not one congressman from the affected states has signed on as a co-sponsor of H.R. 488.

A Senate committee recently passed S. 1100. It provides that the designation of critical habitat for endangered and threatened species be required as part of the development of recovery. According to Jack Mingus, director of communications for the National ESA Reform Coalition, "This is a small bill that will bring a lot of discussion

regarding the need to reform ESA."

Reed Hopper of the Pacific Legal Foundation in Sacramento, Calif., says the people in charge of endangered species, the U.S. Fish and Wildlife Service, are on record that they do not believe critical-habitat designation is worthwhile. They say it is not an effective use of money and does not help protect the species.

### Endangered Species Listing and Delisting Reform Act of 1999

In June Thomas introduced S. 1305, the Endangered Species Listing and Delisting Reform Act of 1999. The bill will amend the ESA to improve the processes for listing, recovery planning and delisting.

"The changes will lead to a better ESA," he says, "one that will work not only for the species but for local government, landowners and the federal treasury."

Included in S. 1305 are provisions to:

- Ensure the collection and use of the best scientific data and require that such information, whether it supports listing or not, be available to the public;
- Establish minimum requirements for species-listing petitions;
- Establish greater partnerships with states by giving notice of any petition;
- Require a broad range of participation by affected persons. The secretary of interior shall hold at least one public hearing in each affected state and one hearing in an affected rural area;
- Require a sufficient final plan for species recovery by the date of listing. Before a species can be listed, there must be a specific plan in place on how to recover that species; and
- When the criteria of a recovery plan have been met for the removal of the species, the secretary would be required to promptly publish a notice of intent to remove the species from the list.

"This legislation requires clearer planning and forethought from the federal

government with regard to conservation and recovery at the time the species is listed," Thomas says. "But it does not alter the basic premise that some species require protection under the ESA."

### Listings trends

The national trend is to list more endangered species. California has had more than 50 new species listings since 1997. Wyoming has experienced the increase with attempts to list the black-tailed prairie dog and the Prebles Meadow jumping mouse.

According to the Fish and Wildlife Service, the historical range of the jumping mouse included five counties in southeastern Wyoming. However, scientific data and current knowledge do not agree that the semi-arid plains in southeastern Wyoming are part of the mouse's historical habitat, as it actually prefers to be near rivers, streams and irrigation ditches. This is only one example of how the system has failed, critics say.

If the jumping mouse gets listed and you happen to find one on your property, your life is about to change. Because the mouse likes water and hiding in the tall, damp grasses, you could no longer maintain your irrigation canals and ditches.

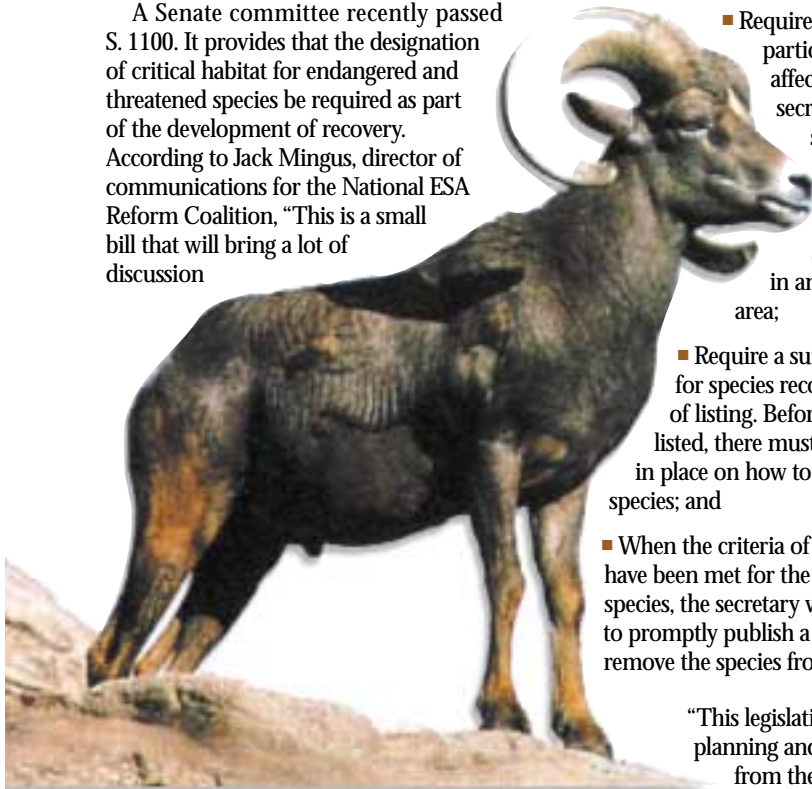
"The delisting list is not a long one," says Kunsman. "Though the eagle has been delisted, it is not the trend. For example, the grizzly is recovered, but it will be extremely hard to get it off the list. There is more money spent on the listing side than on the delisting side."

What would have happened if the ESRA of 1997 had passed with its incentives for recovery, rather than punitive measures for harming a species? Some say many extinct species might still be with us and the black-footed ferret may have survived without a captive-breeding program. But we will never know.

### Lawsuits

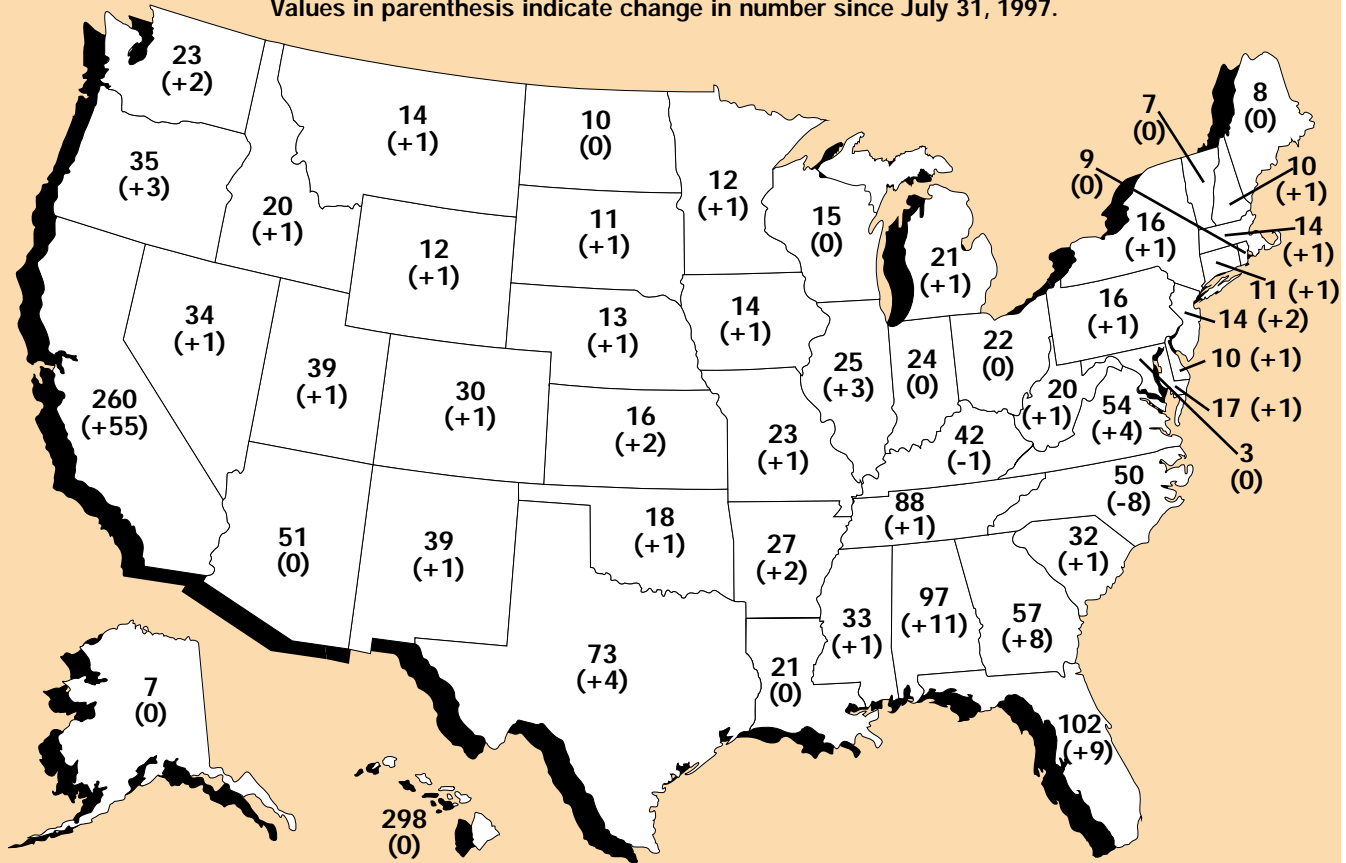
The Pacific Legal Foundation finds that the people it represents are worse off today than ever.

"The current administration takes pride in being heavy-handed in their enforcement of environmental laws," Hopper says. "Of



## LISTED SPECIES BY STATE as of May 31, 1999

Omits "similarity of appearance" and some extirpated species.  
Values in parenthesis indicate change in number since July 31, 1997.



NOTE: Total U.S. Species: 1,187 (+83), including eight whale species. Numbers not additive, as a species often occurs in more than one state.

SOURCE: U.S. FISH & WILDLIFE SERVICE

course, the more enforcement there is, the stricter the controls become.”

He believes this administration is involved with expanding the purview of the government in regard to the ESA. He says it is complaisant with the environmentalists in pushing the envelope as far as possible to expand the jurisdiction of federal agencies in implementation of their acts.

“Under this administration we are seeing a command-and-control approach to environmental protection, as opposed to positive incentives,” Hopper says. “Threats and litigation are at an all-time high.”

### Executive orders

When the president declares an executive order, there is no recourse. It is believed that President Clinton has issued more executive orders in relation to the environment than

any other president. The majority of those have fallen on the side of the environmental community.

His most acclaimed executive order came just prior to his re-election. In a presidential proclamation on Sept. 18, 1996, he created the Grand Staircase-Escalante National Monument in southern Utah. He stood in Arizona, across the state line from the monument, to make his announcement.

In one sweeping statement, he took 1.7 million acres of private land and turned them into government public property. One of the major consequences was the termination of mining, costing the state of Utah an unknown amount of revenue. The real controversy was that the executive order bypassed local officials, including county commissioners and the Utah

congressional delegation.

More importantly, it bypassed the public process for establishing public lands like national parks and monuments.

The ESA is controversial and political. If nothing is accomplished this congressional session regarding ESA reform, it is certain reform will not come in the next session. That will be an election year.

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