

ENDANGERED SPECIES

Ranchers, Rodents and Reason

by Barbara LaBarbara

In Wyoming's cattle country, the Pueblo Meadow Jumping Mouse is causing quite a stir. Biologists want to list the little rodents as endangered. Ranchers are saying it has not been proven the Pueblo even resides in Wyoming.

The scientific basis for listing individual species has been the subject of controversy since the enactment of the Endangered Species Act (ESA) in 1973.

"We are completely changing the dynamics of the ESA by making it work better and smarter," Sen. Dirk Kempthorne, R-Idaho, said at a news conference in September when he introduced the Endangered Species Recovery Act (ESRA) of 1997. ESRA focuses on species recovery and protecting communities.

"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."

Why do we need ESA Reform?

If you are an endangered species, right now your greatest concern is a landowner will destroy your habitat or your species itself to keep the federal government off his property. It's the old "shoot, shovel and shut up" policy that is not good for anybody. The landowner faces legal action if found out; the species is totally out of luck.

The act has given private landowners incentives to harm habitat and has produced a backlash against endangered species preservation.

Abuses of the current ESA are many:

1. Ranchers have been threatened by lawsuits simply because they graze their cattle near the spawning habitat of salmon;
2. Families can't get mortgages because an endangered species is on their property;
3. Farmers and ordinary citizens fear the water they depend on for their crops and livestock will be taken away by the federal government;

4. Mills are shut down because logging might affect the habitat of an owl that might or might not use the habitat; and

5. Property owners cannot develop acreage purchased before an endangered species was found, rendering it worthless.

John Sutherland, who ranches west of Cheyenne, Wyo., says if the Pueblo Meadow Jumping Mouse is found on his property, it could put him out of business. "No matter what it costs, I have to fight it. I don't have the money not to," Sutherland declares.

Fighting ESA regulations has landed property owners in jail and cost many of them their ranches and millions of dollars.

A bipartisan effort

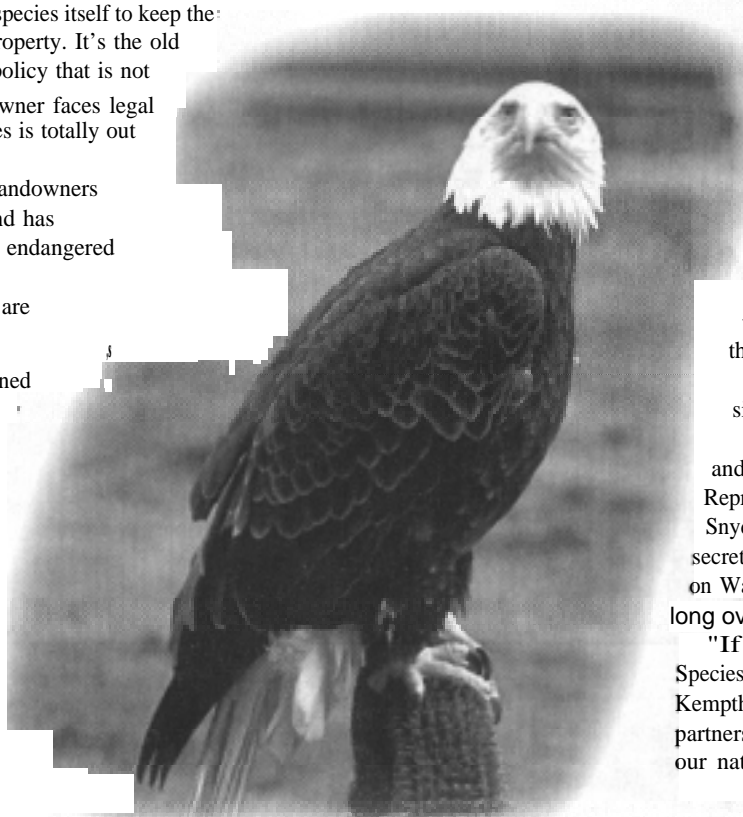
For more than 18 months, Sen. Kempthorne, along with Sens. Harry Reid, D-Nev.; John Chafee, R-R.I.; and Max Baucus, D-Mont., have been discussing and presenting ESRA to cattle organizations, environmental groups, landowners and

virtually anyone who is affected by the ESA. By the time ESRA reaches the Senate floor, it's expected more senators from both parties will sign on as sponsors.

ESRA could be through the Senate and on its way to the House of Representatives by November. Mark Snyder, Sen. Kempthorne's press secretary, says the legislation is being put on Washington's fast track because it's long overdue.

"If we do nothing, the Endangered Species Act will become extinct," Kempthorne says. "This bill establishes a partnership so we can do what's right for our natural world and our future."

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Seven Reasons Why the Endangered Species Act Does Not Work

1. The act is based on command, not on incentives. Incentives were added to the act in 1982, but they are incentives to comply with the original commands. The threat to endangered species is not bad people but rather bad incentives.
2. The act fails to deal with numerous federal programs and subsidies that are harmful to listed species. An example: the federal effort to poison prairie dogs,
3. The act gives private landowners no incentives to protect species and their habitats. Bad incentives, such as government regulation of wildlife that gives nongame species an open door to public and private land, deny benefits to private landowners who protect wildlife habitat.
4. The act gives private landowners incentives to destroy habitat to avoid regulation. Numerous cases of landowners following the "shoot, shovel and shut up" policy toward endangered species have been documented. Many more remain undocumented.
5. Even when private landowners obey the law or no private land is involved, the act creates resentments and polarizes local communities against species protection. The wise-use movement and the property rights movement were created as a result of the ESA.
6. The act provides inadequate mechanisms for accounting for trade-offs among species and between species and other resources. The law requires protection of all listed species. Given limited resources, the Fish & Wildlife Service (FWS) must assign priorities to various species. Such priorities are inevitably political.
7. The act does not emphasize peer-reviewed science. Instead, it focuses on the preservation of undeveloped land and governing with no scientific background. The fact is that millions of dollars are spent every year, putting tens of thousands of jobs at risk and jeopardizing entire communities, but the ESA has failed to recover any species. Most of the success stories, like the bald eagle, recovered for other reasons such as private efforts or the elimination of harsh insecticides.

The Endangered Species Recovery Act of 1997

The Endangered Species Recovery Act of 1997 (ESRA) re-authorizes and improves the ESA. The major provisions of the bill are summarized below.

Listing of species

Under current law, the Secretary of the Interior or the Secretary of Commerce is required to list any species as endangered or threatened if, based on the best scientific and commercial data available, the species is in danger of extinction or will be in the future. To enhance public confidence in the listing process, ESRA places greater emphasis on the use of good science and public participation.

Good science

The bill requires the Secretary, in evaluating comparable data, to give greater weight to data that is empirical, field-tested or peer-reviewed.

Delisting

The bill requires the Secretary to initiate procedures for determining to delist a species once the recovery goal has been met.

Minimum requirements for listing petitions

The bill establishes minimum scientific requirements for petitions to list, delist or change the status of a species. Petitions must include a description of the available data on the historical and current range of the species, an appraisal of the date on the status and of any threats to the species. It must identify information that has been peer-reviewed.

Greater role for the states

The bill recognizes that states should have a greater role in the listing process. The Secretary must solicit and consider views of state fish and wildlife agencies.

Public hearings

If requested, the Secretary is required to hold at least one public hearing on a proposed listing in each affected state, including one hearing in an affected rural area.

Independent peer review

The bill establishes a process for independent peer review by three scientists, nominated by the National Academy of Sciences and appointed by the Secretary, for all listing and delisting decisions.

Distinguishing between endangered and threatened species

The bill requires the Secretary to issue a species-specific rule for species listed as threatened in the future by no later than 30 months after the species is listed. The special rule allows the Secretary to provide greater management flexibility for threatened species.



Enhanced recovery planning

The purpose of the ESA is the recovery of endangered and threatened species. ESRA significantly strengthens the recovery planning and implementation process by more clearly focusing the act on saving species and removing them from the endangered species list. ESRA creates recovery plans that include:

- Deadlines for the development of recovery plans for each listed species;
- Recovery plans are to be developed by broadly representative recovery teams; and
- Substantive requirements for the contents of recovery plans, including an objective biological recovery goal as well as general and site-specific recovery measures to achieve that goal.

Developing deadlines

For a newly listed species, a draft recovery plan must be published within 18

months a final listing decision and the final plan must be published within 30 months of listing. Plans for species already listed, and for which no plans have been developed, must be completed within 60 months.

Involve stakeholders and scientific experts

The bill requires most draft plans be developed by recovery teams that include representatives of local governments, academic institutions, private individuals and organizations, and state and federal agencies. The recovery team is charged with advising the Secretary on designations of critical habitat.

Adding "teeth"

The bill establishes requirements for the contents of recovery plans, including a biological recovery goal expressed as measurable criteria; objective and measurable benchmarks to determine progress; general and site-specific recovery measures; and identification of federal agencies that are likely to have a significant affect on recovery.

Consideration of costs

Recovery measures must meet the recovery goal and must do so in a way that achieves an appropriate balance among the effectiveness of the measures, the time period in which recovery will be achieved, and the social and economic impacts of those measures.

If the recommended recovery measures would impose significant cost on a municipality, county, region or industry, the recovery team must describe the overall economic effects of implementing the plan on public and private sectors, including the effects on employment, public revenues and the value of property.

State may assume responsibility

The bill authorizes qualified state fish and wildlife agencies to develop a draft recovery plan for an endangered or threatened species. The state agency may appoint the recovery team.

Critical habitat designation

Currently, the Secretary is required to designate critical habitat at the time of listing. The bill revises that requirements to allow designation of critical habitat 30 months after listing.

Interagency consultation and cooperation

The ESA requires each federal agency to consult with Fish & Wildlife Service (FWS) to ensure that agency actions are not likely to jeopardize the continued existence of threatened or endangered species or destroy critical habitat. This consultation process required for activities requiring federal permits that affect listed species on private lands. ESRA will streamline the consultation process.

Inventory of species

The bill requires each federal land management agency to develop an inventory of endangered, threatened, proposed and candidate species on lands or waters owned or under control of the agency and to update the inventory every five years.

Increased state role

The bill requires the Secretary, when consulting on a federal action affecting a listed species or critical habitat, to solicit and consider information from the state fish and wildlife agency in each affected state.

Conservation plans

Under the ESA, people whose land is



occupied by threatened or endangered species are able to receive "incidental take" permits in return for carrying out habitat conservation plans (HCP) on their properties. These permits, which are hard to get, allow landowners to carry out economic activities on their properties that may incidentally harm listed species. ESRA authorizes multiple-species conservation plans, provides a more streamline HCP process to address the needs of private landowners, and encourages voluntary actions to conserve species before they are on the brink of extinction.

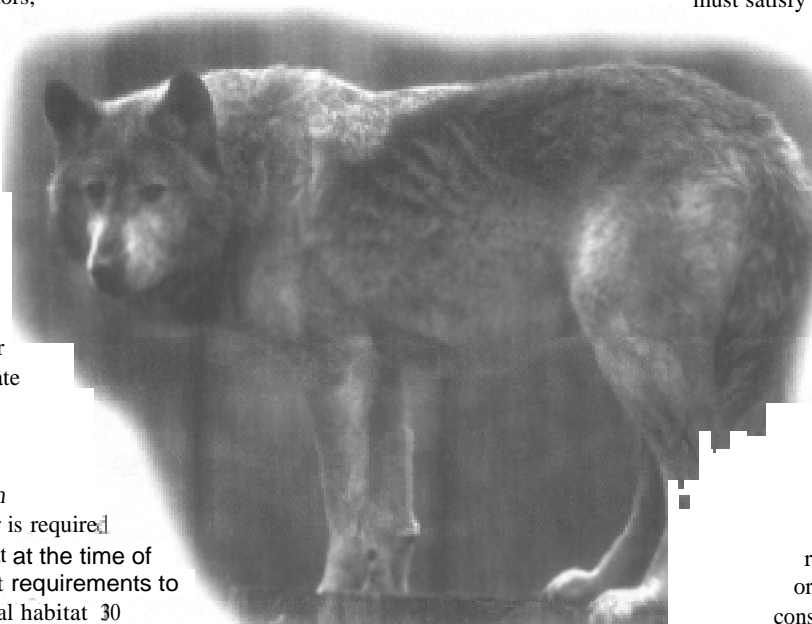
Multiple species plans

The bill authorizes private landowners to develop conservation plans for multiple species that depend on the same habitat. This approach addresses the needs of species and landowners. For listed species, the plan must satisfy the criteria under current law.

For proposed and candidate species, the bill requires actions taken by the applicant must be likely to eliminate the need to list the species. For other non-listed species, the bill requires that the actions taken by the applicant must not be likely to contribute to a determination to list the species.

No surprises policy

The bill ensures that landowners who develop HCPs and receive "incidental take" permits will not be required to spend more money or set aside additional land for conservation of species covered by the plan.



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ENDANGERED SPECIES cont.

Safe Harbor agreements

Fear that requirements under the ESA will restrict use of land occupied by threatened or endangered species acts as a disincentive that, prevents landowners from taking voluntary steps to conserve species on their property. The bill addresses this by authorizing safe harbor agreements. This provision encourages landowners to enter into voluntary agreements with the Secretary that benefit conservation of listed species by assuring landowners that their efforts to maintain, create, restore or improve habitat will not subject them to additional liability under the ESA.

Habitat reserve agreements

The bill authorizes the Secretary to enter into habitat reserve agreements with non-Federal persons to protect, manage or enhance suitable habitat for endangered or threatened species. The Secretary is authorized to make payments to a property owner to carry out the terms of the agreement. The bill authorizes \$10 million

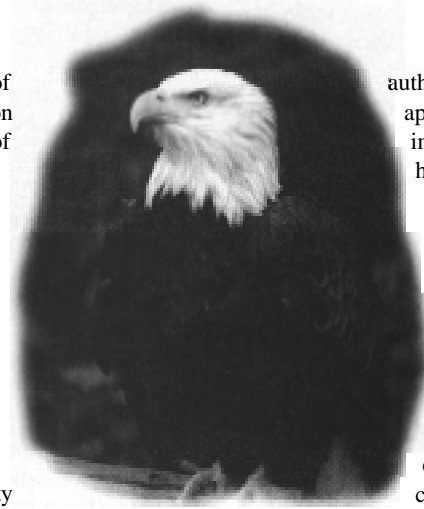
per year to the Secretary of the Interior and \$5 million per year to the Secretary of Commerce to carry out this program.

Enforcement

ESRA clarifies that to maintain an action for an "incidental take" prohibited by the ESA, the person bringing action must establish, using scientifically valid principles, that the activity has caused or will cause the take of a listed species.

Authorization of appropriations

ESRA re-authorizes the ESA through fiscal year 2003. Appropriations would increase by fiscal year 2000 for the Department of the Interior to \$165 million and for the Department of Commerce to \$70 million. In addition, ESRA includes



authorization of appropriations for implementing the safe harbor program, establishing the habitat conservation planning fund, providing financial assistance for recovery plan implementation agreements, and assisting state fish and wildlife agencies in carrying out conservation activities under the act.

Other amendments

The bill authorizes the Secretary to enter into agreements with property owners, at the request of the property owner, that identify activities that will not result in a prohibited take of an endangered or threatened species.



LISTED SPECIES BY STATE/TERRITORY as of July 31, 1997

Omits "similarity of appearance" and some extirpated species. No longer maps whale and non-nesting sea turtle species in State coastal waters.



NOTE: Total U.S. Species: 1,104 (including 8 whale species) Numbers not additive, a species often occurs in more than one state.