



A Workable, More Effective Endangered Species Act

Comprehensive reauthorization of the Endangered Species Act "... is the highest legislative priority of the Western Governors. The number and geographic range of listings continues to grow in the West, encompassing major metropolitan areas, public lands, and private forests and farmlands, while the Act remains underfunded and without the tools necessary to enable private landowners and states to be partners in achieving the goals of the Act. Our states desperately need the act to be reauthorized."

Governor Marc Racicot - Testimony before the House Resources Committee 3/1/00

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Comprehensive reauthorization of the Endangered Species Act (ESA) is the highest legislative priority of the Western Governors. Western states and communities must deal with the effects of proposals and decisions made under the ESA on a daily basis. Recent salmon, steelhead, and bull trout listings affect nearly every watershed in the Pacific Northwest from tidewater areas to the headwater streams in Montana. The black tailed prairie dog, which the Service has said is warranted but precluded for listing, ranges over 11 western states; and the sage grouse, another far ranging species, is threatened.¹

Unfortunately, listing under the Act places a cloud of uncertainty over nearly every economic and social activity where the species may occur. States, counties and local governments must consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to identify and develop best management practices for a myriad of activities ranging from storm water discharges to road design.²

Furthermore, the dynamics of present ESA impacts stifle cooperative agreements and innovative ways to restore healthy populations. There are far too few effective federal-state partnerships which can lead to workable, protective rules once species are listed (so called "4 (d) rules"). This lack of partnership reflects a lack of understanding of and trust in effective state and local government practices.

At the same time our farm and ranching communities are trying to learn what practices will restore habitat and health of species in order to prevent listings or, at least, lead to reasonable 4(d) rules if a species is listed. States and communities are coming together and marshaling their resources to reverse

Elements of Reform

- Significant increase in the role of states and more effective use of federal and state expertise and resources.
- Increased ability to restore declining species before they need to be listed.
- New tools to enable private landowners and water users to voluntarily conserve listed species and thereby vastly improve conservation on private land holdings.
- Restoration of public confidence in decisions made under the Act through peer review and enhanced public participation.
- Recovery of listed species elevated to the status of listing species and more efficient de-listing of species once recovery goals are reached.

the declines in these species. In many instances, the FWS and NMFS are either not willing or have the too few personnel to work with states and private landowners to incorporate creative solutions to meet requirements of the Act.³

Western states need immediate, comprehensive improvements in the way the Endangered Species Act is implemented and funded. The intent of the Act remains a laudable goal. Yet, the tools within the Act are outdated and incomplete.⁴

The Western Governors call on Congress to amend and reauthorize the Endangered Species Act of 1973 following four principles:

- increase the role for states;
- increase certainty and technical assistance for landowners and water-users;
- increase and stabilize funding for states; and
- streamline the Act, for example, by providing for statewide, multi-species strategies.

These goals can and should be achieved while maintaining the act's integrity and original intent to protect listed species.

Increased Role of States

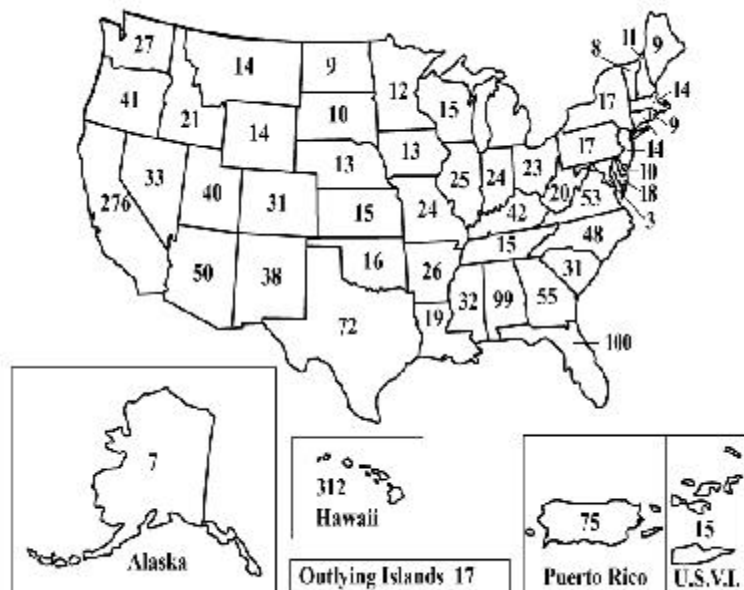
States possess broad trustee and police powers over fish and wildlife, including those species found on most federal lands within their borders. It follows that the Act can be effectively implemented only through a full partnership between the states and federal government. That would entail meaningful participation by states in all aspects of the Act, ranging from species surveys to development of habitat conservation plans.⁵

ESA is premised on a strong federal-state role, but the Act and its implementation need to provide expanded, meaningful opportunities for states to participate or take the lead in the decision-making process, from listing through delisting.⁶

Increase certainty and technical assistance for landowners and water-users

There is wide agreement that the value of habitat-based planning lies not only in its benefit to species and ecosystems, but also in its promise of long-term certainty with respect to land use, both within and outside of designated critical habitats. A planning process for multiple species should include incentives, such as authorization for short-form, cost-effective habitat conservation plans under section 10; no-surprises policies; safe harbor policies; small landowner and small impact exemptions; and other initiatives that provide certainty and encourage voluntary efforts by landowners.⁷

U.S. Fish and Wildlife Service map of listed species as of November 1, 2000



Although 50 percent of endangered and threatened species are found on nonfederal land, the Act lacks the tools and incentives to encourage private landowners, state and local governments, and private organizations to undertake conservation measures before a crisis exists. The reauthorized Act must expand incentives for non federal efforts that assist in species conservation, recovery efforts and habitat preservation.⁸

In addition, states should be authorized to initiate conservation agreements with federal, tribal, and local agencies and private landowners to conserve declining species before the need to list those species. In cooperation with the secretaries, the states should determine the standards and guidelines for these conservation agreements. These agreements should include landowner certainty provisions and incentives to encourage the involvement of federal agencies as well as private landowners and other nonfederal parties in this preventive effort.⁹

Increase and stabilize funding for states

Inadequate funding remains an impediment to the success of and the public's support for the ESA. Without adequate funding, burdens are unfairly placed on local communities and owners of private property. At the same time states are encountering delays in construction projects under the new highway act, because the federal agencies do not have the personnel to conduct the necessary consultations before bridges and roads can be built in affected watersheds.¹⁰

Funding for ESA should be enhanced to address the growing list of threatened and endangered species. Funding needs to escalate rapidly, as state and federal agencies increasingly assume ESA management activities and embrace ecosystem management strategies, and as a means to protect species and their habitats and to meet state recovery goals.¹¹

The number and geographic range of listings continues to grow in the West, encompassing major metropolitan areas, public lands, and private forest and farmlands. Meanwhile, the Act remains underfunded and lacks the tools for private landowners and states to be partners. The western states desperately need the Act to be reauthorized.¹²

States are vitally interested in maintaining viable programs for the conservation of fish and wildlife that are largely within their jurisdiction. Western states are committed to success and expect to be held accountable, but only if they are given the proper tools and adequate resources to do the job. With the right tools, states can achieve conservation success in cooperation with private landowners that build on the landowners stewardship ethic for these resources.

Actions Needed

Implementation of the following recommendations will make the Act more workable and understandable.

- T** Enhanced authority for statewide and multi-state conservation agreements.
- T** Strong incentives for private landowners, such as "Safe Harbor" and "No Surprises", as well as funding for habitat conservation planning and technical assistance.
- T** Peer review of listing and delisting decisions.
- T** Designation of critical habitat, where appropriate, as a part of recovery planning when designation is most sensible and practical.
- T** Greatly enhanced public comment and involvement in all aspects of the Act.
- T** The central focus of the Act must be the recovery of species. Recovery plans must not only be comprehensive and inclusive in their efforts to conserve species, but also carried out.

- T Enhanced authority for multi-species and distinct Habitat Conservation Plans and streamlined HCP process for small landowners with small impacts.
- T Increased rigor in the listing process and the ability to address multiple species.
- T A more rigorous, less costly and more predictable delisting process.
- T Reaffirmation of the management distinction between threatened and endangered.
- T Funding for the ESA should be increased to address the growing list of threatened and endangered species.

Additional Resources

- www.fws.gov
- www.westgov.org
- www.noaa.gov
- <http://resourcescommittee.house.gov/>
- <http://epw.senate.gov/>

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Endnotes

1. WGA Resolution 98-030 p.1, #4, #5, www.westgov.org
2. WGA Resolution 98-030
3. Testimony of Governor Marc Racicot before the House Resources Committee, March 1, 2000, p.1.
4. Id.
5. WGA Resolution 98-030, #13, p.3.
6. Id.
7. WGA Resolution 98-030, #2, p.4.
8. Id. #8, p.7.
9. Id. #9, p. 7.
10. Id. #11, p.3.
11. Id. #10, p.7.
12. Governor Racicot Testimony p.8.