Audubon

ENDANGERED SPECIES ACT: 10 MYTHS & FACTS

Public Policy Fact Sheet

Endangered Whooping Crane

Endangered Dakota Skipper Butterfly

Endangered Antioch Dunes Evening Primrose

"The last word in ignorance is the man who says of an animal or plant: "What good is it?" If the land mechanism as a whole is good, then every part is good, whether we understand it or not...who but a fool would discard seemingly useless parts? To keep every cog and wheel is the first precaution of intelligent tinkering."
- Aldo Leopold, *A Sand County Almanac*

1. MYTH: The Endangered Species Act elevates protection of plants and animals over humans.

FACT: The ESA explicitly requires balancing species protection with people's economic needs. Once a species is listed, the ESA requires that people and the economy be considered at every stage of development of the protection plan, including designation of habitat and any necessary regulations. Plus, the ESA actually helps the economy by protecting the ecosystems that provide food, medicine, flood protection and recreation. Approximately one quarter of the prescriptions written in the U.S. are based on substances derived from natural products – and new plant-based medicines are constantly being developed. In addition, birds and other animals eat huge numbers of insects, helping to keep their populations in check. Finally, species often provide early warnings of environmental problems that may threaten human health. The bald eagle provided early warning of the health problems posed by the carcinogen DDT. The timely prohibition of DDT use in the U.S. significantly reduced potentially serious and costly public health problems. Thus, it is in everyone's interest to protect species.

2. MYTH: The ESA is a failure because it has led to the recovery of only a handful of species.

FACT: Recovery within the relatively few years species have been listed is the wrong measure of success. The ESA was enacted to protect species from becoming extinct and then set them on the long-term road to recovery. By that measure the law is a profound success. According to the U.S. Fish and Wildlife Service, the ESA has prevented extinction for 99% of the species that are listed as endangered or threatened. In addition, 68% of listed species are stable or improving. The longer a species is listed under the Act, the more likely it is to be improving. Scientists estimate that it takes several decades, if not longer, for imperiled wildlife to fully recover. Since most plants and animals have been protected under the Act for only about 16 years, full recoveries can not be expected yet. Ironically, some of the same organizations and individuals who claim the law doesn't work because of low recovery numbers have opposed adequate funding for listing and recovering species – impeding rather than advancing full recovery.

3. MYTH: Although the ESA was originally well intentioned, it is now an outdated law. Endangered species deserve better.

FACT: In assessments of the Act, scientists consistently identify low funding levels rather than flaws in the law as the most serious problem with the nation's endangered species program. A 2002 study in the journal *BioScience* concluded that claims that the ESA is ineffective are wrong. The data indicated that "species that have higher proportional spending have an improved chance of achieving a status of improving or stable. . . . Current funding is less than 20 percent of the amount we estimate it will take to get the job done."

4. MYTH: U.S. Fish and Wildlife Service scientists frequently use "junk" or faulty and incomplete science which leads to incorrect listing and habitat designation decisions.

FACT: While any group or individual may petition the federal government to list a species as endangered or threatened, to succeed the petition must address several statutory listing

criteria, be based on the best scientific data available and go through a series of rigorous reviews and peer review. As a result, decisions to list a species are rarely, if ever, reversed due to inadequate science. The same is true for habitat designation decisions. Overall, while there is seldom unanimous agreement among scientists, the science behind the decisions made under the ESA is rarely found to be inaccurate. A 2003 Government Accountability Office report found that only 10 of the more than 1,200 domestic listed species were delisted after new scientific information surfaced indicating that the original listing decision was not warranted.

5. MYTH: Designating land as "critical habitat" doesn't aid in the recovery of endangered species.

FACT: Because habitat loss threatens 85% of all endangered plants and animals, the ESA requires federal wildlife agencies to designate and protect areas of "critical habitat," which is "essential to the conservation of the species." The limitations critical habitat imposes affect only government actions on government land or actions requiring a federal government permit. Critical habitat may be one of the most powerful tools for protecting endangered species. According to a 2005 study in *BioScience*, "species with critical habitat for two or more years were . . . more than twice as likely to be improving . . . as species without such critical habitat."

6. MYTH: Critical habitat is for the sole use of endangered species, and it locks away land – often private land – from productive use. Critical habitat designations invite the federal government into Americans' backyards.

FACT: The Congressional Research Service observed that "there appear to be public misperceptions [sic] that [critical habitat] designations result in binding federal restrictions on private lands." Critical habitat designations do not directly affect the way a private landowner can use his or her land. The indirect impact occurs when the landowner needs a federal permit for an activity already regulated under another law such as draining a wetland, an activity regulated under the Clean Water Act. Even when a federal agency gives heightened scrutiny to the effect of a landowner's action on endangered species because of critical habitat, the agency is usually able to issue a permit for the activity anyway. On public lands, the ESA mandates that the FWS consider "the economic . . . and any other relevant impact" of designating critical habitat. As a result, many activities besides species protection occur in critical habitat on public land.

7. MYTH: The FWS controls private property and thwarts important land use and development projects.

FACT: A General Accounting Office study of 18,211 consultations by the FWS and National Marine Fisheries Service showed 89% of these projects allowed business and property owners to operate without any intervention. Most consultations were handled informally. The FWS found only 181 projects (less than 1%) to present a risk to a species. Nearly all of the 181 projects were able to move forward after collaboration with the FWS.

8. Myth: The ESA unreasonably blocks necessary construction and development.

FACT: Out of 429,533 development projects considered under the ESA between 1998 and 2004, less than 1% were halted and all but one of these projects were implemented after modifying the project to address concerns about listed species. The one project that was halted was the FWS' own translocation program for southern sea otters.

9. MYTH: Lawsuits by environmentalists requiring the FWS to designate critical habitat distract the agency and drain resources from conservation.

FACT: According to a study by a professor at Vermont Law School, the current "flood" of critical habitat litigation comes from ESA opponents, not environmental groups. The study concluded that "industry lawsuits seeking to undo critical habitat designations now account for over 80% of the active cases." Critical habitat is one of the two largest categories of ESA litigation. Under the Bush administration, the FWS has not listed a single endangered species or designated any critical habitat except in response to citizen petitions, court orders, or the threat of a lawsuit. Litigation by environmentalists, far from stopping species protection, has actually advanced it in lieu of support from the Bush administration.

10. MYTH: Most lawsuits by environmentalists are frivolous. They are designed to block economic development or raise money for environmental lawyers.

FACT: Far from frivolous, government reports show that environmental groups file cases against the FWS for failing to implement the law. Recent analyses by the Government Accountability Office (GAO) and the Congressional Research Service (CRS) concluded that suits filed by conservation organizations have actually brought about many of the ESA's conservation accomplishments. The GAO found that a large portion of the listing activities of the Act "have resulted from litigation, court orders, and settlement agreements." The GAO and CRS reports show litigation has produced concrete conservation results that would never have occurred without such intervention.

By contrast industry groups generally tailor their litigation to block implementation of the law or discourage federal agencies from applying protections for species. For example, the Pacific Legal Foundation sued FWS for failing to conduct a five-year review of the status of 200 listed species in California. Ultimately the suit was an attempt to remove the species from the threatened and endangered list. The assessments demanded by the group were unlikely to change a species' status. The Bush administration's FWS settled the lawsuit, agreeing to conduct the reviews – meaning that millions of dollars will be diverted from species conservation with few substantial benefits.

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