4. ENDANGERED SPECIES:

Harness economic incentives to enhance wildlife assets

— by Reed Watson

Critics of the Endangered Species Act (ESA) routinely point out that only 2 percent of all species listed as endangered or threatened have recovered and been delisted. While that recovery rate is abysmally low, it reflects the law's structure more than its performance. To wit, the ESA is designed to stem the loss of species, not to actively encourage their proliferation.

Aside from provisions allowing for habitat banking, the act provides no mechanism by which private landowners can actually benefit from investing in species conservation.[15] As Sam Hamilton, former U.S. Fish and Wildlife Service director, said, "The incentives are wrong here. If a rare metal is on my property the value of my land goes up. But if a rare bird is on my property the value of my property goes down."

Functioning more as a stick than a carrot, the ESA imposes wide-sweeping prohibitions on activities that constitute a "take" of species found to be in danger of extinction. Because those take prohibitions often have significant economic consequences and create perverse incentives for landowners with endangered species or habitat on their property, the ESA's greatest potential may lie in its ability to spur innovation and cooperation aimed at avoiding a species becoming listed in the first place.[16]

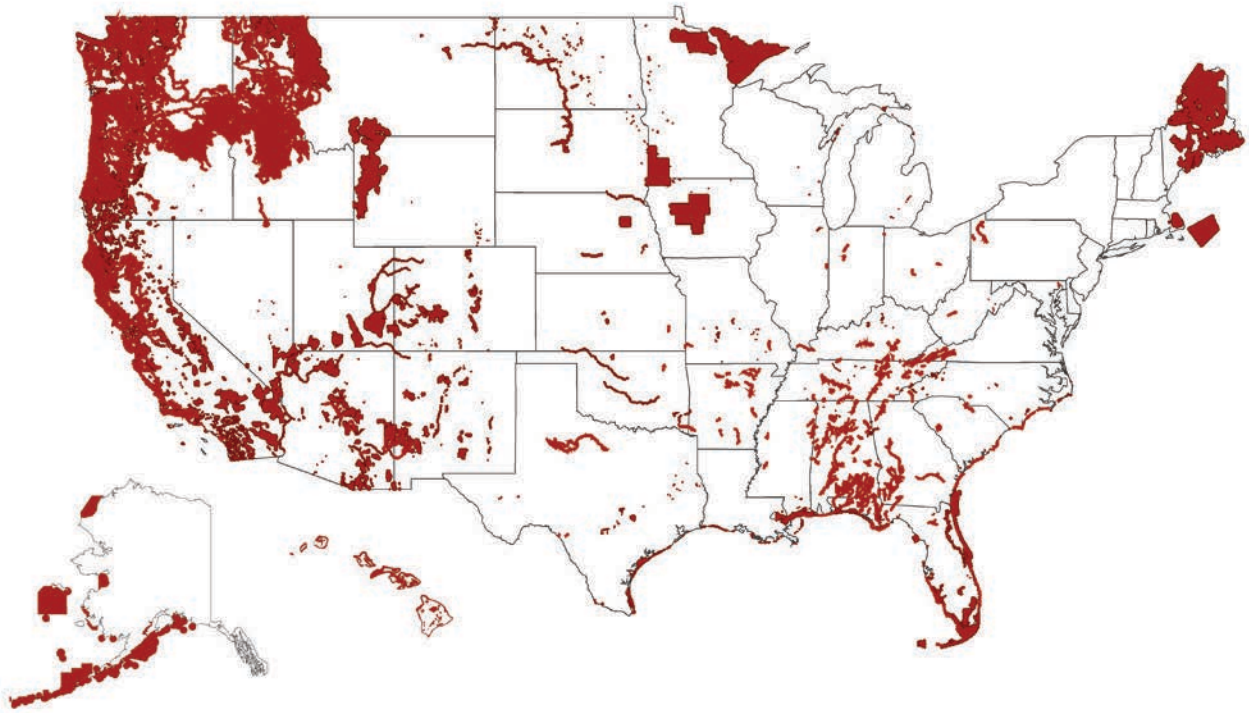
While legislative reform of the Endangered Species Act has proven politically untenable, the law is not an effective tool for recovering endangered species.[17] The Interior Department has several opportunities within the existing law to truly encourage species conservation on private land.

First, the department can participate in the development of range-wide management plans to proactively keep species of concern from needing the act's formal protections. To take one example, a working group of the Western Association of Fish and Wildlife Agencies is developing a range-wide conservation plan to increase the population of the lesser prairie chicken. The group functions in partnership with federal agencies, private landowners, and the states of Colorado, Kansas, New Mexico, Oklahoma, and Texas.[18]

To encourage similar efforts for other species, the department could articulate species-specific thresholds, such as population counts or minimum range areas, which would automatically trigger listing. Setting such thresholds would require a significant investment in scientific study and likely be the subject of litigation. Nonetheless, articulating objective listing criteria would help guide the conservation activities and investments of state wildlife agencies and conservation groups.

Second, and on a similar note, the Department of the Interior can articulate reasonable and clearly defined delisting criteria for species currently on the list. Providing state wildlife agencies and private landowners with objective recovery targets allows them to invent new recovery approaches and invest their resources in the most productive manner possible. Currently, listing and delisting decisions are the subject of frequent

LAND DESIGNATED AS CRITICAL HABITAT BY THE U.S. FISH AND WILDLIFE SERVICE



Source: U.S. Fish and Wildlife Service

and protracted litigation, often with final implementation not occurring until years after department decisions. Setting objective, conservative listing and delisting criteria would likely diffuse some of this controversy or, at the very least, accelerate its resolution before a listing or delisting decision is made.

Third, the department can engender the cooperation of more landowners by walking back several regulatory expansions that discourage private conservation investments. Specifically, it can repeal the 2016 regulation that permits the Fish and Wildlife Service to designate critical habitat for endangered species on private lands that are not only unoccupied by a given species, but also unsuitable for that species.[19] To create a positive incentive for species conservation, the department could also offer tax or regulatory relief in the form of habitat rental agreements with private landowners who implement habitat conservation or species management plans.

Fourth and finally, the department can create an incentive for private landowners to invest in the survival and propagation of exotic endangered species. Two actions would promote such husbandry: streamlining the issuance of import permits for foreign-born animals listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and issuing permanent exemptions for captive-bred animals. When landowners can legally possess and profitably foster exotic endangered animals, they have a strong incentive to invest in the husbandry and propagation of such species. By contrast, when import permits are practically impossible to obtain, and when exemptions for captive-bred wildlife are revoked by the department, this conservation incentive disappears.

Policy Reforms:

- Publish species-specific listing and delisting criteria that state wildlife agencies and private landowners can use to direct their conservation investments.
- Facilitate the use of voluntary agreements, such as conservation easements and habitat rental agreements, whereby private landowners are financially rewarded for enhancing species habitat.
- Walk back regulatory expansions that discourage private conservation investments, such as the designation of critical habitat on private property that is inhospitable for protected species.
- Streamline the issuance of import permits for exotic foreign-born endangered species and issue permanent exemptions for captive-bred animals.

Further Reading:

- *Smoking Them Out: The Theft of the Environment and How to Take It Back*, by Greg Walcher. American Tradition Institute (2013).
- *Rebuilding the Ark: New Perspectives on Endangered Species Act Reform*, by Jonathan Adler. AEI Press (2011).
- "When the Endangered Species Act Threatens Wildlife," by Terry Anderson. *The Wall Street Journal*. October 20, 2014.