The Problems with the Endangered Species Act

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Table of Contents

Attack on Property Rights 5

No Understanding of Constitutional Principles 6

Bad Science + Zealous Bureaucrats = Corruption 8

Gross Distortion of Science 8

Outright Fraud and Religious Zealousness 11

Origins and Problems of the Endangered Species Act 13

The Western Convention and the ESA 13

Some Examples 15

The Usurpation of the US Constitution 17

The Failure of the ESA 19

Arbitrary and Capricious 21

Notes and Citations 23

In the spring of 2001 fourteen hundred farmers, their families and a host of support businesses in the Klamath Falls Oregon area awoke to the realization that their lives were not as important to the federal government as two species of bottom-feeding sucker fish. Citing the U.S. Endangered Species Act (ESA), Oregon U.S. District Judge Ann Aiken ruled in Federal Court on April 6, 2001, to allow the U.S. Fish and Wildlife Service (USFWS) to implement their recovery plan to give all the water of the Klamath Lake to the endangered species. Aiken's ruling gave first rights to the water to the fish. The farmers got nothing — even though they and community businesses faced immediate economic and personal bankruptcy. What is worse, the National Academy of Sciences would later rule that the recovery plan was based on false science. Thousands of people were hurt or ruined financially because of bureaucratic zealousness and the knowing application of false science.

Attack on Property Rights

In writing her ruling Judge Aiken claimed, "Given the high priority the law places on species threatened with extinction, I cannot find that the balance of hardship [to the farmers and residents in the county] tips sharply in the [farmers] favor."[1] The farmers were stunned. Just what does it take to constitute economic hardship, they asked? Without water, over 200,000 acres of farmland and 50,000 acres of the Klamath Wildlife Refuge dried up during the summer of 2001. Farmland plummeted from over $1000 per acre to less than $50. The property value of the farm represents the life savings of most of these farmers. It was as if Aiken's decision wiped out $950,000 of a $1,000,000 life-savings account and then proclaimed it would not create sufficient hardship to prevent her from enforcing the reclamation plan for two species that had lived in harmony with the farmers for a hundred years.

To most American citizens the Endangered Species Act (ESA) and many other environmental laws are a noble effort to save species from extinction, and to protect the environment from reckless destruction by man. Tragically, what happened to the Klamath Basin farmers is not unique. The media rarely reports on the human tragedy caused by the ESA and other environmental. Consequently, most Americans do not realize that potentially hundreds of thousands of their mostly rural fellow citizens are needlessly being stripped of their livelihoods and decimated economically by these laws as our government uses them to nationalize their property. Klamath Basin farmer Rick Rodgers asserts:

> This is out and out thievery. This is a land grab, a water grab, a theft of private property. They want to steal the whole thing and shove us out of here and make it a 'preserve.'…Upper Klamath has 837,000 acre/feet of storage and by *contract*, agriculture is supposed to get 437,000 acre/feet of water. But they didn't give us *any*. The people here have homestead deeds from the government promising — *guaranteeing* — them,

and their heirs, water 'forever.' That's why many of them settled here after World Wars I and II."

Indeed, the farmers do hold the original land grant deeds and water rights, signed by President Roosevelt in 1940, which read in part:

> KNOW NOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these deeds DOES GIVE AND GRANT, unto said _____name_____ and __his__ heirs, the tract described above, together with his *right to use the water* from the reclamation project in which the tract is situated, as an appurtenance [legal right] to the irrigable lands in said tract; TO HAVE AND TO HOLD to same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature… *used in connection with such water rights*, as may be recognized and acknowledged by the local customs, laws, and decisions of courts…all in the manner prescribed by the *Act of Congress approved August 30, 1890* (26 Stat., 391).[2] (Italics added)

The ESA and the court ruling trumped a 100-year old property right, seemingly guaranteed by the government of the United States. But the same United States trashed its promise which threatened to destroy hundreds of millions of dollars of the farmer's property value and ability to earn a living – all without one dime of compensation. To add insult to injury, the farmers still had to pay their 'water tax', an operation and maintenance fee that pays for the irrigation system.

How could the federal government have so flippantly destroyed these families? Jim Hainline, a biologist of the Lower Klamath National Wildlife Refuge provides a clue:

> Once the government urged man to risk his all in the Klamath Basin. That was then, this is now. It was the social values of the time — man over nature. It worked for the purposes for which it was intended. Now we have a real change in the social values of the country. People are more urban, and they want to see the countryside more natural.[3]

How could Hainline say this knowing that his government was destroying thousands of his fellow men, women and children? Is it possible that he is so cold-blooded that he really doesn't care? Just what makes him think that urbanites should even have the right to enforce their will upon rural minorities — destroying them in the process? Tragically, Hainline does represent millions of urbanites who believe just like him, but often do not really understand it. They really do not think of themselves as being cold-blooded. They think they are merely doing what is necessary to protect nature based on their education and personal belief system — even though their actions are diametrically opposed to the Bill of Rights — the Constitutional foundation that guarantees the individual freedoms of every American. For with Hainline's reasoning, no person anywhere in America would be protected against the whims of the politically correct majority.

No Understanding of Constitutional Principles

What has happened to bring us to this condition? Americans no longer have the opportunity to learn the foundations of freedom and to understand what it really means to have the God-given

right to "life, liberty and the pursuit of happiness" as Thomas Jefferson penned in the Declaration of Independence. Since the 1970s, we are increasingly following another system of governance that wholly opposes the principles of the Declaration of Independence and the Constitution. In doing so, we are systematically destroying the very foundation that has made America the greatest nation in the history of the world.

America is in a war of world views between the principles of freedom laid down by John Locke (1632-1704) in his *Two Treatises on Government* (1689) and Jean Jacques Rousseau in his *Social Contract* (1762) and *Discourse on the Origin of Inequality* (1754). Private property is anything to which a person or group owns exclusive rights — including money. Without legal protection, the government becomes all-powerful and no land, no investment, no bank account is safe from whoever happens to be the biggest bully in town.[a]

The government's purpose then, according to Locke, is to join with others to "unite, for the mutual preservation of their lives, liberties and estate, which I call by the general name, property." According to Locke, the primary reason for government "is the *preservation of their property*." (Italics added) This fundamental principle became the cornerstone of the Declaration of Independence and the United States Constitution because the King of England was usurping these rights from the colonialists.

Rousseau attacked Locke's model, arguing that individuality and property rights divide man by focusing on self-interest and greed rather than the good of society. He claims that property rights bind the poor thereby giving "new powers to the rich" that destroys "natural liberty" and equality and converts "usurpation into unalterable right." He argues for the creation of the common good as embodied through an abstract, public will he called the 'general will'. In his model, the enlightened state determines the general will of the people through the force of law, including how they use property.

Rousseau's model of forced compliance has formed the basis of social and environmental laws in America since the 1970s — especially the ESA. This is causing a hemorrhage in individual liberties once taken for granted by all Americans, especially property rights. Without private property, individuals are powerless to oppose the government's attempt to infringe on their rights or control the fruit of their labor. The old Soviet Union, where all property belonged to the state, provides the clearest example of this principle. No one could speak out against the government for fear of their family's eviction or their job taken away by the local communist commissar.

Using top-dollar Madison Avenue packaging, the Rousseau-oriented environmental message finds willing listeners in urban America. While we do need to protect the environment, these slick, but distorted or false messages have easily manipulated the largely uninformed urban voters and politicians into believing all kinds of terrible things are happening that only big government can solve. In response, Congress has created an interlocking web of Rousseau-based laws and regulations, including the ESA, which usurp local and state jurisdictions and bestow enormous powers on federal bureaucrats who have little to no accountability to those they govern.

Over the past three decades, the ESA has given special protected status to hundreds of species of wildlife and plants. The federal government has used the ESA to take land-use control over hundreds of thousands of privately owned acres.[4] The law, however, has an even more sinister side: each protected species has been listed without any consideration of the resulting

[a] A more thorough discussion of this principle can be found in the American Land Foundation's paper on property rights by going to http://www.propertyrights.org/propertyrights.htm.

social or economic impact on the people living and working in their habitat area — most of which is based on bad to nonexistent science.

Bad Science + Zealous Bureaucrats = Corruption

The Klamath Tribe of Native Americans originally petitioned to list the two suckerfish because the fish had religious significance and were allegedly declining in their numbers during the 1980s. Klamath citizens had maintained from the beginning of their problems with the ESA that the science used to justify the listing of the two suckerfish and the Coho salmon was corrupt. After the fish were listed in 1988, poor water quality led to algae blooms and massive fish kills in 1995 through 1997. The USFWS reported at least 80 percent of adult suckers died in those years, leading to a narrow age class today and lessening suckers' ability to reproduce, the service said. Likewise, the National Marine Fisheries Service (NMFS) maintained that the reduced water levels and pollution threatened the endangered Coho salmon below the Klamath Lake dam.

Gross Distortion of Science

Not all is what it seems, however, and the Klamath River debacle continued its odyssey into the twilight zone – this time in the arena of science. Or, more appropriately, pseudoscience. During the June 16, 2001, House Committee on Resources Oversight Field Hearing on "Water Management and Endangered Species Issues in the Klamath Basin" fisheries biologist David A. Vogel testified that the Klamath farm situation is an:

> artificially created regulatory crisis that has been imposed on the Upper Klamath basin.… In my entire professional career," he said, "I have never been involved in a decision-making process that was as closed, segregated, and poor as we now have in the Klamath basin. The constructive science-based processes I have been involved in elsewhere have involved an honest and open dialogue among people having scientific expertise. Hypotheses are developed, then rigorously tested against empirical evidence. None of those elements of good science characterize the decision-making process for the Klamath Project.[5]

Vogel had been a fisheries scientist for 26 years and worked 15 of those years for the USFWS and the National Marine Fisheries Service (NMFS). During his tenure with the federal government, he received numerous superior and outstanding achievement awards and commendations, including Fisheries Management Biologist of the Year Award for six western states. During the hearing, Vogel indirectly accused the USFWS and NMFS of distorting the data to arrive at a predetermined conclusion, ignoring all contradictory evidence that would negate their recommendations.

It is not that there was no justification for some kind of remedial work. A serious pollution problem did exist. But Vogel had worked with Dr. Alex Horne and others to develop a plan that would provide good water for both the farmers and the aquatic ecosystem.[6] In his testimony before Congress, Vogel sharply criticized the USFWS for its grossly unacceptable census of the sucker fish to justify its listing as an endangered species. He claimed that, “three years after the sucker listing, it also became apparent that the assumptions concerning the status of shortnose

suckers and Lost River suckers in the Lost River/Clear Lake watershed were in error."[7] The more complete census in 1991 showed tens of thousands of these fish. Had that information been made public, the suckerfish may not have even been listed.

The reason, Vogel continued, that the service recommended imposing high reservoir levels was to "allow sucker spawning access to one small lakeshore spring" and to dilute the lake's pollution by keeping so much water in it that it would theoretically improve the water quality and improve the habitat for the endangered fish. Vogel stated just the opposite was true. "All the empirical evidence and material demonstrate that huge fish kills have occurred when Upper Klamath Lake was near average or above average elevations, but not at low elevations," asserted Vogel.[8] He even said he warned the USFWS that there would be huge fish kills if the Upper Klamath Lake elevations were maintained at higher than historical levels. That's exactly what happened in 1971, 1986, 1995, 1996, and 1997.

In spite of this overwhelming scientific evidence, the NMFS recommend high lake levels to Judge Akin by "selectively reporting only information to support the agency's concept of higher lake levels."[9] Concerning the Coho salmon, Vogel again sharply criticized the NMFS for its misuse of science. "Coho salmon, as a species, prefer smaller tributary habitats, as compared to larger mainstream river habitats [such as the Klamath]. This extremely important biological fact was not incorporated into the rationale NMFS used to assess Klamath Project effects on Coho," he stated. In other words, more water in the Klamath River would not help the salmon because the problem was in the tributaries, not in the main river. Yet, the NMFS continued to promote this fraudulent recovery plan knowing it was wrong!

Given the contentious nature of this battle and the charges that the U.S. Fish and Wildlife used junk science to justify their decisions, Interior Secretary Norton asked the National Academy of Sciences (NAS) to give an opinion of the science used by the service. The committee of NAS scientists that reviewed the data essentially agreed with Vogel:

> Incidents of adult mortality (fish kill), for example, have not been associated with years of low water level, and the highest recorded recruitment of new individuals into the adult population occurred through reproduction in a year of low water level.… Thus the committee finds no substantial scientific evidence supporting changes to the operating practices that have produced observed levels in Upper Klamath Lake and observed stream flows over the past 10 years.[10]

Thus the scientists of the USFWS recommended a recovery program that had no scientific merit whatsoever. In fact, the recovery plan actually placed the two species of sucker fish at even greater risk because high lake levels were associated with fish kills while low lake levels yielded fish gains. The recovery plan did serve, however, to destroy a one-hundred year-old property right and would lead to the elimination of farming and therefore farmers in the Klamath basin.

But that is not all the USFWS and NMFS did in this recovery plan. The plan also hinged on more reservoir water being released in the Klamath River to provide more water to the endangered Coho salmon during low water years. While this makes sense on the surface, the NAS report also found that: "water added as necessary to sustain higher flows in the main stem during dry years would need to come from reservoirs, and this water could equal or exceed the lethal temperatures for Coho salmon during the warmest months."[11] In other words, excessive release of the warm reservoir water *could actually kill the salmon, not help them.* Again, the

recovery plan demanded action that is exactly the opposite of what the scientists knew to be true, and *their actions actually put the salmon at much higher risk*! The recovery plan did serve, however, to destroy property rights and people's lives.

This is not the only example of such abuse. The ESA and other federal regulations have destroyed the lives of thousands of families, closed entire communities, and confiscated hundreds of millions (if not billions) of dollars of private property — all in the name of protecting the environment. Why? Michael Kelley of the Washington Post Writers Group provides a clue in the July 11, 2001, issue of *MSNBC*. He found "The Endangered Species Act…has been exploited by environmental groups who have forged from it a weapon in their agenda to force humans out of lands they wish to see returned to a pre-human state. Never has this been made more nakedly, brutally clear than in the battle of Klamath Falls."[12]

Charles Bridges agrees. A retired soft drink bottler who lives in the town of Klamath Falls Bridges claims: "This isn't about saving endangered species or the environment. It's about control, taking the land away from the people, 're-wilding the land,' going back to 1492. It's all part of that UN Earth Summit, the Biodiversity Treaty, the Wildlands Project, etc. These green extremists don't want us here."[13]

The Wildlands Project is a plan for creating huge wilderness reserves interconnected with wilderness corridors usually along streams, rivers or mountain ranges where no human activity can take place. It would occupy up to 50 percent of the U.S. landscape resulting in road closures and relocation of entire communities to re-wild America.[14] It is no wild-eyed pipe dream. The Wildlands Project was to provide the backbone of biodiversity recovery in the United Nations Convention on Biological Diversity, which was within one hour of ratification on September 30, 1994, when the plan was exposed on the U.S. Senate floor and stopped.[15]

The Never-Never Land of ESA Science

On March 20, 2002, Rob Gordon, Executive Director of the National Wilderness Institute testified before the House Resources Committee on H.R. 2829 and H.R. 3705, both bills to amend the Endangered Species Act of 1973. In addressing the issues of quality and type of research used, Gordon said:

> Under the current program the evidentiary standards for listing are, in a word, bad. I use the word bad because it is an apt acronym for "best available data." The problem with best available data, or BAD, is that best is a comparative word. Thus the data need not be verified, reliable, conclusive, adequate, verifiable, accurate or even good. The best available data standard hampers the effectiveness of the program.[16]

Because of the lack of scientific accountability, mistakes — big mistakes — are common. In one example, the USFWS considered the Indian flapshell turtle endangered because it is listed in Appendix I of the U.N.'s Convention on the International Trade of Endangered Species (CITES), It was not until *after* the turtle was listed that the USFWS conducted a literature review to see if supporting evidence justified its current endangered status. No such supporting data could be found. Desperate for justification, the USFWS then contacted turtle experts such as Dr. E. O. Moll, who was conducting research in India at that time. Moll stated that it was "seemingly the most common and widespread turtle in all of India. How it ever made Appendix I is a big mystery."[17]

This is just one of dozens, if not hundreds, of examples of an overzealous agency shooting from the hip before having proper information. There are presently 1046 species listed as endangered by the USFWS, 1156 of which have recovery plans.[18] The National Wilderness Institute conducted a study in which they found that over 306 of these recovery plans had "little to no hard information about the status of listed species." Gordon continues, "Few recovery plans state that we reliably know how many of a particular federally regulated species exist." For instance, the plan for the endangered Cave Crayfish cites "Sufficient data to estimate population size or trends is lacking."[19] If there is not sufficient data to even estimate the population size, let alone trends, then how could the USFWS even know it was endangered in the first place? How could it write a recovery plan? The agency could not have. But it did anyway.

In another case, the Palau dove, Palau owl and Palau flycatcher, native to a small island nation of Palau about 400 miles east of the Philippines, were considered recoveries by the USFWS. While USFWS calls them 'recoveries,' a GAO report states that "officially designated as recovered, the three Palau species owe their recovery more to the discovery of additional birds than to successful recovery efforts." Similarly, John Turner, former USFWS director, revealed during a Senate hearing that the Rydberg milk-vetch, a plant which is one of the few other supposed recoveries was de-listed because "further surveys turned up sufficient healthy populations."[20]

Outright Fraud and Religious Zealousness

Government scientists are not above actually planting evidence to support their anti-human beliefs. In the fall of 2001 the U.S. Forest Service found that seven federal and state wildlife biologists planted false evidence of a rare and threatened Canadian lynx in the Wenatchee and Gifford Pinchot National Forests in the state of Washington. The three U.S. Forest Service, two U.S. Fish and Wildlife Service, and two Washington State Department of Fish and Wildlife employees planted lynx fur on rubbing posts. The posts were installed to identify existence of the creatures in the two national forests as part of a lynx habitat study started in 1999. DNA testing of two of the samples matched that of a lynx living inside an animal preserve. The third DNA sample matched that of an escaped pet lynx being held in a federal office until its owner retrieved it.[21]

Had the fraud gone undetected it would have closed roads to vehicles. They would have banned off-road vehicles, snowmobiles, skis and snowshoes, along with livestock grazing and tree thinning. Representatives Richard Pombo (R-California) and John Peterson (R-Pennsylvania), the chair communications chairman, respectively, of the House Western Caucus, were especially critical of the incident in a jointly released statement:

> As Americans, we should have been astounded by the recent findings that federal officials intentionally planted hair from the threatened Canadian lynx in our national forests in order to impose sweeping land regulations. But in truth, many of us who come from rural America have grown accustomed to environmental activism prevailing over the rule of law and over the best interests of families and communities.[22]

The guilty employees claimed they were not really trying to manipulate or expand the lynx habitat, but instead were merely testing the lab's ability to identify the cat species through DNA analysis. They did not come forward, however, until *after* a fellow Forest Service colleague had

exposed them. “That would be like bank robbers taking money from a bank and saying they were just testing the security of a bank, they weren't really stealing the money,” said Rob Gordon, executive director of the National Wilderness Institute.[23] Nonetheless, the story given by the seven guilty biologists prevailed, and the guilty parties received no discipline—thereby encouraging more fraud in the future.[24] Representatives Pombo and Peterson were aghast: “This lackadaisical approach to willful, unethical conduct is unacceptable, and we see no credible alternative other than to terminate the parties if there is convincing evidence that they knowingly and willingly planted unauthorized samples.”[25]

Retired Fish and Wildlife Service biologist James M. Beers called the false sampling amazing but not very surprising. “I'm convinced that there is a lot of that going on for so-called higher purposes,”[26] he said. The higher purpose to which Beers referred is known as “conservation biology.” Untested, conservation biology rests on the unproven pantheistic assumption that nature knows best and that all human use and activity should follow natural patterns within relatively homogenous soil-vegetation-hydrology landscapes called ecosystems.[27] Such belief holds that the government should not permit unnatural human development like roads, and activities snowmobiling, livestock grazing and harvesting. Furthermore, ecosystems cross unnatural property lines. Since conservation biology ostensibly calls for holistic management of entire ecosystems to protect its perceived fragile web of life, the rights of nature must be superior to the rights of people, including their property rights.

The religious zealousness driving the ESA has gotten so bad that David Stirling, Vice-president of the Pacific Legal Foundation, a conservative legal foundation taking cases that have Constitutional merit, notes:

> For three decades, environmental purists have actively promoted the pantheistic notion that plant and animal life rank higher on the species hierarchy than people. Their "return-to-the-wild" agenda argues that human life activities are the enemy of plant and animal species, and only through their efforts to halt growth and shut down people’s normal and necessary life endeavors will Mother Earth smile again. From as far away as the paved-over streams and erstwhile species habitat of Manhattan, a recent New York Times editorial called for farmers in the Klamath Basin to turn their land back to nature.[28]

David Graber, Research Biologist with the National Park Service, graphically expresses this radical view:

> Human happiness, and certainly human fecundity, are not as important as a wild and healthy planet. I know social scientists who remind me that people are part of nature, but that isn’t true. Somewhere along the line — at about a million years ago, maybe half of that—we quit the contract and became a cancer. We have become a plague upon ourselves and upon the Earth…. Until such time as Homo Sapiens should decide to rejoin nature, some of us can only hope for the right virus to come along.[29]

Conservation biology is little more than earth worship, seasoned with a little science.[30] Although more religion than science, conservation biology now dominates the scientific basis and thinking of our federal agencies. Further, our federal land management and environmental agencies are now riddled with employees holding these conservation degrees. It doesn’t take a

rocket scientist to realize that those government bureaucrats holding such extremist views are quite hostile to all people using either private or government lands for any purpose.

This contempt of humanity was brazenly declared in a 1994 United States Bureau of Land Management internal working document on Ecosystem Management: “All ecosystem management activities should consider human beings as a biological resource...”[31] Americans are no longer considered the employees of our federal agencies, they are merely biological resources to be managed along with endangered species. Worse, these “biological resources” are forced to pay enlightened bureaucrats to tell them what they can and cannot do on their own land.

This is why federal bureaucrats in these agencies can arbitrarily destroy the lives of thousands of people and still sleep at night. They have been taught to believe they, as retired USFWS biologist James Beers said, are serving a “higher purpose” in saving nature at all costs, even to the point people suffer horribly. After all, people are merely biological resources for those who are wise to manage.

Origins and Problems of the Endangered Species Act

The Endangered Species Act of 1973, is the quintessence of all anti-human, anti-property rights laws. It derives its authority and power from five principle international treaties administered by the UN, the most prominent being the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. Section 2, paragraph (4) of the Endangered Species Act of 1973 states; "the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to:

A. migratory bird treaties with Canada and Mexico;
B. the Migratory and Endangered Bird Treaty with Japan;
C. the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Western Convention);
D. the International Convention for the Northwest Atlantic Fisheries;
E. the International Convention for the High Seas Fisheries of the North Pacific Ocean;
F. the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
G. other international agreements

The ESA even extols the fact that it cedes sovereignty to the international community by saying its purpose is to "develop and maintain conservation programs which meet national and international standards." In turn, these programs are "key to meeting the Nation's international commitments."[32] In a very real way, U.S. citizens are going to prison, paying thousands of dollars in fines and, in some cases, losing their life savings because of international treaties that are not in the best interests of the American people.

The Western Convention and the ESA

Even if they do not know of the existence of the Western Convention, most Americans who live in rural America will recognize with alarm some of the key language of the treaty because they have witnessed its application in their area through the ESA. The Western Convention *requires* the United States to pass “suitable laws and regulations for the protection and

preservation of flora and fauna within their national boundaries but not included in the national parks, national reserves, nature monuments, or strict wilderness reserves."[33] Consequently, the treaty requires the U.S. to protect endangered species over all private as well as public land.

The goal of Western Convention is to: "protect and preserve in their *natural habitat* representatives of all species and genera of their native flora and fauna...in *sufficient numbers and over areas extensive enough* to assure them from becoming extinct through any agency within man's control...." (Italics added) Section 4 of the ESA, designed to meet this requirement, states: "Secretary [of Interior]," upon determining "that a species is an endangered species or a threatened species, to the maximum extent prudent and determinable shall...designate any habitat of such species which is then considered to be critical habitat."[34] Both the treaty and the ESA require that the appropriate natural habitat be identified and protected for the species — regardless of who owns the land.

Section 4 also defines the requirements of "whether any species is an endangered species or a threatened species" by any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;
(B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation;
(D) the inadequacy of existing regulatory mechanisms;
(E) other natural or manmade factors affecting its continued existence.

These rather nebulous criteria for listing are only limited by Section 4(b)(1)(A), which calls for the Secretary's decision to be made "solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species." Of course, the USFWS uses conservation biology to justify their need to list the species and eventually to establish a recovery plan. Land use restrictions on private property are the inevitable result. And, according to Section 4(b)(3)(A) of the Endangered Species Act and Title 5, Section 553e of the U.S. Code, any person can petition for a listing and the Secretary of Interior has to respond within "90 days after receiving the petition."[35] If the Secretary of Interior fails to respond within that time, the citizen can file a lawsuit charging the Secretary with non-compliance of a federal law.

The ESA is the perfect tool for environmental groups to stop the use of any private land that they want by simply finding a species that is declining or is relatively rare, and petition the Secretary of the Interior. The petition costs the environmentalist or environmental group almost nothing. The private landowner and USFWS, on the other hand, have to spend hundreds of thousands, if not millions of dollars proving the species is not endangered. This is often impossible because the species may truly be in decline for reasons totally unrelated to the use of the private land, but the Klamath River example, the USFWS will nonetheless impose a recovery plan to affect it.

Many citizens have experienced the ESA horror as it has dramatically restricted or even stripped them personally of their right to use their own land, without a dime of compensation. Under Section 4 of the ESA, the federal government can condemn private property to create the needed habitat, or *possibly* could be needed at some future date,[36] by an endangered fly, sucker fish or beetle, as well as more glamorous species like the bald eagle.

According to Article VIII of the Western Convention, all endangered species "shall be protected as completely as possible, and their hunting, killing, capturing, or *taking*, shall be allowed only with the permission of the appropriate government authorities in the country." (Italics added) Not surprisingly, the concept of full protection and *taking*s is also found in Section 9 the ESA where it is unlawful to "*take* any" endangered "species within the United States or the territorial sea of States," or "*take* any such species upon the high seas." Since this includes the species' habitat, the rights of the landowner are usurped by the endangered species.

Some Examples

There are thousands of examples that illustrate the extent to which the USFWS will go to stop any land use they deem as a taking within the ESA. Consider:

- "In 1979, Barbara and Dick Mossman mortgaged their farm to buy a new International log truck to start their own logging business in the Pacific Northwest. In June 1990, the United States Fish and Wildlife Service (USFWS) declared the Northern Spotted Owl an endangered species. Since the owl was found virtually anywhere there was logging, nearly all forests were declared part of the recovery area and the timber industry collapsed. The Mossmans' business was no exception. By October of 1991, less than 18 months after the USFWS ruling, the Mossmans went out of business.

  "Because they were self-employed, they could not apply for unemployment benefits. As a result, the Mossmans had to sell their boat, trailer, welder, tools and motorcycles to get the cash they needed just to make ends meet. That was not enough, though. In the spring of 1992, they received a foreclosure notice on their farm. The electricity was turned off, leaving the couple without heat, lights and water. The Mossmans were unable to respond to collection notices and deputies began knocking on the door with lawsuits in hand. However, Barbara says the most degrading thing of all 'was being forced to walk into a public assistance agency, after 13 years as independent truckers, and ask for a voucher for food, because we were hungry.'"[37]
- "Taung Ming-Lin, a Chinese immigrant, bought land in Kern County, California...to grow Chinese vegetables for sale to the southern California's Asian Community. Lin [Taung] claims to have been told by the county the land was already zoned for farming and that no permit was needed. When Lin [Taung] began farming, his tractor allegedly disturbed the habitat of the endangered Tipton Kangaroo rat...[and] ran over some of the rats. Lin was charged with federal civil and criminal violations of the Endangered Species Act.... The criminal charges carry penalties of up to a year in jail and $100,000 fine."[38] Taung was later released, but not after suffering the jack-boot of federal bureaucrats.
- "In 1973 Margaret Rector bought 15 acres of land on a busy highway west of Austin, Texas. In 1990 the golden-checkered warbler was listed as endangered, and the United States Fish and Wildlife Service says her property is suitable habitat. The land, in the fastest-growing part of the county, is now unusable. Its assessed value falls from $831,000 in 1991 to $30,000 in 1992. USFWS says she might be able to get a permit to develop, but this would require her to finance extensive studies and to mitigate any impact on the warbler."[39]
- "North Carolina farmer Richard Mann thought he was shooting a large dog that was threatening his cattle. But when he came back the next day to bury the animal, he was

confronted by federal wildlife officials who charged him with killing a red wolf - a federally-protected species. Mann was fined $2,000 and required to perform community service by building "wolf houses" and feeding the wolves. Afterwards, he filed suit against the U.S. Fish and Wildlife Service (FWS) claiming that the federal government had no constitutional authority to prevent residents from protecting themselves and their property.

"The red wolf, which is not even native to the state, was introduced by the FWS to the area in 1984 as part of an experiment to see how well the animals adapt to the environment. There is considerable scientific debate about whether the red wolf is a distinct "species" that merits special protection. In fact, many wildlife experts believe that it is a cross between a gray wolf and a coyote. Whatever the red wolf is, federal officials assured farmers [prior to listing] that the wolves would stay in the boundaries of the wildlife refuge and if by some chance the wolves would wander, the government would retrieve them. But just in case, the North Carolina legislature passed a law specifically allowing residents to kill the red wolves if they believed the animals posed a threat to their lives or livestock. Mann claims the state law allowed him to shoot the animal. But "federal lawyers argue that FWS regulations protecting red wolves take precedence over the state's legislation protecting landowners."[40]

- "[T]he Central Valley of California, Kern County produces huge crops of vegetables, nuts, fruit, and cotton with water that is brought southward from Sacramento-San Joaquin Delta through a series of natural and man-made structures known as the California Water Project. This multi-billion-dollar water project is financed by assessments upon all of those who use the water; in turn, state law allocates the right to receive and use specified quantities of water to farmers, …cities, and industrial users. These water rights are recognized as a property right under California State law.

  "Beginning in 1992, the federal government started limiting the amounts of water which could be sent south to Kern County and other parts of California to maintain in-stream flows to protect the habitat of two endangered fish — the delta smelt and the winter run of Chinook salmon. As much as two million acre-feet of water — enough to cover two million acres to a depth of one foot — have been held back annually from municipal and agricultural use in order to maintain certain levels in streams and lakes which constitute the habitat of these fish. Farmers and ranchers have suffered many millions of dollars in lost crops and, in some instances, have lost their property as it has become unproductive."[41]

  "The farmers took the case to U.S. Court of Federal Claims and the court ruled in favor of the farmers on April 30, 2001. 'The federal government is certainly free to preserve the fish,' the court said. 'It must simply pay for the water it takes to do so.'[42] Attorney Peter Fraley said, 'The court found these actions are more than a regulation of a water right, they are an actual physical taking of a property right, and they have to pay you for it.'"[43]
- In Southern California an endangered fly in Riverside County held up the building of a hospital.... It's a flower-loving desert sand fly, a bit larger than a common housefly, but it was an endangered fly, and they found eight of them. The cost to set aside this habitat for the fly: about $400,000 per fly."[44]
- "In August 1997, U.S. District Judge Michael Hogan issued a moratorium on logging on 94 acres of privately held land near Eugene, Oregon. The two spotted owls actually make their nest about one mile away from the privately held parcel of land that is managed by the federal government. But because the land *may* be part of the owls' 'home range,' the judge

determined that logging should be stopped...without knowing if the owls in fact even used it."[45] (Italics added)

- The USFWS "threatened to fine a Utah man $15,000 for farming his land and allegedly posing a risk to the prairie dog, a protected species.... [T]he USFWS told the man that he should hire an outside expert to determine if there are prairie dogs on his land. The expert prepared a report, which indicated that there were no prairie dogs. The farmer proceeded to work his land. However, the USFWS has told him that they will fine him anyway."[46]

The Usurpation of the US Constitution

The UN-administered Western Convention and its ESA progeny have provided the hammer for denying landowners their property rights in the U.S. by trumping the Fifth Amendment of the U.S. Constitution:

> ....No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be *taken* for public use, without just compensation. (Italics added)

David Stirling, Vice President of Pacific Legal Foundation, notes that, "Because the ESA makes no mention of 'people,' the plants' and animals' protected status is always assured, while the resulting harm done to people is always ignored."[47] Until recently, the U.S. District Courts have ruled against the rights of the landowner to receive just compensation under the Fifth Amendment. This has led to some disastrous consequences, such as happened to the Klamath Basin farmers in 2001 and many of the people in the examples above.

According to the U.S. Constitution, Congress has no power to legislate anything other than the eighteen enumerated powers granted in Article One Section Eight. None of those eighteen powers allow Congress to pass environmental law, except number 18, which is further defined in Article VI, Clause 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

As it was originally written, the Constitution was the supreme law of the land. The laws of the United States had to be "in pursuance thereof," or subservient to the Constitution. Likewise, treaties could only be made "under the Authority of the United States." Since the authority of the United States comes from the sovereign people who delegated it to the U.S. Constitution, treaties also had to be subservient to it.

Although the founders thought it obvious and therefore did not include it in the original U.S. Constitution, the sovereignty of the people was eventually spelled out in the first ten amendments to the Constitution. For instance, Amendment IX states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In other words, neither the Congress, nor the executive, nor the judicial branches of the

federal government had *any* powers other than those clearly spelled out in the U.S. Constitution. Those that were in doubt or not spelled out belonged to the people. Just to make sure future courts understood this, Amendment X states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are *reserved to the States respectively, or to the people*.” (Italics added) It was the people's ironclad contract that they would never become serfs to the federal government.

The Constitution began to be reinterpreted in the case Missouri vs. Holland 252 U.S. 416, 40 S. Ct. 3822, 64 L.Ed 641 (1920). In that decision the U.S. Supreme Court held the federal government may preempt state control over wildlife under federal legislation implementing the Migratory Bird Treaty. By putting liberal and corrupt judges into lower courts and the Supreme Court, Article 6.2 of the Constitution was gradually reinterpreted to mean:

> ...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...

By redefining Article 6 of the U.S. Constitution, environmentalists merely have to promote international treaties that, in total, subvert the Constitution in a way that puts all power into the hands of federal bureaucrats who work in concert with environmentalists. As a consequence, Americans are systematically coming under the control of international law and the United Nations where flies and suckerfish have more legal rights than people.

Section 3(18) of the ESA defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Nowhere does this include taking private property. For decades, however, federal agencies arbitrarily extended the definition to take private property to protect the species habitat. The U.S. Supreme Court legitimized this convoluted interpretation on June 29, 1995 in Babbitt v. Sweet Home Chapter of Communities for a Great Oregon. Section IX of the ESA provides the legal basis for the FWS to implement a recovery plan to protect an endangered species from "harm." The Court ruled that "harm" to a species included the modification of suitable habitat for a species.[48] The Supreme Court also upheld the Interior Department's regulatory right to "take" private property in instances in which a landowner makes "significant habitat modification or degradation."[49] By doing so, the ruling allowed the government to take private land for an endangered species without paying for it.

The Sweet Home decision was devastating to the entire concept of property rights. Justice Scalia, Chief Justice Rehnquist, and Justice Thomas dissented. Scalia wrote:

> I think it unmistakably clear that the legislation at issue here (1) forbade the hunting and killing of endangered animals, and (2) provided federal lands and federal funds for the acquisition of private lands, to preserve the habitat of endangered animals. The Court's holding that the hunting and killing prohibition incidentally preserves habitat on private lands imposes unfairness to the point of financial ruin – not just upon the rich, but upon the simplest farmer who finds his land conscripted to national zoological use. I respectfully dissent.

Scalia, Rehnquist and Thomas were correct. The ESA has imposed “unfairness to the point of financial ruin - not just upon the rich, but upon the simplest farmer who finds his land

conscripted to national zoological use." Writing for the Heritage Foundation, Alexander Annett notes that: "Because of the Supreme Court ruling, the ESA empowers the federal government to regulate any land that is thought to provide "suitable habitat" for an endangered species — without proof of death or injury to an identifiable animal that was caused by the landowners."[50] The real tragedy of the ESA is that it harms people through a law that depends on bad science at best, and at worst, no science at all.

The Failure of the ESA

The purpose of the ESA is to prevent species from becoming extinct and then to help them recover to the point where they no longer need protection. During the first 25 years of the ESA only 27 species have been de-listed. As reported by the Heritage Foundation:

> According to the National Wilderness Institute, the reasons for delisting these species had little to do with the ESA's efforts to recover them:

- 7 species were delisted because they are extinct – the Tecupa pupfish, the longjaw cisco, the blue pike, the Santa Barbara song sparrow, Sampson's pearly mussel, the Amistad gambusia, and the dusky seaside sparrow;

- 16 species were delisted due to data errors – the Mexican duck, the Pine Barrens tree frog, the Indian flap-shelled turtle, the Bahama swallowtail butterfly, the purple-spined hedgehog cactus, the Tumamoc globeberry, the spineless hedgehog cactus, the Mckittrick pennyroyal, the cuneate bidens, the Eastern brown pelican, the Palau fantail, the Palau dove, the Palau owl, the American alligator, the Rydberg milk-vetch, and the gray whale; …and

- The Eastern gray kangaroo, the Red kangaroo, and the Western gray kangaroo were delisted as a "response to Australian policies."[51]

Environmental International editor Alan Moghissi of observes in summarizing the National Wilderness Institute report:

> a disheartening part of the [NWI report] is their conclusive evidence that the deletion of essentially every species from the endangered species list was not caused by implementation of the ESA.... [It provides] a picture in which the USFWS [U.S. Fish and Wildlife Service] lists a species and either removes it or reduces its severity of endangerment, solely because afterwards it finds that it made an error.[52]

It gets worse. The politicalization of the Endangered Species Act reached its zenith on May 5, 1998 when Interior Secretary Bruce Babbitt announced that he would recommend delisting thirty-three endangered or threatened species on the endangered species list. He touted this action as proof that the ESA is working. But his claim subsequently was disputed, most notably by the director of his own department's Fish and Wildlife Service. Of the species Babbitt planned to de-list, several were already extinct or were taxonomically invalid. Many other species never were

actually endangered; they had been undercounted or the threat to them had been overestimated. Some others on Babbitt's list had actually improved but did so primarily because of events unrelated to the Endangered Species Act such as the Clean Water Act or management by state agencies or private conservation efforts:

Common Name	**Reason**
Guam broadbill	Extinct
Oahu tree snail	Extinct
Oahu tree snail	Extinct
Oahu tree snail	Extinct
Mariana mallard	Extinct
Truckee barberry	Taxonomic Error
Virginia roundleaf birch	Taxonomic Error
Lloyde's hedgehog cactus	Taxonomic Error
Ewa Palains 'akoko	Taxonomic Error
Dismal swamp southeastern shrew	Data Error
Virginia northern flying squirrel	Data Error
running buffalo clover	Data Error
Tinian monarch	Data Error
Hawiaian hawk	Data Error
Island night lizard	Data Error
Hoover's wooley star	Data Error
Missouri bladderpod	Data Error
tidewater goby	Data Error & Non - ESA Factors
Aleutin Canada goose	Data Error & non - ESA Management
bald eagle	Non - ESA Factors
peregrine falcon	Non - ESA Factors
Columbian white-tail deer	Non - ESA Management
brown pelican	Non - ESA Factors
Eureka Valley evening primrose	Pre-ESA /Management
Eureka Valley dune grass	Pre-ESA /Management
Columbia white tail deer	Pre-ESA, Est. Refuge & Hunting Restriction
Robbin's cinquefoil	Non-ESA Management Activities
Loch lomond coyote thistle	Non-ESA Management Activities
Heliotrope milk vetch	Non-ESA Management Activities
parhump poolfish	Non-ESA Management Activities
heliotrpoe milkvetch	Non-ESA Management Activities
spring-loving centaury	Established Refuge
Ash Meadows sunray	Established Refuge
Ash Meadows gumplant	Established Refuge
Ash Meadows amargosa pupfish	Established Refuge
gray wolf	Hunting Restriction[53]

Notice that five of these de-listed species were *extinct*. Yet, Babbitt included these in with those that showed how the ESA supposedly worked! *Fourteen* of the rest were removed from the list because of taxonomic or data errors! The remaining species were removed because of factors outside of ESA requirements! Three months after Secretary Babbitt announced plans to remove

these thirty-three species from the endangered species list, the director of the Department of the Interior's Fish and Wildlife Service, Jamie Clark, wrote to Representative Richard Pombo (R-CA), chairman of the Endangered Species Task Force, that she was "personally embarrassed by this unfortunate error." She noted that Secretary Babbitt's list of successful recoveries "included species which we believe to be extinct and those for which we have new scientific information concerning their taxonomy or abundance."[54]

Arbitrary and Capricious

One of the surest signs of whether a law has been created or corrupted for a specific special-interest purpose is whether it is administered fairly for *all* people. Although it has seriously harmed tens of thousands of rural Americans, rarely is the ESA applied within the city limits of large cities in the U.S. — especially not in our nation's capital where its pain would be inflicted on the lawmakers themselves. That is changing, however, but not by environmentalists who have been responsible for almost all the listings under the ESA to date.

The National Wilderness Institute[55] filed a lawsuit against federal regulatory agencies in early 2002, charging that the expansion of the new Woodrow Wilson Bridge over the Potomac River and the permitting of discharges into the Potomac violated the ESA. The federally owned bridge is a main commuter gateway from Maryland into the Capital. When the expansion is completed it would ease the gnarled traffic into and out of the city. Because of its undeniably critical need, the U.S.F.WS, which usually delights in using the ESA as a club to stop any kind of development in rural America, quickly waved through the project even though its construction could imperil several endangered species, including the bald eagle.[56]

Of the studies done by federal agencies that claimed that there would be no harm, Rep. George Radanovich of California said, "…the reports are less a search for the truth than an attempt to circumvent the protection of the Endangered Species Act."[57] "We in the West have seen project after project stopped in its tracks over the very statutes that are at issue in this case," Rep. Radanovich said.[58] "Rural and Western communities have long noticed that laws such as the Endangered Species Act have been zealously enforced against them, often with devastating effects on their communities, while the act never seems to be applied in the urban East."[59]

The lawsuit by the National Wilderness Institute was long overdue. "It seems that Washington politicians and commuters are shocked — shocked — that an ESA lawsuit is being used so blatantly to halt human activity" notes the *Wall Street Journal*. "…environmental groups have hijacked the act, turning it into a bludgeon by which they can enforce their vision of a development-free America. Its rural parts of the country, where small landowners lack deep pockets and political clout, that bear the brunt," continues the *Journal.* But now it is at the doorstep and inconveniencing the very political body that created this anti-human law. Shortly after the NWI sued, then-Virginia Attorney General Mark Earley said that it was "disturbing to anyone who has ever had to sit in a traffic jam on the old bridge." [60] He makes an excellent point. The same point that Western and rural landowners have been making for decades.

Economics

The cost of implementing the ESA is very difficult to calculate. For instance, in addition to the public resources that go to its efforts to protect endangered species, there are other costs associated with foregone opportunities from restrictions on the use of the property. The Heritage Foundation cites data that in 1995 the U.S. General Accounting Office reported on fifty-seven approved recovery plans. The total estimated cost to implement thirty-four of the plans was

about $700 million, and the estimate for the initial three years of recovery for twenty-three plans was $350 million.[61] These amounts, however,

> do not include the millions of dollars that would be lost from restricted or altered development projects; in agriculture production, timber harvesting, mining extraction, and recreation activities; the lost wages of displaced workers who went unemployed or became re-employed at lower wages; or the lower consumer surplus resulting from higher prices and lower capital asset value.[62]

The Heritage Foundation notes, "The government estimates that recovering all currently known endangered species would cost more than $4.6 billion."[63] Again, however, the National Center for Policy Analysis asserts this estimate is misleading because it includes solely recovery costs. It does "not include the $2.26 spent on consulting with scientists and stakeholders for every $1.00 spent on recovery; or the lost jobs, foregone wages, and social costs of the recovery effort."[64] Just how much are these intangible regulatory costs? No one knows. They are huge, however.

Regardless, the ESA's economic costs beg the issue. Under the ESA as it currently stands, the government is entitled to take control of all or part of a landowner's property without regard to the financial burden placed on the landowner if the government believes the property is needed to protect an endangered species. Consequently, regulators can set aside large amounts of land *at no cost to their agency or to the urban taxpayer*. This formula inevitably will lead them to take control of private property even when its contribution to efforts to save an endangered species is low and the cost to the landowner is high.[65] Hence, the government's power is absolute, destroying the Locke model of protecting property rights and enforcing the Rousseau model of socialism where the state has absolute authority to enforce the "general will" upon hapless property owners.

The top-down bludgeon approach of the ESA sends exactly the wrong message to land-owners. If they want to protect their land and their family investment, they dare not allow an endangered species on their land — or their neighbor's land. To do so invites the federal government to condemn their land for the benefit of the endangered species. If their life savings is invested in the land they stand to lose *everything*. This has led to what is called the three S's: "shoot, shovel and shut-up — destroying and disposing of an endangered species before it can be found by federal bureaucrats or environmentalists. Consequently, the ESA has every incentive to fail. And, as noted above, it has failed miserably. Not a single species that has been taken off the endangered or threatened species list is the result of government efforts of the ESA. Not one.

The only solution to this nightmare called the ESA is to give just compensation to landowners when the value of the land is lessened because of habitat recovery plans. After all, a species becomes endangered because of previous development or activities by human society as a whole. Why should the landowners of the last remaining habitat shoulder the entire costs created by all citizens? It is neither fair nor just. The federal government must be compelled by law to pay just compensation as required by the Fifth Amendment. Paying for the huge costs of implementing the law would expose the real cost to the taxpayers footing the bill, forcing the USFWS and other agencies to prioritize what species must receive protection to allow for their recovery, while putting less emphasis on those species that are not in real jeopardy.

Just imagine! The solution to finding the balance between protecting species and the landowners of America is in following the intent of the U.S. Constitution!

Notes and Citations

[1]Judge Ann Atkins decision, http://www.klamathbasincrisis.org/injunctiondenied.htm

[2]See actual deed http://www.klamathbasincrisis.org/articles/Archives/archive1/injunctiondenied.htm

[3]Michael Kelly. "This Land Is Your land—or Is It My Land?" *MSNBC*, July 11, 2001.

[4]M. David Stirling. "Endangered Species Act Fails the Test," Pacific Legal Foundation. (No date)

[5]David A. Vogel, Fisheries Biologist. Testimony before the House Committee on Resources Oversight Field Hearing on: Water Management and Endangered Species Issues in the Klamath Basin, June 16, 2001 http://www.klamathbasincrisis.org/testimony_vogel.htm

[6]Dr. Alex Horne, *et. al. Protecting the Beneficial Uses of Waters of Upper Klamath Lake: A Plan to Accelerate Recovery of the Lost River and ShortnoseSuckers*. March 2001.

[7]Vogel, p. 3

[8]Ibid, p. 3

[9]Ibid, p. 4

[10]National Academy of Sciences. *Scientific Evaluation of Biological Opinions on Endangered and Threatened in the Klamath River Basin: Interim Report (2002)*. pp 21. http://books.nap.edu/books/0309083249/html/4.html

[11]Ibid.

[12]Michael Kelly. "This Land Is Your land—or Is It My Land?" *MSNBC*, July 11, 2001.

[13]William Jasper. "High and Dry in the Klamath Basin." *The New American*, September 10, 2001, 17(19): Also, http://www.thenewamerican.com/ tna/2001/09_10_2001/vo17no19_klamath.htm

[14]Reed Noss, "The Wildlands Project," *Wild Earth,* 1992, p. 10. http://www.twp.org

[15]Henry Lamb. "How the Biodiversity Treaty Was Stopped," *Sovereignty International*, 1998. http://www.sovereignty.net/p/land/biotreatystop.htm

[16]Rob Gordon. Testimony before the U.S. House of Representatives, Full Resources Committee, on H.R. 2829 and H.R. 3705 Washington, D.C., March 20, 2002. http://www.nwi.org/Testimony/testMar02.html

[17]Ibid.

[18]Summary of Listed Species as of August 31, 2002. Threatened and Endangered Species System, U.S. Fish and Wildlife Service. August, 31, 2002. http://ecos.fws.gov/tess/html/boxscore.html

[19]Rob Gordon. Testimony before the U.S. House of Representatives. http://www.nwi.org/Testimony/testMar02.html

[20]Ibid.

[21]Audrey Hudson. "Rare Lynx Hairs Found in Forest Exposed as Hoax." *Washington Times*, December 17, 2001. http://www.nwi.org/EndangeredSpecies/TWT17Dec01.html

[22]James Taylor. "Gov't Researchers Caught Planting False ESA Evidence," *Heartland Institute*, March 2002. http://www.heartland.org/environment/mar02/false.htm

[23]Audrey Hudson. "Rare Lynx Hairs Found in Forests Exposed as Hoax." *Washington Times*. December 17, 2001.

[24]Ibid.

[25]James Taylor, "Gov't Researchers Caught Planting False ESA Evidence."

[26]Ibid.

[27]Michael Coffman. *Saviors of the Earth, The Politics and Religion of the Environmental Movement* (Chicago: Northfield Publishing, a subsidiary of Moody Publishing, 1994), p. 135.

[28]M. David Stirling. "Endangered Species Act Fails the Test," Pacific Legal Foundation. (No date) http://www.pacificlegal.org/view_SearchDetail.asp?tid=Commentary&sField=CommentaryID&iID=33

[29]Robert Bidinotto, "Environmentalism: Freedom's Foe for the '90s," *The Freeman*, November 1990, 414.

[30]Henry Lamb. “Burn, Baby, Burn!” *WorldNetDaily*, June 22, 2002. http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=28059

[31]BLM Internal Working Document, Prepared for BLM Summit on Ecosystem Management March 30, 1994.

[32]Endangered Species Act of 1973, Section 2:(5) http://endangered.fws.gov/esa.html#Lnk02

[33]The Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere. http://sedac.ciesin.org/entri/texts/wildlife.western.hemisphere.1940.html

[34]Endangered Species Act of 1973, Section 4(b)(2) http://endangered.fws.gov/esa.html#Lnk04

[35]Endangered Species Act of 1973, Section 4(b)(3)(A) of the Endangered Species Act http://endangered.fws.gov/esa.html#Lnk04 and Title 5, Section 553e of the U.S. Code http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=5&sec=553.

[36]Endangered Species Act of 1973, Section 4(b)(2). http://endangered.fws.gov/esa.html#Lnk04

[37]John K. Carlisle, “1998 National Directory of National Environmental and Regulatory Victims,” National Center for Public Policy Research, Washington, D.C., p. 15. http://www.nationalcenter.org/VictimDirectory98.html#B

[38]Ibid, p. 16. http://www.nationalcenter.org/VictimDirectory98.html#B

[39]Ibid.

[40]John K. Carlisle, 2000 National Directory of Environmental and Regulatory Victims,” National Center for Public Policy Research, Washington, D.C., http://www.nationalcenter.org/VictimDirectory00.html#B

[41]Nancie G. Marzulla and Roger J. Marzulla, *Property Rights: Understanding Government Takings and Environmental Regulation* (Rockville, MD: The Government Institute, 1997), p. 87.

[42]Lynda V. Mapes. “Court to feds: Pay farmers when water supply goes to fish,” *Seattle Times*. May 4, 2001. http://seattletimes.nwsource.com/html/nationworld/134291987_water04m.html

[43]Ibid.

[44]Representative Richard W. Pombo, "This Land Is Our Land," Heritage Foundation *Lecture* No. 598, July 29, 1997, p. 3. Taken from Alexander Annett, “Reforming the Endangered Species Act to Protect Species and Property Rights,” *Heritage Foundation*, Backgrounder #1234 November 13, 1998.

[45]Jon Carlisle, “1998 National Directory of National Environmental and Regulatory Victims,” National Center for Public Policy Research, Washington, D.C., p. 8. http://www.nationalcenter.org/VictimDirectory98.html#B

[46]Ibid, p. 15.

[47]M. David Stirling. “Endangered Species Act Fails the Test,” Pacific Legal Foundation. (No date) http://www.pacificlegal.org/view_SearchDetail.asp?tid=Commentary&sField=CommentaryID&iID=33

[48]Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 94-859, 115 S. Ct. 2407 (June 29, 1995). http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=515&invol=687

[49]Ibid.

[50]Alexander Annett, “Reforming the Endangered Species Act to Protect Species and Property Rights,” *Heritage Foundation*, Backgrounder #1234 November 13, 1998.

[51]Ibid.

[52]Ibid.

[53]Rob Gordon. Testimony before the U.S. House of Representatives. http://www.nwi.org/Testimony/testMar02.html

[54]Alexander Annett. “Reforming the Endangered Species Act to Protect Species and Property Rights.”

[55]The National Wilderness Institute is dedicated to bringing balance to the environmental debate. http://www.nwi.org/

[56]“Endangering the Beltway,” *Wall Street Journal*. January 10, 2002.

[57]Rep. George Randovich. “Wilson Bridge Watch,” *Washington Times*. February 6, 2002.

[58]Christine Hall. “Endangered Species Act Bites Washington, D.C. *CNS News*. February 6, 2002. http://www.cnsnews.com/Politics/Archive/200102/POL20010206c.html

[59]Rep. George Randovich, “Wilson Bridge Watch,” *Washington Times*. February 6, 2002.

[60]“Endangering the Beltway,” *Wall Street Journal.* January 10, 2002.

[61]U.S. General Accounting Office, "Correspondence to Representative Don Young on Estimated Recovery Cost of Endangered Species," B-270461, 1995b, as cited in Brown and Shogren, "Economics of the Endangered Species Act," p. 14. In: Alexander Annett. “Reforming the Endangered Species Act to Protect Species and Property Rights.” http://www.heritage.org/Research/EnergyandEnvironment/BG1234.cfm

[62]Alexander Annett. “Reforming the Endangered Species Act to Protect Species and Property Rights.” Heritage Foundation, *Backgrounder* #1234, November 13, 1998. Taken from: Brown and Shogren, "Economics of the Endangered Species Act," p. 13.

[63]Burnett and Allen, "The Endangered Species Act," p. 1. In: Alexander Annett. http://www.heritage.org/Research/EnergyandEnvironment/BG1234.cfm

[64]Ibid.

[65]Alexander Annett. “Reforming the Endangered Species Act to Protect Species and Property Rights.” http://www.heritage.org/Research/EnergyandEnvironment/BG1234.cfm