

small and for decades too poor for that not to be the case. Diminutive polities—and not so diminutive ones, too—are almost always in someone's sphere of interest. What Harold Bloom calls "the anxiety of influence" is not just in the ken of poets. The Palestinians will live either with the delusionary gratifications of ecstatic politics and the cruelties that attend them or they will live with the practical gratifications of quotidian politics and the compromises that attend them. Anyone who wishes the Palestinians the first, with all the turmoil with Israel

it implies, is not truly their friend. This leaves them the second option. But for that kind of politics to prevail, the sphere of influence with which they are associated cannot be that of Syria or Iraq. It would have to be Jordan—and Israel. Jordan, however, needs help to perform that function, help that only the United States can provide. That truly would be an American contribution to Middle East peace. But it may be the kind of contribution this administration hasn't the imagination to make. •

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## In defense of endangered species.

# THE FINAL ACT

By Stephen M. Meyer

**T**he Endangered Species Act—the poor, beleaguered Endangered Species Act—is facing congressional reauthorization later this year, and its future does not look particularly bright. Ranchers, loggers, home builders, members of the grossly misnamed "wise-use" movement and others are moving in, like a pack of wolves, to tear it to shreds. The act, they charge, is a misguided effort to save maladapted, obscure and useless creatures. It shaves percentage points off the gross national product, costs tens of thousands of jobs, tramples private property rights, wastes valuable public resources and clogs the courts with frivolous cases. The act's foes hope to restore "balance" to the legislation with a series of "people first" amendments.

Their criticisms and solutions are wrongheaded. Efforts to save America's endangered species have not hindered economic growth in any meaningful way. Nor have potential economic and social consequences been ignored. Indeed, just the opposite has happened. The act has been paralyzed by political and special interests. Certainly, there are reforms that will make the act function better, that will enable it to benefit both the economy and the environment. But the fact remains that the Endangered Species Act is our last, best hope to preserve our national biological heritage.

### I.

**B**efore we can have any meaningful discussion about how to improve the Endangered Species Act, we need first to sort through the criticisms that have been directed against it. For starters, the act's opponents, citing a handful of headline-grabbing cases, argue that it hurts the economy.

According to Ron Arnold and Alan Gottlieb in their 1993 book, *Trashing the Economy*, the Endangered Species Act is "probably the single most destructive economy trasher law on the books." They couldn't be more wrong. While listing an animal as endangered may reduce the short-term profitability of a construction project or a local industry, the effects are of neither sufficient size nor duration to harm state economic performance, let alone the national economy.

I recently completed a state-by-state study examining the relationship between endangered species listings and economic growth and development. The result? The states with the most endangered species listings were also the ones with the strongest economies. These results repeated themselves no matter how economic development was measured. They persisted after taking into account a variety of differences in state and regional characteristics (population density, land area, etc.). And they were consistent from 1973, when the act was passed, through 1992.

The reason that higher numbers of endangered species are linked with stronger economic performance is that wildlife habitats are being bulldozed by rapid development and quick-profit natural resource management. For instance, Alabama, which boomed, had seventy species listed. Louisiana, its less successful near-neighbor, had twenty-one listings. Of course the relationship is not perfect, but it is obvious that fast-growing state economies and explosive development are pushing American nature off the map (see graph page 27).

It follows, then, that there is no reason to believe that any significant number of jobs would be saved—let alone gained—by watering down protection for endan-

gered species. Oklahoma will not suddenly rocket out of recession because the specter of future endangered species listings is exorcised. California's aerospace industry will not suddenly get orders for fighter aircraft because critical habitat designations are denied. Amendments to make the Endangered Species Act more "economy friendly" do not address any real problem. As the graph points out, the act does little to thwart economic booms.

**W**hen the economic argument fails, foes of the Endangered Species Act claim that species loss is due to natural selection, not development or commerce. Rubbish. The frequency with which one encounters this baseless argument says more about the quality of science education in America's high schools and universities than anything else. Piping plovers are not "maladapted" just because they never developed the armor needed to survive being crushed by joy-riding dune buggy enthusiasts. The Houston toad is not a genetic misfit because it is unable to live with a shopping mall covering its native habitat.

The endangered species problem is fundamentally a problem of human/wildlife collisions. Human development consumes more than 200 acres every hour. About one-quarter of this loss is wetlands, where almost half of our endangered species live. As development extends into previously remote areas, other human activities follow and compound the problem even where development itself has spared critical habitats. (A critical habitat is the minimum amount of land required to halt a species' decline.)

Even in those instances where biological problems seem to be affecting the health of a species, the evidence suggests human responsibility. Consider the Florida panther. Whereas the species once covered the Southeast from South Carolina to Louisiana, perhaps just fifty animals remain in a small area of South Florida. There is good reason to believe that pollutants and pesticides with hormonelike effects may be partially responsible for fertility problems among the males. Severely limiting habitat poses two additional problems: weak traits are magnified through inbreeding; and the population is vulnerable to single catastrophes, such as Hurricane Andrew, which slammed into south Florida, killing panthers and decimating portions of their remaining habitat.

The act's critics also argue that it fails to take into account political and societal needs. Right. In theory, the act is supposed to ignore "nonbiological" factors. In reality, it has been thoroughly politicized.

What evidence is there for this? Look at how many times the act has actually been enforced. In 1992 the General Accounting Office reviewed the record of endangered species consultations by the Fish and Wildlife Service and the National Marine Fisheries Service between 1987 and 1991. Of the 18,211 consultations, only 11 percent (2,050) resulted in formal biological opinions. The remaining 89 percent were handled informally—that is, the projects proceeded on schedule

and without interference. Of the 2,050 formal opinions, 181—not even 10 percent—concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some modification in design and construction. Thus, more than 99 percent of the projects reviewed under the act eventually proceeded unhindered or with marginal additional time and economic costs.

Were the consultations without merit? Hardly. The fact that more than 200 species have been listed since 1990 and that 1,000 or more imperiled species await action drives the point home. Rather, the reason for the abundance of "nondecisions" and approvals is simple: political, economic and social considerations figure prominently at all stages of the endangered species decision-making process. A 1989 GAO report of the spotted owl listing, for example, concluded that "Fish and Wildlife Service management substantively changed the body of scientific evidence.... The revisions had the effect of changing the report from one that emphasized the dangers facing the owl to one that could more easily support denying the listing petition." Richard Tobin's *The Expendable Future* and a number of other academic studies offer further evidence of such heavy-handed tampering.

**I**ndeed, the very senators, representatives and governors who rail the loudest against the politicization of the act are among the most potent forces who routinely intervene on behalf of special interests. In 1976, for example, the Fish and Wildlife Service proposed establishing critical habitats for the grizzly bear in Montana, Idaho and Wyoming. The agency was forced to back down, however, when members of the Senate Appropriations Committee made it clear to Interior Department officials that with budget time approaching far more was endangered than the grizzly. Ten years later Senator Alan Simpson of Wyoming held up the 1985 reauthorization of the Endangered Species Act for three years to demonstrate his displeasure at government plans to reintroduce the wolf into Yellowstone National Park. In both cases the politicians were representing the interests of ranchers who feared that the reintroduction of large predators would threaten their herds.

The political appointees who populate the top echelons of government agencies exert their influence on the act, too. How else to explain the vast differences between Ronald Reagan's Interior Department and those that preceded and followed it—despite the fact that the bureaucracy remained largely the same? Before Reagan made James Watt interior secretary, the number of endangered species listings averaged about thirty a year but then plummeted to eight a year during his tenure. After Watt's departure the annual number of listings rebounded to forty-five.

Governmental infighting also politicizes the endangered species process. Federal agencies, such as the Forest Service, the Bureau of Land Management and the Army Corps of Engineers, as well as state agencies, have

missions and clients that invariably conflict with endangered species listings and critical habitat designations. The Forest Service sided with timber interests in opposing the listing of the northern spotted owl in 1989 and the Jemez Mountain salamander a year later. In fact, one of the reasons the spotted owl controversy dragged on for so long was that three government agencies—the Fish and Wildlife Service, the Forest Service and the Bureau of Land Management—were fighting bureaucratic turf battles.

All of these nonbiological pressures feed back directly into the process. In particular, the quantity and quality of biological data deemed sufficient to make a case for listing a species or designating a habitat becomes captive to the degree of political controversy likely to be generated. A recent GAO study that exam-

ined reasons for delays in six endangered species cases found that three of the four instances where questions about biological sufficiency were cited as the reason for delay also involved opposition from economic interests. While it makes sense that the level of scientific confidence should be greater in cases of serious economic or social impact, the actual consequence is a strong bias against listing a threatened animal or plant or designating a critical habitat in all but trivial cases. This occurs because concerned special interests can slap together the "estimated costs" in money and jobs that they claim will result from the listing, claims that are never subjected to rigorous substantiation. At the same time, the biological data to support a listing often take years to assemble. Since biological studies make their uncertainties explicit, they are easy targets for criticism. The result is either a decision not to take action or a delay that seals the fate of the creature in question.

The call for more balance in the endangered species process is right on the mark. But it is not the mark that the act's opponents are aiming at. The current imbalance weighs heavily against America's wildlife. Indeed, the very reason we have endangered species crises is that there is no effective advocacy for the environment until the final, desperate moment. Only when faced with eleventh-hour court orders and legal injunctions sought by environmental interests do the opponents of

endangered species protection call for balance.

Finally, ESA opponents claim that private property rights are sacrificed to the act at virtually every step. To hear them tell it, thousands of Americans are in danger of losing their homes and businesses to federal "takings" under the law. But as Interior Secretary Bruce Babbitt noted recently, a search of court records found that "in the twenty years of this act, when we've listed some 800 species, there has not been a single case alleging a taking under the Endangered Species Act."

Critics of the act add that it has been an invitation for groundless suits by anti-development forces trying to halt projects they oppose for personal or philosophical reasons. There certainly have been such cases, but they are very few in number. The fact is, much of the litigation over endangered species designations has been initiated and prolonged by opponents of listings, not environmentalists.

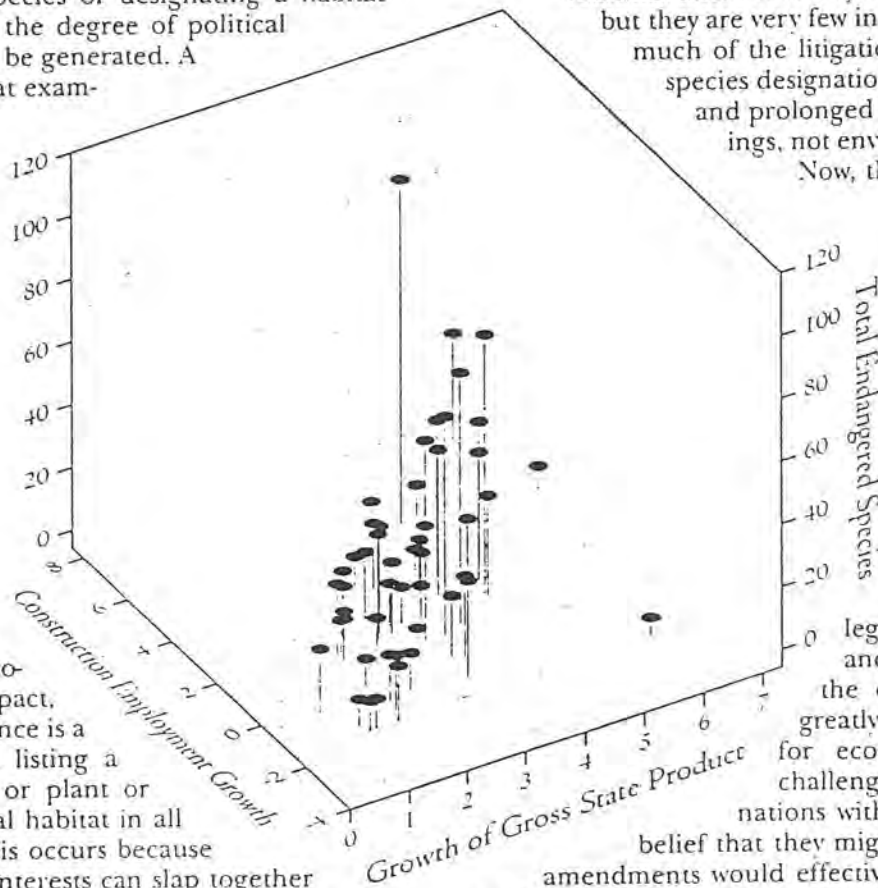
Now, the opponents of the act want it amended to warp the legal process in ways that will end serious enforcement of the law. On the one hand, they are pushing to remove the existing right of public interest groups and citizens to intervene

legally to force compliance with the law. On the other, they want to greatly expand the avenues for economic interests to challenge listings and designations with no more than the belief that they might be harmed. Such amendments would effectively destroy vigorous and balanced enforcement of the act.

## II.

So, what do we do? How do we improve wildlife protection while reducing the likelihood and intensity of clashes with economic interests?

All of the amendments offered by the act's opponents have the same goal: to delay federal intervention on behalf of an endangered species as long as possible, if not entirely. One proposed amendment calls for exhaustive economic impact analyses to be reviewed by the Bureau of Labor Statistics prior to a listing or habitat designation. Another proposal would mandate a virtually endless series of public hearings and reviews of the scientific information for a proposed listing (always





a breezy process, as anyone who has subjected his or her work to peer review can attest). The effect of these changes, of course, will be to turn every proposed listing, every habitat designation, into a political and social crisis. Legal challenges will multiply and the political, economic and environmental costs of endangered species protection will soar. The changes, in short, will have the perverse effect of proving the act's critics right: enforcement will be an even bigger mess.

Hope lies in the opposite direction. Early engagement. Babbitt and others are arguing that the best chance for avoiding collisions between endangered species protection and economic growth is to integrate ecological concerns into development or land management plans from the beginning. Right now, such considerations are at best after-thoughts. And the legal requirements to compel some form of ecological due diligence are limp, little more than checklists and forms. True, neither economic nor environmental interests are likely to gain as much as if they were free to have all their preferences, but this ain't the movies, and it is silly to pretend otherwise.

**W**hat do we need for early engagement to function? For starters—and this is the tough one—there has to be a collective realization: businesses have to understand that preserving wildlife and habitats is as important as economic growth; environmentalists have to know that economic growth is as important as protecting nature.

It's not as hard as one might think. In Massachusetts, where I serve as a conservation commissioner, I spend a lot of time with developers and landowners, walking their properties, pointing out the effects a project might have on the local habitat. More often than not, these people are completely unaware of the plants and animals on their land. And when they learn about the ecology, they are often willing to compromise, to alter development plans and even to voluntarily set aside areas for protection. In short, they are far more amenable to caring for the environment than the radical green rhetoric would have us believe.

Businesspeople—one hopes—are also not unaware of economics. It makes sense for them to understand a project's ecological implications before they spend big money on design, engineering and construction. It makes sense for them to know, too, how they can increase their returns by preserving the environment they've already built on. Toward this end, organizations such as the Maryland-based Wildlife Habitat Enhancement Council work with companies to promote habitat-enhancing projects that also help the corporate bottom line. Some solutions are absurdly simple—allowing regal lawns to return to a natural state, for instance, can save a firm tens of thousands of dollars annually on watering, fertilizer, mowing and seeding. Other solutions involve more elaborate restoration projects that yield longer-term payoffs.

What about the environmentalists? They have to recognize that they have an important stake in solid eco-

nomie growth. For one thing, people are more favorably inclined toward environmental protection when there is confidence in the economy and they are not afraid of losing their jobs. For another, some environmental goals can be furthered by intelligent development and land management practices—especially in heavily developed regions. Artificial wetlands, for example, are being built to contain and clean up storm water runoff from new developments. These artificial wetlands bring new and productive habitat to areas that lost native wetlands decades ago.

Cooperation can pay off. In Maine, the timber industry and conservationists are working together to try to understand the natural history of the pine marten, a weasel-like animal with a precarious future. Their joint effort now, while the marten population is still relatively healthy, may avoid a future conflict over drastic measures to save the species. (See, for example, the spotted owl controversy.)

**F**or a strategy of early engagement to work, we must also shift the scale of our thinking from protecting species to protecting landscape-sized habitats. Currently, the Fish and Wildlife Service will fix on a given animal or plant and then try to determine the critical habitat required to halt its decline. Focusing so much attention on the plight of a single "endangered species"—more often than not a plant or animal that no one knew existed—trivializes the importance of preserving the remnants of America's natural heritage and encourages ridiculous metaphysical calculations: owls versus loggers, moss versus highways.

This reductive approach also favors "politically correct" furry and feathered animals, or species that might serve an immediate human purpose. Did anyone think twice about the endangered Pacific yew before it was found to be a source of taxol, which may work against ovarian cancer? And what about nature's more menacing or less aesthetic creations? Don Henley is not likely to volunteer his services for a "Save the Timber Rattlers" benefit concert. In general, reptiles, amphibians, nongame fish, insects and lower plants have been shoved to the side in the endangered species debate, the victims of bad P.R. Consequently, the scant funds available for species recovery are spent on a tiny number of high-profile critters.

A more productive, flexible and ecologically sound approach would be to focus on landscape protection. After all, endangered species are really just a symptom of a much larger problem: irreplaceable habitat is being destroyed by pollution and development. Remember, more than 90 percent of the old-growth forest in the Pacific Northwest was destroyed before the spotted owl reared its head. Working at the landscape level, habitat and species protection can be examined on a larger scale and traded off among public and private lands. The burden of protecting a local wildlife resource could be spread out across a region rather than imposed on a single owner, with green corridors linking main habitat areas. Animals are generally reluctant to adhere to

property lines. Where especially important habitat exists on private lands, landscape level preservation may suggest sensible land swaps.

Which leads to another element, perhaps the linchpin, of an early engagement strategy: we need detailed information about the status and distribution of wildlife and habitat on public and private lands. How can we know what to save—and what can be traded off—unless we have a comprehensive inventory of North American flora and fauna?

Unfortunately, the mechanism to do this—the National Biological Survey—is grossly underfinanced. And it is being blocked by the very interests likely to benefit most from it: private property owners, who refuse to allow biological surveyors on their land. If the environmentalists are hyping their endangered species claims with false data, then the National Biological Survey will expose these distortions. But the property rights activists want to have it both ways. They fear that surveyors on their land might discover a new plant or creature that would hinder development. What they don't seem to realize is that if they have threatened species on their lands, the species will be discovered anyway.

**T**he primary advantage of the survey is this: information will be available well in advance of a development project. Projects can be planned with preservation in mind; crises can be avoided. In the mid-1980s, for example, Waste Management Inc. wanted to build a landfill near San Jose. The proposed site, however, was also the habitat of the threatened bay checkerspot butterfly. Working with local conservation groups in California and the Fish and Wildlife Service, the firm devised a conservation plan. As a result, it got its landfill with a minimum of effort and without the hassles of litigation. The time and money saved more than covered the costs of preserving the habitat. Not everyone chose as wisely as Waste Management. United Technologies Corp., a defense contractor, wanted to build on the butterfly's habitat, too, but it was unwilling to amend its plans. The result? It spent much more on legal fees in a futile attempt to block the listing than it would have spent to change its plans to accommodate the butterfly.

A strategy of early engagement also requires property owners to care for the habitats on their land. Unfortunately, even when industry and private property owners want to be good public citizens, there are many instances where land pricing, property tax policies and local land use regulations skew the economic calculus in ways that force a confrontation between sound business practices and sound ecological management.

For instance, it is substantially cheaper for a developer to build on virgin land (seashore, meadow, wetland) than to redevelop marginally used or abandoned property in the downtown business district. Paradoxically, preservation of America's urban business environment—from the largest cities to the smallest towns—is

tied inexorably to preservation of its natural environment. We can assist urban renewal and habitat protection by revamping the tax code with tax credits for redevelopment projects and tax penalties for those who take over untouched wildlife habitats. Likewise, tax credits should be available for property owners who sign conservation and stewardship agreements with the government, and who derive income from lands where rare animals or plants are allowed to thrive. Financial and technical assistance for habitat restoration should also be made available to them, just as we provide assistance for farmers. These people are doing a public service of national significance, and are without question far more deserving of tax subsidies than tobacco growers and mohair producers.

Finally, for early engagement to work, the management of public lands must be brought into the twentieth century. Why should private land managers and owners follow sound economic and ecological practices when the people who work our federal lands don't have to? We should greatly increase fees and severance taxes for those extracting resources from public lands, whether the resource is vegetation, water, energy or minerals. Those who work public lands do so for private gain—and they should pay accordingly. If these sagebrush welfare queens cannot live without public subsidies, then they should go out of business. Similarly, recreationists should pay to use our national lands. We should tax outdoor recreational equipment (skis, canoes, backpacks, etc.) and recreational vehicles (snowmobiles, jet skis, dirt bikes etc.). The money derived could be routed to pay for stewardship awards to private landowners and to the restoration of public lands.

**H**ow do we save the Endangered Species Act from the clashes that have poisoned its reputation and hampered its effectiveness? Through early engagement reforms, which will spare us from invoking the law's necessarily draconian measures. But make no mistake. The act is the last line of defense, and the fact remains that there will continue to be instances when nothing short of outright prohibitory regulation makes sense. Why? Because we will always be plagued by boneheads—self-indulgent individuals, groups and businesses that lack any sense of social responsibility. In Massachusetts, for example, the National Park Service and state authorities can't keep dune buggy riders off only a few beaches for a mere thirty-five days in the spring, when an endangered shore bird nests along the coast. On the other side of the country, California dirt bike racing organizations advocate allowing the last of the California condors—the world's largest bird capable of flight—to go extinct so that they can expand their racing domain. Sound reasonable? Of course not. That's why we need the Endangered Species Act.

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