

The Washington Times

www.washingtontimes.com

The Endangered Species Act

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Published December 26, 2003

On Dec. 28, the Endangered Species Act (ESA) turns 30. But before celebrating the grand anniversary of this landmark federal legislation, we should ask ourselves a sobering question. What has the ESA really accomplished in the past three decades?

The answer gives little cause for celebration.

For starters, the ESA has done precious little to help endangered animals. Since the act's passage, seven American species have gone extinct. Meanwhile, while more than 1,260 species have been listed as "endangered" or "threatened," only 10 North American species have "recovered," often due to efforts unrelated to the ESA.

Even worse, the ESA has often backfired, prompting needless destruction of wildlife habitat as it expanded from its initial mission of helping endangered species to blocking economic activity across the country.

Based on the assumption that species are threatened as "a consequence of economic growth and development," the ESA gives the authority to limit activities on both public and private land. This loggerheaded notion -- that conservation and commerce are incompatible -- has dominated the application of ESA since it was passed in 1973.

Indeed, in ESA's first year, a tiny fish called the snail darter was discovered in an area that would be flooded by a dam being built on the Little Tennessee River. A lawsuit was promptly filed, halting construction. Eventually, a special congressional dispensation let the nearly completed dam go forward, but the case left little doubt about the strict-enforcement power of the ESA.

ESA restrictions create a perverse incentive that has led landowners to destroy habitat that might one day provide an attractive home for endangered species. For example, a study by economists Dean Lueck and Jeffrey Michael found that owners of forests that would evolve into endangered red-cockaded woodpecker habitat (they prefer old-growth trees) tend to cut their trees ahead of schedule to avoid attracting the birds.

Because more than 700 endangered or threatened species are found on private land, meaningful conservation will clearly require the cooperation of private landowners. The ESA finally recognized the problems it creates with the establishment of the Safe Harbor program, which indemnifies landowners who don't already have endangered species on their land from further restrictions.

The Safe Harbor program does begin to address the fact that endangered species on private land are a liability. But reducing liability isn't enough. To really turn around endangered species conservation, landowners need to view endangered species as assets.

Over the past 30 years, there have been many successful examples of private and public-private efforts to save wildlife. A new-and-improved Endangered Species Act could be modeled -- at least partially -- on any number of them.

One particularly successful example is Earth Sanctuaries Ltd. (ESL), an eco-tourism company in Australia. ESL was founded in 1988 by John Wamsley, who was alarmed by Australia's high number of animal extinctions. Under Mr. Wamsley's guidance, ESL bought land and built fences to protect threatened animals.

ESL has since successfully brought back numerous populations of native species -- including wombats, bandicoots, kangaroos and platypuses. An essential part of their efforts to raise the capital they need to save species is a new accounting rule in Australia that makes it possible to report wildlife as regenerating financial assets. ESL is also the first publicly traded conservation company in the world.

The ESL example shows that committed and informed landowners, often in their own interests, can help restore threatened species. In the United States, there have also been remarkable experiments showing that private individuals are not, by nature, the scourge of endangered animals.

The nonprofit Peregrine Fund has shown how privately run organizations can work harmoniously with government agencies. The fund reintroduced the California condor to Arizona in cooperation with the U.S. Fish and Wildlife Service and the Bureau of Land Management, among others. The fund has also had significant success saving peregrine falcons, bald eagles and Mauritius kestrels.

Even the American bison benefited from private initiative when a small group of ranchers took some of the few remaining bison off the open range, where they were being slaughtered indiscriminately. From a low of fewer than 1,000, there are now as many as 350,000 bison in North America, according to the National Buffalo Association.

In all of these remarkable examples of private-sector conservation, success was not gained by coercion or lawsuits, but by taking advantage of natural market forces.

Over the last 30 years, the ESA has surely produced far more lawsuits and headaches than species recoveries. It's time to follow the more successful examples of the private sector and consign this legislative dinosaur to extinction.

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