

Living with the Endangered Species Act . . .

Conflicts, compromises arise at grassroots

Fairy shrimp vs. developers. Delta smelt vs. farmers. Kangaroo rats vs. homeowners. . . While the Endangered Species Act (ESA) has protected such popular species as the bald eagle, the California sea otter, and the peregrine falcon, it has also pitted the interests of lesser known species against those of private citizens. The result: emotional confrontations, proposed reforms and repeals, court battles and acts of physical violence.

For example:

- Threats followed Forest Service cancellation of grazing leases in riparian areas of the Toiyabe National Forest, a measure taken to conserve endangered Lahontan cutthroat trout. In March 1995, bomb blasts blew apart a Carson City Forest Service office and later the private residence of a Forest Service official. No injuries resulted.

- When Fresno County's flood control district found the endangered flower *Tulare pseudobahia* on land it intended to flood, it attempted to mitigate by purchasing 40 acres of a Kern County ranch where the flower thrived. When the rancher refused to sell, the district tried to condemn the land. Last year, an appellate court returned the property to the rancher plus \$100,000 in attorney fees and court expenses.

- Fires on the outskirts of Riverside destroyed 29 homes in October 1993. Homeowners charged that ESA protection of the Stephens kangaroo rat, and the consequent ban on disking vegetation near their homes, led fire to their property. General Accounting Office (GAO) investigators concluded to the contrary, citing "burning embers driven by winds of up to 80 miles per hour," conditions which allowed the fire to jump across 6-lane highways and concrete canals. However, the GAO noted that "County fire department officials continue to be concerned . . . and have

taken the position that the department's fire prevention activities to protect people and property should not be affected by species protection actions."

Conflicts such as these have set the stage for Congressional efforts to reform the ESA. Today, dozens of bills in the U.S. Congress and the state legislature propose to modify and in some cases curb environmental protections. Reformers on both sides ask: How can we compensate landowners for property designated as wildlife habitat? How can we conserve threatened and endangered species while allowing economic development to continue? (see sidebar, p. 35)

California is rich in endemic species, those that are native and found nowhere else. One outcome of those riches: California is now the home to more endangered species than any other state in the continental United States. As a result, farmers, ranchers, homeowners and developers here have more than the average interest in ESA reform. Efforts to overhaul the Endangered Species Act were voted the top story by 170 California Farm Bureau Federation (CFBF) convention delegates in 1995.

UC range and pasture specialist Mel George notes, "We have to protect endangered species, but we are not doing it right. We can't save every endangered species on those lists. What we have to do is identify situations where endangered species have habitat in common, then protect these habitats rather than focusing on individual species."

Despite the number of reform bills proposed, wholesale repeal of environmental legislation is unlikely because it would meet with public disfavor. In a nationwide CNN/Time poll conducted in September 1995, 63% of 1,000 Americans interviewed said they opposed reducing protection for endangered species.

Although ESA debates are marked by passionate advocacy, in some cases contenders are learning to live with each other. For example, U.S. Fish and Wildlife Service (USFWS) officials report they have finalized Habitat Conservation Plans (HCPs) for 50 landowners nationwide; plans are in the works for 150 others. In HCPs, landowners agree to take conservation measures to bolster species recovery; in turn, the USFWS permits them to incidentally harm individual members of the listed species in the course of economic activity. In one such agreement, Simpson Timber Company has set aside land in Humboldt and Del Norte counties as spotted owl habitat. In exchange, the company may incidentally harm up to five pairs of owls a year as it logs Douglas fir.

Other recent, historic compromises include the Bay-Delta accord (see p. 77) and the Mono Lake pact (see p. 15).

While some ESA disputes have led to exemplary compromise, others have raised unresolved questions. For example, in 1991, UC Riverside entomologists Jocelyn Millar, Tim Paine and Larry Hanks initiated a biological control program for the eucalyptus longhorn borer (ELB), a recently introduced insect that kills eucalyptus trees. The scientists followed prescribed procedures, obtaining permits from state and federal agencies to release five parasitic wasps imported from Australia.

In September 1992, the USFWS asked Millar and his colleagues to "hold the biological control program for the ELB in abeyance" based on the possibility that the highly selective parasitic wasps might affect the distantly related valley elderberry longhorn beetle, an ESA-protected insect. (The elderberry beetle was related at the family level; a family typically includes thousands of species.)

"When we received that communication, we had 4 years invested in the project, and we had been importing, mass rearing, and releasing the parasitoid for 2 years with all the required permits. The relevant USDA and CDFA officials had full knowledge of our work," Millar said. "We were completely blindsided. All the money and effort invested in collecting, importing and developing the facilities and knowledge base for mass rearing of biological control agents is obviously wasted if you can't release the beneficial organism." Comprehensive literature reviews and

bioassays proved that the parasites posed negligible threat to the valley elderberry borer, but in the meantime the project was suspended for 8 months.

ESA rules also affected Tehama County farm advisor Sheila Barry's research. Barry's assessment of the impact of livestock grazing on vernal pools ended when she learned she needed a special "incidental take" permit for fairy shrimp.

"I could have gone to a class, paid money and gotten a permit to continue," she says. "All I was doing was observing fairy shrimp by scooping them up in a swimming pool net, then dumping them back. That was considered 'taking.'"

ESA reformists have proposed changes that would increase the ESA's flexibility (see p. 35). American Farmland Trust has proposed a "Safe Harbor" initiative to encourage farmers to enhance or create wildlife habitat on their land. The San Joaquin Valley "Safe Harbor" Agricultural Wildlife Conservation Plan would ease the currently cumbersome and costly task of obtaining a permit for "incidental take" under ESA provisions. (Such taking is permitted if the applicant mitigates impact with a habitat conservation plan.) Under the Safe Harbor initiative, to be administered by the California Department of Fish and Game, growers could convert productive farmland to wildlife habitat with the assurance that they would not be prosecuted if they returned the land to cultivation at some future time.

The initiative will not change current law, says Erik Vink, AFT field director. Permits are currently issued under section 10 of the federal ESA on a case-by-case basis. Safe Harbor seeks to provide a simpler and faster standardized process.

When there is a meeting of minds between environmentalists and agriculturists — who sometimes seem to be poles apart — it can have productive results. An example is the teamwork that developed between Sacramento Valley rice growers and environmentalist Mark Reisner, author of *Cadillac Desert* and *Overtapped Oasis*, two scathing critiques of agriculture. He became an ally to growers after they showed him their practice of winter flooding to decompose stubble also provided waterfowl habitat (see p. 58). "We're strange bedfellows," Reisner told *California Farmer*, "but it's a great alliance."

— Editor

Perspective

Incentives are key to ESA

Bob Vice

The furor concerning reform of the federal Endangered Species Act has unfortunately been characterized as a declaration of war on endangered species themselves. California farmers and ranchers support protection of endangered species through sound science and common-sense incentives. Cooperation, not confrontation, is the key to make the act work for everyone.

California has a big stake in the issue. This state is home to 160 listed species — more than are listed for any other state. In the process of trying to manage listed species, federal regulations have sometimes restricted livestock grazing, logging and even basic agricultural practices. Farmers and ranchers have become fearful of restrictive regulations.

The extent to which Congress transforms the protection of species into a positive effort that landowners can embrace will determine whether the law takes a bold step into the 21st Century.

Farmers, ranchers and other property owners hold the key if the ESA is going to work. A report by the General Accounting Office (GAO) found that more than 78% of listed plants and animals have some of their habitat on private lands, based on May 1993 tallies. Therein lies the key to reforming the law.

Endangered species protections can be more effectively achieved by providing positive incentives to private landowners and public land users as an alternative to land use restrictions. The creation of a voluntary conservation program could provide crucial habitat areas. In such a program, landowners would receive annual management fees for managing land as critical habitat for endangered species.

The act should specify scientific standards necessary to support a listing. Too often listing decisions are made based on inadequate data. The fairy shrimp is a good case in point. Since the time of listing, fairy shrimp have been found in thousands of vernal pools and other seasonal wetlands from Redding to Bakersfield, according to John Lambeth, attor-

ney and project manager for the Fairy Shrimp Study Group. (The group is a statewide organization of trade associations and private property owners who believe the data supporting two of the four listings of fairy shrimp species were flawed.)

Current ESA decisions are required to be made on the basis of the "best scientific and commercial data available." This provision should include procedures necessary to sustain a decision that a species should be listed or that some other action be taken. There must be some unbiased, objective review prior to the decision to ensure that the proffered data meet minimum scientific standards.

We suggest the creation of an independent Scientific Advisory panel to peer review ESA decisions prior to species listing. Such a body would have the same role as the Scientific Advisory Panel within the Environmental Protection Agency (EPA), except that the panel would have authority to veto any proposal that does not meet minimum scientific muster.

We also propose two major changes in fundamental definitions on which the current law is now based. We would redefine critical habitat, restricting it to that land occupied by the species at the time of listing. We also propose that the term "species" be redefined to include only populations so distinct genetically that they cannot interbreed to produce fertile young. (For more discussion see p. 9 — Ed.)

Farmers and ranchers support the basic goals of the ESA. We offer potential solutions to endangered species issues which will make the act stronger in its protection for species, their habitat, and the farm and ranch families whose land harbors these species. Managing endangered species habitat can and should be a source of landowner pride, rather than fear and apprehension. Farmers, ranchers and the species that depend on their land need a reformed Endangered Species Act.

Bob Vice is President of the California Farm Bureau Federation.