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Moving Endangered Species Management from Conflict to Cooperation

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Introduction

The lie detector has been used in one form or another for thousands of years. In ancient Mesopotamia, suspected thieves entered a darkened shed where they were directed to grab the tail of a donkey, who, they were told, would bray if they were guilty. Those with nothing to hide grabbed the tail. Those who were not so pure of heart used the darkness to conceal their failure to touch the donkey's tail. Unbeknownst to the suspects, the donkey's tail was coated in lamp black. On exiting the shed, the innocent had dirty hands, while those with something to hide held out clean ones.

This ancient form of lie detection would fail today due to the speed of communications (not to mention protests from the animal rights folks about the abuse of donkeys). Society, however, still uses the clean and dirty hands metaphor when discussing personal responsibility. Direct involvement in a task often is referred to as "getting your hands dirty," while clean hands denote a remoteness from the task and lack of investment in the outcome. This clean (and guilty) hands versus dirty (and innocent) hands metaphor is a useful one for the following discussion on endangered species management. It also is an appropriate metaphor for the concept of "triage" and endangered species conservation priorities.

The Endangered Species Act (ESA), keystone of the nation's effort to conserve its biological diversity, is confronting an uncertain future as it faces reauthorization in 1995. Opponents of the ESA charge that the Act has a history of trampling private property rights and wreaking havoc on local economies in its pursuit to preserve obscure species like the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) or the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). Proponents of the ESA acknowledge that, for the first time, reauthorization of the Act faces a stiff challenge.

Unfortunately for the ESA and the U.S. Fish and Wildlife Service (FWS)—as lead responsible agency—the goal posts of public opinion are not crossed merely by accumulating listing (more than 830 animals) and recovery plan statistics (more than 500). What counts are results, or at least the perception of progress toward stated goals. This paper seeks to demonstrate that the ESA, while not fatally flawed, is a bio-political instrument in need of greater flexibility, less central command and control, and increased results and accountability. The ESA is a regulatory program in need of practitioners who have a greater sensitivity to the human element in all endangered species disputes. It is here that the concept of "triage" comes into play.

Triage and Endangered Species

Triage arose on the front lines of World War I where field hospitals queued casualties both by seriousness of the wounds and the chances for medical success.

Rather than commit limited resources in an attempt to save patients beyond their medical capabilities, triage directed front-line resources to those patients whose injuries were treatable. These decisions were not reached after a public hearing, draft rule-making, 90-day comment period or discussions with headquarters; they were made immediately.

Battlefield triage, as a concept for endangered species management, is not entirely practical. While the status of endangered species is dire, decisions about their treatment must respond to scientific and public process determinations. Still, like battlefield triage, endangered species recovery actions must take into account the realistic capabilities of any response, including available budget, staffing and executable techniques. In addition, prior to undertaking new recovery efforts, responsible agencies must be cognizant of the number of "patients" already under care along with the burden their "convalescence" places on available resources. A final aspect of triage useful in the endangered species context is the question of responsibility. In battlefield triage, the attending medical team is solely responsible for the patient. For endangered species, too often, treatment decisions are not made in the field but far removed in Washington, D.C. This paper will demonstrate that endangered species conservation is achieved best when the greatest amount of responsibility for that recovery is given to the field.

The Little Fish that Could

It is impossible to discuss perceptions of ESA without a look at *Percina tanasi*, the diminutive snail darter. In 1967, the Tennessee Valley Authority (TVA) began construction of the Tellico Dam on the Little Tennessee River which would dam the last significant free-flowing stretch of water in the region. Opposition to the dam was immediate, with opponents claiming loss of farmland, inundation of the Cherokee Indian Nation's most sacred religious site and loss of river recreational opportunities. The resulting tangle of lawsuits succeeded in delaying the project for years, but by 1973, the dam appeared destined to be built. The year also saw passage of the ESA, and discovery of the snail darter, thought only to reside within the area proposed to be inundated by Tellico. A number of Tennessee scientists, conservation groups and citizens petitioned to list the snail darter as an endangered species. Based on existing knowledge, as required by ESA, the species was listed as endangered in 1975 and critical habitat was designated (40 *Federal Register* 47506). FWS requested TVA halt construction and enter into interagency consultation to resolve the endangered species conflict. TVA responded that it would not discuss any option except completion of the dam.

Having lost on cultural and economic grounds, dam opponents now embraced the ESA and took TVA to court. The case found its way to the Supreme Court in 1977. Plater (1982) noted that the ESA "and its tiny protege [the snail darter] seemed to constitute a minor legal violation whimsically coincidental to the dam issue," but, since other more dam-related issues had failed to influence the TVA, the dam's opponents hoped that this little nondescript fish would give them the leverage to press the larger issues.

In *TVA v. Hill*, the Supreme Court found for the snail darter, even though the dam was 80-percent complete and more than \$100 million already had been spent on its

construction. The court made a number of findings, including that Congress intended endangered species to be afforded the highest of priorities, and that the ESA applied to all federal actions without exception, at whatever the cost (437 U.S. at 174). As a direct result of the court's decision, Congress amended the ESA in 1978, providing for the granting of exemptions to projects of regional or national significance where project benefits "clearly outweigh the benefits of alternative courses of action" (16 U.S.C. 1536, as amended). This review process was to be carried out by the Endangered Species Committee (ESC), a Cabinet-level committee nicknamed the "God Committee" because of its power over a species' existence. On January 23, 1979, the ESC unanimously denied an exemption for Tellico Dam on economic rather than ecological grounds. Concerning the ESC's decision, Chairman Cecil Andrus stated: "I hate to see the snail darter get the credit for stopping a project that was ill-conceived and uneconomic in the first place" (Plater 1982). Pork barrel politics in America, however, do not necessarily bend to the decisions of the Supreme Court and congressional-appointed ESCs. On June 18, 1979, a rider was attached to a public works appropriation bill which overrode all other decision and authorized the completion of Tellico Dam.

The snail darter continues to be an icon for endangered species management. Unfortunately, the actual events and outcomes of the case are poorly understood by environmentalists, policy makers and politicians alike. Too often, the case is viewed as one of a tiny, insignificant fish that threatened to stop a valuable public works project. In the course of the controversy, debate did not focus on the strong arguments against completion of the dam (i.e., TVA's own cost benefit analysis) or the loss of cultural and recreational benefits, but rather on the fish. Chairman Andrus' concern for the snail darter getting the credit for stopping what the *New York Times* (1980) termed a "costly boondoggle," was misplaced. The snail darter didn't get the credit, it got the blame.

This problem of perception not matching reality did not stop with the completion of Tellico Dam. It has been repeated consistently in other endangered species battles such as the northern spotted owl (*Strix occidentalis caurina*) in the Pacific Northwest and the golden-cheeked warbler (*Dendroica chrysoparia*) in Texas. Unfortunately, rather than recognizing the phenomenon and dealing with it, too many agency personnel have repeatedly ignored the snail darter's lessons and elected instead to stand fast by their data, deaf to public perception and politics. Such tenacity and dedication is, on one hand, admirable. On the other hand, an inflexible and rigid adherence to regulations promulgated under ESA can make enemies of potential allies, and cause ESA issues to become so polarized that resolution becomes impossible. When the "combat biologist" stands pat, in the name of conservation, on regulations that often are untested and inflexibly applied, that biologist is headed for a fall and, more importantly, so is the resource that the biologist is attempting to protect. A balance is needed. As one former FWS Deputy Regional Director often counseled, it is the job of the field offices to present the facts (as best they understand them) back to headquarters. The facts themselves should never get an employee in trouble. In return for this candor and competence, headquarters owes the field an explanation in those cases where the field office's recommendations are changed and/or overruled. Too often, this type of clear communication and management leadership is what is in danger of extinction.

Lessons from Wolves

After years of revising plans, seeking legislation, conducting environmental impact statements and responding to thousands of public comments, red wolves (*Canis rufus*) again roam North Carolina and the gray wolf (*Canis lupus*) has been released in Yellowstone National Park and central Idaho. For more than two decades, the main obstacles facing wolf recovery have been social and political, not biological.

Proponents often speak of endangered species conservation as being both legally required and ecologically desirable. But, as the wolf demonstrates, it is not sufficient merely to state legal and ecological mandates. There is the need to build a popular consensus that having wolves, even on a limited basis, is desirable. The people who live in the wolf recovery areas must be convinced that sharing the land with wolves need not result in socioeconomic loss. Nor is it sufficient merely to speak of "the national interest" or "existence value" (gaining satisfaction from merely knowing that the wolf exists in the wild, even if you never see one). National interest and intrinsic wildlife values are important, but to the rancher, farmer, outfitter, hunter and trapper in wolf recovery areas, these have become empty phrases.

While not comprehensive in their relief, three principles must be adhered to for successful wolf recovery specifically, and endangered species conservation as a whole. First, all parties must recognize that there will be times when individual wolves must be killed to protect lawfully present livestock and private property. The ESA allows the taking of individual animals where such an action supports the recovery of the overall population as often is the case with large predators (16 U.S.C. 1535, Section 10(a)(1)). Second, adequate funding is vital to endangered species recovery, regardless of species. The majority of state wildlife revenues come from hunting and fishing sales and the federal excise tax on firearms and ammunition. Traditionally, these monies have been used to support "game" animal programs. Endangered species, however, are not game species, and some states depend largely on federal assistance programs funded under the ESA. Unfortunately, the availability of funding for states has fallen far short of actual recovery needs. Finally, state officials have expressed concern that once recovery goals are met, the wolf will not be delisted. They feel that anti-hunting and other pro-animal advocates will foster a new set of criteria for delisting the species once it has reached the numerical goal established by the recovery plan. While the ESA does have a few success stories where geographical populations of species, like the alligator and brown pelican, have been delisted, the successes can not compete with a growing list of new candidates that number in the hundreds.

Efforts to recover the red wolf offer a number of insights for achieving cooperation rather than conflict for endangered species management. In the early 1980s, the red wolf was considered extinct in the wild—a victim of human persecution, habitat loss and hybridization with coyotes. The species was sustained by a captive population of some 70 animals awaiting identification of suitable release sites and establishment of sufficient public support. Early efforts to reintroduce the species into the Land-between-the-Lakes region of Tennessee and Kentucky failed when a lack of public education and the perception of "critical habitat" led to fears of a federal take-over. In November 1986, a much wiser FWS, after extensive public involvement and advance planning, began reintroduction of the red wolf on Alligator River National Wildlife Refuge in eastern North Carolina. The reintroduced wolves were listed as

an "experimental, nonessential population" and the effort was carefully planned with the concerns of sportsmen, residents and conservationists incorporated. As of January 1995, a minimum of 41 wolves inhabit federal and private lands in eastern North Carolina (Morse 1995). A major reason for this success lies in the efforts of FWS personnel not only to be responsive to landowners' interests, but to take the time to meet with landowners one-on-one to discuss concerns and potential conflicts. Conscious efforts to be responsive and flexible have paid dividends with more than 186,000 acres in private lands voluntarily made available to the red wolf. One important element in this landowner cooperation is local accountability. Landowners have been willing to cooperate because the FWS has worked hard to demonstrate that the on-the-ground manager has the authority to respond on a local level (M. Phillips personal communication: 1994). Such faith would erode quickly if all decisions had to be sent to the Atlanta regional office or to Washington, D.C.

Analysis: Implications for Future Management

Through the years, much has been made in wildlife management circles of the need to base decisions on sound biological data. Unfortunately, sound science does not lead inexorably to sound public policy. FWS and other responsible parties in the ESA arena must recognize that years of hiding behind a process that is mystifying in its bureaucracy and maddening in its inflexibility have led to a total disconnect between the regulator and the regulated. Fortunately, there are numerous models of how the ESA can work to protect biodiversity in a responsive and flexible manner. The red wolf's access to 186,000 acres of private lands is just one example where a commitment to public involvement, direct contact with effected stakeholders and flexible application of the ESA has paid dividends.

Wolf recovery in the northern Rocky Mountains brings to the forefront another challenge that, if unmet, will destroy the credibility of the ESA. After millions of dollars of research and planning, restoration efforts are underway in Yellowstone and central Idaho. The two biggest questions that remain on the table are: (1) how will be ambitious recovery efforts be funded, and (2) will the environmental interests play by the rules or, once again, attempt to change them to their advantage? As one frustrated logger in the Pacific Northwest stated: "every time we get close to the goal line, they move the goal posts." This goal post issue is vital to the effectiveness of the ESA. Whether it involves wolves, snail darters, California gnatcatchers (*Poliophtila californica*) or pigtoe mussels (*Pleutobema* spp.), effective conservation requires the commitment of the stakeholders, including private landowners and municipal governments. Such commitment will not be forthcoming if there is no assurance that the conservation interests will play by the negotiated rules. Currently, there are numerous efforts underway to force FWS to move the goal posts on listed species. In the majority of these efforts, the ESA is used as a surrogate for land-use planning where the real issues are concerns over such issues as wilderness protection, timber harvest, grazing allocations and mining operations, not endangered species. Conducting land-use planning through the narrow focus of the ESA allows the listed species to be blamed for any resulting economic hardship, but it should not be confused with sound land planning.

Current attempts to control the federal deficit will translate into lean years for the

ESA, regardless of how it is reauthorized in the 104th Congress. ESA currently has more patients in its intensive care ward than it can effectively manage and recover; and FWS and the National Marine Fisheries Service are under court-ordered mandates to list more and more species. Some issues, like Columbia River salmon (*Oncorhynchus* spp.) promise to be much more complex and bellicose than snail darters and wolves. The individual species-by-species approach that has driven endangered species management in the past slowly is being replaced by conservation planning based on the habitat. For example, in southern California there are an estimated 35 animals and 59 plant species dependent on coastal sage scrub habitat (California Department of Fish and Game personal communication: 1994). Instead of viewing them as 94 individual patients, budget and personnel constraints alone will force the FWS and other wildlife managers to view them collectively as a single patient through their common habitat.

In conclusion, we return to the clean (and guilty) hands versus dirty (and innocent) hands. As wildlife managers capable of learning from past mistakes, we must work to promote a flexible style of endangered species management that focuses on habitats rather than individual species, that promotes local delegation of authority to the greatest extent possible, and that is accountable not to mechanical adherence of the *Code of Federal Regulations*, but rather to achieving a workable solution, on-the-ground, that incorporates the interests of the human residents even as it strives to preserve scientific rigor. To the future, effective endangered species management will require more than scientific expertise and bureaucratic fortitude: it will require greater commitment to work with local landowners and governments to forge a common strategy that is achievable and realistic. It will require getting our hands dirty.

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