OPINION

A Green Olive Branch on Endangered Species

The ESA's mixed record on wildlife restoration and its impact on business have made the law vulnerable to critics.

By TIMOTHY D. MALE

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The Endangered Species Act was signed in 1973 by a Republican president— Richard Nixon —and passed with the support of 99% of Congress. The goal was to protect America's special animals and plants no matter the cost, but the measure of the law's effectiveness depends on whether you're a glass half-full or half-empty person. Between 40%-50% of endangered species in the U.S. are improving or stable, but the others are moving toward extinction. While the law has driven the rebirth of 36 species, a similar number have disappeared. This mixed record on wildlife restoration—and the real and perceived impact it has on business—has turned the ESA into a partisan playing field.

Despite numerous attempts, no major revisions to the law have passed Congress in more than 25 years. Republican leaders in the House have said they would try to revise it again next year, but all indications are that this effort will be as doomed as earlier hyperpartisan proposals that suggested limiting wildlife protections if there is any economic cost.

In this April 15, 2008 file photo, a male sage grouse performs his "strut" near Rawlins, Wyo. In a statement Friday, Dec. 20, 2013, Nevada's U.S. senators released a statement that they are orchestrating a bipartisan discussion on how best to protect sage grouse in the Silver State, with the goal of staving off a listing by the federal government under the Endangered Species Act. *Associated Press*

This is unfortunate. If politicians and advocates on both sides are willing to compromise, there are many ways to make this law even more successful at restoring American wildlife, while minimizing costs to business and the economy. For example, in testimony to the House critics have heaped scorn on the ways the ESA empowers private citizens to use lawsuits to compel the government to protect species. Setting deadlines for agency decision-making—and allowing citizens to sue if the agency fails to meet a deadline—is necessary to make sure that potentially endangered species receive due consideration, especially because past administrations have flaunted those deadlines without judicial enforcement.

Still, critics are right that lawsuits are not the best way to prioritize species for protection. A better alternative is to rely on science to tell us which species are more distinctive, imperiled, critical to ecosystem health, or likely to benefit from the ESA. Listing decisions could be scheduled based on those criteria, but the ESA currently lacks a meaningful tool other than the courts to set up such a schedule.

Other tweaks could help with whether and how species are listed. While the ESA hasn't changed, other organizations have developed more sophisticated ways to categorize extinction risk. The International Union for the Conservation of Nature, the state of Florida, New Zealand and the nonprofit NatureServe have developed far more transparent and quantitative methods that use science to understand the differences between more and less threatened species. Meanwhile, the federal government still lacks clear and consistently applied definitions of the terms "threatened," "endangered" and "recovered" for the 1,500 listed species.

This is more than semantics. The lack of clarity creates a huge degree of frustration for state agencies and businesses affected by the ESA because they cannot predict how federal agencies will behave. It often appears that requirements change with agency personnel and on a case-by-case basis.

Establishing clearer definitions would greatly speed up decisions on whether and how to protect species. We need that faster process because scientists have already identified thousands that face some degree of extinction risk and aren't currently protected. Clear definitions would also create benchmarks for lowering protection levels from endangered to threatened to delisted. Such benchmarks would give more businesses and states an incentive to invest in conservation.

Efforts to restore or "recover" endangered species also need to be revamped. The federal government owns almost 30% of all U.S. land, and it is fair to expect that this should be managed for endangered species preservation and restoration. Unfortunately, when placing restrictions on projects, agencies often ask less of federal lands than private or state lands. That unequal treatment makes little sense. Most Americans would probably agree that the onus should be put on federal property whenever, all else being equal, there is a choice in where to pursue species restoration.

Congressional action or a directive from Interior Secretary Sally Jewell could raise the standard on federal projects to a "net benefit" level requiring that federal projects leave species better off. While not a panacea, such a standard would incentivize agencies and businesses to invest in restoring habitat and species populations. Then they could "bank" those achievements in advance of future development projects that will harm species.

Such initiatives have already paid dividends in California and Hawaii, where state laws have led to better conservation of listed species and the protection of more than one million acres—while creating a growing market in restoration credits for businesses. Recently announced efforts by the Obama administration to improve and expand similar policies across the country are a step in the right direction.

These and many other ideas offer a blueprint to produce a new law that would yield more recovering species, while providing American businesses with greater regulatory predictability and smart ways to lower costs.

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