**Working Groups’ Report on the Endangered Species Act: Recommendations and Implications**

The House of Representatives Committee on Natural Resources Endangered Species Act (ESA) Working group came out with a report in early February on ESA reform. The group of 13 Republican Representatives [compiled the report](http://esaworkinggroup.hastings.house.gov/uploadedfiles/finalreportandrecommendations-113.pdf), which details the major problems of the current ESA and their recommended solutions. While the recommendations in the report may conflict with the workings of the scientific process, the problems discussed are undeniable and real. The difficulties with transparency, lack of cooperative measures, and massive amounts of litigation make a case for ESA reform.

The four central recommendations in the report are:

* Ensuring Greater Transparency and Prioritization of ESA with a Focus on Species Recovery and De-Listing
* Reducing ESA Litigation and Encouraging Settlement Reform
* Empowering States, Tribes, Local Governments and Private Landowners on ESA Decisions Affecting Them and Their Property
* Requiring More Transparency and Accountability of ESA Data and Science

The problems with transparency as detailed in the report (bullet #1 and #4) can be stated as follows: the Working Group recommends greater transparency on all ESA decisions including litigation, prioritization, and data used to make listing decisions. It is important that the decision to list or de-list a species is defensible. The only way to make such decisions defensible is to make the studies, expert opinions, or other data used to make the decision available to the public, especially in the case that the data or study is federally funded. It should be noted, however, that oftentimes the services rely on studies in which the researchers or organizations do not publish or release their proprietary raw data. In this case, the service does not have the data to release and is relying on the best available information as mandated in the act. Whether studies that are funded with federal dollars should be required to release their raw data is an entirely different question, especially since this is not the status quo in science.

The Working Group also recommends that we require numerical goals for species recovery upfront so that there are clear and appreciable objectives for recovery and de-listing of a species. Unfortunately, this requirement does not leave flexibility for National Marine Fisheries Service (NMFS) and The Fish and Wildlife Service (FWS) to list species that clearly need protection, but for which we do not have enough data to set hard goals. This recommendation along with the recommendations to clarify and define ESA terms and to require delisting and down listing as data supports are not in line with the scientific process. It is not always so cut-and-dry whether a species is recovered and stabilized and may require several years of consecutive data to determine a real long-term trend and not naturally occurring population flux. Also, trying to define terms such as “significant portion of the range”, “jeopardy”, and “foreseeable future” could restrict the flexibility of the agencies to respond to each situation given unique species’ needs and regional differences. The report also recommends that there be a focus on species recovery and de-listing (bullet #1). While recovery of species should be a focus, this focus should be balanced with both the regular analysis of listed species for de-listing and the consideration of new species as candidates for listing.

The Working Group identifies litigation as one of the greatest problems with the ESA in recent years (bullet # 2). Massive amounts of litigation have put a greater burden on our over-taxed federal courts. The Group made several recommendations on how to decrease the susceptibility of the ESA to such litigation. They suggest that there should be transparency of settlement agreements with litigious groups, increased flexibility in habitat designation deadlines, and placing a limit on hourly fees paid to attorneys for ESA litigation. While increased flexibility in habitat designation deadlines would help to curtail litigation, it is also important that decisions cannot be delayed for an indefinite amount of time. It is of note that such deadlines are the basis for large number of settlements, including “mega-settlements” in which hundreds of species are included on a petition for listing and agencies are held to a 90-day finding. Forcing such decisions is not only a burden on the FWS or NMFS, but also not scientifically or economically sound. Being forced to list species that have not had time to be properly evaluated may place protection on habitats and species that don’t require it and take resources away from species in need. Most importantly, the recommendation to place a limit on hourly fees that can be reimbursed through ESA litigation is in line with other legislation.

Finally, the Working Group’s conclusion that we need to “empower states, tribes, local governments, and private landowners on ESA decisions affecting them and their property” is a laudable goal (bullet # 3). It seems reasonable state and local authorities to have a voice in settlements that impact their land. Additionally, the recommendation that “agreements to delegate authority between Federal and states for management activities involving listed species should not be subject to excessive litigation…” would help to foster cooperation between levels of government. However, requiring state and local data and peer reviews may be too restrictive. While local data should always be taken into consideration, sometimes there is no local data. Also, while it would be optimal to have a “real economic analyses up front” for ESA actions, it is not always possible with the best available data and what is included for analysis of economic impact can be subjective. Oftentimes the ecological benefits that we receive from intact habitat, such as water and air filtration, are not considered. The group additionally recommends that Habitat Conservation Plans (HCP) and Candidate Conservation Agreements with Assurances (CCAA) be exempt from Critical Habitat listing, there be reconsideration of listing decisions that harm private landowners, and that private funding of the permitting process be authorized.

In the Working Group’s report there is some language worthy of note. Several times in the report animals of small size are referenced as ESA listed species that had negative impacts on economic activities. While economic activities are critical and need to be taken into consideration for ESA decisions, the size of any animal is not correlated with its biological importance. An animal’s ecological role or danger of extinction should not be defined by its relative size. Also, the report makes a great deal of use of anecdotes and case-studies. While anecdotes can be helpful in demonstrating a point, they are not necessarily a reflection of the ESA as a whole. Additionally, there is a quote from the former Executive Director of the Convention on Biological Diversity (CBD), in which he states that he is not interested in having scientists work for him because they have already “bought into resource management values and multiple use by the time they graduate”. While this may reflex the views of one particular environmental group, it is also true that many environmentally-minded groups are scientifically minded and maintain that science is an invaluable tool for environmental management and conservation.

The Working Group, among others, has attacked the ESA’s lack of use of DNA technology. While on the surface DNA sequencing seems like a straightforward and easy way to differentiate species, it is not that simple. First, it is essential to note that DNA is a tool that biologists and taxonomists can use to help define a species and not a definitive test unto itself. While there is genetic diversity between species, there can (and should be) a large amount of genetic variability within a species as well. Simply put, this means that other factors such as distribution and mating habits/methods must be taken into consideration when trying to define a species, especially if they are in the same Family or Genus. There are several examples of species that while they may be genetically compatible with overlapping distributions, their mating practices prevent them from intermingling.

There are a few concerns with the ESA as it stands now that were not brought up in the report. If the ESA is to protect our endangered and threatened species, than factors other than habitat loss must be addressed. Climate change due to Green House Gas (GHG) emissions, disease, and invasive species are increasingly detrimental to a growing number of species. If species in peril are to recover, then more comprehensive, larger scale plans that take these other factors into consideration are needed. While it is nearly impossible to attribute one factory’s greenhouse gas (GHG) emissions to contributing to a certain species’ deterioration, the effects of climate change should be taken into consideration if our recovery efforts are to be effective. Sustainably managed forests are key in climate mitigation and could be incorporated into recovery plans.

The problems of the ESA are real and tangible. If we wish to continue to use the ESA to protect our threatened or endangered species than we must take a hard look at the possibility of some changes; changes that could make the ESA work better for our imperiled species, states, landowners, our forests, the economy, and the public at large. The ability of the ESA to function efficiently and effectively is critical to us all and to the health of our forests.

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