

FACT SHEET

No. 38

Timber & Timber Harvesting in West Virginia

Fall, 2002

Rare and Endangered Species

The Endangered Species Act (ESA), passed initially by Congress in 1973, and since reauthorized, is one of the nation's most far reaching laws, regulating as it does a wide range of human activities affecting plants and animals determined to be rare or endangered by the U. S. Fish & Wildlife Service (F&WS) of the U. S. Department of Interior. An endangered plant or animal is one listed in the Federal Register as being in danger of extinction. A threatened plant or animal is one thought likely to become endangered sometime in the foreseeable future. The ESA provides for listing as endangered or threatened, proposed endangered or proposed threatened and candidate species which are those awaiting listing. Species may be de-listed due to extinction, taxonomic change or increased abundance.

Congress passed the law after deciding that a) "various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development un-tempered by adequate concern and conservation" and b) "other species ...have been so depleted in numbers that they are in danger of or threatened with extinction." Also, "species includes any subspecies..." Under the Act, endangered means "any species...other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man."

Two of the criteria to be used in determining rare or endangered species are the "present or threatened destruction, modification, or curtailment of its habitat or range" and "over-utilization for commercial, recreational, scientific, or educational purposes."

In West Virginia the records are kept by the West Virginia Non-game Wildlife & Natural Heritage Program (NWNHP). Currently, there are 11 endangered and three threatened animals and four endangered and two threatened plants. The West Virginia rare species list contains 803 names – 381 plants, 243 invertebrate animals and 179 vertebrates.

The Act is undoubtedly a good law, but its somewhat loosely drawn provisions have been subject to interpretation and in several important ways have been misused for

political and special interests purposes. Listings are to be based on “the best available scientific and commercial data.” This, in scientific circles is empirical data that has been peer-reviewed and published or field-tested. Strictly speaking, this would not include modeling and population viability analysis, both of which rely heavily on speculative assumptions.

Listings that appear to have been based on unsound science include the Spotted Owl that shut down commerce in large parts of the northwestern United States resulting in the loss of tens of thousands of jobs, and the snail darter that initially stopped the building of a dam in Tennessee. Both were later found to occur in places biologists had thought they didn't. As a direct outcome of such controversies, various forestry groups have organized to lobby for changes in the ESA. Conversely, other special interest groups represent themselves as guardians of the Act. The literature of one group, the Endangered Species Coalition, states it is spokesman for 440 environmental, conservation, religious, scientific, humane, sporting and business groups “dedicated to a strong Endangered Act.”

Quite often the F&WS, through incomplete work, leaves itself open to criticism. The cases of the spotted owl stopping timbering and the Indiana bat being used for much the same purpose are well known. Another example is the Klamath Basin in Oregon and Washington where during a dry period irrigation water was cut off to farmers to “save the endangered sucker fish.” A federal judge ordered the water use be stopped. Several respected scientists said the fish was not in danger, but the case dragged on. Finally, when it wouldn't go away, the F&WS asked for peer review of the “science” on which the decision had been based. The resulting National Academy of Science report left little doubt that science had not previously been involved in the decision. There are apparently many such cases.

There are also other problems with the law. For example, in West Virginia, rumors became rampant about illicit activities of biologists hired to scout for rare and endangered species in a controversial area. Finally, the persistent rumors resulted in the biologists homes in Kentucky being searched and several specimens of rare species being found stored in their refrigerators. The question is not so much in which forest were the specimens caught as it is where were they destined to be re-found?

Another case involved seven governmental officials, biologists from the U. S Forest Service, F & WS and the state of Washington who planted lynx fur from captive Canadian lynx's on rubbing posts in two national forests not known to be inhabited by the rare cat. The hoax was revealed by another Forest Service employee who didn't like such tactics being used to prove a presumed range expansion. DNA tests proved he was correct as the captive lynx's from which the fur was taken were identified. The biologists said they had planted the samples to test laboratory findings, but no one in authority knew of the testing in advance. Unfortunately, none of the seven were prosecuted. The director of the National Wilderness Institute said of the biologists story, “That would be like bank robbers taking money from a bank and saying they were just testing the security of the bank; they weren't really stealing the money.” Rumors abound

that there are numerous other cases where falsified data has been used. One not uncommon statement heard is “get a taxonomist to describe it as a sub-species and you can stop the world in which it lives.” This may be true.

The Endangered Species Act is necessary, but to be scientific and equitable it also needs revision.

(Prepared by William H. Gillespie)

This publication is distributed free by the Timber Committee, West Virginia Forestry Association, P. O. Box 718, Ripley, WV 25271. Please call (304-372-1955) or write for additional copies, topics or for a list of speakers and their availability.