

Making the Endangered Species Act Work Better

WE CANNOT SUCCEED IN RECOVERING SPECIES WITHOUT THE HELP OF PRIVATE LANDOWNERS.

BY STEVE WILLIAMS, DIRECTOR, U.S. FISH & WILDLIFE SERVICE. PHOTOS © LARRY TURNER.

I came to Washington from Kansas, where the land—nearly all of it privately held—is treated with a respect that borders on reverence. Much of the tallgrass and shortgrass prairie that once covered the state has been converted to other uses, but in landowners across the state we found allies in the battle to save what remains and to restore this important wildlife habitat. After spending countless hours on front porches across the state talking with families who make their

succeed in recovering endangered species in the West, or anywhere else for that matter, without the help of private landowners. Yet I recognize that for every rancher who has worked successfully with the Service, there are others



landowners later want to develop their land when the agreement expires, they can return it to the condition it was in before the improvements without penalty. At the same time, the Service can give



ABOVE: Pelicans on Southern Oregon's Lower Klamath National Wildlife Refuge. TOP: Tiger swallowtail. RIGHT: Mule deer fawn.

living from the land, I came to understand just how deeply they cared about wildlife and wanted to improve habitat for a variety of species, including those on the endangered species list.

The fact is that ranchers across the West are working right now to save endangered species. Not just because it's the law, but because they love the land and recognize that species diversity is a sign that the range is alive and vibrant. We absolutely cannot

who continue to view the presence of endangered species on their land as a threat and not an opportunity.

At the Fish & Wildlife Service, preservation of our nation's farms and ranches is a real priority. We know that if these areas are subdivided and developed, significant habitat for wildlife will be lost forever. That's why we're working to make it easier for private landowners to provide habitat for endangered

species. Our efforts to partner with ranchers have produced real benefits for endangered species across the West while helping ranch families keep their traditions alive.

Safe Harbor Agreements give landowners assurances that improvements they make on their property to provide habitat for endangered species won't lead to additional land use restrictions in the future. As long as these improvements provide a net conservation benefit to the species, if

landowners technical assistance to make a difference for endangered species conservation.

In Kansas, I saw firsthand how providing such incentives can help. During my tenure as state director, we started the Walk-In Hunting Areas program, which compensated landowners who allowed hunting on their property and provided state funding to improve and maintain wildlife habitat on their land. The WIHA program, which began in 1995, grew to include tracts in 99 counties totaling more than 800,000 acres in 2001. That acreage



benefits dozens of species, not just game animals.

We know habitat projects cost money. That's why the Service's Landowner Incentive Program and the Private Stewardship Grants Program together provide \$50 million annually to encourage private

landowners to conserve a wide range of wildlife, not just endangered species, on their property.

For example, in southeastern Texas, ranchers along the Gulf Coast prairies have signed Safe Harbor Agreements and are working to restore coastal prairie habitat for the endangered Attwater's prairie chicken. The Service has provided more than \$500,000 in grants to help them make those improvements, which have also benefited the endangered Houston toad and the Texas prairie dawn-flower. Landowners have received cost-share incentives to carry out prairie habitat conservation practices such as brush control, grazing management and prescribed burning to improve the health of their rangeland.

The Service's Partners for Fish and Wildlife program has provided financial and technical assistance to thousands of landowners seeking help to improve wildlife habitat on their land since its inception in 1987. The Partners program worked with Darrel Wood, owner of a 1,200-acre ranch along Pete's Creek in northeastern California to restore wetland and riparian habitat. Fencing kept cattle away from 345 acres along the creek, allowing sedges, willows, and other wetland plants to return. Improved livestock management allowed native grasses to colonize formerly bare areas, while the Service helped construct a dam and water control structure that created a seasonal wetland to benefit sage grouse, sandhill cranes and other wildlife.

Since Mr. Wood embarked on his wetland improvement program, livestock carrying capacity on his ranch has increased from 200 to 300 pairs, and weaning weights have increased from 400 to 650 pounds. In addition, by allowing limited hunting of waterfowl, upland game birds, deer, and antelope on the ranch, Mr. Wood has diversified his ranch income to provide stability during economically difficult times for the ranching industry.

Ranchers are conserving endangered species in places that may surprise you. In Hawaii, cattle ranchers are working with the state and the Fish & Wildlife Service to provide habitat for the endangered néné, or Hawaiian goose, through Safe Harbor Agreements. Ranching operations maintain the open, shortgrass habitat favored by néné, provide water in stock ponds or mechanical water units, and have fewer predators such as feral dogs. On Molokai, the Puu O Hoku Ranch has agreed to

maintain or improve néné habitat for at least seven years and allowed the reintroduction of néné on the island, where they had not been seen in more than 100 years. Birds released just last December have adapted well to their new home and are beginning to breed. A draft programmatic Safe Harbor Agreement would allow other landowners on Molokai to take part in the néné recovery effort as well.

By developing Habitat Conservation Plans in partnership with the Service, ranchers and the irrigation districts on which they depend have been able to improve habitat for endangered species without having to worry that their normal operations will violate the Act.

For example, we are developing an HCP for the Walla Walla River basin in eastern Oregon and Washington, working with ranchers, irrigation districts, tribes and other state and federal agencies to increase stream flows to benefit the endangered bull trout. Until that HCP is completed, the Service has worked out an agreement that, in exchange for minimum instream flows, has protected the districts and their customers from liability for any take of bull trout. The HCP process remains the best opportunity to work together to build consensus with landowners for endangered species conservation.

Ranchers are making a difference for species that are candidates for Endangered Species Act protection as well—efforts that in several instances have helped reverse population declines and keep species off the list. Our ultimate goal in developing Candidate Conservation Agreements has

been to eliminate the need for Endangered Species Act protection by removing or reducing threats to a species' existence.

In southwestern Oregon's Catlow Valley, the Roaring Springs Ranch and its manager, Stacy Davies, developed a Candidate Conservation Agreement with the Service, the BLM and the Oregon Department of Fish & Wildlife to rebuild habitat for red-

band rainbow trout and the Catlow tui chub. The ranch modified its grazing practices, restoring streamside vegetation, screening irrigation canals to prevent trout from entering, and changing grazing patterns and practices to promote growth of riparian vegetation. The efforts of the Roaring Springs Ranch, as well as those of other area ranches that signed conservation agreements with the Service, were a major factor in the Service's 2000 decision not to list the red-band trout.

Candidate Conservation Agreements with Assurances (CCAAs) provide additional regulatory certainty to landowners that when they work to conserve a candidate species they can continue to use their

land without worrying about additional restrictions if the species is listed in the future.

The Service recently signed a CCAA with the Alexander Ranch in south-central Kansas to benefit the lesser prairie chicken. This 10-year agreement, which can be renewed if both parties agree, will improve habitat for the prairie chicken on more than 2,200 acres of native mixed grass and sand-sage prairie using rotational grazing techniques. A partnership between the

(Continued on page ESA 13)



COURTESY U.S. FISH & WILDLIFE SERVICE

" At the Fish and Wildlife Service, preservation of our nation's farms and ranches is a real priority. We know that if these areas are subdivided and developed, significant habitat for wildlife will be lost forever."

STEVE WILLIAMS



The South Canadian River winds through Oklahoma's Canadian County, giving sustenance to land and livestock. INSET: The tiny Arkansas River shiner (which may live in the river and might be endangered) threatens the livelihood of whole communities.

Liberty and the Minnow

OKLAHOMA FARMERS FIGHT FOR THEIR LAND. WORDS BY NICOLA XANTHUS.

PHOTOS BY SAM KNIPP, DIRECTOR OF CORPORATE COMMUNICATIONS, OKLAHOMA FARM BUREAU.

The blood, sweat and tears of Oklahoma's farmers and ranchers is as much a part of the earth as the crops which grow from it. They take pride in their land. Now landowners along the Canadian, Cimarron and Beaver rivers could find themselves at the mercy of a two-inch minnow.

Federal agents of U.S. Fish & Wildlife Ser-

vice (FWS) have proposed a critical habitat designation for the Arkansas River shiner, a minnow they believe to be a threatened species. They say the two-inch long shiner may exist in these rivers and want to designate critical habitat for the shiner on 1,160 river miles and 42,600 adjacent acres in four states.



Lewis and Anna Mayer feed cattle and bale hay on the river bottom as his family has done for 100 years. To Lewis the ESA is "injustice."

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Producers in these designated areas would face restrictions on using their private land. Steve Kouplen, Oklahoma Farm Bureau president and rancher from Beggs, says it's a battle the state's largest farm organization is willing to fight. OFB is against designating critical habitat. "To do so would be financially crippling and in direct opposition to the Endangered Species Act," he says. "We believe the Fish & Wildlife Service has violated the ESA by failing to conduct a proper economic analysis. The government is basically saying there is no economic impact from designating critical habitat for the shiner. We believe quite the opposite is true. Land is the most valuable asset a producer has."

Kouplen knows that declaring thousands of acres as critical habitat would reduce the

amount of livestock and crops an individual could produce. "This would ultimately result in smaller supplies and higher prices in the supermarket." According to FWS, the shiner's historical range was primarily western portions of the Arkansas River basin in Oklahoma, New Mexico, Texas and Kansas. They speculate that the shiner also may exist in the Cimarron River and scattered reaches of the Canadian and Beaver rivers.

The agency's website states their mission is to conserve, protect and enhance the nation's fish and wildlife in their habitats for continuing benefits of people. However, farmers and ranchers are concerned this "mission" would erase their rights as landowners.

Henry Jo VonTungeln, a farmer from Calumet, Okla., believes farmers and ranchers understand how to preserve the earth's resources. "This is not only a conservation issue, but a land issue," VonTungeln says. "This is a loss of liberty for farmers and ranchers in these areas."

The VonTungeln family arrived in America from Germany in 1870. Six generations have worked on the land they love. Farming is a way of life for Henry Jo and his wife Donna, and a symbol of strength and pride for the entire family.

Testifying on behalf of OFB at public hearings opposing the critical habitat designation, VonTungeln says: "You can't tell farmers what they can or cannot do to their land and which practices they can maintain, from cultivating to running cattle. We have rights as property owners to use our land as we wish, and farmers care for the land better than most people."

In northwestern Oklahoma, where the sky meets the horizon in all directions, landowners pride themselves in living off the limited resources available. Unfortunately, years of

drought have turned the Canadian and Beaver rivers into mud holes.

Deep in this cattle country, Lewis Mayer tends his land and 200 head of cattle as his family has for more than 100 years. His grandfather settled along the Beaver River in 1883 as a Sooner, making a living capturing and breaking wild horses, then marketing them to ranchers. Mayer's land, spread across the Oklahoma Panhandle where there is little rain and less vegetation, borders the critical habitat battleground.

"The land around the river bottoms is essential to farmers and ranchers in this area. We use that land to feed cattle on and bale hay. Without it, farmers will be faced with a great loss. It's a shame the FWS is threatening to take private property, leaving individuals powerless." He says food producers receive no compensation. "We don't realize how severe this issue is until it happens to someone you know. This act is an injustice to farmers." In addition to restricted production, groundwater pumps could be stopped within designated areas. Municipal water in many communities comes from groundwater and would be threatened with reduced water supplies. As more consequences of declaring critical habitat surface, the number of people affected increases.

OFB and 16 other agriculture and conservation groups representing thousands of landowners have filed a lawsuit. The legal action contests the agency's attempt to designate a critical habitat for the shiner in Oklahoma, New Mexico, Texas and Kansas. A critical habitat designation would idle productive land, essentially rendering it useless to the owner and removing the land from production forever.

"The importance of farmers and ranchers defeats the subsistence of a minnow treading water in Oklahoma rivers," Kouplen says. "Farmers and ranchers have devoted their lives to the land they own. Without their land, they will be lost." ■

Nicola Xanthus is a senior at Oklahoma State University studying Ag Communications and an intern for Oklahoma Farm Bureau.

BUGS RULE

MICROSCOPIC CREATURES ARE THE GUARDIANS
OF OUR PRECIOUS ECOSYSTEMS.

BY DAN BYFIELD

If you are unfortunate enough to have a cave on your land that houses bugs considered so ecologically important to be listed as endangered, you must not use 89 acres of land around the holes they live in.

Believe it or not, this is exactly what the federal government has told hundreds of Central Texas landowners around Austin and San Antonio. The Hill Country, as it is

known in the scientific world as karst invertebrates—tiny spiders, beetles and scorpions that measure anywhere from 1.6 to 8 millimeters in size. Some are so small scientists have to use a microscope to study them.

Regardless, according to regulations of the U.S. Fish & Wildlife Service (FWS), these little creatures are the guardians of our precious ecosystems that must be protected no matter

couldn't build homes for families. The area is touted as being the fastest-growing suburban county in the nation.

The Purcells spent millions of dollars constructing water and wastewater facilities, lift stations, electrical and other utility amenities, streets and multiple improvements necessary to develop the land and then dedicated them at no cost to the city of Austin. The city granted approval for development in 1984.

For years, all kinds of critters have been thrown onto the endangered species list as a way to control growth in the Austin area. The environmental community has a dominant presence in and around the city. It was known that to stop a project from being developed all you had to do was get a species listed.

How do you do that?

Call a radical environmental group.

Fred Purcell found this out the hard way when EarthFirst!, an organization linked to hundreds of eco-terrorist acts in the United States, trespassed onto his property for the specific goal of getting six types of cave bugs listed as endangered.

The EarthFirst!er camped out in a cave on the Purcells' property. When the sheriff arrived to arrest him, the trespasser was wedged into a crevice in one of the sinkholes that was too small for the sheriff to access. So he called a weight-challenged deputy to drag the trespasser out and handcuff him.

As usual with a stunt like this, it garnered the attention of the media. That in turn placed pressure on FWS to list the six species as endangered, even though the Earth-First!er had no credible scientific evidence to support the request.

According to the Endangered Species Act, science is supposed to be at the heart of all the listings of species, but when it comes right down to it, you don't have to have any science at all. FWS is obligated to list a species when requested by anyone, including trespassers.

Thus began Fred Purcell's quest for the elusive 10a permit required by the ESA. A 10a permit allows certain "takes" of a species in return for money, land, or both. In federal agency terms it's called mitigation. In the real



WYMAN MEINZER/USFWS

Science is supposed to be at the heart of all the listings of endangered species, but when it comes right down to it, FWS is obligated to list a species when requested by anyone, including trespassers on private property. Cave bugs vary from 1.6mm to 8mm. This is the eyeless Robber Baron Cave harvestman, one of the largest.

known, consists of rocky terrain made up of porous limestone formations. The surface is covered by a very thin layer of soil that doesn't lend well to row crops, but does to livestock agriculture, cedar trees and sinkholes.

Most of these caves are no bigger than a manhole cover sunk only a few feet into the ground. However, they can shelter insects

the cost. And the private, taxpaying citizen who is unfortunate enough to own the land with the porous rock must bear that cost.

Fred Purcell and his brother purchased 216 acres just west of Austin in 1983. They bought it as an investment wanting to develop it into residential lots at first, then into commercial property after being told they

world, it's called extortion or greenmail (the environmental term for blackmail).

At the recommendation of the feds, Purcell donated 10 acres, six caves and several sinkholes to a nonprofit environmental organization to research and oversee the health and good fortune of the six types of protected cave bugs. He then placed metal gates over their entrances and metal fencing around their perimeters to keep all predators out. But that wasn't enough. Purcell filed all the requisite paperwork attempting to obtain the proper permit under the Endangered Species Act, but he was continuously thwarted for years and was never granted nor denied a permit.

Running out of time, money and options, Fred Purcell enlisted the help of the American Land Foundation, a nonprofit organization in Austin dedicated to the protection of private property. They filed a lawsuit against FWS on Fred's behalf using the Commerce Clause of the Constitution to challenge the agency's authority to regulate "take" of the six species of endangered cave bugs that live on or near Purcell's 216 acres. To the dismay of Purcell and his attorneys, the federal district judge ruled that the federal agency has the authority under the ESA to regulate the proposed commercial development even though no development has occurred. The *proposed* commercial development is all that was needed to connect cave bug regulating to interstate commerce, according to the judge. The case is now at the Fifth Circuit Court of Appeals in New Orleans and is likely going to have a hearing by Fall. In his appeal, Purcell cites two Supreme Court rulings known as Lopez and Morrison, in which the Supreme Court has said that it is improper to look at activities *other* than what the statute itself regulates.

The reason for this is straightforward. The federal government is a government of limited, enumerated powers. If the Commerce Clause can be used as a justification for federal authority based on such far-reaching connections with interstate commerce as the proposed commercial development on Purcell's property, then the federal government will have the authority to regulate practically *anything, anywhere, anytime*. The Supreme Court has said that allowing distant connections to commerce as a basis for federal authority would undermine our fundamental constitutional structure.

In Purcell's case, nobody believes that harming, even killing cave bugs substantially affects interstate commerce. The Supreme Court's recent holdings forbid this sort of

loose connection with commerce, especially in Morrison where the Court held that a provision of the Violence Against Women Act was unconstitutional because harm to women is not, in and of itself, economic or commercial behavior.

If the Court does not think harm to women is an economic or commercial activity that can be regulated by the federal government, then it stands to reason neither will harm to a bug which lives underground on private property with no known commercial value.

The State of Texas believes in the case too. They filed a Friend of the Court brief on behalf of Purcell, stating: "The State of Texas files this brief to assert its interest in restoring State control over its resources and returning to the federal-state balance of power secured by the Constitution." Two other briefs were filed on Purcell's behalf by the Texas Farm Bureau and the Pacific Legal Foundation out of Sacramento, Calif.

In the meantime, Purcell has lost most of his property through foreclosure but is holding on to a few acres that weren't collateralized with a bank note. It's those few acres that he is desperately trying to retain. If Purcell wins, his attorneys have estimated that his case will set the precedent for over 70 percent of all listed species.

In other words, approximately seven out of every 10 species listed is found on private property, has no commercial value, and is not traded in interstate commerce. If the court agrees, the federal government should have no authority to regulate *private property* using the Endangered Species Act. Not only will thousands of landowners find themselves free of an extremely tyrannical law, but millions of acres will be free from regulation and critical habitat designation.

This is a vital case for landowners. The government lawyers and environmental organizations know that if Purcell wins they lose—big time!

Hopefully, the Fifth Circuit will once again follow their groundbreaking legal precedent and apply their reasoning to a law that has been broken since its inception. The Endangered Species Act has proven time and again that it's not about saving species. It's about controlling private property.

Purcell is living proof. It's time to change a law that does this to its own citizens. ■

Dan Byfield serves as president of both the American Land Foundation and Liberty Matters, protecting private property.

MAKING THE ESA WORK

(Continued from page ESA 9)

Kansas Department of Wildlife and Parks and the Partners for Fish and Wildlife Program provided financial and technical assistance to help Mr. Alexander improve his livestock watering system and restore and reseed native grass pastureland. We believe that if enough partnerships are developed with landowners who own property with potential lesser prairie chicken habitat, it may preclude the need to list the lesser prairie chicken.

Where we can we are also taking advantage of the parts of the Endangered Species Act that give us more flexibility when species are listed as threatened. In the parched Southwest, livestock tanks maintained by ranchers provide important habitat for the Chiricahua leopard frog, and we want to encourage ranchers to continue to harbor the species. When it became necessary to list the frog as a threatened species in June, the Service simultaneously published a special rule that exempts the use, operation, and maintenance of stock tanks from the normal take prohibitions that apply under the Act.

I'd like to close with an invitation to every rancher who has reservations about how the Endangered Species Act works on the ground. Talk to us. You'll find good people who are willing to work with you to find flexible, cost-effective solutions that can improve both habitat for wildlife and the health of the range. Now more than ever, we are striving to operate with common sense, open communication and an understanding of and empathy for those who are ultimately affected by our decisions. I hope you'll join us in working to make the ESA better for both the species and for the communities that shelter them. ■

Steven A. Williams was confirmed by the Senate as Director of the U.S. Fish & Wildlife Service on January 30, 2002. As Director, Williams oversees the operations of the nation's primary wildlife conservation agency with more than 7,500 employees and a 2002 budget of \$1.94 billion. Previously, Williams served as Secretary of the Kansas Department of Wildlife and Parks beginning in 1995. He holds a doctorate in forest resources from Pennsylvania State University. Williams and his wife, Beth, have two children.

THE BAD, THE GOOD, & THE JUST PLAIN UGLY

COMPILED BY TIM FINDLEY

Go ahead, Goose, make my day.

Back in 1990 in Utah, where Brandt Childs was planning to build a golf course, he was astonished one day when a U.S. Fish & Wildlife Service (FWS) agent showed up with a shotgun and announced he was about to terminate 10 geese on suspicion of eating Kanab ambersnails from ponds on Brandt's property. The plan, according to Utah Congressman Jim Hansen, was to blast the geese, cut open their gullets, and fine Childs \$50,000 for every endangered snail the FWS agent found. Only the arrival of a local reporter with a camera blocked the carnage. So instead of shooting them, the FWS agent choked the geese until they regurgitated—no snails. No help for Childs either, whose \$2.5 million project was still blocked.

There are blue-eyed Mexicans.

Trying to list "Mexican ducks" as resembling, but endangered, among common mallards, FWS stumbled all over itself, finally acknowledging that "all reports of Mexican ducks" should be seen as "Mexican-like ducks." Turns out, according to federal reports, that the "Mexican ducks are only identifiable segments of the entire population, just as brown-eyed and blue-eyed individuals are phenotypic segments of the human species."

Fire one, fire two.

Just about the time in 2000 when the Forest Service was acknowledging responsibility for the town-burning Los Alamos fire in New Mexico, a lesser-known wildfire broke out in Otero County in the same state. Two people died in the 16,000-acre blaze. It started in a windstorm when a tree fell across and broke a power line. State authorities had known about the tree, but were prevented from cutting it down because it was a potential nesting spot for the Mexican Spotted Owl.

Need health insurance? Be a fly.

Among the most notorious of endangered species episodes involves the \$3.3 million spent by the city of San Bernardino, Calif., to protect an endangered species of fly found on the site

of a much-needed new medical center. The city was forced to create an eight-acre "fly preserve" and expend millions in a study of the endangered species, not to mention the losses in years of delayed construction. In all, federal scientists reported they had found eight precious Delhi Sands flies on the site. The cost to taxpayers was estimated at \$400,000 per fly, or enough to provide outpatient care for 23,000 people.

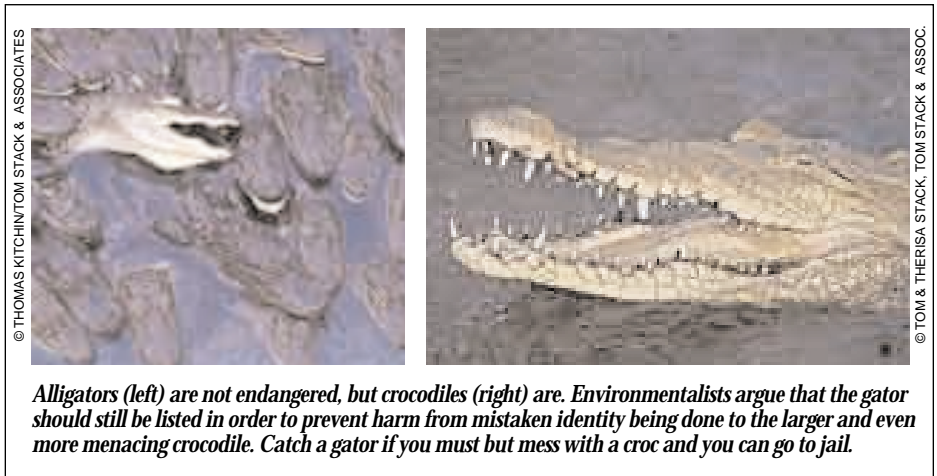
The Beetles never got back together.

In Yuba County, Calif., authorities were told they couldn't restore 30 miles of levees along the Yuba and Feather rivers because 43 elderberry bushes were found there and the bushes are the favorite food of the endangered valley

never was really endangered, but more likely misunderstood. People get confused between a broad snout full of teeth like the gator has and a more narrow face full of even sharper teeth of the American crocodile—which is endangered. Environmentalists now argue that the alligator should still be listed in order to prevent harm from mistaken identity being done to the larger and even more menacing crocodile. Catch a gator if you must, but mess with a croc and you can go to jail (if you survive).

Get your golden cheeks outta my space.

It's nothing against the golden-cheeked warbler that it much prefers the crowded spaces among low water-sucking cedar trees. It's



longhorn elderberry beetles. Not wanting to spoil the show, the county built a large pond to help handle the water, but the pond leaked and finally, in 1996, the levee broke. Three people were killed in the flood, 500 homes were destroyed and about 9,000 acres of farmland lost. The real tragedy is that after all that, still not one of the endangered beetles has ever been seen in the area or on the elderberry bushes staged to lure them there.

Who flung dat gator?

If mistakes can be made on "Mexican" ducks, then it's also possible folks can get misled on American alligators. Even environmentalist groups such as the National Wildlife Federation agree that the American gator probably

just that nobody else wants to live there. That's been a problem in Texas for some time, especially around the rapidly yuppifying suburbs of Austin where in 1995 those golden cheeks with the help of The Nature Conservancy (TNC) pretty much mooned developers to a standstill until agreement could be found on a cedar "preserve" and the surrounding countryside it sucked dry. The city was divided between those who could clear out the cedar and those whose property would be effectively forfeited to the golden cheeks under care of TNC. The result was financial ruin for a few families, but also a loss of habitat for the warbler as property owners on all sides quickly eliminated any cedar on their land.

Salamanders are stupid.

...or at least they're not road smart. U.S. Fish & Wildlife Service discovered in the 1990s that 70 percent of the tiger salamander species in Santa Barbara County, Calif., were getting themselves squished in nocturnal ramblings out onto roads and especially U.S. Highway 101. That made them endangered, and somebody had to pay. So they banned tractors and other

agricultural equipment on farmland found to be salamander habitat. Best not to slow down if you smush one with your Subaru on the way to Big Sur, but don't even think of driving a John Deere near a stock pond unless you've got a lawyer.

Stand back, boys, I'm a gonna fly catch.

It requires a five-mile radius around the likely nesting sites of the willow flycatcher to be certain that the little bird will not be threatened by "nest tipping" or cowbird parasites from cattle. Thus in California, where a willow flycatcher's potential home is found, ranchers must give him his space between April 1 and August 31. That pretty much takes care of the grazing season, but just think of all the flies that willow bird must be gulping down. Makes you sick, doesn't it?

On the other hand...New Mexico rancher Dan Ogilvie guessed he might be facing some kind of problem like that when he noticed all those songbirds taking up residence among the trees on his range. Sure enough, biologists found 64 pairs of Southwest willow flycatchers on his land along the Gila drainage, about twice as many as known in the second largest site found in Kern County, Calif. Thing was, though, the birds seemed to thrive among the cattle on Ogilvie's carefully managed U Bar ranch. So much so, that with a little more attention, 138 pairs were identified on the U Bar—10 times as many as those on government preserves. Did that make the government reconsider the benefits of grazing and flycatching? FWS authorities brushed it off as a "unique situation" at the U Bar and went ahead with their own plans to limit grazing.

Kangaroos can jump. ranchers can't.

Even by accounts of the FWS experts, the kangaroo rats on Andy Domenigoni's ranch sur-



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The black-footed ferret, supposedly extinct since 1971, was "rediscovered" on the Pitchfork Ranch in Wyoming.

prevented what happened, but the feds said he'd be committing a felony by disturbing the rat's habitat. Biologists later said the rats apparently evacuated the area when the brush became too thick for them to move among their nests and Andy's wheat crop, all of which was lost in the fire. Kangaroo rats were known on the ranch, by the way, since it was first established in 1879.

Gooooo dog.

Way up in the Wyoming mountains even in the 1980s, "Shep" was still not so common a name for a good dog like the one that brought a strange-looking animal to rancher Jack Turnell. Turned out to be a black-footed ferret, supposedly extinct since 1971, and Jack, curious as anybody, led science to discover that it wasn't extinct at all. In fact, they found more than 60 of them, half of them on Turnell's own Pitchfork Ranch. A little later on maybe and that might have been enough to shut the whole ranch down, but it was Jack in fact who led the campaign through books and videos and articles, much of it at his own expense, to re-establish the ferret in the wild. He was given an award by President George Bush in 1990 and recognized all over the world, but he never stopped ranching, or believing that grazing is compatible with nature.

Not even the Pope?

Nope, nobody is immune to the Endangered Species Act, not even the Vatican which began a project in the 1980s to reach into the heavens with a new telescope on the highest peaks of Mt. Graham in Arizona. Problems began in spiritual realms from the start when San Carlos

vived the wildfire that blackened 300 acres around his home. In fact the rats, undisturbed in a federal study area, had probably jumped on out of there long before, sensing perhaps the problems to their own survival from the buildup of brush and dry grass since federal authorities ordered the Domenigonis to leave it fallow. Andy had wanted to disc it out, at least to provide a fire-break that would have

Apaches claimed the mountain was sacred to them. But even when those were more or less resolved, FWS found its own new reasons in the endangered red squirrel, whose habitat they said might be threatened by Catholic intentions. Honest to God, they said the squirrel might become so fixated on humans that it would become prey to goshawks. The grudging result is tight limitations around the peak prominence of the telescope, construction of which was delayed for months by the squirrelly debate.

If it ain't the ravens, it's the tanks you get.

Not so long ago, in the 1950s, you could get a desert tortoise with every fill-up at a Mohave service station. Then federal scientists concluded the sluggish creatures were going dinosaur because of predation by ravens. The Bureau of Land Management proposed to kill 1,500 of the scavenger birds, but after environmentalists protested they settled for only 56 they figured were most responsible. The greens caught on, though, and blamed not the ravens, but off-road vehicle riders and grazing cattle as the culprits for the still-unverified extinction of the tortoise. Despite his well-established record for environmental protection on behalf of bighorn sheep and other animals within his ranges, the Center for Bio-



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Kangaroo rats have it easy. Taking precedence over people, particularly food producers, even when a major fire ravaged Southern California, residents were not allowed to build a firebreak around their homes, in case they damaged kangaroo-rat habitat. Because of the ESA, dozens of homes were destroyed.

logical Diversity focused especially on rancher Dave Fisher with relentless lawsuits demanding that he remove his cattle from federal grazing allotments. The court challenges to Fisher's rights left the way open to new claims on the federal land by the U.S. Army, which has announced it wants to use the desert expanse for tank training.

The tortoise, by the way, is still only listed as threatened with some three million in the wild and another 100,000 in captivity, not counting those that went along with a full tank of ethyl.

How many owls? How many you want?

The northern spotted owl, which is the same as the California spotted owl, which is like the Mexican spotted owl, is by far the most successful surrogate in shutting down resource economies. Since the northern owl was listed as endangered in 1990, more than 300 timber mills have shut down, at least 35,000 jobs have been lost and production of lumber has been cut by up to 90 percent. That's just in the Northwest. In the Southwest where the owl's Mexican cousin lives, logging has all but been halted, leaving over 1.5 billion board feet of unharvested timber, not counting the billions more lost to forest fires raging through overgrown stands in both regions.

The Sierra Club

always said the owl could only live in old-growth forests, and when it seemed necessary to demonstrate that, the owls seemed oddly cooperative. Tammy Jensen of Rural Voters of America in Whitehall, Mont., remembers when the count was made in old-growth of Oregon and Washington, that it was done not by spotting the birds but by listening to their calls. "There were long-standing rumors that environmentalists had learned to make the calls and positioned themselves in the woods when the counts were made," she says.

On the other hand when the argument goes, as it has ever more strongly in recent years, that the owls don't just live in old-growth, the green powers demand more proof. Just saying there's one living in a culvert and that it sometimes flies alongside your pickup for sport, or that somebody saw one in a Kmart sign won't get it, even though solid scientific review has concluded that the Sierra Club cooked its old-growth findings to block logging and that even the presence of "old-growth" is sometimes in doubt.

Take the logic used by the Forest Service, for example, in blocking a timber sale to Wetzel-Oviatt Lumber company in 1998. The Forest Service flew over the region and looked at satellite photos, but just to be sure they sent in owl expert Gerry Verner who walked through the forest and confirmed a strong "gestalt notion" that it was a nesting habitat. In other words, he could just "feel" the birds were there. Federal Claims Court Judge Lawrence Margolis was unimpressed. He ruled that the Forest Service denied the logging permit "arbitrarily

and capriciously and without rational basis."

The Forest Service acknowledges that rulings like that have already cost the federal government more than \$15 million for contract breaches on timber sales.

One way to deal with extinction: can it.

With a self-serving San Francisco fishmonger and environmental lawsuit activist named Glenn Spain running around the nation as he was this year claiming that Klamath farmers are killing endangered coho salmon, isn't it fair to wonder who is serving them up in cans available at the supermarket?

Fact is that in 2001, more than three million salmon made their way up the Columbia River Basin—the most since official counts began in 1938. It was similar in

other Northwest salmon runs from California to Washington where the fish were so abundant they were given away to food banks.

It had nothing to do with farmers in the Klamath or with Spain's raging attempts to exploit the ESA as a means of controlling the fishing industry. Latest scientific evidence indicates that improved ocean conditions are responsible for the record runs. Even so, the salmon remain the only endangered species you can eat from a can, though it's better from a barbecue.

Klamath showed 'em.

That was part of the hope of Glenn Spain and co-litigant Felice Pace in suing the U.S. Bureau of Reclamation to halt farm irrigation as a means of saving downstream salmon and upstream sucker fish. If it could be done at Klamath, it could be repeated in federal irrigation districts all over the West where there is, inevitably, a fish somebody will say is on the brink of extinction. Facts revealed at Klamath, however, were quite to the contrary. Halting irrigation did nothing for the suckers or the salmon, and may in fact have had a negative effect on the fish—as it did on more than 1,400 farm families.

But Klamath showed 'em, so much so that the tiny town of Patagonia, Ariz., got wise to a proposed water rights agreement between the town and The Nature Conservancy. Noting the similarities of fish and farm conditions on their Sonoita Creek to those used by environmentalists in the Klamath, town leaders were struck

by what was later found to be questionable science in the so-called "Hardy flows" report done to justify the Klamath cutoff. The report was done by Dr. Thomas Hardy of Utah State University, and lo and behold, there was his name again on the TNC study of habitat requirements for endangered fish in Sonoita Creek. Local citizens in the 881-resident town banded together to protest the deal with TNC, which, true to form when public light is shown on its activities, faded back and away from controversy. Klamath showed 'em.

Grazin' in the grass might save a bird or two.

At least, that's the way Dr. Lew Oring of the University of Nevada at Reno sees it. Oring, a professor of Environmental and Resource Science, has been studying the long-billed curlew, considered imperiled in its existence nearly everywhere else in the world but Nevada. The reason, he concludes, is that even though the curlew is the world's largest shorebird, it still needs to see over the grasses where it nests and feeds to watch for predators. Where grazing has ended the curlew is in trouble, but in Nevada where managed grazing keeps the grass short, the bird is common. Oring and other researchers are looking at other land management practices that may be beneficial to multiple species.

Killers and con-men, the lynx between them.

Colorado Department of Wildlife still has a cash reward waiting for information on what happened to the Canadian lynx whose radio collar was found along the Rio Grande near Creede in March. They assume, of course, that some humans killed the threatened species (listed as endangered in Colorado) and offer money from the Game Thief Fund to help track the culprit down.

It's a lesser crime to commit a fraud, so it's not surprising that three Forest Service employees who planted lynx hairs in the Pacific Northwest are still on the job—though not any longer on the study trying to prove the lynx is endangered in that part of the Washington woods, where there is no proof it even exists. The rangers (with two state Fish & Game and two FWS biologists) said they were just testing the skills of their labs at identifying species.

The Colorado fugitive could go to jail, but if the Northwest trio had gotten away with it, it's generally agreed that their stickup of planted fur might have cost a few hundred more jobs in the forest industry to protect a myth. Not their jobs, of course. Who needs guns when you've got small-time bureaucrats with lame excuses? ■



KELLY GEER, USFWS

Because of the possibility of squishing a tiger salamander in Santa Barbara County, Calif., tractors and ag equipment—not cars—have been banned.