

# Endangered Species UPDATE

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School of Natural Resources

## Special Issue



Recovery Planning

## Endangered Species UPDATE

A forum for information exchange on  
endangered species issues

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Rob Blair.....Editor  
Dr. Michael Soulé.....Faculty Advisor  
D. Scott Boven.....Layout  
Jeff C. Hodgson.....Production

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The Endangered Species UPDATE welcomes articles related to species protection in a wide range of areas including but not limited to research and management activities for endangered species, theoretical approaches to species conservation, and habitat protection and preserve design. Book reviews, editorial comments, and announcements of current events and publications are also welcome.

Readers include a broad range of professionals in both scientific and policy fields. Articles should be written in an easily understandable style for a knowledgeable audience. Manuscripts should be 10-12 double spaced typed pages. For further information please contact Rob Blair at the number listed below.

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Coachella Valley fringe-toed lizard  
(*Uma inornata*)  
Photo courtesy of Paul Selzer

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*Passiflora* spp.  
Photo: William Anderson

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# Table of Contents

Page:

- 2     **Recovery Planning and Endangered Species**  
Robert Culbert and Robert B. Blair, editors
- 9     **Science, Planning, and the Recovery of  
Endangered Plants**  
Philip M. Dixon and Robert E. Cook
- 15    **Population Viability Analysis**  
Michael E. Gilpin
- 19    **Risk Analysis for the Concho Water Snake**  
Michael E. Soulé
- 26    **Intensified Efforts for Red Wolves  
Are Paying Off**  
Ginger Merchant Meese
- 28    **Habitat Conservation Planning and  
the Coachella Valley Fringe-Toed Lizard**  
Paul T. Selzer
- 35    **The Biopolitics of Endangered Species**  
Whitney C. Tilt
- 40    **Predicting the Future for Endangered Species**  
David Wilcove

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# The Biopolitics of Endangered Species

by  
Whitney Tilt

I am sure that many of us remember times in our past when our fathers or mothers turned us out to do something that we may or may not have been ready for — “fish or cut bait” time. This paper argues that we have reached such a time in endangered species management. How well we rise to this challenge will be reflected in the cold glare of 20/20 hindsight when the history books of the late 20th century are written.

Within the pages of the *Endangered Species UPDATE*, readers have been introduced to the complexities of the Endangered Species Act (ESA) — from listing to consultation to recovery plans to delisting. A sampling of endangered species professionals today, however, would reveal a wide range of opinions on how well the Act has functioned, and how effective the program has been in fulfilling its purpose as steward of endangered, threatened and candidate species. It comes as no surprise, or at least it is slowly dawning on us, that endangered species management has as much to do with people management as it has to do with heterozygotes or minimum viable populations. Anyone who has been involved in the recovery efforts of the red and gray wolf, California condor, Coachella Valley fringed-toed lizard, or snail darter can attest to the fact that the science of zoology or ichthyology has a lot less to do with the management of these species than the science of “biopolitics.”

A student of the Endangered Species Act could read every line of the ESA and Title 50, Part 17 of the Code of Federal Regulations and never find a single reference to having to “enter into consultation” with a biopolitican. In reflection, however, the status of certain species might be better off today if we had engaged in such consultation. This

paper looks at two endangered species, the gray wolf in the northern Rocky Mountains and the snail darter, and examines how non-biological concerns have shaped efforts to recover the species. The paper then summarizes some of the rules of the road governing endangered species management in a biopolitical world.

## Lessons from the Wolf

Recovery of the gray wolf in the northern Rocky Mountains is currently a hot topic. Even after two decades of effort, bringing the wolf back to the northern Rocky Mountains is by no means a sure thing. Wolves have a high capacity to reproduce, can sustain a relatively high mortality rate, and pose no threat to human safety. In short, if all that stood between the gray wolf and a recovered population were biological considerations, we could have wolves in Yellowstone National Park next year. However, this is not the case. Numerous hurdles, easily crossed in attempts to recover other species, have proven to be controversial barriers in the case of the gray wolf. Note that it took more than 13 years to simply develop the current recovery plan for the NRM wolf, and the plan is merely a biological blueprint of what “might happen.”

Recovery of an endangered species is both legally required and ecologically desirable. In the case of the wolf, however, it is not sufficient merely to state legal and ecological mandates. The need exists to build a popular consensus that having wolves on a limited basis in carefully selected locations is desirable. The people of Idaho, Montana, and Wyoming 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 values” — those millions of non-residents who will gain satisfaction from merely knowing that the wolf exists in the wild, even if they never see one. National interest and intrinsic wildlife values are important, but to the rancher, farmer, outfitter, hunter, and trapper in the Intermountain West, these have become empty phrases. History has already demonstrated that humans can eradicate wolves if they choose to. Unless adequate groundwork is laid, history will likely repeat itself.

To date, there has been a certain reluctance on the part of Idaho, Montana and Wyoming to heartily endorse wolf recovery. Speaking privately, many state wildlife officials readily support the return of the wolf. However, their enthusiasm is tempered by political and management realities. By and large, state wildlife officials seek three assurances before supporting wolf recovery in their respective states: management flexibility, sufficient funding, and a commitment to delist the species when appropriate.

The question of management flexibility has largely revolved around the question “under what conditions may a threatened or endangered species be controlled or killed?” The court’s decision in the Minnesota wolf case, *Sierra Club v. Clark*, and a threatened law suit against the Montana grizzly bear hunt in 1984, have made state wildlife agencies fearful of being sued if they attempt to control wolves. Therefore it is easier if they avoid getting wolves within their state borders in the first place.

For wolf recovery to proceed, all parties must agree to meet each other halfway. Animal protection groups must recognize that there will be times when wolves must be killed to protect lawfully present livestock and other permitted land uses. State agencies



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must come to trust that opponents will be unable to successfully bring suit against a wolf control program that is backed by good biological information and built on a sound administrative record. The Minnesota wolf dispute addressed in *Sierra Club v. Clark* arose over a proposal for the sport trapping of wolves by the general public -- not the control of specific "problem" animals. Interested parties purporting to have the wolf's best interest at heart need to move forward, not look backwards. Animal protection groups and state wildlife agencies are either going to have to "agree to disagree" and seek a workable arrangement among wildlife advocates or allow a district court to do their thinking for them. *Sierra Club v. Clark* may be perceived as a victory for animal "rights" but it was a set-back for wolf recovery.

The question of adequate funding is vital to endangered species recovery, regardless of the species involved. The majority of state wildlife revenues come from hunting and fishing license sales and the federal excise tax on firearms and ammunition. Traditionally these monies have been used to support "game" animal programs -- but this is largely due to the fact that sportsmen's groups continue to be the ones that best

put their money where their mouth is. In the era of deficit reductions on federal and state levels, it is not enough to merely request more money -- there is a need to build a constituency and work to build public and private partnerships to put money on the ground. The Forest Service's Challenge Cost-Share program is one good example where \$1.00 of federal appropriations has been matched by an average of \$2.30 from local sponsors like sportsmen groups and others interested in getting involved. Another promising approach is the involvement of Defenders of Wildlife and others in producing the *Oregon Wildlife Viewing Guide* which is helping to build a constituency of wildlife "watchers."

Finally, state officials have expressed concern that once recovery goals are met, the wolf will not be delisted. They feel that anti-hunting groups and other pro-animal advocates will foster a new set of criteria for delisting the wolf once the species has reached the numerical goal established by the recovery plan. Unfortunately, the Endangered Species Act is still too young a program to have established many precedents where species have been successfully listed, recovered, and delisted. There are success stories, like

the alligator and brown pelican, but these species did not face the socio-political challenges that the likes of wolves, grizzlies, and condors face. The time has come to move towards delisting of the grizzly bear in northwest Montana and the gray wolf in Minnesota. Many questions remain to be resolved before these actions can be accomplished, including habitat protection and program funding. It is not the intent of the Endangered Species Act, however, that endangered predators and other controversial animals become permanent wards of the endangered species program because we are unwilling to tackle the unknown. If these yet to be

formed mechanisms fail to protect a species after delisting, we can always admit defeat and relist the animal.

Much has been made of the wolf. It is seen as everything from an embodiment of deceit to a symbol for wilderness preservation. The endangered species manager, newly steeped in biopolitical wisdom, recognizes that a more realistic view is necessary for wolf recovery in the northern Rocky Mountains to become a reality (Tilt *et al.* 1987).

### Remember the Snail Darter

In 1977, a virtually unknown fish threatened to stop construction of Tellico Dam, a Tennessee Valley Authority (TVA) project that was more than 80 percent completed. The snail darter was a tiny fish, unknown prior to 1973, which became a weapon for those who sought to halt a "pork barrel" dam. The vehicle that allowed the lowly snail darter to oppose Tellico Dam was the Endangered Species Act.

In 1967, TVA began construction of the Tellico Dam on the Little Tennessee River. TVA had built more than 60 dams in the area, and the Tellico Project would dam the last significant free-

flowing water in the region. Opposition to the dam was immediate. Lost farmland, inundation of the Cherokee Nation's most sacred religious site, and loss of river recreational opportunities were just three of the concerns of Tellico's opponents. When these concerns had no effect, opponents of the dam sought relief from the courts, claiming that the completion of the dam would violate the ESA by causing the snail darter's extinction. After their case was dismissed by the District Court, the Sixth Circuit Court reversed and ordered the District Court to permanently enjoin completion of the project "until Congress, by appropriate legislation, exempts Tellico from compliance with the Act or the snail darter has been deleted from the list of endangered species or its critical habitat materially redefined" (549 F. 2d 1064 (1977)). The Supreme Court agreed to review the lower court's judgment in 1977.

The Supreme Court, in a 6 to 3 decision, affirmed the lower court's decision, even though Tellico Dam was by then 90 percent completed and TVA had spent over \$20 million on the dam and in excess of \$80 million on land development. The court found that Congress intended endangered species to be afforded the highest of priorities, and that the ESA's provisions apply to all federal actions without exception and are to be applied whatever the cost (437 U.S. at 184).

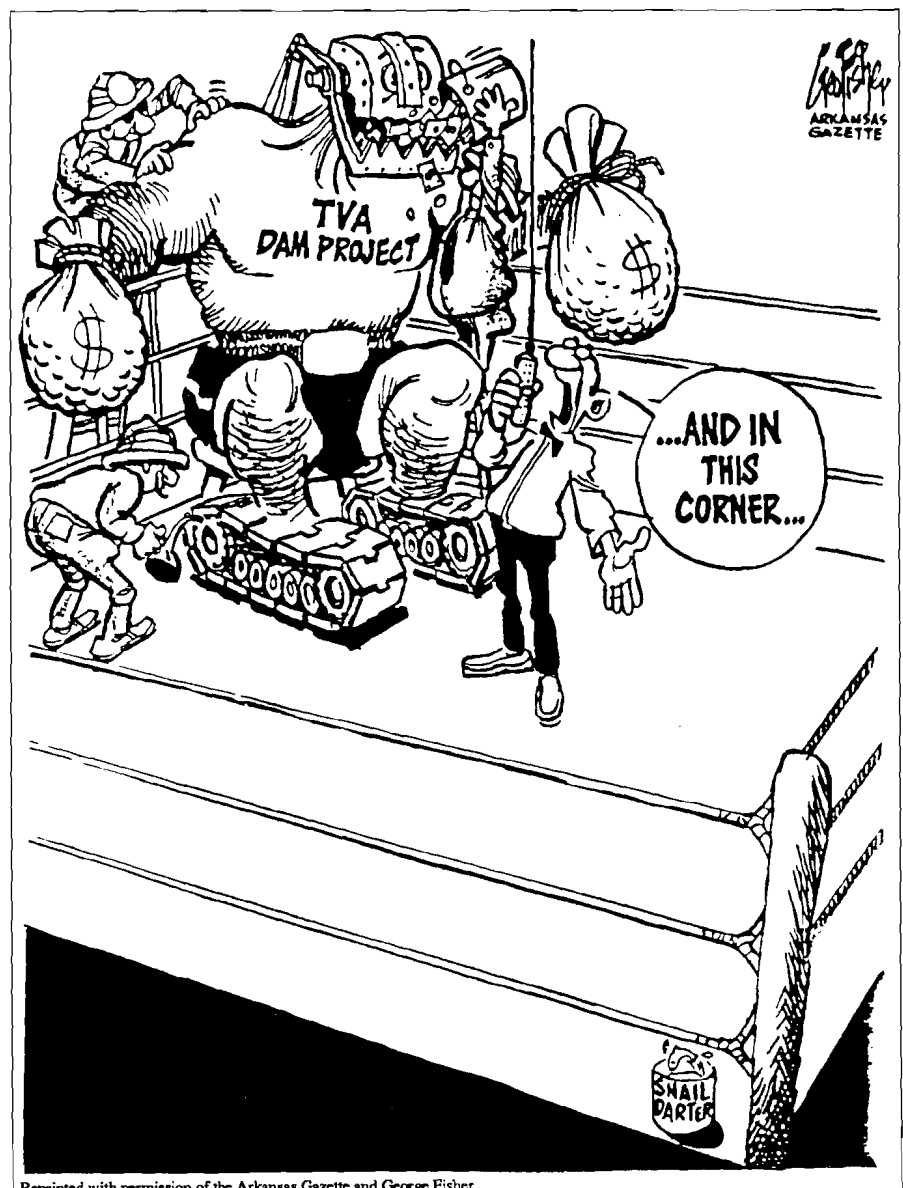
As a direct result of the *TVA v. Hill* decision, Congress amended the ESA in 1978. The amendments provided for the granting of exemptions to projects of regional or national significance where project benefits "clearly outweigh the benefits of alternative courses of action" (Pub. L. No. 95-632, 92 Stat. 3757 (codified at 16 U.S.C. Section 1536 (h) (A) (Srpp. IV 1980)). 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, Chair-

man 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." Another ESC member added, "Here is a project that is 95 percent complete, and if one takes just the cost of finishing it against the [total project] benefits, and does it properly, it doesn't pay, which says something about the original design" (Plater, 1982).

Unfortunately for the Little Tennessee River, politics are not bound blindly to the decisions of the Supreme Court or a Congressionally appointed "God Committee." On June 18, 1979, a rider on the annual public works appropriation bill overrode all other deci-

sions, and authorized the completion of Tellico Dam. The rider was neither read nor discussed before the House chamber, "and in forty-two seconds the citizen's work of sixteen years was reversed" (Plater, 1982).

When dam opponents first realized that the diminutive snail darter and the ESA might be used to defeat Tellico dam, they were hesitant to use it, fearing that an "insignificant fish" stopping a dam in midst of construction would brand them as rabid environmentalists. (It is estimated that approximately \$12 million had been invested—\$4 million on the dam and \$8 million on associated land development—at the time that TVA first became aware of the conflict



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with a listed species.) Further they feared that such an action would allow the ESA's opponents to brand the Act as an abuse of regulatory power. The following New York Times editorial perhaps best sums up the controversy:

*Environmentalists may come to regret their choice of the snail darter as a weapon against Tellico. They lost the battle and succeeded only in making the fish a cause for snickers. These may escalate to guffaws if it now turns out that the snail darter was able to take care of itself all along. But discovery of the new colony of fish does not mean it was wrong to oppose the project. Tellico Dam remains a costly boondoggle.* (NY Times, 1980)

Taking an historical perspective, the first litigants invoking the prohibitive powers of the ESA could have chosen a better champion. Perhaps the

continued survival of the Florida panther against a condominium project in Florida would have had the ingredients for a winning hand. Failing the luxury of such hindsight, however, *TVA v. Hill* set a strong pro-endangered species precedent. For example, in 1978 and 1979, Congress sought to tighten, not weaken, interpretation of the ESA through amendments. Unfortunately, the subtleties that framed the original dispute have largely been forgotten — what is remembered are the “guffaws”: that a tiny fish nearly stopped the multi-million dollar development of an allegedly necessary dam and reservoir project (this despite official decisions that Tellico's economic costs far outweighed its benefits). It is an image that has recently reemerged in the spotted owl/old growth forest controversy as the timber industry's future is pitted against the “winged snail darter.”

## Rules of the Game

Snail darters have become symbolic of tilting at windmills while gray wolves are still a long way from roaming Yellowstone National Park. What do these seemingly disparate tales of wolves and darters have to teach us? A brief primer of rules governing the “biopolitics game” would include:

1. Don't bet the “national interest” above the “local interest.” Remember House Speaker Tip O'Neill's maxim that “All politics are local.” The creation of a strong local constituency in support of a particular critter is step one for a successful recovery. National interest also doesn't mean very much to state wildlife agencies whose budgets are set from within the state, not without.
2. Maintain management purview. If wildlife management is to remain the



Photo: USFWS



**Wilderness advocates may not want to hear from researchers that grizzly bears may be able to coexist with a carefully managed timber program, but the purpose of the ESA is to recover listed species, not create wilderness.**

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purview of the professional wildlife manager, with Congress, the public, and the courts acting in a supporting role, biologists must produce good, sound biology in a timely manner and intelligible form. In addition, we can not view court opinions and special interest lobbying as a replacement for good biology and professional wildlife management. In addition, conservation groups and other interested parties should seek to play an active role in concert with the state and federal wildlife agencies, not merely a manipulative role through Congress and the courts.

3. Ensure adequate funding. Adequate funding must be assured for recovery programs to proceed. It is no longer sufficient to lobby a budget-conscious Congress for more add-ons for pet projects. The development of private-public partnerships demonstrating support for a particular project will not only reduce the level of federal appropriations needed, but will demonstrate broad-based support for the project.

4. Don't hide behind an endangered species. The key to any successful dispute resolution is to bind all parties to the table. Proponents and opponents alike must have something to lose as well as gain by reaching consensus. For example, issues of wilderness protection, hunting or trapping, and the like are important, but is it appropriate to hide behind an endangered species to get them fulfilled? Wilderness advocates may not want to hear from researchers that grizzly bears may be able to coexist with a carefully managed timber program, but the purpose of the ESA is to recover listed species, not

create wilderness. If controversy over when and how wolves may be killed (e.g. sport trapping) is the pivotal reason for keeping the gray wolf listed in Minnesota, then the wolf should be delisted and the issues of appropriate use of the wolf debated on the state level. As the list of threatened, endangered, and candidate species grows, we do not have the luxury of these hitch-hikers.

5. Perception is reality. The general public's perception of an endangered species issue may not seem important to a wolf lover or darter supporter. But if the general perception runs against an animal or plant's continued survival, all the biological data in the world will be useless against the perception. Opponents of Tellico never changed the general perception that "a little fish might halt a valuable dam project" even though they worked long and hard at trying to do so. While it may be difficult, or seemingly impossible, to achieve a change in public perception, the perception problem must be addressed head-on, and cannot be ignored if recovery of the listed species is to be achieved.

6. Talk to everyone. This applies not only to Congress but the state legislature and local community leaders. Many members of Congress are not people you would find among the national environmental groups' pantheon of heroes. However, many are master legislative tacticians who, once you convince them to support your cause, have the clout to carry your banner. The same is true on the state and local level. Do not let the media or a special interest group define the good guys or bad guys. Seek out the players and make your own determination.

7. Avoid an attitude of "all or nothing." Where your final objective cannot be readily obtained, seek to develop partial solutions. In too many cases, while the parties involved battle for total victory, the species in question continues to lose — its habitat, constituency, and chances for survival — while avenues for recovery become fewer and more expensive in terms of socioeconomic costs. Of course, it takes "two to tango," with all parties seeing the dangers of refusing to compromise.

8. Think locally. The scope of endangered species management is changing.

While we continue to work to recover the well-known species like the whooping crane, grizzly bear and bald eagle, species coming onto the list are not as well known or widely distributed — two examples are the Minnesota trout lily and the Iowa pleistocene snail. Increasingly, endangered species management will be undertaken on a state and local level. While many advocacy groups continue to concentrate on the high profile species on a national level, the majority of listed species beckon closer to the ground. Today the action is increasingly at the state and local level, not in Washington, DC. Applying the maxim that "all politics are local," success (in terms of acres of land protected or number of endangered species recovered) is more palpable and visible, and therefore more lasting at the local level.

9. If not you, who? Finally, there is the challenge that if the endangered species professional is not willing to take on the leadership responsibilities on behalf of the wildlife profession and the onerous duties entailed in management, administration, budgeting, popular communications and politics, who will? Who is going to do the job of shaping the endangered species agenda: Congress, the courts, the animal protection movement or other special interest groups? Failure to gain proficiency on the multiple disciplines of "biopolitics" will likely lead to continued frustration and a lack of wins (defined as species which are delisted because of recovery, not extinction). What the endangered species effort needs right now are some species in the win column.

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Whitney Tilt serves as Project Manager for the National Fish and Wildlife Foundation. He previously worked as a Wildlife Specialist for the National Audubon Society, and has extensive experience with endangered species issues.

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