

The Long View

The Endangered Species Act at 40

By Amy Atwood and Noah Greenwald

Signed into law by President Nixon 40 years ago this year, the Endangered Species Act (“ESA”) is widely recognized as one of the strongest laws ever enacted for protecting biodiversity. With the Clean Air Act and the Clean Water Act, it is part of a suite of environmental laws from the late 1960s and early 1970s to protect the nation’s natural resources.

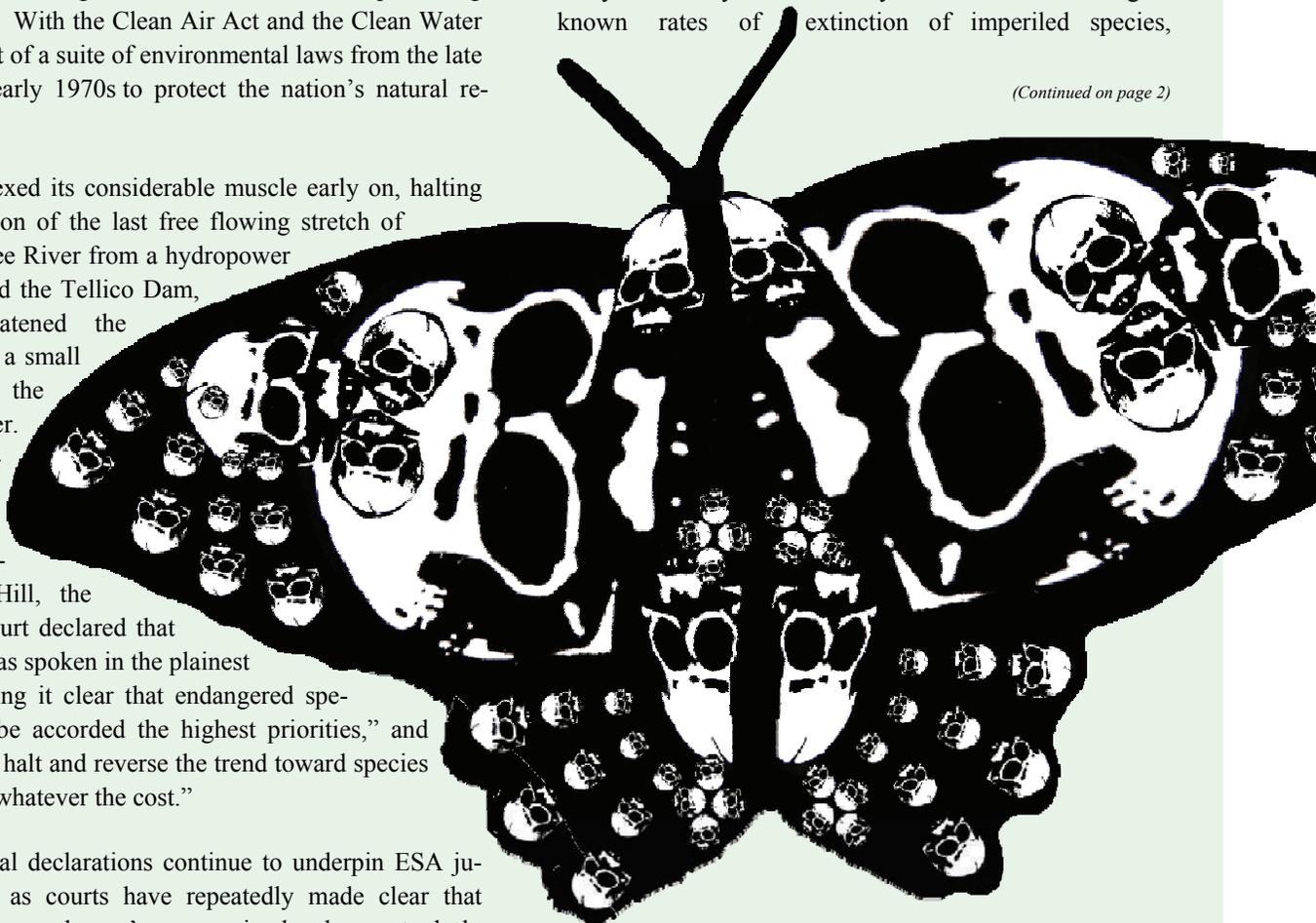
The ESA flexed its considerable muscle early on, halting the destruction of the last free flowing stretch of the Tennessee River from a hydropower project called the Tellico Dam, which threatened the existence of a small fish called the snail darter. In the seminal case *Tennessee Valley Authority v. Hill*, the Supreme Court declared that Congress “has spoken in the plainest words, making it clear that endangered species are to be accorded the highest priorities,” and “intended to halt and reverse the trend toward species extinction - whatever the cost.”

These judicial declarations continue to underpin ESA jurisprudence, as courts have repeatedly made clear that where species and man’s economic development clash, species take priority. The ESA deftly applies an important national policy objective: no matter how economically beneficial man’s activities may be, they can never outweigh our nation’s esthetic, ecological, educational, historical, recreational and scientific obligations to maintain the existence of our fellow species.

Throughout its 40-year history, the ESA has been extraordinarily effective in stopping extinction and setting species

on the road to recovery. Once listed, species are protected from activities that threaten their existence. Of the more than 1,400 species protected by the ESA, only 10 have been declared extinct, and of these eight were likely already extinct by the time they were listed. Looking at known rates of extinction of imperiled species,

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Over the past 40 years, the ESA has also put hundreds of species on the road to recovery, including well-known species like the bald eagle, peregrine falcon, and gray wolf. Here in the Pacific Northwest, many species have benefited from the ESA's protection. The Aleutian Canada goose, for example, was believed extinct until a small population of 150 geese was discovered on remote Buldir Island in the western Aleutian Islands. Recovery efforts under the ESA included removal of foxes from nesting areas, restrictions on hunting, and creation of national wildlife refuges in California and Oregon. These efforts led to the species increasing from 790 birds in 1975 to over 37,000 in 2001 when they were delisted, and to well over 60,000 today. There are many species here in the Northwest and across the United States whose numbers are growing under ESA protection.

The ESA has not been without controversy, and much of the criticism has been raised at the behest of economic interests that oppose any interference – real or perceived – with their activities. These voices are in the minority, however, as polls routinely record overwhelming public support for the ESA. A recent poll found that two-thirds of Americans favor strengthening the law.

Yet, for all of the ESA's successes there is room for improvement. The U.S. Fish and Wildlife Services' programs for listing terrestrial species as endangered or threatened need ade-

quate funding and reform. This is particularly true for the agency's ESA program, which processes listing petitions submitted by members of the public, including scientists and conservation organizations like the Center for Biological Diversity. Critics considered the program to be plagued by political interference and a lack of political will.

By 2008 the Service's listing program faced a large backlog of species nominated for protection, but facing long delays without protection. The situation prompted an historic settlement agreement between the U.S. Fish and Wildlife Service and the Center for Biodiversity, which is described in the accompanying article entitled: "Historic Agreement Speeds Protection for Hundreds of America's Most Imperiled Wildlife."

It provides some relief by requiring the agency to reduce the backlog built up during the George W. Bush Administration. Yet, the federal listing program is perpetually funded at levels far below what's necessary to process consideration of nominated species in a timely manner.

Still, the ESA's unequaled accomplishments are worth celebrating. The ESA is one of the few legal tools available to check negative human impacts on the Earth's land, air, water, oceans and atmosphere. It requires that balance of economic development and human use nature's resources. In the process, it codifies one of our nation's most important national policy objectives – that protecting species and ecosystems today is central to protecting the long-term health of both our environment and our livelihoods. ■

