



A Double Dose of Dini

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The Endangered Species Act Goes On And On

(From *Hawaii Reporter*, February 27, 2009)

As we mentioned a few months back, Jack has been writing his popular *Fact or Fiction?* columns faster than we can publish them. Jack has published his extras in other places including, for a brief time last year, on the NASF website. Starting with this issue of *Plating & Surface Finishing*, we will, from time to time, run additional installments of his well-received writings, as “*A Double Dose of Dini*.” - Ed.

What do Preble’s meadow jumping mice, California’s delta smelt and polar bears have in common? They are all listed as an endangered species under the Endangered Species Act (ESA). You may have heard of some of their predecessors who paved the way for present day activities under ESA; the northern spotted owl, the snail darter, the Stephen’s kangaroo rat. Want to read about others? Check M. David Stirling’s book, *Green Gone Wild*.¹

The Endangered Species Act (1973) was promulgated on the assumption that many and various species of plants and animals in the world are going extinct, and the Federal Government had to step in to do something about it. Many dire reports warned of mass extinctions, a loss of “bio-diversity,” and the pending collapse of ecosystems worldwide. Although a lot of noise was, and still is, made about mass extinctions, the data suggest otherwise.²

Stirling observes, “From Congress’ enactment, President Nixon’s execution and the Supreme Court’s lofty interpretation that nothing shall interfere with preserving even the most obscure species, i.e., ‘whatever the cost,’ the ESA has been interpreted by the courts, implemented and enforced by the federal government, and

championed by the exclusionist community as indifferent and even hostile to human needs, human rights and human dignity. In weighing the value, practicality and cost of preserving hundreds of plant and wildlife species and their habitat against the value of people - needs such as jobs, homes, transportation - even the national defense - the ESA bias automatically tilts against the interests of people. The use of land lies at the heart of the conflict.”³

While costing the taxpayers billions of dollars and creating a thriving lawsuit industry, the ESA has spawned a massive bureaucracy and given rise to dozens of new species of government functionaries, regulations, taxes, takings, exactions and an entirely new branch of law, courts, lawyers, judges and advocates, as well as inflicting economic hardships, nationally and worldwide.⁴

Spotted owls

Before talking about some present-day species, let’s update the spotted owl, since this is still an on-going issue. Tom DeWeese reports that we were told that spotted owls were disappearing because big bad timber companies were cutting down old-growth forests. So the environmental movement rushed to the forests, hugged the trees and issued news releases to decry the evils of the logging industry. As a result of the hysteria to save the “endangered” owls, U.S. timber sales were reduced by 80 to 90%, forcing disappearance of entire towns that depended on the industry.⁵

Craig Welch adds, “A sweeping federal court ruling in 1991 closed much of the Northwest woods to logging. By the end of the century, the timber harvest on 24 million acres of federal land had dropped 90% from its heyday. The spotted owl crystallized the power of the species-protection law. No threatened animal has done more

to change how we use land.” Yet, fifteen years after old-growth logging was banned on most federal lands to protect the owls, their numbers are vanishing faster than ever.⁶

And guess what? The habitat loss may no longer be the primary threat to spotted owls’ survival. There is a new wrinkle, the invasion of the larger, more aggressive barred owl into spotted owl territory. Barred owls are less selective about the habitat they use and the prey they feed upon and are out-competing northern spotted owl’s decline.⁵ The barred owl either eats spotted owls or kicks them out of their habitat. Warren Cornwall notes, “Desperate government wildlife managers are now considering experiments of systematically shooting barred owls. In a preliminary test in Northern California, researchers have shot seven barred owls near former spotted



Northern spotted owl. Credit: U.S. Fish and Wildlife Service.

owl nesting sites. Spotted owls returned to all the sites.”⁷ So now to save the owls we have to shoot other owls after the timber industry has already been shot.

Litigation windfalls

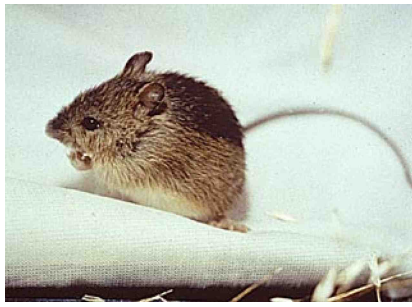
Here’s another item to keep in mind. Under the ESA, no compensation is paid to land-owners for economic hardships caused for having an endangered species on their property. But, as Bonner Cohen reports, “The ESA, like many other environmental statutes, has a ‘cost recovery’ provision that allows a ‘public interest’ plaintiff that brings a suit under the Act and wins to recover its cost at taxpayers’ expense. In the first three-and-one-half years following the listing of the northern spotted owl, ‘public interest’ plaintiffs in the case took their winnings to the bank, in the form of cost-recovery settlements. The Seattle Audubon Society, Portland Audubon Society, Lane County (Oregon) Audubon Society and the Sierra Club Legal Defense Fund, together collected over \$2,140,000 in spotted owl related court costs. These groups can sue to their heart’s content.”⁸

In an expose of costly lawsuits, Tom Knudson of *The Sacramento Bee*, notes, “During the 1990s, the government paid out \$31.6 million in attorney fees for 434 environmental cases brought against federal agencies. The average award per case was more than \$70,000. One long-running lawsuit in Texas involving an endangered salamander netted lawyers for the Sierra Club and other plaintiffs more than \$3.5 million in taxpayer funds. Attorneys for environmental groups are not shy about asking for money. They earn \$150 to \$350 an hour, and sometimes get accused of trying to gouge the government.”⁹

Any wonder why the owl became the darling of the environmental movement?

Preble’s meadow jumping mouse

The Meadow Jumping Mouse (*Zapus hudsonius*) has been called “a cute little rodent distinguished by a long tapering tail, large hind feet, small front feet and a propensity to hop erratically through the grass when disturbed. Sometimes called a kangaroo mouse, *Zapus hudsonius* is native and common to North America and Asia, frequenting hayfields and wheat farms as well as native grasslands. Billions of the little critters live in perfect harmony with grazers and agriculturalists across two continents.” Meadow jumping mice may be found throughout northern North America. They are found from the Atlantic Coast to the Great Plains in the



Preble's Meadow Jumping Mouse. Credit: U.S. Fish and Wildlife Service.

United States, northward throughout the northeastern and north central states to the Arctic tree-line of Alaska and Canada, and as far south as Georgia, Alabama, Arizona and New Mexico. They have the widest known distribution of mice in the subfamily *Zapodinae*. But the meadow jumping mouse has been listed as a Threatened Species under ESA. Not every meadow jumping mouse was listed, just the Preble’s Mouse.⁴

And this is a problem, particularly in Colorado, where some 31,000 acres of local government and privately owned land in the state and stretching into Wyoming - an area larger than the District of Columbia - was essentially quarantined from all development so as not to disrupt the mouse’s natural habitat. Even the Fish and Wildlife Service concedes that the cost to these land owners could reach \$183 million.¹⁰

The Preble’s Mouse has been listed as a Threatened Species since 1998, when the decision sparked a scientific debate over whether the Preble’s mouse is a distinct subspecies of jumping mouse or is genetically indistinguishable from other subspecies of jumping mice.¹¹

Stephen Moore observes, “What we have here is arguably the most contentious dispute over the economic impact of the ESA since the famous early-90s clash between the timber industry and the environmentalist lobby over the ‘endangered’ listing of the spotted owl in the Northwest.” A coalition of enraged homeowners, developers and farmers petitioned the Department of the Interior to have the mouse immediately delisted as “endangered” because of reliance on faulty data based on the latest research on the mouse. It turns out that not only is the mouse not endangered, but it isn’t even a unique species.¹⁰

Nor is the mouse on the road to extinction. “The more people look for these mice, the more they find. Every time scientists do a new count, we find more of the Preble’s mouse,” says scientist Rob Roy Ramey.

“It’s now been found inhabiting twice as many distinct areas as once thought. These are mice, after all, and the one thing rodents are proficient at is breeding. The full species of the meadow jumping mouse, far from being rare, can be found over half the land area of North America.”¹⁰

Something else to get folks in Colorado upset? Mead Gruver reports in July 2008, “The U.S. Fish and Wildlife Service announced that it will remove the Preble’s meadow jumping mouse from the Threatened Species list in Wyoming, but keep the mouse on the list in Colorado. The government said the mouse can be delisted in Wyoming because new populations have been confirmed in habitat not at risk from development. But in Colorado, home construction and other types of development continue to threaten Preble’s mouse habitat, Fish and Wildlife officials said.”¹¹

Think about this for a moment and pretend you are a Preble’s mouse nested along the border between Colorado and Wyoming. Depending on which direction you choose to roam on a given day, you become an endangered species (Colorado side) or just a simple mouse roaming the fields (Wyoming side). Perhaps you might wisely choose to stay on the Colorado side because new homes built there contain a binding covenant that the homeowners keep their cats inside at all times to restrict them from roaming and killing your species. Owners can be fined if their cats chase and apprehend mice.

Delta Smelt fish

The delta smelt is a small, slender-bodied fish with a typical adult size of 2 to 3 inches that is found only in the Sacramento-San Joaquin Estuary. In 2007, a federal judge ordered operators of the giant water pumps in the Sacramento-San Joaquin River Delta - which funnels water to two-thirds of California - to decrease water exports by one-third in order to protect the endangered delta smelt.¹²

The crux of the issue is the contention by environmentalists that the huge Tracy-area pumps used by the State Water Project and Federal Central Valley Project to bring delta water to 25 million Californians and irrigate 750,000 acres of cropland also suck up and kill smelt. Biologists believe the federal ruling will prevent the extinction of the species. Peter Fimrite says, “The rules are among the most comprehensive ever put together under endangered species laws to protect a single species of fish, according to experts.”¹³

As of January 2009, it appears that California may have the driest year in a



Delta Smelt. Credit: U.S. Fish and Wildlife Service.

long time, making water rationing almost certain. Obviously, cutting down on pumping speed to the Tracy pumps will make things even worse. In October 2008, the agency announced that it would deliver just 15 percent of the water requested by cities and farmers statewide in 2009 - the second lowest level since deliveries began in 1962.¹²

Other critters loom on the horizon. Water agencies are also concerned that further restrictions in the coming months might further crimp the water supply. A second permit, to protect salmon and steelhead, is due in March and another Delta fish, longfin smelt, is being considered for listing under state and federal endangered species laws. How bad is it? We're looking at what could be "a water supply and delivery crisis the likes of which Californians have not seen in decades," said the state's top Water Resources director Lester Snow.¹⁴

Craig Manson, a professor at the University of Pacific and former U.S. Department of Interior assistant secretary and colleague Brandon Middleton say there is little science to support the notion that pumping restrictions will solve the problem of the smelt's decline. "Myriad factors negatively affect the well-being of the delta smelt. These include, but are not limited to, a low food supply, presence of predatory fish and a toxic water habitat for the smelt. The pumps play a role through entrainment, meaning that smelt can sometimes get sucked into the pumps. But the significance of this and how it affects the species is unknown. No one knows how many smelt are in the delta. Moreover, no study has shown a definitive link between the pumps and smelt viability. As a federal judge overseeing litigation concerning

the delta smelt has noted, there is no one cause for the smelt's decline. And yet, as a 2008 CALFED report indicates, the pumps are 'blamed for many of the delta's ills,' despite there being no conclusive evidence that export pumping has caused population declines,' of delta fish species."¹⁵

Polar bears

"The Interior Department, bound by the Endangered Species Act, has declared polar bears a 'threatened' species because they might be endangered 'in the foreseeable future,' meaning, 45 years. (Note: 45 years ago, the now-long forgotten global cooling menace of 35 years ago was not yet foreseen). The bears will be threatened if the current episode of warming, if there really is one, is, unlike all the previous episodes, irreversible, and if it intensifies, and if it continues to melt sea ice vital to the bears, and if the bears, unlike in many previous warming episodes, cannot adopt," says George Will.¹⁶

Never mind that the overall polar bear population has increased from about 5,000 in the 1960s to 25,000 today, and that the only two populations in decline come from areas where it has actually been getting colder over the past fifty years. Also, ignore the fact that polar bears were around 100,000 years ago, long before at least one interglacial period (Eemian) when it was much warmer than our present Holocene. Clearly, they survived long periods of time

when the climate of the Arctic was much warmer than at present.¹⁷ But obviously, they aren't expected to survive this present warming without help from the regulators.

George Will adds, "Now that polar bears are wards of the government, and now that it is a legal doctrine that humans are responsible for global warming, the Endangered Species Act has acquired unlimited application. Anything that can be said to increase global warming can - must - be said to threaten bears already designated as threatened. Want to build a power plant in Arizona? A building in Florida? Do you drive an SUV? Or leave your cell phone charger plugged in overnight? Some judge might construe federal policy as proscribing these activities."¹⁶ Sound far-fetched? Hardly so, if you look at the past history of the ESA.

M. David Stirling sums this up quite well. "So, exactly what biological benefits have the American people received for the billions of dollars spent or incurred over 35 years as a result of the ESA? Of the 1,355 plants and wildlife species listed as endangered or threatened, only five - that is 37/100ths of one percent - have been 'recovered,' more or less, as a result of the operation of the ESA. Even if the Fish and Wildlife Services more generous number of 21 recovered species were accepted without question that still would be only a 1.5 percent recovery rate over 35 years."¹⁸

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Polar bear. Photo by Ansgar Walk under Wikipedia Creative Commons Attribution ShareAlike 2.5 License.

The Southern Metal Finishing Conference is an event dedicated to metal finishing professionals from all over the US, Europe and other countries abroad who choose to attend for the value of the workshops and technical sessions, to increase their technical skills and to network with fellow metal finishing professionals in a historic setting. Hosted annually by the ISFA, the event is rapidly being seen around the globe as a rare and unique opportunity for maximizing educational and networking requirements in a changing international industry.

The three-day conference, known for combining entertaining social networking with educational opportunities, has the following events lined up for 2009: Finishing Market Swamp Fox Scramble, PF Online Fishing Tournament, Annual Scavenger Hunt, Rickshaw Races, and even a live taping of the hit industry IPTV show "Finishing Talk Live".

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and OEMs, each with unique and exclusive access to the heartbeat of the metal finishing industry, through an easy to use online purchase process hosted on the official ISFA website. Space is always limited for this event, and early registration is highly encouraged by experienced attendees. For more information about the Conference, Phone: (828) 245-3482; Website: <http://www.surfacefinishingacademy.com/conference.php> for online registration.

In Memoriam

Ed Bayha AESF Member

We have learned of the passing of Edwin P. Bayha, of Matthews, North Carolina, an AESF member and friend of many in the industry. Ed passed away peacefully on Sunday, March 29, 2009. Ed was born on May 5, 1936 to the late Barbara Schneider Pfeifer and the late Edwin H. Bayha. A celebration of his life was held on March 31, 2009, in Matthews. Ed is survived by his wife of 52 years, Janet; daughter, Joanne Miller (Ron); sons, Tom and Scott; seven grandchildren, and his brother, Tom. The family thanks all of those who cared for Ed, with special thanks to the staff of Levine & Dickson Hospice House. He will be missed.

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