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Save the Endangered Species Act with common sense

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The Endangered Species Act has been called the strongest environmental law Congress has ever written because it gives the government almost unlimited power to regulate private landowners with the objective of saving wildlife, fish, and even insects. Environmental groups that relish seeing this law enforced are upset that the Trump administration is proposing to change how the law is administered.

The Fifth Amendment to the Constitution forbids the taking of private property for public use without compensation. The Endangered Species Act violates the spirit, if not the letter, of this amendment.

Under the law, if you have an endangered species on your land, or if the government thinks you might have an endangered species on your land, or if the government knows you don't have an endangered species on your land but thinks that you might someday have that species on your land, then the government can so strictly regulate your land that you can't get any economic use out of it. For example, the government told Louisiana landowners that they couldn't develop their property because it was defined as "critical habitat" for a rare frog — even though the frog didn't, and couldn't, live on the land without completely removing existing trees and replacing them with other species.

Effectively, the government is requiring some private landowners to house and feed certain species of wildlife at the landowners' expense. Moreover, the government can force this without providing any compensation at all. The law doesn't require the government to consider the cost of its regulation, so government officials can write overly strict rules just in case it might help a species.

Yet there is little evidence that giving the government this power has done much to save species. The few species that have recovered from danger did so mostly for other reasons.

For example, America's symbol, the bald eagle, was once considered endangered. But scientists agree that it recovered primarily because the Environmental Protection Agency banned the use of the pesticide DDT a year before the Endangered Species Act was passed.

Moreover, the Endangered Species Act may actually do more harm than good to endangered species. To avoid regulation, the law gives private landowners incentives to do everything they can to keep endangered species off their land, leading to the phrase, "shoot, shovel, and shut up."

This entire system is unfair because it forces a few people to pay the costs for something that benefits everyone else. While it is unknown whether the Supreme Court would agree that the law

is unconstitutional, we shouldn't have to ask it because we shouldn't have imposed such an inequitable burden on a few people in the first place.

The Trump administration has proposed to revise how the law is administered in several ways. Among other things, the proposed rules would allow the government to consider the costs of its regulation and would impose less intrusive regulations for the protection of species that are considered "threatened" as opposed to "endangered."

While these changes may ease the burden on some private landowners, Congress and the administration could do much more to assure species recovery without imposing the costs on a few landowners. Carrots work better than sticks, meaning we can save more species by rewarding people for doing so rather than punishing them for having those species on their land.

First, a share of public land recreation fees should go into trust funds for protecting endangered species. To adequately fund this program, federal agencies such as the National Park Service, Forest Service, and Bureau of Land Management should be allowed to charge for all recreation on public lands.

Currently, most public land recreation, including hunting, fishing, hiking, boating, and off-road vehicles, is free. It is perfectly fair to ask people who use public lands to pay such fees, and many will be happy to pay such fees knowing that by doing so they are helping to save endangered species.

Second, on a case-by-case basis, it may be appropriate to give people ownership rights to selected species. In Britain, wildlife are owned by the owners of the land the wildlife use, which can give landowners incentives to protect such wildlife. Giving Americans similar ownership rights can help save many species.

People go to great lengths to save rare breeds of dogs, cattle, and other domestic animals, not for any economic reward but simply for the pride in doing so. Creating ownership rights in some species of wildlife can put this energy to work in saving rare species.

Saving endangered species is important, but imposing the costs of doing so on a few people is unfair, counterproductive, and may be unconstitutional. Those who truly want to save rare species should support revisions to the law that give people incentives to save species without imposing the costs on a handful of landowners.

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