

# **~Access for All ~**

**Defending America's Equal Access to Justice**  
**Klamath, CA 95548 707-954-6588 JusticeAccess@gmail.com**

---

## **Testimony of Felice Pace, Coordinator, Access for All For the Hearing Record U.S. House of Representatives Resources Committee Hearing on Endangered Species Act Litigation December 6, 2011**

Submitted to: House Committee on Natural Resources  
Attn. Chief Legislative Clerk  
1324 Longworth House Office Building  
Washington, D.C. 20515

Date: December 13, 2011

On Tuesday December 6<sup>th</sup> the Resources Committee of the US House of Representatives held the first in a series of hearings on the Endangered Species Act. While this hearing was intended to focus on ESA litigation, testimony, questions and answers included a wide range of issues related to - and even some extraneous too - the announced subject matter. The hearing record remains open until December 16<sup>th</sup>. This testimony is submitted for the hearing record.

Because I am a university trained economist (BA, Yale University, 1969) and because Chairman Hastings said in his opening statement that he "wants to hear more about how the ESA is impacting...job creation and economic development," I will focus these comments on the question of economic impacts of the ESA.

The question of the ESA's economic impacts came up during the hearing in three key statements:

In his opening remarks, Chairman Hastings said:

The litigation mindset that is consuming the Endangered Species Act has had significant job and economic impacts throughout the West – unnecessarily pitting people against species. During these challenging economic times, Americans cannot afford runaway regulations and endless lawsuits.

In the Pacific Northwest, the ESA-related litigation touches nearly everyone - be it through federal judges determining the fate of irrigated agriculture and clean renewable hydropower dams, the impact of the listed spotted owl on timber communities and jobs, the fear of litigation that has blocked renewable wind projects, or uncertainty of whether predatory wolves are endangered on one side of a highway but not the other.

During the question and answer period Chairman Hastings spoke about the economic impact of the ESA. He reached back to the 1990s and the Northern Spotted Owl conflicts. Chairman Hastings claimed that the Northern Spotted Owl ESA listing had devastated Northwest economies and led to the “destruction” of the timber industry in the region.

The third major reference to the ESA’s economic impact came from the testimony of Attorney Karen Budd-Fallen. Ms. Falen’s statement included this:

*Contrary to some belief, the implementation of the ESA has real impacts on real landowners, ranchers, farmers, businesses, employers and others who are a vital part of America’s present and future. Rather than saving species and conserving their habitats, the ESA is used as a sword to tear down the American economy, drive up food, energy and housing costs and wear down and take out rural communities and counties.*

In the testimony below I examine each of the three claims:

### **1. “The ESA has had significant job and economic impacts throughout the West”**

I have examined the economic literature on the subject of the economic impacts of the ESA. The overwhelming preponderance of extant studies has found either no significant impact or a positive relationship between ESA listings and standard measures of economic development.

One of the most on point studies is one conducted by MIT professor Timothy Meyer in 1995. Meyer examined “The Economic Impact of the ESA on the Agricultural Sector” and concluded:

*The key observation from the tests is that all three time periods suggest a positive relationship between endangered species listings and state economic performance in the agricultural sector. Each additional listing of species is associated with an increase in agricultural gross state product during the period of roughly 0.05% to*

*0.09%. Even if it were real this effect is so small that it is of no policy interest. Moreover, the statistics suggest we would be wise to assume that no systematic relationship exists at all (i.e., the results are statistically insignificant). Nevertheless, this is strong evidence that the functional relationship between endangered species listings and agricultural performance cannot be negative as the opponents of the Endangered Species Act claim.*

In 2006 Tim Kroeger and Frank Casey published “Economic Impacts of Designating Critical Habitat under the U.S. Endangered Species Act: Case Study of the Canada Lynx (*Lynx Canadensis*)” and concluded:

*The agencies implementing the ESA generally do not quantify the benefits of designation in their economic analyses, arguing that uncertainties associated with monetary quantification of benefits are too large. We examined that argument in a case study of critical habitat designation for the Canada lynx. We found that well-established valuation methodologies allow quantification of many of the benefits of designation. We further found that expected benefits of designation surpass expected costs in seven of our eight scenarios. This underscores the importance of including benefits in economic analyses of critical habitat designation. Otherwise, conservation decisions tend to be dominated by cost considerations, which may result in suboptimal choices for society.*

The inescapable conclusion from examination of the economic literature is that – at the level of states, regions and the nation as a whole - rather than being the job-killer which opponents claim, the Endangered Species Act has either had no significant economic impact or has had a positive impact. Based on the empirical studies in the literature, many of this nation’s independent economists have concluded that the ESA is a job creator.

## **2. The Northern Spotted Owl’s ESA listing “devastated” the Pacific Northwest and “destroyed” the timber industry in the region.**

The claim that the ESA “destroyed” the timber industry in the Pacific Northwest is, of course, hyperbola. The timber industry remains a major industrial sector in the Northwest and Northern California. But the general claim of negative impacts to the economy is also not backed up by economic data. While jobs were lost in the timber industry, the region’s economy diversified and is now more resilient to changes in the broader economy.

I’ve lived, worked and raised a family in Northwest California within the range of the Northern Spotted Owl since 1975 and I have studied the region’s economy in depth. In the twenty years before restrictions on federal land in response to the Owl’s listing, unemployment in rural Northwest California counties was consistently double the rate for California as a whole. Employment was erratic as timber dependent economies weathered boom and bust housing markets. Since protection for the Owl reduced logging on the region’s national forests, however, rural county unemployment rates have averaged only 50% above the state rate...not the 100% that was experienced previously.

This indicates that these economies are better off now relative to the state as a whole and also that rural Northwest California communities are now much less impacted by boom and bust changes in housing markets.

From an economic perspective, the Northern Spotted Owl was a catalyst for economic diversification and increased economic resiliency, i.e. for positive economic developments within Northwest and Northern California communities.

Of course, the fact that the Northern Spotted Owl was a catalyst for positive economic developments - i.e. for the diversification of economies which were over dependent on a single, unsustainable, boom-bust industry - does not mean that there were no negative economic impacts. Indeed there were negative impacts. I've had friends and neighbors who are loggers and who have had a harder time finding work since federal timber sale levels were reduced. And I know mills and mill owners who went out of business because they were over-dependent on federal timber or could not afford to retool their plants for the second growth economy.

That said, the negative economic effects attributed to the Northern Spotted Owl ESA listing were not what the Timber Industry and many politicians claimed and still claim they were. Furthermore, these changes were going to come anyway once the Old Growth was liquidated. Finally, negative impacts were and are dwarfed by the durable positive economic impacts that resulted.

Unfortunately, positive economic news does not really matter much if yours is the job that was lost or if yours was the mill which closed. It remains a fact of life, however, that the closing of one Simplot potato processing plant in Idaho - not to mention the decision of a timber corporation to ship logs to China - causes more economic dislocation and more job losses than the Northern Spotted Owl caused on balance.

### **3. Budd-Falen claims**

In her testimony and in her regular memos and guest opinions attacking the ESA Karen Budd-Falen repeats time and again that the ESA is devastating rural America. When, as in her testimony, Ms. Budd-Falen says that "*the ESA has real impacts on real landowners, ranchers, farmers, businesses, employers and others who are a vital part of America's present and future*" I can agree with her.

If the ESA is being implemented properly, those who own or control land which contains critical habitat for an ESA-listed species could have to change some of their practices to accommodate the species. I would argue that if we are going to have a healthy environment capable of sustaining economic well being maintaining and restoring the habitat on which biodiversity depends is a basic landowner responsibility. It is up to Congress, however, whether or not to provide compensation to those who shoulder this responsibility.

I do, however, reject the assertion that the ESA is putting a significant number of folks out of business and I challenge Ms. Budd-Falen to present the actual cases where her

clients have been put out of business as a result of the ESA. Where is the data; where even are the case histories? Nowhere in her testimony – and nowhere in the hearing or in the hearing records that I’ve seen – is there one shred of evidence to back up Ms. Budd-Falen’s claims of economic devastation.

What is true is that – in the rural West where Ms. Budd-Falen and I live – there is great fear of the ESA. This fear has been nurtured and encouraged by the Farm Bureau Federation, Ms. Budd Falen and others – including many of the West’s rural legislators – for the past 30 years or so. The shrill claims of devastating economic impacts repeated over and over for so many years have had an impact.

Yes, many rural westerners do believe that the ESA is a job-killer and many fear the ESA coming to bear on them, their jobs and their property. But the fear is not reality-based. Furthermore, I think it is clear that those who would demonize the ESA for political or economic gain are responsible for ESA fear. If these folks really care about rural westerners they should not be cynically creating and manipulating these folk’s fear.

I would like to also address the testimony submitted by Doug Miller, General Manager, Public Utility District No. 2, Pacific County. Mr. Miller described his district’s experience with the ESA. I do not doubt or question his experience. I would ask, however, what was his expectation going in and was that realistic?

The agencies responsible for implementing the ESA have sufficient management tools in the ESA toolbox and they have additional tools which can be used to protect habitat and preclude the necessity for listings. But the existence of tools is no guarantee. Indeed tools can be used well or poorly with predictable results. Two key factors usually define the difference between effective and unsuccessful use of ESA planning and management tools:

- A conservation management plan is likely to fail if you try to use it to get around the law. It is ESA law – as passed by Congress and in accord with regulations adopted to implement the law – which remains the yardstick. If you don’t meet the letter and spirit of the law, it is the obligation of the agencies to reject your plan and it is the mission of some other citizens to challenge that plan.
- If you don’t have the right people in the room, you are asking for trouble. Attempts to get around the ESA law and the citizen groups which are dedicated to enforcing it have a high probability of failure; adopt such strategies at your own risk. If you want success in managing ESA species for which you have responsibility as a company or landowner, work with the organizations which are dedicated to preserving those species. Most of those organizations are ready and willing to work with you IF you are in good faith and intend to meet your legal obligations.

In conclusion, I would like to take note of the response of FWS Director Don Ash to a question from a member of the committee. When asked about his biggest challenge in implementing the ESA, Director Ash told the committee that habitat loss to development – not litigation – is the single greatest challenge facing the Service. Mr. Ash also defended

the citizen suit provisions of the ESA stating that citizen enforcement holds government to the “highest standards.”

We - the American People - and you - our elected representatives - have a choice. We can continue the “War for the West” - including creating, encouraging and whipping up folks fears with wild and unsubstantiated claims of “devastation” at the hands of the ESA or “immanent extinction” for species. That would be the easy path we have come to know so well. Or we can choose to work together, using all the tools in the toolbox in good faith, to allay fears and work out solutions on the ground.

The ESA is a good law and it can work tolerably well for everyone if we - and by “we” I mean those both inside and outside of Congress - are willing to get out of the way and let it work.

*On behalf of the Access for All network, I thank the Committee for the opportunity to submit testimony.*