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THE SONORAN DESERT TORTOISE AND THE MEXICAN SPOTTED OWL:
THE HIGH ROAD AND THE SLOW ROAD TO CONSERVATION

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Duane L. Shroufe

In approving the Endangered Species Act of 1973 (Pub. L. 93-205, 81 Stat. 884, Dec. 28, 1973; current version at 16 U.S.C. 1531 et seq.), Congress established "a clear public policy that [the Nation] would not be indifferent to the destruction of nature's bounty" (Representative John D. Dingell *in* Rohl 1989). The reasons for enacting such a law are basic, and have been and will be much discussed by others at this conference. The focus of my presentation will instead be on two contemporary situations in which agencies handled compliance with the letter and the spirit of the Act quite differently, with remarkably different results. The two case histories that I will briefly explore are the Sonoran desert tortoise (*Gopherus agassizii*) and the Mexican spotted owl (*Strix occidentalis lucida*).

I suggest these two case histories offer insight into what many people see as "that darned Endangered Species Act problem." The problem is actually not with the Act itself, or even necessarily with the rules through which it is implemented. The problem is human; the reality that agencies and industries are reflections of the people who staff them, and people have personal agendas that too often override the letter and the spirit of the Act.

Other sections of the Act also provide crucial underpinnings of conservation spirit, or intent. The concept of proactive conservation programs that preclude the need for listing a species stem from Section 4. A vital role for state wildlife agencies in maintaining an adequate conservation program for each species of mutual concern to the state and the U.S. Fish and Wildlife Service flows from Section 6, and clearly flows more readily than funding for such efforts flows from Congress.

Now the case histories, as one agency perceives them.

THE MEXICAN SPOTTED OWL

1. The Mexican spotted owl is much like its cousins, the California and northern spotted owls (*Strix occidentalis occidentalis* and *S. o. caurina*, respectively). That is, it is a large owl that until recently was poorly known and which has become the focal point of controversy almost beyond belief.
2. The Mexican subspecies is endemic to the American Southwest and northern Mexico, occurring in forested habitats from southern Utah and Colorado through Arizona and New Mexico well into Mexico.
3. The central questions about this species are: how many owls are there, what kind of forest do they need, and how does and will forest management affect them? The central questions about the agencies interested in this species are: what did they know, and what did they do about it?
4. The Arizona Game and Fish Department (Department) has been actively involved in efforts to determine the distribution, population status, and habitat requirements of the Mexican spotted owl in the Southwest for more than a decade. Our interest began with a confidential phone call from a U.S. Forest Service employee in about 1981, to express concern that the owl was being given short shrift under timber management plans on Arizona's Apache-Sitgreaves National Forests.
5. In 1982, the Department added the owl to our list of *Threatened Native Wildlife*, a non-regulatory list that identified species on which we hoped to focus management attention from cooperating agencies, as well as our own staff. This listing was underscored by a companion Forest Service decision to list the owl as a "sensitive species," and was reaffirmed with revision of the *TNW* list in 1988. On September 18, 1985, the Fish and Wildlife Service recognized the Mexican spotted owl as a candidate for federal listing.

6. As the first listings occurred, little changed for the owl, but big changes began to occur in the Department's approach to wildlife conservation. We began to look more closely at forest management practices, and to insert ourselves into the decision-making process. We would no longer rely on simply providing survey information, with the expectation that land management agencies would "do what's right."
7. Early on it became obvious that discussions about the Mexican spotted owl, as with many nongame species, were severely limited by a dearth of information. We knew nothing about the owl's population status, very little about its basic biology, and we could only guess as to how most proposed habitat management actions might affect it.
8. With cooperation and financial support from the Forest Service, we funded a first-year graduate student to begin looking at the owl through the long-eyes of radiotelemetry. The two-year study began in 1985, and still continues today. The graduate student now has a doctorate, and virtually guaranteed employment under the Endangered Species Act.
9. As the owl research proceeded, the political climate and interagency relations began to deteriorate. The more information was generated, the more obvious became the actual and potential effects of current and proposed timber harvest. And the more obvious those impacts became, the wider the gap became in cooperation between the Forest Service and our Department. The timber industry began to play a more active role in discussions about forest management, and in a few short years what had been a joint venture in every sense became a project in which our participation was increasingly unwelcome, and for which the data were increasingly unavailable to us.
10. On March 28, 1990, the Fish and Wildlife Service found that the petition presented "substantial information indicating that listing the Mexican spotted owl may be warranted" and initiated a Status Review of the owl (55 FR 1413; March 28, 1990). The Department was invited to participate as an *ex officio* member of the Status Review

Team. We protested not having full status on the Team, but assigned a representative and began participating.

11. By this time, controversy over Mount Graham red squirrels, northern goshawks, and a dozen other issues had driven a wedge between the Forest Service on the one hand and, on the other, the Fish and Wildlife Service and our Department. Needless to say, the timber industry and the conservation community chose sides, too.
12. During the Status Review, the "cooperating" agencies' paths clearly diverged. The Forest Service internalized its deliberations, and its interactions with the Fish and Wildlife Service were formalized at a policy level. Attorneys replaced biologists as support staff. And although the Fish and Wildlife Service continued to coordinate closely with the Department, and provided us with funding for minimal spotted owl surveys, when it came time for the two federal agencies to discuss issues, we began to encounter invocation of the Federal Advisory Committee Act as a reason for our exclusion.
13. In June 1990, Kaibab Forest Products Company (Kaibab) sent a letter to the Fish and Wildlife Service regarding activities of the Status Review Team. Kaibab submitted documents concerning violation of the Federal Advisory Committee Act (FACA), and requested that the Fish and Wildlife Service withdraw its notice of intent to list the Mexican spotted owl. It also requested that a new Status Review Team of knowledgeable federal employees be created, in compliance with FACA.
14. Nevertheless, in December 1990 the Fish and Wildlife Service Region 2 Director afforded the Department an opportunity to participate directly in discussions with his executive staff and the Status Review Team Leader of what listing recommendation to forward to Washington. This was a precedent-setting and much-appreciated event, but one that would prove to be less enthusiastically endorsed by the timber industry.

15. The Status Review resulted in an April 11, 1991 finding by the Fish and Wildlife Service that listing the Mexican spotted owl was warranted (56 FR 14678). In November 1991, the owl was proposed for federal listing as a threatened species (56 FR 56344). The listing proposal asserted that the phrase "federally threatened species" was all too accurate in this case: the primary threat was the management practices proposed by the Forest Service's official forest plans.
16. Kaibab Industries then filed a lawsuit in federal District Court arguing that the Review Team did not comply with FACA. Kaibab asked the court to set aside the findings of the Review Team and enjoin actions on the proposed listing until the Team was reconstituted with members from the timber industry and other affected interests. The court found that FACA had indeed been violated by inclusion of employees from the Arizona and the New Mexico Game and Fish Departments, but did not grant Kaibab's request. It reasoned that the overall process had afforded so many opportunities for the public, and specifically Kaibab Industries, to participate that it declined to set aside the listing recommendation.
17. In March 1993, the Fish and Wildlife Service published the final rule listing the Mexican spotted owl as a threatened species, effective April 16, 1993. The Mexican Spotted Owl Recovery Team was convened by the Fish and Wildlife Service in March 1993 to develop a species recovery plan. A Department employee was not appointed to the Team, but we were identified as a Technical Consultant and participated fully in drafting the Recovery Plan.
18. In February 1994, a lawsuit was filed in Federal District Court in Arizona by Dr. Robin Silver alleging failure of the Department of Interior to designate critical habitat for the spotted owl as required under the Endangered Species Act. In October 1994, the court agreed and ordered the Service to propose and make final the designation of spotted owl critical habitat. On December 7, 1994, the Service published a proposal to designate

critical habitat for the Mexican spotted owl. This proposal included almost two million acres of State, Tribal, Federal and private lands in Arizona.

19. On June 6, 1995, a final rule published in the Federal Register designated critical habitat for the Mexican spotted owl, effective July 6, 1995.
20. The final *Mexican Spotted Owl Recovery Plan* was issued in February 1996. The management recommendations contained in the recovery plan will serve as the management guidance for the Service during Section 7 consultation on critical habitat.
21. The Mexican spotted owl in the Southwest, much like the Northern spotted owl in the Northwest, has become the center of a management controversy in which lawyers, rather than land and resource managers determine the outcome. Despite 10 years of cooperative surveying and monitoring efforts, development of a conservation strategy, development of a Recovery Plan, and amendment of Forest Plans to address management of spotted owl habitat, court orders continue to drive the process and to dictate the application of the Endangered Species Act to spotted owl management.
22. In the case of the spotted owl, the environmental community, the industry, and the land management agency were willing to allow the courts to make the decisions instead of the responsible land and resource managers, in an open and cooperative manner.

THE SONORAN DESERT TORTOISE

1. The Sonoran desert tortoise case history is remarkably parallel to that of the Mexican spotted owl, at least at the outset.
2. The Sonoran Desert population of the desert tortoise occurs east and south of the Colorado River, disjunct from the Mohave Desert population of California, Nevada, Utah, and northwestern Arizona. In sharp contrast to Mohave Desert tortoises, which

inhabit desert flatlands, Sonoran Desert tortoises occur on rocky, desertscrub-clad slopes, from west-central Arizona south into Sonora and Sinaloa, Mexico.

3. As with the Mexican spotted owl, the central questions about the Sonoran desert tortoise were/are: how many are there, what kinds of habitats do they need, and how do and will various land-management practices affect them? As with the Mexican spotted owl, the central questions about the agencies responsible for managing the desert tortoise are: what did they know, and what did they do about it?
4. In 1974, various state and federal land and wildlife management agencies began to express concerns about the desert tortoise. The concerns stimulated formation of an ad hoc "recovery team" that, in 1976, became the Desert Tortoise Council, a nonprofit organization dedicated to conservation of the species.
5. In 1976, the Colorado River Wildlife Council, representing the wildlife agencies from the seven states along the Colorado, determined that the desert tortoise was in need of management assistance in the four states to which it was native: Utah, Nevada, California, and Arizona. That same year, the Department recognized the tortoise as a *Threatened and Unique* species and the Bureau of Land Management recognized it as a "sensitive species." The Department's listing was nonregulatory, but the Bureau's listing set in motion a policy requiring that agency to take whatever action was necessary to preclude the need for listing the species federally as endangered or threatened.
6. On August 8, 1977, the Desert Tortoise Council petitioned the Fish and Wildlife Service to list the Utah desert tortoise population as endangered, and to designate roughly 50 mi² of critical habitat. On August 23, 1978, the Fish and Wildlife Service published a notice of intent to review the status of the tortoise throughout its range.
7. Over the next several years, the Department became increasingly actively involved in efforts to determine the desert tortoise's distribution, population status, and habitat

requirements. Although the tortoise's plight seemed worst in the Mohave and Great Basin desert, west and north of the Colorado River, clearly better information was needed range-wide.

8. On August 20, 1980, the Fish and Wildlife Service listed the Beaver Dam Slope (Utah) desert tortoise population as threatened, and designated 39 mi² of critical habitat. The species and the habitat listings both ended at the Utah-Arizona and Utah-Nevada borders, although tortoises moved back and forth across both state lines.
9. In the early 1980s, the Department's efforts focused on trying to persuade Mohave Desert tortoise interests that tortoises in the Sonoran Desert were different biologically, and that, consequently, management needs might also differ in Arizona and Mexico. Aside from obvious differences in habitat preferences, differences in shell characteristics, breeding phenology, and surface activity seemed potentially important. In fact, many of the actual and potential population threats identified in the western portion of the range did not appear to be significant in the eastern portion. Unfortunately, most biologists and land managers were still looking at Arizona tortoises through California eyes.
10. In 1982 the Department added the tortoise to our list of *Threatened Native Wildlife*. The listing was reaffirmed with revision of the *TNW* list in 1988.
11. In 1982, the Fish and Wildlife Service recognized the Sonoran desert tortoise as a candidate for federal listing, but was still unable to contribute significant funding to efforts to determine its status. The tortoise was stuck in that limbo between departure and train wreck. Clearly there were management issues to address, but they had not yet reached crisis proportion as was happening in the Mohave Desert.
12. Over the next few years, interaction among the Bureau, Fish and Wildlife Service, and Department regarding desert tortoise management continued to increase. We began educating our employees and the public as to why translocations of salvaged tortoises

were generally not advisable, and why such individuals should instead be adopted out to private citizens. We also began to jointly and cooperatively fund and carry out tortoise research and population surveys, review applicable management practices, and form an Arizona Interagency Desert Tortoise Team to facilitate cooperation and enhance decision-making. In short, what started as informal cooperation began to evolve into a collaborative conservation strategy. We just didn't recognize it at the time.

13. On September 14, 1984, various conservation organizations petitioned Fish and Wildlife to list the tortoise range-wide (north of Mexico) as endangered. In September 1985, the Service determined the listing was warranted, but precluded by higher priority issues. Such determinations would be reissued annually until 1989.
14. As with the Mexican spotted owl, early on it became obvious that discussions about the desert tortoise were limited by a lack of information. We knew nothing about its population status, very little about its basic biology, and we could only guess as to how most proposed habitat management actions might affect it. Most of what we "knew" was actually inferred from Mohave Desert activities.
15. On October 17, 1987 the Department closed its long-standing live take and possession limit of one tortoise per person, thus restricting importation and exportation of desert tortoises. The action took effect on January 1, 1988, and was a culmination of several years discussion of the potential for captive-releases to impact wild populations through disease transmittal and genetic swamping.
16. The Bureau of Land Management completed a Rangewide Desert Tortoise Management Plan in 1988. The document established habitat management guidelines, and called for establishment of an interagency Management Oversight Group (MOG). Participants included a variety of state and federal agencies in California, Nevada, and Arizona. Among them was the Arizona Game and Fish Department. MOG met for the first time that September, and continues to meet twice annually.

17. As disease and other factors decimated populations in the Mohave, on May 31, 1989 the original petitioners re-petitioned to emergency list the tortoise as endangered throughout its U.S. range. On August 4, 1989, by emergency rule, Fish and Wildlife listed the Mohave Desert population as endangered. On October 13, 1989, the Mohave population was proposed for formal listing as threatened; the listing took effect on April 2, 1990.
18. Despite that listing, and despite the blossoming Mexican spotted owl situation, cooperative tortoise management efforts among the Bureau of Land Management, the Fish and Wildlife Service, and AGED proceeded unabated. It seemed that the more information generated, the closer and harder the agencies worked to put it to use. Grazing plans were reviewed for possible impacts, and appropriate adjustments were identified and implemented. We also formed an Arizona Interagency Desert Tortoise Team, through a Memorandum of Understanding, emulating similarly productive efforts with the southwestern bald eagle. And, in contrast to those in the Mohave Desert, ranchers in the Sonoran Desert remained largely oblivious to presence of desert tortoises as a political beast. The Act was quietly at work, in letter and spirit.
19. In settling litigation by the petitioners, the Fish and Wildlife Service agreed to continue to evaluate the status of the Sonoran population, and to determine, on or before January 15, 1991, whether it warranted federal listing. Instead of retreating behind closed doors in the face of the Mohave listing and the deadline for a decision on the Sonoran population, the Arizona State Office of the Bureau of Land Management called a meeting with the Fish and Wildlife Service and the Department and asked a simple question: What could be done to meet the needs of the Sonoran desert tortoise? No mention was made of trying to prevent a listing, and no mention was made of the Federal Advisory Committee Act.
20. Meanwhile, the formal Status Review began, and the cooperating agencies' paths came together nicely. A Fish and Wildlife Service employee and a Department employee gathered all available information and co-authored the document. They spent untold

weeks wrestling over it with each other and with a Bureau of Land Management employee, in open and constructive give and take discussion. As they wrote the Status Review, they provided information and specific language to the Bureau to infuse into its own range-wide desert tortoise management guidelines. All information was shared openly with their respective agencies, but even when differences of opinion surfaced nobody was directed to reach a predetermined outcome and nobody was told to curtail involvement or to exclude someone else. And, still, nobody raised a FACA concern.

21. Meanwhile, with the Mexican spotted owl, essentially the same process was resulting in stonewalling, lawsuits, and gridlock.
22. In December 1990, the Fish and Wildlife Service Region 2 Director afforded the Department an opportunity to participate directly in discussions with his executive staff and the Status Review Team Leader of what listing recommendation to forward to Washington. This was a precedent-setting and much-appreciated event, but one that would prove not to attract any interest from the grazing industry.
23. The Status Review resulted in a June 20, 1991 finding by the Fish and Wildlife Service that listing the Sonoran desert tortoise was not warranted. The adequacy of existing regulatory mechanisms, viz. interagency cooperative management efforts, were an important component of the basis for that decision.
24. The Department then met with the conservation community and the grazing industry to explain what had happened, and why, and we continued to forge and improve our cooperative management efforts. Today, with funding from the Bureau, the Fish and Wildlife Service, and the Department, we monitor several permanent study plots each year to determine population trends, we have ongoing desert tortoise health studies, and we jointly formulate, review, and implement management activities and land uses that give appropriate consideration to the needs of the desert tortoise. We also still cooperate in the Management Oversight Group and its Technical Advisory Committee, and chair

the Arizona Interagency Desert Tortoise Team. We continue to make our decisions about the public's resources in the public eye, and, thus far, nobody has sued. Knock on wood.

25. In the case of the Sonoran desert tortoise, the environmental community, the affected industry, and the principal land management agency have been willing to allow the responsible land and resource managers to make the decisions in an open and cooperative manner, instead of the courts.

In my experience, whether the Endangered Species Act of 1973 is viewed as an opportunity or an obstacle is often a reflection of attitude rather than necessity. When used to ensure that decisions are based on the best available scientific information, with appropriate involvement by all interested and affected parties, the Act can and does work. But when it is used as a shield, whether by an action agency, the Fish and Wildlife Service, a state agency, private industry, or the conservation community, confrontation builds, tempers flare, management slows to a crawl, and the resource suffers. And when the resource suffers, we all suffer, if not in the short term then in the long term. Given the rate of human population growth, and the lack of new earth to plow, we've flat run out of time for such self indulgence. The question is never so much what process to follow, as it is what leader to follow. Both the tortoise and the owl have much to teach us about leadership, if we are only willing to learn.

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