

STANDING UP FOR MONTANA

The state's effective approach to dealing with federal endangered species listing. **By Tom Dickson**

Two *Bozeman Chronicle* headlines this past August summed up Montana's successful strategy toward keeping species from being listed under the Endangered Species Act (ESA).

"Feds: Insufficient data to list wolverine as threatened" read one.

"Arctic grayling won't get federal protections" proclaimed the other.

Jeff Hagener, director of Montana Fish, Wildlife & Parks, says the decisions demonstrate the value of working cooperatively with the U.S. Fish & Wildlife Service. "They prove that FWP's approach is sensible and effective," he says.

Yet many Montanans disagree, believing FWP should do more to "stand up to the feds" and "show some backbone" whenever a species is listed or proposed for listing. An opinion piece earlier this year in the Billings-based *Western Ag Reporter* reflected a common viewpoint. "[FWP] has apparently slunk into the shadows and abdicated its authority to the U.S. Fish & Wildlife Service," the writer commented. "They once answered to the sportsmen and women of Montana. Now they dance to the tune of the feds."

Not true, says Hagener. "The notion that we're being jerked around on a chain is wrong," he says. "I've met with [USFWS director] Dan Ashe and made it clear that our proven conservation history shows that Montana is the best manager of Montana's wildlife." Hagener also told Ashe that listing species that are abundant in Montana but not in other states can be counterproductive. "One reason we have such healthy fish and

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wildlife populations and habitats is that Montana stockgrowers and other landowners have done a good job of stewardship," Hagener says. "But if a species gets listed anyway, they have less incentive to do the right thing, because they just end up getting punished for it."

Still, despite Montana's concerns with the ESA, "there's no escaping the fact that it's the law of the land, enforceable in all states, and the USFWS is responsible for upholding it," Hagener says.

Is FWP sensibly handling ESA requirements, as Hagener maintains? Or, as many Montanans are urging, should the department defy the USFWS and federal law?

POPULAR ACT

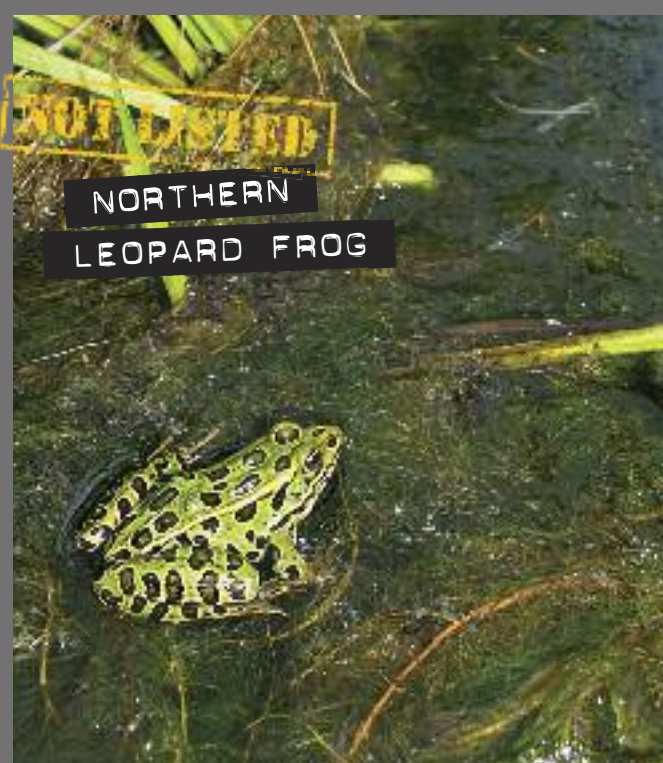
Congress passed the ESA in 1973 by a wide margin with strong bipartisan support. Though many property rights and corporate interests don't like the law, it remains popular with most Americans.

The USFWS is charged with carrying out provisions of the ESA, such as identifying species that may be candidates for listing. If the agency believes that threats to a species' population, range, or habitats may be grave enough to require ESA designation, it classifies the species as "warranted." "That's generally the first indication there's a serious problem," says Ken McDonald, head of the FWP Wildlife Division.

The USFWS also identifies what federal biologists consider to be the species' primary threats. "This indicates to states what the service will be looking at most closely as it considers the possibility of listing," says McDonald. In the case of sage-grouse for instance, the federal agency's primary concerns



STILL UNDER STATE CONTROL
By attending to federal concerns regarding habitat, populations, and management, Montana helped keep all of the species shown here off the endangered species list.



CLOCKWISE FROM TOP: STEVEN GNAM; JONNY ARMSTRONG; JESSE; PHIL VECSEI/ENGRETSOON UNDERWATER PHOTOGRAPHY; SHUTTERSTOCK

are sagebrush-grassland loss and fragmentation as well as a lack of state regulations to safeguard sage-grouse habitat in the future.

“The feds want to see legal mechanisms and regulations firmly in place so they can be assured a state is on the right track and is willing to do things on the ground to conserve the species,” says McDonald.

Two examples of how the USFWS responds to the lack of assurances are its listing of the grizzly bear in 1975 and the Canada lynx in 2000. “The reason for both was that the states lacked adequate regulatory mechanisms to protect the species,” McDonald says. “The USFWS wanted more than just promises. It wanted to see policies, conservation activities, and regulations in place to protect grizzlies and lynx over the long haul.”

DOING WHAT'S NECESSARY

When Montana and other states address those concerns, the USFWS is much more likely not to list. That's what happened this past summer with the arctic grayling. The salmonid's last major stream-dwelling population in the Lower 48 lies in Montana's upper Big Hole River Valley. In August, federal officials said they were encouraged by a decade-long conservation program that encourages Big Hole landowners to voluntarily manage their property to remove threats to the grayling's coldwater habitat. “They wanted to see population trends increasing, genetic diversity, improved flows, and habitat improvements, and all of that happened,” says Hagener.

Preventive conservation provisions can add to ranchers' busy workdays, “but it's generally a lot better than what they'd face if a species is listed,” says Hagener. “It's like walking three miles a day and going on a diet. No one wants to do that, but it beats having a heart attack.”

The same preventive conservation work helped keep the Yellowstone and westslope cutthroat trout off the threatened and endangered species list in the late 1990s,



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says Hagener. “With the ESA looming, Montana got ahead of the curve with some strong conservation efforts, and the USFWS decided that neither species warranted federal listing,” he says. “As a result, anglers in Montana can still catch and keep cutthroat, and landowners have greater certainty about how they manage their lands.”

FWP officials say the key to keeping species off the ESA list is to employ sound science and management. For instance, the department uses federal grants to conduct surveys of nongame wildlife populations suspected of declining. The work has paid dividends. “In part from our discovery that northern leopard frog populations in Montana were more robust than previously thought, the USFWS decided not to even consider that species as potentially endangered,” McDonald says.

Trying to keep a species from being federally listed doesn't mean FWP is not concerned about it. “Just the opposite,” says McDonald. “Montana's legacy of fish and wildlife conservation—and that includes good private land stewardship—has maintained strong populations that few states can match. We want to retain state control so we can continue to sustain healthy populations while managing species like wolves and grizzlies in balance with other wildlife. Once a species is listed, Montana loses that authority.”

“TOUGH TALK” BACKFIRES

Despite Montana's success working cooperatively with the USFWS, many Montanans want the state to instead defy the federal agency. Some have called on county commissioners and the governor to insist that FWP, not the USFWS, should be the lead agency to carry out and enforce the ESA within Montana.

Because federal law makes clear that endangered species fall under federal jurisdiction, such demands can be counterproductive, say USFWS officials. “Chest thumping and rhetoric can make it tough for us to convince the courts and other federal agencies that a state is really serious [about conserving at-risk species],” says Mike Thabault,

an assistant regional director with the USFWS. “We know that a lot of it is just bluster, but the general public often doesn't.”

When it comes to endangered species, states should want to increase, not lessen, their conservation credibility in the eyes of the USFWS. Lacking assurances that states will enact appropriate conservation legislation, the federal agency is far more likely to protect a species by using ESA designation. Usually, that's the last thing a state wants.

NO WOLF HUNTING

For example, when wolves were under federal protection, Montana lacked wolf management authority, hunting was banned, and depredation control on ranches was severely curtailed. The Canada lynx listing in 2000 has since halted timber harvest across much of western Montana. Were it to occur, the listing of sage-grouse, warns Hagener, would threaten activities in the bird's range connected to federal funding, including Farm Bill subsidies, CRP payments, and grazing leases on BLM land. “Many people don't understand how bad things could get,” says Hagener. “If the sage-grouse is listed, we'd end up with the USFWS dictating farming, ranching, and oil and gas development across much of eastern and southwestern Montana.”

Can't Montana defy the federal govern-

ment, as some state lawmakers have urged with their introduction of “nullification” bills? Wyoming tried that with gray wolves, going so far as to challenge, unsuccessfully, the Department of Interior in court. As a result, wolves remained under federal protection in Wyoming five years longer than in Montana and Idaho, both of which submitted wolf conservation plans that fully met federal requirements.

TAKING A STAND

None of this is to say that FWP won't challenge the USFWS when necessary. Recently the federal agency proposed listing the wolverine as threatened. Though the population was not considered in immediate danger, some biologists predicated that global warming would, decades from now, reduce late winter snowpack and affect wolverine denning and pup survival. FWP biologists and their counterparts in other western states maintained that “the science was too uncertain to justify listing,” says McDonald, “especially at a time when the population in the northern Rockies is expanding and wolver-

ines are everywhere they were when Lewis and Clark came through 200-plus years ago.”

At the urging of eight western states, the USFWS convened a panel of 11 noted biologists, forest ecologists, and climate experts from across North America. After reviewing the study that linked future declining wolverine numbers to climate change, panel members concluded it was too speculative. So did USFWS officials. “Based on all the information available, we simply do not know enough about the ecology of the wolverine and when or how it will be affected by a changing climate to conclude at this time that it is likely to be in danger of extinction within the foreseeable future,” announced Ashe in August.

The agency's decisions on the wolverine and, later, arctic grayling, demonstrates how science, conservation, cooperation, and sound management work more effectively than fiery rhetoric at keeping species off the ESA list, says Hagener. “We definitely stand up for Montana and Montana wildlife, but we do it in ways that actually work and don't defy the laws of the nation.”

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GREATER SAGE-GROUSE TO BE LISTED?



LEFT TO RIGHT: JUDY WANTLOK, SHUTTERSTOCK



MONTANA'S LIST

U.S. Fish & Wildlife Service Threatened, Endangered, and Candidate Species in Montana

ENDANGERED

Any species that is in danger of extinction throughout all or a significant portion of its range in the United States.

- Black-footed ferret
- Least tern
- Whooping crane
- Pallid sturgeon
- White sturgeon

THREATENED

Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in the U.S.

- Grizzly bear
- Piping plover
- Water howellia
- Bull trout
- Spalding's champion
- Canada lynx

CANDIDATE

Species for which the USFWS has sufficient information on biological status and threats to propose to list them as threatened or endangered.

- Whitebark pine
- Sprague's pipit
- Greater sage-grouse
- Meltwater lednian stonefly

PROPOSED

Any species that is proposed in the Federal Register to be listed under section 4 of the Endangered Species Act.

- Yellow-billed Cuckoo
- Red knot
- Northern long-eared bat