AFS Policy Statement #27:
Conservation of Imperiled Species and Reauthorization of the Endangered Species Act of 1973
(Full Statement)

This document is the American Fisheries Society's policy statement regarding the Endangered Species Act and its reauthorization.

Issue Definition

In 1993 and 1994, the U.S. Congress is debating reauthorization of the Endangered Species Act of 1973 (ESA). The ESA has been and should continue to be an integral part of U.S. policy regarding conservation of natural resources. Protection of ecological integrity, including rare and endangered species, is critical to sustainable resource use. The American Fisheries Society (AFS) supports legislative mandates, including a strengthened ESA, to protect ecological integrity of freshwater and marine systems.

Background

The ESA is one of the most influential environmental laws in existence. Its primary stated purpose is to prevent anthropogenic extinctions of species by conserving the ecosystems "upon which endangered species and threatened species depend." Thus, it is consistent with a primary objective of natural resource management: sustainable use.

Sustainability implies that all the biological elements and processes that keep ecosystems productive and resilient must be maintained. These elements and processes operate over a broad range of biological levels, including genetic, species, community, and landscape levels. The summation of all types of elements over all levels represents total biological diversity. Ultimately, conservation efforts should encompass elements and processes at each level. Thus, conserving species is an essential (but not sufficient) component of maintaining biological diversity and integrity.

Recent status assessments conducted by the AFS and its subunits clearly indicate systematic declines in native fish distribution and abundance throughout North America. About one-third of the freshwater fish taxa in North America are endangered, threatened, or of special concern, with membership in each category exhibiting substantial increases during the last decade. At least 106 Pacific coast stocks of anadromous salmon and trout are extinct, and 214 more are at risk of extinction or of special concern status. These trends indicate that the current high rates of freshwater fish extinction will persist into the 21st century.

Other aquatic taxa exhibit even higher rates of endangerment. For example, Master (1990) reported that 36% of the crayfishes and 55% of the mussels in North America are extinct or imperiled. Moreover, endangerment of aquatic animals is greater than that of terrestrial animals, in part, because of (a) social biases against small, cold, and wet species and (b) a lack of information regarding the status of aquatic species.

Widespread declines in aquatic taxa indicate that the integrity of many ecosystems (i.e., their capability to support a balanced, adaptive community of organisms may be damaged. Erosion of ecosystem integrity (including species endangerment) stems primarily from pervasive anthropogenic impacts. Ineffectiveness of current conservation policy is, in part, due to its inappropriate focus and highly fragmented nature. Conservation policy should promote management practices that maintain integrity, prevent endangerment, and enhance recovery of species and ecosystems.

As a society of fisheries professionals and a leading proponent of wise and sustainable resource stewardship, the AFS supports enactment of sound endangered species legislation and implementation of comprehensive conservation policy. To that end, the ESA must not be weakened and should be strengthened in numerous ways, as described below. The rationale for strengthening the ESA is based on the objective of sustainable resource use and the larger goal of maintaining ecological integrity, which is fundamental to providing economic stability and social well-being perceived or actual land-use restrictions, whether on private or federal lands, this issue will be hard fought.

Incidental Take Permitting and Habitat Conservation Planning

Nowhere is the issue of species conservation more complex than in the process of incidental take permitting. The ESA provides a process under Section 10 whereby anyone can obtain an incidental take permit to harm or even kill individuals of a listed species incidental to a person's other activities, if in turn the individual develops a Habitat Conservation Plan (HCP) approved by the USFWS. Although the HCP process provides a much needed mechanism for addressing species /development conflicts, the process is still being refined; to date, it has been time consuming, expensive, and too young to be proven successful for the species involved.

ESA opponents argue that the HCP process is much more arduous than the Section 7 consultation process used by federal agencies, which does not require an HCP to get a permit. Consequently, H.R. 1490 and S. 1521 propose to allow nonfederal entities to use Section 7 or an equivalent non-HCP process to remedy this "double standard" and to require the federal government to pay half of any mitigation costs involved with getting a permit. Such a provision to allow landowners to bow out of the development of HCPs would doom the HCP process to failure, say environmentalists. Although somewhat ambivalent about the merits of the process, they note that HCPs must include enough landowners to address a large area of a species' habitat to be ecologically and politically successful. Therefore, H.R. 2043 and S. 921 propose a revolving loan fund for the development of HCPs by municipalities and counties to provide the means for large-scale land use planning, hopefully before species conflicts develop.

H.R. 1490 and S. 1521 also authorize other potential loopholes in the ESA such as requiring the interior secretary to develop Cooperative Management Agreements with any nonfederal person with "authority, control, or ownership" of any area affected by a listed or proposed species. Upon approval, these agreements would suspend the normal

operation of the ESA for that area, including the listing of additional species or enforcement of the act's protections. These bills also propose general permits on a county, state, regional, or national basis "for any category of activities that may affect" a listed species, and allow any person denied an incidental take permit to apply to the Cabinet-level Endangered Species Committee (a.k.a. "God Squad") for an exemption. In sharp contrast, environmentalists want full mitigation for any incidental take allowed under either Section 7 or 10 of the ESA to prevent any net harm to the species, and mandatory compliance with "reasonable and prudent measures" established as conditions of incidental take statements.

Legal Recourse under the ESA

The ability of citizens to bring lawsuits under the ESA to ensure adequate implementation and enforcement of the law has been essential throughout the years to the listing and conservation of numerous species. Such suits also have been criticized as a tool used to stop development wherever possible. H.R. 2043 proposes to increase citizens' abilities to protect species by waiving the 60 day waiting period required before a citizen can file suit in emergencies posing an immediate and significant risk to a listed species. Environmentalists say H.R. 1490 and S. 1521 propose to restrict citizens' efforts to protect species while enabling them to undermine the purposes of the act. Specifically, the bills would (1) eliminate the right of citizens to bring suit against any violators of the act other than federal agencies; (2) create the right of a nonfederal person suffering "actual or imminent economic injury as a direct or indirect result" of a regulation issued under the act to sue; and (3) allow suits to be brought against USFWS listing determinations made under the act, even before a final proposal has been issued.

Conclusion

Many of the issues being debated during the ESA reauthorization will have great ramifications for the survival and recovery of America's fish and wildlife. Given the widespread declines in distribution and abundance of native fish across North America, fisheries professionals should get involved in voicing their opinions on this important legislative battle.

The AFS contends that:

(1) Conservation of aquatic species and ecosystems is a high priority for society and for fisheries professionals. (2) Aquatic species and healthy ecosystems provide society with a broad array of goods and services and are valued for aesthetic, commercial, ecological, ethical, recreational, and scientific reasons. (3) Aquatic species are reliable indicators of environmental conditions. Widespread declines of aquatic species reflect ecosystem deterioration and loss of resource value to society. (4) The major causes of aquatic species endangerment include habitat degradation, introduction of non-native species, and overfishing. (5) The primary goal of water resource management should be to maintain ecosystem integrity, including conservation of all native species. An integrity goal is essential to preserve all resource values. (6) Ecological conditions in waters are linked inextricably to land use. Conservation of aquatic species and ecosystems requires

wise management of both the water and the watershed. (7) Restoration and maintenance of aquatic ecosystems require close cooperation of land and water users and managers, including individuals, nongovernment organizations, and agencies of federal, tribal, state, and local governments. (8) Increasing human demands on water resources will cause increasing endangerment to aquatic biota. Innovative, proactive policies are needed to prevent endangerment and thereby avoid the repeated need to invoke the ESA. (9) The ESA is primarily a safety net to avert species extinctions. It must be complemented by and coordinated with other legislation and policy (state and federal) to maintain ecosystem integrity. Some appropriate legislation already is enacted (e.g., Clean Water Act, Marine Mammal Protection Act, National Environmental Protection Act, National Forest Management Act, and numerous state laws), but often is not fully or appropriately implemented. Additional legislation may be necessary to fully protect other components of biological diversity. (10) Curbing extinction of aquatic species will require a multi-faceted strategy, including emphasis on (a) preventing endangerment through wise resource management and use, (b) restoring degraded ecosystems and habitats and reduced populations through intensive management, and (c) increasing scientific and public understanding of aquatic ecosystems.

Policy Recommendations

The policy of the AFS in regard to conservation of imperiled species is to support reauthorization of a strengthened ESA as one step toward development and implementation of conservation policies that seek to maintain the ecological integrity of aquatic systems. The AFS offers the following recommendations to strengthen and help implement the ESA. Recommendations are divided into six categories: Funding Needs, The Listing Process, Recovery Plans, Jeopardy Determination, Individual Rights and the Public Good, and Enforcement Needs. In addition, the AFS offers several general recommendations regarding conservation policy beyond the purview of the ESA.

Funding Needs

(1) Adequate funding of the ESA is the top priority. Substantial increases in appropriations for federal agencies, cooperative state programs, and local habitat conservation plans are critical for achieving any real success in ecosystem protection and species recovery.

(2) Innovative approaches to funding are needed to implement the ESA effectively. A few options include (a) federal loans to local governments to purchase critical habitat, (b) increased funding of cooperative agreements between state and federal governments, (c) new excise taxes on outdoor recreational equipment or resource use, and (d) establishment of a congressionally appropriated revolving fund for acquiring land under provisions for habitat conservation plans. Other funding sources also should be explored. Consistent success will require program flexibility and the availability of numerous options.

(3) Recovery efforts will not be distributed uniformly among species, especially when funding is limited. All species, regardless of priority for recovery, should be protected from further decline (i.e., additional degradation should be prohibited). Agency decisions on recovery priorities should be based on explicitly stated criteria and guidelines. Currently, prioritization is mostly implicit; making this process explicit would open it to public scrutiny. Criteria should include (a) costs of recovery and extinction (relative to all values listed in item 2 of the Background section, page 25) and (b) probabilities of recovery and extinction. Criteria should be assessed at local, regional, and national scales.

The Listing Process

(1) Listing of species should be based solely on the best scientific and commercial data available, as currently stated in the ESA. Federal agencies responsible for listing should seek a consensus opinion of the most appropriate scientists, including federal, state, and private sector experts.

(2) The listing process should be streamlined, not encumbered by additional bureaucratic checks, such as reviews by independent committees, congressional hearings, or considerations of economic consequences.

(3) Measures should be taken to eliminate the backlog of Category 1 and 2 candidate species. Such measures might include (a) allowing a "warranted but precluded" finding to be made only once per species, (b) establishing a statutory deadline for making final determinations for Category I candidate species, and (c) encouraging the use of scientifically sound conservation agreements that eliminate threats in lieu of listing.

(4) Measures should be taken to eliminate the backlog of listed species without critical habitat determinations, except in cases where such determination would harm the listed species. Such measures might include (a) reducing agency discretion for designating critical habitat and (b) simplifying the process of designating critical habitat.

(5) Timing of critical habitat designation should be flexible and depend on availability of necessary information. For example, critical habitat might be designated concurrently with listing or recovery plan development. Critical habitat should include key riparian and/or watershed components, not just aquatic habitat.

(6) The option of listing subspecies and vertebrate populations should be retained because it provides the authority and flexibility to intervene early in the extinction process. Early intervention often offers the highest probability of successful recovery. Populations are appropriate biological units of conservation and are especially relevant to management of anadromous fishes (e.g., salmon, steelhead). Populations and subspecies should be defined objectively on the basis of best available scientific expertise, including morphological and genetic analyses. However, because populations and subspecies are not as evolutionarily distinct as species, certain policies (e.g., hybrid policy) may need to be relaxed to ensure their conservation.

Recovery Plans

(1) Objectives and criteria for recovery of imperiled species should be scientifically defensible and based on both ecosystem integrity and species status. Recovery plans should contain clear objectives and measurable criteria for assessing recovery, delisting species, and relisting species.

(2) Where multiple listed and/or candidate species occur, recovery plans should be developed for communities or ecosystems rather than for single species. This approach would provide a larger-scale focus and perhaps avoid the need to list some candidate species.

(3) Affirmative duties of federal agencies to implement recovery plans should be more clearly defined and include lines of accountability at all levels. Proactive species conservation efforts by state and federal agencies, in addition to those identified through Section 7 consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, should be encouraged.

(4) Recovery plans should not be requisite for listing, but a draft should be completed within one year of listing.

(5) Recovery plans should include explicit efforts to educate the public regarding the rationale, procedures, and success of recovery. Education efforts should be designed to generate popular understanding of recovery objectives and to induce shifts in resource use that reduce future endangerment.

(6) Recovery plans should be flexible enough to incorporate new information as it becomes available. Initial plans should identify key information gaps, including research and inventory needs.

(7) Recovery plans should outline ecological, economic, and social ramifications of species recovery or loss in enough detail to permit recovery options to be weighed accurately.

(8) Where feasible, recovery plans should outline several viable options for recovery and include analyses of their respective probabilities of success. Options with the highest probabilities of success should be pursued.

Jeopardy Determination

(1) The "jeopardy" standard should be defined in the ESA (rather than by regulation) as any action that reduces the likelihood of either survival or recovery (rather than both) of an imperiled species.

(2) Any significant reduction in the integrity of ecosystems supporting imperiled species, including modification of habitat or introduction of non-natives, should warrant a jeopardy determination.

Individual Rights and the Public Good

(1) ESA restrictions on economic development should not be relaxed. The perception that the ESA is an inflexible impediment to economic growth is erroneous. According to General Accounting Office reports, fewer than 1% of the development activities scrutinized according to Section 7 of the ESA have been prohibited due to impacts on protected species.

(2) Partnerships among government agencies (state, federal, tribal, local) and between government agencies and the private sector to maintain integrity, prevent endangerment, and enhance recovery should be expanded substantially, especially where private lands are critical to imperiled species. Partnerships with nongovernment organizations and individuals should be encouraged through cooperative agreements, tax credits, or other positive incentives to promote wise stewardship of land and water resources.

(3) Where feasible, cooperative management plans should be developed to meet species' needs for protection and landowner objectives. Other options include purchase of conservation easements, exchange of lands, and outright purchase by the government. Criteria for determining land value should be fair and objective but should not be based solely on current market price.

(4) Surveys to determine the presence of imperiled species on private lands should be the responsibility of appropriate government agencies. Landowners should grant rights of access and cooperate with those agencies.

(5) As allowed by the existing ESA, citizens should be eligible to sue to assure implementation of ESA provisions for conserving imperiled species. Much of the value of ecosystems (including rare species) accrues to society at large. Legal standing to file suit should not be limited to those suffering immediate harm.

Enforcement Needs

(1) Civil and criminal penalties for violations of the ESA should be increased substantially to provide a deterrent to violators.
(2) Violation of the ESA should lead to liability for costs of restoration and/or recovery of affected portions of ecosystems, habitats, or species. Cost estimates should be based on the recovery plan or best available information.

General

The following recommendations are intended to promote wise land and water stewardship, thereby minimizing further species endangerment. The AFS

(1) Encourages proactive cooperative resource management among agencies at federal, state, and local levels. Cooperation increases cost-effectiveness, minimizes overlap, and reduces conflict.

(2) Supports additional federal, state, and local programs that focus on maintenance and restoration of ecosystem integrity, including rare and nongame species.

(3) Encourages proactive programs aimed at land/ water users to promote ecosystem integrity and sustainable resource use. Such programs might include conservation incentives, workshops on land/water use practices, technical assistance, or biomonitoring.

(4) Supports efforts to educate the public on the distribution, biology, and environmental needs of aquatic biota, including rare and nongame species. The more people know about natural resources, the more they will support resource conservation.

(5) Supports efforts to articulate the value of aquatic systems and their ecological integrity to society. An appreciation for the value of water resources is critical to sustaining public support for their protection.

(6) Supports scientific research on the ecology and management of aquatic systems. Improved understanding is crucial to improved policy making.

Summary

The ESA, despite shortcomings in its implementation, provides a firm basis for conserving imperiled species. It does not need substantial revision, economic "balancing," or more "flexibility." Rather, it needs reliable, adequate funding; strengthened provisions; and improved implementation. The AFS vigorously supports reauthorization of a strengthened ESA and supports complementary legislation to protect ecological integrity of aquatic systems, thereby averting future endangerment of species. Further, the AFS supports all agency cooperation, proactive programs, and public education that enhance wise resource use or generate public appreciation of aquatic systems.