POLITICS OF EXTINCTION

The Unprecedented Republican Attack on Endangered Species and the Endangered Species Act

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Executive Summary

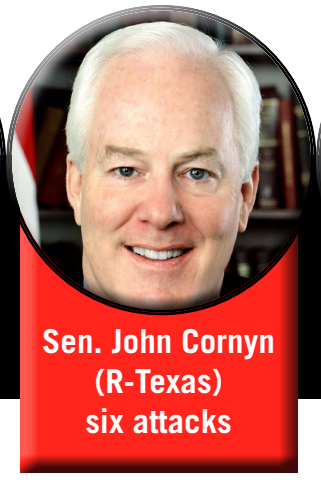
Since 2011 Republicans in Congress have dramatically increased legislative attacks on endangered wildlife and the Endangered Species Act, the nation's most important law for protecting and recovering plants and animals on the brink of extinction.

Our analysis examined legislative and congressional records over the past 20 years and found a sixfold increase in the number of attacks on the Endangered Species Act and the wildlife it protects.

- In the past five years, there have been at least 164 legislative attacks on endangered species, for an average of 33 per year.
- In the 15 years prior to 2011 (1996-2010), for comparison, there were only a total of 69 legislative attacks on endangered species, for an average of fewer than five per year.
- Since January of this year, there have already been 66 legislative attacks on endangered species — the most in any of the past 20 years. This dramatic upsurge does not appear to be slowing, with more attacks likely in the second half of 2015.
- Overall 93 percent of legislative attacks on endangered species have been introduced by Republicans, including all 66 in 2015, raising a major red flag for what will occur should Republicans gain the presidency or a filibuster-proof majority in the Senate.

Our analysis also finds that five Republican members, collectively, account for nearly 25 percent of legislative attacks on the Endangered Species Act since 2011 and have received millions of dollars from special interests opposed to protection of endangered species:

- Rep. Ken Calvert (R-Calif.) with nine attacks;
- Sen. Mike Lee (R-Utah) nine attacks;
- Rep. Don Young (R-Alaska) six attacks;
- Sen. John Cornyn (R-Texas) six attacks;
- Rep. Rob Bishop (R-Utah) with five attacks.



Much of the upsurge in legislative attacks since 2011 has focused on individual endangered species, including 102 attacks targeting at least 228 species, seeking to weaken or remove Endangered Species Act protections for already-listed species or to block listing for imperiled species yet to receive protection. In the 15 years before, there were only 16 such attacks targeting 72 species.

Notably, many of the species-specific attacks in the past five years have focused on animals that are perceived as threatening the economic profits of powerful special interests, such as the oil and gas industry or big agriculture, including **gray wolf** (17 attacks), **greater sage grouse** (14 attacks), **American burying beetle** (13 attacks), **lesser prairie chicken** (12 attacks), and **Delta smelt and Sacramento River salmon** (11 attacks).


Gray wolf


Greater sage grouse


American burying beetle


Lesser prairie chicken


Delta smelt

In short, special interests dominated by the oil and gas industry and big agriculture have ramped up campaign contributions targeted at undermining protections for endangered species and they are getting results. Republicans in Congress are working overtime to pass legislation gutting the life-saving protections of the Endangered Species Act. Given the barrage of attacks, including numerous riders on must-pass spending bills, there is an increasing likelihood that one or more of these disastrous bills will pass.

By taking life-and-death decisions for species away from expert scientists and placing them in the hands of politicians with financial interests directly contrary to conservation, these attacks fundamentally undermine the Endangered Species Act, which more than any other law was written to be science-driven. This largely Republican-driven upsurge in attacks on endangered species is occurring despite the fact that an overwhelming majority of the American public (90 percent) support protections for endangered species and the Act,[1] including a majority of Republicans, revealing that in their zeal to represent moneyed interests, congressional Republicans are out of step with most Americans.

I. Introduction

When enacted more than 40 years ago, the Endangered Species Act ("ESA" or "Act"), 16 U.S.C. § 1531 *et. seq.* enjoyed nearly unanimous bipartisan support and was championed by Republicans and Democrats alike. The Act unanimously passed the Senate on July 24, 1973 and the House by a 390-12 vote on September 18, 1973.[2] When signing the Act into law on December 28, 1973, President Nixon issued a strong signing statement that still resonates today, noting that "[t]his important measure grants the Government both the authority to make early identification of endangered species and the means to act quickly and thoroughly to save them from extinction," and further that:

> *Nothing is more priceless and worthy of preservation than the rich array of animal life with which our country has been blessed.*
> *— President Richard Nixon, December 28, 1973*

Four decades later the culture of collaboration between our elected officials is long gone, with many captured by special interests that have direct economic conflicts with protecting endangered species. Never has the line between those who support saving species under the Endangered Species Act and those who want to dismantle the Act in the name of economic profits been so clear. Indeed Sen. Barbara Boxer (D-Calif.), a staunch champion of protecting endangered species, recently threatened "hand to hand combat" to block five Republican bills attacking the ESA (S. 112, S. 292, S. 293, S. 468, S. 655, S. 736, S. 855 and S. 1036).[3] The bills would, among other things, force consideration of short-term economics when designating critical habitat, and cut habitat from the Act's protections whenever those impacts were deemed too high; prevent the listing of the greater sage grouse; weaken protections for the northern long-eared bat; and increase the burden and costs of implementing the Act by creating unnecessary reporting requirements and red tape.

In addition to these stand-alone bills, Republicans have attached numerous riders to must-pass legislation such as appropriations bills for the departments of defense or interior, including language to remove federal protections for the gray wolf, lesser prairie chicken, African elephant, southern sea otter and American burying beetle. These stand-alone bills and most of the riders are unlikely to pass, but have an impact nonetheless by intimidating the agencies charged with implementing the Act. The U.S. Fish and Wildlife Service, for example, has responded to congressional attacks on listing of individual species by either withdrawing their listing (e.g. bi-state population of sage grouse) or downgrading their protection from "endangered" to "threatened" and passing special rules that exempt threats to the species and thereby blunt the impact of protection (northern long-eared bat). The Services have also proposed new regulations that restrict the rights of citizens to petition for protection of species,[4] which appear to be a direct response to some of the congressional criticisms.

To date the Endangered Species Act has been tremendously successful. Bald eagles, gray whales and more than two dozen other species have been fully recovered, and hundreds more are on the road to recovery.[5] Overall the Act has been more than 99 percent successful at preventing extinction of species under its protection. This success is particularly remarkable given the growing threats from climate change, habitat loss and pollution. Yet rather than provide additional funds to further endangered species recovery or otherwise bolster the success of the Act, Republicans are working to undermine the Act at every turn, even though polls show 9 out of 10 Americans are supportive of the Act and recognize the importance of preserving our nation's biodiversity.[6]

In order to spotlight the broad scope of Republican attacks on the Act and the extent to which this is being driven by special-interest campaign contributions, this study includes a comprehensive survey of every proposed bill or rider proposed since 1996 that was intended to weaken protections for endangered species or the Act itself, and identifies the congressional sponsors of these bills and the major campaign contributors to the worst offenders. This survey clearly shows that legislative attacks on endangered species have not only dramatically increased since 2011, but that these increases have corresponded with substantial increases in campaign contributions from special interests that believe their bottom lines are threatened by endangered species protections — notably the oil and gas industry and big agriculture. Most of these attacks have not passed, but should

Republicans gain a filibuster-proof majority in the Senate or gain the presidency, endangered species and the Endangered Species Act will face even greater risks.

II. Methods

We conducted an extensive search of the congressional search engine Thomas as well as the Congressional Record to identify all stand-alone bills or riders introduced in the past 20 years (1996-2015) that would weaken protections for individual endangered species or sought to weaken the Endangered Species Act itself. A rider is a "*non-germane* amendment to a bill or appropriations bill that changes the permanent law governing a program funded by the bill."[7] We did not include legislative attempts to weaken protections for endangered species through other federal environmental laws, such as the National Environmental Policy Act ("NEPA") or Marine Protection Mammal Act ("MMPA"), but only those riders or bills targeted directly at endangered species or the Act. Notably, if these indirect attacks had been considered, the number of legislative attacks aimed at endangered wildlife would be significantly higher. Because of this our methodology arguably *underestimates* the number of Republican-led legislative attacks on endangered species.

For each bill or rider, we identified the primary sponsor(s) as a means of identifying those who are the primary drivers of anti-endangered species legislation. We further tabulated whether sponsors were Democrats or Republicans. For the five congressional representatives that sponsored the most legislative attacks on endangered species, we obtained data on the financial contributions they received from the oil and gas industry and big agriculture. We also provide data on the overall contributions to Congress from these industries compared to the trend in legislative attacks on endangered species.

III. Republicans in Congress have Dramatically Increased Legislative Attacks on Endangered Species and the Act

Since 2011 there has been a dramatic increase in legislative attacks on endangered species largely driven by Republican legislators. Between 1996 and 2010, there were a total of 69 legislative attacks on endangered species for an average of five per year.[8] Since 2011, however, there have been 164 legislative attacks on endangered species for an average of 33 per year. Overall, Republicans sponsored a total of 218 and Democrats sponsored 16 of these attacks in the 20-year period, indicating that only one was introduced with bipartisan support. There are currently 66 legislative attacks on endangered species pending in Congress, all introduced by Republicans. This surpasses the number of attacks in any of the past 20 years, with more expected through the end of the year.

The past five years have also seen a dramatic rise in the number of species-specific attacks. From 1996 to 2011, there were only 16 species-specific legislative attacks targeting at least 72 individual species. But since 2011 there have been 102 such attacks seeking to reduce or remove protections for at least 228 species. Of the 66 currently pending attacks on endangered species in Congress, 38 are species-specific, targeting 51 species. Recent legislative attacks on species have concentrated on particular species that are perceived as affecting the bottom line of powerful special interests, notably the oil and gas industry and big agriculture, including wolves (17 attack), sage grouse (14 attacks), American burying beetle (13 attacks), lesser prairie chicken (12 attacks), and Delta smelt and Sacramento River salmon (11 attacks).

The use of riders on must-pass budget and spending legislation to undermine protections for endangered species has also skyrocketed: 54 of the 164 attacks since 2011 (33 percent) have been riders compared to just two between 1996 and 2010. These riders have no relevance to the spending priorities of Congress, but are nonetheless added through secretive closed-door processes as a means to pass controversial provisions that would otherwise not pass as stand-alone bills. There is no public hearing, debate or citizen involvement. Congress is currently considering 31 riders attacking protections for endangered species, including riders that would remove protections for wolves in the rest of their range, block protections for sage grouse, and remove protections for the lesser prairie chicken and American burying beetle, as well as many other imperiled species.

The increase in species-specific attacks often as riders likely in part reflects the fact that in 2011 a rider on a must-pass appropriations bill funding the Department of Defense removed protections for gray wolves in

Montana and Idaho.[9] The rider, introduced by Sen. Jon Tester (D-Mont.) and Rep. Mike Simpson (R-Idaho), signified the first major congressional intervention to remove federal protections for a listed species. It appears to have opened the floodgates to this alarming trend.

The vast majority of legislative attacks have not passed, but two other significant riders besides the one delisting wolves in Montana and Idaho also passed in 2014. One allowed for trophy hunting and importation of three African animals — scimitar-horned oryx, addax and Dama gazelle[10] — and another prohibited the U.S. Fish and Wildlife Service from expending any resources to list the greater sage grouse, the bi-state population of greater sage grouse in California, and Nevada or the Gunnison sage grouse.[11] Thus far, only a handful of harmful provisions have passed into law.[12] The real concern now is that, with so many legislative attacks currently pending in Congress, more bills designed to weaken, block or remove protections for endangered species will slip through as part of backroom political trading. This will not only further endanger particular species, but ultimately threatens to undermine the Endangered Species Act itself.

Even the bills that don't pass have a chilling effect on the two agencies charged with implementing the Act, the U.S. Fish and Wildlife Service and National Marine Fisheries Service ("Services"). The current slate of legislative attacks include riders to prohibit new protections for sage grouse, weaken protections for northern long-eared bats and lesser prairie chickens and remove existing protections for gray wolves and American burying beetles, as well as stand-alone bills to limit citizen enforcement of the Endangered Species Act or otherwise make implementation of the Act more cumbersome and less effective. Likely in part responding to these attacks, the Fish and Wildlife Service withdrew proposed protections for bi-state sage grouse and weakened protections for the northern long-eared bat by downgrading the bat from endangered to threatened status and implementing a special rule that exempts many threats, such as logging, mining and oil and gas drilling, that otherwise would be prohibited under the Act.[13] Other species have lost protection or had protections weakened in response to congressional attacks, and more are likely to face a similar fate, even if no more bills are passed. This places our nation's most-imperiled wildlife at serious risk.

A total of 107 Republicans and 12 Democrats have introduced legislative attacks on endangered species since 1996, including 57 who have introduced more than one attack. Since 2011 five senators and representatives stand out for introducing multiple legislative attacks on endangered species, including Rep. Ken Calvert (R-Calif.) and Sen. Mike Lee (R-Utah) with nine attacks each, Rep. Don Young (R-Alaska) and Sen. John Cornyn (R-Texas) with six attacks each and Rep. Rob Bishop (R-Utah) with five attacks (Table 1). Collectively, these five members of Congress were responsible for nearly a quarter of the legislative attacks on endangered species since 2011. According to the Center for Responsive Politics, all of these members have received hundreds of thousands to millions of dollars from the oil and gas industry and big agriculture during their careers in Congress (Table 1).

Table 1. The five members of Congress who introduced the most legislative attacks on endangered species since 2011, the species attacked and the amount of campaign contributions they've received from big agriculture and the oil and gas industry in their careers.

Member	Number of bills	Species Targeted	Big Agriculture	Oil and Gas
Ken Calvert	10	Sierra Nevada yellow-legged frog, mountain yellow legged frog, Yosemite toad, African elephant, valley elderberry longhorn beetle, sage grouse, Gunnison sage grouse, gray wolf, northern long-eared bat	$665,009	$277,074
Mike Lee	9	Sage grouse, American burying beetle, lesser prairie chicken	$45,650	$157,865
Don Young	6	African elephant, African antelope, black rhino, leopard, polar bear, two general attacks on *all* ESA and CITES protected species, as well as endangered marine mammals and fish	$459,070	$1,311,818
John Cornyn	6	Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, Salado salamander, dunes sagebrush lizard	$1,693,599	$2,886,106
Rob Bishop	5	Sage grouse	$119,350	$264,700

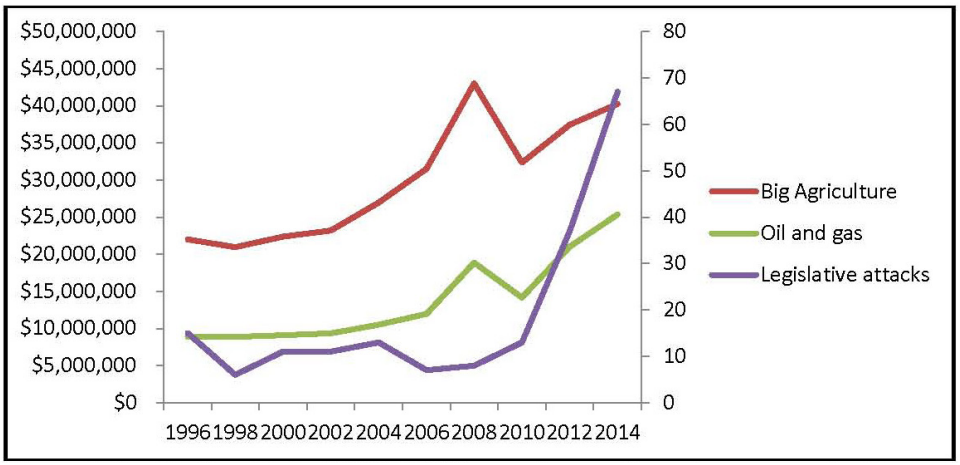


Figure 1. Legislative attacks (1996-2015) on endangered species compared with campaign contributions from two industries that have opposed protection of endangered species: big agriculture and the oil and gas industry.

More broadly, the dramatic upsurge in attacks on endangered species since 2011 corresponds with an overall increase in campaign contributions beginning in 2008 related to both the presidential campaign and the 2010 U.S. Supreme Court decision in *Citizens United*.[14] This correspondence is particularly apparent when comparing the upsurge in legislative attacks on endangered species to the total big agriculture and oil and gas industry contributions to Congress from 2004 to 2014. Over that period contributions from big agriculture jumped from just under $27 million to more than $40 million; contributions from the oil and gas industry increased from roughly $10.5 million to more than $25 million (Figure 1).[15] These campaign contributions have disproportionately favored some of the most aggressive critics of the Endangered Species Act, including the five Republican members discussed above.

Conclusion

The Endangered Species Act is under attack from special interests and their supporters in Congress as never before, including: a six-fold increase in legislative attacks in the past five years compared to the previous 15; increased use of riders on unrelated, must-pass appropriations bills; and increased targeting of individual species that are perceived by special interests like the oil and gas industry and big agriculture as a threat to their economic profits. The attacks are having the desired effect in most cases not by passage of legislation, but by exerting political pressure on the U.S. Fish and Wildlife Service, which has responded by weakening or removing protection for a number of species, including gray wolves, lesser prairie chickens, sage grouse and northern long-eared bats. These special interest-driven attacks are fundamentally undermining the purpose of the Act to prevent the extinction of species by making protection decisions based on the best available science.

The Endangered Species Act was passed in 1973 with nearly unanimous public and bipartisan congressional support. A large majority of the American public continues to support the Act and the protection of endangered species, but support in Congress, particularly among Republicans, has turned to outright opposition and hostility. This hostility corresponds with a tremendous increase in the amount of, and dependence upon, campaign contributions from interests directly opposed to protection of vulnerable wildlife. Our findings indicate that the opponents of protection of endangered species are clearly out of step with the American public and demonstrate the clear need to maintain both the integrity of the Act and limit the influence of money in politics.

Endnotes

[1] Tulchin Research, *Poll Finds Overwhelming, Broad-Based Support for the Endangered Species Act Among Voters Nationwide* (July 6, 2015), available at http://earthjustice.org/sites/default/files/files/PollingMemoNationalESASurvey.pdf

[2] *S. 1983 Bill Summary and Status: 93rd Congress (1973-1974),* available at http://thomas.loc.gov/cgi-bin/bdquery/z?d093:SN01983:@@@S.

[3] B. Boxer, *Minority Member Opening Statements: FY 2016 Budget Request for FWS and Legislative Hearing* (May 6, 2015), available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Statement&Statement_ID=411eec6e-36b3-4849-9bfe-3402f18d439f.

[4] *See* 98 Fed. Reg. 29286 ("Revisions to the Regulations for Petitions").

[5] *See* http://www.esasuccess.org,

[6] Tulchin Research, *Poll Finds Overwhelming, Broad-Based Support for the Endangered Species Act Among Voters Nationwide* (July 6, 2015), available at http://earthjustice.org/sites/default/files/files/PollingMemoNationalESASurvey.pdf.

[7] Senate Glossary, available at Glossary, available at ttp://www.senate.gov/reference/glossary_term/rider.htm http://www.senate.gov/reference/glossary_term/rider.htm.

[8] The Center is carefully tracking the anti-ESA legislative attacks as they get introduced by the 114th Congress. Data will be regularly updated. Accord Center for Biological Diversity, Attacks on the Endangered Species Act, available at http://www.biologicaldiversity.org/campaigns/esa_attacks/table.

[9] H.R. 1473 (Sec. 1713): Department of Defense Full-Year Continuing Appropriations Act for Fiscal Year 2011, available at https://www.congress.gov/bill/112th-congress/house-bill/1473.

[10] H.R. H.R.3547 (Sect. 127): Consolidated Appropriations Act for FY 2014, available at https://www.congress.gov/bill/113th-congress/house-bill/3547.

[11] H.R. 83 (Sect. 117); H.R.3547 (Sect. 127).

[12] *See Id.* at http://www.biologicaldiversity.org/campaigns/esa_attacks/table.

[13] *Accord* 80 Fed. Reg. 17974 (April 2, 2015).

[14] *Citizens United v. FEC,* 130 S. Ct. 876 (U.S. 2010).

[15] These numbers were taken by averaging the total financial contributions for the election cycles of 2004 and 2006 for the oil and gas, and agricultural industries. The same method of calculation was done for the election cycles of 2008 and 2010. *See* Center for Responsive Politics: Long Term Trends.