To: Representative Tom McClintock

Regarding the Endangered Species Act (ESA)

Dear Representative McClintock,

Your office recently responded to one of our members regarding a proposed ESA listing with this statement:

"For all its good intentions, the ESA is in desperate need of reform. If the law functioned properly, we would be regularly delisting species as populations recovered. Instead, the ESA regularly adds species to the protected list, further hampering economic activity under the guise of protecting them, while failing to deliver meaningful results. Rather than continuing to impose bureaucratic edicts that restrict land use and destroy economic value, we should reform the ESA to give state and local governments more control to better protect species on the lands that they know best."

As you are aware, the Audubon Society knows a thing or two about birds, and I can say quite objectively that this statement – which appears to have been authored by a rather junior aide in your office – is largely incorrect and misleading, and we request that you withdraw it and discontinue its use in response to ESA letters, questions and actions.

Since I have the temerity of challenging the correctness of your statement, I will here offer our analysis:

For all its good intentions, the ESA is in desperate need of reform. If the law functioned properly, we would be regularly delisting species as populations recovered.

- That is a reasonable action - indeed, it is the wish and goal of the environmental community and of the ESA itself. Actually, the purposes of the ESA are two-fold: to prevent the extinction of specific species, and to recover those species to the point where the law's protections are not needed. Delisting before sustainability is accomplished would make the whole process purposeless.
- If, as you say, “the ESA is in desperate need of reform”, we might assume that you can provide plenty of such illustrations of that “desperate need”. It would be instructive if you would name a selection of species that you regard as worthy of delisting. Perhaps you will be good enough to provide the data that justifies delisting these species.
- Of course, there can be no such thing as “regular” delisting because delisting is dependent upon robust and sustainable recovery of the particular species.
- In truth, it would be more correct to say that species are only listed under the ESA when they are desperately close to extinction.
Instead, the ESA regularly adds species to the protected list, further hampering economic activity under the guise of protecting them, while failing to deliver meaningful results.

- Please name species where you regard it is the case that listing is “failing to deliver meaningful results.” You will, of course, be familiar with the successful recovery of the Bald Eagle and other raptors where “meaningful results” have clearly been achieved due to the withdrawal from the market of DDT.
- As you know, the ESA doesn’t “regularly add species to the protected list.” In fact, the ESA doesn’t do anything; rather, the listing action is taken by relevant agencies under a scientific process as authorized under the ESA. It is live, real people who list endangered species using science to analyze and justify the listing.
- Here again, the use of the word “regularly” is incorrect and misleading.

Rather than continuing to impose bureaucratic edicts that restrict land use and destroy economic value, we should reform the ESA to give state and local governments more control to better protect species on the lands that they know best.

- A scientific process that analyzes the pros and cons of listing a specific species can hardly be called “bureaucratic” in the normal understanding of that word. Listing a species under the ESA is the result of a very robust and well-considered process, out in the public and open to scrutiny and contention. Consequently, it is incorrect to call it a “bureaucratic edict” because it is based on a rigorous process, not on ideology.
- You wish to “give state and local governments more control” so perhaps you would be good enough to enlighten me as to which local government(s) within the 5th District might have been capable of analyzing the reasons why raptors were not reproducing in the 1960s. You might review the EPA document The Case of DDT: Revisiting the Impairment (https://www.epa.gov/caddis-vol1/case-ddt-revisiting-impairment) to understand the scientific complexities in the listing process and why it is beyond local government capabilities. You will also see that the process was scientific, not bureaucratic.
- You say that local governments could “better protect species on the lands that they know best” – but what do they really know about those lands? We can be sure that they know the commercial value of the land, but to "better protect species" as you say, they would need expertise that is beyond local governments’ spheres of capabilities. Furthermore, wildlife and particularly birds, don't know local government boundaries. That is why the ESA is administered jointly by the U.S. Fish & Wildlife Service and NOAA Fisheries that have the necessary geographic scope plus requisite skills to call on other scientific bodies and people as necessary.

We respectfully request that you cease use of this statement in connection with the ESA. We will, of course, be pleased to comment and advise on any new statement that your office prepares.

Sincerely,

Barry Boulton
President, Central Sierra Audubon Society