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Laura Peterson
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**Introduction**

Environmental laws and the ecosystems they support are under attack. Intermittently since the Reagan administration and increasingly since the 2008 economic collapse, certain politicians and their industry sponsors have inundated the media with angry rhetoric, blaming historic job losses on “overregulation.”¹ Environmental laws are a frequent target of these politicians who often benefit from contributions supplied by the fossil fuel and mining industries.² Ignoring the successes of these laws—cleaner air, cleaner water, and recovering imperiled wild species and habitat—they claim that environmental regulations are “job killers.”³ Reflecting the success of these claims, the recent House Fiscal Year 2012 Interior and Environment spending bill contained forty-two proposed anti-environmental riders. These riders range from limiting the Environmental Protection Agency’s ability to curb carbon emissions⁴ to blocking the U.S. Fish and Wildlife Service’s ability to list new threatened and endangered species.⁵

In the midst of these attacks, the Endangered Species Act (“ESA”)—an act President Nixon signed in 1973 with the enormous popular support of the American people—has become a target for repeal.⁶ A bedrock environmental law, the ESA protects both imperiled species and the habitat necessary for those vulnerable species to survive.⁷ Capitalizing on widespread economic anxieties, opponents of industry regulation have proposed legislation to undermine the ESA and block the listing of threatened and endangered species.⁸ Sometimes based on more hyperbole than fact, these opponents promote the false belief that resource development and environmental protection are mutually exclusive. Some industry supporters argue that jobs would be created if the government opened up protected lands for private use,⁹ and that increased regulation may block development and destroy jobs, leading to further economic depression.¹⁰ Such attacks on the ESA characterize the issue as a tradeoff between the economy and the environment, claiming that the government must choose between using scarce natural resources to protect wildlife or help the economy.¹¹ In the current climate of economic distress, these arguments, regardless of their truth, are particularly effective. Whenever environmental protections are proposed or enforced, industry proponents predictably forecast dire economic consequences.¹² However, these gloomy predictions rarely materialize.¹³ There is no stark dichotomy of economy versus the environment when it comes to developing natural resources; the issues are much more nuanced. Overblown rhetoric about environmental regulation obstruct the public’s access to open and honest debate about the best uses for scarce natural resources.

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* Laura Peterson is a Legal Fellow at the Center for Biological Diversity; Jay C. Lininger is an Ecologist at the Center for Biological Diversity; Marty Bergoffen is an Endangered Species Organizer at the Center for Biological Diversity; Bill Snape is Senior Counsel at the Center for Biological Diversity and a Practitioner in Residence at American University, Washington College of Law; Curt Bradley is a GIS Specialist and Information Technology Director at the Center for Biological Diversity.
Controversy in the Permian Basin

The American Southwest, which is itself an intersection of diverse cultures, ecosystems, and political ideologies, is on the front line for the cutting-edge natural resource battles of the early 21st Century. The Permian Basin in southeast New Mexico and west Texas is the focus of the latest and most serious attacks on the ESA (See Figure 1). The Permian Basin is an area of great economic and ecological significance. It is one of the largest domestic producers of fossil fuel in the United States, providing seventeen percent of the nation's domestic crude oil. In 2004, the Permian Basin produced about 841,000 barrels of oil per day. In addition to oil and gas extraction, the Permian Basin is home to significant agricultural interests, producing both food crops and grazing livestock. While these activities are important for the region's economy, they also have a significant effect on wildlife. The lesser prairie chicken and the dunes sagebrush lizard are particularly vulnerable to these industrial activities that are destroying their diminishing habitats. Their habitats and populations have been declining steadily for decades and their survival depends on protection under the ESA.

As a result of their population decline, these two species are now candidates for listing under the ESA. If approved, their listing would trigger certain protections for both the species and their habitats. However, opponents argue that listing these imperiled species would virtually shut down oil and gas drilling and inhibit agricultural production, both of which are bases of the local economy. These opponents argue that public resources should be dedicated to economic development to benefit workers rather than protecting environmental resources. Responding to these claims, local members of Congress have spearheaded legislation that would preclude listing the dunes sagebrush lizard and lesser prairie chicken, regardless of the scientific merit of protecting them as endangered species.

This article examines the pronounced controversy over natural resources in the Permian Basin, arguing that the supposed conflict between environmental protection and resource exploitation is not as stark as many claim. Protection would have little real effect on energy development and may ultimately help the economy of the American Southwest and lead to improved land management practices. To the extent that there is a real conflict over use of scarce resources, the controversy presents a much-needed opportunity for healthy dialogue about sustainable development in the region. Any actual conflict can be resolved within the existing flexible mechanisms provided in the ESA.

The Lesser Prairie Chicken

The lesser prairie chicken is a medium-sized, gray-brown member of the grousse family that lives in the short grass prairies of the American Southwest. It forages for insects, leaves, and buds on the shinnery oak and sand sagebrush grasslands in limited areas of Colorado, Kansas, New Mexico, Oklahoma, and Texas. While the prairie chicken is best known for the male's unique courtship display on communal breeding grounds, it also provides the vital ecosystem service of regulating the grassland insect populations, which can cause substantial economic damage to agricultural operations. Destruction of habitat is one of the primary threats to the lesser prairie chicken. Since the 1800s, its range has been reduced by over 90%, and its population has declined significantly. The remaining habitat faces a myriad of ongoing threats from livestock grazing, oil and gas drilling, fire suppression, deliberate poisoning of shinnery oak, and fragmentation from structural and transportation development.

The lesser prairie chicken has been caught in regulatory limbo for over a decade. In 1998, the U.S. Fish and Wildlife Service (“FWS”) concluded that it warranted protection as an endangered species. However, it has since remained a “candidate species” with no protection while its numbers decline. Now, the FWS characterizes the extinction threat to this terrestrial bird as high, ongoing, and imminent. To survive and recover, the lesser prairie chicken needs protection under the ESA.

The Dunes Sagebrush Lizard

The dunes sagebrush lizard is arguably the most controversial animal in the current ESA fight. The lizard exclusively makes its home in shinnery oaks on the sand dunes of southeastern New Mexico and west Texas. This habitat specialist has a limited range, living under the shade of oak trees and burying itself in white sand to avoid predators and regulate its body temperature.

The primary threats to the lizard stem from fossil fuel development and agricultural activities within the lizard's specialized habitat. Roads, pipelines, and power lines, as well as vehicular traffic and soil compaction associated with extraction operations, have destroyed and fragmented the lizard's native environment. In addition, ranchers historically used herbicides to kill the shinnery oak necessary for the lizard's survival because it is poisonous to livestock in the spring when it is budding. Farmers also remove the oak to clear land for livestock grazing and crop production. Killing the shinnery oak not only removes the lizard's habitat, it also destabilizes the entire dunes ecosystem.

The FWS classified the dunes sagebrush lizard as a candidate for listing under the ESA in 1982. As a candidate species, neither the lizard nor its habitat has received any federal protection. As a result, and despite listing by the State of New Mexico as an endangered species, its habitat has decreased by forty percent since 1982. This fact is particularly troubling given the direct link between the lizard's survival and the quality and quantity of the shinnery oak. In 2010, after twenty-eight years, the FWS proposed to formally list the dunes sagebrush lizard as endangered under the ESA. The survival of the dunes sagebrush lizard depends on its ultimate protection under the ESA. However, this protection could be undermined if federal action under the ESA is blocked by oil, gas, and agricultural interests.

Backlash over Protection Exploits Economic Fears

Based on media reports, it would seem that protecting the lesser prairie chicken and the dunes sagebrush lizard from extinction would have a significant negative impact on economic
activity in the Permian Basin. Proposed ESA listings have generated virulent opposition, with some predicting dire economic scenarios in the region if these at-risk species receive protection. Representative (“Rep.”) Steve Pearce (R-NM) alleged that protecting the lizard would place “[m]ost of the oil and gas jobs in southeast New Mexico . . . at risk.” Echoing this sentiment, a Texas newspaper asserted that listing the lizard as an endangered species would put 27,000 jobs in jeopardy by severely limiting oil production. Senator (“Sen.”) John Cornyn (R-TX) has advanced similar claims, stating that lizard protection is just another way the federal government puts obstacles in the way of job creation. These members of Congress have proposed legislation that would preclude the ability of the FWS to list either species as endangered. In addition to these claims, industry has inundated the local media with claims that environmentalists are determined “to shut down the oil and gas industry in Texas.”

However, when the rhetoric is peeled away, these claims of imminent job loss resulting from wildlife protection have little substance. Instead, protection of at-risk wildlife would arguably have little or no effect on continued fossil fuel extraction in the Permian Basin. A recent study on the impact of listing the dunes sagebrush lizard on oil and gas activities in New Mexico shows that claims of economic calamity are blown over. The dunes sagebrush lizard’s potentially suitable habitat covers only 600,000 acres—less than one percent of all oil and gas lands in the Permian Basin. The study examined the leasing activity from January 2010 to July 2011 of the Bureau of Land Management (“BLM”) Pecos District, which manages most of the land in the animal’s range in New Mexico. Instead of the consequences purported the media, the study shows that lizard protection will have almost no effect on oil and gas activity. Only five percent (2,920 acres) of 52,874 acres offered for lease in New Mexico are habitat for the lizard. Moreover, only fifteen percent (3,484 acres) of 22,383 acres where BLM proposed leases in the second half of 2011 were lizard habitat. The Permian Basin Petroleum Association claims that lizard protection “would shut down drilling activity for a minimum of two and as many as five years” while the FWS determines whether listing is warranted. On the contrary, BLM will defer leasing of only 560 acres—less than one percent of lands proposed for oil and gas development during the study period—to conserve habitat for the animal. Further, leases offered by BLM during the study period outnumbered those purchased by oil and gas companies, indicating a market surplus. Additionally, in Texas, the state comptroller and land commissioner jointly found that only three percent of the 197,606 acres of dunes sagebrush lizard habitat overlaps developable oil and gas land.

Instead of shutting down all oil and gas activities in the Permian Basin, protecting the dunes sagebrush lizard and its habitat would affect only a miniscule portion of lands that the oil and gas industry wishes to exploit in the Permian Basin. Given the current surplus of leasing opportunities on public land in New Mexico alone, listing the lizard would have little effect on oil and gas activities in the Permian Basin.

The ESA Provides the Flexibility to Deal with Conflicts That Arise

This article does not deny the existence of conflict over natural resource development in the American Southwest or that the ESA can inhibit resource development. The ESA does and should prevent development in certain circumstances. However, to the extent that conflicts about the use of natural resources in the Permian Basin exist, the ESA provides flexible mechanisms to minimize the economic impacts of wildlife protection. The ESA requires public involvement and recognition of competing interests when the FWS considers protection of at-risk species. The ESA is flexible: it either mandates or allows socio-economic considerations at nearly every stage of the process including designation of critical habitat, consultation with federal action agencies, recovery planning, and prohibition against “take” (i.e., harm or harassment of endangered species). The act provides ample opportunity for public involvement and for provision of information on listing decisions and critical habitat determinations.

The decision to list an imperiled species under the ESA must take into account only “the best scientific and commercial data available” after a status review. This science-based listing requirement ensures that decisions are based on the actual status of the species as opposed to politics. However, the FWS does not act unilaterally. Before making a determination of whether to list a species as endangered, the agency must take into account any state or local efforts to protect that species. Although the FWS ultimately must base its decision to list a species only on the best available science—a requirement that is essential to prevent extinction—it must undertake extensive procedural steps to ensure that wildlife protection is accomplished through a transparent process. The FWS must notify the state and local jurisdiction that might be affected by the listing decision. If it decides that listing is warranted, the FWS must conduct a “status review” and solicit comments and information from the public, including industry and conservation groups, scientific experts, as well as affected state, local, tribal and federal agencies. After the status review, the FWS must publish a proposed rule in the Federal Register, which then undergoes another public comment process and sometimes includes public hearings. The FWS then incorporates the comments into a final listing rule. In addition to the public review processes, listings undergo considerable internal review as well as formal, independent scientific peer review.

The FWS must undertake a similarly public process when it designates critical habitat, which by law is necessary for the survival and recovery of imperiled species. The FWS must consider economic impacts, the impacts on national security, as well as any other relevant impact of specifying a particular area as critical habitat. The FWS can go so far as to exclude an area from critical habitat if it determines that the benefits of excluding the area outweigh the benefits of designation as long as this decision will not result in the extinction of the species.

Beyond these opportunities for involvement in the decision-making process, stakeholders can minimize the impact of
regulatory protections by voluntarily entering into conservation agreements to prevent extinction of a species and potentially preclude the need for listing under the ESA. Conservation agreements routinely facilitate the protection of species that are candidates for listing or are proposed to be candidates for listing. They give non-federal property owners incentives to implement measures that prevent the decline of imperiled species. Conservation agreements are not overly burdensome, and participants must only address the issues that they can control under their property rights. Such agreements can protect populations on participants’ land, restore degraded habitat, create new habitat, and promise not to take an action that would harm an at-risk population of wildlife. After signing a conservation agreement, if the FWS later lists the species under the ESA, non-federal property owners may not be subject to additional use restrictions beyond those agreed to in the conservation agreement. This provides landowners with valuable operational certainty in the face of potential regulation.

**What is Driving the Attacks on the ESA in the Permian Basin?**

Resistance to regulation by affected industries is the primary force driving attacks on the ESA. By capitalizing on widely-shared anxieties created by the current economic climate and high unemployment, industry proponents can advance a long-standing agenda to avoid new regulations and rollback existing ones. Backers of industry claim that listing the chicken or the lizard will lead to regulatory uncertainty and cost jobs in rural communities. However, there is little evidence to support this contention. Studies show that there is little connection between supposed “regulatory uncertainty,” and economic growth.

Financial incentives play a significant role in the decisions of potentially affected industries. Accordingly, industry financial support of Congressional initiatives to block wildlife protection is not surprising. Rep. Pearce is largely funded by the oil, gas and agriculture industries. In the 2011 to 2012 campaign cycle, the oil and gas industry was his number one industrial contributor. Yates Petroleum, Mack Energy, and Exxon Mobil were included in Pearce’s top five individual contributors. In 2009-2010, Pearce’s top contributors included Yates Petroleum, Marbob Energy, Devon Energy, Chesapeake Energy and Exxon Mobil. Sen. Cornyn is similarly funded by the oil and gas industry—Exxon Mobil is his largest organizational contributor. The heavy industry backing of both politicians may explain their stances on federal regulation that would financially benefit these contributors with promises of increased profits.

**Blocking Wildlife Protection is Counterproductive to the Public Interest**

Proposed amendments to shortcut listing the lesser prairie chicken and dunes sagebrush lizard under the ESA would exclude the public from standard ESA involvement in the decision-making process. Rep. Pearce and Sen. Cornyn’s proposed policy riders to appropriations bills would therefore prevent the consideration of competing interests in making decisions regarding natural resources. This result is unacceptable. A functioning democracy requires accurate information about the real implications and benefits of wildlife protection and an open and honest dialogue about the best uses for natural resources.

Creating a false dichotomy between economic development and wildlife protection is also counterproductive to the economic future of the Permian Basin. Studies show that protection of natural resources actually helps to diversify local economies and can even lead to job growth. The Pacific Northwest provides an instructive example of habitat protection improving long-term economic health. Like the current controversy in the Permian Basin, there were foreboding claims in the Pacific Northwest that species protection would lead to significant job losses in the region. In response to a federal court ruling temporarily banning logging on twenty-four million acres of national forest land to protect the northern spotted owl from habitat loss, the local timber industry rallied communities around predictions of a widespread economic depression. Industry spokespersons stated that the ban would cost hundreds of thousands of jobs and create ghost towns throughout the region. However, these predictions failed to materialize. Instead, in the decade following the temporary logging ban, the Pacific Northwest’s economy outperformed the rest of the country in job and income growth.

The regional economy’s base has continued shifting away from the logging industry and the newly-protected forests provide recreational opportunities and enhanced quality of life, drawing new businesses and mobile professionals. Accordingly, protection of owl habitat directly contributed to the economic growth of the Pacific Northwest, leading to higher quality of life, higher income, and more jobs. Protecting the lesser prairie chicken and the dunes sagebrush lizard in the Permian Basin would arguably lead to similar benefits. For one, a healthy economy is linked to a healthy environment and preservation of resources. From quality of life to public health to recreation and tourism, preservation of resources has a positive effect on regional economies. In addition, protecting at-risk wildlife in the Permian Basin will likely have a beneficial effect on the very industries that currently seek to avoid new regulation. Preserving the shinnery oak habitat that is necessary for the survival of both species keeps sand dunes intact and prevents erosion. The continued existence of the lesser prairie chicken allows that species to continue regulating the insect population in a way that could benefit agricultural interests. Sustainable development of energy resources will promote the continued vitality of the region in the long term. Therefore, species protection will not only benefit these individual species, but will benefit the public at large.

**Conclusion**

Conflicts over the allocation of natural resources in the American Southwest are overblown, driven more likely by economic greed and political power than a rational examination of
the public interest. The economic downturn has provided a convenient opportunity for industry-backed interests to capitalize on economic fears and campaign for de-regulation of the powerful fossil fuel industry. Listing and protecting the lesser prairie chicken and the dunes sagebrush lizard under the ESA will not destroy the economy of the Southwest, nor will it stop oil and gas drilling or lead to widespread job loss. Instead, protecting these animals from extinction will uphold an honest and science-based debate of the best uses of the natural resources.

To ensure constructive dialogue about the use of natural resources, Congress and the current Administration must allow environmental laws to work. Yielding to hyperbolic rhetoric neither preserves natural resources nor aids the working people directly impacted by natural resource conservation. The goal of natural resource management must continue to be the recovery of imperiled species and their natural habitats, which remain the best gauge of healthy ecosystems and the economies upon which we ultimately depend.

Endnotes: Natural Resource “Conflicts” in the U.S. Southwest: A Story of Hype over Substance

1 See, e.g., Paul Krugman, Phony Fear Factor, N.Y. TIMES, Sept. 29, 2011, http://www.nytimes.com/2011/09/30/opinion/krugman-phony-fear-factor.html?_r=3&hp (describing flawed claims that regulation is to blame for the weak economy and asserting that such claims are “pure fantasy” because there is no evidence to suggest such a connection).


3 Many studies show that there is no truth to this claim. There is no connection between environmental regulation and job loss. See, e.g., E.B. Goodstein, ECON. POLICY INST., JOBS AND THE ENVIRONMENT: THE MYTH OF A NATIONAL TRADE-OFF 1, 2 (1994), http://epi.3cdn.net/83dfae8d6dfc6151c1_55m6id8x6.pdf.

4 See H.R. 2584, 112th Cong. § 431 (2011) (requiring the EPA to stop its work limiting harmful carbon dioxide pollution from power plants and refineries for one year).

5 This sweeping “extinction rider” would have prevented the U.S. Fish & Wildlife Service from spending any money to list new species, designate critical habitat, or upgrade the status of a species from threatened to endangered. It was strongly defeated with a vote of 224-202 in favor of an amendment to strip the bill of this detrimental rider. See DEFENDERS OF WILDLIFE, ASSAULT ON WILDLIFE: THE ENDANGERED SPECIES ACT UNDER ATTACK 3 (2011), http://www.defenders.org/resources/publications/policy_and_legislation/esa/assault_on_wildlife_the_endangered_species_act_under_attack.pdf.

6 See DEFENDERS OF WILDLIFE, supra note 5, at 6-8.


8 See DEFENDERS OF WILDLIFE, supra note 5, at 20, 21 (discussing Senator Cornyn’s, and Senator Inhofe’s proposals amending the ESA to exempt the dunes sagebrush lizard and the lesser prairie chicken from ESA protection).


11 See Newby, supra note 10.

12 See, e.g., ERNIE NIEMI ET AL., ECOnORTHWEST, THE SKY DID NOT FALL: THE PACIFIC NORTHWEST’S RESPONSE TO LOGGING REDUCTIONS 1, 21-33 (1999), http://pages.uoregon.edu/whitelaw/432/articles/SkyDidNotFallFull.pdf (discussing the timber industry’s prediction that a federal judge’s temporary ban on logging 24 million acres of national forest in the Pacific Northwest to protect the northern spotted owl would lead to wide spread job losses and an economic depression).

13 See Krugman, supra note 1; see also GOODSTEIN, supra note 3, at 32, 33 (debunking the myth that environmental regulation threatens jobs and finding that environmental protection actually raises overall employment levels).


16 ADVANCED RESOURCES INT’L, BASIN ORIENTED STRATEGIES FOR CO2 ENHANCED OIL RECOVERY: PERMIAN BASIN 2-1 (Feb. 2006), http://fossil.energy.gov/programs/oilgas/publications/er_co2/Permian_Basin_Document.pdf. Although the Permian Basin is one of the largest domestic oil producers, oil production in the region has been declining for thirty years since its peak in 1974. Id.

17 See THE NEW MEXICO LPC/SDL WORKING GROUP, supra note 14, at 1, 12. Id. at 4-5.

18 DEFENDERS OF WILDLIFE, supra note 5, at 20-21 (describing threats faced by lesser prairie chickens and dunes sagebrush lizards such as loss of habitat caused by oil and gas drilling).

19 See id. (arguing that without protection the lesser prairie chicken and dunes sagebrush lizard could face extinction).


23 See Manning, supra note 23; May, supra note 23.


25 See GOODSTEIN, supra note 3, at 5, 8, 32, 33.
Endnotes: A Case for the United States' Opposition of International and Domestic Coal Subsidies

continued from page 31


3 The U.S. Treasury Department has issued guidance to multilateral development banks stating that lending policies should foster planning for and development of no or low carbon energy sources rather than funding conventional coal-fired facilities. See U.S. Dep’t of Treasury, Guidance to MDBs for Engaging with Developing Countries on Coal-Fired Power Generation (2009).


10 The United States has substantial influence over the IBRD, comprising sixteen percent of the voting power, when the next closest country, the United Kingdom, only has four percent. See World Bank Group, International Bank for Reconstruction and Development Subscriptions and Voting Power of Member Countries (Sept. 30, 2011), http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf.


12 Mainhardt-Gibbs, supra note 7, at 4.


17 Id.

18 Johnston et al., Supra note 4, at 13-15.

19 Id. at 15-17.


21 James T. Bartis et al., RAND, Producing Liquid Fuels From Coal 5 (2008).


23 Id.

24 Id.


27 Coal use accounts for nearly twenty percent of global—and over thirty percent of United States—green house gas emissions. Pew, Supra note 20. The United States produces over seven billion tons of CO2 per year, with two billion coming from coal-burning power plants. Id.


29 Paul Epstein et al., Full Cost Accounting for the Life Cycle of Coal, 1219 Annals of the NY Acad. of Sci. 73, 93 (2011) (“The low estimate is $175 billion, or over 9¢/kWh, while the true monetizable costs could be as much as the upper bounds of $523.3 billion.”).

30 Nat'l. Research Council, Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use (2010) (“Just the damage from external effects the committee was able to quantify add up to more than $120 billion for the year 2005.”).

Endnotes: Natural Resource “Conflicts” in the U.S. Southwest: A Story of Hype over Substance

continued from page 36


29 See generally Davis et al., Lesser Prairie Chicken Interstate Working Group, Lesser Prairie-Chicken Conservation Initiative 13, 14 (May 2008), http://www.wafwa.org/documents/LPCCI_FINAL.pdf (showing that the lesser prairie chicken’s diet consists largely of insects).

30 Id. at 40.

31 Id. at 15.


33 See 63 Fed. Reg. 31400, 31401 (June 9, 1998) (discussing the importance of listing the lesser prairie-chicken as threatened and designating critical habitat). In the end, the Fish and Wildlife Service determined that their listing though warranted, was precluded by higher priority species. Id.

34 Id.


37 Id. at 1.


39 Id. at 77805-06.
U.S. Fish & Wildlife Serv. et al., supra note 40, at 86. Farmers also kill shinnery oak for fire suppression purposes and control of the boll weevil. This destabilization is ultimately not all that economically beneficial for farmers because it leads to erosion. Id.

See 75 Fed. Reg. 77801 (Dec. 14, 2010) (noting that the shinnery oak is poisonous to livestock in the spring when it is budding).

Id.

See U.S. Fish & Wildlife Serv. et al., supra note 40, at 46. Farmers also kill shinnery oak for fire suppression purposes and control of the boll weevil. This destabilization is ultimately not all that economically beneficial for farmers because it leads to erosion. Id.


46 75 Fed. Reg. 69222, 69243 (Nov. 10, 2010) (finding that sagebrush lizards warrant listing as endangered but are precluded by higher listing priorities).


60 Id.; see also Nicole L. Slomensky & Lee A. Fitzgerald, Population Variation in Dune-Dwelling Lizards in Response to Patch Size, Patch Quality and Oil and Gas Development, 56(3) SW. NATURALIST 315 (2011).


66 See U.S. Fish & Wildlife Serv. et al., supra note 40, at 21-22 (arguing that the implementation of a conservation plan to protect sagebrush lizard will lower the negative impact on Texas economy); see also Goodstein, supra note 3.

67 See Newby, supra note 10; see also Manning, supra note 23; May, supra note 23.


69 May, supra note 23.


74 Lininger & Bradley, supra note 56, at 1-2.

75 See Lininger & Bradley, supra note 56, at 14 (concluding that protecting the dunes sagebrush lizard would have no effect on oil and gas leasing opportunities).

76 Id. at 2.

77 Id. at 2.

78 See May, supra note 23 (quoting Ben Shepperd, president of Permian Basin Petroleum Association).

79 Lininger & Bradley, supra note 56, at 2.

80 Id. at 2.

81 See U.S. Fish & Wildlife Serv. et al., supra note 40, at 56 (referring to Fig. 1-2); see also Lininger, Bradley & McKinney, supra note 57, at 6 (concluding that the limited area of dunes sagebrush lizard habitat in Texas would have only minimal effect, if any, on oil and gas activity in west Texas).

82 See, e.g., Lininger & Bradley, supra note 56, at 14.

83 Id. at 14.

Economic Benefits of Protecting Natural Resources in the Sonoran Desert

1 See Stasha Darlington, Cuban Offshore Oil Plans Gain Momentum, CNN (Sept. 1, 2010), http://articles.cnn.com/2010-09-01/world/cuba-oil_1_ri
g-cupet-drilling-companies?_s=PM:WORLD (reporting that if drilling began in
year 2011, the exploratory wells would be completed by 2014). But
see Jeff Franks, Arrival of Cuba Offshore Oil Rig Delayed Again, Reuters (Oct. 12, 2011), http://www.reuters.com/article/2011/10/12/cuba-oil-idUS-
N1E793U0201110102 (stating that the arrival of the oil rig has been delayed
until December 2011).

2 See Thomas Omestad, Cuba Plans New Offshore Drilling in Search for Big
www.usnews.com/news/energy/articles/2009/02/03/cuba-plans-new-offshore-
drilling-in-search-for-big-oil-finds-in-the-gulf-of-mexico/ (noting that foreign firms
have signed exploration and production agreements for 21 of the 59 blocks, are
discussing contracts over the 23 additional blocks, and that some commentators
foresee Cuban offshore drilling increasing the cost of the U.S. embargo)

3 See id. (stating that some U.S. law makers have “urged that an exception
be made in the embargo to permit energy cooperation”).

4 See, e.g., Press Release, The U.S. Attorney’s Office, Dist. of Colo., Boulder
Company Sentenced for “Trading with the Enemy” (Sept. 17, 2009), available at
17_09.html.

5 H.R. Res. 372, 112th Cong. (2011) (permitting the U.S. Secretary of the
Interior to deny drilling leases to foreign companies that deal with countries
under U.S. trade sanctions, including Cuba.).

6 See Thomas, 50 Years of Sanctions: Time for a Cuban Healing, RT
economic-embargo/ (“In 1960, President Eisenhower enacted the first serious
embargo against Cuba, halting all sugar purchases from the country, ending
all oil deliveries and continuing arms embargos that were in place during the
revolutionary period, starting in 1958.”)

7 See id. (noting that the embargo and the mobilization of Cuban exiles was
an attempt to overthrow Fidel Castro and reestablish U.S. influence); See also
John Sweeney, Why the Cuban Trade Embargo Should Be Maintained, Heritage
s3.amazonaws.com/1994/pdf/bg1010.pdf (noting that the original goals of the
embargo were to “compel Castro to open Cuba’s economy and establish democracy,
to weaken Cuba’s communist regime, and to force Castro to relinquish power”).


10 See Thom Woodroofe, Time to Bring Cuba in from the Cold, Sydney Morning
cuba-in-from-the-cold-20101110-17do3.html (describing how President Kennedy
signed the executive order implementing the Cuban embargo).

11 These regulations prohibit United States Citizens and corporations from
conducting business transactions with Cuba or Cuban nationals. The statute
includes transactions involving property in Cuba or belonging to Cuban nationals
unless the transaction occurs under license. See Cuban Assets Control Regulations,
31 C.F.R. § 515.201 (2011). The TWEA empowers the president to control or prevent trade with


13 Woodroofe, supra note 8.


15 John W. Boscardin et al., Export Controls and Economic Sanctions, 44 Int’l
Law. 25, 33 (2010) (noting that the Omnibus Act lightens restrictions on travel
and remittances to Cuba); 31 C.F.R. § 515.561.

16 A January 14, 2011 press release announced changes to policies governing
“(1) purposeful travel; (2) non-family remittances; and (3) U.S. airports
supporting licensed charter flights to and from Cuba.” The measures are said
to “increase people-to-people contact; support civil society in Cuba; enhance
the free flow of information to, from, and among the Cuban people; and help
promote their independence from Cuban authorities.” Press Release, The White
House Office of the Press Secretary, Reaching Out to the Cuban People (Jan.
14, 2011), http://www.whitehouse.gov/the_press_office/2011/01/14/reaching-
out-cuban-people.

17 See Daniel Hernandez, U.S. Opens the Door Further on Travel to Cuba,
cuba-travel-restrictions-obama-white-house-.html (discussing loosening restric-
tions on Cuba under Obama and the Cuban government’s response).

18 See Nelson Acosta, Cuba Says U.S. embargo has Toughened Under
Obama, Reuters (Sept. 15, 2010), http://www.reuters.com/article/us-uS-
TRE68644FS20100915 (quoting the Cuban Foreign Minister stating “[t]he
embargo policy in the last two years, that is to say under the government of Presi-
dent Obama, has not changed at all. . . [in some aspects it has even hardened”).

19 See Howard LaFranchi, Obama Eases Cuba Travel, but Embargo Remains,
eign-Policy/2009/0413/p9b061-uspstory.html (stating the actual easing of sanctions
is merely due to keeping family connections but really does nothing to change
the economic sanctions placed on Cuba or better the Cuban-US relationship).

20 It is important to note that the President alone cannot end the embargo; an
act of Congress is required. Patrick J. Haney & Walt Vandebrand, The Cuban

21 See Rachel D. Solomon, Note, Cuban Baseball Players, the Unlucky Ones:
United States-Cuba Professional Baseball Relations Should Be an Integral
Part of the United States-Cuba Relationship, 10 J. INT’L BUS. & L. 153, 169
(2011) (“The United States’ embargo against Cuba stems from the 1917 Trad-