Only 30:
A Portrait of the Endangered Species Act as a Young Law

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On 27 December 1973, President Richard Nixon publicly reduced his energy use by flying to California on a scheduled commercial airline flight. The following day, from his home in San Clemente, Nixon signed several pieces of legislation into law. One of these—a new manpower initiative—was front-page news in the 29 December New York Times. The others, listed only as bullet points at the end of the article, included an authorization for a Lyndon B. Johnson memorial tree grove, a bill enabling federal insurance for fire safety equipment in nursing homes, and a wildlife protection measure known as the Endangered Species Act (ESA) of 1973.

Thirty years later and about 120 miles up the coast, a diverse group met for three days in Santa Barbara to review the consequences of that now-historic presidential signature. In the time since its enactment, the ESA has become perhaps the most divisive environmental policy issue in the country. The goal of the “ESA at Thirty: Lessons and Prospects” conference, hosted and cosponsored by the Donald Bren School of Environmental Science and Management, was to bring together prominent individuals from all sides of the ESA debate in an effort to defuse rhetoric and find common ground. Participants ranged from the person who has been credited with wielding more control over the ESA today than the government itself—Kieran Suckling, of the Center for Biological Diversity—to the Bush administration’s own man in charge, Craig Manson, assistant secretary for fish, wildlife, and parks at the Department of the Interior. Industry leaders, activists, environmental attorneys, consultants, planners, academics, agency biologists, managers, and elected officials all were held in close quarters by an agenda that spilled across breakfast, lunch, and dinner.

Much was said and, despite some sharp differences, the parties expressed considerable agreement both on the nature of the problems the ESA now faces and on the direction in which solutions must lie. Defenders of the act agreed that there is a pressing need to address some of its shortcomings and unintended consequences; ESA critics acknowledged both the validity of its purpose and the need for some government regulatory mechanism for protecting species. In the end, the success of the conference may have been simply in bringing greater clarity and legitimacy to a question that seemed present throughout: Can the seemingly contradictory imperatives of increased conservation effectiveness and reduced economic burden be reconciled in some widely acceptable kind of ESA reform?

Imperfect, yet ahead of its time

The ESA was once, to the extent that it was noticed at all, a very popular law. Its prodigious powers first gained widespread public attention when the Supreme Court ruled in favor of the snail darter in 1978, halting construction of the Tennessee Valley Authority’s Tellico Dam. Ever since—but particularly in the last 10 years—dissatisfaction with the act and its enforcement has grown, among both conservationists and regulated groups. Critics claim the ESA is taxonomically biased, insufficiently funded, and overwhelmed by litigation. It fails to provide adequate incentives or enforcement, and sometimes punishes good deeds. It is subject to conflicting political, legal, and regulatory mandates and is completely intractable as a conservation mechanism on private land. It impedes economic development and imposes costs and obligations unfairly. It maintains but seldom recovers species, and it does nothing to prevent species from becoming threatened in the first place.

By legal standards, the ESA is still young, and its implications and imperfections are still being revealed and addressed. Underlying some of the recent contentiousness surrounding the act is an ongoing coming to terms with its most original and enduring ideas, a process still unfolding in a world that has changed greatly since 1973. The ESA drew upon a body of knowledge still new to science, and values just finding widespread societal articulation, to boldly address the phenomenon of species extinction not as a peripheral or aesthetic concern, but as a problem of deep biological and moral significance. Accordingly, it introduced a new and fundamental prohibition into the conduct of human affairs: to not jeopardize the continued existence of another species. It offered comprehensive legal protections to species—and even subspecies—found to have become perilously rare, and it specified that only