

GOVERNOR'S STATEMENT COASTAL COHO DECISION

by Governor John Kitzhaber

The following statement was released on June 4, 1998. We believe it is a very important contribution to the debate on how best to preserve Oregon's natural resources.

I'm announcing today that the State of Oregon will appeal the recent U.S. Federal District Court decision on the Endangered Species Act (ESA) by Magistrate Stewart and will furthermore request a stay of the Magistrate's order.

I want to make it clear that these actions by the State of Oregon do not reflect a disagreement with the objectives of the ESA. Rather, these actions reflect a deep concern about the implications of Magistrate Stewart's extremely narrow interpretation of the Act on our ability to actually achieve its objectives—restoration of those species whose habitat includes substantial areas in private ownership.

Magistrate Stewart's interpretation, if allowed to stand, implies that the requirement under the ESA for federal agencies to consider state conservation plans means almost nothing; that state-led conservation efforts have no place under ESA; that conservation efforts by individuals count only if they are mandated by government; and that state and local regulatory actions count only if there are legal assurances that they will remain in place into the future (which is extremely difficult for states like Oregon that are constitutionally prohibited from taking actions to bind future legislatures).

In short, under this narrow interpretation, the objectives of ESA can only be met through federal regulation and federal enforcement which creates an enormous contradiction—especially on private land. This is a critical point which deserves some elaboration.

The primary role of the federal government under the ESA is a regulatory one by which it can prevent landowners from engaging in activities that "take" a listed species. The federal government cannot require individuals to restore watersheds. Yet to restore coastal coho and many other species, restoration work on private land is essential. In Oregon, 65 percent of coho habitat is privately owned, thus ESA prohibitions alone will not result in the kind of restoration needed for recovery.

The only way such restoration work can be achieved is to involve private landowners in the decision-making and give them some ownership and investment in the work being done. And this, of course, is the heart of the Oregon Plan.

The point is that we cannot recover coastal coho unless private landowners take restoration actions that go well beyond avoiding "take." So the question becomes: by what means can we achieve these kinds

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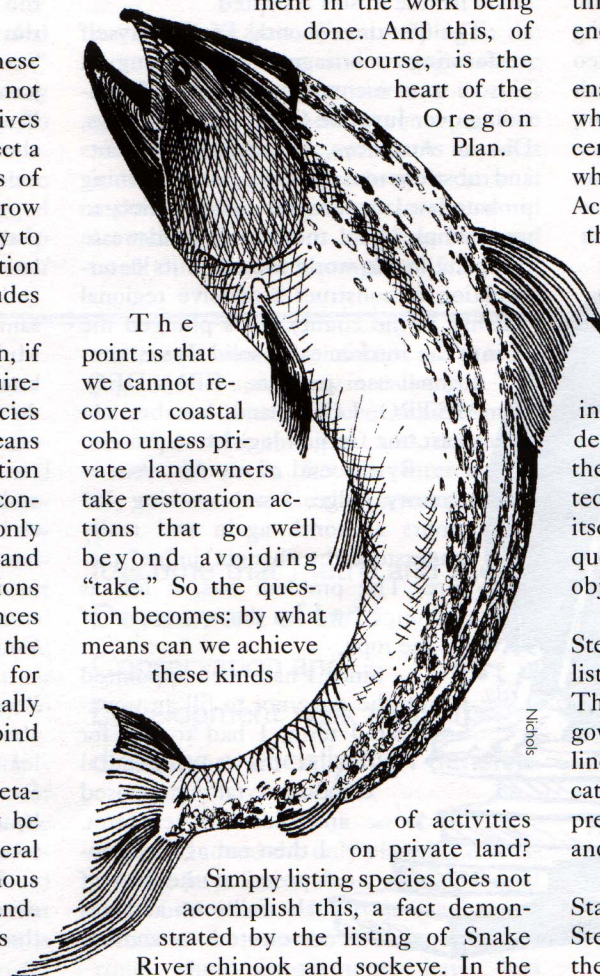
The ESA was passed in 1973 to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." With ecosystem conservation as the objective, application of the ESA through a listing is a means to that end—not the end in itself.

The Endangered Species Act was enacted for a noble purpose—a purpose in which I believe. But now, a quarter of a century later, we need to ask ourselves whether the traditional application of the Act by federal agencies is achieving that purpose. With more than 600 species now listed and dozens more proposed for listing—and few species on the road to recovery—it is clear that we need to be open to new approaches.

If the ESA can only be so narrowly interpreted that, in order to legally defend its application, we disadvantage the very species it was enacted to protect—then there is a problem with the Act itself. We need to know the answer to this question if we are truly committed to the objectives of the ESA.

Again, my objection to Magistrate Stewart's decision is not about whether a listing is warranted on the Oregon coast. That is a decision made by the federal government according to statutory guidelines. Rather, my objection is to the implications of the Magistrate's narrow interpretation on our long term ability to save and restore species.

For these reasons, I have directed the State of Oregon to appeal Magistrate Stewart's decision and to request a stay of the Magistrate's order.



of activities on private land?

Simply listing species does not accomplish this, a fact demonstrated by the listing of Snake River chinook and sockeye. In the