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Laura J. Hendrickson*

Coverage of the Endangered Species Act in Four Major Newspapers

ABSTRACT

The Endangered Species Act (ESA) is among the most prominent laws in a controversial federal system of resource preservation. When conflicts over the ESA emerge, they are convenient fodder for the news media. This article examines both the amount and character of coverage of the statute in four major U.S. newspapers over the course of one year. During the year studied, coverage of the ESA overall was substantial compared to that of most other federal environmental or resource preservation statutes. Popular, familiar species were more widely covered than less popular, unfamiliar species; while at the same time, species regarded as unappealing and obstructionist received significant attention. The regulatory process provided a common legal framework for ESA stories, and conflict scenarios were fairly common, with the interests of both rural and urban residents set against the preservation interests protected by the statute. The author suggests an examination of more regional newspapers, among other approaches, for a fuller picture of news coverage.

I. INTRODUCTION

The Endangered Species Act (ESA)¹ is one of the most comprehensive and controversial wildlife laws in the world. Its expressed intent is to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”² The statute seeks to preserve species habitat and prohibits the taking³ under most circumstances of an endangered or threatened

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1. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (2000 & Supp. 2004).
2. *Id.* § 1531(b).
3. *Id.* § 1538(a)(1)(B).

species.⁴ Some perceive the law, now 30 years old, as obstructing other important goals, such as economic development.⁵ Advocates of the law, on the other hand, acknowledge its inconvenience but rely in their defense of the statute on the value of endangered species⁶ as "incalculable."⁷

When conflicts over the ESA emerge, they are convenient fodder for the news media. ESA conflicts that have generated substantial press coverage include the Tellico Dam case in the 1970s, in which protection for the snail darter was said to be derailing a major dam project in Tennessee,⁸ the "timber wars"⁹ in the early 1990s over logging the old-growth forest habitat of the Northern Spotted Owl in the Pacific Northwest;¹⁰ and more recently the conflict over who got access to water from Klamath Falls, the Coho salmon or farmers trying to irrigate their crops.¹¹ Articles in the press about these topics have often drawn clear battle lines. Most recently, competition for water from Klamath Falls led

4. The comprehensive 1973 law evolved from earlier federal legislation in the 1960s. That legislation had empowered the Fish and Wildlife Service to identify species as endangered and to buy habitat so the species could be protected. The 1973 statute was more far-reaching, drawing distinctions between endangered and threatened species and calling for the designation of habitat considered critical to species survival, among other things.

5. See, e.g., Michael De Alessi, Editorial, *The Endangered Species Act*, WASH. TIMES, Dec. 26, 2003, available at <http://www.washtimes.com/op-ed/20031225-122339-8160r.htm> (last visited Feb. 4, 2005).

6. The statute protects "fish, wildlife, and plants." 16 U.S.C. § 1531(a)(1).

7. *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 178 (1978) (stating that Congress, in passing the ESA, had characterized the value of endangered species as "incalculable").

8. See, e.g., Richard Haitch, *Fish vs. Dam*, N.Y. TIMES, Oct. 16, 1977, at 47 (number of snail darters reduced from an estimated 15,000 to approximately 3500); N.Y. TIMES, Oct. 17, 1978, at 27 (story about establishment of high-level federal review to exempt certain species from ESA coverage under exceptional circumstances); see also *Tenn. Valley Auth.*, 437 U.S. 153.

9. Hugh Dellios, *Congress' End-Run of Clinton Plan Rekindles Timber Wars*, CHI. TRIB., Dec. 10, 1995, at 6.

10. *Id.* ("A room full of flannel-shirted loggers had sneaked in to bid for the right to chop down prime timber. Outside, dozens of rain-soaked environmentalists danced and chanted and blockaded the road. Between them, a swarm of pistol-toting police scowled and prepared to haul the protesters off."); see, e.g., Melissa Healy, *Clinton Logging Plan Runs into a Buzz Saw of Foes*, L.A. TIMES, July 2, 1993, at 1; William K. Stevens, *Early Findings Link Threatened Owl to a Related Subgroup*, N.Y. TIMES, Dec. 4, 1990, at C4; see also *N. Spotted Owl v. Hodel*, 716 F. Supp. 479 (1988).

11. See, e.g., Eric Bailey, *Panel Urges Large-Scale Approach to Protect Fish in Klamath Basin*, L.A. TIMES, Oct. 22, 2003, at B6 ("Controversy swept the fertile agricultural basin straddling the Oregon-California border in 2001 after federal officials increased water allotments for fish and slashed irrigation deliveries to farmers."); Steve Hyman, *Salmon Die-Off Reignites Feud over Klamath River Water*, L.A. TIMES, Sept. 25, 2002, at 6; Deborah Schoch, *Dreams Dry Up in Klamath Basin*, L.A. TIMES, July 23, 2001, at 1.

to stories in the *Los Angeles Times* that pegged the controversy on federal law, saying that “farmers blame their plight on the Endangered Species Act, a law widely condemned for valuing wildlife more than people.”¹²

The overarching purpose of this article is to examine both the amount and character of coverage of the ESA in major U.S. newspapers over the course of one year. One goal is to discover how frequently the statute receives press attention. Another goal is to learn how the statute is framed and to speculate on how that might influence public support for the law. In addition, the article draws on theories about influences on media content to discern why coverage looks as it does. Content analysis of news does not typically focus so narrowly on the coverage of a statute. Instead it tends to focus on issues and events. But because the ESA has become such a popularly invoked law, the point of this article is to look at coverage of the statute itself and the law it generates.

Accordingly, part II reviews some of the existing literature on how the media cover conservation and environmental issues and also on how law in general is portrayed in the news media. Part II also provides an overview of the theories that suggest why research of this type has value—agenda-setting, framing, and influences on media content. Part III explains the method and content analysis used to examine news coverage of the ESA for this study, as well as how the stories were selected and which aspects of those stories were examined. Part IV lays out the results of the research, and part V offers some concluding thoughts, including both praise for news coverage of ESA issues and some observations about where press coverage may fall short in presenting a full picture of the statute and its impact.

II. COMMUNICATION THEORIES AND RESEARCH

A. News Coverage of Environmental and Conservation Issues

Some phenomena of environmental news reporting are established enough that they have almost come to be accepted as truisms. We know that reporters rely heavily on government sources and that they focus on dramatic events and damage already done, rather than on routine events or chronic problems and long-term risk. Government sources are among the most popular with reporters,¹³ including for

12. *Id.*

13. See generally Leon V. Sigal, *Sources Make the News*, in *READING THE NEWS* 9-37 (Robert Karl Manoff & Michael Schudson eds., 1986); Claire E. Taylor et al., *Local Press Coverage of Environmental Conflict*, 77 *JOURNALISM & MASS COMM.* Q. 175, 183-85 (2000)

environmental and conservation stories, because they are accessible and publicly accountable. This may mean sources with alternative perspectives, such as citizens, business owners, and activists, are not heard from as often.¹⁴ If true for endangered species stories, it suggests that lawmakers and regulators would be prominent sources and that their comments in the news might be closely tied to their empowering statute, the ESA. We also know that the news media tend to focus on discrete, dramatic events rather than chronic, more slowly evolving phenomena.¹⁵ For example, an accidental spill of a large amount of hazardous waste would probably get more attention than the pollutants emitted regularly in small increments. Writers have said that "an overwhelming number of environmental stories" focus on these "crises,"¹⁶ and some suggest that the media increasingly have been criticized for a crisis-oriented approach to environmental reporting.¹⁷ Similarly, news stories tend to focus on harm done rather than the more complex phenomenon of risk.¹⁸ Researchers seem to have paid more

(government sources were cited more than others at all but one stage of conflict in the case of a hazardous waste incinerator in a Louisiana town).

14. *But see* Carol M. Liebler & Jacob Bendix, *Old-Growth Forests on Network News: News Sources and the Framing of an Environmental Controversy*, 73 JOURNALISM & MASS COMM. Q. 53, 58 (1996) (government sources were second to timber industry employees and roughly even with environmental sources in a study examining news coverage of the repercussions of designating the Northern Spotted Owl a threatened species in the Pacific Northwest).

15. David C. Coulson & Stephen Lacy, *Newspaper Economic Coverage of Motor Vehicle Emissions Standards*, 75 JOURNALISM & MASS COMM. Q. 154, 154 (1998) (in a study of the relative coverage given to the costs and benefits of environmental regulation, the authors open by saying, "an overwhelming number of environmental stories center on highly visible events or crises"); A. Clay Schoenfeld et al., *Constructing a Social Problem: The Press and the Environment*, 27 SOC. PROBS. 38, 50 (1979) (attributing lack of or lapses in environmental coverage to the fact that "most environmental degradation was seldom linked with (a) an interesting, unusual, and/or significant (b) event (c) occurring in the past 24 hours. It was more like the slow evolution of the moonscape than a spectacular landing on the moon.").

16. Coulson & Lacy, *supra* note 15, at 154.

17. *See, e.g.*, Patricia A. Curtin & Eric Rodenbaugh, *It's Not Easy Being Green: Building the News Media Agenda on the Environment* (unpublished paper presented to the Science Communication Interest Group of the Association for Education in Journalism and Mass Communication conference, New Orleans, La., 1999), available at <http://list.msu.edu/cgi-bin/wa?A2=ind9909d&L=aejmc&F=&S=&P=5859> (last visited Jan. 20, 2005). The authors quote a *Washington Post* reporter: "There's a tradition in environment writing of giving an unquestioning alarmist spin to the stories." *Id.* However, the writers claim this "backlash" is largely a result of effective public relations efforts.

18. *See, e.g.*, Salma I. Ghanem & Laura J. Hendrickson, *North American Newspaper Coverage of the Environment* (2003) (unpublished paper presented to the International Communication Association annual conference, San Diego, Calif. (on file with author) (claiming more environmental stories in Canadian, U.S., and Mexican newspapers were about harm than were about risk).

attention to pollution coverage than to the way conservation issues are covered, although one notable exception is the study of news coverage of the Northern Spotted Owl controversy of the 1990s.¹⁹

Analyzing press coverage of the law and legal issues is not all that common. Journalists and the people who analyze their work tend to be more interested in stories than in statutes. Increasingly, however, exceptions are emerging as it becomes clear that public perceptions of the law must be shaped in large part, or at least in some part, by the mass media.²⁰ In a different legal context, controversies over cameras in courtrooms or in finding juries untainted by press coverage reflect the legal community's concerns about the impact of the press. Articles in law journals, including articles about the ESA, frequently cite news coverage, sometimes for documentation, sometimes as authority, and sometimes as a reflection of—or source of—public misperceptions.²¹ One author recently reflected on the interplay between the press and the law in the Tellico Dam case of the 1970s, perhaps the first major case to present significant controversy in the press about application of the ESA.²² The

19. Liebler & Bendix, *supra* note 14.

20. See, e.g., Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2051 (1996) (stating public learns of court cases largely through media).

21. See, e.g., Shi-Ling Hsu, *A Game-Theoretic Approach to Regulatory Negotiation and a Framework for Empirical Analysis*, 26 HARV. ENVTL. L. REV. 33, 53, n.118 (2002). "Newspaper accounts of the hearings indicate that they are more like pep rallies." *Id.* (citations omitted) (referring to hearings of a congressional Endangered Species Task Force); Oliver Houck, *Unfinished Stories*, 73 U. COLO. L. REV. 867, 934 (2002) ("The media were already in full hype and howl; their news stories showed only two pictures and one headline, insignificant fish versus \$100 million dollar project."); Harold Shepherd, *Conflict Comes to Roost! The Bureau of Reclamation and the Federal Indian Trust Responsibility*, 31 ENVTL. L. 901, 902 (2001) ("A recent federal district court decision rejecting irrigators' pleas to keep water flowing to fields in the Klamath Basin of Southwestern Oregon filled the front pages in newspapers statewide."); Karin P. Sheldon, *Habitat Conservation Planning: Addressing the Achilles Heel of the Endangered Species Act*, 6 N.Y.U. ENVTL. L.J. 279, 279 (1998) ("Newspapers carry tales of federal zealots seizing farm equipment from unwitting farmers, homeowners barred from saving their property from wildfire because of brush clearing restrictions, and businesses losing decades of investment—all because of endangered species."); Mark Sagoff, *Muddle or Muddle Through? Takings Jurisprudence Meets the Endangered Species Act*, 38 WM. & MARY L. REV. 825, 827 (1997) ("Newspaper editorials condemned the *Sweet Home* decision as a confiscation of property rights.") (citations omitted); James Drozdowski, *Note: Saving an Endangered Act: The Case for a Biodiversity Approach to ESA Conservation Efforts*, 45 CASE W. RES. L. REV. 553, 574-75 (1995) ("The media billed the controversy as a three-inch fish versus an \$80 million dam project."). The authors cited the *Washington Post* and credited or blamed it for sharpening "the battle lines" in the *Tennessee Valley Authority* case. See *id.*

22. Zygmunt J.B. Plater, *Law and the Fourth Estate: Endangered Nature, the Press, and the Dicey Game of Democratic Governance*, 32 ENVTL. L. 1, 1-36 (2002). Plater, petitioner and lead counsel in the Tellico Dam litigation, discusses his experiences and frustration with the interplay of the press, Congress, and the parties involved in *Tennessee Valley Authority v. Hill* in the 1970s.

author said that in modern public interest law the press plays “a critical role”²³ in shaping public perceptions and that “[t]he Press and legislators are often linked in a political symbiosis.”²⁴ Accordingly, a few more scholars, including legal scholars, seem to be exploring the connection between press coverage and lawmaking.²⁵ That is part of what we seek to do here—to determine how an existing, controversial statute is characterized in news and to describe that characterization with the knowledge that public perceptions may have the power to influence the statute’s future enforcement, shape, and longevity.

B. Agenda-Setting

A few decades of social science suggest that the public, while not an empty, passively receptive vessel for media portrayals,²⁶ can nevertheless be affected by news coverage. One way is through the process of agenda setting,²⁷ whereby the news media signal to the public what is important and when it is important by how much attention they pay to it at certain times. A public overwhelmed with information relies to some extent on the media to do this job. The theory of agenda-setting has been formally recognized for about 30 years,²⁸ although its conceptual roots are older.²⁹ Agenda-setting suggests that greater coverage of an issue or event by the news media leads it to have increased salience in the minds of the audience. The theory suggests a cause-and-effect relationship, with the media as the cause, rather than a

23. *Id.* at 1.

24. *Id.* at 18 (describing how efforts to get the press to attend congressional hearings often turned on which important senators would be attending, and vice versa).

25. See, e.g., Melissa B. Jacoby, *Negotiating Bankruptcy Legislation Through the News Media* (2003) (unpublished draft paper presented to the Faculty Research Workshop, Georgetown University Law Center, Washington, D.C., Nov. 11, 2003) (on file with author) (focusing on the interplay of lawmaking and the press in the drafting of a statute).

26. In fact, the “Limited Effects” approach to understanding media effects suggests that exposure to news coverage is only one of many factors that play a role in people’s formations of attitudes. JAMES W. TANKARD, JR. & WERNER E. SEVERIN, *COMMUNICATION THEORIES: ORIGINS, METHODS AND USES IN THE MASS MEDIA* 248 (1979).

27. The seminal agenda-setting study is Maxwell E. McCombs and Donald L. Shaw, *The Agenda-Setting Function of Mass Media*, 36 *PUB. OPINION Q.* 176 (1972). However, discussions of the phenomenon have been around since at least the 1960s, and several years of research have confirmed the existence of this basic agenda-setting phenomenon, while accounting for differences in the way and degree to which individual audience members are affected.

28. *Id.*

29. BERNARD C. COHEN, *THE PRESS AND FOREIGN POLICY* 13 (1963) (“[The press] may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about.”); see generally WALTER LIPPMAN, *PUBLIC OPINION* (1922).

mere correlation where both media and public independently identify the same issues as being important at the same time.³⁰ Agenda-setting does not attempt to explain everything about how public opinions are formed; it attempts to explain only how people decide what is important. In other words, it presumes the news suggests to people not what to think but "what to think *about*."³¹ Accordingly, we would expect more ESA coverage to lead to greater salience for the statute with the public.

In recent years, some scholars have extended the theory of agenda-setting to a "second level," suggesting that which attributes of issues receive attention can influence the way the issue is perceived overall.³² Similarly, one might expect that which attributes of the ESA receive attention would affect the way the law itself is perceived overall. Some of these attributes might include the particular provisions that are the focus of attention or even the particular species receiving attention. This second level of agenda-setting is often compared to the theoretical area of media framing, with which it has much in common.

C. News Framing

Another way in which the public may be influenced by media portrayals is through media framing or news framing,³³ whereby the media set the terms for a debate not by the amount or timing of coverage but by the character of that coverage. This includes factors such as which parties are portrayed as contributing to a problem, as having a stake in outcomes, or having some degree of power to influence outcomes.³⁴ Framing as a way to conceptualize news coverage was offered in the

30. McCombs & Shaw, *supra* note 27, at 185 (finding only a correlation but speculating on the likelihood of a cause and effect relationship, from media to public, which is the direction the theory took). See also generally COMMUNICATION AND DEMOCRACY: EXPLORING THE INTELLECTUAL FRONTIERS IN AGENDA-SETTING THEORY 3 (Maxwell E. McCombs et al. eds., 1997).

31. COHEN, *supra* note 29, at 13.

32. See, e.g., Salma Ghanem, *Filling in the Tapestry: The Second Level of Agenda-Setting*, in COMMUNICATION AND DEMOCRACY: EXPLORING THE INTELLECTUAL FRONTIERS IN AGENDA-SETTING THEORY 3 (McCombs et al. eds., 1997).

33. In the 1980s, Hackett offered *framing* as an alternative approach to *bias* for analyzing news coverage. He argued that news coverage is rarely overtly "pro" or "con" on a given issue and that the real power of the news media comes not from which side in a debate they choose, which they rarely do explicitly, but from their ability to *set the terms* for that debate by the way they frame the issues, which they often do implicitly. See generally Robert A. Hackett, *Decline of a Paradigm? Bias and Objectivity in News Media Studies*, in 1 CRITICAL STUD. IN MASS COMM. 229 (1984).

34. See generally SHANTO IYENGAR, IS ANYONE RESPONSIBLE? HOW TELEVISION FRAMES POLITICAL ISSUES (1991).

1980s as an alternative paradigm to bias,³⁵ which is rarely overt in news coverage. Framing is both an individual level, psychological process³⁶ for receiving information and an organizing system for presenting information to the public.³⁷ For news, it has been defined as “a central organizing idea for news content that suggests what the issue is through the use of selection, emphasis, exclusion and elaboration.”³⁸

Analogies also can be useful here. Noted sociologist Erving Goffman refers to a frame as a “strip” of a larger picture. That concept has been elaborated by other writers using a picture frame metaphor to suggest that “a small frame placed on a large picture...must cut some ‘slice’ from that picture at the expense of other possible slices.”³⁹ As a metaphor, one might also consider a building frame, which provides “an organizing structure” to a house just as a news frame provides “an organizing structure” to a news story.⁴⁰ In both metaphors, only certain pieces of some larger idea will be able to fit the frame. The rest will be left out. This defines the picture—or the issue, or the statute, such as the ESA—for purposes of the stories that will then be told about it. In this study we are examining aspects of newspaper framing of the ESA. We are also looking at which dimensions of the law generated by the statute are selected and emphasized in the news and, by association, which are excluded.

D. News Sociology

Next we turn to a theory where media content is not the cause but the effect. Media sociology is not the study of media influences on the public, but of effects on media content from other sources. It examines those variables that play a role in determining how the news is presented. A common way of thinking about these influences is as a hierarchy of five levels, often shown as concentric circles.⁴¹ The first

35. See Hackett, *supra* note 33.

36. G. Bateson, *A Theory of Play and Fantasy*, in *STEPS TO AN ECOLOGY OF MIND: COLLECTED ESSAYS IN ANTHROPOLOGY, PSYCHIATRY, EVOLUTION, AND EPISTEMOLOGY* 177 (1972).

37. ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* 21-39 (1974).

38. James W. Tankard et al., *Media Frames: Approaches to Conceptualization and Measurement* 11 (1991) (unpublished paper presented to the Communication Theory and Methodology Division of the Association for Education in Journalism and Mass Communication annual conference, Boston, Mass.) (on file with author).

39. *Id.* at 10.

40. *Id.* at 11.

41. PAMELA J. SHOEMAKER & STEPHEN D. REESE, *MEDIATING THE MESSAGE: THEORIES OF INFLUENCES ON MASS MEDIA CONTENT* 106 (2d ed. 1995).

level, or innermost circle, is the influence from the individual reporter; the second level is the influence from the news organization and may reflect such factors as the resources available to the newspaper, including the size of the staff; the third level is the influence from professional norms practiced across most news organizations, including norms about newsworthiness and the tendency to rely on some sources over others; the fourth level is the influences from outside the media world, such as legal constraints and availability of information; the fifth level is influences from broad underlying ideologies and presumptions. In this article we allude to factors at several of these levels in coverage of the ESA.

Among the professional norms at the third level, as mentioned previously, are news values. News sociology⁴² suggests that shared beliefs about what makes a story newsworthy, including the value of conflict, are one of many influences that shape news coverage.⁴³ Conflict is a news value used by professional journalists to identify worthwhile stories and is among the basic news values taught to students in journalism schools.⁴⁴ Because the ESA sometimes generates controversy in which clearly delineated positions on two opposing sides can quickly be identified, it lends itself to easy news coverage on those occasions.

This study works from the premise that legal stories are usually stories about conflict because that is what the law exists to resolve. Conflict stories provide advantages to writers and readers. With balance as a goal, a conflict story can give voice to “both sides” in a debate and achieve a superficial kind of balance that will satisfy most readers that the newspaper has done its job or that it has been objective in the sense that most people use the term. At the same time, conflict stories are dramatic and engaging for readers and bring into focus the stakes at issue with relatively little need for readers to grasp the underlying complexities. Readers—who may be skimming a news story on the subway or while drinking a cup of coffee—seem to like this.

However, a potentially conflict-oriented presentation of the ESA raises questions about the picture of the law being painted for the American public. The American public plays an important role in this statute’s life—its retention, amendments, and application in specific

42. News sociology or media sociology is sometimes referred to as “influences on media content.”

43. SHOEMAKER & REESE, *supra* note 41, at 105–12.

44. The basic news values—meaning those qualities of a story that contribute to its newsworthiness—taught in journalism schools include conflict, proximity, prominence, impact, oddity, timeliness, and human interest. CAROLE RICH, *WRITING AND REPORTING NEWS: A COACHING METHOD* (2002).

circumstances. As a creature of Congress, the ESA is subject to public opinion by way of constituent and interest group pressure exerted on lawmakers. Any conflict story must identify who has interests at stake in that conflict. The same goes for conflicts generated by the ESA. Therefore, one of the issues examined in this article is which parties are identified in news stories as having a stake in outcomes of conflicts over the ESA.

III. RESEARCH METHOD

A. Content Analysis

Determining the amount and character of coverage of the ESA was best achieved by conducting a content analysis. Content analysis is a method used to analyze text, pictures, or other verbal or visual messages. It has been more narrowly defined in part as "a research technique for making replicable and valid inferences from text...."⁴⁵ Similarly, content analysis has been called a "systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding."⁴⁶ It is frequently used to analyze, or to make inferences from, news coverage, but it is also popular in a wide variety of fields where the character of a message is important.⁴⁷ Content analysis can be used to identify attributes of a message, to document changes in messages over time, or to compare characteristics of messages in different media or geographic locations.

Traditionally, content analysis is accomplished by having human coders examine messages and code them into pre-determined categories. The more complicated the coding decision,⁴⁸ the more likely it is that the

45. KLAUS KRIPPENDORFF, *CONTENT ANALYSIS: AN INTRODUCTION TO METHODOLOGY* 18 (1980).

46. Steve Stemler, *An Introduction to Content Analysis*, ERIC DIGEST, at <http://www.ericdigests.org/2002-2/content.htm> (last visited Jan. 22, 2004); see also BERNARD BERELSON, *CONTENT ANALYSIS IN COMMUNICATION RESEARCH* (1952).

47. According to a content analysis overview on the Colorado State University writing program's web site, "content analysis is currently used in a dizzying array of fields, ranging from marketing and media studies, to literature and rhetoric, ethnography and cultural studies, gender and age issues, sociology and political science, psychology and cognitive science, and many other fields of inquiry." COLO. STATE UNIV., *Uses of Content Analysis*, in WRITING@CSU: WRITING GUIDE, at <http://writing.colostate.edu/references/research/content/com2a2.cfm> (last visited Jan. 21, 2005).

48. A complicated coding decision might require a coder to determine whether a news article was "pro" war or "anti" war, whereas a simpler coding decision would simply require the coder to count how many times the word "war" appeared in the article.

researcher will need an inter-coder reliability test⁴⁹ to make sure the coding decision is objective. Sometimes, humanly coded and recorded information is placed into a data file and subjected to statistical analysis. More recently, computers with the appropriately designed programs are able to conduct content analysis by counting the occurrence of certain words, for example, or determining words that fall within certain proximity of one another.⁵⁰ As a research method, content analysis has both benefits and drawbacks. One advantage is that it can be used to gather either qualitative or quantitative data. In addition, it is useful as a systematic way to identify what coverage is actually like—a preferable approach to making a subjective determination in advance and then finding random anecdotal evidence to support one's predetermined conclusion. By identifying at the beginning of the study which aspects of the coverage one is interested in and how they will be measured and then looking methodically for those aspects in a representative sample, one is usually able to filter out some bias in the assessment. Bias remains, of course, in the kinds of questions that are asked about the content in the first place, but those questions are open to scrutiny.

The drawback of content analysis is that standing alone it is merely descriptive. It can tell us what coverage is like but does little to explain why or to predict what future coverage will be like, let alone how or whether it might be changed. If we bring outside variables into the analysis, we can sometimes come closer to explanation and prediction. This study of news coverage of the ESA confines the

49. An inter-coder reliability test consists of two or more associates of the researcher independently coding the same material to determine if the categories and definitions are valid. A variety of inter-coder reliability formulas exists, but the simplest consist of determining the percentage of coding decisions on which the coders agreed and reporting that as part of the research results. This gives the reader of research results some indication of the objectivity of the coding decisions made by the researcher. Alternatively, a researcher might conduct an intra-coder reliability test, with the same coder coding the content at different points in time, to test the reliability of the coding decision.

50. Many studies have been conducted over the last couple of decades using a variety of computer-based content analysis methods. See, e.g., Robert L. Stevenson & Yuan Zhang, *A Semantics Based Analysis of Campaign 2000 Debates and Accompanying News Coverage* (2002) (paper presented to the Southern Association for Public Opinion Research), available at <http://www.unc.edu/~rlstev/Text/SAPOR%20Presidential%20debates.pdf> (last visited Jan. 21, 2005). The authors used the program to search text for semantic features. For a study comparing traditional and computerized approaches to content analysis, see Cindy Royal, *Comparison of Computerized and Traditional Content Analysis Techniques: A Case Study of the Texas Democratic Gubernatorial Primary* (Nov. 1-2, 2002) (paper presented to the Southwest Education Council for Journalism and Mass Communication Symposium), available at <http://www.cindyroyal.com/ca.pdf> (last visited Jan. 21, 2005). The author used a computerized content analysis tool able to identify frequency and "co-occurrence of terms" in text.

measurement of variables to the content analysis itself, but then takes a somewhat speculative approach to explaining and predicting by considering a few outside variables— aspects of news routines and media effects that are relatively well established. Direct measurement of outside variables in this context can be reserved for future study.

B. The Study

A content analysis was conducted of nearly 200 news stories appearing in four major U.S. newspapers between mid-September 2002 and mid-September 2003. The stories, culled from the *Chicago Tribune*, the *Los Angeles Times*, the *New York Times*, and the *Washington Post*, were acquired by conducting a key word search in the Lexis/Nexis news database. These newspapers were chosen because they are national newspapers with relatively large, heterogeneous audiences. They are also some of the newspapers most likely to be read by policymakers and they represent different geographic regions within the United States. In addition, all of them have adequate and comparable resources for covering the news, which diminishes the importance of that factor as a meaningful difference influencing their coverage of the ESA.

The criterion for a story to be included in the content analysis sample was only that the story refer to the ESA at least once. The stories selected were published between September 17, 2002, and September 16, 2003. Inevitably some stories would be missed using such a method because the stories collected for the study can be drawn only from those already contained in the database, where it is assumed some anomalies might occur. In addition, sometimes different editions of a newspaper publish the same story on the same day and both end up in the data base, so the researcher attempted to delete those stories that appeared more than once on the same day. As a result, the numbers of stories collected for this study are assumed to be rough indicators, but reasonably good ones.

Both opinion pieces and news articles were included in the sample. It is reasonable to assume that editorials and news articles might be different both in terms of attributes and in how they affect public opinion; however, we did not make a distinction in this study because of the small number of editorials that emerged relative to the number of news stories. We did not exclude the editorials, however. Ultimately, the objective was to measure the character of coverage as a whole phenomenon, rather than to speculate on effects of individual stories, so while we noted the distinction between news and opinion for future reference, it was not a significant factor in this analysis.

C. Amount of Coverage

First, we examined the amount of coverage of the ESA. Stories were counted to determine how many articles referring to the ESA were published in the major papers in the past year, and these amounts were compared among the different newspapers. In addition, quick searches yielded data on the number of references to other federal environmental statutes. In addition, the amount of ESA coverage was compared to coverage of other environmental or conservation statutes. An informal search in the Lexis/Nexis news database was carried out using the full, informal name of several other federal statutes as key words. This type of search stops when it reaches 250 articles, which meant at least that many were found but there could be more. Searches on statute acronyms were done only to determine if the acronym or a more casual term were being used in lieu of the full name. This information was then used to compare the amount of ESA coverage to statutes with comparable goals.

Also examined was how much (or how little) attention was given to particular species. Common wisdom says some species, such as grizzlies, are more popular when it comes to preservation than are other species, such as cave spiders.⁵¹ As one writer has said in assessing news coverage of the salmon, "Although the Endangered Species Act identifies all organisms as equal in value, the news does not."⁵² We wanted to see if any such trends emerged in how the newspapers identified which species were worth telling stories about. When a species was mentioned in connection with the ESA, it was recorded. Recorded mentions were then counted for each species. It is possible to categorize "species" in a variety of ways, including by sub-population, as any close observer of the ESA knows.⁵³ However, for clarity, and because we believe most readers do not make these fine distinctions, we collapsed categories and combined certain categories of species.⁵⁴

51. Shannon Petersen, *Comment: Congress and Charismatic Megafauna: A Legislative History of the Endangered Species Act*, 29 ENVTL. L. 463, 466 (suggesting concern for "charismatic megafauna" may have been one of the real motivating factors behind passage of the ESA).

52. Sarah Ann Gilbert, *A Response to "Old-Growth Forests on Network News: News Sources and the Framing of an Environmental Controversy,"* 74 JOURNALISM & MASS COMM. Q. 883, 884 (1997).

53. See, e.g., *U.S. Ignoring Need to Protect Puget Sound Orcas, Suit Alleges*, CHI. TRIB., Dec. 19, 2002, at 20 (discussing case in which groups argue that the Puget Sound whales are genetically distinct from neighboring populations and deserve stronger ESA protections).

54. For example, we collapsed the Coho salmon, the Maine salmon, and the Chinook salmon into one category, and we collapsed the spotted owl, the California spotted owl, and the Mexican spotted owl into one category.

D. Character of Coverage

Next, we examined the character of ESA news coverage by gathering descriptive, qualitative data. Stories were read to identify adjectives or other descriptive phrases that referred directly to the ESA, to one of its specific provisions, or to a general process, such as critical habitat designation, that is triggered by one of the provisions of the law. Those descriptive words or phrases were recorded, along with the newspaper in which they were published, whether the reference was a quote, a paraphrase, or neither, and whether it referred to the ESA generally or to one of its specific provisions. Descriptive phrases were assessed qualitatively.⁵⁵

We also looked for more subtle, context-rich story frameworks being used to frame the ESA. A variety of approaches have been used to identify news frames, both inductive approaches, in which the frames are gradually teased out by examining news stories,⁵⁶ and more deductive approaches, where potential frames are borrowed from an established area of discourse to discover how prevalent those frames are in news content.⁵⁷ We used both approaches here, and both approaches assumed that our stories were, at their heart, legal stories.

Our deductive approach was to determine which, among the established mechanisms of environmental law news stories about the ESA, were focused on legislation, regulation, or litigation. This approach is deductive because the categories were derived from pre-existing

55. Verb phrases were not recorded because drawing the line on what was significant was deemed too cumbersome for this small part of the study. For example, the study did not record interesting phrases about the critical habitat provisions that suggested it "sucks up a lot of the resources" and "causes economic and social upheaval." Douglas Jehl, *Rare Arizona Owl (All 7 Inches of It) Is in Habitat Furor*, N.Y. TIMES, Mar. 17, 2003, at A1. But not doing so also meant we were not burdened with recording the huge number of less colorful or informative verb phrases.

56. See, e.g., Tankard et al., *supra* note 38. Researchers read a sample of stories, discussed them in a group, and gradually identified a set of recurring frames as suggested by the stories themselves.

57. See, e.g., Pieter Van den Bos, *Islam in Focus: A Study of Frames in the News Following the U.S. Terrorist Attacks (2001-2002)*, available at http://www.miramedia.nl/media/files/Islam_in_Focus.doc (last visited Feb. 3, 2005). The author defined the deductive approach to frame analysis by saying that the "goal was to look for predefined media frames, which are derived from an analysis of the frames in use when the media report on protest groups." *Id.* at 5. See also Laura J. Hendrickson, *Media Framing of Child Maltreatment: Conceptualizing Framing as a Continuous Variable* 40-41, 43 (2000) (unpublished Ph.D. dissertation, University of Texas). The author borrowed pre-existing theoretical frames about the causes of child maltreatment from social psychology and then looked for their presence in news content to draw inferences about where news coverage was most likely to place responsibility for the problem.

organizational structures and imposed upon our analysis of the stories, rather than being derived from the stories themselves. Such an approach typically means that some stories will turn up in the sample that do not fit into any of the pre-determined categories, and they are simply coded as such. Those stories that focused on legislation (the statute itself), regulation (the process used, for example, by the Fish and Wildlife Service for listing species or designating critical habitat), or litigation (cases brought to enforce the statute or regulations pertaining to it, for example, or cases brought to prevent such enforcement) were recorded. The researcher focused on points of emphasis⁵⁸ in the stories to help determine what the focus was for each story.

These three legal processes in effect behave as a hierarchy. Because every story had at least one reference to the ESA, each story contained elements of legislation, whether the story was also about something else or not. Legislation was considered to be at the bottom of the legal process hierarchy, not because it is less important but because, with the ESA, legislation is what triggers the other two processes. Such legislative mentions were considered incidental. The highest level in the hierarchy is litigation because litigation in this context occurs in response either to legislation or a regulatory process. Therefore, stories about litigation often contained incidental elements of both of the other two categories. However, stories in this study were coded for which of these processes was *predominant* in the story. In a small number of cases, stories were coded as hybrids if they seemed inescapably to be equally about, for example, litigation and regulation. An example of such a hybrid story would be one in which the lead⁵⁹ describes a court order and the rest of the story is about how the regulatory agency is responding to that order.⁶⁰

Because most legal stories are inherently conflict stories, our next objective was to use this sample inductively to begin identifying a group of more specific conflict themes that may be appearing with some regularity in the news. Our inductive approach was to read the stories and try to identify which parties, if any, were presented as being in contest with one another, and over what. To do this we read each of the

58. Leads, headlines, quotations, sources, etc.

59. A lead is the first sentence or paragraph of a news story.

60. A number of such stories appeared in the context of the controversy over the water level in the Missouri River, as one example. See, e.g., Eric Pianin, *Judge Orders River Level Lowered; Endangered Species Act Takes Precedence, Ruling Says*, WASH. POST, Aug. 7, 2003, at A19 ("In the latest twist in a decades-old legal battle over water levels along the Missouri River, a federal judge in Minnesota has ordered the Army Corps of Engineers to lower the level to protect the habitat of two endangered species of birds and one species of fish. The Army Corps prefers to keep the river high for navigational purposes....").

stories, not spending much time on those whose mention of the ESA was incidental.⁶¹ The objective was to identify common themes and scenarios.⁶² Again, particular attention was paid to points of emphasis in the stories, such as headlines and leads.

IV. FINDINGS

A. Amount of Coverage

Of the four newspapers, the *Los Angeles Times* published the largest number of stories referring to the Endangered Species Act during the time frame studied. In fact, the other three newspapers were remarkably similar, in that each published 30-some stories referring to the ESA over the course of one year, while the *Los Angeles Times* published more than twice as many, with about 82 such stories during the same time. Specific results appear in Table 1.

Table 1: Number of Stories Mentioning the ESA in Major Newspapers in One Year

	Number of Stories*
<i>Los Angeles Times</i>	82
<i>Washington Post</i>	39
<i>Chicago Tribune</i>	34
<i>New York Times</i>	31

* Numbers based on stories available in database when research conducted and therefore approximate.

When asking “how much” coverage major newspapers gave the ESA in the past year, a meaningful answer might also require that we ask “compared to what?” Quick Lexis/Nexis searches in this study yielded data on the number of references to other federal environmental or conservation statutes. By contrast to the number of ESA references, the number of Clean Air Act (CAA) references during the same one-year period was more than 250. We expected that the CAA would have more references than the ESA, partly because of recent controversial (*i.e.*, conflict) issues surrounding enforcement of the statute.⁶³

61. Examples of incidental mentions of the ESA might be stories about a political candidate that devote one sentence in a much larger story to the candidate’s opinion on the statute.

62. This inductive approach was used by the author of this article and her co-authors in a previous attempt to identify news frames for abortion coverage, a study that then went on to use those inductively identified frames in an empirical, quantitative study.

63. See, *e.g.*, Eric Pianin, *EPA Eases Clean Air Rule on Power Plants*, WASH. POST, Aug. 28, 2003, at A9.

In most cases, acronyms or more casual terms were not used in lieu of the full name of the statute. However, the use of “Superfund” rather than Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was a notable exception. Hence, we did not do similar searches on statutes that had already turned up numerous stories, which would have required filtering which stories were about the Clean Water Act and which were about the Communication Workers of America, for example. However, we did do an acronym search for the Endangered Species Act—only one story turned up under ESA, and it was one that was already included in the sample. The chart below shows the number of references to various federal environmental statutes during the same time period as this study of the ESA.

Table 2: Stories Mentioning Environmental and Resource Statutes in Major Newspapers in One Year

Clean Air Act	250+
Endangered Species Act	200
Clean Water Act	171
Comprehensive Environmental Response, Compensation & Liability Act (or CERCLA = 0) (or “Superfund” = 164)	164
National Environmental Policy Act (or NEPA = 10)	55
Marine Mammal Protection Act (or MMPA = 0)	37
Resource Conservation and Recovery Act (or RCRA = 1)	8
Toxic Substances Control Act (or TSCA = 0)	5
Safe Drinking Water Act (or SDWA = 0)	5
Surface Mining Control and Reclamation Act	2
Emergency Planning & Community Right to Know Act (EPCRA = 0)	1
Federal Insecticide, Fungicide & Rodenticide Act (or FIFRA)	0

Numbers based on stories available in database when research conducted and therefore approximate.

B. Species Agenda

A discussion of which species were most commonly covered in news articles about the ESA might fall equally well under a section on framing as one on agenda-setting. That is because connecting certain species rather than others with the statute is presumed to provide a context, or frame, for readers. Anecdotal evidence suggests that most readers will react differently to what they perceive as a grizzly-saving law than to what they perceive as a fly-saving law, whatever one’s moral reservations about that distinction may be. Nevertheless, these data are included under agenda-setting because, at its most elemental level, what

the study did was monitor which ESA-connected species⁶⁴ were higher on the newspapers' agenda than others.

Fin, feather, and fur were all represented in the top three species. The clear winner in the newspaper popularity contest was the salmon. In fact, even when the three categories of salmon we combined are divided, the Coho salmon would finish at least in a tie for first place. The Coho salmon was one of the species at issue in the controversy over whether water in Klamath Falls should be diverted for farmers or reserved to save the salmon. The spotted owl finished second. If we sub-divide the Mexican and California spotted owls, they would fall slightly in the standings. Third in this study was the ever-popular grizzly bear, still a darling of newspaper coverage with seven mentions in ESA stories during the year. No plant was mentioned more than twice. The species that received four or more mentions are listed below in descending order of occurrence. In addition, a number of species were listed between one and three times.⁶⁵ (See Table 3.)

Table 3: Species Agenda in Endangered Species Act Stories

	Number of Stories
Salmon	16
Spotted owl	9
Grizzly bear	7
Trout	6
Silvery minnow	5
Whale/orca	5
Gray (timber) wolf	4
Tiger	4
Desert tortoise	4
Delhi sand flower-loving fly	4

Numbers based on stories available in the data base when research conducted and therefore approximate.

64. They are referred to as "ESA-connected species," rather than as endangered or threatened species because a number of stories were about, for example, a decision *not* to list a particular species as endangered. These mentions were considered to be part of the context for understanding the ESA and so were included in the data.

65. For example, some of the other species covered included the following: with about three mentions each—California condor, piping plover, and red-cockaded woodpecker; and with one or two mentions—elephant, lynx, panther, Sonoran pronghorn, fisher, sea otter, giant panda, snail darter, white marlin, fairy shrimp, sturgeon, sucker fish, bocaccio rockfish, desert pupfish, miscellaneous crustaceans, pygmy owl, least bell's vireo, bald eagle, least tern, leopard, gnatcatcher, marbled murrelet, brown pelicans, trumpeter swan, sea turtles, southwestern arroyo toad, horned lizard, red-legged frog, checkerspot butterfly, sphinx moth, Kauai cave wolf spider, slick spot peppergrass, miscellaneous wildflowers, milk vetch plant, and Aupaka violet.

C. Character of Coverage

References to the ESA as a whole are very often neutral, with the exceptions tending to highlight the law's extraordinary power and its controversial nature. This is consistent with two of the classic news values in journalism—impact and conflict. The most common adjective used to describe the law was that it is “federal,”⁶⁶ a bland but useful description to distinguish it from similar state laws. However, in the *Los Angeles Times*, the law was also described as “landmark,”⁶⁷ “stringent,”⁶⁸ and “powerful.”⁶⁹ *The New York Times* published one reference to it as “sacrosanct.”⁷⁰ These descriptions only take on the character of praise or criticism if one has a strong opinion on the matter. At least one essentially neutral adjective in the *Los Angeles Times* pointed to the controversy surrounding the law, describing it simply as “disputed.”⁷¹ However, some of the descriptive words and phrases could be characterized distinctly as praise or criticism. These comments often turned up in the words of quoted sources because those sources are not confined by the requirements for objectivity that news writers are. In direct quotes from interested stakeholders, the ESA was described in the *Los Angeles Times* as being “grounded in the fundamental truth that people will suffer unless the warnings that nature provides are heeded.”⁷² By contrast, in a letter to the editor it was also described as “a tool to eliminate the traditional Western American lifestyle.”⁷³ Sometimes the ESA got caught in the net, so to speak, of general preservation laws, which one opinionated source characterized in *The New York Times* as consisting of “hard and fast rules imposed 40, 50 years ago.”⁷⁴ In the *Chicago Tribune*, it was “a flawed act”⁷⁵ that, along with other environmental laws, was “out of balance.”⁷⁶

66. See, e.g., *Stuffed Wild Cats May Go to Museum*, CHI. TRIB., Apr. 14, 2003, at 6.

67. Elizabeth Shogren, *Senate OKs Broad Waiver for Pentagon on Migratory Birds*, L.A. TIMES, Nov. 14, 2002, at A32.

68. Deborah Schoch, *Man Pleads Guilty in Killing of Condor*, L.A. TIMES, May 15, 2003, at B3.

69. Jennifer Ragland & Deborah Schoch, *Hunter Could Have Faced a Stiffer Charge*, L.A. TIMES, May 1, 2003, at B5.

70. Michael Janofsky, *In the Dry, Dry West, a Search for Solutions*, N.Y. TIMES, June 2, 2003, at A13.

71. Ragland & Schoch, *supra* note 69.

72. Roger G. Kennedy, *Commentary, Don't Scapegoat Environmentalists: Saving Minnows Saves Humans*, L.A. TIMES, Feb. 17, 2003, at B11.

73. Howard Brown, *Letter to the Editor, More on the Colton Fly "Fiasco,"* L.A. TIMES, Mar. 16, 2003, at I4.

74. Carl Hulse, *Senate Votes to Lift Ban on Producing Nuclear Arms*, N.Y. TIMES, May 21, 2003, at A26.

The specific parts of the ESA receiving the most colorful coverage were the critical habitat provisions.⁷⁷ These provisions require federal agencies to “insure that any action[s]...[are] not likely to jeopardize the continued existence of any endangered species...or result in the destruction or adverse modification of [critical] habitat....”⁷⁸ They also prohibit the individual “tak[ing]” of species,⁷⁹ the definition of which has been expanded to include harming habitat critical to the species survival.⁸⁰ This requires permits under some circumstances to private landowners to modify their property.⁸¹ The provisions themselves were described as “annoying to landowners,” in the *Los Angeles Times*, and as “essentially redundant”⁸² but also as “vital”⁸³ in the *New York Times*, which also published stories and editorials describing the process of habitat designation as “expensive,”⁸⁴ “unnecessary,”⁸⁵ “required by law,”⁸⁶ “counterproductive,”⁸⁷ and “long, torturous.”⁸⁸ Critical habitat analysis in particular was described as “court mandated” and “time consuming.”

Some stories centered on complaints about critical habitat designation for a particular species. For example, one California community expressed frustration with the designation of certain portions of its community as critical habitat for the Delhi Sands flower-loving fly. People in the story indicated annoyance—either with the listing of the fly⁸⁹ or with the designation of habitat in their community, or both—without necessarily attacking the validity of the ESA or the

75. Jon Yates, *Tinley Park Man Guilty of Killing Endangered Tigers*, CHI. TRIB., April 4, 2003, at 1.

76. Rob Crawford, *Perspective, Environmental Laws Are Out of Balance*, CHI. TRIB., Nov. 17, 2002, at 10.

77. 16 U.S.C.A. §§ 1533(a)(3), (b)(2) (Supp. 2004) (authorizing the Secretary to designate critical habitat “to the maximum extent prudent and determinable”).

78. 16 U.S.C. § 1536(a)(2) (2000); see also U.S. FISH & WILDLIFE SERV., CONSULTATIONS WITH FEDERAL AGENCIES: SECTION 7 OF THE ENDANGERED SPECIES ACT, available at <http://endangered.fws.gov/consultations/consultations.pdf> (last visited Feb. 3, 2005).

79. 16 U.S.C. § 1538(a)(1)(B) (2000).

80. See *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 708 (1995); see also 50 C.F.R. § 17.3 (2003).

81. See 16 U.S.C. § 1539(a) (on permitting).

82. Jehl, *supra* note 55, at A1.

83. *Id.*

84. Editorial, *Protection on the Cheap*, N.Y. TIMES, May 31, 2003, at A24.

85. *Id.*

86. *Id.*

87. Jehl, *supra* note 55.

88. Jennifer B. Lee, *Money Gone, U.S. Suspends Designations of Habitats*, N.Y. TIMES, May 29, 2003, at A18.

89. See 16 U.S.C. § 1533 (on listing species as endangered or threatened).

critical habitat provisions themselves. Such stories express in some cases a greater degree of frustration with the regulatory process carried out by federal agencies than with the law itself or with its goals.

In fact, the reason for documenting the descriptive phrase references to the ESA was, in part, because that is one of the few places where we see direct references to the statute. More often, the stories that play out in articles that reference the ESA conjure up the statute itself only indirectly. They draw from larger themes about the value of species preservation, both favoring and disfavoring it, or about the regulatory process getting mired in bureaucratic detail and losing sight either of the conservation goals or of the conflicting interests at issue in a community.⁹⁰ So it is to the larger frameworks used to tell these stories that we turn next.

D. Story Frames

Most of the stories in our sample that referred to the ESA did not dwell on it. The ESA was sometimes referred to incidentally and more often by way of explaining why a controversy or problem about a particular species had erupted. But once the story was pegged on the statute, the statute itself often did not turn up explicitly again. The articles then went on to describe a drama, to tell a story.

Stories, nevertheless, are presenting the statute within a larger legal context. Framing of an issue—or a statute—is not so much about how often the name is mentioned but about the nature of the stories that spring from it. These stories can suggest something about the impact of the statute on various stakeholders without ever criticizing or praising the statute explicitly. As one writer has said, “Much of the power of framing comes from its ability to define the terms of a debate without the audience realizing it is taking place.”⁹¹

Deductively Identified Frames: Accordingly, because our focus was the law and its application, one objective was to identify the extent to which legislation, regulation, and litigation processes each are dominant in the telling of these stories. Are the stories primarily about flaws in or strengths of the statute, about the process of species listing and habit designation by federal agencies, or about cases being played out in an adversarial way in court? Where the newspapers are placing the

90. John Kass, *Insect with Clout Flies in the Face of Progress*, CHI. TRIB., Oct. 2, 2002, at 2.

91. James W. Tankard, Jr., *The Empirical Approach to the Study of Media Framing*, in FRAMING PUBLIC LIFE: PERSPECTIVES ON MEDIA AND OUR UNDERSTANDING OF THE SOCIAL WORLD 95, 97 (Stephen D. Reese et al. eds., 2001).

emphasis could suggest something about where responsibility for conflicts over the ESA is being placed.

The results suggest that the regulatory process was dominant over legislation and litigation in the stories about the ESA. This was true in every newspaper studied except the *Chicago Tribune*. During the year, the *Chicago Tribune* covered a case of illegal tiger smuggling and most of its "litigation" stories were, in fact, stories about prosecution under the ESA⁹² in that one case. Regulatory stories, which were predominant overall, might be about the listing of a species, the designation of critical habitat, a recovery plan, or even the publishing of an agency report or the completion of a building project. The results by newspaper appear below.

Table 4: Legal Frames for Stories About the Endangered Species Act

	Chicago Tribune	LA Times	NY Times	Washington Post	Total*
Regulation	6	34	9	14	63
Litigation	13	11	6	8	38
Legislation**	5	12	1	14	32
Hybrids	4	8	3	3	18
<i>Reg/Lit</i>	2	6	2	1	11
<i>Reg/Leg</i>	1	1	1	1	4
<i>Leg/Lit</i>	1	1	0	0	2
<i>Reg/Leg/Lit</i>	0	0	0	1	1

*Totals do not equal the number of ESA stories published during the year. Some stories could not be coded as belonging to any of these frames (e.g., stories about books, activist organizations, economic development, or in which the ESA was incidental).

**In *The Washington Post*, five of these references were incidental, in that they were one-line mentions in schedules of congressional activities. Three were about Pentagon requests for exemption from ESA. In *The New York Times*, four stories were about bills exempting the Pentagon from ESA and other statutory provisions. In the *Chicago Tribune*, one reference was incidental and two were related to Pentagon requests for exemption from the ESA and other environmental laws.

Numbers are based on stories available in the Lexis-Nexis database when the research was conducted and are therefore approximate.

Inductively Identified Frames: Next we inductively identified two broad frames and within those two frames a series of more specific conflict themes. We borrowed from previous studies that suggest that those seeking to frame a debate, regardless of their position, tend to portray themselves as "pro" on some issue. The pro-life versus pro-

92. 16 U.S.C. §§ 1531, 1538 (2000) (addressing interstate trade in endangered species).

choice debate on abortion⁹³ or the pro-save versus pro-cut debate on Pacific Northwest logging⁹⁴ are examples of this phenomenon. Framing is not a pro-con distinction as much as it is a divergence on “what the issue is.”⁹⁵ The framing comes in when advocates for one side or another manage to make their issue the focus of the debate.

In looking at ESA stories, we determined that the competing issues in such stories, those that advocates seek to make the focus of the debate, are *people*, on the one hand, and *preservation* on the other. Therefore, we worked with a pro-people frame and a pro-preservation frame. These two frames need not inherently be in conflict, but the objective was to look for the contest as it is played out in the news story, and this is what emerged. The contest is simply over where the emphasis is placed. Within these two broad frameworks, we identified a larger number of more specific conflict themes. We did not attempt to count these in the overall sample because of the subjectivity involved in that kind of categorization. We did identify them, however, and provide examples. Following are some dominant themes we identified as representing each frame, as well as sample passages, each pulled from one of the stories in the sample:

93. Tankard et al., *supra* note 38, at 17, 24.

94. Liebler & Bendix, *supra* note 14, at 53.

95. Tankard et al., *supra* note 38, at 11.

Pro-People***Progress versus Primitivism***

"A few years ago, the Fly-Fed Alliance killed plans for much needed hospital construction because five or six of these small flies were seen in the neighborhood....[S]quashed [were] plans for a \$12 million sports complex, including a hotel and restaurant. All because of one fly."⁹⁶

People versus Wildlife

"'It's the fish versus the people now, and we want the Middle Rio Grande water for the people of this valley,' says Corky Herkenhoff, who farms alfalfa 60 miles south of Albuquerque."⁹⁷ "It is believed this is the first time a legal claim under the Endangered Species Act has threatened the water rights of a major urban center."⁹⁸

Way of Life versus Federal Law

"Ultimately, Mechenbier [farmer] and others believe the greatest threat facing the Middle Rio Grande Valley comes from the federal officials."⁹⁹

"Let's call him Boss Fly. Boss Fly was found recently in the desert, by government fly watchers. You'll be glad to know that your tax dollars are being well spent when it comes to flies....'We were going to have baseball diamonds; they were going to be replicas of major league fields,' Mayor Bennett said....She'd love to smush Boss Fly. This would upset Jane Hendron of the Fish and Wildlife Service."¹⁰⁰

Pro-Preservation***Preservation versus Greed***

"Logging, trapping and urbanization have reduced it [the fisher] to three known populations in northwestern California, the southern Sierra and Oregon."¹⁰¹

96. Kass, *supra* note 90, at 2.

97. Judith Graham, *Fish Story Tells Tale of West's Water*, CHI. TRIB., July 21, 2003, at 8 (discussing the endangered silvery minnow).

98. *Id.*

99. *Id.*

100. Kass, *supra* note 90, at 2.

101. Bettina Boxall, *Fisher to Be Considered for Endangered Status*, L.A. TIMES, July 11, 2003, at 8.

Protection versus Harm

"The bird that was killed, known as AC-8, was among the nine condors captured in 1986 in a last-ditch effort to save the species from extinction."¹⁰²

"[J]urors took less than six hours Thursday to convict a Tinley Park man of buying, selling and killing almost two dozen endangered animals....The conviction caps one of the largest prosecutions of illegal animal trafficking in U.S. history...."¹⁰³

Future versus Present

"In the long term, the problem will be met only by recognizing the abuses of the past, remedying those that can be remedied and setting limits on water use....[T]he minnows are telling us that there is not enough to sustain current consumption—let alone the greater demands that will come from more people moving in every day."¹⁰⁴

"The reason for the concern is that when the plan was conceived it was estimated that only 800 acre-feet of river water was needed to flow through the fish ladder annually. It was later learned that federal guidelines required that a minimum of 2,000 acre-feet flow through"¹⁰⁵

News Sociology Factors: We next examined variables that could suggest what some of the influences on ESA coverage might be. These variables are more difficult to assess by measuring content alone, without observing the process that led to the stories, but some aspects of content can hint at influences from professional norms or differences among news organizations. Variables examined included the consistency of ESA coverage and the number of individual reporters responsible for the stories. The level of consistency of ESA coverage could suggest whether it is obligatory and built into that news organization's routines or whether it occurs less evenly in response to meaningful outside events. The number of reporters involved in producing ESA stories could suggest that it is a part of several "news beats" at that organization

102. Joy L. Woodson, *Killer of Condor Gets Probation, a \$20,000 Fine*, L.A. TIMES, Aug. 16, 2003.

103. Yates, *supra* note 75, at 1.

104. Kennedy, *supra* note 72, at B11.

105. Suzie St. John, *Steelhead Ladder Takes a Big Step Up*, L.A. TIMES, Aug. 29, 2003, at 3.

or that stories are the responsibility of one or two “environmental” reporters.

The consistency of ESA coverage was examined by noting the number of references to the ESA over the course of the year. The primary reason for this was to see whether the amount of coverage of the statute was relatively sustained throughout the year, suggesting perhaps a somewhat routine or obligatory approach to ESA coverage on the part of a particular news organization, or whether the amount of coverage varied significantly, suggesting that factors outside of newspaper routines were affecting when it received attention. The most straightforward way to get at this variable was to count the number of references to the ESA each month. The results, sorted by newspaper, appear in Table 5.

Table 5: Number of References to Endangered Species Act Each Month

	<i>Chicago Tribune</i>	<i>LA Times</i>	<i>NY Times</i>	<i>Washington Post</i>	Total
Sept.02	0	5	1	0	5
Oct.	2	3	2	5	12
Nov.	7	9	0	3	19
Dec.	3	9	5	2	19
Jan.	0	8	5	6	19
Feb.	1	8	2	2	13
Mar.	7	6	3	2	18
Apr.	5	8	1	4	18
May	2	8	8	7	25
June	2	3	2	3	10
July	2	6	1	5	14
Aug	1	7	0	2	10
Sept.03	0	2	1	0	3

Numbers are based on stories available in the Lexis-Nexis database when the research was conducted and are therefore approximate.

No immediately discernible pattern turned up across the newspapers in terms of when during the year ESA coverage was most pronounced. For every pattern the author found between two newspapers, a divergence from that pattern would appear with a third. One commonality is that each of the newspapers had peaks and valleys in its coverage of the ESA. In fact, several seemed to have what might be called a “twin peaks” approach to coverage during the year, with two periods of unusually frequent ESA stories, followed by dips in

coverage.¹⁰⁶ This is most discernible in looking at the results of all four newspapers combined. However, the peaks in coverage did not occur at the same time in each newspaper. The most sustained coverage appears to have been in the *Los Angeles Times*, which was also the newspaper with the greatest number of ESA stories overall.

V. CONCLUSIONS

While much of the information presented here is only a descriptive portrait of news coverage of the Endangered Species Act, it does give us a springboard from which to reach for some explanations. It also raises some questions, however. We address all three—descriptions, possible explanations, and remaining questions—in the discussion that follows.

The amount of coverage we found of the ESA suggests that most of these newspapers averaged more than one reference to the statute every two weeks. Given the amount of pressing news over the year of the study, including the onset of war, it would be difficult to argue that the ESA was ignored. However, comparing ESA coverage to coverage of other environmental statutes is more enlightening. The ESA had the second highest number of references during the year of all of the major federal environmental statutes, finishing second only to the Clean Air Act. From an agenda-setting perspective, we could conclude that ESA references are frequent and persistent enough to give it a stable place on the public agenda. It appears that something about the ESA makes it better material for news stories than the Federal Insecticide, Fungicide and Rodenticide Act or the Toxic Substances Control Act. This does not mean newspapers are not covering conflicts produced by other federal environmental laws, of course, only that they are not invoking the statute by name when they do so.

After the Clean Air Act, the Endangered Species Act, the Clean Water Act, and Superfund, a significant drop-off in naming statutes occurs. It would be helpful to compare data on ESA “events” and other environmental “events” to know if the news media were favoring the ESA over other environmental statutes in coverage, or whether the media were simply responding to real-world events and controversies. However, defining an “event” or what is worth writing about is too often confounded with what *is* written about to be able to discern that accurately. One possible way to operationally define ESA events would

106. An exception would be *The Washington Post*, which, rather than having two visible peaks in coverage, appeared to have four milder peaks over the course of the year.

be to look at the number of final agency actions, but that, of course, builds in a regulation-oriented bias.

The species receiving the most attention in ESA stories are a fairly predictable collection. With the exception of one or two, the top ten all would be appealing pictured on a poster promoting the preservation of endangered species. This essentially affirms what has been accepted as common wisdom—charismatic species like owls and grizzly bears are more likely than others, such as pupfish and milk vetch plants, to attract attention from the news media. On the other hand, another phenomenon not as well documented seemed to appear in these stories. That is when attention is given to an obscure or even unappealing species to balance the interests *protected* by the ESA against the interests *threatened* by the ESA in a way that ends up favoring the latter. Sometimes species are portrayed as obstructionist and even subject to ridicule or diminishment, such as when one story summed up the significance of the Delhi Sands flower-loving fly by saying that it “spends its two days of life sipping nectar and mating in the local sand dunes.”¹⁰⁷

The press’s devotion to salmon, owls, and grizzlies is a double-edged sword both for environmental advocates and for property rights and development advocates. An environmentalist might argue for more equitable coverage of less popular or less charismatic species because such coverage would be likely to demonstrate more clearly the rationale behind the ESA—the preservation of diversity and the threads of the ecosystem.¹⁰⁸ On the other hand, where news coverage, as it often is, is reduced to telling the simplest story about a controversy, rather than the more complicated underlying one, less charismatic species will likely suffer in a direct comparison to projects to improve human quality of life in the short term. From the perspective of the news media, given the way the statute is enforced, a more accurate—and hence, more professionally responsible—picture is painted by giving attention to ESA controversies, at least in part, based on factors beyond the particular species involved.

In addition, it turns out the coverage, while weighted toward appealing and recognizable species, is not completely skewed by this variable. After all, the silvery minnow and the Delhi Sands flower-loving fly both finished in this study well ahead of the more elegant Sonoran pronghorn, an antelope-like creature of the Arizona desert. This is largely because the minnow and the fly were viewed as obstructionist species, however. The difference in coverage given to “obstructionist”

107. *Endangered Fly Stalls Some California Projects*, N.Y. TIMES, Dec. 1, 2002, § 1, at 40.

108. The purpose of the ESA is to provide a “means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(2)(b). *But see* Peterson, *supra* note 51.

species and “preservation-worthy” species would be an interesting future study.

Of course, the amount of coverage is a separate matter from the character of the coverage. A consistent chorus of ESA criticism may well produce a different reaction in the public and policy makers than repeated praise for the statute’s goals or relatively innocuous, politically neutral coverage. Stories about how the regulatory process of critical habitat designation has deprived a local rancher of his livelihood¹⁰⁹ or prevented a community from developing economically¹¹⁰ present a different picture to the public than stories in which the law allows courts—and society—to punish people who smuggle and kill tigers¹¹¹ or provides for the return of the popular grizzly to its presumably rightful habitat.¹¹²

However, our interest in this study was primarily coverage of the statute itself. Because the ESA is commonly perceived as controversial, we wanted to see where the newspapers were locating the controversy—in the statute, in the regulatory or administrative process, or in the litigation that results from failures in the other two domains. The ESA triggers all three processes. In examining the stories, it seemed surprisingly clear that the regulatory and administrative process was at the heart of stories told about the ESA.¹¹³ The sample turned up stories about the designation of critical habitat, about recovery plans, and about decisions to list or not list a particular species.

When the Delhi Sands flower-loving fly prevents the community of Colton, California, from building its baseball diamond or when the silvery minnow of the Rio Grande leads the citizens of Albuquerque, New Mexico, to fear that they will run out of drinking water, it would be easiest to return the blame to that pesky ESA. Nevertheless, the author found that the news articles, rather than pinning problems cavalierly on the ESA, were surprisingly good at identifying where the controversy originated, whether that be with a listing decision, a controversial habitat designation, or an unavoidable conflict between two valid but competing interests. Still, often it was clear in the stories that the regulatory decisions were to some extent compelled by the ESA’s provisions, which

109. See, e.g., Rone Tempest, *High Noon at the Blair Ranch*, L.A. TIMES, Feb. 9, 2003, at 1.

110. See Kass, *supra* note 90.

111. Yates, *supra* note 75.

112. See, e.g., Jim Robbins, *A Battle for Turf Where Threatened Grizzlies Still Roam*, N.Y. TIMES, Sept. 9, 2003, at F2.

113. It was “surprisingly clear” because the author anticipated a healthier supply of litigation stories, in keeping with the news value of conflict.

for the careful reader in some cases will lead blame back to the statute itself.

Next, the inductively derived conflict frames—pro-people and pro-preservation—provide some of the best context in this study for understanding stories about the ESA. Approaching ESA stories as conflict stories is reasonable when we take into account that the law in general is often grounded in conflict of some type. Accordingly, stories about a particular statute are probably more likely than some others to turn on a central conflict. By contrast, had we identified stories for our study using the key word “wildlife” or even “species extinction,” rather than the “Endangered Species Act,” we might have found an entirely different sample of stories with different attributes. This study worked from the premise that many stories springing from this particular federal law, not all stories about wildlife or conservation, are at least partly about conflict.¹¹⁴ In addition, the study revealed a significant group of stories that were not necessarily high in conflict in which the mention of the ESA was incidental.

Nevertheless, because of the substantial conflict orientation of many of the more substantial stories, it was not difficult to identify the parties portrayed as having stakes in the outcome of a controversy. Not surprisingly, what we found was that when people themselves were portrayed as having a stake in the outcome, the outcome advanced was generally short term, such as the immediate need for water or the desire to build something to improve quality of life. However, a bigger surprise was that when the interests protected by the ESA were advanced, it *also* often tended to be for relatively short-term gain. That is perhaps one place where otherwise relatively good coverage falls somewhat short.¹¹⁵ When stories confined themselves to short-term outcomes, as news stories often do,¹¹⁶ it is more difficult to discuss the long-term goals of

114. By no means is conflict the exclusive approach to the ESA, however. In an informal, ancillary search, the author identified, from the same sample of newspaper stories, 17 stories that referred to the ESA and also used the word “conflict” and 36 ESA stories that used the word “battle,” as well as 25 ESA stories that used the word “agreement” and three ESA stories that also used the word “cooperation.”

115. The press probably has to make a more deliberate effort when covering more complicated, systemic problems with long-term implications, partly because of the inherent restrictions in the production of news. For a discussion of how reporters might think about broadening their perspective in this way, see Laura J. Hendrickson & James W. Tankard, *Expanding the News Frame: The Systems Theory Perspective*, JOURNALISM & MASS COMM. EDUCATOR, Winter 1997, at 39–46.

116. *Timeliness* is one of the traditional news values used across news organizations to identify worthwhile stories. SHOEMAKER & REESE, *supra* note 41, at 111.

the Endangered Species Act in conserving ecosystems.¹¹⁷ Instead, when confined to short-term frameworks, the needs of people often are set against the narrower “rights” of a particular species. And those species are sometimes portrayed as advantaged by federal law in the competition with people over the immediate need for resources. Such a portrayal risks crass comparisons of the value of people and fish, a distortion of the underlying purpose of the ESA, and greater controversy and confusion over the statute’s goals.

It was striking that, in inductively identifying conflict themes within our two broad frames (pro-people and pro-preservation), the themes that were pro-people were easier to locate because they tended to focus on concrete, specific participants and stakeholders—people, wildlife, specific development activities, or federal laws. By contrast, the conflict themes that emerged for the pro-preservation frame often seemed more abstract, focusing on *ideas* like greed, harm, urbanization, and “the future,” making them harder to locate. Abstract ideas are always more complicated and difficult for journalists to write about in a brief news story than are concrete, identifiable participants.

Similarly, one author has drawn a distinction between episodic and thematic frames in the news.¹¹⁸ An episodic frame would focus on a discrete event, like an armed robbery, while a thematic frame would focus on a larger idea, like crime as a social problem. Likewise, an episodic story about the ESA might focus on the failure of a farmer’s crops from lack of irrigation in a specific year, whereas a thematic story might be about the long-term value to multiple stakeholders of saving the Klamath Basin. The sometimes-greater ease in writing from an episodic perspective suggests one reason why a closer look might show the pro-people frame to be not necessarily dominant, but perhaps better developed in news coverage.

Finally, we speculate briefly about the “news sociology” variables—the consistency of coverage and the number of writers responsible for ESA stories. The results indicate a lack of consistency in

117. There are some notable exceptions to the tendency of media stories to shy away from the more complicated topics of ecology and biodiversity, although the circumstances from one medium to another (time available, audience demographics, etc.) that permit such discussions must be acknowledged. With the arrival of the thirtieth anniversary of the ESA, several media outlets devoted special attention to the ESA in late 2003 and early 2004, with some of these stories having a stronger tendency to focus on the biodiversity goal of the statute. See, e.g., *Endangered Wolves Make a Comeback*, in Morning Edition (National Public Radio broadcast, Feb. 19, 2004) (discussing how reintroduction of the wolf has revitalized parts of the ecosystem in the area of Yellowstone Park), available at <http://www.npr.org/features/feature.php?wfid=1682559> (last visited Feb. 3, 2005).

118. Iyengar, *supra* note 34.

coverage during the year. This is something that cannot be fully understood, however, without comparing the consistency of ESA coverage to that of other statutes. A lack of consistency is not necessarily negative, however. It might suggest that news organizations are writing about the ESA when they determine that some issue has risen to the level that the public needs to be alerted to it. From an agenda-setting perspective, whether one supports or opposes the law, one might be inclined to believe that more coverage is better. But more coverage only tends to make the statute more salient, not more or less popular. Next, the number of writers involved in producing ESA stories was surprisingly high.¹¹⁹ This suggests that ESA stories might be emerging on a number of different "news beats," rather than being confined strictly to the "environmental beat." At the same time, each newspaper had one or two reporters who seemed to be responsible for a larger number of stories than the others, suggesting that perhaps the news organization also has invested time and talent in assuring that the issues raised by the statute do not get overlooked.

Whatever the strengths or weaknesses of ESA coverage may be, journalism as a trade clearly sees a need for reporters to treat environmental and conservation stories in distinct ways. One of the influences on news content, according to the news sociology theory discussed earlier, is the way journalists are trained, socialized, and prepared for their jobs. Environmental journalism is considered important enough as a domain of news content that academic programs to train students in this specific area have sprouted at universities over the last decade. The Society of Environmental Journalists, founded in 1990, lists more than 25 university programs that offer classes or programs in environmental or agricultural journalism.¹²⁰ Some involve a substantial component on the complexities of environmental science,¹²¹ which one would expect to lead to more sophisticated and clearer

119. The *Chicago Tribune* used 11 byline reporters, the *Los Angeles Times* used 42, the *New York Times* used 19, and the *Washington Post* used 21 for ESA stories. Remaining stories came either from subscriber news services or anonymous staff reporters, with a smaller number of stories not indicating any source.

120. SOC'Y OF ENVTL. JOURNALISTS, ENVIRONMENTAL JOURNALISM PROGRAMS AND COURSES, at <http://www.sej.org/careers/index1.htm> (last visited Feb. 3, 2005).

121. The University of Wisconsin's journalism program includes the following in its description of a course in Science and Environmental Journalism: "Instruction and practice in strategies for communicating science to the public. Emphases include (1) how to explain difficult concepts and processes, (2) skills for telling interesting and artful stories, and (3) strategies for making reasonable judgments about scientific evidence." See UNIVERSITY OF WISCONSIN-MADISON, ALL COURSES IN THE SCHOOL OF JOURNALISM AND MASS COMMUNICATION, at <http://www.journalism.wisc.edu/courses/all.html> (last visited Feb. 3, 2005).

understandings of extinction and biodiversity issues. Also, for example, the Vermont Law School's environmental law program recently initiated a two-week fellowship to educate journalists on environmental law.¹²² It is difficult to know what, if any, differences in coverage such programs make, as they are likely to be strongly influenced by the programs in which they are housed—science, journalism, or law. However, they do indicate recognition on the part of journalists, as well as environmental lawyers and policymakers, for some degree of specialized knowledge.

To conclude, in a preliminary investigation such as this one, what we learn about are the attributes of recent coverage. Taking what we have learned about ESA coverage and comparing it to additional variables would be a reasonable next step. For example, more would be learned by doing similar studies at one-year or five-year increments to identify changes in the tone of coverage over time. In addition, comparing the major newspapers to more regional newspapers, especially in the West where many ESA controversies erupt, might prove enlightening. Perhaps a study of the *Denver Post*, the *Albuquerque Journal*, the *Seattle Post-Intelligencer*, the *Minneapolis Star-Tribune*, the *Dallas Morning News*, the *Rocky Mountain News*, or even the *Tampa Tribune* would show us a less muted approach to stories about the ESA.

In the end, what we have learned about ESA coverage over the last year is this: Coverage was substantial compared to coverage of other environmental statutes. It had peaks and valleys, with periods of intense coverage followed by dips in coverage, suggesting that it may have been motivated by real-world events. The four newspapers did not increase their coverage of the ESA at the same times, suggesting perhaps that they were responding to regional issues when they emerged. Popular, well-recognized species were more widely covered than less popular, unfamiliar species while, at the same time, unappealing species that might be regarded as “obstructionist species” received significant attention as well. Conflict scenarios were fairly common in ESA stories and the interests of all kinds of people—ranchers, farmers, inhabitants of small communities, and urban residents—were set against the interests protected by the ESA. The regulatory process appeared to provide the most common legal framework for ESA stories, with litigation and legislation issues being slightly less prominent. Some of these findings were surprising, many not. But with a statute recently described as “broken,”¹²³ and which is part of a federal system of resource

122. VERMONT LAW SCHOOL, SUMMER MEDIA FELLOWSHIP, at http://www.vermontlaw.edu/media/index.cfm?doc_id=506 (last visited Feb. 3, 2005).

123. Editorial, *An Endangered Act*, WASH. POST, Dec. 29, 2003, at A16 (quoting “skeptical members of Congress”).

preservation characterized as “under serious challenge,”¹²⁴ it is valuable to determine what kinds of messages the public is receiving about the law. This study is but one step toward understanding the picture being painted of a highly controversial, sometimes tenuously persisting federal statute.

124. David A. Dana, *Existence Value and Federal Preservation Regulation 1* (2003) (Northwestern University School of Law, Public Law and Legal Theory Research Paper Series, No. 03-17); *see also An Endangered Act*, *supra* note 123.