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Understanding the Endangered Species Act: A Book Review Comparison of the Endangered Species Act and the Endangered Species Act: History, Conservation, Biology, and Public Policy

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**UNDERSTANDING THE ENDANGERED SPECIES ACT:
A BOOK REVIEW COMPARISON OF
THE ENDANGERED SPECIES ACT¹
AND
THE ENDANGERED SPECIES ACT: HISTORY,
CONSERVATION BIOLOGY, AND PUBLIC POLICY²**

Robert W. Malsheimer*

The U.S. Supreme Court has called the Endangered Species Act (ESA)³ "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."⁴ It is also one of the most scrutinized. Since its enactment in 1973, the ESA has been the subject of scores of books and hundreds law review articles. Two new books, Tony Sullins' *The Endangered Species Act* and Brian Czech and Paul Krausman's *The Endangered Species Act: History, Conservation Biology, and Public Policy* recently joined these works.

This review compares these two books, both of which claim to be comprehensive analyses of the ESA. This article begins with a summary of each book's organization and content. I then compare three aspects of the books, their authors' perspectives, the breadth and depth of their analysis, and the books' usefulness for various audiences.

¹ Tony A. Sullins, *The Endangered Species Act* (2001).

² BRIAN CZECH & PAUL R. KRAUSMAN, *THE ENDANGERED SPECIES ACT: HISTORY, CONSERVATION BIOLOGY, AND PUBLIC POLICY* (2001).

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³ 16 U.S.C. §§1531-1544 (1994).

⁴ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978).

Organization and Contents

Sullins' The Endangered Species Act

Tony Sullins' book is part of the American Bar Association Section of Environment, Energy, and Resources' Basic Practice Series which are designed to provide concise information in an easy-to-use format. Sullins, an attorney with the U.S. Department of the Interior Solicitor's Office in Boise, Idaho, states that his goal was to "provide a comprehensive, yet basic overview of every major component of the ESA" that serves "as a valuable starting point for researching all but the most obscure ESA issue."⁵ Sullins fulfills both the series' objectives and his own goals with a useful, legal analysis of the ESA.

After an executive summary, the book consists of ten chapters that correspond to the ESA's major provisions: Listing and Critical Habitat Designation; Conservation: Section 7(a)(1) and Recovery Planning; Prohibited Acts and Penalties (ESA Sections 9 and 11); Section 7 Consultation; Incidental Take Permits and Other Allowable Take; The Section 7 Exemption Process; State/Federal Interactions under the ESA; International Application of the ESA; Experimental Populations; and Citizen Suits, Standing, and Procedure. In addition to the acronym list and comprehensive index the reader would expect as appendixes in this book, Sullins provides appendixes that answer frequently asked questions, list and describe key ESA cases, and provide an in-depth, well-referenced definitions of more than ninety ESA words and phrases.

Czech and Krausman's The Endangered Species Act

This book is the product of Brian Czech's Ph.D. dissertation that he completed under the direction of Paul Krausman while at the University of Arizona. Dr. Czech, who also has two degrees in

⁵ SULLINS, *supra* note 1, at xv.

wildlife sciences, is a conservation biologist in the U.S. Fish and Wildlife Services' national office and has authored a previous book that critically examined economic growth.⁶ Dr. Krausman is a professor of Wildlife and Fisheries Science at the University of Arizona who has served as editor of numerous wildlife sciences, peer-review journals. Czech and Krausman's goal was to write "*the book on ESA*. That is, if a person were to own only one account of ESA, this would be it."⁷ While their book contains many important, unique, and fascinating analyses, Czech and Krausman never overcome the accessibility problems that the best social-science-dissertation-turned-public-policy-analysis books, such as Rosemary O'Leary's *Environmental Change: Federal Courts and the EPA*,⁸ overcome to be readable by audiences of non-social scientists.

Czech and Krausman's book is divided into two parts. Part One's four chapters set the stage for their analysis. After an introductory chapter, they describe the history of endangered species in the United States; the statutory, administrative, and academic evolution of the ESA; and the social science theories that others have used to examine the ESA. The remaining six chapters in Part Two comprise more than 70% of the book and use policy design theory, the theoretical basis for Czech's dissertation, to examine the ESA's policy elements, social construction, technical legitimacy, context, implications for democracy, and property rights controversy. It contains some unique, but often difficult to read and sometimes confusing, analyses. Chapter Five describes and employs policy design theory to analyze the assumptions of the ESA's authors by conducting a subsection-by-subsection analysis of the ESA. The next chapter describes the results of a nationwide survey that asked the public to value species for conservation and examines the political

⁶ BRIAN CZECH, SHOVELING FUEL FOR A RUNAWAY TRAIN: ERRANT ECONOMISTS, SHAMEFUL SPENDERS, AND A PLAN TO STOP THEM ALL (2000).

⁷ CZECH AND KRAUSMAN, *supra* note 2, at xiv (emphasis in original).

⁸ ROSEMARY O'LEARY, ENVIRONMENTAL CHANGE: FEDERAL COURTS AND THE EPA (1993).

power held in trust for species by conservation groups. Chapter Seven addresses the issue of species conservation prioritization by examining the implications of species' biological characteristics. The next chapter describes the causes of species endangerment and how these causes relate to the American economy. Chapter Nine analyzes the ESA's implications for democracy by examining five issues: equity, freedom of information, public participation, majority rule, and political representation. The penultimate chapter discusses property rights issues based on the ESA, primarily through a description and analysis of the Federal Court of Claims' decision in *Good v. United States*.⁹ The final chapter contains Czech and Krausman's recommendations about how the ESA should be amended to emphasize a "steady state economy and the adoption of ecosystem health as an omnibus role for public policy."¹⁰

A Comparison

Authors' Perspective

Sullins' and Czech and Krausman's books differ in two important ways. First, Sullins' book is a legal analysis of the ESA, while Czech and Krausman's book provides a social science analysis of the act. Sullins' task is easier. He only needs to analyze the ESA and its regulations, and courts' interpretations of them. Sullins expertly accomplishes his task. Czech and Krausman's job is much more difficult. They must relate this same information to the social, political, and economic contexts in which humans make decisions about endangered species, biodiversity, and the ESA. Czech and Krausman designed innovative analyses to address these issues. For example, they analyzed a database of 877 endangered species listed through 1994 to identify eighteen causes of species jeopardization since the passage of the ESA. This analysis represents an important quantification of others'

⁹ *Good v. United States*, 39 Fed. Cl. 81 (1997).

¹⁰ Czech and Krausman, *supra* note 2, at xvi.

anecdotal observations. However, as the next two subsections of this review describe, they do not make this or most of their other analyses easily accessible to most of their potential audience.

Second, Sullins' and Czech and Krausman's books reverse the usual roles of attorney and scientist. Attorneys' books and law review articles usually include both analysis and advocacy, while social and natural scientists' books and journal articles generally strive for objective analysis. In this case, Sullins, the attorney, has provided an objective legal analysis of the ESA, while Czech and Krausman, the social and natural scientists, have combined analysis and advocacy. Czech and Krausman clearly have an agenda. By page four, they have already attempted to rebut and discredit the Wise Use movement's arguments against the ESA. Their weaving of social and natural science with advocacy makes it difficult for the reader to differentiate where their analysis ends and their advocacy begins.

Depth and Breadth of Analysis

Sullins breaks no new ground with his book. Instead, he provides the best concise description of the ESA's legal requirements currently available. The logical flow of the chapters and Sullins' clear, succinct writing style allows the reader to understand the ESA in only a few hours. For these readers, Sullins' "Frequently Asked Questions" appendix provides a review of their reading and a superb analysis of how different ESA sections and subsections interact.

Czech and Krausman also do not break new ground. Most of their analyses are available elsewhere. For example, their examination of the causes of species endangerment was previously published in the well-respected journal, *Science*, in 1997.¹¹ However, this compilation provides readers with their unique and important ESA analyses in one source and were it not for their dense and difficult to read writing style, their book would be useful to a wide audience.

¹¹ Brian Czech and Paul R. Krausman, *Distribution and Causation of Species Endangerment in the United States*, 277 *SCIENCE* 1116-1117 (1997).

This is a critical flaw. Czech and Krausman's passive voice, multiple clause sentences make this slow, exhausting reading, which is a discredit to their work and ideas because Czech and Krausman have an important story to tell. Another problem for readers is the relative independence of Part Two's chapters. After only a few chapters, it becomes obvious that these chapters summarize work that Czech and Krausman previously published independently. This defect could be overcome if the authors spent more time explaining how these chapters fit together. For example, Czech and Krausman continually state that their analyses are based on policy design theory. However, they fail to provide a clear description of the theory (rather than a simple reference to it) or explain how their analyses conform with the theory. Such an explanation, either in their initial discussion of policy design theory or in the book's conclusion, would have been extremely helpful to those readers attempting to evaluate the appropriateness of policy design theory for an evaluation of the ESA.

Sullins' book is useful both as an overview of the ESA and as a reference book. The book's index makes it easy to locate specific information and the extensive use of footnotes provide readers with starting points for more in-depth analysis. Czech and Krausman's book, as would be expected, is more difficult to use as a reference book, but its index does allow readers to quickly locate pertinent information.

Usefulness to Readers

According to the authors, both of these books were written for multiple audiences. However, the books' usefulness depends upon the reader's understanding of the ESA and the reader's profession.

Legal scholars and practicing attorneys' familiar with the ESA will find Sullins' book most useful as a quick reference. Those readers unfamiliar with the ESA and law students will not find a better overview of the ESA. Czech and Krausman's book is not appropriate for those in the legal community attempting to understand the ESA, and this book while interesting, provides little pragmatic

legal knowledge that practicing attorneys generally value. However, law professors will find Czech and Krausman's book fascinating reading that may supply valuable information for teaching students about endangered species and the ESA, and serve as a source of quantitative information for legal scholarship.

Natural resource and environmental professionals and scholars will also find Sullins' description of the ESA an understandable overview, although Sullins does assume the reader has a basic understanding of legal concepts. These professionals and scholars are more likely than those in the legal community to value Czech and Krausman's book. They are also more likely to continue through the authors' dense writing style because their analysis will help them understand how social, political, and economic factors influence endangered species protection. However, natural resource and environmental scholars will be frustrated by Czech and Krausman's attempts to adopt their analyses for a broader audience. For example, when the authors discuss the results of their national survey of the public's attitudes toward species, they fail to provide basic information that readers need to evaluate their results, such as number of survey respondents or the survey's response rate. Instead, they direct us to "a more thorough assessment of our methods and statistical analysis" found in an article in the journal *Conservation Biology*.¹² While it is important not to get bogged down in an exhaustive description of the survey's methodology, this information allows the reader to evaluate the inferential value of Czech and Krausman's results.

Conclusion

Both Sullins' and Czech and Krausman's analyses of the ESA fill voids in the literature. Sullins' book is more useful to those readers interested in understanding the structure and requirements of

¹² CZECH AND KRAUSMAN, *supra* note 2, at 60. See also Brian Czech, et al., *Social Construction, Political Power, and the Allocation of Benefits to Endangered Species*, 12 CONSERVATION BIOLOGY 1103-1112 (1998).

the ESA and its regulations. Czech and Krausman's book increases our understanding of the how social, political, and economic forces have impacted endangered species and their protection.