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LYNX, LIES AND MEDIA HYPE

Armed with media reports that state and federal scientists tried to lock up public land by "falsifying" lynx data, conservative politicians are lashing out at the Endangered Species Act. They angrily proclaim that there has been "unethical behavior" and "malicious activities." They're right.

By

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FINALLY, THERE WAS PROOF. in the worst abuse of the Endangered Species Act ever exposed, state and federal scientists, fronting for environmentalists, had faked data--the better to lock up public land. The multiagency conspiracy to defraud the public had involved seven field biologists--three from the U.S. Forest Service, two from the U.S. Fish and Wildlife Service, and two from the Washington Department of Fish and Wildlife (WDFW).

The story, first published on December 17, 2001, by the D.C.-based Washington Times and flashed around the nation the next day by the Associated Press, is still being reported as I write this in mid-March. As part of a cooperative survey to determine distribution of the Canada lynx, listed as threatened two years ago, the biologists had set up scented pads with nails stuck through them, then hung pie plates nearby. All cats--wild, feral, and domestic--like to investigate the pie plates and rub their cheeks on the pads, leaving fur that is later checked for DNA. So the biologists snuck into the Wenatchee and Gifford Pinchot national forests in Washington and planted fur on the pads.

The Forest Service's investigation of this "biofraud," reported the Times, "hit a dead end when some employees refused to cooperate." In a January 21 news story, the Times revealed the motive: "The admission that employees of the U.S. Fish and Wildlife Service, Forest Service, and Washington State falsified data confirmed what many rural westerners believe: Agencies are doctoring species and habitat studies to stop logging, ranching, and mining on the federal government's vast land holdings." At this writing, the Times has published 12 news stories, 3 editorials, and 2 op-ed pieces on the lynx scandal.

New investigations were launched by the Washington State legislature, the U.S. Congress, the General Accounting Office (GAO), the Inspector General of the Department of the Interior, and the Inspector General of the Department of Agriculture. "Let's hope they dig deep . . .," editorialized The Wall Street Journal. "These departments can no longer be trusted to make fair or competent decisions about our nation's resources. The lynx scandal underscores everything that's wrong with Fish and Wildlife and the Forest Service. It shows how the agencies succumbed to a Clinton-era culture that puts ideology ahead of science. It demonstrates the undue influence environmental groups hold over the departments. It also shows how vaguely written laws like the Endangered Species Act can be used to further political agendas."

Right-wing talking heads prattled gleefully. The property-rights community puffed and blew. Feeding the ravenous media were members of the U.S. Congress, most notably Senator Larry Craig (R-ID) and Representatives Scott McInnis (R-CO), chair of the Forests Subcommittee; James Hansen (R-UT), chair of the Resources Committee; Barbara Cubin (R-WY); and Richard Pombo (R-CA). Craig called for oversight hearings; McInnis and Hansen scheduled them. In an open letter to the directors of the Interior and Agriculture departments, Pombo, Cubin, McInnis, and 16 other Republican representatives condemned the "unethical behavior [and] malicious activities that support the closet agenda of the 'green' community" and called for the termination of "those officials who knowingly and willingly planted unauthorized samples."

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Washington State legislators roasted Forest Service and WDFW officials at a joint House-Senate hearing January 16 in Olympia. Particularly vocal were property-rights champions Representative Richard DeBolt (R-Chehalis) and Senator Val Stevens (R-Arlington). DeBolt testified that the lynx biofraud has cost his constituents their jobs. "We have totally emasculated communities in the name of the Endangered Species Act," he declared. "The community has had it with their property rights being trampled on, their jobs being taken away because someone feels they can manipulate data." Stevens spoke of "criminal action" and "possible jail time" and demanded that she and WDFW officials meet with the attorney general to discuss undertaking yet another investigation.

Among the many fascinating aspects of the story is the fact that it is utterly untrue. The biologists did not plant fur in the forests. They did not conspire. They engaged in no "criminal" or even "unethical" behavior. Nobody "falsified" data or admitted to it. The Forest Service investigation did not "hit a dead end." The biologists did not "refuse to cooperate." There had actually been two Forest Service investigations: one internal, one contracted out. Both had been completed, the last--the external one--six months earlier. Both had cleared the biologists. On March 7, after the GAO and the Interior Department's Inspector General had also cleared the biologists of biofraud, the Times reported that Forest Service biologist Ray Scharpf had been "the whistleblower who informed his supervisor of the unauthorized submission." But Scharpf's only motive had been professional courtesy--to let the lab know that blind samples were on their way and that he had popped them into the mail that day.

Independently, and with excellent reason, the biologists had come to the conclusion that the Forest Service's DNA analysis was flawed. For one thing, house-cat hair was turning up in high-elevation snowfields, far from civilization. For another, positive lynx hits had been reported up and down the Cascades in places where no lynx had been seen in decades and where snowshoe hare, its preferred prey, are rare. "That just didn't make any sense to us," says WDFW biologist Jeff Bernatowicz. "Lynx don't survive where there aren't many snowshoe hare." Lynx surveyors in the Forest Service and Fish and Wildlife Service reached identical, independent conclusions.

In 1999, the first year the survey was conducted, Bernatowicz found four hair samples in the Wenatchee National Forest. One, from an animal he identified as a bobcat because of the field sign, came back "no quality," meaning the lab couldn't tell what it was. Another, which he had identified as a black bear, came back "cougar." Something wasn't right.

On September 14, 2000--the day after the end of that year's sampling season--Bernatowicz arrived at his Yakima office with the rubbing pads he'd pulled out the day before still in his truck. There, in the garage, was a caged lynx, an escaped pet captured by a game warden. Bernatowicz asked his supervisor, Lee Stream, if it would be okay to send in some of this lynx's hair as a "blind control" in order to check the lab's accuracy. Stream gave him permission.

WDFW biologist Tom McCall submitted three samples of bobcat fur as a blind control, getting permission from both his supervisor and the office manager. In addition, McCall informed the Fish and Wildlife Service's Tim McCracken, survey leader for the Wenatchee. McCracken, who later sent in a blind sample himself, expressed his support.

Meanwhile, John Weaver of the Wildlife Conservation Society, the nation's most experienced lynx researcher and the inventor of the rubbing pads, was questioning the DNA analysis himself. Weaver had been hired by the Forest Service and the states of Oregon and Washington to design and direct an earlier lynx survey, in 1998--the survey that found lynx all through the Cascades. To check the accuracy of the lab, located in New York, he resubmitted eight of the samples to a lab in British Columbia. They all came back as lynx, but the B.C. lab said something wasn't right about the signal strength and that the samples seemed to come from one animal. Weaver suspected that DNA from lynx hair had gotten into a solution and contaminated the samples at the New York lab. So he pulled some original hair still left on the pads and sent it to the B.C. lab. This time it came back as cougar and bobcat. The contamination theory was correct. Bernatowicz, McCall, McCracken, and the other state and federal biologists had been right.

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Another biologist who sent in a blind sample--Mitch Wainwright of the Forest Service--told me this: "At the time nobody knew that the problem at the [New York] lab was contamination rather than method. If we'd known, I wouldn't have submitted the blind samples, and I don't think the others would have either." As it turned out, their samples went to a different lab--the University of Montana's, in Missoula. But even if this were relevant--and it's not because one lab is generally no better or worse than another--at least some of the biologists thought their samples were going to the New York lab Weaver had used. As it also turned out, the Missoula lab had used blind samples when it was setting up the survey's protocol. But no one at the lab had bothered to tell the field biologists.

The Missoula lab was having trouble reading lynx DNA--so much, in fact, that the problem became a topic of discussion at a meeting of biologists in Portland on July 11, 2000. Still, Scott Mills, who runs the lab, has been expressing outrage to the press. "What the biologists did was wrong," he keeps saying. I asked him why, reminding him that they had gotten permission from their supervisors. "Well, their supervisors weren't in charge of the study," Mills answered. "Kevin McKelvey and I were in charge."

True, but maybe that's not the point. Andy Stahl, director of the Forest Service Employees for Environmental Ethics (FSEEE) and a forest scientist himself, offers this allegory: "An elderly professor and some grad students are conducting a spotted-owl survey, but one of the students suspects the professor's hearing is defective. At midnight she climbs Ridge 2 and plays a tape of a barred owl. Next day she reads this in the field notes: 'Spotted owl, Ridge 2, midnight.' 'Hey, Prof,' she says, 'that wasn't a spotted owl--it was me playing a barred-owl tape. I think you're losing your hearing.' There are two ways for the professor to react. The right way--the scientific way--is, 'Way to go, gal. You saved the survey. Thanks!' The other way--Mills's way--is, 'How dare you question my competency as a scientist? You're fired!'"

To find out if Stahl has it right, I interviewed four of the nation's most respected wildlife scientists. Ken Goddard, director of the Fish and Wildlife Service's forensics lab in Ashland, Oregon, said this: "There is nothing wrong with running blind samples past a lab." I asked if he'd be offended if he got one without a heads-up. "No," he answered, explaining that he regularly gets blind samples and sometimes finds out only after the fact. "I don't want my people getting complacent. Our job is to get the right answers, to look only at the evidence and not take an emotional stance. I'd like to believe that all labs take this attitude; and, of course, that's a naive belief."

"Submitting blind samples is part of doing rigorous science," said the Wildlife Conservation Society's John Weaver.

Elliot Norse, president of the Marine Conservation Biology Institute and a founding life member of the Society for Conservation Biology, said, "These scientists did what researchers routinely do when submitting samples to analytical laboratories."

"It shouldn't be an issue at all," said Richard Reading, director of conservation biology at the Denver Zoological Foundation and co-chair of the advisory team for Colorado's lynx restoration program. "They should have a right to verify the lab results. I think it makes all the sense in the world."

Another astonishing aspect of the story is the way the agencies cringed, groveled, and cheerfully sacrificed the biologists' careers. Interior Secretary Gale Norton, professing to be "deeply troubled," unleashed the Inspector General and apparently had her people refer the case to the Justice Department, which declined to prosecute. But the only Interior employee known to have engaged in biofraud is Norton herself. Last October, Public Employees for Environmental Responsibility (PEER) learned that, in a report ordered by the U.S. Senate, she had deleted data gathered by Interior's own biologists on the dangers of oil exploration in the Arctic National Wildlife Refuge and plugged in numbers provided by the oil industry.

In his public apologies, WDFW director Jeffrey Koenings all but licked the floor. "The two WDFW employees involved have been barred from further research work," he announced in a December 20 press release. "The behavior of these biologists is not only extremely embarrassing but unprofessional, and cannot be tolerated." At the hearing in Olympia he proclaimed that his biologists had "violated the public's trust," and accused them of having "a cavalier attitude."

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Bowing and scraping at the same hearing was Phil Mattson, from the Forest Service's regional office. He accused the biologists of submitting "unauthorized samples"--even though his own agency had determined they'd had permission--and vowed to "emphasize the importance of ethical behavior," as if someone other than politicians, reporters, and editors had behaved unethically.

There are some nasty internal politics at play here. For 20 years the brass of all three agencies have done everything in their power to prevent the lynx from being listed, failing only because environmental groups have successfully sued Interior four times. A 1994 petition to list the lynx as endangered was overwhelmingly supported by the public and state and federal biologists. Accordingly, the Fish and Wildlife Service's Rocky Mountain regional office approved the rule. Then, in an unprecedented move, the D.C. office contradicted its own scientists as well as itself, proclaiming that listing was "not warranted" because (1) lynx were too common, and (2) lynx were so rare that populations weren't viable. U.S. District Judge Gladys Kessler ruled that the agency had acted illegally, and that its premises were "glaringly faulty" and "contradicted the entire administrative record."

So the service had to list the lynx. But, again silencing its own biologists, it listed it only as threatened. Then it redefined the lynx's habitat, virtually excluding Oregon and thus making it unnecessary to consult with the Forest Service on timber sales in that state. Since then the service has ignored its legal obligation to define critical habitat, so it's being sued again.

During the entire process, field biologists from the three agencies have bitterly complained to their regional offices about being ignored. The regional offices resent this; and one of their ways of dealing with dissenters is to dispense only unofficial discipline. The biologists who submitted the blind samples have been scolded in writing by their superiors, but that's it. And in the case of the three Forest Service biologists, the "letters of counseling" didn't even make it into their files; they were read to them, then ripped up. Some of the biologists were taken off lynx research and forbidden to do any kind of sampling; others have apparently been laterally transferred. But those actions aren't technically punishments. Meanwhile, the biologists can't defend themselves because they've been forbidden to speak in detail due to "on-going investigations." Neat trick.

Might the bad blood between bureaucrats and biologists explain the former's vicious and untruthful statements? The FSEEE's Stahl thinks so. "This incident has given the Forest Service's regional office the opportunity it's been looking for to slap some people down," he said. "It has sent this message: Don't ask questions. But a scientist's duty is to question everything."

Another astonishing aspect: How did politicians on Capitol Hill get an internal personnel investigation? These documents are strictly confidential. "Someone in the Forest Service had to have briefed them," said Stahl. "Why? The Democrats weren't briefed. The Forest Service leaked the lynx issue to The Washington Times, through western Republicans."

Perhaps the most astonishing aspect is the circulation of lies by America's mainstream media. Of all the reasons to disregard or at least rigorously vet a story, few are better than reading it in The Washington Times. Whatever possessed the Associated Press to recycle it 24 hours later? The investigation report that vindicates the biologists had already been leaked--it has been available to the public since at least January 1. Why haven't the AP, The Wall Street Journal, and the hundreds of newspapers and TV and radio stations that ran the fiction apologized and issued retractions? Why would anyone, especially mainstream reporters and editors, put stock in wind vented by politicians who traditionally have used all means, foul and fair, to gut the Endangered Species Act? The AP's editor for the West, Bill Kronholm, told me the wire service won't be publishing any retractions or apologies, explaining that this would be too difficult.

As PEER's attorneys have informed the Interior and Agriculture departments, communications from Representatives James Hansen, Scott McInnis, Richard Pombo, Barbara Cubin, and Senator Larry Craig to Interior Secretary Norton and Agriculture Secretary Ann. M. Veneman asking that they terminate the biologists are unlawful under the Whistleblower Protection Act. The secretaries can be investigated and punished if they comply. Herewith, a credibility check of the biofraud tale's main sources.

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Hansen. On taking over the House Resources Committee, he announced that his first priority is "changing" the ESA, which he calls "a ham-fisted law [that] frightens private landowners, intimidates businesses," and causes "personal financial ruin."

McInnis. He won favor with greens by securing federal money for an Audubon nature center in Colorado, but then used our national tragedy of September 11 to attack defenders of the ESA, sending mainstream environmental groups open letters demanding that they "publicly disavow" acts of "eco-terrorism." He used last summer's "Thirty-mile" forest fire in the Cascades to attack the ESA, suggesting, incorrectly, that the deaths of four firefighters were the result of water restrictions brought on by the listing of Pacific salmon.

Pombo. He serves on the national advisory board of a radical, anti-ESA property-rights group called the National Wilderness Institute. A week after the Forest Service's investigation report vindicating the biologists had been made public, he falsely charged in an op-ed piece for The Washington Times that they had "intentionally planted hair from the threatened Canadian lynx in our nation-al forests in order to impose sweeping land-management regulations."

Cubin. She has a long history of bizarre, irrational, and disruptive behavior. Colleagues have complained about her distributing penis-shaped cookies and photographing the pants crotches of male legislators, then asking them to guess who belongs to which. As the former ranking minority member of the House energy subcommittee, she bullied and harassed a little watchdog group called the Project on Government Oversight (POGO), dragging it to endless hearings, trying to get it cited for contempt of Congress, and costing it \$500,000 in legal fees from an annual budget of \$600,000. POGO had exposed royalty cheating by oil companies, thereby fetching \$438 million for the U.S. Treasury in 15 out-of-court settlements. It had then given part of its reward money to two federal whistleblowers. Armed with no evidence, Cubin "investigated" POGO to see if it had paid off the whistleblowers for possibly illegally leaking information to help with its lawsuit.

Craig. He serves with Pombo on the advisory board of the National Wilderness Institute. He has a long history of bullying federal employees for doing their jobs. In 1996 he was cited by the Interior Department's solicitor for unlawfully demanding the termination of a BLM employee. What makes the behavior of The Washington Times astonishing is not its willingness to shatter innocent lives in an effort to sell newspapers. This is expected of the Times. What's astonishing is its effort to use the mess it made to sell an ad. Two weeks after the Times ran its original story and three iterations, the FSEEE got a call from the paper's advertising department. The guy said that the biologists were getting the bejesus kicked out of them by the editorial department and that the really smart thing to do would be to purchase a full-page ad for \$9,450. That way the FSEEE and the biologists could tell their side of the story. Overcoming speechlessness, Stahl feigned interest. "This wasn't just some ad rep operating on his own," he said. "I made sure he went to his department and that the Times sent me a mock-up of the ad. It's their brand of ethics: 'For a small price you can fix some of the damage we've done.'"

I am unable to determine how the Times could not have known the "bio-fraud" tale was false before it published at least six of its "news" stories and two of its editorials. Audrey Hudson, who wrote all but one of the 12 stories, told me she got the investigation report that vindicated the biologist of "biofraud," a word the Times invented, from PEER's web site. PEER says it posted the report during the last week of December. This raises three disturbing questions: How was Hudson able to reference the report and selectively pull information from it in the paper's first story, on December 17? Why, on January 18, was she still repeating the untruth about the biologists planting fur in the forests? And why was the Times still accusing the biologists of "fraud" on March 2? This was my conversation with Hudson.

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TW: "Are you going to issue a retraction and apology?"

AH: "No. We stand by our story."

TW: "But you've known it was false at least since December. . . ."

AH: "I reported what the Forest Service told me. We stand by our story."

TW: "But the Forest Service told you in its investigation report that your story isn't true. . . ."

AH: "I'm not going to quibble with you."

I guess that means that PEER and/or the FSEEE will have to write the Times' retraction and apology for it-- provided, of course, that the paper has ad space available.