



# Removing the Golden-cheeked Warbler from the Endangered Species Act – A Success Story

Article by ROBERT HENNEKE



The U.S. Fish and Wildlife Service states the purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend. When Congress passed the ESA in 1973, it recognized that our right natural heritage is of “esthetic, ecological, educational, recreational and scientific value to our Nation and its people.” The law’s ultimate goal is to “recover” species so they no longer need protection under the ESA.

Texans have accomplished this goal with the Golden-cheeked Warbler species. On July 1, 2015, a partnership between the Texas Public Policy Foundation, Texans for Positive Economic Policy, Susan Combs and the Reason Foundation filed their Petition with the Service to remove the Golden-cheeked Warbler from ESA protection following scientific evidence that the warbler population

is 19 times larger than when the species was listed in 1990.

Whereas the successful recovery of the warbler species brought to light by this coalition represents a victory for conservation, the knee-jerk response in opposition from radical environmental groups calls into question whether these persons and groups actually support the ESA’s purpose of recovery. Rather than refute the Texas A&M Institute of Renewable Natural Resources’ (IRNR) finding that breeding warblers inhabit a much wider range of habitat types than earlier identified, opponents have begun online petitions and published editorials advocating against delisting out of “loyalty” to the warbler and due to its popularity with birdwatchers.

Through their blanket opposition to any reduction in federal ESA regulation, environmental groups have lost credibility

on this issue. Instead, these groups advocate continuance of the burdensome protection regulations and associated costs to private property owners. For example, the current participation fee for take of Golden-cheeked Warbler habitat in Williamson County is \$9,000 per acre for tracts smaller than 200 acres.

The coalition’s delisting effort has drawn widespread support across Texas from groups such as the Texas Wildlife Association, Texas Farm Bureau, and the Texas Association of Business. Both the Texas Comptroller Glen Hegar and General Land Commissioner George P. Bush have also endorsed removal of the warbler from ESA control. According to Comptroller Hegar, “since the warbler was listed 25 years ago, significant conservation efforts and research have occurred” thus warranting delisting.

The basis for delisting the Golden-cheeked Warbler stands in sharp contrast to the circumstances first leading to its regulation. On May 4, 1990, the Service rushed to list the Golden-cheeked Warbler as endangered on an emergency basis, erroneously believing that the species was rare and only existed in spatially separated populations within Travis County, Texas. At that time, FWS relied on the only available studies of the Golden-cheeked Warbler – satellite mapping data from 1980 and a 1970s study of the warbler that significantly underestimated the extent of warbler habitat and the size of the warbler population.

Today’s science shows that the bird does not meet the ESA’s definition of “endangered” – that the Golden-cheeked Warbler today is not “in danger of extinction throughout all or a significant portion of its range,” nor is likely to become so in the foreseeable future.

In June 2015, the IRNR published its *Conservation Status of the Federally Endangered Golden-cheeked Warbler* report. The Institute operates as a unit of Texas AgriLife Research, the Texas A&M Agrilife



Extension Service and the College of Agriculture and Life Sciences at Texas A&M University.

The Institute's comprehensive study indicates that there are approximately five times more warbler breeding habitat (approximately 6,480 square miles) and that there are approximately 19 times more warblers (263,339 males) than assumed at the time of the 1990 listing decision. In addition, molecular work suggests there is not genetic basis for managing warblers as separate population entities. Collectively, the Institute concluded that the warbler recovery criteria was based on a fundamental misunderstanding of the existing abundance and population structure of the species, thus justifying reexamination of the warbler's federal endangered listing status.

Even following delisting of the warbler, adequate protections currently exist and will remain to ensure the future of this beautiful migratory songbird. Service delisting will not impact continuing protections, such as afforded by the Texas Endangered Species

Act and Balcones Canyonlands National Wildlife Refuge (a 30,000-acre area in Travis County set aside in 1996 to provide habitat for the warbler, black-capped vireo and six invertebrates).

Federal regulations provide three circumstances under which the Service may delist a previously listed species – extinction, recovery and error. The best available science today shows that the species is not endangered: the warbler was either listed in error or has recovered since listing. Either way, the ESA's purpose in terms of the Golden-cheeked Warbler has been accomplished, and Texas private property owners should no longer be burdened by further, unwarranted federal regulation.

*The Honorable Robert Henneke is the Director of the Center for the American Future at the Texas Public Policy Foundation. The Center is the Foundation's litigation effort whose mission is to advance Tenth Amendment principles through judicial opposition to federal overreach and abuse in the subject matter areas of environmental, private property, and*

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