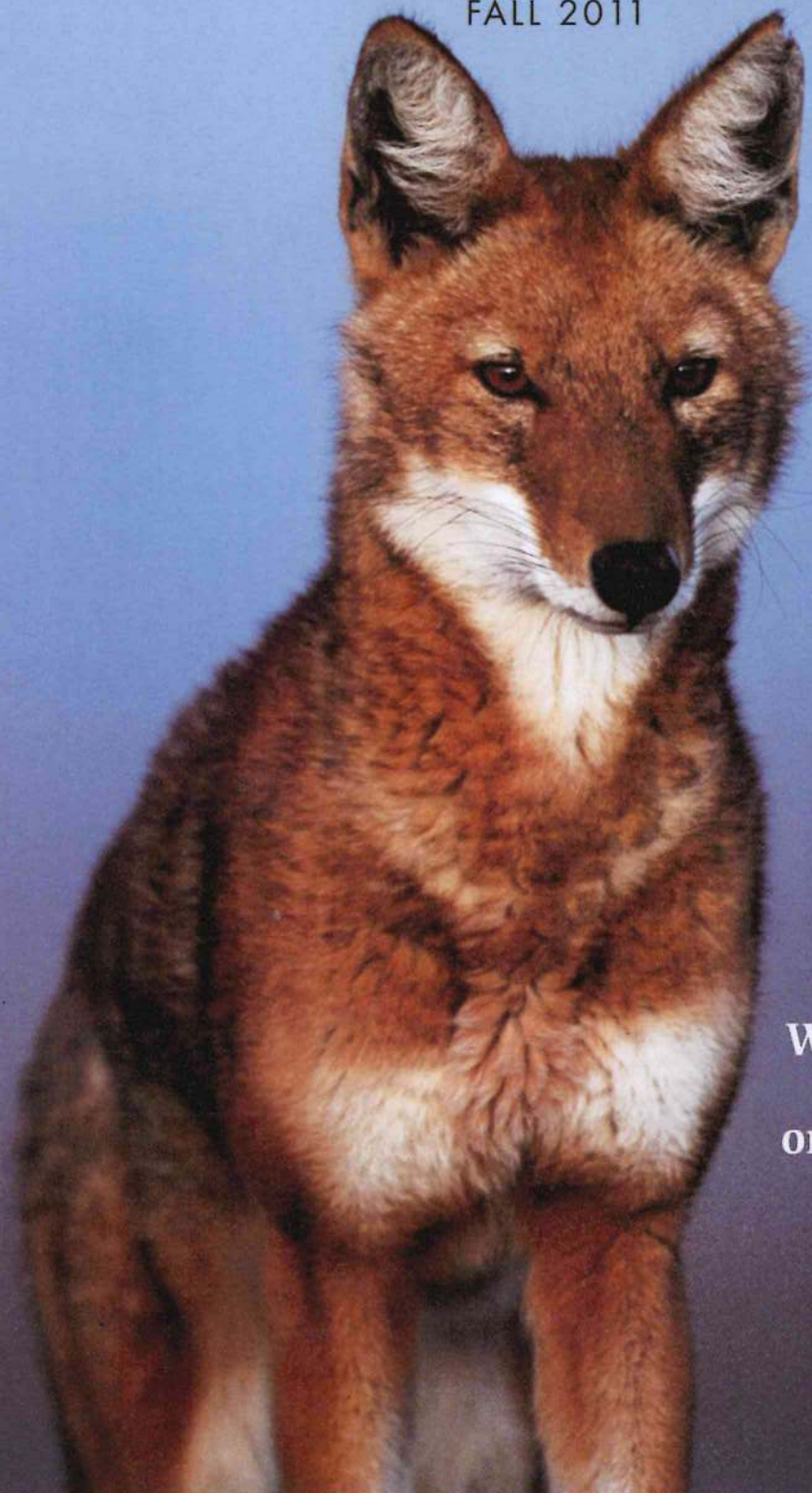


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Endangered Species Act

A CONVERSATION WITH MIKE PHILLIPS



Clockwise from top: Lynn Rogers, Evelyn Mercer,
Kevin Loader, Jackie Fallon

Editor's Note: Tom Myrick, communications director for the International Wolf Center, recently recorded an in-depth interview with Executive Director of the Turner Endangered Species Fund Mike Phillips, an expert on the Endangered Species Act. During the interview, Myrick posed several key questions to more fully understand the intentionally ambiguous nature of this groundbreaking legislation, how it works, and what happens when it works. The following is a summary of that conversation with the full interview, including question-by-question sound bites, available at the new *International Wolf* YouTube channel www.youtube.com/user/IntlWolfMagazine.



Photo courtesy of Mike Phillips

Mike Phillips, a leading expert on the Endangered Species Act, argues that the law's ultimate goal is to ensure that future landscapes are healthy enough that endangered species can eventually be delisted.

IWC: What constitutes success under the Endangered Species Act (ESA)?

PHILLIPS: There are at least three measures. First and perhaps most important, we prevent species from going extinct because once that happens, there's no putting Humpty Dumpty together again. The second success measure is for a species listed as "endangered" to be down-listed to "threatened," which means it's not in such dire straits. Finally, another important measure of success is delisting the species altogether, meaning federal protection under the ESA is no longer needed. The species is then managed by a state agency like other non-listed wildlife species. But given that some species' needs are so hard to meet and landscapes are so different from what they used to be, some species may never be delisted. But that's not a failure of the ESA or of the American people. It's recognition that sometimes we can't restore species to their native habitats or to areas within their historical range in a manner that sufficiently fits the spirit and intent of the ESA. Delisting is a really big deal. There have been very few cases where a species has been delisted because of conservation progress in the field. The mark established by the federal law is very high and difficult to meet.

IWC: Why do some people have a problem with that success?

PHILLIPS: Some people are frustrated by gray wolves because as they've become increasingly common in some areas, they have the potential to create problems. Gray wolves are a very, very challenging species. The gray wolf was subjected to a 350-year war by pioneering settlers. And that war lasted until the late 1950s. By the late 1950s, the gray wolf had been exterminated from the United States except for a small population in northern Minnesota and a small number of animals in Isle Royale National Park. The war against the wolf was based on the notion that gray

wolves are a problem because they take things I want. They take wild game if I'm a hunter, they take livestock if I'm a rancher and in the minds of some people they take security because they represent a threat to human safety. But there are lots of gray wolves living close to people. And you very rarely see gray wolves attacking people. In contrast, cougars, black bears and grizzly bears have all, on occasion, attacked people with far more regularity than gray wolves. We can't explain why gray wolves see people differently, but they do. Nonetheless, this war drove gray wolves close to extinction in the 48 states. The feelings of frustration haven't completely dissipated, and so some will argue that with delisting growing wolf populations, we're now seeing an unacceptable level of conflict. And because of that conflict, we have to respond by killing wolves.

IWC: Is it true that the ESA has the capacity to restore habitat, and why is that absolutely critical to both recovery and management?

PHILLIPS: The aim of the ESA is to preserve these species and the habitat upon which they depend. Without the particular habitat that a species depends upon, it simply won't make it. The classic example would be the black-footed ferret, a very narrow ecological specialist. At the other end of the spectrum are the ecological generalists, those species that can do well just about anywhere if some basic needs are met. And the greatest ecological generalist is the gray wolf. Historically, the gray wolf occurred everywhere; it occupied every habitat in the United States. The important

ecological role that the gray wolf plays is that it typically subsists on things bigger than itself. The gray wolf is designed physically and emotionally, through its social ecology, to kill things bigger than itself such as white-tailed deer and bison, whereas the coyote is designed to kill things smaller than itself like rabbits and rodents. So with the wolf species, a great ecological generalist, we have to think about biological carry capacities, how many moose are available, for example. We also need to think about social carrying capacity, how many gray wolves will

because they can't speak for themselves. And I think we take pride in the claim that no species will disappear on our watch. We take pride in the notion that we're going to hand to our children and grandchildren a country full of opportunities. And these species and the landscapes upon which they depend do represent opportunities. All of our human needs are met only if our landscapes are healthy enough to provide food, cover, water and space. The U.S. Fish and Wildlife Service (USFWS) has done an outstanding job of improving the ESA over the



Evelyn Mercer

people support before they blow a gasket and say, "Gee whiz! We need a massive control program because there are simply too many gray wolves."

IWC: What is the future of the ESA? Can it be improved?

PHILLIPS: It's a landmark piece of legislation, viewed as such around the world. It's something this country takes a great deal of pride in. We like the notion of standing in firm support of our brothers and sisters that wear fur and feathers, that need our help and that require us to speak for them

years. Principally the USFWS has made the ESA better by integrating some common sense approaches to implementing the law. There are lots of provisions now that incentivize participation of private landowners, for example. And private land, which very much defines this country, is important for many of these species. I have lots of examples where private land works well to help save and recover listed species. In part, private land works well because over the years, the USFWS has improved the ESA to make it more user friendly for private landowners.

IWC: If you could change or improve the ESA, what would be the one thing that you would do?

PHILLIPS: I have thought a lot about the law. It's not enough just to look at the ESA and ask how it can be improved. You also have to look at what rules and regulations the USFWS has developed to fill in the gaps created by the broad language in the ESA. So when I look at improving the ESA, I consider both the language of the law and how we might modify the rules and regulations that guide the USFWS on a daily basis. The one thing I would do is make sure USFWS policy and regulations are clear on the point that concerns this notion of "significant portion of range." That is, the ESA defines an endangered species as "any species which is in danger of extinction throughout all



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or a significant portion of its range." As restoration ecologists, we have to wrestle with what constitutes "significant portion of range." An important part of effecting recovery is trying to understand what the original authors of the ESA meant. I think they purposely gave us some latitude to try to figure it out on a case-by-case, species-by-species basis.

IWC: Does "significant portion of range" give clear direction? Does it eliminate or stop the lawsuits?

PHILLIPS: No, I don't think so. We're a litigious society. We appreciate the opportunity to seek redress in court. Sometimes people are never satisfied. Sometimes people will use a specific issue to try to effect a bigger agenda. Sometimes an environmental organization might use gray wolves, and even



misrepresent the gray wolf situation, to advance some of their other causes. The gray wolf has appropriately been a poster animal for a host of environmental ills. Other people use the gray wolf as a whipping post no matter how few there are. For these people, the acceptable number of wolves is zero. They will argue that there should be an aspect of the ESA that says some species are no longer acceptable. There will always be zealots on both ends of the extremes. What's needed is the common sense middle that recognizes and listens to the extremes but is not motivated by them. In other words, "You want no wolves anywhere, and you, on the other hand, want gray wolves everywhere," but somewhere between these two extremes is a happy

medium the country can celebrate, take pride in—and move on.

IWC: What's the benefit of clarifying "significant portion of range?" What does that help us do better?

PHILLIPS: It certainly would give the courts clearer direction. If Congress were to amend the ESA so some of these terms were better defined, the executive branch, through the USFWS, could do a better job implementing the law in a manner consistent with congressional intent. I would try to improve the ESA by making clear that "significant portion of range" is recognized by everybody as a really big deal. This country didn't just say we want to prevent extinctions. I think what the

country said through the ESA is that we want to embark on a journey that takes us to healthier landscapes going forward. We want these species to not just dodge extinction; we want them to be so common in the future that they can be delisted. That's the only conclusion I can reach from the ESA, and that is a really big deal. ■

Mike Phillips, an ESA expert and a member of the Montana House of Representatives (D. Bozeman), was the principal biologist in charge of the reintroduction of the red wolf in the southeastern United States and the gray wolf in Yellowstone.

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