

Fires, Owls, Salmon and 52 Years of Watching the ESA Burn Itself Down

A longtime conservationist's take on how "harm" became a legal trap—and how we can still fix it.



AMOS ENO

MAY 20, 2025



1



1



Share

Thursday morning, May 15, 2025 – The *Portland Press Herald* opened with a bold, front-page headline:

Canada Lynx in the Maine Forest

Featured alongside *The Portland Press Herald's* May 15, 2025, article, "[Plan to loosen federal habitat protection viewed as threat to iconic Maine wildlife](#)," this image highlights one of the species cited as potentially at risk. The article suggests that revised ESA definitions could harm the Canada lynx, though in reality, clear-cut logging often benefits the species by creating prime habitat for their primary prey, the snowshoe hare.

Amos's Substack is a reader-supported publication. To receive new posts and support my work, consider becoming a free or paid subscriber.

Subscribe



(Image credit: Portland Press Herald / Penelope Overton)

Photo by Canada Lynx Ed Robinson photo. Article by Penelope Overton, Portland Press Herald, May 15, 2025

[Read the full article here](#)

A page and a half of environmental drivels follows.

The article wraps itself around the ankle of the Interior Department's proposed regulatory revision of the definition of *harm* in the 1973 Endangered Species Act (ESA)—a definition already amplified by the Supreme Court's 1995 decision in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*.

I shall delve into the *Sweet Home* decision in a moment, but first, it is important to recognize that Maine has a paucity of public conservation lands—**thank God!** Acadia National Park, a smidgen of the White Mountain National Forest, Maine’s own Katahdin Park, and a sprinkling of National Wildlife Refuges on coastal marshes and seabird islands. Maine has few endangered species, and except for Atlantic salmon, most are thriving.

That’s because Maine is **mostly private land—90.7% of our state is private forestland**

Contrast that with the American West, where vast tracts of forest are publicly owned by federal agencies—USFS, BLM, etc.—and where catastrophic wildfires now rage annually due to regulatory paralysis and the absence of active forest management. Wildlife—including the spotted owl, the very species at the center of *Sweet Home*—being extirpated not by logging, but by fire and policy failure.

The *PPH* article was triggered by the Trump administration’s proposal to revise the definition of “harm”—to curb its use as a blunt instrument against habitat modification, particularly in the case of spotted owl habitat in Oregon.

Subscribe

Revisiting *Sweet Home*: Notes from a Non-Lawyer with 52 Years in Conservation

1. On May 17, after a conversation with a LandCAN board member about *Sweet Home*, I re-read the full decision—Justice Scalia’s dissent included.
2. This is a case where ecological realities have long since overtaken a legally convenient interpretation. The Court’s conclusionary judgment now beggars credulity. *Sweet Home* is overdue for rejudgment. Brought by Oregon logging families trying to work around expansive restrictions tied to the spotted owl’s endangered status, the case now reads as a monument to regulatory overreach. Meanwhile, wildfires today

take and harm more owls—by a factor of 1,000—than any forest management practice ever did.

3. A few observations: the decision is legal-environmental babbitttry, riddled with obscurantism, *noscitur a sociis*, and statutory hair-splitting. The term “take” was expanded to include “harm,” and “harm” was stretched to include nearly *any* modification of habitat.

“Petitioner Secretary of the Interior further defines ‘harm’ to include ‘significant habitat modification or degradation where it actually kills or injures wildlife.’”

—*Sweet Home*, 1995

This is an inflated and illogical interpretation of what Congress actually intended in 1973.

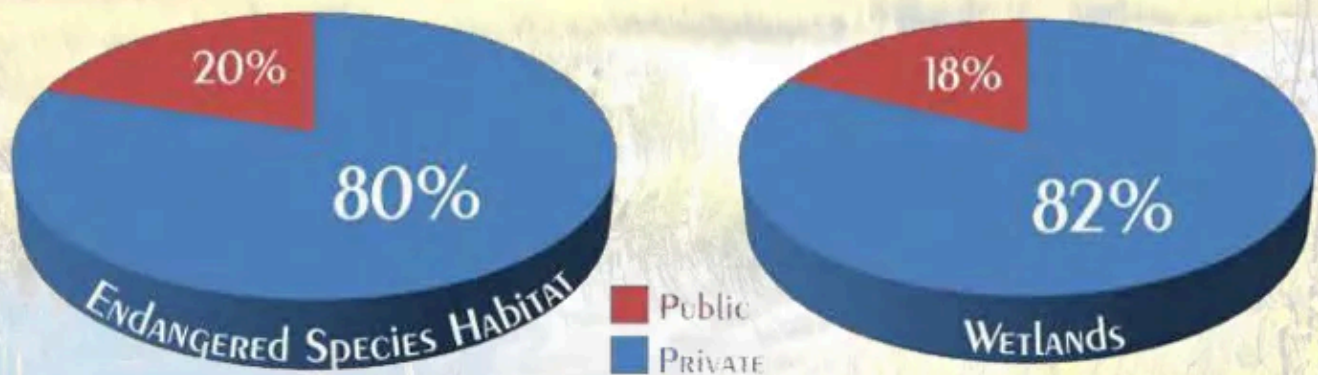
“Respondents, persons and entities dependent on the forest products industries and others, challenged this regulation on its face, claiming that Congress did not intend the word ‘take’ include habitat modification.”

General Observations & Context

- USFWS has recovered only 3% of the thousands of species listed under the ESA.
- Roughly 80% of ESA species’ habitat is on private land.

Wetlands and Endangered Species

The most environmentally crucial areas are wetlands and habitats for endangered species. Remarkably, individual landowners are responsible for the stewardship of 82% of these wetlands and over 80% of habitats designated for endangered species.



**Data from U.S. Fish and Wildlife Service*

- The agency's reliance on punitive regulation—rather than collaboration and incentives—has led to widespread resistance and poor recovery outcomes.
- Since 1990, western wildfires have scorched **over 200 million acres**, taking untold numbers of wildlife with them.
- **Environmental litigants**—EarthJustice, the Center for Biological Diversity, and others—have used statutes like NEPA and the ESA, combined with **EAJA reimbursement**, to block forest management and prevent recovery efforts.

Fire Snapshot (2021–2022)

- **Nationwide (2021):** 10+ million acres burned
- **Oregon:** 828,777 acres
- **Washington:** 674,222 acres

- **California:** 2.2 million acres
- **New Mexico (2022):** 859,906 acres

Spotted Owl Listing – A Science Misfire?

The listing of the spotted owl likely rested on flawed science. The prevailing narrative focused on nesting high in old-growth canopies. In truth, the species' key habitat was on the **forest floor**, historically maintained as open woodland by 5,000 years of indigenous burning.

The suppression of fire and the abandonment of active forest management allowed dense understory growth, leading to the competitive barred owl invasion. In a bizarre twist, USFWS now proposes to **shoot thousands of barred owls**—a gruesome patch to a recovery plan already crippled by insufficient data and bad policy.

Policy Prescriptions for Enhancing Species Recovery

- **Revisit *Sweet Home*** in the courts; reconsider its legal standing alongside potential reforms to **Chevron** deference.
- **Redefine “harm”** under the ESA—restore ecological meaning to the term.
- **Amend the Equal Access to Justice Act (EAJA)** to exclude ESA/NEPA environmental litigants from reimbursement.
- **Reform USFWS** to prioritize cooperation with landowners.
- **Reconstitute NFWF** as a proactive investment mechanism for species recovery.
- **Fund new research:** Have NFWF reevaluate the biological assumptions of the spotted owl listing (see Oliver et al.).

- **Rethink habitat-centric policy:** Many key mortality drivers are not habitat-related (e.g., Atlantic salmon, California condor).

***Sweet Home* at 30: A Panoply of Ironies**

1. Wildfires do exponentially more damage to spotted owls than timber ever did.
2. Government agencies remain incapable of managing large-scale wildfires.
3. Environmental litigants, who once opposed the *Sweet Home* plaintiffs, are now *fuelling* the destruction they claim to prevent.
4. These same groups continue to block salvage logging and active management.
5. The kicker: the very people targeted in *Sweet Home*—private timber operators—are **essential** to future recovery and fire mitigation.

Back to Maine—and the PPH’s Alarmism

The *Press Herald* opines:

“The Trump administration wants to weaken federal habitat protections for imperiled plants and animals.”

Penelope Overton couldn’t be more wrong—or, to borrow a Maineism, **more ass backward**.

This proposed revision would **strengthen species recovery** by bringing landowners who own over 80% of ESA habitat, back into the conservation conversation. Most landowners don’t relish Washington bureaucrats dictating land use from afar.

Take Overton’s examples:

- **Atlantic salmon** are dying in the ocean, not in Maine's rivers.
- **Furbish's lousewort** grows along the St. John River, and its greatest threat isn't logging—it's the potential siting of **Governor Janet Mills' solar or wind project** in its limited habitat range.
- **Piping plovers** are well protected under multiple jurisdictions and enforcement agencies.
- **Canada lynx**? They feed on snowshoe hares, and hares thrive in **young forests** created by logging and clearcuts.

Environmental alarmism isn't helping species—it's hurting them. And in the West, where environmental groups sue weekly to block forest management, wildlife habitat is burning up because of **5,000 years of indigenous practices** that we now ignore.

Final Word

Recovering species on private lands will require **incentives, partnerships, and respect** for those who manage the land—not a weaponized regulatory hook called “harm.”

We are **30 years late** to this conclusion.

P.S.

I personally funded the first mainstem dam removal in Maine—the Edwards Dam on the Kennebec River—for the sake of Atlantic salmon recovery. I also negotiated the two largest conservation easements in U.S. history: the **Pingree Project** and the **Downeast Lakes Project**—totaling **1.1 million acres of privately owned, sustainably managed forest**.

About the Author: Amos S. Eno

Amos S. Eno is the president and founder of the **Land Conservation Assistance Network (LandCAN)**—a man who has spent more than **five decades** challenging orthodoxy in conservation policy and building practical tools to put conservation back where it belongs: in the hands of the people who live and work the land.

Raised between **Mount Desert Island, Maine**, and suburban **New Jersey**, Amos grew up exploring Frenchman and Blue Hill Bays, hiking Acadia's granite ridges, and collecting the kind of wild treasures that shape a naturalist's soul. To this day, he can identify nearly any perching bird—even at 85 mph.



After earning a degree in history from **Princeton**, Amos took his curiosity global—conducting tiger and bird surveys in Nepal's Chitwan Park and writing the first proposal for what would become **Langtang National Park**. In East Africa, he worked closely with Maasai communities to embed conservation within local land use.

A veteran of the **Department of the Interior**, Amos later earned his master's in natural resources from **Cornell University** and has since held leadership roles that helped

reshape the conservation landscape:

- As Executive Director of the **New England Forestry Foundation**, he led the two **largest private land conservation easements in U.S. history**—protecting **1.1 million acres** of working forest.
- At the **National Fish and Wildlife Foundation**, he spent a decade decentralizing operations to better serve local conservation efforts across the country.
- He also served at the **National Audubon Society**, where his early leadership planted the seeds for programs still in place today.

Since founding **LandCAN** in 2000, Amos has developed an extensive online platform that now connects private landowners with over **57,000 conservation professionals and resources nationwide**. LandCAN is built on a simple belief: **conservation works best when it's practical, local, and landowner-led**.

This Substack is where Amos shares unfiltered reflections from 50+ years in the trenches—part memoir, part policy critique, and always deeply rooted in field experience. If you care about forests, wildlife, rural communities, and getting government out of its own way, you'll want to follow along.

Reach Amos directly at aeno@landcan.org

Learn more about LandCAN at www.landcan.org

LandCAN is a 501(c)(3) nonprofit offering free tools and expert connections for private landowners committed to sustainable stewardship. If you own land—or care about those who do—this is your home base for conservation that actually works.

Amos's Substack is a reader-supported publication. To receive new posts and support my work, consider becoming a free or paid subscriber.

Type your email...

Subscribe



1 Like

← Previous

Discussion about this post

Comments

Restacks



Write a comment...



K Tucker Andersen 3d

👏👏👏👏 Thanks the information and shining some needed light and providing some sanity concerning issues that often inspire a lot more heat than light.

♡ LIKE 💬 REPLY

