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Inadequate enforcement of the Endangered Species Act

Several military bases in the southern US manage large areas of naturally regenerated pine forest that support numerous federally listed threatened and endangered species. One endangered species of particular concern is the red-cockaded woodpecker (RCW; *Picoides borealis*). Because the pine forests in which these birds reside are federally owned lands (Figure 1), RCW management falls under those provisions of the Endangered Species Act (ESA) that require federal agencies to protect listed species and also to restore their numbers and their habitat. In this case, the agency responsible for assuring compliance with the ESA is the US Fish and Wildlife Service (FWS). Below we offer three examples of RCW management efforts on military lands – two (at Fort Bragg, North Carolina, and Eglin Air Force Base, Florida) in which the Department of Defense (DoD) should be commended for its environmental stewardship, and one (at Fort Benning, Georgia) in which we think that both the FWS and the DoD have made serious mistakes. We are concerned that this last example could be used as a precedent for future policy decisions.

According to the official 2003 recovery plan for the RCW (www.fws.gov/rcwrecovery/recovery_plan.html), one criterion for recovery is that 11 of 13 primary core populations on federal lands have reached a stable population estimated to contain at

least 350 potentially breeding pairs. Of these 11 core populations, one – located within Florida's Apalachicola National Forest – has had 350 breeding pairs for several decades. Two of the remaining core populations, one at Fort Bragg and another at Eglin Air Force Base, have reached their recovery goals.

However, the Fort Benning RCW population – the sixth largest range-wide – occurs where an immense new program of construction and training, called the Maneuver Center of Excellence (MCOE), is underway. According to the Army's Biological Assessment, the MCOE program is expected to “take” (a legal term for destroy), directly and indirectly, more than 3200 hectares of current woodpecker habitat.

In May 2009, the FWS published a Biological Opinion stating that the scope and intensity of the MCOE program would “jeopardize” (a legal term for put at risk) the base's RCW population, in violation of the ESA. The Opinion concluded that, by jeopardizing the RCW population at Fort Benning, the MCOE would also jeopardize the recovery of the species as a whole.

The Biological Opinion was a strong statement by the FWS about the threat posed by the MCOE to an endangered species and its habitat, but the settlement negotiated between the FWS and the US Army did not substantially reduce the likelihood or severity of this threat. Destruction of a few RCW territories was avoided, and some previously inaccessible areas were opened to monitoring and management. Nevertheless, severe impacts to RCWs (including habitat destruction) were still to be permitted to 97 of about 300 potential breeding groups. Although the FWS stated that its settlement was sufficient to preclude jeopardizing the species, we think this conclusion has little scientific justification. Indeed,



US Army/Fort Bragg Public Affairs

Figure 1. Red-cockaded woodpecker sign posted at Fort Bragg, North Carolina.

the FWS admitted that the negotiated changes would hardly affect the delays in population recovery attributed to MCOE. In August 2009, the Army issued a record of decision, also admitting that recovery of the woodpecker would be delayed, but nevertheless indicated its intent to implement the proposed action.

At Fort Benning, the Army is engaged in a major violation of the ESA, and the FWS has failed in its oversight and supervisory role. The initial problem was caused by the US Congress, which mandated that a major military training program be moved from Fort Knox, Kentucky, to Fort Benning, presumably as a cost-saving measure but without any regard for its environmental impact. At present, it is too soon to tell what the full effect will be. The positive conservation record of the DoD at some installations is marred by this violation of the ESA, and the FWS should not have been intimidated regarding enforcement. The loser here is not just the RCW but also the southern pine forest ecosystem and the rare plants and animals that depend on it.

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