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Issue Analysis

The Green Regulatory State

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Executive Summary

Over the years, the environmental lobby has advanced a considerable number of laws—leading to the passage of hundreds of environmental statutes. But the legacy does not end there; a great many of these laws require federal agencies to issue regulations on an ongoing basis. The following analysis employs several tools to assess the scope and growth of the environmental regulatory state. It shows that environmental regulations comprise a considerable size of the total federal regulatory agenda, and the impact expands annually in the absence of congressional activity.

First, it shows that environmental regulations comprise nearly 30 percent of all economically significant regulations submitted for regulatory review—making it the largest area of regulation by this measure. In addition, during the years in which environmental activists complained that Congress was doing little on the environment, environmental regulations continued to grow substantially.

Another common measure of the regulatory state involves estimating costs. Again, environment ranks high in this category. According to CEI regulatory expert Clyde Wayne Crews Jr., Office of Management and Budget figures indicate that federal regulations in total cost \$39 to \$46 billion between 1996 and 2006, but actual costs could be more than 10 times higher.

In addition to the compliance costs, another measure of the environmental regulatory state involves assessing the number of resources devoted to development and enforcement of environmental regulations. An analysis of spending to implement federal regulations shows that environment was the second largest category of such spending. Homeland security was the largest, with consumer health and safety coming in third. All other categories were substantially lower.

When adjusted for inflation, environmental regulatory spending has grown from \$81 million to more than \$6 billion in 2000 dollars, or 7,372 percent between 1960 and 2006. Only homeland security-related spending exceeds environmental spending, with federal outlays of more than \$15 billion in 2006. However, homeland security spending has only increased by 2,089 percent since 1960—meaning that environmental spending has grown more than three times faster than homeland security spending since 1960. Other categories of spending grew far more slowly than environment. An analysis of the staffing levels reveals a similar story.

In addition, much of environmental policy costs and impacts are not included in these compliance costs and government spending estimates. For example, federal regulation of public land use is another indicator of the scope of the green regulatory state. The available data show that federal government land-use controls are substantial and growing—and the emphasis on managing land for wildlife conservation uses has grown at the expense of resource extraction uses. In particular, federal government policy has continued to reduce access to public lands for mining and energy extraction.

Endangered Species Act (ESA) regulation is yet another area in which federal regulation grows in a largely unchecked fashion. Government reports reveal that the costs of the Act are considerable and increasing. Yet independent studies show that these governmental estimates grossly underestimate the costs. In particular, costs to the private sector are not documented in government reports. These costs are substantial considering that 75 percent of all listed species reside at least in part on private land.

The ESA listing process provides additional evidence of this law's substantial and increasing impact on American society. After a species is listed, the Fish and Wildlife Service may designate a "critical habitat" for it. Habitat designations allow federal regulators to regulate the use of such lands and impact use by federal agencies and developers. An increasing number of designations—like the increasing number of listings—is indicative of a growing territory for regulatory activity.

The data show that environmental regulations continued to expand the scope of federal controls without the involvement of elected policy makers in Congress. Failure of Congress to initiate any reforms of these programs means that they will continue to grow larger and have increasingly greater influence on society.

Volume of Environmental Regulation

Over the years, the environmental lobby has advanced a considerable number of laws—leading to the passage of hundreds of environmental statutes.¹ But the legacy does not end there; a great many of these laws require federal agencies to issue regulations on an ongoing basis. The following analysis employs several tools to assess the scope and growth of the environmental regulatory state. It shows that environmental regulations comprise a considerable size of the total federal regulatory agenda, and the impact expands annually even in the absence of congressional activity.

Regulatory Reviews. Data on the federal website reginfo.gov offers an opportunity to assess the extent of environmental regulatory activity. Created by the 1980 Paperwork Reduction Act, the Office of Information and Regulatory Affairs (OIRA) is designed to reduce paperwork and review major regulations before agencies make them final, but the Act also plays a role in providing information on the scope of federal regulations. Data examined here represents rules submitted to OIRA for review starting in 1981.² Not all the reviews in this OIRA database led to final regulations, but they do provide some measure of regulatory activity at the agencies. Measurements of final regulations follow in a subsequent section of this paper.

A search on reginfo.gov finds that agencies reported 37,084 regulatory reviews between January 1981 and January 2005. Of these 6,354—about 17 percent—were issued by environmental agencies—the Environmental Protection Agency (EPA), Department of Interior, and Council on Environmental Quality. Agriculture is the only area of law that was subject to more regulatory activity. The U.S. Department of Agriculture (USDA) submitted 6,797 rules to OIRA for review—about 18 percent of the total regulations submitted. Health-related issues ranked third, with the Department of Health and Human Services (HHS) sending 4,500 regulations to OIRA for review—about 12 percent of the regulations reviewed.

It is worth noting that in addition to the environmental agencies, several other agencies issued environmental regulations, including USDA, HHS, and the departments of Labor, Energy, Housing and Urban Development, Defense, and Commerce. The Department of Labor's share of environmental regulation is substantial because it includes the implementation of the Occupational Health and Safety Act (OSHA), which involves environmental management of chemicals.

Of the total number of regulatory reviews, the federal government classified 2,088—5.6 percent—as “economically significant.”

Of the total number of regulatory reviews, the federal government classified 2,088—5.6 percent—as “economically significant.” This classification began under the 1980 Regulatory Flexibility Act,³ which mandated that agencies identify rules that regulators estimate will have a significant economic impact on a substantial number of small entities.

Of these economically significant rules, environmental agencies—EPA and Interior—sent OIRA the second largest amount, 460 regulations, following closely behind the Department of Agriculture, at 470 regulations. Health and Human Services sent OIRA the third highest number of economically significant regulations, 408.

In addition, non-environmental agencies also sent OIRA a considerable number of economically significant environmental regulations, which were identified through a manual review of all the significant regulations in the database. USDA produced 26 economically significant environmental regulations, including regulations addressing the conservation reserve program, the organic food program (labeling to certify such things as “pesticide free”), the forest service, waste water, biotechnology, wetlands, and the environmental quality incentives program.

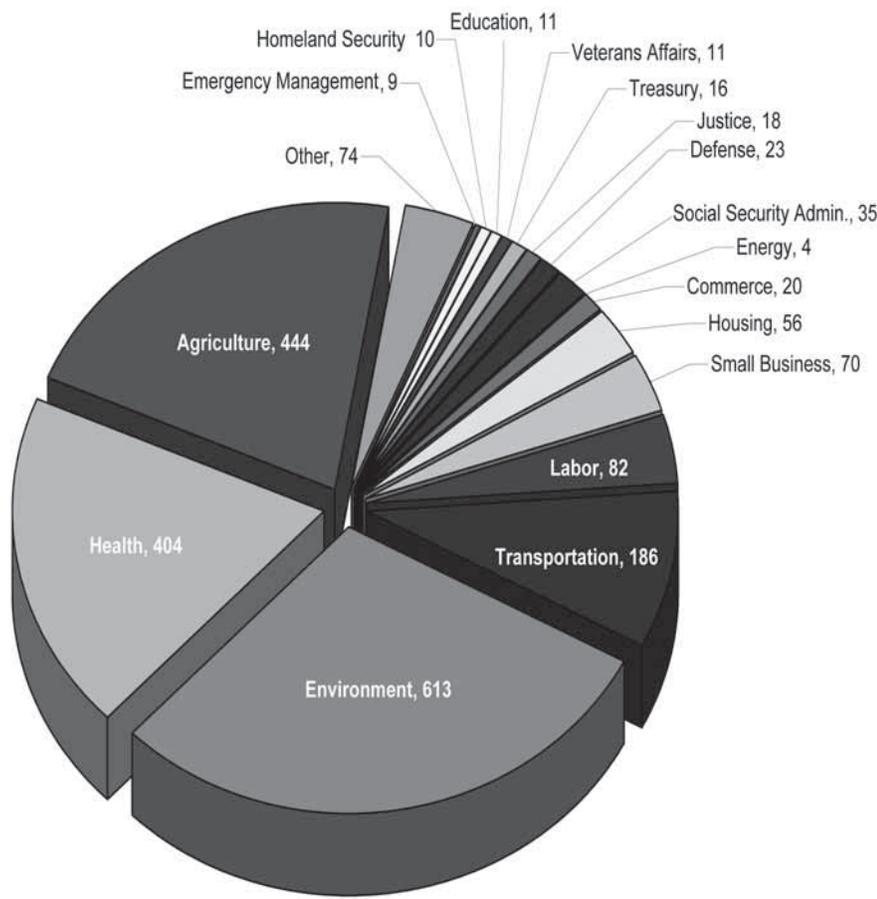
The Department of Commerce produced 32 environmental economically significant regulations out of its total of 52—thus, more than 60 percent of its significant regulations were environmental. These included regulations related to the Endangered Species Act, marine life protection, fisheries management, and the Coastal Zone Protection Act.

A total of 37 significant regulations produced by the Department of Labor are environmentally related. These include numerous regulations on the handling of hazardous or carcinogenic substances in the workplace as well as indoor air quality, lead exposure, and hazardous waste issues.

At the Department of Energy, 33 out of 37 economically significant regulations were environmental—all dealing with energy conservation standards of various types, such as efficiency standards for light bulbs and household appliances.

Other agencies issued fewer economically significant regulations related to the environment. The Department of Transportation sent OIRA environmental regulations dealing with fuel economy standards. HHS sent OIRA four environmental regulations—two address biotechnology issues, one sets guidelines for an environmental health course, and another focuses on the use of certain ozone depleting substances. The Department of Housing and Urban Development sent OIRA eight environmental regulations,

Figure 1. Economically Significant Rules



all related to lead-based paint. The Department of Justice produced two regulations addressing legal claims associated with radiation exposure.

The total number of economically significant environmental regulations at all of these agencies is 153. Add that to the number produced by the EPA and Interior, and the total number of economically significant environmental regulations reviewed by OIRA comes to 613. That means environmental regulations comprise nearly 30 percent of all economically significant regulations submitted for regulatory review—making it the largest area of regulation by this measure (see Figure 1).

This analysis indicates that a considerable percentage of the regulations that OIRA reviews are environmentally related. The data also show that since 1981, environmental regulation has grown without any congressional action. The following charts on the EPA and the Department of Interior shows that during the so-called years of gridlock, environmental regulations continued to grow substantially (see Figures 2 and 3). This growth in the environmental regulatory state primarily serves a progressive agenda. In fact, one analysis conducted by James L. Gattuso of the

Figure 2. Significant EPA Regulations Submitted for Review, Cumulative Total by Year

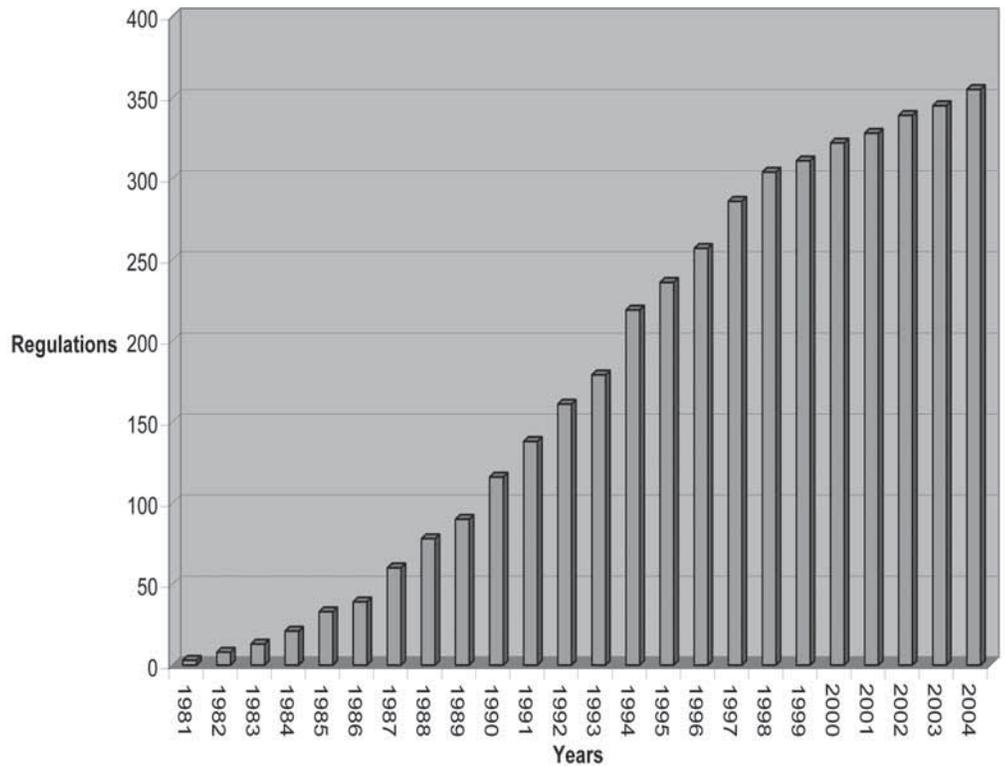
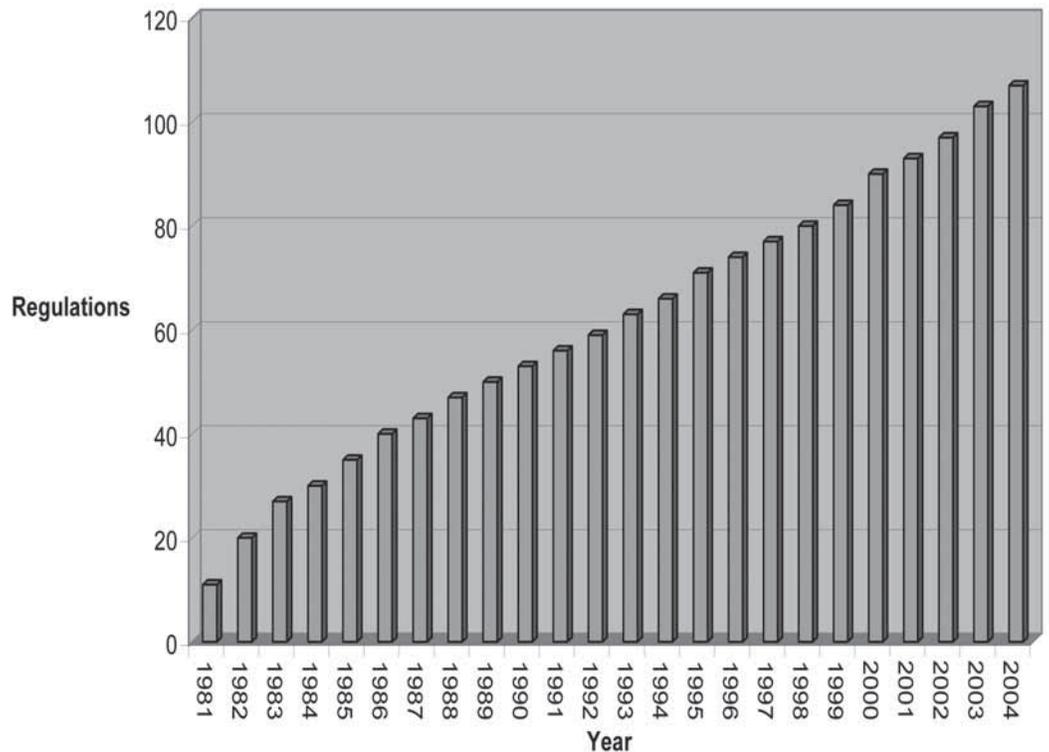


Figure 3. Significant Department of Interior Regulations Submitted for Review, Cumulative Total by Year



Heritage Foundation shows that the vast majority of rules increase rather than decrease regulations. Gattuso reviewed major rules promulgated between 1997 and 2004, classifying each as regulatory or deregulatory, or other. After excluding rules that didn't clearly fit in either category, this study discovered that, out of 169 rules, 39—or 23 percent—were deregulatory and 77 percent increased regulation.⁴

Code of Federal Regulations. Another consideration is how environment compares to other issues when it comes to final rules. A review of the length of the *Code of Federal Regulations* provides some measure. There are 50 volumes in the *Code*, each containing one or more books. Five volumes—10 percent of the volumes—are exclusively dedicated to environmental issues. Another 12 volumes include some coverage of environmental regulations inside other issues at agencies that are generally not viewed as environmental agencies. Hence, 17 volumes out of 50—just over one-third—address environmental protection to some degree.

Each volume contains one or more books and all of them combined contain 240 books. The volume with the most number of books is volume 40, which contains 31 books that deal with environmental regulations exclusively. It is followed by volumes dealing federal guidelines on alcohol, tobacco, and firearms (22 books), IRS regulations (19 books), agriculture (15 books), and labor (10 books).

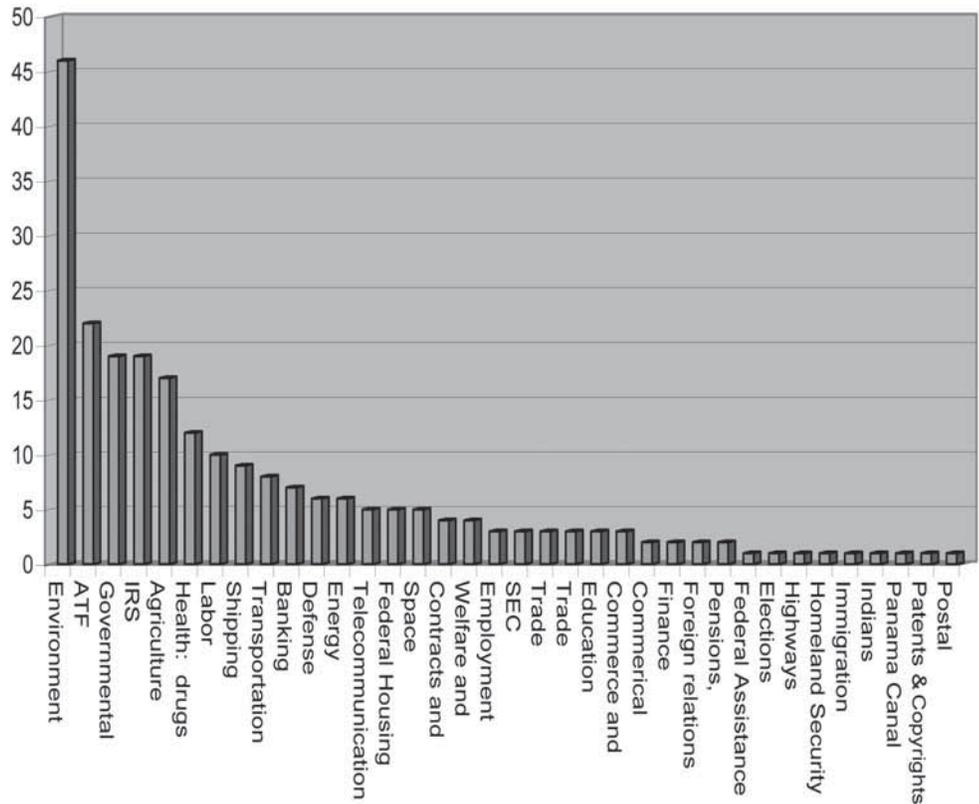
In addition, other titles contain more books exclusively dedicated to environmental protection. These are: Volume 43 (two books on public lands regulations); Volume 30 (three books on mining); Volume 36 (three books on parks, forests, and public property); and Volume 50 (seven books on wildlife and fisheries). Hence, the total number of books that deal exclusively with environmental protection comes to 46—or 19 percent of the total (see Figure 4).

But that's not all the environmental regulation covered in these volumes. There are an additional 12 books that include some coverage of environmental regulations. Hence, 58 books—24 percent—include at least some environmental regulations.

Environment is only surpassed in regard to the extent of regulations if various other categories are lumped together into one dubbed “economic” regulations. In that case, there are 12 volumes addressing “economic regulation” and 52 books dedicated to economic regulation.

A considerable percentage of the regulations that OIRA reviews are environmentally related.

Figure 4. Code of Federal Regulations, Books by Primary Category



Environment is only surpassed in regard to the extent of regulations if various other categories are lumped together into one dubbed “economic” regulations.

Economic regulation, however, covers a wide range of issues: employee benefits, banking, commercial practices, business credit and assistance, money and finance, commodity and securities exchanges, shipping, telecommunications, commerce and foreign trade, public contracts, property management, labor, and customs duties.

Costs of Environmental Regulation

A common measure of the regulatory state involves estimating costs. Again, environment ranks high in this category. According to CEI regulatory expert Clyde Wayne Crews Jr., Office of Management and Budget (OMB) figures indicate that federal regulations in total cost \$39 to \$46 billion between 1996 and 2006, but actual costs could be more than 10 times higher.⁵ A Small Business Administration (SBA) study estimates that regulatory costs are likely 20 times higher than estimates offered by OMB.

The SBA notes two important explanations for the disparity: OMB only reports on the costs of regulations it approved during a 10-year time frame, and it simply reports figures from the various agency cost-benefit

analyses. Accordingly, it does not measure costs of regulations outside the limited time frame nor does it consider costs of regulations that are promulgated without cost-benefit estimates (The Paperwork Reduction Act only requires regulatory review for rules expected to cost more than \$100 million). In addition to leaving a substantial amount of regulations out of its calculations, OMB reliance on agency estimates also introduces a bias into the estimates as the agencies have incentives to underestimate costs and overstate benefits in an effort to gain OMB approval.⁶

The SBA study attempts to offer a more comprehensive view of regulatory costs for the various categories, but it relies primarily on OMB reports for its environmental estimates. The main difference is that the SBA study measures costs for a longer time frame than the 10-year OMB limit. SBA notes problems with reliance on the OMB estimates, such as the fact that OMB lacks estimates for many environmental regulations. For example, it does not include costs for the federal Superfund program—an omission which the SBA report says is likely to be “quite large.”⁷

Accordingly, SBA’s environmental estimates could be considered to be underestimates. In addition to missing data for some programs, SBA estimates do not include the cost that agencies incur to draft, finalize, enforce, or administer regulations, and it does not measure the costs of regulations to local and state governments. Nor do these estimates consider the indirect costs of regulations, such as the cost increases in manufacturing associated with regulations that drive up energy costs; they only consider the compliance cost to the energy utility. They also fail to consider the potential of regulations to reduce innovations that might have increased productivity.

According to SBA, the total cost of federal regulations in 2004 was \$1.1 trillion—11 percent of national income and about \$10,000 per household. This is more than half of the amount of revenues that the federal government collected for that year, which was 18 percent of national income and \$17,000 per household. Of that amount, environmental regulation is estimated at \$221 billion, which is second only to a mega-category dubbed “economic regulation”—which covers everything except environment, workplace, and tax regulations.⁸ Costing an estimated \$591 billion, economic regulation covers transportation (ground and air), trade, financial, communications, waterworks, manufacturing, tobacco, insurance, and many other areas.⁹ Given its wide range, its being bigger than the environmental category is not surprising.

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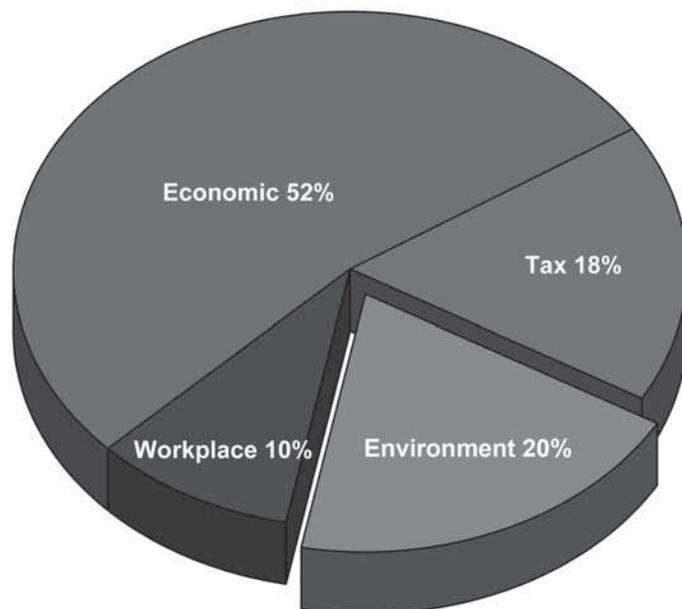
What is surprising is that environmental regulations cost nearly half as much as all the categories combined under economic regulations (see Figure 5).

The next highest figure is the cost of tax compliance regulations at \$195, and workplace regulation comes in last at \$106 billion. Further note that more than half—\$56 billion out of \$106 billion—of workplace regulations fall into the “health and safety” category.¹⁰ This in part reflects another area of environmental regulatory costs because, as noted earlier, a considerable share of OSHA’s health and safety regulations involve management of chemicals to reduce environmental hazards.

Measured on a per-employee basis, regulations overall cost American businesses \$5,633 per employee in 2004. Of that amount, environmental regulations cost \$1,249 per employee, followed by workplace regulation costs of \$922 per employee, and tax compliance costs of \$894 per employee. The rest of the costs, lumped together as economic regulations, cost \$2,567 per employee.

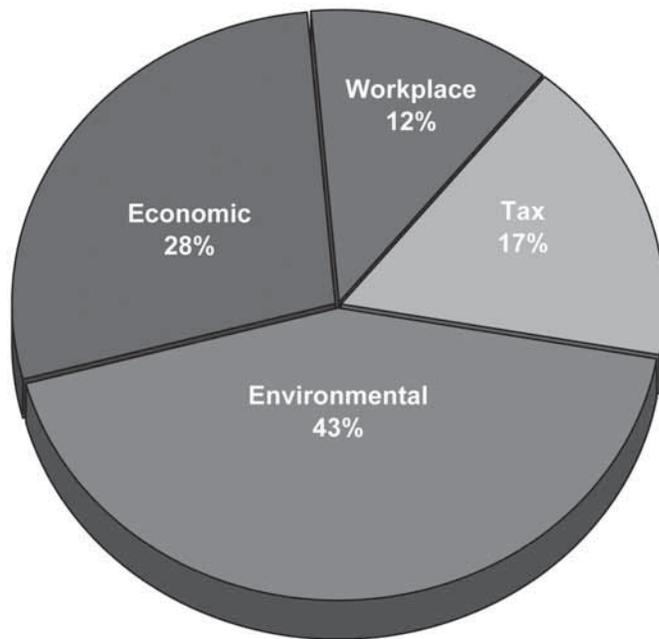
The SBA study also shows that environmental regulation impacts small businesses more than any other kind of regulation (see Figure 6).¹¹ At firms with fewer than 20 employees, environmental regulation is the leading regulatory cost—costing an estimated \$3,296 per employee. For these firms economic regulations cost \$2,127 per employee, tax regulations cost \$1,304 per employee, and workplace regulations cost \$920 per employee.¹²

Figure 5. Federal Regulatory Costs,
Source: U.S. Small Business Administration



**Figure 6. Costs of Regulation to Small Business,
Measured in Costs Per Employee**

Source: U.S. Small Business Administration



Because more than 99 percent of U.S. firms are categorized as small,¹³ this impact has widespread effects on the lives of Americans—not only as small business owners but also as consumers who feel the impacts as cost increases and workers who suffer from any impacts on the economy.

Further, the SBA report finds that small firms pay 45 percent more to comply with regulations than do larger firms. Environmental regulations and tax regulations are the “main drivers” for this cost differential, with environmental regulation being the leading cause. As economist W. Mark Crain notes, “Compliance with environmental regulations costs 364 percent more in small firms than in large firms.”¹⁴ In comparison, the cost of tax-related regulatory costs is 67 percent greater for small firms than for larger firms.¹⁵

Size of the Environmental Bureaucracy

In addition to the compliance costs of regulation, another measure of the environmental regulatory state involves assessing the number of resources devoted to development and enforcement of environmental regulations. The best source for information on this topic is a report produced annually through a joint effort by the Mercatus Center at George Mason University in Arlington, Virginia, and the Weidenbaum Center on the Economy, Government, and Public Policy at Washington University in St. Louis, Missouri.¹⁶ This report covers what the authors label “the regulator’s

budget,” the portion of the federal budget devoted to administering the regulatory state.

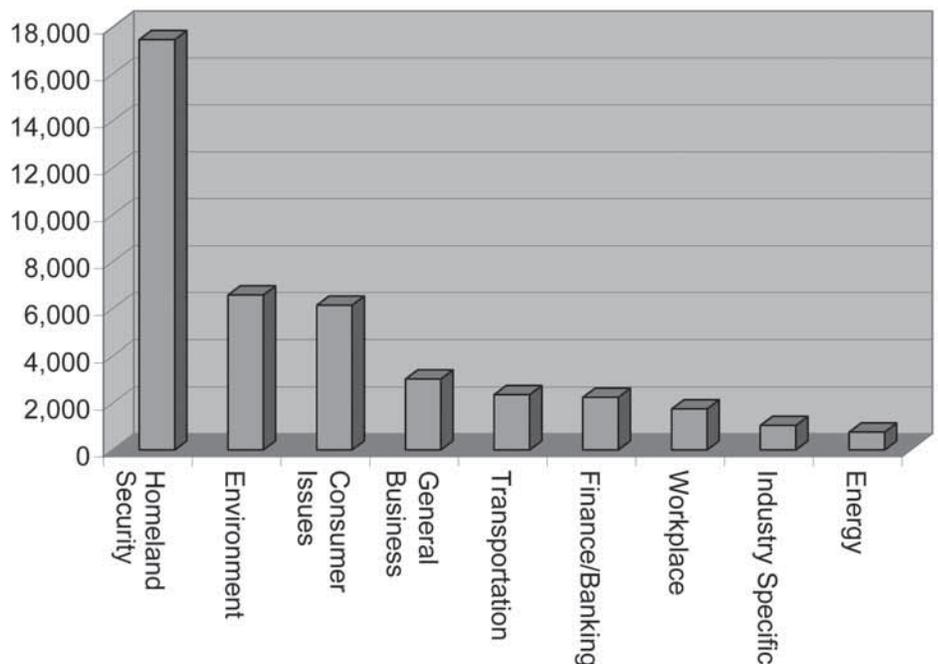
This report divides regulation into two broad categories. The first is social regulation, which covers regulations associated with health, safety, and the environment. Although the agencies that cover “social regulation” regulate within specific issue areas, their regulatory reach tends to cover many different industries and areas of economic activity.

The other category, “economic regulation,” covers mostly industry-specific regulations, and includes regulation of economic activities through measures such as price controls and product quality controls. Economic regulation covers securities and exchange, communications, and some—but not all—of the regulations in the transportation and energy sectors. Note that this definition of economic regulation is different from that used in the costs of regulation section in the Small Business Administration report.

One measure used in the Mercatus-Weidenbaum report is federal outlays—funds that the Department of the Treasury dispenses to the agencies to perform their regulatory tasks. Their 2007 report lists federal outlays for regulatory activities within several categories: consumer health and safety, homeland security, transportation, workplace, environment, energy, finance and banking, industry-specific regulations, and general business. Among these categories, environmental spending is higher in all but one category, and it has grown faster than any other (see Figure 7).¹⁷

**Figure 7. Spending Outlays By Category for 2006
in millions of dollars**

Source: Mercatus-Weidenbaum Report, 2007

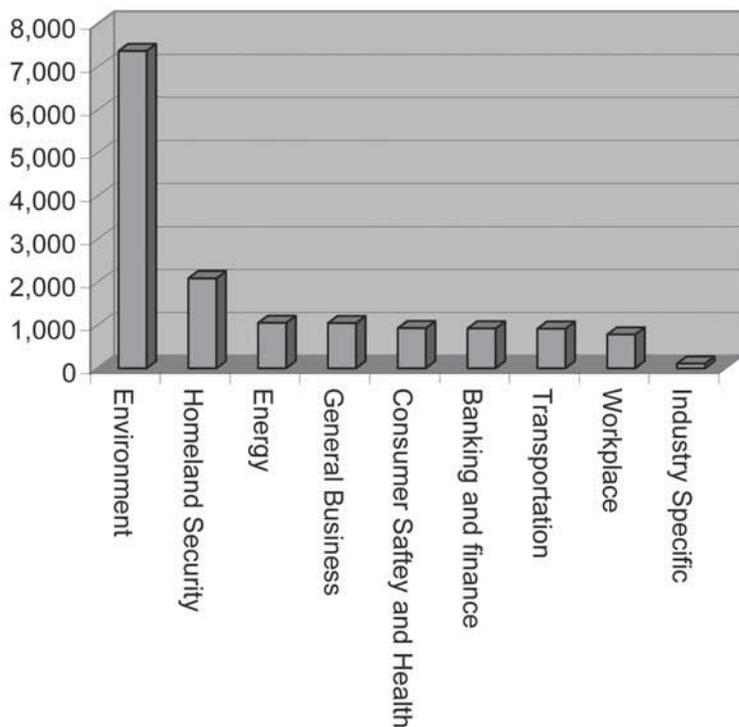


In 1960, the federal outlays for environmental protection were \$17 million. By 2006, outlays had increased to just over \$7 billion—a 41,117 percent increase. Environmental spending was the second largest category of spending in the 2006 regulatory budget. Homeland security was the largest at \$16 billion, with consumer health and safety coming in third at \$5 billion. All other categories were substantially lower.¹⁸

When adjusted for inflation, the environmental budget has grown from \$81 million to more than \$6 billion in 2000 dollars, or 7,372 percent between 1960 and 2006.¹⁹ Only homeland security-related spending exceeds environmental spending, with federal outlays of more than \$15 billion in 2006. However, homeland security spending has only increased by 2,089 percent since 1960—meaning that environmental spending has grown more than three times faster than homeland security spending since 1960. Other categories of spending grew far slower than environment: energy by 1,053 percent, general business by 1,047 percent, banking and finance by 923 percent, consumer health and safety by 933 percent, transportation by 919 percent, workplace by 785 percent, and industry-specific by 109 percent (See Figure 8).

An analysis of the staffing levels reveals a similar story. In this case, environmental staff increased from 1,230 in 1960 to 26,788

Figure 8. Spending Outlays Since 1960, in millions of inflation adjusted dollars
Source: Mercatus-Weidenbaum, 2007



in 2006—a 2,078 percent increase. Only energy had a higher rate of increase, starting with only 35 staff members and increasing to 3,255 (see Figure 9).²⁰ It is worth noting that most energy regulations are environmental in nature. The survey of economically significant regulations reviewed between 1981 and 2004 found that 33 out of 37 were environmentally related, addressing various energy conservation measures. Hence, environment and related energy conservation areas experienced the largest growth in federal staffing since 1960.

Staff increases at other agencies fall far below environment and energy: Homeland Security, 573 percent; banking and finance, 350 percent; workplace, 165 percent; consumer health and safety, 189 percent; general business, 168 percent; and transportation, 118 percent. Only the industry-specific regulation category experienced a decrease in federal staffing levels—dropping by 36 percent.

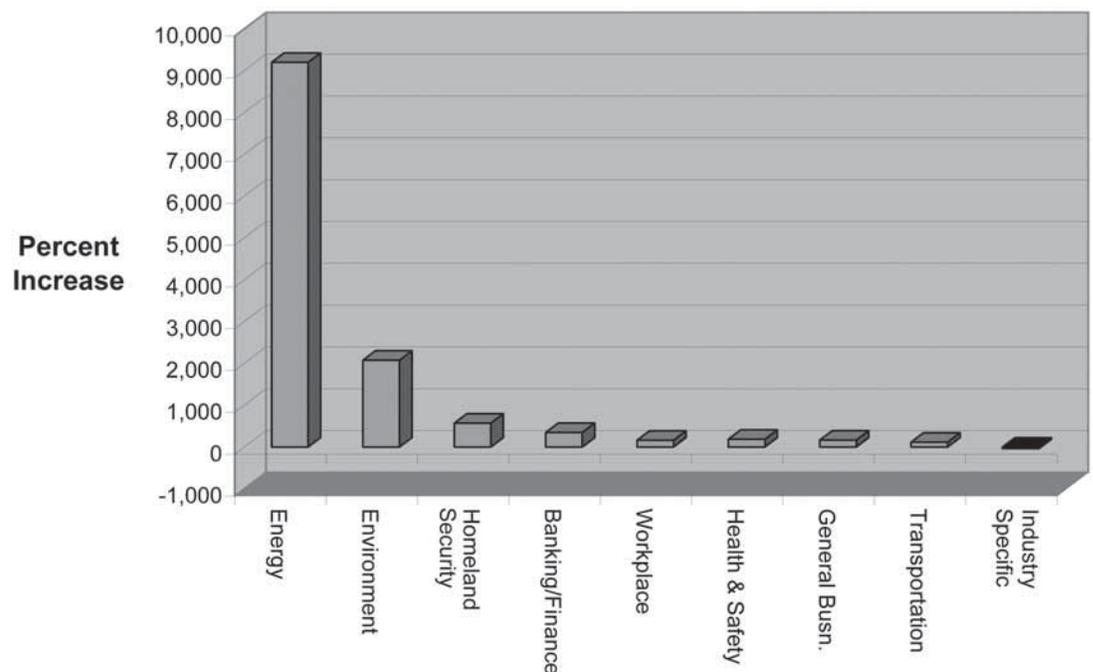
In addition to experiencing some of the fastest growth in staffing levels, environmental federal staffing for environmental issues moved from second to last in absolute numbers to the third-highest staffing levels by 2006.

Federal Land Management

A Congressional Research Service study reports: “Early in the history of the United States, the federal government owned as much as 80 percent of the total land area, but has disposed of more than 1.1 billion acres to states

Figure 9. Increases between 1960 and 2006

Source: Mercatus-Wiedenbaum, 2007



and to the private sector.”²¹ However, the trends reversed themselves in recent decades, with federal divestiture being less prevalent and the desire for increased federal ownership and management, starting with the creation of the National Forest Service under the leadership of Gifford Pinchot and with the rise of the Progressive era. At that time, the emphasis of lands policy was on resource use.

The impact of the progressive modern environmental movement arose in the 1960s. Authors of the various chapters of *Western Public Lands and Environmental Politics* document the shifting of policy to reflect new values—showing how land management policy began to move away from resource use toward conservation and preservation goals.²²

These trends are important because land-use policies impact many businesses in the resource industry—foresters involved in logging in national forests, mining companies seeking to access minerals on public lands, ranchers who graze their cattle on public lands, and others. They also affect recreation on public lands, including hunting, fishing, touring, and other outdoor sports that create significant economic value for rural communities.

The shift in emphasis from resource uses to conservation uses of public lands is evident in data presented in one of the most comprehensive reviews of land management and ownership policy, which was produced by the General Accounting Office (GAO, now the Government Accountability Office) in 1996. The GAO reported on land ownership and federal land use regulation for property managed by four agencies: the Department of Agriculture’s U.S. Forest Service, the Department of Interior’s Bureau of Land Management, the Fish and Wildlife Service (USFWS), and the National Park Service.

According to GAO, these four federal agencies own and regulate 95 percent of federal lands, and the Department of Defense owns the rest. Total federal land ownership is substantial, amounting to about 30 percent of the United States land mass or about 650 million acres.²³ Most federal ownership is concentrated in the western United States, with federal ownership exceeding 20 percent in 12 western states and 50 percent in five.²⁴

GAO reported that overall federal land ownership between 1964 and 1994 for the four environmental agencies declined from 700.8 million acres to 622.8 million acres.²⁵ One might conclude that such a reduction of ownership indicates that federal land use regulation has declined in at least one area. However, closer inspection reveals a different story.

In addition to experiencing some of fastest growth in staffing levels, environmental federal staffing for environmental issues moved from second to last in absolute numbers to the third-highest staffing levels by 2006.

The growth of federal land controls and ownership is apparent in most states. The number of acres managed by land agencies increased in 46 states and decreased in only four.

Federal land ownership increased for three out of the four environmental agencies involved: Forest Service territory expanded by about 5 million acres, Fish and Wildlife Service holdings by about 65 million acres, and National Park Service land by about 49 million acres.²⁶ As documented below, the agencies that gained greater control over lands are the ones whose missions are more consistent with the progressive environmental movement's emphasis on preservation at the expense of resource use.

Based on each agency's stated mission, a logical ranking starting from those agencies most focused on resource use to those focused primarily on conservation runs as follows:

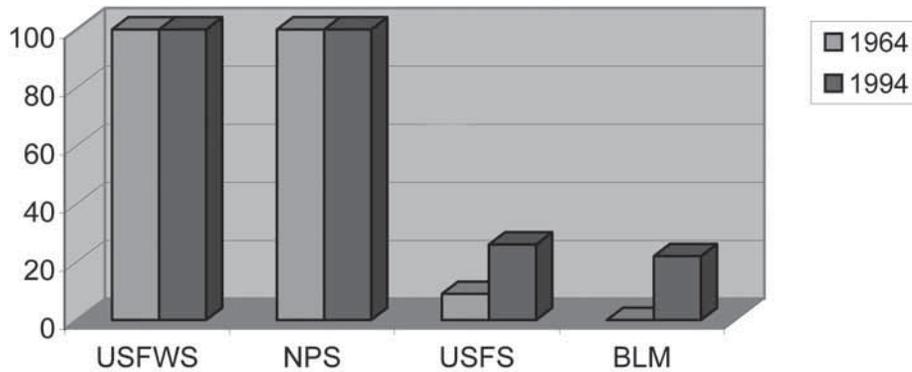
- Bureau of Land Management: "It is the mission of the Bureau of Land Management to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations."²⁷
- Forest Service: "The mission of the USDA Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."
- Fish and Wildlife Service: "[W]orking with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."²⁸
- National Park Service: "The National Park Service preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country."²⁹

GAO confirms this ranking by assessing the amount of land that each agency has available for conservation and preservation. The Bureau of Land Management is the agency least focused on conservation, followed by the Forest Service. The National Park Service and the U.S. Fish and Wildlife Service, according to GAO, have always dedicated 100 percent of their property to conservation and preservation goals. Also of note, GAO also shows a considerable shift from use to preservation/conservation between 1964 and 1994 (see Figure 10).

Not surprisingly, the Bureau of Land Management—whose mission

Figure 10. Managed for Conservation, Percent by Agency

Source U.S. Government Accounting Office



is the most focused on resource use—is the only agency that saw a *decline* in its land holdings. It relinquished control of 197 million acres during 1964-1994. However, BLM land holding reductions are not indicative of reduced federal controls overall or increased development of public lands. In fact, not much of this land was privatized for resource-use purposes. More than 113 million acres were simply transferred to the state of Alaska and Native Alaskans. And even with that shift, GAO reports that in 1994 the federal government still owned 63 percent of the state of Alaska.³⁰

Not only did agencies with greater focus on preservation—reflecting progressive environmental ideals—gain the most, they gained some of it at the expense of the more resource use-focused Bureau of Land Management. The Fish and Wildlife Service received 49 million acres and the National Park Service received 41 million acres of BLM land.³¹ Such shifts represent a policy shift away from a balance between conservation and resource use toward preservation.

The growth of federal land controls and ownership is apparent in most states. The number of acres managed by land agencies increased in 46 states and decreased in only four. In some states—Arizona, California, Florida, Nevada, and Wyoming—the shift toward federal ownership was substantial, with more than 1 million acres becoming federal property in each of these states. Federal ownership declined in Alaska, Idaho, New Mexico, and Utah.³² These findings indicate that the federal government in general is accruing land in states—such as California and Florida—with higher-valued real estate while dispensing with lands in states with lower-valued real estate such as Utah and Alaska.

The amount of federal land managed for conservation purposes—that is, “national parks, national wildlife refuges, wilderness and wilderness study areas, wild and scenic rivers, and areas of critical

Between July 1964 and September 1994, environmental organizations transferred 3.2 million acres of land to the federal government.

environmental concern”³³—grew by 66 million acres between 1964 and 1994.³⁴ In total, more than 272 million out of 622.8 million acres—or about 44 percent—were managed for “conservation,” rather than resource use, by 1994, according to GAO.³⁵ Again, this trend supports the contention that that federal land policy has shifted in favor of environmental interests.

In addition to expanding its conservation- and preservation-related territories, the federal government increased its “rights of use” on 3 million acres of non-federal lands.³⁶ These include rights for the public or government agencies to cross lands owned by private parties, nonprofit organizations, or local and state government entities.

Also of note, GAO reports that between July 1964 and September 1994, environmental organizations transferred 3.2 million acres of land to the federal government.³⁷ Such transfers are indicative of environmentalist support for federal land management policies, since few such organizations would transfer lands unless they had some assurance that the federal government would promote the environmentalist agenda of conservation and preservation of such lands.

Since 1994, total federal land ownership by the four environmental agencies has grown from 622.7 million acres to 629.3 million acres. Yet as in the prior two decades, the Bureau of Land Management continued to lose property while more conservation focused agencies gained lands.

- Forest Service – 191.6 million acres in 1994 to 193 million acres by 2006.³⁸
- Fish and Wildlife Service – 87.5 million acres in 1996 to 96 million acres in 2006.³⁹
- National Park Service – 76.6 million acres in 1994 to 79.3 million acres in 2006.⁴⁰

Land managed by the Bureau of Land Management shrank from 267.1 million acres in 1994 to 261 million acres by 2006.⁴¹

Another way to demonstrate the trend toward conservation and preservation on public lands involves assessing the amount of lands designated as wilderness in the past several decades. The National Wilderness Act of 1964 created the National Wilderness Preservation System, a network of public lands that receive special protections from development and other uses. Under the Act, Congress can designate land as “wilderness.” The Act declared that once designated by Congress, wilderness areas:

...shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.⁴²

The intent of such designations was to reduce their use for resource industries and focus on “recreational, scenic, scientific, educational, conservation, and historical use.”⁴³

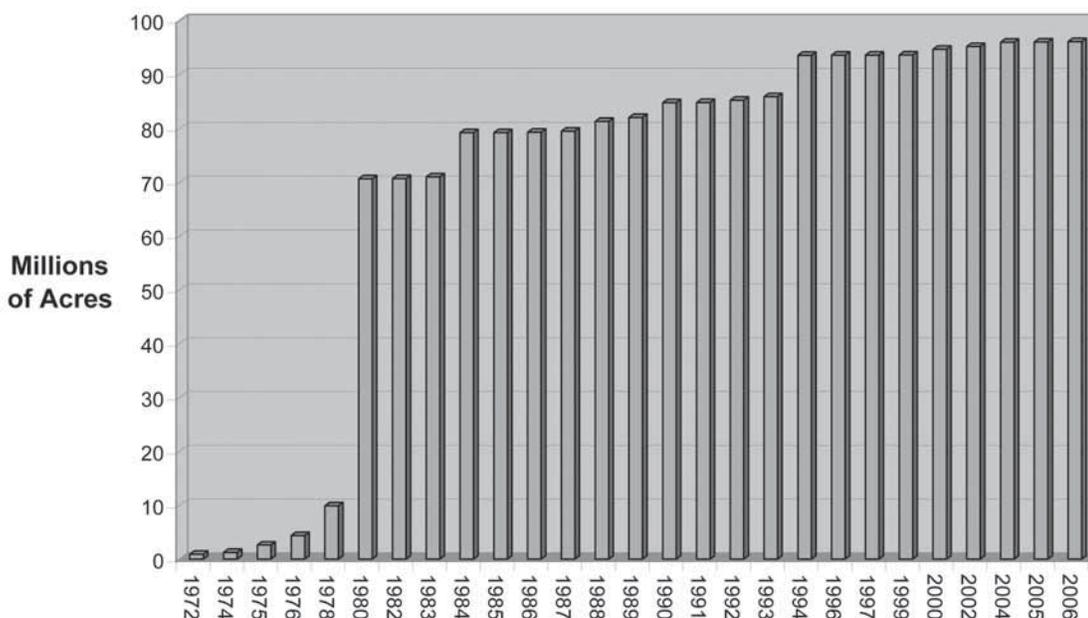
While the National Wilderness Act did not eliminate all resource use, wilderness designations can limit such use considerably, and the growing number of wilderness areas reflect the new emphasis on preservation over resource utilization. The following charts show a considerable and steady expansion of the amount of federal land designated as wilderness (see Figure 11).⁴⁴ In 1980, Congress added more than 56 million acres to the system with the passage of the Alaska National Interest Lands Conservation Act (ANILCA). Since then, Congress has continued to add additional lands, but at a slower pace.

The federal government also implements a similar law for wild and scenic rivers. Congress can designate rivers for protection under the 1968 Wild and Scenic Rivers Act, which stipulates that these rivers:

...shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit

Figure 11. Federal Wilderness Acres

Source: Wilderness.net



Federal land ownership impacts the ability of energy developers to access energy and mineral resources.

and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.⁴⁵

As with the wilderness designations, Congress has added more miles of river to the list nearly every year since the Wild and Scenic Rivers law was enacted (see Figure 12).⁴⁶

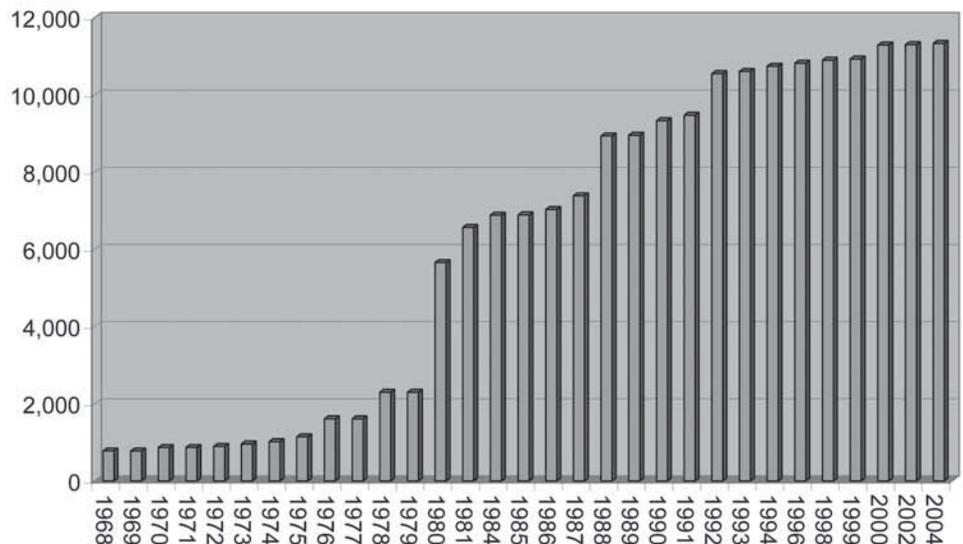
Mining and Energy. Federal land ownership impacts the ability of energy developers to access energy and mineral resources. According to the American Petroleum Institute (API), the federal government owns most of the nation’s oil and gas resources—78 percent and 62 percent, respectively.⁴⁷ In recent decades, industry and others have complained that environmental regulations have led to a continually shrinking level of access to such resources.

API claims that the federal government limits access to 90 percent of the offshore areas of the outer continental shelf, and that litigation and permitting delays limits access to onshore lands. It also notes that in 1999, 4.5 percent of oil and gas leases were challenged in court, while today nearly 50 percent are challenged. Permit restrictions also complicate drilling, making it impossible in some leased areas.⁴⁸

Figure 12. Total Miles of Wild and Scenic Rivers

Source: National Park Service

(Years not listed are those for which the Park Service provided no data.)



In contrast, the Environmental Working Group (EWG) claimed in 2005 that oil and gas development on these lands is out of control, and that it affects one in three acres of federal land. To make this point, EWG used an elaborate computer mapping program that cross-referenced federal Bureau of Land Management data with additional data collected from several other sources, including locations of oil and gas operations around the nation. EWG then compared this database to the location of federal lands. The group then reported:

We electronically plotted the 3.45 million tracts of Western public land currently or formerly drilled, mined, offered to or otherwise controlled by mining, oil and gas interests, as detailed in the three data sources described above.⁴⁹

The EWG report further concludes:

A two-and-a-half year Environmental Working Group (EWG) computer investigation has found that metal mining and oil and gas industries actively control land in and around more than two-thirds of 1,855 parks, wilderness areas, wildlife refuges, wild and scenic rivers, forests and other treasured public lands in the American West. If present trends continue, within 20 years, metal mining and oil and gas companies will actively mine, drill, or otherwise control public lands inside or within five miles of every one of these natural treasures. EWG's investigation of millions of federal government records belies industry claims that excessive emphasis on environmental protection has locked companies out of public lands.⁵⁰

However, a review of the EWG methodology reveals some serious flaws. The data are not organized in a way that reveals trends that rebut industry claims about shrinking resource access. The EWG study simply includes a collection of activities from several databases covering several different years. Second, the data are incapable of measuring the environmental impact because they do not contain information on the impacts of these operations. Instead, EWG notes that mining activities could *theoretically* affect wildlife and the environment within 100 miles of the operation. But it is also possible—in fact quite likely—that most of these operations can be pursued without serious adverse environmental impacts.

The federal government owns more than 50 percent of the land in five of those states, including Nevada, of which it owns 80 percent.

In fact, the Audubon Society drills for oil and gas on its lands, and claims to do so in a manner that is consistent with its wildlife protection goals.

Perhaps most importantly, EWG's dataset includes a large number of development activities that were not on federal land because the group counted all activities on non-federal lands—including private or state lands—within five miles of a federal property. Still, one should expect that a large number of resource-use activities would necessarily occur near federal lands given that a high percentage of the resources are mined in western states where much of the land is owned by the government. In fact, the federal government owns more than 50 percent of the land in five of those states, including Nevada, of which it owns 80 percent.⁵¹ By counting activities on nearby non-federal lands, EWG inflates the number of tracks of land affected by a whopping 67 percent.⁵²

In addition, EWG counts all development-related activities—ongoing, proposed, potential, or past—as the same. Accordingly, its data set includes active drilling or mining operations, potential drilling or mining, potential leasing opportunities, and abandoned mining operations. Yet many of these activities do not accurately reflect development on public lands. For example, the fact that lands are available for leasing now (or were so in the past) does not mean they will ever be (or ever were) used for resource extraction. Lease restrictions may make such activities unlikely or even impossible in some cases, and the land might simply not be suitable for such use.

EWG does help clarify these distinctions by categorizing its data into four types:

- Type One – lands with active and proposed mines and active oil and gas drilling and production.
- Type Two – lands with active mining claims and active oil and gas leases.
- Type Three – lands containing abandoned or closed mines, or abandoned or closed drilling operations.
- Type Four – closed mining claims, closed oil and gas leases, tracts of land offered for lease by the government, and leases offered and refused by industry (see Figure 13).

However, it makes no sense to count types Three and Four to assess the effects of resource use activities on lands today. These involve closed operations, closed claims or leasing rights, and refusals by industry to access resources on the lands. Accordingly, this data provides little information about existing land-use activities, and, because it is

Figure 13. Environmental Working Group Data

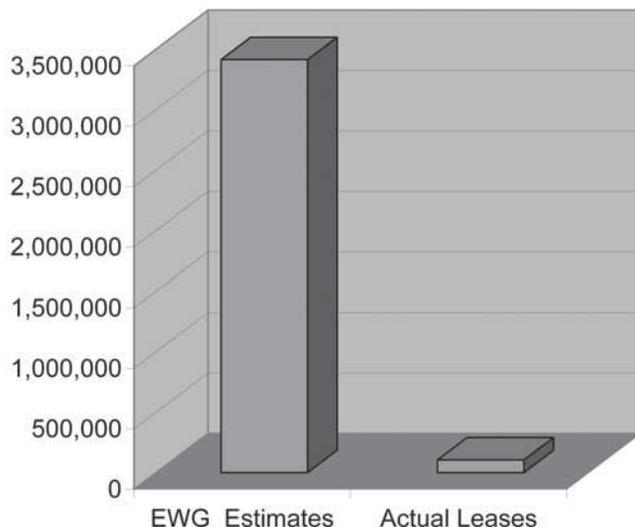
Type control	Source(s) of information	Located on Federal Land
Active and proposed mines (Type One)	Active mining plans and notices from BLM's LR2000 database (BLM 2004), and various industry sources	334
Active oil and gas drilling and production (Type One)	Active leases in current production according to BLM (2004)	13,679
Active mining claims (Type Two)	BLM's LR2000 database (BLM 2004)	70,833
Active oil and gas leases (Type Two)	Active leases not in current production, according to BLM (2004)	20,080
Total		104,926

aggregated, it provides no meaningful information on future trends. It is true that some past activities might have had environmental impacts, but EWG presents no data on such impacts and, most importantly, does not reveal how they relate to current or future activities.

The only relevant categories in EWG's data for assessing current and potential resource-use activities on federal lands would be types One and Two. But it should be noted that Type Two only represents *potential* development. Reliance on types One and Two lands indicates that actual operations on federal lands are much lower than what EWG claims. In fact, it decreases the total number of oil, gas, and mining activities from 3,413,627 to 160,893—lowering EWG's total by nearly 97 percent. The final tally for active and proposed oil, gas, and mining activities is 104,926 (See Figure 14).

EWG's data does not reveal how many acres are involved in these projects, but somehow its study makes the extrapolation that projects

Figure 14. EWG Estimates vs. Actual Oil and Gas Leases



affect one in three acres of Western land. Given that 97 percent of its data is not applicable, energy development on federal lands is likely much less than EWG claims.

One possible way to assess the percentage of land actually involved in such activities is to compare the total acreage owned by the four environmental agencies to the acres containing leases for existing and potential oil, gas, and mining operations. As noted earlier, the four agencies own about 629 million acres of land.⁵³ The Bureau of Land Management's most recent annual report, *Public Land Statistics 2005*, indicates that the total acreage of federal lands subject to active oil and gas leases amounted to about 35 million acres.⁵⁴ All other mineral leases—coal, geothermal, hard rock, and others—amount to about 1.2 million acres. Combined, that's less than 6 percent of federal properties—far less than the EWG estimate of one in three acres.⁵⁵

It should be noted that this data simply reflect existing leases—not active operations—which are a fraction of the number of leases. For example, while there were 34.6 million acres under lease in 2004, the Bureau of Land Management reports only 11.6 million “acres in producing status” for that year—about one-third of the lands leased.⁵⁶

The Bureau of Land Management's annual reporting of public land statistics can also provide some insight into leasing trends. The Bureau has produced an annual statistics report every year starting in 1962 from which the following chart on oil and gas leasing trends was developed.⁵⁷ The chart shows increasing acreage under lease during the 1980s, but historic low leasing starting in the 1990s, through 2000, and onward (see Figure 15).

This chart belies environmental activists' claims that oil and gas leasing and drilling on public lands is growing. In fact, it supports the contention that industry is experiencing reduced access to these lands. However, oil and gas drilling on public lands may have declined for other reasons and hence, the conclusion that environmental regulation is largely responsible cannot be drawn with any certainty here. Still, the chart undermines claims that such access has reached historic highs. Greater support for the idea that access has been reduced comes from policy changes that have limited the scope of commercial activities on these lands, such as the increase in wilderness areas, which has been already been demonstrated.

A report produced by the Department of Energy's Energy Information Administration (EIA) shows that policy changes related to

environmental concerns have also significantly reduced access to oil and gas resources.⁵⁸ The federal government owns and controls access to all offshore lands—the lands referred to as the continental margins. There are three categories of such lands. First, there is the continental shelf, which includes the shallowest regions running to a depth of about 650 feet and extending off the coasts 12 to 250 miles. Second is the continental slope, a transitional point at which the ocean floor slopes down depths of up to three miles. At the bottom of the slope begins the third category, the continental rise, where the ocean floor dips down gradually and where sediment from the slope remains.

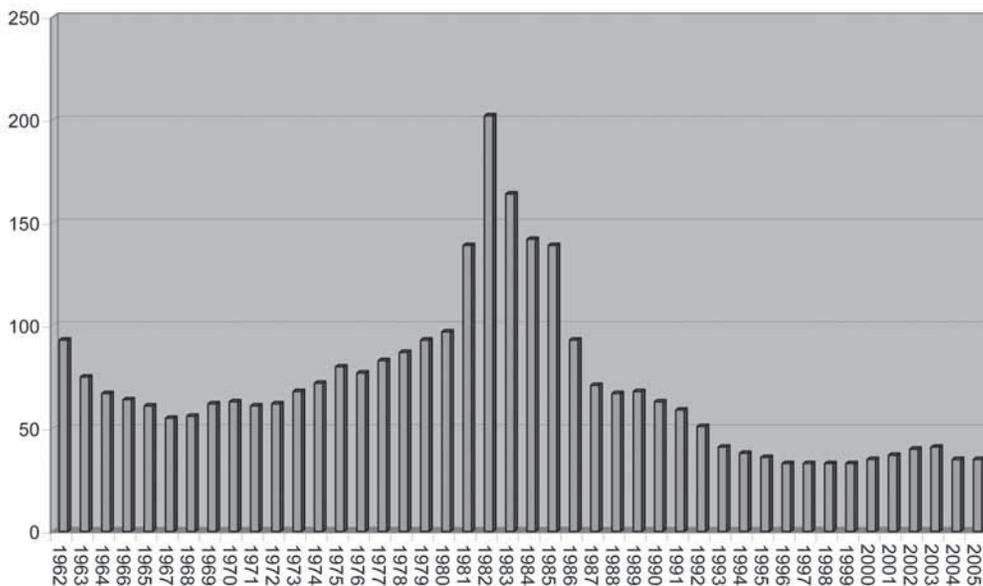
The federal government maintains jurisdiction over nearly all of the lands of the continental shelf.

According to EIA, the continental margin is important because it is increasingly becoming the key source of oil and gas production. Natural gas production in these areas accounted for about 20 percent of all U.S. natural gas production in 2004, and crude oil accessed in these areas amounted to about 29 percent of national production.⁵⁹ Production from these areas could be much higher, but it is limited by various federal regulations, mostly environmental.

The federal government maintains jurisdiction over nearly all of the lands of the continental shelf. Under the Submerged Lands Act of 1953, states own the lands within four miles of the coast, with exceptions off the coasts of Texas and Florida, which each own nine miles of lands off their coasts. The federal government owns and controls resource use on the rest. The 1953 Outer Continental Shelf Lands Act (OCSLA) governs federal management of the government’s submerged lands. OCSLA set

**Figure 15. Oil and Gas Leasing on Public Lands
(in Millions of Acres)**

Source Bureau of Land Management



Perhaps most significant is the increasing amount of the continental shelf that has been placed off-limits to any drilling.

environmental regulations in areas where resource extraction continues. The 1978 amendments increased environmental considerations. It set up a system for five-year leases, and held that no such leasing could continue unless the federal government obtained information on “environmental, social, and economic effects” of the activities for which the land was being leased.⁶⁰ It also called for balancing environmental concerns against the economic benefits of resource extraction.

In addition to regulations in the Outer Continental Shelf Lands Act, the Energy Information Administration notes: “During the 1960s increasing environmental awareness set the stage for the development of numerous environmental laws, regulations, and executive orders that have affected natural gas and oil activities on federal offshore areas. All natural gas and oil activities must now pass through a large number of environmental reviews by federal, state, and local agencies.” These include reviews under rules under the National Environmental Policy Act, Clean Air Act, Coastal Zone Management Act, Endangered Species Act, Clean Water Act, and National Fishing Enhancement Act.

Perhaps most significant is the increasing amount of the continental shelf that has been placed off-limits to any drilling. Most of these set-asides began as annual moratoria on drilling via appropriations bills, which are included in Interior Appropriations bills every year. These began with a drilling moratorium in 1982 on 736,000 acres off the coast of California. Much more land has been removed from drilling for many years thereafter (see Figure 16).

After lands were removed from leasing for about a decade under various appropriations bills, President George H. W. Bush issued a directive that placed a blanket moratorium over drilling on unleased areas off of California (with the exception of 87 tracks in Southern California), Washington, Oregon, the North Atlantic Coast, and the Eastern Gulf of Mexico coast. Only recently has there been any shift in direction. At the end of 2006, a provision placed in a tax bill allows drilling in 8.3 million acres in the Gulf of Mexico. While it represents an important shift in direction, the gains were relatively modest compared to the substantial growth of federal controls in past decades. One industry lobbyist compared it to “laboring mightily to birth a mouse... This is a political document written to accomplish the least while buying Louisiana off and guaranteeing we will never revisit this set of issues again for another 25 years.”⁶¹

Figure 16. Moratoria on Drilling in the Outer Continental Shelf

Source: Energy Information Administration

Year	Acreage removed from drilling
1983	35 million
1984	54 million
1985	45 million
1986 & 1988	8 million
1989	33 million
1990	84 million
1990	Bush Blanket Moratorium (effective through 2000)
2000	Clinton extension of Bush blanket Moratorium (effective through 2012)

As this history clearly shows, public land use policies, particularly on the outer continental shelf, reflect environmental activist groups' desire to limit access to energy resources on public lands.

Endangered Species Regulations

The Endangered Species Act (ESA) presents another area of environmentally related regulatory costs that are not accounted for in most regulatory cost estimates. That is because regulatory cost estimates are usually based on agency cost-benefit analysis assessments, which are not conducted for endangered species listing. Despite that omission, the impacts of this law are likely significant.

There have been some efforts to measure the costs of the ESA. The Act's Section 18 (passed as an amendment to the law in 1988) demands that the Fish and Wildlife Service produce an annual report estimating federal and state ESA expenditures. Some of these costs are accounted for under the Mercatus-Wiedenbaum report on the costs of government agencies discussed previously. However, the Mercatus-Wiedenbaum report does not consider either state-level costs or many of the costs spread out over various agencies. For example, the analysis of the Mercatus-Wiedenbaum data in this paper only counts EPA and DOI costs as environmental. The Fish and Wildlife service reports consider the cost of ESA administration across 13 agencies, including the departments of Commerce, State, Defense, Energy, and others.⁶² In addition, Fish and Wildlife Service reports are supposed to consider costs to state governments. None of these reports consider the costs to private landowners, which could be even more substantial than the administrative costs.

According to the Fish and Wildlife Service, the agency considers ESA costs that are "reasonably identifiable" from agencies that voluntarily participate in their study. This means that many costs are not included

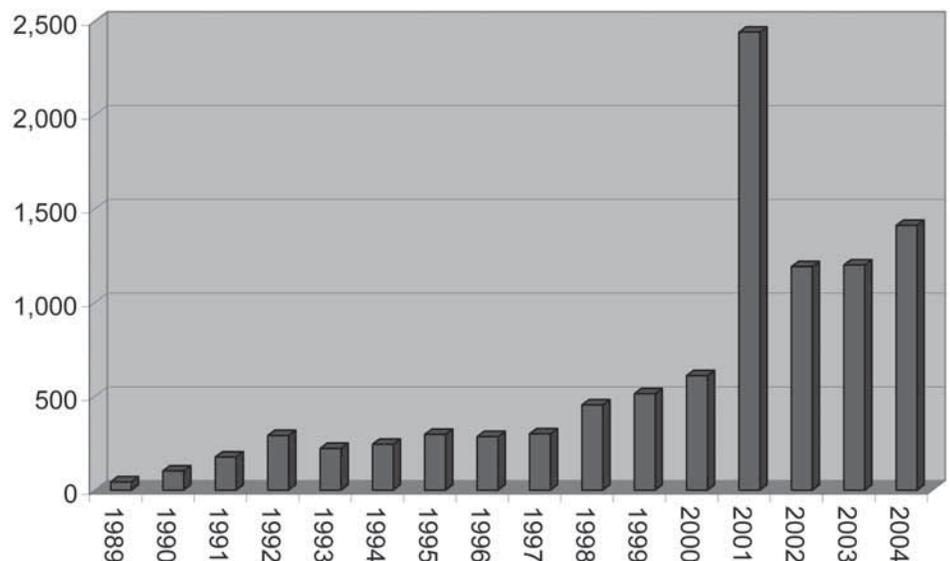
Even if environmental pressure groups fail to convince Congress to pass new legislation, they can rely on existing laws to continue to grow the green regulatory state.

as at least some state agencies do not participate at all, and data is not necessarily complete. In addition, the Service explains that the data from one year to the next are not “easily comparable” for a variety of reasons, such as the fact that different state and federal agencies participate each year, the Service’s methodologies for calculating costs have varied over the years, and changes in agencies ability to calculate costs.⁶³

Despite these limitations, the reports offer some indication that both costs and ESA regulations are increasing, even during the years of alleged “gridlock” for the environmental agenda on Capitol Hill. Indeed, as Figure 17 shows, even if environmental pressure groups fail to convince Congress to pass new legislation, they can rely on existing laws to continue to grow the green regulatory state. Another thing these reports indicate is that expenses for this program are considerable; particularly considering that the data in this expenditure report is admittedly incomplete.

The Property & Environment Research Center (PERC) offers an analysis of these reports and finds that the Fish and Wildlife Service reports only include costs from a limited number of agencies. In fact, they only reflect a fraction of the costs from the agencies covered by the report.⁶⁴ A key problem is that the law only requires USFWS to estimate costs that are “easily identifiable,” which leaves out a lot of other costs. There is evidence that many of the costs are not included. For example, The Bonneville Power Administration is the only agency within the entire Department of Energy that reported costs in 2002. None of the other three

Figure 17. ESA Spending (in Million of Dollars)
Source: U.S. Fish and Wildlife Service



power administrations reported costs even though there are listed species throughout all power administration regions. Similarly, the Department of Interior’s Mineral Management Service did not report any costs that year despite its having ESA responsibilities. PERC reports several other agencies that did not report that also have ESA implementation duties.⁶⁵

In addition, the Fish and Wildlife Service’s ESA cost estimates for agencies it does track appear to be wildly off the mark. PERC notes that in 1996 USFWS reported a total of \$285.7 million in expenditures for all agencies, yet that year five agencies reported to Congress in congressional testimony that they cumulatively spent \$560 million implementing the ESA—far exceeding the Service estimate for the *entire federal government and all the states*.⁶⁶ These reports also miss costs incurred by state and local governments, which involve projects costing millions of dollars. For example, a habitat conservation project in San Diego is estimated to cost \$650 billion. Another project in Riverside County, California, cost an estimated \$45 million to protect the kangaroo rat, and a conservation plan in Travis County, Texas, cost an estimated \$160 million.⁶⁷

Completely undocumented by the federal government are the costs of the ESA on the private sector. These costs are substantial considering that 75 percent of all listed species reside at least in part on private land.⁶⁸ Studies of the costs to private parties have focused on individual cases, revealing high costs. For example, a study on the cost of designating critical habitat for the gnatcatcher will cost \$4.6 to \$5.1 billion—\$300 million a year—between 2003 and 2020.⁶⁹ The private sector is also spending a great deal of money on habitat conservation plans. Finally, indirect costs associated with productivity loss are substantial yet not fully documented. For example, the Klamath Basin area in Oregon lost an estimated \$59.3 million in crop values when the Department of Interior cut off farmers’ water supply in 2001 in an attempt to protect an endangered fish.⁷⁰

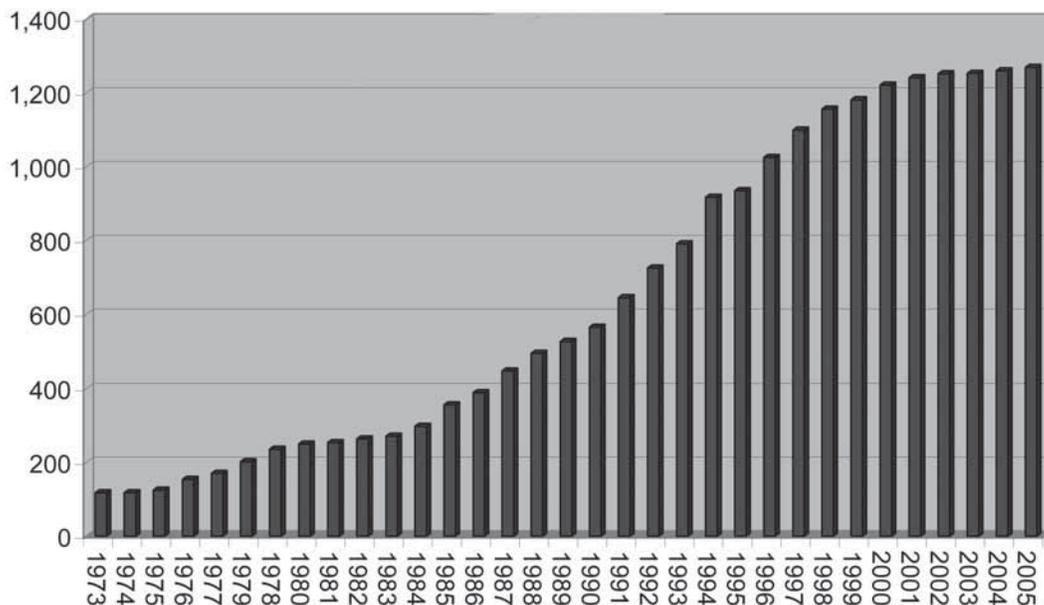
The ESA listing process provides additional evidence of this law’s substantial and increasing impact on American society. The steady increase of the number of species listed indicates an ever-growing justification for land-use regulations (see Figure 18).⁷¹

Once a species is listed, the Fish and Wildlife Service may designate a “critical habitat” for it. Habitat designations allow federal regulators to regulate the use of such lands and impact use by federal agencies and developers. One study finds that such designations raise the costs of housing developments, resulting in increased housing prices.⁷²

In 1996 five agencies reported to Congress in congressional testimony that they cumulatively spent \$560 million implementing the ESA—far exceeding the Service estimate for the entire federal government and all the states.

Figure 18. ESA Listing: Totals by Year (with delistings removed)

Source: USFWS TESS Database



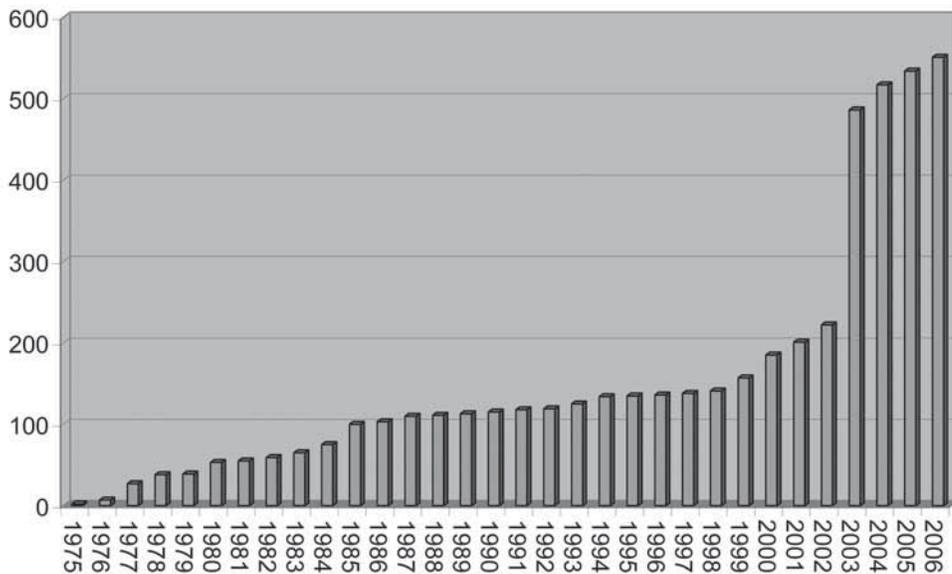
Currently, the Fish and Wildlife Service has such designations for more than 500 threatened and endangered species in its online database.⁷³ Figure 19 shows the time trend line for the total number of designations; it includes all designations that remain active today⁷⁴ and excludes revoked designations. The number of designations exploded during the administration of George W. Bush. The increasing number of designations, like the increasing number of listings, is indicative of a growing territory for regulatory activity that environmentalists can secure by simply preventing any changes to the ESA.

Environmental pressure groups have suggested that the Bush Administration has attempted to stall critical habitat designations and scale down the size of such designations—which implies that the movement is losing ground in this area. It does appear that key administration policy makers did not believe it was necessary or wise to advance more designations. For example, Interior Secretary Gale Norton had criticized the designation process, suggesting that at least some designations did not help species and were needlessly expensive.⁷⁵ Yet by the end of 2006 the Bush Administration has finalized more habitat designations than all other previous administrations combined—nearly doubling the total number of designations in existence when Bush entered office. (See Figure 20)

Environmental groups also suggested that Bush designations contain less acreage on average than those finalized during President

Figure 19. Total Critical Habitat Designations

Source: U.S. FWS TESS Database

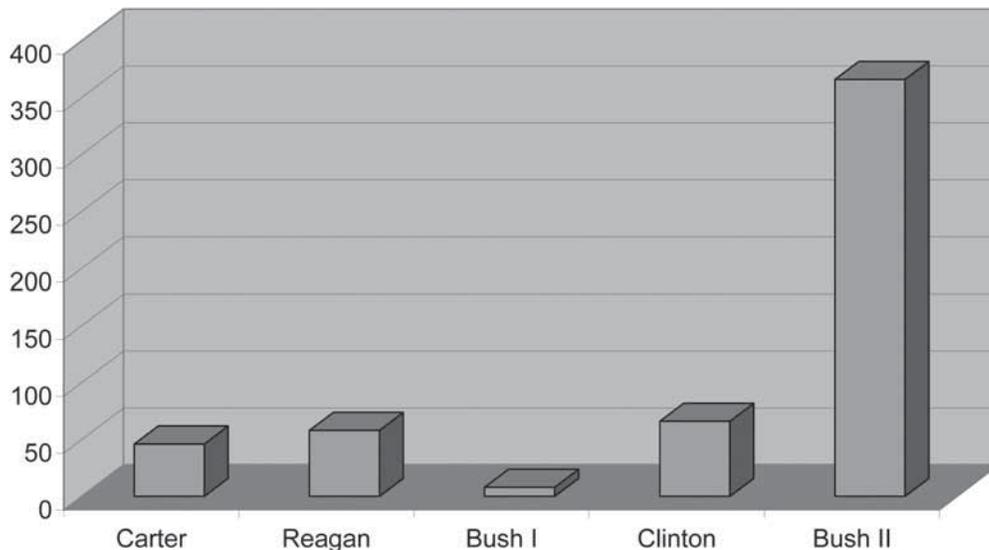


Habitat designations allow federal regulators to regulate the use of such lands and impact use by federal agencies and developers. One study finds that such designations raise the costs of housing developments, resulting in increased housing prices.

Clinton's term. For example, one report claims that Bush designations were one-third the size of Clinton designations.⁷⁶ If this is true, the Bush administration would still have designated more property as critical habitat than Clinton because it has finalized nearly five times the number of Clinton administration designations. As of mid-2006, the Bush Administration had finalized 366 designations, while the Clinton administration finalized 66.

The volume of designations produced by the Bush Administration could be attributed to environmental movement's advocacy efforts. These

Figure 20. Critical Habitat Designations During Presidential Administrations



There is a substantial amount of environmental regulation that remains unaccounted for in traditional studies of the costs of government regulation.

groups have filed lawsuits demanding that the agencies produce the designations, and they have waged public relations campaigns to build political pressure for more designations. The result of such efforts indicate that, even when their political opponents hold the White House, Congress, or both, environmental advocates have been able to advance Endangered Species Act regulation without passing new federal legislation. In fact, a key success of the environmental movement has been its ability to fight attempts to reform ESA in ways that they believe would reduce its scope.

As these examples indicate, there is a substantial amount of environmental regulation that remains unaccounted for in traditional studies of the costs of government regulation. There are other cost areas that could be included: wetlands regulations and other policies that impact the use and value of private property, superfund litigation costs, and others. However, the cases discussed show that unaccounted-for environmental program costs are not only substantial; they continue to expand—even without any congressional action.

Conclusion

Environmental regulation is one of the largest areas of federal regulatory costs as documented here and in many other studies. The costs associated with this area of law are underestimated in most studies for a variety of reasons, particularly because many program costs are not estimated by federal agencies. Few studies consider costs to private parties and the costs associated with reduced access to public resources. A review of just some of these costs reveal they are substantial and that environmental regulation on land use and other areas continues to expand.

The data show that environmental regulations continued to expand the scope of federal controls without the involvement of elected policy makers in Congress. In fact, progressive environmental groups have been able to prevent Congress from making any substantial reforms that would curb the growing cost of environmental regulation.

Notes

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- 2 The search tool for this database is available at <http://www.reginfo.gov/public/do/eoHistoricReport>.
- 3 5 U.S.C. §601.
- 4 James L. Gattuso, Testimony before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, Committee on Government Reform, United States House of Representatives, on “What is the Bush Administration’s Record on Regulatory Reform?” November 17, 2004, <http://www.heritage.org/Research/HomelandSecurity/tst111604a.cfm>.
- 5 Clyde Wayne Crews, *Ten Thousand Commandments 2007: An Annual Snapshot of the Federal Regulatory State* (Washington, D.C.: Competitive Enterprise Institute, 2007), <http://www.cei.org/pdf/6018.pdf>.
- 6 Susan E. Dudley, *Public Interest Comment on the Office of Management and Budget's 2005 Benefit-Cost Report to Congress* (Washington, D.C.: Mercatus Center, June 20, 2005), 7.
- 7 W. Mark Crain, *Impact of Regulatory Costs on Small Firms* (Washington, D.C.: U.S. Small Business Administration, 2005), 25.
- 8 *Ibid.*, 29.
- 9 *Ibid.*, see chart A-2 on page 69 for the full list.
- 10 *Ibid.*, 24.
- 11 *Ibid.*, 5.
- 12 *Ibid.*
- 13 Office of Advocacy, U.S. Small Business Administration, “Frequently Asked Questions,” June 2006, <http://www.sba.gov/advo/stats/sbfaq.pdf>.
- 14 Crain, *Impact of Regulatory Costs on Small Firms*, 6.
- 15 *Ibid.*
- 16 Jerry Brito and Melinda Warren, *Growth in Regulation Slows: An Analysis of the U.S. Budget for Fiscal Years 2007 and 2008: 2008 Annual Report, Regulators Budget Report 29* (Washington, D.C.: Mercatus Center June 2007).
- 17 *Ibid.*, 4.
- 18 *Ibid.*, 4.
- 19 *Ibid.* The Mercatus-Wiedenbaum report listed EPA’s budget in 2000 real dollars as \$81 million in 1960 and \$6.052 billion in 2006, 4.
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- 21 Betsy A. Cody, *Major Federal Land Management Agencies: Management of Our Nation’s Lands and Resources* (Washington, D.C.: Congressional Research Service, 1995), <http://cnie.org/NLE/CRSreports/Natural/nrgen-3.cfm>.
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- 23 U.S. General Accounting Office, *Land Ownership: Information on the Acreage, Management, and Use of Federal and Other Lands*, GAO/RCED-96-40 (Washington, D.C.: USGAO, 1996), 14.
- 24 *Ibid.*, 23-24.
- 25 *Ibid.*, 2.
- 26 *Ibid.*, 19.
- 27 Bureau of Land Management, Office of Public Affairs, “BLM Facts,” accessed online June 7, 2006, <http://www.blm.gov/nhp/facts/index.htm>.
- 28 U.S. Fish and Wildlife Service, “Who We Are,” accessed online on June 7, 2006, <http://www.fws.gov/who>.
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- 30 General Accounting Office, *Land Ownership: Information on the Acreage, Management*, 24.
- 31 *Ibid.*, 20.
- 32 *Ibid.*, 20.
- 33 As defined by GAO, *Ibid.*
- 34 *Ibid.*, 6.
- 35 *Ibid.*, 24.
- 36 *Ibid.*, 6.
- 37 *Ibid.*, 7.
- 38 For the 1994 figures see General Accounting Office, *Land Ownership: Information on the Acreage, Management*, 6; for 2006 figure see U.S. Forest Service, “About Us,” accessed June 8, 2006, <http://www.fs.fed.us/aboutus>.
- 39 For the 1994 figures see General Accounting Office, *Land Ownership: Information on the Acreage, Management*, 6; for 2006 figure see U.S. Fish and Wildlife Service, “President Seeks More than \$2 Billion for U.S. Fish and Wildlife Service in 2007 Budget,” Press Release, February 6, 2006, <http://www.fws.gov/budget/2007/FY07%20press%20release.htm>.

- 40 For the 1994 figures see General Accounting Office, *Land Ownership: Information on the Acreage, Management*, 6; for 2006 figure see National Park Service, “The National Park System Acreage” accessed online, June 8, 2006, <http://www.nps.gov/legacy/acreage.html>; Note: According to the park service it was responsible for managing “83.6 million acres [in 2006], of which more than 4.3 million acres remain in private ownership,” meaning 79.3 million acres were government owned.
- 41 For the 1994 figures see General Accounting Office, *Land Ownership: Information on the Acreage, Management*, 6; for 2006 figure see Bureau of Land Management, Homepage, accessed June 8, 2006, <http://www.blm.gov/nhp/index.htm>.
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- 51 U.S. General Accounting Office, *Land Ownership*, 24.
- 52 According to the EWG data, there were 3,413,627 tracts of land (total in types One through Four) involved in active or potential mining in the western United States. Of that total, EWG reports that 2,294,570—67 percent—was land actually outside the boundaries of government land. See *Who Owns the West*, “Methodology.”
- 53 Data is based on estimates for each agency: U.S. Forest Service, “About Us,” accessed June 8, 2006, <http://www.fs.fed.us/aboutus>; U.S. Fish and Wildlife Service, “President Seeks More than \$2 Billion for U.S. Fish and Wildlife Service in 2007 Budget,” Press Release, February 6, 2006, <http://www.fws.gov/budget/2007/FY07%20press%20release.htm>; National Park Service, “The National Park System Acreage” accessed online, June 8, 2006, <http://www.nps.gov/legacy/acreage.html>; Note: According to the Park Service it was responsible for managing “83.6 million acres [in 2006], of which more than 4.3 million acres remain in private ownership,” meaning 79.3 million acres were government owned.
- 54 U.S. Bureau of Land Management, *Public Land Statistics 2005* (Washington, D.C.: Department of Interior, 2005), see grand totals for acreage in charts 3-13, 3-14; <http://www.blm.gov/natacq/pls05/PLScover06web.pdf>.
- 55 U.S. Bureau of Land Management, *Public Land Statistics 2005*; leases related to mining for all other resources was tallied from leasing totals in charts 3-13 and 3-14 (for geothermal leasing) and charts 3-18 and 3-19 for all the other lease totals.
- 56 Note: 2004 is used here because the 2005 report did not include statistics on acres in producing status, but the ratio would be similar; Bureau of Land Management, *Public Land Statistics 2004* (Washington, D.C.: U.S. Department of Interior, 2004), see charts 3-13 and 3-17.
- 57 Bureau of Land Management, *Public Land Statistics* (reports 1962-2005). The Bureau reported in different formats over the years, which required that the total of existing leases for each be tallied from several tables in some cases. From 1962 through 1980, the totals were reported in one chart and required no calculations. From 1981-1985, the numbers were reported in three charts (competitive leases issued that year, noncompetitive leases issued that year, and all other leases continuing that year) and tallied accordingly. From 1986 through 2005, the leases were reported in two charts (all existing competitive leases and all existing noncompetitive leases), requiring the tallying to the two totals.
- 58 U.S. Energy Information Administration, Department of Energy, “Overview of U.S. Legislation and Regulation Affecting Offshore Natural Gas and Oil Activity,” September 2005.
- 59 U.S. Energy Information Administration, “Overview of U.S. Legislation and Regulation Affecting Offshore Natural Gas and Oil Activity,” 4.
- 60 Ibid., 8.
- 61 Quoted by Ben Geman, “Offshore Drilling: Congress Expands OCS Access, steers royalties to Gulf States,” *Greenwire*, December 11, 2006.
- 62 For a complete list see: U.S. Fish and Wildlife Service, *Federal & State Endangered and Threatened Species Expenditures, 2004* (Washington, D.C.: USFWS, 2004), 101.
- 63 Fish and Wildlife Service, *Federal & State Endangered and Threatened Species Expenditures, 2004*, p. iii.

- 64 Randy T. Simmons and Kimberly Frost, *Accounting for Species: The True Costs of the Endangered Species Act* (Bozeman, MT: PERC, the Center for Free-Market Environmentalism, 2004).
- 65 Ibid., 5.
- 66 Ibid., 6.
- 67 Ibid., 9.
- 68 Ibid., 10.
- 69 Ibid., 11.
- 70 Ibid., 13.
- 71 Data was drawn from the U.S. Fish and Wildlife Service's TESS database. The search involved selecting all species that were U.S.-listed, along with date listed, and scientific name. That search pulled up 1,596 records, from which all list candidates and de-listed species were removed from the dataset. Hence, this chart contains only active endangered and threatened status listings. It excludes listings that have been removed or that are still at the proposed stage to avoid overestimating the ESA's impact. Accordingly, it underreports the number of active listings for some years. Also, of note, some species were listed before the 1973 Act under a prior endangered species law—the 1966 Endangered Species Preservation Act. Those listings are included in the cumulative number for 1973 when the ESA took effect, since they formed the basis for the ESA list under the new law in 1973.
- 72 David Sunding, "Economic Impacts of Critical Habitat Designation," *ARE Update* 6, no. 6 (August 1, 2003), 7-9, www.agecon.ucdavis.edu/uploads/update_articles/v6n6_3.pdf.
- 73 U.S. Fish and Wildlife Service, USFWS Threatened and Endangered Species System (TESS), http://ecos.fws.gov/tess_public/StartTESS.do, accessed June 11, 2006.
- 74 This chart counts each designation for a species (some have more than one designation announcement) when such designations occur in different years. When there was more than one designation announcement in a single year for a particular species, it is considered a single designation.
- 75 "Norton Has Harsh Words for Enviro, Critical Habitat Lawsuits," *Greenwire*, May 20, 2005.
- 76 Center for Biological Diversity, *Reagan Redux: A Review of the Bush Critical Habitat Record*, July 1, 2003.

About the Author

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