The folks over at Pacific Legal Foundation’s (PLF) blog have been nice enough to post about an article that I co-authored with Berry Brosi at Emory University (paywall protected, unfortunately!). The article investigates the role that citizen petitions and citizen suits play in the process of listing species for protection under the Endangered Species Act (ESA). We of course appreciate the publicity (any publicity is good publicity, right?). But at the risk of sounding churlish, I think that PLF seriously misread our article.

First, a little background. The ESA provides significant legal protections for species that are identified as endangered or threatened. That means that the process by which species are identified for protection (the listing process) has potentially high stakes. The ESA also allows anybody to file a petition asking the relevant agencies to list a species for protection under the Act; the ESA sets tight deadlines for the agencies to respond to the petitions, and allows anybody to sue the agencies if they miss the deadlines or reject a petition.

One question is how well citizens do in identifying species at risk that warrant protection under the Act compared to the agencies (which can list a species for protection on their own initiative as well). We compared species that had been listed for protection under the Act as a result of citizen involvement with those that had been listed by the agencies on their own initiative. We found that, on average, the citizen-initiated species faced at least as high, if not higher, threats as agency-initiated species. Thus, under the terms of the Act (which states that the *only* factor to be used in making listing decisions is the degree of threat a species faces), citizens did as well or better than agencies in identifying species that warrant listing.

The folks at PLF noted this conclusion, and even appeared to agree with it. But then they went a little further:

> I suspect that even the authors would recognize that the ESA petitioning process often leads to “pretextual listings,” meaning that the species is being protected not to preserve some anthrocentric value but rather to impede an productive human activity. I’m quite certain that Congress did not intend the ESA to be the chosen tool of NIMBYS and anti-growth groups, and yet such a fate has befallen the Act, in large measure due to the petitioning process that these authors laud.

I can’t speak for my co-author, but here’s my response to PLF: No, I don’t recognize the concept of “pretextual listings.” And in fact, our article shows that the concept really doesn’t exist (or doesn’t have any meaning).

First, it’s important to note that the ESA says *nothing* about the motives of the actors who seek to list species under the Act. There aren’t good motives or bad motives. All the Act focuses on is whether a species warrants protection because of the threats to its existence. So while PLF may be “quite certain” about their statement, I don’t think they can point to any language in the Act that would support it.

Second, even if some groups use the ESA to “impede a productive human activity,” the conclusions of our study indicate that this is a good thing, consonant with the purposes of the Act. It is true that we found that the protection of citizen-initiated species is more likely on average to conflict with human development projects. But we also found that species whose protection conflicts with human development projects on average face higher threats than species whose protection does not conflict with development. And this makes perfect sense: One of the primary reasons that species become endangered or extinct is development of their habitat for “productive human activities.” So unless you want to write off a large chunk of the endangered species in this country, you’re going to “impede productive human activities” to some extent at least.

Thus, far from interfering with the functioning of the Act, groups seeking to pursue “pretextual listings” are, in fact, making the ESA work better. Our data show that these citizen petitions and suits are resulting in the listing of species that face serious threats – in large part because of the conflict with “productive human activities.” And whether you disagree or agree with the motives of groups pursuing allegedly NIMBY goals, those motives inspire the groups to identify and list species that warrant protection under the Act.

I’m a little surprised by PLF’s focus on motives here. After all, one of the strengths of a free market economic system is that we don’t care about the motives of individuals (whether they are altruistic or selfish, focused on money or not), so long as the motives of those individuals are channeled in a productive way (through incentives to undertake socially-productive activities). That is, in many ways, how we found the citizen petition and suit process to work in the context of ESA species listing decisions.

Now of course you could believe that we’re spending too many resources on protecting endangered species. PLF has taken that position before in its blog. And if you believe that, then the citizen petition and suit process is problematic because it results in the listing of more species. But I encourage PLF to make that argument directly, rather than advancing a meaningless argument about “pretextual listings” that we have already rebutted in our article.