



MANAGED TO EXTINCTION?

A 40th Anniversary Legal Forum assessing the 1971 Wild Free-Roaming Horses & Burros Act

TRANSCRIPT: ROSS MACPHEE, Curator, Division of Vertebrate Zoology, American Museum of Natural History (AMNH)

Introduction

My comments refer not to the 1971 congressional act, which other panel participants will speak about, but instead to **Executive Order 13112**, released on February 3, 1999. In a number of ways this EO is very relevant to everything that we're going to talk about tonight. This is, in effect, the federal government's statement regarding what an invasive species is and how an invasive species can be recognized. It has been used as one basis for the BLM's policy on wild horses because—in the BLM's view—it offers grounds on which these horses can be considered invasive rather than native.

The EO contains a number of definitions; I will review only a few:

"The purpose of this order is to prevent the introduction of invasive species and provide for their control to minimize the economic and ecological and human health impacts that invasive species have caused."

According to the definitions in the order (as revised by the "2008-12 report" of the National Invasive Species Council and its precursor body, set up under sec. 5c of EO) an invasive species is: *"a species that is non-native to the ecosystem under consideration and whose introduction into a particular ecosystem causes or is likely to cause economic or environmental harm or harm to human health."*

By contrast, a native species means, with respect to a particular ecosystem, "a species, other than as a result of introduction, historically occurred or currently occurs in that ecosystem."

Now, why is any of this relevant to the issue of wild horses and burros?

According to the publicly accessible BLM website, which is meant to be read by any citizen and presumably therefore unquestionably accurate, there are a number of “myths and facts” about WH&B.

Among these is the following: (italicized content from BLM website)

Myth #11: Wild horses are native to the United States

Fact: This claim is false.

American wild horses are descended from domestic horses, some of which were brought over by European explorers in the late 15th and 16th centuries, plus others along that were imported from Europe and were released or escaped captivity in modern times.

Further, according to the BLM, “these horses have adapted successfully to the Western range, but biologically they did not evolve on the North American continent. The disappearance of the horse from the Western Hemisphere for 10,000 years supports the position that today’s wild horses cannot be considered ‘native’ in any meaningful historical sense.”

Now I put it to you that every clause, every sentence about the foreignness of horses in the passages I just read is palpably wrong, demonstrably wrong, not only according to people like me but also to anybody who has any intimate understanding of the history of horses on this continent.

Now let me just put this in a nutshell. The family Equidae evolved on this continent; it is as American as anything you could possibly imagine. That was 55 million years ago. Progressive evolution occurred thereafter, eventually culminating 1.8 million years ago when a horse very like modern horses evolved. With a very high statistical probability, domestic horses, **The Horse**, evolved from that precursor and spread throughout North America and then across land bridges to Eurasia and South America.

Scientifically, the BLM’s comment that **The Horse** did not biologically evolve on the North American continent is wrong, and therefore the additional comments about **The Horse** being foreign to the Western ecosystem is completely irrelevant.

It is additionally irrelevant to say that today's ecosystem in which today's mustangs and feral horses survive is somehow completely different from what was here 10,000 years ago. That is simply not true. The conditions that characterize this ecosystem that you think of as normal, the one you are in now, in this present warm period that's getting warmer all the time, have come and gone repeatedly throughout the past 2.4 million years. This period encompasses the Ice Ages, during which warmer and colder periods oscillated with substantial frequency.

To say that there is a “Western ecosystem” that is in place now that is completely different from the one in existence 10,000 or more years ago is a red herring. Of course it is different! And it was different from the one at 20,000, and all the way back as far as you want to go.

Yet virtually all of the species that anyone would regard as “native” to North America today went through these very same alternating warm and cold periods with no trouble because they were in fact *adapted* to the roller-coaster climate system that has prevailed here throughout the Pleistocene.

So horses are of course adapted to this place, because this place has been a roller coaster with respect to its ecosystem over this whole period. **So if nothing else happens out of this discussion, what I want you to take home is the idea that scientifically, the idea that horses are an invasive species is utterly wrong.** Thank you.

Ross MacPhee (Panel discussion):

A native species by definition cannot be invasive. So rather than start with competing interests as between humans, horses, and commerce, the first question I want to ask is what would that Western ecosystem have been without people, in particular white people, during the last 500 years? There would have been enormous herds of bison, for one thing. These same family ranchers who have been competing with horses would now be competing with bison if they were still here in large numbers. Would they be managed in the same way we allow horses to be managed? I would say no, because most people regard bison as a native species even though it has only occupied North America for the past 125,000 years. But horses are seen in a different category: they are invasive species, like zebra mussels or Med fly; and therefore they have no rights.

I want to point out something, that sagebrush that's being passed around at the moment, you know that that's an invasive species. Sorry John Wayne, it's a Eurasian species brought over and it's characteristic of the West. It's characteristic of the West.

What we are in now is a novel ecosystem; we've been altering it at an incredible rate (as Dick just pointed out) for a very long period of time. Thanks to our presence and the modifications we have introduced over centuries, in a sense it is not what it was before. OK, under BLM understanding does that mean that every species that is native here now should be disenfranchised because they're not in their original ecosystem?

You can see how these wrongly-formulated, supposedly scientific interpretations keep biting their tails. And my point here is let's start with something that can be fixed - because lots of things will flow from that. If it can be fixed that the horse is a native species, then it has to be treated like wolves, like bison, like whooping cranes, like all of

the things that we consider to be a part of the American landscape, long before we came along.

That will have an impact. There will be certain things that are no longer possible to do, because you can't treat native species as we treat horses nowadays. There are competing rights as between horses and people, I accept that. But there are rights that should accrue to horses as native species that they don't have at the moment. In allocating and weighing rights, all sides need to be at the table, sitting at the same height. At present, **The Horse** is down here (points down low) and everybody else with different kinds of rights are up here (points up). Now that, to me, is the fundamental problem.

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New York University (NYU) Environmental Law Journal (ELJ), NYU Environmental Studies Program and the NYU-SCPS M.A. Program in Graphic Communications Management and Technology jointly host *MANAGED TO EXTINCTION?* - A 40th Anniversary Legal Forum assessing the 1971 Wild Free-Roaming Horses & Burros Act (WFRH&BA).

Moderated by **Dale Jamieson**, Professor of Law and Director of the NYU Environmental Studies Program, this panel discussion took place at 6 p.m. on Wednesday evening, November 16th, 2011 at NYU School of Law, Vanderbilt Hall, 40 Washington Square South.

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CONTACTS:

Please direct any queries regarding the event transcript contents above to:

Ross MacPhee, PhD
Curator
Division of Vertebrate Zoology
American Museum of Natural History
New York NY 10024
macphee@amnh.org

Please direct general queries regarding the event to:

Jan Liverance
jg2951@nyu.edu