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## Russia's Protected Territories: *Idealism Hard-Pressed to Survive in Consumerist Times*

By Elena Agarkova

**L**AKE BAIKAL –Russia has one of the largest and most important networks of protected natural areas in the world. The country stretches across one-sixth of the world's land area, and has one-fifth of the world's forests. A wondrous kaleidoscope of landscapes and ecosystems weaves across *eleven* time zones (more than any other country in the world): boreal, temperate coniferous and broadleaf forests, montane and flooded grasslands, alpine meadows, deserts and xeric shrublands,<sup>1</sup> shrub and grass steppes,<sup>2</sup>

cold flat tundra, and even fertile subtropics.<sup>3</sup> Despite plenty of difficult times, Russia's protected areas have played an enormous role in preserving its rich biodiversity. The enthusiasts who worked in the protected areas system maintained ties with their foreign colleagues and, physically separated from the Kremlin overseers by thousands of kilometers of wilderness, often enjoyed a degree of freedom not available in other spheres of Soviet life. The federally protected areas system survived drastic territorial cuts under Stalin and



*A spectacular autumn day on the Holy Nose peninsula in Zabaikalsky National Park, on the eastern shore of Lake Baikal.*

1 Biomes characterized by or requiring only a small amount of moisture.

2 As I wrote in one of the previous newsletters, steppe, or an extended treeless plain with a semiarid continental climate, comes from a Russian word step'. It's similar to North American western prairies, except prairies have tall grasses whereas short grasses dominate the steppe. Russia's steppe provided the country's best farmland, because of its predominance of rich black earths. Between 1928 and 1940, the Soviets converted most of the western steppe to state and collective farms.

3 Russia's Krasnodar region, located on the Black Sea, has temperate Mediterranean forests, lush orchards, vineyards, and rice paddies.



of a zapovednik. A unique form of nature reserve, a zapovednik serves nature above all other goals. It offers the strictest kind of protection to its non-human inhabitants and keeps humans, with the exception of scientists and researchers, out. "Zapoved", the root of zapovednik, means "commandment" in Russian. The adverb "zapovednyi" means something reserved, forbidden, secret, or dear. The word zapovednik appeared in Russian around the 10<sup>th</sup> century, and even then it already referred to conservation or protection of a certain territory or part of nature from unreasonable use. The earliest nature protection in pagan Russia had a spiritual underpinning. Ancient Slavic tribes protected "shaman" forests, places of pagan worship, and considered oaks sacred. In medieval times nature conservation took on a more commercial aspect. Feudal landlords, Russian counts and later emperors began to act as good managers, protecting forests and steppe as hunting grounds, sources of construction material, food, and fur. Peter the First passed a law creating protected, or "zapovednyie," areas and even "zapovednyie" trees (after cutting ancient oak forests to build two hundred ships for Russia's first fleet). The punishment

Khrushchev, enormous budget cuts of the 1990s, and endless reshuffling of governing entities. Today the main question the system faces is whether it can survive in the post-Soviet Russia's market economy.

Several types of "specially protected natural territories," with different degrees of wildlife protection, exist in Russia. These include zapovedniki (plural of "zapovednik"), national parks, zakazniki, or special purpose preserves, wildlife sanctuaries, nature monuments, and different types of forest reserves. The federal government establishes zapovedniki and national parks. All other types of protected areas exist at both federal and regional levels. Zakazniki present a flexible form of nature protection since they are established for a particular time period and purpose, for example, to protect a rare colony of birds or plants in need of recovery. Any human activity on the territory of zakaznik can be limited permanently or temporarily, if it contradicts a zakaznik's purpose or harms the ecosystem at issue.

The most remarkable and idealistic notion that Russian pioneers of nature conservation put forward was that

for breaking the law was death. Scaffolds stood on every other kilometer in both directions from Peter's new capital, Petersburg. The czar personally ordered raids on peasants who stole timber from "his" forests, and once ordered that every tenth person of the ones caught be put to death. Catherine the Second created protected forests to save the best trees for the royal fleet. The first state zapovednik in Russia, the Barguzinsky nature reserve on the northeastern shore of Lake Baikal, was established in 1916 as a "sable reserve." The Tsarist government wanted to save the rare Barguzin sable, highly valued for its beautiful black fur, from disappearing. The Bolsheviks, who came to power a year later, continued to develop the system of zapovedniki, with a particular emphasis on prohibition of any resource use.

By the end of 19<sup>th</sup> century Russian conservationists already put forward a radical idea that certain territories were so unique, so important, that they should be protected for their own sake. This zapoved of complete non-interference by humans in true wilderness goes back to the spiritual, pagan connection to nature. The conservationists made the idea more palatable to the Soviet government and the

public by giving it a scientific justification. Untouched, set-aside natural areas would serve as outdoor laboratories, providing a control baseline for “objective” research.

But even allowing such benefit to humanity, the idea of a zapovednik presented a real limitation of man’s economic desires. One striking aspect of the history of Russian protected areas history is that this utopian idea succeeded (to a certain extent) in the materialistic Soviet Union.<sup>4</sup> A strictly protected scientific nature reserve became one of the few spheres in which human beings did not subjugate and torture nature for immediate material needs. This happened in a country where everything was supposed to serve the Soviet state (under the guise of serving the average Soviet citizen), a country whose top managers authorized draining the Aral Sea (the fourth largest inland sea in the world) to irrigate cotton fields in Central Asian deserts, sprayed DDT long after other countries banned it, built schools with radioactive materials, and planned to turn its north-running rivers around, for more desert irrigation. The scale of Soviet Union’s crimes against nature and its own people prompted some observers to call the country’s collapse in the early 1990s “death by ecocide.”<sup>5</sup>



*Zapovedniki traditionally did not allow tourism. But in places like Baikal, one doesn’t have to go to a zapovesnik to find true wilderness. Here, a trail-building expert from the U.S. Forest Service assesses a “trail” in the Zabaikalsky national park, located directly south of the Barguzinsky zapovednik.*

In this context Russia’s system of protected natural areas and its role in preserving North Eurasian biodiversity is remarkable. Russian scientists strove to set aside entire ecosystems, to not only preserve rare species or unique habitat, but also ensure that these nature reserves represented a wide diversity of natural communities. Today Russia has 101 federal zapoveniki and 40 national parks, which occupy a territory of 41 million hectares, or 101 million acres.<sup>6</sup> Russian zapovedniki offer nature the highest level of protection found anywhere in the world. The history of zapovedniki, their crises and successes during the Soviet Union years, and zapovedniki’s current problems, deserve a separate discussion in a different newsletter.

Even though Russian conservationists of the 19<sup>th</sup> cen-

tury took inspiration from the creation of Yellowstone National Park in the U.S. in 1872, Russia’s first national parks appeared only in 1983. Russian national parks protect and conserve natural areas and objects of ecological, historical, and aesthetical importance. The parks permit a variety of uses, including environmental, educational, recreational, cultural, and scientific. The territory of a national park may be subdivided into several zones with different degrees of wildlife protection, such as a zapovednik zone, tourist and recreational areas, and sometimes areas of traditional land use (by native ethnic minorities). Some Russian protected-areas experts argue that a park’s main function may differ depending on its location. Whereas national parks in-

4 Communism, or its practical manifestations (consider modern China), are not inherently anti-consumerist. One of Karl Marx’s most famous dictums states, “From each according to his abilities, to each according to his needs!” Soviet functionaries’ vision of Communist utopia was limited to a society of material abundance and pleasurable labor. Khrushchev, for example, wanted to show communism’s superiority over the West by outproducing it. In this race against capitalism, nature – and the Soviet people’s health — were only means to an end.

5 See Murray Feshback, “Ecocide in the USSR: Health and Nature under Siege.”

6 A hectare equals 10,000 square meters, equivalent to 2.471 acres.



*The Barguzin valley, on the border of Zabaikalsky National Park, used to have one of the biggest and most profitable state farms (“kolkhoz”, an abbreviation of Russian words “collective/common/joint” and “property”) in the region. The kolkhoz went bankrupt in the 1990s, and almost all young people left the valley’s villages for work in big towns. Last year my friend and I stayed at her aunt’s house in the valley. The aunt told us she keeps trying to get up the courage to leave her animals and join the rest of her family in Ulan-Ude. She fed us the best milk and sour cream I’ve ever tasted.*

mote wilderness areas work to protect existing ecosystems in their natural state, parks in developed areas should balance recreation, conservation of historical and cultural objects, and economic development of their region. Needless to say, such balancing may be hard to achieve as national parks administrations face conflicting pressures.

environmentalists over its Sochi plans. The government already changed the law, re-zoning and re-partitioning the park to allow construction of Olympic facilities. One of the main questions is whether private individuals illegally used federal re-zoning of the park’s territory to construct

One of the two national parks created in 1983, Losinyi Ostrov (“Moose Island”) is located on the territory of Moscow and the Moscow region. The park’s territory used to serve as traditional hunting grounds for Russian tsars and aristocracy. In 2006 Yury Luzhkov, the mayor of Moscow whose wife runs a multi-million dollar construction business, petitioned the federal government to cut the park’s territory by 150 hectares. The mayor proposed to use this land for part of a highway circumventing Moscow, and for a villa community. The federal government refused the mayor’s petition four months later.



*The kids who live in the Barguzin area manage to find entertainment even in a puddle.*

Now environmental groups claim that the federal government will destroy the integrity of the other national park created in 1983, nearby Sochi, a popular Russian resort city on the Black Sea. Since winning the bid to host the 2014 Winter Olympics, Russia’s government has repeatedly clashed with

private cottages and hotels. However, it appears that some dialogue between the government and the environmental groups has begun regarding propriety of the park's rezoning.

In theory, the national park's administration should be part of the discussion of any economic activity that takes place on its territory. Reality is often different. In my previous newsletter I described the frustrating situation in which the administration of the Pribaikalsky National Park (PNP) finds itself with respect to the federal government's plans to create a special economic zone in Bolshoye Goloustnoye. This village is technically located on PNP's land. The problem is that a national park does not get control over agricultural lands (in contrast to its forest lands) that may be included within its territory. Even though the

national parks' charter requires private agricultural land-owners to obey the park's regulations, no enforcement mechanism exists.

The past two decades have been especially difficult for Russia's protected areas. With the collapse of the Soviet Union the protected areas system lost a relatively stable source of funding. As inflation increased rapidly in the early 1990s, zapovedniki lost more than 90 percent of the real value of their budgets (in comparison to 1989). Their finances never recovered to Soviet levels. By the middle of the '90s, zapovedniki employees earned salaries significantly below minimum subsistence levels, even though park managers spent the majority of their budgets on wages. The situation has not improved much. The federal government does not seem to consider protected areas



*(above) The Barguzin valley lies in the foothills of spectacular mountains, where the Zabaikalsky National Park starts. (right) Ust-Barguzin, another village bordering the Zabaikalsky National Park, benefits from its location. Russian and foreign tourists frequently come to stay in the village homestays or camp on the sandy pine-covered dunes of the Barguzin Bay, the biggest bay on Baikal.*





*Autumn in the Zabaikalsky national park: a classic view of the Barguzin bay and the Holy Nose peninsula.*

to be one of its top priorities. Instead of focusing on their main mission, each zapovednik and national park faces pressure to become a commercial unit in order to survive in Russia's capitalist economy. Cash-strapped nature reserve administrations begin to look at tourism, formerly not just forbidden but unthinkable in a zapovednik, as a potential source of income. National parks favor timber interests over conservation needs and territory management.<sup>7</sup>

Recently I visited the Zabaikalsky National Park (ZNP), one of the three national parks in the Baikal region, located on the eastern shore of Lake Baikal. Its director, Vladimir Melnikov, talked to me about the challenges ZNP faces.

Not surprisingly, ZNP's main problem lies in the constant lack of funds for daily operations. The park has about 67 people on staff, for a territory of 269,000 hectares (664,430 acres). According to Vladimir, the park's federal budget is about 10 million rubles, or less than US\$400,000. Federal money covers salaries but does not pay for replacement of the park's deteriorating vehicle fleet or further development of the park's programs. The park's only dump truck is 20

performing selective logging but, according to the director, they don't do it out of principle. A group of American and Canadian national park specialists who visited the park in the early '90s inspired them to become a wild nature park. "We're thankful to those experts for their advice and



*ZNP rangers rely on old motor boats to chase after the many poachers who come to the fish-rich Chivyrkuy Bay.*

years old, even though it's supposed to last only five. This is the truck the park used to remove about five tons of garbage each summer season from the Holy Nose peninsula, a popular tourist area, until the truck broke down.<sup>8</sup>

The park earns about 2 million rubles (US\$80,000) a year on its own, from entrance fees. Vladimir says, "That's the money we live on." Nonetheless, the director feels it's doing better in the past four or five years than in the past, especially in the '90s.

The park could earn additional money from its natural resources, by issuing for hunting licenses and

<sup>7</sup> Russia's forests used to run in an endless belt of pristine wilderness. This belt now consists of fragments of former glory in the European Russia, but large unbroken pieces of ancient forests still exist in the mountainous areas of Altai and Tuva in Southern Siberia, in the northern parts of Eastern Siberia and the Russian Far East, and in Kamchatka. Approximately 289 million hectares of large, intact forest landscapes remain in Russia. Out of those, only 14 million hectares, or five percent of the intact forest landscapes, belong to federally protected natural areas.

<sup>8</sup> Buryatia's new president made news last year when he announced his proposal for dealing with the garbage left behind by "wild" tourists. He wants to sell Baikal's shoreline into private hands. This plan would provide Buryatia with some short-term cash flow – and close off most of public access to the Lake. No one in the administration is looking into the possibility of creating a governmental system of monitoring and enforcement, or giving additional funds to the existing structures.

that is the path we decided to take. It means as little human intervention into nature as possible."

But the realities of life force the park to make exceptions. "It's impossible to completely stop fishing in the park because the territories that ended up in our borders, Chivyrkuy and Barguzin bays, have been traditional fishing grounds for at least 200 years. Of course we cannot completely forbid it because that would be devastating to locals." The park gives out annual licenses to registered fishing cooperatives from local villages, based on scientific estimates of fish stocks. That's not enough for locals. There is not much wildlife poaching on the park's territory, but illegal fishing is huge. "It's impossible to change their minds," says Vladimir. "Barguzin and fish are one and the same. The first question anyone asks a person from Ust-Barguzin is about fishing." Even during the Soviet Union, there were two state-run fishing collectives and a fish cannery in Ust-Barguzin.

So fish poaching continues despite the park's efforts at fining offenders. The fine for fishing omul, a Baikal endemic, out of season is 250 rubles (US\$10) per head, but on the territory of the park the fine increases to 750 rubles. I ask if the locals pay the fines. "Yes, sometimes! But nowadays everyone is smart; it's hard to catch them." Vladimir laughs somewhat sadly. "The biggest problem is Chinese nets. They flooded the market, not just here, but all over the country. The problem is that they are very cheap. Back in the old days you knit the net yourself and you took care of it. If the fishing patrol confiscated it, you came to ask for it, paid the fine, did anything to get it back. And under the law we had to return the net to the owner after he paid everything. The fishermen valued the nets; there weren't that many



*Legal fishing crews work in the Barguzin and Chivyrkuy bays along with poachers. Sometimes a fishing crew with a valid fishing license breaks the law by taking extra or staying beyond the terms of the license.*

of them. Today a net costs maybe a hundred rubles. So if they put it in, and a patrol comes by and confiscates it, the fishermen deny it's theirs. I'm here to just pick some berries, or on vacation, they say."

The park has no means of proving that the net indeed belongs to a particular fisherman. Yet another problem cre-

ated by cheap Chinese nets is the fact that some fishermen leave nets in the water forever. "If the person understands what he's doing, if he's conscientious, he'll come back and take the net out. But some, especially younger ones, don't understand the harm. If a strong wind prevents them from taking the net out, they just leave it there. So the fish keep getting stuck in the net and keep dying. The stench from some of these is terrible. We've taken out nets with 100 kilograms of dead fish and more." The park does not see a ready solution.

Yet another complication is that under federal rules, the park must keep all confiscated nets for a year or until the owners claim them. Vladimir says that after realizing they simply had no space in the park's warehouse, he simply wrote a decree authorizing his inspectors to destroy Chinese nets on the spot. But the prosecutor's office didn't agree. The nets are "evidence." "So now I have to abolish the decree and start lying. I'm not going to make my staff collect these nets."

Vladimir says that before the Buryatia prosecutor's office always helped the park, but now the relationship has deteriorated. Last year the prosecutor sued him for charging admission, saying it's illegal and going as far as to claim that the practice "infringes human rights." The park



*One of the local fishermen also gives rides to tourists to make a little extra cash.*

charges 50 rubles a day (US\$2) per person. "It's common practice all over the world. We get 2 million rubles a year from entrance fees. If we logged forest on our territory, we would get at least 10 million rubles a year, and that would be legal. But charging a fee for entering the park — the fee that covers removal of garbage from tourism — that's illegal." Last year the park won the case on the local level, in the Barguzin court, and on appeal in the Supreme Court of Buryatia. But the prosecutor did not let the case rest there. Vladimir is expecting a visit from the Ulan-Ude office tomorrow. The prosecutor's office is looking into how the park spent the money raised from

entrance fees for the past three years. "The way I understand it, they'll be looking for any infractions, for any grounds to prevent us from charging entrance fees. Several other national parks stopped charging admission because of similar lawsuits. I guess our prosecutor cannot come to terms with the fact that they lost." In his papers, the director has a 1991 decree from Buryatia's government specifically allowing him to charge admission fees.

Vladimir brings up another example of the prosecutor's work. Last year poachers set fire to the house of a senior inspector. (Such violence is extremely rare, he hastens to reassure me.) The inspector's wife and his little child were in the house; luckily, they woke



*Remnants of the fishing season on the Barguzin bay, on the ZNP's territory.*





*A ZNP ranger, a friend of mine, used three of his summer vacations to build and install new gates for his house. He cannot afford to hire carpenters on his national park salary.*

up in time. "At first there was a lot of noise and hullabaloo, but then the case died down." The park asked federal and local authorities for financial help. The federal ministries turned down the request immediately. Last month one of the local agencies finally came up with 30 thousand rubles (about US\$1,150). "Can you comprehend this? His house burned down, and they are giving him 30 thousand rubles. Can you rebuild a house with 30 thousand rubles? In Moscow one square meter costs about US\$6,000. Perhaps the prosecutor should occupy himself with cases like this instead of looking for infractions on our books."

As for the garbage problem, the park now faces a curious dilemma. The park used to collect garbage from passing ships. "But then all ships started heading to the park, because it's impossible to unload this garbage anywhere else. You can either dump it on the shore, or you can take it here. So the captains remember that the Zabaykalskii National Park collects garbage — and they decide to bring

it to us." On the one hand, it's good to hear that local captains are taking garbage disposal seriously; on the other, the park has no capacity to dispose of all of Baikal's waste. "Our statistics show that each year, the number of visitors doesn't increase that much, but there is more and more garbage." Since federal money doesn't pay for garbage collection services, the park covers these expenses from its admission fees.



*Vladimir Melnikov in his office.*

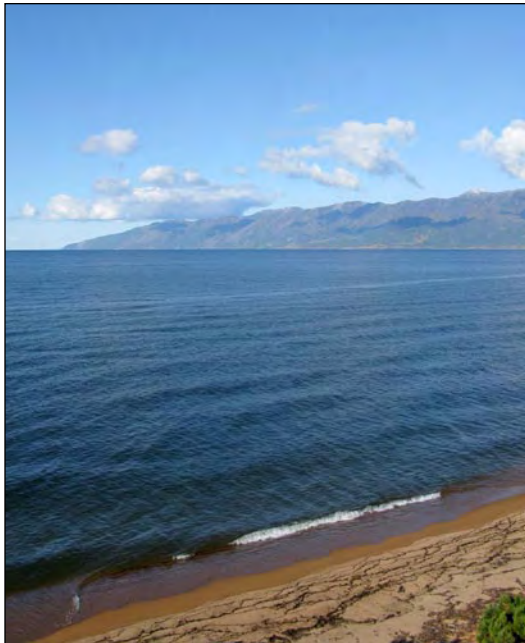
Aside from federal funds, the park sometimes gets private contributions, for example, from people who vacation on its territory. The US Fish & Wildlife Service gives \$5,000 in grants to the park almost every year. "With these grants, we can add some of our own money and replace a motorboat, buy a car or a snowmobile. That's about it for our sources of income."

At the end of the interview Vladimir gets interested in my recorder. "It'd be great to give some of these to our inspectors to record their conversations with poachers." I wish I could provide



The ferry across the Barguzin river remains the only way to get onto the ZNP territory from the main road, which goes from Ulan-Ude to Ust'-Barguzin and then into the Barguzin valley. The ferry runs once an hour and cannot take more than 8-10 cars. It limits — some say as a matter of the park's policy — the number of tourists who can visit the park daily.

(right & below )After the ferry, tourists have to endure a two-hour ride on a bumpy sand road to the Holy Nose peninsula. The road passes by one of the most important bird reserves on Baikal, the Arangutai wetlands. If you climb a 30-something-year-old wooden tower, you get rewarded with a 360 degree panoramic view of both the Barguzin and Chivyrkuy bay.



(right) Cars constantly break down on the potholes of the road to the Holy Nose peninsula. Here we offer roadside assistance to some locals.

an i-Pod to each one of the park's inspectors. At the end I take a picture of Vladimir in front of the map of the park. He smiles optimistically for the camera.

Later on, when I talk to Vitaly Ryabsev, a vice-director of the Pribaikalsky National Park, he echoes many of Vladimir's statements. He estimates that Moscow finances about 50 to 60 percent of the park's minimal financial needs. "For us to function normally, to be able to buy new equipment and vehicles, the park's budget needs to increase three or four times over. It's been many years since we've received any money for construction or for our vehicle fleet. The wear and tear of our equipment approaches 85 percent. But if there are any problems, everyone blames the park. If there are forest fires, what is the park doing about them? But in the past four years the park has not received a single ruble from the federal budget for fighting fires! We get money for our hand-to-mouth salaries, and receive a little bit for absolute basics, gas, electricity, and rent." Vitaly says that the park's employees fight fires practically for nothing, whereas they are supposed to receive per diems and overtime wages for working nights or holidays. PNP is much more accessible than ZNP, and is a popular tourist destination. Vitaly blames tourists for the majority of forest fires on PNP's territory.

Enforcement of the park's charter and its main goal, nature conservation, does not come easy. Vitaly mentions that fines for poaching have not changed since perestroika times, or since the 1980s. "The fines for damage to endangered species are ridiculously small.<sup>9</sup> For example, the maximum fine for poaching a northern falcon, which fetches up to \$100,000 on the black market in the Russian Far East, is about 15 thousand rubles [less than \$500] if the crime happens on the park's territory. The fine is three times less otherwise. The falcon is almost free!"

"It's the same with other fines. If before we confiscated poachers' weapons, and it was almost impossible to get them back. Now you only have to pay 1000 rubles [about \$30] and you can get even the most expensive gun back easily and go back out the very next day." Vitaly asks

rhetorically, "What's the point of such anti-poaching measures? Every year we confiscate 30, 40 guns. They "return back to nature" the next week. Oh, and by the way, if previously the park kept these pathetic sums of money, starting this year they go into the federal budget. If before the park also kept the money from the trees cut down by local populations for personal use, and from land rent, now everything goes to the federal budget."

Vitaly proudly mentions that in the past couple of years PNP confiscated more illegal guns than any other national park. Many of these were rifled-barrel guns for hunting deer. "But this is a drop in the ocean." The park needs money for salaries, rangers' weapons, and transport. The park needs better federal laws. "What's the point of catching poachers if they just walk away?" In contrast to ZNP, which is hard to reach, PNP suffers from proximity to big cities and relatively good roads. "We get a lot of "visiting" poachers. Among them are "new Russians," local bureaucrats, policemen, prosecutors... Don't be surprised — in Russia a large number of poachers are law-enforcement personnel," says Vitaly. "They're big shots. No one has a right to stop them." Vitaly wonders whether the park's efforts to apprehend well-connected poachers may be tied to the fact that the park never receives any recognition for its work.

"The park's legal helplessness gets worse each year," says Vitaly. The problem is compounded by lack of enforcement mechanisms and the public's general disinterest in nature conservation. The pendulum has swung in a different direction and the idea that nature deserves protection for its own sake is no longer accepted part of the calculus.

I mention the snail darter controversy, a 30-year old landmark decision by the U.S. Supreme Court under the Endangered Species Act.<sup>10</sup> In *Tennessee Valley Authority v. Hill* the Court held that survival of a relatively small number of endangered fish required putting a halt to a virtually completed Tellico dam costing more than \$100 million.<sup>11</sup> Vitaly shakes his head, saying, "In Russia many facilities are built in the endangered species habitat, and there has been no precedent where a Russian court decided to halt

9 Russia lists its endangered and threatened species in a Red Book, which takes its name from the Red List of Threatened Species that the International Union for the Conservation of Nature and Natural Resources (IUCN) has been compiling since 1963. The species listing in the Red Book accords it limited automatic protection insofar as it creates a presumption of prohibition on procurement.

10 The Endangered Species Act of 1973 directs the U.S. Fish and Wildlife Service, a branch of the Department of the Interior, to maintain a list of species that are either endangered (in imminent peril of becoming extinct) or threatened (likely to become endangered in the near future). As Chief Justice Burger of the U.S. Supreme Court described in his background to *TVA v. Hill*, the ESA, "among other things, authorizes the Secretary of the Interior to declare species of animal life 'endangered' and to identify the 'critical habitat' of these creatures. When a species or its habitat is so listed, the following portion of the Act ... becomes effective. 'All ... Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter ... by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary ... to be critical.'"

11 The Tennessee Valley Authority began constructing the Tellico Dam in 1967. Five years later a University of Tennessee professor discovered a unique species of the darter. That same year Congress passed the Endangered Species Act of 1973 (the ESA or the 1973 Act). A year before President Richard Nixon himself called for more stringent legislation protecting endangered species. Two years after the snail darter's discovery the Department of Interior listed the snail darter as an endangered species, and declared the area of the Little Tennessee river which would be affected by the Tellico Dam to be the 'critical habitat' of the snail darter. When plaintiffs filed suit, asking the court to halt construction of the Tellico dam, the lower federal court refused, stating that it would produce an unreasonable result.

construction because of a rare plant or animal. The Sochi Olympics area is a prime example. The area is practically crawling with endangered species but, as we know, this did not stop the project's organizers."

Of course the story of the snail darter and the Tellico dam is more complicated than it appears. In some respects the dam resembles grandiose Soviet construction projects, built for the sake of building, with no consideration of quality or end results. If you are a law professor, you will likely view *TVA v. Hill* as one of the most important cases in the history of environmental law. If you are a former clerk to Chief Justice Burger who has the behind-the-scenes knowledge of the Supreme Court's deliberations, you will see *TVA v. Hill* as a case in which the judicial branch scolded the legislative for sloppy drafting.<sup>12</sup> *TVA v. Hill* may be an outstanding example of civic activism, a public citizen lawsuit by a small group of concerned individuals that made its way to the very top of America's government. If you are a right-wing conservative, you will likely see it as an example of regulatory idiocy and environmental extremism. Or you can also see it as a case where influential backers of a pork-barrel project, which made little economic sense, hijacked public consciousness by painting a caricature of the displaced farmers and law professors as leftist hippies; the media failed to report the real facts; and the president felt powerless to veto the project despite its economic record and the law.<sup>13</sup>

*TVA v. Hill* is important because in this case the highest Court of the United States endorsed the idea that it might not be appropriate to put a monetary value on a species. It made the notion that nature is priceless part of American public debate and popular culture. As the Court of Appeals said in its reversal of the lower court, "Whether a dam is 50% or 90% completed is irrelevant in calculating the social and scientific costs attributable to the disappearance of a unique form of life. Courts are ill-equipped to calculate how many dollars must be invested before the value of a dam exceeds that of the endangered species.

Our responsibility... is merely to preserve the status quo where endangered species are threatened, thereby guaranteeing the legislative or executive branches sufficient opportunity to grapple with the alternatives."

The Supreme Court agreed. In doing so it relied on the 'plain meaning' of the statute at hand, stating that it was clear from the ESA and its legislative history that Congress intended to halt and reverse the trend toward species extinction *whatever the cost*: "It may seem curious to some that the survival of a relatively small number of three-inch fish among all the countless millions of species [still living] would require the permanent halting of a virtually completed dam for which Congress has expended more than \$100 million... One would be hard pressed to find a statutory provision whose terms were any plainer than those in [Section] 7 of the Endangered Species Act. Its very words ... command all federal agencies 'to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence' of an endangered species or 'result in the destruction or modification of habitat of such species. ...' This language admits of no exception."

Following the Supreme Court's decision, Congress passed an appropriations bill with a rider exempting the Tellico Dam from the requirements of the ESA, to allow completion of the dam in 1979. The snail darter was transplanted to other rivers. Together with a relic population discovered downstream, this allowed the Department of Interior to change the snail darter's status from endangered to threatened.

Because the ESA spelled out such a black-and-white approach — saving endangered species no matter the cost — the statute became a powerful tool for the American environmental movement. The snail darter, along with the northern spotted owl a few years later, became one of the most infamous and vilified creatures in the history of the U.S. environmentalism.<sup>14</sup> The debate over the price of nature continued, and in 1978 Congress amended the

12 A couple of years ago I attended a lecture on *TVA v. Hill* by this former clerk, currently a professor of law at the University of Washington. He recalled that he convinced Chief Justice Burger to vote the way he ultimately did for two reasons. The Chief Justice disapproved of sloppily written laws (and saw the ESA as an overbroad statute because it failed to allow any exceptions). He also believed that it was up to Congress, not to the courts, to balance economic versus environmental interests: "Congress has spoken in the plainest words, making it clear that endangered species are to be accorded the highest priorities. Since that legislative power has been exercised, it is up to the Executive Branch to administer the law, and for the Judiciary to enforce it when, as here, enforcement has been sought."

13 The attorney who argued the case in federal courts described this in detail. "Ultimately the pork-barrel coalition in Congress, with a rider pushed onto an appropriations bill by Rep. John Duncan and Sen. Baker, overturned the ESA's protections for the darter [...] Before the rider vote, every Member of Congress was given a personal letter from Secretary of Interior Cecil Andrus, chair of the economic review ordered by Congress that had unanimously decided against the dam. But although every member knew of the Tellico Dam's economics, they also knew that the American public did not know, so the pork barrel was free to roll. And the president was told by his political liaison, Frank Moore, that he could not withstand the ridicule a veto would receive from the press and public opinion that viewed the snail darter as an economically irrational, environmentally extreme technicality." Zygmunt J. B. Plater, *Tiny Fish / Big Battle*, published in the *Tennessee Bar Association Journal*, April 2008, Vol. 44, No. 4, available at [http://tba.org/Journal\\_TBArchives/200804/TBJ-200804-coverStory.html](http://tba.org/Journal_TBArchives/200804/TBJ-200804-coverStory.html)

14 It is possible that President Nixon and Congress did not have a clear understanding of the ESA's implications at the time of its passage. The ESA drafters most likely had in mind a few thousand anthropomorphic species, whales, bald eagles, elk, whooping cranes — big, pretty animals that humans like and admire. But more than a hundred million species exist on Earth (insects comprising an inordinate amount of the Earth's fauna). Compelling arguments for saving all fungi do exist, from utilitarian (any given species may hold the clue to saving the humankind from yet another deadly disease), to spiritual (every species is precious, has a right to exist no lesser than that of its neighbor, and humans, stewards of the planet, have a moral responsibility to them all).



*Several years ago a Czech company rented land on the shore of the Holy Nose peninsula and tried to start a tourist camp. The business did not take off. The landlot is back on the market.*

law. Importantly, it created the Endangered Species Committee, also known as the God Squad. The committee has the authority to allow a species extinction by exempting a federal agency from the ESA requirements.

Notwithstanding substantial weakening of the law, the idealist presumption that every species has a right to exist remains as one of the underlying inspirations of the ESA. In that spirit, the statute prescribes steep penalties for knowing violation of the ESA, or trafficking in endangered species. The law allows assessment of a maximum fine of up to \$50,000 or imprisonment for one year, or both, and civil penalties of up to \$25,000 per violation. If only Russian environmentalists had these kinds of penalties in their arsenal (and could actually enforce them)!

Putting nature's right to exist against human freedom is an even more radical notion than limiting economic development because of a small fish. The ESA drafters and Russia's early conservationists lived on different continents in different centuries, but they spoke the same language. The universe does not exist solely for the sake of humans. Not everything should be for sale.

But is this idealist spirit going extinct in modern, capitalist Russia? The desire to make money, whether by cutting timber in zapovedniki and national parks, building

hotels and spas in fragile natural habitats, or dumping toxins into the world's largest lake, can at times appear limitless. "Endangered species are an empty sound to our administration," says Vitaly Ryabtsev. "No one talks about them. When I bring them up, people get taken aback — why am I talking about some nonsense when they are talking about real money?"

But this "real" money rarely trickles down, if at all. Just the other day I ran into an acquaintance who now works in the Barguzinsky zapovednik (as I mentioned earlier, it's the oldest zapovednik in Russia, established on the northeastern shore of Baikal in 1916 as a sable reserve). Svetlana said that the staff has not received any salary for the past two months, and zapovedniki have no budgets for 2009. They've been borrowing money to continue everyday operations.

The reason for the budget and salary delay? In January of this year the Kremlin transferred control of federal protected areas yet again, from the State Nature Protection Agency, to the Ministry of Natural Resources and Ecology. It was not an unexpected move, more of a formality since the Ministry already had de facto control over the protected areas. One would think that a bureaucratic shuffle should not affect the salaries of staff. But Russia's zapovedniki and national parks — and the environment — do not top the

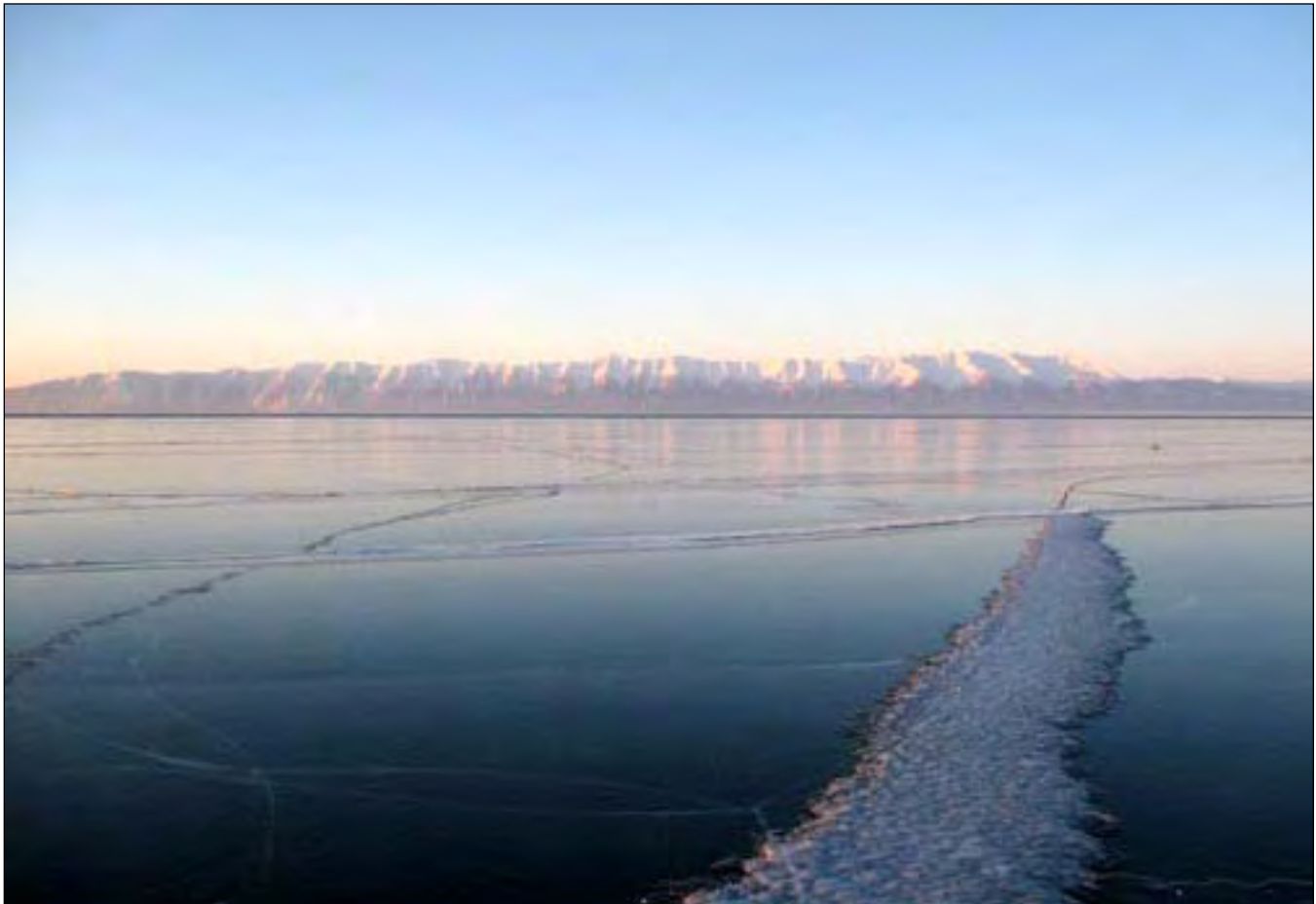


*If the administration of the ZNP fails to find new owners, what's left of the Czech tourist camp will follow the fate of ancient cities, disintegrating into the ancient wilderness.*

list of federal government's priorities. Even though the federal government created an environmental regulatory body, the Ministry of Ecology, in 1991, five years later Boris Yeltsin downgraded the ministry to state committee status (the federal Committee on Ecology). In 1999 Putin abol-

ished the committee altogether, folding its functions into the Ministry of Natural Resources. The MNR exists since the Soviet times to manage extraction of the country's oil and mineral resources. Putin's reorganization equaled giving the U.S. Department of Interior control over the E.P.A. and the Forest Service, or, as some Russians called it, putting an alcoholic in charge of a liquor shop. Official government disclosures show that in 2006, the minister of natural resources received \$435,600 in income, monthly. That sum is several times bigger than the annual budget of any of the protected areas.

How much longer will Russian protected areas work on the idealism of their underpaid staff? It will be tragic if the system, which survived World War II, Stalin's reign, and the collapse of the Soviet Union, succumbs to the new spirit of entrepreneurship. As my friend from the Barguzinsky zapovednik said, "It's not like the poachers stop just because our inspectors get no money for gas." □



*A view of the Holy Nose peninsula across the Barguzin bay in January. When Baikal "stands," or gets covered with first ice, the ice is completely see-through. Driving on it is an exhilarating — and terrifying — experience.*



# Current Fellows

## **Elena Agarkova • RUSSIA**

May 2008 - 2010

Elena will be living in Siberia, studying management of natural resources and the relationship between Siberia's natural riches and its people. Previously, Elena was a Legal Fellow at the University of Washington's School of Law, at the Berman Environmental Law Clinic. She has clerked for Honorable Cynthia M. Rufe of the federal district court in Philadelphia, and has practiced commercial litigation at the New York office of Milbank, Tweed, Hadley & McCloy LLP. Elena was born in Moscow, Russia, and has volunteered for environmental non-profits in the Lake Baikal region of Siberia. She graduated from Georgetown University Law Center in 2001, and has received a bachelor's degree in political science from Barnard College.

## **Pooja Bhatia • HAITI**

September 2008 - 2010

Pooja attended Harvard as an undergraduate, and then worked for the Wall Street Journal for a few years. She graduated from Harvard Law School. She was appointed Harvard Law School Satter Human Rights Fellow in 2007 and worked as an attorney with the Bureau des Avocats Internationaux, which advocates and litigates on behalf of Haiti's poor.

## **Eve Fairbanks • SOUTH AFRICA**

May 2009 - 2011

Eve is a New Republic staff writer interested in character and in how individuals fit themselves into new or changing societies. Through that lens, she will be writing about medicine and politics in the new South Africa. At the New Republic, she covered the first Democratic Congress since 1992 and the 2008 presidential race; her book reviews have also appeared in the New York Times. She graduated with a degree in political science from Yale, where she also studied music.

## **Ezra Fieser • GUATEMALA**

January 2008 - 2010

Ezra is interested in economic and political changes in Central America. He is an ICWA fellow living in Guatemala where he will write about the country's rapidly changing economic structure and the effects on its politics, culture and people. He was formerly the deputy city editor for The (Wilmington, Del.) News Journal, a staff writer for Springfield (Mass.) Republican and a Pulliam Fellow at The Arizona Republic. He is a graduate of Emerson College in Boston.

## **Suzy Hansen • TURKEY**

April 2007 - 2009

A John O. Crane Memorial Fellow, Suzy will be writing about politics and religion in Turkey. A former editor at the New York Observer, her work has also appeared in Salon, the New York Times Book Review, the Nation, and other publications. She graduated from the University of Pennsylvania in 1999.

## **Cecilia Kline • CENTRAL AMERICA**

January 2009 - 2011

Cecilia is a graduate of Georgetown University, Loyola University Chicago School of Law, and the University of Chicago School of Social Service Administration. In 2007 she began with Casa Alianza in Tegucigalpa, Honduras providing outreach for youth living on the street. As an ICWA Fellow she will write about youth-service programs from several Central American cities as a participant observer.

## **Derek Mitchell • INDIA**

September 2007 - 2009

As a Phillips Talbot Fellow, Derek will explore the impact of global trade and economic growth on Indians living in poverty. He has served for the past year as a volunteer for Swaraj Peeth, an institute in New Delhi dedicated to nonviolent conflict resolution and Mahatma Gandhi's thought. Previously he was a Fulbright scholar in India at the Gandhi Peace Foundation. He has coordinated foreign policy research at George Washington University's Institute for Communitarian Policy Studies and worked as a political organizer in New Hampshire. Derek graduated with a degree in religion from Columbia University.

## **Raphael Soifer • BRAZIL**

April 2007-2009

Raphi is a Donors' Fellow studying, as a participant and observer, the relationship between the arts and social change in communities throughout Brazil. An actor, director, playwright, musician and theatre educator, he has worked in the United States and Brazil, and has taught performance to prisoners and underprivileged youth through People's Palace Projects in Rio de Janeiro and Community Works in San Francisco. He holds a bachelor's degree in Theatre Studies and Anthropology from Yale University.

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