

Bush administration reinterprets species law

Officials say endangered wildlife will be helped, activists plan to sue

Gray wolves like this one in Wisconsin were cited by the Bush administration as an example of why its reinterpretation of the Endangered Species Act will help wildlife.

Jayne Belsky / Wisconsin Dept. of Natural Resources via AP

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GRANTS PASS, Ore. - Tired of losing lawsuits brought by conservation groups, the Bush administration issued a new interpretation of the Endangered Species Act that would allow it to protect plants and animals only in areas where they are struggling to survive, while ignoring places they are healthy or have already died out.

The opinion by U.S. Department of Interior Solicitor David Bernhardt was posted with no formal announcement on the department's Web site on Friday.

U.S. Fish and Wildlife Service Director Dale Hall, contacted in Washington, D.C., said the new policy would allow them to focus on protecting species in areas where they are in trouble, rather than having to list a species over its entire range.

That would make it easier to take the gray wolf off the federal threatened species list in Montana and Idaho, leaving it to the states to manage. And it would leave it listed in Wyoming, where the state has yet to adopt a protection plan that satisfies the federal government, Hall said.

"I think this will be a good tool from a biological standpoint," he said. "I think a lot of species might be affected in the future, especially species that are wide-ranging."

Activist: Policy is 'anti-wildlife'

But Kieran Suckling, policy director for the Center for Biological Diversity in Tucson, said the new policy was a sophisticated effort by the Bush administration to gut the Endangered species Act by ignoring the loss of species from their historical range, making it easier to deny endangered species listings.

If upheld by the courts, Suckling estimated the new policy would remove 80 percent of the roughly 1,300 species from threatened and endangered lists — because most species have at least one stronghold where they are doing well.

"It's just so clearly illogical and anti-wildlife that I can't wait to get this before a federal judge," Suckling said. "They are rewarding industry for driving populations extinct. Because as soon as you drive a population extinct (in a certain area) it is no longer on the table. It no longer counts toward whether a species is endangered."

Conservation groups have regularly gone to court to get the Bush administration to protect species after Fish and Wildlife denied petitions to list them. Protections for endangered species have stopped new housing developments, limited logging, cut off irrigation, and forced limits on fishing.

At issue is the language in the Endangered Species Act that demands the Secretary of Interior to list a plant or animal species as threatened or endangered if it is in danger of becoming extinct throughout all of its range, or a significant portion of its range.

Since at least 2000, Interior lawyers have gone to court claiming that a species could be listed based on a portion of its range only if disappearing from that portion of its range threatens its continued survival everywhere, Bernhardt said.

Bernhardt said Interior has lost eight out of the 10 cases where they have used that argument. The species involved were the flat-tailed horned lizard, gray wolf, Canada lynx, coastal cutthroat trout, green sturgeon, Rio Grande cutthroat trout, Queen Charlotte goshawk and Florida black bear.

"Lawyers should help their clients bat a thousand, and we're really below that here," he said from Washington, D.C.

Defining habitat ranges

The new policy defines the range of a species as the geographic area where it currently can be found, and not places where it once could be found — such as areas where destruction of habitat has driven it out.

It also gives the secretary of Interior and Fish and Wildlife broad discretion to define what a significant portion of the range is, and allows them to consider the biological significance of an area, not just the size of it.

Hall said they would not review the some 1,300 species listed as threatened or endangered, but would evaluate petitions brought by the public.

"If someone feels like (listing a species) throughout their range is too much, they can petition us to just look at the significant portion," he said. "We intend to use this as a move forward."

Suckling said courts have consistently ruled against the Bush administration, saying that if a species is imperiled in part of its range, it must be listed as threatened or endangered across its entire range.

"Say I'm an irrigator," **Suckling said**. "Say there are 10 fish in a stream. That's a terribly low number. Someone looks at that and they would say the fish is imperiled. I'm going to go kill those 10 fish. Now they are part of the historical range, not the current range. It doesn't count.

"This policy will do more to promote the purposeful killing of imperiled species than anything else this administration has ever done."

The opinion of the Interior Department's solicitor's is online at www.doi.gov/solicitor/M37013.pdf.