

U.S. Abusing Law to Get Species Off Protected List?

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Francis Eatherington caught her first glimpse of the elusive Columbian white-tailed deer near a meadow in Douglas County, [Oregon](#).

The conservationist heard a rustle of movement, then saw a flash of the deer's cinnamon-brown coat and white tail retreating into the brush.

That was nearly a decade ago. Today the deer in Douglas County have rebounded from 2,500 in the early 1980s to more than 6,000 individuals. In 2003 their longtime protected status under the U.S. Endangered Species Act was revoked.

But many conservationists don't believe delisting means the population is fully recovered.

"[It] doesn't really mean it's out of danger," Eatherington said, citing potential habitat loss and disease.

Genetic Distinctions

Columbian white-tailed deer in Oregon, [grizzly bears in Yellowstone National Park](#), and now [gray wolves in the northern Rocky Mountains](#) are just three species protected by U.S. law for decades that have been delisted in recent years.

Critics say the federal government is placing these and other animals in peril by improperly using a little-known provision of the act that classifies groups as distinct population segments (DPSs).

The designation, which was added to the law in 1978, allows officials to make decisions on whether groups within a species gain threatened or endangered status. It is meant to help preserve important populations that are often crucial reservoirs of genetic diversity.

The DPS rule is used for a species or subspecies that is markedly separate from other populations by physical, physiological, or behavioral factors and that is also significant to the long-term survival of the overall population.

For example, while the Columbian white-tailed deer in Douglas County are no longer protected, a second DPS in the Lower Columbia River region remains on the list.

When DPSs were established, Congress directed federal agencies to interpret and use the classification "sparingly and only when the biological evidence indicates that such action is warranted."

But many conservationists and environmentalists say federal agencies are increasingly using DPSs to add fewer animals to the endangered list while taking more off.

"Originally [the DPS rule was] being used to protect smaller, isolated populations of biological importance," said Patrick Parenteau, senior counsel of the Environmental and Natural Resources Law Clinic at the Vermont Law School.

"But now it's been turned into something that is frankly unrecognizable from what its origins were."

Chris Nolin, chief of conservation at the U.S. Fish and Wildlife Service's Endangered Species Program, strongly disagrees.

Federal officials use the provision to protect a greater portion of species at risk, she said.

"It affords us the opportunity to list something and, more importantly, try to recover something that maybe we wouldn't have been able to," Nolin said.

There were a total of 26 DPSs prior to 1997, according to the USFWS database. Since then, 54 more have been established.

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