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High Noon for Habitat

BY TONY DAVIS

In Southern California, a host of imperiled wildlife lies in the path of America's worst urban sprawl. The battle over the last patches of habitat is ringing through the halls of Washington, D.C.

RIVERSIDE COUNTY, California — The scene just outside the town of Hemet could be duplicated in almost any fast-growing Southwestern suburb: dirt roads snaking through a once-untrammelled landscape, a handful of half-finished houses with red-tile roofs, a dozen or so concrete pads ready for future homes, yellow bulldozers set to smooth out more raw earth. A real estate sign proclaims, "Coming soon. Montero. 3-6 bedrooms. 1,746-3,000 square feet."

There is one unique feature here. The U.S. Fish and Wildlife Service has deemed this area part of about 15,000 acres of essential habitat for an endangered plant found nowhere else but western Riverside County. The San Jacinto Valley crownscale is a 4- to 12-inch tall annual herb, a member of the goosefoot family, that thrives on this area's white-flecked alkaline soils and springs up after the winter rains.

The plant survives in only four patches today, but that hasn't been enough to gain them formal designation as critical habitat. Critical habitat designation is a part of the

Endangered Species Act; it kicks in a complex array of rules designed to bolster a species' chances of recovery. The crownscale was one of five rare Riverside County plants that failed to make the cut last October. The other four plants got at least a few hundred acres in other counties; the crownscale was zeroed out.

The Wildlife Service's decision stemmed less from science than from what the agency saw as the legal and political realities. Riverside County has placed much of the land deemed necessary to these plants under the umbrella of its "multi-species habitat conservation plan," which aims to protect the county's still-wild hillsides, grasslands, riparian areas and vernal pool complexes. Developers and local officials argued that piling new designations onto the existing plan would throw a dagger at the habitat planning process.

Environmentalists denounced the decision as a "travesty." They say Riverside's habitat conservation plan — like many, they believe — has serious scientific flaws.

California is the flash point for a searing national debate over protecting the home territories of imperiled wildlife. The state has more endangered and threatened species — 309, at last count — than any state but Hawaii. Millions of acres of land, and many miles of rivers and streams, are either designated or proposed as critical habitat. But the

need to save habitat has run headlong into the state's booming population: California has 37 million residents — more people than any other state by far — and is adding another half-million each year.

It is no coincidence, then, that a California congressman is leading the effort to overhaul the Endangered Species Act. Rep. Richard Pombo, R, wants to make life easier for developers, ranchers and other industries, and critical habitat has become his biggest target.

The fight over critical habitat goes to the heart of our national commitment to conservation — a commitment that inspired the near-unanimous passage of the Endangered Species Act back in 1973. Even today, people on all sides of the debate agree that saving endangered species means saving their habitat. Yet it's never as easy as it sounds: This is a nation built on the belief that progress means never-ending growth. And so, across the country, the story of the crownscale is repeated.

When the dust settles from the battles now raging in Congress and in Riverside County, we will have a much clearer idea of what kinds of boundaries we're willing to set for ourselves in order to leave a little room for nature.

The habitat wars

In theory, critical habitat is simple.

It bans destruction or “adverse modification” of the best territory for plants and animals listed as threatened or endangered. It is supposed to include all areas “essential to the conservation of the species.”

There’s little question that Congress originally intended critical habitat to help protect most, if not all, federally listed species. Yet lawmakers also set limits on the rule: It applies only to federal projects, such as dams or national forest timber sales, and to private projects that need federal permits, such as subdivisions that require disturbing, or bridging, federally regulated wetlands and washes. And exceptions are allowed, as when the Service determines that the benefits would be outweighed by the economic costs, or that selecting critical habitat is “not prudent” because it might attract vandalism or other activity.

In the years immediately following the Endangered Species Act’s passage, critical habitat racked up more than a few success stories: It stopped dams, forced developers to save open space, and ejected cattle from denuded streambanks. The most celebrated and reviled case came in 1978, when the U.S. Supreme Court halted construction of the Tellico Dam in Tennessee to protect the habitat of the endangered snail darter, a tiny fish.

Starting in the early 1980s, however, the Fish and Wildlife Service backed off. John Sidle, a former Fish and Wildlife Service biologist, says the Service grew disillusioned with critical habitat after public criticism forced the agency to dramatically scale back its habitat proposal for the endangered whooping crane. The original proposal covered hundreds of thousands of acres across most of the Great Plains, he says. “The perception was that the whole region was to be locked up.”

But the very lines on the map that

sometimes frighten the public are critical habitat’s greatest strength, according to environmentalists. They believe that critical habitat, despite the exemptions and exceptions written into the law, still offers the clearest, cleanest method of habitat protection.

Kieran Suckling, science and policy director for the Tucson-based Center for Biological Diversity, remembers the dismay he felt watching the federal government try to protect the Mexican spotted owl on southwest New Mexico’s Gila National Forest. “The Forest Service was managing the forest like an outdoor zoo,” protecting “a bunch of postage-stamp spots” where the owls were known to live. “They were not managing for ecosystems,” he says. “We decided, ‘We’ve gotta figure out how to force the agency to take the ecosystem perspective.’ “ And they had to do it fast, he says; under a statute of limitations built into the law, anyone seeking to overturn a decision not to designate critical habitat had six years to sue. “It was now or never.”

The Center, along with larger national groups, such as the Sierra Club and the Natural Resources Defense Council, took turns filing lawsuits. Their argument was simple: The Endangered Species Act gives the Fish and Wildlife Service one year after listing a species to designate critical habitat; the agency was missing the deadline for nearly every species.

The parade really started in 1994, when the Center won a lawsuit over the spikedace and loach minnow, two tiny fish species living in cattle-battered Southwestern streams. In the next decade, environmentalists forced habitat designations for the desert tortoise, the peninsular bighorn sheep, the cactus ferruginous pygmy owl, the California gnatcatcher, the Inyo California towhee, the snowy plover, the tidewater goby

(a Southern California fish), the Southern California steelhead trout, the arroyo southwestern toad, the southwestern willow flycatcher, the Quino checkerspot butterfly and dozens more. By 2005, the number of habitat designations had more than quadrupled, from 96 in 1987 to 473.

The habitat protection had results. Critical habitat for the spikedace, loach minnow and willow flycatcher provided the legal ammunition for a 1998 agreement with the U.S. Forest Service that removed cattle from along hundreds of miles of streams in the Gila River basin (HCN, 10/22/01: Healing the Gila). A year later, a judge stopped the Army Corps of Engineers from issuing certain permits for development inside critical habitat for the endangered cactus ferruginous pygmy owl in Arizona. In 2001, the Bureau of Land Management ordered cows off 371,000 acres, and sheep off another 815,000 acres, of desert tortoise habitat in the California Desert Conservation Area.

Inside the Fish and Wildlife Service, staffers battled over the value of critical habitat. Publicly, however, the agency continued to argue, through two decades and four presidential administrations, that critical habitat was useless. Many agency leaders said critical habitat lawsuits had overwhelmed the Service, and diverted staff time — and lots of money — from the more critical task of listing endangered species. (The Service has budgeted \$12.6 million for critical habitat this year. That compares to \$5.2 million for listing species, though there is a long line of wildlife waiting for protection.)

Meanwhile, homebuilders, ranchers and timber companies fired back with lawsuits of their own. The industry groups argued that legal requirements add months or years to the process of permitting projects, and force landowners to bear society’s burden of habitat protection.

The critical habitat wars were among scores of species disputes nationwide that fueled a backlash against the Endangered Species Act as a whole. In 1994, Republicans, led by Georgia Rep. Newt Gingrich, took control of Congress. The next year, the new Congress slapped a one-year moratorium on new species listings and habitat designations. And lawmakers went further than that, threatening a wholesale rollback of environmental laws.

Partly in response to the hostile climate in Congress, the Interior Department under Secretary Bruce Babbitt veered away from critical habitat. Looking to work with landowners rather than regulate them, Babbitt started promoting regional habitat conservation plans, particularly in Southern California, where the 1993 listing of the California gnatcatcher had thrown a scare into developers.

The habitat conservation plans helped defuse some of the opposition to the Endangered Species Act. Republican attempts to eviscerate it fizzled, along with much of the “Republican Revolution.” But as Riverside County shows, the issue did not go away.

Critical habitat comes to Riverside

Riverside County is an elongated rectangle, stretching 200 miles from Orange and Los Angeles counties through the Coachella Valley to the Colorado River. It is bounded on the west by rolling hills and badlands, and on the east by creosote flats and steep, craggy mountains. The county lies within a global biodiversity hotspot, and has a wider variety of plant and animal species than exists in most states.

But Riverside County is also prime human habitat, perennially one of the nation’s three fastest-growing counties. Between 1980 and 2005, its population leapt from 663,000

to 1.7 million. Newcomers seek an affordable alternative to life in Los Angeles County, where average home prices have vaulted to over a half-million dollars. (Last year, the average home in Riverside County cost a relatively earthbound \$391,000.)

A 2002 report from the national group Smart Growth America looked at more than 100 counties nationwide: Riverside County had the dubious distinction of America’s worst urban sprawl. Twenty-four municipalities straggle over the landscape; the area has no real urban center. Only 28 percent of all Riverside area residents lived within a half-block of any business or other institution, the study found. And less than 1 percent lived in areas with enough housing density to support mass transit.

The inevitable result has been severe traffic congestion; commuters now lose three to four hours a day driving from Riverside into Irvine or Los Angeles. About 280,000 vehicles per day cram onto the Highway 91 freeway in northern Riverside County. Near Temecula, in the southern part of the county, off-ramps on southbound Interstate 15 are backed up with traffic by 3 p.m.

By the 1990s, growth threatened to swallow the hillsides, grasslands and riparian areas, kicking off a wave of species listings and habitat designations. The beneficiaries were the gnatcatcher, the butterfly, the arroyo toad, the San Bernardino kangaroo rat and the least Bell’s vireo.

Developers were far from delighted: They found the restrictions too time-consuming, according to Barry Jones, a San Diego biological consultant who has worked for many of them. When a developer wanted to build in critical habitat, he or she had to consult with the Fish and Wildlife Service under Section 7 of the Endangered Species Act, and minimize the effects on the

species.

Still, the critical habitat provision affected only a small portion of development proposals, in areas where a species wasn’t actually present, according to two consultants for developers; the rest of the time, the basic rules against “jeopardizing” a species came into play. And even in critical habitat, the Fish and Wildlife Service generally allowed some development to go forward. Prior to 2004, the agency approved 64 projects inside critical habitat areas in Riverside County.

“I’ve never really understood why Southern California developers were so upset about critical habitat,” says David Hogan of the Center for Biological Diversity. “I guess it’s because they didn’t get to destroy everything.”

Jones, however, says critical habitat was an unnecessary burden because projects also had to go through endangered species reviews by state agencies. Critical habitat consultations typically take at least a few months, he says. “Anytime you add another layer of requirements ... it’s a delay.”

Every year, it took longer to build roads, flood-control channels and other projects. Many projects languished in the planning stages for 20 years.

Riverside County officials decided to get things running more smoothly. “We believed for us to deal with growth, we needed infrastructure,” says John Tavaglione, a county supervisor. “We understood that to build infrastructure, you gotta have your ducks in line — to get permits.”

Thus was born Riverside County’s multi-species habitat conservation plan.

“Soft-line” conservation

The plan brought together property

owners, developers, environmentalists, farmers, agency staffers — 133 stakeholders in all. It took four years to complete, and cost \$35 million. And still, it's a work in progress.

On a map, the plan is a mosaic of squares called "criteria cells," each representing a 160-acre block of sensitive land. Approved by the county government in 2003 and by the Fish and Wildlife Service in 2004, it calls for preserving 153,000 acres of private land across the county's western third over the next 25 years. Another 350,000 acres will stay undeveloped, because the Forest Service, Bureau of Land Management and various state and county agencies manage them. Ultimately, 500,000 acres will be preserved; the rest of the plan area, roughly 750,000 acres, will be developed.

Riverside County officials believe this plan is visionary. Under the old way of endangered species planning, using critical habitat maps to guide regulators who review individual projects, important land was saved in a piecemeal fashion — 10 acres here, 100 acres there — says Joe Richards, deputy director of the Western Riverside County Regional Conservation Authority, a county agency created to oversee the plan. When this multi-species plan is complete, Richards says, large blocks of conservation lands will be linked, allowing animals to travel back and forth.

But to use a planner's term, this is the quintessential "soft-line" preserve: The plan sets broad goals for habitat protection, but parts or all of each cell can be developed. The plan "covers" 146 rare species — another planner's term that amounts to a legal license to destroy some habitat in return for saving territory elsewhere. It comes from a Section 10 permit under the Endangered Species Act, which grants assurances that enough land will be saved so that the development

of other land won't hurt a species' chances for recovery.

A developer who wants to build inside one of the cells must take the proposal before the Conservation Authority, which requires, in return, some conservation land, as well as impact fees to buy more open habitat. In theory, the preserved land will grow at roughly the same pace that the other habitat is destroyed.

The Riverside plan's Section 10 permit also gives the county the right to build 600 different pieces of public works infrastructure: water lines, sewer lines, electric lines and flood control channels, to name a few. Not surprisingly, four planned freeways sit at the top of the county's wish list. The first big one is the Mid-County Parkway, 32 miles of pavement slicing through three suburbs and possibly two lake preserves. It's designed to slash the travel time from the eastern part of Western Riverside County to Corona near the Orange County line.

Tom Mullen, the Conservation Authority's interim executive director, predicts that the highway will be approved by 2008, 10 years after planning started. Construction is projected to begin in 2011. "For the first time since the 1950s in California, we will have conceived and approved a new highway within a decade, as opposed to two decades," Mullen says.

Dan Silver, director of the Endangered Habitat League, says it was a miracle that such a conservative county could adopt a plan this far-reaching. "The challenge is getting enough money quickly," he says. While the county has already acquired 28,000 acres, officials estimate that assembling the full preserve will cost \$1.5 billion.

How critical is critical habitat?

Like many other habitat plans,

Riverside County's has drawn pointed criticism from environmentalists and some scientists.

A scientists' panel from University of California Riverside concluded in 2003 that there's no way to tell right now if the plan is adequate; there are just too many unknowns.

Harsher words came from the Conservation Biology Institute, a nonprofit planning institution long steeped in habitat conservation plans. In a letter to the county, institute biologist Wayne Spencer said the plan fails to meet legal and scientific standards generally applied to such plans. He said it contains no real reserve design map, provides insufficient information about the methods used to define the preserve and uses vague and ambiguous standards for protecting species.

The vague guidelines are of particular concern to critics because the plan knocks out large blocks of critical habitat for four animal species and five plants, including the San Jacinto Valley crowscale. The Fish and Wildlife Service has a policy of excluding lands within habitat plans from critical habitat designation, arguing that habitat plans typically offer more conservation benefits than the project-by-project biological reviews for developments in critical habitat.

Critics say this logic is full of holes. Because it is unlikely that any single development can be proven to jeopardize the existence of, say, the California gnatcatcher, the Fish and Wildlife Service is free to give projects the green light. But the Center's David Hogan says bulldozing coastal sage scrub is indisputably whittling away at the bird's last, best habitat; without critical habitat, he says, there's no recourse. The Wildlife Service often requires developers to set aside land even when critical habitat rules don't come into play, but Hogan says it's

often not enough.

The lack of critical habitat is a particular problem for rare plants. These plants — the plan covers 58 — don't always lend themselves to landscape-level conservation because they often live in small patches that will not necessarily be protected by the "soft-line" preserves.

Driving around the fields and subdivisions of suburban Riverside County on a warm Sunday in January, botanist Ileene Anderson points out several spots that the Fish and Wildlife Service called essential habitat for various plants, but opted not to designate as critical. In some, farmers are plowing the ground to reduce the risk of brushfires. At one spot, concrete rubble and other construction debris have been dumped on the land. In other places, subdivisions are rising.

"They allow development in the cells, and have so much area set aside in other parts," says Anderson, who recently took a job with the Center for Biological Diversity. "The animals can move around from one part of a cell to another, but with a lot of the plants, they're all very specific. My worry is that they ... won't save the plants."

Some vital plant habitat — such as the spot near Hemet that is home to one of the last populations of San Jacinto Valley crownscale — didn't even make it into any of the plan's cells. "It is just another brick in essentially dooming this area," says Anderson. "Is a plan that dooms things to extinction the best hope?"

The Center and the California Native Plant Society had sued to designate critical habitat for the crownscale, hoping that it would offer some protection until the county decided whether to put these lands in the final reserve. The lawsuit forced the Wildlife Service to identify critical

habitat, but in October, the agency chose not to designate it. Now, the Center is considering suing again to overturn the Riverside plan's exclusions of critical habitat.

Hogan says that adding formal critical habitat designations for individual species to the plan would not slow the county's growth. "So much of Riverside is already built out, and so much more has already been disturbed through agriculture or former industrial uses, that protection of the last small tidbit of habitat left is not going to have much of an impact," he says.

The county's Tavaglione disagrees. If new critical habitat is designated, he says, the county won't be able to build enough new roads to keep up with growth. "I can't tell you how many times our officials traveled to Washington, D.C., to meet with congressional staffs and agencies on this," he says. "What was always the challenge to us is that every time you think you have an agreement, you think you have a permit in place, then someone else, an outside environmental group, finds a way, legally or otherwise, to put a wrench in the spokes of the wheel."

The Conservation Authority's Mullen points out that there are 37 million people in California today. "By 2020, we'll be at 50 million. By 2030, which no one is looking at right now, we'll be at 65 million people. Where in the hell are we going to be able to put people?"

He goes so far as to predict that if this plan is overturned, "There will be a wholesale rollback of environmental laws."

Be careful what you wish for

Truth be told, the habitat wars have already turned against those fighting for wildlife protection.

In 2001, in response to a lawsuit from

the New Mexico Cattle Growers Association, the 10th Circuit Court of Appeals overturned critical habitat for the southwestern willow flycatcher, on the grounds that the Fish and Wildlife Service's economic analysis was inadequate. That ruling sparked another wave of lawsuits from the ranching, building and timber industries that forced the service to redesignate critical habitat, sometimes twice. The habitats shrank dramatically in many cases, as the economic analyses found potential costs in the hundreds of millions or billions of dollars.

According to a 2005 study by a coalition of environmental groups, the Bush administration has eliminated 16.4 million acres of critical habitat. In the Northern Rockies, for instance, the Fish and Wildlife Service scaled back critical habitat for the bull trout from 18,450 stream miles to 3,780, and 532,700 acres of lakes and reservoirs to 110,364. In the San Francisco Bay Area, the service chopped critical habitat for the Alameda whipsnake from 403,000 to 203,000 acres. In Southern California, critical habitat for the arroyo toad fell from 180,000 to 11,000 acres.

And there's more to come: In central California, the agency has proposed cutting critical habitat for the red-legged frog by 83 percent from an original 4.1 million acres. This is to say nothing of the more than 60 percent of threatened and endangered species for which the Service has never designated a single acre of habitat.

Even a recent court victory for environmentalists may turn into a defeat. In 2004, the 9th Circuit Court of Appeals overturned six biological opinions that allowed timber harvesting within 21,453 acres of critical habitat for the northern spotted owl in California, Oregon and Washington. Ruling on a lawsuit filed by the Gifford Pinchot Task Force,

the court found that the biological opinions factored in species survival, but not recovery. “The (Endangered Species Act) was enacted not merely to forestall the extinction of species ... but to allow a species to recover,” wrote Judge Ronald Gould.

The ruling gave environmentalists a potential legal hook to challenge the agency’s ban on adding critical habitats to the Riverside habitat plan. “(Habitat conservation plans) are not strong enough for recovery,” explains John Buse, an attorney for the Center for Biological Diversity. “They are geared to life support.”

But the “Pinchot ruling” also ratcheted up the Wildlife Service’s cost estimates for critical habitat; if the owls need more forests, then the cost of foregone logging will be all the bigger.

That could have unintended consequences, says Steven Quarles, a Washington, D.C., attorney who has argued endangered species cases on behalf of a wide range of private and public sector clients. “The immediate reaction in the environmental community to the Pinchot ruling may be very loud cheers,” he says. “But if that means it is very hard to do any ground-disturbing activities ... that means a hell of a lot of land uses won’t occur.” As the prices escalate, he says, the Fish and Wildlife Service will have reason to exclude far more land from critical habitat.

The Center has already filed another lawsuit to prevent that from happening. Developers, meanwhile, say Southern California is in the midst of a critical habitat crisis.

In September 2004, a month after the Pinchot ruling, Orange County attorney Rob Thornton told a congressional hearing that the Wildlife Service had proposed or designated 36.8 million acres of land in California as critical habitat for 21 species, not counting

overlap. That’s more than a third of the state. (The Center’s estimate is less than half of that.)

Thornton warned that the Pinchot ruling could jeopardize not just the Western Riverside County multi-species plan, but the entire tradition of habitat planning in Southern California. “Landowners and public agencies in Southern California have spent the last 13 years and many tens of millions of dollars working on habitat conservation plans to address and resolve endangered species issues,” he said. “It is not an exaggeration to say that the program has fundamentally altered land uses in Southern California.”

More than a few members of Congress were ready to listen.

The future hangs in the balance

Last fall, California Rep. Richard Pombo, the Republican chairman of the powerful House Resources Committee, pushed an overhaul of the Endangered Species Act through the House. Pombo’s bill, which passed by a margin of 229 to 193, would eliminate the critical habitat rules and throw habitat protection into the recovery plan for an imperiled species.

“The regulations are being streamlined under one umbrella,” said Committee spokesman Brian Kennedy. The bill would eliminate the restrictions on “adverse modification” of critical habitat, but the Fish and Wildlife Service would still have to consider whether a project destroys habitat when it determined whether the project jeopardizes a species, Kennedy said.

Critics were quick to point out that, under Pombo’s proposal, there would be no legal weight behind protecting habitat — just an advisory plan. But in a sign of the political times, some environmentalists threw their support behind a last-minute alternative

bill that also would have wiped out critical habitat. Like Pombo’s bill, the alternative would have rolled habitat protection into recovery planning, but it would have added more teeth to the recovery plans by setting new deadlines for the Fish and Wildlife Service to propose and approve them.

The substitute bill failed by a narrow margin, and the reform effort has now moved to the Senate. There, Sen. James Inhofe, the Oklahoma Republican who chairs the Environment and Public Works Committee, says he expects legislation to come out of the committee by the end of February or early March.

But Senate legislation is unlikely to look like the House Bill. Like Gingrich before him, Pombo is now being pushed to the margin (HCN, 2/20/06: The many problems of Richard Pombo). Moderate Republican Sen. Lincoln Chafee of Rhode Island has commissioned the nonprofit Keystone Center, based in Keystone, Colo., to gather environmentalists, attorneys, business leaders, biologists and others to come to some consensus on how to deal with critical habitat.

Chafee, working with other moderates from both parties, has vowed to produce a bill with strong bipartisan support. But he told Environment and Energy Daily, an online news service, that he is hesitant to push a bill through the Senate for fear that the bill will be “Pombo-ized” in congressional committee before it can go to the president for approval. He is particularly concerned, he said, about Pombo’s push to require the federal government to compensate landowners for losses they suffer due to species protection — and his determination to kill critical habitat.

Andrew Wetzler, a Natural Resources Defense Council attorney, says it’s very doubtful that the Senate will pass a bill that doesn’t legally tie habitat

protection to species recovery. In fact, he believes there are real questions as to whether any bill can pass the Senate. “There’s a limited amount of time left in this session. Elections are going to come up,” Wetzler says. “This is a very controversial issue, and there was a close vote in the House. It’s not at all clear that the Senate Republicans in an election year want to be seen as gutting the Endangered Species Act.” But Steven Hourahan, Chafee’s press secretary, says there’s no indication that a bill won’t go ahead. Hourahan says his boss sees a bill already introduced by Sen. Mike Crapo, R-Idaho, as a good starting point. Crapo’s bill leans heavily on tax incentives and a series of collaborative measures with landowners to encourage habitat protection. It leaves critical habitat intact, although it would push back the deadline for establishing it to three to five years after listing.

Environmentalists, meanwhile, are divided over what to do next. Defenders of Wildlife Litigation Director Mike Senatore says critical habitat simply isn’t working. While that’s partly because the Bush administration has done so much to undermine it, he says it’s also because the law itself is poorly written. “It has always been exceedingly controversial,” Senatore adds. “To the extent you have controversy surrounding an issue, it often makes it more difficult for an agency to implement that provision.”

Still fiercely defending critical habitat is the United Endangered Species Campaign, an alliance that includes the Center for Biological Diversity, the Sierra Club and the Natural Resources Defense Council. The coalition has proposed a bill that also would fold critical habitat into recovery plans, but eliminate exceptions — including the economic analysis requirement — that allow federal agencies to sidestep it.

Officially, at least, the Fish and Wildlife Service is still set against critical habitat. Despite the repeated court rulings against the agency, Renne Lohofener, the deputy director for endangered species, says he still doesn’t believe critical habitat does much good. The best plan, he says, would rely on collaboration and consensus to protect habitat. There have been numerous cases where people come to the agency and say, “Don’t designate critical habitat and we’ll get together and plan conservation measures that exceed what we do with critical habitat,” he says. “That’s a hell of a way to get consensus and conservation.”

But Sally Stefferud, who retired in 2002 after 20 years as a Service biologist, says it’s not realistic to think that developers will come to the table unless there’s something like critical habitat hanging over their heads.

—“In order to do well in negotiations, you have to have some leverage. Regulation is usually that leverage,” she says. “If you walk into that room and say the Endangered Species Act is something you are not going to enforce — that we just want you to do good things for the species — that it’s the right thing to do — in my experience, we haven’t had much luck with that.”

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