



# Reagan Redux: A Review of the Bush Critical Habitat Record

Center for Biological Diversity  
July 1, 2003

The federal government is supposed to designate critical habitat areas encompassing all lands and water “essential to the conservation” of endangered species. Between 1974 and 1986 it regularly did so with predictable results: species with critical habitat are twice as likely to be recovering and much less likely to be declining than species without it.

In 1986, however, the Reagan Administration introduced a controversial regulation severely curtailing the power of the U.S. Fish and Wildlife Service to protect critical habitat areas. Since the agency directly oversees only a small portion of critical habitat, the regulation had little effect on how the vast majority of existing critical habitats were managed. But it did force the Fish and Wildlife Service to dramatically reduce the number critical habitats it designated between 1988 and 2000. In 2001, the Reagan regulation was struck down by the courts. Restoring the clear language of the Endangered Species Act and Congressional intent, the courts held that critical habitat must be managed to *recover* endangered species, not simply to *maintain* them as endangered.

“If the protection of endangered and threatened species depends in large measure on the preservation of the species' habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitat.”

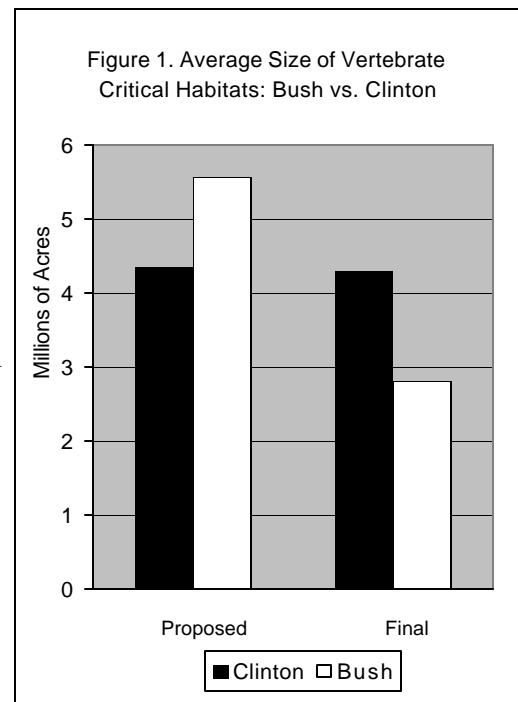
*United States Congress, 1976*

A wave of court-ordered critical habitat designations ensued, making up for the near shutdown of the program since 1988. Unfortunately, most (259) of these designations have been under the direction of the Bush Administration, which steadfastly clings to Reagan-era policies. Unable to stop the flow of court orders to designate and protect critical habitat areas, the Bush Administration has taken to ignoring court orders, refusing the Fish and Wildlife Service sufficient funds to carry them out, and most importantly, drastically scaling back the size of those critical habitats that do get designated. It has also revoked 16.4 million acres of critical habitat designated by the Clinton Administration.

The Bush Administration is executing the greatest rollback of endangered species habitat protection in the history of the Endangered Species Act.

### ***Slashing the Size of Habitat Protection Proposals***

The size of critical habitat areas has shrunk dramatically between the Clinton and Bush administrations. The former designated 115.2 million acres of critical habitat for 50 endangered species, the latter has designated just 40.0 million acres for 259 species. The political nature of the Bush designation is evident in the



difference between proposed and final rules. In both administrations, local agency biologists were allowed to develop proposed critical habitat designations on purely biological grounds. Not surprisingly, the size of these proposals were similar in both administrations (see Figures 1 and 2). Indeed, the Bush-era proposals were larger.

In response to industry objections, Bush appointees at the Department of Interior ordered the agencies to cut the size of 93% of the proposals and cancel 11 altogether. On average, critical habitats were shrunk by 79%, stripping habitat protection from 42 million acres.<sup>1</sup> By contrast, Clinton era proposals were decreased by just 9%, affecting only 1.3 million acres. Suffering most under the Bush directives were Hawaiian plants (98% were reduced, average size reduction was 90%) and Texas invertebrates (100% were reduced, average size reduction was 89%). Critical habitat for the spectacled eider in Alaska was cut by 22.7 million acres. Eastern states lost 2.0 million acres of protection for the piping plover proposal.

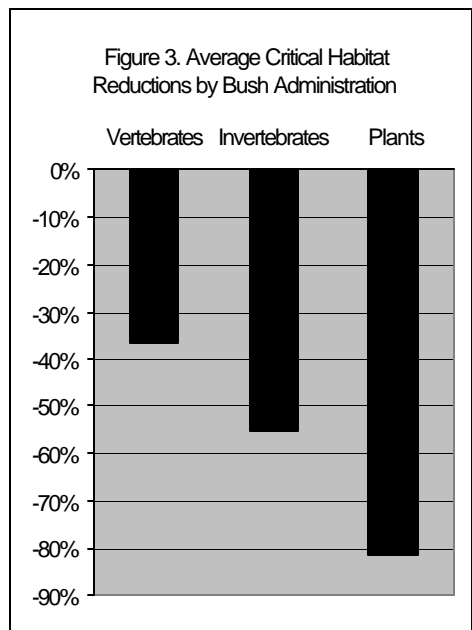
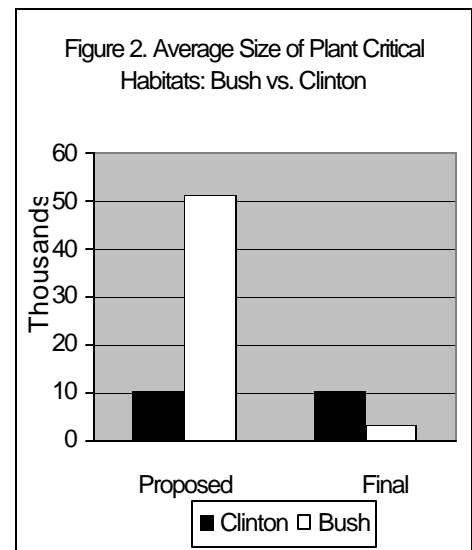
Exempting those lands most sought after by industry has made many critical habitats almost useless. Washington, D.C. bureaucrats ordered local Fish and Wildlife Service biologists to remove 8.9 million acres of proposed critical habitat from the Mexican spotted owl. The result was a designation that excluded 95% of all known owls, 80% of owl habitat, and virtually all areas under threat of logging. An agency biologist objected: “the designation would make no biological sense if the [U.S. Forest Services land] was excluded since these lands are the most essential for the owl.” Two years later a federal court agreed, calling the designation “nonsensical.”

### Ignoring Science

While the Clinton Administration often increased the size of critical habitat proposals in response to recommendations by scientists, the Bush Administration has not increased the size of a single critical habitat proposal. Indeed, it has banned the U.S. Fish and Wildlife Service from increasing their size. Its policy of only responding to industry complaints makes a mockery of the peer-review and public comment process. Habitat protection for the San Bernardino kangaroo rat, for example, was slashed by 40% (22,113 acres), even though four peer-reviewers asserted that the original 55,408 acres must be expanded if the

species is to recover. Peer-reviewers and members of the Riverside fairy shrimp federal recovery team also recommended that its proposed critical habitat be expanded. When ordered to instead decrease it by 43% (5,230 acres), an agency biologist lodged a complaint with her superiors: “Clearly, the [Fish and Wildlife] Service ignored—or violated—its own

policy by failing to address and consider the peer-reviewers expert opinion.”<sup>2</sup>



“Clearly, the [Fish and Wildlife] Service ignored—or violated—its own policy by failing to address and consider the peer-reviewer’s expert opinion”  
*U.S. Fish and Wildlife Service Biologist*

In the majority of its critical habitat designations, the Bush Administration has ignored the recommendations of scientific peer-reviewers to increase or maintain the size of proposed critical habitat areas. Instead, it decreased the size of 93% of them by an average of 79%.

### ***Rolling Back Clinton Critical Habitat Designations***

Not content with reducing the size of current critical habitat designations, the Bush Administration voluntarily revoked 25 previously existing designations in response to industry lawsuits, removing protections from 16.4 million acres. Federal judges refused to approve the sweetheart settlements in four other cases, saving 924,000 acres from Bush's chopping block.

The revoked critical habitats have disproportionately targeted Clinton designations. With little to complain about in the Bush White House, industry targeted 30 of its 34 lawsuits toward Clinton designations. Sixty percent of all Clinton critical habitats- and 100% of all Clinton designations not barred by the statute of limitations- were challenged. The Bush Administration did not mount a legal defense to any of these challenges. It has settled 27, and is in the process of settling seven more.

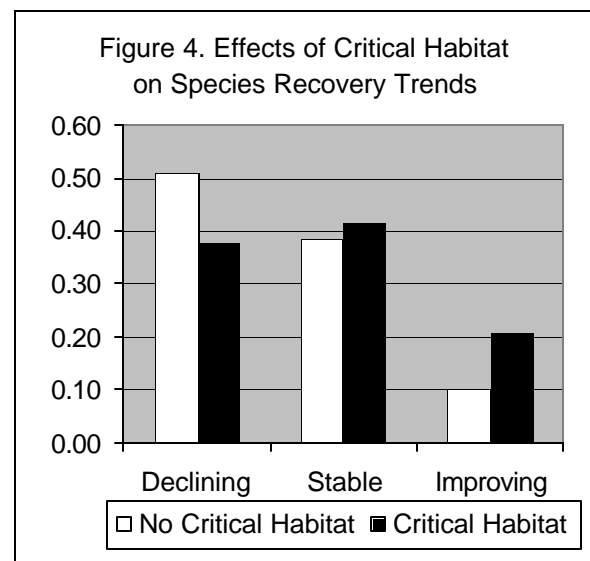
“The designation would make no biological sense if the [8.9 million acres of U.S. Forest Service] land was excluded, since these lands are the most essential for the owl.”

*U.S. Fish and Wildlife Service Biologist*

Citing budget shortfalls, the Administration announced in April, 2003 that it would seek lengthy extensions on compliance with 24 court orders to designate critical habitat, while completing 15 others. The difference between those to completed and those to be delayed reads like an industry wish list: the 2003 redesignation of all critical habitats revoked by Bush/industry agreements are to be delayed. Redesignation of the two critical habitats that the court refused to revoke will go forward. Having failed to strike them down through a sweetheart legal settlement, the White House plans to undermine them through redesignation. Eighteen of the critical habitats currently under court order are likely to reign in destructive logging, mining, and development corporations. Thirteen of those happen to fall on the administration's delay list. Two of the remaining five are the critical habitats the court refused to strike down.

### ***Reversing the Proven Effectiveness of Critical Habitat***

Critical habitat is a proven and effective conservation strategy. A 1997 analysis determined that species with critical habitat are 11% less likely to be declining, and 14% more likely to be stable, than species without critical habitat.<sup>3</sup> A 2003 study using a larger, more recent data set, determined that species with critical habitat are more than twice as likely to be recovering, and 13% less likely to be declining, than species without it (see Figure 4).<sup>4</sup>



The tiny, politically drawn critical habitats of the Bush Administration may well reverse the gains of the past. The ignored peer-reviewers who repeatedly warned that reducing the size of critical habitats will render them incapable of saving endangered species are likely correct. The Bush Administration's assertion that critical habitat does not help endangered species is being turned into a self-fulfilling prophecy by its tiny, politically driven designations.

### ***Political Rhetoric and Bankrupt Legal Tactics***

The Bush Administration regularly denounces critical habitat as an ineffective and expensive conservation tool. It never mentions the scientific studies showing the effectiveness of critical habitat. Nor does it offer contradictory studies. Indeed, it conspicuously offers no evidence at all- just its opinion that critical habitat *should not* work. And this opinion is just a rehash of the 1986 Reagan regulation banning the Fish and Wildlife Service from protecting critical habitat. The Administration clings to it like a lifeline, even though it has been repeatedly struck down by the courts.

### ***Endnotes***

1. The total deleted was 45.2 million acres. Some acres, however, especially for Hawaiian plants and Texas invertebrates, are double counted due to species overlap. We conservatively estimate that 42 million acres of non-overlapping habitat was deleted.
2. Letter from Nancy Kehoe to Andy Yuen and Jim Bartel, U.S. Fish and Wildlife Service, Carlsbad, CA, dated June 3, 2001.
3. Rachlinski, J. 1997. Noah by the numbers: an empirical evaluation of the Endangered Species Act. *Cornell Law Review* 82:356-389
4. Taylor, M. and Suckling, K. (in prep) An empirical assessment of the effect of critical habitat, recovery plans, and economic conflict on the status of endangered species. Center for Biological Diversity, Tucson, AZ.