

MONDAY  
SEPTEMBER 27, 2004

# The Seattle Times



## Bush switches nation's tack on protecting species

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When it comes to saving America's most endangered plants and animals, George W. Bush has listed fewer species for protection than any other president.

In nearly four years in office, Bush has protected one-tenth as many species as his father did under the Endangered Species Act (ESA). Even as species slipped toward extinction, most of the protection he did extend came as a result of court orders.

The nation's most powerful law to protect imperiled flora and fauna is, by many accounts, battered. Wildlife agencies are hamstrung by tight budgets. And a long-simmering war between environmentalists and industry has judges, not biologists, dictating the fate of hundreds of species.

Bush is not solely responsible for the problem, having taken over the troubled program from President Clinton. But neither has he fixed it.

Instead, the president has sought to make wildlife protection more efficient, less costly and less burdensome for landowners.

While the president has taken his own approach to managing America's threatened wildlife, his administration has also worked to sidestep the ESA:

- Bush administration officials have un-

dercut or ignored the warnings and conclusions of government scientists, including those studying a tiny fish in central California and some of the world's experts on a rare Northwest seabird — the marbled murrelet.

- During its four years in office, the Bush administration has designated just half of the habitat government biologists recommended for protecting imperiled species. In a California case, the Interior Department acknowledged using faulty data to shave hundreds of thousands of acres from a plan to protect California wetland species.

- An Arizona-based environmental group co-founded by a former EarthFirst! member now all but dictates which creatures get protected under the act. It has sued the Bush administration so often that cases have piled up in courts across the country.

- Bush appointees, including lawyers and lobbyists hired from the Northwest timber industry, have worked to rewrite obscure wildlife rules in ways sought by their former employers.

"I think their approach is an extremely clever and Machiavellian effort to pick apart, unravel and emasculate the ESA under the radar," said Eric Glitzenstein, a Washington, D.C.-based environmental attorney.

"This is not James Watt (President Reagan's outspoken interior secretary) at work with some blunderbuss across-the-

board attack. It's extremely deliberate."



**Kieran Suckling, who helped found the Center for Biological Diversity, has had a hand in forcing the government to extend protection to many species. "I'm tired of the government saying, 'What is the absolute minimum we can do to deal with these problems,' " he says.**

But Craig Manson, the assistant interisecretary who oversees endangered species, said the only thing deliberate is Bush's attempt to take plant and wildlife recovery in a new direction after inheriting a program under assault by lawsuit-slinging environmentalists.

"The cases they bring are largely procedural and deadline cases, which are a slam-dunk, frankly, for them," Manson said. "But every lawsuit diverts time and effort and resources from real habitat protection. Instead they go into court and they sue. That's easy."

### List is a last resort

Adopted under President Nixon in 1973, the Endangered Species Act can trigger a whole slew of regulations that do everything from limiting development to halting logging or mining on public and private lands. The rules, with their far-reach-

ing impact, have become a bane for many in industry and are broadly supported by environmentalists.

The ESA covers all manner of plants and animals threatened with extinction — from salmon to spiders to a half-inch-long blind crustacean found in a lone Washington, D.C., spring.

Experts such as pre-eminent Harvard University biologist Edward Wilson have said the ESA is perhaps the country's greatest tool for maintaining biodiversity, the complex web of interactions among species that keeps natural systems functioning.

But with roughly 1,200 creatures already protected by the ESA, a backlash among landowners has been brewing for more than a decade. Development in the United States chewed up 60 million acres in the last half-century, and the farmers, ranchers, developers and timber companies that control most of the nation's remaining private open lands shoulder a significant burden for maintaining species' habitat.

"Some have taken the point of view that you should be extremely liberal in listing species," Manson said. "For me, it should be a last resort. It comes with a set of collateral costs for society. If we can avoid those, we should."

The 26 species Bush protected during his term amount to less than his father listed each year of his presidency. Bush's father listed 228 species in his term; Clinton protected 305 in his first term and 222 in his second.

Even though the Bush administration increased the U.S. Fish and Wildlife Service's budget for listing species by 35 percent last year to \$12 million, it acknowledged listing all the species that need it would take more than \$120 million.

Instead, the administration provided hundreds of millions of dollars in grants to communities to protect species. It gave cash and technical advice to help farmers deal with at-risk species, and pumped

millions into programs to buy land for conservation.

"We think the most important function is on the recovery side," said Interior Secretary Gale Norton. "That's where we're trying to put our emphasis — in doing things that will improve the outlook for existing endangered species and keep new ones from becoming endangered."

Whether it's funneling money to Maine to remove a small dam and improve estuaries to help Atlantic salmon, or awarding grants to The Nature Conservancy to help rid invasive plants on one of California's Channel Islands, the administration this year pumped more than \$500 million toward direct habitat improvement.

Assistant Interior Secretary Lynn Scarlett said that was nearly triple the amount of grant money that the Clinton administration spent on similar programs in its last year. Just last week, Washington state was awarded more than \$15 million in grants, including \$1 million to King County to buy habitat in the Cedar River area for both listed salmon species — and other, unprotected creatures.

When the ESA first came about there needed to be enforcement tools to get quick action, Scarlett said. "They came with a lot of procedural hoops and processes and the expectation that if you went through them all, it would work. ... In the 21st century, we need to be focusing on results on the ground."

Julie MacDonald, deputy assistant interior secretary, said, "We're doing a really good job of getting people to conserve on their own — far more than we could ever force them to do with a regulation."

But many of the 279 creatures government scientists think need ESA protections are still slipping toward extinction, according to Fish and Wildlife Service documents published last spring.

Oregon spotted frogs are gone from three-quarters of their historic Northwest range, and habitat restoration isn't slowing their

decline. Entire colonies of Washington ground squirrels disappeared from the Columbia basin and state lands in Oregon in 2001, and many surviving adults failed to reproduce. Biologists can't even decipher what's wrong with the muted red-and-white Taylor's checkerspot butterflies found in and around Fort Lewis and Central Cascade rangelands.

## Wielding lawsuits

Bush administration officials complain the government's wildlife agencies — much as they were under Clinton — are sued so often they have no time or money to list new species. The Fish and Wildlife Service faces 36 lawsuits about ESA protections and is complying with 41 court orders.

Much of that litigation can be traced to Kieran Suckling.

On a recent summer morning, Suckling strolled down a 1,200-acre white-sand beach preserve north of Boston, hoping to spy a piping plover. The dwindling hockey-puck-sized songbird is among the dozens subject to legal action by the Tucson-based Center for Biological Diversity, which Suckling helped found.

"I'm tired of the government saying, 'What is the absolute minimum we can do to deal with these problems,' " Suckling said.

With an uncanny knack for using the courts to its advantage, the center has forced protection for 92 percent of the animals and plants listed under the ESA since 2000. Overall, the center has filed roughly 180 lawsuits and takes credit for listing 335 species — a quarter of those protected nationwide.

Even critics of Suckling don't deny the power his center wields.

Attorney Karen Budd-Falen, whose Wyoming law office fights ESA suits on behalf of farmers, ranchers and property-rights groups, said, "They're basically running the endangered-species listing program."

Suckling said the center's success rate should speak for itself. Two years ago, the Bush administration declined to list Puget Sound's southern killer-whale pods as threatened, despite acknowledging that the Northwest population was dropping. Suckling's group sued, and a federal judge ordered the National Marine Fisheries Service to reconsider.

### **Giving habitat a home**

The center also files suits over perhaps the most contentious aspect of the act — the designation of critical habitat. Biologists say such habitat is essential for survival of a species. For salmon, it means clean, cool streams, protected from logging. For the Northwest spotted owl and the marbled murrelet, old-growth forests are a must.

The Bush administration has been reluctant to designate critical habitat. It eats biologists' time and requires precise mapping. And other provisions within the ESA already provide many of the same protections.

But Suckling insists species with critical habitat fair better.

On this issue, some of the Bush administration's most vocal critics side with the president: "I think the whole critical-habitat thing has become torturous," said Jamie Clark, Fish and Wildlife Service director under Clinton, now with the environmental group Defenders of Wildlife. "The Clinton administration, too, would say critical habitat didn't provide an additional benefit."

While the Clinton administration typically designated critical habitat as agency scientists recommended, Bush has protected only half the 80 million acres identified by his federal scientists, often justifying revisions based on the cost.

The way the administration determines those costs has sometimes raised eyebrows.

In the case of the Topeka shiner, an olive-

colored Midwestern minnow, the White House noted the costs of critical habitat but urged Fish and Wildlife to delete references in its economic analysis to the habitat's benefits, according to agency documents. Fish and Wildlife officials said they weigh only environmental — not monetary — benefits.

In another case, White House budget experts reviewed an exhaustive economic analysis of habitat for 15 central California wetlands species and suggested that eliminating 3,000 acres of habitat could save hundreds of millions of dollars. Instead, Deputy Assistant Interior Secretary MacDonald quickly sketched out her own economic analysis and used that to justify eliminating several hundred thousand acres more. Later, she acknowledged her economic analysis was mathematically flawed.

"I made a mistake," MacDonald said. "You have to understand these economic analyses are evolving."

Even after the mistake was corrected, thousands of acres were still excluded.

And Bush is hardly the first president to avoid invoking ESA protections.

Not long after a national furor over how listing of a small Tennessee fish called the snail darter could affect dams in the South, the Carter administration lopped 1,700 species off a list of candidates to be protected.

In the Clinton administration, Interior Secretary Bruce Babbitt scaled back the list of potential candidates from a few thousand to a few hundred. He was accused by a 5,000-member government-employees group of trying to "sabotage" the endangered-species law.

And Babbitt's department in 2000 all but halted new species listings, arguing it was drowning in litigation.

### **Skirting the law**

In some cases the Bush administration's actions have helped landowners and busi-

nesses sidestep the Endangered Species Act.

For instance, the act required the Environmental Protection Agency to work with other federal departments to gauge whether pesticides might harm imperiled plants or animals. But when pesticide manufacturers complained that the rule was cumbersome, the Bush administration changed it.

Now decisions about pesticides can be left entirely to the EPA.

"No doubt (the industry) found it beneficial," said Manson, adding that it is vital to have a more efficient pesticide program.

But as recently as this year, a federal judge stepped in to ban the use of 38 pesticides near Northwest streams after ruling the EPA had done a poor job assessing the risk to salmon.

Industry groups also are now employing a tactic environmental groups used under Clinton: Some sue the Bush administration over everything from endangered-species listings to critical habitat — cases the administration often settles by agreeing to meet industry demands.

That happened in central California when farmers sued, claiming a 2-inch-long translucent fish known as the delta smelt no longer deserved ESA protection. The government settled by agreeing to see if protections were still warranted.

Michael Fris, a Fish and Wildlife Service biologist, said the agency did a scientific review and concluded the fish should remain protected.

But Deputy Assistant Interior Secretary MacDonald then fired off a blistering e-mail to Fris, arguing that he and other biologists had oversimplified, according to documents unearthed during litigation.

MacDonald then called and read her e-mail to a California Farm Bureau Federation lawyer. The Farm Bureau later filed a motion to reopen its case seeking to ex-

empt the smelt from ESA protections, citing MacDonald's e-mail as evidence the government's science was flawed.

MacDonald, in an interview, said she hadn't thought her actions would help the Farm Bureau, since she never disputed that the fish should be protected.

"I don't know how that e-mail could ever give [the Farm Bureau] ammunition," she said.

But Barbara Jans Southwick, Farm Bureau managing counsel, said, "The way we see it, the status review was incorrectly done, and that [e-mail] helps show that."

The Bush administration's willingness to respond to industry's needs has shown itself in the Northwest, as well.

Timber operators, still bitter over the decade-old shutdown of federal forests to protected threatened bird species, raised \$1 million for Bush's 2000 campaign at a single Portland fund-raiser. When the industry sued the administration to scale back protections for spotted owls, marbled murrelets and salmon, it provided a written plan outlining what it wanted — a 38-page "four-part litigation initiative."

Rather than fight the lawsuits, the Forest Service — overseen by Agriculture Undersecretary Mark Rey, a former timber-industry lobbyist — changed rules governing how timber companies log next to salmon streams, much as the industry had sought. The attorney who represented the industry, Mark Rutzick, has since been appointed to the National Marine Fisheries Service, to work on issues affecting salmon listings.

The administration also agreed to revisit spotted-owl and marbled-murrelet listings that had placed millions of acres of federal land off-limits to logging. The spotted-owl review has not been completed. And the administration earlier this month dismissed advice from field scientists and decided that murrelets were wrongly protected.

"It seems like the logic they [the agency] used to come up with their interpretation was a little fuzzy," said Tom Hamer, one of the world's foremost experts on murrelets and one of the independent scientists the government had hired to review the Northwest seabirds.

David Patte, spokesman for Fish and Wildlife's Portland office, said, "That's kind of a policy call, and, working with the assistant secretary's [Manson's] office, we decided to change that conclusion."