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## Judge Backs Desert Refuge

Off-road vehicles are ordered banned from half a million acres to protect an endangered tortoise species. But the restriction may not last.

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A federal judge has ordered the U.S. Bureau of Land Management to ban off-road vehicles from more than half a million acres of California desert that are home to the reclusive desert tortoise, which is protected under the Endangered Species Act. The injunction by U.S. District Judge Susan Illston is a setback for the Bush administration and its public lands agencies, which have been whittling back critical habitat for scores of endangered species, conservationists said.

"It takes a 2-by-4 over their heads to get their attention, and this is a 2-by-4," said Elden Hughes, chairman of the Sierra Club's desert committee.

"The court's ruling checks the abuses of the executive branch, and upholds ... the Endangered Species Act, America's most important wildlife law," said Daniel Patterson, of the Center for Biological Diversity, which, along with the Sierra Club and two other groups, filed suit in 2003 to overturn desert management plans crafted by the BLM and the U.S. Fish and Wildlife Service in recent years.

"Critical habitat works, and the Bush administration must follow the law," Patterson said.

Federal officials said they would immediately implement the ban, which covers a huge swath of the Sonoran and Mojave deserts in Riverside, Imperial

and San Bernardino counties that is honeycombed with washes that are popular routes for off-road recreation.

But the officials predicted the ban would be temporary, likely to last only about six weeks. They said once a scientific report addressing concerns about the desert tortoise was complete, the ban would automatically be lifted.

"We do not have any intention of appealing this ruling. We are going to implement it," said spokeswoman Jan Bedrosian of the BLM office in Sacramento. "We are expecting a new biological opinion by the end of February, so that means the duration of the restriction will be fairly short."

"It's not that simple," Patterson said. "If they just do some wordsmithing and change nothing on the ground, it will be challenged."

In the meantime, anyone caught motoring in the banned washes across 571,000 acres could face a \$1,000 fine or up to 12 months in prison, although prison time is unlikely, officials said.

The injunction brought prompt protest from off-road groups.

"Look, off-highway vehicle use is a popular and a legitimate activity in these areas, and we remain frustrated with this ongoing debacle, and we look forward to the day when OHV use can be properly managed," said Brian Hawthorne, public lands director for the BlueRibbon Coalition in Pocatello, Idaho, a lobbying

group that is an intervenor in the lawsuit.

"It's really frustrating. We're not insensitive to our impacts ... but on the other hand, there's been a huge amount of closures. Millions and millions of acres have already been closed."

He also said signs must be posted. Signs will be posted where it is practical, Bedrosian said.

"These are huge, massive enforcement areas; they need to be properly signed," Hawthorne said. "You can't just go out and expect us to clairvoyantly know where it's legal and not legal to go."

BLM Desert District Manager Linda Hansen said in a statement that the public still had off-road access to more than 1,700 miles of designated routes covering 1.7 million acres of public land in the desert.

The new ban does not affect the popular Algodones Dunes in Imperial County, where off-roaders and conservationists have fought over access. The dunes were part of the original lawsuit, but all sides reached a separate, interim settlement banning access to about 80,000 acres and allowing off-road use of another 80,000 acres.

In August, Illston ruled that the biological opinion written by the Fish and Wildlife Service's Ventura office was not adequate to guarantee the tortoise's recovery.

Ray Bransfield, the wildlife service biologist who wrote that opinion and who is preparing a new version, said the former standard had not been as strict because it focused more on survival of the species, not recovery.

"What we've looked at in the past was ... having species hang on, just make sure you don't wipe it out," Bransfield said. "What the Center for Biological Diversity has argued ... and what the court has said, is that Congress intended a higher standard for recovery of the species. They changed the rules. In my view, I was told to paint the house red, and then they came back and said paint the house black. I don't care, that's fine."

He said that although it would be better for the tortoise if all off-road use were permanently banned in its habitat, he believed it could recover with some off-road access allowed in certain areas.

Illston's ruling is the latest development in a decades-long battle between environmentalists and off-road enthusiasts, with both sides guarding millions of acres of desert washes and dunes.

Off-road groups say that ravens, drought and disease are to blame for the tortoise's decline -- not their vehicles.

But conservation groups say off-road vehicles crush the animals and their burrows, spew pollution and dust, and destroy vegetation that the wildlife eats to survive and reproduce.

Studies have shown desert tortoise populations in some areas have declined by as much as 90% in the last 10 to 15 years. A shy creature, the foot-long tortoise is uniquely adapted to survive in harsh desert weather, able to withstand heat and sustained drought by getting moisture from plants and burrowing underground for months at a time.

Currently, most of the tortoises are hibernating for the winter, Hughes said.

"They're sleeping," he said.