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New Rule on Endangered Species in the Southwest

By Felicity Barringer

WASHINGTON, May 23 - The southwestern regional director of the United States Fish and Wildlife Service has instructed members of his staff to limit their use of the latest scientific studies on the genetics of endangered plants and animals when deciding how best to preserve and recover them.

At issue is what happens once a fish, animal, plant or bird is included on the federal endangered species list as being in danger of extinction and needing protection.

Dale Hall, the director of the southwestern region, in a memorandum dated Jan. 27, said that all decisions about how to return a species to robust viability must use only the genetic science in place at the time it was put on the endangered species list - in some cases the 1970's or earlier - even if there have been scientific advances in understanding the genetic makeup of a species and its subgroups in the ensuing years.

His instructions can spare states in his region the expense of extensive recovery efforts. Arizona officials responsible for the recovery of Apache trout, for example, argue that the money - \$2 million to \$3 million in the past five years - spent on ensuring the survival of each genetic subgroup of the trout was misdirected, since the species as a whole was on its way to recovery.

In his memorandum, Mr. Hall built upon a federal court ruling involving Oregon Coast coho salmon. The judge in that case said that because there was no basic genetic distinction between hatchery fish and their

wild cousins, both had to be counted when making a determination that the fish was endangered.

In the policy discussion attached to his memorandum, Mr. Hall wrote, "genetic differences must be addressed" when a species is declared endangered. Thereafter, he said, "there can be no further subdivision of the entity because of genetics or any other factor" unless the government goes through the time-consuming process of listing the subspecies as a separate endangered species.

The regional office, in Albuquerque, covers Arizona, Oklahoma, New Mexico and Texas.

Mr. Hall's memorandum prompted dissent within the agency. Six weeks later, his counterpart at the mountain-prairie regional office, in Denver, sent a sharp rebuttal to Mr. Hall.

"Knowing if populations are genetically isolated or where gene flow is restricted can assist us in identifying recovery units that will ensure that a species will persist over time," the regional director, Ralph O. Morgenweck, wrote. "It can also ensure that unique adaptations that may be essential for future survival continue to be maintained in the species."

Mr. Hall's policy, he wrote, "could run counter to the purpose of the Endangered Species Act" and "may contradict our direction to use the best available science in endangered species decisions in some cases."

One retired biologist for the southwestern office, Sally Stefferud, suggested in a telephone interview that the issue went

beyond the question of whether to consider modern genetics.

"That's a major issue, of course," Ms. Stefferud said. "But I think there's more behind it. It's a move to make it easier" to take away a species's endangered status, she said. That would make it easier for officials to approve actions - like construction, logging or commercial fishing - that could reduce a species's number.

Mr. Hall was on vacation and not available for comment Monday. Mr. Morgenweck could not be reached late Monday afternoon, but his assistant confirmed he had sent the rebuttal.

The memorandums were provided by the Center for Biological Diversity and Public Employees for Environmental Responsibility, two groups that opposed Mr. Hall's policy. They said that species whose recovery could be impeded by the policy included the Gila trout and the Apache trout.

Mr. Hall's ruling fits squarely into the theory advanced by the Pacific Legal Foundation, a property-rights group in California, that endangered species be considered as one genetic unit for purposes of being put on the endangered species list and in subsequent management plans.

In an e-mail message on Monday, Russ Brooks, the lawyer who worked on the Oregon case for the foundation, wrote, "Having read the memo, I can say that I agree with it."

Bruce Taubert, the assistant director for wildlife management at the Arizona Game and Fish Department, said of the new policy,

“We support it,” adding, in the case of the endangered Apache trout, “Why should we spend an incredible amount of time and money to do something with that species if it doesn’t add to the viability and longevity of the species that was listed?”

“By not having to worry about small genetic pools, we can do these things faster and better,” Mr. Taubert said.

But Philip Hedrick, a professor of population genetics at Arizona State University, said that it made no sense to ignore scientific advances in his field. “Genetics and evolutionary thinking have to be incorporated if we’re going to talk about long-term sustainability of these species,” he said. “Maybe in the short term you can have a few animals closely related and inbred out there, but for them to survive in any long-term sense you have to think about this long-term picture that conservation biologists have come up with over the last 25 years.”

Professor Hedrick added that cutting off new genetic findings that fell short of providing evidence that a separate species had evolved was “completely inappropriate, because as everyone knows, we’re able to know a lot more than we did five years ago.”

He added, “They talk about using the best science, but that’s clearly not what they’re trying to do here.”

In a telephone interview from the Albuquerque fish and wildlife office, Larry Bell, a spokesman, said that Mr. Hall’s interpretation meant that “the only thing that we have to consider in recovery is: does the species exist?”

“We don’t have to consider whether various adaptive portions of a species exist,” he said.

Asked about why an Oregon ruling would have an impact on policies in the southwest, he said: “My belief is that because it’s the only court decision that addresses the issue of genetics. While we’re not within this region bound by the Oregon decision per se, it would provide guidance.”