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ENDANGERED SPECIES: Groups plan lawsuit to force final decision on penguins (01/04/2010)

Patrick Reis, E&E reporter

Two environmental groups announced plans today to sue the Obama administration for failing to meet deadlines for protecting seven penguin species.

At issue is the Obama team's failure to finalize a December 2008 proposed listing of the species as threatened or endangered within the year's time that the Endangered Species Act allows for such decisions.

The Center for Biological Diversity and Turtle Island Restoration Network say in a notice filed today that they will sue in 60 days unless the listing proposals are addressed.

"Penguins face a double whammy from the threats brought by climate change and industrial fisheries that deplete the penguins' food supply and entangle and drown the penguins in longlines and other destructive fishing gear," said Todd Steiner, executive director of the Turtle Island Restoration Network. "They deserve protection under the Endangered Species Act."

The Fish and Wildlife Service has declined to set a date for acting on the Bush-era proposals.

"We have provided funding for all of these decisions and are currently working towards completing them, but we have no estimated date for when we expect to have them finalized at this time," service spokeswoman Valerie Fellows said.

To finalize a listing, the service must reopen a period of public comments on the proposal and review those comments, as well as refine the rule for what becomes the government's scientific -- and frequently legal -- foundation for the decision, Fellows said. Once finalized, the rule is passed from field offices to regional officials before going to the Interior secretary for a final decision, she said.

The seven species are the African, Humboldt, yellow-eyed, white-flipped, Fiordland crested, and erect-crested penguins and some populations of the southern rockhopper penguin.

Finalizing the listings would activate several conservation mechanisms, including closer scrutiny of U.S. fishing licenses in southern oceans, said Shaye Wolf, a Center for Biological Diversity biologist.

The groups would likely file their lawsuit in the U.S. District Court of Northern California but would also have the option of doing so in the U.S. District Court in the District of Columbia, Wolf said.

The penguins are among 144 species for which the Obama administration is currently violating Endangered Species Act deadlines, Wolf said.

They are also indicative of the administration's failure to speed up a listing program that ground to a halt under the Bush administration, Wolf said.

"So far, the Obama administration has done even less for penguins than Bush did," Wolf said.