

# The San Diego Union-Tribune.

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May 21, 2005

## Plight of tiny fairy shrimp is a symbol of crisis Federal effort to save threatened species is hobbled by lawsuits

**By Mike Lee**

*UNION-TRIBUNE STAFF WRITER*

Coaster commuters scurry across footbridges at Carlsbad's Poinsettia railstation with little thought about what lives below: a tiny crustacean that symbolizes a national species protection program in crisis.

The endangered Riverside fairy shrimp, like scores of other species nationwide, is the subject of dueling lawsuits lodged by environmentalists and developers. Both sides say the U.S. Fish and Wildlife Service's habitat program is in shambles, and top agency officials have told Congress the same thing.

After more than a decade of such suits, the agency is spinning in a seemingly endless whirl of court mandates, paperwork and research. An estimated 400 species have been the subject of habitat litigation, and the agency is currently responding to about 40 related court orders.

The service says the legal expenses leave virtually no money for finding new species in need of protection, and the log jam has fueled legislation by a congressman from California's Central Valley who says altering the Endangered Species Act will allow the service to run its recovery programs based on science rather than the outcome of litigation.

Nowhere in the nation is the effect of the

legal wrangling more severe than at the U.S. Fish and Wildlife Service office in Carlsbad, which is responsible for preserving more than 100 federally protected species across six Southern California counties. Nearly half of those species live in San Diego County, putting the region at the heart of the controversy.

Because the Carlsbad office spends so much time in federal court, "We are almost totally hamstrung in terms of setting our own priorities," said spokeswoman Jane Hendron.

Nationwide, the agency said, it is spending about \$11 million this year -- roughly half of 1 percent of the agency's overall annual budget of \$2 billion -- on critical habitat litigation. Representatives say this comes at the expense of adding new species to the endangered list.

Because of the lawsuits, Hendron said, the agency has spent about \$244,000 in the past two years on studies related to protecting Riverside shrimp habitat.

Contentions over protected lands touch virtually all of California, home to more threatened and endangered species -- 291 -- than any state except Hawaii.

The case of the fairy shrimp, which lives in vernal pools that dot Southern California after the rainy season, is a classic example of how the situation unfolds.

In 2000, a lawsuit by the Arizona-based

species advocacy group Center for Biological Diversity resulted in a judge ordering the Fish and Wildlife Service to identify land vital for the fairy shrimp.

Almost without exception, courts side with the environmental groups bringing such actions because the law says "critical habitat" should be established at the time a species is awarded federal protection.

The designation forces a federal review of development proposals that involve critical habitat, not only on government land but also for projects that use federal permits or grants. The goal is to prevent new projects from destroying the last refuges of endangered plants and animals.

Under the law, there's a separate prohibition against harming protected species or their homes. As a result, the Fish and Wildlife Service maintains that "critical habitat" designations are redundant -- "kind of like a belt and suspenders," said agency spokesman Mitch Snow in Washington, D.C.

That philosophy has run through Democratic and Republican administrations. Since at least the early 1990s, the agency has mostly avoided reviews for designating land as critical habitat, saying its money is better spent developing recovery plans and using staff expertise to decide where else to invest resources.

Environmentalists object to the Fish and

Wildlife stance and point to an April article in the peer-review journal BioScience that shows species with critical habitat designations are far more likely to show improvement in their populations than species without them. They say the Department of the Interior, which oversees the Fish and Wildlife Service, has created a crisis by failing to adequately fund the habitat program.

"The (agency) has just unilaterally decided that Congress was wrong about protecting critical habitat. . . . That is far beyond their authority," said David Hogan of the Center for Biological Diversity's office in San Diego.

The center's lawsuit in the shrimp case resulted in the service initially proposing critical habitat on 12,060 acres. In 2001, Fish and Wildlife said there would be "no significant economic impacts" as a result of the extra layer of land protection. That did not sit well with developers, who say the effects of habitat protections regularly spill over onto private property by subjecting land owners to expensive studies, fees, design changes and consulting costs if they want to alter their land.

The building industry challenged the shrimp ruling with a lawsuit of its own. As a result, the court negated the original habitat order and told the agency to try again.

Sent back to the drawing board, the service has spent the past two years reviewing shrimp habitat and the economic impact of habitat designations, now pegged at up to \$4.4 million over 20 years. Impacts typically include delays and changes to development plans to accommodate protected species.

The Fish and Wildlife Service concluded in April that only 306 acres -- or less than 3 percent of the original designation -- were critical for the shrimp's survival.

Agency officials said they excluded so much of the original habitat because the land was part of other conservation plans, needed for military exercises or essential to national security. For instance, Camp

Pendleton land was excluded because protections might conflict with Marine training.

The service's decision probably is headed for a third court challenge by environmentalists concerned that the downsizing went too far.

"What am I supposed to do (when) they put out this piece of garbage?" Kieran Suckling, policy director at the Center for Biological Diversity, said of the latest habitat decision. "Of course they are going to get sued."

Developers will be watching closely. They already are pushing two sweeping lawsuits aimed at reducing protected habitat up and down the state, from San Diego County to Siskiyou County.

"What we have here is a federal regulation that is really not effective, but costs a great deal to implement and that is the perfect definition of waste," said Reed Hopper, attorney for the conservative Pacific Legal Foundation in Sacramento, which represents home builders and farmers in the lawsuits.

Meanwhile, the habitat issue is resurfacing in Congress, which regularly considers legislation on various aspects of the Endangered Species Act. In March, Rep. Dennis Cardoza, a conservative Central Valley Democrat, introduced a bill he dubbed "The Critical Habitat Enhancement Act."

It would give the Fish and Wildlife Service more time to designate habitat and require that the agency consult with local agencies on its decisions. Cardoza said that by redefining the process, his bill also would reduce litigation.

Mike Senatore, vice president of conservation litigation for the Washington, D.C.-based environmental group Defenders of Wildlife, said he sympathizes with the lawsuit-hobbled Fish and Wildlife Service. However, he said, Cardoza's proposal would undermine essential mandates and begin turning species protection into an untenable voluntary process.

"If that is going to be the starting point, I don't see how you get the various interest groups to have a serious debate about this subject," Senatore said.