

# THE CHRISTIAN SCIENCE MONITOR

wednesday, January 26, 2005

## Protection vs. recreation: the tortoise tussle

Environmentalists win legal round to protect a reptile, but off-roaders push to keep desert open

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SAN DIEGO – As Congress considers whether to tinker with the venerable Endangered Species Act, a dust-up between environmentalists and off-road enthusiasts is spotlighting the power of judges to protect animals from the agencies assigned to defend them.

At issue is the Mojave desert tortoise, a species whose numbers in Southern California have shrunk in recent decades. Federal wildlife officials, who believe they only have an obligation to keep the tortoise from dwindling further, are facing fire from environmental organizations, including the Sierra Club. A federal judge has

been sympathetic to the tortoise's defenders, rejecting pleas from off-roaders who fear losing access to large swaths of the desert.

The dispute is part of an enduring trend in which environmentalists are turning to the courts to fight any federal rollback of protections for rare plants and animals. In recent months, judges have been grappling with how far to go to protect animals such as Arizona's pygmy owl and the southwestern willow flycatcher.

"These court cases are shaping the way the Endangered Species Act is implemented," says Patrick Parenteau, an environmental law expert at the Vermont Law School in South Royalton.

The clash over the desert

tortoise is among the most visible, in part because it is a better-known and more popular species. After all, it beat out everything from the arroyo toad to the mountain yellow-legged frog to become California's state reptile. Perhaps helping the tortoise's cause is what boosters consider its dynamic personality and approachability.

"It's probably the most charismatic of all the reptiles," says Michael Connor, executive director of the Desert Tortoise Preserve Committee. "They're easily recognizable by everyone. If you see one in the desert, you can go up and touch it; you know it won't bite you."

The tortoises, which are about a foot long, pull into their shells to hide from foxes, ravens, and other threats, including dune buggies. "But that doesn't stop you from being run over," Mr. Connor says.

Human destruction of the tortoise habitat - along with disease and threats from natural predators - led federal officials to declare the tortoise to be "threatened" in 1990. (Under the law, "threatened" is a step below "endangered," which means that a species is not in immediate danger of becoming extinct, but might be in the future.)

Since naturalists say the tortoise likes to find moisture in desert washes - riverbeds that are usually on the dry side - federal wildlife officials have tried to keep off-road vehicles out of some desert areas of Southern California. But on Dec. 30, US District Court Judge Susan Illston said the government hadn't gone far enough. She temporarily banned off-road vehicles in 570,000 acres of desert washes - an area about twice the size of Los Angeles - and ordered officials to return with

a plan that better protects the tortoise.

Ultimately, the fate of the protected desert lands, along with countless other wildlife habitats across the country, lie in the hands of Congress, which has been considering bills that would weaken the 1973 Endangered Species Act's protections. It's unclear if the bills will return in the new congressional session, but there's plenty of pressure for change.

While it's designed to protect plants and animals, the act "often hurts people along the way," argues the National Endangered Species Act Reform Coalition, an organization made up of home builders, farmers, and other groups.

For now, however, the courts are the power players, lobbying back government attempts to limit the act's pro-

tections. Besides the ruling in the desert tortoise case, other courts have rejected the argument that the Endangered Species Act only requires that the government take action to prevent the extinction of animals, not that it needs to help them "recover," or gain in number.

That interpretation is "regrettably, but blatantly, contradictory to Congress' express command," said the Ninth Circuit Court of Appeals, which serves the Western states, in a ruling last year.

Environmentalists agree, saying the act requires the government to do much more than preserve the status quo. "The whole intent of the Endangered Species Act is to recover endangered species, not just keep them hanging on their deathbed for years and years," says Daniel Patterson of the Center for Biological Diversity in Tucson, Ariz.

As the court case continues, off- roaders are reluctantly avoiding the newly forbidden desert washes. Environmentalists contend they still have access to hundreds of thousands of acres of land in Southern California, including

many popular areas, despite the new and existing dune-buggy bans.

But off-road enthusiasts think the threat to the tortoises is overblown. They also believe the riverbeds are crucial to their recreational activities. "The whole desert is exciting," says Edward Waldheim, president of the California Off-Road Vehicle Association. He adds that public lands are "constantly being narrowed down, constantly being squeezed. You cannot have continued growth like we're having and continue to have [land] closures."

On that point - the shrinking desert - Mr. Waldheim and the tortoise defenders share common ground.