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## Lawsuit seeks protection of Sacramento splittail

- Challenges Bush Administration's action against fish
- 'One of the most outrageous cases of political interference, manipulation of science, and blatant conflict of interest'

SAN FRANCISCO - Another tiny fish that calls the Sacramento-San Joaquin Delta home is the center of a federal lawsuit that ultimately could impact use of fresh water from the Delta, the largest estuary on the West Coast of North America.

The "Sacramento splittail" should be restored to the federal endangered species list, says the suit filed Thursday in U.S. District Court in San Francisco by the Center for Biological Diversity.

The lawsuit says the George W. Bush administration removed the fish from the list in 2003 in a politically tainted decision.

"There is evidence that the 2003 decision not to list the splittail was influenced by Julie MacDonald, former deputy assistant Secretary of the Interior, Fish, Wildlife and Parks, who at the time the decision was made had a manifest financial conflict of interest," says the lawsuit. "The Investigator General of the Department of the Interior found that the scientific information and data relied on in making the 2003 Decision was limited and manipulated at the behest of Ms. MacDonald. As a result, the integrity of the listing process was undermined and the Sacramento splittail was

arbitrarily and capriciously denied the protections of the ESA."

The lawsuit is part of a larger campaign on the part of the Center for Biological Diversity to undo Bush-administration decisions that it feels weakened protections for dozens of endangered species.

"The Bush administration regularly put industry interests over conservation and let politics dictate endangered species decisions, but the delisting of the splittail was one of the most outrageous cases of political interference, manipulation of science, and blatant conflict of interest," says Jeff Miller, conservation advocate with the Center for Biological Diversity.

The center says the splittail has severely declined since its delistin. "Federal protection is needed to prevent the extinction of splittail and other native fish species that share its habitat in the Delta and Central Valley," says Mr. Miller.

In 1999 the splittail was listed as a threatened species. After litigation by water agencies challenging the listing, a court ordered the Fish and Wildlife Service to review the status of the splittail. In 2003 the Service removed the splittail from the threatened list "despite strong

consensus by agency scientists and fisheries experts that it should retain its protected status," the center says.

Ms. MacDonald, "who owned an 80-acre farm in the Yolo Bypass – a floodplain that is key habitat for the splittail – edited the splittail decision in a manner that appeared to benefit her financial interests," the Center for Biological Diversity says. "Two subsequent inspector general investigations concluded that MacDonald should have recused herself from the listing review process, and that she edited and interfered with the scientific data used in the decision."

The Sacramento splittail is a minnow native to the upper San Francisco Estuary and the Central Valley. Splittail are primarily freshwater fish but can tolerate moderately salty water. They are found mostly in slow-moving marshy sections of rivers and dead-end sloughs, though floodplains are important for spawning. The splittail once occurred in lakes and rivers throughout the Central Valley as far north as Redding on the Sacramento River and as far south as the Friant Dam on the San Joaquin River, as well as in the Sacramento-San Joaquin River Delta.

The splittail is estimated to be only 35 percent to 60 percent as abundant in the Delta as it was in 1940, and the percentage decline over the species' historic range is much greater.

Splittail numbers in the Delta have declined steadily since 1980, and in 1992 numbers declined to the lowest on record. Although population levels appear to fluctuate widely from year to year based on freshwater outflow, since the 2003 delisting of the species available data (2003-2007) shows splittail abundance has dropped to low levels for five consecutive years, according to the center.

Courts and federal agencies have begun to order changes in water export operations from the Delta to protect fish populations.

- In 2007, an Alameda County court ruled that the California Department of Water Resources had been illegally pumping water out of the Delta without a permit to kill delta smelt and other fish species listed under the California Endangered Species Act.

- A federal court also rejected a federal "biological opinion" allowing high water exports and ordered reduced Delta pumping.

- In 2008, a federal judge invalidated a water plan that would have allowed more pumping from the Delta at the expense of protected salmon and steelhead trout.

- Earlier this year the National Marine Fisheries Service determined that pumping operations of the

Central Valley Project jeopardize the long-term survival of winter and spring-run Chinook salmon, green sturgeon, Central Valley steelhead, and orcas that feed on the salmon, and mandated a 5 percent to 7 percent reduction in Delta water exports to save salmon.

The Center for Biological Diversity describes itself as a nonprofit conservation organization with 225,000 members and online activists dedicated to protecting endangered species and wild places.