

Suit challenges habitat designations

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A conservative legal foundation announced Monday it will file a lawsuit challenging federal designations of critical habitat for endangered species. The Pacific Legal Foundation notified the Fish and Wildlife Service and National Marine Fisheries it would file suit in 60 days over its designation of habitats for 48 species in California, including the Western snowy plover, steelhead trout and six other species protected in Monterey County.

Advance notice is required before filing endangered species lawsuits.

Among the eight species whose Monterey County habitats the group has targeted are steelhead trout, which spawn on the Carmel River, and the Western snowy plover, whose nesting grounds on Marina State Beach are protected.

Other local species named are longhorn and vernal pool fairy shrimp, and Contra Costa goldfields, Monterey spineflower, purple amole and Santa Cruz tarplant, all flowering plants.

Reed Hopper, principal attorney for the foundation, said the agencies failed to meet requirements of the Endangered Species Act when they established protected habitats.

Based on a favorable ruling in U.S. District Court in Fresno that overturned habitat protection for the Alameda whipsnake last year, Hopper said the agencies underestimated the economic impact of protec-

tion and didn't properly follow the rules to protect habitat.

"They speculated instead of determining what areas are essential to the conservation of the species," he said.

The legal foundation, representing business groups, farmers and developers in the case, said its lawsuit would ultimately bring back jeopardized plants and animals by forcing the agencies to consider their recovery plans, a claim dismissed by environmentalists.

"Only the Pacific Legal Foundation is cynical enough to argue that taking away habitat protection will help endangered species," said Kieran Suckling, of the Center for Biological Diversity, which has appealed the whipsnake case to the 9th U.S. Circuit Court of Appeal. "This lawsuit is all about paving California and clearing the way for massive development."

Suckling said a study of government data shows that species in critical habitat areas are recovering twice as fast as those who have not yet had a habitat declared.

Under the Endangered Species Act, the federal government is required to map out land that is essential to a plant or animal's survival and recovery.

The so-called critical habitat designation has been a hot topic for business interests, environmentalists and the federal government.

Environmentalists have sued to force the government to identify habitat to protect

species while developers and farmers have sued to remove or alter the designation, which can crimp logging, mining and large-scale development projects.

The government, meanwhile, has said habitat designation pales in comparison to the protection afforded once a species is listed as endangered or threatened. The Fish and Wildlife Service has blamed litigation for creating a backlog of petitions to protect other species and for diverting funds that could be used for other protection efforts.

"We could put more resources into recovery if we didn't have to spend those resources on critical habitat," said spokesman Al Donner.

Donner said it was premature to respond to the lawsuit notice, but said it would soon unveil a 60-year plan to help restore more than 30 protected vernal pool species, including Monterey County's longhorn fairy shrimp and vernal pool fairy shrimp.

The whipsnake case is currently before the 9th U.S. Circuit Court of Appeals, which ruled this summer in favor of environmentalists in a case involving critical habitat for northern spotted owls. They also won a case before a federal judge involving the desert tortoise.