



ENDANGERED SPECIES: 50 groups urge Obama admin to toughen habitat-protection rules (Greenwire, 03/10/2010)

Allison Winter, E&E reporter

Fifty environmental groups are urging the Obama administration to revisit rules setting parameters for when federal agencies can harm or destroy habitat for protected species.

In a letter sent today to Interior Secretary Ken Salazar and Commerce Secretary Gary Locke, the groups attempt to set guidelines for administration efforts to redraw key provisions in the Endangered Species Act.

Interior Department officials have said they are considering wide-ranging revisions to the 1973 law, with changes to the habitat modification rules at the top of their list. Interior is likely to make the changes administratively -- through new regulations and agency guidance -- not through an ESA rewrite in Congress (*Greenwire*, Dec. 24, 2009).

The law requires the government to protect critical habitat for endangered species and prohibits "destruction and adverse modification" of that habitat. The big question, the groups say, is how to define "adverse modification."

The phrase has been interpreted differently by different administrations. Multiple federal courts have said the Fish and Wildlife Service -- the government's primary ESA agency -- needs to provide a clarification.

The Center for Biological Diversity spearheaded the letter aimed at shaping that clarification, with 49 other groups -- including Oceana, the Union of Concerned Scientists, Sierra Club, American Rivers and Earthjustice -- signing on.

"The courts are beginning to reject efforts to limit adverse modification, so I think the administration is starting to recognize they need to address it," the center's Bill Snape said. "The courts have been very clear that adverse modification is a recovery-based standard. [The administration] recognizes they need to work with that and give guidance to their own scientists on how to apply it."

A technical but important distinction is whether the government must apply a "survival" or "recovery" standard when weighing habitat protections. Regulations in place since 1986 require protection for habitat as a means to aid survival of species. Environmental groups want them to expand protections to aid species' recovery.

Environmentalists say the courts support their approach. In a 2004 decision in *Gifford Pinchot Task Force v. Fish and Wildlife Service*, the 9th U.S. Circuit Court of Appeals said the survival-based standard goes against the Endangered Species Act because it would "drastically narrow the scope of protection commanded by Congress under the ESA."

The issue also came into play in a lawsuit filed by environmental groups several years ago against Interior in an effort to block livestock grazing in Colorado habitat for Preble's jumping mouse.

The groups argued that grazing was "adverse modification" because it would not promote the recovery of the mouse. But the government and ranching and homebuilder groups said grazing should be allowed, since "adverse modification" does not require "recovery." They said grazing itself was not jeopardizing the mouse -- even if it might be altering some of its habitat.

The 10th U.S. Circuit Court of Appeals sided with environmentalists, ruling in December 2007 that the "adverse modification" standard requires agencies to consider recovery. The court said any permitted actions should allow for species "conservation."