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Endangered Species Act attacked through the back door

BY ERIKA BOLSTAD

WASHINGTON-The Endangered Species Act has long had its foes, particularly in the West.

But in recent months, the law has taken an unprecedented hit from Congress. Republicans, led by Rep. Mike Simpson of Idaho, used a budget bill signed into law by the president to return to the states of Idaho and Montana the right to manage their wolf populations.

It's the latest move in a long-raging battle over how to manage gray wolves that has pitted environmentalists, ranchers, state wildlife managers and the federal government against each other.

It effectively took the wolves off the federal endangered species list in those two

states, sidestepping provisions in the Endangered Species Act that give citizens the ability to use the courts to force the government to act on endangered species.

Environmentalists say they fear the successful wolf delisting language will open the act to new legislative attacks. It "has certainly emboldened certain members who for political reasons see a benefit in stopping new listings," said Mike Senatore, vice president of conservation law at Defenders of Wildlife. "It set exceedingly bad precedent."

They were particularly alarmed by one of the first evidences of fallout: an amendment filed earlier this month by Sen. John Cornyn, R-Texas, who wants to stop the proposed listing of the dunes sagebrush lizard in New Mexico. He joins

House Republicans, who have filed legislation to stop the potential listing of the lizard and the lesser prairie chicken.

Cornyn, who has joined Rep. Steve Pearce, R-N.M., in saying that the proposed listings could shut down oil and gas production in parts of west Texas and eastern New Mexico, called the lizard a "scaly political pawn." Its listing would "score points with radical environmentalists," he warned earlier this month.

But in a report, the Center for Biological Diversity points out that the proposed habitat is 5 percent - or about 2,920 acres - of the 52,874 acres offered for oil and gas lease since the beginning of 2010. The environmental group also accuses the lawmakers who oppose the listings of being too closely tied to the oil and gas industry.

“It really fits into their message of the big, bad federal government,” the center’s Noah Greenwald said of Republicans. “It also reflects their corporate interests - their campaign contributors in the oil and gas industry.”

Although Simpson took the lead on the language that returned the gray wolf to state management, he said he, too, has some concerns about the door that may have been opened by the move. Simpson oversees Interior Department spending as the chairman of the appropriations subcommittee that approves the agency’s budget. He worries that his legislation could become a vehicle for amendments that target specific listings.

Environmentalists have a point, Simpson said: Congress shouldn’t meddle with the process of the Endangered Species Act. He argues that the wolf listing language was about allowing Montana and Idaho to separate their successful state wolf management programs from Wyoming, which does not have one. It didn’t change the law, he said, or interfere with a pending listing.

“In general I agree with them,” Simpson said of the argument environmentalists have made about meddling with the Endangered Species Act. “I don’t want Congress or our bill to be the delisting bill. So I’m going to try to prevent that, to some extent.”

But Simpson also said there’s much work to be done to tackle what he thinks of as flaws in the Endangered Species Act.

“My concern is that what the Endangered Species Act has become is not an act to save species,” he said. “It’s an act to control land and water. If it was to save species, we would be delisting these things.”

The law has had some notable successes, however: the bald eagle, the brown pelican, the Aleutian Canadian goose, American alligators, the American peregrine falcon and the eastern North Pacific population of the gray whale.

Both the dunes sagebrush lizard and the lesser prairie chicken are in dire need of protection, said Mark Salvo

of WildEarth Guardians, an environmental group. The chickens, a type of grouse, are “celebrated as icons of the arid landscapes where they occur,” Salvo said.

The explorers Lewis and Clark discovered many of the birds, Salvo said. And pioneers on the Oregon Trail wrote about huge flocks “darkening the sky” when they rose up from valley floors.

“Even today, Westerners, ranchers, hunters, birders, celebrate them as being as iconic to these landscapes, and deserving of a place in the landscape,” he said.

The lizards are equally important, he said, because they’re an indicator species for their habitat.

“If the lizard disappears, we know we’re mismanaging that habitat,” he said. “That’s why the lizard is also important for conservation.”

The Endangered Species Act currently protects more than 1,300 species in the U.S. and about 570 species in other countries. It gives broad powers to nearly anyone,

including citizens and government agencies, to petition for species to be protected. The law has specific statutory timelines for responding to those petitions and gives the public the ability to sue to enforce the deadlines.

However, even the federal government has acknowledges that the 38-year-old law is showing its age. Recently, the Interior Department announced a proposed settlement with WildEarth Guardians to clear up a backlog of more than 250 endangered species act petitions.

In recent years, the Interior Department has said that environmental groups have inundated it with petitions and lawsuits. As a result, the agency spent much of its resources on legal battles.

The Interior Department notes that over the past four years, the Fish and Wildlife Service received petitions to list more than 1,230 species - nearly as many species as have been listed in the law's entire history.

If approved by a federal judge, the settlement would

give the Fish and Wildlife Service the opportunity to "put the needs of species first and extend that safety net to those truly in need of protection, rather than having our workload driven by the courts," Deputy Interior Secretary David Hayes said last month.

Salvo, of WildEarth Guardians, said: "We're hoping that if the settlement agreement is certified, it will help focus agency efforts on protecting species. Which is really what the Endangered Species Act was enacted to do."