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Wildlife at Risk Face Long Line at U.S. Agency

BY TODD WODDY

In February, the Obama administration declared the Pacific walrus to be at risk of extinction because its Arctic habitat was melting. But it declined to list the marine mammal as an endangered species, saying a backlog of other animals faced greater peril.

Regulators say they are overwhelmed by lawsuits to save flora and fauna endangered by global warming. What's the answer?

The federal Fish and Wildlife Service is in emergency triage mode as it struggles with an avalanche of petitions and lawsuits over the endangered species list, the chief tool for protecting plants and animals facing extinction in the United States. Over the last four years, a few environmental groups have requested that more than 1,230 species be listed, compared with the previous 12 years in which annual requests averaged only 20 species.

Some environmental groups argue that vastly expanded listings are needed as evidence mounts that the world is entering an era of mass extinctions related to destruction of habitat, climate and other changes. Such threats require a focus on entire ecosystems, they say, rather than individual species.

Fish and Wildlife Service officials say the barrage has paralyzed the listing process. Last month, the agency asked Congress to intervene and impose a limit on the number of species it must consider for protection, setting the stage for a showdown.

"The many requests for species petitions has inundated the listing program's domestic species listing capabilities," the service wrote in its 2012 budget request. Already it faces a backlog of 254 species — including the yellow-billed loon, Gunnison's prairie dog and the North American wolverine. It says their protection is warranted but precluded by a lack of resources.

The Fish and Wildlife Service declined to make officials available for comment. But Gary Frazer, the agency's assistant director for endangered species, discussed the mass of filings in an interview last year.



U.S. Fish and Wildlife, via Associated Press
The Pacific walrus risks extinction, but making the endangered species list may take a long time

"These megapetitions are putting us in a difficult spot, and they're basically going to shut down our ability to list any candidates for the foreseeable future," Mr. Frazer said. "If all our resources are used responding to petitions, we don't have resources to put species on the endangered species list. It's not a happy situation."

Two environmental groups, the Center for Biological Diversity and WildEarth Guardians, have filed 90 percent of the listings petitions since 2007 and maintain that a bioblitz, as it is often called, is the best strategy for forcing the service to be more assertive in its wildlife protection mission.

"We want to compel the Fish and Wildlife Service to look at the full extent of the extinction crisis in the United States," said Nicole Rosmarino, wildlife program director for WildEarth Guardians, which is based in Santa Fe, N.M. "We would like a system where the service is actively looking for species that merit protection rather than the current system where groups like ours have to drive this process."

The wider environmental community appears divided on the mass-listing strategy.

“It is undoubtedly the case that the resources and the staffing for the Fish and Wildlife Service are inadequate,” said Bob Irvin, senior vice president for conservation programs at Defenders of Wildlife in Washington. “The question is, is tying the service in knots the best way to save the web of life?”

In its 2012 budget request, the service estimated that in 2011 it will be able to make final listing decisions on only 4 percent of warranted petitions within one year as required by law, down from 12 percent in 2010.

Since Congress passed the Endangered Species Act 37 years ago, some 1,370 species have been listed, the last being the southern rockhopper penguin. Last month, the agency asked Congress to impose a cap on the amount of money the agency can spend on processing listing petitions, both to control its workload and as a defense against lawsuits. “We would essentially use that as our defense for not doing more,” Mr. Frazer, the agency’s assistant director for endangered species, testified, “so that we can balance among the various duties that we have.”

This month, Congress intervened with the list for the first time, removing protections for wolves in Montana and Idaho, but it is unclear whether it will act on the wildlife service’s current request.

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Patrick Parenteau, a professor and endangered species expert at Vermont Law School who was special counsel to the Fish and Wildlife Service in the 1990s, said he could empathize with both sides. “The agency does seem to be reaching a political tipping point,” he said. “They feel overwhelmed, they feel politically vulnerable, they can’t handle the job, and all these petitions makes it harder and harder.”

“But from an endangered species conservation perspective, the environmentalists are doing exactly what the science demands,” he added. “If you want to save these species, you have to list them, designate their critical habitat and spend money.”

WildEarth Guardians and the Center for Biological Diversity have filed more than 100 lawsuits against the Interior Department over listing delays involving some 1,100 species since 2007, according to government records. Under the act, the Interior Department must determine if a petition to list a species warrants further investigation within 90 days of its receipt. Officials acknowledge that the Fish and Wildlife Service invariably misses that deadline.

If the agency issues a finding that a listing may be warranted, it has 12 months to conduct a scientific investigation and make a final determination. That deadline is often missed as well, leading to more litigation.

The Center for Biological Diversity is a particularly formidable adversary. The nonprofit group, based in Tucson, has 20 lawyers on its staff in more than a dozen offices across the country. The center raised \$7.5 million in 2009, according to its annual report, including \$4.8 million from membership donations and \$1.2 million in what it calls “legal returns” from cases.

The Fish and Wildlife Service’s 2012 budget request includes \$24.6 million for the endangered-species listing program, including paying a staff of 141. That is an 11 percent increase from the previous fiscal year and a 28 percent rise since 2009.

Daniel J. Rohlf, an associate professor at Lewis & Clark Law School in Portland, Ore., who specializes in endangered species law, said that was nowhere near sufficient.

“In an age of accelerating threats to biodiversity, not just from habitat loss but from invasive species and climate change, the budgets for Fish and Wildlife Service have not even been close to keeping up with the demands on the agency,” Mr. Rohlf said.

Noah Greenwald, the endangered species program director for the Center for Biological Diversity, said the government needed to streamline the listing process. “It’s more efficient to list species in batches by habitat or geography,” he said. “The petitions are also designed in part to pressure them to take that approach more often.”

According to a 2004 review conducted by the center, 42 species went extinct in the first 21 years of the Endangered Species Act’s existence while waiting to be listed. The study found that 24 species — including the four-angled pelea, a Hawaiian flowering plant, and the honeyeater, a bird native to Guam — became extinct while on the candidate list.

Last year, the Center for Biological Diversity filed a petition to list 404 plants and animals, including the Alabama hickory nut and the frecklebelly madtom, citing an “extinction crisis” for species dependent on waterways in the Southeast.

WildEarth Guardians began its barrage in 2007 in reaction to a sharp decline in listing decisions under the Bush administration. In that administration, only eight species were listed a year on average, compared with 58 per year in the Clinton administration, according to the center.

In a little over two years, the Obama administration has listed 59 species, Mr. Rohlf said. Of those, 48 were species of Hawaiian birds and plants listed as a group, in the kind of broad approach to habitat advocated by the most active petitioners.

“We’re pushing species to extinction every day, and it’s an overwhelming job, frankly, that the Fish and Wildlife Service has,” Mr. Parenteau said. “But is the answer to put your head in the sand and say, We’re not going to do it?”