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Endangered species truce hangs in the balance

By Juliet Eilperin

It wasn't too hard for the Fish and Wildlife Service to decide the fate of 92 freshwater snails, or 17 dragonflies or, indeed more than 500 species over the past year. But when it comes to the dunes sagebrush lizard, trouble looms.

The small spiny reptile seeks refuge from the hot sun and potential predators in the shinnery oak dunes of southeastern New Mexico and west Texas. Ranchers have been clearing the oak shrubs, and oil and gas companies are drilling in the dunes. If the lizard is designated as an endangered species, some of those activities could be in jeopardy.

The lizard's future is among the first in a series of wrenching tests threatening what has been a year-long ceasefire in the war over endangered species listings.

Since two environmental groups reached landmark agreements last year with the U.S. Fish and Wildlife, the government has resolved dozens of long-standing cases. State and industry officials who spent years largely resisting conservation efforts are now scrambling to protect imperiled species in the hopes of keeping them off the federal endangered species list.

But now the Obama administration must decide whether or not to provide federal protection to a handful of animals who share their habitat with oil and gas rigs, cattle, and wind turbines. And groups on both sides of the debate are skeptical of whether federal officials can make fair decisions—several of which will have ramifications for swing states in the West—in a presidential election year.

“Clearly the notion that there's a truce is very fragile,” said Defenders of Wildlife president Jamie, who headed the Fish and Wildlife Service under President Clinton.

According to last year's settlements WildEarth Guardians agreed to curtail its petitions and lawsuits aimed at the Fish and Wildlife Service, and the Center for Biological Diversity agreed to space out its litigation, in exchange for a commitment that the agency will issue protection decisions for 841 plants and animals.

“This settlement gave us the breathing room to really focus on conservation, which is really what the [Endangered Species Act] is about,” said Fish and Wildlife Service director Dan Ashe. “We're really able to focus our conservation effort.”

In fiscal year 2011 the agency made more positive listing decisions, 539, than in any year in the law's 39-year history. But these decisions—which either found a species that deserved federal protection or warranted further review—covered species whose conservation did not have huge economic implications such as the mollusks in the Pacific Northwest and springsnails in the West's Great Basin region.

“It's the calm before the storm,” said Sen. James M. Inhofe (Okla.), the top Republican on the Senate Environment and Public Works Committee.

The storm may start with the dunes sagebrush lizard, first listed as a candidate for federal protection in 1982. Since then its habitat has been reduced by 40 percent and Fish and Wildlife proposed listing the animal, also known as the sand dunes lizard, as endangered in December 2010.

The agency was set to issue a final decision a year later, but delayed by six months in the face of fierce congressional resistance. Some of the lizard's habitat overlaps with the oil-rich Permian Basin, which produces 17 percent of the nation's annual onshore oil supply.

Permian Basin Petroleum Association president Ben Sheppard, whose group represents 900 oil and gas producers in New Mexico and Texas, estimates the association has spent between \$500,000 and \$1 million on consultants who have conducted their own census of the lizard and challenged several aspects of agency's listing proposal.

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"The evidence does not point to a threat to this species," Sheppard said, adding his members fear this decision— along with ones on the Lesser prairie chicken and spot-tailed earless lizard, also mandated under the settlement agreement—could restrict oil and gas drilling. "We think the impact is in the billions of dollars."

Rep. Mike Conaway (R-Tex.), who has threatened to block Fish and Wildlife from listing the dunes sagebrush lizard, said the agency needs to prove it can do a better job of taking economic considerations into account in listing decisions. "We have to factor that into what we can and cannot do," he said.

The agency cannot take economics into consideration when making a listing decision, though it can factor economic impact into account when drafting plans to conserve listing species.

"The listing decision is a scientific diagnosis," Ashe said. "Once that's been made, you can take into account other factors."

Advocates for the lizard call Sheppard's dire economic predictions exaggerated. Its historic habitat accounts for just 2 percent of the Permian basin, said Center for Biological Diversity executive director Kieran Suckling, and federal officials have already indicated they will not prohibit energy exploration on that entire range.

"The impact of listing and saving the lizard will have a minimal impact on oil and gas drilling," said Suckling, estimating it will affect about one quarter of one percent of the basin.

One of the main reasons why the lizard may not mean economic doom for New Mexico and Texas oil and gas firms lies in the "candidate cooperation agreements" they have just forged, under which they voluntarily agree to protect its range. New Mexico now has a plan for 93 percent of the lizard's habitat; Texas is still assembling a program. In Texas the comptroller will enter into an agreement with private landholders; in New Mexico a non-profit organization will oversee the pact.

Ashe said the plans are encouraging, adding that its not clear yet whether it will be enough to avoid listing the lizard.

Western oil and gas drillers aren't the only ones scrambling to protect vulnerable species as a way of keeping them from being added to the endangered list. Fish and Wildlife must decide by Sept. 30 whether to propose listing the lesser prairie chicken, a grayish-brown grouse that lives in Colorado, Kansas, New Mexico, Oklahoma and Texas. In 2015, it must decide whether to list the Greater sage grouse, whose historic habitat traverses 11 states.

Tyler Powell, director of the Oklahoma Office of the Secretary of the Environment, estimates he spends a fifth of his time working to keep the Lesser prairie chicken off the endangered species list. The state hired two firms to develop a management plan that aims to minimize conflicts between the bird—which rams into ranchers' fences and is deterred from nesting by tall wind turbines—and the energy and farming sector in northwest Oklahoma.

"We think we've started to get some room where we've shown we've taken this seriously and we're going to take every effort possible to conserve the species," Powell said.

Inhofe—who initially held up Ashe's nomination as director over the issue—pressed Ashe last week over whether he would provide Oklahoma with "flexibility" in terms of the listing. In an interview,

Ashe said that could mean a six-month delay in finalizing a proposed listing decision, which otherwise would come out at the end of 2013.

Chermac Energy Corp. president Jaime McAlpine, who has already developed three wind farms in the bird's historic habitat and is considering three more projects in its range, recently agreed to pay \$2.5 million for lesser prairie chicken habitat conservation as part of a transmission line deal with the state department of wildlife .

"Needless to say, I reluctantly agreed to pay," McAlpine said. "Economic development is hard enough as it is."

Mark Salvo, wildlife program director at WildEarth Guardians, questioned whether these efforts will be enough to help the lesser prairie chicken.

"There is no reason why states shouldn't have been working to protect and recover the species years ago," he said, noting it has been on the candidate list for a decade.

Even when the law has produced successes, it is not without controversy. A year ago Congress voted to take gray wolves in the northern Rockies off the endangered species list, ratifying a decision by Fish and Wildlife that had been blocked by a federal judge. Idaho recently ended a hunting and trapping season which killed nearly 40 percent of the state's gray wolf population; Clark describes the current situation as "a powder keg ready to go off."

"You can't just go from fragile recovery to open season in a blink of an eye, and that's what's happening," she said.