

# Endangered earth

Inside this Issue

Winter 2005/2006

## Whale of a Victory Five-year battle with Bush administration leads to protection for Puget Sound orcas

The Center for Biological Diversity won a huge conservation victory in November when the National Marine Fisheries Service announced that Puget Sound's Southern Resident killer whales will be protected as an endangered species under the federal Endangered Species Act.

The Southern Residents are believed to be at risk of extinction primarily because of toxic pollution, reduced abundance of wild salmon (the whales' primary prey) and disturbance and noise from vessel traffic.

The Endangered Species Act protections address all of these threats by requiring polluters to ensure toxins will not travel up the food chain and deposit in highly concentrated amounts in killer whale blubber; by protecting the whales' critical feeding habitats

from destruction and thereby ensuring salmon populations remain healthy; and by authorizing substantial criminal and civil penalties against vessels that harm and harass killer whales.

The Southern Residents comprise a distinct population of killer whales that calls Washington's Puget Sound



The Southern Resident killer whale population of Puget Sound is believed to be at grave risk of extinction primarily because of toxic pollution, declines in wild salmon, and vessel traffic. The Center's Population Viability Assessment of the Southern Residents' status found that without protection, the whales would go extinct within 100 years. After years of work to protect Puget Sound's orcas, the Center celebrated a huge victory in November: the protection of the population under the federal Endangered Species Act.

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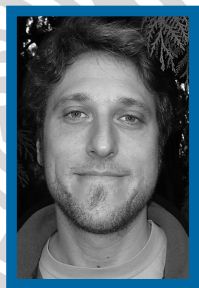
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its summer home. For over 30 years, scientists have carefully studied these whales, assessing the status of the population every year. These studies have greatly enriched our understanding of killer whales, but during the 1990s the studies also uncovered an alarming trend: the Southern Residents were declining at a rapid rate, losing 20 percent of the population in a five-year span.

In 2001, the Center published a scientific study of the Southern Residents' status. This study, known as a Population Viability Assessment, found that without provisions to protect them, these killer

Whales continued on back page...



# ADVOCACY SPOTLIGHT

Noah Greenwald, *Conservation Biologist*

## Delays are a dangerous gamble Center takes sweeping action to speed protection for 283 “forgotten” species in waiting list limbo

The keystone of the U.S. Endangered Species Act is the listing of imperiled plants and animals as “threatened” or “endangered” species. It is only after plants and animals have been added to these lists that they receive the substantial protections provided by the Act.

But lengthy delays in listing species known to warrant protection—often made lengthier by political interference—have been persistent problems in implementation of the listing program by the U.S. Fish and Wildlife Service (USFWS).

The consequences of delayed protection are severe, allowing species to decline, making recovery more costly and difficult, and in a number of cases resulting in species extinction. At least 42 plants and animals have become extinct during delays in the process to list them.

### **Administration drags its feet**

Political interference in extending the Act’s protections to the plants and animals that need it has been the hallmark of the current administration in Washington, D.C. Under the Bush presidency, fewer new species have been protected than under any other presidency since passage of the Endangered Species Act. (See chart, “Stalled out on saving species.”) To date, the Bush administration has listed only 39 species, all under court order, for a rate of just eight per year.

2 By comparison, the Clinton administration protected

512 species, and the elder Bush administration protected 234 species. Overall, an average of 45 species per year were listed from 1974 to 2000 and 73 species per year were listed from 1991 to 1995.

The Bush administration’s failure to protect more species



The Sonoyta mud turtle, now reduced to a single isolated U.S. population near Arizona’s Quitobaquito Springs, has been in unprotected limbo on the federal government’s waiting list for eight years.

does not reflect a lack of species in need of protection. To the contrary, there are currently 283 plants and animals considered candidates for protection under the Act—all so imperiled that USFWS has determined that they warrant the Act’s protection.

Unfortunately, these species remain on the government’s “candidate list,” which is the bureaucratic equivalent of an under-funded city pound where the nation’s wildlife go to waste away. Placement on the candidate waiting list provides no protection, and has left such species as the Oregon spotted frog, yellow-billed cuckoo, Pacific fisher, Dakota skipper butterfly, and the Hawaiian plant Kopiko at risk of extinction.

On average, the 283 species have been waiting 14 years for protection, and many have waited decades. The Kopiko, for example, was first proposed for protection in 1975. Today, as few as 10 plants remain, yet the administration has still failed to take action.

Without immediate action, many candidate species are likely to go extinct. But instead of taking steps to rescue these species on the brink by bringing them under the mantle of the Endangered Species Act’s full protections, the administration has allowed the candidate list backlog to grow even longer. There are now 31 more species on the list than when Bush entered office.

### **High time to take action**

The Center has been working for years to call attention to the forgotten species on the candidate list. In May 2004, as a culmination of those efforts, the Center petitioned the government to move 225 plants



Photo by David R. McAdoo

The white fringeless orchid grows in wetlands in the Blue Ridge Mountains and coastal plain of Alabama, Georgia, Tennessee, Kentucky and South Carolina. Only one out of every 100 plants produces seeds each year, and the orchid relies on sufficiently large populations to maintain itself. Though it survives in fewer and fewer locations, it has remained unprotected on the candidate list for 30 years.

and animals off the list and to fully protect them as “threatened” or “endangered” species.

A number of notable co-signers joined the Center in releasing the scientific petitions and launching a media campaign to bring the



candidate species into the national spotlight, including world-famous primate biologist Jane Goodall, Harvard Nobel laureate E.O. Wilson, Stanford population biologist Paul Ehrlich, Riverkeepers' Robert Kennedy, Jr., and naturalist-authors Barbara Kingsolver and Charles Bowden.

Since then, the administration has taken no action to speed protections for the candidate species—or even, as the Center's petition requested, to set reasonable timelines for their protection.

In response, we have taken the candidates' case to the courts. Along with Biodiversity Conservation Alliance, Center for Native Ecosystems and Forest Guardians, the Center filed suit in November 2005, arguing that the Bush administration has not met its responsibility to make "expeditious progress" to protect them.



Photo by Bill Boorhe

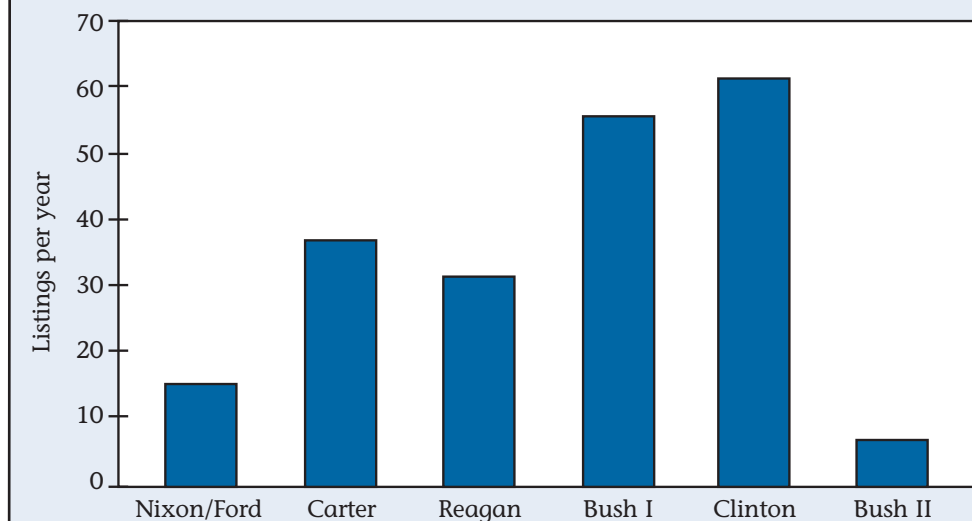
The Florida semaphore, a large prickly pear cactus from the Florida keys, was thought to have been driven extinct by collectors and road construction in the late 1970s but was rediscovered in the mid-1980s. Despite the species' precarious state, it was not placed on the candidate list until 1999 and has stayed there unprotected while its habitat falls prey to development, destruction and fragmentation.

### Funding "crisis" is poor excuse

The Bush administration repeatedly makes the disingenuous argument that it cannot protect the 283 species because all its funding is tied up by court orders requiring it to respond to petitions to protect other

## Stalled out on saving species

Chart: Rate of Endangered Species Act listings by presidential administration. To date, the Bush administration has listed only 39 species, all under court order, for a rate of just eight per year. By comparison, the Clinton administration protected 512 species and the elder Bush administration protected 234 species.



imperiled plants and animals or to designate "critical habitat" for species already protected under the Act.

An examination of its annual budget requests to Congress, however, shows that year after year the administration knowingly asks for far less funding than it needs to address the backlog of species needing protection.

Moreover, with the money it does have, the Bush administration is listing far fewer species per dollar than the previous administration. The rate of species listings per dollar has dropped from 22 species listed per million dollars in 2000 to just two species per million dollars in 2003 and six species per million in 2004.

Under the Endangered Species Act, the government is allowed to

ignore the normally strict timelines for protecting candidate species—but only if it can show that such protection is precluded by actions to protect other, higher priority species, and if it is making "expeditious progress" adding such species to the endangered list. Given that the Bush administration has only listed 39 species over its five-year tenure, it is increasingly clear that it is not making expeditious progress.

Taking the candidates' case to the courts is part of our larger campaign to obtain protection for the many imperiled species that without the protections of the Act will spiral toward extinction. The Center and our partners seek legal deadlines for the administration to finally take action, to ensure full funding for the listing program, and to move all 283 plants and animals currently on the candidate list under the full protection of the Endangered Species Act within five years. ■

For a more detailed analysis of the Bush administration's failure to protect endangered species, visit: <http://www.biologicaldiversity.org/swcbd/press/ESAreport-revised.pdf>



Photo by Mike Williams, Canadian Wildlife Service

The eastern Massasauga is a wetland rattlesnake of the Midwest and Great Lakes. It has waited for protection on the candidate list for 23 years while its wetland habitat continues to decline.

# PROGRAM NEWS...

## Members help defend four CA forests

In November, Center staff biologist Monica Bond delivered 1,140 letters from our members to the Regional Forester asking for improvements to the Forest Service's final management plans for Southern California's four national forests.

The plans, released in September, guide decisions on everything from protecting imperiled wildlife and providing recreational opportunities to deciding where potentially damaging developments and off-road vehicle trails can be placed on more than 3.5 million acres of the Los Padres, Angeles, San Bernardino, and Cleveland National Forests.

The Center participated in development of the plans, submitting a scientifically based Conservation Alternative outlining visionary management standards that would maintain world-class recreational opportunities while offering new ways to protect the rich array of plants and animals that call these forests home.

The Center's Conservation Alternative became "Alternative 6" in the Forest Service's Environmental Impact Statement for the plans. This May we also sent a report to the Forest Service identifying biodiversity hotspots in the four forests and recommending that they receive the highest level of protection.

Despite strong public support for Alternative 6, the Forest Service chose Alternative 4a, which fails to protect the forest

and its endangered and threatened species from fast-growing threats.

For example, the final plans would open the door for increased use of noisy, polluting off-road vehicles that damage streams and rivers, rip up wildlife habitat, increase fire risk, and disturb the 95 percent of visitors who do not use off-road vehicles. The final plans also neglect to propose eligible areas for wilderness, including Morrell Canyon in the Cleveland National Forest, paving the way for a highly destructive hydroelectric project.



Center biologist Monica Bond presents members' letters to Regional Forester Bernie Weingardt

The Center and our colleagues, backed by support from our members, will continue to challenge the Forest Service's concession of much of our precious forests to off-road and development special interests, and to push for improved management of our shared public lands.

## Center moves to reverse harm to Grand Canyon's aquatic habitat

For more than a decade the Bureau of Reclamation has been required to

modify the operations of Glen Canyon Dam on the Colorado River to reverse the dam's downstream impacts on Grand Canyon's famed river ecosystem.



Glen Canyon Dam, Colorado River

However, these efforts have been a resounding failure, prompting the Center and Living Rivers to notify the Department of Interior, U.S. Bureau of Reclamation and U.S. Fish and Wildlife Service (USFWS) in November of our intent to take legal action on behalf of the Grand Canyon.

In 1992, Congress passed the Grand Canyon Protection Act to reverse the demise of the canyon and the decline of endangered native fish species such as the humpback chub.

Following the completion of an Environmental Impact Statement three years later, the Glen Canyon Dam Adaptive Management Program was established to guide the Bureau of Reclamation in implementing recovery guidelines set forth by USFWS.

In October 2005, the U.S. Geological Survey released its evaluation of this program in a 220-page report, "The State of the Colorado River Ecosystem in Grand Canyon." This report confirmed what many scientists have been saying for years: that recovery is not being achieved.

The Center's suit, expected to be filed in late January, aims to stop Glen Canyon Dam's ongoing destruction of native fish and Grand Canyon's aquatic habitat.

## Devil's River minnow overdue for upgrade

In October, a coalition of conservation groups took the first step in securing stronger protections for the threatened Devil's River minnow.

The Center, along with Forest Guardians and Save our Springs Alliance, filed suit against the U.S. Fish and Wildlife Service to compel them to upgrade the minnow's status to "endangered" and to protect critical habitat for the fish.

The minnow was first listed as "threatened" under the federal Endangered Species Act in 1999 as a result of the Center's work. However, scientific evidence we provided USFWS proved the minnow needed the strongest level of protection available: an "endangered" listing.

In the six years since its threatened listing, Devil's River minnow populations have declined en masse. Surveys document not only a population decline but massive reductions in the minnow's range. This freshwater fish is now only found in three tributaries to the Rio Grande in southern Texas, and in one drainage in northern Mexico.

This minnow was once abundant in tributaries to the Rio Grande in spring-fed streams with fast-flowing water. But today, sightings of the fish's distinctive lateral stripe and wedge-shaped tail spot are few and far between.





Photo by Garold W. Sneegas

Devil's River minnow

Habitat for the Devil's River minnow has been lost or degraded by stream altering projects such as dam building, spring dewatering, bank stabilization, flood control efforts and irrigation. In addition, non-native fishes outcompete it for food and resources, and some prey upon it.

## Settlement brings two salamanders closer to protection

Two of North America's rarest salamanders will receive consideration for protection under the federal Endangered Species Act, in a settlement agreement reached between a Center coalition and the U.S. Fish and Wildlife Service.

In 2004, we petitioned USFWS to add the Siskiyou Mountain and Scott Bar salamanders to the endangered species list, but the agency missed its required deadlines to address the petition, claiming it lacked the resources to do so.

However, the Bush administration consistently fails to ask for sufficient resources to protect new species under the Endangered Species Act, creating a self-imposed budget "crisis" and stalling new protections for plants and animals that desperately need it. (See Advocacy Spotlight, page 2.)

Both the Siskiyou and Scott Bar salamanders are mostly subterranean-dwelling amphibians that feed on insects and small ants. The lungless creatures breathe directly through

their skin and depend on deep, moist shade provided by dense canopies of mature forests in northwestern California and southwestern Oregon. Unfortunately, these forests are threatened by logging on both private and federal lands—a threat compounded by the Bush administration's systematic weakening of forest protections.

Under the settlement, USFWS will issue an initial finding on our petition to protect the salamanders by April 15, 2006, and determine whether the salamanders should be protected by January 15, 2007. Protection under the Endangered Species Act, and conservation of critical habitat, are the salamanders' surest path to recovery.

Our partners in this case are the Klamath-Siskiyou Wildlands Center (K-S Wild), Cascadia Wildlands Project, Environmental Protection Information Center, and Oregon Natural Resources Council. The groups are represented by K-S Wild's staff attorney Erin Madden and Amy Atwood of the Western Environmental Law Center.



Photo by Gary Nafis

Scott Bar salamander

## Center sees early victories in Energy Policy Act campaign

Earlier this year the Center sued 14 federal

agencies for failing to comply with the Energy Policy Act of 1992, a law passed at the close of the first Gulf War and intended to help break U.S. dependency on foreign oil.

The Energy Policy Act requires federal agencies to use alternative fuel vehicles (such as bio-diesel) as a step towards the Act's goal of replacing 30 percent of all oil used for transportation in the U.S. with alternative fuels by 2010.

With over 600,000 vehicles in its fleet, the U.S. government is the largest car purchaser in the nation. If fully implemented, the law would have decreased U.S. reliance on fossil fuels, reduced U.S. greenhouse gas emissions that cause global warming, eliminated excuses to develop new oil fields and pipelines in wildlife areas such as the Arctic National Wildlife Refuge, and reduced air pollution.

Unfortunately, the current Bush administration has almost completely ignored this statute signed into law by the first President Bush.

In July 2005, in an initial ruling in the case in our favor, a federal judge found the CIA to be in violation of the Energy Policy Act. And in a partial settlement of the case at the end of November, four federal agencies—the Departments of Commerce, Labor, Transportation, and the Veterans Administration—admitted their violation of the law and agreed to alternative fuels vehicle purchasing plans to bring their purchases from 46 percent, 3 percent, 29 percent, and 24 percent respectively up to the 75 percent required. A final decision in the claims remaining in the case is expected in early 2006.

This campaign follows on the Center's successful action in 2002, which compelled the federal agencies to prepare overdue reports demonstrating their compliance, or lack thereof, with the Energy Policy Act.

## GAO report, Center campaign, reveal grazing fee shortfall

In late October, the Government Accountability Office (GAO), a nonpartisan research arm of Congress, released a study showing that public lands livestock grazing costs U.S. taxpayers at least \$144 million a year, and that the government only recovers one-sixth of these costs by collecting grazing fees.

However, these dismal figures fail to also account for the ecological costs of livestock grazing. In light of that oversight, the Center's Range Restoration Campaign worked hard to ensure that media coverage of the GAO report revealed the complete story of livestock impacts on public lands.

The Center also responded to news of the budgetary shortfall by submitting a petition to the Secretaries of Interior and Agriculture (which manage the U.S. Forest Service and Bureau of Land Management, respectively) to raise the grazing fee on federal lands.

The present grazing fee is based on a flawed formula that has failed to keep up with the market. As a result, public lands ranchers pay much less than ranchers who graze on private, state trust, or other types of federal lands. In fact, the federal

# P PROGRAM NEWS...

grazing fee decreased by 40 percent between 1980 and 2004, while private fees increased 78 percent during that same period.

We believe that, at the very least, the government should be recovering the economic costs of permitting livestock operations. We encourage them to begin considering the widespread ecological costs as well: degraded water and air quality, impaired habitat for imperiled species, and diminished aesthetic experiences for recreational users of our public lands.

The Center was joined by American Lands, Great Old Broads for Wilderness, Forest Guardians, Oregon Natural Desert Association, and the Western Watersheds Project in submitting this petition.

## ■■■■■■■■■■ Court win may help save marlin from longlines

A key component of the Center's Oceans Program is our effort to eliminate the harmful impacts of longline fishing on imperiled marine species. Our longlining campaign scored a significant victory in October, when a federal judge approved a settlement requiring the National Marine Fisheries Service (NMFS) to take several steps to protect the Atlantic white marlin.

Atlantic white marlin have declined to less than five percent of their historic biomass, with longline fishing the primary cause of the decline. In 2001, the Center petitioned NMFS to protect the white marlin

under the Endangered Species Act. While NMFS made an initial positive finding on the petition, the agency ultimately ignored science showing the marlin's extinction trajectory, and concluded that Endangered Species Act protections were unnecessary to halt the species' decline.

The Center's successful suit requires NMFS to reevaluate whether the Atlantic white marlin warrants those protections, and also requires the agency to analyze whether closing certain marlin "hot spots" to longline fishing would significantly reduce mortality to the species.

If ultimately listed under the Act, the white marlin would be the first longline-caught fish to be protected under our nation's premier wildlife protection law.



Marlin fishery historic photo

Photo by Tom Greene

A typical longline fishing vessel lays out a monofilament main line 20 to 40 miles long with upwards of 2000 baited hooks. Intended to catch tuna, swordfish and sharks, longlines catch and drown hundreds of thousands of seabirds, tens of thousands of sea turtles, and thousands of marine mammals annually. Even target species are caught at unsustainable rates.

A recent study published in *Nature* documented the decline of large marine fish by over 90 percent in less than 50 years since the onset of industrial fishing practices.

## Take action today to stop anti-ESA bills in Senate

In the fall issue of *Endangered Earth*, we urged you to take action against H.R. 3824, the "Extinction Bill" that passed the U.S. House of Representatives in September by a largely party-line 229-193 vote—with little debate. (See Fall 2005, "Kill this Bill.")

Authored by Rep. Richard Pombo (R-Calif.), a rabid opponent of environmental protections, H.R. 3824 would gut many of the Endangered Species Act's key protections for America's most imperiled plants and animals.

Thank you for contacting your Representatives to let them know how you feel about their votes on the Pombo bill. We still need your help: the fate of the Extinction Bill is now in the Senate's hands, and they are expected to take action on it soon (as early as February).

Fortunately, the bill faces tougher opposition in the Senate from key leadership—including Sen. Lincoln Chafee (R-RI), who heads up the Senate subcommittee overseeing environmental issues.

However, the Endangered Species Act has staunch enemies in the Senate who seek to unravel our nation's strongest safety net for imperiled wildlife. In December, under cover of Congress' end-of-year rush to recess for the holidays, Sen. Mike Crapo (R-ID) introduced S. 2110—another bill intended to cut the heart out of the Act.

The Senate bill would completely derail the program to add plants and animals to the endangered species list, remove protections for endangered species habitat, and cut federal oversight of projects that threaten endangered species.

In the same underhanded fashion in which Pombo has attacked the Act in the House, Crapo hopes to sneak his bill through the Senate Finance Committee—bypassing the Environment and Public Works Committee that usually oversees endangered species issues.

Both these terrible bills are still alive in the Senate, but with your help, we can raise the alarm and stop them in their tracks.

### What You Can Do

Please help get the message to the U.S. Senate that you support America's wildlife and you expect them to as well.

Contact your Senators and urge them to:

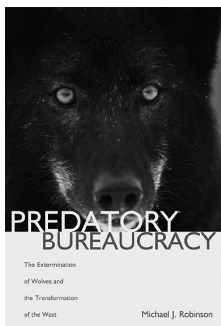
1. Support protections for endangered wildlife and their habitat
2. Oppose the Crapo bill S. 2110
3. Oppose any efforts to undermine the Endangered Species Act

For contact information for your Senator, talking points, and more ways you can help, visit: [www.biologicaldiversity.org](http://www.biologicaldiversity.org)



This issue, we feature the creative published work of two Center staff members: Carnivore Conservation Coordinator Michael J. Robinson and Policy Director Kieran Suckling.

## Wolf epic published



The Center's own Carnivore Conservation Coordinator Michael Robinson has published *Predatory Bureaucracy: The Extermination of Wolves and the Transformation of the West*.

The product of 13 years of research, *Predatory Bureaucracy* tells the epic story of the West's wolves from conquistador days through 2005.

The book traces wolf extermination from its rogue bounty-hunter history through the emergence of a federal control program that nearly eliminated wolves throughout the United States and Mexico and radically changed American lands. Federal wolf killing undercut the livelihoods of countless homestead families in order to benefit an emerging elite of livestock owners, and disrupted the balance of ecosystems that relied on wolves as predators.

*Predatory Bureaucracy* demonstrates the continuity of federal policies from 1905, when the newly created U.S. Forest Service first began trapping wolves, through 2005 and a Mexican gray wolf reintroduction program that traps and kills too many wolves and thwarts scientists' recommendations for recovering the species.

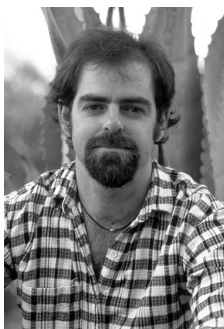
The book explores the role of the Endangered Species Act—which, when signed into law in 1973 became the only significant obstacle to government trapping and poisoning wolves to extinction, and which led to reintroduction of wolves in the 1990s. But now the law is under attack precisely because of its effectiveness, and the western livestock industry is poised to regain unrestrained use of poison if the Act is gutted.

Dave Foreman calls *Predatory Bureaucracy* “insightful, eloquent, humble.” Pulitzer Prize-winner Thomas

Powers calls it an “extraordinary book.” Wildlife biologist David R. Parsons, the former Mexican wolf recovery coordinator for the U.S. Fish and Wildlife Service, says *Predatory Bureaucracy* is “compulsively readable” and recommends it especially to government biologists.

To purchase an autographed copy of *Predatory Bureaucracy* and help support the Center's work, please visit our website at [www.biologicaldiversity.org](http://www.biologicaldiversity.org).

## A week in the blog-light



Our members know founder and Policy Director Kieran Suckling as the Center's voice on Endangered Species Act politics—including the current battle to defend the Act against legislative attack in Congress.

But this fall, Kieran shared another side of his voice with a national audience: every bit as political, but also personal and poetic. Kieran spent a week in October as the guest blogger for Natural Resources Defense Council's Action Fund, writing a series of essays on cultural and biological diversity.

Not unfamiliar subjects for our resident philosopher-turned-endangered species advocate, but the blog showcases the philosopher. Kieran infuses his subject matter with insights inspired by everything from Heidegger, the Sex Pistols, and Beethoven to the Book of Genesis, the Magna Carta, and the author's own boyhood interactions with local flora and fauna.

For our members who missed the October run, Kieran's blog entries are posted at <http://blog.nrdcactionfund.org/>. The following is an excerpt from his October 5 entry: “Loss of species, language, perspective.”

*Javelinas haven't prowled my yard for a while. I miss them. They rip up the irrigation*

## Endangered earth

Endangered Earth is the quarterly newsletter of the Center for Biological Diversity, a 501(c)3 nonprofit organization dedicated to protecting endangered species and wild places through science, advocacy, education and environmental law. Contributions are tax-deductible.

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On occasion, we trade our mailing list with organizations that share our mission. If you would prefer that your name not be exchanged, please contact us.

CENTER FOR BIOLOGICAL DIVERSITY  
BECAUSE LIFE IS GOOD.

*and ravage the quail block, but in doing so they remind me that this is their world too.*

*I may have paid for it, but this 20 acres is still their home. And if I alter the land to meet my desires, I affect their lives too. I was reminded by someone yesterday that you can't choose your parents. Turns out you can't choose your animal neighbors either.*

*Or maybe we can. Because of our choices, plants and animals are disappearing from the world. And from our neighborhoods even faster. It's not only their bodies that are leaving, but their perspectives.*

*Diane Ackerman beautifully described the influence of species on perception in an essay called “The Moon by Whale Light.” The moon, seen in the presence of calving whales, is very different from the moon seen from an apartment window, or the moon seen through the filter of a million gray bats rushing into the night.*

*We tend to think of perspective as individual, but it's surely influenced by a community of perceivers. Whether that community includes a diversity of plants and animals matters. Not just to them, but to us. ■*



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## Whale of a Victory *continued from front page*

whales would go extinct within 100 years. The Center then drafted and submitted a petition to protect the Southern Residents under the Endangered Species Act. Joining our petition were 11 co-petitioners, including former Washington Secretary of State Ralph Munro.

But the Bush administration announced in July 2002 that it would not protect the whales under the Endangered Species Act, claiming that Puget Sound's killer whales are not "significant" enough to protect.

The Center sued the Bush administration for that decision, and in December 2003 a court determined that the administration's decision denying protection to the Southern Residents was "arbitrary and capricious" under the law.

The Bush administration then proposed to list the Southern Residents as a "threatened" species, which would have provided the administration with the discretion to exempt almost any activity from the Endangered Species Act's protections. In response the Center submitted comments demanding that full Endangered Species Act protections be given to the Southern Residents, including protection for the whales' critical feeding habitats.

In a victory for science and the democratic process, the National Marine Fisheries Service did protect the Southern Residents as an "endangered" species in its final rule. In an encouraging statement, the agency also agreed with conservationists that "designating critical habitat is

useful for the recovery of Southern Resident killer whales" and is expected to propose protected habitat for the whales shortly. ■

*Cover article by Brent Plater, Center staff attorney, who since 2000 has led our campaign to protect Puget Sound's killer whales.*