

Politicizing Extinction

The Bush Administration's Dangerous Approach to Endangered Wildlife



A Center for Biological Diversity Report



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Greater sage grouse, photo by Gary Kramer/USFWS

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The Center for Biological Diversity is a nonprofit conservation organization with more than 35,000 members dedicated to the protection of imperiled species and habitat.

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Grizzly bear
photo by Robin Silver

Executive Summary

The Bush administration has implemented the Endangered Species Act in a manner that undermines, minimizes and eviscerates fundamental protections for the nation's most imperiled wildlife. Political appointees in the administration have consistently interfered in the scientific process with the express purpose of limiting protections for endangered species. In so doing they have bullied government scientists, violated the law, and ignored public concern for the conservation of wildlife.

In the following discussion, we provide conclusive evidence of the administration's obstruction and interference in three critical aspects of implementation of the Endangered Species Act: protection of new species as endangered, designation of critical habitat, and development and implementation of recovery plans. The administration's malfeasance in these areas is leading, and has led, to the irreversible extinction of species.

Protection of New Species As Threatened or Endangered Has Come To a Halt Under the Bush Administration

Under the Bush administration, listing of species has dropped to the lowest level since the Act was passed, far below the level of any other administration. Since the administration took over in 2001, the U.S. Fish and Wildlife Service has listed just 50 species, for a rate of eight species per year. By comparison, the Clinton administration listed 512 species for a rate of 62 species per year, and the first Bush administration listed 234 species for a rate of 56 species per year.

On May 9, 2007, the U.S. Fish and Wildlife Service will not have listed a single U.S. species for an entire year. The last time the agency went this long without protecting a single species was in 1981 when James Watt was Secretary of Interior, and in response Congress amended the Endangered Species Act to create mandatory timelines by which species were protected.

Currently, there are 279 species recognized as candidates for protection as threatened or



Florida manatee
photo by Jim Reid/USFWS

endangered. These species have on average been waiting 19 years for protection. Delay and obstruction in protection of species as threatened or endangered makes recovery more difficult and costly and places species at risk of extinction. Indeed, at least two species have gone extinct waiting for protection under Bush's watch — the Hawaiian plant, Haha, and summer-run Lake Sammamish kokanee.

Limiting Designation of Critical Habitat

Designation of critical habitat provides important protection for endangered wildlife by demarking habitats necessary for their survival and recovery. The Bush administration has been forced to designate critical habitat for large numbers of species by court order. In nearly every case, the administration has overruled its own biologists and ignored the comments of peer reviewers and the public to reduce the area covered by designated critical habitat.

Proposals to designate critical habitat are generally completed by agency scientists most familiar with the species in question and inclusive of habitats necessary for survival and recovery. Final designations of critical habitat, however, must be approved by political appointees at the highest levels of the Department of Interior. Of all critical habitats designated under the Bush administration, 90 percent were reduced from proposed to final by an average of 70 percent. These reductions resulted in the loss of more than 71 million acres of protected habitat for endangered species.

Undermining Recovery: the Bush Administration's Interference in the Development and Implementation of Recovery Plans

The Bush administration has completed fewer recovery plans than any administration since the Carter administration, to date only completing 100 plans compared to 577 plans completed under the Clinton administration and 174 under the first Bush administration.

In developing a number of recovery plans, political appointees in the Bush administration have interfered in the scientific process to an unprecedented degree. Recovery plans for both the Apache trout and northern spotted owl, for example, were rewritten without the

participation of the recovery teams, which included recognized experts on the species and were formed specifically to develop the plans.

In the case of the northern spotted owl, when the recovery team developed a draft plan that built on reserves designated under the Northwest Forest Plan to protect the owl and the old-growth forests it depends on, the administration formed a "Washington oversight committee" that included the heads of federal land-management agencies and a number of political appointees with close ties to the timber industry, who wrote a new plan that lacked specific reserves to protect the owl's habitat.

In a rush to strip species of their protection as endangered species, the administration has ignored population targets developed by recovery teams that must be reached before species can be delisted. In particular, the administration proposed to remove the West Virginia northern flying squirrel from the list of endangered species even though there is no evidence that populations have stabilized and the species is severely threatened by logging of its forest habitats and climate change. The administration is also moving to strip protection for the gray wolf, Yellowstone population of grizzly bear, Florida manatee, and marbled murrelet.

In composite, these examples demonstrate that the administration is abusing executive authority to fundamentally undermine protection for endangered species.

I. Protection of New Species As Threatened or Endangered Has Come To a Halt Under the Bush Administration

Listing of species as threatened or endangered is the keystone of the U.S. Endangered Species Act because it is only after species are listed that they receive the substantial protections provided by the Act. Under the Bush administration, listing of species has dropped to the lowest level

As of May 9, 2007, the agency will not have listed a single species for a year. The last time the agency went an entire year without protecting a single species was in 1981, when the infamous James Watt was Secretary of Interior, and Congress quickly responded by amending the Act in 1982 to include firm

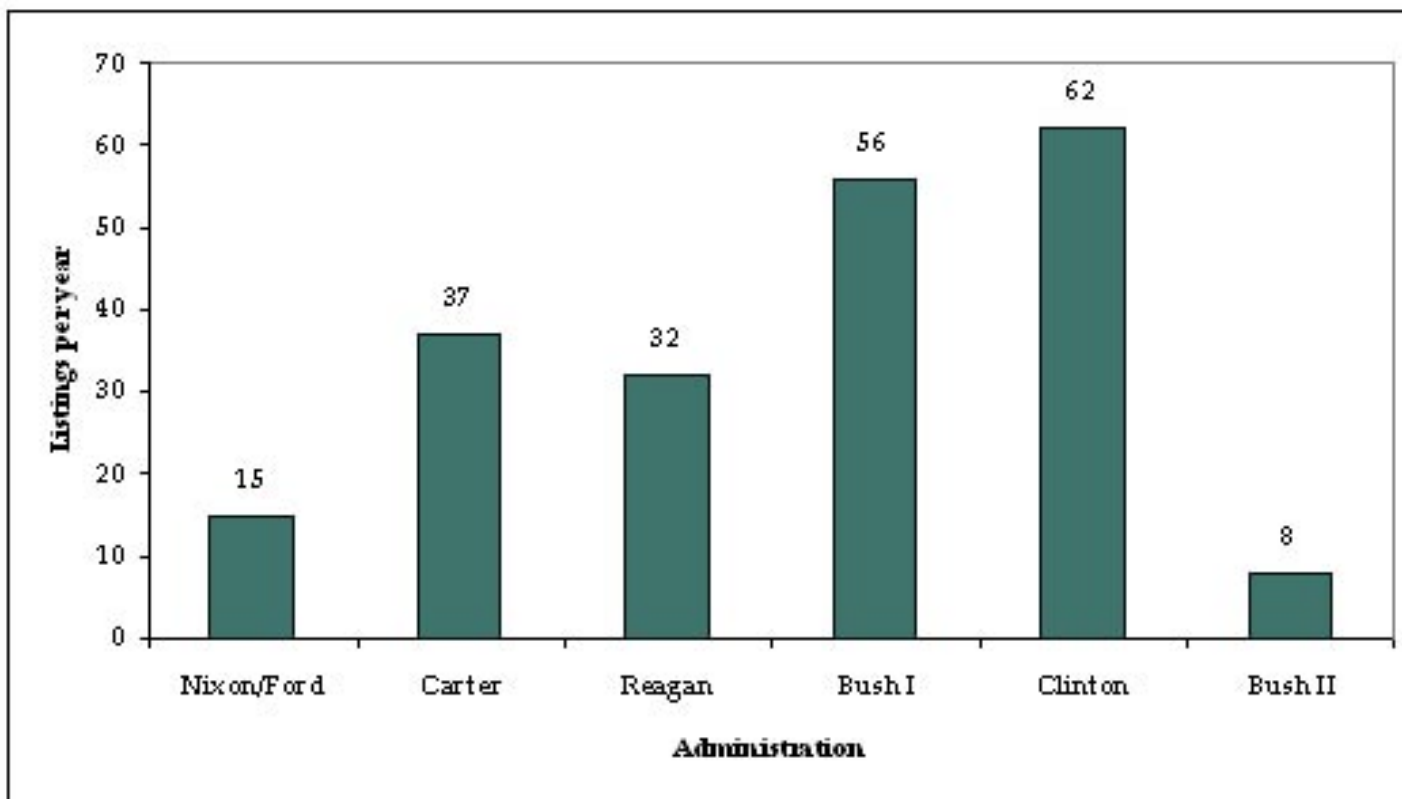


Figure 1. Rate of U.S. Fish and Wildlife Service Endangered Species Act listings by presidential administration.

since the Act was passed, far below any other administration (Figure 1). Since the administration took over in 2001, the U.S. Fish and Wildlife Service has listed just 50 species for a rate of eight species per year. By comparison, the Clinton administration listed 512 species for a rate of 62 species per year and the first Bush administration listed 234 species for a rate of 56 species per year.

deadlines for protecting those species. It may be time for Congress to step in once again.

This sharp drop in the number and rate of species listings is not due to a shortage in the number of deserving species. To the contrary, there are currently 279 species that are candidates for listing, which have on average been waiting nearly 19 years for protection.¹

Many of these species, including the elfin woods warbler, mountain yellow-legged frog, and New England cottontail rabbit, are on the brink of extinction.

Lack of action by the Bush administration is leading to the extinction of species

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. Indeed, at least 25 species have become extinct after being recognized as a candidate species.² One of these extinctions was announced as



Fish and Wildlife Service to emergency-list the population. With no response by 2003, King County Executive Ron Sims wrote to the Fish and Wildlife Service noting that early-run kokanee were probably extinct and demanding a response within 90 days to the request for protection. He received no response, and most biologists believe the population is now extinct.

A number of species are on the brink of extinction, but have yet to be protected. Under the Endangered Species Act, the administration has the authority and duty to provide emergency protection to species when their status becomes dire. Even in cases where there is an obvious emergency, the administration

has been ignoring this duty. Commenting on the extinction of the Hawaiian plant Haha, for example, an email from a Fish and Wildlife Service biologist (available upon request) concluded that three other Hawaiian plants should be emergency-listed before they too become extinct, stating:

“We should give serious consideration to emergency listing one or more of these species of there is justification. In light of the news that one of the Hawaiian candidates is going to be recommended for removal from candidate status because it is extinct! I am not

recently as October 2006, when the Fish and Wildlife Service concluded that there are “no extant wild individuals and there is no material in genetic storage” of the Hawaiian plant “Haha” (*Cyanea eleleensis*) and thus that the species “appears to be extinct.”³

Another species extinction on Bush’s watch is the summer-run of the Lake Sammamish kokanee, which formerly lived in Washington’s second-largest lake. After biologists only counted two fish returning to Issaquah Creek in the year 2000, a group of homeowners formed Save Lake Sammamish and petitioned the U.S.

Kokanee salmon
photo courtesy USFS

anxious to have any other species end up in the same situation without at least trying to get them added attention via emergency listing – if that’s appropriate. Karen doesn’t think the case has been made to emergency list and questions the benefit it would have. I’m not so sure – and particularly with just two individuals left of *Phyllostegia hispida* it seems to me we ought to take a very hard look at emergency listing at least that one.”⁴

Although this email is dated 18 months ago, these species have yet to be protected.

Another Hawaiian candidate, the Akikiki or Kauai creeper, which is found only on the island of Kauai primarily in the Alakai Swamp,



Akikiki
photo courtesy NBII

may also be nearing extinction. The species had a population of roughly 7,000 birds in 1973, but declined to fewer than 1,500 birds by the year 2000.⁵ In recent years, the American Bird Conservancy notes that expert birders have had difficulty finding any Akikiki or another bird, the Akekee. A recent press release from the Conservancy concluded:

“A dramatic drop in sightings of the Akekee and the Akikiki, two very rare birds on the Hawaiian Island of Kauai, is raising concern that these species may be on the brink of extinction.”⁶

The Akikiki was made a candidate in 1994, nearly 13 years ago, yet to date has not been protected. The Akekee is not a candidate, but likely should be considered for protection. Both of these unique Hawaiian birds are at risk because of lack of action by the Bush administration.

In the few cases where the administration has been forced to make decisions about whether to protect candidate species by court orders, they have reversed previous determinations and denied the species protection, including decisions over the Montana fluvial arctic grayling, Gunnison sage grouse and others. The Fish and Wildlife Service first placed the grayling, which is a member of the salmon family, on the candidate list in 1982. The grayling was formerly widespread in the upper Missouri River of Montana, but today is found in just one stretch of the Big Hole River, where a combination of habitat degradation, non-native trout, and water withdrawal for irrigation have driven it to the brink of extinction. In 1994, the grayling was upgraded from a category two to a category one candidate,⁷ and in 2002, its listing priority was changed from a 9 to a 3, which is the highest priority given a population and indicates that the grayling faces high-magnitude threats and is at imminent risk of extinction. Rather than immediately protecting the grayling as an endangered species, on April 24, 2007, the administration denied the grayling protection and removed it from the candidate list, stating that it no longer considered the population, which is the last in the continental United States and the only one in a non-arctic drainage, to be significant.

The administration similarly denied protection to the Gunnison sage grouse on April 18, 2006. Like the grayling, the grouse was a candidate species that as recently as 2003 was given the highest priority for listing because of high-magnitude threats and imminent risk of extinction. Reflecting this risk, field staff at the Fish and Wildlife Service

prepared a draft rule to list the species as endangered in 2005 — the same year in which the National Audubon Society listed the grouse as one of the 10 most endangered birds in North America. This draft rule, however, was never finalized because political appointees in the administration overruled the field biologists, denied the grouse protection, and removed it from the candidate list.

Lack of funding and litigation are not to blame for the administration's poor record protecting species

The poor listing rate has occurred despite substantial increases in funding for the listing program. From 2000 to 2006, the listing budget increased from \$6,208,000 to \$17,630,000, which is a 280 percent increase. Since 2002, Congress has capped the amount of listing dollars that can be spent on critical habitat, providing a dedicated source of funding for listing of new

species. This dedicated funding has increased from \$3,077,000 in 2002 to \$4,778,000 in 2006, which is a 55 percent increase.

With increased funding and decreased efficiency, the number of species protected per dollar has declined dramatically under the Bush administration (Figure 2). The Fish and Wildlife Service listed nearly 30 species per million dollars in 1997 and more than seven species per million in 1998. Between 2002 and 2006, in contrast, the agency listed an average of just 2.4 species per million dollars of budget.⁸ Had the agency maintained efficiency, it would have listed 563 species between 2002 and 2006 based on the 1997 rate and 136 species based on the 1998 rate, instead of the 50 species it actually listed.

U.S. Fish and Wildlife Service officials repeatedly have claimed the reason the agency is not protecting more species, particularly candidate species, is because it is flooded

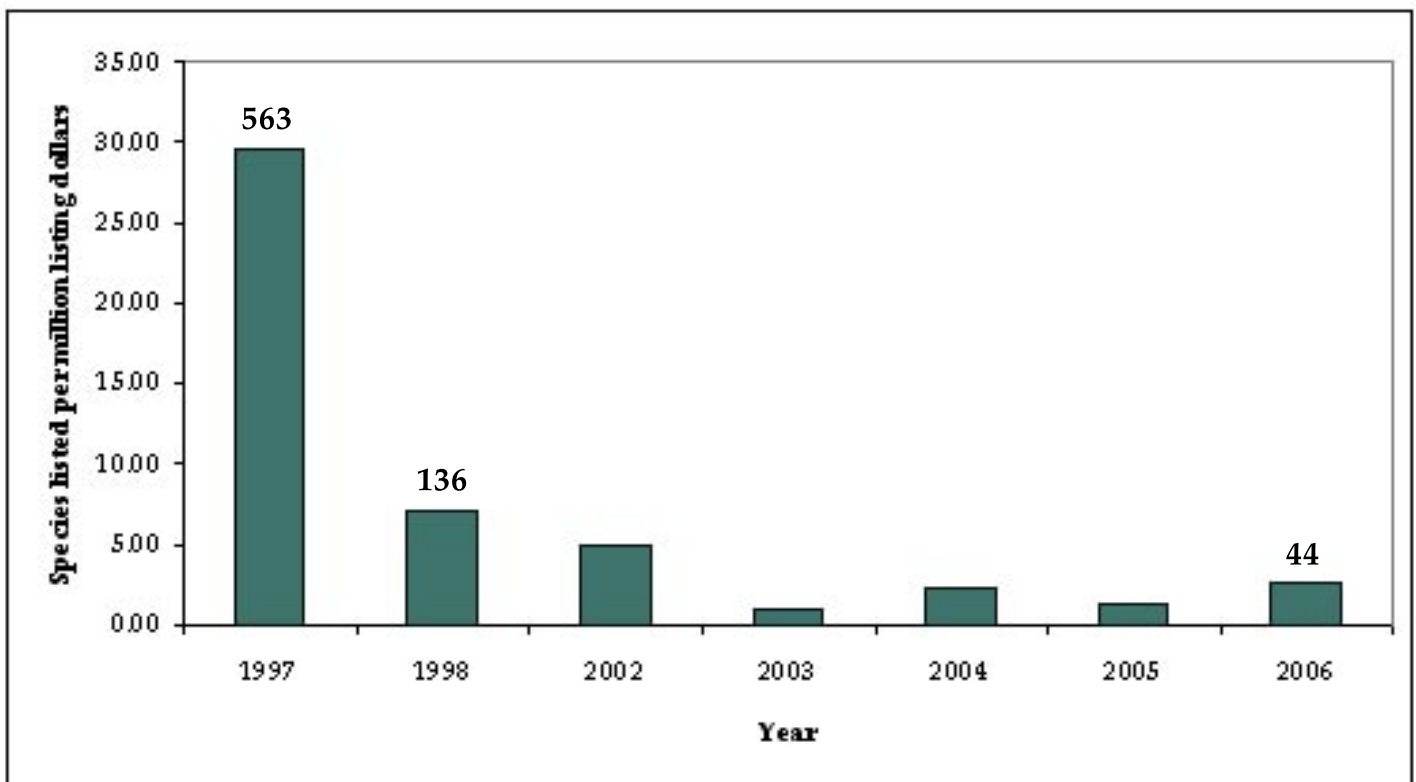


Figure 2. Species listed per million dollars, based on the actual amount of money budgeted for listing, and number of species that would have been listed 2002-2006 had they maintained the 1997 and 1998 rates, compared to the number actually listed.

by litigation and court orders to conduct other listing activities. Under the Clinton administration, however, the agency completed substantially more listing determinations under court order and still managed to complete hundreds of non-court ordered listing determinations. Between 1995 and 2001, the agency completed 290 court ordered determinations, as well as an additional 402 other determinations.⁹ Since 2001, in contrast, the agency has only completed 178 court ordered listing determinations, as well as a paltry 28 non-court ordered determinations. These numbers clearly indicate that litigation is not the reason the agency has listed so few species in the last six years.

Delay and interference has effectively closed the gates to protection of new species under the Endangered Species Act. Overall, the agency issued far fewer listing determinations, as discussed above, and a greater proportion of negative determinations since 2001 than in the previous six years (1995-2001). Of the 692 listing determinations completed between 1995-2001, only 13 percent denied protection to species. Of the 206 listing determinations issued since 2001, 52 percent denied protection to species. This quadrupling in the rate of negative determinations is reflective of the administration's opposition to protecting species under the Endangered Species Act and indicative of the degree to which politics are

Political opposition and interference in science are the real culprits

Instead, the administration is making so little progress protecting new species because of the opposition of political appointees in the Department of Interior, who have slowed decision-making with multiple reviews and edits and bullied agency scientists to reverse their conclusions. Documents obtained by the Center for Biological Diversity and others through the Freedom of Information Act reveal that Department of Interior officials interfered with — and in many cases, reversed — U.S. Fish and Wildlife Service biologists' recommendations to list species as "threatened" or "endangered" under the Act, including decisions concerning Gunnison sage grouse as mentioned above, greater sage grouse, Mexican garter snake, marbled murrelet, delta smelt, wolverine, trumpeter swan, Gunnison's prairie dog, white-tailed prairie dog, and roundtail chub.



Trumpeter swan brood
photo by Donna Dewhurst/USFWS

overriding important decisions concerning the protection of the nation's wildlife.

Interference in listing determinations to the detriment of species protection is also demonstrated by a recent survey of Fish and Wildlife biologists conducted by the Union of Concerned Scientists. The survey found that nearly half of all respondents whose work is related to endangered species scientific findings (44 percent) reported that they "have been

directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.”

Political pressure and bullying of agency scientists to reverse their conclusions to protect species was also recently documented in a report by the Inspector General of the Department of Interior, which found that Assistant Secretary of Fish, Wildlife and Parks Julie MacDonald, who has no biological training, rode roughshod over numerous decisions by agency scientists concerning protection of the nation's endangered species. The report also found that MacDonald violated federal rules by sending internal documents to industry lobbyists with the right-wing Pacific Legal Foundation and others.

In the report, numerous former and current high level staff of the Fish and Wildlife Service stated that MacDonald's interference in scientific decisions concerning endangered species was pervasive, aggressive, designed to limit protection and exposed the agency to litigation over poorly supported and politically motivated decisions. The former director of endangered species, for example, concluded that MacDonald “regularly bypassed managers to speak directly with field staff, often intimidating and bullying them into producing documents that had the desired effect” and that “the overall effect was to minimize the Endangered Species Act as much as possible or ensnare it in court litigation, which often happened.”

In sum, despite increased funding and hundreds of species in need of immediate protection, the Bush administration has engineered a near collapse in protection of new species as threatened or endangered under the Endangered Species Act. Delay and obstruction of species protection has already contributed to the extinction of the Hawaiian plant Haha and the summer-run Lake Sammamish Kokonee under President Bush's watch. At the least, further delay will

make recovery of the hundreds of candidate species more difficult and costly and at worst, will lead to extinction of further species, such as the Akikiki, Montana fluvial arctic grayling and Gunnison sage grouse.



Arctic grayling
photo by Ernest R. Keeley

II. Limiting Designation of Critical Habitat

An important protection for many listed threatened and endangered species is the designation of critical habitat. In particular, critical habitat allows for the protection of areas where species do not currently reside, but could be recovered, and is thus a key tool for recovery of species. A recent study found that listed species that had critical habitat for two or more years were more than twice as likely to have an improving status and less than half as likely to be declining than listed species without critical habitat.¹⁰

Throughout much of the late 1980s and 1990s, the Fish and Wildlife Service did not routinely designate critical habitat for listed species, despite a clear statutory mandate. Beginning in the late 1990s conservation organizations began suing to obtain critical habitat for species before being barred by the statute of limitations. Unfortunately, the great majority of these designations (387) have been under the direction of the Bush administration. Unable to stop the flow of court orders to designate and protect critical habitat areas, the administration has resorted to drastically scaling back the size of critical habitats.

In general, proposed critical habitats were developed by field-level staff who are familiar with the particular species in question and have been fairly inclusive of species habitat. Proposed critical habitat under the Bush administration included nearly 120 million acres with an average of over 310,000 acres per species. Final critical habitats, however, included only just over 48 million acres with an average of only 125,000 acres per species. On average, critical habitats were reduced by 70 percent between proposed and final. In total, 90 percent of all critical habitats were reduced between proposed and final, and 14 were canceled altogether. Only four were increased for a meager total of 18,544 acres.

In many cases, excluding large tracts of land

has made critical habitats practically useless. In 2001, political appointees in Washington DC ordered local Fish and Wildlife Service biologists to remove 8.9 million acres of proposed critical habitat from the Mexican spotted owl. The result was a designation that



Mexican spotted owls
photo by Robin Silver

excluded 95 percent of all known owls, 80 percent of owl habitat, and virtually all areas under threat of logging. An agency biologist objected: “the designation would make no biological sense if the [U.S. Forest Services land] was excluded since these lands are the most essential for the owl.” Two years later a federal court agreed, calling the designation “nonsensical.”

Ignoring science

In so consistently and drastically reducing designated critical habitat, the administration overruled their own biologists and in many cases ignored the comments of peer reviewers and the public, making a mockery of the comment process. Habitat protection for the San Bernardino kangaroo rat, for example, was slashed by 40 percent (22,113 acres), even though four peer-reviewers asserted that the original 55,408 acres must be expanded if the species is to recover. Peer reviewers and members of the Riverside fairy shrimp federal recovery team also recommended that its proposed critical habitat be expanded. When ordered to instead decrease the area by 43 percent (5,230 acres), an agency biologist lodged a complaint with her superiors: “Clearly, the [Fish and Wildlife] Service ignored — or violated — its own policy by failing to address and consider the peer-reviewers’ expert opinion.”¹¹ Willfully ignoring expert scientists, its own biologists and the public is all too typical of this administration.

Rolling back critical habitat designations

For a total of 25 species, the Bush administration has willingly settled lawsuits from its industry supporters to reconsider critical habitat, and in most cases has withdrawn tens to hundreds of thousands of acres of critical habitat rather than defend the U.S. Fish and Wildlife Service’s designation of them. These settlements have been so egregiously one-sided that the courts took the very unusual step of refusing to approve of six of the settlements. Instead of removing critical habitat while the administration reconsidered, they kept the existing designation in place. In total, critical habitat was reduced for these 25 species by over 1.5 million acres with an average reduction of 38 percent per species. It is important to note that these lawsuits did not challenge the substance of the designations, but rather the process by which they were designated, meaning the administration was under no obligation to reduce critical habitat for any of these species.



San Bernardino kangaroo rat
photo by Dr. Lloyd Ingles (c) California Academy of Sciences

III. Undermining Recovery: The Bush Administration's Interference in the Development and Implementation of Recovery Plans

Developed by teams of expert scientists and land managers, recovery plans detail the necessary actions to recover species to the point at which they no longer require the protection of the Endangered Species Act. Recovery plans

the survival and recovery of threatened and endangered species.

The Bush administration has completed fewer recovery plans than any administration since the Carter administration, has interfered

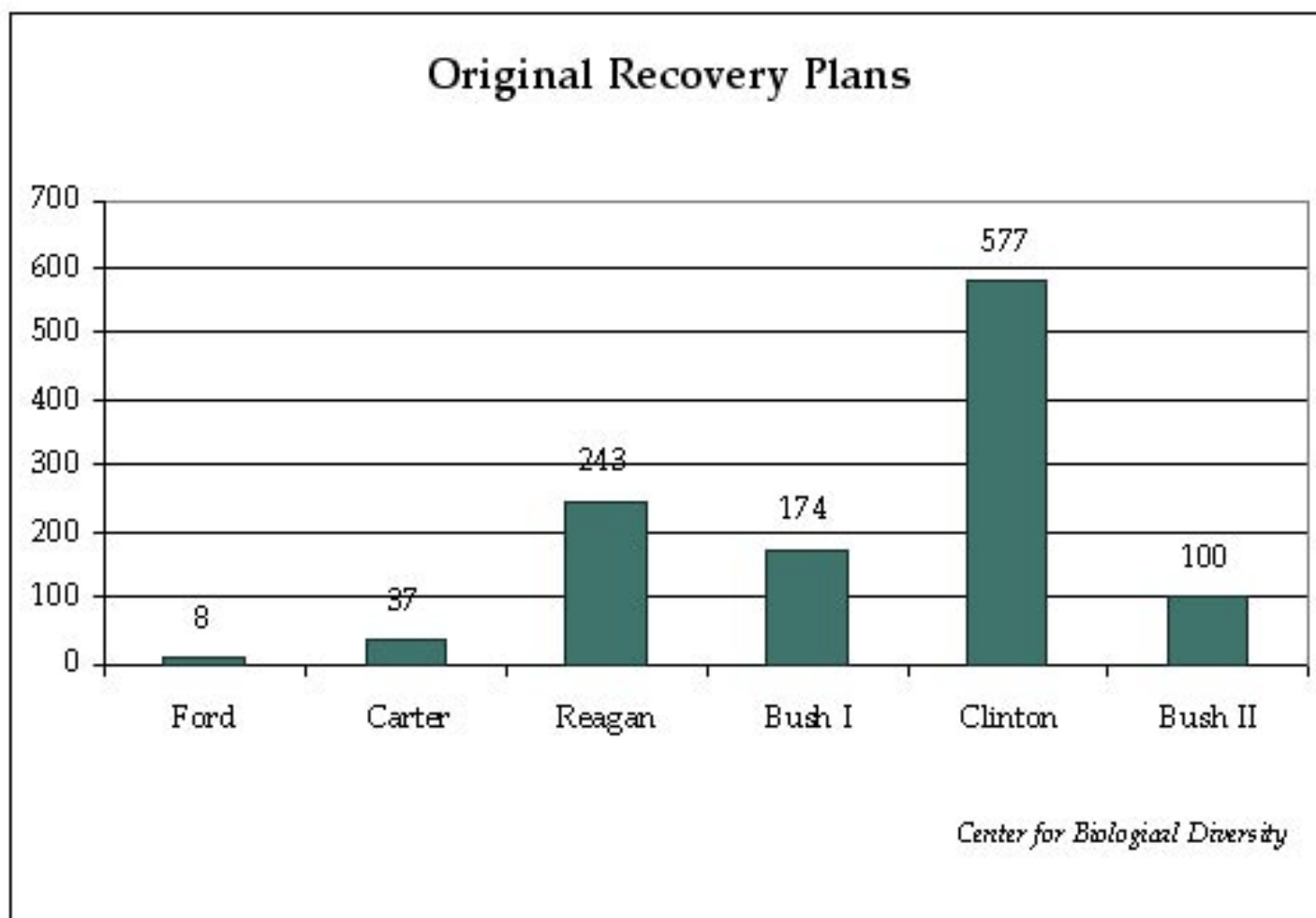


Figure 3. Number of recovery plans completed by administration.

involve compilation of extensive and highly specific information related to the threats to, and status of, the species in question, and thus by necessity, recovery teams have historically operated with a fair degree of independence. Recovery plans provide important guidance to federal land-management agencies, which are required to ensure that their actions ensure

with development of recovery plans to an unprecedented degree, and has ignored recovery-plan criteria in a rush to strip species of protection. To date, the Bush administration has completed just 100 recovery plans, compared to 577 under the Clinton administration and 174 under the first Bush administration (Figure 3).

Interference in development of recovery plans

Apache trout. The Apache trout once occupied more than 600 miles of rivers and streams in Arizona. By the 1950s the trout was reduced to fewer than 30 miles of stream due to a combination of habitat degradation and non-native trout, and the species was listed as endangered in 1967 under the precursor to the Endangered Species Act. Thanks to the efforts of the White Mountain Apache Tribe, U.S.



Apache trout
photo courtesy Arizona Game & Fish

Fish and Wildlife Service and Arizona Game and Fish Department, Apache trout have been reintroduced in a number of streams and have begun the process of recovery.

In 2004, the Apache Trout Recovery Team, which consists of a diverse group of

professional biologists, developed a draft revised recovery plan based on many months of deliberation and consideration of the best available scientific information. This plan, however, did not allow for delisting the species fast enough for then-southwest regional director of the U.S. Fish and Wildlife Service Dale Hall, who unbeknownst to team members worked with officials of Arizona Game and Fish to substantially revise the plan. In order to speed delisting of the trout, the new plan lowered population targets and removed requirements to replicate different genetic lineages.

In response to the revised plan, three respected members of the recovery team sent a letter to Dale Hall, concluding:

“As members of the Apache Trout Recovery Team (Team), we are writing you to express our dissent with the ongoing revision of the Apache Trout Recovery Plan. Specifically, we do not believe that the Plan’s revised recovery strategies and objectives are sufficient to allow the species to be delisted. We have expressed to the Team our reservations about the Plan’s adequacy toward recovering Apache trout on several occasions, yet the Plan continues toward finalization despite our stated concerns. Because our views apparently will not be incorporated into the final Plan, we wanted to make you aware of alternative approaches to the recovery process that are based on the best scientific information available... We believe that implementation of the revised Plan as currently written will not conserve Apache trout according to provisions outlined in ESA, and will eventually result in its further genetic degradation and possible extinction.”¹²

What were the consequences of Dale Hall’s decision to ignore recovery team scientists and lower the recovery criteria for the rare

Apache Trout? He was promoted to Director of the U.S. Fish and Wildlife Service by the Bush administration, where he continues to meddle in development of recovery plans to the detriment of the nation's endangered species.

Northern spotted owl. On April 27, 2007, the Fish and Wildlife Service released a draft recovery plan for the northern spotted owl. Unlike any other draft recovery plan, the owl plan contained two alternatives.¹³ The first of these alternatives was created by a multi-stakeholder recovery team, including scientists, conservationists, and state and timber industry representatives. The team developed a draft recovery plan that built on decades of science demonstrating that the owl needs large blocks of old-growth forest to have a chance at survival and recovery and relied in large part on the reserves created by the Northwest Forest Plan.

In response to the team's draft plan, the Bush administration formed a "Washington oversight committee," which included among others Dale Hall, Julie MacDonald, the heads of the land management agencies, and Mark Rey, a former timber-industry lobbyist who is now undersecretary for natural resources and the environment in the Department of Agriculture. The oversight committee began by ordering the recovery team to "deemphasize reference to the Northwest Forest Plan," and eliminate reserves in the plan. When the team resisted, the oversight committee simply drafted its own plan and attached it as a second alternative. This alternative does not include reserves. Instead, it allows land-management agencies, which have a vested interest in timber extraction, to decide when and where they will protect the owl's habitat. This alternative is a thinly veiled attempt to allow more logging of old-growth forests, ignores decades of science and runs roughshod over the recovery team.



West Virginia
northern flying
squirrel
photo courtesy USFWS



Northern spotted owl
photo by John and Karen Hollingsworth/USFWS

Rushing to strip species of protection

West Virginia northern flying squirrel. Rather than taking the time to revise recovery plans, in several cases the administration has simply ignored them in an effort to strip species of protection. The administration recently proposed to delist the West Virginia northern flying squirrel as an endangered species. In the proposal, the administration argues that it can dispense with the objective, measurable, concrete delisting criteria of the recovery plan by instead considering five largely non-measurable criteria used to determine whether species should be listed in the first place. The precedent this sets is terrible news not just for the squirrel, but for every listed threatened and endangered species.

The West Virginia northern flying squirrel is a distinct population of this widely distributed species that occupies isolated mountaintops in the southern Appalachians, mountaintops that harbor boreal-like forests that are relicts of the last Ice Age. First drafted in 1990 and revised in 2001, the recovery plan for the squirrel established highly defensible, scientific criteria for downlisting and ultimately delisting the squirrel:

Downlisting:

1. populations are stable or expanding at greater than or equal to 80 percent of Geographic Recovery Areas (GRAs) for 10 years
2. Sufficient life history information is available to permit effective management
3. GRAs are managed for squirrels in perpetuity

Delisting: the existence of the high-elevation forests on which the squirrels depend is not threatened by disease, pollution, or other systematic threats

Although the squirrel has not met these criteria, the Fish and Wildlife Service is bypassing downlisting entirely and moving directly to delisting. In doing so, the agency kept expert members of the recovery team in the dark and ignored concerns about ongoing habitat destruction and the likely future threat posed by climate change. In comments on the delisting proposal, Dr. Peter Weigl, a recovery team member, concluded:

“Most of the delisting proposal assumes adequate and improving habitat conditions. My understanding is the Forest Service is still in the planning stage for its forest holdings. What about future timber harvest? Certainly, it can continue, but with greater awareness of this species’ needs other than the perpetuation of spruce stands. The other issue haunting flying squirrel persistence is climactic change. The impact of warming conditions on already disturbed “boreal” forests is unclear at present in the east, but is already a major concern in parts of the west. Add certain anthropogenic changes, and I believe there continues to be substantial risk for the flying squirrel.”¹⁴

Despite these and many other objections, the Fish and Wildlife Service appears to be moving forward with delisting of the West Virginia northern flying squirrel.

Southwestern bald eagle. Historically, the U.S. Fish and Wildlife Service managed the Arizona bald eagle as a population distinct from all other eagles in the U.S. It has its own recovery plan and recovery program. In 1999, however, the agency proposed to treat all eagles in the lower 48 as a single population and remove them from the endangered list. The agency convened a seven-member scientific panel to peer-review the delisting proposal. On August 11, 2006, the panel approved of the national delisting effort but recommended that the Arizona population not be delisted:

“(T)he Southwest population appears to be less viable than populations in other parts of the country and may not warrant delisting at this time... (W)e do not believe that the Southwest Bald Eagle population is secure, and we question whether even current numbers can be sustained without active management and habitat protection. USFWS may wish to reconsider the possibilities of designating the Southwest recovery region as a Distinct Population Segment (DPS) and deferring delisting of the Southwest population until data are available that demonstrate the population is sufficiently large and self-sustaining.”¹⁵

The same conclusion was reached by Robert Magill, former Chairman of the multi-agency Southwestern Bald Eagle Management Committee. His June 17, 2006, review of the national delisting proposal stated:

“Therefore, the bald eagle should continue to be protected as a threatened species in the Southwest until realistic delisting goals can be established and obtained...the conclusion that the bald eagle in the Southwestern Recovery Region no longer needs protection from the Endangered Species Act is incorrect. The bald eagle is still threatened in the Southwestern Recovery Region, across the broader Southwest portion of its range (the area which influences the status of the Southwestern Recovery Region), and current protection are not adequate to protect the bird and its habitat.”¹⁶

The Center for Biological Diversity and the Maricopa Audubon Society petitioned the U.S. Fish and Wildlife Service to keep the Arizona bald eagle on the endangered list on October 6, 2004. The U.S. Fish and Wildlife Service denied the petition on August 30, 2006. It agreed the Arizona population was a valid population,



Southwestern bald eagle
photo by Tom Gatz/USFWS

but declared that it was neither endangered nor biologically significant.

Despite having the peer-review panel and Magill assessments in hand, the Fish and Wildlife Service declared that the agency did not possess “information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” The decision does not discuss or admit the existence of either assessment.¹⁷

Other species that are at risk because of the administration’s rush to remove or reduce protections for species include the Florida manatee, gray wolf, Yellowstone population of the grizzly bear, Gila trout, and marbled murrelet.

IV. Recommendations

- Enact legislation giving government scientists independence from political appointees that allows them to make scientific determinations with independence and to communicate freely with the public about their results.
- Create scientific advisory boards to review Bush administration recovery plans and decisions to deny species protection and lessen critical habitat.
- Based on the conclusions of the scientific advisory board, reconsider listing decisions, critical habitat designations and recovery plans found to have been politically motivated and not based on the best available science.
- Increase the budget for listing new species as threatened and endangered to 35 million dollars and earmark 15 million dollars of this budget specifically for listing candidate species. As a condition of this earmark, require listing of 50 of the highest-priority candidate species within 12 months.



Haha, Hawaiian plant
photo by Forest and Kim Star

Notes

¹The U.S. Fish and Wildlife Service began keeping lists of species that warrant review in 1974 and candidate lists in 1980. Prior to 1996, the agency had several categories of candidate species (e.g. C1, C2, C3) based on the available information. Because all of these categories required additional action on the part of the agency, we have calculated wait time based on the first date a species was added regardless of category. In 1996, only category 1 species were maintained on the candidate list.

² Suckling, K., R. Slack, B. Nowicki, *Extinction and the Endangered Species Act*, Center for Biological Diversity, May 4, 2004.

³ U.S. Fish and Wildlife Service, *Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates or Proposed for Listing as Endangered or Threatened*, Federal Register: September 12, 2006, Volume 71, Number 176, Page 53806

⁴ Email from Nancy Green, Pacific Region, U.S. Fish and Wildlife Service, to Chris Nolin, Washington DC office U.S. Fish and Wildlife Service, October 25, 2005.

⁵ Foster, J. T., E. J. Tweed, R. J. Camp, B. L. Woodworth, and C. Adler. In Press. *Avian Population Trends in the Alakai Swamp, Kauai: Native Declines and Exotic Expansions?* *Conservation Biology*.

⁶ American Bird Conservancy, press release April 27, 2007, Contact: Steve Holmer, American Bird Conservancy, 202/234-7181, ext. 216, sholmer@abcbirds.org, www.abcbirds.org

⁷ The agency stopped keeping a list of category 2 candidates in 1996

⁸ We used 1997, 1998 and 2002-2006 because in these years it is possible to determine the budget for listing independent of critical habitat.

⁹ A listing determination is a decision whether to not list (negative) or list (positive) an individual species, and includes 90-day, 12-month, and final listing decisions. One listing rule can contain determinations for multiple species.

¹⁰ Taylor, M., K. Suckling, J. Rachlinski. 2005. The effectiveness of the Endangered Species Act: a quantitative analysis. *Bioscience* V. 55(4): 360-367.

¹¹ Letter from Nancy Kehoe to Andy Yuen and Jim Bartel, U.S. Fish and Wildlife Service, Carlsbad, CA, dated June 3, 2001.

¹² Letter from Apache trout recovery team members, Robert Clarkson, Jerry Ward and Alex Puglisi to Regional Director Dale Hall, U.S. Fish and Wildlife Service, March 9, 2005.

¹³ 2007 Draft Recovery Plan for the Northern Spotted Owl. April, 2007. Region 1, U.S. Fish and Wildlife Service, Portland, OR.

¹⁴ Letter to Glenn Smith, Assistant Chief of Endangered Species, U.S. Fish and Wildlife Service from Dr. Peter Weigl, March 30, 2007.

¹⁵ Raptor Research Foundation Comments on Bald Eagle Delisting Documents, August 11, 2006.

¹⁶ Comments of Robert T. Magill on Proposed Delisting of the Bald Eagle, June 17, 2006.

¹⁷ "Endangered and Threatened Wildlife and Plants; Petition to List the Sonoran Desert Population of the Bald Eagle as a Distinct Population Segment, List that Distinct Population Segment as Endangered, and Designate Critical Habitat; Notice of 90-day Petition Finding." 71 Federal Register 168 (30 August 2006), p. 51549.



Mexican garter snake
photo by Phil Rosen



White-tailed prairie dog
photo by John J. Mosesso/NBII



Gray wolf
photo courtesy USFWS