IMPLEMENTATION OF THE ENDANGERED SPECIES ACT BY THE BUSH ADMINISTRATION: A CASE STUDY IN ABUSE OF EXECUTIVE AUTHORITY

Noah Greenwald
Science Director
Center for Biological Diversity
Interference in Science:

• Interference in scientific decisions concerning endangered species is well documented:

“The former ES Director said that overall, MacDonald did not want to accept petitions to list species as endangered, and she did not want to designate critical habitats. He said the overall effect was to minimize the Endangered Species Act as much as possible or ensnare it in court litigation, which happened often.”
Listings per year
Number of species that could have been listed 2002-2006 at 1997 rate: 563
Number of species that could have been listed 2002-2006 at 1998 rate: 136
Number of species actually listed 2002-2006: 44
COURT ORDERS ARE NOT TO BLAME

• Between 1995-2001, FWS listed 315 species, 113 of which were listed under court order. Between 2001-2007, in contrast, the agency listed only 55 species all under court order.

• Litigation expenses primarily come from the Department of Justice.

• In 2007, of 5.2 million dollars allocated for listing, less than 2% spent on litigation expenses.
Critical Habitat

• Critical habitat includes “specific areas within the geographical area occupied by the species on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species.”

• The Endangered Species Act contains substantial protections for critical habitat, prohibiting federal agencies from adversely modifying habitat.

• Species with critical habitat for two or more years were over two times less likely to be declining and over twice as likely to be improving than species without critical habitat (Taylor, M.T., K.F. Suckling, J.J. Rachlinski. 2005. The effectiveness of the Endangered Species Act: a quantitative analysis. Bioscience V. 55, No. 4: 360-367)
Designation of critical habitat under the Bush administration

• Under the Bush administration, 67 percent of critical habitat designations, including 178 species, were reduced between proposed and final by an average of 49%, reducing the total designated acreage by nearly 63 million acres

• Only 7 critical habitats were increased between proposed and final
Minimization of critical habitat

• In designating critical habitat, FWS “may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat”

• FWS has stymied any consideration of the benefits of critical habitat designation and routinely exaggerated costs

• Despite the statute, FWS has defined essential habitat as synonymous with occupied habitat
Critical habitat reductions go against science and common sense

• Of 47 peer reviews analyzed so far, 19 called for adding habitat, which was ignored in 18 cases and was indeterminable in one case. Several peer reviews stated that proposed habitat was the minimum to ensure survival and DOI lowered it anyway.

• Habitat protection for the San Bernardino kangaroo rat was slashed by 40% (22,113 acres), even though four peer-reviewers recommended that the original 55,408 acres must be expanded if the species is to recover
Recovery planning

- As with listing and critical habitat, Bush administration has gutted recovery planning.
Conclusions

• The Endangered Species Act is an effective law for preventing the extinction and recovering the nation’s wildlife
• But only if it is enforced
• Under the Bush administration, the U.S. Fish and Wildlife Service has become a rogue agency, necessitating citizen and congressional oversight
Not limited to one official:

• MacDonald was given a “Special Thanks for Achieving Results” (“STAR”) award on March 6, 2005 with a cash bonus of $9628

• The GAO found that at least four other DOI officials were involved in interfering with scientific decisions
Political interference


- A Union of Concerned Scientists survey found nearly half (44%) of all FWS respondents reported that they “have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.”
Let’s discuss. We should give serious consideration to emergency listing one or more of these species if there is justification. In light of the news that one of the other Hawaiian candidates is going to be recommended from removal from candidate status because it is extinct (!) I am not anxious to have any other species end up in the same situation without at least trying to get them some added attention via emergency listing -- if that’s appropriate. Karen doesn’t think the case has been made to emergency list these 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 that we ought to take a very hard look at emergency listing at least that one.

----- Forwarded by Nancy Green/ARL/R9/FWS/DOI on 10/26/2005 10:44 AM -----

Karen L. Anderson/ARL/R9/FWS/DOI

To: Nancy Green/ARL/R9/FWS/DOI

cc: Nancy Green/ARL/R9/FWS/DOI

Subject: Fw: 3 emergency listings

I’m really not convinced of the need for emergency listing for these 3 plants - they definitely need listing but I don’t see a good rationale for the emergency. See what you think. I told Paul I would provide him some feedback this week. I also asked Doug to take a look at these since he dealt with the Miami blue “emergency”. I also let Marj know what the region wanted to do (so she can work with them on the budget aspects, etc.).

Karen
Failing to follow recovery plans

• Administration is moving to delist West Virginia northern flying squirrel even though it has not met scientifically based recovery goals

• “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.” Dr. Peter Weigl, a recovery team member