
U P D A T E

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This periodic publication is intended solely for the use of NESARC members.

Invalidation of Oregon coast salmon listing upheld. A Ninth Circuit Court of Appeals refused attempts by the Oregon Natural Resources Council, Sierra Club and other environmental groups to intervene and appeal a 2001 decision invalidating the listing of the Oregon Coast *coho salmon* as a “threatened species” under the ESA. The 2001 decision in *Alsea Valley Alliance v. Evans* held that the National Marine Fisheries Service (NMFS) improperly excluded hatchery coho populations from listing protections under the ESA even though they are part of the same distinct population segment as natural coho populations. NMFS’ counting of only naturally spawned salmon while disregarding hatchery spawned salmon kept the fish count artificially low, justifying ESA protections and land use restrictions. The Ninth Circuit’s February 24th ruling dismissed an appeal by environmentalists on the lower court’s ruling, determining that the environmentalists could participate like any other concerned individuals in the public process related to the status reviews.

With the appeal of the *Alsea Valley* decision now resolved, NMFS must conform its listing determination process to be consistent with the *Alsea Valley* decision. For example, other listing of salmonids may now be subject to review and modification due to the treatment (or non-treatment) of hatchery populations in the listing decision. In fact, the treatment of hatchery populations in the listing of the Klamath coho population segment is already the subject of a lawsuit similar to the one that resulted in the *Alsea Valley* decision. The full text of the ruling may be found at

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/1B722110BCE8E05B88256E440001DBB6/\\$file/0136071.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/1B722110BCE8E05B88256E440001DBB6/$file/0136071.pdf?openelement)

FWS Director Williams questions need for critical habitat. The Fish and Wildlife Service (FWS) is looking to increase its critical habitat designation budget by nearly \$5 million for FY 2005, but the money would be better spent elsewhere, FWS Director Steve Williams recently told the House Interior Appropriations Subcommittee. Overall, the \$1.33 billion budget request for FWS is relatively stable, at about \$668,000 less than the FY 2004 figure. The deepest cut targets species recovery funds, which would fall \$9.8 million to \$58 million. At the same time, the Bush administration would increase funding for ESA listing and critical habitat designations from \$5 million to \$17 million. Echoing statements made late last year by Craig Manson, Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior, Williams criticized the critical habitat provisions of the law, saying such designations are not needed for the survival of many plants and animals. FWS reaffirmed its position that money spent on critical habitat would be better used on recovery or cooperative programs.

Governors call for more state authority in applying law. During its recent conference held in Washington, D.C., the National Governors’ Association passed a resolution calling for states to have a greater role in ESA implementation. The resolution calls for the reauthorization of the ESA based on increasing the role of states, streamlining the law, and providing information and technical support for landowners and water users so they

can more fully participate in species protection. Colorado Governor Bill Owens (R) proposed amendments to the text that would further emphasize better state-federal coordination. Additionally, the resolution calls for states to develop their own conservation and recovery plans after agreeing to adhere to certain federal standards, as well as allowing states to delist species when they have reached their recovery goals. Additional information on the NGA's discussion about the ESA may be found at <http://www.nga.org/nga/newsRoom/>

Interior proposes broader *gray wolf* management authority for Idaho, Montana. Interior Secretary Gale Norton recently announced a proposal to give Idaho and Montana more authority to manage wolf populations in their states, consistent with the requirements of the ESA. FWS has been working with Idaho, Montana, and Wyoming as they develop the state management plans that are required under the Act before a species can be delisted. Under the proposal, landowners would be able to take additional steps to protect their livestock and pets from attacks by problem wolves, and the state would be able to issue permits to allow landowners to control wolves that consistently pose a threat to domestic animals. Idaho and Montana could take wolves determined to be causing unacceptable impacts to elk and deer populations. In addition, the states could petition FWS to take over the lead role in managing and conserving wolves within their states. Comments on this proposed rule must be received by May 10, 2004. The rule may be found in the Federal Register at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-5248.pdf>

NGA releases report on success of state species recovery plans. At Governor Owens' direction, the National Governors' Association Center for Best Practices examined three case studies of state-led endangered species recovery efforts. These case studies, from Idaho, Oregon and Colorado, chronicled how states are taking the lead to recover species, as well as some of the obstacles these states encountered in the course of their efforts. The report concluded that, while states can exert leadership in this area, their recovery efforts would be greatly enhanced if the federal government published quantifiable recovery goals for species on the endangered list. The report may be found at <http://www.nga.org/cda/files/0204SPECIES.pdf>

New Mexico water talks restart. State and federal officials returned to the bargaining table earlier this month in an effort that could determine the future of water use in New Mexico's rivers. New Mexico Governor Bill Richardson (D) halted talks between the state, cities, American Indian pueblos and environmentalists in September, after the Bureau of Reclamation declared it would not have time to reach a final river management agreement before Congress took action. Parties in the talks had proposed a binding compact that would address contract rights for water storage, repopulation of the silvery minnow to other parts of the river, compensation to farmers who do not divert water from the Rio Grande, and water efficiency upgrades. Last week's meeting was the first in a series intended to find a long-term solution for the management of the Rio Grande. The participants agreed to use the latest biological opinion as a starting point, according to FWS officials. A nine-member executive committee, consisting of representatives of the various groups and federal agencies involved, is expected to continue discussions.