
U P D A T E

July 2, 2003

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Minnow ruling becomes focus of Senate EPW hearing on ESA. The Senate Environment and Public Works Subcommittee on Fisheries, Wildlife and Water held a hearing last week to examine the consultation process required by Section 7 of ESA. But, the recent *silvery minnow* decision in the Tenth Circuit Court of Appeals quickly became the hot topic of the hearing, with Sen. Pete Domenici (R-NM) decriing the lack of common sense in decisions involving the law. Sen. Domenici announced his intent to move legislation that would prevent the application of ESA as was upheld by the recent court ruling, but Senate EPW Committee Chairman James Inhofe (R-OK) stressed that the legislation should be a broader initiative that goes beyond the minnow issue in New Mexico.

N.M. officials condemn *silvery minnow* ruling. Officials from New Mexico and the city of Albuquerque continue to publicly condemn a recent federal appeals court ruling that says the ESA can overrule existing water contracts. Rep. Heather Wilson (R-NM) promised to introduce a bill to overturn the Tenth Circuit Court of Appeals ruling, while Sen. Pete Domenici (R-NM) urged the city of Albuquerque and others to pursue an appeal to the Supreme Court. The ruling upheld a previous decision from last fall, when a U.S. District Judge said the San Acacia stretch of the Rio Grande, 50 miles south of Albuquerque, must maintain a flow of 50 cubic-feet per second for the endangered fish. The ruling allows the ESA to take precedence over water contracts that the city of Albuquerque and the Middle Rio Grande Conservancy District own. For additional information, you may access the recently released NESARC Issue Alert at <http://www.nesarc.org/minnow.pdf>

New sound science bill introduced. Rep. Butch Otter (R-ID) last week introduced H.R. 2602, the "Scientifically Identifying the Need for Critical Habitat (SINCH) Act." H.R. 2602 amends the ESA to make the authority to designate critical habitat discretionary instead of mandatory. The proposed legislation also includes the language of H.R. 1662, Rep. Greg Walden's (R-OR) "Sound Science for Endangered Species Act Planning Act of 2003." The introduction of H.R. 2602 shows a continued interest on behalf of House Resources Committee members to consider ESA reform this Congress.

Environmentalists challenge "No Surprises" rule for HCPs. A California-based environmental group is attempting to undo a policy adopted under the Clinton Administration that allows private individuals to manage species and make modifications to their land without violating the ESA. The group argued before a federal judge last month that the government's "No Surprises" policy violates the ESA because it provides certainty for landowners rather than certainty for species. The policy says that a landowner involved in a Habitat Conservation Plan (HCP) would not be forced to provide additional land, water, other natural resources or money beyond what was agreed in the HCP. The Justice Department argues that the policy has never been triggered, and thus has caused no harm to endangered or threatened species.

Kempthorne comments on ESA amid speculation of return to Washington. Gov. Dirk Kempthorne (R-ID) called the benefits of the ESA “debatable” in a speech to the Idaho Waters Users Association last week. He stated that the law should be changed to include incentives that focus on recovering endangered species rather than merely listing them. Kempthorne said he and other governors will work to modify the ESA to allow for more “cost-effective solutions” to saving species. Kempthorne is slated to become chairman of the National Governors’ Association in August, unless he is tapped by President Bush to become the new chief of the Environmental Protection Agency.

Columbia River plan can stand for a year, judge rules. The Administration’s plan to protect Northwest salmon in the Columbia River Basin can stand for one year, a federal judge ruled last week. The ruling comes one month after a court ruling ordering the National Marine Fisheries Service (NMFS) to revamp its plan to protect 12 species of Pacific Northwest salmon and steelhead. The earlier ruling stated that the plan violates the ESA because it relies upon actions that are uncertain to occur, and because the geographic scope of the plan is too narrow. The judge remanded the plan and imposed a one-year deadline for revision, including progress reports every three months. This latest ruling allows the existing plan to remain in effect until the new one is implemented next year. The ruling comes on the heels of a hearing held by the Senate Environment and Public Works Subcommittee on Fisheries, Wildlife and Water last week on the implementation of NMFS’s 2000 Biological Opinion for listed anadromous fish regarding operation of the Federal Columbia River Power System.

Ninety-nine Oahu plants get critical habitat, 27K acres of military land excluded. With FWS’ \$6 million critical habitat budget soon to be depleted, the agency recently published its final designation of about 55,000 acres of critical habitat for 99 threatened and endangered plant species on the island of Oahu. The final number is approximately half of the proposed 111,364 acres. About 27,000 acres of Army training lands were excluded from the final designation due to voluntary conservation efforts undertaken by the Department of Defense. The designation also included the Interior Department’s new disclaimer regarding critical habitat, which states that the growing number of lawsuits has now consumed nearly the entire listing program budget.

Federal agency refuses to declare *Canada lynx* endangered. The government Friday rejected a demand by environmentalists to list the *Canada lynx* as an endangered species in the Lower 48 states. The decision by FWS means the cats will remain listed as threatened. Environmental groups that had won a court ruling forcing the government to review an earlier finding that an endangered listing was unwarranted denounced the decision. Environmentalists said no decision had been made on whether to appeal.

FWS announces critical habitat for Preble’s mouse. FWS announced its final decision for critical habitat designations for the threatened *Preble’s meadow jumping mouse*, settling on half as much critical habitat as it had proposed in its draft plan. Agricultural leaders, state officials and Wyoming congressmen have called into question the critical habitat for the mouse, found only in Colorado and Wyoming and easily confused with other field mice. Last month, five Wyoming county commissioners wrote to Interior Secretary Gale Norton asking for an extension on the deadline for critical habitat designation, saying the strain on the local economies, approximately \$172 million over the next 10 years, outweighed any environmental imperative.

Welcome to NESARC’s newest member! NESARC wishes to extend a warm welcome to our newest member, the National Marine Manufacturers Association (NMMA). NMMA, located in Chicago, is comprised of more than 1,400 companies that produce products used by recreational boaters.