
U P D A T E

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

ESA Modernization Legislation Passes House Resources Committee. Prior to adjourning for the August Congressional recess, the House Resources Committee passed H.R. 1662, the “Endangered Species Data Quality Act of 2004,” and H.R. 2933, the “Critical Habitat Reform Act,” marking the greatest legislative achievement for ESA this Congress. H.R. 1662 passed by a vote of 26-15, while H.R. 2933 passed 28-14. The persistence of NESARC members who have diligently worked to muster the support of Committee members has helped to send lawmakers the strong message that the thirty-year-old ESA must be modernized! The full NESARC alert detailing this legislative success may be found at <http://www.nesarc.org/legalert072104.pdf>

Resources Subcommittee holds another field hearing highlighting ESA impacts. The House Resources Subcommittee on Water and Power also recently held a Congressional field hearing to discuss the application of the ESA in Klamath project operations. Prior to the hearing, a rally drawing approximately 1,000 people was held to show the strong support in the region for ESA modernization. Witnesses testifying before the Committee, which included nine different interests representing tribes, conservation groups, irrigators and government agencies, all agreed that peer review is something that could help in the administration of the ESA. The hearing also provided Committee members an opportunity to note the progress in the Klamath region since the water shut off in 2001. A full list of witnesses and their prepared statements may be found at http://resourcescommittee.house.gov/archives/108/wp/07_17_04.htm

Tiger salamander gets protected status in California. Federal wildlife officials on Monday agreed to grant protected status to the California *tiger salamander* and its habitat across the state, handing a major victory to conservationists but angering farmers and real estate developers. The Fish and Wildlife Service (FWS) said it will list the salamander as a threatened species, a designation that makes it unlawful to harm the salamander and restricts development in its habitat, which is primarily found in the Central Valley, Central Coast and San Francisco Bay area. FWS officials said they plan to propose designating nearly 400,000 acres in 20 counties as the salamander's critical habitat. Those opposing the listing said the decision was based on outdated and biased information, and that it will impact critically needed infrastructure projects, affordable housing, school construction and farming activities. The listing will go into effect in about a month.

Administration eases pesticide reviews for endangered species. The Environmental Protection Agency no longer will have to consult with other federal agencies to determine if approval of a pesticide might jeopardize plants and animals shielded under the ESA, the Administration said Thursday. The streamlined regulations from the Departments of the Interior and Commerce mean the EPA will not be obligated to consult in each case with the Fish and Wildlife Service and NOAA Fisheries. EPA will now forgo consultations with the other agencies when making a decision, after scientific review, that a pesticide will not harm a species' survival. EPA can still ask for formal consultations, but the other agencies will presume EPA's review work is adequate.

FWS Director Steve Williams said it was too difficult for the other agencies to look at each possibility among hundreds of active chemicals and 1,200 threatened and endangered species. By not requiring so many consultations, officials said it was more likely the ones that matter most would get done.

FWS proposes to drop species from ESA in Midwest, Northeast. FWS proposed earlier this month to remove endangered species protection for gray wolves in 21 Midwestern and Northeastern states, arguing that with more than 3,000 wolves in Michigan, Minnesota and Wisconsin, the population has recovered. The delisting plan has been ongoing for over a year. Last spring FWS downlisted the predators from endangered to threatened and made it clear the agency was moving toward a complete delisting.

Environmentalists and FWS spar over report on critical habitat designation. A study recently released by environmentalists maintains that the Administration is approving approximately one of every two acres that federal biologists propose setting aside to help species recover. But the Administration argues that it is designating a significant amount of critical habitat, and that it is following the law, which says critical habitat can be excluded if the economic or other benefits of protecting species do not outweigh the costs. FWS Assistant Secretary Craig Mansion said the Administration has used economic analyses to exclude critical habitat far more than in previous years because critical habitat provides little additional benefit to species over and above those when a species is designated as threatened or endangered.

FWS designates water vital to *bull trout*. A plan released by the FWS aimed at saving local populations of *bull trout* covers nearly 2,300 miles of streams in Western Washington, and designates 985 miles of marine shoreline and thousands of lakes and reservoirs as critical to the trout's survival. While the plan does not specifically create refuges or preserves, it includes language with requirements for notifying the government of proposed development that could affect the stream or lake. *Bull trout* were listed as "threatened" under the ESA in 1999. FWS already has proposed a list of thousands of miles of rivers, streams and lakes critical to bull trout in the eastern part of the state, Oregon, Idaho and Montana. The final proposal for Western Washington is expected in September.

Judge rules to keep protection in place for *pygmy owl*. A federal judge has ruled that the *pygmy owl* will stay protected until at least late January while FWS determines if the owl's listing as an endangered species is scientifically valid. The ruling is considered a victory for environmentalists, who have sought to protect the owl as a way of preventing forests development. The ruling is a setback for home builders, who have complained that protection of the owl has reduced the supply of developable land and increased home prices. Officials with the wildlife service and home builders groups said they have not decided whether to appeal the ruling.

Judge granted biologist immunity in trespassing case. A U.S. District Court judge ruled in a trespassing case that a federal wolf biologist's work should be protected under "sovereign immunity" because the agent was simply doing his job of protecting and controlling wolves under the wolf recovery program. The judge agreed with defense attorneys that a FWS biologist should be protected from prosecution under federal immunity because he was performing his duties pursuant to the ESA, that his actions were necessary and proper, and that he made all reasonable effort to protect private property. FWS said the biologist inadvertently landed on the private land while working to place tracking collars on the wolves. The landowners maintain that the uninvited biologists were trespassing on their private land and had no right, under the ESA or any other law, to be on their property.

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