

# CONSERVATION IN ACTION



Safeguarding  
Citizen Rights  
Under the  
Endangered  
Species Act

May 2001



Defenders of Wildlife



Center for Biological Diversity



Endangered Species Coalition

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This report expands on the report “No Room on the Ark? Endangered Species Listing Trends in California 1974-2000,” by Kieran Suckling, Center for Biological Diversity.

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## Executive Summary

The Bush Administration, in its first major Endangered Species Act (ESA) policy decision, has asked Congress to attach a legislative rider to the Department of the Interior 2002 appropriations bill that would drastically restrict the ability of citizens to have imperiled species protected under the ESA.

This rider cuts at the heart of our nation's most important wildlife protection law by eliminating the right of citizens to enforce the ESA's mandatory deadlines governing the listing of threatened and endangered species.

These deadlines and the right of citizen enforcement are absolutely critical components of the ESA. They have been instrumental in securing the protection of literally hundreds of species threatened with extinction and have served as a crucial check against political and economic influences in the protection of imperiled species. At least half of all endangered and threatened species listings have occurred as a result of citizen enforcement. Over the last 10 years in California alone, 92 percent of all endangered and threatened species listings have been the direct result of citizen enforcement.

Without these vitally important safeguards, Secretary of the Interior Gale Norton — the same person who once argued that the ESA was unconstitutional — would be granted almost complete discretion to determine whether a species is protected under the ESA. The net result of the Bush Administration's anti-ESA rider will be fewer imperiled species protected under the ESA, and more species allowed to go extinct.

Not only is the Bush Administration proposing to gut the ESA, but it is also failing to address the fundamental problem — the inability of the U.S. Fish and Wildlife Service (FWS) to list species threatened with extinction because of insufficient funding. The Bush Administration has requested \$8.5 million for FWS's listing program. Yet FWS has stated that it needs \$120 million, or approximately \$24 million a year over the next five years.

The Bush Administration's failure to call for a substantial and sustained increase in funding for the ESA's listing program, while instead proposing to restrict the rights of citizens to have our nation's deteriorating plants and animals protected under the ESA, is clearly a recipe for extinction.



INTRODUCTION

# Assault on Endangered Species

The Bush Administration's proposed 2002 budget for the Department of the Interior contains a rider that would set the Endangered Species Act (ESA) listing and critical habitat programs back 20 years. The rider would suspend a 1982 amendment to the ESA which set forth clear deadlines to list imperiled species and gave citizens the right to enforce those deadlines. The amendment has been very successful, resulting in an upsurge of species listings and critical habitat designations. Its suspension will result in a slowing of the listing process and a likely increase in extinctions. The rider, moreover, fails to address the fundamental problem with the ESA listing and critical habitat programs: chronic underfunding. With a backlog of perhaps more than 6,000 species waiting for federal protection, it is imperative that the listing and critical habitat budgets be increased substantially in 2002.

# The Role of Citizens Under the Endangered Species Act

## THE STATE OF BIODIVERSITY

Our nation, and indeed the planet, are in the midst of an extinction crisis. Estimates of the current rate of extinctions are conservatively estimated to be 100 to 1,000 times greater than natural levels. Scientists estimate that over the last 200 years in the United States alone, approximately 539 species have gone extinct (Master et al. 2000). This includes relatively well known species like the great auk, passenger pigeon and Carolina parakeet, and lesser known species like the robust pentagenian burrowing mayfly, Sexton Mountain mariposa lily and Ash Meadows topminnow. Many more have also likely gone extinct but have never been chronicled by scientists.

The current situation is even more dire. A recent assessment by The Nature Conservancy found one third (6,894) of 20,892 U.S. vertebrate animals and vascular plant species to be of conservation concern (Master et al. 2000). This assessment only reflects a portion of the nation's 200,000 known species and doesn't include the

much larger number of endangered invertebrates (clams, lobsters, butterflies, grasshoppers, etc.) or non-vascular plants.

The U.S. ranks number one in the world for level of diversity of freshwater mussels and crayfish, yet a staggering 69 percent and 51 percent, respectively, of these species are at risk in the United States. The United States has the seventh highest level of freshwater fish diversity in the world, but 37 percent of these species are at risk. The numbers are sobering for other groups of species as well: 36 percent of amphibians; 33 percent of flowering plants; 18 percent of reptiles; 16 percent of mammals; and 14 percent of birds in the U.S. face an uncertain future.

The state of our nation's ecosystems is equally disturbing. A 1995 report identified 27 "critically endangered" ecosystems — those that have lost more than 98 percent of their extent since European settlement — in the United States (Noss et al. 1995). These ecosystems include longleaf pine forests of the southeast, eastern old-growth forests, tall grass prairie and oak savanna



in the midwest, Palouse prairie in the northern Rockies and Pacific Northwest, and native grasslands of all types in California. Another 55 of our nation's ecosystems have declined by at least 70 percent.

### BIODIVERSITY'S IRREPLACEABLE VALUE

Biodiversity — the sum total of plants, animals and their ecosystems — is quite literally that which we depend upon for survival. As human beings, we have a clear moral imperative to avoid causing the destruction of any species or ecosystem. As Congress explained in 1973 when it enacted the ESA:

One might analogize the case to one which one copy of all the books ever printed were gathered together in one huge building. The position which we find ourselves today is that of custodians of this building, and our choice is between exercising our responsibilities and ignoring them. . . . Like it or not, we are our brothers' keepers, and we are also keepers of the rest of the house.

*House Report No. 93-412, 93rd Congress, 1st Session, July 27, 1973*

Beyond the moral imperative, it is also in our own self-interest to prevent the further loss of biodiversity. Many of us, for example, benefit immensely from observing plants and animals in their natural environments, or from simply knowing that they exist in the wild. As Congress fully recognized in 1973, the existing and potential benefits of biodiversity to human society are, "quite literally, incalculable."

From the most narrow possible point of view, it is in the best interests of mankind

to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.

Who knows, or can say, what potential cures for cancer or other scourges, present or future, may lie locked up in the structures of plants which may yet be undiscovered, much less analyzed? More to the point, who is prepared to risk being those potential cures by eliminating those plants for all time? Sheer self-interest impels us to be cautious.

*House Report No. 93-412, 93rd Congress, 1st Session, July 27, 1973*

Twenty-seven years after the ESA was enacted, Congress' prescience is readily apparent.

It has been estimated that biodiversity provides the United States with approximately \$319 billion a year in economic and environmental benefits (Pimental et al. 1997). For the world, the benefits of biodiversity are estimated to be a staggering \$2.9 trillion per year, or approximately 11 percent of a total world economy of \$26 trillion per year. These benefits include ecosystem services such as soil formation, nitrogen fixation and bioremediation of chemical pollution. An astonishing 50 percent of the most frequently prescribed medications are derived from wild species, including analgesics, anti-cancer agents, hormones and anti-coagulants. Notable examples include digitalis, derived from the purple foxglove and used to treat heart disease; vincristine, a cancer-fighting agent derived from the rosy periwinkle; taxol, a drug originating in the bark of the Pacific yew tree that has proven effective in battling ovarian cancer; and drugs such as codeine,

morphine, atropine and quinine that are used to treat everything from malaria to tooth-ache pain. The commercial value of wildlife-derived medicines in the United States was estimated in 1983 to be more than \$15 billion per year. The value of biodiversity, in the form of native pollinators, to American agriculture is estimated to be at least \$4.1 billion per year. Wildlife-related recreation including tourism, bird-watching, hunting and fishing generates more than \$100 billion annually. These benefits are not only important to human society, but in many cases they are also absolutely essential to life on this planet and are simply irreplaceable. If a plant or animal is driven extinct or an ecosystem destroyed, the benefits that they provide to human society and life on this planet are also lost.

#### **THE ESA: OUR NATION'S SOLUTION TO THE EXTINCTION CRISIS**

The ESA was enacted to protect our nation's biodiversity for existing and future generations. It was then and remains today a truly landmark and noble piece of legislation. The fundamental goal of the ESA, like the statute itself, is concise yet comprehensive:

“to provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved . . .”

In the 27 years since the ESA was enacted, there have been significant conservation victories. Literally, hundreds of species including the bald eagle, Florida manatee, Kemp's ridley sea turtle, whooping crane and peregrine falcon

have been pulled back from the brink of extinction because of the ESA. The gray wolf — almost entirely wiped-out throughout the lower 48 states — has made a remarkable comeback thanks to the ESA and is now thriving in parts of its historic range in the northern Rockies, including Yellowstone National Park. Robbins' cinquefoil, a rare alpine flowering plant found only in the White Mountains of New Hampshire, was listed as an endangered species in 1980. Since that time, the plant's population has more than doubled.

While we have much to celebrate, the fact is that our nation's biodiversity continues to deteriorate in large part because the ESA has been plagued by chronic underfunding and inadequate implementation. The Bush Administration's proposal fails to address the need for substantially more funding. Worse, it would remove citizen oversight and listing deadlines, opening the door to political intervention, bureaucratic delays and new extinctions.

#### **HOW THE BUSH ANTI-ESA RIDER WOULD PUT IMPERILED SPECIES AT FURTHER RISK OF EXTINCTION**

The linchpin of the ESA is the listing process, whereby a plant or animal is formally designated as an endangered or threatened species. There are two avenues by which an imperiled plant or animal can be listed under the ESA: 1) the Secretary of the Interior (Secretary), acting through the U.S. Fish and Wildlife Service (FWS) may, of his or her own accord, list a species as endangered or threatened; or 2) a cit-

izen may file a petition with the Secretary requesting that a species be added to the list of endangered and threatened species. The petitioning process is the most important avenue for listing plants and animals under the ESA for two very important reasons.

First, the receipt of a citizen listing petition automatically obligates the Secretary to meet mandatory statutory deadlines intended to prevent bureaucratic foot-dragging in listing species. For example, within 90 days the Secretary must determine whether the petition presents sufficient information indicating that the species might be endangered. Within 12 months after receiving the petition, he or she must determine whether to formally propose listing of the species. Second, and most importantly, if FWS ignores the listing petition, which it often does, the ESA expressly authorizes citizens to enforce review deadlines in federal court.

The Bush anti-ESA rider would suspend these statutory deadlines and thereby prevent a citizen from obtaining a court order requiring the Secretary to process a petition to either add a species to the list, to have a species already listed as threatened upgraded to endangered status, or to have critical habitat designated. Tellingly, this provision would not restrict lawsuits to decrease or eliminate protections afforded to currently listed species. These anti-environmental lawsuits and petitions are exempt from the rider.

As documented below, this provision could have devastating impacts on thousands of our nation's imperiled plants and animals.

## THE HISTORY AND IMPORTANCE OF CITIZEN PARTICIPATION AND OVERSIGHT UNDER THE ESA

The Bush Administration claims that this rider is necessary to stop citizen suits that have made it difficult for FWS to list species when, in fact, the history of ESA clearly shows that without citizen involvement, most endangered and threatened species would never have made it onto the endangered and threatened species list.

Mandatory listing timelines and the ability of citizens to enforce them were not in the original ESA as passed in 1973. They were added by Congress as an amendment in 1982 in recognition of the fact that the listing program is the "keystone" of the ESA and that federal agencies were failing to list imperiled species:

With more than 3,000 species already identified as 'candidates' for designation as endangered or threatened, the Secretary should make considerably more progress in the listing process than he has during the past 14 months.

*U.S. Senate Report No. 97-418, 97th Congress, 2nd Session, May 26, 1982.*

The listing process under section 4 is the keystone of the Endangered Species Act. The bill further amends the Act to . . . speed up the process by which species are added to or subtracted from the endangered and threatened species lists. . . . It is the committee's strong conviction that listing will be substantially improved and expedited under this new process.

*U.S. House Report No. 567, 97th Congress 2nd Session, May 17, 1982.*

The Bush rider is directly contrary to

Congress' intent in enacting the 1982 amendments, which was to limit the Secretary's discretion with non-discretionary timelines, because it significantly expands Secretary Norton's discretion to decide whether a species is listed:

In several ways, these amendments will replace the Secretary's discretion with mandatory, nondiscretionary duties. For example, under current law, if a petition presents substantial evidence warranting a review of the status of a species, the Secretary is to undertake such a review. However, the statute imposes no deadlines within which such review is to be completed. In practice, such status reviews have often continued indefinitely, sometimes for many years. The amendments will force action on listing and delisting proposals...

*U.S. House Conference Report NO. 97-835,  
September 17, 1982*

And Congress clearly believed that the new timelines would not be adhered to without citizen oversight. It even accused the Secretary of "delinquency":

[T]he Secretary must determine and present evidence that he is, in fact, making expeditious progress in the process of listing and delisting other species . . . In cases challenging the Secretary's claim of inability to propose an otherwise warranted petitioned action, the court will, in essence, be called on to separate justifications grounded in the purposes of the Act from the foot-dragging efforts of a delinquent agency.

*U.S. House Conference Rep. 97-835, 97th  
Congress, 2nd Session, September 17, 1982*

The right of citizens to petition to have imperiled species listed, mandatory deadlines for processing listing petitions and the right to have those deadlines enforced in court, are all part of the critically important system of checks and balances Congress built into the ESA to ensure that species threatened with extinction do not go unprotected because of political or economic influences, or agency inaction. The Bush anti-ESA rider would dismantle this system to the detriment of our nation's biodiversity.

### **IMPACT OF THE 1982 REFORMS AND CITIZEN PARTICIPATION ON LISTINGS**

Three lawsuits filed in the early 1990s alone were instrumental in the listing of approximately half of all species currently listed under the ESA. The first, brought by the California Native Plant Society and Sierra Club Legal Defense Fund, addressed the listing of 95 imperiled plants. Of these 95 species, 61 had to be relitigated once and 15 had to be relitigated twice. The second, brought by the Conservation Council for Hawaii, resulted in the listing of 185 imperiled plants. The third, brought by Fund for Animals and other environmental groups, dealt with approximately 400 species that are now listed as endangered or threatened. Many of these species, including Atlantic salmon and Canada lynx, had to be relitigated before they were listed.

Of the approximately 270 threatened and endangered species listed in California since the ESA was passed in 1973, just 30 percent were listed during the first 18 years of the ESA, when very few listing petitions or lawsuits were filed. From

1989 to 1990, the first two years of President George Bush Sr.'s administration, just nine species were listed in California. After 1990, the listing rate in California and nationwide skyrocketed. The dramatic turn was sparked by a 1990 audit of FWS's management of the ESA by the U.S. Department of the Interior Inspector General (IG). The IG found that the agency's listing rate was woefully inadequate, that the 1982 timeline reforms were not being implemented, and that at least 34 species had gone extinct between 1980 and 1990 while waiting to be listed. At the current listing rate, the IG concluded, it would take up to 48 years to address the backlog of 3,000 imperiled but unprotected species. And by that time, many of them would be extinct:

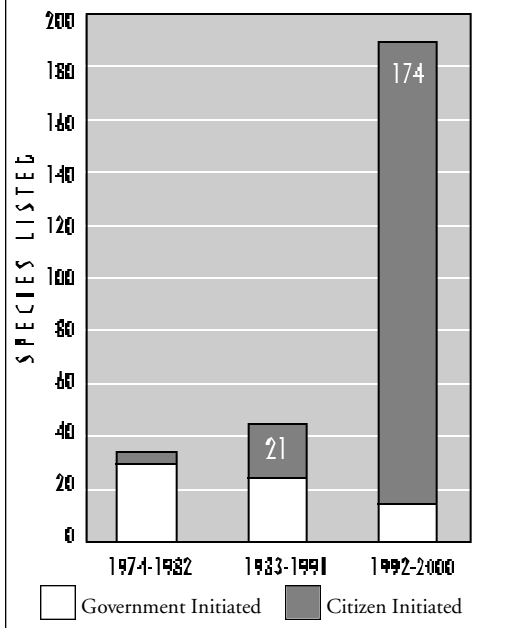
We conclude that the U.S. Fish and Wildlife Service had not effectively implemented a domestic endangered species program, . . . timely progress has not been made toward officially listing and protecting endangered and threatened plant and animal species. Approximately 600 domestic candidate species deemed by the Service to merit immediate protection under the Act have thus far not been officially listed. Also, the Service has identified an additional 3,000 species that are suspected to be threatened or endangered, but action has not been taken to list and protect these plants and animals. During the last 10 years, at least 34 animal and plant species have been determined to be extinct without every having received full benefit of the Act's protection, and those species currently known to merit protection, as well as those candidate species eventually determined to need protection, are similarly in jeopardy of extinction.

It may take 38 to 48 years at current listing rates to list just those species now

estimated to qualify for protection under the Act. In the meantime, additional species will likely require the Act's protection . . . We believe that this length of time to list and protect endangered species is not indicative of the "expeditious progress" specified in the Act and could likely result in additional extinction of certain plants and animals during the period.

The 1982 reforms did not immediately increase the rate of listing between 1982 and 1990 because the agency ignored them and citizen groups failed to enforce them. The report was seized upon by scientists, religious organizations and environmental groups. After 17 years of deferring to FWS's discretion, they inundated the agency with listing petitions and lawsuits challenging the agency's chronic failure to expe-

**Figure 1. Government vs. Citizen Initiated Listings in California: 1974-2000**



ditiously list imperiled species under the ESA. The result was exactly what Congress intended by the 1982 reforms and what the IG called for in his 1990 audit.

- The annual endangered species listing rate in California increased by 350 percent in the last ten years compared to the prior 17 years.

- 92 percent of all California listings in past ten years were initiated by citizen petitions and/or lawsuits (this excludes the 1975 petition by the Smithsonian Institute covering more than 3,000 plants which, if counted, would raise the citizen count even higher).

- 74 percent of all California listings since 1974 were initiated by citizen petitions and/or lawsuits (Figure 1).

The vast majority of the California species protected by citizen initiative in the past ten years had been languishing in a stalled federal listing program for more than a decade despite a two-year mandatory timeline to complete listings.

- The average time between the submission of a first listing petition and publication of a final listing rule was 17 years.

- The average time between first designation as a category 1 candidate for listing and a final listing rule was 15.9 years.

- The average time between designation as “warranted-but-precluded” (i.e., listing has been found to be warranted, but precluded by higher priorities) was 14 years.

- The average time between a first listing proposal and final listing rule was 7.5 years.

Many of the lawsuits brought by citizens in recent years to have imperiled species listed under the ESA provide compelling examples of

how easily swayed the Secretary is by political pressure, and the lengths that he or she will often travel to avoid listing imperiled species.

## ILLEGAL LISTING DECISIONS

### Canada Lynx

On March 24, 2000, FWS issued a final rule listing the Canada lynx as a threatened species throughout its range in the lower 48 states. This action came more than

20 years after FWS first officially determined that the lynx possibly warranted listing. Environmentalists were forced to file two separate listing petitions and four lawsuits to have the species protected under the ESA.

During this period, FWS went so far as to

completely fabricate its own legal standard, disregard the recommendations of its own biologists and assert patently false facts in denying the listing of the Canada lynx. In setting aside one of FWS’s decisions denying protection for the lynx, Judge Gladys Kessler concluded that:

[T]he agency applied the wrong legal standard, in clear violation of the plain wording of the [ESA] as well as the case law and its own prior interpretation of that statute...



LYNX, GREAT LAKES ECOSYSTEM, MARK AND SUE WERNER

## Case Study

### Ventura Marsh Milk-Vetch: A Case Study in Delay and Inaction

The Ventura Marsh milk-vetch was first discovered in Bolsa Chica Marsh in Orange County, California, in 1882. It formerly occurred in coastal wetlands in Orange, Los Angeles, and Ventura counties, including Ballona Marsh. By 1967 only a single plant was known to exist, though in the same year, clippings of the plant were discovered in the freshly mowed McGrath State Beach. Currently, a single population exists on less than half an acre of private land — land slated for toxic remediation and development.

The listing process for the Ventura Marsh milk-vetch began in 1975 and is a study in delay, inaction and inefficiency. It began with a 1975 petition by the Smithsonian Institute and a responsive

1976 listing proposal by FWS. Despite concern at the time that the milk-vetch was possibly already extinct, FWS took no action on the proposal for more than three years, at which time it revoked the proposal because the ESA at that time required listing proposals to be finalized within two years.

In 1980, the milk-vetch was designated as a candidate for listing. The one known population disappeared in the 1980s, and in 1993 FWS declared the species extinct. It was subsequently re-discovered in 1997 on a degraded dune system near Oxnard, California. The 1997 population of 374 plants declined to fewer than 200 plants in 1998. On June 25, 1999, FWS issued a second listing proposal — more than 20 years after the species was first proposed for listing. After FWS failed to issue a timely final listing rule on June 25, 2000, the Center for Biological Diversity filed suit. The agency settled the case in April 2001, agreeing to issue a final listing rule on May 15 — 26 years after the Smithsonian first petitioned FWS to list the species.



STEVE JUNAK

The FWS decision not to list the Canada Lynx and grant it protections of the ESA is arbitrary and capricious, applied an incorrect legal standard, relied on glaringly faulty factual premises, and ignored the views of its own experts.

*Defenders of Wildlife v. Babbitt*, 958 F.Supp. 670  
(D.D.C. 1997)

#### **Barton Springs Salamander**

In 1997, the court ruled that the Secretary had succumbed to political pressure in agreeing to accept an unenforceable and unimplemented state conservation agreement in lieu of listing the critically imperiled Barton Springs salamander under the ESA. In support of its holding that the Secretary's decision was illegal, the court made several notable findings:

The court finds that strong political pressure was applied to the Secretary to withdraw the proposed listing of the salamander.

When the Secretary permitted an Agreement, with no proven track record for effectiveness in protecting the species, to play the pivotal role in his listing decision and when he considered political factors in making his listing decision, he acted arbitrarily and capriciously.

This court finds as a matter of law that the Secretary failed to follow proper procedures under the [Administrative Procedure Act] and ESA. He failed to allow comment on issues that were fundamental to his ultimate decision. He missed virtually every statutory deadline provided under the ESA. And he considered factors other than those contemplated by the ESA.

The court concluded by stating that:

This Court finds that the Secretary, during the entire listing procedure with respect to the species at issue here, failed to follow Congress' directives and missed every nondiscretionary statutory imposed deadline. Moreover, the Secretary placed the continued existence of a species, found only one place in the natural world, in the hands of state agencies and a Conservation Agreement with no proven track record for success.

*Save Our Springs v. Babbitt*, 27 F.Supp.2d 739  
(W.D. Texas 1997)

#### **Alexander Archipelago Wolf**

In 1996, the court struck down FWS's decision denying ESA protection for the Alexander Archipelago wolf in the Tongass National Forest in Alaska. In its decision, the court noted that the agency had relied upon a document of "pros and cons" for listing the wolf.

On the "pro" side, it listed the fact that the wolf appeared to meet all the requirements for listing under the Endangered Species Act. On the "con" side, among other factors, was that a "not warranted" finding was the "[l]east controversial option" with the Alaskan delegation to Congress.

*Biodiversity Legal Foundation v. Babbitt*, 943  
F.Supp. 23 (D.D.C. 1996)

#### **Gentner's Fritillary, Willamette Daisy, Fender's Blue Butterfly, Kincaid's Lupine, Rough Popcorn Flower and Yreka Phlox**

After the Secretary failed to issue final listing rules by the required statutory deadline for these 6 species, environmental groups brought legal action to have those deadlines enforced.



Although the Secretary eventually issued the final listing rules, the court found that he did so as a result of the plaintiffs' legal action. The court sharply criticized the Secretary for continuing to litigate the case even after admitting liability.

In fact, throughout this litigation, the Secretary's conduct has been less than exemplary by ignoring plaintiffs' settlement attempts. Plaintiffs' counsel attests that at the time of her first settlement proposal in July 1999, she had spent only 3.16 hours on the case. Even at the time of her final settlement offer in September 1999, plaintiffs' counsel had spent only 15.21 hours on the case. Since the Secretary admitted liability, settlement of this case at an early state would have been relatively inexpensive and would have served the interests of both parties and the public. Instead, the Secretary chose to litigate the matter, making settlement progressively more difficult and increasing costs, especially by belatedly raising the standing issue. This type of conduct neither instills confidence in the Secretary's adherence to the law nor furthers the goals of the ESA. To deny attorneys fees and allow the Secretary now to reap the benefit of its untoward conduct would undermine the very purpose of the ESA citizen suit provision.

After considering evidence demonstrating that almost no Region 1 (California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Northern Mariana Islands and Guam) species has been listed under the ESA in the absence of citizen litigation or at least a notice of intent to sue, the court also noted that:

Considered together, the evidence supports a reasonable inference that in a general

sense, the Secretary's actions are substantially influenced by litigation. Indeed, the evidence seems to indicate that those who wish to champion a certain "at-risk" species would do well to file lawsuit.

*Klamath Siskiyou Wildlands Center v. Babbitt,*  
105 F.Supp.2d 1132 (D. Oregon 2000)

## CRITICAL HABITAT

Congress recognized when it enacted the ESA that habitat destruction and fragmentation was the primary threat to biodiversity. It noted that:

Man can threaten the existence of species of plants and animals in any number of ways, by excessive use, by unrestricted trade, by pollution or by other destruction of their habitat or range. The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat.

*H.R. No. 93-412, 93rd Cong., 1st Sess., July 27,*  
1973

To address the loss of habitat, Congress required the Secretary at the time a species is listed as endangered or threatened to also map out, designate and protect specific "critical habitat" areas for the species. By law, critical habitat must encompass all habitats necessary for an endangered or threatened species to recover. In one of the more flagrant and systematic violations of the ESA, the Secretary has outright refused to designate critical habitat for most listed species. Of the more than 1,200 species currently listed as endangered or threatened under the ESA, only 11 percent have had critical habi-

tat designated. Citizen action, particularly in the courts, has been absolutely essential recently in getting the Secretary to comply with this fundamental statutory requirement. In fact, until environmentalists recently began filing critical habitat lawsuits, it was FWS policy to almost never designate critical habitat.

Following are examples of how important critical habitat can be in protecting the species.

#### **Peninsular Bighorn Sheep**

The Peninsular bighorn sheep inhabits the foothills of Southern California's Peninsular Mountain Ranges. It has declined by at least 77 percent due to predation, urban sprawl, competition with — and diseases spread from — livestock, travel route interruptions by roads, fences and sprawl, and human disturbance including hikers, horseback riders, cars and ORVs. There are approximately 334 animals left. There are now more golf courses in the palm springs area than bighorn sheep.

FWS designated the species a candidate for ESA protection in 1985, but took no steps to list it until 1991, when environmentalists submitted a formal listing petition. The listing process began in earnest but eventually bogged down in politics. A lawsuit was filed and the species was listed in 1998. A second lawsuit was necessary before the Service designated 845,000 acres of critical habitat in 2001.

The Bureau of Land Management and the U.S. Forest Service have agreed to remove all livestock grazing from the bighorn's critical habitat on federal lands.

#### **Desert Tortoise**

Desert tortoise populations in the Mojave Desert region of southern California, Nevada, Utah and northern Arizona have declined by 90 percent since the 1930's due to competition with cattle, roads and respiratory diseases. Biologists first warned of the species possible extinction in 1970. Environmental groups began advocating for its listing under the ESA in 1977. Three petitions and two lawsuits later, the species was listed as endangered in 1989 and its critical habitat area was designated in 1994. The species was estimated to have declined by at least 50 percent during the drawn out listing process.

In 2000 and 2001, the Bureau of Land Management agreed to prohibit new or expanded mining operations on 3.4 million acres of the critical habitat, to prohibit or limit livestock grazing on 2.2 million acres of critical desert tortoise habitat, to review and close approximately 4,500 miles of illegal roads and ban off-road vehicles on approximately 500,000 acres of the critical habitat.

#### **Cactus Ferruginous Pygmy-Owl**

Formerly common in Arizona's Sonoran Desert, the cactus ferruginous pygmy owl has declined to just 40 birds in the state due to urban sprawl, livestock grazing and dewatering of rivers. A petition to protect it under the ESA was filed in 1992. Five lawsuits later, the species was listed as "endangered" in 1997 and 731,000 acres of critical habitat was designated in 1999.

Though the species was listed in 1997, it was not until critical habitat was designated that significant recovery efforts began. In 1999, a U.S.



CACTUS FERRUGINOUS PYGMY OWL, BRIAN E. SHALL

district court judge ordered the U.S. Army Corps of Engineers to review the cumulative effects of all its development permits within the critical habitat zone. It was the first time the agency had been ordered to take a full accounting of the impact of urban sprawl on open space and endangered species at an ecosystem level. Pima County,

Arizona, meanwhile, issued a requirement that all large developments within the critical habitat area be reviewed for their impact on endangered species before building permits will be issued. The county is developing a habitat conservation plan with the critical habitat zone as its centerpiece.

#### **Southwestern Willow Flycatcher**

The southwestern willow flycatcher is one of the nation's most endangered birds. It has declined by more than 90 percent in California, Nevada, Arizona, Utah, New Mexico and Colorado since the turn of the century. Recent reports by FWS suggest it may soon be extirpated in California and will go extinct if current population trends continue. Its streamside forest habitat is threatened by livestock grazing, cowbird parasitism, dewatering of rivers, dam management and suburban sprawl.

Its federal listing in 1995 and designation of 600 river miles of critical habitat in 1997 came

in response to the filing of a citizen listing petition and three lawsuits. In 1998 and 1999, the U.S. Forest Service agreed to remove livestock from all National Forest streams in Arizona and New Mexico designated as critical habitat for the flycatcher.

#### **California Red-Legged Frog**

The California red-legged frog formerly occurred in wetlands and streams throughout the California coast and the Sierra Nevada. Livestock grazing, logging, urban sprawl, dams, dewatering of rivers and exotic species have reduced its numbers by more than 80 percent.

It was listed as "category 1 candidate" for listing in 1991, meaning the Service had at that time sufficient information to issue a proposed rule to protect it under the ESA. The proposal did not occur, however, so scientists filed a petition to list it as endangered in 1992. Deadlines were ignored, three lawsuits followed, and the species was listed in 1996 with 4.1 million acres of critical habitat being designated in 2001.

Almost immediately upon designation, the U.S. Army Corps of Engineers and the Service agreed to suspend its prior approval of a 1,647 acre sprawling luxury development in San Francisco's East Bay Hills. The Blue Rock Country Club had been previously approved under the minimal condition that it would not drive the red-legged frog or Alameda whipsnake extinct. Once critical habitat had been designated for the species, however, federal agencies had to ensure a higher standard of protection: that the species' recovery not be significantly impaired.

### Steller Sea Lion

In western Alaska, Steller sea lion populations have plummeted between 80 and 90 percent since the 1970s. This decline coincided with a huge growth in large-scale commercial pollock fisheries in the region. To save the sea lion from extinction, environmental groups petitioned the National Marine Fisheries Service (NMFS) to emergency list the species in 1989. NMFS listed Alaska sea lions as “threatened” in 1990, designated terrestrial and marine critical habitat in 1993 and reclassified the western stock of sea lions as “endangered” in 1997.

In 1998, conservation groups sued NMFS for failing to protect sea lions and their critical habitat from the adverse impacts of increasingly concentrated pollock trawling in designated critical habitat. Forced to examine the problem, NMFS determined that the pollock fisheries were jeopardizing the continued existence of Steller sea lions and adversely modifying their critical habitat. NMFS imposed limited restrictions on pollock trawling in critical habitat, but substantial portions of critical habitat remained unprotected. Conservation groups argued that the changes to the pollock fisheries did not go far enough and that NMFS had not considered the combined and cumulative effects of all of the groundfish fisheries on sea lions and their critical habitat. In July 2000, a federal judge agreed and closed critical habitat to all trawling for groundfish until NMFS developed fishing limitations ensuring the survival of the sea lion and the protection of its critical habitat. In November 2000, NMFS released its plan for complying with the court order.

### FINANCIAL COSTS OF THE INTERIOR SECRETARY'S CHRONIC FAILURE TO LEGALLY ADMINISTER THE ESA

The legislative history of the ESA reflects Congress' intent that preventative action to protect species be taken sooner rather than later.

In the past, little action was taken until the situation became critical and the species was dangerously close to total extinction. This legislation provides us with the means of preventative action.

In approving this legislation, we will be giving authority for the inclusion of those species which . . . might be threatened by extinction in the near future. Such foresight will help avoid the regrettable plight of repairing damages already incurred. By heeding the warnings of possible extinction today, we will prevent tomorrow's crisis.

Sheer self-interest impels us to be cautious.

The institutionalization of that caution lies at the heart of the [ESA].

*H.R. Rep. No. 412, 93d Cong.,  
1st Sess. (1973)*

The Secretary, unfortunately, has failed to adopt Congress' notion of institutionalized caution by consistently delaying ESA protection for imperiled species and their habitats until forced by citizen action. This chronic delay means that species and their habitats are allowed to deteriorate further, which can substantially increase the costs of recovery. For example, the cost of maintaining habitat of the threatened Florida scrub jay is approximately \$500 per acre, while restoring such habitat after it has been allowed to degrade over time can be 30 times as expensive,

or \$15,000 per acre (Wilcove et al. 1998). The costs of repairing entire ecosystems is even greater. The federal government has estimated that it will cost taxpayers approximately \$8 billion to undue damage caused to the Florida Everglades. Clearly, it is more cost effective to act early to protect and maintain imperiled species and their habitats than it is to try and reverse the damage after the status of a species or ecosystem becomes critical.

### THE EXTINCTION WAITING LIST

**Candidates.** Two-hundred and thirty-five species are currently classified as “candidates” for ESA protection (Appendix A). These species have been determined to warrant formal listing proposals, but have been left on the candidate list — some for more than two decades — instead of being proposed for listings. As noted in the Inspector General’s 1990 report, numerous candidates have gone extinct due to listing delays.

**Proposed Listings.** Thirty-seven species have been formally proposed for listing (Appendix B), but their final listing decisions have been held up by the Department of the Interior’s listing moratorium. Most of them only reached the proposal stage as a result of 22 citizen listing petitions and 11 lawsuits. Several of these, including the Buena Vista Lake ornate shrew and mountain yellow-legged frog are at extreme risk of extinction. Four species of Hawaiian picture wings — known as the birds of paradise of the insect world — may already be extinct. On average, the 37 proposed species were first formally recognized as being

seriously imperiled 11 years ago. Five were petitioned for listing by the Smithsonian Institute more than 20 years ago.

**Warranted-but-Precluded.** Another Twenty-four species have been classified as “warranted but precluded” (Appendix C). These species have been formally found to “warrant” listing, but have been “precluded” by higher listing priorities. Many of these species, however, have been caught up in listing delays for more than a decade.

**Listing Petitions.** At least 47 species have been the subject of listing petitions by scientists or environmental groups in the past decade (Appendix D). Another 1,500 species petitioned by listing by the Smithsonian Institution in 1975 have yet to receive final reviews and listing decisions.

#### Buena Vista Lake Ornate Shrew

The Buena Vista Lake ornate shrew formerly inhabited the vast wetland complex of the Tulare Valley. It was thought extinct due to wetland draining and agriculture clearing until three individuals were found in 1986. Since then a total of 38 shrews, some of them dead, have been located on the Kern National Wildlife Refuge and a private 30 acre wetland owned by the J.R. Boswell Company. The only population known to exist today is on the Boswell property. The Nature Conservancy leased the property in 1985 and operated it as the Kern Lake Preserve. As the hydrology of the area has been completely altered by intensive commercial agriculture, the wetland

is now entirely dependent upon the purchase and pumping of excess agricultural water supplies. The Boswell Company refuses to guarantee water availability except in wet years and in 1994 refused a FWS offer to establish a conservation agreement permanently protecting the site. Lacking a guaranteed water supply or habitat preservation plan, The Nature Conservancy gave up the lease in 1995. A single act of vegetation mowing or refusal to provide water could drive the species extinct.

The Buena Vista Lake ornate shrew was designated a candidate for listing by FWS in 1985. On April, 18 1988, a petition was filed by the Interfaith Council for the Protection of Animals and Nature asking that the species be listed under the ESA. FWS issued a positive 90-day finding on the petition later that year, however it failed to issue a proposed listing rule in April 1989, as it was required to do under the ESA.

On June 1, 2000, more than eleven years after the petition was filed and more than ten years after the statutory deadline had past, FWS proposed the species for listing. Lest FWS claim it was processing higher priority species, consider that the agency listed a total of 9 California species in 1989 and 1990, the years in which they were legally required to have issued the proposed and final rules for the lake shrew.

### Mountain Plover

The mountain plover breeds in the short-grass prairies and shrub-steppes of the Rocky Mountain states from Canada to Mexico, but primarily in Montana and Colorado. Most birds winter in grasslands or similar landscapes in

California. A few wintering birds occur in Arizona, Texas and Mexico. The mountain plover is one of nine grassland species endemic to North America. All are declining due to agricultural and urban sprawl, livestock grazing and the disappearance of native herbivores. Pesticides may also be a contributing factor. The plover is the most rapidly declining of the grassland birds, its total population having dropped by 63 percent between 1966 and 1991. Its current population size is between 8,000 and 10,000 individuals.

The plover is true ecosystem bellwether. Its decline is linked to the simultaneous loss of native bison, elk, pronghorn, badgers, prairie dogs and kangaroo rats. These species are “ecological engineers,” which greatly influence the structure of the vegetation and soils through grazing, burrowing, wallowing and digging. Their decline has dramatically changed the landscape, including habitat for native birds.

FWS published a mountain plover status review in 1990 concluding that the species warranted listing under the ESA. No further action was taken until 1994 when it was designated a candidate for listing. On July 7, 1997, seven years after FWS determined that the plover warranted protection under the ESA, the Biodiversity Legal Foundation petitioned FWS to list the plover as endangered or threatened. The species was proposed for listing on February



MOUNTAIN PLOVER, RICK AND NORA BOWERS/STUDIALS UNLIMITED

16, 1999, seven months after the statutory deadline. A final listing rule is now more than a year overdue.

**Southern California Mountain Yellow-Legged Frog**

Prior to the late 1960's, mountain yellow-legged frogs were abundant throughout southern California streams. Today, just 200 individuals remain in nine isolated populations within four small stream systems in the San Gabriel, San Jacinto and San Bernardino Mountains. These 200 individuals are threatened by livestock graz-



MOUNTAIN YELLOW-LEGGED FROG, STEPHEN INGRAM

ing, recreational gold dredging within designated wilderness areas, poorly sited campgrounds and introduction of exotic rainbow trout and bull frogs.

On July 13, 1995, the Biodiversity Legal Foundation petitioned FWS to list the species under the ESA. After failing to process the petition, the agency was sued. As a result of the lawsuit, FWS issued its overdue 90-day petition finding on July 8, 1997.

FWS then delayed issuing a proposed listing rule which prompted a second lawsuit. As a result of this lawsuit, a listing proposal was issued

on December 22, 1999, almost three and a half years after the mandatory statutory deadline. A final listing rule is now almost four and half years late.

**San Diego Ambrosia**

This plant is restricted to 13 sites in San Diego and Riverside counties and adjacent areas in Baja California Norte. Sprawl, including commercial and residential development, and highway construction is the greatest threat.

The pattern of listing delays on this species go back 22 years to 1978 when the Smithsonian Institute submitted a petition to list it as a "threatened" species. In 1980, FWS designated the species as a candidate for listing. In 1983, FWS moved the species a step closer to listing by placing it on the "warranted-but-precluded" list, meaning that the species' listing was warranted, but allegedly precluded by limited resources and work on higher priority species. Ironically, FWS did not list a single species in California in 1981, 1982 or 1983, and in 1984 it listed just four species.

No further action was taken to list the ambrosia until January 1, 1997, when the Center for Biological Diversity and California Native Plant Society submitted a formal listing petition. On October 1, 1998, FWS was more than a year and half late with its 90-day finding, prompting a lawsuit by the Center and the Plant Society. When the 90-day petition finding was issued on April 9, 1999, FWS was almost a year and a half late with a proposed listing. On October 28, 1999, a federal court finally ordered the agency to issue a proposed rule, which was issued on

December 29, 1999. A final listing rule is now more than a year overdue.

### **Cerulean Warbler**

The cerulean warbler is a songbird that migrates between the eastern U.S. in the summer and the Andes Mountains in South America in the winter. Its striking blue plumage and distinctive song make it one of the most recognizable warblers. It was also one of the most abundant warblers, regularly seen throughout the U.S., especially in the Ohio and Mississippi River valleys. The species depends on large tracts of mature, native forest both in this country and in South America. However, forests in both hemispheres are being destroyed and fragmented. Seventy percent of the cerulean warbler population in the U.S. has disappeared over the last 30



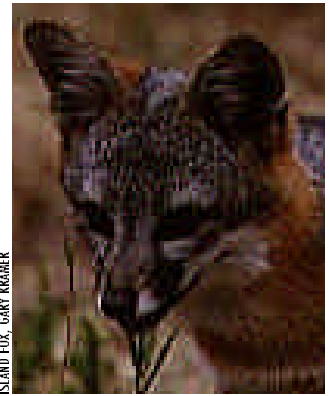
CERULEAN WARBLER, J. WALKINSHAW/PIREO

years. The bird's rapid decline is a clear warning that the forest ecosystems themselves are vanishing. In October 2000, a coalition of 28 regional and national conservation groups petitioned FWS to list the cerulean warbler. FWS has failed to process the petition.

### **Island Fox**

Four subspecies of gravely imperiled island fox live on the Channel Islands off the southern coast of California. As the largest native mammal to the islands and the only carnivore endemic to the state of California, the fox's extinction would be a tremendous loss California's unique natural heritage and the ecological balance of the

Channel Islands. The island fox is fragile because of small numbers and isolated populations. The combined effects of habitat degradation and fragmentation, the introduction of exotic species, and predation has caused the population to drop 90 percent in the past six years. On San Miguel Island, one fox



ISLAND FOX, GARY KRAHER

remains in the wild. On June 1, 2000, the Institute for Wildlife Studies and the Center for Biological Diversity filed a petition to list the island fox as endangered on four of the California Channel Islands. Citing the listing moratorium, the Department of the Interior has refused to process the petition.

### **Aleutian Sea Otter**

The Aleutian sea otter swims in the icy waters around the Aleutian islands of Alaska. In the 1980s, sea otter populations in Alaska were the largest in the world. Only two decades later, merely 6,000 sea otters survive. Scientists believe hungry orca whales are increasingly eating sea otters because their usual prey, Steller sea lions and harbor seals, are becoming scarce. The



Steller sea lion was itself listed as an endangered species in 1990. The sea otter is a keystone species in the Bearing Sea and its decline has caused a ripple of negative effects throughout the ecosystem. Sea urchins populations have exploded as otter predation pressure has declined. Urchin predation pressure on kelp forests has conversely increased, threatening to destroy one of the basic habitats and food sources for dozens of species.



SEA OTTER, LEN RUE JR.

The Center for Biological Diversity petitioned to list the Aleutian sea otter as endangered on October 25, 2000. Citing its listing moratorium, the U.S. Fish and Wildlife Service has refused to process the petition.

**New England Cottontail**

On August 29, 2000 four organizations submitted a petition to list the New England cottontail rabbit under the ESA. Biologists estimate that over the last four decades the New England cottontail population has been declining at a rate of about 4 percent per year. There are two core factors contributing to the decline of the New England cottontail: suburban sprawl and non-native species. Dramatic human expansion in the New England area has



NEW ENGLAND COTTONTAIL, ROB AND ANN SIMPSON

resulted in at least a 75 percent habitat loss, according to biologists. Only a few small patches of land exist in New England which can support the species. Additionally, one study found that winter survival rates on small patches of land are only half of those found on larger areas of land where food and shelter are more abundant.

The introduction of the non-native Eastern cottontail by the fish and game clubs in the 1930's has contributed to the native New England cottontail's demise as well. Surveys prior to the 1930's found that 100 percent of cottontails in the region were the native subspecies. However, a study conducted from 1993-1998 on 250 rabbits found only 18 percent (45) to be native cottontails, while 82 percent (205) were the eastern cottontail. As has been documented in other parts of the country, non-native species often outcompete the native ones.

FWS has failed to issue the required 90-day petition finding.

**Wolverine**

A petition to list the wolverine as an endangered species was submitted to the U.S. Fish and Wildlife Service on July 11, 2000.

Wolverine distribution and abundance has been reduced in the continental United States from a contiguous population that ranged the entire northern tier of states to 800 or fewer animals fragmented across six or more populations centered in western Montana and Idaho and potential remnant populations scattered across the mountainous areas of Washington, Oregon and perhaps California.

Several ecological factors jeopardize wolverine

survival and recovery, including their large home range requirements, slow reproductive rate and sensitivity to human disturbance. Human activi-



WOLVERINE, JEFFREY RICH NATURE PHOTOGRAPHY

ties and developments that directly threaten wolverine survival and recovery include the loss and destruction of roadless areas, disturbance of denning habitat by winter recreation, and fragmentation of wolverine subpopulations by development of private lands and transportation corridors in the areas between existing and potential wolverine habitat. Direct and incidental mortality of wolverines due to traps and poisons was a major cause of decline of wolverines historically and continues to be a threat in some areas of the wolverine's range today.

FWS has failed to make the mandatory 90-day finding on the wolverine petition.

**Washington Ground Squirrel**

The Washington ground squirrel has been declining dramatically. In Oregon it has declined by 70 percent every ten years for the past three decades. With an average number of 1.2 - 31.7 individuals per colony, there were only 16 colonies documented in Oregon as of 1998. On

February 29, 2000, conservation groups filed a petition to have the species listed under the ESA. Currently, the species is classified as an “endangered” species by the Oregon Department of Fish and Wildlife, a “candidate species” by FWS, a “state monitor species” by the Washington Department of Wildlife and a “globally imperiled” species by the Oregon Natural Heritage Program. These listings do not provide protection for the squirrel on the federally owned Boardman Bombing Range, the only significant population stronghold in all of Oregon.

Several ecological factors jeopardize Washington ground squirrel recovery including direct take of individuals, loss of habitat, fragmentation of habitat and degradation of remaining habitat from the secondary effects of agricultural practices that would result from proposed conversion of habitat on Oregon State Lands.

Human activity continues to fragment and degrade the squirrel population in Oregon as a proposed road which could run through 23,000 acres of State land currently leased by The Nature Conservancy awaits approval by the state.

Population loss has been consistent, if somewhat less dramatic, in Washington over the last few decades. However, this spring, a biologist



WASHINGTON GROUND SQUIRREL, RON SPOMER

studying 23 sites in the Columbia basin found that all the squirrels at one location and half the squirrels at two other sites had disappeared as well.

FWS has failed to process the listing petition.

#### **Sheath-tailed Bat**

Once abundant in the Pacific Islands of Samoa, Fiji, the New Hebrides, Palau and the Marianas, the sheath-tailed bat declined so precipitously that it was thought to possibly be extinct in the late 1970's. It is so rare that the causes of its decline are not well known, but may include pesticide exposure, military bombing and guano collection.

On December 14, 1981, the Governor of Guam, submitted a petition to FWS to list the sheath-tailed bat as an endangered species. The agency delayed taking any action for several years, then denied the petition even though the bat was clearly on the knife-edge of extinction. In 1984 biologists found 10 sheath-tailed bats on Goat Island. This was the first verifiable sighting in more than 50 years.

On February 24, 1986, Dr. Thomas O. Lemke of the Montana Dept. of Fish, Wildlife and Parks, submitted a second petition to the U.S. Fish and Wildlife Service. As before, the agency first delayed making a decision (missing its statutory deadline by a year and half) then denied the petition on July 7, 1988. Nine years later the species was still at extinction's edge, so the agency declared it warranted-but-precluded for listing on September 19, 1997. It has remained in that status ever since.

#### **Oregon Spotted Frog**

The Oregon spotted frog lives in western California, Oregon, Washington and British Columbia where it is threatened by water pollution, urban sprawl, overgrazing, introduction of exotic predatory fish and frogs, and wetland loss. On May 4, 1989, the Utah Nature Study Society submitted a petition to FWS to list the Oregon spotted frog as an endangered species. On May 7, 1993 — three years after the statutory deadline — the agency issued a decision that listing was warranted but precluded by higher priorities.

In 1997, FWS increased the priority of the Oregon frog from a Priority 6 species (moderate magnitude and imminence of threats) to Priority 2 (high magnitude and imminence) because of continued declines. Yet, the agency still refused to list. In 1999, the government of British Columbia listed the species as endangered on an emergency basis. On January 8, 2001, FWS again declared listing of the Oregon frog to be warranted-but-precluded.

#### **Boreal Toad**

The southern Rocky Mountains population of the boreal toad has declined by 80 percent due to habitat loss from livestock grazing, mining, logging, water diversion, water pollution, predation by introduced exotic species and a debilitating fungus. In 1993 it was listed as endangered by the State of Colorado. To obtain stronger federal protection, the Biodiversity Legal Foundation and Dr. Peter Hovingh petitioned FWS on September 27, 1993 to list the species under the ESA. On March 23, 1995, the agency declared that the species warranted listing as an endangered species, but

that such action was precluded by limited resources and work on higher priorities.

Despite the alleged lack of resources, FWS found funds to develop a weak “conservation agreement” in 1997 which was never finalized. On January 8, 2001, FWS again declared listing of the boreal toad to be warranted-but-precluded.

#### **Band-Rumped Storm-Petrel**

The Hawaiian population of the band-rumped storm-petrel is the rarest breeding seabird in Hawaii where it is also called “Ake’ake.” Once common throughout the Hawaiian Islands, it has been reduced to less than 100 pairs on the island of Kauai. It is listed as endangered by the State of Hawaii.

On May 3, 1989, Craig Harrison petitioned FWS to list the storm-petrel as an endangered species. On December 9, 1993 — three and a half years after the mandatory statutory deadline — the agency declared that listing of the species is warranted, but precluded by higher priorities. On January 8, 2001 — nearly 12 years after the band-rumped storm-petrel was petitioned for listing, FWS again declared listing of the species to be warranted-but-precluded.

### **THE SOLUTION: SUBSTANTIALLY INCREASED FUNDING**

The Bush Administration concedes that FWS does not have enough money to meet its statutory obligations under the ESA to protect our nation’s imperiled biodiversity. Yet its proposed solution is not to request adequate funding, but instead to drastically curtail citizen enforcement

— which, as already demonstrated, will guarantee that fewer species are listed under the ESA and less critical habitat is protected. It also proposes to give Secretary of the Interior Gale Norton — the very same person who once argued that the ESA was unconstitutional — almost complete discretion to decide which species are listed and when. The Bush Administration claims that without the constraints imposed by citizen suits, it would be free to prioritize species’ listings and critical habitat designations based on science. As history indicates, however, without citizen oversight, listing decisions are inevitably driven by politics and economic considerations, and not science as the ESA requires. Giving Secretary Norton almost absolute discretion to pick and chose which species are listed will ensure that any species whose listing is controversial or opposed by industry will not make the cut, and that overall fewer species will be protected. The Bush Administration’s proposal will only lead to more extinctions.

The real solution and the one that Congress must adopt if it is truly committed to saving our nation’s biodiversity is to substantially increase funding for the ESA.

### **A QUESTION OF PRIORITIES**

Funding for the ESA, our nation’s most important program for the conservation of biodiversity, has never even approached levels commensurate with the values our nation receives from biodiversity, or necessary to prevent the further loss of plants, animals and ecosystems. This fund-

ing shortfall has only become worse in recent years as our nation's biodiversity crisis has increased substantially without a concomitant rise in spending.

The Bush Administration has requested approximately \$166 million for the ESA for FY 2001. This amount pales in comparison to environmentally harmful federal subsidy programs for industry. In 1999, for example, mining companies extracted more than \$1 billion worth of minerals from our public lands without paying a dime in royalties to U.S. taxpayers. In total, mining companies have taken more than \$240 billion worth of mineral from public lands, while at the same time leaving the public with a \$32 to \$72 billion cleanup bill for polluted mine sites. Between 1992 and 1997, Congress appropriated approximately \$36.5 million for the ESA's listing program. During this same period, more than \$2 billion of the U.S. taxpayers' money was wasted on allowing timber companies to log on U.S. National Forests.

### **THE MOST IMMEDIATE NEED: A THREE-FOLD INCREASE FOR LISTING AND CRITICAL HABITAT**

Over the last ten years, no program has been more starved for money than listing and critical habitat (Appendix E). In 1992, Congress appropriated approximately \$7.4 million for listing and critical habitat, which represented about 21 percent of the ESA's total budget for that year. For FY 2001, Congress only appropriated approximately \$6.3 million, representing a mea-

ger five percent of the total ESA budget. In other words, since 1992 funding for the listing and critical habitat program has decreased significantly both in terms of total dollars and as a percentage of the total ESA budget, at the same time the number of species in need of protection has increased. While the Bush Administration has asked for a \$2 million increase, or about \$8.5 million, for the listing and critical habitat program, this amount doesn't begin to address the underlying backlog of species awaiting listing and critical habitat. Notably, it is \$1.7 million less than the \$10.2 million George Bush Sr.'s administration requested in 1992.

FWS officials have repeatedly stated that to address just the existing listing and critical habitat backlog would require approximately \$120 million, or \$24 million a year allocated over a five year period. In 1999, the Senate Environment and Public Works Committee unanimously voted for a bill introduced by Senator John Chafee that would have authorized appropriations totaling \$253 million over five years, or approximately \$51 million per year, to address the existing critical habitat backlog and to revise or develop recovery plans for all listed species. Based on these figures, annual funding for listing and critical habitat should be immediately increased to at least \$24 million a year, or approximately three times what the Bush Administration is requesting.



## CONCLUSION

# Stopping Extinction

**W**e face a critical situation in our nation's effort to protect its imperiled biodiversity. The problem is a lack of adequate funding for the ESA so severe that FWS cannot even list species that are on the brink of extinction. The Bush Administration's proposed solution, which is really no solution at all, is to restrict the very statutory provisions that have been responsible for the listing of hundreds of endangered and threatened species. This anti-environmental rider must be rejected. If the Congress and the Bush Administration are truly committed to saving our nation's plants and animals from extinction, then they must support at least a three-fold increase in funding for the ESA's listing program.

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APPENDIX A

# Candidate Species for Listing

**235 SPECIES ARE “CANDIDATES” FOR ENDANGERED SPECIES ACT LISTING**

FWS has determined that it possesses sufficient information to issue listing proposals for the following 235 species. Rather than proposing them, however, it has placed them on the “candidate” list. Many species have been on the list for more than a decade, some for nearly two decades.

The Secretary of the Interior issued a policy in 1996 banning the acceptance of citizen petitions to list candidate species under the ESA. Internal FWS memos show that the candidate list is being used as a holding pen to shield species from citizen petitions and lawsuits that would otherwise result in their being listed.

<b>SPECIES</b>	<b>RANGE</b>
Acuna cactus.....	U.S.A. (AZ), Mexico
A'e.....	U.S.A. (HI)
'Aiea.....	U.S.A. (HI)
'Akoko.....	U.S.A. (HI)
'Akoko.....	U.S.A. (HI)
'Akoko.....	U.S.A. (HI)
'Ala 'ala wai nui.....	U.S.A. (HI)
Alabama clubshell.....	U.S.A. (AL, GA, TN)
Alabama pearlshell.....	U.S.A. (AL)
Alani.....	U.S.A. (HI)
Alani.....	U.S.A. (HI)
Alani.....	U.S.A. (HI)
Alani.....	U.S.A. (HI)
Alani.....	U.S.A. (HI)

**SPECIES**

**RANGE**

Alani.....	U.S.A. (HI)
Alani.....	U.S.A. (HI)
Anchialine pool shrimp.....	U.S.A. (HI)
Anchialine pool shrimp.....	U.S.A. (HI)
Anchialine pool shrimp.....	U.S.A. (HI)
Anchialine pool shrimp.....	U.S.A. (HI)
Anchialine pool shrimp.....	U.S.A. (HI), Mozambique, Saudi Arabia, Japan
Anchialine pool shrimp.....	U.S.A. (HI), Funafuti Atol, Saudi Arabia, Sinai Peninsula, Tuvalu
'Anunu.....	U.S.A. (HI)
Aquarius paintbrush .....	U.S.A. (UT)
Arctic grayling (Upper Missouri R. fluvial pop.).....	U.S.A. (MT, WY)
Arkansas darter.....	U.S.A. (AR, CO, KS, MO, OK)
'Awikiwiki.....	U.S.A. (HI)
'Awikiwiki.....	U.S.A. (HI)
Band-rumped storm petrel.....	U.S.A. (HI)
Basalt daisy.....	U.S.A. (WA)
Big Pine partridge pea.....	U.S.A. (FL)
Black warrior waterdog.....	U.S.A. (AL)
Black-tailed prairie dog.....	U.S.A. (AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, WY), Canada, Mexico
Blodgett's Silverbrush.....	U.S.A. (FL)
Bog asphodel.....	U.S.A. (DE, NJ, NC, NY, SC)
Bonneville pondsnail .....	U.S.A. (UT)
Boreal toad (Southern Rocky Mountain pop.).....	U.S.A. (CO, NM, WY)
Bushy whitlow-wort .....	U.S.A. (TX)
Caddisfly, Sequatchie.....	U.S.A. (TN)
Cagle's map turtle.....	U.S.A. (TX)
California tiger salamander .....	U.S.A. (CA)
Camp Shelby burrowing crayfish.....	U.S.A. (MS)
Cape sable thoroughwort .....	U.S.A. (FL)
Carter's small-flowered flax.....	U.S.A. (FL)
Christ's paintbrush.....	U.S.A. (ID)
Chupadera springsnail.....	U.S.A. (NM)
Coachella Valley round-tailed ground squirrel.....	U.S.A. (CA)
Columbia spotted frog (Great Basin pop.).....	U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada
Coral Pink Sand Dunes tiger beetle.....	U.S.A. (UT)
Cumberland Johnny darter.....	U.S.A. (KY, TN)

**SPECIES**

**RANGE**

Damselfly, blackline Hawaiian.....	U.S.A. (HI)
Damselfly, crimson Hawaiian.....	U.S.A. (HI)
Damselfly, flying earwig Hawaiian.....	U.S.A. (HI)
Damselfly, oceanic Hawaiian.....	U.S.A. (HI)
Damselfly, orangeblack Hawaiian .....	U.S.A. (HI)
Damselfly, Pacific Hawaiian.....	U.S.A. (HI)
DeBeque phacelia.....	U.S.A. (CO)
Diamond cholla.....	U.S.A. (NV)
Diamond Y Spring snail.....	U.S.A. (TX)
Eastern massasauga.....	U.S.A. (IL, IN, IA, MI, MN, MO, NY, OH, PA, WI), Canada (Ont.)
Elfin woods warbler.....	U.S.A. (PR)
‘Ena’ena.....	U.S.A. (HI)
Florida Brickell-bush.....	U.S.A. (FL)
Florida indigo .....	U.S.A. (FL)
Florida pineland crabgrass.....	U.S.A. (FL)
Florida prairie-clover.....	U.S.A. (FL)
Florida semaphore cactus.....	U.S.A. (FL)
Fluted kidneyshell.....	U.S.A. (AL, KY, TN, VA)
Fragile tree snail.....	U.S.A. (GU, MP)
Friendly ground dove (American Somoa pop.).....	U.S.A. (AS), Fiji, Tonga, Western Samoa
Gall fly, Po’olanui.....	U.S.A. (HI)
Georgia aster.....	U.S.A. (AL, FL, GA, NC, SC)
Georgia pigtoe.....	U.S.A. (AL, GA, TN)
Georgia Rockcress.....	U.S.A. (AL, GA)
Georgia rocksnail .....	U.S.A. (GA, AL)
Gila Chub.....	U.S.A. (AZ, NM), Mexico
Gila Springsnail.....	U.S.A. (NM)
Glade-cress.....	U.S.A. (AL)
Gonzales springsnail.....	U.S.A. (TX)
Graham beardtongue.....	U.S.A. (CO, UT)
Guadalupe fescue.....	U.S.A. (TX), Mexico
Guam tree snail.....	U.S.A. (GU)
Gunnison sage grouse.....	U.S.A. (AZ, CO, KS, OK, NM, UT)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)

**SPECIES**

**RANGE**

Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Haha.....	U.S.A. (HI)
Ha'iwale.....	U.S.A. (HI)
Ha'iwale.....	U.S.A. (HI)
Ha'iwale.....	U.S.A. (HI)
Ha'iwale.....	U.S.A. (HI)
Ha'iwale.....	U.S.A. (HI)
Hala pepe .....	U.S.A. (HI)
Hala pepe .....	U.S.A. (HI)
Hawaiian picture-wing.....	U.S.A. (HI)
Hawaiian picture-wing.....	U.S.A. (HI)
Highlands tiger beetle.....	U.S.A. (FL)
Hirsts panic grass.....	U.S.A. (DE, GA, NC, NJ)
Ho'awa.....	U.S.A. (HI)
Holei.....	U.S.A. (HI)
Holsinger's cave beetle.....	U.S.A. (VA)
Horseshoe milk-vetch .....	U.S.A. (UT)
Huachuca springsnail.....	U.S.A. (AZ), Mexico
Hulumoa .....	U.S.A. (HI)
Humped tree snail.....	U.S.A. (GU, MP)
Kamakahala.....	U.S.A. (HI)
Kamakahala.....	U.S.A. (HI)
Kamapua'a.....	U.S.A. (HI)
Kauai creeper.....	U.S.A. (HI)
Kaulu.....	U.S.A. (HI)
Kolea .....	U.S.A. (HI)
Kolea .....	U.S.A. (HI)
Kolea .....	U.S.A. (HI)
Ko'oko'olau.....	U.S.A. (HI)
Ko'oko'olau.....	U.S.A. (HI)
Ko'oko'olau.....	U.S.A. (HI)
Ko'oko'olau.....	U.S.A. (HI)
Ko'oko'olau.....	U.S.A. (HI)
Kopiko.....	U.S.A. (HI)
Kopiko.....	U.S.A. (HI)
Kopiko.....	U.S.A. (HI)
Koster's tryonia snail.....	U.S.A. (NM)

**SPECIES**

**RANGE**

Lanai tree snail.....	U.S.A. (HI)
Lanai tree snail.....	U.S.A. (HI)
Langford's tree snail.....	U.S.A. (MP)
Lehua makanoe.....	U.S.A. (HI)
Lemmon fleabane.....	U.S.A. (AZ)
Lesser prairie-chicken.....	U.S.A. (CO, KA, NM, OK, TX)
Makou.....	U.S.A. (HI)
Makou.....	U.S.A. (HI)
Many-colored fruit dove .....	U.S.A. (AS)
Mariana eight-spot butterfly .....	U.S.A. (GU, MP)
Mariana wandering butterfly .....	U.S.A. (GU, MP)
Moth, fabulous green sphinx .....	U.S.A. (HI)
Na'ena'e .....	U.S.A. (HI)
Na'ena'e.....	U.S.A. (HI)
Na'ena'e .....	U.S.A. (HI)
Na'ena'e .....	U.S.A. (HI)
Nanu .....	U.S.A. (HI)
Neches River rose-mallow .....	U.S.A. (TX)
New Mexico springsnail.....	U.S.A. (NM)
Newcomb's tree snail.....	U.S.A. (HI)
Nohoanu.....	U.S.A. (HI)
Nohoanu.....	U.S.A. (HI)
Nohoanu.....	U.S.A. (HI)
None (Calamagrostis hillebrandii) .....	U.S.A. (HI)
None (Calliandra locoensis).....	U.S.A. (PR)
None (Calyptanthes estremerae).....	U.S.A. (PR)
None (Cordia rupicola).....	U.S.A. (PR), Anegada
None (Doryopteris takeuchii).....	U.S.A. (HI)
None (Dryopteris tenebrosa).....	U.S.A. (HI)
None (Festuca hawaiiensis).....	U.S.A. (HI)
None (Festuca Hawaiiensis).....	U.S.A. (HI)
None (Lagenifera erici).....	U.S.A. (HI)
None (Lagenifera helenae).....	U.S.A. (HI)
None (Lysimachia venosa) .....	U.S.A. (HI)
None (Microlepidia mauiensis).....	U.S.A. (HI)
None (onocalyx concolor).....	U.S.A. (PR)
None (Phyllostegia bracteata).....	U.S.A. (HI)
None (Phyllostegia floribunda).....	U.S.A. (HI)
None (Phyllostegia helleri).....	U.S.A. (HI)
None (Phyllostegia hispida).....	U.S.A. (HI)

**SPECIES**

**RANGE**

None ( <i>Phyllostegia imminuta</i> ).....	U.S.A. (HI)
None ( <i>Platydesma cornuta</i> var. <i>cornuta</i> ).....	U.S.A. (HI)
None ( <i>Platydesma cornuta</i> var. <i>decurrens</i> ).....	U.S.A. (HI)
None ( <i>Platydesma remyi</i> ).....	U.S.A. (HI)
None ( <i>Schiedea attenuata</i> ).....	U.S.A. (HI)
None ( <i>Schiedea pubescens</i> var. <i>pubescens</i> ).....	U.S.A. (HI)
None ( <i>Schiedea salicaria</i> ).....	U.S.A. (HI)
None ( <i>Stenogyne cranwelliae</i> ).....	U.S.A. (HI)
None ( <i>Stenogyne kealiae</i> ).....	U.S.A. (HI)
None ( <i>Thelypteris boydiae</i> ).....	U.S.A. (HI)
Northern sea otter.....	U.S.A. (AK)
Northern wormwood.....	U.S.A. (OR, WA)
Ogden deseret mountain snail .....	U.S.A. (UT)
‘Ohe.....	U.S.A. (HI)
Oregon spotted frog (W. Coast pop.).....	U.S.A. (CA, OR, WA)
Pa`iniu.....	U.S.A. (HI)
Page springsnail.....	U.S.A. (AZ)
Painted clubshell.....	U.S.A. (AL, GA, TN)
Papala .....	U.S.A. (HI)
Parachute beardtongue .....	U.S.A. (CO)
Parish’s checkerbloom.....	U.S.A. (CA)
Pearl darter.....	U.S.A. (LA, MS)
Pecos assiminea snail.....	U.S.A. (NM, TX), Mexico
Pilo kea lau li’I.....	U.S.A. (HI)
Pineland sandmat.....	U.S.A. (FL)
plains cactus.....	U.S.A. (AZ)
Popolo.....	U.S.A. (HI)
Pu’uka’a (=kili’o’opu, kiolohia, mau’u pu’u, puko’a).....	U.S.A. (HI)
Ramshaw Meadows Sand-verbena.....	U.S.A. (CA)
Red Mountain buckwheat.....	U.S.A. (CA)
Red Mountain stonecrop.....	U.S.A. (CA)
River beardtongue.....	U.S.A. (CO, UT)
Roswell springsnail .....	U.S.A. (NM)
Rota bridled white-eye.....	U.S.A. (MP)
Salt Creek tiger beetle.....	U.S.A. (NE)
San Fernando Valley spineflower.....	U.S.A. (CA)
Sand flax .....	U.S.A. (FL)
Sheath-tailed bat (Aguijan, American Samoa pops.).....	U.S.A. (AS, GU, MP (Aguijan))
Shinner’s tickle-tongue.....	U.S.A. (TX)
Short’s bladderpod.....	U.S.A. (IN, KY, TN)

**SPECIES**

**RANGE**

Sisi.....	U.S.A. (AS)
Skipper, Mardon.....	U.S.A. (CA, OR, WA)
Slabside Pearlymussel.....	U.S.A. (AL, KY, TN, VA)
Sleeping Ute milk-vetch .....	U.S.A. (CO)
Slick spot peppergrass.....	U.S.A. (ID)
Snake, black pine .....	U.S.A. (AL, LA, MS)
Snake, Louisiana pine.....	U.S.A. (LA, TX)
Spotless crane (American Samoa pop.).....	U.S.A. (AS), Figi, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa
Tahoe Yellow Cress.....	U.S.A. (CA, NV)
Texas golden gladeceess .....	U.S.A. (TX)
Three Forks springsnail .....	U.S.A. (AZ)
Troglobitic ground-water shrimp .....	U.S.A. (PR), Barbuda, Domin. Repub.
Tumbling Creek cavesnail.....	U.S.A. (MO)
Turtle, Sonoyta mud.....	U.S.A. (AZ), Mexico
Tutuila tree snail .....	U.S.A. (AS)
Umtanum desert-buckwheat .....	U.S.A. (WA)
Wandering skipper.....	U.S.A. (CA, NV)
Warm springs zaitzevian riffle beetle.....	U.S.A. (MT)
Warton's Cave Spider .....	U.S.A. (TX)
Washington ground squirrel.....	U.S.A. (WA, OR)
Wawae'iole (or Lei lani firmoss).....	U.S.A. (HI)
Wedge spurge (=Wedge sandmat) .....	U.S.A. (FL)
Wekiu bug.....	U.S.A. (HI)
Wet Canyon Talussnail.....	U.S.A. (AZ)
White Bluffs bladderpod.....	U.S.A. (WA)
White fringeless orchid.....	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA)
Whorled sunflower.....	U.S.A. (AL, GA, TN)
Wonderland alice-flower.....	U.S.A. (UT)

APPENDIX B

# Species Proposed for Listing

**THIRTY-SEVEN SPECIES HAVE BEEN OFFICIALLY PROPOSED FOR ESA LISTING BY FWS**

Thirty-seven species in 23 states, Guam and the Marianas Islands have been formally proposed for listing under the ESA by FWS (see table below). Most only got this far in the listing

process due to citizen petitions (22) and lawsuits (11) (see Table B2). On average, the 37 currently proposed species were first formally recognized as being seriously imperiled 11 years ago. Five have been waiting for more than 20 years.

**TABLE B1**  
**Species Proposed for ESA Listing by State and Territory**

RANGE	SPECIES
CA	Ventura Marsh milk-vetch, San Diego ambrosia, So. Cal. Mnt. yellow-legged frog, Cowhead Lake tui chub, Mountain plover, Ohlone tiger beetle, Buena Vista Lake ornate shrew, Scotts Valley polygonum
OR	Mountain plover, Spalding's catchfly, Large-flowered wooly meadowfoam, Cook's Lomatium, Coastal cutthroat trout (Lower Columbia), Coho salmon (Oregon)
WA	Mountain plover, Spalding's catchfly, Showy stickseed, Coastal cutthroat trout (Lower Columbia)
NM	Mountain plover, Chiricahua leopard frog
AZ	Mountain plover, Holmgren milk-vetch, Chiricahua leopard frog



RANGE	SPECIES
CO	Mountain plover
UT	Mountain plover, Holmgren milk-vetch, Shivwitz milk-vetch
NV	Mountain plover
ID	Mountain plover, Spalding's catchfly
MT	Mountain plover, Spalding's catchfly
WY	Mountain plover, Desert yellowhead
TX	Mountain plover
NB	Mountain plover
KS	Mountain plover
OK	Mountain plover
HI	Hawaiian picture-wing (12 species)
NC	Golden sedge
AL	Vermilion darter, Mississippi gopher frog
MS	Mississippi gopher frog
LA	Mississippi gopher frog
MI	Scaleshell mussel
OK	Scaleshell mussel
AR	Scaleshell mussel
Marianas Islands	Nesogenes rotensis , Osmoxylon mariannense, Tabernaemontana rotensis
Guam	Tabernaemontana rotensis

TABLE B 2

# Listing History of the 37 Species Currently Proposed

Species	Range	Years since Identified as Imperiled	Proposed for Listing
Ventura Marsh milk-vetch	CA	26	06-16-76, 05-25-
San Diego ambrosia	CA	23	12-29-99
So. California mountain yellow-legged frog	CA	6	12-22-99
Cowhead Lake tui chub	CA	10	03-30-98
Mountain plover	CA, OR, WA, NM, AZ, CO, UT, NV, ID, MT, WY, TX, NB, KS, OK	7	02-16-99
Ohlone tiger beetle	CA	8	02-11-00
Buena Vista Lake ornate shrew	CA	13	06-01-00
Scotts Valley polygonum	CA	2	11-09-00
Vermilion darter	AL	3	04-18-00
Spalding's catchfly	ID, OR, MT, WA, BC	26	12-03-99, 06-16-
Showy stickseed	WA	21	02-14-00
Large-flowered wooly meadowfoam	OR	26	05-15-00, 06-16-
Cook's Lomatium	OR	11	05-15-00
Mississippi gopher frog	AL, MS, LA	10	05-23-00
Holmgren milk-vetch	UT, AZ	8	04-12-00
Chiricahua leopard frog	AZ, NM	5	06-14-00

# For ESA Listing

First Made a Category 1 Candidate	Petition & Litigation History
12-15-80	1 petition: Petition (01-01-75 Smithsonian Institute)
12-15-80	2 petitions, 1 lawsuit: Petitions (1978 Smithsonian Institute, 01-09-97 Center for Biological Diversity and California Native Plant Society); CBD and CNPS filed suit over 90-day and 12-month finding delay
	1 petition, 2 lawsuits: Petition (07-13-95 Biodiversity Legal Foundation); BLF filed separate suits over 90-day and 12-month finding delays
11-21-91	
11-15-94	1 petition: Petition (07-21-97 Biodiversity Legal Foundation)
10-25-99	2 petitions, 1 lawsuit: Petitions (02-28-93 Randall Morgan, 04-30-97 Grey Hayes); CBD filed suit to obtain 12-month finding
11-21-91	1 petition: Petition (04-18-88 Interfaith Council for the Protection of Animals and Nature)
10-25-99	
	2 petitions: 07-23-98 Robert Reid, 08-18 98 Dr. Paul Blanchard
12-15-80	2 petitions, 1 lawsuit: Petitions (01-01-75 Smithsonian Institute, 02-27-95 Biodiversity Legal Foundation, Montana and Washington Native Plant Societies); BLF sued over delay of 12-month finding
12-15-80	
12-15-80	1 petition: Petition (01-01-75 Smithsonian Institute)
02-21-90	
11-21-91, 10-25-99	
1993	1 petition: Petition (07-02-99 Center for Biological Diversity)
02-28-96	1 petition, 1 lawsuit: Petition (06-10-98 Center for Biological Diversity); CBD filed single suit over 90-day and 12-month finding delays

TABLE B2, CONTINUED

Species	Range	Years since Identified as Imperiled	Proposed for Listing
Desert yellowhead	WY	5	12-22-98
Nesogenes rotensis	Mar. Isl.	5	06-01-00
Osmoxylon mariannense	Mar. Isl.	5	06-01-00
Tabernaemontana rotensis	Mar. Isl., Guam	5	06-01-00
Shivwitz milk-vetch	UT	26	04-12-00
Golden sedge	NC	3	08-16-99
Scaleshell mussel	MI, OK, AR	3	09-13-99
Coastal cutthroat trout (Lower Columbia)	OR, WA	4	04-05-99
Coho salmon (Oregon)	OR	8	07-25-95
Hawaiian picture-wing ( <i>D. aglaia</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. differens</i> )	HI	15	1-17-01
Hawaiian picture-wing ( <i>D. hemipeza</i> )	HI	8	1-17-01
Hawaiian picture-wing ( <i>D. heteroneura</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. montgomeryi</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. mulli</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. musaphilia</i> )	HI	25	1-17-01
Hawaiian picture-wing ( <i>D. neoclavisetae</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. obatai</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. ochrobasis</i> )	HI	15	1-17-01
Hawaiian picture-wing ( <i>D. substenoptera</i> )	HI	?	1-17-01
Hawaiian picture-wing ( <i>D. tarphytrichia</i> )	HI	?	1-17-01

First Made a Category 1 Candidate	Petition & Litigation History
02-28-96	1 petition, 2 lawsuits: Petition (11-24-97 Biodiversity Legal Foundation and Biodiversity Associates); BLF filed separate suits over delay of the 90-day and 12-month findings
02-28-96	
02-28-96	
02-28-96	
02-28-96	2 petitions: Petitions (01-01-75 Smithsonian Institute 07-02-99, Center for Biological Diversity)
10-16-98	
10-16-98	
N/A	1 petition, 1 lawsuit: Petitions (12-18-97 Oregon Natural Resources Council), ONRC filed suit to obtain 12-month finding
N/A	2 petitions, 1 lawsuit: Petitions (07-23-93 Oregon Trout et al., 08-20-93 Pacific Rivers Council et al.); ONRC filed suit to obtain 12-month finding
02-28-96	
09-19-97	
02-28-96	
02-28-96	
02-28-96	
02-28-96	
02-28-96	
02-28-96	
02-28-96	
02-28-96	
09-19-97	
02-28-96	
02-28-96	

APPENDIX C

# Species Warranted-But-Precluded From Listing

**TWENTY-FOUR SPECIES ARE “WARRANTED-BUT-PRECLUDED” FROM ESA LISTING**

FWS has determined that the following 24 species “warrant” listing under the ESA but are

“precluded” by higher priorities. Many of them have been languishing in the review process for more than a decade. Some have been under review for 20 years.

<b>SPECIES</b>	<b>RANGE</b>
Arctic grayling (Upper Missouri R. fluvial pop.).....	U.S.A. (MT, WY)
Band-rumped storm petrel.....	U.S.A. (HI)
Boreal toad (Southern Rocky Mountain pop.).....	U.S.A. (CO, NM, WY)
Cagle’s map turtle.....	U.S.A. (TX)
California tiger salamander .....	U.S.A. (CA)
Chupadera springsnail.....	U.S.A. (NM)
Columbia spotted frog (Great Basin pop.).....	U.S.A. (ID, NV, OR)
Coral Pink Sand Dunes tiger beetle.....	U.S.A. (UT)
Gila Chub.....	U.S.A. (AZ, NM), Mexico
Gila Springsnail.....	U.S.A. (NM)
Grizzly Bear (Cabinet-Yaak) — upgrade to endangered.....	U.S.A. (ID, MT)

<b>SPECIES</b>	<b>RANGE</b>
Grizzly Bear (North Cascades) — upgrade to endangered.....	U.S.A. (WA)
Grizzly Bear (Selkirk) — upgrade to endangered.....	U.S.A. (ID, WA)
Koster’s tryonia snail.....	U.S.A. (NM)
Lesser prairie-chicken.....	U.S.A. (CO, KA, NM, OK, TX)
Loach minnow — upgrade to endangered.....	U.S.A. (AZ, NM)
New Mexico springsnail.....	U.S.A. (NM)
Oregon spotted frog (W. Coast pop.).....	U.S.A. (CA, OR, WA)
Pecos assiminea snail.....	U.S.A. (NM, TX), Mexico
Roswell springsnail .....	U.S.A. (NM)
San Fernando Valley spineflower.....	U.S.A. (CA)
Sheath-tailed bat (Aguijan, American Samoa pops.).....	U.S.A. (AS, GU, MP (Aguijan))
Spikedace — upgrade to endangered.....	U.S.A. (AZ, NM)
Washington ground squirrel.....	U.S.A. (WA, OR)

APPENDIX D

# Active Petitions To List or Designate Critical Habitat

**AT LEAST 47 PETITIONS TO LIST SPECIES OR DESIGNATE CRITICAL HABITAT ARE CURRENTLY ACTIVE**

The federal government is late in its decision

on listing the following species. Despite the mandatory two year review process, some of these petitions have been under review for more than a decade.

SPECIES	PETITION
Alabama Beach Mouse Critical Habitat	1999 02-02-99 Sierra Club and Biodiversity Legal Foundation
Aleutian sea otter	2000 01-25-00 Center for Biological Diversity
Big Cypress Fox Squirrel	1997 12-30-97 Biodiversity Legal Foundation
Black-tailed Prairie Dog	National Wildlife Federation
Bonneville Cutthroat Trout	1998 02-26-98 Biodiversity Legal Foundation
Bowhead whale critical habitat	2000 Center for Biological Diversity
Cabinet-Yaak grizzly bear	1991 Biodiversity Legal Foundation
California golden trout	2000 10-16-00 Trout Unlimited
California Spotted Owl	2000 04-03-00 Center for Biological Diversity et al.
Cape Sable Seaside Sparrow Critical Habitat	1999 08-26-99 Biodiversity Legal Foundation
Cerulean Warbler	2000 10-30-00 National Audubon Society et al.
Chiricahua Leopard Frog	1998 06-5-98 Center for Biological Diversity and Sky Island Watch
Choctawatchee Beach Mouse Critical Habitat Revision	1999 02-02-99 Sierra Club and Biodiversity Legal Foundation
Cloudcroft checkerspot butterfly	1998 01-26-98 Center for Biological Diversity
Colorado River Cutthroat Trout	1999 12-14-99 Center for Biological Diversity et al.
Desert Yellow-head	1997 Biodiversity Legal Foundation and Biodiversity Associates
Gila Chub	1998 06-5-98 Center for Biological Diversity and Sky Island Watch
Gunnison Sage Grouse	2000 01-25-00 American Land Alliance et al.



SPECIES	PETITION
Holmgren's Milkvetch	1999 06-02-99 Center for Biological Diversity and Southern Utah Wilderness Alliance, 1975 07-01-75 Smithsonian Institute
Loach minnow	1995 Center for Biological Diversity
New England Cottontail Rabbit	2000 09-29-00 Biodiversity Legal Foundation et al.
North Cascades grizzly bear	1990 Humane Society of the United States et al.
Northern right whale critical habitat	2000 Center for Biological Diversity
Orca (Puget Sound population)	2001 05-01-01 Center for Biological Diversity et al.
Pacific Fisher	2000 11-28-00 Center for Biological Diversity et al.
Perdido Key Beach Mouse Critical	1999 02-02-99 Sierra Club and Biodiversity Legal Foundation
San Diego ambrosia	1997 01-09-97 Center for Biological Diversity and California Native Plant Society, 1978 Smithsonian Institute 1978
San Miguel Island Fox	2000 06-01-00 Center for Biological Diversity and Institute for Wildlife Studies
Santa Catalina Island Fox	2000 06-01-00 Center for Biological Diversity and Institute for Wildlife Studies
Santa Cruz Island Fox	2000 06-01-00 Center for Biological Diversity and Institute for Wildlife Studies
Santa Rosa Island Fox	2000 06-01-00 Center for Biological Diversity and Institute for Wildlife Studies
Selkirk grizzly bear	1991 Biodiversity Legal Foundation
Shivwits Milkvetch	1999 06-02-99 Center for Biological Diversity and Southern Utah Wilderness Alliance, 1975 07-01-75 Smithsonian Institute
Sierra Nevada Mountain Yellow-legged Frog	2000 02-08-00 Center for Biological Diversity and Pacific Rivers Council
Skinny Moonwort	1999 07-26-99 Biodiversity Legal Foundation
Slickspot peppergrass	2001 04-04-01 Western Watersheds Project et al.
Southern California Mountain Yellow-legged Frog	1995 07-10-95 Biodiversity Legal Foundation
Southern Idaho Ground Squirrel	2001 01-26-01 Biodiversity Legal Foundation
Spikedace	1995 Center for Biological Diversity
Tahoe Yellow Cress	2000 12-11-00 League to Save Lake Tahoe and Center for Biological Diversity
Trumpeter Swan	2000 08-22-00 Biodiversity Legal Foundation
Washington ground squirrel	2000 Defenders of Wildlife et al.
Western Grey Squirrel	2000 12-29-00 Northwest Ecosystem Alliance and Tahoma Audubon Society
Western Sage Grouse	2000 Northwest Ecosystem Alliance
Wolverine	2000 07-11-00 Biodiversity Legal Foundation et al.
Yellow-billed cuckoo	1998 02-09-98 Center for Biological Diversity et al.
Yosemite Toad	2000 02-29-00 Center for Biological Diversity and Pacific Rivers

## APPENDIX E

## ESA Enacted Funding, 1991-2001

## ESA Enacted Funding (in thousands)

	1991	1992	1993	1994	1995
Candidate Conservation	-	-	2,130	4,360	4,442
Listing	4,325	7,378	6,190	7,409	6,499
Consultations	5,267	8,130	9,455	14,416	18,297
Recovery	14,906	19,014	20,065	29,550	39,709
Permits	910	1,199	1,358	2,968	-
Landowner Incentives	-	-	-	-	-
Cooperative ESA Fund	6,674	6,621	6,565	9,000	8,983
<b>Total</b>	<b>32,082</b>	<b>42,342</b>	<b>45,763</b>	<b>69,803</b>	<b>77,930</b>

CONSERVATION IN ACTION

996	1997	1998	1999	2000	2001
.800	4,800	5,703	6,750	7,390	7,144
.000	5,000	5,190	5,750	6,200	6,355
.997	17,949	23,828	27,230	32,340	43,495
.500	39,636	42,460	46,100	57,360	60,954
-	-	-	-	-	-
-	-	-	5,000	5,000	5,000
.074	14,085	14,000	7,500	15,000	105,000
<b>021</b>	<b>81,470</b>	<b>91,181</b>	<b>98,330</b>	<b>123,290</b>	<b>227,948</b>



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