

## Last of the Pygmy-owls

**Quality of life in Southern Arizona may rest on the tiny wings of the cactus ferruginous pygmy-owl—an endangered bird we are renewing the fight to protect.**

In March, the Center filed a petition to re-list the cactus ferruginous pygmy-owl under the Endangered Species Act.

The action comes 10 years after the Center first won a place on the federal endangered species list for the diminutive owl. That 1997 listing made the pygmy-owl an icon for wildlife conservation planning amidst explosive growth in Tucson, Ariz., and the surrounding area, where the last few owls north of the U.S.-Mexican border now cling to survival.

Back then, those tiny wings stirred up a mighty wind. Endangered Species Act protection led to the designation of more than 700,000 acres of critical habitat for the owl

in 1999, and catalyzed creation of the Sonoran Desert Conservation Plan—hailed nationwide as one of the most scientifically-sound plans to protect imperiled species by fostering rational growth over rampant sprawl.

Unfortunately, following a 2001 homebuilders' lawsuit and with Bush administration collusion, the pygmy-owl's legal protection was removed on a technicality in April 2006.

The court concluded narrowly that the U.S. Fish and Wildlife Service had not adequately explained its decision that the Arizona pygmy-owl population qualified as a "distinct population

### ● Who speaks for the trees?

Not the Bush Forest Service, if its rules recently struck down in court are any indication.

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Photo by Robin Silver

**Life in the Balance:** Ten years ago, the cactus ferruginous pygmy-owl catalyzed smarter planning and protection of the Sonoran Desert surrounding Tucson. Now, one year after the Bush administration stripped the tiny predator of its place on the federal endangered species list, the stakes are higher than ever to keep it protected.

segment," a requirement for protecting a species as endangered. The court in that case did not strip the owl of its protection or question the science behind the owl's endangered status.

The Bush administration, however, seized on the court decision as an excuse to do away with federal protection, despite a number of alternatives for retaining the pygmy-owl's protection. In doing so, the administration ignored the advice of its own scientists, who concluded that either the Arizona population or a larger

**Pygmy-owls** continued on back page



# ADVOCACY SPOTLIGHT

Greta Anderson, *Conservation Advocate*

## Setting the Standard

**After the Forest Service rewrote the rules to set the stage for irresponsible and industry-friendly management of our national forests, the Center and other conservation groups stepped in. Our members, the public—and now, the courts—have refused to let the agency off the hook.**

Our national forests encompass 193 million acres nationwide. These forests and grasslands are among the public lands upon which many of us love to hike, camp and seek quiet refuge, but they also provide for us and the planet in other, incalculable ways. They clean our air, house healthy watersheds, and sustain diverse life forms that affect us in ways we may not even understand.

The U.S. Forest Service is charged with guardianship of our national forest lands, including the development and enforcement of management plans that set limits on resource extraction and prevent uses that would harm important wildlife habitat. Under the National Forest Management Act, the agency is required to revise these forest plans every 10 to 15 years to keep current with changing ecological conditions and demands on resources in each national forest.

The first forest plans, which were based upon rules set out in 1982, included standards and guidelines that limited resource use, as well as strong language concerning wildlife habitat, forest health and road densities. Apparently, these legally-binding guidelines, which provided for management of wildlife habitat and limited use of forest resources, proved too limiting for the voracious appetite of industry.

Beginning in the late 1990s, a new movement towards “simplifying” the forest planning process took hold within the Forest Service. New planning rules began to emerge that would reduce the role of science in the planning process, limit requirements for the maintenance

of species and their habitat, and change the framework of the forest plans and public participation.

contain no hard and fast prescriptions for allowable levels of grazing, logging, mining, road densities or,



Photo by Chris Kasar

The Coconino National Forest is home to Arizona’s San Francisco Peaks, a volcanic mountain range north of Flagstaff. From base to summit, these mountains showcase the extraordinary diversity of our national forest lands, climbing from desert plants through pinyon-juniper woodlands, on through ponderosa and fir forests, all the way to alpine tundra—a rare treasure in the Southwest.

Starting in 2000, the agency issued a series of proposed rules, interim rules, “interpretative” rules, and planning regulations, which gradually worsened after the anti-environmental Bush administration took office.

The final bureaucratic blow was struck when the U.S. Department of Agriculture published the “2005 Rule,” a rule that would revise the forest plans in ways that would eliminate legally-enforceable standards. The new plans would

for that matter, restoration efforts. Instead, they would merely describe “desired conditions,” with no actual timelines for achieving these conditions nor guidance for implementation.

These new, amorphous plans also were designed as “living documents”—which sounded dangerously like they would become subject to the whim of each forest supervisor. To make matters worse, in 2006, the agency employed a



series of technical loopholes to exclude its forest plans from the scrutiny of environmental review under the National Environmental Policy Act. Ironically, in doing so, the Forest Service essentially admitted that the plans would be so vague in their management standards as to have no environmental consequences, and therefore not require comprehensive environmental impact statements analyzing their effects, nor be subject to appeal.

The justifying logic? The Forest Service claimed that because environmental reviews would be completed at the project level (i.e., on each timber sale, grazing permit, or road construction), the broader programmatic direction defined in the forest plans did not need specific analysis. But that logic is suspect; the agency has been systematically exempting itself from site-specific reviews as well by applying “categorical exclusions,” an ever-expanding list of actions that can be taken on our public lands without public input or comprehensive environmental analysis.

The agency’s strategy under the 2005 rules has been comparable to a baker deciding that there is no need to consult a recipe to bake a cake, and then also failing to measure any of the ingredients as the batter is prepared. The quality of the cake then depends solely on the skill and experience of the baker, but if something goes awry, no one will know exactly why or how to fix it. Our forests are too precious as refugia for imperiled species to risk this kind of reckless management.

Fortunately, the courts agreed.

On March 30, 2007, in response to a lawsuit brought by environmental groups including the Center, a federal district court determined the Forest Service broke the law by passing the 2005 rules. By failing to provide sufficient public notice, by failing to analyze the potential environmental consequences, and by failing to consult with the Fish and Wildlife Service about endangered species, the Forest Service violated the Endangered Species Act, the Administrative Procedures Act, and

the National Environmental Policy Act. The court told the Forest Service to go back to the drawing board.

In the Southwest, the agency had already begun to rewrite regional forest plans under the 2005 rules, hosting public meetings and asking for input and collaboration. Center staff and members attended many of these meetings and advocated for the strongest possible protections for endangered species, watersheds, soils and ecological resources. We also worked in coalition with environmental groups in Arizona and New Mexico to develop more effective citizen advocacy for the forest planning process.

It remains to be seen how the Forest Service will go forward with revising

its plans for our national forests. But it is clear that both the courts and the American public support unambiguous standards for protecting the biological values of 193 million acres. Hopefully, the agency will hear that message loud and clear.

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*For more information on the Center's campaign and to stay apprised of planning for your national forests, visit our Web site at: [www.biologicaldiversity.org/swcbd/programs/forests/revisions/](http://www.biologicaldiversity.org/swcbd/programs/forests/revisions/).*



Photo by Chris Kaspar

Northern New Mexico’s Carson National Forest encompasses 1.5 million acres, including more than 86,000 acres of designated wilderness. The forest supports mule deer, elk, antelope, bighorn sheep, black bears and mountain lions, as well as some of the most magnificent scenery in the state.

# PROGRAM NEWS.....

## Death Valley under road-building threat

The Center seeks to intervene in a court case brought by Inyo County, Calif., that could result in three new highways through wilderness areas in Death Valley National Park, the largest national park in the lower 48 states.

Inyo County filed suit last fall seeking rights-of-way for the new highways, which would permanently disrupt the park's peaceful canyons and valleys and threaten the imperiled desert tortoise, desert bighorn sheep and other wildlife, as well as one of the park's most important ancient petroglyph sites.

The County's action is one of many recent attempts by off-road organizations, counties and states throughout the West to exploit little-used tracks on federal lands on the basis of a long-repealed Civil War-era law, R.S. 2477. Citing that law, Inyo County's suit claims rights to open "routes" through the park's Greenwater Canyon, Greenwater Valley and Last Chance Canyon, with the stated goal of running two-lane highways through those areas.

However, all three areas were declared "roadless" in 1979, and as designated wilderness areas, have been protected from damaging off-road vehicle use for at least 13 years. Of the three alleged "routes," two were closed for protection by the National Park Service and have been restored largely to wilderness. The third, in Last Chance Canyon, simply never existed; the "route" claimed by the County goes straight through the back of a box canyon and up a cliff face.

The Center intends to ensure that Death Valley National Park remains among the few desert areas in California where wildlife populations are protected from the habitat fragmentation caused by roads.

## Center watchdogs mismanagement of fragile habitat, prehistoric sites

In another action to protect California's sensitive desert lands from the impacts of motorized traffic, the Center and partners have challenged poor management of the Desert Cahuilla Prehistoric Area.



Photo by Lawrence Hogue

ORVS on Desert Cahuilla lands

The California Department of Parks and Recreation acquired the Desert Cahuilla lands in 2006 for the protection of endangered Peninsular bighorn sheep and other rare wildlife, plants, Native American cultural sites and fossils. It originally claimed the 4,000-acre property would be protected as part of the adjacent Anza-Borrego Desert State Park.

However, the Parks Department subsequently announced the land would be jointly managed by the state park and the Off-Highway Vehicle Division. That decision, made without a required environmental impact report or a management plan to protect the area, opened the Desert

Cahuilla Prehistoric Area to unchecked abuse by off-road vehicles.

The Center and Desert Protective Council filed suit against the Parks Department in January, seeking an injunction to block a two-day "extreme" rally that would have allowed hundreds of off-road vehicles to roar through the sensitive area.

In response, event sponsor California Off-Road Vehicle Association withdrew its permit request, and a similar event planned for March was moved to another location. The Parks Department agreed to not permit large events at the site until an environmental review has been completed, and to restrict ongoing off-road vehicle use to "existing trails."

However, while the department admits that past off-road vehicle use has caused significant damage to fragile resources on the property, it absurdly asserts that ongoing use will not cause additional damage.

Documentation gathered by the conservation groups clearly contradicts the department's claim, and we are moving forward with legal action to ensure an interim management plan that protects the Desert Cahuilla lands and their treasures.

## Fight goes on for Arizona's bald eagles

Despite more than 30 years of managing Arizona's desert nesting bald eagle as a distinct population of the American bald eagle, the federal government now claims the Arizona population is nothing special.

In the face of proposals to remove the bald eagle from the federal endangered species list, the Center filed a petition in 2004 to list the desert nesting bald eagle as an endangered distinct population segment under the Endangered Species Act.

While nationally the bald eagle has made a remarkable recovery—from 417 pairs in the lower 48 states in 1963 to about 10,000 pairs in 2005—Arizona's geographically distinct population is faltering, with just 39 breeding pairs in 2006. Nonetheless, last August the U.S. Fish and Wildlife Service denied the population special protection under the Act.

In January, the Center and the Maricopa Audubon Society filed suit against the Service for suppressing studies that show the desert nesting population is failing to thrive. The Center further contends that the Service failed to sufficiently analyze the desert eagle's status and threats to its survival. We expect the case to go to court in the coming months.

In the meantime, the Service moves forward with its proposal to delist the bald eagle nationally. The decision, due in June, was delayed four months by brewing controversy over protection of the species' habitat after delisting, and over the imperiled status of the Arizona population.

Three American Indian tribes in Arizona have passed resolutions to oppose delisting the desert bald eagle, citing its "irreplaceable role" in their cultural heritage and ceremonial traditions. The matter has been



forwarded for support of the National Congress of American Indians.

## Court protects sacred peaks, tribal rights

In a precedent-setting case over religious freedoms, the Ninth Circuit Court of Appeals ruled in March to block the U.S. Forest Service's authorization of a plan to make snow from recycled sewage at an Arizona ski resort. The Arizona Snowbowl is in the San Francisco Peaks outside Flagstaff, which are held sacred by at least 13 American Indian tribes.

The Yavapai-Apache and Navajo Nations, Havasupai, Hopi, Hualapai and White Mountain Apache Tribes, Sierra Club and Flagstaff Activist Network along with the Center argued that using treated sewage to make artificial snow at the resort would violate the Religious Freedom Restoration Act. The groups also argued that the plan had not been sufficiently reviewed for safety to people, plants, fish and other animals living on the mountain and streams receiving runoff.

"This case provides a glimmer of hope for all people of conscience that are committed to protecting and preserving Native cultural and religious practices," said Howard Shanker, attorney for the plaintiffs. "Today, the Ninth Circuit confirmed the existence of a legal remedy that will, hopefully, require the federal government to consider its land-use decisions more closely when they impact Native American religious practices."

In its reversal of a district court ruling, the



Photo by Brett Ramey

**Indigenous Action protested the peaks plan last September outside the Ninth Circuit Court of Appeals.**

circuit court dismissed claims that the Forest Service acted out of "compelling governmental interest" in permitting the plan. It also agreed with the plaintiffs' claim that the plan's inadequate environmental analysis of risks posed by human ingestion of reclaimed wastewater violated the National Environmental Policy Act.

## Timber suit targets old-growth forest mammal

The Center and coalition partners recently intervened in a timber-industry lawsuit seeking to remove the Pacific fisher, an elusive and charismatic relative of the mink and otter, from the list of species that are candidates for protection under the federal Endangered Species Act.

In 2000, the Center petitioned to have the fisher added to the federal endangered species list. After two lawsuits, the U.S. Fish and Wildlife Service ruled that although the fisher warrants protection as a threatened species, higher priority actions precluded such protection. Instead, the agency placed the fisher on the candidate list.

The fisher once was found across the west coast from the Canadian border to the southern Sierra Nevada.

A combination of historic fur trapping and logging of the fisher's old-growth forest habitat reduced the species to two small, isolated populations in the southern Sierra and the Klamath region of northern California and southwestern Oregon.

Although the fisher's current status as a candidate species provides no protection, anti-wildlife firm Pacific Legal Foundation has brought suit on behalf of Sierra Forest Products. The suit makes the bizarre contention that the Pacific fisher is ineligible for Endangered Species Act protection, no matter how imperiled it may be, because it represents a "distinct population segment" of a subspecies



Photo courtesy of Pacific Biodiversity Institute

**The Pacific fisher requires more protection—not less.**

and therefore falls outside the Act's jurisdiction.

The firm already lost this argument in a separate case over Puget Sound's distinct population segment of the orca, which based on Center actions is protected as a threatened species.

## Last U.S. Caribou get reprieve from snowmobiling

Once roaming a wide swath of the northern continental United States, mountain caribou have been reduced to a small area of the Idaho Panhandle and northeastern Washington, where an estimated

population of fewer than 40 animals is threatened by a combination of habitat destruction and increasing disturbance from snowmobiles.

Under a recent ruling in a case brought by a coalition including the Center, the caribou will receive a measure of protection from this new disturbance.

Mountain caribou are a variety of woodland caribou that are adapted to the deep snow of the northern Rockies. They survive winter high in the mountains, traveling on snowshoe-like feet and eating lichen off the branches of old-growth trees. Decades of logging, road building and other habitat destruction have led to sharp declines in the northern Rockies population, which was protected as a federally endangered species in 1984.

In recent years, growing interest in snowmobiling and more powerful machines have led to dramatic increases in the number of snowmobiles in the Selkirk Mountains on the Idaho Panhandle National Forest, the heart of the recovery area for the caribou.

In 2005, the Center joined a lawsuit to force the U.S. Forest Service to consult with the U.S. Fish and Wildlife Service and develop a winter recreation plan protecting the caribou. In particular, the groups asked the Forest Service to consider the impacts of grooming snowmobile trails that provide access to caribou habitat.

The judge handed down an initial victory in February, ordering the Forest Service to stop grooming a number of trails and to enforce a closure on the bulk of the

# PROGRAM NEWS.....

caribou's recovery habitat in the Selkirks.



Photo by Alan Bauer/www.alanbauer.com

Woodland caribou pair in Canada.  
Few caribou remain in the U.S.

## Pressure pushes Chevron to abandon gas terminal near biodiversity hotspot

In a victory for conservationists, Chevron announced in March its abandonment of plans to build a liquefied natural gas facility next to the Coronado Islands, a biodiversity hotspot just south of the U.S. border off Baja California, Mexico.

Chevron's decision to cancel the project follows a recent ruling by the Secretariat of the Commission for Environmental Cooperation, a tri-national environmental commission created under the North American Free Trade Agreement. The commission rejected Chevron's request to suspend an investigation into whether Mexico violated its own laws in approving the facility.

In 2005, U.S. and Mexican conservation organizations including the Center filed a formal petition with the commission challenging the Mexican government's approval of the terminal just 600 yards from the Coronado Islands. These islands, located 11 miles south of the border, provide critical nesting habitat for six threatened

or endangered seabird species and 10 other species of plants and animals found nowhere else in the world.

The islands also house the largest remaining breeding colonies of the Xantus's murrelet, a seabird currently under consideration for protection under the U.S. Endangered Species Act and extremely sensitive to disturbance and light pollution.

"This natural-gas facility would have been such a disaster to seabirds that it could not lawfully be built in the United States," said Brendan Cummings, Center attorney. "Fortunately for the seabirds of the Coronado Islands, Chevron realized that building the terminal in Mexico was also a bad idea."

## Carbon dioxide pollution threatens marine life

Ocean acidification caused by carbon dioxide pollution is a primary threat to marine life. When the ocean takes up carbon dioxide, the most prevalent greenhouse gas, seawater chemistry becomes more acidic. Approximately half the carbon dioxide emissions from human activities over the past 200 years have been absorbed by our oceans, already significantly lowering their average pH.

Acidification poses particularly severe threats to marine animals such as corals, crabs, abalone, oysters and sea urchins, inhibiting the calcification process whereby these creatures make shells and skeletons. Calcifying species include many phytoplankton and zooplankton, which form the basis of the marine food web. By some estimates, calcification

rates will decrease up to 60 percent by the end of this century.

In short, absent significant reductions in carbon dioxide emissions, changes in seawater chemistry could lead to the collapse of oceanic food webs.

In response to this threat, the Center petitioned the state of California to protect its ocean waters by regulating carbon dioxide pollution under the federal Clean Water Act. Under the Act, states must develop a list of water bodies that are being degraded or not attaining water quality standards and set limits on pollutants for those water bodies.

In this case, the Clean Water Act would require limits on carbon dioxide emissions that contribute to ocean acidification. Such limits would address both acidification and global warming.

The Center plans to extend similar requests to other coastal states and

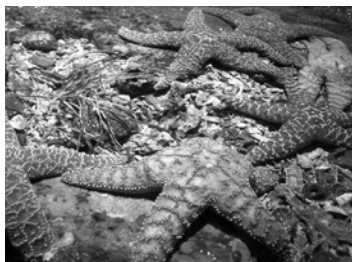


Photo by Paul Townsend

Sea stars and other species depend on calcification for survival.

is investigating further legal action to protect the planet's marine ecosystems against ocean acidification.

## Grazing fee drops again; public pays

Once again, the federal government has lowered the grazing fee for public lands. The price to feed a cow/calf pair in 2007

is just \$1.35 per month, down from \$1.56 last year. This good deal for ranchers is a bad deal for the American public, whose taxes compensate for the massive budget shortfall that these low fees create.

The Center works to expose the fiscal irresponsibility of artificially low grazing fees and seeks accounting that includes ecological costs as well as economic ones.

A 2004 Government Accountability Office analysis reported that federal grazing program losses total at least \$123 million each year. Our independent report, "Assessing the Full Cost of the Federal Grazing Program," detailed losses of about \$500 million a year, including the costs of restoring wildlife habitat and water quality that are degraded by livestock.

Why do we keep selling our soil, vegetation, water and wildlife so cheaply?

The grazing fee is preserved as a subsidy by an outdated formula that figures in the cost of doing business as a rancher instead of trying to recoup the costs of ranching on public lands. As a result, each cow on our national forest and other public lands costs less to feed than the average hamster.

The Center and other conservation groups petitioned the U.S. Department of Agriculture and Department of Interior in November 2005, requesting that the fee formula be changed to more closely approximate the costs of ranching on our public lands, including habitat monitoring and restoration programs. That petition is still pending.



# SPECIAL SECTION: A CLIMATE FOR CHANGE

Over the past few months, public awareness about climate change has taken a quantum leap.

A year ago, for instance, the sign of the times was the stark appearance on a *Time* magazine cover of a lone polar bear on an isolated ice floe, next to an emphatic “Be Worried. Be *Very* Worried.” But last year’s step forward for the mainstream media may prove unremarkable in light of the pop-cultural revolution taking hold in 2007, which so far has found global warming in the spotlight at the Academy Awards (including Oscars for “An Inconvenient Truth” and its original song, “I Need to Wake Up”) and on the cover of *Sports Illustrated* (which sported the admonition “Time to Pay Attention”).

What science has proved is becoming popular vernacular: for the sake of our planet, our wildlife and ourselves, it’s vital to curb global warming as soon as possible.

At the center of the media firestorm has been that most charismatic of megafauna: the polar bear. While global warming already demonstrably threatens a startling number of species from the tropics to the poles, there has been no more arresting an icon for the reality of global warming than the image of bears far adrift of land on melting ice floes, facing a swim they may not survive.



Photo by Jenny E. Ross/www.jennyross.com

The Center is working to protect the rockhopper penguin and 11 other species of the world’s penguins under the Endangered Species Act, due to threats including global warming.

The power of the polar bear is such that it even forced action from the intractable Bush administration, which until it announced a proposal in December to list the bear as a threatened species, had never so definitively and publicly acknowledged global warming as a real phenomenon with potentially devastating effects.

That concession marked an historic turn in the national dialogue on global warming and a huge victory for the Center for Biological Diversity, which authored the petition to protect the polar bear under the Endangered Species Act and, together with National Resources Defense Council and Greenpeace, went to court to compel the administration to action.



Photo by Pete Spruance

The proposal to add polar bears to the federal list of threatened species is a step in the right direction—but when it comes to convincing the administration to protect the bears’ habitat from global warming by reducing greenhouse gas emissions, a long journey awaits.

The Center’s campaign also has undeniably played a role in sparking and shaping the media rush. Before that memorable *Time* cover hit the newsstands, the Center tied the polar bear petition to the absence of U.S. participation in the Kyoto Protocol then taking effect, and to the lack of domestic policy to reduce greenhouse gas pollution. And this winter, our full-force media campaign on the polar bear helped generate more than 1,000 stories in the print media, including more than 250 editorials in newspapers coast to coast, as well as triggering television, radio and Web coverage around the world.

These are great and necessary steps, and worth celebrating. But ultimately, when it comes to halting global warming,

talk is cheap and swift, decisive, sweeping action is everything.

That’s why the Center is working every angle we can to force real change on a policy level—change that will reduce the greenhouse gas emissions that cause global warming.

Unfortunately, for an administration hooked on fossil fuels, the gulf between talk and action is likely to be all but unfathomably wide. To be sure, the Bush administration’s walk since it trumpeted its polar bear proposal has been clumsily out of synch with its talk.

Read on to discover exactly what Bush and his cronies have been saying—as opposed to what they’ve been doing—and what the Center is doing to transform talk into action.

## Bush “Addresses” Global Warming

A new year should bring goals for positive change. Accordingly, in his 2007 State of the Union address, our president tried out his own positive spin on the climate issue.

First, Bush boldly announced a brand new energy policy, declaring his intention to reduce U.S. gas consumption by 20 percent over the next 10 years through the use of alternative fuels. Many applauded. But put this stance in context and, to put it mildly, it falls far short of bold.

That’s because the Energy Policy Act ratified by Bush Sr. back in 1992 required a replacement of 10 percent of U.S. gas consumption with alternative fuels by 2000, and 30 percent by 2010. In addition, the Act required that at least 75 percent of new vehicle purchases by federal agencies be for alternative fuels vehicles, and it required the Department of Energy to set purchasing requirements for municipal and corporate fleets as well, if necessary to meet the replacement goal. All a bit bolder than Bush Jr.’s “policy advance.”

Unfortunately, the administration hasn’t achieved the goals set up by the Energy Policy Act in the first place. Rather, it has neglected mandates to add alternative-fuel vehicles to its own fleets and to establish the private and municipal standards sorely needed to bring emissions into line with the Act’s goals.

To remedy this neglect, the Center and Friends of the Earth sued the federal government in 2002 and 2006. Those court actions compelled the named

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agencies to commit to compliance with the standards set by the Energy Policy Act. But we are still fighting administration intransigence. Last September the administration proposed to move the Act's goal date for a 30 percent reduction in U.S. gas consumption from 2010 to 2030. And a new decision on private and municipal fleet rules is due soon.

The Center is gearing up for new challenges to achieve the goals of the 1992 Energy Policy Act—which were far more ambitious than the 20 percent gas consumption reduction by 2017 announced in the State of the Union.

## Time To Plug In

Bush's address also plugged plug-in hybrid electric vehicles, calling for advances in battery research for the cars. But Bush's rhetoric appears to be only that; in fact, an executive order issued immediately before his address requires federal fleets to purchase plug-ins only once they become "commercially available" at a "reasonably comparable cost."

The week before the State of the Union, the Center and Friends of the Earth continued their push for greener government practices with a petition to the Department of Energy requesting that federal and state agencies be allowed to purchase plug-ins and count them as alternative-fuel vehicles under the Energy Policy Act.

Such a move would create an instant market for the cars, which have the potential to achieve the equivalent of nearly 100 miles per gallon with dramatically reduced emissions. Creating a market for alternative-fuel vehicles, including plug-in electrics, is a crucial step in any serious plan to reduce carbon emissions.

## Waking Up Washington

In early February, the Center led environmental groups from all over the country in petitioning seven cabinet secretaries to set firm rules for curbing global warming and wildlife extinction.

The petition requests that government agencies actively ensure the recovery of threatened and endangered species, identify all species likely to be hurt by global warming, include benefits as well as costs in their economic analyses of setting aside critical habitat for endangered species, and provide

incentives to states, counties, cities, corporations and private landowners to restore habitat and protect endangered species.

In addition, the petition calls upon all federal agencies to include an assessment of global warming and its impact on at-risk species when undertaking any major federal action.

No federal agency presently possesses such regulations on the growing threat of global warming despite the fact that the Departments of Energy and Transportation alone oversee industries responsible for 73 percent of all carbon dioxide emissions in the United States.

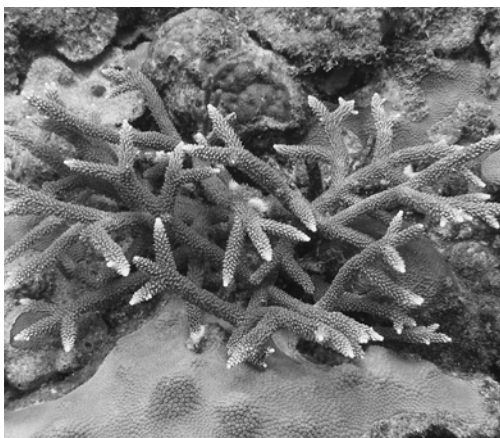


Photo by Keith & Diane Nelson

Corals are just one component of our ocean ecosystems that are vulnerable to global warming. Last year, the Center won Endangered Species Act protection for the staghorn coral, pictured here, and the elkhorn coral—foundational species in Caribbean coral reefs.

## Congress Gets Into the Act

While we clearly need new federal legislation explicitly capping and rapidly reducing greenhouse gas pollution, current law already demands that the government at least keep abreast of the impacts of global warming. The 1990 Global Change Research Act calls for the executive branch to provide Congress and the public with a national assessment every four years of the environmental, human health and economic effects of global warming on the United States. But the administration suppressed the assessment in 2000, and in 2004 failed to produce it at all.

As reported in our last newsletter, the Center, Friends of the Earth and Greenpeace filed suit in November to demand that the administration produce

the assessment. In February, Sen. John Kerry, D-Mass., and Rep. Jay Inslee, D-Wash. filed an amicus brief in support of the lawsuit.

Further support came in the form of Congressional testimony from Rick Piltz, formerly of the Climate Change Science Program, at the Senate Commerce Committee hearing the day before the brief was filed. Piltz's testimony stated that both the suppression of the original assessment and the administration's failure to produce an updated assessment were brought about through the influence of industry groups.

A hearing on the issue was scheduled for May 1, 2007.

## Save the Bears, But Stay the Course

The administration says it wants to save polar bears. But just six weeks after the Bush administration announced its proposal to list the polar bear as a threatened species due to melting of its Arctic sea-ice habitat, the Center and Pacific Environment had to file suit to stop the administration from allowing oil and gas drilling in—where else?—polar bear habitat.

U.S. Fish and Wildlife Service regulations currently permit oil and gas companies to drill in the Beaufort Sea and adjacent coastal plains, where global warming is already shrinking ice sheets that polar bears and walruses depend upon for survival.

Astonishingly, the permit also allows companies to disrupt denning polar bears—mothers and newborn cubs huddling inside maternity dens to stay alive through the harsh winter. As if the threat to the bears from the burning of fossil fuels weren't grave enough, noisy drilling for those same fossil fuels is allowed to directly disturb and pollute their habitat.

But the administration's decision to allow this permit does not consider how drilling impacts will interact with global warming to harm the bears. The Center's suit under the Marine Mammal Protection Act and National Environmental Policy Act asks the court to declare unlawful the regulations that allow the drilling to continue, and to require the Service to thoroughly assess the combined effects of global warming and oil exploration on polar bears and walruses.

We are represented in this suit by Earthjustice and Center staff attorney Brendan Cummings.



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## A Forked-tongue Policy

As if saying one thing and doing another weren't frustrating enough, how about saying one thing and . . . saying another? Or to go one further, how about commanding government scientists to say nothing at all?

In March, the Center for Biological Diversity helped break yet another scandal on the suppression of science within the administration. While on the domestic front public hearings unfolded on the proposed addition of the polar bear to the federal list of threatened species, so did evidence that the Fish and Wildlife Service had been circulating memos barring scientists traveling internationally from speaking about polar bears, global warming or sea ice. The agency's directives also required scientists headed abroad to submit a signed statement assuring that they "understand the administration's position on these issues" and will leave speaking about them to designated officials. In other words, the administration had issued a gag order.

As usual, the administration attempted to deny wrongdoing even when caught red-handed. Service director H. Dale Hall, for example, denied that the order was censorship and claimed it reflected long-standing policy simply meant to help honor international protocol during meetings. Long-standing? Then why head the memos "New Requirement . . . Importance: High"?



The golden toad, once a resident of Costa Rica's Monteverde Cloud Forest, is believed to be one of the first species driven extinct as a result of climate change. Cloud forest ecology depends on mists and clouds, which have formed less frequently over the Monteverde region since the 1970s. Global warming also may pose a particular threat to amphibians by exacerbating the effects of chytrid skin disease, which has decimated amphibian populations around the globe.

Attempting to prevent scientists and others from speaking the truth about global warming—or endangered species—is nothing new for the Bush administration, which has racked up an extensive record of intimidating and censoring its own scientists and altering their findings for political ends. (For a list of documented cases, see *Endangered Earth*, Winter 2006/2007, "A History of Violence on Science.")



American pika populations are disappearing from the western United States as global warming pushes their alpine habitat higher and higher. The Center is preparing to launch a campaign to protect pikas under the Endangered Species Act.

But the administration's messaging on the subject of its polar bear proposal has risen to the level of Orwellian double-speak. The Fish and Wildlife Service's polar bear status review contained numerous references to global warming, greenhouse gases, carbon dioxide, and the inadequacy of Bush administration policies to address global warming and prevent the extinction of the polar bear. But in the official administration proposal, purportedly based on the status review, essentially all of this information had been edited out.

After the Center helped obtain and expose February's internal administration order barring scientists from speaking about global warming abroad, Congressmen Inslee, Bart Gordon, D-Tenn., and Brad Miller, D-N.C., demanded that the administration withdraw the policy and explain its actions to Congress.

## Supreme Court: You Can't Shackle the EPA, Either

The U.S. Supreme Court delivered a landmark decision April 2 that may prove the strongest rebuke yet of the Bush administration's irresponsible policies on curbing carbon emissions.

The court struck down the Environmental Protection Agency's (EPA) blanket refusal to regulate greenhouse gas emissions from automobiles under the Clean Air Act. In 2003, the EPA rejected a petition by environmental groups requesting that the agency classify carbon dioxide emissions from cars as an "air pollutant" and establish standards to lower those emissions. The administration's denial of the petition maintained that carbon dioxide is not a pollutant, and that therefore the EPA does not have the authority to regulate it.

In yet another of its rhetorical contradictions, the administration also argued that even if the EPA does have that legal authority, it also has the "discretion" to ignore its authority in order to adhere to presidential policies.

The Supreme Court's 5-4 ruling shatters the administration's assertions, establishing not only that the EPA has the authority to regulate tailpipe emissions, but also that the agency cannot shirk that authority unless "it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."

Under the court's ruling, the agency's actions must be based only on scientific review and the requirements of the Clean Air Act, not on the political directives of the White House.

The court's decision should make the administration think twice about attempts to bar the U.S. Fish and Wildlife Service from addressing greenhouse gas emissions in order to protect the polar bear. In an argument strikingly similar to that just rejected by the high court, the administration has asserted that regulating emissions is beyond the scope of the Endangered Species Act and beyond the jurisdiction of the Service.

Massachusetts v. EPA was brought to the Supreme Court by a coalition of 12 states and cities and 13 environmental groups, including the Center.

# SPECIAL SECTION: A CLIMATE FOR CHANGE

## Step It Up

The administration continues to play politics on the issue of global warming. But increasingly, the American people are grasping that inconvenient truth: The time for games has long run out, and the time for change is here. Our collective future is too important to stand by and let our so-called leaders fiddle while the planet burns.

The Center is working on as many fronts as we can to hold those leaders accountable. We're also taking steps to lead by example, and to ask our supporters to become leaders in the fight to stop global warming.

As this issue goes to press, we're joining climate change organizers across the country to mobilize Americans to participate in Step It Up 2007, National

Day of Climate Action, on April 14. The event—expected to find voice in more than 1,000 rallies and events across all 50 states—includes a call to Congress to cut carbon emissions by 80 percent by 2050, a goal endorsed by America's foremost climatologist and NASA scientist James Hansen.

On the Day of Action, Center staff and volunteers from our San Francisco office will distribute 1,000 donated energy-saving compact fluorescent light bulbs to local neighborhoods, talking to people along the way about what more they can do to reduce carbon emissions. And we're working on getting the word out on events in other cities.

If you missed the Day of Action, stay tuned: it's only just the beginning of actions you can take to get to the goal.

(See accompanying article, *Going Neutral*, for more about the Center's efforts to lead by example by reducing and off-setting our own emissions, and how you can do the same.)



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*Special Section text by Julie K. Miller, Anna Mirocha and Kassie Siegel.*

## Going Neutral .....

It's unusual for the Center to take a neutral position. But when it came to our carbon emissions, we've made an exception.

As we fight for major greenhouse gas reductions on a regional, national and global scale, we've also made a commitment to look within for solutions by eliminating the "carbon footprint" of our own activities.

This year, the Center went climate neutral, which means we're reducing our own greenhouse gas emissions and offsetting those that can't be eliminated.

To achieve this, we first used the Corporate Greenhouse Gas Accounting and Reporting Standard (developed by the World Resources Institute and others) to track our carbon footprint, adding up the estimated carbon emissions we've directly or indirectly generated throughout our entire 18-year history—emissions caused by everything from heating our offices to traveling by plane and car.

With that total in hand, we purchased carbon-offset credits in Madagascar's Makira Forest Conservation Project. Although we can't reverse the effects of greenhouse gases already emitted, we're doing our best to make up for our share

by helping finance the protection of one of the most biologically diverse—and, thanks to deforestation, environmentally devastated—rainforests in the world, and investing in such endangered species as the Madagascar serpent eagle, the red-ruffed lemur and the silky sifaka.

But when it comes to going climate neutral, the most important step is to reduce future emissions as much as possible. We're tackling that step as well, installing solar panels at our Tucson and Joshua Tree offices, switching to more energy efficient lighting, and encouraging more fuel-efficient forms of travel whenever possible—including keeping our urban offices central for bicycle and pedestrian commuting.

Reducing the Center's already small greenhouse gas footprint may seem like a minor goal relative to the major legal and policy battles ongoing. But while the major battles must be fought and won, we also believe that it's important to lead by example, and that ultimately very large emissions reductions will be achieved through many small reductions from all possible sources.

The average American generates about 24 tons of carbon dioxide each year. But this number can be drastically reduced with simple changes—many of which will also save you money. For much more information about our journey toward carbon neutrality and for the tools to do it yourself, visit [www.endangerearth.org/climateneutral/](http://www.endangerearth.org/climateneutral/).



Photo by Brendan Cummings

Center Climate, Air & Energy Program Director Kassie Siegel and her dog, Trina, with the solar panels that power our Joshua Tree office.



# Sneak Attack

**Behind closed doors, the administration is attempting to unilaterally kill the popular wildlife protection law that wouldn't die in Congress.**

In the wake of Richard Pombo's ousting from his House seat in the November elections and the subsequent collapse of his long campaign to dismantle the Endangered Species Act in Congress, the Bush administration was well on its way toward destroying the law through administrative rule-making instead.

The Center for Biological Diversity and Public Employees for Environmental Responsibility obtained and released a 114-page document in March containing the administration's draft revisions to the Endangered Species Act—proposed rule changes that constitute the worst administrative attack on the Act in its 34-year history.

Conservationists have anticipated administrative attempts to rewrite the law this year, including a recently publicized clause that would limit protection for endangered species to areas where they are currently threatened rather than protecting them across their historic range.

But the revisions revealed in the draft comprise a top-to-bottom rewrite of the Act. In addition to geographically limiting the protection of habitat for imperiled species, the proposed regulations would:

- Limit the number of species that qualify for protection. Currently, species may be considered for endangered species status if they are likely to go extinct within the "foreseeable future." The administration wants to redefine that time frame—formerly defined by as many as 300 years—to mean as few as 20 years.

- Remove recovery as a goal of the Act.
- Allow development projects to move forward even if they threaten endangered species—as long as they don't "hasten" the previous rate of extinction.
- Remove federal oversight of endangered species protection, giving state governors authority to veto protection for species, to decide whether or not to implement recovery

plans or protect habitat for endangered species, and to block reintroduction of species in their states.

The proposal's language draws heavily from Pombo's defeated anti-Endangered Species Act legislation, but this time, Congress has no vote. Instead, the draft regulations fall under the discretion of Interior Secretary Dirk Kempthorne, who has a long history of opposing endangered species protection in his years as an Idaho Senator.

Interior Department spokespeople deny that the leaked document

key Congressional leaders are now vowing to vigorously oppose them by other means, including exercising leverage through appropriations legislation that could block the administration from spending any money to implement its new rules.

The Center will continue to work with Congress, the media and our members to defend the Endangered Species Act, our most important and beloved environmental law, against abuses of executive power by this administration.

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Photo courtesy of USFWS

**Had draft regulations proposed by the Bush administration been in place 30 years ago, the bald eagle, grizzly bear and gray wolf might never have been listed as endangered species, and the peregrine falcon, black-footed ferret and California condor might never have been reintroduced to the wild.**

represents an attempt to make an end-run around Congress and rewrite the Act in secrecy, calling it an early draft that doesn't represent the administration's current thinking. However, analysis of the document reveals that it has been circulated for many months and revised as recently as February.

With the help of our vigilance, the administration's attack on the Act is no longer sheltered from the public eye. And while Congress cannot vote directly to defeat the rule changes,

## Endangered earth

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CENTER FOR BIOLOGICAL DIVERSITY

*Because life is good.*



## Last of the Pygmy-owls *continued from front page*

Sonoran Desert population qualifies as a distinct population segment.

For example, an internal Fish and Wildlife white paper supported consideration of a Sonoran Desert distinct population segment, including Arizona and portions of Sonora, Mexico: "In our analysis of potential [distinct population segment] boundaries for the pygmy-owl, this division presented a logical [distinct population segment] boundary based on ecological conditions, pygmy-owl distribution and genetics."

In a detailed discussion of the owl's biology, status and management, the Center's new petition makes clear that the owl is in urgent need of protection in Arizona and Mexico and outlines a number of options. Those options include protecting the Sonoran Desert population of pygmy-owls (Arizona and northern Sonora), the western subspecies of the pygmy-owl (Arizona, Sonora and Sinaloa), or again protecting the Arizona population.

Research conducted since the pygmy-owl's original listing as an endangered species in 1997 demonstrates the perilous status of this unique bird.

In Arizona, fewer than 30 birds have been documented in recent years despite fairly extensive surveys. In northwest Tucson, the population has dropped to just one bird. These numbers fall below any minimum standard for a viable population and indicate the pygmy-owl is in immediate risk of extinction in Arizona.

In Mexico, studies show pygmy-owl populations declining sharply. Research by the University of Arizona shows that since 2000, the pygmy-owl in Mexico has declined by 26 percent. Combined with the fact that habitat destruction is rampant in Sonora, including conversion of hundreds of thousands of acres from native vegetation to African buffelgrass to benefit livestock operations, these declines indicate that the pygmy-owl is in trouble in Mexico as well as Arizona.

The U.S. Fish and Wildlife Service is required to make a decision on the Center's petition within 12 months. In the meantime, the Center continues to work for protection of the pygmy-owl's Sonoran Desert habitat through our involvement in the Coalition for Sonoran Desert Protection, the Sonoran Desert Conservation Plan, and advocacy with Pima County.

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*Cover article by Center Conservation Biologist Noah Greenwald.*