



**Monday, March 21, 2005**

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## **18. ENDANGERED SPECIES**

### **ESA 'pretty much inoperable,' DOJ's attorney says**

**Allison A. Freeman, *Greenwire* reporter**

The Justice Department's top environmental attorney urged Congress on Friday to wrest control of the Endangered Species Act from the courts.

In an interview being aired today on E&ETV's [OnPoint](#), Tom Sansonetti, the DOJ's outgoing assistant attorney general for environmental matters, said the department is working with federal agencies to "fix" the act, but congressional action is needed.

"You ask a citizen on the street, 'Who runs the Endangered Species Act?' and they would say, 'Well, the Fish and Wildlife Service, I guess.' No." Sansonetti said. "It is run by a third branch of government. It's the judges that are running ESA right now.

"It's pretty much inoperable, particularly on listing," he added. "It's out of control, and Congress needs to revisit it and amend it."

Sansonetti's comments are in concord with those of Republicans on Capitol Hill who are gearing up to reauthorize and revamp the 30-year-old act, which they have said is characterized more by litigation than saving species.

House Resources Committee Chairman Richard Pombo (R-Calif.), Senate Wildlife Subcommittee Chairman Lincoln Chafee (R-R.I.), Sen. Mike Crapo (R-Idaho) and Rep. Greg Walden (R-Ore.) announced last month that they would work toward a bicameral, consensus effort to change the act.

And last week Rep. Dennis Cardoza (D-Calif.) reintroduced a bill he passed through committee last year that would change the act's critical habitat requirements ([E&E Daily](#), March 16).

Pombo, Crapo and Walden applauded the move, but the bill has met criticism from Democrats and environmental groups, who say it could allow agencies to rule out critical habitat altogether.

ESA's critical habitat requirements have been a source of contention and lawsuits for years. The act mandates designation of critical habitat -- an area deemed essential for a species' survival and recovery -- for almost all federally listed species.

But FWS rarely designates critical habitat when it lists a species. Agency officials have said that in 30 years of implementing ESA, they have found little to no additional protection from the designation.

The Justice Department has upheld that position in court, arguing that critical habitat is redundant. But a number of federal court decisions over the past few years have struck that position down, mandating the designation of critical habitat.

When asked if DOJ would change its course in response to those decisions, Sansonetti said not in the "short term," although he left the door open for changes later.

The issue over critical habitat litigation strikes at the heart of the ESA debate. Many environmentalists have said ESA is less in need of revision than enforcement, arguing the act would not be so rife with litigation if agency officials would follow the letter of the law.

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