

## *Endangered Species*

# **Interior Plans 'Major Announcements' Soon On Species Protection, Habitats, Official Says**

Interior Department Habitat Protection

**Key Development:** Policy changes are coming soon on habitat protection strategies, an official says.

**Potential Impact:** Changes could ease work on land near endangered or threatened species.

**What's Next:** Deputy Secretary Hayes predicts “major announcements” within weeks.

By [Alan Kovski](#)

The Interior Department is working to improve its planning to protect species and landscapes while allowing development and is preparing to announce policy modifications to advance those efforts, according to Deputy Interior Secretary David Hayes.

“You're going to hear more about that from this department in the next few weeks, with some major announcements,” Hayes said March 22.

He did not specify the content of the impending changes, but the subject of policy improvements arose in the context of a discussion of critical habitat designations for endangered species and the use of mitigation to offset adverse impacts on habitat. The discussion was sponsored by the Environmental Law Institute and Vanderbilt University Law School.

Hayes said the use of mitigation has typically been confined to small geographic sites or narrow categories of sites such as wetlands. The Obama administration has been trying to take a landscape-level approach to environmental protection and development.

“Large-scale, off-site mitigation needs to be a big part of this,” Hayes said. “It has not been, to date.”

### **Worries About Cumulative Harm.**

Hayes illustrated landscape-scale planning by referring to the work of Interior on determining where within 20 million acres of California desert, on both public and private land, it would be appropriate to allow construction of renewable energy facilities.

He also noted the large-scale effort to protect the greater sage grouse, a bird found in 11 states and the subject of federal planning and private conservation efforts. Members of Congress have questioned the legitimacy of those efforts (47 DEN A-14, 3/11/13).

The discussion focused on the utility of critical habitat designations, required by the Endangered Species Act when a species is listed as threatened or endangered. David Owen, a University of Maine associate professor, suggested Interior could do a better job of preventing small-scale harm to critical habitat by focusing more on cumulative impacts, possibly in an approach analogous to the state implementation plans used for Clean Air Act emission limits.

Owen offered his suggestion to address the problem of incremental degradation of habitat. Such harm often

escapes restrictions after the U.S. Fish and Wildlife Service consults with an agency under Section 7 of the Endangered Species Act because the consequence of the consultation often is an assessment that some environmental harm is small enough to be allowed when viewed in isolation rather than as part of various cumulative impacts.

### **'Huge Amount of Time' on Lawsuits.**

Hayes suggested that the designation of critical habitat is of marginal benefit, and it opens the door to far too much litigation.

Interior devotes much time and budget to acre-by-acre determination of critical habitats, and then the department must devote much time to litigation, especially because of missed deadlines, Hayes said.

“We've been spending a huge amount of--to my mind--relatively unproductive time fending off lawsuits,” he said.

“There does not seem to be a lot of benefit to the exercise of identifying critical habitat,” Hayes said. In his view, those resources might better be devoted to planning for species protection and recovery.

The U.S. Fish and Wildlife Service, an Interior agency, has been working for some time with the NOAA Fisheries Service on an effort to determine what is meant by “adverse modification” of critical habitat, language included by Congress in the Endangered Species Act (22 DEN B-1, 2/3/12).

Hayes did not suggest he was thinking of that effort when he mentioned impending announcements.

By [Alan Kovski](#)

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