

# Experts debate barriers to species delisting

## Bureaucracy, litigation cited as obstacles

By **MATEUSZ PERKOWSKI**  
Capital Press

Whether the Endangered Species Act has effectively improved the fortunes of imperiled wildlife and plants is a matter of interpretation.

Critics of the ESA's implementation point to the fact that only 63 species have ever been removed from the federal list of threatened and endangered species, which currently has 2,258 international entries.

Of the species no longer on the list, 10 have gone extinct, 19 were listed erroneously and 34 have sufficiently recovered.

Experts recently testifying before Congress offered several reasons so few species ever make it off the list.

Rob Thornton, an attorney

involved in ESA litigation, largely laid the blame on bureaucracy.

Each species that's listed develops a "constituency" that actively opposes its removal, he said during an April 20 hearing before the House Committee on Oversight and Government Reform.

Federal officials are also reluctant to delist species because it diminishes their regulatory domain, Thornton said.

"Frankly, the Endangered Species Act provides a lot of regulatory authority and power to the Fish and Wildlife Service, so the natural human inclination of the regulator is to retain that authority," he said.

Litigation also acts as an obstacle to delisting, critics said.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service commonly face lawsuits over delisting actions or the failure to meet deadlines on listing pe-

titions from environmentalists.

As a result, federal regulators spend much of their time reacting to lawsuits rather than conducting science and on-the-ground activities, said Karen Budd-Falen, an attorney who represents natural resource industries.

"They simply can't do their jobs because all their hours are sucked up in litigation," she said.

A major settlement reached in 2011 between the federal government and environmental groups established a schedule for listing decisions for more than 1,000 species, said Lowell Baier, an attorney and environmental historian.

Rather than lift the burden of litigation, however, the settlement has simply invited new legal challenges when the governments decides not to list species, he said.

"The settlement did nothing but generate a whole series of new lawsuits," Baier said.

Meanwhile, the government has slowed its pace of creating "recovery plans" for species that are listed, Budd-Falen said.

Such plans were developed for 843 species between 1990 and 1999, but the rate fell to only 235 species between 2000 and 2009, she said. Only 177 recovery plans have been finished since 2010.

"The priority is in listing, not in setting recovery plans to get the species off the list," Budd-Falen said.

The lack of recovery plans is a hindrance to delisting because states and landowners don't have population goals for species to be considered recovered, she said.

"If we know where we're going, we can figure out how to get there," she said.

Defenders of the ESA's effectiveness argued the law has measurably helped listed species.

Ninety percent of listed

species with recovery plans are rebounding at the prescribed rates, said Robert Glicksman, a law professor at George Washington University.

About 250 species would likely have disappeared if not for ESA protections, he said. "The success of the Endangered Species Act cannot be measured by delisting alone."

Funding for the ESA has been inadequate since the law was passed in 1973, but Congress has nonetheless sought to cut programs aimed at species recovery, Glicksman said.

ESA lawsuits are allowed to ensure that federal agencies are held accountable, he said.

The court system has been used by those who want stronger ESA enforcement and those who believe it's too strict, Glicksman said.

Attorneys can be sanctioned by courts for filing frivolous lawsuits, he said. "There's a reputational cost to an attorney in a case which the

judge says the suit was frivolous."

Dan Ashe, director of the Fish and Wildlife Service, called the ESA "a visionary and powerful law."

"It's been remarkably successful: 99 percent of the species listed are still with us today," he said.

Even so, recovery efforts take time, Ashe said.

The bald eagle, for example, was delisted in 2008 after "40 years of hard work," which involved banning the insecticide DDT and restoring the health of rivers so they'd have enough fish to sustain the birds, he said.

Populations of the black-footed ferret were so low that it was considered extinct at one point, but now is improving, Ashe said. "We have brought it back to the point where we're now talking about the recovery of the black-footed ferret. That takes decades to accomplish."

# Mexico may revisit apple tariffs

By **DAN WHEAT**  
Capital Press

YAKIMA, Wash. — Mexico may decide the future of its temporary tariffs on Washington apples in early June.

The nation could end the tariffs or extend them for five years, said Fred Scarlett, manager of Northwest Fruit Exporters, a nonprofit corporation in Yakima that manages export procedures for apples and cherries.

"I have no idea what they will do but we expect it in early June," Scarlett said. That's based on what an attorney for NFE is hearing from the Mexican Ministry of Economia, he said.

Mexico is the largest importer of Washington apples, usually buying about 10 million, 40-pound boxes a season. The record was 16 million boxes from the 2014 crop.

As of April 15 season-to-date, shipments to Mexico total 4.9 million boxes, down 36 percent from 7.6 million for the same period a year ago.

Mexico imposed temporary tariffs ranging from 2.44 to 20.82 percent on Washington exporters on Jan. 7 for alleged dumping — selling apples at low prices that damaged Mexican apple producers — in 2013.

Washington shippers de-



Dan Wheat/Capital Press

Eleodoro Rameriz, front, packs a tray of Fuji apples into a 40-pound box at Washington Fruit & Produce Co.'s new packing plant in Yakima, Wash., last December. The company is one of only a few apple packers in the state that has tariff-free access to the Mexico market this season.

nied the allegations but Economia determined there was sufficient evidence to investigate and impose preliminary duties.

Washington Fruit & Produce, Yakima; Monson Fruit Co., Selah; and CPC International Apple Co., Tieton, were allowed to keep shipping free of any tariff.

According to a Jan. 7 report by USDA GAIN — Global Agricultural Information Network — tariffs were imposed on Zirkle Fruit Co., Selah, at 20.82 percent; Broetje Orchards, Prescott, 17.22 percent; Stemilt Growers, Wenatchee, 10.14 percent; Northern Fruit, East Wenatchee, 9.45 percent;

Chiawana, Yakima, 8.27 percent; Gilbert Orchards, Yakima, 7.39 percent; Custom Apple Packers, Wenatchee, 5.55 percent; and Evans Fruit, Coviche, 2.44 percent.

Producer-exporters who were among 40 responding to a 2015 Economia questionnaire but not among the 12 chosen for audit are at a 7.55 percent tariff, and others who didn't respond to the questionnaire face a 20.82 percent tariff.

Mexico officials could conclude there was no dumping and drop the tariffs or they could conclude there was dumping and impose tariffs, which would typically last five

years, Scarlett said.

Rebecca Lyons, export marketing director of the Washington Apple Commission in Wenatchee, said a 12 percent reduction in the value of the peso versus the dollar, a smaller 2015 Washington apple crop and higher prices have all contributed more to the drop in exports to Mexico than the tariffs. The tariffs hurt some shippers more than others, she said.

Overall exports are down 30 percent because of the strong dollar and higher prices, she said.

Mexico imports will likely finish the season at about 9

million boxes, Lyons said.

Attorneys for several Washington fruit companies spoke at an Economia public hearing on the case in Mexico City on March 17. Cass Gebbers, co-owner of Gebbers Farms in Brewster, was the only company principal to attend and speak, Scarlett said.

Gebbers declined comment.

West Mathison, president of Stemilt Growers, said the company is in the process of having Economia review data. He said the impact has been small this season as most of Stemilt's fruit is sold domestically.

## Darigold offers membership to McMinnville dairy co-op farmers

By **ERIC MORTENSON**  
Capital Press

Darigold, the Seattle-based dairy co-op,

### LEGAL

The Oregon Soil and Water Conservation Commission (SWCC) will hold a work session to update its Strategic Plan on Monday, May 23, 2016, from 1:00 p.m. to 4:00 p.m. The SWCC will hold its regular quarterly meeting on Tuesday, May 24, 2016, from 8:30 a.m. to 12:30 p.m. The work session and the regular quarterly meeting will be held at the Oregon Association of Nurseries, 29751 SW Town Center Loop West, Wilsonville, OR 97070. The meeting agenda covers SWCC reports, advisor reports, Soil and Water Conservation District programs and funding, Agriculture Water Quality Management Program updates, and other agenda items.

The Oregon Department of Agriculture complies with the Americans with Disabilities Act (ADA). If you need special accommodations to participate in this meeting, please contact Sandi Hiatt at (503) 986-4704, at least 72 hours prior to the meeting.

19-1/#4

is offering membership to farmers now aligned with Farmers Cooperative Creamery, based in McMinnville, Ore.

In a carefully worded email statement, Darigold spokeswoman Sarah Taydas said the boards of both co-ops approved an agreement in which FCC members can

join Northwest Dairy Association.

Darigold is an NDA subsidiary. FCC producers will consider the "strategic option" at upcoming meetings, Taydas said in the statement.

She said the agreement is not a merger of the co-ops.

### LEGAL

#### NOTICE OF RYEGRASS GROWERS SEED COMMISSION PROPOSED ASSESSMENT INCREASE AND BUDGET HEARING

**TO: ALL OREGON RYEGRASS GROWERS**  
Notice is hereby given that a public hearing will be held pursuant to ORS 576.416 (5), on Wednesday, June 15, 2016, at 7:00 a.m., at the Elmer's Restaurant, 2802 Santiam Hwy SE, Albany, Oregon. First item will be upon a proposal to increase the assessment due the Commission on Oregon-grown ryegrass seed from 12¢/cwt to 15¢/cwt to take effect beginning July 1, 2016. The second item will be upon a proposed budget for operation of the Oregon Ryegrass Growers Seed Commission during the fiscal year July 1, 2016 through June 30, 2017. At this hearing any producer of Oregon-grown Ryegrass seed has a right to be heard with respect to the proposed assessment and with respect to the proposed budget, a copy of which is available for public inspection, under reasonable circumstances, in the office of each County Extension Agent in Oregon. Interested persons may comment on the proposed rulemaking procedure or budget in writing to the Commission business office, address below. Comments to be received by 3:00 p.m., May 31, 2016. For further information, contact the Oregon Ryegrass Growers Seed Commission business office, PO Box 3366, Salem, Oregon 97302, telephone 503-364-2944. The meeting location is accessible to persons with disabilities. Please make any request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities at least 48 hours before the meeting by contacting the Commission office at 503-364-2944.

19-1/#4

## Chilean fruit company expands its U.S. footprint

By **MATEUSZ PERKOWSKI**  
Capital Press

A large Chilean fruit company is expanding its U.S. operations with the purchase of property in Oregon and a merger with a California-based berry producer.

Hortifrut of Santiago, Chile, which last year sold roughly \$350 million in berries globally, recently announced the upcoming merger with Munger Bros. of Delano, Calif., which has more than 3,000 acres in Washington, Oregon, California, British Columbia and Mexico.

Details of the agreement were not disclosed and the deal is subject to "various conditions," including due diligence and shareholder approval.

The two firms, which are currently partners in the Natu-ripe Farms marketing organization, expect to complete the merger this summer.

Hortifrut also recently bought eight parcels totaling more than 550 acres near Forest Grove, Ore., for \$11 million from the Glenn Walters Nursery.

Bob Hawk, president and CEO of Munger Bros., said he's not prepared to make a public statement about plans for the property, which is still being evaluated.

"We found it to be a good investment opportunity," he said. "There's no short-term plan to begin planting anything at this point in time."

For the past 15 years or so, berry production has become increasingly globalized as farmers seek to diversify their holdings, said Bernadine Strik, berry specialist with Oregon State University Extension.

Growing numerous types and cultivars of berries across different geographies allows companies to supply grocers with fresh fruit for longer periods of time, even throughout the year if they own properties in the Northern and Southern Hemispheres, she said.

Such diversification also helps mitigate risk, Strik said. "If there's a climate event or pest problem in one region, and that's the only region where you grow, it hits harder economically."

Before its recent acquisitions, Hortifrut had nearly 3,200 acres in production in Chile, Brazil, Mexico and Spain, with about 80 percent of that acreage in blueberries and the remainder in raspberries, blackberries, strawberries and cherries, according to its 2015 financial report.

The company also sources berries grown by about 700 suppliers in various countries where it has operations.

About 60 percent of the company's revenues are generated in North America, 25 percent are generated in Europe and the remaining 15 percent come from Asia and South America.

The co-op was founded in 1918 and has processing plants in Portland and 10 other locations.