Biden administration will look to overturn spotted owl habitat rollbacks

By GEORGE PLAVEN
Capital Press

Tom Kogut/USFS

A northern spotted owl in the Gifford Pinchot National Forest of Washington state. The species is at the center of ongoing lawsuits.

WASHINGTON, D.C. — The Biden administration announced April 29 it intends to revise or withdraw a Trump-era rule that would roll back 3.4 million acres of federally protected "critical habitat" for the northern spotted owl.

It is the latest twist in the battle over the small, forest-dwelling owl, with environmental and timber interests lobbing lawsuits on both sides.

Days before leaving office in January, Trump's Interior Department reduced critical habitat for the spotted owl by roughly one-third in Oregon, Washington and California. The rule was supposed to be implemented in March, but was delayed by the new administration until April 30 pending further review.

Now, the U.S. Fish and Wildlife Service says it will block the rule until Dec. 15 while it prepares a revision or withdrawal.

"Robust habitat protections are essential to the conservation of the northern spotted owl," said Alyssa Hausman, congressional and legislative affairs specialist for the Fish and Wildlife Service, in an email sent April 28 to lawmakers.

Hausman said loss of habitat due to logging, land conversions, natural disturbances such as fire and windstorms, and competition with barred owls have led a decline of spotted owls in much of their historic range.

The northern spotted owl was listed as threatened under the Endangered Species Act in 1990. Initially, the USFWS set aside 6.9 million acres of critical habitat where the birds nest.

A new management plan for the species in 2012 increased protected habitat to 9.5 million acres. The American Forest Resource Council, a regional timber trade group, led a lawsuit against the expansion, arguing it wrongfully restricted logging in more than 1 million acres of land where the owls do not live.

Part of the 9.5 million acres also encroached on land that was to be managed by the Bureau of Land Management for sustainable timber production — known as the Oregon and California Revested Lands, or O&C lands, scattered across 18 Western Oregon counties.

Nick Smith, AFRC spokesman, said the group strongly supports the January 2021 rule "because it provides an opportunity for agencies to address the real threats to the species," including large wildfires and the barred owl.

"Until the federal government focuses on those actual threats, the (spotted owl) is just going to continue to decline, along with our rural communities," Smith said.

The AFRC and Association of O&C Counties is already suing the government over delaying habitat rollbacks. The effort to overturn the rule has also drawn condemnation from several Western Republicans, including Oregon Rep. Cliff Bentz.

"It is shameful that the Biden administration would rather kowtow to radical environmental groups than follow the science and the law," Bentz said in a statement.

Nine environmental groups filed their own lawsuit in March seeking to overturn the Trump administration's spotted owl rule. Ryan Shannon, staff attorney at the Center for Biological Diversity, one of the plaintiffs, described the habitat reduction as "inaccurate, sloppy and illegal."

"Our goal is to make sure the owl retains all the habitat protections it scientifically needs to recover," Shannon said.

On Aug. 11, 2020, the USFWS proposed a habitat reduction of just 204,653 acres. But the final rule in January called for 3.4 million acres removed, more than 16 times that amount.

According to the Biden administration, the 3.2 million-acre difference was never presented to the public for notice and comment. The agency has since gathered more than 2,000 additional public comments outlining concerns with the rule.

"Based on this information, the service intends to prepare a notice of proposed rule-making to revise or withdraw the January 2021 final rule to address issues that the public comments raised," the agency stated.

9th Circuit hears arguments over 'grazing preference'

By MATEUSZ PERKOWSKI
Capital Press

Mateusz Perkowski/Capital Press File

From left to right, Mike Hanley and his wife, Linda, stand with daughter Martha Corrigan and her husband, John, at the family's ranch near Jordan Valley, Ore. The 9th U.S. Circuit Court of Appeals heard oral arguments May 3 in the family's lawsuit against the U.S. Bureau of Land Management.

An Oregon family wants to convince a federal appeals court that its ranch's "grazing preference" was canceled contrary to the U.S. Bureau of Land Management's own regulations.

The 9th U.S. Circuit Court of Appeals heard oral arguments on May 3 in the lawsuit, which raises questions about the interaction between private lands and public grazing allotments.

After losing a permit to graze on 30,000 acres of BLM allotments in nearby Idaho, ranchers Mike and Linda Hanley leased their private "base property" in Jordan Valley, Ore., to their daughter and son-in-law, Martha and John Corrigan.

When the Corrigans applied for a new grazing permit — citing the private ranch's "grazing preference" to the allotments — the BLM rejected the request in 2017.

The BLM claimed the property's grazing preference, which gave it priority for access to public allotments, was lost along with Hanley's grazing permit.

The agency's interpretation of the preference rules was upheld by a federal judge last year, but an attorney for Hanleys and Corrigans has now asked the 9th Circuit to overturn that decision.

Alan Schroeder, the family's attorney, argued that BLM must undertake a separate legal process to eliminate the grazing preference, which provides the ranch property with first-priority access to permits for nearby grazing allotments.

The Hanleys and Corrigans believe the BLM's decision could set a troubling precedent for ranchers' due process rights, since they weren't allowed to challenge the BLM's elimination of their property's valuable grazing preference.

The controversy has also concerned ranch groups, such as the Owyhee Cattlemen's Association, which have argued the BLM's actions threaten to undermine the important connection between private property and surrounding grazing allotments.

Schroeder said the BLM has in the past revoked grazing preferences separately from grazing permits, which simply allow cattle to be released onto government property.

In the case of Nevada rancher Wayne Hage, an icon of the "Sagebrush Rebellion" against government grazing restrictions, 12 years elapsed between the two actions.

The government's own definition of grazing preference provides a property with super-priority to apply for grazing access regardless of why a permit was lost, Schroeder said.