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*** CURRENT THROUGH PL 111-62, APPROVED 08/19/2009 ***

TITLE 16. CONSERVATION
 CHAPTER 35. ENDANGERED SPECIES

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16 USCS § 1531

§ 1531. Congressional findings and declaration of purposes and policy

(a) Findings. The Congress finds and declares that--

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to--

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy.

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

HISTORY:

(Dec. 28, 1973, P.L. 93-205, § 2, 87 Stat. 884; Dec. 28, 1979, P.L. 96-159, § 1, 93 Stat. 1225; Oct. 13, 1982, P.L. 97-304, § 9(a), 96 Stat. 1426; Oct. 7, 1988, P.L. 100-478, Title I, § 1013(a), 102 Stat. 2315.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 28, 1973, P.L. 93-205, 87 Stat. 884, which appears generally as 16 USCS §§ 1531 et seq. For full classification of this Act, consult USCS Tables volumes.

Effective date of section:

Act Dec. 28, 1973, P.L. 93-205, § 16, 87 Stat. 903, provided: "This Act [16 USCS §§ 1531 et seq., generally; for full classification of this Act, consult USCS Tables volumes] shall take effect on the date of its enactment [enacted Dec. 28, 1973].".

Amendments:**1979**

. Act Dec. 28, 1979, in subsec. (a)(5), substituted "fish, wildlife, and plants" for "fish and wildlife".

1982

. Act Oct. 13, 1982, in subsec. (c), designated existing provisions as para. (1), and added para. (2).

1988

. Act Oct. 7, 1988, in subsec. (a)(4)(G), substituted "; and" for the period.

Short titles:

Act Dec. 28, 1973, P.L. 93-205, § 1, 87 Stat. 884, provided: "This Act may be cited as the 'Endangered Species Act of 1973'". For full classification of such Act, consult USCS Tables volumes.

Act Nov. 10, 1978, P.L. 95-632, § 1, 92 Stat. 3751, provided: "This Act may be cited as the 'Endangered Species Act Amendments of 1978'". For full classification of such Act, consult USCS Tables volumes.

Act Oct. 13, 1982, P.L. 97-304, § 1, 96 Stat. 1411, provided: "This Act may be cited as the 'Endangered Species Act Amendments of 1982'". For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Relationship of 16 USCS § 1802(24) to Endangered Species Act of 1973 Act March 9, 1992, P.L. 102-251, Title III, § 305, 106 Stat. 66; Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(a) [Title II, § 211(b)], 110 Stat. 3009-41 (effective 15 days after enactment of Act Oct. 11, 1996, P.L. 104-297), provides: "The special areas defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(24)) shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).".

NOTES:**Code of Federal Regulations:**

Natural Resources Conservation Service, Department of Agriculture--Compliance with NEPA, 7 CFR Part 650.
National Oceanic and Atmospheric Administration, Department of Commerce--Civil procedures, 15 CFR Part 904.

Bureau of Customs and Border Protection, Department of Homeland Security; Department of the Treasury--Articles conditionally free, subject to a reduced rate, etc, 19 CFR Part 10.

Bureau of Customs and Border Protection, Department of Homeland Security; Department of the Treasury--Special classes of merchandise, 19 CFR Part 12.

Office of Surface Mining Reclamation and Enforcement, Department of the Interior--Requirements for permits and permit processing, 30 CFR Part 773.

Office of the Secretary of Defense--Natural Resources Management program, 32 CFR Part 190.

Department of the Army--Regulations affecting military reservations, 32 CFR Part 552.

National Park Service, Department of the Interior--National park system units in Alaska, 36 CFR Part 13.

Bureau of Land Management, Department of the Interior--Off-road vehicles, 43 CFR Part 8340.

Surface Transportation Board, Department of Transportation--Procedures for implementation of environmental laws, 49 CFR Part 1105.

United States Fish and Wildlife Service, Department of the Interior--General provisions, 50 CFR Part 10.

United States Fish and Wildlife Service, Department of the Interior--Endangered and threatened wildlife and plants, 50 CFR Part 17.

United States Fish and Wildlife Service, Department of the Interior--Eagle permits, 50 CFR Part 22.

United States Fish and Wildlife Service, Department of the Interior--Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 50 CFR Part 23.

United States Fish and Wildlife Service, Department of the Interior--Conservation of endangered and threatened species of fish, wildlife, and plants-cooperation with the States, 50 CFR Part 81.

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce--General endangered and threatened marine species, 50 CFR Part 222.

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce--Threatened marine and anadromous species, 50 CFR Part 223.

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce--Endangered marine and anadromous species, 50 CFR Part 224.

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce--Whaling provisions, 50 CFR Part 230.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Interagency cooperation-Endangered Species Act of 1973, as amended, 50 CFR Part 402.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Northwestern Hawaiian Islands Marine National Monument, 50 CFR Part 404.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Listing endangered and threatened species and designating critical habitat, 50 CFR Part 424.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--General provisions, 50 CFR Part 450.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Application procedure, 50 CFR Part 451.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Consideration of application by the Secretary, 50 CFR Part 452.

Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations--Endangered Species Committee, 50 CFR Part 453.

Related Statutes & Rules:

This section is referred to in 16 USCS § 1539.

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 54, Judgment; Costs § 54.171.
 24A Fed Proc L Ed, Natural and Marine Resources §§ 56:2074, 2105, 2132, 2154, 2155, 2336.

Am Jur:

35A Am Jur 2d, Fish, Game, and Wildlife Conservation §§ 62, 67.
 41 Am Jur 2d, **Indians**; Native Americans § 66.

Am Jur Proof of Facts:

35 Am Jur Proof of Facts 3d, Proof of Standing in Environmental Citizen Suits, p. 493.
 86 Am Jur Proof of Facts 3d, Citizen Suit for Injunctive Relief Pending Federal Agency's Compliance with National Environmental Policy Act, p. 99.
 89 Am Jur Proof of Facts 3d, Citizen-Suit Claims Under § 11(g)(1) of the Endangered Species Act, p. 125.

Forms:

10B Fed Procedural Forms L Ed, Highways and Bridges (2006) § 38:17.
 13 Fed Procedural Forms L Ed, Natural and Mineral Resources (2005) §§ 50:209, 211, 212, 214.
 12 Am Jur Pl & Pr Forms (2008), Fish and Game, § 30.
 13A Am Jur Pl & Pr Forms (2009), Highways, Streets, and Bridges, § 219.
 20B Am Jur Pl & Pr Forms (2008), Public Lands, § 13.
 24B Am Jur Pl & Pr Forms (1999), Waters, § 100.

Annotations:

Construction and Application of State Endangered Species Acts. 44 ALR6th 325.
 Validity, construction, and application of state wildlife possession laws. 50 ALR5th 703.

Texts:

3 Benedict on Admiralty, Marine Oil Pollution § 112.
 Cohen's Handbook of Federal **Indian** Law (Matthew Bender), ch 4, **Indian** Tribal Governments § 4.07.
 Cohen's Handbook of Federal **Indian** Law (Matthew Bender), ch 17, Natural Resources § 17.04.
 Cohen's Handbook of Federal **Indian** Law (Matthew Bender), ch 18, Hunting, Fishing, and Gathering Rights § 18.07.
 Cohen's Handbook of Federal **Indian** Law (Matthew Bender), ch 19, Water Rights § 19.06.
 2 Energy Law & Transactions (Matthew Bender), ch 50, Natural Gas § 50.04.
 2 Energy Law & Transactions (Matthew Bender), ch 53, Hydroelectric Power § 53.04.
 3 Energy Law & Transactions (Matthew Bender), ch 55, Coal § 55.14.
 1 Environmental Law Practice Guide (Matthew Bender), ch 4, Information Disclosure and Access § 4.01.
 2A Environmental Law Practice Guide (Matthew Bender), ch 15A, **Indian** Country Environmental Law §§ 15A.02, 15A.08.
 4 Environmental Law Practice Guide (Matthew Bender), ch 19, Wetlands § 19.04.
 4 Environmental Law Practice Guide (Matthew Bender), ch 23A, Coasts § 23A.04.
 4 Environmental Law Practice Guide (Matthew Bender), ch 24, Wildlife and Habitat Protection § 24.03.
 5 Environmental Law Practice Guide (Matthew Bender), ch 34A, Agricultural Environmental Law § 34A.05.
 6 Environmental Law Practice Guide (Matthew Bender), ch 41, Federal-State Relationships § 41.02.

- 6 Environmental Law Practice Guide (Matthew Bender), ch 43, Alaska § 43.11.
 8 Environmental Law Practice Guide (Matthew Bender), ch 82, Rhode Island § 82.11.

Law Review Articles:

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- Teller. Effective installation compliance with the Endangered Species Act. *1993 Army Law* 5, June 1993.
- Goldman-Carter. Federal Conservation of Threatened Species: By Administrative Discretion or by Legislative Standard? *11 BC Environ Aff L Rev* 63, October 1983.
- Stromberg. The Endangered Species Act of 1973: Is the Statute Itself Endangered?, *6 Environmental Affairs* 511, 1978.
- Estes. The effect of the Federal Endangered Species Act on state water rights. *22 Env'tl L* 1027, 1992.
- Morriss; Stroup. Quarantining species: the "living Constitution," the Third Amendment, and the Endangered Species Act. *30 Env'tl L* 769, Fall 2000.
- Auslander. Reversing The Flow: The Interconnectivity Of Environmental Law In Addressing External Threats To Protected Lands And Waters. *30 Harv Env'tl L Rev* 481, 2006.
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- Thornton. Takings under Endangered Species Act section 9. *4 Nat Resources & Env't* 7.
- Endangered species protection. *8 Nat Resources & Env't* 3, Summer 1993.
- Coggins. An ivory tower perspective on endangered species law. *8 Nat Resources & Env't* 3, Summer 1993.
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- Quarles; Macleod; Lundquist. The unsettled law of ESA takings. *8 Nat Resources & Env't* 10, Summer 1993.
- Freeman. Reinitiation of ESA § 7 consultations over existing projects. *8 Nat Resources & Env't* 17, Summer 1993.
- Thornton. The search for a conservation planning paradigm: Section 10 of the ESA. *8 Nat Resources & Env't* 21, Summer 1993.
- Evans. A "recovery" partnership for the Upper Colorado River to meet ESA § 7 needs. *8 Nat Resources & Env't* 24, Summer 1993.
- Ruhl. Section 4 of the ESA-the cornerstone of species protection law. *8 Nat Resources & Env't* 26, Summer 1993.
- Sobek. Enforcement of the Endangered Species Act. *8 Nat Resources & Env't* 30, Summer 1993.
- Balistreri. CITES: the ESA and international trade. *8 Nat Resources & Env't* 33, Summer 1993.
- Irvin. The Endangered Species Act: keeping every cog and wheel. *8 Nat Resources & Env't* 36, Summer 1993.
- Desiderio. The ESA: facing hard truths and advocating responsible reform. *8 Nat Resources & Env't* 37, Summer 1993.
- Cheney. A selective bibliography on the Endangered Species Act. *8 Nat Resources & Env't* 43, Summer 1993.
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- Chen. Diversity in a different dimension: evolutionary theory and affirmative action's destiny, *59 3 Ohio St L J* 811, 1998.

Interpretive Notes and Decisions:

1. Generally 2. Purpose 3. Constitutionality 4. Relationship to other provisions 5. Duty to protect endangered species, generally 6.--Prohibited activities 7. Practice and procedure 8.--Standing 9. Miscellaneous

1. Generally

Court will not expurgate important federal policy statute designed to foreclose all activities antithetic to preservation of "esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people" of vulnerable species of fish, wildlife, and plants, as referred to in 16 USCS § 1531(a)(3). *Hill v Tennessee Valley Authority* (1977, CA6 Tenn) 549 F2d 1064, 9 Evt Rep Cas 1737, 7 ELR 20172, affd (1978) 437 US 153, 57 L Ed 2d 117, 98 S Ct 2279, 11 Evt Rep Cas 1705, 8 ELR 20513 (superseded by statute as stated in *Board of Governors of Federal Reserve System v Dimension Financial Corp.* (1986) 474 US 361, 88 L Ed 2d 691, 106 S Ct 681, CCH Fed Secur L Rep P 92437) and (superseded by statute as stated in *Pyramid Lake Paiute Tribe of Indians v United States Dep't of Navy* (1990, CA9 Nev) 898 F2d 1410, 20 ELR 20572) and (superseded by statute as stated in *Pacific Rivers Council v Thomas* (1994, CA9 Or) 30 F3d 1050, 94 CDOS 5250, 94 Daily Journal DAR 9626, 39 Evt Rep Cas 1078, 24 ELR 21367) and (superseded by statute as stated in *Rio Grande Silvery Minnow v Keys* (2002, DC NM) 356 F Supp 2d 1222).

Language in 16 USCS § 1533, stating that Secretary of Interior had one year in which to publish final regulation after general notice of proposed regulation listing species as endangered, is to be taken literally; if Congress had wanted to tie publishing of final regulation to filing of petition seeking listing, it easily could have. *Oregon Natural Resources Council v Kantor* (1996, CA9 Cal) 99 F3d 334, 96 CDOS 7969, 96 Daily Journal DAR 13233, 43 Evt Rep Cas 1796, 27 ELR 20469, dismd, in part, motion den, in part, transf (1997, ND Cal) 1997 US Dist LEXIS 11286, transf to, summary judgment gr, summary judgment den, remanded (1998, DC Or) 6 F Supp 2d 1139, 29 ELR 20514 (criticized in *Defenders of Wildlife v Babbitt* (1999, SD Cal) 1999 US Dist LEXIS 10366).

Endangered Species Act (16 USCS §§ 1531 et seq.) applies to hunting on Seminole **Indian** Reservation, where United States prosecuted tribe member for taking and possessing Florida panther, because on-reservation hunting rights are not absolute when species is in danger of extinction, and legislative history and clear interpretation of Act support conclusion Congress abrogated such rights to extent necessary to advance purpose of Act. *United States v Billie* (1987, SD Fla) 667 F Supp 1485, 18 ELR 20209.

2. Purpose

Objective of Endangered Species Act is to enable listed species not merely to survive, but to recover from their endangered or threatened status. *Sierra Club v United States Fish & Wildlife Serv.* (2001, CA5 La) 245 F3d 434, 52 Evt Rep Cas 1464, 31 ELR 20504.

Endangered Species Act of 1973 (16 USCS §§ 1531-1543) was enacted to provide for conservation of domestic and endangered species of fish and wildlife through federal action and through cooperation with state endangered species conservation programs consistent with federal law. *Fouke Co. v Brown* (1979, ED Cal) 463 F Supp 1142, 9 ELR 20113.

U.S. Fish and Wildlife Service's conclusion that three of lynx's four regions, which comprised three-quarters of lynx's historical regions and in two of which lynx was no longer viable, were collectively not significant portion of lynx's range was arbitrary and capricious and contrary to plain meaning of and broad purpose of Endangered Species Act, 16 USCS § 1531 et seq., to protect endangered and threatened species. *Defenders of Wildlife v Norton* (2002, DC Dist Col) 239 F Supp 2d 9, remanded (2004, App DC) 89 Fed Appx 273.

3. Constitutionality

Indian's First Amendment right of religious freedom was not violated due to conviction of **Indian** for taking and selling eagles and other migratory birds in violation of Bald Eagle Protection Act (16 USCS §§ 668 et seq.), Migratory Bird Treaty Act (16 USCS §§ 703 et seq.) and Endangered Species Act (16 USCS §§ 1531 et seq.), based upon contention that possession and transportation of eagle feathers and parts of eagles are integral parts of **Indian** religious practices, since record reveals that **Indian** was killing eagles and other protected birds for commercial gain and not for religious purposes. *United States v Dion* (1985, CA8 SD) 762 F2d 674, revd on other grounds, in part, remanded (1986) 476 US 734, 90 L Ed 2d 767, 106 S Ct 2216, 16 ELR 20676.

Endangered Species Act (16 USCS §§ 1531 et seq.) and regulations promulgated thereunder, which prevent killing of grizzly bears to protect sheep, do not deprive plaintiff livestock owners of their property without due process of law; killing

of grizzly bears to protect sheep is not fundamental right under U.S. Constitution, and enactments must be upheld because they rationally further legitimate government objective of preserving threatened species by forbidding killing of grizzly bears except in certain limited circumstances; regulations accommodate needs and concerns of livestock owners by authorizing killing of "nuisance bears" by government officials when efforts to live-capture them have been unsuccessful, and by permitting personal defense of property by means other than killing. *Christy v Hodel* (1988, CA9 Mont) 857 F2d 1324, 18 ELR 21430, cert den (1989) 490 US 1114, 104 L Ed 2d 1038, 109 S Ct 3176.

Endangered Species Act (ESA) (16 USCS §§ 1531 et seq.), and regulations promulgated thereunder, which prevent killing of grizzly bears to protect sheep, do not deny livestock owners equal protection, since persons raising livestock near grizzly bear habitat is not classification made by ESA or grizzly bear regulations, and prohibition is not applied with greater severity against such persons; furthermore, regulations authorizing carefully controlled and limited sport hunt of grizzly bears in designated geographic areas has rational basis, and does not deny plaintiffs equal protection, since limited amount of regulated taking is necessary to ease grizzly bear population pressures in those areas. *Christy v Hodel* (1988, CA9 Mont) 857 F2d 1324, 18 ELR 21430, cert den (1989) 490 US 1114, 104 L Ed 2d 1038, 109 S Ct 3176.

Endangered Species Act (16 USCS §§ 1531 et seq.), and regulations promulgated thereunder, which prevent killing of grizzly bears to protect sheep, do not effect a "taking" of livestock owners' property by government so as to trigger just compensation clause of Fifth Amendment, since federal government does not own or control wild animals it protects, and losses sustained by plaintiff livestock owners are incidental and by no means inevitable result of reasonable regulation in public interest. *Christy v Hodel* (1988, CA9 Mont) 857 F2d 1324, 18 ELR 21430, cert den (1989) 490 US 1114, 104 L Ed 2d 1038, 109 S Ct 3176.

Endangered Species Act (16 USCS §§ 1531 et seq.) does not unconstitutionally delegate legislative authority to Secretary of Interior, since, by limiting Secretary's legislative authority to promulgation of regulations that promote "conservation" of threatened species, and by defining and providing examples of such conservation, Congress has established standard sufficiently definite and precise to permit courts to determine whether Secretary's enactments comport with Congressional will. *Christy v Hodel* (1988, CA9 Mont) 857 F2d 1324, 18 ELR 21430, cert den (1989) 490 US 1114, 104 L Ed 2d 1038, 109 S Ct 3176.

Summary judgment pursuant to Fed. R. Civ. P. 56 was properly granted in favor of United States in action in which real estate development company sought to construct 202-acre housing development in county in California; application of Endangered Species Act by Fish and Wildlife Service when it reached its determination that company's construction plan was likely to jeopardize continued existence of arroyo southwestern toad was not unconstitutional. *Rancho Viejo, LLC v Norton* (2003, App DC) 355 US App DC 303, 323 F3d 1062, 56 Env't Rep Cas 1001, 33 ELR 20163, cert den (2004) 540 US 1218, 158 L Ed 2d 153, 124 S Ct 1506, 58 Env't Rep Cas 1640, cert den (2004) 541 US 1006, 158 L Ed 2d 524, 124 S Ct 2061.

Endangered Species Act of 1973 does not violate due process clause of Fifth Amendment because provisions thereof have rational basis. *Delbay Pharmaceuticals, Inc. v Department of Commerce* (1976, DC Dist Col) 409 F Supp 637, 6 ELR 20211.

Indian's religious interest in possessing Florida panther parts does not outweigh compelling governmental interest in protecting panther, where evidence shows panther parts are not critical or indispensable to religious medicine practices, and thus charge of illegal possession of endangered species parts does not violate **Indian's** right to freedom of religion. *United States v Billie* (1987, SD Fla) 667 F Supp 1485, 18 ELR 20209.

Endangered Species Act, 16 USCS § 1531 et seq., is valid exercise of Congressional power pursuant to treaty-making power and Commerce Clause of United States Constitution. *Shields v Babbitt* (2000, WD Tex) 229 F Supp 2d 638.

State failed to demonstrate claim arising under Tenth Amendment in its action against defendants, Secretary of Interior and Director of Fish and Wildlife Services (FWS), concerning FWS's rejection of state's gray wolf management plan under Wyo. Stat. Ann. § 23-1-304 because state failed to show how Congress violated state's reserved powers by regulating gray wolves via Endangered Species Act (ESA), 16 USCS § 1531 et seq., nor did state show how defendants commandeered state's legislative processes; state was under no mandate to regulate gray wolves, and defendants offered state permissible quid pro quo, namely that state establish wolf management plan that comported with ESA, or defendants, through ESA would continue to preempt state regulation of gray wolf. *Wyoming v United States DOI* (2005, DC Wyo) 360 F Supp 2d 1214, 60 Env't Rep Cas 1189.

State failed to demonstrate claim arising under Guarantee Clause, U.S. Const. art. 4, § 4, in its action against defendants, Secretary of Department of Interior and Director of Fish and Wildlife Services (FWS), concerning FWS's rejection of state's gray wolf management plan under Wyo. Stat. Ann. § 23-1-304 because there was no usurpation of state's governmental processes; Endangered Species Act (ESA), 16 USCS § 1531 et seq., was valid exercise of Congressional legislation, and

mandates state complained of were not mandatory; FWS through ESA simply gave state conditions by which it could take over management of gray wolves, and state was free to not accept conditions, with consequence of continued preemption. *Wyoming v United States DOI* (2005, DC Wyo) 360 F Supp 2d 1214, 60 Env't Rep Cas 1189.

Endangered Species Act (16 USCS §§ 1531 et seq.) is constitutional exercise of police power, since protection of endangered species of wildlife is matter of general concern and in public interest. *People v K. Sakai Co.* (1976, 1st Dist) 56 Cal App 3d 531, 128 Cal Rptr 536.

4. Relationship to other provisions

Neither 10 USCS § 2866, which directs that Secretary of Defense allow and encourage Department instrumentalities to participate in water conservation efforts, nor 16 USCS § 1531(c)(2), which declares that federal agencies are to cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species, overrides, modifies, or repeals 10 USCS § 2246(a), which prohibits use of appropriated funds to equip, operate or maintain golf course at facility or installation of Department of Defense. *Prohibition on Use of Appropriated Funds for Defense Golf Courses* (3/17/98) Comp. Gen. Dec. No. B-277905, 1998 US Comp Gen LEXIS 419.

Both Endangered Species Act (16 USCS §§ 1531 et seq.) and National Environmental Policy Act (42 USCS §§ 4321 et seq.) apply to each of 3 distinct stages prescribed by Outer Continental Shelf Lands Act (43 USCS §§ 1331 et seq.) for offshore and gas activities, namely, leasing, exploration, and development and production. *False Pass v Clark* (1984, CA9 Alaska) 733 F2d 605, 20 Env't Rep Cas 1705, 14 ELR 20398, 81 OGR 457 (criticized in *Conner v Burford* (1988, CA9 Or) 836 F2d 1521, 27 Env't Rep Cas 1443, 10 FR Serv 3d 560, 18 ELR 20379).

Bureau of Reclamation's salvaging of sucker fish from drained canals and transporting some of them to hatcheries is activity categorically excluded from National Environmental Policy Act where salvage operation is required as part of Bureau's compliance with Endangered Species Act. *Oregon Natural Resources Council v Bureau of Reclamation* (1995, CA9 Or) 49 F3d 1441, 95 CDOS 2448, 95 Daily Journal DAR 4203, 42 Env't Rep Cas 1190.

Long-term water service contract between government and users did not obligate government to furnish full contractual amount of water when that amount could not be delivered consistent with Endangered Species Act. *O'Neill v United States* (1995, CA9 Cal) 50 F3d 677, 95 CDOS 1903, 95 Daily Journal DAR 3289, 40 Env't Rep Cas 1586, 26 UCCRS2d 1, 25 ELR 20873, cert den (1995) 516 US 1028, 133 L Ed 2d 521, 116 S Ct 672.

Where federal agency retained authority to manage dam and remained owner in fee simple of dam, it had responsibilities under ESA, despite fact that ESA was enacted well after agreement between agency and state power company; thus, it had authority to direct dam operations to comply with ESA. *Klamath Water Users Protective Ass'n v Patterson* (2000, CA9 Or) 204 F3d 1206, 2000 CDOS 706, 2000 Daily Journal DAR 1093.

District court decision interpreting term "species" under 16 USCS §§ 1531(b) and 1532(16) of Endangered Species Act was irrelevant to interpreting meaning of term "stock" in 16 USCS § 1802(37) of Magnuson-Stevens Fishery Conservation and Management Act, 16 USCS §§ 1801 et seq; there was no basis for suggesting that "species" and "stock" had same definition. *Or. Trollers Ass'n v Gutierrez* (2006, CA9 Or) 452 F3d 1104.

Secretary must make comprehensive analysis of all ramifications of lease-sale under Outer Continental Shelf Land Act (OCSLA) (43 USCS §§ 1331 et seq.) and consider all checks and balances and all mitigating measures adopted in pursuance of OCSLA when considering whether there has been satisfaction of mandate of Endangered Species Act (16 USCS §§ 1531 et seq.) that no endangered life be jeopardized; such considerations may be considered "agency action" subject to judicial review. *North Slope Borough v Andrus* (1980, App DC) 206 US App DC 184, 642 F2d 589, 15 Env't Rep Cas 1633, 10 ELR 20832 (criticized in *Conner v Burford* (1988, CA9 Or) 836 F2d 1521, 27 Env't Rep Cas 1443, 10 FR Serv 3d 560, 18 ELR 20379).

Although environmental group claimed that EPA violated Endangered Species Act, Clean Air Act (CAA) required EPA to undertake two-phase process for promulgating regulations to reduce hazardous air pollutants emissions and EPA considered "adverse environmental effects" only during second, risk-based phase, 42 USCS § 7412(f)(2)(A); Congress expressly channeled consideration of endangered species to second phase of CAA standard promulgation and instant case involved first phase. *Sierra Club v EPA* (2004, App DC) 359 US App DC 251, 353 F3d 976, 57 Env't Rep Cas 1878, 34 ELR 20014, reh den (2004, App DC) 2004 US App LEXIS 7009 and reh, en banc, den (2004, App DC) 2004 US App LEXIS 7010.

Congress has power to authorize and direct Tennessee Valley Authority to impound Tellico Reservoir notwithstanding

provisions of 16 USCS §§ 1531 et seq. or any other law; Energy and Water Development Appropriation Bill, whose language exempts Tellico Dam project from "any other law" is clear and explicit, and Congress has clearly and expressly exempted Tellico Reservoir from any law repugnant to its completion. *Sequoyah v Tennessee Valley Authority* (1979, ED Tenn) 480 F Supp 608, affd (1980, CA6 Tenn) 620 F2d 1159, cert den (1980) 449 US 953, 66 L Ed 2d 216, 101 S Ct 357.

District court did not have jurisdiction to hear City's challenge to decision of National Marine Fisheries Service under Endangered Species Act, 16 USCS § 1531, because decision was related to decision of Federal Energy Regulatory Commission to issue license to City's power plant subject to certain environmental provisions and appeal needed to be taken under specific procedure that was outlined for appeals under 16 USCS § 8251, which was part of Federal Power Act, 16 USCS § 791a et seq. *City of Tacoma v Nat'l Marine Fisheries Serv.* (2005, DC Dist Col) 383 F Supp 2d 89.

Fish and Wildlife Service did not violate National Environmental Policy Act by failing to prepare Environmental Impact Statement or Environmental Assessment for its critical habitat designation; binding Ninth Circuit authority precluded challenge under NEPA for critical habitat designation made pursuant to Endangered Species Act. *Home Builders Ass'n v United States Fish & Wildlife Serv.* (2006, ED Cal) 64 Env't Rep Cas 1843, 36 ELR 20226, motion withdrawn, motion den, remanded (2007, ED Cal) 2007 US Dist LEXIS 5208.

5. Duty to protect endangered species, generally

In connection with challenge to Secretary's refusal to sell water from dam in reservoir for municipal and industrial use in neighboring cities, (1) Endangered Species Act (16 USCS §§ 1531 et seq.) requires Secretary to give priority to conserving endangered species of fish in reservoir so long as they are endangered and threatened, and (2) Secretary did not abuse discretion both in determining that there was no excess water to sell for municipal and industrial purposes after obligations under Act were fulfilled, and in rejecting alternate plan for operation of reservoir. *Carson-Truckee Water Conservancy Dist. v Clark* (1984, CA9 Nev) 741 F2d 257, 21 Env't Rep Cas 2111, 14 ELR 20797, cert den (1985) 470 US 1083, 85 L Ed 2d 141, 105 S Ct 1842.

Because links between species loss and substantial commercial effect were not attenuated under Endangered Species Act (ESA), economic regulatory scheme, taking of Texas cave species were aggregated with other takes, and ESA's take provision was constitutional under Commerce Clause. *GDF Realty Invs., Ltd. v Norton* (2003, CA5 Tex) 326 F3d 622, 56 Env't Rep Cas 1033, reh den, reh, en banc, den (2004, CA5 Tex) 362 F3d 286, 58 Env't Rep Cas 1187.

As purpose of Endangered Species Act, 16 USCS § 1531 et seq., was to conserve endangered and threatened species rather than allow them to go extinct, pursuant to 16 USCS § 1531, EPA's approval of state's transfer application for pollution permitting power under Clean Water Act presented too great risk of harm to listed species where record suggested that one of affected species numbered less than 100; temporary harms while agency "followed necessary procedures," could have led to permanent harm of extinction, and without greater assurances that harm to listed species would not occur, court's "institutionalized caution" made it unwilling on instant record to order any remedy other than vacation of EPA's approval of state's transfer application for pollution permitting power under Clean Water Act. *Defenders of Wildlife v United States EPA* (2005, CA9) 420 F3d 946, 60 Env't Rep Cas 2025, 35 ELR 20172.

Under Endangered Species Act of 1973 (16 USCS §§ 1531 et seq.), Fish and Wildlife Service, acting for Secretary of Interior, has affirmative duty to increase population of protected species, and regulations permitting sport hunting of migratory game birds from one-half hour before sunrise until sunset are inconsistent with such duty since certain endangered species might be misidentified during twilight hours. *Defenders of Wildlife v Andrus* (1977, DC Dist Col) 428 F Supp 167, 9 Env't Rep Cas 1889, 7 ELR 20269.

Endangered Species Act requires federal agencies to protect endangered species and Bowhead Whale and Gray Whale are endangered species within meaning of ESA. *North Slope Borough v Andrus* (1979, DC Dist Col) 486 F Supp 326, 13 Env't Rep Cas 2097, 10 ELR 20054.

Government's responsibility under Endangered Species Act (16 USCS §§ 1531 et seq.) is to insure that government does not authorize, fund, or carryout any activity that is likely to jeopardize continued existence of endangered species and to take affirmative steps to protect, conserve, and restore endangered species to level that would permit removal from Endangered Species list. *Cabinet Mountains Wilderness v Peterson* (1981, DC Dist Col) 510 F Supp 1186, 15 Env't Rep Cas 2081, 11 ELR 20812, affd (1982, App DC) 222 US App DC 228, 685 F2d 678, 17 Env't Rep Cas 1844, 12 ELR 21058.

Secretary has breached his statutory duty to conserve Eastern Timber Wolf, within meaning of Endangered Species Act (16 USCS §§ 1531 et seq.), by declaring that sport season on wolf will be allowed, absent any showing of extraordinary situation in which population pressures within wolf's ecosystem cannot otherwise be relieved; Secretary has affirmative duty

to bring wolf population to point where protections of Act are no longer needed; regulations expanding current livestock predation control program to within one-half mile of farm where depredation occurred, are also illegal under Act where there is no requirement that trapper determine with reasonable certainty identity of predating wolf or wolves, and where there is no requirement that wolf or wolves be treated in humane manner. *Sierra Club v Clark* (1984, DC Minn) 577 F Supp 783, 20 *Env't Rep Cas* 1884, *aff'd in part and rev'd in part* (1985, CA8 Minn) 755 F2d 608, 15 *ELR* 20391.

Argument of Secretary of Interior and U.S. Fish and Wildlife Service that lynx was not "significant" under Endangered Species Act, 16 USCS § 1531 et seq., because it was naturally rare had no foundation in statute and was contrary to Act's broad purpose to protect wildlife that is in danger of or threatened with extinction, pursuant to 16 USCS § 1531(a)(2). *Defenders of Wildlife v Norton* (2002, DC Dist Col) 239 F Supp 2d 9, *remanded* (2004, App DC) 89 Fed Appx 273.

Defendants, Secretary of Interior and U.S. Fish and Wildlife Service, violated 16 USCS § 1533(b)(6)(C) by failing to designate critical habitat for lynx within one year of final decision that lynx was threatened species; it was appropriate to enjoin defendants to do so because they had asserted that it would be at least four years before lynx critical habitat would be designated; six and one-half year delay in designating critical habitat was completely counter to mandate of 16 USCS § 1531 (b). *Defenders of Wildlife v Norton* (2002, DC Dist Col) 239 F Supp 2d 9, *remanded* (2004, App DC) 89 Fed Appx 273.

During voluntary remand to U.S. Fish and Wildlife Service of its critical habitat designations of two endangered species, current designations remained in force during remand because 1) substantive defect in designations did not require vacatur, and risk of harm to designated species from vacating designations outweighed considerations favoring vacatur under Endangered Species Act's intent, as expressed in 16 USCS § 1531, due to potential prejudice from maintaining status quo, and 2) designations provided marginal benefit in reducing risk of harm to designated species from habitat conversion pursuant to 16 USCS § 1536(a)(2). *NRDC v United States DOI* (2002, CD Cal) 275 F Supp 2d 1136.

Coercive fines were imposed on Army Corps of Engineers and Secretary of Army for non-compliance with injunction to decrease water flow in river basin because it was clear that Corps was not in compliance with court's order and, to extent that injunction was in conflict with injunction issued by another federal district court, Corps' deliberate choice to give navigation-based injunction priority over endangered species-protecting injunction hardly represented good faith effort to comply with its federally mandated obligations under Endangered Species Act, 16 USCS § 1531 et seq. *Am. Rivers v United States Army Corps of Eng'rs* (2003, DC Dist Col) 274 F Supp 2d 62, 57 *Env't Rep Cas* 1145.

Claims brought by coalition of environmental groups that Forest Service and Bureau of Land Management failed to follow consultation requirements of Endangered Species Act, thereby violating Administrative Procedure Act, 5 USCS § 701 et seq., specifically that defendants had failed to formally consult with Fish and Wildlife Service before issuing several oil and gas leases, were not ripe for review; claims rested upon contingent future events that may not have occurred as anticipated, or many not have occurred at all. *Wyo. Outdoor Council v Bosworth* (2003, DC Dist Col) 284 F Supp 2d 81, *app'd* (2004, App DC) 2004 US App LEXIS 11867.

Fish and Wildlife Service was entitled to deference in revising endangered seaside sparrow's critical habitat designation, but once it determined revision was necessary it was under obligation to take timely action in determining specific schedule and process. *Biodiversity Legal Found. v Norton* (2003, DC Dist Col) 285 F Supp 2d 1, 57 *Env't Rep Cas* 1916, *motion gr., dismd* (2004, App DC) 2004 US App LEXIS 9238.

Because United States Forest Service's issuance of 16 USCS § 1536(d) determination qualified as affirmative "agency action" under 16 USCS § 1536(a)(2), court had authority to issue injunction after reinitiation of consultation to prohibit activities that potentially violated ESA during consultation process; court prohibited all snowmobiling and snowmobile trail grooming within designated caribou recovery area inside Idaho Panhandle National Forest until completion of formal consultation. *Defenders of Wildlife v Martin* (2006, ED Wash) 454 F Supp 2d 1085.

6.--Prohibited activities

Endangered Species Act of 1973 (16 USCS §§ 1531 et seq.)--pursuant to which Secretary of Interior has declared that (1) species of small fish is "endangered species," (2) "critical habitat" of such fish is area of river which would be impounded by reservoir that would be created as consequence of completion of dam by federal agency authorized to develop rivers, (3) impoundment of water behind dam would result in total destruction of species' habitat, and (4) all federal agencies must take such action as is necessary to ensure that actions by them do not destroy or modify critical habitat of fish--prohibits federal river development agency from impounding river by nearly-completed, multimillion dollar dam. *Tennessee Valley Auth. v Hill* (1978) 437 US 153, 57 L Ed 2d 117, 98 S Ct 2279, 11 *Env't Rep Cas* 1705, 8 *ELR* 20513 (superseded by statute as stated in *Board of Governors of Federal Reserve System v Dimension Financial Corp.* (1986) 474 US 361, 88 L Ed 2d 691, 106 S Ct 681, *CCH Fed Secur L Rep P* 92437) and (superseded by statute as stated in *Pyramid Lake Paiute Tribe of Indians v United States Dep't of Navy* (1990, CA9 Nev) 898 F2d 1410, 20 *ELR* 20572) and (superseded by statute as stated in *Pacific*

Rivers Council v Thomas (1994, CA9 Or) 30 F3d 1050, 94 CDOS 5250, 94 Daily Journal DAR 9626, 39 Env't Rep Cas 1078, 24 ELR 21367) and (superseded by statute as stated in Rio Grande Silvery Minnow v Keys (2002, DC NM) 356 F Supp 2d 1222).

Secretary is prohibited by Endangered Species Act of 1973 (16 USCS §§ 1531 et seq.) from issuing regulation permitting sport trapping of Eastern Timber Wolf. Sierra Club v Clark (1985, CA8 Minn) 755 F2d 608, 15 ELR 20391.

Decision of U.S. Fish and Wildlife Service to lift ban on commercial importation of 3 threatened kangaroo species does not violate Endangered Species Act (16 USCS §§ 1531 et seq.), since lifting of ban is part of program to encourage Australian states, who alone have power directly to protect kangaroos and their habitat, to implement programs for species' conservation. Defenders of Wildlife, Inc. v Watt (1981, DC Dist Col) 12 ELR 20210.

Secretary will be preliminarily enjoined from conducting sale of leases for exploration, development and production of oil and gas in George's Bank Region of Outer Continental Shelf on grounds of inadequacy of final EIS prepared in connection with sale, where (1) Secretary failed to use best available scientific information necessary to preserve endangered species located in bank, (2) materials relied upon by Secretary do not support conclusion stated in EIS that no jeopardy to species is likely and (3) EIS itself contains incomplete and conclusory discussion of risk of jeopardy to endangered species. Conservation Law Foundation v Watt (1983, DC Mass) 560 F Supp 561, 18 Env't Rep Cas 1904, 13 ELR 20445, aff'd (1983, CA1 Mass) 716 F2d 946, 19 Env't Rep Cas 1745, 13 ELR 20893.

U.S. Fish and Wildlife Service's (USFWS) designation of critical habitat for Mexican spotted owl violated 16 USCS § 1531(b) where existence of other habitat protections did not relieve USFWS from designating critical habitat; existing state plans were not and never had been adequate; although USFWS' interpretation of relevant impact was entitled to deference, it failed to produce a certain tribal management plan; and USFWS' exclusion of unoccupied areas was impermissible. Ctr. for Biological Diversity v Norton (2003, DC Ariz) 240 F Supp 2d 1090.

Developers' construction of condominium project on shores of lake caused "take" under § 9 (16 USCS § 1538) of Endangered Species Act (ESA), 16 USCS § 1531 et seq., because it harassed bald eagle population by modifying and disturbing its habitat; furthermore, continued construction of project and activities associated with it would impact, impair, and disrupt essential bald eagle behaviors going forward. Ctr. for Biological Diversity v Marina Point Dev. Assocs. (2006, CD Cal) 434 F Supp 2d 789.

Where United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) issued to four companies permits, which allowed companies to plant corn and sugarcane that had been genetically modified to use for pharmaceutical purposes, did not obtain information about listed species and critical habitats from Fish and Wildlife Service and National Marine Fisheries Service before APHIS issued permits, Endangered Species Act, 16 USCS §§ 1531 et seq., was violated. Ctr. for Food Safety v Johanns (2006, DC Hawaii) 2006 US Dist LEXIS 56632, superseded (2006, DC Hawaii) 451 F Supp 2d 1165.

Federal agency violated Endangered Species Act when it failed to obtain information about listed species and critical habitats from Fish and Wildlife Service and National Marine Fisheries Service before it issued permits to four companies that had modified genetic structure of corn and sugarcane so that plants would contain hormones or vaccines that could be used to treat human illnesses. Ctr. for Food Safety v Johanns (2006, DC Hawaii) 451 F Supp 2d 1165.

Under 33 USCS § 1251 et seq., permits which allowed wetlands destruction for limestone mining, were set aside because beneficial effects of mining, including keeping limestone products available for purchase and collecting funds from mining companies to acquire wetlands for restoration, did not outweigh adverse environmental effects, including risk of contamination of water supply, destruction of wetlands and foraging habitat for endangered wood stork under Endangered Species Act, 16 USCS § 1531 et seq., and seepage impacts that had not been fully studied, and because United States Army Corps of Engineers acted arbitrarily and capriciously and in violation of its governing regulations when it failed to provide adequate mitigation for lost wetlands in its public interest review, conduct permitting activities with transparency by disclosing benzene contamination of water supply to public and court, and presume that environmentally preferable alternatives existed. Sierra Club v Strock (2007, SD Fla) 495 F Supp 2d 1188, 37 ELR 20188, 20 FLW Fed D 995.

In action brought by plaintiffs alleging that United States Forest Service's decision to construct snowmobile trail along route adjacent to Boundary Waters Canoe Area Wilderness (BWCAW) and failing to set motorboat quotas violated Wilderness Act, BWCAW Act, National Forest Management Act, National Environmental Policy Act, and Administrative Procedure Act, court granted defendants' motion for summary judgment, and denied plaintiffs' motion for summary judgment, on Count IV of plaintiffs' complaint, which alleged that Forest Service's decision to construct proposed snowmobile trail to South Fowl Lake would violate specific standards and guidelines developed under Superior National Forest Plan pursuant to National Forest Management Act, 16 USCS § 1604(a), and 36 C.F.R. § 219.7, because (1) Forest

Service's decision to construct South Fowl Trail did not conflict with standard S-WL-2 and, thus, was not arbitrary and capricious under 5 USCS § 706(2)(A) as physical closure and obliteration of another trail could reasonably be used to offset increase in snow-compacted trail created by South Fowl Trail; (2) Forest Service's explication of S-WL-2 was not post-hoc rationalization that resulted solely from instant litigation as Forest Service adequately explained its rationale at time it selected alternative 2 route for South Fowl Trail; and (3) Forest Service's application of guideline G-WL-6, which directed Forest Service to minimize impact of new snow-compacting routes in lynx analysis units by concentrating such routes in existing developed areas rather than developing new recreational areas, was not arbitrary and capricious under 5 USCS § 706(2)(A) as G-WL-6 did not require that new trails be located entirely within existing developed areas of national forest but, rather, gave Forest Service considerable discretion in determining how best to protect or improve habitat of lynx, threatened species under 16 USCS § 1531(c)(1), and minimize snow compacting, and while portion of South Fowl Trail was located within undeveloped forest along BWCAW, much of South Fowl Trail was concentrated in developed areas with existing roads and trails. *Izaak Walton League of Am., Inc. v Kimbell* (2007, DC Minn) 516 F Supp 2d 982.

Where court had to balance issue of marine mammal safety and welfare as well as Navy's need to train utilizing mid-frequency active sonar in its submarine training exercises in action that alleged violations of National Environmental Policy Act, 42 USCS §§ 4321-4370f, Endangered Species Act, 16 USCS §§ 1531-1599, and Coastal Zone Management Act, 16 USCS §§ 1451-1466, it was ordered that Navy recognize 12 nautical mile coastal exclusion zone, as well as observation of certain safety zones where marine life was spotted; Navy was also ordered to monitor for presence of marine mammals for 60 minutes before employing MFA sonar. *Ocean Mammal Inst. v Gates* (2008, DC Hawaii) 546 F Supp 2d 960.

Court of International Trade lacked jurisdiction over claims under 16 USCS § 1538(c), because Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, D.C., art. II, para. 2(a), Aug. 3, 1973, T.I.A.S. No. 8249, 27 U.S.T. 1092, merely required regulation, not complete embargo of, imports of bigleaf mahogany. *Native Fed'n of Madre De Dios River & Tributaries v Bozovich Timber Prods.* (2007, CIT) 491 F Supp 2d 1174.

7. Practice and procedure

On certiorari to review decision of Federal Court of Appeals in action concerning whether Endangered Species Act of 1973 (16 USCS §§ 1531 et seq.) is violated by operation of dam by federal agency when Secretary of Interior, pursuant to his authority under Act, has determined that operation of dam would eradicate species of fish which he has declared to be endangered species, United States Supreme Court must accept Secretary's determinations. *Tennessee Valley Auth. v Hill* (1978) 437 US 153, 57 L Ed 2d 117, 98 S Ct 2279, 11 Env't Rep Cas 1705, 8 ELR 20513 (superseded by statute as stated in *Board of Governors of Federal Reserve System v Dimension Financial Corp.* (1986) 474 US 361, 88 L Ed 2d 691, 106 S Ct 681, CCH Fed Secur L Rep P 92437) and (superseded by statute as stated in *Pyramid Lake Paiute Tribe of Indians v United States Dep't of Navy* (1990, CA9 Nev) 898 F2d 1410, 20 ELR 20572) and (superseded by statute as stated in *Pacific Rivers Council v Thomas* (1994, CA9 Or) 30 F3d 1050, 94 CDOS 5250, 94 Daily Journal DAR 9626, 39 Env't Rep Cas 1078, 24 ELR 21367) and (superseded by statute as stated in *Rio Grande Silvery Minnow v Keys* (2002, DC NM) 356 F Supp 2d 1222).

Indian, who is prosecuted under Endangered Species Act (Act) (16 USCS §§ 1531 et seq.) for shooting bald eagles, is barred from asserting treaty right to hunt eagles as defense, even if Congress did not address treaty rights in Act sufficiently expressly to abrogate them, since Eagle Protection Act (16 USCS §§ 668 et seq.), which prohibits same conduct, does abrogate **Indians'** rights. *United States v Dion* (1986) 476 US 734, 90 L Ed 2d 767, 106 S Ct 2216, 16 ELR 20676.

5 USCS § 706 governs review of Fish and Wildlife Service's actions concerning Endangered Species Act (16 USCS §§ 1531 et seq.). *Friends of Endangered Species, Inc. v Jantzen* (1985, CA9 Cal) 760 F2d 976, 22 Env't Rep Cas 1817, 15 ELR 20455.

Court of Appeals interprets de novo statutory provisions of Endangered Species Act (16 USCS §§ 1531 et seq.). *Enos v Marsh* (1985, CA9 Hawaii) 769 F2d 1363, 23 Env't Rep Cas 1124, 15 ELR 20853.

Where coalition of sportsmen failed to address its claim under Endangered Species Act (16 USCS §§ 1531 et seq.) in its brief, court would not address claim; moreover, District Court's denial of inexplicably late motion to amend complaint to add claims under Clean Water Act (33 USCS § 1365) was proper. *Swanson v United States Forest Serv.* (1996, CA9 Idaho) 87 F3d 339, 96 CDOS 4593, 96 Daily Journal DAR 7405, 34 FR Serv 3d 1413, 26 ELR 21466.

District Court did not abuse its discretion in denying state's motion to intervene in suit brought by environmental organization and federal government as untimely where state's involvement in prior litigation left it fully aware of issues of case. *Save Our Springs Alliance v Babbitt* (1997, CA5 Tex) 115 F3d 346, 38 FR Serv 3d 423, 27 ELR 21152.

Certification pursuant to Fed. R. Civ. P. 54(b) of judgment upholding actions of Fish and Wildlife Service listing distinct population segment of cactus ferruginous pygmy owl in southern Arizona as endangered species pursuant to Endangered Species Act, 16 USCS § 1531 et seq., as final order where critical habitat designation was remanded to agency for further consideration was required because listing decision was not final judgment where non-concurrent listing and habitat designations were challenged in single action, administrative records overlapped, and district court expressly retained jurisdiction to ensure that any future designation of critical habitat was consistent with its prior ruling. *Nat'l Ass'n of Home Builders v Norton* (2003, CA9 Ariz) 325 F3d 1165, 2003 CDOS 3100, 2003 Daily Journal DAR 3963, 55 FR Serv 3d 137, appeal after remand, remanded (2003, CA9 Ariz) 340 F3d 835, 2003 CDOS 7463, 2003 Daily Journal DAR 9338, 56 *Env't Rep Cas* 2098, 33 *ELR* 20259.

Environmental group's appeal of order upholding federal government's policy for listing killer whales under Endangered Species Act, 16 USCS §§ 1531 et seq., was rendered moot after National Marine Fisheries Service issued final rule listing Southern Resident killer whale as endangered species; declaring Distinct Population Segment Policy unlawful would have served no purpose in case because Service had listed Southern Resident as endangered species, group's ultimate objective. *Ctr. for Biological Diversity v Lohn* (2007, CA9 Wash) 511 F3d 960, 65 *Env't Rep Cas* 1676.

Secretary must make comprehensive analysis of all ramifications of lease-sale under Outer Continental Shelf Land Act (OCSLA) (43 USCS §§ 1331 et seq.) and consider all checks and balances and all mitigating measures adopted in pursuance of OCSLA when considering whether there has been satisfaction of mandate of Endangered Species Act (16 USCS §§ 1531 et seq.) that no endangered life be jeopardized; such considerations may be considered "agency action" subject to judicial review. *North Slope Borough v Andrus* (1980, App DC) 206 US App DC 184, 642 F2d 589, 15 *Env't Rep Cas* 1633, 10 *ELR* 20832 (criticized in *Conner v Burford* (1988, CA9 Or) 836 F2d 1521, 27 *Env't Rep Cas* 1443, 10 *FR Serv 3d* 560, 18 *ELR* 20379).

There exists no statutory review provision in Endangered Species Act, 16 USCS § 1531 et seq., that authorizes judicial review of agency action beyond that that is provided for in Administrative Procedure Act, 5 USCS § 701 et seq.; thus, agency action must be final in order to be judicially reviewable, and if agency action is not final, court cannot reach merits of dispute. *Nat'l Ass'n of Home Builders v Norton* (2005, App DC) 415 F3d 8, 35 *ELR* 20143.

Expert's declaration did not explain administrative record relating to National Marine Fisheries Service's final rule classification of coho salmon under 16 USCS § 1531, but, rather, included expert's interpretation, opinion, and argument of what ultimate conclusions record could and could not support, and, thus, could not be considered by court reviewing final rule. *Alsea Valley Alliance v Evans* (2001, DC Or) 143 F Supp 2d 1214, summary judgment gr, remanded (2001, DC Or) 161 F Supp 2d 1154, 53 *Env't Rep Cas* 1490, app dismd (2004, CA9 Or) 358 F3d 1181, 57 *Env't Rep Cas* 2094.

Judicial intervention in administrative proceedings by environmental organization's action alleging that proposed gravel mining expansion violated 42 USCS §§ 4321 et seq., 16 USCS §§ 1531(b) and 1533(a)(1), and other environmental laws improperly interfered with legislatively established requirements and administrative procedures so that dismissal for lack of ripeness was appropriate. *Sierra Club v United States DOE* (2001, DC Colo) 150 F Supp 2d 1099, revd, remanded (2002, CA10 Colo) 287 F3d 1256, 54 *Env't Rep Cas* 1229, 32 *ELR* 20642, on remand, injunction gr, judgment entered (2002, DC Colo) 255 F Supp 2d 1177, 56 *Env't Rep Cas* 1119.

Recorded conversations, between defendant and confidential informant and between defendant and undercover government agents concerning purchase, slaughter, transport, and sale of endangered species and preparation of false paper work, were admissible coconspirator statements under Fed R. Evid. 801(d)(2)(E) in connection with prosecution for violation of Endangered Species Act, 16 USCS § 1531 et seq., and Lacey Act, 16 USCS § 3371 et seq.; government showed by preponderance of evidence that it was more likely than not that statements were made in furtherance of conspiracy to sell and purchase live endangered animals. *United States v Kapp* (2003, ND Ill) 56 *Env't Rep Cas* 1255.

Determination by Fish and Wildlife Service to place species on its internal review list, to assign it candidate status, and to thus declare that public petition filed on behalf of species under 16 USCS § 1533(b)(3)(A) was thus "redundant" illegally circumvented notice and hearing requirements set forth in § 1533(b)(3)(B), and precluded judicial review, thus violating notice and hearing requirements of Endangered Species Act, 16 USCS § 1531 et seq. *Am. Lands Alliance v Norton* (2003, DC Dist Col) 242 F Supp 2d 1, 33 *ELR* 20137, reconsideration gr, vacated, in part (2003, DC Dist Col) 360 F Supp 2d 1, injunction gr (2004, DC Dist Col) 2004 US Dist LEXIS 27533, dismd (2004, App DC) 2004 US App LEXIS 15243.

Endangered Species Petition Management Guidance policy that was used by Fish and Wildlife Service (FWS) for determining categorizations of species as threatened or endangered violated notice and comment requirement embodied in 16 USCS § 1533(h), was procedurally flawed, and was facially invalid because it allowed FWS and Secretary of Department of Interior to avoid mandatory, non-discretionary hearing requirements set forth in 16 USCS § 1533(b)(3)(B). *Am. Lands*

Alliance v Norton (2003, DC Dist Col) 242 F Supp 2d 1, 33 ELR 20137, reconsideration gr, vacated, in part (2003, DC Dist Col) 360 F Supp 2d 1, injunction gr (2004, DC Dist Col) 2004 US Dist LEXIS 27533, dismd (2004, App DC) 2004 US App LEXIS 15243.

In action by environmental organizations against Army Corps of Engineers (Corps) and Fish and Wildlife Service (FWS) alleging violation of Clean Water Act, 33 USCS § 1344 et seq., Migratory Bird Treaty Act, 16 USCS § 701 et seq., Endangered Species Act, 16 USCS § 1531 et seq., National Environmental Policy Act, 42 USCS § 4321 et seq., and Administrative Procedure Act, 5 USCS § 706 et seq., Corps and FWS were entitled to transfer of venue under 28 USCS § 1404(a) and venue was proper in transferee district under 28 USCS § 1391(e)(2) because environmental organizations could have brought suit in transferee district when much of decision-making process occurred in federal agency offices in that district, balance of private and public interests weighed in favor of transfer as environmental organizations' chosen forum had no meaningful ties to controversy and no particular interest in parties or subject matter, and decision by Corps and FWS to issue subject permits was controversy local to transferee district and one in which state in which transferee district was located and state's residents had great interest. *Sierra Club v Flowers* (2003, DC Dist Col) 276 F Supp 2d 62.

90-day finding by government agencies completely and irrevocably eradicated effects of alleged Endangered Species Act (ESA), 16 USCS § 1531 et seq., violation, which finding mooted activists' claim and deprived court of jurisdiction; thus, court altered its judgment accordingly regarding ESA claim under Fed. R. Civ. P. 59(e). *Fund for Animals v Williams* (2004, DC Dist Col) 311 F Supp 2d 1.

Leaseholders' citizen suit with respect to alleged taking--as defined by 16 USCS § 1532(19)--of endangered plover was improper because leaseholders failed to provide requisite 60-day notice under 16 USCS § 1540(g) that they intended to sue state officers for taking plover in process of removing leaseholders' mobile homes; leaseholders' notice failed to even mention plover and, therefore, never provided state opportunity to rectify asserted Endangered Species Act, 16 USCS § 1531 et seq., violation with respect to plover. *Pulaski v Chrisman* (2005, CD Cal) 352 F Supp 2d 1105.

Plaintiffs who asserted claim against circus operator and related corporation for mistreatment of Asian elephants in violation of Endangered Species Act were not entitled to documents from defendants related to profitability, public relations, and advertising because defendants had admitted that they were for profit corporation and other commercial activity was not relevant to exhibition of elephants. *ASPCA v Ringling Bros. & Barnum & Bailey Circus* (2006, DC Dist Col) 233 FRD 209.

Where plaintiffs, private citizens and other individuals, sued Bureau of **Indian** Affairs (BIA) pursuant to National Environmental Policy Act, 42 USCS §§ 4321 et seq., National Historic Preservation Act, 16 USCS §§ 470 et seq., **Indian** Long-Term Leasing Act of 1955, 25 USCS § 415, and Endangered Species Act, 16 USCS §§ 1531 et seq., challenging approval of land lease, exception to 5 USCS § 704 requirement that remedies be exhausted prior to judicial review under 5 USCS § 702 was not merited as they did not show that administrative review would be futile and equitable considerations weighed in favor of dismissal; inter alia, plaintiffs had not claimed that hierarchs made pre-announced decision on merits of administrative review, nor had they asserted that BIA denied them access to administrative review or convinced federal district court that BIA's failure to give notice of right to appeal amounted to type of denial that exception contemplated; moreover, BIA's inaction did not meet standards for applying equitable estoppel, waiver did not apply as Fed. R. Civ. P. 12(a) (4) allowed party to file motion to dismiss before answering complaint and exhaustion was not defense required to be affirmatively stated pursuant to Fed. R. Civ. P. 8(c), and equitable tolling did not apply. *Nulankeyutmonen Nkihtaqmikon v Impson* (2008, DC Me) 573 F Supp 2d 311.

8.--Standing

District Court erred in denying state's motion to intervene in suit brought by environmental organization against city for violating 16 USCS §§ 1531 et seq., where state in its various capacities had interest in regulation of water rights. *Sierra Club v City of San Antonio* (1997, CA5 Tex) 115 F3d 311, 38 FR Serv 3d 194, 28 ELR 20124, reh den (1997, CA5 Tex) 1997 US App LEXIS 26922.

District court erred in concluding that coalition of industries that relied upon Alabama waterways for their businesses did not have U.S. Const. art. III standing to seek declaratory and injunctive relief challenging Secretary of Interior's decision to list Alabama sturgeon as endangered species pursuant to Endangered Species Act (ESA), 16 USCS §§ 1531-1544; coalition had economic standing; alleged pattern and practice presented substantial likelihood that alleged injury would occur because coalition was operating against backdrop of continuing policy that was triggered by endangered species listing and was effectuated by machinery of ESA. *Alabama-Tombigbee Rivers Coalition v Norton* (2003, CA11) 338 F3d 1244, 56 Env't Rep Cas 1897, 16 FLW Fed C 902 (criticized in *Int'l Brominated Solvents Ass'n v Am. Conf. of Governmental Indus. Hygienists, Inc.* (2004, MD Ga) 20 BNA OSHC 2070).

Plaintiffs, who opposed construction of natural gas terminal on tribal land, did not lack standing to bring claims under

National Environmental Policy Act of 1969, 42 USCS §§ 4321 et seq., National Historic Preservation Act, 16 USCS §§ 470 et seq., and Endangered Species Act, 16 USCS §§ 1531 et seq., as land lease facilitating building constituted land use change allegedly endangering environment, tribal land historic preservation, and protected animals; thus, plaintiffs alleged injury in fact; moreover, redressability requirement for U.S. Const. art. III standing was met as requested procedures might convince Bureau of **Indian** Affairs to withhold approval. *Nulankeyutmonen Nkihtaqmikon v Impson* (2007, CA1 Me) 503 F3d 18.

Environmental groups' Endangered Species Act (ESA), 16 USCS § 1531 et seq., claims against development company were moot because Bald Eagle had been de-listed; therefore, no activities by company could constitute "take" of bald eagle within meaning of ESA. *Ctr. for Biological Diversity v Marina Point Dev. Co.* (2008, CA9 Cal) 535 F3d 1026.

Organization which utilizes refuge system for recreational purposes, including observation of wildlife protected by refuges, which alleges that allowing hunting on wildlife refuges forces members to witness animal corpses and environmental degradation, in addition to depleting supply of animals and birds that refuge visitors seek to view, has standing to challenge actions by United States Fish and Wildlife Service allowing hunting on some of national wildlife refuges in alleged violation of National Environmental Policy Act of 1969 (42 USCS §§ 4331 et seq.); Endangered Species Act of 1973 (16 USCS §§ 1531 et seq.); Refuge Recreation Act of 1962 (16 USCS §§ 460k et seq.); and National Wildlife Refuge System Administrative Procedure Act (16 USCS §§ 668dd). *Humane Soc'y of United States v Hodel* (1988, App DC) 268 US App DC 165, 840 F2d 45, 18 ELR 20636.

Summary judgment granted to government officials in suit brought against them by businesses and consumers of hydroelectric power under Endangered Species Act (16 USCS §§ 1531 et seq.), where claims alleged that government's plan to encourage growth in salmon population by increasing flow over dam would have harmful effect on supply and price of hydroelectric power, because, although power consumers' stated economic loss was sufficient to establish injury, the injury was remote and failed to meet causation and redressability requirements for standing to sue. *Pacific Northwest Generating Coop. v Brown* (1993, DC Or) 822 F Supp 1479, 37 Env't Rep Cas 1110, 23 ELR 21404, *aff'd* (1994, CA9 Or) 25 F3d 1443, 94 CDOS 4037, 94 Daily Journal DAR 7573, 39 Env't Rep Cas 1615, 24 ELR 21111, *amd* (1994, CA9 Or) 38 F3d 1058, 94 CDOS 7394, 94 Daily Journal DAR 13563.

Forest user's suit against Forest Service to force compliance with substantive and procedural requirements of Endangered Species Act (16 USCS §§ 1531 et seq.) is moot, even if he can establish standing, because terms of settlement of related case affect very compliance with Act which user seeks in his action. *Hobbs v Sprague* (2000, ND Cal) 87 F Supp 2d 1007.

In action in which conservation organizations committed to preserving animal species in their natural habitats and individuals involved in argali sheep conservation efforts filed suit against Secretary of Interior under Endangered Species Act (ESA), 16 USCS § 1531 et seq., and Administrative Procedure Act (APA), 5 USCS § 702, intervenors were granted summary judgment where plaintiffs lacked standing; because prohibition on importation of argali into U.S. and listing of argali in Kyrgyzstan, Mongolia, and Tajikistan as endangered under ESA would not prohibit those governments from issuing hunting permits, and because prior U.S. import restrictions did not decrease hunting and poaching of argali, individuals had failed to demonstrate that they would likely obtain redress from favorable decision on merits. *Fund for Animals v Norton* (2003, DC Dist Col) 295 F Supp 2d 1.

In action challenging legitimacy of State Petitions for Inventoried Roadless Area Management Rule, 70 Fed. Reg. 25,654 (May 13, 2005), environmental organizations and States met prudential standing requirements under Administrative Procedure Act, 5 USCS §§ 701 et seq., to establish their standing when challenged rule had been published as final rule in Federal Register and interest they sought to protect was arguably within zone of interests to be protected or regulated by National Environmental Policy Act, 42 USCS §§ 4321 et seq., and Endangered Species Act, 16 USCS §§ 1531 et seq. *Cal. ex rel. Lockyer v United States Dep't of Agric.* (2006, ND Cal) 459 F Supp 2d 874.

9. Miscellaneous

To extent Cal. Fish & Game Code § 3003.1(c) prevents federal agencies from protecting species listed in Endangered Species Act (ESA), 16 USCS §§ 1531 et seq., it is preempted by ESA. *Nat'l Audubon Soc'y, Inc. v Davis* (2002, CA9 Cal) 307 F3d 835, 2002 CDOS 9815, 2002 Daily Journal DAR 11049, 55 Env't Rep Cas 1065, 33 ELR 20058, reprinted as *amd* (2002, CA9 Cal) 2002 US App LEXIS 24712 and *amd, reh den, reh, en banc, den* (2002, CA9) 312 F3d 416, 2002 CDOS 11826, 2002 Daily Journal DAR 13872.

Forest Service and Fish and Wildlife Service did not violate their duty to rely on best scientific data available when they reasonably concluded that effects of road construction and timber harvesting would be sufficiently mitigated by enforcement of conservation agreement with lumber company seeking easement to build road through grizzly bear habitat where agencies

conducted reasonable evaluation of information and reached conclusion that, although disputable, was not arbitrary and capricious. *Selkirk Conservation Alliance v Forsgren* (2003, CA9 Or) 336 F3d 944, 2003 CDOS 6301, 2003 Daily Journal DAR 7955, 33 ELR 20242.

In action by city against National Park Service in which city sought to enjoin NPS from implementing its Fort Baker Plan for development and rehabilitation of former military base into national park, district court properly concluded that NPS did not violate Endangered Species Act, 16 USCS §§ 1531-1544; NPS prepared adequate biological assessment with respect to Plan's effects on Mission Blue Butterfly and on salmonids and, although NPS did not comply with 180-day deadline under 16 USCS § 1536(c)(1) for preparing biological assessment, city was not entitled to remedy as result of tardiness on part of NPS because city pointed to no harm resulting from belated NPS biological assessment. *City of Sausalito v O'Neill* (2004, CA9 Cal) 386 F3d 1186.

Evidence was sufficient to prove that defendant violated Endangered Species Act, 16 USCS §§ 1531 et seq., by trafficking in and killing tigers and leopards, as expert testimony and defendant's own statements established that animals were tigers and leopards, not non-protected tiger-lion hybrids. *United States v Kapp* (2005, CA7 Ill) 419 F3d 666, 61 Env't Rep Cas 1020, 67 Fed Rules Evid Serv 1330.

Hybrids of two protected subspecies (e.g., protected tiger subspecies) are protected under Endangered Species Act, 16 USCS §§ 1531 et seq. *United States v Kapp* (2005, CA7 Ill) 419 F3d 666, 61 Env't Rep Cas 1020, 67 Fed Rules Evid Serv 1330.

United States Fish and Wildlife Service had articulated reasonable basis--Washington western gray squirrel population's lack of biologically and ecologically distinguishing features--for its conclusion that loss of population would not cause significant gap and its decision to deny petition to list squirrels as endangered "distinct population segment" under 16 USCS § 1533 was not arbitrary or capricious. *Northwest Ecosystem Alliance v United States Fish & Wildlife Serv.* (2007, CA9 Or) 475 F3d 1136.

In case related to defendant's conviction on charges related to importation of protected reptiles in violation of Endangered Species Act, 16 USCS §§ 1531 et seq., and Lacey Act, 16 USCS §§ 3771 et seq., district court's misconstruction of remand mandate led to failure to consider all improperly excluded periods under Speedy Trial Act, 18 USCS §§ 3161 et seq., and thus prevented district court from accurately weighing statutory factors under 18 USCS § 3162(a)(2) when it dismissed defendant's indictment without prejudice; remand for review of entirety of pre-trial delay suffered by defendant was necessary. *United States v Lewis* (2008, CA9 Cal) 518 F3d 1171.

Final environmental impact statement issued in connection with proposed oil and gas lease sales covering 25 million acres of outer continental shelf located off coast of Massachusetts is inadequate since statement (1) fails to describe any alternatives that Secretary could have selected for lease sale date, (2) fails to present any significantly varied alternatives for sale from which Secretary could choose, and (3) attempts to cover area too large to be adequately site-specific; both Secretarial Issue Decision and Environmental Assessment fail to rehabilitate environmental impact statement, since both documents fail to provide kind of accurate, detailed information Secretary needs to balance needs of environment and oil industry. *Massachusetts v Clark* (1984, DC Mass) 594 F Supp 1373, 21 Env't Rep Cas 1673, 15 ELR 20132.

Court-ordered deadline for Fish and Wildlife Service (FWS) to provide its final designation of critical habitat is not vacated upon government's motion, where rider to public law provided that none of remaining funds for year may be used to make final determination regarding critical habitat, but where rider also provides that where Endangered Species Act (ESA) (16 USCS §§ 1531 et seq.) has been interpreted in any court order to require making determination respecting species or habitats by certain date, ESA must not be applied to require that determination be made by that date if making of determination is made impracticable by rescission made by preceding provision, because lawsuit at issue is clearly action which requires, by court order, making of determination respecting habitat by certain date and because FWS admits that final designation is not impracticable as matter of fact. *Silver v Babbitt* (1995, DC Ariz) 924 F Supp 972, 42 Env't Rep Cas 1016.

In action by environmental organizations against Department of Energy (DOE), and Secretary of Energy, alleging violation of National Environmental Policy Act (NEPA), 42 USCS §§ 4321 et seq., and Endangered Species Act (ESA), 16 USCS §§ 1531 et seq., for grant of road easement to mining company without first preparing environmental assessment or environmental impact statement, DOE's action was arbitrary and capricious under 5 USCS § 706 where DOE violated NEPA because its application of categorical exclusion to easement was inconsistent with 10 C.F.R. § 1021 as there was no rational basis to conclude that constructing private mining road on land was same land use as researching wind energy, DOE failed to consider and evaluate mine's impacts on environment as required by 10 C.F.R. § 1021.410(b)(3) as easement and mine were connected actions that were inextricably linked, DOE failed to consider both easement and future mine expansion as required by 40 C.F.R. §§ 1508.7 and 1508.8 as mine expansion was reasonably foreseeable, and DOE violated its continuing duty under 16 USCS § 1536(a)(2) to consult with Fish and Wildlife Service on environmental impacts of easement, including

proposed mining project, on habitat of Preble's jumping mouse, which was listed as threatened species under ESA. *Sierra Club v United States DOE* (2002, DC Colo) 255 F Supp 2d 1177, 56 *Env't Rep Cas* 1119.

Plaintiffs were granted summary judgment in their challenge to validity of regulations adopted under Endangered Species Act, 16 USCS §§ 1531-1544, as procedures utilized in promulgating "permit revocation rule" (PRR), codified at 50 C.F.R. §§ 17.22(b), 17.32(b), were deficient as matter of law because regulation was adopted without notice and comment as required under Administrative Procedure Act, 5 USCS § 553, and relationship between PRR and No Surprises Rule (NSR), codified at 50 C.F.R. §§ 17.22, 17.32, 222.2, which it amended, was such that remand of PRR required remand of NSR. *Spirit of the Sage Council v Norton* (2003, DC Dist Col) 294 F Supp 2d 67, 57 *Env't Rep Cas* 2103, 34 *ELR* 20008.

Secretary of Interior's argument that requiring it to abide by court's order would violate Anti-Deficiency Act, 31 USCS § 1341, failed because it ignored fact that, in order to comply with Anti-Deficiency Act, Secretary had to be permitted to continue its ongoing 10-year violation of Endangered Species Act, 16 USCS §§ 1531 et seq. *Ctr. for Biological Diversity v Norton* (2003, DC Ariz) 304 F Supp 2d 1174.

Where 36 CFR pt. 294 unlawfully repealed former pt. 294, and thus 42 USCS §§ 4321 et seq., 16 USCS §§ 1531 et seq., and 5 USCS §§ 701 et seq. were violated, injunctive relief issued and former pt. 294 was reinstated as if it had never been repealed because to reinstate former pt. 294 from date of district court's order would impermissibly constitute partial repeal; injunctive relief extended to number of unapproved oil and gas leases given that approval without "no surface occupancy" condition constituted government commitment and stripped government of ability to prohibit potentially significant inroads on environment. *California ex rel. Lockyer v United States Dep't of Agric.* (2006, ND Cal) 468 F Supp 2d 1140.

Summary judgment as to all dispositive issues was denied where Bureau of Reclamation's failure to meet its requirement to provide water to municipal users with which it had contracted, given ambiguities in agreements, and potential application of sovereign acts doctrine and § 3406 Central Valley Project Improvement Act. *Stockton E. Water Dist. v United States* (2006) 70 Fed Cl 515.