

Judge Rules Feds Improperly Refused to Protect Wolverines (Press Release 4/4/16)

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Orders Reconsideration of Safeguards for Species Imperiled by Climate Change

Location:

Missoula

Today, the federal district court for Montana rejected a decision by the U.S. Fish and Wildlife Service (Service) to deny protections for wolverines in the contiguous U.S. The court ruled the Service improperly ignored science and violated the Endangered Species Act. A broad coalition of conservation organizations challenged the Service's refusal to protect imperiled wolverines by listing them under the ESA.

"Today's win is a victory not just for wolverine but for all species whose fate relies on the scientific integrity of the Fish and Wildlife Service," said Bethany Cotton, wildlife program director for WildEarth Guardians. "We call on the agency to stop playing politics and start living up to its mandate to protect our country's most imperiled species."

Often called "southern polar bears," wolverines are custom built for cold, snowy climates and depend on areas with spring snow for denning and year-round habitat. Science shows climate change may eliminate nearly two-thirds of the snowy habitat needed by wolverines in the contiguous U.S. within 75 years. This means significantly less habitat and/or worsened habitat fragmentation for the approximately 250-300 wolverines that remain in the lower 48 states.

The Service originally identified climate change, in conjunction with small population size, as the primary threat to wolverine existence in the contiguous U.S. Published, peer-reviewed research, the larger scientific community – including the Society for Conservation Biology – an independent scientific panel, the majority of experts who reviewed the decision, and the Service's own biologists all verified this finding. The Service proposed listing the wolverine as a "threatened" species under the ESA in 2013. At the eleventh hour, however, the Service reversed course and chose not to protect wolverine, citing too many "uncertainties" in the scientific literature.

Today, the court rejected this excuse, holding the agency accountable for its decision to discount the best available science about climate impacts on wolverine. "[T]he Service's decision against listing the wolverine as threatened under the ESA is arbitrary and capricious. No greater level of certainty is needed to see the writing on the wall for this snow-dependent species standing squarely in the path of global climate change. It has taken us twenty years to get to this point. It is the [Court's] view that if there is one thing required of the Service under the ESA, it is to take action at the earliest possible, defensible point in time to protect against the loss of biodiversity within our reach as a nation. For the wolverine. That time is now." Opinion at page 83.

The court correctly noted that the ESA directs the Service to make listing decisions based on the best *available* science, not the best possible science. This means the agency cannot make the perfect the enemy of the good. Instead, it must use and rely on the best science available when making listing decisions, which it failed to do in this case.

"The court sent a clear message to the Service: don't let politics trump science," said Matthew Bishop, a Western Environmental Law Center attorney who represented the conservation groups. "The Service cannot ignore the published literature and advice of its own biologists when making important listing decisions."

Today's ruling requires the agency to make a new final listing determination for wolverines. The ruling also restores the Service's proposed rule to list wolverine and the wolverine's status as a candidate species under the ESA.

"Cascadia Wildlands is very encouraged by the court's rejection of political game playing by the U.S. Fish and Wildlife Service," said Nick Cady with Cascadia Wildlands. "As with all species, wolverines deserve conservation and protections based upon sound science. This legal victory sets the stage for further reform of a deteriorating U.S. Fish and Wildlife Service, and the installment of protections for this struggling species across the West."

"We hope the Fish and Wildlife Service wastes no more time in granting wolverines Endangered Species Act protection," said Keith Hammer, chair of Swan View Coalition. "This rare species deserves all the help it can get as we hit record-setting temperatures here in Montana."

"We need to do everything we can to protect wolverines and wolverine habitat in the face of climate change and a snowballing extinction crisis," said Greg Costello, executive director of Wildlands Network. "Our actions should be rooted in precaution and the best available science—not political nitpicking."

"With only 300 wolverine spread across the Western U.S., it is refreshing to see the court appreciates the precarious state of wolverine populations and confirm the findings of the Fish and Wildlife Service's own biologists that the species merits ESA protection," said ecologist George Wuerthner.

"Wolverines deserve protection, not political shenanigans," said Arlene Montgomery of Friends of the Wild Swan. "The Fish and Wildlife Service must now do its job to protect and recover this imperiled animal."

"It is reassuring to know that our court system is doing its job, even while other branches of government flounder," said Larry Campbell of Friends of the Bitterroot. "The U.S. Fish and Wildlife Service is apparently willing to illegally sacrifice an awesome species and good science while ineptly playing politics. Go wolverines!"

A copy of the decision is available [here](#).

A copy of the original complaint is available [here](#).

Read more about the case history [here](#).

Matthew Bishop and John Mellgren of the Western Environmental Law Center and Sarah McMillan of WildEarth Guardians represented WildEarth Guardians, Cascadia Wildlands, Alliance for the Wild Rockies, Cottonwood Environmental Law Center, Footloose Montana, Friends of the Bitterroot, Friends of the Wild Swan, George Wuerthner, Helena Hunters and Anglers Association, Kootenai Environmental Alliance, Native Ecosystem Council, Oregon Wild, and the Swan View Coalition on the case.

Additional quotes from the decision:

"Why did the Service make the decision [to not list the wolverine]?...Based on the record, the Court suspects that a possible answer to this question can be found in the immense political pressure that was brought to bear on this issue, particularly by a handful of western states." Opinion at page 56.

"This strikes the Court as the essence of arbitrary and capricious decision making." Opinion at page 61 (discussing climate change claim).

"[A]s Plaintiffs' counsel rightly pointed out ... the Service's stance here borders on the absurd – if evidence shows that wolverines need snow for denning purposes, and the best available science projects a loss of snow as a result of climate where and when wolverines den, then what sense does it make to deny that climate change is a threat to the wolverine simply because research has yet to prove exactly *why* wolverines need snow for denning?" Opinion at page 67 (discussing climate change claim).

"If ever there was a species for which conservation depends on foregoing absolute certainty, it is the wolverine." Opinion at page 68 (discussing why we don't need absolute certainty for why wolverine need deep persistent snow).

Background:

Wolverine number just 250-300 individuals in the contiguous U.S. and are dependent on high elevation habitat with deep winter snows. Imperiled by climate change, habitat loss and trapping, wolverine were first petitioned for ESA protections in 2000. The Service found the petition did not contain adequate information to justify a listing. A federal court overturned that decision in 2006. The Service then issued a negative 12-month finding in 2008, which was challenged in court resulting in a settlement that led to a new finding that wolverine should be protected under the ESA, but that other priorities precluded the listing at that time. A landmark settlement with WildEarth Guardians, which resolves the backlog of imperiled species awaiting protections, then guaranteed a new finding for wolverine. In February 2013, the Service proposed listing the wolverine as "threatened" under the ESA. In August 2014, however, the Service reversed course and issued a decision not to list the species, contradicting its own expert scientists' recommendations. Today's ruling is in response to the organizations' legal challenge to that decision.

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