

The Conservation Column

By Pepper Trail

The following information on pending serious threats to the Endangered Species Act and our National Wildlife Refuges comes from the Ornithological Council and the National Audubon Society.

CURRENT CONGRESSIONAL ATTACKS ON THE ENDANGERED SPECIES ACT House Natural Resources Committee marked up and advanced several bills that would weaken the Endangered Species Act. House Chair Rob Bishop (R-UT) has said he would like to eliminate the ESA entirely. The bills considered last week are just a start.

H.R. 717 (The Listing Reform Act), introduced by Rep. Pete Olson (R-Texas) would require consideration of the economic costs of protecting an animal or plant on the endangered species list and remove all deadlines for completing the listing process.

H.R. 1274 (the State, Tribal, and Local Species Transparency and Recovery Act), introduced by Rep. Dan Newhouse (R-Wash.) would deem any information submitted by a state or local government to qualify as “best available” science even if inaccurate, out-of-date, fraudulent, incomplete, or otherwise faulty, and without any merit review.

H.R. 3131 (the Endangered Species Litigation Reasonableness Act), introduced by Rep. Bill Huizenga (R-Mich.) would discourage citizen enforcement and participation in the implementation of the Endangered Species Act. It would award attorneys fees to the prevailing party, contrary to the general rule in the United States that each party pays its own attorneys fees, regardless of outcome.

H.R. 2603 (the Saving America's Endangered Species or SAVES Act), introduced by Rep. Louie Gohmert (R-Texas) would bar ESA protection for non-native species that are present in the U.S.

Sen. Mike Lee (R-UT) has introduced yet another bill, S.1863 (Native Species Protection Act), to clarify that noncommercial species found entirely within the borders of a single state are not in inter- state commerce or subject to regulation under the Endangered Species Act of 1973 or any other provision of law enacted as an exercise of the power of Congress to regulate interstate commerce. A lower federal court in Utah ruled in 2014

that there was no Constitutional basis for the exercise of federal authority in such instances, but that ruling was overturned by the 10th Circuit Court of Appeals in March 2017. A request for a re-hearing "en banc" (a three-judge panel) was denied in August. The Supreme Court has never ruled on the issue, although John Roberts, the current Chief Justice, hinted in a dissent he wrote when he was a lower court judge that a species found in only one state does not affect interstate commerce. The legislation is backed by extreme anti-ESA organizations that oppose the protection of the Utah Prairie Dog, an animal only found in Utah. In addition to ending protections for the prairie dog, the legislation would terminate protections for all 1,098 intrastate species, including 497 species in Hawaii, 234 species in California, 86 species in Florida (including the Florida Panther) and 20 species in Utah. Since January congressional Republicans have launched 50 legislative attacks against the Endangered Species Act or particular endangered species. To keep track of this legislation and other legislation of interest to ornithologists, visit the Ornithological Council legislative database, (URL: [http://ornithologyexchange.org/articles/_/community/callingcongress-should-not-be-a-full-time-job-new-resource-for-ornithologists -r242](http://ornithologyexchange.org/articles/_/community/callingcongress-should-not-be-a-full-time-job-new-resource-for-ornithologists-r242)).

SANTA ANA NATIONAL WILDLIFE REFUGE THREATENED BY BORDER WALL CONSTRUCTION

Santa Ana National Wildlife Refuge in the Lower Rio Grande Valley (LRGV) of Texas is currently under an immediate threat from the Trump Administration's border-wall plans. The U.S. Army Corps of Engineers and its subcontractors have recently been taking soil samples and making other preparations to build a huge and intrusive 18-foot border-wall through the north end of the refuge. Santa Ana NWR represents 2,088 acres of vital borderland habitat along the banks of the Rio Grande. The refuge was originally created in 1943 to protect migratory birds, and almost 95% of the property was acquired through Duck-Stamp/MBFC dollars. Some 400 bird species have been recorded in the refuge, including migratory waterfowl, raptors, warblers, and a suite of "South Texas specialties" that are Mexican in character and barely range into Texas. Moreover, Santa Ana NWR is an essential part of that intricate network of natural hotspots in the four-county LRGV that draws an economic income of over \$465 million per year from eco-tourists and birders.

Why is Santa Ana NWR the center of concern? Santa Ana NWR is viewed as a relatively convenient location to fulfill the Trump Administration's promise to build "a

wall." Santa Ana NWR is one of the few federally owned properties immediately along the Texas border. (Ninety-five percent of the land abutting the Mexico border in Texas is privately owned.) By initiating the new border wall at Santa Ana NWR, the administration is hoping to avoid the logistical nightmare of negotiating with private landowners - and even state and county authorities - to build a wall through their own back- yards. Presently the plan is to build the wall on the levee that goes through and beyond the north end of the refuge. There is already enough current funding in the pipeline to start the project some- where on the levee.

Altamira Oriole in the Santa Ana NWR

At Santa Ana NWR, the issue of public access itself is still unresolved. We do not know if public access will continue to be allowed if this intrusive wall is built, or what kind of restrictions would be placed on future NWR visitation. The proposed 18-foot tall wall and corresponding land clearing would surely discourage visitors from experiencing the refuge. Naturally any reduction in visitation at the refuge and other wild- life habitats in the LRGV would have significant economic impacts to the lo- cal communities. If you wish to express concern about this issue to Congress, you can access a template letter from

the National Wildlife Refuge Association which you can edit at: <http://refugeassociation.org/action/#/87> You can also obtain more details from the Friends of the Migratory Bird/Duck Stamp at: [http:// www.friendsofthestamp.org/santa-ana-nwr-in-jeopardy/](http://www.friendsofthestamp.org/santa-ana-nwr-in-jeopardy/) (from Birding Community E-bulletin, August and September 2017, <http://refugeassociation.org/news/birdingbulletin/>)

MOST SERIOUS THREAT EVER TO THE ALASKA NATIONAL WILDLIFE REFUGE

Republicans in Congress have tried many, many times to open the pristine Arctic National Wildlife Refuge to oil drilling, but have always been beaten back by determined conservationists and their allies in Congress. The refuge is now facing its biggest threat yet, as Congress attempts to use the budget reconciliation process to pay for tax cuts through Arctic drilling—a scheme that would force the legislation through without typical debate, and allow the Senate to pass the bill with a simple majority vote.

The first clue of the renewed effort to drill in the refuge came in the spring, when President Donald Trump's proposed budget included a novel line item: revenues of \$1.8

billion earned between 2018 and 2027 from selling oil and gas leases in the Arctic Refuge. Then, on October 5, the U.S. House of Representatives passed a 2018 budget resolution in a 219-206 vote that called for the Natural Resources Committee, which has jurisdiction over the refuge, to find a way to reduce the deficit by \$5 billion over 10 years—a covert nod towards new revenues from refuge drilling.

The budget proposal released by the U.S. Senate the previous week includes a parallel ask: The Energy and Natural Resources Committee, which like its House counterpart oversees leasing in the Arctic Refuge, must find a way to save \$1 billion over the next decade—another furtive glance toward refuge oil. Under typical Senate rules, new legislation would require 60 votes to overcome a potential filibuster, support Arctic Refuge drilling doesn't have. But budget reconciliation requires only 51 votes.

As a result, the refuge's fate now lies in the hands of a few moderate Republican senators, whose names are familiar to many Americans after months of attempts to repeal the Affordable Care Act. In the past, Senators Susan Collins (R-ME) and John McCain (R-AZ) have opposed drilling in the refuge, though they haven't yet announced how they'll vote. Senator Lisa Murkowski (R-AK), a moderate voice during the healthcare debate, supports drilling, arguing that it would bring jobs and revenues to her state. Republicans hold 52 seats in the Senate, and if two senators defect from their party, Vice President Mike Pence could vote to break a 50-50 tie.

The arithmetic doesn't add up in two ways. First, the U.S. is in the midst of an oil and gas glut with enough surplus that the industry is sending it overseas. Given that, "it's not clear that a lot of oil companies are interested in drilling in the refuge," Justin Stokes, director of legislative affairs at the National Audubon Society, says. Second, opening the refuge might not even raise the \$1 billion in revenues legislators project as part of this budget process.

"At the end of the day, not only is this a really special place—a lot of people call it the crown jewel of America's wildlife refuges—it's not even going to do what they claim that it would do, and that is produce a billion dollars of revenue to help them pay for tax reform," Stokes says. "The numbers just don't add up. It's important that people around the country continue to talk about how there are some places that are truly wild and should remain that way."