

Update Court Decisions regarding Adverse Modification of Critical Habitat

Desert Managers Group

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Court Decisions

Biological opinion for the desert tortoise regarding the California Desert Conservation Area Plan – Northern District Court of California

1. our regulatory definition of critical habitat is invalid
2. our biological opinion was vacated and remanded to the Service
3. the judge provided a new definition of adverse modification: "appreciably diminish the value of critical habitat for either the survival or recovery of listed species."

Gifford Pinchot Task Force – Ninth Circuit Court

1. our regulatory definition of critical habitat is invalid
2. the court sent the definition back to the lower court and us

Long Term Options for the Fish and Wildlife Service

1. Plea for relief in the CDCA case – allow the other parts of the biological opinion to stand
2. appeal to the Supreme Court in the Ninth Circuit case
3. change regulatory definition at 50 CFR 402.02

Our Immediate Response

1. for biological opinions in the desert – use judgment to follow interim guidance or Judge Illston's new definition
2. for all biological opinions except for the desert – follow interim guidance