



Endangered Species:

FWS scientists were ‘in the dark’ in withdrawing lizard listing --

Phil Taylor,
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Interior Department scientists knew too little about how landowners and energy companies in Texas planned to protect a small dune lizard before the agency decided to withdraw proposed federal protections for the reptile, according to a lawsuit filed today by environmental groups.

Defenders of Wildlife and the Center for Biological Diversity are challenging the Fish and Wildlife Service’s decision last summer to withdraw its proposal to list the dunes sagebrush lizard as endangered in west Texas and southeast New Mexico.

Their lawsuit in the U.S. District Court for the District of Columbia claims agency scientists were “in the dark” about how farmers, ranchers and energy companies planned to protect the 3-inch reptile’s shinnery oak dune habitat.

As Defenders argued in a report earlier this year, FWS was, and still is, unable to review the individual commitments landowners have made as part of the Texas Conservation Plan, which sought to protect the lizard from threats including oil wells, truck traffic and herbicide spraying (Greenwire, March 6).

The Texas plan, as well as a similar one in New Mexico, helped form the basis for FWS’s decision to withdraw its lizard listing proposal (E&ENews PM, June 13, 2012).

“Denying Endangered Species Act protection for a species that is clearly imperiled based on a wink and a nod from the state is downright negligent at best, since the service has no way of validating the quality or effectiveness of the agreements,” said Jason Rylander, senior attorney at Defenders.

Moreover, the groups criticized the Texas comptroller’s reliance on the Texas Habitat Conservation Foundation to run the state’s lizard conservation program. As The Texas Tribune reported in April, the foundation was initially run by three registered lobbyists for the Texas Oil and Gas Association.

“This really is an example of letting the fox guard the henhouse,” said Noah Greenwald, endangered species director at the Center for Biological Diversity.

Asked for a comment on the lawsuit, FWS issued a statement: “The U.S. Fish and Wildlife Service continues to believe that the Candidate Conservation Agreements with Assurances (CCAAs) for New Mexico and Texas are providing needed protections for the habitat of the Dunes Sagebrush Lizard. We believe partner-

ship and collaboration are the key to conserving species, like this, that exist largely on private lands.”

The lawsuit claims FWS’s decision not to list the lizard after determining in late 2010 that it faced “immediate and significant threats due to oil and gas activities and herbicide treatments” was arbitrary and should be set aside.

The lawsuit has shone a spotlight on the efficacy of CCAAs, which have increased in popularity as FWS pursues final listing decisions on hundreds of candidate species for ESA protections.

Landowners and energy companies that enroll in CCAAs commit to certain conservation steps in return for assurances that they will not face additional regulatory burdens if a species is eventually listed.

In issuing his decision on the dunes sagebrush lizard last summer, Fish and Wildlife Service Director Dan Ashe promised accountability from the scores of oil and gas companies, ranchers and other land users that signed voluntary conservation agreements.

“If they don’t live up to the agreements and we continue to lose the habitat for the dunes sagebrush lizard, then we can propose to list it,” Ashe said at the time. “We believe there’s clear and compelling evidence that these conservation agreements are going to be effective.”

The decision to withdraw the lizard listing was widely praised by lawmakers of both parties, local officials and the oil and gas industry, as well as the Environmental Defense Fund, which praised the administration’s proactive engagement with landowners.

The agency is pursuing additional CCAAs as it nears the finalization of a proposal to list the lesser prairie chicken -- another candidate species -- as threatened in five southern Great Plains states.