

# Statesman

## Nonprofit threatens to sue feds over Houston Toad recovery

By Brandon Mulder  
Nov 27, 2019

A national wildlife conservation group is threatening to file a lawsuit against the federal government after accusing it of violating the Endangered Species Act by failing to properly manage the Houston Toad's recovery.

On Monday, the Center for Biological Diversity filed a letter of intent to sue the U.S. Fish and Wildlife Service for not updating the endangered toad's 1984 recovery plan "despite new information learned about the toad and the failure of the plan to include recovery criteria," the letter says.

The Houston Toad was the first amphibian species added to the endangered species list nearly 50 years ago. The frog species has been known to exist only in the rural post-oak woodland savannahs around Harris County and Loblolly pine forests between Bastrop and Leon counties, according to the Texas Parks and Wildlife Department.

But not all of these counties continue to have detectable toad populations, said biologist Michael Forstner, a Texas State University professor and toad researcher. The latest toad survey taken in 2011 found populations in Burleson, Lavaca, Austin, Colorado and Bastrop counties, while populations in Lee and Milam counties declined to undetectable levels. Other toad habitats, such as those in Brazos, Fort Bend, Harris and Liberty counties, have lost toad populations altogether.

The Center for Biological Diversity is arguing that the U.S. Fish and Wildlife Service has not set objective benchmarks by which toad recovery can be measured for the species' conservation and survival. Such benchmarks were not included in the 1984 recovery plan — although that plan states that objective, measurable criteria is needed — and were not included in two subsequent reviews in 2011 and 2018.

"Although the 2011 review explains that the (U.S. Fish and Wildlife) Service was 'working with a recovery team to develop a new recovery strategy for the Houston toad and began drafting an updated recovery plan,' no such plan has been released to date," the center's letter said.

The U.S. Fish and Wildlife Service's failure to set legally required recovery benchmarks and its failure to update the recovery plan with new discoveries made about the species violates provisions of the Endangered Species Act, the conservation group argues.

The group said a lawsuit would be filed at least 60 days from the letter of intent, said attorney Jenny Loda with the Center for Biological Diversity.

"If we heard some positive news from USFWS in response to the letter there is a chance we may not to file the lawsuit," she said. "This may happen if, for example, they are close to completing a revised recovery plan and agree to a very near term timeline for finalizing it."

Forstner, whose research was heavily cited in the group's letter, said that it's not unusual for recovery plans to be out of date and lacking recent scientific discoveries. But while lawsuits such as these usefully highlight deficiencies in endangered species conservation, it fails to recognize the gains conservationists and biologists have made since the 2011 Complex Fire, which devastated Houston Toad habitat in Bastrop County.

"In some ways, making a big deal about there not being a recovery plan is a tempest in a teapot, because the Fish and Wildlife (Service) has sponsored ... critical personnel arranging what I consider to be a remarkable bit of success in recovery," Forstner said, emphasizing the success of conservation partnerships between the wildlife service and Texas zoos, Texas State University, the Texas Parks and Wildlife Department, and private landowners.

"I'm never against someone pointing out we could do things better, but failing to appreciate the dramatic changes in Houston Toad conservation efforts within critical habitat — I would argue it represents an illustrative program to be mimicked by others in how well it's succeeding today," Forstner said.

Today, an estimated 3,000 Houston Toads remain, he said. The most active site of toad conservation work has been in and around Bastrop County, where toad populations reached an alarmingly low count after the 2011 Complex Fire and the preceding drought. The burned down loblolly pine forests became dominated by yaupon trees, which negatively impacts vegetative diversity and, thus, the bugs that compose the toad's diet. In 2011, researchers detected only three toads.

"Managing adult toads is all about managing bugs," Forstner said. "If you have an enormous amount of yaupon that dominates the understory (of the forest), there's no flowers, there's no grasses. With no herbaceous diversity, there's not arthropod diversity (like beetles, spiders and crickets) with no arthropod diversity you don't get healthy toads."

Forstner, who does field work about 200 days of the year, often in Bastrop County, works with several groups protecting toad breeding. They place screen boxes around toad eggs to protect them from predators, or produce eggs in captivity and place them in breeding ponds during their January to mid-May breeding season.

In 2014, researchers discovered a toad population in Robertson County north of College Station, where they are now trying to duplicate recovery efforts that have benefited Bastrop County over the years.

"I thought this situation was not going to be recoverable when we discovered a large population in Robertson County," Forstner said. "What we're working on now is better awareness in Robertson County and other counties that surround Bastrop to make the same success that is happening in Bastrop happen in those other counties."