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Enviro Scolds Feds For Not Listing Fla. Lizard As Endangered

By Nathan Hale
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The Center for Biological Diversity on Monday launched a challenge against the federal government's finding that a species of lizard found only on a few islands in the Florida Keys does not warrant protection under the Endangered Species Act, despite evidence that rising seas and real estate development are threatening the animal's limited habitat.

In a 32-page complaint filed in the Southern District of Florida, the center claimed the U.S. Fish and Wildlife Service violated the ESA and the Administrative Procedure Act in reaching its determination that a listing of the Florida Keys mole skink as endangered or threatened is "not warranted."

"The Trump administration has systematically suppressed and ignored climate science showing devastating impacts on species like the Florida Keys mole skink," Elise Bennett, a center attorney who is dedicated to protecting rare reptiles and amphibians and is handling the case, told Law360.

"This lawsuit seeks to ensure that species protection decisions are based on science and not on politics."

The Florida Keys mole skink, a shiny brown lizard with dark and light stripes and a "brilliant reddish pink tail," used to be found all the way from Key Largo to the Dry Tortugas, the suit says. But recent sightings suggest there are now only six to 20 wild populations inhabiting about half that range, mostly on about six islands from Key West to Long Key, according to the complaint, which also names as a defendant U.S. Department of the Interior Secretary David Bernhardt in his official capacity.

The mole skinks live in a narrow strip of coastline about 20 to 31 inches above the mean-high water line, areas with loose, dry sand that the animals can "swim" through and lay their eggs on, according to the suit.

The complaint says that the FWS' own findings show that sea level rise will overtake half of the skinks' remaining habitat in the Keys by 2060, and three-quarters by the end of the century. Global climate change also will fuel stronger storms, adding to the habitat damage, the complaint said.

As the mole skinks are driven to higher ground, they are likely to experience “coastal squeeze,” with upland human development blocking their landward migration and reducing the amount of potential habitat. Development is also expected to add other stressors, such as increased beach use, pollution, and more people who might try to catch and collect skinks, the suit said.

The center said it petitioned the FWS to list the Florida Keys mole skink as threatened or endangered in April 2010. It said the agency had identified the species for possible listing in 1982 but failed to take action since then.

In September 2011, the FWS issued a 90-day finding in which it agreed that a listing for Florida Keys mole skinks might be warranted and thereafter began a status review.

However, in April 2016, the FWS’ Southeast Region adopted an objective of reaching a predetermined goal of delisting, downlisting or denying listing protections for 30 species by the end of fiscal year 2017, and included the Florida Keys mole skink toward that goal, along with almost a dozen other species for which protection was being sought, the suit said.

In October 2017, after reaching a legal settlement with the center for missing a deadline under the Endangered Species Act to make a decision on the listing, the FWS issued its 12-month finding for the Florida Keys mole skink, which concluded that listing is not warranted because it is not endangered or threatened throughout its range or in a significant portion of its range.

The center says the FWS admitted that it did not rely upon the most recent and accurate climate data and as a result failed to account for a 15% additional projected rise in sea levels. The agency also assumed, without providing a scientific basis or explanation, that the mole skinks would be able to adapt, including by rafting to dry land on floating debris, according to the complaint.

The government’s failure to use the best available scientific data is just one of several violations of the Endangered Species Act claimed in the suit. The center also says the FWS failed to consider all five listing factors set out in the law and failed to apply the law’s definitions of “endangered” and “threatened,” among other shortcomings.

The center also accuses the FWS of violating the Administrative Procedure Act through arbitrary and unlawful decision-making. It says the government failed to provide a rational explanation for its findings, noting that it concluded sea level rise is not currently impacting the Florida Keys mole skinks at the same time it found that sea level rise and climate change are affecting the species at all life stages and across all of its range.

“The service based its ‘not warranted’ determination on the fact that some skinks and some of their habitat still exist at present, and that some skinks may exist in the future,” the center said. “This determination is arbitrary, capricious, and contrary to the best available science informing the skink’s risk of extinction at present and in the foreseeable future.”

Representatives for the U.S. Department of the Interior, which oversees the FWS, did not immediately respond to a request for comment Monday.

The center is represented in-house by Elise Pautler Bennett, Jaclyn Lopez and Brian Segee.

Counsel information for the government was not immediately available.

The case is Center for Biological Diversity v. Bernhardt et al., case number 2:19-cv-14353, in the U.S. District Court for the Southern District of Florida.