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Enviros Say Feds Have No Plan For Saving Endangered Toad

By Jack Queen

Law360 (February 24, 2020, 7:47 PM EST)
-- The first toad ever added to the endangered species list is sliding toward extinction and the U.S. Fish and Wildlife Service has an inadequate and outdated recovery plan for the embattled Texas amphibian, environmentalists said in a lawsuit filed in D.C. federal court Monday.

It's been 36 years since the FWS updated its so-called recovery plan for the Houston toad and nearly a decade since the agency acknowledged the plan was incomplete and lacked up-to-date science on the critter, whose numbers have dwindled to fewer than 1,000, according to the complaint by the Center for Biological Diversity.

"Forty-nine years after the Houston toad's listing under the Endangered Species Act and thirty-five years after an incomplete 'Recovery Plan' document was published, the service has failed to produce a legally compliant recovery plan for the Houston toad, which is one of the most endangered amphibians in the United States," the group's complaint said.

The Houston toad, a secretive amphibian that burrows and hibernates during the winter, has been decimated by drought and development in the past half-century and is thought to have been wiped out of its namesake city and surrounding counties, according to the complaint. The toad was listed as an endangered species in 1970.

"Over years of federal inaction, the Houston toad has moved closer and closer to extinction," Center for Biological Diversity attorney Jenny Loda said in a statement Monday. "A new plan is desperately needed to put these precious animals back on track. The Fish and Wildlife Service must take all necessary actions to protect these toads, or we'll lose them forever."

FWS spokesman Brian Hires told Law360 in an email Monday that the agency completed a species status assessment for the Houston toad last month.

"The assessment is being used to develop the revised recovery plan and we anticipate publishing a revised draft recovery plan for public review and comment later this year," Hires wrote.

The environmental group's lawsuit says the FWS' 1984 plan for the Houston toad contains no recovery criteria, does not address the factors relevant to its inclusion on the endangered species list and is no longer based on the best available science.

In a five-year report on the Houston toad in 2011, the agency acknowledged the recovery plan "lacked basic components" of similar documents and needed to be updated with better science and measurable criteria for bringing the species back from the brink, according to the complaint.

The agency's next five-year report on the Houston toad ran a single page and concluded "the evaluation of threats affecting the species ... and analysis of the species in our 2011 5-year review remains an accurate reflection of the species current status," according to the complaint.

"The 2018 5-year review did not include any information regarding progress towards the development of a new recovery strategy or updated recovery plan," the complaint said.

The lawsuit asks the court to declare the FWS violated the Endangered Species Act by failing to issue an updated recovery plan, and seeks an order compelling the agency to do so.

The Center for Biological Diversity did not immediately respond to a request for further comment Monday.

The Center for Biological Diversity is represented in-house by Jennifer L. Loda and Ryan A. Shannon.

Counsel information for the U.S. Fish and Wildlife Service was not immediately available Monday.

The case is Center for Biological Diversity v. David Bernhardt, Secretary of the Interior et al., case number 1:20-cv-00529 in U.S. District Court for the District of Columbia.

--Editing by Abbie Sarfo.