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Group Says Feds Delaying Protection For Hawaiian Bird

By [Brett Barrouquere](#)

Law360 (March 4, 2021, 5:09 PM EST) -- The [Center for Biological Diversity](#) is asking a federal judge in Hawaii to force the U.S. [Fish and Wildlife Service](#) to protect the habitat of a native bird on the verge of extinction.

In a lawsuit filed Wednesday, the environmentalist nonprofit said Fish and Wildlife officials have failed to comply with the Endangered Species Act by not yet designating a critical habitat for the 'i'iwi, a bird native to the islands that the agency designated as "threatened" three years ago.

The 'i'iwi's population is declining amid threats from viruses and climate change, the center said, and the bird may not survive without steps taken to protect its habitat.

"Without the protections provided by critical habitat and a valid recovery plan, 'i'iwi will continue down a heartbreaking path towards extinction," Maxx Phillips, the Center's Hawaii director and staff attorney said in a statement.

The center is asking a judge to order the Fish and Wildlife Service to propose and finalize rules governing the preservation and management of habitat needed by the 'i'iwi on a fixed timeline and set out a recovery plan for the bird, also known as the scarlet honeycreeper.

The center also wants the judge to declare that the service violated the Endangered Species Act by not developing a plan to preserve the bird's habitat.

When a species is listed as "endangered" or "threatened" under the Endangered Species Act, a host of legal protections and requirements kick in. Under the law, the Fish and Wildlife Service is required to protect the habitat of the listed species to give the designated creature's numbers a chance to grow.

The lengthy delay in putting forward a habitat plan for the 'i'iwi means Fish and Wildlife officials are violating their own policy mandating the development of a recovery plan for listed species within two and a half years of the species being designated "endangered" or "threatened," the center said.

By failing to provide a critical habitat for the 'i'iwi after it's designation as "threatened" on Sept. 20, 2017, the Fish and Wildlife Service is leaving the bird's population vulnerable to further erosion from diseases as well as climate change, according to the complaint.

"The service's failure is inexcusable as it has recognized that 'i'iwi face population declines of 70 to 90% over the next 80 years if actions are not taken to minimize the threats of disease and habitat loss," Phillips said.

Christina Meister, a spokeswoman for the Fish and Wildlife Service, declined to comment Thursday.

The Center for Biological Diversity is represented by its own attorneys, Maxx Phillips and Amy R. Atwood.

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

The case is Center for Biological Diversity v. Scott De La Vega and the U.S. Fish and Wildlife Service, case number [1:21-cv-00122](#), in the U.S. District Court for Hawaii.