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**EPA**

## **Lawsuit: Ozone rule fails to consider endangered species**

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Whooping cranes are among the world's most endangered birds. Steve Gifford/Fish and Wildlife Service

EPA's decision to leave a key ground-level ozone standard unchanged was flawed due to a failure to consider the impact on imperiled plant and animal species, a conservation group lawyer said today in announcing a legal challenge.

"It really should come as no surprise that the science shows plants and animals, especially those on the brink of extinction, need clean air," Robert Ukeiley, a senior attorney at the Center for

Biological Diversity, said in a news release on the [lawsuit](#), filed with the U.S. Court of Appeals for the District of Columbia Circuit.

Although the suit does not detail the grounds, the center had previously argued that the Endangered Species Act required EPA to consult with federal wildlife agencies before opting to keep the status quo for soot standards ([Greenwire](#), Feb. 9).

Ozone, a lung irritant that is the main ingredient in smog, can be harmful to whooping cranes and other endangered bird species, the group said in the release. It can also damage plants that they rely on, according to the release.

In the final rule issued at the end of December, the agency left both its primary and secondary ozone standards at the threshold of 70 parts per billion set in 2015. Under the Clean Air Act, the primary limit is intended to protect public health, while the secondary "public welfare" standard is meant to protect animals, crops, trees and other vegetation.

While the D.C. Circuit had upheld the primary standard in a 2019 ruling, the three-judge panel said that EPA needed to either tighten the secondary standard or better explain the rationale for adopting the 70-ppb limit. Much of the December rule is devoted to defending that decision.

The Biden administration has already signaled plans to review the rule; at least two other suits brought by states and other advocacy groups are pending with the D.C. Circuit.

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