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Sens. Cruz, Cornyn Send Letter Confronting The Biden Administration’s Weaponization of the Endangered Species Act in Texas

Oct 25, 2023



WASHINGTON, D.C. – U.S. Sens. Ted Cruz (R-Texas) and John Cornyn (R-Texas) sent a letter to the U.S. Department of the Interior’s Fish and Wildlife Service to express their strong concerns with the agency’s recently proposed rule that lists the toothless and widemouth blindcats, two underground species of blind, translucent catfish, as endangered under the Endangered Species Act of 1973 (ESA). The rule directly impacts the Edwards Aquifer in Bexar County, Texas, where these two catfish species reside, which provides over 1.7 million Texans with drinking water. The Biden administration has

prioritized the well-being of blind catfish over the needs of people in San Antonio and south-central Texas for clean drinking water. If the Department of the Interior deems a species endangered, then it grants unelected federal bureaucrats power over Texans’ land even though scientists have never directly observed either species in their natural subterranean habitat.

Upon sending the letter, Sen. Cruz said, *“This administration has weaponized its political agenda by sending bureaucrats on scouting missions to find obscure species that are not on the endangered species list. Their goal is to regulate private lands and strip landowners of their ability to control their own property. Now, they have proposed an ESA rule that protects two species of fish while threatening the drinking water supply of 1.7 million people living in San Antonio. This rule would shut down two major pumps that feed and refill the primary underground water storage facility. The lack of fundamental research to support this unfounded regulation is astonishing. The Biden administration should stop imposing oppressive regulations that elevate two obscure*

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species of catfish over the needs of millions of working families.”

President and CEO of San Antonio Water System Robert R. Puente said, “The proposed listing of two blindcat fish species lacks appropriate science and fundamentally misunderstands how groundwater pumping works in San Antonio. The listing may put at jeopardy well-established and nationally-recognized programs that currently protect the aquifer and which have been agreed on by stakeholders across the Edwards Aquifer region.”

Read the full letter [here](#) and below:

Dear Secretary Haaland and Director Williams,

We write to express our strong concerns with the recent Fish and Wildlife Service (“FWS”) rule (88 FR 57046) proposing the listing of the toothless and widemouth blindcats, two cavefish species found in the Edwards Aquifer, as endangered under the Endangered Species Act of 1973 (P.L. 93–205).

The FWS explicitly states that neither species of blindcat has “ever been directly observed in its natural subterranean habitat, but [that the FWS can] infer the species’ needs from their location and from the life-history of other cavefish species.” Astonishingly, your agency also claims that “longevity and reproduction of the toothless blindcat and widemouth blindcat is not known but can be inferred from other cavefish species.” We find it deeply concerning that your agency is attempting to list these two species without any recorded observation of them in their natural habitat. The excessive use of assumptions and extrapolations from other species only further highlights that the proposed listing was made without the best science and commercial information available.

The Edwards Aquifer in central Texas, which covers over 4,300 mi², is a crucial source of water for several agricultural, municipal, and industrial actors. It is also the primary source of drinking water for over 1.7 million Texans. Your agency’s proposed rule claims that these species of blindcat have “adapted to and require groundwater of a certain quality from the Edwards Aquifer that is relatively free of anthropogenic contaminants.” The Safe Drinking Water Act (“SDWA”) of 1974 (P.L. 93–523) established federal regulations, necessary steps, and protections for the quality of drinking water in the United States, including from underground sources such as the Edwards Aquifer. The State of Texas began implementing federal standards for this aquifer after the passage of the SDWA and ongoing water quality testing has been occurring routinely for decades. Unfortunately, we fear that your agency and department has not considered the environmental steps that the Edwards Aquifer Authority, which oversees the aquifer, has taken to remain in strict compliance with federal and state law.

Additionally, this proposed rule is largely based off documentation that the toothless blindcat was found expelled from eight wells across Texas and the widemouth blindcat from five wells, with overlapping expulsions at two wells in the state. Looking at the wells in question, fewer than 100 specimens have been found discharged over the last 100 years. Most of the wells are no longer in production, and ceased production so long ago that their exact location and depth is unknown. Further, most of the information cited by FWS was available in 1998 when the FWS determined that there wasn’t enough information available to warrant listing these two species. We find it concerning that FWS has failed to meet the standard of data available, especially for an aquifer larger than the state of Rhode Island, to justify the listing of these two species as endangered.

This proposed rule falls far short at justifying protections for the toothless blindcat and widemouth blindcat under the Endangered Species Act. We urge you to immediately withdraw this proposed rule, and ask that FWS respond to the following questions by November 13, 2023.

- What effort, if any, was made to obtain data on these two species from the area the proposed rule seeks to regulate, Bexar County? None of the data cited in the proposed rule came from the area subject to additional regulation under the proposed rule.
- How does FWS justify listing both species as endangered rather than vulnerable?
- The Edwards Aquifer is unique in that a regulatory entity exists, dedicated to the protection of the aquifer. Please detail the outreach FWS has conducted with the Edwards Aquifer Authority on the matter of the

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Please detail the outreach FWS has conducted with the Edwards Aquifer Authority on the matter of the toothless blindcat and widemouth blindcat in general, and this listing in particular, since 2015.

- Has FWS evaluated the impact of potential mitigations on the 13 other listed species in the Comal and San Marcos Springs, if the toothless and widemouth blindcats are listed as endangered? If so, please describe how the impact of potential mitigations will not negatively impact the 13 other listed species in the Comal and San Marcos Springs.
- Since 2013, stakeholders in the San Antonio region have had an agreement in place known as the Edwards Aquifer Habitat Conservation Plan (EAHCP) which represents an agreement among many disparate equities in the region to protect the 13 species already listed under the ESA. Please detail the outreach FWS has conducted with the signatories of the EAHCP in general, and this listing in particular, since 2015.

We look forward to your prompt response.

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