

United States Senate

October 23, 2023

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

The Honorable Martha Williams
Director
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

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.”¹ 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.”² 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.”³ 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.

¹ “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Toothless Blindcat and Widemouth Blindcat.” The Federal Register, August 22, 2023.

<https://www.federalregister.gov/documents/2023/08/22/2023-17667/endangered-and-threatened-wildlife-and-plants-endangered-species-status-for-toothless-blindcat-and>.

² Id.

³ Id.

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 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.

Sincerely,



Ted Cruz
United States Senator



John Cornyn
United States Senator