

Endangered Species Act/U.S. Fish and Wildlife Service Final Rules: Coalition of 18 State Attorney Generals File Judicial Challenge



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

10/02/2020

A coalition of 18 state Attorney Generals filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) on September 25th in the United States District Court for the Northern District of California challenging three separate final rules that had been promulgated by the U.S. Fish & Wildlife Service and the National Marine Fishery Service, collectively (“Services”), related to the federal Endangered Species Act (“ESA”).

The Complaint was filed by Attorney Generals from the following states:

- California
- Maryland
- Connecticut
- Massachusetts
- Colorado
- Illinois
- Michigan
- New Jersey
- New York
- Nevada
- New Mexico
- North Carolina
- Oregon
- Rhode Island
- Washington
- Pennsylvania
- Vermont
- District of Columbia

The rules promulgated by the Services addressed in the Complaint include:

- Revision of the Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45,020 (Aug. 27, 2019)
- Revision of the Regulations for Interagency Cooperation, 84 Fed. Reg. 44,976 (Aug. 27, 2019)

- Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants, 84 Fed. Reg. 44,753 (Aug. 27, 2019)

The coalition argues that the three rules:

- Violate the plain language and purpose of the ESA
- Violate the ESA's legislative history
- Violate numerous binding judicial precedent interpreting the ESA
- Violate its precautionary approach to protecting imperiled species and critical habitat
- Lack any reasoned basis and are otherwise arbitrary and capricious under the Administrative Procedure Act
- Failed to consider and disclose the significant environmental impacts of the action in violation of the National Environmental Policy Act

The coalition also argues that the rules:

- Inject economic considerations into the Endangered Species Act's science-driven, species focused analyses;
- Restrict the circumstances under which species can be listed as threatened;
- Expand the Act's narrow exemptions for designating critical habitats and limit the circumstances under which a habitat would be designated, especially where climate changes poses a threat;
- Reduce consultation and analyses required before federal agency action;
- Radically depart from the longstanding, conservation-based agency policy and practice of providing the same level of protection to threatened species afforded to endangered species, which is necessary to prevent a species from becoming endangered;
- Push the responsibility for protecting imperiled species and habitats onto the state, detracting from the states' efforts to carry out their own programs and imposing significant costs; and
- Exclude analysis of and public input on the rules' significant environmental impacts.

A copy of the Complaint can be found [here](#).