

# Central Texas Mussels/Endangered Species Act: Texas Attorney General Challenges U.S. Fish and Wildlife Service Listings



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The Texas Attorney General (“AG”) on behalf of the State of Texas filed a Complaint and Petition for Review (“Complaint”) in the United States District Court for the Northern District of Texas against the United States Fish and Wildlife Service (“Service”) challenging the legality of a final administrative rule promulgated pursuant to Endangered Species Act (“ESA”). See Civil Action No. 6:240-cv-81.

The Complaint challenges a rule promulgated by the Service entitled:

*Endangered and Threatened Wildlife and Plants; Endangered Species Status With Critical Habitat for Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, Balcones Spike, and False Spike, and Threatened Species Status With Section 4(d) Rule and Critical Habitat for Texas Fawnsfoot (“Final Rule”).*

See 89 Fed. Reg. 48,034 (June 4, 2024).

The referenced species are collectively referenced in the Complaint as “Central Texas Mussels”.

The Final Rule lists the Central Texas Mussels as threatened or endangered and promulgates a Section 4(d) regulation to protect the threatened species and establishes a critical habitat for all seven species.

The AG alleges that the Service made errors in its promulgation of the final listing determination.

The alleged errors are stated to have violated the ESA and the Service’s policies by:

- Failing to recognize and give consideration owed to Texas’s comprehensive statutory, regulatory, and programmatic conservation efforts to protect the Central Texas Mussels.
- Failed to provide sufficient specificity in describing what may or may not result in a take of the Central Texas Mussels.
- The determination was procedurally deficient because it was published nearly three years after the proposed rule which is alleged to be in excess of the one-year publication deadline established by the ESA.

The Complaint also alleges that the Section 4(d) regulation is vague and makes it “nearly impossible for the public to understand what the Rule prohibits”. In addition, the AG alleges the Service refused to conduct an environmental analysis or provide an environmental impact statement as required by the National Environmental Policy Act.

The critical habitat designation for the Central Texas Mussel is also alleged to be deficient because of a:

- Failure to make the designation on the basis of the best available scientific data.
- Failure to consider the full economic impacts that such a designation will impose.
- Publication of the critical habitat designation in an untimely manner.
- Publishing without providing notice and opportunity to comment on the applicability of the Service's revised definition of habitat.

The AG requests that the Court declare the Final Rule unlawful because it violates the ESA, Administrative Procedure Act, and National Environmental Policy Act. It further requests that the Final Rule be vacated.

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