

October 8, 2020

ATTORNEY GENERAL RAOUL OPPOSES PROPOSAL DESIGNED TO EXCLUDE CRITICAL HABITAT FROM ENDANGERED SPECIES ACT PROTECTIONS

Chicago — Attorney General Kwame Raoul today joined a coalition of 16 attorneys general and the City of New York in filing a comment letter opposing the U.S. Fish and Wildlife Service’s (FWS) proposal to establish a new, unlawful process for excluding areas from critical habitat designations under the federal Endangered Species Act. If finalized, the proposal is likely to drastically reduce the areas protected as critical habitat, further endangering the conservation of our nation’s most imperiled species.

In the comment letter, Raoul and the coalition argue that the FWS’s proposal is contrary to the plain language of the Endangered Species Act and arbitrarily limits its ability to protect endangered or threatened species as required by the Act.

“For years, the ESA has protected thousands of threatened and endangered species,” Raoul said. “With this proposal, the federal government is once again turning its back on science and putting these species and their habitat at risk. I am committed to continuing to fight attempts to ignore or roll back existing environmental protections.”

Enacted under the Nixon Administration in 1973, the Endangered Species Act is intended to halt and reverse the trend toward species extinction. Under Section 4(b)(2) of the Endangered Species Act, the FWS is required to designate critical habitat for listed species based on “the best scientific data available” and after considering economic, national security, and other relevant impacts. Areas designated as critical habitat are provided with significant protections to ensure that species have the ability to recover to sustainable population levels so that they no longer need to be listed. The FWS may exclude areas of critical habitat if the agency determines that the benefits of exclusion outweigh the benefits of designation.

On September 8, 2020, the FWS published a proposed rule that would establish a new process for excluding areas of critical habitat. If finalized, the FWS would be required to consider excluding areas from a critical habitat designation when a “proponent of excluding a particular area” presents “credible information” supporting exclusion. In conducting such an analysis, the FWS would have to defer to outside experts and sources regarding nonbiological impacts that are outside the scope of the FWS’s expertise. If the FWS determines that the benefits of excluding a particular area outweigh the benefits of specifying that area as a critical habitat, it must exclude that area, unless it will result in the extinction of a species. This would be likely to drastically reduce the amount of critical habitat designated and protected under the Endangered Species Act.

In the comment letter, Raoul and the coalition argue that the FWS’s proposal is unlawful and should be abandoned because:

- The proposal is contrary to the plain language and overarching conservation purposes of the Endangered Species Act.
- The proposal is arbitrary and capricious under the Administrative Procedure Act because the FWS fails to provide any reasoned explanation for the proposal.
- The FWS incorrectly suggests that the proposal is subject to a categorical exclusion under the National Environmental Policy Act, or that it may complete review at a later date, despite its major substantive changes that are likely to cause significant environmental effects on imperiled species and their habitat.

Joining Raoul in the comments are the attorneys general of California, Connecticut, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin, as well as the City of New York in filing the comment letter.