

INTERIOR

D.C. Circuit: Greens don't have grounds to file ESA suit

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The E. Barrett Prettyman U.S. Courthouse houses the U.S. Court of Appeals for the District of Columbia Circuit. Francis Chung/E&E News

An environmental group lacks sufficient grounds to challenge the Fish and Wildlife Service's process for assessing vulnerable species, a federal appeals court ruled today.

In an unsigned, unpublished [decision](#) this morning, the U.S. Court of Appeals for the District of Columbia Circuit said the Center for Biological Diversity could not show how it was harmed by a lack of information related to the agency's framework for deciding whether to list plants and animals as endangered or threatened.

The court rejected the group's arguments that it suffered informational injury after FWS failed to provide notice and comment on its framework for "species status assessments" (SSAs) and that it sustained a distinct organizational injury.

"Regardless of how the alleged harm is characterized, the Center has not suffered an injury in fact sufficient to establish standing," the D.C. Circuit wrote.

The case was before Chief Judge Sri Srinivasan, along with Judges David Tatel and Neomi Rao. Srinivasan is an Obama appointee, Tatel is a Clinton pick and Rao was appointed by President Trump.

During oral argument, the judges appeared skeptical of the center's standing, which refers to a group's authority to bring a lawsuit in federal court ([E&E News PM](#), Jan. 11).

"While we're disappointed, we're not completely surprised based on the argument and the questions we received from the panel," said Amy Atwood, a senior attorney for the center, in a phone interview following the D.C. Circuit's ruling.

She said the center will continue to look for opportunities to challenge the FWS assessments, which require the agency to look to the best available science when determining whether to list a species.

FWS began writing guidelines for SSAs in 2012 and completed its framework in 2016 without public notice and comment. In 2017, the Trump administration added the "expectation" that assessments should involve at least one representative from each state.

Atwood said the assessments often serve to delay endangered species listing decisions, defeating the ESA's intended goal of protecting species before it's too late.

She said one window for a challenge to the FWS process might be litigation over a Nevada lithium mine's impact on Tiehm's buckwheat, a wildflower that exists on just 10 acres of land in the Silver State.

The center has secured a court-ordered 30-day turnaround on its petition for FWS to list the wildflower, over the objections of the agency, which said it needed additional time to prepare an SSA, Atwood said.

"We see SSAs coming up over and over again in lots of different contexts involving different species," Atwood said. "While it's difficult to generalize, on the whole we can say that SSAs don't really serve anything except more delay, and delay unfortunately has become the hallmark of the Fish and Wildlife Service."

The Interior Department, which houses FWS, declined to comment on the D.C. Circuit ruling.

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