

Protected Species and Implementation of the Endangered Species Act (ESA)

ESA issues have the potential to significantly impact water infrastructure project development, wastewater operations, and the availability of water supplies serving municipal, industrial, and agricultural water users across Texas. This includes the recent proposal by the U.S. Fish and Wildlife Service (Service) to list several aquatic species in Texas as threatened or endangered. The proposal delineates almost 2,000 river miles as critical habitat, including areas important to water supply interests. The TWCA membership understands and supports the need to protect biodiversity. However, there are several issues that concern our members, as discussed below.

The species' need for protection should be driven by best available science. Litigation over petitions to list species has created an incentive to err on the side of listing before a thorough evaluation of available, credible science can be conducted. Petitioning numerous species, many of which are poorly understood, has become a strategy that may increase the probability of a positive listing determination based more on the lack of information about a species rather than available, credible science. An absence of credible science regarding a species' habitat or behavior and general uncertainty about climate change impacts should not be relied upon to determine whether species need protection. Rather, the lack of credible science should be acknowledged and corrected through deliberate, peer-reviewed studies before a listing determination is made.

Concern over regional impacts of climate change, absent specific peer-reviewed scientific studies, should not be used in threat assessments to tip the scales on listing decisions. In species listing evaluations, the impacts of climate change are recognized as a specific, individual threat and a universal threat multiplier, even when there are no credible regional studies to support the conclusions drawn by the Service. Assumptions about future, local climate conditions that are not based on credible regional studies are inherently speculative, yet they are relied upon to justify a listing. The Service should provide clear guidance on the use of climate data in threat assessments and listing decisions, to include data sufficiency standards.

There should be greater diligence on the part of the Service to perform required five-year status reviews. The Service is required to maintain a list of protected species and to review the status of those species every five years. The result of these reviews can be everything from a delisting or reclassified listing to no change. These reviews should focus on the best available science regarding the need for continued or increased protection rather than an evaluation of recovery planning objectives, which should be correctly seen as a means to an end and not the end itself.

Requests of Congress:

Continued oversight of the Services' implementation of the ESA to:

- Ensure listing decisions are based on sound science.
- Support efforts to expand the scientific understanding of species so that listing *and* delisting decisions can be made in a timely and defensible manner.
- Make sure the Service is conducting five-year assessments as required.



Alligator Snapping Turtle
(*Macrochelys temminckii*)