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Extinct Species/Endangered Species Act: U.S. Fish and Wildlife Service Proposed Removal of 23 Species (Including Ivory-Billed Woodpecker)

10/04/2021

The United States Fish and Wildlife Service ("Service") published a proposed rule in the September 30th Federal Register proposing to remove 23 species from the Endangered Species Act ("ESA") federal Lists of Endangered and Threatened Wildlife and Plants ("Lists"). See 86 Fed. Reg. 54298.

The removal of these species from the Lists is the Service's determination that they are extinct.

Two of the species encompassed by the proposal ranges formerly included the State of Arkansas. They include:

- Ivory-billed woodpecker
- Bachman's warbler

Pursuant to the ESA, codified at 16 U.S.C. § 1531 et seq., the Service maintains lists of endangered and threatened wildlife and plants (i.e., the Lists).

The Service maintains the Lists in Title 50 of the Code of Federal Regulations.

Section 4c of the ESA also requires that the Service determine whether an endangered and threatened species should be listed based on the determination that it is either extinct or presumed extinct. Such a determination must be based on the best scientific and commercial data available.

The Service can make a determination to delist a species for the following reasons:

- On its own initiative
- As a result of a five-year review
- Because a petition has been submitted to delist due to extinction

In the case of a five-year review, the Service will consider all the information available at the time of the review. Such data typically includes:

- Specie's biology, including but not limited to population trends, distribution, abundance, demographics and genetics;
- Habitat conditions, including but not limited to amount, distribution, and suitability
- Conservation measures that have been implemented that benefit the species
- Threat and trends in relation to the five listing factors (as defined in Section 4(a)(1) of the ESA); and

- Other new information, data, or corrections, including but not limited to taxonomic and nomenclature changes, identification of erroneous information contained in the Lists, and improved analytical methods

The Service notes that the ivory-billed woodpecker was listed as endangered throughout its range in 1967 under the Endangered Species Act of 1966. A series of status reviews were completed to determine if the species had become extinct and proposed for delisting. Also referenced is a five-year review conducted in 2018 and information it was provided during the public comment period.

In terms of sightings, the Service notes in part:

. . . The last commonly agreed-upon sighting of the species was on the Singer Tract in the Tensas River region of northeast Louisiana in April of 1944. . .

Since this sighting, the most compelling evidence of the existence of the ivory-billed woodpecker was in 2004 in Arkansas. From 2004 to 2005, within the same area of the Bayou DeView located in the Cache River National Wildlife Refuge in Arkansas, observers reported sightings, audio recordings, and a video interpreted to an ivory-billed woodpecker.

The Service describes search efforts since the 2004 encounter and notes:

. . . after completing analysis of detection probabilities associated with all of the methods, researchers noted few, if any, ivory-billed woodpeckers could have remained undetected in the Big Woods of Arkansas during the period from 2005 to 2009.

Based on that analysis, the Service concluded that the best available scientific and commercial information indicates that the ivory-billed woodpecker is extinct.

The Bachman's warbler is stated to have been listed in 1967 as endangered. Two five-year reviews have been completed for the species in 2007 and 2014. The five-year reviews recommended that if the species was not detected within the following five years it should be listed as extinct. Information regarding surveys, detectability of the species and other information is provided by the Service. It similarly concludes that the best available scientific and commercial information indicates the species is extinct.

A copy of the Federal Register Notice can be downloaded [here](#).