

KEY ISSUE: Endangered Species Impact to Water Infrastructure Projects

TWCA is tracking two primary Endangered Species Act (ESA) developments that have the potential to significantly impact water infrastructure project development, wastewater operations, and the availability of water rights serving municipal, industrial, and agricultural water users across Texas. These include: (1) the U.S. Fish & Wildlife Service (USFWS) consideration of multiple freshwater mussels species found in rivers across Central and East Texas; and (2) the implementation of recent regulatory reforms by USFWS to help streamline ESA implementation.

Knowledge gaps in the species listing process.

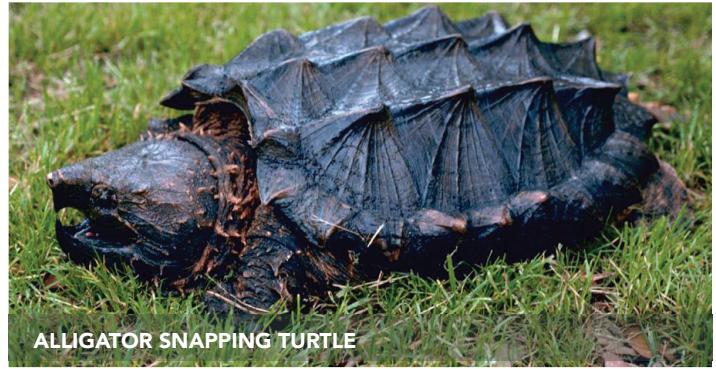
USFWS anticipates making decisions on whether to list a number of Texas freshwater mussel species in late 2020 or early 2021. A listing of any of these species under the ESA could significantly impact water use in Texas. Freshwater mussels represent the first of many Texas species that may be listed by USFWS over the next several years, many of which could have the same potential impacts on water use.

Impacts of Listing Central and East Texas Freshwater Mussels

TWCA is concerned that listing any of these species could negatively affect:

- the use of existing water rights;
- ongoing water, wastewater and hydroelectric operations; and
- the construction of any new water projects necessary to meet the long-term water needs of the state's rapidly growing population.

Accordingly, how USFWS approaches its decision-making on mussels warrants special attention. While the Texas Comptroller's Office and several Texas river authorities have funded scientific research to better understand some of these species, there remain significant gaps in the basic understanding of their biology and ecological requirements. TWCA is concerned that these knowledge gaps could lead USFWS to make listing determinations based on speculation and untested assumptions rather than science. USFWS has expressed interest in negotiating voluntary conservation agreements with private and governmental entities that would benefit freshwater mussels, while also providing certainty



to participants that additional measures would not be required of them if and when mussels are listed.

Need for continued oversight of revised ESA regulations.

In 2019, USFWS revised its regulations to streamline ESA listing and permitting processes. This effort included revisions to the processes for listing and designation of critical habitat, requirements for the listing of threatened species, and the consultation process when federal permitting is required (as is often triggered for water infrastructure project development and operation). TWCA welcomes improvements to ESA implementation and wishes to assist in its on-the-ground success.

REQUESTS:

Ensure listing decisions are based on sound science.

Provide adequate opportunity to collaborate on species' protection through voluntary agreements. Ensure that enough time is allowed for negotiating and drafting voluntary agreements before listing decisions are finalized.

For any mussel species listed as threatened, allow ongoing operations and maintenance of water infrastructure projects in mussel habitat.

Continue congressional oversight of revised ESA implementation. Remain vigilant that recent regulatory reforms achieve stated goals and translate into actual efficiencies that benefit water users and communities in Texas, while continuing to protect endangered species.