



CONSERVATION IN THE NEWS

West Texas Sand Rush Exposes Faults in State's Lizard Protection Plan

Eric Dexheimer

Highlights

- State officials responsible for species protection concede new sand-mining operations caught them by surprise.
- The scope of the sand industry's plans for the Permian Basin is still unknown.
- By exposing weaknesses in Texas' plan to protect rare lizard, sand mining could revive legal challenges.

A sudden influx of mining companies scraping the West Texas oil patch for sand to use in fracking operations has disrupted nearly as much highly sensitive habitat of a rare lizard in the last three months as the oil and gas industry had in the previous five years, according to state officials and a conservation group that monitors the area.

The development, they say, exposes deep and potentially fatal flaws in the state's much-vaunted, private-public plan to protect the rare Dunes Sagebrush Lizard (*Sceloporus arenicolus*).

The Texas Conservation Plan was adopted in 2012 as a way to avoid the land-use restrictions that would apply if the U.S. Fish and Wildlife Service officially listed the small brown lizard as endangered. Pushed by then-Comptroller Susan Combs, an outspoken critic of such listings, the deal enlisted oil and gas companies to protect the species by paying to monitor and minimize damage to its Permian Basin habitat. Conservation groups, who challenged the plan in court as unenforceable because it was voluntary, ultimately lost their case.

The agreement was hailed as a victory that would protect the lizard while allowing Texas' powerful oil industry to operate with minimal restrictions. Yet the arrival of the sand companies has provided a stark illustration of the plan's limitations.

The Texas plan didn't anticipate the possibility of another large industry threatening the lizard's habitat. So the comptroller's office, which oversees the state's endangered species, was caught by surprise when the fracking sand companies started churning up sand earlier this summer. Even now, with the threat in view, the plan supplies state officials with no tools to compel the sand mining companies to join the effort to protect the lizard.

The comptroller "has no authority to stop the development of frac-sand operations," Robert Gulley, who oversees

endangered species issues for Comptroller Glenn Hegar, wrote in a letter last week to the U.S. Fish and Wildlife Service alerting the agency to the threat (the correspondence was first reported by the *Texas Tribune*).

The sand companies insist they intend to voluntarily operate as good citizens. "The plan as drafted really doesn't fit well with sand mining," said Bud Brigham, an Austin oilman whose Atlas Sand holdings lie almost entirely in tracts the state has designated highly sensitive lizard habitat. Still, he added, "We've worked extremely hard to be good stewards of the land."

Yet critics who warned the Texas Conservation Plan was insufficient to protect the lizard say the arrival of the sand mining industry has confirmed their fears. They note the state's current predicament stands in marked contrast to the authority federal regulators would have wielded had the species been officially listed as endangered.

Not only would the companies most likely have had to alert the Fish and Wildlife Service of their intention before they started operations, they "would have had to comply with conservation measures, instead of it being voluntary as it is now," said Ya-Wei Li, director of the Center for Conservation Innovation at the Defenders of Wildlife, one of the organizations that challenged the Texas plan in court.

"There's nothing really that can be done to stop the sand people," said Gary Mowad, who as former head of the U.S. Fish and Wildlife Service's Texas office resisted the state's initiative.

Fracking, lizard like same sand

Sand is a basic component of fracking, a mining technique that has allowed petroleum companies to extract more oil and

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The Dunes Sagebrush Lizard (*Sceloporus arenicolus*) is the subject of a much-vaunted Texas private-public conservation plan. Photograph by Mike Hill (U.S. Fish and Wildlife Service).

gas. Water is pumped into wells under high pressure, forcing open fissures in the rock. Sand blasted into the holes then keeps the cracks open, allowing for oil and gas to be pumped out.

As fracking operations have become more sophisticated, the amount of sand used in the process has skyrocketed. A recent investor presentation by Hi-Crush Partners LP, one of the first sand companies to open an operation in the Permian Basin, predicted industry demand would soar to 100 million tons annually by next year, a 54-percent increase from 2014.

Previously, most of the sand has been mined from Midwestern states and shipped to mining sites. But with the soaring demand, industry experts say the cost savings of acquiring sand closer to the oil and gas wells became too great to ignore.

Yet conservationists say that the sand mining in West Texas imperils the lizard's survival. The same sand that is best for fracking appears to be the type preferred by the lizard. A comptroller's map of the Permian Basin's known sand-mining operations shows a thin north-south arc of land near the New Mexico border nearly overlaying sensitive lizard habitat.

They add that the standard method of mining — digging 80-foot-deep pits to extract the sand — is unavoidably disruptive. Once completed, it cannot be easily repaired to restore the habitat.

Brigham, who through Atlas Sand controls 2,000 acres of land in the area and leases 4,000 more from the state's

General Land Office, dismissed such fears. "The concern about the impact of sand mining is very much exaggerated," he said.

He said that, despite his large holdings, the Atlas operation would disrupt fewer than 100 acres in the next three years, and reclaim nearly half of that. Brigham added that he has encouraged other local mining companies to adopt best practices, and that he is funding additional research on the lizard and its habitat. "The Dunes Sagebrush Lizard is a very poorly understood species," he said.

Operations remain unknown

The comptroller's office said it has identified 15 sand-mining companies that have started operations in the Permian Basin, primarily in Winkler County, and secured commitments from several to join the lizard-protection effort. Yet the process has exposed limitations of the Texas plan's ability to react to new threats.

Gulley said his office learned about the breadth of the mining boom in the heart of the lizard's most sensitive habitat only after reading about it in a newspaper article. Using satellite images of the area his office reviews quarterly, his staff last month noticed disturbances on the ground. Li said his organization's monitoring of the Permian Basin picked up on the activity, as well, with most of it starting in July.

The precise extent of the activity has been a challenge to pinpoint, however. While several of the companies are

publicly traded, and so report the outlines of their activity to investors, others are privately held.

Because it cannot intrude on the sand-mining companies' private property, the company hired through the Texas Conservation Plan to keep an eye on the lizard habitat has only been able to infer sand-mining activity by driving by the operations. "We just don't have access to the sites, so we don't have all the information we'd like to have," Gulley said.

In the case of Ohio-based Fairmount Santrol, whose operations lie in the lizard's most sensitive habitat, Gulley said he still didn't know how many acres the company controlled. State officials haven't yet been able to pinpoint where three of the companies intend to mine at all. And in one instance, Gulley conceded that he has been unable to even identify the sand-mining company's owners.

'There will be a reckoning'

Even once all the sand-mining companies are identified and their operations mapped, the state has limited authority to enlist their help in protecting the lizard.

Gulley said his office has so far communicated with nine of the companies, urging them to work with the comptroller to minimize damage to the lizard habitat. Two of those, Black Mountain and Vista Sand, agreed to change their mining to avoid sensitive land and to enroll land most likely to provide a home to the lizard in the state's conservation plan. Two other

companies said they won't mine on sensitive lizard habitat. High Roller LLC recently indicated a willingness to avoid areas most likely to have lizards, he said.

Yet such agreements are voluntary. And "as of now, nine of the remaining 11 companies apparently still plan to operate in (Dune Sagebrush Lizard) habitat or buffer including in very high likelihood of occurrence areas," Gulley wrote in his letter to the U.S. Fish and Wildlife Service. He said he was particularly concerned about the operations of Atlas, Hi-Crush, and Fairmount, whose holdings were almost entirely in tracts designated as highly likely to contain lizards.

Gulley said the Texas Oil and Gas Association and Permian Basin Petroleum Association, whose members comprise and continue to support the original Texas Conservation Plan, have urged the sand-mining companies to work with the state. The industry has an incentive to enlist the sand companies. If a threat to the lizard persists, federal regulators may still step in and list the lizard as endangered, potentially limiting petroleum extraction in the Permian Basin.

Despite the efforts, Gulley said he fully expects either the U.S. Fish and Wildlife Service will resume its efforts to list the lizard as endangered or conservation groups will rekindle their opposition in court — a possibility Li said the Defenders of Wildlife is already considering.

"Either the U.S. Fish and Wildlife Service or a federal judge will decide," Gulley said. "There will be a reckoning."