



Via Email, Facsimile, and Certified Mail, Return Receipt Requested

October 27, 2010

Mr. Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
kensalazar@ios.doi.gov
Fax: 202-208-6956

Rowan Gould, Acting Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
Rowan_Gould@fws.gov
Fax: 202-208-6965

RE: Sixty-day notice of violation of section 4(b)(3)(A, and B) of the Endangered Species Act, relating to late findings for four species

Dear Secretary Salazar and Acting Director Gould:

This letter serves as a 60-day notice from the Center for Biological Diversity and Noah Greenwald of their intent to sue you pursuant to the Endangered Species Act (“ESA”) for failing to make required findings on three petitions requesting listing of threatened and endangered species: (1) the Mexican gray wolf (*Canus lupus baileyi*); (2) the giant Palouse earthworm (*Driloleirus americanus*); (3) the Oklahoma grass pink orchid (*Calopogon oklahomensis*); and (4) the spring pygmy sunfish (*Elassoma alabamae*). 16 U.S.C. § 1533(b)(3)(A) and (B). This letter is being provided to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

In response to a petition to list a species as threatened or endangered, the ESA requires the Secretary, within 90 days, to determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (“90-day finding”), and within 12 months determine whether listing is warranted, not warranted, or warranted but precluded (“12-month finding”). 16 U.S.C. § 1533(b)(3)(A) and (B). These obligations have been delegated to the U.S. Fish and Wildlife Service (“FWS”) for terrestrial species.

A petition to list the Oklahoma grass pink orchid was received by FWS on May 28, 2008. A petition to list the Mexican gray wolf was filed on August 11, 2009. A petition to list the giant Palouse earthworm was filed on June 30, 2009. A petition to list the spring pygmy sunfish was filed on November 24, 2009. FWS has issued positive 90-day findings for the orchid, wolf, and earthworm, but has yet to issue required 12-month findings for these petitions. The agency has yet to issue a 90-day finding for the sunfish. Moreover, the petition to list the spring pygmy sunfish stated that the Secretary must use his authority under the ESA to promulgate an

emergency rule to list the sunfish, in order to prevent a significant risk to its well-being. 16 U.S.C. §§ 1533(b)(3)(C)(iii), 1533(b)(7). You have yet to act. Thus, you are in violation of the ESA and have abrogated your duty to ensure that protection of endangered species occurs in a timely manner and avoid further decline and increased risk of extinction, and to comply with your affirmative duty to prevent a significant risk to the well-being of the sunfish.

If you do not make the required findings for these species or contact us to develop a timeline for making these findings within the next 60 days, we intend to file suit. Please contact me if you have any questions or if you would like to discuss this matter. Thank you.

Sincerely,

A handwritten signature in black ink that reads "David Greenwald". The signature is written in a cursive style with a large, sweeping flourish at the end.

D. Noah Greenwald
Endangered Species Program Director
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
ngreenwald@biologicaldiversity.org