



Via Electronic and Certified Mail

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**RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act
Relating to a Petition to List the Cedar Key Mole Skink (*Plestiodon egrigius insularis*) as a
Threatened or Endangered Species**

Dear Sirs and Madam,

In accordance with Section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), the Center for Biological Diversity (Center) provides this 60-day notice of its intent to sue the U.S. Fish and Wildlife Service (Service) for violations of the ESA¹ in connection with the Service's failure to make a 12-month finding on the Cedar Key mole skink (*Plestiodon egrigius insularis*). Specifically the Service violated and continues to be in violation of Section 4 of the ESA, which requires the Service to make a final determination of whether a species warrants designation as endangered or threatened within 12 months of receiving a petition for listing.²

On July 11, 2012, the Service received a petition from the Center for Biological Diversity requesting that the Cedar Key mole skink be listed as threatened or endangered under the Endangered Species Act. On July 1, 2015, the Service issued a 90-day finding that there was substantial scientific or commercial information indicating listing may be warranted.³ To date, nearly 56 months later, the Service still has not issued a 12-month finding for the skink.

¹ 16 U.S.C. § 1531, *et seq.*; 50 C.F.R. § 402, *et seq.*

² 16 U.S.C. § 1533(b)(3)(B).

³ 80 Fed. Reg. 37,568, 37,569 (July 1, 2015).

When the Service receives a petition to list a species as endangered or threatened, ESA Section 4(b)(3) requires the Service to “make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted” within 90 days of receiving the petition.⁴ If the petition is found to present substantial information, the Service must “promptly commence a review of the status of the species”⁵ and “[w]ithin 12 months after receiving the petition” it must make a finding that listing is: 1) warranted; 2) not warranted; or 3) warranted but precluded by higher priority listing activities.⁶

Because the Service received the Center’s petition to list the Cedar Key mole skink on July 11, 2012, the Service’s 12-month finding was due on or before July 11, 2013. The Service has yet to publish a 12-month finding in the Federal Register, meaning the decision is nearly five years overdue. Furthermore, the Service’s failure to issue a 12-month finding on the Cedar Key mole skink undermines the agency’s own internal plan to manage delayed listing decisions for species urgently in need of protection. In 2016, the Service issued a seven-year National Listing Workplan intended to prioritize the needs of candidate species and petitioned species still under review.⁷ The Cedar Key mole skink received high priority under this workplan, with the Service indicating it would receive a 12-month finding on or before the end of fiscal year 2017 (September 30, 2017).

Consequently, the Service is in violation of Section 4 of the ESA and has abandoned its duty to ensure that endangered and threatened species are afforded protections in a timely manner, thereby avoiding further decline and increased risk of extinction.⁸ The Service will continue to be in violation of the law until it publishes a 12-month finding on the Cedar Key mole skink. If the Service does not make the required 12-month finding for the Cedar Key mole skink within the next sixty days, the Center intends to file suit in federal court. Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,



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⁴ 16 U.S.C. § 1533(b)(3)(A).

⁵ *Id.*

⁶ *Id.* § 1533(b)(3)(B).

⁷ U.S. Fish and Wildlife Service, National Listing Workplan: 7-Year Workplan (2016 Version) 2, *available at* <https://www.fws.gov/endangered/esa-library/pdf/Listing%207-Year%20Workplan%20Sept%202016.pdf> (last accessed Feb. 28, 2018).

⁸ *See* 16 U.S.C. § 1533(b)(3)(B).