



August 15, 2024

The Honorable Deb Haaland
Secretary of Interior
1849 C Street, N.W.
Washington, D.C. 20240
exsec_exsec@ios.doi.gov

Shannon Estenoz
Assistant Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
shannon_estenoz@ios.doi.gov

Martha Williams
Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington D.C. 20240
martha_williams@fws.gov

Larry Williams
State Supervisor
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, FL 32960
larry_williams@fws.gov

Re: Sixty-day Notice of Intent to Sue for Violations of Endangered Species Act Section 4, 16 U.S.C. § 1533(b)(6)(A); Failure to Publish Final Determinations on Regulations to List the Florida Keys Mole Skink as Threatened, to List the Rim Rock Crowned Snake and Key Ring-necked Snake as Endangered, and to designate critical habitat for all three species.

Dear Secretary Haaland, Assistant Secretary Estenoz, Director Williams, and State Supervisor Willams:

This letter serves as the Center for Biological Diversity's (Center) 60-day notice of intent to sue the U.S. Fish and Wildlife Service (Service) for violations of the Endangered Species Act (ESA).¹ Specifically, the Service has failed to timely publish final regulations to list and designate critical habitat for the Florida Keys mole skink (*Plestiodon egregius egregius*), Rim Rock crowned snake (*Tantilla oolitica*), and Key ring-necked snake (*Diadophis punctatus acricus*).

The primary threats to the existence of these three Florida endemic reptiles are the destruction and fragmentation of their south Florida habitats. The region's susceptibility to sea level rise, intensifying storms, increasing storm surges, and expanding sprawl development drive their

¹ 16 U.S.C. § 1540 (g)(2)(C).

unacceptable extinction risks. The Service's delay in publishing final rules leaves these reptiles vulnerable to these existential threats.

I. Statutory Timelines for Final Determinations on Proposed Rules

Within one year of publishing a proposed regulation determining a species is threatened or endangered, the ESA requires the Service to publish (1) a final regulation to implement the listing determination in the proposed regulation; (2) a notice that the one-year period is being extended up to six additional months due to scientific disagreement about available data; or (3) a notice that such regulation is being withdrawn.² Similarly, concurrent with final listing and within one year of publishing a proposed rule to designate critical habitat, the ESA requires the Service to publish either (1) a final rule designating critical habitat or (2) a notice that the one-year finalization period is being extended up to a maximum of one additional year because critical habitat is not then determinable.³ Under the ESA, these one-year requirements for final publishing are not discretionary.

II. The Service's Failure to Publish a Final Regulation Listing the Florida Keys Mole Skink as Threatened and Designating Critical Habitat Violates the ESA.

The Florida Keys mole skink is a rare, Florida endemic lizard, most identifiable by its bright pink tail and brown body.⁴ With very short limbs and a long torso, the skink is adapted to quietly live and dig underground.⁵ In the sandy shorelines of small islands in the Florida Keys, the Florida Keys mole skink digs through dry sand, making burrows for nesting and regulating its body temperature.⁶

Because the Florida Keys mole skink nests and regulates its body temperature underground, a significant threat to its continued survival is the loss and degradation of this dry, sandy habitat.⁷ The inundation risk of vital Florida Keys mole skink cavities increases with climate change-

² 16 U.S.C. § 1533 (b)(6)(A)(i).

³ 16 U.S.C. § 1533 (b)(6)(A)(ii); 16 U.S.C. § 1533 (b)(6)(C).

⁴ Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Florida Keys Mole Skink and Designation of Critical Habitat, 87 Fed. Reg. 58648, 58650 (Sept. 27, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 58653.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.

induced sea level rise and higher storm surges.⁸ Additionally, irresponsible sprawl development in the Keys squeezes small populations of the species into smaller areas of habitat and has resulted in smaller, more fragmented populations.⁹

In 2010, the Center petitioned the Service for ESA protection of the Florida Keys mole skink along with 403 other species, based on a rapid decline of the species' populations.¹⁰ In September of 2011, the Service published a 90-day finding that listing the Florida Keys mole skink as threatened or endangered under the ESA may be warranted.¹¹ However, the Service missed its statutory 12-month deadline to publish a final decision on the petition, and in February 2013, the Center was forced to send the Service a Notice of Intent to Sue for that violation of the ESA.¹² The ensuing lawsuit resulted in the Service stipulating to publish a 12-month finding on the petition to list the Florida Keys mole skink by September 30, 2017.¹³

In October 2017, the Service unlawfully denied ESA protection to the Florida Keys mole skink,¹⁴ despite finding that about 4-44% of the Florida Keys mole skink's remaining habitat would likely be inundated by 2060, in addition to degradation from saltwater intrusion and storm surges.¹⁵ The Center sued, and in 2020 a federal judge held that the Service arbitrarily and

⁸ *Id.*

⁹ *Id.*

¹⁰ Center for Biological Diversity, Petition to List 404 Aquatic, Riparian and Wetland Species from the Southeastern United States as Threatened or Endangered Under The Endangered Species Act (Apr. 20, 2010), https://www.biologicaldiversity.org/programs/biodiversity/1000_species/the_southeast_freshwater_extinction_crisis/pdfs/SEPetition.pdf.

¹¹ Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened with Critical Habitat, 76 Fed. Reg. 59836, 59836 (Sept. 27, 2011).

¹² Center for Biological Diversity, Sixty-day notice of violation of section 4(b)(3)(A and B) of the Endangered Species Act, relating to a late finding on a petition to list the MacGillivray's seaside sparrow (*Ammodramus maritimus macgillivrayi*) and the Florida Keys mole skink (*Eumeces egregius egregius*) as a threatened or endangered species (Feb. 20, 2013), https://www.biologicaldiversity.org/species/reptiles/pdfs/2013_02_20_MSS_and_FKMS_NOI.pdf.

¹³ Stipulated Settlement Agreement, *Ctr. for Biological Diversity v. Jewell*, No. 1:13-cv-00975 (D.D.C. Sep. 23, 2013).

¹⁴ Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions to List 25 Species as Endangered or Threatened Species, 82 Fed. Reg. 46618, 46618 (Oct. 05, 2017).

¹⁵ *Id.* at 46639.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.

unlawfully denied ESA protection to the Florida Keys mole skink and remanded the decision back to the agency.¹⁶

Two years later, on September 27, 2022, the Service published a proposal to list the Florida Keys mole skink as threatened and designate its critical habitat, finding that the species' habitat would be 72-88% inundated by 2060.¹⁷ This forecasted inundation was more than twice as much as the Service's prior prediction from 2017,¹⁸ underscoring the urgent need for ESA protection.

On November 28, 2022, the Service published a notice extending the 60-day public comment deadline for the proposed regulation from November 28, 2022 to January 13, 2023.¹⁹ However, the Service did not extend the one-year deadline to publish its final rule, nor does the Service have the authority to extend the one-year deadline by extending the public comment period.²⁰ Thus, under the ESA, the Service was required to publish either a final regulation implementing its 2022 proposed listing determination and critical habitat designation rule or a statutory extension notice by September 27, 2023.²¹ As of the date of this letter, the Service has not published a final listing determination or critical habitat designation.

III. The Service's Failure to Publish a Final Rule Listing the Rim Rock Crowned Snake and Key Ring-necked Snake as Endangered and Designating Critical Habitat Violates the ESA.

The Center petitioned the Service to list the Rim Rock crowned snake and the Key ring-necked snake (also known as the Key ringneck snake), two Florida endemic snakes, in 2012.²² The Rim

¹⁶ Order Granting Plaintiff's Motion for Summary Judgment, *Ctr. for Biological Diversity v. Haaland*, No. 2:19-cv-14343 (S.D. Fla. Sept. 9, 2020).

¹⁷ 87 Fed. Reg. 58648, 58658.

¹⁸ *Id.*

¹⁹ Endangered and Threatened Wildlife and Plants; Extending the Comment Periods for Four Proposed Rules, 87 Fed. Reg. 72958, 72958 (Nov. 28, 2022).

²⁰ See 16 U.S.C. § 1533 (b)(6)(A)-(C) (detailing the only means of extending the one-year listing and critical habitat determination finalization deadlines, limited to two scenarios: 1) when there is scientific disagreement concerning available data relevant to listing (six-month extension for final listing and 2) when critical habitat designation is prudent but not determinable at the time of final listing).

²¹ 16 U.S.C. § 1533 (b)(6)(A).

²² Center for Biological Diversity, Petition to List 53 Amphibians and Reptiles in the United States as Threatened or Endangered Species Under the Endangered Species Act (July 11, 2012), https://www.biologicaldiversity.org/campaigns/amphibian_conservation/pdfs/Mega_herp_petition_7-9-2012.pdf?_gl=1*5xs9my*_gcl_au*NTQ5NDYzMzI5LjE3MDY0ODYxNzQ.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.

Rock crowned snake (*Tantilla oolitica*) is a bright, pinkish-tan, six-to-nine-inch-long snake with a black head “cap.”²³ It is only found in southeastern Florida in the tropical hardwood hammocks and pine rocklands of the southern Atlantic Coast and Florida Keys.²⁴ Named after the Miami Rim Rock geological formation, this nonvenomous snake is often found underground or in the crevices or holes of rocks or other organic matter where it finds refuge.²⁵ Major threats to the continued existence of this species include flooding, storm surges, and isolation from other populations due to urban development in its habitat.²⁶

Like the Rim Rock crowned snake, the Key ring-necked snake (*Diadophis punctatus acricus*) is a small, nonvenomous, Florida endemic snake.²⁷ This species has a pale gray head and black dorsal coloring with bright yellow, orange, or red abdomen underneath the tail.²⁸ It has been documented in the lower Florida Keys islands, where it is restricted to areas near permanent freshwater sources in pine rockland and rockland hammock habitats.²⁹ Because of its limited habitat and range, the Service identified the Key ring-necked snake as needing protection as early as 1982.³⁰

In 2015, in response to the Center’s 2012 petition, the Service published its 90-day finding that listing both snakes under the ESA may be warranted.³¹ By then, residential sprawl had reduced the snakes’ rockland hammock habitat by 98%, leaving highly fragmented population pockets.³² The Service did not meet its statutory deadlines to publish 12-month findings, and in 2020, the

²³ Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rim Rock Crowned Snake and Key Ring-Necked Snake and Designation of Critical Habitat, 87 Fed. Reg. 62614, 62617 (Oct. 14, 2022).

²⁴ *Id.* at 62616.

²⁵ Florida Fish and Wildlife Conservation Commission, *Rim Rock crowned snake*, MY FWC, [https://myfwc.com/wildlifehabitats/profiles/reptiles/snakes/rim-rock-crowned-snake/#:~:text=The%20Rim%20Rock%20crowned%20snake,ten%20inches%20\(25%20centimeters\)](https://myfwc.com/wildlifehabitats/profiles/reptiles/snakes/rim-rock-crowned-snake/#:~:text=The%20Rim%20Rock%20crowned%20snake,ten%20inches%20(25%20centimeters)) (last visited Mar. 20, 2024).

²⁶ 87 Fed. Reg. 62614, 62620–37.

²⁷ Univ. of Fla., *Ring-necked Snake – Florida Snake ID Guide*, FLORIDA MUSEUM, <https://www.floridamuseum.ufl.edu/florida-snake-id/snake/ring-necked-snake/> (last visited Mar. 20, 2024).

²⁸ 87 Fed. Reg. 62614, 62616.

²⁹ *Id.* at 62617.

³⁰ *Id.* at 62616.

³¹ Endangered and Threatened Wildlife and Plants; 90-Day Findings on 31 Petitions, 80 Fed. Reg. 37568, 37568 (Jul. 1, 2015).

³² *Id.*

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service’s Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.

Center filed a federal lawsuit against the Service to compel a decision.³³ As a result of that lawsuit, the Service stipulated to make 12-month findings for the Rim Rock crowned snake and the Key ring-necked snake by September 30, 2022.³⁴ On October 14, 2022, the Service published its proposed rule to list the Rim Rock crowned snake and the Key ring-necked snake as endangered under the ESA and to designate critical habitat for both species.³⁵

On November 28, 2022, the Service published a notice extending the 60-day public comment deadline for the proposed regulation from December 13, 2022 to January 13, 2023.³⁶ This notice did not—nor could it—include an extension of the Service’s one-year deadline to publish a final regulation on its proposed listing determination and critical habitat designation.³⁷ The Service did not publish any notice extending the deadline due to scientific disagreement about available data. Therefore, the Service’s deadline to publish a final rule listing the species and designating critical habitat was one year from the date of the proposed rule, or October 14, 2023. As of the date of this letter, the Service has not published a final rule listing the species or designating their critical habitat.

IV. Conclusion

The rapid changes occurring and projected to occur on the remaining habitats of the Florida Keys mole skink, Rim Rock crowned snake, and the Key ring-necked snake have placed these three Florida endemic reptiles at risk of extinction. Continued delay in granting much-needed ESA protection to these three species may result in irreparable harm to the species. We are eager to address these violations and to discuss prospects for resolution at the earliest possible date. If the Service does not correct its violation of the ESA by publishing final rules listing the species and

³³ Plaintiff’s Complaint at 1, *Ctr. for Biological Diversity v. Bernhardt*, No. 1:20-cv-00573 (D.D.C. Feb. 27, 2020).

³⁴ Stipulated Settlement Agreement Regarding 83 Species at 5, *Ctr. for Biological Diversity v. Bernhardt*, No. 1:20-cv-00573 (D.D.C. Apr. 26, 2020).

³⁵ 87 Fed. Reg. 62614.

³⁶ 87 Fed. Reg. 72958.

³⁷ *Id.*

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service’s Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.

designating critical habitats within 60 days, the Center is prepared to pursue litigation against the agency in federal court.³⁸

Please contact us at jmlopez@law.stetson.edu or 727-490-9190 to resolve this matter. Thank you for your attention.

Sincerely,

Jaclyn Lopez, Director
[Jacobs Public Interest Law Clinic for
Democracy and the Environment](#)
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707
727-490-9190
jmlopez@law.stetson.edu

Rachael Curran, Staff Attorney
[Jacobs Public Interest Law Clinic for
Democracy and the Environment](#)
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707
727-537-0802
rcurran1@law.stetson.edu

On Behalf of the Center for Biological Diversity

Encl: copies of all cited documents

³⁸ The Center is aware of the Department of the Interior's Agency Rule List, [Agency Rule List - Spring 2024 \(reginfo.gov\)](#), a nonbinding list of rules federal agencies intend to publish, which indicates that the Service would publish a rule for the Florida Keys mole skink in July 2024 and rules for the Rim Rock crowned snake and the Key ring-necked snake in September 2024.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to List and Finalize Critical Habitat Designations for Three Florida Reptiles.



STETSON LAW



Sent via email and certified U.S. mail

August 15, 2024

The Honorable Deb Haaland
Secretary of Interior
1849 C Street, N.W.
Washington, D.C. 20240
exsec_exsec@ios.doi.gov

Shannon Estenoz
Assistant Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
shannon_estenoz@ios.doi.gov

Martha Williams
Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington D.C. 20240
martha_williams@fws.gov

Larry Williams
State Supervisor
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, FL 32960
larry_williams@fws.gov

RE: Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for the Big Pine Partridge Pea, Wedge Spurge, Sand Flax, Blodgett's Silverbush, Everglades Bully, Florida Pineland Crabgrass, Pineland Sandmat, and Florida Prairie-Clover.

Dear Secretary Haaland, Assistant Secretary Estenoz, Director Williams, and State Supervisor Williams:

This letter serves as notice of the Center for Biological Diversity's intent to sue the United States Fish and Wildlife Service (Service) for violations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.* Specifically, the Service has failed to finalize its critical habitat designations proposed in 2022 for eight Florida plant species it listed in 2016 and 2017 under the ESA.¹ The Service's failure deprives these imperiled plants of important protections and puts

¹ Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades Bully), *Digitaria pauciflora* (Florida Pineland Crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (Pineland Sandmat), and *Dalea carthagenensis* var. *floridana* (Florida Prairie-clover), 87 Fed. Reg. 62564 (Oct. 14, 2022); Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), *Linum arenicola* (Sand Flax), and *Argythamnia blodgettii* (Blodgett's silverbush), 87 Fed. Reg. 62502 (Oct. 14, 2022); Endangered and Threatened Wildlife and Plants; Endangered Species Status for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), and *Linum arenicola*

them at further risk of extinction. The Center provides this letter pursuant to the sixty-day notice requirement of the citizen suit provision of the ESA,² to the extent that such notice is deemed necessary by a court of competent jurisdiction.

In 2016, the Service published a final rule listing the Big Pine partridge pea (*Chamaecrista lineata* var. *keyensis*), wedge spurge (*Chamaesyce deltoidei* ssp. *serpyllum*), and sand flax (*Linum arenicola*) as endangered, and the Blodgett's silverbush (*Argythamnia blodgettii*) as threatened.³ In 2017, the Service published a final rule listing the Florida prairie-clover (*Dalea carthagenensis* var. *floridana*) as endangered, and the Everglades bully (*Sideroxylon reclinatum* ssp. *austrofloridense*), Florida pineland crabgrass (*Digitaria pauciflora*), and pineland sandmat (*Chamaesyce deltoidei* ssp. *pinetorum*) as threatened.⁴ Having missed its critical habitat designation deadlines by several years, in 2022 the Service *proposed* designating critical habitat for all eight south Florida plants.⁵ Nearly two years later, the Service has yet to publish *final* rules designating critical habitat, meaning the Service has violated the ESA's one-year deadline to complete the critical habitat designations for these eight plants.

I. The Imperiled Pine Rocklands: Home to the Eight South Florida Threatened and Endangered Plants

The Big Pine partridge pea, wedge spurge, sand flax, Blodgett's silverbush, Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, all listed as either endangered or threatened under the ESA, are south Florida plant species that live predominantly in delicate, critically endangered pine rocklands ecosystems.⁶ Pine rocklands are sensitive ecosystems found in Everglades National Park, the Miami Rock Ridge, the Florida Keys, and the

(Sand flax), and Threatened Species Status for *Argythamnia blodgettii* (Blodgett's Silverbush), 81 Fed. Reg. 66842 (Sept. 29, 2016); Endangered and Threatened Wildlife and Plants; Endangered Species Status for *Dalea carthagenensis* var. *floridana* (Florida Prairie-clover), and Threatened Species Status for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades Bully), *Digitaria pauciflora* (Florida Pineland Crabgrass), and *Chamaesyce deltoidea* ssp. *pinetorum* (Pineland Sandmat), 82 Fed. Reg. 46691 (Oct. 6, 2017).

² 16 U.S.C. § 1540(g)(2).

³ 81 Fed. Reg. 66842.

⁴ 82 Fed. Reg. 46691.

⁵ 87 Fed. Reg. 62502; 87 Fed. Reg. 62564.

⁶ 87 Fed. Reg. 62502, 6250-62509; 87 Fed. Reg. 62564, 62568-62573.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

Big Cypress National Preserve, as well as in the Bahamas and Cuba.⁷ They are karst environments characterized by limestone bedrock with loose deposits of oolitic soil found in solution holes between rocks and on the surface of the limestone.⁸ There is little soil development, with gradual accumulation of clays and sands from neighboring ecotones.⁹ The flora consists of a thin canopy dominated by slash pine, a softwood tree native to the Southeastern United States.¹⁰ Hardwoods are also found, but they are not a dominant feature.¹¹ The subcanopy is dominated by low-growing saw palmetto.¹² The herbaceous layer is filled with diverse natives and, many times, endemic, low-growing shrubs and grasses.¹³ Periodic natural or prescribed fires are necessary to maintain the ideal flora in pine rocklands.¹⁴

Several native and endemic species, including these eight plants, live in these pine rocklands and are reliant on the maintenance of this unique tropical ecosystem.¹⁵ These pine rocklands are threatened by fire suppression, climate change, and sprawl development.¹⁶

A. Fire Suppression Harms Pine Rocklands.

The suppression of periodic, low-intensity fires threatens these delicate ecosystems.¹⁷ Fires are essential to various life stages of plants in the herbaceous layer because fires minimize thick

⁷ *Id.*; U.S. FISH & WILDLIFE SERVICE, *Pine Rocklands*, in SOUTH FLORIDA FIELD OFFICE MULTI-SPECIES RECOVERY PLAN: THE ECOLOGICAL COMMUNITIES 3-161 (1999), https://ecos.fws.gov/docs/recovery_plan/sfl_msrp/SFL_MSRP_Ecol%20Comm.pdf.

⁸ 80 Fed. Reg. 58536, 58539; 81 Fed. Reg. 70282, 70284; *see also* *Forests*, Florida Hikes! <https://floridahikes.com/florida-habitats/forests> (last visited Apr. 25, 2024).

⁹ 87 Fed. Reg. 62564, 62571.

¹⁰ Edward Gilman et al., *Pinus elliottii*: slash pine, IFAS EXTENSION, UNIVERSITY OF FLORIDA 1 (Apr. 26, 2019), <https://edis.ifas.ufl.edu/publication/ST463> (last visited Mar. 26, 2024).

¹¹ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-164, 3-167; FLORIDA NATURAL AREAS INVENTORY, *Pine Rocklands*, in GUIDE TO THE NATURAL COMMUNITIES OF FLORIDA 69 (2d ed. 2010), https://www.fnai.org/PDFs/Full_FNAI-Natural-Community-Classification-Guide-2010_20150218.pdf.

¹² U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-165.

¹³ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-163.

¹⁴ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-161.

¹⁵ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-161; FLORIDA NATURAL AREAS INVENTORY, *supra* note 11. Pine rocklands are the exclusive habitat for pineland sandmat; primary habitat for Big Pine partridge pea, wedge spurge, sand flax; and a key habitat for Blogett's silverbush, Everglades bully, Florida pineland crabgrass, and Florida prairie clover, which are also found in a few other south Florida habitats.

¹⁶ *Pine Rockland within Pine Flatwoods and Dry Prairie*, CLIMATE ADAPTATION EXPLORER, <https://climateadaptationexplorer.org/habitats/terrestrial/1320> (last visited Apr. 9, 2024).

¹⁷ *Id.*

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

shade from developing by burning away thick brush and leaving behind more fire-tolerant and fire-dependent species.¹⁸ In the case of pine rocklands, the south Florida slash pine trees, characterized by needle-like leaves, produce sparse shade.¹⁹ This enables the herbaceous layer to receive full sun, essential for the plants' growth and flowering.²⁰ Another benefit of periodic fire is the removal of invasive plants and seeds that would otherwise vigorously outcompete the native species.²¹ The native species of pine rockland plants are, to varying degrees, fire-resistant during different stages of their life cycles.²² Adaptations can include hard seed pods or resilient root zones.²³

Historically, unsuppressed fires would occur every three to seven years from lightning strikes during the summer rainy season.²⁴ These fires would quickly spread through entire swaths of pine rocklands, clearing away excess canopy and subcanopy growth and promoting herbaceous growth.²⁵ Today, however, fires rarely occur naturally.²⁶ This is due to habitat destruction and fragmentation, driven by rapid urbanization and agricultural development, which have reduced pine rockland acreage by 90% in mainland south Florida.²⁷ Fires are actively suppressed to reduce risk or nuisance to nearby human communities, and where fires do occur, they are in fragmented portions of pine rocklands, leaving the other habitat fragments unmanaged.²⁸ Additionally, agriculture and the use of irrigation create conditions unfavorable for healthy fire development.²⁹

¹⁸ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-172, 3-176.

¹⁹ *Id.* at 3-161.

²⁰ 87 Fed. Reg. 62502, 62510.

²¹ 87 Fed. Reg. 62564, 62573.

²² Endangered and Threatened Wildlife and Plants; Endangered Species Status for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), and *Linum arenicola* (Sand Flax), and Threatened Species Status for *Argythamnia blodgettii* (Blodgett's Silverbush), Proposed Rule, 80 Fed. Reg. 58536, 58541 (Sept. 29, 2015); Endangered and Threatened Wildlife and Plants; Threatened Species Status for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida Pineland Crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) and Endangered Species Status for *Dalea carthagenensis* var. *floridana* (Florida prairie-clover), Proposed Rule, 81 Fed. Reg. 70282, 70295 (Oct. 11, 2016).

²³ *Id.*

²⁴ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-172.

²⁵ FLORIDA NATURAL AREAS INVENTORY, *supra* note 11, at 71.

²⁶ *Id.* at 70.

²⁷ 87 Fed. Reg. 62564, 62568.

²⁸ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-176.

²⁹ *Id.*; FLORIDA NATURAL AREAS INVENTORY, *supra* note 11, at 70.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

The suppression of fires in pine rocklands causes the ecosystem to convert into hardwood hammock, a neighboring ecosystem that has similar karst bedrock but is characterized by a thick canopy of hardwood tree species and thick shade, which favors shade-tolerant understory species.³⁰ Hardwood hammock also has rich humus soils and thick leaf litter, as opposed to the sparse oolitic soils found within pine rocklands.³¹ Different soil conditions cycle different nutrients upon which plants within specific ecosystems depend. Pine rockland plants depend on burned organic matter, clays, and oolites found specifically within pine rocklands.³² These qualities specialize and distinguish pine rocklands and the pine rocklands species from those of hardwood hammock.³³ Furthermore, when fires burn through hardwood hammocks, they burn much hotter due to the abundance of hardwoods and woody shrubs.³⁴ This creates fires that are too hot for the flora of pine rocklands to survive.³⁵ When fires are present, the ecotone between the two systems is abrupt.³⁶ When fires are suppressed, the ecotone widens as hardwood hammock encroaches into pine rocklands.³⁷

B. Climate Change Threatens Pine Rocklands.

Another peril to pine rocklands is the ever-growing threat of climate change and its effects on rising sea levels and increased salinity in inland plant communities.³⁸ Many of the plants found in pine rocklands are not adapted to tolerate salt spray and periods of post-hurricane inundation.³⁹ While hurricanes also play a role in maintaining the canopy layer, the increase in severity of these storms can decimate plant populations.⁴⁰ For example, in 2005 Hurricane Wilma killed off the entire population of the Big Pine partridge pea from Middle Torch Key and

³⁰ U.S. FISH & WILDLIFE SERVICE, *supra* note 7, at 3-176.

³¹ *Id.* at 3-130.

³² 80 Fed. Reg. 58536, 58542-58546; 81 Fed. Reg. 70282, 70284.

³³ 80 Fed. Reg. 58536, 58542-58546; 81 Fed. Reg. 70282, 70284.

³⁴ 81 Fed. Reg. 66842, 66851.

³⁵ *Id.*

³⁶ FLORIDA NATURAL AREAS INVENTORY, *supra* note 11, at 70.

³⁷ *Id.*

³⁸ 87 Fed. Reg. 62502, 62512.

³⁹ 82 Fed. Reg. 46691, 46708-09.

⁴⁰ *Big Pine Partridge Pea*, WILD SOUTH FLORIDA, <https://wildsouthflorida.com/big.pine.partridge.pea.html> (last visited Ap. 11, 2024).

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

left behind only a single plant on Big Torch Key.⁴¹ Several of the major hurricanes since had similar effects.⁴²

In addition to the native flora of pine rocklands, wildlife rely on the stability of the plants within this ecosystem. Some insect species, like the Miami blue butterfly, Florida leafwing, Bartram's scrub-hairstreak, and Miami tiger beetle, exclusively depend on the flora found in and around pine rocklands.⁴³ Additionally, for the Key deer, the smallest subspecies of white-tailed deer found only in the Florida Keys, pine rocklands provide diverse plant species to forage on and essential permanent freshwater drinking sources.⁴⁴ Without these plants that they rely on and the right habitat to live in, these species would cease to exist.⁴⁵

C. Rapid Urbanization Threatens Pine Rocklands.

The rapid urbanization of south Florida has led to destruction, fragmentation, predation of seeds, fire suppression, and human disturbances of pine rocklands habitat.⁴⁶ Fragmentation increases the proportion of "edge" habitat.⁴⁷ This alters microclimates and community structure, alters fire distribution, and increases pressure from non-native plants and animals.⁴⁸ For example, predation of Big Pine partridge pea seeds in and around urban areas decreases seed production due to insect pressure.⁴⁹ Habitat fragmentation created by urbanization prevents the natural flow of fires, leading to decrease in habitat quality.⁵⁰ Furthermore, forest fragments are subject to an increased likelihood of dumping of trash, as well as other human-related disturbances.⁵¹ The urbanization on Key West likely caused the annihilation of a population of Blodgett's

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Pine Rocklands*, TROPICAL AUDUBON SOCIETY, <https://tropicalaudubon.org/pine-rocklands> (last visited Apr. 9, 2024).

⁴⁴ *Key deer*, CLIMATE ADAPTATION EXPLORER, <https://climateadaptationexplorer.org/species/mammals/119> (last visited Apr. 9, 2024).

⁴⁵ U.S. FISH & WILDLIFE SERVICE, *Key Deer*, in SOUTH FLORIDA FIELD OFFICE MULTI-SPECIES RECOVERY PLAN: THE SPECIES 4-6 (1999), https://ecos.fws.gov/docs/recovery_plan/sfl_msrp/SFL_MSRLP_Species.pdf (last visited Apr. 23, 2024).

⁴⁶ 81 Fed. Reg. 66842, 66850; 82 Fed. Reg. 46691, 46700.

⁴⁷ 81 Fed. Reg. 66842, 66850.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

silverbush.⁵² Management of pine rocklands becomes increasingly difficult as urbanization further fragments it.⁵³

Pine rocklands continue to be threatened by urban development projects. For example, until recently, the controversial Miami Wilds water park development proposal imminently threatened several federally protected species and their designated critical habitat, including Carter's small-flowered flax and Florida brickell-bush.⁵⁴ The proposed project was also adjacent to proposed critical habitat for some of the eight plants at issue here, including Blodgett's silverbush, Everglades bully, and sand flax.⁵⁵ The development would have hampered natural fires needed to support the health of the pine rocklands ecosystem and would risk introducing more non-native and invasive species.⁵⁶ The Center, along with others, brought suit in federal court, and fortunately, the court recognized that federal actions taken in furtherance of this development violated the ESA and the National Environmental Policy Act, and the court vacated and remanded the federal action that facilitated the development plans to allow for consideration of environmental impacts.⁵⁷

To guarantee these eight threatened and endangered plants are fully protected, the Service must promptly designate critical habitat so that the habitat that is essential to their survival and recovery is fully considered by federal agencies when making decisions in south Florida.

II. The Service's Failure to Designate Critical Habitat for the Eight Plants Harms Them and Violates the ESA.

The Service's failure to finalize critical habitat for these eight plants violates the ESA and deprives them of the important habitat protections they are legally entitled to and desperately

⁵² *Id.* at 66848.

⁵³ *Id.* at 66851.

⁵⁴ *Legal Victory Restores Safeguards for Miami-Dade Wildlife Habitat Threatened by Controversial Water Park*, CTR. FOR BIOLOGICAL DIVERSITY (Dec. 11, 2023), <https://biologicaldiversity.org/w/news/press-releases/legal-victory-restores-safeguards-for-miami-dade-wildlife-habitat-threatened-by-controversial-water-park-2023-12-11/> (last visited Apr. 23, 2024).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Center for Biological Diversity et al. v. Haaland*, Case No. 23-cv-20495-PAS, Order on Cross-Motions for Summary Judgment Setting Aside 2022 Agreement and Release Between National Park Service and Miami-Dade County, Doc. 58 (S.D. Fla. Dec. 11, 2023).

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

need. The Service’s delay in finalizing one of the most effective conservation measures available—designated critical habitat—places these species at further risk of extinction. Critical habitat designations guide cooperation with the Service to conserve listed species and affect federal agency decision-making, federal funding, and federally permitted activities.⁵⁸ This cooperation is key to the conservation of listed plants. According to the Service, “[i]dentifying critical habitat informs landowners and the public which specific areas are important to a species’ conservation and recovery.”⁵⁹

The Service failed to finalize critical habitat for the eight plants within the mandatory statutory timeframes set forth in the ESA. Section 4(a)(3) requires the Service to designate critical habitat for a species at the time it lists the species as threatened or endangered if critical habitat designation is both prudent and determinable.⁶⁰ When designating critical habitat is prudent but “the information sufficient to perform required analysis of the impacts of the designation is lacking, or biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat,” the Service may find critical habitat is not determinable at the time of species listing.⁶¹ When the Service makes a prudent but not determinable finding at the time of listing and notices the public, the ESA authorizes the Service to extend its critical habitat designation deadline, requiring the Service to publish a final critical habitat determination rule no later than one year from the date of listing.⁶² Additionally, and regardless of whether the Service publishes a not determinable finding, once the Service publishes a proposed critical habitat determination rule for a listed species, the ESA mandates that the Service finalize that proposed critical habitat determination rule within one year of publication.⁶³

In 2016 and 2017, the Service published its final rules listing these eight species.⁶⁴ Under the ESA, the Service should have designated critical habitats for the plants concurrent with their

⁵⁸ *Critical Habitat*, U.S. FISH & WILDLIFE SERVICE, <https://www.fws.gov/project/critical-habitat> (last visited Apr. 12, 2024).

⁵⁹ *Id.*

⁶⁰ 16 U.S.C. § 1533 (a)(3)(A).

⁶¹ 50 C.F.R. § 424.12(a)(2).

⁶² 16 U.S.C. § 1533(b)(6)(C)(ii); 50 C.F.R. § 424.17(b)(2).

⁶³ 16 U.S.C. § 1533(b)(6)(A); 50 C.F.R. § 424.17(a)(1).

⁶⁴ 81 Fed. Reg. 66842; 82 Fed. Reg. 46691.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service’s Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

listing in 2016 and 2017, or if critical habitat was not determinable for the eight plants at those times, the Service should have noticed the public that it was extending the *final* critical habitat determinations deadlines by up to one additional year from the date of listing, or until September 29, 2017 and October 7, 2018 respectively.⁶⁵

The Service found critical habitat was not determinable for the Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush when it listed these species in 2016, and noticed the public in its final listing rule that it intended to *propose* critical habitat for these species by the end of the 2017 fiscal year, or September 30, 2017.⁶⁶ The Service also found critical habitat was not determinable for the Florida prairie-clover, Everglades bully, Florida pineland crabgrass, and pineland sandmat when it listed those species in 2017, but the Service did not grant itself an extra-statutory extension for critical habitat finalization beyond the one-year extension authorized by the ESA.⁶⁷

The Service *proposed* critical habitat designations for all eight plants in 2022,⁶⁸ four to five years later than the one-year statutory extension the ESA provides to the Service for *finalizing* critical habitats that are not determinable at the time of species listing.⁶⁹ Furthermore, with the Service's proposed critical habitat for the eight plants on October 14, 2022, the ESA required the Service to make a final determination no later than a year from the date of the proposed critical habitat rule, or October 14, 2023.⁷⁰ At the time of this notice, the Service still has not promulgated final critical habitat designations. Therefore the Service has violated both its duty to publish a final decision within a year of publishing a proposed rule as well as violated the extended September 29, 2017 and October 7, 2018 deadlines available to the Service when it found critical habitats were not determinable for these eight species at final listing in 2016 and 2017.

The Service must promptly finalize the critical habitat designations to ensure robust habitat protections for these imperiled plant species. If Florida's unique ecosystems and native species

⁶⁵ 16 U.S.C. § 1533(b)(6)(C)(ii); 50 C.F.R. § 424.17(b).

⁶⁶ 81 Fed. Reg. 66842, 66864.

⁶⁷ *Id.*

⁶⁸ 87 Fed. Reg. 62502.

⁶⁹ 16 U.S.C. § 1533(b)(6)(C)(ii); 50 C.F.R. § 424.17(b).

⁷⁰ 16 U.S.C. § 1533(b)(6)(A); 50 C.F.R. § 424.17(a)(1).

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.

are to survive, the Service must not further delay the ESA's strong protections to safeguard them from extinction.

We are eager to address these violations and to discuss prospects for resolution at the earliest possible date. If the Service does not act within 60 days to correct these violations of the ESA, the Center intends to pursue litigation in federal court.⁷¹ We will seek injunctive and declaratory relief regarding these violations. If you have any questions, wish to discuss this matter, or feel this notice in error, please contact 727-490-9190 or jmlopez@law.stetson.edu. Thank you for your prompt attention to this matter.

Sincerely,

Jaclyn Lopez, Director
[Jacobs Public Interest Law Clinic for
Democracy and the Environment](#)
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707
727-490-9190
[jmllopez@law.stetson.edu](mailto:jmlopez@law.stetson.edu)

Rachael Curran, Staff Attorney
[Jacobs Public Interest Law Clinic for
Democracy and the Environment](#)
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707
727-537-0802
rcurran1@law.stetson.edu

On Behalf of the Center for Biological Diversity

Encl: copies of all cited documents

⁷¹ The Center is aware of the Department of the Interior's Agency Rule List, [Agency Rule List - Spring 2024 \(reginfo.gov\)](#), a nonbinding list of rules federal agencies intend to publish, which indicates that the Service would publish rules for the eight plans in September 2024.

Sixty-day Notice of Intent to Sue Regarding the U.S. Fish and Wildlife Service's Violations of the Endangered Species Act in Failing to Finalize Critical Habitat Designations for Eight South Florida Plants.