



**VIA CERTIFIED MAIL; RETURN RECEIPT REQUESTED AND FACSIMILE**

March 11, 2009

Ken Salazar, Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240  
Fax: 202-208-6956

Rowan W. Gould, Acting Director  
U.S. Fish and Wildlife Service  
1849 C Street, NW  
3256 MIB  
Washington, D.C. 20240  
Fax: (202) 208-6965

**RE: Notice of Violation of Section 4 of the Endangered Species Act Relating to Petition to List the Amargosa Toad (*Bufo nelsoni*)**

Dear Secretary Salazar and Acting Director Gould,

This letter provides you with sixty days notice that the Center for Biological Diversity and Public Employees for Environmental Responsibility intend to sue the U.S. Department of the Interior and U.S. Fish and Wildlife Service (collectively “FWS”) for violating the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544.

Petitioners submitted a petition to list the Amargosa Toad on February 26, 2008. FWS has violated the ESA by failing to take the legally-required action concerning the petition to list the Amargosa Toad as endangered or threatened under the ESA. FWS has not issued a 90-day finding for the petition, and has further violated its duty to issue a 12-month finding for the Amargosa Toad.

As detailed in the petition, the Amargosa Toad meets the criteria for listing as an endangered species due to its highly restricted geographic range, specialized habitat needs, and historic and ongoing habitat destruction. The entire known geographic range of the Amargosa Toad is restricted to riparian areas, springs, and adjacent desert uplands in a 10-mile (16-kilometer) stretch of the Amargosa River and interconnected spring systems in the Oasis Valley in Nevada. Less than 20 breeding populations have been found near the Amargosa River and surrounding springs in the Bullfrog Hills in the Oasis Valley in Nye County, Nevada. The remaining habitat contains about 8,440 acres of riparian and adjacent upland habitat which faces imminent decline due to numerous impacts. Threats to the Amargosa Toad include ongoing destruction and modification of its remaining habitat by urban, residential, and recreational development as well as introduction of nonnative predators, ground disturbance and vegetation removal from grading, grazing, and off-road driving and water diversions.

Congress enacted the ESA to ensure the protection and conservation of threatened and endangered species. 16 U.S.C. § 1531(b). The fundamental, express purpose of this federal statute is to conserve endangered and threatened species and the ecosystems upon which they depend. *Id.* To achieve this purpose, the ESA requires FWS to list species of plants and animals that are facing extinction as either “threatened” or “endangered.” 16 U.S.C. § 1533(c)(1). Upon receipt of a petition to list a species, FWS has approximately 90 days to make a finding as to whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(b)(1). Twelve months after receipt of a citizen petition, FWS must make one of three determinations: (1) listing is not warranted; (2) listing is warranted; or (3) listing is warranted but presently precluded by other pending proposals for listing species, provided certain circumstances are met. 16 U.S.C. § 1533(b)(3)(B). If FWS determines that listing a species is warranted, it must then promptly publish, in the Federal Register, a proposed rule to list the species. 16 U.S.C. § 1533(b)(5).

FWS has not published a 90-day finding or a 12-month finding for the Amargosa Toad despite the passage of nearly 13 months since the submission of the petition. Consequently, FWS is in violation of section 4 of the ESA, 16 U.S.C. § 1533. If FWS does not promptly correct its violations, Petitioners intend to file suit.

Please do not hesitate to contact me at (415) 436-9682 ext. 307 if you have any questions regarding this notice letter. Thank you for your prompt attention to this matter.

Sincerely,



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Please note change of address as of June 1, 2008