



July 22, 2020

SENT VIA EMAIL

Mr. David Bernhardt
Secretary of the Interior
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RE: Sixty-day notice of violations of the Endangered Species Act relating to final listing determinations and final critical habitat designations for Carolina Madtom (*Noturus furiosus*) and Neuse River Waterdog (*Necturus lewisi*)

Dear Secretary Bernhardt:

This letter serves as a sixty-day notice from the Center for Biological Diversity of our intent to sue the United States Fish and Wildlife Service (“Service”) and you in your official capacity as Secretary of the Interior of the United States (“Secretary”) pursuant to the Endangered Species Act (“ESA”), for failing to make timely final listing and critical habitat determinations on two petitioned freshwater species from North Carolina, the Carolina madtom (*Noturus furiosus*), and the Neuse River waterdog (*Necturus lewisi*). 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).

Within twelve months of publishing in the Federal Register a general notice and the complete text of a proposed regulation to list a new species under the ESA and/or designate its critical habitat, the Secretary must publish in the Federal Register a final determination on both questions. *Id.* § 1533(b)(6)(A). For decisions regarding whether to list new species under the ESA, the Secretary may satisfy this requirement by publishing in the Federal Register:

- a final regulation to implement such determination;

- a final regulation to implement such revision or a finding that such revision should not be made;
- notice that such one-year period is being extended due to substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination concerned; or
- notice that the proposed regulation is being withdrawn because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, together with the finding on which such withdrawal is based;

16 U.S.C. § 1533(b)(6)(A)(i).

For decisions regarding whether to designate critical habitat pursuant to the ESA, the Secretary may satisfy his obligations under 16 U.S.C. § 1533(b)(6)(A) by publishing in the Federal Register:

- a final regulation to implement such designation; or
- notice that such one-year period is being extended under 16 U.S.C. § 1533(b)(6)(C).

16 U.S.C. § 1533(b)(6)(A)(ii).

The Secretary must publish in the Federal Register a final regulation designating critical habitat of an endangered species or a threatened species concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that:

- it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
- critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat

16 U.S.C. § 1533(b)(6)(C).

On May 22, 2019, the Service published in the Federal Register a proposed rule to list the Carolina Madtom as Endangered; to list the Neuse River Waterdog as Threatened; and to designate 995 river miles of critical habitat for the two species. 84 Fed. Reg. 23,644 (May 22, 2019). In both the case of the Carolina madtom and the Neuse River waterdog, the due date for the final determination on both listing and critical habitat designation was May 22, 2020. 16 U.S.C. § 1533(b)(6)(A) and (C). The Service, however, has failed to issue a timely final determination for either of the species' listings or critical habitat designations, which determinations are both more than a month overdue.

Accordingly, you are in violation of 16 U.S.C. § 1533(b)(6)(A) and 16 U.S.C. § 1533(b)(6)(C), and have abrogated your duty to ensure that protection of endangered species occurs in a timely manner, thereby avoiding further decline and increased risk of extinction. If, within the next sixty days, the Secretary does not publish the required final determinations for the Carolina madtom and Neuse River waterdog, or contact us to develop a timeline for making the finding, we intend to file suit. Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,



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