



THE UNIVERSITY OF
CHICAGO

ABRAMS ENVIRONMENTAL LAW CLINIC AT
THE UNIVERSITY OF CHICAGO LAW SCHOOL

May 29, 2019

Secretary David Bernhardt
U.S. Department of the Interior
1849 C Street, NW
Washington DC 20240

Assistant Director Gary Frazer
U.S. Fish and Wildlife Service
1849 C Street, NW
Room 3345
Washington DC 20240

RE: Sixty-day notice of violation of the Endangered Species Act, relating to a late finding on a petition to list the lake sturgeon (*Acipenser fulvescens*) as a threatened or endangered species

Dear Secretary Bernhardt and Assistant Director Frazer,

This letter serves as a 60-day notice-of-intent-to-sue from the Center for Biological Diversity (the “Center”), Fishable Indiana Streams for Hoosiers, Hoosier Environmental Council, and Illinois Environmental Council for failure to make required findings on a petition from the Center to list the lake sturgeon as a threatened or endangered species under the Endangered Species Act (“ESA”). 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).

The lake sturgeon is a large, long-lived, freshwater fish species that has survived relatively unchanged for approximately 200 million years. Historically, the Great Lakes teemed with lake sturgeon, but lake sturgeon abundance is now reduced to less than one percent of historic levels in their native range, which is primarily the Great Lakes and Mississippi River drainage. Most of the remaining spawning populations show little or limited signs of natural recovery. The lake sturgeon face ongoing and critical threats from dams and hydroelectric facilities, pollution and contaminants, recreational fishing, poaching, invasive species, climate change, and habitat fragmentation.

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

The Center filed a petition seeking Endangered Species Act protection for the lake sturgeon on May 14, 2018. Specifically, the Center sought “threatened” status for all lake sturgeon in the

United States, or, alternatively, for identification and listing of imperiled subpopulations of lake sturgeon in the U.S as “threatened” or “endangered.” The Center also requested that critical habitat for all listed U.S. populations of the lake sturgeon be designated concurrent with listing.

A 90-day finding to determine whether action may be warranted was due on August 12, 2018, and a 12-month finding for the lake sturgeon was due on May 14, 2019. The Service has failed to issue either of these required findings. Accordingly, you are in violation of the law and have abrogated your duty to ensure that protection of endangered species occurs in a timely manner to avoid further decline and increased risk of extinction.

If the Secretary does not make the required findings for the lake sturgeon or contact us to develop a timeline for making these findings within the next 60 days, the entities providing notice herein intend to file suit. Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Templeton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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