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June 2, 2005

**By Facsimile and Certified Mail-Return Receipt Requested**

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Secretary of the Interior  
U.S. Department of the Interior  
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Washington, D.C. 20240  
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Matt Hogan  
Acting Director  
U.S. Fish & Wildlife Service  
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Sam Hamilton  
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1875 Century Blvd., Suite 400  
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Jay Slack  
Field Supervisor  
South Florida Ecological Services Office  
U.S. Fish & Wildlife Service  
1339 20<sup>th</sup> Street  
Vero Beach, FL 32960  
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**Re: 60-Day Notice Letter of Intent to Sue for Violations of Section 4 of the Endangered Species Act with respect to the Miami Blue Butterfly (*Hemiargus thomasi bethunebakeri*)**

Dear Secretary Norton, Acting Director Hogan, Regional Director Hamilton, and Field Supervisor Slack:

Pursuant to the citizen suit provision of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), this letter provides notice that no sooner than sixty (60) days from today, the Center for Biological Diversity and other interested parties intend to file suit against you, the United States Department of the Interior, the United States Fish and Wildlife Service, and any other responsible government officials for failure to issue an emergency listing regulation, issuing an insufficient 12-month finding, and/or for issuing an inadequate 12-month finding of “warranted but precluded” under § 4 of the ESA for the Miami Blue Butterfly (*Hemiargus thomasi bethunebakeri*). 16 U.S.C. § 1533(b).

The Miami Blue Butterfly (*Hemiargus thomasi bethunebakeri*) resides in Florida and “is the only subspecies of *Hemiargus thomasi* in the United States.” 67 Fed. Reg. 280 (Jan. 3,

2002). This unique butterfly needs to be protected under the ESA's emergency listing provisions because the population and habitat of the Miami Blue Butterfly is disappearing at an alarmingly fast pace. The known historic range of the Miami Blue Butterfly was as far north as Florida's "Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys to the west of Key West." *Id.* The Miami Blue Butterfly is now "restricted to one isolated population on Bahia Honda Key in Florida." 69 Fed. Reg. 77,167, 77,170 (Dec. 27, 2004). The population in Bahia Honda Key is estimated to be only "45-50 adults." 68 Fed. Reg. 73,091, 73,105.

There are several threats to the Miami Blue Butterfly. Two major threats are habitat loss and fragmentation of habitat. 67 Fed. Reg. 280, 281. The Miami Blue Butterfly has lost much of its habitat because the species habitat range is the heavily urbanized south Florida coast. *Id.* Fragmentation is another problem "because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat." *Id.* Other threats include "unethical butterfly collection" and "mosquito control measures." *Id.* at 280.

The Secretary of the Interior must use the emergency listing provision of the ESA to list a species when there is an "emergency posing a significant risk to the well-being" of that species. 16 U.S.C. § 1533(b)(7). The FWS proposed several times an emergency listing of the Miami Blue Butterfly recognizing that there is a significant decline in population and increasing harm from the known threats, but has yet to list the Miami Blue Butterfly. 65 Fed. Reg. 73,920, 73,941 (Nov. 30, 2000); 68 Fed. Reg. 73,091, 73,105 (Dec. 22, 2003); 69 Fed. Reg. 37,670, 37,682 (June 28, 2004); 69 Fed. Reg. 73, 345, 73, 354 (Dec. 13, 2004). However, "senior officials in Washington" declined to issue an emergency listing for the Miami Blue Butterfly "because of an existing captive-bred population." 69 Fed. Reg. 77,167, 77,170. An emergency listing can prevent the near immediate loss of a species in the wild, but the inclusion of a captive-bred population, such as those in zoos, in the determination could result in inaccurate population numbers and the loss of a species in the wild. The FWS recently acknowledged that the captive-bred program for the Miami Blue Butterfly has not been successful, stating: "Monitoring results do not indicate that the Miami blue has become established at any of the release sites." 70 Fed. Reg. 24,870, 24,872 (May 11, 2005). This demonstrates that the FWS's decision declining to emergency list the Miami Blue Butterfly is arbitrary and capricious and otherwise not in accordance with the law.

The ESA requires the FWS to issue a finding "within 12 months after receiving a petition" if the 90-day finding is that the listing "may be warranted." *Id.* The FWS received a petition to list the Miami Blue Butterfly on June 15, 2000. 67 Fed. Reg. 280. The 90-day finding found that "listing this species may be warranted." *Id.* Under the ESA, the FWS should have issued the 12-month finding approximately June 15, 2001, but the FWS failed to meet this deadline. The Courts have held in several cases that the 12-month deadline is a firm, mandatory deadline. Biodiversity Legal Found. v. Badgley, 284 F.3d 1046, 1055-1057 (9th Cir. 2002) and Am. Lands Alliance v. Norton, 242 F.Supp.2d 1, 11 (D.D.C. 2003).

The FWS recently listed the Miami Blue Butterfly as a candidate species, stating that the listing served as a 12-month finding that the petition to list this species was "warranted but

precluded.” 70 Fed. Reg. 24,870, 24,885-24,886. The FWS has issued an inadequate 12-month finding for the Miami Blue Butterfly because this finding was issued in the Candidate Notice of Review and does not go into the detail required by Section 4 of the ESA which requires the FWS to issue a 12-month finding that provides “a description and evaluation of the reasons and data on which the finding is based.” 16 U.S.C. § 1533(b)(3)(B). Alternatively the “warranted but precluded” finding issued by the FWS is insufficient because the threats to the Miami Blue Butterfly have only increased in the many years that the FWS has considered the listing of this species and it can be “found only in a single metapopulation, located at Bahia Honda Key State Park.” 70 Fed. Reg. 24,870, 24,872. Pursuant to the ESA, the warranted but precluded decision is subject to judicial review. 16 U.S.C. § 1533(b)(3)(C)(ii). This warranted but precluded decision by the FWS is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and/or constitutes agency action unlawfully withheld or unreasonably delayed within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 701-706 (2000). The Courts have also affirmed the right of judicial review in warranted but precluded decisions. Am. Lands Alliance v. Norton, 242 F.Supp.2d 1, 5 (D.D.C. 2003).

We are providing the address of Center for Biological Diversity, which is:  
Center for Biological Diversity  
P.O. Box 710  
Tucson, AZ 85702

However, please address any communications regarding this notice letter to the undersigned legal counsel. We welcome your communication in an effort to resolve this matter and avoid the need for litigation. However, if you fail to contact us, we will have no other option except to file suit in federal district court.

Sincerely,

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