

*Via Certified and Electronic Mail*

April 2, 2014

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**RE: Sixty Day Notice of Intent to Sue Over Violations of Section 4 of the Endangered Species Act; Failure to Make a 12-month Finding on a Petition to List the Alexander Archipelago Wolf as a Threatened or Endangered Species**

This letter serves as a sixty day notice on behalf of the Center for Biological Diversity, Greenpeace and the Boat Company (collectively “Petitioners”) of our intent to sue Secretary of Interior Sally Jewell, the Department of Interior, and the Fish and Wildlife Service (collectively “the Secretary”) over violations of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, for actions and inactions related to the processing of a petition to list the Alexander Archipelago wolf (*Canis Lupis Ligoni*) as a threatened or endangered species. This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the ESA, to the extent such notice is deemed necessary by a court. *See* 16 U.S.C. § 1540(g).

On August 10, 2011, Petitioners submitted a formal, detailed petition to the Secretary to list the Alexander Archipelago wolf as a threatened or endangered species under the ESA (“Petition”). On March 31, 2014, the Secretary announced that listing “may be warranted,” triggering a requirement to undertake a status review to determine whether to list the wolf. The Secretary is in violation of the law because she has failed to timely undertake this status review to determine whether listing the Alexander Archipelago wolf under the ESA is warranted pursuant to ESA Section 4.

No matter how imperiled a species might be, it does not receive any protection under the ESA until it is officially listed as threatened or endangered. Congress has recognized this, describing Section 4 of the ESA, 16 U.S.C. § 1533, the section that sets out the process for listing a species, as “[t]he cornerstone of effective implementation of the Endangered Species Act.” S. Rep. No. 418, 97th Cong., 2d Sess. at 10; *see also* H. Rep. No. 567, 97th Cong., 2d Sess. at 10.

Section 4 establishes a detailed process by which the Secretary of the Interior through her designee the U.S. Fish and Wildlife Service adds to the list of threatened and endangered species. 16 U.S.C. § 1533. The listing process can begin either by citizen petition or by internal Secretary initiative. No matter how the process is initiated, strict timelines apply once the process begins. In most cases, as here, the process begins when a petition for listing is received by the Secretary. 16 U.S.C. § 1533(b)(3)(A).

Once the Secretary receives a petition to list a species under the ESA, she must determine whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” *Id.* The Secretary must make this initial “90-Day Finding” “[t]o the maximum extent practicable, within 90 days after receiving the petition.” *Id.* If the Secretary finds that the petition presents substantial information that a listing may be warranted, she must then “promptly commence a review of the status of the species” to determine whether listing is “(1) warranted, (2) not warranted, or (3) warranted but precluded by other pending proposals that require immediate attention.” 16 U.S.C. § 1533(b)(3)(B). This finding, known as the “12-Month Finding,” is due “within 12 months after receiving a petition.” *Id.* The Secretary has no discretion to extend the time allotted for the 12-Month Finding.

If the Secretary concludes that listing is warranted in its 12-Month Finding, she must simultaneously publish a proposed rule to list the species in the Federal Register. 16 U.S.C. § 1533(b)(3)(B)(ii). Within 12 months of publishing the proposed rule, the Secretary must make a final listing determination for the species. At this point, the Secretary must publish a final rule listing the species, publish a withdrawal of the proposal, or in the rare instance where there is substantial disagreement about scientific data, delay a final determination for up to six months to solicit more scientific information. 16 U.S.C. §§ 1533(b)(6)(A)(i), 1533(b)(6)(B)(i).

The Secretary received the Petition to list the Alexander Archipelago wolf as a threatened or endangered species via email on August 10, 2011. The Secretary’s 90-Day Finding was due on November 10, 2011, but the Secretary only just issued her belated positive finding on March 31, 2014. The Secretary’s more than two-year delay in issuing the 90-Day Finding has made it impossible for her to meet the 12-Month Finding deadline, which was August 10, 2012.

The Secretary’s failure to comply with the ESA’s deadlines for processing the Petition deprives Alexander Archipelago wolves of statutorily mandated protection vitally necessary for their survival. Any further delay by the Secretary in response to the petition frustrates the intent of the ESA by reducing the likelihood of survival and recovery of the species due to continued harm to the species from unsustainable logging and road-building practices in the Tongass National Forest.

If the Secretary does not act promptly to correct the above violations, Petitioners plan to pursue legal action. An appropriate remedy would be to promptly issue and publish in the Federal Register a 12-Month Finding on the Petition.

Sincerely,



Rebecca Noblin  
Alaska Director  
Center for Biological Diversity



Larry Edwards  
Forest Campaigner  
Greenpeace USA



Joel Hanson  
Conservation Director  
The Boat Company