



Sent via electronic and certified mail

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RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to the U.S. Fish and Wildlife Service's Failure to Designate Critical Habitat for Florida bonneted bat (*Eumops floridanus*)

Dear Sirs,

In accordance with Section 11(g) of the Endangered Species Act (Act), 16 U.S.C. § 1540(g), the Center for Biological Diversity (Center) provides this 60-day notice of its intent to sue the U.S. Fish and Wildlife Service (Service) for violations of the Act¹ in connection with the Service's failure to designate critical habitat for the Florida bonneted bat (*Eumops floridanus*). The Service violated and continues to be in violation of Section 4 of the Act, which requires the Service to designate critical habitat concurrently with its listing determination for the bat.² This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the Act, to the extent that such notice is deemed necessary by a court.³

I. Legal Background

The Act defines critical habitat as:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the [Act], on which are found those physical or

¹ 16 U.S.C. § 1531, *et seq.*; 50 C.F.R. § 402, *et seq.*

² 16 U.S.C. § 1533(a)(3)(A)(i), (b)(6)(C).

³ 16 U.S.C. § 1540(g).

biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it was listed . . . upon a determination by [the Services] that such areas are essential for the conservation of the species.⁴

“Conservation,” in turn, means recovery of these species “to the point at which the measures provided pursuant to this chapter are no longer necessary.”⁵

Critical habitat provides important protection for imperiled species beyond that provided by listing alone. Pursuant to section 7(a)(2) of the Act, federal agencies must ensure through consultation with the Service that any action they authorize, fund, or carry out will not “jeopardize the continued existence of any [listed] species.”⁶ For species with critical habitat, each federal agency must additionally guarantee that its actions will not “result in the destruction or adverse modification” of the critical habitat.⁷

Section 4 of the Act provides that once the Service publishes in the Federal Register notice of a proposed regulation listing a species, it has one year to either: 1) publish a final regulation that lists the species and finalize critical habitat designation concurrently; or 2) if critical habitat is prudent but not determinable, publish notice that it is extending the one-year period by no more than one additional year.⁸ If the Service avails itself of the one-year extension because it finds critical habitat is prudent but not determinable, it must within the additional year publish a final regulation designating critical habitat “based on such data as may be available at that time,” giving the Service a final deadline of two years from the date of publication of the proposed listing to publish a finalized critical habitat rule.⁹

II. Florida Bonneted Bat

The Florida bonneted bat is the largest bat in Florida, getting its common name from large, broad ears which project over the eyes.¹⁰ The Florida bonneted bat can roost in tree cavities, buildings, and artificial bat houses, either singly or in colonies consisting of one male and several females.¹¹ The bat forages in open spaces without dense vegetation, using its speed and agility at night as a “fast hawking” bat to target insects in the absence of background clutter.¹² While flying, the Florida bonneted bat produces relatively loud echolocation calls that can be heard by

⁴ 16 U.S.C. § 1532(5)(A).

⁵ *Id.* at § 1532(3).

⁶ *Id.* at § 1536(a)(2).

⁷ *Id.*

⁸ 16 U.S.C. § 1533(b)(6)(A)(ii); 50 C.F.R. § 424.12; 50 C.F.R. § 424.17(b)(2).

⁹ 16 U.S.C. § 1533(b)(6)(C)(ii).

¹⁰ *Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Florida Bonneted Bat*, 78 Fed. Reg. 61004, 61004 (Oct. 2, 2013).

¹¹ *Id.* at 61005.

¹² *Id.* at 61006.

RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Failure to Designate Critical Habitat for the Florida Bonneted Bat

some humans, unlike the ultrasonic calls of most other North American bats.¹³ Florida bonneted bats have been recorded in a variety of habitat types, including “pine flatwoods, pine rocklands, cypress, hardwood hammocks, mangroves, wetlands, rivers, lakes, ponds, [and] canals.”¹⁴ In forested areas, mature trees are essential roosting sites, and the availability of suitable roosting sites is an important habitat requirement.¹⁵ At the time of listing, all known roosting sites were artificial structures;¹⁶ however in 2014, a biologist discovered a colony of Florida bonneted bats roosting inside a tree cavity in Avon Park Airforce Range.¹⁷ Since then, natural roosts have also been discovered in tree cavities located in Florida Panther National Wildlife Refuge and Big Cypress National Preserve.¹⁸

The Florida bonneted bat has one of the most restricted ranges of any bat species in the New World, consisting of approximately 26 colonies in south and southwest Florida.¹⁹ The greatest threats to the species’ survival are habitat loss and degradation due to development and climate change effects, including sea-level rise and coastal squeeze.²⁰ These threats are compounded by the bat’s small population size, genetic isolation, slow reproduction, and low fecundity, and place the species at risk of extinction.²¹

On October 4, 2012, as part of a July 12, 2011 settlement agreement with the Center, the Service published a proposed rule to list the Florida bonneted bat as endangered throughout its range, but did not propose critical habitat, instead asserting that designation was not determinable.²² On October 2, 2013, the Service issued a final rule listing the Florida bonneted bat as endangered under the Act, finding that critical habitat for the Florida bonneted bat was not determinable.²³ The October 2013 decision did not provide a timeline for designating critical habitat other than to state the Service intended to publish a separate rule designating critical habitat “in the near future,” and “within our statutory timeframe.”²⁴ To date, the Service has not finalized a rule designating critical habitat for the Florida bonneted bat.

¹³ *Id.*

¹⁴ *Id.* at 61007.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ National Park Service, *Florida bonneted bat*, <https://www.nps.gov/ever/learn/nature/flbonnetedbat.html>.

¹⁸ Ridgley, Frank, *Discovering Our Endangered Neighbor*, <https://www.zoomiami.org/florida-bonneted-bat>.

¹⁹ *Id.* at 61010, 61012.

²⁰ *Id.* at 61004.

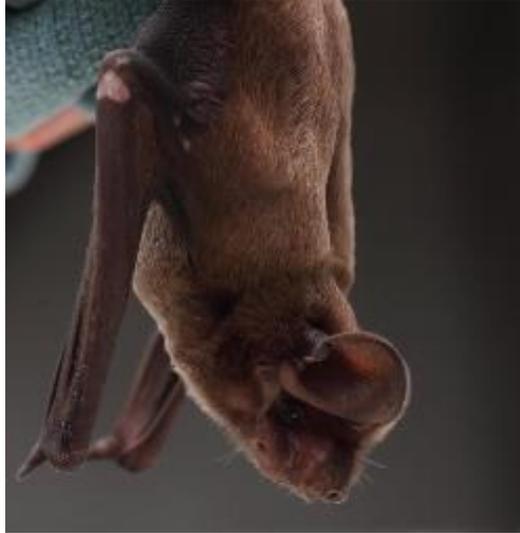
²¹ *Id.*

²² *Endangered and Threatened Wildlife and Plants; Proposed Endangered Species Status for the Florida Bonneted Bat*, 77 Fed. Reg. 60750, 60750 (Oct. 4, 2012).

²³ *Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Florida Bonneted Bat*, 78 Fed. Reg. 61004, 61004 (Oct. 2, 2013).

²⁴ *Id.* at 61004, 61022.

RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Failure to Designate Critical Habitat for the Florida Bonneted Bat



Florida bonneted bat. Photo by USFWS

III. Violations of the Endangered Species Act

The Service is in violation of the Act by failing to designate critical habitat for the Florida bonneted bat within the statutory timeframes required under the Act. The Service failed to designate critical habitat “concurrently” with its October 2, 2013 rule listing the species as endangered. The Service also missed its October 4, 2014 deadline to designate critical habitat within an additional year from the date of the proposed listing rule.

Consequently, the Service has failed to timely designate critical habitat for the Florida bonneted bat, and is in violation of Section 4 of the Act. The Service will continue to be in violation of the law until it publishes final rules designating critical habitat for the Florida bonneted bat. If the Service does not make the required critical habitat designation for the Florida bonneted bat within the next 60 days, the Center intends to file suit in federal court. Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,

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RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Failure to Designate Critical Habitat for the Florida Bonneted Bat