



January 11, 2016

SENT VIA EMAIL AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

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RE: Notice of Violations of the Endangered Species Act for Failing to Make Required Findings as to the California Spotted Owl

On behalf of the Center for Biological Diversity, we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A)(i), that the United States Fish and Wildlife Service (“FWS”) is in violation of Section 4(b)(3) of the ESA, 16 U.S.C. § 1533(b)(3), for failing to make the required 12-month finding on the California spotted owl (*Strix occidentalis occidentalis*).¹ The Center for Biological Diversity (the “Center”) is a

¹ The FWS’s failure to make the required finding also constitutes agency action unlawfully withheld or unreasonably delayed or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 706(1) & 706(2)(A).

national, nonprofit conservation organization with more than 900,000 members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including the California spotted owl, and the effective implementation of the ESA.

BACKGROUND

On December 23, 2014, conservation groups submitted a petition seeking ESA protection for the California spotted owl. On September 18, 2015, the U.S. Fish and Wildlife Service issued its determination that listing the California spotted owl under the Endangered Species Act “may be warranted”. 80 Fed. Reg. 56423, 56426 (September 18, 2015).

California spotted owls are in need of ESA protection due to the serious, ongoing decline in their populations on both public (National Forest) and private lands in the conifer forests of the Sierra region (e.g., Conner et al. 2013, Tempel and Gutiérrez 2013, Tempel et al. 2014). ESA protection for the owl is urgent because published science indicates that the Forest Service’s management of conifer forests must change in order to ensure the owl’s recovery. Currently, however, and in reliance on the false assumption that owl populations are stable, the Forest Service continues to propose large logging projects in spotted owl habitat and intends to increase such logging. Furthermore, timber companies operating on private lands in the Sierra region continue to use widespread clear-cutting in owl habitat. The best available science has demonstrated that the Forest Service’s and private timber companies’ logging harms spotted owls. In addition to logging, spotted owls face the growing threat of competition from barred owls, as well as climate change and loss of habitat from development.

ESA VIOLATIONS

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

Over a year has passed since the California spotted owl was petitioned for listing under the ESA. Accordingly, FWS is violating Section 4 of the ESA, and is failing to ensure that protection of threatened and endangered species occurs in a timely manner thereby avoiding further decline and increased risk of extinction.

CONCLUSION

California spotted owls are at risk, and continued delay is harming prospects for their survival and recovery. This delay is contrary to law, especially given the importance Congress has assigned to the protection of ESA listed species.

Within sixty days, if FWS does not act to correct the violation described in this letter or agree to discuss with us a schedule for completing the overdue finding, the Center will pursue litigation against the agency. If you have any questions, or would like to discuss, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Justin Augustine". The signature is written in a cursive style with a large, stylized 'J' and 'A'.

Justin Augustine
Center for Biological Diversity