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Barrens Topminnow/Tennessee: Center for Biological Diversity Notice of Intent to Sue U.S. Fish and Wildlife Service for Alleged Violation of the Endangered Species Act

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The Center for Biological Diversity (“CBD”) sent an August 15th Notice of Intent to Sue (“NOI”) to the United States Fish and Wildlife Service and Department of the Interior (collectively, “Service”) alleging violation of the Endangered Species Act (“ESA”).

CBD alleges that the Service has violated Section 4 of the ESA by failing to designate critical habitat for what it describes as the “critically endangered Barrens topminnow.”

The Barrens topminnow is stated to be found in only a handful of streams on the Barrens Plateau in middle Tennessee.

When the Service identifies a species as endangered or threatened Section 4 of the ESA requires that it also concurrently designate critical habitat. The relevant statutory language provides in part:

. . . to the maximum extent prudent and determinable the Service shall, concurrently with making a determination. . . that a species is an endangered species or threatened species, designate any habitat of such species which is then considered to be critical habitat.

The ESA also provides that if the Service determines that designating critical habitat for a listed species is prudent but not determinable at the time of the time of final listing, it may take one additional year to designate critical habitat for the species.

CBD states that when the Service proposed to list the Barrens topminnow as endangered it determined that designating critical habitat was prudent but not determinable. Further, the organization states that 18 months later, in issuing the final rule listing, it again concluded critical habitat was not determinable. Consequently, CBD states the ESA provided the Service one additional year from the date of its final listing to designate critical habitat for the Barrens topminnow.

Because the Service has not yet designated critical habitat for the species it is alleged to be in noncompliance with the ESA. Therefore, CBD states that if the Service does not act within 60 days to correct the alleged violation of the ESA, it will file an ESA citizen suit seeking injunctive and declaratory relief.

A copy of the NOI can be downloaded [here](#).

