



December 22, 2015

*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 Finding on Wood Turtle**

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 wood turtle (*Macrochelys temminckii*), one of the 53 amphibians and reptiles included in the Center’s July 11, 2012 petition.

The Center for Biological Diversity (the “Center”) is 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 wood turtle, and the effective implementation of the ESA.

**BACKGROUND**

Scientists estimate that about 25 percent of the nation’s amphibians and reptiles are at risk of extinction, yet only 69 of the approximately 1,400 U.S. species protected under the Endangered Species Act are amphibians and reptiles. To ensure that the nation’s most vulnerable amphibians and reptiles secure the life-saving protections of the ESA, on July 11, 2012, the Center for Biological Diversity submitted a petition to list 53 amphibian and reptiles species. The

petition asks the FWS to protect six turtles, seven snakes, two toads, four frogs, 10 lizards and 24 salamanders under the ESA. A copy of the petition, along with a list of the petitioned species, is available here:

[http://www.biologicaldiversity.org/campaigns/amphibian\\_conservation/pdfs/Mega\\_herp\\_petition\\_7-9-2012.pdf](http://www.biologicaldiversity.org/campaigns/amphibian_conservation/pdfs/Mega_herp_petition_7-9-2012.pdf).

All of these petitioned species have been classified as G1, G2 or G3 by NatureServe or are included on the IUCN's Red List as Near Threatened or worse, and they are facing threats to their survival, such as habitat loss, pollution, introduced predators and climate change. Backed by hundreds of scientific articles, the 450-page petition details the status of, and threats to, the petitioned animals, demonstrating the urgent need for their federal protection.

On September 18, 2015, the FWS determined that the wood turtle may warrant protection under the ESA and launched a full status review. 80 Fed. Reg. 56423,56432 (Sept. 18, 2015) ("90-day finding"). The agency has made no further findings under the ESA regarding the turtle.

### **ESA VIOLATION**

In response to a petition to list a species as threatened or endangered, the ESA requires that the Secretary 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 also requires that the Secretary within 12 months determine whether listing is warranted, not warranted, or warranted but precluded. 16 U.S.C. § 1533(b)(3)(B).

The Center filed its petition on July 11, 2012, and the turtle received its 90-day finding last fall. But over four years have passed without the FWS making the required 12-month finding on the turtle. Accordingly, FWS is violating Section 4 of the ESA and failing to ensure that protection of endangered species occurs in a timely manner thereby avoiding further decline and increased risk of extinction.<sup>1</sup>

### **CONCLUSION**

The species covered by this notice is at risk and continued delay is harming prospects for the survival and recovery of this highly imperiled animal. 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

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<sup>1</sup> 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).

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 "Collette L. Adkins". The signature is written in a cursive style with a large initial "C".

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Collette L. Adkins  
Amphibian and Reptile Senior Attorney  
Center for Biological Diversity