



January 28, 2009

Ken Salazar
U.S. Secretary of the Interior
1849 C. Street, NW
Washington, DC 20240
(Fax) 202-208-5048

Acting Director
U.S. Fish and Wildlife Service
1849 C. Street NW
Washington, DC 20240
(Fax) 202-208-6817

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Notice of Violations of the Endangered Species Act

Dear Secretary and Director,

We write to inform you that you are in violation of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, by failing to take action required by ESA Section 4(b)(3)(A), concerning six petitions to list 12 species as endangered or threatened and to designate their critical habitat. 16 U.S.C. § 1533(b)(3)(A). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

According to a letter from the U.S. Fish and Wildlife Service (Service) dated November 26, 2008, the Service received our petitions by certified mail on October 15, 2008. ESA Section 4(b)(3)(A) and its regulations require that, to the maximum extent practicable, within 90 days of receiving a petition the Service must make a finding as to 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); 50 C.F.R. § 424.14(b). Accordingly, if practicable, the 90-day finding was due on or before January 13, 2009. The six petitions for which you have failed to issue 90-day findings are:

- **Chihuahua scurfpea** (*Pedimelum pentaphyllum*)
- **Jemez Mountains salamander** (*Plethodon neomexicanus*)
- **Six mollusks:** southern hickorynut (*Obovaria jacksoniana*), smooth pimpleback (*Quadrula houstonensis*), Texas pimpleback (*Quadrula petrina*), false spike (*Quincuncina mitchelli*), Mexican fawnsfoot (*Truncilla cognata*), Texas fawnsfoot (*Truncilla macrodon*)
- **Sprague’s pipit** (*Anthus spragueii*)
- **White-sided jackrabbit** (*Lepus callotis*)
- **Wright’s marsh thistle** (*Cirsium wrightii*)

It is practicable for the Service to make immediate 90-day findings for all of these species, as our petitions contain substantial information warranting full consideration for ESA listing.

We also petitioned the **New Mexico meadow jumping mouse** (*Zapus hudsonius luteus*) for listing on October 9, 2008. By your letter dated November 26, 2008, the Service confirmed it received the jumping mouse petition on October 15, 2008. However, the jumping mouse is already designated a candidate for ESA listing, with a listing priority number of 3, the highest possible for a subspecies. We understand from your letter that the Service is treating the jumping mouse as “warranted, but precluded” from ESA listing.

The Service’s December 10, 2008 Candidate Notice of Review indicates multiple, high-magnitude, and imminent threats facing the jumping mouse, alongside its rapidly vanishing populations. 73 Fed. Reg. 75176, 75191. We contend that you are violating the ESA by considering this taxon “warranted, but precluded” given the failure to make expeditious progress in the listing program. 16 U.S.C. § 1533(b)(3)(B)(iii). The Service should therefore promptly issue a listing proposal for the New Mexico meadow jumping mouse. Alternatively, we contend that you should emergency list this species under the ESA. See 16 U.S.C. § 1533(b)(7). Your decision not to invoke your authority to emergency list the jumping mouse is arbitrary and capricious.

If you do not make the required 90-day findings on these six listing petitions within the next sixty days and issue a listing proposal for the New Mexico meadow jumping mouse, WildEarth Guardians intends to file suit to force you to do so. However, this is not our preference. The purpose of the 60-day notice provision in the ESA is for alleged violators of the law to come into compliance, therefore avoiding the need for litigation. Please contact me if you have any questions or if you would like to discuss this matter. Specifically, please contact me if you would like to propose a specific date by which you will take action on our petitions or if you intend to take action by a specific date.

Our preference would be to avoid lawsuits over ESA findings altogether, instead working out reasonable schedules with the Service’s staff for petition findings, listing proposals, and final listing rules. About 80% of the nation’s imperiled species are not yet protected under the ESA. Because of our group’s keen interest in obtaining federal protection for many of these species, a cooperative relationship between the Service and our organization could save WildEarth Guardians and the government substantial time and money.

Sincerely,

Nicole J. Rosmarino, Ph.D.
Wildlife Program Director
WildEarth Guardians
1536 Wynkoop St.
Denver, CO 80302
303-573-4898
nrosmarino@wildearthguardians.org