

9 April 2004

Dale Hall, Regional Director
U.S. Fish and Wildlife Service
P.O. Box 1306
Albuquerque, NM 87103

Hon. Gale A. Norton
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Steven A. Williams, Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

VIA CERTIFIED MAIL

RE: 60-DAY NOTICE OF INTENT TO SUE: Notice of Violation of Section 4(b)(3)(D) of the Endangered Species Act Relating to the Petition to Revise the Critical Habitat Designation for the Northern Aplomado Falcon (Falco femoralis septentrionalis)

Dear Director Hall, Secretary Norton, and Director Williams,

We are writing 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 section 4(b)(3)(D)(i), (ii), concerning the petition to revise the critical habitat determination for the northern aplomado falcon. 16 U.S.C. § 1533(b)(3)(D)(i). This letter is being provided to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

Notwithstanding the assertions in your letter, Director Hall, dated February 14, 2003, FWS is obligated to provide a 90-day petition finding and a 12-month determination under the Endangered Species Act on our petition to revise the critical habitat designation for the northern aplomado falcon. Both of these findings are now overdue.

Secretary Norton, on September 9, 2002, you received our petition to revise the critical habitat determination for the northern aplomado falcon. ESA section 4(b)(3)(D)(i) and its regulations require you to make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned critical habitat revision may be warranted within 90 days of receiving the petition. 16 U.S.C. § 1533(b)(3)(D)(i); 50 C.F.R. § 424.14(c). Accordingly, the 90-day finding was due on or before December 8, 2002.

In Re: Northern Aplomado Falcon Critical Habitat Revision Petition

In addition, you are required under 16 U.S.C. § 1533(b)(3)(D)(ii); 50 C.F.R. § 424.14(c) to make a determination on how to proceed with the requested revision twelve months after the petition is submitted. Accordingly, a 12-month finding was due on or before September 9, 2003.

You have not made the required 90-day or 12-month findings on the petition to revise the critical habitat determination for the Northern Aplomado Falcon, and so are in violation of the ESA.

In your correspondence to us, Director Hall, you indicated your understanding that our petition is a petition to revise the recovery plan. This is incorrect. Rather, it is a petition to revise the critical habitat designation for the northern aplomado falcon from zero to a positive number. Critical habitat designation and recovery plans are distinguishable. The formal designation of critical habitat provides a clear prohibition on federal agency actions that adversely modify critical habitat under 16 U.S.C. § 1536(a)(2). We address this and other assertions in your February 14, 2003 letter in correspondence under separate cover.

If you do not make the required findings on the northern aplomado falcon within the next sixty days, Forest Guardians, Chihuahuan Desert Conservation Alliance, the Texas chapter of Public Employees for Environmental Responsibility, and other interested parties intend to file suit to force you to do so. Please contact me if you have any questions or if you would like to discuss this matter.

I look forward to your response.

Sincerely,

Nicole J. Rosmarino, Ph.D.
Endangered Species Director
Forest Guardians

for
Chihuahuan Desert Conservation Alliance

Texas Public Employees for Environmental Responsibility

cc:

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