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FOOD SAFETY



Sent via Email and Certified Mail Return Receipt Requested

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January 5, 2016

Re: Notice of Violations of the Endangered Species Act for Failing to Make a Required Finding on the Petition to Protect the Monarch Butterfly

On behalf of the Center for Biological Diversity and the Center for Food Safety, 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 our August 26, 2014 petition to protect the Monarch butterfly (*Danaus plexippus plexippus*) as a threatened species under the ESA.¹

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

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 900,000 members and supporters 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 monarch butterfly, and the effective implementation of the ESA.

The Center for Food Safety (“CFS”) is a nonprofit public interest organization established in 1997 whose mission centers on protecting public health and the environment by curbing the adverse impacts of industrial agriculture and food production systems on public health, the environment, and animal welfare, and by instead promoting sustainable forms of agriculture. CFS is the leading nonprofit working on the adverse impacts of genetically engineered crops and neonicotinoid pesticides. CFS and its over 700,000 members are concerned about the impacts of industrial agriculture on biodiversity generally, and on monarch butterflies specifically. CFS and its members have strong interests in the conservation of monarch butterflies that are impacted, directly and indirectly, by harmful agricultural practices. As part of its mission and member interests, CFS’s multifaceted pollinator protection program actively works to reduce the adverse effects of toxic pesticides on important insect and pollinator species, such as monarch butterflies and honey bees. This program utilizes scientific, policy, educational, legislative, regulatory, and grassroots campaigns to spearhead action from government agencies, policymakers, and the public, to protect food security and the environment by requiring robust analyses of these pesticides’ adverse impacts, and suspending or curbing their use as needed.

BACKGROUND

The monarch is an iconic large orange and black butterfly that is one of the most familiar butterflies in North America. Once common and numbering near one billion butterflies during overwintering counts, monarch numbers have recently declined by more than 80 percent from the 20-year average. During the last two winters, the numbers of overwintering monarchs were the lowest population sizes ever recorded. The monarch is threatened by multiple factors including increased pesticide use due to the widespread planting of crops that are genetically modified to be pesticide tolerant, habitat loss due to development in their summer breeding grounds and logging in their overwintering grounds, and global climate change.

In light of these ongoing threats and the resultant butterfly population decline, on August 26, 2014, the Center for Biological Diversity and Center for Food Safety as co-lead petitioners, joined by the Xerces Society for Invertebrate Conservation and monarch scientist Lincoln Brower, submitted a legal petition to protect the monarch butterfly as a threatened species under the ESA.² Drawing from hundreds of scientific articles, the 159-page petition details the status of, and threats to, the monarch butterfly, demonstrating the urgent need for its federal protection.

not in accordance with law within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 706(1) & 706(2)(A).

² The petition is available for download here: http://www.centerforfoodsafety.org/files/monarch-esa-petition-final_77427.pdf

On December 31, 2014, the FWS determined that the petition contained substantial information to indicate that ESA protection for the monarch butterfly may be warranted, and the Service initiated a full status review. 79 Fed. Reg. 78775 (Dec. 31, 2014) (“90-day finding”). The agency has made no further findings under the ESA regarding the butterfly’s protection.

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).

We filed our petition seeking protection for the monarch butterfly on August 26, 2014, and the Service issued its 90-day finding on December 26, 2014. More than 12 months have passed without the FWS making the required 12-month finding for the monarch butterfly. 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.

CONCLUSION

The monarch is threatened by multiple factors and continued delay is harming prospects for the recovery of this highly imperiled migratory butterfly. 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, we will pursue litigation against the agency. If you have any questions, or would like to discuss this matter, please contact us.

Sincerely,



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