December 11, 2019

Secretary David Bernhardt
U.S. Department of the Interior
1849 C Street, NW
Washington DC 20240

Assistant Director Gary Frazer
U.S. Fish and Wildlife Service
1849 C Street, NW
Room 3345
Washington DC 20240

RE: Sixty-date notice of violation of the Endangered Species Act, relating to a late finding on a petition to list the lake sturgeon (*Acipenser fulvescens*) as a threatened or endangered species

Dear Secretary Bernhardt and Assistant Director Frazer,

This letter serves as a 60-day notice-of-intent-to-sue from the Center for Biological Diversity (the “Center”), Fishable Indiana Streams for Hoosiers, Hoosier Environmental Council, and Prairie Rivers Network for failure to make a required 12-month finding on a petition from the Center to list the lake sturgeon as a threatened or endangered species under the Endangered Species Act (“ESA”). 16 U.S.C. § 1533(b)(3)(B). 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).

The lake sturgeon is a large, long-lived, freshwater fish species that has survived relatively unchanged for approximately 200 million years. Historically, the Great Lakes teemed with lake sturgeon, but lake sturgeon abundance is now reduced to less than one percent of historic levels in their native range, which is primarily the Great Lakes and Mississippi River drainage. Most of the remaining spawning populations show little or limited signs of natural recovery. The lake sturgeon face ongoing and critical threats from dams and hydroelectric facilities, pollution and contaminants, recreational fishing, poaching, invasive species, climate change, and habitat fragmentation.

In response to a petition to list a species as threatened or endangered, the ESA requires the Secretary to determine within 90 days whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (“90-day finding”). 16 U.S.C. § 1533(b)(3)(A). If a petition is found by the Secretary to present substantial scientific or commercial information indicating that the petitioned action may be warranted, the ESA then also requires that the Secretary determine within 12 months of receiving the petition whether the listing is warranted, not warranted, or warranted but precluded (“12-month finding”). 16 U.S.C. § 1533(b)(3)(B).
The Center filed a petition seeking Endangered Species Act protection for the lake sturgeon on May 14, 2018. Specifically, the Center sought “threatened” status for all lake sturgeon in the United States, or, alternatively, for identification and listing of imperiled subpopulations of lake sturgeon in the U.S as “threatened” or “endangered.” The Center also requested that critical habitat for all listed U.S. populations of the lake sturgeon be designated concurrent with listing. On August 15, 2019, the U.S. Fish and Wildlife Service (“Service”) found that the petition to list the lake sturgeon as endangered or threatened presented “substantial scientific or commercial information indicating that the petitioned action may be warranted,” and affirmed its plan to issue a 12-month finding in accordance with the ESA.

Given the Service’s published 90-day finding that the lake sturgeon petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, a 12-month finding for the same petition was due on May 14, 2019. The Service has failed to issue this required finding. Accordingly, you are in violation of the law and have abrogated your duty to ensure that protection of endangered species occurs in a timely manner to avoid further decline and increased risk of extinction.

If the Secretary does not make the required findings for the lake sturgeon or contact us to develop a timeline for making these findings within the next 60 days, the entities providing notice herein intend to file suit. Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,

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