



CENTER for BIOLOGICAL DIVERSITY

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Ken _____
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CC: ES

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February 20, 2013

Mr. Ken Salazar, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Ms. Cindy Dohner, Southeast Regional Director
Fish and Wildlife Service
1875 Century Blvd. Suite 400
Atlanta, GA 30345

Mr. Daniel M. Ashe, Director
Fish and Wildlife Service
1849 C Street N.W.
Washington, DC 20240

RE: Sixty-day notice of violation of section 4(b)(3)(A and B) of the Endangered Species Act, relating to a late finding on a petition to list the MacGillivray's seaside sparrow (*Ammodramus maritimus macgillivrayi*) and the Florida Keys mole skink (*Eumeces egregius egregius*) as a threatened or endangered species.

Dear Secretary Salazar, Director Ashe, and Regional Director Dohner:

This letter serves as a sixty-day notice from the Center for Biological Diversity ("Center") of its intent to sue you pursuant to the Endangered Species Act ("ESA") for failing to make required findings on a petition to list the MacGillivray's seaside sparrow (*Ammodramus maritimus macgillivrayi*) and Florida Keys mole skink (*Eumeces egregius egregius*) as threatened or endangered species under the ESA. 16 U.S.C. § 4(b)(3)(A) and (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).

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"), and to determine within 12 months of the petition submission whether listing is warranted, not warranted, or warranted but precluded ("12-month finding"). 16 U.S.C. § 1533(b)(3)(A) and (B). The Center filed a petition to list the MacGillivray's seaside sparrow and Florida Keys mole skink as endangered or threatened species under the ESA on April 20, 2010. The U.S. Fish and Wildlife Service ("FWS") issued positive 90-day findings on the petition for these species on September 26, 2011. 76 Fed. Reg. 59835 (Sept. 27, 2011). Therefore, the 12-month findings for the species were due on April 20, 2011. It has been over two years since the Center submitted its petition to FWS, yet the FWS has not issued 12-month findings for these species. 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 thereby avoiding further decline and increased risk of extinction.

The MacGillivray's seaside sparrow is one of four subspecies of seaside sparrow still found in Florida – the Cape Sable seaside sparrow is listed under the ESA as endangered and the dusky seaside sparrow is now extinct. The MacGillivray's seaside sparrow once ranged into Volusia County, Florida, but now

only has patchy distribution along the Atlantic coast of northern Florida through northern North Carolina. Optimum habitat for the MacGillivray's seaside sparrow contains salt and brackish marshes with watery openings in vegetation to allow for foraging at the base of rooted vegetation.

The MacGillivray's seaside sparrow's distribution is limited by tidal extremes and predation, with populations south of the St. John's River having been eliminated. Wetlands loss in the U.S. coastal zone has accelerated about 0.5 percent annually since the mid-1950s, with some of the greatest losses experienced in Florida. Remaining wetlands are fragmented by development and otherwise impacted by sedimentation, dam operations, pollution, and incompatible water use practices. Because it is a habitat specialist and needs extensive areas to survive, it is particularly vulnerable to habitat loss and degradation.

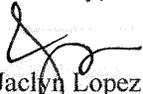
The Florida Keys mole skink is a tiny lizard found mainly in Dry Tortugas and Lower Keys along the shoreline in sandy areas where it burrows into soil. It may also occur in Upper and Middle Keys and in Key West, Middle Torch Key, Key Vaca, Stork Island, Big Pine Key, Grassy Key, Upper Matecumbe, and Saddlebunch. It is the southernmost of the mole skink subspecies. Its populations are declining primarily due to habitat destruction and overcollection.

Both species are extremely vulnerable to sea level rise and increasing storm surge due to climate change. These forces can inundate coastal marsh habitat, jeopardize nesting and burrowing efforts, and make the species more vulnerable to predators. These species also significant risks from coastal squeeze that occurs when their habitat is pressed between rising sea levels and coastal development that prevents landward movement.

Global sea level is predicted to rise by at least one to two meters within this century. Sea level rise is accelerating in pace; the rate of sea level rise between 1993 and 2011 was 60% faster than expected. Globally, sea levels rose by eight inches on average over the past century, and by nine inches off northern Florida (Fernandina Beach). On a regional level, sea level rise projections for Florida are similar to global estimates, making it likely that Florida will experience one to meters of sea level rise within this century. In addition, more powerful storms and higher storm surge will increase the impacts of sea level rise on the sparrow. The frequency of high-severity Atlantic hurricanes is increasing along with associated large storm surge events and wave heights.

If the Secretary does not make the required finding for the MacGillivray's seaside sparrow and Florida Keys mole skink, or contact us to develop a timeline for making these findings within the next 60 days, we intend to file suit. Please contact me at (727)490-9190 or jlopez@biologicaldiversity.org if you have any questions or if you would like to discuss this matter.

Sincerely,


Jaclyn Lopez
Staff Attorney