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Sent via electronic and certified mail

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**RE: Notice of Violations of the Endangered Species Act Relating to the U.S.
Fish and Wildlife Service's Determination that Listing the Venus Flytrap
Is Not Warranted.**

Secretary Burgum, Director Nesvik, Acting Assistant Director Tirpak, and Regional Director Oetker:

With this letter, the Center for Biological Diversity provides notice to the U.S. Fish and Wildlife ("FWS") that its determination that the Venus flytrap (*Dionaea muscipula*) does not warrant listing as a threatened or endangered species (not warranted finding) violates Section 4 of the Endangered Species Act ("ESA").¹

Legal Background

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."² The ESA is intended to protect and recover species that FWS determines to be "threatened" or "endangered."³ "Endangered" means the species "is in

¹ Endangered and Threatened Species: Species Not Warranted for Listing, 88 Fed. Reg. 47839 (July 25, 2023). This notice of violations is provided, to the extent required under law, pursuant to section 11(g)(1)(C) of the ESA. 16 U.S.C. § 1540(g)(1)(C).

² *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

³ 16 U.S.C. § 1533(a).

danger of extinction throughout all or a significant portion of its range.”⁴ “Threatened” means the species is “likely to become an endangered species within the foreseeable future.”⁵

Any person may petition FWS to list a species as threatened or endangered under the ESA.⁶ FWS must make a preliminary finding on the petition within 90 days.⁷ If FWS finds “substantial information indicating that the petitioned action may be warranted,” it must publish that finding and proceed to conduct a full scientific review of the species’ status.⁸ Based on that review, and with limited exception, FWS has twelve months to either issue a “not warranted” finding (thus rejecting the petition) or a proposed rule adding the species to either the endangered or threatened list.⁹ If FWS proposes to list the species under either category, it then has twelve more months to make a final determination.¹⁰

When making listing decisions, the ESA requires FWS to determine whether any species is an endangered species or a threatened species based on consideration of five factors: the present or threatened destruction, modification, or curtailment of a species’ habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; predation or disease; the inadequacy of existing regulatory mechanisms; or other manmade or natural factors affecting the species’ continued existence.¹¹

If a species meets the definition of “endangered” or “threatened” because of any one or a combination of these five factors, FWS must list the species.¹² In evaluating these factors, FWS must make listing determinations “solely on the basis of the best scientific and commercial data available.”¹³

The lawfulness of FWS listing decisions is governed by Administrative Procedure Act (“APA”) standards of review.¹⁴ The APA directs that courts “shall” set aside agency actions, findings, or conclusions that are determined to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁵ In reviewing whether an agency decision is arbitrary and capricious, courts must “ensure that the agency considered the relevant factors and

⁴ *Id.* § 1532(6).

⁵ *Id.* § 1532(20).

⁶ *Id.* § 1533(b)(3)(A).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* § 1533(b)(3)(B).

¹⁰ *Id.* § 1533(b)(6)(A).

¹¹ *Id.* § 1533(a)(1).

¹² *Id.*; 50 C.F.R. § 424.11(c); *see also Fed’n of Fly Fishers v. Daley*, 131 F. Supp. 2d 1158, 1164 (N.D. Cal. 2000) (“These factors are listed in the disjunctive; any one or a combination can be sufficient for a finding that a particular species is endangered or threatened.”).

¹³ 16 U.S.C. § 1533(b)(1)(A).

¹⁴ 5 U.S.C. §§ 701-706.

¹⁵ *Id.* § 706(2)(A).

articulated a rational connection between the facts found and choices made.”¹⁶ An “agency rule would be arbitrary and capricious if the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”¹⁷

Factual Background

1. The Venus Flytrap.

The Venus flytrap is one of the most widely recognized plant species on earth. In his 1875 book *Insectivorous Plants*, Charles Darwin referred to it as “one of the most wonderful plants in the world.” It is the sole member of its genus and the only terrestrial carnivorous plant that uses a snap-capture mechanism to capture its prey. Belying its common name, the Venus flytrap’s diet is comprised primarily of ants and spiders.

The Venus flytrap is endemic to a small area of southeastern North Carolina and northeastern South Carolina, within the Outer Coastal Plain, Inner Coastal Plain, and Sandhills regions. All Venus flytrap populations are located within an approximate 100-mile radius of the port city of Wilmington, NC.¹⁸ The acidic soils, low nutrients, and high-water table characteristic of this region make it a “hotspot” for plant diversity, particularly “meat eaters.” 15 different species of insectivorous plants, including sundews, butterworts, bladderworts, and pitcher plants, as well as Venus flytrap, are native to the Wilmington area (TNC 2022).

In all, the Coastal Plains and Sandhills regions harbor at least 45 endemic or near-endemic plant taxa (Leblond 2001). The restricted geographic range of the Venus flytrap and the numerous other endemic plants found in this area “reflects the geographic history of the region, which has experienced several bouts of inundation with fluctuating sea levels, accompanied by speciation on isolated upland regions” (Hamon et al. 2021, at p. 18).

In the Coastal Plain, the Venus flytrap most commonly occurs between pocosins (a type of shrub bog wetland) and adjacent longleaf pine savanna or wet pine flatwoods. It also occurs between the edges of Carolina bays (shallow, elliptical depressions often containing wetlands running northwest-southeast on the Atlantic Coastal Plain) and adjacent forested communities. (Ross 2003).

¹⁶ *Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1023 (9th Cir. 2011).

¹⁷ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁸ The species has also been introduced outside of its native range in other portions of North Carolina, the Florida panhandle, and southern New Jersey, and is widely cultivated. “The entity petitioned for listing is distinct from its cultivars, genetic variants of the wild type that have been propagated vegetatively or by tissue culture, commonly sold as house plants.” FWS Petition Review Form (Sept. 22, 2017), at p. 2.

The Sandhills populations are ecologically distinct and geographically separated from the Coastal Plain populations, occurring in streamhead pocosins and sandhill seeps, where sphagnum moss tends to occur, as well as other endemic plants of the ecosystem. This area likely served as a refuge in past sea level rise events and is essential to preserving the genetic legacy of the Venus flytrap. These Sandhills populations, primarily located on Fort Bragg, are separated by more than 80 kilometers from all other Venus flytrap populations.¹⁹

The most recent range-wide surveys of the Venus flytrap were conducted from 2019 to 2021. The surveyors estimated a total population of 879,167 plants, a “far smaller” size than the estimated historic population size (Hamon et al., at p. ii). Of the estimated 69 extant populations, only 17 were characterized by surveyors as being in “good” to “excellent” condition (more than 1,000 individuals), all located in the Outer Coastal Plain. (Hamon et al., at p. 3). Approximately two-thirds of remaining native and wild Venus flytrap—540,000 plants—are concentrated in the three largest populations: Green Swamp (Nature Conservancy preserve), state-owned game land, and Camp Lejeune.²⁰ Other remaining large populations occur on Fort Bragg, the Croatan National Forest, and additional state lands.²¹

At the time of its not warranted decision, FWS did not “have information on the genetic diversity within and among all the populations across the species’ range,” but noted that researchers at the University of North Carolina Chapel Hill Center for Genomic Studies and North Carolina Botanical Garden were “working on a population genetics and phylogeography study.”²² Pending the results of that study, FWS utilized the three ecoregions within the Venus flytrap’s range (Outer Coastal Plain, Inner Coastal Plain, and Sandhills) as “broad areas within which local adaptations and genetic coadaptation have likely occurred.”²³

Direct habitat destruction is a primary threat to Venus flytrap, “including conversion to timber plantations, agriculture, golf courses, and residential areas” (Hamon et al, at p. 21-22). The species’ highly limited range sits within one of the most rapidly growing areas in the country, resulting in significant and continuing diminishment of remaining flytrap habitat, particularly on private lands.²⁴ More than 50 percent of the remaining areas with highly suitable

¹⁹ Listing petition, at p. 19, Figure 4.

²⁰ Species Assessment Form (“SAF”), at p. 19.

²¹ *Id.*, at p. 15.

²² Species Status Assessment (“SSA”), at p. 26, 47. A preprint of this study, issued on June 2, 2026, identified “four major ancestral lineages” of Venus flytrap, two of those located in the Sandhills region (Zhou et al. 2026, at p. 24). Based on their findings, the study’s authors recommend that “all extant” Venus flytrap populations “receive special conservation attention” and that this “is perhaps particularly urgent for Sandhills populations (with their genetic uniqueness) and the smaller and/or peripheral populations where ... inbreeding and genetic drift could drive them toward local extinction” (Zhou et al., at p. 28).

²³ SSA, at p. 26.

²⁴ Gareth McGrath, StarNews Online. “Under pressure: As the Wilmington area grows, natural resources are being threatened.” (Oct. 21, 2024).

Venus flytrap habitat have a high potential to be developed by 2050.²⁵ Fire suppression techniques such as bulldozing of fire lines, power line and roadside right-of-way maintenance, and agricultural land conversion (including tree farming) have historically and continue to further reduce flytrap habitat.

Like the broader longleaf forest ecosystem, the Venus flytrap is highly dependent on frequent fire and begins to die out after only 3-4 years without fire (Hamon et al., at p. 21). Only sites that are well managed with prescribed fire are likely to support Venus flytrap over time. (Hamon et al., at p. 22). In addition to directly impacting habitat, rapid urban development also complicates the prescribed fire management of natural areas harboring the remaining large populations of Venus flytraps. (Hamon et al., at p. 22).

2. FWS Determination that Listing the Venus Flytrap Is Not Warranted.

On October 21, 2016, Dr. Donald M. Waller and 25 other leading plant scientists and interested individuals petitioned to list the Venus flytrap under the ESA.²⁶ On December 20, 2017, FWS published a 90-day finding that the petition contained substantial information indicating that listing may be warranted.²⁷

The basis for FWS's positive 90-day finding is detailed in a petition review form completed on September 22, 2017.²⁸ The form reflects that FWS determined that the petition provided substantial information in support of its claim that the species is imperiled by the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial purposes; and the inadequacy of existing regulatory mechanisms.

FWS also concluded, however, that the listing petition did not provide substantial information in support of its claim that the Venus flytrap is imperiled by climate change and resulting sea level rise. Although the petition stated that sea levels in the Wilmington area are projected to rise 0.5 meters in the 21st century and included a map showing low elevation in the counties where the species occurs, FWS found that "because citations are not provided, the petitioners' claim that climate change will contribute to sea level rise that will encroach on Venus flytrap habitat cannot be substantiated."

FWS did not timely issue its 12-month finding, prompting the Center to file a lawsuit to compel the overdue listing decision.²⁹ Nearly six years after its positive 90-day finding, FWS determined on July 25, 2023, that the Venus flytrap does not warrant listing under the ESA.³⁰

²⁵ SSA, at p. 37.

²⁶ Available at: <https://ecos.fws.gov/ecp/species/7142#petitions>.

²⁷ 82 Fed. Reg. 60362 (Dec. 20, 2017).

²⁸ Available at: <https://www.regulations.gov/document/FWS-R4-ES-2017-0041-0002>.

²⁹ *Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv.*, D.D.C. Case No. 1:20-cv-00573 (filed Feb. 27, 2020).

³⁰ 88 Fed. Reg. 47839 (July 25, 2023).

FWS's decision was largely based on a review known as a Species Status Assessment ("SSA"), with the decision rationale documented in a Species Assessment Form ("SAF").

In the SSA, FWS defined Venus flytrap populations "with a large number of individual plants, made up of multiple subpopulations, and managed with frequent fire" as the most "resilient."³¹ Of the 74 remaining flytrap populations,³² FWS categorized three-quarters of those populations (56) as "low resiliency." Only 18 populations were categorized as "high" or "medium" resiliency.³³

In order to project the future condition of Venus flytrap populations, FWS considered future climate conditions; future land use change; future suitable prescribed burning windows; and protection status, under six "plausible scenarios."³⁴ For future climate conditions, FWS relied on generalized Intergovernmental Panel on Climate Change modeling, with five emission "pathways."³⁵ It defined the "foreseeable future" as 50 years (2070), considered at 30-year and 50-year time steps.³⁶

FWS concluded in the SSA that "[t]he results of our future conditions analysis indicate no change in the future resiliency of Venus flytrap populations that are currently in high resiliency condition, regardless of management scenario, climate scenario, and year."³⁷ This *status quo* is predicted at both 30 years and 50 years into the future.³⁸

Notice of ESA Violations

FWS's determination that listing the Venus flytrap as an endangered or threatened species is not warranted is arbitrary and capricious, and counter to the ESA's best available scientific information standard, in at least the following respects:

* Arbitrary assumption of continued necessary management, including prescribed burning. As FWS details, due to the extensive and ongoing loss of habitat within the Venus flytrap's limited range, remaining individual plants are today overwhelmingly found in a small number of remaining populations. The Venus flytrap is thus at heightened risk of extinction if any one of these remaining populations is lost or significantly reduced.

³¹ SSA, at p. 24.

³² The SSA does not explain the discrepancy between its use of 74 extant populations and the 69 extant populations reported in the 2019-2021 rangewide survey. (Hamon et al., at p. 3).

³³ SSA, at p. 24.

³⁴ *Id.*, at p. 50-51.

³⁵ *Id.*, at p. 48.

³⁶ *Id.*, at p. 48.

³⁷ *Id.*, at p. 56.

³⁸ *Id.*, at p. 56; *id.*, Appendix D, at p. 92-98.

FWS characterizes fire suppression as “by far the biggest threat” to the Venus flytrap.³⁹ Thus, ongoing and active management of remaining populations is essential to the species’ continuing viability. Despite the existential importance of prescribed fire to the Venus flytrap’s continued existence, FWS takes a lackadaisical and sanguine approach when assessing the likelihood of this essential management continuing in the foreseeable future.

FWS’s analysis has two layers of assumptions that are not sufficiently supported by the available evidence. First, FWS characterizes five “populations owned entirely by government agencies with a conservation focus,” including the U.S. Forest Service and several North Carolina state agencies, “to have a high level of protection.” FWS further characterizes three populations occurring on military bases (Camp Lejeune and Fort Bragg) as having a “moderate” level of protection.⁴⁰ Together, these eight “protected” populations contain “95% of the estimated known number of plants.”⁴¹

FWS’s assumption that all the Venus flytrap’s largest remaining populations are “protected” provides the primary basis for its conclusion that threats facing the species “appear to have low imminence and magnitude such that” the species “is not in danger of extinction throughout all of its range and does not meet the definition of an endangered species.”⁴²

FWS further assumes that all eight populations “will likely be managed with prescribed fire and maintain resiliency into the future.”⁴³ As a result, in all future “scenarios,” FWS projects that all the populations currently deemed to be currently “highly” or “moderately” “resilient” will remain in that status for decades into the future (2050 and 2070).⁴⁴ Based on these assumptions, FWS concludes that Venus flytrap is not likely to become endangered in the foreseeable future, and thus does not meet the definition of a threatened species.⁴⁵

FWS does not provide sufficient evidence to support its assumptions and blanket characterizations of populations as “protected” simply because they occur on government land. FWS does not, for example, cite to any land management direction, policy, or other binding direction on Department of Defense lands, the Croatan National Forest, or North Carolina state lands requiring the relevant federal and state agencies to “protect” the Venus flytrap.⁴⁶ While

³⁹ SAF, at p. 18.

⁴⁰ *Id.*, at p. 21; see also *id.*, at p. 15 (“Conservation lands owned by the US Forest Service, State agencies, and private nature preserves *are expected to remain protected and managed for conservation purposes.*”)(emphasis added).

⁴¹ *Id.*, at p. 25.

⁴² *Id.*, at p. 27.

⁴³ *Id.*, at p. 25; SSA, at p. 63.

⁴⁴ See SAF, at p. 28 (“This is primarily because these populations are currently protected and managed, and those conditions are not likely to change in the future.”).

⁴⁵ *Id.*, at p. 28.

⁴⁶ See, e.g., Listing petition, p. 20 (“Of the four main clusters of flytrap populations (Croatan National Forest, Marine Corps Base Camp Lejeune, Holly Shelter Game Land, and the Boiling

these areas will likely not be urbanized, development is just one example of habitat modification that threatens the Venus flytrap.⁴⁷

FWS provides even less evidence that these lands will be actively managed for prescribed fire, particularly decades into the future. Indeed, FWS acknowledges such management is unlikely on both Camp Lejeune (containing one of the three largest populations within the Inner Coastal Plain) and Fort Bragg (containing the largest remaining populations within the Sandhills).⁴⁸

* Failure to rationally address or even acknowledge the threat of sea level rise: Past sea level rise has been identified as a key contributor to historic evolution of the Venus flytrap. Today and in the foreseeable future, sea level rise driven by climate change is a significant threat to the Carolina coast generally, and the Wilmington region in particular. In addition to direct inundation, sea level rise can cause salt water to mix further upstream and farther inland in aquifers and wetlands. The resultant increased salinity can kill wetland vegetation and also cause subsidence (Moorman, et al. 2024). Despite the clear relevance of sea level rise to the past, present, and future condition of the Venus flytrap, FWS did not provide any consideration of this threat in either the SSA or SAF.

FWS's failure to address sea level rise is glaring and inexplicable. As FWS acknowledges, the recently revised North Carolina Climate Science Report (Kunkel et al. 2020), found that "large changes in North Carolina's climate, much larger than at any time in the state's history, are very likely by the end of the century under both the low (RCP 4.5) and high (RCP 8.5 scenarios)." Yet FWS fails to mention the Report's findings that sea level has already risen by 0.9 inches per decade since 1935 at Wilmington, and that it "is *virtually certain*" that sea level will continue to rise along the North Carolina coast." (Kunkel et al., at p. 6)(emphasis in original).

As the Report further details, storm-driven water levels that had a 1% chance of occurring each year at the beginning of this century on North Carolina's coast "may have as much as a 30%-100% chance of occurring each year in the latter part of the century." (Kunkel et al., at p. 6-7). High tide flooding "is projected to become a near daily occurrence by 2100 under

Spring Lakes Preserve), only the Boiling Spring Lakes Preserve is managed for this plant species.").

⁴⁷ See, e.g., SSA, at p. 35 (noting past fire suppression incidents in the Croatan National Forest negatively impacting Venus flytrap plants).

⁴⁸ See e.g., SAF, at p. 19 ("The third largest Venus flytrap population occurs on a military base where regular fire has maintained this population; however, management of the military base [Camp Lejeune] could change so the long-term protection of this population is less certain"); SSA, at p. 31 ("These Sandhills populations all occur at Fort Bragg Army Base where they are considered moderately protected. Since Fort Bragg could change the land use of the areas where these populations occur, the long-term protection and management of these populations is uncertain.").

both the lower and higher scenarios,” and one of two days by mid-century (Kunkel et al., at p. 68, 176).

The best available scientific information demonstrates that the rate of sea level rise within the Venus flytrap’s highly limited range is already rapidly worsening: Wilmington recorded seven inches of sea level rise since 2010, more than double than 2.7 inches observed from 1990 to 2009. Under high emission scenarios, areas in the Wilmington region that currently have a 10% probability of flooding each year would have nearly a 100% probability by 2050. (Kunkel et. 2020, p. 181; Kopp et al. 2015).

Although the SSA notes high-tide flooding as a risk to the Venus flytrap, there is no mention of such flooding in SAF. And FWS makes no mention of sea level rise in either the SSA or SAF. Although FWS considers climate change generally, it primarily relies on broad, national level assessments despite the ready availability of studies specific not only to the Carolina Coastal Plain, but the precise areas around Wilmington that harbor the species’ entire native range.

In its initial consideration of the listing petition at the 90-day finding stage, FWS found that petitioners had not presented information regarding sea level rise sufficient to demonstrate that listing may be warranted.⁴⁹ Even accepting this characterization as true (the listing petition in fact presented detailed information regarding projected impacts of sea level rise⁵⁰), it does not provide a lawful basis for FWS to completely disregard the risk of sea level rise at the 12-month finding stage. While FWS is generally limited to considering the “four corners” of a listing petition in its threshold 90-day finding, once it makes the initial determination that listing may be warranted (even on other grounds), it is required under the ESA to assess *all* available scientific information in its 12-month determination.

* Arbitrary Significant Portion of Range Analysis: All the remaining populations of Venus flytrap characterized by FWS as being of “high” resilience are located in the Outer Coastal Plain. Based on this characterization, FWS acknowledges that the Venus flytrap is “in danger of extinction now in the Inner Coastal Plain,” and “in danger of extinction in the foreseeable future in the Sandhills.”⁵¹ It concludes, however, that neither of these portions of the Venus flytrap’s range are “significant.”⁵²

In making its determination, FWS did not consider or address the genetic value (or any other metric of ecological importance) of the Inner Coastal Plain and Sandhills portions of the

⁴⁹ Listing petition form (“A map in the petition (Figure 8), also not cited, shows low elevation areas in counties where the species occurs that could be affected by sea level rise. Because citations are not provided, the petitioners’ claim that climate change will contribute to sea level rise that will encroach on Venus flytrap habitat cannot be substantiated.”)

⁵⁰ Listing petition, at p. 6-7, 31-32.

⁵¹ SAF, at p. 29.

⁵² *Id.*, at p. 29. FWS further states that the species “was likely never widespread through the Inner Coastal Plain and Sandhills like it is in the Outer Coastal Plan.” *Id.*, at p. 19.

Venus flytrap's range, but instead simply asserts that each area constitutes a small portion of the species' total range.⁵³ FWS's determination that the loss of two of the three regions where the Venus flytrap occurs does not constitute a significant portion of the species' range ("SPR") is arbitrary in several respects.

First, FWS's attempt to dismiss the Inner Coastal Plain and Sandhills as a small percentage of the species' overall range focuses only on the current population status of those areas, and fails entirely to address or acknowledge the loss of historical range that has already occurred. FWS estimates that at least nine populations in the Inner Coastal Plain and three populations in the Sandhills have already been extirpated.⁵⁴ Moreover, there are seven remaining populations in the Sandhills—nearly ten percent of the species' total remaining populations.⁵⁵ In any event, the size of a population is not a dispositive factor in determining whether that portion of a species' range is significant.

Second, while FWS acknowledges that one of the primary threats to the continued existence of Venus flytrap is population isolation and lack of habitat connectivity, it fails to address the impact that the loss of the Inner Coastal Plain and Sandhills populations will have in exacerbating this threat to remaining flytrap populations in the Outer Coastal Plain. Isolation imperils the species as a whole because it leads to genetic bottlenecks.⁵⁶ This threat is heightened by the species' naturally limited range.⁵⁷

Third, FWS relies on internally inconsistent and contradictory reasoning in concluding that the Sandhills Venus flytrap populations are not a significant portion of the species' range. In one portion of its analysis, FWS depends on the existing populations in the Sandhills when assessing the species' current "redundancy," stating that "[w]ith multiple medium and highly resilient populations in the Outer Coastal Plain ecoregion and several medium to low resilient populations in the Sandhills, this species should be able to withstand catastrophic events" to any of the remaining populations.⁵⁸ Yet in the SPR analysis, it dismisses the anticipated loss of the Sandhills populations as not significant.⁵⁹ In addition to this internal inconsistency, FWS's SPR analysis also continues the agency's long history, repeatedly found unlawful, of not ascribing

⁵³ *Id.*, at p. 29-30.

⁵⁴ SSA, at p. 26.

⁵⁵ *Id.*, at p. 28.

⁵⁶ *Id.*, at p. 40.

⁵⁷ *Id.*, at p. 40 ("Narrow endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Species that are restricted to geographically limited areas are inherently more vulnerable to extinction than widespread species because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change, stochastic events, and localized catastrophes such as hurricanes and disease outbreaks.")

⁵⁸ *Id.*, at p. 31.

⁵⁹ *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 274 F. App'x 542, 545 (9th Cir. 2008) (explaining that FWS must consider areas in "significant portion" analysis if the "agency's own reasoning" recognizes their importance).

“significance” to a portion of a species’ range unless the loss of that portion will endanger the species as a whole.⁶⁰

Conclusion

If FWS does not remedy these violations within the 60-day notice period, the Center for Biological Diversity intends to pursue legal action. If FWS believes any of the foregoing to be in error, has any questions, or wishes to discuss resolution of the matter, please contact me.

Sincerely,



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⁶⁰ *Def. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 828 (N.D. Cal. 2022) (“[T]he Rule suggests that wolves that contribute to the resiliency, redundancy, and representation of gray wolves still may not be considered meaningful and thus, do not satisfy the ‘significant portion’ standard. But [FWS] has not sufficiently explained how it draws that line. Because [FWS] has not provided any threshold for meaningfulness, the Court cannot assess whether [FWS’s] interpretation gives independent meaning to the phrase or has again implemented an interpretation that renders it redundant or superfluous.”).

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