



February 3, 2026

Via Electronic and Certified Mail

Doug Burgum, Secretary of the Interior
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RE: Notice of Intent to Sue for Violation of the Endangered Species Act

Dear Secretary Burgum and Director Nesvik:

The Center for Biological Diversity (“Center”) provides notice that the U.S. Fish and Wildlife Service (“Service”) has violated the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA” or “Act”) by failing to issue the required final rule on the Center’s petition to list the Clear Lake hitch under the Act. In accordance with the 60-day notice requirement of the ESA’s citizen suit provision, *id.* § 1540(g)(2)(C), the Center hereby notifies the Service that it intends to file suit in federal district court on or after the 60th day from the date of this notice unless the Service addresses the violations of the ESA set forth in this letter.

The Center is a national nonprofit conservation organization with more than 1.8 million members and online activists dedicated to the protection of endangered species and wild places, including the Clear Lake hitch.

SPECIES BACKGROUND AND THREATS

The Clear Lake hitch (*Lavinia exilicauda chi*) is a rare freshwater fish found only in the Clear Lake watershed in Lake County, California. Once so numerous that indigenous communities relied on Clear Lake hitch—or “chi”—as a primary food source, these fish could be found throughout its namesake watershed’s many lakes and ponds and, in the spring, they abundantly spawned in the numerous tributaries to larger waterbodies. Many wetlands that historically connected these waters provided vital nursery areas where juvenile Clear Lake hitch could avoid predators present in the lakes. Today, as the region’s freshwater resources have been stretched to meet growing pressure from agricultural and industrial demands and the area has suffered

repeated prolonged droughts, the Clear Lake hitch has struggled to reproduce in what remains of its available spawning habitat. Many streams run dry before the Clear Lake hitch can up-migrate to spawn successfully, and most of the once-connected wetlands have been lost to development. Now, the Clear Lake hitch is forced to spawn and rear in whatever available water it can, leaving juveniles and eggs exposed to increased predation by introduced sportfish. In addition to these significant strains on its spawning and rearing habitat, the Clear Lake hitch continues to face an extinction risk due to many other threats, including dams and water diversions; alteration of water sources and habitat, including from urban and agricultural development; legacy pesticide use and continued pollution; disease; predation; and climate change.

ENDANGERED SPECIES ACT VIOLATIONS

In response to a petition to list a species under the ESA, Section 4 of the ESA requires the Service to determine within 90 days 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). If the Service determines that listing may be warranted, it must then determine within 12 months whether listing the species is warranted, not warranted, or warranted but precluded by higher-priority actions (*i.e.*, a “12-month finding”). *Id.* § 1533(b)(3)(B). If the Service determines that listing is warranted, the agency must publish its 12-month finding in the Federal Register along with the text of a proposed rule to list the species as endangered or threatened and take public comments on the proposed listing rule. *Id.* Within one year of a proposed listing rule, the Service must publish in the Federal Register the final rule implementing its determination to list the species under the Act. *Id.* §1533(b)(6)(A).

Confronted with the science showing that many threats risked the Clear Lake hitch’s extinction, the Center petitioned the Service on September 25, 2012, to list the Clear Lake hitch as an endangered or threatened species and to designate critical habitat. On April 10, 2015, the Service issued a positive 90-day finding that the petition presented “substantial information that listing the Clear Lake hitch may be warranted,” and initiated a status review of the subspecies. 80 Fed. Reg. 19259. After the Service published a 12-month finding that the Clear Lake hitch was not warranted for listing under the Act on December 3, 2020, 85 Fed. Reg. 78029, the Center sued the Service and secured a court-approved settlement requiring the Service to make a new 12-month finding for the Clear Lake hitch on or before January 12, 2025. *Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv., et al.*, No. 3:21-cv-06323-RS (N.D. Cal.) (Aug. 17, 2021).

On January 16, 2025, the Service proposed to list the Clear Lake hitch as a threatened species under the ESA due to various threats, including habitat loss, degradation, and modifications; predation; competition; and the effects of climate change. 90 Fed. Reg. 4916. Thus, pursuant to the ESA, the Service’s deadline to issue a final listing rule for the Clear Lake hitch was due January 16, 2026.

The Service has failed to perform its nondiscretionary duty to publish a timely final listing rule for the Clear Lake hitch, in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A). Until the Service publishes the legally required final listing rule, the Clear Lake hitch will continue to lack necessary endangered species protections under the ESA.

CONCLUSION

The Center welcomes the opportunity to discuss how the Service can resolve this ESA violation without the need for litigation. An appropriate remedy that would prevent the need for litigation would be for the Service to commit to issuing its final listing rule for the Clear Lake hitch by a date certain. If, however, the Service does not take action to cure this violation within 60 days, the Center intends to initiate litigation in federal court to resolve the matter.

If you have any questions or wish to discuss this matter, please feel free to contact me.

Sincerely,



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