



NATURAL RESOURCES DEFENSE COUNCIL

Via Electronic and United States Mail

February 13, 2014

Sally Jewell
Secretary of the Interior
1849 C Street, N.W.
Washington, DC 20240

Email: feedback@ios.doi.gov

**Re: Notice of Intent to Pursue Legal Action for Failure to Make Required
Ninety-day Finding on Petition to List Rusty Patched Bumble Bee as
Endangered**

Dear Ms. Sally Jewell:

On behalf of the Xerces Society for Invertebrate Conservation and the Natural Resources Defense Council (“NRDC”), we are writing to inform you that we intend to pursue legal action against the U.S. Department of the Interior, the U.S. Fish and Wildlife Service, and agency officials acting in their official capacities for failure to respond to a petition to list the rusty patched bumble bee (*Bombus affinis*) as an endangered species pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. § 1531, *et seq.* See 16 U.S.C. § 1533(b)(3)(A) (“To the maximum extent practicable, within 90 days after receiving the petition of an interested person . . . to add a species to . . . the lists . . . the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petition action may be warranted.”). This letter is provided pursuant to the sixty-day notice requirements of the citizen suit provision of the ESA, to the extent such notice is deemed necessary by a court. See 16 U.S.C. § 1540(g)(2).

I. Background

The rusty patched bumble bee is a pollinator whose historic range spread across the northern Midwest and eastern seaboard. Bumble bees, including the rusty patched bumble bee, are keystone species, which means that they facilitate the existence of other species, thereby boosting biodiversity by regulating and stabilizing fundamental ecosystem processes. Bumble bees are not just critical components of their environment, they are essential to our food security. The rusty patched bumble bee has been shown to be an excellent pollinator of cranberry and other important food crops such as plum, apple, alfalfa, and onion for seed production. Like

other bumble bees, this species also plays a valuable role the pollination of numerous wildflowers.

In recent years, the rusty patched bumble bee has been lost from 87 percent of its historic range, and its relative abundance has declined by 95 percent. Declines in North American bumble bees have been associated with increased pathogen levels and reduced genetic diversity, and scientists are currently investigating the hypothesis that exotic pathogens were introduced to wild rusty patched bumble bees from commercial bumble bee colonies.

In addition, the rusty patched bumble bee historically occupied the grasslands of the northern Midwest and Northeast. These grasslands have largely been lost or fragmented by agricultural conversion and urban development or transformed by fire suppression, invasive species, and livestock grazing. This loss, fragmentation, and development of historic habitat has resulted in declines in native plant species and decreased access to sufficient nectar and pollen; fewer nesting sites, such as underground abandoned rodent cavities or above ground in clumps of grasses; and, limited overwintering sites for hibernating queens.

Additional possible causes of the rusty patched bumble bee's decline include pesticide use, pathogens from other sources, competition with honey bees, and climate change. Climate change may lead to increased pathogen pressure, decreased resource availability, phenological asynchrony between the bees and the plants they feed on, and a decrease in nesting habitat availability due to changes in rodent abundance or distribution.

The current extent of rusty patched bumble bee range losses and the combined effects of disease, reduced genetic diversity, habitat loss, pesticide use, and future climate change, threaten the continued existence of the rusty patched bumble bee and qualify it for protection as an endangered species.

II. Deadline Violation

The Endangered Species Act allows "any person" to petition the Secretary of the Interior or Secretary of Commerce to list a species as either "threatened" or "endangered." 16 U.S.C. § 1533(a). A "threatened species" is defined as any species "which is likely to become an endangered species within the foreseeable future." 16 U.S.C. § 1532(20). An "endangered species" is defined as any species "which is in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6).

After a listing petition is filed, the Secretary is required, "to the maximum extent practicable," to make an initial finding regarding whether the petition presents "substantial scientific or commercial information indicating that the petitioned action may be warranted" within ninety days. 16 U.S.C. § 1533(b)(3). If the Secretary finds that the petitioned action may be warranted, she is required to make a final decision regarding whether to grant the petition and issue a proposed listing rule within twelve months of the date of the petition. *Id.*

On January 31, 2013, the Xerces Society sent a petition to the Secretary of the Interior requesting the listing of the rusty patched bumble bee (*Bombus affinis*) as an endangered species. The Secretary has not yet made either a ninety-day or twelve-month finding on the petition. This constitutes a violation of the ESA.

III. Conclusion

If the Secretary does not act within sixty days to correct the violation described above, we will pursue litigation in federal court. It is our practice to pursue negotiations whenever possible. In keeping with this policy, we invite all alleged violators to discuss their obligations under the ESA with us. If you have any questions about the issues raised in this letter, please contact Giulia Good Stefani at (310) 434-2300.

Very truly yours,



Giulia Good Stefani
Project Attorney
Natural Resources Defense Council



Sarina Jepsen
Endangered Species, Program Director
The Xerces Society

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