



CENTER FOR FOOD SAFETY

April 2, 2024

Sent via Electronic and Certified Mail

Debra Haaland, Secretary
U.S. Department of Interior
1849 C Street NW
Washington, D.C. 20240
exsec@ios.doi.gov

Martha Williams, Director
U.S. Fish & Wildlife Service
1849 C Street NW, Room 3331
Washington, D.C. 20240
martha_williams@fws.gov

Re: Sixty-Day Notice of Intent to Sue for Violation of the Endangered Species Act

Dear Secretary Haaland and Director Williams,

Center for Food Safety (“CFS”) provides this 60-day notice of intent to sue the U.S. Department of the Interior and U.S. Fish and Wildlife Service (“the Service”) for violating the Endangered Species Act (“ESA” or “the Act”), 16 U.S.C. §§ 1531–44, resulting from the Service’s failure to issue a 90-day finding or, if positive, the subsequent 12-month finding on CFS’s petition to list the Iowa skipper butterfly (*Atrytone arogos iowa*). These findings are past the deadlines established by the ESA. CFS provides this letter in accordance with the 60-day notice requirement of the ESA’s citizen suit provision. *Id.* § 1540(g)(2)(C).

CFS is a public interest organization with more than one million members across the country. A recognized national leader in addressing industrial agriculture’s impacts on public health and the environment, CFS and its members are dedicated to protecting biodiversity, endangered species, and wild places.

SPECIES BACKGROUND AND THREATS

The health of natural ecosystems and humanity are intricately linked to the health of pollinators.¹ Globally, about 35% of food crops require pollination.² In the United States alone, pollination-dependent agriculture is valued at \$10 billion annually across over 150 crops.³

¹ *The Importance of Pollinators*, U.S. DEPT. OF AGRIC. (USDA), <https://www.usda.gov/peoples-garden/pollinators> (last visited Mar. 20, 2024).

² *Id.* (“Some scientists estimate that one out of every three bites of food we eat exists because of animal pollinators like bees, butterflies and moths, birds and bats, and beetles and other insects.”).

³ *Why is Pollination Important*, U.S. FOREST SERV., USDA, <https://www.fs.usda.gov/managing-land/wildflowers/pollinators/importance#:~:text=Without%20pollinators%2C%20the%20human%20race,80%25%20require%20pollination%20by%20animals> (last visited Mar. 20, 2024).

Furthermore, essential to the reproduction of diverse plant species they are intrinsic to creating more resilient ecosystems, support carbon-sequestration, soil and water nutrient cycling, and erosion control.⁴ The Iowa skipper butterfly is a highly vulnerable pollinator with an outstanding listing petition for which the Service has not made a legally required determination under the ESA.

The Iowa skipper (*Atrytone arogos iowa*) is an imperiled prairie-specialist yellow-orange butterfly considered an indicator of high-quality prairie habitat.⁵ The Iowa Skipper's 14-state range once spanned the midcontinent grassland biome from North Dakota and eastern Montana east to Illinois and south to Texas.⁶ Now, its population is patchy and small. Grasslands and prairies continue to be converted into agricultural land despite already being one of the most threatened biomes on the planet. In the U.S. alone, about 99% of tallgrass prairie habitats have been destroyed since European settlement.⁷ In addition to destroying the Iowa skipper's habitat, industrial agriculture's toxic pesticides compound their threat of extinction. The Iowa skipper's remaining habitat is predominantly surrounded by pesticide-laden intensive row crop agriculture that, through drift, has dramatic repercussions on the health of these vulnerable butterflies.⁸

Once described as the most abundant skippers in Iowa, by 1998, it was already classified as threatened and vulnerable to further losses.⁹ Today, it is considered insecure in all states, last seen in Iowa in 2009, Minnesota in 2008, and Illinois in 1989.¹⁰ Rightly, NatureServe, a nonprofit conservation organization partnered with the Service, ranks the Iowa skipper as "Imperiled".¹¹ The skipper's survival continues to be threatened by the destruction, fragmentation, and modification of its remaining habitat, as well as by pesticides, climate change, invasive species, and its small, isolated populations, as well as the additive and synergistic effects of these threats.

⁴ *Id.*

⁵ *Arkansas Wildlife Action Plan*, Arkansas Game & Fish Commission (Fowler, A. & J. Anderson eds., 2015).

⁶ *Rare Species Guide: Atrytone arogos iowa*, MINNESOTA DEPT. OF NATURAL RESOURCES, <https://www.dnr.state.mn.us/rsg/profile.html?action=elementDetail&selectedElement=IILEP70012> (last visited Apr. 2, 2024).

⁷ P. Raven et al., *Agricultural Intensification & Climate Change Are Rapidly Decreasing Insect Biodiversity*, 118 PNAS e2002548117 (2021).

⁸ About one billion pounds of pesticides are applied in the United States per year, with lethal and sub-lethal impacts on pollinators, these toxins dramatically impact pollinators' activity, and in turn, the many plants relying on them for reproduction. See P. Raven et al., *supra* note 7; D. ATWOOD & C. PAISLEY-JONES, EPA, PESTICIDES INDUSTRY SALES & USAGE: 2008–2012 MARKET ESTIMATES (2017).

⁹ S. Scudder et al., *A Preliminary List of the Butterflies of Iowa*, TRANSACTIONS OF THE CHICAGO ACADEMY OF SCI. 326, 377 (1869); T. Orwig et al., *The Last of the Iowa Skippers*, 7 AMERICAN BUTTERFLIES 4 (1999).

¹⁰ Shepherd, Personal Communication (2022); F. OLSEN, SURVEY OF NORTHWEST IOWA PRAIRIES FOR ATRYTONE AROGOS & POANES MASSASOIT (2018); R. Dana, *Imperiled Prairie Butterfly Conservation, Research, & Breeding Program*, Unpublished Report: Minnesota Dept. of Natural Resources (2017); J. Petersen, *Prairie Butterfly Conservation, Research, & Breeding-Phase 2*, Unpublished Report: Minnesota Dept. of Natural Resources (2020); NatureServe, *NatureServe Explorer: Atrytone arogos iowa* (2020), https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.112838/Atrytone_arogos_iowa; *Illinois List of Endangered & Threatened Animal Species 5-Year Review & Revision Ending in 2014*, Illinois Dept. of Natural Resources, 93-94 (2015).

¹¹ Imperiled (I2) means "at high risk of extirpation in the jurisdiction due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors." *NatureServe, supra* note 10.

Accordingly, on March 28, 2023, CFS filed a petition to list the Iowa Skipper (*Atrytone arogos iowa*) under the endangered species act. The petition was submitted to the Secretary of Interior through the U.S. Fish and Wildlife Service pursuant to section 4(b) of the ESA, 16 U.S.C. § 1533(b); section 553(e) of the Administrative Procedure Act (APA), 5 U.S.C. § 553(e); and 50 C.F.R. § 424.14(a). The 128-page petition provides detailed information on the Iowa Skipper, its habitat range, acute threats, and, ultimately, the necessity for a prompt endangerment listing.

ENDANGERED SPECIES ACT VIOLATIONS

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

On March 28, 2023, the Service received CFS’s petition to list the Iowa skipper butterfly as endangered or threatened under the ESA. The Service has yet to issue even the initial 90-day finding in response to CFS’s petition, as required by the ESA. This finding is past due.

The Service has abrogated its duty to ensure that the Iowa skipper butterfly is timely protected to avoid an increased risk of extinction, in violation of Section 4 of the ESA. If the Secretary does not make the required findings or contact us to develop a timeline for this butterfly species within the next 60 days, we intend to file suit to enforce the Act.

Please contact me at gkimbrell@centerforfoodsafety.org or (971) 271-7372 if you have any questions or if you would like to discuss this matter.

Sincerely,



George A. Kimbrell
Co-Executive Director and Legal Director
Center for Food Safety
2009 NE Alberta Street, Suite 207
Portland, OR 97211
gkimbrell@centerforfoodsafety.org