Pesticides/Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue U.S. Fish and Wildlife Service for Alleged Violation

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The Center for Biological Diversity ("CBD") sent a March 27th Notice of Intent to Sue ("Notice") to the United States Fish and Wildlife Service ("Service") alleging a violation of the Endangered Species Act ("ESA").

The Service is alleged to have failed to respond within a reasonable time to a document titled:

Petition for Rulemaking to Protect Endangered Species from Pesticides by Restricting Pesticide Use in Critical Habitat ("Petition")

CBD states that the Petition was submitted on January 7, 2019. The Notice alleges that the failure of the Service to respond constitutes an unreasonable delay, pursuant to the Administrative Procedure Act because there was no initiated rulemaking or substantive response to the Petition within 30 days after its receipt as required by the ESA.

The CBD Notice states that:

. . . the failure of the Service to respond to the Petition after four years is unreasonable and unlawfully delayed. However, in an effort to avoid litigation, the Center has identified approximately 40 highly imperiled, narrowly endemic species that would receive the greatest benefit from a prohibition on the use of pesticides within critical habitat. Should the Service wish to avoid litigation by developing a plan to implement restrictions on the use of pesticides within these critical habitat designations, the Center would defer litigation at this time.

The letter lists various species that CBD believes should be prioritized by the Service by elimination of the use of pesticides within their critical habitat.

A copy of the Notice can be downloaded here.