Western Ridged Mussel/Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue U.S. Fish and Wildlife Service Regarding Listing

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

CBD alleges that the Service has violated the ESA by failing to issue a timely 12-month finding on the petition to list the western ridged mussel.

The western ridged mussel is described as a bivalve mollusk that is evolutionarily unique among the United States' freshwater mussels. The mussel is stated to be a sole member of its genus and known for its distinctive shell structure.

The mussel is stated to be unique because, unlike other mussels that live on the top of stream substrates, the western ridged mussel can remain nearly completely buried in mud or sand in cold streams for years.

CBD states that 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 (i.e., a "90-day finding"). Within 12 months after receiving a petition on which a positive 90-day finding has been made, the Secretary must publish a determination that listing the species is warranted, not warranted, or warranted but precluded by more immediate listing concerns ("12-month finding").

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. 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 ESA.

The Service is alleged to have failed to issue the legally required 12-month finding by August 21, 2021. Therefore, the Service is alleged to have failed to perform its nondiscretionary duty to issue a timely 12-month finding for the western ridged mussel, in violation of the ESA.

A copy of the NOI can be found here.