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12 Attorneys for Plaintiff

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

16 Center for Biological Diversity, a
17 non-profit organization,

18 Plaintiff,

19 v.

20 U.S. Fish and Wildlife Service; Deb
21 Haaland, in her official capacity as
22 Secretary of the Interior,

23 Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

24 **INTRODUCTION**

25 1. Plaintiff Center for Biological Diversity (“Center”) challenges the
26 unlawful decision of the U.S. Fish and Wildlife Service (“Service”) to deny Endangered
27
28

1 Species Act (“ESA”) protections to the Tucson shovel-nosed snake (*Chionactis annulate*
2 *klauberi*).

3 2. The Tucson shovel-nosed snake is striking in appearance, characterized by
4 alternating black-and-red stripes over its cream-colored body. Shovel-nosed snakes are
5 well-known habitat specialists, largely to entirely restricted to sand and sandy loam
6 substrates on valley floors, and the Tucson shovel-nosed snake is uniquely adapted to
7 swim through sandy soils using its spade-shaped snout.

8 3. The Tucson shovel-nosed snake’s range is geographically restricted to
9 northwestern and east-central Maricopa County, Pinal County, and if the species can still
10 be found, northeastern Pima County. A preeminent expert estimated that that the species
11 has already lost 39 percent of its historic habitat to agriculture and urban development.
12 Nearly all of its remaining habitat is unprotected and vulnerable to development.

13 4. The Center first petitioned to list the Tucson shovel-nosed snake in 2004.
14 In 2010, the Service found that listing was warranted, and that the entire remaining range
15 of the species was in the path of future development. 75 Fed. Reg. 16,058 (March 31,
16 2010). However, in 2014, the Service reversed course and concluded that the Tucson
17 shovel-nosed snake does not warrant protection. 79 Fed. Reg. 56,731 (September 23,
18 2014).

19 5. In March 2015, a preeminent expert on the species, the late Dr. Phil Rosen,
20 sent the Service a letter identifying 5 fundamental problems with the agency’s not
21 warranted determination: 1) the Tucson shovel-nosed snake is a habitat specialist, not a
22 habitat generalist; 2) the Tucson shovel-nosed snake has experienced severe population
23 declines in the core of its range; 3) the Tucson shovel-nosed snake is vulnerable to
24 habitat destruction; 4) the agency overestimated the local distribution of the Tucson
25 shovel-nosed snake; and 5) the agency’s assumed extent and shape of the Tucson
26 shovel-nosed snake’s range is arbitrarily large and inconsistent with the best available
27 scientific information.

6. In 2020, the Center submitted a second listing petition, which incorporated the Rosen 2015 letter, as well as a peer-reviewed, 2020 study co-authored by Dr. Rosen, and other new scientific information.

7. In 2021, the Service—at the very first step of the listing process—made a threshold “90-day finding” that the Center’s 2020 petition failed to present substantial information indicating that the listing “may be warranted.” 86 Fed. Reg. 53,941 (Sept. 29, 2021).

8. The Service's 90-day finding is arbitrary and capricious in several respects. The Service uniformly ignored and refused to address this extensive new scientific information directly contradicting the agency's findings regarding the Tucson shovel-nosed snake's habitat preference, conservation status, and range. The Service's negative 90-day finding also failed to acknowledge new information regarding the continued and foreseeable threats to the species from urbanization and roads, agriculture, and climate change. Instead, the Service repeats its previous findings and wrongly concludes that it already analyzed these threats.

9. The Center brings this lawsuit for declaratory and injunctive relief, seeking an Order declaring that the Service is in violation of the ESA and APA, vacating the negative 90-day finding, and ordering the Service to undertake a species status review immediately, and to issue a 12-month determination within one year of the entry of judgment.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. § 1540(g); 28 U.S.C. §§ 2201-2202; and 5 U.S.C. § 706(2).

11. Plaintiff provided Defendants with 60-days' notice of the ESA violation, as required by 16 U.S.C. § 1540(g)(2)(A), by a letter to the Service dated January 3,

2022 (received January 10, 2022). Defendants have not remedied the violations set out

1 in the notices and an actual controversy exists between the parties within the meaning of
2 the Declaratory Judgment Act, 28 U.S.C. § 2201.

3 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because
4 Plaintiff resides in this judicial district and a substantial part of the violations of law by
5 Defendants occurred in this district.

6 **PARTIES**

7 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-
8 profit conservation organization that works through science, law, and policy to protect
9 imperiled wildlife and their habitat. The Center is headquartered in Tucson, Arizona,
10 with offices throughout the United States, and an office in Mexico. The Center has more
11 than 81,000 active members throughout the country.

12 14. The Center brings this action on behalf of its organization, and its staff and
13 members who derive ecological, recreational, aesthetic, educational, scientific,
14 professional, and other benefits from the Tucson shovel-nosed snake, and its Sonoran
15 Desert habitat. The Center's headquarters are in Pima County, within the Tucson shovel-
16 nosed snake's range, and its members and staff live near and/or regularly visit areas
17 where Tucson shovel-nosed snakes are known or believed to exist, in hopes of viewing
18 this increasingly elusive and rare species.

19 15. Center member Noah Greenwald, Director for the Center for Biological
20 Diversity's Endangered Species Program, has concrete plans to search for the snake in
21 October 2022. He was the lead author for two federal ESA petitions to list the Tucson
22 shovel-nosed snake and has worked on projects to protect the species from various
23 threats. He cares deeply about the conservation of this unique species in the wild.
24 Ongoing threats from rampant development and the threats of the escalating climate
25 crisis on the future existence of this lizard and its habitat harm his interests in the
26 species.

27 16. The Center's members have been, are being, and will continue to be

28 adversely harmed by the Service's unlawful determination that the Center's 2020 listing

petition failed to present substantial information indicating that listing the Tucson shovel-nosed snake as a threatened or endangered species may be warranted, and its failure to afford the species the protections of the Act. The injuries described are actual, concrete injuries presently suffered by the Center and its members, and they will continue to occur unless this Court grants relief. The relief sought herein—including an Order vacating the 90-day finding and ordering the Service to undertake a species status review immediately, and to issue a 12-month determination within one year of the entry of judgment—would redress those harms. The Center and its members have no other adequate remedy at law.

17. Defendant U.S. FISH AND WILDLIFE SERVICE is the agency within the Department of the Interior charged with implementing the ESA for the species at issue in this suit. The Secretary of the Interior has delegated administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

18. Defendant DEB HAALAND is the Secretary of the U.S. Department of the Interior and has the ultimate responsibility to administer and implement the provisions of the ESA. Defendant Haaland is sued in her official capacity.

STATUTORY FRAMEWORK

The Endangered Species Act

19. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *TVA v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

20. The ESA’s substantive protections generally apply only once the Service lists a species as threatened or endangered. For example, section 7 of the ESA requires all federal agencies to ensure that their actions do not “jeopardize the continued

existence” of any listed species or “result in the destruction or adverse modification” of a

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