

1 Camila Cossío (OR Bar No. 191504)  
2 Center for Biological Diversity  
3 P.O. Box 11374  
4 Portland, OR 97211  
5 Phone: (971) 717-6727  
6 ccosio@biologicaldiversity.org  
7 *Pro Hac Vice Admission Pending*

8 Brian Segee (Cal. Bar No. 200795)  
9 Center for Biological Diversity  
10 660 S. Figueroa Street, Suite 1000  
11 Los Angeles, CA 90017  
12 Phone (805) 750-8852  
13 bsegee@biologicaldiversity.org  
14 *Pro Hac Vice Admission Pending*

15 Attorneys for Plaintiff

16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE DISTRICT OF ARIZONA**  
18 **TUCSON DIVISION**

19 Center for Biological Diversity, a  
20 non-profit organization,

21 Plaintiff,

22 v.

23 U.S. Fish and Wildlife Service; Deb  
24 Haaland, in her official capacity as  
25 Secretary of the Interior,

26 Defendants.

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

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

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.

28



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

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

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

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

### 17 STATUTORY FRAMEWORK

#### 18 **The Endangered Species Act**

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

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

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.