

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY
378 Main Street
Tucson, AZ 85701,

WILDEARTH GUARDIANS
301 N. Guadalupe Street, Suite 201
Santa Fe, NM 87501, and

MIAMI WATERKEEPER
2103 Coral Way
Miami, FL 33145,

Plaintiffs,

v.

WILBUR ROSS, Secretary of the
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230,

CHRIS OLIVER, Assistant Administrator
for Fisheries at the National Oceanic
Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910, and

NATIONAL MARINE FISHERIES
SERVICE
1315 East-West Highway
Silver Spring, MD 20910,

Defendants.

Case No: 1:20-cv-2439

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In this civil action for declaratory and injunctive relief, Plaintiffs Center for Biological Diversity, WildEarth Guardians, and Miami Waterkeeper (collectively, Conservation Organizations) challenge the National Marine Fisheries Service's (Service) failure to comply with the nondiscretionary deadlines set forth in Section 4 of the Endangered Species Act, 16 U.S.C. §§ 1531–1544.

2. Specifically, the Service failed to designate critical habitat for the Nassau grouper (*Epinephelus striatus*) concurrently with its decision to list the species as threatened or within one additional year from the date of the proposed listing after making a “not determinable” finding. *Id.* § 1533(a)(3), (b)(6)(A)(ii), (b)(6)(C). Nassau groupers, one of the largest coral reef fish, form spawning aggregations that make them particularly vulnerable to overfishing. They also face the loss of habitat, including from human activities affecting coastal mangroves, seagrass beds, estuaries, and coral reefs.

3. Nassau groupers are protected under the Endangered Species Act because they are threatened by habitat loss from global warming, sea-level rise, ocean acidification, and loss of structural habitat in coral reef ecosystems. Designated habitat would identify the most important areas for Nassau groupers and prevent federal activities that would destroy them. The Nassau grouper remains at risk until the Service fulfills its statutory duties to designate the critical habitat necessary to support the grouper's survival and recovery.

4. To ensure that the Endangered Species Act can provide lifesaving protections for the Nassau grouper, the Conservation Organizations bring this action for declaratory relief against Wilbur Ross, in his official capacity as the Secretary of Commerce; Chris Oliver, in his official capacity as Assistant Administrator for Fisheries at the National Oceanic Atmospheric

Administration Service; and the National Marine Fisheries Service (collectively, Defendants).

The Conservation Organizations ask this Court to find that the Defendants are in violation of the Endangered Species Act for failing to timely designate critical habitat for the Nassau grouper and order the Defendants to issue a rule designating critical habitat to safeguard the habitat the species need to survive.

JURISDICTION AND VENUE

5. The Conservation Organizations bring this action under the Endangered Species Act, 16 U.S.C. §§ 1533, 1540(g). The Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (United States as a defendant), and 16 U.S.C. § 1540(g) (citizen suit provision of the Endangered Species Act).

6. The relief sought is authorized under 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), and 16 U.S.C. § 1540(g).

7. The Conservation Organizations provided formal notice to the Defendants of their intent to file suit under the Endangered Species Act on April 6, 2020, more than 60 days prior to filing this complaint, consistent with the Endangered Species Act's statutory requirements. 16 U.S.C. § 1540(g)(2). Because the Defendants have not remedied the legal violations outlined in the notice, there exists an actual, justiciable controversy between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

8. Venue in this Court is proper according to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because at least one Defendant resides in this judicial district and because a substantial part of the events giving rise to the Conservation Organization's claims occurred in this district.

PARTIES

9. Plaintiff Center for Biological Diversity is a national, nonprofit conservation organization incorporated in California and headquartered in Tucson, Arizona, with offices in Mexico and throughout the United States, including California, Florida, Hawaii, North Carolina, and Washington, D.C. The Center works through science, law, and policy to secure a future for all species, great and small, hovering on the brink of extinction. The Center has 81,843 members dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including the Nassau grouper, through effective implementation of the Endangered Species Act. The Center brings this action on behalf of itself and its members.

10. Plaintiff WildEarth Guardians (Guardians) is a conservation nonprofit whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has offices in Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, and Washington, with over 6,700 members worldwide. As part of its conservation mission, between approximately 2010 and 2016, Guardians undertook a Wild Oceans campaign that sought to protect marine biodiversity, with actions including submitting Endangered Species Act listing petitions. As part of that campaign, Guardians petitioned for a suite of grouper species, including the Nassau grouper. Guardians continues to push for the conservation of these species. Guardians' members have a current and continuing interest in the Nassau grouper; its members enjoy observing them in the wild—and enjoy snorkeling with them in particular—and intend to continue doing so in the future.

11. Plaintiff Miami Waterkeeper, Inc. (Waterkeeper), is a non-profit organization serving more than 4.5 million people across Miami-Dade and Broward counties. Waterkeeper's

mission is to defend, protect, and preserve South Florida's watersheds through citizen engagement and community action rooted in sound science and research. The organization works to ensure swimmable, drinkable, fishable water for all. Waterkeeper is also dedicated to protecting South Florida's marine ecosystems and the marine life that depend on them, such as the Nassau grouper. Waterkeeper's "Protect Florida's Corals" campaign includes the goal of preventing damage to corals and marine ecosystems that the Nassau grouper calls home. Waterkeeper's 137 members have an interest in protecting South Florida's marine ecosystems for recreational diving, sport fishing, boating, scientific research, and resiliency benefits. Waterkeeper's approach combines education and outreach, scientific research, advocacy, and, when necessary, legal action.

12. The Conservation Organizations have members with concrete interests in the conservation of Nassau groupers and the protection of their critical habitat. The Conservation Organizations' members and staff have researched, studied, observed, and sought protection for the Nassau grouper. In addition, the members and staff have visited Nassau grouper habitat and observed or sought to observe the species in the wild. Conservation Organizations' members derive recreational, scientific, professional, aesthetic, spiritual, and ethical interests in the Nassau grouper and its habitats. For example, Conservation Organizations' members regularly go snorkeling and SCUBA diving in southern Florida, the Florida Keys, and the Caribbean with the intention and hope of seeing Nassau grouper and plan to do so in the future. Members know that Nassau groupers are an important part of coral reef ecosystems and that their extirpation would diminish these ecosystems and associated species that they study and enjoy viewing.

13. Defendants' failure to comply with the Endangered Species Act's nondiscretionary deadline to designate critical habitat for the Nassau grouper denies the grouper

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