

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

**CENTER FOR BIOLOGICAL
DIVERSITY,**

378 N. Main Street,
Tucson, AZ 85701

Plaintiff,

v.

DAVID BERNHARDT, in his official
capacity as Secretary of the U.S. Department
of Interior,

1849 C Street NW
Washington, DC 20240, and

U.S. FISH AND WILDLIFE SERVICE

1849 C Street N.W.
Washington, D.C. 20240

Defendants.

Case No.: 1:20-cv-2714

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The Center for Biological Diversity (Center) brings this case challenging the U.S. Fish and Wildlife Service's (FWS) failure to determine whether eight species of Caribbean skink (collectively, Skinks) warrant protection as endangered or threatened, in violation of the Endangered Species Act's nondiscretionary, congressionally mandated deadlines. 16 U.S.C. § 1533(b)(3). This failure delays crucial, lifesaving protections for these rare lizards that now suffer an even greater risk of extinction because of FWS's delay.

2. The Skinks are endemic to a few islands in the Caribbean Sea and found nowhere else on earth. Yet they are in steep decline from threats including habitat destruction and degradation, human-introduced predators, climate change, and accelerating sea level rise.

3. Because of these substantial threats, on February 11, 2014, the Center submitted a petition asking FWS to list the Skinks as endangered or threatened. In response to the petition, FWS determined there was substantial scientific or commercial information indicating that listing the Skinks may be warranted. Endangered and Threatened Wildlife and Plants; 90-Day Findings on 17 Petitions, 81 Fed. Reg. 1,368 (Jan. 12, 2016); Endangered and Threatened Wildlife and Plants; 90-Day Findings on 10 Petitions, 81 Fed. Reg. 63,160 (Sept. 14, 2016).

4. These findings trigger a deadline for FWS to determine if listing the species is “warranted” within 12 months of receiving the Center’s petition on February 11, 2014. 16 U.S.C. § 1533(b)(3)(B).

5. FWS has failed to make the requisite final determination for the Skinks, violating the statutory deadline and withholding the Endangered Species Act’s lifesaving protections from species that are hanging on the brink of extinction.

6. The Center brings this action for declaratory relief to affirm that FWS is in violation of the Endangered Species Act for failing to make a timely 12-month finding and to compel FWS to issue its final determination on whether to list each of the Skinks as endangered or threatened so they may receive the protections they need to survive and recover in the wild.

JURISDICTION AND VENUE

7. The Center brings this action under the Endangered Species Act, 16 U.S.C. §§ 1533, 1540(g).

8. 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), 16 U.S.C. § 1540(c) (actions arising under the Endangered Species Act), and 16 U.S.C. § 1540(g) (citizen suit provision of the Endangered Species Act).

9. 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) (Endangered Species Act citizen suits).

10. The Center notified Defendants of its intent to file suit under the Endangered Species Act on March 10, 2020, more than 60 days prior to filing this complaint, consistent with the Endangered Species Act's notice requirement. 16 U.S.C. § 1540(g)(2). Because Defendants have not remedied the legal violations outlined in the notice, an actual, justiciable controversy exists between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

11. Venue in this Court is proper according to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because Defendants reside in this judicial district and a substantial part of the violations giving rise to the claim occurred in this district. FWS's headquarters in the District of Columbia had the principal role of approving and publishing the 90-day findings for the Skinks and has the ultimate responsibility to make the 12-month findings for the Skinks.

PARTIES

12. Plaintiff Center for Biological Diversity is a national, nonprofit conservation organization that works through science, law, and policy to protect imperiled species and their habitats. The Center has more than 81,000 active members across the country. It is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States, including Alaska, Arizona, California, Colorado, Florida, Hawaii, Idaho, Minnesota, Nevada, New York, North Carolina, Oregon, Washington, and Washington, D.C., and in Mexico. The Center brings this action on behalf of itself and its members.

13. Center members are concerned with the conservation of imperiled species like the Skinks and have an interest in the effective implementation of the Endangered Species Act to protect these species. They use and enjoy areas vital to the survival of these species for scientific study, observation of the species, nature photography, aesthetic enjoyment, recreation, and spiritual fulfillment. Center members derive recreational, scientific, aesthetic, spiritual, and educational benefit from the continued existence of the Skinks and their habitat. Center members have concrete plans to continue to travel to and recreate in areas where they can observe these species and will maintain an interest in the species in the future.

14. In addition to submitting a petition to list the Skinks under the Endangered Species Act, the Center and its members have participated in conservation efforts that affect these species. For example, the Center has campaigns to curb the mass extinction of reptiles and amphibians and protect wildlife and plants from climate change. These campaigns seek to help the Skinks.

15. Because of these well-established interests in conservation of the Skinks, FWS's failure to timely determine whether the Skinks warrant listing as endangered or threatened injures the Center and its members. The Center and its members will continue to suffer these actual, concrete injuries unless this Court grants relief and issues an order compelling listing decisions for these species. The Center and its members have no other adequate remedy at law.

16. Defendant David Bernhardt is the Secretary of the Interior. As Secretary of the Interior, he has the ultimate responsibility to administer and implement the Endangered Species Act, and to comply with all other federal laws applicable to the U.S. Department of the Interior. Plaintiff sues Defendant Bernhardt in his official capacity.

17. Defendant U.S. Fish and Wildlife Service is a federal agency within the Department of the Interior. The Secretary of the Interior has delegated his authority to administer the Endangered Species Act to FWS for non-marine wildlife. 50 C.F.R. § 402.01(b). This authority encompasses proposed and final listing decisions for the Skinks.

18. The citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g), authorizes this lawsuit and thus waives sovereign immunity of Defendants David Bernhardt, in his official capacity as Secretary of the Interior, and the U.S. Fish and Wildlife Service.

STATUTORY AND REGULATORY FRAMEWORK

19. The Endangered Species Act “represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Indeed, “Congress intended endangered species be afforded the highest of priorities.” *Id.* at 174. To that end, the Act’s purpose is to “provide a program for the conservation of . . . endangered species and threatened species” and “to provide a means whereby the ecosystems upon which endangered . . . and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

20. Before an imperiled animal can receive the Endangered Species Act’s protections, Section 4 of the Act directs FWS to classify it into a list of “endangered” or “threatened” species, a process known as “listing.” *Id.* § 1533(a). A “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16). An endangered species is any species that “is in danger of extinction throughout all or a significant portion of its range,” *id.* § 1532(6), and a threatened species is any species that “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range,” *id.* § 1532(20).

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