

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,	)	
	)	Case No: _____
<i>Plaintiff,</i>	)	
	)	COMPLAINT FOR DECLARATORY
v.	)	AND INJUNCTIVE RELIEF
	)	
DAVID BERNHARDT, Secretary,	)	
U.S. Department of the Interior	)	
1849 C Street NW	)	
Washington, DC 20240	)	
	)	
and	)	
	)	
U.S. FISH AND WILDLIFE SERVICE,	)	
1849 C Street NW	)	
Washington, DC 20240,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

INTRODUCTION

1. Plaintiff Center for Biological Diversity (“Center” or “Plaintiff”) brings this action under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA” or “Act”) challenging the failure of Secretary of the Interior David Bernhardt (“Secretary”) and U.S. Fish and Wildlife Service (“Service”) (collectively “the Service” or “Defendants”) to make a timely final determination on the proposed listing of the Panama City crayfish (*Procambarus econfinae*) as either an endangered or threatened species under the ESA.

2. The Panama City crayfish (“crayfish”) is a small, semi-terrestrial crayfish that grows to about two inches in length, excluding its claws, and is found only in Bay County, Florida. It lives in ponds and ditches within wet, pine flatwood forest. The crayfish is threatened with extinction

primarily due to persistent threats caused by extensive land development and the conversion of natural forests into pine plantations.



3. Due to the serious threats crayfish face, such as impacts to freshwater quality and flow, on April 20, 2010, the Center petitioned the Service to list the crayfish under the ESA. On September 27, 2011, the Service issued a “90-day finding” in response to the Center’s petition, which determined that the petition presented substantial information indicating that the listing of the crayfish “may be warranted.” *Endangered and Threatened Wildlife and Plants; Partial 90-day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened with Critical Habitat*, 76 Fed. Reg. 59,835 (Sept. 27, 2011).

4. After the Service failed to make a 12-month finding for the crayfish by the statutory deadline, the Center filed a lawsuit against the Service to compel a decision as to the crayfish’s status, which resulted in the Service agreeing to review the status of the crayfish and make a 12-month finding as to whether listing it as threatened or endangered is warranted by September 30,

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<sup>1</sup> Photograph by the Florida Fish and Wildlife Conservation Commission.

2017. *Center for Biological Diversity v. Jewell*, Case No. 1:13-cv-00975-EGS (D.D.C. Sept. 23, 2013).

5. Finally, nearly seven years after originally receiving the petition to list the crayfish, and three months past the deadline established in the original stipulated settlement agreement to make a 12-month finding, the Service proposed listing the crayfish as a threatened species under the Act on January 3, 2018. *Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Panama City Crayfish*, 83 Fed. Reg. 330 (Jan. 3, 2018).

6. The Service's 12-month finding triggered a requirement that the Secretary make a final determination on the proposed listing within one year of publication of the proposed regulation, i.e., by January 3, 2019. 16 U.S.C. § 1533(b)(6)(A).

7. After the January 3, 2019 deadline for the final determination lapsed, by letter dated June 18, 2020, the Center notified Defendants that they have violated section 4 of the ESA by failing to make a timely final listing determination for the crayfish. The Center advised Defendants that the Center intended to file suit to enforce the ESA's mandatory listing deadline. As of the date of the filing of this complaint, the Defendants have failed to make a final listing determination on the crayfish's status.

8. Until Defendants act and make a final listing determination, the Service is in violation of the Act and the crayfish will continue to decline toward extinction. There is no legal excuse for Defendants' failure to act. By this action the Center seeks declaratory and injunctive relief to enforce the ESA's mandatory deadline for the required final determination in response to the Center's petition to list the crayfish, and to compel Defendants to determine whether listing the crayfish as endangered or threatened under the Act is warranted. 16 U.S.C. § 1533(b)(3)(B).

### JURISDICTION AND VENUE

9. Plaintiffs bring this action under the Endangered Species Act, 16 U.S.C. §§ 1531-1544.

10. This Court has subject matter jurisdiction over this action pursuant to 16 U.S.C. § 1540(c) and (g)(1)(C) (actions arising under the ESA's citizen suit provision), 28 U.S.C. § 1331 (actions arising under the laws of the United States), and 28 U.S.C. § 1346 (actions against the United States).

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

12. Plaintiff provided Defendants formal notice of its intent to file suit under the ESA on June 18, 2020, more than 60 days prior to filing this Complaint, consistent with the ESA's statutory requirements. 16 U.S.C. § 1540(g)(2).

13. Defendants have not remedied their continuing ESA violation as of the date of this Complaint. Therefore, an actual controversy exists between the parties under 28 U.S.C. § 2201.

14. Venue in this Court is proper under 15 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e)(1)(B) because this action is brought against a federal agency and an officer and employee of the United States in his official capacity.

### PARTIES

15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national nonprofit conservation organization incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States, including California, Florida, Hawai'i, Nevada, New Mexico, North Carolina, Oregon, Washington, and Washington, D.C., and in Mexico. 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 over 81,000 members across the country.

16. The Center and its members are concerned with the conservation of imperiled species, including the crayfish, and the effective implementation of the ESA. The Center brings this action on behalf of itself and its members.

17. Plaintiff organization and its members derive professional, scientific, educational, recreational, conservational, aesthetic, and other benefits from observing crayfish in the wild.

18. For example, Center members have attempted to view and study the Panama City crayfish in its natural habitat and have concrete plans to visit Panama City crayfish habitat.

19. Defendant DAVID BERNHARDT is the Secretary of the Department of the Interior and is the federal official in whom the ESA vests final responsibility for making decisions and promulgating regulations required by and in accordance with the ESA, including listing decisions and critical habitat designations. Secretary Bernhardt is sued in his official capacity.

20. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency within the Department of the Interior that is charged with implementing the ESA for the crayfish, including through prompt compliance with the ESA's mandatory listing and critical habitat deadlines. The Secretary has delegated administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

21. Defendants' failure to comply with the ESA's non-discretionary deadline for issuing a final determination on the proposed listing of the crayfish deprives the crayfish of statutory protections that are vitally necessary to its survival and recovery.

22. The Center and its members have long participated in efforts to conserve the crayfish and to protect the species' habitat. The Center's conservation efforts are prompted by the concern

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