

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,
378 N. Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. FISH AND WILDLIFE SERVICE,
1849 C Street, N.W.
Washington, DC 20240,

MARTHA WILLIAMS,
in her official capacity as acting Director of
the U.S. Fish and Wildlife Service,
1849 C Street, N.W.
Washington, DC 20240,

and,

SECRETARY, U.S. DEPARTMENT OF THE
INTERIOR,
1849 C Street, N.W.
Washington, DC 20240,

Defendants.

Case No: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. The Earth is in the midst of an ongoing and unprecedented human-caused extinction crisis. The United Nations’ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services warns that the current rate of global species extinction is tens to hundreds of times greater than average over the last 10 million years, and is accelerating. Approximately one million species are headed toward extinction.

2. The Endangered Species Act, 16 U.S.C. §§ 1531–1544 (“ESA” or “Act”), is successful at stopping species’ extinction, but the Act can only succeed after species are listed and thus protected as “endangered” or “threatened” by the U.S. Fish and Wildlife Service (“Service”) under section 4 of the ESA. *Id.* § 1533(a), (b). During the Trump administration, however, the Service listed the fewest number of species as “endangered” or “threatened,” on average, of any administration.

3. Despite this abysmal record, the Service claims that it has been making “expeditious progress” in adding species to the lists of endangered and threatened species, as the agency must show under the ESA, *id.* § 1533(b)(3)(B)(iii), to justify dragging its feet in listing, at this time, 10 “candidate” species—i.e., 10 species that the Service has determined “warrant” protection as endangered or threatened but which are awaiting final listing rules. These 10 candidate species are the: northern spotted owl (*Strix occidentalis caurina*); monarch butterfly (*Danaus plexippus plexippus*); Peñasco least chipmunk (*Tamias minimus atristriatus*); gopher tortoise (eastern population) (*Gopherus polyphemus*); longfin smelt (San Francisco Bay-Delta population) (*Spirinchus thaleichthys*); Texas pimpleback (a mussel) (*Cyclonaias petrina*); Texas fawnsfoot (a mussel) (*Truncilla macrodon*); Texas fatmucket (a mussel) (*Lampsilis bracteate*); magnificent ramshorn (a snail) (*Planorbella magnifica*); and bracted twistflower (*Streptanthus bracteatus*) (collectively “10 species”). The Service’s baseless claims—that it is making expeditious progress to add species to the lists of endangered and threatened species, and that the immediate listing of these 10 species is precluded by other higher priorities—are set forth in three administrative documents. *See* Review of Domestic Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions, 85 Fed. Reg. 73,164 (Nov. 16, 2020)

(warranted but precluded finding for the Peñasco least chipmunk, gopher tortoise (eastern population), longfin smelt (San Francisco Bay-Delta population), Texas pimpleback, Texas fawnsfoot, Texas fatmucket, magnificent ramshorn, and bracted twistflower) (“2020 CNOR”); 12-Month Finding for the Northern Spotted Owl, 85 Fed. Reg. 81,144 (Dec. 15, 2020); 12-Month Finding for the Monarch Butterfly, 85 Fed. Reg. 81,813 (Dec. 17, 2020) (collectively “warranted but precluded findings”).

4. The Service claims its ability to complete the ESA rulemakings for these 10 species is being impeded by the agency’s focus on higher priority listing activities (including removing species from the lists of endangered and threatened species). Yet the Service is consistently missing its own internal deadlines for these priorities which are set forth in agency “workplans.”

5. Languishing in regulatory limbo without a final listing decision can be a death sentence for these endangered and threatened species. At least 47 species have gone extinct while waiting for protection under the Act. But despite this dark history, the Service has failed to provide these 10 species with urgently needed protections under the ESA for years.

6. There is no legal justification for the Service’s foot-dragging and bureaucratic delays. Rather, the Service’s warranted but precluded findings for these 10 species violate the ESA because the Service has not made “expeditious progress” in adding qualified species to the endangered or threatened species lists, and because the Service has not shown that the immediate proposal and prompt final listing of these 10 species is “precluded” by higher-priority imperiled species. 16 U.S.C. § 1533(b)(3)(B)(iii).

7. Plaintiff Center for Biological Diversity (“Center”) thus brings this lawsuit under the ESA’s citizen-suit provision to challenge the Service’s arbitrary and capricious refusal to protect these 10 species in violation of the ESA. *Id.* § 1540(g)(1)(C).

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to the citizen suit provision of the ESA. *Id.* § 1540(c), (g) (“The several district courts of the United States... shall have jurisdiction over any actions arising under this Act.”). The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346 because this action involves the United States as a defendant and arises under the laws of the United States, including the ESA or, alternatively, the Administrative Procedure Act (“APA”). The requested relief is proper under 16 U.S.C. § 1540(g)(1); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. §§ 704, 706.

9. The U.S. District Court for the District of Columbia is the proper venue for this action, pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e), because Defendants reside in this district.

10. In compliance with 16 U.S.C. § 1540(g)(2)(C), the Center gave notice to Defendants of the Center’s intent to file suit under the Act for the violations described in this complaint more than 60 days ago. These violations have not been remedied.

PARTIES

11. The Center is a non-profit corporation headquartered in Tucson, Arizona, with offices throughout the country, including Washington, D.C. The Center works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of

extinction. The Center is actively involved in species and habitat protection issues. The Center has more than 84,000 members throughout the United States and the world.

12. The Center routinely petitions for the listing of imperiled species as endangered or threatened, including species such as the longfin smelt, magnificent ramshorn, monarch butterfly, and many more. On behalf of itself and its members, the Center has an interest in the effective implementation of the ESA and the timely listing of endangered or threatened species, including the timely listing of imperiled species for which the Center and others have submitted listing petitions.

13. The Center brings this action on behalf of itself and its many members who derive aesthetic, recreational, scientific, spiritual, and other concrete benefits from the 10 species and their habitats. The Center has members that endeavor to observe these species and have ongoing interests in the species and their habitats. The Center has members who have concrete plans to visit these species' habitats and try to observe them. Defendants' actions have harmed and continue to harm the Center's members' interests in observing, studying, and otherwise enjoying the species and their habitats. The relief sought in this case would redress this harm.

14. Defendants' ESA violations are also subverting the Center's core mission to safeguard endangered and threatened species. As a consequence of Defendant's unlawful delay in protecting the species at issue in this suit, the Center has been compelled to expend resources (exclusive of this litigation) on alternative means of protecting the species, which has diverted time and resources that could and would have been spent on other activities that are central to the Center's mission to conserve imperiled species.

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.