

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. This lawsuit concerns defendants’ failure to carry out their mandatory duties under the Endangered Species Act, 16 U.S.C. § 1531-1544 (“ESA” or “Act”). The lead defendant in this matter, the U.S. Fish and Wildlife Service, (“the Service”), has failed to classify nine species as endangered or threatened, and has failed to designate “critical habitat” for 10 listed species, as mandated under section 4 of the ESA. 16 U.S.C. § 1533(b)(3), (5). These 19

species include five insects, 11 plants, a mammal, and two aquatic species that are at risk of extinction due to habitat degradation and destruction, climate change, and other threats.

2. Therefore, plaintiff the Center for Biological Diversity (“Center”), a national nonprofit conservation organization, brings this action under the ESA’s citizen-suit provision, *id.* § 1540(g)(1), to obtain remedies for defendants’ failures to comply with the law by directing them to issue the overdue findings by Court-ordered deadlines.

3. Specifically, the Center seeks enforceable deadlines for defendants: (1) to publish overdue “12-month” listing determinations for the Mojave poppy bee, Las Vegas bearpoppy, Gulf Coast solitary bee, and the Bethany Beach firefly as endangered or threatened; (2) publish final rules listing the Franklin’s bumble bee, Sierra Nevada red fox, and Bartram’s stonecrop; (3) publish final rules listing and designating critical habitat for the Hermes copper butterfly and Beardless chinchweed; (4) designate critical habitat for the Big Pine partridge pea, Blodgett’s silverbush, sand flax, wedge spruce, Everglades bully, Florida pineland crabgrass, Florida prairie-clover, Pineland sandmat, and Pearl darter; and (5) publish a final rule implementing the Service’s designation of critical habitat for the Suwannee moccasinshell.

### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c) and (g)(1)(C) (action arising under ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question jurisdiction).

5. The Court may grant the relief requested under the ESA, 16 U.S.C. § 1540(g) and 28 U.S.C. §§ 2201 and 2202 (declaratory and injunctive relief).

6. The Center provided 60 days’ notice of the violations alleged herein by letters to defendants dated January 6, 2021 (Big Pine partridge pea, Blodgett’s silverbush, sand flax,

wedge spurge, Everglades bully, Florida pineland crabgrass, Florida prairie-clover, and pineland sandmat); January 7, 2021 (Mojave poppy bee, Las Vegas bearpoppy, Gulf Coast solitary bee, Bethany Beach firefly, and Franklin’s bumble bee); January 12, 2021 (Suwannee moccasinshell); January 15, 2021 (Hermes copper butterfly, a “distinct population segment” or “DPS” of the Sierra Nevada red fox, Bartram’s Stonecrop, and beardless chinchweed); and January 19, 2021 (Pearl darter). Defendants have not remedied their continuing ESA violations by the date of this Complaint. Therefore, an actual controversy exists between the parties under 28 U.S.C. § 2201.

7. The federal government has waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) and 5 U.S.C. § 702.

8. Venue is proper in the United States District Court for the District of Columbia pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because defendants reside in the district and a substantial part of the events giving rise to the Center’s claims occurred in this district.

### **PARTIES**

9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a nonprofit organization that 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 incorporated in California and headquartered in Tucson, Arizona, with field offices throughout the United States and Mexico, including in Washington, D.C. The Center has over 84,000 members. The Center and its members are concerned with the conservation of imperiled species, including the ones at issue in this suit, and with the Service’s effective implementation of the ESA.

10. The Center’s members and staff include individuals with a broad range of scientific, professional, educational, recreational, aesthetic, moral, and spiritual interests in the

Suwannee moccasinshell, Big Pine partridge pea, Blodgett's silverbush, sand flax, wedge spurge, Everglades bully, Florida pineland crabgrass, Florida prairie-clover, Pineland sandmat, Mojave poppy bee, Las Vegas bearpoppy, Gulf Coast solitary bee, Bethany Beach firefly, Franklin's bumble bee, Pearl darter, Hermes copper butterfly, Sierra Nevada red fox, Bartram's stonecrop, and the beardless chinchweed. In addition, the Center's members and staff use and enjoy these species' habitats for biological, scientific, research, educational, conservation, recreational, and aesthetic purposes. The Center's members have concrete plans to visit these species' habitats in the future.

11. The Center and its members' interests in these species and their habitats depend upon the conservation of these species in the wild. Yet, unless these species and their habitats are promptly protected under the ESA, they will continue to decline and may go extinct. Out of these concerns, the Center and other interested persons have submitted petitions to the Service to extend the substantive protections of the ESA to these species by listing them as "endangered" or "threatened." Defendants' failure to comply with their nondiscretionary duties under the ESA deprives these species of statutory protections that are necessary to their survival and recovery. Until these species are protected under the ESA, the Center and its members' future interests in these species and/or their habitat are impaired.

12. The Center and its members are injured by defendants' failure to publish timely listing decisions and critical habitat designations. Defendants' failure to act has delayed the application of the ESA's protections to these species, making the conservation of these species more difficult. These injuries are actual, concrete injuries that are presently suffered by the Center and its members, are directly caused by defendants' acts and omissions, and will continue

unless the Court grants relief. The relief sought would redress these injuries. The Center and its members have no adequate remedy at law.

13. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency within the Department of the Interior charged with implementing the ESA for the species at issue in this suit, 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).

14. Defendant MARTHA WILLIAMS is the acting Director of the U.S. Fish and Wildlife Service and is charged with ensuring agency decisions comply with the ESA. Plaintiff sues Defendant Williams in her official capacity.

15. Defendant SECRETARY, U.S. DEPARTMENT OF THE INTERIOR (“Secretary”) has the ultimate responsibility to administer and implement the provisions of the ESA regarding these species. Plaintiff sues the Secretary in their official capacity.

### **STATUTORY FRAMEWORK**

16. The ESA is a comprehensive federal statute declaring that endangered and threatened species are of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). The purpose of the ESA is to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.” *Id.* § 1531(b).

17. The ESA has a suite of substantive legal protections that apply to “species,” *id.* § 1532(16) (defining “species”) once they are listed as endangered or threatened. For example,

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