

Julian Aguon (GU Bar No. 09081)
BLUE OCEAN LAW, P.C.
134 W Soledad Ave., Ste. 400
Hagåtña, GU 96910
Phone: (671) 472-2583
Email: julian@blueoceanlaw.com

Maxx Phillips (HI Bar No. 10032)
pro hac vice application forthcoming
CENTER FOR BIOLOGICAL DIVERSITY
1188 Bishop Street, Suite 2412
Honolulu, HI 96813
Phone: (808) 284-0007
Email: mphillips@biologicaldiversity.org

Amy R. Atwood (OR State Bar No. 060407)
pro hac vice application forthcoming
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211
Phone: (917) 717-6401
Email: atwood@biologicaldiversity.org

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
OF GUAM**

CENTER FOR BIOLOGICAL
DIVERSITY, a non-profit corporation,

Plaintiff,

v.

DEBRA HAALAND, in her official
capacity as Secretary of the Interior;

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

U.S. FISH AND WILDLIFE SERVICE,
an agency of the U.S. Department of
Commerce;

and

MARTHA WILLIAMS, in her official
capacity as the Principal Deputy Director
of the U.S. Fish and Wildlife Service;

Defendants.

INTRODUCTION

1. In this civil action for declaratory and injunctive relief, Plaintiff Center for Biological Diversity (“the Center”) challenges the failure of the Secretary of the Interior and the U.S. Fish and Wildlife Service (collectively, “the Service”) to designate critical habitat for fourteen species of plants and nine species of animals in Micronesia, as required under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544. The Service’s failure to timely designate critical habitat violates its mandatory duty under section 4 of the ESA, 16 U.S.C. § 1533, and deprives these imperiled species of vitally important protections in their most essential habitat areas. Compliance with this mandatory and non-discretionary duty is necessary to ensure the continued survival and eventual recovery of these vulnerable species.

2. On October 1, 2015, the Service determined endangered status for 16 plant and animal species from the Mariana Islands: *Eugenia bryanii*; *Hedyotis megalantha* (pao dedu Ch,¹ pao doodu CI²); *Heritiera longipetiolata* (ufa halumtanu Ch, ufa halom tano CI); *Phyllanthus saffordii*; *Psychotria malaspinae* (aplokating palaoan Ch / CI); *Solanum guamense* (Biringenas halumtanu Ch, birengenas halom tano CI); *Tinospora homosepala*; *Emballonura semicaudata rotensis* (Pacific sheath-tailed bat (Mariana subspecies), payeyi Ch, paischeey CI); *Emoia slevini* (Slevin's skink, Marianas Emoia, Marianas skink, gualiik halumtanu Ch, gholuuf CI); *Hypolimnas octocula marianensis* (Mariana eight-spot butterfly, ababbang Ch, Libweibwogh CI); *Vagrans egistina* (Mariana wandering butterfly, ababbang Ch, Libweibwogh CI); *Ischnura luta* (Rota blue damselfly, dulalas Luta Ch, dulalas Luuta CI); *Partula gibba* (humped tree snail, akaleha Ch, denden CI); *Partula langfordi* (Langford's tree snail, akaleha Ch, denden CI); *Partula radiolata* (Guam tree snail, akaleha Ch, denden CI.); and *Samoana fragilis* (fragile tree snail, akaleha dogas Ch, denden CI). 80 Fed. Reg. 59,424, 59,427 (Oct. 1, 2015). The Service also determined threatened status for seven plant species from the Mariana Islands and greater Micronesia in the U.S. Territory of Guam, and the U.S. Commonwealth of the Northern Mariana Islands ("CNMI"): *Bulbophyllum*

¹ "Ch" denotes the name of the ESA-listed species in the Chamorro language. 80 Fed. Reg. 59,427 tbl. 1.

² "CI" denotes the name of the ESA-listed species in the Carolinian language. *Id.*

guamense (wild onion siboyas halumtanu Ch, siboyan halom tano CI); *Cycas micronesica* (fadang Ch, faadang CI); *Dendrobium guamense*; *Maesa walkeri*; *Nervilia jacksoniae*; *Tabernaemontana rotensis*; and *Tuberolabium guamense*. *Id.* at 59,424.

3. When the Service lists a species as endangered or threatened, it must concurrently designate critical habitat for that species, to the greatest extent prudent and determinable. 16 U.S.C. § 1533(a)(3)(A)(i). Under limited circumstances, the Service may extend that deadline to no more than one additional year. *Id.* § 1533(b)(6)(C)(ii).

4. Despite this non-discretionary statutory requirement, to date, the Service has not designated critical habitat for any of the above listed species, as required by section 4 of the ESA.

5. The Service's failure is all the more egregious due to the fact that it has recognized that these species' habitats are being devastated by "land conversion by agriculture and urbanization, habitat destruction and modification by nonnative animals and plants, fire, the potential alteration of environmental conditions resulting from climate change, and compounded impacts due to the interaction of these threats." 80 Fed. Reg. 59,460-61. This habitat destruction, in addition to other threats, has left these endemic species, which persist in low numbers across

restricted ranges, highly vulnerable and in danger of extinction throughout their entire range. *Id.* at 64,686.

6. The very existence of these 23 imperiled species remains at risk until the Service fulfills its mandatory statutory duties.

7. The Service's failure to timely designate critical habitat for these fourteen species of plants and nine species of animals in Micronesia violates section 4(a) of the ESA, 16 U.S.C. § 1533(a), and alternatively constitutes agency actions unlawfully withheld and unreasonably delayed under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1). Accordingly, the Center brings this action against the Service to (1) secure declaratory relief that the Service is in violation of the ESA for failing to timely designate critical habitat, and (2) compel performance of its mandatory duties to designate critical habitat according to a timeline established by the Court.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c) & (g) (action arising under the ESA and citizen suit provision), 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 702 (APA), and 28 U.S.C. § 1361 (mandamus).

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.