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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

CENTER FOR BIOLOGICAL
DIVERSITY, a non-profit corporation,

Plaintiff,

v.

SCOTT DE LA VEGA, in his official
capacity as Acting Secretary of the
Interior; U.S. FISH AND WILDLIFE
SERVICE, an agency of the U.S.
Department of Commerce,

Defendants.

Case No.:

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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 and develop a valid recovery plan for the ‘i‘iwi (*Drepanis coccinea*), a threatened native Hawai’ian bird species, as required under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544. The Service’s failure to timely designate critical habitat for ‘i‘iwi violates its mandatory duties under section 4 of the ESA, 16 U.S.C. § 1533. Likewise, the Service’s failure to timely develop and implement a recovery plan for ‘i‘iwi violates its mandatory duties under section 4 of the ESA, 16 U.S.C. § 1533. Compliance with these mandatory, nondiscretionary duties are necessary to ensure the continued survival and eventual recovery of this imperiled species. These inexcusable delays deprive the threatened ‘i‘iwi of vitally important protections in its most essential habitat areas and at its greatest time of need.



An 'i'iwi (*Drepanis coccinea*) in an 'ōhi'a tree. Credit: Keith Burnett

2. Hawaiian forest birds, one of the most imperiled groups of birds in the world, are in crisis. Sadly, 68 percent of Hawai'i's known endemic bird species have gone extinct since the arrival of humans due to habitat loss, disease, and the introduction of invasive predators. Of the 37 endemic species that remain, 33 are currently listed under the ESA, although nine have not been observed recently and are believed to be extinct.

3. The vulnerable i'iwi has declined significantly in recent decades due to threats including climate change, habitat destruction, and diseases.

4. Once one of the most abundant native forest birds in Hawai'i, the 'i'iwi now persists on only three islands, with the population on one of these

islands likely to go extinct by 2050. 82 Fed. Reg. at 43,875, 43,880 (Sept. 20, 2017).

5. In light of the significant threats facing ‘i‘iwi, on September 20, 2017, the Service listed ‘i‘iwi as a “threatened” species under the ESA. *Id.* at 43,873.

6. When the Service lists a species as endangered or threatened, it must 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).

7. Additionally, subsection 4(f) of the ESA imposes a mandatory, nondiscretionary duty on the Service to develop and implement recovery plans for the conservation of each species listed as endangered or threatened. 16 U.S.C. § 1533(f)(1).

8. Regardless of these non-discretionary statutory requirements, to date, the Service has not designated critical habitat for the ‘i‘iwi nor developed a final recovery plan for this species, as required by section 4 of the ESA.

9. Time is of the essence in protecting this iconic forest bird. The ‘i‘iwi’s very existence remains at risk until the Service fulfills its mandatory statutory duties.

10. The Service’s failure to timely designate critical habitat and prepare a legally required recovery plan for ‘i‘iwi violates section 4(f) of the ESA, 16 U.S.C. § 1533, 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 for ‘i‘iwi, (2) secure declaratory relief that the Service is in violation of the ESA for failing to create a legally valid recovery plan for the ‘i‘iwi, (3) enjoin the agency to designate critical habitat according to a timeline established by the Court and (4) enjoin the agency to issue a recovery plan according to a timeline established by the Court.

JURISDICTION AND VENUE

11. 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 (Administrative Procedure Act or “APA”), and 28 U.S.C. § 1361 (mandamus).

12. The relief sought is authorized by 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), 16 U.S.C. § 1540(g) (citizen-suit provision of the ESA), and 5 U.S.C. §§ 701-706 (APA).

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