

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

Brian Segee (CA Bar No. 200795), *pro hac vice application forthcoming*  
CENTER FOR BIOLOGICAL DIVERSITY  
660 S. Figueroa St., Suite 1000  
Los Angeles, CA 90017  
Phone: (805) 750-8852  
Email: bsegee@biologicaldiversity.org

*Attorneys for Plaintiff*

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

CENTER FOR BIOLOGICAL DIVERSITY,  
a non-profit corporation,

*Plaintiff,*

v.

DEB HAALAND, in her official  
capacity as Secretary of the Interior; U.S.  
FISH AND WILDLIFE SERVICE, an agency  
of the U.S. Department of the Interior;

and

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

*Defendants.*

Case No.:

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
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 for forty-nine species of plants and animals in Hawai‘i, as required under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544. The Service’s failure to timely designate critical habitat after listing these species as endangered violates its mandatory duty under the ESA. See 16 U.S.C. § 1533(a)(3)(A)(i). This unlawful delay 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 September 30, 2016, the Service listed forty-nine species from the Hawaiian Islands as endangered. 81 Fed. Reg. 67,786 (Sept. 30, 2016). The 2016 listing included 39 species of plants: *Asplenium diellaciniatum*, *Calamagrostis expansa* (Maui reedgrass), *Cyanea kauaulaensis*, *Cyclosorus boydiae* (kupukupu makali‘i), *Cyperus neokunthianus*, *Cyrtandra hematos* (ha‘iwale), *Deparia kaalaana*, *Dryopteris glabra* var. *pusilla* (hohiu), *Exocarpos menziesii* (heau), *Festuca hawaiiensis*, *Gardenia remyi* (nānū), *Huperzia stemmermanniae*,

*Hypolepis hawaiiensis* var. *mauiensis* (olua), *Joinvillea ascendens* ssp. *ascendens* (‘ohe), *Kadua fluviatilis* (kamapua‘a), *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare* (‘ānaunau), *Microlepis strigosa* var. *mauiensis*, *Myrsine fosbergii* (kōlea), *Nothocestrum latifolium* (‘aiea), *Ochrosia haleakalae* (hōlei), *Phyllostegia brevidens*, *Phyllostegia helleri*, *Phyllostegia stachyoides*, *Portulaca villosa* (‘ihi), *Pritchardia bakeri* (Baker’s loulu), *Pseudognaphalium sandwicense* var. *molokaiense* (‘ena‘ena), *Ranunculus hawaiiensis* (makou), *Ranunculus mauiensis* (makou), *Sanicula sandwicensis*, *Santalum involutum* (‘iliahi), *Schiedea diffusa* ssp. *diffusa*, *Schiedea pubescens* (ma‘oli‘oli), *Sicyos lanceoloideus* (‘ānunu), *Sicyos macrophyllus* (‘ānunu), *Solanum nelsonii* (pōpolo), *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana* (‘ākia). Id.

Further, the 2016 listing included 10 animal species at risk for extinction:

*Oceanodroma castro*, (Band-rumped storm-petrel), *Hylaeus anthracinus* (Yellow-faced bee), *Hylaeus assimulans* (Yellow-faced bee), *Hylaeus facilis* (Yellow-faced bee), *Hylaeus hiliaris* (Yellow-faced bee), *Hylaeus kuakea* (Yellow-faced bee), *Hylaeus longiceps* (Yellow-faced bee), *Hylaeus mana* (Yellow-faced bee), *Megalagrion xanthomelas* (Orangeblack Hawaiian damselfly), and *Procaris hawaiiiana* (Anchialine pool shrimp). Id.

3. When the Service lists a species as endangered or threatened, the ESA mandates that the Service shall concurrently “designate any habitat of such species which is then considered to be critical habitat.” 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 mandate, the Service has not, to date, designated critical habitat for any of the above listed species, as required by § 1533 of the ESA.

5. These forty-nine plants and animals are only found in the Hawaiian Islands and each has a limited range within this already restricted geographic area. 81 Fed. Reg. 67,826. The Service’s failure to designate critical habitat is all the more egregious due to the fact that it has recognized that these species’ already restricted habitats are being degraded or lost entirely due to “urbanization; nonnative feral ungulates (hoofed mammals, e.g., pigs, goats, axis deer, black-tailed deer, mouflon, and cattle); nonnative plants; wildfire; and water extraction.” Id. at 67,786.

6. The continued survival and eventual recovery of these forty-nine endangered species remains at risk until the Service fulfills its mandatory statutory duty to designate critical habitat.

7. The Service's failure to timely designate critical habitat for these forty-nine species of plants and animals in Hawai'i violates section 4 of the ESA, 16 U.S.C. §§ 1533(a)(3)(A)(i), (b)(6)(C). Accordingly, the Center brings this action against the Service to (1) secure declaratory relief that the Service's failure to timely designate critical habitat is unlawful, 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 its citizen suit provision), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1361 (mandamus).

9. The declaratory judgment and injunctive relief sought is authorized by 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act), and 16 U.S.C. § 1540(g) (citizen suit provision of the ESA).

10. By written notice sent on May 25, 2022, the Center informed Defendants of their violation more than sixty days prior to the filing of this Complaint, as required by the ESA. See 16 U.S.C. § 1540(g)(2). Despite receipt of the Center's notice letter, the Service has failed to remedy its violation of the ESA.

# 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.