

Hayden Wyatt (CO Bar No. 62632)
Center for Biological Diversity
P.O. Box 492
Ridgway, CO 81432
Phone: 971 724-7157 (ext. 602)
hwyatt@biologicaldiversity.org
Pro Hac Vice Admission Pending

Camila Cossío (OR Bar No. 191504)
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
Phone: 971 717-6402
ccossio@biologicaldiversity.org
Pro Hac Vice Admission Pending

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

Center for Biological Diversity, a non-
profit organization

Plaintiff,

v.

U.S. Fish and Wildlife Service; Brian
Nesvik, in his official capacity as Director
of the U.S. Fish and Wildlife Service; and
Doug Burgum, in his official capacity as
Secretary of the U.S. Department of the
Interior,

Defendants.

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. Plaintiff Center for Biological Diversity (the “Center”) brings this case challenging the U.S. Fish and Wildlife Service’s (the “Service”) failure to issue a timely 12-month finding on the petition to list the Tamaulipan spot-tailed earless lizard

1 (*Holbrookia subcaudalis*), in violation of the Endangered Species Act’s (“ESA” or
2 “Act”) nondiscretionary, congressionally mandated deadline. The Service’s failure to
3 meet the ESA deadline for the Tamaulipan spot-tailed earless lizard delays lifesaving
4 protections for the lizard, thereby increasing its risk of extinction.
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6 2. Anthropogenic stressors, including habitat loss and degradation, have led to
7 a rapidly declining Tamaulipan lizard population. Native only to Texas and northern
8 Mexico, the Tamaulipan lizard is now only found in five counties in southern Texas.
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10 3. The Center brings this lawsuit for declaratory and injunctive relief, seeking
11 an Order declaring that the Service violated Section 4(b)(3)(B) of the ESA, 16 U.S.C. §
12 1533(b)(3)(B), by failing to timely issue a 12-month finding for the Tamaulipan spot-
13 tailed earless lizard and directing the Service to issue the finding by a date certain.
14

15 **JURISDICTION**

16 4. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),
17 (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has
18 authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. §
19 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).
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22 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because
23 Plaintiff resides in and has its principal place of business in this judicial district.
24

25 **PARTIES**

26 6. Plaintiff the Center for Biological Diversity is a national, non-profit
27 conservation organization that works through science, law, and policy to protect
28

1 imperiled wildlife and their habitat. The Center is incorporated in California and
2 headquartered in Tucson, Arizona, with offices throughout the United States. The Center
3 has more than 101,000 active members throughout the country.
4

5 7. The Center brings this action on behalf of its members who derive
6 recreational, educational, scientific, professional, and other benefits from the Tamaulipan
7 spot-tailed earless lizard and its habitat. Plaintiff's members' interests in protecting and
8 recovering the lizard and its habitat are directly harmed by the Service's failure to timely
9 issue a 12-month finding, delaying critical protections under the ESA that can put the
10 Tamaulipan spot-tailed earless lizard on a path to recovery.
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13 8. Center member Drew Davis is a biologist and he teaches wildlife biology at
14 Eastern New Mexico University. Dr. Davis's research interests focus primarily on the
15 ecology and conservation of amphibians and reptiles in the southwestern and midwestern
16 United States. Before the species was split, he first began searching for the spot-tailed
17 earless lizard in 2013, when he learned of the easternmost record for this species
18 occurring near Mustang Ridge, Texas, which is near where his parent's own property and
19 where he grew up. He encountered his first spot-tailed earless lizard in the fall of 2021 (in
20 Kinney County). As a herpetologist and someone interested in discovering native
21 wildlife, he specifically searches for this species. On another occasion, he found an adult
22 female on a dirt road surrounded by agricultural fields. He last searched for the
23 Tamaulipan spot-tailed lizard in March 2026 and was unsuccessful in finding any
24 individuals. Even when his attempts to view the lizard are unsuccessful, knowing that the
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1 lizard is roaming the arid landscape where he grew up gives his searches purpose. Dr.
2 Davis has visited the Tamaulipan spot-tailed earless lizard's habitat on multiple occasions
3 and plans to return to look for the lizard and spend time in its habitat near Jim Wells in
4 August 2026. Dr. Davis derives professional, aesthetic, spiritual, recreational, and moral
5 benefits from the lizard's continued existence. His interests are harmed by the Service's
6 continued delay in making a 12-month finding. The Service's failure delays protection
7 for the lizard, and its decline would lead to less research opportunities for Dr. Davis's lab
8 and it would harm his recreational interests because its decline would detract from his
9 enjoyment of the species and its habitat.
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13 9. Defendants' violation of the ESA's deadline has delayed ESA protections
14 for the Tamaulipan spot-tailed earless lizard. This inaction harms Plaintiff's members'
15 interests in the lizard by permitting the species' continued trajectory toward extinction,
16 thereby decreasing the likelihood that the Center's members will encounter the species as
17 part of their personal and professional excursions. These injuries are actual, concrete
18 injuries presently suffered by Plaintiff's members, are directly caused by Defendants'
19 acts and omissions, and will continue unless the Court grants relief. The relief sought
20 would redress these injuries by providing ESA protection for the Tamaulipan spot-tailed
21 earless lizard, thus promoting its conservation and recovery. Plaintiff and its members
22 have no other adequate remedy at law.
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26 10. Defendant U.S. Fish and Wildlife Service is the agency within the
27 Department of the Interior charged with implementing the ESA for the Tamaulipan spot-
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1 tailed earless lizard. The Secretary of the Interior has delegated administration of the ESA
2 to the Service. 50 C.F.R. § 402.01(b).

3
4 11. Defendant Brian Nesvik is the Director of the Service and is charged with
5 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his
6 official capacity.

7
8 12. Defendant Doug Burgum is the Secretary of the U.S. Department of the
9 Interior (“Secretary”) and has the ultimate responsibility to administer and implement the
10 provisions of the ESA. Defendant Burgum is sued in his official capacity.

11 **STATUTORY FRAMEWORK**

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13 13. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is “the most
14 comprehensive legislation for the preservation of endangered species ever enacted by any
15 nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes
16 are “to provide a means whereby the ecosystems upon which endangered species and
17 threatened species depend may be conserved [and] to provide a program for the
18 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

19
20 14. The ESA defines a “species” as “any subspecies of fish or wildlife or
21 plants, and any distinct population segment of any species of vertebrate fish or wildlife
22 which interbreeds when mature.” 16 U.S.C. § 1532(16).

23
24 15. A species is “endangered” when it “is in danger of extinction throughout all
25 or a significant portion of its range.” 16 U.S.C. § 1532(6). A species is “threatened” when
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1 it is “likely to become an endangered species within the foreseeable future throughout all
2 or a significant portion of its range.” *Id.* § 1532(20).

3
4 16. The ESA requires the Service to determine whether any species is
5 endangered or threatened because of any one of, or combination of, the following factors:
6 (A) the present or threatened destruction, modification, or curtailment of its habitat or
7 range; (B) overutilization for commercial, recreational, scientific, or educational
8 purposes; (C) disease or predation; (D) the inadequacy of existing regulatory
9 mechanisms; or (E) other natural or manmade factors affecting its continued existence.

10
11 16 U.S.C. § 1533(a)(1).

12
13 17. If the Service determines that the species is not endangered throughout all
14 of its range, the ESA requires the agency to examine whether it is endangered or
15 threatened throughout any “significant portion” of its range. 16 U.S.C. §§ 1532(6), (20).

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17 18. The Service must base all listing determinations “solely on the basis of the
18 best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A).

19
20 19. To ensure the timely protection of species at risk of extinction, Congress set
21 forth a detailed process whereby interested persons may petition the Service to list a
22 species as endangered or threatened and, in response, the Service must publish a series of
23 three decisions according to statutory deadlines. 16 U.S.C. § 1533(b)(3). First, within 90
24 days of receipt of a listing petition, the Service must publish an initial finding as to
25 whether the petition, “presents substantial scientific or commercial information indicating
26 that the petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). If the Service
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1 determines that the petition does not present substantial information indicating that listing
2 may be warranted, the petition is rejected, and the process concludes.

3
4 20. If the Service determines that a petition presents substantial information
5 indicating that listing “may be warranted,” the agency must publish that finding and
6 proceed with a scientific review of the species’ status, known as a “status review.” 16
7 U.S.C. § 1533(b)(3)(A).
8

9 21. Upon completing the status review, and within 12 months of receiving the
10 petition, the Service must publish a “12-month finding” making one of three listing
11 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is
12 “warranted but precluded” by other proposals for listing species, provided certain
13 circumstances are met. 16 U.S.C. § 1533(b)(3)(B).
14

15 22. If the Service determines that listing is “warranted,” the agency must
16 publish that finding in the Federal Register along with the text of a proposed regulation to
17 list the species as endangered or threatened and to designate critical habitat for the
18 species. 16 U.S.C. § 1533(a)(3)(A), (b)(3)(B)(ii). Within one year of the proposed listing
19 rule publication, the Service must publish in the Federal Register the final rule
20 implementing its determination to list the species and designate critical habitat. *Id.* §
21 1533(b)(6)(A).
22

23
24 23. If the Service instead issues a finding that listing the species is “not
25 warranted,” the process concludes, and that finding is a final agency action subject to
26 judicial review. 16 U.S.C. § 1533(b)(3)(C)(ii).
27
28

1 24. The ESA has a suite of substantive and procedural legal protections that
2 apply to species once they are listed as endangered or threatened. For example, Section
3 4(a)(3) of the Act requires the Service to designate “critical habitat” for each endangered
4 and threatened species at the time it lists the species. 16 U.S.C. § 1533(a)(3).

6 25. Once a species is listed under the Act, all other Federal agencies are
7 required to “utilize their authorities in furtherance of the purposes of this Act by carrying
8 out programs for the conservation of endangered species and threatened species.” 16
9 U.S.C. § 1536(a)(1).

11 26. In addition, ESA Section 7(a)(2) requires all federal agencies to ensure that
12 their actions do not “jeopardize the continued existence” of any endangered or threatened
13 species or “result in the destruction or adverse modification” of any listed species’ critical
14 habitat. 16 U.S.C. § 1536(a)(2).

16 27. ESA Section 9 prohibits, among other actions, “any person” from causing
17 the “take” of any protected fish or wildlife without lawful authorization from the Service.
18 16 U.S.C. §§ 1538(a)(1)(B), § 1539; *see also* 16 U.S.C. § 1532(19) (defining “take”).
19 Other provisions require the Service to “develop and implement” recovery plans for listed
20 species, *id.* § 1533(f); authorize the Service to acquire land for the protection of listed
21 species, *id.* § 1534; and authorize the Service to make federal funds available to states to
22 assist in the conservation of endangered and threatened species, *id.* § 1535(d).



Female *Holbrookia subcaudalis*, photo by Toby Hibbitts.

FACTUAL BACKGROUND

28. Tamaulipan spot-tailed earless lizard (*Holbrookia subcaudalis*) (“Tamaulipan lizard”) is a small lizard that lives in semi-arid to humid grasslands of Texas. Tamaulipan lizards are burrowing lizards, making their home in shallow soil that allows them to remain informed of environmental cues above ground. While they were once considered a subspecies of the spot-tailed earless lizard (*Holbrookia lacerate*), recent research has revealed that the Tamaulipan lizard is a fully independent species.

29. Named for being “earless”, the Tamaulipan lizard’s lack of an exterior ear allows the lizard to more smoothly burrow, reducing the entry of sand, soil, and debris

1 when the lizard moves through loose substrates. It also may assist the lizard in staying
2 hydrated by reducing the loss of water. The lizard's inner ear is sensitive to sound which
3 travels through vibrations transmitted across the skull and jaw.
4

5 30. The Tamaulipan lizard has experienced a steep and continual decline since
6 the 1970s. The primary drivers are habitat loss and degradation from agricultural
7 expansion, land-use changes, and habitat degradation resulting from brush encroachment
8 and invasive vegetation. These impacts are compounded by the lizards' limited dispersal,
9 preventing recolonization once extirpated.
10

11 31. Their habitat was once widespread, from Oklahoma to Mexico, but they are
12 now only found in a few disjunctive populations in southern Texas and Mexico. Climate
13 change modeling has predicted a loss of all available habitat for the southwestern
14 population of the Tamaulipan lizard.
15

16 32. Within Texas, small populations of the Tamaulipan lizard likely live in
17 Nueces, Jim Wells, McMullen, Kinney, and Val Verde counties. Even within this small
18 range, populations are likely to see short-term declines because of development. In
19 McMullen County, a strip mine for lignite coal will likely extirpate the Tamaulipan
20 lizard. And a suburban expansion could threaten the Tamaulipan lizard population in Jim
21 Wells County.
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Listing Petition and Response

33. In January 2010, the Service received a petition to list the spot-tailed earless lizard, including two subspecies, *Holbrookia lacerate lacerata* and *Holbrookia lacerate subcaudalis*, as a threatened or endangered species under the ESA.

34. In May 2011, the Service found that the petition presented substantial scientific or commercial information indicating that listing the species may be warranted. 76 Fed. Reg. 30082 (May 24, 2011).

35. In 2019, the two subspecies were formally described as full species, and the common name for *Holbrookia lacerata* became the Plateau spottailed earless lizard and the common name for *Holbrookia lacerate subcaudalis* became the Tamaulipan Spot-tailed earless lizard.

36. In February 2024, the Service found that the Plateau spot-tailed earless subspecies did not warrant listing. 89 Fed. Reg. 8137 (February 6, 2024). The Service explained that it was evaluating the status of the Tamaulipan spot-tailed earless lizard separately. *Id.* at 8140.

37. It has now been more than 16 years since the Service received the petition to protect to lizard under the ESA.

38. Plaintiff provided Defendants with sixty-days' notice of their ESA violations, as required by 16 U.S.C. § 1540(g)(2)(C), by a letter to the Service dated January 12, 2026. Defendants have not remedied the violations set out in the notice letter,

1 and an actual controversy exists between the parties within the meaning of the
2 Declaratory Judgment Act, 28 U.S.C. § 2201.

3
4 **CLAIM FOR RELIEF**

5
6 **Violation of the ESA for Failure to Publish a Timely 12-Month Finding for the
7 Tamaulipan spot-tailed earless lizard**

8 39. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
9 paragraphs.

10 40. The ESA requires the Service to publish a 12-month finding within 12-
11 months of receiving a petition to list a species under the Act when the Service has made a
12 positive 90-day finding that listing may be warranted. 16 U.S.C. § 1533(b)(3)(B).

13
14 41. In response to the January 2010 petition to list the spot-tailed earless lizard,
15 the Service issued a 90-day finding for the lizard in 2011, finding the lizard may warrant
16 listing.

17
18 42. Because the Service found that the petition to list the lizard may be
19 warranted, it was required to publish a 12-month finding 12 months after receiving the
20 listing petition or by January 21, 2011.

21
22 43. Defendants have not made the statutorily required 12-month finding for the
23 Tamaulipan spot-tailed earless lizard.

24 44. Defendants failed to perform their nondiscretionary duty to timely publish a
25 12-month finding in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).
26

27 **REQUEST FOR RELIEF**
28

1 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
2 providing the following relief:

- 3
- 4 1. Declare that Defendants violated and continue to violate the ESA by failing to
5 make a timely 12-month finding;
- 6 2. Provide injunctive relief compelling Defendants to publish a 12-month finding
7 for the Tamaulipan lizard by a date certain;
- 8
- 9 3. Retain continuing jurisdiction to review Defendants' compliance with all
10 judgments and orders herein;
- 11 4. Grant Plaintiff its reasonable attorneys' fees and costs as provided by the ESA,
12 16 U.S.C. § 1540(g)(4); and
- 13
- 14 5. Provide such other relief as the Court deems just and proper.
- 15
- 16

17 Respectfully submitted and dated this 23rd day of July 2026.

18

19 s/ Hayden Wyatt
20 Hayden Wyatt (CO Bar No. 62632)
21 Center for Biological Diversity
22 P.O. Box 492
23 Ridgway, CO 81432
24 Phone: 971 724-7157 (ext. 602)
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