

ANNA K. STIMMEL, SB No. 322916
astimmel@earthjustice.org
EARTHJUSTICE
1 Sansome St., Ste. 1700
San Francisco, CA 94104
Tel: (415) 217-2000
Fax: (415) 217-2040

ANDRIA H. SO, SB No. 341595
aso@earthjustice.org
EARTHJUSTICE
707 Wilshire Boulevard, Suite 4300
Los Angeles, CA 90017
Tel: (415) 217-2000
Fax: (415) 217-2040

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE; DOUG BURGUM, in his official
capacity as Secretary of the U.S. Department of the
Interior; and BRIAN NESVIK, in his official
capacity as Director of the U.S. Fish and Wildlife
Service,

Defendants.

Case No. 5:25-cv-09943

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

NATURE OF THE ACTION

1. Plaintiff brings this action under the federal Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, to compel the United States Fish and Wildlife Service (the “Service”) to take the statutorily required action of making a final determination on the proposed listing of two distinct population segments (“DPSs”) of the California spotted owl occurring in California and Nevada as endangered and threatened species.

INTRODUCTION

2. On February 23, 2023, the Service found that the California spotted owl (*Strix occidentalis occidentalis*) was at risk of extinction and published a proposed rule to protect two distinct population segments of the species. Endangered and Threatened Wildlife and Plants; California Spotted Owl, 88 Fed. Reg. 11600 (Feb. 23, 2023). Under the ESA, the Service then had a non-discretionary duty to act on its proposed rule, either by finalizing and adopting the rule or by withdrawing it, within twelve months (by February 23, 2024). But, as of the filing of this complaint, over two and a half years after the Service published the proposed rule, the Service has failed to publish a final rule or take further action in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A), (B)(iii).

3. The ESA also authorizes this Court to order the Service to perform nondiscretionary agency action it has unlawfully withheld. *Id.* § 1540(g)(1)(C). Accordingly, Plaintiff comes to this Court seeking relief from the Service's unlawful failure to take action on its proposed rule to list the California spotted owl.

JURISDICTION

4. This action is brought pursuant to the ESA, 16 U.S.C. § 1540(g)(1)(C) (failure of Secretary to perform nondiscretionary duty), which waives the Defendants' sovereign immunity. The Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 16 U.S.C. § 1540(g)(1)(C) (ESA citizen-suit provision) and may issue a declaratory judgment and further relief pursuant to 16 U.S.C. § 1540(g)(1)(C) and 28 U.S.C. §§ 2201–02.

NOTICE

5. Plaintiff provided defendants with 60 days' written notice of plaintiffs' intent to sue on April 15, 2025, in accordance with 16 U.S.C. § 1540(g)(2). *See* Exhibit A (Letter from Anna K. Stimmel, et al., counsel for Plaintiff, to Secretary Burgum and then-Acting Director and Regional Director Paul Souza, dated Apr. 15, 2025).

6. More than 60 days have passed since the notice was served, and the violations complained of are continuing.

VENUE

7. Venue is proper in this Court under 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because a substantial part of the ESA violations alleged in this complaint occurred in this District and a significant number of the remaining owls impacted by the Service's unlawful conduct are located in this District.

DIVISIONAL ASSIGNMENT

8. Assignment to the San Jose Division of this Court is proper, because California spotted owls inhabit Monterey County, and thus, a substantial part of the events and omissions giving rise to the claims herein occurred in Monterey County. Civil L.R. 3-2(c), 3-5(b).

PARTIES

9. Plaintiff Center for Biological Diversity (the "Center") is a nonprofit organization incorporated in California. In addition to its headquarters in Tucson, Arizona, the Center has offices around the country, including in Oakland, California. The Center is dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems with more than 93,000 members, approximately 18,000 of whom reside in California. By combining conservation biology with litigation, policy advocacy, and an innovative strategic vision, the Center works to secure a future for animals and plants hovering on the brink of extinction. Since its founding over ten years ago, the Center has fulfilled its mission by preparing and publishing scientific articles, participating in state and federal administrative proceedings, disseminating educational information through newsletters, alerts, the world-wide web and media releases, and petitioning and litigating both to list numerous species as threatened or endangered and to designate their critical habitat under the ESA. The Center brings this action on its own institutional behalf and on behalf of its members.

10. The Center and its members have been and will continue to be actively involved in efforts to protect and restore California spotted owl populations throughout the State. For two decades, the Center has worked to secure protection under both state and federal laws for the California spotted owl and its old forest habitat in California. Most recently, the Center along with other environmental groups successfully sued the Service in 2020, challenging the agency for refusing to protect the California spotted owl under the ESA.

11. Many of the Center’s members and staff reside and/or work in communities located near or adjacent to California spotted owl forest habitat in the Sierra Nevada, central coast, and southern California. In addition, members and staff visit the owl’s habitat on a regular basis for a variety of purposes including, but not limited to, hiking, backpacking, photography, scientific study, wildlife observation, hunting, and fishing. They intend to continue doing so on an ongoing basis in the future. Plaintiff’s members and staff derive aesthetic, recreational, scientific, spiritual, professional, inspirational, educational, and other benefits and enjoyment from these activities and from the existence of the owls in their natural habitat throughout the State. An integral aspect of Plaintiff’s interest in the species and its habitat is the expectation and knowledge that the California spotted owl is present, healthy, and wild in its native range.

12. For example, Jeff Miller, a member of the Center since 1995 and a staff member since 2001, is an avid birdwatcher and outdoor adventurer. Declaration of Jeff Miller (“Miller Decl.”) ¶¶ 2–3; 5. He has spent four decades hiking, camping, birdwatching, observing, and photographing wildlife in the range of the California spotted owl, throughout the Sierra Nevada and the southern Coast Ranges. *Id.* ¶ 6. He is a frequent visitor of the Santa Lucia Range where he searches for the California spotted owl. *Id.* ¶ 9. He most recently visited the area in search of California spotted owls in September of 2025. *Id.* He plans to continue visiting areas within the California spotted owl’s habitat range in order to locate and photograph California spotted owls, including the Big Sur and the Santa Lucia Wilderness in the spring of 2026. *Id.* ¶ 11. Mr. Miller also has professional interests in the California spotted owl as a conservationist, and the survival of the species is integral to his efforts to promote funding, regulatory action, advocacy, and citizen involvement in the protection of endangered species. *Id.* ¶ 15. Furthermore, Mr. Miller derives spiritual fulfillment from interaction with and protection of wild places and wildlife such that the loss of the California spotted owl would harm his aesthetic and spiritual enjoyment of important places to him in California. *Id.* ¶¶ 13–14. Due to the Service’s delay in finalizing its rule and extending ESA protections to the California spotted owl, Mr. Miller will suffer harm to his deep recreational, professional, aesthetic, and spiritual interests in the continued presence of the species in its natural habitat. *Id.* ¶¶ 14–17.

1 13. Additionally, Susan Britting, a wildlife biologist and member of the Center has spent
2 nearly 30 years working in both her personal and professional life to protect California spotted owls
3 and their habitat. Declaration of Susan Britting (“Britting Decl.”) ¶¶ 2–6. Ms. Britting lives in the
4 Sierra Nevada foothills and regularly visits California spotted owl habitat on the Eldorado National
5 Forest to hike, botanize, explore and learn about the ecology of the area, and enjoy the peaceful
6 solitude of this forested landscape. *Id.* ¶ 6. She most recently visited California spotted owl habitat
7 on the Eldorado National Forest in June 2025 to evaluate the condition of the habitat following a
8 2021 wildfire. *Id.* ¶ 7. She intends to return to the same area during summer 2026 to again evaluate
9 the post-fire habitat conditions. *Id.* ¶ 8. Ms. Britting derives great pleasure and satisfaction from
10 visiting areas where California spotted owls live and reproduce and she receives significant
11 intellectual, emotional, and scientific benefit from the continued existence of the species in the Sierra
12 Nevada. *Id.* ¶ 9. The Service’s failure to meet its deadline to finalize or withdraw its proposed rule
13 listing the California spotted owl leaves the species at risk of decline and extinction, which harms
14 Ms. Britting’s interests. *Id.* ¶ 10.

15 14. The legal violation alleged in this complaint causes direct injury to the aesthetic,
16 conservation, recreational, inspirational, educational, and wildlife preservation interests of the
17 Plaintiff and members of the Plaintiff organization. These are actual, concrete injuries to Plaintiff,
18 caused by Defendants’ failure to comply with the ESA and its implementing regulations and
19 policies. These injuries would be redressed by the relief requested in this complaint. Plaintiff has no
20 other adequate remedy at law.

21 15. Defendant United States Fish and Wildlife Service is a federal agency within the
22 Department of Interior. It is responsible for administering the ESA with respect to non-marine
23 species such as the California spotted owl, including species listing determinations under ESA
24 Section 4.

25 16. Defendant Doug Burgum is the United States Secretary of the Interior. In that
26 capacity, Secretary Burgum has supervisory responsibility of the Service. The Secretary of the
27 Interior is the federal official vested with responsibility for properly carrying out the ESA with
28

1 respect to non-marine species such as the California spotted owl. Defendant Burgum is sued in his
2 official capacity.

3 17. Defendant Brian Nesvik is the Director of the United States Fish and Wildlife
4 Service. He has been delegated the responsibilities of the Secretary of Interior described in the
5 preceding paragraph. 50 C.F.R. § 402.01(b). Defendant Nesvik is sued in his official capacity.

6 **THE ENDANGERED SPECIES ACT**

7 18. Congress enacted the ESA to “provide a program for the conservation of ...
8 endangered species and threatened species” and to “provide a means whereby the ecosystems upon
9 which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

10 19. The ESA is a call to species protection: a commitment, in the words of the U.S.
11 Supreme Court, “to halt and reverse the trend toward species extinction—whatever the cost” by
12 rejecting the “economic growth and development untempered by adequate concern and
13 conservation” that gave this country its legacy of extinctions. *Tennessee Valley Auth. v. Hill*, 437
14 U.S. 153, 154 (1978); 16 U.S.C. § 1531(a)(1).

15 20. To achieve the goal of conserving threatened and endangered species, section 4 of the
16 ESA requires the Secretary of the Interior to determine whether a species is threatened or
17 endangered, 16 U.S.C. § 1533(a)(1), designate critical habitat for the species, *id.* § 1533(a)(3), and
18 promulgate a recovery plan for the species, *id.* § 1533(f). The ESA defines “species” to include “any
19 distinct population segment of any species of vertebrate fish or wildlife which interbreeds when
20 mature.” *Id.* § 1532(16). An “endangered species” is “any species which is in danger of extinction
21 throughout all or a significant portion of its range.” *Id.* § 1532(6). A “threatened species” is “any
22 species which is likely to become an endangered species within the foreseeable future throughout all
23 or a significant portion of its range.” *Id.* § 1532(20). Under these definitions, the Service can list as
24 endangered or threatened a distinct population segment of a vertebrate species.

25 21. During the listing process, the ESA sets mandatory deadlines for agency action. One
26 such deadline is that after publishing a proposed rule, the Service must publish a final rule or
27 withdraw the proposed rule within one year, 16 U.S.C. § 1533(b)(6)(A), except that, upon finding
28 “substantial disagreement regarding the sufficiency or accuracy” of available scientific data, the

Secretary may extend the period for no more than six months for the purpose of “soliciting additional data,” *id.* § 1533(b)(6)(B)(i). These deadline requirements are echoed in the ESA’s implementing regulations. 50 C.F.R. § 424.17(a)(1), (a)(1)(iv).

22. The ESA further provides that federal district courts “shall have jurisdiction ... to order the Secretary to perform” nondiscretionary duties required by the Act. 16 U.S.C. § 1540(g)(1)(C). The Service’s obligation to act on a proposed listing, whether it be through finalization or withdrawal of the proposed rule, within the statutorily-required timeline is one such nondiscretionary duty.

23. Here, the Service’s failure to act in a timely manner and in compliance with the ESA has harmed, is harming, and will continue to harm the California spotted owl by depriving the species of protections designed to avoid further decline and extinction—protections that come with ESA-listing. Without adequate protections, the California spotted owl will continue to decline toward extinction. *See generally* 88 Fed. Reg. 11600.

STATEMENT OF FACTS

The California Spotted Owl

24. The California spotted owl is a medium-sized raptor with a round face, large dark eyes, and mottled brown and white coloring. The species has a pale brown face surrounded by a darker ring, and light “eyebrows” and “whiskers” that form a distinctive X between the eyes.

25. The California spotted owl is a subspecies of spotted owl occurring in the Sierra Nevada Mountains of California, southern and coastal California, and potentially in the Sierra San Pedro Mártir area of Mexico, where it has not been confirmed but where the Service believes it to be a rare visitor. 88 Fed. Reg. at 11603. The owl’s southern California ranges are separated from its range in the Sierra Nevada as a result of natural topographic and manmade obstacles and the Service has divided the California spotted owl population into two distinct population segments—the Coastal-Southern California DPS and the Sierra Nevada DPS. *Id.* at 11607.

26. Like all spotted owls, California spotted owls are habitat specialists that require mature, multistoried forests with complex structures, large trees, multi-layered high canopy cover, and large amounts of coarse woody debris (fallen dead trees and the remains of large branches on the

1 ground) for nesting, roosting, and foraging. Studies have shown that California spotted owls select
2 remnants of old growth forests that are 200 to 350 years in age or greater.

3 27. The California spotted owl faces increasing threats from climate change and
4 associated increases in high-severity wildfire, tree mortality, and extreme drought conditions; forest
5 fuels management and logging that degrades the owls' habitat; and competition with the invading
6 barred owl species; among other factors. Due to these factors, the California spotted owl's Coastal-
7 Southern California DPS and the Sierra Nevada DPS and their habitats now have low resiliency and
8 may be vulnerable to extinction. Species Status Assessment Report for the California Spotted Owl
9 (*Strix occidentalis occidentalis*) 2.0 (Nov. 2022) ("Species Status Assessment"), at iii–v.

10 28. Wildfires, tree mortality, and droughts all threaten the large trees and canopy cover
11 the California spotted owl relies on for its habitat. The Service has concluded that high-severity
12 wildfires threaten the majority of the California spotted owl's range, threatening both the species and
13 its habitat. 88 Fed. Reg. at 11613. The majority of the California spotted owl's range is subject to
14 very high wildfire threats, and the southern California range in particular is subject to extreme fire
15 risk. *Id.* Tree mortality is increasing in California due to drought, disease, and bark beetles, and is
16 particularly severe in the southern Sierra Nevada area. *Id.* at 11614. Droughts also contribute to
17 lower reproductive success and less availability of prey for the California spotted owl. *Id.*

18 29. Over the last century and a half, human activities including logging, urbanization, and
19 fire suppression have severely impacted California's forests, diminishing the California spotted
20 owl's habitat. The Service has recognized the fuel reduction and forest management practices of
21 clearcutting, mechanical thinning, and salvage logging all reduce the large trees and coarse woody
22 debris needed in the California spotted owl's habitat. 88 Fed. Reg. at 11616–18. Historical practices
23 have damaged this old growth forest habitat, which will take decades or centuries to grow back. *Id.*
24 at 11616. These practices will continue to "pose a risk to future viability of the species." Species
25 Status Assessment at iii.

26 30. Competition with the barred owl and the barred owl's rapid expansion also threatens
27 the persistence of the California spotted owl. 88 Fed. Reg. at 11619. Barred owls aggressively
28 outcompete and displace spotted owls, given their higher survival and production rates. *Id.* at 11618.

1 The Service has recognized that in the last ten years, barred owl detections in the California spotted
2 owl's range has increased, displacing the California spotted owl from its habitat. *Id.*

3 31. The California spotted owl also suffers from secondary exposure to anticoagulant
4 rodenticides through ingestion of exposed prey animals. 88 Fed. Reg. at 11619. Anticoagulant
5 rodenticides can be lethal to predators such as the California spotted owl and cause severe blood
6 loss, internal hemorrhaging, and organ failure. *Id.* The species is particularly threatened by
7 rodenticide exposure to parents during breeding season, such that hatchlings and juveniles dependent
8 on parental care may also perish. *Id.*

9 32. The widespread degradation of habitat and other risks to the California spotted owl's
10 viability have caused the species' populations to decline throughout the State. Although the rate of
11 population decline for the Sierra Nevada DPS is uncertain, some study areas have documented
12 declines ranging from 50 to 31 percent. The only available demographic data for the Coastal-
13 Southern California DPS shows a population decline of 9 percent from 1987 to 1998, with further
14 declines since. 88 Fed. Reg. at 11611.

15 California Spotted Owl Listing History

16 33. The California spotted owl's low population numbers and fragmented habitat has
17 motivated members of the public, including Plaintiff, to seek to obtain legal protections for the owl
18 under the ESA. At almost every step and for more than two decades, the Service has delayed or
19 outright refused to take the actions required by the ESA, repeatedly requiring judicial intervention.

20 34. Conservation groups, including the Center, have petitioned the Service to list the
21 California spotted owl as endangered or threatened under the ESA and to designate its critical habitat
22 repeatedly.

23 35. On April 3, 2000, the Center, alongside other organizations, first submitted a petition
24 to list the California spotted owl. After almost four years, the Service responded with a finding that
25 refused to list the owl despite recognizing the California spotted owl faced threats from habitat
26 modification and potential future threats from climate change and drought. Endangered and
27 Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the California Spotted Owl,
28 68 Fed. Reg. 7580, 7608 (Feb. 14, 2003).

1 36. On May 24, 2006, the Service again refused to list the California spotted owl on the
2 basis that it found inconclusive evidence of population decline. Endangered and Threatened Wildlife
3 and Plants; 12-Month Finding for a Petition to List the California Spotted Owl, 71 Fed. Reg. 29886,
4 29907 (May 24, 2006).

5 37. In 2015, conservation groups submitted a new petition for the California spotted owl
6 to be listed, citing new demographic evidence of the species' range-wide decline as well as the risk
7 to the owl from forest management practices, an impoverished gene pool and small total population
8 size, exposure to anticoagulant rodenticides, and competition from the barred owl. The Service
9 subsequently issued a 90-day finding that the petition presented substantial information that listing
10 may be warranted. Endangered and Threatened Wildlife and Plants; 90-Day Findings on 25
11 Petitions, 80 Fed. Reg. 56423, 56426 (Sept. 18, 2015).

12 38. After the Service failed to make a final determination on the petition by the 12-month
13 deadline to do so, 16 U.S.C. § 1533(b)(3)(B), the Center challenged the Service's failure. *CBD v.*
14 *Jewell, et al.*, No. 1:16-cv-00503-JDB (D.D.C.). Parties ultimately settled, and the Service
15 committed to submitting a 12-month finding on the California spotted owl by September 30, 2019.
16 On May 2, 2019, the D.C. District Court extended the deadline until November 4, 2019.

17 39. On November 8, 2019, the Service published a 12-month finding that listing the
18 California spotted owl was not warranted at the time. Endangered and Threatened Wildlife and
19 Plants; 12-Month Finding for the California Spotted Owl, 84 Fed. Reg. 60371, 60372 (Nov. 8,
20 2019).

21 40. On August 18, 2020, Plaintiff, joined by other organizations, filed suit in the United
22 States District Court for the Northern District of California challenging the Service's 12-month not-
23 warranted finding. *Sierra Forest Legacy, et al. v. U.S. Fish and Wildlife Service, et al.*, No. 5:20-cv-
24 05800, 2020 WL 4791284 (N.D. Cal. Aug. 18, 2020). On November 30, 2021, the court ordered the
25 Service to submit a new 12-month finding for the owl on or before February 15, 2023.

26 41. On February 23, 2023, after more than two decades of administrative foot dragging
27 and only under a court order to act, the Service finally published a proposed rule to list the California
28 spotted owl in accordance with the ESA. *See* 88 Fed. Reg. 11600.

42. The Service concluded in the proposed rule that the Sierra Nevada DPS “is currently being impacted by high-severity fire, tree mortality, drought, and barred owls,” and is “likely to become in danger of extinction within the foreseeable future throughout all of its range.” 88 Fed. Reg. at 11600, 11630. The Service further concluded that the Sierra Nevada DPS meets the definition of a threatened species under the ESA. *Id.* at 11630.

43. The Service also concluded in the proposed rule that the Coastal-Southern California DPS “has low resiliency, redundancy, and representation,” with a range “at extremely high risk of fire” and habitat fragmentation, and “additional threats from tree mortality and drought.” 88 Fed. Reg. at 11600. The Service concluded that “[t]hese threats are impacting the DPS now” and Coastal-Southern California DPS “is endanger of extinction throughout all of its range.” *Id.* at 11632. The Service further concluded that the Coastal-Southern California DPS meets the definition of an endangered species under the ESA. *Id.*

44. In light of these findings, the Service proposed listing the Coastal-Southern California DPS as endangered and the Sierra Nevada DPS as threatened. *Id.*

CAUSE OF ACTION

(Violation of Endangered Species Act—Failure to Comply with Statutory Listing Deadline)

45. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

46. The ESA requires the Service to publish a final rule or withdraw a proposed rule concerning a listing determination within one year of issuing notice of a proposed rule. 16 U.S.C. § 1533(b)(6)(A), 50 C.F.R. § 424.17 (a)(1). If there is “substantial disagreement regarding the sufficiency or accuracy of the available data,” the Secretary may extend the period for no more than six months for the purpose of “soliciting additional data.” 16 U.S.C. § 1533(b)(6)(B)(i); 50 C.F.R. § 424.17(a)(1)(iv). If the Secretary extends the deadline, he or she must publish a final rule or withdraw the proposed rule before the end of the extension period. 16 U.S.C. § 1533(b)(6)(B)(iii); 50 C.F.R. § 414.17(a)(2).

47. The mandatory deadline to publish the final rule was therefore February 23, 2024, one year after the Service published a proposed rule to list the California spotted owl. *See* 88 Fed. Reg. 11600. The Secretary did not extend the deadline.

48. Notwithstanding its nondiscretionary duty to publish a final rule or withdrawal the proposed rule by February 23, 2024, for two and a half years the Service has failed to publish a final rule listing the California spotted owl or to take any further action. *See* 88 Fed. Reg. 11600.

49. The court may now issue a declaratory judgement and further relief pursuant to 16 U.S.C. § 1540(g)(1)(C) and 28 U.S.C. §§ 2201–02.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that the Court:

50. Enter a declaratory judgement that Defendants' failure to issue a final listing determination on the proposed rule to list the Coastal-Southern California DPS as an endangered species and the Sierra Nevada DPS as a threatened species violates the ESA and its implementing regulations;

51. Order Defendants to issue and publish a final listing determination on the proposed rule for the California spotted owl as soon as possible but no later than one year from the filing of this complaint;

52. Award Plaintiff's reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and

53. Grant Plaintiff such further and additional relief as the Court may deem just and proper.

Dated: November 19, 2025

Respectfully submitted,



ANNA K. STIMMEL, SB No. 322916
astimmel@earthjustice.org
EARTHJUSTICE
1 Sansome St., Ste. 1700
San Francisco, CA 94104
Tel: (415) 217-2000
Fax: (415) 217-2040

1 ANDRIA H. SO, SB No. 341595
2 aso@earthjustice.org
3 EARTHJUSTICE
4 707 Wilshire Boulevard, Suite 4300
5 Los Angeles, CA 90017
6 Tel: (415) 217-2000
7 Fax: (415) 217-2040

8 *Attorneys for Plaintiff*
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