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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY,

*Plaintiff,*

v.

NATIONAL MARINE FISHERIES  
SERVICE, EUGENIO PIÑEIRO SOLER,  
in his official capacity as Assistant  
Administrator for the National Marine  
Fisheries Service, and HOWARD  
LUTNICK, in his official capacity as  
Secretary of Commerce,

*Defendants.*

Case No. 3:26-cv-06157

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Center for Biological Diversity (“Center”) brings this case challenging Secretary of Commerce Lutnick, Assistant Administrator Piñero Soler, and the National Marine Fisheries Service’s (collectively, the “Service”) failure to issue a final rule protecting the sunflower sea star (*Pycnopodia helianthoides*) as a threatened species, in violation of the Endangered Species Act’s nondiscretionary, congressionally mandated deadline.



1 proposed rule, the Service has failed to publish a final rule. *Id.* The agency’s failure to meet the  
2 deadline delays crucial protections for the sunflower sea star, increasing its risk of extinction.

3 5. Accordingly, the Center seeks an order declaring that the Service violated 16  
4 U.S.C. § 1533(b)(6) by failing to timely finalize the proposed listing for the sea star, and an order  
5 directing the Service to publish a final rule by a date certain.

6 **JURISDICTION AND VENUE**

7 6. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g)  
8 (actions brought under the Endangered Species Act) and 28 U.S.C. § 1331 (federal question).  
9 This Court has the authority to issue declaratory and injunctive relief pursuant to the Endangered  
10 Species Act, 16 U.S.C. § 1540(g), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

11 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the  
12 sunflower sea star’s range includes Northern California.

13 **PLAINTIFFS**

14 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a nonprofit organization  
15 incorporated in the State of California. The Center works through science and environmental law  
16 to advocate for the protection of endangered, threatened, and rare species and their habitats  
17 throughout the United States and abroad.

18 9. The Center has more than 101,000 active members. Center members reside  
19 throughout the United States, including along the West Coast where the sunflower sea star lives.  
20 The Center works to ensure the long-term health and viability of animal and plant communities  
21 across the United States and elsewhere, and to protect the habitat these species need to survive.  
22 The Center believes that the health and vigor of human societies and the integrity and wildness  
23 of the natural environment are closely linked. The Center brings this action on behalf of itself  
24 and its members.

25 10. The Center petitioned to list the sunflower sea star as a threatened or endangered  
26 species in 2021. It commented in support of listing sunflower sea stars as threatened or  
27 endangered, and it conducted research and advocacy to further the survival and recovery of the  
28 sunflower sea star. The Center also has longstanding work to protect the habitat of the sunflower

1 sea star as well as efforts to reduce the risk of warming waters and ocean acidification in the  
2 Pacific Ocean.

3 11. The Center has members with concrete interests in the conservation of the  
4 sunflower sea star and its habitat. Center members have studied, observed, and sought protection  
5 for this species. Center members derive recreational, scientific, professional, spiritual, and  
6 aesthetic interests in the sunflower sea star and its habitat along the coasts of California, Oregon,  
7 Washington, and Alaska. For example, one of the Center's members is a free diver who  
8 frequently dives off the California coast to enjoy the underwater world. He enjoys diving in kelp  
9 forests and observing sea stars, including the sunflower sea star, among other marine life, and  
10 intends to continue these regular dives in the future. The ocean and its native wildlife, including  
11 the sunflower sea star, are part of this member's aesthetic, recreational, and spiritual interests.  
12 The decline of the sunflower sea star population has already impaired his ability to enjoy this  
13 species, and the Service's ongoing delay in finalizing Endangered Species Act protections for the  
14 sunflower sea star deepen that injury.

15 12. The Service's failure to comply with the Act's nondiscretionary deadline to  
16 finalize a listing rule for the sunflower sea star denies the species vital protections that will  
17 support its survival and recovery. For example, federal actions that may affect listed species or  
18 their critical habitat—such as water pollution permits, authorizations for coastal construction or  
19 dredging, and fisheries management actions—require consultation with the Service to ensure  
20 they do not jeopardize listed species or adversely modify their critical habitat. Concurrently with  
21 listing, the Service must also designate critical habitat. Additionally, listing would support  
22 sunflower sea star survival and recovery through federal funding, conservation programs, and  
23 recovery planning that are available to threatened and endangered species. Delays are  
24 forestalling these lifesaving protections for the sunflower sea star. Therefore, the Service's  
25 ongoing violation harms the concrete interests of the Center and its members.

26 13. The relief the Center seeks—an order compelling the Service to finalize a listing  
27 rule for the sunflower sea star—would redress the Center and its member's injuries by protecting  
28 the sunflower sea star and its habitat, thereby increasing its chances of survival and recovery.

1 This would benefit the educational, scientific, recreational, aesthetic, and spiritual interests that  
2 the Center and its members have in the sunflower sea star. The Center and its members have no  
3 other adequate remedy at law.

4 **DEFENDANTS**

5 14. Defendant NATIONAL MARINE FISHERIES SERVICE is a federal agency  
6 within the U.S. Department of Commerce. The Service is the agency to which the Secretary of  
7 Commerce has delegated his authority to administer and implement the Endangered Species Act  
8 for most marine species, including the sunflower sea star. The Service is responsible for  
9 complying with the mandatory deadlines of the Act and has the authority to remedy the violation  
10 alleged in this Complaint.

11 15. Defendant EUGENIO PIÑEIRO SOLER is sued in his official capacity as  
12 Assistant Administrator for the Service. In that capacity, he has responsibility for the Service’s  
13 administration and implementation of the Endangered Species Act for most marine species,  
14 including the sunflower sea star, and has authority to remedy the violation alleged in this  
15 Complaint.

16 16. Defendant HOWARD LUTNICK is the Secretary of the U.S. Department of  
17 Commerce. As Secretary of Commerce, he has the ultimate responsibility to properly administer  
18 and implement the provisions of the Endangered Species Act for most marine species, including  
19 the sunflower sea star, and has authority to remedy the violation alleged in this Complaint. The  
20 Center sues Defendant Lutnick in his official capacity.

21 **STATUTORY BACKGROUND**

22 **The Endangered Species Act**

23 17. Congress enacted the Endangered Species Act in 1973 “to provide a program for  
24 the conservation of . . . endangered species and threatened species.” 16 U.S.C. § 1531(b). The  
25 Act seeks not only to prevent the extinction of species but also to ensure their survival and  
26 recovery. It is considered “the most comprehensive legislation for the preservation of endangered  
27 species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

1 18. Toward these goals, the Act directs the Secretary of Commerce through the  
2 Service (which administers the statute for most marine species, including the sunflower sea star)  
3 to determine which species of plants and animals are “threatened” and “endangered” and place  
4 them on a list of protected species. 16 U.S.C. § 1533. A “‘species’ includes any subspecies of  
5 fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or  
6 wildlife.” *Id.* § 1532(16). An “endangered” or “threatened” species is one “in danger of  
7 extinction throughout all or a significant portion of its range” or “likely to become an endangered  
8 species within the foreseeable future throughout all or a significant portion of its range,”  
9 respectively. *Id.* § 1532(6), (20).

10 19. The Endangered Species Act requires the Service to determine whether any  
11 species is endangered or threatened because of any one of, or combination of, the following  
12 factors: “(A) the present or threatened destruction, modification, or curtailment of its habitat or  
13 range; (B) overutilization for commercial, recreational, scientific, or educational purposes;  
14 (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other  
15 natural or manmade factors affecting its continued existence.” *Id.* § 1533(a)(1).

16 20. The Service must make listing “determinations . . . solely on the basis of the best  
17 scientific and commercial data available” regarding a species’ status.” *Id.* § 1533(b)(1)(A).

18 21. To facilitate prompt and timely listing actions, Congress established a process by  
19 which citizens may petition the Service to protect a species under the Endangered Species Act,  
20 with mandatory deadlines for the Service to respond. *Id.* § 1533(b)(3), (b)(6).

21 22. “To the maximum extent practicable,” the Service must determine within 90 days  
22 of receiving a petition if it presents substantial information showing the petitioned action may be  
23 warranted. *Id.* § 1533(b)(3)(A).

24 23. If the Service determines that there is substantial information supporting a  
25 determination of a threatened or endangered species, it shall “promptly commence a review of  
26 the status of the species concerned.” *Id.* “Within 12 months after receiving a petition that . . .  
27 present[s] substantial information indicating that the petitioned action may be warranted, the  
28 Secretary shall” determine whether listing is warranted. *Id.* § 1553(b)(3)(B).

1           24. If the Service determines the listing is warranted, it must publish notice in the  
2 Federal Register and a complete text of the proposed regulation to implement the listing. *Id.*  
3 § 1553(b)(3)(B)(ii), (b)(5).

4           25. Within the one-year period beginning on the date of the notice of the proposed  
5 regulation, the Secretary must publish a final rule implementing the decision to list the species  
6 and designate critical habitat. *Id.* § 1553(b)(6)(A).

7           26. The Endangered Species Act has a suite of substantive and procedural legal  
8 protections that apply to species once they are listed as endangered or threatened.

9           27. For example, section 4(a)(3) of the Act requires the Service to designate “critical  
10 habitat” for each endangered and threatened species. *Id.* § 1533(a)(3). A “critical habitat”  
11 designation protects the areas occupied by a species at the time of listing that contain the  
12 physical or biological features essential to the conservation of the species, or currently  
13 unoccupied areas that the Service determines are essential for the conservation of the species. *Id.*  
14 §§ 1532(5)(A), 1533(b)(2).

15           28. Endangered Species Act section 7(a)(2) requires all federal agencies to ensure that  
16 their actions do not “jeopardize the continued existence of any endangered species or threatened  
17 species or result in the destruction or adverse modification” of any listed species’ critical habitat.  
18 *Id.* § 1536(a)(2).

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

**STATEMENT OF FACTS**

**The Sunflower Sea Star**

30. Sunflower sea stars are one of the world’s largest sea stars. Commonly known as starfish, sunflower sea stars are actually marine invertebrates, not fish.

31. Sunflower sea stars typically have 16 to 24 arms, and adults can span up to one meter across. They vary in color, and they can be red, orange, yellow, green, or purple.



*Figure 2. Photo: NOAA*

32. The sea stars live in intertidal and subtidal coastal areas from the Aleutian Islands in Alaska to Baja California, Mexico. The sea stars are found in kelp forests, near shore sandy bottoms, and rocky bottom reef habitats.

33. Sunflower sea stars are predators. Moving more than three feet per minute, they are the top predators for intertidal invertebrates, including purple sea urchins. Sea stars also prefer clams and scallops, and will forage on a variety of bivalves, gastropods, crustaceans, and dead fish.

1 34. The sea stars are considered a keystone species for intertidal ecosystems,  
2 especially kelp forests. Sunflower sea stars control populations of purple sea urchins. Sea urchins  
3 are herbivorous and graze on kelp and other macroalgae. Without the predation by sunflower sea  
4 stars, urchin populations rapidly increase and can then destroy entire kelp forests. The loss of  
5 kelp results in a shift in the structure and function of the ecosystem that can be largely  
6 irreversible.

7 35. Historically, the sunflower sea star was common throughout its range.

8 36. Beginning in 2013, a pandemic of sea star wasting disease affected sea stars along  
9 the Pacific Coast, including sunflower sea stars. Sea star wasting disease causes lesions and  
10 twists the arms of the stars; eventually, the tissue melts away.

11 37. Sea star wasting disease is caused by a pathogenic bacterium, *Vibrio pectenicida*.

12 38. The sea star wasting disease pandemic devastated sunflower sea star populations.  
13 Across the sea stars' range, populations declined 80 to 100 percent.

14 39. In the southern portion of the sea stars' range, the sea stars are now exceptionally  
15 rare.

16 40. Sunflower sea star populations in the northern part of their range in Alaska and  
17 Canada are doing better than those farther south.

18 41. Scientific studies have demonstrated a link between climate change and sea star  
19 wasting disease, particularly with higher water temperatures, which increase the prevalence and  
20 severity of the disease.

21 42. Sunflower sea stars are also at risk from ocean acidification, which can make it  
22 more difficult for them to build their skeletal structures. Sunflower sea stars are also threatened  
23 by coastal development and pollution, harmful algal blooms, and other forms of habitat loss.

#### 24 **Sunflower Sea Star Listing History**

25 43. The Center submitted a petition to list the sunflower sea star on August 18, 2021,  
26 which the Service received the same day. 86 Fed. Reg. 73,230, 73,230 (Dec. 27, 2021).

27 44. The Service published a positive 90-day finding on December 27, 2021, because  
28 the petition "present[ed] substantial scientific information indicating that the petitioned action

1 may be warranted,” and initiated a status review. *Id.*

2 45. On March 16, 2023, the Service released a proposed rule to list the sunflower sea  
3 star as a threatened species. 88 Fed. Reg. 16,212, 16,225–27 (Mar. 16, 2023). It concluded that  
4 “that the sunflower sea star is at moderate risk of extinction now and in the foreseeable future  
5 throughout its range,” and “[i]n some areas, functional extirpation is likely within . . . 30 years.”  
6 *Id.* at 16,225.

7 46. In May 2023, the Service held two public hearings on the proposed listing rule in  
8 Alaska, and the public comment period ended May 15, 2023. 88 Fed. Reg. 21,600, 21,600 (Apr.  
9 11, 2023).

10 47. The Center provided the Service with 60-days’ notice of the Endangered Species  
11 Act violation, as required by 16 U.S.C. § 1540(g)(2)(A) and (C), by a letter to the Service dated  
12 March 3, 2026, explaining the Center’s intent to sue. The Service has not remedied the violations  
13 set out in the notice.

#### 14 CLAIM FOR RELIEF

##### 15 (Endangered Species Act—Failure to Comply with Statutory Listing Deadline)

16 48. The Center realleges, as if fully set forth herein, each and every allegation  
17 contained in the preceding paragraphs.

18 49. The Endangered Species Act requires the Service to publish a final rule within  
19 one year of issuing notice of a proposed rule. 16 U.S.C. § 1533(b)(6)(A); 50 C.F.R.  
20 § 424.17(a)(1). If there is “substantial disagreement regarding the sufficiency or accuracy of the  
21 available data,” the Service may extend the period for no more than six months for the purpose  
22 of “soliciting additional data.” 16 U.S.C. § 1533(b)(6)(B)(i); *see* 50 C.F.R. § 424.17(a)(1)(iv). If  
23 the Secretary extends the deadline, he or she must publish a final rule or withdraw the proposed  
24 rule before the end of the extension period. 16 U.S.C. § 1533(b)(6)(B)(iii); 50 C.F.R.  
25 § 424.17(a)(2). The Service did not extend its deadline for final action under this provision.

26 50. The mandatory deadline to publish the final rule was therefore March 16, 2024,  
27 one year after the Service published a proposed rule to list the sunflower sea star. *See* 88 Fed.  
28 Reg. at 16,225–27.

1 51. Notwithstanding its nondiscretionary duty to publish a final rule or withdraw the  
2 proposed rule by March 16, 2024, for over two years the Service has failed to publish a final rule  
3 listing the sunflower sea star or take any further action. The Service is in violation of the  
4 Endangered Species Act’s mandatory deadlines.

5 52. The court may now issue a declaratory judgement and further relief pursuant to 16  
6 U.S.C. § 1540(g)(1)(C) and 28 U.S.C. §§ 2201–2202.

7 **PRAYER FOR RELIEF**

8 A. Declare that Defendants’ failure to issue a final listing determination on the  
9 proposed rule to list the sunflower sea star as a threatened species violates the Endangered  
10 Species Act and its implementing regulations;

11 B. Order Defendants to issue and publish a final listing determination on the  
12 proposed rule for the sunflower sea star by a date certain;

13 C. Retain continuing jurisdiction to review Defendants’ compliance with all  
14 judgments and orders;

15 D. Award Plaintiff its costs of this action, including reasonable attorneys’ fees, as  
16 provided by 16 U.S.C. §1540(g)(4); and

17 E. Grant such other relief as this Court deems just and proper.

18  
19 Dated: June 22, 2026

Respectfully Submitted,

20  
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