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

Defendants.

Case No.: 4:26-cv-00093-RCC

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Center for Biological Diversity (the "Center") brings this case challenging the U.S. Fish and Wildlife Service's ("Service") failure to issue final listing rules for the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*), Santa Ana specked dace (*Rhinichthys gabrielino*), Bethany Beach firefly (*Photuris bethaniensis*), and Navasota false foxglove (*Agalinis navasotensis*), as well as the Service's failure to issue a final critical habitat designation for the Navasota false foxglove and cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), in violation of the Endangered Species Act's ("ESA" or "Act") nondiscretionary, congressionally mandated deadlines. The Service's failure to meet ESA deadlines for each of the five species delays lifesaving protections, thereby increasing their risk of extinction.

2. The Service's ongoing violations of the statutory deadlines to finalize ESA protections for each these five species is representative of an unlawful policy and practice of not issuing final listing and critical habitat determinations under the second Trump administration.

3. Since January 20, 2026, the Service has listed only three species as threatened or endangered and issued only two final critical habitat rules, all of which were required by court orders. This is, by far, the fewest new ESA protections finalized under any Presidential administration since the law's enactment in 1973. The Service's ongoing violation of ESA deadlines for final listing and critical habitat rules unlawfully prevents needed protections for species in danger of extinction now or in the foreseeable future, including the final rules for the five species at issue in this suit.

4. To remedy these ESA violations, the Center seeks declaratory relief that the Service violated the ESA, 16 U.S.C. § 1533(b)(6), by failing to timely issue final listing rules for the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, and Navasota false foxglove, and by failing to issue timely final critical habitat rules for the Navasota false foxglove and cactus ferruginous pygmy owl, and injunctive relief ordering the Service to issue the overdue rules by a date certain.

5. In addition, the Center challenges the Service's policy and pattern of violating the ESA's statutory deadlines requiring final listing rules to be issued within one year of a proposed listing rule, and final critical habitat designations within one year of a proposed critical habitat designation. The Center seeks declaratory relief that this policy and practice is unlawful, vacatur of the policy, and injunctive relief prohibiting the Service from continuing to apply the unlawful policy and practice.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g) (ESA citizen suit provision); 5 U.S.C. § 702 (APA review); and 28 U.S.C. § 1331 (federal question).

7. This Court has authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. § 1540(g); the APA, 5 U.S.C. §§ 701-706; and 28 U.S.C. §§ 2201–2202 (declaratory and injunctive relief).

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because Plaintiff resides in this judicial district, and because a substantial part of the events or omissions giving rise to the Center's claims occurred in this District.

PARTIES

9. Plaintiff Center for Biological Diversity is a national, non-profit conservation organization that works through science, law, and policy to protect imperiled wildlife and their habitat. The Center is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States, as well as Mexico and Canada. The Center currently has 130,435 members.

10. The Center brings this action on behalf of its members who derive aesthetic, recreational, educational, scientific, professional, and other benefits from the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl, and their habitat. Plaintiff's members' interests in protecting and recovering the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, cactus ferruginous pygmy owl, and their

habitat are directly harmed by the Service's failure to timely publish final listing and/or critical habitat rules, as well as the Service's policy and practice to not issue such final listing and/or critical habitat rules, delaying critical protections under the ESA that are proven to greatly reduce the likelihood of extinction and are necessary to put the species on a path to recovery.

11. For example, Center member Reed Rossell is a freelance environmental consultant based in North Carolina and a lead scientist on a forthcoming study on the eastern hellbender. Mr. Rossell has a professional, recreational, and aesthetic interest in the conservation of the eastern hellbender. Mr. Rossell has been studying the eastern hellbender since 2013. The Service's failure to protect the hellbender harms Mr. Rossell's professional work because the loss of the species means a lack of opportunities for his consulting work and the further degradation of the hellbender's aquatic habitat means less diversity of species to monitor and study. Mr. Rossell also has aesthetic and recreational interests in conserving the hellbender and its habitat. He has concrete plans to visit the South Toe River to flyfish and monitor hellbenders in the spring or summer of 2027. Mr. Rossell enjoys spending time in nature, particularly fly fishing, which he does several times a month in the hellbender's habitat. Because the hellbender is an indicator species of aquatic health, the loss of the hellbender will lessen his experience in nature and in recreating in clean rivers. Mr. Rossell intends to continue to utilize the hellbender's habitat throughout all months of the year.

12. Center member Duncan S. Bell is a Senior Conservation Botanist at the California Botanic Garden. Based in the greater Los Angeles area, Mr. Bell regularly frequents the Santa Ana speckled dace's habitat. In 2025, he visited the Santa Ana River every other week for about 6 months to work on a post-fire project. The health of the Santa Ana River is tied to many of the rare plants that he monitors. In his personal capacity, Mr. Bell regularly visits dace habitat for recreational purposes, including walking along the streams and recreating in the water. Mr. Bell has observed small fish that may have been the Santa Ana speckled dace, and he intends to continue searching

for Santa Ana speckled dace. Specifically, Mr. Bell intends to return in the summer of 2027 to look for the dace, recreate in its habitat around Plunge Creek, and he intends to survey rare plants in the Santa Ana speckled dace's habitat. The delay in finalizing protections for the species harms Mr. Bell's professional, aesthetic, and recreational interests. If the Santa Ana speckled dace were to go extinct, his interests will be diminished by its absence.

13. Center member Tamara Strobel is a science teacher and an insect aficionado, with a master's in Entomology. Ms. Strobel teaches her students about biodiversity and the role that insects play in our lives. Having grown up in Arizona, Ms. Strobel cherishes her childhood memories of visiting family in the Midwest in the summer and searching for fireflies. She believes that this type of summer magic instills a sense of wonder in children and adults, and Ms. Strobel strives to highlight the beauty of creatures like the Bethany Beach firefly in her classroom. She returns to the Bethany Beach firefly's habitat at least 1-2 times per year to visit family and engage in recreational activities, always making time to search for the Bethany Beach firefly. She has seen the Bethany Beach firefly once in a Delaware State Park. She has specific plans to return to Bethany Beach in summer 2027 to search for the firefly in any of its other known locations. Ms. Strobel is harmed by the Service's delay in protecting the firefly because it undermines her purpose and mission as an educator who seeks to teach her students about the value of protecting vulnerable species. The Service's delay in protecting the firefly also harms her recreational and aesthetic interests because knowing the firefly is alive brings her joy when she recreates at Bethany Beach, and the firefly's further decline or loss would detract from her enjoyment in nature.

14. Center member Eric Keith is an environmental scientist recognized in Texas as an expert in botany. Mr. Keith has extensive experience with Texas plants, having worked for more than twenty years as a natural resource manager, specializing in plant taxonomy, ecological classification, and monitoring. He is frequently consulted to identify rare plants. Most recently, Mr. Keith was consulted to assess the Navasota false

foxglove's population in Tyler County, finding only a few dozen plants at this site when he surveyed in fall 2026. He also recently returned to the plant's habitat in Grimes County, finding only a few dozen plant left in this population as well. He intends to continue monitoring and assessing both populations for as long as he is able, with specific plans to return to both sites in Fall 2027. Mr. Keith is one of the few plant experts monitoring the foxglove, having monitored the plant since it was first identified in 1993. Mr. Keith's professional, aesthetic, and recreational interests are harmed by the Service's delay in protecting the Navasota false foxglove. He has witnessed the extinction of other Texas plants, and his experience recreating in the species' habitat will decline if the Navasota false foxglove goes extinct and no longer exists in East Texas.

15. Center member Christina McVie is highly involved in local advocacy to protect the cactus ferruginous pygmy owl. Christina lives near Arthur Pack Park, an area that had the most prolific nest sites of cactus ferruginous pygmy owls recorded in Arizona. As the former Vice President and Conservation Chair of Tucson Bird Alliance, former steering committee member and contributor to Pima County's award-winning Sonoran Desert Conservation Plan, former member of the "Cactus Ferruginous Pygmy-Owl Recovery Implementation Team," and founding member and current board president of the Coalition for Sonoran Desert Protection, she has a long-standing interest in protecting the owl and its habitat. Ms. McVie frequently visits previously occupied and other suitable pygmy owl habitats in Pima and adjoining counties to observe the owl's habitat, including in Avra and Altar Valleys. In spring 2026, she surveyed the area from Ironwood Forest National Monument to the west to Saguaro National Park - West and Tucson Mountain Park to the east, from north of Manville Road, with emphasis on the vegetated riparian flow corridors, south to Ajo/SR 86 in the Avra Valley and south of there to Tucson, and Pima County-owned properties in the Altar Valley, especially along the bajada areas where cavity-bearing saguaros are more plentiful, to look for the pygmy owls. She did not see or hear any owls but enjoyed being in nature and knowing they could be nearby. Ms. McVie plans to resurvey suitable habitats again in Fall 2026. Ms.

McVie misses hearing the raucous sound of the owl's calling behavior and seeing fledglings learn to fly and hunt. The Service's delay in protecting the owl harms her volunteer, aesthetic, and recreational interests in the pygmy owl and its habitat. Working to eventually see a healthy metapopulation of cactus ferruginous pygmy owls for almost three decades and having recently celebrated her 75th birthday, Ms. McVie hopes to live long enough to see cactus ferruginous pygmy owls flourishing in the wild once again.

16. Defendants' violations of the ESA's deadlines, and the Service's policy and practice of violating those deadlines, have delayed ESA protections for the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl. This inaction harms the Center's members' interests by permitting these species' continued trajectory toward extinction, thereby decreasing the likelihood that the Center's members will encounter the species as part of their personal and professional excursions. These injuries are actual, concrete injuries presently suffered by the Center's members, are directly caused by Defendants' acts and omissions, and will continue unless the Court grants relief. The relief sought would redress these injuries by ordering the Service to provide overdue ESA protections for the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl by a date certain, thus promoting their conservation and recovery. The relief sought would also redress those injuries by prohibiting Defendants from continuing to apply their unlawful policy and practice of not finalizing listing rules and critical habitat designations in relation to nearly 70 other species with overdue final listing and critical habitat deadlines, as well as additional species with upcoming deadlines in the immediate future. The Center and its members have no other adequate remedy at law.

17. Defendant U.S. Department of the Interior is responsible for implementation of the ESA with respect to terrestrial species.

18. Defendant U.S. Fish and Wildlife Service is the agency within the Department of the Interior charged with implementing the ESA for the eastern

hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl. The Secretary of the Interior has delegated administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

19. Defendant Brian Nesvik is the Director of the Service and is charged with ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his official capacity.

20. Defendant Doug Burgum is the Secretary of the U.S. Department of the Interior ("Secretary") and has the ultimate responsibility to administer and implement the provisions of the ESA. Defendant Burgum is sued in his official capacity.

STATUTORY FRAMEWORK

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

22. The ESA defines a "species" as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." *Id.* § 1532(16).

23. A species is "endangered" when it "is in danger of extinction throughout all or a significant portion of its range." *Id*. § 1532(6). A species is "threatened" when it is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* § 1532(20).

24. The ESA requires the Service to determine whether any species is endangered or threatened because of any one of, or combination of, the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or

educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. *Id.* § 1533(a)(1).

25. If the Service determines that the species is not endangered throughout all its range, the ESA requires the agency to examine whether it is endangered or threatened throughout any "significant portion" of its range. *Id.* §§ 1532(6), (20).

26. The Service must base all listing determinations "solely on the basis of the best scientific and commercial data available." *Id.* § 1533(b)(1)(A).

27. To ensure the timely protection of species at risk of extinction, Congress set forth a detailed process whereby citizens may petition the Service to list a species as endangered or threatened. *Id.* § 1533(b)(3). In response, the Service must publish a series of three decisions according to statutory deadlines. First, within 90 days of receipt of a listing petition, the Service must, "to the maximum extent practicable," publish an initial finding as to whether the petition, "presents substantial scientific or commercial information indicating that the petitioned action may be warranted." *Id.* § 1533(b)(3)(A). This is known as the "90-day finding." If the Service determines in the 90-day finding that the petition does not present substantial information indicating that listing may be warranted, the petition is rejected and the process concludes.

28. If the Service determines that a petition presents substantial information indicating that listing "may be warranted," the agency must publish that finding and proceed with a scientific review of the species' status, known as a "status review." *Id.*

29. Upon completing the status review, and within 12 months of receiving the petition, the Service must publish a "12-month finding" with one of three listing determinations: (1) listing is "warranted"; (2) listing is "not warranted"; or (3) listing is "warranted but precluded" by other proposals for listing species, provided certain circumstances are met. *Id.* § 1533(b)(3)(B).

30. If the Service issues a finding that listing the species is "not warranted," the process concludes, and that finding is a final agency action subject to judicial review. *Id.* § 1533(b)(3)(C)(ii).

31. If the Service instead determines that listing is "warranted," the agency must publish that finding in the Federal Register along with the text of a proposed rule to list the species as endangered or threatened and to designate critical habitat for the species. *Id.* §§ 1533(a)(3)(A), (b)(3)(B)(ii).

32. Within one year of publication of the proposed listing rule, with limited exceptions, the Service must publish in the Federal Register the final rule implementing its determination to list the species and to concurrently designate critical habitat. *Id.* §§ 1533(b)(6)(A), (b)(6)(C).

33. If at the time of a final listing determination the Service determines that designation of critical habitat is not then determinable, the Service may take up to one additional year to publish a final critical habitat designation. *Id*. § 1533(b)(6)(C)(ii).

34. The ESA's substantive and procedural legal protections generally only apply to species once they are listed as endangered or threatened. For example, section 7(a)(2) requires all federal agencies to ensure that their actions do not "jeopardize the continued existence" of any endangered or threatened species or "result in the destruction or adverse modification" of any listed species' critical habitat. *Id.* § 1536(a)(2).

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

FACTUAL BACKGROUND

I. Species With Late Final Listing and Critical Habitat Determinations.

A. Eastern Hellbender.

36. The eastern hellbender is a large, fully aquatic salamander that lives in clear, clean streams of the eastern and midwestern United States. Reaching nearly two feet in length, it is the largest amphibian in North America.

37. The hellbender can live at least 25–30 years in the wild and may in some instances live longer than 50 years. At every life stage, the eastern hellbender has a strong preference for free-flowing, cool, clean, highly oxygenated streams with boulders and crevices to survive.

38. The eastern hellbender's historic range encompassed 15 eastern and midwestern states, ranging from northeastern Mississippi, northern Alabama, and northern Georgia northeast through Tennessee, Kentucky, North Carolina, Missouri, Illinois, Indiana, Ohio, West Virginia, Maryland, Virginia, and Pennsylvania, to the southern portion of New York.

39. Hellbender abundance has drastically declined in most areas of the species' range.

40. Hellbender declines are driven by myriad human-caused impacts. Sedimentation is one of the primary factors most impacting the status of the species throughout its range, arising from multiple sources, including agriculture, deforestation of upland forests, clearing of riparian vegetation, oil and gas development (including enhanced recovery techniques such as hydraulic fracturing), residential development, off-road vehicles, impoundments, and instream gravel mining. Increased sediment fills the interstitial spaces in cobble beds that are used as shelter by larval and juvenile hellbenders as well as their prey, and sediment can also impact habitat use and migration by adults by burying shelter and nest rocks.

41. Dam construction and other stream impoundments negatively impact hellbenders throughout much of their range. Because hellbenders breathe primarily

through their skin, they depend on well-oxygenated water. Dams stop swift water flow and submerge riffles, causing dissolved oxygen levels to drop and rendering the habitat unsuitable for hellbenders. Impoundments also fragment hellbender habitat, blocking the gene flow between populations.

42. Coal mining, streambed gravel mining, and other forms of mining destroy hellbender habitat and degrade water quality through toxic pollution (often caused by acid mine drainage), decreased pH levels, increased conductivity (salinity), and increased siltation and sedimentation.

43. Hellbenders have suffered direct mortality through collection for scientific study and anatomy courses, the illegal pet trade, bounty hunts by sportsman's clubs, and persecution by anglers holding the misconception that hellbenders impact fish populations, when their primary prey is in fact crayfish. In addition, non-native fish stocked for sports fishing often prey on young or larval hellbenders.

44. Direct mortality of hellbenders also occurs from careless human behavior such as stone-stacking and cairn building by recreationists. The moving and stacking of rocks along waterways directly impacts hellbender shelter and breeding habitat and can result in the crushing of individual hellbenders, as occurred in summer 2025 in Great Smoky Mountains National Park. See https://www.wunc.org/2025-09-19/national-park-service-asks-visitors-not-to-stack-rocks-after-hellbender-was-crushed.

45. Climate change is predicted to exacerbate the trends of warming stream temperatures and lower flow regimes that negatively impact eastern hellbenders. More frequent and intense flooding events exacerbated by climate change are an additional increasing and quite significant threat to hellbenders, as illustrated by Hurricane

Helene's devastating impact on many of the species' healthiest remaining populations in western North Carolina.



Photo Credit: Ryan Gunderson

46. On April 20, 2010, the Center petitioned the Service to list the eastern hellbender as threatened or endangered under the ESA. On September 27, 2011, the Service issued a positive 90-day finding for the eastern hellbender, determining the petition presented substantial scientific information indicating that listing may be warranted because of "habitat loss and overuse," as well as other factors. 76 Fed. Reg. 59836.

47. In June 2013, the Center sued to compel the Service to issue the required but overdue 12-month finding. *Ctr. for Biological Diversity v. Jewell*, Case No. 1:13-cv-00975-EGS (D.D.C.). On September 23, 2013, the Center and the Service entered a stipulated settlement agreement that the Service would submit to the Federal Register a 12-month finding on the petition to list the hellbender by September 30, 2018. *Id*. at Dkt. No. 7.

48. On April 4, 2019, the Service issued its 12-month finding. Of an estimated 570 historic eastern hellbender populations at that time, the Service could only identify 35 remaining known healthy populations. The agency nonetheless concluded that listing the eastern hellbender as threatened or endangered under the ESA was not warranted. 84 Fed. Reg. 13223.

49. In 2021, the Center and partners sued the Service challenging its decision to deny protection to the eastern hellbender. In response to the Center's lawsuit, the Court declared the decision unlawful, vacated the determination, and remanded to the agency with orders to make a lawful determination consistent with the ESA's requirements. *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 690 F. Supp. 3d 322 (S.D.N.Y. 2023).

50. The Service published a proposed rule to list the hellbender as an endangered species on December 13, 2024, determining that the species is in danger of extinction throughout its range. 89 Fed. Reg. 100934. The Service found that of an estimated 371 remaining populations, only 45 (12 percent) of those populations are considered stable. *Id*. at 100944. Highlighting the urgency of the situation, the Service found that listing as threatened is not appropriate "because the extent and magnitude of past and ongoing threats has reduced the number and distribution of healthy populations, rendering the eastern hellbender less able to cope with stressors and environmental fluctuations, impaired its ability to adapt to novel changes, and increased its vulnerability to catastrophes." *Id*.

51. With limited exceptions, the ESA requires the Service to issue a final listing rule within one year of a proposed listing rule. Nearly two years have now passed since the Service issued its proposed listing rule for the eastern hellbender.

52. It has now been over 16 years since the Center petitioned to list the eastern hellbender. During the Service's egregious, unlawful, and inexcusable delay in providing the protections demanded by the ESA, the eastern hellbender has continued to suffer significant population declines and loss of habitat.

B. Santa Ana Speckled Dace.

53. The Santa Ana speckled dace is a small, olive to dark yellow minnow species native to Southern California streams. The species is adapted to living in moving water, occurring in rivers and cool, perennial streams formed by spring water. Speckled daces have been eliminated from three-quarters of their former stream habitats in Southern California, mainly because of dams and water diversions that deplete stream-flow and isolate fish populations, and because of habitat loss due to urban sprawl development. Dams and impoundments also improve habitat for introduced species that prey on the Santa Ana speckled dace. For example, the species is presumed extirpated from parts of the San Jacinto River system because of the introduction of Brown trout.

54. Historically found throughout river systems of the San Gabriel, San Bernardino, and San Jacinto Mountain ranges, the Santa Ana speckled dace has been eliminated from most of the Los Angeles River basin. Remaining dace populations in Southern California are highly fragmented and isolated from one another, and jeopardized by climate change, which has caused more frequent drought, high-severity wildfires, and intensive flooding and debris flows into streams.

55. On May 11, 2020, the Center petitioned the Service to list the Santa Ana speckled dace. In 2021, the Service found that threats including dams, reservoirs, and water diversions, barriers to migration and movement, pollution, mining, concentrated recreational use, predation, introduced species, climate change, and habitat fragmentation demonstrate that listing the dace may be warranted. *Id.* at 32243.

56. On November 3, 2021, the Center sued the Service over the agency's failure to make a timely 12-month finding, resulting in a settlement under which the agency agreed to issue the overdue finding before July 31, 2024. On August 13, 2024, the Service determined that listing was warranted, and published a proposed rule listing the dace as a threatened species. 89 Fed. Reg. 65816 (Aug. 13, 2024).

57. The Service's final listing determination was due within one year of the proposed listing rule. It has now been more than two years since the Service issued its

proposed rule to list the Santa Ana speckled dace as a threatened species and the agency has yet to finalize its listing rule.

C. Bethany Beach Firefly.

58. The Bethany Beach firefly is a rare beetle also known as a lightning bug. Bethany Beach fireflies produce two bright green flashes at night to attract mates; therefore, artificial light and light pollution interferes with the species' core behavior and mating success because it can change the intensity of firefly flashes, making it harder for fireflies to find each other.

59. The species also has specialized habitat requirements and only occurs in a handful of coastal dune swales on the Delmarva coast. Coastal dune swales are a unique freshwater wetland habitat. Because it is a habitat specialist restricted to freshwater swales, degradation and loss of swales from human activities like high-density residential and commercial development are one of the main threats to the firefly's survival. For example, when the species was petitioned for listing, it was known to occur at only seven sites. Since then, the best swale in Delaware, the Tower Shores swale, has been fully developed, and the population that was there is believed to be extirpated after a cul-de-sac was built over the swale.

60. The species is considered a fast flyer, flying fast and high at night to search for wetlands, but the proliferation of buildings, roads, and associated developments can act as physical barriers to the firefly that impede the Bethany Beach firefly's ability to fly.

61. Due to the significant reduction in its range, droughts and hurricanes, both made more frequent and more intense by climate change, are a primary threat to the species' continued existence. Extended periods of drought can dry swales and promote the growth of woody plants instead of the wetland plants that the firefly needs in its ecosystem. Although some storms benefit the species' habitat, increased storm intensity can cause too much saltwater to enter swales, leading to larval mortality and a change in swale hydrology. Because of its small population, specialized habitat needs, limited

available habitat, and large distances between populations, the species does not have the ability to shift its range in response to drought, hurricanes, or other intense storm events.

62. On May 20, 2019, the Center and a coalition partner petitioned the Service to list the Bethany Beach firefly under the ESA. In 2019, the Service published a 90-day finding that the Center's petition presented substantial scientific or commercial information indicating that the petitioned actions may be warranted. In 2021, the Center sued the Service for its failure to make a timely 12-month finding, leading a settlement agreement requiring the Service to make the overdue finding by September 30, 2024.

63. On October 1, 2024, the Service published the proposed rule to list the firefly as a threatened species. 89 Fed. Reg. 79857 (Oct. 1, 2024). The Service found that the main threats affecting the species are related to "urban development and changes in land cover, light pollution, recreational activities, pesticides, invasive plants, [and] shoreline erosion control" as well as the effects of having a small population size, climate change, habitat loss, and degradation from "urbanization and development" which "has caused populations to be isolated with presumably no genetic transfer" and at an "increased risk of impacts from random stochastic and unforeseen catastrophic events." *Id.* at 79861.

64. The Service's final listing determination was due within one year of the proposed listing rule. It has now been more than two years since the Service issued its proposed rule to list the Bethany Beach firefly as a threatened species and the agency has yet to finalize its listing rule.

D. Navasota False Foxglove.

65. Navasota false foxglove is a three-foot-tall, purplish-pink wildflower known to exist in only two counties, Grimes and Tyler, and in just three locations on 1.9 acres spread across East Texas. The foxglove was first identified in 1993 and is similar to but genetically distinct from the Caddo false foxglove, which once grew in Louisiana but is now presumed to be extinct. The Navasota false foxglove's flowers are only visible in the autumn months, from mid-September to October, when the plant blooms.

66. The plant does not tolerate shade and requires full sunlight, growing in shallow and sandy soils. While the Navasota false foxglove can photosynthesize, it partially relies on a host plant—the little bluestem plant (*Schizachyrium scoparium*)—for vital nutrients, water, and minerals. The foxglove is vulnerable to introduced plant species that can outcompete the foxglove and its host plant by consuming nutrients in the soil.

67. The foxglove is also threatened by juniper which shades out the foxglove, reducing seed germination. Other threats to the species include its limited distribution, including one area in Tyler County that is separated from the other two populations in Grimes County by more than 100 miles, increasingly frequent droughts, and potential disturbances from livestock, road widening, and development.

68. In 2007, the Service received a petition to list Navasota false foxglove under the ESA. In 2009, the Service published a 90-day finding that the species may warrant listing under the ESA. 74 Fed. Reg. 66866 (Dec. 16, 2009). In 2020, the Center filed a lawsuit to compel the agency's long overdue 12-month finding. On June 13, 2023, the Service finally published a proposed rule to list the Navasota false foxglove as an endangered species and to designate critical habitat. 88 Fed. Reg. 38455.

69. The Service's final listing determination and critical habitat designation for the Navasota false foxglove was due within one year of the proposed rule. It has now been over three years since the Service issued its proposed rule, and the agency has yet to finalize the final listing rule and the critical habitat designation.

E. Cactus Ferruginous Pygmy Owl.

70. The cactus ferruginous pygmy owl is a small, fierce raptor found in Arizona, Texas, and northern Mexico. They are named for the saguaro cacti that they live in, their rusty-colored stripes, and their small size. These 2.5-ounce raptors prey on birds twice their size, fend off mobs of birds, and feed lizards to their chicks. The cactus ferruginous pygmy owl almost exclusively nests in saguaro cavities excavated by other

birds. For instance, in Arizona, pygmy owls primarily choose saguaros that have been excavated by Gila woodpeckers or gilded flickers.

71. The cactus ferruginous pygmy owl has been suffered extensive population declines, with an estimated population in the low thirties in Arizona. Much of the species' prime occupied habitat that existed when the Center first petitioned for their listing, in northwest Tucson and other areas, has subsequently been destroyed by urban development.

72. Remaining owls, as well as their currently unoccupied but suitable habitat, are further threatened by the planting and rapid spread of introduced buffelgrass, which promotes fire that eliminates the columnar cacti and other desert vegetation needed by the owl. The establishment of introduced grasses was identified as one of the most serious threats to the biological diversity of the Sonoran Desert.

73. Long-term drought driven by climate change also threatens the species. In Texas and Mexico, agricultural development and human population growth and related infrastructure threaten the pygmy owl. These activities fragment populations, isolate the species, and restrict movement between the owls in Texas and Mexico. They also consume significant amounts of water, dry up aquifers, and degrade habitat. For example, research in Mexico found that nest success for the owl was much lower in nest sites close to large roadways.

74. In Texas and Mexico, agricultural development and human population growth and related infrastructure threaten the pygmy owl. These activities fragment populations, isolate the species, and restrict movement between the owls in Texas and Mexico. They also consume significant amounts of water, dry up aquifers, and degrade habitat. For example, research in Mexico found that nest success for the owl was much lower in nest sites close to large roadways.

75. The Center first petitioned the Service to list the owl in 1992. In response to the Center's petition, the Service proposed to list the owl in 1994, and in 1997, the owl's Arizona population was listed as endangered. 62 Fed. Reg. 10730 (Mar. 10, 1997).

After the Center sued again in 1998, the Service finalized critical habitat protections for the pygmy owl. But following an industry lawsuit, protections were removed in 2006. 71 Fed. Reg. 19452 (Apr. 14, 2006).



Photo Credit: Dr. Aaron Flesch

76. On March 20, 2007, the Center and a coalition partner re-petitioned the Service to list the cactus ferruginous pygmy owl. The Service determined that listing was not warranted. 76 Fed. Reg. 61856 (Oct. 5, 2011). In 2014, the Center challenged the Service's determination in a lawsuit. 86 Fed. Reg. 72550 (Dec. 22, 2021). The court agreed with the Center and ordered the Service to reconsider its determination. *Id*. The parties reached an agreement requiring the Service to submit a 12-month finding for the owl by August 5, 2021 (which was later extended to December 16, 2021). *Id.*

77. On December 22, 2021, the Service published a proposed rule to list the owl as a threatened species and determined that designating critical habitat was prudent but not determinable at that time. *Id.* at 72547. The Service again missed its deadline to finalize the proposed rule, and in 2023, the Center filed another lawsuit to compel the Service to issue its determination. Shortly after the Center filed its 2023 lawsuit, the

Service listed the owl as threatened. 88 Fed. Reg. 46910 (July 20, 2023). The Service also found that designating critical habitat for the owl was prudent and determinable, but that it would be proposed in a separate rule. *Id.*

78. It has now been over three years since the Service determined the owl is a threatened species under the Act, and the agency has yet to propose critical habitat for the owl, let alone finalize the rule.

II. The Service's Unlawful Policy of Not Finalizing ESA Listing Rules and Critical Habitat Designations.

79. Under the second Trump administration, the Service has adopted and is implementing a policy and pattern of avoiding new ESA protections. This has resulted in the cessation of *any* new ESA listing or critical habitat designations, except in a few instances where the Service was mandated by court order to take action.

80. The Service's policy and practice of refusing to issue overdue listing determinations and critical habitat designations is preventing numerous species from receiving timely ESA listing protections, including the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, and Navasota false foxglove, as well as final critical habitat designations, including for the Navasota false foxglove and cactus ferruginous pygmy owl.

81. In the absence of a court order, the Service has not listed a single species as endangered or threatened or finalized a single critical habitat designation. The Service has also routinely sought multi-year extensions, to dates after the end of the second Trump administration, of final listing rules due under consent decrees reached under prior administrations. Thus, nearly halfway through the second Trump administration, the Service has issued final listing rules for just three species and issued only two critical habitat final rules for a total of five species.

82. This failure to finalize listing rules and critical habitat designations flagrantly disregards the ESA's strict statutory deadlines, and has resulted in an abrupt

and unprecedented decline in the number of final listing rules and critical habitat designations typically issued by the Service.

83. For example, from 2020-2023, the Service issued 55 final listing or reclassification rules and 47 final critical habitat rules. On average, the Service has listed 34 species per year since the ESA's 1973 enactment.

84. The cessation of final ESA listings and critical habitat designations is compelling evidence that Service officials, at the instigation, under the control or authority of, or with the direction, knowledge, consent, or acquiescence of Defendants, have adopted and are implementing a policy of unlawfully avoiding new ESA protections.

85. The Service's own prioritization process for responding to ESA listing petitions further evidences the existence of a policy not to issue final listing determinations and critical habitat designations.

86. In 2016, the Service developed a "National Listing Workplan," establishing a five-year schedule for prioritizing petition findings. The Service has periodically issued updated five-year Workplans since that time, including the most recent National Domestic Listing Workplan for FYs 2026-2030, publicly released in July 2026.

87. The Workplan generally focuses on the Service's schedule for issuing "12-month findings" and (when those findings are positive) associated proposed listing rules, rather than final listing determinations or critical habitat designations. Under the ESA, 12-month findings and associated proposed listing rules must be preceded by a status review, and are accordingly the most labor-intensive phase of the listing process.

88. The Service also typically develops and publicly releases an annual "Stepdown Workplan," which includes all the listing and critical habitat actions the agency intends to issue that year, including final listing and critical habitat designation rules.

89. During the second Trump administration, however, the Service has not issued a Stepdown Workplan for Fiscal Years 2025, 2026, or 2027. In the absence of the annual Stepdown Workplan, the agency is no longer publicly providing any estimated dates for the issuance of final listing and critical habitat determinations.

90. More than 70 final listing and/or critical habitat determinations are now well overdue, including the final listing determinations for the eastern hellbender, Santa Ana speckled dace, Navasota false foxglove, and Bethany Beach firefly, and the final critical habitat designations for the Navasota false foxglove and cactus ferruginous pygmy owl.

91. Additional species which the Service issued proposed listing and/or critical habitat rules more than 1 year ago include: Alabama hickorynut (*Obovaria unicolor*) (Proposed Endangered, 89 Fed. Reg. 73330, Sept. 10, 2024); Alligator snapping turtle (*Macrochelys temminckii*) (Proposed Threatened, 86 Fed. Reg. 62434, Nov. 9, 2021); Barrens topminnow (*Fundulus julisia*) (Proposed Critical Habitat, 89 Fed. Reg. 56253, July 9, 2024); Big Pine partridge pea (*Chamaecrista lineata keyensis*) (Proposed Critical Habitat, 87 Fed. Reg. 62502, Oct. 14, 2022); Black Creek crayfish (*Procambarus pictus*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 73512, Sept. 10, 2024); Blodgett's silverbush (*Argythamnia blodgettii*) (Proposed Critical Habitat, 87 Fed. Reg. 62502, Oct. 14, 2022); Brawleys Fork crayfish (*Cambarus williami*) (Proposed Threatened and Critical Habitat, 88 Fed. Reg. 57292, Aug. 22, 2023); bushy whitlow-wort (*Paronychia congesta*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 19526, Mar. 19, 2024); California spotted owl-Coastal/Southern California and Sierra Nevada DPS (*Strix occidentalis occidentalis*) (Proposed Endangered (Coastal/So. Cal. DPS) and Threatened (Sierra Nevada DPS), 88 Fed. Reg. 11600, Feb. 23, 2023); Cedar Key mole skink (*Plestiodon egregius insularis*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 65124, Aug. 8, 2024); Clear Lake hitch (*Lavinia exilicauda chi*) (Proposed Threatened, 90 Fed. Reg. 4916, Jan. 16, 2025); coal darter (*Percina brevicauda*) (Proposed Threatened, 89 Fed. Reg. 24415, Apr. 8, 2024); Culebra skink

(*Spondylurus culebrae*) (Proposed Threatened and Critical Habitat, 89 Fed. Reg. 103938, Dec. 19, 2024); Cumberland moccasinshell (*Medionidus conradicus*) (Proposed Endangered, 88 Fed. Reg. 57060, Aug. 22, 2023); Dixie Valley toad (*Anaxyrus williamsi*) (Proposed Critical Habitat, 89 Fed. Reg. 46838, May 30, 2024); Eastern regal fritillary (*Speyeria idalia idalia*) (Proposed Endangered, 89 Fed. Reg. 63888, Aug. 6, 2024); Everglades bully (*Sideroxylon reclinatum ssp. austrofloridense*) (Proposed Critical Habitat, 87 Fed. Reg. 62564, Oct. 14, 2022); fisher-Southern Sierra Nevada DPS (*Pekania pennanti*) (Proposed Critical Habitat, 87 Fed. Reg. 66987, Nov. 7, 2022); Florida bonneted bat (*Eumops floridanus*) (Proposed Critical Habitat, 89 Fed. Reg. 16624, Mar. 7, 2024); Florida Keys mole skink (*Plestiodon egregius egregius*) (Proposed Critical Habitat, 87 Fed. Reg. 58649, Sept. 27, 2022); Florida pineland crabgrass (*Digitaria pauciflora*) (Proposed Critical Habitat, 87 Fed. Reg. 62564, Oct. 14, 2022); Florida prairie-clover (*Dalea carthagenensis var. floridana*) (Proposed Critical Habitat, 87 Fed. Reg. 62564, Oct. 14, 2022); foothill yellow-legged frog-4 DPSs (*Rana boylii*) (Proposed Critical Habitat, 90 Fed. Reg. 3412, Jan. 14, 2025); ghost orchid (*Dendrophylax lindenii*) (Proposed Endangered, 90 Fed. Reg. 23869, June 5, 2025); green floater (*Lasmigona subviridis*) (Proposed Threatened and Critical Habitat, 88 Fed. Reg. 48294, July 26, 2023); green sea turtle (*Chelonia mydas*) (Proposed Critical Habitat, 88 Fed. Reg. 46376, July 19, 2023); I'iwi (*Drepanis coccinea*) (Proposed Critical Habitat, 87 Fed. Reg. 79942, Dec. 28, 2022); Kentucky creekshell (*Leaunio ortmanni*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 76196, Sept. 17, 2024); Kern Canyon slender salamander (*Batrachoseps simatus*) (Proposed Threatened and Critical Habitat, 88 Fed. Reg. 81028, Nov. 21, 2023); Key ring-necked snake (*Diadophis punctatus acricus*) (Proposed Critical Habitat, 87 Fed. Reg. 62614, Oct. 14, 2022); lesser Virgin Islands skink (*Spondylurus semitaeniatus*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 103938, Dec. 19, 2024); Louisiana pigtoe (*Pleurobema riddellii*) (Proposed Threatened and Critical Habitat, 89 Fed. Reg. 16776, Mar. 20, 2023); Louisiana pinesnake (*Pituophis ruthveni*) (Proposed Critical Habitat, 87

Fed. Reg. 60580, Oct. 6, 2022); Mexican fawnsfoot (*Truncilla cognata*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 47952, July 25, 2023); Miami Cave crayfish (*Procambarus milleri*) (Proposed Threatened, 88 Fed. Reg. 64856, Sept. 20, 2023); monarch butterfly (*Danaus plexippus*) (Proposed Threatened and Critical Habitat, 89 Fed. Reg. 100662, Dec. 12, 2024); Northwestern pond turtle (*Actinemys marmorata*) (Proposed Threatened, 88 Fed. Reg. 68370, Oct. 3, 2023); oblong rocksnail (*Leptoxis compacta*) (Proposed Endangered, 88 Fed. Reg. 74930, Oct. 31, 2023); pineland sandmat (*Chamaesyce deltoidea pinetorum*) (Proposed Critical Habitat, 87 Fed. Reg. 62564, Oct. 14, 2022); Puerto Rican skink (*Spondylurus nitidus*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 103938, Dec. 19, 2024); Quitobaquito tryonia (*Tryonia quitobaquitae*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 62725, Sept. 13, 2023); relictual slender salamander (*Batrachoseps relictus*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 81028, Nov. 21, 2023); rim rock crowned snake (*Tantilla oolitica*) (Proposed Critical Habitat, 87 Fed. Reg. 62614, Oct. 14, 2022); rufa red knot (*Calidris canutus rufa*) (Proposed Critical Habitat, 88 Fed. Reg. 22530, Apr. 13, 2023); Sacramento Mountains checkerspot (*Euphydryas anicia cloudcrofti*) (Proposed Critical Habitat, 88 Fed. Reg. 54263, Aug. 10, 2023); salamander mussel (*Simpsonaias ambigua*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 57224, Aug. 22, 2023); Salina mucket (*Potamilus metnecktayi*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 47952, July 25, 2023); sand flax (*Linum arenicola*) (Proposed Critical Habitat, 87 Fed. Reg. 62502, Oct. 14, 2022); short-tailed snake (*Lampropeltis extenuata*) (Proposed Threatened, 88 Fed. Reg. 68070, Oct. 3, 2023); sickle darter (*Percina williamsi*) (Proposed Critical Habitat, 88 Fed. Reg. 4128, Jan. 24, 2023); Southern elktoe (*Alasmidonta triangulata*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 40160, June 21, 2023); Southwestern pond turtle (*Actinemys pallida*) (Proposed Threatened, 88 Fed. Reg. 68370, Oct. 3, 2023); Tennessee clubshell (*Pleurobema oviforme*) (Proposed Endangered, 88 Fed. Reg. 57060, Aug. 22, 2023); Tennessee pigtoe (*Pleuronaia barnesiana*) (Proposed Endangered, 88 Fed. Reg. 57060,

Aug. 22, 2023); Texas heelsplitter (*Potamilus amphichaenus*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 16776, Mar. 20, 2023); Texas hornshell (*Popenaias popeii*) (Proposed Critical Habitat, 88 Fed. Reg. 1602, Jan. 11, 2023); Texas kangaroo rat (*Dipodomys elator*) (Proposed Endangered and Critical Habitat, 88 Fed. Reg. 55962, Aug. 17, 2023); toothless blindcat (*Trogloglanis pattersoni*) (Proposed Endangered, 88 Fed. Reg. 57046, Aug. 22, 2023); tricolored bat (*Perimyotis subflavus*) (Proposed Endangered, 87 Fed. Reg. 56381, Sept. 14, 2022); Virgin Islands bronze skink (*Spondylurus sloanii*) (Proposed Endangered and Critical Habitat, 89 Fed. Reg. 103938 (Dec. 19, 2024); wedge spurge (*Chamaesyce deltoidea ssp. serpyllum*) (Proposed Critical Habitat, 87 Fed. Reg. 62502, Oct. 14, 2022); Western regal fritillary (*Speyeria idalia occidentalis*) (Proposed Threatened, 89 Fed. Reg. 63888, Aug. 6, 2024); Western spadefoot-Northern and Southern DPS (*Spea hammondii*) (Proposed Threatened, 88 Fed. Reg. 84252, Dec. 5, 2023); widemouth blindcat (*Satan eurystomus*) (Proposed Endangered, 88 Fed. Reg. 57046, Aug. 22, 2023).

92. The Service's continuing delays are particularly noteworthy given that the relative work required by the Service to finalize a proposed listing or critical habitat rule is modest compared to other stages of the listing process, particularly the 12-month finding and proposed rule stage.

93. The length of these delays and lack of any Service estimated time frame for their finalization further evidences the existence of an unlawful Service policy not to issue final ESA listing rules and critical habitat designations.

94. The Service's unlawful policy likely stems, at least in part, from Executive Orders and related Interior direction. On the first day of his second administration, President Trump issued multiple executive orders signaling a change in federal priorities regarding endangered species protection. *See, e.g.,* Exec. Order No. 14156, *Declaring a National Energy Emergency* (Jan. 20, 2025) (directing agencies to "identify obstacles to domestic energy infrastructure specifically deriving from implementation of the ESA ... [including] regulatory reform efforts, species listings, and other related matters[.]");

Exec. Order No. 14154, *Unleashing American Energy* (Jan. 20, 2025) (calling on agencies to "suspend, revise, or rescind" actions that would be "unduly burdensome" to domestic energy development).

95. Secretary of the Interior Doug Burgum subsequently issued two orders prioritizing deregulation in relation to endangered species protections. *See* Secy's Order No. 3418 (Dep't of the Interior Feb. 3, 2025) (directing agency staff to revise or rescind various endangered species regulations); *see also* Secy's Order No. 3,417 (Dep't of the Interior Feb. 3, 2025).

96. The Center has received documents through the Freedom of Information Act showing that a "Deregulatory Task Force" of Service and Interior officials exists. On information and belief, the Service's Deregulatory Task Force has likely been involved in the development and implementation of the Service's policy not to issue final ESA listing rules and critical habitat designations.

97. The Center provided Defendants with 60-days' notice of their ESA violations, as required by 16 U.S.C. § 1540(g)(2)(C), by letters dated November 5, 2025 (cactus ferruginous pygmy owl), December 15, 2025 (eastern hellbender), January 16, 2026 (Navasota false foxglove), and June 11, 2026 (Santa Ana speckled dace and Bethany Beach firefly, and policy and practice claim). Defendants have not remedied the violations set out in the notice letter, and an actual controversy exists between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

CLAIMS FOR RELIEF

Violation of the ESA: Failure to Publish Timely Final Listing Rules for the Eastern Hellbender, Santa Ana Speckled Dace, Navasota False Foxglove, and Bethany Beach Firefly, and Failure to Publish Timely Final Critical Habitat Determination for the Navasota False Foxglove and Cactus Ferruginous Pygmy Owl

98. Plaintiff re-alleges and incorporates all allegations set forth in the preceding paragraphs.

99. With limited exceptions, the ESA requires the Service to publish a final rule implementing its determination to list the species and/or concurrently designate critical habitat within 1 year of the proposed listing rule. 16 U.S.C. §§ 1533(b)(6)(A); 1533(b)(6)(C).

100. The Center petitioned the Service to list the eastern hellbender in 2010.

101. The Service published a proposed rule to list the eastern hellbender as an endangered species under the ESA on December 13, 2024. 89 Fed. Reg. 100934.

102. Therefore, the final listing rule for the eastern hellbender was due December 13, 2025.

103. The Center petitioned the Service to list the Santa Ana speckled dace in 2021.

104. The Service published a proposed rule to list the Santa Ana speckled dace as threatened on August 13, 2024. 89 Fed. Reg. 65816.

105. Therefore, the final listing rule for the Santa Ana speckled dace was due August 13, 2025.

106. The Center petitioned the Service to list the Bethany Beach firefly in 2019.

107. The Service published a proposed rule to list the Bethany Beach firefly as threatened on October 1, 2024. 89 Fed. Reg. 79587.

108. Therefore, the final listing rule for the Bethany Beach firefly was due October 1, 2025.

109. The Service was petitioned to list the Navasota false foxglove in 2007.

110. The Service published a proposed rule to list the Navasota false foxglove as an endangered species, and to designate critical habitat, on June 13, 2023. 88 Fed. Reg. 38455.

111. Therefore, the final listing rule and critical habitat designation for the Navasota false foxglove was due June 13, 2024.

112. The Center petitioned the Service to list the cactus ferruginous pygmy owl in 1992, and re-petitioned the Service in 2007.

113. The Service published a final rule listing the cactus ferruginous pygmy owl as a threatened species on July 20, 2023. 88 Fed. Reg. 46910.

114. In the final listing rule, the Service found that designating critical habitat for the cactus ferruginous pygmy owl was prudent and determinable, but stated that it would be proposed in a separate rule.

115. The ESA generally requires the Service to publish a rule designating critical habitat concurrently with a final listing rule, meaning the final critical habitat designation for the cactus ferruginous pygmy owl was due July 20, 2023. The Service has yet to propose or finalize critical habitat for the cactus ferruginous pygmy owl.

116. Defendants failed to perform their nondiscretionary duty to timely publish the final listing rules for the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, and Navasota false foxglove, or to timely publish final critical habitat designations for the Navasota false foxglove and cactus ferruginous pygmy owl, in violation of the ESA. 16 U.S.C. §§ 1533(b)(6)(A).

Violation of the ESA and/or APA: Policy and Practice of Not Issuing Final Listing Rules and Final Critical Habitat Designations

117. Plaintiff re-alleges and incorporates all allegations set forth in the preceding paragraphs.

118. Service officials, at the instigation, under the control or authority of, or with the direction, knowledge, consent, or acquiescence of Defendants, have engaged in an unlawful policy and practice of refusing to finalize listing determinations and critical habitat designations during the second Trump administration.

119. Through the adoption and implementation of their policy not to finalize final listing rules or critical habitat designations, Defendants are acting in clear, continuing, and egregious contravention of the ESA's plain statutory timelines, including in relation to the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl, in addition to other species as to which the Center's members have concrete interests.

120. By definition, species that are proposed for listing under the ESA are in danger of extinction now or in the foreseeable future. 16 U.S.C. §§ 1532(6), (20). Congress thus established, and has reaffirmed through statutory amendments, strict statutory timelines for the Service to make decisions on species petitioned for listing. *Id*. §§ 1533(b)(3)(A)-(B), (b)(6)(A)-(C). These timelines include the requirement that, with limited exceptions, proposed rules to list a species as threatened or endangered, as well as proposed rules to designate critical habitat for listed species, be finalized within one year.

121. The final listing or critical habitat rules for species including the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, Navasota false foxglove, and cactus ferruginous pygmy owl are each well overdue, in some cases by multiple years. Final listing and/or critical habitat determinations for nearly 70 additional species are also overdue. The Service's overdue final listing and/or critical habitat rules are occurring on top of extensive delays in earlier stages of the listing process, and most of the species have awaited protections for at least a decade. The Service's policy and pattern or practice of not finalizing listing and critical habitat protections risks extinction of each of the species, and each passing day without protection makes achieving the ESA's central goal—recovering species to the point where the Act's protections are no longer necessary—more difficult. This policy and practice violates the Service's mandatory duties under the ESA and is arbitrary, capricious, and not in accordance with law in violation of the APA.

REQUEST FOR RELIEF

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

1. Declare that Defendants violated the ESA by failing to issue timely final listing rules for the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, and Navasota false foxglove, and by failing to issue timely final critical habitat designations for the Navasota false foxglove and cactus ferruginous pygmy owl;

2. Provide injunctive relief compelling Defendants to publish final rules listing the eastern hellbender, Santa Ana specked dace, Bethany Beach firefly, and Navasota false foxglove, and to publish final rules designating critical habitat for the Navasota false foxglove and cactus ferruginous pygmy owl, by a date certain;

3. Declare that Defendants' policy and practice of not issuing ESA final listing determinations and critical habitat designations, including not issuing overdue final rules listing the eastern hellbender, Santa Ana speckled dace, Bethany Beach firefly, and Navasota false foxglove, and not issuing overdue final rules designating critical habitat for the Navasota false foxglove and cactus ferruginous pygmy owl, as well as not issuing final listing determinations and/or critical habitat designations for nearly 70 additional species (¶ 91), is unlawful;

4. Vacate Defendants' unlawful policy to not issue ESA final listing determinations and critical habitat designations;

5. Enjoin Defendants from applying the unlawful policy to not issue ESA final listing determinations and critical habitat designations;

6. Retain continuing jurisdiction to review Defendants' compliance with all judgments and orders herein;

7. Grant Plaintiff its reasonable attorneys' fees and costs; and

8. Provide such other relief as the Court deems just and proper.

Respectfully submitted and dated this 16th day of November, 2026.

s/ Brian Segee
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