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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**  
11 **TUCSON DIVISION**

12 Center for Biological Diversity,

13 Plaintiff,

14 v.

15 U.S. Fish and Wildlife Service; Martha  
16 Williams, in her official capacity as  
17 Director of the U.S. Fish and Wildlife  
18 Service; and Deb Haaland, in her official  
19 capacity as Secretary of the U.S.  
20 Department of the Interior,

21 Defendants.

Case No. \_\_\_\_\_

22 **COMPLAINT FOR**  
23 **DECLARATORY AND**  
24 **INJUNCTIVE RELIEF**

25 **INTRODUCTION**

26 1. Plaintiff Center for Biological Diversity (“Center”) brings this case  
27 challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to issue timely 12-  
28 month findings on the Center’s petition to list the southern bog turtle DPS and the  
roughhead shiner in violation of the Endangered Species Act’s (“ESA” or “Act”)

1 nondiscretionary, congressionally mandated deadlines. The agency’s failure to meet the  
2 deadlines delays crucial, lifesaving protections for the southern bog turtle DPS and the  
3 roughhead shiner, increasing their risk of extinction.

4 2. Plaintiff brings this lawsuit for declaratory and injunctive relief, seeking an  
5 Order declaring that the Service violated section 4(b)(3)(B) of the ESA, 16 U.S.C. §  
6 1533(b)(3)(B), by failing to timely issue a 12-month finding for the southern bog turtle  
7 DPS and the roughhead shiner and directing the Service to issue the findings by a date  
8 certain.

9 **JURISDICTION**

10 3. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),  
11 (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has  
12 authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. §  
13 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).

14 4. Plaintiff provided Defendants with 60-days’ notice of the ESA violation as  
15 required by 16 U.S.C. § 1540(g)(2)(A) by a notice letter to the Service for the southern  
16 bog turtle DPS dated July 1, 2024 and a notice letter to the Service for the roughhead  
17 shiner dated July 8, 2024. Defendants have not remedied the violations set out in the  
18 notice and an actual controversy exists between the parties within the meaning of the  
19 Declaratory Judgment Act, 28 U.S.C. § 2201.

20 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because  
21 Plaintiff resides in this judicial district.

22 **PARTIES**

23 6. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a national, non-  
24 profit conservation organization that works through science, law, and policy to protect  
25 imperiled wildlife and their habitat. The Center is incorporated in California and  
26 headquartered in Tucson, Arizona, with offices throughout the United States. The Center  
27 has more than 89,000 active members throughout the country.

1           7.       The Center brings this action on behalf of its organization, and its staff and  
2 members who derive ecological, recreational, aesthetic, educational, scientific,  
3 professional, and other benefits from these species and their habitat. As a multitude of  
4 threats continue to push the southern bog turtle DPS and the roughhead shiner  
5 dangerously close to extinction, Plaintiff's members' interests in protecting and  
6 recovering these species and their habitat are directly harmed by the Service's failure to  
7 issue timely findings.

8           8.       For example, the professional, economic, aesthetic, and recreational  
9 interests of Center member Will Harlan, Southeast Director and Senior Scientist at the  
10 Center, are harmed by the Service's delay in issuing the southern bog turtle's 12-month  
11 finding. Harlan is a herpetologist who wrote a national bestselling book about turtles and  
12 has professional and economic concerns about the turtle's welfare and survival. He visits  
13 the bog turtle's habitat regularly for herpetological research and exploration and intends  
14 to visit again in spring 2025. He also recreates in the bog turtle's habitat with his family  
15 and intends to regularly return to explore the wetlands with his family in the spring,  
16 specifically to the French Broad River and wetlands in the Mills River where the bog  
17 turtles occur. Harlan has spent much of his time searching for southern bog turtles and  
18 plans to continue to do so, the Service's failure to protect the turtles harms his ability to  
19 continue searching for them because they likely will be pushed to extinction without ESA  
20 protections.

21           9.       The aesthetic and recreational interests of Center member Steve Welgos are  
22 harmed by the Service's delay in issuing the shiner's 12-month finding. Welgos recently  
23 searched for the shiner near tributaries where the fish occurs that cross the Appalachian  
24 Trail. He was unable to find any fish and intends to return to hike in the area with friends  
25 and search for the shiner in spring 2025. The loss of the shiner would be harmful to  
26 Welgos as he has not had the opportunity to observe this species, despite his efforts to  
27 search for it. It will also harm Welgos's experience in nature because the roughhead  
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1 shiner will likely go extinct without ESA protections and his aesthetic and recreational  
2 experience will be lessened knowing that the shiner no longer exists.

3 10. Defendants' violation of the ESA's nondiscretionary mandatory deadline  
4 has delayed the ESA's protections for the southern bog turtle DPS and the roughhead  
5 shiner, harming the Center's members' interests in them by decreasing the likelihood that  
6 these members will encounter the species as part of their personal and professional  
7 excursions. These injuries are actual, concrete injuries that are presently suffered by the  
8 Center's members, are directly caused by Defendants' acts and omissions, and will  
9 continue unless the Court grants relief. The relief sought would redress these injuries.  
10 The Center and its members have no other adequate remedy at law.

11 11. Defendant U.S. FISH AND WILDLIFE SERVICE is the agency within the  
12 Department of the Interior charged with implementing the ESA for the southern bog  
13 turtle DPS and the roughhead shiner. The Secretary of the Interior has delegated  
14 administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

15 12. Defendant MARTHA WILLIAMS is the Director of the Service and is  
16 charged with ensuring that agency decisions comply with the ESA. Defendant Williams  
17 is sued in her official capacity.

18 13. Defendant DEB HAALAND is the Secretary of the U.S. Department of the  
19 Interior and has the ultimate responsibility to administer and implement the provisions of  
20 the ESA. Defendant Haaland is sued in her official capacity.

## 21 **STATUTORY FRAMEWORK**

### 22 **The Endangered Species Act**

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

1           15.     The ESA has a suite of substantive and procedural legal protections that  
2 apply to species once they are listed as endangered or threatened. For example, section  
3 4(a)(3) of the Act requires the Service to designate “critical habitat” for each endangered  
4 and threatened species. *Id.* § 1533(a)(3).

5           16.     In addition, ESA section 7(a)(2) requires all federal agencies to ensure that  
6 their actions do not “jeopardize the continued existence” of any endangered or threatened  
7 species or “result in the destruction or adverse modification” of any listed species’ critical  
8 habitat. *Id.* §1536(a)(2).

9           17.     ESA section 9 prohibits, among other actions, “any person” from causing  
10 the “take” of any protected fish or wildlife without lawful authorization from the Service.  
11 *Id.* §§ 1538(a)(1)(B), 1539; see also *id.* § 1532(19) (defining “take”). Other provisions  
12 require the Service to “develop and implement” recovery plans for listed species, *id.* §  
13 1533(f); authorize the Service to acquire land for the protection of listed species, *id.* §  
14 1534; and authorize the Service to make federal funds available to states to assist in the  
15 conservation of endangered and threatened species, *id.* § 1535(d).

16           18.     The ESA defines a “species” as “any subspecies of fish or wildlife or  
17 plants, and any distinct population segment of any species of vertebrate fish or wildlife  
18 which interbreeds when mature.” *Id.* § 1532(16). A “distinct population segment” of a  
19 species is known as a “DPS.” When considering whether a population segment qualifies  
20 as a DPS under the Act, Service policy requires the agency to determine whether the  
21 population is “discrete” and “significant.” If the Service determines that a population  
22 segment is both discrete and significant, then the population qualifies as a DPS and meets  
23 the ESA’s definition of a “species” that may be classified as threatened or endangered.

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

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1           20.    The ESA requires the Service to determine whether any species is  
2 endangered or threatened because of any of the following factors: (A) the present or  
3 threatened destruction, modification, or curtailment of its habitat or range; (B)  
4 overutilization for commercial, recreational, scientific, or educational purposes; (C)  
5 disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other  
6 natural or manmade factors affecting its continued existence. *Id.* § 1533(a)(1).

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

17           22.    If the Service determines that a petition does present substantial  
18 information indicating that listing “may be warranted,” the agency must publish that  
19 finding and proceed with a scientific review of the species’ status, known as a “status  
20 review.” *Id.*

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

26           24.    If the Service determines that listing is “warranted,” the agency must  
27 publish that finding in the Federal Register along with the text of a proposed regulation to  
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1 list the species as endangered or threatened and take public comments on the proposed  
2 listing rule. *Id.* § 1533(b)(3)(B)(ii).

3 25. Within one year of publication of the proposed listing rule, the Service  
4 must publish in the Federal Register the final rule implementing its determination to list  
5 the species. *Id.* § 1533(b)(6)(A). This is known as a “final listing rule.”

## 6 **FACTUAL BACKGROUND**

### 7 **The southern bog turtle DPS**

8 26. The southern bog turtle DPS (*Glyptemys muhlenbergii*) is a distinct  
9 population of bog turtles, genetically isolated from the northern population. The southern  
10 population occurs from southern Virginia to northern Georgia. The bog turtle is North  
11 America’s smallest and rarest turtle species. Because of its small size and attractive  
12 appearance, bog turtles are one of the most popular animals in the wildlife trade and  
13 poaching continues to wipe out populations.

14 27. In the past twenty years, the southern bog turtle has declined by at least 50  
15 percent. Only 14 viable populations remain across its five-state southern range. The  
16 southern bog turtle’s total known population is likely less than 2,000 individuals. The  
17 remaining population consists of few juvenile turtles and has extremely low juvenile  
18 survival rates and little to no recruitment, which has led to a population precipice: adults  
19 are rapidly disappearing, and no juveniles are replacing them.

20 28. The southern bog turtle DPS is further threatened by habitat destruction,  
21 overutilization, disease and predation, inadequacy of existing regulatory mechanisms, and  
22 natural and manmade factors affecting its continued existence.

### 23 **The roughhead shiner**

24 29. The roughhead shiner (*Notropis semperasper*) is a small olive-colored  
25 minnow named for the distinctive bumps on its head. It lives only in the James River  
26 watershed in Virginia and nowhere else on Earth.

27 30. It is threatened with extinction primarily due to displacement by a non-  
28 native shiner species, the telescope shiner which has a 10-state range and has been

1 introduced outside its native range in Virginia as well as into the state of West Virginia. It  
2 is also threatened by habitat disturbance and climate change which is altering the shiner’s  
3 sensitive freshwater habitat with extreme heat, flooding, and heavy rainfall events.

4 31. The roughhead shiner was first flagged for conservation attention over 50  
5 years ago and the state of Virginia is aware of the imperiled status of the fish but has  
6 lacked the funding to research or improve its situation. ESA protection would  
7 immediately help protect the shiner through a recovery plan and federal funding to  
8 restore the remaining populations.

9 **Listing Petition and Response**

10 32. The Center petitioned the Service to list the southern bog turtle DPS in  
11 2022. In October of that year, the Service published a 90-day finding that the petition to  
12 list the southern bog turtle DPS presented “substantial scientific or commercial  
13 information indicating the petitioned entity may qualify as a DPS and that listing ... may  
14 be warranted due to loss and degradation of wetland habitat,” and that “development,  
15 vehicles and roads, overutilization (i.e., collection and poaching), disease and predation,  
16 invasive species, climate change, succession and lack of wetlands management, small  
17 population size and other biological factors may be threats to the southern population of  
18 bog turtle and regulatory mechanisms may be inadequate to address these potential  
19 threats.” 87 Fed. Reg. 63470 (Oct.19, 2022).

20 33. Because the Service found that the petition may be warranted, its 12-month  
21 finding was due one year after receipt of the petition. The deadline for publication of the  
22 12-month finding for the southern bog turtle DPS was January 1, 2023, and therefore it is  
23 past due.

24 34. The Center petitioned the Service to list the roughhead shiner in 2022. The  
25 following year, the Service published a 90-day finding that the petition to list the shiner  
26 presented substantial scientific or commercial information indicating listing may be  
27 warranted. 88 Fed. Reg. 16933, 16936 (Mar. 21, 2023). Specially, the Service found that  
28 based on its review of the petition, the shiner may warrant listing due to threats from

1 “habitat modification from siltation and/or contamination (Factor A), and competition  
2 from the introduced telescope shiner.” *Id.*

3 35. Because the Service found that the petition may be warranted, it was  
4 required to publish a 12-month finding one year after it received the petition. The  
5 deadline for publication of the 12-month finding for the roughhead shiner was March 25,  
6 2023, and therefore it is past due.

7 36. Until Defendants timely issue the statutorily overdue 12-month findings,  
8 the southern bog turtle DPS and the roughhead shiner will continue to lack necessary  
9 protections under the Act, contributing to their decline.

### 10 **CLAIMS FOR RELIEF**

#### 11 **Violation of the ESA for Failure to Publish a Timely 12-Month Findings for** 12 **the Southern bog turtle DPS and the Roughhead shiner**

13 37. Plaintiff re-alleges and incorporates all allegations set forth in the preceding  
14 paragraphs.

15 38. The ESA requires the Service to publish a 12-month finding within 12  
16 months of receiving a petition to list a species under the Act, when it makes a 90-day  
17 finding that listing may be warranted. In response to the Center’s petitions, the Service  
18 issued 90-day findings for the southern bog turtle DPS and the roughhead shiner and thus  
19 12-month findings were due 12 months after the petitions were submitted. Defendants  
20 failed to perform their nondiscretionary duty to publish these 12-month findings, in  
21 violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

### 22 **REQUEST FOR RELIEF**

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

- 25 1. Declare that Defendants violated the ESA by failing to issue a timely 12-  
26 month listing determination in response to the Center’s petition to list the  
27 southern bog turtle DPS and the roughhead shiner;

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2. Provide injunctive relief compelling Defendants to issue the 12-month findings by a date certain;
3. Retain continuing jurisdiction to review Defendants’ compliance with all judgments and orders herein;
4. Grant Plaintiff its reasonable attorneys’ fees and costs as provided by the ESA, 16 U.S.C. § 1540(g)(4); and
5. Provide such other relief as the Court deems just and proper.

Respectfully submitted and dated this 25th day of November, 2024.

*/s/ Camila Cossio*  
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