

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

CENTER FOR BIOLOGICAL DIVERSITY,

*Plaintiff,*

v.

Case No.

U.S. FISH AND WILDLIFE SERVICE;  
DOUG BURGUM, in his official capacity as  
Secretary of the Interior; and PAUL SOUZA  
in his official capacity as Acting Director of the U.S. Fish  
and Wildlife Service,

*Defendants.*

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**CENTER FOR BIOLOGICAL DIVERSITY’S COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

Center for Biological Diversity (Center) brings this action Doug Burgum, the Secretary of the Interior; Paul Souza, the Acting Director of the U.S. Fish and Wildlife Service; and the U.S. Fish and Wildlife Service (collectively, FWS), for failing to comply with the nondiscretionary deadlines set forth in the Endangered Species Act (or “Act”), 16 U.S.C. §§ 1531–1544.

1. First, the Center brings this action against FWS for its failure to issue final determinations on proposed regulations listing the Florida Keys mole skink (*Eumeces egregius egregius*) as threatened and the Rim Rock crowned snake (*Tantilla oolitica*) and Key ring-necked snake (*Diadophis punctatus acricus*) as endangered, and designating critical habitat. 16 U.S.C. § 1533(b)(6)(A)(i)(I)–(IV).

2. These three small and rare reptiles, found only in the southern tip of Florida and the Florida Keys, are facing existential threats from the combined effects of urban development and sea level rise driven by climate change. Their survival and recovery can only be assured by timely protections under the Endangered Species Act.

3. Indeed, FWS has already recognized that these animals are at risk of extinction and require protection when the agency proposed protecting each of them under the Endangered Species Act in fall 2022. Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Florida Keys Mole Skink and Designation of Critical Habitat, 87 Fed. Reg. 58648 (Sept. 27, 2022); Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rim Rock Crowned Snake and Key Ring-Necked Snake and Designation of Critical Habitat, 87 Fed. Reg. 62614 (Oct. 14, 2022).

4. Yet more than two years have passed, and FWS has failed to act and issue timely final determinations on the proposed regulations listing the species and designating critical habitat, which means these animals that require and deserve protection have gone without them.

5. Additionally, FWS has failed to designate critical habitats for eight south Florida plants that are listed as endangered or threatened—the Big Pine partridge pea (*Chamaecrista lineata* var. *keyensis*); wedge spurge (*Chamaesyce deltoidei* ssp. *Serpyllum*); sand flax (*Linum Arenicola*); Blodgett's silverbush (*Argythamnia blodgettii*); Everglades bully (*Sideroxylon reclinatum* ssp. *Austrofloridense*); Florida pineland crabgrass (*Digitaria pauciflora*); pineland sandmat (*chamaesyce deltoidei* ssp. *Pinetorum*); and Florida prairie-clover (*Dalea carthagenensis* var. *floridana*). 87 Fed. Reg. 62502 (Oct. 14, 2022); 87 Fed. Reg. 62564 (Oct. 14, 2022). FWS failed to designate critical habitat for these eight plant species within two years from the date of proposed listing after it found critical habitat was not then determinable and also failed to designate critical habitat within one year of its proposal to designate critical habitat, as required by law. 16 U.S.C. §§ 1533(a)(3)(A)(i), (b)(6)(A)(ii), (b)(6)(C)(ii).

6. FWS listed the Big Pine partridge pea, wedge spurge, and sand flax as endangered, and Blodgett's silverbush as threatened, on September 29, 2016, and concurrently concluded the critical habitat was not then determinable. 81 Fed. Reg. 66842 (Sept. 29, 2016).

7. The Endangered Species Act required FWS to designate critical habitat for these plants within two years of the proposed listing, by September 29, 2017. But FWS failed to comply with this nondiscretionary requirement.

8. FWS listed the Everglades bully, Florida pineland crabgrass, and pineland sandmat as threatened, and Florida prairie-clover as endangered, on October 6, 2017, and concurrently concluded the critical habitat was not then determinable. 82 Fed. Reg. 46691 (Oct. 6, 2017).

9. The Endangered Species Act required FWS to designate critical habitat for these plants within two years of the proposed listing, by October 11, 2018. But FWS failed to comply with this nondiscretionary requirement.

10. FWS finally published proposed rules to designate critical habitat for all eight plants on October 14, 2022. 87 Fed. Reg. 62502, 87 Fed. Reg. 62564.

11. FWS was then required to finalize its designation of critical habitat for the eight plants within a year of the proposed rules, by October 14, 2023, but it has yet to do so.

12. Consequently, FWS has been and continues to be in violation of the Endangered Species Act, depriving these endangered and threatened plants of vital habitat protections for years.

13. Compliance with the mandatory deadlines regarding these south Florida plants and animals is necessary to ensure their continued survival and recovery.

#### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c), (g)(1)(C) (action arising under the Endangered Species Act's citizen suit provision); 5 U.S.C. § 702 (review of agency action under the Administrative Procedure Act); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1346 (United States as a Defendant).

15. This Court may grant the relief requested under the Endangered Species Act, 16 U.S.C. § 1540(g); the APA, 5 U.S.C. §§ 701-706; and 28 U.S.C. §§ 2201 and 2202 (declaratory and injunctive relief).

16. The Center provided sixty days' notice of its intent to file this suit pursuant to the citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(C), by letters to FWS dated August 15, 2024. Because FWS has not remedied the legal violations outlined in the notices by the date of this Complaint's filing, there exists an actual, justiciable controversy between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

17. Venue is proper in the United States District Court for the Southern District of Florida under 16 U.S.C. § 1540(g)(3)(A) because any person may commence a civil suit on his own behalf "in the judicial district in which the violation occurs," and under 28 U.S.C. § 1391(e) because the south Florida plants and animals are all located within this judicial district.

18. Venue is also proper in this Division according to Local Rule 3.1 because proposed critical habitat for the majority of the plant and animal species is located in Miami-Dade County.

### **PARTIES**

19. Plaintiff **CENTER FOR BIOLOGICAL DIVERSITY** is a national, nonprofit conservation organization incorporated in California and headquartered in Tucson, Arizona, with field offices throughout the United States and Mexico, including in Florida. The Center works through science, law, and creative media to secure a future for all species, great and small, hovering on the brink of extinction.

20. The Center has more than 79,000 members throughout the country. The Center and its members are concerned with the conservation of threatened and endangered species, including the Rim Rock crowned snake, the Key ring-necked snake, the Florida Keys mole skink, and eight south Florida plants, and ensuring the effectiveness of the Endangered Species Act's implementation.

21. The Center's individual members and staff include individuals with interests in the south Florida plants and animals and their habitat, ranging from scientific, professional, and educational to recreational, aesthetic, moral, and spiritual. The Center's members and staff enjoy, on an ongoing basis, the biological, scientific, research, education, economic, conservation, recreational, and aesthetic values of Florida's endemic plants and reptiles.

22. For example, one Center member, Stephanie Clements, regularly visits preserves in Miami to participate in photography, hiking, and wildlife watching. She continues to participate in searches for the Rim Rock crowned snake during "Bio Blitzes," as the species is rarely spotted, and she hopes to see it someday. As a biologist, this member takes personal joy in knowing that endemic Florida reptiles exist and can be spotted by herself, her family, and other wildlife-spotting enthusiasts.

23. Another Center member, George Gann, is a botanist who regularly visits pine rocklands and other habitats of the eight plant species. He has observed and studied all eight plants in their native environments recreationally and professionally.

24. Yet another Center member, Jordan Mannix-Lachner, is a lifelong Florida Keys resident who regularly visits pine rocklands and other habitat in the Keys, with plans to return to

continue to search for the Florida Keys mole skink, Key ring-necked snake, and Rim Rock crowned snake in the hopes of observing them.

25. FWS's failure to meet the Endangered Species Act's nondiscretionary deadlines to issue final determinations on the proposed regulations to protect and designate critical habitat for the south Florida plants and animals denies these species the protections they need to survive and recover, which in turn injures the Center's interests.

26. While FWS continues to delay listing these species and designating critical habitat, they continue to go without comprehensive recovery planning and protections for areas of habitat that are critical to safeguarding them from the threats of climate change and development. The impacts of climate change and development have and continue to destroy these species' habitats and push them closer to extinction. This lack of protection harms their chances to survive and recover, which, in turn, injures the Center and its members' interest in them. These injuries described are actual, concrete, and ongoing, presently suffered by the Center and its members, and they will continue to occur unless this Court grants relief. FWS's failure to adhere to the Endangered Species Act's statutory timeliness directly causes these injuries.

27. The relief sought in this case—an order compelling FWS to finalize the Endangered Species Act rulemaking process by a date certain—would redress these injuries by protecting the plants' and animals' habitat before they can be further degraded or destroyed, so the Center and its members can continue to pursue their interests in them and their habitat. The Center and its members have no other adequate remedy at law.

28. Defendant **U.S. FISH AND WILDLIFE SERVICE** is the federal agency within the Department of Interior that is charged with implementing the Endangered Species Act for the Rim Rock crowned snake, Key ring-necked snake, Florida Keys mole skink, and the eight south Florida plants, including through compliance with provisions requiring timely designation of critical habitat for endangered species.<sup>1</sup>

29. Defendant **DOUG BURGUM** is the Secretary of the Department of the Interior and is the federal official responsible for administering and implementing the provisions of the Endangered Species Act, including timely listing and critical habitat regulations for the Rim

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<sup>1</sup> The Secretary of the U.S. Department of the Interior has delegated administration of the Endangered Species Act to FWS through 50 C.F.R. § 402.01(b).

Rock crowned snake, Key ring-necked snake, Florida Keys mole skink, and eight south Florida plants. The Center sues Defendant Burgum in his official capacity.

30. Defendant **PAUL SOUZA** is the Acting Director of the U.S. Fish and Wildlife Service. By holding this position, he is charged with implementing the Endangered Species Act for the Rim Rock crowned snake, Key ring-necked snake, Florida Keys mole skink, and south Florida plants including through compliance with the Endangered Species Act's mandatory listing and critical habitat deadlines. The Center sues Defendant Souza in his official capacity.

31. Defendants Doug Burgum, in his official capacity as Secretary of the United States Department of the Interior; and Paul Souza, in his official capacity as Acting Director of FWS, have waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) and 5 U.S.C. § 702.

### STATUTORY FRAMEWORK

32. The Endangered Species Act is a comprehensive federal statute that declares endangered and threatened species to be of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). The purpose of the Endangered Species Act is 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.” *Id.* § 1531(b).

33. For this purpose, section 4(a) of the Endangered Species Act requires that the Secretary protect imperiled species by listing them as either “endangered” or “threatened.” *Id.* § 1533(a). The Endangered Species Act defines a “species” as “any subspecies of fish or wildlife or plant and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16).

34. A species is “endangered” if it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6).

35. A species is “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

36. When FWS lists a species as threatened or endangered, the species receives a host of protections designed to prevent its extinction and support its recovery, including one of the most crucial protections—safeguards for critical habitat. *Id.* § 1533(a)(3)(A).

37. The Endangered Species Act requires the agency to designate “critical habitat” for listed species “to the maximum extent prudent and determinable,” *id.* § 1533(a)(3), “develop and implement” recovery plans, *id.* § 1533(f). Critical habitat includes specific areas occupied by the threatened or endangered species with “those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.” *Id.* § 1532(5)(A) (cleaned up). Areas unoccupied by the species that “are essential for the conservation of the species” are also included within the definition of critical habitat. *Id.*

38. FWS may also acquire land, *id.* § 1534, and make federal funds available to states to assist in the conservation of endangered and threatened species, *id.* § 1535(d). Additionally, listed species are protected from unpermitted “take,” which is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* §§ 1538, 1532(19).

39. To ensure the timely protection of species at risk of extinction, Congress set forth a detailed process whereby citizens may petition the Secretary to list a species as endangered or threatened. The process includes mandatory, nondiscretionary deadlines that the Secretary must meet so that species in need of protection receive the Endangered Species Act’s substantive protections in a timely fashion. *Id.* §§ 1533(a)(3), (b)(3)–(6).

40. Upon receipt of a listing petition, FWS must, “to the maximum extent practicable, within 90-days” make 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). If FWS determines that a petition does present substantial information indicating that listing “may be warranted,” the agency must publish that finding and proceed with a full scientific review of the species’ status, known as a “status review.” *Id.*

41. Upon completing the status review, within 12 months of receiving the petition, FWS must publish a “12-month finding” making one of three listing determinations: (1) the petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted but precluded by higher-priority listing actions. *Id.* § 1533(b)(3)(B).

42. If FWS’s 12-month finding concludes that listing is warranted, the agency must publish notice of the proposed regulation to list the species as endangered or threatened in the Federal Register for public comment. *Id.* § 1533(b)(3)(B)(ii).



43. Within one year of publication of the proposed regulation, the Endangered Species Act requires FWS to render its final determination on the proposal. *Id.* § 1533(b)(6)(A). At such time, FWS must either list the species, withdraw the proposed listing regulation, or, if there is substantial disagreement about scientific data, delay a final listing determination for up to six months in order to solicit more scientific information. *Id.* §§ 1533(b)(6)(A)(i), (B)(i).

44. With limited exceptions, the Endangered Species Act requires FWS to designate “critical habitat” at the time of an imperiled species’ listing as endangered or threatened. *Id.* § 1533(a)(3)(A). Thus, FWS must, “to the maximum extent prudent and determinable,” designate critical habitat for a species “concurrently with making a determination . . . that a species is an endangered species or a threatened species,” *id.* § 1533(a)(3)(A)(i), and within one year of proposing critical habitat, *id.* §§ 1533(b)(6)(A)(ii), (C)(ii).

45. In requiring the designation of critical habitat at the time of listing the species, the Endangered Species Act aims to ensure that all species at risk of extinction receive these essential habitat protections in a timely manner. *Id.* §§ 1533(a)(3)(A), (b)(6)(A)(ii) (critical habitat must be designated within a year of publication of the proposed regulation to designate critical habitat), (b)(6)(C); see also *id.* § 1531(b) (statutory directive to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved”).

46. The Endangered Species Act’s conservation measures apply only after the Secretary lists a species as threatened or endangered. Section 7(a)(2) of the Endangered Species Act requires all federal agencies to ensure that their actions do not “jeopardize the continued existence” of any listed species or “result in the destruction or adverse modification” of a species’ critical habitat. *Id.* § 1535(a)(2). Protecting critical habitat is crucial for the protection and recovery of many listed species, especially those that are endangered or threatened because of historical and ongoing habitat loss or degradation.

47. The Endangered Species Act does not protect a species facing extinction until FWS lists it as endangered or threatened and designates critical habitat; therefore, it is critical that FWS complies with the Endangered Species Act’s procedures and deadlines designed to ensure the species are protected in a timely manner.



48. Protecting a species' critical habitat is crucial for the protection and recovery of many listed species, especially those that are endangered or threatened because of historical and ongoing habitat loss or degradation.

### **FACTUAL BACKGROUND**

#### *Rim Rock crowned snake*

49. Named for the Miami Rim Rock geological formation, the Rim Rock crowned snake, pictured below, is a pinkish-tan snake with a black cap or "crown" on its head. An adult snake can grow to between six and nine inches long, with female snakes growing longer than male snakes.



Photo credit: FWC Fish and Wildlife Research Institute

50. The Rim Rock crowned snake is endemic to southeastern Florida and the Florida Keys, and its habitat includes pine rocklands, hardwood hammocks, and coastal areas.

51. It can be found either underground or in crevices, holes, or gaps in rocks or organic matter.

52. Its diet consists of worms, centipedes, spiders, insects, larvae, and other small invertebrates.

53. The Rim Rock crowned snake and its habitat face a number of threats, including urban and residential development, flooding, and storm surges.

#### *Key ring-necked snake*

54. The Key ring-necked snake, pictured below, is a black snake with a greyish black head and vibrant coloring on its underside, ranging from bright yellow to dark red. Unlike other ring-necked snakes, the band around the Key ring-necked snake is indistinct or even absent. The adult snake will grow to be between six and ten inches.



Photo credit: Keith Enge/FWC

55. The Key ring-necked snake is endemic to the Florida Keys, living solely in the seven lower Keys: Key West, Big Pine Key, Little Torch Key, Middle Torch Key, No Name Key, Cudjoe Key, and Stock Island.

56. Like the Rim Rock crowned snake, the Key ring-necked snake lives in pine rocklands and hardwood hammock. It is nocturnal and lives largely underground or in rotten stumps, fallen logs, pockets of organic matter in holes, or in shallow depressions in limestone.

57. The Key ring-necked snake's diet includes small insects, slugs, earthworms, anoles, geckos, tadpoles, frogs, and even other snakes.

58. Threats to the Key ring-necked snake and its habitat include rising seas, severe storms, fire suppression, saltwater intrusion, and flooding.

*The Rim Rock crowned snake's and Key ring-necked snake's petition and litigation history*

59. In 2012, the Center filed a petition to list both the Rim Rock crowned snake and the Key ring-necked snake under the Endangered Species Act.

60. In 2015, FWS published its 90-day finding in response to the Center's 2012 petition, finding that the petition presented substantial scientific information indicating that listing both snakes under the Endangered Species Act may be warranted. Endangered and Threatened Wildlife and Plants; 90-Day Findings on 31 Petitions, 80 Fed. Reg. 37568, 37568 (July 1, 2015).

61. After FWS failed to make the requisite “12-month findings” to determine whether the snakes warranted listing, in 2020 the Center filed a lawsuit to compel FWS to publish a decision, which resulted in FWS’s agreement to publish 12-month findings for the Rim Rock crowned snake and the Key ring-necked snake by September 30, 2022.

62. On October 14, 2022, FWS published proposed regulations to list both snakes as endangered under the Endangered Species Act and to designate critical habitat for both species. 87 Fed. Reg. 62614.

63. Therefore, the deadline for FWS to publish a final determination on the proposed regulation to list the species and designate critical habitat was one year from the date of the proposed regulation, on October 14, 2023. 16 U.S.C. § 1533(b)(6)(A).

64. On November 28, 2022, FWS extended the 60-day public comment deadline for the proposed regulation, changing the public comment deadline from December 13, 2022, to January 12, 2023. Endangered and Threatened Wildlife and Plants; Extending the Comment Periods for Four Proposed Rules, 87 Fed. Reg. 72958 (Nov. 28, 2022).

65. This extension of the comment period did not—and could not—extend FWS’s one-year deadline to publish a final regulation on its proposed listing determination and critical habitat designation for the Rim Rock crowned snake and the Key ring-necked snake.

66. On August 15, 2024, FWS still had not published a final regulation listing and designating critical habitat for the Rim Rock crowned snake and the Key ring-necked snake, so the Center sent a Notice of Intent to Sue to FWS.

67. As of the date of this Complaint, FWS has not published a final regulation listing and designating critical habitat for the Rim Rock crowned snake and the Key ring-necked snake or otherwise acted on the proposed rule.

#### *Florida Keys mole skink*

68. The Florida Keys mole skink, pictured below, is a small lizard that is typically brown, tan, or gray in color, with two-to-four stripes running down its back to the base of the tail, which is brightly colored, typically orange, red, or pink. Adult skinks can grow to about five inches long.



Photo credit: Jake Scott/FWC

69. The Florida Keys mole skink is endemic to the Florida Keys. Historically, it has been observed on 23 islands in the Keys, with the largest known population living on Long Beach on Big Pine Key.

70. Most often, the Florida Keys mole skink can be found underground or under groundcover, like low-lying vegetation. It lives in sandy areas, burrowing beneath rocks, leaves, leaf litter, debris, and tidal wrack.

71. The Florida Keys mole skink has a diet that consists of small arthropods and insects such as spiders, roaches, crickets, ants, beetles, termites, small bugs, butterfly larva, mites, pseudoscorpions, and fungus.

72. The Florida Keys mole skink and its habitat are threatened by human activity and development, sea-level rise, beach erosion, resource competition and predation from invasive species, and severe weather events fueled by climate change.

*The Florida Keys mole skink's petition and litigation history*

73. The Center petitioned FWS to protect the Florida Keys mole skink under the Endangered Species Act in 2010. In response, in 2011 FWS published a "90-day finding" that listing the skink as threatened or endangered under the Endangered Species Act may be warranted. Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened with Critical Habitat, 76 Fed. Reg. 59836, 59836 (Sept. 27, 2011).

74. After FWS failed to publish a “12-month finding,” the Center filed a lawsuit, which resulted in FWS stipulating that it would publish a 12-month finding on September 30, 2017.

75. On October 5, 2017, FWS published a 12-month finding that the Florida Keys mole skink did not warrant Endangered Species Act protection, despite finding that most of the skink’s remaining habitat would be destroyed or degraded by sea level rise and development by the end of this century. 82 Fed. Reg. 46618 (Oct. 5, 2017).

76. Following a lawsuit filed by Center, a Judge Rosenberg held that FWS arbitrarily and unlawfully denied Endangered Species Act protection to the Florida Keys mole skink and remanded the decision back to the agency. *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 488 F. Supp. 3d 1219 (S.D. Fla. 2020).

77. Two years later on September 27, 2022, FWS published a proposal to list the Florida Keys mole skink as threatened and to designate critical habitat, finding that “12 of the 15 current populations . . . are projected to be extirpated by 2040, with significant habitat loss projected for islands with remaining populations.” 87 Fed. Reg. 58648, 58662.

78. The deadline to publish a final determination on the proposed regulation to list the Florida Keys mole skink and designate critical habitat was September 27, 2023. 16 U.S.C. § 1533(b)(6)(A).

79. On November 28, 2022, FWS published a notice extending the 60-day public comment deadline for the proposed regulation, providing a new comment deadline of January 12, 2023. 87 Fed. Reg. 72958.

80. Though FWS extended the public comment deadline, it did not—and could not—extend the one-year deadline to publish a final determination on the proposed regulation.

81. As of August 15, 2024, FWS had still not published a final regulation listing and designating critical habitat for the Florida Keys mole skink. Because of this statutory violation, the Center sent FWS a Notice of Intent to Sue.

82. As of the date of this Complaint, FWS has not published a final regulation listing and designating critical habitat for the Florida Keys mole skink, or otherwise acted on the proposed rule.



*South Florida Plants*

92. The Big Pine partridge pea, wedge spurge, sand flax, Blodgett's silverbush, Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, all listed as either endangered or threatened under the Endangered Species Act, are south Florida plants that live predominantly in delicate, critically endangered pine rocklands ecosystems.

93. Pineland sandmat is exclusive to the pine rocklands, whereas the other plants are also found in other habitats. The Big Pine partridge pea, wedge spurge, and sand flax's primary habitat are the pine rocklands, but they also inhabit nearby vacant lots. The Blodgett's silverbush inhabits rockland hammock and coastal berm. The Everglades bully and Florida pineland crabgrass inhabit marl prairies and ecotone between its habitats. The Florida Prairie-clover inhabits marl prairie, rockland hammock, coastal berm, and disturbed adjacent sites such as roadsides and mowed areas still dominated by native species.



Big Pine partridge pea and pineland sandmat, Image Credit: Jennifer Possley/Fairchild Tropical Botanical Garden



Florida prairie-clover, Image Credit: Susan Kolterman/Fairchild Tropical Botanical Garden;  
Everglades bully, Image Credit: Elise Bennett

#### *Pine rocklands*

94. Pine rocklands are fragile ecosystems found in Everglades National Park, the Miami Rock Ridge, the Florida Keys, Big Cypress National Preserve, as well as in the Bahamas and Cuba. Several native and endemic species, including the eight south Florida plants, are found in these pine rocklands and rely on the protection and maintenance of this unique tropical ecosystem.

95. In addition to the native flora of pine rocklands, wildlife rely on the stability of the plants within this ecosystem. Some insect species, like the Miami blue butterfly, Florida leafwing, Bartram's scrub-hairstreak, and Miami tiger beetle, exclusively depend on the flora found in and around pine rocklands. Additionally, for the Key deer, the smallest subspecies of white-tailed deer that is found only in the Florida Keys, pine rocklands provide diverse plants to forage on and essential permanent freshwater drinking sources. The Key deer would cease to exist without the plants and the pine rocklands ecosystem in which the plants inhabit.

96. Pine rocklands are globally critically imperiled and threatened by fire suppression, climate change, and sprawl development. For example, in mainland south Florida, 90 percent of pine rockland acreage has been destroyed or degraded by rapid urbanization and agricultural development, as demonstrated in the images below.



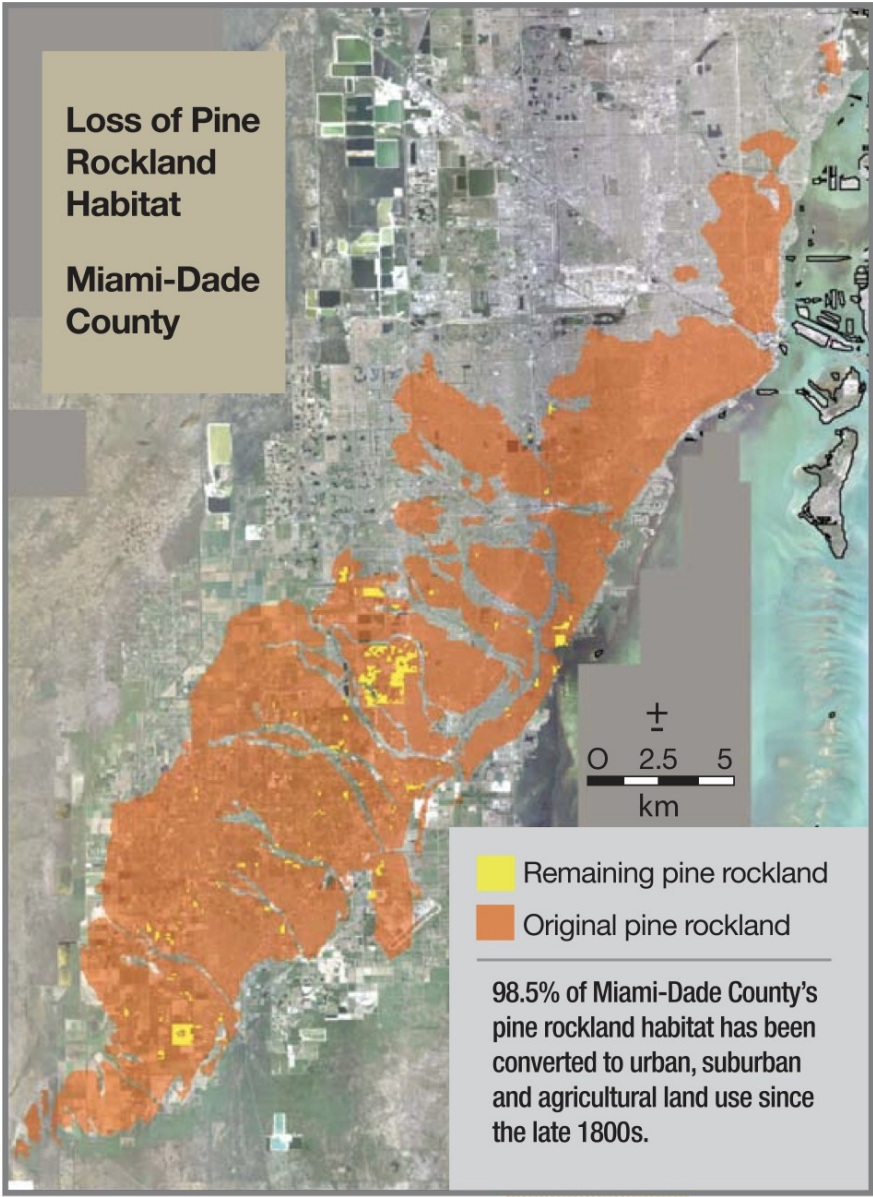


Image Credit: Karen Minkowski, Keith Bradley, and George Gann

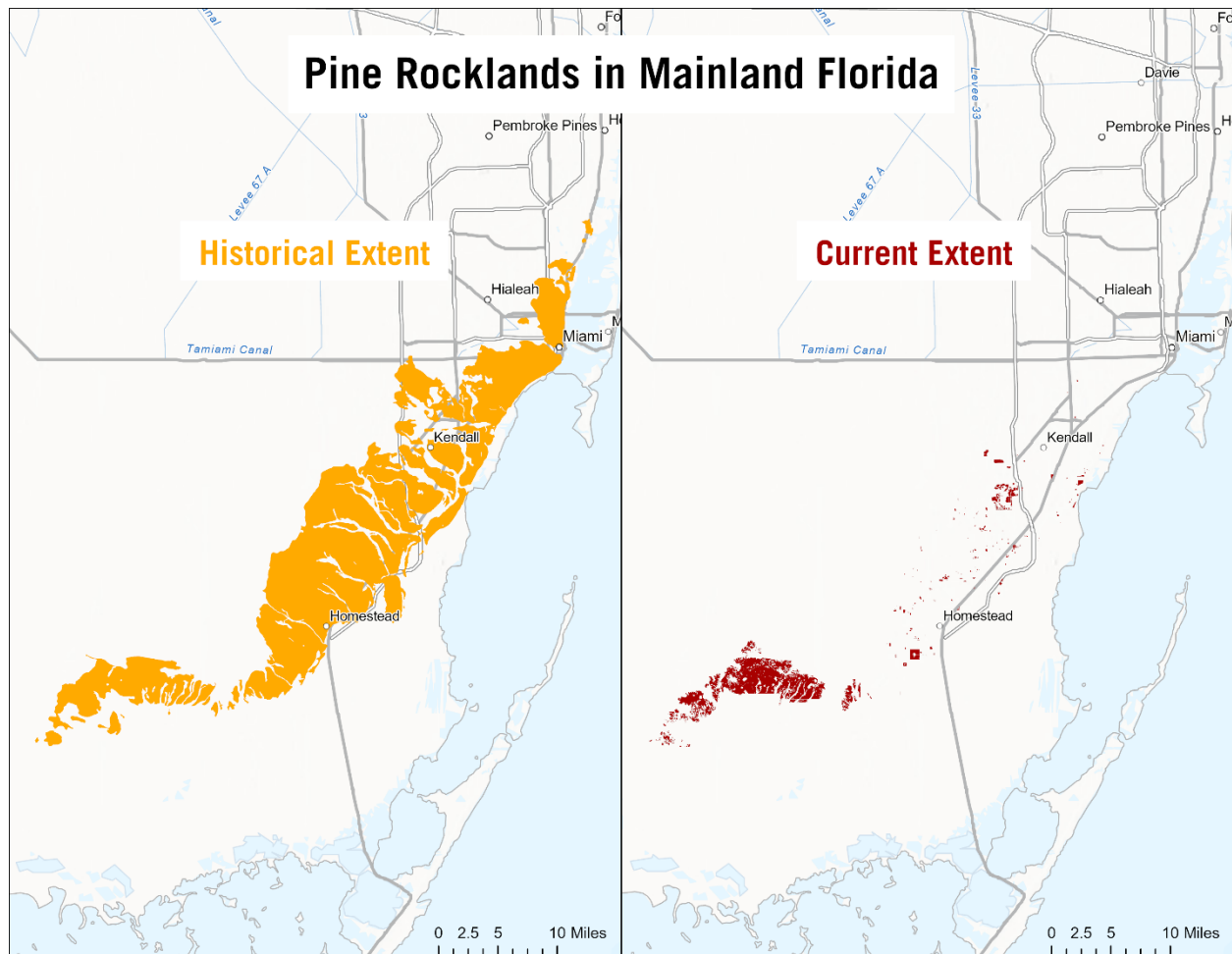


Image Credit: Kara Clauser, Center for Biological Diversity

97. Fires in the pine rocklands are essential to various life stages of herbs and plants. Unsuppressed fires quickly spread through entire swaths of pine rocklands, clearing away tree canopy growth and allowing more sun to reach the rare and imperiled plants on the ground below. Historically, unsuppressed fires would occur every three to seven years from lightning strikes during the summer rainy season. Today, however, fires rarely occur naturally. This is due to habitat destruction and fragmentation, driven by rapid urbanization and agricultural development. Fires are actively suppressed to reduce risk or nuisance to nearby human communities, and where fires do occur, they are in fragmented portions of pine rocklands, leaving the other habitat fragments unmanaged.

98. Climate change is an ongoing threat to the pine rocklands ecosystem. Many plants found in pine rocklands are not adapted to tolerate salt spray and periods of post-hurricane inundation. For example, in 2005, Hurricane Wilma killed off the entire population of the Big

Pine partridge pea from Middle Torch Key and left behind only a single plant on Big Torch Key.

99. The rapid urbanization of south Florida has led to destruction, fragmentation, predation of seeds, fire suppression, and human disturbances of pine rocklands habitat. Outside of Everglades National Park, less than two percent of the original extent of pine rocklands within Miami-Dade County's urban corridor are all that remain. Fragmentation increases the proportion of edge habitat or the spaces that exist between two different types of ecosystems. This alters microclimates and community structure, alters fire distribution, and increases pressure from non-native plants and animals. For example, predation of Big Pine partridge pea seeds by increased insect pressure in and around urban areas resulted in decreased seed production. The urbanization on Key West likely caused the annihilation of a population of Blodgett's silverbush.

*The south Florida plants' listing and litigation history*

100. Recognizing the imminent threat of extinction for these plants, on September 29, 2015, FWS published a proposed rule to list the Big Pine partridge pea, wedge spurge, and sand flax as endangered and the Blodgett's silverbush as threatened but asserted that critical habitat was not determinable. Endangered and Threatened Wildlife and Plants; Endangered Species Status for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), and *Linum arenicola* (Sand Flax), and Threatened Species Status for *Argythamnia blodgettii* (Blodgett's Silverbush), Proposed Rule, 80 Fed. Reg. 58536, 58566 (Sept. 29, 2015).

101. On September 29, 2016, FWS issued a final rule listing the Big Pine partridge pea, wedge spurge, and sand flax as endangered and Blodgett's silverbush as threatened under the Endangered Species Act, but did not designate critical habitat, maintaining that critical habitat was not then determinable. 81 Fed. Reg. 66842, 66864.

102. The "not determinable" finding gave FWS one additional year from the date of the proposed listing, or until September 29, 2017, to determine critical habitat.

103. FWS did not publish a critical habitat final determination for the Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush by September 29, 2017.

104. On October 11, 2016, FWS published a proposed rule to list the Everglades bully, Florida pineland crabgrass, and pineland sandmat as threatened and the Florida prairie-clover as endangered but asserted that critical habitat was not determinable. 81 Fed. Reg. 70282, 70307 (Oct. 11, 2016).

105. On October 6, 2017, FWS issued a final rule listing the Florida prairie-clover as endangered and the Everglades bully, Florida pineland crabgrass, and pineland sandmat as threatened under the Endangered Species Act, but did not designate critical habitat, maintaining that critical habitat was not then determinable. 82 Fed. Reg. 46691.

106. The “not determinable” finding gave FWS one additional year from the date of the proposed listing, or until October 11, 2018, to determine critical habitat.

107. FWS did not publish a final critical habitat designation for the Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover by October 11, 2018.

108. On October 14, 2022, FWS finally published a proposed rule to designate critical habitat for the eight plants. 87 Fed. Reg. 62502, 62564.

109. On November 28, 2022, following Hurricane Ian, FWS extended the comment period until January 12, 2023. 87 Fed. Reg. 72958.

110. FWS was required to finalize its designation of critical habitat for the plants within a year of the proposed rule, by October 14, 2023, but as of the date of the Complaint, it has yet to do so. Consequently, FWS has been and continues to be in violation of the Endangered Species Act.

111. To guarantee these eight threatened and endangered plants are fully protected, FWS must promptly designate critical habitat so that the habitat that is essential to their survival and recovery is not destroyed or adversely modified by federal agencies when making decisions in south Florida.

### **CLAIM FOR RELIEF**

113. The Center re-alleges and incorporates by reference all the allegations set forth in this Complaint.

114. The Endangered Species Act mandates that FWS shall publish, within a one-year period, a final decision on a proposal to list a species or designate critical habitat. 16 U.S.C. § 1533 (b)(6)(A).

115. The Endangered Species Act also mandates that a final regulation designating critical habitat of an endangered or threatened species be published concurrently with the final regulation implementing the determination the species is endangered, unless the habitat is not determinable, in which case the regulation may not be extended more than one additional year. *Id.* §§ 1533(a)(3)(A), (b)(6)(C). At the end of that year, a final regulation must be published. *Id.*

§ 1533(b)(6)(C)(ii). FWS has violated these express statutory commands of the Endangered Species Act.

116. The deadline for the Rim Rock crowned snake and the Key ring-necked snake's final listing and critical habitat designation was October 14, 2023, one year from the publication of the proposed regulation on October 14, 2022. As of the date of this Complaint, FWS has not issued the final regulation listing the species and designating critical habitat and thus has missed this deadline.

117. The deadline for the Florida Keys mole skink's final listing and critical habitat designation was September 27, 2023, one year from the publication of the proposed regulation on September 27, 2022. As of the date of the date this Complaint, FWS has not issued the final regulation listing the species and designating critical habitat and thus has missed this deadline.

118. FWS's violations of the Endangered Species Act's express statutory command to issue a final listing decision and critical habitat designation within twelve months has caused injury to the Center and its members' interests in the three reptile species. A Court order requiring FWS to issue the final regulations by a date certain would remedy the Center's injuries.

119. Alternatively, these failures constitute agency actions that have been "unlawfully withheld or unreasonably delayed" within the meaning of the APA. 5 U.S.C. § 706(1).

120. FWS published a final rule on September 29, 2016, listing the Big Pine partridge pea, wedge spurge, and sand flax as endangered and Blodgett's silverbush as threatened under the Endangered Species Act, but did not designate critical habitat, maintaining that critical habitat was not then determinable.

121. FWS did not designate critical habitat within one additional year from the date of the proposed listing, or by September 29, 2017, in violation of the nondiscretionary deadline set forth in the Endangered Species Act.

122. FWS published a final rule on October 6, 2017, listing the Florida prairie-clover as endangered and the Everglades bully, Florida pineland crabgrass, and pineland sandmat as threatened under the Endangered Species Act, but did not designate critical habitat, maintaining the critical habitat was not then determinable.

123. FWS did not designate critical habitat within one additional year from the proposed listing, or by October 11, 2018, in violation of the nondiscretionary deadline set forth in the Endangered Species Act.

124. FWS published a proposed rule to designate critical habitat for the eight plants on October 14, 2023, but as of the date of this Complaint, more than a year later, it still has not published a rule finalizing that proposal and are thus in violation of the Endangered Species Act's express statutory command to timely designate critical habitat within one year of a proposed regulation designation critical habitat.

125. The Center and its members are injured by FWS's failure to comply with the Endangered Species Act's nondiscretionary deadlines to designate critical habitat for the plants.

126. FWS has violated the Endangered Species Act, 16 U.S.C. § 1533(a)(3)(A), (b)(6)(A), (C), as well as its implementing regulations, by failing to finalize listing and critical habitat determinations for the reptiles and failing to finalize critical habitat determinations for the plants. Compliance with these mandatory deadlines is necessary to ensure the continued survival and recovery of these South Florida species.

127. This failure to comply with mandatory deadlines also constitutes agency action "unlawfully withheld or unreasonably delayed" within the meaning of the APA. 5 U.S.C. § 706(1).

### **REQUEST FOR RELIEF**

The Center respectfully requests that this Court enter a judgment for the Center providing the following relief:

1. Declare FWS violated the Endangered Species Act and/or the APA by failing to designate critical habitat for the eight south Florida plants;
2. Declare that FWS violated the Endangered Species Act and/or APA by failing to publish final determinations on the proposed regulations to list and designate critical habitat for the Rim Rock crowned snake, Key ring-necked snake, and Florida Keys mole skink;
3. Order FWS to designate, by a date certain, final critical habitat for the eight south Florida plants under the Endangered Species Act, 16 U.S.C. §§ 1533(a)(3)(A)(i), (b)(6)(C)(ii), (b)(6)(A)(ii).
4. Order FWS to issue, by a date certain, a final determination on the proposed regulations listing and designating critical habitat for the Rim Rock crowned snake, Key ring-necked snake, and Florida Keys mole skink under the Endangered Species Act, 16 U.S.C. § 1533(a)(3)(A)(i);



5. Award the Center attorneys' fees and costs in this action as provided by the Endangered Species Act, 16 U.S.C. § 1540(g)(4), or any other applicable law; and

6. Provide such other relief as this Court deems just and proper.

DATED: March 13, 2025

Respectfully submitted,

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