

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, )  
1333 N. Oracle Road )  
Tucson, AZ 85705 )

Plaintiff, )

v. )

SALLY JEWELL, Secretary of the Interior, )  
U.S. Department of the Interior )  
1849 C Street NW )  
Washington, DC 20240 )

and )

U.S. FISH AND WILDLIFE SERVICE, )  
1849 C Street NW )  
Washington, DC 20240 )

Defendants. )  
\_\_\_\_\_ )

Civil No: \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Center for Biological Diversity (“Center”) brings this action under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”), to challenge the failure of the Secretary of the Interior (“Secretary”) and the U.S. Fish and Wildlife Service (“FWS”) (collectively, “Defendants” or “FWS”) to make statutorily-required findings on whether to list nine species as endangered or threatened under the ESA. 16 U.S.C. § 1533(b)(3)(B). These species are experiencing steep population declines and myriad threats to their very existence. They are the Sierra Nevada red fox (*Vulpes vulpes necator*), Suwannee moccasinshell (*Medionidus walkeri*), Bicknell’s thrush (*Catharus bicknelli*), hellbender (*Cryptobranchus alleganiensis*), Panama City crayfish (*Procambarus econfinae*), boreal toad (*Anaxyrus boreas*),

Macgillivray's seaside sparrow (*Ammodramus maritimus macgillivraii*), Florida Keys mole skink (*Plestiodon egregius egregious*), and the bridled darter (*Percina kusha*).

2. To obtain federal safeguards and habitat protections, the Center submitted petitions to list these nine species as endangered or threatened pursuant to the ESA. FWS issued "90-day findings" in response to the Center's petitions, which concluded that the petitions presented substantial information indicating that listing each of these species "may be warranted." 16 U.S.C. § 1533(b)(3)(A); *see also* 76 Fed. Reg. 59,835 (Sept. 27, 2011) (Suwannee moccasinshell, Panama City crayfish, Macgillivray's seaside sparrow, Florida Keys mole skink, bridled darter); 77 Fed. Reg. 45 (January 3, 2012) (Sierra Nevada red fox); 77 Fed. Reg. 48,934 (August 15, 2012) (Bicknell's thrush); 77 Fed. Reg. 21,920 (April 12, 2012) (boreal toad); 76 Fed. Reg. 61,978 (October 6, 2011) (hellbender). To date, however, FWS has failed to make the mandatory "12-month findings" as to whether the listing of the species is "warranted." 16 U.S.C. § 1533(b)(3)(B). Defendants are therefore in violation of the ESA.

3. Thus, by this action the Center seeks declaratory and injunctive relief to enforce the ESA's mandatory deadline for Defendants to make 12-month findings in response to the Center's petitions to list the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender, Panama City crayfish, boreal toad, Macgillivray's seaside sparrow, Florida Keys mole skink, and bridled darter, and to compel Defendants to determine whether listing these species as endangered or threatened is warranted. *Id.* § 1533(b)(3)(B).

#### JURISDICTION

4. The Court has jurisdiction over this action pursuant to *Id.* §§ 1540(c), (g)(1)(C) (action arising under ESA citizen suit provision), 5 U.S.C. § 702 (review of agency action under the Administrative Procedure Act or "APA"), and 28 U.S.C. § 1331 (federal question

jurisdiction).

5. The Court may grant the relief requested under the ESA, 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).

6. The Center provided 60 days notice of its intent to file this suit pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g)(2)(C), by letters to Defendants dated: January 16, 2013 (Sierra Nevada red fox); March 14, 2013 (Suwannee moccasinshell and Bridled darter); March 19, 2013 (Bicknell's thrush); May 22, 2012 (hellbender); June 18, 2012 (Panama City crayfish); January 24, 2012 (boreal toad); and February 20, 2013 (Macgillivray's seaside sparrow and Florida Keys mole skink). Defendants have not responded to these notices of the Center's intent to sue nor have the Defendants remedied the alleged violations. Therefore, an actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

#### VENUE

7. Venue is proper in the United States District Court for the District of Columbia pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because the Department of the Interior and FWS headquarters are found within this district, and a substantial part of the events giving rise to the Center's claim occurred in this district.

#### PARTIES

8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit corporation incorporated in California and headquartered in Tucson, Arizona, with field offices throughout the United States, including Arizona, New Mexico, California, Nevada, Oregon, Washington, Alaska, Minnesota, Vermont, Florida, Washington, and Washington, D.C. The Center works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction. The Center has nearly 49,000 members and more than

400,000 online supporters. The Center and its members are concerned with the conservation of imperiled species, including the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender, Panama City crayfish, boreal toad, Macgillivray's seaside sparrow, Florida Keys mole skink, and bridled darter, and with the effective implementation of the ESA.

9. The Center has members who visit areas where the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender, Panama City crayfish, boreal toad, Macgillivray's seaside sparrow, Florida Keys mole skink, and bridled darter are still known to occur. The Center's members use these areas for observation of these species and other wildlife, for research, nature photography, aesthetic enjoyment, recreational, educational, and other activities. The Center's members derive professional, aesthetic, spiritual, recreational, economic, and educational benefits from these species and their habitats. Those members have concrete plans to continue to travel to and recreate in areas where they can observe these species and will continue to maintain an interest in these species and their habitats in the future.

10. In addition to submitting petitions to list these nine species under the ESA, the Center and its members have participated in conservation efforts. For example, the Center has campaigns organized towards ending the Southeast Freshwater Extinction Crisis, which would help species like the Suwannee moccasinshell, Panama City crayfish, hellbender and Macgillivray's seaside sparrow. The Center's campaign for pesticide reduction has sought to reduce pesticide use and to protect human health and the environment, and seeks to protect species vulnerable to pesticides like the boreal toad. The Center has a program dedicated to fighting climate change, one of the biggest, emerging threats for species like the Bicknell's thrush and Sierra Nevada red fox. Climate change also causes sea level rise, which is putting the Florida Keys mole skink and the bridled darter in danger of extinction.

11. The Center's conservation efforts are prompted by the concern that the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender, Panama City crayfish, boreal toad, Macgillivray's seaside sparrow, Florida Keys mole skink, and bridled darter are at serious risk of extinction. Defendants' failure to comply with the ESA's non-discretionary deadline for issuing 12-month findings on these species deprives them of statutory protections that are vitally necessary to their survival and recovery. Until these species are protected under the ESA, the Center's interest in their conservation and recovery is impaired. Therefore, the Center's members and staff are injured by the FWS's failure to make a timely determination as to whether listing these species is warranted, as well as by the ongoing harm to the species and their habitats in the absence of such protections. The injuries described above are actual, concrete injuries presently suffered by the Center and its members and they will continue to occur unless this Court grants relief. These injuries are directly caused by Defendants' inaction. The relief sought herein – an order compelling listing decisions for these species – would redress these injuries. The Center and its members have no adequate remedy at law.

12. Defendant SALLY JEWELL is the Secretary of the Interior and is the federal official in whom the ESA vests final responsibility for making decisions and promulgating regulations required by and in accordance with the ESA, including listing and critical habitat decisions. Secretary Jewell is sued in her official capacity.

13. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency within the Department of the Interior that is charged with implementing the ESA for most terrestrial species as well as ensuring prompt compliance with the ESA's mandatory listing deadlines.

LEGAL BACKGROUND

14. The ESA is a comprehensive federal statute declaring that endangered and threatened species are of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). Accordingly, the purpose of the ESA 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).

15. To this end, ESA section 4 requires that the Secretary protect imperiled species by listing them as either “endangered” or “threatened.” *Id.* § 1533(a).

16. The ESA’s conservation measures apply only after the Secretary lists a species as threatened or endangered. For example, section 7 of the ESA 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.* § 1536(a)(2). Section 9 of the ESA prohibits, among other things, “any person” from intentionally taking listed species or incidentally taking listed species without a lawful authorization from the Secretary. *Id.* §§ 1538(a)(1)(B) and 1539. Concurrently with listing, the Secretary must designate the species’ critical habitat, which includes areas that are essential to the conservation of the species. *Id.* §§ 1532(5)(A) and 1533(a)(3)(A). Other provisions of the ESA require the Secretary to “develop and implement” recovery plans for listed species, *id.* § 1533(f), to authorize the Secretary to acquire land for the protection of listed species, *id.* § 1534, and to make federal funds available to states to assist in their efforts to preserve and protect threatened and endangered species, *id.* § 1535(d).

17. 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, non-discretionary deadlines that the Secretary must meet so that species in need of protection receive the ESA's substantive protections in a timely fashion. The three required findings, described below, are the 90-day finding, the 12-month finding, and the final listing determination. The Secretary has delegated responsibility for making these findings to FWS.

18. 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 finds that the petition does not present substantial information indicating that listing may be warranted, the petition is rejected and the process ends.

19. If, on the other hand, FWS determines that a petition does present substantial information indicating that listing may be warranted, then the agency must conduct a full scientific review of the species' status. *Id.* § 1533(b)(3)(A). Upon completion of this status review, and within 12-months from the date that it receives the petition, FWS must make one of three findings: (1) listing is "not warranted"; (2) listing is "warranted"; or (3) listing is "warranted but precluded" by other pending proposals for listing species, provided certain circumstances are present. *Id.* § 1533(b)(3)(B).

20. 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). Within one year of publication of the proposed regulation, the ESA 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 rule, or, if there is substantial disagreement about scientific data, delay a final determination for up to six months in order to solicit more scientific information. *Id.* §§ 1533(b)(6)(A)(i) and 1533(b)(6)(B)(i).

21. It is critical that FWS follow scrupulously the ESA's listing procedures and deadlines if species are to be protected in a timely manner, because the ESA does not protect a species facing extinction until it is formally listed as endangered or threatened. Defendants have regularly ignored statutory procedures and have missed statutory listing deadlines, leading to litigation to correct these deficiencies.

22. On July 12, 2011, the Center and Defendants entered into a comprehensive stipulated settlement agreement that defines Defendants' responsibilities regarding future ESA statutory deadline litigation between these parties. The instant complaint is a "deadline suit" as defined in the parties' settlement.

23. Under the settlement, the Center may file deadline suits addressing up to 10 species, and to obtain remedies from up to three deadline suits, in each fiscal year from 2012 through 2016. If the Center files suits addressing more than 10 species, or obtains remedies from more than three suits in one of these fiscal years, negotiated deadlines that must be met by Defendants under the agreement may be pushed back to 2016. Under the settlement, a "remedy" means a stipulated settlement agreement or judicially-enforceable order requiring the [FWS] to make any finding, listing determination, or critical habitat determination for a species before April 1, 2017.

24. As of the date of this filing, during fiscal year 2013, the Center has filed a "deadline suit," within the meaning of the meaning of the parties' settlement agreement, in U.S. District Court for the Northern District of California. This deadline suit challenged the FWS's

failure to designate critical habitat for the loggerhead sea turtle. On May 2, 2013, FWS agreed to designate critical habitat for the loggerhead turtle by July 1, 2014. This agreement constitutes one “remedy” for fiscal year 2013 within the meaning of the parties’ settlement agreement.

FACTUAL BACKGROUND

A. Sierra Nevada Red Fox

25. The Sierra Nevada red fox’s historic range covers the alpine and subalpine areas of Northern California and the Oregon Cascades. The fox’s population has dwindled to only two small populations in California, one of which has less than 20 individual foxes remaining.

26. The Sierra Nevada red fox has gone through dramatic population declines over the last century. The remaining populations of red fox are particularly vulnerable to extinction. Threats to the fox include development, climate change, disease, fire suppression, logging, livestock grazing, wildlife control activities, rodenticide use, hunting, trapping, recreation and other factors. Because the populations of this subspecies of red fox are so fragile, any of these threats could contribute to the extinction of the Sierra Nevada red fox.

27. Based on these threats and the inadequacy of regulatory mechanisms to protect it, the Center submitted a petition to FWS on April 27, 2011 to list the Sierra Nevada red fox as endangered or threatened under the ESA.

28. On January 3, 2012 FWS issued a 90-day finding on the Sierra Nevada red fox. The finding concluded that the Center’s petition presented substantial scientific or commercial information indicating that listing the fox may be warranted. 77 Fed. Reg. at 45.

29. To date, more than 12 months after receiving the Center’s petition, FWS has failed to issue the requested 12 month finding as to whether listing the Sierra Nevada red fox is warranted.

B. Suwannee Moccasinshell

30. The Suwannee moccasinshell is a two-inch long mussel that lives in sand, mud, or gravel in slow-moving, clear water, and requires high water quality to survive. The moccasinshell is found only in the Suwannee River drainage in Florida. Before two individuals were found in 2012, the moccasinshell was considered to be extinct.

31. The moccasinshell is threatened due to its very small population size, poor water quality, and overcollection. Threats include sedimentation from agricultural and silvicultural activities, phosphate mining in the upper Suwannee River, industrial pollution from a pulp mill in the Withlacoochee watershed, and by localized municipal pollution. High density development and phosphate mining have also contributed to eutrophication of the Suwannee. The moccasinshell is ranked as “critically imperiled” by NatureServe, as “critically endangered” by the International Union for the Conservation of Nature, and as “endangered” by the American Fisheries Society. FWS identified the moccasinshell as a “candidate” for federal listing in 1994 but did not include it in subsequent candidate lists. 59 Fed. Reg. 58,982, 59,009 (Nov. 15, 1994).

32. Based on these threats to the fragile population of the moccasinshell, the Center submitted a petition to FWS to list the moccasinshell as endangered or threatened under the ESA.

33. On September 27, 2011, FWS issued a 90-day finding on the Center’s petition to list the moccasinshell. The finding concluded that the Center’s petition presented substantial scientific or commercial information indicating that listing the moccasinshell may be warranted. 76 Fed. Reg. at 59,859.

34. To date, more than two years after receiving the Center’s petition, FWS has failed to issue the required 12-month finding as to whether listing the moccasinshell is warranted.

C. Bicknell's Thrush

35. The Bicknell's thrush is a small gray songbird that is found in the high peaks of New England and Nova Scotia, with a winter range in the Antilles of the Caribbean. The Bicknell's thrush is a habitat specialist, living in disturbed subalpine spruce-fir forests for breeding season and in high elevation broadleaf rainforests in the winter. Documented declines of Bicknell's thrush are seven to 19 percent annually.

36. Threats to Bicknell's thrush include climate change, which is projected to change the distribution of trees that make up the species' montane-forest breeding habitat. Numerous other environmental stressors are already contributing to the thrush's decline as well, including acid rain pollution, ground-level ozone and mercury, forest pests, logging, and habitat destruction for development for ski resorts, communications infrastructure and wind-energy projects.

37. Based on these threats, on August 10, 2010 the Center submitted a petition to FWS to list the Bicknell's thrush as endangered or threatened under the ESA.

38. On August 15, 2012 FWS issued a 90-day finding on the Center's petition to list the Bicknell's thrush. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the thrush may be warranted. 77 Fed. Reg. at 48,935.

39. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the Bicknell's thrush is warranted.

D. Hellbender

40. The hellbender is the largest salamander in North America; it can grow to be two feet long. The hellbender's range is the Southeast, and parts of the Midwest. Hellbenders prefer habitat of clear, cold, rocky water in flowing streams.

41. Many streams within its range are now too polluted to support hellbender habitat. Additional threats to the Hellbender include water pollution, collection, persecution by anglers, disease, and fish stocking. The hellbender is facing drastic population declines throughout its entire range.

42. Based on these threats, on April 20, 2010 the Center filed a petition to list the hellbender as endangered or threatened under the ESA.

43. On September 27, 2011, FWS issued a 90 day finding on the Center's petition to list the hellbender. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the hellbender may be warranted. 76 Fed. Reg. at 59,856.

44. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12-month finding as to whether listing the hellbender is warranted.

E. Panama City Crayfish

45. The Panama City crayfish is a small, two-inch long crayfish that is in grave danger of losing its habitat. The crayfish live in coastal plain flatwood forests, ditches and temporary ponds in the Panama City area of Bay County in Northwest Florida. The crayfish's current range is dangerously small at only 40 square miles.

46. The biggest threats to crayfish are water pollution and heavy development as well as groundwater pumping, road widening, pipeline installation and drainage. Because the range of the crayfish is so small, it is at a much higher risk of becoming extinct.

47. Based on these threats and lack of regulatory mechanisms to protect it, on April 20, 2010 the Center submitted a petition to FWS to list the crayfish as endangered or threatened under the ESA.

48. On September 27, 2011, FWS issued a 90 day finding on the Center's petition to list the crayfish. The finding concluded that the Center's petition presented substantial scientific or commercial information, indicating that listing the crayfish may be warranted. *Id.* at 59,858.

49. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the crayfish is warranted.

F. Boreal Toad

50. The boreal toad is a small, four-inch toad that is found in Idaho, Utah, and Nevada. The boreal toad prefers aquatic habitats like slow-moving streams, beaver ponds, small lakes, reservoirs, stock ponds, and wet meadows, seeps, creek pools, marshy areas, and wet meadows and associated woodlands.

51. Threats to the boreal toad include disease, habitat destruction, pesticides and other pollutants, fish stocking, and climate change. In the southern Rocky Mountains, a global amphibian disease known as chytrid fungus has wiped out most of the toad's remaining populations.

52. Based on these threats and the lack of regulatory mechanisms to protect it, on May 25, 2011 the Center submitted a petition to FWS to list the boreal toad as endangered or threatened under the ESA.

53. On April 12, 2012, FWS issued a 90-day finding on the boreal toad. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the toad may be warranted. 77 Fed. Reg. at 21,921.

54. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the toad is warranted.

G. MacGillivray's Seaside Sparrow

55. The MacGillivray's seaside sparrow spends its time in a narrow fringe of Atlantic coastal marshes in North Carolina, South Carolina, Georgia and Florida. The MacGillivray's seaside sparrow is a gray-brown sparrow with a distinctive yellow streak on its eye. Its population status is unknown, but decline has been documented in Florida and similar species of seaside sparrow, like the Cape Sable seaside sparrow, have gained protection under the ESA. One similar species of sparrow, the dusky seaside sparrow, has already gone extinct.

56. The biggest threat to the MacGillivray's seaside sparrow is sea level rise, which is caused by the rising global temperature. This century, sea levels are expected to rise three to nine inches, which would destroy the sparrow's coastal habitat. MacGillivray's seaside sparrow is also threatened by habitat loss, which was documented in Florida.

57. Based on these threats, on April 20, 2010 the Center submitted a petition to FWS to list MacGillivray's seaside sparrow as endangered or threatened under the ESA.

58. On September 27, 2011, FWS issued a 90-day finding on the Center's petition to list the sparrow. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the sparrow may be warranted. 76 Fed. Reg. at 59,857.

59. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the sparrow is warranted.

H. Florida Keys Mole Skink

60. The Florida Keys mole skink is a five-inch lizard that lives the southernmost United States. The mole skink is found in Dry Tortugas and the Lower Keys along Florida's shoreline, the coastal sandy areas with lots of debris, driftwood and tidal wrack, where it burrows deep for refuge. A skink is a smooth bodied lizard with short or absent limbs belonging to the family Scincidae. The Florida Keys mole skink is rarer than other skinks, and is distinguished by its pink, red, or orange tail that maintains its color throughout its life.

61. The Florida Keys mole skink's population is declining. Threats to the skink include development and collection, which have reduced its numbers. The skink is also in such grave danger because sea level rise will destroy its habitat. Sea levels are expected to rise between three and nine inches in the next century due to climate change, and this sea level rise will put the Florida Keys mole skink at serious risk of extinction because sea level rise will destroy its habitat.

62. Based on these threats, on April 20, 2010 the Center submitted a petition to FWS to list the Florida Keys mole skink as endangered or threatened under the ESA.

63. On September 27, 2011, FWS issued a 90-day finding on the skink. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the skink may be warranted. *Id.* at 59,860.

64. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the skink is warranted.

I. Bridled Darter

65. The bridled darter is a three-inch fish that was discovered in 2007. It is found in Georgia and Tennessee, in small rivers and lower reaches and tributaries of the Conasauga and Etowah rivers with good water quality.

66. Threats to the bridled darter include development, logging, and agriculture. The small fish is also extremely sensitive to pollution.

67. Based on these threats, on April 20, 2010 the Center submitted a petition to FWS to list the bridled darter as endangered or threatened under the ESA.

68. On September 27, 2011, FWS issued a 90-day finding on the Center's petition to list the bridled darter. The finding concluded that the Center's petition presented substantial scientific or commercial information indicating that listing the darter may be warranted. *Id.* at 59,859.

69. To date, more than 12 months after receiving the Center's petition, FWS has failed to issue the required 12 month finding as to whether listing the darter is warranted.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Sierra Nevada Red Fox

70. Plaintiff hereby incorporates all preceding paragraphs.

71. FWS's failure to make a timely 12-month finding on the Center's petition to list the Sierra Nevada red fox as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

SECOND CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Suwannee Moccasinshell

72. Plaintiff hereby incorporates all preceding paragraphs.

73. FWS's failure to make a timely 12-month finding on the Center's petition to list the Suwannee moccasinshell as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

THIRD CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Bicknell's Thrush

74. Plaintiff hereby incorporates all preceding paragraphs.

75. FWS's failure to make a timely 12-month finding on the Center's petition to list the Bicknell's thrush as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

FOURTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Hellbender

76. Plaintiff hereby incorporates all preceding paragraphs.

77. FWS's failure to make a timely 12-month finding on the Center's petition to list the hellbender as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

FIFTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Panama City Crayfish

78. Plaintiff hereby incorporates all preceding paragraphs.

79. FWS's failure to make a timely 12-month finding on the Center's petition to list the Panama City crayfish as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

SIXTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Boreal Toad

80. Plaintiff hereby incorporates all preceding paragraphs.

81. FWS's failure to make a timely 12-month finding on the Center's petition to list the boreal toad as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

SEVENTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the MacGillivray's Seaside Sparrow

82. Plaintiff hereby incorporates all preceding paragraphs.

83. FWS's failure to make a timely 12-month finding on the Center's petition to list the MacGillivray's seaside sparrow as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

EIGHTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Florida Keys Mole Skink

84. Plaintiff hereby incorporates all preceding paragraphs.

85. FWS's failure to make a timely 12-month finding on the Center's petition to list the Florida Keys mole skink as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. § 706(1).

NINTH CLAIM FOR RELIEF

Violation of the ESA: Failure to Make a Timely 12-Month Finding  
for the Bridled Darter

86. Plaintiff hereby incorporates all preceding paragraphs.

87. FWS's failure to make a timely 12-month finding on the Center's petition to list the Bridled darter as an endangered or threatened species violates the ESA, 16 U.S.C. § 1533(b)(3)(B), and constitutes agency action that has been "unlawfully withheld" within the meaning of the APA. 5 U.S.C. §706(1).

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court enter Judgment for Plaintiff providing the following relief:

A. Declare that Defendants violated the ESA and APA by failing to issue a timely 12-month finding as to whether listing the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender, Panama City crayfish, boreal toad, MacGillivray's seaside sparrow, Florida Keys mole skink, and bridled darter;

B. Order Defendants to issue, by reasonable dates certain, findings as to whether listing the Sierra Nevada red fox, Suwannee moccasinshell, Bicknell's thrush, hellbender,

Panama City crayfish, boreal toad, MacGillivray's seaside sparrow, Florida Keys mole skink, and bridled darter is warranted, 16 U.S.C. § 1533(b)(3)(B);

C. Grant Plaintiff its attorneys' fees and costs in this action as provided by the ESA, 16 U.S.C. § 1540(g)(4), or the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

Dated: June 27, 2013

Respectfully submitted,

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Amy R. Atwood, DC Bar No. 470258  
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