

1 JONATHAN EVANS
2 (*Pro Hac Vice*)
3 CENTER FOR BIOLOGICAL DIVERSITY
4 1212 BROADWAY, SUITE 800
5 OAKLAND CA, 94612
6 Cal State Bar # 247376
7 EMAIL: jevans@biologicaldiversity.org
8 TEL: (510) 844-7100 x318

6 Counsel for Plaintiff
7 Center for Biological Diversity

9 THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Center for Biological Diversity,

12 Plaintiff,

13 v.

14 United States Fish and Wildlife Service;
15 and Deb Haaland, in her official capacity
16 as Secretary of the United States
Department of the Interior,

17 Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

19 INTRODUCTION

20 1. Plaintiff Center for Biological Diversity (“Center”) brings this case
21 challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to make a mandatory
22 finding of whether the imperiled Suckley’s cuckoo bumblebee (*Bombus suckleyi*) should
23 be listed as threatened or endangered under the Endangered Species Act (“ESA”). 16
24 U.S.C. § 1533(b)(3)(B). The Service’s delay in providing lifesaving protections to
25 Suckley’s cuckoo bumblebee increases its risk of extinction.
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2. Suckley's cuckoo bumblebee is a social parasite relying on host bumblebee colonies to care for its young. This rare pollinator has been observed across the western United States and inhabits meadows and grasslands. Due to the decline of its primary host, the western bumblebee, Suckley's cuckoo bumblebee is at greater risk for extinction. Other significant threats to Suckley's cuckoo bumblebee's survival and recovery include habitat loss and degradation, livestock overgrazing, conifer encroachment and fire suppression, climate change, pesticide use, disease, and domesticated honey and bumblebees.

3. The Center submitted a petition to the Service on April 23, 2020, to list Suckley's cuckoo bumblebee as "threatened" or "endangered" under the ESA. The Service's failure to comply with its nondiscretionary duty to complete its review of the petition deprives the Center of a timely determination on its petition and Suckley's cuckoo bumblebee of the statutory protections that are necessary for its survival and recovery.

4. The Center brings this lawsuit for declaratory and injunctive relief, seeking an Order declaring that the Service is in violation of the ESA by failing to make the required 12-month finding on the Center's petition to list Suckley's cuckoo bumblebee and directing the Service to publish its overdue 12-month listing determination by a date certain.

JURISDICTION AND VENUE

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

1 authority to issue declaratory and injunctive relief pursuant to 16 U.S.C. § 1540(g); 28
2 U.S.C. § 2201-2202 (Declaratory Judgement Act); and 5 U.S.C. § 706 (Administrative
3 Procedure Act, “APA”).
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5 6. The Center provided the Service with 60 days’ notice of its ESA violation,
6 as required by 16 U.S.C. § 1540(g)(2)(A), by a letter to the Service dated February 9,
7 2022 (received February 18, 2022). The Service has not remedied the ESA violation
8 described in the notice and an actual controversy exists between the parties within the
9 meaning of the Declaratory Judgement Act, 28 U.S.C. § 2201.
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11 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C)
12 because Plaintiff resides in this district.
13

14 **PARTIES**

15 8. Plaintiff Center for Biological Diversity is a national, non-profit
16 conservation organization that works to ensure the preservation, protection, and
17 restoration of biodiversity, native species, ecosystems, public lands and waters, and
18 public health through science, policy, and environmental law. The Center is incorporated
19 in California and headquartered in Tuscon, Arizona, with offices throughout the United
20 States. The Center has over 1.7 million members and supporters.
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23 9. The Center and its members have deep and long-standing interests in the
24 conservation and recovery of imperiled species such as Suckley’s cuckoo bumblebee and
25 its habitat, and the enforcement of the ESA. The Center’s members have scientific,
26 professional, educational, aesthetic, moral, and spiritual interests in Suckley’s cuckoo
27 bumblebee, and seek to observe this species in its natural habitat. The Center’s interests
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1 are directly harmed by the Service's failure to timely respond to the Center's petition to
2 list Suckley's cuckoo bumblebee and comply with its mandatory duty to determine
3 whether Suckley's cuckoo bumblebee should be listed as "threatened" or "endangered"
4 under the ESA.
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6 10. The Center's members include individuals who seek to observe and study
7 Suckley's cuckoo bumblebee in its natural habitat and who regularly visit those areas.
8 The Center's members derive scientific, professional, educational, and aesthetic benefits
9 from observing this rare species and intend to continue to visit these areas to observe
10 Suckley's cuckoo bumblebee in the future.
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12 11. For example, one Center member has professional and educational interests
13 in Suckley's cuckoo bumblebee and has visited habitat areas for Suckley's cuckoo
14 bumblebee while conducting surveys for several species of bumblebees. This member
15 also has recreational and aesthetic interests in Suckley's cuckoo bumblebee and is deeply
16 passionate about its conservation. This member is a part of organizations solely dedicated
17 to the protection of imperiled bees, including Suckley's cuckoo bumblebee, and often
18 hikes in areas where Suckley's cuckoo bumblebee might be observed. This member is so
19 enthusiastic about bumblebees, that he has even named his camper van after bumblebees.
20 This member has concrete plans to search for Suckley's cuckoo bumblebee this year.
21 These interests are harmed by the significant threats to Suckley's cuckoo bumblebee's
22 survival and recovery, such as the decline of host species, habitat loss and degradation,
23 pesticide use, and climate change.
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12. Defendants’ failure to comply with its nondiscretionary duty to timely list Suckley’s cuckoo bumblebee as “threatened” or “endangered” under the ESA has delayed crucial statutory protections for this species and its habitat, therefore impeding conservation efforts. These are actual, concrete injuries that are presently felt by the Center’s members and are directly caused by Defendants’ failure to act and will continue unless this Court grants relief. The relief sought by Plaintiffs would redress these injuries. The Center and its members have no other adequate remedy at law.

13. Defendant U.S. Fish and Wildlife Service, is an agency of the United States Government within the Department of the Interior. The Service has been delegated the responsibility from the Secretary of the Interior to implement the ESA.

14. Defendant Deb Haaland, United State Secretary of the Interior, is the highest-ranking official within the U.S. Department of the Interior and has the ultimate authority to administer and implement the provisions of the ESA. The Secretary of the Interior has delegated administration of the ESA to the U.S. Fish and Wildlife Service. 50 C.F.R. § 402.01(b). Secretary Haaland is sued in her official capacity.

STATUTORY FRAMEWORK

The Endangered Species Act

15. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, requires federal agencies to “afford first priority to the declared national policy of saving endangered species.” *TVA v. Hill*, 437 U.S. 153, 185 (1978). The purposes of the ESA are to “provide a means whereby the ecosystems upon which endangered species and

1 threatened species depend may be conserved . . . [and] to provide a program for the
2 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

3 16. Section 4 implements the goals of the ESA by charging the Secretary with
4 the duty to list imperiled species as “threatened” or “endangered.” *Id.* § 1533(a). The
5 ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct
6 population segment of any species of vertebrate fish or wildlife which interbreeds when
7 mature.” *Id.* at § 1532(16). A species is considered “endangered” when it “is in danger of
8 extinction throughout all or a significant portion of its range.” *Id.* at § 1532(6). A species
9 is considered “threatened” when it is “likely to become an endangered species within the
10 foreseeable future throughout all or a significant portion of its range.” *Id.* at § 1532(20).

11 17. The ESA’s substantive protections only apply after the Secretary lists a
12 species as threatened or endangered. For example, section 7 of the ESA requires all
13 federal agencies to ensure that their actions do not “jeopardize the continued existence”
14 of any listed species or “result in the destruction or adverse modification” of a listed
15 species’ “critical habitat” *Id.* § 1536(a)(2). Section 9 prohibits “any person” from
16 intentionally taking listed species or incidentally taking listed species without a lawful
17 authorization from the Secretary. *Id.* §§ 1538(a)(1)(B) and 1539.

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

3 19. To ensure the timely protection of species that are at risk of extinction,
4 Congress set forth a detailed process whereby citizens may petition the Secretary to list a
5 species as endangered or threatened. The process includes mandatory, non-discretionary
6 deadlines that the Secretary must meet so that imperiled species timely receive the ESA’s
7 substantive protections. The three required findings, described below, are the 90-day
8 finding, the 12-month finding, and the final listing determination. The Secretary has
9 delegated responsibility for making these findings to the Service.
10

11 20. After receiving a listing petition, the Service must “to the maximum extent
12 practicable, within 90-days” make an initial finding as to whether the petition “presents
13 substantial scientific or commercial information indicating that the petitioned action may
14 be warranted.” *Id.* § 1533(b)(3)(A). If the Service finds that the petition does not present
15 substantial information indicating that listing may be warranted, the petition is denied,
16 and the process ends.
17

18 21. If the Service instead determines that a petition does present substantial
19 information indicating that listing may be warranted, then the agency must conduct a full
20 scientific review of the species’ status. *Id.* Upon completion of this status review, the
21 Service must issue a “12-month finding,” making one of three findings: (1) listing is “not
22 warranted”; (2) listing is “warranted”; or (3) listing is “warranted but precluded” by other
23 pending proposals for listing species, provided certain requirements are met. *Id.* §
24 1533(b)(3)(B).
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22. If the Service’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 Service must render its final determination on the proposal. *Id.* § 1533(b)(6)(A).

23. If the Service finds that there is “substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned ... [it] may extend the one-year period ... for not more than six months for purposes of soliciting additional data.” *Id.* § 1533(b)(6)(B)(i). Before the expiration of that six-month extension, the Service must publish either a final regulation or a notice of withdrawal. *Id.* § 1533(b)(6)(B)(ii)-(iii).

FACTUAL BACKGROUND

24. Suckley's cuckoo bumblebee is a social parasite, relying on its hosts to raise its young. This unique pollinator plays a vital role in the preservation of bumblebee biodiversity by regulating bee populations. Suckley's cuckoo bumblebee has historically inhabited meadows and grasslands, nesting in underground cavities created by other animals across the western United States. Recent data has revealed that Suckley's cuckoo bumblebee has lost more than 50% of its range and is down by more than 90% in relative abundance compared to historic levels. Due to its reliance on the declining western bumblebee, its primary host, Suckley's cuckoo bumblebee is more vulnerable to extinction. Suckley's cuckoo bumblebee cannot reproduce without a host colony, and as

1 the western bumblebee population declines, there are fewer hosts to raise Suckley's
2 cuckoo bumblebee's young.

3 25. Suckley's cuckoo bumblebee and its' host face habitat loss and
4 degradation. As a result, Suckley's cuckoo bumblebee and its host are left with fewer
5 floral resources such as pollen and nectar that are necessary for their survival. Livestock
6 overgrazing contributes to this decrease in floral resources and increases soil compaction,
7 which reduces nesting opportunities for Suckley's cuckoo bumblebee and its host.
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9 Furthermore, active fire suppression inhibits the growth of flower-rich meadows, thereby
10 contributing to the loss of Suckley's cuckoo bumblebee's natural habitat.
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12 26. Pesticides, specifically neonicotinoid insecticides, are toxic to Suckley's
13 cuckoo bumblebee and its host. Neonicotinoid insecticides threaten Suckley's cuckoo
14 bumblebee's ability to reproduce and reduce the host colony's ability to care for
15 Suckley's cuckoo bumblebee's young.
16

17 27. Suckley's cuckoo bumblebee and its' host suffer from the impacts of
18 climate change. Extreme temperatures threaten Suckley's cuckoo bumblebee's and its'
19 host's ability to fly and forage. When bumblebees are exposed to temperatures above
20 24°C / 75°F, they are unable to control their body temperature and cannot fly. Rising
21 temperatures also cause droughts, which leads to the depletion of floral resources within
22 Suckley's cuckoo bumblebee's range.
23

24 28. Thus, Suckley's cuckoo bumblebee is immediately threatened by habitat
25 loss and degradation, pesticide use, and climate change, which are compounded because
26 Suckley's cuckoo bumblebee's host also faces these threats.
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1 **Listing Petition and Response**

2 29. On April 23, 2020, the Center petitioned the Service to list Suckley's
3 cuckoo bumblebee.
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5 30. On May 11, 2021, the Service issued a positive 90-day finding that the
6 Center's petition to list Suckley's cuckoo bumblebee presented "substantial scientific or
7 commercial information indicating" that listing Suckley's cuckoo bumblebee "may be
8 warranted" due the decline of host species, pesticide use, climate change, and habitat loss
9 caused by livestock grazing and fire management. 86 Fed. Reg. 25,833, 25,835-6 (May
10 11, 2021).
11

12 31. Because of the positive 90-day finding, Defendants had a mandatory duty
13 to issue their 12-month finding for Suckley's cuckoo bumblebee by April 23, 2021.
14 Defendants have failed to do so.
15

16 32. Until Defendants issue the legally required 12-month listing determination
17 and final listing rules, Suckley's cuckoo bumblebee will continue to face significant
18 threats to its survival and recovery caused by Defendants' failure to comply with the
19 ESA.
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22 **CLAIM FOR RELIEF**

23 **Violation of the ESA for Failure to Issue a Timely 12-Month Listing**

24 **Determination for Suckley's Cuckoo Bumblebee**

25 33. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
26 paragraphs.
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34. Where the Service finds that listing of a species “may be warranted,” the ESA requires the Service to issue a “12-month finding” with a listing determination within one year of receiving a listing petition. After finding that listing “may be warranted” for Suckley’s cuckoo bumblebee, Defendants failed to perform their nondiscretionary duty to issue a timely 12-month listing determination on Plaintiff’s petition to list Suckley’s cuckoo bumblebee as endangered or threatened, in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

REQUEST FOR RELIEF

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

1. Declare the Defendants have violated the ESA by failing to issue a timely 12-month listing determination in response to the petition to list Suckley's cuckoo bumblebee;

2. Provide injunctive relief compelling Defendants to publish in the Federal Register a 12-month listing determination on the petition to list Suckley's cuckoo bumblebee by a date certain;

3. Retain continuing jurisdiction to review Defendants' compliance with all judgements 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.

1 Respectfully submitted this 21st day of April, 2022.

2 /s/ Jonathan Evans

3 JONATHAN EVANS

4 (*Pro Hac Vice*)

5 CENTER FOR BIOLOGICAL DIVERSITY

6 1212 BROADWAY, SUITE 800

7 OAKLAND, CA 94612

8 TEL: (510) 844-7100 x318

9 EMAIL: jevans@biologicaldiversity.org

10 *COUNSEL FOR PLAINTIFF*