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NORTHERN DISTRICT OF CALIFORNIA**

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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY, a
non-profit organization; OCEANA, INC., a non-
profit organization; and TURTLE ISLAND
RESTORATION NETWORK, a non-profit
organization,

Plaintiffs,

v.

REBECCA M. BLANK, in her official capacity
as Acting Secretary of the United States
Department of Commerce, the NATIONAL
MARINE FISHERIES SERVICE, KEN
SALAZAR, in his official capacity as Secretary
of the United States Department of the Interior,
and the U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No.

13 0086

NC

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1
2 1. In this civil action for declaratory and injunctive relief, Plaintiffs CENTER FOR
3 BIOLOGICAL DIVERSITY, OCEANA, INC. and TURTLE ISLAND RESTORATION
4 NETWORK challenge the failure of Defendants Rebecca Blank, Acting Secretary of Commerce
5 (“the Secretary”), the National Marine Fisheries Service, Ken Salazar, Secretary of the Interior
6 Department, and the U.S. Fish and Wildlife Service (collectively “Services”) to comply with the
7 nondiscretionary deadlines of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544.
8 Specifically, the Services have failed to establish critical habitat for loggerhead sea turtle
9 populations (*Caretta caretta*). 16 U.S.C. §§ 1533(a)(3)(A) and 1533(b)(6)(C).

10 2. Loggerhead sea turtles are among the most imperiled of sea turtle species and have
11 experienced alarming declines in recent years. The North Pacific population of loggerhead sea
12 turtles was reclassified from threatened to endangered in 2011.

13 3. Loggerhead sea turtles face numerous, ongoing threats in waters off the coasts of
14 California and Hawaii, and along the continental shelf off the eastern seaboard from Cape Cod
15 Bay, Massachusetts, south through Florida and the Gulf of Mexico. These threats include
16 incidental capture, injury, and death by commercial fishing fleets. Additional changes in
17 environmental conditions caused by pollution, climate change, and sea level rise further threaten
18 the loggerhead sea turtle’s survival and recovery.

19 4. Loggerhead sea turtles also use the beaches and sand dunes for nesting from
20 southern Virginia, along the Florida peninsula and along the Gulf Coast to Texas. Sea turtles face
21 the loss and degradation of their nesting habitat in these areas from sea level rise, light pollution,
22 trash, coastal development, beach armoring and renourishment, and vehicles driving on beaches.

23 5. The Services’ failure to designate critical habitat significantly diminishes
24 loggerhead sea turtles’ chances for long-term recovery and survival. Critical habitat is an effective
25 and important component of the ESA, without which the loggerhead sea turtle’s chance for
26 recovery dramatically diminishes. For example, species with critical habitat are twice as likely to
27 show signs of recovery compared to species lacking designated habitat.

1 6. On September 22, 2011, the Services issued a final rule listing nine distinct
2 population segments of loggerhead sea turtles under the Endangered Species Act. *Endangered*
3 *and Threatened Species; Determination of Nine Distinct Population Segments of Loggerhead Sea*
4 *Turtles as Endangered or Threatened*, 76 Fed. Reg. 58868 (Sept. 22, 2011). This action triggered
5 a duty to propose critical habitat concurrently with the listing. 16 U.S.C. § 1533(b)(6)(C). In rare
6 circumstances, the Services may take one additional year to propose critical habitat. *Id.* Despite
7 ample scientific information about loggerhead sea turtle distribution and habitat use during many
8 phases of their life history, including well-documented nesting beaches, the Services concluded at
9 the time of listing that critical habitat “is not determinable at this time, but will be proposed in a
10 separate rulemaking.” 76 Fed. Reg. at 58905.

11 7. To date, the Services have failed to designate, or even propose, critical habitat for
12 the threatened Northwest Atlantic Ocean and endangered North Pacific Ocean populations. Over a
13 year has passed since these populations were listed and two and a half years have passed since the
14 Services proposed listing. 76 Fed. Reg. 58868. Accordingly, the Services have violated and
15 continue to violate the ESA.

16 8. The Services are depriving this critically imperiled species of significant legal
17 protections that are important for its conservation and recovery, especially in light of the
18 continuing negative effects of climate change and commercial fishing activities which include the
19 use of harmful longlines, trawls, and gillnets.

20 9. Plaintiffs bring this action to compel the Services to publish the final rule
21 designating critical habitat for the threatened Northwest Atlantic Ocean and endangered North
22 Pacific Ocean populations by a date certain.

23 **II. JURISDICTION, VENUE, and INTRADISTRICT ASSIGNMENT**

24 10. This court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c) (actions
25 under the ESA); 16 U.S.C. § 1540(g) (ESA citizen suit provision); 5 U.S.C. § 702 (Administrative
26 Procedure Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (action against the United
27 States); 28 U.S.C. § 1361 (action to compel an officer of the United States to perform his or her
28 duty); and 28 U.S.C. §§ 2201-02 (power to issue declaratory judgments and grant relief in cases

1 of actual controversy).

2 11. By written notice sent by electronic mail and facsimile on October 11, 2012,
3 Plaintiffs informed the Services of their violations more than sixty days prior to the filing of this
4 Complaint, as required by the Endangered Species Act. 16 U.S.C. § 1540(g). To date, the Services
5 have failed to remedy their violations of the Act.

6 12. Plaintiffs demanded that the Services satisfy their statutory obligations to designate
7 critical habitat for the threatened Northwest Atlantic Ocean and endangered North Pacific Ocean
8 loggerhead sea turtle populations. The Services have failed to remedy the alleged violation, and
9 therefore an actual, justiciable controversy exists within the meaning of 28 U.S.C. § 2201(a).

10 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
11 1391(e), as one or more Plaintiffs reside in this judicial district and a substantial part of the events or
12 omissions giving rise to the claim occurred here.

13 14. Pursuant to Civil Local Rule 3-2(c) and 3-2(d), the appropriate intradistrict
14 assignment of this case is either to the San Francisco Division or the Oakland Division.

15 **III. PARTIES**

16 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
17 corporation with offices in San Francisco, Joshua Tree, and Los Angeles, California; as well as in
18 Washington, Oregon, Arizona, Nevada, New Mexico, Illinois, Minnesota, Vermont, Florida, and
19 Washington, D.C. Through science, policy, and environmental law, the Center for Biological
20 Diversity is actively involved in species and habitat protection issues throughout the United
21 States, including efforts related to the loggerhead sea turtle and the effective implementation of
22 the ESA. The Center for Biological Diversity has over 38,877 active members throughout the
23 United States and the world.

24 16. Plaintiff TURTLE ISLAND RESTORATION NETWORK is a non-profit
25 501(c)(3) corporation with its principal place of business in Forest Knolls, California. Turtle
26 Island operates the Sea Turtle Restoration Project, which is dedicated to the protection and
27 restoration of endangered and threatened sea turtles. Turtle Island Restoration Network is an
28 environmental organization with approximately 10,000 members and more than 70,000 online

1 activists and supporters throughout the United States and the world, each of whom shares a
2 commitment to the study, protection, enhancement, conservation, and preservation of the world's
3 marine and terrestrial ecosystems, including protection of sea turtles such as the loggerhead.
4 Turtle Island has worked extensively to conserve and protect loggerhead and other sea turtle
5 species in the U.S. Pacific, the Gulf and the Atlantic from a variety of threats. Turtle Island also
6 works to conserve sea turtles and other marine wildlife internationally, including in Costa Rica
7 and Australia.

8 17. Plaintiff OCEANA, INC. is a 501(c)(3) non-profit international advocacy
9 organization dedicated to protecting and restoring the world's oceans through policy, advocacy,
10 science, law, and public education. Oceana has over 190,000 members around the world including
11 over 160,000 in the United States. Oceana maintains its headquarters in Washington, D.C., and it
12 has offices or staff in several states including Alaska, Oregon, California, Maine, Massachusetts,
13 Pennsylvania, and Florida. Through its policy, scientific, legal, communication, and grass-roots
14 activities, Oceana has been a prominent advocate for protecting threatened and endangered marine
15 species and marine ecosystems. Many of Oceana's members enjoy the aesthetic pleasure of
16 observing loggerhead sea turtles, study them as scientists, and/or work to protect their nesting
17 areas and save them when they are stranded. Oceana has worked for years to protect the interests
18 of its members in conserving and recovering sea turtles, including implementing turtle deflector
19 dredges in the Atlantic, defending the longline fishing closure on the Grand Banks, advocating to
20 enlarge the size of turtle excluder devices, advocating to improve the monitoring of sea turtle
21 bycatch in fisheries, and advocating against activities that seek to expand longlining or roll back
22 conservation measures to protect loggerheads from such activities in the Pacific Ocean.

23 18. Plaintiffs have members with concrete interests in the conservation of loggerhead
24 sea turtles and the protection of their critical habitat. Plaintiffs' members and staff have
25 researched, studied, observed, and sought protection for the loggerhead sea turtle. In addition, the
26 members and staff have visited and observed, or sought out, loggerhead sea turtles in the Pacific
27 and Atlantic oceans. The Plaintiffs' members and staff have concrete plans to visit and observe, or
28 attempt to visit and observe, this species and its habitat in the future. These members derive

1 scientific, recreational, conservation, and aesthetic benefits from this rare species' existence in the
2 wild. The Services' failure to comply with ESA requirements delays protections that insure the
3 future benefits of the existence of loggerhead turtles in the designated area and, thus, directly
4 harms these interests of Plaintiffs' members and staff. Plaintiffs bring this action on behalf of their
5 organizations and their adversely affected members.

6 19. An integral aspect of Plaintiffs' members' use and enjoyment of the sea turtles is
7 the expectation and knowledge that the species are in their native habitat. For this reason,
8 Plaintiffs' use and enjoyment of loggerhead sea turtles is entirely dependent on the continued
9 existence of healthy, sustainable populations in habitat consisting of areas in the Pacific and
10 Atlantic Oceans and on Atlantic and Gulf of Mexico nesting beaches. The Services' failure to
11 comply with the ESA's mandatory deadlines prevents the completion of the critical habitat
12 designation process and therefore the implementation of additional measures to protect the
13 loggerhead sea turtle based on the critical habitat designation. Without the legal protections of
14 critical habitat designation, loggerhead sea turtles are more likely to continue to decline and
15 become extinct. The Services' failure to finalize critical habitat diminishes the enjoyment and
16 aesthetic interests of Plaintiffs and their members because loggerhead turtles are less likely to be
17 conserved absent the critical habitat protections. Plaintiffs are therefore injured because Plaintiffs'
18 use and enjoyment of the loggerhead sea turtles, and those areas inhabited by the turtles, are
19 threatened by the Services' failure to designate critical habitat off the Pacific and Atlantic coasts
20 of the United States, along with such coastal and sand dune areas necessary for nesting.

21 20. Plaintiffs have a long-standing interest in conserving marine mammals and their
22 habitat, including diligent efforts to protect the loggerhead sea turtle's critical habitat. On July 12,
23 2007, the Center for Biological Diversity and Turtle Island Restoration Network petitioned the
24 Services to list the North Pacific populations of loggerhead sea turtle as an endangered species
25 under the ESA and designate critical habitat to ensure its recovery. Oceana submitted written
26 comments in support of this petition. The Services published a notice on November 16, 2007,
27 stating the petition presented substantial scientific information indicating that the petitioned action
28 may be warranted. *90-day Finding for a Petition to Reclassify the Loggerhead Turtle in the North*

1 *Pacific Ocean as a Distinct Population Segment with Endangered Status and to Designate*
2 *Critical Habitat*, 72 Fed. Reg. 64585 (Nov. 16, 2007). On November 15, 2007, the Center for
3 Biological Diversity and Oceana petitioned the Services to list the Western North Atlantic
4 populations of loggerhead sea turtle as an endangered species under the ESA and designate
5 critical habitat. On March 5, 2008, the Services published a notice stating that petition presented
6 substantial scientific information indicating that the petitioned action may be warranted. *90-day*
7 *Finding for a Petition to Reclassify the Loggerhead Turtle in the Western North Atlantic Ocean*,
8 73 Fed. Reg. 11849 (Mar. 5, 2008). Now, five years since these petitions for critical habitat
9 designation, the Services leave Plaintiffs with little choice but to file suit.

10 21. The Services' failure to comply with the ESA's deadlines has also resulted in
11 informational and procedural injury to Plaintiffs. The ESA allows Plaintiffs access to information
12 and opportunity to participate in the public process afforded by the ESA. The Services' failure to
13 timely designate loggerhead sea turtle critical habitat deprives Plaintiffs of these rights.

14 22. These are actual, concrete injuries to Plaintiffs, caused by the Services' failure to
15 comply with the ESA, the Administrative Procedure Act, and their implementing regulations. The
16 relief requested will fully redress those injuries. Plaintiffs bring this action on their own behalf
17 and on behalf of their adversely affected members and staff.

18 23. The injury to the Plaintiffs, their members, and staff would be redressed by
19 declaratory and injunctive relief compelling the Services to designate critical habitat for the
20 loggerhead sea turtle because such designation would better protect the loggerhead's habitat, thus
21 helping to conserve the loggerhead sea turtle populations that live in the United States. Protection
22 of critical habitat is an important step toward the recovery of listed species and the added
23 protection of critical habitat will improve the loggerhead's chances of recovery. Plaintiffs have no
24 adequate remedy at law.

25 24. Defendant REBECCA M. BLANK, Acting United States Secretary of Commerce,
26 is the highest ranking official within the Department of Commerce and, in that capacity, has
27 responsibility for its administration and implementation of the ESA with regard to loggerhead sea
28

1 turtle critical habitat, and for compliance with all other federal laws applicable to the Department
2 of Commerce. She is sued in her official capacity.

3 25. Defendant NATIONAL MARINE FISHERIES SERVICE is a federal agency
4 within the Department of Commerce. Through delegation of authority from the Secretary of
5 Commerce, the National Marine Fisheries Service administers and implements the ESA and is
6 legally responsible for complying with the ESA's mandatory deadlines and for making decisions
7 and promulgating regulations under the ESA, including designating critical habitat for the
8 loggerhead sea turtle.

9 26. Defendant KEN SALAZAR, United States Secretary of the Interior, is the highest
10 ranking official within the U.S. Department of the Interior and, in that capacity, has ultimate
11 responsibility for the administration and implementation of the ESA with regard to endangered
12 and threatened species within the Department of Interior's jurisdiction, and for compliance with
13 all other federal laws applicable to the Department of the Interior. He is sued in his official
14 capacity.

15 27. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is a federal
16 agency within the Department of the Interior. Through delegation of authority from the Secretary
17 of the Interior, it is responsible for administering and implementing the provisions of the ESA
18 with regard to threatened and endangered species, including issuing a final critical habitat rule for
19 the loggerhead sea turtle.

20 **IV. LEGAL BACKGROUND**

21 28. With the ESA, Congress intended endangered species to be afforded the highest of
22 priorities. The ESA's purpose is "to provide a means whereby the ecosystems upon which
23 endangered species and threatened species depend may be conserved, [and] to provide a program
24 for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b).

25 29. The ESA assigns responsibility to implement the statute to the Secretaries of
26 Commerce and Interior, which in turn have delegated responsibility to the National Marine
27 Fisheries Service and the U.S. Fish and Wildlife Service, respectively. Generally, the National
28 Marine Fisheries Service has jurisdiction over marine species, while the U.S. Fish and Wildlife

1 Service has jurisdiction over terrestrial and freshwater species. The two agencies have joint
2 jurisdiction over sea turtles, with the National Marine Fisheries Service responsible for the sea
3 turtles in the marine environment and the U.S. Fish and Wildlife Service responsible when they
4 come ashore to nest. Because the critical habitat rule at issue here concerns both the designation
5 of ocean waters, and nesting habitat along several eastern and Gulf of Mexico states, it is within
6 the jurisdiction of both the National Marine Fisheries Service and U.S. Fish and Wildlife Service.

7 30. The ESA protects imperiled species by listing them as “endangered” or
8 “threatened.” A species is “endangered” if it “is in danger of extinction throughout all or a
9 significant portion of its range.” 16 U.S.C. § 1532(6). A species is “threatened” if it is “likely to
10 become an endangered species in the foreseeable future throughout all or a significant portion of
11 its range.” 16 U.S.C. § 1532(20).

12 31. For listed species, the ESA requires that the Services designate “critical habitat”
13 for each species. 16 U.S.C. § 1533. The critical habitat designations must be based on “the best
14 scientific data available.” 16 U.S.C. § 1533(b)(2).

15 32. Critical habitat includes specific areas occupied by the threatened or endangered
16 species with physical or biological features “(I) essential to the conservation of the species and
17 (II) which may require special management considerations or protection” and specific areas
18 unoccupied by the species that “are essential for the conservation of the species.” 16 U.S.C. §
19 1532(5)(A).

20 33. Under the ESA, conservation means “to use and the use of all methods and
21 procedures which are necessary to bring any endangered species or threatened species to the point
22 at which the measures provided pursuant to this chapter are no longer necessary.” 16 U.S.C. §
23 1532(3). Thus, critical habitat defines the areas that require proper management in order to ensure
24 that listed species recover.

25 34. Congress recognized that the protection of habitat is essential to the recovery of
26 listed species, stating that:

27 classifying a species as endangered or threatened is only the first step in insuring
28 its survival. Of equal or more importance is the determination of the habitat

1 necessary for that species' continued existence If the protection of endangered
2 and threatened species depends in large measure on the preservation of the species'
3 habitat, then the ultimate effectiveness of the Endangered Species Act will depend
4 on the designation of critical habitat.

4 H.R. Rep. No. 94-887, at 3 (1976).

5 35. Critical habitat provides additional protections for listed species. For example,
6 Section 7 of the ESA requires all federal agencies to “insure” that their actions neither “jeopardize
7 the continued existence” of any listed species nor “result in the destruction or adverse
8 modification” of its “critical habitat.” 16 U.S.C. § 1536(a)(2).

9 36. In order to ensure the timely protection of species and their critical habitat,
10 Congress set forth mandatory, non-discretionary deadlines in the ESA.

11 37. The Services, when promulgating regulations to propose listing a species as
12 endangered or threatened, shall “concurrently . . . designate any habitat of such species which is
13 then considered to be critical habitat.” 16 U.S.C. §§ 1533(a)(3)(A), *see id.* at § 1533(b)(6)(C).

14 38. In situations where critical habitat is “not determinable” at the time of listing, the
15 Services must conduct additional necessary research, and must publish a final determination of
16 critical habitat no later than one year from the date of the “not determinable” finding. 16 U.S.C. §
17 1533(b)(6)(C)(ii). The Services shall make critical habitat designations based on “the best
18 scientific data available.” 16 U.S.C. § 1533(b)(2).

19 **V. FACTUAL AND PROCEDURAL BACKGROUND**

20 39. The loggerhead sea turtle is the largest of all the hard-shelled sea turtle species,
21 weighing between 250 and 1,000 pounds as an adult, and ranging from 2 to 3 feet in length.
22 Loggerheads are mostly carnivorous reptiles, feeding primarily on jellyfish, conchs, and crabs.
23 However, they also eat seaweed and sargassum.

24 40. The endangered North Pacific Ocean loggerheads spend the majority of their lives
25 in the ocean, migrating over 7,500 miles between nesting sites in Japan and the South China Sea,
26 and at least two primary feeding grounds, one off the coast of Mexico and Southern California
27 and one in the central North Pacific, north of Hawaii. The major habitat for post-nesting adult
28 females occurs within the East China Sea and the Kuroshio Extension Bifurcation Region is a

1 critically important foraging area for juvenile loggerheads. Closer to the United States, juvenile
2 loggerheads frequently forage and migrate off the coasts of California, Baja California Sur,
3 Mexico, and north of Hawaii, in the central North Pacific. In recognition of the importance of
4 southern California marine habitat, the National Marine Fisheries Service has prohibited drift
5 gillnets in that area during El Niño years. *Fisheries Off West Coast States; Highly Migratory*
6 *Species Fisheries*, 72 Fed. Reg. 31756 (June 8, 2007).

7 41. The threatened Northwest Atlantic Ocean loggerheads mainly nest on the beaches
8 and sand dunes from southern Virginia to Texas. After hatching, the Northwest Atlantic Ocean
9 loggerheads enter the North Atlantic Gyre and travel to Northeast Atlantic waters and even as far
10 as the Mediterranean Sea. 76 Fed. Reg. at 58870. These oceanic juveniles have a long period of
11 residency near the Azores and stay for a shorter duration in waters surrounding Madeira. *Id.*

12 42. After returning from their post-hatching trans-Atlantic migration, juvenile and
13 adult loggerhead sea turtles feed and live in the continental shelf waters off the eastern seaboard,
14 the Bahamas, and the Gulf of Mexico. Oceanic juveniles are found in great concentrations in the
15 rich foraging grounds of the Grand Banks off of Newfoundland. *Id.* Neritic (meaning “coastal”)
16 juveniles are found in the continental shelf waters from Cape Cod Bay, Massachusetts, south
17 through Florida, the Bahamas, Cuba, and the Gulf of Mexico, as well as estuarine waters such as
18 Pamlico Sound, North Carolina, and the Indian River Lagoon, Florida. *Id.* Estuarine areas with
19 open ocean access, such as the Chesapeake Bay, provide habitat for juvenile and adult
20 loggerheads in warmer months. *Id.* Shallow water habitat with open ocean access, like Florida
21 Bay, provides year-round foraging habitat for adult loggerheads. *Id.*

22 43. The primary threats to both populations’ habitats are anthropogenic activities.
23 Fishing with longline, trawl, dredge, gillnet and other gear in the turtles’ marine habitat interfere
24 with safe passage and kill thousands of loggerheads every year. Loggerhead sea turtles’ foraging
25 habitat faces numerous, increasing threats, including seafloor destruction from fishing gear,
26 abandoned fishing gear, marine debris, pollution, and ocean acidification. Beach armoring (i.e.,
27 construction of sea walls), coastal development and vehicles driving on beaches interfere with
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1 adults' nesting and hatchlings' return to the ocean, with heavy vehicles often crushing nests not
2 marked and protected.

3 44. On July 28, 1978, the Services listed the loggerhead sea turtle as threatened
4 throughout its worldwide range, but did not designate critical habitat. *Listing and Protecting*
5 *Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea*
6 *Turtles as Threatened Species or "Endangered Species,"* 43 Fed. Reg. 32800 (July 28, 1978).

7 45. As a result of the continuing decline of the loggerhead sea turtle populations, in
8 2007 Plaintiffs petitioned to reclassify the North Pacific Ocean loggerheads and the Western
9 North Atlantic loggerhead sea turtles from threatened to endangered and designate critical habitat.
10 When the Services failed to respond to the petitions within the statutory timeframe, Plaintiffs filed
11 suit to compel a listing rule.

12 46. Pursuant to a court-ordered deadline, the Services then proposed listing nine
13 distinct population segments as threatened or endangered on March 16, 2010. *Endangered and*
14 *Threatened Species; Proposed Listing of Nine Distinct Population Segments of Loggerhead Sea*
15 *Turtles as Endangered or Threatened,* 75 Fed. Reg. 12598 (Mar. 16, 2010).

16 47. The proposed listing rule triggered the Services' legal obligation to complete a
17 listing decision by March 16, 2011. 16 U.S.C. § 1533(b)(6)(A). Instead of a listing decision, the
18 Services published a notice that invoked 16 U.S.C. § 1533(b)(6)(B)(i), which, in limited
19 circumstances, authorizes the Secretary to extend the one-year period for "not more than six
20 months for purposes of soliciting additional data." *Endangered and Threatened Species;*
21 *Proposed Listing of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered*
22 *or Threatened,* 76 Fed. Reg. 15932 (Mar. 22, 2011). On September 22, 2011, the Services listed
23 nine distinct loggerhead sea turtle populations worldwide. 76 Fed. Reg. 58868.

24 48. The Services have never designated critical habitat for the two loggerhead sea
25 turtle populations within U.S. jurisdiction, the North Pacific Ocean loggerhead and the western
26 North Atlantic loggerhead. Rather than designate critical habitat at the time of listing these
27 populations, the Services instead determined that critical habitat "is not determinable at this time,
28 but will be proposed in a separate rulemaking." *Id.* at 58905.

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VI. CLAIM FOR RELIEF

49. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

50. The Services violated and continue to violate the ESA, 16 U.S.C. § 1533, by failing to designate critical habitat for the Northwest Atlantic and North Pacific Ocean populations of loggerhead sea turtle within the time limit mandated by the ESA. 16 U.S.C. §§ 1533(a)(3)(A), (b)(6)(C) and 1540(g)(1)(C).

51. The Services' failure to perform their mandatory, non-discretionary duty with respect to loggerhead sea turtles' critical habitat is arbitrary and capricious, an abuse of discretion, not in accordance with procedures required by law, and constitutes agency action "unlawfully withheld or unreasonably delayed" in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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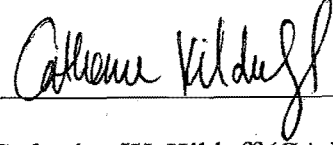
VII. PRAYER FOR RELIEF

For the reasons stated above, Plaintiffs respectfully request that the Court grant the following relief:

1. Declare that the Services violated their non-discretionary duties under the ESA, 16 U.S.C. §§ 1531-44, and acted in a manner that is arbitrary, capricious, or otherwise not in accordance with law, by failing to designate critical habitat for the Northwest Atlantic Ocean and North Pacific Ocean loggerhead sea turtle populations within the time frame dictated by the ESA;
2. Issue injunctive relief compelling the Services to designate critical habitat under the ESA for the loggerhead sea turtle populations at issue by a date certain;
3. Award Plaintiffs their costs of litigation, including reasonable attorney fees as provided by the ESA, 16 U.S.C. § 1540(g)(4); and
4. Provide such other relief as the Court deems just and proper.

1 DATE: January 8, 2013

Respectfully Submitted,

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