

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

**CENTER FOR BIOLOGICAL
DIVERSITY,**

378 North Main Avenue,
Tucson, AZ 85701

HEALTHY GULF,

935 Gravier Street, Ste. 700
New Orleans, LA 70112

Plaintiffs,

v.

DAVID BERNHARDT, in his official
capacity as Secretary of the U.S. Department
of Interior; **U.S. DEPARTMENT OF THE
INTERIOR**; **AURELIA SKIPWITH**, in her
official capacity as Director of U.S. Fish and
Wildlife Service; **U.S. FISH AND
WILDLIFE SERVICE,**

1849 C Street NW
Washington, DC 20240

Defendants.

Case No.: 1:20-cv-146

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. In this civil action for declaratory and injunctive relief, the Center for Biological Diversity (Center) and Healthy Gulf challenge the U.S. Fish and Wildlife Service’s (Service) failure to comply with the nondiscretionary deadlines set forth in the Endangered Species Act, 16 U.S.C. §§ 1531–1544. Specifically, the Service failed to determine whether the Pascagoula map turtle (*Graptemys gibbonsi*) and Pearl River map turtle (*Graptemys pearlensis*) warrant

protection as endangered or threatened under the Endangered Species Act within the congressionally mandated timeline set forth in Section 4 of the Act, *Id.* § 1533(b)(3). This failure delays crucial, lifesaving protections for these rare turtles that now suffer an even greater risk of extinction because of the Service's delay.

2. The Pascagoula map turtle is endemic to the Pascagoula river system in Mississippi. It is threatened by habitat loss and degradation due to stream channelization, point-bar mining, pollution, and dams and impoundment. Overutilization also threatens the survival of the species as commercial collection has increased dramatically in recent years.

3. The Pearl River Map turtle is endemic to medium sized creeks and large rivers in the Pearl River drainage of Mississippi and Louisiana. Once considered to be the Pearl River population of Pascagoula map turtle, scientists now recognize it as a full separate species.

4. The Pearl River map turtle was once more abundant in the Pearl River, but the population has declined significantly. As with many turtle species, habitat loss and degradation appear to be a leading cause for the decline. The state of Mississippi has listed the species as a Species in Need of Management, and the International Union for the Conservation of Nature (IUCN) considers the Pearl River map turtle endangered and possibly critically endangered.

5. Due to these threats, on April 20, 2010, the Center and Healthy Gulf submitted a petition to the Service asking it to list the Pascagoula map turtle as endangered or threatened.¹ In response to this petition, on September 27, 2011, the Service determined there was substantial

¹ Petitioners formally petitioned the Secretaries of Interior and Commerce to list 404 aquatic, riparian and wetland species from the southeastern U.S., including the Pascagoula map turtle, as threatened or endangered species and to designate critical habitat concurrent with listing. Petitioners included the Center, Healthy Gulf (formerly Gulf Restoration Network), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Tennessee Forests Council, West Virginia Highlands Conservancy, Tierra Curry, and Noah Greenwald.

scientific or commercial information indicating that listing the Pascagoula map turtle as endangered or threatened may be warranted. 76 Fed. Reg. 59,836–59,862 (Sep. 27, 2011).

6. Accordingly, the Endangered Species Act required the Service to determine if listing the species is “warranted” within 12 months of receiving Plaintiffs’ petition on April 20, 2010. 16 U.S.C. § 1533(b)(3)(B). The Service has failed to make the requisite final determination.

7. The Endangered Species Act provides lifesaving protections for species that are listed as endangered or threatened; however, the Pascagoula map turtle and Pearl River map turtle cannot benefit from any of these protections until they have been listed.

8. The Center and Healthy Gulf bring this action for declaratory relief to affirm that the Service is in violation of the Endangered Species Act for failing to make a timely 12-month finding, and to compel the Service to issue its final determination of whether to list the Pascagoula map turtle and Pearl River map turtle as endangered or threatened so they may receive the protections they need to survive in the wild.

II. JURISDICTION AND VENUE

9. Plaintiffs bring this action under the Endangered Species Act, 16 U.S.C. §§ 1533, 1540(g).

10. The Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (United States as a defendant), 16 U.S.C. § 1540(c) (actions arising under the Endangered Species Act), and 16 U.S.C. § 1540(g) (citizen suit provision of the Endangered Species Act).

11. The relief sought is authorized under 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), and 16 U.S.C. § 1540(g).

12. Plaintiffs provided formal notice to Defendants of their intent to file suit under the Endangered Species Act on November 13, 2018, and again on October 4, 2019, more than 60 days prior to filing this complaint, consistent with the Act's statutory requirements. 16 U.S.C. § 1540(g)(2). Because Defendants have not remedied the legal violations outlined in the notice, there exists an actual, justiciable controversy between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

13. Venue in this Court is proper according to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because Defendants reside in this judicial district and a substantial part of the violations giving rise to the claim occurred in this district.

III. PARTIES

14. Plaintiff Center for Biological Diversity is a national, nonprofit conservation organization that works through science, law, and policy to protect imperiled species and their habitats. The Center has more than 67,000 active members across the country. It is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States, including Alaska, Arizona, California, Colorado, Florida, Hawaii, Idaho, Minnesota, Nevada, New York, North Carolina, Oregon, Washington, and Washington, D.C., and in Mexico. The Center brings this action on behalf of itself and its members.

15. Center members and staff are concerned with the conservation of imperiled species like the Pascagoula map turtle and Pearl River map turtle and have an interest in the effective implementation of the Endangered Species Act to protect these species. They use and enjoy areas vital to the survival of these two species for observation of the species, nature photography, aesthetic enjoyment, recreation, and spiritual fulfillment. Center members and staff derive recreational, scientific, aesthetic, spiritual, and educational benefit from the continued

existence of the Pascagoula map turtle and Pearl River map turtle and their habitat. Center members and staff have concrete plans to continue to travel to and recreate in areas where they can observe these species and will maintain an interest in the species in the future.

16. In addition to submitting a petition to list the Pascagoula map turtle under the Endangered Species Act, the Center and its members have participated in conservation efforts that affect these two species. For example, the Center has a campaign to protect biodiversity in the southeastern United States, a campaign to curb the mass extinction of reptiles and amphibians, and a campaign to protect wildlife and plants from climate change. These campaigns seek to help the Pascagoula map turtle and Pearl River map turtle.

17. The Center's conservation efforts arise from a concern that the Pascagoula map turtle and Pearl River map turtle are at serious and imminent risk of extinction. The Service's failure to comply with the Endangered Species Act's nondiscretionary deadline for issuing a 12-month finding for the Pascagoula map turtle deprives it and the Pearl River map turtle of statutory protections that are necessary for their survival and recovery. Until these turtles are protected, the Center's interest in their conservation and recovery is harmed. Therefore, the Center's members and staff are injured by the Service's failure to make a timely determination of whether the Pascagoula and Pearl River map turtles warrant listing as endangered or threatened. The Center and its members will continue to suffer these actual, concrete injuries unless this Court grants relief and issues an order compelling a listing decision for these two species. The Center and its members have no other adequate remedy at law.

18. Plaintiff Healthy Gulf is a nonprofit conservation organization that is committed to uniting and empowering people to protect and restore the natural resources of the Gulf Region. Established in 1994 as the Gulf Restoration Network, the organization has evolved from a

network of several dozen member organizations to an independent organization with thousands of individual members throughout the Gulf. In 2019, Gulf Restoration Network changed its name to Healthy Gulf to reflect the ultimate mission of the organization. Healthy Gulf is incorporated in Louisiana and headquartered in New Orleans, Louisiana. Healthy Gulf brings this action on behalf of itself and its members.

19. Healthy Gulf members and staff are concerned with the conservation of imperiled species like the Pascagoula map turtle and Pearl River map turtle and have an interest in the effective implementation of the Endangered Species Act to protect these species. Healthy Gulf has members in Louisiana and Mississippi that live and recreate in the Pearl River basin. They use and enjoy areas vital to the survival of these two species for observation of the species, nature photography, aesthetic enjoyment, recreation, and spiritual fulfillment. Healthy Gulf members and staff derive recreational, scientific, aesthetic, spiritual, and educational benefit from the continued existence of the Pascagoula map turtle and Pearl River map turtle and their habitat. Healthy Gulf members and staff have concrete plans to continue to travel to and recreate in areas where they can observe these species and will maintain an interest in the species in the future.

20. In addition to submitting a petition to list the Pascagoula map turtle under the Endangered Species Act, Healthy Gulf and its members have participated in conservation efforts that affect these two species. Healthy Gulf has opposed dam projects on both the Pascagoula and Pearl rivers that would disrupt turtle habitat, and the organization has commented on National Pollution Discharge Elimination System (NPDES) permits affecting water quality in both drainages.

21. Healthy Gulf's conservation efforts arise from a concern that the Pascagoula map turtle and Pearl River map turtle are at serious and imminent risk of extinction. The Service's failure to comply with the Endangered Species Act's nondiscretionary deadline for issuing a 12-month finding for the Pascagoula map turtle deprives it and the Pearl River map turtle of statutory protections that are necessary for its survival and recovery. Until these turtles are protected, Healthy Gulf's interest in their conservation and recovery is harmed. Therefore, Healthy Gulf's members and staff are injured by the Service's failure to make a timely determination of whether the Pascagoula and Pearl River map turtles warrant listing as endangered or threatened. Healthy Gulf and its members will continue to suffer these actual, concrete injuries unless this Court grants relief and issues an order compelling a listing decision for these two species. Healthy Gulf and its members have no other adequate remedy at law.

22. Defendant David Bernhardt is the Secretary of the Interior. As Secretary of the Interior, he has the ultimate responsibility to administer and implement the provisions of the Endangered Species Act regarding the Pascagoula map turtle and Pearl River map turtle, and to comply with all other federal laws applicable to the U.S. Department of the Interior. Plaintiffs sue Defendant Bernhardt in his official capacity.

23. Defendant U.S. Department of the Interior is an agency of the United States charged with administering the Endangered Species Act for non-marine species.

24. Defendant Aurelia Skipwith is the Director of the U.S. Fish and Wildlife Service. As Director, Defendant Skipwith is a federal official with responsibility for implementing and enforcing the Endangered Species Act and its joint regulations, and to comply with all other federal laws applicable to the Service. Plaintiffs sue Defendant Skipwith in her official capacity.

25. Defendant U.S. Fish and Wildlife Service is a federal agency within the Department of the Interior. The Secretary of the Interior has delegated his authority to administer the Endangered Species Act to the Service for non-marine wildlife. 50 C.F.R. § 402.01(b). This authority encompasses proposed and final listing decisions for the Pascagoula map turtle and Pearl River map turtle.

26. Defendants Department of the Interior; U.S. Fish and Wildlife Service; David Bernhardt, in his official capacity as Secretary of the Interior; and Aurelia Skipwith, in her official capacity as Director of the Service, have waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) (Endangered Species Act).

IV. STATUTORY AND REGULATORY FRAMEWORK

27. The Endangered Species Act “represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Indeed, “Congress intended endangered species be afforded the highest of priorities.” *Id.* at 174. To that end, the Act’s purpose is to “provide a program for the conservation of . . . endangered species and threatened species” and “to provide a means whereby the ecosystems upon which endangered . . . and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

28. Before an imperiled animal can receive the Endangered Species Act’s protections, Section 4 of the Act directs the Service to classify it into a list of “endangered” or “threatened” species, a process known as “listing.” *Id.* § 1533(a). A “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16). An endangered species is any species that “is in danger of extinction throughout all or a significant portion of its range,” *id.* § 1532(6),

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

29. The Service must list a species if it is endangered or threatened because of any one of five factors: “(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.” *Id.* § 1533(a)(1).

30. The Endangered Species Act’s protective measures apply to species only after the Service lists them as threatened or endangered. For instance, Section 4 of the Act requires the Service to designate habitat essential to the conservation of a species as “critical habitat” at the same time it lists the species. *Id.* §§ 1533(a)(3)(A), 1532(5)(A). The Service must also develop a comprehensive recovery plan with site-specific management actions and objectives to guide its conservation efforts. *Id.* § 1533(f). Section 7 of the Act requires all federal agencies to ensure their actions do not “jeopardize the continued existence” of any listed species or “result in the destruction or adverse modification” of habitat that is essential to a listed species’ conservation. *Id.* § 1536(a)(2). Section 9 of the Act prohibits unauthorized trade and “taking” of endangered wildlife, which includes harming, harassing, or killing. *Id.* §§ 1538(a)(1)(B); 1533(19). The Act also authorizes the Service to acquire land for the protection of listed species and make federal funding available to assist states in their efforts to preserve and protect listed species. *Id.* §§ 1534(a)(2), 1535(d).

31. To ensure species at risk of extinction receive these protections in a timely manner, Congress set forth a detailed process so citizens may petition the Secretary to list a species as endangered or threatened. The process includes mandatory, non-discretionary

deadlines the Service must meet for three required findings: the 90-day finding, the 12-month finding, and the final listing determination. *Id.* § 1533(b)(3)–(6).

32. Upon receiving a listing petition, the Service must “to the maximum extent practicable, within 90 days after receiving [a] petition,” make an initial finding of whether the petition “presents substantial scientific or commercial information indicating the petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). If the Service finds the petition does not present substantial information indicating a species’ listing may be warranted, it rejects the petition. *Id.*

33. If the Service instead finds that a petition does present substantial information indicating that listing may be warranted, it must conduct a full scientific review of the species’ status. *Id.* Within 12 months from the date it receives the petition, the Service must make one of three findings: (1) listing is not warranted; (2) listing is warranted; or (2) listing is “warranted but precluded” by other pending proposals for listing species, providing certain requirements are met. *Id.* § 1533(b)(3)(B)

34. If the Service’s 12-month finding is 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 publishing the proposed regulation, the Service must render its final determination on the proposal, either finalizing the proposed listing rule, withdrawing the proposed listing rule, or if there is substantial disagreement about scientific data, delaying a final determination for up to six months to solicit more information. *Id.* § 1533(b)(6)(A)–(B).

35. The Endangered Species Act does not safeguard species at risk of extinction until the Service lists them as endangered or threatened. Accordingly, it is critical that the Service

meticulously follow the Act's listing procedures and deadlines to ensure species are listed in a timely manner.

V. FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

Pascagoula Map Turtle

36. The Pascagoula map turtle is a moderate-sized, freshwater turtle with a relatively small range in the Pascagoula river system in Mississippi. It occurs in the Pascagoula, Leaf, and Chickasawhay rivers, and in Red, Bowie, Okatoma, and Tallahala creeks. The species is not found in Big Creek, Black Creek, the Escatawpa River, or in Alabama tributaries of the Pascagoula River. The Pascagoula map turtle uses medium to large rivers especially those with abundant prey, deep pools, sandy banks or sandbars for nesting, and logs or other structures for basking. At night it usually clings to submerged objects just below water's surface, but sometimes comes onto sandy beaches or into shallow water.

37. The species is threatened by loss of basking sites due to the removal of logs and snags for boat navigation. It is also threatened by habitat loss and degradation due to stream channelization, point-bar mining, and impoundment. Overutilization also threatens the survival of the Pascagoula map turtle. Commercial collection has increased dramatically in recent years, and there has been a substantial increase in trade. Studies have shown that the removal of long-lived, slow growing animals with life history traits designed for replacement reproduction spread out over the course of a lifetime (such as the Pascagoula map turtle) results in population decline. The elimination of individuals from populations that are already threatened because of habitat degradation is an additive impact on already stressed populations. Water quality degradation is also a high-level threat to this turtle's stream habitat.

38. Due to these significant threats to the Pascagoula map turtle, on April 20, 2010, the Center and Healthy Gulf submitted a petition to the Service to list the species as threatened or endangered under the Endangered Species Act. The petition comprehensively substantiated the urgent threats to the Pascagoula map turtle using scientific information about habitat destruction, overcollection, and predation, and explained that current regulatory mechanisms are inadequate to curtail the growing threats to the species.

39. On September 27, 2011 the Service published a 90-day finding in which it agreed that listing the Pascagoula map turtle as endangered or threatened “may be warranted.” 76 Fed. Reg. 59,836–59,862 (Sep. 27, 2011).

40. The Service was required to make a 12-month finding determining whether listing the Pascagoula map turtle is warranted, but it still has not made this mandatory finding, in violation of the Endangered Species Act. 16 U.S.C. § 1533(b)(3)(B).

Pearl River Map Turtle

41. The Pearl River map turtle is a moderate-sized, freshwater turtle endemic to medium sized creeks and large rivers in the Pearl River drainage of Mississippi and Louisiana. It uses sand bars as nesting sites and its diet largely consists of mollusks and snails. Habitat loss and degradation appear to be leading causes for the decline, particularly as a result of alterations to hydrologic flow regimes caused by dams, impoundments, and flood control projects. Associated floodplain clearing and channelization contribute to increased turbidity and siltation that further impact the snails and other mollusks on which map turtles feed. Sedimentation and other anthropogenic alterations within the Pearl River drainage basin may have caused a decline in native mussel and snail populations, thus decreasing a significant prey source for female Pearl River map turtles.

42. Presently, the proposed construction of a low-head dam on the Pearl River in Hinds and Rankin Counties, Mississippi, threatens the Pearl River map turtle. The “One Lake Project” would transform a riverine ecosystem into a large lake environment, resulting in the disruption of flow regimes, water quality impacts, and the loss of habitat for basking. Impounding this stretch of the Pearl River could extirpate the species from the area.

43. The species is also threatened by contaminants from urban and industrial sources and overexploitation. There is evidence that the Pearl River map turtle has been collected for the pet trade. The species is currently experiencing a decline both upstream and downstream of the Ross Barnett Reservoir near Jackson, Mississippi, likely as a result of impaired water quality from industrial and/or municipal effluents, associated impacts of reservoir flow regulation, collection by the pet trade, or a combination of these factors.

44. The Pearl River map turtle was once considered to be the Pearl River population of the Pascagoula map turtle. A scientific study published in June 2010, however, split the Pascagoula map turtle into two species. The study concluded that what was accepted at the time as Pearl and Pascagoula populations of *G. gibbonsi* should be recognized as two separate species, noting they are morphologically and genetically distinct.

45. Because the two species constitute populations previously petitioned for listing as a single species, the Service must make a 12-month finding on both the Pascagoula map turtle (*Graptemys gibbonsi*) and the Pearl River map turtle (*Graptemys pearlensis*).

VI. PLAINTIFF’S CLAIM FOR RELIEF

Violation of the Endangered Species Act, 16 U.S.C. § 1533(b)(3)(B) Failure to Make a 12-Month Finding for the Pascagoula Map Turtle and Pearl River Map Turtle

46. Plaintiffs re-allege and incorporate by reference all the allegations set forth in this Complaint as though fully set forth below.

47. The Service's failure to make a timely 12-month finding on Plaintiffs' petition to list the Pascagoula map turtle and Pearl River map turtle as endangered or threatened species violates the Endangered Species Act, 16 U.S.C. § 1533(b)(3)(B).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter a Judgment for Plaintiffs providing the following relief:

- (1) Declare that Defendants violated the Endangered Species Act by failing to issue a timely 12-month finding regarding whether listing the Pascagoula map turtle and Pearl River map turtle as endangered or threatened is warranted;
- (2) Order Defendants to issue, by date certain, a finding regarding whether listing the Pascagoula map turtle and Pearl River map turtle as endangered or threatened is warranted;
- (3) Grant Plaintiffs their attorneys' fees and costs in this action, as provided by the Endangered Species Act, 16 U.S.C. § 1540(g)(4); and
- (4) Provide such other relief as the Court deems just and proper.

DATED: January 21, 2020

Respectfully submitted,

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