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*Pro Hac Vice Application Pending*

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION**

Center for Biological Diversity, a  
non-profit organization,

Plaintiff,

v.

U.S. Fish and Wildlife Service; Brian  
Nesvik, in his official capacity as  
Director of the U.S. Fish and Wildlife  
Service; Doug Burgum, in his official  
capacity as Secretary of the U.S.  
Department of the Interior,

Defendants.

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Center for Biological Diversity (the “Center”) brings this case challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to issue a final listing rule for the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) in violation of the Endangered Species Act’s (“ESA” or “Act”) nondiscretionary, congressionally mandated deadline. The Service’s failure to meet the ESA deadline for

1 the eastern hellbender delays lifesaving protections for the hellbender, thereby  
2 increasing its risk of extinction.



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16 **Photo Credit: Ryan Hagerty/USFWS**

17 2. Plaintiff brings this lawsuit for declaratory and injunctive relief, seeking an  
18 Order declaring that the Service violated section 4(b)(6)(A) of the ESA, 16 U.S.C. §  
19 1533(b)(6)(A), by failing to timely issue a final listing rule for the eastern hellbender,  
20 and directing the Service to issue the finding by a date certain.

21 **JURISDICTION**

22 3. This Court has jurisdiction over this action pursuant to 16 U.S.C. §  
23 1540(c), (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This  
24 Court has authority to issue declaratory and injunctive relief pursuant to the ESA, 16  
25 U.S.C. § 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).

26 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because  
27 Plaintiff resides in this judicial district.  
28

1 **PARTIES**

2 5. Plaintiff Center for Biological Diversity is a national, non-profit  
3 conservation organization that works through science, law, and policy to protect  
4 imperiled wildlife and their habitat. The Center is incorporated in California and  
5 headquartered in Tucson, Arizona, with offices throughout the United States. The Center  
6 has more than 101,000 active members throughout the country.

7 6. The Center brings this action on behalf of its members who derive  
8 recreational, educational, scientific, professional, and other benefits from the eastern  
9 hellbender and its habitat. Plaintiff's members' interests in protecting and recovering the  
10 eastern hellbender and its habitat are directly harmed by the Service's failure to timely  
11 publish a final listing rule, delaying critical protections under the ESA that can put the  
12 eastern hellbender on a path to recovery.

13 7. For example, Center member Reed Rossell is a freelance environmental  
14 consultant based in North Carolina and a lead scientist on a forthcoming study on the  
15 eastern hellbender. Mr. Rossell has a professional, recreational, and aesthetic interest in  
16 the conservation of the eastern hellbender. Mr. Rossell has been studying the eastern  
17 hellbender since 2013. The Service's failure to protect the hellbender harms Mr.  
18 Rossell's professional work because the loss of the species means a lack of opportunities  
19 for his consulting work and the further degradation of the hellbender's aquatic habitat  
20 means less diversity of species to monitor and study. Mr. Rossell also has aesthetic and  
21 recreational interests in conserving the hellbender and its habitat. He has concrete plans  
22 to visit the South Toe River to flyfish and monitor hellbenders. Mr. Rossell enjoys  
23 spending time in nature, particularly fly fishing, which he does several times a month in  
24 the hellbender's habitat. Because the hellbender is an indicator species of aquatic health,  
25 the loss of the hellbender will lessen his experience in nature and in recreating in clean  
26 rivers. Mr. Rossell intends to continue to utilize the hellbender's habitat throughout all  
27 months of the year.  
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1           8.       Defendants' violation of the ESA's deadline has delayed ESA protections  
2 for the eastern hellbender. This inaction harms Plaintiff's members' interests in the  
3 hellbender by permitting the species' continued trajectory toward extinction, thereby  
4 decreasing the likelihood that the Center's members will encounter the species as part of  
5 their personal and professional excursions. These injuries are actual, concrete injuries  
6 presently suffered by Plaintiff's members, are directly caused by Defendants' acts and  
7 omissions, and will continue unless the Court grants relief. The relief sought would  
8 redress these injuries by providing ESA protection for the eastern hellbender, thus  
9 promoting its conservation and recovery. Plaintiff and its members have no other  
10 adequate remedy at law.

11           9.       Defendant U.S. Fish and Wildlife Service is the agency within the  
12 Department of the Interior charged with implementing the ESA for the eastern  
13 hellbender. The Secretary of the Interior has delegated administration of the ESA to the  
14 Service. 50 C.F.R. § 402.01(b).

15           10.      Defendant Brian Nesvik is the Director of the Service and is charged with  
16 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his  
17 official capacity.

18           11.      Defendant Doug Burgum is the Secretary of the U.S. Department of the  
19 Interior ("Secretary") and has the ultimate responsibility to administer and implement  
20 the provisions of the ESA. Defendant Burgum is sued in his official capacity.

### 21                           **STATUTORY FRAMEWORK**

22           12.      The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is "the most  
23 comprehensive legislation for the preservation of endangered species ever enacted by  
24 any nation." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental  
25 purposes are "to provide a means whereby the ecosystems upon which endangered  
26 species and threatened species depend may be conserved [and] to provide a program for  
27 the conservation of such endangered species and threatened species." 16 U.S.C. §  
28 1531(b).

1           13.     The ESA defines a “species” as “any subspecies of fish or wildlife or  
2 plants, and any distinct population segment of any species of vertebrate fish or wildlife  
3 which interbreeds when mature.” *Id.* § 1532(16).

4           14.     A species is “endangered” when it “is in danger of extinction throughout  
5 all or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it  
6 is “likely to become an endangered species within the foreseeable future throughout all  
7 or a significant portion of its range.” *Id.* § 1532(20).

8           15.     The ESA requires the Service to determine whether any species is  
9 endangered or threatened because of any one of, or combination of, the following  
10 factors: (A) the present or threatened destruction, modification, or curtailment of its  
11 habitat or range; (B) overutilization for commercial, recreational, scientific, or  
12 educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory  
13 mechanisms; or (E) other natural or manmade factors affecting its continued existence.  
14 *Id.* § 1533(a)(1).

15           16.     If the Service determines that the species is not endangered throughout all  
16 its range, the ESA requires the agency to examine whether it is endangered or threatened  
17 throughout any “significant portion” of its range. *Id.* §§ 1532(6), (20).

18           17.     The Service must base all listing determinations “solely on the basis of the  
19 best scientific and commercial data available.” *Id.* § 1533(b)(1)(A).

20           18.     To ensure the timely protection of species at risk of extinction, Congress  
21 set forth a detailed process whereby citizens may petition the Service to list a species as  
22 endangered or threatened. *Id.* § 1533(b)(3). In response, the Service must publish a  
23 series of three decisions according to statutory deadlines. First, within 90 days of receipt  
24 of a listing petition, the Service must, “to the maximum extent practicable,” publish an  
25 initial finding as to whether the petition, “presents substantial scientific or commercial  
26 information indicating that the petitioned action may be warranted.” *Id.* § 1533(b)(3)(A).  
27 This is known as the “90-day finding.” If the Service determines in the 90-day finding  
28

1 that the petition does not present substantial information indicating that listing may be  
2 warranted, the petition is rejected and the process concludes.

3 19. If the Service determines that a petition presents substantial information  
4 indicating that listing “may be warranted,” the agency must publish that finding and  
5 proceed with a scientific review of the species’ status, known as a “status review.” *Id.*

6 20. Upon completing the status review, and within 12 months of receiving the  
7 petition, the Service must publish a “12-month finding” with one of three listing  
8 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is  
9 “warranted but precluded” by other proposals for listing species, provided certain  
10 circumstances are met. *Id.* § 1533(b)(3)(B).

11 21. If the Service determines that listing is “warranted,” the agency must  
12 publish that finding in the Federal Register along with the text of a proposed regulation  
13 to list the species as endangered or threatened and to designate critical habitat for the  
14 species. *Id.* § 1533(a)(3)(A), (b)(3)(B)(ii). Within one year of publication of the  
15 proposed listing rule, the Service must publish in the Federal Register the final rule  
16 implementing its determination to list the species and designate critical habitat. *Id.* §  
17 1533(b)(6)(A).

18 22. If the Service instead issues a finding that listing the species is “not  
19 warranted,” the process concludes, and that finding is a final agency action subject to  
20 judicial review. *Id.* § 1533(b)(3)(C)(ii).

21 23. The ESA has a suite of substantive and procedural legal protections that  
22 apply to species once they are listed as endangered or threatened. For example, section  
23 4(a)(3) of the Act requires the Service to designate “critical habitat” for each endangered  
24 and threatened species. *Id.* § 1533(a)(3).

25 24. In addition, ESA section 7(a)(2) requires all federal agencies to ensure that  
26 their actions do not “jeopardize the continued existence” of any endangered or  
27 threatened species or “result in the destruction or adverse modification” of any listed  
28 species’ critical habitat. *Id.* § 1536(a)(2).

1           25.     ESA section 9 prohibits, among other actions, “any person” from causing  
2 the “take” of any protected fish or wildlife without lawful authorization from the  
3 Service. *Id.* §§ 1538(a)(1)(B), 1539; *see also id.* § 1532(19) (defining “take”). Other  
4 provisions require the Service to “develop and implement” recovery plans for listed  
5 species, *id.* § 1533(f); authorize the Service to acquire land for the protection of listed  
6 species, *id.* § 1534; and authorize the Service to make federal funds available to states to  
7 assist in the conservation of endangered and threatened species, *id.* § 1535(d).

### 8                                   **FACTUAL BACKGROUND**

9           26.     The eastern hellbender is a large, fully aquatic salamander that lives in  
10 clear, clean streams of the eastern and midwestern United States. Reaching nearly two  
11 feet in length, it is the largest amphibian in North America.

12           27.     The hellbender can live at least 25–30 years in the wild and may in some  
13 instances live longer than 50 years. At every life stage, the eastern hellbender has a  
14 strong preference for free-flowing, cool, clean, highly oxygenated streams with boulders  
15 and crevices to survive.



23

24           Figure 1 – Map of the range of the hellbender. Dark gray sites are the range of the Eastern  
25 hellbender, and the light gray site in northern Arkansas and southern Missouri is the range of  
26 the Ozark hellbender.

27           Illustration is courtesy of the Marshall University Herpetology Lab web site –

28           <http://www.marshall.edu/herp/Salamanders/hellbender.htm>.

1           28.     As illustrated above, the eastern hellbender's historic range encompassed  
2 15 eastern and midwestern states, ranging from northeastern Mississippi, northern  
3 Alabama, and northern Georgia northeast through Tennessee, Kentucky, North Carolina,  
4 Missouri, Illinois, Indiana, Ohio, West Virginia, Maryland, Virginia, and Pennsylvania,  
5 to the southern portion of New York.

6           29.     Hellbender abundance has drastically declined in most areas of the  
7 species' range.

8           30.     Hellbender declines are driven by myriad human-caused impacts.  
9 Sedimentation is one of the primary factors most impacting the status of the species  
10 throughout its range, arising from multiple sources, including agriculture, deforestation  
11 of upland forests, clearing of riparian vegetation, oil and gas development (including  
12 enhanced recovery techniques such as hydraulic fracturing), residential development,  
13 off-road vehicles, impoundments, and instream gravel mining. Increased sediment fills  
14 the interstitial spaces in cobble beds that are used as shelter by larval and juvenile  
15 hellbenders as well as their prey, and sediment can also impact habitat use and migration  
16 by adults by burying shelter and nest rocks.

17           31.     Dam construction and other stream impoundments negatively impact  
18 hellbenders throughout much of their range. Because hellbenders breathe primarily  
19 through their skin, they depend on well-oxygenated water. Dams stop swift water flow  
20 and submerge riffles, causing dissolved oxygen levels to drop and rendering the habitat  
21 unsuitable for hellbenders. Impoundments also fragment hellbender habitat, blocking the  
22 gene flow between populations.

23           32.     Coal mining, streambed gravel mining, and other forms of mining destroy  
24 hellbender habitat and degrade water quality through toxic pollution (often caused by  
25 acid mine drainage), decreased pH levels, increased conductivity (salinity), and  
26 increased siltation and sedimentation.

27           33.     Hellbenders have suffered direct mortality through collection for scientific  
28 study and anatomy courses, the illegal pet trade, bounty hunts by sportsman's clubs, and



1 persecution by anglers holding the misconception that hellbenders impact fish  
2 populations, when their primary prey is in fact crayfish. In addition, non-native fish  
3 stocked for sports fishing often prey on young or larval hellbenders.

4 34. Direct mortality of hellbenders also occurs from careless human behavior  
5 such as stone-stacking and cairn building by recreationists. The moving and stacking of  
6 rocks along waterways directly impacts hellbender shelter and breeding habitat and can  
7 also result in the crushing of individual hellbenders, as occurred last summer in Great  
8 Smoky Mountains National Park. See [https://www.wunc.org/2025-09-19/national-park-](https://www.wunc.org/2025-09-19/national-park-service-asks-visitors-not-to-stack-rocks-after-hellbender-was-crushed)  
9 [service-asks-visitors-not-to-stack-rocks-after-hellbender-was-crushed](https://www.wunc.org/2025-09-19/national-park-service-asks-visitors-not-to-stack-rocks-after-hellbender-was-crushed).

10 35. Climate change is predicted to exacerbate the trends of warming stream  
11 temperatures and lower flow regimes that negatively impact eastern hellbenders. More  
12 frequent and intense flooding events exacerbated by climate change are an additional  
13 increasing and quite significant threat to hellbenders, as illustrated by Hurricane  
14 Helene's devastating impact on many of the species' healthiest remaining populations in  
15 western North Carolina.

#### 16 **The Center's Petition and Listing History**

17 36. On April 20, 2010, the Center petitioned the Service to list the eastern  
18 hellbender as threatened or endangered under the ESA. On September 27, 2011, the  
19 Service issued a positive 90-day finding for the eastern hellbender, determining the  
20 petition presented substantial scientific information indicating that listing may be  
21 warranted because of "habitat loss and overuse," as well as other factors. 76 Fed. Reg.  
22 59836.

23 37. In June 2013, the Center sued to compel the Service to issue the required  
24 but overdue 12-month finding. *Ctr. for Biological Diversity v. Jewell*, Case No. 1:13-cv-  
25 00975-EGS (D.D.C.). On September 23, 2013, the Center and the Service entered a  
26 stipulated settlement agreement that the Service would submit to the Federal Register a  
27 12-month finding on the petition to list the hellbender by September 30, 2018. *Id.* at Dkt.  
28 No. 7.

1           38.     On April 4, 2019, the Service issued its 12-month finding. Of an estimated  
2 570 historic eastern hellbender populations at that time, the Service could only identify  
3 35 remaining known healthy populations. The agency nonetheless concluded that listing  
4 the eastern hellbender as threatened or endangered under the ESA was not warranted. 84  
5 Fed. Reg. 13223.

6           39.     In 2021, the Center and partners sued the Service challenging its decision  
7 to deny protection to the eastern hellbender. In response to the Center’s lawsuit, the  
8 Court declared the decision unlawful, vacated the determination, and remanded to the  
9 agency with orders to make a lawful determination consistent with the ESA’s  
10 requirements. *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 690 F. Supp. 3d  
11 322 (S.D.N.Y. 2023).

12           40.     The Service published a proposed rule to list the hellbender as an  
13 endangered species on December 13, 2024, determining that the species is in danger of  
14 extinction throughout its range. 89 Fed. Reg. 100934. The Service found that of an  
15 estimated 371 remaining populations, only 45 (12 percent) of those populations are  
16 considered stable. *Id.* at 100944. Highlighting the urgency of the situation, the Service  
17 found that listing as threatened is not appropriate “because the extent and magnitude of  
18 past and ongoing threats has reduced the number and distribution of healthy populations,  
19 rendering the eastern hellbender less able to cope with stressors and environmental  
20 fluctuations, impaired its ability to adapt to novel changes, and increased its  
21 vulnerability to catastrophes.” *Id.*

22           41.     With limited exceptions, the ESA requires FWS to issue a final listing rule  
23 within one year of a proposed listing rule. More than one year has now passed since the  
24 Service issued its proposed listing rule for the eastern hellbender.

25           42.     It has now been over 15 years since the Center petitioned to list the eastern  
26 hellbender. During the Service’s egregious, unlawful, and inexcusable delay in  
27 providing the protections demanded by the ESA, the eastern hellbender has continued to  
28 suffer significant population declines and loss of habitat.

43. Plaintiff provided Defendants with 60-days' notice of their ESA violations, as required by 16 U.S.C. § 1540(g)(2)(C), by a letter to the Service dated December 15, 2025. Defendants have not remedied the violations set out in the notice letter, and an actual controversy exists between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

**CLAIM FOR RELIEF**

**Violation of the ESA for Failure to Publish a Timely Final Listing Rule for the Eastern Hellbender**

44. Plaintiff re-alleges and incorporates all allegations set forth in the preceding paragraphs.

45. With limited exceptions, the ESA requires the Service to publish a final listing rule implementing its determination to list the species within 1 year of the proposed listing rule. 16 U.S.C. § 1533(b)(6)(A).

46. In response to the Center's 2010 petition to list the hellbender, and in response to multiple lawsuits by the Center, the Service published a proposed rule to list the eastern hellbender as an endangered species under the ESA on December 13, 2024. Therefore, the final rule implementing the Service's determination to list the species was due December 13, 2025.

47. Defendants have not made the statutorily required final determination for the eastern hellbender.

48. Defendants failed to perform their nondiscretionary duty to timely publish the final listing rule in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A).

## REQUEST FOR RELIEF

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

1. Declare that Defendants violated the ESA by failing to issue a timely final listing rule;

2. Provide injunctive relief compelling Defendants to publish a final rule listing the eastern hellbender as endangered under the ESA by a date certain;
3. Retain continuing jurisdiction to review Defendants' compliance with all judgments 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.

Respectfully submitted and dated this 17th day of February 2026.

s/ Brian Segee

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