

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

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

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CENTER FOR BIOLOGICAL DIVERSITY,  
TROPICAL AUDUBON SOCIETY, and the  
MIAMI BLUE CHAPTER of the NORTH  
AMERICAN BUTTERFLY ASSOCIATION

Plaintiff,

v.

DEBRA HAALAND, in her official capacity as  
Secretary of the U.S. Department of the  
Interior; MARTHA WILLIAMS, in her official  
capacity as Director of the U.S. Fish and  
Wildlife Service; and the U.S. FISH AND  
WILDLIFE SERVICE,

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Plaintiffs Center for Biological Diversity, Tropical Audubon Society, and the Miami Blue Chapter of the North American Butterfly Association (collectively, “Plaintiffs”) challenge the U.S. Fish and Wildlife Service’s (“Service”) failure to comply with nondiscretionary deadlines set forth in the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544. The Service failed to designate critical habitat concurrently with its decision to list the Miami tiger beetle as endangered on October 5, 2016, finding critical habitat not then determinable. The Service also failed to designate critical habitat one year after the that it found critical habitat was not then determinable. Finally, the Service failed to issue a final rule designating critical habitat within one year after its proposal to designate critical habitat on September 7, 2021. *Id.* § 1533(a)(3)(A)(i), (b)(6)(C)(ii). By failing to fulfill its statutory duty to designate critical habitat according to mandatory deadlines, the Service is violating the ESA.

2. The Miami tiger beetle is found only in small pockets of pine rockland habitat in Miami-Dade County, Florida. Pine rockland habitat is characterized by limestone outcrops, Florida slash pine as the sole canopy species, and a diverse understory of scrubs and herbs. Pine rockland habitat is a globally endangered plant community that has disappeared from more than 98 percent of its historic extent because of habitat degradation and outright destruction. Pine rockland habitat with sandy patches suitable to support the Miami tiger beetle have largely been lost to urban development. Most remaining habitat is considered degraded due to dense vegetation and lack of land management via controlled burns.

3. Habitat loss and degradation is the primary cause of extinction globally and is the primary threat to the Miami tiger beetle. Due to the beetle’s very small population size and significant, imminent threats to its incredibly limited habitat, the species is facing an imminent

threat of extinction. The Miami tiger beetle's very existence depends on the protection of its remaining habitat.

4. Because the Service listed the beetle on October 5, 2016, and concurrently concluded that critical habitat was not then determinable, the ESA required the agency to designate critical habitat by October 5, 2017. Following litigation, the Service finally published a proposed rule to designate critical habitat for the Miami tiger beetle on September 7, 2021.

5. The Service was then required to finalize its designation of critical habitat for the Miami tiger beetle within a year of the proposed rule, by September 7, 2022, but it has yet to do so. Consequently, the Service has been and continues to be in violation of the ESA, depriving the beetle of vital habitat protections for more than five years.

6. To ensure the beetle receives the lifesaving habitat protections it needs and is entitled to under the ESA, Plaintiffs bring this action for declaratory relief against Debra Haaland, in her official capacity as Secretary of the Interior; the Department of the Interior; Martha Williams, in her official capacity as Director of the United States Fish and Wildlife Service; and the United States Fish and Wildlife Service to affirm Defendants are in violation of the ESA and Administrative Procedure Act (APA) for failing to designate critical habitat for the Miami tiger beetle in accordance with mandatory statutory deadlines. Plaintiffs respectfully request that this Court compel the Service to issue its final rule designating critical habitat that is vital for Miami tiger beetle's survival.

#### **JURISDICTION AND VENUE**

7. Plaintiffs bring this action under the Endangered Species Act, 16 U.S.C. §§ 1533, 1540(g), and the Administrative Procedure Act, 5 U.S.C. § 706.

8. The Court has jurisdiction over this action under 16 U.S.C. § 1540 (c) & (g) (actions arising under the citizen suit provision of the Endangered Species Act), 5 U.S.C. § 702 (Administrative Procedure Act), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1346 (United States as a defendant).

9. The relief sought is authorized under 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), 16 U.S.C. § 1540(g) (ESA), and 5 U.S.C. § 702 (APA).

10. Plaintiffs provided Defendants sixty (60) days' notice of their intent to sue over the ESA violations listed herein pursuant to the ESA's citizen-suit provision, *Id.* § 1540(g)(2)(A)(i), by letter dated September 8, 2022. Because Defendants have not remedied the legal violations outlined in the notice by the date of this Complaint's filing, there exists an actual, justiciable controversy between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

11. Venue is proper in the United States District Court for the Southern District of Florida according to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because a substantial part of the events or omissions giving rise to the claim occurred here.

### **PARTIES**

12. The Center for Biological Diversity ("Center") is a nonprofit 501(c)(3) organization incorporated in the State of California and headquartered in Tucson, Arizona, with offices across the country, including in Arizona, California, Florida, New York, North Carolina, Oregon, Washington, and Washington, D.C., and in Baja California Sur, Mexico. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats both in the United States and abroad. The Center

has more than 89,500 active members, including members with recreational, scientific, professional, aesthetic, spiritual, and ethical interests in the Miami tiger beetle and its habitat

13. For example, one Center member has spent more than 40 years researching tiger beetles. He has conducted and published research on the Miami tiger beetle, including its description as a species, biology, habitat, and rarity. His research aided in formulating the basis for listing the Miami tiger beetle as an endangered species. He believes protecting the Miami tiger beetle and its unique habitat is of paramount importance and plans to conduct further research on the Miami tiger beetle in the near future. He also plans to recreationally visit the Miami tiger beetle's habitat, with hopes of encountering the species.

14. Tropical Audubon Society ("TAS") is a nonprofit 501(c)(3) organization incorporated in the State of Florida and headquartered in Miami, Florida. TAS is a science-and solutions-based nonprofit conservation organization driven by its grassroots community and principles of equity, diversity and inclusion. TAS' legacy is to protect, conserve and restore South Florida ecosystems by working closely with local governments and other stakeholders, and by fostering wise stewardship of native habitats, birds, and other indigenous wildlife. TAS has more than 1,000 active members, including members who appreciate and have ethical, recreational, and aesthetic interests in the Miami tiger beetle and its habitat.

15. For example, one TAS member lives only three miles away from the Miami pine rocklands. He has spent years photographing the Miami tiger beetle habitat, hoping to encounter the beetle and other endangered species on each visit. He will continue photographing the habitat bi-weekly throughout the winter in addition to visiting recreationally. He believes critical habitat determinations are vital to preserving this unique species and its imperiled habitat. He believes

that the Miami tiger beetle is nearing extinction, and that removal of the species from the environment will create many unknown ramifications on our natural world.

16. The Miami Blue Chapter ("Miami Blue") of the North American Butterfly Association is a non-profit organization dedicated to lepidopteran conservation, research, and educational outreach. Miami Blue is located in Southeast Florida, a unique region in the continental United States harboring the globally imperiled pine rockland ecosystem with high biodiversity and endemism. Miami Blue strives to preserve biodiversity and prevent catastrophic ecosystem service failures beneficial to people and wildlife. Miami Blue believes protecting the Miami tiger beetle will also protect habitat for imperiled lepidopterans, which directly and indirectly will protect other wildlife and maintain the ecological integrity of the pine rockland ecosystem.

16. One member of Miami Blue routinely leads nature walks throughout Miami-Dade County and participates in butterfly counts in and around Miami Tiger Beetle habitat. He will continue these walks on a seasonal basis. He has a deep appreciation of the tiger beetle and believes it deserves protection from the immediate threats of development and urban sprawl. He has advocated for the protection of this beetle species to local governments, including Miami-Dade County.

17. Defendants' failure to meet the ESA's nondiscretionary deadlines to designate critical habitat for the Miami tiger beetle denies this species the protection it needs to survive, which in turn injures the Plaintiffs' interests. For example, while the Service continues to delay designating critical habitat, imminent development plans threaten to destroy or degrade even more key habitat before it can receive protections. This ongoing habitat loss, absent protections, harms the beetle's chances to survive and recover. Therefore, Defendants' failure to designate

critical habitat harms and will continue to injure Plaintiffs' and their members' interests in the Miami tiger beetle and the protection of its habitat. These injuries are actual, concrete injuries presently suffered by Plaintiffs' members; are directly caused by Defendants' inaction; and will continue to occur unless this Court grants relief.

18. The relief sought in this case—an order compelling the Service to designate critical habitat by a date certain—would redress these injuries by protecting the Miami tiger beetle's habitat before it can be further degraded or destroyed, thereby protecting the beetle from extinction so Plaintiffs and their members can continue to pursue their interests in the beetle and its unique habitat. Plaintiffs and their members have no other adequate remedy at law.

19. Defendant Debra Haaland is the Secretary of the United States Department of the Interior. By holding this position, she is ultimately responsible for administering the provisions of the ESA, including timely designation of critical habitat for listed species, as well as all other federal laws that apply to the Department of the Interior. Plaintiffs sue Defendant Haaland in her official capacity.

20. Defendant United States Department of the Interior is an agency of the United States responsible for administering the ESA for most terrestrial and non-marine species, including the Miami tiger beetle.

21. Defendant Martha Williams is the Director of the United States Fish and Wildlife Service. By holding this position, she is responsible for enforcing the provisions of the ESA, including timely designation of critical habitat for listed species, and regulations promulgated in accordance with the ESA, as well as any other federal laws that apply to the Service. Plaintiffs sue Defendant Williams in her official capacity.

22. Defendant United States Fish and Wildlife Service is a federal agency that is a part of the Department of the Interior. The Secretary of the Interior has delegated to the Service authority to administer the ESA, including provisions requiring timely designation of critical habitat for endangered species. 50 C.F.R. § 402.01(b).

23. Defendants United States Department of the Interior; United States Fish and Wildlife Service; Debra Haaland, in her official capacity as Secretary of the United States Department of the Interior; and Martha Williams, in her official capacity as Director of the Service, have waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) and 5 U.S.C. § 702.

#### **STATUTORY AND REGULATORY FRAMEWORK**

24. In 1973, recognizing that certain species “have been so depleted in numbers that they are in danger of or threatened with extinction,” Congress enacted the Endangered Species Act, 16 U.S.C. §§ 1531–1544, “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.” *Id.* § 1531(a)(2), (b). Considered “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation,” the ESA embodies the “plain intent” of Congress to “halt and reverse the trend toward species extinction, whatever the cost.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978). The ESA’s goal is not simply to prevent endangered and threatened species from becoming extinct but to recover these species to the point where they no longer require the statute’s protections. *Id.*

25. To serve its purpose, the ESA demands that the Service, through its authority delegated by the Secretary of the Interior, determine which species are threatened or endangered



and list them as such. 16 U.S.C. § 1533(a)(1). A species is endangered if it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A species is threatened if it “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

26. When a species is listed as threatened or endangered, it receives a host of protections designed to prevent its extinction and support its recovery, including one of the most crucial protections—safeguards for critical habitat. *Id.* § 1533(a)(3)(A).

27. Critical habitat includes specific areas occupied by the threatened or endangered species with “those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.” *Id.* § 1532(5)(A) (cleaned up). Areas unoccupied by the species that “are essential for the conservation of the species” are also included within the definition of critical habitat. *Id.*

28. Designating critical habitat provides species vital protection because, once designated, federal agencies are required to ensure that their actions do not “jeopardize the continued existence of any endangered species or threatened species *or result in the destruction or adverse modification of [critical] habitat.*” *Id.* § 1536(a)(2) (emphasis added).

29. The ESA requires the Service to designate a species’ critical habitat concurrently with its determination to list the species as threatened or endangered “to the maximum extent prudent and determinable.” *Id.* § 1533(a)(3)(A)(i).

30. If critical habitat is found to be “not then determinable,” the Service may extend its one-year period for publishing a final regulation designating critical habitat by “not more than one additional year.” *Id.* § 1533(b)(6)(C)(ii). If such a decision is made, the Service “must

publish a final regulation, based on such data as may be available at that time, designating” critical habitat by “no later than the close of such additional year.” *Id.*

31. The ESA also requires the Service to publish a final regulation implementing a designation of critical habitat within a year of the publication of its proposed regulation to designated critical habitat. *Id.* § 1533(b)(6)(A)(ii).

32. The ESA does not safeguard a species’ critical habitat until the Service designates it. Accordingly, it is vital that the Service meticulously follow the ESA’s procedures and deadlines to ensure it designates critical habitat in a timely manner.

### **FACTUAL BACKGROUND**

33. The Miami tiger beetle, pictured below, is confined to patches of pine rockland habitat in Miami-Dade County. The Miami tiger beetle is one of the two tiger beetles in the United States most in danger of extinction. 81 Fed. Reg. 689,985 (Oct. 5, 2016).



Photo Credit: Jonathan Mays, Florida Fish and Wildlife Conservation Commission

34. The Miami tiger beetle has few remaining populations, low abundance, and a highly restricted range. *Id.* at 68,997. The beetle is threatened by increased urban development

that destroys and degrades habitat. The beetle and its habitat are also threatened by demographic and environmental stochasticity, including climate change and sea level rise. *Id.* at 68,985. The species faces major risks from coastal squeeze—a phenomenon where species and their habitat become trapped between urban development and continuously rising seas and are ultimately squeezed out of existence. *Id.* 69,004.

35. Recognizing the imminent threat of extinction, the Service proposed to list the Miami tiger beetle as endangered on December 22, 2015. 80 Fed. Reg 79,533.

36. The Service issued a final rule listing the Miami tiger beetle as endangered on October 5, 2016. 81 Fed. Reg. 68,985. At that time, the Service found critical habitat for the Miami tiger beetle was not then determinable, despite explicitly finding the beetle is endangered by “habitat loss, degradation, and fragmentation and proposed future development of habitat, modification from human population growth and associated development and agriculture.” *Id.* at 68,985-90.

37. Following litigation, the Service published a proposed regulation on September 7, 2021, in which it proposed to protect 1,977 acres as critical habitat in Miami-Dade County for the Miami tiger beetle. 86 Fed. Reg. 49,945.

38. The Service had a statutory duty to issue a final regulation designating critical habitat within a year of its September 7, 2021, proposed regulation, on or before September 7, 2022.

39. It has been more than a year since the Service published that proposed regulation—and more than six years since the Service’s original duty to concurrently designate critical habitat arose—and as of the date of this Complaint, the Service has still not issued a final rule designating critical habitat for the Miami tiger beetle.

40. Designated critical habitat provides important protection for listed species beyond merely listing as endangered or threatened. Once a species is listed under the ESA, federal agencies must ensure that any action they authorize, fund, or carry out will not “jeopardize the continued existence of any [listed] species” or “result in the destruction or adverse modification” of the species’ designated critical habitat. 16 U.S.C. § 1536(a)(2).

41. The Service’s failure to designate critical habitat for the Miami tiger beetle violates the ESA, *id.* § 1533(a)(3)(A), (b)(6)(A), (C), and its implementing regulations, and constitutes agency action “unlawfully withheld or unreasonably delayed” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1).

**PLAINTIFFS’ CLAIM FOR RELIEF  
(Failure to Designate Critical Habitat for the Miami Tiger Beetle)**

42. The Center re-alleges and incorporates by reference all the allegations set forth in contained in paragraphs 1 through 41.

43. The ESA requires Defendants to designate critical habitat for Miami tiger beetle within one year of proposing critical habitat, 16 U.S.C. § 1533(b)(6)(A)(ii).

44. Defendants published a proposed rule to designate critical habitat for the Miami tiger beetle on September 7, 2021, but more than a year later, they still have not published a rule finalizing that proposal and are thus in violation of the ESA’s express statutory command to timely designate critical habitat within one year of a proposed regulation designating critical habitat.

45. Plaintiffs and their members are injured by the Service’s failure to comply with the ESA’s nondiscretionary deadlines to designate critical habitat for the Miami tiger beetle.

46. The Service has violated the Endangered Species Act, 16 U.S.C. § 1533(a)(3)(A), (b)(6)(A), (C), as well as its implementing regulations, by failing to designate critical habitat for

the Miami tiger beetle. This failure also constitutes agency action “unlawfully withheld or unreasonably delayed” within the meaning of the APA. 5 U.S.C. § 706(1).

**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 and Administrative Procedure Act by failing designate critical habitat for the Miami tiger beetle;
- (2) Order Defendants to designate, by a date certain, final critical habitat for the Miami tiger beetle under the Endangered Species Act, 16 U.S.C. § 1533(a)(3)(A);
- (3) Award Plaintiffs the cost of this action, including reasonable attorneys’ fees; and
- (4) Provide such other relief as this Court deems just and proper

DATED: November 16, 2022

Respectfully submitted,

**/s/ Ragan Edward Whitlock**

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