

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c) and (g) (action arising under the ESA and citizen suit provision), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1361 (mandamus). The relief sought is authorized by 28 U.S.C. § 2201 (declaratory judgment) and 28 U.S.C. § 2202 (injunctive relief).

3. Pursuant to 16 U.S.C. § 1540(g)(2), Guardians sent the Secretary written Notice of Intent to Sue (“Notice”) on October 24, 2009; FOA sent Notice on December 2, 2009. True and correct copies of both Notices, including certified mail receipts, are attached as Exhibit A. More than sixty (60) days have passed since Guardians and FOA provided Notice. The Secretary has not remedied his violations of the ESA. Therefore, an actual controversy exists between the parties.

4. Venue is proper in this Court pursuant to the ESA, 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff FOA is a non-profit international advocacy organization with its principal place of business in Darien, Connecticut. FOA seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. FOA engages in a variety of advocacy programs in support of these goals. The organization regularly publishes a magazine for its membership, and has published articles advocating for free-living birds to live unfettered in their natural habitats. Its members also observe the species in their natural habitats, and provide sanctuary and rehabilitation to animals in need in the U.S. FOA members and staff regularly travel to Northern and Southern American countries to view exotic birds in their natural habitats. Concern that certain species of foreign

but precluded for ESA listing since 1994. Accordingly, FOA and Guardians bring this citizen suit to compel the Secretary to issue the long-overdue 12-month finding for the remaining 12 species.

parrots, macaws, and cockatoos are at serious risk of extinction due to deforestation and the illegal pet trade, prompted FOA to petition to list these species as threatened or endangered under the ESA. In absence of proper protection under the ESA, the birds are still subject to mounting pressures from deforestation and poachers who smuggle the birds into the U.S. for sale as pets. FOA (along with Guardians) submitted timely comments on September 14, 2009 on ESA status reviews for these 12 birds. FOA members and staff are injured by the Secretary's failure to prepare a 12-month finding in response to the petition. This injury is actual and concrete and is caused by the Secretary's failure to comply with the ESA. The relief requested will fully redress this injury.

6. Plaintiff Guardians is a non-profit corporation with over 4,500 members throughout the United States. Guardians seeks to protect and restore wildlife, wild places, and wild rivers in the American Southwest. Additionally, Guardians has an active endangered species protection campaign with a national scope. As part of this campaign, Guardians has repeatedly urged the Secretary to list, and thereby to protect, imperiled species as threatened or endangered species under the ESA. Guardians and its members are particularly concerned with the conservation of the twelve (12) species of Parrots, Macaws, and Cockatoos included in FOA's petition and the ecosystem on which they depend. Guardians (along with FOA) submitted timely comments on September 14, 2009 on ESA status reviews for these 12 birds. Guardians and its members have a substantial interest in this matter and are injured by the Secretary's failure to prepare a 12-month finding in response to FOA's petition. This injury is actual and concrete and is caused by the Secretary's failure to comply with the ESA. The relief requested will fully redress this injury.

7. Defendant Ken Salazar is sued in his official capacity as the Secretary of the Interior. The Secretary is the federal official responsible for complying with the statutory requirements of the ESA.

STATUTORY FRAMEWORK OF THE ESA

8. The purpose of the ESA is to conserve endangered and threatened species and the ecosystems upon which these species depend. 16 U.S.C. § 1531(b). The ESA's ultimate goal is to recover listed species to the point where they no longer need legal protection. Id. §§ 1531(b)-(c), 1532(3), 1533(f).

9. Before the ESA can protect a species facing extinction or that species' habitat, the species must be listed as either endangered or threatened. Id. § 1533(d). 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." Id. § 1532(20). The listing process is the essential first step in the ESA's system of species protection and recovery.

10. The Secretary must list a species if it is threatened or endangered due to any one or a combination of the following 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). In making a determination if a species is to be listed based upon one or more of these factors, the Secretary must conduct a thorough "review of the status of the species" and base his conclusions "solely on the . . . best scientific and commercial data available." Id. § 1533(b)(1)(A).

11. Policy requires the Secretary to obtain independent peer review of proposed listings to ensure that it is utilizing the best scientific and commercial data available. See 59 Fed. Reg. 34,270 (July 1, 1994).

12. Any interested person can begin the listing process by filing a petition to list a species with the Secretary. Id. § 1533(b)(3)(A); 50 C.F.R. § 424.14(a).

13. Upon receipt of a petition to list a species, the Secretary is required to make an initial finding known as a “90-day finding.” Specifically, within 90 days of receipt, “to the maximum extent practicable,” the Secretary must determine whether the petition presents “substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A). Implementing regulations define “substantial information” as “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” 50 C.F.R. § 424.14(b).

14. If the Secretary finds that the petition does not present substantial information indicating that the listing may be warranted, the petition is rejected and the process ends. This is known as a “negative” 90-day finding. All findings are subject to judicial review in the U.S. District Court. See 16 U.S.C. § 1540(c) and (g).

15. If the Secretary finds that the petition presents substantial information indicating that listing may be warranted, the Secretary must then commence a status review of the species. Id. § 1533(b)(3)(B). This is known as a “positive” 90-day finding. Id. § 1533(b)(3)(A).

16. Once a “positive” 90-day finding is made, the Secretary has 12 months from the date the petition was received to make one of three findings: (1) the petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted but presently precluded by other pending proposals to list species of higher priority, provided that the Fish and Wildlife Service (“FWS”) is making expeditious progress in listing other species. Id. § 1533(b)(3)(B); 50 C.F.R. § 424.14(b)(3). This second finding is known as a “12-month finding” and must be published in the Federal Register. The 12-month deadline for making this finding is mandatory. There is no mechanism by which the Secretary can extend the deadline for making the 12-month finding.

17. Within one year of the publication of a proposed rule to list a species, the ESA requires the Secretary to render a final decision on the proposed rule. 16 U.S.C. § 1533(b)(6)(A).

18. If the Secretary finds the petitioned action is not warranted, he must publish such a finding in the Federal Register. Id. § 1533(b)(3)(B)(i). The decision to not list a species is subject to judicial review. Id. § 1533(b)(3)(C)(ii).

19. If the Secretary finds the listing of the species is warranted, the Secretary must publish a proposed rule for public comment to list such species as either endangered or threatened in the Federal Register. Id. § 1533(b)(5).

20. If the Secretary finds that the petitioned action is warranted, but precluded by other pending listing proposals, the Secretary places the species on FWS' candidate species list, where it receives none of the protections afforded by the ESA. The Secretary must conduct a status review and make a new 12-month finding every year on the anniversary of the warranted but precluded determination. Id. § 1533(b)(3)(C)(i). This yearly process continues as long as the Secretary finds that the species is still warranted but precluded. It ends if the Secretary publishes a proposed rule to list the species or makes a determination that listing is no longer warranted.

21. Once a species is listed, ESA safeguards apply. Federal agencies cannot engage in any action that will jeopardize the survival or recovery of threatened or endangered species or adversely modify their critical habitat. Id. § 1536.

FACTUAL BACKGROUND

22. The twelve (12) species of parrots, macaws, and cockatoos included in FOA's petition face increasingly dire threats to their continued survival. A variety of man-made factors make it increasingly difficult for all of the species to continue to exist without legal protection. Destruction of forests associated with changing land use practices in these species' native ranges results in decreased habitat for many of these species. All of the petitioned species are also highly sought after for sale in the caged-bird pet trade. In many cases, trappers and poachers are either unable or unwilling to reach these birds in their nests situated high in the forest canopy. Accordingly, trappers and poachers resort to cutting down sections of the forest in order to bring

the trees, nests and birds to the forest floor. Once the trees are cut down, trappers and poachers collect any chicks or fledglings to sell them to both legal and illegal commercial pet markets. This harvesting increases pressure on already dwindling populations and their habitats. The caged-bird pet trade threatens to extirpate these species from their native ranges. Many of these harvested birds ultimately end up for sale as pets in the U.S.

23. FOA's petition, dated January 29, 2008, presented substantive scientific and commercial data on the species from BirdLife International, NatureServe, and the IUCN Red List. These sources constitute a reliable source for information on bird conservation and habitat. All three sources contain significant amounts of data illustrating the continuing decline of the petitioned species. By incorporating information from these sources, FOA's petition presented substantial information indicating the listing as warranted.

24. On July 29, 2008, FWS published notice in the Federal Register that it was "making expeditious progress in adding to and removing species from the Federal lists of threatened and endangered species." 73 Fed. Reg. 44,062 (July 29, 2008).

25. By letter dated October 27, 2008, FOA notified the Secretary that he violated Section 4(b)(3)(A) of the ESA, 15 U.S.C. § 1533(b)(3)(A), by failing to determine within 90 days whether FOA's petition presents substantial information indicating that listing the species of parrots, macaws, and cockatoos may be warranted.

26. The Secretary issued a "positive" 90-day finding on July 14, 2009, over 17 months after receiving FOA's petition. The Secretary found that FOA's petition presents substantial scientific or commercial information indicating that listing may be warranted for twelve (12) of the fourteen (14) species of macaws, parrots, and cockatoos included in the petition.

27. Guardians and FOA submitted comments on status reviews for the twelve (12) species to FWS on September 14, 2009.

28. Guardians, by letter dated October 24, 2009, and FOA, by letter dated December 2, 2009, notified the Secretary that he has violated Section 4(b)(3)(B) of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to determine within 12 months whether FOA's petition to list the twelve (12) species of macaws, parrots, and cockatoos as threatened or endangered under the ESA is warranted.

29. The Secretary has yet to issue a 12-month finding for the twelve (12) species of macaws, parrots, and cockatoos listed in FOA's petition.

30. FOA and Guardians frequently submit petitions to list species as threatened or endangered under the ESA, and the Secretary continually fails to issue the required findings in a timely manner. The Secretary often fails to comply with statutory deadlines, only to issue the requisite finding before litigation can occur, thereby avoiding judicial review of the Secretary's failure to comply with his mandatory duties. FOA and Guardians have filed, and will continue to file, a number of suits challenging the Secretary's delays in responding to citizen petitions. FOA and Guardians can reasonably anticipate being subjected to the same delay in responses to future petitions.

**FIRST CAUSE OF ACTION
(Violation of the ESA)**

31. FOA and Guardians re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

32. FOA's petition presented substantial scientific evidence that the petitioned birds face continual threat from the illegal pet trade, as well as deforestation and habitat loss.

33. The Secretary failed to make a finding indicating that the petitioned action is warranted within 12 months after receiving FOA's petition on January 31, 2008, to list these twelve (12) species of petitioned macaws, parrots, and cockatoos as threatened or endangered under the ESA. 16 U.S.C. § 1533 (b)(3)(B).

34. Failure to make a 12-month finding violates the Secretary's mandatory duty under Section 4 of the ESA.

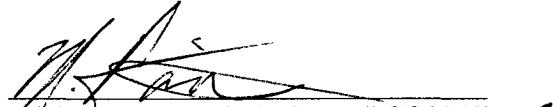
PRAYER FOR RELIEF

WHEREFORE, FOA and Guardians respectfully request that this Court enter judgment providing the following relief:

1. Declare that the Secretary has violated the ESA by not issuing a 12 month finding on FOA's petition;
2. Declare that the Secretary has violated the ESA by failing to list Blue-headed macaw (*Propyrrhura couloni*); Crimson shining parrot (*Prosopeia splendens*); Great green macaw (*Ara ambiguous*); Greycheeked parakeet (*Brotogeris pyrrhoptera*); Hyacinth macaw (*Andorhynchus hyacinthinus*); Military macaw (*Ara militaris*); Philippine cockatoo (*Cacatua haematuropygia*); Red-crowned parrot (*Amazona viridigenalis*); Scarlet macaw (*Ara macao*); White cockatoo (*Cacatua alba*); Yellow-billed parrot (*Amazona collaria*); and Yellow-crested cockatoo (*Cacatua sulphurea*) as threatened or endangered;
3. Order the Secretary to issue a rulemaking and new finding on each of the petitioned species within 60 days;
4. Award FOA and Guardians costs, including reasonable attorney fees; and
5. Grant FOA and Guardians such other relief as the Court deems just and proper.

Dated: March 2, 2010

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M. Harris", is written over a horizontal line.

Michael Ray Harris (DC Bar # CO0049) ✓
Environmental Law Clinic
University of Denver-Law
2255 East Evans Avenue
Denver, CO 80208
303.871.7870
mharris@law.du.edu

EXHIBIT A

December 2, 2009

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Hon. Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Rowan Gould
Acting Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

RE: 60-day Notice of Intent to Sue under the Endangered Species Act: Failure to Make 12-Month Finding for Petition to List 13 Species of Parrots, Macaws, and Cockatoos

In accordance with the 60-day notice requirement of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), you are hereby notified that Friends of Animals intends to bring a civil action challenging the Secretary of the Interior and the United States Fish and Wildlife Service (collectively “FWS”) for violating Section 4(b)(3)(B) of the ESA, 16 U.S.C. § 1533(b)(3)(B), by failing to make a 12-month finding regarding Friends of Animal’s petition to list numerous species of foreign parrots, macaws, and cockatoos as threatened or endangered under the ESA.² On January 29, 2008, Friends of Animals filed a Petition with FWS to list the following species:

- Blue-Headed Macaw (*Ara glaucogularis*)
- Crimson Shining Parrot (*Prospeia splendens*)
- Great-Green Macaw (*Ara ambiguus*)
- Grey-Cheeked Parakeet (*Brotogeris pyrrhoptera*)
- Hyacinth Macaw (*Anodorhynchus hyacinthinus*)
- Military Macaw (*Ara militaris*)

¹ This notice letter supersedes Friends of Animals’ July 21, 2009 notice letter.

- Philippine Cockatoo (*Cacatua haematuropygia*)
- Red-Crowned Parrot (*Amazona viridigenalis*)
- Scarlet Macaw (*Ara macao*)
- Thick-Billed Parrot (*Rhynchopsitta pachyrhyncha*)³¹
- White Cockatoo (*Cacatua alba*)
- Yellow-Billed Parrot (*Amazona collaria*)
- Yellow-Crested Cockatoo (*Cacatua sulphurea*).²

These thirteen species of parrots, macaws, and cockatoos included in the Petition face dire and increasing threats to their continued survival. These species are highly sought after for sale in the caged bird pet trade. Legal and illegal harvesting increases pressure on already dwindling populations and their habitats, as trappers and poachers destroy the trees and forests in which the birds are found in order to get to the birds. Taken together with local land use practices leading to further destruction of the birds' habitats, pressure from the caged bird pet trade threatens to wipe out these species.

1. Noticing Party

Friends of Animals is a non-profit international advocacy organization that seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. The organization regularly publishes a magazine for its membership, and has published articles advocating for free-living birds to live unfettered in their natural habitats. Its members also observe the species in their natural habitats, and provide sanctuary and rehabilitation to animals in need in the U.S.

2. Statutory Framework

Congress enacted the ESA to ensure the protection and conservation of threatened and endangered species. 16 U.S.C. § 1531(b). To achieve this goal, the statute requires the FWS to list species of plants and animals that are facing extinction as either “threatened” or “endangered.” 16 U.S.C. § 1533(c)(1). Any interested person may submit a petition to FWS requesting that a species be listed. 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14. Upon

receiving a petition to list a species, FWS has ninety (90) days “to the maximum extent practicable,” to make a finding as to whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(b)(1). FWS must then “promptly publish” that finding in the Federal Register. 16 U.S.C. § 1533(b)(3)(A). If FWS determines that the petition presents substantial information, then the agency must, within twelve (12) months after receiving such a

² The Thick-Billed Parrot is listed under the ESA as endangered in Mexico. Friends of Animals’ Petition requests the Parrot to be listed in its historical range in the U.S.

³ Friends of Animals’ Petition also included the Blue-Throated Macaw. Because this species has been listed as warranted but precluded under the ESA since 1994, this letter does not address the Blue-Throated Macaw.

petition, make one of three determinations: 1) listing is not warranted, 2) listing is warranted, or 3) listing is warranted, but presently precluded by other pending proposals for listing species, provided other circumstances are met. 16 U.S.C. § 1533(b)(3)(B). Although the language “to the maximum extent practicable” provides the Secretary with some limited flexibility with regards to the making of the 90-day finding, the deadline for the 12-month finding is firm. 16 U.S.C. § 1533(b)(3)(B); Biodiversity Legal Foundation v. Badgley, 309 F.3d 1166, 1175 (9th Cir. 2002).

3. Factual Background

On January 29, 2008, Friends of Animals filed a petition with FWS to list the thirteen species of parrots, macaws, and cockatoos. According to FWS, this petition was received on January 31, 2009. Accordingly, a 90-day finding was due on or about April 30, 2008. The 12-month finding was due on January 31, 2009.

On October 27, 2008, Friends of Animals notified FWS of their intent to sue for FWS’ failure to make a 90-day finding on these species of species of parrots, macaws, and cockatoos. On April 13, 2009, Friends of Animals filed a Complaint in the United States District Court for the District of Columbia against FWS for their failure to make a determination that these species are endangered or threatened under the ESA.

On July 14, 2009, FWS announced a positive 90-day finding, concluding that Friends of Animals’ petition presented substantial scientific or commercial information indicating that listing may be warranted for the following 12 species of parrots, macaws, and cockatoos: Blueheaded macaw, crimson shining parrot, great green macaw, grey-cheeked parakeet, hyacinth macaw, military macaw, Philippine cockatoo, redcrowned parrot, scarlet macaw, white cockatoo, yellow-billed parrot, and yellow-crested cockatoo.⁴ See *90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered*, 74 Fed. Reg. 33957 (July 14, 2009). FWS initiated a status review to determine if listing any of these 12 species under ESA is warranted. However, over 17 months have passed since FWS received the petition, and the 12-month finding is already past due.

4. Violations of the ESA

The final listing determination must be made within one year of receiving the petition. Biodiversity Legal Foundation v. Badgley, 309 F.3d 1166, 1176 (9th Cir. 2002). The 12-month finding is late and FWS is in violation of the ESA.

As provided under the ESA citizen suit provision, if FWS does not act within 60 days to correct this violation of the ESA, Friends of Animals will pursue legal action in federal court to remedy the foregoing violations of law. Friends of Animals will seek declaratory and injunctive relief as appropriate, as well as recovery of their costs and expert and attorneys fees pursuant to

⁴ According to FWS, one of the 14 species included in the petition received from Friends of Animals, the thick-billed parrot (*Rhynchopsitta pachyrhyncha*), is already listed as “endangered” in its entirety under the Act, despite the appearance from the Code of Federal Regulations that only a distinct population segment (DPS) of the species outside of the United States is listed. See 74 Fed. Reg. 33957, 33958.

the ESA citizen suit provision. 16 U.S.C. § 1540(g)(4). If you have any questions or believe this notice is in error, please contact me at 303-871-6140.

Sincerely,

Professor Michael Harris
Director of the Environmental Law Clinic
University of Denver Sturm College of Law
2255 E. Evans Avenue
Denver, Colorado 80208
303-871-6140 (Office)
Email: mharris@law.du.edu

Attorneys for Friends of Animals

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> Agent <i>A Giles</i> <input type="checkbox"/> Addressee	
1. Article Addressed to: Sam D. Hamilton U.S. Fish & Wildlife Service 1849 C. Street, N.W. Washington, D.C. 20240	B. Received by (Printed Name) A Giles	C. Date of Delivery 12/18/09
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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Michael Harris
Sturm College of Law, Clinical Programs
2255 E. Evans Ave, Suite 335
Denver, CO 80208



October 24, 2009

Ken Salazar
U.S. Secretary of the Interior
1849 C. Street, NW
Washington, DC 20240

Sam Hamilton, Director
U.S. Fish and Wildlife Service
1849 C. Street NW
Washington, DC 20240

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Notice of Violations of the Endangered Species Act Concerning 12 Parrot Species

Dear Secretary and Director,

On behalf of WildEarth Guardians, I write to inform you that you are in violation of Section 4 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1533(b)(3)(B), by failing to timely issue a 12-month finding on a petition submitted by Friends of Animals to list 12 parrot species. This letter is provided to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA, 16 U.S.C. § 1540(g)(2)(C). The 12 parrot species are:

1. Blue-Headed Macaw (*Primolius couloni*)
2. Crimson Shining Parrot (*Prosopeia splendens*)
3. Great-Green Macaw (*Ara ambiguus*)
4. Grey-Cheeked Parakeet (*Brotogeris pyrrhoptera*)
5. Hyacinth Macaw (*Anodorhynchus hyacinthinus*)
6. Military Macaw (*Ara militaris*)
7. Philippine Cockatoo (*Cacatua haematuropygia*)
8. Red-Crowned Parrot (*Amazona viridigenalis*)
9. Scarlet Macaw (*Ara macao*)
10. White Cockatoo (*Cacatua alba*)
11. Yellow-Billed Parrot (*Amazona collaria*)
12. Yellow-Crested Cockatoo (*Cacatua sulphurea*)

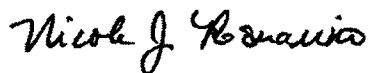
WildEarth Guardians Notice of Intent to Sue
Re: Overdue 12-Month Finding for 12 Parrots

2

The Interior Secretary and the U.S. Fish and Wildlife Service (“FWS”) received the petition from Friends of Animals on January 31, 2008, more than 12 months ago. In a 90-day finding issued on July 14, 2009, FWS found that the petition presented substantial information indicating that the petitioned action may be warranted for these 12 parrot species. 74 Fed. Reg. 33957-33960. The ESA therefore requires a finding, within 12 months of receiving the petition, as to whether these species warrant listing, warrant listing but are precluded due to higher priorities, or do not warrant listing. 16 U.S.C. 1533(b)(3)(B).

If you do not promptly issue a 12-month finding for these species, WildEarth Guardians intends to file suit to require that you do so. However, this is not our preference. The purpose of the 60-day notice provision in the ESA is for violators of the law to come into compliance, therefore avoiding the need for litigation. Accordingly, if you have any plans to issue the overdue 12-month findings in the reasonably prompt future or believe any of the information above is incorrect, please contact me to discuss the matter.

Sincerely,



Nicole J. Rosmarino, Ph.D.
Wildlife Program Director
WildEarth Guardians
1536 Wynkoop St.
Denver, CO 80202
303-573-4898
nrosmarino@wildearthguardians.org

10-357
CKK

CIVIL COVER SHEET

JS-44
(Rev. 1/05 DC)

<p>I (a) PLAINTIFFS</p> <p>Friends of Animals WildEarth Guardians</p> <hr/> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <hr/> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>Michael Ray Harris Environmental Law Clinic University of Denver Sturm College of Law 2255 East Evans Avenue Denver, CO 80208 (303) 871-7870</p>	<p>DEFENDANTS</p> <p>Ken Salazar, Secretary of the Interior</p> <hr/> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <hr/> <p>Case: 1:10-cv-00357 Assigned To : Collyer, Rosemary M. Assign. Date : 3/2/2010 Description: Admn Agency Review</p>
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<p>II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT
(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input checked="" type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p>Social Security:</p> <p><input type="checkbox"/> 861 HIA ((1395ff))</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>Other Statutes</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input checked="" type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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E. General Civil (Other) OR **F. Pro Se General Civil**

<p>Real Property</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p>Personal Property</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>Bankruptcy</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>Prisoner Petitions</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p>Property Rights</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>Federal Tax Suits</p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>	<p>Forfeiture/Penalty</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 RR & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p>Other Statutes</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks & Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>
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<input checked="" type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

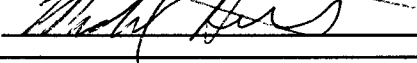
V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Endangered Species Act - Failure to make a 12-month finding for 12 species of birds under the ESA, 16 U.S.C. section 1533, 1540

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ Check YES only if demanded in complaint
 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.

DATE 03/02/2010 SIGNATURE OF ATTORNEY OF RECORD 

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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