

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA**

WILDEARTH GUARDIANS  
312 Montezuma Ave.  
Santa Fe, NM 87501

Plaintiff,

v.

GARY LOCKE, in his official capacity as  
Secretary,  
U.S. Department of Commerce  
14<sup>th</sup> & Constitution Ave. N.W.  
Washington, DC 20230

Defendant.

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**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. Plaintiff, WildEarth Guardians (“Guardians”), brings this action against Defendant, Gary Locke, in his official capacity as U.S. Secretary of Commerce (“Secretary”) to require him to carry out his mandatory duty under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 *et seq.*, to develop and implement “recovery plans” for the Sperm whale, *Physeter macrocephalus*, Fin whale, *Balaenoptera physalus*, and Sei whale, *Balaenoptera borealis* (collectively “the Whales”). The Secretary’s failure to develop and implement recovery plans for the Whales constitutes agency action unlawfully withheld or unreasonably delayed and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 706(1) & 706(2)(A).

2. The ESA provides the Secretary “shall develop and implement plans [referred to as “recovery plans”] for the conservation and survival of endangered species and threatened species listed pursuant to [the ESA], unless he finds that such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f)(1). The Whales have been listed as endangered species under the ESA since the inception of the Act in 1973. During the more than 37 years the Whales have been on the endangered species list, the Secretary has neither developed and implemented recovery plans for the species, nor made findings that such plans would not promote the conservation of the species. Guardians challenges the Secretary’s unreasonable and illegal delay in taking either of these statutorily required acts. This lawsuit seeks a declaratory judgment that the Secretary’s continued inaction is illegal and an injunctive order requiring him to act in accordance with the law by the earliest possible date.

#### **JURISDICTION, NOTICE AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal question), 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief), 5 U.S.C. §§ 701-706 (APA), and 16 U.S.C. §§ 1540(c) and (g) (action arising under the ESA and citizen suit provision). As required by the ESA’s citizen suit provision, 16 U.S.C. § 1540(g)(2)(C), Guardians has afforded the Secretary with more than 60-days written notice of the violations alleged in this Complaint and of Guardians’ intention to sue to enforce the law. The Secretary has not remedied his violations of law by either developing and implementing recovery plans for the Whales or making findings that such plans would not promote the conservation of the

species. Accordingly, an actual controversy exists between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.

4. Venue properly lies in this judicial district pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e). The Secretary officially resides in this judicial district.

### PARTIES

5. Plaintiff, WILDEARTH GUARDIANS, sues on behalf of itself and its adversely affected members. Guardians is a non-profit environmental organization. It has approximately 4,500 members. Guardians has an active endangered species protection program and has repeatedly sought full ESA protection for imperiled species. Guardians' members and staff use and enjoy, and will continue to use and enjoy, the Whales and their habitat for wildlife viewing and for recreational, aesthetic, spiritual and scientific activities. Guardians and its members are particularly concerned with the conservation of the Whales and the ecosystem on which they depend for their survival. Guardians and its members have a substantial interest in this matter, including in information that the Secretary must provide, and are adversely affected by the Secretary's failure to comply with the ESA in this case. The requested relief will redress the injuries of Guardians and its members.

6. Defendant, GARY LOCKE, is the Secretary of the United States Department of Commerce. As such he is the federal official responsible for developing and implementing recovery plans for marine species, such as the Whales, listed pursuant to the ESA. He is sued in his official capacity.

### LEGAL BACKGROUND

7. The purpose of the ESA is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a

program for the conservation of such endangered species and threatened species ....” 16 U.S.C. § 1531(b). The ESA defines conservation as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). Accordingly, the ultimate goal of the ESA is not only to temporarily save endangered and threatened species from extinction, but also to recover these species to the point where they are no longer in danger of extinction and no longer need ESA protection.

8. As part of its statutory scheme to conserve endangered and threatened species, the ESA provides the Secretary “shall develop and implement [recovery plans] for the conservation and survival of endangered species and threatened species listed pursuant to [the ESA], unless he finds that such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f)(1).

9. In developing and implementing recovery plans, the Secretary shall, to the maximum extent practicable, “give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.” 16 U.S.C. § 1533(f)(1)(A).

10. In all such recovery plans, the Secretary shall, to the maximum extent practicable, incorporate in each plan:

- (i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species;
- (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provision of the Act, that the species be removed from the threatened or endangered species lists; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

16 U.S.C. § 1533(f)(1)(B).

11. The ESA further provides that in developing and implementing recovery plans the Secretary may procure the services of appropriate public and private agencies and institutions, and other qualified persons, 16 U.S.C. § 1533(f)(2), that the Secretary shall report to Congress every two years on the status of efforts to develop and implement recovery plans for all listed species and on the status of all species for which such plans have been developed, 16 U.S.C. § 1533(f)(3), that the Secretary shall provide for public notice of, and comment on, any new or revised recovery plan prior to its final approval and shall consider all information presented during the public comment period prior to final approval of the new or revised recovery plan, 16 U.S.C. § 1533(f)(4), and that each Federal agency, prior to implementation of a new or revised recovery plan, shall consider all information presented during the public comment period, 16 U.S.C. § 1533(f)(5).

12. The Secretary has adopted a policy that he will develop a recovery plan in compliance with 16 U.S.C. § 1533(f) within two and one-half years of the final listing of a threatened or endangered species. See 59 Fed. Reg. 34272 (Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Recovery Plan Participation and Implementation under the Endangered Species Act).

### **FACTS GIVING RISE TO PLAINTIFF'S CLAIMS**

#### **I. The Whales**

13. The Whales are members of a group known as the "great whales." The great whales include all of the baleen whales (the Fin and Sei whales are baleen whales) and one

toothed whale, the Sperm whale. Humans have killed the great whales in commercial whaling operations for centuries, nearly driving many species to extinction. Though whaling is currently limited, it remains a potential threat to all of these species.

14. The Fin and Sei whales are mostly solitary creatures. However, they may gather in small, transient groups on feeding grounds or in breeding and birthing areas.

15. The Sperm whale has a complex social structure. Females live in large groups, raising their young communally and generally stay with the same unit all their lives. Males form "bachelor herds," migrating far greater distances than females and joining the nursery groups only during the mating season. As males get older and larger, they begin to migrate to higher latitudes (towards the poles) and slowly the bachelor schools become smaller, until the largest males often end up alone.

16. The great whales give birth to one calf at a time, usually every other year. The Fin and Sei whales' gestation period is between 11-13 months. The Sperm whale's is between 14-16 months.

17. Fin whales are found in deep, offshore waters of all major oceans, primarily in temperate to polar latitudes, and less commonly in the tropics. They occur year-round in a wide range of latitudes and longitudes, including the territorial waters of the United States. The density of Fin whales in any one area changes seasonally. The Fin whale's current worldwide population is largely unknown due to the fact that large portions of the North Pacific Ocean and the Southern Oceans have not been surveyed.

18. Sei whales prefer subtropical to subpolar waters on the continental shelf edge and slope worldwide, including the territorial waters of the United States. Sei whales are usually

observed in deeper waters of oceanic areas far from the coastline. Scientists estimate that the current worldwide population of Sei whales is approximately 80,000.

19. Sperm whales inhabit all oceans of the world, including the territorial waters of the United States. Sperm whales can be seen close to the edge of pack ice in both hemispheres, but are also commonly seen along the equator, especially in the Pacific. Currently, there is no good estimate of the total worldwide Sperm whale population, with figures ranging from 200,000 to 1,500,000 individuals. These estimates are based on extrapolations from only a few areas and may be largely inaccurate.

20. Current potential threats to the Whales are collisions with vessels, entanglement in fishing gear, reduced prey abundance due to overfishing, habitat degradation, disturbance from low-frequency noise, illegal whaling, whaling by some nations for allegedly scientific purposes, or the resumption of commercial whaling. Pollution in the ocean environment, by heavy metals, organochlorines, and plastic may also affect the health or behavior of the Whales and threaten their continued existence.

## **II. The Secretary's Actions**

21. The Secretary has listed the Sperm, Fin and Sei whales as endangered species since the inception of the ESA in 1973. During the more than 37 years the Whales have been on the endangered species list the Secretary has never developed or implemented a final recovery plan for these species. The Secretary did prepare a draft recovery plan for the Fin and Sei whales in 2000 and a draft recovery plan for the Fin and Sperm whales in 2006, but the Secretary has never finalized any of these draft recovery plans. Additionally, during the 37 years the Whales have been on the endangered species list the Secretary has never made any finding that the development and implementation of recovery plans would not further the conservation of these



species. Indeed, such a finding would be entirely inconsistent with the Secretary's preparation of the unfinished draft recovery plans for these species.

### **III. Guardians' Actions**

22. In early 2009, Guardians reviewed the Secretary's list of final recovery plans to determine which marine species had waited the longest without the development of a final, or even draft, recovery plan by the Secretary. As a result of this review, Guardians sent the Secretary a formal written notice letter of its intention to sue to require the Secretary to develop recovery plans for the Sei, Bowhead, and Gray whales. Guardians letter, dated February 2, 2009, was received by the Secretary on February 20, 2009. On approximately, May 31, 2009, the Secretary responded to Guardians' initial notice letter in writing. The Secretary's response included findings dated May 31, 2009, that he had concluded the development of recovery plans for the Bowhead and Gray whales would not further the conservation of these species.

Guardians does not challenge these determinations by the Secretary through this action. As to the Sei Whale, the Secretary indicated that he had developed a draft recovery plan for the Sei and Fin whales in 2000. The Secretary further indicated that he intended to hold a workshop in May 2009 to finalize a draft recovery plan for the Fin and Sperm whales published in 2006. The Secretary said that the draft recovery plan for the Fin and Sperm whales would be finalized in 2009 and that subsequently the Secretary would finalize a recovery plan for the Sei whale in 2011.

23. As a result of the Secretary's response to its initial notice letter, Guardians sent the Secretary a second notice letter dated April 21, 2009, indicating its intention to sue to force the Secretary to develop and implement a final recovery plan for the Sperm and Fin whales. The



Secretary received this second notice letter on April 27, 2009. The Secretary responded by letter dated May 8, 2009. Again, the Secretary indicated that he was holding a workshop, later in May 2009, to finalize recovery plans for the Sperm and Fin whales and further indicated that he would issue final recovery plans for these species by late summer or, at the latest, by early fall 2009. Early fall 2009 came and went but the Secretary has still not issued a final recovery plan for the Sperm, Fin or Sei whales. Accordingly, Guardians has elected to file the present action.

**FIRST CLAIM FOR RELIEF: Violation of the ESA**

24. All proceeding allegations in this Complaint are incorporated herein by reference.

25. The Secretary has violated his mandatory, non-discretionary duty found in Section 4(f) of the ESA, 16 U.S.C. § 1533(f), to either develop and implement recovery plans for the Sperm, Fin, and Sei whales or to make a finding that such plans will not promote the conservation of these species. This violation of law is actionable under the ESA's citizen-suit provision. 16 U.S.C. § 1540(g)(1)(C). The APA provides the standard of review. 5 U.S.C. §§ 706(1) & 706(2)(A). The Secretary's refusal to fulfill his mandatory duty constitutes unlawfully withheld or unreasonably delayed agency action and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Id.*

**SECOND CLAIM FOR RELIEF: Violation of APA**

27. All proceeding allegations in this Complaint are incorporated herein by reference.

28. The Secretary has unlawfully withheld or unreasonably delayed his compliance with Section 4(f) of the ESA, 16 U.S.C. § 1533(f), with respect to the Sperm, Fin and Sei whales for more than 37 years in violation of the APA. 5 U.S.C. § 706(1).

**REQUEST FOR RELIEF**

WHEREFORE, Guardians requests that this Court enter judgment providing the following relief:

- A. A declaratory judgment that the Secretary has violated his mandatory duty found in Section 4(f) of the ESA with respect to the Sperm, Fin, and Sei whales;
- B. A declaratory judgment that the Secretary has unlawfully withheld or unreasonable delayed compliance with Section 4(f) of the ESA with respect to the Sperm, Fin, and Sei whales in violation of the APA;
- C. An injunctive order requiring the Secretary to comply with Section 4(f) of the ESA with respect to the Sperm, Fin, and Sei whales by a reasonable date certain;
- D. An order awarding Guardians its costs of litigation, including reasonable attorney's fees, as provided by the ESA or Equal Access to Justice Act, 28 U.S.C. § 2412; and
- E. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 19<sup>th</sup> day of February, 2010.

  
/s/ Robert Ukeiley

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E-mail: rukeiley@igc.org

*Counsel for WildEarth Guardians*

0-283  
RWR

**CIVIL COVER SHEET**

JS-44  
(Rev. 1/05 DC)

<p><b>I (a) PLAINTIFFS</b></p> <p>WILDEARTH GUARDIANS</p> <p style="text-align: right;"><del>88888</del></p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>Law Office of Robert Ukeiley 435R Chestnut St. Ste 1 Berea, KY 40403 859-986-5402</p>	<p><b>DEFENDANTS</b></p> <p>GARY LOCKE, Secretary of Commerce</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE IN LAND CONDEMNATION CASES _____ OF _____</p> <p>Case: 1:10-cv-00283 Assigned To : Roberts, Richard W. Assign. Date : 2/22/2010 Description: Admn. Agency Review</p>
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<p><b>II. BASIS OF JURISDICTION</b> (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><b>III CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></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
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**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"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; 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"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><b>Social Security:</b></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><b>Other Statutes</b></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"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></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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<p><input type="radio"/> <b>E. General Civil (Other)</b></p> <p><b>Real Property</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; 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><b>Personal Property</b></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 style="text-align: center;"><b>OR</b></p> <p><input type="radio"/> <b>F. Pro Se General Civil</b></p> <p><b>Bankruptcy</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>Prisoner Petitions</b></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><b>Property Rights</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>Federal Tax Suits</b></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><b>Forfeiture/Penalty</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; 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 &amp; 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><b>Other Statutes</b></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; 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 &amp; 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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3

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> <b>H. Employment Discrimination</b>  <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"/> <b>I. FOIA/PRIVACY ACT</b>  <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"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <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"/> <b>L. Other Civil Rights (non-employment)</b>  <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"/> <b>M. Contract</b>  <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"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

**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.)**  
 16 U.S.C. 1531, et seq. Violation of Mandatory Duty under Endangered Species Act.

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

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

**DATE** 02/18/2010      **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 by signing the form