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WASHINGTON CATTLEMEN'S
7 ASSOCIATION

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON
11

12 WASHINGTON CATTLEMEN'S
ASSOCIATION,

13 Plaintiff,

14 v.

15 KEN SALAZAR, in his official capacity as
16 Secretary of Interior; ROWAN W. GOULD, in
his official capacity as Acting Director of
17 United States Fish and Wildlife Service; and
18 UNITED STATES FISH AND WILDLIFE
SERVICE, an agency of the United States,

19 Defendants.

No. _____

**COMPLAINT
FOR DECLARATORY
JUDGMENT AND
ACTION IN THE
NATURE OF MANDAMUS**

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Complaint for Declaratory Judgment &
Action in the Nature of Mandamus

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INTRODUCTION

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2 1. Plaintiff Washington Cattlemen’s Association (Association) brings a
3 citizen suit seeking an order requiring the Defendants to complete a mandatory status
4 review of the gray wolf, excluding the Minnesota threatened population, all
5 experimental populations, and the Northern Rocky Mountain distinct population
6 segment. The gray wolf occurs in the State of Washington and is currently listed as
7 endangered in the lower forty-eight states, but has not undergone status review by
8 the Defendants in the last five years, as the Endangered Species Act (ESA) requires.

9 2. Performing five-year status reviews of species listed as endangered or
10 threatened is a mandatory, nondiscretionary duty of the Defendants under the ESA.
11 16 U.S.C. § 1533(c)(2). But the Defendants have failed to perform this duty for the
12 gray wolf. As a result, this species—which has been listed for *decades* without
13 review—remains listed as endangered. The Defendants’ failure to complete the
14 status review has caused the gray wolf to remain on the endangered list, without any
15 assurance that it really belongs there.

16 3. In requesting relief, the Association seeks to compel the Defendants to
17 perform acts unlawfully withheld or unreasonably delayed pursuant to the
18 Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq.*, and to compel officers
19 and employees of the United States and its agencies to perform duties owed to the
20 Association under the mandamus provision of 28 U.S.C. § 1361. Further, the
21 Association brings this action for a declaration of the Defendants’ duties and
22 responsibilities regarding mandatory status reviews pursuant to 28 U.S.C. §§ 2201-
23 2202. The Association seeks to ensure that the Defendants are administering the
24 ESA for its intended purpose—protecting species that are *demonstrably* threatened
25 or in danger of extinction.

1 **JURISDICTION AND VENUE**

2 4. An actual controversy exists between the Association and Defendants
3 relative to their respective rights and duties as set forth herein. This Court has
4 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331
5 (actions arising under the laws of the United States); 5 U.S.C. §§ 702, 706(1)
6 (providing for judicial review of agency actions arising under the APA); 16 U.S.C.
7 § 1540(c) (actions arising under the ESA); and 16 U.S.C. § 1540(g) (ESA citizen suit
8 provision).

9 5. The Defendants have failed to conduct a timely status review for the
10 gray wolf, as required by 16 U.S.C. § 1533(c)(2). The Association asserts that this
11 failure to engage in conduct required by law constitutes agency action unlawfully
12 withheld or unreasonably delayed. 5 U.S.C. § 706(1). Therefore, an actual
13 controversy exists within the meaning of 28 U.S.C. § 2201(a) authorizing declaratory
14 relief.

15 6. On September 8, 2010, the Association served upon Defendants a 60-
16 day notice of intent to file this action, pursuant to 16 U.S.C. § 1540(g)(2)(C). A true
17 and correct copy of the 60-day notice dated September 8, 2010, is attached hereto as
18 Exhibit 1 and incorporated herein by reference. Defendants have taken no action to
19 remedy their violations of law.

20 7. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)
21 because the Association resides in this district.

22 **PARTIES**

23 **Plaintiff**

24 8. Washington Cattlemen’s Association is a nonpartisan, nonprofit
25 statewide organization dedicated to protecting and preserving the cattle industry in

1 Washington. As part of its mission, the Association spends its resources on a variety
2 of activities relating to the management of endangered species in Washington. Each
3 year, the Association adopts an endangered species policy. In line with this policy,
4 the Association lobbies for legislation promoting the Association's species
5 conservation objectives, consistent with the overarching goal of securing the
6 continued well-being of the cattle industry. The Association also regularly submits
7 comments to administrative agencies developing species regulation; for example, the
8 Association has recently been involved in the development of a gray wolf
9 management plan. Additionally, the Association hosts workshops and provides news
10 and information updates on issues that are important to the cattle industry, including
11 endangered species management.

12 9. The Association has a distinct interest in conservation and endangered
13 species regulation, and devotes a share of its resources to advance its agenda with
14 regard to those interests. Consequently, the Association is specifically affected by
15 the Defendants' ESA activities, including the Defendants' failure to complete a
16 status review for the gray wolf. The Defendants' failure to complete a statutorily
17 prescribed status review thus frustrates the Association's conservation mission, and
18 causes the Association to use its resources to respond to regulations developed for
19 the benefit of a species that has not been lawfully reviewed.

20 **Defendants**

21 10. Defendant Ken Salazar is sued in his official capacity as Secretary of
22 the United States Department of Interior. In his official capacity, Secretary Salazar
23 has been given certain delegated authority for the implementation and administration
24 of the ESA. The Secretary's responsibilities include administering the ESA for the

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1 benefit of species and the public, including ensuring that status reviews of currently
2 listed species are conducted, pursuant to 16 U.S.C. § 1533(c)(2).

3 11. Defendant Rowan W. Gould is sued in his official capacity as Acting
4 Director of the United States Fish and Wildlife Service. The Secretary of Interior
5 delegates most of his ESA authority to the Director, and the Director, in exercising
6 that authority, is responsible for implementing status reviews of listed species
7 pursuant to 16 U.S.C. § 1533(c)(2).

8 12. Defendant United States Fish and Wildlife Service is an agency within
9 the Interior Department possessing by delegation certain responsibilities for
10 administering and implementing the ESA, including provisions related to status
11 review of listed species.

12 **GENERAL ALLEGATIONS RELATING TO**
13 **DEFENDANTS' FAILURE TO PERFORM THE**
14 **REQUIRED FIVE-YEAR STATUS REVIEW**

15 13. Congress enacted the ESA to provide “a program for the conservation
16 of . . . endangered species and threatened species.” 16 U.S.C. § 1531(b).

17 14. As part of this program, the Defendants have the statutory authority to
18 list species as either endangered or threatened, due to any of several factors.
19 16 U.S.C. § 1533(a)(1)(A)-(E). These factors are:

- 20 (A) the present or threatened destruction, modification, or curtailment of its
21 habitat or range;
- 22 (B) overutilization for commercial, recreational, scientific, or educational
23 purposes;
- 24 (C) disease or predation;
- 25 (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

1 *Id.*

2 15. The Secretary shall make listing determinations solely on the basis of
3 the best scientific and commercial data available to him after conducting a review of
4 the status of the species and after taking into account other efforts to protect such
5 species. 16 U.S.C. § 1533(b)(1)(A).

6 16. The Secretary is responsible for publishing in the Federal Register a list
7 of all species determined to be endangered or threatened. 16 U.S.C. § 1533(c)(1).

8 17. The Secretary is also responsible for conducting, at least once every five
9 years, a *status review* of all species included in the list published pursuant to
10 16 U.S.C. § 1533(c)(1), and must determine whether any such species should be
11 removed from the list, reclassified from an endangered species to a threatened
12 species, or reclassified from a threatened species to an endangered species.
13 16 U.S.C. § 1533(c)(2)(A)-(B).

14 18. Pursuant to the listing authority of 16 U.S.C. § 1533(a)(1)(A)-(E), the
15 Defendants or their predecessors have listed thousands of species as endangered or
16 threatened. On information and belief, Defendants have yet to conduct a timely
17 status review of the gray wolf as listed in the lower forty-eight states, excluding all
18 experimental populations, the Minnesota threatened population, and the Northern
19 Rocky Mountain distinct population segment, as required by 16 U.S.C. § 1533(c)(2).

20 19. The gray wolf was originally identified as an endangered species in
21 1967. 32 Fed. Reg. 4001 (Mar. 11, 1967); U.S. Fish and Wildlife Service Species
22 Profile, Gray wolf (*Canis lupus*), [http://ecos.fws.gov/speciesProfile/profile/speciesProfile.](http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A00D)
23 [action?spcode=A00D](http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A00D). In 1978, the Secretary listed the entire gray wolf species as
24 endangered in the lower forty-eight states, except Minnesota. *Wyoming v. U.S. Dep't*
25 *of the Interior*, 2010 U.S. Dist. LEXIS 122829, at *43 (D. Wyo.) (citing *Wyo. Farm*

1 *Bureau Fed'n v. Babbitt*, 199 F.3d 1224, 1228 (10th Cir. 2000)). The gray wolf
2 remains listed as an endangered species in the conterminous states, with the
3 exception of the Minnesota threatened population, experimental populations, and the
4 Northern Rocky Mountain distinct population segment. The gray wolf is known to
5 occur in Washington. On information and belief, the Defendants have not conducted
6 a timely status review of the gray wolf—excluding all experimental populations, the
7 Minnesota threatened population, and the Northern Rocky Mountain distinct
8 population segment—as required by 16 U.S.C. § 1533(c)(2). A true and correct copy
9 of the U.S. Fish and Wildlife Service Spotlight Species Action Plan, Aug. 21, 2009,
10 is attached hereto as Exhibit 2 and incorporated herein by reference.

11 **DECLARATORY RELIEF ALLEGATIONS**

12 20. The Association re-alleges and incorporates by reference each and every
13 allegation contained in paragraphs 1 through 19, inclusive as though fully set forth
14 herein.

15 21. An actual controversy exists between the Association and Defendants
16 as to their respective legal rights and duties. The Association contends that the ESA
17 requires the Defendants to complete a five-year status review for the gray wolf. The
18 Association is informed and believes, and on that basis alleges, that Defendants
19 contend otherwise.

20 22. The Association also contends that failing to complete a timely status
21 review for the gray wolf constitutes agency action unlawfully withheld or
22 unreasonably delayed under the APA. The Association is informed and believes, and
23 on that basis alleges, that Defendants contend otherwise.

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1 23. There is a present justiciable controversy between the parties. The
2 Association has a real interest in knowing whether the Defendants are required by
3 the ESA and APA to conduct a status review for the gray wolf.

4 24. Accordingly, declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202
5 is appropriate. Specifically, the Association seeks a declaration that the Defendants
6 violated the ESA by failing to complete a status review for the gray wolf. The
7 Association also seeks a declaration that the Defendants violated the APA by failing
8 to complete the status review, and that such failure constitutes agency action
9 unlawfully withheld or unreasonably delayed.

10 **FIRST CLAIM FOR RELIEF**
11 **(VIOLATION OF ENDANGERED**
12 **SPECIES ACT, 16 U.S.C. § 1533(c)(2),**
13 **FAILURE TO CONDUCT MANDATORY**
14 **STATUS REVIEW OF LISTED SPECIES)**

15 25. The Association re-alleges and incorporates by reference each and every
16 allegation contained in paragraphs 1 through 24, inclusive as though fully set forth
17 herein.

18 26. The Secretary has a mandatory and nondiscretionary duty under the
19 ESA to review all listed species at least once every five years. 16 U.S.C.
20 § 1533(c)(2).

21 27. The gray wolf has been listed as endangered or threatened for more than
22 five years, but the Defendants have failed to review its status within the last five
23 years as required by 16 U.S.C. § 1533(c)(2).

24 28. Defendants' failure to conduct a timely status review for the gray wolf
25 as required by law violates the ESA and is unlawful.

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1 all experimental populations, and the Northern Rocky Mountain distinct population
2 segment;

3 2. A declaratory judgment that Defendants’ failure to conduct a mandatory
4 status review for the gray wolf as listed in the lower forty-eight states, excluding the
5 Minnesota threatened population, all experimental populations, and the Northern
6 Rocky Mountain distinct population segment, pursuant to 16 U.S.C. § 1533(c)(2),
7 constitutes agency action unlawfully withheld or unreasonably delayed in violation
8 of the APA and must be compelled;

9 3. An order compelling the Defendants to conduct the 16 U.S.C.
10 § 1533(c)(2) mandated status review for the gray wolf as listed in the lower forty-
11 eight states, excluding the Minnesota threatened population, all experimental
12 populations, and the Northern Rocky Mountain distinct population segment, within
13 a reasonable period of time;

14 4. An order that Defendants pay Plaintiff its reasonable attorney fees in
15 bringing and maintaining this action pursuant to 16 U.S.C. § 1540(g)(4);

