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9  
 10 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**  
 11 **TUCSON DIVISION**

12  
 13 Center for Biological Diversity,

14 Plaintiff,

15 v.

16 U.S. Fish and Wildlife Service; and  
 17 Debra Haaland, in her official capacity  
 18 as Secretary of the U.S. Department of  
 the Interior,  
 19

20 Defendants.

Case No.

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF

21 **INTRODUCTION**

22 1. Plaintiff Center for Biological Diversity challenges the failure of the U.S.  
 23 Fish and Wildlife Service and the Secretary of the Interior Debra Haaland (collectively  
 24 “the Service” or “Defendants”) to make required, 12-month findings as to whether seven  
 25 foreign wildlife species “warrant” listing under the Endangered Species Act (“ESA”).  
 26 These species have been on the Service’s “candidate” list awaiting ESA protections for  
 27  
 28

1 decades, even though the Service has acknowledged that each qualifies for full ESA  
2 listing.

3 2. The Okinawa woodpecker, Kaiser-i-hind swallowtail, Jamaican kite  
4 swallowtail, black-backed tanager, Harris' mimic swallowtail, fluminense swallowtail,  
5 and the southern helmeted curassow are each in danger of or threatened with extinction.  
6 All seven species are impacted by habitat destruction and six are collected for trade or  
7 hunted.

8 3. The Okinawa woodpecker is medium-sized, brown bird that inhabits only  
9 Okinawa, Japan. The International Union for the Conservation of Nature ("IUCN"), a  
10 respected, scientific organization that maintains the "RedList" inventory of species'  
11 conservation statuses, assessed the woodpecker as "Critically Endangered," as only  
12 between 50 and 249 mature individual Okinawa woodpeckers likely remain. The  
13 Okinawa woodpecker is threatened by habitat loss, and most of its remaining habitat  
14 occurs within a U.S. Marine Corps installation on Okinawa Island.

15 4. The Kaiser-i-hind swallowtail is a rare, green and orange butterfly that  
16 inhabits high-altitude forests in the Himalayan regions. IUCN has assessed the species as  
17 "Near Threatened" from habitat loss and collection for trade. The butterfly is advertised  
18 for sale online in the United States.

19 5. The blue-green and black Jamaican kite swallowtail is considered Jamaica's  
20 most endangered butterfly. It is threatened by habitat loss and collection for trade, with a  
21 single specimen recently selling for \$178. IUCN has assessed the Jamaican kite  
22 swallowtail as "Vulnerable."

23 6. The black-backed tanager is a colorful bird with touches of turquoise, dark  
24 blue, and orange that is native to Brazil's coastal Atlantic Forest region. IUCN has  
25 classified the tanager as "Vulnerable" due to loss and destruction of the species' habitat,  
26 and the species is collected for the illegal bird trade.

27 7. The Harris' mimic swallowtail is a medium-sized, mostly black butterfly  
28 with white and rose-red markings. The species is endemic to Brazil's coastal Atlantic

1 Forest region and is threatened by habitat destruction. Collection and trade also threaten  
2 the species. Specimen have been advertised online for sale for up to \$2,200 USD.

3 8. The fluminense swallowtail is a black and white butterfly with dusty rose  
4 and bright pink/red markings. Also inhabiting the coastal Atlantic Forest region of Brazil,  
5 the species is threatened by habitat degradation and is also collected for trade. Specimens  
6 of this butterfly have been advertised for sale online for up to \$700. IUCN has classified  
7 the fluminense swallowtail as “Vulnerable.”

8 9. The southern helmeted curassow is a ground bird endemic to central  
9 Bolivia. The bird has black feathers and a large, distinctive, blue casque on its head. The  
10 curassow is threatened by hunting and habitat destruction and was proposed for listing  
11 under the Convention on International Trade in Endangered Species (“CITES”) in 1997.  
12 CITES, CoP10, Prop. 10.39. IUCN has classified the southern helmeted curassow as  
13 “Critically Endangered.”

14 10. However, none of the seven species are currently protected under the U.S.  
15 Endangered Species Act and have not been afforded the ESA’s protections.

16 11. The ESA allows interested parties to “petition” to list species as threatened  
17 or endangered and sets specific deadlines by which Defendants must respond. 16 U.S.C.  
18 § 1533(b)(3).

19 12. The Service received ESA petitions to list the (1) Okinawa woodpecker in  
20 1980; (2) black-backed tanager and southern helmeted curassow in 1991; and (3) Kaiser-  
21 i-hind swallowtail, Jamaican kite swallowtail, Harris’ mimic swallowtail, and fluminense  
22 swallowtail in 1994.

23 13. The ESA requires Defendants to determine if listing is warranted within 12  
24 months of receiving a listing petition. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R.  
25 § 424.14(h)(2) (2021). This determination is referred to as a “12-month finding.” If the  
26 Service finds listing “is warranted,” the ESA requires the Service to “promptly” propose  
27 listing for the species. 16 U.S.C. § 1533(b)(3)(B)(ii).

28





1 international law to protect imperiled species wherever they are found. The Center has  
2 nearly 84,300 active members and approximately 1.7 million online activists living in the  
3 United States and other nations.

4 29. Plaintiff's members and supporters derive professional, scientific,  
5 educational, recreational, conservation, aesthetic, and other benefits from viewing  
6 wildlife in the wild, including the seven species at issue in this case. Plaintiff's members  
7 regularly visit or have concrete plans to visit habitat for each of the seven species.

8 30. For example, Mr. Brett Hartl is a Center member and avid traveler who  
9 regularly looks for, photographs, and records videos of wildlife both in the United States  
10 and globally. Mr. Hartl has observed hundreds of mammal species and thousands of bird  
11 species around the world and has a life goal of seeing many more mammals, birds, and  
12 other wildlife species, including butterflies.

13 31. Mr. Hartl has booked a trip to Bhutan and India for February 2022,  
14 specifically to look for and photograph wildlife. He will be traveling throughout several  
15 regions of Bhutan and the Himalayan region of India, including in the habitat of the  
16 Kaiser-i-hind swallowtail, with knowledgeable wildlife guides. While there, he will be  
17 looking to see the Kaiser-i-hind swallowtail, among other imperiled wildlife species, to  
18 photograph, document, and enjoy.

19 32. Mr. Hartl has visited Jamaica and the habitat of the Jamaican kite  
20 swallowtail. During his trip, which took place in March 2020, Mr. Hartl visited the  
21 mountainous regions on both the western and eastern sides of the island, looking for  
22 wildlife, including birds and butterflies. However, he was unable to see several of the  
23 species he had hoped to view because his trip was cut short due to the pandemic. Mr.  
24 Hartl plans to return to Jamaica in three years to once again attempt to see several rare  
25 Jamaican species, including the Jamaican kite swallowtail.

26 33. Mr. Hartl also has specific plans to visit Brazil in August 2023. While he  
27 will spend most of his trip viewing species in the Brazilian Pantanal, Mr. Hartl plans to  
28

1 spend a few days visiting the coastal Atlantic Forest region to view species, including the  
2 black-backed tanager, fluminense swallowtail, and Harris' mimic swallowtail.

3 34. Center member Peter Galvin frequently visits the island of Okinawa, Japan,  
4 to view wildlife. Mr. Galvin has been to Okinawa five times and saw an Okinawa  
5 woodpecker on one of these visits. He is planning his sixth visit to Okinawa in December  
6 2022. While there, Mr. Galvin will visit the habitat of the Okinawa woodpecker and other  
7 rare wildlife and search for woodpeckers while there.

8 35. Celina Yoshihara is a Center member who lives in Bertioga, located in the  
9 coastal Atlantic Forest region of southeastern Brazil. Ms. Yoshihara works as a  
10 Coordinator at a protected area within the habitat of the black-backed tanager, where she  
11 surveys local species through catch, biomonitoring, and release and assists with wildlife  
12 rehabilitation. Ms. Yoshihara has been involved in dozens of catch-and-release events for  
13 black-backed tanagers over her career. She has also personally assisted in rehabilitation  
14 of several black-backed tanagers brought in by authorities, all likely caught for breeding  
15 to supply the illegal pet trade. She enjoys viewing and studying the birds and plans to  
16 continue her work with the species in the future.

17 36. Center member Salvatore Sicialiano lives in Rio de Janeiro, Brazil, and  
18 works as a biologist with a general focus on zoology and specific focus on marine  
19 mammalogy. His family has owned a home near Cabo Frio for decades, where Mr.  
20 Sicialiano regularly spends his weekends. His family home is within the habitat of the  
21 fluminense swallowtail, and Mr. Sicialiano sees fluminense swallowtail butterflies  
22 regularly, usually about once a year. Mr. Sicialiano also visits the habitat of the Harris'  
23 mimic swallowtail regularly, which is near his family home, both for his field work and  
24 for personal reasons. He plans to continue to look for both butterflies in his regular visits  
25 to their habitats in the future.

26 37. Tjalle Boorsma is a Center member who lives in Sierra Cruz de la Sierra in  
27 central Bolivia. Mr. Tjalle has had a life-long passion for birds, including watching and  
28 studying them. Mr. Tjalle works for Asociación Armonía, a non-profit organization

1 dedicated to protecting Bolivia’s natural heritage while supporting local communities. He  
2 is working with the organization’s Horned Curassow Program to develop a conservation  
3 plan for the southern helmeted curassow. Mr. Tjalle visited the southern helmeted  
4 curassow’s habitat in 2018 and plans to return this year to assist with a population survey  
5 that Armonía will be conducting.

6 38. Center members will enjoy their visits to the habitat of the seven species  
7 less and see fewer individuals of the species, as the species’ populations continue to  
8 decline due to habitat destruction, collection, trade, hunting, actions by the U.S.  
9 government, and other impacts.

10 39. Defendants’ violations have directly, adversely, and irreparably harmed  
11 Plaintiff and its members’ interests in the seven species addressed in this Complaint. This  
12 harm is ongoing and will continue unless and until this Court provides the relief prayed  
13 for in this Complaint.

14 40. The relief sought in this Complaint would redress Plaintiff’s injuries. ESA  
15 listings would provide the seven species with important protections and benefits. The  
16 ESA generally bans the import, export, and sale in interstate and foreign commerce of  
17 endangered species, 16 U.S.C. § 1538(a), and requires the Service to issue regulations  
18 deemed “necessary and advisable” for the conservation of threatened species. *Id.*  
19 § 1533(d).

20 41. The ESA also provides for international cooperation in the conservation of  
21 foreign species. The statute requires the Service to, *inter alia*, “encourage foreign  
22 countries to provide for the conservation of . . . species listed” under the ESA and to  
23 “enter[ ] into . . . bilateral or multilateral agreements with foreign countries to provide for  
24 such conservation.” 16 U.S.C. § 1537(b)(1), (2).

25 42. ESA listings also increase awareness of imperiled species and their threats.  
26 ESA listings stimulate research efforts to address conservation needs. ESA listing  
27 increases funding for conservation of species in their range countries, including habitat  
28 conservation. Under the ESA, the Service provides financial assistance for programs to

1 conserve listed species in foreign countries, encourages conservation programs for such  
2 species, and offers other related assistance, such as personnel and training.

3 **B. Defendants**

4 43. Defendant U.S. Fish and Wildlife Service (“the Service”) is an agency  
5 within the Department of the Interior. The Secretary of the Interior has delegated to the  
6 Service the authority to administer the ESA for many wildlife species, including the  
7 responsibility of complying with the ESA’s mandatory listing deadlines. 50 C.F.R.  
8 § 402.01(b). This authority includes issuing listing determinations for the Okinawa  
9 woodpecker, Kaiser-i-hind swallowtail, Jamaican kite swallowtail, black-backed tanager,  
10 Harris’ mimic swallowtail, fluminense swallowtail, and southern helmeted curassow. The  
11 Service is responsible for the violations alleged in this Complaint.

12 44. Defendant Debra Haaland is the Secretary of the U.S. Department of the  
13 Interior. In this capacity, Secretary Haaland directs all business of the Department.  
14 Pursuant to the ESA, Secretary Haaland is responsible for determining whether species  
15 are endangered or threatened and for promulgating regulations to list and protect those  
16 species. In her official capacity, Secretary Haaland is responsible for the violations  
17 alleged in this Complaint.

18 **LEGAL BACKGROUND**

19 45. Recognizing that endangered and threatened species are of “esthetic,  
20 ecological, educational, historical, recreational, and scientific value to the Nation and its  
21 people,” Congress enacted the Endangered Species Act (“ESA”) in 1973 “to provide a  
22 program for the conservation of” these species. 16 U.S.C. § 1531(a)(3), (b).

23 46. Thus, Section 4 of the ESA requires the Secretary of the Interior to  
24 determine whether any species is “endangered” or “threatened,” and if so, list the species  
25 under the ESA. 16 U.S.C. § 1533(a), (c). The Secretary has delegated administration of  
26 the ESA to the Service for many species. 50 C.F.R. § 402.01(b).

27 47. A “species” includes “any subspecies of fish or wildlife or plants.” 16  
28 U.S.C. § 1532(16). An “endangered” species is any species that “is in danger of

1 extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A  
2 “threatened” species is any species that “is likely to become an endangered species within  
3 the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

4 48. The Service must determine whether any species is endangered or  
5 threatened due to the following factors: “(A) the present or threatened destruction,  
6 modification, or curtailment of its habitat or range; (B) overutilization for commercial,  
7 recreational, scientific, or educational purposes; (C) disease or predation; (D) the  
8 inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors  
9 affecting its continued existence.” 16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11(c). The  
10 Service must make this determination “solely on the basis of the best scientific and  
11 commercial data available to [the agency] after conducting a review of the status of the  
12 species.” 16 U.S.C. § 1533(b)(1)(A); 50 C.F.R. § 424.11(b).

13 49. Certain protections apply once a species is listed under the ESA.

14 50. Section 7(a) of the ESA requires that each federal agency “shall . . . utilize  
15 [its] authorities . . . [to] carry[ ] out programs for the conservation” of listed threatened  
16 and endangered species. 16 U.S.C. § 1536(a)(1).

17 51. If a species is listed as “endangered,” Section 9 of the ESA prohibits any  
18 person from, among other things, (1) importing or exporting the species, (2) transporting  
19 the species “in the course of a commercial activity” in either interstate or foreign  
20 commerce, (3) selling or offering for sale the species in interstate or foreign commerce,  
21 and (4) violating any relevant ESA regulation, unless exceptions apply. 16 U.S.C.  
22 § 1538(a)(1).

23 52. If the Service lists a species as threatened, the Service “shall issue such  
24 regulations as [it] deems necessary and advisable to provide for the conservation of such  
25 species,” and the agency may prohibit any act under Section 9 of the ESA. 16 U.S.C.  
26 § 1533(d).

27 53. Further, the ESA authorizes the Service to provide financial and other  
28 assistance for programs that conserve foreign, ESA-listed species. 16 U.S.C. § 1537(a).

1 The ESA also authorizes and directs the Service through the U.S. Secretary of State to  
2 encourage foreign nations to conserve listed species and enter the United States into  
3 treaties and other agreements to provide for conservation. *Id.* § 1537(b)(1), (2).

4 54. To ensure the timely protection of species, Congress established a detailed  
5 and time-bound process whereby citizens may petition the Service to list a species as  
6 endangered or threatened and the Service must respond. 16 U.S.C. § 1533(b)(3).

7 55. Any interested person may submit a petition requesting the Service to list a  
8 species. 50 C.F.R. § 424.14(a).

9 56. “To the maximum extent practicable, within 90 days after receiving the  
10 petition of an interested person,” the Service must make an initial finding “as to whether  
11 the petition presents substantial scientific or commercial information indicating that the  
12 petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R.

13 § 424.14(h)(1). This is referred to as a “90-day finding.” If the Service makes a positive  
14 90-day finding, the agency must “promptly commence a review of the status of the  
15 species concerned.” 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(h)(2).

16 57. Then, within 12 months of receiving the petition, the Service must make a  
17 “12-month finding.” Specifically, the Service must make one of three findings: (1) the  
18 petitioned action is “not warranted;” (2) the petitioned action “is warranted,” in which  
19 case the Service must promptly propose a rule to list the species; or (3) the petitioned  
20 action is “warranted[ ] but . . . precluded” by other pending proposals to determine  
21 whether other species qualify for protection. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R.  
22 § 424.14(h)(2).

23 58. To make a warranted but precluded finding, the Service must demonstrate it  
24 is making “expeditious progress” to either list or delist other species. 16 U.S.C.  
25 § 1533(b)(3)(B)(iii); 50 C.F.R. § 424.14(h)(2)(iii). The Service must promptly publish the  
26 finding in the Federal Register along with “a description and evaluation of the reasons  
27 and data on which the finding is based.” 16 U.S.C. § 1533(b)(3)(B)(iii); 50 C.F.R.  
28 § 424.14(h)(2)(iii).



1           65.     The Okinawa woodpecker population is believed to be declining. 84 Fed.  
2 Reg. 54,732, 54,745 (Oct. 10, 2019).

3           66.     The main cause of the Okinawa woodpecker’s population decline is  
4 reduced habitat and deforestation. 84 Fed. Reg. 54,732, 54,745 (Oct. 10, 2019). By the  
5 mid-1990s, only 15 square miles of suitable habitat remained for the species. *Id.*

6           67.     The Service considers the threats to the Okinawa woodpecker to be  
7 imminent and high in magnitude. 84 Fed. Reg. 54,732, 54,745–46 (Oct. 10, 2019).

8           **2.     Kaiser-i-hind swallowtail**

9           68.     The Kaiser-i-hind swallowtail (*Teinopalpus imperialis*) is large, ornate, and  
10 green, black, and orange in color. 84 Fed. Reg. 54,732, 54,750 (Oct. 10, 2019). The  
11 butterfly inhabits the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal,  
12 Thailand, and Vietnam, preferring undisturbed, high-altitude forests. *Id.*

13           69.     Although the Kaiser-i-hind swallowtail has a relatively large range, it  
14 occurs only locally within this range and is restricted to higher elevations. 84 Fed. Reg.  
15 54,732, 54,750 (Oct. 10, 2019). It is generally considered rare. *Id.*

16           70.     Habitat destruction and disturbance is one of the primary, ongoing threats  
17 to the species. 84 Fed. Reg. 54,732, 54,750–51 (Oct. 10, 2019).

18           71.     Collection for commercial trade also threatens the Kaiser-i-hind  
19 swallowtail. The butterfly is highly valued and is collected and traded despite restrictions.

20           72.     The Kaiser-i-hind swallowtail is included in Appendix II of the Convention  
21 on International Trade in Endangered Species (“CITES”). The CITES database  
22 documents trade in the species, including imports of wild-sourced specimen into the  
23 United States.

24           73.     The species remains available for purchase online in the United States. For  
25 example, on June 15, 2021, a Kaiser-i-hind swallowtail was available to purchase on  
26  
27  
28

1 eBay for \$320 USD.<sup>1</sup> A specimen of the butterfly was also for sale on the website *Aureus*  
2 for €1,450 (around \$1,750 USD).<sup>2</sup>

3 74. IUCN assessed the Kaiser-i-hind swallowtail as “Near Threatened” in 1996.  
4 However, IUCN indicates that its assessment needs updating. 84 Fed. Reg. 54,732,  
5 54,751 (Oct. 10, 2019).

6 75. The Service considers the Kaiser-i-hind swallowtail’s threats to be  
7 imminent and of moderate magnitude. 84 Fed. Reg. 54,732, 54,751 (Oct. 10, 2019).

### 8 **3. Jamaican kite swallowtail**

9 76. The Jamaican kite swallowtail (*Protographium marcellinus*, syn. *Eurytides*  
10 *marcellinus*) is a small, blue-green and black butterfly. 84 Fed. Reg. 54,732, 54,750 (Oct.  
11 10, 2019).

12 77. The species is considered to be Jamaica’s most endangered butterfly. 84  
13 Fed. Reg. 54,732, 54,750 (Oct. 10, 2019). There is no estimate of the species’ population  
14 size. *Id.* Subpopulations are known from five sites; two of these subpopulations may have  
15 been recently extirpated and one subpopulation is tenuous. *Id.* Thus only two  
16 subpopulations may be currently viable. *Id.*

17 78. The species relies on rare, dense stands of a single host plant. 84 Fed. Reg.  
18 54,732, 54,750 (Oct. 10, 2019).

19 79. The Jamaican kite swallowtail is threatened by habitat degradation,  
20 fragmentation, and loss. 84 Fed. Reg. 54,732, 54,750 (Oct. 10, 2019).

21 80. Collection and trade also threaten the species.

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24 <sup>1</sup>See eBay, *PA4495. Unmounted butterflies: Teinopalpus imperialis. Central Vietnam.*  
25 *Over 2000m*,  
26 <https://www.ebay.com/itm/372674449266?hash=item56c520cf72%3Ag%3AVpgAAOSwfrJc1oJ8&mkevt=1&mkcid=1&mkrid=711-53200-19255-0&campid=5338795919&customid=&toolid=10049> (last visited June 16, 2021).

27 <sup>2</sup> See Aureus, *Teinopalpus imperialis ssp. imperialis female*, [https://www.aureus-](https://www.aureus-butterflies.de/Teinopalpus-imperialis-ssp-imperialis-female)  
28 [butterflies.de/Teinopalpus-imperialis-ssp-imperialis-female](https://www.aureus-butterflies.de/Teinopalpus-imperialis-ssp-imperialis-female) (last visited June 15, 2021).

1 81. In 2017, three specimens of the Jamaican kite swallowtail were noted for  
2 sale on the internet for as much as \$120 USD. 84 Fed. Reg. 54,732, 54,750 (Oct. 10,  
3 2019). In 2015, one specimen sold for \$178 USD. *Id.*

4 82. The butterfly remains available for purchase online in the United States.  
5 For example, the website The Insect Collector advertised the Jamaican kite swallowtail  
6 for sale on June 16, 2021, for €150 (around \$180 USD).<sup>3</sup>

7 83. IUCN has assessed the Jamaican kite swallowtail as “Vulnerable” since  
8 1985 but notes that its assessment needs updating. 84 Fed. Reg. 54,732, 54,750 (Oct. 10,  
9 2019).

10 84. The Service considers the threats to the Jamaican kite swallowtail to be  
11 imminent and of high magnitude. 84 Fed. Reg. 54,732, 54,750 (Oct. 10, 2019).

#### 12 **4. Black-backed tanager**

13 85. The black-backed tanager (*Tangara peruviana*) inhabits the coastal Atlantic  
14 Forest region of southeastern Brazil, in the States of Espirito Santo, Rio de Janeiro, São  
15 Paulo, Paraná, Santa Catarina, and Rio Grande do Sul. 84 Fed. Reg. 54,732, 54,747 (Oct.  
16 10, 2019). The tanager is restricted to restinga sand-forest habitat. *Id.*

17 86. The species’ population estimate is only between 2,500 and 9,999  
18 individuals. 84 Fed. Reg. 54,732, 54,747 (Oct. 10, 2019). Populations are small,  
19 fragmented, and declining. *Id.*

20 87. The black-backed tanager is threatened by habitat loss, destruction, and  
21 fragmentation primarily from development, and rising sea levels will contribute to this  
22 threat. 84 Fed. Reg. 54,732, 54,747 (Oct. 10, 2019).

23 88. The black-backed tanager is found in the illegal pet trade.

24 89. IUCN has assessed the black-backed tanager as Vulnerable.

25  
26 \_\_\_\_\_  
27 <sup>3</sup> The Insect Collector, *Protographium marcellinus*,  
28 [https://www.theinsectcollector.com/acatalog/info\\_346.html](https://www.theinsectcollector.com/acatalog/info_346.html) (last visited June 16, 2021).  
The website indicates the specimen was “SOLD;” however, a user may place an order for  
specimens once collected. *Id.*

1           90. The Service considers the threats to the black-backed tanager to be  
2 imminent and of moderate magnitude. 84 Fed. Reg. 54,732, 54,747 (Oct. 10, 2019).

3           **5. Harris' mimic swallowtail**

4           91. The Harris' mimic swallowtail (*Mimoides lysithous harrisianus*) is a  
5 subspecies that is mostly black with white and rose-red markings.

6           92. The subspecies inhabits the restinga sand-forest habitat within Brazil's  
7 coastal Atlantic Forest region. 84 Fed. Reg. 54,732, 54,748 (Oct. 10, 2019). The species  
8 is currently known to occupy only five sites within State of Rio de Janeiro. *Id.*

9           93. The Harris' mimic swallowtail is threatened by habitat destruction and  
10 fragmentation from development and fire, as well as sea-level rise. 84 Fed. Reg. 54,732,  
11 54,748–49 (Oct. 10, 2019).

12           94. The Harris' mimic swallowtail is also threatened by collection for trade.

13           95. Specimens of Harris' mimic swallowtail have been advertised for sale  
14 online for up to \$2,200 USD. 84 Fed. Reg. 54,732, 54,749 (Oct. 10, 2019). The species is  
15 in high demand. *Id.* On June 15, 2021, a Harris' mimic swallowtail specimen was  
16 available to purchase on eBay for €990, or approximately \$1,180 USD.<sup>4</sup>

17           96. IUCN has not assessed the Harris' mimic swallowtail.

18           97. The Service considers the threats to the Harris' mimic swallowtail to be  
19 imminent and of high magnitude. 84 Fed. Reg. 54,732, 54,749 (Oct. 10, 2019).

20           **6. Fluminense swallowtail**

21           98. The fluminense swallowtail (*Parides ascanius*) is a black and white  
22 butterfly with dusty rose and bright, pink-red markings. The species' habitat occurs in  
23 Brazil's coastal Atlantic Forest region within the State of Rio de Janeiro. 84 Fed. Reg.  
24 54,732, 54,749 (Oct. 19, 2019).

25  
26 \_\_\_\_\_  
27 <sup>4</sup> See eBay, *Mimoides-lysithous-harrisianus* F. *platydesma* \*\*\* male \*\*\* Brazil \*\*\*  
28 *TOP Rarity* \*\*\*, <https://www.ebay.com/itm/MIMOIDES-LYSITHOUS-HARRISIANUS-f-PLATYDESMA-male-BRAZIL-TOP-RARITY-/303463209179> (last visited June 17, 2021).

1 99. Scientists estimate the species has declined from fewer than 20 colonies in  
2 1994 to 8–12 colonies in 2017, and the number of individuals within each subpopulation  
3 has also declined. 84 Fed. Reg. 54,732, 54,749 (Oct. 19, 2019).

4 100. The fluminense swallowtail is threatened by habitat fragmentation, loss,  
5 and degradation from development, road building, drainage of swamps, vegetation  
6 suppression, and fire. 84 Fed. Reg. 54,732, 54,749 (Oct. 19, 2019).

7 101. The fluminense swallowtail is threatened by collection for trade.

8 102. Specimens of this swallowtail butterfly have been advertised online for up  
9 to \$700. 84 Fed. Reg. 54,732, 54,749 (Oct. 19, 2019). On June 17, 2021, a fluminense  
10 swallowtail specimen was available to purchase online from P&E Insects for \$350.<sup>5</sup> The  
11 European Union protects the species under its Wildlife Trade Regulations, requiring an  
12 import permit. 84 Fed. Reg. 54,732, 54,749 (Oct. 19, 2019).

13 103. IUCN has classified the fluminense swallowtail as “Vulnerable.”

14 104. The Service considers the threats to the fluminense swallowtail to be  
15 imminent and of high magnitude. 84 Fed. Reg. 54,732, 54,749 (Oct. 10, 2019).

## 16 7. Southern helmeted curassow

17 105. The southern helmeted curassow (*Pauxi unicornis*) is a large bird with  
18 black feathers and a distinctive, pale-blue casque on its head. 84 Fed. Reg. 54,732,  
19 54,743 (Oct. 19, 2019).

20 106. The bird inhabits only central Bolivia’s eastern slope of the Andes  
21 Mountains in a narrow altitudinal band of foothills and lower montane forests. 84 Fed.  
22 Reg. 54,732, 54,743 (Oct. 19, 2019).

23 107. The bird’s population is declining, and IUCN estimates that only between  
24 1,500 and 7,500 individuals remain. 84 Fed. Reg. 54,732, 54,743 (Oct. 19, 2019).

25 108. The species is threatened by habitat loss and hunting. 84 Fed. Reg. 54,732,  
26 54,743 (Oct. 19, 2019). Although much of the species’ habitat occurs within Bolivian

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27 <sup>5</sup> P&E Insects, *Parides ascanius*, <http://www.peinsects.com/producto/parides-ascanius-2/>  
28 (last visited June 17, 2021).

1 protected areas, these national parks are not effectively protected from logging, land  
2 clearing, or development. *Id.*

3 109. The southern helmeted curassow is not protected under CITES. However,  
4 the Netherlands proposed listing the species under CITES Appendix-II in 1997, noting,  
5 “[t]here may or could be a market in ornamental use of the [species’] helmet” (its casque)  
6 and that individuals were captured for breeding for a private collection in Mexico.  
7 CITES, CoP10, Prop. 10.39.

8 110. The European Union protects the species under its Wildlife Trade  
9 Regulations, noting that the species “warrant[s] monitoring of trade levels.” 84 Fed. Reg.  
10 54,732, 54,743 (Oct. 19, 2019).

11 111. IUCN has assessed the southern helmeted curassow as “Critically  
12 Endangered.”

13 112. The Service considers the threats to the southern helmeted curassow to be  
14 imminent and of high magnitude. 84 Fed. Reg. 54,732, 54,743 (Oct. 19, 2019).

15 **B. Species’ Listing Petitions and Defendants’ Failure to Act**

16 113. Due to the imminent threats confronting the species, the International  
17 Council for Bird Preservation (now BirdLife International) submitted an ESA petition to  
18 list the Okinawa woodpecker on November 28, 1980. 46 Fed. Reg. 26,464 (May 12,  
19 1981). The Service issued a 90-day finding that listing the woodpecker may be warranted  
20 in 1981, more than 40 years ago. *Id.*

21 114. The Service received a petition from the International Council for Bird  
22 Preservation to list the black-backed tanager and southern helmeted curassow on May 6,  
23 1991. 56 Fed. Reg. 65,207, 65,208 (Dec. 16, 1991). The Service issued a 90-day finding  
24 that listing both birds may be warranted in 1991, more than 29 years ago. *Id.* at 65,207–  
25 08.

26 115. Ms. Dee E. Warenycia, a Center member, submitted a petition to list the  
27 Kaiser-i-hind swallowtail, Jamaican kite swallowtail, fluminense swallowtail, and Harris’  
28 mimic swallowtail under the ESA on January 10, 1994. The Service issued 90-day

1 findings on the petitions in 1994—more than 27 years ago—in which it determined that  
2 listing the four butterflies may be warranted. 59 Fed. Reg. 24,117 (May 10, 1994).

3 116. The Service has put off protections for the seven species for decades,  
4 repeatedly finding their listing was “warranted but precluded” by other listing actions,  
5 despite the species’ threats.

6 117. Most recently, in October 2019, the Service again found that listing was  
7 warranted but precluded for the Okinawa woodpecker, Kaiser-i-hind swallowtail,  
8 Jamaican kite swallowtail, black-backed tanager, Harris’ mimic swallowtail, fluminense  
9 swallowtail, and southern helmeted curassow. 84 Fed. Reg. 54,732 (Oct. 10, 2019).

10 118. New 12-month findings for each of the seven species were due by October  
11 10, 2020. More than seven months have passed since this date.

12 **CLAIM FOR RELIEF**

13 **Violations of the Endangered Species Act**

14 119. Plaintiff re-alleges and incorporates by reference the allegations contained  
15 in all preceding paragraphs of this Complaint as though fully set forth below.

16 120. Defendants’ protracted and ongoing failure to make the statutorily required  
17 12-month findings for the Okinawa woodpecker, Kaiser-i-hind swallowtail, Jamaican kite  
18 swallowtail, black-backed tanager, Harris’ mimic swallowtail, fluminense swallowtail,  
19 and southern helmeted curassow violates the ESA. 16 U.S.C. § 1533(b); 50 C.F.R.  
20 § 424.14(h).

21 **REQUEST FOR RELIEF**

22 Plaintiff respectfully requests this Court:

23 A. Declare that Defendants have violated and continue to violate the ESA by  
24 failing to issue a 12-month finding as to whether ESA listings are warranted for the  
25 Okinawa woodpecker, Kaiser-i-hind swallowtail, Jamaican kite swallowtail, black-  
26 backed tanager, Harris’ mimic swallowtail, fluminense swallowtail, and southern  
27 helmeted curassow, 16 U.S.C. § 1533(b)(3); 50 C.F.R. § 424.14(h);  
28

1 B. Order Defendants to issue, within set days of the Court's order, a finding as  
2 to whether ESA listings are warranted for the Okinawa woodpecker, Kaiser-i-hind  
3 swallowtail, Jamaican kite swallowtail, black-backed tanager, Harris' mimic swallowtail,  
4 fluminense swallowtail, and southern helmeted curassow, 16 U.S.C. § 1533(b)(3); 50  
5 C.F.R. § 424.14(h);

6 C. Award Plaintiff its attorneys' fees and costs in this action as the ESA  
7 provides, 16 U.S.C. § 1540(g)(4); and

8 D. Provide such other and further relief this Court deems just and proper.  
9

10 DATED this 23rd day of June, 2021.

Respectfully submitted,

11  
12 /s/ Tanya Sanerib

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