

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

WILDEARTH GUARDIANS,  
Plaintiff

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VS.

CASE NO.

KEN SALAZAR, SUED IN HIS OFFICIAL  
CAPACITY, AS U.S. SECRETARY OF THE  
INTERIOR, U.S. DEPARTMENT OF THE  
INTERIOR  
Defendant

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff, WildEarth Guardians (Guardians), challenges Defendant, Secretary of the Interior, Ken Salazar (the Secretary), for failure to perform his mandatory, statutory duties as required by the Endangered Species Act (“ESA”) 16 U.S.C. §§ 1531-1544 (2000).
2. The Secretary has a mandatory duty to create 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).
3. The Secretary has neither made a finding that a recovery plan would not promote the conservation of the Gulf Coast or Sinaloan jaguarundi, nor has he created and implemented a recovery plan for these sub-species.
4. Guardians challenge the Secretary’s failure to create and implement a recovery plan for both the Gulf Coast (*Herpailurus yagouaroundi cacomitli*) jaguarundi, and the Sinaloan (*Herpailurus yagouaroundi tolteca*) jaguarundi, as required by the Endangered Species Act, 16 U.S.C. §1533(f).

5. The Secretary's conduct is a violation of the ESA and constitutes unreasonable delay within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1).
6. In addition to violating his statutory obligations, the Secretary has failed to act within his own agency's published guidelines for timely preparation and implementation of a recovery plan. 59 Fed. Reg. 34272, 34273 (July 1, 1994).
7. The Secretary has not determined that recovery plans would not promote the conservation of the two subspecies of jaguarundi, the only exception the Act provides for failure to prepare a recovery plan. To the contrary, the Secretary, through the Fish and Wildlife Service, clearly determined that the jaguarundi would benefit from a recovery plan, stating that the jaguarundi is suffering from the loss of the same habitat as the ocelot in Texas and would benefit from the same habitat preservation and enhancement as for the ocelot recovery.

### **I. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c) & (g) (ESA's citizen suit provision) and 28 U.S.C. § 1331 (federal question).
9. This Court may grant the relief requested under 28 U.S.C. § 2201-2202 (declaratory and injunctive relief) and 5 U.S.C. § 701-706 (Administrative Procedure Act).
10. The Secretary was provided with written notice of his violations of the ESA more than 60 days ago in accordance with 16 U.S.C. § 1540(g)(2). The Secretary has refused to remedy his legal violations. As a result, an actual and present controversy exists between the parties within the meaning of the Declaratory Judgment Act. 28 U.S.C. § 2201.
11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(2) and 16 U.S.C. § 1540(g)(3)(A), as the Gulf Coast jaguarundi inhabits the Southern part of Texas and the harm is occurring within this District.

## II. PARTIES

12. Plaintiff WildEarth Guardians sues on behalf of itself and its adversely affected members. Guardians is a non-profit environmental organization dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West. Guardians members frequently enjoy looking for the jaguarundi and enjoy their habitats for wildlife viewing, recreational purposes, aesthetic, and scientific activities. Guardians members have specific and concrete plans to visit the jaguarundi's habitats and enjoy these sub-species in the future. Guardians and its members are particularly concerned with the conservation and recovery of these unique sub-species and their habitats, especially the Rio Grande Valley brush thickets they rely upon for survival. Guardians members are adversely affected by the Secretary's failure to comply with the ESA. The requested relief will redress the harm suffered by Guardians and its members.
13. Secretary Ken Salazar is the federal official responsible for preparing and implementing recovery plans for species listed under the ESA. In this instance, the Secretary has delegated this power and responsibility to the U.S. Fish and Wildlife Service (FWS), an agency with the U.S. Department of the Interior. Secretary Ken Salazar is sued in his official capacity as U.S. Secretary of the Interior.

### III. FACTUAL BACKGROUND



(Gulf Coast Jaguarundi, U.S. Fish and Wildlife Service.)

14. The two sub-species at issue, both the Gulf Coast (*Herpailurus yagouaroundi cacomitli*) jaguarundi, and the Sinaloan (*Herpailurus yagouaroundi tolteca*) jaguarundi, are small, slender, cats with tails that can be up to two feet long. They are often called Otter-cats, because their short legs and small ears give them an otter-like appearance. They are only slightly larger than an ordinary alley cat, making them hard to track in sightings and identify in road-kill situations.
15. The jaguarundi is a vocal felid, with at least 13 distinct calls having been recorded, including a purr, whistle, scream, chatter, yap, and a bird-like chirp.
16. Gulf Coast Jaguarundi inhabit the brush country of extreme southern Texas in Cameron, Hidalgo, Starr, and Willacy counties.

17. There have been at least 20 unpublished sightings of Sinaloan jaguarundi in Arizona between 1975 and 1991, four of which were made by professional biologists.
18. Jaguarundis live in the dense thorny mesquite, cacti, and cat claw thickets of southern Texas. These thickets provide an almost impenetrable shelter from their two main predators; dogs and humans.
19. Potential jaguarundi habitat does occur in southeastern Arizona, in the similar dense brush, shrubbery, and thorny forests.
20. Though their breeding habits are not well known, they have been observed to have about two litters each year, with about three kittens in each litter. Several litters have been found in Raymondville, Willacy County, Texas.
21. The continued survival of these two sub-species is threatened by a variety of human activities.
22. The clearing of the Rio Grande Valley brush land thickets that provide the cat's protective habitat is the largest threat to the safety of these endangered felids. The brush land thickets are being cleared for farming and vegetable production.
23. The border between Mexico and the U.S is now blocked in part by a border fence prohibiting the north and south movements of these species between their already dwindling habitats. Trans-boundary conservation is important for rare species, as previously unoccupied historical habitat areas have often been re-colonized by protected populations from neighboring regions. This human-made impediment damages these species' already slim chances at survival by preventing their travel between healthy habitats and limiting their access to broader genetic populations for breeding.

24. The cats are not generally hunted for their pelts, but are notorious predators of poultry. Killing jaguarundi in defense of livestock is considered to have a major impact on the population.

#### **IV. LEGAL BACKGROUND THE ENDANGERED SPECIES ACT**

25. The Endangered Species Act was passed by Congress in 1973 for the express purpose of conserving endangered and threatened species and the ecosystems they depend upon. 16 U.S.C. § 1531(b).
26. Congress defined “conservation” to mean the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. 16 U.S.C. §1532(3).
27. To achieve this purpose, the ESA requires the Secretary to “list” species of plants and animals that are facing extinction as either “threatened” or “endangered.” 16 U.S.C. § 1533(a)(3)(A)(i).
28. Congress defined an “endangered species” to be any species which is in danger of extinction throughout all or a significant portion of its range. 16 U.S.C. § 1532(6).
29. A species is “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20).
30. The ultimate goal of the ESA is to recover species so that the protections of the Act are no longer needed. 16 U.S.C. § 1532(3).
31. To accomplish this goal, the ESA requires the Fish and Wildlife Service to develop and implement “recovery plans” for the conservation and survival of listed species, unless they find that such a plan would not benefit the species. 16 U.S.C. § 1533(f).

32. The Secretary, in developing and implementing recovery plans, 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. Id.
33. A “recovery plan” must include:
- (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 determination, in accordance with [the ESA] that the species be removed from the list; 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 the goal. 16 U.S.C. § 1533(f).
34. Unless a species is listed as threatened or endangered, the ESA does not provide any protection for a species. Once listed, a recovery plan must be prepared and implemented for the species in order to accomplish its conservation.

**V. LEGAL BACKGROUND**  
**THE ADMINISTRATIVE PROCEDURES ACT.**

35. The Administrative Procedure Act was enacted by Congress in 1946 with the intent of providing uniformity to the rulemaking and adjudicative proceedings of federal administrative agencies.
36. The APA also provides a process by which the U.S. Federal Courts may review agency actions.
37. 5 U.S.C. §706 requires the Court to compel agency action unlawfully withheld or unreasonably delayed and hold unlawful and set aside agency action, findings, and

conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

38. The Secretary's failure to prepare and implement a recovery plan for these subspecies of jaguarundi for thirty-two years after their final listing determinations were published is an agency action unlawfully withheld and unreasonably delayed and is contrary to law.

## VI. STATEMENT OF FACTS

39. The Fish and Wildlife Service published a final listing determination for the Gulf coast and sinaloan jaguarundi, listing them as endangered species, on June 14<sup>th</sup> 1976.
40. Four of the eight subspecies of jaguarundi appear on the federal list of endangered species: 1) the Panamanian jaguarundi (*Herpailurus yagouaroundi panamensis*); 2) the Guatemalan jaguarundi (*Herpailurus yagouaroundi fossata*); 3) the Gulf Coast jaguarundi (*Herpailurus yagouaroundi cacomitli*); and 4) the Sinaloan jaguarundi (*Herpailurus yagouaroundi tolteca*).
41. Both the Gulf Coast and Sinaloan jaguarundi are resident in or frequently visit the United States.
42. At the time the subspecies were listed, the Fish and Wildlife Service did not prepare and implement a recovery plan for these subspecies.
43. It has been thirty-two years since these sub-species were listed as threatened or endangered and no recovery plan is in place for either of these subspecies.
44. It is the stated policy of FWS that recovery plans for threatened or endangered species be prepared and implemented within two and a half years of the species final listing determination. In order to avoid preparing a recovery plan the Secretary must determine that such a plan would not benefit the species. 16 U.S.C. § 1533(f)(1).



45. Neither the Secretary, nor the U.S. Fish and Wildlife Service, has made a finding that a recovery plan would not promote the conservation of the Gulf Coast or Sinaloan jaguarundi.
46. To the contrary, FWS clearly determined that the jaguarundi would benefit from a recovery plan, stating that the jaguarundi is suffering from the loss of the same habitat as the ocelot in Texas and would benefit from the same habitat preservation and enhancement as for the ocelot recovery.
47. The extensive shrub lands of the Lower Rio Grande Valley the jaguarundi depends upon for its habitat have been and are being converted to agricultural use. The soil that grows the thickest brush, and therefore the best habitat, is the best soil for the production of vegetables, citrus, sugarcane, cotton, and other crops.
48. Construction of the border fence between the U.S. and Mexico is going to end chances of connectivity between some habitats and significantly impact recovery unless the fence is constructed with the jaguarundi in mind.
49. FWS chose not to de-list the sinaloan jaguarundi in Arizona because the subspecies is secretive in nature, not easily trapped, and its size and relative similarity in appearance to the average alley cat makes noticing it as road-kill challenging.
50. Potential jaguarundi habitat occurs in southeastern Arizona, and protection of peripheral populations is an important aspect of the conservation of species, as studies have shown that when species become rare they often persist in the periphery of their historic geographical range.
51. Conservation and maintenance of existing habitat, and creation of connecting brush corridors between existing habitats is necessary for the survival of this species.

52. As human-caused habitat destruction represents the primary form of harm to the species, the species is highly likely to benefit from the development and implementation of a recovery plan.

## **VII. FIRST CLAIM FOR RELIEF**

### **THE SECRETARY VIOLATED HIS STATUTORY DUTY UNDER THE ESA, 16 U.S.C. § 1533(F), BY FAILING TO PREPARE AND IMPLEMENT A RECOVERY PLAN FOR THE GULF COAST AND SINOLOAN JAGUARUNDI.**

53. All preceding paragraphs are incorporated herein.
54. The Gulf Coast and Sinoloan jaguarundi were listed as endangered species in the Secretary's final ruling on June 14th, 1976. 50 Fed. Reg. 24061-24066.
55. FWS has delayed developing and implementing a recovery plan for these subspecies of jaguarundi for thirty two years past their final designation as endangered species.
56. The Secretary has violated his non-discretionary duties under Section 4 of the ESA, within the meaning of the ESA's citizen suit provision by failing to prepare and implement a recovery plan for the Gulf Coast and Sinoloan jaguarundi. 16 U.S.C. § 1540(g)(1)(C).

## **VIII. SECOND CLAIM FOR RELIEF**

### **THE SECRETARY HAS UNREASONABLY DELAYED COMPLIANCE WITH THE ESA IN VIOLATION OF THE APA.**

57. All preceding paragraphs are incorporated herein.
58. The Secretary's failure to develop and implement a recovery plan for the Gulf Coast and Sinoloan jaguarundi for thirty-two years following their listing as threatened or endangered species violates his statutory duties under the ESA, 16 U.S.C. § 1533(f)(1), FWS' own policies, and constitutes agency action unlawfully withheld, unreasonably delayed, and contrary to law within the meaning of the APA. 5 U.S.C. § 706.

