



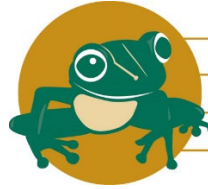
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February 15, 2023

The Honorable Debra Haaland
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RE: Notice of Intent to Sue Under the Endangered Species Act for Failing to Make Required Finding on a Petition to Protect Hippopotamuses (*Hippopotamus amphibius*)

Dear Secretary Haaland, Director Williams, and Chief London:

This letter serves to notify the U.S. Fish and Wildlife Service (“Service”), on behalf of Humane Society International, the Humane Society of the United States (“HSUS”), Humane Society Legislative Fund (“HSLF”), and the Center for Biological Diversity (“Center”), of our

intent to sue under the Endangered Species Act (“ESA” or “Act”),¹ for failure to make the required 90-day finding on our March 24, 2022 petition to list the common hippopotamus (*Hippopotamus amphibius*) (“hippo”) under the Act.² This letter is submitted pursuant to the ESA’s sixty-day notice requirement³ to provide the Service with notice of its violation of Section 4(b)(3).⁴

Hippos have suffered a major reduction in population size across their range primarily due to habitat loss and fragmentation, legal overutilization for commercial and recreational purposes, illegal hunting and trade, disease, and the inadequacy of current regulatory mechanisms, and such decline continues unabated. Our organizations and their members and supporters are concerned that the loss of this keystone species will damage sub-Saharan ecosystems and believe that ESA protections are imperative to prevent the loss of this species, especially because current international and domestic range country regulatory protections are inadequate to protect the species and have failed to stall the decline in hippo populations.

Accordingly, and as detailed below, we urge the Service to promptly respond to our March 2022 petition to protect hippos under the ESA. Our petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and thus a positive 90-day finding is warranted. By failing to make a timely 90-day finding on our petition, the Service is failing to meet its duty under Section 4 of the ESA to ensure that protection of endangered and threatened species occurs in a timely manner. As such, we hereby provide our notice of intent to sue the Service for its failure to make a 90-day finding, should the Service not take timely action to remedy its legal violation.

BACKGROUND

On March 24, 2022, the Service received a petition from the HSUS, HSI, HSLF, and the Center (“Petition”).⁵ The Petition requested that hippos be listed under the ESA as an endangered species, or, in the alternative, as a threatened species.⁶ As detailed in our petition, the hippo faces substantial and intensifying threats across sub-Saharan Africa, and national and international regulatory mechanisms are inadequate to address these threats.

¹ 16 U.S.C. §§ 1531-1544.

² 16 U.S.C. § 1533(b)(3)(A).

³ See 16 U.S.C. § 1540(g)(2)(C).

⁴ 16 U.S.C. § 1533(b)(3); *id.* § 1540(g)(1)(C).

⁵ The Petition is available at

https://www.humanesociety.org/sites/default/files/docs/Petition_Hippo_ESA_Protections.pdf. See also <https://ecos.fws.gov/ecp/report/table/petitions-received.html> (confirming the Service received the Petition on March 24, 2022).

⁶ Specifically, the Petition (at footnote 1) requested that if the Service determines that the common hippopotamus is not in danger of extinction throughout all of its range, the agency determine whether the species is in danger of extinction throughout a significant portion of its range, thus warranting endangered listing range-wide on that basis. See 16 U.S.C. § 1532(6). If the Service determines that the species should not be listed as endangered range-wide, then we requested that the species be listed as threatened, with qualifying distinct population segments or subspecies (should the scientific community reach consensus regarding subspecies) listed as endangered. If the Service lists the common hippopotamus as threatened, the Petition explained that all the prohibitions in Section 9 should be extended to the species through a 4(d) rule given the threats these animals face. See 16 U.S.C. § 1533(d).

Numerous factors threaten hippos' survival. The species has experienced significant habitat loss and fragmentation due to expanding human populations and increased land use activities, such as agriculture and irrigation. The human population in sub-Saharan Africa is projected to continue expanding and, by 2050, it is expected to double with more than 60% of this growth occurring in urban African cities.⁷ As this happens, hippo habitats will be increasingly converted for human use, particularly for agriculture. This increases the siltation of these freshwater bodies, making them less suitable for hippos, and related agricultural conversion decreases available grazing opportunities.⁸ Other hippo habitats have been and will be negatively affected as their water sources are converted into irrigation facilities, destroyed by dams and dikes, and/or impacted by climate-change induced droughts.⁹ Adverse environmental challenges have profound deleterious effects on hippo conception rate, with one study showing a decrease of over 30%.¹⁰ In addition to low reproductivity, loss of habitat due to drought and anthropogenic pressures leads to higher mortality rates due to disease spread, intra-specific aggression, and starvation.¹¹

Furthermore, overutilization threatens the species. Hippos are hunted both illegally and legally for their parts and products as well as for sport. Poaching for bushmeat and teeth is common outside of national parks and nature reserves but is also increasing inside of them.¹² Hippo ivory is in demand as a cheaper substitute to elephant ivory.¹³ The hippo's reputation as a dangerous animal has also increased its popularity as a target in big game hunting.¹⁴ This is concerning because hippos may exhibit sexually selected infanticide, where adult males who acquire new territories kill dependent young to bring females into estrous and increase mating opportunities.¹⁵ Though the effects of trophy hunting on hippos have not been well studied, research on other mammal species that exhibit such behavior have shown the effects of trophy hunting to be: population decline, changes in habitat use and behavior, disrupted social structure, and reduced reproductive success.¹⁶ Moreover, hippo hunts and poaching do not occur broadly across Africa. Rather, they are concentrated primarily in Tanzania, Uganda, Zambia, Zimbabwe, Malawi, and South Africa, causing a significantly greater impact to those countries' hippo populations.¹⁷

Additionally, international trade in hippo parts and products is significant, with the United States playing an outsized role. According to available CITES global trade data, 75,397 wild-sourced hippo specimens were traded internationally for commercial, personal, or hunting purposes between 2009 and 2018.¹⁸ This equates to a conservative estimate of at least 13,496

⁷ Petition at 76.

⁸ Petition at 18-19.

⁹ Petition at 18-19.

¹⁰ Petition at 17.

¹¹ Petition at 17-18.

¹² Petition at 60.

¹³ Petition at 62-63.

¹⁴ Petition at 57.

¹⁵ Petition at 78.

¹⁶ Petition at 78 (citing numerous studies).

¹⁷ Petition at 79-81, Table 25.

¹⁸ Petition at 25-26, Table 3.

hippos removed from the wild.¹⁹ The United States is the top importer of globally imported hippo parts and products, including trophies, and its proportion in this regard has only increased in recent years. Between 2009 and 2018, the United States has been the world's top importer of hippo specimens, consuming 37% of the global total.²⁰ Between 2009 and 2018, the parts of 669 wild hippos that originated in Zimbabwe were imported into the United States for hunting trophy purposes, 21 for personal purposes, and 113 for commercial purposes, making up nearly half of all global imports of wild hippos sourced from Zimbabwe for these purposes.²¹ In that same timeframe, the United States imported nearly half of all the wild hippo parts traded globally for hunting trophy, commercial, and personal purposes from Mozambique and more than half from South Africa and Namibia.²²

The lack of adequate existing regulatory mechanisms also harms the survival of the species. There are significant gaps in range country regulation. For example, of the top six hippo exporting countries, only Malawi provides full protection for the species.²³ Hippos are provided partial protection in Tanzania, Uganda, Zambia, and Zimbabwe, and are not a protected species in South Africa.²⁴ Even where regulatory measures tend to be more comprehensive, war, civil unrest, and the lack of a powerful central government in other parts of hippos' range have resulted in population declines.²⁵ Civil unrest diverts funds from anti-poaching patrols, and those park guards who are not laid off are often under- or un-armed, under paid or unpaid, and many are shot and killed by soldiers and poachers during times of conflict.²⁶ As civil wars continue to affect parts of Africa, hippos and other wildlife are left vulnerable to poaching and overexploitation.

Further, international agreements are not adequately protecting hippos. The African Convention on the Conservation of Nature and Natural Resources requires members of the African Union to adopt domestic measures to protect, among others, faunal resources (e.g., hippos), but several major hippo exporting nations, such as South Africa and Zimbabwe, have never ratified the agreement, and even for those that have acceded, the agreement lacks any enforcement mechanisms for noncompliance.²⁷ Moreover, despite the listing of hippos on the Convention of International Trade in Engaged Species ("CITES") Appendix III in 1975 and Appendix II in 1994, the conservation status of the species continues to deteriorate.²⁸ This is, in part, a result of the international crackdown on the commercial trade of elephant ivory, for which hippo ivory is a substitute. And, at the most recent CITES Conference of the Parties, member states failed to adopt

¹⁹ Petition at 33-35, Table 6.

²⁰ Petition at 59, Table 12.

²¹ Petition at 48.

²² Petition at 45, 46.

²³ Petition at 97.

²⁴ Petition at 97.

²⁵ Petition at 61-62.

²⁶ Petition at 21.

²⁷ Petition at 96-97.

²⁸ Petition at 83-95.

a proposed revision to hippos' Appendix II listing that would have prohibited all exports of wild specimens for commercial purposes, demonstrating that CITES continues to fail the species.²⁹

As a top consumer of the species, it is critical that the United States take swift action to protect the common hippopotamus from the threat of extinction. Our petition documents the threats to the species along with declining hippo populations in many areas, presenting substantial scientific and commercial information that supports a finding that listing hippos under the ESA is warranted.

ESA VIOLATIONS

In response to a petition to list a species as threatened or endangered, the ESA requires that the Secretary to “the maximum extent practicable” within 90 days determine “whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.”³⁰ If the Service makes a positive 90-day finding, it must initiate a status review of the species and then determine whether listing is warranted, not warranted, or warranted but precluded within 12 months of the date the petition is filed.³¹ The ESA requires listing determinations to be made “solely on the basis of the best scientific and commercial data available.”³²

We filed, and the Service received, our petition seeking ESA protections for hippos on March 24, 2022.³³ While nearly a year has passed since we filed our petition, the Service has failed to make the required 90-day finding for this species. Accordingly, the 90-day finding is overdue, and the Service is violating Section 4(b)(3) of the ESA. We therefore seek to compel the Service to act on our petition and make the required 90-day finding.

CONCLUSION

Hippos are under substantial threat, and it is imperative that the Service recognize the plight of these iconic animals and protect them under the ESA. The delay in responding to our petition is contrary to law, especially given the importance Congress has assigned to the protection of endangered and threatened species. If the Service does not act quickly to issue its overdue 90-day finding, we will pursue litigation against the agency for its violation of the ESA.

²⁹ Elizabeth Claire Alberts, New Protections for sharks, songbirds, frogs and more at CITES trade summit. *Mongabay* (Nov. 25, 2022), <https://news.mongabay.com/2022/11/new-protections-for-sharks-songbirds-frogs-and-more-at-cites-trade-summit/>.

³⁰ 16 U.S.C. § 1533(b)(3)(A).

³¹ 16 U.S.C. § 1533(b)(3)(B).

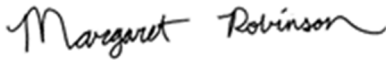
³² 16 U.S.C. § 1533(b)(1)(A); *New Mexico Cattle Growers v. U.S. Fish & Wildlife Service*, 248 F.3d 1277, 1284- 85 (10th Cir. 2001) (“The addition of the word ‘solely’ is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species” (quoting H.R. Rep. No. 97-567, pt. 1, at 29 (1982), reprinted in 1982 U.S.C.C.A.N. 2807)); H.R. Conf. Rep. No. 97-835 (1982), reprinted in 1982 U.S.C.C.A.N. 2860, 2860 (the limitations on the factors the Service may consider in making listing decisions were intended to “ensure that decisions . . . pertaining to the listing . . . are based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions”).

³³ See <https://ecos.fws.gov/ecp/report/table/petitions-received.html>.

If you have any questions, or would like to discuss this matter, our contact information is below. We request that any correspondence regarding this matter that is sent in hard copy also be provided electronically to our email addresses below.

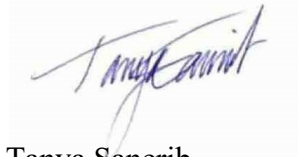
Thank you for your attention to this matter.

Sincerely,



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