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March 21, 2024

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. Department of the Interior and the U.S. Fish and Wildlife Service (collectively, “Service”), on behalf of Humane Society International (“HSI”), the Humane Society of the United States (“HSUS”), Humane Society Legislative Fund (“HSLF”),

and the Center for Biological Diversity (“Center”) (collectively “Petitioners”), of our intent to sue under the Endangered Species Act (“ESA” or “Act”),¹ for failure to make the required 12-month 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. 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. We believe that ESA protections are imperative to prevent the loss of the hippo, especially because of the role of the U.S. market in fueling demand for hippo products and due to inadequate current international and domestic range country regulatory protections that have failed to stall the decline in hippo populations.

Accordingly, and as detailed below, we urge the Service to promptly make a 12-month finding on our March 24, 2022 petition to protect hippos under the ESA (“Petition”).⁵ As the Service concluded in its March 21, 2023 90-day finding, the Petition “presents substantial scientific or commercial information indicating that listing the common hippopotamus . . . under the Act may be warranted.”⁶ On January 4, 2024, we submitted comments to be considered as part of the status review of hippos. These comments outlined new scientific and commercial information about the status of the species, providing further evidence of hippos’ perilous status.⁷ By failing to make a 12-month 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 12-month finding, unless the Service takes timely action to remedy its legal violation.

BACKGROUND

On March 24, 2022, the Service received a petition from HSI, HSUS, HSLF, and the Center. The Petition requested that hippos be listed under the ESA as an endangered species, or, in the alternative, as a threatened species.⁸ As detailed in our Petition, the hippo faces substantial and

¹ 16 U.S.C. §§ 1531-1544.

² *Id.* § 1533(b)(3)(B).

³ *See id.* § 1540(g)(2)(C).

⁴ *Id.* § 1533(b)(3); *see also id.* § 1540(g)(1)(C).

⁵ This petition is available at:

https://www.humanesociety.org/sites/default/files/docs/Petition_Hippo_ESA_Protections.pdf (hereinafter, “Petition”). *See also Report on Endangered Species Act Petitions Received by Fish and Wildlife Service*, U.S. FISH & WILDLIFE SERV. ENV’T L CONSERVATION ONLINE SYS., <https://ecos.fws.gov/ecp/report/table/petitions-received.html> (last visited Mar. 15, 2024) (hereinafter, “USFWS Report”) (confirming Service received Petition on March 24, 2022).

⁶ 88 Fed. Reg. 16933, 16935 (Mar. 21, 2023).

⁷ Petitioners’ status review comments are available at: <https://www.regulations.gov/comment/FWS-HQ-ES-2022-0158-3649> (hereinafter, “Petitioners’ Status Review Comments”).

⁸ Specifically, the Petition requested that if the Service determines that the common hippopotamus is not in danger of

intensifying threats across sub-Saharan Africa, and national and international regulatory mechanisms are inadequate to address these threats.

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 detrimental impacts of these habitat alterations are exacerbated by climate and environmental changes, including water scarcity and drought. 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.⁹ 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.¹⁰

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 periods of water scarcity and droughts.¹¹ Notably, in recent years, in a key hippo conservation area, ephemeral waterholes decreased by 62% from wet to dry seasons.¹² Such decreases in extent and quality of ephemeral pools negatively impact hippo population dynamics because hippos are dependent on the availability of freshwater pools and sensitive to changes in water depth.¹³ Further, as hippo abundance and aggregation are heavily dependent on rainfall, droughts portend disaster. During the 2015/2016 drought in Kruger National Park in South Africa, the number of hippos decreased by 38.6% between 2015 and 2016 and by 8% between 2016 and 2017.¹⁴

Adverse environmental challenges also have profound deleterious effects on hippo conception rate, with one study showing a decrease of over 30%.¹⁵ 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.¹⁶ Human retaliatory killing of hippos, a key contributor to population decline in some regions, is also expected to become more prevalent due to these threats.¹⁷

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* Petition at i, n. 1; *see also* 16 U.S.C. § 1532(6) (defining “endangered species” to include “any species which is in danger of extinction throughout all or a significant portion of its range”) (emphasis added). 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* Petition at i, n.1, 2 n.3; *see also* 16 U.S.C. § 1533(d).

⁹ Petition at 76.

¹⁰ Petition at 18-19.

¹¹ Petition at 18-19.

¹² Petitioners' Status Review Comments at 3.

¹³ Petitioners' Status Review Comments at 4.

¹⁴ Petitioners' Status Review Comments at 4.

¹⁵ Petition at 17.

¹⁶ Petition at 17-18.

¹⁷ Petitioners' Status Review Comments at 15-16.

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.¹⁸ Hippo ivory is in demand as a cheaper substitute to elephant ivory.¹⁹ The hippos' reputation as a dangerous animal has also increased its popularity as a target in big game hunting.²⁰ This trend 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.²¹ 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 include population decline, changes in habitat use and behavior, disrupted social structure, and reduced reproductive success.²² 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.²³

Additionally, international trade in hippo parts and products is significant, with the United States playing an outsized role. Compiling Convention of International Trade in Engaged Species ("CITES") global trade data, our Petition documented 75,397 wild-sourced hippo specimens traded internationally for commercial, personal, or hunting purposes between 2009 and 2018.²⁴ This equates to a conservative estimate of at least 13,496 hippos, mainly originating from Tanzania, Uganda, Zambia, and Zimbabwe.²⁵ More recent CITES data from 2019 to 2021 continues to show a high level of trade, with an additional 6,124 specimens traded for the same purposes during that period.²⁶ The United States is the top importer of globally imported hippo parts and products, including trophies, and its proportion has only increased in recent years. In the decade studied in the Petition (2009-2018), the United States was the world's top importer of hippo parts and products, consuming 34% of global imports.²⁷ More recently, between 2019 and 2021, the United States imported 45% of the global total of hippo parts and products.²⁸

In addition to CITES data, Petitioners documented widespread availability of hippo products for sale in U.S. stores and online. The Petition and status review comments documented hundreds of hippo products for sale online—with raw ivory pieces and leather products being particularly prevalent.²⁹ These findings reflect rapid assessments of online trade, and likely only capture a very small fraction of the availability of hippo products online. In addition, HSI and HSUS conducted undercover investigations between 2018 and 2021 that reveal a thriving market

¹⁸ Petition at 60.

¹⁹ Petition at 62-63.

²⁰ Petition at 57.

²¹ Petition at 78.

²² Petition at 78 (citing numerous studies).

²³ Petition at 79-81; *id.* at 80, Table 25.

²⁴ Petition at 25-26, Table 3. Data reported in this paragraph refers to unweighted imports of hippo specimens. For such unweighted imports, the unit used in the CITES trade database equals the number of specimens imported, rather than the weight of the specimens imported.

²⁵ Petition at 33-35; *id.* at 35, Table 6.

²⁶ Petitioners' Status Review Comments at 6, Table 1.

²⁷ Petition at 29, Figure 5.

²⁸ Petitioners' Status Review Comment at 7, Table 3.

²⁹ Petition at 48-50; Petitioners' Status Review Comments at 12.

of hippo parts and products for sale in brick-and-mortar stores in the United States.³⁰ Again, the products documented likely represent only a small fraction of the actual products available across the country.

The lack of adequate existing regulatory mechanisms also harms the survival of the species. There are significant gaps in range country regulations. For example, many major exporting countries only provide partial protections of hippos from hunting and other forms of utilization.³¹ Even where regulatory measures tend to be more comprehensive, war, civil unrest, and the lack of a powerful central government in parts of hippos' range have resulted in population declines.³² 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.³³ 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).³⁴ However, several major hippo exporting nations, such as South Africa and Zimbabwe, have never ratified the agreement.³⁵ Even for those that have acceded, the agreement lacks any enforcement mechanisms for noncompliance.³⁶ Moreover, despite the listing of hippos on CITES Appendix III in 1975 and Appendix II in 1994, the conservation status of the species continues to deteriorate.³⁷ And, at the most recent CITES Conference of the Parties, member states failed to adopt a proposed revision to hippos' Appendix II listing that would have prohibited exports of wild specimens for commercial purposes, demonstrating that CITES continues to fail the species.³⁸

As a top consumer of the species, it is critical that the United States take swift action to protect hippos 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

We submitted our Petition on March 24, 2022,³⁹ and the Service issued a positive 90-day finding on March 21, 2023, determining that the petitioned action may be warranted.⁴⁰ Once a positive 90-day finding is made, the Service is statutorily required to initiate a status review of the

³⁰ Petition at 50; *id.* at 50-57, Table 11.

³¹ Petition at 98-104, Table 28.

³² Petition at 61-62.

³³ Petition at 21.

³⁴ Petition at 96.

³⁵ Petition at 96-97.

³⁶ Petition at 97.

³⁷ Petition at 83-95.

³⁸ See 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/>.

³⁹ See USFWS Report, *supra* note 5.

⁴⁰ 88 Fed. Reg. 16933, 16935 (Mar. 21, 2023).

species and determine whether listing is warranted, not warranted, or warranted but precluded within 12 months of the date that the petition was filed.⁴¹

The 12-month finding on our Petition was therefore due on March 24, 2023. Yet nearly two years have passed since we filed our Petition, and the Service has failed to make the required 12-month finding. Accordingly, the 12-month finding is overdue, and the Service is violating Section 4(b)(3) of the ESA.⁴² We therefore seek to compel the Service to act on our petition and make the required 12-month finding.

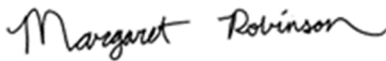
CONCLUSION

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 Service's delay in making a determination on 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 12-month finding, we will pursue litigation against the agency for its violation of the ESA.

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.

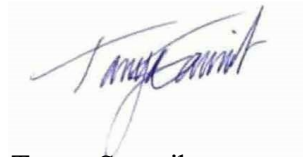
Thank you for your attention to this matter.

Sincerely,



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⁴¹ 16 U.S.C. § 1533(b)(3)(A)-(B).

⁴² *Id.* § 1533(b)(3).