



November 16, 2016

Via Email and Certified Mail

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Re: Notice of Violations of the Endangered Species Act for Failing to Make Required Findings on a Petition to Protect Savannah and Forest Elephants

Dear Secretary Jewell, Director Ashe, and Mr. Frazer,

On behalf of the Center for Biological Diversity, we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act (ESA),¹ that the U.S. Fish and Wildlife Service (the Service) is in violation of Section 4(b)(3) of the ESA for failing to make the required 12-month findings on our June 10, 2015 petition to reclassify African elephants as two separate species: forest elephants (*Loxodonta cyclotis*) and savannah elephants (*Loxodonta africana*) and to list each species as endangered under the ESA.² The Center for Biological Diversity (the Center) is a nonprofit conservation organization with more than 1.1 million members and supporters dedicated to the protection of endangered species and wild places.

Every 15 minutes or less, an elephant in Africa is poached for its ivory. Given the ongoing and shocking population declines of both forest and savannah elephants in Africa, the Center and its members are concerned we may forever lose these keystone species that inspire

¹ 16 U.S.C. § 1540(g)(2)(A)(i).

² *Id.* § 1533(b)(3). The Service's failure to make the required finding also constitutes agency action unlawfully withheld or unreasonably delayed or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the Administrative Procedure Act (APA). 5 U.S.C. §§ 706(1); 706(2)(A).

our hearts and minds and provide critical ecosystem functions for a wide array of habitats and species, if the fullest protections are not provided.

Accordingly and as detailed below, we urge the Service to promptly respond to our June 2015 petition to recognize and list both forest and savannah elephants as endangered under the ESA. Further, because the Service has already violated the ESA's requirement to determine whether listing is warranted within 12 months of receiving our petition,³ we hereby provide our notice of intent to sue the Service, if the Service has not taken action within the next 60 days.

BACKGROUND

As detailed in our June 2015 petition, recent genetic studies demonstrate that forest elephants and savannah elephants diverged from each other genetically as long ago as Asian elephants diverged from mammoths. Recognizing these two different species of elephants in Africa is crucial to understanding and highlighting the species' separate and substantial declines, particularly in the context of the threats each species faces. These threats include the ongoing poaching crisis, significant habitat loss, impacts related to war and political conflicts, and the bush meat crisis that are each pushing both species toward extinction. Indeed, a paper released just this week documented that most ivory in trade is from recently killed elephants.⁴

New evidence also confirms that both species of African elephants are in danger of imminent extinction. The 2016 Great Elephant Census (GEC) of savannah elephants estimated the current range-wide population at roughly 334,464 to 370,078 elephants—far lower than previously estimated.⁵ Alarming, the GEC report documented a seven year decline of 30 percent or 144,000 elephants. If this rate of decline continues, savannah elephants in Africa could go extinct in 15 years. For a species ranging from east, central, west, and southern Africa, these results are disturbing and indicate an endangered listing is both warranted and urgently needed for savannah elephants.

Likewise, a 2016 review of forest elephant demographic data documented a markedly slower reproductive rate in forest elephants compared to savannah elephants.⁶ Coupling this reproductive reality with the poaching crisis, Turkalo et al. (2016) concluded “the conditions of forest elephants are more precarious than previously thought.”⁷ When all the threats to forest

³ 16 U.S.C. § 1533(b)(3)(B).

⁴ Cerling, T.E., J.E. Barnette, L.A. Chesson, I. Douglas-Hamilton, K.S. Gobush, K.T. Uno, S.K. Wasser, and X. Xui. (2016). Radiocarbon dating of seized ivory confirms rapid decline in African elephant populations and provides insight into illegal trade. PNAS. (available at: <http://www.pnas.org/content/early/2016/11/02/1614938113.full>).

⁵ Chase, M. J., et al. (2016). Continent-wide survey reveals massive decline in African savannah elephants. PeerJ, 4, e2354 (available at: <https://peerj.com/articles/2354/>).

⁶ Turkalo, A.K., P.H., Wrege, & G. Wittemyer (2016). Slow intrinsic growth rate in forest elephants indicates recovery from poaching will require decades. J. of Applied Ecol. (available at: <http://onlinelibrary.wiley.com/doi/10.1111/1365-2664.12764/full>).

⁷ *Id.*

elephants are considered together, there is also a great risk of losing this unique species and a clear need for endangered protections for these elephants.

As countries around the globe work to close their domestic ivory markets and meet the agreements, decisions, and resolutions under the Convention on International Trade in Endangered Species (CITES), it is critical that the United States play its part and protect savannah and forest elephants as endangered, ensuring the highest level of protect for these majestic animals.

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.”⁸ The ESA then requires that the Secretary within 12 months to determine whether listing is warranted, not warranted, or warranted but precluded.⁹

The Center filed its petition seeking endangered listings for forest elephants and savannah elephants on June 10, 2015,¹⁰ and the Service issued its positive 90-day finding on March 16, 2016.¹¹ Seventeen months have passed since we filed our petition, yet the Service has failed to make the required 12-month findings for these species. Accordingly, those mandated findings are now five months overdue, and the Service is violating Section 4 of the ESA. As such, the Service is abrogating its duty to ensure that protection of endangered species occurs in a timely manner thereby avoiding further population declines and increasing the risk of extinction and cost of recovery of these species. For all these reasons, we seek to compel you to take action on our petition.

CONCLUSION

Both forest and savannah elephants are threatened by multiple factors and continued delay in protecting them as endangered species is harming prospects for the recovery of these majestic yet highly imperiled species. This delay is contrary to law, especially given the importance Congress has assigned to the protection of endangered and threatened species.

Within 60 days, if the Service does not act to correct the violations described in this letter or agree to discuss a schedule for completing the overdue findings, we will pursue litigation against the agency. If you have any questions, or would like to discuss this matter, please contact Ms. Tanya Sanerib at the number below as soon as possible.

⁸ 16 U.S.C. § 1533(b)(3)(A).

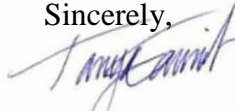
⁹ *Id.* § 1533(b)(3)(B).

¹⁰ Available at:

http://www.biologicaldiversity.org/species/mammals/pdfs/African_Elephant_Uplisting_Petition.pdf

¹¹ 81 Fed. Reg. 14,058 (March 16, 2016).

Sincerely,



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