



HUMANE SOCIETY
INTERNATIONAL



THE HUMANE SOCIETY
OF THE UNITED STATES



September 18, 2018

Via Email and Certified Mail

Secretary Ryan Zinke
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Acting Director Jim Kurth
U.S. Fish and Wildlife Service
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Gary Frazer
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Re: Notice of Violations of the Endangered Species Act for Failing to Make Required Finding on a Petition to Protect Giraffes (*Giraffa camelopardalis*)

Dear Secretary Zinke, Acting Director Kurth, and Mr. Frazer,

On behalf of the Center for Biological Diversity, Humane Society International, Humane Society of the United States, and the Natural Resources Defense Council, 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 90-day finding and as a result failing to make the requisite 12-month finding as well on our April 19, 2017 petition to list the giraffe (*Giraffa camelopardalis*).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 imperiled species and wild places. The Humane Society of the United States is a non-profit organization that works on behalf of its members to protect all animals and combat cruelty through litigation, legislation, investigation, education, advocacy, grant-making, emergency rescue missions, field work, and direct care to tens of thousands of animals. Humane Society International is a non-profit organization committed to the goals of protecting, conserving, and enhancing wildlife and fostering the humane treatment of all animals around the world. Natural Resources Defense

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).

Council is an international nonprofit environmental organization with more than 3 million members and online activists.

Giraffes have been undergoing a silent extinction with fewer giraffes now remaining in Africa than elephants.³ Giraffes have suffered a major reduction in population size across their range primarily due to habitat loss, commercial overutilization, and severe poaching, and their decline continues unabated. Our organizations and members are concerned we may forever lose these unique and fascinating animals if ESA protections are not extended to this species, especially because the species is not protected from trade under international law.

Accordingly and as detailed below, we urge the Service to promptly respond to our April 2017 petition to protect giraffes 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 90-day finding on our petition, the Service has also foreclosed its ability to make a 12-month finding within 12 months if a positive 90-day finding is made.⁴ In addition to missing the statutory deadline, the Service has violated the ESA's requirement to determine whether our petition presents substantial information indicating that the petitioned action may be warranted.⁵ As such, 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 April 2017 petition, currently one species of giraffe (*Giraffa camelopardalis*) is recognized along with nine subspecies⁶ In classifying the giraffe as vulnerable to extinction in December, 2016, the IUCN Giraffe and Okapi Specialist Group utilized this taxonomy.⁷ Moreover, that review found that giraffes have undergone a 36 to 40 percent population decline over the past 30 years.⁸ Today, roughly 97,500 giraffes remain in Africa compared to the over 150,000 giraffes recorded in Africa in 1985.⁹

This species is facing substantial and varying threats across its range. Giraffes have experienced severe habitat loss and fragmentation due to expanding human populations and increased land use activities such as ranching and mining. Giraffes are hunted both legally and illegally for sport and for their parts and products. Civil unrest as well as poaching for bushmeat, bones, tail hair, and other parts are also causing giraffe mortality and contributing to their

³ The Service has listed elephants as threatened and found that an endangered listing may be warranted. 81 Fed. Reg. 14,058, 14,062 (March 16, 2016).

⁴ 16 U.S.C. § 1533(b)(3)(A).

⁵ *Id.* § 1533(b)(3)(B).

⁶ The nine subspecies are: West African (*Giraffa camelopardalis peralta*); Kordofan (*G. c. antiquorum*); Nubian (*G. c. camelopardalis*); reticulated (*G. c. reticulata*); Rothschild's (*G. c. rothschildi*); Masai (*G. c. tippelskirchi*); Thornicroft's (*G. c. thornicrofti*); Angolan (*G. c. angolensis*); and South African (*G. c. giraffa*). Dagg, A. I. (1971). *Giraffa camelopardalis*. *Mammalian Species*, (5), 1-8.

⁷ Muller, Z., Bercovitch, F., Fennessy, J., Brown, D., Brand, R., Brown, M., Bolger, D., Carter, K., Deacon, F., Doherty, J., Fennessy, S., Hussein, A.A., Lee, D., Marais, A., Strauss, M., Tutchings, A. & Wube, T. (2016). *Giraffa camelopardalis*. IUCN Red List Threat Species, 2016, 1-8.

⁸ *Id.*

⁹ *Id.*

decline. The international trade in giraffe parts and products spurs poaching, legal hunting, and trophy hunting, and a disturbing trend of substituting giraffe bone for ivory in knife and gun handles is emerging.¹⁰ Giraffes are further threatened by the proliferation of disease, inbreeding depression in isolated populations, collisions with motor vehicles, and the increased frequency and magnitude of droughts associated with climate change. Our petition documents these threats along with declining giraffe populations, presenting substantial scientific and commercial information that supports a finding that the petitioned action is warranted.

Through available LEMIS data, it is clear that the United States is contributing to giraffe population decline. Over the past decade, a conservative estimate of imports indicates that the U.S. imported 21,402 bone carvings, 3,008 skin pieces, and 3,744 hunting trophies. Thus, it is critical that the United States play its part and protect giraffes, ensuring these mesmerizing animals receive the necessary protections the ESA affords imperiled species.

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.”¹¹ 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.¹² The ESA requires listing determinations to be made “solely on the basis of the best scientific and commercial data available”¹³

We filed our petition seeking ESA protections for giraffes on April 19, 2017.¹⁴ While nearly seventeen months have 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 now almost fourteen months overdue, and the Service is violating Section 4 of the ESA. By failing to render a 90-day finding within 90-days, the Service is also in violation of the 12-month finding deadline should the 90-day finding be positive. As such, the Service is abrogating its duty under Section 4 of the ESA to ensure that protection of endangered and threatened species occurs in a timely manner, thereby avoiding further population declines and increasing the risk of extinction and

¹⁰ See, e.g., <http://www.hsi.org/assets/pdfs/giraffe-report-HSI-HSUS-082318.pdf>; https://newsroom.humanesociety.org/fetcher/index.php?searchMerlin=1&searchBrightcove=1&submitted=1&mw=d&q=GiraffeInvestigation0618&credit=web_id892742291.

¹¹ 16 U.S.C. § 1533(b)(3)(A).

¹² *Id.* § 1533(b)(3)(B).

¹³ *Id.* § 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 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))); H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess. 19-20 (1982) (the limitations on the factors the Service may consider in making listing decisions were intended to “ensure that decisions . . . pertaining to listing . . . are based solely upon biological criteria and to prevent nonbiological considerations from affecting such decisions”).

¹⁴ Available at:

https://www.biologicaldiversity.org/species/mammals/giraffe/pdfs/Giraffe_ESA_Petition_4-18-17.pdf.

cost of recovery of this species. For all these reasons, we seek to compel you to act on our petition.

CONCLUSION

Giraffes are in the midst of a silent extinction, and it is imperative that we recognize the continued decline of these captivating 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.

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 finding, we will pursue litigation against the agency. If you have any questions, or would like to discuss this matter, our contact information is below. Thank you for your attention to this matter.

Sincerely,



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