

December 10, 2015

***Via Email and Certified Mail, Return Receipt Requested***

The Honorable Sally Jewel, Secretary  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Mr. Dan Ashe, Director  
U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Ms. Jane Van Norman  
Acting Chief, Division of Conservation and Classification  
Ecological Services Program  
U.S. Fish and Wildlife Service  
MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**Re: Notice of Intent to Sue the United States Fish and Wildlife Service for Failing to Provide Required 12-Month Finding with Respect to Endangerment of the Pygmy Three-Toed Sloth (*Bradypus pygmaeus*)**

Dear Secretary Jewell, Director Ashe, and Acting Chief Van Norman:

On behalf of the Animal Welfare Institute (“AWI”), we hereby provide the notice required by Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(C), due to the United States Fish and Wildlife Service’s (“FWS”) failure to make the statutorily required findings on AWI’s November 15, 2013 petition (the “Petition”) concerning the pygmy three-toed sloth (the “Petition”) in a timely manner in violation of Section 4(b)(3)(B) of the ESA, 16 U.S.C. § 1533(b)(3)(B).

AWI is a non-profit, charitable organization that seeks to alleviate the suffering inflicted on animals by people. AWI works to minimize the impacts of all human actions detrimental to wildlife, including the commercial trade that threatens endangered species and destruction of native habitat.

**BACKGROUND**

As detailed in the Petition, the pygmy three-toed sloth is in critical need of immediate protection as an endangered species. This species is confined to Isla Escudo de Veraguas (“Isla Escudo”), a five square-kilometer island on the Mosquito Gulf coast of Panama. It is almost exclusively found in Isla Escudo’s four remaining acres of red mangrove forests. The International Union for

Conservation of Nature (“IUCN”) reports that the number of pygmy three-toed sloths is less than 500 individuals.<sup>1</sup> Surveys<sup>2</sup> on Isla Escudo conducted in 2012 detected only 79 pygmy sloths located in five isolated patches of red mangrove forest, with no single population greater than 20 individuals. More recently, only 48 pygmy sloths were observed within the mangrove forests on Isla Escudo.<sup>3</sup>

The species has been listed as Critically Endangered on IUCN’s red list since 2006. It is also listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”).<sup>4</sup> To ensure that the species secures the life-saving protections of the ESA, on November 15, 2013, AWI submitted the Petition to list the species under the ESA. A copy of the Petition, along with an appendix including all relevant scientific articles and other supporting materials, is available at: <https://awionline.org/sites/default/files/press-release/WL-AWI-PygmySlothPetition-11152013.pdf>.

As discussed in the Petition, ongoing and pervasive threats to the pygmy sloth and its habitat include:

- Degradation and destruction of mangrove forests on Isla Escudo, further reducing the species’ habitat and, hence, its area of occupancy.
- Opportunistic hunting of pygmy sloths for food by the indigenous population and local visitors to Isla Escudo.
- The cumulative impacts of habitat loss, degradation and fragmentation, and hunting further isolating the existing pygmy sloth population on Isla Escudo.
- Increased genetic inbreeding and loss of genetic diversity due to existing low level of genetic heterozygosity, habitat loss, and population isolation.
- Collection for the zoological or pet trade and to use captive sloths to provide tourists with opportunities to be photographed with the animals.
- Minimal protection under Panamanian law for pygmy sloths or their habitat despite Isla Escudo being designated as an Indigenous Reserve.

The magnitude and frequency of the threats to the species are rapidly increasing, primarily due to an increase in popularity of sloths in popular culture. This has contributed to an increase in the exploitation, including capture, of wild sloths for sale as pets or for use as tourist photographic props (*see, e.g.,* <http://abcnews.go.com/International/hottest-selling-animal-colombias-illegal-exotic-pet-trade/story?id=19172620>). Most recently, in September 2013, the Dallas World Aquarium captured eight pygmy sloths on Isla Escudo with the intent of exporting six to Texas while providing two animals to a zoo in Panama. This attempted removal of 10 percent of the known remaining population of pygmy sloths was thwarted at the last minute by concerned

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<sup>1</sup> See Voirin, B., Smith, D., Chiarello, A. & Moraes-Barros, N. 2014. *Bradypus pygmaeus*. The IUCN Red List of Threatened Species 2014: e.T61925A47444229. <http://dx.doi.org/10.2305/IUCN.UK.2014-1.RLTS.T61925A47444229.en>. Downloaded on December 4, 2015.

<sup>2</sup> See Kaviar S, Shockey J, Sundberg P. 2012. Observations on the Endemic Pygmy Three-Toed Sloth, *Bradypus pygmaeus* of Isla Escudo de Veraguas, Panama. PLoS ONE 7(11): 2012. Available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0049854>.

<sup>3</sup> Kaviar, S., Z. Ellsworth, and E. Hundrup. 2015. [attached]

<sup>4</sup> The recent addition to Appendix II remedied an unintentional omission of the pygmy sloth from CITES dating back to 2007.

citizens, animal advocates and local authorities. Unfortunately, at least two of the eight sloths may have died before or immediately after release, potentially as a result of their capture and confinement.<sup>5</sup>

Based on the best available scientific evidence available at the time, the Petition details the status of, and threats to, these animals, demonstrating the urgent need for their protection under the ESA.

### FWS'S VIOLATION OF THE ESA REQUIREMENTS

The ESA states that in response to a petition to list a species as threatened or endangered, the Secretary must, “[t]o 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.” 16 U.S.C. § 1533(b)(3)(A) (“90-day findings”). If a petition receives a positive 90-day finding, the ESA then requires that the Secretary determine whether listing is warranted, not warranted, or warranted but precluded within 12 months of receiving the relevant petition. 16 U.S.C. § 1533(b)(3)(B) (“12-month findings”).

Unlike the 90-day finding, the provision requiring a 12-month finding imposes a mandatory timeline – the Secretary must make a 12-month finding no later than one year from receipt of the petition. *Id.* (“[w]ithin 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petition action may be warranted, the Secretary shall make one of the following findings ...” (emphasis added)); *see also Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1171, 1175 (9th Cir. 2002) (“[T]he Service has discretion to extend the initial determination beyond ninety days; however, the Service is required to make a final determination on positive petitions within twelve months of receipt. ... Subsection (b)(3)(B) imposes a firm twelve-month deadline for making final determinations.” (citing *Ore. Natural Res. Council, Inc. v. Kantor*, 99 F.3d 334, 338-39 (9th Cir. 1996))).

AWI filed its Petition on November 15, 2013. In June 2014, FWS made a 90-day finding to the effect that protection under the ESA may very well be warranted<sup>6</sup>. Now, over two years have passed since AWI filed its Petition, and FWS has not made the required 12-month finding on the pygmy sloth. In fact, FWS advised AWI that a finding would not be forthcoming until sometime in fiscal year 2017, at the earliest.<sup>7</sup> Accordingly, FWS is failing to ensure that the protection of this endangered species occurs in a timely manner and has completely disregarded the ESA’s statutory mandate requiring a 12-month finding within one year of the date of the Petition. The continued lack of action is likely to result in further decline in pygmy sloth numbers and the increased risk of extinction for the species.

The FWS is in clear violation of Section 4 of the ESA. If the FWS does not notify AWI on or before January 11, 2016 that it will commit to making the required 12-month finding, AWI will

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<sup>5</sup> See Attempt to export nearly-extinct pygmy sloths sets off international incident in Panama, Tanya Dimitrova, special to mongabay.com, September 20, 2013.

<sup>6</sup> 79 Fed. Reg. 32900 (June, 2014).

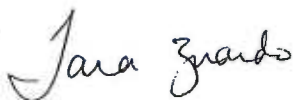
<sup>7</sup> Communication between Tara Zuardo of AWI and Janine Van Norman, Acting Chief, Division of Conservation and Classification, Ecological Services Program, U.S. Fish and Wildlife Service, on January 15, 2015.

have little choice but to file a civil lawsuit under 16 U.S.C. § 1540(g)(1)(C) and seek judicial intervention. In the alternative, AWI would be willing to meet with FWS to mutually agree on an acceptable timeline for a 12-month finding, if FWS promptly notifies AWI that it is willing to engage in meaningful discussions.

### CONCLUSION

The three-toed pygmy sloth is in serious jeopardy and deserves a prompt status review by FWS, certainly earlier than fiscal year 2017. Continued delay is harming the prospects of the very survival and recovery of these highly imperiled animals. The FWS's actions are contrary not only the letter of the law, but also to the spirit of the law, especially given the importance Congress has assigned to the protection of ESA-listed species.

AWI looks forward to FWS's immediate attention to the Petition, and timely notification that FWS will make a 12-month finding by January 31, 2016 or an indication, as soon as possible, that FWS is open to discussing a reasonable timeline. We are available to discuss this matter at any time. To arrange such a meeting, please contact Tara Zuardo at 202-446-2148 or [tara@awionline.org](mailto:tara@awionline.org).



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### **Abstract**

Pygmy sloths, *Bradypus pygmaeus*, are described as a dwarfed three-fingered sloth that is endemic to the 4.3 km<sup>2</sup> island of Escudo de Veraguas, off the Caribbean coast of Panamá. Pygmy sloths have been classified as critically endangered and believed to have a declining population and declining habitat area. The number of pygmy sloths observed in the mangrove habitat of Escudo de Veraguas has declined by 31.43% from 2011 to 2015. Mangrove habitat quality appears to have remained stable in area and contiguity across survey years, and may have even improved.

### **Introduction**

Pygmy sloths, *Bradypus pygmaeus*, are noted for their small size and are strongly suspected to be obligate mangrove folivores (Anderson & Handley 2001 & 2002), as opposed to their congeners, brown-throated sloths (*Bradypus variegatus*) which are generalist folivores. The Sloth Red List Assessment by the International Union for the Conservation of Nature, (IUCN: Superina et al 2010) also notes the importance of mangrove forest the pygmy sloths. The Sloth Red List Assessment estimates that there are >500 pygmy sloths, and 1.3-1.5 km<sup>2</sup> of available red mangrove, but to-date their methods for ascertaining this estimate are not publically documented. A 2011 habitat census demonstrated that there were only 0.1067 km<sup>2</sup> of mangrove forest on Escudo de Veraguas (Kaviar et al. 2012). Furthermore, recent research using wildlife telemetry, has demonstrated that pygmy sloths do utilize the mixed non-mangrove tropical lowland forest of Escudo de Veraguas, and suggests that they might consume from a greater diversity of plants than previously thought (Voirin 2015). Voirin (2015) extrapolated the 2011 census population density of ~ 6.56 pygmy sloths per hectare (incorrectly calculated as ~7.4 pygmy sloths) X 430 hectares to 2,820 pygmy sloths across Escudo de Veraguas (incorrectly calculated as 3,182) (Voirin 2015). There are conflicting reports that local Ngöbe people may hunt and eat the pygmy sloths, but these claims remain unsubstantiated.

### **Methods**

From May 20<sup>th</sup> to May 23<sup>rd</sup> of 2015 we accompanied ranger from the Comarcal Ngöbe-Buglé office of the Ministry of the Environment, Miambiente Ngöbe-Buglé Comarca, to perform a strip census method across the mangroves of Escudo de Veraguas. Researchers stood three meters abreast and followed compass bearings, adhering to the same schema as the 2011 census (Kaviar et al 2012). We recorded each sloth sighting using handheld GPS unit (Garmin GPSMAP 62s). Due to time and budget constraints, we were unable to repeat the mangrove mapping performed in 2011. All mangrove thickets were re-censused for the presence and abundance of pygmy sloth individuals.

## Results

We observed 48 pygmy sloths within the mangroves of Escudo de Veraguas, with 4 more pygmy sloths found beyond the fringes of the mangroves. This count represents a 31.43% reduction in pygmy sloth densities over four years since 2011. Within the mangrove thicket labeled as Thicket 1, which are the mangroves closest to the largest human settlement, pygmy sloth abundance declined from 16 in 2011 to 3 in 2015, which represents a local reduction of 81.25%.

Thicket	Area m <sup>2</sup> in 2011	Population 2011	Population 2015	Population percent change 2011 to 2015	Density 2011 (individual per hectare)	Density 2015 (individual per hectare)
Thicket 1	35094	16	3	-81.25	4.56	0.85
Thicket 10	23095	11	15	-36.36	4.76	6.49
Thicket 3	18533	15	6	60	8.09	3.24
Thicket 6	14224	14	6	57.14	9.84	4.22
Thicket 8	13579	13	11	15.38	9.57	8.1
Thicket 4	606	0	0	N/A	0	0
Thicket 9	569	0	0	N/A	0	0
Thicket 7	483	1	0	100	20.7	0
Thicket 2	445	0	6	N/A	0	134.83
Thicket 5	71	0	0	N/A	0	0
Total	106699	70	48	-31.42	6.56	4.49



## Discussion

The total population of pygmy sloths remains unknown, although the number of observed individuals in mangrove habitat decreased between 2011 and 2015. Heterogeneous pygmy sloth population densities within the mangrove thickets of Escudo de Veraguas suggest that extrapolating population densities across the

entire island may yield inaccurate estimates. However, if the mangrove area were representative of the total area of Escudo de Veraguas we would have seen a reduction of the pygmy sloth population from 2,820 to 1,931.

While we were unable to quantify overall habitat area in 2015, mangrove thickets boundaries did not appear to have changed since the census in 2011, and all 2015 mangrove sloth GPS locations fell within previously delineated sloth habitat. None of the mangrove thickets have disappeared, and there was no evidence of large-scale logging since the 2011 survey. Only a handful of marginal, new cuts in the mangrove thickets were observed (less than 2 meters). We observed re-growth in the logging cuts surveyed in the 2011 census, including considerable new growth in Thicket 1, the area with the greatest amount of logging in the 2011.

Discussion with the Ngöbe fisherpeople, who occupy the settlement on the eastern point of the island, reveal they now identify as permanent residents of Escudo de Veraguas, as opposed to seasonal visitors (Anderson and Handley 2001 & 2002, Superina et al 2010, Kaviar et al 2012, Voiron 2015). We did not ask them this same question in 2011. The Ngöbe people have stated that that they had observed the sloths on Escudo within the mixed tropical lowland forest. They also told us that the mangroves have been approximately the same size for more than two decades, and that no Ngöbe person to their knowledge had ever eaten the sloths.

The results of our 2015 census highlight the need for continued monitoring for this culturally important species.

### **Acknowledgements**

We'd like to thank Jacob R. Douma, Mary Gilbert, and George Kaviar for their generous support of research expenditures, as well as the Fulbright student program for supporting Samuel Kaviar, and the staff of Miambiente Comarca Ngöbe-Buglé for their support, as well as Melanie Davis.