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# Eastern Hellbender/Endangered Species Act: Waterkeeper Federal District Court Challenge to U.S. Fish and Wildlife Service Denial of Listing Petition

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Waterkeeper Alliance, Inc., and other organizations filed a July 1st Complaint for Declaratory and Injunctive Relief (“Complaint”) against the United States Fish and Wildlife Service (“Service”) challenging its decision to not list as a threatened or endangered species under the Endangered Species Act (“ESA”) the eastern hellbender. See Case No. 1:21-cv-5706.

The other organizations listed as plaintiffs in the United States District Court for the Southern District of New York action include:

- Center for Biological Diversity
- Waterkeepers Chesapeake, Inc.
- Lower Susquehanna Riverkeeper Association
- Middle Susquehanna Riverkeeper Association

The eastern hellbender is described in the Complaint as a large, fully aquatic salamander that was historically widespread across 15 eastern states. Its range is stated to have included from northeastern Mississippi, northern Alabama, and northern Georgia northeast to New York’s southern tier.

The Complaint alleges that the Center for Biological Diversity petitioned the Service in April 2010 to list the eastern hellbender as a threatened or endangered species under the ESA. The petition was stated to have been submitted because:

. . . the best available science shows that the hellbender, once relatively common throughout its range, has disappeared from many rivers and streams, and that the stressors driving the species’ decline are expected to continue unabated or even intensify in the future.

The hellbender is also described as an “indicator species” for aquatic habitats, needing free-flowing, cool, clean, highly oxygenated streams with boulders and crevasses to survive and reproduce. The majority of such streams within the hellbender’s range are alleged to have been degraded by disturbances such as agricultural and industrial water pollution, sedimentation, dams, and other impoundments, warming waters, deforestation, and destruction of riverine habitat.

Remaining populations of eastern hellbenders are stated to be concentrated in the Ohio River Watershed, the Tennessee and Kanawha River Watersheds, along with the population in the State of Missouri.

The Service denied the Center for Biological Diversity's petition in 2019, concluding that listing the species was not warranted. The Complaint alleges that the Service's decision is unlawful and failed to rely on the best scientific and commercial data available such as:

1. Arbitrarily relying on admittedly unproven and ineffective conservation measures
2. Failing to consider the adequacy of existing regulatory mechanisms
3. Arbitrarily concluding that the hellbender is not endangered or threatened in a significant portion of its range
4. Failing to provide a rational explanation for its choice to limit the foreseeable future analysis regarding the hellbender and its threats to 25 years (shorter than a single generation's expected lifespan)
5. Conflating the ESA's definition of endangered and threatened such that it did not determine whether the species was threatened

A copy of the Complaint can be downloaded [here](#).