PUBLIC SUBMISSION

As of: 8/12/26 4:41 AM
Received: August 07, 2026
Status: Posted
Posted: August 10, 2026
Tracking No. msj-a24v-x30a
Comments Due: August 07, 2026
Submission Type: Web

Docket: FWS-HQ-IA-2026-1948
Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports--Requirements for African Elephants

Comment On: FWS-HQ-IA-2026-1948-0001
Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports--Requirements for African Elephants

Document: FWS-HQ-IA-2026-1948-0008
Comment from Safari Club International

Submitter Information

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General Comment

Safari Club International's comments and supporting materials are attached.

Attachments

2026 08 07 SCI Comments on Elephant Permit Collection Final Signed

2025 Petition for Revisions to Endangered Species Act Regulations

2023 03 20 - SCI Elephant 4d Rule Comment - Final

2024 04 04 SCI NOIS Elephant 4d Rule

August 7, 2026

Via www.regulations.gov

Service Information Collection Clearance Officer
Attn: Docket No. FWS-HQ-IA-2026-1948
U.S. Fish and Wildlife Service
5275 Leesburg Pike, MS: PRB (JAO/3W)
Falls Church, Virginia 22041-3803

Re: Safari Club International Comments on Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports—Requirements for African Elephants; 91 Fed. Reg. 34639 (June 8, 2026)

Dear Ms. Baucum:

Safari Club International ("SCI") respectfully submits these comments in response to the U.S. Fish and Wildlife Service's ("Service") request for information and comments regarding the annual certification for African elephant range countries. SCI believes this information request is unnecessary and encourages the Service to remove the enhancement permit requirement and related annual certification, as explained in SCI's prior comments in opposition to that proposed rule.

The notice specifically asks whether the current information collection is necessary. SCI's response is a resounding "no." It is undisputed that 81% of the world's elephants inhabit the seven countries where elephant hunting occurs and from which elephants are exported. These countries should be commended for their conservation achievements, particularly when compared to other elephant range states where populations are declining or remain depressed. U.S. hunters play an important role in funding wildlife conservation efforts in these countries. Accordingly, the Service should seek to facilitate, rather than impede, the continued importation of legally harvested elephants and the conservation benefits generated by regulated hunting.

The current enhancement permit requirement does the opposite. It intrudes upon the sovereignty of foreign nations. For example, if one of these countries imposed an information demand comparable to the annual certification, it is doubtful the United States would respond favorably to such a demand. While the Service may appropriately request information on a government-to-government basis, it is quite another matter to mandate the submission of a one-size-fits-all certification through regulation and withhold import authorization if the required document is not provided. SCI objected[1] to this requirement when it was proposed and continues to do so

[1] Attached and incorporated here is SCI's comments on Proposed Rule, Revision to the Section 4(d) Rule for African Elephant, 87 Fed. Reg. 68975 (Nov. 17, 2022), Docket No. FWS-HQ-IA-2021-0099, timely submitted on March 20, 2023.

because it is unnecessary, particularly given these countries' demonstrated conservation successes.

SCI also continues to object to the Service's characterization of the rule as merely a "clarification" of how it evaluates the enhancement requirement in 50 C.F.R. § 17.40(e). In practice, the certification requirement extends well beyond a determination that hunting enhances elephant conservation. As SCI explained in prior comments, hunting (and elephant hunting specifically) contributes to habitat conservation, anti-poaching efforts, and improvement of rural livelihoods in Southern Africa. This is especially true in Zimbabwe and Botswana, the countries with the world's largest elephant populations.

For example, in a June 23, 2019 speech, the President of Zimbabwe confirmed that "Safari hunting is a vital cog in successful wildlife economies. Proceeds obtained from hunting are reinvested towards the provision of game water, fencing and law enforcement, among other conservation initiatives. We continue to call for the free trade in hunting products as these have a positive impact on the national and local economies of our countries."[2] Likewise, the Director of the Zimbabwe Parks and Wildlife Management Authority explained that "ceasing the importation of big game animals from Zimbabwe will not contribute in any way to the conservation of ecosystems. In fact, it will have the exact opposite effect." He further noted that hunting is a critical part of Zimbabwe's national elephant management plan and community-based conservation program.[3]

Botswana's wildlife authority concluded in its Convention on the International Trade in Endangered Species ("CITES") non-detriment finding that, "[h]unting is conducted in marginal areas where other land use activities such as photographic tourism or agriculture are not possible or viable. Hunting is beneficial to elephant and their habitats because of the tangible and intangible benefits it provides, such are revenues for Government and Communities, support to Government in monitoring illegal activities and infrastructure development."[4] Botswana further determined that "[s]afari hunting provides a net benefit to the species, it does not pose a threat to the species, and it is not a detriment to the survival of the species. Regulated and controlled safari hunting of elephant in Botswana enhances the survival of the species." *Id*. In short, the same assurances demanded by the information collection are already provided by the range states in other fora, including CITES. The Service's information collection is cumulative, unnecessary, and overly intrusive.

The certification is also inconsistent with congressional intent. According to Representative John Dingell, widely regarded as the "architect" of the Endangered Species Act ("ESA"), Congress intended to limit circumstances in which the Service would "look behind an export permit" for a non-endangered species. As Representative Dingell explained, "where nonendangered trophy animals are being managed in such a way as to assure their continued and

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[2] Available at https://bulawayo24.com/index-idnews-sc-press+release-byo-164833.html.
[3] F. Mangwanya, CECIL Act Would Destroy Local Conservation Programs, Washington Examiner (Sept. 18, 2019).
[4] Republic of Botswana, Non-detriment findings for *Loxodonta africana* (African Elephant) Controlled Hunting in Botswana (June 2021).

healthy existence, no barriers will be placed upon the continued harvesting of those animals by the government."[5] Congress enacted Section 9(c)(2) of the ESA specifically to circumvent barriers to the importation of trophies from healthy and well-managed wildlife populations.[6] The enhancement permit requirement creates precisely the type of obstacle Congress aimed to avoid, ultimately to the detriment of the species the Service purports to protect.

Rather than recognizing these conservation benefits and adhering to Congress' direction, the Service has continued to demand increasingly detailed and, in many cases, confidential financial information from the range states protecting the world's largest elephant populations before allowing imports. And despite the fact that the seven primary elephant countries have different conservation traditions, governance structures, and land-use systems, the Service effectively dictates a single model of conservation success through the questions on its certification. The Service also imposes the National Legislation Project ("NLP") criterion more stringently than would apply if elephant were listed as an endangered species instead of a threatened species. As SCI previously explained in its comments and Notice of Intent[7], this requirement is not a mere "clarification." It is a substantive regulatory barrier premised on arbitrary criteria.

The Service requests comment on how it might minimize the burden associated with this information collection. The most effective solution is straightforward: repeal the rule and eliminate the special regulatory requirements applicable to Appendix II elephant populations. Doing so would acknowledge the conservation benefits generated by hunting and align the Service's regulations with Congressional intent. SCI submitted a petition in 2025 seeking precisely that result, and reminds the Service to timely act on that petition.[8]

Finally, SCI notes that the factual basis supporting these information collection requests is weak. The international trade in live elephants is minimal. Trade in sport-hunted elephant trophies is likewise limited, properly regulated through CITES quotas, and demonstrably sustainable given the healthy—and in some instances overabundant—elephant populations maintained by the affected range states.

For the foregoing reasons, SCI respectfully urges the Service to repeal the enhancement permit requirement and related annual certification, and act on SCI's pending 2025 petition to eliminate the special regulatory requirements applicable to Appendix II African elephant populations. As explained above and in the attachments, these requirements are unnecessary, inconsistent with Congressional intent, and detrimental to conservation programs with a proven track record of conserving elephants.

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[5] House Consideration and Passage of H.R. 37 with Amendments, U.S. Congressional Record (Sept. 18, 1973), p. 195.

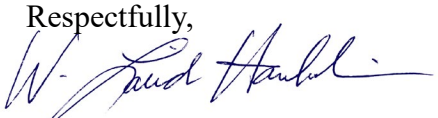
[6] Section 9(c)(2) presumes that the import of threatened-listed species, for non-commercial purposes, otherwise governed by and compliant with CITES requires are legal under the ESA. 16 U.S.C. § 1538(c)(2).

[7] Attached is SCI's Notice of Intent to Sue on Final Rule, Revision to the Section 4(d) Rule for the African Elephant, 89 Fed. Reg. 22522 (Apr. 1, 2024), sent to the Department of the Interior on April 4, 2024.

[8] Attached is SCI's Petition for Revisions to the Endangered Species Act Regulations (May 7, 2025).

SCI appreciates the opportunity to provide these comments. Should the Service have any questions or require additional information regarding these comments or SCI's petition, please do not hesitate to contact SCI's Legal Advocacy team at litigation@safariclub.org.

Respectfully,



W. Laird Hamberlin
CEO, Safari Club International

May 7, 2025

Via Federal Express and Email

The Honorable Doug Burgum
Secretary, Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240
exsec@ios.doi.gov

Re: Petition for Revisions to the Endangered Species Act Regulations

Dear Secretary Burgum,

Safari Club International ("SCI") respectfully petitions for amendment of regulations pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, and its implementing regulation at 43 C.F.R. § 14.2. This petition is ripe for action in light of the deregulatory purposes of President Trump's Executive Orders "Unleashing Prosperity Through Deregulation"[1] and "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative."[2] Specifically, SCI requests that the U.S. Fish and Wildlife Service ("Service") repeal 50 C.F.R. § 17.8(a) and rules at 50 C.F.R. § 17.40 that conflict with Section 9(c)(2) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1538(c)(2). This currently includes rules at § 17.40(e) (African elephant), (j) (argali), and (r) (African lion). SCI's proposed amendments to these regulations are included as an addendum to this petition.

These regulations should be repealed for three primary reasons. First, they are inconsistent with Congress's intent and the language of the ESA's deregulatory provision, as well as the requirement that any rule for threatened species be "necessary and advisable." Second, they run afoul of the ESA directive to encourage foreign conservation programs. And last, they "implicate matters of social, political, or economic significance that are not authorized by clear statutory authority." These regulations are opposed by the range states who conserve the world's largest populations of elephant, lion, argali, and many other species. It is best for these species, as well as the United States, to remove these rules and advance Congress's directive to facilitate the import of animals from well-managed conservation hunting programs.

Safari Club International

SCI is an I.R.C. § 501(c)(4) nonprofit organization headquartered in Washington, D.C. SCI has approximately 100,000 members and advocates worldwide and 152 chapters throughout the U.S. and around the world. SCI members hunt internationally and often seek to import mementoes of these hunts back to the U.S. These members contribute millions of U.S. dollars each year to the wildlife management budgets and Gross Domestic Products of the countries protecting and

[1] Executive Order 14192, 90 Fed. Reg. 9065 (Jan. 31, 2025).
[2] Executive Order 14219, 90 Fed. Reg. 10583 (Feb. 19, 2025).

managing the world's largest populations of elephant, lion, argali, and many other species. Like the United States, these countries rely on hunting as part of their conservation and wildlife management programs.

SCI's missions are to protect the freedom to hunt, educate the public about hunting and its role as a conservation tool, and promote wildlife conservation worldwide. Along with its sister organization SCI Foundation, SCI's advocacy and conservation interests focus on the "sustainable use" of wildlife. SCI is a leader in educating courts, elected officials, and policymakers on the essential role of hunting in the science-based management of wildlife and habitat. SCI works closely with range states and community organizations to protect sustainable-use hunting and its significant benefits, through its own work and the work of SCI Foundation, which funds and participates in conservation and research projects around the world.

SCI regularly submits comments on proposed rules to list foreign species under the ESA. SCI has submitted two petitions to repeal the special rules for the import of sport-hunted African elephant and African lion.[3] SCI is also an active participant in meetings of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), which currently governs the international trade in relevant species.

Need for the Petitioned Actions

1. **The enhancement and permit requirements in the rules for threatened-listed species contradicts Section 9(c)(2) of the ESA and Congress's goal of reducing regulation of trophy imports.**

The regulations for argali, elephant, and lion—known as "special rules"— conflict with Congress's intent to protect the flow of hunting benefits by excepting threatened species already protected under international law from further import restrictions.

The ESA implements CITES. 16 U.S.C. § 1531(b), § 1537a. CITES is an international agreement between party governments with the aim of ensuring that international trade does not threaten the survival of at-risk species. Parties may seek to list species on the CITES Appendices (I – III), according to the degree of protection they need. International trade in CITES-listed species is highly regulated. For species listed on Appendix I, all commercial trade is banned, limited non-commercial trade is permitted, including in hunting trophies, and the exporting and importing country must each find that the activity is "not detrimental to the survival of the species" and issue a CITES permit for export or import, respectively. For Appendix II species, commercial trade is not prohibited, and only the exporting country must find that the activity is not detrimental to the survival of the species and issue an export permit; the importing country is not required to issue any permits.[4]

[3] SCI submitted a "Petition for repeal of the special rule for threatened-listed lions, *Panthera leo melanochaita*, as applied to sport-hunted trophies" on August 13, 2019, and a "Petition for repeal of the special rule for the import of sport-hunted African elephant trophies" on December 18, 2020. The Department and the Service have failed to respond to either petition.
[4] The text of CITES is available at https://cites.org/eng/disc/text.php.

Section 9(c) of the ESA is titled "Violation of the Convention," referring to CITES. This title is something of a misnomer, as Section 9(c)(2) is about compliance with CITES. Under this section, when a non-endangered (i.e., threatened) species is also listed on Appendix II of CITES, is imported for non-commercial purposes, and meets all the other CITES criteria, the ESA presumes the legality of such an import. 16 U.S.C. § 1538(c)(2).[5] The Service has repeated this presumption of legality in regulation. 50 C.F.R. § 17.8. However, the Service has also overridden this presumption, unnecessarily, for African elephant, lion, and argali.

That administrative overreach is unacceptable. In Section 9(c)(2), Congress sought to reduce the regulatory burden on foreign species not in danger of extinction and otherwise protected and managed through the CITES processes. According to Representative John Dingell, the "architect" of the ESA, Congress intended to limit situations in which the Service could "look behind an export permit" of a non-endangered species:

> H.R. 37 has been attacked by some as a[n] anti-hunter bill; it has been attacked by others as a prohunter bill. In reality, it is neither—it is a bill which has been carefully drafted to encourage State and foreign governments to develop healthy stocks of animals occurring naturally within their borders. If these animals are considered valuable as trophy animals, and are not endangered, they should be regarded as a potential source of revenue to the managing agency and they should be encouraged to develop to the maximum extent compatible with the ecosystem upon which they depend.
>
> I have been informed by the Department of the Interior that they will carefully review the status of animal stocks in foreign countries and that ***where nonendangered trophy animals are being managed in such a way as to assure their continued and healthy existence, no barriers will be placed upon the continued harvesting of those animals*** by the government. This is as it should be, because it is only in the understanding that these animals have a real and measurable value that many of the less developed countries will agree to take steps to assure their continued existence.
>
> There is language in the legislation which incorporates a presumption of validity as to export permits issued by governments of foreign countries for animals which are not on appendix I of the international endangered species convention. This will allow persons subject to U.S. jurisdiction to accept export permits from the

[5] Section 9(c)(2) states that "[a]ny importation into the United States of fish and wildlife shall" be "presumed to be an importation not in violation of any provision of" the ESA or its implementing regulations, if:

> (A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of [the ESA] but is listed in Appendix II to the Convention,
> (B) the taking and exportation of such fish or wildlife is not contrary to the provisions of [CITES] and all other applicable requirements of [CITES] have been satisfied,
> (C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and
> (D) such importation is not made in the course of a commercial activity…

16 U.S.C. § 1538(c)(2).

> countries for animals which have legitimately been taken as trophies without the fear that the U.S. Government will arbitrarily refuse to accept those permits as valid.
>
> We are assured by representatives of the Government that this is what they would do in any case, but we felt it best to spell out just what could and should be done at this time, in order to avoid future misunderstandings.

House Consideration and Passage of H.R. 37 with Amendments, U.S. Congressional Record (Sept. 18, 1973), p. 195 (emphasis added). Simply put, Congress's express purpose was to avoid putting up barriers to hunting imports of healthy wildlife populations, such as African elephants in southern Africa and argali in Tajikistan. These special rules put up exactly the type of barrier that Congress worked to avoid—to the detriment of the species, as discussed below. SCI respectfully requests that the Department reinforce Congress's intent and repeal the enhancement finding and permit requirements in the special rules discussed here.

2. The negative impact of requiring a permit and an enhancement finding conflicts with the ESA's directive to encourage foreign conservation programs.

The enhancement and permit requirements for importing sport-hunted trophies violate the ESA's directive to encourage foreign conservation programs. These regulations *dis*courage foreign countries' reliance on hunting as a conservation tool, despite its proven track record.[6]

Section 8(b) of the ESA directs the Service to "encourage foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species." 16 U.S.C. § 1537(b)(1). This directive is consistent with the practices of a number of foreign countries that rely on hunting to justify the protection of habitat, generate funding for anti-poaching, and create incentives for community-based conservation. These benefits result in larger and more secure populations of endangered and threatened species. That most of the world's elephant, lion, and argali (as well as many other species) inhabit countries where they are hunted is not a coincidence. It is the result of national management plans that give these species great value through their status as game.

For example, over 70% of the world's giraffe, 75% of the world's lions, 80% of the world's elephants, and 90% of the world's rhino and leopard inhabit the countries where they are hunted.[7] These countries maintain far more habitat in hunting areas than in parks, and far more habitat than in countries without hunting.[8] This is because of stakeholder buy-in. The benefits

[6] According to Dr. Dilys Roe, chair of the international Union for Conservation of Nature ("IUCN") Sustainable Use and Livelihoods Specialist Group, "from a conservation perspective the evidence is clear… [w]hen hunting is done properly, when it is well regulated, the overwhelming evidence is that it is good for conservation and it can result in recovery of key species such as lions, elephants and rhinos." A. Woodyatt, Zimbabwe Lifts Ban on Buffalo Bow Hunting to Boost Tourism, CNN (May 22, 2019).
[7] According to data from the IUCN specialist groups and Red Book.
[8] As an example, comparing non-hunting and hunting countries, Kenya is approximately two-thirds the size of Tanzania and banned hunting in the 1970s, but its elephant range is less than one-third the size of Tanzania's elephant range and its elephant population is less than half as large as Tanzania's. African

from hunting revenues[9] and game meat distributions[10] have incentivized the conservation of hundreds of thousands of square kilometers on communal lands[11] and private lands.[12]

The U.S. hunting market is the world's largest. Moreover, U.S. hunters place a premium on conservation hunting programs and are the most willing to invest in programs that include extra fees for wildlife conservation.[13] The extraneous and unnecessary regulation from these rules obstruct the import of lawfully hunted animals and thereby reduces the benefits of hunting for foreign countries and their citizens. U.S. hunters are less willing to pay a conservation premium when they are unable to import the trophy mementoes of their hunts.

Range countries have repeatedly informed the Service that hunting benefits endangered and threatened species and restrictions on trophy imports, such as permit requirements, harm the species and interfere with national conservation programs.

For example, in a June 23, 2019 speech, the President of Zimbabwe confirmed that "Safari hunting is a vital cog in successful wildlife economies. Proceeds obtained from hunting are reinvested towards the provision of game water, fencing and law enforcement, among other conservation initiatives. We continue to call for the free trade in hunting products as these have a positive impact on the national and local economies of our countries."[14]

Similarly, in response to the proposed ESA listing of lions, Tanzania's government explained that hunting generates conservation revenues and contributes to anti-poaching and habitat security.[15] It warned that hunting operators would be unable to secure their concessions if adoption of the ESA listing reduced U.S. hunters' willingness to book 21-day lion safaris, and huge hunting areas would be at risk of conversion to agriculture or grazing by Tanzania's rapidly expanding human population. *Id.* Unfortunately, the Service's implementation of the enhancement

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Elephant Specialist Group, Elephant Database. "[W]ildlife numbers outside parks have declined in Kenya since it banned hunting." R. Emslie et al., Prince William Is Talking Sense—Trophy Hunting Is Crucial to Conservation, The Independent (Mar. 18, 2016).

[9] *E.g.*, P. Lindsey et al., Economic and Conservation Significance of the Trophy Hunting Industry in Sub-Saharan Africa, 134 Bio. Conservation 455-469 (2007); R. Naidoo et al., Complementary Benefits of Tourism and Hunting to Communal Conservancies in Namibia, 30 Conservation Bio. (Jan. 8, 2016), p. 632; I.R. Nkuwi, Conservation Status and Related Impacts of Elephants and Lion Trophy Ban to Tanzania, Presented to International Wildlife Conservation Council (Sept. 2018) [in Service records].

[10] P.A. White & J.L. Belant, Provisioning of Game Meat to Rural Communities as a Benefit of Sport Hunting in Zambia, PLoS ONE 10(2) (2015).

[11] *E.g.*, N. Onishi, A Hunting Ban Saps a Village's Livelihood, N.Y. Times (Sept. 12, 2015); CAMPFIRE Ass'n, The Role of Trophy Hunting of Elephant in Support of the Zimbabwe CAMPFIRE Program (Dec. 2016); CAMPFIRE Ass'n, Press Statement on Lifting of the Suspension of Elephant Trophy Imports into America (Nov. 21, 2017); R. Cooney at al., The Baby and the Bathwater: Trophy Hunting, Conservation and Rural Livelihoods, 68 Unasylva 249 (2017/1); Namibian Association of CBNRM Support Organisations, State of Community Conservation in Namibia (2023).

[12] This includes areas that are not "scenic" enough to draw photographic tourists, including because rural communities live on the same lands.

[13] Southwick Assocs., The Economic Contributions of Hunting-Related Tourism in Eastern and Southern Africa (Nov. 2015).

[14] Available at https://bulawayo24.com/index-idnews-sc-press+release-byo-164833.html.

[15] Available through Docket FWS-R9-ES-2012-0025.

requirement has led to exactly this outcome, and tens of thousands of kilometers of hunting concessions were returned to the government because of the huge decline in U.S. clients.[16] As another example, in an article against proposed restrictions on elephant and lion import permits, the Director of the Zimbabwe Parks and Wildlife Management Authority argued that "ceasing the importation of big game animals from Zimbabwe will not contribute in any way to the conservation of ecosystems. In fact, it will have the exact opposite effect." He explained that hunting is a critical part of Zimbabwe's national elephant management plan and community-based conservation program.[17]

In its CITES non-detriment finding, the wildlife authority of Botswana noted that, "[h]unting is conducted in marginal areas where other land use activities such as photographic tourism or agriculture are not possible or viable. Hunting is beneficial to elephant and their habitats because of the tangible and intangible benefits it provides, such are revenues for Government and Communities, support to Government in monitoring illegal activities and infrastructure development."[18] Botswana's wildlife authority added: "Safari hunting provides a net benefit to the species, it does not pose a threat to the species, and it is not a detriment to the survival of the species. Regulated and controlled safari hunting of elephant in Botswana enhances the survival of the species." *Id*.

The same can be said for argali. Import bans and restrictions "jeopardize hunting tourism as the main source of revenue of the overall successful incentive-based conservation of Argali."[19] The National Resources Department of the Ministry of Nature and Environment of Mongolia has asserted that "fees paid by sport hunters are the primary source of fundings for its argali conservation program," and if American hunters are barred from bringing home their argali mementoes, "some hunters [would] not travel to Mongolia to hunt the argali, and the revenues that support the conservation program [would] decline."[20] Further, hunting represents a substantial source of revenue in Tajikistan, with funds going back to the conservation of the species in well-managed hunting concessions.[21]

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[16] United Republic of Tanzania, Comment on ESA Status Review of the African Leopard (*Panthera pardus*) in Tanzania (Nov. 30, 2016) ("Without operating or anti-poaching funds from the Safari Operators, the habitat is already disappearing and in short order, this land will be occupied by livestock, people, and snares. Tanzania's ability to manage its wildlife is being impacted by the suspension of import of hunting trophies."); United Republic of Tanzania, Report on Decision 17.114 (May 2018), AC Doc. 15, Annex 4. This negative impact is especially problematic because Tanzania "holds the most important lion population in Africa." Hunting revenues are the largest source of funding for the Tanzania Wildlife Authority.

[17] F. Mangwanya, CECIL Act Would Destroy Local Conservation Programs, Washington Examiner (Sept. 18, 2019).

[18] Republic of Botswana, Non-detriment findings for *Loxodonta africana* (African Elephant) Controlled Hunting in Botswana (June 2021).

[19] Convention on Migratory Species, Implementation of the International Single Species Action Plan for the Conservation of the Argali (*Ovis ammon*) (2014-2024) (Aug. 12, 2024).

[20] *Fund for Animals Inc. v. Norton*, 332 F.3d 728, 731-33 (D.D.C. 2003).

[21] IUCN Red List, Argali (*Ovis ammon*).

The IUCN highlighted the importance of trophy hunting for argali and other species:

> The incentives and revenue from trophy hunting programmes are not just important for conservation of hunted species, but through site protection exercise a "biodiversity umbrella" effect and may help conserve non-hunted species too …In the Pamirs in Tajikistan, trophy hunting concessions for Argali and ibex are showing higher densities of the threatened Snow Leopard than nearby areas without trophy hunting, likely due to higher prey densities and reduced poaching (Kachel, 2014).[22]

For all these reasons, hunting benefits conservation of these species. Restrictions on import do the opposite. Thus, the Department of the Interior should require repeal of these regulations imposing special rules and import burdens. These rules reduce the benefits of hunting—to the detriment of the species and the local people who live alongside the species.

3. **The enhancement and permit requirements should be repealed in accord with EO 14219 because they are unnecessary, overly burdensome, and inconsistent with regulatory reform initiatives.**

Executive Order 14192 and Executive Order 14219 make it the policy of the executive branch "to alleviate unnecessary regulatory burdens placed on the American people" and "[e]nd[] Federal overreach…." Executive Order 14219 directs each agency to identify regulations for possible repeal that "implicate matters of social, political, or economic significance that are not authorized by clear statutory authority." 90 Fed. Reg. at 10583. The enhancement and permit requirements in the special rules check these boxes.

First, by taking these species outside the presumption of Section 9(c)(2), these special rules have increased the Service's administrative burden. This is unnecessary given that Congress already approved these imports and legislated an *exemption* to the permit requirement to avoid *exactly* that burden. The Service will still have oversight over endangered- and Appendix I-listed species. But those who benefit from sustainable use should be permitted to do so, as Congress intended.

Second, the delay and uncertainty caused by administration of these special rules is overly burdensome. These special rules impose costs that reduce the benefits of hunting. They deter U.S. hunters from paying the highest prices or going on the most expensive, longest hunts. These losses threaten the habitat, anti-poaching efforts, and community incentives generated by hunting in range countries.

Third, the permitting process, which includes an enhancement finding, has significantly delayed imports.[23] Hunters are left on "pins and needles" while they wait for the Service to make a

[22] IUCN, Informing Decisions on Trophy Hunting (Apr. 2016) (updated in 2023).
[23] Following the implementation of the lion special rule, the Service took almost two years to issue the first import permits for lion trophies. More recently, when updating the information for the enhancement findings for argali, the Service failed to issue an import permit for almost four years.

determination on their import permits. The Service can take months to respond to emails or process permits.[24]

In sum, once these regulations are repealed, the Service can administer the ESA more efficiently. Range countries can focus on protecting and managing their species instead of diverting attention and resources to satisfy the Service's information requests. U.S. hunters can confidently support these range nations' programs, keep range nation and community revenues high, and fund operators' anti-poaching and habitat protection efforts. Most importantly, elephant, lion, and argali can continue to benefit, without interruption, from the enhancement that hunting provides. Repealing these special rules is consistent with the ESA and regulatory reform initiatives.

Conclusion

For the foregoing reasons, SCI requests the Service repeal 50 C.F.R. § 17.8(a) and rules at 50 C.F.R. § 17.40 that conflicts with ESA § 9(c)(2), as provided in the addendum. If you have any questions, please contact SCI's Legal Advocacy team at litigation@safariclub.org.

Sincerely,



W. Laird Hamberlin
CEO, Safari Club International

[24] Ironically, permit applicants are required to answer questions from the Service within 45 days while the Service is under no similar obligation. The Service recently contracted with an outside company to conduct a "comprehensive needs analysis" on the Service's permitting program "with the aim of identifying opportunities to innovate and optimize [the Service's] process to better serve [ ] permit applicants and maximize conservation outcomes." Adopting the changes requested in this petition would significantly reduce the Service's permitting workload and allow staff to focus on other tasks.

Addendum

Proposed Amendments to the Code of Federal Regulations

50 C.F.R. § 17.8 Import exemption for threatened, CITES Appendix-II wildlife.

~~(a) Except as provided in a species-specific rule in §§ 17.40 through 17.48 or in paragraph (b) of this section, all provisions of §§ 17.31 and 17.32 apply to any specimen of a threatened species of wildlife that is listed in Appendix II of the Convention.~~

~~(b) Except as provided in a species-specific rule in §§ 17.40 through 17.48,~~ Any live or dead specimen of a fish and wildlife species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided all of the following conditions are met:

(1) The specimen was not acquired in foreign commerce or imported in the course of a commercial activity;
(2) The species is listed in Appendix II of the Convention.
(3) The specimen is imported and subsequently used in accordance with the requirements of part 23 of this subchapter, except as provided in paragraph (b)(4) of this section.
(4) Personal and household effects (see § 23.5) must be accompanied by a CITES document.
(5) At the time of import, the importer must provide to the FWS documentation that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.
(6) All applicable requirements of part 14 of this subchapter are satisfied.

50 C.F.R. § 17.40 Species-specific rules—mammals.

…

(e) African elephant (*Loxodonta africana*). This paragraph (e) applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof. The African Elephant Conservation Act (16 U.S.C. 4201 et. seq.), and any moratorium under that act, also applies. The provisions of Section 9(c)(2) of the Endangered Species Act (16. U.S.C. § 1538(c)(2)) and 50 CFR § 17.8 apply to any African elephant also listed on Appendix II of the Convention~~Except as provided in paragraphs (e)(2) through (11) of this section, all of the prohibitions and exceptions in §§ 17.31 and 17.32 apply to the African elephant. Persons seeking to benefit from the exceptions provided in this paragraph (e) must demonstrate that they meet the criteria to qualify for the exceptions~~.

…

(6) Sport-hunted trophies.

(i) African elephant sport-hunted trophies may be imported into the United States without a threatened species permit provided all requirements of 50 C.F.R. § 17.8(b) are met.

(ii) ~~(i)~~ African elephant sport-hunted trophies for which the species is listed on Appendix I of the Convention may be imported into the United States provided:

(A) ~~The trophy was legally taken in an African elephant range country that declared an ivory export quota to the CITES Secretariat for the year in which the trophy animal was killed; and~~The requirements in 50 CFR part 23 are met.

~~(B) A determination is made that the killing of the trophy animal will enhance the survival of the species and the trophy is accompanied by a threatened species permit issued under § 17.32;~~

~~(C)~~ (B) The trophy is legibly marked in accordance with 50 CFR part 23~~;~~.

~~(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph €(11) of this section have been met; and~~

~~(E) No more than two African elephant sport-hunted trophies are imported by any hunter in a calendar year.~~

~~(ii) For African elephant sport-hunted trophies taken on or after May 1, 2024, to make an enhancement determination under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is taken that:~~

~~(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.~~

~~(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.~~

~~(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.~~

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied significantly toward African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range country governments to produce or strengthen regional and national elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor elephant populations;

(5) Conducting elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human-elephant conflict.

….

(11) CITES National Legislation Project and African elephants. On or after January 1, 2026, live African elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies may not be imported into the United States under the exceptions for importation provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when:

(i) All trade in the specimen has been and is accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter and http://www.cites.org); or

(ii) When importation under paragraph (e)(2) of this section is for law enforcement purposes and meets the requirements as set forth at paragraph (e)(7) of this section for the import of ivory or is for genuine scientific purposes and meets the requirements as set forth at paragraph (e)(8) of this section for the import of ivory.

…

(j) Argali (*Ovis ammon*) in Kyrgyzstan, Mongolia, and Tajikistan.

(1) Except as noted in paragraph (j)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part shall apply to this species in Kyrgyzstan, Mongolia, and Tajikistan

(Note. In all other parts of its range the argali is classified as endangered and covered by § 17.21).

(2) Upon receiving from the governments of Kyrgyzstan, Mongolia, and Tajikistan properly documented and verifiable certification that

(i) argali populations in those countries are sufficiently large to sustain sport hunting,

(ii) regulating authorities have the capacity to obtain sound data on these populations,

(iii) regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them as such,

(iv) the habitat of these populations is secure,

(v) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations, and

(vi) funds derived from the involved sport hunting are applied primarily to argali conservation, the Director may, consistent with the purposes of the Act, authorize by publication of a notice in the Federal Register the importation of personal sport-hunted argali trophies, taken legally in Kyrgyzstan, Mongolia, and Tajikistan after the date of such notice, without a Threatened Species permit pursuant to § 17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

…

(r) Lion (Panthera leo melanochaita).

~~(1) General requirements. All prohibitions and provisions of §§ 17.31 and 17.32 apply to this subspecies.~~

~~(2) The import exemption found in § 17.8 for threatened wildlife listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) does not apply to this subspecies. A threatened species import permit under § 17.32 is required for the importation of all specimens of Panthera leo melanochaita.~~

~~(3) All applicable provisions of 50 CFR parts 13, 14, 17, and 23 must be met.~~

…

March 20, 2023

Via www.regulations.gov

Public Comments Processing
Attn: FWS-HQ-IA-2021-0099
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, Virginia 22041-3803

Re: Safari Club International Comments on Proposed Rule, Revision to the Section 4(d) Rule for the African Elephant, 87 Fed. Reg. 68975 (Nov. 17, 2022), Docket No. FWS-HQ-IA-2021-0099

Dear Dr. Cogliano,

Safari Club International ("SCI") respectfully requests that the U.S. Fish and Wildlife Service ("Service") withdraw the proposed revisions to the special rule for the import of sport-hunted African elephant trophies, 50 C.F.R. § 17.40(e)(6) ("4(d) Rule"). For many reasons, including those explained below, the proposed rule should be withdrawn. Perhaps most importantly, these revisions will not resolve any conservation concern, but will only reduce the funding and incentives available to African range states to conserve elephants.

Over 81% of the world's elephants inhabit the seven countries where they are hunted and from which they are exported. These countries should be lauded for their many constructive efforts—especially compared to the rest of elephant range, where elephant populations are declining or depressed. U.S. hunters play an important role in funding the conservation of wildlife in the seven countries from which elephants are exported. The Service should not make imports any more difficult than they already are. Rather, it should do everything in its power to ensure that imports continue and that hunting continues to benefit elephants and other species.

Not only should the Service not adopt this proposed rule, but doing so is a violation of the Endangered Species Act ("ESA"). Under the ESA, the Service is only permitted to adopt regulations that are "necessary and advisable" for the conservation of threatened-listed species like elephant. 16 U.S.C. § 1533(d). The proposal is neither necessary nor advisable. It is not necessary because of the low volume of trade in elephant hunting trophies, and the demonstrated benefits to elephants from hunting conservation programs. It is not advisable because it will reduce these demonstrated benefits and ultimately, harm the conservation of elephants. Further, not only is the proposed rule unnecessary and inadvisable, but it is a direct affront to the oft-expressed desires and sovereignty of the impacted range nations.

Safari Club International

SCI, a nonprofit IRC § 501(c)(4) corporation, has approximately 50,000 members and advocates worldwide. Its missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI members frequently hunt elephant in southern Africa, and seek to import trophy mementoes of these hunts back to the U.S. These members contribute millions of dollars per year to the wildlife management budgets and Gross Domestic Products of the countries which rely on elephant hunting as part of their conservation programs. SCI also works closely with African range countries and community organizations to, among other things, promote sustainable use hunting and demonstrate its benefits in various fora around the world. SCI's sister organization, SCI Foundation, also contributes funding to, and directly participates in, wildlife conservation and research projects around the world, including southern Africa. SCI Foundation hosts an annual "African Wildlife Consultative Forum" to bring together range states, rural and local community organizations, outfitter associations, and other stakeholders to discuss important issues related to conservation, wildlife management, and hunting. The Service is a regular participant at this Forum.

The proposed rule should be withdrawn because the Service failed to consult meaningfully with range states.

SCI requests that the Service withdraw the current proposal and comply with its obligation to consult ***meaningfully*** with impacted sovereign range states before proposing any stricter domestic measure. Consultation is an essential part of the Service's obligations under the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). CITES Res. Conf. 6.7 encourages an importing state to "make every reasonable effort" to consult with affected range states before adopting any stricter domestic measures, like the proposed rule. The Service must ***make every reasonable effort*** to engage the range states in southern Africa in meaningful consultation regarding their conservation programs and any alleged need to revise the 4(d) Rule.

The process and procedure that the Service used to promulgate this proposed rule does not represent meaningful consultation or comply with CITES Res. Conf. 6.7. And although CITES resolutions are non-binding, the Service regularly treats certain CITES resolutions as binding. In fact, the Environmental Assessment ("EA") prepared along with the proposed rule spends multiple pages discussing CITES resolutions and non-binding guidance for live trade in elephants and for the National Legislation Project. The Service should acknowledge and support ***all*** the CITES processes regarding regulation of importation of foreign wildlife, including Res. Conf. 6.7.

Service staff attended SCI Foundation's African Wildlife Consultative Forum in October 2022, only a few weeks before the proposed rule was published in the Federal Register. Ten African elephant range states also attended that meeting, and yet the Service did not raise these issues ***even once*** to initiate consultation with the range state representatives prior to publication of the proposed rule. The Service also did not take full advantage of the consultation opportunities

presented during the Nineteenth Conference of the Parties to CITES, held in mid/late November, which could have facilitated robust discussions prior to publication of the proposed rule.

To their credit, Service staff did attend SCI's annual Convention in February 2023, during which they met with southern African range state representatives. However, these meetings were insufficient for fulsome consultation, and certainly did not comply with CITES Res. Conf. 6.7. First, these meetings occurred after publication of the proposed rule, after the Service's decision was announced and likely mostly finalized. It simply is not enough for the Service to treat sovereign range states like any other public commenter and accept feedback ***after*** the proposed rule is published. No other stakeholder has as much to lose as the range states and rural and local communities that will be impacted by the proposed rule. Consultation should have occurred ***prior*** to formulation of the proposed rule, let alone publication of it. And the Service should have made ***every reasonable effort*** to travel to relevant range states to learn first-hand about their conservation programs.

Second, the Service did not meet with all impacted range states. Notably, Botswana, the range state with the largest elephant population in the world, was unable to send representatives to SCI's Convention. Perhaps more than any other range state, Botswana will be directly impacted by adoption of the proposed rule. To SCI's knowledge, the Service still has not engaged in direct consultation with Botswana, despite the importance of this issue and the fact that the proposal will likely shut down all elephant trophy imports from this country. The Service's oversight is not only inexcusable—a clear disregard of Botswana's acknowledged successes and sovereignty—but a violation of the ESA.

The proposed rule will harm conservation of elephants and other species in southern Africa.

Regulated hunting generates significant benefits, with low environmental impact. The seven countries where elephants are hunted and exported to the U.S. sustain ***over 81%*** of the global elephant population. The four countries which export almost 90% of all elephant trophies conserve over 60% of the world's elephants. A table showing the elephant populations of these countries and the regulated hunting offtakes is included at the end of this comment.

Normally, when a community has achieved some impressive metric—a school district with high test scores, a town with high incomes—we admire this success and try to replicate it. Instead, through increased regulation, the Service will reduce the benefits of hunting and ultimately, harm elephant conservation.

The proposed rule disingenuously plays down its detrimental impact to these successful conservation programs.[1] It purports to "clarify" how the Service analyzes the "enhancement" provision in 50 C.F.R. § 17.40(e) by requiring that range states certify, on an annual basis, a number of specific points—none of which have been required previously. The Service has

[1] C. Semcer, Testimony before the House Natural Resources Committee (July 18, 2019), https://www.perc.org/2019/07/18/the-role-of-hunting-in-conserving-african-wildlife/#_ftnref20.

defined "enhancement" for elephant imports based on the benefit to the species: did hunting help support anti-poaching? Did it help improve community livelihoods? Now the Service is micro-managing how the range states monitor their elephant populations, protect their habitat, and spend their conservation dollars. There is no reason for the Service to do this, when it has already been repeatedly demonstrated—by the range states, community organizations, and ample scientific research—that hunting generates significant benefits.

Habitat: The primary threat facing elephants—and almost all species—is loss of habitat. Hunting justifies the preservation of large tracts of intact habitat. Hunting areas protect far more land than national parks in the relevant range states, from 1.5 times as much land to more than five times as much land. A table showing the size of hunting areas versus national parks, as well as elephant population estimates, is included at the end of this comment. Hunting areas also conserve far more habitat than national parks in popular photo-tourist destination countries that do not permit hunting, such as Kenya.[2]

A 2007 study found that hunting areas protected over 22% more habitat than national parks,[3] but that figure does not account for the growth of communal conservancies, private ranches, and trans-frontier conservation areas ("TFCAs") since 2007. For example, 50 communal conservancies in Namibia protected 118,000 km^2 in 2007. As of the end of 2021 (in the middle of the international Covid-19 pandemic), in Namibia alone, 86 conservancies protected over 180,000 km^2.[4] Communal lands are of special importance, with the majority of elephant range in southern Africa on communal lands, outside strictly protected national park boundaries.[5] The incentives from hunting (such as revenues, infrastructure projects, employment, and meat) help maintain this land as habitat and prevent its conversion to crops, livestock grazing, and other human purposes.[6]

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[2] For reference, Kenya is approximately two-thirds the size of Tanzania, but its elephant range is less than one-third the size of Tanzania's elephant range, and its elephant population is less than half as large as Tanzania's. African Elephant Specialist Group, Elephant Database, https://africanelephantdatabase.org/. "[W]ildlife numbers outside parks have declined in Kenya since it banned hunting." R. Emslie et al., Prince William Is Talking Sense—Trophy Hunting Is Crucial to Conservation, The Independent (Mar. 18, 2016), https://www.independent.co.uk/voices/comment/prince-william-is-talking-sense-trophy-hunting-is-crucial-to-conservation-a6940506.html.

[3] P. Lindsey et al., Economic and Conservation Significance of the Trophy Hunting Industry in Sub-Saharan Africa, 134 Biological Conservation 455-469 (2007), https://www.perc.org/wp-content/uploads/2015/08/Economic-and-conservation-significance.pdf.

[4] Namibian Association of CBNRM Support Organisations, State of Community Conservation in Namibia (2021) ("State of Community Conservation in Namibia"), http://www.nacso.org.na/resources/state-of-community-conservation.

[5] C.R. Thouless et al., African Elephant Status Report 2016 ("Elephant Status Report"), p. 138, https://portals.iucn.org/library/sites/library/files/documents/SSC-OP-060_D.pdf. Communal areas protect well over half a million square kilometers of habitat across southern Africa.

[6] R. Cooney at al., The Baby and the Bathwater: Trophy Hunting, Conservation and Rural Livelihoods, 68 Unasylva 249 (2017/1), https://www.fao.org/3/i6855en/I6855EN.pdf; A. Dickman, Ending Trophy Hunting Could Actually Be Worse for Endangered Species, CNN (Nov. 24, 2017),

Since 2007, TFCAs have formed to protect habitat across national borders. TFCAs connect parks, hunting areas, and communal and private lands to collaboratively manage natural resources across international borders, "for improved biodiversity conservation and socio-economic development."[7] As one example, the Kavango-Zambezi TFCA is twice as large as the United Kingdom and encompasses crucial elephant range across Botswana, Namibia, Zimbabwe, and Zambia.[8] Over 81% of the world's elephants inhabit southern Africa, and "nearly 75% of [these] occur as part of a single population in the Kavango Zambezi Transfrontier Conservation Area."[9]

Anti-Poaching and Conservation Revenues: Hunting raises substantial revenue from concession leases, trophy fees, conservation fees, taxes, and other charges levied by national and local governments and landholders. Prior to trophy import restrictions imposed by the U.S. and other western countries, elephant hunting was the highest or among the highest sources of hunting revenue.[10] A large percentage of this revenue is used for law enforcement and anti-poaching by national wildlife authorities.[11] For example, in Zimbabwe in 2014, hunting revenue funded one-quarter of the wildlife authority's budget, and over 60% of this revenue was dedicated to anti-poaching efforts.[12]

Further, hunting operators frequently run their own anti-poaching patrols, which reduce the national government's law enforcement burden and expand the "boots on the ground".[13] It is not

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https://www.cnn.com/2017/11/24/opinions/trophy-hunting-decline-of-species-opinion-dickman/index.html.

[7] SADC, Transfrontier Conservation Areas, Website, https://www.sadc.int/themes/ natural-resources/transfrontier-conservation-areas/.

[8] Kavango-Zambezi TFCA, Website, https://www.kavangozambezi.org/en/.

[9] Elephant Status Report, p. 138.

[10] P.A. Lindsey et al., The Significance of African Lions for the Financial Viability of Trophy Hunting and the Maintenance of Wild Land, PLoS ONE 7(1) (2012), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0029332.

[11] E.g., Zimbabwe Parks and Wildlife Management Authority, Zimbabwe National Elephant Management Plan (2021-2025) ("Zimbabwe Elephant Plan"), pp. 11, 12, 14 ("Financial resources deployed in the management and general conservation of elephant during the years 2016 to 2019, averaged approximately $5.6 million per year or about $90.00 per km^2 excluding administrative costs."); I.R. Nkuwi, Conservation Status and Related Impacts of Elephants and Lion Trophy Ban to Tanzania, Presented During International Wildlife Conservation Council (Sept. 2018) ("Conservation Status of Elephant and Lion in Tanzania").

[12] The Service has this information in its possession in non-detriment and enhancement findings and responses to Service questionnaires provided by the Zimbabwe Parks and Wildlife Management Authority; *see also* Showcasing Implementation of Zimbabwe's National Elephant Management Plan (2015-2020) and Its National Action Plan, CoP18 Inf. 32 (2019), https://cites.org/sites/default/files/eng/cop/ 18/inf/E-CoP18-Inf-032.pdf.

[13] Zimbabwe Elephant Plan, p. 12 ("The presence of regulated hunting can also reduce illegal activities. Many hunting operators in Zimbabwe have specialised anti-poaching units. Private operators' lease

uncommon for hunting operators to spend $70,000 to $100,000 a year (or more) on anti-poaching (as the Service is well aware, from the anti-poaching expenditure information provided in the Form 3-200-20 operator enhancement questionnaire).
In the same vein, community game scouts, employed using revenues from safari hunting, extend poaching control into communal areas. For example, there are over 750 community game scouts in Zambia, funded by hunting revenues.[14] Similarly, from 2010 to 2015, rural district councils in Zimbabwe spent $1.77 million on law enforcement activities in CAMPFIRE areas.[15]

These efforts are working—far better in hunting areas than in other parts of Africa, in which hunting is not part of the conservation regime. One key indicator of the level of elephant poaching, the Proportion of Illegally Killed Elephant ("PIKE"), shows both a consistent downward trend in elephant poaching in southern and eastern Africa, and that poaching is well below the "unsustainable" threshold.[16] On the other hand, the PIKE in central and western Africa is considerably higher and above the "unsustainable" threshold. Faced with these metrics of success, it is difficult to understand why the Service is seeking to impose additional regulatory barriers that will reduce the benefits of hunting.

Hunting revenue is crucial to the operating budgets of range state wildlife authorities. For example, Tanzania has repeatedly informed the Service that, prior to the suspension of elephant trophy imports, approximately 80% of the wildlife authority budget came from hunting fees.[17]

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agreements include anti-poaching as an obligation of the concessionaire."); Conservation Status of Elephant and Lion in Tanzania.

[14] The Service has this information in its possession in non-detriment and enhancement findings and responses to Service questionnaires provided by Zambia's Department of National Parks and Wildlife.

[15] The Service has this information in its possession in non-detriment and enhancement findings and responses to Service questionnaires provided by Zambia's Department of National Parks and Wildlife and the Zimbabwe Parks and Wildlife Management Authority.

[16] The CITES "Monitoring the Illegal Killing of Elephant" ("MIKE") program collects data on elephant mortalities and causes of death, and evaluates relative poaching levels based on the PIKE, calculated as the number of illegally killed elephant divided by the total number of elephant carcasses observed. A PIKE value of 0.5 or above implies that more elephant died from illegal killing that any other causes. The 2022 MIKE report for eastern Africa shows "strong evidence for … a downward trend [in poaching] from 2011 to 2021," and that "[t]he trend [in poaching] in the last five years, from 2017 to 2021, is downward." The PIKE for eastern Africa for 2021 was estimated at 0.28, which is well below the "unsustainable" threshold of 0.5 and well below the continental average of 0.40. CITES Secretariat, Report on Monitoring the Illegal Killing of Elephants (MIKE), CoP19 Doc. 66.5 (2021), ¶ 23. Likewise, "[i]n the last five years, from 2017 to 2021, there is strong evidence of a downward trend" in poaching in southern Africa, and the PIKE was estimated at 0.27, below the average continental PIKE estimate of 0.40." *Id.* ¶ 25. Notably, the high PIKE of 0.70 in western Africa, where there is no regulated hunting, increased the continental estimate. But the low elephant population and small sample size means the reliability of this PIKE estimate has "a high level of uncertainty" *Id.* ¶¶ 26-27.

[17] The Service has this information in its possession in non-detriment and enhancement findings provided by Tanzania's Ministry of Natural Resources and Tourism et al.; additional information is provided in: United Republic of Tanzania, Ministry of Natural Resources and Tourism, Report on Decision 17.114

Zimbabwe and Zambia have reported that between 25-40% (depending on the year) of their wildlife authority operating budgets come from hunting leases and fees.[18] As the Zimbabwe Parks and Wildlife Management Authority has explained:

> Revenues from hunting are vital because there are not enough [non-hunting] tourists to otherwise generate income to support all protected areas. Eco-tourism revenues are typically sufficient to cover the costs of only some of the parks and certainly not to justify wildlife as a land use outside of protected areas. Hunting is able to generate revenues under a wider range of scenarios than eco-tourism, including in remote areas lacking infrastructure, attractive scenery, or high densities of viewable wildlife.[19]

Elephant hunting revenues also comprise a large part of the operating revenues for private and communal landholders. A model simulating a ban on hunting in Namibia found that over 80% of communal wildlife conservancies would be unable to cover their operating costs, putting that habitat at risk of conversion to other uses.[20]

Livelihoods: Hunting, especially elephant hunting, benefits the rural communities who live alongside elephants (and other species) and who are most impacted by this wildlife. Human-elephant conflict is a major issue in southern Africa. Communities are increasingly exposed to loss of crops, damage to water supplies and fences, and even physical harm to humans.[21] For

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regarding African Leopard (Panthera pardus) Quotas Established under Res. Conf. 10.14 (rev. CoP 16), CITES AC30 Doc. 15, Annex 4 (May 2018), https://cites.org/sites/default/files/eng/com/ac/30/E-AC30-15-A4.pdf; I.R. Nkuwi, Conservation Status and Related Impacts of Elephants and Lion Trophy Ban to Tanzania, Presented During International Wildlife Conservation Council (Sept. 2018) ("Conservation Status of Elephant and Lion in Tanzania"). Although this document is no longer available on the Service's website, it should remain within the Service's files.

[18] The Service has this information in its possession in non-detriment and enhancement findings provided by the Zimbabwe Parks and Wildlife Management Authority and the Zambia Department of National Parks and Wildlife.

[19] Zimbabwe Elephant Plan, p. 12; the Service also has information on this point in its possession in non-detriment and enhancement findings and responses to Service questionnaires provided by the Tanzania Wildlife Management Authority.

[20] R. Naidoo et al., Complementary Benefits of Tourism and Hunting to Communal Conservancies in Namibia, 30 Conservation Biology (Jan. 8, 2016) ("Complementary Benefits"), p. 632, https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1111/cobi.12643. Notably, this study also concluded that removal of hunting derived revenues would have a far greater negative impact on communal conservancy funding than if photo-tourism revenues were removed.

[21] Botswana Department of Wildlife and National Parks, Botswana Elephant Management Plan and Action Plan (2021-2026), CoP19-Inf-102 ("Botswana Elephant Plan"), p. 15; CAMPFIRE Association, The Role of Trophy Hunting of Elephant in Support of the Zimbabwe CAMPFIRE Program (Dec. 2016) ("CAMPFIRE Role of Trophy Hunting"); CAMPFIRE Association, Press Statement on Lifting of the Suspension of Elephant Trophy Imports into America (Nov. 21, 2017) ("CAMPFIRE Press Statement"), https://campfirezimbabwe.org/article/press-statement-21-november-2017; N. Onishi, A Hunting Ban Saps a Village's Livelihood, The New York Times (Sept. 12, 2015).

example, in the Zambezi and Erongo-Kunene regions of Namibia's communal conservancies, there was an average of 700 elephant conflict incidents reported between 2015-2019.[22] When hunting was suspended in Zambia (2012-2014), the wildlife authority received over 5,440 reports of crop or property damage and human injury caused by elephants.[23] In ten communal districts in Zimbabwe, an estimated 50 people were killed, and more than 7,000 hectares of crops were destroyed by elephants between 2010 and 2015. The financial losses of the crops were estimated to be as high as $1 million.[24]

Hunting can help boost community tolerance for elephants through creating clear and direct benefits from wildlife. For example, in the national elephant management plan, the Zimbabwe Parks and Wildlife Management Authority explains,

> When it is viewed as a valuable asset, wildlife becomes an economically competitive land use in Zimbabwe, which leads to habitat preservation instead of habitat destruction and conversion to agriculture or livestock production. Game animals have a survival advantage because of user-pay stewardship systems where use revenue generated from tourist hunters is paid through to wildlife authorities and local communities.[25]

Prior to the Service's suspension of elephant trophy imports from Zimbabwe in 2014, hunting revenues averaged $2.2 million/year in CAMPFIRE Areas, and elephant hunting alone generated approximately $1.6 million/year (~70% of the total on average).[26]

Opposing potential restrictions on trophy imports in the state of Connecticut, the Director of Zambia's Department of National Parks and Wildlife explained,

> the benefits of regulated hunting are crucial to maintaining rural community support for growing populations of dangerous game such as elephants, lions, and leopards. … [S]ome of Zambia's poorest communities bear the greatest impact of crop-raiding elephants … But these communities tolerate the wildlife largely because they derive income, social services, and much-needed game meat from regulated hunting.[27]

Under Zambia law, at least half of all hunter harvested game meat must be shared with local communities, resulting in approximately 130,000 kg of fresh game meat provisioned each year to

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[22] State of Community Conservation in Namibia, pp. 63-64.

[23] The Service has this information in its possession in non-detriment and enhancement findings provided by the Zambia Department of National Parks and Wildlife.

[24] CAMPFIRE Press Statement.

[25] Zimbabwe Elephant Plan, p. 12.

[26] CAMPFIRE Role of Trophy Hunting; CAMPFIRE Press Statement.

[27] C. Simukonda, CT's Ban of 6 African Species Would Hurt, Not Save, Wildlife, Stamford Advocate (Apr. 19, 2021), Stamford Advocate, https://www.stamfordadvocate.com/opinion/article/Opinion-CT-s-ban-of-6-African-species-would-16105621.php.

local communities.[28]

Similarly, approximately 55% of the hunting revenues in Namibia's communal conservancies come from elephant hunts alone. The conservancies secure otherwise unprotected habitat across 180,000 km^2 and benefit 238,700 people.[29] Revenue from hunting is reinvested into badly needed rural infrastructure, like construction of clinics and schools, improvements in drinking water, building and improving roads, and much more.[30]

In addition, when rural communities live near hunting areas (common in some countries, less common in others), elephant hunting provides much-needed protein. Hunting operators and conservancies are also major sources of employment in the remote areas where hunting takes place.[31]

The Service is well aware of these benefits and of the negative impacts of import restrictions. Tanzania's wildlife authority has repeatedly informed the Service of the quantifiable negative impact of harvest restrictions.[32] Namibia's cabinet initiated a "ban on hunting bans."[33] Botswana's President took to international media to explain why Botswana was reopening hunting after a moratorium;[34] this is further explained in Botswana's national elephant management plan:

> The hunting moratorium [in Botswana] resulted in ill-feeling in a number of communities and settlements, especially from members of the local population who regard hunting as a traditional way of life. Many local people were formerly reliant on controlled hunting for food, income and employment especially on marginal lands where elephant occur but where land that is not suitable and financially viable for photographic tourism and other economic options, such agriculture is very limited. … When hunting was suspended in 2014, many

[28] P.A. White & J.L. Belant, Provisioning of Game Meat to Rural Communities as a Benefit of Sport Hunting in Zambia, PLoS ONE 10(2) (2015), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0117237.

[29] Complementary Benefits, p. 635; State of Community Conservation in Namibia, p. 11.

[30] E.g., E. Koro, Significant Benefits: The Reason Why Hunting Will Not Stop in Africa Despite Foreign Opposition, The Chronicle (Feb. 22, 2023), https://www.chronicle.co.zw/significant-benefits-the-reason-why-hunting-will-not-stop-in-africa-despite-foreign-opposition/.

[31] R. Cooney at al., The Baby and the Bathwater: Trophy Hunting, Conservation and Rural Livelihoods, 68 Unasylva 249 (2017/1), https://www.fao.org/3/i6855en/I6855EN.pdf.

[32] E.g., Conservation Status of Elephant and Lion in Tanzania; non-detriment and enhancement findings and responses to Service questionnaires from the Tanzania Wildlife Management Authority/Wildlife Division/Ministry of Natural Resources and Tourism (in the Service's possession).

[33] E.g., A. Nakale, Trophy hunting ban will impact conservation, New Era (Namibia) (Feb. 21, 2020), https://neweralive.na/posts/trophy-hunting-ban-will-impact-conservation.

[34] H.E. M. Masisi, Hunting Elephants Will Help Them Survive, Wall Street Journal (June 19, 2019), https://www.wsj.com/articles/hunting-elephants-will-help-them-survive-11560985152.

> community Trusts in northern Botswana experienced large declines in income.[35]

The proposed rule will not benefit elephant, because it will reduce the benefits of elephant hunting which, in turn, are essential to habitat protection, anti-poaching, and community support. For these reasons, SCI requests that the Service withdraw the proposed revision to the 4(d) Rule.[36]

The proposed rule runs counter to the intent of Congress in enacting the ESA.

Over 60% of the world's elephant inhabit four countries: Botswana, Zimbabwe, South Africa, and Namibia. These countries also account for almost 90% of the trade in sport-hunted elephant trophies. As the Service knows, African elephants are listed as threatened under the ESA, and all four of these elephant populations are listed on Appendix II of CITES. Thus, Section 9(c)(2) of the ESA ***presumes the legality of elephant trophy imports from these countries*** because the elephants are listed as threatened, are on Appendix II, and the import is for non-commercial use. 16 U.S.C. § 1538(c)(2).

The proposal—and the Service's enhancement requirement in the first place—run contrary to Congress' intent in the ESA to facilitate the import of elephant hunting trophies from these countries. Rep. John Dingell, the architect of the ESA, stated the following in the ESA's legislative history:

> H.R. 37 has been attacked by some as a[n] anti-hunter bill; it has been attacked by others as a prohunter bill. In reality, it is neither—it is a bill which has been carefully drafted to encourage State and foreign governments to develop healthy stocks of animals occurring naturally within their borders. If these animals are considered valuable as trophy animals, and are not endangered, they should be regarded as a potential source of revenue to the managing agency and they should be encouraged to develop to the maximum extent compatible with the ecosystem upon which they depend.
>
> I have been informed by the Department of the Interior that they will carefully review the status of animal stocks in foreign countries and that ***where nonendangered trophy animals are being managed in such a way as to assure their continued and healthy existence, no barriers will be placed upon the***

[35] Botswana Elephant Plan, pp. 21, 23; see also E. Koro, Inside Botswana Communities' 21st Century International Hunting Windfall, Zimbabwe Independent (Mar. 15, 2023), https://www.theindependent.co.zw/local-news/article/200008854/inside-botswana-communities-21st-century-international-hunting-windfall (discussing benefits to Botswana communities from reopening of regulated hunting).

[36] Additional citations regarding the benefits of hunting and harm caused by import bans are included at the end of this letter. They collectively demonstrate that the Service's proposed rule will hinder elephant conservation efforts to the detriment of elephants and other wildlife, local communities, and the range states that successfully manage their wildlife.

> ***continued harvesting of those animals by the government***. This is as it should be, because it is only in the understanding that these animals have a real and measurable value that many of the less developed countries will agree to take steps to assure their continued existence. . . .[37]

Congress' express purpose was to ***avoid*** the placing of barriers on import of sport-hunted trophies from healthy wildlife populations, such as elephants in southern Africa. The proposed rule does the opposite and should be withdrawn.

The practical effect of the proposed revisions further demonstrates that the Service's proposal contravenes Congress' intent. Implementation of the proposed rule would irrationally impose stricter trade restrictions for the threatened-listed elephants than for endangered-listed species. Import of endangered-listed species is allowed with an ESA import permit. As the Service is aware, import of such species is not dependent upon annual certifications from range states—regardless of species—or designation as "Category One" under the CITES National Legislation Project ("NLP"). Although the Service asserts that the Secretary's authority to promulgate regulations related to threatened-listed species is effectively limitless, Congress surely did not intend that the Service would impose more stringent restrictions on threatened species than those Congress thought necessary for endangered species. Indeed, Section 4(d) states that the Service "may by regulation prohibit with respect to any threatened species any act prohibited … with respect to endangered species." 16 U.S.C. § 1533(d). Congress did not intend for the Service to promulgate regulations that go above and beyond the restrictions placed on endangered species.

The proposed certification requirement is unnecessary and unduly burdensome on the range states.

The proposed rule attempts to solve problems that do not exist. There is no evidence that elephant populations are threatened by ***legal*** international trade in hunting trophies. As explained above, elephant populations are healthiest, largest, and most secure in southern Africa—undoubtedly, because of their hunting conservation programs and the benefits that justify the protection of habitat, fund law enforcement activities, and encourage rural and local community tolerance. The Service refers to "concerns" about the impact of trade in live elephants, but the proposed rule points to no similar "concerns" for the trade in hunting trophies.[38] In short, the Service provides ***no substantive justification*** for the proposed revisions that would require annual certification from range states.

The Service claims to be "clarifying" the enhancement standard for import. That simply is not true. The Service is imposing additional requirements on range states before the U.S. will allow

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[37] House Consideration and Passage of H.R. 37 with Amendments, U.S. Congressional Record (Sept. 18, 1973), p. 195 (emphasis added).

[38] Moreover, recent studies indicate that the commercial poaching of the mid-2010s has been diminished, and elephant populations are recovering. *See, e.g.*, https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/18185/Extensive-Wildlife-Survey-in-Tanzania-Confirms-Elephant-Recovery-in-Key-African-Wildlife-Stronghold.aspx.

individual hunters to import. The proposed rule is not a clarification of an existing requirement, but a further restriction that, as explained above, does nothing to support conservation.

An annual certification to the United States is unnecessary (and therefore, not authorized by Section 4(d) of the ESA). The range states already make certifications through the CITES export permit process. CITES only allows a range state to issue an export permit when the activity is "not detrimental" to the survival of the species—meaning the hunting is at a level which is sustainable—and the offtake was legal.[39] Thus, range state export permits are ***already*** certifications of sustainability and legality. The range states also announce export quotas for elephants to the CITES Secretariat. Those quotas are published online and open to review by all CITES Parties, any of which could raise concerns or otherwise object to the quotas. This process is also a certification of the level of international trade which is not detrimental to the survival of the species.[40]

Second, the proposed certification requirement would impose a standard far greater than "enhancement." Instead, the Service would essentially require range states to certify that their conservation programs "ensure" the survival of the species, rather than "enhance" it. The term "enhance" (or "enhancement") is not defined in the ESA, ESA regulations, or in any CITES documents. The dictionary defines "enhance" as "heighten, increase; especially: to increase or improve in value, quality, desirability, or attractiveness."[41] The certification is a departure from the Service's previously stated standards for enhancement, a fact not stated within the proposed rule.

In 1992, the Service noted that importation of a sport-hunted elephant required "a determination that the killing of elephants for sport-hunting enhances the survival of the species by providing financial support programs for elephant conservation." 57 Fed. Reg. 35473, 35485 (Aug. 10, 1992). In 1995, the Service stated that it "believes that when revenues are directed to management or enforcement activities or when there is long-term benefit to individuals or groups with proprietary interest in ensuring a viable elephant population, there is benefit to the survival of the elephant." 60 Fed. Reg. 12969, 12970 (Mar. 9, 1995). And in 2015, the Service stated that its enhancement determination is made based on: "[1] if a country has sufficient numbers of elephants to support a hunting program, [2] if the country has a management plan and adequate laws and regulations to effectively implement a hunting program, and [3] if the participation of U.S. hunters in the program provides a clear benefit to the species…" *Safari Club Int'l v. Zinke*, 878 F.3d 316, 327 (D.C. Circ. 2017) (quoting the Service's March 2015 negative enhancement finding for Zimbabwe elephants). The Service's newly-proposed certification factors are clearly an unreasonable expansion of the previous factors the Service considered when determining enhancement.[42]

[39] Article IV of the CITES Convention.

[40] Res. Conf. 14.7 and Res. Conf. 10.10.

[41] https://www.merriam-webster.com/dictionary/enhance.

[42] As set forth above, the Service has previously considered this clear benefit to include contributions to habitat protection, anti-poaching, and improvement of community livelihoods.

Further, the required certification is disconnected from the requested activity of importing a sport-hunted trophy. The current 4(d) Rule requires a finding "that the killing of the [elephant] will enhance the survival of the species." 50 C.F.R. § 17.40(e)(6)(i)(B). Rather than focusing on whether ***hunting*** improves conservation outcomes within the range state, the Service would require range states to certify a number of broad "factors" that may or may not have anything to do with hunting in particular. For example, whether current viable elephant habitat is not decreasing or degrading may be wholly outside the control of the hunter and the hunting conservation program. Hunting does secure wildlife habitat, as reflected above, but it does not prevent the inescapable realities of climate change, drought, or continent-wide population growth that will surely continue to diminish "viable habitat" outside of hunting areas and national parks. Likewise, the question of whether "elephant populations in the range country are stable or increasing," on the whole, is distinct from the question of whether the elephant populations are "sufficiently large to sustain sport hunting at the level authorized by the country," and even more distinct from the question that should be asked: whether the elephant population from which the trophy was hunted is sufficiently large such that the hunting was not detrimental/sustainable.

Third, the required certification effectively imposes an unfunded mandate on sovereign nations. The Service requests that range state management authorities expend time and resources—which the Service knows are already limited due to existing trade restrictions—but provides no funding or other provisions to implement the annual certification. Such unfunded regulatory mandates are frowned upon in the United States. It is unnecessary and ill-advised for the Service to cause sovereign nations to expend valuable resources at its direction.

In effect, the Service is creating a wholly new and unduly burdensome requirement that (1) changes the standard for enhancement and is not simply a clarification of an existing requirement, (2) cannot be met by the individual hunters who submit import permit applications, and (3) may never be met by range states up to the Service's unreasonably high standard. The proposal is not only unnecessary, but far from advisable—it may be impossible.

Aspects of the proposed certification requirement are unsuitable for southern Africa.

In addition to being unnecessary and overly burdensome, the certification requirement ignores the realities of southern Africa and the elephant populations therein.

First, although elephants are listed as threatened across their range under the ESA, their distribution is not uniform. In the countries where elephants are hunted, they are not only abundant but, in some countries, ***overly*** abundant. Again, over 81% of the world's elephants inhabit the seven countries that account for all trophy exports. In these countries, elephant are not considered threatened; in fact, they are sometimes not even specially protected but are treated as a wildlife resource which, through sustainable use, can generate conservation benefits. Ignoring these facts, the Service proposes to require certification that (1) elephant populations are stable or increasing, and (2) funding derived from sport hunting is applied specifically to elephant conservation. But the range states should be permitted to adaptively manage their

elephant populations and decrease them in certain instances.[43] Similarly, range states should be able to utilize funding from elephant hunts for other species of greater conservation concern. It makes little sense for the Service to require these two factors in instances where elephant populations are overly abundant.

Second, habitat is at risk across the world, including in the United States. As explained above, hunting secures habitat for wildlife, including elephants, but it is not a cure for all threats to habitat throughout each country. Climate change, human population growth, increased demand for other natural resources, and overregulation that disincentivizes conservation of habitat for the benefit of wildlife all work against the range states' ability to secure habitat for elephants. The United States faces similar stresses to habitat conservation, and the Service would not be able to make such a certification that wildlife habitat is not decreasing or degrading throughout the United States. The Service cannot credibly place impossible requirements on the range states.

Third, requiring that the range country has "sound data" on the elephant population is more than the Service requires of itself or U.S. states. Nevertheless, the relevant countries do monitor their elephant populations through a number of methods, and adaptively manage their elephants (and other species) as needed to protect overall biodiversity. Not only do these countries protect the world's largest populations of elephants, but also lions, leopards, rhinos, and many other species—all exemplars of the countries' respective conservation success. SCI requests that the Service withdraw the proposed revision and opt out of micro-managing these demonstrably successful wildlife conservation programs.

Fourth, requiring all range states to certify that 100% of the meat from sport-hunted elephants goes to rural communities would not be possible in areas where there are few to no communities. Many hunting areas, including much of South Africa, are not nearby villages to make the transfer of game meat viable. In areas where local communities are present, however, they benefit from sustainable use hunting programs, including the donation of the meat from harvested wildlife, including elephants.

Finally, the Service seeks public comments on "[h]ow to ensure an effective transfer of hunting revenues back into conservation of the species, including the kinds of regulations, infrastructure, or standard processes the range country of the hunt should have in place to ensure that hunting revenues add to and do not simply substitute for other existing funding for conservation." The Service gives no explanation for where this "other existing funding for conservation" would come, and this request for comment is hypocritical. In the United States, most of the funding for state wildlife conservation comes from hunting revenues, which is then matched with dollars from an excise tax on hunting, fishing, and shooting equipment. The Service is suggesting a requirement that elephant range states fund their conservation programs with dollars that even the U.S. states do not have. Hunting revenues do not "substitute" for other sources of funding; rather, they are often the only source of conservation revenue. Any suggestion that hunting removes otherwise available conservation funding is absurd.

[43] Moreover, declining populations may be hunted, as long as hunting quotas are adjusted accordingly.

Generally, the proposed rule would require an illogical "one size fits all" certification to countries with different conservation models. These countries have different proportions of private, public, and communal land, different conservation funding models, and different conservation needs. Instead of imposing a certification that will be difficult for any or all of the range states to provide, the Service should support and reward the countries who have stood for decades against the tide of poaching, habitat loss, and decreasing wildlife numbers worldwide.

The CITES National Legislation Project Category One requirement elevates form over substance.

SCI supports U.S. efforts to assist other CITES Parties in achieving CITES NLP "Category One" status. But SCI vigorously opposes making elephant imports dependent upon achieving that status.[44] The Service has not explained why or how achieving "Category One" status will benefit elephant conservation. The reality is that "Category One" status has no conservation benefit whatsoever.

The NLP assesses whether a country has adopted laws which fully implement the CITES Convention, which governs international trade in fauna and flora. Thus, the NLP designations assess the country's CITES implementation across-the-board, meaning for wildlife, fish, and plants. Some countries have not fully developed their regulations for every CITES species in every situation, but that does not mean these countries are not effectively implementing CITES to regulate trade in elephants. For example, all the range states have designated management and scientific authorities and issue CITES-compliant permits for trade in elephants.

Further, the NLP designations come from CITES Res. Conf. 8.4, which directs the Secretariat, "within available resources," to assess the CITES Parties' domestic measures. Updates to the NLP designations are therefore dependent on the Secretariat's resources—which are always scarce and overtaxed. Such designations are not made in real time and may take years to be revised. Meanwhile, the Service's "Category One" requirement will apply from the moment the proposed rule is finalized and effective. Waiting for CITES to catch up on updating the NLP designations jeopardizes necessary funds for important conservation programs.

The erroneous nature of this requirement is perhaps best demonstrated by comparing the list of "Category One" Parties to "Category Two" Parties. Some countries in west and central Africa, including those with dwindling elephant populations, are in "Category One." Unremarkably, their designation in "Category One" has no direct causation or even correlation with successful elephant conservation. On the other hand, some countries in southern and eastern Africa that are among the most successful at elephant conservation (as demonstrated by the size of their elephant populations, their low incidence of poaching, and the support of their private and

[44] The proposed rule notes that the Service has previously assisted Angola and Jordan in their efforts to implement CITES. Notably, neither country trades elephants and so would not be impacted by the proposed restrictions. If the Service truly believes that achievement of Category One status would benefit range state elephant conservation efforts, it should assist the relevant range states to achieve that objective, not diminish conservation funding through unwarranted trade restrictions.

communal stakeholders) are included in "Category Two." The only logical conclusion when comparing these facts is that the NLP designation has no impact on elephant conservation within the individual range states.[45]

The proposal fails to take into account the Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government.

On his first day in office, President Biden signed the Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government ("Executive Order"). The Executive Order declares it the "policy of [the Biden] Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."[46] According to the Executive Order, "advancing equity requires a systematic approach to embedding fairness in decision-making processes." Accordingly, it directs "each agency [to] assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups." The Executive Order defines equity as "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as … persons of color; … persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." The Order defines "underserved communities" as "populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life…."

The proposed rule contains no assessment of whether and to what extent it will perpetuate systemic barriers to opportunities and benefits to people of color and other underserved groups. Nor does it fairly treat the African range countries and the rural and local communities who benefit from regulated hunting. The Service failed to consult with these countries and communities prior to publishing the proposed rule.

Further, the Service has been warned by African range states and local communities that import restrictions are detrimental to their conservation programs and to improving rural livelihoods. The Service has been told, repeatedly, that these countries and communities are already successfully managing their wildlife—as shown by the fact that most of the world's elephants live within the countries where they are hunted—and the Service should adopt fewer restrictions, not more. The Executive Order mandates that the Service consider the impact of its policies on the distribution of benefits to persons of color, rural communities, and underserved communities. The proposed rule not only ignores the Executive Order, but it ignores a petition by

[45] In an effort to demonstrate a need for the proposed revisions, the Service cites to recent sales of live elephants from Namibia and Zimbabwe as the only specific example of trade that concerns the Service. Ironically, both Namibia and Zimbabwe are designated as Category One in the NLP. This requirement has no impact on those Parties, and the Service's proposed requirement is arbitrary.

[46] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

representatives of communities whose interests the Executive Order seeks to advance. On June 30, 2021, the CAMPFIRE Association, which represents Zimbabwe's community-based conservation program, and the Ngamiland Council of Non-Governmental Organisations ("NCONGO"), which represents community organizations in the Ngamiland districts in Botswana, requested that the Service revise its regulations to reduce disproportionate negative impacts on communities of color and underserved indigenous and rural communities in Africa and other parts of the world.[47] The petition explained that current federal regulations do not account for the detrimental impact of listing foreign species and imposing import restrictions on the rural and local communities who benefit from sustainable use of wildlife. That petition suggested specific changes to better take into account community voices. It also sought to reduce import restrictions on hunting trophies.

SCI questions whether the proposed rule, which will reduce the benefits of regulated hunting to communities of color, rural communities, indigenous communities, and underserved communities in southern Africa, can comply with the Executive Order—particularly as representatives of these communities have spoken in opposition to the proposed rule and requested fewer import restrictions. For these reasons, **SCI requests an explanation of the Service's analysis of how the proposed rule complies with the Executive Order in any final rule**.

The Service did not fulfill its National Environmental Policy Act obligations.

The Draft EA does not fulfill the Service's legal obligations under the National Environmental Policy Act ("NEPA"). The Service failed to take a "hard look" at the environmental and economic impacts of the proposed rule. *Blue Mtns. Diversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). Indeed, the Service admits in the EA that it does not know the impact of the proposed rule. *E.g.*, Draft EA at 61–62. Moreover, the Service speculates that implementation of the NLP "Category One" requirement will drive hunters from hunting in certain range states to hunting in others, but the Service provides no analysis of the impact that shift will have on either set of range states. Draft EA at 52. SCI requests that the Service withdraw the proposed rule and associated draft EA, prepare an Environmental Impact Statement in compliance with NEPA, and fully analyze the impacts that these unnecessary revisions to the 4(d) Rule will have on relevant range states.

Country-wide certifications should result in country-wide enhancement findings.

If the Service requires country-wide certifications from range states, the 4(d) Rule should reflect that these certifications are sufficient for country-wide enhancement findings. As the Service recognizes, a case-by-case permitting approach is not required. The Service is permitted to conduct rulemaking—such as this one—to give itself the authority to make country-wide enhancement determinations. It is not bound legally to make enhancement findings on a permit-by-permit basis.

[47] CAMPFIRE Association, Press Statement on Petition, https://campfirezimbabwe.org/article/petition.

Similar to the 4(d) rule for threatened-listed argali, the elephant 4(d) Rule should explicitly provide that annual certification from a range state results in country-wide enhancement findings for the importation of sport-hunted elephants from that country.[48] If the Service truly intends to provide clarity regarding enhancement, alleviate its backlog of import permit applications, and use its regulatory authority to benefit elephant conservation, it should—at an absolute minimum—promulgate revisions to the 4(d) Rule that would allow for positive country-wide enhancement findings.

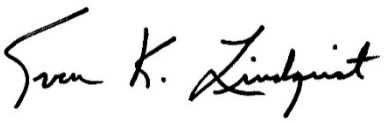
Any revisions to the 4(d) Rule should only apply prospectively.

If the Service ultimately adopts revisions to the 4(d) Rule, any new requirements for the importation of elephants should only apply to import applications received after the effective date of the new Rule. As the Service is aware, many hunters have been waiting years for decisions from the Service on their elephant import permit applications. Those hunters should not be held to standards that did not exist at the time of their hunts and applications. In addition to general notions of fairness and equity, prospective application of any new rule is consistent with judicial opinions regarding the difference between rules and adjudications. *See, e.g.*, *Safari Club Int'l v. Zinke*, 878 F.3d 316, 332–34 (D.C. Cir. 2017) ("[R]ules generally have only 'future effect' while adjudications immediately bind parties by retroactively applying law to their past actions."). Thus, if the Service adopts new requirements for imports, those requirements should apply only to applications received after the effective date of the new Rule.

Conclusion

For all the reasons explained above, the Service should withdraw the proposed revisions to the 4(d) Rule. The Service should endeavor to work with elephant range states to implement effective conservation policy, not hamstring successful conservation programs with unnecessary and irrational regulation. If you have any questions, please contact Regina Lennox, rlennox@safariclub.org, or Jeremy Clare, jclare@safariclub.org.

Sincerely,



Sven Lindquist
President, Safari Club International

[48] The argali rule is different in other, obvious aspects. SCI encourages the Service to actually utilize the provisions of the argali rule and provide notice in the Federal Register that imports from Kyrgyzstan, Mongolia, and Tajikistan are permitted without an ESA import permit. 50 C.F.R. 17.40(j)(2).

Exhibit A

Country	**Est. Elephant Range (km^2)**	**Est. Elephant Pop.**	**% of Est. Continental Elephant Pop.**	**Est. Size of Hunting Areas (km^2)**	**Size of National Parks (km^2)**
Botswana	228,073	131,626	31.7	Not Available	Not Available
Mozambique	320,402	10,884	2.6	131,425	87,806
Namibia	164,069	22,754	5.5	Not Available	Not Available
South Africa	30,651	18,841	4.5	>210,000	37,511
Tanzania	389,921	50,433	12.1	304,400	57,838
Zambia	170,466	21,967	5.3	179,904	~64,000
Zimbabwe	81,228	82,630	19.9	~88,000	~28,000
Total	**1,384,810**	**339,095**	**81.6**	**--**	**--**
*** Kenya	130,725	22,809	5.5	N/A	~29,400

Sources: C.R. Thouless et al., African Elephant Status Report (2016) (estimating a continental elephant population of 415,428); IUCN, WCMC, and UNEP, ProtectPlanet.net (world database of protected places), http://www.protectedplanet.net.

Note: In Namibia, some limited hunting takes place in National Parks.

Exhibit B

Country	**Est. Elephant Population**	**CITES Export Quota (2022)**	**Avg. Hunting Offtakes**
Botswana	131,626	400	2021-22: 196
Mozambique	10,844	33	--
Namibia	22,754	90	2016-19: 48
South Africa	18,841	150	2013-17: 76
Tanzania	50,433	50	2016-21: 4
Zambia	21,967	80	2016-22: 15
Zimbabwe	82,630	500	2016-22: 173
TOTAL	**339,095**	**1,303 (0.3% Pop.)**	**--**

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April 4, 2024

The Honorable Deb Haaland
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Director Martha Williams
U.S. Fish and Wildlife Service
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Re: Safari Club International Notice of Intent to Sue on Final Rule, Revision to the Section 4(d) Rule for the African Elephant, 89 Fed. Reg. 22522 (Apr. 1, 2024)

Dear Secretary Haaland and Director Williams:

Safari Club International ("SCI") respectfully gives notice of our intent to sue the Department of the Interior and U.S. Fish and Wildlife Service ("Service") to challenge the final rule restricting the import of sport-hunted African elephant published at 89 Fed. Reg. 22522 (Apr. 1, 2024). The final rule violates the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("ESA"), and the Administrative Procedure Act, 5 U.S.C. §§ 551-555, 706 ("APA"). This notice is provided under the ESA's 60-day notice requirement, 16 U.S.C. § 1540(g). SCI reserves the right to assert additional violations of other federal and international laws.

The Service's final rule will require an annual "certification" from range states before the Service will consider issuing an import permit for a legally harvested elephant. The final rule will also prohibit the import of legally harvested elephant from some southern African countries, based on an arbitrary requirement related to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") National Legislation Project ("NLP"). These requirements are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, among other violations of the APA. 5 U.S.C. § 706.

Over 81% of the world's elephants inhabit the seven countries where they are hunted and from which they are exported.[1] These countries should be lauded for their many constructive efforts—especially compared to the rest of elephant range, where elephant populations are declining or depressed. U.S. hunters play an important role in funding the conservation of wildlife in these seven countries. The Service should do everything in its power to ensure that imports of harvested elephants continue and that hunting continues to benefit elephants and other species. Yet the final rule does the opposite.

[1] The seven countries are Botswana, Mozambique, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe.

The final rule violates the ESA for four primary reasons. ***First***, the Service is only permitted to adopt regulations that are "necessary and advisable" for the conservation of threatened-listed species like elephant. 16 U.S.C. § 1533(d). The final rule is neither necessary nor advisable. It is not necessary because of the low volume of trade in elephant hunting trophies, and the demonstrated benefits to elephants from hunting conservation programs. It is not advisable because it will reduce these demonstrated benefits and ultimately, harm the conservation of elephants. The final rule also violates Section 4(d) of the ESA because it creates requirements for import of threatened-listed elephants that are more restrictive than would otherwise apply if elephants were listed as endangered. ***Second***, the final rule violates the ESA's directives to encourage foreign conservation of listed species. 16 U.S.C. § 1537(b).

Third, the final rule reflects a continuing failure of the Service to fully implement CITES, contrary to Section 8a of the ESA. CITES Res. Conf. 6.7 recommends that countries considering stricter domestic measures engage in ***meaningful*** consultation with affected range states. The Service failed to do so in adopting the final rule. ***Last***, the final rule conflicts with the text and spirit of the ESA's presumption of legal import of threatened-listed, CITES Appendix II-listed species imported for personal reasons. Congress intended that the Service impose "no barriers" to the import of such species from successful conservation programs. The final rule is exactly the kind of barrier that Congress feared—which the Service previously "assured" Congress it would not adopt.

Safari Club International

SCI, a nonprofit I.R.C. § 501(c)(4) corporation, has approximately 88,000 members and advocates worldwide. Its missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI members frequently hunt elephant in southern Africa and often seek to import trophy mementoes of these hunts back to the U.S. These members contribute millions of dollars per year to the wildlife management budgets and Gross Domestic Products of the countries which rely on elephant hunting as part of their conservation programs. SCI also works closely with African range states and community organizations to protect sustainable-use hunting and its significant benefits. SCI's sister organization, SCI Foundation, contributes funding to, and directly participates in, wildlife conservation and research projects around the world, including southern Africa. SCI Foundation hosts an annual African Wildlife Consultative Forum to bring together range states, rural and local community organizations, outfitter associations, and other stakeholders to discuss important issues related to conservation, wildlife management, and hunting. The Service is a regular participant at this Forum.

SCI submitted extensive comments in opposition to the proposed rule revising the Section 4(d) rule for the African elephant, published at 87 Fed. Reg. 68975 (Nov. 17, 2022). SCI appreciates that the Service made some changes to the final rule in response to SCI's comments. But the Service did not go far enough. SCI has a history of working with the Service, as shown by the African Wildlife Consultative Forum among other things. SCI hopes that some of the claims in this letter might be resolved through discussions with the Service, and improvements to how the

final rule is implemented. ***SCI respectfully requests a meeting with the Service to discuss the claims in this notice.***

SCI also emphasizes that this notice does ***not apply*** to the Service's current import permit program. SCI does not object to how the Service is currently processing or approving import permit applications. Accordingly, this notice and any potential litigation should ***not*** have any impact on the processing or approval of pending import permit applications, and SCI urges the Service to continue to process and approve these applications in a timely fashion.

Identified Violations of the Endangered Species Act

1. **Section 4(d)**

The final rule violates Section 4(d) of the ESA because that provision only allows the Service to adopt a regulation that is "necessary and advisable to provide for the conservation of such species." 16 U.S.C. § 1533(d). The ESA defines "conservation" as:

> to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, … in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

16 U.S.C. § 1532(3). In southern Africa, elephant populations are extremely healthy. In Botswana and Zimbabwe in particular, elephant populations are above the ecological and social carrying capacities. Regulated hunting is necessary to help reduce pressures in certain habitat and to increase local tolerance for this species. The final rule is not necessary and advisable because it disrupts the conservation programs of range states like Botswana and Zimbabwe.

The final rule is also not necessary and advisable because it reduces the significant benefits generated by regulated hunting. It is no coincidence that the seven countries where elephants are hunted and exported to the U.S. sustain ***over 81%*** of the global elephant population. The four countries which export almost 90% of all elephant trophies into the U.S. conserve over 60% of the world's elephants. Regulated hunting plays a crucial role in supporting these successful conservation programs. Regulated hunting conserves habitat, generates funding, and incentivizes elephant conservation for private and communal landholders.

The final rule disingenuously plays down its detrimental impact to these successful conservation programs. It purports to "clarify" how the Service analyzes the "enhancement" provision in 50 C.F.R. § 17.40(e). If this were true, these range states would not have stood in solidarity to oppose the proposal. These range states rightly fear the impact of additional red tape. They rightly fear—based on experience—that additional regulation will halt elephant trophy imports,

which will reduce U.S. hunters' willingness to pay the highest prices for elephant hunts.[2] That in turn will reduce the significant "enhancement" that regulated hunting generates.[3]

Further, an annual certification to the Service is not "necessary" and therefore is not authorized by Section 4(d) because the range states already make certifications through the CITES export permit process. CITES only allows a range state to issue an export permit when the activity is "not detrimental" to the survival of the species—meaning the hunting is at a level which is sustainable—and the offtake was legal.[4] Thus, range state export permits are already certifications of sustainability and legality. The range states also announce export quotas for elephants to the CITES Secretariat. Those quotas are published online and are open to review by all CITES Parties, any of which could raise concerns or otherwise object to the quotas. This process is also a certification of the level of international trade which is not detrimental to the survival of the species.[5]

The final rule's certification requirement imposes a standard far greater than "enhancement," which is the language used for endangered species in ESA Section 9. The Service essentially requires range states to certify that their conservation programs "ensure" the survival of the species, rather than "enhance" it. The Service has previously defined "enhancement" as "providing financial support programs for elephant conservation." 57 Fed. Reg. 35473, 35485 (Aug. 10, 1992); *see also* 60 Fed. Reg. 12969, 12970 (Mar. 9, 1995) ("when revenues are directed to management or enforcement activities or when there is long-term benefit to individuals or groups with proprietary interest in ensuring a viable elephant population, there is benefit to the survival of the elephant"); *Safari Club Int'l v. Zinke*, 878 F.3d 316, 327 (D.C. Circ. 2017) (enhancement determination is made based on: "[1] if a country has sufficient numbers of elephants to support a hunting program, [2] if the country has a management plan and adequate laws and regulations to effectively implement a hunting program, and [3] if the participation of U.S. hunters in the program provides a clear benefit to the species…"). The final rule's certification factors unreasonably expand the previous factors that the Service has considered when determining enhancement.

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[2] For example, the Tanzania Wildlife Division and Tanzania Wildlife Authority have submitted multiple documents to the Service describing the negative impacts of import restrictions on hunting in Tanzania and southern Africa. *E.g.*, United Republic of Tanzania, Comment on ESA Status Review of African Lion (Jan. 27, 2015), available through Docket FWS-R9-ES-2012-0025; United Republic of Tanzania, Comment on ESA Status Review of the African Leopard (*Panthera pardus*) in Tanzania (Nov. 30, 2016), available through Docket FWS-HQ-ES-2016-0131; I.R. Nkuwi, Director of Wildlife Utilization and Business Services, Tanzania Wildlife Management Authority, "Conservation Status and Related Impacts of Elephants and Lion Trophy Ban to Tanzania, Presentation to the International Wildlife Conservation Council (Sept. 2018).

[3] SCI described these benefits in detail in its public comment at Docket FWS-HQ-IA-2021-0099 and incorporates that explanation here.

[4] Article IV of the CITES Convention.

[5] Res. Conf. 14.7 and Res. Conf. 10.10, available at https://cites.org/eng/res/index.php.

Finally, the final rule violates Section 4(d) (as well as Section 8(b), below) because inclusion of the requirement that international trade in elephant may only come from countries with a CITES Category One designation under the NLP serves no conservation purpose.

The NLP assesses whether a country has adopted laws which fully implement the CITES Convention, which governs international trade in fauna and flora. Thus, the NLP designations assess the country's CITES implementation across-the-board, meaning for wildlife, fish, and plants. Some countries have not fully developed their regulations for every CITES species in every situation, but that does not mean these countries are not effectively implementing CITES to regulate trade in elephants. For example, all the range states have designated management and scientific authorities and issue CITES-compliant permits for trade in elephants.

The erroneous nature of this requirement is perhaps best demonstrated by comparing the list of "Category One" Parties to "Category Two" Parties. Some countries in west and central Africa are in "Category One." On the other hand, some countries in southern Africa that are among the most successful at elephant conservation are included in "Category Two." Does the fact that Senegal is on Category One mean it is doing a better job conserving elephant than Botswana? Clearly not, if the size of their elephant populations and their known involvement in international poaching rings (or lack thereof, in Botswana's case) is considered.[6] This clash underscores the fact the NLP has absolutely no bearing on elephant conservation within the individual range states, and the arbitrary nature of this requirement.

Similarly, the final rule violates Section 4(d) because it creates more restrictive barriers to import threatened-listed elephants than would otherwise apply if elephants were listed as endangered. Congress authorized the Service to "prohibit with respect to any threatened species any act prohibited" for endangered listed species. 16 U.S.C. § 1539. The Service cannot by regulation prohibit more than the statutory prohibitions for endangered species, which includes an obligation for the Service to apply fully the exceptions to those prohibitions. In creating restrictions that preclude any possibility for individual applicants to demonstrate enhancement—either due to failure of a relevant range state to provide an annual certification or due to the CITES NLP designation—the final rule violates the ESA. Contrary to the Service's assertion that it intends to continue to review import applications on a case-by-case basis, the new requirements for import effectively impose an insurmountable country-wide blanket ban on imports if either requirement is not met. The requirements are illegal "conclusions at which the Service [have] already arrived—as the culmination, in other words, rather than the initiation, of the decisionmaking process." *Safari Club Int'l v. Zinke*, 878 F.3d 316, 335 (D.C. Circ. 2017).

2. <u>Section 8(b)</u>

The ESA requires that the Service "shall encourage—(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species,"

[6] *E.g.*, J. Wynyard, Rare Sighting of Senegalese Elephant Brings Fresh But Cautious Hope (Feb. 4, 2020) ("Senegal has one of the most threatened elephant populations in Africa and remains a hub for the illegal ivory trade.").

and "(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries … for importation into the United States … to develop and carry out … conservation practices designed to enhance such fish or wildlife or plants and their habitat." 16 U.S.C. § 1537(b).

The Service was notified that the final rule ***dis***courages foreign conservation, yet it ploughed ahead over these objections. Range states, community organizations, and hunting outfitter organizations all objected to the proposed rule. For example, the Governments of Botswana, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe submitted a joint comment explaining that "the proposed rule conflicts with the best interests of our elephant and will reduce the benefits of our successful conservation strategies as well as unnecessarily add to the cost of administration."[7] Resource Africa, representing a network of community-based natural resource management ("CBNRM") organizations in southern Africa, expressed "concern[]" about "the negative consequences [the rule] is likely to have on the rural communities in Southern Africa that sustainably use elephants on their lands as part of CBNRM." The Namibian Chamber of Environment, representing some of the world's best-known CBNRM programs, objected that "blocking elephant trophy imports into the US will have an immediate impact on CBNRM in Namibia, by greatly reducing the ability of communal conservancies to conserve their wildlife (including elephants), respond to human-elephant conflict, generate tangible benefits for their communities, and provide sufficient match funding for a host of donor-funded projects." The African Professional Hunters Association pointed out that "the most directly affected by any decisions regarding the take of elephants are African residents who lose their lives and livelihoods from the consumption or trampling of crops, who compete for water sources, and who are traumatized by dangerously close encounters and/or the need for constant vigilance and attempts at deterrence. … we urge you to fully consider that legal trade via safari hunting is primarily what funds the current protection of most elephant habitat and anti-poaching efforts."

SCI incorporates the discussion of the CITES NLP requirement above here, as a violation of Section 8(b).

The ESA directs the Service to encourage conservation by these foreign countries and foreign persons who directly or indirectly take elephants. But the final rule does the opposite, and therefore violates Section 8(b).

3. Sections 1(b) and 8a

Congress enacted the ESA "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in" the findings subsection, which includes CITES. 16 U.S.C. § 1531(a)(4)(F) & (b). The final rule violates the ESA because, as explained above, it obstructs programs that protect ecosystems and conserve

[7] All comments referenced here (and others objecting to the proposed rule) are available through the Regulations.gov docket (FWS-HQ-IA-2021-0099).

elephants in southern Africa. But even more, it violates the Service's obligations to fully execute and follow CITES.

Specifically, the Service failed to consult ***meaningfully*** with impacted, sovereign range states. Consultation is an essential part of the Service's obligations under the ESA and CITES. CITES Res. Conf. 6.7 encourages an importing state to "make every reasonable effort" to consult with affected range states before adopting any stricter domestic measures, like the final rule.[8] The process and procedure that the Service used to promulgate this final rule does not represent meaningful consultation or comply with this Resolution. And although CITES resolutions are non-binding, the Service regularly treats them as binding. In fact, the Environmental Assessment ("EA") prepared in support of the final rule spends multiple pages discussing CITES resolutions and non-binding guidance for live trade in elephants and for the NLP. Res. Conf. 6.7 requires meaningful consultation. The Service failed to meet this requirement.[9]

The Service has also failed to meet the requirements of Res. Conf. 17.9 for trade in hunting trophies. That resolution "RECOGNIZ[ES] that well-managed and sustainable trophy hunting is consistent with and contributes to species conservation," and "CONSIDER[S] the need for uniform interpretation of the Convention with regard to hunting trophies," among other things.[10] Through the final rule, and especially the NLP requirement, the Service has ignored the recommendations of this resolution and adopted its own interpretation of the Convention. The final rule prohibits trophy trade before the CITES Parties, the Standing Committee, or the Secretariat makes any such decision or even recommendation. The Service is interpreting the NLP differently and more stringently than 183 other Parties and the body charged with administering the Convention. Inclusion of the CITES NLP requirement in the final rule incorrectly implements CITES.

In the letter from Botswana, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe referenced above, these range states raised another issue:

> [T]he proposal by the USA Government conflicts with the National Legislation Project because it does not conform with CITES Resolutions Conf. 8.4 (Rev. CoP15) and 14.3 (Rev. CoP18) which provides for the Standing Committee recommending the suspension of commercial or all trade in specimen of one or more CITES-listed species from a certain country only as a last resort after all other options have been exhausted (see point 30 of Resolution Conf. 14.3).
>
> The CITES Standing Committee has not yet determined to suspend trade at all of any kind in the signatory. Consequently this proposal by the USA Government

[8] Available at https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-06-07.pdf.

[9] This objection was raised repeatedly by range states, community organizations, and hunting outfitter organizations.

[10] Available at https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-17-09.pdf.

> would conflict with and disrupt the CITES process and prohibit activities that enhance the survival of elephant for an irrelevant reason.

The final rule does not achieve the purposes of, or even comply with, CITES. And for these reasons, it violates the ESA, which is the legislation adopted by Congress to implement CITES.

4. <u>Section 9(c)(2)</u>

Finally, the final rule runs contrary to the language and intent of Congress in enacting Section 9(c)(2) of the ESA. This section provides that "[a]ny importation into the United States of fish or wildlife shall" be "presumed to be an importation not in violation of any provision of this chapter" of the ESA or its implementing regulations, if:

> (A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,
> (B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,
> (C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and
> (D) such importation is not made in the course of a commercial activity …

16 U.S.C. § 1538(c)(2).

Over 60% of the world's elephant inhabit four countries: Botswana, Zimbabwe, South Africa, and Namibia. These countries also account for almost 90% of imports into the U.S. in sport-hunted elephant trophies. And elephant trophy imports from these countries are ***not*** listed as endangered, are listed on Appendix II of CITES, meet all other applicable requirements of CITES, and are non-commercial. Therefore, Section 9(c)(2) of the ESA ***presumes the legality of elephant trophy imports from these countries.***

Yet the Service has repeatedly ignored this language and related legislative history in enacting Section 4(d) rules for African elephant. Rep. John Dingell, the "architect" of the ESA, stated the following in the ESA's legislative history:

> H.R. 37 has been attacked by some as a[n] anti-hunter bill; it has been attacked by others as a prohunter bill. In reality, it is neither—it is a bill which has been carefully drafted to encourage State and foreign governments to develop healthy stocks of animals occurring naturally within their borders. If these animals are considered valuable as trophy animals, and are not endangered, they should be regarded as a potential source of revenue to the managing agency and they should be encouraged to develop to the maximum extent compatible with the ecosystem upon which they depend.

> ***I have been informed by the Department of the Interior that they will carefully review the status of animal stocks in foreign countries and that where nonendangered trophy animals are being managed in such a way as to assure their continued and healthy existence, no barriers will be placed upon the continued harvesting of those animals by the government.*** This is as it should be, because it is only in the understanding that these animals have a real and measurable value that many of the less developed countries will agree to take steps to assure their continued existence…
>
> We are assured by representatives of the Government that this is what they would do in any case, but we felt it best to spell out just what could and should be done at this time, in order to avoid future misunderstandings.

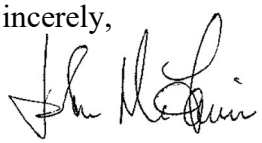
House Consideration and Passage of H.R. 37 with Amendments, U.S. Congressional Record (Sept. 18, 1973), p. 195 (emphasis added). Simply put, Congress' express purpose was to ***avoid*** putting up barriers for the import of sport-hunted trophies from healthy wildlife populations, such as elephants in southern Africa. The final rule does the opposite.

Inclusion of the CITES NLP requirement is a particularly egregious violation. This requirement imposes a de facto ban on the import of elephant trophies from Botswana, Mozambique, and Zambia. If elephants in these countries were listed as endangered, then the Service would make individual enhancement determinations to authorize imports without the burden of a Section 4(d) rule. Elephant imports could and would[11] continue. As Section 9(c)(2) demonstrates, Congress did not intend that the Service would impose more stringent restrictions on threatened species than on endangered species.

Conclusion

For the above reasons, the final rule violates the ESA. SCI respectfully requests a meeting with the Service to discuss these violations. To set up that meeting, and if you have any questions, please contact Regina Lennox, rlennox@safariclub.org, or Jeremy Clare, jclare@safariclub.org.

Sincerely,



John McLaurin
President, Safari Club International

[11] For example, Botswana's elephant population is the world's largest and is likely above ecological and social carrying capacity. Elephant hunting is carefully regulated. It was partly closed for four years but reopened in 2019, in response to calls from rural communities impacted by the huge number of elephants, who lost all benefits from the hunting moratorium. Botswana has recently updated its elephant management plan and regulations and, to SCI's knowledge, the Service has issued import permits for elephant since hunting was reopened. Yet under the final rule, these imports will cease.