

**NOTICE OF PETITION FOR RULEMAKING**

**RULEMAKING PETITION TO BAN THE IMPORT OF SPORT-HUNTED TROPHIES FROM  
THREATENED AND ENDANGERED SPECIES**



**Petitioner:**

Friends of Animals  
Wildlife Law Program  
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Centennial, CO 80112

**NOTICE OF PETITION FOR RULEMAKING**

June 17, 2021

*Via Certified U.S. Mail*

Honorable Debra Haaland  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Martha Williams  
Principal Deputy Director  
U.S. Fish and Wildlife Service  
1849 C Street, N.W.  
Washington, DC 20240

**Re: Request to Initiate Rulemaking to Ban the Import of Sport-hunted Trophies from Threatened and Endangered Species**

Dear Secretary Haaland and Principal Deputy Director Williams:

Friends of Animals submits this petition pursuant to section 553(e) of the Administrative Procedure Act (APA)<sup>1</sup> and the First Amendment of the Constitution.<sup>2</sup> Petitioner is an “interested person” under APA section 553(e), and seeks issuance of certain rules to ban the import into the United States of trophies taken from threatened and endangered animals abroad to ensure that the rules governing the conservation of imperiled species are consistent with conserving those species as well as contemporary ethical standards and the best available science.

Petitioner requests that the United States Fish and Wildlife Service (FWS) amend its permitting regulations governing the import of threatened and endangered animal parts. Specifically, Petitioner proposes the following language be added to the permitting sections concerning both endangered (50 C.F.R. § 17.22) and threatened (50 C.F.R. § 17.32) species and the following language be added and deleted from several provisions of 50 C.F.R. § 17.40 (additions marked in red; deletions noted in strikethrough):

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<sup>1</sup> The APA provides that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e).

<sup>2</sup> The United States Constitution provides that “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances.” U.S. CONST., amend. I.

**50 C.F.R. § 17.22**

**Permits for Scientific Purposes, enhancement of Propagation or Survival, or for Incidental Taking**

**(a)(2)** Issuance criteria. Upon receiving an application in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21 of this subchapter, the following factors:

- (i)** Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit. **Importing a trophy is not an adequate purpose to justify removing wildlife;**

**50 C.F.R. § 17.32**

**Permits - - general**

**(a)(2)** Issuance criteria. Upon receiving an application in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

- (i)** Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit. **Importing a trophy is not an adequate purpose to justify removing wildlife;**

**50 C.F.R. § 17.40**

**(e)** African elephant (*Loxodonta africana*) . . . .

**(6) Sport-hunted trophies.**

**(i)** African elephant sport-hunted trophies may **not** 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;~~

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

~~(D)~~ The requirements in 50 CFR parts 13, 14, and 23 have been met; and

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

~~(ii)~~ It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.

~~(iii)~~ Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (e)(7), (e)(8), and (e)(9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

~~(f)~~ Leopard (*Panthera pardus*) (1) Except as noted in paragraph (f)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part shall apply to the leopard populations occurring in southern Africa to the south of a line running along the borders of the following countries: Gabon/Rio Muni; Gabon/Cameroon; Congo/Cameroon; Congo/Central African Republic; Zaire/Central African Republic; Zaire/Sudan; Uganda/Sudan; Kenya/Sudan; Kenya/Ethiopia; Kenya/Somalia.

~~(2)~~ A sport-hunted leopard trophy legally taken after the effective date of this rulemaking, from the area south of the line delineated above, may be imported into the United States 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.

~~(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

~~(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.

**(n)** Straight-horned markhor (*Capra falconeri megaceros*).

**(1) General requirements.** Except as noted in paragraph (n)(2) of this section, a ~~All~~ prohibitions of § 17.31 and exemptions of § 17.32 apply to this subspecies.

**~~(2) What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32?~~** The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation, without a threatened species permit issued under § 17.32, of personal sport-hunted straight-horned markhor from an established conservation program that meets the following criteria:

**~~(i)~~** The markhor was taken legally from the established program after the date of the FEDERAL REGISTER notice;

**~~(ii)~~** The applicable provisions of 50 CFR parts 13, 14, 17, and 23 have been met; and

**~~(iii)~~** The Director has received the following information regarding the established conservation program for straight-horned markhor:

**~~(A)~~** Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing.

**~~(B)~~** Regulatory authorities have the capacity to obtain sound data on populations.

**~~(C)~~** The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.

**~~(D)~~** Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.

**~~(E)~~** Regulatory authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program.

## **STATEMENT OF PETITIONER'S INTERESTS**

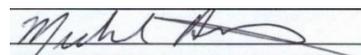
Friends of Animals is an international animal-advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and

exploitation around the world and to promote a respectful view of non-human, free-living, and domestic animals. Friends of Animals' activities include educating its members on current threats to many species' abilities to live in ecosystems free from human manipulation, exploitation, and abuse; and monitoring federal agency actions to ensure that laws enacted to protect the environment and wildlife are properly implemented.

Since 1991, Friends of Animals has been closely involved in species conservation and recovery projects in Africa, including providing funds and equipment for conservation projects and combatting poaching on the continent. Friends of Animals' members and staff have been actively involved in conservation for more than twenty years. Friends of Animals was one of the organizations originally involved in drafting a proposal that world leaders, pursuant to CITES, impose a worldwide ban on trade in elephant ivory. Friends of Animals also successfully lobbied against proposals to grant ivory quotas to the African countries of Zimbabwe, Namibia, Botswana, and South Africa at the 11th CITES Conference of the Parties held in Nairobi, Kenya, in April 2000.

This petition is urgent due to the increasing perils faced by threatened species and the easing of restrictions on the permitting process for importing animal trophies during the administration of former President Donald Trump.<sup>3</sup> Trophy hunters can currently apply for new import permits any day. New regulations should be in place to prevent the continued recreational hunting of imperiled animals. Friends of Animals thanks you for your careful review of this petition and requests a written response informing us of your decision. The attached Basis of Support further explains the reasons for this Petition.

Respectfully submitted,



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<sup>3</sup> See generally, Rachel Nuwer, *U.S. Lifts Ban on Some Elephant and Lion Trophies*, THE NEW YORK TIMES (March 7, 2018), <https://www.nytimes.com/2018/03/07/science/trump-elephant-trophy-hunting.html>; William Mansell, *Trump Administration Reportedly Approves Trophy Hunter's Permit for Endangered Rhino Remains*, ABC NEWS (Sept. 7, 2019), <https://abcnews.go.com/US/trump-administration-reportedly-approves-trophy-hunters-permit-endangered/story?id=65456919>; Jake Bullinger, *How Trump's Wildlife Board is Rebranding Trophy Hunting as Good for Animals*, THE GUARDIAN (July 17, 2018), <https://www.theguardian.com/environment/2018/jul/17/trumps-wildlife-board-claims-trophy-hunting-saves-endangered-animals>; Vanessa Romo, *Controversial Trophy Hunting Council Disbanded Amid Legal Battle*, NPR (Feb. 10, 2020), <https://www.npr.org/2020/02/10/804647908/controversial-trophy-hunting-council-disbanded-amid-legal-battle>.

**Basis of Support for Adoption of Proposed Amendment to Ban the Import of Trophies  
from Endangered and Threatened Animals**

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## INTRODUCTION

In the next fifty years, our planet is poised to lose a third of its plant and animal species.<sup>4</sup> This trend is considered to be the beginning of the sixth mass extinction, the first since dinosaurs walked the earth.<sup>5</sup> Eighty-five percent of these species are at risk due directly to human interaction.<sup>6</sup> The United States has attempted to curb these impacts with strict protections of animals on the brink of extinction through the Endangered Species Act (ESA), “the strongest and most effective tool we have to repair the environmental harm that is causing a species to decline.”<sup>7</sup>

But the ESA has a gaping hole which allows the completely unnecessary killing of imperiled animals. It permits the killing of endangered animals for sport, with no goal in mind besides claiming a trophy. Hunting endangered animals for trophies and importing their carcasses from abroad is allowed if the United States Fish and Wildlife Service (FWS) determines that the killing enhances the propagation or survival of the species. Trophy hunting never enhances the propagation or survival of a species. Even if it did, the ends would not justify the means; killing members of a species to protect the species is immoral, ineffective, and illogical. Arguing that the elimination of members of an endangered species further protects the species is akin to the medieval practice of bloodletting to save a dying man.<sup>8</sup> It seems obvious to us now that to save a dying man, one should not spill more of his blood. To save a dying species, we cannot kill more of its individual members, especially not for something as trivial as sport. Whereas subsistence hunting is done for survival, trophy hunting is done solely for pleasure and pride. Gaining pleasure from killing is repugnant, and the cultural systems that support such a practice are destructive, discriminatory, and outdated.

Importantly, studies are showing that conservation programs funded through trophy hunting are not only failing to “enhance” the survival of these species but are instead grievously damaging them. Many of these programs are struggling to stay afloat financially. They have sold off the right to kill so many animals that they cannot continue to masquerade as wildlife preserves. The approach of funding conservation through

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<sup>4</sup> Reid Ewing, et al., *Endangered by Sprawl: How Runaway Development Threatens America’s Wildlife*, NATIONAL WILDLIFE FEDERATION (2005), at vii.

<sup>5</sup> Center for Biological Diversity and Conservation, American Museum of Natural History, *Humans and Other Catastrophes: Perspectives on Extinction*, a summary of the 1997 symposium of the same name; see also, E.O. Wilson, *The Diversity of Life* (1992).

<sup>6</sup> B. A. Stein, L.S. Kutner, J.S. Abrams, eds., *Precious Heritage: The Status of Biodiversity in the United States* (2000).

<sup>7</sup> This quotation is commonly attributed to former United States Congressman Norm Dicks. Gabby Raymond, *Here’s Why the Endangered Species Act Was Created in the First Place*, TIME (July 23, 2018), <https://time.com/5345913/endangered-species-act-history/>.

<sup>8</sup> Though an existing treatment for many maladies since ancient times, bloodletting became a standard treatment for many medical conditions in the Middle Ages and is thought to have contributed to, if not caused, the deaths of prominent historical figures such as King Charles II (1630-1685) and President George Washington (1732-1799). See Berry Greenstone, *The History of Bloodletting*, BC MEDICAL JOURNAL Vol. 52, No. 1 (Jan. 2010), <https://www.bcmj.org/premise/history-bloodletting>.

auctioning off the right to kill animals sounds counterintuitive because it simply does not make sense. To protect and preserve animals, we cannot allow them to be killed, let alone for the killing to be glorified by displaying the victim. Such behavior broadcasts the message globally that these animals exist solely as commodities for human purposes. To protect animals, one must teach compassion and admiration. This sends the message that each of these animals is an important part of the global ecosystem and that they are more valuable living and free than they are as a rug or wall ornament.

Even if modern ethics could tolerate killing endangered animals for pleasure, FWS procedures are still failing the mandates of the ESA. The ESA requires that the proceeds from a trophy hunt are spent on recovering the imperiled population. FWS grants import permits without verifying that a hunter's money goes to foreign conservation agencies or that it is spent on enhancing the survival of the species in question. Instead, FWS blindly equates money spent on a trophy hunt with the enhancement of the propagation of a species.

Throughout human history, we have time and again assessed our behavior and recalibrated our laws to reflect modern morality. The most obvious examples in American history of moments such as this are the emancipation of African-American slaves and the various measures taken to enable all citizens to exercise their right to participate in our democratic government through voting. The time for legal reform has come again. Recognizing the immorality of killing for pleasure and the abundance of evidence against trophy hunting as a conservation tool, states and foreign governments have already begun passing legislation to ban trophy hunting and the import of animal trophies. If the goal of the ESA is conservation of species, our regulations should not grant a loophole legalizing predation on the most vulnerable amongst them and literally permitting the glorification of that predation through the dismemberment of endangered animals and the exhibition of their parts. Permitting individuals to hang lion heads in their homes undermines the message that we should be protecting lions.

This petition first reviews the most prominent existing laws and regulations governing the import of trophies of endangered animals. Second, this petition examines the economic and cultural effects of trophy-hunting programs on human populations, revealing that the programs are not sustainable and encourage black markets to spring up around legitimate ones, which leads to unregulated poaching and inter-human violence. Third, this petition scrutinizes the effects of trophy hunting on vulnerable African species and finds that their survival is not enhanced, but instead their existence is strained. Fourth, it analyzes the history and motives behind trophy hunting to conclude that the practice is a grotesque holdover of an obsolete moral system—the same system which encouraged every evil associated with the age of imperialism. Fifth, and perhaps most importantly, this petition demonstrates that alternative conservation programs, such as wildlife photography and other forms of ecotourism, provide a superior model for the conservation of endangered species, both ethically and economically.

FWS oversees and enforces the ESA, but does not have jurisdiction over the management of wildlife outside of the United States. However, it does have the authority to regulate trophies imported into the United States taken from animals protected under the ESA. Americans are the primary exporters of animal trophies, and outlawing the importation of trophies from endangered animals would contribute significantly toward their protection and send a clear message to the rest of the world. Because trophy hunting never enhances the survival of a species, we petition FWS to rescind the exception in its regulations permitting imports of endangered animal trophies.

## LEGAL BACKGROUND

### **A. The United States has international legal commitments to protect imperiled species.**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade in imperiled animals. The United States entered into CITES on January 14th, 1974, “[r]ecognizing that wild fauna . . . in their many beautiful and varied forms are an irreplaceable part of the natural systems of this earth which must be protected for this and the generations to come.”<sup>9</sup> With this general purpose to protect in mind, the United States further recognized the essential role of international cooperation in protecting animals “against over-exploitation through international trade.”<sup>10</sup> CITES lists all species which are threatened by human exploitation on one of three appendices.<sup>11</sup> Species listed on Appendix III are at risk of exploitation, but not in urgent need of legal intervention to prevent their extinction.<sup>12</sup> Species listed on Appendix II are more at risk of extinction than those on Appendix III.<sup>13</sup> Species listed on Appendix I are at immediate and severe risk of extinction.<sup>14</sup> Under CITES, international trade in a species of animals present on any of these appendices is regulated and trade in more immediately imperiled animals is fittingly controlled more stringently.<sup>15</sup> To further this end, the United States agreed to “the particularly strict regulation” of species already “threatened with extinction” and that the authorization of such trade “must only be authorized in exceptional circumstances.”<sup>16</sup>

Under CITES, both the state exporting and the state importing an endangered

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<sup>9</sup> CITES [preamble].

<sup>10</sup> CITES [preamble].

<sup>11</sup> CITES Article II.

<sup>12</sup> CITES Article II(3).

<sup>13</sup> CITES Article II(2).

<sup>14</sup> CITES Article II(1).

<sup>15</sup> CITES Article II.

<sup>16</sup> CITES Article II(1).

species<sup>17</sup> or its corpse must grant a permit for the trade prior to the taking<sup>18</sup> of the animal.<sup>19</sup> Both permits require that the respective state's scientific authority<sup>20</sup> has determined that the trade will not be "detrimental to the survival of the species."<sup>21</sup> These determinations are known as non-detriment findings (NDFs).<sup>22</sup> This means that animals listed on Appendix I of CITES may be killed or traded if the respective countries determine that that individual killing has no negative effect on the population as a whole. In 1979, at the Second Meeting of the Conference of the Parties to CITES, the signatories agreed that the trade in hunting trophies of animals of an endangered species is generally not detrimental to the survival of the species, unless indicated otherwise.<sup>23</sup> This agreement was not accompanied by any scientific studies or even explained at length in the text. Instead, it was merely asserted as the official policy. An NDF nevertheless does not mean that the United States must import trophies taken from imperiled species.

CITES sets a legal floor for the protection of animals, which signatory states may go beyond when passing domestic law. Signatories have the right to adopt "stricter domestic measures regarding the conditions for trade . . . of specimens,"<sup>24</sup> and may even go so far as to adopt "measures restricting or prohibiting trade" of these animals and the parts of them collected as trophies.<sup>25</sup> The United States has already restricted trade in endangered animals through domestic law.

## **B. The United States has domestic legal commitments to protect imperiled species.**

The United States ratified the commitments it made in CITES in the ESA, which was passed by Congress in 1973.<sup>26</sup> The ESA functions by "listing"<sup>27</sup> specific imperiled species, many of which are also on CITES Appendix I, and granting them federal protection from

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<sup>17</sup> CITES distinguishes between species based on their respective risks of becoming extinct. "Endangered species" in this context means species listed on CITES Appendix I, which are immediately imperiled. CITES Article II(1).

<sup>18</sup> "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19).

<sup>19</sup> CITES Article III(2)-(3).

<sup>20</sup> "Scientific authority" means a national scientific authority. CITES Article I(f); FWS's Division of Scientific Authority serves as the United States' scientific authority for the purpose of CITES. USFWS, *Division of Scientific Authority*, <https://www.fws.gov/international/about-us/division-of-scientific-authority.html>, (last visited June 8, 2021).

<sup>21</sup> CITES Article III(2)(a); Article III(3)(a).

<sup>22</sup> See generally, CITES at Work, *CITES 'Non-Detriment Findings'*, [https://cites.org/eng/prog/ndf/index\\_new.php](https://cites.org/eng/prog/ndf/index_new.php), (last visited June 8, 2021).

<sup>23</sup> Conference of Parties to the Convention, Res. 2.11 (Nov. 2-6, 1976).

<sup>24</sup> CITES Article XIV 1(a).

<sup>25</sup> CITES Article XIV 1(b).

<sup>26</sup> CITES Article XX; 16 U.S.C. § 1531(a)(4)(F); USFWS, *Endangered Species Act, Overview*, <https://www.fws.gov/endangered/laws-policies/>, (last visited June 8, 2021).

<sup>27</sup> "Listing" refers to the legal determination that a species is endangered or threatened. 16 U.S.C. § 1533 (a)(2)(A)(i).

further harm.<sup>28</sup> Similarly to CITES, the ESA was adopted with the intention to prevent the extinction of earth's species. While CITES is designed to protect these species through restrictions on trade, the ESA's purpose is to

[P]rovide 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 subsection (a) of this section.<sup>29</sup>

A species of animal or plant is "listed"<sup>30</sup> as threatened or endangered based on a decrease in its population and or habitat due to a variety of factors, which include "overutilization for . . . recreational . . . purposes . . . or predation."<sup>31</sup> Many trade-oriented activities concerning listed species are prohibited by the ESA. Specifically, "with respect to any endangered species . . . it is unlawful for any person . . . to import . . . possess . . . deliver, receive, carry, transport, or ship in interstate or foreign commerce . . . sell or offer for sale in interstate or foreign commerce."<sup>32</sup> While the ESA does contain exceptions to these prohibitions, the basic language is clear that the fulfillment of the ESA's purpose requires human overutilization and trade of endangered animals to end.

As is permitted by CITES Article XIV 1(a), the ESA has stricter standards concerning the conditions of trade in endangered species and parts of them collected as trophies. In granting exceptions to the prohibitions in section 1538, the ESA goes beyond requiring an NDF as CITES does, and only allows certain prohibited activities "for scientific purposes or **to enhance the propagation or survival of the affected species.**"<sup>33</sup> It is this second prong, "to enhance the propagation or survival of the affected species," that permits the import of tusks, horns, skins, heads, and other parts of endangered animals. This is a more stringent standard than an NDF under CITES. While an NDF permits trade in endangered species if there is no negative effect to the population of the species, the ESA only permits trade in endangered animals if the trade results in a **positive** effect on the species.

Despite Congress's clear intent and specific directive to conserve endangered species, FWS continues to issue permits for the trophy hunting of endangered species. Yet, trophy hunting is all but named in the ESA's language describing circumstances which lead to the extinction of a species: human "overutilization [of a species] for . . . recreational . . . purposes . . . or predation."<sup>34</sup> Granting permits for the import of trophies claimed from

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<sup>28</sup> Cynthia F. Hodges, *Brief Summary of the Endangered Species Act (ESA)*, Animal Legal & Historical Center (Michigan State University College of Law 2010), <https://www.animallaw.info/article/brief-summary-endangered-species-act>.

<sup>29</sup> 87 Stat. 884 § 2(b).

<sup>30</sup> 16 U.S.C. § 1533(a)(2)(A)(i), (ii).

<sup>31</sup> 16 U.S.C. § 1533(a)(1)(A)-(E).

<sup>32</sup> 16 U.S.C. § 1538 (a)(1)(A)-(F).

<sup>33</sup> 16 U.S.C. § 1539 (a)(1)(A) (emphasis added); *see also* 50 C.F.R. §§ 17.22, 17.32.

<sup>34</sup> *See generally* 16 U.S.C. § 1533(a)(1)(A)-(E).

hunted animals also violates the purpose of CITES on its face. Allowing individuals to kill endangered animals for pleasure hardly strikes one as “particularly strict regulation” of these species, and hunters<sup>35</sup> desiring another trophy hardly seems like an “exceptional circumstance” warranting authorization.<sup>36</sup>

Exceptions in the ESA granting private individuals the legal authority to kill members of an endangered species, just because they feel like it, does not enhance the survival of these species. This loophole undermines the conservation effort and is irreconcilably inconsistent with the purpose of the ESA—protecting endangered species.

The United States does not have jurisdiction over the animals in other countries, and as such, any animal’s status as threatened or endangered on the ESA does not, on its own, protect that species from being hunted abroad. However, the United States does have complete jurisdiction over what crosses its borders and could prohibit the importation of trophies taken from endangered and threatened animals, thus eliminating a significant gap in the current protections of endangered species. Such a move would certainly reduce the number of endangered and threatened animals who are hunted abroad.<sup>37</sup>

The idea that trophy hunting enhances the propagation of the survival of a species can be distilled into a traditional, morally dubious consequentialist argument: the end of protecting a species justifies the means of killing it for fun.<sup>38</sup> Putting aside for the moment that that argument is measurably incorrect and that killing a species for fun does not protect it, it is ethically contradictory. As becomes clear when reviewing the motives behind trophy hunting, allowing individuals to bring in pieces of the endangered animals they have killed sends the wrong message about how we should be interacting with life on earth.

## **NEW REGULATIONS ARE NEEDED**

### **A. Importing trophies not only fails to enhance the survival of a species but instead has negative effects.**

Proponents of trophy hunting argue that it is a valuable conservation tool. They argue that an individual animal’s moral standing is irrelevant and that the end of conservation justifies the killing of some endangered animals. They argue that a trophy hunt functions as a method for raising money through auctions or permit fees to support wildlife preserves. Hunting programs that allege this method of conservation can be

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<sup>35</sup> For a discussion of trophy hunters’ demographic makeup, *see* Part C.2, *infra*.

<sup>36</sup> CITES Article II(1).

<sup>37</sup> For a detailed discussion of the effects of the United States banning trophy imports, *see* Part D, *infra*.

<sup>38</sup> “The ends justify the means” is a statement most commonly used to excuse wrongdoing by way of claiming that wicked behavior will secure a greater good in the future. It is commonly attributed to Niccolò Machiavelli, the sixteenth-century Florentine diplomat whose name has become a byword for “subtle or unscrupulous cunning, deception, expediency, or dishonesty” often “placed above morality . . . to maintain the authority.” Dictionary.com, *Machiavellianism* (2020), <https://www.dictionary.com/browse/machiavellianism>.

labelled most simply as “kill-to-serve programs.” The most vocal supporters of kill-to-serve programs are, unsurprisingly, hunters’ clubs. However, such groups as Safari Club International (SCI) are formed with the purpose to “advocate, preserve and protect the rights of all hunters.”<sup>39</sup> None of SCI’s five listed purposes concern efforts to conserve species.<sup>40</sup>

Beyond being ethically untenable, even the most efficiently run kill-to-serve programs are ineffective. Historically, the idea that trophy hunting is valuable, if not essential, to the conservation of endangered species has been asserted with little evidence.<sup>41</sup> As the novelist Franz Kafka noted, “A myth becomes true and effective by daily use, otherwise it only remains a bewildering play of fantasy.”<sup>42</sup> This understanding helps to explain how it has ever been believed that sport killing could contribute to wildlife conservation. Empirical studies have shown that trophy hunting is frequently measurably detrimental to the conservation effort.<sup>43</sup> It can undermine the conservation of all local wildlife through ecosystem alteration, and often negatively affects local populations of trophy animals, sometimes in disturbing ways.<sup>44</sup>

The most obvious negative effect is to the individual animal that is killed. Beyond this, trophy hunting reduces “the number of animals in the population . . . [and] the population’s reproductive capacity . . . [and negatively] altering the ecosystem.”<sup>45</sup> Trophy hunting is yet another item on the list of factors contributing to wildlife population decline and mass extinction.<sup>46</sup>

There are two specifically stark examples of how trophy hunting fails to enhance the propagation of a species. The first is the sociological effects that trophy hunting has on harvested populations of animals. To understand these awful effects, we will review studies conducted on kill-to-serve programs of both lions and elephants. The second example of trophy hunting failing to enhance the propagation of a species is its effect on a species’ gene-pool—an effect that directly upsets a species’ process of natural selection and can leave populations devoid of the genetic material needed to adapt and perpetuate themselves in the modern world.

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<sup>39</sup> Safari Club International, *About Us: Mission and Purpose* (2020), <https://safariclub.org/about-us/>.

<sup>40</sup> See generally *id.*

<sup>41</sup> Chelsea Batavia, et al., *The elephant (head) in the room: A critical look at trophy hunting*, *Conservation Letters: A Journal of the Society for Conservation Biology* (April 20, 2018), <https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1111/conl.12565>, at 3.

<sup>42</sup> Patricia J. Williams, *Donald Trump Is the Great White Hunter*, *THE NATION* (Jan. 22, 2018), <https://www.thenation.com/article/archive/donald-trump-is-the-great-white-hunter/>.

<sup>43</sup> Democratic Staff of the House Committee on Natural Resources, *Missing the Mark: African Trophy Hunting Fails to Show Consistent Conservation Benefits*, (June 13, 2016), <https://conservationaction.co.za/wp-content/uploads/2019/01/Missing-the-Mark.pdf>, at 13.

<sup>44</sup> *Id.* at 13-14.

<sup>45</sup> *Id.* at 14.

<sup>46</sup> *Id.*

## 1. Trophy hunting has disturbing sociological effects on hunted populations.

Numerous studies concerning the trophy hunting of lions in Africa have demonstrated that the negative effects on the species go beyond the high death rate of male lions.<sup>47</sup> Lions are not solitary animals and lead complex social lives, with high levels of both “co-operation and antagonism.”<sup>48</sup> Lions are very territorial, and this antagonism is often the result of “male take-over” and territorial defense.<sup>49</sup> With males rapidly being removed from a region through trophy hunting, the socio-spatial dynamics of various prides of lions are disrupted.<sup>50</sup> The aggressive behavior exhibited is increased by trophy-hunting-induced social disruption.<sup>51</sup> The territory which was dominated by a male lion killed for sport becomes a vacuum drawing in other males.<sup>52</sup> This vacuum is the direct result of trophy hunting and it induces violence between populations of lions that would otherwise not come into conflict.<sup>53</sup> Furthermore, the males killed for sport do not transmit their genes in a population, because male take-over is accompanied by the infanticide of cubs from another male.<sup>54</sup> All of these violent effects are reversed when a moratorium is placed on trophy hunting.<sup>55</sup>

The killing of elephants in Botswana’s Chobe National Park provides another grim example of the effects of trophy hunting on the sociology of targeted animals. Recent conservation efforts have been centered on restoring woodlands that have been largely eaten by protected grazing populations, including elephants.<sup>56</sup> But these woodlands only sprung up due to the “excessive hunting of elephants about 100 years ago.”<sup>57</sup> Previously the area had been shrubland, which it is now becoming again with the restored presence of elephants.<sup>58</sup> This habitat conversion is beneficial for many species that thrive in shrubland, including black rhinoceros, impala, lions, lizard communities, and others.<sup>59</sup> The presence of

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<sup>47</sup> In one five-year study, 72% of the male lions tagged were killed by sport hunters. A.J. Loveridge, A.W. Searle, F. Murindagomo, D.W. Macdonald, *The impact of sport-hunting on the population dynamics of an African lion population in a protected area*, BIOLOGICAL CONSERVATION, Vol. 134, Iss. 4 (published online Nov. 3, 2006), <https://www.sciencedirect.com/science/article/abs/pii/S0006320706003843?via%3Dihub>.

<sup>48</sup> Zeke Davidson, Marion Valeix, Andrew J. Loveridge, Hillary Madzikanda, and David W. Macdonald, *Socio-Spatial Behaviour of an African Lion Population Following Perturbation by Sport Hunting*, BIOLOGICAL CONSERVATION, Vol. 144, Iss. 1 (Jan 2011), at 114.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 120.

<sup>51</sup> *Id.* at 114.

<sup>52</sup> *Id.* at 115.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 120.

<sup>56</sup> Ross Harvey, *Trophy Hunting ‘Imperialistic’ and ‘Unsustainable’*, CONSERVATION ACTION TRUST (June 26, 2019), <https://animalpeopleforum.org/2019/06/26/trophy-hunting-imperialistic-unsustainable/>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

elephants is actually beneficial to the plant community as well because elephants disperse seeds over vast distances.<sup>60</sup>

Some conservationists argue for culling larger male elephants that have already contributed to the population's gene pool.<sup>61</sup> An older, larger male is known as a "tusk" because a bull's tusks grow exponentially toward the end of his life;<sup>62</sup> this makes him a prime target for trophy hunters.<sup>63</sup> Eliminating the oldest, largest bulls has catastrophic sociological consequences on a population of elephants, and its effects reverberate through the local ecosystem in disturbing ways.<sup>64</sup>

To begin with, the loss of tuskers to a population compromises the ability of other elephants to process information about social identity, including the important age-based hierarchy in elephant communities.<sup>65</sup> Young males are doubly affected by this loss. First, they have no older role models to show them the right way to conduct themselves.<sup>66</sup> Second, without the suppression of an older bull's musth cycle, these younger bulls behave with extreme aggression and violence.<sup>67</sup> Musth is a state of heightened sexual and aggressive male activity in elephants due to surges in testosterone.<sup>68</sup> Older males suppress these surges of testosterone in younger males.<sup>69</sup>

Without the suppression of an older bull's musth cycle, the aggression of young bulls in musth has extended beyond the elephant community. In a region where the old tuskers had been culled, "young bulls displayed recurrent, atypical, lethal violence against rhinoceroses, and were occasionally observed forcing copulations with them."<sup>70</sup> This is exceptionally upsetting behavior, indicative of great psychological agitation, and we humans are to blame.<sup>71</sup> While it is a great shame that we have disturbed some elephant

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Similarly, older females, matriarchs, have larger tusks than other female elephants. In those countries that allow trophy hunting of female elephants, matriarchs will be prime targets of trophy hunters. Elephant herds rely on their matriarchs, who "are instrumental in keeping their groups fed, watered, safe and reproducing," that is they are vital to "enhancing the survival of their members." The killing of a matriarch from a trophy hunter will have "potentially dire consequences" on an elephant herd. See generally Lesley Evans Ogden and New Scientist, *What elephants can teach us about the importance of female leadership*, THE WASHINGTON POST (Jan. 27, 2014), [https://www.washingtonpost.com/national/health-science/what-elephants-can-teach-us-about-the-importance-of-female-leadership/2014/01/27/32db3f5e-7eeb-11e3-95c6-0a7aa80874bc\\_story.html](https://www.washingtonpost.com/national/health-science/what-elephants-can-teach-us-about-the-importance-of-female-leadership/2014/01/27/32db3f5e-7eeb-11e3-95c6-0a7aa80874bc_story.html).

<sup>64</sup> Harvey, *supra* note 56.

<sup>65</sup> *Id.*

<sup>66</sup> Young bulls learn critical social skills from older tuskers. Lesley Evans Ogden, *Male Elephants Are Not the Loners We Once Thought*, BBC EARTH (Oct. 31, 2014), <http://www.bbc.com/earth/story/20141101-male-elephants-have-a-sweet-side>.

<sup>67</sup> Harvey, *supra* note 56.

<sup>68</sup> Bruce Page, Joyce Poole, et al., *Older Bull Elephants Control Younger Males*, NATURE, Vol. 408 (Nov. 23, 2000) at 425.

<sup>69</sup> *Id.*

<sup>70</sup> Harvey, *supra* note 56.

<sup>71</sup> *Id.*

populations to this extent, we can still learn from this example. The hyper-aggression of the young bulls ended when older tuskers were reintroduced to the population.<sup>72</sup>

Conservation efforts that include the killing of trophy animals, such as tuskers, do not enhance the propagation or survival of a species. Instead, they send powerful shockwaves through the core of a species' society that can lead to profoundly alarming and unnatural behavior. These are just two examples. The detrimental sociological impacts of trophy hunting are hardly limited to lions and elephants alone.

## **2. Trophy hunting interferes with natural selection, leaving hunted populations vulnerable to extinction.**

Trophy hunting's influence on animal behavior is enough of a reason on its own to stop enabling the practice. However, this behavioral influence is not the only profoundly deleterious effect on hunted species. Removing individuals in any population increases the probability of inbreeding.<sup>73</sup> Trophy hunting functions as artificial selection, degrading the genetic makeup of targeted populations, and increasing the likelihood that hunted animals will go extinct.<sup>74</sup>

Trophy hunters specifically target male animals with the largest antlers, tusks, manes, overall size, or other secondary reproductive traits.<sup>75</sup> Proponents of trophy hunting argue that killing only a fraction of the males in any population does not damage the reproductive cycle because females do not have trouble finding mates.<sup>76</sup> However, studies show that predation for sport leaves these populations genetically vulnerable to extinction, not because there are immediately fewer animals being born, but because the animals being born do not have the traits that are required to survive in a changing world.<sup>77</sup>

Trophy hunting is unlike any other form of predation and functions exactly opposite to natural selection.<sup>78</sup> Natural predation removes the sick, elderly, and poorly adapted from

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<sup>72</sup> Page, et al., *supra* note 68, at 426.

<sup>73</sup> Pervaze A. Sheikh, *International Trophy Hunting*, CONGRESSIONAL RESEARCH SERVICE (March 20, 2019), <https://crsreports.congress.gov/product/pdf/R/R45615>, at 15.

<sup>74</sup> Robert J. Knell and Carlos Martínez-Ruiz, *Selective Harvest Focused on Sexual Signal Traits Can Lead to Extinction Under Directional Environmental Change*, PROCEEDINGS OF THE ROYAL SOCIETY B: BIOLOGICAL SCIENCES, Vol. 284, Iss. 1868 (Dec. 6, 2017), <https://royalsocietypublishing.org/doi/full/10.1098/rspb.2017.1788#:~:text=Using%20an%20individual%2Dbased%20model,extinction%20in%20otherwise%20resilient%20populations.>

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> "Natural selection" is a process whereby some of an organism's traits are maintained and passed down from one generation to the next while others are discarded. Generally, traits that are conducive to survival and reproduction are passed down and those that do not further these ends are not. Evolution is largely a consequence of natural selection. John P. Rafferty, *Natural Selection*, ENCYCLOPÆDIA BRITANNICA (Feb. 3, 2020), <https://www.britannica.com/science/natural-selection>. In this section of the petition, the term natural selection is used to refer to both natural selection and sexual selection. "Sexual selection" is a type of natural selection in which the traits maintained and passed down from one generation to the next are determined through mating preferences. See generally Francisco Jose Ayala, *Sexual Selection*, ENCYCLOPÆDIA BRITANNICA

a population of animals; trophy hunting removes the strongest.<sup>79</sup> Trophy hunters target and eliminate males with the most extreme secondary sexual signals, such as the largest antlers.<sup>80</sup> Such traits are used in contests between males over mates and are indicative of condition dependence, meaning that the greater the expression of the trait—the larger the antlers—the healthier the individual.<sup>81</sup> Since the animal with the largest antlers wins the contests for mates, he passes on an abundance of this healthy genetic material.<sup>82</sup> In natural selection, these healthy males produce healthy offspring and increase the resilience of the population.<sup>83</sup> Trophy hunting functions as an artificial selection method, whereby the healthiest males of a species are removed, which allows weaker males to breed.<sup>84</sup> The resultant offspring will not be as healthy or as adaptive as those from the healthiest males would have been.<sup>85</sup>

Numerous studies have shown that populations which sexually select based on secondary reproductive traits can adapt to changing environments more quickly and effectively than populations with less selective mating.<sup>86</sup> Populations of species with strong sexual selection adapt faster “to novel foods and to pesticides, to a reduced extinction risk from thermal stress and to a reduction in inbreeding depression leading to improved persistence of small populations.”<sup>87</sup> Removing males bearing the largest “trophies” removes the most adaptable members of a population.<sup>88</sup> As stated by the evolutionary ecologist Robert Knell, “Selectivity associated with human predation can lead to uniquely

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(Aug. 8, 2019), <https://www.britannica.com/science/sexual-selection>. As this section of the petition illustrates, in many instances sexual selection is based on traits that are indicative of an individual’s ability to survive and adapt.

<sup>79</sup> Knell and Martínez-Ruiz, *supra* note 74.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Claudia Fricke and Göran Arnqvist, *Rapid Adaptation to a Novel Host in a Seed Beetle (Callosobruchus maculatus): the Role of Sexual Selection*. *EVOLUTION* (Feb. 23, 2007),

<https://onlinelibrary.wiley.com/doi/full/10.1111/j.1558-5646.2007.00038.x>;

Frances Jacomb, Jason Marsh, and Luke Holman, *Sexual selection expedites the evolution of pesticide resistance*, *EVOLUTION* (Sept. 28, 2016), <https://onlinelibrary.wiley.com/doi/abs/10.1111/evo.13074>; Agata Plesnar-Bielak, et al., *Mating system affects population performance and extinction risk under environmental challenge*. *PROCEEDINGS OF THE ROYAL SOCIETY B: BIOLOGICAL SCIENCES*, Vol. 279, Iss. 1747 (Sept. 5, 2012),

<https://royalsocietypublishing.org/doi/10.1098/rspb.2012.1867>; Alyson J. Lumley, et al. *Sexual selection protects against extinction*, *NATURE* (May 18, 2015), <https://www.nature.com/articles/nature14419>;

Magdalena Jarzebowska and Jacek Radwan, *Sexual Selection Counteracts Extinction of Small Populations of the Bulb Mites*. *EVOLUTION* (May 7, 2010), [https://onlinelibrary.wiley.com/doi/full/10.1111/j.1558-](https://onlinelibrary.wiley.com/doi/full/10.1111/j.1558-5646.2009.00905.x)

[5646.2009.00905.x](https://onlinelibrary.wiley.com/doi/full/10.1111/j.1558-5646.2009.00905.x).

<sup>87</sup> Knell and Martínez-Ruiz, *supra* note 74.

<sup>88</sup> *Id.*

severe impacts on harvested populations.”<sup>89</sup> The most severe of these impacts is the potential to reverse adaptation rates and increase a species’ probability of extinction.<sup>90</sup>

A species’ adaptability has always been essential to its long-term survival. This is especially true today.<sup>91</sup> Environmental changes, such as raised global temperatures, increased ocean acidification, and alterations of seasonal timing put animal populations at increased risk of extinction.<sup>92</sup> Animals that are unable to migrate due to confined habitats, such as fragmented forests, isolated conservation areas, or islands, are particularly at risk.<sup>93</sup> Such populations will have to adapt to these environmental changes, or they will die out.<sup>94</sup>

If trophy hunting is the practice of killing off the members of a species most able to adapt to environmental changes, then we are leaving only those individuals less-suited for survival to perpetuate their respective species. Considering the current extreme flux in our planetary environment, this means that we are effectively condemning trophy-hunted species to extinction by eliminating the most adaptable individuals from the gene pool.

## **B. Trophy hunting conservation programs are economically unsound.**

Aside from the horrendous effects of trophy hunting on animal populations’ sociology and survival rates, kill-to-serve programs are not economically efficient and fail to conserve the animals that they are supposed to protect. Concerning whether a hunt has resulted in the enhancement of an endangered species, the FWS permit application form asks the hunter only three questions. First, it asks if the hunter has any information on the population status of the species.<sup>95</sup> Second, it asks how much the hunter is paying for the hunt and if the hunter has any information on how the funds will be used.<sup>96</sup> Third, it asks for information concerning any other funding activities being carried out by the outfitters.<sup>97</sup> It also requests that “if you have any information that could support [an enhancement] finding, it would be helpful for our review if you could provide it.”<sup>98</sup> FWS

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Local extinctions due to climate change are occurring at a massive scale, in all habitats globally, despite current levels of climate change being modest compared to what is predicted to occur in the next century. The extent of species loss because of climate change’s effects depends on how rapidly the world’s species can adapt to “rapid change in their climatic niches.” John J. Wiens, *Climate-Related Local Extinctions Are Already Widespread Among Plant and Animal Species*, PLOS BIOLOGY (Dec. 8, 2016), <https://journals.plos.org/plosbiology/article?id=10.1371/journal.pbio.2001104>.

<sup>92</sup> Knell and Martínez-Ruiz, *supra* note 74.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Form 3-200-20, Federal Fish and Wildlife Permit Application Form, §E(9)(a), available at <https://www.fws.gov/forms/3-200-20.pdf>.

<sup>96</sup> *Id.* at §E(9)(b).

<sup>97</sup> *Id.* at §E(9)(c).

<sup>98</sup> *Id.* at §E(9).

requires only a bare minimum of input from those doing the killing concerning the impact of their hunting.

Instead, FWS is supposed to make these determinations itself. But FWS makes a series of gigantic assumptions to effectively conclude without evidence that any money spent by trophy hunters enhances the survival of a species. To accurately determine if an individual trophy hunt enhanced the propagation of a species, FWS would have to study specific species of targeted endangered animals on a local basis. Then, FWS would have to calculate the sum required to not only replace a hunted animal from that population, but to enhance the survival of the species beyond mere replacement.<sup>99</sup> Finally, FWS would have to determine the acceptable ways in which that money could be spent in order to achieve the end of population enhancement. Petitioner is not aware of FWS conducting any of these studies.

In the case of imports from many countries, FWS grants permits relying extensively on information provided to them from exporting countries and only minimally verifying any of the conditions in the country from which the trophy was claimed.<sup>100</sup> This is problematic because determining that money was spent on a permit for trophy hunting is not the same as determining that the money will go towards conservation.<sup>101</sup> Contrary to the requirements of the ESA's permitting procedure,<sup>102</sup> this system fails to ensure that foreign conservation programs are actually enhancing the propagation of endangered animals. Furthermore, failing to verify the circumstances behind a trophy provides a potential loophole for poachers to import their goods into the United States. There is reason to believe that many of the claims that kills result in species' enhancement are false, as "in cases of wildlife crime, the most common links are offences related to corruption, the fraudulent obtaining of licences or forgery of the latter[,] including customs official documents."<sup>103</sup>

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<sup>99</sup> A permitting process along these lines would lead to vastly different prices for different hunts depending on the conservation status of each species in distinct regions and how much money was required to aid each particular conservation effort. Instead, the price of a trophy is relatively consistent throughout a species' range, indicating that the supply and demand economics behind trophies is what determines the price of a hunt, not the amount necessary to recover endangered species. *See* New Regulations Are Needed, Part A.2, *supra*.

<sup>100</sup> Democratic Staff of the House Committee on Natural Resources, *supra* note 43, at 23. This is unlike the EU, where "new measures address [the problem of fraudulent claims of sustainability] by introducing a requirement for an import permit . . . [that] will only be delivered once the EU is convinced that the import meets criteria demonstrating that it is sustainable . . . Permits should not be issued by EU member states in cases where no satisfactory information has been obtained from the exporting or re-exporting country regarding the legality of wildlife products . . ." European Commission, *New EU Measures on Import of Hunting Trophies to Fight Against Illegal and Unsustainable Practices* (Feb. 5, 2015).

<sup>101</sup> For a discussion of corruption in trophy hunting permitting procedures, *see* New Regulations Are Needed, Part A.3, *supra*.

<sup>102</sup> *See* Legal Background Part B, *supra*.

<sup>103</sup> Elena Ares, *Trophy Hunting*, House of Commons Library, BRIEFING PAPER, No. 7908 (Sept. 26, 2019), at 7 (citing European Parliament Committee on International Trade, EU trade policy and the wildlife trade, 2016) (internal parentheses omitted).

Despite requiring almost no evidence to prove that the killing of an animal has enhanced anything, this permitting program still costs approximately \$5 million annually, with taxpayers covering 92% of the costs.<sup>104</sup> This is especially troubling considering that the only individuals who can afford to travel to distant continents and pay large sums<sup>105</sup> of money for an exotic hunting trip are wealthy individuals.<sup>106</sup> It is an inequitable and unwise use of taxpayer resources to fund 92% of the permitting cost of trophy imports when, in the case of elephants, for example, only 7% of Americans even approve of hunting them.<sup>107</sup> Banning the import of trophies taken from threatened and endangered animals will eliminate the regulatory cost of the permitting program and free up FWS to protect and manage wildlife in far more effective ways.

### **1. Hunting imperiled animals does not support conservation efforts.**

In many African countries, kill-to-serve programs have failed to “maintain biodiversity” and have “not contributed significantly to the well-being” of local communities.<sup>108</sup> Attempting to support the claim that trophy hunting is beneficial to wildlife conservation, hunters frequently cite the example of Kenya, a country which lost much of its wildlife despite banning trophy hunting.<sup>109</sup> This is a *post hoc ergo propter hoc* fallacy. Kenya’s tragic loss of wildlife is not due to the prohibition on trophy hunting, but instead to an incredibly rapid population growth and a land management plan that permitted habitat destruction for farming.<sup>110</sup> In recent years, Kenya’s conservation efforts have improved and it is now home to the fourth largest population of elephants in continental Africa and the third largest population of black rhinos.<sup>111</sup> In fact, Kenya’s elephant population has increased from 16,000 elephants in 1989 to 34,800 elephants at the end of 2019.<sup>112</sup> This is evidence that Kenya’s policies actually have enhanced the survival of the species. The difficulties that Kenya’s kill-free conservation program endured early on only demonstrate that a deliberate conservation plan is necessary to protect imperiled animals. Those difficulties do not demonstrate that trophy hunting has enhanced the propagation or survival of a species in Kenya or anywhere else.

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<sup>104</sup> Democratic Staff of the House Committee on Natural Resources, *supra* note 43, at 24.

<sup>105</sup> *See infra* note 193.

<sup>106</sup> *See generally*, Liam Stack, *Big Game Hunting is also Big Business for Wealthy Few*, *The New York Times* (Aug. 10, 2015), <https://www.nytimes.com/2015/08/10/travel/big-game-hunting-cecil-lion.html>.

<sup>107</sup> Responsive Management and National Sports Shooting Foundation, *Americans’ Attitudes Toward Hunting, Fishing, Sport Shooting, and Trapping* (2019), at 23.

<sup>108</sup> Bertrand Chardonnet, *Reconfiguring the Protected Areas in Africa*, FRANCE-IUCN PARTNERSHIP, translated by Sheila Hardie (2019), [https://conservationaction.co.za/wp-content/uploads/2019/03/etudesAP\\_configAP\\_EN.pdf](https://conservationaction.co.za/wp-content/uploads/2019/03/etudesAP_configAP_EN.pdf), at 35.

<sup>109</sup> Gordon Goldhaber, *Why trophy hunters are dead wrong about Kenya*, *The Dodo* (Feb. 14, 2016), <https://www.thedodo.com/why-trophy-hunters-are-dea-1602184461.html>.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Gabriela Saldivia, *Some Good News: An ‘Elephant Boom’ in One Kenyan National Park*, *NPR* (Aug. 14, 2020), <https://www.npr.org/2020/08/14/902177466/some-good-news-an-elephant-baby-boom-in-one-kenyan-national-park>.

Before rescinding its ban on trophy hunting for internal political reasons,<sup>113</sup> Botswana served as an example of wildlife conservation done right. Despite Africa's elephant population declining "by at least 30 percent between 2007 and 2014,"<sup>114</sup> in Botswana, where trophy hunting was banned, protected elephants make up "30% of the continent's entire wild population."<sup>115</sup> While Botswana's population is thought to be declining as well, "[t]his decrease is not as dramatic as across most of Africa and is testimony to the country's solid conservation policies."<sup>116</sup>

In part due to this increasing depletion of trophy animals in Africa, foreign hunters are not traveling there in near the same frequency as before.<sup>117</sup> Aside from the claims of trophy hunters that the practice provides essential funding to conservation efforts,<sup>118</sup> "trophy-hunting revenue remains a small percentage—1.8% according to one study—of overall tourism revenues and just a fraction of overall GDP for some of the core wildlife source countries in Africa."<sup>119</sup> Namibia reports that trophy hunting accounts for a nearly inconsequential 0.27% of its GDP, and that is the **highest** reported contribution from trophy hunting among African countries.<sup>120</sup> Furthermore, the bulk of contributions from trophy hunting to a country's GDP do not come from the rare, dangerous, and expensive hunts for endangered animals.<sup>121</sup> Instead, relatively common African buffalo contribute the greatest percent of trophy fees and, in general, such smaller, less dangerous animals "are the 'bread and butter' of the hunting industry."<sup>122</sup> Fees collected from trophy hunting endangered animals do not contribute in a meaningful way to the hunting industry, which itself does not make up a substantial portion of the funds in the natural tourism industry.<sup>123</sup>

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<sup>113</sup> *Botswana lifts ban on elephant hunting*, BBC NEWS (May 22, 2019), <https://www.bbc.com/news/world-africa-48374880>.

<sup>114</sup> Meilan Solly, *Five Things to Know About Botswana's Decision to Lift Ban on Hunting Elephants*, Smithsonian Magazine (May 24, 2019), <https://www.smithsonianmag.com/smart-news/five-things-know-about-botswanas-decision-lift-ban-hunting-elephants-180972281/>.

<sup>115</sup> Louise De Waal, *Confusion over Botswana's elephant population*, CONSERVATION ACTION TRUST (Nov. 27, 2018), <https://conservationaction.co.za/media-articles/confusion-over-botswanas-elephant-population/>.

<sup>116</sup> *Id.*

<sup>117</sup> Chardonnet, *supra* note 108, at 35.

<sup>118</sup> As the "posterchild of hunter conservation," Corey Knowlton said of his \$350,000 hunt to kill an endangered black rhino, "I made a commitment to conservation as a whole . . . this was never about me going over and taking a black rhino's life . . . it was about a method of conservation to keep black rhinos on the face of this earth." Corey Knowlton, *The Rhino Hunter*, Radio Lab (Sept. 7, 2015) at 15:03, available at <https://www.wnycstudios.org/podcasts/radiolab/articles/rhino-hunter>.

<sup>119</sup> Sheikh, *supra* note 73, at 18.

<sup>120</sup> Roderick Campbell, *The \$200 Million Question: How Much Does Trophy Hunting Really Contribute to African Communities?*, ECONOMIST AT LARGE (Feb., 2013), <https://www.conservationaction.co.za/wp-content/uploads/2013/09/The-200-Million-Question-How-Much-Does-Trophy-Hunting-Really-Contribute-to-African-Communities.pdf>, at 12.

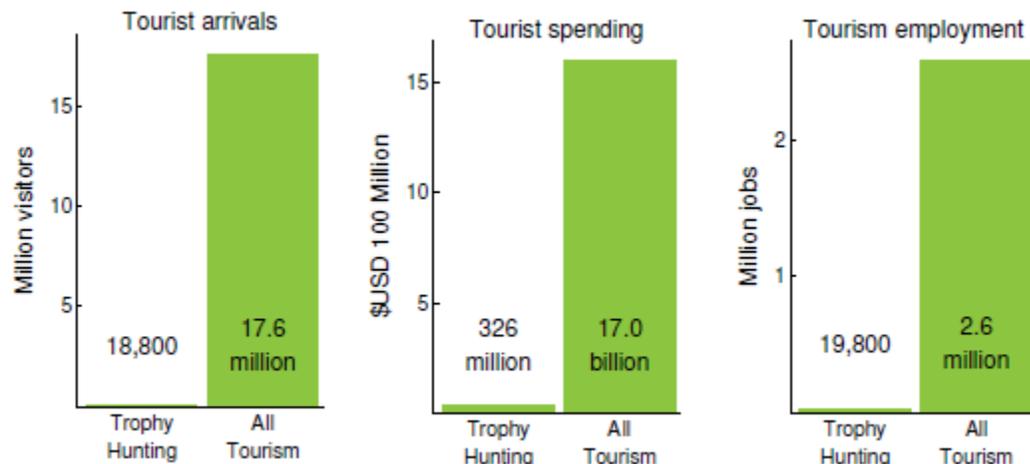
<sup>121</sup> *Id.* at 15.

<sup>122</sup> *Id.* (citing Booth, Vernon R., *A Comparison of the Prices of Hunting Tourism in Southern and Eastern Africa*, Joint publication of FAO and CIC (2009) at 15-16).

<sup>123</sup> *Id.* at 12.

One study comparing the economic benefits of trophy hunting to those from the entire tourism industry in eight African countries<sup>124</sup> summarized its findings with the following graph:

Figure 1. Economic Benefit of Trophy Hunting Compared to All Tourism<sup>125</sup>



This graph demonstrates that trophy hunting is not the contributor to the tourism industries or conservation efforts that proponents of the practice claim it to be. More importantly, it demonstrates that extensive funding outside of trophy hunting exists to fund conservation. This multi-billion-dollar tourism industry is negatively impacted by trophy hunting, which may actually **deter economic growth** in other, more profitable areas of the sector.<sup>126</sup> Trophy hunting is not only failing to conserve animals, but also foundering as an industry.

## 2. Trophy hunting is an unsustainable industry.

Big game hunting conservation programs are not sustaining populations of endangered species and cannot sustain themselves financially. In Tanzania, neither elephants nor lions are being effectively protected. Tanzania's kill-to-serve elephant program is failing.<sup>127</sup> As has been mentioned, trophy hunters target older bull elephants with large tusks. Tanzanian law mandates that only elephants bearing tusks weighing over twenty kilograms or greater than 1.6 meters long may be killed.<sup>128</sup> Due to this requirement, legal hunting (but certainly not poaching) of elephants has nearly halted because there are no elephants left with either of these qualities.<sup>129</sup> Due to the slow rate at which tusks grow,

<sup>124</sup> The countries studied were Botswana, Ethiopia, Mozambique, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe. Cameron K. Murray, *The lion's share? On the economic benefits of trophy hunting*, ECONOMISTS AT LARGE, prepared for HUMANE SOCIETY INTERNATIONAL (2017), <https://www.hsi.org/wp-content/uploads/assets/pdfs/economists-at-large-trophy-hunting.pdf>, at 3.

<sup>125</sup> *Id.* at 5.

<sup>126</sup> *Id.* For a discussion of more profitable areas of the tourism industry, see Part D, *infra*.

<sup>127</sup> Chardonnet, *supra* note 108, at 34.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

“it will take several decades of protection with no hunting before elephant hunting can start again respecting minimum measures.”<sup>130</sup> Similar to the size requirements for the taking of a trophy elephant, Tanzania requires that a lion must be at least six years old to be shot for sport. In 2015, over two-thirds of the lions killed were five years old or younger.<sup>131</sup> This is because there are so few lions left that are more than five years old.<sup>132</sup> An outright prohibition on hunting to allow these populations to recover is entirely fiscally unfeasible in a program that funds itself by selling the right to kill wild animals to hunters.

But kill-to-serve is not a fiscally feasible model to begin with. An ideal hunting zone has approximately two lions per hundred square kilometers.<sup>133</sup> An area needs to be about five thousand square kilometers in order to sustain the killing of a single lion per year.<sup>134</sup> To maintain such a space costs roughly \$4 million annually.<sup>135</sup> Thus, a program singularly focused on killing-to-serve lions would be unable to sustain itself financially if it charges less than \$4 million to kill one lion.<sup>136</sup> But a high price to kill a lion is \$50,000, the same amount paid for the now-infamous killing of Cecil the Lion.<sup>137</sup> Therefore, such kill-to-serve programs are actually hurting lions and the other endangered animals they are purporting to help. Big game hunting “does not protect the natural habitat from agro-pastoral encroachment, it can only finance a small percentage of the sum required for its conservation, and its socio-economic benefits are too low.”<sup>138</sup>

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 35.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 36. Importantly, one might argue that the \$4 million required to fund the upkeep of the 5,000 square kilometers of habitat which a pride of lions needs could be secured through auctioning off the right to hunt more common animals, such as African buffalo. However, a range of 5,000 square kilometers might support as few as 0.17 buffalo per square kilometer, or 850 buffalo total. Brent Huffman, *Syncerus caffer: African buffalo*, *Ultimate Ungulate* (May 19, 2017), [http://www.ultimateungulate.com/Artiodactyla/Syncerus\\_cafferFull.html](http://www.ultimateungulate.com/Artiodactyla/Syncerus_cafferFull.html). If a single lion is killed for \$50,000, this means that a game preserve will have to auction off \$39.5 million worth of buffalo. The average price paid to kill a single African buffalo is about \$17,000. Humane Society, *Trophy Hunting by the Numbers: The United States' Role in Global Trophy Hunting* (Feb., 2016), [https://www.hsi.org/wp-content/uploads/assets/pdfs/report\\_trophy\\_hunting\\_by\\_the.pdf](https://www.hsi.org/wp-content/uploads/assets/pdfs/report_trophy_hunting_by_the.pdf), at 19. This means that a game preserve will have to kill off 232.4 buffalo annually. A female buffalo has an average of 1 calf every two years. Huffman, *supra*. Studies have shown that an average population of buffalo is only 46.7% female and only 52.5% of that population is of adult breeding age. Aberham Megaze, et al., *Current population estimate and distribution of the African buffalo in Chebera Churchura National Park, Ethiopia*, *AFRICAN JOURNAL OF ECOLOGY* (2017), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/aje.12411>. Assuming that every adult female buffalo gives birth, a population of buffalo is likely to increase by 24.5% every two years. If 232.4 buffalo are sport hunted annually from a population that is only reproducing at a rate of 12.25% each year, a population of 850 buffalo will be eliminated within six years. Trophy hunting even common animals is not a sustainable conservation model.

When considering trophy hunting from a broad viewpoint, it becomes clear that it is not an economically sustainable enterprise. The Anthropogenic Allee effect demonstrates the reason why the act of bidding for the right to kill a trophy animal only perpetuates the human desire that will lead to the destruction of the species.<sup>139</sup> It is basic supply and demand; as the supply of any given species goes down, hunters will have to pay more to kill what is left.<sup>140</sup> The most valuable trophy animals are rare.<sup>141</sup> When members of these species are killed off, the animals become even rarer, which increases their value to trophy collectors.<sup>142</sup> It is this vicious cycle that led to the life of a black rhino being auctioned off for \$350,000.<sup>143</sup> Without any regulation, this cycle could eventually lead to a hunting guide selling the last of any trophy species for a veritable fortune.

Proponents of trophy hunting state that it does not lead to extinction in this way because the money collected from a hunt goes back into the conservation programs of these animals and into the communities of local individuals who might otherwise be tempted to set up hunting operations outside of more strictly managed kill-to-serve programs.<sup>144</sup> Where this money actually goes is unclear.

### **3. Trophy hunting does not benefit local communities.**

Local communities are the most important stakeholders in areas used for trophy hunting and their cooperation is vital for the protection of wildlife.<sup>145</sup> Yet, only 3% of trophy-hunting companies' revenue goes toward the communities living in or near areas used for hunting.<sup>146</sup> "[F]rameworks for ensuring that trophy hunts benefit species conservation . . . [have] been marred by corruption and [have] not produced the advertised and desired results."<sup>147</sup> While the level of corruption varies from government to government and from organization to organization, it plays a significant role in the prevention of "trophy hunting revenues from funding conservation activities and can even lead to the mismanagement of hunted populations."<sup>148</sup> In a poignant example, in Zimbabwe, the location of the infamous killing of Cecil the Lion, "[n]othing" of the money paid by trophy hunters to the government typically makes it to the parks leading conservation efforts, and "corrupt government officials" are to blame.<sup>149</sup> This type of corruption is

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<sup>139</sup> Sheikh, *supra* note 73, at 14.

<sup>140</sup> *Id.*

<sup>141</sup> As of 2016, an African buffalo hunt cost between \$15,500-\$18,500, a leopard hunt \$13,000-\$24,000, a lion hunt \$13,500-\$49,000, an elephant hunt \$11,000-\$70,000, and a white rhino hunt \$55,000-\$150,000. Humane Society, *supra* note 138, at 12, 14, 16, 18, 19.

<sup>142</sup> Sheikh, *supra* note 73, at 13.

<sup>143</sup> *Id.* at 6.

<sup>144</sup> *Id.* at 1.

<sup>145</sup> Campbell, *supra* note 120, at 6.

<sup>146</sup> *Id.* at 3.

<sup>147</sup> Democratic Staff of the House Committee on Natural Resources, *supra* note 43, at 22.

<sup>148</sup> *Id.* at 13.

<sup>149</sup> CBS This Morning, *Who profits from trophy hunting riches in Zimbabwe?*, CBS NEWS (Oct. 14, 2015), <https://www.cbsnews.com/news/zimbabwe-corruption-trophy-hunting-cecil-lion-conservation/>.

common in kill-to conserve programs.<sup>150</sup> Since the 1970s, the trophy-hunting industry has been monopolized by foreign companies, with some prominent examples committing tax evasion, keeping more of the proceeds for themselves and contributing less to the local programs designed to conserve the ecosystem.<sup>151</sup> In many countries there is little oversight of the governance of big game hunting programs.<sup>152</sup> Due to this failing, the individuals in charge attempt to keep “largely exhausted” kill-to-conserve programs going.<sup>153</sup> The perpetuation of these programs “serves individual interests, but not those of conservation, governments or local communities.”<sup>154</sup>

Importantly, hunting outfitters, professional hunters, and their clientele, the hunters themselves, are almost entirely foreigners.<sup>155</sup> But it is the local community’s environment and livelihood being utilized for hunting and “[w]ithout the strong involvement of local people it is impossible to reduce poaching, reduce human-animal conflict, reduce agricultural encroachment on wildlife habitat and ensure the sustainable management of the area in question.”<sup>156</sup> It is also fair to wonder what effect trophy hunting may have on local populations. Seeing wealthy foreigners be allowed to shoot and kill endangered animals may make a local more willing to poach that same animal and may reduce park rangers’ incentives to risk their lives to protect an animal from poachers when that same animal can be shot legally by a trophy hunter.

One village leader in northern Tanzania stated, “Villagers felt that hunting was destructive, exploitative, and disempowering, and jeopardised village [community-based tourism] revenues.”<sup>157</sup> This same leader stated that trophy hunters “are finishing off the wildlife before we’ve had a chance to realize a profit from it,” and that the village is “more closely allied with the photographic operators than the hunters.”<sup>158</sup> This attitude is not surprising. For a local community, a lion can bring in a single fee from a single hunter, or a lion can bring in a continuous flow of revenue from every tourist that visits to take a picture.

FWS does not study what amount of money from a trophy-hunting fee is going to local communities before granting an import permit. Moreover, FWS has not studied how much money has gone to local communities historically from these fees. Without evidence that trophy-hunting fees are going to local communities and aiding conservation of the

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<sup>150</sup> See generally Democratic Staff of the House Committee on Natural Resources, *supra* note 43, at 9-22.

<sup>151</sup> Richard Smallteacher, *Panama Papers Leak Reveals Safari Companies in Africa Use Tax Havens*, CORPWATCH (July 25, 2016), <https://corpwatch.org/article/panama-papers-leak-reveals-safari-companies-africa-use-tax-havens>.

<sup>152</sup> See IUCN, *Big Game Hunting in West Africa* (2009), <https://portals.iucn.org/library/efiles/documents/2009-074-En.pdf>, at 10.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Campbell, *supra* note 120, at 5.

<sup>156</sup> *Id.* at 6.

<sup>157</sup> *Id.* at 9.

<sup>158</sup> *Id.*

hunted species, a determination that the import of a trophy into the United States enhances the survival of the species is arbitrary.

#### **4. Trophy hunting enables and encourages poaching.**

Proponents of trophy hunting argue that the practice helps to prevent poaching.<sup>159</sup> Trophy-hunting conservation programs not only fail to prevent poaching,<sup>160</sup> they encourage it. To begin with, it is hard to blame a hungry villager who thinks that it is not wrong to kill an endangered animal for the purpose of feeding her family or protecting her livestock, when wealthy Americans are allowed to kill endangered animals for fun. Such individuals receive a mixed message about how animals should be treated, which is the result of an inequitable system that favors the wealthy.<sup>161</sup>

Legalizing the hunting of imperiled species contributes to the growth of more organized poaching as well. Because commercial trade in trophies from endangered animals is prohibited with the exception of trophy hunting, poachers sometimes pose as trophy hunters to harvest body parts, such as rhino's horns, that have great value for supposed medical or cultural reasons.<sup>162</sup> Trophy hunting can thus function as a cover for laundering illegal contraband. Indeed, "[c]riminal groups are increasingly involved" in "trade in hunting trophies from lions, polar bears, elephants, and rhinoceroses . . . [W]ildlife trafficking has become a form of transnational organized crime that resembles trafficking in human beings, drugs, and firearms."<sup>163</sup>

The foreign demand for some animal parts is substantial enough that some terrorist organizations fund their inter-human violence through poaching and selling animal parts.<sup>164</sup> In the process these groups are "looting communities, enslaving people, and killing park rangers who get in their way."<sup>165</sup> Joseph Kony, leader of the terrorist organization the Lord's Resistance Army (LRA), has been quoted saying, "I want ivory for ammunition . . . It's only the ivory that will make the LRA strong."<sup>166</sup> Al-Shabaab, a Somali branch of Al-Qaeda, reportedly receives between \$200,000 to \$600,000 per month in profits from illegal ivory trading.<sup>167</sup> In Afghanistan, the Taliban has directly completed the link between trophy

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<sup>159</sup> "[I]n Namibia . . . local communities . . . offer [trophy hunts to tourists . . . This has dramatically reduced poaching." Niki Rust, *Trophy hunting is not poaching and can help conserve wildlife*, THE CONVERSATION (Aug. 14, 2014), <https://theconversation.com/trophy-hunting-is-not-poaching-and-can-help-conserve-wildlife-29938>.

<sup>160</sup> See Democratic Staff of the House Committee on Natural Resources, *supra* note 43 at 5.

<sup>161</sup> See Part D, *infra*.

<sup>162</sup> Jordan Casamitjana and Jennifer Tsang, *Killing for Trophies: An Analysis of Global Trophy Hunting Trade*, INTERNATIONAL FUND FOR ANIMAL WELFARE (2016), [https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/IFAW\\_TrophyHuntingReport\\_US\\_v2.pdf](https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/IFAW_TrophyHuntingReport_US_v2.pdf), at 7.

<sup>163</sup> Ares, *supra* note 103, at 7 (citing European Commission, *New EU measures on import of hunting trophies to fight against illegal and unsustainable practices* (Feb. 5, 2015)).

<sup>164</sup> Bryan Christy, *How Killing Elephants Finances Terror in Africa*, NATIONAL GEOGRAPHIC (Aug. 12, 2015), <https://www.nationalgeographic.com/tracking-ivory/article.html>.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Johan Bergenas et al., *Killing Lions, Buying Bombs*, THE NEW YORK TIMES, Aug. 9, 2013, <https://www.nytimes.com/2013/08/10/opinion/killing-lions-buying-bombs.html>.

hunting and terrorism by facilitating the hunting of imperiled “houbara bustards, snow leopards, and saker falcons for wealthy Saudis and Emiratis.”<sup>168</sup>

It has been previously hypothesized that relaxing restrictions on controlled goods, such as elephant tusks and rhino horns, provides the opportunity to displace these items in the market with stringently regulated legal goods.<sup>169</sup> This idea embraces the erroneous assumption that the supply and demand of black markets is reduced by the creation of a white market for the same good.<sup>170</sup> This assumption fails to consider two important effects of legalization of controlled goods. First, the creation of a white market makes trade and smuggling of illegal goods easier, which causes the cost of illegal production to fall.<sup>171</sup> Second, this assumption fails to recognize that legalization of an otherwise banned object reduces societal stigma against the good, which can result in an increase in demand.<sup>172</sup> A study on the effect of legal trade in elephant ivory demonstrated that the creation of a white market does not displace black market trading, and instead, “the legal sale of ivory triggered an increase in black market ivory production by increasing consumer demand and/or reducing the cost of supplying black market ivory, and these effects dominated any competitive displacement [of the black market] that occurred.”<sup>173</sup>

Alternatively, full bans on trade in certain goods does help reduce demand. In 1989, attempting to halt the decline of African elephants, CITES banned all international trade in ivory.<sup>174</sup> Poaching of the animals decreased for years and many populations of elephants recovered.<sup>175</sup> However, because the poaching of elephants was not halted altogether, a one-time sale of ivory was authorized under CITES in 1999, to try and crowd out the black market via competitive displacement.<sup>176</sup> At that time, there was no system in place to collect data on how the sale would affect the black market, and poaching was essentially unmonitored.<sup>177</sup> In 2003, CITES established its program “Monitoring the Illegal Killing of Elephants” (MIKE), which largely collects data concerning the “Proportion of Illegally Killed Elephants” (PIKE).<sup>178</sup>

Believing without evidence that the 1999 sale had its intended effect of crowding out the black market in ivory, a second, one-time sale of ivory was authorized under CITES

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<sup>168</sup> Vanda Felbab-Brown, *Wildlife and Drug Trafficking, Terrorism, and Human Security*, PRISM, Vol. 7, No. 4 (Nov. 8, 2018), <https://cco.ndu.edu/News/Article/1682014/wildlife-and-drug-trafficking-terrorism-and-human-security/>.

<sup>169</sup> Solomon Hsiang and Nitin Sekar, *Does Legalization Reduce Black Market Activity? Evidence from a Global Ivory Experiment and Elephant Poaching Data*, NATIONAL BUREAU OF ECONOMIC RESEARCH (June 2016, Revised April 2019), <https://www.nber.org/papers/w22314.pdf>, at 1.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 33.

<sup>174</sup> *Id.* at 3.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 4.

<sup>178</sup> *Id.*

in 2008.<sup>179</sup> This time, with MIKE in place, the effects of the 2008 sale on trade in ivory and the poaching of elephants was tracked.<sup>180</sup> Data from the index, PIKE, indicates that after the 2008 sale there was a 66% increase in the poaching of elephants<sup>181</sup> and that ivory smuggled out of African countries “increased abruptly by roughly 71%.”<sup>182</sup>

The legal sales of elephant ivory did not reduce the demand for illicit ivory, but instead prompted increased killing of African elephants, a species protected by both federal and international law.<sup>183</sup> While the economic model used to depict the effects of legal trade of ivory on that black market is not applicable in the case of every illegal trade, the same model applies for other animals that have low populations.<sup>184</sup> Legal trade in the parts of endangered species does not enhance the propagation of a species. Instead, by masking illegal trade and reducing cultural stigma, legal trade increases demand for animal parts.<sup>185</sup> As stated concerning the poaching of jaguars in South America, “If there is demand, it will be fulfilled.”<sup>186</sup> This has one logical conclusion for those animals: extinction.

### **C. Killing for sport is unethical.**

#### **1. Trophy hunting has troubling cultural roots.**

Humans have been claiming parts of living beings as trophies since ancient times.<sup>187</sup> The English word “trophy” traces its roots to the Greek *Tropaion* which means “defeat.”<sup>188</sup> Thus, a victor claims this symbol of power and conquest from the defeated. While trophies can be analyzed through myriad lenses, in Western culture they are symbols of power, strength, and virility, which is part of “a dominant narrative of male supremacy.”<sup>189</sup> In its classic sense, a trophy is collected during war, from enemies conquered on the

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<sup>179</sup> *Id.*

<sup>180</sup> *See id.*

<sup>181</sup> *Id.* at 15.

<sup>182</sup> *Id.* at 27.

<sup>183</sup> *See* U.S. Fish & Wildlife Service, *African Elephants*, <https://www.fws.gov/international/animals/african-elephants.html> (last visited June 18, 2021).

<sup>184</sup> Hsiang and Sekar, *supra* note 169, at 34.

<sup>185</sup> *Id.* at 2.

<sup>186</sup> Rachel Nuwer, *Cross Hairs Are Trained on Jaguars*, THE NEW YORK TIMES (June 16, 2020), at D1, available at <https://www.nytimes.com/2020/06/11/science/jaguars-poaching-china.html> (quoting Vincent Nijman).

<sup>187</sup> Batavia, et al., *supra* note 41, at 3.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

battlefield.<sup>190</sup> It was not until the latter half of the nineteenth century that Americans began hunting recreationally and collecting trophies from non-human animals.<sup>191</sup>

Hunting in America before the 1850s was performed for subsistence or in order to procure raw materials from animals,<sup>192</sup> such as oil from whales for lamp fuel and soap production.<sup>193</sup> As Americans increasingly began living in cities, the concept arose that “urban life was making men effeminate, effete, overly civilized, [and] domesticated.”<sup>194</sup> To prove their masculinity, American men began hunting wild animals and claiming trophies.<sup>195</sup> Capturing this concept, Theodore Roosevelt wrote:

[A]ntlers properly have their chief value as trophies. Nothing adds more to a hall or a room than fine antlers when they have been shot by the owner, but there is always an element of the absurd in a room furnished with trophies of the chase which the owner has acquired by purchase.<sup>196</sup>

Thus by hunting recreationally and claiming trophies, American men approached hunting as a contest in which trophies were earned and not bought.<sup>197</sup> Furthermore, because those hunting for subsistence or for raw materials were not hunting recreationally, trophy hunting was also considered an activity for the upper class.<sup>198</sup> If trophy hunting is viewed as a contest to prove one’s wealth and masculinity, then he who kills the highest volume of big, elusive, and attractive animals has won the contest and can demonstrate through a display of his trophies that he is the richest and most virile. Ironically, due to modern hunting technology, roads, and hunting guides, many of the challenging physical and skill-based aspects of hunting can be eliminated with enough money.<sup>199</sup> Today, a rare trophy only proves the hunter’s wealth and misguided understanding of conservation.

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<sup>190</sup> *Id.*; see also Oxford Classical Dictionary, *Spolia Opima* (March 2016), <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-6046> (detailing the ancient Roman practice of stripping a slain enemy general of his armor if killed in single combat); see also Michael Sallah, *The Tiger Force Atrocities*, *The New York Times* (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/opinion/vietnam-tiger-force-atrocities.html>, detailing the practice of American soldiers claiming ears and scalps from slain prisoners during the Vietnam War.

<sup>191</sup> Lisa Wade, *A short history of trophy hunting in America*, THE SOCIETY PAGES (Dec. 29, 2015), <https://thesocietypages.org/socimages/2015/12/29/a-short-history-of-trophy-hunting-in-america/>.

<sup>192</sup> *Id.*

<sup>193</sup> BRITANNICA, *Whale oil* (last visited June 8, 2021), <https://www.britannica.com/technology/whale-oil>.

<sup>194</sup> Wade, *supra* note 191.

<sup>195</sup> *Id.*

<sup>196</sup> Theodore Roosevelt, *Camera Shots at Wild Animals: The Extraordinary Photographs by Mr. A. G. Wallihan of Cougars, Deer, and Other Western Game, in Their Native Habitats*, in *The World’s Work*, Vol. 3 (1902), at 1549, available at <https://books.google.com/books?id=c3zRf0IXrQ4C&pg>.

<sup>197</sup> Wade, *supra* note 191.

<sup>198</sup> *Id.*

<sup>199</sup> Casamitjana and Tsang, *supra* note 162, at 9.

## 2. Trophy hunting is the modern perpetuation of an imperialist narrative.

As is revealed through this historic lens, trophy hunting is a contest over status between humans, not between humans and animals. Considering trophy hunting in the context of Western imperialism,<sup>200</sup> we come to the disturbing realization of its role in perpetuating racist and jingoist narratives. Imperialism has been historically justified though racism.<sup>201</sup> When discussing the mass of scholarship on the link between imperialism and trophy hunting, the ecologist Chelsea Batavia notes that “modern trophy hunting reenacts a vainglorious history of colonization, wherein the hunt of wildlife symbolically represents the conquering and subjugation of ‘subhuman’ indigenous people.”<sup>202</sup>

A sociological analysis of images in fourteen prominent hunting magazines found that a “vast majority” of the pictures were of white males with their weapons prominently displayed over the corpses of the animals.<sup>203</sup> People of color or women were typically depicted in conformity with racist or sexist stereotypes and in a subordinate position to any white man in the photograph.<sup>204</sup> People of color and women were **never** shown holding a weapon if in a photograph with a white man.<sup>205</sup> This study reveals that the ideology of trophy hunting as a symbol of white male dominance has persisted into our modern time. It “has nothing to do with the culture of the countries in which it takes place.”<sup>206</sup> Instead, it is practiced by the wealthy elite from predominantly western countries.<sup>207</sup> This phenomenon is summed up by veterinarian Dr. Mark Jones, “When, often poor, local people kill endangered wild animals, we call it poaching. If caught they face fines, imprisonment, even death. When wealthy people pay tens of thousands of dollars for the privilege, it’s called trophy hunting, and they get awards.”<sup>208</sup>

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<sup>200</sup> Western imperialism is used to define a phenomenon occurring from the fifteenth through twentieth centuries, characterized by the exploration, conquest, and exploitation of earth by European nations. BRITANNICA, *Western Colonialism* (2020), <https://www.britannica.com/topic/Western-colonialism>.

<sup>201</sup> Many scholars have written on the inextricable connection between imperialism and racism. Specifically, sociologist Jan Pieterse asserts that conquest and exploitation, defining traits of imperialism, are validated and justified through embracing an ideology of an imperialist nation’s supremacy, racially and otherwise. Paul B. Rich, *Racial Ideas and the Impact of Imperialism in Europe*, THE EUROPEAN LEGACY, Vol. 3, Iss. 1 (1998), <https://www.tandfonline.com/doi/abs/10.1080/10848779808579862?journalCode=cele20>, at 31.

<sup>202</sup> Batavia, et al., *supra* note 41, at 3.

<sup>203</sup> Linda Kalof and Amy Fitzgerald, *Reading the Trophy: Exploring the Display of Dead Animals in Hunting Magazines*, VISUAL STUDIES, Vol. 18, Iss. 2 (published online June 8, 2010), at 1, <https://www.tandfonline.com/doi/abs/10.1080/14725860310001631985>.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Mark Jones, *Let’s Stop the Hunt*, WILDLIFE TIMES MAGAZINE (Autumn 2019), at 4, available at [https://issuu.com/bornfreeuk/docs/bff\\_aut\\_2019](https://issuu.com/bornfreeuk/docs/bff_aut_2019).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

### 3. Killing for pleasure is unjustifiable.

Just as law has evolved to no longer perpetuate racism and sexism, so too should it change to end the sport killing of animals on the brink of extinction. Effective policymaking requires combining science and moral values. Before a discussion of the practical feasibility of conservation programs without trophy hunting,<sup>209</sup> it is necessary to assert the immorality of killing for fun. Some hunting clubs assert their “ethical” approach to trophy hunting. Such groups condemn canned hunts, or hunts in which an animal is captive, in favor of a “fair-chase” hunt.<sup>210</sup> However, these hunters still use an abundance of modern technology and generations of study on precisely the best way to get a trophy “fairly.” The use of high-powered rifles, off-road vehicles, and a professional hunting guide hardly makes hunting difficult.

Furthermore, killing for pleasure is not justified even if the contest is “fair,” however one defines that term. This is made abundantly clear in Richard Connell’s famous short story *The Most Dangerous Game*. General Zaroff, the villain, states that “hunting had ceased to be . . . a sporting proposition . . . No animal had a chance with me . . . The animal had nothing but his legs and his instinct . . . I had to invent a new animal to hunt . . . [humans].”<sup>211</sup> Such a statement is obviously found only in the genres of horror or satire. But humans hunting humans would be the only truly “fair” contest. However, killing humans for sport is not hunting. It is murder.<sup>212</sup> The double standard concerning the target of trophy hunting is not confined to fiction. During the Vietnam War, certain elite commando units began “severing the ears of the dead [enemies] and fashioning them into necklaces”<sup>213</sup> as a symbol of their might and dominance. In the contest of warfare, undoubtedly a “fair-chase,” to collect trophies from your enemies is an atrocity that constitutes a war crime,<sup>214</sup> not sport.

However, adorning our walls, mantles, and floors with the heads, horns, and skins of non-human animals is somehow fashionable in certain circles. Some who decorate their surroundings with dead animals claim that they have done it out of an appreciation for the beauty of the animal—that they have done it so they can admire the animal’s form. But there is an obvious inconsistency in the statement “I killed it so that I could admire it.” If admiration is the intent, why not take a picture? Why not donate the money spent on a

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<sup>209</sup> For a detailed discussion of conservation programs without trophy hunting, see Part D, *infra*.

<sup>210</sup> “The Boone and Crockett Club is opposed to canned shoots because they create an artificial relationship between predator and prey. The Club upholds the moral principle that hunting is justified under the conditions of Fair Chase because of the value of the predator-prey relationship experienced when a hunter pursues game under conditions native to the animal.” Boone and Crockett Club, *B&C Position Statement – Canned Shoots*, <https://www.boone-crockett.org/bc-position-statement-canned-shoots> (last visited June 8, 2021).

<sup>211</sup> Richard Connell, *The Most Dangerous Game* (1924), at 7, available at

<https://americanliterature.com/author/richard-connell/short-story/the-most-dangerous-game>.

<sup>212</sup> *Id.* at 8.

<sup>213</sup> Sallah, *supra* note 190.

<sup>214</sup> *Id.*

trophy hunt instead directly to conservation or to a wildlife preserve? A trophy hunter hanging a lion's head on his wall is not like hanging a painting. It is more analogous to a medieval lord putting his vanquished enemy's head on a spike in front of his castle. This practice was done specifically to "enemies 'of high repute'" to "show the power of the [victorious] warrior."<sup>215</sup> It was not done out of admiration, but instead out of machismo.

Part of the psychological process for claiming trophies is the objectification of an animal; by thinking of an animal as an object, the hunter has morally disengaged from it, allowing him or herself to perform acts that would be repulsive if performed on anything but an object.<sup>216</sup> Such objectification or commodification is a method used to rationalize injustice.<sup>217</sup> Unsurprisingly, people are more likely to approve of hunting in the abstract than they are when a specific species is named.<sup>218</sup> This illustrates that people are less likely to accept the killing of any animal, no matter its conservation status, when forced to confront the reality that it is an individual and not a commodity. Although the permitting of imported animal trophies is supposedly intended to conserve endangered species, this ongoing commodification is not only failing to enhance the propagation of endangered species, but also speeding them along towards extinction.<sup>219</sup> Trophy hunters are hiding behind an invalid justification.

The International Union for Conservation of Nature (IUCN), a well-recognized name in the conservation community, has advocated for trophy hunting. Discussing trophy hunting as a conservation tool, the IUCN wrote, "where an economic value can be attached to a wild living resource, perverse incentives removed, and costs and benefits internalized, favourable conditions can be created for investment in the conservation and the sustainable use of the resource, thus reducing the risk of resource degradation, depletion, and habitat conversion."<sup>220</sup> In this study, the IUCN recommends trophy hunting as part of a conservation program to achieve the end of protecting endangered species. Putting aside for now the insurmountable practical hurdles in creating a kill-to-serve program, there are irreconcilable ethical considerations.

The IUCN discusses removing "perverse incentives" from such programs, but as the history of trophy hunting clearly illustrates, the desire to kill animals and take trophies comes out of a culture of asserting one's wealth and supremacy and is deeply intertwined with outdated and destructive racist and sexist narratives. Furthermore, the IUCN discusses "reducing the risk of resource degradation." But animals are more than just a

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<sup>215</sup> Ben Guarino, *A brief history of displaying opponents' severed heads*, THE WASHINGTON POST (Nov. 7, 2018), <https://www.washingtonpost.com/science/2018/11/07/brief-history-displaying-opponents-severed-heads/>.

<sup>216</sup> Batavia, et al., *supra* note 41, at 3.

<sup>217</sup> *Id.*

<sup>218</sup> Responsive Management, *et al.*, *supra* note 107, at 23.

<sup>219</sup> See New Regulations Are Needed, Part A, *supra*.

<sup>220</sup> International Union for the Conservation of Nature (IUCN), *IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives*, Ver. 1.0 (Aug. 2012), <https://portals.iucn.org/library/sites/library/files/documents/Rep-2012-007.pdf>, at 3.

resource and what could be more degrading than to be chased, killed, butchered, and displayed? The IUCN and other groups that support kill-to-serve programs fail to recognize animals as individuals with their own lives apart from their relationship to humanity. It is never ethically right to attach economic values to wild animals. By doing so, we perpetuate the treatment of animals as commodities for human use—the same treatment that has led to endangerment and so many extinctions in the first place.

Trophy hunting has historically played a direct role in the extinction and near extinction of many species. Before hunting was outlawed in India, tens of thousands of tigers were shot for their skins; it was a “massacre from which the species has never recovered.”<sup>221</sup> Before the 19th century, when trophy-hunting Europeans spread through Africa, rhinoceroses were abundant throughout the continent.<sup>222</sup> Both tigers and some species of rhinos are now on the brink of extinction.<sup>223</sup> These are only a handful of many similar examples.<sup>224</sup>

Tigers, rhinoceroses, elephants, polar bears, and many other trophy-hunted animals are out in the world just trying to survive. Do individual animals’ lives mean so little that our laws should permit them to be killed solely because a human wanted to shoot them and display their parts on his wall? Is the planet’s extinction crisis so unimportant that our laws should allow even animals on the brink of extinction to be killed for fun? The vast majority of Americans do not think so.

#### **4. Most people oppose trophy hunting.**

Public opinion toward trophy hunting is low. Only 29% percent of Americans approve of trophy hunting.<sup>225</sup> Studies have demonstrated that, in line with the historic origins of trophy hunting, white men are most likely to approve of hunting, while Latinos, African-Americans, and females are more likely to disapprove.<sup>226</sup> Among those who approve of some form of hunting, between 80 to 85% approve of it for the purposes of self-defense from a dangerous animal or for subsistence.<sup>227</sup> While acceptance of hunting more common animals, such as deer and waterfowl, is in the 70th percentile, only seven percent

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<sup>221</sup> Mark Jones, *The Brutal Truth*, WILDLIFE TIMES (Autumn 2019), at 17, [https://issuu.com/bornfreeuk/docs/bff\\_aut\\_2019](https://issuu.com/bornfreeuk/docs/bff_aut_2019).

<sup>222</sup> *Id.*

<sup>223</sup> CITES Secretariat, *Tiger*, UN World Wildlife Day <https://www.wildlifeday.org/content/factsheets/tiger> (last visited June 8, 2021); World Wildlife Fund, *Rhino* (2020), <https://www.worldwildlife.org/species/rhino> (last visited June 8, 2021).

<sup>224</sup> Jones, *supra* note 221, at 17.

<sup>225</sup> Responsive Management, *et al.*, *supra* note 107, at 12.

<sup>226</sup> *Id.* at 9-10.

<sup>227</sup> *Id.* at 12.

of Americans approve of hunting elephants.<sup>228</sup> This is indicative of the moral understanding that it is a greater evil to kill rare and imperiled animals.

With their citizens frustrated by federal inaction in ending this immoral policy, some states<sup>229</sup> have taken matters into their own hands and attempted to pass bans on importing trophies from Africa's "Big Five" at the state level.<sup>230</sup> But even in the states in which the bans were signed into law, the laws may not be enforced due to legal challenges from trophy-hunting organizations arguing that the ESA's exceptions clause preempts the state laws.<sup>231</sup> Specifically, the ESA contains the following provision:

Any State law or regulation which applies with respect to the importation . . . [of] endangered species or threatened species is void to the extent that it may effectively . . . (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.<sup>232</sup>

Our federal law is currently cited as a basis to force states to allow the import of carcasses of beloved and endangered wildlife, even when their elected representatives have voted against it.

Other countries have taken steps to stop their citizens from importing endangered animal parts. Primarily citing the immorality of trophy hunting, France, Australia, and the Netherlands have banned the import of trophies from certain species of animals.<sup>233</sup> The Netherlands has gone the furthest in protecting at-risk animals by banning the import of parts taken from elephants, cheetahs, lions, hippopotami, white rhinoceroses, and polar bears.<sup>234</sup> The United Kingdom undertook a process to determine whether to ban trophies and what such a policy would look like.<sup>235</sup> It now plans "to introduce the 'toughest

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<sup>228</sup> *Id.* at 23.

<sup>229</sup> States that have passed or attempted to pass legislation banning trophy imports of the "Big Five" include New Jersey, California, New York, and Connecticut. Congressional Sportsmen's Foundation, "*Big 5 Trophy Importation Bans*" (2020), <http://congressionalsportsmen.org/policies/state/big-5-trophy-importation-bans>.

<sup>230</sup> The "Big Five" is used by hunters to describe five African species considered to be particularly dangerous to hunt: African elephants, Cape buffalo, African lions, white and black rhinoceroses, and African leopards. *See id.*

<sup>231</sup> James A. Swan, *Federal Court Overturns New Jersey Trophy Import Ban*, NRA Hunters' Leadership Forum (Aug. 31, 2016), <https://www.nrahl.org/articles/2016/8/31/federal-court-overturns-new-jersey-trophy-import-ban/>.

<sup>232</sup> 16 U.S.C. § 1535(f).

<sup>233</sup> Ares, *supra* note 103, at 8.

<sup>234</sup> Government of Netherlands, *Additional Hunting Trophies Added to the Import Prohibition List* (May 2, 2016), <https://www.government.nl/latest/news/2016/05/02/additional-hunting-trophies-added-to-the-import-prohibition-list>.

<sup>235</sup> Department for Environment, Food & Rural Affairs, *Hunting Trophies: Controlling Imports to and Exports from the UK*, GOV.UK (Nov. 2, 2019; last updated May 15, 2020), <https://www.gov.uk/government/consultations/hunting-trophies-controlling-imports-to-and-exports-from-the-uk>.

legislation in the world' later this year" to ban imports of any animals listed as endangered or critically endangered by the IUCN.<sup>236</sup>

Similarly, many countries have banned trophy hunting to some extent. These include Angola, Congo, Gabon, Ghana, India, Kenya, Malawi, Mauritania, Rwanda, South Sudan, Costa Rica, Colombia, and until recently Brazil and Botswana.<sup>237</sup> These countries recognize the moral obligation that humans have to wildlife. As stated by Antonio José Lizarazo Ocampo, a Magistrate of the Constitutional Court of Colombia, "It is not constitutionally allowable to mistreat animals for the sole purpose of recreation. Animals are not things, they are beings with feelings."<sup>238</sup>

All of the governments seeking to end the killing of animals for sport recognize that trophy hunting is a regrettable vestige of a bygone era. France, Australia, the Netherlands, and the UK have already begun the process of updating their laws to reflect modern ethics and prevent their citizens from killing for fun. Eleven other countries currently prohibit the killing of their animals for sport. If the United States wishes to be a world leader, our regulations should not grant a loophole legalizing the glorification of killing endangered animals. Even if it were morally cogent to kill animals in order to save them from extinction, it is a practical impossibility.

#### **D. Banning trophy imports opens up ethical and profitable ecotourism.**

Banning the import of trophies into the United States will have a profound impact on global trade in trophies as Americans import far more animal parts than any other nationality. Between 2005-2014, Americans imported over 1.25 million animal trophies, 32,000 of which were taken from Africa's Big Five species, four of which are at risk of going extinct.<sup>239</sup>

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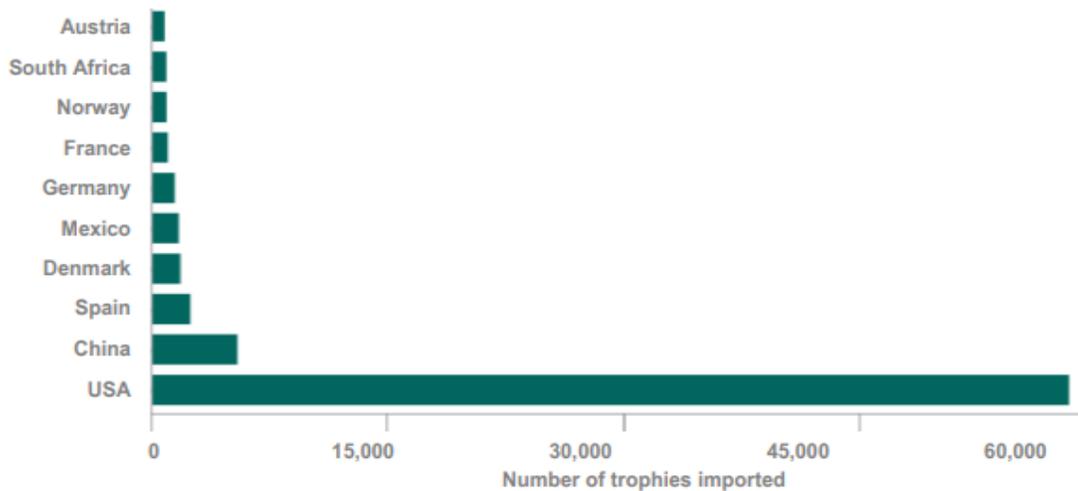
<sup>236</sup> Michael Powell and Holly Bancroft, *Hunters face a total ban on bringing big game trophies back to the UK but campaigners fear a 'blood money' exemption for those who pay for conservation*, DAILY MAIL (May 15, 2021), <https://www.dailymail.co.uk/news/article-9583299/Hunters-face-total-ban-bringing-big-game-trophies-UK.html>.

<sup>237</sup> Sheikh, *supra* note 73, at 11; Jane Dalton, *Brazil will let hunters shoot endangered jaguars, parrots and monkeys in rainforests under new law, warn conservation experts*, INDEPENDENT (Aug. 13, 2019), <https://www.independent.co.uk/news/world/americas/brazil-hunt-shoot-endangered-animals-jaguar-wildlife-rainforest-amazon-bolsonaro-a9055776.html>; Carly Day, *A Win for the Animals! Colombia Has Banned Trophy Hunting*, LADY FREETHINKER (Feb. 12, 2019), <https://ladyfreethinker.org/a-win-for-the-animals-colombia-has-banned-trophy-hunting/>; Krista Mahr, *Why Botswana Is Lifting its Ban on Elephant Trophy Hunting*, NPR (Sept. 28, 2019), <https://www.npr.org/sections/goatsandsoda/2019/09/28/763994654/why-botswana-is-lifting-its-ban-on-elephant-trophy-hunting>.

<sup>238</sup> Day, *supra* note 237.

<sup>239</sup> Humane Society, *supra* note 138 at 21.

Figure 2. Top Ten Importers of Mammal Trophies (2008-2013)<sup>240</sup>



The above graph reveals America's particular culpability for the harms inflicted by trophy hunting to animals and to other humans. But it is also a point of hope: if the United States were to ban the import of trophies from endangered animals, American trophy hunters would be deprived of the primary purpose for killing members of these species. In turn, this would lead to a dramatic decrease in the number of endangered animals killed and a decrease in all of the destructive consequences associated with trophy hunting.

Take for example the federal ban on imports of polar bear trophies. In 2008, polar bears were listed under the ESA as threatened, which triggered a provision in the Marine Mammal Protection Act mandating a prohibition on all imports of polar bear parts.<sup>241</sup> This ban did not prohibit American citizens from killing polar bears in other countries.<sup>242</sup> It only prohibited them from bringing the corpses back to the United States.<sup>243</sup> It was thought that American hunters would continue killing polar bears for fun despite the prohibition on importing a trophy.<sup>244</sup> Alternatively, some speculated that Europeans and Chinese hunters would fill the void left by Americans.<sup>245</sup> However, neither came to pass. Instead, this single-country ban decreased global demand.<sup>246</sup> In the four years following the ban, 41.7% fewer polar bears were killed by hunters.<sup>247</sup> The effect of banning all imports of endangered animals would be similarly dramatic and would result in actual conservation of these

<sup>240</sup> Figures as reported by importing country. Democratic Staff of the House Committee on Natural Resources, *supra* note 43, at 9.

<sup>241</sup> Casamitjana and Tsang, *supra* note 162, at 19.

<sup>242</sup> Wild polar bears only live in Canada, Greenland (Denmark), Norway, Russia, and the U.S. Canada is the only country that permits non-indigenous people to hunt polar bears. Sarah Morgan, *Brief Summary of the Laws Affecting Polar Bears*, Michigan State University: Animal Legal & Historical Center (2007), <https://www.animallaw.info/intro/polar-bears>.

<sup>243</sup> Casamitjana and Tsang, *supra* note 162, at 19.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

species that the United States is bound by law to protect. Furthermore, banning trophy imports will help leave space open to be used solely for more profitable and ethical ecotourism.

Proponents of trophy hunting assert a false dichotomy, in which the choice is either kill-to-serve programs or extinction.<sup>248</sup> While it is true that a loss of funding for wildlife conservation might precipitate the extinction of many species, there are, of course, alternative methods of funding conservation that do not entail the recreational killing of endangered species.<sup>249</sup> In Africa and other places where endangered species are sport-hunted, the primary draw for tourists is the abundance of wildlife in conservation areas.<sup>250</sup> These areas still provide the opportunity for wildlife viewing and photography, as well as agritourism.<sup>251</sup> Many spaces used for trophy hunting adjoin national parks, which grant endangered animals full protection; “there is clear opportunity for this [adjoining] land to be utilized for similar ecotourism purposes as the parks themselves.”<sup>252</sup>

Utilizing these spaces for ecotourism instead of hunting provides an even stronger economic motive for local communities to protect wildlife. For example, one elephant’s ivory is worth about \$21,000 on the black market, but alive and free, one elephant brings in over \$1.6 million in ecotourism opportunities.<sup>253</sup> A community’s participatory stewardship could empower local people with a more sustainable and equitable system.<sup>254</sup> Residents involved in an ecotourism business in Botswana noted that photo-safaris<sup>255</sup> were more beneficial to the local community because its residents were employed year round, instead of just during hunting season.<sup>256</sup> Instead of a consequentialist approach, ecotourism offers

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<sup>248</sup> See generally Amy Dickman, et al., *Trophy Hunting Bans Imperil Biodiversity*, SCIENCE, Vol 365, Iss. 6454 (Aug. 3, 2019),

[https://www.sciencemagazinedigital.org/sciencemagazine/30\\_august\\_2019/MobilePagedArticle.action?articleId=1515303#articleId1515303](https://www.sciencemagazinedigital.org/sciencemagazine/30_august_2019/MobilePagedArticle.action?articleId=1515303#articleId1515303). Importantly, Dr. Dickman, the lead author of the article cited above, is the director of a project that has received funding from the Dallas Safari Club and Safari Club International, trophy-hunting organizations. Mandish Pendey, *Scientists: Banning Trophy Hunting ‘Doesn’t Protect Animals’*, BBC NEWS (Aug. 30, 2019), <https://www.bbc.com/news/newsbeat-49524189>.

<sup>249</sup> Katarzyna Nowak, et al., *Trophy hunting: Bans create opening for change*, SCIENCE, Vol. 366, Iss. 6464 (Oct. 25, 2019), [https://www.researchgate.net/publication/336781814\\_Trophy\\_hunting\\_Bans\\_create\\_opening\\_for\\_change](https://www.researchgate.net/publication/336781814_Trophy_hunting_Bans_create_opening_for_change), at 434.

<sup>250</sup> Murray, *supra* note 124, at 21.

<sup>251</sup> Nowak, et al., *supra* note 249, at 434.

<sup>252</sup> Murray, *supra* note 124, at 11.

<sup>253</sup> John R. Platt, *Elephants are Worth 76 Times More Alive Than Dead: Report*, SCIENTIFIC AMERICAN (Oct. 8, 2014), <https://blogs.scientificamerican.com/extinction-countdown/elephants-are-worth-76-times-more-alive-than-dead-report/>.

<sup>254</sup> Nowak, et al., *supra* note 249, at 434.

<sup>255</sup> A photo-safari is a non-consumptive form of wildlife tourism in which tourists photograph animals and do not kill them. Mucha Mkonzo, *Trophy hunting in Africa: the case for viable, sustainable alternatives*, THE CONVERSATION (May 15, 2019), <https://theconversation.com/trophy-hunting-in-africa-the-case-for-viable-sustainable-alternatives-115649>.

<sup>256</sup> *Id.*

an integrated approach to conserving endangered species in which the animals have monetary value **and** moral standing as individuals deserving of respect and admiration.

Proponents of trophy hunting argue that it contributes to conservation by generating an incentive for landowners to protect wildlife on their land, increasing tolerance for living with wildlife, generating revenue for wildlife protection, and reducing illegal killing.<sup>257</sup> The data demonstrates that in each of these instances, trophy hunting is either an inferior method for conservation, or worse, functions as another factor pushing endangered species toward extinction. Trophy hunting only masquerades as a conservation tool while negatively impacting imperiled animals. There are more ethical methods for wildlife conservation than trophy hunting. Ecotourism programs are economically superior and specifically designed for the purpose of conservation.

### **PETITION FOR RULEMAKING**

For all of the reasons discussed above, Friends of Animals requests that FWS immediately amend its regulations governing the importation of trophies from threatened and endangered animals. Such amendments are in accord with contemporary ethics, ecology, and economics, and serve the public interest in the conservation of imperiled animals.

As this petition demonstrates, it is critical that FWS amend its regulations in order to modernize its policies concerning imperiled animals. Friends of Animals requests the following amendments to 50 C.F.R. § 17.22 and 50 C.F.R. § 17.32 and the following amendments to several provisions of 50 C.F.R. § 17.40 (additions marked in red; deletions noted in strikethrough):

#### **50 C.F.R. § 17.22**

##### **Permits for Scientific Purposes, enhancement of Propagation or Survival, or for Incidental Taking**

**(a)(2)** Issuance criteria. Upon receiving an application in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21 of this subchapter, the following factors:

- (i)** Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit. **Importing a trophy is not an adequate purpose to justify removing wildlife;**

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<sup>257</sup> Ares, *supra* note 103, at 6.

## 50 C.F.R. § 17.32

### Permits - - general

**(a)(2)** Issuance criteria. Upon receiving an application in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 17.32(b) of this subchapter, the following factors:

- (i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit. **Importing a trophy is not an adequate purpose to justify removing wildlife;**

## 50 C.F.R. § 17.40

**(e)** African elephant (*Loxodonta africana*) . . . .

### **(6) Sport-hunted trophies.**

**(i)** African elephant sport-hunted trophies may **not** 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;~~

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

~~**(D)** The requirements in 50 CFR parts 13, 14, and 23 have been met; and~~

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

~~**(ii)** It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.~~

~~**(iii)** Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (e)(7), (e)(8), and (e)(9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported~~

from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

**(f)** Leopard (*Panthera pardus*) (1) Except as noted in paragraph (f)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part shall apply to the leopard populations occurring in southern Africa to the south of a line running along the borders of the following countries: Gabon/Rio Muni; Gabon/Cameroon; Congo/Cameroon; Congo/Central African Republic; Zaire/Central African Republic; Zaire/Sudan; Uganda/Sudan; Kenya/Sudan; Kenya/Ethiopia; Kenya/Somalia.

~~**(2)** A sport-hunted leopard trophy legally taken after the effective date of this rulemaking, from the area south of the line delineated above, may be imported into the United States 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.~~

**(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

~~**(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.~~

**(n)** Straight-horned markhor (*Capra falconeri megaceros*).

**(1) General requirements.** Except as noted in paragraph (n)(2) of this section, all prohibitions of § 17.31 and exemptions of § 17.32 apply to this subspecies.

~~**(2) What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32?** The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation, without a threatened species permit issued under § 17.32, of personal~~

~~sport hunted straight horned markhor from an established conservation program that meets the following criteria:~~

~~(i) The markhor was taken legally from the established program after the date of the FEDERAL REGISTER notice;~~

~~(ii) The applicable provisions of 50 CFR parts 13, 14, 17, and 23 have been met; and~~

~~(iii) The Director has received the following information regarding the established conservation program for straight horned markhor:~~

~~(A) Populations of straight horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing.~~

~~(B) Regulatory authorities have the capacity to obtain sound data on populations.~~

~~(C) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.~~

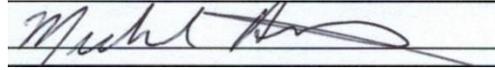
~~(D) Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.~~

~~(E) Regulatory authorities can determine that the sport hunted trophies have in fact been legally taken from the populations under an established conservation program.~~

## CONCLUSION

Recognizing the likelihood of extinction for many species across the planet, the United States signed onto CITES and enacted the ESA. But for nearly fifty years, our country's legal protections of imperiled animals have been incomplete. Trophy hunting is morally unredeemable, failing as a source of funding to support conservation, and severely damaging hunted animal populations and the ecosystems of which they are a part. The United States has permitted the import of spoils from the purposeless killing of animals facing extinction for too long. FWS should recognize that trophy hunting is unethical and that its destructive results do not "enhance the propagation or the survival of a species." FWS should amend its regulations to ban the import of trophies taken from threatened and endangered species.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Harris", is written over two horizontal lines.

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