

**NOTICE OF PETITION FOR RULEMAKING**

**RULEMAKING PETITION TO BAN THE DOMESTIC CAPTIVE TROPHY HUNTING OF  
ENDANGERED AND THREATENED SPECIES**



**Petitioner:**

Friends of Animals  
Wildlife Law Program  
7500 E. Arapahoe Road, Suite 385  
Centennial, CO 80112



## **NOTICE OF PETITION FOR RULEMAKING**

March 16, 2022

*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  
Director, U.S. Fish and Wildlife Service  
1849 C Street, N.W.  
Washington, DC 20240

**Re: Request to Initiate Rulemaking to Ban the Domestic Captive Trophy Hunting of Threatened and Endangered Species**

Dear Secretary Haaland and 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 captive trophy hunting of threatened and endangered species in the United States. This proposal is 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 under the Endangered Species Act for captive-bred wildlife. Friends of Animals requests that FWS make the following amendments to 50 C.F.R. § 17.21 (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. § 17.21**  
**Prohibitions**

**(g)** Captive-bred wildlife.

**(1)** Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided either that the wildlife is of a taxon listed in paragraph (g)(6) of this section, or that the following conditions are met:

**(ii)** The purpose of such activity is to enhance the propagation or survival of the affected species. **Killing endangered or threatened species for a fee or other valuable consideration or for recreation on a U.S. shooting preserve or any other controlled hunting facility is not an adequate purpose;**

**(3)** Upon receipt of a complete application for registration, or the renewal or amendment of an existing registration, under this section, the Service will publish notice of the application in the Federal Register. Each notice will invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. All information received as part of each application will be made available to the public, upon request, as a matter of public record at every stage of the proceeding, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

**(i)** At the completion of this comment period, the Director will decide whether to approve the registration. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. **The Director will not consider any applicant seeking to allow the killing of endangered or threatened species for a fee or other valuable consideration or for recreation on a shooting preserve or any other controlled hunting facility.** Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section.

~~(h) U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle. Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:~~

~~(1) The purpose of such activity is associated with the management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;~~

~~(2) The specimen was captive-bred, in accordance with § 17.3, within the United States;~~

~~(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies;~~

~~(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity;~~

~~(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;~~

~~(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the documentation required under paragraph (h)(5) of this section; and~~

~~(7) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.~~

~~(8) The sport hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.~~

### **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.

Friends of Animals' members and staff have been actively involved in conservation for more than twenty years, including protecting species under the Endangered Species Act (ESA). Friends of Animals has filed multiple lawsuits to prevent and limit the trophy hunting of vulnerable species. Friends of Animals has also been actively involved in the fight against the scourge of domestic captive trophy hunting of threatened and endangered species. Friends of Animals challenged a regulation that exempted three species of antelope from permitting requirements under the ESA, and in 2009 a federal court ruled in Friends of Animals' favor. In 2012, Friends of Animals' President was interviewed on *60 Minutes* to discuss the domestic captive trophy hunting of these species.

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. The reports and studies cited in the Basis of Support are included in the enclosed flash drive along with a PDF of this Petition.

Respectfully submitted,

*/s/ Stephen R. Hernick*

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**Basis of Support for Adoption of Proposed Amendment to Ban Domestic Captive  
Trophy Hunting of Endangered and Threatened Species**

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## Introduction

While trophy hunting ranches continue to profit off the killing of threatened and endangered species, the United States Fish & Wildlife Service (“FWS”) allows this market to exist and grow. The first trophy hunting ranches began as a breeding grounds for surplus zoo animals, where ranch owners enjoyed owning and showing off their exotic species. But then, the idea was raised that, like cattle, exotic animals could be bred and sold—but at a much heftier price than ordinary livestock. Thus, today we have the modern trophy hunting ranch, a facility that allows customers to pay to kill not only exotic animals, but over a dozen different species listed as threatened and endangered as well.<sup>3</sup> It is estimated there are over 1,000 trophy hunting ranches in the U.S.,<sup>4</sup> with hundreds of thousands, and potentially more than a million, of exotic animals in Texas alone.<sup>5</sup> Thousands of these exotic animals held on captive hunting ranches are threatened and endangered species.

Congress enacted the Endangered Species Act (“ESA”) after realizing human activity was depleting populations of certain species of plants and animals into near or permanent extinction.<sup>6</sup> The ESA recognizes that these species “are of esthetic, ecological, educational, historical, recreational, and scientific value.”<sup>7</sup> Its purpose does not end with preventing extinction, but recovering species to the point where the ESA’s protections are no longer needed at all.<sup>8</sup> Though the ESA is considered “the strongest and most effective tool we have to repair the environmental harm that is causing a species to decline,”<sup>9</sup> it has a nonsensical loophole: it permits the killing of threatened and endangered species on U.S. hunting ranches. Contrary to the requirements of the ESA, killing imperiled species on these ranches does not actually enhance the propagation or survival of these species; there are no plans of returning them to their natural homes and little of the profits from the killings are contributed toward anything resembling conservation. Even if these ranches did enhance survival, breeding individual imperiled species to kill them is unethical and antithetical to the ESA. Captive hunting in general is extremely problematic, affecting the biology and behavior of animals and is a particularly perverse form of hunting. Furthermore, these ranches glorify the hunting of rare animals, reducing the stigma of killing protected species. If the goal of the ESA is to protect imperiled species, our

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<sup>3</sup> Some imperiled species found on ranches include the scimitar-horned oryx, addax, dama gazelle, markhor, Arabian oryx, Pere David’s deer, Eld’s deer, barasingha, lechwe, urial, and the bongo. The Humane Society of the United States, *Captive hunts fact sheet*, <https://www.humanesociety.org/resources/captive-hunts-fact-sheet> (last visited Mar. 3, 2022).

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

<sup>5</sup> “Because the industry is largely unregulated, there is no official census of exotic animals in Texas.” Manny Fernandez, *Blood and Beauty on a Texas Exotic-Game Ranch*, NY Times (Oct. 19, 2017) <https://www.nytimes.com/2017/10/19/us/exotic-hunting-texas-ranch.html>.

<sup>6</sup> 16 U.S.C. § 1531(1)-(2).

<sup>7</sup> *Id.* § 1531(3).

<sup>8</sup> *Id.* § 1532(3) (defining “conservation” as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary”).

<sup>9</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/> (last visited Mar. 10, 2022).



regulations should not allow the killing of them on U.S. hunting ranches. Because there is no evidence that trophy hunting ranches enhance the propagation of endangered or threatened species when FWS permits these animals to be hunted, we petition FWS to amend its regulations to prohibit the take of imperiled species at these facilities.

## **Legal Background**

### **A. The Endangered Species Act**

Congress enacted the ESA in 1973 to provide federal protection for imperiled species.<sup>10</sup> Federal protection was necessary because “various species of fish, wildlife, and plants in the United States ha[d] been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation” and “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.”<sup>11</sup> The purposes of the ESA are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.”<sup>12</sup>

The ESA functions by “listing” certain imperiled species as threatened or endangered and giving them federal protection from further harm.<sup>13</sup> The term “endangered species” means “any species which is in danger of extinction throughout all or a significant portion of its range . . . .”<sup>14</sup> The term “threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>15</sup> A species is threatened or endangered based on a decrease in its population or habitat destruction due to one or more of five listing factors, including “the present or threatened destruction, modification, or curtailment of its habitat or range[,] . . . overutilization for commercial [and] recreational purposes[,] . . . or predation.”<sup>16</sup> The ESA generally prohibits taking endangered and threatened species within the United States.<sup>17</sup> The ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”<sup>18</sup> The ESA also prohibits many commercial activities<sup>19</sup> with respect to endangered and threatened species.

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<sup>10</sup> 16 U.S.C. § 1531(b).

<sup>11</sup> *Id.* §§ 1531(a)(1), (a)(3).

<sup>12</sup> *Id.* § 1531(b).

<sup>13</sup> “Listing” refers to the legal determination that a species is endangered or threatened. 16 U.S.C. § 1533(a)(2)(A)(i).

<sup>14</sup> 16 U.S.C. § 1532(6).

<sup>15</sup> *Id.* § 1532(20).

<sup>16</sup> *Id.* § 1533(a)(1)(A)-(E) (outlining the five listing factors).

<sup>17</sup> *Id.* §§ 1538(a)(1)(B)-(C), (a)(1)(G); 50 C.F.R. §§ 17.31(a), 17.21 (although the statute does not prohibit taking and commercial activities with respect to threatened species, the regulations extend all prohibitions on take and commercial activities to threatened species except when the agency issues a special rule for a particular species pursuant to Section 4(d)).

<sup>18</sup> 16 U.S.C. § 1532(19).

<sup>19</sup> The term “commercial activity” means “all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.” *Id.* § 1532(2).

Specifically, the ESA makes it unlawful to “deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species,” and “sell or offer for sale in interstate or foreign commerce any such species.”<sup>20</sup>

## **B. Enhancement of survival permits**

FWS is in charge of administering the ESA for all terrestrial and freshwater species, including making protective regulations that promote conservation and distributing permits.<sup>21</sup> The ESA contains an exception that allows FWS to grant permits authorizing prohibited activities such as take if FWS determines that the activity is “for scientific purposes or to **enhance the propagation or survival of the affected species.**”<sup>22</sup> Subsections 10(c) and (d) of the ESA require FWS to go through the notice and comment process for any application permit and mandates that FWS only grant such permits if it finds that the permit or exception: (1) was “applied for in good faith”; (2) “will not operate to the disadvantage of such endangered species”; and (3) “will be consistent with the purposes and policy” of the ESA.<sup>23</sup> Congress intended these requirements to “limit substantially” the number of exemptions that may be granted.<sup>24</sup>

With its delegated authority, FWS established the Captive-Bred Wildlife (“CBW”) permitting program, which allows individuals to sell and cull captive-bred wildlife.<sup>25</sup> Under the CBW regulations, a person may “take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided . . . that . . . [t]he purpose of such activity is to enhance the propagation or survival of the affected species.”<sup>26</sup> A CBW registration requires FWS to find that such registration “will not operate to the disadvantage of the species.”<sup>27</sup> Ranches can allow commercial hunting of exotic endangered or threatened species deemed to be “excess” on their premises if they obtain a CBW registration permit (Form 3-200-41) and a take (cull/lethal harvest) of a live animal under a valid CBW permit (Form 3-200-37c) (“take permit”).<sup>28</sup>

The CBW registration is good for five years and allows the registrant to buy and sell non-native endangered or threatened species that were born in the United States.<sup>29</sup> It also

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<sup>20</sup> *Id.* § 1538(a)(1)(E)-(F); 50 C.F.R. § 17.21(d)-(f).

<sup>21</sup> 16 U.S.C. § 1532(15); 50 C.F.R. §§ 1.2, 1.8.

<sup>22</sup> 16 U.S.C. § 1539 (a)(1)(A) (emphasis added); *see also* 50 C.F.R. §§ 17.22, 17.32.

<sup>23</sup> 16 U.S.C. § 1539(c)-(d).

<sup>24</sup> H.R. Rep. No. 93-412 p. 156 (1973).

<sup>25</sup> Decl. of Timothy J. Van Norman ¶ 3, *Safari Club Int'l v. Salazar*, 852 F. Supp. 2d 102 (D.D.C. 2012) (Nos. 11-cv-01564 (BAH), 12-cv-00194 (BAH), 12-cv-00340 (BAH)) (hereinafter “Van Norman Decl.”).

<sup>26</sup> 50 C.F.R. § 17.21(g)(1)(ii).

<sup>27</sup> *Id.* § 17.21(g)(3)(ii).

<sup>28</sup> Van Norman Decl. ¶¶ 3-5.

<sup>29</sup> *Id.* ¶ 3; U.S. Fish & Wildlife Service, *Endangered Species Permits: Frequently Asked Questions*, available at: <https://www.fws.gov/node/267045> (last visited Mar. 4, 2022); U.S. Fish & Wildlife Service, *3-200-41: Captive-Bred Wildlife Registration (CBW) (U.S. Endangered Species Act)*, <https://www.fws.gov/service/3-200-41-captive-bred-wildlife-registration-cbwus-endangered-species-act> (last visited Mar. 4, 2022); U.S.

allows a registrant or its employees to cull animals in its herd to if required to maintain a healthy herd.<sup>30</sup> CBW registrants must submit a CBW annual report to FWS (Form 3-200-41a).<sup>31</sup> The CBW take permit is good for one year and allows outside hunters to visit a ranch and lethally take excess exotic endangered or threatened species on the ranch.<sup>32</sup> During the take permit application process, applicants must identify the number of animals likely to be killed over a one-year period.<sup>33</sup> If approved, FWS issues a single permit authorizing the killing of a certain number of animals for one year.<sup>34</sup> The ESA does not allow FWS to issue blanket take permits; rather, FWS can only issue take permits pursuant to specific enhancement exceptions under the ESA.

Regulations of three endangered antelope, U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle are more relaxed, allowing take of these species even without a CBW registration and take permit. In 2005, FWS published a regulation allowing otherwise prohibited activities with the three antelope including “take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce.”<sup>35</sup> Friends of Animals filed a lawsuit challenging the promulgation of this regulation.<sup>36</sup> In 2009, the D.C. District Court found that the rule violated the ESA by failing to provide the public an opportunity to comment on takings of ESA-listed species and remanded the rule to FWS for action consistent with its opinion.<sup>37</sup> In 2012, to comply with the court’s order, FWS removed the exclusion for the three antelope species. This change required individuals to obtain a CBW registration and take permit before conducting otherwise prohibited activities with respect to the three antelope species.<sup>38</sup> Prominent trophy hunting groups Safari Club International and Exotic Wildlife Association challenged this action in federal court and lost at both the preliminary injunction and summary judgment stage.<sup>39</sup> However, in 2014, the Consolidated Appropriations Act of 2014 was enacted with a provision

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Department of the Interior, *FWS Form 3-200-41* (Rev. Jan. 2020), [https://www.fws.gov/sites/default/files/documents/3-200-41\\_captive\\_bred\\_wildlife\\_registration\\_v3%28508%29.pdf](https://www.fws.gov/sites/default/files/documents/3-200-41_captive_bred_wildlife_registration_v3%28508%29.pdf) (last visited Mar. 4, 2022).

<sup>30</sup> Van Norman Decl. ¶ 3.

<sup>31</sup> *Id.* ¶ 4; U.S. Department of the Interior, *Form 3-200-41a* (Rev. Jan. 2020) [https://www.fws.gov/sites/default/files/documents/3-200-41A%20Captive-bred\\_Wildlife\\_Registration\\_Annual\\_Report\\_v2%28508%29.pdf](https://www.fws.gov/sites/default/files/documents/3-200-41A%20Captive-bred_Wildlife_Registration_Annual_Report_v2%28508%29.pdf) (last visited Mar. 4, 2022).

<sup>32</sup> Van Norman Decl. ¶ 5; U.S. Fish & Wildlife Service, *3-200-37c: Take (cull/lethal harvest) of a live animal under a valid CBW*, <https://www.fws.gov/service/3-200-37c-take-cullethal-harvest-live-animal-under-valid-cbw> (last visited Mar. 4, 2022); U.S. Department of the Interior, *FWS Form 3-200-37c* (Rev. Jan. 2020), [https://www.fws.gov/sites/default/files/documents/3-200-37c\\_ESA\\_take\\_cull\\_of\\_live\\_animal\\_under\\_valid\\_CBW\\_v3%28508%29.pdf](https://www.fws.gov/sites/default/files/documents/3-200-37c_ESA_take_cull_of_live_animal_under_valid_CBW_v3%28508%29.pdf) (last visited Mar. 4, 2022).

<sup>33</sup> Van Norman Decl. ¶ 5; Form 3-200-37c at 3.

<sup>34</sup> Van Norman Decl. ¶ 5.

<sup>35</sup> 50 C.F.R. § 17.21(h).

<sup>36</sup> See *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 105 (D.D.C. 2009).

<sup>37</sup> *Id.* at 120.

<sup>38</sup> Endangered and Threatened Wildlife and Plants; Removal of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions, 77. Fed. Reg. 431 (Jan. 5, 2012) (“Amend § 17.21 by removing paragraph (h).”).

<sup>39</sup> See *Safari Club Int’l v. Salazar*, 852 F. Supp. 2d 102 (D.D.C. 2012); *Safari Club Int’l v. Jewell*, 960 F. Supp. 2d 17 (D.D.C. 2013).

directing the Secretary to reissue the original exclusion, and the exemption for the three antelope species is still in place today.<sup>40</sup>

Despite Congress's unambiguous intent and explicit instruction to conserve imperiled species, FWS continues to issue permits to captive hunting facilities for the killing of endangered species. Yet, this kind of hunting is essentially described in the ESA's explanation of circumstances that lead to the extinction of a species: "overutilization for commercial [and] recreational purposes . . . or predation."<sup>41</sup> This is even more serious for the three antelope species, for which a CBW registration and take permit are not even required. FWS has sole responsibility to grant such permits to trophy hunting ranches and it has the sole authority to stop the sport killing of protected species on trophy hunting ranches. Allowing individuals to legally kill endangered species, for profit or recreation, does not enhance the survival of these species and is contrary to the purpose of the ESA. Therefore, FWS should cease permitting the take of imperiled species on these ranches.

### **New Regulations are Needed**

#### **A. The legislative history of the ESA and its implementing regulations did not contemplate captive trophy hunting of protected species.**

When Congress amended the ESA to include the propagation and survival exception to the prohibition on taking endangered species, it did not contemplate the commercial killing of endangered species on hunting ranches. Instead, this exception was originally intended to "prevent serious and otherwise unavoidable **threats to human health or the environment**."<sup>42</sup> Wildlife biologists recommended allowing take of imperiled species because it may sometimes be necessary "where a species is **destroying its habitat** or where the species is **diseased**."<sup>43</sup> Yet, one large pro-trophy hunting organization has explicitly stated these animals are "harmless" to the environment,<sup>44</sup> and ranch owners often brag about the health of their herds and the species' longevity in ranch environments. Further, Congress found that activities that encourage propagation or survival may take place in captivity only if they are found "to provide the most practicable and realistic opportunity to encourage the development of the species concerned" and only "in extraordinary circumstances" the activities may "include the power to cull excess members of a species where the carrying capacity of its environment is in danger of being overwhelmed."<sup>45</sup>

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<sup>40</sup> Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, div. G, tit. I, § 127, 128 Stat. 5, 315-16 (2014); Reinstatement of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle from Certain Prohibitions ("Reinstatement Rule"), [79 Fed. Reg. 15,250, 15,250 \(Mar. 19, 2014\)](#) (codified at 50 C.F.R. § 17.21(h)).

<sup>41</sup> See generally 16 U.S.C. § 1533(a)(1)(A)-(E).

<sup>42</sup> Senate Consideration and Passage of S. 1983, With Amendments, 358 (July 24, 1973) (emphasis added).

<sup>43</sup> *Id.* at 396 (emphasis added).

<sup>44</sup> Carly Brasseur, *90 Facts About Exotic Hoofstock and Conservation*, Exotic Wildlife Ass'n (June 11, 2019) <https://myewa.org/90-facts-exotic-hoofstock-conservation/> (last visited Mar. 7, 2022).

<sup>45</sup> H.R. Rep. 93-412 at 156 (1973).

When FWS promulgated a regulation for captive, self-sustaining populations, FWS found that holding surplus pools of ESA-listed species would enhance the survival of the species in the wild because the animals would be held “in reserve for future incorporation into a scientific or propagation program.”<sup>46</sup> The idea of surplus pools was established when the primary holders of exotic ESA-listed species were zoos, many of which participated in the International Species Inventory System, a tool that provided information needed to effectively manage captive populations, especially with regard to avoiding inbreeding and relocating surplus stock.<sup>47</sup> In discussing the importance of captive-bred wildlife, FWS found captive populations can benefit wild populations by: “(1) Increasing the likelihood that captive breeding populations will be established as a source of known genetic stock to bolster or reestablish populations in the wild; (2) Reducing the need to take stock from the wild for scientific or other purposes; and (3) Providing opportunities for research that can lead to improved management of wild populations.”<sup>48</sup>

FWS amended the definition of “enhance the propagation or survival” of wildlife in captivity to “include a wide range of normal animal husbandry practices needed to maintain self-sustaining and genetically viable populations of wildlife in captivity,” including culling and euthanasia.<sup>49</sup> The hunting of random healthy animals that happens at trophy hunting ranches today, however, does not fall into the definition of culling or euthanasia. FWS stated that culling “was intended to mean the removal (including by destruction) of animals with genetic defects, animals that are overrepresented in the gene pool so that further use in a breeding program would result in inbreeding, or animals otherwise unsuitable for breeding.”<sup>50</sup> Further, euthanasia “was intended to denote the true mercy killing of old or incurably ill or injured animals.”<sup>51</sup> Indeed, FWS specifically stated that euthanasia does not include the alleged “quick and painless” destruction of healthy animals for merely any reason.<sup>52</sup>

FWS stated that it “considers the purpose of the [ESA] to be best served by conserving species **in the wild** along with their ecosystems. Populations of species in captivity are, in large degree, removed from their natural ecosystems and have a role in survival of the species only to the extent that they maintain genetic integrity and offer the potential of restocking natural ecosystems where the species has become depleted or no longer occurs.”<sup>53</sup> FWS proposed “to restrict CBW registrations to those entities that participate in an organized breeding program.”<sup>54</sup> However, after public pressure, FWS

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<sup>46</sup> Proposal To Determine Captive Self-Sustaining Population for: 3 Large Cats, 2 Primates, 7 Pheasants, 3 Waterfowl and 1 Quail; and To Define Endangered Species Permits for “Enhancement or the Survival of the Species,” 41 Fed. Reg. 18,618, 18,622 (1976).

<sup>47</sup> Captive Wildlife Regulation, 44 Fed. Reg. 54,002, 54,004 (Sept. 17, 1979).

<sup>48</sup> Captive Wildlife Regulation, 44 Fed. Reg. 30,044, 30,044-45 (May 23, 1979).

<sup>49</sup> Captive-bred Wildlife Regulation, 57 Fed. Reg. 548, 549 (Jan. 7, 1992).

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

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

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

<sup>53</sup> Captive-Bred Wildlife Regulation, 58 Fed. Reg. 32,632, 32,633 (June 11, 1993).

<sup>54</sup> Captive-bred Wildlife Regulation, 63 Fed. Reg. 48,634, 48,637 (Sept. 11, 1998).

deleted that requirement from the final rule because it would burden FWS and the public and likely give rise to frequent appeals and litigation.<sup>55</sup>

In developing the CBW program, FWS explained it believes “a wide range of activities involved in maintenance and propagation of captive wildlife should readily be permitted when wild populations are sufficiently protected from unauthorized taking, and when it can be shown that such activities would not be detrimental to the survival” of the species.<sup>56</sup> CBW registration must only be permitted if the purpose of the requested activity is to enhance propagation or survival and can only be granted to those “who engage in **beneficial** captive breeding.”<sup>57</sup>

“Enhance the propagation or survival,” when used in reference to captive wildlife, includes “[p]rovision of health care, management of populations by culling, contraception, euthanasia, grouping or handling of wildlife to control survivorship and reproduction, **and similar normal practices of animal husbandry** needed to maintain captive populations that are self-sustaining and that possess as much genetic vitality as possible.”<sup>58</sup> When FWS issued the enhancement definition, it clarified its intent to lessen the burdens on captive propagation facilities only “when routine practices of animal husbandry are involved.”<sup>59</sup> While the regulations include culling as a permissible enhancement activity, they only allow culling that qualifies as a “normal practice of animal husbandry.”<sup>60</sup> FWS originally intended to limited CBW permits in these ways because it was concerned “[c]aptive-bred animals . . . might be used for purposes that do not contribute to conservation, such as for pets, research that does not benefit the species, or **for entertainment**.”<sup>61</sup> While captive trophy hunts arguably qualify as providing entertainment to hunters, they in no way qualify as a “normal practice of animal husbandry.”<sup>62</sup>

Shooting endangered species for profit and pleasure is not what Congress had in mind when adding the enhancement exception. The purpose of the ESA, and the only justification for keeping imperiled species on these ranches, is reintroducing them into the wild without any lasting need for ESA protection.<sup>63</sup> Since the beginning, hunting ranches have failed to achieve this, and the time has come for FWS to stop enabling a practice that is antithetical to the ESA.

## **B. Trophy hunting ranches do not contribute to reintroduction efforts.**

Without any real possibility of reintroduction, FWS is unlawfully granting enhancement permits that are inconsistent with the purposes and policy of the ESA. As stated previously, the main purpose of the ESA is to conserve endangered and threatened

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

<sup>56</sup> Captive Wildlife Regulation, 44 Fed. Reg. 30,044, 30,047 (May 23, 1979); 50 C.F.R. § 17.3.

<sup>57</sup> Captive-bred Wildlife Regulation, 58 Fed. Reg. 68,323, 68,325 (Dec. 27, 1993) (emphasis added).

<sup>58</sup> 50 C.F.R. § 17.3 (emphasis added).

<sup>59</sup> Captive Wildlife Regulation, 44 Fed. Reg. at 30,046.

<sup>60</sup> 50 C.F.R. § 17.3.

<sup>61</sup> Captive-bred Wildlife Regulation, 57 Fed. Reg. 548, 550 (Jan. 7, 1992) (emphasis added).

<sup>62</sup> 50 C.F.R. § 17.3; 44 Fed. Reg. at 30,046.

<sup>63</sup> See section (B) below.

species.<sup>64</sup> The ESA defines “conserve” as “to use . . . all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.”<sup>65</sup> The measures of the ESA are necessary when a species is endangered or threatened due to the five listing factors.<sup>66</sup> The term “endangered species” means “any species which is in danger of extinction throughout all or a significant portion **of its range** . . .”<sup>67</sup> Since the animals subject to the ESA on these hunting ranches are from foreign countries, their “ranges” are within those foreign countries. Thus, in order for permits to be consistent with the purposes and policy of the ESA, the permit must either mitigate the listing factors or enhance the survival of the species in their actual ranges in foreign countries. The killing for sport of these listed species on U.S. hunting ranches cannot mitigate the destruction of the species’ habitat or the overutilization of the species. Accordingly, the only way the hunting ranches can actually bring the endangered species to a point where ESA listing is no longer needed is to reintroduce the species to their ranges in foreign countries.

**1. Under the current scheme, there are no actual requirements or plans to reintroduce imperiled species.**

While FWS’s authority is limited with regards to endangered species in foreign countries, the same cannot be said of species on U.S. soil. The ESA gives authority to FWS to grant enhancement permits under Section 10(a), meaning FWS has complete authority, as well as a duty, to protect imperiled species on U.S. hunting ranches. In other words, these ranches would not be able to allow the killing of imperiled species<sup>68</sup> but for FWS granting these permits.

FWS continues to grant permits without any guidelines for the necessary numbers of ranches, populations, or species. None of the rules, the current CBW registration application, and the CBW take permit application contain any language establishing real criteria for how hunting ranches are to handle species’ reintroductions. There are no specifications for when a species can or must be reintroduced into the wild or how many of each are necessary for reintroduction. And even though the CBW take permit application states its function is “for the take (culling) of excess exotic endangered or threatened species,” there is no other language defining what “excess” means or how FWS can make sure that the animals killed by hunting ranches are “excess.”<sup>69</sup> Instead, the application allows the rancher to unilaterally determine the “[n]umber of animals per species [they] anticipate culling per year.”<sup>70</sup> Because FWS has not established any specific criteria to ensure ranches make reintroduction efforts, it is failing to do its job under the ESA. One

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<sup>64</sup> 16 U.S.C. § 1531(b).

<sup>65</sup> *Id.* § 1532(3).

<sup>66</sup> The five listing factors are “(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.” 16 U.S.C. § 1533(a)(1)(A)-(D).

<sup>67</sup> *Id.* § 1532(6) (emphasis added).

<sup>68</sup> For the three antelope species, FWS would also have to amend its regulations.

<sup>69</sup> U.S. Department of the Interior, FWS Form 3-200-37c (Rev. Jan. 2020).

<sup>70</sup> *Id.*

Texas ranch owner told a popular news outlet he could not give any specific details about ranches because “there is no official overview of the industry. It’s almost entirely privately-run, with some permitting required by the Texas Parks and Wildlife Department, as well as the Fish and Wildlife Service.”<sup>71</sup> This is an alarming statement when federally protected species live on these ranches only with the approval of FWS.

This lack of meaningful guidance effectively grants hunting ranches the sole discretion to breed species for as long as they want while the owners profit from breeding them sufficiently so that they can sell the rights to hunt them. The ranches have no incentives to help reintroduce species and face no consequences should they fail to do so. In fact, hunting ranches have every incentive not to reintroduce animals to the wild because they would be losing a source of profit by doing so.<sup>72</sup> They also have every incentive to purposefully overbreed animals to create “excess” animals to profit from hunting.

Many ranch owners vigorously fought against the 2011 proposed rule<sup>73</sup> to require permitting for the three antelope species. For example, a ranch owner with 18 oryx commented that if permitting were required, the animals “will simply have to be shot. No one in their right mind would go through the expense o[f] raising them simply to raise them. They simply will no longer exist.”<sup>74</sup> Another ranch owner commented, “[i]f there is no profit, I promise I will no longer feed or care for them. What happens to them then? They will perish.”<sup>75</sup> Because profit is such a powerful driving force for them, many owners would rather **kill their existing antelope** rather than follow a simple, very low burden permitting process,<sup>76</sup> let alone contemplate plans for reintroduction.

Some proponents of hunting ranches argue that maintaining “source populations” justifies keeping and killing imperiled species on ranches because even if they go extinct in the wild, there will be back-up populations on ranches. If this was the primary purpose, it stands to reason that FWS and the hunting ranches would work together to determine the ideal backup population size for each species and the breeding requirements needed to maintain genetic integrity. But that is not what is happening.

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<sup>71</sup> Ines Novacic, “Bred simply to be shot”: Inside America’s exotic hunting industry, CBS News (June 9, 2019), <https://www.cbsnews.com/news/exotic-hunting-business-trophy-hunting-cbsn-originals/> (last visited Mar. 7, 2022).

<sup>72</sup> See section (B)(2) below for further analysis.

<sup>73</sup> Before enacting the final rule in 2012, FWS published the proposed rule on July 7, 2011. Endangered and Threatened Wildlife and Plants; Removal of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions, 76 Fed. Reg. 39,804 (July 7, 2011).

<sup>74</sup> Pamandan Ranch, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 1, 2011).

<sup>75</sup> White Point Ranch, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 4, 2011).

<sup>76</sup> Van Norman Decl. ¶ 6 (estimating that the total time it would take to complete the CBW registration, take permit application, and annual report would be six to seven hours total over a five-year period).



The Exotic Wildlife Association's<sup>77</sup> 2010 census revealed its members alone owned over 11,000 scimitar-horned oryx, 5,000 addax, and 800 dama gazelles, which represent a "very conservative estimate[] of the actual numbers on private ranches throughout North America."<sup>78</sup> There is every reason to believe that these populations have only increased since then. When asked if these animals are, in his view, endangered, the executive director of a large pro-hunting exotic wildlife organization responded, "Absolutely not, not in Texas."<sup>79</sup> This illustrates the extent to which FWS has allowed itself to be used by these ranches and let their commercialization of these animals create populations unrelated to any reintroduction to the wild. Yet FWS continues to allow hunting ranches to breed more and more of these animals for killing. FWS has failed to examine the numbers of animals on ranches and has failed to set any limits on the number and genetic makeup of animals it will allow to be bred for killing. The lack of any scientific precision to what FWS allows on hunting ranches reveals that hunting ranches, not FWS, are running things. Profit, not conservation of endangered species, is the driving factor here.

The ESA requires FWS to "insure that any action authorized, funded, or carried out by [FWS] . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in destruction or adverse modification of the habitat of such species" and must use the best scientific data available to achieve this.<sup>80</sup> FWS cannot fulfill this duty without any studies or evaluations of these ranches. Petitioner is unaware of any facts, studies, or scientific publications undertaken by FWS about ideal population sizes, the feasibility of certain species for reintroduction, when a population of any particular species is viable to return to the wild, or the effects of ranches on genetic diversity. FWS cannot facilitate this industry without studying the effects of such captive hunting and the feasibility of reintroduction, setting population targets and limits, and demanding accountability from the ranches.

Because FWS has not made efforts to evaluate hunting ranches, FWS has no way of examining whether or not hunting ranches are even theoretically beneficial to the endangered species. If the goal is truly recovery and reintroduction, there is no need for any hunting of these species; facilities can just breed and maintain them until they are ready to be reintroduced. U.S. trophy hunting ranches are hardly essential.

The Conservation Centers for Species Survival ("C2S2") is an association of many facilities dedicated to the conservation of species, with a massive member capacity in breeding and researching large, endangered herbivores:<sup>81</sup>

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<sup>77</sup> The Texas-based Exotic Wildlife Association's purpose is to "preserve the rights of exotic wildlife owners, and to promote the development and expansion of the exotic wildlife industry." Exotic Wildlife Association, *EWA History*, <https://myewa.org/ewa-history/> (last visited Mar. 7, 2022).

<sup>78</sup> Exotic Wildlife Association, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 5, 2011).

<sup>79</sup> Max McClellan, *Can hunting endangered animals save the species?*, CBS News (Jan. 30, 2012) <https://www.cbsnews.com/news/can-hunting-endangered-animals-save-the-species/> (last visited Mar. 7, 2022).

<sup>80</sup> 16 U.S.C. § 1536(a)(2).

<sup>81</sup> David Wildt et al., *Breeding Centers, Private Ranches, and Genomics for Creating Sustainable Wildlife Populations*, 69 *Bioscience*, 928, 930 (Nov. 2019).

The Smithsonian Conservation Biology Institute (SCBI; Virginia) is comprised of barns . . . used for conservation breeding of scimitar-horned oryx . . . and dama gazelle . . . . The Fossil Rim Wildlife Center (Texas), with landscapes and climate similar to African savannahs, has produced prodigious numbers of scimitar-horned oryx as well as addax . . . and sable antelope . . . . The Wilds (Ohio), set on vast reclaimed mining lands, reproduces these antelopes as well as southern white rhinoceroses . . . , the latter through four successive generations. White Oak Conservation (Florida) has a similar success with antelopes, rhinoceroses, giraffe as well as the okapi . . . . Among the successes for African Lion Safari (Ontario, Canada) is the Asian elephant . . . , including a multi-generational herd with semi-free-ranging opportunities.<sup>82</sup>

These facilities clearly align more accurately with the purposes of the ESA. Notably, C2S2 mentions that “each program’s activities grow populations and space, optimize reproduction and genetic diversity, and return species to the wild when possible, with different priorities based on each population’s unique needs.”<sup>83</sup> Unlike trophy hunting ranches, C2S2 takes population numbers, needs, and chances of reintroduction into account. If there are no guidelines or specified numbers for reintroduction, then owners in places like Texas can breed as many species as they want, strictly to continue bringing in revenue, and the animals will remain captive on non-native land forever. But keeping a species alive solely for human commercial benefit is not contemplated by the ESA; the ESA was enacted **because of** human activity, not to make it more profitable.<sup>84</sup>

## **2. Trophy hunting ranches are not actually reintroducing imperiled species because their commercial motives disincentivize them from doing so.**

FWS explicitly agrees that the only purpose of allowing endangered species to be killed on captive hunting ranches is to maintain genetic diversity and reintroduce imperiled species into their wild natural habitats, including for the three antelope species.<sup>85</sup> But with no defined quantities of antelope permitted, no guidelines for the desired size for back-up populations, no requirements regarding breeding and genetic diversity, and no solidified plans for reintroduction, FWS essentially allows imperiled species to be bred for slaughter strictly for commercial purposes. In other words, FWS has created an entire market for these animals that otherwise would not exist.

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<sup>82</sup> *Id.* (species’ scientific names removed).

<sup>83</sup> Conservation Centers for Species Survival, *Programs*, <https://www.conservationcenters.org/programs.html> (last visited Mar. 8, 2022).

<sup>84</sup> 16 U.S.C. § 1531.

<sup>85</sup> See *generally* Captive-bred Wildlife Regulation, 58 Fed. Reg. at 68,323 (“Populations of species in captivity are, in large degree, removed from their natural ecosystems and have a role in survival of the species only to the extent that they maintain genetic integrity and offer the potential of restocking natural ecosystems where the species has become depleted or no longer occurs.”); Endangered and Threatened Wildlife and Plants; Exclusion of U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions, 70 Fed. Reg. 52,310, 52,312 (Sept. 2, 2005) (“[C]ontinued breeding of these species, and their monitoring and maintaining genetic diversity, will ensure that specimens will be available when the appropriate conditions for reintroduction exist in range countries.”).

The main argument of proponents of captive trophy hunting is that species cannot recover unless they have a price tag on their heads.<sup>86</sup> The ESA does not allow for the commercialization of threatened and endangered species. Instead, Congress passed the ESA with the sole intention of benefitting at-risk species and their habitats, not commercial industries such as the multibillion-dollar captive hunting industry. Hunting ranches are exclusively for-profit businesses. This means they not only lack any incentives to participate in reintroduction efforts, but they actually have large incentives to **avoid** them. FWS has not established any required commitments for reintroducing any number of animals nor any consequences for failing to do so. Because these ranches are for-profit businesses, any reintroduced animal is a loss to them, similar to a cattle ranch giving away a cow it could otherwise sell. Thus, not only have ranches made virtually zero reintroduction measures, but it would be illogical for them to do so from their point of view. Ranches simply prioritize profit by design—and they admit it, too. For example, the CEO of one large hunting ranch stated, “[i]f an animal ceases to have a monetary value, it’s gonna cease to exist,”<sup>87</sup> which further illustrates the reasoning used by this industry to place profit as the purpose, with an alleged trickle-down benefit for the species as the justification.

The captive hunting format used by these facilities aggravates the situation because it attracts American hunters, lines the pockets of ranch owners, and thus, disincentivizes any reintroduction efforts for endangered species. Again, the term “endangered species” means “any species which is in danger of extinction throughout all or a significant portion **of its range** . . .”<sup>88</sup> Enclosures may vary in size and structure, but “the one constant is that animals hunted within them have little or no chance of escape,”<sup>89</sup> which is appealing to customers because they appear to offer an authentic, dauntless adventure with fiscal simplicity and efficient timing; however, “in reality they are conducted in an atmosphere of comfort and convenience.”<sup>90</sup> In fact, they virtually guarantee the hunter will have success,<sup>91</sup>

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<sup>86</sup> See, e.g., Richard Welch, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 8, 2011) (“If the permitting system is too cumbersome or expensive, I will no longer raise these animals. I will hunt them, I will sell them, I will cross bred them or I will simply grind them into hamburger. But I can’t raise them if they are not economically feasible.”); Bowhunter’s Paradise Ranch, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 7, 2011) (“[I]f they have no financial benefit, individuals like myself will no longer protect their future.”); Alan Lee, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 7, 2011) (“If the animals have no ‘value’ other than ‘something to look at’, they will no longer be considered an asset to me and I will have to eliminate them from my ranch.”); Donovan Wayne, *Comment on Permitting Requirements for Three Antelope Species* (Aug. 7, 2011) (“The harvest pays for the restoration of these species.”).

<sup>87</sup> Alexandra Villerreal, *Fancy hunting a kangaroo? Or a zebra? In Texas, you can pay to play*, *The Guardian* (Sept. 27, 2021), <https://www.theguardian.com/us-news/2021/sep/27/texas-hunting-captive-animals-kangaroo-zebra> (last visited Mar. 8, 2022).

<sup>88</sup> 16 U.S.C. § 1532(6) (emphasis added).

<sup>89</sup> Richard A. Schroeder, *Moving targets: The ‘canned’ hunting of captive-bred lions in south Africa*, 61 *African Studies Rev.* 8, 9 (2018).

<sup>90</sup> Diana Norris et al., *Canned Hunts: Unfair at Any Price*, *The Fund for Animals* (2002), <https://www.animallaw.info/article/canned-hunts-unfair-any-price> (last visited Mar. 8, 2022).

<sup>91</sup> *Id.*

especially with ranches that operate on a “[n]o kill, no pay” basis.<sup>92</sup> Investigations regarding captive hunting revealed that on some ranches the animals were so tame “investigators could walk up to them and hug them” and one rancher admitted to “tranquilizing his animals when people paid him to.”<sup>93</sup> These owners have a strong financial incentive to **ensure** their customers successfully kill something so that they can profit and so that they can continue to breed animals to be hunted. Therefore, if these ranches continue to exist, those businesses that are profiting off this billion-dollar industry and those hunters who are able to buy a “thrilling adventure” without having to take an international flight will have no incentive to make efforts to reintroduce these species to their true habitats.

Considering this total lack of incentive for reintroduction, it is unsurprising that FWS has documented zero examples of actual instances of reintroduction headed by hunting ranches. One ranch owner has admitted, the goal is to “repopulate the species back to countries of origin,” but “there is virtually no track record of this practice or its effectiveness.”<sup>94</sup> However, there is actually quite a bit of public data displaying successful alternative methods for reintroduction through collaborative efforts by conservation organizations, zoos, and governments.

For example, in 2016, several agencies and organizations<sup>95</sup> partnered to reintroduce scimitar-horned oryx and addax onto the Ouadi Rimé-Ouadi Achim Reserve (“Reserve”) in Chad. The partners worked together to research information about the status of wildlife and use of land in areas where the antelope once roamed and concluded the Reserve had the highest chance of success.<sup>96</sup> Their research also revealed that “despite increased livestock in the area and the oryx no longer existing in the wild, there was sufficient suitable habitat available to provide the species’ expected requirements.”<sup>97</sup> The Environment Agency of Abu Dhabi collected a few wild and several captive oryx from all over the world in order to maintain a healthy, genetically diverse herd.<sup>98</sup> In 2016 and 2017, a total of 35 of those oryx were released onto the Reserve.<sup>99</sup> In 2019, 15 addax were

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<sup>92</sup> “No kill, no pay” means hunters who leave without having killed an animal do not get charged.

<sup>93</sup> Kitty Block and Sara Amundson, *Shooting fish in a barrel: U.S. canned hunting industry offers ‘menus’ of rare animals for a thrill kill*, A Humane World Kitty Block’s Blog (Jan. 29, 2021), <https://blog.humanesociety.org/2021/01/shooting-fish-in-a-barrel-u-s-canned-hunting-industry-offers-menus-of-rare-animals-for-a-thrill-kill.html> (last visited Mar. 8, 2022).

<sup>94</sup> Ines Novacic, “Bred simply to be shot”: Inside America’s exotic hunting industry, CBS News (June 9, 2019), <https://www.cbsnews.com/news/exotic-hunting-business-trophy-hunting-cbsn-originals/> (last visited Mar. 8, 2022).

<sup>95</sup> These partners included the Environment Agency of Abu Dhabi, the Government of Chad, the Sahara Conservation Fund, the Smithsonian Conservation Biology Institute, the Zoological Society of London, the Fossil Rim Wildlife Center, Marwell Wildlife, the Royal Zoological Society of Scotland, the European Union, and the Saint Louis Zoo WildCare Institute. Zoological Society of London, *Reintroducing scimitar-horned oryx to Chad*, <https://www.zsl.org/conservation/regions/africa/reintroducing-scimitar-horned-oryx-to-chad> (last visited Mar. 8 2022).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

released and in 2020, 25 addax and 25 oryx were also released.<sup>100</sup> In 2020, two addax calves were born and the number of reintroduced oryx increased to 288 after 33 calves were born by August of that year.<sup>101</sup>

In another example, the Phoenix Zoo, Fauna and Floral International, and others<sup>102</sup> worked together starting in the 1960s to rescue the Arabian oryx, which was on the brink of extinction.<sup>103</sup> The groups collaborated to create a World Herd at the Phoenix Zoo, which accepted donated oryxes from zoos and private entities across the globe.<sup>104</sup> The oryx was considered extinct in the wild in 1972, and ten years later in 1982, 10 oryx were reintroduced into the wild.<sup>105</sup> For the next few decades, more and more oryx were released into sites across the Middle East, and today there are over 6,000 in semi-captivity<sup>106</sup> and more than 1,200 fully in the wild.<sup>107</sup> In 2011, the Arabian oryx made history and was down-listed on the International Union for Conservation of Nature (IUCN) Red List from “Endangered” to “Vulnerable,” marking the very first time a species has moved three categories on the IUCN Red List; today, it is close to moving to “Nearly-Threatened.”<sup>108</sup>

A clear reason for the success of these programs is that they each require collaboration by many groups and the reintroduction of imperiled species is a primary purpose for which the programs exist. None of those entities profit off the killing of the endangered species. In contrast, commercial profit through killing is the primary purpose of hunting ranches—and were they to ever reintroduce animals, they would lose sources of profit. Without any requirements, standards, or consequences, ranches have no reason to give up those sources of profit.

### C. Trophy hunting ranches are not conserving imperiled species.

“Conservation” is the hunting ranch industry’s digestible explanation for killing threatened and endangered species. Regardless of how the industry twists the meaning of “conservation,” the ESA defines it explicitly:

The terms “conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures **which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.** Such

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<sup>100</sup> Convention on the Conservation of Migratory Species of Wild Animals, *Two Calves Born to Reintroduced Addax in Chad* (Feb. 25, 2021) <https://www.cms.int/en/news/two-calves-born-reintroduced-addax-chad> (last visited Mar. 8, 2022).

<sup>101</sup> *Id.*

<sup>102</sup> The project involved six world governments, five zoos, several organized societies, a few conservation organizations, and hundreds of dedicated individuals. Phoenix Zoo, *Saving Species: Arabian Oryx*, <https://www.phoenixzoo.org/blog/zoo-news/saving-species-arabian-oryx/> (last visited Mar. 8, 2022).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Fossil Rim Wildlife Center, *Arabian Oryx*, <https://fossilrim.org/animals/arabian-oryx/> (last visited Mar. 8, 2022).

<sup>106</sup> “Semi-captivity” here means existing in a large, fenced area protected from being shot.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, **in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.**<sup>109</sup>

The ESA requires that conservation methods be **necessary** to protect imperiled species. However, FWS has never explained or demonstrated how hunting ranches are “necessary” to protect imperiled species. The existence of animals in captive facilities in the U.S. does not bring the species **in their natural habitats** to the point at which the measures provided pursuant to the ESA are no longer necessary. Furthermore, Congress recognized the only conceivable circumstance when regulated taking can be regarded as “conservation” is in **extraordinary cases** when ecosystems are suffering. Even if U.S. ecosystems were suffering from these species, again, they are only here because FWS sanctions their breeding and killing for profit.

### **1. Donations are an inadequate conservation method.**

Many ranch owners claim to make donations to “conservation” because FWS accepts donations as a justification for a CBW take permit.<sup>110</sup> In general, the ten largest non-profit conservation organizations contribute around \$2.5 billion annually to habitat and wildlife conservation; of this, only 12.3% comes from hunters, while 87.7% comes from non-hunting sources.<sup>111</sup> Neither FWS nor any other organization has published any findings of how much trophy hunting ranches specifically contribute to habitat and wildlife conservation, but it has to be a small fraction of that 12.3%. Beyond that fact, the ESA requires a direct link between the authorized action and the required effect.<sup>112</sup> In other words, FWS can only permit the take or sale of imperiled species if **that action itself** enhances the species’ survival.<sup>113</sup> FWS is permitting the “otherwise prohibited activity” (take/commerce) not to directly enhance survival, but to directly enhance the profitability of hunting ranches, with donations as a convenient—but realistically fictitious—rationale. Therefore, FWS cannot grant CBW registrations or take permits to trophy hunting ranches in exchange for donations because it violates the ESA and its implementing regulations.

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<sup>109</sup> 16 U.S.C. § 1532(3) (emphases added).

<sup>110</sup> U.S. Department of Interior, FWS Form 3-200-37c, 3 (Rev. Jan. 2020) at 3.

<sup>111</sup> Mark E. Smith & Donald A. Molde, *Wildlife Conservation & Management in the U.S.*, Nevadans for Responsible Wildlife Management, 2 (Rev. June 2015), <http://www.nrwm.org/wp-content/uploads/2015/06/Smith-Molde-Wildlife-Funding-spreadsheet-Rev-F2-19Jun15.pdf> (last visited Mar. 8, 2022).

<sup>112</sup> Captive-bred Wildlife Regulation, 58 Fed. Reg. 68,323, 68,324-25 (Dec. 27, 1993) (eliminating public education through exhibition of living wildlife as the sole justification for issuance of a CBW registration and instead narrowing the CBW program so that “only those persons who engage in beneficial captive breeding can participate” because FWS had “sincere doubts about the relative conservation benefits that are provided to non-native species in the wild from the public exhibition of living wildlife” and despite many public comments no one provided “examples of how exhibition of living wildlife has any specific affirmative effect on survival of non-native species in the wild”).

<sup>113</sup> 16 U.S.C. § 1539(a)(1)(A).

Moreover, donations are not even required for the three antelope species. One hunting ranch owner who also sells oryx and addax to other hunting ranches stated that his oryx and addax operation is “**more** profitable” than his for-profit livestock operation.<sup>114</sup> Yet, when asked whether the rancher would adhere to a proposed rule requiring the rancher donate a percentage of the hunting sale proceeds to a conservation program that is seeking to return the three antelope species to the wild, the ranch owner responded “**NO!!!**”<sup>115</sup>

Even if donations were an adequate justification for otherwise prohibited activities, the current procedure FWS has established fails to benefit any wild imperiled species. When filling out permit applications, most ranches assert they will donate about 5-10% of funds derived from hunts they sell either to a “FWS-approved conservation project” or to the pro-hunting ranch organization Conservation Force.<sup>116</sup> The amount typically “will equal \$100 - \$1,000 per animal taken.”<sup>117</sup> This donation structure fails to enhance the survival of any species for many reasons.

First, there is no such thing as a “FWS-approved conservation project” because FWS has not established any such projects, or even standards for eligible projects. The application merely requires the applicant to describe how their activities will “enhance or benefit the wild population,” with no requirements to include details about chosen donees. This falls short of the ESA requirements because the regulations specifically require applicants to include a “full statement of why the permit is justified.”<sup>118</sup> FWS has not enumerated any programs or given any guidance for choosing eligible conservation programs to which ranches may make donations, so it is impossible to use this as an actual justification.

To illustrate this, Conservation Force, the most popular donee of choice, has short and vague descriptions of efforts to save a few of the species<sup>119</sup> in the wild on its website; however, it does not publicize **how** it utilizes donations. Conservation Force claims to be a conservation organization, yet it spends a significant amount of its funding on promoting and defending hunting-related activities, including foreign trophy hunting of endangered and threatened species in the wild.<sup>120</sup> Further, Conservation Force does not provide any

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<sup>114</sup> Sammy Jetton, *Captive Hunting Survey*, 2, 4 (Aug. 5, 2011) (emphasis added).

<sup>115</sup> *Id.* at 3 (emphasis in original).

<sup>116</sup> To exemplify this process, reviewing one CBW take permit application, the ranch applicant indicated it planned to donate 10% of the proceeds received for each threatened red lechwe to a “FWS-approved conservation project for these species in nature” or to Conservation Force. The ranch further indicated the amount typically “will equal \$100 - \$1,000 per animal taken.” Vara Ranch, *Form 3-200-37 Federal Fish and Wildlife Permit Application Form*, FWS-HQ-IA-2021-0095-0008 (July 6, 2021) at 7.

<sup>117</sup> *Id.*

<sup>118</sup> 50 C.F.R. § 17.22(a)(1)(vii).

<sup>119</sup> Conservation Force, *How to Contribute*, [https://4e77d166-f0cf-4bd6-ba9b-1a2e342dd950.filesusr.com/ugd/87ac64\\_a216613250834872a5d1324d2cdf896a.pdf](https://4e77d166-f0cf-4bd6-ba9b-1a2e342dd950.filesusr.com/ugd/87ac64_a216613250834872a5d1324d2cdf896a.pdf) (last visited Mar. 8, 2022) (broadly stating “[w]e have established and support select projects” for only four named species; red lechwe, Elds deer, barasingha, and Arabian oryx”).

<sup>120</sup> See, e.g., Conservation Force, *News Updates and Alerts*, <https://www.conservationforce.org/news-updates-alerts> (last visited Mar. 8, 2022) (Conservation Force documenting its pro-hunting advocacy); *Conservation*

breakdown of its expenses to determine what percentage of the donations from trophy hunts, or anywhere else, go toward conservation. In fact, the top of the Ranching for Restoration webpage states, “This program helps ranchers obtain the two necessary permits needed to breed and cull exotic endangered game species,” indicating its priority for this program is to provide a name for hunting ranch owners to write in their applications.<sup>121</sup> With no available information surrounding the validity of this or other programs, neither FWS nor the public can assess if such programs are actually providing benefits to imperiled species.

Finally, donating 5-10% is an arbitrary amount, with no account given to how much money specific projects require to enhance the species’ survival. FWS has failed to require any information for how much funding any individual programs or species need. Also, conservation projects typically require millions of dollars in funding to enhance survival in a way that is sufficient under the ESA. A donation of 5-10% of funds from each animal killed, even if the amount is somewhere between \$100 and \$1,000,<sup>122</sup> is highly unlikely to reach such a goal. If there are no requirements for a particular amount needed for any particular programs to enhance the survival of any particular species, FWS and the public cannot make any determinations regarding the benefits to imperiled species and applicants cannot adequately use donations as a justification.

## **2. Trophy hunting ranches are inhibiting actual conservation efforts.**

The lack of conservation standards is further illustrated through most individual facilities’ websites, which offer almost no information about their contributions to conservation; in fact, certain individuals involved in this industry proudly admit that business growth is of higher concern to them than conservation. For example, the owner of a company that buys and sells exotic species from hunting ranches “acknowledges he’s a business owner first and foremost, and that he’s focused on growing his company—not conservation.”<sup>123</sup> When ranches do have information on their websites, there seems to be confusion within the industry about what “conservation” actually means. For example, one owner stated, “I’m not only spending 100% of the money that is brought in from hunting operations but am donating an additional \$2mm+ a year to feed and care for our thousands of wildlife.”<sup>124</sup> Based on this reasoning, “donating” to one’s own ranch operations—business expenses by any definition—is equivalent to “conservation.” Other ranches simply

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*Force v. Salazar*, 646 F.3d 1240 (9th Cir. 2011)(Conservation Force and two trophy hunters challenging FWS’s notice of seizure and proposed forfeiture of two leopard trophies due to deficient export permits); *Conservation Force v. Manning*, 301 F.3d 985 (9th Cir. 2002) (appealing after suing Arizona game and fish department officials, alleging that the limitation on hunting permits for out-of-state hunters violated the Constitution).

<sup>121</sup> Conservation Force, *Ranching for Restoration* (2018), <https://www.conservationforce.org/ranching-for-restoration> (last visited Mar. 8, 2022).

<sup>122</sup> Vara Ranch, *Form 3-200-37 Federal Fish and Wildlife Permit Application Form*, FWS-HQ-IA-2021-0095-0008 (July 6, 2021) at 7.

<sup>123</sup> Douglas Main, *A behind-the-scenes look at Texas’ exotic animal ranches*, National Geographic (July 2020), <https://www.nationalgeographic.com/animals/article/inside-texas-exotic-animal-ranching-industry> (last visited Mar. 8, 2022).

<sup>124</sup> Brent Oxley, *Hunting for Conservation*, Ox Ranch (Jan. 14, 2018), <https://www.oxhuntingranch.com/blog/hunting/hunting-for-conservation/> (last visited Mar. 8, 2022).



deem the mere existence of species on their ranches plus selling them—a literal description of any hunting ranch business—as successful “conservation endeavors.”<sup>125</sup> Clearly many trophy hunting ranches do not understand what “conservation” means under the ESA, and not only do they fail to truly conserve species, but they actually inhibit this effort. FWS’s continual association of hunting captive exotic ESA-listed species with enhancement of the survival of wild animals gives trophy hunting ranches a false sense of righteousness and supplies them with tools necessary to mislead the public to believe the ranches actually contribute to conservation of the species.

As stated previously, the ESA strives to put forth methods and procedures that not only prevent extinction, but recover species until such protections are no longer needed. FWS is failing to meet this ESA standard because under the current scheme FWS has created, trophy hunting ranches are actually incentivized to **not** conserve these species. If the populations increase enough such that the species is returned to the wild in such numbers that the species no longer require ESA protection, the species will lose their “rareness” status, thus making them less valuable to the industry. Typical pricing structures for hunts can be exemplified through one ranch’s website: \$3,000 to start for a native whitetail buck, \$10,000 for an exotic but non-listed blue wildebeest, and a starting rate of \$45,000 for an endangered bongo.<sup>126</sup> While some ranches sell native species for more money based on their size, there is at least some monetary distinction between listed and non-listed exotics.<sup>127</sup> This is entirely logical based on simple supply and demand. The three antelope species are often priced somewhere in the middle,<sup>128</sup> and this is likely in part because there are so many of them as they can be consistently bred and hunted without any permits. Because the ranches are exclusively for-profit businesses, and because the

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<sup>125</sup> “The Addax took to the Hill Country extremely well, and have thrived in their ‘second home,’ to the point that their numbers are healthy enough to provide both hunting opportunities and live animal sales to other exotic game ranches.” The Patio Ranch, *Conservation Endeavors*, <https://thepatioranch.com/conservation-endeavors/> (last visited Mar. 8, 2022).

<sup>126</sup> Ox Ranch, *Whitetail Deer Hunting*, <https://www.oxhuntingranch.com/texas/whitetail-deer-hunting/> (last visited Mar. 8, 2022); Ox Ranch, *Blue Wildebeest Hunting*, <https://www.oxhuntingranch.com/texas/blue-wildebeest-hunting/> (last visited Mar. 8, 2022); Ox Ranch, *Bongo Hunting*, <https://www.oxhuntingranch.com/texas/bongo-hunting/> (last visited Mar. 8, 2022); see generally Ox Ranch, *Hunting*, <https://www.oxhuntingranch.com/hunting/> (last visited Mar. 8, 2022) (click each species’ photo for pricing).

<sup>127</sup> See 777 Ranch, *Pricing*, <https://www.777ranch.com/hunting/pricing/> (last visited Mar. 8, 2022) (an exotic but non-listed zebra is \$4,000, an exotic but non-listed axis buck is \$3,000, a threatened urial is \$15,000, a threatened sambar is \$12,500, and an endangered bongo is \$25,000 to \$35,000); see also Montgomery Properties Ranch, *Texas Exotics Hunting Rates*, <https://www.mprhunts.com/texas-exotics-rates/> (last visited Mar. 8, 2022) (an exotic but non-listed nilgai is \$6,000, a vulnerable Nubian ibex starts at \$17,500, an endangered dama gazelle is \$10,000, an endangered Nile lechwe is \$16,000, and an endangered bongo starts at \$30,000).

<sup>128</sup> At the Ox Ranch an addax is \$10,000, a dama gazelle is \$10,000, and a scimitar-horned oryx is \$5,250. Ox Ranch, *Addax Hunting*, <https://www.oxhuntingranch.com/texas/addax-hunting/> (last visited Mar. 8, 2022); Ox Ranch, *Dama Gazelle Hunting*, <https://www.oxhuntingranch.com/texas/dama-gazelle-hunting/> (last visited Mar. 8, 2022); Ox Ranch, *Scimitar Horned Oryx Hunting*, <https://www.oxhuntingranch.com/texas/scimitar-horned-oryx-hunting/> (Mar. 8, 2022); see also 777 Ranch, *Pricing* (an addax is \$6,500, a dama gazelle is \$8,500, and a male scimitar-horned oryx is \$5,000); see also Montgomery Properties Ranch, *Texas Exotics Hunting Rates* (an addax is \$8,500, a dama gazelle is \$10,000, and a scimitar-horned oryx is \$7,500).

species' rareness makes them worth more, the entire scheme invites ranchers to use these species as an exotic, expensive livestock to be bred for killing, which is in complete contradiction to the ESA.

Furthermore, keeping these animals in captivity to be subject to selective hunting hinders any future reintroduction efforts by creating an unnatural imbalance that leads to a wide array of biological changes. Many ranches appeal to customers by advertising that they raise the largest trophies to be won; however, there is evidence that selective hunting induces rapid evolutionary change. One study analyzed the effects of trophy hunting on horn size of bighorn sheep.<sup>129</sup> Intense selective hunting from 1973 to 1996 “revealed a significant decline in genetic value for horn length of rams, consistent with an evolutionary response to artificial selection on this trait.”<sup>130</sup> During the 23 years of being hunted, the estimated breeding value of male horn length “declined significantly.”<sup>131</sup> Female horn length breeding value and estimated breeding value of male horn base size also declined.<sup>132</sup> In 1996, when hunting almost completely ceased, “average [estimated breeding value] remained stable or showed a weak tendency to increase” for both male and female horn length.<sup>133</sup> “The decline in male horn length breeding values appeared to stop when hunting pressure was greatly reduced. While horn length declined during the hunting period, female horn base, a trait not subjected to trophy hunting and with low genetic correlation . . . to male horn length . . . did not decline, supporting the contention that the decline in horn length was partly due to artificial selection.”<sup>134</sup> This is unsurprising because males with larger, more attractive horns “faced a 40% yearly probability of being shot and . . . the negative selective pressure through hunting started 2–3 years before large-horned rams could achieve high reproductive success.”<sup>135</sup> Thus, if these species are ever reintroduced to the wild, ranches would likely be introducing an evolutionary inferior version of the animals than would exist without hunting. This is completely contrary to the purpose of the ESA.

#### **D. Trophy hunting captive imperiled species is unethical.**

The ESA’s central purpose is conserving ecosystems and imperiled species that have “esthetic, ecological, educational, historical, recreational, and scientific value.”<sup>136</sup> FWS has provided further guidance regarding the values found in protecting imperiled species, including natural diversity, biodiversity, environmental quality monitoring, ecosystem serving, and viewing opportunities.<sup>137</sup> Notably, FWS also endorses the view that “every creature has an intrinsic value” and that “[e]liminating entire species has been compared to

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<sup>129</sup> Gabriel Pigeon et al., *Intense selective hunting leads to artificial evolution in horn size*, 9 J. Evol. Appl. 521 521 (2016).

<sup>130</sup> *Id.* at 521.

<sup>131</sup> *Id.* at 524.

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

<sup>133</sup> *Id.* at 525.

<sup>134</sup> *Id.* at 526.

<sup>135</sup> *Id.* at 528.

<sup>136</sup> 16 U.S.C. § 1531(a)(3).

<sup>137</sup> See generally U.S. Fish & Wildlife Service, *Why Save Endangered Species?* (July 2005), <https://digitalmedia.fws.gov/digital/collection/document/id/1682/> (last visited Mar. 8, 2022).

ripping pages out of books that have not yet been read.”<sup>138</sup> Hunting some members of a species in captivity is unethical, illogical, and contrary to the purposes of the ESA—and most Americans agree.

### 1. There are no ethical justifications for killing imperiled species.

Proponents of killing imperiled species almost always attempt to excuse the practice by reasoning that the end justifies the means. This is a utilitarian rationale of benefitting whole populations by sacrificing some individuals’ lives.<sup>139</sup> A utilitarian view “necessitates considering all consequences of an action on all those affected. Hence, in trophy hunting, the interests of affected animals and humans ought to be accounted for in the aggregate welfare.”<sup>140</sup> The utilitarian view taken by the hunting industry ignores several crucial factors. As discussed above, selective breeding and removing predators to protect trophy-valued large herbivores have been proven to distort the functioning, structure, and evolution of different species, effectively changing the species into something different.<sup>141</sup> Moreover, animal welfare concerns must be factored into this ethical equation.<sup>142</sup> With these hunts, animals inevitably suffer pain, fear, and even grief.<sup>143</sup> Considering these costs, the common utilitarian view held by trophy hunting proponents actually clashes with the killing of imperiled species on hunting ranches.

Captive trophy hunting gives species essentially one purpose for existing—to support the commercial hunting industry—and members will be bred and killed as this commercial industry dictates. Defenders justify this practice with the theory that a species’ descendants will one day roam free in their natural habitats. This theory fails not only on the merits,<sup>144</sup> but the moral justification as well. In a questionnaire FWS distributed to ranch owners for comments on the 2011 proposed rule to add permitting requirements for the three antelope species, one question asked if the ability to allow hunting of these species helps owners to continue to keep them. One owner responded, “Absolutely – it is only their economic value that permits me **to allow them** to exist.”<sup>145</sup> When asked if requiring take permits would affect his continuing to keep the animals, he responded, “Yes – I will eliminate them.”<sup>146</sup> This owner admits he feels as though **he alone** gets to choose whether these animals get to live and only cares to sustain his populations if he receives a financial benefit unencumbered by permits; unsurprisingly, this is by far the most popular view in the industry. But it is never morally just to attach an economic value to a wild

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<sup>138</sup> *Id.* at 18 (“We are accustomed to a rich diversity in nature. This diversity has provided inspiration for countless writers and artists, and all others who treasure variety in the natural world.”).

<sup>139</sup> Davis Macdonald et al., *Conservation or the moral high ground: Siding with Bentham or Kant.*, 9 J. Soc’y Conserv. Biol. 237, 307 (2016).

<sup>140</sup> Benjamin Ghasemi, *Trophy hunting and conservation: Do the major ethical theories converge in opposition to trophy hunting?*, 3 *People and Nature* 77, 78 (2020).

<sup>141</sup> *Id.* at 79.

<sup>142</sup> *Id.* at 78 (“Even Jeremy Bentham, the father of modern utilitarianism, suggested that the capacity for suffering entitles animals to equal consideration of moral interests.”).

<sup>143</sup> *Id.* at 80.

<sup>144</sup> Their descendants will *never* roam free under the current system. See Parts B & C above.

<sup>145</sup> Sammy Jetton, *Captive Hunting Survey*, 2 (Aug. 5, 2011) (emphasis added).

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

animal, let alone one that is at risk. In doing so, the treatment of animals as commodities for human use is further perpetuated, which is the same exploitation that has led to endangerment and extinctions in the first place. This again clashes with the overall purpose of the ESA.

## 2. The vast majority of citizens finds these hunts unethical.

More and more, people are recognizing that it is unethical to hunt an endangered species for sport. American opinions about hunting vary based on the species being killed. For example, about 70% of Americans find it acceptable to hunt common game such as deer, wild turkey, and duck.<sup>147</sup> In contrast, only 7% approve of hunting African elephants, which shows the vast majority of this nation recognizes a deeper value in imperiled species and a greater evil in killing them.<sup>148</sup> The majority of Americans do not approve of captive trophy hunting either. Only 29% percent of Americans approve of trophy hunting in general.<sup>149</sup> Though there are variations in sizes of enclosures, research shows that people's attitudes about methods of hunting are more disfavoring of unnatural or unfair advantages.<sup>150</sup> Only 32% approve of baiting<sup>151</sup> and only 21% approve of hunting on property with a fence around it,<sup>152</sup> which are two methods often used by hunting ranches. Even pro-hunting groups, such as the Boone and Crockett Club, only believe hunting is morally 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."<sup>153</sup> There can be no truly fair chase when the animals do not actually live where the ESA strives to put them—in their spacious natural habitat.

The CEO of an 18,000-acre hunting facility has attempted to refute this by suggesting the size of the enclosure makes the hunts fair.<sup>154</sup> Yet, customers rarely leave this ranch without making a kill, which contrasts with hunts undertaken in the wild.<sup>155</sup> This CEO admits "[s]ome clients prefer to sit inside hunting blinds and set off corn feeders that lure animals directly to them. If that's what they want, it's what they do. [This ranch] even hosts bachelor parties where guys can hang out in big blinds decked out with a poker table, refrigerator and satellite TV."<sup>156</sup> And, if an animal appears nearby, the party "gets to shoot at it."<sup>157</sup> Further, investigations regarding captive hunting revealed that on some ranches

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<sup>147</sup> Responsive Management and National Sports Shooting Foundation, *Americans' Attitudes Toward Hunting, Fishing, Sport Shooting, and Trapping*, 23 (2019).

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

<sup>149</sup> *Id.* at 12.

<sup>150</sup> *Id.* at 34.

<sup>151</sup> "Baiting" here means strategically placing food to lure in animals.

<sup>152</sup> Responsive Management et. al, *Americans' Attitudes Toward Hunting, Fishing, Sport Shooting, and Trapping* at 34.

<sup>153</sup> Boone and Crockett Club, *B&C Position Statement – Canned Hunts* (June 11, 2013), <https://www.boone-crockett.org/bc-position-statement-canned-shoots> (last visited Mar. 10, 2022).

<sup>154</sup> Alexandra Villerreal, *Fancy hunting a kangaroo? Or a zebra? In Texas, you can pay to play*, *The Guardian* (Sept. 27, 2021), <https://www.theguardian.com/us-news/2021/sep/27/texas-hunting-captive-animals-kangaroo-zebra> (last visited Mar. 8, 2022).

<sup>155</sup> *Id.*

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

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

the animals were so tame “investigators could walk up to them and hug them” and one rancher admitted to “tranquilizing his animals when people paid him to.”<sup>158</sup> Luring in animals with food and shooting them is certainly not a “normal practice of animal husbandry”<sup>159</sup> permissible under the ESA’s implementing regulations. And shooting an imperiled animal that is comfortable being near humans and drawn in by the smell of food from a party can hardly be considered ethical. Yet when FWS grants permits for endangered species to be killed on hunting ranches like this one, it does so without knowing the ways in which those animals will be killed. FWS can, and should, avoid such uncertainties by simply prohibiting the captive hunting of threatened and endangered species on U.S. soil. FWS never should have allowed a practice that is so contrary to the ESA in the first place. It is well past time to end it.

### **Petition for Rulemaking**

For all of the reasons discussed above, Friends of Animals requests that FWS immediately amend its regulations governing the taking of threatened and endangered animals on trophy hunting ranches. Such amendments are consistent with the ESA and are in accord with contemporary ethics and ecology, 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. § 17.21 (additions marked in red; deletions noted in strikethrough):

### **[Proposed Amendments Appear on the Following Pages]**

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<sup>158</sup> Kitty Block and Sara Amundson, *Shooting fish in a barrel: U.S. canned hunting industry offers ‘menus’ of rare animals for a thrill kill*, A Humane World Kitty Block’s Blog (Jan. 29, 2021), <https://blog.humanesociety.org/2021/01/shooting-fish-in-a-barrel-u-s-canned-hunting-industry-offers-menus-of-rare-animals-for-a-thrill-kill.html> (last visited Mar. 8, 2022).

<sup>159</sup> 50 C.F.R. § 17.3.

**50 C.F.R. § 17.21**  
**Prohibitions**

**(g)** Captive-bred wildlife.

**(1)** Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided either that the wildlife is of a taxon listed in paragraph (g)(6) of this section, or that the following conditions are met:

**(ii)** The purpose of such activity is to enhance the propagation or survival of the affected species. **Killing endangered or threatened species for a fee or other valuable consideration or for recreation on a U.S. shooting preserve or any other controlled hunting facility is not an adequate purpose;**

**(3)** Upon receipt of a complete application for registration, or the renewal or amendment of an existing registration, under this section, the Service will publish notice of the application in the Federal Register. Each notice will invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. All information received as part of each application will be made available to the public, upon request, as a matter of public record at every stage of the proceeding, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

**(i)** At the completion of this comment period, the Director will decide whether to approve the registration. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. **The Director will not consider any applicant seeking to allow the killing of endangered or threatened species for a fee or other valuable consideration or for recreation on a shooting preserve or any other controlled hunting facility.** Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section.

~~(h) U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle. Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:~~

~~(1) The purpose of such activity is associated with the management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;~~

~~(2) The specimen was captive-bred, in accordance with § 17.3, within the United States;~~

~~(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies;~~

~~(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity;~~

~~(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;~~

~~(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the documentation required under paragraph (h)(5) of this section; and~~

~~(7) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.~~

~~(8) The sport hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.~~

### Conclusion

Recognizing the likelihood of extinction for many species across the planet, the United States enacted the ESA. But our country's legal protections of imperiled animals within our own borders are incomplete. Trophy hunting ranches do not and will never recover imperiled species. And FWS has continued permitting these practices without any actual studies, data, or sensical reasoning for allowing such an exception. FWS should recognize that trophy hunting of captive imperiled species will not only always fail to "enhance the propagation or the survival of a species," but it is unethical and harmful to all at-risk species. FWS must amend its regulations to ban the killing of threatened and endangered species on U.S. trophy hunting ranches.