



**THE HUMANE SOCIETY**  
OF THE UNITED STATES



**HUMANE SOCIETY**  
INTERNATIONAL



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LEGISLATIVE FUND™

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Mr. Timothy Van Norman  
Chief, Branch of Permits  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
Falls Church, VA 22041

***Re: Comments Opposing the Establishment of an International Wildlife Conservation Council (Docket No. FWS-HQ-R-2017-N118)***

Dear Mr. Winchell and Chief Van Norman,

The Humane Society of the United States (“HSUS”), Humane Society International (“HSI”), Humane Society Legislative Fund (“HSLF”), and the [x number] undersigned groups strongly urge the U.S. Fish and Wildlife Service (“Service”) to not establish the euphemistically-named International Wildlife Conservation Council (“IWCC”), as establishing the IWCC as proposed would violate the Federal Advisory Committee Act (“FACA”, 5 U.S.C. App. 2) and would be arbitrary and capricious and not in accordance with law. *See* 82 Fed. Reg. 51,857 (Nov. 8, 2017).

**The Service Proposes to Create a Duplicative and Biased Advisory Council**

The Service is proposing to establish the IWCC for the purpose of “**increasing public awareness** domestically regarding the **conservation**, wildlife law enforcement, and **economic benefits that result from U.S. citizens traveling to foreign nations to engage in hunting**. Additionally, the Council shall **advise the Secretary on the benefits international hunting** has on foreign wildlife and habitat conservation, anti-poaching and illegal wildlife trafficking programs, and other ways in which international hunting benefits human populations in these areas.” *Id.* (emphasis added).

The duties of the IWCC would include:

- developing a plan for public engagement and education on the benefits of international hunting;
- reviewing and making recommendations for changes, when needed, on all Federal programs, and/or regulations, to ensure support of hunting as: (a) An enhancement to foreign wildlife conservation and survival, and (b) an effective tool to combat illegal trafficking and poaching;
- recommending strategies to benefit the U.S. Fish and Wildlife Service's permit office in receiving timely country data and information so as to remove barriers that impact consulting with range states;
- recommending removal of barriers to the importation into the United States of legally hunted wildlife;
- ongoing review of import suspension/bans and providing recommendations that seek to resume the legal trade of those items, where appropriate;
- reviewing seizure and forfeiture actions/practices, and providing recommendations for regulations that will lead to a reduction of unwarranted actions;
- reviewing the Endangered Species Act's foreign listed species and interaction with the Convention on International Trade in Endangered Species of Wild Flora and Fauna, with the goal of eliminating regulatory duplications; and
- recommending methods for streamlining/expediting the process of import permits.

*Id.*

As detailed herein, the IWCC is unnecessary, duplicative, not in the public interest, and designed to be inappropriately influenced by the trophy hunting industry in a manner that undermines the Service's statutory duties under the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and FACA. Therefore, the IWCC cannot lawfully be established.

### **Requirements for Establishing a Federal Advisory Committee**

The FACA provides that “new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary.” 5 U.S.C. App. 2 § 2(b)(2). Further, “[n]o advisory committee shall be established unless such establishment is determined...to be in the public interest in connection with the performance of duties imposed on that agency by law.” *Id.* § 9(a)(2). Advisory committees can only be used “solely for advisory functions” (*id.* § 9(b)) and must serve a “clearly defined purpose” (*id.* § 5(b)(1)). The membership of an advisory committee must “be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee” (*id.* § 5(b)(2)), and must “not be inappropriately influenced by... any special interest” (*id.* § 5(b)(3)). Agency actions contrary to the requirements of FACA are subject to judicial review under the Administrative Procedure Act (APA). *See, e.g., Fertilizer Institute v. U.S. E.P.A.*, 938 F.Supp. 52, 54-55 (D.D.C., 1996)); 5 U.S.C. § 702. *See also Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1049 (D.D.C. 1974) (enjoining agency from convening advisory committee meetings unless conducted in full compliance with FACA).

## Establishing the IWCC Would Violate FACA

### A. The IWCC Is Duplicative and Not Essential

The purpose of FACA is “to enhance the public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures” that result only in “worthless committee meetings and biased proposals.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 453, 459 (1989). To this end, it is unlawful for FWS to establish an advisory committee that exceeds the minimum number of committees necessary or to establish a committee that is not needed to advance an agency’s statutory duties and regulatory agenda. *See* 5 U.S.C. App. 2 § 2(b)(2). The IWCC wholly fails to meet these standards – indeed, the IWCC raises the precise concerns that FACA was designed to guard against.

Notably, there already exists an advisory council entitled the Wildlife and Hunting Heritage Conservation Council (“WHHCC”), which has the authority to address the matters included in the IWCC’s proposed purview. *See* 75 Fed. Reg. 6,056 (Feb. 5, 2010); <https://www.fws.gov/whhcc/>. Like the IWCC, the WHHCC’s mission explicitly includes providing “advice on wildlife and habitat conservation endeavors that (1) **benefit recreational hunting**; (2) benefit wildlife resources; and (3) encourage partnerships among the public, the sporting conservation community, wildlife conservation groups, the States, Native American Tribes, and the Federal government.” 75 Fed. Reg. 6,056 (Feb. 5, 2010) (emphasis added). To achieve that goal of promoting recreational hunting, the WHHCC focuses in part on “Providing appropriate access to hunting and recreational shooting on Federal lands” and “Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting and outdoor recreation on private lands.” *Id.* Consistent with these broad purposes, the WHHCC has multiple times discussed and formed recommendations on international trophy hunting issues.

For example, in July 2012, the WHHCC sent a letter to the Service on behalf of “millions of hunters and anglers nationwide, including many who hunt internationally and seek to import and export their trophies into and out of the United States.” (Attached). That letter included criticism of the process the Service uses to interpret and apply restrictions on the import and seizure of hunting trophies, and provided eight particular recommendations relating to “1) amendments to CITES resolutions and/or decision documents; 2) modifications to FWS manuals, policies, Directors’ Orders, guidance documents and/or practices; and 3) coordinating efforts with representative organizations of the international hunting community.” *Id.* Similarly, in July 2014, the WHHCC sent another letter to the Service, this time urging the Service to reverse its decision to suspend the import of elephant hunting trophies from Tanzania and Zimbabwe, noting the WHHCC’s “efforts on behalf of the hunting community.” (Attached). That latter letter followed a June 2014 meeting of the WHHCC where Safari Club International (“SCI”) presented “updates on African Lion and Elephant” trophy hunting. *See* <https://www.facadatabase.gov/committee/historymeeting.aspx?mid=123631&cid=2299&fy=2014>. At its March 2016 meeting, WHHCC again discussed the topic of international trophy hunting, specifically focusing on African lion import issues and including a presentation from SCI. <https://www.facadatabase.gov/committee/historymeetingdocuments.aspx?flr=135324&cid=2>

[299&fy=2016](#). These are the precise tasks identified in the IWCC notice, demonstrating that there already exists a forum for trophy hunters to attempt to influence FWS policy on these matters.

Therefore, it would be wholly duplicative for the Service to establish the IWCC, whose proposed purpose and tasks are matters that can and are already being carried out by another advisory group.

Similarly, the Service has failed to demonstrate that establishing the IWCC is *essential*. For example, in 2013 the Service established a Wildlife Trafficking Advisory Council to combat issues of illicit wildlife trade and to improve enforcement of wildlife trade laws. 78 Fed. Reg. 45,555 (Jul. 29, 2013). That committee discussed issues of international trophy hunting as a type of wildlife trade. See <https://www.fws.gov/International/advisory-council-wildlife-trafficking/pdf/acwt-meeting-minutes-march-20.pdf>. However, that advisory council was deemed inessential and discontinued pursuant to Executive Order No. 13811 (September 29, 2017). See <https://www.whitehouse.gov/the-press-office/2017/09/29/presidential-executive-order-continuance-certain-federal-advisory>. It is arbitrary and capricious for the Service to now establish the IWCC to take on activities that were previously covered by the Wildlife Trafficking Advisory Council, which was deemed unnecessary by this Administration. Further, the duplicative nature of the IWCC is further demonstrated by the fact that the IWCC would include a representative from the U.S. Department of State – the Presidential Task Force on Wildlife Trafficking established pursuant to Executive Order No. 13,648 (July 1, 2013) already provides a forum for the Service and the State Department to discuss issues of international wildlife trade, including trade in hunting trophies.

Thus, there are already multiple fora for detailed discussion of the issues the IWCC is tasked with providing advice to the Service on, meaning that establishing the IWCC is not essential, as required by law. This is especially true given the broader statutory context, as discussed further below – the Endangered Species Act already provides the opportunity for the trophy hunting industry to submit applications for import permits that demonstrate the alleged benefit of trophy hunting and to submit comments on other permit applications and foreign species listing petitions. See 16 U.S.C. § 1539(c). Thus, there is no functional need for an advisory committee dedicated to promoting propaganda of the trophy hunting industry.

Because the IWCC is per se inessential and duplicative, chartering the IWCC would violate FACA.

#### **B. The IWCC Is Not in the Public Interest**

Chartering the IWCC would further violate FACA because its purpose is inconsistent with the public interest and the “performance of duties imposed on [the Service] by law.” 5 U.S.C. App. § 9(a)(2).

The primary stated purpose of the IWCC is to *promote* trophy hunting of foreign species and to relax the legal restrictions for importing trophies of threatened and endangered species, accepting as incontrovertible fact the notion that trophy hunting promotes the conservation of wildlife species. However, this is a highly controversial and hotly debated

topic, with ample scientific evidence to the contrary, and the notice of IWCC creation patently reveals the biased and unsupported positions that the council would advance.

The FACA was specifically adopted to avoid such a circumstance. *See, e.g., Moss v. C.A.B.*, 430 F.2d 891, 893 (1970) (when the “subject matter of” a FACA council’s “involve[s] serious and much-debated...issues...[t]he Government’s consideration of such sensitive issues must not be unduly weighted by input from the private commercial sector, lest the Government fall victim to the devastating harm of being regulated by those whom the Government is supposed to regulate in the public interest.”); H.R. REP. 92-1017, 1972 U.S.C.C.A.N. 3491, 3496 (“One of the great dangers in th[e] unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns. Testimony received [on the passage of the FACA] pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have vested interests.”).

Thus, forming the IWCC as proposed would be unlawful.

### **1. Trophy hunting undermines conservation efforts**

As detailed in numerous documents in the Service’s possession (*e.g.*, petitions to list African lions, elephants, and leopards as endangered under the ESA, letters submitted with respect to the import of lions and elephants from Tanzania, Zimbabwe, Zambia, and South Africa, as well as the expert declarations in support thereof, **attached**), there is ample scientific evidence that trophy hunting of threatened and endangered species does not in fact enhance the survival of the species in the wild. With respect to three of the so-called “Big Five” species targeted by trophy hunters, a summary of that evidence is as follows:

#### **Trophy Hunting of African Lions**

With the world’s preeminent lion scientist as the lead author, Packer et al. (2009)<sup>1</sup> and Packer et al. (2010)<sup>2</sup> identify trophy hunting as the likely cause of multiple lion population declines in Africa. In addition to direct population reduction through lethal take, trophy hunting poses a threat to lions because it can weaken a population’s genetic constitution (*e.g.* Allendorf et al. 2008<sup>3</sup>). Because hunters target the biggest and strongest males, trophy hunting removes these animals from the breeding pool and unnaturally selects for smaller or weaker animals (Allendorf and Hard, 2009<sup>4</sup>). In this way, trophy hunting can decrease genetic variation, shift the population structure, and cause unnatural evolutionary impacts.

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<sup>1</sup> Packer, C., Kosmala, M., Cooley, H.S., Brink, H., Pintea, L., Garshelis, D., Purchase, G., Strauss, M., Swanson, A., Balme, G., Hunter, L., and Nowell, K. (2009). Sport Hunting, Predator Control and Conservation of Large Carnivores. *PLoS ONE*, 4(6): e5941. DOI:10.1371/journal.pone.0005941

<sup>2</sup> Packer, C., Brink, H., Kissui, B.M., Maliti, H., Kushnir, H., and Caro, T. (2010) Effects of trophy hunting on lion and leopard populations in Tanzania. *Conservation Biology*, 25, 142–153.

<sup>3</sup> Allendorf, F.W., England, P.R., Luikart, G., Ritchie, P.A., and Ryman, N. (2008). Genetic effects of harvest on wild animal populations. *Trends in Ecology and Evolution*, 23, 327-337. doi:10.1016/j.tree.2008.02.008

<sup>4</sup> Allendorf, F.W. and Hard, J.J. (2009). Human-induced evolution caused by unnatural selection through harvest of wild animals. *Proceedings of the National Academy of Sciences of the United States of America*, 106, 9987-9994.

This effect has already been documented in other species. For example, selective hunting likely increased the occurrence of mature female African elephants (*Loxodonta africana*) lacking tusks from 10% to 38% in parts of Zambia over 20 years (Jachmann et al. 1995<sup>5</sup>), and recent studies of bighorn sheep suggest that horn size and body weight decreased over time as a result of trophy hunting (e.g. Coltman et al., 2003<sup>6</sup>; Festa-Bianchet et al., 2013<sup>7</sup>). Further, when trophy hunting is sanctioned, poaching activity increases, likely due to the perception that species authorized for hunting are of diminished value and the perception that legal killing increases the acceptability of poaching.<sup>8</sup>

Lion scientists have produced a steady drumbeat of warnings that trophy hunting across African range states is unsustainable and is a threat to survival of the species:

#### African Continent:

- Rosenblatt (2014)<sup>9</sup>: “...overharvesting of lions has been well-documented throughout Africa”, recognize trophy hunting as one of the reasons for the decline of the lion throughout its range.
- Hunter et al. (2014)<sup>10</sup>: “there is considerable scientific evidence of negative population impacts associated with poorly-managed trophy hunting of lions.” The authors state “there have been documented negative impact on lion populations resulting from trophy hunting” and call for lion trophy hunting reform.
- Lindsey et al. (2013)<sup>11</sup> stated that, regarding the recent decline of lion populations, “Most of the factors that contribute to this decline are now well understood, although evidence of the impacts of trophy hunting on lions has only emerged relatively recently.” The authors also state, “lion quotas remain higher than the 0.5/1,000 km<sup>2</sup> recommended by [Packer et al. (2011)] in all countries except Mozambique” and “in all countries where data are available, harvests appear too high in a proportion of hunting blocks.”

#### Zambia:

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<sup>5</sup> Jachmann, H., Berry, P.S.M., and Imae, H. (1995). Tusknlessness in African Elephants: a future trend. *African Journal of Ecology*, 33, 230-235. DOI: 10.1111/j.1365-2028.1995.tb00800.x

<sup>6</sup> Coltman, D.W., O'Donoghue, P., Jorgenson, J.T., Hogg, J.T., Strobeck, C., and Festa-Bianchet, M. (2003). Undesirable evolutionary consequences of trophy hunting. *Nature*, 426, 655-658. doi:10.1038/nature02177

<sup>7</sup> Festa-Bianchet, M., Pelletier, F., Jorgenson, J.T., Feder, C., and Hubbs, A. (2013). Decrease in Horn Size and Increase in Age of Trophy Sheep in Alberta Over 37 Years. *Journal of Wildlife Management*, 78, 133-141.

<sup>8</sup> Chapron, G. and Treves, A., *Blood does not buy goodwill: allowing culling increases poaching of a large carnivore*, Proc. R. Soc. B 283 (2016), <http://dx.doi.org/10.1098/rspb.2015.2939>.

<sup>9</sup> Rosenblatt, E., Becker, M. S., Creel, S., Droge, E., Mweetwa, T., Schuette, P. A., ... & Mwape, H. (2014). Detecting declines of apex carnivores and evaluating their causes: An example with Zambian lions. *Biological Conservation*, 180, 176-186.

<sup>10</sup> Hunter, L., Lindsey, P., Balme, G., Becker, M., Begg, C., Brink, H. ... White, P., Whitman-Gelatt, K. (2014). Urgent and comprehensive reform of trophy hunting of lions is a better option than an endangered listing; a science-based consensus [sic]. Unpublished.

<sup>11</sup> Lindsey, P. A., Balme, G. A., Funston, P., Henschel, P., Hunter, L., Madzikanda, H., ... & Nyirenda, V. (2013). The trophy hunting of African lions: Scale, current management practices and factors undermining sustainability. *PloS one*, 8(9), e73808.

- Rosenblatt et al. (2014): found a declining lion population in South Luangwa National Park with low recruitment, low sub-adult and adult survivorship, depletion of adult males and an aging adult female population and attributed this to the “severe male depletion” caused by trophy hunting.
- Lindsey et al. (2014)<sup>12</sup>: numerous problems identified with trophy hunting in Zambia including that the Zambia Wildlife Authority establishes trophy quotas arbitrarily and “quotas of lions have been particularly excessive”.
- Lindsey et al. (2013): “Excessive offtake from trophy hunting also lowered population density of lions and altered sex-ratios of lions in Hwange National Park, Zimbabwe, South Luangwa, Kafue and Lower Zambezi national parks in Zambia, and the Bénoué Complex in Cameroon.” The authors also said that mean lion harvests are higher than Packer et al. (2011) 0.5/1,000 km<sup>2</sup> threshold in Zambia.

#### Tanzania:

- Dolrenry et al. (2014)<sup>13</sup>: populations in Tanzania are declining in part due to “overexploitation due to poor management of trophy hunting”.
- Lindsey et al. (2013): “Trophy hunting has contributed to population declines outside (and inside some) protected areas in Tanzania, a country that holds between 30-50% of Africa’s lion.”

#### Zimbabwe:

- Groom et al. (2014)<sup>14</sup>: the low densities of lion populations in Gonarezhou National Park and trophy hunting concessions in Tuli are due to the collapse of these populations in the past due to “unsustainably high trophy hunting within Tuli and in the concessions around Gonarezhou ...” The authors concluded, “hunting has probably had a strong negative effect on lion abundance in both reserves.”
- Lindsey et al. (2013): “Excessive offtake from trophy hunting also lowered population density of lions and altered sex-ratios of lions in Hwange National Park, Zimbabwe, South Luangwa, Kafue and Lower Zambezi national parks in Zambia, and the Bénoué Complex in Cameroon.”
- Lindsey et al. (2013): mean lion harvests are higher than Packer et al. (2011) 0.5/1,000 km<sup>2</sup> threshold in Zimbabwe.

#### Namibia:

- Lindsey et al. (2013): mean lion harvests are higher than Packer et al. (2011) 0.5/1,000 km<sup>2</sup> threshold in Namibia.

#### Cameroon:

- Lindsey et al. (2013): “Excessive offtake from trophy hunting also lowered population density of lions and altered sex-ratios of lions in Hwange National Park, Zimbabwe, South Luangwa, Kafue and Lower Zambezi national parks in Zambia, and the Bénoué Complex in Cameroon.”

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<sup>12</sup> Lindsey, P. A., Nyirenda, V. R., Barnes, J. I., Becker, M. S., McRobb, R., Tambling, C. J., ... & t’Sas-Rolfes, M. (2014). Underperformance of African Protected Area Networks and the Case for New Conservation Models: Insights from Zambia. *PloS one*, 9(5), e94109.

<sup>13</sup> S. Dolrenry, J. Stenglein, L. Hazzah, R.S. Lutz, and L. Frank (2014). A metapopulation approach to African lion (*Panthera leo*) conservation. *Plos One* 9 (2), e88081.

<sup>14</sup> R.J. Groom, P.J. Funston and R. Mandisodza (2014). Surveys of lions *Panthera leo* in protected areas in Zimbabwe yield disturbing results: what is driving the population collapse? *Oryx* 2014: 1-9.

### Burkina Faso:

- Lindsey et al. (2013): mean lion harvests are higher than Packer et al. (2011) 0.5/1,000 km<sup>2</sup> threshold in Burkina Faso.

### Benin:

- Sogbohossou et al. (2014)<sup>15</sup>: the low lion density and small group size found in Pendjari Biosphere Reserve in Benin is due to human disturbance and mortality through trophy hunting, the Pendjari lion hunting quota is three times higher than recommended by Packer et al. (2011), and the existing age limit for 'old males' is not enforced.

## **Trophy Hunting of African Elephants**

Similarly, trophy hunting is documented to undermine the conservation of African elephants. As explained in a recent scientific study, range states from which the Service currently allows trophy imports (such as South Africa) may be setting unsustainably high hunting quotas: in the Greater Mapungubwe Transfrontier Conservation Area scientists found that, in contrast to current hunting allowances, “only a small number of bulls (<10/year) could be hunted sustainably. At current rates of hunting, under average ecological conditions, trophy bulls will disappear from the population in less than 10 years.”<sup>16</sup>

Researchers have found that the selective nature of trophy hunting causes changes in desirable phenotypic traits in harvested species. In particular, trophy sizes for wild herbivores experienced temporal decline in South Africa and Tanzania. “Declines in trophy size over time due to selective harvesting could be attributed to phenotypic plasticity that may result due to a decline in abundance of big tuskers and individuals with big horns or tusks as these are mostly selected by hunters.”<sup>17</sup> Again, because hunters target the biggest and strongest male elephants, trophy hunting removes these animals from the breeding pool and unnaturally selects for smaller or weaker animals.<sup>18</sup> In this way, trophy hunting can decrease genetic variation, shift the population structure, and cause unnatural evolutionary impacts. For example, selective hunting likely increased the occurrence of mature female African elephants (*Loxodonta africana*) lacking tusks from 10% to 38% in

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<sup>15</sup> Sogbohossou, E. A., Bauer, H., Loveridge, A., Funston, P. J., De Snoo, G. R., Sinsin, B., & De Iongh, H. H. (2014). Social Structure of Lions (*Panthera leo*) Is Affected by Management in Pendjari Biosphere Reserve, Benin. *PloS one*, 9(1), e84674.

<sup>16</sup> S. Selier et al. (2014), Sustainability of elephant hunting across international borders in southern Africa: A case study of the greater Mapungubwe Transfrontier Conservation Area. *The Journal of Wildlife Management*, 78: 122–132.

[http://www.researchgate.net/publication/259539652\\_Sustainability\\_of\\_elephant\\_hunting\\_across\\_international\\_borders\\_in\\_southern\\_Africa\\_A\\_case\\_study\\_of\\_the\\_greater\\_Mapungubwe\\_Transfrontier\\_Conservation\\_Area](http://www.researchgate.net/publication/259539652_Sustainability_of_elephant_hunting_across_international_borders_in_southern_Africa_A_case_study_of_the_greater_Mapungubwe_Transfrontier_Conservation_Area).

<sup>17</sup> Muposhi VK, Gandiwa E, Bartels P, Makuza SM, Madiri TH, *Trophy Hunting and Sustainability: Temporal Dynamics in Trophy Quality and Harvesting Patterns of Wild Herbivores in a Tropical Semi-Arid Savanna Ecosystem*, PLoS ONE 11(10) (2016), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0164429>.

<sup>18</sup> Allendorf, F.W. and Hard, J.J. (2009). Human-induced evolution caused by unnatural selection through harvest of wild animals. *Proceedings of the National Academy of Sciences of the United States of America*, 106, 9987-9994.

parts of Zambia over 20 years.<sup>19</sup> Additionally, trophy hunting has been shown to disrupt family groups and social stability, negatively impacting elephant survival.<sup>20</sup>

Another study reviewed the functioning of Zambia's protected areas and game management areas (GMAs), where trophy hunting occurs.<sup>21</sup> The authors found numerous problems that pertain to management of trophy hunting in GMAs including: uncontrolled human immigration and open access to wildlife; the Zambia Wildlife Authority (ZAWA) retains most of income derived from trophy hunting, little of this income goes to people living in GMAs with affluent community members benefiting most, and there are frequent financial irregularities associated with the distribution of this income; scouts employed in anti-poaching in GMAs are poorly and irregularly paid, insufficiently trained and equipped, and inadequate in number; ZAWA is poorly funded, has an inadequate number of staff to protect elephants against poaching, has increased hunting quotas to unsustainable levels in GMAs in order to raise money (the authors state that ZAWA 'are sometimes forced to make decisions to achieve financial survival at the expense of the wildlife they are mandated to conserve'), establishes trophy quotas arbitrarily, and does not monitor wildlife populations or trophies; and hunting concession agreements are not effectively enforced and unscrupulous concession operators are not adequately punished. The authors blame these many failures for the low numbers and diversity of wildlife, including elephants.

Thus, it is not surprising that elephant densities are lower in trophy hunting areas compared to a national park where trophy hunting is not permitted.<sup>22</sup> The Service itself acknowledged such impacts in 2014 when it suspended the issuance of elephant trophy imports from Tanzania and Zimbabwe.<sup>23</sup>

The Service has previously rejected attempts to import trophies from Zambia due to similar concerns of mismanagement including inconsistencies in reported elephant population estimates, failure to comply with monitoring requirements, absence of government funding for elephant protection, and lack of effective anti-poaching measures.<sup>24</sup> Further, the Service

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<sup>19</sup> Jachmann, H., Berry, P.S.M., and Imae, H. (1995). Tusklessness in African Elephants: a future trend. *African Journal of Ecology*, 33, 230-235. DOI: 10.1111/j.1365-2028.1995.tb00800.x

<sup>20</sup> Milner J.M., Nielsen E.B., Andreassen HP, *Demographic side effects of selective hunting in ungulates and carnivores*, Conservation Biology Vol. 21:36-47 (2007), doi: 10.1111/j.1523-1739.2006.00591.x ("Such selective harvesting can destabilize social structures and the dominance hierarchy and may cause loss of social knowledge, sexually selected infanticide, habitat changes among reproductive females, and changes in offspring sex ratio.")

<sup>21</sup> Lindsey, P. A., Nyirenda, V. R., Barnes, J. I., Becker, M. S., McRobb, R., Tambling, C. J., ... & t'Sas-Rolfes, M. (2014). Underperformance of African Protected Area Networks and the Case for New Conservation Models: Insights from Zambia. *PloS one*, 9(5), e94109.

<sup>22</sup> Crosmary, W. G., S. D. Cote, and H. Fritz. (2015). Does trophy hunting matter to long-term population trends in African herbivores of different dietary guilds?. *Animal Conservation*, 18, 117-130.

<sup>23</sup> See 80 Fed. Reg. 42524 (July 17, 2015); 79 Fed. Reg. 44459 (July 31, 2014) ("Without management plans with specific goals and actions that are measurable and reports on the progress of meeting these goals, the Service cannot determine if...Zimbabwe is implementing, on a national scale, appropriate management measures for its elephant populations."). Note that the Service's November 2017 decision to reverse this suspension was put "on hold" by President Trump and Secretary Zinke on November 17, 2017.

<sup>24</sup> See *Marcum v. Salazar*, 810 F.Supp.2d 56, 63 (D.D.C. 2011); *Marcum v. Salazar*, 694 F.3d 123

has not made enhancement findings for elephant trophy imports from either Mozambique or Cameroon even though elephant trophy hunting is allowed there.<sup>25</sup>

### **Trophy Hunting of African Leopards**

Similarly, Balme et al. (2010)<sup>26</sup> demonstrated the impact of trophy hunting on infanticide in a population of leopards in South Africa; high trophy hunting offtake resulted in particularly high male leopard mortality and high levels of male turnover; females cannot successfully raise cubs because of immigration into the population of new males; the consequences were low cub survival rates, delayed age at first parturition, reduced conception rates, and low annual litter production; the combined impact of high mortality and low reproductive output led to a negative population growth rate. Further, the 2016 IUCN assessment for *Panthera pardus* specifically notes that “concern about unsustainable trophy hunting has lately increased” and cites studies concretely demonstrating that “trophy hunting was a key driver of Leopard population decline” (Stein et al. 2016).<sup>27</sup>

Moreover, few of the potential benefits from hunting are consistently realized by local communities that live amongst lions, elephants, leopards, and other species targeted by trophy hunters. According to an IUCN analysis from 2009, big-game hunting only provided one job for every 10,000 inhabitants in the area studied,<sup>28</sup> and many of these jobs were temporary seasonal positions like opening the trails at the start of the hunting season (IUCN 2009<sup>29</sup>). Trophy hunting fails to create a significant number of permanent jobs (and those that it does create do not automatically benefit conservation), but ecotourism offers a possible solution. Consider the Okavango in Botswana where, as of 2009, a safari ecotourism tourism park provided 39 times the number of jobs than would big-game hunting on an area of equal size (IUCN 2009). Another example is the Luangwa National Park in Zambia, which produced twice the number of jobs provided by Benin and Burkina Faso’s trophy hunting sector combined in 2007 (IUCN 2009).

The IUCN also found that Africa’s 11 main big-game hunting countries only contributed an average of 0.6% to the national GDP as of 2009 (IUCN 2009). Of this marginal profit, studies suggest that as little as 3-5% of trophy hunting revenues are actually shared with

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(D.C.Cir. 2012). Note that the Service’s November 2017 decision to allow elephant trophy imports from Zambia was put “on hold” by President Trump and Secretary Zinke on November 17, 2017.

<sup>25</sup> See <https://www.fws.gov/international/permits/by-activity/sport-hunted-trophies-elephants.html>

<sup>26</sup> Balme, G.A., Hunter, L.T., Goodman, P., Ferguson, H., Craigie, J. and Slotow, R., 2010. An adaptive management approach to trophy hunting of leopards *Panthera pardus*: a case study from KwaZulu-Natal, South Africa. *Biology and conservation of wild felids*. Oxford University Press, Oxford, pp.341-352.

<sup>27</sup> Stein, A.B., Athreya, V., Gerngross, P., Balme, G., Henschel, P., Karanth, U., Miquelle, D., Rostro, S., Kamler, J.F. and Laguardia, A. 2016. *Panthera pardus*. The IUCN Red List of Threatened Species 2016: e.T15954A50659089. Downloaded on 11 July 2016. <http://www.iucnredlist.org/details/full/15954/0>

<sup>28</sup> South Africa, Namibia, Tanzania, Botswana, Cameroon, Central African Republic, Burkina, and Benin.

<sup>29</sup> IUCN. (2009). Programme Afrique Centrale et Occidentale. Big Game Hunting in West Africa. What is its contribution to conservation?

local communities (Economists at Large 2013<sup>30</sup>; IUCN 2009; Sachedina 2008<sup>31</sup>). Perhaps because of this, locals do not always view trophy hunting as the positive economic driver that hunting advocates portray it as. For example, villagers in Emboreet village in Tanzania characterized hunting as “destructive, exploitative, and disempowering,” and blame hunting for jeopardizing village revenues (Sachedina 2008). The same study presents an interview with a the Village Executive Officer, who explained that villagers feel more closely partnered with photographic tour operators than with hunters because hunters “are finishing off the wildlife before we’ve had a chance to realize a profit from it,” and because villagers never see the 5% of revenue they are supposed to receive from trophy hunting (Sachedina 2008).

A 2017 report from Economists at Large<sup>32</sup> found that in Botswana (where trophy hunting is now prohibited since 2014), Ethiopia, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe, trophy hunting brings in less than \$132 million in tourism spending to the eight study countries out of \$17 billion annual tourism spending, or just 0.78 percent. And trophy hunting has only a marginal impact on employment in these eight countries, contributing only between 7,500-15,500 jobs or 0.76 percent or less of nearly 2.6 million overall tourism jobs.

On average, American trophy hunters import more than 126,000 trophies every year.<sup>33</sup> While not all of these species are protected under the U.S. Endangered Species Act, it is an unfounded and sweeping generalization to assert that trophy hunting always provides a biological or economic benefit to the conservation of the species, as asserted in the IWCC notice. Therefore, an advisory council designed solely to *educate* the public on the *benefits* of trophy hunting is not in the public interest, as those alleged benefits are not supported by the best available science. Nor is that conclusion supported by the American public – indeed, in the last week alone, over 413,191 members of the public have voiced their opposition to American trophy hunters killing African lions and elephants threatened with extinction, and nearly 2 million people worldwide have taken action in opposition to elephant trophy hunting in another call to action.<sup>34</sup>

## **2. Using taxpayer dollars to promote the commercial interests of trophy hunting industry is not in the public interest**

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<sup>30</sup> Economists at Large. (2013). The \$200 million question: How much does trophy hunting really contribute to African communities? A report for the African Lion Coalition, prepared by Economists at Large, Melbourne, Australia.

<sup>31</sup> Sachedina, H.T. 2008. “Wildlife Is Our Oil: Conservation, Livelihoods and NGOs in the Tarangire Ecosystem, Tanzania.” University of Oxford. PhD. Thesis.

<sup>32</sup> Economists at Large. (2017). The Lion’s Share? On The Economic Benefits Of Trophy Hunting. A report for the Humane Society International, prepared by Economists at Large, Melbourne, Australia.

<sup>33</sup> [http://www.hsi.org/assets/pdfs/report\\_trophy\\_hunting\\_by\\_the.pdf](http://www.hsi.org/assets/pdfs/report_trophy_hunting_by_the.pdf);  
<http://www.hsi.org/assets/pdfs/trophy-madness-report.pdf>;  
[http://www.ifaw.org/sites/default/files/IFAW\\_TrophyHuntingReport\\_UK\\_v2.pdf](http://www.ifaw.org/sites/default/files/IFAW_TrophyHuntingReport_UK_v2.pdf).

<sup>34</sup> See <https://www.thepetitionsite.com/takeaction/721/417/558/>;  
[https://secure.avaaz.org/campaign/fr/trump\\_vs\\_elephants/](https://secure.avaaz.org/campaign/fr/trump_vs_elephants/).

The purpose of the FACA is “to eliminate useless advisory committees, strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving.” *Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare*, 409 F.Supp. 473, affirmed 551 F.2d 466 (D.D.C.1976). Establishing the IWCC would require the Service to expend resources on convening and participating in the council, unnecessarily diverting resources from an already strapped agency. Indeed, the Fiscal Year 2018 budget proposes to decrease funds spent on foreign species protection by \$1,000,000.<sup>35</sup> To use precious agency resources to create a self-serving platform for trophy hunters to amplify their voice, especially while funds are already provided for other FACA advisory committees addressing these same topics, does not meet the FACA requirements for actions in the public interest.

Therefore, the IWCC is not in the public interest and cannot be lawfully chartered.

### **C. The IWCC Is Designed to Undermine the Implementation of the ESA**

The IWCC represents an effort by a commercial industry to undermine the statutory duties of an agency, and as such the establishment of the IWCC would be patently *ultra vires*.

As an initial matter (and to be discussed further in comments submitted on or before December 8, 2017), the proposed makeup of the IWCC is inherently biased – it would include up to eighteen members who represent “Wildlife and habitat conservation/management organizations; U.S. hunters actively engaged in international and/or domestic hunting conservation; The firearms or ammunition manufacturing industry; Archery and/or hunting sports industry; and Tourism, outfitter, and/or guide industries related to international hunting.” There is no suggestion that objective conservation biologists will be invited to have a roll on this committee that would make recommendations on the management of threatened and endangered species (indeed, even the reference to participation by conservation and management organizations is so vague that it could even include biased groups like Safari Club International/Safari Club International Foundation or the National Rifle Association, groups that have filed lawsuits against the Service to assert the interests they now seek to address via the IWCC).

The IWCC is inherently designed to allow the trophy hunting industry to have an amplified voice, with an air of formality, on the question of whether killing threatened and endangered species enhances the survival of the species as required under the Endangered Species Act. 16 U.S.C. § 1539(a)(1)(A); 50 C.F.R. § 17.40. Specifically, the IWCC would be charged with:

- recommending removal of barriers to the importation into the United States of legally hunted wildlife;
- ongoing review of import suspension/bans and providing recommendations that seek to resume the legal trade of those items, where appropriate;
- reviewing seizure and forfeiture actions/practices, and providing recommendations for regulations that will lead to a reduction of unwarranted actions;
- reviewing the Endangered Species Act's foreign listed species and interaction with the Convention on International Trade in Endangered Species of Wild Flora and Fauna, with the goal of eliminating regulatory duplications; and

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<sup>35</sup> <https://www.fws.gov/budget/2018/FY2018-FWS-Greenbook.pdf>

- recommending methods for streamlining/expediting the process of import permits.

The ESA mandates that the Service itself make enhancement findings and determine whether listing a species is warranted, and these are not tasks that can be delegated to the regulated industry. 16 U.S.C. §§ 1533, 1539. Indeed, even without the creation of the IWCC the trophy hunting industry has had undue influence on such decisions of the Service, as evidenced by the fact that Safari Club International announced the recent decisions to allow elephant trophy imports from Zimbabwe and Zambia before such findings were even announced by the Service<sup>36</sup> (and before such announcements were called into question by the President and Secretary Zinke).<sup>37</sup>

The IWCC would also apparently take on “recommending strategies to benefit the U.S. Fish and Wildlife Service's permit office in receiving timely country data and information so as to remove barriers that impact consulting with range states.” But it would be inappropriate for such bilateral governmental discussions to be mediated by a third party with a financial stake in affecting the outcome of those communications. It is clear that the trophy hunting industry is aiming to minimize the impact of the ESA (indeed, they are currently arguing both in federal court<sup>38</sup> and before Congress that the ESA should add no more protections than what exists under CITES, even though that treaty explicitly calls for member countries to adopt national measures<sup>39</sup>). The IWCC would give the regulated industry a special seat at the table, to the disadvantage of conservation and animal protection groups seeking to prevent species extinction in furtherance of the statutory mandate of the ESA.

With the establishment of the ESA, Congress created “a program for the conservation of such endangered species and threatened species” and mandated federal agencies to “utilize their authorities in furtherance of the purposes of” the ESA by committing “to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction . . . .” 16 U.S.C. § 1531(a)(4), (b), (c)(1). The ESA defines the term “conserve” to mean “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 [the Act] are no longer necessary.” 16 U.S.C. § 1532(3). It is critical that any decisions to list species or allow imports of listed species are made based on the best available science, not pursuant to the commercial interests of the trophy hunting industry as envisioned by the IWCC.

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<sup>36</sup> <https://www.safariclub.org/detail/news/2017/11/14/u.s.-now-allows-elephants-from-zimbabwe-zambia-to-be-imported?from=groupmessage&isappinstalled=0>

<sup>37</sup> Statement of President Trump, Nov. 17, 2017 at 8:47 pm, <https://twitter.com/realDonaldTrump/status/931685146415255552>; Statement of President Trump, Nov. 19, 2017 at 6:57 pm, <https://twitter.com/realDonaldTrump/status/932397369655808001>.

<sup>38</sup> *SCI et al. v. Zinke*, Case No. 1:14-cv-00670-RCL (D.D.C. 2017).

<sup>39</sup> This international law sets the floor, expressly providing that parties may adopt “stricter domestic measures” for species covered by CITES (as well as those that are not). CITES, Art. XIV, para. 1. See also FWS, *Ensuring the Future of the Black Rhino* (Nov. 25, 2014), at <http://www.fws.gov/news/blog/index.cfm/2014/11/25/Ensuring-the-Future-of-the-Black-Rhino> (acknowledging that the ESA enhancement standard is in addition to the CITES non-detriment standard and that trophy import permits should only be issued if the Service finds “that the [animal] is taken as part of a well-managed conservation program that contributes to the long-term survival of the species”).

Therefore, the establishment of the IWCC is not in accordance with either the FACA or the ESA and must not be finalized. If the IWCC is finalized, HSUS and HSI will consider seeking legal review of this unlawful agency action. We will submit separate comments on the composition of the IWCC on or before December 8, 2017.

Sincerely,



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