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May 15, 2014

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Division of Management Authority  
U.S. Fish & Wildlife Service  
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**BY FEDERAL EXPRESS**

**Re: Request for Reconsideration of permit application denials PRT-29232B, PRT-29234B and PRT-31753B**

Dear Chief:

This is a request for reconsideration of the denials of the following permit applications to import personal hunting trophies of elephant to be taken in Tanzania in 2014:

*To Be Taken*

- 1. Stanley S. Studer, PRT-29232B**  
For bull elephant to be taken in Selous, Tanzania in 2014, hunting with operator Eric Pasanisi; denial dated April 4, 2014.
- 2. Ryan K. Studer, PRT-29234B**  
For bull elephant to be taken in Selous, Tanzania in 2014, hunting with operator Eric Pasanisi; denial dated April 4, 2014.
- 3. Jeffrey D. Smithers, PRT-31753B**  
For bull elephant to be taken in Selous, Tanzania in 2014, hunting with operator Eric Pasanisi; denial dated May 7, 2014.

This request seeks reconsideration of both the negative DSA non-detriment advice and the negative DMA enhancement finding for Tanzania. In failing to make positive findings, the DSA and the DMA erred as a matter of fact and law. These errors are addressed below.

Regretfully, neither the DSA nor the DMA made a request to Tanzania authorities for information before making their respective determinations, not since the positive determinations of the past. The Fish and Wildlife Service's (FWS) response to Conservation Force's FOIA for a questionnaire or response from Tanzania confirms that no related correspondence has occurred – not since 2011, when undersigned counsel escorted the Tanzania Wildlife Director, past Wildlife

Director, and Director of the Tanzania Wildlife Research Institute to FWS headquarters in Washington, DC, at Tanzania's request. Unless the FWS's FOIA response was erroneous, there has been no questionnaire to date, more than one month after the suspension. The Tanzania Minister and Director of Wildlife confirm that there has been no communication from FWS. Without communication with Tanzania, most of the attached documents, reports, information, and explanations were not considered by DSA and DMA in making their two negative findings. While there is no doubt additional information as well as positive developments are unfolding daily, we believe the urgent circumstances and attached documents are sufficient to reverse the negative advice and findings. It is important not to leave the house empty for too long when thieves/poachers are known to be nearby, unless you wish to invite them in.

### **Summary of Errors**

First, the denials of Stanley and Ryan Studers' and Jeffrey Smithers' permit applications should be reconsidered and reversed because the denials apply the wrong standard to evaluate enhancement and are based on flawed and outdated data.

In the March 27, 2014 DMA enhancement finding (Enhancement Finding), the Division of Management Authority (DMA) applied the wrong standard in evaluating whether import of these trophies would enhance the survival of the species. The letters denying the referenced permit applications explicitly define "enhancement" as providing a benefit to the species and specify activities providing types of benefits, like using hunting revenue to support conservation and anti-poaching efforts and to decrease human-wildlife conflict. The Enhancement Finding never examines or discusses the specified benefits, even though sport-hunting revenue provides all of them. Instead, the Enhancement Finding relies on flawed data that fails to address benefits at all and rehashes the improper biological assessment made by the Division of Scientific Authority (DSA) in the February 21, 2014 non-detriment advice (Non-Detriment Advice). The Applicants respectfully request you properly consider the current and correct enhancement data submitted with this request for reconsideration and reverse the denial of these applications. As a matter of fact, the activity of hunting enhances the survival of the elephant in Tanzania.

Second, the Enhancement Finding should be reconsidered and reversed because it is legally unnecessary. The FWS added the enhancement requirement in 1992 based on its understanding of CITES at that time. In 1994, however, the CITES Conference of Parties (CoP) abandoned the concept of enhancement entirely. Thus, the current FWS enhancement requirement is based on a rejected interpretation of CITES and should be reconsidered because its sole statutory basis is a clause in a CITES resolution that has been deleted.

Third, the DSA erred as a matter of law in making a negative Non-Detriment Advice regarding the purpose of import of sport-hunted elephant trophies from Tanzania. The Code of Federal Regulations, CITES Resolution 2.11, and CITES Article III require the DSA to make a finding on whether the proposed activity would be for "purposes" that are not detrimental to the survival of the species at issue. The DSA has attempted to function as a scientific authority for an exporting country and engaged in a fact-finding inquiry that wholly disregards the purpose of the import permits. Tanzania is in the best position to biologically evaluate whether an export is detrimental to the survival of a species, not the DSA. The biological findings of the exporting country should be accepted according to CoP Res. 2.11, and it is in the best position to make that determination as well as the first party interest.

Fourth, the DSA advice here should have been that the “purpose” of import was not detrimental. Notwithstanding that the DSA exceeded legal requirements in the Non-Detriment Advice, its improper inquiry suffers from several fundamental flaws. The DSA failed to review updated and relevant evidence of the monumental conservation and management measures undertaken by the government of Tanzania in partnership with hunting outfitters to protect the elephant population. The anecdotal data cited in the Non-Detriment Advice has no bearing on the “purposes” of sport-hunting trophy imports. But even if FWS’ incorrect line of analysis is followed, import of sport-hunted elephant trophies is still not a detriment to the survival of the elephant in Tanzania. Tourist hunting sponsors habitat protection, anti-poaching operations, and facilitates management of human-elephant conflict. The marginal amount of older bulls taken in hunts does not have a net negative effect on the elephant population. Overall, sport-hunting of elephants is essential and sustainable use and the revenue it generates is instrumental in poaching control and management. There would be far fewer elephants but for the activity of regulated hunting – it provides a net benefit to the population rather than a detriment.

Considering the evidence presented in the attached Information Document, it is clear the import of sport-hunted elephant trophies from Tanzania is not done for purposes that are detrimental to the elephant population and enhances the survival of the species. Accordingly, the Applicants respectfully request the attached information be considered, this request for reconsideration be granted, and the permit applications be approved as soon as possible.

Respectfully submitted,

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Attachments:

Authorizations of Representation  
Permit Denials  
Information Document

## INFORMATION DOCUMENT

### Introduction

The FWS has approved elephant trophy import permits from Tanzania for 22 years, since 1992. The import permits have been based on positive DMA and DSA determinations which have been largely based on intergovernmental communications and secondarily, from submissions of applicants, often with information from Conservation Force. When and if International Affairs has needed more or updated information, the DMA or DSA has requested the information from the Tanzania authorities and simultaneously advised Tanzania it required the information and precisely what information it needed.

In this instance, no notice, warning, or inquiry was made to Tanzania before the negative findings. No inquiry was made of the Applicants, who were instead misadvised in a written acknowledgment their applications were complete and they would be contacted if any further information was necessary.

As of the date of this request for reconsideration, no inquiry for additional information has been made to Tanzania or the Applicants. Tanzania does not even have a letter of inquiry as has been the longstanding practice or a courtesy notice of the pending permit denials. **At the very least**, the information attached should be given every consideration because this is the first opportunity to address unknown issues and the FWS's misperceptions arising from anecdotal information.

### State of Conservation

The Republic of Tanzania has the most up-to-date National Elephant Management Plan in Africa, adopted in 2010 and effective through 2015.<sup>1</sup> It also conducts regular elephant surveys and has developed substantial internal survey capacity uncommon in the developing countries. It had and probably still maintains the second largest elephant population in the world. It has succeeded in preserving the largest amount of protected habitat in Africa, approximately 36% of the country. Thirty-eight Wildlife Management Areas (WMAs) are soon to add an additional 7% of the country as land managed for conservation.<sup>2</sup>

Tanzania has over 1,000 rangers or game scouts, and in 2014 is adding 930 more (500, then 430). Although it is one of the largest exporters of illegal ivory in the midst of the current unprecedented Africa-wide ivory trafficking crisis, it also is the seaport gateway for eight land-locked countries, has four international airports, and has had the largest number of elephant and habitat excepting land-locked Botswana. A great deal of the country's record amount of habitat is held in 150 hunting blocks and 38 developing WMAs. Tourist safari hunting is a major part of Tanzania's anti-poaching strategy. Each of the 150 hunting blocks and the 38 developing WMAs must do anti-poaching and CBNRM. Most of the game scouts are supplied directly or indirectly through hunting.

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<sup>1</sup> With the exception of Kenya, no other country's plan is anywhere near as up-to-date as Tanzania. For example, Namibia's plan is dated 2007. Zimbabwe's plan is dated 1997. Botswana's plan and Zambia's plan are each dated 2003. Only Kenya has a current plan that extends from 2012-2021.

<sup>2</sup> Currently, 17 WMAs make up 3% of the country, with 21 being registered for another 4%. WWF-Tanzania, Tanzania's Wildlife Management Areas, 2012 Status Report (Attached 60, p. 11).

Tanzania is not unique to have an ivory poaching and trafficking problem, but it is the leader in addressing the problem. (Witness the Summit on Stopping Wildlife Crime and Advancing Wildlife Conservation, Dar es Salaam, May 9 and 10, 2014.) A large part of the conservation world leadership is helping Tanzania authorities contend with the unprecedented and unexpected rise in poaching to crisis level. The fact remains that no one is doing more to control the unprecedented poaching arising from unprecedented demand.

### **Summary**

For 22 years, the DSA has made a positive non-detriment finding and the DMA has made a positive enhancement finding for import of hunting trophies. Because of an unprecedented Asian demand, poaching was more than anticipated. That said, Tanzania has been addressing the issues as they have become known. In the past four years, Tanzania has stepped up its programs. In 2014, without any knowledge that FWS would threaten the hunting components of its programs, Tanzania has raised its anti-poaching and management efforts to exceptional levels. It is in the process of doubling its game scouts by adding 930 within months, increasing its WMAs by 21 areas to a total of 7% of the country (building community incentives and an army of village game scouts, and protecting corridors), returning to its Retention Funding system, organizing a UNDP Basket Fund, establishing the new Wildlife Authority, creating a ranger Disciplinary Board, Code of Conduct, and more. *See Gov't, UNDP Establish Fund for Conservation of Wildlife, The Citizen* (May 12, 2014) (Attached 74). Tourist safari hunting has been a primary tool in Tanzania's anti-poaching arsenal. It serves as an essential user-pay mechanism for survival in the war on poaching, which the Minister has made clear is not optional.

It follows that the suspension is untimely. Tanzania appears to have already turned the surprise crisis around after 2,000 arrests, confiscation of over 1,000 firearms, and several military and paramilitary campaigns. The skeletal carcass counts aged less than 18 months in the 2013 aerial surveys speak loudly because they are extremely low.

The extreme rise in demand for ivory was unprecedented and unforeseeable, but Tanzania is measuring up. There is a wealth of hard documents and real actions to attest to the facts.

### **The Enhancement Finding Relies on the Wrong Standard and on Information that is Incomplete and Incorrect**

The Enhancement Finding should be reversed for the simple fact that it never addresses the concept of enhancement. As the letters denying the permit applications indicate:

... to enhance the survival of the species, the importation must be associated with activities that provide a direct benefit to the species being hunted. Such benefits could include the use of revenue generated by the hunt to support conservation projects or to manage the species. Other benefits that could result from activities that enhance the survival of the species include improving human-wildlife conflicts, anti-poaching efforts, or habitat conservation.

Evaluating these benefits – as the DMA should have done<sup>3</sup> – it is clear that the import of elephant trophies from Tanzania meets the stated test.

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<sup>3</sup> Although it was not officially adopted for other reasons, in its definitions the FWS's 2003 Draft Enhancement Policy states that "enhancement" is "demonstrated through support of a substantive conservation program for that

## Regulated Tourist Hunting Benefits Elephant Survival

First, **tourist hunting in Tanzania provides core support for conservation programs and preservation of habitat.** Tourist hunting revenue pays for conservation and wildlife management projects. Hunting revenue incentivizes local communities to preserve and protect important habitat and migration corridors. The DSA acknowledged these benefits in the Non-Detriment Advice, noting that hunting revenue and fees go to local districts and communities to support conservation activities and make up more than 90% of the Tanzania Wildlife Protection Fund. (Attached 3).

Evidence submitted with this request from those on the ground in Tanzania demonstrates further that sport-hunting and the import of trophies support sustainable use of wildlife and land conservation.

### *Additional Attached Examples of Conservation Management and Habitat Preservation*

- The hunting industry is “the sole contributor” to habitat and wildlife conservation outside of national parks and preserves and manages natural resources as a partner to the Wildlife Division. Tanzania Safari Outfitters Assn. Letter (Attached 32).
- Hunting in Tanzania is highly regulated to be sustainable and to advance a sound wildlife management policy. Tanzania Safari Outfitters Assn. Letter (Attached 32); Tanzania Wildlife Conservation Regulations (Tourist Hunting) (Attached 12, produced in partial FOIA response on Apr. 14, 2014 (unstamped) (Attached 6)).
- Elephant hunting attracts hunters willing to put large sums into conservation and to support community based conservation, which leads to more protected acreage. African Prof'l Hunters Assn. Letter (Attached 26).
- The 150 hunting blocks in Tanzania have been substantially rehabilitated through the “wise use” of hunting funds, and operators of these blocks can now provide hunting and photographic safaris, which further increases revenue for conservation efforts and provides quality wildlife habitat. African Prof'l Hunters Assn. Letter (Attached 26).
- Hunting is an “important wildlife management tool,” because it generates income earmarked for conservation and generally utilizes older animals who do not affect population growth. Letter from renowned operator Robin Hurt (Attached 33).
- Wildlife Management Areas cover 28,389 kilometers<sup>2</sup>, or about 3% of Tanzania, and provide “enhanced protection of critical habitats outside of protected areas,” with additional WMAs under development. USAID, Tanzania Wildlife Management Areas, Final Evaluation Report (July 15, 2013) (Attached 59, p. 12). The additional WMAs will add 4% to habitat under wildlife management (for a total of 7% of the country). WWF-Tanzania, Tanzania’s Wildlife Management Areas, 2012 Status Report (Attached 60, p. 11).

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species in the range country with a **positive benefit for the species and/or its habitat.**” 68 F.R. 45912 (Attached 86).

### *Quota Concerns Are Misplaced*

Without explanation, the negative findings suggest DMA and DSA are concerned about the Tanzania export quota of 200 elephant. First, the quota explanation demonstrates this concern is misplaced. At no time has the actual take been more than 40% of the quota. There is a \$17,000 fine for taking an elephant with less than the prescribed tusk length. Concern over the numbered quota limit is erroneous. Second, at no time have the numerical limits been more than a fraction of 1% of the population. A 1% quota of 200 elephants would represent a population of 20,000 elephants. Tanzania has many more elephant than that.

But, although the concern is misplaced, having learned of this FWS issue, the Tanzania authorities are reducing the total quota to 100 elephants per year, while continuing to maintain the extra size limits. (Verbal discussions with the Director of Wildlife; presumably the Wildlife Division would have already made the reduction had they been informed of the concern.)

It should be pointed out that the annual take has been stable and consistent, averaging 36% but always less than 40% of the quota of 200, for years. There has not been any decline in offtake that would suggest a significant population decline. This confirms the sustainability of the offtake as much if not more than the numerical limit maximum. It has always been a conservative quota and far less than the maximum sustainable yield.

### Regulated Tourist Hunting Reduces Human-Wildlife Conflict and Secures Additional Habitat

**Hunting reduces human-elephant conflicts by giving elephants value**, which changes the way local communities traditionally view elephants and encourages good ecological stewardship. Elephants and people live side-by-side in Tanzania. Elephants cause problems for their neighbors by destroying crops, disrupting livestock, and maiming and killing local people. But hunting transforms elephants from troublemakers into valuable assets. Hunters pay to utilize elephants and share the wealth of a successful hunt with locals. Hunting concessions are local employers and contribute directly to the communities, and concession bidders must submit community programs.

Tanzania hunting operators have many kinds of community programs. Tanzania also has a CBNRM Wildlife Management Area program particularly designed for communities. *See generally* WWF-Tanzania 2012 Status Report (Attached 60).

### *Tanzania's WMA Program Enhances the Survival of Elephants*

The Enhancement Finding does not rely on updated information with respect to Wildlife Management Areas (WMAs\_ in Tanzania. The regulations governing WMAs were revised in 2012 to address the same types of criticism raised by DMA. Wildlife Conservation Regulations (Attached 14). Recent analysis that should be considered (from USAID, WWF, and others) describes the WMAs' success. Although recognizing limits WMAs have faced in the past, these organizations are optimistic about future progress given the revised regulations. For example, according to USAID, "WMAs represent the best hope for conserving wildlife outside of Tanzanian protected areas while enhancing rural economic development." USAID Final Evaluation Report (Attached 59, p. iv). WMAs have substantially grown the protected habitat beyond national parks and reserves, especially in important wildlife corridors, and evidence indicates WMAs have "led to improved biodiversity conservation." (Attached 59, p. v). WMAs support conservation efforts with funds to the Wildlife Division. Further, the revised regulations vest local communities with greater rights to manage hunting concessions and retain revenue to

invest in social infrastructure. (Attached 59, p. 13). In these ways, WMAs benefit both wildlife and people.<sup>4</sup>

Approximately 36% of Tanzania has protected area status. WWF-Tanzania, 2012 Status Report (Attached 60, p. 1). Another 7% is dedicated to community based natural resource management (CBNRM) initially established under a series of regulations in the 1998 Wildlife Policy Act (revised 2007). (Attached 60, p. 5). The CBNRM in Tanzania currently consists of 17 registered WMAs covering 3% of the country and another 21 in the registration process, adding an additional 4%. (Attached 60, p. 6). The currently registered WMAs include 148 villages employing 529 village game scouts to control poaching. (Attached 60, p. 12). The WMA CBNRM program is supported by USAID, which believes in its efficacy and is stepping up what is already more than a \$27 million investment. *See generally* USAID Final Evaluation Report (Attached 59).

In addition to governmental aid, WMAs receive a significant amount of fiscal support from tourist hunting safaris. “Safari hunting provides a valuable source of revenue for WMAs.... The more wild animals the WMA manages and conserves, the more revenue it can generate. These are very tangible benefits and linkages that can be easily understood at the community level and are good incentives to reduce poaching and retaliatory killings of animals such as lions.” WWF-Tanzania 2012 Status Report (Attached 60, p. 20). Nearly every WMA earns hunting revenue (13 of 17 in 2012). (Attached 60, p. 20). Hunters pay concession fees and games fees for each type of animal hunted. “The most valuable game fees are for elephant trophies, which are either US\$15,000 or US\$20,000, depending on the size of the trophy. The fees rise to US\$18,000 and US\$25,000 for bow-and-arrow hunting.” (Attached 60, p. 21). With the new WMA legislative reforms, a substantial amount of the associated safari fees go directly to the WMAs.

Since the 2012 WMA regulations there are new benefit-sharing mechanisms aimed at encouraging transparency and ensuring local communities actually receive the benefits derived from the tourist hunting operations located within their areas. (Attached 60, p. 22). The attached chart shows the breakdown of fees generated. In sum, the WMA receives 75% of the hunting block fee, 45% of the game fee, 45% of the conservation fee, 45% of the observer’s fee, and 15% of the permit fee. (Attached 60, p. 22). This evidence demonstrates a strong connection between the tourist hunting sector and the success of the WMAs in Tanzania.

Because it turns wildlife into economic assets, regulated tourist hunting lies at the core of community conservation strategies. Giving communities control over their natural resources and decisions about how to use them empowers communities politically. It allows communities to turn hunting revenue into benefits like new clinics and schools. In Tanzania, the success and growth of WMAs benefit elephants by increasing their protected habitat. And as USAID found, WMAs benefit people because “villages in WMAs with earnings are in turn now receiving their share of financial benefits and using them to support social infrastructure development.” USAID

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<sup>4</sup> Similarly, the Maliasili Initiatives indicate that the 2012 revisions to the WMA regulations address the two greatest weaknesses in past WMA legislation and suggest “a much more robust basis for strengthening the linkages between local interests and wildlife conservation.” (Attached 58). And the conclusion of the U.N. Food and Agriculture Organization that “[c]ommunities can make a substantial amount of money from businesses within WMAs, and WMAs may make communities more attractive to businesses,” suggests that DMA should reconsider its opinion that WMAs have a low capacity for generating income. (Attached 57, p. 2).



Final Evaluation Report (Attached 59, p. v). Successful WMAs help to reduce human frustration and conflicts with elephants, now and into the future. As such, they enhance the survival of the species.

*Additional Attached Examples of Conflict Reduction*

- Hunting “hugely contributes to the financial well being and food supply, to people who live on a day to day basis with wild animals, in and around wildlife areas...” Letter from renowned operator Robin Hurt (Attached 33). When elephants benefit local communities, they are respected and protected as assets.
- “Where wildlife provides few benefits ... it is often killed (legally or illegally) and its habitats are degraded ... hunting can address this problem by making wildlife more valuable than other forms of land use. It can return benefits to local people, encouraging their support for wildlife, and motivating investment at community levels.” African Prof'l Hunters Assn. Letter (Attached 26).
- According to an outfitter in Tanzania who supports local communities through a benefit-sharing scheme, because “these communities are beneficiaries of revenue generated by hunted animals, they have a vested interest in those animals, and are pro-wildlife conservation for all species in respective areas.” Sworn Decl. of Derek A. Hurt (Attached 43).
- One outfitter acknowledged: “programs that invest hunter dollars in local economies change[ ] local attitudes towards elephants.... Where elephants become worth protecting as a means of generating hunter revenue, local communities are more willing to tolerate and protect these animals.” He pointed to the decline of the scimitar-horned oryx as a cautionary tale: “Taking away the value of an animal takes away its future.... Once [hunting] restrictions were imposed [on oryx], the value dropped and the numbers of these animals dropped as well ... because there was no incentive to maintain healthy populations. In Africa ... cash is king and where a resource cannot or does not generate financial return, it has no future.” Sworn Decl. of Ivan Murray Carter (Attached 39).
- One hunter reported on a “win-win” result of his hunt when he took an elephant that damaged a local field. The village benefited by the fresh meat and removal of a problem animal, and the hunter benefited from the successful and sustainable hunt. Sworn Decl. of Atlas L. Cheek, III (Attached 40).
- Sport-hunting reduces human-elephant conflicts because it “places value on the species and that impacts the local economies. In addition to the revenue received from hunting fees, locals are employed in jobs related to the hunting operation as trackers, skimmers, camp staff, etc. They earn wages that would otherwise not be available to them without the presence of hunters and hunting. Without the value that sport hunters provide, elephants would be intolerable to the locals because of their destructive behaviors. Local residents would lose their tolerance of the crop destruction caused by elephants and would resort to poaching....” Sworn Decl. of Grant F. Dennison (Attached 41).

### Regulated Hunting is the Primary Defense against Poachers

Perhaps most important, **tourist hunting is the backbone of anti-poaching efforts throughout Africa, especially in Tanzania.** Concession and permit fees benefit elephants by financing most government anti-poaching efforts. As acknowledged in the Non-Detriment Advice: “More than 90% of the revenue of the Tanzania Wildlife Protection Fund is generated from fees associated with sport-hunting and the sale of trophies. Law enforcement activities for wildlife and wildlife products, including ivory, are largely subsidized by the Tanzania Wildlife Protection Fund.” (Attached 3, p. 5). Hunting operators, and donations by conservation-minded tourist safari hunters who see the destruction caused by poachers, support the Wildlife Division’s anti-poaching efforts with equipment, training, manpower, and financial contributions.

#### *Pasanisi Example*

There are so many examples of the enhancement services of safari hunting that it is not possible to describe them all. The benefits are magnified by the number of operators and the size and number of their blocks (150 blocks, although Pasanisi is among the very exceptional). The Studer and Smithers permit applications at issue are booked with operator Eric Pasanisi, who prepared the attached report partially demonstrating his anti-poaching expenses in 2012 and 2013 (with supporting documentation). Anti-Poaching Campaign 2012 and 2013 (Attached 37). **The itemized expenses for anti-poaching were \$527,698 in 2012 and \$387,218 in 2013, totaling \$914,916 in the past two years.** This includes game scout salaries, fuel for scout vehicles, satellite phones, binoculars and similar equipment, and special food rations for scout patrols at the request of the Selous Game Reserve Warden, Benny Kibonde, who oversees 63 anti-poaching sections in the Selous each with six game scouts, 384 total, wholly funded by the hunting operators within the Selous. (Attached 37, p. 14); Eric Pasanisi Letter (Attached 56).

Operator Eric Pasanisi has an amazing Award System for the Selous scouts. He doubles the salary of every scout in the six-member team as a reward when an elephant poacher is caught! (He had been doubling the salary of **every** game scout, but now that he is voluntarily going to pay the salaries of 100 scouts in the Selous, he intends to only reward the six members of the team that make the arrest.) The award is the full amount of a scout’s salary, which Eric already pays through the Selous Warden, but the awarded second amount is paid directly to the scout, rather than through the government like the first. This is strong motivation to catch poachers, according to Eric. (Attached 53, 55).

On top of all this, Eric (and his father before him) founded and operate the *Wildlife Conservation Foundation of Tanzania*, which holds annual galas to raise funds for anti-poaching activities, above and apart from that accounted for in the attached report. See attached records, media clip, and photo samples. Conservation Force and Dallas Safari Club co-hosted such an event with the Foundation one year with President Bush. Photograph (Attached 98); see also The Citizen, Selous Anti-Poaching Drive Gets Sh350 Million Boost (Attached 78). In total, 20 Land Rovers costing \$1.5 million have been donated for anti-poaching efforts.<sup>5</sup> Through this foundation, Eric has also arranged to provide 300 rifles and 30,000 rounds of ammunition to the Selous game scouts.

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<sup>5</sup> Eric Pasanisi’s operation maintains 2,000 miles of road for the enforcement use of the vehicles donated. (Attached 37).

On top of these millions of dollars of direct contributions to anti-poaching, Eric has just pledged to the Wildlife Division to step up his contribution to funding 100 rangers/scouts for the Selous indefinitely, starting this year (up from 36). Address to Wildlife Summit by Eric Pasinisi (Attached 54). The permit denials did not take any of these concrete benefits into account.

Hunting benefits elephants directly by taking the fight to the frontlines. Safari operators all maintain anti-poaching teams and are the poachers worst enemies. The mere presence of the safari operation is a deterrent to poachers. It is the eyes and ears of anti-poaching forces. In 90% of cases, hunters find poached carcasses first. They use advanced equipment to track and catch poachers. For example, the Zimbabwe poisoning tragedy referenced in the FWS's April 4, 2014 press release announcing the suspension was discovered by a hunting operator who used his resources to track the poachers and assist in their arrest. Thys De Vries Email (Attached 29); *see also* Pete Fick Email (Attached 30); Michael Mantheakis Safaris in Tanzania (Attached 35). Professional hunters and the safari clients who support them are so vital to the fight against poaching that Tanzania's Ministry of Natural Resources and Tourism is considering extending the season length for three months to keep hunters in the bush – with their eyes, ears, and satellite phones as a deterrent to the poachers. Tanzania Prof'l Hunters Assn. Letter (Attached 25); Sworn Decl. of Derek A. Hurt ("The hunting off-season has recently been shorted by three months.... This should help with reducing poaching pressure as it is allowing more time for hunters in the field.") (Attached 43).

*Additional Attached Examples of Tourist Hunting Anti-Poaching Impact*

- Hunters form a "protection presence" in over 20% of wildlife habitat in Tanzania. Tanzania Safari Outfitters Assn. Letter (Attached 32).
- Hunters deter poachers by their presence, and because they will personally track and arrest poachers in support of national rangers and game scouts. Sworn Decl. of Scott Petty, Jr. ("During my 2013 hunt in Tanzania ... I watched numerous anti-poaching details that were supported by our Professional Hunter.... Everyone involved in the hunting of elephants was very involved in anti-poaching patrols and all efforts at preventing poaching") (Attached 47).
- Professional hunters provide the "first and most effective line of law enforcement" defense against poaching. Prof'l Hunters' Assn. of South Africa Letter (Attached 36).
- "Banning the import of legally hunted elephant trophies removes the revenue used to curb the exploitation of wildlife resources, thus giving poachers and traders unrestricted freedom to carry out their ruthless trade with little chance of being apprehended and brought to justice." African Prof'l Hunters Assn. Letter (Attached 26).
- One safari outfitter noted that habitat depleted by poachers can be rehabilitated by "effective use of highly motivated anti-poaching teams" and community support. "To keep these teams on site and motivated, one needs a profitable operation to pay for it." Michael Mantheakis Safaris in Tanzania (Attached 35). The import suspension will reduce net income, and anti-poaching efforts will suffer.
- Taking hunters out of the bush and off patrol clears the way for poachers who then decimate wildlife, as shown by Tanzania's 1973 hunting ban. When hunting was

banned, Tanzania's elephant population decreased by 300,000, but "the elephant population immediately started to recover" when hunting reopened. Letter from renowned operator Robin Hurt (Attached 33).

- Although the FWS's suspension of trophy imports is not a ban on all hunting, it will undoubtedly cause cancellations that cannot be rebooked, resulting in fewer professional hunters on patrol and decreased revenue to support anti-poaching efforts. Sworn Decl. of Alistair Pole (Attached 48); Sworn Decl. of Gary M. Duckworth (Attached 42).
- Hunting companies rely on donations and safari revenue to sustain successful anti-poaching efforts. Charlton McCallum Safaris (Attached 27). Unfortunately, a loss of revenue from U.S. hunters because of the ban translates to a direct loss in the funds outfitters invest in anti-poaching efforts. Tanzania Hunting Operators Assn. Letter ("If, because of the FWS's decision, these Hunting Companies lose their clients, and consequently their financial possibilities, I can affirm that not a single elephant will remain alive, in the coming months, on these territories left to poachers.") (Attached 28).
- One hunter affirmed that the safari outfitter he used maintained an anti-poaching unit and charged a daily anti-poaching fee. He contributed additional funds (as did most other hunters) to support this effort. Sworn Decl. of Jerry E. Beardmore, Jr. (Attached 38).
- "In 19 safaris since 1995, I have seen the benefits of sport hunting and the impact it has on poaching. I have arrested poachers (of plains game) and burned their camps. I have removed their snares and traps in Tanzania and found plains game dead as a result of poachers. I have seen anti-poaching operations funded and conducted by professional hunters and outfitters in Zimbabwe." Sworn Decl. of Michael B. Nice (Attached 46).
- According to another hunter, "my safari ... incentivizes the game scouts. They see the value of what they do and the locals see a greater value to the elephants than what they receive by tolerating the presence of poachers. Without hunters, the unpaid game scouts and the locals will not protect the elephants if they see no value in the elephants that destroy their crops in the fields." Sworn Decl. of Richard D. Netzley, Jr. (Attached 45); Decl. of Robert Johnson (hunters destroy poaching camps using intelligence from locals, and government game scouts accompany all hunts) (Attached 44).
- "Hunting in Tanzania certainly **enhances the survival of the species**. Hunters are the only ones in the remote wilderness areas who can deter poachers. The hunting business is a huge employer and provider to the local economies. For this reason, **Tanzania can justify keeping wilderness as wilderness and therefore a home for all wildlife.**" Sworn Decl. of Derek A. Hurt (Attached 43).

The international response to Tanzania's poaching crisis shows how central sport-hunting is in the fight against poaching. In another instance, hunter-conservationists have pledged more than \$66,000 to curb the poaching epidemic in one effort in the Selous alone. Rolf Baldus Email (Attached 99). This is an effort arising from CIC, to which Conservation Force is contributing

\$10,000. Additional support will come from safaris on the ground – if hunters can import their trophies back home.

In the Enhancement Finding, the DMA only considered the offtake of elephant, while in the past the full spectrum of benefits have been considered as they should be. The benefits of the hunting described in past enhancement findings still exist and are all the more important, as poaching becomes a greater threat.

#### Regulated Tourist Hunting of Elephants is Sustainable

The Enhancement Finding suggests that additional offtake from sport-hunting is not a sustainable use of elephants in Tanzania. For all the reasons above, sport-hunting enhances the survival of elephants in Tanzania and utilizes them in a way that benefits all wildlife through increased habitat preservation and support for conservation and anti-poaching programs. Sport-hunting raises the value of elephants in the eyes of their human neighbors and thereby increases social tolerance for elephants' destructive behavior.

We wholeheartedly agree with DMA's concern about a significant decline in Tanzania's elephant populations. We disagree, however, that the regulated tourist safari hunting take is not sustainable. The bottom line is hunters take fewer than 100 primarily bull elephants in Tanzania. Even if the total elephant population has fallen to 50,000 (but best estimates place it substantially higher, as discussed below), taking 100 elephants would represent only **0.2%** of the population. Hunters select post-mature elephants, so their take has no effect on population growth levels. In a sustainability analysis, sport-hunting's effect on offtake is negligible. Its ability to help elephant populations is great. Therefore, with hunting, there is a net population gain.<sup>6</sup>

#### Tanzania's Political Housecleaning Benefits the Elephant Population

The Enhancement Finding should consider extensive reforms being undertaken to address alleged corruption in the Wildlife Division. The new Minister of Natural Resources and Tourism, Lazaro Nylandu, has received overwhelming praise and taken a tough stance against corruption and poaching. *E.g.*, African Wildlife Trust, Nylandu the Right Man for the Job (Attached 64, produced in FOIA production at 690-91).

For instance, Minister Nylandu immediately instituted Codes of Conduct to govern anti-poaching operations following Operation Tokomeza. (Attached 64). And the fact it was willing to clean house and suspend 21 officials demonstrates the new Ministry's conviction and strength. At the time of the personnel suspension, the Ministry announced it **"won't hesitate in dealing with employees who use their position to sabotage the country's natural resources or anybody partnering with poachers to kill wild animals. Tougher measures are going to be taken against them without delay."** Tanzania Daily News, Twenty One Officials Suspended over Poaching Claims (Attached 63, produced in FOIA production at 696-97). The recent Summit to Stop Wildlife Crime and Advance Wildlife Conservation held in Dar es Salaam also exemplifies the country's and Ministry's efforts to manage wildlife effectively and to address concerns raised by the international community and specifically the U.S.

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<sup>6</sup> As the FWS found in the 1997 enhancement finding for Tanzania, sport-hunters frequently take problem animals. In this way, total legal offtake is reduced. *See* DMA, Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Tanzania (1997) ("Tanzania's regulated sport-hunting industry has contributed to the reduction of illegally taken elephant and those killed through problem animal control.") (Attached 1).

Tanzania Summit to Stop Wildlife Crime and Advance Wildlife Conservation:  
A Call to Action

Conservation Force was invited to and attended the elephant summit, entitled Summit to Stop Wildlife Crime and to Advance Wildlife Conservation. *See* Invitation, Agenda, photograph (Attached 49-51). It is one more documented effort of contending with the poaching crisis. *See also* Photograph: IPP Executive Chair Dr. Reginald Mengi, et al. (Attached 52). During the two-day summit, Minister Nyalandu reported on the status of many actions being taken to control poaching and conserve elephants in Tanzania.

At the summit, attended by a full team of FWS, it was announced that the new Wildlife Management Authority is to be put into operation in July 2014. Tanzania Daily News, Wildlife Body Formed to Enhance War on Poaching (Attached 70); Tanzania Wildlife Management Authority Act (Attached 20). Nine hundred thirty (930) additional game scouts are planned for this year (2014). The Citizen, 900 Wardens to Fight Poaching (Attached 77). Through the help of the Howard Buffet Foundation, three helicopters are being added to control poaching at the cost of \$5 million.

The Frankfurt Zoological Society announced that two special trainers are to be added to the Selous game scouts for a full year to teach Selous scouts the best and most up-to-date practices to control poaching (probably with help of Conservation Force). A Disciplinary Board for game scouts is also being established, as well as a Code of Conduct. All in all, the Ministry is acting seriously to combat poaching and to address the types of concerns opined in the Enhancement Finding. There is no doubt of the truth of the newspaper headlines that there is a “national war on poaching” in Tanzania. Tanzania Daily News, PM: We are Determined to Stay the Course in Anti-poaching War (Attached 75); The Guardian, Dar to Declare National War on Poaching Today (Attached 71).

**No Enhancement Finding Is Even Necessary**

Although it is clear that tourist hunting enhances the survival of elephants, no such finding is even necessary.

The special rule governing the import of sport-hunted elephant trophies, adopted prior to the revision of CITES CoP Resolution 2.11, requires the FWS to find “the killing of the animal whose trophy is intended for import would enhance the survival of the species.” 50 C.F.R. § 17.40 (Attached 88). In 1992, in adopting this rule, the FWS referred to CoP Resolution 2.11, which – at the time – had an enhancement provision. *See* 57 F.R. 35473 (Attached 83).

But two years after the FWS adopted the special rule, CITES CoP revised 9 Resolution 2.11 intentionally to eliminate any mention of enhancement. Based on a recommendation from Namibia and supported by other range states, the CoP liberalized their understanding of the requirements for CITES import and export permits. Resolution 2.11 was revised to recommend “the Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species, unless there are scientific or management data to indicate otherwise.” CoP Res. 2.11 (rev. 1994) (Attached 85). Any reference to “enhancement” was specifically deleted. Resolution 2.11 was revised due to the concern of exporting countries about how enhancement and import limitations harmed their hunting-based conservation programs. They were frustrated

with “the patronizing approach” of the enhancement requirement, which indicated mistrust by importing countries. *See* Trade in Hunting Trophies of Species Listed in Appendix I, CITES Doc. 9.50 (Attached 84). Finally, exporting countries wanted to remove the idea of enhancement because it places a higher, arbitrary, and subjective burden on the importing state, while the exporting state is actually in a far better position to determine that a particular trade is not detrimental to a particular species as required under CITES.

The FWS explicitly acknowledged that CITES no longer requires import/export permits to address enhancement. 68 F.R. 49514 (Attached 86). The basis of the enhancement requirement no longer exists under CITES or the special rule to enforce this no longer existing CITES provision. The FWS now applies the special rule in a way CITES and its authors never intended, which is poor policy because it adds expense, delay, and in this instance, mistaken suspension.

### **The DSA Non-Detriment Advice Contains Numerous Errors**

#### **Regulations and Guidelines for Making Non-Detriment Advices**

The DSA’s Non-Detriment Advice has not adhered to its own rules for making that kind of determination, and should be reconsidered. The Applicants seek approval of import permits, but the DSA’s analysis looks like the type done for export permits. Upon consideration of new, up-to-date, and additional documentation, it is clear that these import permits are for purposes not detrimental to the survival of the elephant in Tanzania and should be promptly approved.

#### *Code of Federal Regulations*

An import permit for a CITES Appendix I species requires the Scientific Authority to make a finding that the proposed import would be for **purposes** not detrimental to the survival of the species. This rule, 50 C.F.R. 23.61 (Attached 90), does not require the same biological fact-finding required for export permits. The FWS itself has acknowledged that use of the term **purposes** “indicates that the importing country’s approach should differ and, in particular, that it should focus on the nature and quality of the activity in the importing country as it relates to species survival.” 42 F.R. 42297 (Attached. 82).

In making a non-detriment advice, DSA must evaluate several factors for a cumulative, well-reasoned determination, including unsustainable use, activities that cause a net harm, removal resulting in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade. 50 C.F.R. 23.61. In reaching a positive non-detriment inquiry, the DSA should assess the purposes of the proposed import in the context of whether the proposed activity represents sustainable use; whether management plans are designed to eliminate over-utilization; whether the proposed activity does not pose **net** harm to the species in the wild; whether the proposed activity does not lead to **long term** decline; whether the proposed activity does not lead to habitat loss or destruction; whether the proposed activity does not cause an increased risk for extinction; and whether the proposed activity does not interfere with recovery of the species. 50 C.F.R. 26.61.

Furthermore, the basis of a non-detriment advice must be the best available biological information, trade information and other scientific management information. 50 C.F.R. 26.61. The inquiry begins with consultation of experts, other relevant agencies, CITES bodies and parties, and the **range countries** of the species. (Tanzania was not consulted or advised in this

instance.) Ultimately, the core of the non-detriment determination is to evaluate the biological impact of the proposed activity. If insufficient information is available, the DSA acts on a precautionary basis and concludes it is unable to make a finding of non-detriment.

A non-detriment advice is most importantly an assessment of the degree of risk of the proposed activity to the species in the wild. The risk analysis considers the following factors: status of the species, volume of legal and illegal trades, and type of trade at issue. Finally, the DSA will also consider national export quotas and how those quotas were established. 50 C.F.R. 26.61.

#### DSA Misinterpreted Federal Regulations and CITES Guidelines in Making the Non-Detriment Advice

A fundamental flaw in the Non-Detriment Advice is it has approached the non-detriment determination as if an export permit was being sought by the import permit Applicants. A non-detriment determination for an importing country should focus on the “nature and quality” of the proposed activity, not the activities in the exporting country. 42 F.R. 42297 (Attached 82). But the Non-Detriment Advice mainly engages in a biological fact-finding inquiry and speculation in the exporting country more focused on the survival of the elephant in the export context. Tanzania already conducted a thorough examination into whether the export of sport-hunted elephant trophies is not detrimental to the survival of its elephant population. The Non-Detriment Advice should focus on whether the **purposes** of importing sport-hunting elephant trophies would not be detrimental to the survival of the Tanzanian elephant population, *i.e.*, is the purpose commercial or for non-commercial, personal use in the country of import.

As further demonstrated here, the Non-Detriment Advice is flawed because DSA did not consult the range nation (Tanzania) or consider best available and most recent information. The Non-Detriment Advice relies largely on negative assumptions and long outdated information like that from CoP 15. The DSA overlooks recent studies reflecting developments in Tanzania which have positively affected elephant populations in its range and specifically speak to the advice’s concerns. DSA relies on a significant amount of anecdotal accounts that should not be treated as authoritative evidence. Further, many of the negative assumptions made in the Non-Detriment Advice are vague and weakly justified. The information provided with this request should help reverse these negative assumptions (discussed below) and assist in a positive finding.

The Applicants are concerned that DSA had already resolved to reach a negative non-detriment advice without a thorough review of all available resources. This suspicion comes from talking points drafted by the FWS in preparing to announce the suspension of elephant trophies from Tanzania and Zimbabwe. The talking points specifically note the conservation benefits of tourist hunting, but state the goal of “improving the situation in Tanzania” and working with organizations like Conservation Force to facilitate “greater oversight and commitment by the Tanzania and Zimbabwe governments to elephant management and conservation.” 2014 Talking Points (Attached 2). This suggests the FWS’s concerns are not with the impact or purposes of tourist hunting, but with elements of Tanzania’s elephant management strategy, and the FWS recognized that proactive organizations like Conservation Force are best equipped to facilitate the improvements sought.

The talking points also state that the FWS wants Tanzania to provide data to show total offtake is lower than population growth, to adjust its annual quota downward, to strengthen its management and law enforcement, and to provide an accounting of how funds from elephant



hunting are used to support survival of the elephant population. The best course of action to resolve these issues would have been to consult with Tanzania prior to any suspension. However, the suspension has already taken place, and moving forward, Tanzania is making every possible effort to address these issues, evidence of which has been described here and attached to this request.

#### Basis for Advice

The DSA states that several sources have been made available since its 2013 finding and it is using these new reports as a basis for the departure from the prior, positive advices over the prior 22 years. The Non-Detriment Advice lists these reports in the “Basis for Advice” section; however, it relies heavily on other sources, most of them dating to 2009 and 2011. The new sources the DSA claims to consider are not central to the 2014 decision and do not explain the departure. The majority of the evidence cited to support key areas of concern in the finding has been available for several years, but has not previously warranted a negative non-detriment finding and does not support one now. More accurate and current documentation has become available in the last few years that show overwhelming progress in key areas of elephant management in Tanzania. The negative Non-Detriment Advice has largely overlooked these important reports: USAID Final Evaluation Report (Attached 59); WWF-Tanzania 2012 Status Report (Attached 60). For decades, Tanzania has continually proven to the FWS that it is accountable and responsible in this respect, especially concerning the African elephant within its borders. The Applicants respectfully request that the new and additional evidence attached to this request be reviewed and relied upon as the basis for advice and for reversing the non-detriment finding.

#### Conservation and Management

DSA did not review all the updated and relevant evidence of the monumental conservation and management measures taken by Tanzania in partnership with hunting operators within its borders to protect its elephant population. When this information is considered, it is clear the purpose of importing the trophies at issue would not be detrimental to the survival of the Tanzanian elephant population.

#### *WMAs*

WMAs are key elements of promising elephant conservation developments in Tanzania. The mission of these CBNRM institutions is to empower communities to value and benefit from local wildlife and rethink resource management to support sustainable use and conservation. USAID Final Evaluation Report (Attached 59, p. ix). According to USAID: “WMAs represent the best hope for conserving wildlife outside of Tanzanian protected areas while enhancing rural economic development.” (Attached 59, p. iv). The Non-Detriment Advice’s conclusion that WMAs are not successful is unbalanced and unwarranted. It is unwarranted because the 2009 report by Dr. Rolf Baldus cited does not say these programs are not beneficial, and the 2013 TEPS presentation cited was made only shortly after the revisions to WMA regulations described above, and thus had not allowed time for the changes to be realized. The reforms to the WMA legislation made three years after the Baldus report corrected key items, including benefit-sharing and community control over hunting concession allocations, and crucially strengthened the effectiveness of the WMA programs. Masaili Initiatives (Attached 58). USAID clearly recognized the tangible benefits WMA initiatives continue to create for local communities, the Tanzania government, and the private sector. (Attached 59, p. 12).

The WWF has also acknowledged that WMAs provide for community development projects such as wells and schools and for social welfare needs. WWF-Tanzania 2012 Status Report (Attached 60, p. 29). As of 2012, 529 local villagers find employment as game scouts through these initiatives. (Attached 60, p. 12). Further, WMAs are instrumental in ending illegal wildlife poaching and trade by helping communities realize tangible benefits from sustainable use of the elephant population. The Citizen, Community Role “Key to Ending Poaching” (Attached. 73); The Guardian, UNDP: Community Involvement Crucial in Fight against Poaching (Attached 76). And the recent Elephant Summit left no doubt of the importance of the WMA promise. It is also a far stretch to assert it as basis for a finding of detriment when it is just a small part of a very big success story.<sup>7</sup>

The suspension of import of elephant trophies from Tanzania will be devastating to the WMA programs and communities. Aff. of C.A. Mlay (Attached 97). Elephant hunting safaris generate significant amounts of revenue that is funneled into the local communities and conservation and protection measures, including habitat restoration and anti-poaching operations, which are indispensable functions of the WMAs. African Prof'l Hunters Assn. Letter (Attached 26).

#### *Ambiguous Transboundary Issues*

The Non-Detriment Advice briefly discusses transboundary elephant populations and acknowledges that Tanzania cooperates with bordering nations, but expresses unspecified concern about the effectiveness of this cooperation. These concerns may arise from a misinterpretation of the 2009 Baldus report. This report tracks the intensification of cross-border cooperation, which has made joint patrols possible. 2009 Baldus-Hahn Report (Attached 9, p. 31). Since 1998, information exchange and enforcement coordination have been reducing criminal activities and increasing border security. Although the situation needs to continue improving, it has steadily been moving in the right direction. (Attached 9, p. 31). To this end, the Wildlife Conservation Society has been given a grant to establish an expansive and long-term program to combat poaching between the Selous-Niassa corridor. Niassa AECF Grant (Attached 15). It is one of the nine key strategic objectives identified in the 2010-2015 National Elephant Management Plan.

#### *2010-2015 Tanzania National Elephant Management Plan (“TNEMP”)*

DSA begins its assessment of the TNEMP by stating “it is unclear ... to what extent” this plan has been implemented in Tanzania to date. A prefatory matter of concern is that DSA did not consult the Tanzanian government or any experts about the practical application of the plan. The Code of Federal Regulations lists the range country as among the first sources to consult in making a non-detriment advice. 50 C.F.R. 23.61(f)(1) (“We make a non-detriment finding in the following way: (1) We consult with the States, Tribes, other Federal agencies, scientists, other experts, and the range countries of the species.”). Although the DSA is not required to consult any particular body, the Tanzania government and its experts would have been an ideal place to begin (and that has been past protocol). The Tanzania government has not been officially informed of this finding, let alone consulted about its contents. The Non-Detriment Advice should be reconsidered because no inquiry was made before reaching the negative conclusion.

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<sup>7</sup> See also discussion of WMAs at pages 4-5 of this Information Document.

In Item 7 on page 4 of the Non-Detriment Advice, DSA has correctly quoted the TNEMP regarding a decrease in funding for the management of elephants in the Selous ecosystem. The timing of the 2004 decrease in funding coincided with an increase in poaching, which suggests that anti-poaching operations may have been underfunded. But the Non-Detriment Advice needs to consider more recent measures aimed at remedying the funding issue. For example, shortly after the Non-Detriment Advice was issued, Tanzania signed an agreement with the International Conservation Caucus Foundation and the UNDP to work together to combat poaching. Press Release, Tanzania's Campaign Against Poaching Gets Global Backing (Attached 21). In May 2014, Tanzania signed an agreement for a public-private partnership on anti-poaching campaigns in the southern Selous. The agreement will pump \$800,000 into combating elephant poaching. (Attached 81). Further, in 2014, Tanzania returned to the revenue retention scheme, so revenue loss is no longer a concern. Rolf Baldus, Tanzania: The Selous Revisited (Attached 68). The revenue retention scheme has been reinstated in the Selous. Fifty percent from the hunting block operations are again being retained for management of the Game Reserve with its 43 sport-hunting blocks. TNEMP (Attached 11, pp. 14-15).

A substantial portion of tourist hunting revenues, and especially revenues from expensive elephant licenses (\$15,000-\$25,000), are used for management of wildlife reserves and deterring poachers. Safari operators also provide human capital in the fight against poachers, which is again funded by hunters, many of whom come to take elephant trophies. An increase in the national budget for anti-poaching measures may be desirable, but not at the cost of removing resources that already exist. Together, hunting operators and a bolstered law enforcement department will be a formidable adversary to poachers in the area. As shown above and in the Pasanisi Report (Attached 37), these permits will directly contribute to the funding of anti-poaching operations in Tanzania and should be promptly approved.

The Non-Detriment Advice recognizes that significant amounts of funding from hunting operations are directed to local communities and used to support conservation activities. For example, "more than 90% of the revenue of the Tanzania Wildlife Protection Fund," which subsidizes wildlife law enforcement activities, "is generated from fees associated with sport-hunting and the sale of trophies." (Attached 3, p. 5). The 2013 TEPS presentation cited clearly identifies elephant hunting as an important source of revenue. (Attached 19, p. 9). In its hand-delivered report to the FWS in February 2011, Tanzania stated that it received over \$78 million from wildlife-based activities, including tourist hunting from 2005-09. (Attached. 13). At that time the hunting community directly employed more than 5,000 Tanzanians and continues to do so. 2013 TEPS Presentation (Attached 19, p. 5). DSA opines that despite these documented funding and anti-poaching measures, poaching continues to increase, but there is evidence to the contrary DSA should consider. The ratio of carcass counts and ages demonstrate that poaching is on the decline, suggesting Tanzania properly utilized this funding. 2013 Selous Aerial Census (Attached. 17); *see also* Non-Detriment Advice (Attached 3). Tanzania has also utilized its funds to step up its anti-poaching efforts to unheard-of levels, making thousands of arrests and seizures.

As discussed above, Tanzania recently gained international partners to aid in its fight against poachers. Reuters, China to Extend over \$12bln in Aid to Africa (Attached. 69). Organizations and individuals have pledged an overwhelming amount of financial support to improve elephant management and decrease instances of poaching. In light of these recent developments, it is clear that poaching in Tanzania will continue to decline.

Speculation of government corruption has also been related in the Non-Detriment Advice to issues of weak governance and higher instances of poaching. But as previously recognized by DSA, Tanzania has a “good law enforcement to effort ratio.” DSA, General Advice on Importation of Sport-Hunted Trophies of African Elephants from Tanzania in for the Calendar Year 2008 (Attached 100). To address this, Tanzania has been proactive in taking measures to ensure accountability and transparency of its governing institutions and civil servants in the wildlife sector. *E.g.*, The Guardian, Top Wildlife Officials Now to Be Assigned New Duties (Attached 72). Tanzania’s Commission for Human Rights and Good Governance implemented a comprehensive plan to investigate and eradicate instances of public service corruption. (Attached 10). The Ministry of Natural Resources and Tourism has established a Code of Conduct and a game scout Disciplinary Board to compliment its agenda of improving the country’s national and local governance. In addition, non-governmental agencies, such as Tazama Trust through its West Kilimanjaro Project, work within the ethical guidelines to provide training and experience for game scouts. (Attached 61).

The Non-Detriment Advice also raises concern about Tanzania’s annual elephant export quota. For 2014, Tanzania set a quota of 400 tusks, as trophies from 200 elephant, which was submitted to and published by the CITES Secretariat. (Attached 22). According to DSA and the FWS’s talking points (Attached 2), Tanzania should have adjusted its quota downward to respond to a decreasing population trend. However, the DSA failed to consider that Tanzania’s actual export of elephant trophies is typically fewer than 100 animals. It has averaged only 36% of the quota in the past five years. With current population estimates between 70,000-80,000 elephants nationwide, the percentage of sport-hunted trophies taken annually in Tanzania is at or below 0.07%. DSA mistakenly presumes the quota was based on a higher population estimate. It was not and never was represented to be at maximum sustainable yield.

Tanzania has a lower or comparable offtake ratio than Namibia and South Africa, which the FWS holds out as better managed in its April 4, 2014 press release. South Africa has 22,889 elephant and a CITES registered quota for 2014 of 300 tusks/150 elephant. Namibia has 20,546 elephant and a quota of 180 tusks/90 elephant. AFESC Elephant Database (Attached 62). **Both of these quotas represent a higher ratio of the population and greater than the actual take in Tanzania. Tanzania has three or more times the number of elephant of these countries (and a third more than both combined).** It has always maintained a very conservative quota.

The Tanzania quota is also not detrimental because the Tanzania authorities are cutting the voluntary quota by one-half, to 200 tusks for a maximum of 100 elephant in response to the DSA’s expressed concern. It is a sustainable quota and more importantly, a net benefit because it saves far more elephant than the number taken.

#### Population Distribution, Status and Trends

According to reports cited in the Non-Detriment Advice, Tanzania’s elephant population is now about 70,000, which represents a decrease in five years from the 2009 estimate. This decrease is attributed to an increase in poaching. The DSA relies heavily on what it refers to as “anecdotal” reports to support its conclusions. Anecdotes are neither reliable nor scientific, as required by 50 C.F.R. 23.61 and CITES CoP. Res. 16.7. It is inappropriate to use anecdotal reports to support such a crucial finding since the decision disrupts essential benefits.

Reliance on the population decrease is improper considering that a non-detriment advice for purposes of an import permit should analyze whether the **purposes** of importing sport-hunted

elephant trophies would be non-detrimental to the survival of Tanzania's elephant population. However, even if this improper line of analysis is followed, DSA reached the wrong conclusion. Approximately 50-80 elephants are taken yearly in Tanzania, which has minimal, if any, bearing on the survival of a population of about 70,000. Tanzania strictly regulates which elephants may be taken on an elephant hunt. Only elephants with tusk size of 18 kilograms and above and 160 centimeters and above may be taken. Wildlife Conservation Regulations § 24(5)(b) (Attached 12). Most of the animals that meet these requirements are bulls over the age of 45 who are not typically ranging for a female elephant in oestrus, and therefore likely have no bearing on population increase. A.A. Ferrar Die Natuurlewevereniging van Suider Afrika Letter (Attached 92). The most virile and active males (ages 25-45), females, and calves are not the animals being taken on tourist safari hunts. Southern African Nature Foundation Fax (Attached 91).

The Non-Detriment Advice expresses alarm about elephant mobility and an accompanying increase in human-elephant conflict, and notes that Tanzania has been working to minimize the risks and conflicts associated with expanding settlements and land use. The DSA admits it has not reviewed updated information on these initiatives and progress achieved, and most of the data relied upon by the DSA dates back to 2009. The new data attached here shows Tanzania is working to protect elephant mobility. Without question, Tanzania already has the largest existing elephant protected area in Africa.

Again, the USAID's most recent evaluation of WMAs in Tanzania indicated positive findings regarding wildlife mobility, noting: "The most obvious potential benefit to wildlife from WMAs is the expansion of wildlife conservation beyond the boundaries of national parks and reserves into dispersal areas and wildlife corridors between protected areas." (Attached 59, p. 15). The increasing success of WMAs has proportionately decreased instances of human-elephant conflict. Under the WMA model, elephants who were once destroyers of crops and perpetrators of attacks against humans become a source of self-determination and a provider of basic necessities for locals. This more recent report paints a brighter picture than the evidence relied upon by the Non-Detriment Advice.

Further, an important initiative entitled SEEP (Selous Emergency Elephant Project) has been created to pour thousands of dollars into improving elephant conservation measures and mobility in and around the Selous Game Reserve. Rolf Baldus Email (Attached 99). This includes enforcement, monitoring, and management programs. Some of this funding will be donated directly by key representatives of the hunting community – including CIC and Conservation Force. This new information directly addresses the concern about mobility and reduction of human-animal conflict and demonstrates that the purposes of tourist hunting are a benefit to the elephant in Tanzania and not a detriment to their survival. *See generally* Some Observations by Rolf Baldus (Attached 23).

Tanzania is focused on moving forward and strengthening its elephant management, but it would be remiss not to remember lessons from history. In 1973, Tanzania closed tourist hunting within its borders. Tanzania Hunting Operators Assn. Letter (Attached 28). During the five-year hunting ban, elephant and rhino populations were decimated by poachers. Hunting reopened in 1978 with the objective of using regulated safari hunting and the professional operators as the champions of the elephant, through combating poaching to resuscitate a dwindling population. IUCN Species Survival Commission, Tourist Hunting in Tanzania (Attached 93, p. 2). While some might have perceived the hunting at the time to have been an additive offtake, it proved to have been a net benefit. Likewise, in 1989, the government of Tanzania launched "Operation

UHAI,” a partnership with hunting operators targeted at eradicating poaching. This operation was internationally acclaimed as a success, and the elephant population nearly doubled in the 20 years following its completion. TNEMP (Attached 11, p. 10). The revival of the elephant in Tanzania can most certainly be repeated, but it cannot be done without the crucial component of sport-hunting and the resources it generates.

#### The Elephant Population Decline in the Selous has been Overestimated

The 2013 Selous Aerial Census was neither comparable to earlier surveys nor complete, and is not an appropriate basis for a negative enhancement finding or non-detriment advice. Tanzania’s elephant population is underestimated – and the poaching-related decline is overestimated. This has been suspected, and is now supported, by a comparison of the “planned” transects with the actual tracks. *See* Marco Pani Email (re: Survey Issues) (Attached 53); Eric Pasanisi Letter (Attached 56). The carcass counts indicated that the poaching is not recent, and suggests poaching is now actually on the decline. *See* 2013 Selous Aerial Survey (Attached 17).

First, numerous people reported no plane surveyed their areas of the Selous. Eric Pasanisi Letter (Attached 56). Second, the carcass count was far too low to account for the lower estimates. Moreover, the carcasses were too old to explain a loss in recent years.

It has now been verified that one of the three planes intended for use in the survey had an altimeter problem and had to be taken off the survey. Eric Pasanisi Letter (Attached 56). The southwest Selous was not included in the survey at all. The south-central Selous was only surveyed at half the transects as planned and as compared to the past. (Attached 56); *see also* diagrams at the beginning of this Information Document. The Frankfurt Zoological Survey team do not deny this and have tentatively agreed to redo the aerial census this October as it was planned, so as to be comparable to past transects. (Attached 56). Although only a fraction of the elephant can be seen because of forests, the transects must be comparable. *See* Discussion Paper for Aerial Survey Standards (Attached 18). Based upon the verified carcass observations, very little loss is recent. Most carcasses were more than 18 months old. 2013 Selous Aerial Census (Attached 17, p. 7). The population cannot be said to have halved when so much of the prime area in the Selous was skipped during the 2013 survey.

#### Sustainability of Offtake

Tourist hunting in Tanzania has always been and will continue to be a sustainable use of the country’s elephant population. The remarkable conservation efforts supported by the hunting community greatly outweigh the minimal tourist-hunting offtake of elephant.

##### *Legal Offtake*

Legal offtake includes natural mortality, problem animal control, and regulated tourist-hunting. The DSA recognizes the legal offtake in and of itself is sustainable, but opines that the higher recent percentage of illegal offtake makes the overall offtake of elephant unsustainable, and this renders tourist-hunting a detriment to the elephant population. But the reality is that the small amount of elephant legally taken via hunting yearly in Tanzania is minimal compared to the number of elephants saved with the anti-poaching and budget resources generated by these hunts. Tanzania Prof’l Hunters Assn. Letter (Attached 25). Thus, hunting is a net gain.

### *Illegal Offtake*

The objective of all concerned is to save the elephant. The Applicants do not disagree that poaching has been a serious problem. But recent reports appear to overestimate the extent to which it is occurring. In the cited 2013 population survey, fewer than 5% of elephant carcasses found were killed in the past 18 months. 2013 Selous Aerial Census (Attached 17, p. 7); Non-Detriment Advice (Attached 3, p. 24). This shows that recent measures have contributed to a decline in illegal offtake, and now anti-poaching efforts are being more than doubled. The Citizen, TZ Against Trophy Ban (Attached 79). Illegal killings will continue to decrease with the hunting community rallying to the defense of these animals with emergency measures such as SEEP and the doubling of game scouts.

To continue its war against poaching, Tanzania needs money, equipment and personnel to adequately combat the perpetrators of these crimes. The 2013 TEPS presentation calls for greater manpower and equipment, but it **does not** recommend removing the tourist hunting element. (Attached 19, p. 24). Tourist hunting provides these very necessities. *See, e.g.*, Game Frontiers of Tanzania Safaris Pamphlet (Attached 24); Aff. of Jack Atcheson, Sr. (Attached 94). Without hunters, current resources will decrease substantially and poachers will take advantage of the situation. Ron Thomson Email (Attached 31). Hunting operators and their local employees are the eyes and ears in the bush. World Conservation Force Bulletin, Apr. 2014 (Attached 65). They have both financial and moral incentives to eradicate the poachers and risk their lives daily to do so. But the reality is without the funding generated by tourist hunting of elephants, the outfitters with concession blocks in Tanzania cannot continue to divert great amounts of resources to anti-poaching measures. Aff. of Richard Elliott (Attached 95). In fact, many of them may no longer be fiscally successful at all. The loss of this great resource will be a detriment to the elephant population. Aff. of Bert Klineberger (Attached 96); Prof'l Hunters of South Africa Letter (Attached 36); Namibia Prof'l Hunters Assn. Letter (Attached 34). As one prominent hunter explains:

To keep these teams on site and motivated, one needs a profitable operation to pay for it, but the Import Ban unless resolved quickly, will cause a wave of cancelations by the predominantly USA citizen hunters who have booked Elephant hunts. This means the hunting companies that are dependant [sic] on Elephant safari revenue, like most Outfitters in Selous Game Reserve and Southern Tanzania and almost all the Zimbabwean outfitters, will lose not only the needed profit and incentive required to operate their anti-poaching efforts, and that in turn will translate into a free hand to the poachers and a few thousand more Elephants poached. (Attached 35).

Hunting operations provide employment, meat, and general livelihood to communities in Tanzania. African Prof'l Hunters Assn. Letter (Attached 26). In the absence of these facilitators of sustainable legal offtake, locals will be forced to fill the void created by the suspension. World Conservation Force Bulletin, May 2014 (Attached 66). The most viable solution for them is to form partnerships with poachers, who can provide similar benefits but at an unsustainable cost to the elephant population. For these reasons and in light of new and additional evidence provided, it is imperative that a positive Non-Detriment Advice be made.

## **Conclusion**

The future of the elephant in Tanzania depends on regulated hunters and hunting. That country is trying – through implementing its 2010-2015 National Elephant Management Plan, by maintaining up-to-date population surveys, in creating a new Wildlife Management Authority to capture more revenue, reestablishing the revenue retention scheme, and more. Tanzania has also demonstrated its commitment to address the poaching crisis by opening its doors and asking for help from the international community.

Had the DMA evaluated correct and updated information such as presented here, it would have concluded the sport-hunting at issue here enhances and is not detrimental to the survival of the elephant species in Tanzania. The import of these trophies does not cause a detriment to the elephant population; rather, it enhances the survival of the species by providing revenue, anti-poaching support, and local incentives for conservation through sustainable use. We respectfully urge the DSA and DMA to reconsider their advice and findings in light of the new and additional information here. In the wake of the suspension, a deeper understanding of events has unfolded and it is clear Tanzania and stakeholders in regulated tourist hunting are expending all possible efforts to eradicate poaching and improve elephant management and conservation measures. Many of the initiatives, reports, and programs were not considered or not available at the time the negative Enhancement Finding and Non-Detriment Advice were issued, but the evidence to date now overwhelmingly supports positive findings and approval of the permits at issue.