

Response to Former Director Ashe: We *Must* Hunt Elephant to Conserve Them

On January 4, former US Fish and Wildlife Service Director Dan Ashe posted a blog entry entitled, "We Can Conserve Elephants Without Hunting Them."¹ Perhaps this title is unsurprising, since Mr. Ashe was Director when the FWS suspended the import of elephant trophies from Tanzania and Zimbabwe in April 2014. (The title surprised Conservation Force, because we argued the Tanzania suspension before then-Director Ashe in 2016 ... and now wonder if his nonsensical negative decision had already been made.)



John J. Jackson, III



Regina Lennox
Staff Attorney

In the post, former Director Ashe first defends the 2014 import suspension and the 2017 reversal of that suspension as decisions that are not politically motivated. Rather, although made under specific Administrations, these decisions are "recommended ... by career experts implementing the ESA and CITES" and "reflect[] their independent assessment of conditions in Zimbabwe." Similarly, the 2017 approval of elephant trophy imports "resulted from analysis by the very same career experts." Because the ESA recognizes hunting as conservation, "USFWS career professionals implement the law without imposing their personal values, and without political influence." All that sounds positive. But then the former Director pivots.

The post next incorrectly speculates that lifting of the suspension was "unsupported by sufficient information" and "warrants skepticism," because of the timing and location of the announcement. (In fact, the decision had been made and the FWS Chief of Permits could not resist the first occasion he had to tell the range wildlife authorities in person.) The post argues that endangered species are

not hunted in the US, and should not be hunted in other countries. In Mr. Ashe's words:

"So, if elephants were native to the US, and endangered or threatened, they would not be hunted. And neither would lions, rhinos, or leopards. It's time to ask an inconvenient question: If hunting is not a conservation tool for US endangered species, with the world's best regulatory framework, why would we expect it to be so in countries like Zimbabwe, where the record is muddled, at best?"

While claiming to be a "life-long and proud hunter," Mr. Ashe calls elephant hunting a "cruel anachronism." He suggests that Botswana has the world's largest elephant population, and yet does not hunt elephants. (Although not stated as such, the post implies that not hunting elephants will lead to a larger population, which is biological nonsense.)

The post changes direction one more time. After advising the FWS to "reinstate the 2014 ban," and advising President Trump to lead the way in combating wildlife trafficking—a policy focus of the former Administration—Mr. Ashe praises the 62 Association of Zoos and Aquariums (AZA) members that "work, tirelessly, giving exceptional and respectful care for these magnificent animals, and providing millions of visitors the opportunity to encounter them, each year," as well as other species. The post concludes that zoos are "helping to save [these species] from extinction, without trophy hunting." The post encourages readers to visit a zoo and "draw your own conclusions" about whether trophy hunting is necessary.

After considering this post, here are the conclusions we have drawn at Conservation Force.

First, with all due respect to the

former Director, he had never visited Africa before May 2015.² His second trip to Southern Africa presumably occurred at the Conference of the Parties to CITES in late September 2016. Mr. Ashe has likely never seen an elephant hunt, and appears to be offering a moral judgment more than anything else. But what right does he have to impose the US/ESA model of conservation on any other country, particularly those with a very different historical context, political system, social structure, governance record, enforcement capability, economic position, etc.? Mr. Ashe certainly seems to be dictating policy, but speaking out of line with his own expertise and experience.



Six African countries protect almost 40% of the elephant range and 50% of the continental elephant population with funds almost exclusively derived from hunting.

Second, this post skates over the fact that "endangered" status lies in the eye of the beholder. The FWS, for better or worse, considers the African elephant to be "threatened" (*not* endangered, as defined in the ESA). But Zimbabwe does not consider its 84,000-plus elephants to be endangered at all. Neither does CITES or the IUCN. To quote Zimbabwe's National Elephant Management Plan:

"In Zimbabwe, African elephant are not included on the list of 'specially protected animals' because their population is so large. However, they

1 <https://www.aza.org/from-the-desk-of-dan-ashe/posts/statement-by-dan-ashe-on-elephant-trophy-import-ban>.

2 <https://www.washingtonpost.com/blogs/in-the-loop/wp/2015/05/07/watch-for-agency-officials-jet-setting-before-obama-white-house-packs-up/>.

are listed on the 'Schedule of Animals with High Economic Value.'"

The elephant population in Zimbabwe is *double* the carrying capacity of the country's habitat. By itself, the population of Hwange National Park is almost four times the size of all elephant populations in West Africa put together—45,846 compared to 11,489, according to the 2016 African Elephant Status Report. The population of Hwange is almost double the size of the observed elephant populations (without guesses) in Central Africa—45,846 compared to 24,119. The population of Hwange, *by itself*, is double the size of Kenya's elephant population—45,846 compared to 22,809. Put simply, Mr. Ashe, elephant are not "at risk of extinction" in Zimbabwe. And the approximately 200 older, bull elephant hunted there each year have zero biological impact on Zimbabwe's large and basically stable population.

Third, we do not believe that the former Director can defend the 2014 suspension of elephant trophy imports from Zimbabwe (or Tanzania, for that matter). The suspension was based on dubious science, and it seems like Mr. Ashe may be defending the decision as "not political" to cover his own actions.

The April 17, 2014 enhancement finding—all six pages of it—claimed to lack information about elephant management in Zimbabwe. The negative conclusion was based on this lack, as well as a "reduction" in Zimbabwe's elephant population between 2007 and 2013; "widely publicized" poaching incidents including the poisoning of 300 elephants in Hwange National Park; and the conclusions of the "2013 Panel of Experts" with respect to Zimbabwe's CAMPFIRE Program.

However, the "reduction" in Zimbabwe's elephant population was based on the FWS' gross misreading of the African Elephant Specialist Group's database, not any real decline. A Freedom of Information Act response suggested the "widely publicized" and incorrect reports of 300 elephants being poisoned

all came from one, anti-hunting source. The "2013 CITES Panel of Experts" never existed, and the negative enhancement finding's commentary on CAMPFIRE was actually cribbed from the *positive* 1997 enhancement finding almost verbatim.

At the end of the day, the April 2014 suspension was based on misinformation and mistake, and those errors were compounded in the July 2014 and March 2015 negative enhancement findings. Perhaps there was no political motivation in suspending imports. But that does not explain why the FWS did not reach out to Tanzania or Zimbabwe before imposing the suspension, particularly if the FWS lacked information on Zimbabwe's elephant management program. It does not explain why the FWS did not follow-up with Zimbabwe if the FWS had further questions, before



Dan Ashe at the IUCN World Congress (WCC), Hawaii, September 2016.

confirming the negative finding in July 2014 and March 2015. And it does not explain why the FWS did not update the March 2015 finding until this year. Although defending the "integrity" of the FWS' process, former Director Ashe's post actually raises questions.

Fourth, and most importantly, the suggestion that elephant and other listed species do better where they are not hunted,

like Botswana (of all places), does not hold up when you look at the data. To be precise, there is still hunting on private concessions in Botswana. Moreover, hunting on national and communal lands has been suspended for only a few years. Until 2014, regulated hunting played an important part in Botswana's wildlife management, especially for rural communities. Botswana's communities have petitioned the government to reopen hunting because of their lost benefits and revenues.³ A recent study confirmed the communities' concerns and concluded that the country and the communities have lost revenues, jobs, much-needed social services, and more,

³ For example: <http://www.tourismupdate.co.za/article/109878/Botswana-Communities-to-lobby-for-exemptions-to-hunting-ban>.



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EDITOR/WRITER

John J. Jackson, III

PUBLISHER

Barbara Crown

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Conservation Force
3240 South I-10 Service Road West, Suite 200
Metairie, LA 70001
Tel. 504-837-1233 Fax 504-837-1145
www.ConservationForce.org

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resulting in increased poaching and negative attitudes towards wildlife.⁴ Botswana is a poor ambassador for Mr. Ashe's argument.

Putting Botswana aside, there is a clear correlation between a wildlife management policy that incorporates regulated hunting, and a larger and more stable elephant population. According to the 2016 African Elephant Status Report, five Southern African countries (Mozambique, Namibia, South Africa, Zambia and Zimbabwe) protected almost 25% of the total continental range and almost 40% of the total continental population. Add Tanzania, and those six countries protect almost 40% of the range and 50% of the continental population. Those six countries rely extensively on regulated hunting to generate conservation incentives. Just looking at the numbers, that reliance has paid off—without negative biological consequence.

Read any IUCN *Red List* assessment of a Big Five species. The lion? Doing better in Southern Africa, particularly Namibia, South Africa, and Zimbabwe. The leopard? "Healthiest" populations in Southern Africa. The rhino? Despite the threat of poaching, white rhino populations have grown and remained stable, and black rhino populations have continued to increase. No matter what Mr. Ashe or animal rights organizations argue, these numbers and trends speak for themselves. Regulated hunting enables and incentivizes the protection of habitat, especially outside national parks, which are dwarfed by the hunting areas. This expansion benefits species like elephant and lion, which like to spread out.

Regulated hunting generates management revenue. Trophy fees in Zimbabwe exceeded \$10.7 million in 2014, *despite* the elephant trophy import suspension. That revenue pays for Zimbabwe's Parks and Wildlife Management Authority to conduct anti-poaching patrols in the national parks,

⁴ Joseph E. Mbaiwa (2017): Effects of the safari hunting tourism ban on rural livelihoods and wildlife conservation in Northern Botswana, South African Geographical Journal, DOI: 10.1080/03736245.2017.1299639; see also <https://www.nytimes.com/2015/09/13/world/a-hunting-ban-saps-a-villages-livelihood.html>.

and for private operators to staff anti-poaching teams for the Safari Areas. The involvement of private patrols reduces the financial and human power burden on ZPWMA. Regulated hunting revenue pays for 40 highly-trained anti-poaching scouts in Savé Valley Conservancy, protecting the conservancy's black rhino population, elephant, lion and other species. Regulated hunting revenue pays for the building of classrooms, electrification of clinics, digging of boreholes and other infrastructure projects in CAMPFIRE Areas around the country. Approximately 800,000 households benefit directly or indirectly (through the provision of social services) from hunting fees.

To take another example: regulated hunting has all but saved the markhor in Pakistan and Tajikistan. If these markhor were not hunted by well-paying tourists, they might not exist. They certainly would not be increasing to the point of being downlisted on the IUCN *Red List* (see also our prior bulletin articles noted below).⁵ The incentives created by regulated hunting have secured habitat, minimized poaching, and benefitted those who live with the markhor. Straight-horned markhor are now listed as threatened; flare-horned markhor are not listed under the ESA, presumably because no group has ever been motivated to file a petition. Does the listing status make any difference for the people of Pakistan and Tajikistan, or the markhor in those countries? In former Director Ashe's words, "draw your own conclusion."

Put simply, the revenue from regulated hunting is *essential* to the success of wildlife management in Zimbabwe. There is no replacement. If it goes away, so do the safari areas, CAMPFIRE areas, and conservancies. Zimbabwe ends up like Kenya, with fewer protected areas and fewer elephant. Is that really what the former Director wants?

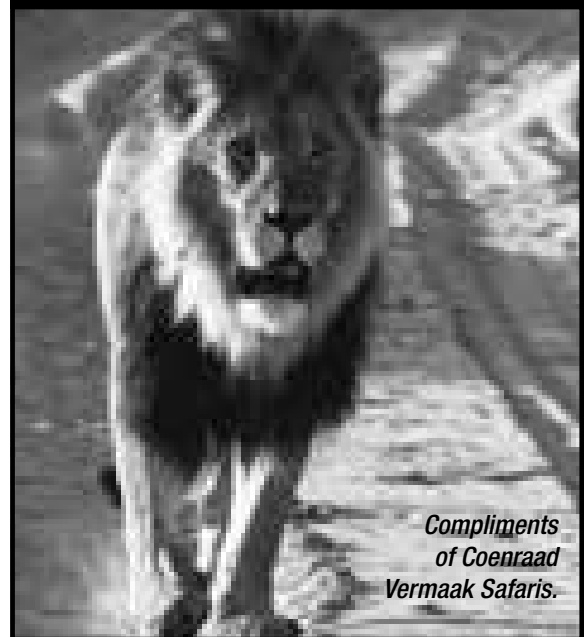
Maybe so. As the head of

⁵ February 2016, October 2016, November 2014, http://www.huntingreport.com/conservation_force.cfm.

the AZA, his job is to defend fenced enclosures where at-risk species live. That definition could encompass an elephant exhibit at the zoo—or a national park in some African countries. But regulated hunting, particularly in countries like Zimbabwe, Zambia and Tanzania, takes the opposite tack. Those countries exemplify the proposition that if additional habitat is available, greater wildlife populations will follow. And that seems to be the case. Perhaps Mr. Ashe would prefer to see no hunting ... and fewer elephants. No hunting ... and wildlife relegated to parks (and zoos). However, we stand with the countries that prefer to see wildlife in the wild. Regulated hunting provides the necessary economic justification for communal and private land to have wildlife, and for governments to set aside and protect safari areas. Therefore, we will defend it before the FWS, the courts, the public and wherever else.

And finally, the Congressional authors of the ESA and FWS "expert" regulators treat foreign listed species differently than Mr. Ashe suggests for sound reason. The ESA does not provide the array of recovery tools and benefits for foreign species that it does for domestic species. Listing of foreign species all too often has a net negative effect and hobbles the authorities responsible. The post's comparison with how domestic species are affected is fundamentally flawed. ■

PHOTO OF THE MONTH



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D.C. Circuit Decision—The Trouble with Enhancement Findings

On December 22, the D.C. Circuit Court of Appeals issued its decision in SCI's challenge to the 2014 and 2015 suspension of elephant trophy imports. In a 33-page opinion,¹ the court affirmed the FWS' actions in most respects. This was not a surprise. Agency actions are upheld unless shown to be "arbitrary and capricious." This is an exceedingly high bar, despite strong arguments by SCI.

However, the court reversed the district court on one claim. It held the FWS' decision to suspend imports based on the negative 2014 and 2015 enhancement findings were invalid, because they did not follow the notice-and-comment rulemaking procedures of the Administrative Procedures Act (APA). Under the APA, an agency rule cannot be made until the agency publishes "notice of proposed rulemaking" in the Federal Register. The public must have the opportunity to comment on the proposed rule. Then the agency must respond to the substantive comments in the Federal Register before adopting a final rule, which is not effective for 30 days. A formal rulemaking is a public participatory process.

Previously, the FWS has made an internal decision with respect to enhancement findings. The FWS argued that enhancement findings are "informal adjudications," not formal rulemakings. However, the court

disagreed. The court held:

"The enhancement findings reflect a final rule and, therefore, the Service was required to adhere to the notice-and-comment procedures under 5 U.S.C. § 553."

Specifically, the 2014 and 2015 enhancement findings were rules because they were generally applicable, i.e., countrywide and applicable to everyone who sought to import elephant trophies from Zimbabwe, and

prospective when made, i.e., applicable to future applications, not past occurrences.

The appellate court remanded the case to the district court to direct the FWS to initiate a rulemaking process if it wishes to reimpose the trophy import suspension for 2014 and 2015.

What does all this mean?

At present, the FWS is waiting for the district court's instructions expected in February. Then it will have to decide whether to propose a rule to suspend elephant trophy imports from Zimbabwe from May 2014 through January 2016, accept comments on that rule, consider the comments, and publish its rationale in a final rule reinstating the suspension. That is a lot of work, given the suspension basically applies to only a year-and-a-half period and has been lifted as of January 2016.

It is also possible the FWS may let the suspension lapse. If the *negative* April and July 2014 and March 2015 findings are invalid, the *positive* 1997 enhancement finding should still control. In that case, the FWS may have to issue import permits for elephant

trophies under that finding, for the 2014-2015 period and going forward.

The court's ruling may have future implications, but those are unclear. However, an animal rights organization (Friends of Animals) had intervened in the SCI suit and supported the argument that enhancement findings are rulemakings. Of course, they have long wanted notice and an opportunity to comment in these internal permitting decisions by the FWS. They have separately sued the FWS to invalidate the more recent 2017 positive enhancement finding authorizing the import of elephant trophies from Zimbabwe. Although their suit faces jurisdictional hurdles, they may claim that the positive 2017 finding should have been published for their comments rather than an internal decision. If so, the FWS may need to go through the full APA rulemaking process (and consequent delays) before the positive 2017 finding will be effective.

The bottom line is the court's ruling may—not will, but *may*—slow down import permit applications. The FWS has the option to handle each individual application separately instead of making a range or countrywide determination to avoid "generally applicable" rulemaking. The FWS could issue end-of-year enhancement findings, based on the conditions that occurred during that year. This would avoid a "prospective" rulemaking. Or, the FWS could choose to follow the APA process and accept and respond to public comments, which is believed to be a heavy burden and barrier to permitting. Under any scenario, the FWS can still issue import permits for elephant trophies from Zimbabwe. The timeline becomes the primary issue. Stay tuned, as we will report on the status in future Bulletins. ■



1 See [www.cadc.uscourts.gov/internet/opinions.nsf/B1CC447E18C6CB-95852581FE0055A684/\\$file/16-5358-1710175.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/B1CC447E18C6CB-95852581FE0055A684/$file/16-5358-1710175.pdf).

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