



**HUMANE SOCIETY
INTERNATIONAL**
UNITED KINGDOM

The case for rejecting amendments for a ‘smart ban’ (conservation benefit permit license)

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Humane Society International/UK strongly urges the Government to reject any amendments to the Hunting Trophies (Import Prohibition) Bill that seek to allow the import of certain hunting trophies on the basis of a belief that an assessment could be made that the hunt benefited conservation. We present the following arguments against a so-called ‘smart ban’:

1. A conservation loophole would be disproportionate and would carry a high risk of judicial reviews

Those advocating for an exemption have described how the importation of trophies from species that the Bill proposes to ban might be permitted if it can be demonstrated that the import provides “enhancement” to species conservation, determined on a case-by-case basis (a so-called “Smart Ban”). This language implies a similar system to that of the US Endangered Species Act (ESA).

However, the ESA system is flawed, expensive and time consuming and would be **disproportionate to include** within the legislation. In evidence from a 2020 elephant trophy import case *Dallas Safari Club v. Bernhardt*, the Acting Assistant Director, International Affairs, US Fish and Wildlife Service explained the problem:

*“The International Affairs Program currently has a **backlog of applications and insufficient staffing and resources** to keep up with the very high workload and backlog. Staff time also must be spent supporting the Department of Justice and the Department of the Interior’s Office of the Solicitor **defending against multiple lawsuits** filed in federal court concerning the Service’s administration of permits to import sport-hunted elephant trophies and other permitting responsibilities.”*

According to the results of a LexisNexis search, over the last 20 years (2003-2023) the US federal government has faced **more than two dozen lawsuits over its administration of permits for hunting trophies**, with suits filed by both conservation organisations and the hunting organisations. Some prominent examples include:

- i. 2009 *Conservation Force v. Salazar*. Conservation Force and the hunters sued the U.S Fish and Wildlife Service (USFWS) in 2009, after what they considered to be an unreasonably delayed response to their wood bison import permit applications; their complaint alleged that the USFWS's failure to respond to their import request violated several statutory and constitutional provisions. Permits denied, case dismissed.
- ii. 2012 *Conservation Force v. Salazar*. Conservation Force sued the USFWS for taking nine years to take action on a hunting trophy import permit of Canadian wood bison.
- iii. 2017 *Natural Resources Defense Council v. Zinke*. The Trump administration [lifted the ban on African elephant trophy imports](#), which was imposed by the Obama administration in 2014. At the same time, it also began allowing lion trophy imports from Zimbabwe for the first time since the species was listed under the U.S. Endangered Species Act (ESA) in

January 2016. [The suit](#) argues that these decisions are illegal, primarily because such imports will not “enhance the survival of the species” as required under the Endangered Species Act.

- iv. 2017 *Safari Club International v. Zinke*. The U.S. Court of Appeals ruled that USFWS was required to follow the “notice-and-comment” procedures under 5. U.S.C. § 553 whenever it issued enhancement findings (Ref. 9), findings that the killing of an animal will enhance its species’ survival (Ref. 4).
- v. 2018 *Born Free v. U.S. Fish and Wildlife Service*. Organizations sued the USFWS for failing to post online elephant and lion trophy permitting records as required by the Freedom of Information Act (FOIA).
- vi. 2019 *Center for Biological Diversity v. Zinke* and *Friends of Animals v. Zinke*. Conservation organizations sued USFWS for changing its approach to making “enhancement findings” that are a necessary prerequisite to issuing import permits for endangered species trophies.
- vii. 2019 *Humane Society of the United States v. U.S. Fish and Wildlife Service*. Organizations sued USFWS for failing to timely release elephant and lion trophy import permit records under Freedom of Information Act.
- viii. 2020 *Conservation Force v. Bernhardt*. Hunting orgs sued the USFWS for failing to take action on import permit applications for a number of elephant hunting trophies from Zimbabwe.
- ix. 2020 *Center for Biological Diversity v. Bernhardt*. The lawsuit argues that the USFWS did not sufficiently demonstrate that the import of leopard hunting trophies from Tanzania, Mozambique, Zambia, or Zimbabwe “enhanced the survival of the species.” Because the leopard population in those southeastern African nations is being squeezed by predation from people, loss of habitat and poaching, the species is harmed by U.S. imports from the four countries, where basic data on leopard populations isn’t even available.

In addition to the risk of cases being brought against the Government, a licensing scheme would be disproportionate in that it would induce additional costs and administrative burdens. Given the comparatively low number of hunting trophies imported into the UK each year, the assessment system that trophy hunting advocates are calling for would likely cost far more to attempt to effectively administer, than any financial losses incurred as a result of the introduction of a comprehensive ban.

2. A ‘smart ban’ would be dependent on unreliable and incomplete data, and burdensome on exporting nations

As we have seen under current EU rules, a system to assess whether import permits should be issued for hunting trophies from threatened species according to certain criteria inevitably ends up relying on unverified, unscientific, incomplete or false data generated by exporting countries or by the trophy hunting concessions, both of whom have vested interests, in order to justify the imports.

Scrutiny and decision making on ‘smart permit’ requests for introduction of trophies, including of endangered species, into the UK, would clearly lie with Defra and the Animal Plant Health Authority, and would be almost entirely dependent on data and assurances issued by exporting countries. The UK should learn from the difficulties and mistakes experienced by the US, which has created a permitting burden of attempting to determine whether hunting trophy imports ‘enhance the survival of the species’. These requirements have resulted in the U.S. having to establish an extensive permitting program which is consistently understaffed for the workload such a program requires.

A hunting trophy licensing scheme from the UK would create a paperwork burden for exporting countries, many of which are already highly oversubscribed trying to prevent illegal trade per CITES requirements. Additional demands on their capacity to attempt to certify trophies according

to a new UK licensing scheme would further stress an already overburdened system.

A 'smart ban' would be subject to the same data reliability problems, as faced by non-detriment findings issued in accordance with CITES permit requirements. The following are examples from South Africa on data reliability issues with their NDFs, and includes commentary on the value of hunting with respect to wildlife protection and habitat conservation:

- a) **Hippo NDF** - published in government gazette 40021 on 27/05/2016. This finding of non-detriment is now seven years old and based on data from 2014. They note "*There are budgetary, manpower and logistical constraints for the implementation of management plans and monitoring programmes.*" and then go on to say, "*Compared to other large animals such as the white rhino, the conservation of this species has not benefited significantly from the hunting and game farming industries, and likewise there is a low benefit with respect to habitat conservation.*".
- b) **White Rhino NDF** - published in government gazette 40021 on 27/05/2016, this non-detriment finding is also seven years old now and is also based on data from 2014. It is seriously out of date especially with respect to the recent illegal poaching of white rhino (see the South African Parliamentary question [PQ1279] covering poaching of rhino in national parks over the past 5 years indicating 1331 rhinos were lost.
- c) **Leopard NDF** - draft published in government gazette 39185 on 10/09/2015, never finalised and still the most recent assessment. This is a finding of detriment. They highlight a lack of data "*There is no rigorous estimate for the size of the South African leopard population, nor reliable estimates of leopard population trends at national or provincial scales.*" this is still largely true today. When talking about the threats to leopards they state "*However, the relative severity of these threats and their impact on the national or provincial leopard populations remain unknown.*". They highlight that "*There is an urgent need for a coordinated national strategy which provides standardized guidelines to all provinces for the management of leopards.*", this is still not in place almost 8 years later. They also highlight the lack of conservation benefits "*There are likely no effective incentives for habitat conservation arising from the harvest of leopards*". This NDF basically speaks to poor data on the population and threats to the species and highlights a lack of oversight at a national scale. In some locations in SA monitoring is now happening, however, there has yet to be a newer NDF published for comment.
- d) **Black rhino NDF** - draft published in government gazette 42660 on 22/08/2019, never finalised. It is a finding of non-detriment. They do appear to have regular monitoring of the population figures "*Detailed recent quantitative data exist on black rhinoceros numbers, poaching rates and population performances for most subpopulations over the past 30 years*". But they do note that "*The current overall species conservation benefit associated with trophy hunting of black rhinoceros is low... There is also currently no benefit derived for habitat conservation through trophy hunting.*".

Whilst these largely suggest that for these species population data was used at the time of making the NDFs (except for leopards), it highlights is the inability of the South African government to ensure that these assessments are regularly reviewed and updated, in addition to their frequent inability to assess/demonstrate conservation benefits as a result of trophy hunting. Despite this, they are clearly being used to authorise exports, and South African Ministers are under regular challenge and scrutiny for this.

Additionally, there are many other species that are being exported as trophies from South Africa without any NDF findings having been published in the South African government gazette, as is required by South African law. It has been indicated to us that this is due to a lack of expertise, capacity and/or data within the Scientific Authority to make these findings.

It follows that further burdens imposed on government departments to additionally make

"conservation benefit findings" would likely be problematic. Such data requests will run into the same, or perhaps even greater challenges as CITES NDFs, but in all likelihood exports will continue to be authorised.

It is also worth noting that recent requests (South Africa PQ446 and PQ1857 by an MP) to the South African Department for the Environment for simple data on the level of annual hunting that takes place in the country have been met with resistance and were passed onto the provinces. In South Africa the individual provinces are responsible for issuing permits, both for the hunting and then the export of species. As a result, there is often confusion over who is responsible, out of the nine provinces and national government, for certain monitoring/activities. Required data or findings for 'smart ban' compliance would likely result in similar confusion and would likely increase the burden on already stretched Provincial departments.

Reliance on frequently unreliable and incomplete information provided by exporting countries would be at odds with the Government's Environmental Principles Policy Statement, which requires application of the precautionary principle in policy making. It would be impossible, in practice, for the Government to verify any purported conservation benefits on a case-by-case basis.

3. A 'smart ban' would be unworkable in practice: the US licensing experience

In response to the frustrations of a dysfunctional permitting system, the US hunting lobby has been pushing for the abolition of the permitting program in order to make imports easier. The pro-hunting lobby – the same pro-hunting lobby that is behind attempts to create a conservation permit loophole in the UK Bill - is highly critical of the US permitting process and "enhancement finding" requirements, describing them as "tedious". For example:

1. [From Safari Club International](#): Frustrated members have been unable to get information from the government agency regarding pending trophy import applications for leopards, lions, bontebok and, of course, elephants. Some applications have been pending for a year or more, especially for elephant and bontebok.

The USFWS lead on the permitting program, Dr Cogliano, reported a difficult year in which the USFWS experienced compounded limitations caused by COVID-19, reduced staffing and a series of litigation challenges which she says dominated the time of a staff already at reduced capacity. Litigation by anti-hunters questioned the methods and information that USFWS uses to evaluate import permit applications; litigation by hunters forced the processing of stalled import permit applications for African elephants. Finally, an unexpected amount of staff attention was required to resolve issues with the new [ePermits](#) online application system that was plagued by numerous programing "bugs," errors and complications.

According to Dr. Cogliano, permit applications for certain species from some range nations are delayed due to gaps in information that must be provided by the government wildlife agencies. USFWS has requested this information and informs permit applicants it will proceed with processing permits once the information is received.

Dr Cogliano confirmed that the department is processing a backlog of hundreds of import permit requests from US hunters for killing abroad. They include 126 applications for lions and 323 for elephants.¹

¹ <https://www.savetheelephants.org/news/concerns-over-trophy-hunting-mount-as-pro-killing-lobbyists-go-on-charm-offensive/>

2. Comments from [pro-hunting lobby organisation Conservation Force](#) regarding consideration of 300 additional hunting trophy import permits of elephants (when CITES downlisted some populations) illustrate the frustrations felt by the US's efforts to run a permitting system to attempt to assess whether imports would 'enhance the survival of the species' on a case by case basis. Conservation Force submitted comments in opposition to USFWS's permitting information requests, stating that "it is unnecessary and over burdensome for both the U.S. Fish and Wildlife Service . . . and permit applicants/tourist safari hunters, and it will not provide any useful information." The organisation contends that it is "a burden without a benefit" and that the burden cannot be reduced unless the permit requirement is removed.

Conservation Force also asserts that the burden estimate is inaccurate [USFWS estimated \$30,000], because the Service has not considered its current backlog of applications in assessing its ability to process another 300 permits, the additional costs and demands for seizures and law enforcement actions, and the permit renewal fee.

3. An illuminating December 2020 [newsletter from Conservation Force](#) notes that USFWS indicates there are hundreds of applications that are incomplete because they do not have the new case-by-case documentation, stating "We have been taking over all applications that we can to file 'supplements' to properly complete them... We have been doing what the USFWS and range countries do not have the will or capacity to achieve themselves. On top of this, FWS does not have adequately trained staff to make the tedious findings and to consult the operators and foreign authorities." They also refer to 'the extreme difficulty of the case-by-case' method of assessing permit applications.

The USFWS has also flip-flopped on enhancement findings for key species of interest to both hunters and conservationists, as evidenced in this [timeline on USFWS permits for elephant and lion trophy imports](#). The UK Government should consider the point that such erratic permissions in trophy imports and associated (purported) fluctuating conservation revenue, which would highly likely be a feature of any UK 'smart ban', is entirely at odds with the need for conservation programmes and protected areas to be in receipt of consistent and sustainable revenue sources.

4. A 'smart ban' would be contrary to the aim of the legislation

The aim of the Bill is to "Make provision prohibiting the import of hunting trophies into Great Britain" and follows a government policy statement which stated: "Within the consultation, we asked whether exemptions should be considered, for example for conservation reasons. We note the strength of sentiment from those who did not support exemptions, and **there will be no exemptions for hunting trophies from species in scope of the ban.**" It is clear that an exemption of this nature would run contrary to the aim of the legislation.

Under the ESA, the US has continued to allow the import of hunting trophies from species that they have classified as threatened or endangered, including African elephants, leopards, and even critically endangered black rhinos. Similar exemptions allowing imports into the UK would go **against the intended purpose of the Bill**, against the wishes of the British public, and against a sound precautionary approach to prevent species extinction.

5. A 'smart ban' would be liable to legal challenge

A 2013 WTO ruling on the EU seal fur ban set out in Regulation (EC) No. 1007/2009 struck down a similar exemption which would have allowed the import of seal products obtained through sustainable management of marine resources on a non-profit basis to continue. The WTO ruled

that the hunting of seals, even for supposed conservation purposes to manage marine wildlife, gave rise to the same wildlife welfare concerns, as the animals were killed in similar (if not the same) ways.

The WTO also highlighted that it was **next to impossible to monitor** how these seals were treated/killed or that such hunts were really carried out for purposes other than of commercial hunting and exploitation. They therefore ordered that the EU should strike out the marine resource management exclusion. A WTO challenge over the legality of a 'smart ban' exemption could be reasonably expected to reach a similar conclusion. Given the stated conservation purpose of the legislation, the licensing of certain imports under subjective and unreliable criteria would likely be seen as ineffective, unjustified and potentially discriminatory under the WTO's international free trade rules.