

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL )  
and )  
NATIONAL RIFLE ASSOCIATION OF )  
AMERICA )

Plaintiffs, )

v. )

Civ. No. 14-cv-00670 (ABJ)

SALLY M. R. JEWELL, in her official )  
capacity as Secretary of the U.S. )  
Department of the Interior; )  
U.S. DEPARTMENT OF THE INTERIOR, )  
an agency of the United States; )  
DANIEL ASHE, in his official capacity as )  
Director of the U.S. Fish and Wildlife Service; and )  
U.S. FISH AND WILDLIFE SERVICE, )  
an agency of the United States )

Defendants. )

**SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF  
AMERICA’S (1) REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A  
SECOND AMENDED AND SUPPLEMENTED COMPLAINT AND (2) OPPOSITION  
TO FEDERAL DEFENDANTS’ SUPPLEMENTAL MOTION TO DISMISS**

**TABLE OF CONTENTS**

- I. INTRODUCTION ..... 1
- II. ARGUMENT ..... 3
  - A. SCI/NRA’s Claims Concerning the Tanzania Importation Ban Challenge Final Agency Action and State a Viable Cause of Action..... 3
    - 1. Standard of Review..... 3
    - 2. The Tanzania Importation Ban Qualifies as Final Agency Action..... 4
      - a. The Tanzania Ban Marked the Consummation of Federal Defendants’ Decision-Making Process and Qualifies as a Binding Norm ..... 5
      - b. The Tanzania Importation Ban Determines the Rights and Obligations of Those Who Seek to Import Sport Hunted Elephants..... 8
      - c. The Existence of a Permit Process Does Not Negate the Finality of the Import Ban Decision ..... 9
      - d. The Tanzania Ban Is Having a Direct Effect on the Day-to-Day Businesses of SCI/NRA Members Who Do Not Want or Require Permits..... 11
      - e. Federal Defendants Have Made it Futile for Hunter/Importers to Attempt to Exhaust Administrative Remedies Applicable to Obtaining Importation Permits ..... 12
  - B. SCI/NRA’s Claims Against the April 4 Importation Ban for Zimbabwe Are Viable and Not Moot ..... 16
    - 1. Federal Defendants Bear a Heavy Burden to Prove Mootness and the Court Must Assume that SCI/NRA Will Prevail on the Merits of Their Legal Claims ..... 17
    - 2. Federal Defendants Lack Authority to Implement Decisions With Retroactive Impact, So the April 4 Decision Continues to Govern the Importation of Elephants Hunted Before the July 31 Importation Ban Went Into Effect..... 19
    - 3. Federal Defendants Have Not Proven that the April 4 Illegal Conduct Will Not Recur and, Even if Moot, SCI/NRA’s Zimbabwe Claims Are Capable of Repetition Yet Will Evade Review ..... 24
- III. CONCLUSION..... 27

## I. INTRODUCTION

In one way, this case is about how the arbitrary actions of the federal government have harmed elephant conservation and the U.S. hunters who are among those who do the most for elephant conservation. In other ways, it is about a federal agency taking drastic actions without any public input and striving in court to avoid all judicial review of those actions. In this brief, Plaintiffs Safari Club International and the National Rifle Association of America (“SCI/NRA”) seek to prevent those harms to elephant conservation and to defend the justiciability of their challenges to the government’s drastic actions.

On April 4, 2014, Defendants Sally M. R. Jewell *et al.* (“Federal Defendants”), without warning or public input, abruptly terminated the importation of sport-hunted elephants from Tanzania and Zimbabwe. SCI/NRA promptly sued to challenge those importation bans. Federal Defendants filed multiple motions to dismiss SCI/NRA’s claims and to limit SCI/NRA’s ability to seek judicial review of their challenges.

In their latest motion, Federal Defendants claim that this Court cannot consider SCI/NRA’s challenges to the Tanzania ban until SCI/NRA members unsuccessfully apply for permits and then exhaust all administrative appeals. Federal Defendants’ defenses fail because although those who apply for permits *could* seek administrative review, the importation ban decision is itself final agency action and does not require administrative review as a prerequisite to judicial consideration. In addition, SCI/NRA members harmed by the importation ban decisions include individuals whose injuries do not arise from the inability to obtain permits for the importation of elephants. Finally, Federal Defendants have made administrative review futile by establishing impossible standards for obtaining importation permits.

When SCI/NRA challenged Federal Defendants' original April 4, 2014 decision for Zimbabwe, Federal Defendants attacked the ripeness of those claims, arguing that Federal Defendants *might* render a new decision after analyzing information they had belatedly sought from Zimbabwe. Now that they have confirmed the ban for Zimbabwe by making a new importation ban decision and by publishing that decision in a Federal Register notice, Federal Defendants argue that what was previously unripe has become moot.

This attempt to avoid judicial review fails because Federal Defendants cannot meet their heavy burden to establish the mootness of the April 4, 2014 Zimbabwe decision. Because Federal Defendants lack authority to implement the new decision with retroactive effect, the April 4, 2014 decision continues to govern the importation of elephants that were hunted while that decision was in place. Moreover, even if challenges to that decision are moot, the illegalities of the April 4, Zimbabwe decision are capable of repetition yet would evade review.

Federal Defendants do not, in their Supplemental Motion to Dismiss and Partial Opposition to Motion to Amend/Correct ("Supp. MTD") (Dkt. 37), seek to prevent SCI/NRA from adding to their existing Amended Complaint challenges to the July 31, 2014 decision to ban elephant importation from Zimbabwe.<sup>1</sup> In addition, SCI/NRA's claims challenging the April 4, 2014 Tanzania and Zimbabwe ban decisions all remain viable.

This Court should exercise its discretion to grant SCI/NRA leave to amend and supplement its existing Amended Complaint to both add the new claims and present the latest

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<sup>1</sup> The July importation ban decision was not published in the Federal Register until July 31, 2014. According to the commitment Federal Defendants published in the Federal Register in 1997, the pre-existing finding would "remain in effect until the Service finds, based on new information, that the conditions of the special rule are no longer met and has published a notice of any change in the Federal Register." 62 Fed. Reg. 44627, 44633 (Aug. 22, 1997). For this reason, SCI/NRA will refer to Federal Defendants' most recent importation ban decision for Zimbabwe as the "July 31, 2014 decision."

amended versions of SCI/NRA's challenges to the April 4, 2014 importation ban decisions for Tanzania and Zimbabwe.<sup>2</sup> The Court can then cleanly and efficiently address all of Federal Defendants' alleged grounds for dismissal in light of the latest articulation of SCI/NRA's claims.<sup>3</sup> However, Federal Defendants should not prevail as they cannot support any of their varied grounds for dismissal.

For all these reasons, this Court should exercise its discretion to grant SCI/NRA's Motion for Leave to File a Second Amended and Supplemented Complaint ("Mot. To Amend") (Dkt. 34), deny Federal Defendants' motions to dismiss, and expeditiously resolve this litigation in SCI/NRA's favor.

## **II. ARGUMENT**

### **A. SCI/NRA's Claims Concerning the Tanzania Importation Ban Challenge Final Agency Action and State a Viable Cause of Action**

#### **1. Standard of Review**

In their latest challenge to SCI/NRA's claims concerning the Tanzania importation ban, Federal Defendants allege that the Tanzania decision does not constitute final agency action and that consequently SCI/NRA fail to state a claim. SCI/NRA's burden to overcome that challenge is relatively minimal. Rules applicable to notice pleadings are "not meant to impose a great

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<sup>2</sup> Under Fed. R. Civ. P. 15(a), "[t]he court should freely give leave when justice so requires." "The grant or denial of an opportunity to amend is within the discretion of the District Court ...." *Foman v. Davis*, 371 U.S. 178, 182 (1962). "When a plaintiff amends its complaint while a motion to dismiss is pending, which happens frequently, the court then has a variety of ways in which it may deal with the pending motion [to dismiss], from denying the motion as moot to considering the merits of the motion in light of the amended complaint." *Roller Bearing Co. of Am. v. Am. Software, Inc.*, 570 F. Supp. 2d 376, 384 (D. Ct. 2008). SCI/NRA agree that the pending motion to dismiss would apply to their Second Amended and Supplemented Complaint should the Court adopt the second approach.

<sup>3</sup> Federal Defendants appear to agree that the Court could take this approach. Supp. MTD at 2 n.1 ("this Supplemental Motion to Dismiss applies equally to the proposed Second Amended Complaint, should the Court allow Plaintiffs to further amend their complaint.")

burden upon a plaintiff.” *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). The Court must “treat the complaint’s factual allegations as true ... and must grant plaintiff ‘the benefit of all inferences that can be derived from the facts alleged.’” *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000) (quoting *Schuler v. United States*, 617 F.2d 605, 608 (D.C. Cir. 1979)) (internal citation omitted). As long as the allegations of the complaint are sufficient to raise the right to relief “above the speculative level,” plaintiffs can defeat a motion for failure to state a claim even if “recovery is very remote and unlikely.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 556 (2007) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).<sup>4</sup>

## 2. The Tanzania Importation Ban Qualifies as Final Agency Action

Federal Defendants’ April 4, 2014 decision to ban importation of elephants from Tanzania constitutes final agency action for at least three reasons. First, the importation ban determination qualifies as a binding norm that dictates the requisite threshold of information that SCI/NRA members have become obligated to provide to obtain importation permits. Second, SCI/NRA members who do not intend to import elephants or apply for permits have been directly harmed by the importation ban. And third, participation in and/or exhaustion of the administrative process would be futile.

Federal Defendants properly recognize that the question of finality is not jurisdictional.

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<sup>4</sup> Federal Defendants selectively cite statements from *Ashcroft v. Iqbal* to suggest that SCI/NRA’s Amended Complaint does not offer sufficient factual allegations to survive their motion to dismiss. Supp. MTD at 4, citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In *Iqbal*, the Court recognized plaintiffs’ relatively minimal burden to overcome a motion to dismiss for failure to state a claim. *Id.* Nevertheless, the court dismissed the *Iqbal* plaintiffs’ complaint as it failed to provide sufficient factual allegations to demonstrate the plausibility of their success. *See id.* at 681. Unlike the complaint in *Iqbal*, SCI/NRA’s detailed pleadings, containing in excess of 100 paragraphs, describe the factual bases of SCI/NRA’s claims and do not succumb to the same failings that resulted in the dismissal in *Iqbal*. SCI/NRA have provided sufficient facts concerning the statutory, regulatory and self-imposed obligations that Federal Defendants violated in their decision-making process.

Instead the issue of finality relates to whether plaintiffs allege a cause of action. *Trudeau v. FTC*, 456 F.3d 178, 184-85 (D.C. Cir. 2006). To be final and reviewable, agency action must satisfy two criteria. First, it must “mark the ‘consummation’ of the agency’s decisionmaking process” and “must not be of a merely tentative or interlocutory nature.” *Center for Auto Safety v. National Highway Traffic Safety Admin.*, 452 F.3d 798, 806 (D.C. Cir. 2006), quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). To determine finality, courts look to see whether the challenged agency action established a “binding norm” as opposed to an “unreviewable statement of policy.” *Id.* (quoting *Wilderness Soc’y v. Norton*, 434 F.3d 584, 595 (D.C. Cir. 2006)). Second, the agency’s action “must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Id.* A core question a court must consider is whether the result of the agency’s decision-making “will directly affect the parties.” *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). An agency’s action is final if it is “definitive” and has a “direct and immediate ... effect on the day-to-day business” of the party challenging it. *FTC v. Standard Oil Co.*, 449 U.S. 232, 239 (1980) (citations omitted).

**a. The Tanzania Ban Marked the Consummation of Federal Defendants’ Decision-Making Process and Qualifies as a Binding Norm**

Federal Defendants’ importation ban decision was the product of final findings made by two separate divisions of the U.S. Fish and Wildlife Service (“FWS”). Amended Complaint, ¶50 (Dkt. 13). On February 21, 2014, the Scientific Authority of the FWS finalized their decision not to issue a non-detriment finding for elephant trophy importation from Tanzania, and on March 27, 2014, the Management Authority of the FWS finalized their finding that the importation of sport-hunting trophies from Tanzania was not likely to enhance the survival of the species.

*Id.* These types of findings have served as the basis of Federal Defendants’ two decades-long practice of consistently approving the importation of sport-hunted elephants taken in Tanzania.

Based on these two new FWS findings, Federal Defendants “suspended” the importation of elephants from Tanzania. The decision was the culmination of their decision-making, which effectively reversed almost 20 years of a consistent approach to elephant importation, based on positive determinations that the hunting of elephants in Tanzania enhanced the survival of the species and that the importation was not detrimental to species survival. Now that they have banned the importation, Federal Defendants have not demonstrated any affirmative efforts to reverse or revise their decision. Federal Defendants have not announced that they are actively engaged in any conduct designed to collect data to refute or revise their existing decisions or to re-examine these decisions for 2014. All that Federal Defendants have agreed to do is passively accept additional data. On the FWS website, Federal Defendants state merely:

The decision to suspend the import of sport-hunted trophies from Tanzania and Zimbabwe applies to elephants taken on or after April 4, 2014. The Service will reevaluate this suspension for calendar year 2015 or upon receipt of new information that demonstrates an improved situation for elephants in these countries.

Service Suspends Import of Elephant Trophies from Tanzania and Zimbabwe, <http://www.fws.gov/news/ShowNews.cfm?ID=2E6FF2A2-E10F-82BC-DAE08807810E3C6B>, *last visited* Sept. 5, 2014.

The mere fact that Federal Defendants could, at some point in the future, revise their two determinations about the importation of elephants from Tanzania – if and when they receive the information they have tasked hunters with producing – does not undermine the finality of the April 4, 2014 importation ban. Finality exists even if the agency’s decision is subject to future change. “[A]ll laws are subject to change . . . . The fact that a law may be altered in the future



has nothing to do with whether it is subject to judicial review at the moment.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000) (EPA Guidance document concerning state permit programs under the Clean Air Act qualified as final agency action); *see also Sackett v. EPA*, — U.S. —, 132 S.Ct. 1367, 1372 (2012) (“The mere possibility that an agency might reconsider ... does not suffice to make an otherwise final agency action nonfinal.”).

In addition, the importation ban qualifies as a “binding norm.” From at least 1993 until April 3, 2014, Federal Defendants made positive enhancement of survival and non-detriment findings for elephants hunted in and imported from Tanzania. 60 Fed. Reg. 12969, 12969-70 (Mar. 9, 1995). For that reason, prior to April 4, 2014, a permit applicant could rely on the information already within Federal Defendants’ possession for the enhancement of survival and non-detriment determinations that serve as prerequisites to the issuance of import permits. To satisfy these two aspects of the permit process between 1993 and April 3, 2014, the individual permit applicant did not have to submit additional information to reverse pre-existing negative findings about whether the take of the elephant enhanced the survival of the species and whether the importation would not be detrimental to the species’ survival. On April 4, 2014, everything changed. In making the April 4, 2014 determination, Federal Defendants, for the first time in approximately two decades, decided that the information they had within their possession did not fulfill their unspecified criteria for enhancement of survival and non-detriment findings. As of April 4, 2014, Federal Defendants shifted the obligation to produce this information to each individual permit applicant. Now the individual hunter/importer must overcome established negative findings and supply – as discussed below – very specific information that is not currently in existence, let alone obtainable by individual hunters from the United States.

By setting a new standard for the amount and type of information that hunters/importers must submit for the purpose of obtaining a permit, Federal Defendants have established a new binding norm. Federal Defendants have made clear that, without such additional information, they will not issue an importation permit. It matters not that Federal Defendants refuse to acknowledge the binding nature of their decision:

[W]e have also recognized that an agency's other pronouncements can, as a practical matter, have a binding effect . . . . If an agency acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule, if it bases enforcement actions on the policies or interpretations formulated in the document, if it leads private parties or State permitting authorities to believe that it will declare permits invalid unless they comply with the terms of the document, then the agency's document is for all practical purposes "binding." (citations omitted)

*Appalachian Power Co.*, 208 F.3d at 1021. Although Federal Defendants deny the decision's finality, Federal Defendants have not suggested that SCI/NRA members, applicants for importation permits, and/or the federal personnel responsible for issuing importation permits may ignore or disregard the April 4, 2014 decision in their conduct regarding the importation of elephants from Tanzania. Federal Defendants' decision that they will not make enhancement of survival and non-detriment findings binds all interested parties, as does the decision that no elephants will be imported until additional information (of a very specific nature) is submitted.

**b. The Tanzania Importation Ban Determines the Rights and Obligations of Those Who Seek to Import Sport Hunted Elephants**

As explained above, Federal Defendants' decision dictates the rights and obligations of those who wish to import elephants from Tanzania, long before they attempt to submit a permit application. The importation ban decision increases the amount and nature of information that hunter/importers will need to produce to have Federal Defendants seriously consider their applications. Without that additional information, hunter/importers will have no chance to

successfully import their legally hunted elephants.

Federal Defendants incorrectly insist that the Tanzania importation ban cannot be final because hunters retain the opportunity to obtain permits by providing additional information to persuade Federal Defendants to reverse the ban. As discussed in detail above, for the first time in two decades, Federal Defendants have imposed on hunter/importers the obligation to provide data to reverse pre-existing negative decisions for Tanzania concerning enhancement of survival caused by the hunting of elephants and non-detriment to survival caused by the importation. In suggesting that the importation opportunity has not been completely closed, Federal Defendants ignore the fact that their April 4, 2014 decision established a binding norm that dictates new requirements for the amount and type of information a hunter will need to provide in order to obtain an import permit. The April 4, 2014 ban decision set a new and higher informational threshold for permit applicants.

**c. The Existence of a Permit Process Does Not Negate the Finality of the Import Ban Decision**

Federal Defendants' final agency action on importation of elephants from Tanzania is not contingent on the denial of individual permit applications. Contrary to Federal Defendants' arguments, the existence of an administrative permit process does not dictate when final decision-making occurs. Decisions that govern how that process will be applied also qualify as final agency action. Federal Defendants have already established the standards they will apply to all permit applications.

Just as the Environmental Protection Agency attempted to do in *National Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34 (D.D.C. 2011), Federal Defendants seek to use the existence of a permit process as a means of promoting an overly restrictive understanding of the phrase "final agency action." *Id.* at 42.

The federal defendants' view of what amounts to finality is too narrow, as it is possible for an agency to take final agency actions during a permit assessment process prior to actually determining whether to grant or deny an application for a permit.

*Id.* at 44.<sup>5</sup> (Court held that agency interim guidance memoranda governing the permit process qualified as final agency action, regardless of the fact that permits had yet to be issued or denied); *see also National Treasury Employees Union v. Federal Labor Relations Authority*, 745 F.3d 1219, 1222 (D.C. Cir. 2014), *quoting Role Models Am., Inc. v. White*, 317 F.3d 327, 331 (D.C. Cir. 2003) (a challenged agency action “need not be the last administrative action contemplated by the statutory scheme” to qualify as “final” for the purpose of judicial review).

The U.S. Supreme Court has not adopted the rigid approach to finality that Federal Defendants ask this Court to apply. Instead, the Supreme Court has directed the judiciary to address the finality requirement in a “flexible” and “pragmatic” way. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149-50 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 106-07 (1977); *see also Ciba-Geigy Corp. v. U.S.E.P.A.*, 801 F.2d 430, 435-36 (D.C. Cir. 1986). The *Abbott Labs* court also looked to whether the agency’s action was “definitive” and whether it imposed a “direct effect on the day-to-day business” of those who challenged the action. 387 U.S. at 151-52.

The practical effect of the Tanzania importation ban was to increase the burden on those who seek to hunt in Tanzania and import their legally taken elephants. For almost two decades,

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<sup>5</sup> In *National Mining*, the EPA subsequently enacted a Final Guidance memoranda, which “account[ed] for and respond[ed] to key concerns” of claimants, replacing the interim guidance and making claims challenging it as moot. *Nat’l Mining Ass’n v. Jackson*, 880 F.Supp.2d 119, 127 (D.D.C. 2012) *rev’d by Nat’l Mining Ass’n v. McCarthy*, ---F.3d--- (D.C. Cir. 2014), 2014 WL 3377245. The Court of Appeals found the replacement guidance a non-binding agency action as it could be rejected by the ultimate decision making authority. *Nat’l Mining Ass’n v. McCarthy*, at \*6.

Federal Defendants did not impose on hunter/importers the individual burden of providing evidence to overcome negative enhancement and non-detriment findings. Since April 4, 2014, the hunter/importers bear the insurmountable informational burden to persuade Federal Defendants to make a finding the government has already essentially decided it cannot. Viewed pragmatically, the importation ban is sufficiently final for the purpose of this Court's review.

**d. The Tanzania Ban Is Having a Direct Effect on the Day-to-Day Businesses of SCI/NRA Members Who Do Not Want or Require Permits**

In asserting that finality is contingent on the completion of the permit application process, Federal Defendants ignore the binding impact the importation ban is having on SCI/NRA members with professional hunting operations in Tanzania. Amended Complaint ¶¶13, 56. The consequences to these professional hunters' interests arise not from an inability to import elephants, but instead from Federal Defendants' purposeful efforts to persuade U.S. hunters to cancel their Tanzania elephant hunts. These SCI/NRA members are suffering due to cancellations, decreased bookings, loss of revenue and reduced ability to engage in anti-poaching and other elephant conservation measures. The importation ban decision was directed at these professional hunters, as it was Federal Defendants' intent to persuade hunters to cancel the hunts they had booked with these outfitters and guides.

**I have already purchased a hunt in Tanzania or Zimbabwe. How do I get my money back?**

We encourage you to contact your hunting outfitter to discuss options. While you can still participate in a hunt in 2014, you currently are not able to import the trophy. In addition, given the current conservation concerns for elephants in Tanzania and Zimbabwe, *we strongly advise that you reconsider taking part in an elephant hunt in either of these countries at this time.*

FWS Q&A Webpage, <http://www.fws.gov/international/pdf/questions-and-answers-suspension-of-elephant-sport-hunted-trophies.pdf> last visited Sept. 5, 2014 (second emphasis added).

As the cancellations and a decrease in the number of hunters travelling to Tanzania for elephant hunting are the express purposes of the importation ban and because Federal Defendants publicly encouraged cancellations in the explanation they provided for their decision, the importation bans, and not the hunters' logical reactions to them, are the direct cause of harm to SCI/NRA members who run hunting operations in Tanzania. Resort to an administrative process would not even be possible as they have no interest in obtaining import permits and could not appeal what they have not been denied.

**e. Federal Defendants Have Made it Futile for Hunter/Importers to Attempt to Exhaust Administrative Remedies Applicable to Obtaining Importation Permits**

Regardless of the number of applications submitted or the amount of currently available information that SCI/NRA members might attempt to provide in support of their applications, their efforts will not result in the issuance of importation permits for elephants hunted in Tanzania in 2014. Any attempt to exhaust the administrative remedies applicable to the importation permit process would certainly be unsuccessful. Evidence from the Administrative Record demonstrates that resort to the administrative process would be futile. *Cutler v. Hayes*, 818 F.2d 879, 891-92 (D.C. Cir. 1987) (“[T]he exhaustion requirement may be waived by the agency, or disregarded by the court when application of the doctrine would be futile.”)

The exhaustion doctrine is “an exercise of judicial discretion.” *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 156 (D.C. Cir. 1985), citing *Action for Children's Television v. FCC*, 564 F.2d 458, 469 (D.C. Cir. 1977) (Court excused plaintiffs from exhausting administrative remedies based on finding that plaintiffs' concern about environmental review of deliberate release of genetically engineered organisms was of “great public importance.”). The Court may disregard it in “exceptional cases or particular circumstances \* \* \* where injustice

might otherwise result,” *Id.* (quoting *Hormel v. Helvering*, 312 U.S. 552, 557 (1941)).

To consider whether resort to administrative remedies would be futile, this Court must examine Federal Defendants’ own statements about what they require of hunter/importers to prompt a reversal of the existing binding decision for Tanzania. Federal Defendants seek very particular information that does not presently exist and will not exist until Tanzania modifies its elephant management practices and/or conducts lengthy surveys and studies that reveal specific results.

On April 4, 2014, Bryan Arroyo, Assistant Director of the U.S. Fish and Wildlife Service for International Affairs, sent a letter to Tanzania’s Minister of Natural Resources and Tourism explaining Federal Defendants’ decision to ban importation of Tanzania elephants. After expressing grave concern about the escalation of elephant poaching throughout Tanzania, Assistant Director Arroyo issued Federal Defendants’ ultimatum to Tanzania’s wildlife authority:

In order to allow elephant trophies to be imported in the future, documented total offtake from the elephant population (i.e., all sources of elephant deaths, including poaching, sport-hunting, problem animal control, and natural mortality) would need to be below the elephant’s annual population growth rate, ***requiring the poaching rate to be significantly reduced.***

Exhibit 1 (emphasis added).<sup>6</sup> Mr. Arroyo’s letter revealed that Federal Defendants are not simply seeking additional information, but are instead requiring Tanzania to modify its management approach in order to reduce the number of elephants poached.

The importation ban that SCI/NRA challenge in this litigation currently applies only to elephants hunted in 2014.<sup>7</sup> Individuals who have hunted and have plans to hunt elephants in

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<sup>6</sup> SCI/NRA previously introduced this document as an exhibit attached to their Request for Reconsideration of the Court’s Order Granting the Federal Defendants’ Motion for Relief from LCvR 7(n) and Cross-Motion to Compel Production of the Administrative Record. Dkt. 28.

2014 will not be able to provide the information demanded by Federal Defendants until Tanzania satisfies Federal Defendants' requirements concerning elephant management. If the required information does not exist for elephants taken in 2014, and will not exist until Tanzania has demonstrable results from a change in its management plan, then participation in the permit process without such information is certainly futile.

Ignoring the insurmountable hurdle Federal Defendants have imposed on hunter/importers, Federal Defendants incorrectly try to rely on the ruling in *Marcum v. Salazar*, 694 F.3d 123 (D.C. Cir. 2012) to support their contention that SCI/NRA must exhaust the futile permit process before bringing a challenge to this court. Many differences separate *Marcum* from this case. Although both cases involve the importation of elephant populations listed as threatened under the Endangered Species Act and classified as Appendix I species pursuant to the Conference on International Trade of Endangered Species (commonly known as "CITES"), the similarities end there. In the instant matter, Federal Defendants reversed a consistent, two decade-long position for Tanzania that the importation of elephants is not detrimental to the survival of the species and that the take of those elephants enhances their survival. By contrast, in *Marcum*, Federal Defendants had not previously made such determinations or allowed importation of Zambia's elephants. Consequently, the plaintiffs in *Marcum* had no importation history or past practice upon which to base their expectations of importing their elephants and suffered no reversal of opportunities when Federal Defendants refused to approve their permit applications. Moreover, nothing in the *Marcum* case suggests that Federal Defendants had made the permit process futile by communicating an absolute refusal to allow importation until Zambia

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<sup>7</sup> For Tanzania, Federal Defendants make their findings on an annual basis. Even if in 2015 Tanzania produces population data demonstrating a different ratio of elephant mortality to elephant population growth, this will not change the population status of elephants in 2014 and would not change the futility of applying for a permit to import an elephant hunted in 2014.



changed its management practices. In fact, Federal Defendants were still awaiting a response to their request for additional information from Zambia about their elephants when the *Marcum* plaintiffs filed suit. 694 F.3d at 125. Thus, it was possible that the *Marcum* plaintiffs' applications might have been granted.

Perhaps the greatest contrast between the instant matter and *Marcum* is the fact that the plaintiffs in *Marcum* had initiated the administrative process by applying for permits. *Marcum*'s challenge was to the denial of those permit applications. In the instant litigation, SCI/NRA members are not challenging the denial of an importation permit application. Instead, they are challenging the changes in burdens imposed upon them as well as the process that Federal Defendants have and will apply to the granting of importation permits. Similar differences distinguish *Conservation Force v. Salazar*. 919 F. Supp. 2d 85 (D.D.C. 2013). In *Conservation Force*, the plaintiffs also challenged the denial of their import permit applications and the only claim that remained before court was the allegation that the permit denials were arbitrary and capricious. *Id.* at 88.<sup>8</sup>

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<sup>8</sup> Another case that Federal Defendants cite, *Coosewoon v. Meridian Oil Co.*, 25 F.3d 920 (10th Cir. 1994), is not applicable to the instant case for two main reasons. First, the plaintiffs in *Coosewoon* sued to force the federal government to make a final decision – to cancel an oil and gas lease; whereas, SCI/NRA have sued to challenge a final decision already made by Federal Defendants – the Tanzania importation ban. Second, the statute at issue in *Coosewoon* applied specifically to Title 25 (“Indians”) of the Code of Federal Regulations. Agency decisions made under Title 25 have a prescribed administrative appeal requirement that must be fulfilled before the decisions are considered final. *See* 25 C.F.R. § 2.6(a); *Coosewoon*, 25 F.3d at 924-25. Federal Defendants also cite to 50 C.F.R § 13.29, a regulation that applies only to those who have applied for importation permits. SCI/NRA are not challenging permit denials. Section 13.29 might apply if SCI/NRA were challenging permit denials prior to exhausting the administrative appeal process, but that is not the basis of SCI/NRA's challenges.

For all these reasons, SCI/NRA challenge final agency actions and need not exhaust any administrative process. The Court should allow SCI/NRA to amend their complaint to restate their Tanzania claims and should deny the Federal Defendants' motion to dismiss those claims.

**B. SCI/NRA's Claims Against the April 4 Importation Ban for Zimbabwe Are Viable and Not Moot**

Federal Defendants have assumed a heavy burden to prove the mootness of SCI/NRA's claims against the April 4, 2014 importation ban. Ostensibly, Federal Defendants voluntarily stopped applying the illegal April 4 determination by merely replacing it with a similarly illegal July 31 determination. By asserting mootness based on this version of the facts, Federal Defendants are required to shoulder the burden of establishing the mootness of SCI/NRA's original challenge. Consequently, Federal Defendants cannot attempt to shift to SCI/NRA the obligation of proving this Court's jurisdiction to consider the challenge to the April 4 Zimbabwe importation ban. Federal Defendants fail to meet this burden of proof.

In addition, SCI/NRA affirmatively demonstrate below that Federal Defendants lack the authority to implement a decision with retroactive impact. For that reason, the April 4 importation ban cannot be moot because it still governs whether hunters can import sport-hunted elephants taken in Zimbabwe between April 4 and July 31, 2014.

Finally, even if their challenges to the April 4 importation ban are moot, SCI/NRA can still pursue these challenges under the exception applicable to conduct that is capable of repetition yet will evading review.

**1. Federal Defendants Bear a Heavy Burden to Prove Mootness and the Court Must Assume that SCI/NRA Will Prevail on the Merits of Their Legal Claims**

By asserting that they have voluntarily terminated the conduct that SCI/NRA challenged in their original Complaint and Amended Complaint, Federal Defendants assume the burden of demonstrating that, due to mootness, the Court no longer has jurisdiction to review challenges to the allegedly terminated conduct. As one court in this circuit explained: “Defendants bear the ‘heavy burden’ of showing that ‘subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Nat’l Sec. Archive v. C.I.A.*, 564 F. Supp. 2d 29, 35 *on reconsideration*, 584 F. Supp. 2d 144 (D.D.C. 2008) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). Courts refrain from dismissing what might otherwise be meritorious claims based on alleged mootness. “It is no small matter to deprive a litigant of the rewards of its efforts . . . . Such action on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought.” *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224 (2000) (per curiam).

In addition, as is the case here, “[a] defendant’s voluntary cessation of allegedly unlawful conduct moots a case only if (1) ‘there is no reasonable expectation ... that the alleged violation will recur,’ and (2) ‘interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.’” *Kifafi v. Hilton Hotels Ret. Plan*, 701 F.3d 718, 725 (D.C. Cir. 2012) (quoting *Am. Bar Ass’n v. FTC*, 636 F.3d 641, 648 (D.C. Cir. 2011)). Federal Defendants cannot rely on a newly arbitrary and capricious action to moot challenges to earlier illegal conduct. A subsequent action moots a plaintiff’s challenge to the replaced action “only if [the subsequent action] is valid.” *United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002). As

explained below, Federal Defendants have failed to meet both prongs of this “heavy burden” and SCI/NRA’s challenges to the April 4 importation ban cannot be moot. *See Kifafi*, 701 F.3d. at 725 (defendant’s failure to satisfy first factor defeated mootness defense and court did not reach second factor).<sup>9</sup>

A second, equally important principle governs the Court’s resolution of the mootness question. For purposes of resolving whether the Court has Article III jurisdiction, the Court must accept as valid SCI/NRA’s legal claims and theories. The Supreme Court has made clear that when considering whether a plaintiff has Article III standing, a federal court must assume *arguendo* the merits of his or her legal claim. *See Am. Fed’n of Gov’t Emps., AFL-CIO v. Pierce*, 697 F.2d 303, 305 (D.C. Cir. 1982) (“For purposes of the standing issue, we accept as valid Congressman Sabo’s pleaded legal theory.”) (*citing Warth v. Seldin*, 422 U.S. 490, 501 (1975)); *Goldwater v. Carter*, 617 F.2d 697, 701-02 (D.C. Cir. 1979) (“For purposes of the standing issue, we accept, as we must, appellees’ pleaded theories as valid.”), *vacated on other grounds*, 444 U.S. 996 (1979). As the D.C. Circuit stated:

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<sup>9</sup> A few courts appear to place these two requirements on the party asserting mootness when the party ceases the illegal activity in response to the legal challenge as a way to end the litigation. *See Aref v. Holder*, 774 F. Supp. 2d 147, 161 (D.D.C. 2011) (quoting *Pub. Util. Comm’n of Cal. v. Fed. Energy Regulatory Comm’n*, 100 F.3d 1451, 1460 (9th Cir. 1996)). As most cases from the D.C. District Court, D.C. Circuit, and Supreme Court do not discuss this condition, the Court need not inquire into whether the Federal Defendants tried to cease the illegal conduct in response to litigation. In any event, here, the Federal Defendants allege to have ceased their illegal conduct – implementation of the April 4 importation ban – only *after* SCI/NRA brought a suit challenging the April 4 decision that identified numerous flaws in that decision-making. In addition, with their July 31 importation ban, Federal Defendants were apparently attempting to correct their clearly inadequate basis for halting elephant imports from Zimbabwe by adopting a new finding and attempting to give it retroactive effect. Under this version of the facts, Federal Defendants should bear a “heavy burden” to show that they have not repeated their errors in their more recent importation ban decision and that the July 31 decision has “completely and irrevocably eradicated the effects of the” April 4 importation ban.

Indeed, in reviewing the standing question, the court must be careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims.

*City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003) (accepting petitioner’s contention on the correct interpretation of the statute to find that the court could redress petitioner’s injuries) (citation omitted).

Although the foregoing cases deal with the standing element of the Court’s Article III jurisdiction, they should apply equally to the mootness element of the Court’s jurisdiction over a claim. As the Supreme Court has explained, “The ‘personal stake’ aspect of mootness doctrine also serves primarily the purpose of assuring that federal courts are presented with disputes they are capable of resolving.” *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 66-67 (1997) (mootness, like standing, “goes to the Article III jurisdiction of this Court and the courts below . . . .”); *Warth v. Seldin*, 422 U.S. 490, 499, n.10 (1975) (“The standing question thus bears close affinity to questions . . . of mootness-whether the occasion for judicial intervention persists.”). As mootness also addresses the Court’s Article III jurisdiction, this rule should apply with equal force here.

**2. Federal Defendants Lack Authority to Implement Decisions With Retroactive Impact, So the April 4 Decision Continues to Govern the Importation of Elephants Hunted Before the July 31 Importation Ban Went Into Effect**

Without any basis in the law, the Federal Defendants simply declared the July 31 decision to be retroactive and applicable to the importation of elephants sport-hunted between April 4 and July 31. *See* Federal Defendants’ Supp. MTD at 9-10, *quoting* Ex. 1 at 1. But contrary to Federal Defendants’ arguments, the April 4 decision remains operative. The fact that Federal Defendants announced that the July 31 decision superseded their earlier decision does not automatically give the July 31 importation ban retroactive impact.

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. (*Citations omitted.*) By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. (*Citations omitted.*) Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

*Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208-09 (1988); *see also Arkema Inc. v. EPA*, 618 F.3d 1, 7 (D.C. Cir. 2010).

Other laws and agency actions confirm that the July 31 decision lacks retroactive effect.

The Administrative Procedure Act (“APA”) explains that Congress intends agency rulemaking to regulate future conduct:

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and *future* effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . ;

5 U.S.C. §551(4) (emphasis added).<sup>10</sup> Federal Defendants regulate the importation of threatened species under authority of 16 U.S.C. §1533(d) of the Endangered Species Act (“ESA”). That provision authorizes the Secretary of the Interior to issue regulations deemed necessary and advisable for the conservation of species but does not expressly grant authority to promulgate retroactive regulations. The language of the rule that the Secretary issued for African elephants confirms the prospective nature of the Secretary’s authority. The rule states that sport-hunted elephants may be imported when “a determination is made that the killing of the animal whose trophy is intended for import *would* enhance survival of the species;” 50 C.F.R.

§17.40(e)(3)(iii)(c) (emphasis added). The Secretary is to base the decision on whether the take

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<sup>10</sup> In their Complaint (Dkt.1, ¶¶87, 92), Amended Complaint (Dkt. 13, ¶¶94, 99) and Proposed Second Amended Complaint (Dkt. 34-2, ¶¶108, 114), Safari Club contends that the April 4, 2014 importation bans qualify as APA rulemaking. As discussed above, the Court must, for purposes of determining Article III jurisdiction, accept these legal claims.

of the animal intended for import *would* enhance the survival of the species, looking towards the future, and not whether the take “did” enhance the survival at some time in the past. Nothing in the wording of the regulation suggests that the Secretary has authority to make such determinations retroactive.

As explained above, the Court must accept SCI/NRA’s legal claims and theories as valid for purposes of deciding mootness. In Count I of the Second Amended Complaint, SCI/NRA assert and imply that Federal Defendants lack authority to make a so-called “temporary” decision that can be replaced retroactively by a later determination. *See* Amended Complaint, ¶96; *see also id.*, ¶99 (asserting and implying that April 4, 2014 importation decision applies to all elephants hunted between April 4 and July 31, 2014). For this Court to determine that challenges to the April 4, 2014 importation ban are moot, it would have to make a premature ruling against SCI/NRA on the merits and reject SCI/NRA’s claims that the April 4, 2014 importation ban would apply to the importation of elephants until a new finding is made and published in the Federal Register. *Id.*, ¶40. For this reason alone, the April 4, 2014 importation ban, which is the cause of undisputed injuries to SCI/NRA members, must be deemed to remain in effect for the purposes of this litigation.

Ignoring this conclusion, Federal Defendants attempt to bolster their contention that the April 4 decision is now moot by erroneously placing a great deal of weight on their own statement that the July 31 decision “superseded” the April 4 importation ban. Federal Defendants’ Supp. MTD. at 3, 8, 9, 10, 11. The dictionary definition of “supersede” does not suggest that the superseding item retroactively takes the place of the older item, just that it replaces it starting at that point in time:

- 1     *a* : to cause to be set aside
- b* : to force out of use as inferior
- 2:     to take the place or position of
- 3:     to displace in favor of another

<http://www.merriam-webster.com/dictionary/supersede?show=0&t=1409851627>, last visited Sept. 5, 2014.<sup>11</sup>

In their briefing in the appeal of the denial of preliminary injunctive relief in this case, and in their conduct subsequent to April 4, 2014, Federal Defendants belatedly acknowledged “concerns” about their authority to retroactively ban the importation of Zimbabwe’s elephants. The April 4 importation ban decision initially applied retroactively to elephants hunted in Zimbabwe after December 31, 2013. On April 17, 2014, Federal Defendants revised that determination to ban only the importation of elephants hunted *on or after* April 4. In the brief that they filed in the appeal, Federal Defendants admitted that they changed their April 4 ban to prospective application in order to “avoid retroactivity concerns.” Case No. 14-5152 (D.C. Cir.), Federal Appellees’ Answering Brief (Dkt. 1508081) at 10 n.8.

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<sup>11</sup> The cases Federal Defendants cite (Supp. MTD. at 10-11, n.6) are distinguishable because the plaintiffs in those cases did not claim that the allegedly superseded policy or rule still governed conduct undertaken while the policy or rule was in effect, as SCI/NRA claims here. In *Fund for Animals, Inc. v. Bureau of Land Mgmt.*, the policy memorandum expired and all the wild horse gathers covered by it were complete, so the policy had no lasting impact on the plaintiffs. 460 F.3d 13, 18 (D.C. Cir. 2006). Federal Defendants mischaracterize the holding in *Fund For Animals, Inc. v. Hogan*, 428 F.3d 1059 (D.C. Cir. 2005). This case did not involve a “legislative rule[]” or a “regulation,” but a letter responding to an ESA listing petition that was replaced by a 90-day finding. “Insofar as the Service’s letter of September 2000 addressed the Fund’s petition for non-emergency listing, the district court did not err in dismissing as moot the Fund’s claim because the letter was superseded in full by the belated 90-day finding.” *Id.* at 1064. *Ctr. for Sci. in the Pub. Interest v. Regan*, 727 F.2d 1161, 1163-64 (D.C. Cir. 1984), involved a rescinded rule that governed prospective obligations regarding the disclosure of ingredients on labels. Once replaced, the earlier rule had no effect on the petitioner’s future labelling obligations and so no longer harmed the petitioner. *Id.* at 1164. None of these cases involved an agency action that had any continuing adverse impact on plaintiffs, in contrast to the April 4, 2014 importation ban.



Federal Defendants should be “concerned” about the retroactive application of an enhancement finding addressing the importation of sport hunted elephants. Under the broad retroactive rulemaking power the Federal Defendants have asserted, the government could impose draconian results on unsuspecting hunters (and other members of the regulated public). For example, a hunter could have a taxidermied sport-hunted elephant being transported into the United States. Upon takeoff, the importation was legal because a positive enhancement finding was in place at the time of the harvest. But during transport, the FWS could decide that it can no longer make that finding and make it retroactive to some date prior to the harvest of the elephant. Upon landing, elephant importation would be illegal and the elephant subject to confiscation.

Federal Defendants’ practice and policy for almost two decades was that enhancement findings were prospective only and remained in place until replaced by a new finding published in the Federal Register. In contrast to these principles, Federal Defendants have now illegally overreached in their attempt to rectify errors in their April 4, 2014 importation ban decision by making the July 31, 2014 decision retroactive.

Federal Defendants’ argue that SCI/NRA have “‘obtained everything that [they] could recover . . . by a judgment of this court in [their] favor,’ thus rendering their challenge to the April interim finding moot.” Federal Defendants’ Supp. MTD at 10. That is not the case because the July 31 decision is not retroactive. However, if this Court sets aside the April 4 finding, SCI/NRA members that successfully hunted elephants between April 4 and July 31, 2014 will be allowed to import their elephants and be given relief.

The July 31 decision cannot apply to the importation of elephants hunted prior to July 31, 2014 because Federal Defendants lack legal authority to make such retroactive determinations. Because the July 31 decision can apply only to elephants legally hunted in Zimbabwe from July

31, 2014 forward, SCI/NRA's claims challenging the April 4 importation ban remain viable. If SCI/NRA succeed in setting aside the April 4 decision, the result will allow the importation of elephants hunted before July 31, 2014 and will redress the harm suffered by SCI/NRA members who hunted elephants during the period between April 4 and July 31. The July 31 importation decision does not meet the qualifications necessary to moot the previous importation ban. For these reasons, this Court should deny Federal Defendants' attempts to dismiss SCI/NRA's challenges to the April 4 importation ban and should grant SCI/NRA's motion to include such claims in its Second Amended and Supplemented Complaint.

**3. Federal Defendants Have Not Proven that the April 4 Illegal Conduct Will Not Recur and, Even if Moot, SCI/NRA's Zimbabwe Claims Are Capable of Repetition Yet Will Evade Review**

Finally, as explained below, Federal Defendants have not satisfied their burden to prove the illegal conduct will not recur, so as to establish that SCI/NRA's challenges to the April 4 decision are moot. Alternatively, even if the Court determines that the July 31 decision moots SCI/NRA's challenges to the April 4 importation ban, the Court should still not dismiss the challenges to the earlier decision.

Contrary to Federal Defendants' protestations, the illegal, yet allegedly short-lived April 4 decision qualifies as "capable of repetition yet evading review." To assert that mootness exception, a party must demonstrate that (1) the duration of the conduct being challenged is too short to allow for full litigation, and (2) there is a reasonable expectation that the party will be subject to the same conduct again. *Del Monte Fresh Produce Co. v. U.S.*, 570 F.3d 316, 322 (D.C. Cir. 2009). "Full litigation" requires the time necessary for Supreme Court review. *Christian Knights of Ku Klux Klan Invisible Empire v. Dist. of Columbia*, 972 F.2d 365, 369

(D.C. Cir. 1992). Conduct with a duration of less than two years qualifies if the duration of the challenged action is “typical” for that type of agency conduct. *Del Monte*, 570 F.3d at 322.

Federal Defendants characterize the three month duration of the April importation ban as atypical, contrasting that decision with the last decision that Federal Defendants made for Zimbabwe in 1997. Federal Defendants’ Supp. MTD at 12. Since Federal Defendants have made only one previous decision for Zimbabwe, that single example cannot demonstrate typical or atypical behavior. In 1997, Federal Defendants explained that they would make such determinations on a “periodic basis,” giving no indication of any typical duration between decisions. 62 Fed. Reg. at 44633. Federal Defendants have established a new “typical” by making three decisions for Zimbabwe in the past fifteen weeks: (1) the April 4 importation ban; (2) the April 17 decision to revise the effective date of the importation ban; and (3) the July 31 decision. In addition, Federal Defendants have already announced that they intend to make yet another determination in December 2014. “Enhancement Finding for African Elephants Taken as Sport-hunted Trophies in Zimbabwe during 2014,” p. 1 (July 22, 2014), <http://www.fws.gov/international/pdf/enhancement-finding-July-2014-elephant-Zimbabwe.PDF>, last visited Sept. 5, 2014. Consequently, what is currently “typical” is for Federal Defendants to make decisions of very short durations.

Federal Defendants also argue that if the April 4 importation ban is capable of repetition, it will not evade review because SCI/NRA are also challenging the July 31 decision. Federal Defendants Supp. MTD at 12. Because SCI/NRA’s challenges to the April 4 and July 31 decisions are not identical, SCI/NRA cannot rely on their litigation of the July 31 decision to resolve all the illegalities involved with the April 4 importation ban.

Without a judicial ruling enjoining such conduct, SCI/NRA face a real probability that members will be subjected to the same type of arbitrary and capricious decision-making that resulted in the April 4 importation ban. Whether or not Federal Defendants will continue to rely on a lack of information, rather than new information, in their upcoming December 2014 decision,<sup>12</sup> nothing prevents Federal Defendants from applying the same conduct for future decisions concerning Namibia and South Africa elephant importation.<sup>13</sup> Prior to April 4, 2014, SCI/NRA members had no reason to expect that Federal Defendants had any intention of changing their long-standing positive enhancement finding for elephants in Zimbabwe. Similarly, Federal Defendants did not even give Zimbabwe notice of their plans until after imposing the ban. Despite their commitment (1) to base any change in their position on new information and (2) to publish any such change in position in the Federal Register, Federal Defendants did neither. 62 Fed. Reg. at 44633. Federal Defendants have made the exact same commitments for South Africa and Namibia.

The enhancement findings for importation of sport-hunted elephant trophies from Botswana, Namibia, and Zimbabwe ... remain in effect until the Service finds, based on new information, that the conditions of the special rule are no longer met and has published a notice of any change in the Federal Register.

*Id.*; 66 Fed. Reg. 27601, 27609 (May 18, 2001) (South Africa). SCI/NRA's inability to fully litigate their challenges to the April 4 importation ban decision within two years and Federal Defendants' ability to abruptly and without warning use the exact same approach to terminate elephant importation from Namibia and South Africa qualifies Federal Defendants' actions in

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<sup>12</sup> SCI/NRA disagree with Federal Defendants that the July 31 decision was based on "new information." While it may have been based on more information than the April 4 importation ban decision, the July 31 importation ban continues to be based on a lack of information.

<sup>13</sup> To qualify for the capable of repetition yet evading review exception, the injured party can challenge a repeated incidence of the illegal conduct even if the circumstances involving the application of the conduct are not identical to the original action. *Carlson v. Schlesinger*, 511 F.2d 1327, 1334 n.9 (D.C. Cir. 1975).

implementing the April 4, 2014 importation ban as “capable of repetition yet evading review.” See *Super Tire Eng’g Co. v. McCorkle*, 416 U.S. 115, 122 (1974) (petitioners’ challenges were not moot because “the challenged governmental activity . . . has not evaporated or disappeared, and by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties.”).

### **III. CONCLUSION**

For the foregoing reasons, SCI/NRA’s claims challenging the April 4, 2014 importation bans for sport-hunted elephants from Tanzania and Zimbabwe are viable. The April 4, 2014 Tanzania ban decision qualifies as final agency action and SCI/NRA members need not participate in the permit process or exhaust permit-related administrative remedies to challenge that decision. SCI/NRA’s challenges to the April 4, 2014 Zimbabwe ban are not moot because that decision still adversely affects SCI/NRA members. In addition, Federal Defendants have failed to carry their burden of proving that they are moot. Even if this Court finds that they are moot, the Court should not dismiss these claims as the conduct that SCI/NRA challenge is capable of repetition yet would evade review.

SCI/NRA request that this Court grant their motion for leave to file a second amended and supplemented complaint and deny Federal Defendants’ Supplemental Motion to Dismiss. SCI/NRA further ask this Court to expeditiously move forward with consideration of SCI/NRA’s challenges and summary judgment briefing.

Dated: September 5, 2014

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL, *et al.*

Plaintiffs,

v.

SALLY M. R. JEWELL, *et al.*

Defendants.

Civ. No. 14-cv-00670 (ABJ)

**[PROPOSED] ORDER**

The Court hereby **ORDERS** the following: Having considered all the parties' papers, the materials on file, and having heard the arguments of counsel, the Court hereby **GRANTS** Safari Club International and National Rifle Association of America's Motion for Leave to File Second Amended and Supplemented Complaint and **DENIES** Federal Defendants' Motion to Dismiss and Supplemental Motion to Dismiss.

Dated:

**IT IS SO ORDERED:**

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AMY BERMAN JACKSON  
United States District Judge

SAFARI CLUB INTERNATIONAL, *et al.* v. SALLY M. R. JEWELL, *et al.*

SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF AMERICA'S (1) REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A SECOND AMENDED AND SUPPLEMENTED COMPLAINT AND (2) OPPOSITION TO FEDERAL DEFENDANTS' SUPPLEMENTAL MOTION TO DISMISS

Case No.: 14-cv-00670 (ABJ)

Exhibit 1





# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



In Reply Refer To:  
FWS/AIA/057087

APR 04 2014

Honorable Lazaro Nyalandu, Minister  
Ministry of Natural Resources and Tourism  
Wizara ya Maliasili na Utalii  
S.L.P. 9372  
Dar es Salaam  
United Republic of Tanzania

Dear Honorable Lazaro Nyalandu:

As part of the U.S. Government's implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the U.S. Endangered Species Act (ESA), the U.S. Fish and Wildlife Service has conducted evaluations that are required to issue import permits for sport-hunted African elephants taken in the United Republic of Tanzania (Tanzania) in 2014. As you are aware, for U.S. implementation of CITES, we must make a finding that the import of sport-hunted trophies of Appendix-I African elephants is for purposes that are not detrimental to the survival of the species. Under the U.S. Endangered Species Act, we must determine that the import of all sport-hunted elephant trophies will enhance the propagation or survival of the species.

The U.S. Government is gravely concerned about the escalation in poaching activity throughout Tanzania over the past several years, and we have expressed this concern in our CITES findings over the past few years. With new information now showing significant declines in key elephant populations in Tanzania, we are unable to make positive findings required by CITES and the ESA to allow import of elephant trophies taken in Tanzania during calendar year 2014 (see attachments). We recognize that sport-hunting, as part of a sound management program, can provide benefits to the conservation of species. However, because of the rampant elephant poaching in Tanzania, we are concerned that the additional killing of elephants, even if legal, is not sustainable and would not support effective management and community programs that enhance the survival of the species in Tanzania.

We will reevaluate the situation in Tanzania for elephant trophies taken in calendar year 2015 and beyond. When we receive information that indicates a significant improvement for elephants in Tanzania, we will re-consider the import suspension. In order to allow elephant trophies to be imported in the future, documented total offtake from the elephant population (i.e., all sources of elephant deaths, including poaching, sport-hunting, problem animal control, and natural mortality) would need to be below the elephant's annual population growth rate, requiring the

poaching rate to be significantly reduced. We will look to the following sources of information to provide us with this documentation:

- New population census information, demographic surveys, and carcass analyses;
- Monitoring of Illegal Killing of Elephants (MIKE) and Elephant Trade Information System (ETIS) reports; and
- Other relevant sources of information.

In addition, in response to the drastic population decline, we hope that the Government of Tanzania will appropriately adjust its quotas downward and take management actions to address the poaching crisis, such as increased capacity for law enforcement. We would appreciate receiving information on how funds generated from the sport-hunting of elephants are used to support the long-term survival of the species. Such support could be in the way of on-the-ground conservation efforts, such as surveys and anti-poaching efforts, or more indirect support through community development projects that can be tied to the benefits that can be generated by maintaining healthy elephant populations.

We recognize the significant challenges that Tanzania and other African countries face in protecting elephants and other wildlife, given increasing poaching pressure. The U.S. Government works to actively assist the Government of Tanzania in protecting its wildlife resources through U.S. Agency for International Development investments in the wildlife management areas program, through U.S. Department of the Interior/U.S. Fish and Wildlife Service technical support, and through financial and technical support for capacity building and other key conservation and management objectives through the African Elephant and the Rhino/Tiger Conservation Funds. We are eager to discuss how we can further assist Tanzania in improving security for elephants.

If you have any questions, please feel free to contact me by mail, email, or telephone (Bryan\_Arroyo@fws.gov; (202) 208-6394).

Sincerely,



Bryan Arroyo,  
Assistant Director, International Affairs

Enclosures



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



FEB 21 2014

## MEMORANDUM

To: Chief, Division of Management Authority

From: Chief, Division of Scientific Authority *Rosemary Anon*

Subject: General Advice on Importation of Sport-hunted Trophies of African Elephants taken in Tanzania in the Calendar Year 2014

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This General Advice represents our CITES finding for permit applications that you might receive for the import of sport-hunted trophies of African elephants (*Loxodonta africana*) taken in the United Republic of Tanzania (Tanzania) in calendar year 2014.

Please be advised that, based on the available information, we are **unable** to determine that the importation of sport-hunted trophies of African elephants taken in Tanzania during calendar year 2014 will be for purposes that are not detrimental to the survival of the species.

If permit applications are received that include new or additional information showing that elephant management practices by the Government of Tanzania have led to the sustainability of its elephant population on a nation-wide basis, these applications should be referred to the Division of Scientific Authority for consideration on a case-by-case basis.

### BASIS FOR ADVICE:

Since our analysis for the General Advice issued for calendar year 2013, several sources of information have become available indicating a significant decline in Tanzania's elephant population primarily due to poaching for ivory, including:

- *Aerial census of large animals in the Selous-Mikumi ecosystem, population status of African elephant* (TAWIRI 2013a);
- *Aerial census of large animals in the Ruaha-Rungwa ecosystem, population status of African elephant* (TAWIRI 2013b);
- A written report, *Recognition and tackling of the current elephant poaching crisis in Tanzania* (TEPS 2013a) and PowerPoint presentation, *Tackling the elephant poaching crisis in Tanzania* (TEPS 2013b), by the Tanzania Elephant Protection Society (TEPS) Task Force presented to the Parliamentary Committee of Land, Natural Resources and Environment, April, 2013;

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

- A report to the African Elephant Summit (Botswana, 2013), *Status of African elephant populations and levels of illegal killing and the illegal trade in ivory: A report to the African elephant summit* (CITES Secretariat *et al.* 2013);
- A report to the 16<sup>th</sup> Meeting of the CITES Conference of the Parties (CoP16 - Bangkok, Thailand, 2013), providing an update on Monitoring the Illegal Killing of Elephants (MIKE) (CoP16 Doc. 53.1), posted 11/30/2012, with an Addendum posted 2/19/2013; and
- A report to CoP16 (Bangkok, Thailand, 2013), providing an update on monitoring of illegal trade in ivory and other elephant specimens (CoP16 Doc. 53.2.2 (Rev. 1)), originally posted 12/12/2012, with a revision of the document posted 2/8/2013.

The new information provided by these sources is discussed below as it relates to our finding for the 2014 calendar year.

Conservation and Management

1. As recently as a few years ago, African elephants were considered to be widely distributed throughout Tanzania. As of 2009, they covered about 39% of the country's total land surface area (~370,000 square kilometers (km<sup>2</sup>) (TAWIRI 2010) within six ecosystems, including: Tarangire-Manyara, Serengeti, Selous-Mikumi, Ruaha-Rungwa, Katavi-Rukwa, and Moyowosi-Kigosi (CoP15 Doc. 68, Annex 6a). The Selous-Mikumi ecosystem represented about 40% of the total elephant population in Tanzania (CoP15 Doc. 68, Annex 6a). At 31,040 square miles, the Selous-Mikumi ecosystem is Africa's largest protected area, and historically held East Africa's largest elephant population, followed by Ruaha-Rungwa (13,384 square miles) (Jones and Nowak 2013).

2. According to the Government of Tanzania, about 50% of the elephant's range in that country is in protected areas (PA) (CoP16 Prop. 11). This proportion of protected range is relatively high compared to other African elephant range countries (Blanc *et al.* 2007). These protected areas comprise about 28% of the country's land area, and elephants receive full protection in 19% of Tanzania's total land surface area (CoP16 Prop. 11). The network of PAs includes national parks (NP), Ngorongoro Conservation Area, game reserves (GR), game controlled areas (GCA), and wildlife management areas (WMA) in village lands. In the year 2012, Tanzania put into place Wildlife Management Area Regulations (2012), which provided a legal mechanism to promote the establishment of wildlife conservation areas outside of PAs administered by the central government. These regulations allow local communities to establish wildlife management areas in village lands that offer conservation potential for wildlife. This legal mechanism has the potential to enable local communities to contribute to wildlife conservation and to benefit from conservation activities on their land (CoP16 Prop. 11). Concerns have been raised, however, that WMAs have not effectively contributed to conservation (TEPS 2013a). The legal process developed by the Wildlife Department has been criticized as being complicated, overregulated, and lengthy, resulting in high transaction costs and making

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

compliance difficult. It is suggested that in order to make the WMA approach successful, it will need to be simplified (Baldus and Hahn 2009).

3. Historically, there have been transboundary elephant populations in the Kilimanjaro-Amboseli, the Serengeti-Mara, and Tsavo-Mkomazi ecosystems along the Tanzania-Kenya border (Blanc *et al.* 2003), and elephants have moved between the Selous in Tanzania and the Niassa in Mozambique (Mpanduji *et al.* 2002). Tanzania also shares elephant populations with Rwanda – the Buriqi Game Reserve in Tanzania and Akagera National Park in Rwanda (TAWIRI 2010). Tanzania cooperates with transboundary countries, especially Kenya and Mozambique, in cross-border law enforcement efforts (CoP16 Prop. 11); however, concern has been raised over the lack of effectiveness of cross-border cooperation in anti-poaching efforts (Baldus and Hahn 2009).

4. According to the Government of Tanzania (Tarimo, Severre, and Mduma, *in litt.* 2011), the following legal instruments govern wildlife conservation in Tanzania:

- Wildlife Policy, 2007, which provides guidelines for the management of African elephants through the development, review, and updating of specific management plans (CoP15 Doc. 68, Annex 6a);
- Wildlife Conservation Act No. 5 of 2009;
- Tanzania National Parks Act CAP. 282 (RE 2002); and
- Ngorongoro Conservation Area Act CAP. 284 (RE 2002).

5. Four different institutions have authority for management of wildlife in Tanzania:

- Tanzania National Parks (TANAPA), a Parastatal organization that manages 15 national parks (total area of 50,872 km<sup>2</sup>);
- Ngorongoro Conservation Area Authority (NCAA), a Parastatal organization that manages the Ngorongoro Conservation Area (NCA) (total area of 8,300 km<sup>2</sup>);
- Wildlife Division, an institution that manages 28 game reserves with an area of 112,564 km<sup>2</sup>, about 38 game controlled areas with an area of about 161,521 km<sup>2</sup>, and RAMSAR sites covering 249,856 km<sup>2</sup>; and
- District Councils, local government institutions that collaborate with the Wildlife Division on wildlife conservation issues and facilitate the establishment and management of WMAs on village land (Tarimo, Severre, and Mduma, *in litt.* 2011).

6. Tanzania developed its country-level strategy and action plan, the “Tanzania National Elephant Management Plan 2010-2015” in 2010, and the plan was endorsed by the Minister for Natural Resources and Tourism on January 15, 2011. This plan provides updated information on several biological and ecological topics, including: distribution and range, abundance, population trends and demography, elephant corridors, and human-elephant conflicts. It identifies nine different strategic objectives, as well as numerous specific objectives and their associated targets, actions, timelines, actors, and indicators. The strategic objectives include: Human-Elephant Conflict, Elephant Corridors, Law Enforcement, Benefits and Sustainable Utilization, Ivory Stockpile and Management System, Research and Monitoring, Elephant Health

*General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014*

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and Welfare, Cross-border Cooperation, and Elephant Information Management (TAWIRI 2010). It is unclear whether or to what extent the National Elephant Management Plan has been implemented to date.

7. The Tanzania National Elephant Management Plan 2010-2015 (TAWIRI 2010) identified that a substantial decrease in funding is an important factor that has influenced the protection of the elephant population in the Selous ecosystem. Prior to 2005, a Revenue Retention Scheme was being implemented in which 100% of the revenue from photographic tourism and 50% from hunting operations was retained for management of the Game Reserve (TAWIRI 2010). By 2003, the revenue had risen to USD 2,800,000, but following national budget reductions in 2004, the amount retained by the Reserve had dropped to about USD 800,000 by 2008 (UNEP 2008, as cited in TAWIRI 2010). The timing of the decrease in funding coincides with increased poaching in the Reserve, suggesting that anti-poaching operations are greatly under-funded (TAWIRI 2010). It has been reported that the Tanzanian Government terminated the Selous Revenue Retention Scheme following the end of the Tanzanian-German Selous Conservation Program in 2003 (Baldus and Hahn 2009).

8. In addition to concerns about the implementation of Strategic Objective 3, Law Enforcement, we are concerned about implementation of Strategic Objective 8, Elephant Utilization, which includes as an action item to, "Set realistic hunting quotas." Since 2007, the annual CITES export quota for Tanzania has been 400 tusks (sport-hunting quota of 200 elephants). During 2003-2006, the quota was 200 tusks from 100 individuals, while during 1997-2002 the quota was 100 tusks from 50 individuals (<http://www.cites.org/eng/resources/quotas/index.php>). Based on the available information, Tanzania's elephant population is now less than 70,000 elephants nation-wide (see paragraph 16), and according to the population trends shown in the Tanzania National Elephant Management Plan 2010-2015 (p. 10), the population has not been this low since the 1990's. According to the graph, the population in 1999 was estimated at about 75,000 elephants (TAWIRI 2010). During this time period, the quota was 100 tusks from 50 individuals, and the population appeared to be showing an increasing population trend. Despite the ongoing population decline and current estimated population figure, Tanzania has not adjusted its national export quota downward in response.

9. In Tanzania, the only consumptive use of African elephants is sport hunting (CoP16 Prop. 11), which is covered by The Wildlife Conservation (Tourist Hunting) Regulations, 2010 (Government of the United Republic of Tanzania 2010). These regulations control hunting by concession area, season, minimum trophy sizes (18 kg and 160 cm per tusk), annual quotas, post-hunt reporting, trophy registration, marking, and export requirements (CoP15 Doc. 68 Annex 6a; Part V, Regulation 24.-(5)(b)). According to the Government of Tanzania, sport hunting quota determinations for different areas take into account the density of elephants in those ecosystems (CoP16 Prop. 11).

10. According to Tanzania's proposal submitted (and later withdrawn) to CoP16 (CoP16 Prop. 11), 25% of the revenue accrued from the sport hunting and 100% of the revenue from resident

*General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014*

hunting goes to District Councils to support community development projects and conservation activities. In addition, 65% of the revenue from photographic tourism and 75% of the block fee in WMAs is given back to local communities. 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 (CoP16 Prop. 11).

11. Despite the legal and management tools available to Tanzania for managing its elephant populations, population trends and data collected under the CITES program known as Monitoring the Illegal Killing of Elephants (MIKE) show, as discussed below, that elephant populations throughout Tanzania are declining, primarily due to rampant poaching. This ongoing crisis raises questions about the effectiveness of Tanzania's management and governance to protect elephants, particularly with respect to Strategic Objective 3, Law Enforcement, in the National Elephant Management Plan. In its findings on Tanzania's CoP15 (2010) proposal to down-list its elephant population from CITES Appendix I to Appendix II (Note: the proposal was rejected), the Panel of Experts questioned the commitment by Tanzania to combat poaching, raising concerns over the financial mechanism by which the Wildlife Division was funded. The Wildlife Division's revenue share is paid directly to the central Treasury, and the Treasury is then supposed to distribute the budgeted monies to the Wildlife Division. The Panel of Experts raised the concern that over a 3-year period (2007-2009), the Wildlife Division had received only 63% (USD 2,634,975 per year) of its approved budget from the central Treasury. The Panel noted that given these funding limitations, the Wildlife Division would not be able to meet its needs and obligations regarding the conservation, management, and protection of African elephants. The Panel of Experts also noted, however, that between 2005 and 2009, the Tanzania Wildlife Protection Fund contributed on average a total of USD 12,894,564 annually to the Wildlife Division. According to the Panel of Experts, these funds, when combined with the Treasury allocations, should have put the Wildlife Division in a "strong position" to meet its enforcement obligations, including containment of threats to elephants in the Selous-Mikumi ecosystem (CoP15 Doc. 68, Annex 6a). Reported elephant poaching levels in the Selous-Mikumi ecosystem, however, suggest that enforcement was inadequate.

12. Tanzania's high Proportion of Illegally Killed Elephants (PIKE) values indicate high poaching rates, which suggests weak governance in Tanzania (see paragraph 16 for PIKE values). Repeated analyses under the CITES MIKE program have identified that at the national level, governance, as measured by Transparency International's Corruption Perceptions Index (CPI), is the factor most strongly correlated with PIKE. Poaching levels are higher in countries where governance is weaker, and vice versa. It is suggested that poor governance likely facilitates the illegal killing of elephants and movement of illegal ivory by ineffective law enforcement and/or "active aiding and abetting by unscrupulous officials" (CITES Secretariat *et al.* 2013).

13. The MIKE analyses are consistent with information available from the Elephant Trade Information System (ETIS), a global illegal elephant trade tracking system operated by

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

TRAFFIC on behalf of the CITES Parties. According to an analysis of data from the ETIS presented at CITES CoP16, Tanzania was implicated as a significant player in the illegal ivory trade. In the ETIS analysis presented at CoP15, Tanzania was already identified as a country of concern with respect to large consignments of illicit ivory leaving the African continent. In the intervening three years, the ETIS data show that both Kenya and Tanzania continued to be the primary conduits for large shipments of ivory exported to Asia, together accounting for nearly half of the 34 large-scale ivory seizures by number and 58% of the associated weight of such seizures during the period 2009-2011 (CoP16 Doc. 53.2.2 (Rev. 1)). A recent TRAFFIC news article, drawing on ETIS data, reports that since 2009 Tanzania has made or been implicated in 18 large-scale ivory seizures (i.e., seizures that involved 500 kg or more in a single shipment). Of these seizures, Tanzania only made five, while the other 13 seizures were made outside of the country. In total, these seizures represented nearly 43 tons of ivory, representing the death of about 4,000 elephants (<http://www.traffic.org/home/2014/1/27/tanzania-reshuffled-cabinet-should-address-poaching-urgently.html>). Such large-scale transactions of ivory represent higher-level criminal activity, and the ETIS report to CoP16 suggests that governance issues could be responsible for Tanzania's low seizure and reporting rates (CoP16 Doc. 53.2.2 (Rev. 1)).

Population Distribution, Status and Trends

14. New census information was made publicly available in early 2014. The results of back-to-back aerial surveys of the Selous-Mikumi and Ruaha-Rungwa ecosystems in October through November of 2013 show significant population declines (TAWIRI 2013a and 2013b) in both of these ecosystems. The Selous-Mikumi survey revealed an estimate of 13,084 ( $\pm 1,816$  SE) elephants, the lowest figure reported in this area since surveys began in 1976 (TAWIRI 2013a). This figure is down from an estimated 38,975 ( $\pm 2,644$  SE) elephants in 2009 (TAWIRI 2009, as cited in TAWIRI 2013a), a decline of about 66%, which is significant ( $d$ -test = 8.07,  $p > 0.05$ ) (TAWIRI 2013a). The Ruaha-Rungwa survey revealed an estimate of 20,090 ( $\pm 3,282$  SE) elephants (TAWIRI 2013b), down from an estimated 31,625 ( $\pm 2,890$  SE) elephants in 2009 (TAWIRI 2010, as cited in TAWIRI 2013b), a decline of about 36.5%, which is significant ( $d$ -test = 2.6,  $p > 0.05$ ) (TAWIRI 2013b).

15. The latest update to Tanzania's population information in the African Elephant Database ([http://www.elephantdatabase.org/preview\\_report/2013\\_africa/Loxodonta\\_africana/2012/Africa/Eastern\\_Africa/Tanzania](http://www.elephantdatabase.org/preview_report/2013_africa/Loxodonta_africana/2012/Africa/Eastern_Africa/Tanzania)) provides a best estimate for the year 2012, but does not reflect the new survey information discussed above from 2013. According to the 2012 estimate, the "definite" category estimate was 95,351 elephants, in addition to 10,278 "probable," 10,927 "possible," and 900 "speculative" category estimates. The new survey information would reduce the population estimate by about 37,426 individuals. Additional information below suggests that an updated population estimate would be revised downward even further.

16. Other information that indicates elephant populations are declining throughout Tanzania, includes:



General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

- a) Demographic surveys of the Katavi-Rukwa and Ugalla populations in 2009-2010 suggested that these populations were in distress. Survey results revealed that in each of these populations, the proportion of the herd less than 5 years of age was below 30% (TAWIRI 2010). These results are indicative of low recruitment and growth rates, suggesting one or more population stressors, such as higher infant mortality or increased stress associated with human-elephant conflict or illegal activity (i.e., poaching) (CoP15 Doc. 68, Annex 6a).
- b) Anecdotal reports presented at a stakeholders meeting<sup>1</sup> held in Dar es Salaam (January 2013) to address elephant and other wildlife poaching issues in Tanzania (TEPS 2013a and 2013b) indicate that:
- the Moyowosi population in northwest Tanzania may have been extirpated;
  - the population in the Ugalla ecosystem in western Tanzania is becoming unviable, with less than 500 elephants left;
  - the Katavi-Rungwa-Ruaha population in central Tanzania has been decimated by poachers;
  - elephants are almost absent from the Matambwe photo-tourism sector of the Selous Game Reserve and from the Kilombero Valley in southern Tanzania;
  - elephants in the southern Selous Game Reserve and Selous-Niassa corridor are being decimated by poachers;
  - Tanzania has lost 50% of its elephant population since 2007; and
  - the national population estimate is <70,000<sup>2</sup> elephants (*versus* 109,000 elephants in 2009 (TAWIRI 2010) and that if this rate of poaching continues, it is estimated that elephants will be extirpated from Tanzania within seven years.
- c) Although Tarangire National Park in northeast Tanzania was cited in 2010 as having one of the highest growth rates (6%) ever recorded for an African elephant population (Foley and Faust 2010), it has been reported that since December 2011, there has been ongoing massive organized poaching within the park that has resulted in the illegal killing of at least 30 elephants in the year 2012 alone (Kideghesho *et al.* 2013). Demographic surveys of elephants from the Serengeti ecosystem during 2009-2010 were also indicative of good growth rates; however, the January 24, 2014, seizure of six pieces of elephant tusks in the Tarime District bordering the northern part of Serengeti National Park is an indication that not even the Serengeti ecosystem is free from poachers (<http://allafrica.com/stories/201402070291.html>).
- d) Consistent with the population and anecdotal information available, recent information from the CITES MIKE program also suggests widespread population declines in

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<sup>1</sup> This meeting was convened by the Tanzanian Elephant Protection Society (TEPS) and was attended by representatives from the Tanzania Ministry of Natural Resources and Tourism (Wildlife Division, Tunduru District Council, Morogoro Region), Tanzania National Parks (NP) (Udzungwa Mountains NP, Ruaha NP, and Mikumi NP), Wildlife Management Areas (WMA), photographic safari operators, hunting safari operators, researchers, NGOs, foreign donors, the press, and other interested individuals (TEPS 2013a).

<sup>2</sup> Note: this estimate was suggested prior to receipt of new information resulting from the 2013 aerial surveys of the Selous-Mikumi and Ruaha-Rungwa ecosystems.

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

Tanzania due to poaching. MIKE collects data at representative sites throughout Asia and Africa in order to measure trends in the levels of illegal killing of elephants and identifies factors associated with those trends. MIKE evaluates relative poaching levels based on the Proportion of Illegally Killed Elephants (PIKE), which is calculated as the number of illegally killed elephants found divided by the total number of elephant carcasses encountered by patrols or through other means, aggregated by year for each site (CITES Secretariat *et al.* 2013). A PIKE level of 0.5 or higher translates to a level of illegal annual offtake that is likely to be higher than the annual natural birth rate and, therefore, indicates that the elephant population is very likely to be in net decline (CoP16 Doc. 53.1). Within Tanzania, PIKE values suggest widespread population declines due to poaching. At the Selous-Mikumi MIKE site, Tanzania's sole World Heritage site, the 2011 PIKE was 0.64 (based on 224 carcasses), a nearly 27% increase over the 2002-2010 average of 0.50. At the Ruaha-Rungwa MIKE site, the 2011 PIKE was 0.94 (based on 34 carcasses), the highest ever recorded for that site. The PIKE was 0.86 (based on 29 carcasses) at the Katavi-Rukwa MIKE site (CoP16 Doc. 53.1).

17. Aside from concerns about population numbers, we are also concerned about the mobility of the African elephant populations in Tanzania. The Panel of Experts noted, for example, that associated human settlements were increasing in size and number around protected areas and were accompanied by increasing human-elephant conflicts. These settlements and the associated conflicts were probably the most important factors limiting the elephants' mobility and range. It was the opinion of the Panel of Experts that -- at the rates of habitat change and land conversion at the time -- the corridors that still remained in Tanzania would be converted to unsuitable habitat in less than 5 years (CoP15 Doc. 68, Annex 6a).

18. According to Jones *et al.* (2009), Tanzania was working to minimize risks to African elephants, other wildlife, people, and property through improvements in spatial planning involving the identification, maintenance, and restoration of wildlife corridors. The Tanzania National Elephant Management Plan lays out a strategic objective to restore lost corridors and to increase protection for corridors that are still in use (TAWIRI 2010). We do not have updated information on the status of the implementation of this strategic objective, but based on the information available we are particularly concerned about the viability of the Selous (Tanzania)-Niassa (Mozambique) corridor. According to the 2013 survey of the Selous ecosystem only 32 elephants were counted within the Selous portion of the corridor, resulting in an estimate of  $1,006 \pm 810$  (SE) elephants (TAWIRI 2013a). In addition, poaching in the Niassa Reserve has reached crisis levels, as evidenced by high carcass ratios (18%; population of 12,000 elephants) observed during October 2011 aerial surveys (WCS Mozambique *in litt.* 2014) (see paragraph 24 for an explanation of carcass ratios).

#### Sustainability of Offtake

19. In Tanzania, African elephant deaths occur as a result of several factors, including: 1) natural mortality; 2) trophy hunting; 3) problem animal control; and 4) poaching. In order to

*General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014*

evaluate whether offtake from trophy hunting is sustainable, all losses to the African elephant population must be considered.

#### Legal Offtake

20. Since 2007, the annual CITES export quota for Tanzania has been 400 tusks (sport-hunting quota of 200 elephants). During 2003-2006, the quota was 200 tusks from 100 individuals, while during 1997-2002 the quota was 100 tusks from 50 individuals. Tanzania, however, typically has not exported its full quota allotment in sport-hunted trophies or African elephant tusks. This may be an indication that the quota is set too high.

21. Although complete records on natural mortality for the entire country or on the killing of problem elephants were not available, the Panel of Experts were able to estimate the level of such offtake by analyzing the data from the ivory store databases of Tanzania. Based on 21 years of data for that country, an average of 231 elephants died annually from natural mortality, while another 287 individuals died annually from elephant control measures (CoP15 Doc. 68, Annex 6a). These annual mortality rates continue to be the best estimates available for Tanzania and are cited and used by the Government of Tanzania (TAWIRI 2010).

22. Based on a sport-hunting quota of 200 African elephants, as well as the estimates cited earlier for natural mortality and problem animal control in Tanzania, the overall legal offtake of African elephants in Tanzania is about 718 elephants annually. Considering the current population estimate to be 70,000 elephants, which we believe is a significant over-estimate because it did not consider the most recent survey figures, the legal annual offtake would be estimated at about 1% of the population. This figure is less than the annual population growth rate of 3-5% (CoP15 Doc. 68, Annex 6a) and in itself would be considered sustainable; however, sustainability is measured against total offtake, including illegal offtake, discussed below.

#### Illegal Offtake

23. Based on the MIKE report presented to CoP16 (Bangkok, Thailand, 2013), the levels of illegal killing across the African elephants' range are of serious and increasing concern. There has been an ongoing increase in the levels of illegal killing of elephants in Africa since 2006, with 2011 showing the highest levels of poaching since MIKE records began in 2002. The increase in poaching between 2010 and 2011 is statistically significant. As highlighted in paragraph 16, within Tanzania, PIKE values suggest widespread population declines due to illegal offtake. At the Selous-Mikumi MIKE site, Tanzania's sole World Heritage site, the 2011 PIKE was 0.64 (based on 224 carcasses), a nearly 27% increase over the 2002-2010 average of 0.50. At the Ruaha-Rungwa MIKE site, the 2011 PIKE was 0.94 (based on 34 carcasses), the highest ever recorded for that site. The PIKE was 0.86 (based on 29 carcasses) at the Katavi-Rukwa MIKE site (CoP16 Doc. 53.1). A PIKE level of 0.5 or higher translates to a level of illegal annual offtake that is likely to be higher than the annual natural birth rate, indicating that the elephant populations are very likely to be in net decline (CoP16 Doc. 53.1). In other words,

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

the illegal offtake is unsustainable at these sites. Recent information presented at the African Elephant Summit (Botswana, 2013) indicates that in 2012 and the first six months of 2013, the trend in PIKE levels for Eastern Africa stabilized at levels close to those of 2011 (CITES Secretariat *et al.* 2013), indicating that unsustainable illegal offtake levels are continuing.

24. Carcass analyses resulting from the 2013 Selous-Mikumi and Ruaha-Rungwa aerial surveys are consistent with MIKE data. Based on the surveys, there were an estimated 6,516 ( $\pm$  534 SE) elephant carcasses in the Selous-Mikumi, spanning three years. Carcass analyses indicate that more than two thirds (67%) of these elephants were killed 18 to 30 months prior, with much fewer elephants being killed within the last 18 months (<5%). The carcass ratio for the Selous-Mikumi was calculated at 30%, which indicates unnaturally high mortality (TAWIRI 2013a). Natural mortality is represented by a ratio of about 7-8% (Douglas-Hamilton and Burrill 1991, *as cited in* TAWIRI 2013a). In the Ruaha-Rungwa ecosystem, there were an estimated 3,496 ( $\pm$ 342 SE) elephant carcasses, spanning over a ten-year period. Carcass analyses indicate that relatively fewer elephants were killed in the last 12 months (<13%). The carcass ratio for the Ruaha-Rungwa was calculated at 14.6%, which indicates unnaturally high mortality (TAWIRI 2013b).

25. It is expected that data showing high levels of poaching would be concurrent with data showing high levels of illegal trade, and this is the case with Tanzania. As noted in paragraph 16, a recent TRAFFIC news article reports that since 2009 Tanzania has made or been implicated in 18 large-scale ivory seizures (i.e., seizures that involved 500 kg or more in a single shipment). Of these seizures, Tanzania only made five of these seizures, while the other 13 seizures were made outside of the country. In total, these seizures represented nearly 43 tons of ivory, representing the death of about 4,000 elephants (<http://www.traffic.org/home/2014/1/27/tanzania-reshuffled-cabinet-should-address-poaching-urgently.html>). Although information on the origin of ivory from these seizures is not yet available, a significant proportion of the large seizures of ivory made in Asia in 2006 have been traced by forensic DNA work to elephants killed in the Selous-Niassa ecosystem (Wasser *et al.* 2009).

#### Sustainability of All Offtake

26. In its findings on Tanzania's CoP15 (2010) proposal to down-list its elephant population from CITES Appendix I to Appendix II (Note: the proposal was rejected), the Panel of Experts noted that illegal hunting can reduce the sustainability of legal offtakes, potentially negatively impacting the population as a whole. The Panel raised concerns that the poaching in the Selous-Mikumi ecosystem, which was happening at that time, could affect the long-term population sustainability. While the Panel concluded that the level of offtake in the Selous-Mikumi ecosystem was not sustainable at the time, the Panel asserted that legal and illegal offtake appeared to be sustainable for other elephant ecosystems where populations were stable or increasing, namely the Tarangire-Manyara, Ruaha-Rungwa, Katavi-Rukwa, Moyowosi-Kigosi and Serengeti (CoP15 Doc. 68, Annex 6a). In recent years our findings have been made under the supposition that the populations mentioned above were stable or increasing, rendering the

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

overall Tanzania elephant population to be sustainable. New information, however, indicates that the population decline is no longer restricted to the Selous-Mikumi ecosystem, but is occurring throughout Tanzania. Estimates are that Tanzania is losing about 30 elephants per day to poaching, a rate far greater than replacement through natural reproduction (TEPS 2013a and 2013b). This loss rate has recently been cited by TANAPA's Director General, Allan Kijazi (<http://allafrica.com/stories/201402041257.html>).

Conclusion

27. Although Tanzania has put into place legal instruments, wildlife management authorities, and a National Elephant Management Plan, the national elephant population has plummeted, primarily due to the ongoing illegal killing of elephants. Indications are that management resources have not been fully utilized and that governance in Tanzania is weak. In its findings on Tanzania's CoP15 (2010) proposal to down-list its elephant population from CITES Appendix I to Appendix II, the Panel of Experts raised concerns about the mechanism Tanzania used for funding the conservation, management, and protection of African elephants; however, after reviewing the actual allocations to the Wildlife Division between 2005 and 2009, the Panel concluded that sufficient funding was available for Tanzania to meet its enforcement obligations during that time period. The Panel of Experts also raised concern that the levels of offtake in the Selous-Mikumi ecosystem due to poaching was not sustainable at the time and could potentially affect long-term population sustainability. At the time, the Panel asserted that legal and illegal offtake appeared to be sustainable for other ecosystems where elephant populations were stable or increasing, namely the Tarangire-Manyara, Ruaha-Rungwa, Katavi-Rukwa, Moyowosi-Kigosi and Serengeti.

28. Our recent non-detriment findings followed the rationale laid out by the Panel of Experts and concluded that the import of sport-hunted trophies from Tanzania would be for purposes that are not detrimental to the survival of the species. However, now new information indicates that the elephant declines in Tanzania are no longer restricted to the Selous-Mikumi ecosystem, but are occurring throughout the country. MIKE analyses showing high levels of poaching at sites throughout Tanzania and ETIS data showing rampant, large-scale illegal ivory trade involving Tanzania, point to weak governance.

29. We recognize that sport-hunting, as part of a sound management program, can provide benefits to wildlife conservation and that sport-hunting of elephants is not the primary cause of the decline of elephant populations in Tanzania. However, given the significant decline in the elephant population due to uncontrolled poaching and questionable management and governance, we are concerned that additional killing of elephants, even if legal, is not sustainable and will not support effective elephant population recovery efforts in Tanzania.

30. Therefore, we are **unable** to find that the importation of sport-hunted trophies of African elephants taken in Tanzania during calendar year 2014 will be for purposes that are not detrimental to the survival of the species.

General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

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General Advice on Import of Sport-hunted Trophies of African Elephants from Tanzania for the Calendar Year 2014

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240




In Reply Refer To:  
FWS/AIA/DMA

Memorandum

MAR 27 2014

To: The File

From: Chief, Branch of Permits 

Subject: Enhancement Finding for African Elephants Taken as Sport-hunted Trophies in Tanzania during 2014

The African Elephant (*Loxodonta africana*) is listed as threatened under the U.S. Endangered Species Act (Act) with a special rule [50 CFR 17.40(e)]. In addition to other items, the special rule gives the requirements for the import of sport-hunted trophies. Under paragraph 17.40(e)(3)(iii)(C), the U.S. Fish and Wildlife Service (Service) must make a finding that the sport-hunting of elephants will enhance the survival of the species in the wild.

In a meeting in Washington, D.C. on February 17, 2011 between the Service and the Tanzania Ministry of Natural Resources and Tourism (MNRT), the Service was provided with a copy of Tanzania's Elephant Management Plan 2010 -- 2015, signed and endorsed by the Minister for Natural Resources on January 15, 2011 (the last National Elephant Management Plan for Tanzania had been produced in 2001). The 2010 Elephant Plan identified nine (9) Strategic Objectives which needed to be address for the effective management of Tanzania's elephant population. The Plan also identified three major issues impacting Tanzania's ability to manage its elephants. The first was the growth in Tanzania's human population which had doubled in size since 1984, putting increased pressure on the country's natural resources and creating challenges in conserving its elephants, (e.g., increased human-elephant conflicts). The second was the threat to healthy and sustainable elephant populations from an increasing loss of connectivity between important wildlife habitat areas in Tanzania. Existing wildlife corridors where under increased pressure from expansion of agriculture lands, increased human settlement, and habitat destruction caused by logging and charcoal production. The third issue was the ability to provide increased protection for Tanzania's elephant population. There had been an upsurge in elephant poaching occurring across eastern and central African over the past three to five years, apparently fueled by the increased demand for ivory in Asia. This increase in demand had also impacted several distinct elephant populations within Tanzania. A 2009 national elephant census showed an overall decline in Tanzania's elephant population for the first time since 1989.

Since that time, the Service has received more recent population surveys and biological

information to indicate a continued decline in Tanzania's elephant population. One example is the Selous-Mikumi ecosystem that was once an elephant stronghold representing the second largest elephant population in Africa and approximately 40% of Tanzania's elephant population. An October 2013 population survey of that ecosystem indicated that an 80% population decline has occurred in the last three years, from a population of approximately 40,000 to 13,000. Of further concern are the numerous reports of questionable government activities relating to how the elephant hunting program is being managed. While the Service recognizes that a well-managed hunting program could provide a conservation benefit to Tanzania's elephant population, there are indications that Tanzania's program is being managed in a manner whereby participation by U.S. hunters may no longer provide a conservation benefit to the species as is required under the Act. In addition, information regarding financial resources and infrastructure indicates that the Tanzania Government may no longer have the ability to effectively manage and protect its elephant population. We have also received information to indicate that ivory poaching has continued to increase in some parts of the country, and that human-elephant conflict has continued to rise with an ever increasing human population and settlement into elephant habitat for agriculture use and livestock grazing. Therefore, the Service is *unable to find* that the taking of sport-hunted elephant trophies in Tanzania will enhance the survival of the species.

Basis for Finding:

***Management Plan:*** On March 21, 2007, the Division of Management Authority (DMA) sent a letter to the Wildlife Division, MNRT, requesting updated information relating to their current management program for African elephants. This request was stimulated due to the Service not having any substantive communication with the government of Tanzania regarding their elephant management program and elephant hunting in Tanzania for several years. The DMA request related specifically to the following areas: (1) existence of an elephant management plan; (2) current population status of Tanzania elephants; (3) existing legislation and programs relating to elephant conservation and management; (4) elephant trophy hunting quotas for Tanzania; (5) threats of poaching and human-elephant conflicts; (6) revenue generated by trophy hunting; and (7) operations involving trophy hunting in Tanzania. The Service received an email response to this letter on July 1, 2008. While this communication indicated that Tanzania's original response had been sent to DMA on October 29, 2007, by an acting Director of Wildlife, Mr. F. Lyimo, the Service had no record of this official response having been received.

The 2008 e-mail indicated that Tanzania had an approved Policy and National Management Plan for African Elephant that was developed in 2001. This plan was also reviewed on a regular basis to accommodate new insight and other issues deemed pertinent to the conservation of the African elephant. The identified objectives of this elephant management plan were to increase elephant numbers and restore age and sex structures; promote economic value of elephants through tourist game viewing and sustainable harvest through tourist hunting; control elephant numbers where necessary and appropriate (mitigate human-elephant conflict); and incorporate community-based conservation whereby local communities realize a direct benefit from the sustainable utilization and management of elephants. This plan was intended to be implemented throughout the entire country.

More recently, a February 17, 2011, meeting between the Service and the MNRT occurred in Washington, D.C. to discuss concerns by the Government of Tanzania and the Tanzania Hunting Operators Association (TAHAO) relating to potential changes the Service might implement regarding import permits issued to clients intending to hunt elephants in Tanzania in 2011. These concerns were based primarily on the July 23, 2010, Convention on International Trade in Endangered Species (CITES) non-detriment finding prepared by the Service's Division of Scientific Authority (DSA). In that finding, DSA raised several concerns, the first being the availability of future resources to the Wildlife Division to combat poaching in Tanzania, especially in the Selous-Mikumi ecosystem. The second involved the threats to wildlife corridors within Tanzania which allows for elephant movement throughout Tanzania and transboundary populations. These corridors were under increased pressure due to the rising human population in Tanzania, loss of these corridors due to the expansion of agricultural lands, and human expansion into elephant habitat. During this meeting, the Service received a copy of Tanzania's Elephant Management Plan 2010 - 2015, prepared by the Tanzania Wildlife Research Institute (TAWIRI) with the financial support of the Government of Tanzania. This document was endorsed by the Minister for Natural Resources and Tourism on January 15, 2010. The document identified nine key strategic objectives for a management plan: (1) human-elephant conflict; (2) elephant corridors; (3) law enforcement; (4) benefits/sustainable utilization; (5) management of ivory stockpiles; (6) research and monitoring; (7) elephant health and welfare; (8) cross-border cooperation; and (9) elephant information management.

In the 2011 meeting, Mr. Erasmus Tarimo, Director of Wildlife, MNRT, provided a summary of the strategic objectives under the national elephant plan. Mr. Tarimo noted the many challenges to the plan, including: low human resources and financing; the large area covered by Tanzania; the high demand for ivory; an increase in poverty; increased frequency of human-elephant conflicts due to human population growth; political resistance to maintaining wildlife corridors; reversing attitudes people have towards elephants; and providing local communities with a stake in managing, protecting, and conserving elephants as both a natural and economic resource. Mr. Tarimo stated that major reforms were underway to improve the management of wildlife outside National Parks and the Ngorongoro Conservation Area and Game Reserves. He also stated that trophy hunting played a major role in wildlife conservation in Tanzania. Mr. Tarimo went on to state that the Government of Tanzania was in need of United States support to help strengthen their law enforcement capabilities in protected areas and to assist with anti-poaching operations.

Based on this discussion and the document provided to the Service, we have concluded that the "Elephant Management Plan 2010-2015" was a very good starting point for Tanzania, provided that the country strived to overcome the challenges presented by Mr. Tarimo and strived to fully implement the plan throughout Tanzania. However, the presence of a plan, particularly a plan that is not fully implemented, was not sufficient in and of itself to meet the criteria established by the ESA or CITES.

***Population Status:*** Tanzania's Protected Area (PA) network for wildlife includes six ecosystems: Tarangire-Manyara, Serengeti, Selous-Mikumi, Ruaha-Rungwa, Katavi-Rukwa; and Moyowosi-Kigosi. In 2006, the Tanzania Wildlife Research Institute (TAWIRI 2007, as cited in CoP15 Doc. 68, Annex 6a) estimated the African elephant populations in these six ecosystems

within Tanzania at  $139,915 \pm 12,338$  (SE) animals, based on census surveys covering 227,328 sq.km using both total and sample counts. This estimate was not significantly different from the  $111,475 \pm 18,728$  (95% CL) elephants estimated in 2000-2003. It was noted that the 2006 estimate did not include 2,873 additional elephants from areas that had not been previously surveyed, providing a country-wide "best estimate" of  $142,788 \pm 12,405$  (SE) elephants in 2006 (CoP15 Doc. 68, Annex 6a). According to the IUCN SSC African Elephant Status Report 2007 (Blanc *et al.*, 2007), the 2006 elephant population in Tanzania was categorized as being an estimated 108,816 elephants identified as "definite," 27,937 "probable," 29,350 "possible", and 900 "speculative". These estimates were based upon aerial or ground counts, direct sample counts, reliable dung counts, and informed guesses. This was a reported increase from the 2002 report, which estimated 92,453 elephants as "definite," an increase of 16,363 elephants. The report attributed this increase largely due to the results of new estimates from methodologically comparable surveys. The report stated that although over 60% of the country's estimated elephant range was covered by good quality counts, over a third of the estimated range still remained unassessed. According to the 2007 IUCN report, an aerial survey of the Ruaha-Rungwa Ecosystem conducted by the Tanzania Wildlife Research Institute (TAWIRI, 2007), found an estimated  $35,409 \pm 11,507$  (95% CL) elephants. An aerial survey of the Selous Ecosystem (TAWIRI, 2007), found an estimated  $70,406 \pm 24,843$  (95% CL) elephants. These areas account for the two largest elephant populations within Tanzania and Tanzania alone accounted for about 80 % of Eastern Africa's regional population.

In 2009, a similar survey was conducted across the same six ecosystems covering 229,318 sq.km. This census produced a total population estimate of  $105,439 \pm 6,080$  (SE) African elephants (TAWIRI 2010a, as cited in CoP15 Doc. 68, Annex 6a). A "best estimate", which included an additional 3,583 elephants, provided a country-wide estimate of  $109,022 \pm 6,135$  (SE) elephants in 2009. The results of this survey suggested a significant decline compared to the 2006 estimate of 142,788 elephants and that the decline could be attributed in large part to a downward population trend recorded in the Selous-Mikumi ecosystem (CoP15 Doc. 68, Annex 6a). According to the 2013 IUCN SSC Provisional African Elephant Status Report (AESR 2013), the 2012 elephant population in Tanzania was categorized as being an estimated 95,351 elephants defined as "definite," 10,278 "probable," 10,927 "possible," and 900 "speculative." These survey numbers were based upon the same methodology used in the 2007 report. There was a clear decrease in population from the 2007 report, which estimated 108,816 elephants as "definite," 13,465 elephants. According to the 2013 IUCN report, the 2009 aerial sample counts of the Ruaha-Rungwa and the Selous-Mikumi Ecosystems (TAWIRI, 2009), replaced the 2006 survey of those systems. The Ruaha-Rungwa survey found an estimated  $31,625 \pm 5,665$  (95% CL) elephants and the Selous-Mikumi survey found an estimated  $38,997 \pm 5,183$  (95% CL) elephants. Both surveys represented a decline in those populations, with the Selous-Mikumi ecosystem experiencing a significant decline of more than 30,000 elephants. According to TAWIRI, there were methodological issues during the 2006 survey that is believed to have resulted in an overestimate of this population. Taking several factors into account, TAWIRI estimated the actual population in the Selous ecosystem would have been approximately **50,000 elephants in 2006**. This still represents a significant decline (**approximately 11,000 elephants**) most likely resulting from illegal killing taking place in this area.

Two more recent aerial surveys were undertaken by TAWIRI during the 2013 dry season, again looking at the Ruaha-Rungwa and Selous-Mikumi Ecosystems. The preliminary results of those surveys show a continued decline in those two populations. The census of the Ruaha-Rungwa ecosystem covered 50,889 sq.km. The results of this survey produced a total population estimate of 20,090 + 3,282 (SE) elephants. This represents a significant decline (over 11,500 elephants) from the 2009 estimates. This estimate was derived from a count of 1,247 live elephants recorded along 119 transects. In addition, a total of 214 elephant carcasses were also recorded during this survey. Using these two figures, the carcass ratio for the Ruaha-Rungwa ecosystem was 14.6%. This carcass ratio is indicative of a population suffering from unnaturally high mortality. A carcass ratio of about 7 to 8% is considered to represent natural mortality (Douglas-Hamilton and Burrill 1991).

The census of the Selous-Mikumi ecosystem covered 87,421 sq.km. The results of this survey produced a total population estimate of 13,084 ± 1,816 (SE) elephants, the lowest numbers ever recorded in this ecosystem. This represented another significant decline (over 25,000 elephants) from the 2009 estimates. This estimate was derived from a count of 712 live elephants recorded along 203 transects. In addition, a total of 314 elephant carcasses were also recorded during this survey. With these figures, the carcass ratio for the Selous-Mikumi ecosystem was calculated at 30%, twice that recorded in Ruaha-Rungwa, indicating an unnaturally high rate of mortality in the two most significant elephant populations within Tanzania. These numbers indicate significant and unsustainable levels of illegal killing taking place within the two largest elephant populations found in Tanzania.

Based on the most recent surveys, it seems apparent that Tanzania has experienced a significant increase in illegal offtake due to poaching and the increased demand for ivory in the Asian market. In response to the current conditions in Tanzania and the urgent need for wildlife protection, the Service, in collaboration with USAID-TZ, awarded \$200,310 in U.S. Government funds, matched by \$378,443 from other partners, to fund four African Elephant Conservation Fund (AFE) projects that will get underway in 2014. The first project will assess patterns of poaching risk in relation to resource-constrained distribution of Mikumi elephants, for a long-term elephant protection and management strategy in partnership with the Animal Behavior Research Unit in Mikumi National Park. This project will support TANAPA to help improve their ability to protect elephants by assessing elephant distribution and habitat use, threats and poaching activity, and deploying patrol efforts effectively within Mikumi National Park.

The second project will monitor the long-term effects of poaching of elephants in southern Tanzania in partnership with the Udzungwa Elephant Project. This organization, in response to widespread elephant poaching throughout southern Tanzania, is working to protect a key population near Tanzania's elephant strongholds of Selous and Ruaha. Activities will include training staff from TAWIRI, assessing four elephant populations for early warning signs of decline, and training national park staff in monitoring elephant populations and conducting anti-poaching activities.

The third project will support aerial operations and law enforcement activities for the Selous Game Reserve in partnership with the Frankfurt Zoological Society/Grzimek's Help for

Threatened Wildlife, Inc., and the Tanzania Wildlife Division. The Selous, formerly the second most numerous elephant population in Africa, has been heavily impacted by poaching for the past decade with the most recent survey indicating a population of only 13,084 elephants, the lowest levels ever recorded in that area. This project will reinvigorate anti-poaching efforts in the Selous by supporting operating expenses for an aircraft to conduct aerial surveillance, for patrol vehicles, and for basic equipment for rangers throughout the reserve.

The final project will support village game scouts on the Waga Wildlife Management Area, in the Ruaha ecosystem. This will be done in partnership with the Wildlife Conservation Society. In order to improve patrol efficiency, this project will fund village game scout anti-poaching patrols and the pilot phase of a spatially explicit law enforcement monitoring technique, SMART (Spatial Monitoring and Reporting Tool), in the community-owned Waga Wildlife Management Area bordering Ruaha National Park in Tanzania.

The significant decline in the elephant population throughout Tanzania raises grave concerns over the impact of any additional offtake, including sport-hunting, on the country's elephants and its continued survival in the country. These declines must be taken into consideration with any finding made by DMA in regards to trophy imports to ensure that U.S. hunters, while operating under the best intentions, do not adversely contribute to further elephant population declines in Tanzania.

**Regulations and Enforcement:** In Tanzania, wildlife resources are protected under several Acts of Parliament, providing the authority for all aspects of wildlife management, including law enforcement. The Wildlife Conservation Act (WCA) of 2009, which replaced the original WCA of 1974, provides the legal framework for operation of the Wildlife Division under the MNRT, including the appointment of the Director, as well as the establishment of Game Reserves, Game Controlled Areas, Wildlife Management Areas, and other protected areas such as wildlife corridors (not including national parks). The WCA also provides for the establishment of a Wildlife Authority to address the management of wildlife occurring outside the National Parks or the Ngorongoro Conservation Area, with the added responsibility for meeting international obligations involving wildlife conservation. There is also a Wildlife Protection Unit that is granted paramilitary status under the WCA, with the duty of protecting wildlife against unlawful utilization.

In addition, the National Parks Act (CAP 282 RE 2002) establishes the legal authority for the creation and management of national parks, granting powers to the Director General to enable maintenance and security within national parks, as well as the responsibility for the protection of their wildlife resources. The Ngorongoro Conservation Act (CAP 284 RE 2002) provides the legal framework for the existence of the multiple land use in the Ngorongoro Conservation Area and its management Authority under the direction of the Conservator, and also provides the authority for its maintenance and security. The Tanzania Wildlife Institute (TAWIRI, CAP 260 RE.2002), grants powers to the Director General who is responsible for research involving wildlife, and for providing this information to the Wildlife Authorities. The TAWIRI also functions as the CITES Scientific Authority for Tanzania.

The responsibility for managing Tanzania's wildlife falls under four institutions. The first is the Tanzania National Parks (TANAPA). This Parastatal Organization is responsible for managing 15 National Parks with a total area of 50,872 sq.km. In the national parks, only the non-consumptive utilization (tourism game viewing) of wildlife resources is allowed. The second is the Ngorongoro Conservation Area Authority (NCAA). This is also a Parastatal Organization which is responsible for management of only one area, the Ngorongoro Conservation Area covering 8,300 sq.km. It is the only multiple land use wildlife area in Tanzania in which the consumptive utilization of wildlife is not permitted.

The Wildlife Division under the MNRT is responsible for the management of 28 Game Reserves (GRs) with an area of 112,564 sq.km., approximately 38 Game Controlled Areas (GCAs) covering about 161,521 sq.km, and Ramsar sites covering 249,856 sq.km. There are also District Councils, Local Government institutions that work in collaboration with the Wildlife Division. These Councils oversee wildlife conservation issues and facilitate the establishment and management of Wildlife Management Areas (WMAs) on village lands that are outside Protected Areas (PAs). The framework for WMAs was outlined in Tanzania's Wildlife Policy of 1998 (revised in 2007), with legislation established under the Wildlife Management Areas Regulations of 2002, authorizing the formal establishment of WMAs. The goal of this policy is to allow for rural communities and private land holders to manage wildlife on their land for their own benefit and to transferring management responsibilities of settled and unsettled areas outside PAs to rural people and the private sector.

The WMAs are used by communities for conservation and benefit sharing in conjunction with the Wildlife Division. These local communities run the WMAs as a business venture. However, 50% of any hunting revenue generated is retained by the Wildlife Division which also sets quotas and tariffs for any hunting that occurs in the WMAs. The facilitation of these WMAs commenced in 2003, with 12 of 16 original proposals achieving Authorized Association (AA) status. As of June 2010, there were an additional 12 proposals in process. The establishment of these WMAs has resulted in an additional 23,700 sq.km. of Tanzania's land area being added to its conservation network and increased capacity for protected area management through the training of village game scouts and WMA managers. As of June 2010, six out of the ten WMAs with user-rights had entered into business agreements with the private sector worth over \$3.3 million, however, it appears that only a small proportion of this money is being made available to the local communities. Over \$1.7 million was allocated to nine WMAs and several districts in which hunting took place between 2005 -2008. However, there appears to be ongoing challenges that need to be addressed. Investment in training and capacity development needs to be increased as there is a shortage of qualified personnel with relevant skills to be able to manage the Community-based Organizations (CBOs) and AAs. The ability of the community to hold the CBO management accountable and ensure transparent decision-making processes is an issue. There is also a pressing need to increase the economic benefits realized by local communities from utilization of wildlife resources. Overall, the WMAs have a low capacity for generating income for socio-economic development, and as such, do not provide an incentive to local communities to support or even tolerate wildlife as a potential source of renewable revenue.

Both the consumptive and non-consumptive utilization of wildlife resources contributes to about

10% of Tanzania's annual Gross National Product. The tourist industry generates approximately 1.3 billion per year with about 80 million annually going to TANAPA, NCAA, and the Wildlife Division to fund their operations. The two parastatal organizations, TANAPA and NCAA retain 100% of their revenue share. As a result, both TANAPA and NCAA are generally self-sustaining and consequently, National Parks and equivalent areas such as Ngorongoro Conservation Area, with an area covering approximately 57,387 sq.km., or 38% of all PAs in Tanzania, are adequately funded.

By contrast, the Wildlife Division's revenue share is paid to the central treasury, and the Treasury is then responsible for distributing the budgeted monies to the Wildlife Division. The Wildlife Division is responsible for the management and protection of Game Reserves with an area covering approximately 109,471 sq.km., (62% of all PAs). The Wildlife Division over a three year period covering 2007-2009, received only 63% (\$2,634,975 per year) of its approved budget from the central Treasury. This is equivalent to US\$ 24 per sq.km which, when compared to the generally accepted norm of ca. US\$ 200 per sq.km required to protect PAs across southern and eastern Africa (Cummings, 2004), is completely inadequate. With regards to the Selous Game Reserve, the equivalent figure is US\$ 19 per sq.km based on an annual actual budget of \$928,597. Based on this level of funding, it is apparent that the Wildlife Division has not had adequate resources to be able to meet its obligations to conserve, manage, and protecting Tanzania's wildlife resources.

Of further concern is the situation with the elephant population in the Selous-Mikumi ecosystem. Prior to 2005, a Revenue Retention Scheme was in operation in the Selous Game Reserve. This was an agreement between the Government of Tanzania and the German government aid agency, GTZ, whereby a special project status was granted to Selous GR (IUCN-UNESCO, 2007). This allowed for 100% of revenue from photographic tourism, and 50% of revenue from hunting operations to be retained for management of the area. Over the 10 year period from 1994-2004, this retention scheme provided an operational and development budget totaling \$ 15.8 million, an average of \$1,576,000 annually. However, following National budget reductions in 2004, this amount retained by the Reserve declined dramatically to approximately \$800,000 in 2008. This drop in revenue coincides with a period of increased poaching in the Reserve suggesting that anti-poaching operations are severely underfunded.

The hunting of elephants is permitted in Game Reserves, Game Controlled Areas, and Wildlife Management Areas where designated hunting blocks exist. The trophy hunter is required to pay of a license fee that ranges from \$7,500 to \$25,000, the fee being determined by the tusk size of the animals shot and the type of weapon used. The minimum tusk size of a trophy animal is 15kg for males and females. In 2007, Tanzania notified the CITES Secretariat that it had established an export quota of 200 elephants (400 tusks), an increase of 100 bull elephants a year. However, since that time, the legal off-take has been less than 50% of the established quota.

U.S. hunters are the primary recipients of licenses in Tanzania. It is the belief of these hunters, as well as the DMA, that the funds generated from these licenses are being used for conservation purposes. If, however, only a limited portion of these funds are actually utilized for conservation,



it raises further concerns that U.S hunters are not actually contributing the level of conservation funding they are led to believe, and therefore, are not likely to meet the ESA criteria of showing that imports of their trophies contribute to the enhancement of the species.

**Sustainable Use:** The elephant deaths that occur in Tanzania are a result of several factors, including: 1) natural mortality; 2) trophy hunting; 3) problem animal control; and 4) poaching. In considering whether any level of off-take from trophy hunting is sustainable, the level of both legal and illegal take, as well as the rate of natural mortality throughout the country, must be taken into consideration. As previously stated, since 2007, Tanzania has had an established export quota of 200 bull elephants (400 tusks). From 2003-2006, the export quota was set at 100 elephants (200 tusks). During the period from 1997-2002, the quota was set at 50 elephants (100 tusks). Typically, Tanzania has not exported its full quota allotment in sport-hunted trophies or tusks. During the period covering 1997-2009, elephant tusks exported annually amounted to about 40-45 % of the allowed quantities and never exceeded the approved annual quota. In 2010, in conjunction with Tanzania's request to have their elephant populations down-listed to Appendix II, a CITES Panel of Experts was convened to determine whether a down-listing was warranted. At the time, records of natural mortalities covering the entire country were not available and the MNRT Wildlife Division failed to provide data that the Panel requested on the killing of problem elephants. An analysis of the Wildlife Division and TANAPA ivory store databases in 2010 showed the accumulation of 9,705 whole tusks from natural mortality and 12,057 from Problem Animal Control (PAC) in the period from 1989-2009. When averaged over the 21-year period, this was equivalent to 231 elephants dying from natural causes and 287 elephants taken as problem elephants annually. Based on these numbers and the number of trophy animals taken each year, it was estimated that a minimum of 718 elephants were taken annually by legal means. This was equal to 0.7% of the 2009 elephant population estimate of 109,022. Based on what was considered very low carcass detection rates for the country overall, it is likely that the number of natural mortalities was much higher. However, the Panel believed that the level of offtake from legal killings still fell within the expected rate of increase of the elephant population, 3 to 5% annually, which was considered sustainable.

With regards to illegal off-take, official elephant poaching statistics provided to the Panel by the Wildlife Division indicated that 258 reported poaching incidents were documented during 2005-2009, including 82 poaching incidents in 2009. This was the highest reported number of elephants poached in any one year during that time period. The Panel noted, however, that total number of poaching incidents was considered to be greatly underestimated given the low elephant carcass detection rates for the country (CoP15 Doc. 68, Annex 6a). Evidence cited by the Panel showed that poaching had led to elephant population declines in the Selous-Mikumi ecosystem, based in part, on the Proportion of Illegally Killed Elephants (PIKE) values collected at the Selous Mikumi Monitoring Illegal Killing of Elephants (MIKE) site, showing a progressive increase in poaching activities between 2003 and 2009 (CITES Secretariat, 2010). In addition, the joint Wildlife Division/Selous Rhino Project aerial observations and foot patrols recorded more than a threefold increase in encounter rates of recently dead elephant carcasses between 2007 and 2008 (TAWIRI, 2010b). There had also been reports from tourism operators in the northern Selous of increased elephant and other wildlife poaching since 2007/2008, including several incidents close to tourist camps. There were also a significant proportion of the large

seizures of ivory made in Asia in 2006 that were traced by forensic DNA work to elephants killed in the Selous-Niassa area (Wasser et al., 2009). The ivory confiscations served to highlight that the Selous-Mikumi ecosystem was a hotspot for elephant poaching. In the Udzungwa National Park, all ivory collected by wildlife enforcement officials was from confiscations. According to wildlife officials, these confiscations consisted of illegally-sourced ivory coming out of nearby Kilombero Game Controlled Area in the Selous-Mikumi ecosystem. In addition, the highest numbers of tusks confiscated by field-based Wildlife Division offices were found to originate from Morogoro and Lindi, both areas which are adjacent to the Selous-Mikumi ecosystem (CoP15 Doc. 68 Annex 6a). Given these factors, the Panel of Experts came to the conclusion that the level of off-take at that time was not sustainable in the Selous-Mikumi ecosystem, an area containing about 40% of Tanzania's total elephant population. However, the Panel did note that the legal and illegal off-take appeared to be sustainable in the five other elephant ecosystem, including Ruaha-Rungwa, where populations were stable or increasing, but there were concerns that the situation in the Selous-Mikumi ecosystem could affect long-term elephant population sustainability.

MIKE collects data at representative sites throughout Asia and Africa to measure trends in the levels of illegal killing of elephants, as well as identifying factors associated with those trends. MIKE evaluates relative poaching levels based on the PIKE, which is calculated as the number of illegally killed elephants found divided by the total number of elephants carcasses encountered by patrols or through other means, aggregated by year for each site (CITES Secretariat *et. al.* 2013). A PIKE level of 0.5 or higher translates to a level of illegal annual off-take that is likely to be higher than the annual natural birth rate and, therefore, indicates that the elephant population is very likely to be in net decline (CoP16 Doc. 53.1). A more recent analysis of MIKE data indicates that the levels of killing across the African elephants' range are of serious and increasing concern, and populations throughout Tanzania are declining due primarily to rampant poaching. At the Selous-Mikumi MIKE site, the 2011 PIKE level was 0.64 (based on 224 carcasses), a nearly 27% increase over the 2002-2010 average of 0.50. At the Ruaha-Rungwa MIKE site, the 2011 PIKE was 0.94 (based on 34 carcasses), the highest ever recorded for that site. The PIKE was 0.86 (based on 29 carcasses) at the Katavi-Rukwa MIKE site (CoP16 Doc. 53.1). This trend raises concerns as to the effectiveness of Tanzania's management and enforcement capabilities in protecting their elephant populations and the country's wildlife resources in general.

Of additional concern is the distribution of elephants in relation to existing wildlife corridors in Tanzania, and the impact these corridors have on the mobility of these populations. These wildlife corridors are being destroyed by rapid agricultural expansion, unplanned land use, unsustainable resource utilization, and road construction, resulting in increased isolation of protected areas within Tanzania. The Panel of Experts noted that associated human settlements were increasing in size and number around protected areas, the result being increased human-elephant conflicts. These settlements and the associated conflicts were probably the most important factors limiting the elephant's mobility and range. It was the opinion of the Panel at the time, based on the rates of habitat change and land conversion, that those wildlife corridors still remaining in Tanzania would be converted to unsuitable habitat (would disappear) in less than 5 years (CoP15 Doc. 68, Annex 6a). The current National Elephant Management Plan lays

out a strategic objective to restore lost corridors and to increase protection for corridors that are still in use (TAWIRI 2010). The Wildlife Conservation Act (WCA) of 2009, Part IV (b), Section 22. (1-3), provides the legal framework for conserving Tanzania's wildlife corridors. However, it is not clear whether regulations for implementing this section of the Act were ever written, published, or are currently being implemented.

Based on the most current information available, there is particular concern about the viability of the Selous (Tanzania)-Niassa (Mozambique) corridor. The Selous-Niassa ecosystem extends across southern Tanzania and northern Mozambique, and is one of the largest trans-boundary ecosystems in Africa covering ca. 154,000 sq.km of diverse miombo woodland and supporting a rich mammalian and avian fauna (Jones *et al.*, 2009). According to the 2013 survey of the Selous ecosystem, there were only 32 elephants counted within the Selous portion of the corridor, which resulted in an estimate of  $1,006 \pm 810$  (SE) elephants (TAWIRI 2013a). Additionally, poaching in the Niassa Reserve has reached crisis levels, as evidenced by high carcass ratios (18%; population of 12,000 elephants) observed during October 2011 aerial surveys (WCS Mozambique *in litt.* 2014).

**Summary:** The most recent national elephant management plan, "Elephant Management Plan for Tanzania 2010-2015", was prepared by TAWIRI with the financial support of the Government of Tanzania. The Plan identified nine strategic objectives to be addressed in order to effectively manage Tanzania's elephant population. The Plan also identified three major issues impacting Tanzania's ability to manage its elephants: (1) the country's increasing human population which is putting pressure on natural resources and presenting challenges to conserving its elephants; (2) the threat to healthy and sustainable elephant populations from an increasing loss of connectivity (wildlife corridors) between important wildlife habitat areas in Tanzania; and (3) the ability to provide increased protection for Tanzania's elephant population. In a meeting between the Service and representatives from Tanzania that took place in Washington, D.C. in 2011, then Director of Wildlife, MNRT, Erasmus Tarimo, acknowledged that there were many challenges to the plan, including: low human resources and financing; the high demand for ivory; increase in the level of poverty; increased human-elephant conflicts related to human population growth; political resistance to maintaining wildlife corridors; and providing local communities with a stake in managing, protecting, and conserving elephant populations in Tanzania. Mr. Tarimo indicated at the time that major reforms were underway to improve the management of wildlife resources outside National Parks and Game Reserves.

However, since that time, the situation involving Tanzania's elephant population has grown increasingly worse based on current information from a number of sources. The most recent aerial surveys undertaken by TAWIRI conducted during the 2013 dry season covered the two most important ecosystems for elephants in Tanzania, the Ruaha-Rungwa and Selous-Mikumi Ecosystems. The resulting data shows a continued and rapid decline in the two largest elephant populations in Tanzania. The census of the Ruaha-Rungwa ecosystem showed a decline of over 11,500 elephants from the 2009 population estimate of 31,625. The census of the Selous-Mikumi ecosystem showed a decline of over 25,000 elephants from the 2009 survey estimate of 38,997. The carcass ratios resulting from the survey data from each area was indicative of populations suffering from unnaturally high mortality, with the Selous-Mikumi ecosystem having

a mortality rate twice that of the Ruaha-Rungwa ecosystem. These ratios indicate significant and unsustainable levels of illegal off-take occurring in these ecosystems.

In 2010, the CITES Panel of Experts, in its findings on Tanzania's CoP15 (2010) proposal to down-list its elephant population from CITES Appendix I to Appendix II, raised concerns that the level of off-take due to poaching in the Selous-Mikumi ecosystem was not sustainable and could potentially affect long-term population sustainability throughout Tanzania. However, the Panel also determined that legal and illegal off-take appeared to be sustainable in other ecosystems where elephant populations were found to be stable or increasing, namely the Tarangire-Manyara, Katavi-Rukwa, Moyowosi-Kigosi, Serengeti, and including the Ruaha-Rungwa ecosystem. However, since that time, new information indicates that the elephant declines in Tanzania are no longer restricted to the Selous-Mikumi ecosystem. A more recent analysis of MIKE data indicates that the levels of killing across the elephant's range are serious and on the rise, and that elephant populations throughout Tanzania are declining due primarily to rampant poaching.

Of further concern are recent reports of political corruption at high levels within the government, as well as allegations of Wildlife Division staff within MNRT being in collusion with poachers in the illegal killing of elephants. In October of 2013, under orders from the President of Tanzania, Jakaya Kikwete, a countrywide anti-poaching operation was undertaken to combat the illegal taking of elephants. However, the operation, named "Operation Tokomeza", was suddenly terminated after human rights violations, including homicide and rape, were reported to have been committed during the operation, mainly by army personnel involved in the operation. The victims were semi-nomadic pastoralists who illegally, but quite often, utilize national parks and reserves for grazing their livestock. It was also reported that livestock was confiscated by force, and that unlawful collection of money from both farming communities and pastoralists occurred. On December 20, 2013, four cabinet ministers, including Ambassador Khamis Kagasheki, the Natural Resources and Tourism Minister, were forced to resign over this incident. Mr. Kagasheki assumed the political responsibility for the misdeeds of the army. However, it is not believed he was responsible for what occurred, based partly on his reputation for wanting to combat rampant poaching in Tanzania. There are concerns being voiced of strong political and business forces within Parliament, and elsewhere, possibly involved in local poaching or actively protecting such illegal operations.

There are also questions as to the ability of the Wildlife Division to combat poaching. It was announced in January of this year that MNRT had suspended 21 Wildlife Division staff for allegedly colluding with poachers to kill elephants. The Deputy Minister, Lazaro Nyalandu, MNRT, stated that investigations had shown certain members of the ministry's staff were directly involved in illegal acts in collaboration with wildlife criminals. The suspended staff were comprised of eleven individuals from the Anti-Poaching Unit in Arusha, four from the Rukwa-Lwari Forest Reserve, one from the Anti-Poaching Unit in Bunda, three from Maswa Forest Reserve, one from Selous Forest Reserve, and one from the Lukwika-Lumesule-Msanjesi Forest Reserve. These recent events put into question the country's commitment and ability to conserve and protect its natural resources, including elephants.

It was announced in early January of 2014, that the government planned to establish a new agency, the Tanzania Wildlife Authority (TWA), charged with the security of wildlife within all game and forest reserves in the country. The TWA would be granted full authority to hire, fire, and carry out official functions as opposed to the present framework under the MNRT. This new body would be charged with eliminating poaching and other illegal acts harmful to the country's natural resources and would be given full autonomy to set its own salaries and provide incentives to staff to perform their duties efficiently and effectively. It would operate as a parastatal organization much like TANAPA and NCAA. It was estimated that over 4,000 new staff would be needed to cover the over 20 game reserves and 50 forest reserves country wide. This new organization awaits Parliamentary endorsement sometime this year. As a result, while hopeful that this organization will greatly improve the situation in Tanzania, it is too soon to determine what impact the creation of TWA will have on anti-poaching efforts in Tanzania.

While the Service recognizes that sport-hunting, when conducted as part of a sound management program, can provide an important conservation benefit to elephant populations, current conditions in Tanzania put into doubt whether any level of legal take is sustainable. The CITES Panel of Experts concluded in 2010, that the level of off-take occurring in the Selous-Mikumi ecosystem could not be considered sustainable based on a decreasing population and the high level of poaching taking place within that ecosystem. The panel further noted that the legal and illegal off-take appeared to be sustainable in the other five elephant ecosystems based on stable or increasing elephant populations, but voiced concerns that this situation could affect the long-term elephant population sustainability. Since that time, data has shown that populations throughout Tanzania are in severe decline and that poaching appears to be out of control. Based on these factors, DMA is **unable to find** that the sport-hunting of elephants in Tanzania in 2014, for import as personal trophies is likely to enhance the survival of the species. The Service will continue to monitor elephant population levels in Tanzania, progress made by the Government in implementing its management plan and addressing the strategic objectives identified in that plan, as well as efforts made to deal with rampant poaching and government corruption that is negatively affecting African elephants in Tanzania.

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