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Mary Cogliano

Manager, Branch of Permits

Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA
Falls Church, VA 22041

Submitted Electronically via eRulemaking Portal:

<https://www.federalregister.gov/documents/2022/11/17/2022-25010/angered-and-threatened-wildlife-and-plants-revision-to-the-section-4d-rule-for-the-african#open-comment>

Re: Docket No. FWS-HQ-IA-2021-0099 Revision to the Section 4(d) Rule for the African Elephant

Dear Ms. Cogliano,

Attorneys for Animals, Inc. (AFA) is a Michigan non-profit and 501(c)(3) organization comprised of attorneys, law students, law school graduates, and other advocates who work to improve the lives of animals. We actively follow legislative, administrative, and policy actions related to the welfare of animals. We appreciate the opportunity to comment on this important proposed rule.

The proposed rule ("Rule") is a significant improvement to the welfare of elephants, both in range countries and in the United States. It acknowledges the increase in illegal trade of elephants and elephants' parts in recent years. It would align this country's policy more closely with the Convention on International Trade in Endangered Species ("CITES"). It would impose more stringent standards on range countries. It acknowledges the need to improve standards of care for elephants living in this country, admitting there is not even an accurate count of their numbers. The dual goal goals of encouraging conservation in range countries and improving the welfare of elephants under US jurisdiction is an ambitious one.

While far-sighted and comprehensive, the Rule has significant limitations which we discuss in response to the US Fish and Wildlife Service ("FWS") request for "public comment and supporting evidence on the analysis and on the alternatives explored in this rule's draft environmental assessment and economic analysis."¹

¹ <https://www.federalregister.gov/d/2022-25010/p-187>

An Outright Ban is Supporteded by Science and Policy, and Should Be Considered for African Elephants, a Threatened Species

FWS has determined not to ban imports based on assumptions about the efficacy of killing in the name of conservation. It is based on an uncritical reliance on the theory that trophy hunting is the major source of income to range countries with no analysis of alternate sources of revenue via non-consumptive activities, nor consideration of the impact that encouraging such alternatives via this rule would have on the elephant population. Its reliance on elephants' categorization as merely "threatened" under U.S. law is misplaced: the FWS currently is reviewing a petition to list African elephants as "endangered"² and acknowledges its authority to impose bans on threatened as well as endangered animals.³

We urge the FWS to reconsider a ban. As the Rule acknowledges, a ban — with very limited exceptions⁴— is supported by studies that take into account the legal, biological and welfare impacts of the trade.⁵ Available trade data shows that an increasing number of wild-sourced live African elephants are being traded, but the United States has embarrassingly little information about the elephants who currently reside in this country.⁶ Because the US already does not how many elephants are in the room, the FWS' "band-aid" approach is inadequate. The Rule's strengthened standards of care for elephants and the criteria for imports are commendable, but there is compelling evidence that the focus needs to be on the elephants already living here — not on strengthening standards for future imports.⁷ Elephants are highly empathetic and social creatures; removing them from their natural habitats and herds to bring them to the United States is costly to their physical and mental health.

² <https://www.federalregister.gov/d/2022-25010/p-39>.

³ <https://www.federalregister.gov/d/2022-25010/p-121>.

⁴ <https://www.federalregister.gov/d/2022-25010/p-101>.

⁵ <https://www.federalregister.gov/d/2022-25010/p-100>: "challenges to CITES regulation of the international trade in live, wild-caught African elephants. The document presented a detailed analysis of information on the legal implications, biological impacts, and welfare effects of the trade in live African elephants, including case studies. It concluded that, emergencies aside, the only recipients that should be regarded as "appropriate and acceptable" for wild-caught African elephants are in situ conservation programs or secure areas in the wild within the species' natural range. The International Union for Conservation of Nature (IUCN) Species Survival Commission African Elephant Specialist Group has opposed the removal of African elephants from the wild for any captive use for many years."

⁶ <https://www.federalregister.gov/d/2022-25010/p-124> and following paragraphs, can only conclude that there are a minimum of 146 elephants in US; exact numbers unknown because no central registration. More info about elephant population in us:

⁷ <https://www.federalregister.gov/d/2022-25010/p-125>. NOTE that FWS acknowledges problems, ie the new regs address "gaps" in domestic regulation of live elephants including housing standards:

There are already elephants suffering in the United States, and too many remain unreported and underregulated.⁸

The Rule Depends on Uncritical Acceptance that Trophy Hunting is Good for Conservation and Good for the Economies of Range Countries, Thereby Precluding Consideration of Alternatives as Required by the Code of Federal Regulations

There is a dispute among scientists about whether killing animals for “trophies” helps conserve species. Paying a high price to kill an animal is rarely, if ever, motivated by conservation; it is of course partly motivated by a desire to claim a ‘trophy.’⁹ Trophy hunters want to kill animals who are ‘rare’ —e.g., endangered or threatened animals—and return home with trophies from animals who, while alive, had the longest tusks or largest footprints. The hunt for ‘trophies’ often removes key individuals from herds and results in a kind of reverse evolution wherein the fittest animals are killed, thus leaving the rest of the animals and the genetic pool to suffer. Trophy hunting disrupts hierarchies and generational knowledge and puts the remaining animals in harm’s way, resulting in more human-animal and animal-animal conflicts.¹⁰ The hefty price tags the elite pay to kill animals are rarely directly funneled toward conservation efforts or local communities; instead, the fees often wind up in the pockets of the individuals providing the ‘service.’¹¹ The money is thus rarely a major source of conservation funding.

The FWS has not engaged in an analysis of alternatives to funding elephant conservation in range countries, thereby precluding consideration of alternatives as required of agencies. The FWS considered proposed alternatives but all assume that trophy hunting promotes conservation and do not consider other economic activities that promote conservation.

Conclusion:

We support these rules because they are an improvement on existing ones. However, we urge the FWS to consider a ban rather than a band aid approach. A step toward the ban would be to reconsider Alternative 3, which would put more limits on imports of live elephants, sport-hunted trophies, and animal parts.

We ask FWS to broaden its perspective regarding activities that enhance conservation efforts. The Rule justifies sport hunting based on challenged assumptions that it provides positive economic growth to range countries; and does not take into account that non consumptive activities can have a positive economic impact on these countries. The Rule similarly lacks historical contextualization and uncritically accepts that trophy hunting is justified in the name of saving another country’s flora and

⁸ See *In re Nonhuman Rights Project, Inc. v. Breheny*, No. 52 (N.Y. June 14, 2022).

⁹ It is also linked to personality traits like narcissism. See Judith C. Oleson & Bill C. Henry, *Relations among Need for Power, Affect and Attitudes toward Animal Cruelty*, *Anthrozoös*, 22:3, 255-265 (2009).

¹⁰ See Eduardo Gonçalves, *Killing Game: The Extinction Industry* (2020).

¹¹ *Id.*

fauna. The current rule does not ask why—or if—wealthy individuals (largely from the United States) need to kill to fund conservation efforts in other countries. The Rule would be greatly improved if the socio-economic, cultural, and political context and history were considered. The implicit assumption that the only way to grow the economy and therefore elephant conservation is by perpetuating trophy hunting is a failure of imagination on the part of the FWS and does a disservice to elephants.

Very truly yours,

A handwritten signature in cursive script that reads "Beatrice M. Friedlander".

Beatrice M. Friedlander, JD
President, Board of Directors

A handwritten signature in cursive script that reads "Annie Sloan".

Annie Sloan
University of Michigan Law School J.D. Candidate, Class of 2023