

October 1, 2018

# FWS LIFTS BLANKET BAN ON BIG-GAME TROPHY HUNTING

[Agriculture \(/full-blog/category/Agriculture\)](#)

BY: KATHERINE MOORE

Animal rights groups such as the Center for Biological Diversity, the Humane Society, and Born Free U.S.A. have filed a lawsuit against the United States Fish and Wildlife Service (FWS) challenging its recent policy changes regarding the import of elephant trophies into the United States. The new policy allows for case-by-case determinations as to whether the imports are in violation of the Endangered Species Act (ESA). [1]

The FWS's former policy imposed a blanket ban on all imports of African elephant trophies. The policy change came as a response to the D.C. Circuit Court's opinion in *Safari Club Int'l v. Zinke*. [ii] In *Safari Club*, the circuit court ruled that, under the Obama administration, the FWS did not adhere to the notice-and-comment rule-making requirements of the Administrative Procedure Act (APA) before adopting "enhancement findings" as to whether the killing of certain animals for trophy purposes will enhance the survival of the species. [iii]



credit (<https://www.nytimes.com/2018/03/07/science/trump-elephant-trophy-hunting.html>)

The FWS announced in a formal memorandum that it was revoking the previous enhancement findings under the ESA, further stating that the revoked findings “are no longer effective for making individual permit determinations for imports of those sport-hunted ESA-listed species.”<sup>[iv]</sup> Animal rights groups argue that this new policy is not based on science, is unlawful, and violates the ESA by not promoting the conservation of species that are threatened with extinction.<sup>[v]</sup> More importantly, the groups contest that the FWS’s change in policy as arbitrary and capricious under the APA.

The memorandum “did not specify the criteria that would be taken into consideration when granting permits,” and it is also “not clear what role President Trump, who has referred to elephant hunting as a ‘horror show’ and stopped previous efforts to roll back on the ban, played in the new decision.”<sup>[vi]</sup> The confusion created by the FWS memorandum is frustrating for conservationist groups who need more information about what criteria will be used in FWS’s new case-by-case determination process.

While blanket bans on animal hunting trophies such as those desired by the various animal rights and conservationist groups can be good policies, it is important for agencies to follow the proper notice-and-comment rulemaking requirements set out by the APA. Hopefully the FWS can conduct a proper notice-and-comment period and reintroduce a policy similar to that introduced by the Obama administration and ruled against by the D.C. Circuit Court.

[1] Miranda Green, *Animal Rights Groups Lodge Suit Against Interior for New Elephant Trophy Policy*, The Hill (March 20, 2018, 2:03 PM), <http://thehill.com/policy/energy-environment/379342-animal-rights-groups-lodge-suit-against-interior-for-new-elephant> [<https://perma.cc/QU66-H4F3>].

[ii] *Safari Club Int’l v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017).

[iii] *Id.* at 328.

[iv] Brigit Katz, *U.S. Lifts Ban on the Import of African Elephant Trophies*, Smithsonian.com (March 7, 2018), <https://www.smithsonianmag.com/smart-news/us-lifts-ban-import-african-elephant-trophies-180968415/> [<https://perma.cc/T7ZN-WPQS>].

[v] Green, *supra* note 1.

[vi] Katz, *supra* note 4.

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631 SOUTH LIMESTONE, LEXINGTON, KY

40508 (859) 257-4747 [BLOG.KJEANRL@GMAIL.COM](mailto:BLOG.KJEANRL@GMAIL.COM) ([MAILTO:BLOG.KJEANRL@GMAIL.COM](mailto:BLOG.KJEANRL@GMAIL.COM))